



COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI,
WEDNESDAY 5 OCTOBER 2011 AT 2.36 P.M.
(Continued from Tuesday 4 October 2011)

THE CHAIRMAN: Yes, Counsel? Counsel, you want to indicate how many matters we have got for this afternoon before we start?

MR KETAN: Yes. This afternoon there are seven matters in total.

THE CHAIRMAN: I have only got three, Counsel, on my list. And if the morning one has been adjourned, that is Baina Agro-Forestry then that will add up to a total of four altogether on my list for this afternoon.

MR KETAN: Yes. This afternoon matters adjourned and listed for this afternoon are 9, 10, 11, and 12; Yumu Resources, Mekeo Hinterlands, Bewani Oil and Ossima. Matter number 8, Baina Agro-Forestry was adjourned to this afternoon from the morning and then matter listed number 2, there are two number 2s on the first page there, Koaru Resources Owners Company Limited and matter number 1 and 2 rather, Wowobo Oil Palm and Koaru Resources Owners Company Limited.

THE CHAIRMAN: Sorry, Counsel, can we start again. As I said I have got three and then I have got the one that we stood over from this morning, Baina Agro-Forestry, Yumu Resources, Bewani Oil Palm and Ossima Limited. Those are the four on the list I have got for this afternoon. If the Baina Agro has been adjourned from 9.30 that will bring it up to a total of four. I am not too sure about the other two that you have made mention of. What happen did you say to Wowobo Oil Palm? Has it been further stood over to this afternoon?

MR KETAN: Yes, and the next matter, Koaru Resources Owners Company which was stood over to this afternoon. So that is two matters. And then from the morning ---

THE CHAIRMAN: Sorry, what was the other one? Is it Urasir, is it?

MR KETAN: Urasir has been adjourned to the 7th.

THE CHAIRMAN: Okay, so you have got Wowobo Oil Palm stood over to today, 1.30, that is from this morning.

MR KETAN: Yes.

THE CHAIRMAN: What was the other one again?

MR KETAN: Which is matter number 2, listed number 2 on that document titled 'Matters Adjourned', Koaru Resources Owners Company.

THE CHAIRMAN: I do not have that on my list; I do not have that on my list, Counsel.

MR KETAN: It is ---

THE CHAIRMAN: Is it listed for today?

MR KETAN: Yes.

THE CHAIRMAN: What I got listed for today number 2 is Urasir Resources Limited. That is number 2 listed for this morning.

MR KETAN: Yes. This matter of Wowobo Oil Palm and Koaru Resources Owners were adjourned today.

10 THE CHAIRMAN: I got Wowobo Oil Palm, that was listed for this morning, that is fine. The only one that I am talking about is number 2 that you referred to. But unfortunately I do not have that on my list. What I got is Urasir Resources Limited.

MR KETAN: Yes, that was scheduled for this morning as well.

THE CHAIRMAN: Yes.

MR KETAN: But that has been mentioned in the morning and adjourned to the 7th which is this Friday.

THE CHAIRMAN: So which one is the other one, the second one you are talking about?

20 MR KETAN: It is a matter called Koaru Resource Owners Company Limited, spelt K-o-a-r-u Resource Owners Company Limited.

THE CHAIRMAN: It is not Konekaru, is it? No?

MR KETAN: No, Konekaru was mentioned, we dealt with this morning. They were listed for the morning and they were mentioned with opening statements in the morning.

THE CHAIRMAN: Okay, I will just go through the master list and find out where it is. That is portion 323C, is that correct?

MR KETAN: Yes.

THE CHAIRMAN: In the milinch of Kukipi, fourmil Yule, Gulf Province. Is that the one?

MR KETAN: Yes.

THE CHAIRMAN: Gazettal number 115.

MR KETAN: Yes. It was adjourned to today from the 23rd of September.

[2.41 pm] THE CHAIRMAN: Okay, that is fine. It is not on the list but I will add it on now. It is not on the listings for today. Who is the action officer for that? Is that ---

10 MR KETAN: Those two matters, the Koaru Resource matter and the Wowobo Oil Palm matter, the lawyer having carriage of that matter is Mr Boi. He will join us a bit later in the afternoon. The other matters of Baina Agro-Forestry which was adjourned this afternoon from the morning, Ms Koisen has carriage of that matter. She also has carriage of the matters of Yumu Resources and Mekeo Hinterlands Holdings. The last two matters of this afternoon, Bewani Oil Palm and Ossima Limited, Mr Pupaka has carriage of those matters.

THE CHAIRMAN: Can you go back - the Yumu Resource and what do you say, Mekeo Hinterland, are they one and the same thing or different things?

MR KETAN: They are different; different matters.

20 THE CHAIRMAN: There is another one that I do not have on my list, Mekeo Hinterlands.

MR KETAN: Mekeo Hinterlands Holdings?

THE CHAIRMAN: Yes, that is portion 45C, milinch of Omeri.

MR KETAN: Yes.

THE CHAIRMAN: Fourmil Yule, Central Province.

MR KETAN: Yes.

THE CHAIRMAN: Okay, I will add that one as well. All right, what else? Anymore other SABL ---

MR KETAN: I was just mentioning that the other two matters, matters are Bewani Oil Palm and Ossima Limited, those are scheduled for this afternoon.

THE CHAIRMAN: Yes, that is fine. I have got the two except for this Koaru Resource Limited and Mekeo Hinterlands Holdings, I do not have that on my list for this afternoon. But that is fine, I have added it on the list now. So we can proceed. So which one do you intend to start first or begin with?

MR KETAN: If I can start with Bewani Palm Oil Development Limited and Ossima Resources Limited. They are related and I will deal with them together.

THE CHAIRMAN: All right, when you are ready Counsel.

[2.46 pm] MR KETAN: On these two matters Chief Commissioner, I appear with Mr Mark Pupaka who has carriage of this matter.

- 10 There have been two respective files opened for this matter; Commission of Inquiry files, files numbers 35 and 72. 35 for Bewani Palm Oil Development Limited and 72 for Ossima Resources Limited and of course this opening statement will cover the two SABLs granted to Bewani Palm Oil Development Limited and Ossima Resources Limited.

THE CHAIRMAN: Counsel, just for record purposes, do you have any Counsels representing or attending on behalf of Bewani or Ossima? Just for record purposes we need to also acknowledge their presence if they ---

MR KETAN: Yes, I understand so.

THE CHAIRMAN: We want to get some indications on that - who is here?

- 20 MR KETAN: Very well.

THE CHAIRMAN: Let me get some indication who is representing or appearing on behalf of who?

MR GRIFFIN: Good afternoon, Mr Chairman, Griffin, first initial F and Mr Chairman, I would be seeking leave of the Commission pursuant to section 8 of the Commissions of Inquiry Act, fully to appear on behalf of my two clients respectively Bewani Palm Oil Limited and Ossima Resources Limited, Mr Chairman.

- 30 THE CHAIRMAN: Is that all? All right, what is going to happen Mr Griffin is that we will continue to maintain what has been the practice in the last two weeks or so with respect to opening statements made to the Inquiry. We will take note of your presence here today and we will reserve your - if you intend to

make a leave to apply to appear, that is something that can be considered at a later stage when we conduct a substantive hearing into the matter. So I think that has been the position that we have taken right throughout over the last two weeks, especially with regard to the opening statements. So I am just simply advising you of that. Okay, Counsel, we proceed on the opening statement.

MR KETAN: Thank you. As I was saying this opening statement will cover the two SABLs as they are related to each other and also because their existence affects each other. As we progress into the statement full explanations will be given at the appropriate junctures in the statement.

- 10 Firstly, the SABL over portion 160C granted to Bewani Palm Oil Development Limited, this is for 99 years and is contained in Lands Department file volume 15, folio 41. It is the milinch of Wenaki, southwest and southeast Bewani, northwest and northeast and fourmil of Vanimio in the West Sepik Province. The SABL covers an area of 139,909 hectares of land and is a delineated on a class 4 survey plan bearing catalogue number 1-130 and dated 17 July 2008.

This was a Direct Grant to Bewani Palm Oil Development Limited under the hand of the then secretary for the Department of Lands and Physical Planning, Mr Pepi Kimas. The grants dated 11 July 2008, notice of which was gazette in the National Gazette number G124 of 14 July 2008.

- 20 The Commission of Inquiry has received documents from the Departments of Land and Physical Planning and PNG Forest Authority, Department of Environment and Conservation and Department of Agriculture and Livestock and the Investment Promotion Authority. There are also submissions from persons of interest that we have received and are on file.

The SAB holder Bewani Palm Oil Development Limited was incorporated on 3 March 2008. Mr Belden Norman Namah was the sole shareholder at that stage. The directors then were John Wuni, spelt W-u-n-i, Belden Norman Namah, Bob Namah, Ambrose Bewatau, spelt B-e-w-a-t-o-u and Tom Sirae, S-i-r-a-e.

- [2.58 pm] The latter was also the secretary and he still continues to be so according to the
30 IPA records.

