

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
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COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

CHIEF COMMISSIONER
& CHAIRMAN

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TOP FLOOR, MURUK HAUS, WAIGANI, THURSDAY 29 SEPTEMBER
2011 AT 10.27 A.M.

(Continued from Wednesday 28 September 2011)

THE CHAIRMAN: Counsel, how many matters have you got for this morning? I see there is quite a number of them and I was going to discuss with you the status of each of the files before we pursue that. That is fine you can be able to address me from the bar.

MR KETAN: Yes. Chief Commissioner, we have a number of matters today. There are about 10 matters today; five of them are in the morning and five this afternoon with other matters stood over to this afternoon from last week. Of the matters this morning, we will be seeking an adjournment on three of them. The first one will be Pulie Anu Plantation, matter number 64. That is to be stood
10 down to the afternoon.

THE CHAIRMAN: Sorry, which one is that?

MR KETAN: Pulie Anu Plantation Limited, matter number 64.

THE CHAIRMAN: All right, thank you.

MR KETAN: And also Akivru Limited.

THE CHAIRMAN: Sorry, you want to have those matters stood over to this afternoon, did you say?

MR KETAN: This afternoon to be dealt with along with other matters to be mentioned by Senior Lawyer Assisting the Commission, Mr Paul Tusais along with other matters that he has this afternoon.

20 THE CHAIRMAN: That is before me, is it? That is before me this afternoon?

MR KETAN: I assume so. Chief Commissioner, of the three remaining matters, matter number 65 Rera Holdings Limited, in that matter we seek an adjournment to Tuesday, 4October. The opening statement on that matter is not quite ready. The Department of Environment and Conservation file has been received this morning and we want to peruse that and take matters in there into account in our opening address; that our opening address this morning is affected by the late submission of that file.

THE CHAIRMAN: Okay, so, that is for Rera Holdings Limited.

MR KETAN: Rera Holdings Limited. We ask that that be adjourned to 4
30 October 2011 at 9.30 am.

THE CHAIRMAN: Okay, that is fine. What was the other one you said to be stood over to 1.30? Is that the Pulie Anu Plantation?

MR KETAN: Pulie Anu Plantation yes, matter number 64.

THE CHAIRMAN: So it will be mentioned along with the other matters set for 1.30 this afternoon with Tusais?

MR KETAN: Yes.

THE CHAIRMAN: All right, that is fine.

MR KETAN: The other matter is matter number 64 which is also to be stood over to 1.30.

10 THE CHAIRMAN: Yes, that is the one we have just been talking about.

MR KETAN: Yes.

THE CHAIRMAN: What about matter number 62, Sepik Oil Palm Plantation Limited?

MR KETAN: Matter number 62 and matter number 63, we will deal with those this morning and opening statements will be made.

THE CHAIRMAN: All right, that is fine. What about matter number 66, Akivru Limited?

10.32 am] MR KETAN: That is also to be stood down – stood over to 1.30 this afternoon.

20 THE CHAIRMAN: All right, that is fine. So, Counsel, which one of you are ready now to make your opening statement? Is that matter number 62?

MR KETAN: Yes, matter number 62 and 63. Matter number 63 is my own matter.

THE CHAIRMAN: Yes.

MR KETAN: In matter number 64, I appear with Ms Peipul.

30 THE CHAIRMAN: Yes.

MR KETAN: She has carriage of that matter.

THE CHAIRMAN: Yes.

MR KETAN: If I can deal with matter number 63 first? It is a shorter matter.

THE CHAIRMAN: Okay. You have a copy of the brief there with you on the opening statement?

MR KETAN: Yes.

10 THE CHAIRMAN: Okay, when you are ready, Counsel.

MR KETAN: Thank you. This SABL matter is Commission of Inquiry file number 70, matter listed number 63; Hewai Investment Limited, Portion 351C, Milinch Karius, Fourmil Wabag, Southern Highlands Province; comprising an area of 358 hectares.

By notice published in National Gazette number G305 dated 16 December 2010, PS Kimas, the former Secretary of the Department of Lands and Physical Planning, as delegate of the Minister for Lands, granted a SABL for 99 years to
20 Hewai Investment Limited, H-I-L, in short over the abovementioned land known as Hayapal, pursuant to section 102 of the Land Act which land is located at Kobalu village, about 11 kilometres south of Koroba township in the Southern Highlands Province.

The Notice of Direct Grant is dated 10 November 2010 and the SABL title is dated 20 January 2011 this year.

From information received from the Investment Promotion Authority of IPA, by way of a current extract as at 2 August 2011, HIL, the grantee, was incorporated
30 on 20 August 2009 and has its registered office at section 218 allotment 47, Pondorosa Street, Henao Drive Gordon, in the National Capital District. Its postal address, however, is PO Box 90, Mendi, Southern Highlands Province. A Certificate of Incorporation was issued on 28 August 2009.

Of the 100 ordinary shares issued by the company, a Janet Gai of Yebi High School, Imbongu, Mendi, has 10; Andrew Wako Loko of Kobalu village Tari, Southern Highlands Province has 10; Tamuni Matialu of the same village has 10; Nole Miape of the same village has 10; Andira Papali of the same village has 10; Simon Pape of the same village has 10; Tommy Payale of the same
40 village has 10; Andrew Pulupe of the same village has 19; and James Tindipu of the same village has 10.

10.37 am] Janet Gai, Andrew Pulupe, Tommy Payale, Tamuni Matialu, Andira Papali, James Tindipu and Simon Pape are Directors of the company while Andrew Wako Loko and Nole Miape are Secretaries. The company has filed returns made up to 30 April this year 2011. There is no other information as to the affairs of the company on the IPA file provided to us such as annual returns.

There is a Land Investigation Report or LIR dated 24 May 2010 certified by a Mr David Takitako, the Tari District Administration Officer which report appears to have been applied for by Mr Andrew Pulupe.

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The only file we have received from relevant government agency is a very thin one from the Lands Department containing, amongst others, copies of the following documents:

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- (i) Titles office copies of the SABL title dated 20 January 2011, bearing Mr Romily Kila Pat's signature;
- (ii) Instruments of lease for customary lands lease -lease back agreement by way of a deed dated 28 May 2010 whereby the customary landowners agreed to lease the land to the State for 99 years and nominated HIL;
- (iii) Gazettal notice of Direct Grant under section 102 number G305 dated 16 December 2010 was signed by Pepi Kimas dated 10 November 2010.
- (iv) The Certificate of Incorporation of HIL is dated 28 August 2009 which is one of the documents on the file.
- (v) The last document on the file is a survey plan or a cadastral map on Portion 351C Hayapa.

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Mr Andrew Pulupe, the Chairman for HIL, has written to the Commission of Inquiry and filed an affidavit deposing to matters in support of the grant of the SABL to his company and stating that the SABL over land in his village was applied for with the intention to participate in a benefit from any spin-off businesses and opportunities flowing from the development of the LNG project in the Southern Highlands Province, given that Mr Pulupe's village of Kobalu is where one of the LNG campsites is. There appears to be some credence to this contention from a letter from the operator of the LNG project, Esso Highlands Limited, to the Minister for Petroleum and Energy dated 29 March 2010.

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From the information from Mr Pulipi's affidavit, we note the following:

- (i) The land covered by Portion 351C, the subject of SABL, is owned by the Hayapa clan of Kobalu village, Tari District, Southern Highlands Province;
- (ii) The Hayapa clan is made of the families of Pulupe, Payale, Tindipu, Pape, Papali, Matialu, Mondo and Kumapuko;
- (iii) Except for the traditional or customary rights of the Hayapa clan members, the land was free or there was no other land dispute;
- 10 (iv) The Hayapa clan members incorporated HIL as their business and or investment vehicle to participate in the LNG projects spin-off activities and other business opportunities;
- (v) The shareholders hold the shares in trust for the clan members;
- (vi) All the directors; Simon Pape, James Tindipu, Andira Papali, Tamuni Matialu, Tommy Payale, Janet Gai; and Andrew Pulupe all being from the Hayapa clan by unanimous consent, represent the interest of the
- 20 Hayapa clan;
- (vii) As an asset for borrowing of funds or to make available land for the LNG project, the Hayapa clan has applied and has been granted the said SABL;
- (viii) As part of their business plan of Hewai, to make available land for investment and other purposes, Hayapa clan members discussed and unanimously resolved in early 2010 to make available the land over which the subject SABL has been granted.
- 30 [10.42 am] (xi) Inquiries were made by members of the Hayapa clan with the Southern Highlands Provincial Government administration and the land was surveyed as appears on survey plan catalogue 10/731 and then registered on 13 May 2010.
- (x) A land investigation was also commissioned and a LIR dated 28 May 2010 was produced.
- (xi) On 28 September 2010, the Director of Customary Leases of the Department of Lands, Andy Malo, submitted a minute together with the appropriate documentation to the then Secretary of Lands to
- 40 approve the grant of the said SABL to HIL.

