

TRANSCRIPT OF PROCEEDINGS

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COMMISSION OF INQUIRY INTO SABL

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AUGUST AT 10.19 A.M.
(Continued from Monday 15 August 2011)

THE CHAIRMAN: Counsel, we commence again from yesterday. I will now ask you to address the Commission on what you intend to present this morning and the materials you have, if any, for presentation to the hearing this morning. Thank you, Counsel.

MR KETAN: Thank you, Chief Commissioner and Commissioners. This morning I just wish to do a small address to the Commission, about our brief formal opening, and then we will go on to addressing the legal framework for the establishment of the – legal framework for the issuing of the Special Agriculture Business Leases and the operation. The next business after that would be the calling of the Secretary for Lands, the Deputy Secretary for Lands Customary Lands Services, the Registrar of Titles and any other senior management, if need be, basically to address on the process and procedure for the application, approval and registration and operation of the Special Purpose Agriculture and Business Leases.

By appropriate Instrument of Appointment and as published in National Gazette No G198, the then acting Prime Minister, Honourable Sam Abal – the gazette was published on 21 July 2011 – the then acting Prime Minister, Honourable Sam Abal, established this Commission of Inquiry and appointed yourself Chief Commissioner John Numapo, Commissioners Alois Jerewai and Nicholas Mirou, pursuant to section 2 of the Commission of Inquiry Act, Chapter No. 31. The Commission of Inquiry, Mr Commissioners, was set up to inquire into the management generally of the Special Agriculture and Business Leases and all matters relating to the Special Agriculture and Business Leases. The case stated to the Commissioners in the Statement of Case is as follows:

“The land acquisition for purposes of development has been a government policy since 1979 when the Instrument of Special Agriculture and Business Leases was established which was effectively incorporated into the Land Act 1962 and subsequently became the Land Act 1996. The intention of the post-independence government of Papua New Guinea was noble and well intended but it has been left unchecked allowing it to be abused by forces that are beyond landowners’ capacity to manage.

The early governments used SABL - which is the abbreviation for Special Agriculture and Special Leases - policy as a means to increase economic activities and empower the local communities in Papua New Guinea to engage in development of the country by providing customary landowners with a form of land title, state lease and documentation necessary to lease their land for

development purposes. Through issuance of SABL, communities were expected to benefit through rental payment, employment opportunities and increased welfare services and community activities and community facilities.

[10.24 am] In the 1990s however, it became controversial when foreign business interests took advantage of the instrument of SABL under the Land Act 1996 and acquired 99 years leases through SABL. SABL approvals have increased at a high rate resulting to over 5.2 million hectares of customary tenure has decreased from 97 per cent to 86 per cent of total land in Papua New Guinea. This is serious concern for the government considering that Papua New Guinea is a country largely made up of rural based population.

What is for particular concern is the fact that land has been alienated from their customary owners through the use of a government sanctioned outdated policy. The alienation of mass areas of customary land and placing it in the hands of landowner companies linked to foreign owned companies threaten the biodiversity that Papua New Guinea is well known about. Under the Lease - lease back scheme, landowners lease their land to the State who then leases it back to the landowners. The landowners then sublease to another interested developer for a period up to 99 years.

A large majority of the SABLs for large agriculture projects have been issued directly to third party entities without proper knowledge and involvement of the landowners. A large number of SABLs have been abused for pure logging operations, without agriculture development. Several studies conducted by environmental experts reveal large logging operations in those SABL areas. There have been little monitoring control and management of SABLs allowing for abuses which have become evident and which poses great danger for Papua New Guinea.

The current system of SABL will result in long term economic loss whereas real agriculture development and forest conservation could realize large gains for Papua New Guinea. Also the rate of environmental degradation caused by logging operations under the SABL has become an international concern.

Issues surrounding the SABL management are jeopardizing PNG's chance of securing funding for REDD and combating climate change. Papua New Guinea is one of the countries that are in the forefront of climate change issues at global

stages. As such Papua New Guinea must be seen by its words in respect of conserving forest to help reduce the greenhouse gas emission and its effect on climate.

Many segments of the community throughout the country, including civil society organizations, prominent leaders and landowner groups are increasingly objecting to SABL approval and management processes in recent times, and recommending for an independent inquiry and placement of moratorium on further processing of applications pending the completion of the inquiry.

In March, 2011, a large group of environmental and social scientists, natural resource managers and non-governmental organizations staff from Papua New Guinea and other nations met in James Cook University in the city of Cairns, Australia, to discuss the future management and conservation of Papua New Guinea native forest. A strong consensus was reached to take appropriate action towards addressing the issue and calling for a halt in granting of SABL and Forest Clearance Authorities, abbreviated FCAs.

The National Government has considered it important enough to warrant special attention, hence, the Prime Minister's decision on convening a full scale Commission of Inquiry into SABLs.

Having stated the Case, Mr Commissioners, the commissioners were appointed to inquire into and report on the following terms of reference:

- (a) Determine the legal authority for the issuance of SABL; and
- (b) determine the procedure for issuance of SABL in accordance with the legal authority, if any; and
- (c) inquire into and confirm the number of SABL issued to date and the particulars of each including:
 - (i) location; and
 - (ii) customary ownership whether there are any disputes regarding SABL; and

- (iii) prior consent and approval by the customary landowners for the issue of SABL over the particular customary land the subject of each SABL is held; and
- (iv) in whose name the title to the SABL is held; and
- (v) if not in the customary landowners name then in whose name is the particular SABL title held; and
- (vi) if not in the customary landowners' name then by what authority and would it be lawful for the title to be held by a non-customary landowner of the land, the subject of the particular SABL; and

[10.29 am]

- (vii) if all of the matters in the preceding sub-paragraphs (i) to (vi) involved duly granted approvals and permits from the Departments of Agriculture and Livestock, Environment and Conservation, Lands and Physical Planning, and the Papua New Guinea Forest Authority; and
- (d) inquire into and determine if the requisite or subsequent approvals determined under proceedings sub-paragraph 3(vi) were lawfully and duly obtained; and
- (e) inquire into and determine if Forest Clearance Authority (or FCA) in respect of each SABL complied with the proportionate agriculture development input; and
- (f) inquire into and determine if FCA in respect of each SABL complied with Environmental Permit terms and conditions; and
- (g) inquire into and determine if any official or individuals, both citizens and foreigners, have engaged in unethical and/or criminal conduct in the course of the operation of each SABL including:
 - (i) employment of illegal immigrants; and
 - (ii) engagement in illicit or illegal trade including sale and consumption of drugs, prostitution, fire-arms, and pornography; and
 - (iii) unethical conduct in the disregard for the customs and traditions of the local area, and sacred grounds, and unlawful and unethical mistreatment of local people in undermining their dignity and respect; and

- (h) inquire into and assess the effectiveness of existing legal and policy framework in the improved management of SABL in future including facilitating the applications from legitimate applicants; and
- (i) inquire into and determine if all of the 72 SABL covering approximately 5.2 million hectares of customary land in PNG had complied with the existing legal and policy frameworks, in incorporation of Land Groups Act 1974, the Land Act 1996, the Forestry Act 1991 and the Environment Act 2000; and
- (j) to take all steps and to exercise all powers under all enabling legislations inter-alia, the Commission of Inquiry Act to complete the inquiry and to report to the Prime Minister for tabling in the National Parliament including all recommendations as well as to refer to appropriate law enforcing authorities any incidents of criminal conducts this Commission of Inquiry may become aware of in the course of this Inquiry; and
- (k) to make recommendations arising from the Inquiry; and
- (l) to make such referral for prosecution as the Commission deems appropriate; and
- (m) the Prime Minister further direct the Inquiry be held in Port Moresby or such other place or places in Papua New Guinea; and
- (n) further direct the Inquiry be held in public, but be approved that you may permit it to be given in private, any evidence that in the course of Inquiry you, the Commissioners, in your absolute discretion, consider needs to be given in private in accordance with section 12 of the Commission of Inquiry Act; and
- (o) and further direct that you commence the Inquiry without delay and proceed therein with all dispatch and render to him your final reports within three months from the date of commencement of the Inquiry and commencing on and from the date of the signature of the Instrument for a appointment of three months.

Commissioners, the statement of case and the Terms of Reference have been widely published in the print Media, but it needs to go on records so it was necessary for me to do that.

[10.34 am] Following the setting of the Inquiry or at about the same time there has been a moratorium in response to the public outcry issued on the further issue of SABL. So that will await further review pending the Inquiry and the outcome of the Inquiry.

At this stage, Mr Commissioners, as I indicated to the commissioners yesterday, we will deal with the Terms of Reference (a), (b), and (c) and by extension (h) and (k), but for present purposes, particularly (a) and (b) regarding the legal authority for the issuance of the Special Agriculture Business Leases and to determine the procedure for the issuance of the Special Agriculture Business Leases in accordance with the legal authority, if any.

In relation to the Terms of Reference (c), we will deal with ascertaining the number of Special Agriculture and Business Leases issued to date and then ascertain by the details required in Terms of Reference (c)(i) to (vii) once the Lands Department files are to end.

As of this morning, we now have 24 files, more or less, 24 files of the 72 files that – of the 72 SABL that was part of the Terms of Reference. If I can mention at this juncture too, that by way of assistance to the Lands Department, the Commission has made another photocopier available to the Department of Lands so there are two photocopiers that the Commission has made available. So the rate at which we will be getting the files from – as from yesterday onwards, will be faster than in the previous week.

So going back to my address, Special Agriculture and Business Leases are provided for by section 11 of the Land Act 1996 on a Lease - lease back basis. Under section 11, the Minister of Lands may lease customary land for the granting of Special Agriculture Business Leases of the land. The actual leases are granted under section 102 which provides for the granting of Special Agriculture Business Leases over land acquired under section 11. Lease shall be granted” ---

COMMISSIONER JEREWAI: Counsel, can I interrupt here. Before you proceed, for record purposes, I want to state here that the Statement of Case that you have read out plus the Terms of Reference are noted. I wish to also state here that at the same time when this Commission of Inquiry was established there was another committee, a task force also been established by the Prime Minister to oversee the

implementation of the findings and the recommendation of this Commission of Inquiry and this taskforce will take on the recommendation once it has been endorsed by the Prime Minister, approved by Parliament, implementation will take place. So I just want to complete the whole picture of the establishment of the Commission of Inquiry plus the taskforce will be implementing the recommendations of this Commission of Inquiry. Thank you.

MR KETAN: Thank you, Chief Commissioner.

COMMISSIONER JEREWAI: Counsel, sorry, I just want to be certain. You are now progressing into the first TOR, Terms of Reference; it is Terms of Reference (a)?

MR KETAN: Yes, Mr Commissioner.

COMMISSIONER JEREWAI: Thank you.

[10.39 a.m] MR KETAN: As I said, “in relation to the legal authority, pursuant to which the Special Agriculture and Business Leases are issued, section 11 provides the legal authority by which the customary landowner and the Ministry for Lands agree for the customary landowner to lease the land to the State and for the State to in turn lease it back to the customary landowner or a nominated entity. The actual leasing is granted under section 102 which provides for the granting of the lease over the land that was acquired under section 11. A lease then is granted to a person, a group – business group or other incorporated body to whom the customary landowners have agreed that such a lease should be granted. Leases are granted for any period up to 99 years as the Minister deems proper, which is the same period for any of the other business and commercial reschedule leases.

