

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
Department of Prime Minister & NEC
P O Box 639
WAIGANI. NCD
Papua New Guinea

Telephone: (675) 323 7000
Facsimile : (675) 323 6478

10



COMMISSION OF INQUIRY INTO SABL

MR NICHOLAS MIROU

COMMISSIONER

20

KIUNGA VOCATIONAL TECHNICAL COLLEGE, FRIDAY 18 NOVEMBER
2011 AT 9.42 A.M.

[9.42 am] COMMISSIONER MIROU: Good morning, Counsel. Mr Bokomi?

MR BOKOMI: Good morning Commissioner. Today, we will begin with hearings into the SABL over portion 14C within the Nomad area held by a company called Tosigiba Investment Limited. That is COI file number 64. Before we proceed with the hearings into Tosigiba, there are a number of summonses which have been adjourned from Wednesday and yesterday Thursday, which are returnable today before the Commission.

10 Firstly, I would like to make mention COI summons number 154 that has been issued to Mr Ipihah Biyama who is the District Lands Officer for the Balimo District in the Middle Fly area of the Western Province.

Mr Biyama?

COMMISSIONER MIROU: Mr Biyama, can you go to the witness stand? Counsel, are we ready to proceed with him today?

MR BOKOMI: Commissioner, perhaps we will proceed with him today. I think
20 he has written statements. I am subject to your discretion, Commissioner. My contention here is that we may be running out of time later on, so whatever witnesses that are available and ready to give their evidence, for instance, like Mr Biyama, then - he has prepared a written statement which he can basically read into the---

COMMISSIONER MIROU: All right.

MR BOKOMI: But his evidence will cover---

30 COMMISSIONER MIROU: So, what do you propose, we will hear Mr Biyama's evidence this morning, or we---

MR BOKOMI: We can defer it to the afternoon.

COMMISSIONER MIROU: Mr Biyama, is that---

MR BIYAMA: That is okay with me.

MR BOKOMI: After we have gone through with Tosigiba, we can slot him in.

40

COMMISSIONER MIROU: All right.

MR BOKOMI: The other four witnesses – perhaps he can be excused.

COMMISSIONER MIROU: Okay. Mr Biyama, thank you for coming this morning. We will hear you later this afternoon at 1.30 here. Maybe if you can return, and I note that you have prepared a written statement which we will hear you this afternoon at 1.30 here. Thank you, you are excused until 1.30.

10 MR BOKOMI: Thank you, Mr Biyama.

COMMISSIONER MIROU: There is this other matter regarding Mr---

MR BOKOMI: Mr Titus's witnesses.

COMMISSIONER MIROU: Clients, yes.

MR BOKOMI: His clients, not his witnesses, sorry. At the moment, he is still – does not have the right of appearance before the Commission. So, basically, his
20 clients---

COMMISSIONER MIROU: Yes, we have asked for them to appear this morning, so we will probably have to---

MR BOKOMI: Yes, I believe – I have spoken to them. I think they are all here. Four summonses were issued. They are basically as follows. When I call your name, please, you stand up.

They are COI summons number 224.
30

COMMISSIONER MIROU: Counsel, have you received the affidavits from---

MR BOKOMI: I have obtained copies of their affidavits and we will need time.

COMMISSIONER MIROU: Yes.

MR BOKOMI: We will need time to peruse those affidavits in the context of all the evidence that has transpired in the course of the hearings to date, and also in the context of the substantive matters on foot. So I will be asking that we make
40 mention and adjourn the appearances to tomorrow at 9.30 am.

COMMISSIONER MIROU: Okay, yes.

MR BOKOMI: Those witnesses are as follows: Mr Waiti Kwani, he is appearing under summons number 224 - Mr Foxy Asobi. This particular witness appears under summons number 225. Ms Betty Wain, she is appearing under summons number 26; and Mr Samson Ubre, who appears under summons number 227.

COMMISSIONER MIROU: Maybe they can---

10

MR BOKOMI: It appears there are only two of them here. I do not know where the other two are. Sorry, you are Mr?

MR KWANI: Counsel, they are on their way.

COMMISSIONER MIROU: It is okay, they will pass on the message to their other two colleagues, yes.

MR BOKOMI: Just explain to them that they are under summons.

20

COMMISSIONER MIROU: So, Mr Kwani?

MR KWANI: Yes.

COMMISSIONER MIROU: Mr Kwani and Mrs Wain, you are present here. You can pass this message to your two other colleagues, Foxy Asobi and Samson Ubre. They may probably be caught up with the traffic.

30 We have received – counsel informs me that they have received your statements from your lawyer this morning. Our lawyers need time to look at those affidavits and prepare their questions, so we will adjourn this matter to tomorrow at 9.30 am. The Commission will sit on Saturday, and we will commence our hearings at 9.30 am, tomorrow morning unless you have any other things for tomorrow? Mrs Wain? Foxy?

MR FOXSY ASOBI: No.

COMMISSIONER MIROU: And Samson Ubre, do they have anything that will - okay, so you can come tomorrow at 9.30 am and we will proceed with your

evidence. You are now excused until tomorrow at 9.30 am, and thank you for coming this morning. Counsel, thank you.

MR BOKOMI: Commissioner, as I have indicated, hearings into Tosigiba Investment Limited will commence this morning. The openings were done in Port Moresby. For purposes of actually exacting the actual location of the Special Agriculture and Business Lease, I seek to tender the – perhaps, I will just summarize the openings first.

10 COMMISSIONER MIROU: Yes, if you can do that for the benefit of our---

MR BOKOMI: Very well.

[9.52 am] Commissioner, this Special Agriculture and Business Lease is one of the 75 SABLs that has been approved and appended to the Terms of Reference for this Commission of Inquiry set by the National Executive Council and the then Acting Prime Minister, Mr Sam Abal. The grantee, as I have indicated of the SABL, is Tosigiba Investment Limited which purportedly is a company representing landowner interest from the area between the Strickland and Kasuwe rivers which
20 are the natural boundaries; Kasuwe river to the south, and Strickland river which is the natural divide between portion 1C which was considered and inquired into by the Commission yesterday and portion 14C. Further north and to the east is the administrative boundary of the Southern Highlands Province. It encompasses a total area of 632,538 hectares of customary land which has been acquired and converted and granted as SABL to this particular company called Tosigiba Investment Limited. The actual description of the land can be exerted from the notice of Direct Grant and also the survey plan which I will hand up shortly.