From the foregoing, Mr Commissioner, it appears that;

- (i) The application and obtaining of the SABL was prompted by a genuine desire to free up land for a commercial purpose and to capture business opportunities from the LNG project.
- (ii) The process of applying for and being granted the said SABL has been properly and duly executed and completed at least on the face of it.
- (iii) That there has not been any undue influence, coercion or influence whatsoever exerted by the shareholders or directors of HIL or by any members of Hayaba clan on anyone, including any responsible staff of the Department of Lands. For example, the director of customary leases, the registrar of titles or anyone else who may have been or should have been involved in any capacity in the process of granting the SABL and HIL remains the grantee as at date.

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Following the certification of the land investigation report the provincial administrator, Mr William Powi, issued a recommendation as to alienability dated 25 May 2010. A copy of the recommendation as to alienability has been provided by the grantee HIL.

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There is however, no certificate of alienability in amongst the documentation provided by the Department of Lands and Physical Planning or the grantee of the SABL HIL.

The matter - this is the SABL - appears to be an initiative of the landowners to promote land development of their customary land commercially, especially, in view of the LNG project in their area and because we have not had any competing interest claims we can assume for the moment that there are no disputes over the SABL.

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It however appears that in the haste to get the SABL issued, some procedural requirements may have been overlooked resulting in (1), the lack of a certificate of alienability by the custodian of trust land; (2) discrepancy in the signature of the Notice of Direct Grant signed by P S Kimas dated 10 November 2010, and the title document dated 20 January, that should be 2011, issued by Mr Romily Kila Pat.

Apart from the above it seems that this SABL was genuinely applied for and granted to a landowner company which seems to be operating.

In saying this, we assume that a Certificate of Alienability exists, although, nothing has been produced. It may well be that no certificate of alienability was requested from the custodian of trust land and therefore none exists. This may be because the Department of Lands and Physical Planning did not think it was necessary which may be consistent with evidence given by Mr Romily Kila Pat, the Deputy Secretary for Customary Lands at paragraph 4, 10 and 11 of his affidavit of 19 September 2011 in which, he stated that the Department of Lands and Physical Planning made an administrative decision to cease requesting Certificates of Alienability about 10 years ago.

Whilst there is no Certificate of Alienability issued by the Custodian of Trust Land, the SABL was issued on 18 January 2011 by Mr Romily Kila Pat exercising his powers as a delegate of the Minister for Lands.

There are no other documents and information to make any other findings at this stage. The Lands Department file is very thin and no document was received from any of the other State agencies, such as Department of Agriculture and Livestock or the Department of Environment and Conservation, notwithstanding as we have not received any submission from any persons with competing interest.

10.47 am] We assume that the grant of the SABL has been accepted, an assumption that accords with the LIR or the land investigation report.

At this stage, the Commission of Inquiry should, in our submission, make the following interim findings:

- (i) The land appears to be customarily owned by the Hayaba clan of Kobalu village, Tari, Southern Highlands Province.
- (ii) Hayaba clan members are happy for the land to be leased to shareholders and directors of HIL who are members of the Hayaba clan and hold the shares in trust for the clan.
- (iii) That Andrew Pulupe, Simon Pape and the other trustee shareholders and directors, and therefore, HIL have the full consent of the customary landowners.

- (iv) That the SABL is being developed and fully compliant of the purpose of the lease or lease conditions.
- (v) That the certificate of alienability does not exist.
- (vi) That the Lease-Lease Back Agreement or Deed under section 11 of the Lands Act appears to exist.
- (vii) That in view of (v) above, that is that a Certificate of Alienability does not exist, the SABL granted to HIL or Hewai Investment Limited, maybe improper verging on the illegality as being issued without the existence of Certificate of Alienability and in breach of long standing administrative practice and procedure that has become a convention over the years and taking the words from the Chief Secretary's evidence of 13 September 2011, that a COA or Certificate of Alienability is a precondition to the granting of a SABL without which a SABL cannot be granted, which evidence of course has been contested by Mr Romily Kila Pat.

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Again, whilst there does not appear to be any controversy over the SABL, the legality and or the propriety of the SABL is doubtful which needs to be further investigated and for which purposes, the following persons need to be called or summoned in to give evidence:

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- (i), Mr David Ekins, Lands and Community Affairs, Field Manager, Moro, of ESSO Highlands Limited to give evidence on the business operations of Hewai Investments Limited.
- (ii) Mr Andy Malo, the Director Customary Leases, Department of Lands and Physical Planning.
- (iii) Mr David Takitako, Tari District Administration Officer to give evidence on the land investigation process and report that he undertook and certified.
- (iv) Mr William Powi, Provincial Administrator to confirm the issuing of the recommendation as to alienability by him.
- (v) Mr Romily Kila Pat, Deputy Secretary, Customary Land Services of the Department of Lands and Physical Planning to give evidence

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on the existence or otherwise of a COA or Certificate of Alienability.

(vi) Andrew Pulupe and the other shareholders and directors of Hewai Investments Limited as to the whole process of the grant of the SABL and development by them.

(vii) An officer from the office of the Custodian of Trust Land to give evidence as to the existence or otherwise of a Certificate of Alienability.

10 Chief Commissioner, this then concludes my opening statement on this particular SABL and I ask that the matter be adjourned generally. Thank you.

THE CHAIRMAN: Thank you, Counsel. I take note of your request to have that matter adjourned generally, and of course, on the understanding that once the dates for the provincial sittings are finalized, then it will be shown on the listings including the date of the substantive hearing on this matter. All right, thank you for that. We will have this matter adjourned generally until a full schedule of hearing dates are published at a later date. Thank you, Counsel. What is the next matter that you want to raise this morning, did you say?

10.52 am] MR KETAN: The next matter is number 62, Sepik Oil Palm Plantation Limited. I understand and note that there may be lawyers appearing,
20 representing parties with interest in that matter. I have not had the opportunity to meet with them prior to the hearing and perhaps if you take their appearances and ascertain what their interest and as to which interested party or that maybe the grantee or some other interested parties so perhaps if you take their appearances first before we proceed.

THE CHAIRMAN: All right. Can we have your name and which party you are representing?

MR WALI: Good morning, Chief Commissioner, my name is Herbert Wali; Wali is my surname.

THE CHAIRMAN: Yes, you are representing?

30 MR WALI: The parties I am representing Mr Andrew Pinge of Wiamungu village.

THE CHAIRMAN: You want to spell that name of the village, Wi ---

MR WALI: Andrew, Pinge spelt P-i-n-g-e.

THE CHAIRMAN: Yes, of which village?

MR WALI: Of Wiamungu village.

THE CHAIRMAN: Okay, you spell that one for me.

MR WALI: W-i-a-m-u-n-g-u, Wiamungu village of Sepik plains, Saussia LLG, Yangoru, Saussia District, East Sepik Province and Mark Wuktumi ---

THE CHAIRMAN: Mark who? What is the second name?

MR WALI: Wuktumi spelt W-u-k-t-u-m-i.

THE CHAIRMAN: Wuktumi, okay, good.

10 MR WALI: Of Rabiyawa village.

THE CHAIRMAN: Is that all?

MR WALI: That is all.

THE CHAIRMAN: And what are they?

MR WALI: They are ---

THE CHAIRMAN: They are grantee or what?

MR WALI: They are basically representing their clans and the village. That village is contained in a community called Mongul community, consisting of about four villages and their customary land basically covers that community.

20 THE CHAIRMAN: My question, Mr Wali is that, who are they as far as these proceedings are concerned? Are they the grantee or what are their interest in this particular SABL?

MR WALI: They are basically parties coming in as complainant to the granting of the SABL.

THE CHAIRMAN: They are opposing the granting of the SABL?

MR WALI: They are opposing, yes.

THE CHAIRMAN: Okay, good, thanks. Yes?

MR IPAPE: Good morning Chief Commissioner, Counsel's name is Myron Ipape.

THE CHAIRMAN: Sorry, you will have to speak loud a bit.

MR IPAPE: Counsel's name is Myron Ipape.

THE CHAIRMAN: Meroni.

MR IPAPE: Myron, Myron.

THE CHAIRMAN: Myron?

MR IPAPE: Yes.

THE CHAIRMAN: And the surname is?

10 MR IPAPE: Ipape.

THE CHAIRMAN: I---

MR IPAPE: P-a-p-e from Kuman Lawyers, appearing for the grantee Sepik Oil Palm Plantation Limited.

THE CHAIRMAN: Sorry, I will come back to you. Mr Wali, what law firm are you from?

MR WALI: I am from BS Lai Lawyers.

THE CHAIRMAN: How do you ---

MR WALI: Formerly Brendan Lai Lawyers ---

THE CHAIRMAN: Brendan Lai Lawyers.

20 MR WALI: We were formerly with Jerewai Lawyers and we left a month ago.

THE CHAIRMAN: Okay, Brendan Lai Lawyers?

MR WALI: Yes.

THE CHAIRMAN: All right, okay, thank you. Okay, Mr Ipape, yes.

MR IPAPE: I am appearing on behalf of the grantee Sepik Oil Palm Plantation Limited.

THE CHAIRMAN: You appearing on behalf of the grantee?

