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Commission of Inquiry Act 1951 (Chapter 31)

**ROYAL COMMISSION OF INQUIRY INTO PROCESSES AND PROCEDURES FOLLOWED BY THE
GOVERNMENT OF PAPUA NEW GUINEA IN OBTAINING THE OFF-SHORE LOAN FROM THE
UNION BANK OF SWITZERLAND AND RELATED TRANSACTIONS**

To: Commissioner and Chairman, Retired Chief Justice of Papua New Guinea Chief Sir Salamo Injia, Kt., GCL

STATEMENT OF CASE

A. INTRODUCTION

The decision of the Government of Papua New Guinea made in 2014 to obtain an off-shore loan from the Union Bank of Switzerland (UBS) has become controversial following the tabling of the Ombudsman Commission Investigation Report in Parliament in May 2019. The Prime Minister upon assuming office undertook to convene a Commission of Inquiry to establish facts surrounding the whole transaction, including all persons and entities involved in the deal and whether or not the deal followed proper and legal process and procedures.

In order to appreciate the public concerns on improprieties in regard to the whole deal it is necessary and important that the Commission of Inquiry commences inquiry with the cause which brought about the need for the Government of the day to seek funding from an off-shore loan facility. This necessitates the Inquiry to commence its investigation with the States participation in the PNG LNG Project, including the purchase of shares and the disposal of the same.

B. OBJECTIVE

The objective of the Commission of Inquiry is to inquire into and establish facts surrounding:

1. The decision by the Government to obtain the loan funding of US\$1.3 billion;
2. The decision to seek off-shore loan and the decision to select Union Bank of Switzerland as the preferred financier;

Statement of Case—continued

3. Individuals and entities who were instrumental in the negotiation (the middlemen involved) for and on behalf of the State, how were they engaged and how much were paid as fees for their services as brokers and negotiators;
4. Whether breaches of mandatory Constitutional requirements have occurred and whether there were negligence on the part of Leaders and persons involved in the deal.

The ultimate objective of the Commission of Inquiry is to establish whether there were breaches of PNG laws and Constitutional requirements in the process of negotiation and approval of the UBS Loan, and also establish whether PNG as a country had suffered as a result of this off-shore deal, and whether the persons involved in the deal can be held accountable for their negligence.

TERMS OF REFERENCE

Know you that I, Hon. James Marape, MP, Prime Minister of Papua New Guinea, reposing confidence in your integrity and ability to do so, by the virtue of the powers conferred by Section 2 of the *Commission of Inquiry Act* 1951 (Chapter 31) and all powers me enabling, hereby direct the Commissioner and the Commission to inquire into the following matters:

1. The Commission shall inquire into, make findings and report on the following matters:—

PNG LNG PROJECT

- (a) How the State financed its in equity participation in the PNG LNG Project.
- (b) Whether due and proper legal and administrative processes were followed to obtain the loan to finance the State's equity participation in 2009, including but not limited to:—
 - (i) How was the process commenced?
 - (ii) How was IPIC selected?
 - (iii) What process was utilized?
 - (iv) What were the terms of the Loan from IPIC?
- (c) What was the rationale for allowing payment to be made by an election of either cash, or the mortgaged Oil Search Shares or a combination of both.
- (d) What was the rationale for allowing the mortgaged Oil Search shares to be used in payment of the loan.
- (e) Whether IPIC had the sole election as to method of payment in satisfaction of the State Loan from IPIC, and if so what was the rationale for giving IPIC the right of sole election to either accept cash, the mortgaged Oil Search shares or a combination of both.
- (f) When and what decision did IPIC make on the repayment of the loan?

UBS LOAN

- (g) Why and when did the State commence the procedures to obtain a loan regarding the debt to IPIC and/or purchase Oil Search shares.
- (h) Whether legal and administrative processes were followed regarding the loan from UBS, including but not limited to:—
 - (i) How was the process commenced?
 - (ii) How was UBS selected?
 - (iii) What process was utilized?
 - (iv) What were the terms of the loan?
- (i) What processes have been utilized in the past to obtain loans?

Statement of Case—continued

PURCHASE OIL SEARCH SHARES

- (j) The rationale as to why the State determined to buy share in Oil Search in 2014.
- (k) When the decision was made to purchase Oil Search shares.
- (l) The rationale as to why the State determined to utilize the UBS Loan to purchase Oil Search shares.
- (m) Whether legal and administrative processes were followed to buy Oil Search shares in 2014.

SALE OF OIL SEARCH SHARES

- (n) The rationale as to why the State sold the Oil Search shares in 2016.
 - (o) Whether legal and administrative processes were followed in the sale of the Oil Search shares?
2. These Terms of Reference may be added to, varied and amended from time to time.
 3. The Commission shall use its best efforts to conclude its inquiry within three months after it commences, and shall make a full and faithful report on and recommendations concerning the aforesaid matters, and transmit the same to the Prime Minister after concluding its inquiry.
 4. The provisions of *Commission of Inquiry Act*, 1951 Chapter 31 shall be applicable for purposes of this inquiry.
 5. The Commission may hold public and private hearings, in such manner and in such locations, as may be necessary and convenient.
 6. All organs of state, institutions and stakeholders are required to cooperate fully with the Commission.

AND I FURTHER direct that the inquiry be held in the National Capital District, or at such other places in Papua New Guinea or elsewhere as to you may appear necessary and expedient.

AND I FURTHER direct that the inquiry shall be held in public, but I approve that you may permit to be given in private, any evidence that in the course of your inquiry you, in your absolute discretion, consider needs to be given in private in accordance with Section 2(5) of the *Commission of Inquiry Act*, 1951 (Chapter 31).

AND I FURTHER direct that you shall commence with the inquiry without delay and proceed therein with all dispatch and render to me your final report within three months from the date of commencement of hearing.

Dated this 30th day of August, 2019.

Hon. J. MARAPE, MP,
Prime Minister.