

ON OUR LAND

MODERN LAND GRABS REVERSING INDEPENDENCE
IN PAPUA NEW GUINEA



The Oakland Institute

in collaboration with
Pacific Network on Globalisation (PANG)

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Acknowledgments

This report was authored by Frederic Mousseau, Policy Director at the Oakland Institute.

Serah Aupong of Pacific Network on Globalisation (PANG) organized and coordinated in-country research.

Jettie Word provided research assistance on the global timber trade and authored the box “Illegal Timber Laundering in Papua New Guinea.”

We are deeply grateful to the organizations and individuals who assisted with research on the ground, in particular Claire Kouro (ActNow! PNG); Sam Moko (Greenpeace International); Gabriel Molok (Turubu Ecoforestry Wewak); Cosmas Makamet (Forcert); Rosa Koian, Tamara Mandengat, and Bailal Songai (Bismark Ramu Group—BRG); Eddie Tanago and Damien Ase (Celcor); and Ludwig Gambi, Rose Avusi, Celine Tabali, and Francisca Gambi (Women in Oil Palm—West New Britain).

We also want to thank Tony Power and Paul Barker (Institute of National Affairs), Jemima Garrett (ABC Australia), Tim Anderson (University of Sydney), and Simon Lord and his team (NBPOL) for their contribution.

We also want to express our gratitude to all the Papua New Guineans who generously shared their views and experience with the Oakland Institute and PANG researchers in Port Moresby, West New Britain, East Sepik, and Madang provinces.

Lastly, PANG and the Oakland Institute are grateful for the valuable support of its many individual and foundation donors who make our work possible. Thank you.

Design: Design Action Collective

Editors: Granate Sosnoff and Melissa Moore

Photo Credits: Copyright © 2013 by Eric Chebassier / the Oakland Institute

Cover photo: A ship waiting to load logs in Turubu Bay, East Sepik.

Publishers:

The Oakland Institute (OI) is an independent policy think tank bringing fresh ideas and bold action to the most pressing social, economic, and environmental issues.

The Pacific Network on Globalisation (PANG) is a Pacific regional network promoting economic self-determination and justice in the Pacific Islands.

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Acronyms

\$	US Dollar
CEO	Chief Executive Officer
CO ₂	Carbon dioxide
CoI	Commission of Inquiry
DOL	Department of Lands
EU	European Union
EUTR	EU Timber Regulation
FAO	Food and Agriculture Organization of the United Nations
FMA	Forest Management Agreement
FORCERT	Forest Management and Product Certification Service
FPIC	Free, prior, and informed consent
GDP	Gross domestic product
ha	Hectare(s)
ILG	Incorporated land group
INA	PNG Institute of National Affairs
INTERPOL	International Criminal Police Organization
ITTO	International Tropical Timber Organization
IT&S	Independent Timbers and Stevedoring Limited
K	Kina, the currency of Papua New Guinea
LIP	Lands investigation process
LIRs	Land investigation reports
m	Meter(s)
MDG	Millennium Development Goals
MTDP	Medium Term Development Plan
MTDS	Medium Term Development Strategy
NBPOL	New Britain Palm Oil Limited
NGO	Non-governmental organization
OI	Oakland Institute
PANG	Pacific Network on Globalisation
PNG	Papua New Guinea
PNG-LNG	PNG Liquefied Natural Gas
RH	Rimbunan Hijau
RSPO	Roundtable on Sustainable Palm Oil
SABLS	Special Agricultural and Business Leases

Executive Summary

Papua New Guinea (PNG) is one of the most culturally diverse countries in the world, with more than 800 indigenous languages and over 600 islands. Among its many natural treasures, a unique asset is its rainforest, the third largest in the world and home to endangered wildlife, plants, and diverse groups of people.

It has been said that PNG has the most equal distribution of land on earth. The country's constitution protects customary land rights and there is virtually no private ownership. Land is almost entirely controlled by clans and tribes. The constitution sets self-reliance, sovereignty, and the sustainable management of natural resources as overarching principles for the country.

Yet, even with these legal protections, a massive land rush is currently taking place in the country. In recent years, 12 percent of the country, 5.5 million hectares, has been leased out to foreign corporations. Dozens of foreign companies have signed land deals under a government scheme called Special Agriculture and Business Leases (SABLS). Ostensibly formed to launch agricultural projects, these firms appear to be mostly occupied with harvesting timber that is then exported to overseas markets. With the SABL scheme, foreign companies have found a new and relatively easy way to open new areas for logging.

As a result of the SABL framework, PNG has seen a sharp increase in logging and log exports. It is now the second-largest exporter of tropical logs in the world, after Malaysia, and exports more than 3 million cubic meters of logs every year, primarily to China.

In 2011, the government established a Commission of Inquiry (Col) into the SABLS that confirmed dire facts about these recent land allocations in PNG. The commission's findings included widespread lack of free, prior, and informed consent of the local people; failure by state agencies such as the Lands Department, the Department of Agriculture and Livestock, and the Forest Authority in performing their duties; and fraud, misconduct, and incompetence as well as overall lack of adherence to proper procedures. In many deals, landowners were blatantly misled about the size and the nature of an agribusiness project.

On September 18, 2013, Papua New Guinea's Prime Minister Peter O'Neill tabled the commission's report in Parliament and stated that it revealed a shocking trend of corruption and mismanagement. Despite the alarming findings, the government has not taken any concrete or decisive action to

Nearly one-third of the country's 46 million hectares are now in the hands of foreign corporations, mostly for logging.

cancel deceptive land deals, stop illegal logging, nor return land to traditional owners.

Instead, the prime minister has confirmed the official policy that has enabled these land deals. Freeing up land for development and "unlocking" it for "productive use" remains the first priority of the government's development strategy, which aims to develop agricultural plantations, primarily palm oil.

With this strategy, the government planned to reduce the amount of customary land from 97 percent in 2009 to 80 percent by 2030. With the SABLS, it has reached its 2020 goal nine years ahead of schedule.

The government asserts that making land available for productive use is required to bring development to the country. Offering Papua New Guinea's natural resources to foreign interests has made the country one of the fastest growing economies in the world. But economic growth dependent on the export of natural resources has not brought benefits for most citizens. Commenting on the poor human development records of the country, the World Bank describes the situation as a "paradox of wealth without development."

Through extensive field research, the Oakland Institute (OI) and the Pacific Network on Globalisation (PANG) have examined what development looks like on the island of West New Britain, home to the largest and oldest palm oil plantations in Papua New Guinea. The island is held up as a model for what the government intends for the rest of the country. Yet there is no sign of development in the villages that have been cultivating palm oil for several decades. A lack of basic infrastructure and services is a common feature in all villages visited in West New Britain. People have little or no access to safe drinking water, health facilities, nor schools.

The largest palm oil company operating in PNG is New Britain Palm Oil, a member of the Roundtable on Sustainable Palm Oil. The company has been praised in some quarters for its efforts to avoid deforestation and for not grabbing land like most of the logging companies. Despite its efforts towards sustainability, the corporation has not brought any lasting positive improvement in people's lives.



At the current rate of deforestation, the PNG Forest Authority estimates that by 2021, 83 percent of accessible forest areas will be gone or severely damaged.

It is clear that the government's "free up land" policy is not bringing development nor long-term improvements. Worse, it has been implemented in recent years through massive and documented corruption, fraud, and the resulting theft of natural resources from local landowners.

Although he acknowledged the major failure of the SABL scheme, the prime minister did not question the policy that led to this debacle and was silent about the structural causes of the SABL failure. On the contrary, in September 2013 he announced the establishment of a task force "to develop a new legislative framework to free up customary land for development."¹

However, what is needed is not a "new legislative framework," since the country already has a constitution and laws that are very protective of people's rights and resources. The Constitution of Papua New Guinea outlines not only the rights and protections for people, their land, and resources but it also upholds the concept of self-reliance and people's right to economic self-determination. The key problem is a development agenda based on unrestrained capitalism, foreign investment, and resource exploitation—operating within a context of widespread corruption and a dysfunctional administration.

The Commission of Inquiry report, like previous government commissioned assessments consulted in the course of this research, indicates that PNG and its relevant government agencies lack the capacity to "free up land for development" in a way that would respect people's rights and ensure that investments are sustainable and productive.

To get a truer picture of the extent of land grabbing and resource extraction going on today in PNG, it is important to understand that the 5.5 million hectares leased under SABLs in recent years are in addition to the 8.5 million hectares

which were already under some form of logging concession in the country prior to SABLs. This massive amount of land, nearly one-third of the country's 46 million hectares, is now in the hands of foreign corporations, mostly for logging.

Given the Commission of Inquiry's findings confirming previous assessments of the forestry sector, most of the 3 million cubic meters of timber exported every year from the country should be considered illegal. The government authorizes the export of logs and receives tax revenues on log exports, while this timber is harvested in violation of national laws, including the constitution itself. By unquestioningly pocketing this revenue, the government helps legalize an illegal activity and participates in a massive illegal timber laundering scheme.

The logs are exported from PNG to China and then re-exported legally to European and North American markets as wood products and furniture, with China listed as the country of origin.

Many foreign logging firms are involved in this highly lucrative illegal trade that was denounced in a 2012 report by INTERPOL. The largest logging firm in PNG is a Malaysian group known as Rimbunan Hijau. The other logging firms flagged by the Commission of Inquiry for their involvement in irregular land deals come from Malaysia, Australia, USA, and other Asian countries.

