PART A

1.0 Introduction

1.1 The four (4) SABLs featured under Part A of our report for Western Province is linked to the proposed construction of the “GRE_DRIMGAS_WAWOI FALLS road and referred to as the Trans Papuan Highway. There is evidence of majority support which has the support of the people of Awin Pari, Nomad and Wawoi Falls, the North Fly Provincial Government and the National Government. The national highway on completion will link the township of Kiunga, Tabubil, Nomad, Wawoi Falls, Gulf Province, Central Province and the National Capital District,

1.2. The first phase of the Project relates to the Aimbak-Kiunga-Gre-Drimgas Road, The second phase of the project is the subject of proposed Trans Papuan Highway Contract to be constructed by IT&SL commencing Drimgas village through Nomad and Wawoi Falls on the border of Western Province and Gulf Province.

2.0 BACKGROUND TO SABL PORTION 27C, PORTION 1C PORTION 14C AWIN PARI LAND AND PORTION 1 C AIBOLO

2.1 The proposed Gre-Drimgas Nomad Road Project was initiated by Mr Kala Swokin a former Member of the National Parliament in 2002. The initial intent of the project was to build a road for accessible purpose of the large population of people living in North East, Awin, Pari, and Nomad area who have since Independence, did not have any or very little form of government services. The idea was to find a developer or Aid
assistance from overseas or within the country to build the road at their expense since the Fly River Provincial Government has little funds to build such road in the province as the province is so large. And to pay for the cost of the construction was to get consent from landowners to allow for timber permit or authority to harvest logs within 1 kilometer of both side or selective felling along the road, starting from Gre-Drimgas across Fly River, all the way to Nomad and Wawoi Falls area. The whole plan and purpose for the road project was to firstly provide accessibility for the population that lives in the North East West Pari and Nomad towards Wawoi Falls.

Secondly, the economic logs to meet the cost of the road construction through timber permit obtained by the developer to sell and recoup the cost of construction of the road. There was no intention of SABLs. It was a simple road project for accessibility purpose to provide accessibility to the people of that region.

After the discussion was agreed, former leader, Kala Swokin and old man Sam Wigan, Sevi Bona on the following week went to Department of Works, Forestry Department, National Planning on their deliberations on whether the proposed idea was ideal or not. Since then the Department of Works, Forestry Department, National Planning gave their preliminary consents for feasibility work to proceed. The records of these arrangements can be obtained from Works Department or National Planning. The negotiations and consultation began among the national agencies responsible for this project went well.” (Imen Ita Papa)
3.0 COMMON FINDINGS ON THE TRANS PAPUAN HIGHWAY PROJECT OVER CUSTOMARY LAND

3.1 Mr Imen Ita Papa, the Provincial Lands Officer who signed the Land Investigation Report for the Portion 27C Awin Pari, Portion 1C Awin Pari, Portion 14C and Portion 1C Aibolo in the North Fly Districts in his evidence which I detail separately in the Report said he did not do the Report. The Report was compiled by Mr Hudson Hape of IT&SL and he was only told to sign, and left the Report for IT&SL to complete. This is a common trend we find also happening at New Ireland. (Refer to Imen Ita Papa-Transcript 16/11/11 pages 19-23)

4. INVOLVEMENT AND SUPPORT FOR THE ROAD PROJECT BY THE NATIONAL GOVERNMENT.

NEC Decision No 115 of 2002

4.1 On 22nd March 2002 the National Executive Council (NEC) approved in principle the construction of Stage 2 of the Trans Papuan Highway aka Drimgas-Guavi Road. NEC approved government assistance and incentives to be negotiated together with other appropriate terms and conditions through the Project Agreement negotiation process.

4.2 NEC approved Department of Works (DoW) as the lead state agency in the project agreement negotiations. However there is conclusive evidence from documents submitted by IT&SL that feasibility studies was conducted and exchanged between IT&SL and DoW, the Commission is concerned that for a national project concerning a national road, proper tender process was not followed in the engagement of IT&SL in this regard.
4.3 It was however noted that the technical Working Group endorsed by the NEC was only a smokescreen for the engagement of IT&SL and seem to fortify the notion that that this was the endorsement to engage with landowners over the customary land. That Special Projects group involving other state agencies is farcical when the Commission notes that this was for a national road project.

**The Recommendation**

4.4 NEC Decision was made in the interest of the people of Western Province for a highway that enable access by the people in the most remote areas of PNG to towns and to involve in economic activity.

4.5 DoW in conjunction with the National Roads Authority, Department of Transport, Department of National Planning and Implementation, Department of Finance, NSTB, Department of Justice & Attorney General would have been involved in the process on that NEC endorsement. (See Clause 5 Construction- This should be part of the feasibility process with DoW- The Company shall construct and develop the road (highway) in accordance with the Department of Works Standards and Specifications and attend to harvesting, reforestation and processing in accordance with the Timber Authorities.(Clause 5 Construction and Development).prior to commencement and

**NEC Decision 293 of 2008**

4.6 **NEC Decision 293/2008** relate to two specific decisions to implement NEC Decision 115 of 2002 concerning Drimgas to Duava Road Project,
WP by directing the Minister for Commerce and Industry in consultation with the project proponents to obtain FCA from PNG National Forest Authority, basically to obtain approval for the construction of the roadline economic corridor. The reference to project proponents would include the Provincial Government, IT&SL and the customary landowners. The direction to the Minister responsible for Trade and Industry is not within the ambit of that ministry which is our view could have been the DoW through the normal tendering process which will also encapsulate all that requirements through proper negotiations. As will be seen all this process was floundered because the authorisation gave IT&SL a free rein to negotiate the agreement without much input from the stakeholders. Although the Inquiry was not inquiring into the aspects of tendering process, it has become evident that the whole web of acquiring the land was linked to this deal that was negotiating with the government and not conceding to the process for roadline projects.

4.7 A specific direction was made for the Minister responsible for Agriculture and Livestock to compulsory acquire 40metre road corridor of customary land for the purpose of constructing the road. That submission to the NEC which was sighted failed to include that very important aspect of the acquisition.

4.8 We take note that the road project agreement was prepared by the Department of Treasury, and no reference made on the involvement of Ministry of Works and Ministry of Attorney General & Justice.

5. **GRE –DRIMGAS-DUARA-WOIWOI FALLS TRANS PAPUAN HIGHWAY (STAGE TWO) ROAD PROJECT AGREEMENT between the State, Fly River Provincial Government, North East**
West Investment Limited (NEWIL), Kebogas Investment Limited, Tosigiba Investment Limited, PNG Agency For International Development and Independent Timber & Stevedoring Limited.

5.1 On 23 March, 2011 the NEC (Special NEC Meeting No. 06/2011) advised the Governor General to enter into and execute on behalf of the Independent State of Papua New Guinea Project Agreement between the State, Independent Timber & Stevedoring Limited and the Western Province.

5.2 The Project Agreement was prepared by the State Solicitor who gave legal clearance for the execution of the agreement between the said parties. In a letter dated 3rd December 2010, State Solicitor advised Mr John Andreas, acting Secretary, Department of Commerce and Industry that the project agreement was cleared by his office on 8th May 2007 which implied absence of proper negotiations of the Agreement by the relevant State Agencies. It is presumed that no proper discussions and negotiations to gauge the views of the stakeholders were addressed.

5.3 The Agreement was executed by Honourable Sir Michael Ogio, Governor General and Head of State of PNG acting on the advice of the NEC on behalf of PNG on 23rd May 2011 in the presence of John Andreas (Acting Secretary, Department of Commerce and Industry); Joel Luma (Secretary, Department of Works); Mr Kanawi Pouru (National Forest Authority).

5.4 It is noted that key government stakeholders named as signatories on the Agreement were not present at the signing ceremony. Those named but not present were Mr Gabriel Yer Secretary, Department of Finance; Ms Ruby Zariga, Department of National Planning and Monitoring;
Honourable Bob Danaya, then Governor of the Western Province and Mr Gul Gurom, Provincial Administrator, Department of Western Province
This means only one thing and that all the stakeholders had not been provided with the documents and had not commented on it during the drafting stages which was already done in 2007.

5.5 Mr Imen Ita Papa had asked Mr Harsely to convene a special meeting at Kiunga and make presentation of the project agreement. That letter was signed by the Provincial Administrator and he refused the offer. Instead, Mr Harsely funded the trip for the Executives of NEWIL, Tosigiba & Kebogas to travel to Port Moresby for the signing ceremony. Dina Gabo then Chairman of Tosigiba refused to travel to Port Moresby and insisted on IT&SLs transparency over the Agreement, that IT&SL lawyer funded the trip for the Soki Samisi, the signatory on the agreement. Mr Samisi was later installed as the acting Chairman with the assistance of Mr Titus, lawyer engaged by IT&SL. There is evidence that all the executives of the landowner company expressed concern that they did not know what they were signing and that no copy of the agreement was provided.

5.6 Pertinent issues arise following our examination of the project agreement which the Commission finds contravenes Section ---of the *Fairness of Transactions Act*. For example, under recital letter “O”,

**Recital letter “O”** *IT & SL in conjunction with the landowners is seeking a timber authority (T/A) to cover the harvesting of log product covering some seven thousand (7,000) cubic metre per kilometre and or selective harvesting of timber from 1,000 hectares per kilometre of road length or which is the greater of the two for selective*
harvesting of commercial species and the removal of
timber from the 40 metre road corridor or 20 metres
either side of the road centreline and a distance of 5,000 metres on either side of the road corridor which has been initially agreed with traditional landowners.

5.7 The Commission’s review of the **2009 Draft Agreement (Exhibit 27C)** prepared by the State Solicitor notably excludes under Recital “O” the reference to 5,000 hectares. It only corresponds to 40 metre road corridor or 20 metres either side of the road centreline. The C.O.I finds this to be erroneous, misleading, and mischievous. That provision we also find contradicts the statutory requirements for road line forest clearance pursuant to Section 90C of the *Forestry Act*.

6 **EVALUATION AS TO FAIRNESS OF THE CONTRACT**

6.1 The effect period of the agreement for a period of twenty-five years is questionable and whether it takes twenty five years to construct the 600 km roadline (Clause 2.1(a)(b)), issuance of Timber Authority through NFA (Clause 3.2(a)), submission of environmental permit application from DEC (Clause 3.2(c)); submission of an application to the Minister for Lands and Physical Planning under the lease back agreement through the three (3) landowner company, hence reference to the SABL process (Clause 3.2(d)), construction and development (Clause 5) need for roadline feasibility to be completed before contract is awarded and funding available-logging will occur for over twenty five years. *(Clause 5 (c)-, Obligations with State and Provincial Government.)*
6.2 The Western Provincial Government was not present at that signing ceremony.

6.3 Mr Neville Harsely of IT&SL; Mr Waiti Kwani of NEWIL; Mr Max Miyoba (Kebogas Investment Limited) Sami (Tosigiba) signed the document as the Developer and landowners respectively. The signing of the contract was a major concern to the Fly River Provincial Government and the landowners for the reasons expressed by Mr Imen Ita Papa. (Refer to his evidence and evidence of other landowners in this Report).

6.4 The absence of the most important stakeholders leaves a lot to be desired as to how this project document signed by the government would be determined by the very action of IT&SL and the Executives of the Landowning companies.

7. Recommendation

7.1 All government Contracts must be transparent and the involvement of the Office of the State Solicitor as an important Office involved in State Contracts is compulsory. Transparency and involvement of all the Stakeholders must be paramount in all decisions and contractual obligations. The State has been inundated by litigation resulting from irresponsible behaviour of very important instrumentalities of the State. This Contract was not prepared by the State Solicitor and brings into question what is the purpose of that Office in terms of providing advice to the State.
8 Papua New Guinea Agency for International Development

8.1 The Papua New Guinea Agency for international Development (PNGAID) is providing assistance to the landowner companies in the development and humanitarian needs in this road project. This connotes the intention of the company to provide apart from funding project assistance, but humanitarian assistance largely in exchange for merchantable logs for export. The road project has been given a lifeline of twenty five years where IT&SL is benefiting from the agreement at the expense of the four companies, the provincial government having no involvement in matters affecting customary land in the WP and key agencies of government.

8.2 Under recital letter “L” of the Agreement states; “The Landowner Companies have approached PNGAID to seek financial assistance for the project funding. In consultation with the landowners, PNGAID has agreed to assist in the development and humanitarian needs in this road project. All funding has been provided by IT&SL and there will no cost or liability to the State, the Provincial Government and the landowners in connection with the construction of Stage 2 of the Road Project.” (Recital L).

8.3 The Commission notes that funding of the road project will be sourced from the logging activities of IT&SL as stipulated under this agreement, the Joint Venture Agreement with the Landowner companies and under the 25 years sub lease agreement.

8.4 Recital “U” of the Agreement further states, PNGAID has assigned the road construction and logging operation to IT&SL and IT&SL have
“entered into separate contractual arrangement with the landowner Companies for the purpose of implementing the Road Project and harvest the timbers.”

8.5 We find fundamental to this aspect of inquiry that PNGAID played a pivotal role acting as the middleman agency for the landowner companies, IT&SL and the State from inception of the project to the signing of the project agreement. The Commission noted that PNGAID was the funding agency and had engaged its own contractor to implement the road project thus eliminating CSTB involvement in awarding of the contract, minimising delays relating to DOW depleted in-house Design capacity, and minimise delays in outsourcing survey and design components to Consultants, however, the planning and procurement aspects of the PNGAID proposal required approval of the Department of Treasury, National Planning and Finance respectively. Mr Mumu then Deputy Secretary of DOW also advised PNGAID that the new Design concept was accepted subject to DOW Design Standards of Roads and Bridges. (Roy Mumu letter dated 07th September 2006). According to records the proposed design, construction and funding of the road was an initiative taken by the private sector in the provision of a major transport infrastructure in compliance with DOW design standards hence a national road asset subject to the discretion of the Minister of Transport to declare that road as a national road asset. (Mr Parakei, Secretary-Transport-letter dated 21st September, 2006)

8.6 A Memorandum of Understanding was executed between the State and PNGAID on 8th July 2005. The signatories to that MOU were Mr Valentine Kambori, then Secretary for National Planning and Rural Development and Mr Paul M. Japhlom, Managing Director of PNGAID.
Under that MOU, the State will use its best endeavours to facilitate investment by PNGAID in the areas of Economic and Social Development, *facilitate the processing of approvals, endorsement, licences, permits and other clearance as may be required by PNGAID to develop identified projects in PNG and the Department of National Planning and other relevant agencies will provide support and assistance to PNGAID in its dealing with local authorities, landowners and other interested groups.* (See MOU)

8.7 Likewise amongst other things PNGAID will access US and other international multilateral public funding agencies to provide financial, technical and human resources to establish economic and social projects.

8.8 IPA extracts of IT&SL reveal that Paul Michael Japhlom and his wife Winnie Winifred Japhlom each held 50 shares from 7th November 2003 to 5th April 2006. They also held the Directorship and Secretary position jointly to November 2006. The Commission did not interview or receive any evidence from Mr Japhlom on his involvement as Director of IT&SL and the setting up of PNGAID of which he is the Managing Director. The Commission finds that IT&SL became involved with the Trans Papuan Road project as early as 2003, the time Mr & Mrs Japhlom were Shareholders, Directors and Secretary of IT&SL. The Commission conclude as a matter of fact that a potential conflict of interest on the part of Mr Japhlom existed when he established PNGAID to forge investment on behalf of the landowners, the State and IT&SL of which he was a previous active corporate member.

8.9 The Commission notes that a Mr John Mulcahy signed the Road Project Agreement as Managing Director of PNGAID on 23rd May 2011. We find
as a fact that the same Mr John Mulcahy is a non-resident active Director/Employee of IT&SL referred to in the evidence of Mr Neville Harsely (Harsely 10/1/12-SBL 76 Mirou at pages 52-53). Subject to further inquiry on this aspect of the inquiry, the Commission sighted a letter from Meridian Capital Group (Merchant Bankers) dated 1st October 2005 where a Mr John Mulcahy, Managing Director Meridian Capital Group wrote to the Secretary for Transport, Mr Henry Parakei stating that the Meridian Capital Group was acting as an intermediary in regard to Trans Papuan Highway Project, As an intermediary to foreign governments and domestic sources of funding, we have arranged to provide capital required to design, implement and maintain socially conscious infrastructure projects such as the National Road Projects.

8.10 The triangular web created by forging understanding with the State, the abuse of the lease back process and the acquisition of the two (2) million hectares the Commision finds is questionable for the fact that IT&SL is the main source of outworking towards the road project and directly manipulating the SABL lease back process. The source of that manipulation is absolutely encouraged by the agencies of the State whose responsibilities border on gross negligence.

8.11 The State Agencies responsible for foreign company registration and investment portfolio are required to undertake indepth due diligence on all foreign corporations, individuals (both national and foreigners) investors to avoid gross abuse of natural resources and having acess to the peoples asset, the land.

8.12 We recommend that further investigation undertaken to ascertain the involvement of Messrs Japhlom, Harsely, Malcahy and to establish if an
international racketeering over land acquisition has been committed by the company(s) over the SABLs Portion at Awin Pari, Nomad and Wawoi Land.

9 ELC RUN RUNGINAE RURAL HOSPITAL AND OTHER EXISTING STATE LEASES

9.1 It appears from the acquisition that a number of existing SLs was not excised from the SABL. Mr Max Ako current Hospital Administrator of the Runginae Rural Hospital gave evidence on oath. Runginae Rural Hospital is located some 62km from the township of Kiunga (along the Kiunga/Tabubil Road) and is a private hospital administered by the Evangelical Church of Papua New Guinea (ECPNG). The current SABL also includes that current hospital facility, administration block, airstrip and residential houses and other amenities. In what was a very strong statement to the inquiry involving a private run hospital and essential service to North Fly ECPNG raised very serious concerns over the inclusion of an existing mission lease including various leases within the district that is crucial to the decision of the Commission to revoke the SABL without any consideration to NEWIL and IT&SL.

9.2 The statement to the Inquiry in part reads; “…The executive committee of the Evangelical Church of Papua New Guinea Health Services North Fly has some concerns regarding the granting of SABLs in the areas where we operate health service which effectively extinguishes the mission church lease under which we were operating. At a minimum, we would like to see the areas of mission church lease exercise from the SABLs. ECPNG Health Services North Fly operates a rural hospital at Rumginai which serves a referral centre for a very large area of Western Province
as well as a Community Health Worker Training School. As well as the hospital and CSW school we also operate five health centres namely; Moguru Health Centre in Nomad, Debepari Health Centre in Nomad, Havena Health Centre north of Rumginai and Dome, this is not in the SABL area, in the North Fly and Obo in the Middle Fly and 10 aid-posts namely; Senamrai, Atkamba, Sonai, Dahamo, Suabi, Adumari, Honenabi,Yehebi, Fuma and Hesaribi. And six of these last ones are, I think, within the SABL lease. A large number of our aid post and our busiest health centre Moguru have been directly affected by the granting of the Special Purpose Agriculture and Business Lease which now includes the ground where these facilities have been built. The SABLS have also taken away land from the mission stations in which these facilities are based including land where there are schools and other facilities....”

“....As a health service the granting of SABLs has presented us with a number of concerns. Rumginai hospital was built in the late 1960s and many of our facilities are also quite old and run down. We are in the process of presenting project submissions to various agencies. We have no longer hold a valid lease over the land where our facilities are built. We are not going to be able to convince potential donors to assist us with rebuilding or rehabilititating our facilities. To secure funding for infrastructure project, we need to have a valid lease. Our church service has a very high standard with regard to healthy living and respectful behaviour.”

9.3 The project agreement between the State, Fly River Provincial Government and the Independent Timber and Stevedoring Limited is not binding and enforceable because it fails to meet necessary statutory requirements in relation to public contract. For example, tendering
requirements under Public Finance (management) Act 1995 as amended were not complied with. Also, the contract does not comply with either statutory requirement such as Section 90 C of the Forestry Act.

9.4 The recital letter “O” to the project agreement is illegal or fraudulent in that there was no real consensus ad idem between the landowners and the independent Timber Stevedoring Limited and on the subject matter before the agreement were executed by the Head of State, acting on advice of the NEC.
1. COI Inquiry File No. 66 for Special Purpose Agricultural and Business Lease over Portion 27C Volume -- Folio -- Milinch: Alice, Tedi, Sari, Palmer & Kiunga, Western Province in the name of North East West Investment Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to Section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the North East West Investment SABL. These were:

1.2.1 Department of Western Province, (DWP)
1.2.2 Department of Lands and Physical Planning, (DLPP)
1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)
1.2.4 Department of Agriculture and Livestock, (DAL)
1.2.5 Department of Environment and Conservation, (DEC)
1.2.6 PNG Forest Authority (PNGFA)

Witnesses Evidence and Summonses

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings, including titles, are set out in the schedule below. For ease of reference, the schedule also lists the
transcript pages at which the person commenced giving evidence against the name of the witness.