30 But for purposes of the summary of the openings, a perusal of the file supplied to the Commission by the Registrar of Titles and the Customary Lands Acquisition Division of the Department of Lands and Physical Planning at Waigani in relation to the subject SABL shows the following:

1. There appears to be a Land Act section 11 Notice Evidence In Compliance with section 10(3) of the Land Act and forming the basis for the acquisition of customary land.
2. There is a Notice of Direct Grant under section 102 of the Land Act which is dated 23 September and issued under the hand of Pepi S Kimas, the then

Secretary for the Lands, in his capacity as the delegate of the Minister for Lands;

3. However, there is no title deed provided to the Commission by the Department of Lands either from the Registrar of Title's office or from the Customary Lands Division, or from the Secretary of the Department of Lands office to the Commission despite requests formally made by the Commission for same.

10 The lease - lease-back agreement in relation to the subject land was executed by parties on 24 June 2009. Land investigation reports, generally are incomplete and or unsigned in most relevant and necessary parts thereof. The Notice of Direct Grant expressly says that a Special Agriculture and Business Lease under section 102 of the Land Act is granted to Tosigiba for a period of 99 years. However, according to the lands investigations conducted purportedly by the Lands Officer based in Kiunga, one Mr Imen Ite Papa, in relation to portion 14C, the landowners were and are not willing to sell their land outright but, rather, were and are willing to lease for only 25 years and not 99 years as stipulated in the Notice of Direct Grant.

20 The lease period of 25 years as consented to and approved by the customary landowners, as it appears during the land investigations, found the expression as an essential term of the lease - lease-back agreement executed between the landowners and the State as I have already alluded. That particular term is found in part 2 of the terms of the lease as set out in the schedule to the lease which says in particular that the customary landowners agree to lease the subject land to the State for a period of 25 years.

30 Commissioner, you would know that there is a glaring contradiction between the term as set out in the notice of Direct Grant and the term set out in the lease entered into between the State and the landowners. In the lease, landowners are willing to give away their land for only 25 years, whilst in the Notice of Direct Grant, 99 years.

COMMISSIONER MIROU: Who signed the lease on behalf of the State, that agreement? Is it Mr Pepi Kimas?

40 MR BOKOMI: A copy of the lease that I have, the Notice of Direct Grant was signed by Mr Kimas, and the copy – yes, it was signed by Mr Kimas, and it was witnessed by Mr Simon Malu who is now the Director Customary Lands Division,

Lands Department Waigani; and Mr Sikabu Maika who was then here as the Provincial Lands Adviser, but we are advised he has now been transferred to Alotau, Milne Bay Province. It is also noteworthy to mention that only 29 of the 56 ILGs from the area, covered by the SABL, signed through their respective agents the lease instrument.

10 According to the land investigation reports, all the clans owning land within the SABL have, respectively, a population of 1100 persons at 2 per cent natural increase rate per annum. That is the population of almost each and every village that was apparently in which land investigations were conducted. So obvious questions that arise are that, one, how can this be so and how can this be coincidental? What may have happened has already come out in the evidence of Mr Imen Papa.

COMMISSIONER MIROU: We can safely infer that his evidence is that he never---

MR BOKOMI: Yes.

20 COMMISSIONER MIROU: Did the land investigation reports.

MR BOKOMI: We do not need to make any more further conclusions here at this stage. Further, all certificates in relation to boundaries executed by the said Lands officer, Mr Imen Ite Papa based in Kiunga, Western Province, on 15 December 2008, do not indicate when he walked in company of respective clan agents who later signed the Instrument of Lease with the State as far as practicable and indicated the boundaries to the above named persons.

COMMISSIONER MIROU: That is confirmed.

30 MR BOKOMI: Again, he has indicated that---

COMMISSIONER MIROU: Never walked the boundaries.

MR BOKOMI: He never walked the boundaries because he never conducted the land investigations. In addition to that, all certificates recommending alienability were executed also on 19 December by the District Administrator for North Fly, one Mr Ronald Manasseh DMonai. Commissioner, you would note that that particular person, Mr Ronald Manasseh DMonai, was compelled under summons number 223 to appear before this particular Commission yesterday and did give his

40

evidence and his evidence is that he was given the document to sign, only one page of that. He never read anything. He signed that document at Lamana Hotel in Port Moresby and not at Kiunga, North Fly District, Western Province. Commissioner, those are some of the glaring and obvious defects easily ascertainable from the documents as provided. The proposed developer for the project – not the project, but the subject SABL, is Independent Timbers and Stevedoring Limited. Commissioner, for the record, I think we need to correct ourselves. We have been making reference to IT&S as International Timbers and Stevedoring Limited when in fact the actual formal name registered with the
10 Investment Promotion Authority’s Company Registrar’s office is Independent Timbers and Stevedoring Limited.

[10.03 am] That should be the name that is referred to and implied and used in all the other evidences that have unfolded before the Commission in those other matters that we have already done. By original major development projects, it is a level 3. It is proposed to be a major project, a level 3 agro-forestry development project.

The company IT&SL is a company incorporated in the United States of America. It appears to be an American company operating in Papua New Guinea, and more
20 particularly, with interest to develop the agro-forestry sector in the Western Province in the areas covered by the SABLs as follows: portions 1C and 27C which have been granted to North East West Investment Limited, and portion 14C granted to Tosigiba Investment Limited. From our perusal of the files provided by IPA, there appears to be no section 29 certification or evidence thereof for this company IT&SL to operate in the said SABLs, let alone, a Forest Industry Participant Certificate issued under the Forestry Act 1991. These are matters that we will need to further ascertain and confirm.