MR IPAPE: Yes.

THE CHAIRMAN: That is the Sepik Oil Palm Limited?

MR IPAPE: That is correct.

[10.57a.m] THE CHAIRMAN: Okay. Thank you. Counsel, you have got your brief there; your opening statement?

MR KETAN: Yes. Just before I proceed, just for formality sake, for the records, the lawyers appearing need to – they do not have a right of appearance so they need to seek leave of the Commission pursuant to section 8 of the Commission of Inquiry Act, which cannot unreasonably withheld but they need
10 to do that and I guess in their statements they have done, they have stated their reasons for the interested parties that they are representing. But if they could seek leave and if we can for the record deal with that before we proceed?

THE CHAIRMAN: You can. I guess there are two ways of looking at it. First, you can seek leave now but really the business for this morning is really to do an opening statement.

MR KETAN: Yes.

THE CHAIRMAN: We are not going to get into the arguments of the rights and the wrongs or the pros and the cons. Today is really, and has been since last week opening statement on each and every of the SABLs that have been
20 referred to the Commission of Inquiry. So in my view the proceedings today is really limited to that extent, and I would suggest that for record purposes, that Mr Wally and Mr Ipate at some stage I will recognise your appearance but not necessarily giving you leave. And I would suggest that you both do a proper application for leave because your participation will become useful when we conduct substantial hearing on the matter. It will either be here or over in Wewak and we will put out a public notice with the schedule of dates and the venue when this matter will be heard so public will be well informed before that. So for the record for this morning I will acknowledge your presence but not necessarily hearing from you both, whilst the Counsel will take me through
30 the opening statement and I guess Counsel that copies of the opening statement may also be given to the two Counsels as well at some stage. It is a matter that you can talk to your learned colleagues and come up with some understanding on that. But it is really an opening statement to open up the file and that is about it. Thank you Counsel.

MR KETAN: Thank you. Chief Commissioner, again for the record, in that matter No 62, Sepik Oil Palm Plantation Limited, I appear with Ms Peipul. The Commission of Inquiry file number is number 36.

Subheading; “Overview” of the written statement.

1. This SABL was listed number 36 of the list of SABLs that were appended to the Commission of Inquiry Terms of Reference issued in June this year.
2. The company that was granted the SABL over apportioned land in East Sepik Province, gazetted as a private company Sepik Oil Palm Plantation Limited.
3. The “Wewak-Turubu Large Scale Integrated Agriculture Project” is the project that is the proposed Agricultural purpose for which some 116,400 hectares has been acquired.
4. In this opening statement we will review the following documentation produced to the Commission for Sepik Oil Palm Plantation Limited, the grantee, and the Integrated Agriculture project from the Department of Agriculture and Livestock, a file was also received from the Department of Lands and Physical Planning, Department of Environment and Conservation released a file and there was also a file from the PNG Forest Authority.
5. Issues related to the production of evidence will be addressed to be dealt with at the full hearing of the matter in the province where the project is located; and
6. A list of persons and accompanying list of documents to be produced and summons will also be stated.

Gazettal Notice of Grant of SABL.

7. An initial notice of grant of the SABL was published in the National Gazette No G145 on 14 August 2008 pursuant to section 102 of the Land Act 1996. The direct grant was effected to Sepik Oil Palm Plantation Limited on 29 July 2008.
8. An amended notice of grant was published in G154 on 2 September 2008 in which two covenants were amended and added in addition to the four that had been typical or usual of standard SABLs specifically that the lease shall take into consideration the ‘Consent or undertaking signed by

the agents and representatives of the landowners in the event the vesting of the lease to a company is in issue.”

9. It appears that the initial August 14, 2008 gazettal notice was a mistake as the September 2, 2008 gazettal notice reflects the actual notice of grant document on the Lands file. This will need to be clarified by the Department of Lands in evidence in the progress of the Inquiry.
10. The land description and locality in the September 2008 gazettal notice also reflected in the lease-lease back instrument schedule is Portion 144C part Milinch of Wombun NW and NE, Tring, T-r-i-n-g NW and NE and SW and SE, Musehu SW and SE Fourmil of Ambunti Wewak in the Wewak District - there is a typographical error there, “Ambunti District” should be deleted – in the East Sepik Province.

Companies and IPA Files we have received from which we note the following information:

11. According to a Companies Registry current extract produced on 5 August 2011, Sepik Oil Palm Plantation Limited was incorporated and registered on 23 April 2008. There are two shareholder companies; a Limawo Holdings Limited incorporated and registered on 10 January 2007 and Wewak Agriculture Development Limited incorporated and registered on 16 January 2008.
12. In a 20 percent and 80 percent split of the landowner company and the developer, as to 20 percent landowner company and as to 80 percent to the landowner company---

THE CHAIRMAN: Counsel, can we start again on this one. It is not really clear as to who owns how much percentage. The split is 20-80---

MR KETAN: Yes, I will repeat that. The split is 20 percent, 80 percent; 20 percent to landowner company and 80 percent to developer. The actual issued shares are about – we deal with that in paragraph 13.

THE CHAIRMAN: Yes.

- 30 MR KETAN: The developer has ownership of the SABL and it is the grantee company. As a possible result, there is no sublease of the SABL to a developer company, which is Wewak Agriculture Development Limited.

13. Limawo Holdings Limited is registered on 10 January 2007 and holds 2,000 ordinary shares in Sepik Oil Palm Plantation Limited which was

issued on 23 April 2008. The developer company, Wewak Agriculture Development Limited was registered on 16 January 2008 and holds 8,000 ordinary shares in Sepik Oil Palm Limited. Those were issued on 23 April 2008 upon the incorporation of the company.

THE CHAIRMAN: So Counsel, the Wewak Agriculture Development Limited is the developer, is that correct?

MR KETAN: Yes.

THE CHAIRMAN: Okay.

MR KETAN: 14. There are three directors of Sepik Oil Palm Plantation Limited, Hui Teck Lau, a Malaysian national resident in Port Moresby, Nyi Then, spelt T-h-e-n, also a Malaysian national and also resident in Port Moresby and a PNG national, Aron Malijwi, resident in the East Sepik Province.

15. Limawo Holdings Limited appears to have six shareholders, all male citizens residing in the Samowia Village in the Turubu LLG and Turubu District. With 2,000 shares of a total 10,000 issued shares in Sepik Oil Palm Limited it owns 20 percent of the company.

16. Wewak Agriculture Development Limited had one initial shareholder of 10,000 ordinary shares in Mr Hui Teck Lau, a Malaysian resident in Port Moresby. He then transferred 9,000 of those shares in the company to one Ching Ming Ting, a Malaysian also and 800 shares to Nyi Then also a Malaysian – same person referred to above – 200 shares appear to have been retained by Hui Teck Lau himself after the transfer to Nyi Then.

[1.12 a.m.] 17. No IPA certification under Investment Promotion 1992 Act Part IV – Certification to Carry on Business in an Activity as well as Part IV, a certification to carry on business in an national enterprise appear to have been complied with by either Sepik Oil Palm Plantations Limited and Wewak Agriculture Development Ltd. The IPA and companies officers will have to confirm this as the result is under section 41A of the Investment Promotion Act 1992 any resulting contracts between the foreign enterprises and the other enterprises may be declared unlawful and void.

That section, Chief Commissioner, states as follows: Its heading is, “Contract etc”, it should be, “unlawful and void in certain circumstances.” It provides, “Where a contract agreement or understanding is entered into between a foreign enterprise and another enterprise and that foreign enterprise had not been issued a certificate at the time at which the contract agreement or understanding was entered into or the subject matter of the contract relates to business activities outside of the nature of the activities for which the foreign enterprise is certified to carry on business, the court, on the application of that other enterprise of the authority, meaning the Investment Promotion Authority, declare the contract to be unlawful and void.”

The Investment Promotion Authority will obviously need to provide evidence or otherwise, explain as to the existence or otherwise of an appropriate certification.

THE CHAIRMAN: Counsel, are you at some stage going to recommend that they be called to give evidence and that?

MR KETAN: Yes.

THE CHAIRMAN: IPA?

MR KETAN: Yes, towards the end of our address.

THE CHAIRMAN: Okay, thank you.

MR KETAN: We deal with that at page 12 of our written extract.

THE CHAIRMAN: Yes.

MR KETAN: From the Department of Lands and Physical Planning files, firstly - which includes both the Registrar of Titles and the Customary Lands Division of the Department of Lands and Physical Planning.

18. From the Registrar of Titles, a title has been produced by, and there are no dealings recorded on the title document, although no file has been produced to date. The title enumerates that following improvement covenants:

1. The lease shall be under bona fide for the purposes specified in the Schedule.

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2. The lease shall be for a term specified in the Schedule commencing from the date when the land was leased from the customary landowners to the State under Section 11 of the Land Act 1996.
 3. The lease shall be rent-free for the duration of the lease.
 4. The lessee shall be responsible for the provision of any necessary easements for electricity, water, power, drainable and sewerage reticulations.
 5. The lessee shall take into consideration the consent and undertaking signed by the agents and representatives of the landowners in the event that vesting of the lease to a company is in issue.

