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## **PAPUA NEW GUINEA**

### **GLOBAL WITNESS' SUBMISSION TO THE 25TH SESSION OF THE UNIVERSAL PERIODIC REVIEW**

September 2015

*Founded in 1994, Global Witness investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses.*

## **I. FOLLOW UP TO THE PREVIOUS REVIEW**

1. At the time of its first UPR in 2011, PNG accepted recommendations to increase its scrutiny over extractive and logging industries and associated companies and businesses, with a view to reducing negative impacts on the environment and the resulting curtailment of human rights.<sup>1</sup> It also committed to provide adequate judicial review and compensation for cases of government projects that have negative environmental impact on the land and resources of traditional landowners and promote engagement with local communities in the decision-making processes of any government project<sup>2</sup>; to take effective measures to prevent abuse and violence by the police force<sup>3</sup> and bring perpetrators to justice and ensure that victims benefit from full reparations<sup>4</sup>; and to ensure protections against child labour.<sup>5</sup>
2. While initial positive steps were taken to address some of these recommendations, this submission details PNG's shortcomings in fulfilling its commitments and draws particular attention to the significant proliferation in violations of PNG citizens' rights to land and natural resources, as enshrined in its national laws and international commitments, and the resulting systemic violations of its citizens' human rights, both leading up to and in the time since its 2011 UPR.

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. The right to land and other natural resources**

1. PNG's Constitution and legal framework enshrines its citizens' right to their customary land and resources, with 97% of its land belonging to clans and families based on customary ownership.<sup>6</sup> Land is an important form of social security, as 85% of the population is rural and depends on smallholder agriculture and natural products harvested from forests, rivers and the sea for daily subsistence.
2. However, since 2003, the Government has handed over 5.2 million hectares of this customary land - approximately 12 % of PNG's total land mass - to mostly foreign-controlled corporate entities through the abuse of a legal mechanism known as a Special Agriculture and Business Lease (SABL). The leases were usually issued for the maximum period of 99 years, meaning land has been alienated for several generations. In most cases, this appears to have happened without the knowledge

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<sup>1</sup> Recommendation 79.58 from PNG's UPR in 2011

<sup>2</sup> Recommendation 79.51 from PNG's UPR in 2011

<sup>3</sup> Recommendations from PNG's UPR in 2011: 78.50, 78.56, 78.57, 78.58, 78.59 and 79.40

<sup>4</sup> Recommendation from PNG's UPR in 2011: 79.41

<sup>5</sup> Recommendations from PNG's UPR in 2011: 79.27 and 79.37

<sup>6</sup> Constitution of the Independent State of Papua New Guinea, Preamble, Art. 5(4), Section 53 and Land Act 1996, Sections 133-135; for an overview, refer to Filer 2011 in section IV of this submission.

or consent of many of the landowners whose land was being leased away, in principle, for large-scale agricultural projects.<sup>7</sup>

3. Many SABLs have been used for industrial logging rather than their intended purpose of promoting agricultural development, with logging operations under SABLs accounting for roughly 1.2 million m<sup>3</sup> of exported timber by 2014 – approximately one third of PNG’s total timber exports.<sup>8</sup> Expert analysis suggests that many of the agriculture projects proposed under SABLs had low viability and were likely to be fronts for logging.<sup>9</sup> Indeed, in many SABLs, the area of forest subjected to logging far exceeds that being cleared for agricultural purposes according to analysis of satellite imagery carried out by Global Witness; in certain examples where extensive logging has occurred over the course of several years, there is little evidence of significant agricultural activity.<sup>10</sup> Logging operations under SABLs are carried out under forest clearance permits known as Forest Clearance Authorities (FCAs) with no obligation to consider environmental sustainability, resulting in severe environmental degradation.
4. In March 2011, the UN High Commission for Human Rights (UNHCHR) Committee to Eliminate Racial Discrimination sent an early warning letter to the Government of PNG expressing concern about “the threat of alienation through the Government’s practice of granting long-term leases of indigenous lands to non-indigenous companies without adequate consultation and consent of the indigenous landowners” as well as “the alleged denial of access to judicial remedies, including compensation, for indigenous landowners suffering environmental destruction of their lands and resources”.<sup>11</sup>
5. Also in March 2011, academics and civil society organisations from PNG and abroad met in Cairns, Australia and drafted the Cairns Declaration urging the PNG government to declare and enforce an immediate moratorium on the creation of new SABLs, halt the issuing of new FCAs<sup>12</sup>, and suspend existing FCAs.<sup>13</sup>