30 COMMISSIONER MIROU: Yes, with the relevant authorities.

MR BOKOMI: Be that as it may, from perusals of the files, IT&SL has been granted an Environment Permit by the Department of Environment and Conservation on 1 November 2010. The Permit number is WE-L3[204]. The Permit started on 30 November 2010 and was later amended on 3 August 2011. The term of the Permit is for 25 years and would expire on 29 November 2035.

Considering that---

40 COMMISSIONER MIROU: That is a level 3, level 3 Permit.

MR BOKOMI: Yes. Considering that the above three SABLs encompass large tracts of land, IT&SL – which is the acronym for Independent Timbers and Stevedoring Limited – also applied for a Forest Clearance Authority under section 90 of the Forestry Act 1991, and also for a road-line Timber Authority to enable it to be involved in a major agro-forestry development project in the said SABL.

10 Apart from logging, IT&SL, based on the agricultural development plan that it has provided, intends to develop cattle and poultry in a major way with downstream processing plants to meet both the demands of the local PNG market and for export overseas, to name a few, agro-economic activities it proposes to engage in with the use of labour sourced locally.

Commissioner, there seems to be no approvals at this stage from PNG Forest Authority as to the FCA application, the Forest Clearance Authority application. However, road-line applications submitted by IT&SL have been approved and TA024, that is, Timber Authority number 024, has been granted. This, of course, is subject to further inquiry and confirmation.

20 COMMISSIONER MIROU: But you said that they are not a forest participant.

MR BOKOMI: Yes.

COMMISSIONER MIROU: They are not registered as a Forest Participant?

MR BOKOMI: That is correct. All these matters, we need to properly scrutinize and confirm.

COMMISSIONER MIROU: Yes.

30 MR BOKOMI: When we get back to Port Moresby.

COMMISSIONER MIROU: Yes.

40 MR BOKOMI: The common denominator in all these three SABLs is basically this that the two portions held by NEWIL and the one held by Tosigiba now under conservation, that is, portion 14C are basically the areas through which the Trans Papuan Highway – proposed Trans Papuan Highway will be built. That is starting from Gre village, about 14 kilometres from Kiunga town along the road highway towards Tabubil on the right. It goes all the way from Gre village down to Drimgas village up the Fly. That is the first sector of the road which, apparently,

on our visit there on Saturday, we noted that it is merely - more or less like a pilot road track. It is not a highway. We do not know at this stage which company built that road.

COMMISSIONER MIROU: We will have to visit it.

MR BOKOMI: Yes, from Gre to Drimgas, except that we did not go any further down to Drimgas village because we were advised that two bridges along the way have collapsed thereby making it inaccessible for us to get into Drimgas, so we had to turn back along the way and came back to Kiunga.

COMMISSIONER MIROU: We will have to visit that.

MR BOKOMI: That is the first sector. That apparently is known as stage 1 of the project.

Stage 2 of the project starts on the eastern bank of the Fly River from Drimgas village, and it will go all the way up to and including Wawoi Falls as per the delineations on the map which we have tendered to the Commission in the other two matters. That is the stage 2 project.

The agreement that was signed for this particular stage 2 project is also in evidence already. That is the agreement prepared by the State Solicitor in relation to the proposed Trans Island Highway, and it is called Gre-Drimgas Duara Wawoi Falls Trans Islands Highway Stage 2 Road Project.

Evidence which came before the Commission is that there will be an electronic hall bridge built by IT&SL connecting the western bank of the Fly to the eastern bank from Drimgas village. As I have indicated, the project agreement appears to be a road corridor – economic Road-Corridor Project Agreement, but as evidence has unfolded to date, that particular road project works – construction works have not event started. There has deployment of plant machinery and equipment by the company called Independent Timbers and Stevedoring Limited et cetera, et cetera to facilitate for the commencement of the road works.

COMMISSIONER MIROU: Also, this was also used as a means of obtaining the SABLs.

MR BOKOMI: That is correct. The idea behind the road project was that landowner allow certain concessions in relation to their land over which logs will

be felled and sold by the developer and from that money, the developer IT&SL, will be using that money to build the road; a very, very lucrative idea, Commissioner.

COMMISSIONER MIROU: Yes.

[10.14 am] MR BOKOMI: So, Commissioner, in a nutshell, from all that I have basically stated by way of opening, the crux of the issue here is really whether proper land investigations were conducted. The answer is now quite obvious to the
10 Commission in light of the evidence provided by both Mr Imen Ite Papa, the Acting Provincial Adviser Lands, of the Western Province Lands Division; and also the District Administrator Mr Dumunai yesterday and on Wednesday, respectively. That essentially, Commissioner, is a brief summary of the subject SABL and the problems that we have highlighted.

The other glaring effect also is that the notice of direct grant is issued to Tosigiba Investment Limited which company, according to IPA records, is not even registered at all; and I repeat, that particular company Tosigiba Investment Limited is not duly registered with IPA, hence, there are no formal and legal records of
20 registration and or incorporation of that company pursuant to the Companies Act 1997.

Commissioner, that alone means a lot insofar as this particular SABL is concerned from a legal perspective, unless, of course, if the proponents of Tosigiba Investment Limited have evidence to provide otherwise, that really is the fact before the Commission.

COMMISSIONER MIROU: Have we received any submissions or information from those – the executives of Tosigiba Limited?

30 MR BOKOMI: No, not at this stage, I am aware of. I only have Tosigiba Timber Group Limited which, according to records, is a duly registered entity which is still operating; and the proponent for that – or the relevant officer of that company is Mr Dina Gabo which we have listed today as one of the witnesses but that particular witness will give his statement tomorrow.

COMMISSIONER MIROU: Yes.

40 MR BOKOMI: He is still working on a detailed statement to include other relevant facts which he has omitted from the actual initial submission that he

provided to us, so we will defer his evidence to tomorrow. But for the time being, we will be basically dealing with all the others that are on the list if all of them are here or, otherwise, I will basically look at sorting them out with certain adjournments along the way.

COMMISSIONER MIROU: Yes, okay.

MR BOKOMI: Commissioner, with that opening, I would like to no begin with the hearings into – substantive hearings into this particular SABL portion 14C.

