

## Land as Legacy

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“I will make you a group of peoples and give this country to your descendants after you, to own in perpetuity” (Genesis 48,4) (Words of Patriarch Jacob).

We do not inherit the earth.... we borrow it from our children... (Native American Proverb).

“We declare our fourth goal to be for Papua New Guinea’s natural resources and environment to be conserved and used for the collective benefit of us all, and to be replenished for the benefit of future generations.” (National Goals and Directive Principles, PNG Constitution).

Papua New Guinea is a land of rich diversity ranging from tropical islands to high, rugged mountains. The land, totalling almost half a million square kilometres, contains a variety of marine resources, unique species of fauna and flora, minerals, oil and gas. The land is home to six million indigenous people, who until recently were said to be the customary owners of ninety-seven per cent of the land and its resources – the other three per cent being held by the State.

Recent debate has questioned indigenous ownership and reports reveal that up to ten per cent of the land is now under the control of foreign and national corporate interests through lease and leaseback arrangements. At the same time large resource development projects continue to expand.

This article does not enter into legal or political issues associated with such developments. The intention is to focus on ethical issues that seem to be ignored or forgotten in current debates – particularly the issue of intergenerational responsibility

There are three parts to this article, firstly an outline of some ethical points – providing a basis for why this is an issue at all; secondly, a brief consideration with examples of the effects of some current projects today in PNG; and thirdly points on environmental ethics based on the above.

### I. Ethical points

1. Environmental issues are real and call for practical and also ethical responses. Environmental ethics--about what is right conduct in our dealings with the natural world--is becoming an increasingly important aspect of development issues.

2. In recent times there has been a shift in our perception of the “nature of nature.” Formerly it was common to view humanity at the top, exercising “dominion” over the earth. Nature was seen simply as a “resource.” Now we are coming to realize the value of all creatures and the earth for their own goodness, not just because they are useful for human beings. Ours is a relationship “with” the land, not “over” it.

3. Creation is not finished. It is still unfolding. The universe is an “ongoing work”, and with the knowledge and skills we have gained from science and technology we human beings participate in that work.

4. The earth must be safeguarded since it is humanity’s home (*oikos* to use the Greek word from which our English word ‘ecology’ is derived). Ecology is the study of that home (*oikos*) while economics is its management. Earth is humanity’s home and so should be safeguarded.

5. Everything that exists co-exists. Private property affords personal freedom and family autonomy, but it is not an absolute right, since private property has a “social mortgage.” To say, “This is mine” or “this is my land” does not take away social obligations. A person or organization does not have a right to the unlimited accumulation of wealth if that would be to the detriment of the “common good”.

6. Even great financial gain does not justify serious harm to the environment – that is shared with all beings, including future generations. It is unacceptable that maximum yield or advantage in production becomes an end in itself. Science and technology can temporarily increase and transform natural reserves, but they cannot create them.

7. The relationship of indigenous peoples to the land and resources deserves particular attention, since it is a fundamental expression of their identity. Therefore leaders must consider seriously the ethical options for traditional

landowners and their children forced to vacate their land to make way for large-scale projects

8. There is a growing sense of intergenerational responsibility. The land is bequeathed to us in trust, to hand on to our children in a better state than when it was entrusted to us.

The above principles are challenged by what we see today in Papua New Guinea. For thousands of years people have lived out their interconnectedness with the natural world. With current developments we must question to what degree the integrity of the environment is being sacrificed for economic gain. These are serious ethical issues illustrated by real cases today in the following section.

## **II. Three contemporary cases**

1. The Cairns Declaration (March 2011) notes how Special Agricultural and Business Leases (SABLs) are diminishing the rights of traditional owners for long periods of time while promoting industrial-scale logging, deforestation for oil palm plantations or other extractive uses.<sup>1</sup> Foreign or multinational corporations dominate most of these industrial uses.

The Declaration records how in 2010 alone 2.6 million hectares of SABLs were granted, all for protracted 99-year terms. Most of this is without the informed consent of the majority of customary owners, alienating for several generations the lands on which they depend and have long relied.

In this way more than ten per cent of PNG's landmass has been handed over to foreign and national corporate interests over the past seven years under questionable land deals that appear to be aimed at logging native forest. Colin Filer in his report "The New Land Grab in Papua New Guinea" says that between the beginning of July 2003 to the end of January 2011, almost five million hectares of customary land (Eleven per cent of PNG's total land area) have passed into the hands of national and foreign corporate entities through a mechanism known as the "lease-leaseback scheme".<sup>2</sup> Western and West Sepik provinces have lost twenty per cent of their land to these arrangements. Filer says that it is a moot point whether the companies interested in the acquisition of such land in PNG have any genuine interest in its agricultural potential, or whether they are simply looking for new ways to log PNG's natural forests

without following the rather onerous procedures imposed by PNG's forest legislation.<sup>3</sup>

