NEW LAND GRAB IN PAPUA NEW GUINEA

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It is often asserted that ninety-seven percent of PNG's total land area remains under customary ownership, just as it was when PNG gained its independence from Australian colonial rule in 1975. However, in the eight years from 2003 to 2010, almost ten percent of PNG's total land area was apparently alienated from its customary owners and transferred to private companies through something commonly known as the "lease–leaseback scheme." This paper documents the origin and evolution of this scheme, the pattern of recent transactions that have so massively enlarged its scope, and the combination of economic and political factors that help to explain this apparent land grab. The paper ends with some remarks about the sources of opposition to this land grab, and the possible social and political consequences of its continuation.

Introduction

In its present form, which dates from 1996, Papua New Guinea's (PNG's) Land Act contains specific provisions that enable the state to lease customary land from the customary landowners and then lease it back to other persons or organizations for periods of up to ninety-nine years. To be more specific, section 11 of the Act says that the Minister "may lease customary land for the purpose of granting a special agricultural and business lease of the land," whereas section 102 says that "a special agricultural and business lease shall 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." Section 11 also says that "an instrument of lease in the approved form,

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executed by or on behalf of the customary landowners, is conclusive evidence that the State has a good title to the lease and that all customary rights in the land, except those which are specifically reserved in the lease, are suspended for the period of the lease to the State." In the eight years from 2003 to 2010, Special Agricultural and Business Leases were issued over a total area in excess of 4.2 million hectares, which is almost ten percent of PNG's total land area. But it is still commonly asserted that ninety-seven percent of PNG's total land area remains under customary ownership, just as it was when PNG gained its independence from Australian colonial rule in 1975 (GPNG 2007b; AusAID 2008).

My own interest in the operation of the so-called lease–leaseback scheme intensified in April 2009, when I came across a copy of the PNG government's National Gazette announcing that a lease of this kind over 239,810 hectares in West Sepik (or Sandaun) Province had been granted to a company called Nuku Resources Ltd. I found this news especially interesting because Nuku District contains the village in which I first conducted ethnographic fieldwork in the early 1970s (see Filer 1996). At that time, the district contained around two dozen distinct language groups with an average membership of just over 1,000 people, which made it appear to be one of the most culturally diverse or fragmented areas in the whole country. Since then, the boundaries of PNG's old administrative districts have been brought into alignment with those of parliamentary electorates; hence Nuku District today contains an even larger number of language groups and traditional political communities, with a total population more than three times the size of the one that lived within the old district boundaries around the time of independence. I then figured out that the area that lay within these old boundaries was identical to the area over which a single lease had now been granted to a single company. This area is now represented by three of the four local-level governments that operate within the boundaries of the current Nuku Open Electorate. A search of the company records held by PNG's Investment Promotion Authority revealed that Nuku Resources Ltd. was incorporated in the month before the leaseback was granted, with two local villagers as its only two shareholders and directors. The two villages in which these men reside are located in the territory of one of the two dozen language groups that occupy the land over which the company now holds a 99-year lease, and this "tribal territory" also happens to house the headquarters of one of the three local-level governments that now represent the customary owners of this land. From my earlier fieldwork in the area, I also recalled that this "tribe" and "my tribe" were traditional enemies. Therefore, I could not help but wonder how the customary landowners of the village and the larger traditional

political community into which I had then been adopted, not to mention those of more than twenty other language groups, could now have agreed to surrender their land rights to these two men.

In January 2010, the executive director of PNG's Institute of National Affairs, a private sector think tank, published an article in the *Post-Courier* newspaper suggesting that the lease–leaseback scheme was now little more than a scam that was "jeopardising landowners' customary rights over vast areas of the country, without their apparent informed consent" (Barker 2010). According to this article, the discretionary powers granted under section 102 of the Land Act had been systematically abused, and the only way to remedy the situation would be to revoke these powers, cancel the leases that had been granted, and move ahead with recently enacted legislation that would enable customary landowners to register titles to their own land before granting leases to anyone else. In the next section of this paper, I review the history of the lease–leaseback scheme between its inception in 1979 and the installation of the Somare government after the general election of 2002. I shall then summarize the available evidence on the operation of the scheme in the more recent past, with particular attention to its role in the promotion of so-called agroforestry projects. Finally, I assess the different sources of political opposition to the way in which the scheme currently operates and briefly speculate about the social and political impact of its continued operation in its present form.

Use and Abuse of the Lease–Leaseback Scheme, 1979–2002

The lease–leaseback scheme was originally devised as a stop-gap measure to compensate for the absence of any effective legal mechanism for the registration of customary land titles in a situation where land titles of some kind were seen as an essential precondition for commercial agricultural development, but ninety-seven percent of all the land in PNG was still unregistered customary land.

In theory, customary landowners could ask the Land Titles Commission to approve the creation of new freehold titles over their land under the Land (Tenure Conversion) Act of 1963, but the area converted in this way was less than 10,000 hectares in 1979 (Cooter 1989, 14). In 1970, the Australian colonial administration had proposed to repeal the Land Registration (Communally Owned Lands) Ordinance of 1962, which had been totally ineffective, and to introduce a new set of laws to facilitate the systematic registration of customary land, but these measures were withdrawn in the face of opposition from indigenous members of the House of Assembly (Sack 1974). In 1973, the year of self-government, Chief