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<sup>7</sup> The illegal issuance of SABL thus violates UNDHR Article 17 “*The freedom from arbitrary prevention of property*” and ICESCR Article 1(2) “*All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*”

<sup>8</sup> Based on Global Witness’ analysis of official log export data

<sup>9</sup> Nelson et al, *Oil Palm and Deforestation in Papua New Guinea*, Conservation Letters, Vol 7, Issue 3, pages 188-195, May/June 2014; Numapo, John, Final Report, COI into Special Agriculture and Business Lease (SABL). 24 June 2013. Available at:

<http://www.coi.gov.pg/documents/COI%20SABL/Numapo%20SABL%20Final%20Report.pdf>

<sup>10</sup> See 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*, November 2014. Available at:

<https://www.globalwitness.org/campaigns/land-deals/papua-new-guinea-one-biggest-land-grabs-modern-history>

<sup>11</sup> United Nations High Commission for Human Rights, *Early warning and urgent procedure letter to the Permanent Mission of Papua New Guinea to the United Nations*, 11 March 2011. Available at: [http://www2.ohchr.org/english/bodies/cerd/docs/PapuaNewGuinea\\_11March2011.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/PapuaNewGuinea_11March2011.pdf)

<sup>12</sup> A permit required for clear-felling areas of forest larger than 50 hectares.

6. In July 2011, following this international outcry over the legality of SABL allocations and the harms they posed to rural communities and the environment, the government took positive steps by establishing an independent Commission of Inquiry (COI) to review most of the SABLs. However, the COI's final report contains recommendations for only 46 out of the 75 SABLs reviewed as one of the three Commissioners failed to submit his findings. The COI published its final report in June 2013 citing widespread abuses and fraud by government officials and companies involved, and recommending 42 out of the 46 leases to be revoked, suspended, or otherwise modified to address systemic failures to follow legal and administrative procedures, many involving the process of acquiring informed consent from affected landowners.<sup>14</sup>
7. These findings were confirmed by Global Witness' interviews and communications in 2014 and 2015 with local civil society groups and members of communities affected by several SABLs where extensive logging and irreparable environmental damage on customary land has been taking place.
  - i. In the Pomio District in East New Britain Province there has been vocal landowner opposition to an oil palm project currently involving three SABLs covering roughly 420 km<sup>2</sup> of customary land, as evidenced by testimony from community leaders collected by Global Witness, letters of objection from community representatives, protests, blockades and repeated legal challenges, as summarized by several of the reports listed in part IV of this submission. Despite the disputed nature of the leases, extensive logging operations have continued with support from police who have used violence and intimidation to suppress landowners' efforts to protect their land and forests (see section B, paragraphs 2-3). Approximately 80 km<sup>2</sup> of customary land including large areas of pristine rainforest and land used for small-scale agriculture by local communities has been cleared to make way for an industrial oil palm plantation. Global Witness interviewed numerous community representatives including several elected officials, who stated that their customary land was illegally leased without their knowledge or consent. Global Witness has received testimony and seen evidence of forgery in documents meant to demonstrate landowner consent in the case of one SABL, and community members in a neighbouring SABL have made similar allegations of fraud and forgery relating to documents underpinning the lease of their land.
  - ii. In relation to an SABL in northern East Sepik province, both the COI and a subsequent court case won by a group of landowners challenging the legality of the SABL – currently under appeal with the Supreme Court – found that the

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<sup>13</sup> The Cairns Declaration, available at:

<http://www.greenpeace.org/australia/Global/australia/images/forests/Cairns%20Declaration.pdf>

<sup>14</sup> Numapo, John, Final Report, COI into Special Agriculture and Business Lease (SABL). 24 June 2013. Available at: <http://www.coi.gov.pg/documents/COI%20SABL/Numapo%20SABL%20Final%20Report.pdf>

majority of landowners had not been meaningfully consulted nor consented to the SABL, which covers approximately 1160 km<sup>2</sup>, most of it on customary land.<sup>15</sup> The COI's finding that the majority of landowners had not given their consent is consistent with testimony Global Witness' collected in 2014 from landowners in the SABL area.<sup>16</sup> As in the situation in Pomio District described above, community members attested to the use of armed police to protect logging operations from opposing landowners and, in some cases, carry out violence and intimidation against them.

iii. The COI's findings, NGO and media reports, and Global Witness' interviews with civil society activists familiar with the situation in other SABLs confirm that this pattern of peoples' lands being taken away without consultation or consent was widespread in the issuance of SABLs. As well as the impacts on livelihoods caused by alienation of traditional lands, extensive logging under SABLs and other types of licenses is causing irreparable damage to the environment that rural communities depend on for their subsistence.<sup>17</sup> In interviews with Global Witness, community members described the deterioration in the quality of their natural water sources and the loss of animals and other sources of food as a result of the logging operations.