On 8 April 2008, Bewani Palm Oil Development Limited changed ownership. It was sold for a cash consideration by the sole shareholder Belden Norman Namah to one Jimmy Tse, spelt T-s-e. All the original directors ceased to be

directors. Jimmy Tse and one Hung Kai Hii or Hii, spelt H-u-n-g K-a-i H-i-i who then became the directors.

On 21 October 2010, Hung Kai Hii, a Malaysian national ceased to be director. This therefore meant that Jimmy Tse who appears to be a Papua New Guinea became the sole owner and director of Bewani Palm Oil Limited as at 21 October 2010.

IPA extracts show that on 24 November 2008, Bewani Palm Oil Development Limited by then fully owned by Jimmy Tse issued 999, 900 shares bringing the total issued shares to 1 million shares.

10 On 23 March 2009, less than a year after he acquired ownership of the company, Jimmy Tse transferred all of the million shares in Bewani Palm Oil Development Limited in the following way for a consideration of K1 per share. First he transferred 800,000 shares which equates to 80 percent to a Million Miles Group Limited, a company of Singapore. Second, he transferred 150,000 shares which equates to 15 percent to a Bewani Farms Management Limited to be held in trust for four landcors. We do not know what that represents but we assume that refers to landowner companies. But that is perhaps being too assumptuous to be corrected on further investigations and inquiries. And thirdly, he transferred the remaining 50,000 shares equating to about 5 percent
20 to Bewani Palms Management Limited.

Investment Promotion Authority extracts for Bewani Palm Oil Development Limited shows that Million Miles Group Limited has its registered office in the British Virgin Islands. The Investment Promotion Authority extracts reveal that Million Miles Group Limited was 80 percent shareholder of Bewani Palm Oil Development Limited between 20 March 2009 and 21 October 2010. At this stage no compliance category searches at IPA have been done. But when that is done the Commission of Inquiry will ascertain whether Million Miles Group Limited complied with all the requirements under the Investment Promotion Authority 1992 as amended including the requirements under section 36(A)(2)
30 of that Act which requires foreign enterprises to obtain IPA Certification permitting foreign enterprises to acquire, hold an interest in a national enterprise.

On 21 October 2010, Million Miles Group Limited transferred all of its shares to the four landowner entities. It no longer has an interest in the SABL holder. However, the IPA requirements, compliance information is needed for purposes

of a complete reporting of these activities by this Commission of Inquiry and all of what I have stated is subject to confirmation.

Bewani Palms Management Limited is owned by a Philip Eledoni, a Papua New Guinean citizen and its directors are that Mr Philip Eledoni and three other Papua New Guineans, namely, Charles Litau, John Guni and Bob Namah.

On 21 October 2010, it also transferred all of its shares in Bewani Palm Oil Development Limited to the four landowning companies or landowner companies, rather. Therefore, it no longer has any shares in Bewani Palm Oil Development.

- 10 At this juncture, it needs to be reported that there has been an anomaly noticed in the IPA records entries referred to or as referred to above. And this as I have mentioned need to be further ascertained and if these anomalies are ascertained to be correct and existing then they need to be corrected by Investment Promotion Authority.

[2.57 pm] Landowner companies. The holding in trust arrangement referred in paragraph 8.2 of this opening statement appears to have been formalized on 21 October 2010. The LandCors now own all the issued 1 million shares in equal shares of 250,000 each in Bewani Palm Oil Development Limited. The landowner companies are Palms 21 Limited, Momu Holdings Limited, Ossima Yalamaki
20 Limited and Bulaulai Limited. IPA information shows that two of these LandCors are wholly owned by ILGs and the other two are owned by individuals.

Bulaulai Limited was incorporated on 3 September 2008. It is owned by 11 ILGs. Its 11 directors appear to be the respective chairmen of these ILGs.

Ossima Yalamaki Limited was incorporated on 21 August 2008. It is owned by 13 persons who are also its directors. Momul Holdings Limited was incorporated on 4 July 2008. It is owned by Kamilus Habu and Jacob Yani. It is not known whether these two men hold their shares in trust for any other groups. They and seven others are the directors.

- 30 Palms 21 Limited was incorporated on 22 February 2008. It is owned by 23 ILGs. It has five directors. The developer and sublease holder is Bewani Oil Palm Plantations Limited in relation to a sublease that exists as noted on records. It was incorporated last year on 10 October 2010. It is equally owned

by Kim Te Te and a Li Ian Te. They are both Malaysian nationals, they and a Papua New Guinean called Murray Mamanua are the directors.

On 16 November 2010, a sublease was granted and entered on behalf of Bewani Oil Palms Plantations Limited. An appended agriculture sublease instrument that was filed at the time of this entry at the Titles Office shows that the sublease to Bewani Oil Palms Limited is for the remaining term of the lease. This instrument also states that the project agreement entered into between the SABL holder, the landowner companies and Bewani Oil Palms Plantations Limited, the developer on 28 October 2010 is part of the sublease. The
10 Commission of Inquiry has not yet sighted that project agreement. When on location on circuit responsible people from within the contracting entities will be summoned to produce it in the course of further hearing.

In relation to the purpose of the SABL Direct Grants of SABLs under section 11 and section 102 of the Land Act, in our submission, a facilitation for speedy release of customary land for development purposes, particularly to those persons or entities that are consented to or agreed to or nominated by the customary landowners themselves through the land investigation process which is crystallized in the instrument in the land investigation report or often referred as the LIR and the Instrument of Lease for customary lease; this is the Lease-
20 Lease Back Agreement under section 11 of the Land Act which is negotiated and executed between the State and the customary landowners.

[3.02 pm] The customary landowners are required to consent to one person or entity to be the SABL holder. An important consideration implicit right from the beginning is that ownership of the Direct Grant should be constant. In this instance ownership of the SABL holder has changed several times. Whether these changes have always been based on full landowner consent, informed consent is not known at this stage and again, this will be further confirmed during the substantive hearings.

In relation to submissions from persons of interest, there have been some lodged
30 with this Commission of Inquiry by persons of interest and they appear to be representatives of landowner or landowning clans which own land within the SABL area. They basically dispute the legitimacy of the process by which informed consent was secured for purposes of both the Lease-Lease Back Agreement and the Direct Grant to the nominated entity. There appears to be consistency in their protestations to Department of Lands and Physical

Planning, mostly due to the fact that serious issues were raised almost as soon as the SABL was issued. In fact, within a few weeks after the grant of the SABL, as soon as they became aware of the grant, about three villages, namely, Apambo, Amoi and Ituli villages held a meeting to protest and disassociate themselves from the processes that led to the grant.

10 They protested that their land was included in portion 160C without their consent. This apparent lack of consent appears to be continuing. Therefore, the legitimacy of the land investigation report and its clearance by or in terms of an issuance of a certificate of alienability will be investigated further on location on circuit.

In relation to Ossima Resources Limited, Commission of Inquiry file number 72, this SABL was granted to Ossima Resources Limited by way of a direct grant over portion 163C for 99 years. The SABL covers an area of 31,430 hectares of land located within the milinch of Bewani and Oninaki and fourmil of Aitape and Vanimu. The grant is dated 28 January 2011. The SABL was however subsequently cancelled by the Registrar of Titles but it is noted that that cancellation has taken place recently on 12 May 2011. At this stage it stands cancelled.

20 The reason for this cancellation is affixed to the cancelled title retained by the Registrar for Titles, apparently the Registrar of Titles became aware later that this SABL was located within the greater SABL portion of 160C which is of course, held by Bewani Palm Oil Development Limited. Portion 160C was issued first in time or prior in time on 17 July 2008. Portion 163C is one of the 75 SABLs this Commission of Inquiry was to investigate and report on and came within the scope of the Terms of Reference. However, the SABL over portion 163C stands cancelled. It is now dealt with together with portion 16C because, as I mentioned at the outset, are related. This is all that needs to be said at this stage of Ossima Resources Limited and the cancelled SABL over portion 163C.

30 Nevertheless, the mix up with these two direct grants underscores the fact amongst others that either, not all landowners who have interests over the land continue constituting portion 163C may have been consulted or that they did not render up front their informed consent for the grant of an SABL over portion 160C. These matters will need to be ascertained at the hearing, during the

hearing on site. The Commission of Inquiry will need to call the affected ILG presidents in the area in relation to this issue.

In relation to any information or files on this matter from the Department of Agriculture and Livestock being one of the relevant government agencies, it has not produced any agriculture development plan although it is noted from the Papua New Guinea Forest Authority records that the agriculture component is for Palm Oil Development.

[3.07 pm] There is no progress report on compliance requirements. The Department of Environment and Conservation being the other relevant government agency in
10 relation to that the PNG Forest Authority records show that the Department of Environment and Conservation approval is current. Its reference or denoted as WE-L3(154) and valid for 25 years commencing 17 January 2009.

Evidence presented by the Department of Environment and Conservation show that the ministerial approval in principle for the Bewani Palm Oil Development Limited Project has been granted. This is the ministerial approval under the environmental permit application and process. However, since the Department of Environment and Conservation approval is granted, the designated development partner has changed. The current development partner and sublease holder is not the same entity that is submitted in the environmental
20 inception report. These matters need to be further investigated and ascertained and confirmed.

