



# National Gazette

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PORT MORESBY, FRIDAY, 22nd JULY

[2011

*Commissions of Inquiry Act* (Chapter 31)

## COMMISSION OF INQUIRY

Into

### THE MANAGEMENT GENERALLY OF THE SPECIAL AGRICULTURE AND BUSINESS LEASES AND ALL MATTERS RELATING TO THE SPECIAL AGRICULTURE AND BUSINESS LEASES

To: John Numapo (Chief Commissioner)  
Alois Jerewai (Commissioner)  
Nicholas Mirou (Commissioner).

#### STATEMENT OF CASE

STATEMENT OF CASE ON WHICH THE COMMISSION OF INQUIRY WAS ORDERED INTO THE SPECIAL AGRICULTURE AND BUSINESS LEASES AND ALL MATTERS RELATING TO THE SPECIAL AGRICULTURE AND BUSINESS LEASES.

1. Land acquisition for purposes of development has been a government policy since 1979 when the instrument Special Agriculture and Business Lease was established which was effectively incorporated into the *Land Act* 1962 and subsequently became the *Land Act* 1996. The intention of the post independence government of Papua New Guinea was noble and well intended but it has been left unchecked allowing it to be abused by forces that are beyond landowners capacity to manage.
2. The early governments used SABL policy as a means to increase economic activities and empower the local communities in Papua New Guinea to engage in development of the country by providing customary landowners with a form of land title, state lease and documentation necessary to lease their land for development purposes. Through issuance of SABL communities were expected to benefit through rental payments, employment opportunities, and increased welfare services and community facilities.
3. In the 1990s however, it became controversial when foreign business interests took advantage of the instrument of SABL under the *Land Act* 1996 and acquired 99 years lease through SABL. SABL approvals have increased at a high rate resulting to over 5.2 million hectares of customary land been acquired for commercial use at end of April, 2011. Studies have revealed that land held under customary tenure has decreased from 97% to 86%. This is serious concern for the government considering that Papua New Guinea is a country largely made up of rural based population.

**Commission of Inquiry—continued**

4. What is for particular concern is the fact that land has been alienated from their customary owners through the use of a government sanctioned outdated policy. The alienation of massive areas of customary land and placing it in the hands of landowners companies linked to foreign owned companies threaten the biodiversity that Papua New Guinea is well known about. Under the Lease—leaseback scheme, landowners lease their land to the State who then leases it back to the landowners. The landowners then sub-lease to another interested developer for a period up to 99 years.
5. A large majority of the SABLs for large agriculture projects have been issued directly to third part entities without proper knowledge and involvement of the landowners. A large number of SABLs have been abused for pure logging operations, without agriculture development. Several studies conducted by environmental experts reveal large logging operations in those SABL areas. There have been little monitoring, control and management of SABLs allowing for abuses which have become evident and which poses great danger for Papua New Guinea.
6. The current system of SABL will result in long term economic loss whereas real agriculture development and Forest conservation could realise large gains for Papua New Guinea. Also the rate of environmental degradation caused by logging operations under the SABL has become and international concerns.
7. Issues surrounding the SABL management are jeopardising PNG's chances of securing funding for REDD+ and combating climate change. Papua New Guinea is one of the countries that are in the forefront of climate change issues at global stages. As such Papua New Guinea must be seen to live by its words in respect of conserving forests to help reduce the green house gas emission and its effect on climate.
8. Many segment of the community throughout the country, including civil society organisations, prominent leaders and landowner groups are increasingly objecting to SABL approval and management processes in recent times, and recommending for an independent inquiry and placement of moratorium on further processing of applications pending the completion of the inquiry.
9. In March, 2011, a large group of environmental and social scientists, natural resources managers and non-governmental organizations staff from Papua New Guinea and other nations met in James Cook University in the city of Cairns, Australia to discuss the future management and conservation of Papua New Guinea's native forest. A strong consensus was reached to take appropriate action towards addressing the issue and calling for a halt in granting of SABL and Forest Clearance Authorities (FCA).
10. The National Government has considered it important enough to warrant special attention hence, the Prime Minister's decision on convening a full scale Commission of Inquiry into SABL.