Whereas the forestry sector contributes a mere 3 percent of PNG's total export earnings,² it is barely benefiting the people and driving the rapid depletion of PNG's resources and destruction of the environment. At the current rate of deforestation, the PNG Forest Authority estimates that by 2021, 83 percent of accessible forest areas will be gone or severely damaged. This would be an environmental disaster. Given the population's heavy dependence on the forest, the human toll is barely measurable. This loss would affect the livelihoods of millions of rural people.

The jargon of "freeing up land for development" and "unlocking land for productive use" hides a multilayered tragedy of daylight robbery, the betrayal of people's constitutional protections, and the loss of heritage and land for millions of Papua New Guineans.



Children in Mosa village, West New Britain

Introduction

Alarmed by reports about a massive land grab taking place in Papua New Guinea (PNG), the Oakland Institute (OI) and the Pacific Network on Globalisation (PANG) undertook research on land investment deals in the country, including sending a research team to the country in February 2013. The purpose of our work was to study and document recent land investments in PNG to inform the public and policy-makers about a situation that has received little international attention so far compared to other countries affected by land grabbing. The goal of this work was to also give an opportunity to local people and civil society organizations to express their views and concerns in relation to this situation and to the development policy implemented by the government of PNG.

Fieldwork took place in the capital Port Moresby, in Madang Province, East Sepik Province, and the island of West New Britain in February and March 2013. The outcome of this research is this report as well as a documentary film, *On Our Land*.³

The first section of the report provides background information on the country and the unique features of its land tenure system. The second section analyzes the extent and nature of land acquisitions in the country, considering the effects of the most recent government land scheme called Special Agriculture and Business Leases (SABL). Beyond SABL, section two also looks at the forestry and palm oil sectors and at government policies on land and development. The last section assesses the impact of these policies on PNG's people and environment.





A road in Madang province

Background: A Rich, Diverse, and Unique Country

A HIGHLY DIVERSE COUNTRY

PNG, a young democracy, gained independence from Australia in 1975. Located in the southwest region of the Pacific Basin, it has a total land area of 46.17 million hectares (ha), 40.53 million ha of which is the eastern part of New Guinea Island. The remainder is divided between the larger islands of New Britain, New Ireland, Bougainville, and Manus, as well as over 600 small islands.⁴

The country has a population of approximately 6.5 million people who speak a total of over 800 indigenous languages, making it one of the world's most culturally diverse countries.⁵ With around 83 percent of the population living in rural areas,⁶ most people still live traditional lifestyles based on small-scale agriculture, hunting, fishing, and gathering. Most people's cash income comes from the sale of garden produce, food and non-food forest products, and small-scale cash cropping, such as cocoa, coconut, vanilla, betel nut, and coffee farming.⁷

Ninety-seven percent of the land of PNG is held under customary rights, meaning it is owned and controlled by the clans and the tribes who live on the land. Most people live in

small communities of a few hundred villagers who maintain intimate relationships with the land and natural resources.⁸ Though estimates vary according to experts and methodologies, it is generally accepted that forests cover close to 60 percent of the country.⁹ PNG has a variety of forest types ranging from savannah woodlands, swamps, and mangroves to lowland rainforests, hill forests, and mountain forests. Deforestation and forest degradation have been increasing at a worrying rate over the past two decades. People are highly dependent on the forests for their food and medicines, soil and watershed protection, and for materials for construction and cultural activities, customs, and beliefs.¹⁰ The sea and rivers also provide major food resources and a majority of the people rely on rivers and creeks for their freshwater needs, such as drinking, bathing, cooking, and more.

The country contains more than 5 percent of the world's biodiversity within some of the most biologically diverse ecosystems, with around 20,000 species of higher plants (about 7.5 percent of the world's total) and more than 2,000 timber species.¹¹ Many of the plants and animals are endemic and are only found in PNG.¹²

ECONOMY

PNG has one of the fastest growing economies in the world, with gross domestic product (GDP) figures showing growth of 9.2 percent in 2012, following 11.1 percent growth in 2011.¹³ In the first six months of 2012, the number of private sector jobs rose by 5 percent, building on a doubling of formal employment opportunities over the last decade.¹⁴

PNG is rich in gold, oil, gas, copper, silver, and timber and its waters are home to abundant marine resources. This wealth makes it an attractive destination for hundreds of foreign companies interested in the exploitation of natural resources. The growth of the country's economy in recent years has been mainly driven by strong exports of minerals and oil products and the ongoing construction of the PNG-LNG (PNG Liquefied Natural Gas) project, which constitutes an investment of \$15.7 billion (said to possibly increase up to \$19 billion).¹⁵ The first gas delivery is expected in late 2014. Mineral and oil exports together account for over 60 percent of GDP.¹⁶ The second key sector is agriculture, which accounts for 32 percent of GDP.¹⁷ The main export crops are palm oil, coffee, and cocoa.¹⁸

The unemployment rate in PNG is below 3 percent, one of the lowest rates in the world.¹⁹ The country's economy is marked by the duality between a formal sector mainly based on large-scale export of natural resources and an informal sector dominated by the subsistence and small-scale agricultural activities of the majority of the rural population.²⁰ Agriculture provides the livelihood for close to 85 percent of Papua New Guineans.²¹

HUMAN DEVELOPMENT

The World Bank describes the situation of PNG as a “paradox of wealth without development.”²² Health indicators are poor, with average life expectancy at 53 years, the infant mortality rate at 49 per 1,000 live births, and a high rate of maternal mortality. One child in every 13 born in PNG will die before the age of five.²³

PNG is one of the few countries where the poverty level has been increasing in recent decades. In 2006, an estimated 39 percent of Papua New Guineans lived on less than \$1 per day, up from 25 percent in 1996. Over that same time period, the number of people living below the national poverty line rose from 37 percent to 53 percent.²⁴

The 2009-2010 Household Income and Expenditure Survey shows that “the benefits of faster growth and higher revenues have not translated into benefits for wide sections of the population. The proportion of the PNG population who

live in households where the real value of consumption per adult equivalent is below the poverty line is 39.9 percent.”²⁵ The survey results show almost no improvement in human development indicators compared to the previous survey that was conducted in 1996.²⁶

The World Bank further observes “like many minerals rich developing countries, PNG struggles to transform economic growth and increasing national revenues into widespread improvements in household incomes and livelihoods or individual well being.”²⁷

PNG is not on track to meet the Millennium Development Goals (MDG).²⁸ Considering the MDG targets overly ambitious and unrealistic for PNG, the government has developed its own national MDG targets and indicators in its Medium Term Development Strategy (MTDS). Even the self-determined targets are not being achieved by the country: it appears “very unlikely” that PNG will achieve five out of eight targets, and “likely” that it will achieve targets related to poverty reduction and child mortality, targets which are set at a considerably lower level than the global MDG targets.²⁹

AGRICULTURE AND FOOD SECURITY

PNG villagers grow or harvest about 400 plant species, mostly for food with some for sale and cash income. An average family regularly grows between 30 and 80 species of food crops, including many varieties of the most important species.³⁰ For example, a single household may grow as many as seven or ten different varieties of banana.³¹ Whereas only a few crops are generally sold for cash, most of the food produced is consumed within the family or the wider community.

Many fruits are eaten, including pawpaw, marita pandanus, pineapple, mango, watermelon, ton, Malay apple, guava, orange, and passion fruit. The main nut crops are coconut and peanut, but other nuts, which are commonly eaten seasonally, include breadfruit seed, karuka nut pandanus, galip, Polynesian chestnut (aila), sea almond (talis), pao, and okari. Sugarcane is another important food within the country, and is consumed at an average of 60 kg of cane per person per year.³²

As underlined in a comprehensive study of agriculture in Papua New Guinea,³³ local farmers are very open to innovation and pay particular attention to variation among cultivated crops. They try out new variants and retain useful ones, which, in suitable conditions, become established as cultivated varieties. This is a continuous process that enhances crop genetic diversity. This system has been employed in



PNG for thousands of years, and some of the main crops today are plants that were introduced and adopted over the centuries.³⁴ It is also important to note that agriculture in PNG is closely tied to the forest and the trees, which constitute an essential source of soil fertilization.³⁵

This diversity of crops lends to food security and nutrition both because it provides people with a diversified and nutritious diet and also works as insurance against changing conditions such as drought or new diseases. For instance, a minor or moderate drought results in increased production of mango and breadfruit, but reduced production of other fruit, such as pawpaw. Similarly, sweet potato and cassava are tolerant of minor drought, whereas the same drought can negatively affect taro production. Conversely, sweet potato production is often badly affected by very wet periods, while taro is not.³⁶

As a result, household food security in PNG is currently considered to be high. Most of the rural population has adequate access to gardening land sufficient to meet their minimum daily calorie requirements, although protein-energy malnutrition exists in some rural districts as a result of insufficient access to high protein and energy-dense foods (e.g. oils and fats) and because of seasonal

and short-term food shortages.³⁷ Despite rapid population growth in PNG of around 2.3 percent annually since 1966, 83 percent of food energy consumed in PNG continues to come from garden-grown foods. According to agricultural experts, “these achievements reflect the continued importance of traditional social and trading relationships, the introduction of high yielding and rapidly maturing varieties of food crops, the relatively good access to customary land for most rural villagers, and their ability and willingness to innovate, alter agricultural techniques and adopt new crops.”³⁸

