

COMMISSION OF INQUIRY INTO THE SPECIAL AGRICULTURE AND BUSINESS LEASE (SABL)

FINAL REPORT EXTRACT Pages 143-166

John Numapo
Chief Commissioner
Port Moresby

24th June, 2013

8. **KONEKARU HOLDINGS LIMITED (1) – (Portion 2465C)**
(SABL NO. 55)

A. REPORT

This is a final Report on Special Agriculture Business Lease (SABL) over **Portion 2456C** Volume 37 Folio 105 Granville, Port Moresby, Central Province. Portion 2456C is a 'Direct Grant' to **Konekaru Holdings Limited** ('KHL') pursuant to Section 102 of the Land Act. For the record, there are two different grants under the name of Konekaru Holdings Limited. The first grant is over Portion 2456C and the second grant is over Portion 2466C and both are adjacent to each other. Both SABLs are loosely referred to

as 'Konekaru 1' (Portion 2456C) and 'Konekaru 2' (Portion 2466C). There is also Portion 2485C granted to Veady Holdings Limited that is also adjacent to Konekaru 1 & 2. The three SABLs involved the same people in most cases and the land owning clans are also the same. The evidence will be generic for the three SABLs and they will be discussed interchangeably throughout this report.

1.1 Terms of Reference Covered

The Terms of Reference (TOR) heads (a) to (i) except for (g) were fully covered for purposes of this inquiry. IPA records show that Konekaru Holdings Limited (KHL) was duly registered under the Companies Act 1997 on the 15th September 2009 and was issued with a Company Registration no. 1-69621. A copy of the certificate of incorporation is attached and shown in the Schedule of Documents below.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully examined and assessed. The monitoring, oversight, approval and permit processing with other relevant agencies of government such as Department of Agriculture & Livestock (DAL) and Department of Environment & Conservation (DEC) were also investigated and furthermore, whether or not 'informed consent' of the landowners was obtained at every stage from the land investigation stages to public hearings including the application, registration, approval and issuance of the SABL title.

1.2 Sources of Information

Relevant government agencies were called in to give evidence relating to Portion 2456C held by Konekaru Holdings Limited including other persons of interest and the landowners. There were also other witnesses representing companies operating and conducting business on the subject land.

Aside from oral evidence tendered to the inquiry, there were also documents including Land Investigation Report (LIR), company extracts, copy of Title deed, Notice of Direct Grant as well as other relevant documents were also tendered into the inquiry. Affidavits were also filed and tendered before the inquiry by a number of witnesses. The final source of information which made up the bulk of the evidence came through the transcripts from oral evidence and presentations during the hearings.

Witnesses were called from the four (4) government agencies that were principally involved in issuing the SABL. These were: Department of Central Province, Department of Lands and Physical Planning (DLPP), Department of Provincial Affairs and Local Level Government (DPLLG) and Department of

Environment and Conservation (DEC). As this is not an agro-forestry project and not on forested land it was not necessary to call witnesses from Department of Agriculture and Livestock (DAL) and the PNG National Forest Authority (PNGFA).¹⁷

1.3 Location of Portion 2465C

Portion 2465C, Volume 37, Folio 105, Granville, Milinch of Port Moresby is located in the Motu-Koita villages of Papa and Lealea near the LNG Plant site in the Central Province and approximately 15 kilometres from the city of Port Moresby. The land is also traditionally known as “Iarogaha” comprised of a total land area of 980 hectares.

1.4 Grant of Lease

On the 14th January 2010, a ‘Notice of Direct Grant’ under Section 102 of the Land Act over Portion 2465C was issued to Konekaru Holdings Limited for a 99 year lease commencing on 4th January 2010 and expiring on 3rd January 2109. The SABL was for the 457 hectares of land situated along the Papa/Lealea villages in the Central Province. The former Secretary of DLPP Pepi Kimas facilitated the lease agreement.

The details of the SABL over Portion 2465C is as follows:

Legal Description	Portion 2465C Granville
Registered Survey Plan catalogue no.	49/2751
SABL Holder	Konekaru Holdings Limited
Date of Registration of lease	03rd January 2010
Period of Lease	99 years (4th January 2010 - 3rd January 2109)
Land area of lease	980 hectares

¹⁷ Annex. “VIII”

1.5 Landowner Involvement & Consent

The 'Iarogaha Garau Incorporated Land Group' (ILG) of Papa/Lealea was incorporated under the Land Groups Incorporation Act Chapter 147 on the 27th October 2009 initiated by Mr Henao Tetei, a village leader of the area. The purpose of its incorporation was to aid in the process of facilitating landowner support to obtain an SABL grant for Konekaru Holdings Limited. However, it was discovered later that Iarogaha Garau ILG was made up only of one clan named 'Vanemata Clan,' members of whom are descendants of 'Homoka Rei' and Henao Tetei is the eldest male descendant. Other clans are not included in the Iarogaha Garau ILG and this brought about discontentment and disputes amongst the landowners which eventually ended up in the National Court. Landowners who testified told the inquiry that they were not adequately consulted and were not involved in the process and have not given their consent for the SABL.

1.6 Company Structure & Shareholding Arrangements of Konekaru Holdings Limited ('KHL')

Konekaru Holdings Limited ('KHL') was a duly registered company under the Companies Act 1997 and incorporated on the 15th September 2009 with its company registration number 1-69621. A Charles Kassman of PO Box 1430, Boroko applied for the registration of KHL. The two appointed directors of the company were Gerard Kassman and Henao Tetei. Incidentally, Gerard Kassman also has an interest in 'CJ Ventures Limited' (a company owned by his two sons) that has a 99 year sublease agreement with Konekaru Holdings Limited.

