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COMMISSION OF INQUIRY INTO SABL

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MR ALOIS JEREWAI

COMMISSIONER

DAGENHARDT CONFERENCE ROOM, RABAUL ARCHDIOSCese,
VUNAPOPE, KOKOPO, TUESDAY 1 NOVEMBER 2011 AT 9.23 A.M.
(Continued from Monday 31 October 2011)

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[9.23 am] COMMISSIONER JEREWAI: For the record, good morning Counsels, good morning. Those who are in the Inquiry, Mr Tubal, Provincial Administrator, East New Britain, good morning.

MR TUBAL: Morning.

COMMISSIONER JEREWAI: Counsels, I think yesterday when we adjourned, we mentioned a matter of housekeeping. In that regard, particularly, we were to address the aspect of the Inquiry that has now surfaced with the amendment to Terms of Reference, whereby the Prime Minister had extended by the amendment of the Instrument of the Inquiry on the - would you recall the date
10 of the amendment? Bear with me while I take the gazettal out, the gazettal is somewhere.

MR KETAN: I think it is 18 October.

COMMISSIONER JEREWAI: 18 October, right. By Instrument on 18 October 2011, the Prime Minister amended the Term of Reference (i) to not only limit this Commission of Inquiry to investigate and or rather inquire into 72 named SABLs but any other SABLs which may come to the attention of this Commission of Inquiry. It empowers the Commission of Inquiry, therefore, to inquire into these additional SABLs.

In this regard in East New Britain the one that was not listed originally was Illi
20 Wawas. Is it Illi Wawas Integrated Oil Palm Project? Well, something to that description and also Illi Wawas stand-alone project. So there are two, basically.

MS PEIPUL: Commissioner, also Road Line Project as well.

COMMISSIONER JEREWAI: As well as the Road Line Project.

MS PEIPUL: Yes.

COMMISSIONER JEREWAI: If the Road Line Project is within the identified Special Agriculture Business Leases then of course it will fall within the ambit of our Inquiry. But if it is outside of the SABLs, then naturally they are matters of a timber line authority and directly under the administration of the Papua New Guinea Forest Authority. Having said that, can I get some indication as to
30 whether any formal requests or a formal lodgment had been made to this Commission of Inquiry in relation to two Illi Wawas projects?

MR KETAN: This lease, Commissioner, it was a - I think the party was interested in Illi Wawas project. They put in I mean, their submission which we have received.

COMMISSIONER JEREWAI: And you have yet to organize for the opening of the file on this?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Which appropriately should take place in Port Moresby.

MR KETAN: Yes.

10 COMMISSIONER JEREWAI: Before the matters return to the province.

MR KETAN: Yes.

COMMISSIONER JEREWAI: All right, can we now take note that the two Illi Wawas SABLs are set for opening of files, hopefully next week, sometime next week in Port Moresby and to be included in the schedule of continuation of hearings into SABLs when the Commission of Inquiry returns to deal with the SABLs which include Barava Limited, I beg your pardon, not Barava. We are dealing with Baraba now. Trukake Limited as well as the one in Pomio, Rera Holdings. Although we will mention Rera Holdings on Thursday but I doubt with the continuation of Toriu on Thursday, I doubt if we will finish with Rera.
20 And if we do not start Rera then Rera will be among those which the Commission of Inquiry will deal with on the extension and on return to East New Britain. Those will be basically what will be required to be done.

Any further housekeeping to be formally on record? I realized there are other housekeeping in terms of re-scheduling and that can be done in our own meeting later on at our place of abode.

MR KETAN: Yes, I (...inaudible...)

COMMISSIONER JEREWAI: Thank you Mr Ketan and Ms Peipul. Now we have this morning the substantive inquiry into the matter of Pomata Investments, let me get them correctly from the files I have here. Pomata
30 Investment Limited involving portion 196C, Talasea, West New Britain Province; Ralopal Investments Limited, portion 197C, Talasea, East New Britain Province; and Nakiura Investment Limited, portion 198C, Talasea, East

New Britain Province; and Unung Sigite Limited, portion 27C, Talasea, West New Britain Province.

I note that, Counsels, this could be just a minor error, Pomata is indicated to be Talasea, West New Britain Province while Ralopal, Talasea, East New Britain Province, similarly Nakiura is East New Britain Province then Unung Sigite is West New Britain Province. Could this be a mistake? It is all East New Britain Province.

MR KETAN: Yes, it was. I think we corrected that at the hearings back in Moresby.

10 COMMISSIONER JEREWAI: All right, thank you, yes. So that we are in the right province. We are in East New Britain Province. Well, you can if you want to you can formally call the matter or is that sufficient that I have called these matters?

MR KETAN: You have Commissioner, call the matters.

COMMISSIONER JEREWAI: Mr Associate call these matters outside so that anyone else who are not in the room already can take note that we are now commencing with these matters. You call them in that order, including the last file at the back. Go and call at the doorway.

20 Okay, the Associate has called these matters and Counsel, I would like you to proceed. When you have identified or when you have indicated your order of the proceedings with the inquiry into this one, I would like to, soon after the introduction by yourselves, I would like to clearly point to the official defects we have discovered in the preliminary inquiry into these matters so that we do not waste time and we will zero in on these official defects as a start and we will come to the later parts which will involve matters of consents obtained through the relevant land investigations and the report compiled thereafter and other relevant matters in terms of the involvement, and particularly, the willing and participating consents of the landowners with regard to these Special Agriculture and Business Leases.

30 MR KETAN: Yes.

COMMISSIONER JEREWAI: So Counsel, please, proceed.

[9.35 am] MR KETAN: Thank you Commissioner. This morning we will deal with the, as we announced the matters of Pomata and Ralopal, Nakiura and Unung Sigite, although the Unung Sigite matter will actually, the evidence on that will be called tomorrow morning.

COMMISSIONER JEREWAI: And we will also be very short as evidenced by our physical inspection of the site that this particular SABL has nothing happening on it right now.

MR KETAN: That is right.

COMMISSIONER JEREWAI: With the exception of the fact that there is a
10 plantation called Unung Plantation.

MR KETAN: Unung Plantation.

COMMISSIONER JEREWAI: And ownership to which is being contested by a Mrs Painap.

MR KETAN: Yes. This morning we will start with the Land's land investigation reports and we will start with Mr Puipui Tuna, but before him we will call Mr Aquila Kubal, the Provincial Administrator is here so we might proceed with him. He was only a signatory to the Certificates of Alienability on all three SABLs.

COMMISSIONER JEREWAI: You mean, recommendations to –
20 recommendations for the certificate of alienability?

MR KETAN: Yes, the recommendations.

COMMISSIONER JEREWAI: Certificate of Alienability. He did not actually sign the Certificate, did he?

MR KETAN: No, the recommendations.

COMMISSIONER JEREWAI: I think in light of Mr Tubal's important office he holds in the province, he should be given priority so that he can be released early.

MR KETAN: Commissioner, that is what we will do and then once we have done that we will go onto the companies, the respective companies followed by
30 some of the landowners, including the opposing landowners if you want to---

COMMISSIONER JEREWAI: Very well Counsel. Before we proceed, as I said, first of all I want to draw to your attention that there are documents that were delivered or in the way of petition, presented during the site visit between Saturday 29th and Sunday 30 of last month.

MR KETAN: Last month.

COMMISSIONER JEREWAI: We will deal with the formal incorporation of these documents by openly announcing them after we have finished with Mr Tubal. But prior to beginning with Mr Tubal, I want to announce the preliminary observations. I will not say preliminary findings, I will say
10 preliminary observations during the preliminary hearings and opening of the files on this Special Agriculture Business Leases in Port Moresby.

Those of you who are interested in this Special Agriculture Business Leases who are present in this room you are to take note, that in our preliminary observations, we observed from the extracts of the companies records obtained from the office of the company register; Investment Promotion Authority that all three of the following Special Agriculture Business Leases title holders have been deregistered. And that ---

MR KETAN: Commissioner, sorry to interrupt. Just a correction on the company. We have since obtained extracts as at 21 October and following
20 opening statements in Port Moresby when we opened the files, they seem to have – they had produced, the company’s office, this is, extracts which state here that the two companies, particularly Pomata Investment and Ralopal Business have rectified the defect and they are ---

COMMISSIONER JEREWAI: What about Nakiura?

MR KETAN: Nakiura, there is no information on that. So, Nakiura, although, Nakiura was not ---

COMMISSIONER JEREWAI: That is fine.

MR KETAN: So Nakiura, though Nakiura was not---

30 COMMISSIONER JEREWAI: All right, I will make this statement subject to further verification. I just do not want us to get, to be caught up but I would like to indicate that nonetheless.

MR KETAN: Yes.

COMMISSIONER JEREWAI: The initial investigation, as I said, of the Companies office indicated that the three landowner companies who hold titles to the three respective Special Agriculture Business Leases, namely, Pomata Investment in relation to Portion 196C and Ralopal Investment, Portion 197C, Nakiura Investment, in relation to Portion 198C were deregistered. But as Counsel just now informed me, an extract obtained on 21 October 2011, indicate that at least Pomata and Ralopal may have rectified that situation and Nakiura still remains a query until we can be able to further verify. And that is a matter that really, you landowners will not be able to verify except through your company executives and perhaps, through us. On return we intend to recall the companys' officials as we will in relation to the Department of Lands, Department of Environment and Conservation and Department of Agriculture and Livestock, should we find any wanting in aspects that should ensure that a Special Agriculture Business Lease is properly done. So that is not a matter of an impossibility that we cannot rectify or find out about later.

Nonetheless, the important point I am making here before we commence the Inquiry is this. Firstly, the company or incorporated land group or any other entity of your choice to hold the title to your land must be by your willing consent. Secondly, if it is a company, then it is the duty of all those who manage the company, including the board of directors, especially and the public officers of those companies to ensure that these companies remain competent and entity. Companies are persons created by law. They are not natural persons, they are nonetheless, a person created by law and hold every rights such as you and I, natural human beings. But for them to remain entities similar to natural persons such you and I, the management of those companies must ensure that they do not lose that legal recognition that makes them a person.

As we have announced on site when we went down over the weekend and addressed a large crowd who gathered there, despite displaying a lot of placards and notices supporting the project, we said to them the similar things that I am saying to you this morning. So it is incumbent on the management of the company, in particular, the directors and the public official of the company to make sure your landowner company you have chosen to hold title to your customary land in the Lease - lease back arrangement is not affected adversely, so that you lose the right; you lose the entity that holds the title in your interests.

The second thing which we have noted from the preliminary opening of the files on these SABLs, is the inconsistency in the titles being held by the landowner companies. Sorry, before I get to that, let me address the one on Unung Sigite as well.

Unung Sigite although, there is no proposed immediate operation into that SABL has no problem with the company registration. It remains registered and it remains shareholder of the umbrella company that covers these four blocks; four SABLs within this area in Palmalmal area.

10 Now, I revert back to what I was proceeding to say. These companies who hold title on your behalf, we have discovered that they were not in fact, and therefore, there have been a lot of inconsistencies, they have not in fact, been the applicant for the forest clearance authorities. The umbrella company, Counsel, help me, what is the umbrella company again?

MR KETAN: Memalo.

COMMISSIONER JEREWAI: Memalo Holdings. The umbrella company Memalo Holdings, applied for and was granted environmental permit. Memalo Holdings also submitted, I believe, the agriculture development plan which was approved by the Department of Agriculture and Livestock. However, when it came to the Forest Clearance Authority to be issued by the Papua New Guinea
20 Forest Authority, the FCA, in short, for Forest Clearance Authority was issued in favor of Gilford Limited. We made this observation. I have not made any findings which I intend to make before the or after the conclusion of this circuit. We find that to be an inconsistency that must be noted. We observe, rather, not find, we observe that that is an inconsistency that must be seriously addressed. You have the umbrella landowner company and Memalo Holdings holding the environmental permit as well as an approved agriculture plan and it would be consistent to also ensure that Forest Clearance Authority issued is in favor of the same entity who holds the environmental permit or even better that it be
30 granted to the landowner company, Sigite Investment. That is an observation we make at a very early stage.

When we were on the site, we were met with only those who supported the project. And what we did was we left the gathering at Drina log pond and log loading area and to us, was the Base camp for the time being. We left the whole crowd and we drove off without them so that we went around to the villages without them realizing that that is what we were doing. When we arrived at the

villages I realized, and I want to be on record as saying this, because it is very important because of the conflict you have down there over these SABLs. We arrived at one village, Counsel, could you help me with the name of the village?

MR KETAN: Kaitong village.

COMMISSIONER JEREWAI: Kitamon village.

MR KETAN: Kaitong, K-a-i-t-o---

COMMISSIONER JEREWAI: Kaitomon village.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Kaitomon village. And realizing that the
10 presence of the police personnel who escorted us to, I would have to assume
that it may be of intimidation, so I told them all to stay away and I walked down
to the beach with my team. And nobody knew who I was and that they were not
to be frightened or be intimidated in anyway, and that I had purposely left a
large group at Drina logging camp or log loading base and I proceeded here so
that I will catch everybody unaware so that people can speak freely. And upon
questioning the women, they all said they support the projects with only two
problems. The first problem was that they were not happy with the pay they
were receiving while attending to the nursery and doing the seedlings in the
polyester bags of different hectares and different sizes. The second problem
20 was the young people were getting into relationships uncontrollably. And
because one of the Terms of Reference is to investigate any irregular conduct,
particularly by foreign nationals involving local women, I asked specifically if
that involved foreign men, employers of the developer company and they said
no. It was internal, among the young people of the village upon which I
promptly informed them that that is a matter for the village councilor to deal
with. There you are, that is the simple process that we went through.

I want to also let you know that we drove around the peripheries or the
boundaries of the areas that have been cleared without proceeding on the road
back to Palmal and we proceeded in the other direction and went down the
30 new road that is being constructed, towards Ralopal block. And the side of the
road, both sides of the road amounting to 40 meters in total with a road running
in the center that headed toward the Baimarama, I believe, Baimarama River.
We got that far not noticing anything else apart from that. I might add that I did
not notice any indication of skidder tracks or log loading in excess of 20 meters

on both sides of the road. Those are my observations and I want to ensure that I inform you of these observations before we commence with the calling of witnesses.

I understand there is a lot of controversy over these four SABLs, but in particular, Pomata and Ralopal at this stage. And there has been a lot of widespread publicity one way or another. I want you to all know that this Commission of Inquiry is not swayed by mere publicity produced through newspapers. This Commission of Inquiry will be guided by actual facts as presented through evidence gathered through witnesses through authentic materials and by the physical site inspection that we have carried out. So with that Counsel, that is a quick run over of the observations both from the official documentation at the opening of the file on these four SABLs as well as our physical site inspection in the course of the weekend, including Saturday, the 29th and Sunday, the 30 October 2011. Having laid these all before you, I would like to restate the underlying purpose of this Inquiry.

The underlying purpose of this Inquiry recognizes first of all the noble intention to bring our people who predominantly own nearly 97 percent of customary land in this country into commercial undertakings suitable to their own requirements and enhance their wellbeing and improve their living standards. This initiation by the government, initially by the then acting Prime Minister, Honorable Sam Abal and then supported and continued by the current Prime Minister, Honorable Peter O'Neill, recognizing the noble intention of Special Agriculture Business Leases as I have just stated. The concern, however, had been that the integrity of the processes reaching the issuance and operation of SABLs had been infected along the way, and they have been infected by various factors and those are the factors we must look into, establish so that we can recommend the correctional procedures and put better procedures, perhaps, also including legislative changes so as to strengthen the process and provide greater integrity to enable our people to engage in commercial undertakings involving their own natural resources found on their own land.

This inquiry is not about putting anybody out of business. I would like you all to understand this underlying factor and the purpose with which we are moving.

The second very important aspects that this Inquiry hopes to establish or instill is to instill higher business – level of business ethics involved including the business ethics that the proposed developers that you may invite to engage in

the exploitation and development of your resources, such that if they are in breach they can be heavily penalized, including, possibly complete black listing so that they are not allowed to operate in this country. There is one thing I have stated down at the site visit and I will repeat here formally again, I repeated it yesterday. In the course of all these, we will not and we should not allow our people to lose their land. We have experienced the colonial alienation of our land by use of a stick of tobacco, a tomahawk, bolt of lap-lap, and although we have abundance of saltwater around, they even give us a bag of salt; in the course of which they take our land away completely, and these lands are now
10 known as alienated lands which are vested in the Government of Papua New Guinea.

We Papua New Guineans, ourselves must not engage in similar alienation so as to forever deprive our people of their birthrights which is the primary ownership or combined ownership and interests in their customary land. We want to enable our people to be able to use their customary land without alienating their customary land.

Counsels, those are the underlying statements. Can you please, proceed now?

[9.58 am] MR KETAN: Commissioner, if I may call Mr Tubal, given his position, and he signed the recommendation so he can be first. Although, it is sort of in disorder
20 but he is only in relation to the recommendation as to alienability. And then we will call ---

COMMISSIONER JEREWAI: He received the land investigation report compiled by the field officers and having examined it and having been satisfied that they were in order, he signed a recommendation for alienability?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Counsel, if I may suggest the very appropriate way to deal with Mr Tubal would be to have him identify the land investigation report that was presented to him by the field officers. If he agrees that that was the report he sighted and was satisfied with to proceed to sign the
30 recommendation for Certificate of Alienability to be issued and so that we can shorten his, because the land investigation report will be a matter for the field officers themselves to give evidence in relation to.

