

TRANSCRIPT OF PROCEEDINGS

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

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



COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

THE CHAIRMAN & CHIEF
COMMISSIONER

MR ALOIS JEREWAI

COMMISSIONER

MR NICHOLAS MIROU

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, WEDNESDAY
17 AUGUST AT 10.15 A.M.

(Continued from Tuesday 16 August 2011)

THE CHAIRMAN: Counsel, we left off yesterday afternoon after the affidavit of Mr Adrian Abby was tendered in and we have agreed for us to go through this affidavit this morning. Is Mr Abby here?

MR KETAN: He is here.

THE CHAIRMAN: All right, Counsel, when you are ready, we shall proceed. While Mr Abby is making his way what is the other affidavit you intend to tender in this morning?

MR KETAN: The ---

THE CHAIRMAN: What is the other affidavit you intend to tender?

MR KETAN: After Mr Abby will be Henry Wasa, the Registrar of Titles.

THE CHAIRMAN: Any other affidavits apart from Mr Henry Wasa's affidavit will be tendered in, any others?

MR KETAN: No.

THE CHAIRMAN: All right, Counsel, Mr Abby is still on oath from yesterday.

MR KETAN: Yes.

THE CHAIRMAN: As we all understand. So we can proceed on the basis that he is still on oath from yesterday. All right, Counsel.

ADRIAN ABBY (Continuing):

XN: MR KETAN

Q: Mr Abby, you have a copy of your affidavit?

A: Yes.

Q: Would you like to take us through your affidavit?

A: Yes.

Q: Yes, you can do that.

A: Chief Commissioner and Commissioners ---

Q: Sorry, Commissioner, what we will do is do the same as we did with the Secretary. Because it is being recorded you will have to speak – pull it a little bit closer to you.

THE CHAIRMAN: Okay, sir, go ahead.

A: On 16 day of August, 2011, I Adrian Abby, the Acting Deputy Secretary, Customary Land Services of PO Box 6556, Boroko, National Capital District, Papua New Guinea, make and say on oath;

1. This affidavit is purposely prepared to highlight to the Commission of Inquiry on the processes and procedures that the Department of Lands and Physical Planning has proposed to improve the current Special Agricultural Business Lease or for short SABL process. Whereby, in this process it provides for more notifications, more public awareness and whereby, all physical planning requirements for the appropriate use of the land will be conducted by the developer to ensure that the land being proposed for the Special Agriculture Business Lease is appropriate and comes within the perimeters of the planning requirements of Papua New Guinea.
2. This proposed process which is still to be executed by the department, sorry, department's executive management committee, is a process that has been drafted with input from almost all divisions in the department who deal with the SABL process. This was done to ensure that the key users of the process identify the current problems with the system and can provide recommendations on how best to provide a process that will reduce customary disputes over the issuance of SABLs.
3. Below are the detailed steps of the proposed process for the issuance of SABLs and which the department feels confident has captured all the practical aspects of the process.

[10.20 am]

The proposed process for Special Agriculture Business Leases.

3.1- Lodgment of application. Customary landowners who wish to apply for a Special Agricultural Business Lease will have to submit an application in

the approved form with the following attachments to their respective provincial Lands office or the DLPP head office to the customary lease direct, and these are the revised attachments. (a) Development proposal which will indicate the level of impact of the project and its viability; (b) consent forms from the relevant government agencies, example, Department of Environment and Conservation and National Forest Authority; (c) topographical map; (d) Incorporated Land Groups Certificates, (e) Geneology, (f) Land Use Plan.

3.2 Issuance of land investigation instruction number.

3.2.1 The application by the customary landowners who wish to apply for a Special Agriculture Business Lease is either submitted in the province or to the department's head office through the customary lease direct; (a) where issued in the province, the provincial office sends a letter to the department requesting for an instruction number. If lodged at the headquarters, an instruction number is issued to the province to conduct the investigation; (b) before an instruction number is issued, the application is screened to ensure that all documents as stated above from letter (a) to letter (f) are submitted and are complete; (c) if the director is satisfied with the applications and all documents stipulated in the formal criteria have been submitted and are in order, the Director, Leases will then issue an instruction number to the province to conduct a land investigation.

3.3 This is the new revised we included – Approval for land use plan. Customary Lease Division will request the Physical Planning Division for a land use plan. This is a proposed step for refining new process of SABL.

3.3.2 In the event that Director Customary Leases request the Chief Physical Planner for the land used plan, the lodged document is referred for assessment. The Chief Physical Planner, Planning, makes an assessment to determine the magnitude of the project and land use requirement. The Chief Physical Planner will assess if it is a major impact project or a minor impact project.

A) Minor impact project. The application will be an application for planning permission which will be in triplicate and contain the following:

- Development Proposal,
- Consent from relevant government agencies,
- Topographical map,

- ILG Certificate,
- Genealogy
- Proposed Land Use Plan,
- Zoning Proposal of the area.

i) The Chief Physical Planner or the Provincial Planner in the case of a Provincial Physical Planning Board assesses the special impact of the SABL after it is assessed by the Chief Physical Planner or the Provincial Planner, it is then sent to the Physical Planning Board. In the case of a SABL within a province where there is a physical planning board, the Provincial Physical Planning Board will consider in the case of a SABL in NCD. The National Capital Physical Planning Board will consider and in case of applications of provinces without a National Physical Planning Board, the National Physical Planning Board will hear the applications.

ii) The board shall consider the application and invite the applicant to present his land use proposal to the board and whereby after consideration, the board shall give notification to the applicant.

[10.25 am] iii) Where the Board is satisfied that the development or rezoning for a purpose which is the subject of an application for planning permission will or is likely to require provision of or increase the demand for a public or private amenities, utilities and services. The Board before approving planning permission will enter into an agreement with the applicant to provide amenities, utilities and services.

iv) the consent from the Chief Physical Planner in the form of the approval will be forwarded to the Surveyor General as evidence that all of section 5 of the Physical Planning Act 1989 (consideration of physical planning matters requirements have been satisfied).