10

COMMISSIONER MIROU: When you are ready to proceed with the witnesses, you may indicate to the Commission---

MR BOKOMI: Before I do that, I need to tender certain documents that basically establishes---

COMMISSIONER MIROU: Yes.

MR BOKOMI: The concerned SABL.

20

COMMISSIONER MIROU: Thank you. I begin with the map of portion 14C, the Cadastral Survey Plan, which is self-explanatory as to which boundaries as I have already alluded to the Commission, I would ask that this map be admitted into evidence and marked as exhibit Tosigiba number 1, that is, he cadastral survey plan for portion 14C.

COMMISSIONER MIROU: Yes, thank you. The Cadastral Mapping Plan---

MR BOKOMI: Cadastral Survey Plan.

30

COMMISSIONER MIROU: Sorry, the Cadastral Survey Plan which is portion 14C, milinch of Carrington, Karius, Strickland, Bosavi, Gembol, Aiema, Tomu, and Sisa fourmil of Kutubu, Wabag, Blacha, Ragi; zone 54. Class of survey is Rural Class 4 and Catalogue number 28/126 is exhibit Tosigiba number 1. Thank you, Counsel.

[EXHIBIT TOSIGIBA 1 – CADASTRAL SURVEY PLAN – PORTION 14C MILINCH OF CARRINGTON, KARIUS, STRICKLAND, BOSAVI, GEMBOL, AIEMA, TOMU AND SISAFOURMIL OF KUTUBU, WABAG, BLACHA, RAGI – ZONE 54 – RURAL CLASS 4 – CATALOGUE NUMBER 28/126]

MR BOKOMI: Commissioner, the other exhibit that I wish to tender into evidence is the land investigation report purportedly conducted by Mr Imen Ite Papa. It is a bound voluminous document.

10

COMMISSIONER MIROU: Okay, exhibit?

MR BOKOMI: I ask that that land investigation report – compilation be marked at Tosigiba number 2.

20

COMMISSIONER MIROU: Okay. The exhibit Tosigiba number 2 is the Land Investigation Report Instruction number 01/314, Survey Catalogue Plan number 28/126; Land Description, portion 14C milinch of Carrington, Karius, Bosavi, Strickland, Aiema, Tomu, Sisa; fourmil Kutubu, Wabag, Blacha, Ragi. District is Kiunga, North Fly; Province, Western. Submitted by Tosigiba Investment Limited and Gebogas Investment Limited, care of Titus Lawyers, Level 4 Defence Haus, PO Box 132, Port Moresby. Thank you, Counsel.

EXHIBIT TOSIGIBA 2 – LAND INVESTIGATION REPORT INSTRUCTION NUMBER 01/314 – SURVEY CATALOGUE PLAN NUMBER 28/126 – LAND DESCRIPTION, PORTION 14C MILINCH OF CARRINGTON, KARIUS, BOSAVI, STRICKLAND, AIEMA, TOMU, SISA – FOURMIL KUTUBU, WABAG, BLACHA, RAGI – KIUNGA DISTRICT, NORTH FLY, WESTERN PROVINCE

30

MR BOKOMI: Commissioner, sorry, may I proceed?

COMMISSIONER MIROU: Yes.

MR BOKOMI: Thank you. The next exhibit is the Notice of Direct Grant dated 23 September 2010 and executed under the hand of Mr Pepi S Kimas as the delegate of the Minister for Lands and Physical Planning and this particular notice of direct grant was gazetted on Friday 24 September 2010, in the National Gazette number G218.

40

[10.26 am] COMMISSIONER MIROU: Thank you, Counsel.

MR BOKOMI: We ask that this particular piece of public record called the Notice of Direct Grant be admitted into evidence and marked as exhibit Tosigiba number 3.

COMMISSIONER MIROU: Yes, exhibit Tosigiba number 3 is National Gazette number G218 dated Friday, 24 September 2010.

10 MR BOKOMI: Commissioner, the actual description of the land---

COMMISSIONER MIROU: Oh, yes, it is in the first one.

MR BOKOMI: Is set out in the Notice.

COMMISSIONER MIROU: Yes, and the Notice of Direct Grant under section 102 is on the first page which was signed by a delegate of the Minister for Lands and Physical Planning and the then Secretary, Mr Pepi S Kimas.

20 **[EXHIBIT TOSIGIBA 3 – NATIONAL GAZETTE NUMBER G218 – FRIDAY, 24 SEPTEMBER 2010 – NOTICE OF DIRECT GRANT UNDER SECTION 102 – MR PEPI S KIMAS, A DELEGATE OF THE MINISTER FOR LANDS AND PHYSICAL PLANNING AND THE THEN SECRETARY]**

COMMISSIONER MIROU: Yes, thank you, Mr Bokomi.

MR BOKOMI: Thank you, Commissioner. The next piece of evidence which we want to tender and mark as an exhibit is the lease-lease-back agreement for otherwise known as the Instrument of Lease for Customary Land entered into
30 between representatives of the customary landowners of the subject SABL area and the State, and that is the instrument of lease dated 24th day of June 2009. I seek to tender a copy of the Instrument of Lease, and I also ask that that particular Instrument of Lease be admitted into evidence and marked as exhibit Tosigiba number 4.

COMMISSIONER MIROU: Yes, thank you. Exhibit Tosigiba number 4 is the Instrument of Lease for Customary Land pursuant to section 11 of the Land Act 1996. The deed was made on the 24th day of June 2009 between those persons
40 named and listed in the Land Investigation Report as Customary Landowners as

represented wholly and severally by the appointed agents of the one part and the State. The document was signed by the agents in the presence of Simon Malu, Senior Customary Lands Officer, Department of Lands and Physical Planning; and Mr Sika---

MR BOKOMI: Sikabu Maika.

10 COMMISSIONER MIROU: Sikabu Maika, Adviser Lands, Kiunga; and it was also the Minister or the delegate of the Minister, Mr Kimas signed on behalf of the State. That is Tosigiba number 4.