MR KETAN: Yes.

MR KETAN: Yes, if I could do that---

COMMISSIONER JEREWAI: All right, have Mr Tubal come to the witness stand now. Mr Tubal, thank you for coming this morning. Mr Associate, have him sworn in:

AKUILA TUBAL, Sworn:

XN: MR KETAN

Q: Mr Tubal, your full name is Akuila Tubal?

A: Yes.

10 Q: And you are the administrator for the East New Britain Province?

A: I am the administrator at the moment.

COMMISSIONER JEREWAI: Is it Provincial Administrator?

A: Sorry?

Q: The title is Provincial Administrator, is it not?

MR KETAN: Sorry, yes, you are the Provincial Administrator for the East New Britain Province. You are no doubt aware of the work of the Inquiry into the SABLs, some of which are in your province and in relation to which you have been called to give evidence?

20 A: Yes, sir. I am fully aware of the Inquiry and I will give as much information as I can to the best of my ability.

30 Q: And these matters that we are dealing with this morning are the SABLs granted to Pomata, Ralopal, Nakiura and Unung Sigite in the West Pomio District. I will show you the two documents which are the land investigation report attached to which is recommendation for alienability that you signed as Provincial Administrator. This bundle of documents I am showing you is the one for Pomata and I have indicated where your signature is with the stick-on label. But the land investigation officers, particularly, Mr Puipui Tuna and his team who would have presented to you what is in the bulk of the documents, having done their land investigation in relation to landownership, customary boundaries and the

land tenure system and so you would have signed that recommendation upon sighting that report, would that not be the case?

A: Yes, that is normally the case, lands officers come into my office and brief me. And if I do not hear any other from my other years as provincial administrator about a certain project then I do sign. In one or two cases, I send them back if I think there could be a problem. Thank you.

Q: Do you recognize the document that I have shown you? That is the recommendation as to alienability and it bears your signature?

A: Yes.

10 Q: The date on that is 3 January 2008.

A: Yes.

Q: This next bundle of documents with your recommendation as to alienability is in relation to Nakiura which is the next portion of land, it is portion 198C. If I can show you this. You would have signed that at the same time with the one for portion 196 Pomata.

A: It will appear so, yes.

Q: This next bundle of documents is in relation to Ralopal which is portion 197C.

A: Yes.

20 Q: The next, last of the documents that I intend to show to you this morning is the one, your recommendation as to alienability as dated 24 June 2009 and it is in relation to portion 27C over land Unung Sigite. You satisfied with the investigation as to landownership and customary boundaries that are on all of those four portions of land?

A: Yes. As I said, I rely on my officers to do those investigations. And normally, if there are any other issues that are here on site then I normally would ask questions. As you know we have a community that those people working, there is a local government or ward councilor, there is a president or a local level government and also communities. So but only
30 anything else, normally I sign those documents, yes.

Q: The Sigite-Mukus Integrated Agriculture Development Proposal, is that one in which the provincial government is involved?

A: Yes.

Q: Is the provincial government plan, you know ---

10 A: Yes, I will – I was going to make an opening statement. But now that you have asked the question, maybe I will come in on that one. The provincial government in its attempt to develop the outlying areas of East New Britain, especially the Pomio and Baining areas, felt that this SABL was one of the vehicle that we could utilize and use. So we have four main impact projects that we are supporting as a provincial government. And one of them is the project that you have mentioned. Yes.

20 Q: If I can show you a letter dated 14 November 2008 addressed to the Secretary for the Department of Agriculture and Livestock, Mr Anton Benjamin, which was copied to many other people including the Governor for East New Britain, Member for Pomio, the relevant government agencies, Department of Lands, DEC, Forestry, Department of Works, copied also to Gilford Limited, the developer and Memalo Holdings, the holding company for Pomata, Ralopal, Nakiura and Unung-Sigite. If I can show you that, if you just recognize if that is your signature, just confirm that.

COMMISSIONER JEREWAI: What is the content of that letter?

MR KETAN: And you writing to the Secretary for Department of Agriculture requesting them to support in terms of their consideration and in-put into the project, is that not the intention of the letter?

A: Yes.

Q: Thank you ---

COMMISSIONER JEREWAI: Counsel, is that - let us just get the project. We cannot just leave it hanging in there. Is that the overall project that is called Sigite-Mukus Integrated Rural Development Project?

30 MR KETAN: Yes.

COMMISSIONER JEREWAI: I would like things to be very specific and so that the witness will address what it is.

MR KETAN: Yes.

COMMISSIONER JEREWAI: And Unung-Mukus Sigite Integrated Project ---

MR KETAN: It is called Sigite-Mukus Integrated Rural Development Project.

COMMISSIONER JEREWAI: I beg your pardon, Sigite-Mukus Integrated Rural Development Project.

MR KETAN: Yes.

10 COMMISSIONER JEREWAI: And that would cover, Mr Tubal, that would cover the four SABLs. But initially Pomata, Ralopal and Nakiura and ---

A: I will just explain. The earlier submission for this project was a very big one. It was going to be a Mukus-Tolo Project that was done in the early, late '89, '90 for that project to cover the whole, from Muwol right down to West Pomio-Mamusi LLG. And their main concern there was for agriculture project and also infrastructure development in those areas.

MR KETAN: What was the policy behind your provincial government's support of the project?

COMMISSIONER JEREWAI: For the project.

MR KETAN: Yes.

20 A: Thank you. Maybe, if I could draw a little bit towards some brief background to East New Britain ---

COMMISSIONER JEREWAI: Please Mr Tubal, take your time. Relate the government policy to us, we would like to know.

A: Yes.

Q: So take your time. Do not feel that you are taking too long, we would like you to say it.

A: Thank you very much. Provincial Government in its endeavor to develop East New Britain over the last 36 to 40 years have been trying to put in the loop for Pomio and the Baining areas to also be developed. As you

know East New Britain at the moment, the major part of the, most of the products or the produce from East New Britain coming from the 10 percent of the East New Britain which is basically Gazelle. Gazelle Peninsula produced all the cocoa, most of the cocoa and copra. Over the years we have been attempting to troop because of the political pressures, we have been trying to develop the Pomio and the Baining areas. Hence, over time through government initiatives they have had this Pomio-Baining Integrated Program which was approved in the early '80s, I think. That project failed to develop infrastructure, improve the lives of the people. There were a lot of projects or programs under that program. To cut the story short, as soon as we heard about this SABL program, we thought, well maybe it is an opportunity for provincial government because the projects were coming from the people. And I say this because I am also the chairman of the East New Britain Forest Management Committee. So a lot of projects were coming in from those areas to develop their own people, develop their own economies in their own areas. Therefore, the provincial government saw fit to help and assist them. Therefore, you can see in my letters, I was supporting most of the projects that were coming in.

We felt at that time that by developing with this – by piggybacking on this project which was basically people oriented, the provincial government was going to develop the areas. And I think you now can see that Toriu Project, that is you probably been – Inquiry have been inquiring into the last couple of days. Yes, we called down towards the Open Bay areas or the west coast. In the south coast we have Illi Wawas, which you mentioned, chairman and also this Mukus-Tolo Project. The Mukus-Tolo Project then started breaking up, again the people themselves. Due to those things we did not until we came up with this one or two projects that we are supporting. We hope, through these projects and this program, SABL, people will develop themselves, people will develop their own regions and in the end East New Britain will be fully developed. Especially those areas that are laying back, lagging back in development.

You see it in Kokopo, the capital of East New Britain, we still do not have any road links to Pomio. That is why chairman you went on a

chopper. Also, there is no road link between here and Open Bay. Through this project we are trying to do those developments. Thank you.

0.18 am] COMMISSIONER JEREWAI: Thank you. Counsel, before you go on. Mr Tubal, on the other hand of the scale, the question remains why the government, who is responsible for ensuring such infrastructures should have been there to connect Gazelle through the Bainings, through the Open Bay, Wide Bay area, right through the other ranges right into Pomio had not done so on government resources, on government funding and now is going to rely on the peoples' resources to do it.

10 A: Thank you very much chairman. We had a preliminary costing for a road between here and West New Britain about 10 years ago. It was going to cost over 2 billion, over 2 billion. The feasibility study alone was going to cost over 2 million. Government, we do not have those type of resources and therefore, we are relying heavily – and that is why I think you saw the Governor's comments earlier on when the Inquiry was coming. Earlier on we thought that it was going to be to delay project or to stop. We are saying in East New Britain, it is easier for the Highlands region because they have the LNG and the Papuan region because they have got revenues flows from the LNG. We do not have any. We are
20 relying a lot on these projects.

Q: Or perhaps I could point you to a National Government Policy that is in existence which is a Public Sector/Private Sector Partnership. Would you agree?

A: I totally agree Mr Chairman. I think that is basically what we are doing and that is why we are supporting this project.

Q: In other words, the recent government bought off the previous regime and the current regime recognize that the imperative to ensuring such infrastructure come about also is for people to participate, number (1) and number (2) with their natural resources as found on their land and number
30 (3), that they themselves are responsible for the infrastructure to come through with the related benefits as well.

A: I totally agree chairman. I think there is one major improvement also under the current SABL. Under previous - and most of the plantations on the Gazelle were developed, they were under the previous system, the

colonial era, titles went straight to the companies. At least for this one it is with the people. It is really up to them to struck lease arrangement or sublease with developers. So to us, it is already a plus. I think, Commissioner, the good thing about the Commission is to just try and improve on what, the anomalies that we have in the moment with regard to the agreements that we have had. And there will be a major improvement, I think on what we have.

10 Q: Yes, Mr Tubal, in fact section 102; that is 102 of the Land Act says in subsection (2) “A Special Agricultural and Business Lease shall be granted, (a) to a person or persons or (b) to a land group, business group or other incorporated body to whom the customary landowners have agreed that such a lease should be granted.”

A: Yes.

20 Q: So it is noted. Now, my question will be to put to you, recognizing what had already been provided for in the relevant provision which I just read to you, is it not imperative to ensure as a government agency that in the process of supporting development, including infrastructure and economic development, the primary duty also is incumbent on you to make sure that the entity holding SABL is of the choice of the customary landowners?

A: Yes, I ---

Q: You agree?

A: I agree with your comments.

Q: In other words, if this Inquiry is to find that there was no such agreement or consent of the landowners for this particular entity to hold their title to the SABL that comprises of all their combined customary land then it should be nullified.

Proceed, Counsel. Thank you. I think that is the underlying responsibility.

30 MR KETAN: Just one final thing Mr Tubal, before you are excused. The PEC decision that supported the approved Sigite-Mukus Integrated Agriculture Development proposal for the Pomio District is PEC decision number 30 of

2005 and Meeting No 4 of 2005. We have not been provided with a copy of that decision so, in support of what you have just said, outlined as the provincial government policy, if you could locate a copy of that and give it to us while we are here, either here or where we are staying at the Gazelle International. We would appreciate that.

COMMISSIONER JEREWAI: Mr Tubal can undertake to provide us the copy. Can you Mr Tubal?

A: I will endeavor to do that.

Q: I can see your legal officer may have ---

10 MS JUBILEE: Sorry Mr Chairman, it is in the affidavit sworn at the Commission.

COMMISSIONER JEREWAI: Please, point it out. Assist Mr Tubal.

A: It is here with, in this copy. I will be presenting Mr Chairman, to the Commission copies of my ---

Q: Is that the one you are looking for, Counsel?

MR KETAN: No. Commissioner, I think what they did was prepared an affidavit which was intended to be presented by Mr Tubal.

A: I was going to do that straight after the meetings.

COMMISSIONER JEREWAI: Which was to be tendered here?

20 MR KETAN: Yes, he intended to present it here but it was, I think, held back. He has another one for Rera which he can ---

A: I will present it. I was going to, chairman, I was going to present that one.

Q: If we can have that so that when you do attend we can have ---

COMMISSIONER JEREWAI: All right, listen, there is no big deal about the procedures.

MR KETAN: This, we will accept this. If ---

COMMISSIONER JEREWAI: Counsel, yes, let me just say this.

MR KETAN: Yes, we will accept this. The ---

COMMISSIONER JEREWAI: We are, Counsel, if I can just say this. There is no big deal about the procedures. We have adopted our own procedures and material presented in such fashion can be accepted except that we will ask you to provide a copy to those who maybe opposed to the projects. If you can do that we will appreciate it.

A: We have got spare copies available, chairman.

MR KETAN: Commissioner, this is an affidavit dated 31 October 2011, presumably after our meeting with you.

10 A: Yes and the letters that you presented me.

Q: Yes, thank you, we will accept that. Commissioner, if we can accept this affidavit and mark it ---

COMMISSIONER JEREWAI: Have you got an extra copy right now?

A: Yes.

MS JUBILEE: Mr Chairman, I can make a copy available before the Commission.

COMMISSIONER JEREWAI: I would like a copy made available to, I understand this project involves opposing groups and I would like a copy made available to them. Is there any representative of the opposing group inside the
20 room this morning?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Could I have an indication please? Just one of you will do. We just want to ensure you get a copy of the affidavit. Ms Jubilee, you note the gentleman, the one at the back, yes, second row there, please, ensure you provide a copy of the affidavit to him. Now statement in evidence not being tendered through him and I assume therefore, that they are going to be tendered through the leader of the land investigation team?

A: Yes, most of those ---

30 Q: All right. So they are merely there for the time being for Mr Tubal to identify?

MR KETAN: To identify, yes.

COMMISSIONER JEREWAI: Very well. If that is the case, could you proceed to have him tender the first of the affidavits?

MR KETAN: Yes. This is the affidavit of 31 October 2011---

COMMISSIONER JEREWAI: Have him identify the affidavit and have it tendered. Ms Peipul, work out the exhibit numbers in preparation, please.

MR KETAN: It will be exhibit E. But it will be exhibit E, Pomata ---

COMMISSIONER JEREWAI: Ralopal, Nakiura, all three of them.

MR KETAN: Ralopal and Nakiura.

10 A: I have also got some annexures that I have here with us.

COMMISSIONER JEREWAI: Very good.

A: To help the Inquiry.

Q: First of all, Mr Tubal, you identify that that is the affidavit sworn by yourself. Counsel, can you take him through the formal process quickly.

A: I have signed them and Commissioner also signed the affidavit.

Q: That is fine.

MR KETAN: Mr Tubal, if you look at your affidavit, sorry, you have given it back to me.

COMMISSIONER JEREWAI: You may sit down, Mr Tubal.

[10.29am] COMMISSIONER JEREWAI: Counsel, I noted that the documents you have been producing to Mr Tubal for his identification and ---

MR KETAN: Do you have another copy there?

A: You can make copies?

Q: That is fine. You have a look at this, the copy, the original. It is sworn on 31 October 2011. Could you and you happy with the contents?

A: Yes, I am happy with the contents.

Q: If you just hold it up and indicate where ---

COMMISSIONER JEREWAI: Happy with the contents meaning the contents of that affidavit are your statements?

A: Yes, the contents in this affidavit are my statements regarding ---

Q: Hold it up and show us where you signed?

MR KETAN: Where you signed?

A: I have signed plus my legal ---

Q: If you could hold it up for the Commissioner to see?

COMMISSIONER JEREWAI: That is fine, she is the Commissioner of Oaths automatically as a lawyer. You signed on the right of the page?

10 MS JUBILEE: Yes.

A: Yes.

COMMISSIONER JEREWAI: All right. And the annexures, can you show us the annexures?

A: The annexures, if I could ask her to read for me ---

Q: Please, go ahead, open it.

MS JUBILEE: Mr Chairman please, annexures include four annexures A to D, A is a submission from the provincial administration on the processes involved in this SABL. And I guess some recommendations for improvement to the processes. It is included in this, Mr Tubal's affidavit. B, is a letter of
20 instruction from the Department of Lands to the provincial administrator for our lands officers to assist the facilitation of the SABL, Unung Sigite. C, is the PEC Instrument, government's policy on the project. And E is a report on the technical team on technical and monitoring team in place in the province set up through the provincial administrator to monitor the projects on the ground. It is an example of a report that is carried out by the technical officers at these project sites. Thank you, Mr Commissioner.

MR KETAN: I asked for this PEC Decision No 30 of 2005, is that – I was looking very quickly through it. Is that part of the annexures?

A: It is annexure C.

MR KETAN: Okay, yes.

COMMISSIONER JEREWAI: Mr Tubal, those annexures together with the affidavit you just identified are your statements and documents attached to it?

A: Yes, Mr Chairman.

Q: Counsel, proceed to have it tendered.

MR KETAN: Yes, I am ---

COMMISSIONER JEREWAI: And number the exhibit.

MR KETAN: I tender that and it is going to be marked exhibit E, Pomata/Ralopal/Nakiura/Unungi Sigite, portion 196C, 197C, 198C and 27C, respectively.