Coffee, copra, cocoa, and palm oil are the most important crops to the PNG economy, accounting for substantial exports. Oil palm production has grown rapidly in PNG over the past 20 years, and it is now the largest agricultural export earner. Currently, oil palm is planted on more than 136,000 hectares in five provinces: West New Britain, Oro, Milne Bay, New Ireland, and Morobe.³⁹ Palm oil is the main crop involving large-scale plantations, with other crops primarily produced by smallholders. With the introduction of hybrid varieties of coconut and cocoa there is a renewed interest amongst smallholders in these crops, especially in the last 3 years given high commodity prices on the world market.⁴⁰



Forest in East Sepik province © Oakland Institute

UNIQUE CONSTITUTIONAL PROTECTION FOR LAND RIGHTS

Foreigners acquired significant amounts of land in PNG under successive British, German, and Australian rule, which created land shortages in several parts of the country.⁴¹ In order to address the problem associated with the alienation of land and to prevent the perpetuation of the abuse of powers in relation to land rights, the post-independence government ensured that the property rights of Papua New Guineans were protected in the constitution as an integral part of the provision for basic human rights of individuals.⁴² After independence, the acquisition of citizens' land was strictly governed by section 53 of the PNG constitution.⁴³

Whereas section 53 is the part of the constitution generally referred to when considering the issue of land rights in the country, sections 3 and 4, which refer to national sovereignty, self-reliance, and the preservation of natural resources, also offer important provisions that relate to land. For instance, the constitution calls on the state "to control major enterprises engaged in the exploitation of natural resources."

Section 3 of the constitution calls for national sovereignty and self-reliance, stipulating that:

"(4)...citizens and governmental bodies to have control of the bulk of economic enterprise and production; and

(5) strict control of foreign investment capital and wise assessment of foreign ideas and values so that these will be subordinate to the goal of national sovereignty and self-reliance, and in particular for the entry of foreign capital to be geared to internal social and economic policies and to the integrity of the Nation and the People; and

(6) the State to take effective measures to control and actively participate in the national economy, and in particular to control major enterprises engaged in the exploitation of natural resources; and

(7) economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not in dependence on imported skills and resources; and

(8) the constant recognition of our sovereignty, which must not be undermined by dependence on foreign assistance of any sort, and in particular for no investment, military or foreign-aid agreement or understanding to be entered into that imperils our self-reliance and self-respect, or our commitment to these National Goals and Directive Principles,

or that may lead to substantial dependence upon or influence by any country, investor, lender or donor."⁴⁴

The constitution also declares the fourth goal "for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations," and accordingly calls for:

- "Wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations;
- the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and
- all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees."⁴⁵

A UNIQUE LAND TENURE SYSTEM

Until recently, 97 percent of the land of PNG was held under customary tenure. However, taking into account the recent SABLs, the actual surface area under customary land tenure is estimated to have dropped to 85 percent in recent years.⁴⁶

Customary tenure operates on unwritten laws, customs, and practices, which are generally accepted by the people. Although landownership and usufructuary rights vary in different places, kinship groups recognize and strengthen customary land rights and thus provide security of land tenure for all citizens as well as for future generations.⁴⁷

"Papua New Guinea has probably the most equal distribution of land on earth."

—Tim Anderson, University of Sydney⁴⁹

Over the past three decades, the government of PNG has sought to promote development by putting customary land into "productive use" through different programs of land mobilization and various laws. The World Bank along with the Australian Aid Agency (AUSAID) funded the Land Mobilization Program (LMP) in 1989—a program that ignited unrest throughout the country and resulted in the deaths of two university students, forcing the government to abandon the idea. The LMP grew out of the Land



Administration Improvement Program (LAIP), which began in 1984. LAIP subsequently led to the Land Evaluation and Demarcation Project (LEAD Project) in 1987, and finally to the LMP in 1989.⁵⁰

None of these programs has been effective so far, which partly explains the different generations of land mobilization programs. Between 1979 and 2002, the total amount of land removed from customary tenure was very limited, less than 150,000 hectares.⁵¹

According to Tim Anderson of the University of Sydney, “the main obstacle to land registration in PNG is that it is unwanted; there is no popular demand for it and, on the contrary, popular opposition has been expressed strongly on several occasions, sometimes leading to loss of life.”⁵² Another key reason relates to the difficulty of making land a marketable commodity in a customary system where land is held collectively, and in effect has no clearly identified boundaries or legal titles. This difficulty explains why the limited surfaces mobilized through the early 2000s have resulted in massive land disputes and conflicts.⁵³

In August 2005, the PNG government held a land summit to develop an agenda to reform land administration and land management. A number of experts, institutions, and several key ministers of the government attended.⁵⁴ The case made at the summit was that it was necessary to make land more productive and that the status quo was “costing PNG in terms of economic and technical efficiency.”⁵⁵ The summit resulted in a number of recommendations, including establishing the National Land Development Task Force.⁵⁶ Established in 2006, the Task Force produced 18 recommendations that were adopted by the government.

This led to the creations of a Land Development Programme, administered within the Department of Lands and Physical Planning, which was to implement the recommendations of the Task Force.⁵⁷ One of the recommendations on customary land was to reform the Land Groups Incorporation Act of 1974 to make incorporated land groups “vehicles for development.” The 1974 law made it possible for local communities to establish incorporated land groups (ILGs) that would be recognized as legal corporate entities. The act gives legal recognition of the corporate status of customary groups, conferring the power to acquire, hold, dispose of, and manage land, including the right to enter into agreements over their land.⁵⁸ The 2009 amendment of this act strengthened the legal process and the management obligations of the ILGs.

As observed by Colin Filer, Associate Professor at the Australian National University, after 2003, the country saw a steady acceleration in the rate at which customary landowners have supposedly agreed to the transfer of increasingly large areas of land to private companies.⁵⁹ By the end of 2010, there were more than 16,000 incorporated land groups registered with the Lands Department under the terms of the Land Groups Incorporation Act.⁶⁰

The political push toward land mobilization that took place in the 2000s has resulted in a massive transfer of customary land into the hands of foreign corporations. Instead of serving as the “vehicles for development” called for by the National Land Development Task Force, the ILGs have been the vehicles for driving one of the swiftest and largest land grabs in the world.



Loading of logs in Turubu, East Sepik

Land Acquisitions in PNG

SPECIAL AGRICULTURAL AND BUSINESS LEASES (SABLS)

Between 2003 and 2012, around 5.5 million hectares of customary land passed into the hands of national and foreign corporate entities through Special Agricultural and Business Leases (SABLS) and a legal mechanism known as the “lease-leaseback scheme.”⁶¹ Over that period, more than 341 leases were signed for 117 projects; many of the leases were for 99 years. One project was larger than 2 million hectares, 11 projects were between 100,000 and 1 million ha. Taken together, these 12 projects represent close to 80 percent of the total area leased under SABLS. The largest 72 leases represent more than 95 percent of the land leased.⁶² The 5.5 million hectares leased under SABLS correspond to over 12 percent of PNG’s total land area and more than 16 percent of accessible commercial forests, which means that the area of the country under customary land tenure dropped from 97 percent to 85 percent in just a few years.⁶³

Though the SABL system is supposed to concern only agricultural projects, many logging companies have used the system to develop and accelerate their felling activities. For many years after its invention, the lease-leaseback scheme

was rarely used and, when it was employed, it was generally for smaller areas than what has been seen in recent years. The number of SABLS started to increase after 2003, but it was only after the amendments made to the Forestry Act in 2007 that the number of leases started to grow exponentially.⁶⁴

The PNG Forest Authority is the entity that monitors and authorizes logging permits in Papua New Guinea. Prior to the amendments to the Forestry Act in 2007, logging companies had to apply for Forest Management Authorities, permits that could be difficult to obtain, required a rigorous and complex screening process, and required logging companies to negotiate directly with landowners. With the 2007 amendment, logging companies found a loophole in the regulatory system that allowed them to more easily obtain Forest Clearances Authorities, permits that are given almost automatically once the Department of Agriculture and Livestock approved so-called agricultural development projects.⁶⁵

While logging has driven the spread of SABLS, oil palm development has been the justification. But only nine SABLS



(311,000 ha) are controlled by listed oil palm or biofuel companies.⁶⁶

Most companies that hold subleases or development agreements over SABLs have no prior experience with agricultural development. SABLs have resulted in an increase in deforestation of primary forests for oil palm, with potentially the same environmental and social impacts seen in Indonesia and Malaysia. Developing oil palm plantations on primary forest is highly lucrative, as it allows oil palm proponents to profit from the logs felled when forest clearing is carried out prior to planting. The profits from the sale of tropical logs thus pay for the plantation's establishment.⁶⁷

THE SABL MECHANISM

The lease-leaseback scheme was created in 1979 with the objective to enable customary landowners to register titles to their own land. The idea behind the lease-leaseback scheme was that groups of customary landowners could lease some of their land to the government, which would then create a formal title for the land and lease it back to the landowners. The title could then be used as collateral for a bank loan or as the basis for subleasing the land to a third party for development purposes.

The current legal form of the lease-leaseback scheme is represented in two sections of the Land Act of 1996. Section 11 says that the minister "may lease customary land for the purpose of granting a special agricultural and business lease of the land." Section 102 allows such leases "to be granted: (a) to a person or persons; or (b) to a land group, business group or other incorporated body, to whom the customary landowners have agreed that such a lease should be granted."⁶⁸

Officially, SABLs were intended to provide customary landowners with economic opportunities through capital gained from rent and employment that the projects created. The lessees would then improve infrastructure as the project developed.

