

An Assessment of the Impacts of Special Agriculture and Business Leases (SABLs) on Customary Land in PNG: A Case Study of Ramu Sugar Agro-Industries Limited

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Abstract

The study attempts to analyse the perceptions of customary landowners, government officials and employees of Ramu Agro-Industries Ltd. (RAIL) about the impacts of Special Agriculture and Business Leases (SABLs) on the sugar company in Papua New Guinea (PNG). SABL is a product of the Lease-Lease Back Scheme devised in 1979 by the PNG government as a substitute for another legal apparatus for registration of customary land titles. Land registration is a requirement for agriculture and other forms of land development that empowers customary landowners to participate meaningfully in land development projects. Customary land on its own has been criticised as unsustainable for meaningful and sustainable economic development in PNG; therefore, the participation of SABLs in customary land development is a welcome development. The study reveals that SABLs are not beneficial and but pernicious in nature to landowners because they are mismanaged, misapplied and exploited by corrupt government officials colluding with land developers. Furthermore, the study findings indicate that there several challenges associated with the SABLs, such as flagrant abuse of landowner rights, violation of existing land laws, anomalous processes and procedures of granting SABLs, lack of consultation and awareness, management problems by illiterate landowners, benefit sharing issues, land disputes and social concerns. However, the benefits realised through SABLs cannot be repudiated. Such benefits include cash incentives, increased landowner participation and employment opportunities, creation of small and medium-sized enterprises (SME), provision of basic services such as schools and health care facilities and improved living standards for the landowners. Therefore, the paper argues that SABLs should not be abolished by the government. Rather, appropriate measures must be taken to correct the irregularities in the processes and reviews of the land laws to suit current land tenure challenges. The legal and procedural issues relating to SABLs are inherited problems stemming from the old colonial land laws, which appear to be outdated and incompatible with current realities. Therefore, the shortfalls, loopholes, inadequacies in law and anomalies in the entire SABL apparatus must be reviewed and overhauled putting in place stringent measures to guide their evolution over time with due consideration to landowner rights. Finally, the entire land mediation mechanism in PNG should be revamped to empower land mediators to deal with land disputes with accountability, transparency, efficiency and effectiveness that will pave way for sustainable economic development of customary land through the full participation of SABLs in land development as agents of progress.

Keywords: *Special Agriculture and Business Leases, customary land, landowners, legal framework, Papua New Guinea*

1. Introduction

A careful review of the literature indicates that customary land tenure in PNG has undergone many land reforms reviews in the country has passed through many land reform initiatives through changes in policies, programs and the enabling laws. However, to some extent,

customary land tenure system has shown strong resilience to outside forces and influences of the western systems of land alienation and development pathways (Armitage, 2002; Davidson, 2014). Land reforms usually refer to the reallocation of land from wealthy individuals to the underprivileged members of the society, a process which involves regulation of proprietorship, functioning, leasing, disposition and birthright. The reforms vary from full tenure conversion, such as the Land Tenure Conversion Scheme to issuance of a customary title granted through Voluntary Customary Land Registration under the auspices of a registered Incorporated Land Group (ILG), as noted by Power (2001).

Those land reforms include the Plantations Redistribution Scheme, Lease-Lease Back Scheme, Land Tenure Conversion Scheme, Land Mobilisation Program and National Land Development Program, just to name a few. However, the most problematic land reform that the country has ever adopted is the Lease-Leaseback Scheme through the SABLs. This system was entirely abused, which drew the attention of the government to set up a Commission of Inquiry into the operations of the SABLs in 2013, with an overall recommendation to entirely abolish the system due to fraud and violation of land laws in PNG (Filer 2011; Numapo et al. 2013; TIPNG, 2019). Arguably, PNG land laws are outdated and incompatible to seamlessly work with one another (Lakau 1991). Figure 1 shows the hypothesised process of granting SABLs in PNG.