[EXHIBIT TOSIGIBA 4 – INSTRUMENT OF LEASE FOR CUSTOMARY LAND PURSUANT TO SECTION 11 OF THE LAND ACT – 24 JUNE 2009– MR SIMON MALU, SENIOR CUSTOMARY LANDS OFFICER, DEPARTMENT OF LANDS AND PHYSICAL PLANNING – MR SIKABU MAIKA, ADVISER LANDS, KIUNGA – MR KIMAS, ON BEHALF OF THE STATE]

20 MR BOKOMI: Thank you, Commissioner. The same statement made in respect of the cadastral survey plans in respect – in SABLs portions 14C and 1C would apply here as well; and that is that given the breadth of the area – length and breadth of the area – there appears to have been no physical survey, actual physical survey done on the ground.

The map or the cadastral survey plan which we have handed up and is now marked as exhibit Tosigiba number 1, was basically done on the basis of and incorporating topographic map sheets Kiunga 7185, Ningerum 7186, Elevela 7285, Pare 7286, Nomad 7385, and Karoma 7386 with the scale of 1 is to 100,000.

30 So what we are basically saying is if there is any intimation in the land investigation reports that actual physical boundaries were investigated and a walk was taken upon those boundaries, then that is a fat and blatant lie.

COMMISSIONER MIROU: Mr Imen Papa did not walk the boundaries.

MR BOKOMI: Yes.

COMMISSIONER MIROU: He has admitted that in his evidence.

40 MR BOKOMI: Yes. Thank you, Commissioner.

COMMISSIONER MIROU: Counsel, before you sit down or before you continue, you also mentioned that there are some similarities between the three portions and that is the area or the piece of land known as Awin Pari.

MR BOKOMI: That is correct.

COMMISSIONER MIROU: Is that similar in this situation to portion 14?

10 MR BOKOMI: The land – the name of the land is also known as Awin Pari. So there are three Awin Pari lands or pieces of three tracts – major tracts of land covered by those three SABLs which are known by a common name called Awin Pari.

COMMISSIONER MIROU: So it is also reflected in portion 14C and 1C?

MR BOKOMI: Portion 14C and 1C – portion 27C and portion 1C.

COMMISSIONER MIROU: 1C, yes. Thank you.

20

MR BOKOMI: Commissioner, I will ask for a brief adjournment.

COMMISSIONER MIROU: Yes.

MR BOKOMI: For at least about 10 minutes whilst I---

COMMISSIONER MIROU: While you consider.

MR BOKOMI: Yes, sort out the witnesses and then we proceed therefrom.

30

COMMISSIONER MIROU: That is okay, I will definitely. Adjourn the proceedings.

SHORT ADJOURNMENT

[10.49 am] COMMISSIONER MIROU: Thank you, Counsel, when you are. It is a little bit dark; I cannot see properly. Thank you. Okay, Counsel.

40

MR BOKOMI: Thank you, Commissioner. I have about 12 persons who are willing to give evidence, listed as part of the list of witnesses for the hearings today into portion 14C. However, during the brief adjournment, I made a roll call and it appears all the witnesses may be at the airport awaiting the arrival of the Prime Minister of Papua New Guinea, Honourable Peter O'Neill.

COMMISSIONER MIROU: Yes, I do note that is a very significant event for the people.

10 MR BOKOMI: So that may or seriously cause some interference into our program for today – land program for hearing.

COMMISSIONER MIROU: Yes, that is understood.

MR BOKOMI: So there is only one witness from the list available in the hearing room now to give her evidence, and that is Mrs Waeya Bugaebo, that is witness listed number 2.

COMMISSIONER MIROU: Sorry, okay, number 2.

20

MR BOKOMI: Yes.

COMMISSIONER MIROU: Mrs – yes, if she can---

MR BOKOMI: Please.

COMMISSIONER MIROU: Come to the stand. She will give evidence in English or Pidgin?

30 MRS BUGAEBO: Yes.

COMMISSIONER MIROU: In English?

MRS BUGAEBO: English.

COMMISSIONER MIROU: Thank you, okay. Before you do that, swear on the Bible.

40

WAEYA BUGAEBU, sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: Yes, Counsel, when you are ready.

MR BOKOMI: Before I ask the witness to proceed with her evidence to the Commission, I also wish to tender as an exhibit to be marked as Tosigiba – exhibit
10 Tosigiba number 5, which is the photograph of the sign board of the actual beginning of the proposed Trans Papuan Highway, that is, the road from Gre to Dringas. I think it was funded by PNG Sustainable Development Program, and the contractor is not IT&SL, but it is rather Trimar Construction JV Limited.

COMMISSIONER MIROU: Do we also know who took the photograph? Who took the photograph?

MR BOKOMI: Yes, please.

20 COMMISSIONER MIROU: Okay. This photograph which is a photograph of a sign board which says “PNG Sustainable Development Program Limited Gre to Dringas Road Upgrading Project” is exhibit Tosigiba number 5.

[EXHIBIT TOSIGIBA 5 –PHOTOGRAPH OF A SIGN BOARD WHICH READS “PNG SUSTAINABLE DEVELOPMENT PROGRAM LIMITED GRE TO DRINGAS ROAD UPGRADING PROJECT]

COMMISSIONER MIROU: Yes, Counsel, when you are ready.

30 MR BOKOMI: Thank you, Commissioner, once again. Witness, you note that you have sworn to give evidence on the Bible. So whatever you state to the Commission - let me remind you and as a caution - must be nothing but the truth. You must say it with all honesty. Could you, for record purposes, state what your full name is?

A: My name is Waeya Bugaebo.

Q: Can you spell your name? Please speak to the microphone.

40 A: W-a-e-y-a B-u-g-a-e-b-o.

COMMISSIONER MIROU: Ms or Mrs?

A: I am Mrs Waeya Bugaebo but Luia. I am from Balimo, Gogodala; got married to Biyami.

MR BOKOMI: Your husband is from the Biyami tribe?

A: Biyami tribe.

10

Q: Where do the Biyamis live?

A: In Mougulu.

Q: Mougulu. How far is Mougulu from Nomad?

A: It is six hours walk.

Q: Six hours walk. How far is Mougulu from Kiunga?

20

A: I have walked eight days.

