



THE SABL LAND GRAB

Papua New Guinea's ongoing
human rights scandal



SUMMARY

Special Agricultural Business Leases (SABL) are being used by foreign companies to unlawfully occupy community-owned land in Papua New Guinea (PNG). This is despite the leases being declared unlawful and universally discredited. This is happening with the connivance and support of PNG's politicians and public servants. The foreign companies have been able to abuse the law to illegally lease land and grab forest resources from customary landowners—without their legally required consent, and often without any prior warning.

As a result of this state-sanctioned land grab, hundreds of thousands of people, most living in remote rural communities, have seen their traditional subsistence lifestyles and environment destroyed and are suffering a wide-range of serious and on-going human rights abuses.

In many cases the leases have been used as a cover for large-scale logging of PNG's dense tropical rainforest, the third largest in the world¹ and, in some instances, conversion to palm-oil plantations. As a result of logging under SABL leases, PNG is now the world's largest exporter of tropical logs.²

This is all despite PNG's progressive Constitution and its measures specifically designed to boost self-reliance, fend off unwanted foreign economic and cultural influences, and protect the country's spectacular biodiversity.

PNG is not alone though in falling prey to resource hungry foreign commodity traders and manufacturers hunting cheap timber resources. The illegal conversion of forests to agricultural uses has been one of the key drivers of deforestation worldwide, leading to the conversion of 20 million hectares of forest between 2000 and 2012.³

China's manufacturing heartland is a principle global destination for harvested logs. China now accounts for half of global illegal timber imports⁴ and is the main destination for logs from PNG,⁵ 30% of them from SABL areas.⁶ A lack of due diligence

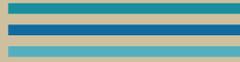
by manufacturers and importers frequently means that PNG's illegal timber is still finding its way into shops in the European Union (EU) and the United States, even though illegal timber imports are banned in both.⁷

Palm oil—the intended focus of many SABLs—is similarly a key driver of global deforestation, with sustained growth in global demand over several decades, particularly in India, China and the EU.⁸ Palm and palm kernel oils constituted 85% of all agri-food imports from PNG into the EU in 2017.⁹

This international trade is fuelling a relentless attack on customary landowners' forests in PNG, and the discredited but ever present SABL process is holding the door open.

The irreparable harm being caused to the human rights of PNG's indigenous peoples and to their continued use, enjoyment and ownership of their lands and resources is in breach of many of the fundamental human rights protected in the Universal Declaration on Human Rights and other UN Conventions and Covenants.

Below we examine the devastating impact of SABL land grabs on the people of PNG, shine a light on the ongoing community resistance and detail a set recommendations calling for immediate action, not only by the PNG government but also various UN bodies and other countries.



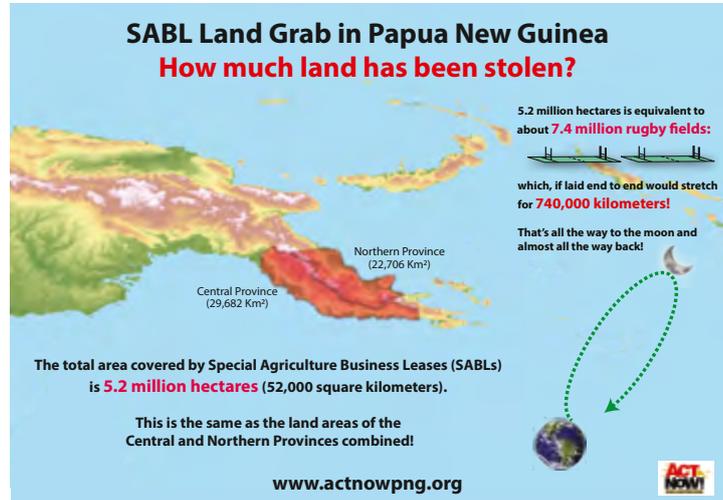
At independence in 1975, Papua New Guinea created a progressive policy and legislative framework intended to foster and protect that independence and protect citizens' human rights. However, implementation has been hindered by corruption, weak law enforcement, and external pressures from the global commodities trade. This is especially evident in the case of the Special Agricultural Business Leases which have been abused to facilitate foreign companies' access to natural resources, with devastating impacts on customary landowners' and their human rights.

