

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
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COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

THE CHAIRMAN & CHIEF
COMMISSIONER

MR ALOIS JEREWAI

COMMISSIONER

MR NICHOLAS MIROU

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, WEDNESDAY
10 AUGUST AT 2.15 P.M.

(Continued from Monday 8 August 2011)

THE CHAIRMAN: Commissioners and Counsel Assisting, Technical Advisers and members of the public, we will now resume again from our brief adjournment yesterday.

After the adjournment yesterday, as a result of our advice that former counsel assisting, Mr Davis Steven, has resigned due to other work commitments, Mr Simon Ketan has now been appointed to replace him, and I understand Mr Ketan is now present here, and I welcome you, Mr Ketan, to this Inquiry. I would like you to address or do you wish to address the Inquiry on the transitional arrangements so far since you have taken office after the resignation of Mr Davis Steven. Thank you, Mr Ketan.

MR KETAN: Thank you, Chairman of the Inquiry, Chief Commissioner, Mr Commissioner Mirou, members of the public, and members of the Assisting Legal Counsel and the Technical Advisers.

On Monday following Mr Steven's resignation as counsel assisting, the Prime Minister appointed myself as Counsel Assisting the Commission of Inquiry Into the Special Purpose Agriculture Business Leases and I accepted the appointment and commenced work on that day.

I have had briefs from Senior Counsel – Senior Lawyer Assisting the Commission, Mr Paul Tusais, and Technical Advice Team, plus the Commissioners. I am happy to announce that as I accepted the appointment, I am more than happy and willing and prepared to assist the Commission in this Inquiry as Counsel Assisting the Commission.

THE CHAIRMAN: Thank you, Mr Ketan. Counsel Assisting, with your Assisting Counsel and Technical Advisers, I believe you will now be in a position to inform this Commission of Inquiry as to the progress on your task, in accordance with the direction that was given on 28 July 2011. This direction, amongst others, includes the preliminary title searches to determine the title holder of the 72 or more SABLs and the other related and relevant information on these SABLs; and secondly, if the title holder is a duly incorporated company, registered business name, duly registered business group or an incorporated land group, then to conduct searches to ascertain the directors, shareholders and executives et cetera of the company or of these entities, as well as to ascertain in cases of companies, whether they are foreign companies registered in Papua New Guinea or PNG, or Papua New Guinea incorporated companies, which shall also include, of course, your searches to

determine whether some of those companies, including the SABLs, are foreign registered companies.

Counsel Assisting, I now advise you with the assistance of your Senior Counsel Assisting, to inform the Commission of Inquiry as to the latest regarding those directions that had been issued on 28 July.

[1.56 p.m.]MR KETAN: Thank you Mr Chairman. The preliminary title searches which were required to be done in accordance with your directions on 28 July have been carried out. Of the 72 SABLs, the Department of Lands, I am pleased to advise, has indicated their willingness to cooperate with the Inquiry and they are in the process of making files available to the Commission. I am briefed by my team that to date they have available about 9 of the 72 files and they are continuing with the photocopying the rest of the files. In relation to the company searches, of the company searches that we have, about 63 extracts, which are the computer generated print outs on the companies and their searchers. The actual file searches have been conducted on 56 of them and photocopies of those have been obtained, and of the records of the gazettal notice and the IPA company records, there are two companies, which have no corresponding information, not registered but we will check that. We are continuing with that. Technical Adviser, Ms Peipul will continue to work on that. But I expect that to be completed by the end of the week. We have discussed and intend to call the Secretary for Lands and the Deputy Secretary for Lands, Customary Lands Services and the Registrar of Titles, next week and I expect that all of next week could be spent on evidence from the Department of Lands. We have been in touch with the Forestry Department and they have provided us with a list of the entities and the issues issued by the Forest Clearance Authorities. That will be dealt with at a later stage after we have gone through with the Lands Department.

By way of plan of action, we, as the Commissioners are aware, the publication of the 72 Special Purpose Agriculture and Business Leases will appear in the newspapers commencing next Monday and Wednesday, inviting people interested in the leases to come forward with exhibitions, and that will take up to 26 August, and then as I have mentioned, hopefully, we will be finished with the Department of Lands, in a week's time, depending on how we progress and then we will take it from there.

[2.01 p.m.] Again, it is the availability of time and how process takes. But next week, it is for the Department of Lands, which is the initial information source for purpose of this Inquiry, and then the Department of Forestry and Environment and Conservation in relation to environment to follow on from there.

