



global witness

# The people and forests of Papua New Guinea under threat: the government's failed response to the largest land grab in modern history\*

A Global Witness briefing

## Summary

**Papua New Guinea (PNG) is a nation of indigenous landowners. Its citizens have legal rights to the land they traditionally live on and use under the country's Constitution and depend on land and forests for their daily survival. The country is home to the world's third largest tropical rainforest and unparalleled biodiversity. Yet PNG is on the frontlines of a global race for natural resources, and rather than protecting its citizens and forests the government is deeply complicit in the largest land grab in modern history.\***

Three years after an independent investigation was launched to look into alleged fraud and illegality surrounding the widespread issuance of Special Agricultural Business Leases (SABLs) covering roughly 12% of Papua New Guinea's total land area, the government has taken no meaningful action to defend its citizen's rights to their land and halt the wholesale destruction of rainforests of global importance.

In this briefing, we explain the following issues that need to be urgently addressed:

- **Government inaction** – The PNG government has failed to stop any logging operations under SABLs even where an official investigation recommended the SABL be cancelled.
- **Breakdown in law and order** – Logging and exports continue unabated and with the support of local police and forest authorities in the one operational SABL the government has cancelled.
- **Failure to complete SABL review** – More than three years after committing to review the legality of SABLs, around 40% have not been reviewed, including the three largest timber exporting operations.
- **More logging authorized** – The National Forest Board continues to issue and renew permits to log and clear rainforest under SABLs, ignoring community complaints and the government's own decision to repeal the SABL mechanism.
- **Timber grabbing** – Many SABLs have been used for industrial logging rather than their intended purpose to promote agricultural development, with SABLs now accounting for nearly a third of the country's total log exports with an export value of roughly US\$100 million a year.
- **Total impunity** – No government officials or companies involved in the abuse of SABLs have been prosecuted or sanctioned where evidence of criminality or negligence was uncovered by an official investigation.



Logging road in a major timber exporting SABL in West Sepik province.

\*Based on the PNG government's abuse of a single type of lease over a short period of time to allocate at least 5.2 million ha of customary land to a number of companies on an effectively permanent basis without the free, prior and informed consent of all affected landowners.

## Introduction

As governments, business leaders and civil society convene at the Asia-Pacific Rainforest Summit in Sydney to discuss ‘practical actions to reduce forest loss’,<sup>1</sup> there is one subject the delegation from Papua New Guinea (PNG), home to the world’s third largest expanse of rainforest, will be hoping to avoid. The government has failed to take meaningful action to protect its people and rainforests from one of the largest land grabs in modern history.

PNG’s Constitution grants its citizens legal ownership over the land they have traditionally lived on and used. This customary tenure applies to 97% of land in PNG.<sup>2</sup> However, between 2002 and 2011, the government handed out over five million hectares (50,000 km<sup>2</sup>) of customary land and forests,<sup>3</sup> approximately 12% of the country’s landmass, for large-scale agricultural development. These allocations exploited a previously obscure form of lease called the Special Agriculture and Business Lease (SABL), which was originally designed for local communities to develop their customary land for agriculture.

However, nearly all SABL operations are controlled by foreign companies, largely linked to Malaysian nationals involved in the logging industry, who are carrying out timber extraction on a massive scale under the leases. Logs from SABLs now account for around one third of all log exports from PNG, with a declared export value of approximately US\$100 million a year. The issuance of SABLs has also been blighted by widespread allegations of fraud and illegality, with many customary landowners claiming that their land was taken from them without their consent. Most SABLs are for 99 years, effectively extinguishing customary land rights.

Following international outcry, in 2011 the PNG government committed to review the legality of SABL allocations, initiating a Commission of Inquiry (COI). This was only partially completed. One Commissioner failed to submit his findings, meaning that the government lacked recommendations for over a third of SABLs, including several of the largest log exporting projects. Of those reviewed, the COI recommended that 42 of 46 should be revoked, or suspended and renegotiated, while only four were considered bona fide. The inquiry concluded that *“the SABL scheme, both at the policy level and in the manner it was implemented, has failed...developers and people with vested interests have hijacked the SABL process to suit their own ends. Greed and corruption at all levels... have tainted a noble landowner empowerment initiative”*.