LEGAL PROCESS

Below is the general process that should be followed when granting an SABL:

1. Landowners make an application to the Department of Lands (DOL) headquarters for their land to be under an SABL
2. A Land Investigation Number is appointed by the DOL HQ
3.
 - 3.1. DOL HQ then refers the matter to the Provincial DOL who consequently then initiates the Lands Investigation Process (LIP)
 - 3.2. The District Lands Officer (DLO) carries out the LIP
4. The Land Investigation Report (LIR) requires the DLO to check the following:
 - 4.1. The name
 - 4.2. Locality and type of land
 - 4.3. A map of the genealogy of customary landowners
 - 4.4. A survey
 - 4.5. Boundaries are declared between adjoining clans both within and outside of the proposed lease area
5. Informed consent is given from all landowners
6. The land mediation process involving members of the same clan begins
7. DLO analyzes the projected population growth and whether sufficient land has been set aside for the needs of future generations
8. The provincial administrator makes an independent assessment of the LIR and makes reservations where applicable
9. The custodian of customary land (Secretary for Provincial and Local Level Government) signs a Certificate of Authenticity⁶⁹

Table 1: SABLs Issued between 2003 and 2012⁷⁰

Scale of Project (hectares)	Number of Projects	Number of Leases	Area Leased	Percentage of total area under SABL
> 1,000,000	1	4	2,043,097	37.1
100,000 - 1,000,000	11	12	2,180,233	39.6
10,000 - 100,000	34	57	1,223,727	22.2
1,000 - 10,000	12	37	58,192	1.1
< 1,000	59	231	7,263	0.1
All	117	341	5,512,512	100.0



COMMISSION OF INQUIRY INTO SABL

"We have made some fundamental mistakes over the past few years. One of them is the Special Agricultural and Business Leases that have been given out by government over the past few years."

—PNG Prime Minister Peter O'Neill⁷⁴

THE COMMISSION OF INQUIRY

The government established a Commission of Inquiry (Col) to look into the operations of the lease-leaseback scheme in May 2011. The following month, it imposed a moratorium on granting further SABLs and related licenses until the commission reported its findings to the parliament. The commissioners began their hearings in August 2011, and continued to gather evidence until March 2012.⁷¹

The Col has found that the majority of leases were granted under threat, intimidation, and bribery, and/or without the free, prior, and informed consent of landowners. More than half of the SABLs were issued without observing due process. According to local groups, only 31 of the 72 largest SABLs had all the necessary documentation in the relevant statutory body's records.⁷² The rights of landowners were not respected in most cases; people had been intimidated, abused, and misinformed, while individuals were bribed or hired to strike deals on behalf of communities.

The Col identified all sorts of fraud and violation of local laws and regulations in the course of its investigation. This includes the use of other people's names and false signatures on lease documents, as well as signing children's names to official documents.⁷³

Furthermore, field research and interviews with local officials confirmed a fact that was made clear during the Col

hearings: in the majority of the cases, government departments responsible for various actions in the legal process described earlier had widely failed to perform their duties. This included land surveys and field investigations that were not conducted by the responsible officials, missing or inappropriate legal documentation, and overall many of the legal steps were not implemented in a proper way.

LEASE AGREEMENTS FLAWED IN FAVOR OF FOREIGN INVESTORS

At minimum, 75 percent of the total 5.5 million hectares of land in SABLs are now controlled by foreign-owned corporations, mostly Malaysian and Australian interests. A 2012 study by Greenpeace International showed the figure to be much higher: a number of deals signed by landowner companies and Incorporated Land Groups use the addresses of logging companies as their principle place of business when registering their companies with the PNG Investment Promotion Authority. Several of them use the address of different offices of the Malaysian firm Rimbunan Hijau (RH), the largest logging operator in the country.

In its hearings, the Col identified how the terms of many of the deals signed are largely unfavorable to local communities. The lease documents include clauses that imply massive compensation to the investors in the case local communities decided to terminate a project. Some SABL subleases contain clauses for profit sharing, but as observed by the Col, historically very few foreign-owned corporations operating in PNG declare profits.⁷⁵ The promised development and benefits for the communities generally don't appear in lease agreements.

BOX 1: THE WIN-LOSE DEAL OF RIMBUNAN HIJAU IN POMIO

The sublease agreements negotiated by Rimbunan Hijau (RH) for SABLs in Pomio District, East New Britain Province, are for 60 years with a further 30-year option. The agreements stipulate that if the landowners wish to terminate the lease, they must compensate Gilford Limited, a subsidiary of RH, for the value of the oil palm planted, its infrastructure, the value of the yet-to-be built oil palm mill, and all its expected profits for the duration of the lease. The head of the Col, Commissioner Alois Jerewai, said this would cost landowners up to K10 billion (\$5 billion).⁷⁶ The Col also notes another clause indicating that if landowners cannot pay this compensation, Gilford Limited could apply to the court for an injunction to stop the landowners from breaking the sublease.⁷⁷ The sublease does not provide any provision for assistance to local communities apart from timber royalties, which are expected to end within four years.⁷⁸



"If you should terminate the lease for one reason or another that is not in accordance with the terms of this sub-lease and if they should want to seek a restraining order from the court of jurisdiction, which is the National Court of Justice, under this clause, you have agreed not to defend it."

— Commissioner Alois Jerewai, Col hearing in Kimbe, February 9, 2012⁷⁹

As in the case of RH in Pomio (see Box 1), the Col investigation of a lease involving New Britain Palm Oil Limited (NBPOL) in West New Britain found that in order to terminate the lease with the company, the landowners would have to pay to the company the equivalent of its "projected profit from subsequent harvests of the oil palms for the [45 years] term and the costs incurred by the tenant in constructing buildings, roads and drainages on the land."⁸⁰ The Col commissioner describes the terms of the deal as "dangerous ground" for local landowners, especially since the landowners have also waived their rights to defend their case in court in the case of a conflict with the company over the termination of the lease (see Box 1).⁸¹

LACK OF CAPACITY, CORRUPTION, AND INCOMPETENCE: FAILURE OF STATE AGENCIES

The findings of the Col highlight the major failure of state agencies to perform their duties in a proper way. This is not news for the country, as not only NGOs but also government officials and independent assessments have repeatedly brought attention to numerous problems of incompetence and corruption in government departments.

The Government of PNG's Vision 2050, the policy document that frames the development policy of the government for the next decades,¹⁰⁰ sees corruption as "the biggest threat to the success of Vision 2050."¹⁰¹

The Lands Department appears seriously affected by corruption. On March 13, 2013, lands minister Benny Allan announced an investigation into "all the land deals alleged to have been fraudulently acquired or sold" and announced he had been instructed by the prime minister to clean up his department. "Such fraudulent deals and actions have become a culture among certain officers within the Department and those outside including business houses, stakeholders and individuals."¹⁰²

BOX 2: RIMBUNAN HIJAU, A LOGGING BARON AND MORE

Rimbunan Hijau is a major player in the logging industry in PNG and has been involved in several major controversial land deals. Rimbunan



Hijau Group (RH Group) is a large Malaysian multi-industry company present in more than 15 countries. Founded in 1975, RH Group is involved in many sectors, including forestry, oil palm plantations, media, information and communications technology, hospitality, aquaculture, biotechnology, plastic manufacturing, mining, real estate, insurance services, and oil and gas.⁸² Tiong Hiew King, one of Malaysia's richest men, controls it.⁸³

The company's most recent investment in PNG's national capital is a billion-kina project known as Vision City, which already contains the largest shopping mall in the Pacific island region, and will soon be expanded to include "an office tower block, service apartments, a hotel and convention centre."⁸⁴

According to Greenpeace, which has campaigned against RH's activities in PNG over the years, "the true extent of its logging and other business interests is difficult to assess given the group has interests in more than 60 interlinked companies that are registered in the country. [...] These companies control more than 50 percent of Papua New Guinea's large-scale commercial logging operations and at least 55 percent of log exports."⁸⁵

A 2009 report by the FAO and the PNG Forest Authority confirms RH's dominant position: "Most of [the logging] companies are connected in the sense that they are owned by one large conglomerate, but operating under different company names. One particular company controls close to 45 percent of all logging."⁸⁶

In December 2012, petroleum and energy minister William Duma revealed there were plans to establish expenditure implementation committees to improve the "abysmal" track record of delivering on agreements between the government and communities for oil projects.¹⁰³ The Forest Authority compound in Port Moresby is the only government department Oakland Institute researchers found protected by armed guards. Inside sources explain that crowds of unhappy landowners have to come to the capital to ask for their royalties over logging activities.

In 2009, a national Commission of Inquiry into the Department of Finance highlighted the gross incompetence of state officers in the Lands Department and labeled state

BOX 3: INDEPENDENT TIMBER AND STEVEDORING (PNG) LIMITED (IT&S)

The largest SABL deal concerns land acquired in Western Province by Independent Timbers and Stevedoring Limited (IT&S), a logging company whose parent companies are registered in Delaware in the United States and in Australia⁸⁷ and whose CEO is Neville Harsley, an Australian citizen. Because of its size and the number of irregularities, the IT&S deal is one of the most egregious SABLs and a good illustration of the many flaws of SABLs signed in recent years.