Between 2003 and 2012, control of around 5.5 million hectares of customary land passed into the hands of mainly foreign corporations through the abuse of the SABL mechanism. The 5.5 million hectares leased represents over 12 percent of PNG's total land area and more than 16 percent of accessible commercial forests.¹⁰

How did this happen?

The SABL model was introduced in 1979 with the objective of enabling customary landowners to enter into formal agriculture projects on their own land. The idea was that customary landowners could lease some of their land to the government, which would then create a formal title and lease it back to the landowners or a third party who could then use that land title to establish a commercial agriculture operation. The scheme is governed by Section 11 and Section 102 of the Land Act 1996.¹¹

It was intended that the SABLs would create economic opportunities that would benefit customary landowners by providing them with commercial rents, employment opportunities and increase the number of small and medium businesses in rural areas with consequent benefits for the local and regional economies and help improve infrastructure etc. For many years after its introduction, the SABL model was rarely used and, when it was employed, it was generally for small coffee and cocoa plantations. The number of SABLs started to increase after 2003, but it was only after changes



The total area covered by the SABL leases is over 52,000 square kilometres Photo: © ACT NOW!

were made to the Forestry Act in 2007 that the number of leases started to grow exponentially.¹²

Prior to the 2007 amendments to the Forestry Act, logging companies had to apply for Forest Management Authorities, permits that could be difficult to obtain and required a rigorous and complex screening process. This was introduced in 1991 following an earlier Commission of Inquiry that uncovered massive corruption in the forestry sector and widespread illegal and unsustainable logging. The 2007 amendment though provided logging companies with a loophole through which they could easily obtain Forest Clearances Authorities under approved 'agricultural development projects'.¹³

This opened the door for logging companies to abuse the SABL system and use the leases as a cover to accelerate their felling activities. Suddenly SABLs were being granted over large areas of customary land, the largest SABL project covered over 2 million hectares and 11 SABLs were for areas over 100,000 hectares.¹⁴

Such large areas are never required for genuine agriculture projects but in many cases the leases were used to secure Forest Clearance Authorities.

2. THE COMMISSION OF INQUIRY AND ITS FINDINGS

In 2011 the Papua New Guinea government, under temporary Prime Minister, Sam Abal, set up a Commission of Inquiry (COI) to look at the legality of the large number of SABLs issued since 2003.

Two of the three Commissioners appointed presented their final reports, covering 42 of the 77 leases investigated, to the Prime Minister (now Peter O'Neill) on 24 June 2013. No final report was ever submitted by the third Commissioner.¹⁵ On 17 September 2013, the Prime Minister presented the Commission's report to Parliament.

The COI found evidence of genuine landowner consent and commercially viable agricultural projects being undertaken in only 4 of the 42 SABLs assessed. In the other 38 leases there was no genuine landowner consent—an essential legal requirement. The COI also found widespread abuse, fraud and a lack of coordination between government agencies, along with a general failure and incompetence of government officials to ensure compliance, accountability and transparency within the SABL process.¹⁶

According to the Commissioners, throughout the course of their inquiry serious allegations were also levelled against officials and senior government bureaucrats involved in the management of SABLs, concerning bribes being offered by project developers and representatives of landowner companies to procure SABL titles.

The inquiry also received evidence of undue political pressure being put on government officials by senior ministers and politicians to fast-track SABL applications and issue titles. Incidences of political interference were numerous and were reported in various individual SABL reports.¹⁷ Pressure was also put on the Commissioners themselves, by senior ministers.¹⁸

The Commission concluded most of the SABL leases were unlawful and should be revoked.¹⁹

Commissioner John Numapo concluded that:

“The overall recommendation of the COI is that the current SABL set up is a complete failure and must be abolished. The current set up is riddled with loopholes, shortfalls and inadequacies—so much so that corrupt public officials and unscrupulous individuals are taking advantage of it to enrich themselves. There is simply no transparency and accountability in the whole process, starting from application to processing to the final issuing of SABLs.”²⁰

Although the Commission of Inquiry reported in 2013, in 2018 communities are still suffering deeply from the loss of their lands, and the devastation of their forests is still continuing, as the stories below illustrate.

