

# Special-purpose agricultural and business leases in Papua New Guinea

## Introduction

Since 2003, the PNG Department of Lands and Physical Planning has approved 74 Special Purpose Agricultural and Business Leases (SABLs) covering about 5.2 million ha of forested customary land; 11% of PNG's total land area or about 18% of its remaining forest.

Most leases run for 99 years and alienate customary owners who can only remain on their land at the discretion of the leaseholder. About 97% of land in PNG is held under customary ownership; therefore, SABLs pose a significant threat to land use and customary ownership in PNG.

SABLs were established to increase economic activity and empower local communities. It was anticipated at the time that customary landowners would benefit from rental payments, employment opportunities and increased welfare services and facilities.

SABLs are also referred to as lease-lease back schemes as the government leases land from customary owners and communities and then leases the land back to corporate entities. Some of these entities are land owner companies or Incorporated Land Groups (ILGs), but many are logging and agriculture corporations, of which most are foreign owned.

In 2007, sections of the Forestry Act were amended to enable project development companies to also harvest the forest under a Forest Clearance Authority (FCA) – formerly harvesting contractors were decided by tenders.

FCAs have been issued for approximately 2 million hectares of forest in existing SABLs. This promotes the exploitation of native forest resources without requiring PNG Forest Authority (PNGFA) approval and adherence to existing forestry regulations. SABLs are therefore an avenue to circumvent prevailing efforts to reform the forestry industry in PNG, which has long been plagued by allegations of mismanagement and corruption.

## SABL drivers

Most of PNG's timber is currently cut from areas subject to Forest Management Agreements (FMAs). FMAs take a great deal of time to negotiate with landowners and often lead to court challenges and delay.

It has been almost 10 years since the PNGFA has approved a FMA or an extension to a FMA. Available timber in negotiated timber concessions in PNG is therefore limited and logging companies see SABLs as a shortcut in the process to access new timber.

SABLs will facilitate a massive expansion of the oil palm industry in PNG, with the same environmental and social impacts seen in Indonesia and Malaysia. Developing oil palm plantations on forested land is advantageous to developers as it allows them to reap the financial rewards of a timber harvest well before the first harvest of palm oil kernels which take several years.

## International pressure

After complaints from NGOs including Greenpeace, the UN High Commission for Human Rights (UNHCHR) sent an early warning letter sent to PNG's UN Ambassador. The letter expressed concerns over SABLs and urged the PNG government to provide information on measures taken or envisaged to ensure that indigenous lands are not alienated and SABLs are granted with the free, prior and informed consent of customary owners.

Greenpeace is also a signatory to the Cairns Declaration which urged the government to:

- declare and enforce an immediate moratorium on the creation of new SABLs
- halt the issuing of new FCAs
- declare a temporary moratorium on the implementation of existing FCAs

The Declaration urges that these steps commence immediately while a thorough, transparent and independent review of the legality and constitutionality of these leases and authorities is undertaken.

## Commission of Inquiry

On 6 May 2011, the then acting Prime Minister, Sam Abal, announced a Commission of Inquiry into SABLs. He also announced an immediate moratorium on the issuing of any new SABLs and a suspension of all FCAs until the conclusion of the Inquiry. The announcement was criticized by then Opposition MP and PNG Party leader, Belden Namah. Namah currently holds the post of Deputy PM in the new government and is involved in a SABL in West Sepik.

On 28 July, Sam Abal announced the constituency of the Commission and the Terms of Reference, following his signing of the instruments and the gazettal the previous week. The aim of the Inquiry is to determine the legality of the SABL process itself, the role of the relevant government departments in the approval of SABLs, FCAs and environmental permits, as well as to 'audit' all SABLs issued to date. In particular, the Commission will focus on the legality of forest clearance authorities (FCAs) that have been issued with the leases.

## Special-purpose agricultural and business leases in Papua New Guinea

The final Terms of Reference for the Commission was signed on 4 August and, after numerous delays, the Commission began on 30 August and was to conclude on 21 October. The Commission has now sought an extension to March 2012.

The Commission has already been compromised by the "loss" of documentation by the Department of Planning pertaining to 31 of the 74 leases. It is believed that many SABLs do not have adequate documentation for them to be upheld and will be found unlawful.

The Commission has announced regional hearings to interview communities within SABLs. Some leases are also likely to be found wanting due to landowner opposition or unlawful approval such as the unauthorised use of children's names on lease documents.

The Commission's findings could also be linked to PNG's potential funding for REDD (reducing emissions from deforestation and forest degradation in developing countries). The international community has agreed to provide \$3.5 billion in support of REDD+ readiness globally between 2010 and 2012 and a total of \$30 billion to support climate action in the developing world from 2010-2012 and has expressed intentions to raise \$100 billion a year in long-term funds by 2020.

PNG's UN-approved National Plan for REDD will release 6.4 million US dollars for UN-backed projects. To achieve the emissions reductions set out in the National Plan, the majority of FCAs issued with SABLs must be withdrawn.