In June 2014, nine months after the COI’s findings were published, the National Executive Council (NEC) issued a decision to follow its recommendations, review the SABLs for which the COI failed to provide recommendations, and repeal the SABL provisions in the Land Act. Following on this, Prime Minister Peter O’Neil issued a rhetorically strong statement pledging to take *“steps to reclaim our customary land illegally lost to foreigners with the help of corrupt public servants and leaders”*.<sup>6</sup>

However, a close reading of the NEC and PM’s announcements reveals a number of crucial caveats that call into question the government’s commitment to cancel illegal SABLs, and

### What are SABLs?

Special Agricultural Business Leases (SABLs) were introduced in the 1996 Land Act to allow the government to lease land owned by communities, with their consent, to individuals or companies interested in carrying out agricultural projects. For many years, the mechanism was used on a limited basis for small scale projects, although there is some evidence of early abuses. However, between 2003 and 2011 there was an explosion in the number and land area of SABLs issued by the government.

Amendments to PNG’s forestry law made it much easier for companies to obtain permits to clear huge areas of rainforest, ostensibly to make way for large-scale agriculture projects such as oil palm plantations. Evidence suggests that many of the agriculture projects being proposed under SABLs had low viability and were likely to be fronts for logging. A 2014 study analysed 36 proposed oil palm projects involving 51 SABLs. It concluded that only four of these projects had the potential to produce viable oil palm plantations due to unsuitable soil, developer inexperience, and lack of support from local landowners.<sup>4</sup> The study concluded that a “large-scale land grab” had occurred “under the guise of oil palm development”.

In many SABLs, the area subjected to logging far exceeds that being cleared for agricultural purposes, and in some cases logging has occurred without corresponding agricultural activities.<sup>5</sup> Even in the potentially viable agriculture projects, many landowners claim they never agreed to lease their land and allege that fraud and forgery was involved in the SABL allocation process.

the token follow up actions to date cast further doubt on the government’s intention to make good on its public promises. Critically, the government has made no effort to prosecute or sanction officials and companies where the COI uncovered evidence that laws were violated.

Below is a detailed summary of the government’s inadequate responses to a) the SABLs for which it received a recommendation from the COI and b) the SABLs for which there are no recommendations from the COI, in the absence of the third, missing report.

### Abbreviations:

- COI** – Commission of Inquiry into SABLs
- NEC** – National Executive Council
- PNG** – Papua New Guinea
- SABL** – Special Agriculture and Business Lease

## Government response to Commission of Inquiry recommendations on SABLs

On 11 July 2014, the Department of Lands published a list of 29 SABLs to be revoked, based upon the findings of the COI, and called for the leases to be handed in. Statements made by Benjamin Samson, the PNG Land Titles Registrar, suggested that two months later only five SABLs had been returned by the leaseholders.<sup>7</sup> Moreover, the government's response is wholly inadequate and has had no impact on the ground because it:

### Has not followed the Commission of Inquiry's recommendations

The government has failed to revoke or suspend SABLs in line with the recommendations of the COI. Of the five SABLs exporting timber in 2013-14 that the COI recommended be revoked, only one was included among the 29 SABLs on the government's cancellation list. The other 28 on the list were either speculative or inactive leases, one of which had already been declared illegal, and null and void, by the courts.

### Has not halted logging in the one operational SABL listed for cancellation

In the one case where the government decided to cancel an active logging operation, an SABL in East Sepik province issued to Sepik Oil Palm Plantation Ltd, there has been no government

enforcement on the ground by the PNG Forest Authority or the police. Five months later, logging continues unabated with the support of local police and forestry officials. This SABL was also declared "null and void" and any logging in the SABL area illegal by a separate ruling by the National Court on 4 July 2014.<sup>8</sup> The defendants have appealed the decision of the National Court and are reportedly suing the government for its decision to cancel the SABL.