B) Is major impact projects.

i) Where an applicant is applying for a SABL for a major impact project the applicant must submit the following,

- land use base plan,
- zoning plan for the subject planning area.

- ii) The Chief Physical Planner seeks the minister's consent for a SABL pursuant to section 50 of the Physical Planning Act 1989. The Minister after advice from the National Physical Planning Board or Chief Physical Planner may consent to the preparation of land use plan and will by notice in the National Gazette order a development plan, specified type of development plan prepared and specify any matter that shall be covered by the development plan.
- iii) the Chief Physical Planner or Provincial Planner shall be responsible for the preparation of the development plan. Either of the two shall prepare the terms of reference and submit to a steering committee and then either to a Provincial Executive Council, National Executive Council, National Physical Planning Board or Provincial Physical Planning Board.
- iv) the Chief Physical Planner or the Provincial Planner will then draft the development plan and then publish the draft Land use plan in the Media where comments and objections are submitted to the National Physical Planning Board.
- v) where there are no comments the final development plan is lodged to the Physical Planning Board where it is refused, reasons for its refusal are given. After the approval of the subject plan and within the time specified it is then submitted by notice in the National Gazette to declare the approval of the plan and the date of gazettal is the date of effectiveness of the execution of the land use plan.

3.4 Publication of notice of intention to conduct land investigation and survey. I want to make this clear here that 3.4 is the new inclusion in the current processes that we proposed.

3.4.1 Once an approval from the Physical Planning division is submitted, the Customary Leases Division then publishes a notice to the public of the minister's intention to conduct a land investigation and a survey in a particular area.

3.4.2 This will be published in the Daily Papers. It will be aired on radio stations and a copy of the notice will be sent to that particular province, district and local level government area.

3.4.3 The notice will be published at the cost of the applicants and a 30 day grace period will be given for objections.

3.4.4 This notice also gives other boundary serving landowners or other parties who have interests in their land the benefit to know if the survey and land investigation does not encroach onto another customary land.

3.4.5 This is a measure identified as a factor that had not been considered in the past in facilitating the SABL through the lease - lease back arrangement that caused a lot of outcry from landowners, non-government organizations and other agencies of customary land being leased to foreigners.

3.4.6 A land investigation and a survey are vital components to identify legitimate landowners and the boundary of their customary land subject to registration.

[10.30am] 3.4.7 Landowners claim that they were never consulted in the first instance when the land investigations and survey were conducted and never agreed to a sub clan. An individual or land owning company, having title to land and find out there are also disputes of neighboring land owners claiming encroachment onto their land.

3.4.8 This new process will therefore be a measure to ensure that all landowners are aware of an investigation and survey being conducted. This notice can be published in the newspapers, radio stations, and whereby landowners are then given the opportunity to object by writing to the Minister and if there are objections a land investigation will not be conducted and the Minister may refer the subject landowners to the local land court pursuant to Section 9 of the Land Act 1996 to determine the ownership of their land.

3.4.9 The Department will not conduct an investigation where an objection is received.

3.5 Conducting of Land Investigation.

3.5.1 The land investigation report is the co-process of this whole SABL process whereby a Land Investigation Report is compiled and in that investigation report, it contains the vital information to proceed with acquiring the list. Landownership is determined, the types of rights of clan members over that land, the agents that will be appointed to execute the special agricultural lease arrangements and other recommendations made by the investigating officers.

3.5.2 The stakeholders involved in the land investigation are the District Land Officers, Provincial Lands Officers, DLP, Customary Lands Officers.

- a) If the Department or the Provincial Lands Office does not receive any objections, a land investigation will be conducted whereby the Provincial Lands Officer, the Department of Lands Customary Liaise Officer, a Valuer and a surveyor will go to that particular area to conduct the investigation.
- (b) During the land investigation, the following steps will be conducted.
 - (i) Awareness of this Special Agriculture Business Lease process. This awareness is conducted to ensure that landowners understand what a SABL is and the advantages and the disadvantages in being granted the lease. Awareness will be given about the sub lease agreement, the term of the lease with the developers and the benefits that will derive from the SABL.
 - (ii) Identification of the Landowners. All landowners of that particular area will be identified and included in the land investigation report. Also which tribe or clan that they come will be captured.
 - (iii) Interview Landowners. Landowners' names which have

been collected which both old and young will be included in the LIR and landowners over the age of 18 will be questioned on whom they want to be appointed as their agents.

- (iv) Term of Lease. This is to determine how long the landowners want their land leased.
- (v) Demarcation of the land boundary. A surveyor, an applicant who applies for that particular lease will hire a surveyor to demarcate the boundary. He is present to walk the land and demarcate the boundary. Landowners and landowners adjacent to that particular land of interest will walk the boundary to confirm and ensure that the landowner applicant is not encroaching onto the other landowners' land.
- (vi) A valuation of the land will be conducted by a valuer who will also walk the land during the boundary demarcation.
- (vii) Confirm the type of dealing that the landowners are agreeing to which should be the Special Agricultural and Business Lease.
- (viii) Compiling the land investigation and obtaining the signatures of all those landowners who agreed to lease their land, recording the names of the agents who will carry out the transactions on behalf of the landowners, all data that is required will be collected and inserted in the land investigation report.

[10.35 am]

3.5. Registration of Survey.

3.5.1 Once the land investigation is compiled the officers return to their respective offices and whereby a survey of the particular area is drawn up by the surveyor.