19. Covenant five brings into issue the implications of landowner ownership and hence landowner consent on the lease.

From the Customary Lands Division File.

20. There are no survey plans on file and the one provided from the Surveyor General's office remains unexamined.
21. There is no land investigation report on the file provided and hence no recommendations as to alienability are found on file.
- [201.17a.m] 22. A lease-lease back instrument dated 29 July 2008 was signed by some 56 landowner representatives who all appear to be the Chairmen of ILGs along with State representatives. A search of the ILG Registry will need to be conducted but there is no land investigation report on file to confirm ownership and consent by the customary landowners.
23. It appears that Limawo Holdings Ltd has been spearheading the SABL application. On file in chronological order are the following documents:
- (i) Letter dated 8 March 2007 from Turubu Local Level Government where which the president and project officer of the Turubu ILG sign off on a letter informing of the formation of Limawo Holdings.
 - (ii) A similar letter of support from the Sausso Local Level Government is on file dated 17 July 2007.
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- (iii) A letter pertaining to the registration of some 52 ILGs from the Turubu inland Wewak District originates from the East Sepik Provincial Administration Lands Division to the Registrar of Incorporated Lands and copies attached to it appear to be landowner consents on Limawo letterhead.
- (iv) In a handwritten memo dated 5 June 2008 from Ms Vahine Gure the ILG Registry manageress indicated that not all the necessary requirements have been provided for the registration of the ILGs, including a family list, property list and covering letter to support the application.
- (v) Limawo Holdings Limited has provided a list of some 56 ILG names, however, no confirmation of their registration with the ILG Registrar exist, although numbers are listed next to names of ILGs on the lease-leaseback instrument. This will need to be confirmed with the ILG Registrar.

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24. Documents provided by Limawo Holding Limited to the Department of Lands outline the reasons behind a 20 – 80 percent shareholder split ownership of the SABL grantee company and a resulting consent or undertaking document by Limawo Holdings Limited the one referred to in improvement covenant five of the lease.

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- (i) In a letter dated 10 July 2008 on Limawo Holdings letterhead recounted a resolution of a Limawo Board of Directors meeting held on 20 April 2008. In it they resolved to have SABL granted to Sepik Holdings Plantation Limited as a joint venture company with investor Wewak Agriculture Development Ltd. In the resolution the five of the six directors irrevocably agreed to do so, on behalf of the 56 ILGs, of which ILG certificates and consents have yet to be sighted. It just appears, Chief Commissioner, that this was done through a company board resolution rather than the usual practice of landowners consenting through the land investigation process and reporting.
- (ii) As noted in the IPA files Sepik Oil Palm Plantation Limited was actually incorporated just three days after the board

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meeting on 23 April 2008. That is a company that is 80 percent owned by non-citizens.

[11.22 a.m] THE CHAIRMAN: So Counsel, what did you say? You said the Sepik Oil Palm Limited was actually incorporated three days after the board meeting?

MR KETAN: Yes.

THE CHAIRMAN: I see. I am just trying to understand the difference between the Wewak Agriculture Development Limited. Okay, fine, I see the difference now. Thank you.

MR KETAN: Yes. There was a board meeting on 20 April, at which meeting they resolved that the SABLs should be granted to this developer company and three days after the board meeting on 23 April 2008 the company was registered.

- (iii) A consent or undertaking document was also provided by Limawo Holdings Limited. In it they signed away their rights of objection to the granting of the SABL to the 20 -80 percent owned Sepik Oil Palm Plantation Limited. To that effect a joint-venture agreement is referred to. Mr Pepi Kimas the then Secretary for the Department of Lands and Physical Planning signed off on the Agreement and we recommend that he needs to be called to explain the contents of that.
- (iv) The joint-venture agreement between Limawo Holdings Limited and Wewak Agriculture Development Limited was signed on 18 April 2008. In the joint-venture agreement, there was also a Limawo Holdings Limited Directors Resolution dated 18 February 2008 agreeing to the shareholding arrangement between Limawo Holdings and Wewak Agricultural Development Limited.
- (v) An undated 69-page proposal document titled, "Wewak Oil Palm Plantation Development Proposal" is also on the Department of Lands file. It was, we note, prepared by Wewak Agriculture Development Limited; the developer.

From the Department of Agriculture and Livestock file certain matters are revealed and we deal with those in the next paragraph 25.

25. From the documents produced by that department it relates to the three requirements as mentioned or in accordance with the affidavit of Mr Francis Daink, the Deputy Secretary of the Department of Agriculture and Livestock dated 30 August 2011 when he gave evidence. In it he swore that the process to approve an agricultural project for the purpose of issuing of a Forest Clearance Authority or FCA was a three step process.

- (i) Land capability and suitability assessment;
- (ii) The land use or estate development plan; and
- (iii) The public hearings that are conducted to gauge the views of the stakeholders or landowning clans affected by the project development.

26. Land capability and suitability: An incomplete proposal document was produced by the Department of Agriculture and Livestock, merely the attachment to a main proposal was provided. It appears to be part 2 of the proposal produced on the Department of Lands files referred to above, which we note was prepared by Wewak Agriculture Development Limited; the developer. From this we were unable to determine how the Department of Agriculture and Livestock could assess land or soil suitability and capability in terms of topography. There appears to be some assessment in a site visit by Mr Daink and the Land Use Advisor, by Mr Mai Baiga dated 27 June 2008. In it there are references to historic assessments from 1987 and 1992. In their conclusion as to general suitability in this report they conclude that it is “moderately suitable” for oil palm growing. It stated that soil depth and drainage are the major limiting factors.

27. In relation to land use development. This is the second step of the three-step process. As stated earlier we have received incomplete documents from Department of Agriculture and Livestock and are at this stage unable to establish whether there has been one provided

for assessment. What has been forwarded to us is the “2010-2011 Forest Clearing and Agriculture Development Plan (Coupe 1 Carried-Over Areas) for Wewak – Turubu Large Scale Integrated Agriculture Project (FCA No 11-01)” prepared again by Wewak Agriculture Development Limited. The developer has asked for an extension to its clearing plans. It is eager to clear some 8,472 hectares of forested areas, however, is only willing to plant in grassland areas constituting 4,044 hectares. There is no mention of the 500 hectare clear and plant legislative requirement in the revised plan. This plan though has met with the approval of Department of Agriculture and Livestock and the PNG Forest Authority with unreserved endorsement in a memo dated 5 July 2010. A Richard Kali, the Wewak-Turubu Project Supervisor for the PNG Forest Authority in East Sepik Provincial office will need to be called to explain the unreserved approval. In addition the report does say that the oil palm seedlings will be ready for planting in the grasslands in October 2011, which is next month. This will be an opportune time for the COI to make a site visit to observe and we just state that to be advised later.

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28. In relation to step three, public hearings – public hearings conducted for the stakeholder affected by project development and there is evidence of a public hearing being conducted on 25 July 2008 at Tumurau Primary School, Turubu. In attendance was Provincial Deputy Administrator, Deputy Secretary of the Department of Agriculture and Livestock, Transport Department representatives and PNGFA representative. Most attendees appear to be in agreement with the project, however, only 18 different people spoke representing nine different ILGs from the area.

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29. Under cover of a letter dated 30 October 2008, the Deputy Secretary of the Department of Agriculture and Livestock, Mr Francis Daink, informs the Department Secretary, Mr Anton Benjamin to sign the form 235 Certificate of Compliance for Large Scale Conversion of forest to agriculture. He says that attached to the letter is a submission report from the PNG Forest Authority, minute of the public hearing and a copy of the land use report granted on 26 November 2008. The submission report which appears to have

been revised several times needs to be produced by the Department of Agriculture and Livestock as it is not on the file that they provided to us.

1.32 am]

The same submission was not produced on the PNGFA file provided to us by the PNG Forest Authority and they also need to be pursued for a copy of that.

- 10 30. The PNGFA was informed by the Department of Agriculture and Livestock in a letter dated 12 November 2008, a revised submission is included for the next board meeting for approval of granting of FCA to Wewak Agriculture Development Limited. We do not know whether that actually happened.
31. On 26 November 2008, the form 235 Certificate of Compliance for Large Scale Conversion of Forestry Agriculture was signed by the Secretary for the Department of Agriculture and Livestock, Mr Anton Benjamin.
32. On 26 November 2008, the same day, a letter of congratulations informing Wewak Agriculture Development Limited, the developer, of it being granted a Certificate of Compliance was sent.
- 20 33. On 27 November, the next day, 2008, a letter to the PNG Forest Authority was sent conveying the Department of Agriculture and Livestock's satisfaction that the requirements of compliance have been met for the issuance of the Certificate of Compliance and that PNG Forest Board would issue the Forest Clearance Authority. In other words, the Department of Agriculture and Livestock was certifying and giving clearance to the PNG Forest Authority to issue the FCA.
- 30 34. The latest document on that file is an unsigned NEC submission dated January 2010 regarding the project seeking approval of a five-year funding plan for landowner company, Limawo Holdings Limited. There are no other documents on the file after this.
35. On the PNG Forest Authority file that has been provided, this file was produced to us on 28 August this year. It contains the joint-venture agreement between Limawo Holdings and Wewak Agriculture Development Limited.