At this stage, that takes care of, really basically the primary source of information, which are covered in Terms of Reference (a), (b) and (c). After that we can then look at Terms of Reference paragraphs (d) to (i). So that is by way of the action plan by the team assisting the Commission of Inquiry. Thank you.

THE CHAIRMAN: Thank you Counsel. The Terms of Reference that you just made reference to, (a), (b) and (c) of the Terms of Reference, the clauses, it is the one that is to determine the legal authority for the issuance of the SABL and (b) to determine the procedure for issuance of the SABL, in accordance with the legal authority, if any, and (c) to inquire into and confirm the number of SABL issued to date and the particulars of each including, of course, the location, customary ownership and if there is any dispute regarding the SABL between different parties.

Let me understand you, Mr Ketan, you intend to call the Acting Secretary for Lands and the Deputy Secretary in charge of Customary Land on Monday to provide all these information?

MR KETAN: On Monday and for that purpose we intend to ask you, the Commissioners, if the hearing can be adjourned to Monday for that purpose?

THE CHAIRMAN: We will be relying on you, Mr Ketan, to advise as to when you are ready to proceed. At this stage, we have no plans and if you think that you will be prepared to proceed with the substantive hearing on Monday, starting with the Department of Lands and Physical Planning, that is fine with us. Can I also ask another question? I understand there have been a number of letters that has been sent out, apart from the Department of Lands and Physical Planning, the PNG Forest Authority, did we get any response at all from them to date?

MR KETAN: Yes, as I have mentioned in my address, we have received from the Acting Managing Director, Mr Kanawi Pouru, a letter dated 8 August, which is

Monday, in which he has provided a list of Forest Clearance Authorities granted by the National Forest Board. So, yes, in answer to your question, they have responded.

THE CHAIRMAN: Thank you. What about Department of Environment and Conservation? Any response, any correspondence from them?

MR KETAN: We have written to them but at this stage we have had no response. We will follow that up.

THE CHAIRMAN: The same will apply with the Department of Agriculture as well?

MR KETAN: Yes.

THE CHAIRMAN: A letter has gone out?

MR KETAN: Yes. A letter has gone out.

THE CHAIRMAN: Thank you. In the process following the directions in the last hearing, Counsel, you have been directed with your technical advisers to obtain information from the various government agencies and State institutions to assist this Commission of Inquiry as part of your preliminary information gathering. I wanted to ask you if there has been any difficulty in obtaining those documents, and or, there is any resistance from those government agencies and State institutions to provide to us those information and documents that we would want to collect for the purposes of this Inquiry?

[2.06 p.m.] MR KETAN: Chief Commissioner, to date, we have had good cooperation from the departments that we have approached, principally the Lands Department. We have established good contact and have opened up communication with them, and we do not see any difficulties with them, but that is too early to say. But so far, they have cooperated. As I mentioned at the beginning of my address that they are in the process of making files available to us. The National Forest Service has responded, as I have just mentioned. The National Research Institute has been contacted and they, at this stage, we have not had any further discussions or communications with them. But we cannot say from that whether they will cooperate or not; I cannot make any comments either way, but we will advise in due course.

We have also been in touch with the National Land Development Program. Again, it is too early to comment whether they will cooperate or not, but we will again advise in due course, which is the same situation with the Department of Environment and Conservation and the Department of Agriculture and Livestock.

THE CHAIRMAN: So, Counsel, what are the specific information do you wish to obtain from the National Research Institute and the National Land Development Program that may be of some assistance to this inquiry? Do you want to state that?

MR KETAN: The information there, although they are not directly involved in the administration of the leases, the subject of the Inquiry, but they have done extensive research and there are papers and research material that is available that we believe will be of assistance to the Inquiry, yes, especially the National Research Institute which has really had an extensive research and the write-ups about the – this is of the lease administration and the process, and to an extent, this Inquiry has been prompted by some of the papers that they presented. So they are, in that respect, relevant information.

THE CHAIRMAN: Thank you, Counsel. Is there any incomplete task that you need to attend to, to complete all your preliminary tasks at this stage?

MR KETAN: Yes, almost all of the matters that I have outlined are incomplete, as such, at this stage, including the Lands Department files. So at this stage, yes, a lot of these are incomplete tasks at the moment, in terms of bringing in the primary source in the documents.