- 3.5.2 Survey registration is very important as far as SABL is concerned as a survey comes as a result of field work carried out by a registered surveyor and upon completion of the field work, a file is lodged with the office of the Surveyor General.
- 3.5.3 The file contains the drawn plan of the land with a survey book which has the survey coordinates that was obtained through the use of the total station or theodolite. The Surveyor General assigns a survey examiner to examine the lodged survey plan to ensure that survey regulations or code of practice has been complied with.
- 3.5.4 The Surveyor General then refers the survey file to a survey allocation officer and a portion number is given and the plan is finally approved by the Surveyor General by way of his signature on the plan.
- 3.5.5 The primary reason to have a registered plan is due to the fact that land is subject to registration and must have an exact area of land documented on the title deed.
- 3.6 Approval of Land Investigation. The land investigation report once compiled it is then endorsed by the Provincial Lands officer and it is then sent to DLPP headquarters to verify. Once verification is conducted and where the Director Customary Leases, is of the opinion that the LAR is in order, it is sent to the provincial administrator to recommend for a Special Agricultural and Business Lease.
- 3.7. Preparation of lease - lease back instrument for execution.
- 3.7.1 A lease - lease back instrument is an instrument prepared pursuant to Section 11(1) of the Land Act 1996. It is an agreement between the landowners and the Independent State of Papua New Guinea, whereby the customary landowners agree to the lease of their land and all customary rights to their land except those stipulated in the lease reserved are suspended for the term of the lease to the State.
- 3.7.2 If the Provincial Administrator recommends for the SABL then the LAR is sent back to DLPP, the Customary Lease Director prepares the lease - lease back instrument for execution by the customary

landowners and the Minister for Lands and Physical Planning or his delegate.

3.7.3 The lease instrument number will also be inserted on the lease - lease back instrument as the same number as the land investigation instruction number.

3.8. Execution of lease instrument. Once the lease - lease back instrument is compiled, it is then taken to the specific site to be leased and it is signed in front of the customary landowners by the appointed agents of the landowners as stipulated in the land investigation report. It is then brought back to DLPP headquarters to be executed by the Minister for Lands and Physical Planning.

3.9. Registration of customary land dealing.

3.9.1 The customary land dealing which was once known as national land dealing is a file compiled showing all the dealings over the subject land. The purpose of SLD file is to keep record of the details of the customary land that has been used for SABL.

[10.40 am] 3.9.2 The Customary Leases Division prepares the customary land dealings file and it contains the following documents:

- lease - lease back instrument;
- the schedule of owners;
- the agency agreement;
- the declaration of custom in relation to land tenure;
- the certification in relation to boundaries;
- the registered survey plan.

3.9.3 The customary land dealing comes in five copies and made to the following:

- i) landowners;
- ii) district administrator,
- iii) provincial lands officer,
- iv) DLPP headquarters,
- v) National Archives,
- vi) office of the Surveyor General.

- 3.9.4 The Customary Leases Division request for issuance of customary land dealing number from the Surveyor General's office and a customary land dealing number is issued which then confirms registration of the customary land dealing.
- 3.10 Gazettal of section 102 refers to direct grant. After registering the customary land dealing, a notice of direct grant is then prepared pursuant to section 72, section 102(i) of the Land Act. This notice is then executed by the minister or his delegate and is published in the National Gazette.
- 3.11 Preparation, registration and issuance State lease for SABL.
- 3.1-11.1 After the gazettal of the direct grant, the Customary Lease Division prepares the state lease document in triplicate. The document with the lands file is then forwarded to the minister or his delegate for him to date and execute or sign the lease on the duplicate. The third one becomes the copy for the lands file, the lands file with the document is referred back to customary leases for them to create a new file. This new file shall contain the following;
1. execute duplicate of the state lease document;
 2. land investigation report;
 3. customary land dealing;
 4. copy of receipt of K100 for registration fee paid by the landowners. This is a proposed fee.
- 3.1-11.2 This new file with its contents is then sent to the office of the Registrar of Titles. The office of the Registrar of Titles then checks to ensure that the land, the subject of the registration is not registered more than once. Allocates the next available volume and folio number of the state lease register; stamps one duplicate of the state lease document as the owner's copy, the other is not to be taken from Titles Office. That is done as Registrar's Office copy. And upon this action, the lease document becomes a State lease title and the file becomes the title file. The title file with the state lease title is referred to the Deputy Registrar of Titles responsible for that region or to the Registrar of Titles for dating and signing. Upon signing, the title is confirmed as registered. The details on the title are then entered in the database.

3.11.3 The owner's copy of the title is posted by registered mail to the address of the owner of the title or is collected at the department by the owner or the legitimate representative of the owner. Those collecting the title must provide valid proof of current identity to ensure that the title does not fall into the wrong hands.

4. I advise that there are some success projects in the country that were initiated through the Special Agriculture and Business Leases under the lease - lease back arrangement. However, major areas of concern with the issuing of SABLs and which has been the discussion of the public is the term of lease and the size of the land area.

[10.45 am] 5. The Department does recommend that it would be proper that the term of the lease and the land area subject to alienation be based on the project's life-span and an extension can be recommended thereafter.

6. The Department has also recommended in its review for the inclusion of prescribed forms in the land regulations as currently as there are none in the land regulation for the SABL process and whereby this creates uncertainty.

That comes to the end of my affidavit.

THE CHAIRMAN: Thank you Mr Abby. Before I let the Commissioners and the Counsel to ask you any questions, if any, I have just got one question that I would like to ask and that is that by reading through your affidavit, it appears to me that it is quite a long process. I want to find out from you, as far as your experience is concerned, how long does the whole process take?

A: This process for land investigation, especially the main part of the SABL process is the LIR, the Land Investigation Report. That investigation report depends on how people cooperate and the remoteness of the site and how big the land area is. So it takes some months, few months and even longer. Whereupon the people, some leaders stay in the city or wherever and they do not travel because of costings, they do not go to the site, it prolongs the process. So really we do not have any specific timing on the process, but for developers, they have to compile all these. They have to compile other documents like Environment and Conservation permits and all that and also the people agreeing so that when the Land Investigators go in, then they do a

quick investigation as well as surveyors also takes time and that is a different process altogether where surveyor's job is to examine whether the survey is done properly with the control coordinates and all that. Then they also sit for their board and they approve that survey. So really we just work until we finish the project so there is no actual duration.