<table>
<thead>
<tr>
<th>No</th>
<th>Name and Position</th>
<th>Pages</th>
<th>Day</th>
<th>Date</th>
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<tbody>
<tr>
<td>1</td>
<td>Mr Imen Ita Papa, Provincial Lands Adviser, Provincial Lands &amp; Physical Planning Office, DWP</td>
<td>3-50</td>
<td>1</td>
<td>16/11/11-SABL 58-MIROU</td>
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<td>Mr Manase Dimonai, District Administrator, North Fly District, DWP</td>
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<td>3</td>
<td>Mr Hudson Hape, Surveyor, IT&amp;SL</td>
<td>13-6</td>
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<td>Mr Michael Titus, Lawyer, Private Legal Practitioner</td>
<td>12-13</td>
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<td>Mr Ronny Guran Landowner, Dahamo Village (Ward 16), Ward Councillor, Olosobip LLG</td>
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<td>Mr Steve Kwani Landowner, Tmigondok village, Husioko Clan, Chairman-Nakrone Forest Area Landowners Association</td>
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<td>Mr Jack Kwani Landowner &amp; Chairman of Gase Clan, Drimgas &amp; Tupensomi village,</td>
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<td>Mr Giwi Giwi Landowner-Sawi Clan, Awin Tribe, Tiomnai Village (Kiunga/Tabubil Road)</td>
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<td>9</td>
<td>Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga</td>
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<td>Mr Norbert Gwame Landowner, Somoe clan, Somoekwankia village, Ningerum Rural LLG</td>
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<td>12</td>
<td>Mr Nelson Women Landowner(Also refer to evidence under Portion 1C Awin Pari)</td>
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2. **Parties represented by counsel**

2.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

   “Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

2.2 The following were granted leave to be represented by counsel

| Laywer for NEWIL & IT&SL | Mr Michael Titus |

3. **Exhibits and documents**

3.1 There were fourteen (14) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.
<table>
<thead>
<tr>
<th>No.</th>
<th>Document Description</th>
<th>Author(s)</th>
<th>Date</th>
<th>Reference</th>
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<tr>
<td>6</td>
<td>Bachelor of Land Studies Degree-Mr Imen Ita Papa dated 28/11/97</td>
<td>C.O.1</td>
<td>16/11/11</td>
<td>NEWIL 27C(6)</td>
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<td>8</td>
<td>ECPNG Letter dated 15 November 2011 from Max Ako, Runginae Rural Hospital Administrator</td>
<td>C.O.1</td>
<td>16/11/11</td>
<td>NEWIL 27C(8)</td>
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<tr>
<td>9</td>
<td>Affidavit of Waiti Kwani &amp; List of ILG Consent Form signed on 11/11</td>
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<td>NEWIL WK</td>
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<td>Affidavit of Foxy Asobi</td>
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<td>11</td>
<td>Affidavit of Samson Ubre</td>
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<td>12</td>
<td>Affidavit of Betty Wine</td>
<td>C.O.1</td>
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<td>BW 18/11/11</td>
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<td>13</td>
<td>Supplementary Affidavit of Max Ako &amp; Map of Project Areas Covered under Portion 27C (NEWIL) &amp; Portion 14C (TOSIGIBA)</td>
<td>C.O.1</td>
<td>25/11/11</td>
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<td>25/11/11</td>
<td>MA “2”</td>
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<td>14</td>
<td>Statement of Aaron Dupnai dated 22 August 2011 re: Inclusion and Investigation to be conducted, PNG Highway and SABLs</td>
<td>C.O.1</td>
<td>25/11/11</td>
<td>AD 1</td>
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4. **Timeline of events of note surrounding NEWIL SABL Title**

4.1 The timeline showing important events concerning the SABL is shown below in chronological order of their happening:
<table>
<thead>
<tr>
<th>№</th>
<th>Milestone</th>
<th>Dated of Completion/Grant/Issue Execution</th>
<th>Proponent/Applicant</th>
<th>Respondent Entity/Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Incorporation of North East West Investment Limited</td>
<td>10 May 2044</td>
<td>NEWIL</td>
<td>NEWIL</td>
</tr>
<tr>
<td>2</td>
<td>Independent Timbers &amp; Stevedoring Limited</td>
<td>7 November 2003</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
<tr>
<td>3</td>
<td>Application for SABL to Portion 27C</td>
<td>19/12/2008</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
<tr>
<td>4</td>
<td>Land Investigation Report(s)</td>
<td>19/12/2008</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
<tr>
<td>5</td>
<td>Survey Plan Catalogue</td>
<td>-</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
<tr>
<td>6</td>
<td>Lease-Lease Back Agreement</td>
<td>24/07/2009</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
<tr>
<td>7</td>
<td>NEC Decision 115/2007 dated 22nd March 2007 re: Government Support and Approval in Principle sought for the construction of the Drimgas to Duara (Tegana) Road Project- Western Province, PNG</td>
<td>22/03/2007</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
<tr>
<td>9</td>
<td>Special NEC Meeting No. 06/2011 re Advice to the Governor General dated 25th March 2011.</td>
<td>25/03/2011</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
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<tr>
<td>10</td>
<td>Trans Papua Highway Road Project Stage II</td>
<td>23/03/2011</td>
<td>IT &amp; SL</td>
<td>IT &amp; SL</td>
</tr>
</tbody>
</table>
5, FINDINGS

5.1 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by NEWIL.

6, North East West Investment Limited SABL

6.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G218 dated 24th September 2010 for Portion 27C Awin Pari Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 23rd September 2010 by the Department of Lands and Physical Planning to the holder North East West Investment Limited (NEWIL). The details of the SABL is shown below:

<table>
<thead>
<tr>
<th>Legal Description</th>
<th>Portion 27C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Survey Plan Catalogue No</td>
<td>9/133</td>
</tr>
<tr>
<td>SABL Holder</td>
<td>North East West Investment Limited</td>
</tr>
<tr>
<td>Date of Registration of Lease</td>
<td>23rd September 2010</td>
</tr>
<tr>
<td>Period of Lease</td>
<td>Ninety-nine (99) years</td>
</tr>
<tr>
<td>Land area of lease</td>
<td>149,117.0 hectares</td>
</tr>
</tbody>
</table>

IPA

7 North East West Limited

7.1 North East West Investment Limited (NEWIL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 10th May 2004 and the current Principal
Place of Business is Room 1001, 10th Floor, Pacific View Apartments, Pruth Street, Korobosea, National Capital District. As at 3rd October, 2011 IPA records confirms that it is operating. The Company number is 1-51352.

7.2 The latest IPA company extract provided to the Commission dated 3rd October 2011 indicates 62 shareholders of NEWIL holding 1 ordinary share each in their capacities as Incorporated Land Groups within the land known as Awin Pari, North Fly electorate of the Western Province.

7.3 The extract discloses Messrs Robin Yawa, Foxy Asobi, Dimo Sobori, Paul Wasi, Joe Skai, Waiti Kwani, Samson Ubre, Susan Bale, Ronson Moya and Tusa Dimabo as Directors of the company. Mr Foxy Asobi is also the current Secretary of the Company with Mr Kwani appointed as the Chairman. The Annual return for the company was made up to 30th June 2010.

7.4 Messrs Waiti Kwani, Foxy Asobi and Samson Ubre, the current Executives of NEWIL told the inquiry the importance of development for the people of North Fly district and collectively confirmed that the people agreed in principle to allow IT&SL to develop the district through the road project. It was on this basis that the majority consented for the road project to be constructed on their land. Mr Waiti Kwani, current Chairman of NEWIL told the inquiry that on 16th March 2003, the Executives convened a meeting at Sarekona for the landowners of Portion 27C, Portion 1C and Portion 14C to inform them that “… IT&SL heard our cry for development and was interested in constructing a road, selective logging and agriculture project from Drimgas, Guavi Falls and all landowners must form ILGs to participate in the project.
On 23 March 2003, Neville Harsely of IT&S came and met more than 500 people at the old Kiunga Rural LLG Council chamber and Mr Harsely advised everyone he was prepared to partner them by carrying out the developments in exchange for forest resources.”

7.5 It was after that meeting that awareness and ILG was organised by the Executives with the assistance of Mr Michael Titus, a private lawyer paid by IT&SL to assist all the landowners register their respective ILGs. According to Mr Waiti the ILG registration finalised in 2006, and that all landowners were aware of the proposed road project agreed to solve their disputes and register their ILG at a later date. This fact was pursued when Mr Waiti attached to his Affidavit a list of clan members endorsing their support and ‘consent’, copies of the signatures signed in the presence of lawyer Michael Titus on October 2011, some 2 weeks before the inquiry commenced its hearing at Kiunga.

7.6 Mr Waiti further states that in 2007, that when IT&SL commenced feasibility studies on all components of the road project, authority for the road line TA was refused by NFA because of changes to the Forestry Act, as the requirement for roads more than 12.5km required FCA. It was that point in time that SABL was mooted and agreed to as the best vehicle for development and for the avoidance of further NFA process where the request for feeder road by landowners during the life of the project would not be an impediment to the IT&SLs construction of the 600 km economic road line for the North Fly District linking Gulf Province, Central Province and eventually Port Moresby. This was admitted as the very basis for converting the initial request for road line into an SABL concept as Waiti states in his evidence;
“…And since NEWIL represented the landowners now given all the awareness programs, the landowners has consented for the project, a next half activities to be undertaken in the project based on the Department of Land’s advice. It was agreed the appropriate way forward was by way of an SABL. Through the SABL, the customary lands would be secured for the project fundamentally, because aside from the main Trans Papuan Highway, the potential request for feeder roads by the landowners would see feeder roads closing the entire project area.

....

Apart from the Trans Papuan Highway, corridor and the development alongside the corridor of the highway, airstrips, base camps, all other parts of the project area would not be utilized unless the landowners wanted feeder roads, selective logging for agriculture projects on their customary lands.

**Awareness of SABL.** After learning the need to secure the land by way of an SABL, in November 2008 we had a meeting with all Pari, Waitu, Awin, Nomad, Biyami tribes at Sarekona and then form teams and we went to advise them to advise them of what we understood and described to the landowners was agricultural lease, timber over their land for the road and agricultural forest project. We went to all the same villages along the proposed road corridor and up the Fly and Palmer River.

.....”
7.7 In that evidence Mr Waiti confirmed that during the process of the Land Investigation process they made representation to Mr Sikabi Maika, then Provincial Lands Adviser and learnt that the district lands office was short staffed and they were funding problems to undertake the LIR. The Executives used that information to approach IT&SL and the developer agreed to facilitate the LIR. Mr Hudson Hapa was instrumental in assisting the landowners in surveying the land and conducting the LIR.

7.8 Mr Waiti, Chairman of NEWIL produced a detailed list of landowners names from all the various clan members and signature to indicative that majority consent for Portion 27C and 1C was obtained. This was an attempt to mislead the COI and it was noted during the hearings that Mr Titus was assisting the executives in the preparation of the Affidavits. The Affidavit tendered in as evidence indicate that it was sworn on 17th September 2011 and the Attachment “a” confirming landowner support of the project and the signatures indicate that signatures were obtained between periods 30/10/11, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th November 2011. The list was prepared some two weeks before the commencement of the hearings at Kiunga and places a lot of question on the integrity of the land investigation process.  

8 Recommendation

8.1 The Chairman and Executives of landowner companies must exercise responsibility in land mobilization process and should not be influenced by any means that is a contravention of any laws or process.

Pepei Kimas confirmed that when Forestry policy changed in 1996 this led to wholesale changes to the way SABL was processed-(page 11 of Transcript SABL 80-Mirou-17/01/12)
8.2 The IPA must also become proactive and undertake workshops for landowners executives in understanding the corporate laws and its process. That must be a compulsory exercise to educate the mushrooming landowning companies.

9 EVIDENCE OF THE LANDGROUPS OF AWIN PARI

9.1 The proceedings of the inquiry into Portion 27C Awin Pari gave opportunity for the landowners under SABL Portion 27C Awin Pari to provide evidence on their understanding of the SABL and the issue of consent. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers or the Provincial administration into all aspects of the land investigation. The general thrust of landowner consensus is that the majority villagers within the road corridor project had consented to the construction of the Trans Papuan Highway, which also included allowance for the clearance of forest area to build the road. That road clearance in compliance with Forestry Act would entail a 40meter road corridor forest clearance.

9.2 The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity

9.3 Ronny Guran, a Ward Councillor from Dahamino village, Olsopip LLG told the Commission, that the five (5) villages within Ward 16 was not aware of the existence of NEWIL as the umbrella landowner company. He confirmed that there was virtually no awareness carried out in the area
by NEWIL or DLPP, but the villagers only knew of the Trans Papuan Highway project and any feeder road that would be constructed for the village to enable access to the highway and the township of Kiunga or other major towns. Olsopip is located further north on the border towards Sandaun Province.

9.4 **Giwi Giwi** from Tiomna village which is some 13km from Kiunga (on the Kiunga/Tabubil Highway) and representative spokesperson for the 70plus members of the Sami clan, Awin tribe confirmed that they were not aware of the SABL Portion 27C until they saw the gazettal listing published by the Commission of Inquiry. The whole village was not aware of the existence of NEWIL as the landowner umbrella company, and also knew nothing of any government representation in the land investigation process.

9.5 **Steven Kwani**, Chairman of Nakrone Forest Area Landowners Association, spokesman representing the USIOKE clan from Trigondok village also confirmed that his people were not aware of the SABL that also included their land. According to Mr Kwani, his people were only told that a roadline will be constructed connecting the Gre –Drimgas road across the Fly River over Portion 1C to the Wawoi Falls. There was no involvement from DLPP or the Provincial Lands Office. He also states that he comes from a clan that has about 105 adults and children. In total there are also 10 clans making up their tribe totalling 246 inhabitants.

9.6 **Jack Kwani**, spokesman from Drimgas village and of the Gause Clan which is one of the 12 clans along the Fly River where the proposed roadline will be constructed. He said on oath that from Drimgas to Tupensomi there are about 624 inhabitants. He also restated that the
people of Drimgas to Tupensomi were not fully aware of SABL until the date of the SABL inquiry hearings at Kiunga. There was awareness about the Trans Papuan Highway, but IT&SL did not make that very clear to the people.

9.7 In respect of the ILG forms, it was confirmed that Waiti Kwani, Samson Ubre and Foxy Asobi were conducting the ILG awareness and collecting signatures basically on the roadline project and not the SABL. He was present at the time the road project agreement was signed at the Office of the Governor General but was insisting on the ILG Certificate for his clan. The important aspect of his evidence is that IT&SL had no presence in Kiunga especially an office to conduct business with the Awin landowners including heavy machinery and equipment since 2006. The current feeder road between Gre village and Drimgas on the Fly River was built jointly by Department of Works and Trima Construction Limited.

9.8 **Patoro Ako** comes from Grengas village which is about 10km from Kiunga along the Kiunga/Tabubil Highway. He is a member of the Hongas clan. Mr Ako states that he played a very significant role by assisting IT&SL as a former Director of NEWIL in the process leading to the acquisition of Portion 27C and the other three SABL lease back titles. He agreed that whilst the initial intent for the consent was for the road corridor roadline, the SABL process was not considered by the majority landowners. He confirmed that his clan have never given the approval or consent and supported calls for the revocation of the SABL title.

9.10 **Nelson Women** (SABL 59-MIROU 17/11/11 pp 19-28) comes from Tmingondok village which lies on the land bordering Portion 27C and
Portion 1C Awin Pari land and covers about 30,000 hectares of land. The villages comprising nine (9) clans are located on the eastern (Portion 1C) and western banks (Portion 27C) of the Fly River. He is the leader of the Gase clan and Deputy Chairman of the Dispute Settlement Authority.

9.11 He expressed disappointment on behalf of his clan over the absence of government officials in conducting awareness over the SABL, the land investigation process and the fraudulent means of obtaining the consent of his people by using another person by the name of Julius Mangunen, who is the member of the Musiok Clan (ILG 12448) on the east bank of the Fly River. He even said that their village lies well outside of the intended road construction project and could not understand how and why it was included under the two portions under the NEWIL and subleased to IT&SL under the JV Agreement. His clan did not fill out the consent form as required in the Land investigation process and they also did not approve Julius Mangunen to be the agent for their clan.

9.12 Aaron Dupnai comes from the Giponai village some 30km up the Fly River from Kiunga, He represents his people of the Gre Clan of the EKium Tribe. At the time of the hearing, Mr Dupnai in the company of his people in their traditional regalia in a silent protest holding placards simply calling for their land under SABL to be returned to them. Mr Dupnai registered his people’s complaints over the acquisition of their customary land by the umbrella Landowner Company and IT&SL without the knowledge and consent of his people. He also expressed a number of matters that will require further investigation especially over the lack of consent and the forging of signatures on the consent form, the road corridor extension of forest clearance to 5km in breach of the
Forestry Act and the lack of financial capacity of IT&SL to construct the road.

10. INDEPENDENT TIMBERS AND STEVEDORING LIMITED

10.1 The proposed developer for the SABL is Independent Timbers & Stevedoring Limited (IT&SL) a foreign company registered and located in Delaware, United States of America. It registered in PNG on 7th November 2003 as a branch or operation office under section 386 of the Companies Act, 1997. The company registration number is 1-500930 and is wholly owned by IT&SL USA, INC.

10.2 In terms of the share structure and composition of shareholders the company has issued a total of 19,242,603 shares Between 5 April 2006 and 31 May 2011 the company had issued a total of 7 million shares. The registered office of IT&S(USA) Incorporated is stated as 3500 South Dupont Highway, Dover, Detroit 19901 USA.

10.3 The current directors of the company are Mr Neville John Harsely and Clifford Ian Frazer, both are Australian citizens.

10.4 The company applied for certification as a foreign entity operating in PNG and the IPA Certificate Committee deliberated and approved the application on 3rd August 2006. A foreign certificate with Certificate No. 91629 with terms and conditions was issued to IT&SL on 11th August 2006.

10.5 The company was certified to carry on business activities of Infrastructure and Construction development; Harvesting of Forest
Products, Processing of Forest Products and Buyers and Exporters of Sawn Timber. Its registered office is located at Section 72, Allotment 31, Korobosea Drive, National Capital District and its operating location to conduct the its certified activities is DRIMGAS to DUNA (TEGANA)-Western Province. That variation was issued to IT&SL by IPA on 18th February 2011. According to IPA, the company intended to work with NEWIL and to implement its Project Executive Work Plan executed on 4 November 2005.

10.6 The Commission is concerned about the lack of presence of the company including heavy machineries, office infrastructure to carry out the project. Under the Schedule of Terms and Conditions of IPA Certification, the company is required to “(1). Commence operations of the approved activities and locations within 6 months from Certification; and;(4). Within 6 months from the date of certification and every 6 months thereafter, provide details of any capital expenditure and other economic statistics such as employment creation as stated in the business plan, import/export statistics and productions data that may be deemed necessary for the purposes of the Investment Promotion Act, 1992.” The company has not complied with this requirement and may be liable for prosecution under the Investment Promotion Act, 1992 since the Certificate was issued on 11th August 2006.19

19 Refer to Affidavit and Annexure attached to the Affidavit of Alex Tongayu, Registrar of Companies dated 20 October 2011 to COI SABL 48 Portion 1C Tumu Timbers Limited
The Evidence of Mr Neville Harsely

10.7 Mr Neville Harsely\textsuperscript{20} is an Australian and the Managing Director of IT&SL operations in Papua New Guinea. He played a leading role in establishing rapport with the landowner company executives, government agencies especially with the Trans Papuan Highway for the past 8 years culminating in the execution of the road project agreement between the State, the landowner companies and his company.

10.8 The Commission has noted with concern that since the company was accorded the status of developer company, there was no significant progress over the second phase of the project been only feasibility studies and on-going negotiations over forestry roadline clearance, environmental issues, agricultural and at the highest the National Executive Council’s authorization for government agencies to lend support to IT&SL as the preferred developer.

10.9 Company has worked in the Western province for eight (8) years and done detailed engineering on the project. (Nothing tangible and operations not visible in terms of the road project both at Kiunga & Port Moresby). Following the amendment to the Forest Act, company was forced to consider other process to utilise the land earmarked for the construction road corridor. “We set up a very significant point by saying that the road construction and clearing had to be done and designed in what we call 20 kilometre sections so that we do survey on site, we design road section in 20 km sections which is submitted to the Department of Works in engineering alignment sheets. The DoW duly approved those

\textsuperscript{20}SABL 76-MIROU-10th January 2012 pages 1-72
20km sections for then to be able to commence construction on,” (page 4 line 46-51)²¹

10.10 Confirm retaining Michael Titus as lawyer to assist the Landowners, “Mr Titus is paid by our company to provide independent legal counsel to the respective landowner companies. So that way companies are provided some form of legal guidance from where they are. We (IT&SL) do not involve ourselves in any of those meetings and we preclude ourselves”.