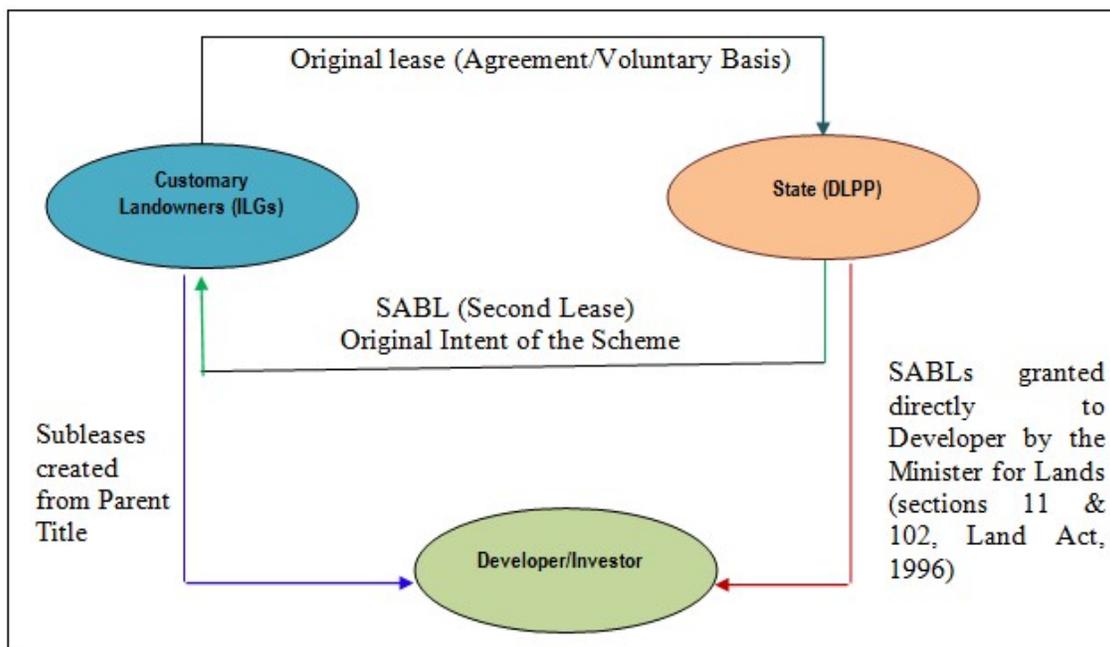


Figure 1: A Hypothesised Process of Granting a SABL and Creating Leases Under the Customary Land Tenure System in Papua New Guinea. [Source: Karigawa, 2015]

It is important to note that under the original intent of the scheme, the State was supposed to be the only facilitator of the SABL system. When all the formalities are completed by the State for the initial lease, the land should be leased back to the landowners following which land development leases (subleases) should be created from the parent lease and leased out to the developer. Under this system, the terms and conditions of the leases should be dictated by the landowners for a short period of time. It is by using the second lease that landowners can obtain financial assistance from financial institutions. If a landowner defaults in the repayment of their loan, it is the second lease that is affected and not the first lease even

though both leases are running concurrently. However, as indicated in Figure 1, SABLs are also granted directly by the State through the Minister for Lands and Physical Planning to the developer under Sections 11 and 102 of the Land Act, Ch. 45, 1996 that is in contrast to the objectives of the scheme resulting in loss of customary land by the landowner (Baker 2011). At this juncture, it is important to remember that land disputes impede land reform progress pertaining to customary land development. Land disputes can create civil disturbances, which can lead to loss of lives and property, and adversely affect land development and eventually the local economy (Olive and Fingleton, 2004).

2. A Snap Shot of SABLs' Challenges in PNG

The SABL-initiated agricultural lease concept has been investigated by a Commission of Inquiry, which described it as improper and unlawful (Numapo et al., 2013). According to these authors, "the lease issued involved misrepresentation and fraud that violates the existence of the law." Moreover, SABLs were employed to perpetuate an enormous land-grab ploy where 5.5 million hectares of customary land were lost by customary landowners (Butler 2013; Numapo et al., 2013; Sosnoff & Moore, 2013; Laurance, 2011). Hance (2011) argues that SABLs could possibly disturb the customarily strong land rights of native groups while creating serious threats to the environment. Similarly, Butler (2013) further argues that SABLs are a type of license which changes traditional land ownership that is the dominant system of land holding in PNG to long-term leases which large multinational entities wish to hold and control. Filer (2011) stressed that SABLs are a stand-in measure to make up for the absence of any successful legal mechanism regarding customary land registration. Thus, the augmentation of agricultural developments through SABLs seems below par and insufficient with regards to the economic and social welfare of the people within a society (Coleman, 2018; Filer 2011; Numapo et al., 2013). The Commission of Inquiry (2013) report claims that the present set up of SABLs is perforated with loopholes, shortcomings and ineffectiveness in law and irregularities in the processes. Thus, dishonest government officials and unethical individuals colluding with developers are taking advantage of SABLs for self-gain. Revealingly, this is a sweeping act of customary land-grab happening in PNG under the guise of oil palm and other agricultural development projects (Butler 2013). Therefore, the general recommendations submitted by Numapo et al. (2013) through the Commission of Inquiry were for government to entirely abolish SABLs in PNG. However, this paper argues otherwise for various reasons.