In a practice that has been commonly used in the country by other logging companies (such as RH) in the past, IT&S agreed to build a highway in Western Province—the Trans Papuan Highway Project—in return for harvesting logs along the route.⁸⁸ The initial consent given by local landowners was for a road corridor of 40 meters, 20 meters on each side of the road, which represented a surface area of 2,400 ha. However, in the opaque preparation process for the project, the plan for the corridor stretched to 1 kilometer on each side of the road—increasing the surface area to 120,000 ha, then the corridor grew to 5 kilometers on either side, ballooning the surface area to 600,000 ha. The final 99-year lease is for 2,043,097 ha, which equates to a 34-kilometer-wide corridor along the road.⁸⁹

The Commission of Inquiry into SABLs found a litany of irregularities with the project: it did not involve adequate information for or adequate consultation with local landowners; the land investigation and the Environmental Impact Assessment were not performed as required by law;⁹⁰ the leases were based on a counterfeit land registration; and IT&S did not have approval to legally operate within the SABLs, nor did it hold a Forest Industry Participant Certificate to apply for a Timber Permit or a Forest Clearing Authority.⁹¹ Furthermore, some of the paperwork required for the project, including papers that would have ascertained whether IT&S had landowner permission, should have been prepared independently by the Lands Department but instead was produced by IT&S.⁹²

Samuel Kapuknai, a landowner representative, reported to the Col in 2012 that the signature under his name on one of the official documents was not his.⁹³ The Provincial Lands Officer who approved the leases, Imen Papa, reported that IT&S misled him about what he was signing. He was quoted by Radio Australia saying, “After I signed the document, later I realized that all, the entire region was covered by the SABL, I got shock! [...]. That was never supposed to be. And I blame the company for misleading the government of Papua New Guinea.”⁹⁴

The Col found that the company “conducted unlawful and unethical actions” but also identified malpractices at different levels of the local and national administration as well as with locals who were supposedly representing local communities.⁹⁵

As observed by Greenpeace, IT&S controlled the approval process for these SABLs every step of the way and provided funding for travel and allowances for government officials.⁹⁶ Imem Ite Papa confirmed to the commission that he had never been to the three project sites and that no provincial government officers assisted in any of the studies.⁹⁷ Papa confirmed that IT&S had conducted the land investigation and the Land Investigation Reports (LIRs) were written, filed, and completed by IT&S and its agents.⁹⁸ Ipisah Biyama, the District Lands Officer for Balimo in Western Province, stated to the commission that while he signed the LIR for Tumu Timbers he did not physically carry out the land investigation. “I was asked to sign papers in Moresby by IT&S lawyer Michael Titus and IT&S surveyor Hudson Hape.”⁹⁹

If the IT&S project goes forward it will be the largest logging operation in PNG history. The deal seems to have stalled to accommodate the Col investigation, but its future is unclear. Despite testimony of fraud, numerous procedural flaws, and corruption, the government has not cancelled the project.

Figure 1: The Trans Papuan Highway Project





'My main concern is for the next generation...I want my land title back,' a resident of Mundawin village, East Sepik

officers as "extremely irresponsible and dishonest in the performance of their statutory functions."¹⁰⁴ The commission established a long list of twenty points of concerns regarding the functioning of the Lands Department that included fraud, misconduct, incompetence, and lack of respect of procedures, among many others.¹⁰⁵

In a report released in 2006, a review commissioned by the PNG government of five different assessments of the logging industry revealed that the "industry is allowed to ignore PNG laws and in fact gains preferential treatment in many cases, while the rural poor are left to suffer the social and environmental consequences of an industry that operates largely outside the regulatory system."¹⁰⁶ According to the review, the PNG Forest Authority is flawed with major deficiencies and widespread corruption.¹⁰⁷

But the problem is not just corruption and lack of competence. The lack of capacity of state agencies to perform their duties is a major weakness in a country where transport infrastructure is very poor and administration resources are limited. As observed by the World Bank, "In many areas of PNG, state institutions are virtually absent."¹⁰⁸ While foreign corporations seeking to exploit land and other resources can easily hire helicopters and required vehicles, officials in the Lands Department, Forest Authority, and the Department of Agriculture and Livestock don't have the means to perform their duties in an adequate manner.

USE OF LOCAL POLICE FORCES TO CURB OPPOSITION

Local police forces have been used by logging companies to curb local opposition to logging and land grabbing

in a number of cases.¹⁰⁹ It is common practice for logging companies in PNG to provide police with transport, accommodation, and allowances in exchange for protection for their projects. As a result, police forces side with logging companies and have often been accused of abuse and violence against locals.¹¹⁰ Intimidation, beatings, and arrests by the police have been common in recent years. In the case of Pomio, where locals oppose a subsidiary of Rimbunan Hijau, police locked up opponents to logging in shipping containers for several consecutive nights at the end of 2011.¹¹¹

By December 2011, this pattern had become so widespread that the police commissioner Tom Kulunga had to order the withdrawal of all police officers from logging sites across the country following numerous abuses by police stationed in logging camps. However, police were reported back at some sites just a few months later.¹¹²

In Pomio, police forces have not just been intimidating landowners opposed to logging but have also investigated people and NGOs involved in eco-forestry programs intending to harvest timber in a sustainable way, with actual benefits for the communities.¹¹⁴ On another occasion, armed policemen working for a logging company forced people to sign documents.¹¹⁵

The use of police force has been reported in a number of cases—such as Turubu and Pomio—but in other cases, people have been deterred from taking any action because of the belief that the court system and the police will side against them. Thus, many people live in fear and accept the plans promoted by the most powerful.¹¹⁶

On "October 3 and 6, 2011, whereby policemen travelled to the Bairaman and Totongpal villages in West Pomio, harassing, attacking and arresting youths without lawful reason, while in search of Paul Palosualrea and Jacob Samo, landowners from the area who are principal plaintiffs in the court action taken against Rimbunan Hijau and the State for fraudulently depriving landowners of their customary land for this logging project."

—Kenn Mondiai, chairman of the Eco Forestry Forum, October 2011¹¹³

FREEING UP LAND FOR DEVELOPMENT: THE GOVERNMENT POLICY BEHIND LAND GRABS

Most criticism around SABLs and recent land grabs in PNG has focused on the lack of respect for procedures and corruption of local officials. However, there has been little questioning of the policy that has led to the current situation. Yet, evidence shows that the grabbing of national resources has been orchestrated through official government policy, which has not been altered since the change of government in 2012.

“Unlocking land for productive use” and development is the first priority of the PNG government’s Medium Term Development Plan.¹²⁴ One key priority for the government is to “provide a secure, well administered land market that serves the needs of landowners and contributes to the nation’s strategic development.”¹²⁵

The government plans laid out the goal of reducing the amount of customary land from 97 percent in 2009 to 80 percent in 2030. It reached its 2020 target 9 years ahead of schedule, in 2011.

The OI-PANG investigation in March 2013 assessed how this policy is implemented at the community level. The provincial officials of the Department of Agriculture and Livestock explained how the priority of their department is “to free up land for development.” Explaining that people were too attached to their land, an official said that it was critical to change the mentality so that people will “give away their rights to their land” so this land could be “developed.” Thus, instead of prioritizing support for farmers through extension services, access to credit, training, and to markets, agriculture officials work to ensure that portions of their land can be taken away so that “developers”—i.e., foreign companies—can come in and develop plantations.

Table 2: Share of Land to Be Taken from Customary Landowners¹²⁶

Baseline 2009	2015 target	2020 target	2025 target	2030 target
3%	7%	11%	15%	20%

BOX 4: HOW A LOGGING BARON FIGHTS OPPOSITION

For several years, the logging industry, and primarily Rimbunan Hijau, has been using the services of an Australian consulting firm, International Trade Strategies Pty Ltd (ITS Global)¹¹⁷ to fight local and international opposition to their activities. Rimbunan Hijau has commissioned several reports by ITS Global, all of which attack civil society organizations for their work against deforestation and illegal logging.¹¹⁸ These reports accuse NGOs of misleading the public, obscuring Western interests, and working “against the nation’s long-term development prospects and undermining PNG’s development objectives.”¹¹⁹ ITS Global also provides comprehensive intelligence on individuals and NGOs opposed to the grabbing of resources by foreign corporations.

ITS Global’s latest report, released in April 2013, comes as a counter-attack to the public’s outcry against SABLs, which according to the company “have become a popular form of tenure in Papua New Guinea.”

“Many anti-development campaigners would have PNG turned into something resembling a museum, or at worst, a zoo.”

—ITS Global, April 2013¹²⁰

The company is only one of the instruments used by RH to fight opposition to its logging operations. The RH Group controls the *National*, the largest of the two daily newspapers in PNG. In May 2012, the *National* was accused of protecting RH’s interests and suppressing and controlling journalists to this end.¹²¹

Ten years ago, Greenpeace warned against Rimbunan Hijau’s connections with PNG’s political elites. Following the change of government in 2012, tensions have emerged between Rimbunan Hijau and the new government. The deputy prime minister accused the company of violating national laws, and called on RH to “respect our laws and our leaders.”¹²² The fact that a senior government official has to ask RH to respect “our laws and leaders” illustrates the power that the company still holds in the country and suggests that the government has limited control over it.

“Rimbunan Hijau has close connections to Papua New Guinea’s political elite. The [former] Prime Minister has been directly involved in the logging industry and his Deputy has been criticised in an Ombudsman Commission report for ‘arbitrary and irresponsible’ interference in directing the unlawful allocation of Kamula Dosa logging concession to Rimbunan Hijau. The Secretary of the Department of Environment and Conservation was also criticised by the Ombudsman Commission for his role in the same affair.