36. A minute dated 16 December 2010 and a letter dated 6 December 2010 to Wewak Agriculture Plantations Limited, confirms PNGFA approval of the revised plan as referred to in paragraph 24 above. There is no mention of the 500 hectare legal requirement, fell and plant requirement.
37. This is despite numerous letters on file of selective logging with no work done to clear land for oil palm planting.
38. An inspection was carried out on 12 March 2011 which showed that 120 kilometres of road had been constructed. 98,000 seedlings were awaiting planting although survey and demarcation work for subdividing the plots was yet to commence. The first lot of seedlings should have been or about to be planted, and the Commission will need to inspect this to ascertain the truth or otherwise of it on the site visits during the provincial circuits.
39. East Sepik Provincial Forest Management Committee, a submission was prepared on 4 March 2009, but the documents attached are in draft form.
40. In the letter from the East Sepik Provincial Administration, Wewak District Administration to Customary Lands Division of Land administration signed by District lands officer and undertaking that the 56 villagers or landowning groupings or ILGs of the Turubu ILG area are committed to the project.

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[11.37 am]

This letter is copied to the Chairman of Turubu Incorporated Land Groups care of Division of Lands, P O Box 475, Wewak. This will need to be clarified as this is the first reference in any of the files of a chairman for the ILG of the Turubu LLG area, Local Level Government area.

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41. On the PNGFA or Forest Authority file, letters of support from provincial administration from local level government and the Department of Agriculture and Livestock, one letter dated 14 May 2008, from the East Sepik Provincial Administration supporting the Turubu Project assuring Wewak Agriculture Development, the developer company, that the project had been integrated into provincial development plans and policies.

42. There is a notice to undertake environmental impact assessment on the PNG file dated 2 July 2008.
43. A draft submission to the Provincial Forest Management Committee was intended to be dated for some time in March 2009 is on the file. However, it is simply a draft with attachments missing. A completed submission along with the notice of decision will need to be sighted and the Provincial Forest Management Committee will need to provide that.

10 From the file from the Department of Environment and Conservation, the various matters are noted or revealed.

44. First, beginning at paragraph 44, an environment permit was issued under section 65 of the Environment Act 2000, issued on 5 December 2008 to commence on 02 January 2009. This was as a result of what appears to be the rigorous permitting process all integrated agriculture project go through as sworn to by the affidavit of Michael Wau, Executive Director of the Environment Wing of the Department of Environment and Conservation. This affidavit is the one that he swore and tendered into evidence during his evidence, during phase one of the hearings.
- 20 45. Step 1, the notice of preparatory work has been done by Wewak Agriculture Plantation Limited.
46. Step 2, sees a submission of an environment inception report or referred to normally as EIR which is also in the Department of Environment and Conservation file that was forwarded to us.
47. Step 3, sees a submission of environmental impact statement completed. It is on the file.
48. Step 4, is an assessment of the environment impact statement by the Director Environment. However, this assessment for this project appears not to be on file. Step 5 is the public review and
30 submissions on the environment impact statement. This was conducted with key agencies consulted via mail and public hearings were conducted on 24 and 23 September 2008 at Yamungun and Balik villages, Turubu, respectively. There were 26 attendees from the local community. Many expressed

environmental damage concerns but were positive about the opportunity this development gave to them.

49. Step 6, will entail Department of Environment and Conservation's acceptance of the environmental impact statement through a letter to the proponent. There are no records of this on file.

50. Step 7, is the referral of the environment impact statement to the Environment Council for its consideration. There appears to be an agenda paper to the Council dated 4 November 2008.

10 51. Steps 8 and 9, sees the Council making positive recommendations leading to the granting of the ministerial approval in principle. This document is on file, signed by then Environment Minister Benny Allen on 19 November 2008.

1.42 am] 52. The final step is the developer proponent applying formally for an environment permit, which appears to have happened as no letter has been sighted on the – although no letter has been sighted on the DEC file. Two environmental permits were issued on 5 December 2008 to commence on 2 January 2009. Term for both permits are being 25 years to expire on 1 January 2034, one for general work of the project and waste discharge and the other for water extraction.

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53. There are broad terms governing the work under the permits as a guide to the Commission of Inquiry, the permit requirements should be observed when conducting the site visit to get a first-hand account of compliance and further understanding of the intention of the SABLs, customary landowner economic benefits via agriculture and business on their traditional land and how this intersects with environmental impacts on a previously subsistence life on that same land.

30 54. In relation to submissions and the evidence from interested persons there is an Augustine Mondo acting for and on behalf of Sengi landowners. He states he is representing landowners. He states he is representing villages in Tring, Yulao Kamasau and Murai. The letter is signed off by 17 people. He provided a comprehensive submission letter to the Commission dated 29 August 2009,

although unsworn; it makes allegations and relays grievances that the Commission, in our submission, should note for further investigation and possible examination. These are that:

(i) There was limited awareness and notification of the project and its impacts on the maturity of affected landowners of the project.

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(ii) There were ongoing landowner dispute prior to the project development and now during, however, developer has failed to take note and instead exacerbates landowner tensions with the lure of hard cash.

(iii) Land group known as Limawo Incorporated Land Group ILG registration number 13993 has held itself out as the sole representative of 56 villagers. He says this is incorrect. This is according to Mr Augustine Mondo and that it has led to a single family group from one village to incorporate Limawo Holdings Limited. A search of the ILG registry has not yet been done and that needs to be done as soon as possible.

(iv) ILG certificates for many landowner groupings applied for have yet to be released.

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(v) Major concern is the manner of logging timber which they believe is indiscriminate and wasteful and venturing onto land not covered by the SABL and then not compensating the landowners for that mistake.

1.47 am]

(vi) The logging and road construction has destroyed sacred sites reportedly by the logging road that is running through Urimu land. That the shipping berthing area is also causing marine environmental damage to land and fish stocks.

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(vii) Questions why logging continues when the road to the oil palm planting area has been constructed and the Commission of Inquiry – he believes that the moratorium stops ongoing SABL based logging projects.

- (viii) Limawo Holdings directors have committed fraud by selling shares in Limawo for K500 each; that there appears to be no returns for the investors.
- (ix) The continued landowner grievances have been ignored by the developer.

10 55. The second person of interest or interest person is a Spencer Poloma who is the current Acting Chairman of Limawo Holdings Limited. In a sworn statement dated 18 August 2011, Mr Poloma claims to represent the current interest of the company and states that;

(i) The previous founder of the company, Mr Aaron Malijiwi has been sidelined and who he claims is in court for corrupt practices, that Malijiwi was more aligned with the developer than looking after the interests of the landowners that he reportedly represented. Mr Poloma says that he therefore speaks for Limawo, and this of course, will need to be further investigated by the Commission.

(ii) He described the SABL grantee Sepik Oil Palm Plantation Limited as a ghost company.

20 (iii) That the developer Wewak Agriculture Development Limited has breached the joint venture agreement and log marketing agreement as of 13 July 2009 when machines first landed at Turubu Bay.

(iv) Makes bribery and collusion claims against the local police, provincial administration staff and provincial PNG Forest Authority officers as well as the Turubu ILG president - LLG president with the developer.

30 (v) He mentions bribery allegations against the Department of Environment and Conservation officers including the Director or Chairman of the Environment Council and figures of anywhere in the vicinity of 10,000 and that mentioned. And he indicates a particular date when this happened, being 3 November 2008. Of course he will be

called; Mr Poluma will be called and other evidence called to substantiate these allegations.

- (vi) A disregard of the sacred sites by the developer is an on-going concern.
- (vii) Multiple claims of fraud have been levelled against this person Aaron Malijiwi and that he as well as the developer used the SABL title as a security to secure a Maybank (PNG) Bank loan in April and May of this year.
- (ix) Much social upheaval has arisen due to the presence of the project.

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56. The third person to submit evidence and affidavit is a Michael Sau, Chairman of Katnimber ILG number 9551 of Kambaraka village, Urimo, Yangoru, Saussia District.

Under cover of a statutory declaration dated 25 August 2011, Mr Sau makes initial reference to the lack of proper site inspection when conducting the survey mapping of the land area. He also spoke at the Department of Agriculture and Livestock public hearing. A copy of his speech was on the Department of Agriculture and Livestock filed on 25 July 2008. On 28 July 2008, the lease-lease back instrument or agreement was signed without Mr Sau's signature with no reference to his ILG.

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1.47 am]

- (a) He says that the process of landowner consultation was flawed; and
- (b) That he claims that he discussed the matter with the then Chairman, Aaron Malijiwi, who clearly stated he did not have landowner consent and once he secured investors he would sort out the landowners.
- (c) He claims that his own ILG was not consulted. From cross-checking with ILG Chairs that signed the Lease-Lease Back Instrument, ILG numbers do not correlate and Mr Sau's own village as it appears to have two ILGs; the other one of which signed on the lease.

