

SABL: A Form of Customary Land Theft

Village communities in Papua New Guinea (PNG) are historically, culturally and spiritually connected to their land. 97% of land in PNG is customary land. This means it is communally owned by large tribal groupings and it is impossible to move people easily from one place to another. Customary land in PNG is used for gardening, hunting and gathering and sourcing building materials and medicines. In theory, the PNG Constitution protects customary landowners from unjust deprivation of traditional land. In the 1970s the government introduced a land scheme called Special Purpose Agriculture Business Leases (SABL) with the intention of helping landowner participation in economic activities. This scheme has been abused since 2003 and it has been used to steal over 5 million hectares of customary land.

"...Between 2003-2011, 5.2 million hectares of Customary Land (11% of PNG land area) passed into the hands of national and foreign corporate entities for 99 years. This is twice the amount of land 'grabbed' by corporate interests across 5 African countries in a similar period..." (Filer 2011)

1. The Law Governing Land Acquisition in Papua New Guinea

The Land Act 1996 governs the administration of all land in PNG. Section 132 prohibits selling or leasing customary land to foreigners.

There are two types of Land in PNG: 97% is Customary Land and 3% is State Land. The State has 3 different methods of acquiring land from customary landholders. It can acquire customary land by Agreement (Section 10), through a lease-lease back process (Section 11 and 102) and by compulsory acquisition (Section 12).



Mu village, Poimo, East New Britain. Photo: Greenpeace

2. What is SABL?

An SABL is a temporary acquisition of customary land for a fixed period of time for the purpose of establishing a plantation or other agriculture business¹. It is intended that when the term of an SABL ends, the land will go back to its customary owners. There is no rent or compensation payable for this type of lease² and all customary rights in the land, except those, which are specifically reserved, are suspended for the period of the lease. The lease can be granted to either a person, a group, or to a company; but the landowners must agree on who gets the lease.

¹Land Act 1996, s102 (ii) clearly states that the term of an SABL shall not exceed 99 years. Most SABLs have been issued for the maximum term.

²Land Act s102 (4)

3. The Intent of and Process for Granting SABL

The SABL scheme was introduced to give customary landholders an opportunity to participate in economic activities. Sections 11 and 102 of the Land Act give the Minister the power to obtain customary land for agriculture business. The Minister is to negotiate with the customary land holders and sign a contract on behalf of the State. The land is supposed to be taken only after receiving the expressed consent of the customary landholders. The Minister then issues a State Lease over that parcel of land and leases it back to the landholders for “agricultural or economic development purposes”.

4. The Cause of Abuse and Public Concerns over SABL

There are several reasons why SABL has been abused:

- i. Section 175 of the Land Act states that regulations must be developed for the administrative procedures for granting SABL. This has never been done.
- ii. There is also no policy framework developed for SABL. The Department of Lands and Physical Planning (DLPP) has always used informal processes to grant SABL.
- iii. There is no legal limit on the size of an SABL land area and the allowed length of a lease is too long. This has resulted in areas of more than 100,000 hectares being taken for up to 99 years.
- iv. A Forest Clearance Authority (FCA) is used in SABL areas to allow clearing of vegetation but the clearance is not limited to areas for planting. FCA is issued under the Forestry Act but there are no linking provisions to the Environmental Act so there is no control of environmental impacts.
- v. There is no amalgamated agriculture law that describes the process and regulates large-scale agriculture projects. The Department of Agriculture is not involved in issuing SABLs, despite the Lease being for agriculture purposes.

5. Commission of Inquiry into SABL (2011) – Summary Findings

- i. Widespread abuse, fraud, lack of coordination between government agencies, and failure and incompetence of government officials to ensure compliance, accountability and transparency within SABL process from application stage to registration, processing, approval and granting of the SABL.
- ii. Undue political pressure put on government officers by government ministers and other politicians to fast-track SABL applications and issue titles.
- iii. Incompetence, failure, inaction and lack of commitment by government officers and agencies to properly and diligently carry out their statutory functions. Legal requirements were deliberately breached and proper processes and procedures were either bypassed or simply ignored.
- iv. Consent of landholders were fraudulently obtained, through misrepresentation, for SABL titles to be issued directly to foreign owned companies, thus landholders were not aware of the particular entities or groups granted an SABL over their customary land.
- v. SABLs were sold to foreign companies for the whole or balance of the 99 years, leaving NO residual rights for the landowners. The inquiry found that 58 out of 75 SABLs were for 99 years.