In relation to information from the Papua New Guinea Forest Authority, there is a current forest clearing authority numbered FCA 10-03 over the SABL. However, PNG Forest Authority record show that forest clearance is yet to be carried out. This needs to be verified on site when the Commission of Inquiry convenes hearing on location.

At this juncture, a discovery generic to most SABLs under Inquiry needs to be recorded. Section 90B(9)(a)(iii) of the Forestry Act requires forest clearing to be apportioned into blocks of a maximum of 500 hectares. PNG Forest Board
30 may increase or decrease the figure, that is the 500 hectares for a good course. However, it seems FCA or Forest Clearance Authority holders are being permitted to clear forest up to 5000 hectares which is 10 times the maximum prescribed at any one time. Increase over or above the maximum allowed are being promoted by the Department of Agriculture and Livestock presumably it is being done on the basis of technical advice available to it but Department of

Agriculture and Livestock has not produced examples of assessments made by it on the economics of scale. The Commission of Inquiry will need to summon Department of Agriculture Livestock officers to give examples of technical assessment that it has done. Other preliminary findings will need to be confirmed, cross checked or amplified after site visits and further inquiries and hearing on location.

10 In relation to the hearing on location, the Commission of Inquiry will travel to Vanimo at this stage in the West Sepik Province generally or some other location as is appropriate where it will call for production of records and hear persons who can shed some light on these issues raised in this opening statement. At this stage, it appears that the Commission of Inquiry will need to call the following people as witnesses. (1) the provincial administrator (2) the members of the provincial forest management committee (3) Mr Jimmy Tse (4) provincial lands officer (5) landowners (6) Tom Sirae (7) sublease holder representative and persons of interest in that (8), any other interested persons.

20 The Commission of Inquiry will confirm the veracity and accuracy of evidence generated or originated from the site and cross check evidence originated elsewhere that needs to be cross referenced with people or sources on site and amplify its contextual and conceptual appreciation of the evidence and preliminary findings.

Mr Commissioner, this concludes the opening statement on this particular SABL over portion 160C and I ask that this matter be adjourned generally until further notice from the Commission of Inquiry by way of advertisement as to further hearings. This is the substantive hearings. Thank you.

THE CHAIRMAN: Thank you Counsel for the comprehensive opening statement with respect to Bewani Oil Palm and Ossima.

[3.12 pm] I agree that there are a number of people that needs to be called before the Inquiry when it conducts its substantive hearing over in Vanimo. So this matter will be generally adjourned to a date that will be scheduled for hearing over in 30 Vanimo and public notice to that effect will be made for interested parties and others to also appear and testify and give evidence as well. So at this stage we will have it generally adjourned until a date is set for a substantive hearing over in Vanimo in the Sundaun Province.

Thank you Counsel. What was the next matter you got?

MR KETAN: The next matter is one of Mr Boi's but if I can mention that matter of Wowobo Oil Palm Limited and deal with that.

THE CHAIRMAN: Which one is that again - sorry, Counsel?

MR KETAN: Wowobo Oil Palm Limited. That is one of the matters that was adjourned to this afternoon from the morning. It is matter number 1 on that list that is going around.

THE CHAIRMAN: Yes, okay, that is fine, go ahead.

MR KETAN: The Commission of Inquiry file on this matter or SABL is file number 29. The grantee is Wowobo Oil Palm Limited. The SABL portion 4C, milinch of Auri, fourmil of Kikori, Gulf Province comprises of an area of 23,180 hectares and is for a period of 99 years. This is again a direct grant of an SABL by Mr Pepi Kimas exercising powers as a delegate of Minister for Lands and Physical Planning, notice of which was placed in the National Gazette No63 dated 09 January 2008.

The title itself, the actual title was issued on 11 January 2008. The Department of Lands and Physical Planning has made a file available to the Commission of Inquiry from which we note amongst others the following: There is a land investigation report referenced 02028/0004C, investigation number 02/134 dated 12 October 2007 and was carried out by a Alex Iva, I-v-a, who appears to be the Gulf provincial lands officer.

The land is described as a large stretch of rain forest and clad and covering many large parcels of many – covering many clans or customary land including water ways, creeks, swamps, covered with generally nipper and sago palms and mangroves. The land is situated 90 kilometres northeast of Kikori government station and is situated north of Wowobo village from where this SABL name gets its name from. And is located between Seri and Wau Rivers in the east Kikori, that should be LLG area not ILG, local level government area.

[3.17 pm] The land is owned by eight named clans from Wowobo village, 10 clans from Golavi village, five clans from Ebigau village and five clans from Waira village and also two clans from Morere village. Ownership of the land of course, is acquired under custom by kinship.

The population of the landowning group is estimated around 1,000 and is expected to increase to three to four persons per square kilometre in the next 60

years. But the land investigation report states that the landowners when interviewed indicated that they wish to lease the land specifically to their landowner company being Wowobo Oil Palm Limited.

The report notes a recommendation from the provincial lands officer Mr Alex Ive, who is as I mentioned, the author of the report that the company Wowobo Oil Palm Limited be granted a SABL as recommended by the or as nominated by the landowners. Attached to the LIR is a copy of the survey and list of landowners together with agency agreements appointing agents for the respective clans.

- 10 The Instrument of Lease for customary land under section 11 of the Land Act was signed on 19 December 2007. A copy of which is on file. The agreement was signed by 30 landowner representatives or agents and was witnessed by this Mr Alex Ive, the Gulf provincial lands officer and Mr Jacob Wafinduo, Manager of customary lands Department of Lands and Physical Planning who is since deceased, Secretary for Lands and Physical Planning, Mr Pepi Kimas, who is the former Secretary signed for the State as the delegate for the Minister for Lands.

- 20 We note however that a certificate in relation to customary boundaries and recommendation as to alienability from the – which is usually from the provincial administrator is not on file.

Following the signing of the head lease which is the Lease-Lease Back Agreement on 19 December 2007, Mr Kimas by Notice in National Gazette dated 9 January 2008 granted the SABL to Wowobo Oil Palm Limited.

- 30 From documents made available to the Commission of Inquiry by the Department of Lands, it appears that the grantee in this, of this SABL Wowobo Oil Palm Limited signed a lease agreement to sublease the land to another company Reco (PNG) Limited. The sublease was signed on 18 January 2008 by six directors of Wowobo Oil Palm Limited and Messrs Kelvin Kii Peng Sing and Elvin Chi Wii Sing on behalf of the sub lessee Reco (PNG) Limited. This was on 18 January 2008. And the SABL was leased or subleased at a rental of K139,080 per annum for the term of the lease less one day. And clause 4.3 of that sublease agreement states that on the commencement date, being 18 January 2008, all trees on the land already planted by the tenant and all those yet to be planted became the property of the tenant. That is Reco (PNG) Limited.

Clause 19.1 of the sublease provides that the tenant Reco (PNG) Limited, may at its sole discretion assign or sublease or mortgage part or for the whole of the SABL without prior written consent of the landlord, being Wowobo.

The sublease also provides that the permitted use of the SABL by the tenant is for purposes of development of plantation crops including oil palm.

[3.22 pm] Clause 17 of the sublease provides that the tenant will pay one percent of the net revenue generated by the tenant from the permitted use of the SABL to the landowners. The permitted use being agriculture development or oil palm as is mentioned. In other words, Reco (PNG) Limited will pay to landowner being
10 Wowobo Oil Palm Limited one percent of net revenue from agriculture development. The sublease agreement makes no mention of royalties for logging other than rent of K139,080 per annum at the rate of K60 per hectare, per annum.

The Department of Environment and Conservation has made available a copy of its file to the Commission of Inquiry. The Department of Environment and Conservation file indicates that the notification of preparatory work was lodged with that Department on 12 October 2009 and an environment inception report was filed or lodged on that date as well, 12 October 2009.

The developer being Reco (PNG) Limited submitted its environmental impact
20 statement on 7 June 2011 and the assessment and public review has commenced. By Notice in the National Gazette recently, in fact, last month on 7

September 2011, the Department of Environment and Conservation advised of an approval in principle, application being filed by Wowobo Oil Palm Limited and invited the public to view and make comments by close of business on 14 October 2011, this month. As can be seen, therefore, the developer is still going through the process of securing the relevant permits and approvals from the Department of Environment and Conservation.

In terms of the Department of Agriculture and Livestock approvals, the
30 department has not submitted any information or file it might have on this particular project relating to the SABL we are concerned with here. However, the Commission of Inquiry does have in its possession a copy of a land and soil survey and suitability evaluation for oil palm on Wowobo Plantation Limited which was done by the developer Reco (PNG) Limited or rather on its request

by Agriculture research and advisory Bureau, a Malaysian entity based in Sri Lanka, Malaysia. Apparently the report comes to the Commission through the Department of Environment and Conservation rather than Department of Agriculture and Livestock.

On page 3 of the executive summary of the report, this is the Department of Environment and Conservation report, it is noted that 53.4 percent or 12,280 hectares of the 23,180 hectares of the land is flat and undulating and most suitable for oil palm

37.8 percent or 8,690 hectares of 23,180 hectares is rolling and hilly but still suitable for oil palm and 8.8 percent or 2,030 hectares is very steep and unsuitable for oil palm. A report concludes that 20,000 hectares of the SABL is suitable for oil palm cultivation and development.