8. Although the Government stated in June 2014 that it would follow the COI's recommendations<sup>18</sup>, more than a year later it has yet to take meaningful action. To date, not a single active logging operation in an SABL has been halted, with timber exports under SABLs reaching their highest level in 2014.<sup>19</sup>

## **B. Violence and impunity of the police force**

1. The issue of human rights abuses perpetrated by the police force was raised repeatedly by UN member states during PNG's UPR in 2011, and seven recommendations pertaining to addressing the situation were accepted by PNG.<sup>20</sup> However, the last four and a half years have seen the continuance of human rights abuses perpetrated by the police force in logging concessions.

2. In the Pomio District of East New Britain province in October 2011, peaceful local community protests against logging operations under SABLs on their land were

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<sup>15</sup> Court decision summarised by PNGexposed Blog, *Court reveals woeful and unlawful lack of consultation and consent in SABL process*, 11 September 2014. Available at:

<https://pngexposed.wordpress.com/2014/09/11/court-reveals-woeful-and-unlawful-lack-of-consultation-and-consent-in-sabl-process/>

<sup>16</sup> Mirou, Nicholas. *Commission of Inquiry into Special Agriculture and Business Lease (C.O.I SABL)*. June 2013. P. 836. Available at: <http://www.coi.gov.pg/documents/COI%20SABL/Mirou%20SABL%20Final%20Report.pdf>

<sup>17</sup> Violating UNDHR Article 25 and ICESCR, Article 1(2).

<sup>18</sup> Act Now, *The Full NEC Decision on the SABL land grab*, 27 June 2014. Available at: <http://www.actnowpng.org/content/full-nec-decision-sabl-land-grab>.

<sup>19</sup> Based on Global Witness' analysis of official log export data

<sup>20</sup> Recommendations from PNG's UPR in 2011: 78.50, 78.56, 78.57, 78.58, 78.59, 79.40 and 79.41

violently suppressed by the police. In response to widely publicised incidents of police brutality, some positive steps were taken in December 2011 when the Commissioner of the National Constabulary announced the withdrawal of police from all sites of logging operations, explaining that “when a private organisation takes over what are primarily responsibilities of the state such as the provision of transportation, board and lodging, then there are bound to be instances of bias or favouritism towards the sponsor.” Yet as described below, in 2014 Global Witness observed first-hand and heard testimony confirming that logging operations across PNG continue to be protected by police receiving financial and other support from logging companies, with police often housed in logging camps.

3. Following public outrage over police abuses in Pomio District, an independent inquiry involving members of the government and civil society was established in 2011. It published its findings in 2014, concluding that the police had perpetrated “harassment, intimidation, and serious assault of ordinary and defenseless villagers using dangerous weapons...and inflicting serious injuries on the victims in the process” amounting to “serious indictable criminal offenses”.<sup>21</sup> To our knowledge, there has been no follow-up prosecution of any police involved in these human rights abuses. Testimony by local villagers and a visit by Global Witness to a logging camp in 2014 confirmed that there continues to be a permanent police presence protecting logging operations from opposing landowners despite the 2011 directive by the National Constabulary. Landowners Global Witness spoke with cited the police presence as the main factor in preventing them from defending their rights to their customary land.
4. Global Witness has documented through direct observation and interviews with members of civil society, local villagers, and police informants familiar with the situation in other SABL areas, the common use of armed members of the official police force and, in some cases, so-called “auxiliary” or unofficial police under the direction of police officers, to protect logging operations from landowner opposition, including through the use of intimidation and violence. A senior officer who had been stationed at logging camps for several years, interviewed by Global Witness in 2014 on condition of anonymity, attested to receiving money, and goods and services, including alcohol, from the logging company. The officer believed this to be common practice amongst other officers and done with the knowledge and complicity of his Provincial Police Commander.