Minister Michael Somare instituted a Commission of Inquiry into Land Matters that recommended an alternative legal mechanism for the registration of customary land by "incorporated land groups" (GPNG 1973; Bredmeyer 1975; Ward 1983). However, although the Land Groups Incorporation Act was passed in 1974, no consequential amendments were made to the legislation relating to the registration of land titles. The PNG Development Bank (originally established in 1967) continued to lend money to individual farmers, local business groups, or landowner companies on the basis of "Clan Land Usage Agreements" signed by clan leaders who were recognized as "agents" under the Land Ordinance of 1966 (Gunton 1974). However, the development of land covered by such agreements was apparently constrained by the legal prohibition on any private dealings between citizens and noncitizens in respect of land without registered titles (Cooter 1991). The introduction of the lease–leaseback scheme was, therefore, justified as a way of circumventing this problem until legal provision was made for the registration of customary land by the customary owners (Hulme 1983).[1]

Between 1979 and 1987, the lease–leaseback scheme was used to secure credit for the conversion of roughly 4,000 hectares of land into 20-hectare coffee blocks in the central highlands and for a smaller number of agricultural development projects in the lowland provinces (McKillop 1991; Ward 1991). By 1989, the area mobilized although this scheme had grown to 5,000 hectares in the coffee-producing highland provinces, with a further 1,000 hectares allocated to cocoa blocks in coastal areas (Thompson and MacWilliam 1992, 145). Self-interested manipulation of the scheme by local politicians and businessmen was noted within a few years of its introduction (Hulme 1983). The 20-hectare coffee blocks were seen in some quarters as a vehicle for the emergence of a rural capitalist class in the central highlands (Stewart 1987), but there is also evidence that this subordination of labor to capital was only partial, because the customary owners often refused to work as wage-laborers on the new coffee blocks and took to stealing the coffee cherries instead (Thompson and MacWilliam 1992, 148). This did not necessarily mean that local resistance was responsible for the slow rate of conversion. As in the case of the Land (Tenure Conversion) Act, the number of applications to participate in the scheme exceeded the state's willingness or ability to process them, and it is not even clear how many formal land titles were actually issued during its first decade of operation (Cooter 1989; McKillop 1991; Power 1991; Ward 1991). In 1987, the lease–leaseback scheme was streamlined by removing the need for proposals to be advertised for public comment (Larmour 1991, 61), but this made little immediate difference to the number of proposals that were actually implemented.

The lease–leaseback scheme received new life in 1998, when PNG's oil palm industry started using it to develop so-called mini-estates on customary land around the margins of the government land on which the main ("nucleus") oil palm estates and associated land settlement schemes had previously been established. For this purpose, a former Land Titles Commissioner, Norm Oliver, was engaged as a consultant to the oil palm industry to organize what he has described as a sixteen-step process through which the customary landowners are first incorporated under the terms of the Land Groups Incorporation Act, lease their land to the state, lease it back from the state, and then grant subleases to the nucleus estate operators on terms negotiated between the parties (Oliver 2001). The largest single mini-estate to be created in this way covered 6,000 hectares of land west of the Kulu River in West New Britain Province. In this instance, the process was complicated by the need for a separate application to be made to the PNG Forest Authority for a Timber Authority that would enable a logging company to clear the land of its existing secondary forest cover (GPNG 2000), but the lease–leaseback arrangement had the active support of the West New Britain Provincial Government because of the latter's equity stake in New Britain Palm Oil Ltd. (NBPOL). Once Special Agricultural and Business Leases had been issued to four land groups representing the customary owners of this area, each land group issued a forty-year sublease to NBPOL. The period of the sublease was based on the assumption that oil palm has a twenty-year life cycle. At the end of the forty-year period, the landowners will have the option of renewing all the lease arrangements with NBPOL, granting subleases to another oil palm company, or allowing all the leases to lapse. By the end of 2000, mini-estates with a combined area of 10,401 hectares had been established in the vicinity of three of the five oil palm schemes in PNG, and plans were afoot to convert an additional 16,620 hectares under the lease–leaseback scheme (Oliver 2001, 69). By the end of 2010, the area converted or in process of conversion to such mini-estates was roughly 32,000 hectares (Ian Orrell, pers. comm., January 2011).

The first well-known instance of the lease–leaseback scheme being abused to transfer a large area of customary land to a private company occurred in 1999, when two substantial portions of land in Oro Province were leased back to a local landowner company (Keroro Development Corporation), which had contracted a Malaysian logging company (Deegold [PNG] Ltd.) to clear-fell much of the area's native forest to make way for a series of dwarf coconut farms. Dissident landowners promptly challenged the whole deal in the National Court, and three years later, the court overturned the Special Agricultural and Business Leases and Timber

Authorities that had been granted over the area (Seri 2005). However, this may have been only a partial victory, because PNG Forest Authority records show that one of the portions in question is now regarded as state land, and the same landowner company has recently renewed its efforts to develop what is now known as the "Wanigela Integrated Agriculture Project" in partnership with another foreign company (OCEAN 2010).

Another irregular form of conversion took place in 2001, when 50,000 hectares of land in Morobe Province was leased back to an entity called Piu Land Group Incorporated. This area happened to embrace the 6,000 hectares of land over which an Exploration Licence had been granted to a mining company by the national government. In 1985, a provincial land court magistrate had determined that the area covered by the Exploration Licence belonged in equal measure to the Yanta and Hengambu communities, thus excluding the claims of a number of other communities, including the Piu people. The mining company helped the Yanta and Hengambu people to reassert their claims before the National Court, the Supreme Court, and the Land Titles Commission, but the dispute was still subject to litigation in 2010 (*Post-Courier*, 5 April 2005, 24 September 2009, 6 November 2010).

Leasebacks to Private Companies since 2003

Let me now turn to an examination of the evidence pertaining to the recent upsurge in the rate at which customary land has apparently been alienated under the lease–leaseback scheme. Tables 1–3 present a summary of the information contained in a spreadsheet maintained by the company, AKT Associates Ltd., which engaged Norm Oliver to organize the establishment of mini-estates for the oil palm industry in 1998. This spreadsheet is based

TABLE 1. **Leasebacks to private companies, 2003–2010.**

Year	No.	Total area (ha)
2003	1	11,800
2004	2	365
2005	3	44,094
2006	6	125,901
2007	16	475,618
2008	15	444,140
2009	10	1,154,842
2010	16	1,959,307
Total	69	4,215,848

Source: PNG National Gazette.