10.11 According to his evidence, IT&SL commenced feasibility studies on the road project which included application for grant of TA. NFA advised IT&SL that proposed road project did not require TA concept based on amendments to the Act, recommending that they submit for roadline FCA. It was at that point in time that IT&SL “..went back to the landowners advising them in Kiunga at a public meeting that the Forestry had advised us that we could not use the TA concept along the road from where it was that we had to use the new adapted FCA concept for the roadline which involved an FAC roadline clearance authority for the forty metre wide and then to achieve the other areas of the road for FCA agriculture. So that was the concept; we went back to the landowners with the briefing that we were provided by Forestry. The landowners then agreed that that was the most applicable way for us to proceed with where we were with agricultural activities and the road along there.”

10.12 IT&SL went further by creating the idea that feeder roads would also be constructed linking the road corridor project hence those outside

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²¹ Reference is made to his involvement in the appointment of Soki Samisi of Tosigiba aided by Michael Titus. The fall out of Dina Gabo and the subsequent signing of the project agreement at p 6 line 29-38 and page 7 lines 14-23
the project area would require access from their remote areas. They consulted National Mapping Bureau to obtain the maps the result of the survey plans and the SABL.

10.13 Mr Harsely’s explanation on the SABL process and IT&SLs involvement, “And there was very much number of meetings there. I personally attended the meetings, I do not send out some lands person to brief the people. I personally went out myself. I had travelled to Wakina, Togina, Deabi. I have been to Suabi, …Juha, Movalulu, Nomad, …Wawoi Falls, Sempoka, …Yabo and Hesalibi and Honinabi, the major villages…

10.14 These were related to the road and the SABL process.

- Confirm involvement of Simon Malu with reference to a meeting that was convened for the community at Sempoka village. Mr Malo interpreted what was said to the people in the Pidgin language. Mr Imen Papa and Biyama also attended the forum and the documents were signed in the presence of the people. “

- Used landowners for consultation, conduct awareness on the land investigation, named Samson Ubre, Foxy Asobi, Waiti Kwani, Dina Gabo Steven Kwani and representatives from Kiunga Timbers. Provided assistance outboard fuel, boat hire to conduct awareness within the project area.

- Agree that the LIR was signed in Port Moresby

A. Commissioner, those provincial lands officers just did not walk in for five minutes and sign documents. I know for a fact because we
had them in our office, they were using our facilities to go through with landowner representatives present.

Q. In Kiunga?

A. In Port Moresby.

Q. Kiunga, I mean that is where the-these lands are located in Western Province not in Port Moresby?

A. Yes, and we also had the same officers present at the meetings with the landowners in Kiunga. Imen Papa was present at those meetings in Kiunga, Ipisa Biyama was present at those meeting in Kiunga and the same representatives came up here to formalize things with Lands Department here in Port Moresby. And the landowner representatives were present were present in Kiunga and they were also present at meetings in our office with officers.

Q. But the lands investigation report says that alkl these documents were signed in Kiunga not in Port Moresby. Now, you say that it has been signed in Port Moresby?

A. No, in the agreement on the customary boundaries, Commissioner, we had representatives from the respective clan groups at a meeting with the provincial lands officer to agree on the boundaries. We used, where we could the river systems as the boundary because the way river systems provides a boundary on the lease...”

Q. Mr Harsely, that is quite true. Your Mr Hape has confirmed that evidence. He did not walk the boundary, he just simply used what you are saying, used the river systems, the ridges...
10.15 **Construction Corridor**-required additional **10km** to grow vegetables, cash crop (cabbage, beetroots, lettuce, tomatoes and light chi chi trees)-to be used for catering over project sites camps etc.-**No expertise in agricultural development** (page 28 line 18 to line 50 on page 29; page 41-42).

10.16 **NFA** questions capacity of **IT&SL** to fund the road project-pages 30 line 1 to **DEC** also queries further submission on the application for further **5,000 metres**.(Kei Vuatha Kapa)

*Company has no profile in PNG and apart from the reference to certain experts within IT&SL operations and will concentrate on logging and shipping*

“...We are going to have the same life in the village mentality that is going to do nothing. I am not here and when I first was invited down at Kiunga by the people, they told me no money politics, no mobilization money because the biggest thing that corrupts this community at the moment is sign documents, to get them to sell their rights out. Before this project agreement was signed, *I ensured that the landowner companies shares were issued to all of the ILGs so those companies were owed by the people; not a group of six directors sitting in Port Moresby doing some dirty deal on peoples land. I have tried to take a moral position on this project over eight years to protect the rights of people. If I have made a mistake, I will stand by it. You know from where the land investigation reports; if there is a correction to be done, I will do it. I am not going to walk away from it but the other things is let me say is that people over this period of time said. Well the project agreement is signed; then we*
know it is real. Since the project agreement was signed, we have registered another 200 ILGs which encompass everyone. From where Tumu Timbers is; when Forestry went through originally they had 52 ILGs. We found out there is another 55 ILGs whose land comes in the project area too. We fixed it, we have registered then...” (Page 49 line 42 to page 50 line 19)

10.17 The above answer was in response to the question put to Mr Harsely by Mr Tusais Counsel for C.O.I that the SABL LIR process was defective and had no legal basis for an issuance of SABL to the three Landowner Umbrella Company.

10.18 C.O.I questioned Mr Harsely on the Minute that was send out by Hudson Hapa to Cliff Frazer, Noah Vica and John Mulcahy seeking K60,000 as reasonable fee to compensate them for putting their careers and professional standing on the line to process the LIR and defend it.

- **Explanation was that it was done by a potential candidate for the seat held by Sir Puka Temu and a conspiracy to solicit funds from IT&SL to fund election campaign as he was previously employed by IT&SL (Pages 52-53) - It is quite extraordinary in that the allegation in itself was a request to pay the Secretary and officers to process project area one and two SABL.**

- **Simon Malu** asked for K5000 to assist him with his father’s funeral expenses and IT&SL never paid the money to him.
11. The Evidence of Hudson Hape

(SABL 62 KIUNGA- 22\textsuperscript{nd} November 2011-pages 13-77)

11.1 Mr Hudson Hape is a duly qualified and registered company surveyor and graduated from University of Technology with a Bachelor of Technology specialising in Surveying in 1988. On examination by the Commission of Inquiry at Kiunga, Mr Hape confirmed that he was currently employed as a registered company surveyor for IT&SL. At the time the land investigation process begun as a result of the company’s involvement in negotiations with the Landowners over the road project.

11.2 He played a leading role in the Land Investigation, coordinated the ILG formations with the Executives of the Tumu and produced the rural class 4 survey from the maps that was already available and provided coordinates for the identification of the boundaries of Portion 1C without any input from the Provincial Lands Officer. It was a direct involvement between DLPP (Waigani) and IT&SL, the developer. He says that he became involved in the LIR and land surveys on his engagement in 2008, and that much of the surveys were already conducted and his role was to ensure that the coordinates were in order before it was finalised.

11.3 When asked by the Commission over his endorsement of the Cadastral Map for Portion 1C, he was adamant it was not his work.

11.4 We are critical on this manner of involvement as there is already evidence obtained from the DLPP and the Provincial Lands Officer that nullifies the LIR. Evidence from Mr Romilly Kila Pat, Simon Malu, Imen Ita Papa, Pepi Kimas painted a completely different analogy to the process.
Mr Kimas in evidence says, “It is not the job of users-for owners of the project to go there and carry out investigations, it is the job of District Officers or Lands Officers to carry out the investigation and that is the normal thing.”(Kimas-SABL 80-Numapo/Mirou 17/01/12 at page 64-65)

11.5 The evidence of Mr Hudson Hape is very critical to the four (4) SABLs located in the North Fly District and Middle Fly District of the Western Province. His evidence features the depth by which his employer IT&SL manipulated the landowner companies in the Trans Papuan Highway project to acquire customary land under the SABL process, a hallmark tainted with corruption involving DLPP, Department of Western Province and the executives of the umbrella landowner companies through lack of awareness and proper advice proceeded to accept IT&SLs tactical ploy and deception over eight years association with a company that had no real presence in Kiunga which included heavy equipment and machinery anywhere in PNG.

11.6 He told the Inquiry that he was involved in preparation of the Survey Plan and Maps for Portion 27C Awin Pari, Portion 1C Awin Pari in the name of NEWIL, Portion 14C Awin Pari to Tosigiba and Portion 1C Aibolo in the name of Tosigiba (and Kebogas Investment Limited). He was also responsible for the Land Investigation Report for four SABLs. He confirmed his involvement at that time he commenced work with IT&SL, in fact confirming the survey plans were already done and his involvement was to enter the coordinates on topographical maps scaled at 1:100,000.

11.7 The Commission accepts that evidence Rural Class 4 survey specifications require GPS land boundary coordinates which can be
manipulated through the desktop rather than the physical land survey requirements under Class 1 and 2 survey which is normally expensive. The surveying land boundaries are transposed onto aerial topographical maps provided by the National Mapping Bureau and the Office of the Surveyor General. The coordinates of land boundaries are the natural rivers, ridges, mountain tops which are transposed onto the aerial topographical maps by the cartographer.

11.8 The survey plan is then vetted by the surveyor as to the correctness of the land boundaries, the landowner’s instructions on boundaries. When the surveyor is satisfied he then certifies the survey map and registers it with the Surveyor Generals Office. The certified map bearing the Rural Class 4 boundaries are then provided to the DLPP for the issuance of title. Mr Hapa agreed that the survey was done not for the Trans Papuan Highway but purposely done for customary land registration.

11.9 In his evidence, Mr Hapa facilitated that process and that we find that he only confined the land investigation and organized the ILGs through the Executives of the four companies. The following information based on evidence confirms that Mr Hapa of IT&SL;

1. Submitted the Tender Form/Application form for SABL on behalf of NEWIL, Tosigiba Investment Limited/Kebogas Investment Limited, Tumu Timbers Development Limited to DLPP on… The Tender form was prepared and submitted after the issuance of the title. That anomaly is our view is deceptive and clearly fraudulent when the land comprises in excess of 2 million hectares.
2. Requested for Land Instruction Number and it was passed onto IT&SL. This would normally be issued to the Provincial Lands Office, Department of Western Province. The Land Instruction Number was issued after the issuance of the title. This indicates the fraudulent nature by which IT&SL colluded with DLPP to fraudulently acquire the said SABLs.

3. Conducted the Land Investigation Report with the assistance of the Executives of the umbrella landowners companies. In his evidence he states that he was so authorized by Mr Simon Malu, Customary Leases Division. This authorization was not done within the acceptable process of administering SABL application.

4. Mr Titus who was paid by IT&SL to assist the landowner companies in the registration of ILGs worked closely with ILGs were completed basically to facilitate the consent of the landowning members of the clan.

5. Certified the survey plan without conducting field survey on the land boundaries with the landowners.

6. Collated the LIR and then got Mr Imen Ita Papa and Ipisa Biyama of the Department of Western Province to sign the LIR. Both Officers signing the LIR knowing it to be false because they did not conduct the land investigation. They signed the LIR at Port Moresby, but the LIR shows that it was signed in Kiunga which was false.

7. The Recommendation for Alienability was signed by Mr Dimonai, the District Administrator for North Fly at Port Moresby whilst he was on
duty travel. The place of the signing indicates Kiunga which is totally false and misleading. Mr Dimonai did not conduct due diligence and out of ignorance of the fact that the LIR was incomplete and did not clearly show the whole tribes/clans in the SABL Portion. Most of the landowners included in the LIR are from within the Kiunga and surrounding village communities.

11.10 However upon cross examination at the hearings Mr Hudson Hape affirmed on oath that the LIR was provided to Land group leaders to conduct. On assessment of the LIRs they were found to be filled by one or two agents or Executors for many people. This is unsatisfactory as two things can happen and that is, (1) names could be made up and (2) numbers of people inflated to mislead. This bore true when on inspection of individual clan group LIRs the names of people named in a certain group was included in two or three other clan groups.

11.11 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Montford Awetari appeared as an agent for Tumten and Gre-Dmesuk land groups. His stated village is Gusiore village along Elevala River under those land groups over Portion 1C Awin Pari. Mr Awoke Wando appears as Agent for Uga Somi and Kyankwenai Dmesuke Land Groups with his stated village as Kmom in those land groups. It is improper and fraudulent for a person to be named in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected. There were twenty-six landgroups who participated in the LIR leading to the NEWIL SABL as provided below:
The total number of people collated in the LIR report total 658, a far cry from the stated 28,000 odd persons (1,100 @2% growth) NEWIL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.
12 **Recommendation**

12.1 The involvement of a foreign owned company in the customary land investigation process, the grant and issuance of title, the security of title in its offices and the agreement to ensure that the State Entities disregard their statutory obligations is a real concern for the State.

12.2 The State should become more proactive in the enforcement of regulations and exercise its powers to protect the asset of the rural community, the customary land of PNG.

12.3 That the owners of IT&SL and their employed Surveyor be questioned on their role in facilitating the NEWIL SABL.

13. **The Evidence of Michael Titus**

13.1 **Mr Michael Titus** is a lawyer by profession and the principal of his law firm Titus Lawyers. He is currently operating his practice at Section 2 Allotment 7 Emirau Street, Kavieng, NIP. He graduated with a law degree from UPNG in 1995.

13.2 Mr Titus is a person of interest to the inquiry in that he has acted as lawyer on record for NEWIL, Tosigiba and Tumu over the grant of SABL concerning portion 27C, 1C, 14C and 1C Aibolo. When cross-examined as to his involvement as a lawyer acting for the landowner companies and IT&SL, he said that he was not acting for IT&SL. Mr Harsely has confirmed that IT&SL engaged and paid Titus Lawyers to assist the landowner companies with legal advice more so with the SABL.
acquisition, the ILG formation and consent forms, and general advice to company directors and executives over meetings and company returns.

13.3 Mr Titus was engaged by IT&SL to assist Tumu Timber Development Limited at the time Mr Dina Gabo and executives of Tosigiba Development Ltd decided to pursue carbon trading initiatives much to IT&SLs dislike. According to Mr Titus, they were referred to as the ‘rogue directors’ and was considered in our view a sabotage what has been a fruitful cooperation between IT&SL and the landowners. It is confirmed that after the Project Agreement was signed in Port Moresby in May 2011, Mr Titus convened a meeting with Soki Samisi and others at Kiunga for changes to be made to the chairmanship and directorship of the company. Mr Gabo and other executives were not properly advised of that meeting which is contrary to the requirements of the Companies Act.

13.4 Mr Titus was cross examined on his role as the lawyer for the three (3) landowner company and IT&SL as a potential conflict of interest with regard to the SABL and a number of agreements that have since been executed. That conflict of interest relates directly to the fact that since he was paid by IT&SL it constituted divided loyalties as to his professional and ethical duties to discharge his professional duties as a lawyer to his clients, the landowner company. The potential conflict was evident with regard to the project agreement clauses which are considered as unfair to the landowners for e.g.

- The original draft of the Project Agreement relating to the harvesting of logs from the road construction corridor was initially 20metre either side of the road was subsequently increased to 5,000metre either side of the road. Recital Clause “O” was not even discussed with the
landowners. The project agreement with the amended clause was executed by the State on May 2011.

- In reference to paragraph 3.2(d) of the Project Agreement (Condition Precedent to States Obligation) states that the landowner companies NEWIL, Tosigiba & Kebogas are ‘obliged’ by this agreement to fast track SABL Lease-lease back process and appoint IT&SL as the developer company in order to carry out the project.

- Paragraph 6 (Development Licence) obligates the State to fast track Lease-lease back agreements in favour of IT&SL.

13.5 These examples reflect the unfair nature of the contract that was drafted by the State Solicitors Office where there is clauses that in our view obligates agencies of government to compromise the regulatory and monitoring powers of state agencies such as DLPP, DEC, NFA, DAL etc. to ensure IT&SL has the ultimate control over all that land for a period of 25 years.

**Recommendation**

13.6. Mr Titus must be referred to the PNG Law Society for his involvement with the landowners companies whilst been paid by IT&SL constituting serious ethical questions over the conduct of his legal services to competing interests.

14. **Department of Western Province**

14.1 The Department of Western Province is the bureaucratic arm of the North Fly Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of
which the Lands Division is an important one. In the issuance of the NEWIL SABL there was no formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of Western Province.

Findings

14.2 It was found that the whole process of Land Investigation, the survey of the land boundaries, the appointment of agents by a particular land group and the authenticity of the data collected from within the said 26 landgroups comprising the land referred to as Portion 27Cemanated from the developer company IT&S with the able assistance of the Executives of the umbrella land owner company NEWIL.

Land Investigation Process

15 IMEN ITA PAPA

15.1 Mr Imen Ita Papa in his evidence to the inquiry at Kiunga categorically stated that he was not involved in the investigation from the very beginning until the time Mr Hudson Hape contacted him at Port Moresby whilst he was on official business to sign the Land Investigation Report.

“MR BOKOMI: ...Under normal circumstances from your experience as a government Lands officer, who should actually take the lead in the land investigations? Should it be the developer company or should it be government Lands officers?

A: Commissioner, it is the functions of the government; the agent of Lands Department in Western Province is Division
of Lands and Physical Planning, which I am responsible for all land investigations, every land dealings in Western Province, I must be consulted first.

Q: Where you actually physically involved in the lands investigations in respect of the three project areas?

A: No, I have not been to the project site.”

15.2 Mr Imen Ita Papa was the then District Lands Officer (now elevated to the position of Acting Advisor, Provincial Lands and Physical Planning Office) at the Department of Western. Evidence before the COI indicated that he was the officer responsible for all Provincial Government matters in the Western Province and was not aware of the SABLs issue over the said road project. In his evidence to the Commission Mr Papa said that most dealings by the landowners, leaders and developer were always done with the national agency by-passing provincial authorities through the project that was in the WP. The only consultation was when the project was referred by the National Forest Authority to the Provincial Forest Management Committee for its deliberation and endorsement.

15.3 Mr Papa’s evidence is crucial to the inquiry and we make specific references the depth of his evidence to which he states unequivocally that IT&SL played a major role in manipulated the LIR process through the road project initiative in the Western Province. The major thrust of that evidence is the admission of his non-involvement in that process follows;

“A: ...I now will admit to the Commission of what actually I have done to the Lands Investigation Reports. The initial arrangement was to consent for road corridor and 1 kilometers both sides of the road. Firstly, my office in
Kiunga have no records of these registered plans. Special Agriculture and Business Lease listed at number 64 held by Tosigiba Investment Limited over land described as Portion 14C Milinch of Kariton, Karia, Strickland, Bosavi, Campbell, Iema, Tomu and Sisa fourmil of Kutubu, Wabag Blucher and Raggi located in the Upper Middle Fly area of Western Province, National Gazette number 3218 of 24 September 2010. Special Agriculture and Business Lease listed as number 65 held by North East West Investment Limited over land described as Portion 1C, Milinch of Palmer, Sari, Mula, Karrington, Alice and Evara, Strickland and Tomu, fourmil of Blucher and Raggi located in the Middle Fly district of Western Province. Notice of direct grant under section 102 of the Land Act of 1996 was published in the National Gazette No G.218 of 24 September 2010. Special Agriculture and Business Lease listed as number 66 held by North East West Investment Limited over land described as Portion 27C Milinch of Alice, Tedi, Palmer and Kiunga fourmil of Blucher and Raggi located in the Middle Fly district of Western Province. Notice of direct grant under section 102 of the Land Act of 1996 was published in the National Gazette No G.218 of 24 September 2010. During the project feasibility studies status, land investigation and lands surveys were part and parcel of the feasibility work. The IT&S officers, Department of Works officer and landowners have collectively completed the lands investigation report for my signature only. All I understood was that once the project feasibility was sanctioned by national relevant agencies, lands surveys, lands investigation was one of the component
of the feasibility studies. And because all various professionals who went out on the field collected data were the agents of the State including landowners leaders and IT&S officials, though I was not out in the field carrying out inspections, I relied all information before me for signature were all true and correct as it was sanctioned by State and the landowners before the actual feasibility work commenced. While I was in Port Moresby in 2008 on other official duties, I was called in to sign the lands investigation report for the proposed road project at the Pacific View up at the 10th floor at 2 Mile Hill in the presence of few landowners and the company IT&S officials, I signed the lands investigation report as North Fly District Lands officer.

MR BOKOMI: You stated earlier on to the Commission that you never conducted the lands investigations yourself?

A: No, I stated that I was not involved in the investigation out on the field.

Q: Well, if I put to you that you were not physically involved in the investigations yourself - leave aside all those others who may have done it - is that a true statement? You were not involved in the lands investigations yourself?