THE CHAIRMAN: Yes. I guess, Counsel, the reason I am asking this question is because you did indicate that you want to commence with the Lands Department on Monday, so that is why I am asking. I mean, have you completed all the tasks that you are required to do before we commence on Monday, as part of your preliminary information gathering, before we proceed on Monday?

[2:11p.m] The reason is that we might get bogged down, if you are not able to complete all these tasks and you commence on Monday only to find that there are a few things that are still outstanding, and we need to then stop to go back to collect all those information. So, I just want to get confirmation or some degree of certainty from you that we will commence on Monday and that we will not be bogged down because we ---

MR KETAN: Yes, the intention, Chief Commissioner, is for Monday. The reason why we want to call the Acting Secretary of the Department of Lands and the Deputy Secretary for Customary Land Services and the Registrar of Titles is to merely to establish the processing of lease applications and approval and registration, which we believe, will be, if you like, the yardstick by which we can screen the leases that are in issue against what the proper process and procedure should be. That is where we are coming from in terms of our request for a hearing when we require the Secretary for Lands and the other two offices.

THE CHAIRMAN: So Senior Counsel, it is more like establishing a checklist?

MR KETAN: Yes.

CHAIRMAN: So to speak so you cross-check the checklist of the requirements of issuing these SABLs, and then after that we will proceed on to look at each and every SABLs of the 72. Is that what you are saying?

MR KETAN: That is what I am saying. In terms of reference paragraphs 1 – it is relevant to Terms of Reference 1(a) and (b).

CHAIRMAN: Ok, thanks.

COMMISSIONER MIROU: Mr Ketan, are you able to tell us that the Secretary and the Deputy Secretary in charge of Customary Lands Office will be available on Monday?

MR KETAN: We have tomorrow; today is Wednesday, tomorrow is Thursday and Friday. We have time available to us to ensure their attendance on Monday and they are the main Government department affected by this Inquiry and they have been put on notice by our team, and they have cooperated so far. So we do not see any difficulty in getting them to be here on Monday. But we are making the request, it is a matter for you, Commissioners, to decide whether we can start on Monday with the officers from the Department of Lands. But we believe that we need to start with these officers to get the approved process and procedure in relation to the issuing of the Special Purposes Agriculture Business Leases before we really go into anything else. So that is the intention of the team assisting the Commission.

THE CHAIRMAN: I do not have any objection to that. The sooner we start, the better it is because the Commission of Inquiry was announced by the previous Government to commence on 12 July; we are now in August and we have not actually commenced any substantive hearing so there is an urgency for us to get on with it.

So I have no objection and I am starting with the Department of Lands and Physical Planning on Monday, starting off with the Secretary for the Department and Deputy Secretary in charge of the Customary Land on Monday.

There is a public notice containing the list of the 72 SABLs, will be published in the daily newspapers; that is Post Courier and the National, hopefully starting this Friday 12 August 2011. We intend to run that for the next two days next week, Monday and Wednesday, and this will be somewhat a public information out to the public or members of the public with regards to this Commission of Inquiry, and particularly the 72 SABLs, that have been referred to this Commission of Inquiry - attached to the Terms of Reference referred to this Inquiry by the Government, those will be published.

[2.16 p.m] I want to think that the list that we have got now is the current, following all your checks and searches with the Department of Lands and Physical Planning, and most of the SABLs have now been confirmed as current and existing. Because of that we will have those published in the Papers.

We intend to give all those interested parties and persons who might have any proprietary interest in those SABLs 14 days for them to submit or make submissions – submit their interest or expression of interest to participate in this Inquiry, and at a later date, hopefully, that we will be able to work out some processes and procedures as to how to take on those submissions and retain them for the purpose of this Inquiry.

We are intending that those submissions should reach the Commission of Inquiry here by the close of business on Friday 26 August 2011. Then after those submissions and information come in, we will publish a schedule of hearing dates, also in the Paper after 26 August. So people will understand exactly when their matter will come before the Inquiry, particularly those people who have an interest in this SABL, and we will be able to make the appropriate appearances.

So that is the arrangement that has been approved by the Commissioners. So it will be 14 days for the submissions to come in and 26 August 2011 will be a closing date for all submissions for the SABLs, and then from there on, we will commence the Inquiry or the hearing.

MR KETAN: Yes, very well.

THE CHAIRMAN: Commissioners, we have anything to add or to say?