COMMISSIONER JEREWAI: All right, the affidavit is accepted as exhibit D, Pomata/ Ralopal/Nakiura/Unung-Sigite ---

MR KETAN: Commissioner, it should be annexure E.

COMMISSIONER JEREWAI: E?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Exhibit E, Pomata/Ralopal/Nakiura/Unung-Sigite and the respective portions, being those SABLs.

**[EXHIBIT E – ANNEXURES A, B, C & D, TOGETHER WITH
AFFIDAVIT OF MR TUBAL –
POMATA/RALOPAL/NAKIURA/UNUNG-SIGITE]**

Proceed, Counsel.

MR KETAN: Thank you. Commissioner, in terms of my questions I have, that is the question. What they have done is given us copies of their files it seems of the land investigation reports and schedules of owners. And so we can – we have some of those documents in the documents that we have referred to in him and these are copies from his file so if I can, just for the record, just mention what is produced. The first one beginning with the recommendation as to alienability which is his own document and is recognized, dated 03 January 2008, that is in relation portion 196, Pomata and then with the other land

investigation documents. The next one is in relation to portion 198C, which is Nakiura Limited, same ---

COMMISSIONER JEREWAI: That is jumping over Ralopal, yes.

MR KETAN: Yes, that was the next document so I mentioned that. The next bound document is portion 197C which is Ralopal and then the last one is in relation to Unung-Sigite, portion 27C. So we will accept those documents.

THE COMMISSIOER: Yes, could we just have him tender those documents? You have mentioned them, they are in the transcripts and they will come in as combination of all the documents which will be exhibit F.

10 MR KETAN: Yes, exhibit F.

COMMISSIONER JEREWAI: Exhibit F. All of those portions with their respective names, Pomata, Ralopal, Nakiura and Unung-Sigite.

MR KETAN: Yes.

COMMISSIONER JEREWAI: All right, that is accepted as tendered by Mr Tubal to be exhibit F, Pomata, Ralopal, Nakiura, Unung-Sigite with their respective portions. Proceed Counsel.

[EXHIBIT F – BOUNDED DOCUMENTS - POMATA, RALOPAL, NAKIURA & UNUNG-SIGITE]

MR KETAN: Thank you for coming, Mr ---

20 COMMISSIONER JEREWAI: I have a couple of questions.

MR KETAN: Very well, Commissioner.

COMMISSIONER JEREWAI: If you may sit down I will just take Mr Tubal through couple of these questions. Mr Tubal, very imperative is the oversight of the responsible department of each provinces when it comes to processing applications for SABLs. You understand that?

A: Yes.

Q: And therefore, the oversight that must be applied as administration head of your province must be sufficient if not complete satisfaction as to particularly the consent of the landowners. You can appreciate that, Mr
30 Tubal?

A: I do.

Q: If you can answer with voice so that it is on the transcripts records. Therefore, you will be able to appreciate that if this Commission of Inquiry should determine on facts that willing and participating consent had not been given to any of these Special Agriculture Business Leases, then they may constitute an irregularity which may result in their nullity? You do appreciate that?

10 A: Yes, I do. As I said during those investigations, there are processes and there are institutions that are there to check and normally we hear from. You have a ward and normally a ward is an area where those things are. Even a local level government which normally the ward councilors do attend and in the end it comes through provincial assembly and we have quarterly assembly meetings. Normally, those are some of the things that I also hear from, if there are any grievances or any issues with regard to land in those areas.

Q: Very good. It should be borne in mind that sometimes forces beyond your immediate official attention may become involved and affect these processes. And that you appreciate?

A: Yes.

20 Q: Thank you. With that I want to thank you that you have given up your very invaluable time to have come to give evidence before this Inquiry and provide us all the official material, including documents that are necessary, including your own statement so as to place number one, the reason your government; the provincial government of East New Britain supports the SABL process in uniformity. And number two, your participation, however, it may have turned out that the Inquiry might find for or against later. So Mr Tubal, thank you very much for your time given up for this Inquiry this morning.

30 A: Thank you. Chairman, I just got one more and that is for – I was also specifically asked on Rera.

MR KETAN: We will ---

A: That is my affidavit.

Q: We will deal with Rera later in the week. We will communicate with your legal officer and then we will let you know, but she will do a copy and give it to us.

A: If I could just hand it over and then I will ---

COMMISSIONER JEREWAI: You could hand it over without actually proceeding by way of tendering of evidence at this stage, Mr Tubal. Thank you.

A: It is just the same process and my statement will be the same with regard to this one so Chairman, if you allow I will present my affidavit.

10 Q: Please, you can present that over to Counsels. And Counsel, our procedures allow for documents we receive in advance?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Thank you. So for the transcripts it is noted that Mr Akuila Tubal, Provincial Administrator of East New Britain Province, at the conclusion of his evidence, whilst this matter we are proceeding with relates to Pomata, Ralopal, Nakiura and Unung-Sigite, he has brought documents relative to the SABL involving Rera Holdings and had submitted those documents to Counsel which have been received, which contain documents probably similar to the ones we have received formally, that had
20 been tendered in respect of the administrative processes attended to for the issue of the Special Agriculture Business Leases, in respect of Pomata, Ralopal, Nakiura and Unung-Sigite. That is noted on the records. Mr Tubal, thank you very much. You may step down.

A: Thank you.

THE WITNESS WITHDREW

10.44 am] MR KETAN: The next witness will be Mr Puipui Tuna.

COMMISSIONER JEREWAI: Mr Puipui Tuna, kindly take the witness seat.

30 **PUIPUI TUNA, Sworn:**

XN: MR KETAN

Q: Mr Tuna, your full name is Puipui Tuna?

A: That is right.

Q: You were the main Lands officer conducting the land investigations into what is now become portions 196, 197, 198C and 27C, land known as Pomata, Ralopal, Nakiura and Unung Sigite?

A: That is right, sir.

Q: You were served with a summons, you are responding to that. If you look at your summons, the schedule to the summons ---

COMMISSIONER JEREWAI: Are you still with the lands division ---

10 A: Yes, that is right.

Q: What is your position right now?

A: My position is the customary lands officer.

Q: Customary lands officer?

A: Yes, that is right.

Q: With the East New Britain Provincial administration?

A: With the division of Lands, East New Britain Provincial Government.

Q: Very good. All right, please proceed. I just want to know.

MR KETAN: If you look at the summons we have served you, there are – we have set out a number of areas in which we would like you to give evidence of.

20 One, is to give an account of the land investigation and report for the portions of land that I have referred to, the grantees of the SABLs on that Pomata Investment Limited, Ralopal Investment Limited and Nakiura Limited for portions 196C, 197C and 198C, respectively. We would also like you to give an account of the investigation you conducted in relation to portion 27C land granted to Unung Sigite Limited. There are other areas that we might ask you questions of. So, firstly, in relation to the reports that you conducted for in relation to the Pomata Limited matter - I will just show you a document. Commissioner, did we – would you like a copy of the documents?

COMMISSIONER JEREWAI: It will be useful. Right now I am sitting here with nothing.

MR KETAN: The document that I have shown you; the first one is your – that is your report, is it not? The one that I gave you? The first one that was given to you?

COMMISSIONER JEREWAI: Which SABL is that in relation, all of them?

MR KETAN: Pomata.

COMMISSIONER JEREWAI: Pomata.

MR KETAN: The first document, that one. Is that the report you compiled or
10 you can have a look at the other document?

A: This is the report, this one.

Q: This is the report?

A: Yes.

Q: If you could just, as I have referred you to your summons, summons that we served you, if you just give an account of how you conducted the investigation, example as to how you identified the owners of the land and the boundaries and that is not necessarily – I mean, you can refer to the documents but if you could just give very brief account of how you conducted the investigation?

20 A: Normally, there is an application submitted to the Lands Department and then instruction to the Provincial Administrator.

Q: Who asked you to provide the – who asked you to conduct the investigation?

A: That is the instruction from Lands Department.

Q: In Port Moresby or?

A: In Moresby. In respond to the application by the landowner company the Lands Department determines whatever in the application.

Q: They determine what you do?

A: No, they instruct the division of Lands through the Administrator's office to conduct the land investigation report.

Q: If you look at the document, the report which begins with the title, 'Field Notes – Land Investigation Report Field Notes.'

A: Yes.

Q: You say that, in the second page, ownership, paragraph A, the land tenure system or customary, rather, that is a land under matrilineal system. Paragraph A on the second page.

A: That is right.

10 Q: Because the evidence is going to be recorded, if you could speak into the mic every time you are answering that be good so it can be recorded. In B, you also state that the land rights are acquired – the means of land rights acquisition is by matrilineal descent from common ancestors.

A: That is right.

Q: In paragraph F, you have listed the names of villages that you visited. Is that village called Kaiton? You see Kaiton, K-a-i-t-o-n? You are familiar with the area where the logging camp is of the company at the moment?

COMMISSIONER JEREWAI: Near Drina log pond.

20 MR KETAN: Yes.

A: That is right.

Q: One of those villages there is Kaiton, K-a-i-t-o-n?

A: That is right.

Q: And that is the village that is situated opposite the jetty?

A: That is right.

Q: Did you, of all these villages, how did you – did you go into the villages and talk to people or did you call public hearings or did you investigate, like house to house or how did you conduct the ---

A: The investigations, first of all, I dealt with the chairmen, the chairmen of each ILG and we drew up a program to enter into the villages. And by visiting each central villages that would be all right for me to conduct the land investigation. And the village closest to Kaiton was Pomai.

Q: What is the name?

A: Pomai, Pomai village.

0.58 am] That is where I did the land investigation report.

Q: What is its full name, Pomai?

A: P-o-m-i, Pomi.

10 Q: Did you go into those villages yourself or you had those guys going in?

A: No, I went with the team, the landowners, chairmen and we went up to from Pomi, conducted the awareness and then we conducted the land investigation. But for the information of the Commission, there was some incident that had happened there and I had to leave them.

Q: Was it at Pomi or at Kaiton?

A: At Pomi village. An incident that happened to, like, disputing themselves. So I had to leave them. That is a central location of ---

Q: Sorry, Commissioner?

20 COMMISSIONER JEREWAI: Counsels, I do not seem to have anything on Pomata. I have all the others. Let us just sort this out first.

MR KETAN: Yes.

COMMISSIONER JEREWAI: I am the one who is going to make some fact findings and I am missed with documents. But it might help if you indicate if there was a land investigation report for all four of them put together or there were separate ones in relation to each SABL.

MR KETAN: I think we had separate files created for them. This is the ---

COMMISSIONER JEREWAI: But is that not the one you are referring to while dealing with the witness?

MR KETAN: Yes, that is ---

COMMISSIONER JEREWAI: All right, that is extra, is it not.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Because I would prefer you have yours and you proceed with. And I can always look at them later. Thank you. Proceed Counsel.

MR KETAN: Mr Tuna, what was that problem, do you know what that problem was?

A: It was a dispute among the parties; the landowners.

10 Q: Dispute as to the land or ownership, or as to the project or what was the nature of dispute?

A: In fact, it was a dispute amongst the landowning group disputing that area.

THE COMMISSIOENR: Is that in relation to the proposed SABL over Pomata?

A: That is right.

Q: Over Pomata?

A: That is right.

Q: We have to be very specific because we are dealing with four and if you are speaking of Pomata, you say that dispute is in relation to Pomata.

20 MR KETAN: I will just show you a map. If you can hold that up and point out to where the meeting was and then there is other villages like the village I mentioned, Kaiton which is towards the south-east from where you were.

COMMISSIONER JEREWAI: Where is the Drina loading area; the base camp, Drina base camp? Can you show it please? That is the starting point so that we can follow you. Hold it up and point it to us. The Associate will hold it for you, you look at it and point it to us. Thank you Mr Tuna.

A: It is here, logging camp.

Q: Right, okay. The village, Counsel.

MR KETAN: The village where the meeting was held is up the top here. And then the other village Kaiton that I have mentioned is up the top there, here.

COMMISSIONER JEREWAI: Right.

MR KETAN: And then the other village Kaiton that I have mentioned is down here ---

COMMISSIONER JEREWAI: Let us just, hold on there. Now, that is approximate distance from Drina, what would be the approximate distance, about 10 kilometers?

MR KETAN: Yes, maybe 10 kilometers.

10 COMMISSIONER JEREWAI: Approximately 10 kilometers.

MR KETAN: Yes.

COMMISSIONER JEREWAI: The other village is across the inlet, the name of the village, Counsel?

MR KETAN: Kaiton.

COMMISSIONER JEREWAI: Kaiton is across the inlet from Drina loading area?

MR KETAN: Yes, just across from Drima, yes.

COMMISSIONER JEREWAI: And that is about one minute boat ride to Drina log pond. Right, go on.

20 MR KETAN: Yes. The meeting – were you at the meeting, people from all the villages in the project area at Pomata ---

A: That is one of the village which according to the chairman that I was arranging and conducting all these meetings, that was one of the central village.

Q: Central village.

A: And the other village was at Totompal and the other village was at Malmal.

Q: Malmal?

A: That is right.

COMMISSIONER JEREWAI: And who organized all these meetings?

A: We organized it through the chairmen; the chairmen of the ---

Q: Through which chairman? You have to be very specific.

A: The chairmen of the respective ILGs, clan.

Q: Be very specific. And how many ILGs are there for Pomata proposed SABL? Counsel, suggest the number to the witness. How many ILGs?

A: I got it at 18; 18 ILGs.

Q: For Pomata alone?

10 A: For Pomata block.

MR KETAN: Pomata alone there is about 18 ILGs.

A: That is right.

COMMISSIONER JEREWAI: That is confirmed by the witness?

MR KETAN: Yes.

COMMISSIONER JEREWAI: And they organized these meetings.

A: That is right.

Q: And they were public meetings?

A: That is right.

Q: Attendance which was by all the villages within the Pomata SABL block?

20 A: That is right.

Q: In your, you believe it was?

A: As I said there were three or four villages that were more central in their locations. So that is where the villages that I conducted the land investigation report.

MR KETAN: Just ---

A: The first one was at Pomata.

Q: You have mentioned there was some argument which after which as a result, which you left.

COMMISSIONER JEREWAI: We will come to that Counsel. Just establish the meeting, get to the conduct of the meeting, disagreement arising and we will get through.

MR KETAN: At the meeting when all the people came together ---

COMMISSIONER JEREWAI: Name each place, Counsel, I will just take over a little bit here. Name each, which village did you start with with the first meeting?

A: The first village was at Pomi.

Q: Pomi. Was there any argument arising at the time you held the meeting there?

A: As I said, there was an incident or arguments over the clan members.

Q: Describe it, this is a very important aspect, describe it completely.

A: The clan members were disputing each other in terms of the ownership and also the project you know, development that was to come.

Q: Ownership meaning that they may not have agreed to their land being part of the SABL?

A: Some factions of the clan were not agreeing to the other factions of the clan.

MR KETAN: Were they arguing with each other or arguing with the chairmen?

A: Arguing with each other.

Q: They were exchanging ---

A: That is right.

Q: Exchanging arguments?

A: That is right.

COMMISSIONER JEREWAI: Go to the next village, where did you go next?

A: Okay, after leaving that particular case there to cool down a bit and ---

Q: Which village did you go next?

A: I went on to Totompal.

MR KETAN: Tontompal?

A: Totompal.

COMMISSIONER JEREWAI: And that meeting at that village was organized by?

A: Through the chairman.

Q: Chairman of which ILG?

10 A: The chairman of the ILG of that respective area by the Totompal villagers.

Q: What transpired in that meeting there?

A: It was a good meeting, people agreed to go into the declarations of custom and also the schedule of owners and with the assistant from the chairmen of the particular ILG that was assisting. Thank you.

Q: So there was no dispute or argument?

A: No, not like ---

Q: Or disagreement?

A: No.

20 Q: In that meeting?

A: No.

Q: Then where was the next meeting, you mentioned four, so that is second, third meeting.

A: The next meeting was at Malmal village.

Q: And what transpired there, what took place there?

A: It was like Totompal, it was a good meeting. And then I was recalled back to Pomi because the sort of agreement reached at that time so I had to go back.

Q: No, I do not want you to return yet to Pomi. Let us just stay where you are at the third village first. There was no disagreement?

A: No.

Q: And so meeting concluded with basically everyone agreeing to their land being involved in the project or involved in the SABL?

A: That is right.

10 Q: And then you received word that there was agreement reached at the number 1 village where you conducted the first meeting?

A: That is right.

Q: All right, so you went back. What happened when you went back?

A: I got the information from the chairman that they have settled the argument that came up at Pomi.

Q: Yes, I understand that. Now, when you went back what transpired, when you reached the number 1 village; Pomi?

A: It was like, normal ---

Q: Everything resolved?

20 A: Normal situation, the problem was solved among ---

Q: No, we must not hear normal situation. We want to know if the dispute was resolved?

A: To my own judgment the dispute was okay, was resolved.

1.07 am] Q: Mr Tuna, these meetings are all about agreement to be involved or rather to involve customary land in the proposed project in the Special Agriculture Business Lease. So it is not a question of you determining if they look like they have agreed. I want to know for certain they settled their differences or not?