The Minister for Justice is the Chair of a company that holds the permit for the East Kikori logging concession. His company employs Rimbunan Hijau as its logging contractor. The Minister for Planning, the Minister for Privatisation and the Chief Secretary are other prominent leaders with well-documented links to the logging industry in PNG.”

—Greenpeace, 2004¹²³



The dominant discourse in government policy documents is one in which development is seen as something brought to rural areas from the outside, rather than a goal that rural communities, enabled by the government, achieve through their own endeavors. At the local level, politicians seeking election promise their constituencies development through logging and commercial agriculture, while controls to ensure sustainability of natural resource exploitation and long-term local benefits are lacking.¹³⁰

Official government policy appears to be creating and promoting a double-layered fraud. The first layer is the promotion of the idea that development will come to PNG through its land policy. The reality is that land deals mostly result in the selling of the country's forests to foreign companies and not in anything resembling development for local people.

BOX 5: WHERE DOES PUBLIC MONEY GO?

An analysis of the budget allocated to the different sectors within the Medium Term Development Plan (MTDP) 2011-2015 suggests that the government is not willing to address the issues identified in this report and, instead, is committed to offering the country's resources to outside interests.

The MTDP indicates plans to spend K136.8 million (\$52.6 million) over five years on land administration, with the ultimate goal of making land available to foreign investors.¹²⁷ The strategy includes plans to spend only K5 million (\$1.9 million—0.01 percent of the total MTDP budget) in the forestry sector and an equivalent amount in the development of small businesses.¹²⁸ This indicates with no ambiguity that the government will not make any substantial investment in this sector.

The MTDP includes the stated policy goal of reducing the share of round logs and increasing the importance of in-country processing, which seems to be no more than a nod to the idea given the minor investment in the sector. Lack of investment in the sector also makes any progress in the field of sustainable and eco-forestry unlikely. The Forest Authority is plagued by major problems of capacity and competence that should be addressed through some form of investment if logging is to continue.

The figures cited above are in sharp contrast with the K24.6 billion (\$9.5 billion)—nearly half of its budget—that the government plans to spend on transport infrastructure.¹²⁹ Providing people with access to markets and social services is the major argument put forward in favor of such massive investment. But it is also obvious that investing heavily in transport infrastructure will facilitate the extraction of the country's resources. Given the findings of this report, this investment allocation should be of high concern for citizens of Papua New Guinea.



Residents of Mosa village, West New Britain

The second part of the fraud is the belief that development of plantations, primarily palm oil, brings long-term improvements. Yet, in the areas of the country where such plantations have been active for decades, there is no evidence of long-term benefits to villages where plantations operate—no signs of improvements such as running water, accessible schools, or health care facilities.

SABL: A TREE HIDING THE FOREST

Contrary to what happened in other parts of the world, particularly in Africa, the natural resources grab in PNG did not start with the 2007-2008 food and oil crisis and the resulting rush for land and natural resources. Land grabbing in PNG started before, and has to be seen in a broader context of foreign interests grabbing PNG resources with the complicity of local elites. This is a crucial point that must be kept in mind by all who are concerned with addressing the problem in the future.

The attention of NGOs, media, and experts has been focused in recent years on the SABL scandal and its 5.5 million ha of land leased, with high concerns and strong evidence that these land deals have been mainly signed as a way to open new forest areas to logging companies. Surprisingly, there is little discussion about the broader issue of logging. Yet, according to the PNG Forest Authority, there are more than 8.5 million ha under active logging concession.¹³¹ When added to the surface area under SABLs, the total area of PNG land under some form of lease or concession is more than 14 million ha—nearly one-third of the country's land, and a much higher share of accessible and useable land.

As seen in Figure 2, the growth of log exports in recent years has been occurring largely through the use of the SABL scheme by logging companies.¹³²

Operations under SABLs constitute a growing share of log exports from PNG—1 million cubic meters, or the equivalent

of a third of total exports in 2012. But 2 million cubic meters were exported in 2012 from areas outside SABLs. The government's own assessments strongly warn that the conditions of these logging operations cannot be considered better than those uncovered under the SABL scandal. Actually, a 2006 review of the logging industry commissioned by the PNG government found that "the majority of forestry operations cannot credibly be characterized as complying with national laws and regulations and are therefore unlawful."¹³⁴ (See Box 6.)

The PNG Forest Authority is flawed with major deficiencies and widespread corruption, which results in the majority of wood harvested in PNG receiving official stamps and licenses despite being harvested illegally.¹³⁵

OIL PALM DEVELOPMENT

Oil palm production has grown rapidly in PNG over the past 20 years, and it is now the largest agricultural export earner. Currently, oil palm is planted on more than 136,000 hectares in five provinces: West New Britain, Oro, Milne Bay, New Ireland, and Morobe.¹⁵⁴

The sector is dominated by one company, New Britain Palm Oil Limited (NBPOL), which controls over 80 percent of the production in PNG and is the largest private employer in the country. The major share of the rest of the production is under Hargi Palm Oil, a Belgian company that has a market share of about 17 percent of the oil palm production in the country.¹⁵⁵ NBPOL is a subsidiary of Kulim (Malaysia) Berhad, and is registered on both the London and Port Moresby stock exchanges. In addition to Kulim, which owns a majority of the shares, NBPOL shareholders include the

Provincial Government of West New Britain (8 percent) as well as a number of foreign banks and investment funds.

Many observers, including some NGOs, believe that NBPOL exemplifies the best practices by foreign companies investing in land in developing countries. Company officials explained to the OI-PANG research team what sets the company apart from those currently grabbing land and natural resources in PNG.¹⁵⁶ For instance, in its recent projects, NBPOL has put a lot of effort into ensuring that the principle of free, prior, and informed consent is followed, as illustrated by their recent land acquisitions, allowing due process of consultation with the local people and adequate surveys. NBPOL has also made efforts to compensate locals for their land, going as far as offering shares of the company to local landowners. The company has also performed land use planning exercises allowing the identification of High Conservation Value Forest. It claims it is committed to preventing deforestation and that it has decided to limit its expansion to existing farms (buying existing plantations) and grassland.

Nevertheless, the amount of surface area used by the company for palm oil has more than doubled in recent years, from 33,000 hectares in 2007 to 78,000 hectares in 2011¹⁵⁷ (the total area controlled by NBPOL is 135,000 ha when taking into account land not planted with palm oil).¹⁵⁸

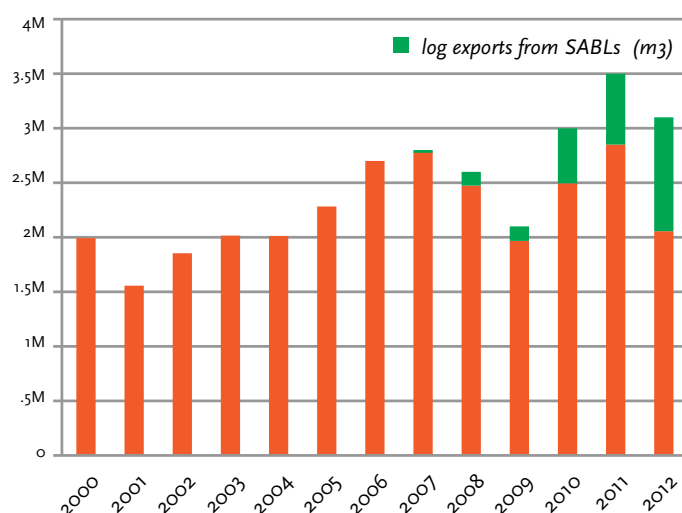
The company was among the first to be approved as a member of the Roundtable on Sustainable Palm Oil (RSPO) and now it wants to go beyond the requirements of the certification body, whose objective is to ensure sustainable practices by the industry.¹⁵⁹

The company's business model seems to be working well as it recorded an increase in revenue from \$225 million in 2007 to \$780 million in 2011 and \$677 million in 2012.¹⁶⁰ The company operates on several PNG islands under different schemes, including estates leased to people through the SABL mechanism and outgrower systems where people have planted oil palm on their land and sell their crop to the company.

In March 2013, the OI-PANG research team visited several villages in West New Britain in order to assess the economic and social conditions of the people involved in the production of palm oil for NBPOL.