TABLE 2. **Size of areas covered by leasebacks to private companies, 2003–2010.**

Size of lease area	No.	Total area
Very small (< 100 ha)	6	330
Small (100–1,000 ha)	7	2,041
Medium (1,000–10,000 ha)	14	65,000
Large (10,000–100,000 ha)	30	803,161
Extra large (> 100,000 ha)	12	3,345,316
Total	69	4,215,848

Source: PNG National Gazette.

TABLE 3. **Provincial land areas covered by leasebacks to private companies, 2003–2010.**

Province	Total area	Area converted	% converted
Western	10,084,400	2,120,880	21.03
West Sepik	3,601,200	704,395	19.56
Oro	2,251,000	348,160	15.47
New Ireland	997,400	141,529	14.19
East New Britain	1,567,800	177,545	11.32
Central + NCD	2,995,700	299,750	10.01
East Sepik	4,475,200	196,824	4.40
West New Britain	2,101,200	89,794	4.27
Gulf	6,220,000	128,172	2.06
Morobe	3,309,000	8,374	0.25
South Highlands	2,569,800	358	0.01
West Highlands	889,700	65	0.01
Total		4,215,848	

Source: PNG National Gazette.

on notices published in the PNG government's National Gazette between the beginning of 2003 and the end of 2010. With one exception, the leasebacks documented in this spreadsheet are leasebacks to private companies not leasebacks to the land groups that supposedly leased their land to the state in the first instance. Thus, the spreadsheet does not contain any information about the type of lease–leaseback arrangement promoted by the oil palm industry. The exception is a lease of over 15,153 hectares of land that was granted to Godae Land Group Incorporated in October 2009. This lease is included in the spreadsheet because four other leasebacks to private companies in the same area of Western Province were gazetted on the same day, and therefore, it seems very likely that all five leases, with a combined area of 77,783 hectares, are part of a single scheme.

This is not the only case in which a number of leases over what appear to be adjacent blocks of land, or blocks in close proximity to each other, have been gazetted on the same day. In some cases, they have been granted to the same company. For example, in February 2007, seven leases over adjacent or proximate blocks of land in Central Province, with a combined area of 12,912 hectares, were granted to a Korean-owned company called Changhae Tapioka (PNG) Ltd. In February 2010, two leases over adjacent or proximate blocks in East New Britain Province, with a combined area of 53,480 hectares, were granted to a company called Tiriu (or Toriu) Timbers Ltd. Additionally in September 2010, two leases over adjacent or proximate blocks in Western Province, with a combined area of 619,759 hectares, were granted to a company called North East West Investments Ltd. Therefore, the total of sixty-seven leasebacks shown in Tables 1 and 2 is greater than the number of schemes or projects for which the land has been converted.

It is possible that there have been some leasebacks to private companies over the period from 2000 to 2010 that have not been captured in the spreadsheet maintained by AKT Associates because relevant notices in the National Gazette have been overlooked. Therefore, the total amount of land alienated to private companies over this decade may be greater than the 4.2 million hectares shown in Tables 1–3. On the other hand, there is a more remote possibility that some of the leases represented in these tables do not cover mutually exclusive areas of land, either because a lease has been revoked and later replaced by another one over the same area, or else because of a muddle in the Surveyor-General's branch of the Lands Department that has created more than one extant lease over a single area. There is known to be one case in which the National Court has revoked a leaseback over an area of 211,600 hectares in Oro Province which was granted to a company called Musida Holdings Ltd. in January 2009. After the court made its ruling in January 2010, a second leaseback over a larger area of 320,060 hectares was granted to the first plaintiff in the case, Musa Valley Management Company Ltd., which seems to have included the area that was covered by the first lease. The lease to Musida Holdings has therefore been excluded from the dataset summarized in Tables 1–3. There is another case in which a company called Emirau Trust Ltd. was granted a leaseback over an area of 3,384 hectares in New Ireland Province in December 2006, but the company was deregistered by the Investment Promotion Authority in 2008 (*Post-Courier*, 16 October 2008). In this case, the legal status of the lease–leaseback arrangement is unclear, but this area still figures in the dataset summarized in Tables 1–3.[2] All of the other leasebacks represented in these tables are thought to have been extant at

the end of 2010, even though some are known to be subject to legal challenges of the kind that overturned the leaseback to Musida Holdings.

There are some cases, including the two leasebacks granted in 2004, where the land covered by a Special Agricultural and Business Lease may not have been customary land before the leaseback was granted. This suspicion arises when the land portion number shown in the National Gazette does not have the letter "C" attached to it. Eight of the leases represented in Tables 1–3 lack this attachment, but all are shown as small or medium-sized leases in Table 2, and their combined area is only 49,974 hectares. There is no known reason why the Lands Department would have granted a Special Agricultural and Business Lease over a portion of land that had already been purchased from its customary owners.

One of the key problems for analysts of the recent upsurge in leasebacks to private companies is that notices placed in the National Gazette do not normally specify the precise boundaries of the land portion covered by each lease, and the Lands Department has been unwilling to provide this information, not only to members of the public but even to other government agencies. The notices in the National Gazette only name the land survey map or maps (Milinch and Fourmil) on which each portion is located, and even old copies of these maps are very hard to come by. The other key problem is that the notices do not specify the development purpose for which each lease has been granted, even though the purpose is meant to be specified in a schedule attached to the instrument by which customary landowners lease their land to the state in the first instance. In a few cases, the purpose can be deduced because words like "oil palm" occur in the name of the company to which a leaseback has been granted, but in most cases, other sources of information are necessary to establish the identities and motivations of the people involved in each project or scheme.

