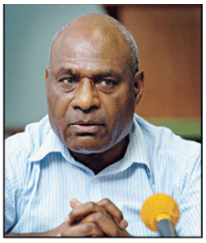

John Numapo


Alois Jerewai


Nicholas Miroi

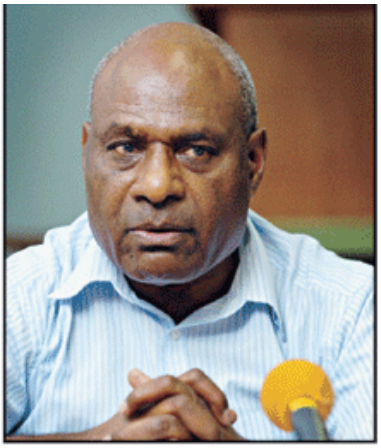
What happens next in PNG's land grab saga?

By Colin Filer
10 December 2013

Five years have now passed since the alarm was first raised about the alienation of huge areas of customary land in Papua New Guinea through the grant of Special Agricultural and Business Leases (SABLs). As if to commemorate this anniversary, the PNG government has finally released the reports of two of the three commissioners asked to investigate the SABL scandal in July 2011. In my last post on this subject, back in August last year, I declared that these reports would 'shortly' be tabled in PNG's national parliament, but in PNG, a 'short' time or distance can sometimes be quite long. For more than a year stakeholders in PNG's land grab debate have been speculating about the reasons for the long delay in the completion and release of these reports; wondering what recommendations they might contain, and asking what Peter O'Neill and his government would do with those recommendations once they were made public.

In March this year, when they submitted an interim report, the commissioners cited a variety of political and bureaucratic obstacles that had hindered the progress of their work. Chief Commissioner John Numapo and Commissioner Nicholas Mirou delivered their final reports to the Prime Minister at the end of June. In September, the third commissioner, Alois Jerewai, claimed that he had finished his own report in 2012, but was not prepared to hand it over to the Prime Minister because he thought that there should only be one final report, co-authored by all three commissioners. O'Neill was not impressed by this argument, and promptly tabled the other two reports in parliament. Or did he? Unlike other reports tabled in parliament, copies were not made available to other MPs (or anyone else) until they appeared on the Commission of Inquiry website at the end of November, along with the brief statement that O'Neill had made when he did, or did not, table them. In that statement, O'Neill expressed his disappointment that the commissioners had 'failed to work together as a team', and then wondered how two of them could make the discovery that 38 out of 42 SABLs had been granted without genuine landowner consent and yet still recommend that 'SABLs be continued'.


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Numapo and Mirou did indeed recommend that most of the leases that they investigated should be revoked. Numapo's additional recommendations outweighed those of his fellow commissioners by many pages, but they also contained a glaring contradiction. On page 4 of his report, Numapo makes the following statement:

> *'We recommend that the current SABL setup be done away entirely. We have carefully considered the option of retaining the SABL setup as an optional method for availing customary land for national development. We have fully considered retaining the SABL setup with more stringent safety features. In the end our view is that the inherent risks associated with the option are unacceptable because we believe any reforms to the law or process may not satisfactorily remove the loop holes, inadequacies or permissive ambiguities that are being used to abuse the SABL process and hijack land use after SABLs are granted.'*

But fast forward to page 255 and he seems to have changed his mind:

> *'The SABL concept is good and we recommend that it be retained… [as] a national development and customary landowner empowerment mechanism.'*

So the goose has laid a bunch of rotten eggs and should be killed, but no, it is essentially a good goose and will lay a better bunch of eggs if it is put through something that the Chief Commissioner eventually describes (on page 264) as a 'Harmonization of Laws & Standardization of Practices exercise'.

There are essentially two points at issue here: What is to be done about the dodgy leases which have already been granted, and what is to be done to prevent the grant of more dodgy leases in future? If the commissioners struggled with the second of these two

questions, that is partly because their original terms of reference mainly directed them to find out how many SABLs were dodgy and why they were dodgy, and the transcripts of their hearings show that this is mainly what they did. On the question of policy reform, they were told to 'inquire into and assess the effectiveness of existing legal and policy framework in the improved management of SABL in future including facilitating the applications from legitimate applicants'. This was hardly an invitation to suggest that the goose should be done away with.

But what about the rotten eggs? While the Prime Minister seems to have castigated the commissioners for their timidity, there is no doubt about the strength of their recommendations on this score. At the same time, there is as yet no sign that the government is actually going to revoke all the dodgy leases. This has led some commentators in the blogosphere to conclude that the Prime Minister is bluffing and prevaricating because so many of the politicians aligned with his government have been actively involved in the granting of SABLs within their own electorates, and even if he now has a vast majority in parliament, he cannot afford to get them offside. But if that sounds like a good political reason for leaving the leases intact, there is also a legal reason which has been bothering some senior government officials who have not themselves been implicated in the land grab. Even if the Minister for Lands does have the power to revoke the dodgy leases, many of the landowner companies holding such leases have sub-leased 'their' land to would-be developers of so-called 'agro-forestry projects', and these specialists in forest clearance are threatening massive compensation claims against the State if their investments are rendered worthless. The State's capacity to defend itself against such claims is known to be rather weak, partly because government officials have sometimes colluded with the claimants in order to reap a share of the reward. What now seems to be happening behind the scenes is an investigation of ways and means to reinforce or modify the Environmental Permits and Forest Clearing Authorities that have been granted to the 'agro-foresters', in preference to the invalidation of their land titles.

So what about the goose? Back in September, O'Neill was quoted as saying that '[w]e will no longer watch on as foreign owned companies come in and con our landowners, chop down our forests and then take the proceeds offshore'. At the same time, he announced that the Minister for Lands would appoint a task force to establish a new legal framework to protect the interests of customary landowners. No one seems to know whether this body has been established or what it might decide to do, but in the meantime there still appears to be a moratorium on the grant of new SABLs. It would not be difficult to amend the Land Act in ways that make it impossible for any more SABLs to be granted in future, and that would lay

the goose to rest. The original reason for allowing customary landowners to lease their land to the State and have it leased back to a corporate body of their own choice was the absence of a legal mechanism for the direct registration of customary land titles. That hole in the policy framework has now been plugged. What seems to have bothered John Numapo (and a number of other people) is that the relevant legislation may prove to be unworkable, or may only serve to 'mobilise' relatively small areas of customary land. In saying that SABLs should still be the mechanism of choice for what he called 'high impact' projects needing large amounts of rural land, he may have been mindful of the ambitious land mobilisation targets set by the previous Somare government in a number of policy and planning documents. And whatever the current Prime Minister might say about the need to protect customary land rights and the natural environment, he has not so far given any public indication that these ambitions have been discarded.

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