In villages where people have been growing oil palm for more than five decades, the lack of development was very obvious and a common complaint of the people interviewed. There was no access to clean drinking water nor proper sanitation facility and no good roads. Residents of Mosa village have

Figure 2: Exports of Round Logs from PNG, 2000-2012¹³³



BOX 6: ILLEGAL TIMBER LAUNDERING IN PNG

A 2006 review of the logging industry commissioned by the PNG government found that “the majority of forestry operations cannot credibly be characterized as complying with national laws and regulations and are therefore ‘unlawful’.”¹³⁶ One government-commissioned assessment of 14 logging operations—including the five largest operations—concluded that none could be defined as legal, and only one operation met more than 50 percent of key criteria for lawful logging operations in PNG.¹³⁷

Although almost all PNG logging bypasses legal procedures and criteria, the majority of the wood enters the legal market. The review found that the “industry is allowed to ignore PNG laws and in fact gains preferential treatment in many cases, while the rural poor are left to suffer the social and environmental consequences of an industry that operates largely outside the regulatory system.”¹³⁸ Export inspections only verify the quantity and description of the timber so that export taxes can be paid; no connection is made between the legal documentation of wood products and the illegal nature of most logging operations in PNG.¹³⁹

PNG is one of the countries identified in a November 2012 INTERPOL report as a major exporter of illegal timber that is then processed through global laundering operations. The report contends that “illegal logging is not on the decline, rather it is becoming more advanced as cartels become better organized.”¹⁴⁰ The illegal timber business is highly lucrative, with the economic value of global illegal logging estimated to be between \$30 and \$100 billion.¹⁴¹

The primary destination for PNG tropical logs is China, which accounted for 97 percent of exports in 2010.¹⁴² In 2011 alone, the amount of logs exported to China increased by 26 percent.¹⁴³

China has become the number one importer, exporter, and consumer of illegal timber in the world.¹⁴⁴ Since 2005, China has become the world’s largest exporter of wooden furniture and parts, and China’s market share keeps growing: the value of wooden furniture and parts exports was \$16.3 billion in 2010, a jump of 35 percent from the previous year.¹⁴⁵

The US and the EU are China’s biggest markets for wood exports.¹⁴⁶ In 2010, the US and the EU imported 11.9 million and 8.48 million cubic meters of wood products from China, respectively, with a value of \$7.7 billion and \$5 billion.¹⁴⁷ Given that China is the largest importer of illegal timber in the world,¹⁴⁸ it is likely used in a large share of the wood products exported from China.¹⁴⁹ Illegally harvested PNG wood is laundered in China and then exported to the US and the EU.¹⁵⁰

The US and the EU have established policies intended to prevent illegal wood—such as timber from PNG—from entering their markets, with the EU Timber Regulation (EUTR) that came into effect in March 2013 and the US Lacey Act 2008. China, on the other hand, is not willing to explicitly prohibit trade in illegal timber.¹⁵¹

Despite US and EU policy, INTERPOL identifies them among the main importers of illegal timber in the world. INTERPOL recognizes myriad laundering systems that are used to make illegal timber appear legal, including falsification of eco-certification, falsification of origin and ownership documents, funneling large volumes of illegal wood through legal plantations, mixing illegal timber with legal timber during timber processing, and bribing customs officials, forest officials, police, military, or local villages.¹⁵³ Once illegal timber has been laundered, it can enter legally the markets of developed countries.

Due to the high prevalence of illegal logging in PNG, as well as the pervasiveness of illegal timber on the Chinese market, it is highly questionable whether any timber from China or with PNG origins should be accepted under the Lacey Act or the EUTR. Given that China is the main trader of illegal timber in the world, wood products from China should be classified as high risk. Similarly, high rates of corruption and low governance capacity in PNG should produce sufficient doubt on the legality of its timber to prevent PNG wood products from entering the US or the EU directly.

Figure 3: Main Bilateral Flows of Illegal Timber¹⁵²



seen few benefits from the exchange of their parents' land, sold for a few hundred pounds in the 1960s, and where the headquarters of NBPOL are now located. A health post was constructed in 2011 but it has no staff, and villagers complain that it is difficult for them to access school and health facilities, which are all at least 20-plus kilometers away in the provincial capital Kimbe.

The situation is far worse in Bovusi village, where 50 years ago settlers were given 6-hectare parcels by the government to cultivate palm oil. The 6 hectares provided to the parents of the current-day farmers were enough to sustain individual families of five members when they arrived in the 1960s. But today, 20 to 30 people live on the same 6 ha parcel, with little or no potential for expansion. The conditions are getting worse year after year, as the size of families increases yet the income from the plantation is fixed. People living here are unable to break out of a spiral of deepening impoverishment.

This rising density in the settlement schemes for palm oil development established in recent decades is leading to a number of problems, including social instability, conflict over allocation of labor inputs and income, and disputes over inheritance of the blocks.¹⁶¹

In the village of Morokea, where the land has been leased for an estate, villagers confirmed they have benefitted from

“What I want is for my children to have a better education and leave, and not to have a lifestyle similar to how I’m living now.”

—Joe, palm oil farmer, Bovusi village, West New Britain, March 2013

the royalties and payments made by the company, which financed the construction of new houses. However, people complain that the managers of the local entity set-up to channel funds from NBPOL no longer distribute the returns to the people.

Though NBPOL is committed to the principle of free, prior, and informed consent, there is an obvious lack of bargaining power for those working for the company. NBPOL holds a quasi monopoly in the country. Landowners who have tried to negotiate the amounts of royalties are told that there is a fixed rate for the share they can obtain from the deal. The relationship between locals and the company is therefore one of clear asymmetry of power. Similarly, farmers cultivating oil palm as outgrowers for the company have no say in the sale price they obtain nor the costs they pay for the use of equipment, such as wheelbarrows, nets for the collection of fruit bunches, and more.



Logging track near Turubu, East Sepik





Log pond in Turubu, East Sepik © Oakland Institute

Impact: The Destruction of PNG's Critical Assets

FORESTS

PNG is the second-largest exporter of tropical logs in the world, following Malaysia. In contrast to Malaysia and other log-exporting countries that export to a range of markets, Papua New Guinea's exports are overwhelmingly channeled to a single market: China, which accounted for about 97 percent of PNG's exports of 2.6 million cubic meters in 2010.¹⁶² PNG is actually the largest source of tropical wood for China, representing more than 30 percent of China's imports.¹⁶³ Whereas 2.86 million cubic meters of logs were exported in 2010,¹⁶⁴ exports have increased to nearly 3.5 million cubic meters in 2011 and 3.1 million cubic meters in 2012.¹⁶⁵

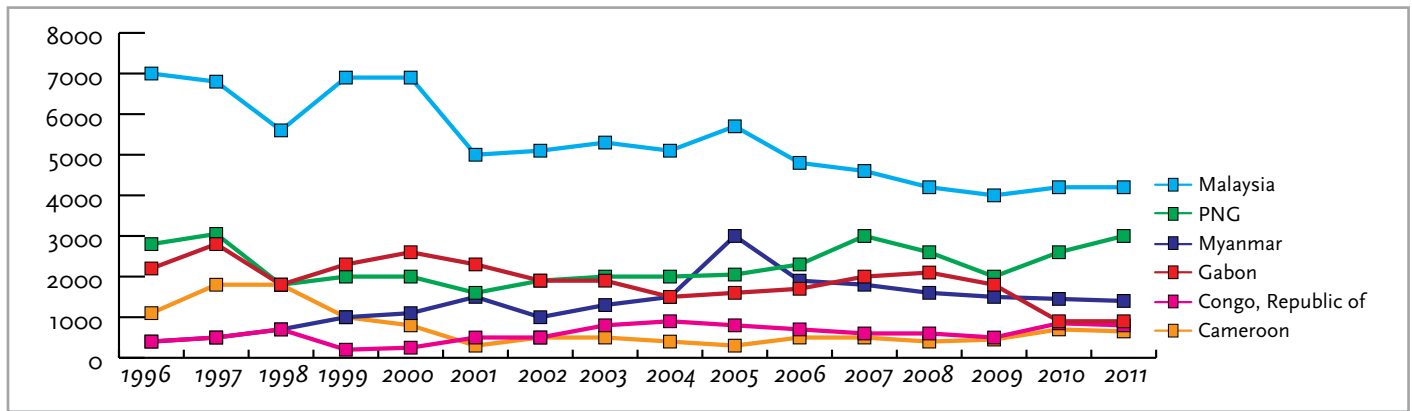
The amount of logs exported gives only a partial view of forest destruction. It is currently estimated that the total volume of trees killed by logging operations is 15 to 16 times the volume of timber exported.¹⁶⁷ This means that in order to export 3.1 million cubic meters of logs, like PNG did in 2012, 46 to 49 million cubic meters of wood has to be destroyed or extracted.¹⁶⁸

Despite PNG being such a major exporter, the forestry sector contributes to a mere 3 percent of PNG's total export

earnings.¹⁶⁹ Additionally, as pointed out by Tim Anderson, "the economic returns to customary landowners are poor. For example, local communities are paid \$11 per cubic meter of kwila wood, which typically returns \$240 in China. Meanwhile, the roads and bridges built by the loggers are not maintained and do not survive much beyond the logging operation."¹⁷⁰

Furthermore, the sector is managed in an unsustainable way, which is driving the rapid depletion of PNG's resources and destruction of the environment. PNG's forests are facing serious threat from the increase of logging operations and the development of large-scale agriculture. Deforestation and forest degradation have been increasing at a worrying rate over the past two decades. According to the PNG Forest Authority, "If the trend continues, it is estimated that by 2021, 83 percent of the accessible forest areas (53 percent of its total forested area) will be gone or severely damaged."¹⁷¹ As stated earlier, given the heavy dependence of Papua New Guineans on their forest resources, such an evolution is not just an environmental issue but also raises serious concerns for the livelihoods of millions of rural people.

Figure 4: Tropical Log Exports (cubic meters), Major Exporters, 1996-2011¹⁶⁶



While there are no recent quantitative assessments of deforestation, the SABLs have resulted in a sudden and dramatic increase in the amount of land under logging activities, which is posing a serious threat to PNG's forests.¹⁷² According to Paul Barker, Director of the Institute of National Affairs in PNG, more than one-third of PNG's logging exports in 2012 came from SABLs, the majority of which may not have received approval from customary landowners.¹⁷³

Given the strong reliance on forest resources, the rapid path of deforestation in PNG is of concern for the livelihoods of the people of PNG and future generations. Yet alternatives to current practices are known.