Section 11 and 102 are the only sections dealing with Special Agriculture and Businesses Leases in the Land Act. There is nothing in the Land Act providing for the procedure and process for the application, approval and registration of Special Agriculture and Business Leases, and accordingly, we hope that the Commission of Inquiry will be guided” ---

COMMISSIONER JEREWAI: Sorry Counsel, if I may interrupt. Where is the terms specified as being, “up to 99 years”? I cannot see it in any of these two provisions.

MR KETAN: It is in section 102 of the Land Act, Commissioner.

COMMISSIONER JEREWAI: Yes, subsection (4). Thank you.

MR KETAN: Yes. Apart from those two sections, in terms of the procedure of how the leases are granted, there is nothing provided for by the Land Act. As I was touching on, we hope that the Department of Lands, through its Secretary and the other officers will guide us with what their current practices and procedures when they are called this morning. “Once the lease is approved by the Minister, again, as it is in the normal process, it then gets referred to the Registrar of Titles, who registers the lease by virtue of which the lessee acquires individual title by virtue of section 33 of the Land Registration Act.

Basically, Commissioners, there are two processes; two-step process for the issuing of the SABLs. The first process is, the State acquires the customary land by leasing it, which if you like, the **ad-lease**. The lease is executed between the Minister for Lands and Physical Planning and the customary landowners or their representatives under section 11(2) of the Land Act. It is interesting to note that the requirement for the landowners to sign the lease implies that they are aware and consent to the State’s acquisition of their land and that it proceeds on that premise. After the” ---

COMMISSIONER MIROU: Counsel Assisting, would that be section 10(2)?

MR KETAN: 11.

COMMISSIONER MIROU: Of the – if you look at section 10(2) of the Land Act, acquisition of customary land agreement, that **ad-lease** would be that the Minister, on behalf of the State may acquire customary land on such terms and conditions as agreed on between him and the customary landowners. Would that be ---

[10.44 a.m] MR KETAN: Yes. The---

THE CHAIRMAN: Sorry Counsel. To dwell a little bit further on the relationship of section 10 to section 11. Is not section 10 in relation to an acquisition that divests completely from the customary landowners’ title to their customary land? In other words, it is alienated forever? While section 11 only

relates to a temporary arrangement so to speak, and when the term lapses, it reverts back to the – the title reverts back to the customary landowners?

MR KETAN: Yes, Commissioner. Thanks for that. I was agreeing to Commissioner Mirou. “Without an appreciation of that, section 10, acquisition of customary land by agreement” - as Commissioner Jerewai points out- “ alienates or takes away land permanently, for whatever the period may be. But under section 11, the land is leased on the understanding that when the lease period is complete, that should revert back to the landowners. That is why the period – any period up to 99 years leases are to be granted, as the Minister deems appropriate. That is the first step. The second step is after the State has acquired the relevant customary land, the Minister for Lands then issues the land for a special agriculture business purpose under section 102(i), and that shall only be granted to a person, not necessarily to the original owners of the land themselves, but to whom the customary landowners have agreed. Once again, there is nothing specifying any particular methodology but the important requirement there seems to be that the customary landowners must consent to the State acquiring their land and then leasing it to a nominated lessee, a lessee that is nominated by the customary landowners themselves. But other than that the Act is decided on the procedures to be employed in the granting of the SABLs.

The primary task of the Commission which would be that, must be to examine, make findings and recommendations on nine of the Terms of Reference out of the total 15 Terms of Reference. The Terms of Reference comes in two broad categories. First, is to make findings on the sufficiency of the existing legal framework under which SABLs have been issued and to make recommendations on where any improvements are needed, relate to Terms of Reference 1, 2, 8 and 9.

[10.49] The second and much larger task assigned to the Commission of Inquiry is the examination of each and every SABL issued to date of which there are said to be 72 which came with the Terms of Reference and at the end, the Commission of Inquiry is to make findings on a number of areas including voluntary participation of customary landowners in the issuing of the lease; Terms of Reference (c) or (ii), (iii) and (iv) – whether there was compliance with the pre-conditions before approvals and permits were issued by the Department of Lands and Physical Planning, Department of Agriculture and Livestock, Department of Environment and Conservation and the National Forest Authority, as the case may be, and these

relate to Terms of Reference (c)(vii) and Terms of Reference (d), (e), (f) and (k), I think.

Also required of the Commission of Inquiry is for it to make specific findings on each SABL issued to persons and corporations other than customary landowners which is a requirement of Terms of Reference (c)(v) and (vi); and whether there has been unethical and or criminal conduct in the course of the operation of each SABL, Terms of Reference (g).

Persons found to have committed crimes are then to be referred for prosecution under Terms of Reference – it is numbering 10 and 12. Terms of Reference (l) and (m) – I beg your pardon, Commissioners. Then the first job of working out the legal framework for the issuance of SABL and then we can proceed with the other Terms of Reference.

The other legislations, if I can just mention very briefly, they deal with the administration and or management or regulation of land in the country apart from the Land Act and the Land Registration Act, to which I have referred to, the Land Tenure Convention Act, the Land Groups Incorporated Act, the Land Dispute Settlement Act, and the Land Titles Commission Act, they have some relevance to the SABLs. For example, where there is a dispute as to the customary ownership of the land, the Land Dispute Settlement Act would come into play or the Land Titles Commission Act might come into play in determining in the project area, for example, where there is need for social mapping and other related issues.

The Land Registration Act as it is currently is for the registration process of the leases and SABLs do not – are registered in the same process as any other lease at the moment. There has been a recent amendment to the Land Registration Act as it is currently is for the registration process of the leases, and SABLs do not – are registered in the same process as any other lease at the moment.

[10.54 am] There has been a recent amendment to the Land Registration Act which appears to be aimed at addressing some of the problems that the current system poses by requiring all customary land to be registered under a registration system managed by – or administered by a director for customary land whose office is established by the Land Registration Amendment Act of 2009. It was certified on 20 May 2010. That is a fairly recent amendment, but that seems to have – yes, it seems to provide in some ways a system where better management of the customary land acquisition and registration process.

We will address that in the course of the Inquiry, but I just mention that for the record that Parliament appears to have been prompted by the situation with the current lease and – yes, the current problems posed by the current system of issuing of SABLs and their management and the achievement of the intended purpose.

In relation to SABLs issued which have some impact on agriculture, the Department of Agriculture has its input into the leases in terms of approval of projects and rehabilitation programs in various land in basically rural settings, and even some on the outskirts of urban centres, which at this stage within the scope of our research we only note that the Department of Agriculture and Livestock, through a number of boards - two legislations which deal with – yes, two types of legislations which deal with the commodity boards and regulatory bodies. In the first ones are the Cocoa and Coconuts and Animals Act, and in the second would be institutions such as the National Agriculture Quarantine Authority. There is no direct mention of SABLs in terms of a legal requirement or a permit situation such as that in the Forestry Act by comparison.

In the Forestry Act which, again, we will come to that at”---

COMMISSIONER JEREWAI: Counsel, if you can just back up just a little bit there. Are you saying in relation to any proposed agriculture development in relation to which applicants may seek to be issued SABL titles, there is in effect no law governing the process through which the Department of Agriculture can make any input prior to the issue of such an SABL? Similarly, if it is in relation to any other business other than agriculture, leaving aside natural resources, including forestry?

[10.59 am] MR KETAN: Yes.

COMMISSIONER JEREWAI: Let us just say any other business that does not involve natural resources, there is no legislation that determines the procedure through which the relevant authority may consider such an application. For instance, if it is in relation to real estate, there is no law in place that governs the procedure to consider and determine if the proposal for such real estate development, through the use of property by way of SABL, can be considered and approved, prior to granting of such a title. Are you basically saying that?

MR KETAN: In a way, Commissioner. “The legislation that we have come across - looked at, do not mention the SABLs, Special Purpose Agriculture and Business

Leases, in the way the Forestry Act does. There are, as the Inquiry will – as it progresses – will reveal that there are SABLs issued for agriculture and business purposes with the support of the various agencies and divisions of the Department of Agriculture which exists.”

COMMISSIONER JEREWAI: Yes, Counsel, it seems there is a tacit connection – a silent connection as between SABL and forestry operations only, as opposed to other types of businesses.

MR KETAN: Yes.

COMMISSIONER JEREWAI: I am just commenting so that it is on record.

MR KETAN: Yes.

THE CHAIRMAN: Counsel, can I take you back to what you have stated earlier on with respect to the Land Act. You did mention that there are two principal provisions that deals directly with SABL.

MR KETAN: Yes.

THE CHAIRMAN: In section 11 and section 102. In my view, I think there are also one or two other relevant provisions also of the Land Act that makes direct or indirect reference to the SABL, such as section 10 of which Commissioner Mirou has already made mention of and this is basically the modes of acquisition; acquisition by agreement and acquisition or compulsory acquisition. That is section 12 of the Land Act.

MR KETAN: Yes.

THE CHAIRMAN: There is another provision that is also of importance insofar as SABL is concerned, and that is section 87. That talks about the granting of the agricultural leases. There is also another provision under the Land Act that also deals direct, in my view, directly with the SABL and that is section 93; and that basically refers to the terms of leases. I think that was one of the questions that was posed earlier on by Commissioner Jerewai with respect to the duration of the leases and I think you did point out that under section 4, I think it was – sorry, subsection (4) of section 11 that deals with it. But in terms of leases and it refers, I believe, to different leases, it is stated under section 93 of the Land Act.

So there are, in my view, unless you hold a different opinion to that, apart from section 11 and section 102, for the purposes of this Inquiry, section 10 is also important; section 87 is also important; and section 93 of the Land Act is also relevant and important as far as SABL is concerned. Thank you Counsel.

[11.04 am] MR KETAN: Yes. Very well, Chief Commissioner. Yes, there are those sections dealing with the agriculture leases, they relate mostly to government leases; state leases.

COMMISSIONER JEREWAI: State owned land.

MR KETAN: State owned land.

COMMISSIONER JEREWAI: State owned land?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Right.

MR KETAN: The sections that we were referring to only deal with customary land under the scheme to give effect to the policy on lease - lease back basis. The only other legislation and government entity that I need to refer to at this stage, for the present purposes, is the forestry regime, if you like, in relation to Agriculture Special Business Purpose Leases that are related to Forestry activities. "The Forestry Act under section 90A" ---

COMMISSIONER JEREWAI: Capital "A"?

MR KETAN: Yes, capital "A", "requires compliance with certain preconditions before granting of a Forest Clearance Authority in large scale conversion of forest to agriculture or other land use. Under section 93, an application for forest clearing authority must be accompanied by a detailed development plan, evaluation report and certificate of approval of that from the Secretary for Department of Agriculture and Livestock or other relevant department where, as commissioned industry or whatever other government is involved, and the copy of the State lease and an implementation schedule showing precise areas of gross rate of harvest of the timber, the applicant must further show what he plans to do on the cleared land by submitting a successive land use development plan approved in writing by the

Secretary for the Department of Agriculture and Livestock and other relevant government departments. They must also include detailed start and completion dates, that is all activities associated with the project, verification of ownership and consent of each resource owning clan, agent or incorporated land group within the project area and the forms – prescribed forms must be signed in the presence of a village court magistrate and land mediator requires by section 90F and supporting letters from relevant departments and or agencies, written approval by the Department of Environment and Conservation which is where the Department of Environment and Conservation comes in relation to environmental impact, requirement by section 90H and details of equipment, manpower plus a proof of past experience in such developments. So by comparison, the Forestry Act actually has a detailed requirement prior to granting of a Forest Clearance Authority by the Forest Authority. Once those requirements are satisfied then there is yet another lot of steps that must be satisfied before the National Forest Board approves the Forest Clearance Authority.