3. Research Questions and Contributions to Knowledge

With regards to the research problem, this paper attempts to answer four research questions as follows:

- a) *What are the irregularities in the issuance of SABLs under the existing legal framework?*
- b) *What are the different types of benefits that the landowners receive from the use of their customary land?*
- c) *What are the challenges faced by customary landowners of Ramu-Agro Industries Ltd (RAIL)? and*
- d) *What are the possible solutions to SABL's challenges in Ramu-Agro-Industries Ltd?*

We argue that answers to these four questions will enrich the literature on SABLs and customary land development in Papua New Guinea.

4. Research Methods

The study adopted stratified random sampling technique to obtain the perceptions of respondents selected from the categories of respondents namely, Ramu Agro-Industries Ltd.'s (RAIL) employees, landowners and government officials. Stratified random sampling is a technique that requires the population to be categorised into smaller clusters called strata from which a random sample is obtained. The sample size of 135 respondents consists of 95 landowner households with an average of 5 persons per household, 5 government officials representing the Department of Lands and Physical Planning (DLPP) and Department of Agriculture and Livestock (DAL), and 20 employee representatives of RAIL. The sampling frame and sample size for the study are indicated in Table 1.

Table 1: Sampling Frame and Sample Size

Sample Groups	Population sample	Sample Target	Target Percentage	No. of Questionnaires Returned	Percentage Returned
RAIL Employees	20	20	100%	11	55 %
Landowners (Households)	95	40	42%	26	27 %
Govt Officials	20	10	50%	5	50 %
Total	135	50	37%	42	31

Primary data for the study were gathered through questionnaires, interviews, and site inspections, while secondary data was tracked from reliable public records and previous studies. Primary data was analysed using MS Excel and SPSS and presented in table forms, pie charts and bar charts. It is worth noting that the study leading to this paper encountered many challenges and obstacles during field surveys and visitations. The three main limitations are as follows: (a) COVID 19 pandemic protocols and lockdowns restricted the researcher and field staff from carrying out more interviews with the landowners, government officials and RAIL employees (b) Financial limitations restricted the researcher from undertaking frequent field surveys and observations and (c) Time was against the researcher due to the start of semester two of the 2020 academic session at the Papua New Guinea University of Technology.

4.1 Study Area

The study area is Ramu Sugar Agro-Industries Ltd. (RAIL) in the Markham Plains, approximately 190 kilometres from Lae City. RAIL employs more than 2,500 employees comprising 850 permanent workers while others are temporary unskilled, casual workers engaging in cutting, harvesting, weeding, packing, and other unskilled jobs working in divisions or departments headed by a manager or supervisor (RAIL, 2019). The SABLs at RAIL were granted under the oil palm project. At the initial stages, a total of 11,295 ha of land were acquired and granted the SABL status (Butler 2013). The researcher was unable to gather all necessary information regarding the total land area covered by SABLs under the oil palm project; however, it is believed that more than 100ha of land is covered by oil palm as per site observations.



Figure 2: Location Map of Ramu Agri-Industries Ltd. [Source: Thomas, 2012]

5. Results and Discussions

The survey findings are discussed in this section in the order of appearance of the research questions posited in Section 1.

Research Question 1: *What are the irregularities in the registration of SABLs under the existing legal framework?*

The study findings reveal some level of deception and violation of existing laws in the registration and administration of SABLs in PNG, which accounts for 36%, followed by abuse of SABL processes by unscrupulous government officials (24%), while 17% of the respondents claimed that there is lack of consultation between the landowners and State agents. Other findings under this research question that raise concerns are abuse and violation of landowner rights and management issues of SABLs by concerned government officials. Figure 3 shows the perceptions of respondents about SABLs in RAIL, PNG.