In 2009, the government of PNG announced its intention to eliminate round logs exports by 2010.¹⁷⁴ The goal was to develop local processing of wood in order to develop the local economy and increase the value of the wood exports through local processing activities. This has been nothing more than wishful thinking, given that the export of round logs has actually increased dramatically since 2009 and wood processing has never taken off.

Another policy issue is the potential of community- and village-based forestry as a sustainable alternative to current logging practices. Promoted by several NGOs in PNG, eco-forestry has proven viable in many areas of PNG and is one avenue in which customary owners can take charge of managing their customary land and resources.

"Much of the accessible forest areas have been logged out or cleared for agriculture projects and other land uses. Only minimal accessible forest areas are remaining, much of it in the hinterland, and difficult to reach."

—Forest National Plan, PNG Forest Authority, 2012

However, the government does not promote or invest in the areas of local processing and small to medium-scale production. As observed by local NGOs: "[the government] has always been pro large-scale industrial logging."¹⁷⁵

A RICH, DIVERSIFIED, AND PRODUCTIVE AGRICULTURE

The monocropping of cereals is one key driver of chronic food insecurity and environment degradation in Africa and around the world.¹⁷⁶ As a result, many development programs are geared toward crop diversification, which ensures more nutritious and balanced diets as well as more resilient livelihoods. Certain crops, such as sweet potato, are promoted by major international programs in Africa because of their nutritional value¹⁷⁷ as well as resilience to droughts and minimal requirements in terms of labor and chemical fertilizers.

PNG does not currently face problems with food insecurity. Sweet potato is already widely consumed in the country, where it is a major crop for subsistence farmers. As stated previously, the high diversity of Papua New Guinean agriculture is a critical asset to ensure food security and good nutrition.¹⁷⁸

The wealth of the traditionally diverse agriculture in PNG does not mean it is backward and closed to innovation. As discussed earlier, PNG farmers do adopt new crops and are active economic players who combine subsistence agriculture with all kinds of cash crops that are sold in domestic markets or exported. Trade is vibrant in the country, with very substantial domestic trade relationships within and between communities—between rural communities and urban centers as well as between highlands and lowlands farmers. As pointed out by Tim Anderson, one of the few academics who has studied and quantified this local economy, policymakers and development experts who tend to focus on export crops rarely account for the value of domestic trade.¹⁷⁹



Anderson's research provides critical information on the reality of agriculture in PNG. It shows the value of subsistence farming, an activity that generally includes some sale of the crops but does not require surrender or leasing land. Subsistence farming provides a level of resources that can't be matched by the returns people would obtain through the royalties received against the loss of their land and formal employment in the plantation sector. Conservative estimates show that returns from subsistence agriculture are three-fold the amount that people would receive when leasing the land to so-called developers.¹⁸⁰

Although family farming constitutes a critical asset for the country, the current strategy of the government is ignoring the economic value and the wealth of smallholder farming in PNG. Beyond "freeing up land for development" and virtually giving it away to foreign "developers," the government's priority is the development of plantations and monocrops. An official from the Department of Agriculture and Livestock in Wewak stated the department's objective completely unambiguously: "We want people to be monocroppers!"¹⁸¹

This statement reflects that the Department of Agriculture and Livestock is close to an empty shell, with no budget, little staff, and few technical resources. This is the result of a policy of corporatization and privatization of agriculture since independence. The department has lost most of the responsibilities that are generally in the hands of such an

agency in the rest of the world. As a result, most agricultural functions in PNG are managed by cash-crop based corporations such as the Oil Palm Industry Corporation (OPIC), the Coffee Industry Corporation (CIC), or the Kokonas Industri Koporesen (KIK, for copra).¹⁸² These corporations are managed as private and independent entities focused on individual crops. This corporatization of agriculture has had several consequences. While the promotion of particular crops is important to support farmers' production and access to market, the lack of broad oversight of the different corporations doesn't leave room for actual policymaking in agriculture. The model also tends to overlook non-export crops, either used as subsistence or sold in local markets for local consumption.¹⁸³

The development policy pursued in PNG goes against the vital interests of a large portion of the population, which enjoys the food security provided by a rich and diverse agriculture.

PEACE AND SOCIAL COHESION

PNG still has the scars of the violent conflict that took place on the island of Bougainville around the operations of a large copper mine from 1988 to 1997. The conflict was driven by the lack of transparency in the agreement between the government and the operator, and by dissatisfaction about benefit-sharing agreements between the large copper mine and local communities. All these factors and more are at play again with the current land grabbing in PNG.



Kennedy Marika, a farmer (left), and Aipapu Marai, ward councillor (right), from Sausi village in Madang are opposing the expansion of palm oil plantations on their land

BOX 7: THE WORLD BANK'S WARNING OVER CONFLICTS RESULTING FROM THE GROWING COMPETITION FOR LAND IN PNG¹⁸⁴

The growing competition for land is creating divisions between clans, within clans, and within families that can easily lead to violence.

- The shift over the past 30 years from an economy based almost entirely on subsistence agriculture to one where the economy is dominated by a limited number of natural resource exploitation projects has put stress on relationships between different social groups—between clans, within clans, and through the informal compensation system.
- The introduction of large-scale natural resource projects which benefit a select, limited group, but stimulate little growth in the remainder of the economy have put stress on this system for maintaining a social and economic equilibrium. Enclaves have emerged around these projects, creating 'haves' and 'have nots,' generating intense competition and aggravating perceptions of injustice amongst these groups who benefit directly, and those who don't.
- In particular, the introduction of large-scale resource projects has created disputes and competition around access to land. [...]
- The leasing of land to private companies under the 1996 Land Law has led to about 11 percent of communally held land being used by private companies for agriculture or logging. The accompanying increase in the value of land is effectively giving clans more wealth to fight over; it has likely contributed to an observed increase in disputes between clans over land.
- The lease of communal land also has deepened divisions within clans. In some cases co-owners of communal land have either not given informed consent, or have been persuaded to go along with the acquisition without understanding the full implications. [...] Manipulation of land ownership by political and economic elites also takes place, and can create tensions between co-owners who do not always agree on the transaction.
- The introduction of large-scale resource projects that rely on land acquisition has also contributed to intra-family disputes. In such cases family members, often young men, disagree with decisions over leasing of land or the distribution of royalty payments within the extended family. There is evidence that disputes over land within families are now overtaking intra-clan disputes in their number.

—Country Partnership Strategy for the Independent State of PNG for the period FY 2013–2016, World Bank, 2012

The OI-PANG field investigations confirmed what has been widely reported in recent years: the current wave of land deals has resulted in increased conflict within and between local communities, as well as spurring growing resentment with the national government. The research team directly witnessed violent tensions between communities resulting from disputes over land deals.

Foreign companies use local intermediaries who often mislead people and use payments in cash or presents to secure consent. As uncovered by the Col, in a number of SABLs, individuals made deals with foreign companies on land that was not theirs and was actually used by other communities.

In its last Country Strategy document, the World Bank rightly identified such conflicts and disputes as a major threat to peace, social cohesion, and development in the country (see Box 7).

The policies undertaken by the government in reference to land, agriculture, and forestry—and the current MTDP in particular—largely violate the constitution of the country. These policies result in the grabbing of PNG's resources by foreign entities, leaving the government with little control and management capacity. The constitution has strong provisions for protecting PNG's land rights, sovereignty, self-reliance, and natural resources. The constitution also has protective clauses with regard to the control of foreign capital, the national control of the economy, and sustainable management of natural resources for the benefit of the population.

The country has moved far from the vision of post-independence leaders and thinkers who conceived of the protections offered in the constitution that was adopted in 1975. The country's current leaders have chosen a different path, which is not only destroying the environment and people's livelihoods but also the fragile foundations of PNG's democracy.





Palm oil nursery after deforestation, East Sepik

Conclusion: No Change in Sight

The 2012 change of government and the work of the Commission of Inquiry created hope that the land grabbing in Papua New Guinea would stop. Those expectations were initially reinforced when the new Prime Minister Peter O'Neill recognized in October 2012 that the country had made a fundamental mistake with the SABLs.¹⁸⁵

On September 18, 2013, two years after the Col started its investigation and following months of questioning about the reasons for the non-release of the report, Prime Minister Peter O'Neill tabled the report in parliament. He said that the report revealed a shocking trend of corruption and mismanagement, and that the policy of using SABLs to free up customary land “had failed miserably.”

According to the report,¹⁸⁶ only four out of the 42 SABLs examined had the consent of local landowners and consisted of viable agricultural projects. While acknowledging the major failure of the government and the administration, the prime minister chose to not question the policy that led

to this debacle and did not announce any steps to cancel the fraudulent leases nor to stop the illegal logging. On the contrary, he announced the establishment of a task force “to develop a new legislative framework to free up customary land for development.”¹⁸⁷

By calling for a new legislative framework, Prime Minister O'Neill is deliberately ignoring the true nature of the problem with PNG's land-freeing development strategy and implementation. The problem does not lie in the law. Like previous assessments cited in this report, the Col report clearly indicates that PNG shows no capacity to “free up land for development” in a manner that will be beneficial to landowners and operate within people's constitutional rights.

While a new task force is created, the looting of the country's resources continues in plain sight of the government and—in the absence of any action to stop it—with its de facto stamp of approval.

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