

DEVELOPMENT CONFERENCE

DESTRUCTION AND REBUILDING IN WEST POMIO EAST NEW BRITAIN PROVINCE PAPUA NEW GUINEA

As of 2017 the population of Papua New Guinea was 8.252 million. In 2009 the population was 6.703. This gives it a growth rate of 2.2 percent. Its population is rapidly expanding requiring the growth and expansion of infrastructure and health, educational and other social facilities. When Papua New Guinea gained its independence from Australia in 1975 it was estimated that 97 percent of the land remained under customary ownership.¹ However between the beginning of July 2003 and the end of April 2011 around 5 million hectares of customary land (11 percent of PNG's total land area) passed into the hands of national and foreign companies through what is referred to as the Special Agricultural Business Lease.² Under the Land Act it is possible for customary Land owners to lease land to the Government with the Minister of Lands converting the land to State Lease and lease it back to the Land owners in the form of a State lease title.³ The customary land owners who hold the Land under this state lease title can then lease this land to other entities national or foreign to undertake certain agricultural activities. This is often referred to as the lease-lease back arrangement.

The intention of such an arrangement was to allow development to occur in outlying or remote areas.⁴ This occurred in West Pomio. In 2010 some 55,400 hectares were leased to a Malaysian Company to undertake logging and then the planting of Oil Palm. West Pomio is a remote area. The area is divided into four blocks with the land owned by different land owner companies.⁵ Three of the blocks area now planted in and producing Oil Palm.

However far from receiving the benefits of development, the people of West Pomio have found themselves the victims of a project which has brought environmental devastation, social and cultural disintegration and disharmony and conflict within communities.

From the start there were issues. When the agreements regulating the project were signed in 2010 they were drafted by the developer who brought the directors of the newly formed land owner companies from Pomio to Kokopo to sign the agreements. The agreements were prepared by the foreign company. They were written in English and not in 'tok pisin' or the local language. When the landowners were told to sign, no explanation was given to them as to the content of the contract. The land owners had been led to believe that this was a logging agreement. When they found out that it was an oil palm project they were all

¹ Colin Filer *The Political Construction of a Land Grab in Papua New Guinea*. Canberra: Australian National University, Crawford School of Economics and Government. (p 1)

² Colin Filer *The Political Construction of a Land Grab in Papua New Guinea*. Canberra: Australian National University, Crawford School of Economics and Government. (p 1)

³ Sections 11 and 102 Land Act 1996.

⁴ From the transcript of the Commission of Inquiry in SABL's.

⁵ Pomata Investment Ltd; Ralopal Investment Ltd; Nakiura Investment Ltd; Unung-Sigite Investment Ltd.

alarmed and asked for time to go back to their home areas and discuss it with their people. The response was that if they did not sign they would lose the project and the company would go elsewhere. This pressured the land owners into signing the agreement.

It is well known that Oil Palm has adverse effects on soil. It is for this reason that a group known as the Round Table for Sustainable Palm Oil has been established. This is a body which has set in place appropriate environmental regulations to ensure that the land and environment upon which oil palm planting and harvesting is taking place is appropriately managed. Therefore regard is given to:

- the gradients upon which the Oil Palm can be planted;
- the fertilizers and sprays which can and cannot be used;
- practices to ensure appropriate protection of water ways and water sources;
- ensuring that there are appropriate buffer zones between water ways and the oil palm and the oil palm and villages;
- appropriate protection of sacred and cultural sites;

In other words there is very careful environmental management.

The company which went in to West Pomio is not a member of the Roundtable for Sustainable Oil Palm and therefore the contract contains no requirements to ensure appropriate environmental protection.

In legal terms the contract which was signed was an unconscionable contract. In common law jurisdictions which Papua New Guinea like New Zealand is one an unconscionable contract refers to a situation where in a contractual arrangement you have a stronger and weaker party with the stronger party manipulates the agreement to its advantage and to the detriment of the weaker party. There are a number of cases that illustrate this. In Australia you have *Commonwealth Bank of Australia v Amadio*⁶ In Papua New Guinea you have *Pinpar Developer Pty Ltd v TL Timber Development Pty*.⁷

In the agreement in question the landowners:

- had no part in the drafting of the agreement;
- were not properly explained the contents of the agreement and its implications;
- were pressured to sign it;
- were not encouraged to seek independent legal advice.