A: That is a true statement. I was not involved in the investigation reports that were compiled.

Q: Then my further question to you is, how then can you sign the lands investigation report? Is it possible?

A: I made a statement that because at the initial consent by the landowners in the start of the project, negotiations, consultations with landowners in Kiunga, because they gave
their consent for feasibility to commence, other departments like Environment Department, Lands Department, Forestry Department, other State agencies were involved in other components, as well as the IT&S and their lands officers and surveyors being an agent of the State, conducted – I cannot go out to the forest and I was, as I have stated, I was on other official duty in Port Moresby and the report was before me. Believing that all the reports were related to the road corridor that is within the 1 kilometer, both side, as initially agreed by people, not outside of the both sides 1 kilometer.

Q:  Mr Papa, I will show you something. Before I do that, you would agree with me if I put to you that under normal circumstances, the Lands officer who signs the investigation report is the one who actually physically goes out to the area to conduct the investigations and then thereafter to confirm by taking a land boundary walk with the relevant landowners that these are parcels of land that they do not require in the near future and they can have it alienated by the State for whatever purpose that the State would require the land for. Is that not a true statement of your duties and functions as the Lands officer?

A:  That is correct. I should be physically on the ground identifying the area that investigations should cover which are the landowners that I should interview or provide consultations and negotiations for the project to go through as well as identifying the landowners physically on the ground.

Q:  That should have been the correct procedure?
A: That should have been the correct procedure I am saying.

Q: But who told you to sign the land investigation report?

A: I signed on the understanding that ---

Q: No, my question to you is, who told you to sign the land investigation report? Who asked you?

A: I was asked by the IT&S company. They picked me up in Waigani while I was on other official duty.

Q: Yes, where did you sign the Lands investigation report?

A: Pacific View, 10\textsuperscript{th} Floor.”

(Transcript SABL58-Mirou-16/11/2011)

16 The Evidence of Mr Ronald Manase Dimonai

16.1 Mr Dimonai comes from the Awin tribe and has been the District Administrator for the past 13 years and obtained a Masters Degree from Western University, Australia in 1998.

16.2 In December 2008 he confirmed that Mr Imen Ita Papa and himself were at Port Moresby on duty travel. He says that Mr Imen Ita Papa and Mr Hudson Hape visited him Lamana Hotel where he was residing and brought documents namely copies of 26 pages of the Recommendation for Alienability and he signed believing that all the information for the purpose of the Trans Papuan Highway, which was road accessibility to bring economic benefits to his people and NOT SABL.

16.3 On December 2008, Mr Dimonai the current District Administrator for the North Fly District was asked by Mr Imen Ita Papa at Lamana Hotel in Port Moresby to sign the Recommendation for Alienability for LIR into SABL Portion 27C. The recommendation was signed at Port Moresby in
the presence of Mr Imen Ita Papa and Mr Hudson Hape of IT&SL. The twenty six separate LIR for each of the clan groups comprising the land referred to as Portion 27C contained no recommendation for reservations to be made on the customary hence extinguishing the customary rights over the for a period of 99 years to NEWIL and subsequent Sub Lease Project Agreement for a period of up to 40 years in the name of the IT&SL and the joint venture company in the name of Awin Pari Lumber

16.4 He also confirmed that

“….The signing was done for the purposes of acquiring the land to provide road accessibility for my people on the North East as well as our people in the Nomad area for the road acquisition and it is not for SABL. That was the understanding I had when I signed this document now in front of you. That they were to build the road in exchange for the logs as well as the road, that document was signed for the acquisition of the road from Drimgas to Nomad for the purpose of the Trans Papuan Highway. While in the course of all the meetings that was held by IT&S, no officers within my office or from the North Fly District Administration was deployed to conduct land investigation report, investigation to identify landowners along the proposed road corridor. None of my officers were deployed to conduct the road, the land investigation to identify landowners who own the land along this proposed road corridor. There was no clear direction from National Department and Physical Planning or any other organizations directing North Fly District Administration through my office to deploy officers to conduct land investigation reports to identify landowners along this proposed road...”
16.5 Mr Dimonai expressed that he had no idea about the LIR and had not conducted any due diligence on the report which was incomplete, contained serious omissions in respect of signatures of landowners, appointment of agents and discrepancy.

**Recommendation**

16.6 That the SABL be revoked pending a fresh LIR to be reconducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

16.7 That Mr Imen Ita Papa, Dimonai, and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

**17 DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)**

**Findings**

17.1 The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Dimonai as the District Administrator on behalf of the Administrator of the Western Province in December 2008.
Recommendation

17.2 That all LIRs be provided to the Secretary of Provincial Affairs as the Custodian of Customary Land for issue of certificate of Alienability.

18 DEPARTMENT OF LANDS AND PHYSICAL PLANNING

18.1 DLPP file records on SABL Portion 27C Awin Pari disclose that an Application or Tender Form duly filled out by the agent for NEWIL and dated 17th June 2009 was submitted for consideration. The agent whose signature appears on the document was confirmed as those of Mr Hudson Hape, Registered Company Surveyor for IT&SL as having been authorized by NEWIL to be their agent. It was revealed that no such authorization was approved by the Board of Directors, NEWIL on matters related to the acquisition of Portion 27C for SABL.

18.2 The purpose of the application was, *for Forestry-Reforestation, Sawmilling, Agriculture and Major Road Construction. Estimated Value for Improvement is about K192.0 Million.* The Commission noted with interest that Portion 27C was specifically referred to in the Application. This application was reflected in the application for SABL regarding Portion 1C Awin Pari, Portion 14C Awin Pari and Portion 1C Aibolo symbolically considered as illuminating the manipulation of a foreign corporation over the people of Awin Pari being unsophisticated with a handful of intellectuals.

18.3 The DLPP file also disclosed that Mr Simon Malu then Caretaker Manager, Customary Land in a letter dated 24th November 2008 to the Managing Director, IT&SL confirmed issuance of Land Instruction
Number for Portion 27C Milinch of Alice; Fourmil: Raggi as 01/316 including references to Portion 1C Awin Pari; Portion 14C Awin Pari and Portion 1C Aibolo. This date confirm that the Land Investigation process was conducted without submission of the most primary documentation that will allow DLPP to carry out vetting on the proposed land in particular existing leases.

18.4 Mr Malu instructed IT&LS to liaise with Customary Lands Section and the Fly River Provincial Government Administration to carry out awareness and complete the Land Investigation process.

18.5 Land Investigation Report for Portion 27C was completed and signed by Mr Imen Ita Papa Provincial Land Adviser, Provincial Land and Physical Planning Office of the Department of Western Province, North Fly Electorate on 19th December 2008. The LIR comprised 26 clans submitting their consent for 25 hectares of their land within the Awin Pari region of Kiunga to be freed up for 25 years.

18.6 Recommendation as to Alienability was signed by Mr Ronald Manise Dimonai, District Administrator, North Fly Region of Western Province at Kiunga on 19th December 2008 as was purportedly indicated on the LIR. No reservation for the continuation of reasonable access for hunting, fishing, gardening and other necessities conducive to access onto the land.

18.7 Instrument of Lease-Lease Back for Customary Land pursuant to section 11 of the Land Act, was executed on 24th June 2009 between the 29 Agents for and on behalf of the landowners as identified in the LIR in the presence of Simon Malu (Senior Customary Lands Officer-DLPP) and
Sikabu Maika (Adviser Lands WP) and Mr Pepi Kimas, then Secretary, DLPP signed as the delegate of the Minister of Lands and Physical Planning and the State. It is however noted that under Schedule Part 2 Term of the Lease (Instrument) states that the customary landowners agree to lease the subject “land” to the State for a period of 99 years, The lease was to come into commence and be complied, for all intents and purposes on the date of this Agreement pursuant to section 102 (7) of the Land Act.

18.8 In relation to the issuance of the title to the applicants namely NEWIL, we note for the DLPP files that a letter directed to the then Secretary of Lands by the Executives of TOSIGIBA Investment Limited, Mr Iya Fami (Acting Chairman); Frank Neobia (Director), John Wabi Sari (Director) and Waiti Kwani (Director) in a Minute dated 27 September 2009 with instructions to DLPP to release the ninety-nine (99) years SABL Title to IT&SL for safe custody keeping it in a secured premises to avoid loss and fraudulent copies of the title.

18.9 By letter dated 29 June 2009 from IT&SL to DLPP Secretary submitting 3 copies of the Instrument of Lease for Customary Land (Lease-lease Back Agreement) and accompanying documents for two of the Agro-Forestry and Road Project Sites to Kiunga and Nomad sub-district in the North Fly District of Western Province. The project sites referred to in the letter included the following;

- Portion 1C, chartered as Catalogue Plan Number 9/133 Project Area 1
- Portion 27C, chartered as Catalogue Plan Number 9/133 Project Area 1
Portion 14C, chartered as Catalogue Plan Number 28/126

Project Area 2

18.10 Mr Hape of IT&SL also follows up with a very similar letter on 3 April 2009.

18.11 The Notice of Direct Grant to NEWIL on Portion 27C is for 99 years. In the LIR, the 26 landowning clans with their immediate members of the clan or unit have agreed to allow 25 hectares of their land freed up for SABL for a period up to 25 years. The underlying reason for giving their consent to this SABL was for the Trans Papua Highway to be built across Portion 27C (Kiunga-Gre-Drimgas), Portion 1C Awin Pari, Portion 14C (Nomad). The objections were basically that their consent was manipulated by IT&SL to obtain access to all the hectares of prime pristine forest which is suspicious and fraudulent. Not consistent with section 11 and 102 of the Land Act.

18.12 In the evidence provided there was found Land Instruction Number given for the LIR to be conducted, a notice of Direct Grant under Section 102 and the signed Lease/leaseback instrument.

18.13 However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.
19 The evidence of Simon Malu
(SABL 71-Mirou-04/01/12)

19.1 Director, Land Acquisition, joined in 2001 Degree in Land Management
2000 University of Technology

19.2 Mr Malo states that he attended meetings organised by IT&SL on the
Trans Papuan Highway project with the landowners. He confirmed been
paid allowances by IT&SL for the chartered plane trip to Kiunga. In
terms of his knowledge over the LIRs, he stated in evidence that he had
instructed Hudson Hape to liaise with Mr Imen Ita Papa or Mr Biyama
for the officers to conduct the LIR. He didn’t conduct any due diligence
on the completed LIR and proceeded to prepare the Lease-Lease Back
agreement for the execution by the Minister or Delegate with the
authorized agents of Tumu. He knew Mr Hape because he normally
frequented his office over land survey matters

19.3 That lack of due diligence from Mr Malo is expressed in his evidence

“Q ....you said you gave instructions to Mr Hudson Hape. Would it not
have been proper for you to give instructions directly to Mr Imen
Papa and then follow it on from there personally to ensure that he
conducted the land investigations, rather than giving it to Mr Hape
as a government officer to another government officer, not to a
private sector employee?...
A. yes that is correct
Q. Why did you do that?
A. Okay, Hudson, he came to the office and saw me regarding this
project, since he was present at that time, and I had to issue an
instruction. I told him that you have to go to Kiumga and liaise with Imen Papa or whoever officer is on the ground, you liaise with him and do the land investigation report, So it was Hudson who was present at that time that I gave the instruction.

Q. Did you ever confirm with Hudson later on---

A. I did

Q. As a follow up measure to ascertain whether or not he did go to Kiumga and he did talk to Mr Imen Papa and that Mr Papa did the investigation personally, did walk the land boundaries as it is stated in the land investigation report? No?

A. I did check with Hudson, Since he was in and out of the office because of this project, so from time to time I talked to him and I asked him if he had contact with Imen and he was also going to, he had probably a few trips to Kiumga and back to Moresby.

Q. What did Hudson tell you?

A. Hudson did indicate that he is in contact with Imen and as soon as the reports are completed they will submit it to me.

Q. You never talked to Imen at all? I mean you never talked to Mr Papa at all, even after getting that kind of response from Mr Hape?

A. No

Q. You think you should have?

A. Yes

19. 4 Mr Malo failed in his duties as the Director-Customary Leases to conduct proper due diligence on the LIR we find contained gross defects and anomalies prior to the preparation of the Lease-lease back agreement, No due diligence was conducted and it is evident that he was merely been directed by IT&SL due to the fact that he had already compromised his position when he was paid allowances IT&SL over the said project. That
project was the high point in all the activities he understood was for IT&SL benefit.

19.5 Mr Malo was merely interested in ensuring that the Lease-lease back agreement was settled, despite the anomalies noted in LIR. No due diligence was conducted and it is evident that he was merely been directed by IT&SL due to the fact that he had already compromised his position when he was paid allowances IT&SL over the said project. That project was the high point in all the activities he understood was for IT&SL to benefit from.

Recommendation

19.6 That the elase be revoked forthwith

19.7 Mr Malo should be disciplined for not doing his job and the result of that neglect of duty has led to the lack of integrity in the SABL process. His actions are a well documented trend in all the SABL inquired by this Commission.

20 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

20.1 There was no evidence illicitied from DAL over the land area. We make no findings or recommendation.

21 PNG FOREST AUTHORITY

21.1 The Commission noted that on 25th November 2010 and pursuant to section 90D (8) of the Forestry Act 1991 (Regulation 273 and Form 252)
the Board of the National Forest Authority issued Forest Clearance Authority Number **FCA 01-01** to IT&SL to carry out larger scale conversion of Forest Road Development. Of note to the FCA was the fact that “The Project area is about **600 kilometres** of road alignment in the North Fly District of the Western Province. It is to be known as the **Gre-Dringas to Nomad Road Alignment.** The maximum forest clearance of road corridor from forest edge to forest edge is to be strictly confined to **40 metres (20 metres of both sides of the road centre line).** (Refer Schedule 1 and 4(1) of the FCA)”.

21.2 The Commission however finds that IT&SL has deliberately increased the FCA road line approval for a 40metre forest clearance with an additional 5,000metres clearance of forest under the Contract between the State and IT&SL dated 23rd May 2011. The changes are reflected under Recital “O”, **“IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road lengths or which is the greater of the two for selective harvesting of commercial species and the removal of timber from **40 metre road corridor or 20 metres either side of the road centreline and a distance of 5,000metres on either side of the road corridor which has been initially agreed with by the traditional landowners.”** (Contract Agreement at page 7)

21.3 In fact the Commission has also sighted an earlier version of the Contract which stipulates as follows; **IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the timber harvesting period of twenty five years and also to cover the harvesting of log product**
covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road 600 kilometres of road length or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline which has been initially agreed with by the traditional landowners.”

21.4 That is a major deviation from the original requirement of road clearance as issued by the Board of PNG Forest Authority.

21.5 In conformity to the FCA requirements for a performance bond in the sum of K595, 000.00 to be paid within 21 days of the issuance of the FCA, IT&SL provided an ANZ BANK Guarantee in the said sum of K595, 000.00 to PNG Forest Authority on 16th December 2010.

RECOMMENDATIONS

21.6 That the PNGNFA officers summoned and failing to appear with material before the COI be served a stern warning so as to prevent future similar behavior by PNGFA officers.

22 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

22.1 In terms of environmental permit, there was no evidence taken and we make no findings or recommendation.
COI Inquiry File No. 65- for Special Purpose Agricultural and Business Lease over Portion 1C Volume -- Folio -- Milinch: Alice, Tedi, Sari, Palmer & Kiunga, Western Province in the name of North East West Investment Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to Section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the North East West Investment SABL. These were:

1.2.1 Department of Western Province, (DWP)
1.2.2 Department of Lands and Physical Planning, (DLPP)
1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)
1.2.4 Department of Agriculture and Livestock, (DAL)
1.2.5 Department of Environment and Conservation, (DEC)
1.2.6 PNG Forest Authority (PNGFA)

Witness Summons and Statement

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

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<td>17/11/11-SABL 59-MIROU, 21/11/11-SABL 61-MIROU</td>
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<tr>
<td>3</td>
<td>Mr Hudson Hape, Surveyor, IT&amp;SL</td>
<td>13-</td>
<td>6</td>
<td>22/11/11-SABL 62-MIROU</td>
</tr>
<tr>
<td>4</td>
<td>Mr Michael Titus, Lawyer, Private Legal Practitioner</td>
<td>12-12</td>
<td>6</td>
<td>22/11/11-SABL 62-MIROU</td>
</tr>
<tr>
<td>5</td>
<td>Mr Montford Awetari</td>
<td>9-18</td>
<td>2</td>
<td>17/11/11-SABL 59 MIROU</td>
</tr>
<tr>
<td>6</td>
<td>Mr Samuel Kepuknai</td>
<td>43-</td>
<td>2</td>
<td>17/11/11-SABL 59 MIROU</td>
</tr>
<tr>
<td>No.</td>
<td>Party Name and Position</td>
<td>Date and Time</td>
<td>Reference</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>-------------------------------------------------------------</td>
<td>---------------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Former Director-NEWIL, Landowner, Drimskai village</td>
<td>54-62</td>
<td>17/11/11-SABL 59 MIROU</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Mr Frank Hameshu, Landowner, Drimdamasau village</td>
<td>19-28</td>
<td>17/11/11-SABL 59 MIROU</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga</td>
<td>78-85</td>
<td>16/11/11-SABL 58 MIROU 25/11/11-SABL- MIROU</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Mr Neville Harsely, CEO, IT&amp;SL</td>
<td>1-73</td>
<td>10/01/12-SABL MIROU</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Mrs Betty Wine, Chairlady, Women in Mining, Kiunga</td>
<td>3-7</td>
<td>23/11/11-SABL 64 MIROU</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Mr Waiti Kwani, Chairman NEWIL</td>
<td>76-6</td>
<td>21/11/11-SABL 61 MIROU 22/11/11-SABL 62 MIROU</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Mr Foxy Asobi, Secretary-NEWIL</td>
<td>5</td>
<td>21/11/11-SABL 61 MIROU</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Mr Samson Ubre, Director-NEWIL</td>
<td>5</td>
<td>21/11/11-SABL 61 MIROU</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Mr Aaron Dupnai, Landowner, Awin Tribe</td>
<td>8</td>
<td>25/11/11=SABL-MIROU</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Mr Pepi Kimas, Former Secretary, DLPP (2000-2010)</td>
<td>7-87</td>
<td>17/01/12-SABL 80- NUMAPO/MIROU</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Mr Simon Malo</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Parties represented by counsel**

2.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

2.2 The following were granted leave to be represented by counsel
3. **Exhibits and documents**

3.1 There were ten (10) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
<th>Interested Party</th>
<th>Date received</th>
<th>Exhibit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Survey Map of Portion 1C</td>
<td>C.O.I</td>
<td>17/11/11</td>
<td>NEWIL 1C(1)</td>
</tr>
<tr>
<td>2</td>
<td>Land Investigation Report 30/10/10</td>
<td>C.O.I</td>
<td>17/11/11</td>
<td>NEWIL 1C(2)</td>
</tr>
<tr>
<td>3</td>
<td>Notice of Direct Grant Gazette No. G 218 dated 27/09/10</td>
<td>C.O.I</td>
<td>18/11/11</td>
<td>NEWIL 1C(3)</td>
</tr>
<tr>
<td>4</td>
<td>Instrument of Lease-Lease Back Agreement</td>
<td>C.O.I</td>
<td>18/11/11</td>
<td>NEWIL 1C(4)</td>
</tr>
<tr>
<td>5</td>
<td>Response by Mr Imen Ita Papa, Acting Advisor, Division of Lands and Physical Planning-Trans Papuan Highway Road Project in Kiunga, WP</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 1C(5)</td>
</tr>
<tr>
<td>6</td>
<td>Bachelor of Land Studies Degree-Mr Imen Ita Papa dated 28/11/97</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 1C(6)</td>
</tr>
<tr>
<td>8</td>
<td>ECPNG Letter dated 15 November 2011 from Max Ako, Runginae Rural Hospital Administrator</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 1C(8)</td>
</tr>
<tr>
<td>9</td>
<td>Supplementary Affidavit of</td>
<td>C.O.I</td>
<td>25/11/11</td>
<td>MA “I”</td>
</tr>
</tbody>
</table>
4. Timeline of events of note surrounding NEWIL SABL Title

4.1 The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

<table>
<thead>
<tr>
<th>No</th>
<th>Milestone</th>
<th>Dated of Completion/Grant/Issue Execution</th>
<th>Proponent/Applicant</th>
<th>Respondent Entity/Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Incorporation of North East West Investment Limited</td>
<td>10/05/04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Independent Timbers &amp; Stevedoring Limited (US) Inc.</td>
<td>07/11/03 (IPA Registration)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Survey Plan Catalogue</td>
<td></td>
<td>Hapa</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Land Investigation Report(s)-30th October 2010 26 separate LIRs signed by Mr Imen Papa. Recommendation for Alienability</td>
<td>19/11/08</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>19/11/08</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Land Instruction No. issued by DLPP</td>
<td>24/11/08</td>
<td></td>
<td>DLPP/IT&amp;SL (Malo/Hapa)</td>
</tr>
<tr>
<td>6</td>
<td>Application/Tender for SABL to Portion 1C</td>
<td>17/06/09</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Lease-Lease Back Agreement</td>
<td>24/06/09</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>SABL Notice of Direct Grant</td>
<td>24/09/10</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NEC Decision 115/2007 dated 22\textsuperscript{nd} March 2007 re: Government Support and Approval in Principle sought for the construction of the Drimgas to Duara (Tegana) Road Project- Western Province, PNG</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>---</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>NEC Decision 293/2008 dated 15\textsuperscript{th} December 2008. re: Implementation of NEC Decision 115/2007 Drimgas to Duara Road Project, Western Province</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Special NEC Meeting No. 06/2011 re Advice to the Governor General dated 25\textsuperscript{th} March 2011</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Trans Papua Highway Road Project Stage II</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FINDINGS**

4.1 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by NEWIL.