Q: In an ideal situation, can you give us some rough indication, rough estimate as to how long it might take? Are we talking 12 months or are we talking six months or are we talking two years or what? Just give us a rough indication in an ideal situation?

A: In an ideal situation, I think it is six months. Six months should be long enough. In this proposed revised process that we have, the only area that made it longer is the Physical Planning because they have to control. Because at the moment there is no control on the SABLs, so when the land is being developed, the Physical Planning has some regulations where they can do control on that.

THE CHAIRMAN: Commissioners, you have got any questions before I ask the Counsel?

COMMISSIONIER MIROU: Mr Abby, I thank for your affidavit that you have provided. I have noted from your proposed review that you have conducted within the Department, there are certain problems that you have highlighted in here and I will just refer to you 3.4.5, where you said something about boundary sharing is a problem that you have noted and then 3.4.7, the investigation report and your objections that were highlighted.

[10.50 am] 3.5 - Conducting of that investigation is an issue and paragraph four which is on the last page, page 11 where you say term of lease and the area that is going to be affected, the major concern. Are these the problems that you have noted during that time SABLs where sort of became law in 1996?

A: No. These problems came about around 2009 when we went into large scale projects. So this SABL intention I was trying to add on here is that, it is for the small holder blocks. But we have not foreseen that the large scale impact projects that would come about so then we – there was no provision

in the Land Act so we just tie it in within the lease - lease back and that is how this outcry came about. So these are the areas that we specifically concentrated to iron out where the loopholes are coming in. So this is only a proposal, it is in a draft form. So we will take note of ---

Q: Okay, Mr, then the next question is, when did the department commence this review into SABLs, the review, when did you conduct them, this review?

A: This year in July, we just - in the draft process.

Q: SABLs have been in existence prior to 1979 when government introduced policy as a result of the Commission of Inquiry into Land matters and in 1976 or 1996 SABLs was formally formalized as a law. The Commission's concern is what process did the department have in place to deal with the complaints and the issues that were arising during the period 1996 up to today? What problems were common that you noted during that period so that some measures could have been taken during that period to deal with those issues?

A: The problems that were in that early years were only ownership. When there were ownership problems then we just wait for the people to sort out themselves, because it is actually with the people; the landowners. So we waited until – some never turned up, some came, so we continued with the process and then completed it. Others, no. Others when they had the title they have their leadership problems, their management problems and they kept the titles and we believed that that was all right for them. So we just waited on.

Q: Thank you.

COMMISSIONER JEREWAI: Mr Abby, I do note that much of what you have stated in your affidavit from paragraph 3 onwards, proposed processes in the review you are conducting to enable much more orderly, if I may put it that way, facilitation of SABL titles to be issued to applicants. Would it be fair to say that you have come up with these proposals because of the problems you have encountered in that facilitation so far?

A: Yes.

Q: Thank you. I suppose I will be asking your view only on this. The process that you are proposing may seem to be quite exacting and tedious to some degree, but would it be fair to say that these are proposed processes and procedures that will ensure that once a title to a SABL is issued it is issued after every possible defects to it is removed prior to its issuance?

[10.55 am] A: I would say, yes but little bit, that we are all human beings there could---

Q: Faults?

A: Yes, for us to change.

Q: Of course.

A: So that is why – but this is – it is in the proposed plan and we are still going to have a workshop with the stakeholders and to gauge their views and maybe we would come up with a proposed process where we can apply.

Q: Right. Mr Abby, you have a – as pointed out by Commissioner Mirou, you have identified the problems, thus far, as being a loss of and, in fact, you said so in paragraph 4 of your affidavit, that two main kinds of problems you have encountered so far are, and which are areas of concerned, are in relation to the term of the lease and also of the size of the land area. Have you considered - and I did not note in any of this proposed processes and procedures you are now considering - I have not noted any suggestions about exclusivity for the issuance of titles to SABLs to be restricted to landowner entities only and no one else. Would you be considering that?

A: Yes.

Q: And if you have not considered that, will you take that into account?

A: Yes.

Q: Thank you.

THE CHAIRMAN: I think I have just one more question, Mr Abby, and that is that, your affidavit basically is setting out your proposed new processes that you are trying to introduce as part of your overall review of the Land Act for the SABL. What about the current process? I mean this is a proposed process that you

are outlining. What about the current existing process on SABL and how do you deal with it? The Terms of Reference is for SABLs issued prior to this proposed is for a period 1993, I think it was, up until this year, April of this year. So what has been the process and the procedures you have been using from 1990 up until this year?

A: The process that was in the – our Acting Secretary’s affidavit was the current process that we use till now. So my process is the one that when the outcry came in and we are looking into it. These are the proposed processes that we reviewing at the moment.

COMMISSIONER JEREWAI: One thing still bugs me and that is lack of consistency insofar as capacities of provinces are concerned. We have heard yesterday from the Acting Secretary, Romily Kila Pat that a number of provinces are adequately capacitated administratively to manage this, not only SABLs but land generally within their provinces.

[11.00 am] Then there are a number of provinces which have not been beefed up to similar capacities. What is the problem there? Is it because of lack of administrative capabilities in those provinces which do not have that capacity or what is it?

A: In my personal view is the infrastructure and also management where the DLPP cannot support because of the reforms, where they go under the provincial governments and then they were neglected by the provincial governments. We do not have constant communication with our officers. They are all over the place – I am sorry, not all over the place but they do not come under our structure. They go under the provincial government structure where they are redundant.

Q: I would have thought that provincial government structure is the constitutional law that devolves, in terms of power sharing and administrative sharing, or all of these types of administrative arrangements, not only in relation to your department but nearly every other department, and I just want to know if there is neglect, even if it is neglect in terms of funding to ensure all provinces’ capacities are built up sufficiently and particularly in relation to lands matters that they are able to management these lands affairs including SABLs.