KHL was initially established as a landowner company to participate in the spin-off benefits and other business activities generated as a result of the LNG Plant Project.

On the 02nd March, 2010 a Notice of Change of Directors was filed by Kundu Legal Services by the principal of the firm Mr Emmanuel Mai indicating that five (5) new directors were appointed. They are: Gumasa Heni, Nickey Maraga, Nao Nao, Hebore Vagua and Reverend Vani Gorogo. All these people are from Papa village and have the same postal address. Each of the new directors were issued with one share each out of the total of five shares. However, there is no record of any board minutes and resolutions appointing the new directors. On the 30th March 2010, the company issued an additional 45 shares and distributed nine (9) shares each to the five newly appointed shareholders to hold 'in trust' for their respective clans.

On the 13th April 2010, a Gomara Segrick was appointed a director of the company and Doriga Berasi appointed as a shareholder holding ten (10) shares.

However, there is no record of any board meeting to show that the two individuals got appointed to their respective positions through a resolution of the board.

Total number of shares issued to date is seventy-five (75). The majority shareholders are: Gerard Kassman with 38 shares and Henao Tetei with 37 shares after all the other six (6) trustee/directors/shareholders transferred their shares to Gerard Kassman and Henao Tetei. It is presumed that the six directors and shareholders have either resigned or terminated as directors of the company however, the IPA records did not show how and why directors lost their shares.

The timeline of important events concerning the Konekaru Holdings Limited SABL (Portion 2456C) is shown below in chronological order of their happening:

(Refer to Annexure "VIII")

Milestone		Date of Completion/Grant Execution/Issue	Proponent/Applicant	Responsible Entity/Respondent
Incorporation of CJ Ventures Limited	1	25 February 2009	Charles Kassman	IPA
Incorporation of Konekaru Holdings Limited at IPA	2	16th September 2009	Charles Kassman	IPA
Registration of Iarogaha Garau ILG	3	27th October 2009	Henao Tetei	Department of Lands
Land Investigation Report (LIR)	4	3rd December 2009	Conducted by a John Lui (retired Lands officer) and a Lazarus Malesa (National Dept. of Lands staff) and signed off by Raga Gulu (Dept. of Central Province	Department of Central Province.

			Lands Officer)	
Governor Moroï's request letter	5	4th January 2010	CoA signed at the 'direction' of Gov. Moroï	Mr Raphael Yipmaramba, P/A Central Province.
Recomm. as to Alienability	6	6th January 2010	R. Yipmaramba, P/A	Department of Central Province.
Certificate of Alienability	7	Not produced	Not done (Dept. of Prov. Affairs)	Not done (Dept. of Prov. Affairs)
Lease/leaseback Agreement	8	4th January 2010	Iarogaha No. 1 Clan members	Department of Lands Department of Central
Notice of Direct Grant	9	14th January 2010	Secretary, Dept. of Lands	Department of Lands
Registration and Issue of SABL title	10	3rd January 2010	Registrar of Title, Lands Department	Department of Lands
Sub-Lease of SABL title to CJ Ventures Limited for 99 years	11	1st February 2010	Konekaru Holdings Limited (Gerard Kassman)	CJ Ventures Limited (Charles Kassman)
Inclusion of new shareholders and directors to Konekaru Holdings Ltd. from Papa Clan	12	30th March 2010	Konekaru Holdings Limited	Konekaru Holdings Limited
Filing of OS (JR) No. 565 of 2010	13	1st October 2010	Vane and Dabara Clan of Papa and Vane Mata ILG	Konekaru Holdings, CJ Ventures, Pepi Kimas Secretary for Lands.

1.7 Legal Disputes

Legal proceeding (OS NO. 494 of 2010) was filed in the National Court relating to the shareholding arrangements of the company – Konekaru Holdings Limited (KHL). This proceeding relates to the dispute over the control and management of KHL. Five other persons from the same landowning unit declared themselves as shareholders and directors of KHL without the approval of the other existing shareholders and directors of the company. The Court ruled that allotment of shares to the five (5) new shareholders on the 02nd March, 30th March and 13th April, 2010 without the approval of the existing shareholders (through a Board resolution) is unlawful pursuant to Section 43 of the Companies Act and therefore, is invalid and not binding. The Court ruled that the first plaintiff, Henao Tetei and second plaintiff, Gerard Kassman are the only two shareholders in Konekaru Holdings Limited. The Order also restrained the other landowners, their servants, agents and associates from interfering with the operations of KHL. This Order effectively means that there are only two shareholders and directors of KHL. With the reduction of the number of shareholders, KHL is no longer a representative landowner company.

The ruling has not gone down well with the other landowners. Battle lines were drawn and things were going to get worse from then on. A judicial review (OS (JR) NO. 565 of 2012) initiated by the other disgruntled landowners was filed on the 9th August 2011 seeking a review of the Lease-leaseback Agreement as many landowners alleged that their names were not included in the Agreement and their signatures forged without their knowledge. They alleged fraudulent conduct on the part of Henao Tetei and others. They dispute the granting of the State lease but in the course of the proceedings the landownership issue crept into the pleadings. On the 16th August 2011, Justice Gavera-Nanu granted an interim junction effectively restraining the First Defendant Morea Lahui representing the Dabara clan of Papa village and its servants and agents including Vane Mata ILG; Konekaru Holdings Ltd; CJ Ventures Ltd and DLPP from dealing with the subject land (Portions 2456C & 2466C) until the matter is properly determined.

