

**Submission to the PNG Forest Authority**

**Why the Forest Clearance Authorities are legally  
invalid and should be cancelled**

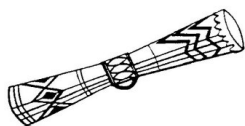
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**Joint Submission with**

**PARTNERS WITH MELANESIANS  
TRANSPARENCY INTERNATIONAL (PNG)**

**26 September 2014**

*Partners With Melanesians Inc.  
Papua New Guinea*



*"Maintaining the Dance"*



## PURPOSE

1. To inform PNGFA on the legal status of the Special Agriculture and Business Leases used to obtain Forest Clearance Authorities.
2. To present to PNGFA the supporting evidence on the status of the SABLs
3. To request the PNGFA to take appropriate action where the mandatory requirements of the Forestry Act have not been fulfilled in issuing the FCAs.

## SUMMARY

1. PNGFA has issued around 25 Forest Clearance Authorities to the holders of Special Agriculture and Business Leases (SABL).
2. Forest Clearance Authorities (FCAs) can only be issued under the Forestry Act, which sets out a number of mandatory preconditions.
3. Under the Forestry Act an FCA can only be issued if there is a valid underlying lease.
4. To be a valid an SABL must be issued in accordance with the process set out in the Land Act and must have the consent of local people
5. There is overwhelming evidence the SABLs have not been issued in accordance with the Land Act and are invalid. This has been confirmed by:
  - *The Prime Minister*
  - *The National Executive Council*
  - *The Minister for Lands*
  - *National Court rulings*
  - *The SABL Commission of Inquiry*
6. There is also overwhelming evidence of a lack of consent from local people:
  - *Commission of Inquiry (COI) findings*
  - *National Court rulings*
  - *COI evidence*
7. If the SABLs are invalid, because of a failure to follow due process and a lack of consent, then, under the Forestry Act, the FCAs are also invalid
8. It is the duty of the PNG Forest Authority to ensure forests are managed in accordance with the law and the interest of landowners are protected. If the PNGFA is aware the FCAs are invalid then it is under a duty to take action.

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## **1. The Forest Clearance Authorities**

The PNG Forest Authority (PNGFA) has granted at least 25 large-scale Forest Clearance Authorities (FCAs) that cover an area of over 1.1 million hectares of forest.

The PNGFA believed the FCAs were part of genuine agriculture projects that had been correctly processed by the Department of Lands and Physical Planning (DLPP) and Department of Agriculture and Livestock (DAL).

Under the auspices of these FCAs thousands of hectares of forest have already been cleared and logs with a value of many hundreds of millions of kina exported. The logging is still continuing.

However there is now overwhelming evidence that the FCAs are not based on a legitimate acquisition of land tenure rights as required under the Forestry Act and local people have not given their informed consent to the agriculture projects or the logging.

If the leases are invalid then, under the Forestry Act, the FCAs are also invalid. If the FCAs are invalid then any ongoing logging is being done without any legal authority and in breach of the Forestry Act.

If the SABLs are invalid then clearly the Forestry Act requires the FCAs must be cancelled.

## **2. Issuing a Forest Clearance Authority: The mandatory preconditions**

FCAs for large scale forest clearance for agriculture are granted under Sections 90A and 90B of the Forestry Act 1991 as amended.

Sections 90A and 90B were inserted by the Forestry (Amendment) Act 2000 and amended by the Forestry (Amendment) Act 2007.

For an agriculture project greater than 50 hectares an FCA application is lodged with the National Forest Board (NFB) through the office of the Managing Director (S.90A(1))

Section 90A requires strict compliance with certain preconditions before the grant of an FCA. These preconditions are set out in S.90A(3).

The PNGFA uses the preconditions in S.90A(3) as a checklist to ensure an application is compliant and complete before it is referred to the Provincial Forest Management Committee and then the NFB for consideration and granting of the FCA pursuant to S.90(B).

*“Section 90A(3) provided for the prerequisites or what the Papua New Guinea Forest Authority (PNGFA) evaluating team considers by way of a checklist to assist and ensure that an application lodged are compliant and complete before it is referred to a provincial forest management committee, the (PFMC) and the board for consideration and subsequent granting of a forest clearance authority pursuant to section 90B of the Act.”*

Evidence of Kanawi Poursu, Managing Director of the PNGFA to the SABL Commission of Inquiry, 25 August 2011. Transcript at page 7.