Economic Motivations of the New Leaseholders

The availability of additional evidence, whether from published or unpublished sources, tends to vary with the size of the land portion that has been converted and, to a lesser extent, with the period of time that has elapsed since the leaseback was granted. Little is known about the conversion of the 13 "small" or "very small" areas of less than 1,000 hectares that are represented in Table 2. Two of them (with a combined area of 142 hectares) are among the seven portions of land simultaneously allocated to Changhae Tapioka for development of a biofuel project in Central Province. Three (with a combined area of 580 hectares) are located within the boundaries of the National Capital District and are, therefore, presumably

dedicated to some form of urban land use. Six (with a combined area of 907 hectares) are apparently dedicated to some kind of small-scale commercial agriculture. One (in Gulf Province) has been allocated to a company called Perpetual Shipping Ltd., which may be involved in the log export business. But the most intriguing case is the last of the leasebacks granted in 2010, an area of 358 hectares (in Southern Highlands Province) that was allocated to a landowner company called Hewai Investment Ltd. and that seems to encompass one of the base camps being used in construction of the PNG Liquid Natural Gas Project (*The National*, 16 August 2010).

At the other end of the scale, the largest leaseback to date is exceptional for a number of reasons apart from its size. This is an area of 790,800 hectares in Western Province that was leased to a company called Tumu Timber Development Ltd. (TTDL) in April 2009. The area in question is generally known as the Kamula Doso forest area, and the PNG Forest Authority supposedly acquired the rights to harvest timber from this area through a Forest Management Agreement (FMA) with the customary landowners in 1998. In 1999, the National Forest Board (NFB) decided to allocate the Kamula Doso concession to Rimbunan Hijau (RH), PNG's biggest logging company, as an "extension" to the Timber Permit that company already held over the adjoining Wawoi Guavi concession. The Ombudsman Commission launched an investigation into this decision and found that it had failed to comply with various provisions of the Forestry Act of 1991 (GPNG 2002). When the NFB made a second attempt to award the concession to RH in 2005, the PNG Eco-Forestry Forum, a nongovernment organization, used the ombudsman's findings as the basis for a legal challenge that was not resolved until 2010, when the state finally conceded that the FMA was invalid. In 2008, while these proceedings were still under way, it seems that the head of PNG's new Office of Climate Change, Theo Yasause, decided to grant some sort of "carbon credit" over the Kamula Doso area to an Australian businessman called Kirk Roberts. Yasause's efforts to facilitate the marketing of carbon credits from a number of areas covered by FMAs were the subject of intense media scrutiny in the middle of 2009 (Barker 2009; Gridneff 2009; Wynn and Creagh 2009), and this scandal soon led to his dismissal. However, the journalists covering the story took little note of the fact that only one of the areas that Yasause had been offering as potential sites for carbon trading projects had also been subject to a lease–leaseback arrangement—and that was Kamula Doso.

Company records show that TTDL, the new leaseholder, was first incorporated in 1994, and has fifty-two incorporated land groups as its shareholders. It is one of at least three landowner companies that have, at various

times, purported to represent the customary landowners of the Kamula Doso forest area (GPNG 2001). Despite the scandal that led to Theo Yasause's downfall, and possibly because of the ongoing court case that prevented the NFB from turning the area into a logging concession, some or all of TTDL's six directors initially kept their faith with the carbon trading scheme proposed by Kirk Roberts (TTDL 2010). However, the process by which TTDL acquired a Special Agricultural and Business Lease over the whole area turns out to have been organized by another Australian businessman, Neville Harsley, who was proposing to finance the development of several small-scale agroforestry projects along the route of a new road connecting different parts of Western Province (*The National*, 24 May 2011).

It is in the space between the huge Kamula Doso forest area and the small or very small areas represented in Table 2 that evidence can be found for a larger collection of agroforestry projects, which already look suspiciously like logging projects disguised as large-scale agricultural development projects. This suspicion is underscored by the fact that most of the areas in excess of 10,000 hectares that have been leased back to private companies appear to contain areas of forest that are defined by the PNG Forest Authority as "Potential Areas for Future Development" (or PFD areas). These are areas of primary forest where officers of the National Forest Service have identified a commercial timber resource that has yet to be exploited, but where the state has not yet acquired the timber harvesting rights through a Forest Management Agreement with the customary landowners. In most of these cases, the process of resource acquisition has stalled because the size of the resource does not meet the minimum requirements for what is defined as a "sustainable forest management" (or selective logging) project under the terms of the National Forest Policy and the National Forestry Development Guidelines (GPNG 1991, 1993).

Anyone proposing to convert more than 50 hectares of native forest to some alternative form of land use is required to apply to the PNG Forest Authority for what is currently known as a Forest Clearing Authority (FCA) under sections 90A–E of the Forestry Act. These sections were first added to the Act in 2000, primarily at the instigation of the World Bank, to close a loophole that had enabled some large-scale logging operations to proceed on the basis of Timber Authorities (rather than Timber Permits) that had been granted to landowner companies for what were meant to be small-scale logging operations under section 87 (McCrea 2009).[3]