5. **North East West Investment Limited SABL**

5.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G218 dated 24th September 2010 for Portion 27C Awin Pari Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 23rd September 2010 by the Department of Lands and Physical Planning to the holder North East West Investment Limited (NEWIL). The details of the SABL is shown below:
<table>
<thead>
<tr>
<th>Legal Description</th>
<th>Portion 1C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Survey Plan Catalogue No</td>
<td>9/133</td>
</tr>
<tr>
<td>SABL Holder</td>
<td>North East West Investment Limited</td>
</tr>
<tr>
<td>Date of Registration of Lease</td>
<td>23rd September 2010</td>
</tr>
<tr>
<td>Period of Lease</td>
<td>Ninety-nine (99) years</td>
</tr>
<tr>
<td>Land area of lease</td>
<td>470,462.0 hectares</td>
</tr>
</tbody>
</table>

6 IPA

6.1 North East West Investment Limited (NEWIL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the *Companies Act* 1997. The Company was incorporated on 10th May 2004 and the current Principal Place of Business is Room 1001, 10th Floor, Pacific View Apartments, Pruth Street, Korobosea, National Capital District. As at 3rd October, 2011 IPA records confirms that it is operating. The Company number is 1-51352.

6.2 The latest IPA company extract provided to the Commission dated 3rd October 2011 indicates 62 shareholders of NEWIL holding 1 ordinary share each in their capacities as Incorporated Land Groups within the land known as Awin Pari, North Fly electorate of the Western Province.

6.3 The extract discloses Messrs Robin Yawa, Foxy Asobi, Dimo Sobori, Paul Wasi, Joe Skai, Waiti Kwani, Samson Ubre, Susan Bale, Ronson Moya and Tusa Dimabo as Directors of the company. Mr Foxy Asobi is also the current Secretary of the Company with Mr Kwani appointed as the Chairman. The Annual return for the company was made up to 30th June 2010.
6.4. Messrs Waiti Kwani, Foxy Asobi and Samson Ubre, the current Executives of NEWIL told the inquiry the importance of development for the people of North Fly district and collectively confirmed that the people agreed in principle to allow IT&SL to develop the district through the road project. It was on this basis that the majority consented for the road project to be constructed on their land.

7 The Evidence of Waiti Kwani

7.1 Mr Waiti Kwani, current Chairman of NEWIL told the inquiry that on 16th March 2003, the Executives convened a meeting at Sarekona for the landowners of Portion 27C, Portion 1C and Portion 14C to inform them that “… IT&SL heard our cry for development and was interested in constructing a road, selective logging and agriculture project from Drimgas, Guavi Falls and all landowners must form ILGs to participate in the project.

On 23 March 2003, Neville Harsely of IT&S came and met more than 500 people at the old Kiunga Rural LLG Council chamber and Mr Harsely advised everyone he was prepared to partner them by carrying out the developments in exchange for forest resources.”

7.2 It was after that meeting that awareness and ILG was organised by the Executives with the assistance of Mr Michael Titus, a private lawyer paid by IT&SL to assist all the landowners register their respective ILGs. According to Mr Waiti the ILG registration finalised in 2006, and that all landowners were aware of the proposed road project agreed to solve their disputes and register their ILG at a later date. This fact was pursued when Mr Waiti attached to his Affidavit a list of clan members endorsing their
support and ‘consent’, copies of the signatures signed in the presence of lawyer Michael Titus on October 2011, some 2 weeks before the inquiry commenced its hearing at Kiunga.

7.3 Mr Waiti further states that in 2007, that when IT&SL commenced feasibility studies on all components of the road project, authority for the road line TA was refused by NFA because of changes to the Forestry Act, as the requirement for roads more than 12.5km required FCA. It was that point in time that SABL was mooted and agreed to as the best vehicle for development and for the avoidance of further NFA process where the request for feeder road by landowners during the life of the project would not be an impediment to the IT&SLs construction of the 600 km economic road line for the North Fly District linking Gulf Province, Central Province and eventually Port Moresby. This was admitted as the very basis for converting the initial request for road line into an SABL concept as Waiti states in his evidence;

“…And since NEWIL represented the landowners now given all the awareness programs, the landowners has consented for the project, a next half activities to be undertaken in the project based on the Department of Land’s advice. It was agreed the appropriate way forward was by way of an SABL. Through the SABL, the customary lands would be secured for the project fundamentally, because aside from the main Trans Papuan Highway, the potential request for feeder roads by the landowners would see feeder roads closing the entire project area.
Apart from the Trans Papuan Highway, corridor and the development alongside the corridor of the highway, airstrips, base camps, all other parts of the project area would not be utilized unless the landowners wanted feeder roads, selective logging for agriculture projects on their customary lands.

**Awareness of SABL.** After learning the need to secure the land by way of an SABL, in November 2008 we had a meeting with all Pari, Waitu, Awin, Nomad, Biyami tribes at Sarekona and then form teams and we went to advise them to advise them of what we understood and described to the landowners was agricultural lease, timber over their land for the road and agricultural forest project. We went to all the same villages along the proposed road corridor and up the Fly and Palmer River.

....."

7.4 In that evidence Mr Waiti confirmed that during the process of the Land Investigation process they made representation to Mr Sikabi Maika, then Provincial Lands Adviser and learnt that the district lands office was short staffed and their was funding problems to undertake the LIR. The Executives used that information to approach IT&SL and the developer agreed to facilitate the LIR. Mr Hudson Hapa was instrumental in assisting the landowners in surveying the land and conducting the LIR.

7.5 Mr Waiti, Chairman of NEWIL produced a detailed list of landowners names from all the various clan members and signature to indicative that majority consent for Portion 27C and 1C was obtained. This was an attempt to mislead the COI and it was noted during the hearings that Mr Titus was assisting the executives in the preparation of the Affidavits.
The Affidavit tendered in as evidence indicate that it was sworn on 17th September 2011 and the Attachment “a” confirming landowner support of the project and the signatures indicate that signatures was obtained between periods 30.10/11, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th November 2011. The list was prepared some two weeks before the commencement of the hearings at Kiunga and places a lot of question on the integrity of the land investigation process.

Recommendation

7.6 That landowner companies must become accountable to their landgroup in terms of holding meetings and been transparent in their duties and responsibilities as agents for the people.

8 EVIDENCE OF LANDOWNERS OF AWIN PARI

8.1 The proceedings of the inquiry into Portion 27C Awin Pari gave opportunity for the landowners under SABL Portion 27C Awin Pari to provide evidence on their understanding of the SABL and the issue of consent. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers or the Provincial administration into all aspects of the land investigation. The general thrust of landowner consensus is that the majority villagers within the road corridor project had consented to the construction of the Trans Papuan Highway, which also included allowance for the clearance of forest area to build the road. That road clearance in compliance with Forestry Act would entail a 40metre road corridor forest clearance.
The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity.

9. The Evidence of Montford Awetari

9.1 Montford Awetari (SABL 59-MIROU 17/11/11) comes from Gusieri village, the first village on the Elevala River from Kiunga. His village is located within SABL Portion 1C Awin Pari Land. That portion of land is bounded by Elevala River to the south which empties into the Fly River and is about 2 ½ hours boat ride upstream from Kiunga. He is the Chairman of TUMTEN Clan with a population of about 15 people. There are 14 landgroups within the village and his land is located under Portion 1C in which his clan owns about 1,000 hectares of land.

9.2 On behalf of his clan, Mr Awetari on oath stated, “I have never heard of the SABL up until after Gazettal No. G 218 was released. That was early this year (2011), I was the one who did the awareness campaigning to cease or terminate Gazettal No. 218 under SABL.” (Page 11) He confirmed having knowledge of the SABL as a result of the publication of the list of SABL by the COI.

9.3 He said that he signed the lease-lease back agreement as the appointed agent for his clan for the Trans Papuan Highway road project for a period of up to 25 years. The formation and registration of the Tumten Clan ILG (ILG No. 12432) was done by the Executives of NEWIL without any involvement of DLPP and the Department of Western Province. He
confirmed that Mr Samson Ubre told him to sign the ILG applications and the Consent Forms at Tumten village in a rush, and that he was not allowed to confirm the ILG and the consent for SABL with members of his clan.

9.4 Mr Awetari raised concern over the inclusion of his clan under Portion 27C Awin Pari which is fraudulent and false. The Commission confirm that Tumten Clan is also referred to in the ILGs named under the Land Investigation Report for Portion 27C.

10 The Evidence of Nelson Women

10.1 Nelson Women (SABL 59-MIROU 17/11/11 pp 19-28) comes from Tmingondok village which lies on the land bordering Portion 27C and Portion 1C Awin Pari land and covers about 30,000 hectares of land. The villages comprising nine (9) clans are located on the eastern (Portion 1C) and western banks (Portion 27C) of the Fly River. He is the leader of the Gase clan and Deputy Chairman of the Dispute Settlement Authority.

10.2 He expressed disappointment on behalf of his clan over the absence of government officials in conducting awareness over the SABL, the land investigation process and the fraudulent means of obtaining the consent of his people by using another person by the name of Julius Mangunen, who is the member of the Musiok Clan (ILG 12448) on the east bank of the Fly River. He even said that their village lies well outside of the intended road construction project and could not understand how and why it was included under the two portions under the NEWIL and subleased to IT&SL under the JV Agreement. His clan did not fill out the consent
form as required in the Land investigation process and they also did not approve Julius Mangunen to be the agent for their clan.

The Evidence of Samuel Kepukunai

11.1 Mr Samuel Kepuknai (SABL 59-17/11/11 pp 43-) of Drimskai village located on the eastern bank of the Fly River is about 3 hours outboard motor ride from Kiunga. He is the clan leader of the Susuke Clan and a former Director of NEWIL. He was elected to the position of Director by shareholders of Drimskai and Swipen villages and was involved with IT&SL over the said road project. He confirmed that no government officers from both the national and provincial level was involved and that the project and voiced concern on the manner in which the project became isolated from the people as it was emanating from Port Moresby and the illiterate community were forced to consent to alienation of land under the guise of the road project and other agricultural projects that will benefit the people as promised by Mr Harsely of IT&SL. He resigned his directorship of NEWIL when he questioned on or about September 2010 as to the manner by which IT&SL coerced illiterate villagers “…bypassing government office, the North Fly Office which is the Department of Western..” (page 44 line 33 of Transcript). He also told the inquiry that he had no idea about the SABL over his land.

12 The Evidence of Frank Hameshu

12.1 Frank Hameshu (SABL 59-MIROU-17/11/11 pp. 54-) from Drimdamasu village-East Awin Census Division and from the Phayuri clan. His village is located on the Elevala River and Fly River on the SABL survey plan. He stated that his land even though it is outside the
SABL, his land is actually surveyed as part of the SABL. He explains as follows;

“A  Okay, my village is Drimdamasu just above Kiunga, and then that is on the Fly River then to the mouth, you turn to Elevala and then Elevala right up follow up Elevala then to Ketu. Mouth of Ketu is another river above Busuri village and my land is within Elevala and Ketu about maybe 3,000 hectares of land.”

12.2 He was aware of the landowner company NEWIL and IT&SL over the road project, but at no one time was proposal to acquire customary land through the SABL process discussed with his people. There was no representation by any officers from either the national or provincial government in those key agencies involved with the landowners except their understanding that an electronic bridge will be built over the Fly River rive linking Awin with Nomad and onto the Gulf Province.

(An example of why boundary walks are crucial in determining land boundaries where minority dissent means dissection from the SABL survey plan.)

13.  The Evidence of Aaron Dupnai

13.1 Aaron Dupnai comes from the Giponai village some 30km up the Fly River from Kiunga, He represents his people of the Gre Clan of the EKium Tribe. At the time of the hearing, Mr Dupnai in the company of his people in their traditional regalia in a silent protest holding placards simply calling for their land under SABL to be returned to them. Mr Dupnai registered his people’s complaints over the acquisition of their
customary land by the umbrella Landowner Company and IT&SL without the knowledge and consent of his people. He also expressed a number of matters that will require further investigation especially over the lack of consent and the forging of signatures on the consent form, the road corridor extension of forest clearance to 5km in breach of the *Forestry Act* and the lack of financial capacity of IT&SL to construct the road.

14 **INDEPENDENT TIMBERS AND STEVEDORING LIMITED**

14.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

15. **The Evidence of Mr Neville Harsely**

15.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

16. **The Evidence of Mr Hudson Hape**

16.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

16.2 In addition to Mr Hapa’s evidence, the following number of inhabitants indicated in the Land Investigation he produced does not reflect the majority of people who have been omitted or missed out of the listing.
This is tantamount to fraudulent practices and also it is not independent and unreliable.

<table>
<thead>
<tr>
<th>No</th>
<th>Name of Land Group</th>
<th>No of people in land group</th>
<th>Lease Period Agreed (years)</th>
<th>No of people signing Agency Agreement</th>
<th>Names of Appointed Agents</th>
<th>Stated village of Appointed Agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Suli</td>
<td>0</td>
<td>25</td>
<td>26</td>
<td>Joel Megime</td>
<td>Kana</td>
</tr>
<tr>
<td>2</td>
<td>Srontia</td>
<td>11</td>
<td>25</td>
<td>11</td>
<td>Wiker Kikri</td>
<td>Gusiore</td>
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<tr>
<td>3</td>
<td>Bube Skai</td>
<td>0</td>
<td>25</td>
<td>28</td>
<td>Gill Atigi</td>
<td>Kwomhenai</td>
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<td>20</td>
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<td>Tegina</td>
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<td>25</td>
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<td>9</td>
<td>Wanaka Suguari</td>
<td>Pipila</td>
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<td>Wainya</td>
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<td>25</td>
<td>37</td>
<td>Hubert Wasu</td>
<td>Kwomhenai</td>
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<td>Dowana Kuse</td>
<td>34</td>
<td>25</td>
<td>33</td>
<td>Nainu Wokwi</td>
<td>Igubia</td>
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<td>9</td>
<td>Utana Kuse</td>
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<td>25</td>
<td>24</td>
<td>Dumo Sobovii</td>
<td>Tegina</td>
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<td>10</td>
<td>Sagai</td>
<td>0</td>
<td>25</td>
<td>30</td>
<td>Thomas Hela</td>
<td>Tegina</td>
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<tr>
<td>11</td>
<td>Samaka</td>
<td>0</td>
<td>25</td>
<td>26</td>
<td>Wanaka Suguari</td>
<td>Pipila</td>
</tr>
<tr>
<td>12</td>
<td>Ihensmo</td>
<td>0</td>
<td>25</td>
<td>33</td>
<td>Max Dwepu</td>
<td>Drimgas</td>
</tr>
<tr>
<td>13</td>
<td>Ihen</td>
<td>32</td>
<td>25</td>
<td>30</td>
<td>Raka Tangu</td>
<td>Gusiore</td>
</tr>
<tr>
<td>14</td>
<td>Usioek</td>
<td>39</td>
<td>25</td>
<td>40</td>
<td>Julius Mgunen</td>
<td>Trimgondok</td>
</tr>
<tr>
<td>15</td>
<td>Grupe</td>
<td>0</td>
<td>25</td>
<td>26</td>
<td>Melsam Sape</td>
<td>Knom</td>
</tr>
<tr>
<td>16</td>
<td>Srunai Gas Ryanka</td>
<td>0</td>
<td>25</td>
<td>43</td>
<td>Neme Sika</td>
<td>Knom</td>
</tr>
<tr>
<td>17</td>
<td>Kyankwenai Dmesuk</td>
<td>10</td>
<td>25</td>
<td>10</td>
<td>Awoke Wando</td>
<td>Knom</td>
</tr>
<tr>
<td>18</td>
<td>Drim Knom</td>
<td>25</td>
<td>25</td>
<td>23</td>
<td>Awoke Wando</td>
<td>Knom</td>
</tr>
<tr>
<td>19</td>
<td>Uga Somi</td>
<td>9</td>
<td>25</td>
<td>9 (All 9 did not sign)</td>
<td>Dimas Binai</td>
<td>Knom</td>
</tr>
<tr>
<td>20</td>
<td>Gre Dwe-Dmesuke</td>
<td>12</td>
<td>25</td>
<td>1</td>
<td>Dimas Binai</td>
<td>Knom</td>
</tr>
<tr>
<td>21</td>
<td>Dmesuke</td>
<td>10</td>
<td>25</td>
<td>0</td>
<td>Asonge Kwinde</td>
<td>Turudmesuk</td>
</tr>
<tr>
<td>22</td>
<td>Ungasomi</td>
<td>29</td>
<td>25</td>
<td>29</td>
<td>Hunda Udena</td>
<td>Drimgas</td>
</tr>
<tr>
<td>23</td>
<td>Kwaape Gre</td>
<td>11</td>
<td>25</td>
<td>10</td>
<td>Amos Daue</td>
<td>Knom</td>
</tr>
<tr>
<td>24</td>
<td>Gre Dmesuke</td>
<td>20</td>
<td>25</td>
<td>0</td>
<td>David Tunai</td>
<td>Trimgmesuk</td>
</tr>
<tr>
<td>25</td>
<td>Mepu Durankia</td>
<td>24</td>
<td>23</td>
<td>22</td>
<td>Arake Wosebi</td>
<td>Cire</td>
</tr>
</tbody>
</table>

16.3 The above table indicates that the total number of people collated in the LIR report total 658, a far cry from the stated 28,000 odd persons (1,100 @2% growth) NEWIL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.
Recommendation

16.4 The involvement of a foreign owned company in the customary land investigation process, the grant and issuance of title, the security of title in its offices and the agreement to ensure that the State Entities disregard their statutory obligations is a real concern for the State.

16.5 The State should become more proactive in the enforcement of regulations and exercise its powers to protect the asset of the rural community, the customary land of PNG.

16.6 That the owners of IT&SLand their employed Surveyor be questioned on their role in facilitating the NEWIL SABL.

17 The Evidence of Mr Michael Titus

17.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

18 Department of Western Province

Findings

18.1 It was found that the whole process of Land Investigation, the survey of the land boundaries, the appointment of agents by a particular land group and the authenticity of the data collected from within the said 26 landgroups comprising the land referred to as Portion 27Cemanated from the developer company IT&S with the able assistance of the Executives of the umbrella land owner company NEWIL.
Land Investigation Process

18.2 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

19 The Evidence of IMEN ITA PAPA

19.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

20 The Evidence of Mr Ronald Manase Dimonai

20.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

Recommendation

20.2 The C.O.I makes reference to the Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The recommendation is common to the SABL under review.

21. DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

21.1 Even though there was evidence of the North Fly District Administrator Mr Dimonai signing recommendations as to alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were
brought to the office of the Custodian of Customary Land for a certificate of alienation to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

21.2 No **Certificate of Alienability** was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

**Recommendation**

21.3 That all LIRs be provided to the Secretary of Provincial Affairs as the Custodian of Customary Land for issue of certificate of Alienability.