[11.09 a.m] There are steps including consultation with the other government bodies concerned, arrange public hearings where government bodies and private sectors may be heard, and on the completion of those, the application is sent, I think, to the Provincial Forest Management Committee, who will in turn make its recommendation to the National Forest Board. Then the Provincial Forest Management Committee considers including the - amongst others - financial resource of the applicant, past performance of the applicant in agriculture, analysis of cash flow and the anticipated net benefit to the resource owners and to the State requirement by section 90B(7)(c).

Provincial Forest Management Committee will then refer its decision to the Board which is the National Forest Board, and if approved, will forward it to the Minister and onto the National Executive Council. This requirement, as we understand, has been changed, but we, as at date, have not sighted the change. We will advise that during the course of the Inquiry when we deal with the Forest related SABLs.”

COMMISSIONER JEREWAI: Counsel, this elaborate process set out under sections 90A and 90B seems to support the earlier comment I made with regard to SABLs that tacitly it seem to facilitate Forestry operations where Agriculture is proposed as part of it. I am just noting.

MR KETAN: Yes. There seems to be very stringent processes and procedure set out under section 90A and 90B.

COMMISSIONER JEREWAI: These are required where the areas are considered for agriculture development are covered by a forest area, and in fact, section 90A specifies those areas within a forest management area, timber rights purchase agreement area, local forest area, those three types of forest areas.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Thank you.

MR KETAN: We will make further submissions on this as we reach the Forest related SABL matters. But for the moment, “in summary, the Forest Clearance Authority aspect is well regulated and there are requirements that need to be followed. The Inquiry will, as it examines the individual files, determine whether those have been actually complied with or not. But we will get to that when we arrive at that stage.

In relation to the Environment and Conservation, again, it is related to the FCA, the Forest Clearance Authorities and other large projects that will have impact on the environment. So the permit system under the Environment Act, again, there is requirements for permit in a number of settings. So again, we will address that when we deal with the evidence from the Department of Environment and Conservation.

[11.14 am] But for the moment we state that the Environmental Act does have a bearing on some of the SABLs. In relation to mining, within the – when the mining lease is being considered, the only matter there seems to be that in section – the only matter is in relation to where, for example, where the mining lease overlaps with – the situations where mining leases have overlapped with the existing SABLs or vice versa, where a number of SA - in particular, the one that we have had a look at is the Ramu Nickel situation where there was existing mining lease and” ---

COMMISSIONER JEREWAI: And SABL was issued afterwards?

MR KETAN: Yes.

COMMISSIONER JEREWAI: And that was the matter that went before Judge Cannings in Madang?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Or Injia?

MR KETAN: Cannings or the Chief Justice.

COMMISSIONER JEREWAI: Chief Justice.

MR KETAN: "It is to do with section 102 of the Mining Act where the registered holder of a tenement shall have priority over any other person in respect to the tenement. In this case, it was issued, the SABL was issued. The question arises as to whether proper checks were done, which then indicates as part of the Inquiry some of the things that needed checks and balances and check list that needed to be adhered to."

COMMISSIONER JEREWAI: Will it not, Counsel, become a question of the holder of the mining lease being able to exercise rights through that lease over the holder of the SABL and vice versa? In other words, you have a circle and there is an overlapping part of the two circles and there are shared interest in their right, and so it would be important for us, I suppose, to consider, in the event of such intertwining circle of interests by the two different kinds of leases, how do we deal with either maintaining them or disposing of one over the other.

MR KETAN: Yes. "From our understanding, from what we read so far is that they cannot co-exist. Mining lease has priority over a SABL. Commissioners, that brings me to the end of my address." Of course ---

COMMISSIONER MIROU: Mr Ketan, just something that I thought was of interest. If you look at "T", which says that inquire into the framework, the legislative regimes that you have taken us through this morning, just one thing that you may also consider when you discuss with the various authorities, the enforcement provisions. How effective are the enforcement provisions in each of the legislation in terms of compliance and things that either the leaseholders or the government would need to enforce to ensure that the requirements within the legislation are complied with, observed. If you could also look at that and the

enforcement provisions like, for instance, in the Forestry Act, part (7), refers to various offences that are committed under the Forestry Act. Whether those enforcement provisions have been fully used by the various departments.

[11.19 am] MR KETAN: Yes, we will call evidence on those issues so it will become clearer as we progress. As to whether, in the case of breaches of requirements and if the Acts have made, created offences as a result of those breaches and as to whether those have been enforced, we will call evidence to address that. As I mentioned, further submissions will be made during the course of the Inquiry at various junctions and stages as necessary and we might address some of this again. But for the moment that brings me to the end of my address this morning and as I mentioned at the outset, the next business from the position of Counsel Assisting and the technical advisers, the team assisting needs to call the Secretary for Lands. The purpose of his evidence will be to establish the process of application, approval and the issuance of the leases.

THE CHAIRMAN: Counsel, just one more thing that I need to raise with you and that is, that you have made mention obviously, to the various legislation, particularly the departments or government entities who are responsible directly or indirectly with the SABL. I may be wrong but I have not heard any remarks or comments from you with regard to the Department of Agriculture. You got anything to say in regard to the role they play as part of your summary, establishing the legal framework, so to speak, or to determine, sorry, determine the legal authority over the SABL. You have spoken of the Department of Lands, obviously, the PNG Forest Authority; you have cited some sections of the Forestry Act; you have made mention that Department of Environment and Conservation is responsible for issuing of environmental permits and at the relevant time you will be producing to this Inquiry, the specific provisions relating to their role with the SABL, particularly, the Forest Clearance Authority. I just want to understand from with regard to the Department of Agriculture, as part of your summary, what role do they play, if any?

MR KETAN: Chief Commissioner, for the Forest Clearing Authorities, the Department of Agriculture does have a major role to play in terms of approving the development plan. Once the Forest is cleared ---

COMMISSIONER JEREWAI: The Agriculture Development Plan?

MR KETAN: Yes, they do, and for the Environment and Conservation they do have a role to play in terms of issuing permits in relation to the environmental impact that firstly, the forest clearing and subsequently the agricultural activity will have on water systems or on the eco system or ---

COMMISSIONER JEREWAI: The environment?

MR KETAN: Yes.

[11.24 a.m] THE CHAIRMAN: Okay, thank you. Counsel, you have completed your, basically the summation of what we intend to discuss with regard to the illegal authority, and you have just indicated to us that you now intend to proceed with the Secretary.

MR KETAN: Yes.

THE CHAIRMAN: Do you have a plan as to how you intend to proceed on with that?

MR KETAN: Yes.

THE CHAIRMAN: A layout of what you intend to – how you intend to proceed?

MR KETAN: Yes. The Secretary for Lands will be called – from yesterday's adjournment, Chief Commissioner and Commissioners, he has put together an affidavit which he will take us through. He will basically be giving evidence as to, from where he sits as Secretary for Lands, as to the initial acquisition of SABLs to the processing of that to the eventual issuing of the leases and in terms of the – from the position of Secretary, from policy and legislative framework stand point.

THE CHAIRMAN: So are you ready to proceed Counsel, with that? Are you in a position now to proceed? You want to call the Secretary?

MR KETAN: He has given us an affidavit.

THE CHAIRMAN: Counsel, that is why I am asking, how do you intend to want to proceed? He has given an affidavit.

COMMISSIONER JEREWAI: Do you want to tender the affidavit formally?

MR KETAN: Well he has brought in – we will call him and through him tender the – have him sworn. But if we have a short adjournment, if I can ask for a short adjournment, we will – for us to consider the affidavit. The Registrar of Titles has also brought in an affidavit. So in some ways they have assisted by bringing the affidavits. Now, we have not had a look at it prior to it been handed to us in the Commission hearing room. If I could ask for a 5 minute short break?

THE CHAIRMAN: So Counsel, what are you intending to do? You want to tender in the affidavit now or you want to go through it first and then tender it later?

COMMISSIONER JEREWAI: Let me ask this. You have not had the opportunity of looking at the affidavit. Obviously, you need to read it. I propose, if the Chief Commissioner accepts, with brother Commissioner Mirou, that you take the affidavit there - it is half an hour to lunch. You take the time to consider both affidavits and we return at 1.30 p.m. and call Secretary in. If it is okay with Secretary Kila Pat? Your time is of importance also. Chief Commissioner, we need to keep in mind. If it is okay with you to return at 1.30 p.m?

MR KETAN: Commissioners, the Secretaries and the Registrar have both brought signed affidavits, sworn and signed. One, we can either accept the affidavit and then adjourn to 1.30, which will give you Commissioners an opportunity to look at the affidavits as well as us. That might be a better way to do it than---

[11.29 am] THE CHAIRMAN: Okay, Counsel, yes, we agree, in consultation with the Commissioners, we agree that you do that now and give us the opportunity to all of us to read through the affidavit, and if there are any particular issues we want to raise, we can do so after lunch when the Secretary returns. So we have no objection, Commissioners?

COMMISSIONER JEREWAI: No objection.

THE CHAIRMAN: For you to have it tendered through the Secretary?

MR KETAN: Yes.

THE CHAIRMAN: As a deponent of the affidavit.

ROMILY KILA PAT, Sworn:

XN: MR KETAN

Q: Witness, your full name?

A: Romily Kila-Pat.

Q: You are the acting Secretary of the Department Lands and Physical Planning?

A: That is correct, Counsel.

Q: When did you join the department?

A: I joined the Department of Lands in July of 1993.

Q: Commissioners, just to speed up the process we have had the witness give us details. I will just put that to him for confirmation.

COMMISSIONER JEREWAI: Yes, put all those matters to him.

MR KETAN: Witness, you have held previous positions in the department as a valuer?

A: That is correct.

Q: As Executive Officer to ---

A: The Secretary.

Q: The previous Secretary?

A: That is correct.

Q: And Deputy Secretary, Corporate and Regulatory?

A: That is correct.

Q: Deputy Secretary, Operations?

A: That is correct, yes.

Q: And Deputy Secretary, Customary Land?

A: That is correct, yes.

Q: And your recent position prior to your appointment as Acting Secretary has been the Deputy Secretary, Customary Lands Service, is that correct?

A: That is correct.

Q: You are the Chairman of the National Land Development Program?

A: That is correct, yes.

Q: And Chairman, Executive Management Committee of the Department of Lands and Physical Planning?

A: That is correct.

Q: And a member of the PNG Institute of Valuers and Land Administrators?

A: That is correct, yes.

Q: Witness, sorry, if you can - because it is going to be recorded - you speak closer to the mic. Your qualifications, witness, you have a Master of Management?

A: That is correct, yes.

Q: From Monash University in Australia?

A: That is correct, yes, in Australia.

Q: And certificate of Global Workplace Personal Development?

A: That is correct, yes.

Q: From Monash as well?

A: That is right.

Q: And a post-graduate diploma, Land Studies and Bachelor of Technology in Land Management from the University of Technology?

A: That is correct, yes.

Q: And you are a registered valuer?

A: That is correct.