1.8 IPA Records

The recent IPA company extract dated 2nd August 2011 shows that all appointed shareholders and directors representing the different clans have ceased or their appointments revoked from the company registry. This follows a legal proceedings filed by Henao Tetei and Gerard Kassman. The Court found the inclusion of additional shareholders and directors as unlawful and not in accordance with the provisions of the Companies Act. All the shares reverts back to the two original shareholders Gerard Kassman with 38 shares in his name and

Henao Tetei holds 37 shares in his name. In effect, Gerard Kassman is a major shareholder of KHL.

At the time of incorporation of KHL, it was discovered that the company (KHL) is not a landowner company as intended for purposes of holding an SABL on behalf of the customary landowners. All the shares were held by only two individuals – Gerard Kassman and Henao Tetei. Both were also directors of the company. A Charles Kassman (biological son of Gerard Kassman) was appointed Company Secretary at the time of incorporation.

1.9 Project Developer

Konekaru Holdings Limited (KHL) appointed CJ Ventures Limited as its preferred developer of the project. CJ Ventures Limited was incorporated on the 25th February 2009. Its shareholders were Charles Kassman and John Kassman, both biological sons of Gerard Kassman who is now (after the passing of Henao Tetei) the sole shareholder KHL.

CJ Ventures Limited signed a sub-lease agreement on Portion 2456C with KHL on the 1st February 2010. The intention of the sub-lease was to make land available to Exxon Mobile for its LNG Plant site should they require additional land for lease to support their operations. KHL and CJ Ventures (sub-lessee) are owned by one family to the exclusion of all other legitimate landowners of Papa and Lealea villages. According to IPA records, Charles Kassman owns 50% of CJ Ventures Ltd whilst he holds a position as Company Secretary of KHL. It is apparent that a single family is both a lessor and sub-lessee over Portion 2456C and this goes against the accepted practices and norms of customary landownership in PNG where land is communally owned by the clans and not one family. It also gives rise to a potential conflict of interest with the same individuals involved in both companies as it does not allow business to be conducted at ‘arms-length.’

CJ Ventures had fenced off a big portion of Portion 2465C directly adjacent to the LNG Plant site and has commenced its business operations. There are no documents pertaining to the regulatory approvals such as environment permit, land use plan, development agreement etc. to ensure it complies with the relevant legislations before it commenced business. Landowners in their evidence to the inquiry stated that they do not know what sort of business CJ Ventures is doing on their land and also have not seen any monetary benefits from its business operations.

1.10 Landowners' Concerns

A good number of landowners representing different clans in and around the Papa / Lealea villages have raised objections to the granting of the SABLs over Portion 2456C and Portion 2466C to KHL. It was obvious that the majority of the landowners apart from Henao Tetei have not given their informed consent for their customary land to be leased. Affidavits submitted to the inquiry by the following landowners Ata Joseph Baeau, Chairman of Vane Mata ILG; Vaguia G. Seri, Ken Kohu, and Vani Baruni, all members of the Iarogaha Clan of Papa village, Central Province have testified that they have not been fully informed and have not given their consent for their customary land to be alienated. They were been misled into thinking that KHL was a landowner company until they checked with the IPA and discovered that there were only two shareholders and directors of KHL and they are Gerard Kassman and Henao Tetei. Gerard Kassman is a major shareholder and holds 38 shares whilst Henao Tetei holds 37 shares.

They told the inquiry that Gerard Kassman is not a landowner from Papa/ Lealea villages but is from 'Muni Ogo' clan of Korobosea in NCD and has no ancestral links whatsoever with the people of Papa/Lealea and therefore, does not own any land in Papa. As far as the landowners are concerned, KHL is a non-landowner company and strongly recommended that the SABL issued to KHL be revoked immediately.

The landowners told the inquiry that there was no land investigation carried out by anyone including the inspection of the adjoining boundaries from either the Division of Lands of Department of Central or the DLPP. There was also no Land Investigation Report (LIR) produced for Portions 2456C and 2466C. There was no 'public hearing or meeting' to gauge the landowners views for these SABLs. Furthermore, there is no Certificate of Alienation (CoA) issued by the Custodian of Trust Land from Department of Provincial and Local Level Government (DPLLG) to allow for the alienation of these portions of customary land for SABL purposes.

The former acting Provincial Lands Officer of the Department of Central Province (currently attached to the Surveyor General's office of DLPP) Mr Ata Unage told the inquiry that the LIR and Lease-leaseback Agreement signed by the Agents purportedly representing the landowners is defective. Only two people signed on behalf of the all landowners who have their names listed on the documents and in some instances forged the signatures of other landowners which borders on fraud and is a criminal act. Signatures of three (3) out of the six (6) agents/landowner representatives were forged on the LIR and the Lease-leaseback Agreement. Ken Kohu, Vani Baruni and Vaguia Seri through their sworn evidence told the inquiry that although they were named as agents/landowner representatives, they have not signed on Lease-leaseback Agreement and the

signatures they sighted on the documents under their names were not their signatures and therefore, must have been forged.

The land area covering Portions 2456C, 2466C and 2485C (Veady Holdings Ltd) is huge and there a total of twelve (12) clans altogether from Papa, Lealea and Boera villages in the Central Province that have links to the land and exercise ownership rights over the land but yet they have not participated in the land investigation process and were not invited to any public meetings to discuss the SABLs and the business activities to be conducted on their land. Most importantly, majority of the landowners have not given their consent to lease their land for SABL.