Section 90B(1) makes clear the National Forest Board can proceed with an application for an FCA **ONLY** if it *“determines that the application under Section 90A is in the prescribed form and contains **ALL** [emphasis added] relevant particulars”*

Kanawi Poursu, the Managing Director of the PNGFA, reiterated this in his sworn evidence to the SABL Commission of Inquiry in 2011:

*“We follow all the requirements and those are the requirements that must be fulfilled for qualification purposes are those that are prescribed in section 90A of the Act. So Section 90A alludes to a number of things; alludes to the agriculture, the financing, the land issue, all those things are the prerequisites for this application to qualify for FCA. So those prescription there in section 90A, and if all those have been evaluated and all have been done, then the FCA application is then processed under the provisions of section 90B”*

1 September 2011. Transcript at page 6.

### **3. The necessity for a valid lease and landowner consent**

Under the Forestry Act, for an FCA to be granted there must be both a valid lease over the forest area and consent, verified in writing, from the landowners or lessee.

S.90A(3) states an application SHALL contain

*(b) a copy of the relevant State Lease or other documentation relating to other type of land tenure appropriate for the project... and  
(f) a verification of ownership and the consent of each resource owning clan agent (or ILG groups if they have been formed) within the project area, which has been signed in the presence of a Village Court Magistrate or land mediator in the prescribed form in relation to customary land, and otherwise the consent in writing of the Board, lessee or owner of the land as the case may be...*

The requirement for customary landowner consent also appears in the Land Act in the provisions dealing with the issuing of an SABL. The requirement for landowner consent is very clear and is specified at each of the three stages in the process of granting an SABL.

An SABL can only be granted under the Land Act 1996. Sections 10, 11 and 102 deal with granting the leases.

First, Section 10(2) requires the agreement of the customary landowners to the acquisition of customary land by the State.

Then S.11(2) requires, where customary land is leased for the purpose of granting a special agriculture and business lease, the lease must be executed by or on behalf of the customary landowners

Finally, S102(2) states an SABL can only be granted to a person or body to whom the customary landowners have agreed that such a lease should be granted.

Justice Cannings in *Musa Valley Management Company v DLPP* (2009) explained what these provision of the Land Act mean in the context of landowner consent:

*"The acquisition by the State of customary land, by lease, under Sections 10 and 11 of the Land Act and the subsequent granting of a lease by the State to a lessee can only proceed lawfully if a substantial majority of customary landowners agree" [at page 2]*

*"... agreement of the customary landowners is an essential precondition to the acquisition by the State, by lease, of customary land under Sections 10 and 11." [at page 6]*

*"... agreement of the customary landowners is an essential precondition to grant of a special agriculture and business lease under Sections 102." [at page 9]*

In the *Musa Valley* case, the Court found there were 'significant errors' in failing to ensure the agreement of the majority of the customary landowners at each stage of the process and therefore the decision to grant the SABL was "seriously flawed". As a result the decision to grant the lease was quashed and the lease declared null and void.

*Leo Maniwa v Limawo Holdings* (2014) is another court case concerning an SABL. Again, the court declared the lease to be unlawful and Justice Gavara-Nanu explained what consultation and landowner agreement involves in situations dealing with long-term changes to tenure rights over customary land.

*"There was also no agreement between the landowners and the Minister for the land to be acquired for SABL".*

*"I do not consider the consent purportedly signed by the Directors of the landowner company for the grant of SABL represented the wishes of the majority of the landowners".*

*"In introducing projects such as this which would have permanent and long term effect on their land, genuine and meaningful consultation with the landowners must be carried out among the landowners. This is emphasized by the Constitution in the Directive Principles under the fifth goal, which provides for promoting and protecting Papua New Guinean ways".*

*"For the reasons given, I am not satisfied that the majority of the landowners were made aware of SABL and its effect on them and their land. It follows that the purported consent signed by the Directors of the landowner company is null and void and of no legal effect.*

*"For the foregoing reasons, I declare that the SABL granted to the fifth defendant on 3 September, 2008, by the Minister for Lands and Physical Planning is null and void".*

Unfortunately, when granting FCAs pursuant to SABLs the PNGFA has been in the habit of relying on the DLPP doing its job properly and has taken the SABLs at face value. As Mr. Pouru explained to the Commission of Inquiry:

*"We do not go to the extent of verifying the landowners because we are dealing with a particular area, land area, that is already under a lease and so the issue of the verification of ownership we leave that to the Lands Department to satisfy themselves, and when they are satisfied, they have granted a lease, and if that lease is given to us, then we accept that lease as a bona fide document.*

1 September 2011. Transcript at page 12.

While this was perhaps a valid position to take at the time, there is now overwhelming evidence that DLPP was not doing its job properly and the SABLs are in fact invalid - which fatally undermines the validity of the FCAs.

#### **4. Overwhelming evidence the SABLs are invalid**

There is overwhelming evidence that almost all the SABLs that have been issued by DLPP are invalid and unlawful because of a failure to follow proper process and comply with the legal requirements. The only exceptions are four SABLs granted for small coffee plantations in the Highlands region.