Due to the absence of any Department of Agriculture and Livestock files, we do not know whether there is a agriculture development plan or not. This needs to be further pursued with that Department in the course of the Inquiry.

In relation to the grantee Wowobo Oil Palm Limited, it is a company registered with the Registrar of Companies or the Investment Promotion Authority and its company registration number 1-58149 registered on 21 November 2006 with its registered offices at Unit 41, First Heritage Centre, Waigani Drive, Waigani, National Capital District, the postal address is P O Box 901, Port Moresby, National Capital District.

The company has eight issued shares and the shareholders are; Ouo Incorporated ILG of Waira village, Kikori, Gulf Province, issued one share; Kemodai Koirari Incorporated Land Group of Goilavi village, Kikori, Gulf Province, one share; Gaiabuda ILG of Ebega village, Kikori with one share; Aievai ILG of Wowobo village, Kikori, one share, Hukiarave ILG of Golavi village, Kikori, one share; Wowobo ILG of Wowobo village, Kikori, one share; Koike ILG of Urere village, Kikori, one share; Gemodai Ebigau of Ebigau, Kikori, Gulf Province with one share. All the shares in the company are held by landowner ILGs.

The directors of the company are; (1) Mark Mapakai, a Papua New Guinean citizen of section 31, lot 11, Henao Drive, Gordons; (2) Kei Mahuki, Papua New Guinean citizen of Goirere village, Kikori, Gulf Province; (3) Goi Ebori, Papua New Guinean of Goirare village, Kikori, Gulf Province; (4) Toagi Peter,

Papua New Guinean of Wowobo village, Kikori, Gulf Province; (5) Ioki Eburo, Papua New Guinean of Siberi village, Kikori; and (6) Amos Mui, Papua New Guinean of Ebigau village, Kikori, Gulf Province. The directors of the grantee company are all Papua New Guinean landowners from the SABL area and from the villages covered by the SABL.

10 The sublease company Wowobo Oil Palm Limited subleased to Reco (PNG) Limited. Reco (PNG) Limited is registered with IPA and its company registration is 1-58682 and was registered on 22 June 2007, with its registered office at section 55, allotment 7, Sorari street, Gordons, National Capital District and its post office box is 1188, Waigani. That company has 10 issued shares and the shareholders are Sukdebi Sairia, a Malaysian of unit 41, First Heritage Centre, he has one share. Kelvin Chi Peng Sim, Malaysian of section 55, allotment 17, Sorase street, Gordon with four shares, Evan Chii Wing Wi Sim, Malaysian of section 55, lot 17, Sorari street, Gordon with four shares, Wowobo Oil Palm Limited of unit 41, First Heritage Center, Waigani Drive with one share.

The directors of the company are Kelvin Chii Peng Sim and Kelvin Chii Wi Sim. Both Malaysian nationals of same unit 41, First Heritage Center, Waigani Drive and section 55, lot 17, Sorari street, Gordons, respectively.

20 The company has 90 percent foreign shareholding from what we note and both directors are foreign citizens. This is therefore, appears to be a foreign company. The secretary of the company is Sukdebi Rian, Malaysian, whom I have mentioned earlier.

[3.31 pm] In relation to the submissions and representations from interested persons we have one submission from an interested person, a Mr Peter Baigere, who is the chairman of the Wowobo ILG. Mr Baigere states his concerns to be as to who owns the titles, why Reco (PNG) Limited is paying land rent when there is no oil palm project on the ground. His ILG, the Wowobo ILG is not being recognized. Other ILGs are not legally registered ILGs and he poses a question
30 as to why has not the land being registered under customary land titles. There are no other submissions from any other interested persons.

In relation to the further evidence that is required, the evidence will comprise the copy of the files entered in by the Department of Lands and Physical Planning and IPA and Department of Environment and Conservation. This will need to be substantiated by oral evidence during the hearing by witnesses. And

we also need to call witnesses to assist us in our inquiry and we name possible witnesses as the following; (1) Mr Alex Ive, the Gulf provincial lands officer. His evidence will be on the compliance aspects of the SABL and particularly with the land investigation process and certification that he undertook and certified. The manager, customary lands, Department of Lands and Physical Planning, on the granting of the SABL, one or two directors of the grantee company to give evidence on aspects of the SABL and the sublease to Reco (PNG) Limited. The manager or director of Reco (PNG) Limited to testify to the Inquiry in relation to its development plans and other aspects of the SABL.

10 One or two of the ILG chairmen of the landowner company Wowobo Oil Palm Limited to – in relation to the whole process from the investigation to the granting of the SABL and this Peter Baigere guy as an interested person. There may be one or two other persons of interest that we might need to call.

In relation to this particular SABL we note that there is no certificate of alienability on file and the Department of Lands officials need to be pursued as to the existence or otherwise of a certificate of alienability, which is the last process prior to the issuing of a SABL as we have heard from witness, particularly, from the Chief Secretary.

That is the opening statement on this particular matter, Chief Commissioner and

20 I ask that this matter be adjourned generally until hearing dates are appointed either or possibly at Kikori Government station where this particular SABL and the project is located.

[3.36 pm] THE CHAIRMAN: Counsel, firstly, thank you for the opening statement with respect to the Wowobo Oil Palm Limited. It appears that there will be a few people that we would want to call, persons of interest when the matter comes across for substantive hearing and we will adjourn generally to a date that is yet to be set and I think it is a matter that we will have to decide with respect to the venue whether it is being held in Kikori, or Kerema. I am not too familiar on that part of the world. But whatever is appropriate, we can then have it

30 published, the date and the venue and we give the opportunities to people to appear.

So we have it generally adjourned to a date. I see there are a lot of people in the public gallery and I am not too sure they are people of interest in this particular case. But we will publish the dates of all the SABLs for a full hearing in all the provincial locations and they will be coming up or they will be published in the daily newspapers; Post Courier and The National and through the provincial administration offices in the provinces.

Sufficient notices will be given out, so everyone who has an interest in the SABL or in this matter will be given the opportunity to appear. So the Commission of Inquiry will have this published hopefully in the next week or so of all the provincial hearings.

Counsel, we will adjourn this matter generally to a date to be set, set for the provincial hearing. Thank you. What is the other one you have got, Counsel?

10 MR KETAN: The other matter is Baina Agro-Forestry matter, and the other matter is listed below that, Yumu Resources, Mekeo Hinterlands Holdings. In that matter, I appear with Ms Koisen who has carriage of those matters. As we did in the morning, Ms Koisen will make or open the files and make the opening statements.

THE CHAIRMAN: All right, thank you. Ms Koisen?

MS KOISEN: Thank you, Chief Commissioner. The first file is in relation to file number 23 on the SABL – Special Agriculture Business Purpose Lease over
20 portion 29C, Volume 29, Folio 182, Tasebona, Central Province. The SABL is issued in the name of Baina Agro-Forest Limited and this particular portion is situated on the west – sorry, Mr Chief Commissioner, I may as well hand up the opening statement for your guide.

THE CHAIRMAN: Yes please.

MS KOISEN: The portion 29C is situated west of Doa Rubber Estate near Kuriva on the Hiritano Highway between Kairuku Hiri LLG and Woitape LLG, Central Province. This particular SABL sits adjacent to another SABL which
30 we will shortly cover in our opening statement, portion 30C, which is in the name of Yumu Resources Limited. Baina Agro-Forest Limited's portion is covering a total area of 42,100 hectares.

With relation to the Department of Lands' files that are before us, the Registrar of Title file contains very few documents and appears to be incomplete. What we have on that file is a copy of the SABL title for portion 29C in the name of the landowning company Baina Agro-Forest Limited. There is also on the back of that particular SABL title a registered caveat number 52539 lodged on 2 September 2009 by a company called Nasyl No 98 Limited.

40

[3.41 pm] A further perusal of other files and interested persons' documents has revealed that Nasil No 98 Limited was the former developer of Baina Agro-Forest, this particular SABL which has been now terminated.

In any event, the caveat is registered on 2 September 2009 and under the Land Act, caveat is only good for about nine months, and there are no further evidence on that particular caveat whether or not there has been a court order for a further caveat. But as it is on the face of that SABL we have, there is no other entry of a court order for a caveat. So the COI can safely assume that that particular caveat has lapsed.

10 On file is also a copy of a section 102 notice issued by Mr Anton Luben, a delegate of the State, on 28 October 2005, Gazette number G157 and on file is also an entry showing that on 19 May, the landowner company Baina Agro-Forest Limited was issued with a replacement title. So on file, there is indication that the original SABL was lost and a replacement title was issued on 19 May 2006 – that should have been 2006.

On 4 May this year 2011---

THE CHAIRMAN: Sorry, Counsel, did you 19 May 2006?

20 MS KOISEN: Yes.

THE CHAIRMAN: All right, thank you.