Moreover, views of the respondents were gathered regarding the concepts of SABLs in Papua New Guinea. These views were used to test the general recommendation of the COI recommending that SABL scheme in PNG be abolished entirely due to its non-conformity to laws. The perceptions of the respondents are presented in Table 2. According to the study findings, 62% of the respondents claimed that SABL in Papua New Guinea is a good concept that assists landowners to free up their customary land for development and receive cash benefits and other forms of benefits. Furthermore, 38% per cent of the respondents claimed that SABL in PNG is a bad concept because it exposes customary land to land grabbing (forceful loss of land) and other forms of corruption and violation of landowner rights to participate meaningfully in economic development.

Pearson correlation coefficient analysis indicates a positive but inferior relationship ($r = 38.5\%$) between the “existing laws protecting landowner rights through SABLs” and “Existing laws not protecting landowner rights through SABLs.” This weak relationship is

attributed to the weak land governance in PNG resulting from lack of reviews on the existing outdated colonial land related laws in the country and anomalies in the processes and procedures of registering SABLs from application to issuance of title coupled with other issues surrounding SABLs in PNG. It is anticipated that as the land laws are reviewed and the anomalies in the entire SABL process are corrected with strict measures of transparency and accountability in place, landowner rights in PNG will be protected. Table 3 shows the results of the analysis.

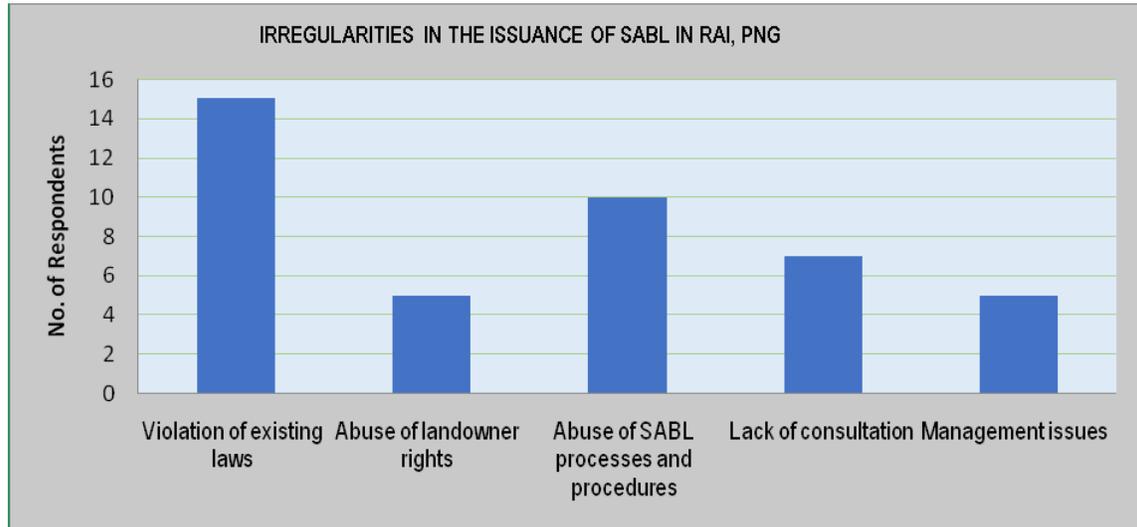


Figure 3: Flaws in the issuance and operation of SABLs in PNG [Source: Author, 2020]

Table 2: Perceptions of Respondents about SABL Concept

Respondents and Representatives	Total Respondents	Views of Respondents			
		Good Concept		Bad Concept	
		Count	Percentage (%)	Count	Percentage (%)
1 RAIL Representatives	11	9	82%	2	18%
2 Landowner Households	26	15	63%	11	37%
3 Govt Officials	5	2	40%	3	60%
TOTAL	42	26	62%	16	38%

Table 3: Correlation Coefficient results for landowner rights and existing laws

Variables	Correlation Coefficient	Variable 1	Variable 2
<u>Variable 1</u> Existing laws protecting landowner rights through SABLs	Pearson Correlation	1	0.385**
	Sig. (2-tailed)		0.000
	N	42	42
<u>Variable 2</u> Existing laws not protecting landowner rights through SABLs	Pearson Correlation	0.385**	1
	Sig. (2-tailed)	0.000	
	N	42	42

** . Correlation is significant at the 0.01 level (2-tailed).

Research Question 2: *What are the different types of benefits that landowners receive from the use of their customary land?*