A: The particular chairman of the particular ILG came up to me with the disputing parties saying that they already settled the dispute.

Q: Did you yourself inquire at large with the people who were present?

A: Well, I had to make myself comfortable and satisfied that this is what ---

Q: My question is, did you yourself inquire at large meaning, announced to the people, is that true this agreement has been reached?

A: Well, that is what I ---

Q: Did you do that or not?

A: That is right.

10 Q: All right, and then number four meeting?

A: That is the land investigation was conducted.

Q: That concluded all the meetings?

A: That is right.

Q: In other words, the first village was visited twice?

A: That is right.

Q: Counsel, take it on from there.

MR KETAN: The village that you visited twice is actually the second village. I think that is the second village. The first village was Pomai and then you went on to Tontolpal, from there you went to Malmal ---

20 COMMISSIONER JEREWAI: Then returned to Pomai?

MR KETAN: Did you go to Kaiton village?

A: According to the chairman, sorry, this was the central location for all the villages to access the central location.

Q: So you ---

COMMISSIONER JEREWAI: Counsel ---

MR KETAN: So everyone else came to those selected villages?

A: No, sorry, council, I did not select it. It was ---

COMMISSIONER JEREWAI: No Counsel, it would be unfair. Let me interject.

A: It was arranged through the chairman. I was walking with ---

Q: Witness, I am speaking. Counsel, it would be unfair. We visited physically on Sunday 30th. The first thing, on the questions issued was that the village you just called now Kaiton was not, the people there did not initially become involved but they later agreed to become involved. So in all fairness to the, he is not from there. We have done our site inspection. We have questioned a few people and I would like us to be straight with this. What we discovered on the ground must be related precisely to the witness. Let us not run rings around him.

MR KETAN: Commissioner, all these villages are named as having visited not four. This is in his report. In his report he visited Toltel, Irina, Poro, Salele, Pomal which he mentioned, Mu, Rowan.

A: That, sorry, can I further explain on this, this particular – can I?

COMMISSIONER JEREWAI: Counsel, are we still on the meetings he has held? He is identifying the meetings he has held. You can come to the other village later and ask him as to why he had not gone to those villages. Let us just be focused on what we are doing. We are still on where he held the meetings. So far he has mentioned that he had been to four villages only.

MR KETAN: Mr Tuna, at those meetings, did the people fill out the forms in your presence or you left the forms and went away?

A: I was present with my – with the land chairmen and these respective chairmen ---

Q: Respective chairmen.

A: Chairmen and the executives, they were of assistant to me. And I was more or less like supervising in those, mainly the land tenure declarations, customs. That is very important in my work.

Q: That is everybody, not just man and boys; women and ---

A: It is certified by what I have written, I mean, the report.

Q: That schedules of owners as to the landownership and those names there, they are names of, in some of them, there is no real indication as to whether they are females or males. But where those forms, those ones you say were filled in your presence and then signed, if you can just indicate what those forms are?

A: The declaration in relation to custom under schedule of owners.

COMMISSIONER JEREWAI: Counsels, Mr Ketan, I just realized that we may be pounding this witness and if I may suggest that we go to the ILG witnesses who may give evidence both for and against and then we come back to this
10 witness. So that what they say about his conduct of the meeting can be put to him. Could we just rearrange this?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Will that be all right with you? We have a short adjournment of at least half an hour?

MR KETAN: Yes.

COMMISSIONER JEREWAI: And we stand Mr Tuna down and have the people here held the meetings with, particularly the ILG chairmen appear as witnesses first and then we come back to him as the official. It may make our line of questioning a bit more easier because we are going to in effect be
20 comparing what the landowners are saying with what the official did on the ground.

MR KETAN: Very well.

COMMISSIONER JEREWAI: Can we adjourn for half an hour and reorganize in that fashion. I am just so mindful of the fact that we have very limited time and these are the most controversial of all the SABLs throughout the country we are looking into.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Particularly, when there have been confrontation between the people themselves, not only in relation to Pomata but
30 perhaps in relation to the other two. Not so much Unung-Sigite at this stage, but particularly, Ralopal and Nakiura. So could we adjourn for one hour, please consider my proposition and rearrange the witness.

MR KETAN: Yes, very well.

COMMISSIONER JEREWAI: Let me explain. Just looking through this relative documentation that is usually attached to the land investigation report, we have the list of all the clans there. Then underneath the list of clans are the ILGs. And after that we come to all the people who signed, most probably in those meetings in the documents called declaration of custom in relation to land tenure and there of course, is the other document that is the declaration of one sort or another also relative to land ownership.

MR KETAN: Yes, boundaries and ---

10 COMMISSIONER JEREWAI: And possibly agency. We might plod through this thing quicker if we go the other way and get these witnesses from the land groups in first and then get the official to come up and verify all these things with the official documentation as per the attendance he is referring to so far. Let us adjourn for half an hour. Associate, adjourn the Inquiry for half an hour. You stand down on oath. Thank you.

THE WITNESS WITHDREW

SHORT ADJOURNMENT

20

12.02 pm] MR KETAN: Commissioner, the ILG chairmen also appear to be the chairmen of the landowner companies. So those are the people in support of the project. From the side of the people who are not supporting the project, we have two representatives; one, a male and another female. The male one, but they are only, the oppositions are only in relation to Pomata and Ralopal.

COMMISSIONER JEREWAI: Ralopal?

MR KETAN: Yes. So they will be giving evidence.

COMMISSIONER JEREWAI: Thank you. Because Mr Puipui Tuna is a public official and the likelihood of him not returning to the witness stand this
30 afternoon, perhaps we could ask him to come back tomorrow morning.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Mr Puipui Tuna. Can you please approach the witness seat again? Mr Tuna, thank you very much. But in light of very limited time that this Commission of Inquiry has and in an attempt to see if we can wade through all the relevant witnesses and also balanced so that we not only hear one side, I have sought for Counsels to rearrange so that you return after the representative landowners, both sides, those opposed and those in support of this, particularly two SABLs, Pomata and Ralopal, give evidence first. We may have taken most part of your day so I would like to excuse you to step down until tomorrow morning. Would that be all right with you?

10 A: That is all right. Thank you very much.

Q: I appreciate that Mr Tuna. So you may step down and you return here at 9 o'clock tomorrow morning.

A: Thank you.

Q: Thank you. Yes, Counsel. Counsel, I notice it is 12 o'clock but I would like us to, if you do not mind, we proceed through the lunch hour and we adjourn at 1 o'clock to approximately half past 2 to quarter to 3 to return.

MR KETAN: Very well. If we can start, Commissioner with the people who are opposing because there are only two, except that we have had communication with Celcor lawyers. When we called for submissions back in
20 Port Moresby, they had made submissions and they filed with us a large, one of this big bound documents which includes some court proceedings that they filed on behalf of their client.

COMMISSIONER JEREWAI: First of all, I would be interested to know if their submission includes any issue of sub-judice.

MR KETAN: We have not been approached ---

COMMISSIONER JEREWAI: There is someone answering yes in the audience somewhere. Did I hear someone answer yes when I raised the issue of sub-judice? Could you come forward? Let us keep moving. Let us be relaxed on how these things are presented.

30 MR KETAN: Yes. The lawyer is Mr Thomas Imal but he might know where he is.

COMMISSIONER JEREWAI: Please, sit down and state your name and in relation to only this question of sub-judice, kindly explain to us where you are with it.

MR PAGOVE: Yes.

COMMISSIONER JEREWAI: Your name, first.

MR PAGOVE: Yes. Your Honour, my name is ---

COMMISSIONER JEREWAI: No, do not call me your Honour. I am not a judge. I am a Commissioner in the Commission of Inquiry so just call me Commissioner.

10 MR PAGOVE: Commissioner, I withdraw that remark. Thank you. My name is Bruno Pagove. I am doing the day to day management of the holding company; Memalo Holdings Company and I am based in Kokopo and my job is mainly to coordinate between all the stakeholders involved in this project. I coordinate with the provincial administration, the Governor's office and the various lead agencies in the province and also Forestry and DEC in Port Moresby.

COMMISSIONER JEREWAI: Thank you. In other words, you coordinate these combined SABLs?

MR PAGOVE: That is right, thank you.

20 COMMISSIONER JEREWAI: With regard to the issue of sub-judice ---

MR PAGOVE: Yes.

COMMISSIONER JEREWAI: To which you responded, what is your position on that?

MR PAGOVE: Yes. The opposing team has taken the project to court, all the parties involved in the project, that is the National Government or the State and I think the Secretary for Lands ---

COMMISSIONER JEREWAI: Cut out all the parties. I am not interested to know all of them. So they took the matter to court?

30 MR PAGOVE: Yes. And the National Court has heard the case and in the motions, one of the motion was for the State and the other stakeholders to

provide all the documentation so that the other party can, in fairness, the other party can have access to the documentation. So we provided all the documents and then the National Court made a ruling on the motions. And the motion that is of importance to us is the motion that they applied that the National Court stop the operations. That was one of the motions. The National Court in its decision stated that that motion was refused.

COMMISSIONER JEREWAI: The motion was for an injunction to ---

MR PAGOVE: To the operation.

COMMISSIONER JEREWAI: Prevent you, the umbrella company, Memalo
10 Holdings as well as Gilford to continue with the project?

MR PAGOVE: That is right.

COMMISSIONER JEREWAI: Which is also inclusive of forestry operations?

MR PAGOVE: That is right.

COMMISSIONER JEREWAI: And the National Court refused that application for injunction, in other words?

MR PAGOVE: Precisely.

COMMISSIONER JEREWAI: Now, where does that leave the court proceedings?

MR PAGOVE: The ---

20 COMMISSIONER JEREWAI: In the main, the main court proceedings?

MR PAGOVE: A Queens Counsel was engaged and the matter was taken up to the Supreme Court for deliberations on the ---

COMMISSIONER JEREWAI: On the ruling of the National Court refusing the injunction?

MR PAGOVE: That is right, and refusing, in a sense that the National Court judge should have made a decision on the spot that the, I mean, he should have dismissed the case. That was the application to the Supreme Court.

COMMISSIONER JEREWAI: Who appealed, Memalo Holdings?

MR PAGOVE: That is right, yes.

COMMISSIONER JEREWAI: Their appeal was on the basis that the National Court on refusing the application for injunction ought to have dismissed the whole action as well?

MR PAGOVE: Whole action, yes. So it is up with the Supreme Court.

COMMISSIONER JEREWAI: All right. And that is from the stand point of the umbrella company Memalo Holdings?

MR PAGOVE: That is right.

COMMISSIONER JEREWAI: Which, yes, thank you. I think that sufficiently explains that. Just remain there, Counsel will look through what we have here
10 in terms of documents.

MR KETAN: The motion, I think was – that he is referring to was for leave to be granted to the plaintiff for judicial review of ---

COMMISSIONER JEREWAI: It was not an injunction?

MR KETAN: Yes.

COMMISSIONER JEREWAI: But injunction may have been part of the application for leave pursuant to rule 8 or 7 of order 16 of the National Court Rules?

MR KETAN: Yes. But Mr – the Celcor Lawyers have nonetheless cooperated with us and provided this information. But they were going to be present, I
20 think today but for reasons unknown to us they are not here. So ---

COMMISSIONER JEREWAI: To mainly draw our attention to the matters before the court?

MR KETAN: And I think to assist the ---

COMMISSIONER JEREWAI: And of course, other ---

MR KETAN: Assist the opposing parties.

COMMISSIONER JEREWAI: Yes. There is a man putting his hand up at the back. He may have an explanation as why Celcor lawyers are not here. Please come forward. Kindly step down, thank you. I appreciate your assistance. We have got a clearance on that.

Yes, I would prefer you sit there. State your name, please?

MR IMAL: For the record my name is Thomas Imal from Celcor Lawyers.

COMMISSIONER JEREWAI: Thomas?

MR IMAL: Imal.

COMMISSIONER JEREWAI: You are from Celcor Lawyers.

MR IMAL: From Celcor Lawyers.

COMMISSIONER JEREWAI: He is a lawyer from Celcor Lawyers. All right, could you kindly explain? You have provided a lot of documentation with regard to the issues you have taken up on behalf your clients. I assume your
10 clients are mainly those opposed to the project involving, particularly, Pomata Investment or SABL that Pomata has title to as well as Ralopal?

MR IMAL: That is right, that is correct.

COMMISSIONER JEREWAI: What is your view regarding us proceeding with the inquiry into those SABLs?

MR IMAL: Commissioner, we had, Celcor Lawyers had discussion with the lawyers on record for the logging company as well as the Lands Department, Baniyama Lawyers. They did not specifically raise the issue of sub-judice. The current status of the proceedings is that Gilford together with Memalo Holdings have appealed to the Supreme Court against the order granting us leave to file
20 judicial review. At this stage, the Supreme Court hearing is yet to be given a date, a date is yet to be set for ---

COMMISSIONER JEREWAI: And all other steps be taken to prosecute the appeal?

MR IMAL: Yes. But our discussions – we reached an understanding that the Commission of Inquiry would proceed as an administrative process on its own, fact finding mission only. And we ---

COMMISSIONER JEREWAI: And in fact for that matter, it may even assist --
-

MR IMAL: It may assist and clarify all the issues involved.

30 COMMISSIONER JEREWAI: Either way, yes.

MR IMAL: So there was no issue as to sub-judice between the lawyers themselves. So that is the position that ---

COMMISSIONER JEREWAI: What about the instructions from your clients, any idea? You obviously will speak on behalf of your own client.

MR IMAL: Yes.

COMMISSIONER JEREWAI: But are there any confirmed instruction as to the wish of the people you represent?

MR IMAL: Sorry Commissioner, I mean, they would like the Commission of Inquiry to ---

10 COMMISSIONER JEREWAI: Are they happy with the Commission of Inquiry proceeding?

MR IMAL: They are happy with the Commission of Inquiry proceeding.

COMMISSIONER JEREWAI: Counsel, that is noted that there is really no objection to the inquiry into the administrative processes and other relative matters with regard to the validity of the issue of these SABL leases.

MR IMAL: That is correct Commissioner. Commissioner, I am only here just to assist them but primarily that is for them, that hearing is for them so they would be presenting the evidence on their own accord.

20 COMMISSIONER JEREWAI: I appreciate that Counsel. I can indicate to you that when they are giving evidence, if you would like to approach the bar table and seek and assist them rather than sitting back among the audience, you are most welcome.

MR IMAL: Thank you Commissioner.

COMMISSIONER JEREWAI: Very well, thank you. You may step down.

MR KETAN: Commissioner, before Mr Imal is excused, he has sworn an affidavit on 1 September 2011 and lodged with us at the Port Moresby office, annexing a lot of documents including common documents like the land investigation report and some reports, the copy of Memorandum of Agreement in relation to block 1, block 2 and 3 with the landowners, and a whole lot of
30 other relevant documents. It also contains copy of the Lease - lease Back Instrument and what I know there is very useful documents, which we can

consider which are annexed to his affidavit. If I can get him to, through him, if I can formally, if we can accept that, tender it and accept it and he can be excused. Two of his clients are here to give evidence which we can take their evidence in addition to the documentation that they have ---

COMMISSIONER JEREWAI: Yes. First matter, I want to be on record as noting is that obviously the documents he had copied are documents he was not himself author of but we are not bound by strict rules of evidence under the Commission of Inquiry Act and we are entitled to receive any documents that are of relevance. And those documents you have mentioned in my view, are of
10 great relevance and they also comprise of official records that he had been able to access. Therefore, Mr Ketan, you can have him formally sworn and have him tender that affidavit if you wish to right now, while he is here at the bar table or rather sitting at the witness box.

MR KETAN: Yes.

THOMAS IMAL, sworn:

XN: MR KETAN

Q: Your full name is Thomas Imal, Imal spelt I-m-a-l?

20 A: That is right.

Q: You are from Celcor Lawyers?

A: That is correct.

Q: You have sworn an affidavit ---

COMMISSIONER JEREWAI: Before you go to that. You are a lawyer by profession?

A: That is right.

MR KETAN: You have sworn an affidavit on 1 September 2011. Could you, just leaving the annexures, if you can remove the body of the affidavit from the arch file and hold it up and indicate to the Commissioner, ust indicate where
30 you signed and ---

COMMISSIONER JEREWAI: The statements you have sworn on that affidavit?

A: That is right.

Q: And at the end of which you signed before a Commissioner for Oaths?

A: That is right.

Q: Hold up the document and show me where you signed and where the Commissioner for Oath signed. You signed on the right?

A: That is my signature on the right and that is Lynette Batari-Pokas.

Q: On the left underneath is the Commissioner for Oaths?

10 A: Is the Commissioner for Oaths.

Q: And annexed to that affidavit are all these annexures?

A: That is right. The whole annexures are in here, this folder here.

Q: And how many of them are there? Can you quickly go through them, indicate without having to dwell on the complete description because we will be able to read them ourselves.

A: I annexed ---

Q: How many annexures, first of all are there? Just look through your affidavit and count them from your affidavit.

MR KETAN: Commissioner, the affidavit only refers to a submission. What ---

20 COMMISSIONER JEREWAI: Well, let him tell me that.

A: Those are the bundle of documents.