The Commission's findings are to be presented to parliament by the PM – as required under the *Commission of Inquiry Act*.

### The Pomio lease

The District of Pomio has a population of about 45,000 and lies on the southeastern coast of East New Britain Province. It is one of the least developed districts in the East New Britain and indeed PNG.

See map: <http://www.maplandia.com/papua-new-guinea/east-new-britain/pomio/>.

On 26 May 2004, Memalo Holdings Limited was incorporated listing six landowner companies as shareholders; Pomata Limited, Unung-Sigte Limited, Ralopal Investment Limited, Ura-Mosi Limited (since delisted), Mosi-Ngelu Limited (since delisted) and Nakiura Investment Limited. All of which were incorporated on the same day.

In 2008, three SABLs were gazetted in West Pomio. These 99 year leases, covering an area of 44,100 ha were leased to landowner companies Pomata Investments Ltd, Nakiura Investment Limited and Ralopal Investment Limited.

The area encompasses an active Eco-forestry Programme sanctioned by PNGFA through the EU funded PNG Eco-forestry Programme (2001-2008) leading on from the IRECDP Pilot (1995-2001), which has seen EU funded infrastructure built worth between K0.75-1.25 million (EUR 250000 - EUR 416,000).

The Rimbunan Hijau (RH) owned company, Gilford Limited received a Forest Clearing Authority in 2009 and landed at West Pomio with logging equipment in late 2010. Logging has continued since then with about 8 shipment of round logs exported to China.

About 200,000 palm oil seedlings wait to be planted on the leases. The project is claimed to be worth K500 million and will see 40ha of the 44,000 ha site cultivated by the end of 2011.

It is understood that the project will link with the development by Tzen Limited at Wide Bay. Tzen are also thought to be owned by RH.

### Concerns of Pomio landowners

Protests began in April after concerted efforts by local landowners to reason with Memalo and Gilford.

In April, landowners began road blocks to stop logging. Police from Port Moresby were flown in to act as security guards for Gilford and one landowner was arrested after an altercation with a Memalo Holdings director.

In July, villagers from Mu, Bairiman, Roven, Mauna, Lau, Kaitong and Kuapal presented a petition to the District Administrator, Pomaleu Langisan demanding that Gilford stop operations and leave the area.

On 6 October, the day after the Commission of Inquiry announced it would investigate the Pomio SABL, RH flew police officers into the area. The police proceeded to attack villagers with fanbelts and sticks before locking up some in shipping containers.

Read more about the conflict:

- <http://www.theage.com.au/national/pngs-great-land-grab-sparks-fightback-by-traditional-owners-20111013-1ln1m.html#ixzz1avVTJyEv>
- <http://www.abc.net.au/news/2011-10-11/png-police-reveal-crackdown-financed-by-loggers/3496032>

The Commission of Inquiry will hold its regional hearing in East New Britain between 24 October and 4 November.

## Special-purpose agricultural and business leases in Papua New Guinea

### Legal situation in Pomio

Landowners have engaged CELCOR and have been granted leave for a Judicial Review. An attempt at an injunction failed in May 2011.

To prepare for the case, CELCOR visited villages to verify the signatures on the Department of Land Investigation Report. Many of the names purporting to approve the lease on behalf of landowners were local children - one as young as three.

A new application for an injunction has been filed on this basis. However, while the legal preparations proceed the landowners are continuing to carry out road blockades to slow the process of destruction.

### Conclusion

As the June 2012 election looms, all members of parliament want to be seen to be protecting the interests of the majority. The majority in PNG are customary landowners. The findings and recommendations of the Commission of Inquiry must therefore lead to the overturning of those SABLs that have impinged upon the rights of landowners.

Greenpeace is urging the Commission to overturn any lease that:

- does not have required documentation
- has been fraudulently or inappropriately approved
- cannot be proven to be for agricultural purposes
- has not followed proper landowner consultations
- has been approved as a result of unconscionable dealing or duress

Greenpeace also urges the Commission to recommend legislative amendments so that such leases cannot be approved in the future.

While the Commission determines its recommendations, FCAs remain active. Greenpeace is therefore seeking the suspension of all active FCAs until the government implements the recommendations emerging from the Commission.



Logging camp on the end of a river. Nearby Pomio village and its people are under threat from logging and the Special Agricultural and Business Leases (SABL) that are being issued to logging companies. July 2011



Logging vehicles operate in the Pomio SABL. July 2011

“We see that our living situation is already alright. We don’t want development like SABL, lease-lease back or oil palm and logging. We don’t like this because we are already getting benefits, given to us by our forest and land. The idea of looking after the forest, land and other resources in this way with the cash benefit we get from it is much better than the “development” that has come into our area now.”

*Pomio landowners involved in the Judicial Review, Jacob Samo & Paul Palosualrea – 11 October, 2011*