A: Yes, Commissioner, I agree with you, it is the neglect.

Q: Because reforms are standard, devolution of powers from the centralized government system to a decentralized government system; and that should be no excuse to build capacities in all provinces. Nonetheless, I do not think you will be really in a position to answer that.

A: No.

Q: That is a larger issue. With what you are proposing and let us assume – with what you are proposing – in terms of the procedures relative to issuance of SABL titles, will you be considering in ensuring that all provinces have the capacity to deal with it?

A: Yes.

Q: Thank you

THE CHAIRMAN: Counsel, I hand it over back to you. If you have got any questions or any issues you wish to raise with regard to the affidavit deposed by Mr Abby, you can now proceed on with that.

MR KETAN: Yes. Just very quickly, one or two general questions and a couple of particular questions, Mr Abby. Leading on from Commissioner Jerewai's question, most of your affidavit covers proposed changes to the current system. What area in the current SABL set up is in your view the biggest problem area, that is the one that generates the most complaints? I note from your affidavit, paragraph 3.12.7 which is an area where a lot of problems occur, especially with the investigations and people not knowing – not being aware of what is going on in terms of leasing the land. There may be some people who are interested in the land itself or neighbouring clansmen who have heard that boundaries overlap with each other. What in your experience is the most problematic area in the current set up?

[11.05 am]A: It is the people that do not consent; the landowners, not all. So that is why we propose that the publication of our intent or developers' intent or any landowner among them that wanted to register a SABL in that particular area, we go through this publication. The radios, the newspapers so anybody that has rights or ownership interest in that particular land can come forward. So it is in their, I mean ---

Q: In the investigation report, in paragraph 3.5 of your affidavit, do you think that that is the proposed changes? Is that one of the main areas where it has not been done properly by officers of the department and the provincial lands officers?

A: It is done properly. But when people come in and tell us that they did not consent, although they attend those meetings but they were not cooperative or not listening to what the lands officer in par with them. That is why we go through publications where they should respond. So everybody should be responding there so we could know that they agree with that particular SABL.

Q: The proposals that you intend to bring, as you stated in your affidavit, will the department be wanting to legislate those or would that be just a policy?

A: Yes, they will become a policy. But we are working on that to go through the review, our legislation review committee so that when we review the Land Act, we capture this as a regulation. So the processes will be captured there.

Q: The next lot of questions will just simply be taking you through the affidavit. Because your affidavit, most of it contains proposals, if you can, for the Commission's assistance, I will take you through that and ask you which, some of the areas whether they are proposed or the current system for our understanding. 3.5, I have just mentioned that. 3.5.1, is that the current system or is that the proposed one?

COMMISSIONER JEREWAI: Counsel, I think Mr Abby has indicated that he had this morning, through his affidavit, spoken on proposed procedures and processes, and that the current process is the one that was presented by the Acting Secretary Romily Kila Pat yesterday which we have gone through. Is that right Mr Abby?

A: Yes, Commissioner.

[11.10 am] MR KETAN: Yes, so 3.5.1, is that proposed or is that the current process?

A: 3.5?

Q: .1.

A: .1 is the current process but we have an additional – the ones that are underneath there, that is why we put it in that it is revised.

Q: Yes.

A: Or subsections in there.

COMMISSIONER JEREWAI: The way I understood it is, that is the current process which they propose to hand up in their proposal for the review process.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Is that not right, Mr Abby?

A: Yes, it is, Commissioner.

THE CHAIRMAN: So you have not actually – those are not currently in the process; it has not been implemented yet.

A: In the propose, yes.

Q: It is still under proposed. It is part of the reforms.

A: Yes.

Q: Then reviewing the Land Act, as you might have heard from the Acting Secretary yesterday in his affidavit, and this is, I guess, part and parcel of the overall review and reforms that you are trying to put in place?

A: Yes.

MR KETAN: The reason why I am asking these questions, Commissioners, is that is the area which is the most problematic area. Either that is the procedure that is being followed and is not working or there is no procedure at the moment and it is proposed. So that is, it is relevant to our – to the Commissioners' investigations.

COMMISSIONER JEREWAI: Indeed it is, Counsel, it is relevant. However, I do not think the witness is going to assist any further than that.

MR KETAN: Yes, very well.

COMMISSIONER JEREWAI: It is a matter which I think the Commission will have to take a position on in our findings and recommendations in our reports.

MR KETAN: Yes, very well.

COMMISSIONER JEREWAI: Counsel, if I may, while you are pondering your next questions.

MR KETAN: Yes.

COMMISSIONER JEREWAI: I just want to follow up with the witness on what I said on exclusivity and which I did not think about to follow up when I asked you as to whether you are considering exclusivity in terms of restricting issue of SABL titles to only landowners or landowner entities. So far, have you been able to do that or you are aware of titles which have been issued in favour of non-landowner entities?

A: I do not have – I have not come across any titles that are given to non-landowners.

Q: What about entities which were landowners, but the majority shares in that entity may have changed hands? Are you aware of such a situation yet thus far?

A: No, that, I do not know.

Q: Thank you.

MR KETAN: Mr Abby, the only other question I wish to ask is in paragraph four of your affidavit – towards the end of your affidavit. You advise that there are some success projects in the country that were initiated through the Special Agriculture Business Leases under the current system, lease - lease back arrangement. Are you able to state some examples of it to the Commission, examples of some projects that you are aware that have been successful?

A: Okay.

Q: Yes, with land leased under this lease - lease back system?

A: For the SABL when it commenced in those earlier years, the success story is the Kagamuga airport to Hagen city, the road corridor. You can see some small holder blocks, plantations, trade stores along that road. That is the area. The only success story that I know of is the West New Britain Palm Oil, that project in West New Britain. That is the large scale one.

Q: Yes. Is it the one with the New Britain Palm Oil?

A: New Britain Palm Oil.