These amendments to the Act were not entirely effective in preventing large-scale logging operations from being disguised as agricultural development projects. The second of the "large" leasebacks shown in Table 2

was granted in October 2005 over an area of 42,100 hectares that included part of the Trans-Vanapa PFD area in Central Province. The lease was granted for a period of forty years to a company called Baina Agro-Forest Ltd., which seems to have been a joint venture between the Central Provincial Government, two local-level governments, and a Malaysian logging company called Nasyl No. 98 Ltd. (*The National*, 31 October 2005). Nasyl No. 98 commenced its logging operation on the pretext of helping to fund the development of an oil palm scheme and the construction of a new road, and the project received the public blessing of the Lands Minister, who was also the Deputy Prime Minister, as well as the Governor of Central Province, who was its principal proponent. The National Forest Board apparently tried to stop the logging operation because the relevant approvals had not been granted under sections 90A–E of the Forestry Act, and then refused to grant the logging company a log export licence on the grounds of a separate policy which banned raw log exports from anywhere within a 100-km radius of the national capital (*The National*, 10 October 2005, 26 July 2006, 13 November 2006). However, these obstacles were overcome in 2007, when Nasyl No. 98 was finally granted an export licence and was able to export almost 30,000 cubic meters of logs, with a combined export value of K4.9 million, before disappearing from the scene (SGS PNG 2008). Since then, nothing has been heard of the oil palm scheme and the new road.

Early in 2007, section 90B of the Forestry Act was amended in a way that increased the power of the Department of Agriculture and Livestock, and reduced the power of the PNG Forest Authority, to determine the fate of agroforestry projects and also removed the need for evidence that forest clearance and agricultural development would be undertaken by different corporate entities (McCrea 2009). Between March 2007 and April 2010, the PNGFA received twenty-three applications for FCAs from proponents of what are typically described as "integrated agriculture," "integrated agro-forestry," or "agro-forest development" projects, and thirteen of these had already been granted (Table 4).[4] Twelve of the applications were already associated with the grant of a Special Agricultural and Business Lease (SABL), including one rather odd case in which the FCA was granted more than a year before the SABL was gazetted. Of the ten applications that were not (or not yet) associated with a lease–leaseback arrangement, most, if not all, appear to be for projects on land previously purchased by the state or where the state has already purchased the timber harvesting rights from the customary owners.

In most of the twelve cases where applications for an FCA were associated with the grant of an SABL, the leaseholder seems to be a landowner company of some kind, the lease is for the maximum period of

TABLE 4. **Status of applications for Forest Clearing Authorities by proponents of agricultural development projects, 2007–2010.**

Status of application	No.	Area (ha)
FCA granted after SABL granted	6	475,413
FCA granted before SABL granted	1	30,830
FCA granted without grant of SABL	6	141,771
Application pending after SABL granted	5	284,156
Application pending without grant of SABL	5	431,950
All applications	23	1,364,120

Source: PNG Forest Authority records, April 2010.

ninety-nine years, but the applicant for an FCA is a "developer" with whom the leaseholder evidently has some sort of contractual relationship. For example, among the six cases in which an FCA had been granted following the gazettal of an SABL over the same area, the records show that:

- An SABL over 24,581 hectares of land in New Ireland Province was issued to Rakubana Development Ltd. in October 2007, and an FCA over this same area was granted to Tutuman Development Ltd. for development of the "Danfu Integrated Agriculture Project" in September 2009.
- An SABL over 116,400 hectares of land in Central Province was issued to Mekeo Hinterland Holdings Ltd. in November 2007, and an FCA over this same area was granted to Albright Ltd. for development of the "Mekeo Hinterland Integrated Agriculture Project" in June 2009.
- An SABL over 116,840 hectares of land in East Sepik Province was issued to Sepik Oil Palm Plantation Ltd. in August 2008, and an FCA over 121,000 hectares (supposedly the same land portion) was granted to Wewak Agriculture Development Ltd. for development of the "Wewak-Turubu Integrated Agro-Forest Project" in March 2009.
- An SABL over 139,909 hectares of land in West Sepik (or Sandaun) Province was issued to Bewani Oil Palm Development Ltd. in August 2008, and an FCA over this same area was granted to a different company called Bewani Palm Oil Development Ltd. for development of the predictably named "Bewani Oil Palm Development Project" in March 2009.

There are some exceptions to this rule. For example, an SABL over 47,626 hectares of land in West Sepik Province was issued jointly to One

Uni Development Corporation (a landowner company) and Vanimo Jaya Ltd. (a logging company) in July 2006. The logging company in the partnership was then granted an FCA over the same area for development of the "Aitape West Integrated Agriculture Project" in April 2008. There is also one case in which customary land has been leased directly to the project proponent. An SABL over 25,600 hectares of land in East Sepik Province, was issued to Brilliant Investment Ltd. (a Malaysian logging company) in February 2007, and this same company was then granted an FCA over the same area for development of the "Angoram (Marienberg) Integrated Agriculture Project" in June 2009. The same sort of arrangement may have occurred in the only case where the SABL was gazetted after an FCA had been granted over the same area. In January 2008, an FCA over an area of 30,830 hectares in East New Britain Province was granted to Toriu Timber Ltd. for development of the "Inland Lassul Baining Integrated Agriculture Project," and more than two years later, in February 2010, two SABLs over a combined area of 53,480 hectares, apparently including the area covered by the FCA, were simultaneously issued to a company called Tiriu Timbers Ltd. for a period of ninety-nine years. It is still not clear whether these are two different companies or one company with different spellings of its name in different government records.