Q: There is only one annexure?

A: There is only one annexure and that is the submission.

Q: And that is annexure A?

A: Yes, that is annexure A.

Q: And that annexure A is the entire submission?

A: It is the entire submission and contains ---

Q: Look at the submission. Have you got it in a content form?

A: Yes. I have with the annexures labeled on it. It may have been rearranged and the annexure page is taken out. That is right. And the table of submissions, Commissioner, it is contained---

10.23 pm] Q: Go through the, it is the table you are referring to?

A: Yes.

Q: That indicates the contents underneath it?

A: That is right.

10 Q: So you just go through the table. That is all I am, that will suffice in terms of indicating what is contained in your submission.

A: Okay, thank you. The first annexure is, the points on Lease - lease Back process, that is marked as annexure A. The second document that is attached is the background information, that is marked as annexure B. And annexure C is the list of documents for each of the three SABLs, sorry, two of the SABLs; that is portion 196 and portion 197.

Q: And that is relative to Pomata?

A: And the Ralopal concession.

Q: And Ralopal. Yes, go on.

20 A: Annexure D is the IPA records for the different landowner companies including the ---

Q: Only Pomata and Ralopal or for all of them?

A: Memalo, Ralopal, Pomata plus the logging company is Gilford.

Q: Very good, next.

A: And annexure E is the court documentation for the National Court proceedings that is presently before the National Court. It is OS 153.

Q: And can you specifically specify all those documents in the court proceedings very quickly? That will be originating summons?

A: We have the originating summons ---

Q: Number?

A: The copy I have does not have a court file but it was filed on the 23 March 2011.

Q: Fine.

A: We also have the Notice of Motion that was filed on 1 April 2011. We have the statement pursuant to order 16 rule 3(2).

Q: Supporting statement of facts pursuant to order 16 rule 3(2)(A)?

10 A: That is correct. It is also filed on 1 April 2011. We also have the undertaking as to damages that was also filed on 1 April. We have the affidavit explaining delay in filing the proceedings. That is also filed on 1 April 2011. And we have the Notice of Application for leave to apply for judicial review, which is also filed on the same date.

Q: That will be addressed to the Secretary for Justice?

A: Addressed to the Secretary of and the Attorney General.

Q: Go on. Is that all?

A: We also have the affidavit of the first principal plaintiff, Paul Palusulrea, that is filed on 1 April 2011.

20 Q: That will be affidavit verifying the statement pursuant to order 16 rule 3(2)(A)?

A: That is just the main affidavit in support. We also have the affidavit of Jacob Samo, who is the second principal plaintiff, which was also filed on the same date. And the affidavit verifying facts, that is also filed on the same date. Those are the ---

Q: Those are the court documents?

A: The court documents for the National Court proceedings.

Q: All right, what is next on the table there?

A: Next on the table we have ---

Q: Sorry, before you go to that. I noted that you do not have a copy of the Notice of Appeal to the Supreme Court included among those documents.

A: Yes.

Q: It is not there.

A: No ---

Q: You mean no?

A: We did not file that. We did not provide those to the ---

Q: All right, go on thank you.

10 A: And annexure F we have the land investigation reports. Those documents were obtained from the Lands Department through an order for discovery that was disclosed today. And annexure G we have our summary of all the documents that are contained in there.

Q: Summary of all the documents you provided in the entire submission?

A: Yes.

Q: Counsel, I think that is pretty well identified and if you can proceed to have it formally tendered. Ms Peipul, you can apply the appropriate exhibit number.

MR KETAN: Mr Imal, the other volume document, did you refer that?

A: Yes. That was also part of the annexures.

20 COMMISSIONER JEREWAI: Annexure A.

A: Yes, that is right.

Q: What is that document in itself; the bulky one?

A: That is the land investigation report.

MR KETAN: Very well.

A: And there were two different land investigation reports.

COMMISSIONER JEREWAI: Understand. You are on record with the identification of all these documents. Thank you. Have him formally tender this document.

MR KETAN: Yes, I seek to tender Mr Imal's affidavit together with the – which comprises of the numerous ---

COMMISSIONER JEREWAI: Annexures.

MR KETAN: Annexures which ---

COMMISSIONER JEREWAI: As he identified.

10 MR KETAN: Which are identified by himself and identified in the table in front of the arch file which contains the documents. That would be annexure F.

COMMISSIONER JEREWAI: Exhibit ---

MR KETAN: It will be ---

COMMISSIONER JEREWAI: FG, I think.

MR KETAN: It will be annexure F.

COMMISSIONER JEREWAI: I have exhibit F already, must be G.

MR KETAN: Sorry, it is G. It will be Pomata, exhibit G ---

COMMISSIONER JEREWAI: Exhibit E was all of the submissions by Mr Akuila Tubal ---

MR KETAN: Yes.

20 COMMISSIONER JEREWAI: Relating to Pomata, Ralopal, Nakiura, Unung Sigite. Exhibit F are all the records of the East New Britain administration process processing of these named SABLs. I think this one should be exhibit G.

MR KETAN: Exhibit G, yes.

COMMISSIONER JEREWAI: Thank you.

[EXHIBIT G – MR IMAL'S AFFIDAVIT COMPRISING OF NUMEROUS ANNEXURES]

MR KETAN: Because we have been identifying them by the names of the matters, rather the portions, so it would be exhibit G - Pomata/Ralopal/Nakiura and Unung-Sigite, portion 196 ---

COMMISSIONER JEREWAI: And their respective portions.

MR KETAN: 196C, 197C, 198C and 27C.

COMMISSIONER JEREWAI: Yes. Thank you, that has been tendered and accepted as that exhibit. Any further matter to continue with?

MR KETAN: Mr Commissioner, Mr Imal has been heavily involved representing the parties opposed to the project. While we have the opportunity,
10 without any unnecessary prolonged comment, if he can in a summary just state what his clients ---

COMMISSIONER JEREWAI: Yes, Counsel, I appreciate it and I think we should---

MR KETAN: If you can state very briefly, we will see what your clients' case is when we review the documents that you have tendered. But just for the record while you have the opportunity, you state what your clients' case is. Is it to do with the land investigations problem or is it to do with landownership or is it to do with choice of projects or choice of project developers or the behavior of the managers or whatever, it is? If you can state in a three minute statement for us.
20 We would appreciate that.

COMMISSIONER JEREWAI: Yes, please.

A: Commissioner, my clients' case before the National Court is primarily to do with – their argument is that they were never consulted and no prior, proper informed consent was obtained from them prior to the grant of the SABL. So in a nutshell, they are actually questioning the acquisition of the or the grant of the SABL; portion 196 and portion 197, respectively. And their case is that there was no, the consent that was contained in the land investigation report was, the consent forms were completed by someone else. They never actually gave the actual consent to the, you know, the acquisition of the land through the SABL.

COMMISSIONER JEREWAI: In a nutshell, you are saying there was no
30 voluntary participation of all those concerned in providing the consents?

A: That is right.

Q: Go on.

A: So on that basis we have filed proceedings to challenge the decision of the Secretary and the Minister to grant the Special Purpose Agriculture Business Lease. So this is primarily our case. Although, they have concerns to do with the logging project that is going on at the moment, the primary case, the substance of the case is that their consent was not obtained properly before the SABL was granted. So they were able to obtain the documents sometime after the – anyway the court proceedings was filed and upon the court making orders for discovery then we were
10 able to get documents from the Lands Department. that was the first time that they have sighted the land investigation report and the ---

Q: That was the first time you sighted the copy of ---

A: That was the first time I sighted the ---

Q: The land investigation report.

A: Land investigation report and the Lease-lease back and all the other documents are given effect to the creation of the lease. So ---

Q: Did you attempt at any time to conduct a file search of the lands, well, files at the Department of Lands and Physical Planning?

A: Yes. Commissioner, we attempted to do a file search before the filing of
20 the proceedings.

Q: Before the action commenced?

A: Yes. And there was no – we were advised that there was no file in the Lands Department.

[2.35 pm] Q: Could you confirm, Counsels, COI Counsels, if that is among the files that were unavailable or did the Department of Lands produce the files on Pomata, Ralopal and Nakiura and Unung Sigite. Please pause here a moment, I just want a confirmation. We are an informal court. We shall not be bound by the strict procedures of the formal judicial hearings.

MR KETAN: Commissioner, they provided – the Lands Department provided,
30 both the Lands Department and the Registrar of Titles provided some

documents. There were parts of documents that were missing. In amongst them was the Lease - lease back document

COMMISSIONER JEREWAI: Instrument, yes.

MR KETAN: But we have obtained copies from the other, for example, the Department Environment Conservation.

COMMISSIONER JEREWAI: Environment and Conservation.

MR KETAN: Environment and Conservation. But from the principal agency there was no ---

10 COMMISSIONER JEREWAI: But principally land investigation report, when the file submitted by the Department of Lands and Physical Planning was given in Port Moresby during our - summonsed for production by this Commission of Inquiry, did these files contain the land investigation report?

MR KETAN: Yes, subsequently.

COMMISSIONER JEREWAI: Subsequently?

MR KETAN: Yes.

COMMISSIONER JEREWAI: Not immediately?

MR KETAN: In response to the summons.

20 COMMISSIONER JEREWAI: Which will be much later than Mr Imals, as Mr Imal has stated because they commenced proceeding before this Commission of Inquiry commenced.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Please proceed. I just want to verify this very clearly.

A: Commissioner, we did initial searches in March 2010, the documents were not available immediately until after we obtained court orders to produce documents. If probably Commission could confirm this, but there was no – to date we have not got the original copy of the title; the Registrar of Title's copy of the lease ---

Q: You have not sighted the original titles?

A: We have not sighted the original title of the ---

Q: Both; neither the Owner's Copy nor the Lands Department Copy?

A: No. The only copy that was available for us to collect was the Owner's Copy but not the Registrar's Copy of the title.

Q: Registrar of Title's copy?

A: Yes. So that is ---

10 Q: Did, in the course of your instructions, was there any expression of any willingness to participate in the project provided due processes are properly followed and the interest of your clients are properly taken into account, including also the representative capacity on the landowner company that, in whose favor title was issued? Was there any such expression at all?

A: Commissioner, probably you could rephrase your question so that – I do not quite get your question, Commissioner, sir.

Q: Well, it is very vital that we discern between what the disagreement is.

A: Yes.

20 Q: As between those who say no altogether to any form of projects to be brought on upon their land and those who are aggrieved because the natural resource is there, in terms of forestry on the land, but the manner in which the different corporate organizations have been structured ---

A: Yes.

30 Q: For their involvement are such that they feel they are marginalized in actual decision making to be part of the project. And I think that is a very great imperative and the recurrence is that it is occurring all around the country. So for lawyers who represent these landowners, it is very imperative to discern between outright objection to development as opposed to their participation through directorship, incorporated land groups and particularly where, as in this case, you have Memalo Holdings as the umbrella company and as if that umbrella company is not enough you then have in relation to each individual SABL from Unung Sigite to Pomata to Ralopal to Nakiura, individual landowner companies as well.

And under all of which you then have respective incorporated land groups having land interest in each one of those landowner companies. So for lawyers representing these kinds of different people with different or separated customary rights to their respective land comprised in those SABLs, it is very important to discern what really is the disagreement.

10 Through your instructions, and I think I should ask this. This is an opportunity. Were you able to discern what really is the disagreement? Is the disagreement against development, I beg your pardon, participation in the development of their resources or is the disagreement about the corporate structure within which all of these came together to be put together in the manner I just described for all of these four SABLs or is the disagreement being that people on the boards of directors for the umbrella company, Memalo Holdings, people on the board of directors of the individual landowner companies, Unung Sigite, Pomata, Ralopal, Nakiura disagreed to as to the composition of the board or individual ILGs who formed the core of the shareholders of this landowner companies. What is really the disagreement?

A: According to my instructions, from reading between the lines, what I could figure out is, as a general observation is that my clients, most of them the ILGs have not been included in the land investigation report and also that those ILGs who appear to be on the land investigation report are incomplete to the extent, in the sense that not everyone whose name appear to be in the ILG are the members of the ILG. So some have been in fact excluded.

Q: Some are from other places or some have been excluded?

A: Yes. And also in the ILGs, the land investigation report after it was obtained, it was forwarded to the people on the ground, the land investigation report and the representatives for each of them had to go through the land investigation report for each of the two separate to see whether those people whose names are in the - contained in the land investigation report as having given their consent. Whether they have in fact signed on those forms ---

Q: Verification by individual landowners and individual clans themselves before the reports should be submitted to the provincial administrator, for instance?

A: Provincial administration. And from my instruction it appears that they never actually saw the documentation or was not involved in the signing of the ---

Q: The complaint is ---

A: Each of the separate consent forms.

Q: The complaint is one of secrecy?

A: Secrecy and ---

10 Q: That after the conclusion of their investigation the report as compiled pursuant to that investigation was passed onto the higher hierarchy of administration without verification from the landowners through their various organizations?

A: That is basically the clients' case.

Q: All right, I am beginning to understand.

A: Also they are saying that each of the separate landowner companies that were formed are not representative of everyone within the different areas under portion 197 and portion 196. Their argument is that the proper person to, and to hold shares or to be the members or the directors and shareholders should be the ILGs and so they also have taken issue as to who the directors of the different landowner companies are. There are
20 instances that some of the members who are members of Ralopal; the landowner company are in fact from or from Pomata – landowner company are in fact from Ralopal concession areas. So there is also issues regarding who is the proper person to be on the landowner company. So those, and also basically the issues that ---

Q: The issues you encountered, yes.

A: We encountered when dealing with this matter.

Q: Was there any expressed opposition to the choice of developer?

A: Yes. My clients, they basically opposed the type of development and that is on the basis that they have existing eco-tourism projects in the area.
30 And basically oppose clear felling logging. I think the sort of confusion that I could see generally is that there was no sort of proper awareness.

Q: Counsel, do not think. I would like you to tell me what you discovered.

A: Yes. Well, I believe that the sort of the – the ongoing disputes that each of the customary landowners have---

Q: It is very dangerous for lawyers to form opinions.

A: Yes, Commissioner.

Q: State what you encountered.

A: So there was a - I mean, there is general disagreement as to how the ---

Q: In relation of question of the choice of the developer?

A: The developer and the project itself as well.

10 Q: Did they say why the choice of the developer is a real issue?

A: Yes, well, they basically opposed to the idea of logging, large scale logging and that is because they have existing eco-forestry set ups within each of their clans.

Q: Primarily because of their eco ---

A: Eco.

Q: Tourism?

A: Eco-tourism.

Q: Eco-tourism?

A: Yes. And ---

20 Q: Eco-forestry?

A: Eco-forestry as well.

Q: Eco-forestry, I assume would be one of those projects for conservation?

A: That is right.

Q: To help the western industrialized countries to consume the discharge that they are putting out from their factories.

A: Yes, it is to do with – under eco-forestry they have separate walkabout sawmills and they harvest their own timber for their own use.

Q: All right, okay. I thought you were talking about preservation of all forests for the purposes of ---

A: Not carbon trade, no.

Q: Yes, carbon trading.

10 A: There is specifically eco-forestry that is under the EU funded projects that they have. It has been existing in there for some time. And companies or organizations like Forcert, forest certification, it assist them with the – it helps them with the --

Q: And those opposed are mainly from which of the SABL comprises mainly of those who oppose?

A: Well, it is ---

Q: In your instructions?

A: It is the areas within the SABLs Ralopal and Pomata.

Q: Mainly Ralopal and Pomata?

A: Yes, and the people who are opposing are mainly landowners from the coastal regions ---

Q: Coastal areas of those ---

20 A: Yes, coastal areas.

Q: Of those SABL?

A: Yes. For those SABLs, if you look at the map, it covers areas from the coastal up to the ---

Q: I am aware of ---

A: Up to the mountain.

Q: I have familiarized myself geographically with those SABLs. You tell me and from your instructions which I appreciate ---

A: Yes, my instruct ---

Q: You would have by now identified mainly people from - let us go portion by portion.

A: Yes.

Q: Do majority of the people from Pomata - I am not saying that the minority should not be heard - I want to get a general overview first and then we will deal with the minority, whose interest must be protected as well. But ---

A: Well, my instructions are that the majority are opposing the project.

Q: Majority.

10 A: Yes, are opposing the project and the Lease-lease Back arrangement. So that is for both Ralopal and Pomata concession.

Q: Let us deal with Pomata first. And the minority who support the project, Pomata, how were they able to get around the majority who opposed it? Were you able to discern that?

A: There are a number of villages that are situated in the higher part and the villages situated on the coast. So my client's instructions are that those who actually filled out the consent forms to acquire the SABL and in support of the project are not from the coastal areas where the project is currently going on, especially the logging. So that is my instructions
20 from my client.

Q: All right, Ralopal, if you can go to Ralopal.

A: It is the same situation with Ralopal.

Q: Similar to what you have just described in relation to Pomata?

A: Similar to - that is right.

Q: Nakiura?

A: Yes, Nakiura, we do not have instructions to ---

Q: Show?

A: To act for Nakiura.