1.11 Department of Central Province

Certain functions, roles and responsibilities of DLPP were transferred to the Provincial Governments through the decentralization process and devolution of powers some years ago which effectively transferred some functions of the national government to the provincial governments. One such function is the conducting of Land Investigation Process (LIP) and compiling of necessary documentations including the Land Investigation Report (LIR) for SABL application purposes. The documentations are then forwarded to DLPP for registration, processing, approval and issuing of SABLs.

Papa, Lealea and Boera villages are located in the Central Province and the SABLs (Portions 2456C, 2566C & 2485C) are in the Central Province hence, the Department of Central Province would have the jurisdiction of the first instance to deal with these SABL applications. Evidence showed that no officers from the Division of Lands Department of Central Province were involved in the LIP and other processes leading up to the issuing of the SABLs for the three (3) portions referred to above.

The then Provincial Administrator of Central Province Raphael Yipmaramba refused to sign the Certificate of Alienability (CoA) for the three (3) Portions of land (2456C-KHL '1'; 2566C-KHL '2' & 2485C- Veady Holdings Ltd) when he discovered that the no proper land investigation was carried out and particularly, that it was not carried out by his Lands Officers from the Department of Central Province. He told the inquiry that Officers from the National Lands Department (DLPP) usurped the function and conducted the land investigations without his knowledge. However, he later signed the CoA when a lawyer Emmanuel Mai of Kundu Legal Services convinced the Lands Officer Manase Rapilla to advise him to sign.

Raga Gulu is the Senior Lands Officer with the Department of Central. He told the inquiry that he was completely left out of the land investigation process (LIP). He informed the inquiry that the LIR was prepared by officers from DLPP without his knowledge. In his evidence to the inquiry he said the LIR was prepared by Lazarus Malesa from DLPP and was sent down to him to sign but he was reluctant as the whole process relating to the LIR was irregular and improper. According to Mr Gulu, the LIP and LIR supposed to have been done by him and his officers from the Department of Central and not by officers from DLPP. He was very suspicious about the involvement of DLLP in what is clearly a provincial function.

1.12 DEC Status (Meeting Requirements for Approval in Principle)

The Department of Environment and Conservation (DEC) is an important agency of government that deals with SABL applications. As stated elsewhere in this report, DEC's main focus is the project's impact on the environment and water ways including waste discharge. In his evidence to the inquiry, Gerard Kassman of CJ Ventures Ltd indicated that his company intends to make some part of the land (Portions 2456C, 2466C & 2485C) available to Exxon Mobil and LNG Plant should they require any land for storage purposes etc. As the land is within the close proximity to the LNG Plant site, it would be easy access for the company.

Given the nature of its operations it is highly likely that Exxon Mobil (LNG Plant) might be storing dangerous chemicals that are harmful to the environment and it is important therefore, that an Environment Impact Assessment study (EIA) must be carried out in accordance with Sections 47 – 56 of the Environment Act. In this case, the EIA should have been carried out by CJ Ventures Ltd or its nominated agent with the necessary technical expertise approved by DEC following its assessment of the Environment Inception Report (EIR) which is supposed to have been submitted by CJ Ventures Ltd prior to any work been carried out. There was also no Environment Impact Statement (EIS) and as a result DEC has not issued any Environment Permit to CJ Ventures Ltd to approve the usage of the land for storage purposes.

1.13 DLPP Process (Compliance with Land Act)

It was obvious that officers from DLPP comprising Lazarus Malesa, Simon Malu, Henry Wasa and Romily Kila-Pat deliberately decided to ignore and by-pass the existing protocols and practices between the DLPP and the Provincial Administration on matters relating to the granting of SABL when they decided to grant three (3) separate SABLs for KHL '1', KHL '2' and Veady Holdings Ltd respectively over Portions 2456C, 2466C and 2485C. The DLPP officers have not

consulted with the Lands Officers of the Department of Central Province before carrying out the land investigation process. Although the subject lands come under the jurisdiction of the Central Provincial Administration, Lands Officers from the Division of Lands of the Central Province were not involved in the land investigation process. It is clear that the land investigation process was 'high jacked' by officers from DLPP when this is clearly the function of Lands Division of the Department of Central.

It is also noted that the term of the sublease exceeds the term of the head lease which is improper and unlawful. The Registrar of Titles Henry Wasa went ahead to register the SABL titles under KHL when there is an existing land dispute over the land. He failed to exercise caution and did not conduct the due diligence checks to ensure that the land is free from any encumbrances before registering the title. This is a careless and reckless discharge of an official function.

Lazarus Malesa compiled the LIR when he is not authorized to do so. He does not work for the Department of Central and there is no evidence to show that he was properly authorized by the Provincial Administrator of Central Province to compile the LIR.

Romily Kila- Pat in his capacity as Acting Secretary for DLPP and a Ministerial Delegate for purposes of SABL went ahead to grant the SABLs for Portions 2456C and 2466C despite the fact that the LIR was defective and the Lease-leaseback Agreement fraudulently acquired.

1.14 Kundu Legal Services (formerly MAI Lawyers)

It appears that Emmanuel Mai of Kundu Legal Services played a major role in getting the LIR signed including the Certificate of Alienability (CoA). He became very influential in setting up the shareholding structure of KHL by including other landowners onto the board to maintain some level of peace amongst the landowners. Whilst his intentions may be good the Court ruled otherwise that the inclusion of the new directors and shareholders onto the KHL board without a proper resolution of the current board was unlawful is contrary to the Companies Act 1997.