MS KOISEN: What appears next on evidence on file is that there is a lease agreement that has been entered into with a company called PMS Limited. There is no information on this company other than the information on the Registrar of Titles' file, so the Commission of Inquiry will have to request for information from the IPA with regards to who this company is.

30 Currently, the evidence we have on file does not give us any indication as to the nature and the background of this company and how it is related to this particular SABL. So the Commission of Inquiry will have to get extracts from IPA and also further information from the Lands Department to find out who PMS Limited is.

40 What is missing on file is the gazettal notice under section 11. That has not been submitted, so that is missing on file. On the Lands file, there is a very long list, a very big thick file where we have been given three copies of land investigation reports of the following clans that are claiming ownership of portion 29C.

The first one is Sama Kuma clan. There are three copies of the land investigation report for the land of Sama Kuma which is about 90 kilometres

within the SABL from Doa Plantation. A total of 72 people were listed as having full and subsidiary rights for that particular portion of land. The people of Sama Kuma come from Inaina village, Woitape District. All the other necessary certificate and recommendation of alienability is signed by Raphael Yipmaramba, the Provincial Administrator, on 13 September 2005.

10 The Sama Kuma people have appointed five agents and representatives to represent them on behalf of the clan. This particular land investigation report is signed off by Gulu Raga of the Provincial Lands Office for the Central Provincial Administration on 26 July 2005.

The next document we have on file is a land investigation report for the Fagaga people. They are also located about 90 kilometres from Doa Plantation. About 34 people of a total population of about 200 were listed as having full and subsidiary rights for the land of Fagaga.

[3.46 pm] The people of Sama Kuma – sorry, Fagaga, that should be – also come from Inaina village. These land investigation report also contains a recommendation of Alienability Certificate issued on 13 September 2005 by Raphael
20 Yipmaramba and the investigation report is signed off by Gulf Raga, the Provincial Lands Officer, for the Central Province administration on 26 July 2005.

The next document that is on file is copies of a land investigation report for Simalolo people – that should be Simalolo, not Fagaga, sorry – where there is a total of about 27 people and the land investigation report does not list down the total estimated number of population for that group. So we are not sure. The Commission of Inquiry cannot make any findings on or recommendation as to whether or not the whole total population was consulted for this land
30 investigation report. However this land investigation report is signed off again by Gulu Raga as completed, from the Central Province administration, and it is dated 26 July 2005.

There is also a recommendation of alienability certificate on 13 September 2005 issued by the Provincial Administrator Raphael Yipmaramba. The Simalolo people have also appointed five agents and representatives on their behalf to act on their behalf.

40 The next document that is on file is for the Hokuna people. They are also located near the Doa Plantation and there was approximately about 27 people who signed the land investigation report out of 200 people stating some full rights and some subsidiary rights for the land of Hokuna. The Hokuna people also come from Inaina village.

This land investigation report is also signed off by Gulu Raga, the Provincial Lands Officer, for the Central Province administration and it is dated also 26 July 2005. The Provincial Administrator Raphael Yipmaramba also issued a recommendation of alienability certificate on 13 September 2005. The Hokuna people have also appointed five agents and representatives to act on their behalf with regards to this SABL.

10 On file is also three copies of a land investigation report for the Biabina people. They are also located close to the Doa Plantation where a total of about 31 people signed up as having full and subsidiary rights of an approximate total of 200 people of the total population there. That also raises the question of whether or not the land investigation report was conducted thoroughly. But in any event, that land investigation report is signed off by Gulu Raga from the Provincial Lands office dated 22 July 2005.

20 On 13 September 2005, the Provincial Administrator Raphael Yipmaramba has issued a recommendation of alienability certificate. The people of Biabina have also appointed five agents and representatives to act on their behalf.

We have the next group that has come forward is Ovea group who have three copies also of their land investigation report for the land of Ovea which is also located about 90 kilometres from Doa Plantation. There is approximate population of about 200 people that claim ownership to that land, having some full and subsidiary rights. The people of Ovea also come from Inaina village.

30 This land investigation report is signed off by Gulu Raga again for the Provincial Lands office dated 26 July 2005 and the Certificate of Alienability is issued by the Provincial Administrator Raphael Yipmaramba on 13 September 2005.

The Ovea people have appointed in the Land Investigation Report five agents and representatives to represent them.

The Yuwaia Land Group also have a land investigation report filed. There is a total of 23 people out of an approximate total of 200 people who were interviewed and some were listed as having full and some subsidiary rights for the land of Yawa. The people of Yawa also come from Inaina village.

[3.51 pom] This particular land investigation report is also signed off by Gulu Raga dated 22 July 2005 and a recommendation for certificate of alienability on 13

September 2005. The Iawabina people also have appointed five agents and representatives to act on their behalf.

The third last group is Kuniroma land group where there is a total of 16 people were interviewed out of an approximate total of 200 people as having full and subsidiary rights for the land of Kuniroma. The people of Kuniroma are also from Inaina village and they have appointed five agents and representatives to act on their behalf.

10 The land investigation report appears to be complete and signed off by Gulu Raga, the provincial lands officer dated 22 July 2005. The provincial administrator Raphael Yipmaramba issued a recommendation of alienability certificate on 13 September 2005.

There is also the Maoru group. Three copies of this land investigation report are on file stating that about 29 people out of approximately 200 are listed as having full and subsidiary rights for the land of Maoru. These people also come from Inaina village and they have also appointed five agents and representatives. The land investigation report is again signed off by Gulu Raga as having been complete on 22 July 2005 and the provincial administrator Raphael Yipmaramba issued a recommendation of alienability of certificate on 13 September 2005.

20 The last group is the Heka land group who also, were also about 31 people out of an approximate of 200 were listed as having full and subsidiary rights for the land of Heka. The people of Heka come from Baina village and they have appointed five agents and representatives to represent them. The certificate of alienability was issued on 13 September like all the other certificates by Raphael Yipmaramba, on 13 September 2005.

30 Chief Commissioner, on paper, the land investigation reports look fairly complete on paper. However, the public hearings seem to tell the COI, Commission of Inquiry that there may not have been a thorough investigation, time enough to get enough people to come and state their rights and give their consent to the alienability of that land. That is a notation that I am making from the land investigation reports that we have on file.

The certificates of alienability are all issued on the same day, on 13 September 2005. So that also leads one to wonder whether it was just an administrative exercise or whether a real investigation was carried out and how all the clans

actually have the same dates on which those certificates are issued. Those are notations that the Commission of Inquiry can make as a preliminary finding. Otherwise, there is no evidence of a section 11 notice under the Land Act. There is also no evidence of a Lease-Lease Back Instrument between the State and the relevant landowning group.

The Commission of Inquiry needs to further clarify with the Lands Department on the availability of those documents. But the Commission of Inquiry can make a safe assumption that perhaps without the Lease-Lease Back Agreement and a section 11 notice, the validity of the SABL can be called into question.

- 10 With regards to the Department of Agriculture and Livestock, there is a site assessment study that was conducted on 16 to 20 August 2009. The report shows that there is some logging being conducted on this SABL and there are some nursery oil palm plants.

3.56p.m] Report concludes with recommendations for the upgrading of roads, proper identification of areas relevant for oil palm prior to logging. The report was put together by Charlie Arua, Michael Siri and Charlie Afu who are DAL officers and the report appears to be of good quality.

- 20 Another report is also put together by DAL and this report is prepared by Mai Baiga and is undated. However, this report is of interest, it is a soil suitability report and it seems to say that the soil area there, some of it is unsuitable for oil palm growth so the COI will need to further clarify with DAL to ascertain exactly which areas and whether or not those areas should be even logged because they are already unsuitable.

Other than that no other documents are on file of the DAL file and the Agriculture plan appears not to be on file with regard to agriculture development that is supposed to follow after logging.

- 30 With regard to Environment and Conservation, this particular file was submitted to us quite late and it contains the following information: There is an environment assessment report, which is undated by Luke Tenekwie from the Environment Impact Assessment branch of the Department of Environment and Conservation. This particular report was filed when the former developer Nasil 98 Limited filed its application for an environmental permit. This report sets up the background of what the project is all about and what it involves.

This particular report has been disagreed to by landowner ILG groups. However, there is no elaborate documents that have been filed with relation to

that particular disagreement. The report actually sets in summary that there are three stages to the whole logging operation here: The first is construction of roads and bridges; second is clear the forest, felling of merchantable trees and then the actual planting of palm seedlings; and the third was to plant oil palm and then go through harvesting.

What is notable on that report is the concern raised by Oveome, Inana, Manumanu and Gugubadina villages for a regular diligence on the operations of the project. So these people are raising a concern on the project for a regular
10 due diligence to be conducted by the Department of Environment and Conservation and the Department of Agriculture and Livestock to ensure that strict adherence to legal requirements under those departments are followed.

On the file is also a waste management plan submitted by John Mosoro, the Manager of the Environment Division dated 21 March 2007. A file note dated 10 January 2006 confirms that there has been a public hearing at Kuvuna station, Omeome Community Hall on 10 January 2006.