State sanctioned violence in the theft of land²¹

In 2016 the New Ireland Provincial Government sent fully armed police to defend illegal logging and road clearing operations on New Hanover and arrest anybody seen obstructing progress.²² This was despite the fact that the COI had already recommended that the three SABLS on the island be revoked based on evidence of both corruption and fraud, and that the majority of landowners in New Hanover were “*totally unaware*” that their land had been given away. The three SABLS cover 936km², and by September 2016 some 85km² of mostly intact forest had been cleared, and 67km² planted with rubber, cocoa, coconut and tree plantations.

Arbitrary deprivation of property and the right to Free, Prior, Informed Consent

In the village of Aimbai in Bewani, in West Sepik Province, none of the villagers spoken to by Act Now, including the chief of the village, said they had any prior knowledge about a SABL agreement that included their land, until a logging company arrived and started operations. There had been no efforts to explain the SABL to the villagers, and they had no idea that their legal rights to their own land had been signed away, behind their backs, for 99 years.²³

The SABL, issued in 2009, covers a massive area of 1,399km². By December 2016, 150 km² of forest had been cleared, and approximately 80km² planted with oil palm. Between May 2012 and January 2017 446,805m³ of logs with an export value of US\$62 million were exported to China and India.²⁴



Chief Peter Tai of Aimbai village Photo: © ACT NOW!

The confused villagers tried to stop the companies and get explanations, but found themselves threatened, beaten and turned away by the armed police and army.

“When the company uses the police and army, they twist the law and beat us up very badly, to the point where we are afraid to attempt stopping the company again.”

Peter Tai, the Chief of Aimbai village²⁵

The Commission of Inquiry determined that this SABL bordered on criminal negligence and should be “*revoked and reviewed*”.²⁶

Police brutality and human rights abuses in East New Britain

The situation has been fraught in Pomio District in East New Britain, where there is widespread opposition to SABLS that allegedly involved fraud and forgery. The four SABLS—part of the Sigite-Mukus Integrated Rural Development Project—were issued to in 2008 and 2009 and the land subleased to a Malaysian logging company²⁷.

By February 2017, almost 210 km² of mostly intact rainforest had been cleared, and 1,275,218 m³ of logs with a declared export value of some US\$122 million exported, mainly to China²⁸.

In the villages of Pomata and Marana, inhabitants have been explicitly restricted from planting food staples and cash crops to generate additional income, and this restriction has been closely enforced by the Royal PNG Constabulary, known locally as the “company police”. This has left local people with no choice but to be employed as labourers on their own land.²⁹

“In the Pomio SABLs we, the people have lost our God given birth right to our land for 99 years and significantly our traditions, cultures, customs, virgin forest and friendly environment, the eco systems we depend on and our peaceful community living and life setting. People have been deprived of their basic human rights to own land, to have their freedom of speech and freedom of movement and are now facing serious social disorders in our communities and our children not attending to their classes very well. We all face a massively unpredictable future.”³⁰

Landholders resisting the implementation of the SABLs have faced ongoing intimidation by police. In 2013, a fact-finding mission that included a team of government officials and civil society organisations found evidence of ‘continuous brutality and human rights violations’ by police operating on behalf of the logging company. Instances of



Local people are restricted from planting food gardens and cash crops. Photo: © ACT NOW!

violence include assaults rendering victims unconscious, locking villagers in shipping containers for days on end, attacks by police on unarmed villagers with fan belts, rifle butts and toe-capped boots, forcing villagers to spend the night lying in the rain on felled logs, and forcing them to drink polluted water.³¹ The police were also found to have forced various groups of youths and landowners to sign agreements pledging not to resist logging operations on their land even though the people had not consented to the logging and it was being done in breach of their constitutional rights. They also forced various people to make compensation payments in cash to the logging company.³²

The logging company has disputed these findings and continues to deny any wrongdoing.

In 2017, Police Minister Jelta Wong promised to ensure police were removed from SABL areas. It seems that order is, at least temporarily, being enforced in Pomio, but concerns about other SABL areas such as New Ireland and the Sepik remain.³³

Lies, false representation, fear and repression

A key feature of the SABL process is that it creates quasi-legal agreements, where documents are officially agreed and signed, but not by the right people.