Approval Process for Agroforestry Projects

The normal form of the political and bureaucratic process that connects the lease–leaseback scheme to the development of agroforestry projects is one that begins with a process of land group incorporation. By the end of 2010, there were more than 15,000 incorporated land groups registered with the Lands Department under the terms of the Land Groups Incorporation Act. Most of these groups had been established in anticipation of a logging project, some with active support from officers of the National Forest Service working to comply with the terms of the Forestry Act, others under the influence of past, present, or potential members of the national parliament, often working in alliance with the present or future directors of landowner companies in which the land groups themselves may turn out to be shareholders, and sometimes working in alliance with logging companies or "development partners" who already have an interest in the exploitation of local forest resources. Sitting members of parliament, especially those aligned with the ruling government coalition, seem to have played a crucial role in facilitating the process through which a set of land group certificates is presented to the Lands Department in support of an application for "their" land to be leased back to a company of "their" choice. By

the time this happens, the logging companies or development partners will almost certainly be party to the process. In theory, officers of the Lands Department should undertake a "land investigation" to establish the connection between the land group certificates and the customary land under consideration before granting a Special Agricultural and Business Lease. However, the relevant Land Investigation Reports have rarely, if ever, come to light, if indeed they exist at all, nor is it possible to establish the extent to which the purpose of the leaseback has been specified in the proposal submitted on behalf of the land groups who are leasing their land to the state.

Once the leaseback has been gazetted, if not before, the development partner submits an agroforestry project proposal to the Department of Agriculture and Livestock. Officers of this department may or may not consult the National Agriculture Development Plan (GPNG 2007a) to see whether the proposal conforms to its priorities, but in any case, this plan does not set any location-specific priorities for the conversion of native forests to large-scale agricultural land use (McCrea 2009). However, to comply with section 90B of the Forestry Act, officers of this department should conduct some form of "awareness" activity with landowners and other stakeholders to establish the extent of local support for the project. There is some evidence of this activity being undertaken, but the outcomes are not clearly documented. For example, in June 2010, the department advertised public hearings in three locations within Nuku District for the integrated agro-forestry project proposed for the 239,800 hectares of land that had been leased back to Nuku Resources Ltd. in April 2009 (*Post-Courier* and *The National*, 21 June 2010). These are likely to be occasions on which the local Member of Parliament delivers a speech of encouragement to his band of loyal supporters, preferably in the company of other political and bureaucratic heavyweights from the national and provincial centers of political power. If these ceremonies are well attended, the speeches may be reported in the national newspapers.

Once the Department of Agriculture and Livestock has placed its stamp of approval on an agroforestry project proposal, the proponents attach this to their application for a Forest Clearing Authority. The application should be vetted by officers of the National Forest Service and then considered by members of the National Forest Board to establish its compliance with the guidelines that pertain to Section 90B of the Forestry Act (GPNG 2008a). The project needs to be approved by the relevant Provincial Forest Management Committee, but this body is unlikely to dissent from the preferences of local members of parliament who are members of the ruling national government coalition. The Department of Environment

and Conservation may also be asked to grant an Environment Permit for the project, but it is not clear who decides whether such a permit needs to be obtained.[5] The records of the PNG Forest Authority show that an Environment Permit had been granted for nine of the twenty-three applications represented in Table 4, including eight of the twelve cases in which an application was associated with a lease–leaseback arrangement. Six FCAs had been granted in the absence of an Environment Permit, but none of these was associated with a lease–leaseback arrangement. In three cases where this association was present, the grant of an FCA had apparently been held up because an Environment Permit had not yet been granted.

When the National Forest Board decides that there are no further bureaucratic (or legal) obstacles to the grant of an FCA, it can still attach various conditions to the grant that specify how much of the area in question can be clear-felled for conversion to agricultural land use or logged selectively to provide additional finance for the proposed development. PNG Forest Authority records indicate that performance bonds of between K100,000 and K890,000 had been levied on at least eight of the fourteen agroforestry projects to which an FCA had been granted by April 2010. Officers of the National Forest Service are meant to monitor the compliance of the developers with the conditions attached to each FCA, just as they are meant to monitor the compliance of mainstream logging operations with the PNG Logging Code of Practice (GPNG 1995). However, serious doubts remain regarding their capacity to perform either of these tasks with due diligence, and it is not clear whether the customary owners of the trees harvested under an FCA that is granted under a lease–leaseback arrangement receive any of the timber royalties to which they would be entitled under the conditions attached to the grant of a regular Timber Permit for a selective logging operation (Bob Tate, pers. comm., October 2010).

According to reports from the company engaged by the PNG government to monitor raw log exports, about 920,000 cubic meters of logs with a combined value of roughly K190 million were exported from the areas represented in Table 4 over the four years from 2007 to 2010 (SGS 2008, 2009, 2010, 2011).[6] About 70 percent of these logs came from areas over which a leaseback has been gazetted, but in three cases (all in New Ireland Province), log exports seem to have begun before or without the grant of an FCA, which seems to be somewhat irregular. There is anecdotal evidence of logs being (illegally) harvested in some of the other areas over which a leaseback has been gazetted, whether or not an application has been made for an FCA, but the true extent of such activity is unknown. The 920,000 cubic meters recorded in official statistics represent less than ten percent

of all the raw logs officially exported from PNG over that four-year period; thus, the logging associated with agroforestry projects still seems far less significant than the selective logging operations authorized under regular Timber Permits. However, agroforestry projects accounted for more than twenty percent of the 3 million cubic meters exported in 2010 (SGS 2011), which suggests that this type of activity is growing more significant each year. The PNG Forest Authority established a new incentive for logging companies to associate themselves with agroforestry projects when it released a new version of the National Forestry Development Guidelines in 2010 (GPNG 2009). These guidelines state that Timber Permits will henceforth only be granted for selective logging operations in which the entire log harvest is processed onshore, whereas raw log exports will still be allowed under an FCA. Although there are some notable exceptions, the available evidence suggests that the average lapse of time between the gazettal of a Special Agricultural and Business Lease, the grant of a Forest Clearing Authority, and the start of actual log export operations in an agroforestry project is at least two years. Given that three-quarters of the total area of customary land leased back to private companies since 2003 had been converted since the beginning of 2009 (see Table 1), it would be reasonable to expect continued growth in the number of applications for FCAs over areas already covered by SABLs in the period after April 2010. It is known, for example, that one such application is already under way for the area now leased to Nuku Resources Ltd. (Bob Tate, pers. comm., October 2010).