Q: And your registration number is 116?

A: That is correct, yes.

Q: Thank you. You no doubt, you are aware of the subject matter of the Inquiry?

A: I am.

Q: And you got a copy of your ---

A: I do, yes.

Q: You have sworn this affidavit and is there anything there that you want to change now or are you happy with---

[11.34 am] A: I am happy with the contents of it.

Q: Yes. The affidavits sworn on 16 August 2011?

A: That is correct.

Q: Thank you.

COMMISSIONER JEREWAI: Have the witness identify the affidavit?

MR KETAN: You want to tender the affidavit to the Inquiry ?

A: Yes, I would like to tender it to the Inquiry, yes.

Q: Thank you. At this stage, I ask that we accept this affidavit, the Commission accept the affidavit, marked for identification we can give it a formal exhibit number.

COMMISSIONER JEREWAI: Could you ---

MR KETAN: Do Commissioners want to give it a number now or---

COMMISSIONER JEREWAI: Yes, give it after his own name initials, that will be easier.

MR KETAN: Yes.

COMMISSIONER JEREWAI: RPK, shall we call that, RPK, exhibit 1?

A: RKP.

COMMISSIONER JEREWAI: RKP, sorry, Romily Kila-Pat, I beg your pardon, witness.

A: Thank you.

MR KETAN: It is exhibit 1, yes. Thank you. We will take your affidavit and then we will take you through it at 1.30. It should not take long.

A: That is okay.

Q: If you can come back at 1.30?

A: That is okay, yes, thank you.

COMMISSIONER JEREWAI: Counsel, he has not identified the affidavit.

THE CHAIRMAN: Can he have the affidavit identified properly for signature?

COMMISSIONER JEREWAI: He has got one in his hand. Ask him to take it up and identify if that is the same affidavit.

MR KETAN: Is that your affidavit?

A: That is correct.

Q: These signatures on the affidavit, there is two signature, which one is your signature?

A: Mine. Mine is the one to the far right.

Q: To the far right.

A: Yes. The other one is the Acting Director, Policy who is our legal officer as well.

COMMISSIONER MIROU: Mr Kila-Pat, can you show us where the signature is? No, that it is all right, you may remain seated.

A: The one to the right is mine and that is the Director of Policy, who is also our legal counsel.

Q: Is she also a Commissioner for Oaths?

A: She is, yes.

COMMISSIONER JEREWAI: And comprising of how many pages altogether is it, Secretary?

A: You will excuse me. I did not number the pages but – commissioners, just over 26 pages altogether.

Q: Excluding the cover or inclusive of the cover?

A: Inclusive of the cover.

MR KETAN: Thank you witness. Unless the Commissioners have any other questions, at this stage, I seek an adjournment to 1.30 when witness will be recalled to continue with his evidence.

THE CHAIRMAN: You formally submit that affidavit after the identification and verification by the deponent. You formally submit that.

MR KETAN: Yes.

THE CHAIRMAN: Associate, you go and pick up the copy of that affidavit and it is now being formally tendered into the Inquiry.

MR KETAN: Yes. Witness, you formally tender that affidavit?

A: Yes, sir, I do.

Q: To the Inquiry, yes.

[11.39 am] THE CHAIRMAN: Counsel, I announce that the affidavit is now being accepted into the Inquiry and for these purposes it is now being marked exhibit RKP number 1, and the affidavit is formally now accepted into the Inquiry.

[EXHIBIT RKP 1 – SWORN AND SIGNED AFFIDAVIT OF MR ROMILY KILA-PAT]

THE CHAIRMAN: Counsel, I understand you intend to – want to call Secretary Kila-Pat to come back at 1.30. Is that what you are saying?

MR KETAN: Yes.

THE CHAIRMAN: If that is the case we will now adjourn until 1.30 and we will resume and start with Secretary Kila-Pat. In the meantime we will go through the affidavit and then we will resume again at half past one.

MR KETAN: Yes.

THE CHAIRMAN: All right, we will adjourn until half past one.

LUNCHEON ADJOURNMENT

[1.51 pm] THE CHAIRMAN: Counsel, we left off before lunch after you tendered in the affidavit from Secretary for Department of Lands, or acting Secretary Romilly Kila Pat. We would like to ask if Mr Kila Pat can come back to the witness box. Thank you.

ROMILLY KILA PAT (Continuing):

XN: MR KETAN

THE CHAIRMAN: Counsel, through you, we would like to, for record purposes, suggest that Mr Kila Pat reads through his affidavit and if he wants to explain or expound on some of the points that has been listed in his affidavit, he is welcome to do so. If there are any questions we want to ask later on, the Commissioners will ask, but we would like to start off by asking, through you, Counsel, to get Mr Kila Pat to read his affidavit to the Inquiry.

MR KETAN: Very well.

THE CHAIRMAN: Thank you, Counsel. Thank you, Mr Kila Pat.

MR KETAN: Mr Kila Pat, if you can take us through your affidavit which you tendered in the morning and, yes, just paragraph by paragraph as the Chief Commissioner has said.

A: Thank you, Counsel Assisting the Inquiry and Commissioners. On 16 August 2011, I, Romilly Kila Pat of PO Box 5665, Boroko, National Capital District, Papua New Guinea, make and say on oath; one, I am the Acting Secretary for Department of Lands and Physical Planning having been appointed on 18 July 2011 by publication in the National Gazette number 187 annexed hereto and marked letter "A" is a copy of the National Gazette Notice number 54; two, as acting Secretary for the Department of Lands and Physical Planning, I am aware of the public's perception of the issuing of the Special Agriculture Business Leases and the processes involved in issuing SABLs to customary landowners. This has resulted in this Commission of Inquiry being set up to investigate the current processes the Department of Lands and Physical Planning administers and to make recommendations on how the processes should be rectified. Three, I am happy that this Inquiry has been set up as it gives the department an opportunity to outline and show the public and other government departments, including our stakeholders, the processes and procedures we administer in issuing SABLs so that all Papua New Guineans can understand the process. Four, the current processes of issuing Special Agriculture Business Leases involves four divisions, including the office of the Secretary, the divisions being the Customary Leases division, Land Information Services division, office of the Surveyor General, office of the Registrar of Titles and the office of the Secretary.

The office of the Registrar of Incorporated Land Groups is not always required in the SABL process, as it is not a pre-requisite for landowners to have ILGs before being issued a SABL and therefore in the past the option of registering ILGs before applying for SABLs has been voluntary; and, six, provided below is the procedure that the Department of Lands and Physical Planning complies with in acquiring land for the lease - lease back process. Number 7, acquisition of customary land for the issuance of SABL. 7.1 Consultation and survey of customary land for SABL. 7.1.1 - Initially,

customary landowners are approached by developers to use the land for development purposes or customary landowners who would like development to occur on their land approach developers, through their own accord and whereby the developers or investors, for that matter, and landowners negotiate for freeing up their customary land for agro-forestry project or other projects. 7.1.2 - Landowners and investors then approach the Department of Lands and Physical Planning or Provincial Lands officers to conduct awareness on the SABL and whereby processes are explained verbally or in writing to the landowners upon their request.

[1.56 pm]

7.1.3- The Lands officers also advice landowners of the option of registering Incorporated Land Groups, so that they can be identified in groups and whereby should the landowners agree to the registering of ILGs the landowners then submit their application for registration of their ILGs to the Registrar of Incorporated Land Groups. 7.1.4- The landowners then engage a surveyor to survey the subject customary land that they want to have leased or whilst awaiting the applications for ILGs being processed. The developers or investors assist the landowners with funding for the engagement of the surveyors and once the land is surveyed, it is then lodged by the surveyor to the office of the Surveyor General for examination, approval and registration. 7.1.5 - A registered copy of the survey plan is then referred to the Chief Information Officer for file creation of the registered parcel of land.

7.2 - Lodgment of Lease - Lease Back (SABL) application. 7.2.1 Once the survey file plan is registered, the landowners lodge their application for a SABL with a K10.00 required fee. A copy of the survey plan of the proposed project area and a development proposal are also attached to their application. 7.2.2 – I advice that the Department did not have a proper form for applying for SABLs and therefore customary landowners can either use a tender form or write a letter to submit with the Survey Plan and development proposal.

7.3 Issuance of Land Instruction Number. 7.3.1 - Once the application is received a status check is then conducted by the Customary Leases Division to ensure that there are no existing leases existing on the proposed project

area and that it is customarily owned. 7.3.2 - Upon confirmation of the status of the land, a Land Investigation Instruction number is registered in the Land Investigation Instruction register and is issued to the respective Provincial Lands Office. 7.3.3 - In some instances, the landowners submit their applications through the Provincial Lands Office and whereby the Provincial Lands Office request for a Land Instruction number from the Customary Leases Division of the Department. 7.3.4 - The Department of Lands and Physical Planning is the only Department that issues Land Investigation Instruction numbers as by issuing an instruction number it authorizes for the conducting of a land investigation as to the ownership of the land and therefore through the Customary Leases Division these requests are submitted to the Department.

7.4 Relates to the Land Investigation Process. 7.4.1 - The Land Investigation Instruction number is always referred to the Provincial Lands Office wherever the application is made as the Provincial Administration through the Division of Lands must be aware of the land investigations being conducted in the province. 7.4.2 - A land investigation is conducted with the assistance of the Provincial lands officer, District Lands officers and the Customary Lands Officers of the department, whereby they visit the proposed area for the issuance of a SABL, have consultation meetings with the landowners, conduct an awareness with the whole village and then interview the landowners to determine whether the landowners want to lease their land for the purposes of SABL. 7.4.3 -The Lands Officers use a Land Investigation Report to interview the landowners and whereby once compiled, it is then executed by the landowners and the Provincial Lands Officers. The Land Investigation Report is used to record all necessary information about the proposed project area, for example, the description, topography, its ownership, clan list and the consent of adjoining landowners that the subject land is not theirs, the consent of the landowners on the alienation of their land and the appointment of agents to execute the subject lease. Annexed and marked letter “B” is a copy of the Land Investigation Report.

[2.01 pm] 7.4.5 - The Land Investigation Report is jointly compiled by the Provincial Lands Officers and Customary Lands Officers from the department and after

the execution of the report by the landowners and the Provincial Lands Officers, it is then referred to the Provincial Administrator for recommendations on the alienation of the subject land.