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- (d) Another claim that K500 membership was collected from 2,000 to 3,000 landowners each by Limawo Holdings Limited with the promise that blocks of land would be offered to the person paying the K500. Indicated at the end of his submission, he says he is available to give evidence to the Commission.

57. The fourth person is the CELCOR or Center for Environment Law and Community Submissions. Submissions received from them on 6 September 2011 via an affidavit sworn by Joseph Lai, employed lawyer of CELCOR representing clients within the Tring-Turubu District of East Sepik Province, specifically highlighting the Department of Environment and Conservation permitting concerns.

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- (a) They claim that much of the statements made in the environment impact statement which they have appended to the affidavit, the same EIS, environment impact statement contained in the Department of Environment and Conservation file referred to earlier in this address. They claim those are false and misleading. And they say that;

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- (i) Requirements under the Lands Department process for SABL registration were not carried as no land investigation report and land used survey per as mentioned in paragraph 2.9 of the environment impacts survey report were conducted. The landowners claim they were never visited by the Lands Department or PNG Forest Authority representatives.

- (ii) Therefore no confirmation of ownership and consent as per relevant regulations of the Forestry Act took place.

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- (iii) Pursuant to paragraph 5.1 of the Environment Impact Statement, there is reference to the company being a newly registered company. As such it has no way to confirm its economic viability for the development of the project. The permits appear to be granted by virtue of its parent companies, although no profiles of

these are included in the environment impact statement.

- (iv) The executive summary of the environment impacts statement claiming benefits will be maximized for landowners according to CELCOR is misleading and false. There is only a few selected landowners benefit.

10 One of CELCOR's recommendation is that provincial level governments stakeholders be looked at closely, specifically, the Provincial Department of Agriculture and Livestock division, Land and Provincial Forest Management Committees. There is some doubt as to the Provincial Forest Management Committee approval. This is in line with the mere draft document sighted on the PNG Forest Authority file and that had yet to be submitted to the Provincial Forest Management Committee.

58. The fifth person of interest is Iawan Holdings Limited.

20 (i) A letter of complaint dated 17 August 2011, briefly detailing the lack of landowner consent of the people of Tring-Wau Kamasau Ibab and Wandimin. Also that trees had been harvested on their land but were not compensated for. Previous letter of complaint to the Surveyor General was attached dated 10 December 2010 detailing the lack of consensus for determining the land boundaries. They expressed concerns for their own project and land boundaries.

11.57 am]

30 (ii) A full submission was received on 15 September 2009 detailing the Jetropha Bio-Fuel Project in the Iawan Wandimi area of East Sepik Province and the encroachment issues. It provides details of the encroachment in detailed maps, these will need to be explained and more carefully mapped by technical persons that we will engage in the course of our inquiries and investigations.

(iii) There appear to be approvals of the project itself from the Department of Agriculture and Livestock. As the required

Department of Agriculture and Livestock stakeholder meetings which is a necessary part of the assessment process, there would be much debate on the encroachment issue and should have influenced approvals.

Obviously, further investigation of this will need to be made in anticipation of the full hearing of the matter on site.

We pose the following issues, Chief Commissioner:

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59. Is the Sepik Oil Palm Plantations Limited a legally registered company? Is Wewak Agriculture and Development Limited also legal? If not, does this invalidate the SABL under the relevant Companies legislation? We do not answer those questions just yet, but we pose those for the time being and this will be part of the continued role of this Commission of Inquiry into this particular issue. But, obviously generally, it raises issues as to if a company is not properly legally in existence in the country carrying on business, whether it has the legal capacity to participate in business and own valuable assets and commodities such as these particular SABLs which are by the legislative regime, designed for landowner - land mobilization for commercial development purposes.

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60. Where all Lands Department procedures complied with? Is the lack of Land Investigation Report and proper survey plan fatal to the SABL issue in process?

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61. Did PNG Forest Authority follow its procedure correctly? There must be approval of the decision by the Provincial Forest Management Committee approving the Turubu Project.

62. Did the Department of Environment and Conservation make a proper assessment of the Environment Impact statement?

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63. Do the persons of interest indicate sufficient lack of landowner consensus prior to the SABL registration process? As I stated just a while ago, we will need to carry out further investigations and call evidence during the hearing on site and even before or after that to answer some of these questions.

In relation to further evidence and documentation, we think that:

64. The Investment Promotion Authority evidence of certification under the Investment Promotion Authority is crucial.
65. The Incorporated Land Group registrar details of ILGs will need to be obtained and reviewed.
66. Surveyor General to explain the lack of a finalized land survey plan and encroachment issues.
- 10 67. The Division of Customary Lands of the Department of Lands and Physical Planning, will need to explain why no Land Investigation Report is produced and to mix up with the gazettal notice.
68. Next, the former Secretary of the Department of Lands and Physical Planning, Mr Pepi Kimas, needs to be called to explain the lease-lease back instrument and the undertaking and consent document.
- [12.02 pm] 69. Next, Mr Francis Daink, the Deputy Secretary of the Department
20 of Agriculture and Livestock who needs to be called to give evidence on the approval of the project from the Department of Agriculture and Livestock's stand point.
70. Magdaline Maihua, Project Manager for the PNG Forest Authority on the PNG Forest Authority approval process will need to be called to give evidence on that process as there are many documents missing especially as regards the provincial liaison with the Provincial Forest Management Committee.
71. Next witness will have to be Mr Michael Wau, the Executive
30 Director of the Environment Wing of the Department of Environment and Conservation as to how the Environment Impact Statement was assessed.
72. Mr Richard Kali, the Wewak-Turubu Project Supervisor for the PNG Forest Authority in East Sepik was based or attached as it appears to this Provincial Office.
73. Limawo Holdings Limited, the past Chairman, Aron Malijiwi and the current Chairman or acting Chairman, Spencer Poloma will need to be called and the other directors will also need to be called during the hearings on site.

74. Finally, Wewak Agriculture Development Limited shareholders and directors will need to be called.
75. In conclusion, The Chief Commissioner, we submit that the issues and matters couched herein will be fully dealt with at the hearing on circuit at the project site and the full hearing will take place at the time, date and place to be determined by the Commissioner and the public, and especially persons of interest will be notified through a publication in the newspapers.

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That concludes our address by way of the opening addresses which is a bit more than a short opening but it was inevitable and necessary to canvass the various issues and to reveal the evidence and documentation on this particular SABL and I ask that this matter be adjourned generally. Thank you.

THE CHAIRMAN: Thank you Counsel. Just one or two comments with respect to it. It appears that a lot of documentations that we would like to be able to view with regards to, especially this SABL, needs to be produced, if we are able to locate them with the various Government agencies responsible for SABLs and I am seeing that some documentations are not been produced so it is probably totally out of our control. But in any event, if you are able to have access to those, we can ask the agents to have them submitted.

MR KETAN: Yes.

THE CHAIRMAN: Initially at the outset, I think, there are a number of very important issues relating to this particular SABL that we need to look at. I am able to see that there are a lot of questions that remains unanswered because of missing documentations and because of the conflicting positions that different people are taking on this SABL. There other comment that I wish to make is, if we can tidy this opening statement up a bit. There are some typo errors and incomplete sentences so we just need to tidy it up. If it is on a computer, we tidy it up and put it on record.

MR KETAN: Yes.

THE CHAIRMAN: All right, we will adjourn this matter generally to a date, Counsel, that as I stated earlier on, that will be indicated through a public notice once the schedule of hearing dates have been finalized. It appears that this matter will be listed for a sitting in Wewak, because I see that you have towards the end also recommended for a site visit by the Commission of Inquiry because the project is ongoing at the moment. In fact, I see a note in one of the pages towards the end that some planting will commence in October next month. So it is still in the process. It is not something that has been completed.

12.07 pm] MR KETAN: Yes.

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THE CHAIRMAN: But in the meantime, we will have this matter adjourned generally to a date that is to be published.

MR KETAN: Yes. Chief Commissioner, sorry, just as I was concluding, I overlooked the fact that my friend Mr Herbert Wali had submitted – I think it was yesterday or today 29th – submission for the – representing some interested persons as he announced himself, also complaining against the issuing and the operation of the SABL. I have not had time to read the contents but for the record, just note that of the five people that we have had submissions on which were referred in my address this morning, I have not referred you to this but I will refer to it now just by way of mentioning it, not necessarily as to the contents of it. But the purpose of it is again in addition to the other four interested persons of interests' submissions, this is the fifth person of interest submission against the issuing and operation of the SABL.

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THE CHAIRMAN: That is fine. We have been getting similar submissions from interested persons and people, so we have got no objection to that and we will file together.

30 MR KETAN: Yes.

THE CHAIRMAN: When we commence our substantive hearing into this particular SABL, then both Counsels will have to make a proper application for leave when we commence, and then of course, you will be given the opportunity to represent your parties. But in the meantime, if there are any submissions that you wish to make in addition to what has already been given, you are free to do so because it is a public inquiry and we would like to be able to get as much information as we can. It will help us to arrive at a decision.