It was also clear from the evidence that Mr Mai was heavily involved in facilitating the production of the LIR on behalf of his clients and 'rushed' the Lands Officers of Central Provincial Administration to sign the LIR which was incomplete and not properly done. Provincial Administrator of Central Province Raphael Yipmaramba told the inquiry that he was 'pressured by a lawyer' (referring to Mr Mai) who turned up at his office and left the Declaration of Alienation to be signed by Mr Yipmaramba but he refused because the LIR was not complied by Officers from

the Central Provincial Lands office. Mr Mai however, managed to convince Manase Rapilla the Acting Deputy Administrator of Central Province at that time to get Mr Yipmaramba to sign the Declaration and Recommendation for Alienation of customary land.

The conduct of Mr Mai raises a lot of questions. As it appears he was exerting pressure and to some degree coerced government officials into signing incomplete and defective LIR including the Certificate of Alienability (CoA) which resulted in the issuing of the SABL. Mr Mai's conduct is unbecoming of professional lawyer who should, at all times, act within the confines of the law and provide the best advice available and ensuring that things are done correctly on behalf of his client.

B. FINDINGS

The following findings are made:

- (1) Konekaru Holdings Ltd (KHL) was granted an SABL lease for 99 years over Portions 2456C known as "Iarogaha" through a 'Direct Grant' under Section 102 of the Land Act by the Acting Secretary of DLPP in his capacity as Ministerial Delegate on the 14th January 2010. The SABL title on Volume 37 Folio 105 dated 15th January 2010 and registered on 3rd February 2010 was issued by DLPP. The lease covers a land area of 457 hectares and situated close to the LNG Plant site near the Papa / Lealea villages of the Central Province.
- (2) Iarogaha Garau Incorporated Land Group (ILG) was incorporated under the Land Groups Incorporation Act Chapter 147 for the purposes of getting landowner's support to obtain an SABL for its nominated landowner company, Konekaru Holdings Ltd. The ILG was incorporated by Henao Tetei on the 27th October 2009. It was found however, that Iarogaha Garau ILG represents one clan only and does not represent the other 12 clans of Papa / Lealea villages.
- (3) The shareholders of the KHL are Henao Tetei with thirty-seven (37) shares and Gerard Kassman with thirty-eight (38) shares making him the majority shareholder. An attempt was made by the other landowners to become shareholders and directors but this was ruled unlawful by the Court which means that Henao Tetei and Gerard Kassman are the only two shareholders to this day. (*Henao Tetei passed away during the course of the inquiry which now leaves Gerard Kassman to be the sole shareholder of KHL).
- (4) CJ Ventures Ltd was incorporated on the 5th February 2009. The company is owned by Gerard Kassman's sons Charles and John Kassman as shareholders. CJ Ventures signed a sub lease agreement with KHL over Portion 2456C on the 1st February

2010. The lease was for 99 years effectively meaning that KHL has transferred all its rights lock, stock and barrel to CJ Ventures leaving no residual rights to KHL, the nominated landowner company. The purpose of the sub lease was to provide services to the LNG Plant site works including leasing out some parts of the land to LNG for storage purposes however, CJ Ventures Ltd has carried not carried out any substantive business operations on the Portions 2456C and 24566C to date.

- (5) The current shareholding arrangements of both KHL and CJ Ventures showed that both companies are owned by one family, the Kassman's family. With the recent passing of Henao Tetei, there is no landowner involvement or participation in the two companies. Evidence revealed that Gerard Kassman is not a landowner as he comes from the 'Muni Ogo' clan of Korobosea and has no ancestral links to 'loragaha' land in Papa / Lealea area. With no landowner's involvement, KHL is no longer a landowner company and this defeats the whole intent and purpose of SABL.
- (6) We also found that the 'informed consent' of ALL landowners was not obtained for purposes of leasing their customary land. It is also very clear from the evidence that Konekaru Holdings Limited (KHL'1') is not a landowner company. Furthermore, we found that the sublease made to the developer CJ Ventures Ltd to be fraudulent and improper.
- (7) Investment Promotion Authority (IPA) has not been diligent in the discharge of its function when it went ahead to include Nicky Maraga, Gumasa Heni, Nao Nao, Hebore Vaguia and Rev. Vani Gorogo as additional shareholders and directors of KHL on the 02nd March 2010 without a proper resolution of the board made by current shareholders. Another new appointment was made again on the 13th April 2010 when Gomara Sedrick was appointed as a director. All these new appointments were cancelled according to the recent IPA extract dated 02nd August 2010. The revocation or cancellation of their appointments were ordered by the National Court when it was discovered that there were no minutes of board meeting or resolutions recommending inclusion of additional board members and the action taken by IPA to include them is contrary to Section 43 of the Companies Act and therefore, unlawful.
- (8) There was no land investigations carried out and no public hearings or meetings held to gauge the views of the landowners and most importantly get landowner's consent to lease their land for the SABL. There was no boundary walk or inspection carried out. All these are important requirements of law under Sections 11 and 102 of the Land Act and must be complied with before an SABL is granted. We find that the whole land investigation process and compiling of the LIR were 'high jacked' by the staff of DLPP when they have no authority to do so as it was clearly a function of the Department of Central. They have usurped the

roles and functions of Lands Officers of Central Province. The whole process is riddled with defects and is flawed.

- (9) The LIR was incomplete and defective, the Certificate of Alienation was signed under duress because of undue pressure been applied to Officers of the Central Province. There seem to be a lot of controversies at every stage of the process leading up to the issuing of the SABL. All these issues and concerns raised throughout should be reason enough for DLPP not to issue this particular SABL but yet it proceeded to issue the SABL. This raises a lot of questions.
- (10) Emmanuel Mai of Kundu Legal Services acted improperly and unprofessionally in facilitating the application and processing of the SABL.
- (11) The SABL issued to **Konekaru Holdings Limited** ('KHL') over **Portion 2456C** was improper and unlawful as proper processes and procedures prescribed as minimum requirements under Sections 11 and 10 of the Land Act 1996 have not been complied with in granting the SABL.
- (12) There are a lot of irregularities, defects and breaches in the granting of this SABL to KHL over Portion 2465C that the SABL cannot lawfully stand.