Regardless of the negativity that SABLs portray in the country, the findings in this study reveal that SABLs play a major role in developing customary land in the country. Survey results indicate that 36% of the respondents believe that landowners are receiving assistance in the form of cash incentives from the company through SABLs, while 17% stated that through SABLs their participation in development has increased. On the other hand, 14% of the respondents indicated that landowners have received basic services such as health and education while 12% of the respondents claimed that SABL has created small medium-sized enterprises (SME), opportunities and spin-off benefits to the landowners. Moreover, 9% of the respondents indicated that SABL development projects have increased landowners' living standards. Therefore, regardless of the controversies surrounding SABLs in Papua New Guinea, this research argues that SABLs are very beneficial to landowners when they are properly and managed properly by the DLPP. There was so much negativity expressed by past scholars regarding SABLs in PNG with very little or no mention of the benefits realised from SABL development projects in the country.

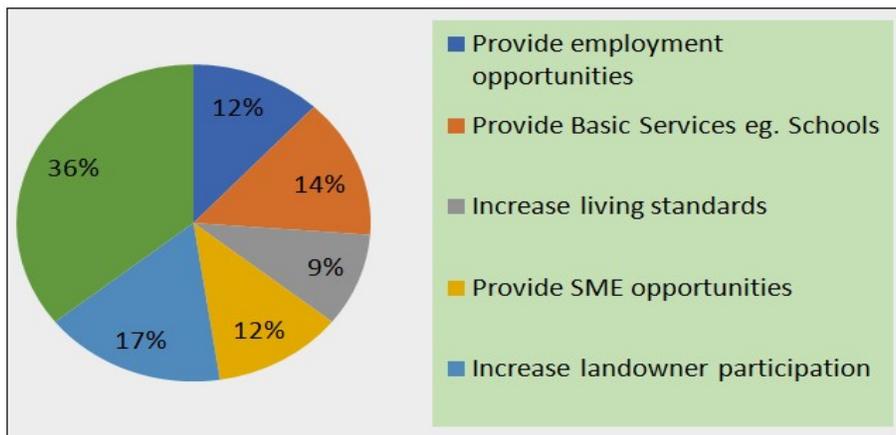


Figure 4: Perceptions of respondents about the benefits of SABLs to landowners

This research further reveals that the type of developer who is granted an SABL registration also matters in establishing good developer-landowner relationship, which paves the way for landowner participation and better benefits negotiation deals. Thus, the paper presents the relationship between benefits and SABLs and the results of the analysis are presented in Table 4. The relationship is favourable; however, there appears to be a weak relationship (47%) between “landowner benefits” and “SABLs”. This inferior relationship is ascribed to the flawed and defective land governance system incapable to manage landowner affairs in project developments coupled with bureaucratic and political influences and interference. It is hoped that this relationship will improve once a robust land administration governance is in place with less or no bureaucratic and political interference in matters of landowner benefit negotiations on land development projects.

Table 4: Relationship between Landowner benefits and SABL

Variables	Correlation Coefficient	Variable 1	Variable 2
Variable 1 Landowner Benefits	Pearson Correlation	1	0.471**
	Sig. (2-tailed)		0.000
	N	42	42

Variable 2 SABs in PNG	Pearson Correlation	0.471**	1
	Sig. (2-tailed)	0.000	
	N	42	42

** . Correlation is significant at the 0.01 level (2-tailed).

Research Question 3: *What are the issues faced by customary landowners of Ramu-Agro Industries?*

Landowner issues are prevailing issues in all land development projects in the country. The problems can be either internal or external. The survey identified five issues faced by landowners of the Ramu Oils Palm project under RAIL. Amongst the five (5) main issues identified in this study, illustrated in Figure 5, land dispute and benefit sharing are the two main landowner problems. Land disputes arise from boundaries to ownership while ordinary members of the clan often complain that benefits are not equally spread out by executives of the landowner groups to reach the landowners.