There is widespread evidence, including from the COI and the Supreme Court showing that individuals without the authority to speak on behalf of customary landowners have flouted customary landowners’ human rights by appointing themselves to head Incorporated Land Groups (ILG) and illegally signing deals on behalf of communities who often know little or nothing about the SABL agreements and their life and livelihood changing consequences.³⁴

People living in the Pomio district have reported that the three local men who have been vocal in supporting SABL leases and the logging operations, appointed themselves as chairpersons of landowner companies and do not represent the local people. The whole logging and oil palm operation was approved by these men in isolation from the communities and without the knowledge of the majority of the population.³⁵



It has also been reported that in Bewani the ILG chairpersons were themselves intimidated into signing on behalf of their communities, without time for consultation:

“Men came in groups to get us to go sign the agreements and for those of us who disagreed, they tore our houses down, beat us up and threatened us. They approached each of us at a time so we couldn’t go against a group of men, especially with the local MP is on their side...We signed all papers of the 14 page agreements, agreements that we didn’t read and so didn’t understand what we were signing, but we knew it was bad because after all, we were forced to sign.”³⁶

company knew there will be no repercussions. But she is adamant that she will protect the land for her children and their children, and that she does not care if the company sends the police and army to stop her:

“This land does not belong to the police and army, it is mine to protect and I will do whatever I can to protect it.”³⁷

Dividing and conquering the people

Even when communities do have an understanding about what is being proposed, the generally false but tantalising promises being made by the companies can create sharp conflicts within communities and even families, between young and old, and between men and women.



Anna Kwembi from Elis village preparing food in her home. Photo: © ACT NOW!

Anna Kwembi, from Elis village in East Sepik, is struggling to keep a logging company off her family’s land, but, together with her daughter, she has angered the men in her family, her brothers and sons by taking this stance. She says her family used to work as a team, making sure their land was well guarded. But she has watched on as the logging company convinced her brothers that they should agree to cut the forests and plant oil palm, turning her brothers against her by dangling the prospect of being able to send their children to school overseas, having houses with electricity and water, and owning their own computers. Anna says she does not understand what a ‘Special Agriculture Business Lease’ is, but she does know that their forest provides everything from food to building materials, herbal plants and much more, so any compensation would definitely need to provide significant long-term benefits just as the forests do. Anna’s daughter obtained a court order restraining the company from going into their family’s area, but the company went in anyway, logging the huge kwila trees. It has not planted any oil palm. Anna believes that the local government officers have been bribed and the

Labour conditions

In addition to the loss of land, destruction of the natural resources and the ensuing pollution of rivers—the source of food and water for many landowners,³⁸ the incoming ‘agricultural development’ brought through SABLs also violate citizens’ human rights with respect to labour conditions. There is evidence that even in 2016 both foreign and local men were being “subjected to forced labour, including through debt bondage, in the logging, mining and fishing sectors” and that violations of wages, overtime and health and safety laws and regulations are also common, again particularly in the logging and agricultural sectors.³⁹ With respect to the logging industry “extremely low wages and poor working conditions, including cramped and unhygienic worker housing” are observed.⁴⁰

4. EMPTY PROMISES FROM THE GOVERNMENT

Since receiving the Commission of Inquiry reports in 2013, the PNG government has taken little meaningful action to cancel the illegal leases. At the same time the PNG Forest Authority has continued issuing Forest Clearance Authorities (FCAs) allowing forests to be logged and the timber exported.

Since 2013, numerous promises have been made by Prime Minister, Peter O'Neill, that the government would act on the Commission's findings and cancel the leases. In September 2013 he said:

“We 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...For too long landowners have been taken advantage of and had their land stolen from under them.”⁴¹

The PNG government has made numerous commitments to address the land grab and revoke the illegal leases

In June 2014 the National Executive Council announced⁴² that the SABLs identified by the COI would be revoked and a Ministerial Committee would consider the SABLs overlooked.

