

Centre For Environmental Law and Community Rights (CELCOR)

Helping the Communities
Protect the Environment
and Defend Community
Based Property Rights

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Core Programs

- Direct Legal Assistance (DLA)
- Community Legal Education (CLE)
- Policy Research and Law Reform (PRLR)
- Campaign Advocacy and Networking (CAN)

Support Programs

- Programs
- Marine
- Accounts
- Administration

Land in PNG

Customary Land

- 97% ownership
- Land Dispute Settlement Act 1975 governs ownership issues relating to this type of land

State Land

- Land Act 1996
- 3% ownership
- State acquires ownership through Compulsory acquisition and or Lease- lease back system

Customary Land

- The strength of the customary land ownership system and the difficulty of land purchase or acquisition have resulted in a high level of interest in the mechanisms for leasing indigenous lands, a form of access to land resources that is within the mandate of the State

State Land

- When land is leased for fixed term periods longer than the span of most human lives (**usually for a term of 99 years**) it becomes important to have effective review of leasing arrangements in cases where the outcomes for traditional owners are negative.

What is Lease-Lease back?

- The law also provides for a process called 'lease-leaseback' wherein the State can acquire a lease from customary owners – only with their express consent – and re-issue a lease on that land for agricultural or economic development purposes, referred to as Special Agricultural and Business Leases (SABLs).]

Purpose of Lease- Lease Back

- The purpose of the 'lease-leaseback' process is "to assist or encourage Papua New Guinean (Landowners) to develop & utilize their own land", allowing landowners to utilize their own land collaterally to obtain mortgage for business development purposes

Special Agriculture and Business Leases

- When a SABL is issued it must, by law, be announced in the National Gazette. A review of the announced SABL's issued by the Government of PNG in the past 12 months (2010) reveals that no less than 2 million hectares of customary lands have been granted in SABLs to non-indigenous companies and other entities, effectively doubling the area leased as SABLs in one year



A SABL CHALLENGED: MUSIDA HOLDINGS

- In *Musa Valley vs Department of Land and Physical Planning*, a lease issued for 99 years to Musida Ltd., the customary owners successfully challenged a SABL issued on their lands. In his findings, the Judge concluded that consent had been fraudulently claimed with Musida Ltd, the recipient of the lease, having secured the agreement of only 10 of the 62 incorporated land groups (ILGs) who owned the land in question.

Challenges

- There is widespread concern in PNG that many or a majority of these leases have been obtained without the consent of customary land owners. The first of these cases to be taken to court substantiated this concern. This is particularly serious given the barriers that face customary owners whose lands may have been illegally leased when they seek to access the judicial system, as UN human rights bodies have already noted.

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Challenges

- the protections offered by the Land Act (1996) are insufficient for customary owners with little access to the national judicial system
- current levels of logging (in PNG) are unsustainable
- the legality of many current concessions is in doubt

Challenges

- the capacity and the will of the state to implement, uphold and defend the rights of the indigenous people of the country.
- PNG at the moment no less than 4.3 million hectares of customary lands are under SABLs (as noted, 2 million of which have been issued in the past year).

Challenges

- corruption is a growing problem in the extractive sector

FPIC in EXTRACTIVCE INDUSTRIES

- **These extractive industry usually occurs on customary land and although it is stipulated by most Natural Resource Management legislation that the landowners are required to give their informed consent as to their extraction, often times, these is never done. Abscence of informed consent can be challenged in a Court of Law.**

What is FPIC?.....

- is a right held by Indigenous Peoples. It means that Indigenous Peoples have the right to give or withhold their consent to projects that affect their land, territories and natural resources.
- The decision to give or withhold consent must be made **free** from force, intimidation, manipulation, coercion or pressure.

Steps to Achieving FPIC

STEP 1:

- Find out who is developing
- the proposed project

STEP 2:

- Request information from
- the project developers

Steps to Achieving FPIC

STEP 3:

- Hold discussions within
- your community

STEP 4:

- Community negotiations with
- the project developers

Steps to Achieving FPIC

STEP 5

- **Seek independent advice**

STEP 6:

- **Make decisions as a community**

STEP 7:

- **On-going communications**
- **with the project developers**

Recommendations

- technical assistance to the Government of PNG in assessing the suitability and strength of the consent procedures in place for the issuance of SABLs,
- Incorporation of access to information standards in records kept of SABLs.

Recommendations

- Government of PNG establish an independent land tenure tribunal to provide accessible review for customary owners to challenge leases issued on their lands.

Reccommendation

- Assists the Government of Papua New Guinea in reviewing the Land Act (1996) and in particular Section 102 to ensure that the intent of the lease-leaseback process be preserved and such arrangements be conducted for the purpose of providing indigenous peoples with access to capital and investment for economic development;

Reccommendation

- Assists the Government of Papua New Guinea in reviewing the consent procedures in place in the process of issuing SABLs to ensure that they are compliant with international standards

Recommendation

- all SABL's issued in 2010 and earlier are examined by an independent and appropriately skilled panel to ensure that in cases where consent has been engineered, fraudulently obtained or manipulated, that the rights to land and resources are returned to the customary owners and the leases cancelled.





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