40 MR WALI: Thank you, Chief Commissioner. Basically, the submissions with my clients, Mr Pinge and Mr Wuktumi, I wish to submit most of it has been

mentioned by the Counsel Assisting the Commission. But for the record of the Commission, I would like to state that they basically object to the granting of the SABL, the Sepik Oil Palm Limited, on the basis that the granting of the SABL was based on the grounds of fraud and breach of natural justice and basically in doing so, it is contrary to unjust deprivation of their property. That is a basic issue they would like to raise and that can be heard substantively once the matter reach Wewak. But on the record, they simply object to that. Most of the concerns raised by the others as well and has been mentioned by the Counsel is well stated. There will be elders in the village as well, the clan
10 elders. They will be providing their affidavit to that effect to assist the Commission in its inquiry. Thank you.

THE CHAIRMAN: That is fine, Mr Wali, we will – as I said, you are at liberty to give that statement to the Counsels and at an appropriate time, we will have it admitted formally into the Inquiry. But at the moment, we are receiving all information and all statements from interested parties. Counsel, the understanding is that we will be sitting in Wewak for that. Is that correct?

MR KETAN: Yes.

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THE CHAIRMAN: Once the date is settled.

MR KETAN: Yes.

THE CHAIRMAN: So then your landowners and people back in the East Sepik Province will have the opportunity to submit their affidavits and also to attend in person to testify and give oral evidence if they so desire. But the dates will be published and then you can obviously get in touch with your clients and advise them of the sitting date in Wewak.

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The same applies to you as well, Mr Ipape. If you have got any statements, any submissions that you wish to tender at this point in time, you are free to do so as part of the building up of our information base before we commence substantial hearing into this SABL.

[12.12 pm]MR IPAPE: At this point in time, we do not have anything to submit to the Commission as yet, but just a point I would like to make is that we would appreciate it if the copies of the submissions made by persons of interest to the Commission, copies of which can be available to us so that, our clients can then
40 be able to adequately respond to those allegations made in those respective submissions so that our clients can be able to assist the Commission.

THE CHAIRMAN: That is fine, I have no objection to that. It is just a matter of you consulting with our Counsel Assisting and his team and you can work out some arrangements on that and I personally do not see any problem with that. But at this stage, we are getting an opening statement and ---

MR KETAN: Not at this stage. It is an Inquiry. As to the hearing itself, that is public but there are matters that are part of the continuing investigation that – those may be made available at a later stage when you are there, probably apply for leave to appear and then leave is granted and that is to ascertain that. At this stage, we are just opening the files and making opening statements.

10 THE CHAIRMAN: Yes, I agree. This Inquiry will not apply any strict rules of evidence. There will be, in my view, we will not be wasting too much time on rebuttal of evidence. I mean, that is basically you tell us your story and the other party tell us their story. Tell the Commission of Inquiry your position with respect to that particular SABL and the other party will do the same. And then parties will come; people will come with different interest. Some of them will come into, for example, the greenies - they will come with an agenda to stop everything. But there are others that will come to say, “look, it is for economic development; it is part of the Government’s medium term development strategy, the 2050 Vision to free up customary land for economic participation and development, so different interests. And the Inquiry is bound to listen to all these different interests.

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Okay Counsel, we shall adjourn until half past one.

MR KETAN: Yes.

LUNCHEON ADJOURNMENT

[2.20 pm] THE CHAIRMAN: Yes, Counsel?

30 MR TUSAIS: Good afternoon Chief Commissioner we have several matters for this afternoon. I appear with Ms Peipul she has got – we mention her matters first, it is the last one listed for today Unung Sigite. Yes, Unung Sigite number 71.

THE CHAIRMAN: Yes.

MR TUSAIS: That is a matter that is related to earlier matters that were stood down from last week, 22, 23 and 24. Pomata Investment, Nakiura Investment, Ralopa Investment; these are East New Britain matters, Chief.

THE CHAIRMAN: Yes, starting from 22, did you say?

MR TUSAIS: 22, 23 and 24.

THE CHAIRMAN: Yes.

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MR TUSAIS: And number, sorry, excuse me, number – yes, 71 Unung Sigite.

THE CHAIRMAN: Yes. They are all connected, they are all related, are they?

MR TUSAIS: Yes in one way or the other they are related, although, they concern different SABLs. Their main connection it would appear would be through various companies and individuals and the project called the Sigite Mukus Integrated Rural Development Project in the Pomio District of East New Britain Province.

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THE CHAIRMAN: So it is East; it is not West New Britain, is it? It is East?

MR TUSAIS: East New Britain. Some of these areas that are covered by the SABLs are described – that land description is described as Talasea et cetera so there was an assumption that it was in West New Britain.

THE CHAIRMAN: Yes.

MR TUSAIS: In any case Chief Commissioner, as we go through this various
30 SABLs some of them straddle or cover areas within two, I think, yes – mainly two provinces. They seem to exist on the border so either ---

THE CHAIRMAN: Yes.

MR TUSAIS: Ms Peipul, as usual is ready with an opening statement it runs to about 13 pages. But she has just noticed that there are aspects to this case which she needs to confirm and verify with the office of the Investment Promotion Authority as regards a company - yes, the umbrella company under which these other various companies operating different SABLs seem to operate
40 under. We can start off with what she has prepared this afternoon, but it probably would be neater if she conducted searches tomorrow and Monday and came back on Tuesday with the facts.

THE CHAIRMAN: That is particularly with IPA, is that correct, Ms Peipul?

MR TUSAIS: Correct, yes, IPA. There seem to be companies that may or may not have foreign representation, if I may put it that way, and that is one of the areas which this Commission has been tasked or specifically asked to cover in the Terms of Reference and to verify or to confirm whether persons operating SABLs are PNG – are persons of this country or of foreign extraction. We suggest that this matter be stood over to 4 October that is a Tuesday.

10 THE CHAIRMAN: So that will include 21, 23, 24, together with 71?

MR TUSAIS: 21, 22, 23 plus 71.

THE CHAIRMAN: Okay.

MR TUSAIS: If these matters could be- - -

THE CHAIRMAN: Sorry, Counsel what was the date again that you are proposing?

20 MR TUSAIS: 4th.

THE CHAIRMAN: 4th.

MR TUSAIS: Tuesday 4 October at half past one. There are other matters already listed for the morning.

THE CHAIRMAN: Okay. The reason is to do further searches with the IPA?

30 MR TUSAIS: Yes, that is correct.

THE CHAIRMAN: Okay, that is fine, I have got no objection to that. We will have all these matters 22, 23, 24 and 71 all stood over to next week Tuesday on 4 October at 1.30 pm.

MR TUSAIS: I have not ascertained whether any person present has come forward for this matter perhaps if a general announcement could be made.

40 THE CHAIRMAN: Yes. I do not know whether we have any representative from those three-four SABLs. Do you want to call the names again?

MR TUSAIS: Yes Commissioner. These matters are; Pomata Investment, Nakiura Investment Limited, Ralopa Investment Limited and Unung Sigite Limited.

THE CHAIRMAN: It appears there is no one from there. Yes?

MR TUSAIS: I think there is one or two. Perhaps if – I have not spoken to them, but perhaps- - -

10 THE CHAIRMAN: You can do that later on advise them?

MR TUSAIS: Yes, I think they have heard our reason for asking for an adjournment to next week Tuesday.

THE CHAIRMAN: Yes, we will be setting out to have all these matters stood over to next week Tuesday on 4 October, all those four matters SABLs that are named that Counsel has mentioned because the technical team need to conduct further researches with IPA to check on the companies and the shareholding and all these. So hopefully by next week Tuesday we will have all these
20 information.

[2.27 pm] So you can all come back next week Tuesday. Okay, thank you for coming. All right, that is fine, we have it stood over. What is the next matter Counsel on your list for this afternoon?

MR TUSAIS: The next matter is the rest of those matters. Excuse me – it starts with two matters which were stood down from this morning. It is Pulie Anu Plantation number 64, number 66 Akivru Limited and the other four are listed for this afternoon 67 which is Ivaga Ourouino-musenamta Limited, Polopo
30 Limited, Kavun Limited and Gogoranto Limited.

THE CHAIRMAN: And all in West New Britain?

MR TUSAIS: These ones are definitely in West New Britain, yes Commissioner in the Kandrian District of West New Britain Province.

THE CHAIRMAN: All right, you got a brief on that?

MR TUSAIS: I have got a brief, I start off with the Pulie Anu Plantation –
40 Pulie Anu Plantation. I have got briefs for the others, but those are lengthy ones perhaps I can do them now that I understand that Commissioner you need to attend to something soon. This is for Pulie Anu. In this matter this matter is – there is no longer a SABL title held by Pulie Anu Plantation Limited. The title

granted to it was declared null and void by the National Court sitting at Waigani by order dated 19 June 2008. The decision was made after court action taken under WS or Writ of Summons number 1051 of 2006 filed by a landowner representative called Robert Lawrence on behalf of himself and members of his clan called the Paris, P-a-r-i-s clan and other landowners of other clans in the Pulie Anu area. Two main grounds were pleaded that is, firstly, that the State had acquired the land on which the lease was located fraudulently without knowledge and full consent of the customary land owners. Secondly, that also there had been no prerequisite land investigation report done prior to the grant of the lease to satisfy those preconditions under sections 10 and 11 of the Land Act 1996 which requires full consent of customary landowners before parting with their land.