- 7.5 Relates to the lodgment of the approved Land Investigation Report. 7.5.1- Once the Provincial Lands Administrator recommends for the alienability of the subject land, the Land Investigation report is referred to the Customary Leases division for processing. 7.5.2 - The Customary Leases Officer checks the Land Investigation Report to ensure that the report has been compiled properly and correctly and all questions have been answered. If there are ILG numbers that have been referred to, the Customary Leases Officers have to ensure that all these ILG certificates are submitted and finally confirm that there is a copy of the Registered Survey Plan attached to the application. 7.5.3 - If the LIR is not in order, it is then referred back to the Provincial Lands Office to be completed thoroughly. 7.5.4 - If the Land Investigation Report is in order, all the other relevant documents as stated in paragraph 7.5.2 are in the Lands file, the Customary Leases Officer then determines whether the landowners have agreed to the lease of their land in order to prepare a lease - lease back agreement.
- 7.6 Refers to the preparation and execution of the lease - lease back agreement. 7.6.1- The lease - lease back Instrument pursuant to section 11(2) of the Land Act 1996 is prepared by the Customary Leases Officer and is then brought to the respective province for execution by the landowners. 7.6.2- The landowners' appointed agents as stipulated in the LIR and which is then captured in the lease - lease back agreement executes the lease - lease back agreement in the presence of the National Customary Leases Officer and the Provincial Lands Officers. 7.6.3 - The signed lease - lease back agreement is then sent back to the Customary Leases division for execution by the Minister or his delegate, being the Secretary for the Department of Lands and Physical Planning. 7.6.4 - There may be special projects where the government has initiated the process with the developers and the landowners and whereby I or the Minister for Lands and Physical Planning may attend the execution of the lease - lease back agreement with the customary landowners and execute the agreement in their presence.
- 7.7 Refers to the preparation, execution and publication of Notice of Direct Grant. 7.7.1 - After the execution of the Lease-Lease Back Agreement, the Minister or his delegate, the Customary Leases Officer requests for the Lands file from the Land Information Services division which has already

been created upon the request by the Office of the Surveyor General. 7.7.2- All documents required in the Special Agriculture and Business Leases process are attached to the Lands file and a Direct Grant notice pursuant to section 72(c) of the Land Act 1996 is prepared by the Customary Leases Officer in duplicate. 7.7.3 - A minute is then prepared and attached to the Lands file to advise the Minister or his delegate to peruse the documents and if approved, the Lease-Lease Back Agreement and the Direct Grant notice are executed. 7.7.5 - The publication of the Direct Grant notice is paid for by the landowners and whereby once gazetted, a copy is then submitted back to the Customary Leases Officers.

7.8 Relates to the registration and the issuance of Native Land Dealing number, also referred to as NLD.

[2.06 pm]

7.8.1- The Customary Leases Officer requests for the Native Land Dealing to be registered with the Office of the Surveyor General, whereby the Surveyor General checks that all the documents for the compilation of a NLD are attached, and whereby, if all documents are in order, the NLD is registered and a number issued. 7.8.2 - A Native Land Dealing contains the following documents:

- a) Executed Lease - Lease Back Agreement
- (b) The Schedule of Owners
- (c) The Agency Agreement
- (d) The Declaration of Customary Land in relation to Land Tenure
- (e) The Certification in Relation to Boundaries
- (f) The registered Survey Plan

7.8.3 - The Schedule of Owners, the Agency Agreement, the Certificate in Relation to boundaries and the Declaration in relation to Land Tenure are all documents contained in the Land Investigation Report. 7.8.4 - The Declaration in Relation to custom is the document where landowners of that particular area that is to be leased signs a declaration in the Land Investigation Report agreeing to certain people to be appointed as agents to be their representatives for the purpose of executing the lease and are

appointed to accept money on behalf of the landowners as a consideration paid for the lease. 7.8.5 - A certificate in relation to boundaries is an officer of the Independent State of Papua New Guinea who signs the above certificate declaring that he walked the boundaries with the landowners and adjacent landowners and whereby he states the total area of land. 7.8.6 - Today the NLD or the Native Land Dealing is referred to as a Customary Land Dealing (CLD) as “native” is a term which the Department would prefer not to use anymore and now DLPP uses the term CLD, Customary Land Dealing.

- 7.9 Preparation and Approval of SABL. 7.9.1 - The Customary Leases Officer then prepares the Special Agriculture and Business Lease Certificate of Titles in duplicate which are then attached to the Lands file with a checklist which is referred to the Deputy Secretary – Customary Land Services through the Director Customary Leases. The Deputy Secretary then refers it to the Minister or a delegate of the Minister for approval and execution. Annexed and marked letter “C” is a copy of the Check List.
8. The above process is the current process that the Department complies with for granting of SABLs. Once the Certificate of Titles have been executed by the Minister or his delegate they are then referred to the Registrar of Titles for registration and whereby the Registrar of Titles has also deposed to an affidavit to clarify the process of registration of SABLs.
9. I further wish to advise the Inquiry that my Department is currently doing a review of the Land Act 1996 and whereby one of its priorities has been to review the current process and procedures of the SABL so as to determine how to tighten the loop holes in the Land Act provided under section 10,11 and 102 of the Land Act and further how to safe guard DLPP from proceedings being instituted in the National Court and further to provide a system which the majority of Papua New Guineans will be happy with.
10. The Document is in its final draft for circulation to my Executive Management Committee members before being endorsed and presented to this Inquiry. My Acting Deputy Secretary – Customary Lands however has

deposed to an affidavit so as to provide the Inquiry with an understanding of the current gaps that my staff have identified in the current SABL process.

[2.11 pm]So Commissioners, if I may just very briefly state that as the acting head of the department, I do agree that the current legislation that we are ministering to process SABLs is in urgent need of review. Since I took office, I have set up an Policy and Review Legislative committee, which is currently chaired by the acting director policy, Sheila Sukwianomb and we are doing an entire review of the Land Act basically. But whilst doing the review we are also looking at various - SABL has really come under the microscope and we have done initial consultations within the department and eventually we will be inviting our stakeholders to this meeting to contribute towards the changes that we want to do to legislation and also we will be travelling out to provinces and all that to gauge further views from our people throughout the country. We are hoping that the first draft of the proposed amendments to the Land Act will be ready by the end of the year. But that will not be the final draft because it will require more consultation as we look forward to coming up with the final Land Act.

But whilst on that note we are also aware of the fact that the Land Act connects with other legislations, like the Physical Planning Act, the Survey Act, Valuation and also outside of the department with Forestry, DAL, Environment, Mining and all those others. So we will be having consultations with them as we go along. But as much as I have said, Commissioners, thank you. That is my affidavit as it is. Thank you.

THE CHAIRMAN: Thank you, Mr Kila Pat. Counsel?

MR KETAN: Thank you Mr Kila Pat. If I can ask you Mr Kila Pat, just some questions arising out of that and some supplementary questions will be asked if need be by my senior lawyer assisting. Your attendance before the Commission has been in response or there have been a number of communication and meetings, but principally, there was a letter sent to you on 10 August 2011 and one of that was for you to give evidence in relation to the position, practices and guidelines, if you like, followed in the issuing of the SABLs which you have done by the affidavit. The other part of the letter was for you to produce before the

Commissioners a verified record of the land titles in respect of all the SABLs listed in the list that was appended to the Terms of Reference. Did you bring a verified list of the – records of the titles, just the titles? This is just on their own. We know in relation to the third requirement for the files, those are being received as and when they are being copied. Are you able to comment on that or?

A: Yes. Commissioners, ---

Q: Commissioners, I am referring to the letter issued.

THE CHAIRMAN: I was thinking Counsel, that we might probably just restrict our questions to the affidavit as being deposed and which the Secretary Mr Kila Pat was asked to read out.

MR KETAN: Very well.

[2.16 pm] THE CHAIRMAN: Other issues, we might consider at some other time. But at this point in time let us just focus on the affidavit that has been tendered. Whilst on that, can I just ask one or two questions that I have? Mr Kila Pat, with regard to your affidavit, can I take you to page, I think it is – they are not numbered but it is the third page – point number 5, and you say that, “The office of the Registrar of Incorporated Land Group is not always required in the SABL process as it is not a pre-requisite for landowners to have ILGs raised before being issued with a SABL. It is an option”, you say there. I just want to find out from you, is it still an option at the moment that you can register? You can apply for a SABL without having to – without the group having to raise it themselves as under the ILG arrangement?

A: Thank you, Commissioner. At the moment, we – the moratorium has actually basically stopped any more processing, but the department is now insistent on any land to be registered must have an incorporated land group.

Q: Okay, so it is no longer an option?

A: It will no longer be an option.

Q: It is a mandatory requirement now?

A: It is a requirement now that they should do that. However, they may have a case against us because the Act also specifies that it can be registered in the name of an individual or nominated agents so that is where the catch is. But

we are still insistent that they should come in an organized group which we would like to see under the ILG, yes.

Q: Okay, thank you. The second question that I have---

COMMISSIONER JEREWAI: Sorry, before the Chief Commissioner goes to the second question, just a matter arising from your answer to the first question. Is this administratively mandatory for ILGs to be registered before they apply for it? I note that there are no provisions that make it mandatory. It is merely administratively imposed mandatory condition. Thank you.

A: Correct, Commissioner, yes.

Q: Thank you.

A: Thank you.

THE CHAIRMAN: Thank you, Commissioner Jerewai. My second question is, I take you to your affidavit again. It is 7.4.4. As part of your due diligence check before deciding on the granting of a SABL, the Land Investigation Report would record a number of – would report a number of things that need to be shown before a decision is made on whether or not a SABL would be granted, like the ownership of the land, the clan list and all those things that you have listed down. I just want to ask as part of the whole process of checking out those requirements, do you also check to see if there are any other existing leases on the land as part of your due diligence check on this particular land?

A: Yes, we do.

Q: Sorry?

A: We do. We do check if there is – I think that is important. If there is an existing SABL, then we cannot issue another lease over an existing lease.

Q: Yes, okay, thank you. I think those are all the questions that I have. Commissioners, we have any more questions?

COMMISSIONER MIROU: Mr Kila Pat, just a simple question. The legislation or sections 10, 11 and 102 refer to the minister directly. In your affidavit 7.6.3,

you say “by the minister or his delegate”. Is that a normal practice for the secretary to be the delegate for the minister?

A: That is correct, yes.

Q: Following from that, you said that you are undertaking a review of the Land Act as it is on SABLs being one of an issue for your department. You made reference under paragraph 7.7.2 - if I can just refer to you- and you make reference to section 72(c) of the Land Act.

[2.21 pm]

If you look at section 72, refers to power to grant State lease direct and also includes reference to a lease granted under Section 102. When we look at Section 102, which is the grant of Special Agriculture and Business Lease, subsection 6, and it also includes some sections, 72, 49, 68 to 76 inclusive. Sections 82, 83, 84 and 122 do not apply to or in relation to a grant of a Special Agriculture and Business Lease. I am a little bit confused here. Can you be able to tell us whether the Minister under the Legislation, which is Section 102 has the power to make a direct grant of leases in relation to SABLs or is this one of the matters that is under consideration by your committee when you are reviewing the Land Act?

A: That is correct Commissioner. I did mention that because the Inquiry has brought to light a lot of issues that we have taken for granted over the years without realizing that there has been need for changes and all that. But unfortunately my predecessors did not really prioritize this and this is one of things that I really want to see happen during my time as the head of the Department. Thank you.

Q: Another issue that comes to mind is the agency. Where agents are involved on behalf of landowners. You made some reference under paragraph 7.6.2. under lease – lease back. Most of the SABLs relate to customary land and this is land outside, not only in Port Moresby but outside - the whole of Papua New Guinea. Why would the officers of your Department, together with those in the - deal with an agent rather than the landowners?

A: Thank you Commissioner. We do not deal with anybody unless they are nominated by the landowners and it is in document form that they write to say that these are our nominated agents and then we talk to them. But we are also mindful of the fact that once dealing with these agents, we try as much as possible to make sure that agents are representing the interest of the people so we continuously raise questions when we find that they want to drive an agenda, we tell them, no. This is the customary landowners issues so we need to be focused on that.

THE CHAIRMAN: Secretary, how would you describe your relationship with your Provincial Lands Office and the National Office, or the Headquarters in Moresby?