Q: Eight days. Commissioner, I am asking these questions simply to establish one tract and that is that some of these SABLs, they cover, as confirmed by the survey plans; very extensive areas and for government officers to even walk, will take them a considerable period of time.

COMMISSIONER MIROU: Considering that you have to cross rivers, tributaries, swamps, forests---

30

MR BOKOMI: Swamps, mountainous areas.

COMMISSIONER MIROU: Yes.

MR BOKOMI: Densely and populated rainforest.

COMMISSIONER MIROU: Yes, it is very difficult. We thank Mrs Bugaebo for her efforts to come to Kiunga.

MR BOKOMI: Yes. You said you were married into the Biyami, what particular village?

A: Obemi. Obemi, ward number 2.

Q: Ward number 2.

A: Mougulu.

10 Q: Of what particular LLG?

A: Mougulu.

Q: Mougulu LLG?

A: Ward number 2.

Q: Mougulu is the area that is just near the border with Southern Highlands, is it?

20

A: Yes.

Q: Can you show on the map here where exactly Mougulu is and whether it is within the portion 14C? Mougulu is more or less within the heart of the SABL poster.

COMMISSIONER MIROU: What was the – sorry, can she spell the – spell it for me, please?

30 MR BOKOMI: Mougulu, how is it spelt?

A: M-o-u-g-u-l-u.

Q: Okay, it is Mougulu.

COMMISSIONER MIROU: Mougulu, okay, thank you. Yes, you may proceed.

MR BOKOMI: What is the name of the clan that you are married into?

A: Commissioner, the clan is Lugmali, that is, a big name in brackets. Subclan is Gagugiyafi, that is, the sub where my husband is - clan. My husband's and sisters were living up on the Mougulu ranges of Sisa before in 1950s and migrated due to tribal war; now living with Odamona, Lugmali clan at Mougulu.

Q: Very well, okay. I will just pause you there. Witness, could you tell the Commission what you actually know about this thing called Special Agriculture and Business Lease?

10

A: I have not heard of this but the Missionary who has brought to us on the 99 Lease document review, that is my article that I have come to speak; wrote to us that, your land has been bought. Your rights have been given. You will not have the right to selling and – of your land - hunting and all other daily activities.

[11.00 am] COMMISSIONER MIROU: You have a prepared statement? You can read your statement and then we can---

20 A: Yes, and I am against the SABL which has come up with. Therefore, I have – I wish to read what I have provided here. That was before the signing, I had my documents written to speak before the signing but they were saying that no man - nobody could speak before signing on 23 May 2011.

MR BOKOMI: That is the signing of what? Is that the Trans Papua---

A: Yes.

Q: Highway Agreement?

30

A: Yes.

Q: Commissioner, that I believe, is the agreement that we have already tendered into evidence.

COMMISSIONER MIROU: Okay.

MR BOKOMI: Is this the agreement that you are referring to?

40 A: Yes.

Q: That is the agreement?

A: Yes.

Q: Commissioner, that is the agreement that is in evidence.

COMMISSIONER MIROU: Yes. I note that she has also referred to a newspaper article. If we can make a copy of that?

10

MR BOKOMI: Yes, we will tender that in as exhibit.

COMMISSIONER MIROU: Okay.

MR BOKOMI: I have a copy here. Perhaps, I should tender that in now.

COMMISSIONER MIROU: Yes.

MR BOKOMI: Apart from the newspaper article, I think there are some brief
20 landowner concerns set out in what they call 99 Land Lease Document Review
among landowners before signing MOU. I ask that both of these documents be
tendered in as one document and be marked as exhibit Tosigiba 6.

COMMISSIONER MIROU: Yes, okay. Bundle of documents, Tosigiba 6, is a
news article on the Post Courier titled "Trans Papua Highway Set", and that was an
article in the paper dated 23 May 2011. Attached to it is a land lease document
review among landowners before signing of Memorandum of Understanding.
Thank you.

30 **[EXHIBIT TOSIGIBA 6 – NEWS ARTICLE ON POST COURIER TITLED
“TRANS PAPUA HIGHWAY SET” – 23 MAY 2011 – ATTACHED LAND
LEASE DOCUMENT]**

COMMISSIONER MIROU: Mrs Waeya, you can continue.

MR BOKOMI: Please continue, witness.

A: We have few issues that should be declared up to the landowners before
actual signing of MOU, Memorandum of Understanding:

40

1. Signatures consent. Signatories have not gone through the Tosigiba and Gebogas document before signing. This is not appropriate. I was selected as a women's representative for Biyami, not officially, but verbally selected, my name was written in the document without letting me reading the documents; and that was not done.
2. In decisions landowners group ILG, time before developing, this review of the documents should be done again within the ILG appropriate time before developers intend to come.
3. ILG has to know before signing MOU. People all have human rights to know very well and make wise decisions before signing the MOU. Biyami ILG forms were not filled by the landowners. Gebogas Investment failed to do this. We are afraid after the door is closed, it will be hard to be opened and this was not done.
4. Apart from 82 ILGs, Tosigiba Investment has illegally included with social geography boundary apart from 82 indigenous land groups that has included Biyami, 44 villages; Mt Bosavi, and Wawoi Falls. Therefore, these villages need awareness so they can make an informed decision and this was not done. So developers should wait for landowners to clear up these few issues first before MOU is developed.

Today, 19/5/11 at 2.30 pm, our statements should be not – should be cleared, and this was what I want to be done but nothing had happened.

5. Title of the land issues must be given to the landowners.

To conclude and to finish off, Proverbs 20 verse 28 – 23: 10-11 says: “Never move an old boundary marker that your ancestors established”. This concern and witness written by Pastor Jacob Luia and Mrs Waeya Luia, now a Biyami lady, speaking on behalf of the uneducated women who cannot come to this place to speak. I speak on behalf of the women.

Thank you, Commissioner and Lawyer.

Q: I have a few questions to ask you. Mougulu station, is it a – what is it?

A: It is a Mission station.

Q: Mission station run by?

A: Evangelical Church of Papua New Guinea.

Q: Okay. ELCPNG, Commissioner.

A: Yes.

10

Q: We will need to confirm that. It is within the SABL area.