In summary, in that hearing, the former developer, DEC officials and the
20 company officials of BAFL were present. There were several questions raised by villagers with regard to the shareholding of BAFL. A second public hearing was held at Joe Bagora's residence on 4 July 2006 in which National NTA Development representatives were present with resource owners and interested persons. Issues were raised regarding already logged areas and whether or not people would be compensated for the logs that were felled. The response from DEC was that the persons making the complaint must verify damages that are done prior to consideration of payment. 120 people attended this public hearing.

[4.01 ~~pm~~] On 2 February 2006 a petition from several ILG groups from within the SABL was written to the Secretary, Dr Wari Iamo and in that petition, among other things, claims were made that certain officers or one particular officer in the Department of Environment and Conservation was closely associated with the former developer. Further the petition states among other things that the Environmental Impact Statement did not reflect the true situation on the ground and it should not be submitted to the Environmental Council.

In that petition the BAFL is also submitting that instead of the Environmental Permit in the name of Nasyl 98 Ltd, that particular Environmental Permit
40 should be issued in the name of BAFL.

Chief Commissioner, what has happened now is Nasy1 98 Ltd is no longer the developer as of – I think it is last – as of 2007, I think they have no longer being the developer. So much of the information that we are covering here is with regards to the previous developer.

There is information on file that currently BAFL has entered into - Baina Agro Forest Ltd has entered into another lease agreement with a new developer called Aramia Plantations Limited. Much like Nasy198, we do not have much corporate information on Aramia Plantations Limited so we are unable - the
10 Commission is unable to give any evidence on the company's status of Aramia Plantations Limited.

The Investment Promotion Authority file is only a Certificate of Incorporation of Baina Agro-Forest Limited, registration number 1-57174 and the shareholding of this company is as follow:

- i. Linus Aia with 10 shares
- ii. Joe Bagoro with 10 shares
- iii. Wasanata Boti with 10 shares
- 20 iv. John Havi with 10 shares
- v. Daniel Mona with 10 shares
- vi. Michael Tama with 10 shares

The directors of this company are as follows:

- i. Linus Aia
- ii. Joe Bagoro
- iii. Wasanata Boti
- iv. John Havi
- 30 v. Daniel Mona
- vi. Michael T Gama
- vii. Morris Oki
- viii. Augustine Mark
- ix. Michael Mogo
- x. Simon Boni
- xi. Davis Bemu
- xii. Henry Mona
- xiii. Nikoal Efi

40 It is obvious and of interest to the Commission that Directors and Shareholders hold these positions as in their personal capacities so that the Commission of Inquiry may need to clarify how these particular persons are representing the

interest groups – the landowning interest groups that have been identified in the Land Investigation Report.

Other than the above information, as I said earlier, there is no other information on Nasyl No 98 Limited, the former developer, and Aramia Plantations is the current developer so the Commission of Inquiry will need to request further information from the Investment Promotion Authority on these particular companies. In particular, an extract for Aramia Plantations because it is the current developer.

10

With the information that has been provided, it is safe to assume that there is already logging being conducted on the current SABL. What is really needed to be confirmed is for the Department of Agriculture and Livestock to confirm whether or not the plan, the Soil Suitability Test Report has been seriously looked at and taken action on. So in this regard, it may be necessary to call Francis Daink, the Secretary for DAL to give us an update on the Soil Suitability Report and the actions taken so far.

20

Mr Mai Baiga, Land Use Advisor also should be called to explain that report on the topography and soil suitability.

Also the next witness that should be called by the COI is Linus Aia, President of the Waitape LLG and Paul Hara to ascertain the role of BAFL in relation to managing landowner benefits.

Chief Commissioner, that is the Opening Statement for Baina Agro-Forest Ltd.

[4.06 pm] THE CHAIRMAN: Thank you Counsel, for the opening statement. It is quite comprehensive. I have just got one or two questions that I would like to raise.

30

Right at the outset there was a reference been made to a company by the name of – the initial of PMS Limited. It is registered State lease on file. Are we able to also ascertain who the shareholders are and who the directors are of this company; of the PMS Limited? I think we also need to ascertain what is the nature of their operation. I mean, what is the nature of their business?

MS KOISEN: Yes. There is no further information on PMS so we are going to have to get a – do some investigation, I mean further collection of extracts from IPA with regard to PMS Timbers Limited.

THE CHAIRMAN: Okay.

MS KOISEN: There is a registered sublease on the SABL with regard to PMS Timbers Limited. But that is the only information I have on file right now.

THE CHAIRMAN: Well, we can – you can take note of that Counsel and we chase up information with the IPA on that, get some more additional information. There is another one Counsel, towards the end that you have brought to light. There is another company it is Aramia Plantation, is that the name, towards the end of your report?

MS KOISEN: It is Aramia?

THE CHAIRMAN: Aramia Plantation.

10 MS KOISEN: Yes, that appears to be a mistake, a typographical error. It should be PMS.

THE CHAIRMAN: PMS, is it?

MS KOISEN: Timbers. Aramia is actually on the other State lease, Yumu, a related State lease. I have got that all mixed up here on this. Aramia is supposed to be on the next portion that I am going to cover.

THE CHAIRMAN: Okay, so that is ---

MS KOISEN: So that looks like a typographical ---

THE CHAIRMAN: That is not right, is it?

MS KOISEN: That is not right, yes.

20 THE CHAIRMAN: The other thing is, with respect to Nasyl 98 Limited. Did you say that they ceased to be - they developed that particular place in 2007? Is that correct? That is what you said.

MS KOISEN: Yes.

THE CHAIRMAN: And then, I think it is on your, on page number 7 that you indicate that they continue to participate in public hearings. There was a number of public hearings being conducted and they continue to participate. Is that after they have ceased?

MS KOISEN: That was in 2006.

THE CHAIRMAN: I see, pardon me. So they participated in all these hearing in 2006.

MS KOISEN: Yes, when the ---

THE CHAIRMAN: But in 2007 they effectively ceased to be the developer on that.

MS KOISEN: Yes.

THE CHAIRMAN: Okay, good, fine, thanks. Counsel, thanks. I think those are only the matters that I need to raise with regard to your opening statement.

10 So what is your conclusion on that with respect to the hearing; the substantive hearing of this matter.

MS KOISEN: To be adjourned generally.

THE CHAIRMAN: Generally, and you have any specific location where the matter can be – where the Commission will sit to hear that – do the substantive hearing or conduct substantive hearings on that?

MS KOISEN: It will be heard here.

THE CHAIRMAN: In Moresby?

MS KOISEN: Chief Commissioner, yes.

20 THE CHAIRMAN: All right, fair enough Counsel, that is fine. We will adjourn this matter generally to a later date which will be published in good time in the Papers and through other outlets with respect to a date that we will set for a substantive hearing on this matter and people or persons of interest and clan groups and others who might have interest in the matter will be required there to attend at the date that we will set at a later time. So thank you for that Counsel. What is the other matter that you got?

MS KOISEN: Chief Commissioner, the other matter is in relation to Special Agriculture Business Lease over portion 30C, volume 31, folio 120 also Kase Buna, Central Province.

THE CHAIRMAN: Kase?

30 MS KOISEN: Yes. The SABL is issued in the name of Yumu Resources Limited.

THE CHAIRMAN: Yumu?

MS KOISEN: Yes.

THE CHAIRMAN: Yes, all right. Okay, yes, I have got that.

MS KOISEN: And is situated north of Doa Rubber Plantation near Kuriva on the Hiritano Highway between the Kairuku LLG and Woitape LLG provinces.

THE CHAIRMAN: Counsel, you have got an opening statement, a copy for me?

MS KOISEN: Yes, I do. I apologise.

[4.11 pm] THE CHAIRMAN: All right, Counsel, you may start.

10 MS KOISEN: The SABL claims a total area of 115,000 hectares and is on the western side – on the western side of that SABL adjacent to it is the Baina Agro-Forest Limited.

With regards to the Department of Land file, both the lands file and the registrar of titles file have not been submitted to the Commission of Inquiry. So the landowner company Yumu Resources Limited provided copies which the Commission of Inquiry received lately. Both files however, appear to be incomplete.

20 On the Registrar of Titles file, there is a number of copies of the Lands title deed, portion 30C, volume 31, folio 120. This SABL is issued in the name of Yumu Resources Limited. But what is notable is that only the front part of the title deed was copied, the back details which would indicate whether the title has been subsequently transferred or not is blank.

However, as late as this morning, in going through the Department of Environment and Conservation file, it has been noted that a copy of the SABL with the back cover was found showing that the SABL has now been transferred to this company called Aramia Plantations Limited.

THE CHAIRMAN: Is it the first one we referred to earlier on?

MS KOISEN: That is right.

THE CHAIRMAN: In the other SABL?

30 MS KOISEN: That is right.

THE CHAIRMAN: So they currently hold the title to that, is it?

MS KOISEN: That is right. The SABL is no longer owned by landowners but is owned by a foreign company called Aramia Plantations Limited who happens to be the developer.

THE CHAIRMAN: Are you able to show at some stage later on the names of the shareholders and the directors on that Aramia Plantation?

MS KOISEN: Yes, Chief Commissioner. We do not have any further information on Investment Promotion Authority file so we are intending to request further documents on Aramia from the Investment Promotion Authority.