This failure to follow proper process and ensure landowner consent has been acknowledged by politicians from the Prime Minister down and has been recognized in the decision of the National Executive Council to order the leases be revoked. The evidence supporting this position is contained in a number of court cases and the extensive transcripts and findings from the SABL Commission of Inquiry.

The Commission of Inquiry looked at 75 leases and found overwhelming evidence of a lack of due process and a lack of landowner consent. In only 4 cases, all relating to

coffee plantations in the Highlands, did the Commission find there was landowner consent and proper process. Unfortunately the detailed findings of the Commission of Inquiry only include specific recommendations on 42 of the leases.

### **The Prime Minister, Hon. Peter O'Neill**

*"Out of the 42 leases reported on, only in four leases were there bona fides landowner consent and a commercially viable agricultural project being undertaken"*

*"The only conclusion that I can draw is that the policy on SABL's has failed miserably. "*

*"This is not acceptable. Something drastic needs to be done."*

*"We will no longer watch on as foreign owned companies come in and con our landowners, chop down our forests and then take the proceeds offshore"*

*"For too long landowners have been taken advantage of and had their land stolen from under them"*

Post Courier, 19 September 2013

*"Developers come in the guise of developing agriculture projects but get into logging."*

*"There's a big scam that's going on. We all understand that now".*

*"Thousands of hectares of land are given to individuals, foreigners, displacing our people. This is a serious crime against our own people."*

The National, 28 May 2014

### **NEC decision**

As a result of the Commission of Inquiry the government set up a Task Force comprising the Ministers of Lands, Agriculture and Forestry. That Task Force made a recommendation to the National Executive Council which has endorsed the findings of the Commission of Inquiry and *"approved to revoke all SABLs recommended by the two Commission of Inquiry (COI) Reports to be revoked"*

NEC Decision June 12, 2014

### **Minister for Lands. Hon. Benny Allen**

*"I have seen first hand the blatant abuse of due process thereby promoting corruption and high level of inefficiency within the Department of Lands and Physical Planning. The system of land administration is corrupt and dysfunctional."*



*"Blatant abuse of process facilitated by staff within the Department over the years has led to large areas of customary land being fraudulently leased to foreigners for as long as 99 years throughout the country.*

*"In the interests of protecting Papua New Guinea land from being fraudulently transacted I will ensure that the recommendations of the Commission of Inquiry into the issuance of SABL are fully implemented"*

Address at NRI, 29 October 2012

## **Court rulings**

There are five reported legal cases in which the validity of a Special Agriculture and Business Lease has been challenged in the courts. In all five cases the courts have found the SABL was not granted in accordance with the law and proper process and the breaches by DLPP were so serious that the lease was declared null and void.

### ***Maniwa v Malijiwi [2014]***

Special Agricultural and Business Lease over Portion 144C, East Sepik Province, granted to Sepik Oil Palm Plantation Limited in September 2008

The judge reiterated that in order to lawfully grant a Special Agricultural and Business Lease over customary land, the Minister must comply with all the requirements of Section 10, 11, and 102 of the Land Act.

In this case the Minister had failed to comply with those Sections. The court also found the SABL was issued in breach of S.53 of the Constitution, in that the landowners were unlawfully deprived of their customary land.

For these reasons, the SAB was declared null and void and *"Any other related actions or projects undertaken or done either pursuant to or in relation to the SABL, such as logging agreements and or planting of oil palm in the SABL area are also declared illegal and null and void"*.

### ***Isu v Ofoi OS [2014]***

This case involved two SABLs.

The SABL over Portion 113C Milinch Murua Fourmil Tufi, Oro Province granted to Sibom Management Limited in July 2012 was declared null and void and was quashed.

The SABL over Portion 143C Milinch Kupari Fourmil Tufi, Oro Province granted to Wanigela Agro Industrial Limited in July 2012 was also declared null and void and was quashed.

The court ordered the original owner copies of the title deeds be surrendered to the Registrar of Titles for cancellation and the Registrar to make all necessary amendments and deletions to the Register of State Leases to give effect to the Order.

### ***Mahuru v Dekena [2013]***

Special Agricultural and Business Lease granted over an 8.51 hectare block of land at Taurama Valley in the National Capital District in June 2010.

The Court found that the procedures in the Land Act were not followed and the Minister erred in law by:

- not meeting with the plaintiffs and agreeing on the terms and conditions on which the land would be acquired by the State, contrary to Section 10(2)
- not inquiring into and being satisfied of the use of the land, contrary to Section 10(3)
- not ensuring that an instrument of lease in the approved form was executed by or on behalf of the customary landowners, contrary to Section 11(2)
- by granting the lease to the fifth defendants, who had not been appointed by the plaintiffs or their clan members, contrary to Section 102(2)

The errors of law were so numerous and serious as to amount to constructive fraud.