**22 DEPARTMENT OF LANDS AND PHYSICAL PLANNING**

22.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

**23 The Evidence of Simon Malu**

23.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

**Recommendation**

23.2 The C.O.I makes reference to the Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Recommendation is common to the SABL under review.
24 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

24.1 There was no evidence elicited from DAL over the land area. We make no findings or recommendation.

25 PNG FOREST AUTHORITY

25.1 The C.O.I makes reference to the Evidence and the Recommendations under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

26 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

26.1 In terms of environmental permit, there was no evidence taken and we make no findings or recommendation.
1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Tosigiba Development SABL. These were:

1.2.1 Department of Western Province, (DWP)
1.2.2 Department of Lands and Physical Planning, (DLPP)
1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)
1.2.4 Department of Agriculture and Livestock, (DAL)
1.2.5 Department of Environment and Conservation, (DEC)
1.2.6 PNG Forest Authority (PNGFA)

Witness Summons and Statement

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.
<table>
<thead>
<tr>
<th>No</th>
<th>Name and Position</th>
<th>Pages</th>
<th>Day</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr Imen Ita Papa, Provincial Lands Adviser, DWP</td>
<td>3-50, 36-51, 74-75, 101-103</td>
<td>1, 5</td>
<td>16/11/11-SABL 58-MIROU, 21/11/11-SABL 61-MIROU</td>
</tr>
<tr>
<td>2</td>
<td>Mr Manase Dimonai, District Administrator, North Fly District, DWP</td>
<td>63-75, 62-74</td>
<td>2, 5</td>
<td>17/11/11-SABL 59-MIROU, 21/11/11-SABL 61-MIROU</td>
</tr>
<tr>
<td>3</td>
<td>Mr Hudson Hape, Surveyor, IT&amp;SL</td>
<td>13-6</td>
<td>6</td>
<td>22/11/11</td>
</tr>
<tr>
<td>4</td>
<td>Mr Michael Titus, Lawyer, Private Legal Practitioner</td>
<td>12-13</td>
<td>5, 6</td>
<td>21/11/11</td>
</tr>
<tr>
<td>5</td>
<td>Mrs Waeya Bugaebbo, Biyami Tribe, Mougelu village, Noamd LLG, Middle Fly</td>
<td>18-31</td>
<td>3</td>
<td>18/11/11-SABL 60-MIROU</td>
</tr>
<tr>
<td>6</td>
<td>Mr Dina Gabo, Landowner &amp; Chairman, Tosigiba Timber Group Ltd, ILG Chairman of Yugri Clan, Sodiobi Village, Nomad LLG, Middle Fly District</td>
<td>7-33</td>
<td>5</td>
<td>21/11/11-SABL 61-MIROU</td>
</tr>
<tr>
<td>7</td>
<td>Mr Max Miyoba, Chairman/Director, Kebogas Investment Ltd, Landowner, Kukulababi village, Nomad LLG, Middle Fly District</td>
<td>133-143</td>
<td>6</td>
<td>22/11/11-SABL 62-MIROU</td>
</tr>
<tr>
<td>8</td>
<td>Mr Soki Samisi, Director of TTGL, Landowner-Wodibi village, Nomad LLG, Middle Fly District</td>
<td>143-153</td>
<td>6</td>
<td>22/11/11-SABL 62-MIROU</td>
</tr>
<tr>
<td>9</td>
<td>Mr Iya Fami, Landowner-Sodiri village, Nomad LLG, Middle Fly, Secretary TTGL</td>
<td>154-158</td>
<td>6</td>
<td>22/11/11-SABL62-MIROU</td>
</tr>
<tr>
<td>10</td>
<td>Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga</td>
<td>78-85</td>
<td>1</td>
<td>16/11/11-SABL 58-MIROU</td>
</tr>
<tr>
<td>11</td>
<td>Mr Nelson Women, Landowner</td>
<td>19-28</td>
<td>2</td>
<td>17/11/11-SABL 59-MIROU</td>
</tr>
<tr>
<td>12</td>
<td>Mr Neville Harsley, CEO,</td>
<td>1-73</td>
<td></td>
<td>10/01/12-SABL MIROU</td>
</tr>
</tbody>
</table>
2. Parties represented by counsel

2.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

2.1 The following were granted leave to be represented by counsel

| Counsel                                    | Mr Michael Titus |

3 Exhibits and documents

3.1 There were fourteen (14) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
<th>Interested Party</th>
<th>Date received</th>
<th>Exhibit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Survey Map of Portion 27C</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(1)</td>
</tr>
<tr>
<td>2</td>
<td>Notice of Direct Grant</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(2)</td>
</tr>
<tr>
<td>3</td>
<td>Land Investigation Report</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(3)</td>
</tr>
<tr>
<td>4</td>
<td>Instrument of Lease-Lease Back Agreement</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(4)</td>
</tr>
<tr>
<td>5</td>
<td>Response by Mr Imen Ita Papa, Acting Advisor, Division of Lands and Physical Planning-Trans Papuan Highway Road</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(5)</td>
</tr>
<tr>
<td></td>
<td>Project in Kiunga, WP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>6</td>
<td>Bachelor of Land Studies Degree-Mr Imen Ita Papa dated 28/11/97</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(6)</td>
</tr>
<tr>
<td>8</td>
<td>ECPNG Letter dated 15 November 2011 from Max Ako, Runginae Rural Hospital Administrator</td>
<td>C.O.I</td>
<td>16/11/11</td>
<td>NEWIL 27C(8)</td>
</tr>
<tr>
<td>9</td>
<td>Affidavit of Waiti Kwani &amp; List of ILG Consent Form signed on /11/11</td>
<td>C.O.I</td>
<td></td>
<td>NEWIL WK</td>
</tr>
<tr>
<td>10</td>
<td>Affidavit of Foxy Asobi</td>
<td>C.O.I</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Affidavit of Samson Ubre</td>
<td>C.O.I</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Affidavit of Betty Wine</td>
<td>C.O.I</td>
<td></td>
<td>BW 18/11/11</td>
</tr>
<tr>
<td>13</td>
<td>Supplementary Affidavit of Max Ravo Ako &amp; Map of Project Areas Covered under Portion 27C and IC Granted to NEWIL &amp; 14C Granted to TOSIGIBA Investment Ltd</td>
<td>C.O.I</td>
<td>25/11/11</td>
<td>MA “1” MA “2”</td>
</tr>
<tr>
<td>14</td>
<td>Statement of Aaron Dupnai dated 22 August 2011 re: Inclusion and Investigation to be conducted, PNG Highway and SABLs</td>
<td>C.O.I</td>
<td>25/11/11</td>
<td>AD 1</td>
</tr>
</tbody>
</table>

5. **FINDINGS**
5.1 I make the following findings follow the chronology events as documented and by evidence adduced during the hearings surrounding the SABL lease title held by TOSIGIBA.

6. Tosigiba Investment Limited SABL

6.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G218 dated 24th September 2010 for Portion 14C Awin Pari Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 23rd September 2010 by the Department of Lands and Physical Planning to the holder Tosigiba Investment Limited (Tosigiba). The details of the SABL is shown below:

<table>
<thead>
<tr>
<th>Legal Description</th>
<th>Portion 14C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Survey Plan Catalogue No</td>
<td>28/126</td>
</tr>
<tr>
<td>SABL Holder</td>
<td>Tosigiba Investment Limited</td>
</tr>
<tr>
<td>Date of Registration of Lease</td>
<td>23rd September 2010</td>
</tr>
<tr>
<td>Period of Lease</td>
<td>Ninety-nine (99) years</td>
</tr>
<tr>
<td>Land area of lease</td>
<td>632538.0 hectares</td>
</tr>
</tbody>
</table>

IPA

7 TOSIGIBA INVESTMENT LIMITED

7.1 Tosigiba Investment Limited is not incorporated as a company in PNG and does not exist. The issuance of the SABL title Tosigiba Investment Limited contravenes s 102 of the Land Act in that this company has no legal capacity to operate as a landowner company. Mr Dino Gabo stated that “to the best of my knowledge no company by that name has ever been registered by the Registrar of Companies.”
7.2 The other glaring effect also is that the Notice of Direct Grant is issued to Tosigiba Investment Limited, according to IPA records, is not even registered at all; hence, there are no formal and legal records of registration and or incorporation of that company pursuant to the Companies Act 1997.

8 TOSIGIBA TIMBER GROUP LIMITED

8.1 The purpose for the formation of TOSIGIBA TIMBER GROUP LIMITED (TTGL) was to encourage the development of the remote areas of the district in joint partnership with a logging company. At that time RH whose presence as a logging company was visible in the Nomad area, was able to provide such assistance to the landowner groups. Tosigiba ceased discussions with RH in 1998 since its inception as a company in 1996.

8.2 Tosigiba Timber Group Limited (TTGL) was incorporated on 27th March 1996 and as at 5th August 2011 was currently operating as an entity in PNG. The Company number is 1-25389 and is a national owned company. Its principal place of business is c/-Titus Lawyers, 4th Floor, Defens Haus, Corner Champion Parade and Hunter Street, Port Moresby, NCD. The company’s total number of ordinary shares is issued is 82.

8.3 The Certificate of Incorporation dated 19th August 1996 show that the original name of the company was JINDALEE NO.1 PTY LTD, followed by a name change to JOSIGIBA TIMBER GROUP PTY LTD and a further name change to TOSIGIBA TIMBER GROUP LTD on 1st July
2008. That was registered by the IPA on 4th August 2008. JINDALLEE P/L was incorporated on 27th March 1996.

8.4 The initial and current shareholders are 81 ILGs representing the people of TOMU River, SLU River, GLOME River and the BAIYA River areas of part of the NOMAD District of Western Province. On 26th November 1996, TTGL was approved and registered by National Forest Authority as a Forest Industry Participant, Registration No. F1797.

8.5 The Directors of TTGL as at 10th August 1996 are Dina Gabo, Jimmy Obabo, Foyo Gaia, Honiabi Bogou, Moses Uwomali, Soki Samisi, Martin Asuwe, Usima Duluwa, Alengo Bayo, Uga Uwok, Opi Sisibai, Hiwabi Umae, Philip Ebagi and Abi Kasubia. **Mr Foyo Gaia** was appointed as the company Secretary. The Company return is current to 10th May 2011.

8.6 The evidence in relation to the issue of the majority consent by members of each clan and ILG and their understanding on the process and registration of the SABL concept was adequately covered in the evidence of former and current Executives of Tosigiba Timber Group Limited. It had become evident during the course of our inquiry that there was factions between the former executives/directors and those executives endorsed to replace Dino Gabo and his group with the assistance Michael Titus and IT&SL. The facts leading up to this dispute within the rank of the Executives of Tosigiba could also be described as unfortunate when it represented the illiterate community which the company stands to foster partnership with entities to develop what is a virtual remote and difficult areas of the district.
8.7 **Dina Gabo** the foundation Chairman of Tosigiba Timber Group Limited on oath described his removal as Chairman in May 2011 right after the signing of the Trans Papuan Highway Agreement at Government House at the behest of Mr Harsely of IT&SL. He told the inquiry that he had requested Mr Harsely to send his lawyer Michael Titus to Kiunga with the Stage II Project Agreement so that NEWIL/TOSIGIBA can understand what the content of the agreement consisted of before they agreed in principle to execute. Mr Harsely refused the request through Mrs Betty Wine, a women leader of the province. That was the basis for the urgent meeting held at Nomad station immediately after the agreement was signed at Government House to appoint new Executives. Mr Gabo had refused to travel to Port Moresby to witness the execution of the Project Agreement and also to sign as Chairman of TTGL.

8.8 Mr Soki Samisi, Director of Tosigiba and the three Executives of NEWIL travelled to Port Moresby, the trip fully funded by IT&SL to attend the signing ceremony at Government House and Mr Samisi signed on behalf of Tosigiba and the 81 ILGs that the company represented. (Tosigiba did not hold a meeting authorising Mr Samisi to sign on behalf of the company and its shareholders).

8.9 Mr Gabo later learned from the shareholders of Tosigiba that after the signing ceremony at Port Moresby, Mr Iya Fami in the company of Michael Titus flew from Port Moresby direct to Honinabi and walked to Nomad District Station where a Special General Meeting was held to appoint Mr Soki Samisi ass the acting Chairman of the company. (This was done irregularly and in breach of section 102 of the companies Act-Chairman was not informed of the meeting and agenda procuring his attendance).
8.9 Mr Gabo does not deny that he was a party to early negotiation with Mr Harsely in 2003 when he was introduced through former MP Kala Swokim and that Mr Harsely was working for a humanitarian company that was interested in constructing the road from Kiunga to Nomad. It was at the first and only meeting that was attended by Mr Harsley, Paul Japhlom representing PNG Agency for International Development at Kiunga when IT&SL informed the landowners of the company’s interest to involve in the Trans Papuan Highway Project.

10. **Proponents of the SABL**

10.1 Despite the major defects in the process combined with the lack of awareness and concern over the involvement of the developer company in the land dealings and process, IT&SL was able to convince other executives of Tosigiba to commit to the 25 year sub-lease agreement.

11 **The Evidence of Iya Fami**

11.1 Mr Iya Fami, shareholder representative of Tosigiba Timber Group Limited on the Joint Venture Company registered as Awin Pari Nomad American Lumber Joint Venture Company Limited confirmed the importance of the road project and the initiatives for development to his people.

11.2 In cross examination, Mr Fami referred to Annexure “A” of his Affidavit to the Commission sworn on 21\textsuperscript{st} November 2011 attaching Statutory Declaration showing consent of the landowners in Nomad, Juha and
Biami. The Statutory Declarations were brought to all the people by Allan Epsi, Derek Wau, Sambo Kobi and Max Miyoba.

11.3 The Statutory declaration was an attempt by the Mr Fami in collaboration with their lawyer Mr Michael Titus to show that the 1,551 signatures of the members of the landgroups was effectively majority consent for the SABL. This is very fraudulent because the process requires that the essential prerequisite of consent is obtained during the land investigation process. The actual dates on which this exercise took place is a period encompassing 26th October 2011, 27th October 2011, 31st October 2011, 2nd November 2011 and 3rd November, 2011 respectively. The Commission conducted its hearings at Kiunga on 16th November 2011 and thus this was a deliberate attempt to mislead the Inquiry with respect to the issue of majority consent. Further to that the signatures of each individual land owners was considered to be fraudulent as was very clear to the Commission that the majority of inhabitants are illiterate and unsophisticated are not able to sign on the small space within the columns and legibly. It is also a concern that the singatures were obtained in a space of three to four days thus suspicions arise.

12 The Evidence of Max Miyobi

12.1 Max Miyobi, the current Chairman of Kebogas Development Limited endorsed Tumu Timber Group Limited as the landowner company vested with their authority to apply for SABL over their customary land. Kebogas land group owns almost 5/6 of the land in the Nomad LLG and Tumu land group would hold 1/6 of the land totalling hectares. The reason for this arrangement was that Kebogas had not organised its ILGs and the need for Stage 2 of the Roadline Project at that time required the
SABL to be issued. Kebogas had lend its support to IT&SL in the lead up to the signing of the Gre-Drimgas-Wawoi Falls Agreement.

12.2 (Recommend that Kebogas facilitate the SABL process and organise land group into ILGs for the purpose of facilitating SABL in its name in the future for the development of its customary land. It would not be in the interest of the majority of the land groups within the umbrella of Kebogas to be controlled by another landowning company in the district. Mr Miyoba had not been authorized by Kebogas to make that arrangement by its customary unit holders of land.)

13. The Evidence of Soki Samisi

13.1 Soki Samisi was ably supported by IT&SL when Mr Gabo questioned IT&SL over the Agreement and the need for a presentation to be made to the Los in Kiunga. We find that Mr Harsely of IT&SL, Mr Michael Titus funded the trip to Port Moresby to execute the Agreement at Government House. In fact, the Agreement was never provided to all the stakeholders including the North Fly Provincial Administration, Governor, NEWIL, Tosigiba, Kebogas and Tumu for its consideration prior to the signing of the document.

13.2 Imen Ita Papa has confirmed that most of the landowners including himself were spectators and were treated with contempt by Mr Harsely after the signing ceremony. They were not even given copies of the Agreement-Unfair Contracts Act

14. KEBOGAS INVESTMENT LIMITED
14.1 Kebogas Investment Limited is the umbrella company of the landowners in the Nomad District, Middle Fly, Western Province. This company was included as an applicant for the SABL Portion 1C Aibolo with Tosigiba Development Limited. The evidence of Mr Max Miyoba by Affidavit and on sworn testimony confirms their willingness to participate in the road project and was very supportive of IT&SL as the developer of the project stage II. Mr Miyoba is the current Director and Chairman of Kebogas Investment Limited (Kebogas) and comes from Kukuhalo village, Nomad District. He is the leader of the Miyami people and told the inquiry that played a principal role in promoting the Trans Papuan Highway, selective logging and agriculture projects in the Noma District. He had extensive knowledge of the project and worked closely with Waiti Kwani of NEWIL during the feasibility stages of the road link project, formation of ILG and SABL.

14.2 He stated that he travelled extensively to Nomad, Sobodi and Mogulu carrying out awareness of the benefits that the roadline and SABL will bring to the project area. That awareness had no input from the key government agencies involved in SABL and the very pertinent aspect of that inquiry was that the road project will also bring numerous request by landowners for feeder roads on both sides of the proposed highway, hence the best way forward was the acquisition of customary land under the lease back system.

14.3 The Commission was unable to peruse any documentation over the incorporation, directorship, shareholding and corporate structure of the company. It was stated in evidence that Kebogas was not able to coordinate its clan and formalise registration of the ILGs, that it decided
to nominate Tosigiba to hold the lease in behalf of the Kebogas until such time it was able to formalise its ILGs.

14.4 The C.O.I is very critical of such agreement based on the following factors;

1. Tosigiba does not have a controlling authority over the landowners to whom Kebogas was formed to represent.

2. There was no agreement between the two entities over such arrangement and it was not authorised by the Directors and Shareholders of the companies. In any event, Kebogas was a legitimate company incorporated in PNG and was at liberty to organize its ILGs and allow for separate LIR to be conducted within its land boundaries. This arrangement was contrary to the Land Act in so far as consent and issuance of the title is concerned.

3. The 82 ILGs represented in the LIR does not include any landowners from Mogulu to Juha along the SHP border across Strickland River and Nomad Station. This would have been excised from the Portion 14C Awin Pari Land.

Recommendation

14.5 That there should be continuous dialogue and collaboration based on mutual understanding between the land groups over the land allocated for agricultural or business activity and that if there is a need to go alone on a business venture that should be allowed to occur. The on going disputes between Lancon Executives is an impediment to progress and
development and is not a licence for powerplay and politics in the corporate setting.

15 **LANDGROUPS OF STRICKLAND RIVER AND KASUWE RIVER COMPRISING PART OF SABL PORTION 14C AWIN PARI**

15.1 The inquiry received evidence from landowners representing the respective villagers and clans from within Portion 14C Awin Pari Land. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers on the land investigation. It is general consensus that they had in fact consented to the 600km road corridor project including the 20m by 20m road corridor clearance of forest area to build the road.

15.2 The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity.

16 **The Evidence of Mrs Bugaabo**

16.1 Mrs Bugaabo is from Gogodala, Balimo but now lives with her husband who is from the Biyami Tribe, Mougulu village which is about six hours walk from Nomad Station. It is about eight (8) days walk from Mougulu village to Kiunga township. The Commission has noted the hardships faced by the people in having access to Kiunga/Tabubil due to the river tributaries, dense jungle and heavily forested areas, the stark remoteness of villages which epitomises the drive for development and the need for a national road network with proper feeder roads into various rural
community. These hardship are very real and in her evidence she told the inquiry of her 8 days walk to Kiungu to attend the hearings of the SABL inquiry and to express her concerns for her tribe in Mougulu which is located at the border closer to the Southern Highlands Province.

"...
A:  I am Mrs Waeya Bugaebo but Luia. I am from Balimo, Gogodala; got married to Biyami.

MR BOKOMI: Your husband is from the Biyami tribe?

A:  Biyami tribe.

Q:  Where do the Biyamis live?

A:  In Mougulu.

Q:  Mougulu. How far is Mougulu from Nomad?

A:  It is six hours walk.

Q:  Six hours walk. How far is Mougulu from Kiungu?

A:  I have walked eight days.

Q:  Eight days. Commissioner, I am asking these questions simply to establish one tract and that is that some of these SABLs, they cover, as confirmed by the survey plans; very
extensive areas and for government officers to even walk, will take them a considerable period of time.

COMMISSIONER MIROU: Considering that you have to cross rivers, tributaries, swamps, forests---

MR BOKOMI: Swamps, mountainous areas.

COMMISSIONER MIROU: Yes.

MR BOKOMI: Densely and populated rainforest.

COMMISSIONER MIROU: Yes, it is very difficult. We thank Mrs Bugaebo for her efforts to come to Kiunga.”

(Our emphasis)

16.2 She expressly called for the revocation of the SABL title in the name of Tosigiba Investment Ltd (a non exisiting corporate entity) in that no awareness was carried out on each of the 82 indegenous land groups that includes 44 villages in the Biyami tribe, Mount Bosavi and Wawoi Falls. She emphasised the need for proper social mapping before any ILGs are registered. Based on the information and proper collation of land groups and other disputes that may arise over land boundary the land groups can make informed decision on how they would like to deal with their land. She emphasised the need for the Developer to wait until all the pressing issues are resolved, which is our view was not forthcoming fron DLPP and the provincial lands office.
16.3 In evidence she also identified to the Commission that the SABL in fact included mission leases and airstrip leases that was run by ECPNG and the Catholic Church. (Mougulu Catholic Mission Lease, Fuma Mission Station, Eselevi (ECPNG), even includes government owned station/district offices etc.