10 A physical search of the file may be necessary to confirm the – to collect the data on Aramia Plantations Limited.

Of further interest and concern is a letter from the Central Province Government administration dated 11 April 2007, by Gulu Raga to the Manager, Customary Lands to Lands division to proceed with the preparation of a section 102 notice. This letter advises that the landowners wish to develop their land for oil palm planting purposes. In paragraph 3 of that letter, Gulu Raga is pointing out that due to the urgency of the project, the Central Provincial administration should proceed to sign the Lease-Lease Back Agreement while the land investigation report was still in the process of being conducted.

20 In the very next paragraph of the same letter, Mr Gulu advises that all the landowners had given their consent to go ahead and that there was no landowner disputes on the subject portion of land.

The last paragraph of Mr Gulu's letter requests the Manager of Customary Lands division to proceed and gazette section 102 Notice so that the developer can be given confidence to start the project.

The Commission will definitely need to call Mr Gulu, even perhaps the administrator himself to clarify why such a letter was written, obviously by-passing set procedure under the Land Act. The land investigation report is a must, a prerequisite to the issuance of an alienability certificate and then lease
30 agreement executed so that this SABL can be issued. So that particular process was jumped in the process of issuing the SABL.

[4.16 pm] The Lease-Lease Back Agreement was executed on 4 April 2007 while the section 102 Direct Grant was published on 18 May 2007. The lease agreement

is executed for and on behalf of the State by Anthony Luben, Deputy Secretary, Lands Services division.

THE CHAIRMAN: Sorry, Counsel, just a minute. Can I take you back to paragraph 8?

MS KOISEN: Yes.

THE CHAIRMAN: Of your opening statement. What is the difference between Yumu Agro-Forestry Project and Yumu Resources Limited? Are they the same or different?

10 MS KOISEN: These are the names that are on the lease agreement. We are assuming that Yumu Agro-Forestry Project and then there is bracket on the lease agreement which says, “(Your Land Land group.” There has been no further information on this except that it is on the agreement. But at the back on the signature part of the agreement you have Yumu Resources Limited signing the agreement. So it is a little bit ---

THE CHAIRMAN: So presumably they are the developer, are they, the Yumu Resources Limited?

MS KOISEN: Yumu Resources Limited is the one who previously held the SABL. It was then transferred to Aramia Plantations.

THE CHAIRMAN: Oh, I see, okay.

20 MS KOISEN: But the Lease-Lease Back was executed by Yumu Resources Limited.

THE CHAIRMAN: Okay, you can continue.

MS KOISEN: The Lease-Lease Agreement is, as I said, executed by the State, on behalf of the State by Anthony Luben, former Deputy Secretary, Lands Services division and for the landowners the agreement is signed by Linus Aia, Member of Parliament and former president of Woitape Local Level Government. There are other witnesses witnessing this lease agreement, Gulu Raga from the provincial lands office and Cliff Boutai, a project coordinator, Central Province, provincial administration. I beg your pardon, Mr Linus Aia is
30 the member of the Woitape Local Level Government. In this regard the ---

THE CHAIRMAN: So he is not a Member of Parliament, is he?

MS KOISEN: He is not a Member of Parliament. He is the president of Waitape Local Level Government.

THE CHAIRMAN: All right, thank you. Yes, all right.

MS KOISEN: In regards to the lease agreement, it is as you have noted, it is a bit confusing as to why the parties named in the front of the agreement is different to the parties that have executed, especially the Yumu. It may be a typographical error, we are not sure at this stage. We do not have further information on that but it may, just for clarification purposes, the COI may want to call in those who executed the agreement or those who witnessed it to clarify
10 whether it is the one and the same party named in this agreement.

THE CHAIRMAN: Okay. All right, Counsel, you may continue.

MS KOISEN: At this stage it seems that the information, the foregoing information tells us that section 10 of the land - processes under and procedures under section 10 of the Land Act may have been ignored in the issuance of this SABL. There was no further action on this particular SABL after that lease-lease agreement was signed on 4 April 2007 until 4 May 2007 when Mr Daniel Katakum issued - he is the director for land administration, Lands Department, issued a memo by requesting that the, sorry, advising that all the required processes under the land investigation report had been met and that there should
20 be - the Department of Lands and Physical Planning should proceed with the issuance of the SABL.

[4.21 pm] The tenor of that memo, it seems to comply with the earlier memo that was sent by the Central Province administration with regard to progressing the issuance of the SABL without properly examining whether or not the processes and procedures under the land investigation report were completed.

There is a copy of a section 11 notice on file. However, there is no copy of a gazetted notice. So at this stage it can be assumed that there has been no gazettal notice of the section 11 notice.

There is a copy of a section 102 Direct Grant Notice on file and that was
30 gazetted on 3 May 2007. The SABL title was issued three days after the issuance of the publication of a section 102 notice on 9 May 2007.

With regard to the transfer from Yumu Resources Limited to Aramia Plantations, there is no further information. The Commission of Inquiry would

probably need to call in the parties involved to further clarify as to under what circumstances the transfer took place and the Department of Lands as well.

Under the lands file the following documents are also on file. We have the owner's copy of the SABL again which does not show the back page. You have a copy of a letter dated 8 August to the Secretary for Lands, attention: Romily Kila Pat from Yumu Resources Limited. Basically, in essence, in summary, that letter is saying that the developer Mansfield sub, that is the former developer Mansfield Limited, was terminated. So there was a former developer; Mansfield Limited, also their lease was terminated, sublease was
10 terminated for non-compliance with the logging and marketing agreement. The date of termination is not stated. However, it is interesting to note that the LMA is only relevant for logging purposes and not for agricultural purposes, such as an oil palm project.

Currently, there is a new sublease agreement in place with a new developer Aramia Plantations Limited and the sublease is undated. The terms of the sub lease basically state that the sub-lessor will lease portion 30C for oil palm growth, and harvesting, inconsideration for the use of the land, the sub-lessee will pay the sum of K20 million over a period of two instalments – over a period of a 10 year period, in instalments of 2 million per annum plus royalties
20 for timbers harvested. So it is a mixture of timber harvesting and in place of that oil palm plantations being planted; oil palm being planted for harvesting. At this stage, the sublease is not registered with the Department of Lands and does not appear on the – as a entry on the back of the title deed.

With regard to Department of Agriculture and Livestock, no file was submitted in this regard. But information has been given to us by interested persons showing that an introduction report on the project dated 29 July 2007 was prepared by Mr Mai Baiga, land use adviser and Mr Lohia Laosi.

A quick perusal of the report indicates that almost 90 percent of the land, the SABL land actually comprises of rugged hills with incised and deeply dissected
30 V-shaped valleys and narrow ridges. The rest of the report is very technical. But what can be gathered from the report is suggesting that most of the area may be unsuitable for oil palm growth. Otherwise, the Certificate of Compliance under the DAL, a copy of that was issued, I mean, a copy was supplied by landowners and it is dated 27 May 2011, that was issued by the Department of Agriculture and Livestock.

Because of the lack of information on this file, the Commission of Inquiry may want to call the Secretary for DAL to explain what has happened so far to this project in terms of the agriculture plan.

[4.26 pm] With relation to the Department of Environment and Conservation file, this file shows the following. It shows a letter from the environmental protection wing acknowledging the receipt of an environment impact statement. That statement was referred to Counsel for its deliberation and there is a minute dated 2 July 2010, sorry, a minute of a meeting dated 2 July 2010 between landowners and the environmental protection unit of the Department of Environment and Conservation. Only 30 people attended that meeting in that report, and there is no other information to suggest as to the total population of that area. So we are not – there is no way that one can make a fair assumption or assessment as to whether the proper public hearing; thorough public hearing was conducted for that vast area of 115,000 hectares. At this stage the COI may need to obtain further evidence or clarity, get clarity from the Department of Environment and Conservation as to exactly how many people appeared in the public hearings.

There is also an environment inception report and a letter dated 19 August 2009 showing and confirming the termination of Burns Philip, the former developer and a sublease agreement dated, 11 October 2009 between Aramia Plantations and Yumu Resources.

So that is about all the information that is on that file. It may be necessary for the Commission of Inquiry to request further information to really find out whether or not an environment notice, permit has been given because that does not – we do not have that on file; we do not have a copy of that on file.

With regard to the Investment Promotion Authority, there is only one current extract on file and that is for Yumu Resource Limited and it has got its registration number 15714 incorporated on 21 July 2006. The company has a constitution and the shareholding is as follows; Allan Haro, 1 share; Glenda Koloko 1 share; Jeffery Onda 1 share; Enga Somba 1 share; Kassina Somba 1 share. Directors of Yumu Resources Limited are Paul Hara, Irumi Asi, Besef Mon, Sao Doa, Pala Enga and Dubara Hara. All shares appear to be held in personal capacities and none are held in trust. So it is difficult to say that this company is a landowning company. On the face of it, it appears to be a non-landowning company. In that the directors are holding shares in their personal

capacities and not in trust for any landowning group. Just a correction on the landowning companies - landowner company.