The Court' quashed the lease and the lease was declared null and void.

Justice Cannings stated:

*"To lawfully grant a Special Agricultural and Business Lease over customary land the Minister must comply with all of the requirements of Sections 10, 11 and 102".*

*"The elaborate procedures in Sections 10, 11 and 102 of the Land Act have been inserted for a reason: to ensure that leases over customary land are granted only after a thorough identification and investigation of the land and the customary landowners and their agreement to what is proposed. In PNG land is a critical natural resource required by National Goal Number 4 to be conserved and used for the benefit of the present generation and for the benefit of future generations"*

*"Decisions about the transfer of interests in customary land must be made carefully and thoughtfully and in strict accordance with procedures prescribed by law."*

### ***Musa Valley Management Company Ltd v Kimas [2010]***

SABL over 211,600ha of land at Portion 16C, Milinch Gona, Fourmil Tufi granted to Muida Holdings Limited in December 2008.

In finding the lease null and void the court declared:

*"The procedures for acquisition of the land by the State under Sections 10 and 11 and for granting of the lease under Section 102 were not complied with as the customary landowners or at least a substantial majority of them did not agree to either process."*

*"The errors of law were significant. The acquisition by the State of customary land, by lease, under Sections 10 and 11 of the Land Act and the subsequent granting of a lease by the State to a lessee can only proceed lawfully if a substantial majority of customary landowners agree. There was a lack of agreement in this case at both stages of the process."*

*"The Secretary's decisions to grant the lease were seriously flawed and therefore his decisions were quashed and the leases declared null and void."*

### ***Ramu Nickel Ltd v Temu [2007]***

Special Agricultural and Business Lease granted over land described as portion 19C, Milinch Sepu, Fourmil Ramu, Madang Province in August 2003

The court granted an order quashing the decision of the Minister for Lands granting the lease and the registration of the lease by the Registrar of Titles. The court also ordered the Registrar of Titles to de-register or cancel the registration of the lease.

### **Commission of Inquiry: Chief Commissioner John Numapo**

*"The Commission of Inquiry (COI) found widespread abuse, fraud, lack of co-ordination between agencies of government, failures and incompetence of government officials to ensure compliance, accountability and transparency within the SABL process from application stage to registration, processing, approval and granting of the SABL. Statutory compliance with respect to process and procedures and effective monitoring and oversight is seriously lacking".*

*"We found numerous instances of incompetence, failure, inaction and lack of commitment by officers of government agencies to properly and diligently carrying out their statutory functions. Legal requirements were deliberately breached and proper processes and procedures were either by-passed or simply ignored. We found a number of agencies to have been reckless, careless and negligent in the discharge of their statutory functions. All these contributed to the problems associated with management of SABLs."*

Final Report Page 235/236

*"DLPP has been plagued with problems for a long time. It grappled with lack of resources, lack of funding, shortage of personnel, lack of office space and*

*equipments, logistical problems, and staff discipline issues. These, coupled with leadership and senior management level issues affected its ability and capacity to manage the department. People criticized DLPP for being incompetent and corrupt, amongst them senior government ministers. The government and people have lost confidence and faith in DLPP. The department has been described as totally dysfunctional and incapable of managing the most important asset belonging to the people of PNG, their land. It is obvious DLPP has not lived up to its Mission Statement to protect the interests of citizens by guaranteeing their land rights. And in so far as SABL is concerned, it has not protected the interests of the people of this country, especially customary landowners".*

*"We have found a number of problems that affect the administration and management of SABL, particularly relating to the application, processing, approval and grant of SABLs. Much of what we have discovered to be wrong with the SABL setup reflects the failures and incompetence of DLPP to properly manage the SABL process."*

Final Report Page 237

## **5. Overwhelming evidence of a lack of consent from local people**

### **Commission of Inquiry: Chief Commissioner John Numapo**

The Chief Commissioners report from the SABL Col makes clear the failure of DLPP to ensure the consent of local people as part of the SABL process and the fundamental importance of that consent and the fact its absence is sufficient of itself to render an SABL null and void:

*"The most serious abuse in SABL acquisition process occurs during the land investigation stages. We found instances short-cuts made to established process, lack of landowner consultations and consent, lack of awareness programs ,involvement of developers and other unauthorized people in the process, lack of boundary inspection, lack of vital information and incomplete and defective LIRs are common, so much so that the integrity of the whole land investigation process has been significantly compromised. We therefore submit that since the LIP and LIR that start the process for SABLs is substantially affected, SABLs granted on the bases of defective LIRs are null and void.*