16.4 In conclusion she told the inquiry that the SABL should be revoked but the road must be constructed to allow for access to towns and market.

17 The Evidence of Giwi Giwi

17.1 Giwi Giwi from Tiomna village which is some 13km from Kiunga (on the Kiunga/Tabubil Highway) and representative spokesperson for the 70 plus members of the Sami clan, Awin tribe confirmed that they were not aware of the SABL Portion 27C until they saw the gazetted listing published by the Commission of Inquiry. The whole village was not aware of the existence of Tosigiba as the landowner umbrella company responsible for facilitating and negotiating on behalf of the villagers on their involvement in projects that will benefit the landowners collectively. Mr Giwi stated that his clan members and other surrounding villagers never had any meeting with any government representatives over the land investigation process.

18 The Evidence of Steven Kwani

18.1 Steven Kwani, Chairman of Nakrone Forest Area Landowners Association, spokesman representing the USIOKE clan from Trigondok village also confirmed that his people were not aware of the SABL that also included their land. According to Mr Kwani, his people were only
told that a roadline will be constructed connecting the Gre – Drimgas road across the Fly River over Portion 1C to the Wawoi Falls. There was no involvement from DLPP or the Provincial Lands Office. He also states that he comes from a clan that has about 105 adults and children. In total there are also 10 clans making up their tribe totalling 246 inhabitants.

18 The Evidence of Jack Kwani

18.1 Jack Kwani, spokesman from Drimgas village and of the Gause Clan which is one of the 12 clans along the Fly River where the proposed roadline will be constructed. He said on oath that from Drimgas to Tupensomi there are about 624 inhabitants. He also restated that the people of Drimgas to Tupensomi were not fully aware of SABL until the date of the SABL inquiry hearings at Kiunga, There was awareness about the Trans Papuan Highway, but IT&SL did not make that very clear to the people.

18.2 In respect of the ILG forms, it was confirmed that Waiti Kwani, Samson Ubre and Foxy Asobi were conducting the ILG awareness and collecting signatures basically on the roadline project and not the SABL. He was present at the time the road project agreement was signed at the Office of the Governor General but was insisting on the ILG Certificate for his clan. The important aspect of his evidence is that IT&SL had no presence in Kiunga especially an office to conduct business with the Awin landowners including heavy machinery and equipment since 2006. The current feeder road between Gre village and Drimgas on the Fly River was built jointly by Department of Works and Trima Construction Limited.
19 INDEPENDENT TIMBERS AND STEVEDORING LIMITED

19.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

20 Mr Neville Harsely
(SABL 76-MIROU-10th January 2012 pages 1-72)

20.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

21 The Evidence of Mr Hudson Hape

21.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

21.2 The evidence with respect to this SABL in relation to the Land Investigation are;

21.3 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Montford Awetari appeared as an agent for Tumten and Gre-Dmesuk land groups. His stated village is Gusiore village along Elevala River under those land groups over Portion 1C Awin Pari. Mr Awoke Wando appears as Agent for Uga Somi and Kyankwenai Dmesuke Land Groups with his stated village as Kmom in those land groups. It is improper and fraudulent for a person to be named
in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected.

21.4 There were twenty-six landgroups who participated in the LIR leading to the NEWIL SABL as provided below:

24.1.1 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Montford Awetari appeared as an agent for Tumten and Gre-Dmesuk land groups. His stated village is Gusioire village along Elevala River under those land groups over Portion 1C Awin Pari. Mr Awoke Wando appears as Agent for Uga Somi and Kyankwenai Dmesuke Land Groups with his stated village as Kmom in those land groups. It is improper and fraudulent for a person to be named in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected. There were twenty-six landgroups who participated in the LIR leading to the NEWIL SABL as provided below:

24.1.2. There were nine landgroups who participated in the LIR leading to the TOSIGIBA DEVELOPMENT LIMITED SABL as provided below:

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<th>Name of Land Group</th>
<th>No of people in land group</th>
<th>Lease Period Agreed (years)</th>
<th>No of people signing Agency Agreement</th>
<th>Names of Appointed Agents</th>
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</table>
The total number of people collated in the LIR report total 658, a far cry from the stated 28,000 odd persons (1,100 @2% growth) NEWIL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.

**Recommendation**

The C.O.I makes reference to the Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Recommendation is common to the SABL under review.
The Evidence of Michael Titus

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

We only highlight certain aspects of his evidence distinct to this SABL as follows:

Mr Titus was engaged by IT&SL to assist Tumu Timber Development Limited at the time Mr Dina Gabo and executives of Tosigiba Development Ltd decided to pursue carbon trading initiatives much to IT&SL’s dislike. According to Mr Titus, they were referred to as the ‘rogue directors’ and was considered in our view a sabotage what has been a fruitful cooperation between IT&SL and the landowners. It is confirmed that after the Project Agreement was signed in Port Moresby in May 2011, Mr Titus convened a meeting with Soki Samisi and others at Kiunga for changes to be made to the chairmanship and directorship of the company. Mr Gabo and other executives were not properly advised of that meeting which is contrary to the requirements of the Companies Act.

Recommendation

Mr Titus must be referred to the PNG Law Society for his involvement with the landowners companies whilst been paid by IT&SL constituting serious ethical questions over the conduct of his legal services to competing interests.

Notable features of the Land Investigation process for Portion 14C Aibolo
LIR 01/314
Name of Applicant: Kebogas Investment & Tosigiba Investment Limited. On the face of the LIR the site from Kiunga is about 80km east. The sub district is NOMAD which is situated within the project site is about 120km from Kiunga. Each of the 26 clans agreed to 25 years. The population estimated with a 2% growth was 1,100 increase. The consent does not reflect that the majority consented. The LIR was signed on 15\textsuperscript{th} December 2008 and the walk on the boundary was done on that very day Papa Domonai, North Fly DA signed the recommendation for alienability on 19\textsuperscript{th} December 2008 at Kiunga.- No due diligence and signing took place at Port Moresby and not Kiunga.

- Papa endorses that reservations be allowed for gardening, hunting, sacred sites, rivers, villages, roads and other complementary uses to the project
- Means of livelihood of owners-subistence farming, nomadic gatherers, hunting and fishing.

Names of Los endorsing agents all appear on the LIR but no signatures endorsing the agents thus affecting the Instrument of Lease-lease back agreement.

Malu and Sikabu signed and Pepi Kimas signed as the delegate of the Minister. Signed at Kiunga on 12\textsuperscript{th} February 2009. (Instrument)

**Recommendation**

That the owners of IT&SL. be questioned as to their role in facilitating the NEWIL SABL.
Department of Western Province

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

Land Investigation Process

THE EVIDENCE OF IMEN ITA PAPA

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Even though there was evidence of the North Fly District Administrator Mr Dimonai signing recommendations as to alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for a certificate of alienation to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation
That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

**DEPARTMENT OF LANDS AND PHYSICAL PLANNING**

The Department of Lands and Physical Planning processes SABLs under two main legal criteria prescribed under the *Lands Act* Chapter 5 (the Land Act). The relevant provision referred to are sections 10 and 11 of the Act and section 102 of the Act.

DLPP file records on SABL Portion 27C Awin Pari disclose that an Application or Tender Form duly filled out by the agent for NEWIL and dated 17\textsuperscript{th} June 2009 was submitted for consideration. The agent whose signature appears on the document was confirmed as those of Mr Hudson Hape, Registered Company Surveyor for IT&SL as having been authorized by NEWIL to be their agent. It was revealed that no such authorization was approved by the Board of Directors, NEWIL on matters related to the acquisition of Portion 27C for SABL.

The purpose of the application was, *for Forestry-Reforestation, Sawmilling, Agriculture and Major Road Construction. Estimated Value for Improvement is about K192.0 Million.*” The Commission noted with interest that Portion 27C was specifically referred to in the Application. This application was reflected in the application for SABL regarding Portion 1C Awin Pari, Portion 14C Awin Pari and Portion 1C Aibolo symbolically considered as illuminating the manipulation of a foreign corporation over the people of Awin Pari being unsophisticated with a handful of intellectuals.
The DLPP file also disclosed that Mr Simon Malu then Caretaker Manager, Customary Land in a letter dated 24\textsuperscript{th} November 2008 to the Managing Director, IT&SL confirmed issuance of Land Instruction Number for Portion 27C Milinch of Alice; Fourmil: Raggi as 01/316 including references to Portion 1C Awin Pari; Portion 14C Awin Pari and Portion 1C Aibolo. This date confirm that the Land Investigation process was conducted without submission of the most primary documentation that will allow DLPP to carry out vetting on the proposed land in particular existing leases.

Mr Malu instructed IT&LS to liaise with Customary Lands Section and the Fly River Provincial Government Administration to carry out awareness and complete the Land Investigation process.

Land Investigation Report for Portion 27C was completed and signed by Mr Imen Ita Papa Provincial Land Adviser, Provincial Land and Physical Planning Office of the Department of Western Province, North Fly Electorate on 19\textsuperscript{th} December 2008. The LIR comprised 26 clans submitting their consent for 25 hectares of their land within the Awin Pari region of Kiunga to be freed up for 25 years.

Recommendation as to Alienability was signed by Mr Ronald Manise Dimonai, District Administrator, North Fly Region of Western Province at Kiunga on 19\textsuperscript{th} December 2008 as was purportedly indicated on the LIR. No reservation for the continuation of reasonable access for hunting, fishing, gardening and other necessities conducive to access onto the land.

**Land Investigation Report**
The Tender form submitted by the agent Mr Hape from IT&SL for SABL to be issued to Tosigiba Investment Limited is dated 17th June 2009. This application was submitted to DLPP after the issuance of the Instruction Number, the land boundary survey and land investigation; and the lease-lease back agreement. This is fraudulent and would in our view require criminal investigation on the manner in which the process for customary land dealings was corrupted at the very beginning. (Lands Official and IT&SL to be investigated for criminal misconduct and conspiracy to acquire customary land without due regard to the process)

Land Investigation Report was conducted by Mr Hapea from IT&SL. It was submitted to Mr Imen Ita Papa who signed each of the 26 individual clan reports on 15th December 2008. Mr Manase Dimonai, District Administrator North Fly District signed the Recommendation for Alienability on 19th December 2008.

There is fraud involved as the applicant(s) in all the 26 reports refers to Tosigiba Timber Group Limited & Kebogas Investment Limited

**Mr Michael Titus** was paid by IT&SL to assist the Executives of the umbrella landowner company Tosigiba with IPA registration, meetings, annual returns and also with the ILG forms. (see evidence of Harsley on that retainer arrangements, even though Mr Titus strenuously refused to accept the Commission’s observation that he was actually paid by IT&SL to provide legal assistance to the Landowner companies-Tosigiba/NEWIL/Tumu.

**Instrument of Lease-Lease Back Agreement**

Our investigation confirms that there was two Instrument of Lease-lease Back Agreement in existence. These documents disclose the corruptible nature of the company IT&SL to manipulate the company executives and ILG agents during
the land acquisition process. Major discrepancies indicate that the agreement is tainted with fraud as was evident in the discovery of two lease-lease back agreements over Portion 14C Awin Pari land.

**Agreement dated 12\(^{th}\) February 2009 (TOSIGIBA 4)**

Mr Gabo confirmed signing the Instrument dated 12\(^{th}\) February in the presence of Mr Imen Ita Papa at the Provincial Lands Advisors Office at Kiunga. The other eighty one agents as authorized agents of the respective ILG were also present and signed the agreement. He was not aware of the second Lease-Lease Back agreement dated July 2009 that led to the issuance of the direct grant to Tosigiba under section 102 of the Land Act. That agreement was not signed by the Minister or by his Delegate.

**Agreement dated 24\(^{th}\) June 2009 (TOSIGIBA 9)**

This agreement led to the issuance of the Direct Grant signed by Mr Kimas as the Delegate of the Minister for Lands and Physical Planning. The Agreement dated 24\(^{th}\) June 2009 was signed by 81 agents of the landgroups but Mr Gabo’s signatures is omitted. The agents signed the agreement in the presence of Mr Sikabu Maika and Simon Malu

**Title**

The substantive title holder to Portion 14C Awin Pari is in the name of TOSIGIBA INVESTMENT LIMITED. It is evident that Tosigiba Timber Group Limited was incorporated in 2006 and is recognised as the umbrella company for 81 landowning clans in the Nomad District.
By letter dated 26th October 2010, Mr Hape of IT&SL wrote to Mr Simon Malu, Director Customary Lands Administration, DLPP for addendum to Notice of Direct Grant under section 102 of the Land Act adding that SABL grantee should be changed to TOSIGIBA TIMBER GROUP LIMITED in compliance with IPA business name requirements.

**SERIOUS DEFECTS IN THE PROCESS THAT WE OBSERVE ARE FRAUDULENTS AND CORRUPTIBLE**

**Period of Lease-lease back**

The lease - lease-back agreement in relation to the subject land was executed by parties on 24 June 2009. Land investigation reports, generally are incomplete and or unsigned in most relevant and necessary parts thereof. The Notice of Direct Grant expressly says that a Special Agriculture and Business Lease under section 102 of the Land Act is granted to Tosigiba for a period of 99 years. However, according to the lands investigations conducted purportedly by the Lands Officer based in Kiunga, one Mr Imen Ite Papa, in relation to portion 14C, the landowners were and are not willing to sell their land outright but, rather, were and are willing to lease for only 25 years and not 99 years as stipulated in the Notice of Direct Grant.

The lease period of 25 years as consented to and approved by the customary landowners, as it appears during the land investigations, found the expression as an essential term of the lease - lease-back agreement executed between the landowners and the State. That particular term is found in part 2 of the terms of the lease as set out in the schedule to the lease which says in particular that the customary landowners agree to lease the subject land to the State for a period of 25 years.
There is a glaring contradiction between the term as set out in the notice of Direct Grant and the term set out in the lease entered into between the State and the landowners. In the lease, landowners are willing to give away their land for only 25 years, whilst in the Notice of Direct Grant, 99 years.

The Notice of Direct Grant was signed by Mr Kimas, and it was witnessed by Mr Simon Malu who is now the Director Customary Lands Division, Lands Department Waigani; and Mr Sikabu Maika who was the then Provincial Lands Adviser. (He has now been transferred to Alotau, Milne Bay Province). It is also noteworthy to mention that only 29 of the 56 ILGs from the area, covered by the SABL, signed through their respective agents the lease instrument.

According to the land investigation reports, all the clans owning land within the SABL have, respectively, a population of 1100 persons at 2 per cent natural increase rate per annum. That is the population of almost each and every village that was apparently in which land investigations were conducted.

The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Dimonai as the District Administrator on behalf of the Administrator of the Western Province in December 2008. In the evidence provided there was found a instruction no. ---- given for the LIR to be conducted, a notice of Direct Grant under Section 102 and the signed Lease/leaseback instrument.

However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback
agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

The Evidence of Simon Malu

The C.O.I makes reference to the Evidence and Recomendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recomendation is common to the SABL under review.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The C.O.I makes reference to the Evidence and Recomendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recomendation is common to the SABL under review.
Files provided to the Commission by NFA reveal that on 25th November 2010 and pursuant to section 90D (8) of the *Forestry Act 1991* (Regulation 273 and Form 252) the Board of the National Forest Authority issued Forest Clearance Authority Number **FCA 01-01** to IT&SL to carry out larger scale conversion of Forest Road Development. We note from the Forest Clearance Authority (FCA) that clearly stated that “The Project area is about **600 kilometres** of road alignment in the North Fly District of the Western Province. It is to be known as the **Gre-Drimgas to Nomad Road Alignment**. The maximum forest clearance of road corridor from forest edge to forest edge is to be strictly confined to 40 metres (20 metres of both sides of the road centre line). (Refer Schedule 1 and 4(1) of the FCA)”.

The Commission however finds that IT&SL has deliberately increased the FCA road line approval for a 40metre forest clearance with an additional 5,000metres clearance of forest under the Contract between the State and IT&SL dated 23rd May 2011. The changes are reflected under Recital “O”, “**IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road lengths or which is the greater of the two for selective harvesting of commercial species and the removal of timber from **40 metre road corridor or 20 metres either side of the road centreline and a distance of 5,000mtres on either side of the road corridor which has been initially agreed with by the traditional landowners.**” (Contract Agreement at page 7)
In fact the Commission has also sighted an earlier version of the Contract which stipulates as follows; *IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the timber harvesting period of twenty five years and also to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road 600 kilometres of road lenght or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline which has been initially agreed with by the traditional landowners."

That is a major deviation from the original requirement of road clearance ass issued by the Board of NFA.

In conformity to the FCA requirements for a performance bond in the sum of K595, 000.00 to be paid within 21 days of the issuance of the FCA, IT&SL provided an ANZ BANK Guarantee in the said sum of K595, 000.00 to NFA on 16th December 2010.

**RECOMMENDATIONS**

The PNG Forest Authority should cancel the FCA and allow new process to be applied consistent with the Road Line Authority and not for Agricultultural purpose.

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

No findings and recommendations as no application was made for environmental permit
1.1 In accordance with the powers given to the Commissioners pursuant to Section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the North East West Investment SABL. These were:

1.2.1 Department of Western Province, (DWP)
1.2.2 Department of Provincial Affairs and Local Level Government, (DPALLG)
1.2.3 Department of Lands and Physical Planning, (DLPP)
1.2.4 Department of Agriculture and Livestock, (DAL)
1.2.5 PNG Forest Authority, (PNGFA)
1.2.6 Department of Environment and Conservation, (DEC)

Witness Summons and Statements/ Evidence

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.
<table>
<thead>
<tr>
<th>No</th>
<th>Name and Position</th>
<th>Pages</th>
<th>Day</th>
<th>Date</th>
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<tr>
<td>1</td>
<td>Mr Imen Ita Papa, Provincial Lands Adviser, Provincial Lands &amp; Physical Planning Office, DWP</td>
<td>3-50</td>
<td>1</td>
<td>16/11/11-SABL 58-MIROU</td>
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<td>5</td>
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<td></td>
<td>74-75</td>
<td>5</td>
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<td></td>
<td>101-103</td>
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<td>Mr Ipisa Biyama, District Administrator, South Fly District, DWP</td>
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<td>62-75</td>
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<td>Mr Hudson Hape, Surveyor, IT&amp;SL</td>
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<td>4</td>
<td>Mr Michael Titus, Lawyer, Private Legal Practitioner</td>
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<td>6</td>
<td>22/11/11</td>
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<td>5</td>
<td>Mr Abini Gesele, Councillor of Ai village, Awala Clan of Boyadari Tribe comprising 36 ILGs President of Gogodala LLG &amp; Chairman for Economics in the Provincial Executive Council, Middle Fly (TTL &quot;7&quot;-Statement of Gesele)</td>
<td>36-3</td>
<td>3</td>
<td>23/11/11-SABL 63-MIROU</td>
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<td>Mr Alex Tongayu Registrar of Companies IPA</td>
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<td>7</td>
<td>George Deposie</td>
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<td>8</td>
<td>Mr Soki Samisi Director of TTGL Landowner-Wodibi village, Nomad LLG, Middle Fly District</td>
<td>143-153</td>
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<td>Mr Iya Fami Landowner-Sodiri village, Nomad LLG, Middle Fly Secretary TTGL</td>
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<td>10</td>
<td>Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga</td>
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<td>Mr Neville Harsely, CEO, IT&amp;SL</td>
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<td>Mr Aaron Dupnai Landowner, Awin Tribe</td>
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<td>15</td>
<td>Mr Pepi Kimas Former Secretary, DLPP (200 to 2010)</td>
<td>7-87</td>
<td></td>
<td>17/01/12-SABL 80-NUMAPO/MIROU</td>
</tr>
</tbody>
</table>
2. **Parties represented by counsel**
2.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

2.2 The following were granted leave to be represented by counsel

| Counsel | Mr Michael Titus |

3. **Exhibits and documents**
3.1 There were eleven (11) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
<th>Interested Party</th>
<th>Date received</th>
<th>Exhibit Number</th>
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<tr>
<td>1</td>
<td>Land Investigation Report</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (1)</td>
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<td>2</td>
<td>Survey Map of Portion 1C Aibolo</td>
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<td>23/11/11</td>
<td>TTL (2)</td>
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<td>Notice of Direct Grant No G 78 dated 28/04/09</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (3)</td>
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<tr>
<td>4</td>
<td>Instrument of Lease-Lease Back Agreement dated 01/04/09 and Deed of Amendment of the Joint Venture Agreement between Pisa American Lumber Shareholder Agreement dated 27/02/09</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (4)</td>
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<td>6</td>
<td>Special Agriculture And Business Lease dated 1 April 2009.</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (6)</td>
</tr>
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</table>
and KEOGAS Investment Limited and Tosigiba Timbers Group Limited and PNG Agency for International Development and Independent Timbers and Stevedoring Limited

<table>
<thead>
<tr>
<th>Statement of Abini Gesele</th>
<th>C.O.I</th>
<th>23/11/11</th>
<th>TTL (7)</th>
</tr>
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<tr>
<td>Personal Statement of Wisa Suspie</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (8)</td>
</tr>
<tr>
<td>Copy of letter from Eco-Forestry dated 9th November 2011 and Copy of Interim Orders OS (JR) 259 of 2006</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (9)</td>
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<tr>
<td>Copy of Court Proceeding OS 737 of 2011 Initiated by Mr Wisa Susupie</td>
<td>C.O.I</td>
<td>23/11/11</td>
<td>TTL (10)</td>
</tr>
</tbody>
</table>

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Tumu Timbers Development Limited.