[4.31 pm] In addition, there is an obvious failure by the Department of Lands and Physical Planning to provide details of any ILGs that may have been registered with regard to this particular portion. So it is difficult for the Commission of Inquiry to ascertain whether these shareholders who are directors and shareholders are actually part of the landowner company; landowner clans that have been identified under the LIR, the land investigation report.

10 With regard to persons of interest, there are no documents on file currently except for two letters enclosing two documents from Aramia Plantations and Yumu Resources advising the Commission that all due diligence relevant to the requirements for the SABL portion have been followed. But that is according to the developer and the landowner company, Yumu Resources Company.

From the information that is on file - that are on the various files, preliminary findings can be made as follows by the Commission of Inquiry. Although the intention for the SABL was originally for oil palm, what is really transpiring is that there is a logging operation project. This is evident in the Memorandum of
20 Agreement and the LMA mentioned on evidence in the files.

Although these LMAs are now no longer relevant because they belong to the former developer, still it shows – there is evidence showing on those particular agreements that the project right now is progressing as a logging project because---

THE CHAIRMAN: Full scale logging project, is it?

MS KOISEN: Yes.

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THE CHAIRMAN: Any evidence of agriculture development on that land?

MR KOISEN: That is what is lacking on the Department of Agriculture and Livestock file.

THE CHAIRMAN: So there is nothing; no information there?

MS KOISEN: There is nothing there.

40 THE CHAIRMAN: There is nothing to indicate that?

MS KOISEN: There is no Agriculture plan so we are unable to make any assessment in that regard. The soil suitability report further points out that almost 90 per cent is unsuitable for oil palm so it does raise a concern.

With the obvious failure to submit – there is also a failure of a file; no file at all from the National Forest Authority in this regard, so we have to obtain a file. Maybe the COI will need to urgently summons for the production of those documents or will need to call in the Secretary Mr Daink to give us – submit documents in that regard – Mr Pouru, sorry, Kanawi Pouru.

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In the preliminary findings, there is an obvious failure to submit evidence on the LIR, Land Investigation Report. So with that information on hand, the Commission of Inquiry can safely assume at this stage, make a preliminary finding that proper procedures under the Land Act may not have been followed in the issuance of the SABL.

[4.36p.m.] A preliminary finding can also be made that the SABL for portion 30C is used partly for logging and partly for oil palm. However, the total area of 115,000 hectares of terrain is mostly mountainous according to the topographical report.

20 This requires DAL to submit all its documents as we have stated earlier so that the Commission of Inquiry can make some firm finding as to whether oil palm can even be grown in this particular portion – SABL.

The Commission of Inquiry can also make a preliminary finding with regard to the IPA records that this particular company is not a landowner company but it is a company that consists of persons who are holding shares in their personal capacities.

30 The COI can also make a preliminary finding that Aramia is the second developer and that Yumu Resource Limited has engaged Aramia to conduct logging and oil palm projects. In this regard, as earlier stated, the government agencies, DAL and DEC, Department of Environment and Conservation are required to produce more documentary evidence with regard to the activities under this SABL.

Information is required from the Department of Environment and Conservation also with regard to section 50 of the Environment Act as to whether a proper public hearing was conducted because that is also no evidence in that regard.

40 THE CHAIRMAN: Is that by the Department of Lands and Physical Planning or Department of Environment and Conservation? Is that correct?

MS KOISEN: Under the legal requirements, they also must hold public hearings so that they gauge views from landowners; landowners giving their consent and also any issues of concern can be raised.

THE CHAIRMAN: Okay.

MS KOISEN: That is a requirement under the Environment Act 2000.

10 THE CHAIRMAN: I see Counsel, many of the things that you have listed under the preliminary findings, you may have already at some stage during your opening remarks also highlighted the terms so there may be no need for us to go through that. You want to take us right to the end with respect to---

MS KOISEN: Yes, in this regard the Commission of Inquiry may need to call the following persons:

- (i) Francis Daink, Secretary, DAL to give us an actual update on the development of Oil Palm and the extent of logging on this particular portion of land;
- 20 (ii) Mr Baiga and Mr Lohia Laosi of DAL to report on the topography and soil suitability report that they put together, they prepared;
- (iii) Mr Raga Gulu and Cliff Botai from the Provincial Lands office to explain why no Land investigation documents have been provided and why the lease-lease back was executed prior to the conclusion of the land investigation;
- (iv) The provincial administer also – he may or he may not be called. I think the two subordinate officers may be sufficient to explain the things; and
- (v) The Registrar of Titles, Henry Wasa to provide a complete copy of the title deed;
- 30 (vi) David Tatakum, Director – Land Services as to why that memo was sent to the Secretary directing him to issue a section 102 notice when the land investigation report had not issued.
- (vii) Also Anthony Newman as to why he executed the lease-lease back agreement when the land investigation report had not been concluded.

40 That is particularly important because in the land investigation report, the Provincial Administrator is required to sign a certificate of alienability of land in the absence of that as to how these officers at the Department of Lands went ahead and issued section 102 notice of direct grant needs to be explained.

THE CHAIRMAN: I agree on that Counsel.

MS KOISEN: Mr Paul Hara, Chairman of Yumu Resources to explain in relation to the company set up, the shareholding and directorship and how this is going to benefit landowners when shares are been help in personal capacities. At least two shareholders from Yumi Resources Limited to explain the company's role in relation to the SABL projects and the landowner benefits because what we have already found out is that that sublease agreement is already in the name of Aramia, the developer.

[4.41 pm] So as to how Yumu is continuing to – how is its involvement continuing in
10 regard to landowner interests with the SABL already transferred into the name of a third party and we would---

THE CHAIRMAN: You wanted two shareholders, did you say, Counsel, at the end from Yumu Resources Limited to explain the company's role in relation to the SABL projects and landowner benefits and identity of landowner clans?

MS KOISEN: Yes.

THE CHAIRMAN: Okay.

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MS KOISEN: Because there is just nothing on file to tell us that the interest and welfare of landowners has been taken care of.

THE CHAIRMAN: Okay.

MS KOISEN: So we need to as part of the---

THE CHAIRMAN: That is fine. I agree.

30 MS KOISEN: There is also a need for the Forest Authority to be perhaps called in to give us documentation on the forest aspect, the logging aspect of this project because as it is at the moment, we do not have any documents on file.

THE CHAIRMAN: Okay.

MS KOISEN: This is our opening statement for this particular---

THE CHAIRMAN: Counsel, thank you once again for your comprehensive opening statement. Apart from one or two issues that I have raised, I have got
40 nothing more to raise with regard for that. Again, we adjourn generally, would you agree, to a date to be set?

MS KOISEN: Yes, to be heard here.

THE CHAIRMAN: I would imagine it will be here in Moresby. Is that right?

MS KOISEN: Yes.

THE CHAIRMAN: All right, that is fine. So we will adjourn this one generally to a date to be set and venue will be in Port Moresby, Counsel, for that. What are the other matters you have got for this afternoon?

10 MR KETAN: Chief Commissioner, I am just looking at time. It is 25 to 5. There are two more matters. One is the matter of Mekeo Hinterlands Holdings, and the other is the matter of Koaru Resource Owners Limited. We are ready.

THE CHAIRMAN: The statement?

MR KETAN: We are ready with statements on those two matters.

THE CHAIRMAN: Yes. I am looking at the schedules for tomorrow morning; the list is for tomorrow morning.

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MR KETAN: Yes.

THE CHAIRMAN: I have got four – sorry, I have got three in the morning tomorrow; listings for tomorrow morning at 9.30. So I would suggest that we put these two over to tomorrow morning as well for your opening statement, including the other three I have got for tomorrow morning. So that will be five altogether for tomorrow morning because I will commence tomorrow morning at 9.30 with the three. So if you have that two included, it will bring it up to a total of five. If you can start on time because immediately after me, there are

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MR KETAN: Yes.

THE CHAIRMAN: So, I would like to suggest that we stood these two matters over to tomorrow morning at 9.30 and then we will proceed with the other three that I have got.

MR KETAN: Very well, there are persons of interest in relation to – particularly those two matters and if they can come back in the morning.

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THE CHAIRMAN: Okay, let me make this announcement. Koaru Resource Limited, Mekeo Hinterlands Holdings, have we got any people from the public? All right, thank you.

Sorry, we started late this afternoon and it is going up to 5. I want to have these two matters stood over to tomorrow morning at 9.30 because I also have got three matters in the morning tomorrow.

So if we have this matter adjourned to tomorrow morning – stood over to tomorrow morning, it will be fine. So we will start at 9.30. So we will try to be on time tomorrow morning. This afternoon, we got tied up with some administrative meetings; that is why we came a bit late.

- 10 So if we have it stood over to tomorrow morning at 9.30, and you all come back tomorrow morning and we will start with your two first and then we will proceed on with the other three that are listed for tomorrow morning at 9.30. Thank you.

[4.46 pm] We will adjourn to tomorrow morning at 9.30.

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**AT 4.47 PM, THE COMMISSION OF INQUIRY INTO SABLs
ADJOURNED TO THURSDAY, 6 OCTOBER AT 9.30 AM.**