Chief Commissioner John Numapo. Final Report Page 239/240

### **Commission of Inquiry: Commissioner Nicholas Mirou**

Commissioner Nicholas Mirou has detailed the complete breakdown in the consultation and consent processes involved in the issuing of SABLs that he found in the 25 SABLs he studied in depth:

*"The Land Investigation process was technically abused by those responsible in the management, land mobilisation and the conduct of land investigation in number of instances. Customary Lands Officers were so negligent in completing the all details necessary for majority consent, grant and issuance of SABL title.*

*Almost all the Provincial Lands Officer was not fully aware of their role in the conduct of the field investigation and was not competent to complete the process amicably... Land mobilisation and investigations were fully funded by the proposed Developers of the project, as was the case with four (4) SABLs located in New Ireland, four (4) at Western Province and one (1) in the Madang Province. This is a typical scenario that has become endemic and systemic... The independence and integrity of the SABL process is compromised with the result very much favouring the proposed Developer and Sub lessee of an Agriculture Sub-lease.*

*In the majority of SABLs reservation for customary rights was not recommended for whatever reasons the Provincial Administrator or District Administrator considered at the time the LIR files were submitted.*

*The Provincial Administrators are required to undertake due diligence of the Land Investigation Report, but the normal trend was that the Officers involved in the project was experienced and competent enough to ignore the vetting process. This is fatal due to the fact that if a lease is for a period of 99 years then the three to four generations will have not exercise their rights to hunting, fishing, burial and sacred sites. This was evident in all the twenty-five SABLs inquired thus far.*

*In almost all the twenty-five SABLs not one of the SABLs was processed by the Custodian of Trust Land pursuant to the Land Registration Act for the Certificate of Alienability to be issued. The Certificate allows for Direct Grant under section 11, Registration under Section 102 of the Act and issuance of the Title. The Department of Lands evidently decided to forgo this process and ultimately issued titles without the Custodian of Customary Land Certification.*

*Executives of Landowner Company have neglected their fiduciary obligations and duties to the shareholder who are the Land group or ILGs by entering into contractual agreements with the Developers without any resolution from the majority shareholders creating serious contentions, disagreements and often times violence...*

*Controversial objections raised by disgruntled landowners prior to ILG registration and SABL investigation was disregarded by DLPP before the grant, registration and issuance of the SABL title... It was incumbent on DLPP to suspend the SABL investigation and allow the issues affecting the landowners to be resolved by mediation. There was no evidence of the process of*

*mediation encouraged and for the investigation to be suspended pending resolution of the dispute"*

SABL Commission of Inquiry Report from page 15

### **Evidence on consent from Court cases**

In each of the three legal cases concerning large SABLs for agriculture clearance that have come before the courts it was found there was a failure to comply with Sections 10 and 11 of the Land Act **and** a failure to secure the consent of landowners.

In each case, *Maniwa v Malijiwi [2014]*, *Isu v Ofoi OS [2014]* and *Musa Valley Management Company Ltd v Kimas [2010]* the court found the lease was null and void.

In *Leo Maniwa v Limawo Holdings (2014)*, Justice Gavara-Nanu detailed what securing the agreement or consent of customary landowners should actually mean in practice.

*20. Having considered all the materials before me and the relevant laws governing the grant of SABLs, I have come to a firm view that the SABL granted over the customary land known as Potion 144C East Sepik Province was so granted in breach of the mandatory statutory requirements, viz, ss. 10 (2),(3), and (4) and 102 (2) and (3) of the Land Act. There is no evidence that the Minister made reasonable inquiries to satisfy himself that the landowners did not require the land either at all or for a period before issuing the SABL to the fifth defendant. There was also no agreement between the landowners and the Minister for the land to be acquired for SABL.*

*21. I do not consider the consent purportedly signed by the Directors of the landowner company for the grant of SABL represented the wishes of the majority of the landowners, if not all the landowners. There was no awareness conducted by the representatives of the State, more particularly the officers from the Department of Lands and Physical Planning and the East Sepik Provincial Government with the landowners to sufficiently inform and educate them of the intentions of the Government regarding SABLs and the effect the SABL would have on them and their land.*

*22. I am also not satisfied that the meeting held at Turumu Primary School on 25 July, 2008, met the requirements of meaningful consultation with the landowners. The first thing to note is that, the meeting lasted for only 50 minutes. That very clearly was insufficient time to gauge the landowners' views on SABL. Furthermore, only 18 people spoke in the meeting. That meeting was the only one held. There is no evidence of similar meetings being held.*

*23. For the landowners to be sufficiently informed of the new Government policies such as introduction of SABLs which would adversely affect their*