Tumu Timbers Development Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G78 dated 28th April 2009 for Portion 1C Aibolo Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 27th April 2009 by the Department of Lands and Physical Planning to the holder Tumu Timbers Development Limited (Tumu). The details of the SABL is shown below:

<table>
<thead>
<tr>
<th>Legal Description</th>
<th>Portion 1C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Survey Plan Catalogue No</td>
<td>35/15</td>
</tr>
<tr>
<td>SABL Holder</td>
<td>Tumu Timbers Investment Limited</td>
</tr>
<tr>
<td>Date of Registration of Lease</td>
<td>27th April 2009</td>
</tr>
<tr>
<td>Period of Lease</td>
<td>Ninety-nine (99) years</td>
</tr>
<tr>
<td>Land area of lease</td>
<td>790,800.0 hectares</td>
</tr>
</tbody>
</table>
The Commission also notes the existence of the SABL Title in the name of Tumu Timber Development Limited which was signed on 10\textsuperscript{th} May 2009 (See Exhibit TTL”6”). This discrepancy indicates the lack of proper supervision and management of land dealings contributed largely by the reckless disregard for proper administrative observance of the land investigation process thus compromising the safe custody and security on indefeasibility of the SABL title (including other State Leases) by DLPP.

**IPA**

Tumu Timber Development Limited (Tumu) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the *Companies Act* 1997. The Company was incorporated on 20\textsuperscript{th} July 1994 and the current Principal Place of Business is DFK Hill Mayberry, 5\textsuperscript{th} Floor Defens Haus, Corner Champion Parade & Hunter Street, Port Moresby National Capital District. As at 14\textsuperscript{th} April, 2009 IPA records confirms that it is operating and the Company number is 1-22269.

The company status on the IPA Extract is that it is deregistered for failure to file company returns as is required under the Companies Act. Mr of Tumu confirms that the company having submitted returns to IPA, it is currently operating.

The latest IPA company extract provided to the Commission dated 14\textsuperscript{th} February 2011 confirm that there are 81 shareholders comprising Incorporated Land Groups within the land known as Aibolo, North Fly District of the Western Province. The Company has issued total number of 145 ordinary shares.
The extract discloses Messrs Ablie Wape, Wisa Susupie, Yamai Umtadie, Walama Paimama, Billy Toroti and Yaiye Bosai as Directors of the company. Mr Walama Paimama is also the current Secretary of the Company with Mr Wisa Susupie appointed as the Chairman. The Annual return for the company was made up to 17th March 2008.

**EVIDENCE OF LANDGROUPS OF STRICKLAND RIVER AND KASUWE RIVER**

The proceedings of the inquiry into Portion 1C Aibolo gave opportunity for the landowners to and appear and assist the inquiry with evidence based on their understanding of the SABL and the issue of consent. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers or the Provincial administration into all aspects of the land investigation. The general thrust of landowner consensus is that the majority villagers within the road corridor project had consented to the construction of the Trans Papuan Highway, which also included allowance for the clearance of forest area to build the road. That road clearance in compliance with Forestry Act would entail a 40meter road corridor forest clearance.

The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity

**Abini Gesele** Councillor of Ali village and President of the Gogodala LLG, Chairman of Economics, Provincial Executive Council, Fly River Provincial Government. He belongs to the Awala Clan of the Boiyadari Tribe which has 36 registered ILGs. stated in his evidence and sworn testimony that his clan and
tripe from Ali village, Balimo, Muye village in Lake Murray was not aware of the acquisition of their land under SABL. As their representative, he also stated that the BOYDARI LAND GROUP and BEGUA RESOURCES CONSERVATION did not consent to the acquisition of their land under SABL and they treated the signing of the land deal as illegal and lack the consent of all the members of his tribe and clan. If there was any agricultural activities was to eventuate on that land then there would have been a submission made to the PEC of which he was a member of the Committee tasked with the oversight of all agricultural activities within the Province.

Wisa Suspie comes from Songoba village and speaks the Doso and Kamula dialect. He belongs to the Kawokwok clan which is situated in Middle Fly of the project area. He is an experienced logger having worked as a Chief Scaler, Marketing Officer for logs, Camp Assistant at logging camps with RH Group of Companies. He currently holds a loggers licence No. 054. He has worked at Kamusi, Teredau, Vailala, and Doa/Tuna Camp (Central Province). He represented his people of the Kamula Doso area which is part of the SANBL encompassing the logging concession known as Kamula Doso TRP operated by RH.

He was the mandated Chairman of Tumu Timbers Development Limited. Tumu is the umbrella landowner company which has 52 ILGs within the Kamula Doso FMA area the shareholder of the company. He confirmed in his evidence that no boundary inspection took place and that proper surveys were not carried out in consultation with Tumu. He told the inquiry that between periods 2006-2008, Tumu under his chairmanship worked closely with IT&SL on the registering each ILGs with regard to the road project. He became concerned when IT&SL prepared the Joint Venture Agreement with the shareholding structure of ninety (90) percent in the name of IT&SL and ten (10) percent to Tumu. The control of
the joint venture company will be in the name of IT&SL, which will nullify the sub lease requirement under the lease back title in the name of Tumu. His group was referred to as the rogue directors by IT&SL (Harsely/Titus) when they decided in 2009 to pursue carbon trade as a means of preserving their forest due to the forest concession held by the forest developer RH.

He confirmed that after the signing of the road agreement at Port Moresby on May 2011 Mr Harsely directed Mr Titus to organise and convene a meeting of BOD basically to deal with the continued leadership of Mr Suspie, A aircraft at the expense of IT&SL was chartered to transport all the directors to Wawoi Falls. That meeting was convened on location at Wawoi Falls and on 9th May 2011 Inwapa Yama was appointed as Chairman, Nodie Imare and Walama Painama was appointed as Directors replacing Mr Suspie’s executives. The meeting was convened without proper notice given to Suspie and his executives to be present at that meeting. It was stated in evidence that IT&SL was trying to protect the SABL interest and that he was seen as an obstacle to IT&SLs role in bringing economic development to Western Province.

He has confirmed that there two factions created over the leadership and directorship of Tumu, the subject of current proceedings in the National Court. The other faction is led by George Deposie and the current records at IPA indicate that both Deposie and Suspie are not registered as Directors of Tumu.

**Mr Solomon Kosa** who is the spokesman for the other 5 SABL in the South Fly District informed the Commission that there was a dispute between Tumu Timber Development Corporation and Wawoi Tumu Holdings over the FMA concession for the harvest of timber within the Kamula Doso area. It transpired that there is a current proceeding in the National Court between the two landowner company over the FMA concessions. The subject of the proceedings
is not known but the essence of that proceeding is for the reason that Wawoi cannot renew and obtain extension for FMA to carry out logging activity within Makapa FMA and Wawoi Falls FMA on the basis of the SABL that was issued under the name of Tumu Timber Development Limited. He said in evidence that the majority of the people wanted to continue with logging activity but was now restrained because of the SABL. Further to that the National Forest Authority has advised that it would not issue any new FMA for the area until the SABL issue was resolved. Mr Kosa was assisting the warring groups in resolving the differences with the intent of carrying on logging in the area. According to Mr Kosa, Waoi Guavi Timber company was requested by NFA for extension of Wawoi Guavi operations of 791,000, 200 hectares of land is heavily forested area. The Kamuladoso FMA was signed in 1997 having lapsed was the subject of an application by the company seeking renewal and extension of the FMA.

Aaron Dupnai comes from the Giponai village some 30km up the Fly River from Kiungu, He represents his people of the Gre Clan of the EKium Tribe. At the time of the hearing, Mr Dupnai in the company of his people in their traditional regalia in a silent protest holding placards simply calling for their land under SABL to be returned to them. Mr Dupnai registered his people’s complaints over the acquisition of their customary land by the umbrella Landowner Company and IT&SL without the knowledge and consent of his people. He also expressed a number of matters that will require further investigation especially over the lack of consent and the forging of signatures on the consent form, the road corridor extension of forest clearance to 5km in breach of the Forestry Act and the lack of financial capacity of IT&SL to construct the road.
INDEPENDENT TIMBERS AND STEVEDORING LIMITED

The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

The Evidence of Mr Neville Harsely

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

The Evidence of Mr Hudson Hape

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

The Evidence of Michael Titus

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

PISA AMERICAN LUMBER JOINT VENTURE COMPANY

Pisa American Lumber Joint Venture Limited (PALL) was set up as a joint venture company for IT&SL and Tumu Timber Development Ltd. The Deed of Amendment Joint Venture Shareholder Agreement (Exhibit TTL”4”) between
IT&SL, Tumu Timber Development Ltd Pisa American Lumber Ltd, and Neville Harsely was executed on 5th February 2009. The agreement was prepared by Gadens Lawyers based in Queensland, Australia. The Commission is concerned that the instruction and the agreement was done outside of PNG when there were law firm quite capable of preparing an agreement that is for the benefit of the landowners and not the developers as will be highlighted in the content of the shareholders agreement.

“A. Very serious and this why we started with a process of what we needed and what the people needed by the MOUs through the contracts so the landowners counsel, under those contracts if we do not perform’ they can sue us. They can sue for damages. We have had a reputable Australian Law Firm with offices in PNG in Gadens draw up those contracts. So we have provided rights in equal parity to the people and to us so if we do not perform counsel, the landowners can physically take us to court and sue us and we can be cited for breach. This project is covered by a project agreement and it provides for provisions under that project agreement for legal ramifications so that landowners are also as an insurance policy are protected by the project agreement.

(Refer to his evidence at page 25 commencing line 44 to and Exhibit NEWIL 27(7))

Recital (A), (B), (C), (D), (E) & (F) sets out the background to the agreement. I set out the pertinent recitals below;

A. “IT&S is a PNG Company and holds a Certificate of Registration as a Forest Industry Participant (registration number F101573) and is
recognised under Part IV of the PNG Forestry Act 1991. The Company is certified to harvest, process and sell forest products in PNG.

B. Tumu is an umbrella company representing each and every customary landowner and/or Incorporated Land Group (ILG) of all land in the Kamula Doso ("KD Area") FMA Concession. Tumu is duly incorporated and registered under the laws of PNG and is the company recognised by the Provincial and National Government as the legal entity representing the rightful landowners of the KD concession area.

C. KD Area is an area of land in the Western Province that has been identified by the State of PNG ("State") and the PNG Department of Forestry, as a Forest Management Authority Timber Concession ("FMA") as recognised under the PNG Forestry Act 1991, and described as Portion 1C, Aibolo, LIR No. 01/317, in the Locality of Balimo, District of Middle Fly, Western Province, on Survey Plan Cat No, 35/15, having an area of 790,800 hectares.

D. IT&S and Tumu have formed a joint venture (the Joint Venture) to undertake the commercial development of the timber and other forest resources within the KD FMA as granted under the Forestry Act 1991, and have set out the terms and conditions of their joint venture in an agreement dated 30 November 2007 (the Joint Venture Agreement)

E. Pursuant to the Joint Venture Agreement, IT&S and Tumu have established and registered Pisa as a special purpose entity for the purpose of the Joint Venture.
F. IT&S and Tumu have required that Pisa agree to carry out the terms of the Joint Venture Agreement on its part required, and Pisa has agreed to do so.”

We are concerned that the Agreement does not accord any right to the landowners to exercise free will and decision on nominating a developer over land dealings affecting pristine forest located within the said project area. The Agreement is in my view an attempt to substitute the ‘sub-lease’ process under the lease back system and introduce the joint venture agreement which we strongly believe undermines the landowner’s ability to use the process the lease in accordance with agriculture, the central basis for the lease.

Clause 1.4 and Clause 1.5 of the Lease Back Agreement states;

“Clause 1.4. In a lease-lease back agreement, the Customary Landowners are the “Lessor” and the State becomes the ‘[Head] Lessee’ and when the land is leased back as agreed, it becomes a Sublease arrangement, hence, the person(s), land group, business group or other incorporated body nominated/appointed by the Customary landowners become the ‘Sublessee’.

Clause 1.5. The Sublessee can either retain the registered interest that it secures and develop the land according to the agreed special agriculture and business lease terms and conditions or it can further ‘Sub-sublease’ the land to another party (i.e: a developer, etc.) for the remaining term of the lease.”
In addition the agreement does not accord any room for benefits to flow from any proposed agricultural activity as envisaged under the SABL process but one that is concerned entirely on the construction corridor and logging. The following are some examples of such exploitation that is to occur and contravenes s of the Fairness of Transactions Act, 1999,

1. IT&S will hold 90 Ordinary shares and Tumu holds 10 A (Royalty) Class shares hence IT&SL retains the controlling interest over the SABL lease and the payment of royalties. (Clause 2.1 (a)-Shares in Pisa; Clause 2.1 (e) Royalty payable under the Marketing Agreement)

2. Clause 2.1(f) imposes an obligation on Tumu to take all steps to arrange with the customary landowners and the State and to secure the Minister for Land’s agreement and all statutory and legal approvals for leasing of the customary land covering the whole of the project area for the purpose of lease-lease back agreement and to ensure the leasing by Tumu to Pisa of the whole of the Project Area for the purpose of logging and taking of timber and associated purposes in accordance with any rules and guidelines from time to time provided for under the Forest Act (the Business Lease).

3. The holding of Timber Authorities by Tumu whether now held or granted in the future in respect of the project area are to be assigned to IT&S and it may direct that those rights be granted to Pisa. Under clause 2.1(g), *Tumu shall not grant (or procure or consent to the grant of) any logging rights in the Project area to any other party other than IT&S or Pisa...”*

4. Clause 2.1 (h) *(Right to timber; undertaking of logging and marketing operations)* provides that “*IT&S shall itself undertake (either itself or by*
any independent contractor or contractors) all logging operations on the project Area”. Pisa is also required to grant IT&S the right to take for its own benefit timber from the project area, and any benefits of carbon sequestration in respect of those areas.

5. We also note that under clause 2.1.(j)(k)(l) the reference to the project area to mean the actual road construction corridor and the requirement under the Forestry Act 1991 for a road corridor of 40metre from the centre line. The JV agreement was executed to give effect to the notion that IT&SL would require an additional 5000 metres to harvest logs within the road corridor, an agreement they insist was agreed to by the landowners. We deem this as irresponsible action and the Agreement contravenes the statutory requirements stipulated under section 90C of the Forestry Act, 1991, hence it is illegal and null and void. The reference to the 5,000metres can be found under Clause 2.1(i) (iii) of the JV Agreement and Recital “O” of the Project Agreement

6. The agreement also contravenes the provisions of section 102() of the Land Act, in relation to payment of rent whereby clause 2.1 (l)(v) and (n) states that ‘entitlements of Pisa to royalties...are in lieu of any other right to compensation (whether by way of royalties or rent payable under the Business Lease or fees or royalties payable under any Marketing Agreement or under any Management Agreement (or otherwise) payable to Tumu or the Incorporated Landowner Groups which represents in respect of the Project Area...the royalties payable under the agreement shall be reduced by the amount of that payment. We take the view that any land rental or compensation paid will be deducted from the royalty paid out of the logs harvested subject to the share component of Tumu 10 “A” (Royalty) Class shares.
Whilst the reference to the construction corridor this agreement also provides IT&SL through its controlling stake in Pisa to have access to all the land under Portion 1C Aibolo.

**Recommendation**

The agreement should be nullified as it contravenes the *Fairness of Transactions Act* in relation to the inability of Tumu to benefit fully from what is to be a logging operation been legitimised under the guise of the JV Agreement,

The roadline requirements under section 90C of the Forest Act have also been contravened.

The lease back requirement for sub-lease has not been executed and that the JV Agreement cannot be the ideal substitute as it only progresses the intent of IT&SL to use PISA as the vehicle to carry out logging activities not only in the construction corridor project area but the entire –hectares of land.

**Department of Western Province**

The C.O.I makes reference to the Evidence and Recomendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.
Recommendation

That the SABL be revoked as the fundamental aspects of land mobilization through the ILG process and LIR process was not independently processed by DLPP in collaboration with the Department of Western Province.

That the Provincial Lands Officers undertake training workshop to be facilitated by the DLPP as a compulsory course for all public servants of any agencies of government involved in the land investigation of state leases and in particular the SABL process either in the present format or a new format that is subject to government intervention as this system of SABL process is abused and entrenched.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Even though there was evidence of the District Administrator signing recommendations as to alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for a certificate of alienation to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

Recommendation

The SABL is to be revoked as the Certificate of Alienability was not signed by the Custodian of Customary Land.
DEPARTMENT OF LANDS AND PHYSICAL PLANNING

The C.O.I makes reference to the Evidence and Recomendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

The C.O.I highlights distinctive features of the SABL,

The Lease-lease back agreement was signed by the agents authorized by the fifty-two (52) landowning clans/groups of Portion 1C Aibolo and Hon. Dr. Puka Temu (now Sir), Minister for LPP on behalf of the State on 24th June 2008 in the presence of Sikabu Maika (then Advisor Lands-WPA) and Simon Malu, Customary Lease Section, DLPP. Clause 2.0 of the lease-lease back agreement refers to the customary landowners listed in the LIR and the nominated representatives and agents whose signature appears in the Agreement. That clause implies the important nexus with the LIR and in this case fifty-two (52) individual LIR was not conducted by Mr Biyama. This agreement therefore was executed without the primary document authenticating consent of the majority landowners apart from the two parts of the LIR referred to above. The lack of due diligence or deliberate attempt on the part of the persons so implicated constitutes the lack of majority consent for the release of the land for agriculture and business activities.

The evidence of Simon Malu

The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.
DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was unable to sight any agricultural reports arising, as the main thrust of the developers interest was on the construction corridor and ensuring that approvals be granted for harvesting of forest products within the confines of the project area (Trans Papuan Highway).

PNG FOREST AUTHORITY

The Commission noted that on 25\textsuperscript{th} November 2010 and pursuant to section 90D (8) of the Forestry Act 1991 (Regulation 273 and Form 252) the Board of the National Forest Authority issued Forest Clearance Authority Number \textbf{FCA 01-01} to IT&SL to carry out larger scale conversion of Forest Road Development. Of note to the FCA was the fact that “The Project area is about \textbf{600 kilometres} of road alignment in the North Fly District of the Western Province. It is to be known as the \textbf{Gre-Drimgas to Nomad Road Alignment}. The maximum forest clearance of road corridor from forest edge to forest edge is to be strictly confined to 40 metres (20 metres of both sides of the road centre line). (Refer Schedule 1 and 4(1) of the FCA)”.

The Commission however finds that IT&SL has deliberately increased the FCA road line approval for a 40metre forest clearance with an additional 5,000metres clearance of forest under the Contract between the State and IT&SL dated 23\textsuperscript{rd} May 2011. The changes are reflected under Recital “O”, “\textit{IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road lengths or which is the greater of the two for selective
harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline and a distance of 5,000 metres on either side of the road corridor which has been initially agreed with by the traditional landowners.” (Contract Agreement at page 7). There is fraud involved in this case as to how IT and SL managed to increase harvesting of timber from 80 wide road corridor on 20 meters either side of the road with an additional 5,000 meters clearance of forest under the contract between the state and the IT & SL dated 23rd May, 2011.

In fact the Commission has also sighted an earlier version of the Contract which stipulates as follows; IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the timber harvesting period of twenty five years and also to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road 600 kilometres of road length or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline which has been initially agreed with by the traditional landowners.”

That is a major deviation from the original requirement of road clearance as issued by the Board of PNG National Forest Authority.

In conformity to the FCA requirements for a performance bond in the sum of K595, 000.00 to be paid within 21 days of the issuance of the FCA, IT&SL provided an ANZ BANK Guarantee in the said sum of K595, 000.00 to NFA on 16th December 2010.
RECOMMENDATIONS

That FCA for Portion 1C is cancelled pending fresh application for Roadline Authority.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

No evidence of application for DEC Level 3 Environment Impact Statement
We make no findings and Recommendation