C. RECOMMENDATIONS

We accordingly recommend that the SABL granted to **Konekaru Holdings Limited (KHL '1')** over **Portion 2465C** to be **REVOKED**.

We further recommend that the SABL to be **REVIEWED** in its entirety and a proper land investigation to be carried by Lands Officers of the Department of Central Province and a new Land Investigation Report (LIR) to be produced. Public hearings/meetings to be conducted and 'informed consent' of ALL landowners must be properly obtained prior to processing and issuing of a new SABL. A new SABL can only be granted after the Custodian of Trust Land is satisfied with all the reports pursuant to Section 132 of the Land Act before issuing the Certificate of Alienability (CoA).

Other generic recommendations made in previous SABLs pertaining to process and procedures on pertaining to the application, processing, approval and issuance of an SABL are also adopted as part of the recommendations and equally apply to this SABL.

9. **KONEKARU HOLDINGS LIMITED '2' (Portion 2466C)**

(SABL NO. 56)

A. REPORT

This is the final Report on Special Agriculture Business Lease (SABL) over **Portion 2466C** Volume 37 Folio 106 Granville, Port Moresby, Central Province. Portion 2466C is also a 'Direct Grant' to **Konekaru Holdings Limited (KHL '2')** pursuant to Section 102 of the Land Act.

The SABL (Portion 2466C) is on the land adjacent to Portions 2456C (Konekaru '1') and much of what has been discussed in KHL '1' (Portion 2465C) applies in a similar way to KHL '2' on Portion 2466C. This SABL (KHL '2') involves the same people, parties and landowners and in many respects the evidences will be the similar for both SABLs. For this reason, we recommend that this final report be read together and in conjunction with the previous report on Portion 2456C (KHL'1'). References will be made to certain aspects of the previous report because of the similarities. There may be other aspects that are peculiar to this SABL (KHL'2') and these will be discussed and highlighted separately.

1.1 Terms of Reference

The Terms of Reference (TOR) (a) to (i) except for (g) were fully covered for purposes of this inquiry into this SABL. Investment Promotion Authority (IPA) records show that Konekaru Holdings Limited (KHL '2') was incorporated as a company and duly registered on the 14th September 2009.

In examining this SABL, the process and procedures used to issue this SABL was thoroughly assessed. The application, processing and issuance of this SABL grant and the different roles of the relevant agencies of government responsible for the administration of SABL in general were also investigated. Also whether or not, 'informed consent' of the landowners was properly and sufficiently obtained prior to the issuing of the grant. The entire process of land investigation, land boundaries inspection, consent of adjoining landowners, public hearings/meetings involving the landowners and project development agreement(s) between the landowners and the nominated developer were also examined.

1.2 Sources of Information

Information and evidence given by the relevant government agencies including landowners and other persons of interest in KHL '2' were similar in many respects to KHL'1' as alluded to above. Much of what has been said about KHL'1' also applies to KHL'2' as it involves the same individuals, parties and people. References and commentaries are made interchangeably between the two SABLs.

There were also documentations submitted to the inquiry relating to LIR, company extracts, copy of title deed, notice of direct grant including other relevant documents pertaining to Portion 2466C (KHL'2'). Affidavits and supporting documents were also filed by different witnesses relating to this SABL. Bulk of the evidence came through the transcripts from oral evidence presented and recorded during the hearing.

Witnesses were called mainly from the Department of Lands and Physical Planning (DLPP), Department of Central Province, Department of Provincial Affairs and Local Level Government (DPLLG) and Department of Environment and Conservation (DEC). As this project is not an agro-forestry project and not located on a forested land it was not necessary to call the Department of Agriculture and Livestock (DAL) and PNG National Forest Authority (PNGFA).¹⁸

1.3 Location of Portion 2466C

Portion 2466C, Volume 37, Folio 105, Granville, Milinch of Port Moresby is located in the Motu-Koita villages of Papa and Lealea near the LNG Plant site in the Central Province and is approximately 15 kilometres from the city of Port Moresby. The land is also traditionally known as "Iarogaha". The total land area granted for this SABL lease is 457 hectares.

1.4 Grant of Lease

A Notice of Direct Grant under Section 102 of the Land Act was gazetted in the National Gazette no. G7 by the Secretary of DLPP granting a 99 year SABL to Konekaru Holdings Limited (KHL '2') over Portion 2466C. The 99 year lease commenced on the 4th January 2010 and will expire on 3rd January 2109. It was registered as Volume 37, Folio 105 on the 3rd February 2010. Portion 2466C covers a land area of 457 hectares. Portion 2466C is adjacent to Portion 2456C within the same vicinity. Infact it was the same piece of land within the same locality but split into two different portions for the SABLs. As mentioned above, the land is owned by the same landowning group of Papa /Lealea villages.