In March 2010, PNG's National Executive Council is thought to have endorsed a climate change policy document that called for a moratorium to be imposed on the further grant of SABLs pending the conduct of an inquiry into the political and bureaucratic process through which existing leases had been granted (GPNG 2010a, 29). The reason for this recommendation was that the PNG government has played a leading role in seeking compensation from the international community for actions taken to reduce carbon dioxide emissions from the process of deforestation and forest degradation in so-called rain-forest nations. If it seemed that the government was actively promoting this very process through its endorsement of a new generation of agroforestry projects, it might be harder to convince the international community that it was acting in good faith (Filer 2010). An Agriculture Sector Working Group was indeed established to investigate the workings of the lease–leaseback scheme in the promotion of agroforestry projects, and three of the four government agencies involved in the process sent representatives to its meetings, whereas the Lands Department was notable by its absence (Valentine Thurairajah, pers. comm., May 2010).

I have not seen any documentary record of the group's deliberations, but between April and December 2010, the Lands Department granted eleven leasebacks to private companies over a combined area of 1.9 million hectares of what had formerly been customary land. Another 800,000 hectares were covered by four new leases granted in the first four months of 2011. In November 2010, a newspaper article quoted the Secretary for Justice making a public declaration that the department's actions in this regard were "totally corrupt," because "[o]fficers and certain rouge [*sic*] landowners are colluding and conniving with each other to sell off customary land for their own benefit and interest while the majority of landowners are left out" (*Post-Courier*, 11 November 2010).

Recent Political Debate about the Lease–Leaseback Scheme

Whatever the Secretary for Justice might think about the Lands Department, the corruption or incompetence of that agency's officers is not sufficient to explain the rising tide of land tenure conversions under the lease–leaseback scheme since 2003. A survey of local newspaper reports reveals numerous instances in which national government ministers and senior government officials have expressed public support for rural development projects authorized under this scheme, and very few cases in which any member of the national parliament has openly questioned its operation. In some cases, the declarations of approval reportedly made by politicians, public servants, and local community leaders make reference to a project planning process that may have lasted for ten years or more, which raises the question of why the wholesale transfer of land titles to private companies did not start until quite recently. In the case of so-called agroforestry projects, the answer to this question can be traced to the influence of the World Bank over the national forest policy process, which came to an abrupt and acrimonious end with the cancellation of the PNG Forestry and Conservation Project in 2005 (Filer 2004; ITS Global 2006; McCrea 2009). However, although subsequent amendments to the Forestry Act have been designed to facilitate the grant of Forest Clearing Authorities, Special Agricultural and Business Leases have also been granted for other types of rural development projects that cannot simply be characterized as logging projects in disguise. For example, the leases granted for the development of cassava biofuel projects in New Ireland Province (December 2006) and Central Province (February 2007) cover 33,000 hectares of land that contains no significant commercial timber resource, nor is there any sign that the Korean project proponent (Changhae Tapioka) has any interest in the log export business.

When politicians and public servants express their support for the current operation of the lease–leaseback scheme, they rarely make any reference to the constraints previously imposed by the World Bank on the large-scale clearance of native forests, but often make reference to the National Agriculture Development Program and the National Land Development Program, both of which were formally initiated in 2007. The documents that serve as charters for these two programs (GPNG 2007a, 2007b) both articulate a strong belief in the need to mobilize customary land for the achievement of national development objectives and should, therefore, gladden the hearts of those academic commentators who argue that customary land ownership has long been one of the major obstacles to PNG's economic growth (Jones and McGavin 2001; Lea 2002; Gosarevski et al. 2004). However, neither document contains an explicit endorsement of plans to transfer customary land titles to private companies through the operation of the lease–leaseback scheme. More recently, the Development Strategic Plan produced by the Department of National Planning has anticipated a K12.7 billion increase in national income by 2030 as a result of undertaking land reforms that will establish registered titles over twenty percent of the country's total land area (GPNG 2010b, 42–43). Although some of the other development targets mooted in this document seem remarkably ambitious, the land reform target could be met within the next five years if the Lands Department continues to grant Special Agricultural and Business Leases to private companies at the rate and scale already documented in this paper. However, the Development Strategic Plan also makes no explicit reference to the lease–leaseback scheme as the preferred vehicle for land mobilization.

The mechanism officially preferred in government planning documents is the one to which the executive director of the Institute of National Affairs made reference when he called for the government to make more use of recent legislation that enables customary landowners to register titles to their own land before granting leases to anyone else (Barker 2010). In March 2009, the national parliament passed a series of amendments to the Land Registration Act of 1981 and the Land Groups Incorporation Act of 1974 that would indeed make it possible for incorporated land groups to register such titles, thus finally implementing one of the key recommendations made by the Commission of Inquiry into Land Matters in 1973. One of the reasons for the outrage more recently expressed by the Secretary for Justice about the corruption of the Lands Department is that he was responsible, in his former capacity as a member of the National Land Development Taskforce and head of PNG's Constitutional and Law Reform Commission, for drafting this legislation (GPNG 2008b). In his view, and that of many

other stakeholders in the land policy process, the amendments should have made the lease–leaseback scheme redundant, because this scheme was only ever intended as a stop-gap measure to compensate for the absence of any effective legal mechanism for the registration of customary land titles.