### Continues to issue new permits to clear rainforest under SABLs

In April 2014, the National Forest Board issued a new clearance permit over a contested SABL area covering 105,200 ha of mostly intact rainforest in West Sepik province.<sup>9</sup> The COI recommended that this SABL be surrendered and renegotiated on the basis of ongoing disputes between landowner groups and serious irregularities in the issuance of certain approvals. The NEC declared a moratorium on the issuance of new clearance permits in 2011, although this decision was challenged in court and apparently struck down in a 2013 ruling.<sup>10</sup> In June 2014, the NEC reaffirmed a moratorium, instructing the PNG Forest Authority "to continue to observe the NEC Decision and not issue any more Forest Clearance Authority to SABLs".<sup>11</sup>



Logs from an SABL in East Sepik province being loaded onto a barge at night on 19 August 2014. The government published a summons for the return of the SABL title on 11 July 2014 "for the purpose of cancellation/deregistration". The SABL was declared "null and void" and any logging in the SABL area illegal in a separate decision by the National Court on 4 July 2014, a decision that is under appeal.



## Government response to SABLs with no Commission of Inquiry recommendations

One of the three Commissioners tasked with the SABL review, Alois Jerewai, failed to submit his report,<sup>12</sup> resulting in an absence of recommendations for roughly one third of the SABLs that were included in the review. In its 12 June decision, the NEC announced the creation of a “Special SABL Taskforce” to investigate these SABLs and oversee the implementation of the COI’s findings and recommendations and the NEC decision. However, the specifics of the Taskforce and the government’s inaction since the NEC decision suggest it has little interest in reaching a fair and timely resolution to the SABL crisis.

### **The government is failing to expedite the review of the remaining SABLs, despite rapid deforestation, landowner opposition, and evidence of major irregularities in their allocation**

The SABLs for which the COI did not publish findings include some of the biggest log exporting projects in PNG, together accounting for around 60% of all log exports from SABLs. Logging and clearance continues in these projects, causing irreparable damage to forests and the environment, despite strong opposition from many affected landowners who claim they did not provide their consent and are seeing their livelihoods harmed. Some communities testified to their lack of knowledge of or consent to SABL projects during the hearings of the COI.<sup>13</sup>

### **The Special SABL Taskforce is not transparent, time bound, or independent**

Four months after the NEC decision, the government has still not made public the composition of the SABL Taskforce, its terms of engagement, or a timeframe for the completion of

its tasks. The Taskforce will be housed in the Forest Ministry, which is deeply complicit in the SABL crisis as the body with oversight of logging operations, raising questions about its level of independence.