¹⁸ Annex. "VII"

The details of the SABL are shown below:

Legal Description	Portion 2466C Granville
Registered Survey Plan catalogue no.	49/2751
SABL Holder	Konekaru Holdings Limited
Date of Registration of lease	03rd January 2010
Period of Lease	99 years (4th January 2010 to 3rd January 2109)
Land area of lease	457 hectares

1.5 Landowner Involvement

Landowner Company “Iarogaha Garau Incorporated Land Group” (ILG) was incorporated under the Land Groups Incorporation Act Chapter 147 on the 27th October 2009 by Henao Tetei claiming to represent the landowners. Iarogaha ILG was formed to facilitate the support of the landowner’s to obtain SABL over their customary land – Portions 2456C and 2466C (KHL ‘1’ & KHL ‘2’).

Iarogaha Garau ILG would be used as a vehicle to obtain SABL grants for the landowner company – Konekaru Holdings Limited. It was discovered however, that Iarogaha Garau ILG was made up of only one clan named “Vanemata”, members of whom are descendants of Homokai Rei and Henao Tetei is the eldest male descendant. Other clans are not included in the Iarogaha Garau ILG and this brought about a lot of discontentment amongst landowners resulting in continuous disputes. A number of clans (landowning units) were not included in the Iarogaha Garau ILG and therefore, it does not represent all the landowners including clans from Papa / Lealea villages.

A landowner, Henao Tetei who claimed to be Chief of the Iarogaha Garau clan wrote a letter to a Charles Kassman dated 29th December 2009 and appointed Mr Kassman as the ‘agent’ and ‘representative’ to represent the Iarogaha Garau ILG to facilitate the application and processing of the SABL over Portion 2466C. There is no evidence to show that other landowners have agreed to or consented to appointing Mr Kassman to be their agent or representative of the Iarogaha Garau

ILG. It appears that Henao Tetei acted alone without consulting the other landowners.

Charles Kassman is also a company secretary of Veadu Holdings Limited that holds an SABL over Portion 2485C within the same vicinity. Henao Tetei was also a one time director and shareholder of Veadu Holdings Ltd. There is an obvious conflict of interest in this transaction.

Timeline showing important events concerning the Konekaru Holdings Ltd SABL Portion 2466C in a chronological order of their happenings:

(Refer to Annexure "VIII")

Milestone		Date of Completion/Grant Execution/Issue	Proponent/Applicant	Responsible Entity/Respondent
Incorporation of CJ Ventures Limited	1	25 February 2009	Charles Kassman	IPA
Incorporation of Konekaru Holdings Limited at IPA	2	16th September 2009	Charles Kassman	IPA
Registration of Iarogaha Garau ILG	3	27th October 2009	Henao Tetei	Department of Lands (DLPP)
Land Investigation Report (LIR)	4	3rd December 2009	Conducted by a John Lui (retired Lands Officer) and Lazarus Malesa (DLPP) and signed off by Raga Gulu (Dept. of Central Province, Lands Officer)	Department of Central Province.
Governor Moroi's	5	4th January 2010	CPG Governor Moroi request PA	Mr Raphael Yipmaramba, Prov.

request letter			to sign the Recommendation as to CoA	Administrator (PA) Dept. of Central Province.
Signed Recommendation as to Alienability	6	6th January 2010	Mr Raphael Yipmaramba PA, Dept. of Central	Department of Central Province.
Certificate of Alienability	7	Not produced	Not done – Custodian of Trust Land (DPLLG)	Not done – Custodian of Trust Land (DPLLG)
Lease/leaseback Agreement	8	4th January 2010	Iarogaha No. 1 Clan members	DLPP Department of Central
Notice of Direct Grant	9	14th January 2010	Secretary Dept. of Lands	DLPP
Registration and Issue of SABL title	10	3rd January 2010	Registrar of Title Lands Department	DLPP
Sub-Lease of SABL title to CJ Ventures Limited for 99 years	11	1st February 2010	Konekaru Holdings Limited (Gerard Kassman)	CJ Ventures Limited (Charles Kassman)
Inclusion of new shareholders and directors to Konekaru Holdings Ltd. from Papa Clan	12	30th March 2010	Konekaru Holdings Limited	Konekaru Holdings Limited
Filing of OS (JR) No. 565 of 2010	13	1st October 2010	Vane and Dabara Clan of Papa and Vane Mata ILG	Konekaru Holdings, CJ Ventures, Pepi Kimas Secretary, DLPP

1.6 Konekaru Holdings Limited 1 & 2 (Portions 2465C & 2466C)

As stated at the outset of this report, much of the evidence given for Portion 2465C (KHL'1') would be similar and is the same for Portion 2466C (KHL '2') and vice versa. The land investigation report (LIR); certificate of alienability (CoA); landowner's consent or nil consent; public hearings, involvement and participation of the various government agencies such as: DLPP, IPA, DEC, DPLLG and Department of Central would be similar in many respects to Portion 2456C as discussed earlier. This is simply because the two SABLs (Portion 2456C & Portion 2466C) are within the same location and are in fact, adjacent to each other. It appears that land investigation processes were done together for both SABLs on the same date with the same individuals and people involved. It is for this reason that the two SABLs (Portions 2456C & 2466C) should be read together. The evidence adduced so far applies to both SABLs and are used interchangeably for the purpose of this report. The findings however, will be made separately.