*traditional lifestyle; more in-depth awareness meetings should have been conducted. This could have been achieved by Government officers travelling to the SABL areas and talking to the landowners in their villages. This exercise should have been done over a period of time, say six or twelve months or even more so that the people were made aware of and understood what SABL is about, its benefits, advantages and disadvantages and so on. To me, this is the true Papua New Guinea way of consulting with people in the villages, especially where new projects are introduced in their areas and especially where SABLs would attract other projects, such as the introduction of oil palm plantations in the SABL areas. In introducing projects such as this which would have permanent and long term effect on their land, genuine and meaningful consultation with the landowners must be carried out among the landowners. This is emphasized by the Constitution in the Directive Principles under the fifth goal, which provides for promoting and protecting Papua New Guinean ways. Section 5 of the Constitution provides:*

*5. Papua New Guinean ways*

*We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.*

*WE ACCORDINGLY CALL FOR -*

- (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and*
- (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and*
- (3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and*
- (4) traditional villages and communities to remain as viable units of Papua New Guinea society, and for active steps to be taken to improve their cultural, social, economic and ethical quality. (my underling)*

*24. The meeting at Turumu Primary School was not a meeting in the Papua New Guinean way. Papua New Guinean way of meeting and consultation with landowners as I discussed above and as provided by the Constitution was required because the SABL and the related activities or projects were going to interfere with and affect their traditional lifestyle, their customary rights to land, rivers, the sea and forests. The SABL was granted to the fifth defendant for 99 years, that is how long the landowners would be denied from the use and enjoyment of their land. So the generations of landowners would be affected. This is why the defendants needed to go to the villages in SABL areas and talk to the landowners, in their families clans and tribes, in the languages they could understand. If they did understand English, Pidgin or Motu, then use*

*interpreters to interpret things in their own languages. This to me is the Papua New Guinean way of consultation and making awareness to the landowners as envisaged by s. 5 of the Constitution. By doing things this way, people and their cultures will be recognized, acknowledged and respected.*

*25. The meeting at Turumu Primary School fell far short of the type of consultation I am referring to, viz; the type of consultation that is envisaged by s. 5 of the Constitution and ss. 10 (2), (3) and (4) and 102 (2) of the Land Act.*

*26. Even if the meeting at Turumu Primary School constituted a form of consultation, it was still not enough to gauge the views of the landowners.*

*27. For the reasons given, I am not satisfied that the majority of the landowners were made aware of SABL and its effect on them and their land. It follows that the purported consent signed by the Directors of the landowner company is null and void and of no legal effect.*

*37. For the foregoing reasons, I declare that the SABL granted to the fifth defendant on 3 September, 2008, by the Minister for Lands and Physical Planning is null and void.*

## **6. If an SABL is invalid any FCA is also invalid**

An FCA is only valid and lawful if it is based on a lawful SABL. That is to say, there must be a valid underlying acquisition of the land from the customary landowners.

This is made clear by the requirement in S.90A of the Forestry Act. S.90A states that a copy of a [valid] lease **must** form part of the FCA application.

This legal requirement was reiterated In *Leo Maniwa v Limawo Holdings (2014)*, to which we have already referred.

In his written decision, Justice Gavara-Nanu declared:

*"For the foregoing reasons, I declare that the SABL granted to the fifth defendant on 3 September, 2008, by the Minister for Lands and Physical Planning is null and void".*

***"Any other related actions or projects undertaken or done either pursuant to or in relation to the SABL, such as logging agreements and or planting of oil palm in the SABL area are also declared illegal and null and void.***

If after an FCA has been granted, it is subsequently shown the underlying SABL is invalid then the PNG FA should review and cancel the FCA, as it will also be invalid and unlawful.



Kanawi Pouru, in his evidence to the Commission of Inquiry, accepted that when new evidence comes to light the PNGFA is under a duty to review its action in granting an FCA:

*COMMISSIONER JEREWAI: That other agency being Department of Lands and Physical Planning?*

*A: Correct. So we leave that part of the landowner verification, all that, to them to ensure that they are granting a lease appropriately to the people that actually owns so we do not dwell a lot in the verification. But when a complaint or a petition comes after, then the board then takes an interest and we inquire into that.*

*MR TUSAIS: And if you see that there the verification is false, you have the power to revoke or cancel that FCA?*

*A: Yes. Then we go through that. So, as I said, we are now dealing with two that actually falls now in that category.*

1 September 2011. Transcript at page 15.

## **7. Duty of the PNGFA to protect the interest of Land Owners**

The Forestry Act explicitly requires in Section 46 that the rights of the customary owners of a forest resource shall be fully recognized and respected in all transactions affecting the resource.