COMMISSIONER MIROU: Just a point on the legislation that was handed up to the Commission on Monday 8. We have noted that there is some legislation missing on the file and we request Counsel Assisting and the team to check legislation that is missing on the file. There are some duplicate legislation as well – and to ensure that these legislations will reflect what this Commission of Inquiry is inquiring into, particularly with respect to determination of the legal authority, the compliance issues and the legislative and policy framework that governs each of the departments like Department of Lands, Forestry, Agriculture, Environment and Conservation. This is important for this Commission because that is the very basis upon which we can ascertain the process by which these SABLs are issued.

So, Counsel Assisting, if you could look at the legislation that was handed up to us on Monday, and just to – if you can ensure that all the relevant legislations are on that particular folder. Thank you.

MR KETAN: Yes, I will.

[2.26 p.m.] THE CHAIRMAN: Counsel, while you are looking for the papers, I also wish to add something on and that is that as we will be commencing on Monday next week with the Department of Lands being the first department to be called into this Inquiry, with respect to the substantive hearings thereafter, we would like to seek your advice and guidance on that as to how we should proceed, once the schedules have been published after the 26th. Then we will be requesting your advice and guidance as to how we should proceed in that, who should be called first, so that there is some management in place, and order in place in your presentation.

Again, as I have said, we will be relying on you to do that because very much will depend on what sort of information you have available, and whether or not those information are sufficient for you to proceed because 72 SABLs involves a lot of people and parties. So as part of the management of the whole Inquiry, we feel

that we need to get some indication from you and your team as to how we intend to proceed and some list of some sort. Thank you.

MR KETAN: Yes, we will. Commissioners, I understand, as Counsel representing one of the – in relation to one of the leases issued to Purari Development Association, Counsel – it is 71 on the list. As an interested party, they responded to the initial invitation in the initial advertisements and Counsel wish to – yes, he is here, Judge Sevua, if we can take his - take the documents - receive the documents, and then excuse him, and then we need to – if there is anything else arising and we will need them to attend again, we will advise him. So since he is here from the adjournment on Monday, I suggest that we take his and the documents that he has brought on behalf of his client.

THE CHAIRMAN: So, Counsel, did you say Judge Sevua is to submit a document or a file from the document submissions?

MR KETAN: Yes, he represents Purari Development Association.

THE CHAIRMAN: Yes, okay.

MR KETAN: It is in relation to portion 8C-GP, I think that is Gulf Province, and Milinch, Auri, Fourmil Kikori and Karimui, Gulf.

THE CHAIRMAN: I guess, Counsel, that we have been calling for written submissions and it has been published in the papers since last week, along with the Terms of Reference. So, I personally do not see any difficulty or problem with that; it can be submitted. But the proper and substantive hearing after we hear the Department of Lands and Physical Planning and after we have agreed to the checklist, that the Department of Lands and Physical Planning will produce on Monday, when they are called in, then every other hearings after that, we will use that as a guide to go through all the SABLs individually.

[2.11p.m.]MR KETAN: Yes.

THE CHAIRMAN: But because the Commission has advertised for the submissions to be tendered to the Commission, I see no reason as to why we should not accept that.

MR KETAN: Yes.

THE CHAIRMAN: Unless you want to – Judge Sevua, yes?

JUDGE SEVUA: Chief Commissioner, Commissioners and Members of the Commission of Inquiry, I firstly seek leave under section 8 of the Commission of Inquiry Act to represent – appear for Purari Development Association Incorporated, the group that is listed fifth from the bottom of the list on page 3.

I caused a letter to be delivered to Counsel Assisting the Inquiry and a copy to the Senior Counsel Assisting and indicated that I have at least two documents that I am willing to submit to the Inquiry to assist this Inquiry. I will supply those tomorrow. I have the document but I did not copy them.

THE CHAIRMAN: Yes.

JUDGE SEVUA: I can supply them tomorrow. I am still waiting for other documents to be provided to me so I can provide them to assist the Inquiry.

THE CHAIRMAN: Yes, thank you, Judge Sevua. I think, yes, we will – your leave has been granted, anyway, by the fact that you have allowed to speak for your client. As I said earlier on, we are in the process of gathering submissions, information. I do not see any difficulty in that. When you do that, I am sure the Counsel Assisting would be able to advise as to the protocol that we have agreed to in principle as to how we receive those documentations and who keeps them for the purpose of the Inquiry. So we do acknowledge, Judge Sevua, your presence here today and we will be looking forward. So Counsel may be able to talk to you after we adjourn and the documents can be given to him from there.

JUDGE SEVUA: Thank you.