B. FINDINGS

The following findings are made:

1. Like Portion 2456C (KHL'1'), Konekaru Holdings Limited (KHL '2') was also granted a 99 year lease (SABL) over Portion 2466C through a Direct Grant under Section 102 of the Land Act by the Acting Secretary of DLPP Romily Kila-Pat in his capacity as Ministerial Delegate on the 14th September, 2010 apparently on the same date as Portion 2456C.
2. At the time of incorporation it was discovered that Iarogaha Garau ILG was not a landowner company for purposes of holding an SABL on behalf of the landowners. It does not represent ALL the landowners as it is made up of only one clan out of the twelve (12) clans of Papa / Lealea villages. There is no evidence of 'informed consent' given by other landowners. Evidence showed that Henao Tetei acted alone in incorporating the Iarogaha Garau ILG to use as a vehicle to obtain a SABL.
3. There were only two (2) shareholders in KHL'2' (similar to KHL'1') and the shares were held individually by Henao Tetei and Gerard Kassman. Henao Tetei held 37 shares and Gerard Kassman held 38 shares making Gerard Kassman the majority shareholder. There is no evidence to show that the shares are 'held in trust' for the other landowners. Charles Kassman, son of Gerard Kassman was appointed the Company Secretary at the time of incorporation. With such shareholding arrangements, there can be no doubt that KHL'2' is a company owned by one family and is not a landowner company.

4. Evidence also shows that Charles Kassman and his father Gerard Kassman are from the 'Muni Ogo' clan of Korobosea in NCD and has no connection whatsoever to any land in Papa or Lealea area although, Gerard Kassman in his affidavit attested that he belonged to the 'Dubara Idibana Hohodae' clan. He stated that his mother is Pidi Monise and his great, great grandfather is from the Iarogaha clan. There is however, no evidence to support this assertion. Motu-Koita is a patrilineal society and land ownership passes through the male line. Apart from his own statement regarding his ancestral links to the land he has not called in any witnesses to corroborate his evidence. Gerard Kassman's statement that he is a landowner from Iarogaha clan cannot stand.
5. The appointment of Charles Kassman as an 'agent' or 'representative' of the Iarogaha Garau ILG by Henao Tetei for purposes of obtaining an SABL over Portion 2466C is improper and unlawful. There is no evidence of any meetings held or resolution passed let alone consulting with the other landowners before the decision to appoint Charles Kassman was made. It was a unilateral decision by Henao Tetei when he clearly has no authority whatsoever to make such appointments.
6. The decision of the National Court in OS No. 494 of 2011 to remove other clan members (landowners) as shareholders and directors of Konekaru Holdings Ltd leaving the shareholders to only two people (Henao Tetei and Gerard Kassman) effectively means that Konekaru Holdings Ltd is no longer a landowner company.
7. It is clear from the evidence that the incorporation of Iarogaha Garau ILG, Konekaru Holding Ltd and CJ Ventures Ltd were carefully planned with 'ulterior motives' and intended to benefit only a few people at the expense of the landowners. There was misrepresentation and fraud involved in the whole process. Everything was 'rushed' from land investigation to the production of the Land Investigation Report (LIR), to the issuing of Certificate of Alienability (CoA) and the actual granting of the SABL. Officers especially from DLPP were collaborating with lawyers purporting to represent landowners and developers resulting in the granting of the SABLs for Portions 2456C and 2466C in record time. The intimidation tactics used by the officers from DLPP and the lawyers to hasten the processing and granting of the SABL is both unacceptable and unprofessional. There are evidence of short-cuts and by-passing of established process and procedures by officers of the State in granting the SABL. The conduct of persons involved in granting of this SABL were 'highly suspicious' as they have gone beyond their call of duty and in the process crossed jurisdictions and

usurped the roles and functions of other agencies of government to ensure that the SABL is granted to individuals of their choice.

8. There were evidences of political pressure exerted on the Provincial Administrator Raphael Yipmaramba by the former Governor of Central Province Alphonse Moroi to sign the Certificate of Alienability (CoA). There were also pressures exerted by Mr Emmanuel Mai of Kundu Legal Services to have all the necessary documentations (LIR, CoA etc) signed to facilitate the granting of the SABL although some of the documents were either incomplete or defective. The whole process from land investigation to signing of documentations and granting of the SABL were done in a speed never seen before. Non compliance with the basic requirements under Section 102 of the Land Act would render the SABL null and void.
9. There were no proper records at the IPA to ascertain the shareholding arrangements of both KHL'1' and KHL'2' despite the Order issued by the Court. The records held by IPA do not show the changes of directors and shareholders. Number of important documents on shareholding was missing from the IPA records.
10. It is obvious that Iarogaha Garau ILG is not made up of the landowners and does not represent the interest of the landowners for purposes of obtaining an SABL. We also found that Konekaru Holdings Ltd (KHL) is not a landowner company as it is owned by only two (2) individuals (Henao Tetei with 37 shares and Gerard Kassman with 38 shares). We also found that the LIR was defective and customary landowners have not given their 'full consent' rendering the whole SABL grant for Portion 2466C null and void. The manner in which the SABL application was processed and the grant issued when the basic requirements have not been met as required under Section 11 and 102 of the Land Act is a blatant disregard of the law and those responsible must be held accountable for their unlawful conduct and actions.

C. RECOMMENDATIONS

Based on the above findings, we recommend that the SABL grant to Konekaru Holdings Limited (KHL'2') over Portion 2466C be immediately **REVOKED**.

We further recommend that the SABL be **REVIEWED** in its entirety and a proper land investigation to be carried by Lands Officers of the Department of Central Province and a new Land Investigation Report (LIR) to be produced and a fresh application for an SABL is to be submitted. Public hearings/meetings to be conducted and 'informed

consent' of ALL landowners must be properly obtained prior to processing and issuing of a new SABL. A new SABL can only be granted after the Custodian of Trust Land is satisfied with all the reports pursuant to Section 132 of the Land Act 1996 before issuing the Certificate of Alienability (CoA).

The other generic recommendations made in other previous SABLs (above) pertaining to process and procedures relating to the application, processing, approval and issuance of an SABL are also adopted and equally apply part of these recommendations.