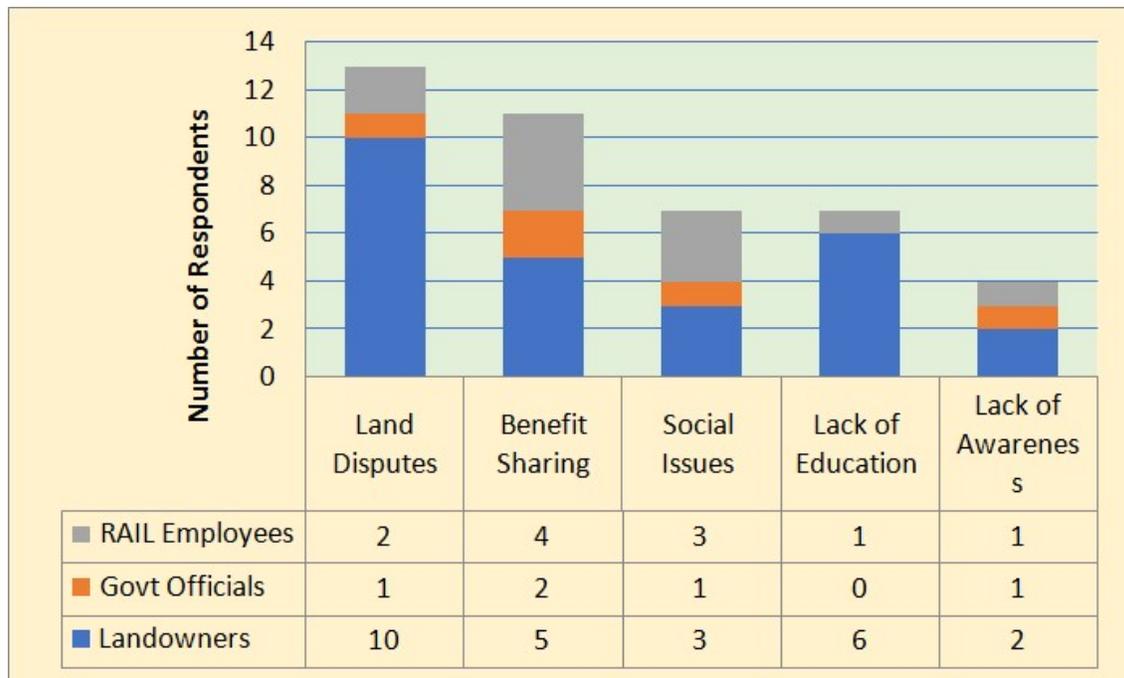


Figure 5: Landowner issues

Other major concerns faced by landowners of RAIL are social issues, lack of education and awareness to landowners. Social issues such as equal participation of members of the land-owning groups are an issue of concern that needs immediate attention. Lack of education and awareness of SABL mechanisms questions the viability of SABLs in RAIL in the long run. Papua New Guinea cannot achieve the SABL objectives in terms of customary land development projects if landowner issues are not addressed amicably by appropriate authorities. Landowner issues are stumbling blocks to economic development on customary land in PNG. It is important to note that the complexity of the land tenure system across all societies in PNG is one of the main causes of the anxiety over landowner issues.

Research Question 4: *What are the possible solutions to SABL issues in Ramu-Agro Industries Ltd?*

The study has identified five solutions that can help improve SABLs in the country to give better utilisation of customary land and produce better benefits to the landowners. As per the survey results, 28% of the respondents claimed that SABLs in RAIL, PNG, will operate effectively when the existing outdated colonial laws are reviewed, thereby prompting a comprehensive overhaul of the entire SABL mechanism putting in place strict measures to guide and manage SABLs.