THE CHAIRMAN: Counsel, looks like we have agreed to a lot of things we want to agree on today, especially with respect to the commencement next week of the Inquiry and we have agreed that we will commence and it will be now up to you Counsel and your technical team to make sure that sufficient notice is issued to the acting Secretary for Lands and Physical Planning and his Deputy to make appearance here next week Monday.

Are you able to now indicate, give us some rough indication as to how many days you are looking at, the presentation of those documents by the Department of Lands if you start on Monday? How many days will it take?

MR KETAN: Three at the maximum, but one and a half day, yes, or one.

THE CHAIRMAN: Three maximum? Three days maximum?

MR KETAN: Yes.

THE CHAIRMAN: Okay. Now that the PNG Forest Authority has written to the Commission, providing some information, do you have any intention of calling them at all, like what you are going to do with the Department of Lands to also appear?

MR KETAN: Not at this stage. The main government department is Lands. Leading on from the evidence and information from them, we will probably call them at a later stage, not next week.

THE CHAIRMAN: Okay, that is fine. I was just thinking as a way of moving forward, that if you call the Department of Lands and Physical Planning and because the PNG Forest Authority is also equally important in that process, and Department of Environment and Conservation for the purposes of environmental permit is also equally important, and of course, Department of Agriculture and Livestock, we might want to get those departments to do their presentations immediately after so that we are very clear in our minds as to what the process involves and the procedures, and who plays what role and is doing what because those are the government departments and agencies that are responsible in the issuance of the SABLs, with the different roles and functions they play.

[2.31 pm] So in my view, it will be half complete if we just do the Lands Department and others are not involved. So we need to also hear from you as to what you intend to do with the other three government departments. I think they are the principal government agencies that the Terms of Reference have made reference to them, and therefore, I think that it is also important that they also come and do their presentation as well, particularly on the role and responsibility they have, and the role that they play in the issuance of those SABLs, otherwise we will have a story that is half complete.

MR KETAN: Very well, Chief Commissioner. They are featured in the Terms of Reference, the Department of Environment and Conservation and the Department of Forestry and the Forestry Service so very well we will take that up and the legal

team assisting the Inquiry and the technical advisers will advise you on Monday in relation to that. If we take it up, and if we do that, it would be most likely be later in the week, next week.

THE CHAIRMAN: Counsel, that is fine. We will rely on your advice on these but I think it is proper that we get them involved as well right from the outset.

MR KETAN: Yes.

THE CHAIRMAN: As part of what we are trying to do with the Department of Lands, also get from them some check-list as to how they contribute towards the issuance of the SABL. They have different roles and responsibilities and we want to be able to ascertain that as well.

MR KETAN: Yes. We will give an indication as to when they will be called after we have made contact with them. We appreciate the importance and the relevance of it, even at this stage, although our initial intention was not to call them at this stage and deal with just the Lands Department, but we will give you an indication as to who is available and when we will call them. But if we do go, if we proceed with that, it will definitely be later in the week next week.

THE CHAIRMAN: I think we all agree, Counsel, that the Lands Department is the main government agency that deals with SABL. This is very clear. But then there are also other departments that we have mentioned. They also play a specific role as well and we need to also hear from them, the process and procedures they have within the Department, on how they approve applications and issuing of permits and things like that, so that we get a clear, complete picture; the whole thing.

MR KETAN: Yes, very well.

THE CHAIRMAN: Has Counsel anything to say?

MR KETAN: We have not got ---

THE CHAIRMAN: Unless you have got anything to add or to say.

MR KETAN: We have not got anything else to address on at this stage.

THE CHAIRMAN: I suggest that we adjourn to next week Monday on 15 August at 9.30 to commence with the Department of Lands and Physical Planning, and if there is any difficulty for them to appear, we would like to know about that well in advance.

MR KETAN: Yes.

THE CHAIRMAN: We do not want to leave it until the last minute. But in the meantime, we would take it that the Acting Secretary, Department of Lands and his Deputy in charge of Customary Land will make appearance next week Monday at 9:30 am.

MR KETAN: Yes.

CHAIRMAN: Thank you Counsel. We will now stand adjourned until next week Monday, 15 August 2011 at 9:30 am to commence again.

MR KETAN: Thank you.

**AT 2.37 P.M. THE COMMISSION OF INQUIRY INTO SABL3
ADJOURNED UNTIL MONDAY 15 AUGUST 2011 AT 9.30 A.M.**