COMMISSIONER MIROU: Lease.

MR BOKOMI: It may be a Mission Lease.

COMMISSIONER MIROU: Mission Lease, yes.

MR BOKOMI: And we need to confirm whether or not that Mission Lease has
20 been revoked in order to pave way for the grant of portion 14C SABL.

Commissioner, the same would also apply to the main government lease over the
Nomad government station.

COMMISSIONER MIROU: Station, yes.

MR BOKOMI: Which is---

COMMISSIONER MIROU: A State---

30

MR BOKOMI: Well and truly within the portion 14C, and there may also be other
Mission stations. Is there a Catholic run Mission there as well?

A: Yes.

Q: How many different types of church denominations have established in the
area?

A: Only Catholic and ECP.

40

Q: From the top of your head, how many ECP Mission stations there, and how many Catholic Missions?

A: That is Mougulu is the big one.

Q: The main Mission.

A: Yes, and then Fuma.

10 Q: Fuma is a Catholic Mission?

A: No, ECP.

Q: ECP?

A: Yes, and Eselevi.

Q: Those are ECP.

20 A: Yes.

Q: You are an ECP Church member?

A: Yes, I am a Pastor's wife.

Q: All right. Maybe, you would not know much about the Catholics?

A: No.

30 Q: But, there are Catholic Missions there?

A: Yes.

Q: We will need to confirm that, Commissioner, as well.

COMMISSIONER MIROU: And airstrips? Any airstrips?

MR BOKOMI: Yes, how many airstrips there?

A: I think our administration – all health centre have it on Mougulu, Eselevi, Dodomona, Yebi, Suavi; those are all Mission stations' airstrips there.

Q: Mission stations. Those may be Mission Leases, Commissioner.

COMMISSIONER MIROU: We will make further inquiries and confirm their---

MR BOKOMI: We will have to make further inquiries to determine.

10 COMMISSIONER MIROU: Yes.

MR BOKOMI: How many different types of leases are within---

COMMISSIONER MIROU: Those SABLs.

MR BOKOMI: Yes.

COMMISSIONER MIROU: Yes.

20 MR BOKOMI: And the same may apply to the other portions.

COMMISSIONER MIROU: Portions, yes; portion 27C and portion 1C.

MR BOKOMI: Yes. If there are government stations there, too, because these are leases. SABL cannot really cover. Those leases ought to be revoked first and there must be compelling reasons for revocation of those leases as per the relevant provisions of the Land Act.

30 Evidence before this Commission, in respect of the other two portions, portion 27C and portion 1C, as well as the land investigations which I have tendered into evidence in respect of this particular hearing today over portion 14C shows that there were no land investigations conducted at all.

40 Could you, to the best of your memory, recall whether over the last two to three years, there were any government patrols comprising of officers of Lands Department, whether from the National Department of Lands at Waigani or from your Provincial Lands office here, as well as officers from other government departments, for instance, Agriculture and Livestock Department, Forestry and Authority, Environment and Conservation et cetera, have gone into the area to conduct any awareness at all?

A: No, Commissioner and Lawyer, not at all.

Q: So if I simply put it to you that based on all these evidence, you would agree with me that your people within the Nomad area may not have given their consent for acquisition of the entire customary land, including the government station, to now form what is called SABL portion 14C granted to Tosigiba, would you say yes?

10 A: Yes, Commissioner and Lawyer, that has not been done. The people right in the remote places have no idea about SABL or whatever they – now, I hear now. Only now today or even three days before I sat here, I know. But the people from outside now, I am walking back on the road and telling them, they do not know. So, I could say no.

Q: Do you know anything about this company called Tosigiba Investment Limited?

20 A: Tosigiba, I have – I was selected to be a Director and for – just for the women, but---

Q: Which? There are two companies.

A: Gebogas.

Q: In fact, there are three companies. There is Gebogas Investment Limited, and Tosigiba Investment Limited, and there is the other one which is called Tosigiba Timber Group Limited. You have to make a difference between the three.

30 A: Yes, Tosigiba---

Q: Which Tosigiba are you talking about? Is it Tosigiba Investment or is it Tosigiba Timber Group Limited?

A: Okay, thank you, Commissioner and Lawyer. I have only heard about Tosigiba, but not the name Timber or Investment.

40 Q: Very well, Commissioner, I do not need to press her any further on that.

COMMISSIONER MIROU: Yes.

MR BOKOMI: I think for purposes of this Inquiry, perhaps, I will just ask her one more question. There are no or any development activity whatsoever in terms of road construction, and logging et cetera conducted by Tosigiba Investment Limited or its preferred developer which we now learn is Independent Timbers and Stevedoring Limited under the management of one American called Mr Neville Hustley. Have you heard of that name?

10 A: Yes, I have met him. They said IT&SL comes---

Q: You answer my question first.

A: Yes?

Q: I am saying, are there development activities within your area at the moment conducted by IT&SL?

A: No.

20

Q: Thank you, you do not need to elaborate any further.

A: Okay, thank you.

Q: Commissioner---

COMMISSIONER MIROU: Audio? Mrs – speak loud into that mic so that---

MR BOKOMI: Yes.

30

A: Okay, thank you.

COMMISSIONER MIROU: So that you will be recorded.

MR BOKOMI: Perhaps, for your benefit and for the benefit of your people, let me thank you for coming and at the same time advise you that this thing called 99 Year Lease over customary land, if there are no reservations made – which we note from the land investigation report – when the person or government officer signing recommendation as to alienability, if he makes no reservation for certain

customary land right to remain with the customary landowners, then what happens is you give away the entire land with all your customary rights; you forego all that.

So at the end of the day, what you will be effectively doing is you will be squatting on the land which you would have otherwise called your ancestral and customary land. That is what has exactly technically, legally happens. That is why this Commission has been set up to look into all of these matters because customary landowners have lost a lot of land, and that has been done seemingly or practically without their proper approval and consent.

10

A: Yes.

Q: But, thank you very much for coming along.

[11.17 am] COMMISSIONER MIROU: In fact, what counsel is saying is that when this land investigation report which we have evidence that it was not even prepared by the Lands Department, even the Provincial Lands officer here; and he did not even visit your area to talk to you.