It is very clear from all the evidence presented that the rights of customary landowners have not been recognized, respected or protected in the granting of SABLs and the subsequent FCAs.

It is clear the SABLs are null and void for a failure to follow proper process and ensure the consent of customary landowners.

It is clear if there is no valid lease then any FCA is also null and void.

If the FCA is null and void then any ongoing logging has no legal basis.

Under the Forestry Act, Section 7, the PNGFA is charged with overseeing the administration and enforcement of the Act and any other legislation pertaining to forestry matters.

The PNGFA is under a duty to act on the overwhelming evidence of a lack of process by DLPP. This means canceling the FCAs, which have been issued in the erroneous belief the SABLs were valid.

The Minister for Lands has labeled his own department (DLPP) corrupt and dysfunctional. In the light of all the evidence PNGFA cannot sit back and wait for

DLPP to take action. PNGFA has its own duty to ensure its actions are lawful and, as Kanawi Pouru made clear in his evidence to the COI, where it has the evidence of a lack of consent or proper process it must review its own decisions.

The SABLs are clearly null and void, that means the FCAs are also null and void and must be cancelled.

It is our view the PNGFA must take action.

Signed: \_\_\_\_\_

Effrey Dademo  
Program Manager ACT NOW!

Dated: 26 September, 2014

## APPENDIX: LIST OF FOREST CLEARANCE AUTHORITIES

Applicant	Project Area	Type / Term	PFMC	Land Lease Title	Gross Area (ha)	Net Resource Volume (m <sup>3</sup> )	FCA No.	Performance Bond
Independent Timbers & Stevedoring Ltd	Gre-Dringas Road Project	02(b)	Endorsed (conditions)	-	2400 (600km length)	-	FCA 01-01	-
Independent Timbers & Stevedoring Limited	Gre-Dringas Road Project	03(b)	-	Portion 14 C Lessee is Tosigiba Inv. Limited. Portion 1C Lessee: North East West Inv.Limited. Portion 27C	1,252,297	-	-	-
Pacific International Resource Limited	Kerema-Meporo Int Agro-forestry Project	03(b)	-	Portion 323C	89,000	-	-	-
Albright Limited	Mekeo Hinterland Int Agriculture Project	03(b)	18/03/2009 – Endorsed	Portion 45C: 99 years commencing 22/11/07.	116,427 (82,464 operable)	2,935,395	FCA 03-01	-
Mansfield Enterprise (PNG) Limited	Yumu Agro-Forest Dev Project	03(b)	-	Portion 30C, Milinch Kase, for 99 years commencing 03/05/07	115,000	1,358,991	-	-
Albright Limited	Abeda Int Agriculture Project	03(b) 4 years		Portion 409C; Milinch Epo and Kairuku; Fourmil Yule, Central Province	11,700		FCA 03-02	
Aramia Plantation Limited	Yumu Oil Palm Estate	03(b) 10 yrs	Endorsed	Portion 30C - 99 years from 03/05/2007. Lessee is Yumu Resources Limited.	115,000 hectares (50,000 ha oil palm)		FCA 03-03	
Victory Plantation Limited	Tufi Wanigela Tree Farming Project.	03(b) 4 Yrs.	Endorsed	Portions 135, 136 & 137, Oro Province	5552	-	FCA 05-01	-
Musa Century Limited	Musa Pongani Int Agro-Forest Project	03(b)	-	-	350,000 (Operable 82,464)	-	-	-
Ang Agro-Forest Management Limited	Wanigela Integrated Agriculture Project	03(b) 40 years		Portion 138 Tufi, Oro; Portion 143 Tufi; Portion 140 Tufi; All leased to Keroro Dev Corp, then subleased to Ang Agro Forest Management Ltd	38,350 (operable 34,350)	4,750,850	FCA 05-02	-
Samas Limited	Aitape East Int. Agriculture Project	03(b) 10 yrs	Endorsed	Ptns 211A, 212B & 213C Aitape	29,205		FCA 10-01	K595,000.00
Vanimo Jaya Limited	Aitape West Int. Agriculture Project	03(b) 10 yrs	Endorsed	Portion 248CMilinch Tadij, Sandaun. 99 Yrs commencing 20/07/06	47,626 (40,000 operable)	1,166,700	FCA 10-02	K595,000.00
Bewani Palm Oil Development Limited	Bewani Oil Palm Development Project	03(b) 10 yrs	04/03/09 Endorsed	Portion 160C, Bewani for 99 years comm. 11/07/08.	139,909 (Operable 105,000)	3,997,000	FCA 10-03	K595,000.00
Jambo Trak Limited	Scotchiao Cocoa Estate Dev Project	03(b) 5 yrs	11/03/09 Endorsed	Customary Land	6,114	210,000	FCA 10-04	K100,000.00
Pacific Green Forest Limited	Walsa Int Agro-Forestry Project	03(b) 10 yrs		Customary Land	17,400 (Operable 23,759)	640,000	FCA 10-05	
Skywalker Global Resource Company (PNG) Limited	Maimai Int Agriculture Project	03(b) 17 years	Endorsed	SABL. Lease held by Nuku Resource Limited over Portion 26C, Aitape, Sandaun Province, subleased to Skywalker Global Resources Company (PNG) Limited	68,300 hectares (Operable 45,000)	4,230,000m <sup>3</sup>	FCA 10-06	
Global Elite Limited	Wammy Rural Development Project	03(b)		SABL; Portion 27C Aitape; Sandaun Province. Term 99 years commencing 09/10/2010	105,000 (Net Operable 74,800)	5,255,298	FCA 10-07	
Gold World	Nungwai Sengo	03(b)		SABL; Portion 54C Wewak	54,384 - 30,000			