Again, Prime Minister, Peter O'Neill promised:

“I will make sure that we terminate the leases of those that were acquired illegally, done not in a proper manner and I have already called Chief Secretary to request the agencies that I have stated—Agriculture, Lands and Forestry—to fast track this and that is happening as we speak and I hope that over the next few weeks we will start the process of terminating the leases.”⁴³

However, it appears this Ministerial Committee made no progress. Commenting on its leadership, COI Commissioner John Numapo said:

“I am at a loss to understand why the Ministers for lands, forestry and agriculture have been given the task to implement the recommendations of the COI when it was their respective departments that were responsible for the management and administration of SABLs, and that messed up the whole SABL scheme. Adverse findings were made against these government agencies, including their respective ministers, so how on earth do we expect them to effectively implement the recommendations of the COI?”⁴⁴



The PNG government has made numerous commitments to address the land grab and revoke the illegal leases Photo: © ACT NOW!



In December 2014, the Prime Minister blamed PNG's bureaucracy for not responding to political directions to implement the recommendations of the COI. He said he had again tasked the Chief Secretary with ensuring the recommendations were implemented.⁴⁵

In May 2015, the Chief Secretary announced the government was setting up a new 'Independent Task Force' to speed up the implementation of the COI's recommendations and cancellation of the leases,⁴⁶ but again no actual progress was made.

More than two years later, in August 2017, a new 'Customary Land Advisory Committee' was announced to investigate the SABLs. Six months later, in February 2018, it was declared 10 SABLs had been cancelled.⁴⁷ However, of these four were actually voluntarily surrendered, four were declared void by the courts, and only one appears to have been cancelled by the government.

Since then there have been no further announcements. A written request for an update from ACT NOW has not been replied to. In the meantime, some millions of hectares of customary land still remains in foreign hands with logging continuing every day in some SABL areas.⁴⁸

5. SABLs AND THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK



ACT NOW! took its campaign against the SABL land grab to the United Nations in Geneva in 2017. Photo: © ACT NOW!

Given the fact that next to nothing has been done to address the systemic aspects of SABL-mandated land grabbing in PNG—in spite of the results of the COI and regardless of the explicit promises made by the Prime Minister—it becomes ever more important to assess the situation in relation to the international human rights framework, to consider what options there might be for using it to drive real change.

There are several UN treaties pertaining to human rights that relate, either directly or indirectly, to illegal land grabbing, especially because of the way in which land grabs and associated violence can deprive vulnerable peoples of their rights to life, self-determination, security, land, livelihood, housing, and adequate food and/or water

First and foremost there is the **Universal Declaration of Human Rights 1948**. The most directly applicable article establishes individuals' rights to own property, and not to be arbitrarily deprived of it. Other pertinent articles enshrine people's rights to life, liberty and security; the economic, social and cultural rights indispensable to human dignity; and the right to a standard of living adequate for human health, including food and housing.⁴⁹

The abuse of the SABL process in PNG can be said to contravene all of these rights.

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**⁵⁰ and the **International Covenant on Civil and Political Rights (ICCPR)**⁵¹ are similarly relevant. Both take people's right to self-determination as their starting point, and go on to state that, "All peoples may, for their own ends, freely dispose of their natural wealth and resources... In no case may a people be deprived of its own means of subsistence."

PNG ratified both these treaties on 21 July 2008.⁵²

ICESCR's Committee on Economic, Social and Cultural Rights has specifically spoken about states' obligations in relations to business activities and land grabbing, which is highly pertinent to the SABL issue in PNG:

“States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.”⁵³

The International Convention on the Elimination of All Forms of Racial Discrimination (UNCERD) is also highly relevant. The abuse of the SABL process has led to widespread discrimination against PNG's indigenous customary landowners in favour of foreign companies wanting to access natural resources.

Convention No. 169 of the International Labour Organization (ILO), the Indigenous and Tribal Peoples Convention recognises Indigenous Peoples' right to own and possess the lands they traditionally occupy and rely on for their subsistence and traditional activities and requires governments to proactively identify and safeguard these rights.⁵⁴ Similarly, the rights of indigenous



groups and ethnic minorities should be protected, including from land grabbing, under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which establishes Indigenous Peoples' right to dispose of their natural wealth and resources freely, and calls on governments to ensure land is not taken from them without their Free, Prior and Informed Consent (FPIC).⁵⁵

PNG has not though signed the ILO Convention⁵⁶ and did not participate in the UNDRIP vote.⁵⁷

The existence of all these treaties and obligations has not so far had a discernible impact on the PNG government, other than possibly eliciting false promises and political manoeuvres from the Prime Minister. The question of how to ensure the implementation of international treaties and norms thus arises.