Nevertheless, the opportunities supposedly created by the new legislation go to the heart of the question of why political opposition to the current operation of the lease–leaseback scheme has been somewhat fragmented. The Secretary for Justice is not alone among senior public servants who are deeply troubled by the current operation of the scheme, especially when leases are granted over customary land belonging to their own communities. However, their voices of dissent have largely been stifled by the enthusiasm of their political masters. A number of nongovernment organizations have voiced their dissent more openly, and some have been helping local groups of dissident landowners to mount legal challenges to specific leasebacks. However, the members of these organizations are generally opposed to any legal mechanism for the registration or conversion of customary land titles, including the one created by the amendments of 2009. From their point of view, a Lands Department that cannot be trusted to manage the lease–leaseback scheme for the benefit of customary landowners could not be trusted to manage a new scheme for the registration of customary land titles, and even if it could, registration would only be another stage in the process of alienation (Anderson and Lee 2010).

Between the wholehearted supporters and opponents of the new legislation is a sort of middle ground occupied by representatives of those industries that have nothing to gain from the perversion of the lease–leaseback scheme but could have something to lose from implementation of the new legislation. For example, New Britain Palm Oil Ltd. (NBPOL), which now controls five of PNG's six operational oil palm schemes, has an obvious interest in maintaining the specific (and rather expensive) form of the lease–leaseback arrangement through which its consultants have been creating mini-estates on customary land since 1998. NBPOL also faces a quandary in its dealings with the proponents of new agroforestry projects who have found a much easier way to gain access to customary land and whose project proposals include the planting of oil palm. That is because NBPOL is one of the world's main producers of high-quality oil palm seed but is also a member of the Roundtable on Sustainable Palm Oil and is, therefore, committed to ensure that its operations do not result in the clearance of primary forests (RSPO 2008). Representatives of the mainstream oil palm industry have been complaining about the new generation of agroforestry projects for some time (*Post-Courier*, 11 September 2007), but their enthusiasm for the registration of customary land titles as an alternative to the

lease–leaseback scheme has been tempered by a perception that the new legislation could be unworkable, especially if nothing is done to improve the performance of the Lands Department.

These concerns are shared by the oil and gas industry, and to some extent by the logging industry, because both industries (unlike the oil palm industry) are legally required to deal with customary landowners under the terms of the Land Groups Incorporation Act. The recent amendments to this Act require that each of the more than 15,000 land groups already registered with the Lands Department shall be reincorporated within a period of five years, with all sorts of additional paperwork to prove the identities of its members, the rules of its operation, and the nature of its connection to a specific area of land. Whether or not these groups also attempt to register titles to their land, it is hard for anyone to imagine how the Lands Department will manage the process of reincorporation, even in those economic sectors where private companies have previously played a significant role in the original creation of these groups.

Of course, these requirements will not only apply to land groups of the kind incorporated with the help of the oil palm industry, which now hold Special Agricultural and Business Leases in their own right, but also to those land groups whose members have supposedly consented to the direct grant of such leases to private companies under the more fashionable version of the lease–leaseback scheme that has converted more than 5 million hectares of customary land since 2003. It is a moot point whether the individuals responsible for organizing this second set of transactions will have the interest or ability to assist in the process of reincorporation or whether the land groups in question will be deregistered as a result of their failure to comply with the new legislation. If they are deregistered, then their chances of ever recovering the land that they leased to the state may be correspondingly diminished, because the legal validity of the original transactions will not be affected.

Conclusion

There does not seem to be any great risk that private companies in possession of Special Agricultural and Business Leases will emulate the example of European landlords who forcibly evicted customary landowners from their land in the eighteenth and nineteenth centuries. Nor does the PNG land grab bear any obvious comparison with the pattern of expropriation recently observed in parts of sub-Saharan Africa (Cotula et al. 2010), mainly because of the very peculiar legal framework through which it has been effected. In many cases, there may be little change to current patterns

of land use in the areas that have been converted, especially those areas where agroforestry projects turn out to involve a year or two of logging and nothing much else. If the promise of large-scale agricultural development does not materialize, those customary landowners who were persuaded to part with their land will surely be disappointed, whereas those who never gave their informed consent in the first place will have the opportunity to ridicule their more gullible neighbors. The main problem is that the state is accustomed to grant Timber Permits, Mining Leases, and Petroleum Development Licences to foreign investors for long periods of time and has evolved a set of policies that entail the redistribution of a substantial proportion of its tax revenues from these forms of investment to the customary owners of the land on which they occur (Filer 1998, 2005). It is not clear whether section 11 of the Land Act entails the transfer of such entitlements to the holders of Special Agricultural and Business Leases, but if the rights are not reserved in the original leases granted to the state, and if the leaseholders are able to maintain their political connections, the transfer may well be accomplished. If abuse of the lease–leaseback scheme then enables a few individuals to capture the lion's share of such "landowner benefits" to the exclusion of the vast majority of the customary owners for any length of time, this will almost certainly provoke an upsurge of rural social unrest and civil disorder.

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NOTES

1. The scheme was first given legal effect by amendments made to the Land Act (the former colonial Land Ordinance) in 1984, but initially there was a twenty-five-year limit on the duration of leases granted under this scheme (Muroa 2001, 41).

2. This leaseback seems to have involved a number of different land portions, like the case of the leases granted to Changhae Tapioka in February 2007, but they are treated as a single transaction in Tables 1–3.

3. In its original form, section 87 placed limits on the area of forest or volume of timber that could be harvested under a Timber Permit.

4. Table 4 includes one application for an FCA associated with construction of a road through part of Western Province, but an SABL over this area was not gazetted until September 2010.

5. Environment Permits are issued under the terms of the Environment Act of 2000. The secretary for Environment and Conservation is notionally responsible for deciding whether project proponents need to submit an Environmental Impact Statement before such a permit is granted. Environmental Impact Statements are normally required for all large-scale logging operations.

6. These figures do not include the 30,000 m^3 exported by Nasyl No. 98 from the Baina agroforestry project area.

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