A: There are some provinces that we worked along very well, for instance Milne Bay – let me put it this way. The provinces that have well established provincial offices, it is easy to deal with them. The other provinces where land and land related functions become very low priority, and so we hardly have any assistance from them. So in those instances, we actually send officers from the National Department to go down and conduct the land investigation reports with the assistance of the kiaps and all that. In some provinces, the Lands functions are almost not there. Although we have been, time and time again, requesting through the provincial administration to give it a priority, to give them the significance of what is happening now with land issues and all that but that has fallen very short. We are not getting any positive feed-back.

[2.26 pm]

But provinces like Milne Bay, Morobe, East New Britain, Western Highlands, they have a full function – a full Land's functions in the province so it makes it easier for us to work with them. Most of the provinces, it is almost nothing. So we---

THE CHAIRMAN: What would be the reason why other provinces are non-functional or non-existent at all?

A: Commissioner, I guess it relates to the reforms that were introduced to have functions transferred back to the province, the province under the local government reforms. In the past, the national Department of Lands coordinated all the land activities throughout the country and the funding was from the national department, so we were able to coordinate well. But

once these reforms came into place and we shifted all the provincial functions back to the provinces, Lands became a very low priority in the provinces, and hence, the problems that we are faced with now. It is almost very difficult to manage in giving that situation, Commissioner.

Q: Thank you.

COMMISSIONER JEREWAI: Secretary Kila Pat, I note that these procedures are not provided for under the relevant provisions relating to SABLs. You may be able to indicate if there are any other provisions of not only the Land Act but elsewhere that you were able to gain some assistance in setting up these procedures which you have used to administer the applications for an issuance of SABL titles?

A: Thank you, Commissioner. I think one of the strongest guidelines that we have used in doing this is the Land Acquisition process where, in order to compulsorily acquire land, we need to do land investigations to establish who the real landowners are in order for the State to compensate for acquiring land compulsorily. So it makes almost no difference from trying to identify landowners in this instance. So that is basically – thank you.

Q: Yes, thank you. I think one of the very vital matters on – well, during the conduct of the land investigation and the report compiled accordingly, would be the Agency Agreement. This Agency Agreement necessarily would include either signatures of all of the members of a particular landowner group or their representatives such as, perhaps chiefs – would it not – so that this is attached to the report?

A: Yes, Commissioner. As much as possible, we ensure that every party that has vested interest in the land that we are dealing with is a signatory to the documents for preparation of SABL.

Q: Thank you.

THE CHAIRMAN: Mr Kila Pat, it appears to me that the application – the process of SABL goes through various different stages. I am trying to understand if you have a checklist that you put a tick on as it goes through the process and whoever gives the final approval – the minister or yourself acting on behalf of the minister – will want to ensure that there is a tick on all the checklists through the process before the approval is given. Do you have such a checklist?

A: Thank you, Commissioner. We do have a checklist but that has been refined at the moment to – it is part of the review that is being undertaken at the moment and I believe the Deputy Secretary – acting Deputy Secretary will be doing a presentation on the recommended changes that will – to be incorporated in the Land Act so that we can tighten up a lot of those loose ends to make it more effective. But, yes, we do have a checklist. I have just a sample copy that I have but I do not have it with me right now but we can have it presented to the Counsel.

[2.31 pm] Q: That is all right, that is okay.

A: Sorry, Commissioners, it is on annexure C on this one, sorry.

Q: Yes, we have realized that, yes. Sorry, Mr Kila-Pat, this is the one that is currently under review as part of the overall review of the Land Act?

A: That is correct, yes.

Q: As you indicated earlier on?

A: Yes.

THE CHAIRMAN: Okay, thank you. Counsel, we are done. The Commissioners are done with Mr Kila Pat and it is over to you now if you have any questions or anything you want to ask regarding the affidavit you may do so. Otherwise, we can excuse Mr Kila Pat. Counsel, you have got anything to say?

MR KETAN: I have some other internal questions but I will just ask him questions in relation to the affidavit. In paragraph 7.1, Secretary Kila Pat, you refer to developers approaching landowners. Have you, either in your previous role as Deputy Secretary, Customary Land Services or just as an officer of the Department of Lands, come across instances where developers have approached the Department of Lands requiring land in customary, in basically in non-State land, customary land for development purposes?

A: I have not come across a developer directly come into the department but in almost all the cases, the landowners actually initiate the whole process. They start it off themselves and then make representation to the department. That is when we learn their development partner.

Q: At that stage, do you try to, as part of – one of your -given that there is no procedure in the Land Act, as part of the initial investigation process leading towards the SABL, do you at that stage inquire as to the status of the proposed developers or their maybe entities or whatever?

A: I think in the department we are focused as much as possible to ensure that we deal with the landowners. I think that is where our main concern is, is that the landowners acquire a title that is or a lease in their name for that matter. As much as possible we do not go to the extent of trying to go and do searches on who their partners are and all that. We feel that we may be interfering in whatever their arrangements are.

[2.36 pm]

But for our purpose in the Department we are concerned so much about the land and so we deal with all of the land issues and we do not touch on whatever the arrangements are. There may be instances, may be my officers may have experienced but we are sometimes told not to interfere with their dealings with the landowners. Whatever the arrangements they come up with that is their arrangement. What we do is we ensure that a clear title is given to them and whatever dealings happen after that it is between them and the developers. Thank you.

Q: In your affidavit, paragraph 7.1.3, in some instances - noting from what you have said there – “land officers do advise landowners of the option of registering incorporated land groups.” Is that intended to protect the landowners from their land? What is the thinking behind that in the advices?

A: Thank you, Counsel. I would think so, yes, because we have instances where individuals come forward and want to register land. And given the landholding systems that we have, we encourage people to come in a communal group, come as a group together because we have instances where individuals when they want to register land there is always disputes and all that. To avoid as much as possible those disputes we tell them you come together as a group, we will register your land rather than an individual coming to register land. So I guess that is the intention basically is to have them come in an organized manner so it is easier to deal with them rather than dealing with one individual in the group.

Q: Yes. This question is more a policy type question but do you see yourself, not personally, but from your position and the Department of Lands, as protective of land, customary land for that matter, or as facilitators for customary landowners as and when they wish to free up their land for commercial purposes? What do you see the role of the Department of Lands as administrators of this legislation?

A: I would see it Counsel, from two perspectives. Firstly, is to – we merely provide a facilitating role in most cases to ensure that landowners come forward and they want to register their land so we facilitate process of registering their land. But on the second point, we are also mindful of the very fact that landowners’ interest to land must be protected at all costs. So those, as much as possible, make sure that landowners, the titles end up with them and they then can use that to either sub-lease or enter into whatever arrangements that they want to do.

Q: Yes. In 7.1.4, in the third sentence you state that, “whilst awaiting the application for ILGs being processed” - in the case where ILGs are seen to be appropriate – “the developers or investors assist the landowners with funding for the engagement of the surveyor”, and so forth. At that stage that particular land, although it may have been identified for the purpose of an eventual SABL being issued, it is still at the investigation stage. Would that be correct or?

[2.41 pm]A: I think one of the prerequisites to having a lease - lease back issued is on an actually defined area where a survey is done. So when we are doing a lease - lease back, it is specific to this area rather than outside of that area. Like I mentioned earlier on, most of or in fact, everything that is done on a customary land is initiated by the landowners. They start the whole process and of course, this has been one of the major issues that they have been bringing to us, “we want to register our land but the survey costs are very, very high”, and all that. So it makes it very difficult for landowners to do that. So the way forward for them which they themselves used their own initiative is to ask their developing partners to engage a surveyor to mark out the land, and how much land to be surveyed is really their prerogative. They decide on how much land they want surveyed. It has really nothing to do

with the Lands Department. The Lands Department does not say, you go and survey 100,000, no. They do it themselves and then it is lodged through the Surveyor General's Office which is again, another legislation that is taken care of by the Surveyor General's Office.

Q: Do you see or is it the Lands Department - does the Lands Department ever expressed any concern over developers or investors coming along with landowners at that stage; at the survey stage, with proposals for funding of survey and other expenses when at that stage SABL has not yet been granted?

A: Counsel, like I said, all these things are initiated outside of the department. The only time we come to learn about it is when they lodge the actual survey plan at the Office of the Surveyor General, then we become aware of how much land they are trying to survey for the purpose of their project. So we at no point in time are involved in whatever is happening at this point.

Q: Thank you. In 7.2.2, you mentioned that you are looking at some reforms now. But the non-availability of a prescribed procedure, has that been a concern for you?

A: Yes, very much so. It is a serious concern that we have. We actually have taken it very seriously and the draft form is now in place but we are going to do further refining on that. But it is – one of the issues that have come up – one of the recommendations that we want to also make later on in our findings is because what has happened is that, there are huge tracts of land being excised for SABLs and one of the things that we want to propose is that, maybe in future SABLs so we may have to change the name, “SABL” to just call it, “customary lease”. One of the things that we are considering at the moment. Also if landowners are willing to engage in a project, from research that we have done and we have had consultations with our sister agencies, is that we should now focus on the actual project area. So for example, if it is an oil palm project and it requires say, 200 hectares then we should deal with only 200 hectares rather than 100,000 hectares, something like that. Because these are the areas that we are not in control of, the landowners they decide how much land they want to survey and register.

But what we are trying to say is, maybe we will help the landowners to guide them in a way forward to say that, okay, according to the research, it finds that only this amount of land is required for this project. So we do not have to register the entire land. But then again, one of the things that is of concern to us too, is the proposed voluntary customary land registration where we are looking at registering customary land where landowners can hold title to their land. I guess the wording of “SABL” is creating a lot of that confusion. But it is something that we want to look at where – in the instances where landowners are registering their land to hold on to title, they do not really need it to do any business but because of the wording of the lease, it creates in the minds of a lot of people that they want to do this kind of thing.

[2.46 pm]

So it is two-fold basically. One, they want to do a project, two, they want to keep land for their purpose, they keep it as security and all these. So it raises an issue there as to whether we look at the naming of the lease or how do we do those kind of things. That is something that we are looking at very critically at the moment. But we are also, Commissioners, if I may say a little bit more on that, in terms of SABL we have big areas of land required for big projects and then we have smaller pockets. For example, we have issues along the plant site where landowners there are wanting to register small pockets of their land to may be set up a trade store or small warehouse to provide services and all that, and they are being affected very seriously because have this blanket on everything; over the SABLs so it is creating serious concerns for us, whether we look at dealing with a small amount of land to assist these people get into business or we just wait until everything is over and then we allow them to come into the picture. So ---

MR JEREWAI: In other words, Secretary, you are canvassing a situation where a blanket issuance of a SABL should not become exclusive to those smaller ones within?

A: Correct, yes.

MR KETAN: Secretary, if I take you back to an earlier question I asked in relation to the involvement of developers, even at the early stage where - at the survey

stage - do you or your department know at that stage what the customary landowners, by involving in the case where they, as you say, there are others who just want to register for purposes of having a title over the land, but there are others that come with investors for a particular project; for a particular business, do you at that stage - for example, if it is an agro forestry project or some commercial business, town subdivision development, do you make it your business as the Department of Lands to try and find out a bit more, and in your investigations which you would use for purposes of granting your or refusing the application?