11.52 am] MR TUSAIS: And secondly that also there had been no prerequisite land investigation report done prior to the grant of the lease to satisfy those preconditions under sections 10 and 11 of the Land Act 1996, which requires full consent of customary landowners before parting with their land.

Chief Commissioner, restraining orders were obtained soon after writ was filed and two years later, the State which was named as the second defendant decided to settle out of court. Court orders were granted accordingly and Pepi Kimas, Secretary for Lands Department and also named as the first defendant cancelled title to the SABL held by Pulie Anu Plantation Limited.

As will be seen later, Chief Commissioner, this however, is not the end of the story in regards to that SABL. The lease was resurrected three months later but as five separate SABLs for five smaller portions of land, but all roughly equating to the same land area or same land mass previously held by Pulie Anu. The new companies were named as Polopo Limited, Akivru Limited, Kavun Limited, Gogoranto Limited and Ivaga Ourouino-musenata Limited. They were all granted one SABL each; titles were granted in September of 2008. I will discuss those companies in separate briefs perhaps at a later date.

In this opening for Pulie Anu Plantation I only outline the creation and subsequent action that was taken with regards to Pulie Anu. Where is this SABL found? Chief Commissioner, this is located on the south coast of the main island of New Britain in the West New Britain Province. The land lies basically between two rivers, that is Pulie River to the west and Anu River to the east. That is probably why they call it Pulie Anu. And it is situated about 30

kilometres, west of the district headquarters at the Kandrian government, I think, station, perhaps town, I am not sure.

For some years logging had been carried out under a LFA which is the local forest area whereby timber operators had carried out logging in agreement with the customary landowners and under direct supervision of the National Forest Service. Chief Commissioner, with an estimated population of about 7,000 or so people, according to the 2007, I think Census, the area is quite remote with no proper road access to the provincial capital of Kimbe town located up north.

10 Commissioner, as to the grant of this lease a Lease-Lease Back Agreement was entered between the State and agents, I think, of 16 villages in the Pulie Anu area on 16 June 2006. On the same day, that is the 16th, Pepi Kimas as Secretary for Lands and delegate of the Minister, issued a SABL to Pulie Anu. Again, on 16 June 2006, a Notice of Direct Grant was published in the National Gazette number G120 announcing 99 year SABL over portion 396 in the milinch of Gogor and Mio. That is two milinches, Gogor in the north east and Mio in the north west, fourmil of Raoult, it is spelt R-a-o-u-l-t and Arawe in West New Britain.

20 The land covered was an area of 46, 233 hectares. Commissioner, the plaintiffs in WS1451 of 2006 pointed to the rapid approval of the lease, grant of SABL and publication of same on the same day as being prima facie evidence that there was an element of fraud involved. It did look highly suspicious that all of these actions could have been done on the very same day.

[2.35 pm] A search of IPA files reveal the following details about Pulie Anu. It is a nationally owned company. According to the extracts, it was registered on 10 November 2005 and it is still operating as a company. It has 62 shareholders and 13 directors named as Nomol Phillip, Jim Ailas, Donimmic Sereng, Martin Mande, Joe Makere, Isaac Micky, Herman Lungio, Francis Murmurio, Mathew Eruel, Robert Kulau, Bensamen Pamore and Peter Utia. The Companies service address is section 29, Allotment 2, Bayside Road Kimbe, West New Britain. Its postal address is stated as P O Box 6399, Boroko, NCD. In its company nomination form it lists its address for service as being Lot 1, Section 479, Kennedy Road, Gordons. As will be seen in later briefs, this would also become the address for service for the five new companies that would be granted SABLs on the same day that Pulie Anu's title was cancelled.

30

The Lands Department's contribution to this Commission of Inquiry was a very skinny file relating to Pulie Anu. The only document inside that file was the copy of the Court Order invalidating title to this SABL. There was no sign of a Lands Investigation Report, any documentation from other agencies including Agriculture or PNGFA since this area is a Forest area, and Commissioner, other correspondence one would expect from a normal file to accumulate over time. Commissioner, nevertheless, those are speculations, but for one reason or another, we did not get any greater detail than that from the Lands Department.

10 As to the Department of Agriculture, also we have not received any file. This is due to the fact that, Chief Commissioner, that the proposed project to be established on the Pulie Anu SABL is an agro-forestry project. The company that would develop this proposed to clear fell the trees or conduct logging prior to establishing oil palm - a big oil palm estate.

In a documentation just received this morning, in fact, there are papers from the Department of Environment and Conservation amongst which is a notification of intention to carry out preparatory work on level 3 activity. This was submitted to the DEC on 19 December 2008, jointly by Monarch Investments Limited as developer and Pulie Anu Plantation Limited as the landowner company. The paper stated the company intends to establish a large oil palm
20 project with initial works costing K250 million.

Commissioner, as far as the PNGFA is concerned, there are no indications that any application was made or no sign as yet that any application has been put forward to be granted a FCA. Records we have obtained from the Forest Service so far do not indicate any pending application over the Pulie Anu area.

[2.40 pm] Commissioner, landowner concerns. There was immediate landowner disagreement and against this SABL . From all appearances, there seem to be two different groups of landowners; one, which is for the SABL and the developer to establish the oil palm project whilst the other side would rather forestry operations continue under the LFA. The initial court action resulted in
30 a victory to that group of landowners but the victory seemed to have been a pyrrhic, as they say; it was short lived, the defendants in that case seemed to have been revived and the SABL is still alive and well. Mention will be made later, and in greater detail in briefs that we will address to the Commission in relation to those five companies.

For this particular SABL, we do not intend to call witnesses and that is for one basic reason, and that this matter has been cancelled. We are just going to state for the record that as far as this SABL is concerned, there is nothing else to perhaps investigate. But if any witnesses were involved in that SABL, they crop up again in the other five SABLs so we will be calling them in regards to those five newly minted SABLs. The Commission of Inquiry will be advised at a later date who those witnesses are.

10 That is all I wish to say in regards to Pulie Anu. I suggest that we do the matters - related matters, tomorrow is full, may be on Tuesday next week, if we can fit them in the morning. I have got other matters listed for Tuesday 4th.

THE CHAIRMAN: Are you proposing that we do the whole lot of them on that date?

MR TUSAIS: Tuesday morning on the 4th at 9.30. The other ones are my matters also so I can run through them.

THE CHAIRMAN: Okay, Tuesday – you got a diary there?

MR TUSAIS: Yes, sir.

THE CHAIRMAN: Is it possible to put them on Tuesday?

MR TUSAIS: Yes, sir.

20 THE CHAIRMAN: I think there is a need for us to have a central diary, now that we are sitting individually. So there is a danger of three of us adjourning too many cases to one day – clogging up the listings so if we are able to maintain some central diary of some sort that will help assist in managing those cases. So Counsel, you are still happy with Tuesday?

MR TUSAIS: I am happy with Tuesday, yes.

THE CHAIRMAN: Okay, and that will be on 4 August at 9.30?

MR TUSAIS: Yes, please.

THE CHAIRMAN: This is for the files – new SABLs?

MR KETAN: Yes, Chief. I will state the names for the record. Akivru No 66; Ivaga Musenanta 67; Polopo, Gavun and Gogoranto.

THE CHAIRMAN: So Counsel, you would have a separate opening statement for each of those five SABLs, I would imagine or you would have only one for the whole lot of them together?

MR TUSAIS: I will try to – I will probably amalgamate them.

THE CHAIRMAN: Yes, you do that.

MR TUSAIS: They basically would be the same but rather than doing five separate openings and saying basically the same stuff.

THE CHAIRMAN: Well, I am just suggesting to you, it is really your discretion as to how you want to – but putting them together would make
10 probably the job much easier for you.

MR TUSAIS: Yes.

THE CHAIRMAN: Otherwise it will be repetition because they seem to be coming from the same source. All right, if that is the case, Counsel, we will have all those matters adjourned to Tuesday next week on 4 October at 9.30 a.m. And the other previous one, we have it stood over to next week Tuesday

[2.45 pm] Any other previous one we have it stood over to next week Tuesday at 1.30. Is that correct? That is for the IPA records?

MR TUSAIS: Yes.

THE CHAIRMAN: And we will be advised on that one as well? And
20 obviously Counsel, we have to come up with a new listings, now that we are adjourning matters to – Thursday – the listings that we have got now will run out by tomorrow so we set a new listing for the Commissioners and Counsels and Technical Advisors are assigned to each of the SABL files for that matter.

All right, we will adjourn to tomorrow morning.

**AT 2.46 PM, THE COMMISSION OF INQUIRY INTO SABLs
ADJOURNED TO FRIDAY 30 SEPTEMBER 2011 AT 9.30 AM.**