Q: We could confirm what we discovered initially in our preliminary hearings and discovery of documents by the various processes including searches. We discovered that Pomata Investment, Ralopal Investment and Nakiura Investment were deregistered from the company as company register with probably the exception of Pomata which may have been reregistered. But we are going to reconfirm that. But you may be able to assist us. Is that the situation or did you carry out any searches of these companies to determine their corporate status?

10 A: Commissioner, I only discovered that information at the preliminary hearing. I was not able to verify that with a separate search before I came over. But I intend to do that. But I am not able to comment on that.

Q: But we can verify that further later when we return. That is not something you should labour on. I just wanted to draw your attention to it in case you have some information that can cast some light on it. Unung Sigite, we have noted has no problem. It is still registered.

[12.53 pm]

20 There is another discrepancy which we discovered that I would like to draw to your attention, perhaps not a discrepancy immediately but it might be the way we are thinking at the moment; the Commission of Inquiry, that is, and which will be among the recommendation. Currently, the environmental permit had been granted to Memalo Holdings, the umbrella company, whilst the Forest Clearance Authority had been granted to Gilford Limited which is the developer. First of all, I want to say that there is nothing wrong with it if there is a full consent that that should be the structure of matters as they are. But I would like your comment if you have any instructions in relation to that or for that matter you aware of that at all?

A: Commissioner, we have noted that but our case is primary to dealing with the SABLs. At the moment we have not sort of, dwelt into the forest clearance authority.

30 Q: Those aspects.

A: Those aspects of the, yes.

Q: In round off with my line of questioning, so your clients act opposition too and therefore, the court action that had been embarked upon is to seek to nullify the title as issued in relation to all of those, particularly ---

A: Ralopal and Pomata.

Q: Ralopal and Pomata; titles issued in relation to Ralopal and Pomata which are portions 169 and 170 respectively, C.

A: That is correct, Commissioner.

Q: Is that right? Counsel, if you feel that I have covered all the ground, we do not need to continue with him.

MR KETAN: Yes, Commissioner, I think you have covered the main areas. Couple of his witnesses will also give evidence. But it may seem an irrelevant question but it does sometime help. We had a witness who was not from the
10 area in relation to another matter yesterday, but it is in – he was concerned that things were not being done properly and he came and gave evidence. Now, in your case, if you just for the record, just state like your own, where you are from, are you from here or you from somewhere else? Are you from any of the villages nearby?

COMMISSIONER JEREWAI: Or can you just ask, are you from any area from within or outside of the four SABLs concerned here?

A: I am from an area outside of the province.

Q: Where are you from by the way, Mr Imal?

A: I am from Sepik, East Sepik.

20 Q: You are from?

A: East Sepik.

Q: East Sepik?

A: Yes.

MR KETAN: Very well, thank you. I think I have no further questions.

COMMISSIONER JEREWAI: It is almost 1 o'clock and look, Counsels, I am going to propose that we resume at 3 o'clock.

MR KETAN: Very well.

THE WITNESS WITHDREW

COMMISSIONER JEREWAI: And it may be and I think I should inform the interested persons in the Inquiry room that it maybe that we may continue up until late evening.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Late evening meaning about 7, half past 7, 8 o'clock. And if security personnel will take note to arrange to ensure that there will be security maintained with regard to their attendance as well as this
10 Commission of Inquiry. And so I am going to adjourn the Inquiry to 3 o'clock in the afternoon.

MR KETAN: Very well.

COMMISSIONER JEREWAI: For us to resume and continue. Mr Associate, adjourn the Inquiry, please.

LUNCHEON ADJOURNMENT

[3.15 pm] COMMISSIONER JEREWAI: Yes, Mr Ketan?

MR KETAN: Commissioner, this afternoon we wish to call – continue to call
20 evidence in relation to the opposition to the project from people who are opposing it. We have received evidence and that from the legal representative Mr Imal.

COMMISSIONER JEREWAI: Mr Imal's second name is spelt I-m-a-r?

MR KETAN: I-m-a-l.

COMMISSIONER JEREWAI: Yes, Imal. What is his first name?

MR KETAN: Thomas.

COMMISSIONER JEREWAI: Thank you. All right, so one of the landowner representatives are opposed to the project or two of them?

MR KETAN: There are two this afternoon. We will call Philip Bailoemakia.

COMMISSIONER JEREWAI: And he is opposed to the project on which block?

MR KETAN: Associate, swear him in.

COMMISSIONER JEREWAI: Sorry.

PHILIP BAILOEAMKIA, Sworn:

XN: MR KETAN

Q: Your name is Philip Bailoemakia, is it? How do you spell your surname?
It is a long name.

10 A: Bailoemakia, B-a-i-l-o-e-m-a-k-i-a.

Q: And your village is Poro village?

A: That is right.

Q: From the Palmalmal District area in west Pomio?

A: That is right.

Q: You are one of the people opposing the project?

A: That is right.

Q: Which, is it on Pomata or which of the three blocks; block 1, 2, 3, block 1 is Pomata, 2 is Ralopal, 3 is Nakiura and then there is the Unung Sigite plantation block.

20 A: I have been asked to represent the opposing party from Pomata and Ralopal.

Q: Do you represent a group or you represent a clan or ---

A: I am representing all the members of the opposing clans, particularly those members within whose representatives are now sitting here, 30 in all.

COMMISSIONER JEREWAI: 3-0 or 1-3?

A: 3-0.

MR KETAN: Are those people here?

A: Yes, right there.

Q: If I show you this map which is a map of portion 196 which is the Pomata block and then I will also show you another map which is portion 197C which is the Ralopal block, do you and the people that you represent, do you have any claims to any of the land in those two blocks; traditional ownership that is?

A: Yes, I do.

Q: Could you, the Associate holds up, could you indicate on the map for the commissioners to see?

10 COMMISSIONER JEREWAI: Can you go one at a time? Take Pomata first.

MR KETAN: Yes, 196.

A: I am a member of Marana major clan.

Q: What is the name of the clan?

A: Marana.

Q: Marana ---

A: Major clan which is the principal - traditionally a principal landowner around Palmalmal area.

Q: Is that where the station is?

20 A: Yes. I have other sub-clan members whose land are situated close to where the logging point is at Drina Plantation, namely, Marana(matapuna), that is our sub-clan and extending to Ralopal. I do not have land there but I have my relatives who are living there.

COMMISSIONER JEREWAI: What is your clan again? What is your clan name again?

A: Marana major clan.

Q: Marana major clan?

A: Yes. And in tok ples marana(matapuna).

Q: Sorry, in brackets?

A: Matapuna. Substitute of that ---

Q: Substitute or sub-clan?

A: No, substitute of that wording ---

Q: Substitute of that.

A: Bagitupuna.

Q: Sorry?

A: Bagitupuna.

MR KETAN: Is it another name?

A: It is a name that is used if you do not want to use Matapuna ---

10 COMMISSIONER JEREWAI: Spell it, spell that other name.

A: B-a---

Q: V-a---

A: B for bravo, a for alpha, g for golf, i, for India, t for tango, u for uniform, p for Peter, u for uniform, n for November, a for alpha.

Q: Great, Bagitupuna.

A: Bagitupuna.

Q: That (marana) Matapu major clan substitutes also for Bagitupuna. Go on.

MR KETAN: Once again, if you look at portion 196 and just indicate on the map what land areas your clan ---

20 COMMISSIONER JEREWAI: Indicate any land within area demarcated on that map that your clan owns.

A: This, from here, right up this way to this river. Now, let me indicate to the Commission of Inquiry that our case ---

MR KETAN: If you can indicate some point name of a village or name of a station from what point from the south to the ---

COMMISSIONER JEREWAI: Some name that you are taking as near as to where you are indicating your clan's land is inside that portion.

A: Okay.

Q: Yes, portion 196C.

A: That is Totogpal ---

Q: Totogpal is to the south, is it not?

A: Yes, going down south of Palmalmal. And then coming to this other side

Q: Palmalmal is at the top?

A: Yes, Palmalmal is here.

Q: Yes, outside of the SABL.

10 A: Yes, Palmalmal is a State land and at the back of Palmalmal we have
Marana village there.

Q: Marana village?

A: Yes.

Q: Right. Now, indicate all of the land that you say is Marana's land?

A: Okay, beginning from Manaro, Toto River, Manaro coming down this
way to Ngelngel River following the coast back, down that way.

Q: And all of that is your major clan's that is marana (Matapu) clan.

A: Commissioner, I would like to take the opportunity to inform you that
that is my claim but it is currently under dispute.

20 Q: It is still disputed? Okay, but you lay claim to it, that is fine.

MR KETAN: If Associate, you can show him the next map portion 197 which
is the Ralopal land.

A: As I have said I have no land in there but I have my relatives and they
live at Bairaman.

Q: Your relatives, what is the relation?

A: I am related to them that my father and their father are brothers. So we
are cousin sisters, cousin brothers.

Q: I understand, correct me, I may not understand the custom here well. But I understand the East New Britain society is a matrilineal society. So is that, those relatives connected through the matrilineal linkage or ---

A: We are related in blood. We are matrilineal society but we, because we – my father and their father, they are brothers so we relate a lot. We treat us as brothers and sisters in our culture.

COMMISSIONER JEREWAI: So through that process you lay no claim to Ralopal? You do not have any claim of any interests; customary interests or ownership to Ralopal?

10 A: No, I do not have land there.

Q: All right. Go on.

[3.28 pm] MR KETAN: Use the map. We understand you are speaking on behalf of or you are just saying, you are speaking on behalf of your relatives. Indicate on that map which is portion 197 which part of that land your relatives claim?

A: The land surrounding Bairaman, to the extent that they have the land-user right over there. I would not be certain of any land ownership right.

Q: Their claim is user-right?

A: User-right.

20 Q: Yes. Thank you. I will show you a document, I think it is a petition that you and others signed.

COMMISSIONER JEREWAI: Before you come to that Counsel, I just want to be very satisfied about the representative capacity to speak on behalf of, particularly his relatives in Ralopal. Let us just dwell on this, on it a little bit longer. Is there any evidence of your relatives in Ralopal asking you to speak on their behalf in opposition to the project on Pomata and Ralopal? I beg your pardon, on Ralopal.

A: Thank you. The evidence of that is my cousin brother. He is at the back there.

Q: He will give evidence after you?

30 A: Sorry?

Q: He will give evidence after you or will he also give evidence?

A: I am just speaking on his behalf. He will not be giving ---

Q: Will he give evidence? Well, he better give evidence because I am not going to accept your evidence.

A: Yes, he will give evidence.

MR KETAN: The ---

COMMISSIONER JEREWAI: Sorry, Counsel. He is reasonably educated; I mean he has a sufficient amount of understanding that he can come and back up what you are saying?

10 A: Maybe if he is asked in Tok Pisin he can ---

Q: That is no problem.

A: He can go ahead and give evidence.

Q: I do not want language barrier to be a barrier to him telling us what is in his mind. We are all Papua New Guineans, we can understand Pidgin. It is just that we are recording all of these proceedings in English. Counsels take note, make sure he gives evidence.

MR KETAN: Yes. What is his name?

COMMISSIONER JEREWAI: If he is from Ralopal.

A: Kevin Magiote.

20 Q: All right, you can sort that out later.

MR KETAN: We will sort that out later. Just taking you back to your own clan's name. You are aware of the company Pomata Limited and the developments that are going on there. What is the basis of your opposition? Why are you opposing it? Is it because you do not want development or is it because the company that is, the formation of the company, you have problems with the formation of the company or the people involved or the development partner or what is the problem that you are complaining about?

A: The main reason for my opposing this is on the process, the process of this development taking place. In fact, I was the first guy to oppose

during the signing; the signing of the lease-lease back on 11 April 2008, because of the process.

Q: When you say due process, what happened that you did not like?

A: Firstly, if this development has to do with our traditional land, all efforts have to be given in ensuring that proper consent is acquired.

COMMISSIONER JEREWAI: Is given, proper consent is given?

A: Yes, is given.

MR KETAN: We also have heard and know of other people and it seems to be that majority of people are supporting the project. When you say proper consent
10 was not given, how were the consents of the landowners obtained? Were you present when those were being done?

A: All the time when the formulation of the project was on, I was at home.

Q: You were at ---

A: I was always at home.

COMMISSIONER JEREWAI: You were there all the time? You were there?

A: I was there. At all occasions I am travelling to town and then I would go back.

Q: So you were there all the time and you could be able to tell us why you
20 say people did not agree to giving up their land to be part of that Special Agriculture and Business Lease?

A: One of the main reasons for people objecting to give up their land for major development projects, firstly, for their subsistence; livelihood.

Q: Such as hunting and ---

A: Such as ---

Q: Gardening and ---

A: Acquiring necessary materials for houses and such as clearing new gardens for food security.

Q: I understand there is a lot of wild pigs down there, I have been told. And if you hunt down there it is very easy for you to catch wild pigs.

A: Certainly.

Q: I saw when I drove through the blocks hornbills flying around, I love hornbills, those kind of things.

A: And another reason for people object to large scale projects is the love for the environment, the waterways, the mangroves.

MR KETAN: You do not want those spoilt?

A: I do not want those spoilt.

10 COMMISSIONER JEREWAI: Let us just ---

MR KETAN: Going back to the consent, you say that no proper consent was obtained. Can you tell us what did the officials do to obtain consent and what was the problem in the way they carried out the interviews and enquiries and investigations?

A: The way officials, particularly, the project forerunners of Pomata ---

COMMISSIONER JEREWAI: Who are they? Project forerunners, who are they?

20 A: These are the company directors and these are the chairmen of the ILGs, 18 ILGs specifically. I would say that and they do not have concern for getting those consents.

Q: Getting their people involved?

A: Getting people involved.

Q: They do not have consent of their people to get their people involved in the project? Is that what you are saying?

A: Yes. In fact, I am married to a woman that is within that land area called Rorakelakal under portion 196C.

Q: 196C?

A: Yes, 196C.

Q: That is Pomata?

A: Pomata. Hence, my wife comes and my children comes from that land area, Rorakelakal.

Q: And your wife is opposed to the involvement of their land in the project?

A: Yes, because that consultation was not always there.

Q: But if she was consulted, would she agree?

A: She may have reasons for not agreeing.

Q: I did not ask you that.

A: And, sorry?

10 Q: I asked you, if she was consulted would she agree, did she indicate to you?

A: She would not agree.

Q: And her village and clan is not part of your larger clan you just called?

A: Marana.

Q: Marana (matapu)?

A: She is from Kerapuna clan.

Q: And whose land is different from yours?

A: Quite different from mine.

MR KETAN: Are those clans within the Pomata project area?

20 A: Certainly.

Q: You are still not, I mean, you are still not clear on what I was asking you?

COMMISSIONER JEREWAI: You have not clarified why you say no proper consent had been given. You have explained around the issue. Can you be more direct, explain to Counsel and myself, the Inquiry as to why you say no proper consent had been given?

A: When I say that the proper consent was not obtained, when it comes to the process of sorting this ---

Q: Do not tell me about the process. You tell me why you say they have not given their consent? I know the process. You tell me why you say they did not give their consent? Why they did not agree for their land and their people and their clan to be involved in this project?

A: James Lelalrea is the chairman of Pomata Investment Limited. In fact, he is also the chairman of the ILG who is supposed to work with them because they are closely related. This does not always take place so that they can - James Lelalrea can obtain that avenue.

Q: Counsels, I hope you are noting that. Go on.

10 MR KETAN: Just the last bit, if he can repeat that.

A: James Lelalrea can use that avenue to acquire the consent of my wife and the children.

COMMISSIONER JEREWAI: What about the others from your wife's clan?

A: That applies to them too.

Q: In the majority, if we were to say, okay, majority rules?

A: Yes.

Q: I have a clan too. If most of the members of my clan outvote me I must go with them. That is one explanation. Is there any other reason you say proper agreement of the landowners were not given for this SABL to be constituted; to be made up as it is?
20

A: Yes. And there were other reasons too.

Q: Tell me.

A: At the line agent ---

Q: Do not beat around the bush, get right down to it, tell me.

A: The line agencies that were responsible for assisting ILGs to go around and conduct proper awareness or conduct public hearings for this project of such magnitude, I feel and I see that this was not adequately done. That is what I say that, that is why I say that no proper consent was acquired. If that was done, people could have used those avenue to express themselves and indicate clearly.
30

Q: For Pomata, we have information that at least three meetings were held in three different villages. And in one village Poniar, is it Poniar village or Pania?

MR KETAN: Yes, Pomai village.

COMMISSIONER JEREWAI: Pomai?

MR KETAN: Yes.

COMMISSIONER JEREWAI: In Pomai village, twice.

MR KETAN: No, twice was at – Pomai twice and then next was at Totolbal, yes and Malmal.

10 COMMISSIONER JEREWAI: They returned to Pomai as I recalled.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Pomai village twice and that was conducted; the meetings were held in the presence of an official called Mr Puipui Tuna, the land investigation officer from the East New Britain provincial administration. Were you aware of those meetings?

A: I was not aware of those meeting. And in fact, I was not even informed about those meeting.

Q: Everyone else were there?

A: I do not know.

20 Q: Is it because you are from ---

A: Poro.