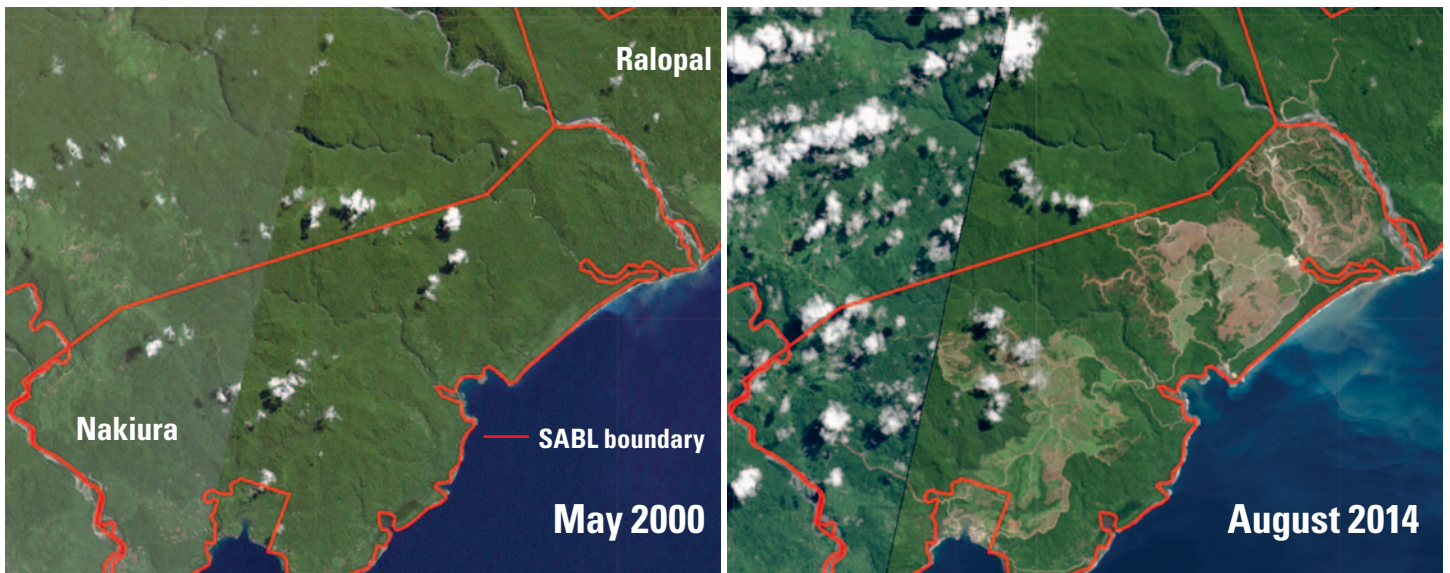
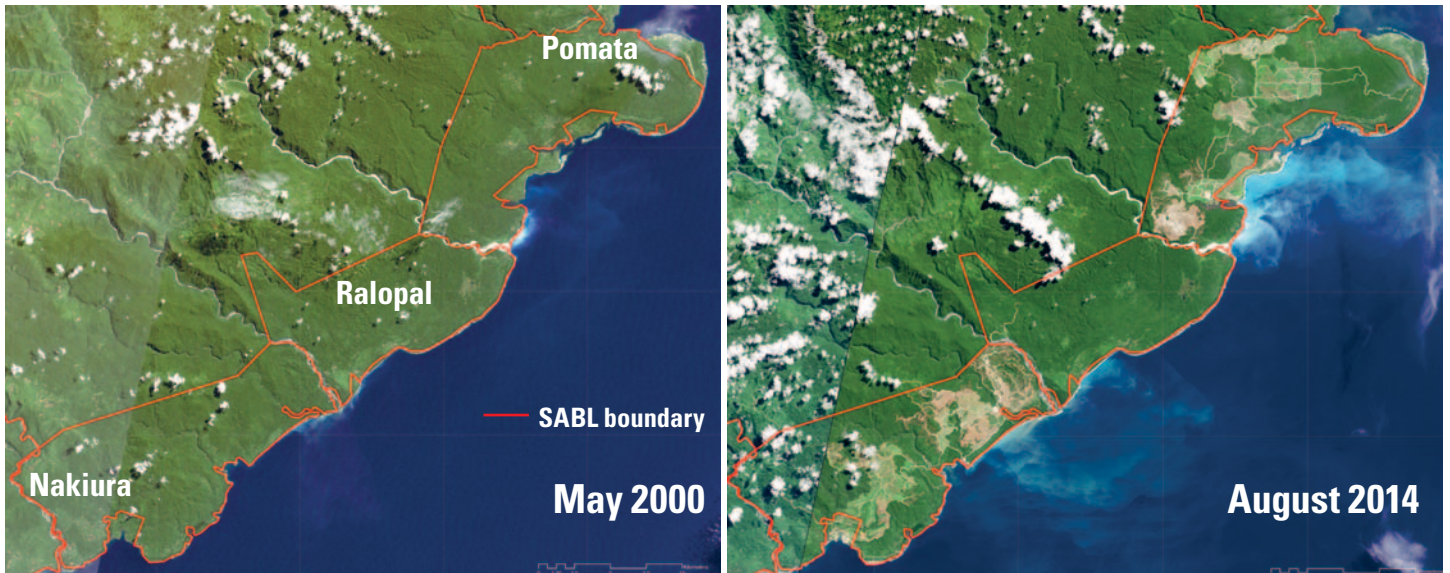
### **The National Forest Board recently renewed a clearance permit for a controversial SABL despite objections from local landowners and allegations of forgery and fraud**

In October 2014, the National Forest Board renewed the clearance permit for 42,000 ha covering three SABLs in the Pomio District of East New Britain, despite being aware of widespread opposition from local landowners whose land was included in the permit area. In September 2014, the elected ward councillors and other community representatives from the villages of Bairaman, Mauna and Lau, located within the SABL area, wrote to the National Forest Board requesting that a forest clearance permit issued in 2010 over their land not be renewed. Some landowners are alleging that the SABLs in their area were obtained by fraud and forgery and are currently pursuing civil litigation. In October, the Board renewed the permit for six more years. Rimbunan Hijau recently stated that its subsidiary has already cleared 7000 hectares of rainforest in the area to make way for palm oil plantations.<sup>14</sup> The project will account for an estimated 40% of log exports from SABLs and at least 12% of PNG’s total log exports in 2014.<sup>15</sup> By April 2014, the company had exported over 500,000 m<sup>3</sup> of timber, mostly to China, with a declared export value of over US\$50 million. Global Witness is not alleging that there is evidence implicating Rimbunan Hijau or its subsidiaries in fraudulent activity.<sup>16</sup>