Q: Or, you are referring to some small holder blocks?

A: The New Britain Palm Oil, the large scale one.

Q: Yes. You are not aware of any---

A: No.

Q: Thank you, no further questions.

[11.15 am] THE CHAIRMAN: Thank you, Counsel. As there are no further questions that we need to ask you with regard to your affidavit, Mr Abby and on behalf of the Commission, I therefore, would like to thank you for your affidavit and for your presence here this morning. If and when the need arises at a later time, we will of course, be able to give you sufficient advice and notice on that for you to reappear. But otherwise for the time being, I thank you for your affidavit and you may be excused. Thank you for coming.

A: Thank you, Chief Commissioner and Commissioners and Counsel Assisting.

THE WITNESS WITHDREW

THE CHAIRMAN: Counsel, you mentioned that there is another affidavit that you intend to tender in this morning as well. How do you wish to proceed with that?

MR KETAN: Commissioners, if we can follow the same – I am advised by technical adviser that that although that affidavit is not quite ready, the witness is not quite ready, although, we have had the affidavit given to us, if I can take some time to consult with technical adviser, Mr Pupaka and the team and we can inform the Commission?

THE CHAIRMAN: In what respect, Counsel? Is the affidavit not ready? In what particular aspect?

MR KETAN: The reason ---

THE CHAIRMAN: Because you did indicate to us yesterday that the affidavit is ready for tendering. So we need to know if it is not ready now for tendering, in what particular aspect of the affidavit that is not ready to come in with the affidavit?

MR KETAN: If the Commission could pardon me just for a moment.

THE CHAIRMAN: Yes, go ahead.

MR KETAN: Commissioners, thank you. What we propose to do is call the witness and have him tender his affidavit which is, the affidavit is basically as to the procedure after the Lands Department has approved the leases and passes, when it is in registrable format, it gets passed to the Registrar of Titles' office for registration. This morning's evidence will be in relation to that process. We require him to attach copies of the titles of the 72 or more SABLs that came with the Terms of Reference. At the end of it, what we would like to ask is, through yourselves, that Registrar of Titles produce that to us. These are copies of the titles.

THE CHAIRMAN: So how long will it take for that to happen? For him to produce the titles, copies of the titles, how long?

MR KETAN: We will ask him through the witness.

THE CHAIRMAN: So what you are saying is that you want to proceed on to have the affidavit tendered in now?

[11.20 am] MR KETAN: Which is the – as to the process and procedure for registration of the leases by him after the Lands Department finalise their processes and it is in registrable format, it goes in for registration. Commissioners, this witness is the – he is important in that, he is the custodian of the titles of leases, all leases.

MR JEREWAI: We have – Counsel, we understand that. We have no problems with that. Our problem is the manner in which you are going to present this evidence. As you will know once an affidavit is tendered, all that comes with it must be dealt with.

MR KETAN: Yes.

MR JEREWAI: Simultaneously, it cannot be delayed. So if you require more time to complete the affidavit with the deponent, as to his availability as well, and have him tender it, and we complete it in its entirety. We cannot leave it half done. That is our concern here.

THE CHAIRMAN: Counsel, at some stage you did indicate earlier on that you wanted to submit his affidavit along with the list of the titles of the 72 or so SABLs that have been issued.

MR KETAN: Yes.

THE CHAIRMAN: I have got the dates right now, from March of 2003 to April of 2011. So if you intend to do that then it must come with an affidavit. Once the affidavit is submitted in we cannot continue to append things onto it and add ---

COMMISSIONER JEREWAI: Later on.

THE CHAIRMAN: And add on to it later on. So that is just what we are trying to say here.

MR KETAN: Very well.

THE CHAIRMAN: That if you are not prepared to submit your – have the affidavit tendered in today, and if you require some time to append the titles on to it then say so and we will give you the time that you require.

MR KETAN: We will consult with the witness and inform you informally and then when the hearing resumes we can, whenever it resumes, we can inform ---

COMMISSIONER JEREWAI: Will you be in a position to advise us at 1.30?

MR KETAN: Of what the position is, yes.

COMMISSIONER JEREWAI: Yes.

THE CHAIRMAN: What we will do, it appears that you are not quite certain as to whether or not you want to have the affidavit tendered in today, this morning and you need time to be able to consult further with the witness, we will allow you the time, we will give you the time. But we need to reconvene again at half past one for record purposes that you have done the consultation, that you have spoke to the witness and he was able to give you some indication as to how long it will take for him to put together the titles and then you can then indicate to the Commission when this affidavit will be ready with the full listings of the titles of the SABLs.

MR KETAN: Yes. Very well.

THE CHAIRMAN: Counsel, have you got any other things to add on before we --
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MR KETAN: Not at this stage.

THE CHAIRMAN: That being the case, we will now adjourn till half past one Counsel and we return and hopefully you will be in a better position to advise the Commission on what you intend to do with this affidavit and then we will have it tendered to court. So we adjourn until half past one.

[11.25 am] MR KETAN: Yes.

LUNCHEON ADJOURNMENT

[1.43 pm] THE CHAIRMAN: Thank you, Counsel. We have adjourned before lunch today and you have indicated that you will advise the Commission whether or not to

tender that affidavit that you got from the Registrar of Titles. So I invite you now to address the Commission on that.

MR KETAN: Thank you, Chief Commissioner. We, during the break, had a discussion with the Registrar of Titles and we have arranged – we have reached an understanding where the Registrar of Titles will attend on Monday morning and he has been requested to bring the copies of the titles. At least the ones the subject matter of the Inquiry which will require an amendment to his affidavit.

THE CHAIRMAN: Is that the position right now?

COMMISSIONER JEREWAI: Counsel, at least it is an indication on your part when you will be ready with this particular witness and what he has to tender. But I have just conferred with the Chief Commissioner and brother Commissioner, perhaps Monday straight after the weekend is not going to be convenient. You need Monday to go into the office after the weekend, put everything together and come prepared on Tuesday morning. How about Tuesday morning? Is that alright?