### **C. Labour conditions**

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<sup>21</sup> Independent Fact Finding Mission, *Investigation of Police Brutality – West Pomio, ENBP*, 19 February 2013. Available at <https://pngexposed.files.wordpress.com/2014/11/investigation-of-police-brutality-west-pomio.pdf> [Accessed 05 May 2015]. These abuses violate UNDHR Article 3 *The right to life, liberty and security of person* ; Article 9 *The freedom from arbitrary arrest*; Article 20 *“The right to freedom of peaceful assembly and association”*

1. Global Witness' investigations in 2014 revealed alarming working conditions and evidence of child labour at an oil palm plantation in the Pomio District of East New Britain province.<sup>22</sup> The plantation is being established under one of the SABLs referenced in section A of this submission. In August 2014, Global Witness documented workers being exposed to concentrated synthetic fertilisers for protracted periods without gloves, masks, shoes or other protective clothing. Women and children were seen completing manual tasks such as packing fertilizer into bags with their bare hands at a plantation facility. The International Labour Organisation states that common health risks associated with exposure to these fertilisers includes burns, dermatitis, respiratory and pulmonary problems.
2. Local community members and a school headmaster from the area told Global Witness that increasing numbers of school-aged children were not attending classes because they were working on the plantation.

### III. RECOMMENDATIONS

Global Witness calls on the Government of Papua New Guinea to:

#### *The right to land and natural resources*

1. Cancel all SABL leases, and related titles and logging permits, found by the Commission of Inquiry to violate customary land rights or involve other legal violations, and return the land to the customary landowners;
2. Halt logging operations in all other SABLs pending the completion of an independent and transparent review process of all SABLs that were not reviewed by the Commission of Inquiry, cancel any leases, and related titles and logging permits, found to violate customary land rights or involve other legal violations, and return the land to the customary landowners;
3. Initiate legal and administrative proceedings to hold government officials and companies to account for violating PNG laws in the issuance of SABLs, including prosecutions where there is evidence of criminal activity.

#### *Violence and impunity of the police force*

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<sup>22</sup> See Global Witness, *Papua New Guinea Must Not Renew License to Deforest Due To Legal Irregularities, Social and Environmental Harm*, September 2014. Available at: <https://www.globalwitness.org/archive/papua-new-guinea-must-not-renew-license-deforest-due-legal-irregularities-social-and/>

1. Implement the 2011 directive from the National Constabulary to remove police from logging camps and prevent their receiving financial or other types of support from logging companies.
2. Take swift and appropriate administrative and/or legal action against police where misconduct or criminal activity has been documented. In the case of incidents in Pomio District in 2011 involving human rights abuses, immediately follow the recommendations of the independent investigative report published in 2014.

#### *Labour conditions*

1. Take proactive measures to fully enforce child labour laws, particularly in industrial plantation operations, and undertake appropriate sanctions where laws are found to be violated;
2. Increase oversight of labour conditions in logging concessions and oil palm plantations to ensure adequate safety standards in compliance with national law and international human rights commitments, and undertake appropriate sanctions where laws are found to be violated.

#### **IV. DOCUMENTS FOR FURTHER REFERENCE**

ALERT, *A plea to stop the land-grabbing in New Guinea*, 24 October 2014. Available at: <http://alert-conservation.org/issues-research-highlights/2014/10/24/a-plea-to-stop-the-land-grabbing>

Chatham House, *Illegal Logging in Papua New Guinea*, 2014. Available at: <https://www.chathamhouse.org/publications/papers/view/198666>

Filer, Colin. *The Political Construction of a Land Grab in Papua New Guinea*. Australian National University. September 2011. Available at: <https://digitalcollections.anu.edu.au/handle/1885/9709>

Greenpeace, *Up for Grabs*, 2011. Available at: <http://www.greenpeace.org/australia/en/mediacentre/media-releases/forests-media-releases/Up-for-Grabs---Greatest-land-grab-in-PNG-history-exposedUp-for-Grabs---Greatest-land-grab-in-PNG-history-exposed/>

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*, November 2014. Available at: <https://www.globalwitness.org/campaigns/land-deals/papua-new-guinea-one-biggest-land-grabs-modern-history/>

Oakland Institute, *On Our Land Modern land grabs Reversing independence in Papua New Guinea Oakland*, 2013. Available at: [http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_Report\\_On\\_Our\\_Land.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Report_On_Our_Land.pdf)