**TERMS OF REFERENCE**

KNOW you that I, Samuel T. Abal, Acting Prime Minister for Papua New Guinea, reposing confidence in your integrity and ability do, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31), and all other powers me enabling, hereby appoint John Numapo to be Chief Commissioner and Alois Jerewai Commissioner and Nicholas Mirou Commissioner to enquire into and report on the following matters:—

**TERMS OF REFERENCE:**

The Commission of Inquiry will:

- (a) determine the legal authority for the issuance of SABL; and
- (b) determine the procedure for the issuance of SABL in accordance with the legal authority if any; and
- (c) inquire into and confirm the number of SABL issued to date and the particulars of each including:
  - (i) location; and
  - (ii) customary ownership whether there are any disputes regarding SABL; and
  - (iii) prior consent and approval by customary landowners for the issue of SABL over the particular customary land the subject of each SABL; and
  - (iv) in whose name the title to the SABL is held; and
  - (v) if not in the customary landowners name then in whose name is the particular SABL title held; and
  - (vi) if not in the customary landowners name then by what authority and whether lawful for the title to be held by a non-customary landowner of the land the subject of the particular SABL; and

**Commission of Inquiry—continued****Terms of Reference—continued**

- (vii) if all of the matters in the preceding Sub-paragraphs (i) to (vi) involved duly granted approvals and permits from the Departments of Agriculture and Livestock; Environment and Conservation; Lands and Physical Planning; and the Papua New Guinea Forest Authority; and
- (d) inquire into and determine if the requisite or subsequent approvals determined under proceeding Sub-paragraph 3(vi) were lawfully and duly obtained; and
- (e) inquire into and determine if Forest Clearance Authority (or FCA) in respect of each SABL complied with the proportionate agriculture development input; and
- (f) inquire into and determine if FCA in respect of each SABL complied with the Environmental Permit terms and conditions; and
- (g) inquire into and determine if any official or individuals, both citizens and foreigners have engaged in unethical and/or criminal conduct in the course of the operation of each SABL including:
- (i) employment of illegal Immigrants; and
  - (ii) engagement in illicit or illegal trade including sale and consumption of drugs; prostitution; fire-arms; and pornography; and
  - (iii) unethical conduct in the disregard for the customs and traditions of the local area, and sacred grounds; and unlawful and unethical mistreatment of the local people in undermining their dignity and respect; and
- (h) inquire into and assess the effectiveness of existing legal and policy framework in the improved management of SABL in future including facilitating the applications from legitimate applicants; and
- (i) inquire into and determine if all of the seventy-two (72) SABL covering approximately 5.2 million hectares of customary land in PNG had complied with the existing legal and policy frameworks, in incorporation of *Land Groups Act 1974*, the *Land Act 1996*, the *Forestry Act 1991*, and the *Environment Act 2000*; and
- (j) to take all steps and to exercise all powers under all enabling legislations, inter alia, the *Commission of Inquiry Act* to complete this Inquiry and to Report to the Prime Minister for tabling in the National Parliament including all Recommendations, as well as to refer to appropriate law enforcement authorities any incidences of criminal conducts this Commission of Inquiry may become aware of in the course of this Inquiry; and
- (k) to make recommendations arising from the Inquiry; and
- (l) to make such referral for prosecution as the Commission deems appropriate; and
- (m) AND I FURTHER direct the Inquiry be held in Port Moresby or as such other place or places in Papua New Guinea; and
- (n) AND I FURTHER direct the Inquiry be held in public, but I approve that you may permit it to be given in private, any evidence that in the course of inquiry you, in your absolute discretion, consider needs to be given in private in accordance with Section 12 of the *Commission of Inquiry Act* (Chapter 31); and
- (o) AND I FURTHER direct that you commence the inquiry without delay and proceed therein with all dispatch and render to me your final reports within three (3) months from the date of commencement of the inquiry; and
- (p) AND I FURTHER direct that this Instrument relating to the Terms of Reference of Commission of Inquiry into the Department of National Planning and Monitoring supersede any previous Instruments issued under my hand,

commencing on and from the date of the signature of this Instrument for a period of three (3) months.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF ESTABLISHMENT COMMISSIONER OF INQUIRY, CHIEF COMMISSIONER AND COMMISSIONERS**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby—

- (a) appoint and establish the Commission of Inquiry into Special Agriculture and Business Leases; and
  - (b) appoint John Numapo to be the Chief Commissioner; and
  - (c) appoint Alois Jerewai and Nicholas Mirou to be Commissioners,
- commencing on and from the date of the signature of this instrument for the period of three (3) months.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

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*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF SENIOR COUNSEL ASSISTING COUNSEL TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Paul Tusais as Senior Counsel assisting Counsel to the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

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*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF TECHNICAL ADVISOR TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Garry Sali as Technical Advisor assisting the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

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*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF TECHNICAL ADVISOR TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Mayapo Peipul as Technical Advisor assisting the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

*Commissions of Inquiry Act (Chapter 31)*

**APPOINTMENT OF TECHNICAL ADVISOR TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Mark Pupaka as Technical Advisor assisting the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

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*Commissions of Inquiry Act (Chapter 31)*

**APPOINTMENT OF SECRETARY OF COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Mathew Yuangu to be the Secretary of the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,  
Acting Prime Minister.

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