A: Thank you, Counsel. What I was basically alluding to is the fact that we deal primarily with landowners because they want to register their land. We become aware of their association with investors or developers. But as much as possible, we make sure that we try to secure their interest to land because any dealings between them and a developer is something between the landowners and the developer to negotiate arrangements and all that. When they do come into that agreement we go ahead and register the subleases when they lodge them later on. But our focus is mainly ensuring that a title goes to the landowners, and thereafter, they do their dealings with whoever they choose to.

MR JEREWAI: Counsel ---

MR KETAN: Yes.

MR JEREWAI: By the same token - if I am following your line of questioning - by the same token, you might have a domineering fellow landowner and the Lands Department will have to be alert to such a domineering landowner who will override other landowners' interest. So this line of questioning is going beyond what the procedures are, in my view, I think when we reach Terms of Reference © and we begin to hit each one of the SABLs as issued, we might get some further clarity and it may not necessarily come from Secretary Kila Pat. It may come from one of the other down the line departmental personnel who are involved in the direct processes that he has outlined; the specifics of it.

[2.51 pm] MR KETAN: Very well, Commissioner Jerewai. If I will go quickly, just ask some other questions.

COMMISSIONER JEREWAI: Sure.

MR KETAN: 7.31 – you do a status check once the applications come in. When you say, you do a status check, does it include status of the Department of Mining and Department of Petroleum in relation to any exploration leases or mining leases or?

A: Thank you Counsel. We do check with these other agencies if their mining leases or mineral exploration licenses - if I am correct in saying that?

Q: Yes.

A: I think the focus where the Lands Department is coming in from is that, we have a lot of issues when it comes to major development projects and all that and it makes it easier for a company that has a mining lease to know that within the mining lease area, there is a registered title to land. So in terms of dealings, when they want to find out who is the right people to talk to, it will help a lot to cut down a lot of anti processes. When they do come to the department, we say, we have identified these group of people to own land within this area. So it makes it easy for them to sit down and deal with the right people. So it is not really undermining what the mining lease is, but it is basically recognizing the landowners within that area by giving them a title so it makes the dealing - I think that is where we are coming from basically. But we do respect that there are those leases that do exist.

Q: 7.4.2, you refer to an inspection. In that a joint inspection of the officers in the provinces and the Customary Lands Officers from your Department?

A: That is correct, sir.

Q: Do those inspections proceed in the absence of the Customary Lands Officers from your Department – from the main office?

A: Thank you. It depends on the issue of capacity because the land investigation report must originate from the province, and like I stated earlier on, that some provinces have full capacity that we rely on them to do all the land investigation reports. But in instances where we have no officers on the ground, we do send our officers to the provinces to do that. But even

those provinces have capacity, we still, for purpose of being accurate in our processes, we do have an officer dispatched to the province to be with the Provincial Office to do the investigations.

Q: So there is no requirement – your department requirement that all these people should be there at the same time to do the inspection?

A: It is a requirement that all the relevant officers are on the ground to do an inspection because if a key officer is missing, then we put on hold the investigation until we have everybody who is required to be there on the ground.

Q: Yes.

COMMISSIONER JEREWAI: Counsel, if I may interrupt again. If Secretary Kila Pat can – just off-the-cuff - give a rundown of provinces who or maybe I should suggest – let me give a rundown and you can either confirm or not confirm. What would you consider the provinces such as Sandaun, West Sepik, has it got capacity in terms of land administration?

A: No.

Q: What about Western Province? You do not have to go into full detail. I just want that on record.

A: No, not Western Province as well.

Q: Gulf?

A: Gulf – almost there.

Q: West New Britain?

A: West New Britain is ok.

Q: New Ireland?

A: New Ireland is ok.

Q: Morobe?

A: Morobe is ok.

Q: Oro?

A: Oro – no.

Q: Madang?

A: Madang is ok.

Q: East Sepik?

A: Yes, they are ok.

Q: Central?

[2.56 pm] A: Central is okay.

Q: Will you be able to give us a list of those with – later, not now.

A: Yes.

Q: Provide it to the Counsels.

A: I will just note. Commissioner, I will just note it and---

Q: Provinces with land administration capabilities that are almost self-maintaining and those which do not have the capacity to self-maintain

A: Thank you, Commissioners, I will make that available to the Counsel.

Q: Thank you.

THE CHAIRMAN: Counsel, you have got any more questions?

MR KETAN: Could I suggest that that list actually contains the names of the Lands officers so that they may help with the – when the Inquiry goes into the provinces to help us identify potential witnesses.

THE CHAIRMAN: Are you – Secretary, are you able to do that?

A: We will try our best to get all that information to the Counsel, Commissioner.

MR KETAN: Yes.

THE CHAIRMAN: I am simply raising that because as we heard from Secretary that during the reforms, some of those powers of the National Government were transferred to the provincial government. If that is the case, then it will probably be totally outside of his control and administration. I am not too sure. Is that the case, Secretary or you still have links with them?

A: Yes, Chief Commissioner, we do have links but in most cases, they report to the – they are paid by the provincial administration. So in order for us to get there, we need to get through the administrator. So it may create a slight delay in us trying to get - because some provinces, they cooperate. Others, they say no, it is a no-go area for you. So it may create a little bit of difficulty Commissioner.

Q: Secretary, I would suggest that what you will do is give the first list that Commissioner Jerewai has raised that we need to have on those provinces that you are having difficulties with the land administration on the ground because of various reasons, and provinces that you have got presence of your people on the ground and that are operating effectively and efficiently. We will just have that list so we know exactly what province is lacking. I think that will assist us in a lot of ways. Thank you.

A: Yes, thank you, Commissioner. I think that will make it easier for me to just give you a list of provinces and who has capacity and who does not.

Q: Yes, okay, thank you. Counsel, any more questions?

MR KETAN: Yes. The other question was in relation to the approval process, Secretary. Under section 72, both the minister and the secretary, by delegation, at that stage you would be in a position to reject any application that does not satisfy the conditions of the investigation report and the – if there are things like their consent missing?

A: Sorry, Counsel, can you just---

Q: You have powers to refuse to approve where a particular application does not meet the requirements?

A: That is correct, yes. If it does not meet the requirements of the SABL, obviously, we do not process it. It goes back again for it to meet all those requirements and then it comes back again.

Q: Yes. In paragraph 9 of your affidavit, you mentioned some court proceedings - to safeguard the department from court proceedings. Could you state what type of issues give rise to those court proceedings?

[3.01 pm]A: I think one that comes from the top of my head and is always the case is the fact that most of the disputes are between the landowners themselves. It is not necessarily in relation to the title. The landowners, they do not agree amongst themselves. Some of them may end up saying that, no you gave the list to the wrong people, we are the rightful landowners. A lot of these issues tend to come after the lease – lease back title has been issued. That is the main thing and they normally would want to get the Department into trying to sort out those issues, but what we say, it is a landowner issue. Can you sort yourselves out and come back to us and say that this is the group that we want to be represented on this title. So I would say in most cases, the issues are between the landowners. They have differences amongst themselves.

Q: Do at this stage endeavor to bring the two parties together and resolve it from the department - is that a part of your practice?

A: As much as possible, we want to avoid that kind of situation because in most cases when we try to bring landowners together and mediate between them, sometimes we get landowners pointing fingers at Department officials saying that, you are siding with this group, that is why this is the decision so most of the times we ask them to get together because they are the landowners, they know where their boundaries and everything is so they need to sort themselves out before we start to deal with the title.

Q: Once the dispute arises, and obviously from people with competing interest, do you, upon a review, find that there is irregularity in terms of overlooking people with competing interest or whatever it may be, do you exercise powers to cancel the leases at that stage?

A: Thank you Counsel. That goes---

COMMISSIONER JEREWAI: Counsel sorry, if I can get your question right. You mean once already issued leases, is it not?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Okay.

A: We as much as possible try to get to a stage of cancelling titles every time an issue comes up because then it defeats the purpose of the titles and it sends wrong signals that you cannot trust the Lands Department. Every time they issue, they will cancel it the next day. So as much as possible, what we want the landowners to do is to sit down amongst themselves and agree that we have put aside our differences and we want to work together and this is how we want the title to be. Currently now, we are having letters written by some landowner groups saying that – not letters, I think one or two letters have come back saying, we have now resolved amongst ourselves and this is how we want it to be. That is very encouraging because if the landowners can take the initiative then to help the Department facilitate the process rather than us making decisions for them because, obviously when we make decisions they keep on coming back to us and saying that, no, you guys are doing something funny so we want to avoid this perception basically.

Q: Let me give a hypothetical situation. If the title for instance is in the name of the entity that is disagreed upon, and if they agree for the title to be reissued to an entity they agree, they all agree with, you can be able to do that?

A: We can be able to resolve on that, yes.

MR KETAN: When you do get into a situation where people with too many interest come along, even after the title has been issued, does it, at that stage, occur to you that obviously, the process that was mentioned in that particular customary land may not have been followed properly?

[3.06 pm] A: Like I stated earlier on, most of these issues arise after the lease has been issued. So basically, what we believe is that we basically complied with

everything up to the issuance of the lease. It is after the lease has been issued where issues start to come up. So what I am maintaining is that we need – the landowners need to take initiative to sort their differences out so that we can deal with registration of their land. But if they continue to dispute when we try to sort out the issues and all that, we have these mechanisms in or provisions in place where the dispute settlements where probably the landowners could take their matter to the court to have the court look at their cases and decide, and upon a decision being made, we can then revert back to issuing the title to who the rightful landowners are. But in most cases we want to avoid using the courts as much as possible. I still believe strongly that we can resolve on these issues as long as landowners are in agreement to the arrangements that we have in place.

THE CHAIRMAN: Counsel, can I make a comment. We just try consult with the Commissioners on this line of questioning. I am thinking that there will be an opportunity for us as you indicated earlier on this morning to the Commission that you will be calling on specific officers including Deputy Secretary, for Customary Lands and others who are actually dealing or actually dealing with those things SABL, the application, the processes and that, I think some of the questions that you raised can be raised at a later time with the officers concerned who are dealing specifically with that. My understanding was or our understanding was that the Secretary was going to give an overview of the whole process. The details of it can come from his officers below him who are dealing specifically with certain areas of the SABLs. So unless you have got any other general question, and there is also the opportunity for us to call the Secretary, recall the Secretary again to come back if there are issues we want to raise with you later on. I am sure Mr Kila Pat that you will be making yourself available if and when we require you. But at this stage I am just thinking that, and of course, in consultation with the two Commissioners that it is probably too early, probably not appropriate for us to get into details of things while we are yet to hear from the other officers below the Secretary who will be tendering their affidavits and talking on their specific roles.

MR KETAN: Yes, very well, Chief Commissioner. I was actually finishing and there is one last, which is a request for Secretary. Commissioners, the Secretary is – part of the question was merely because of his own personal, own knowledge being the immediate past Deputy Secretary Customary Land Services, so I asked

those questions thinking that he was in a position to answer. But in terms of the position he occupies, very well, I mean, we can reserve some of those questions for the appropriate officer later on. But ---

THE CHAIRMAN: Later on. Counsel, because he has deposed an affidavit in his capacity, current capacity as acting Secretary for Department of Lands. So ---

MR KETAN: Very well.

THE CHAIRMAN: We want to restrict and confine our questions in that regard. I am sure the information will come up later on when specific officers are invited to speak.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Chief Commissioner, if I may add. Secretary Kila Pat can be available for recall in the event that when we begin to go into TOR (c) and the specifics begin to come to light, and it may become necessary to recall the Secretary in his capacity as the departmental head to address those issues which we do not know at this point in time.