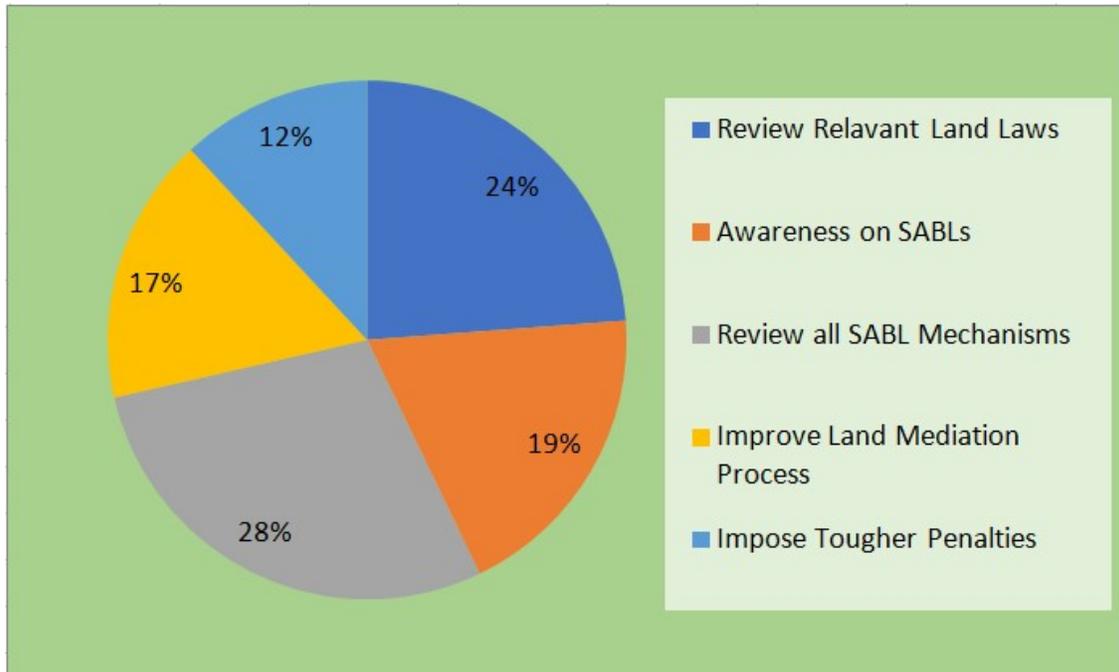


Figure 6: Possible solutions to SABL problems in PNG

Furthermore, 19% of the respondents insisted that responsible government departments such as the DLPP should carry out nation-wide SABL awareness particularly in the rural areas to sensitize the illiterate rural population to the benefits of SABLs. 17% of the respondents indicated that land mediators need empowerment and the entire land mediation process needs an overhaul to correct the shortfalls and give more powers to the mediators to resolve and reduce land disputes in the country, while 17% stated that tougher penalties be imposed on those that abuse SABLs when the out-dated laws are reviewed. Since 2013 to this date, individuals found guilty of abusing SABLs are yet to be prosecuted by the courts and put behind bars. The survey found that 12% of the respondents suggested that tougher penalties must be imposed on those found guilty of abusing SABLs in PNG.

6. Conclusion and Policy Implications

The focus of this study is to investigate the benefits and problems facing SABLs and propose possible solutions to mitigate SABL issues in Ramu Agro-Industries Ltd, PNG. The study employed stratified random sampling technique to capture the views of the landowners, government officials and RAIL employees that form the basis of the main arguments in this paper. The survey results reveal that SABL is a favourable and benevolent concept to landowners; thus, the recommendations of the Commission of Inquiry (COI) set up to

investigate whether SABLs should be entirely abolished cannot be left unchallenged. This paper contends that the legal and procedural issues identified in the COI are inherited problems on the ground since PNG still embraces outdated incompatible colonial laws that lack regular reviews to meet the current land development challenges that support the arguments of Lakau (1991). Furthermore, the study argues that there is no distinct legislation and policy framework initiated to completely deal with all SABL dealings through the lease-lease-back scheme, which reaffirms the argument made by Filer (2011). In the absence of a specific jurisdiction and legal apparatus to deal with customary land registration for development purposes, lease-lease-back scheme was devised to fill the gap but years later, the scheme was incorporated into the Land Act 1996 with only two sections as Section 11 and 102. Contrastingly, these two sections appeared to be inadequate, manipulative and inconclusive which fails to promote the objectives of the whole scheme. Section 102(b) of the Act confers absolute powers on the Minister for Lands and Physical Planning to grant SABL directly to the developer that breaches landowner right to give prior expressed consent to whom the lease should be granted to.

Consistent with the review of the outdated land related laws, the entire SABL process needs immediate overhaul to correct the irregularities and accord fair and just representation to customary landowners in the entire SABL dealings. Conversely, landowner issues identified in this study cannot be disregarded. Lack of attention to landowner issues can create an antagonistic environment for the viability of SABLs that reaffirms the arguments of Olive and Fingleton (2004). Considerably, land disputes and benefit sharing are two most common problems faced by RAIL landowners. Land disputes can be internal concerning user rights or external such as ownership which appears to be very sensitive, while on the other hand, landowners complain of benefits not shared equally amongst the households. Thus, revitalising the poorly structured land mediation process in PNG is necessary to reduce land disputes arising internally or externally between land owning groups because landowner issues hinder the process of economic development on customary. Land mediation should set the phase for land developments in PNG by way of dealing with, resolving and minimising land issues. Other problems faced by landowners identified in this paper are social issues, lack of education and awareness. Therefore, a collaborative and comprehensive awareness of all allied State departments led by the DLPP is crucial to educate illiterate landowners and make them understand the concept of SABL. All landowners across every community in the country must be involved to make SABL become a household name in every community.