20 When this report was done, it was signed off. There was a recommendation to alienate. It means that now, this land is owned by Tosigiba. One of those recommendations in – which was signed by the District Administrator, which is Ronald Manasseh Dimonai - one of them, if I can read to you, is that he has satisfied himself without even reading this whole report by saying that, “I have fully considered the question of reserving”.

Normally, you make a reservation that certain rights that you have like fishing-hunting should be allowed to continue even if there is an owner over that particular land, you will continue to go and hunt where you are supposed to hunt, garden, fish; do anything that you want to do.

30

But here, it says, “I have fully considered the question of reserving to the native owners and or their descendants rights of hunting, gathering, collecting, fishing, access”. His recommendation is that, he says, “No reservation should be made”, meaning that this SABL Tosigiba owns, your people, whoever lives in that SABL have no right whatsoever because your District Administrator recommended for it to be reserved; to make no reservations whatsoever. So now, you are living actually on land that belongs to Tosigiba Limited.

So we are happy that you came forward to provide us evidence that you are not aware of its existence, and you are made also to be aware that this is what has happened since the land became a SABL.

10 Normally, SABLs are for, like you and your group – little group – can set up your own little company because you want some commercial crops to be – so that means you have to cut down trees and do little things so that you grow those things so that you can assist your children to go to school, build a proper house; those little things, even the government can build roads through your – so that you can have access to township like Kiunga or major towns.

These are things that should happen but it is not happening because of greediness. Our Lands officials have become corrupt. People have seen money and they think that that is something that will benefit them for the future, so it is only for a few people; the majority of our people are suffering.

20 So, we welcome you and we thank you for making the effort to travel from your area which is, we know, it is so difficult and to come forward and to tell us – tell this Commission as to how you feel; and your concerns are being recorded. It has been recorded, so these concerns, we will consider them; and we will make a report to the Prime Minister next year in March. These will be one of the SABLs that will also be the subject of our recommendation, and whatever happens after March, you will find out from our report with our recommendation.

So we thank you for your coming forward on behalf of your people, and you continue to await the recommendations that we will make next year. Is there anything you want to say before you leave the witness box?

30 A: Yes, Commissioner.

Q: Okay.

A: My recommendation is that road can go but not other business or SABL; the road corridor only. Thank you.

Q: Thank you.

MR BOKOMI: That is all?

40 A: Yes.

COMMISSIONER MIROU: Thank you, you are excused.

MR BOKOMI: Thank you, Mrs Bugaebo.

THE WITNESS WITHDREW

10 MR BOKOMI: Commissioner, seeing that I have no further witnesses for today because I think they are all attending to the Prime Minister's visit---

COMMISSIONER MIROU: Maybe we can deal with Mr Biyama to come tomorrow.

MR BOKOMI: Mr Biyama would – I have already spoken to him as well.

COMMISSIONER MIROU: Mr Biyama, counsel has spoken to you because of the visit of the Prime Minister to the township of Kiunga. We will have to adjourn
20 proceedings to tomorrow.

MR BOKOMI: Tomorrow morning 9.30.

COMMISSIONER MIROU: If you can come tomorrow morning together with the others so we can take your evidence tomorrow and Saturday. That is okay with you?

MR BIYAMA: That is okay.

30 COMMISSIONER MIROU: Good.

MR BOKOMI: I make application to adjourn the hearings into Tosigiba portion 14C to tomorrow, Saturday---

COMMISSIONER MIROU: 19th.

MR BOKOMI: 19 November 2011 at 9.30 am.

COMMISSIONER MIROU: Yes, thank you, Mr Bokomi. We will definitely
40 adjourn to allow people to attend to the arrival of the Prime Minister and the thing.

So in that event, we will adjourn our proceedings to Saturday 19 at 9.30 am.
Thank you.

**AT 11.25 AM, COMMISSIONER MIROU OF INQUIRY INTO SABL WAS
ADJOURNED UNTIL SATURDAY 18 NOVEMBER 2011 AT 9.30 AM.**

10

INDEX

PAGE NO

WAEYA BUGAEBU, sworn:..... 18
 XN: MR BOKOMI..... 18

THE WITNESS WITHDREW..... 31

10

20

EXHIBIT

PAGE NO

Exhibit Tosigiba 1 – Cadastral Survey Plan – Portion 14c Milinch..... 13
 Of Carrington, Karius, Strickland, Bosavi, Gembol, Aiema,
 Tomu And Sisafourmil Of Kutubu, Wabag, Blacha, Ragi –
 Zone 54 – Rural Class 4 – Catalogue Number 28/126

30 Exhibit Tosigiba 2 – Land Investigation Report Instruction 13
 Number 01/314 – Survey Catalogue Plan Number 28/126 –
 Land Description, Portion 14c Milinch Of Carrington,
 Karius, Bosavi, Strickland, Aiema, Tomu, Sisa – Fourmil
 Kutubu, Wabag, Blacha, Ragi – Kiunga District, North Fly,
 Western Province

40 Exhibit Tosigiba 3 – National Gazette Number G218 – Friday,..... 14
 24 September 2010 – Notice Of Direct Grant Under Section 102 –
 Mr Pepi S Kimas, A Delegate Of The Minister For Lands
 And Physical Planning And The Then Secretary

	Exhibit Tosigiba 4 – Instrument Of Lease For Customary Land.....	15
	Pursuant To Section 11 Of The Land Act – 24 June 2009–	
	Mr Simon Malu, Senior Customary Lands Officer, Department	
	Of Lands And Physical Planning – Mr Sikabu Maika,	
	Adviser Lands, Kiunga – Mr Kimas, On Behalf Of The State	
	Exhibit Tosigiba 5 –Photograph Of A Sign Board Which Reads.....	18
10	“PNG Sustainable Development Program Limited Gre To	
	Drimgas Road Upgrading Project	
	Exhibit Tosigiba 6 – News Article On Post Courier Titled “Trans	22
	Papua Highway Set” – 23 May 2011 – Attached Land Lease	
	Document	