[3.11 pm] MR KETAN: Yes, very well. The only other thing Secretary is, if you can make available to the Commission the draft form of the document with the changed recommendations that you referred to in your affidavit as part of the reform process that we can – the Commission can see?

THE CHAIRMAN: Counsel, you are referring to the review, are you? Is it?

MR KETAN: Yes. The review that Secretary was talking about.

THE CHAIRMAN: Okay, current Land Act. Is that the one you are referring to counsel?

MR KETAN: Yes, he referred to in paragraph 10, the final draft form of the review of the procedures, and yes, that you are referring to. Would you be in a position to make that available?

A: Yes, Chief Commissioner and Commissioners, that is the one that the acting Deputy Secretary, in his affidavit, he is actually, basically going to take you through the process that we are talking now, the proposed amendments that

we want to include in the amendments to the legislation. So that has been deposed in his affidavit which if you allow him then he will do the presentation. Thank you.

THE CHAIRMAN: Thank you Mr Kila Pat. Counsel, any further questions?

MR KETAN: No, that is the end of the questions.

THE CHAIRMAN: Thank you Counsel and thank you Acting Secretary, Mr Kila Pat for your time, and as we indicated earlier on, if and when the need arises, we will require you to come back and we will give you sufficient notice for your appearance if you are required to come back. But in the meantime, on behalf of the Commission, I thank you for appearing. Thank you.

A: Thank you Chief Commissioner and Commissioners.

THE WITNESS WITHDREW

THE CHAIRMAN: Counsel, you indicated this morning that one other affidavit that you intend to also submit or sorry, have it tendered to the Commission is the affidavit produced by the Deputy Secretary of Customary Lands?

MR KETAN: Yes.

THE CHAIRMAN: Is that correct? One other affidavit that you have got in your office and that you want to tender is the one that has been produced by the Deputy Secretary or Acting Deputy Secretary, Customary Lands?

MR KETAN: The Registrar of Titles.

THE CHAIRMAN: Registrar of titles?

MR KETAN: Yes.

THE CHAIRMAN: Pardon me. Alright. What I propose Counsel, is that you, like we did this morning before we break for lunch and if the Registrar of Titles is here, you might want to have his affidavit tendered through him today and that will give

time to Commissioners, and of course yourself and your team, to go through the affidavit tonight and we will call the Registrar first thing tomorrow morning to present his affidavit to the Inquiry.

MR KETAN: Yes.

THE CHAIRMAN: Do you agree that we should proceed in that manner?

MR KETAN: Yes. What I propose Commissioners is, we have two other sworn affidavits; one from the Registrar of Titles, the other from the acting Deputy Secretary Customary Land Services. What I propose is with the Registrar of Titles, we would like him to append the certified copies of the titles. So if that can be done. We can do it in two parts. We can take the affidavit for the main body of the evidence and when he comes in tomorrow, if he can come with the list of the certified list of the titles.

THE CHAIRMAN: Did he make any reference at all in his affidavit to those titles for it to be appended to the affidavit? Was there any reference in the affidavit to the titles?

MR KETAN: He has not, the affidavit has not been presented yet but we ---

THE CHAIRMAN: No, Counsel, what I am asking is that, in his affidavit, the Registrar of Titles, did he make any reference at all to the titles being appended or attached to the submissions – sorry, the affidavit, pardon me?

[3.16 pm] MR KETAN: That message or request is not referred to in the affidavit, but what I am proposing and asking through Commissioners is for him to do that and in the morning tomorrow. But what I want to propose to you now is call the acting Deputy Secretary, Customary Land Services and get him to tender his affidavit so we can consider that.

COMMISSIONER JEREWAI: Overnight.

MR KETAN: Overnight.

COMMISSIONER JEREWAI: But before we go to that, are official list titles not automatically recognized as an official document and need not be tendered but simply set up? Is that not the evidentiary rule? I do not know. Check it overnight and we can deal with it. It is no big deal. I am just raising it.

MR KETAN: Yes.

THE CHAIRMAN: So, Counsel, how do you intend to proceed now? You just want to tender in one affidavit and that affidavit will be coming from the acting Deputy Secretary Customary Lands, right?

MR KETAN: Yes.

THE CHAIRMAN: Is he here today as well?

MR KETAN: Yes.

THE CHAIRMAN: Okay, that is fine, the Commissioners have agreed. We can have him to tender his affidavit this afternoon.

MR KETAN: Yes.

THE CHAIRMAN: We will get him up to the box tomorrow morning. For the other affidavit, that you have from the Registrar of Titles, it is a matter you can advise the hearing tomorrow.

MR KETAN: Yes.

THE CHAIRMAN: As to how you intend to proceed with it.

MR KETAN: Yes, very well, I will call Mr Adrian Abby.

COMMISSIONER JEREWAI: Go ahead.

ADRIAN ABBY, Sworn:

XN: MR KETAN

Q: Take a seat. Your full name is Adrian Abby?

A: Yes, sir.

Q: Abby spelt A-B-B-Y. You currently occupy the position of acting Deputy Secretary Customary Lands?

A: That is correct.

Q: Your substantive position is Director Projects?

A: That is correct.

Q: You joined the Department of Lands and Physical Planning on 18 July 2001?

A: Yes, but I formally – I first joined the department in 1984 - March 1984.

Q: Yes. So you were previously employed for a period from 5 March '84 to 21 June 2000?

A: Yes.

Q: The previous positions, you held Special Projects Officer?

A: Yes.

Q: And Director Projects Customary Lands?

A: Yes.

Q: Also, you are a Provincial Valuer and Lands Officer, Economic Projects?

A: That is correct.

Q: You are a member of the Department of Lands and Physical Planning Executive Management Committee?

A: That is correct.

Q: And member of the PNG Institute of Valuers in Land Management?

A: That is correct.

Q: You hold a Bachelor's Degree in Technology of Land Management?

A: That is correct.

Q: You are a Registered Valuer number 100?

A: That is correct.

Q: You have sworn an affidavit?

A: Yes.

Q: You are basically aware of the purpose of your attendance this afternoon?

A: Yes.

Q: Have a look at your affidavit. You swore that on 16 August, which is this morning.

A: Yes, this morning.

Q: Hold it up and show it to the Commissioners which of the two signatures is your signature?

A: The far right.

Q: There is an affidavit comprising 11 pages?

A: Yes, including the covering.

[3.21 pm] Q: Yes. You are happy with all of the contents of it?

A: Yes.

Q: Is there anything you want to change?

A: No.

Q: Very well. Do you wish to tender that to the Commission? I seek to tender, Commissioners and that will be marked for exhibit - for him, exhibit A2.

Because Secretary's affidavit was one. If you we can follow that order or we individualize it then we can say AAE1.

THE CHAIRMAN: Counsel, before we can get around that part, firstly, we should ask him. Mr Abby, are you happy for the – sorry, you have no objection, pardon me. You have objection for the affidavit to be tendered in the Inquiry. You have no objection to that?

A: No objections.

Q: Okay. All right, we will accept the tendering of the affidavit from Mr Abby and for the purposes of this hearing we will label it as, what is it again, Counsel? What is the label there?

MR KETAN: We will label, mark it as exhibit AAE1 or 2.

THE CHAIRMAN: AA2?

MR KETAN: I think let us make it 2. But for identification purposes AAE2.

THE CHAIRMAN: AAE2?

MR KETAN: E2, exhibit 2.

THE CHAIRMAN: All right, fine. Sorry, Counsel, that is fine. We will label it or mark it as exhibit AA2.

MR KETAN: Yes.

THE CHAIRMAN: Is that correct?

MR KETAN: Yes. Secretary Kila Pat's affidavit is exhibit 1.

THE CHAIRMAN: Yes.

MR KETAN: But for identification of witness it is marked AKE1.

THE CHAIRMAN: Yes.

MR KETAN: This will be identified and marked with exhibits AAE2.

[EXHIBIT AAE2 – SWORN AND SIGNED AFFIDAVIT OF MR ADRIAN ABBY]

MR KETAN: Mr Abby, the Commission will adjourn and if you can come back at 9.30 in the morning for you to formally go through your affidavit. There is nothing further unless the Commissioners have anything else.

THE CHAIRMAN: Thank you Counsel. Mr Abby, you have been sworn in. You are still on oath. So tomorrow morning we will continue with you as indicated by the Counsel we will commence at 9.30 in the morning and he will take us through your affidavit. If there are any questions or clarifications that we need to seek from you, we will do that tomorrow morning. I just want to remind you that you are on oath. So we will adjourn, Counsel, we will adjourn until tomorrow morning at 9.30 for us to recommence again. Also I need to get from your, sorry, Mr Abby, you may be excused. You go and sit at the back.

WITNESS WITHDREW

THE CHAIRMAN: Counsel, I need to also get from you some indication as to - after Mr Abby tomorrow, what else do you intend to do tomorrow?

MR KETAN: We will call - at this stage we will call the Registrar, after Mr Abby, we will call the Registrar of Titles.

THE CHAIRMAN: And he has got an affidavit as well as you said?

MR KETAN: He has got an affidavit. We are just trying to get him to append the certified list of or certified titles.

[3.26 pm] THE CHAIRMAN: Yes. Okay, counsel, I think we have already agreed to that. You can have it attended tomorrow. We do not have to worry about it for this afternoon. I think we are done with an affidavit from Mr Abby and we can go through that in the morning and then after that you will advise us as to how you intend to tender in the Registrar of Titles' affidavit and the titles or whatever you intend to append with it as well. It is a matter you can advise us tomorrow morning.

MR KETAN: Yes.

THE CHAIRMAN: Thank you.

MR KETAN: Most likely, the rest will be at 1.30 depending on how we go with Mr Abby, but the Registrar has been asked to come in the morning. So we will follow after we finish with Mr Abby.

THE CHAIRMAN: Okay, thank you, Counsel. Yes, Commissioner?

COMMISSIONER JEREWAI: As I said yesterday whilst we have received thus far the submissions on the legal basis of the issuance and operation of SABLs, and we have now received from Secretary Kila Pat, and we have got Mr Abby's affidavit to go through tomorrow as well as the Registrar of Titles, those are pretty much addressing Terms of Reference (b). We will in the course of – at the conclusion of which we will need to go into Terms of Reference (c) and while Secretary Kila Pat is still here, I again raise this, that it is very imperative that the information required on searches of the files, approximating 72 that had been attached with the instrument of the establishment of this Inquiry be concluded as soon as possible. I still take note – I do take note and bear in mind the difficulties in photocopying. However, let me indicate that much of the material you need to consider photocopying ought to be considered if relevant. If we are photocopying the entire file with some insignificant irrelevant documents such as correspondences and so on, we may be taking a bit too much time on that. Counsel, you need to bear that in mind with the Senior Counsel Assisting and your team and see if we can progress this quicker than the rate that we are experiencing at the moment.

MR KETAN: Very well.

COMMISSIONER JEREWAI: Thank you. That is the only comment that I needed to make.

THE CHAIRMAN: Thank you, Commissioner Jerewai. I think we will stand adjourned. We will stand adjourned until tomorrow morning at 9.30.

**AT 3.30 PM, THE COMMISSION OF INQUIRY INTO SABLES
ADJOURNED TO WEDNESDAY 17 AUGUST AT 9.30 AM.**

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