Social issues are becoming a major concern for landowners such as population increase, gender equality, poor leadership by landowner leaders and disorderly behaviour by young generation associated with alcohol and other illicit drugs. The correlation coefficient analysis appeared to be inferior for both analyses; however, this study anticipates that the relationship will improve once circumstances surrounding SABLs are mitigated as per the findings of this research in Figure 6. Therefore, this study strongly argues that abolishing SABLs in PNG is not an option but rather there is a need for strong land governance with greater emphasis on transparency and accountability to make SABL effective, viable and landowner friendly for purposes of unlocking and transforming customary land for economic and other forms of development while due consideration is accorded to environmental protection.

The results of this study are of great significance for policy formulation and implementation. Therefore, this research utilises the findings of the last research question by recommending key strategies to mitigate the challenges facing SABLs in RAIL, PNG, as follows:

(i) Review of Existing Land Laws and SABL Mechanisms

Due to lack of a clear jurisdiction and having loopholes, shortfalls and inadequacies in the existing land related laws and anomalies in the entire SABL process, this paper calls for an immediate review of all outdated colonial land-related laws affecting SABLs to promote customary land development and protect traditional land rights in PNG. The weak land governance in the country has prompted loopholes in the laws resulting in the exploitation of the entire SABL process in a bid to avoid irregularities and corruption by government officials. An important plea here is for the government to amend Section 102(b) of the Land Act 1996 to give representation to the landowners in the entire SABL dealings. This section of the Act has given too much power to the Minister to grant SABLs directly to developers roughly for ten decades (99 years) without expressed consent of traditional landowners which violates their traditional land rights and the original intent of the scheme. Other relevant Acts that need reviews include the Land Registration Act 1981 and the Incorporated Land Group Act 1974, as amended.

(ii) Awareness on SABLs

Proper and well-coordinated awareness must be conducted throughout the country to educate the rural populace regarding the benefits as well as the adverse effects of SABL operations. Therefore, this paper calls for a collaborative effort from all government departments and agents involved in dealing with SABL with the DLPP taking the lead. The DLPP should be the central coordinating body that will oversee all SABLs. The processes of awareness and education are necessary tools to break the barriers of doubts, confusion, indecisiveness and tenure insecurity amongst the customary landowners to free up customary land for economic development.

(iii) Improve Land Mediation Mechanisms

The entire land mediation mechanism is outdated and dilapidated for many years. Findings of this study reveal that the entire land mediation mechanism needs to be overhauled and revitalised to empower the land mediators to deal with all land disputes in the country. However, the entire mediation processes cannot be overhauled if the Land Dispute Settlement Act (LDSA) is not revised. Therefore, this paper recommends that LDSA must be revised to pave way for the review of the entire land mediation mechanism for efficiency, transparency, accountability and effectiveness in dealing with land dispute issues in PNG because land disputes hinder the progress of land development projects. Therefore, PNG requires a robust, effective and efficient land dispute settlement approach, which is a crucial component of the nation's land administration system.

(iv) Imposing Tougher Penalties

Interestingly, the Land Act 1996, under Sections 11 and 102, does not stipulate any form of penalty nor the number of years for persons found guilty of corruption, fraud and misrepresentation concerning SABLs. This paper strongly appeals to the responsible government authorities in charge of review of legislation to include tougher penalties in the Land Act for persons that abuse SABLs. Irresponsible and corrupt government officials are using the loopholes in the Act to their advantage to abuse the entire SABL mechanism. Imposing tougher penalties will set the benchmark for future land reform initiatives of the government. Thus, it is worrisome to discover that since 2013, when the COI Report was made public, those found guilty of abusing SABLs are yet to be convicted by the courts and jailed. Imposing tougher penalties, prosecuting and jailing corrupt individuals who abuse the SABL mechanism will instil fear and consciousness on government officials to carry out their duties diligently and responsibly.

Therefore, this study strongly argues that abolishing SABLs in PNG is not the best option. Rather there is a need for strong land governance with greater emphasis on transparency and accountability to make SABL an effective, viable and landowner friendly mechanism that can unlock and transform customary land for economic and other forms of beneficial sustainable development, including environmental protection.

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