Q: Marana village which is to the north and those meetings were around the Drina area, inlet?

A: Yes. Because of the distance I would not be able to know that those two meetings were going to take place at that location.

Q: So I can take it from what you are saying that your complaint also will be that there is no sufficiency of publicity about the meetings so that you can attend?

A: Certainly.

Q: If you were to attend that meeting, you would have attended not only on behalf of your clan but also on behalf of your wife's clan, is that right?

A: That is right.

Q: Was your clan involved in that meeting?

A: Certainly not.

MR KETAN: There is another clan, Marana clan?

COMMISSIONER JEREWAI: Without Matapu added to it.

MR KETAN: There is another clan, there is a Matapuna ILG, does that ring a
10 bell?

A: Correction there, Matopuna. Matopuna clan comes under another major clan in our area Maigyan.

Q: So your clan Marana clan does not have an ILG?

A: We do not have an ILG.

[3.46 pm] COMMISSIONER JEREWAI: Did you consider registering an ILG or not?

A: Certainly, we did. We have already started the process in consultation with the chairman of Memalo, John Parulia.

Q: And Memalo is the umbrella company?

A: Is the umbrella company.

20 Q: And once your ILG is registered, are you thinking of joining up?

A: That will entirely depend on what the ILG members will have to say about that.

Q: Why is the chairman of Memalo involved in registering your ILG then?

A: That, I would not know.

Q: Well, you should know. You just told me, he is involved. Registration of an ILG is your business not his business.

A: I came in late when the process was already on.

Q: You seem to be late for everything, for the meetings and for the registration of your own ILG. No, everyone will wait for you then. Please, Counsel, take over.

MR KETAN: If you went to the meetings and assuming that you agreed to the project going ahead, would you support the project? There are a lot of people supporting it for development, to bring development into the area.

A: If I go to the meeting I would have insisted that the issues raised in there must be properly deliberated upon and properly documented so that we can have a record of what transpired in those meetings.

10 COMMISSIONER JEREWAI: Just tell me truthfully. Are you resisting this because you want to go along the eco-forestry kind of an operation?

A: No. I can go for eco-forestry project and I can accept this ---

Q: No, I am asking you now directly. You just answer me. Are you resisting this because you would rather prefer an eco-forestry type operation? You know, walkabout sawmill, one tree enough for the houses, that kind of thing?

A: Yes. I must honestly say that my preference is the eco-forestry project much environmentally friendly and people friendly and sustainable.

Q: Fair enough.

20 MR KETAN: You are aware that there were European Union funded eco-forestry projects that were already existing in small scale with the chainsaw ---

COMMISSIONER JEREWAI: Walkabout sawmill.

MR KETAN: Yes, walkabout sawmill.

A: Certainly, I am aware. I was aware of that when I was still a councilor and I was involved with the president at that time, Honourable Simon Painap to assist them in marketing of the sawn timber by one of the local man Alois Maloi.

COMMISSIONER JEREWAI: Is he related to the Late John Painap?

A: He is the relative of John Painap.

30 Q: What sort of relative, son or brother or what?

A: Simon Painap is John Painap's brother; big brother.

Q: I just want to be sure of that.

MR KETAN: His area would be Unung Sigite area not necessarily Pomata, is that ---

A: Sorry, repeat your question again?

Q: Painap, Painap's his area would be the Unung plantation, around the Unung plantation area?

A: Yes.

Q: And not Pomata?

10 A: They have some connections with the ---

COMMISSIONER JEREWAI: He did not ask you for connections. You answer straight and later you can say but he has connections. You just answer straight what Counsel is asking.

A: Yes.

MR KETAN: You mentioned connection, what connection between those people and Pomata?

A: Simon is related to some members of the clans that are in Pomata area.

COMMISSIONER JEREWAI: Has he any direct claim to any land in Pomata?

A: They have undertaken some court ---

20 Q: Has he directly got any claim to any land in Pomata?

A: Yes.

Q: Which land and under which clan?

A: Under their clan Vovo, they have managed to go through some cases ---

Q: No, I do not want to know what they managed to go through, I just want a simple answer to how he has a claim to any land in Pomata?

A: Ownership claim to a land at Salel village in Pomata.

Q: Salem, call the name of the village again.

A: Salel.

Q: Salel village and the clan in Salel village would be ---

A: Bovo.

Q: Go by which name?

A: Bovo.

Q: Vovo. Cross check that Counsels. Yes, I see it there, Vovol, Lavuivui clan, is that it? Vovol Lavulavu clan, sorry. Is that the same?

A: Bovo clan.

MR KETAN: Bovo spelt B-o-v-o. That is in the Maranapurina area.

10 A: That is right, according to that map.

COMMISSIONER JEREWAI: All right, now that brings us to where we started from. You first of all, did not, as you claim, you were not aware of these meetings being held in relation to obtaining landowner consents for Pomata SABL which is now portion 196C. Did you at any time later raise your objections and I want to know who you raised those objections with?

A: I raised my objections by having several meetings not with James Lelalrea who is the chairman but I raised them with John Parulrea on several occasions, who is the chairman of the umbrella company at his own village in Malmal.

20 Q: And did you take the issue any further than that? If you did not ---

A: I am prepared to take it with the ---

Q: No, did you take it further?

A: No.

Q: You must just answer.

A: I am sorry, sorry for – yes, I take it further.

Q: To who?

A: I came right out here.

Q: To the administration?

A: Yes, to the administration and I had an audience with the deputy governor, that time Honourable Boniface Etavo to seek his assistance to intervene so that some kind of an around table can be convened to discuss further these matters.

Q: All right, let me ask you straight now. Would you like to take your people and their land out of the SABL that comprises of Pomata?

A: Yes.

Q: Provided, you get over the dispute with the other claimants?

10 A: Yes.

Q: But you have not resolved this dispute yet?

A: Not yet.

Q: Not at the mediation level, not at the village level?

A: Not even at the mediation level or not even at the Local Land Court level.

Q: Who is the clan you are disputing with?

A: We are disputing with 18 other clans and this is a registered case with the land mediator in Palmalmal, Olman Tuaparea.

Q: Name some of the 18 other clans you are disputing with.

A: Kangalona clan (Una).

20 Q: Hold on.

A: Bovo.

Q: Hang on. Have you located the first one you mentioned?

MR KETAN: We have got Bovo clan.

COMMISSIONER JEREWAI: You know, something starting with K.

A: Kangalona.

MR KETAN: Kangalona clan.

A: Kangalona.

Q: Yes, that is number three in that list.

COMMISSIONER JEREWAI: Right, the other one?

A: Bovo.

Q: Is that at the top, number 2 or right at the top, number 1, Bovo?

A: Bovo, B-o-v-o.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Yes, who else?

A: Sere.

10 Q: Yes, that is number 7 on the list there, Counsels. Go on.

A: Manata.

Q: Manata, that is number 12 there on the list.

A: Lova.

Q: That is number 15 on the list.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Anyone else?

A: Bobo, that spelt as B-o-b-o.

Q: And in brackets it would be (Lamulavong)?

A: Yes.

20 Q: Okay, that is number 2 on the list. Is that all?

A: There are some ---

Q: Go on.

A: Commissioner, my uncle is at the back there where he was personally involved in it. He would be able to furnish the list.

Q: Counsels, take note. We may have to call the uncle. What is his name?

A: Peter, Peter Kalpage.

MR KETAN: Peter Kal ---

COMMISSIONER JEREWAI: How do you spell the second name?

A: K-a-l-i-p-a-g-e.

Q: Kalipage?

A: Kalipage.

Q: Peter Kalipage, take note of it. All right, go on, so you – that is the dispute you have with those clans you have mentioned and there could be more?

10 A: Yes.

Q: All right, some of whom you cannot recall right now?

A: Commissioner, the dispute that I am referring to took place prior to the signing on the 11th April 2008.

Q: Which is the Lease - lease back?

A: Yes, Lease-lease back signing and that has not been resolved yet to this point in time.

MR KETAN: What is the current status of that dispute? Is it before court or is it ---

20 COMMISSIONER JEREWAI: No, he has already answered that. They have not gone past even mediation at this point. I have already asked him that. Could we have him – show the map again to him of Pomata? Do you see, Mr Bailoeamkia, do you see the Drina log pond and log loading jetty down at the middle of that map there, yes. You point it out, point it out specifically. Now, across the bay is the other village. You call that village, across the inlet, rather. What is it called?

A: Kaiton there.

Q: What?

A: Kaiton.

Q: Kaiton, Kaiton village. All right, above Kaiton village is where you showed the area you said is under dispute between your clan and these other clans?

A: Between, from Nengel River, Nengel River is here.

Q: Just to the right of Kaiton?

A: Outside of Kaiton, some ---

Q: Yes, to the right of Kaiton. All that land above Kaiton and half you say are under dispute?

A: Yes, all these area.

10 Q: Do not answer at the back all of you who are saying, yes. I want him to answer.

A: Yes, all these area is currently under dispute, the area called Marana.

Q: Before I go to that question, below Kaiton, point Kaiton again? Yes, below Kaiton and two Kaiton's land operations are currently underway. I saw it from the air on my visit. That is an area you have no dispute over. I want you to confirm it?

A: I have no dispute there.

20 Q: Good. So your position would be that you rather, the dispute be resolved before any development progresses to the north of the SABL. Is that right?

A: Yes.

1.04 p.m.] Q: And that would be subject to confirmation from other members of the clans, your own clan as well as those others you say with whom you have the dispute?

A: Yes.

Q: I will read out the names you did not name even though your relative might confirm. I will read out those you do not say you have any dispute with and that is; Una clan? You know about that clan?

A: As I mentioned, yes.

Q: Answer me yes or no. If you have a dispute, you say, yes you have a dispute.

A: Yes.

Q: What about Una clan?

A: Yes.

Q: You have a dispute you mean?

A: It is a party in that 18 clan dispute.

Q: No, I want each clan. I want you to tell me about each clan. Pasigo clan?

A: No.

10 Q: You do not have a dispute with them?

A: No.

Q: No. Note that Counsels. Alo clan?

A: Yes.

Q: You have a dispute with them?

A: Yes.

Q: Oling clan?

A: No.

Q: No.

A: Yes, yes.

20 Q: If I hear any more of those persons, and Counsels take note, and security, sergeant take note, if I hear any more answers, you pick up that person and put him here before me.

What did you say in relation to Oling clan again? You have a dispute with them?

A: Yes.

Q: Olenga clan?

A: Yes.

Q: Marana clan? That is your clan?

A: Yes.

Q: Kapuna clan?

A: We are together. We are together in that.

Q: Kematana clan?

A: Yes.

Q: Opuna clan?

A: Yes.

10 Q: Are there any one from these clans who will be here to tell us that they do have a dispute and confirm with you?

A: Yes. Oling, Bovo, Olenga.

Q: Yes?

MR KETAN: Sorry, could you repeat the other clan?

A: Bovo, B-o-v-o.

COMMISSIONER JEREWAI: Olenga.

MR KETAN: Olenga?

COMMISSIONER JEREWAI: Number 9. This dispute, that is about land boundary?

20 A: Land ownership.

Q: Landownership?

A: And in there, there are land boundaries too have to be sorted out.

Q: Of course. Counsels, that takes about half of the Pomata into dispute.

MR KETAN: Yes. The witness has done a submission in handwriting in which in his verbal evidence, he has indicated and he has got them in his letters. If I can---

COMMISSIONER JEREWAI: Please, show it to him.

MR KETAN: That is the letter you intended to present to the Commission and is it true, it bears your signature?

A: Yes.

Q: The problems that you mentioned are detailed in that letter as to your disputes and the problems with the consent issue plus the areas that are covered by the project, the two areas; one, where ILGs have signed off, and the other where no ILGs have been formed. But all that land is covered in Pomata?

A: Yes.

10 Q: You confirm the agreement – the contents of your letter, you are happy to present to the Commission?

A: Yes, I am quite happy to present it.

Q: At page three of your affidavit you refer to Portion 196C and 197C and you mention that the organization of the ILGs, the clans into ILGs was not properly done. Could you just explain because it involves the land, the upper part of the land which you seem to have referred to where you pointed out on the map. Just explain how those people were left out, the clans that the Commissioner has referred to?

A: How they are left out?

20 Q: Was it because of the dispute or why were they left out? Why were they not involved through the ILG incorporation process?

COMMISSIONER JEREWAI: No, Counsel. He indicated that the clan which is with him, with his clan is Kapuna clan in disputing against the others who lay claim to the customary ownership and interest over that area he pointed out. So there are only two of them if they have missed out. Not the others. The others are the people they are in dispute with. You followed? Your question is that, how are they left out – all of these. But only the two of them have been left out, not the others. Because the others are the ones they are disputing with. Is that right?

30 A: Yes, others we are disputing.

MR KETAN: So the others are involved in the project, are they?

A: The ones that we are disputing and the one with our clan, we are all out.

Q: Yes, that is the point I was getting at, Commissioner. In accordance with – so all these clans, the 15 clans, beginning with Bovo clan down to Loga clan, all of those clans who are within the Pomata Portion 196 project area are not involved in the project. Is that what you are saying?

[4.13 pm] A: For Loga clan, they are in. But for those others we do not have ILGs.

COMMISSIONER JEREWAI: The clans in the – you mean to say lower clan, you mean to say the clans covering the land that is below the area you pointed out? Is that right?

10 A: Yes. Loga clan is one of the clan that is within that area that I have indicated. But it is in the east ---

Q: I cannot understand what he is saying. Find out ---

MR KETAN: Clan number 15 Loga clan, Loga clan is involved in the project?

A: Is involved in the project.

Q: Okay. The rest of the 14 clans are not?

A: To my understanding, yes.

COMMISSIONER JEREWAI: Listen witness. I do not want your understanding. You either know for sure or not. I do not want to take whole afternoon with you going around whether you understood or you know or not.

20 MR KETAN: I will just ---

COMMISSIONER JEREWAI: Counsel, take him through each one.

MR KETAN: Yes. The ---

COMMISSIONER JEREWAI: Tell him if Bovo clan is in the project?

A: Bovo clan is not in the project.

Q: And how do you know?

A: I know that. Their leader is here at the moment.

Q: And he will be prepared to give evidence if he is not in? His clan is not in the project?

A: He can give evidence.

Q: Good, take note. We will call him.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Now, Vovo clan, V-o-v-o, are they ---

A: Vovo ---

Q: No, I am going to the next one. I have already passed B-o-v-o, I am going to now, V-o-v-o. Okay. Is it in the dispute and not in the project? Do you know or do you not know? If you do not know, you say so.

A: The part of the clans are in and part of the clans are not.

10 Q: Good. Now, Kagalona clan, are they part of the project, Pomata project or not?

A: Part of them are in, part of them are not.

Q: There you are. The Una clan?

A: Same to that.

Q: Pasigo clan?

A: Pasigo clan are not in Pomata.

Q: Totally, not in Pomata.

A: Yes.

Q: Alo clan?

20 A: Alo clan?

Q: Yes.

A: No, they are not in.

Q: And also they are not ones you are in dispute with?

A: We are disputing with.

Q: You just told me earlier on and I noted that you have no dispute with them?

A: Alo clan.

Q: Yes, A-l-o- clan.

A: We are disputing with them.

Q: And they are not in the project?

A: They are not in the project.

Q: Sere clan?

A: Asere clan, no, they are not in the project.

Q: Oling clan? Sorry, Sere is in the project or not?

A: No.

10 Q: Oling?

A: They are not, some of them are in, some of them are out.

Q: Olenga?

A: Olenga, some of them are in, some of them are out.

Q: Marana, that is your clan, you clan, yes. Is it in or not? Some in, some out?

A: Some in, some out.

Q: Kapkapuna clan?

A: Some in some out.

Q: Manata clan, some in, some out?

20 A: All of them are in.

Q: All of them are in, okay. Kematana clan?

A: All of them are in.

Q: Popuna clan?

A: Some of them are out, some of them are in.

Q: Loga clan?

A: All of them are in.

Q: It is becoming clearer. Go on Counsel.

MR KETAN: I will show you a map which is a sketch which is on the land investigation report. If you look - those clans, the 15 clans - if you look at, there is two parts to that. There is a bottom part and then the top part is where your village and them are. Those clans that you have mentioned, they are part of the top, what is the name there, if you can just call the name?

A: Marana Purpurena.

10 Q: Marana Purpurena, yes. All of these, the clans, 15 clans that are mentioned are in that area of Marana Purpurena?

A: Yes.

Q: Some of them are in as you have just mentioned and others are not in the project. Is it true that there are no, in terms of the ILG organization that area was left out?

A: Yes. They have no ILGs.

Q: But those two areas there, together are within the Pomata project area, portion 196C, is it?

A: They are in the project area.

Q: No, the two areas, you see the sketch?

20 A: Yes, they are in Pomata area.

Q: Yes, the bottom is Nenkam Purpurena area and the top is Marana Purpurena area.

A: They are in the area but the naming is something new altogether. Traditionally it is not like this.