It has been suggested that illegal land grabbing should be considered a crime against humanity, with cases of abuse being taken to International Criminal Court (ICC) under its 'Rome Statute'.⁵⁸ A 2016 policy paper from the Office of the Prosecutor of the ICC indicates that the ICC would indeed consider giving special consideration to crimes relating to the illegal dispossession of land, exploitation of natural resources and environmental destruction.⁵⁹ However, Papua New Guinea is not currently a signatory.

6. RECOMMENDATIONS

In spite of Papua New Guinea's progressive Constitution—which protects human rights for all of its citizens, recognises the customary landownership of its indigenous population, and seeks to ensure that the country remains independent and free of foreign influence—the ongoing SABL saga shows just how far away the current executive and legislative branches are from implementing the population's human rights and aspirations.

Almost all of the SABLs that have been publicly reported on were declared illegal in 2013, but only a handful have been revoked, most of them through court cases brought by landowners. Meanwhile, Forest Clearance Authorities are still being issued in SABL affected areas.

In order to secure the human rights of PNG's citizens, in line with the country's Constitution and its commitments under UN Declarations and Covenants, the **Government of Papua New Guinea must:**

- Sign and ratify all international human rights conventions, and the Rome Statute of the International Criminal Court.⁶⁰
 - Ensure that communities' rights to Free Informed Prior Consent to any activities taking place on customary land are fully respected and enforced.
 - Establish the Independent Commission Against Corruption and Human Rights Commission that have been promised for more than a decade.⁶¹
 - Ensure that all police and military personnel are removed from all SABL and logging areas.
 - Revoke all illegal SABL leases immediately and return the land to its customary owners.
 - Immediately suspend all Forest Clearance Authorities that relate to SABL areas, and implement a moratorium on new FCAs until an independent public review is conducted.
- Instigate disciplinary action against all those identified in the Commission of Inquiry as having failed to protect the interests of customary landowners and uphold the law.

Members of Parliament, local officials and influencers in Papua New Guinea also have an important role to play in improving the wellbeing of citizens, and should proactively support customary landowners struggling to secure their human rights and prevent the destruction of their lands and resources.

The United Nations and other governments need to find more effective ways of ensuring that PNG fulfils its commitments with respect to the UN Declaration of Human Rights and other international obligations.

Office of the High Commission for Human Rights, Special Rapporteurs and UNCERD should:

- Visit PNG to investigate the ongoing abuses and exactly why recommendations have not yet been fully and effectively implemented.⁶²

Other countries' governments should:

- Ensure that their citizens and corporations operating in PNG do so lawfully and respect human rights obligations.
- Reduce demand for PNG timber by improving measures to implement bans on illegal timber imports.

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ACT NOW! is a community advocacy organisation based in Papua New Guinea.

Our vision is for a 'gutpela sindaun blong olgeta' (a just and equitable society) that embraces Papua New Guinea's rich and diverse biological and cultural heritage and is based on the principles of sharing, communal land ownership and environmental stewardship.

Our mission is to ensure that local people have a strong voice in demanding a just and equitable society. We do this by running public campaigns on issues of national importance; commissioning research that underpins the case for change; creating new and innovative awareness and education materials; and empowering people by informing them of the causes of injustice and inequality and making sure their voices are heard through the media and direct lobbying.

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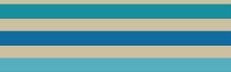
Ozeanien-Dialog
c/o Evangelisches Missionswerk in Deutschland e.V. (EMW)
Normannenweg 17-21, 20537 Hamburg
www.ozeanien-dialog.de

This is an abridged version of a report published by
ACT NOW! and War on Want in October 2018

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Editorial staff: Nicole Skrzipczyk and Jan Pingel
Design: Tilla Balzer | <https://buk.design/>

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