MR KETAN: That is just fine with the witness. That is fine, Commissioner.

THE CHAIRMAN: So Counsel, we are kind of guaranteed, we have been given the assurance that on Tuesday when the witness appear, the Registrar of Titles, that he will be bringing all the titles along with his affidavit or it will be appended to his affidavit?

MR KETAN: Chief Commissioner, we have asked him to bring those. He has expressed some difficulty. We were trying to bring him back tomorrow, but obviously he has something with files, with the way, the state of the files in his office. So he will need a bit more time. That is why we suggested Monday. But Tuesday might give him a bit more time to organize that. At that stage, if he has some difficulties, he will let us know and then we will deal with it. But our request has been that he brings those files and he has accepted the request.

[1.48 pm] THE CHAIRMAN: Let me make it very clear Counsel. Are we talking about the actual files or are we talking about the list of titles?

MR KETAN: No, copies of the titles – titles of the titles.

THE CHAIRMAN: Of the SABLs?

MR KETAN: Yes. The files have other information which he has already begun to copy and make available to us. But as the custodian of the leases, he is the appropriate person to tender the copies of the actual titles.

MR CHAIRMAN: Copies of the actual titles?

MR KETAN: Actual titles.

THE CHAIRMAN: Alright. Counsel, I just remind us that, as you will see in the Papers, together in the National Gazette, and I was advised this morning by the Secretary to the Commission that next week Friday is a public holiday.

MR KETAN: 26, yes.

THE CHAIRMAN: So next week is a short week. So if he gets the titles in on Tuesday then we really got Wednesday and Thursday, and then of course, you will have to advise us in one of our informal meetings as to what will come after the Registrar of Titles so it will help us to have some plans in place as far as giving of evidence and presentation of documents and all these.

MR KETAN: Yes. After the Registration of Titles, the next person will be the Director, Customary Lease, Andy Malo, and then Director, Acquisition, Simon Malu.

COMMISSIONER JEREWAI: Simon?

MR TUSAIS: Malu. M-A-L-U.

COMMISSIONER JEREWAI: Andy Malo?

MR TUSAIS: Simon Malu.

COMMISSIONER JEREWAI: Sorry, the first one.

MR TUSAIS: Andy Malo.

COMMISSIONER JEREWAI: And Simon Malu.

MR TUSAIS: Yes. Simon Malu. M-A-L-U and the first fellow is Andy Malo.

COMMISSIONER JEREWAI: Right, yes, okay.

THE CHAIRMAN: Counsel, these are the two names right at the bottom of the list that we got from the Acting Secretary, Mr Kila Pat. Then we got also other four people mentioned in the list – Benjamin Samson, Taison Asizo, Alfred Lake and Iruna Rogakila. Are you also going to call them or what is your?

MR KETAN: After Simon Malu will be Iruna Rogakila, the Director ILG. With the three names in the middle, it will really depend on what we get out of the Registrar of Titles. They are Deputy Registrar of Titles and all we might do at this stage, Senior Lawyer Assisting and I have discussed and thought that maybe, as we have done with the other Lands Department witnesses, if we get their affidavits, which the lawyer of the Department has agreed to provide, help prepare, there may or may not be a need to call them. Their evidence hopefully will be covered by the Registrar of Titles.

THE CHAIRMAN: Counsel, I agree with that. What we want to avoid is repetition of evidence and it is just dragging on with time. The other three that we have made reference to are really Deputies; you have Deputy Registrar of Titles, Deputy Registrar of something and Deputy Registrar of something, so if the Registrar or the Director have spoken and given evidence and affidavit, I think that should surface.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Bearing in mind that at this point that the Terms of Reference (b) and those other witnesses or officials may necessarily become involved when we go into Terms and Reference (c), which covers more particulars with regard to actually issued SABL.

MR KETAN: Yes. That is why the three Deputy Registrars of Titles, Chief Commissioner, 5 and 6 are the terms of titles are missing in the Secretary's letter. Those are Deputy Registrar Titles for each of the regions.

[1.53 pm] COMMISSIONER JEREWAI: Yes, Counsel, notwithstanding, I still have to say this. We go back to the fact that we are dealing primarily at this point with Terms of Reference (a) and (b).

MR KETAN: Yes.

COMMISSIONER JEREWAI: Those deputy registrars may be relevant witnesses in relation to Terms of Reference (c), and Terms of Reference (c) is the pertinent term of reference which is subject to the preliminary searches and the information revealed from such searches currently conducted by your team.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Yesterday there was mention that you have by now 24.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Of these searches done out of the 72 that are listed with the instrument of this Inquiry.

MR KETAN: Files.

COMMISSIONER JEREWAI: Yes.

MR KETAN: Files have arrived at the office, yes.

COMMISSIONER JEREWAI: Yes, so those witnesses – those other witnesses apart from those who are relevant to Terms of Reference (a) and (b) need to be dealt with.

MR KETAN: At that stage.

COMMISSIONER JEREWAI: At this stage. If the deputy registrars are merely going to cover the actual SABL titles issued in respect of their regions of management, then they will come under Terms of Reference (c).

MR KETAN: Yes.

COMMISSIONER JEREWAI: And they will be relevant witnesses there.

MR KETAN: Yes, that is why we have jumped over to the three other persons so that there is reason that we may not call these three deputy registrars.

COMMISSIONER JEREWAI: Yes.

THE CHAIRMAN: Counsel, the other thing is that I think we have made it very clear since yesterday when acting Secretary Kila Pat was here and again this morning with Mr Abby that they will be recalled if and when they are required to re-appear throughout the course of this Inquiry. So it is not just giving evidence and walking away and that is it; that bit is finished.

MR KETAN: Yes.

THE CHAIRMAN: There may be specific issues that come up and they would be the persons to be call in to come back to address those specific issues. So this is something that I am suggesting that you stress to all your witnesses that there will be a time for them to be recalled if and when the need arises.