Q: That is fine. If you could just recognize, just identify by the sketch that that is the area we are talking about, then that is sufficient for the moment. Commissioner, we have noted in the opening state this particular discrepancy so we can take it up with---

COMMISSIONER JEREWAI: Can you take the witness to – is his clan’s list on the declaration of custom in relation to land tenure? Find that and take him to those documents. I am looking for it myself also here. While he is in the box it is an opportunity to pass up the names of the people involved there.

[4.22 p.m] MR KETAN: I will show you – that document is part of the land investigation documents and your clan, Marana, you see at the top there, your clan’s name is at the top? And those people who signed that form, do you recognize some of them as those are members of your clan?

A: Yes.

10 Q: So some of your members of your clan did ---

COMMISSIONER JEREWAI: Counsel, just bear with me. It is very important I get hold of this. I am still looking for it. Marana Punmata. Is that right?

A: That is our sub-clan.

MR KETAN: It should be after that document.

COMMISSIONER JEREWAI: After that it is Marana clan. Alright, Counsel, I have got it. Take him through all of the names on that first list. See if he recognizes them.

MR KETAN: Commissioners, just pardon us. I gave him the only page I had so we are looking for the other copy.

20 COMMISSIONER JEREWAI: Why do you not take it back, go through the names and then give him the document so he will know that these are the names appearing and signatures accompanied with regard to that document. If you do not mind, I will take him through this very quickly. I have a document here which will be shown to you shortly, you understand? I have a document here which will be shown to you shortly. The title of the document is, “Declaration of Custom in Relation to Land Ownership.” You understand? I want you to identify these people. The first one is Peter Pagot. Do you know him?

A: Yes.

Q: Is he a member of your clan?

30 A: Yes.

Q: Second is Norah Dagma.

A: Yes.

Q: Is she a member of your clan?

A: Yes.

Q: Third is Katherine Pavalenkalei?

A: Yes.

Q: Is she a member of your clan?

A: Yes.

10 Q: You answer likewise if he or she is not a member, you say, no and I will know. The next name is Vigil Momkaletuna?

A: Yes.

Q: Emos Baliape?

A: Yes.

Q: Alfred Loakereia?

A: Yes.

Q: Richard Keltapewan?

A: Yes.

Q: Rose Keltarea?

A: Yes.

20 Q: Ignatius Batei?

A: Yes.

Q: Sylvester Legarea?

A: Yes.

Q: Isidor Lipitaria?

A: Yes.

Q: Joylene Parurea?

A: Yes.

Q: Locklan Parurea?

A: Yes.

Q: Konila Mesmun?

A: Yes.

Q: Pakesi Maki?

A: Yes.

Q: Sinabaloa Daria?

10 A: Yes.

Q: Ester Sawo?

A: Yes.

Q: Leo Sawo?

A: Yes.

Q: Mirigini Sawo?

A: Yes.

Q: Nathan Sawo?

A: Yes.

Q: Olivia Sawo?

20 A: Yes.

Q: Francis Ragusina?

A: Yes.

Q: Paul Puliapei?

A: Yes.

Q: Joe Koriapagi?

A: Yes.

Q: Kela Patalrea?

A: Yes.

Q: Rale? Second name is Rale.

A: Yes.

Q: Tolatoparea Rale?

A: Yes.

Q: Gaspitarea Rale?

10 A: Yes.

Q: Rupitarea Rale?

A: Yes.

Q: Emmanuel Rale?

A: Yes.

Q: Charles Kavatape?

A: Yes.

Q: Christopher Rale?

A: Yes.

Q: Micheline Baleate?

20 A: Yes.

Q: Jeremiah Baleate?

A: Yes.

Q: Adlene Baleate?

A: Yes.

Q: Melissa Baleate?

A: Yes.

Q: Rachel Baleate?

A: Yes.

Q: Diana Kelravugnavunta?

A: Yes.

Q: Or something to that effect. Josephvet Raka?

A: Yes.

Q: Clara Papulealina?

10 A: Yes.

Q: Aaron Kerepage?

A: Yes.

Q: Dickson Patolelrea?

A: Yes.

Q: Ruth Vaisarenkia?

A: Yes.

Q: Lea Albert?

A: Yes.

Q: Jean Morgan?

20 A: Yes.

Q: Daphne Yepakeria?

A: Yes.

Q: Albert Morgan?

A: Yes.

Q: Leoalstein Toatapa?

A: Yes.

Q: Juno Kapalate?

A: Yes.

Q: Lucien Tuatopa?

A: Yes.

Q: Delalia Tuatopa?

A: Yes.

Q: Joylene Tuatopa?

10 A: Yes.

Q: Sawo Bernard?

A: Yes.

Q: Dre Kona?

A: Yes.

Q: Odelia Kona?

A: Yes.

Q: Deloris Kaskena?

A: Yes.

Q: Frank Kona?

20 A: Yes.

Q: Loris Marana?

A: Yes.

Q: Doris Marana?

A: Yes.

Q: Stodi Konakelrea? It is the surname?

A: Yes.

Q: Trudi Marana?

A: Yes.

Q: Johnson Marana?

A: Yes.

Q: Enrica Marana?

A: Yes.

Q: Maltadien Marana?

10 A: Yes.

Q: Herman Marana?

A: Yes.

Q: Ismael Marana?

A: Yes.

Q: Theresa Leo?

A: Yes.

Q: Rose Konakelrea?

A: Yes.

Q: Patricia Marana?

20 A: Yes.

Q: John Pagot?

A: Yes.

Q: Andrew Baka?

A: Yes.

Q: Benedict Tanaia?

A: Yes.

Q: Russel Tanaia?

A: Yes.

Q: Norman Tanaia?

A: Yes.

Q: Dominic Tanaia?

A: Yes.

Q: Kelapagarea Kathy?

10 A: Yes.

Q: Gebina Tanaia?

A: Yes.

Q: Helen Tanaia?

A: Yes.

Q: Emilyn Katai?

A: Yes.

Q: Chorentine Katai?

A: Yes.

Q: Michael Tanaia?

20 A: Yes.

Q: Kevin Maniko?

A: Yes.

Q: Bill Vava?

A: Yes.

Q: Grace Valuka?

A: Yes.

Q: Kogen Leo?

A: Yes.

Q: Patrick Lurea?

A: Yes.

Q: Tobias Badu?

A: Yes.

Q: Tataia Tanaia?

10 A: Yes.

Q: Gerard Lurea?

A: Yes.

Q: Gogipal Valenakale? Does that sound alright?

A: Yes.

Q: Sogipal Valenakale?

A: Yes.

Q: Enrica Marana?

A: Yes.

Q: Mabel Kathy?

20 A: Yes.

Q: Kwentin Dede?

A: Yes.

Q: Madeline Silia?

A: Yes.

Q: Christy Baitri?

A: Yes.

Q: Salome Luvoi?

A: Yes.

Q: Those are all the members constituting Marana clan?

A: Yes.

10 Q: These are all the people who signed on behalf of your clan in relation to the declaration of custom and in relation to landownership. You understand that? This is a document that is completed in the course of the land investigations. You understand that?

A: Yes.

Q: And this is the document that indicates that they all agreed to the Special Agriculture Business Lease been issued in favour of Pomata Investments. You understand that? Do you understand that?

A: I understand.

Q: These are your people, you have just confirmed, who signed this document. Is your name among these people?

A: My name is not there, my brother is not there – my elder brother.

20 Q: Your wife is not in there too. And you are the ones – can I ask you if you are the only ones whose names are not there?

Counsel, continue.

MR KETAN: Are there other members of your clan, the Marana clan, whose names are not here; not in this list that Commissioner has read out?

A: They are in Moresby.

Q: Members of your clan, apart from you and your family, are there any other members of the clan whose names are not on this list?

A: Yes. I have other members that their names are supposed to be in there.

Q: How many? How many other people?

A: Stephen, Bruce, Jenny and Kaiken. They are four of them. They are sons of my uncle – children of my uncle in Moresby.

Q: Jenny who? Jenny Koal?

A: Koal.

Q: Jenny Koal's name is in here. Stephen Koal is the other name?

A: Yes.

Q: Bruce Koal? Two were in Lae at that time; one was in Pomio, Ludwick Koven was in Pomio. These are list of names that were absent at the time I think the investigation as carried out. Junior Jessie was in Kimbe I think and Noman Jessie was in Kimbe, Jacinta Mataruru and Trekla Mataruru were in Lae.

COMMISSIONER JEREWAI: Counsel, how many people from his clan were not there? Just give a number first?

MR KETAN: 25.

COMMISSIONER JEREWAI: And from what you are presenting to the witness?

MR KETAN: Yes, there were 25 people but they ---

COMMISSIONER JEREWAI: Counsel, from what you are presenting to the witness, their absences are due to being anywhere else but in the village?

MR KETAN: That is right.

COMMISSIONER JEREWAI: So where is that going to take us?

MR KETAN: They were absent so---

COMMISSIONER JEREWAI: Absolutely, they are not in the village. Do we send letters out to them in this investigation process?

MR KETAN: Apart from his family, they were ---

COMMISSIONER JEREWAI: But I would suggest Counsel is because this is a very important issue, what I suggest is we do not finish with this witness. We have seen confirmation of these people who signed this declaration of custom in relation to land tenure, landownership, and we should not dismiss this witness

too quickly and allow him to overnight perhaps to come up with a very verifiable list because we are not going to be taken around and around. If they are not there, they are not there. It is similar to me. I am absent from my clan and if they are going to make a decision, they are not going to wait for me. So give him an opportunity tonight, overnight, because it is a very important issue. That issue impinges on the question of agreement to be part of that SABL and I do not want to deny him the opportunity to show sufficiently that despite all of these names he has confirmed when I read them out to him that there may be an equally or more of his number who are opposed to it. So let us give him that
10 opportunity. And I propose that we have this witness stood down and if need be go through with him with regard to other documents that may comprise of the names of the members of his clan and put to him, present to him, confirmation as to whether they participated. And of course, they all signed from the document I am looking at, there does not seem to be anything to suggest to the contrary that they did not voluntarily sign this document I am looking at. And if indeed, there are other documents that carry similar and convey similar participation, we may be dwelling on something that this individual himself with his immediate family are opposed to.

MR KETAN: Yes. If you allow, Commissioner, if I can ask him one more
20 question?

COMMISSIONER JEREWAI: Yes.

MR KETAN: Is your clan, the Marana clan, and you say you are a member of that clan, how many members of that clan?

COMMISSIONER JEREWAI: Approximately, you may not know the exact number, approximately how many constitute the members of your clan?

A: Say about 70 to 100, just between that figure.

MR KETAN: 70 to 100.

COMMISSIONER JEREWAI: Could you ask him next, how many are actually
30 living within your village at the material time, at the time this land investigation report was conducted?

[4.39p.m] A: In Poro village, I have my immediate---

MR KETAN: At that time?

A: Sorry, can I have the date of that document?

Q: Yes, it is 26 October 2007, around that time. Around late October 2007, how many people approximate number of people were living in your villages or village, members of your clan?

COMMISSIONER JEREWAI: First of all do you know or you do not know?

A: My immediate brothers.

MR KETAN: Your clan, the Marana clan?

A: My immediate brothers are my---

Q: No, your clan, the Marana clan. Your clan the Marana clan?

10 A: Yes.

Q: How many people do you think lived in your village in around late October 2007?

A: Eight of us clan members.

Q: My question is your clan, you remember your clan, Marana clan, at the time this investigation was carried and the investigation report was done, it was around late about 26 October 2007. My next question is, how many at that time, what was the approximate number of members of your clan living in the clan's land in and around near the project area?

A: That figure that I have already given 70 to 100 between that number.

20 Q: 70 to 100, thank you.

COMMISSIONER JEREWAI: Look Mr Bailoeamkia, all the names you have just confirmed as being from your clan that I have just read out, I have just done a quick addition and the total number is 95. There were 95 people living in your village at the time this document arrived and they signed. Do you agree? Even if you do not agree, you have no choice because you have just confirmed the numbers, names and they are here in this list before me. And I am putting to you there were 95 people living in your village at the time this report, this investigation was carried out, this document was then signed by them. Is that right?

30 A: Yes.

Q: You do not dispute that?

A: I do not dispute that.

Q: Correct. How many people may be elsewhere? In Pomio, Kokopo, Rabaul, Port Moresby, Wewak even New York, can you be able to tell us?

A: No.

Q: Look, I still feel he must be given the benefit to offset this overwhelming evidence against what he initially said, stating that Marana, his own clan was not involved in this project.

10 MR KETAN: Yes.

COMMISSIONER JEREWAI: Witness, before I showed you this document and took you through confirmation of the names of the members of your clan, you bluntly said your clan was opposed to this project and was opposed to the SABL being issued in favour of Pomata Investment. Now that I have shown you this document and you have confirmed the names of the people who signed this document, giving support for the title to be issued in favour of Pomata, the landowner company, I find it unfair if I do not allow you time between now and tomorrow to come with evidence to show that this may not be right, that there are maybe more people of yours who did not agree. I want to give you that
20 opportunity that is why I will not want you to continue with your evidence because you must take the time to go and check this out and come back. Because that issue about agreement to involve your land in a project such as this is very very important for us. So never mind about me speaking too loudly, just forget me. You understand? You go peacefully, you work out these things and you come back tomorrow morning.

MR KETAN: Very well.

COMMISSIONER JEREWAI: The witness is stood down. You may leave. Come back tomorrow morning at 9 o'clock. Before you go, you are quite
30 welcome to check up with lawyers assisting the Inquiry to look at any other information, particularly documentary information that they may have to assist you, to prepare for this because it is a very important issue. I am not dismissing you easily, no. I would like to get to the bottom of it all. But you must be reminded that you are alone with your unitary family opposed to this while the

rest of your clan are in support of this project and want to participate and agreed to being part of the SABL, in the majority, then do not waste our time. You may step down, thank you very much. Okay, this witness is stood down to 9 o'clock tomorrow morning.

THE WITNESS WITHDREW

MR KETAN: Yes, very well. The next witness we were going to call is Mary Baiu. Her evidence was going to be in relation to consent again.

10 COMMISSIONER JEREWAI: And which clan is she from?

MR KETAN: She is from the Kerebuna clan.

COMMISSIONER JEREWAI: Ask her if she might run into a similar problem.

[4.49p.m] MR KETAN: Yes. We are going to call the other ILG chairmen, some of whom I have called to tomorrow at nine and then ---

COMMISSIONER JEREWAI: Allow you time to confer with them.

MR KETAN: Yes, and complete this line of evidence with the people opposing the project and then we can go on to the---

COMMISSIONER JEREWAI: Yes, to those who are for the project. Yes, Counsel, that is a good idea. Ms Peipul, you do not seem to be sure?

20 MR KETAN: She is just concerned about Barava also being on tomorrow but from what Commissioner said earlier, we ---

(POWER BLACK OUT)

[4.51p.m] COMMISSIONER JEREWAI: Please proceed.

MR KETAN: Yes, what I was saying was that we had scheduled Barava for tomorrow afternoon but in view of what Commissioner you announced in the

morning with regard to Rera Holdings being on present indication not being able to be reached---

COMMISSIONER JEREWAI: Very unlikely.

MR KETAN: That we could fit Barava during the rest of the week and Rera can be plus Illi Waswas and Trukake on the next circuit so we should be able to fit Barava somewhere. If not tomorrow, certainly the next day.

COMMISSIONER JEREWAI: My attitude towards Barava is this. Barava is a quiet plantation under the previous policy of the Government at Independence to be returned to Papua New Guineans. It did not specify whether it would be returned to the original landowners and also it had already surfaced that Barava has got very special circumstances and different facts altogether. My attitude also is that it involves people just up the road, Gudanba, Bitavava and they are easily reachable whereas matters of the outlying districts including Pomio-Bainings must be given precedence. It cost them everyday to be present here in Kokopo. So we will give priority to Pomata, Ralopal, Nakiura, Unung Sigite. If we do not reach Rera, we will couple it up with Illi Waswas, one and Illi Waswas standalone. And Barava and Trukake can come together on another Commissioner's visit, although Barava is listed for me, Trukake is the only one I have disqualified myself.

MR KETAN: Yes, very well.

COMMISSIONER JEREWAI: So let us proceed tomorrow and if it is necessary to confirm by tomorrow morning, we can issue letters out to the representatives of Barava and Giregire and Rera to advise them of this.

MR KETAN: Very well.

COMMISSIONER JEREWAI: And also as I have indicated in discussions with you, as part of the conclusion of the various stages of this Inquiry in relation to individual SABL inquiry, my view is and I will probably likely follow that procedure which is to at the conclusion of the hearing announce my findings. Thank you.

MR KETAN: Very well. If I can ask for the hearing to be adjourned to 9 o'clock tomorrow morning?

COMMISSIONER JEREWAI: Thank you. Thank you Counsel. Associate adjourn the Inquiry – before we do that you have all heard what we have discussed between Counsels and myself. We will return here tomorrow morning at 9 o'clock. All interested persons please return here tomorrow morning at 9 o'clock. Associate please, adjourn the Inquiry.

10 **AT 4.55 P.M. THE COMMISSION OF INQUIRY INTO SABL WAS
ADJOURNED TO TOMORROW, WEDNESDAY 2 NOVEMBER 2011
AT 9.00 A.M.**

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