The terms of the contract completely favour the foreign company;

- the rental for the land is K14.40 per hectare per year;⁸
- the company can take metal and gravel free of charge;
- the amount paid for any timber logged to the local people is K16.00. The injustice of this is

⁶ *Commonwealth Bank of Australia v Amadio* [1982-1983] 151 CLR

⁷ *Pinpar Developer Pty Ltd v TL Timber Development Pty* [2006] PGNC 66: N3075 (9th August 2006)

⁸ This converts to \$NZ 6.24

revealed with the international price for Kwila. This is K838.00 kina. The local land owners receive K16.00 of this;

- there is no requirement for the adoption of any environmental practices;
- there is no requirement for the respect of sacred sites;
- there is no requirement to make any community contributions;
- it states that the oil palm trees are owned by the company. There is a clause in the agreement which states that any disruption to the project by the land owners means that the land owners have to compensate the company for financial losses both for money spent and loss of future profit. It is estimated that the total value of the project is K10 billion.⁹

Clearly the payments for rental and timber royalties are inadequate. The company is using the money that it receives from timber exports to assist in funding the project. This means that:

- the people are being paid an inadequate consideration for the use of the land;
- their resources are being used to fund the project.

As the project developed there were further issues. One of them is the encroachments onto conservation areas. These are designated areas which are supposed to be respected as places where forest and flora is protected and which people can plant their food gardens. However the foreign company has constantly pressured people to sign consent forms allowing encroachment into conservation areas telling them that if they don't sign they will either be taken to court or will lose their land.

It is noted that the project has created jobs. This is acknowledged. However wages are not high and when people work they do not have time to attend to their food gardens. This means that they are not providing appropriate food for their families.

The project has created huge division amongst communities. Some people have supported the company while others realising the environmental and social devastation have become angry and are actively opposing the company. Some NGO's have joined the call of some of the land owners that the company should cease operations and leave.

The Archdiocese of Rabaul was petitioned by the people to become involved and speak on their behalf with regards to the project. It was felt after considerable consultation with communities and professional and government groups that the most appropriate way of doing this was through the negotiation of a new agreement to regulate the project. The company had come, established itself and was not going to leave. Further they would not attend to the environmental devastation before leaving. The Archdiocese therefore proceeded to investigate all issues of the project, ensure that it had the support of the people and prepared a detailed submission for the company. At the heart of the submission was the strong request that the current agreement be set aside and a new agreement negotiated which addressed the following issues:

- the provision for a fair rental;

⁹ Oaklands Institute 2013. *On our Land Modern Land Graps*

- an environmental impact assessment which sets out:
 - the environmental damage;
 - how this can be rectified;
 - policies and practices which must be followed to ensure appropriate respect for and protection of the environment;
 - identification of and respect for conservation areas;
 - the need for the different sacred and cultural sites to be identified and respected;
- the need for appropriate buffer zones to be established;
- that there be a requirement that the company make appropriate community

Contributions. This includes:

- i) Active support of the local hospital;
- ii) Active support for the local High School;
- iii) Active support for the local primary school;
- iv) Assisting to address power and water issues of the district centre Palmalmal;
- v) Assisting with permanent water supplies in the villages.

It was necessary for the Archdiocese of Rabaul to initiate legal proceedings against the company on the basis of unconscionability to get a court order for mediation to make the company come to the negotiation table. Before this occurred there were a number of attempts to derail the process and the administrator of the Archdiocese was deported.

At the mediation it was agreed that:

- for the area that the company had not gone into a new agreement would be negotiated;
- for the other three areas the Corporate Governance of the Land Owner companies need to be attended to with new agreements being negotiated in 2020;

This places large challenges. At the moment:

- there are elections taking place for new Boards of Directors;
- an environmental assessment impact report is being undertaken.

There have been attempts to disrupt the elections by certain elements who are loyal to the company. However the Government has now overtaken these.

In terms of rebuilding there are three important matters the need to be addressed:

- i) The negotiation and implementation of a new agreement based of a fair and just distribution of the benefits of the project making sure that the environment is appropriately managed and that cultural and sacred sites are respected;
- ii) The addressing of the social disruption. This can only be addressed through the company providing appropriate assistance with development and the impute from the Government and UNDP who is already involved to facilitate community programmes and facilities to address this;
- iii) The need to see that there is the appropriate reconciliation in the different communities. The project has divided families and communities. Once the new arrangements are in place reconciliation in accordance with local Melanesian custom needs to occur.

This is a long and slow process. However it is essential if peace and harmony is to be re-established.

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