Gold World Resource Company (PNG) Limited	Nungwai Sengo Agriculture Project	03(b)		SABL; Portion 54C Wewak and Ambunti; Lessee is Mapersa Development Corporation Limited	54,384 - 30,000 Teak; 7,000 rubber; 5,000 jatropa, 2,000 cocoa			
Wewak Agriculture Development Limited	Wewak Turubu IntAgriculture Project	03 (b)	Endorsed	Under Joint venture Company; Sepik Oil Palm Ltd for 99 years commencing 20/07/08 – Portion 144C	121,000 (Operable 96,486)	6,300,000	FCA 11-01	K595,000.00
Brilliant Investment Limited	Angoram (Marianberg) Int Agriculture Project	03 (b) 20 yrs	Endorsed	Under Brilliant Investment; Portion 146C, Sepik, East Sepik Province.	25, 600	150,000	FCA 11-02	K100,000.00
Lolobau Integrated Resources Limited	Lolobau Int Agriculture and Infrastructure Project	03(b) 6 yrs	Endorsed	Customary Land	6,800	146,524	FCA 14-01	
Monarch Investment Limited	Pulie Anu Oil Palm Plantation Development	03 (b) 10 yrs	Rejected	Portion 33; 34, 35, 397, 398 Kandrain District	41,231			
Tzen Niugini Limited	Illli-Wawas Roadline Project	02(b) 20 yrs	Endorsed				FCA 15-01	K190,000.00
Tzen Niugini Limited	Illli-Wawas Int Agriculture Project	03(b) 20 yrs	Endorsed		38,500		FCA 15-02	K890,000.00
Tzen Niugini Limited	Illli Standalone Agriculture Project	03(b) 4 yrs	Endorsed		10,400		FCA 15-03	K190,000.00
Toriu Timber Limited	Inland Lassul Baining Int Agriculture Project	03(b) 10 yrs	Endorsed		30,830 (15,000 operable)	480,000	FCA 15-04	
Suikol Resource Limited	Suikol-Makolkol Int Agriculture Project	03 (b) 8 yrs	-	-	52,000	857,761	FCA 15-05	K100,000.00
DD Lumber Limited	Mukus Melkoi Int Agriculture Project	03 (b) 17 yrs		Portion 2C. ENB. Original Lessee Rera Holdings Ltd, subleased to DD Lumber Ltd.	68,300	4, 230,000m <sup>3</sup>	FCA 15-06	K 595,000.00
Gilford Limited	Sigite Mukus Integrated Rural Development Project	03 (b) 04 yrs		3 SABL held by Pomata Inv. Limited over Portion 196C, Ralopal Inv. Limited over Portion 197C, Nakiura Limited over Portion 198C	42,400	4, 230,000m <sup>3</sup>	FCA 15-07	K 595,000.00
Evershine Plantation (PNG) Limited	South Baining Inte Agriculture Project	03(b)			45,300	459,000		
Tutuman Development Limited	Danfu IntAgriculture Project	03(b) 5 yrs	Endorsed	Portion 871C - Original Lessee Rakubana Dev. Ltd, then subleased to Tutuman Dev. Ltd	24,851 (operable 9,267)	417,015	FCA 16-01	-
Tutuman Development Limited	Central New Haneover	03(b) 10 yrs		Portion 887C, subleased to Tutuman Development Limited, by Central New Haneover Ltd	56, 592 (operable 23,955)	910,290	FCA 16-02	
Tutuman Development Limited	Tabut Mamirum Int Agriculture Project	03(b) 05 yrs		Portion 885C, subleased to TDI by Tabut Ltd.	11, 864 (10,504)	474, 560		
Maxland (PNG)	Pohowa Rubber	03 (b)		Customary Land	40,400 hectares			