MR KETAN: Yes, we have done that.

THE CHAIRMAN: Thank you.

MR KETAN: That in view of your comments, Chief Commissioner, that should take us Tuesday and Wednesday leaving Thursday – given Friday is a holiday and Thursday, the Commission may or may not sit. Tomorrow, if - again, that is a matter for you Commissioners to decide, but tomorrow, we intend to - we wrote to the Department of Environment and Conservation following up on your - Chief Commissioner – your initial letter. The Secretary Dr Wari Iamo has written back assigning two officers, Mr Benjamin Passingan, who is the Chief Legal Counsel and Mr Michael Wal, who is the Executive Director, Environment Protection. They will be here tomorrow morning. We intend to call them if the Commission will sit tomorrow. But if it will not sit, then they will be here, anyway. We can have preliminary discussions with them; with these two officers. That is a matter for you to advise us.

[1.58 pm] COMMISSIONER JEREWAI: Counsel, CA, counsel assisting, is it intended that they proceed by way of affidavit similar to the Lands Department officials so far? If you do not know at this stage, would you consider dealing with them also in this manner which will be far more speedier?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Far speedier than---

MR KETAN: Yes. We think that might be the appropriate – they will be here as the Secretary said. I suggest that the legal team have a conference with them ---

COMMISSIONER JEREWAI: Deal with them?

MR KETAN: Deal with them and then we will inform the Commission. So---

COMMISSIONER JEREWAI: Tomorrow is Thursday.

MR KETAN: Tomorrow is Thursday.

COMMISSIONER JEREWAI: And then you have these other officials from the Department of Environment and Conservation. Are there any officials from other departments who are going to be required at this point with regard to Terms of Reference (a) and (b)? So that we cover all procedural matters with all of these departments before we get to the substantive of individual SABLs?

MR KETAN: Yes. The Department of Agriculture has not come back to us. I did send a follow up letter; follow up on Chief Commissioner's letter. They have not come back so Ms Peipul is working on that. There is then the Department of Agriculture and Livestock and then Forestry. Forestry have given us a letter with a list of all the SABLs that are related to forestry activity. We are going to---

COMMISSIONER JEREWAI: For the record, we note that we have been provided these lists.

MR KETAN: Yes. So we will definitely call them after we finish with the Lands Department guys. In terms of ---

THE CHAIRMAN: Counsel, I was going to suggest that when you deal with these two representatives from the Department of Environment and Conservation and obviously, you would want to have a conference with them tomorrow and work out and advise them as to the manner in which they would present their evidence before the Inquiry. I want to suggest that we do the same thing as what we are doing with the Lands Department so that there is some consistency in the way the evidence is being put forward to the Inquiry.

MR KETAN: Yes.

THE CHAIRMAN: I would like to also suggest that there has been some – following on from the letter from the Managing Director of the PNG Forest Authority, that you also liaise with him or his office and he will have to also indicate to you as to who will be representing the PNG Forest Authority to appear in this Commission of Inquiry, and you would want to do the same thing as you would be doing with the Department of Environment and Conservations, basically telling them how evidence are produced before the Inquiry. Also probably perhaps indicate to them as to when we think they might be required to attend. We have got to also be mindful of the fact that they also got other things to do apart from coming to the Inquiry. So of you give them notice, ample time, that will help them a lot in planning their attendance.

MR KETAN: Yes. With Forestry the files concerned are about 10 or so. So what we – Ms Peipul will have a meeting with the officer that has been assigned to this matter tomorrow morning. So we will know as to the status of those files and then decide what we will do with calling of evidence. But we will take your suggestion up and work on it.

COMMISSIONER JEREWAI: Counsel, these all seem to lead us to the possibility that these other departments and authorities, such as the PNG Forest Authority may proceed similar to the Lands Department today, similar as did the Lands Department so far. So that pretty much gives you tomorrow and Friday as well as Monday and you will be able to advise when we reconvene formally and to be on record; the manner in which these other officials will conclude this part of their reference (a) and (b).

[2.03 pm] MR KETAN: Yes, there should be sufficient time for us to do that.

COMMISSIONER JEREWAI: So really, officially, we should adjourn till Tuesday morning at 9.30 a.m.

MR KETAN: Yes.

COMMISSIONER JEREWAI: I am just speaking aloud.

MR KETAN: Yes.

THE CHAIRMAN: Counsel, with regards to the Department of Environment and Conservation, we must be mindful of the fact that they are also using other environmental plans as well as apart from SABLs. So in your meeting with them, you have got to explain to them the specific areas that directly relates to SABL so that they stay focused and their affidavit will be specifically for SABL rather than that as I have looked through the environmental Act, they issue all manner and all sorts of environmental permits. Mining leases and others as well so it will help us a lot if you can, in your meeting with them, tell them exactly what you want. It has to be reflected in their affidavits so we all stay focused and stay on track presentation. PNG Forest Authority, I think they are aware of it and they will be very specific on that, especially the 10 FCAs that they have advised us also. It is only the Department of Environment and Conservation that I am raising that with you. Thank you.

MR KETAN: Yes. Apart from that, Commissioners, I do not have anything further to address you on.

THE CHAIRMAN: Alright. There will be no hearing between now and next week Tuesday as you have indicated, Counsel, and you utilize those days to try and prepare all the witnesses from other Departments as well, apart from the Lands Department and we will grant you the time.

MR KETAN: Yes.

THE CHAIRMAN: So we will adjourn until next week Tuesday at 9.30 to resume. The date next week Tuesday is 23 August at 9.30 for us to resume again. So we will adjourn to next week Tuesday then. Thank you.

MR KETAN: Very well.

**AT 2.06 P.M. THE COMMISSION OF INQUIRY INTO SABL
ADJOURNED TO TUESDAY 23 AUGUST 2011 AT 9.30 A.M.**

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