**Community leaders and landowner company chairmen from Mauna Village in the Pomio district of East New Britain, who say their land was included in an SABL without their consent.**





Satellite imagery showing logging and clearance of intact rainforests in three SABLs in the Pomio district of East New Britain province by subsidiaries of international logging giant Rimbunan Hijau. The top pair of images shows areas under SABLs leased to landowner companies Pomata Ltd, Ralopal Ltd, and Nakiura Ltd . The lower image pair shows an enlargement of the southernmost SABL area. Images from 2000 and 2014 are shown here for comparison, although analysis of additional imagery carried out by Global Witness confirms that large-scale logging and clearance did not begin until 2010. Many landowners in the area are opposed to the project and some are alleging that fraud and forgery were involved in the allocation of the SABLs to landowner companies, which then sub-leased logging and oil palm operations to Rimbunan Hijau’s subsidiaries.

## Conclusion

Despite public statements to the contrary, the PNG government is failing to take meaningful action to address the SABL crisis that is harming its people and environment. As outlined in this brief, it is imperative that the government implement the recommendations coming out of the Commission of Inquiry's two year investigation into the SABLs and ensure that its decisions are being enforced on the ground. It must initiate appropriate measures to hold government officials

and companies to account for violating PNG laws, including prosecutions where there is evidence of criminal activity. And critically, it must expedite an independent and transparent review process of the remaining SABLs and take swift action to protect the rights of its indigenous landowners and prevent further harm to the livelihoods of its citizens and the natural resources they depend on.



Recent clearance of intact rainforest for oil palm plantations under an SABL in the Pomio district of East New Britain province in August 2014.

## Endnotes

1. For information on the Asia-Pacific Rainforest Summit, see: <http://www.environment.gov.au/rain-forest-summit>
2. Department of Lands and Physical Planning figure, as cited in 2011 civil society submission on SABLs to 78th Session of UNCERD, available here: <http://www.forestpeoples.org/sites/fpp/files/publication/2011/03/png-cerd-2011-ew-ua-final.pdf>
3. Numapo, John, 12/06/2013, Final Report, COI into Special Agriculture and Business Lease (SABL), p2, 12, <http://www.coi.gov.pg/documents/COI%20SABL/Numapo%20SABL%20Final%20Report.pdf>
4. Nelson et al, *Oil Palm and Deforestation in Papua New Guinea*, Conservation Letters, Vol 7, Issue 3, pages 188-195, May/June 2014
5. Based on Global Witness analysis of log export data and satellite imagery of SABL areas.
6. Media statement, 18/06/2014, 'PM: We will reclaim land lost to illegal SABLs'
7. ABC Radio, 15/09/2014, 'More delays in cancelling controversial land leases in PNG', <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/more-delays-in-cancelling-controversial-land-leases-in-png/1368419>
8. *Maniwa v Malijiwi* [2014] PGNC 25; N5687 (4 July 2014)
9. Global Witness, personal communication with government source.
10. 2013 PNG National Court decision in the case of *Musa Century Limited v PM O'Neil, NEC, PNGFA, State of PNG*.
11. NEC Decision 184/2014, clause 8, a copy of the decision is published online <http://www.actnowpng.org/content/full-nec-decision-sabl-land-grab>
12. COI into SABL website <http://www.coi.gov.pg/sabl.html>; Media statement, 18/06/2014, 'PM: We will reclaim land lost to illegal SABLs'
13. Parial transcripts of hearings held by Commission Jerewai are available on the COI website: <http://www.coi.gov.pg/sabl.html>
14. ABC, 27/08/2014, 'PNG set to decide on logging renewal', <http://www.abc.net.au/news/2014-08-27/png-set-to-decide-on-logging-renewal/5700930>
15. Projections based on official export data for the first 4 months of 2014, during which time this SABL accounted for 39% of log exports from SABLs and 12% of all log exports, and analysis of clearance rates up to October 2014.
16. Based on official export data for Rimbunan Hijau subsidiary Gilford Ltd under Forest Clearance Authority 15-07.

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