The matter appeared serious enough for PNG Ambassador to the UN, Robert Aisi, to take the matter personally to the UN Office of High Commissioner for Human Rights (OHCHR). On 8<sup>th</sup> May 2011, Acting Prime Minister Sam Abal called for a suspension of the agreements and the launch of an official inquiry to ensure all legal requirements have been followed.<sup>4</sup> The Commission of Inquiry continues into 2012 and from news reports it appears that in many cases proper processes have not been followed, customary landholders have not given their informed consent and many leases are just a cover for fell-logging. The Commission has not slowed down the chainsaws and the logging continues.<sup>5</sup> Moreover, the Lands Act does not have provision for the revocation of SABLs, so there is no assurance that people will be able to reclaim their land if they or their children wish to do so.<sup>6</sup> Time will tell whether the commission of inquiry is successful in its aims and what will be the reply of the PNG government to the High Commissioner for Human Rights.

2. A second case is that of the Ramu NiCo mine in the Madang Province, planning to discharge more than 100 million tonnes of waste into the sea off Madang. This method of disposal is not accepted in China or Australia where the mining companies – Highlands Pacific, and China Metallurgical Group Corporation (MCC) are based. However, the plan was given approval by the PNG Department of Environment and Conservation. It has also been announced that the coastal treatment facility could be expanded to process ore barged in from distant mines. Early in 2011 over a thousand local landowners won an interim injunction preventing any waste dumping into the sea. They claimed that the system of dumping in the sea will threaten their livelihood with upwelling of suspended tailings polluting the bay and the impact of discharges on local fishing and they wanted a permanent injunction that will force the mining company to seek an on-land solution to waste disposal. A land-based system of disposal might be very much more expensive, yet others argue that without further study it is hard to ascertain the long-term costs of marine tailings disposal.

The National Court passed judgment on the case on 26<sup>th</sup> July 2011. Justice Canning said that although the landholders did have standing, had established that there was a serious likelihood of irreversible harm that would constitute

both a public and private nuisance and that the dumping would breach the National Goals and Directive Principles in Papua New Guinea's Constitution, he was refusing the application for a permanent injunction. The judge gave as his reasons for refusing the plaintiff's application their delay in bringing a court action, the fact the marine dumping has been approved by the government and the economic consequences for the mining company and investor confidence if the marine dumping was stopped.<sup>7</sup>

Over a thousand landowners took an appeal to the Supreme Court which on the 22 December 2011 decided 2-1 that the "apprehension" of nuisance is not nuisance and that Ramu NiCo could go ahead with its plan for waste dumping.<sup>8</sup> The company will do it because it is convenient and cheap and the Government of Papua New Guinea will not dare to oppose it lest the multinational companies sue Papua New Guinea for breach of contract.

3. A third case is that of the Liquefied Natural Gas (LNG) Project in Papua New Guinea. This is a large project involving land and resources over at least four provinces. The Social Impact study for the project notes how landowner equity entitlements held by the Mineral Resources Development Company, could, over the thirty year life of the project amount to over a thousand million kina. This will be split three ways, thirty per cent to a Future Generations Trust, thirty per cent to a Community Infrastructure Trust, and forty per cent in cash payment to landowners.<sup>9</sup> An example of the way cash payments are spent appeared in an article by Morimitsu Onishi in the *New York Times*, about septuagenarian Hamon Matipe of the Southern Highlands who had received \$120,000 as compensation for land where the government plans to build a police barracks. Mr Matipe said he had given most of the money to his ten wives, used about \$20,000 to buy forty-eight pigs which he used as a dowry to obtain a fifteen-year-old bride, and how he and some thirty village men then celebrated by buying fifteen cases of beer, costing about \$800. "All the money is now gone," Mr Matipe said. "But I am very happy about the company. Before, I had nothing. But because of the money, I was able to buy pigs and get married again."<sup>10</sup> One wonders what his grandchildren will inherit.

Leaving aside for the moment the fact that most of the cash payments to landowners to date have been distributed in Port Moresby and not at the site of local communities, and questions about the security of Future Generation Trusts, we might consider a more fundamental question. Mr Matipe and

others are said to be "landowners". But what does this mean? Do they also "own" the oil and gas found below the surface of their land? This is a legal issue raised by former Ambassador and lawyer with Warner Shand Lawyers, Peter Donigi. The Governor of New Ireland and former Prime Minister, Sir Julius Chan supported him. They argue that control of resources should be in the hands of landowners and not the State. Attorney General Sir Arnold Amet replied that the Petroleum Act (1998) and Mining Act (1992) vest ownership of minerals and petroleum resources with the State. In that case, what is the position of "landowners" in resource development? Are they participants with the State and the developers, or merely recipients of royalties?

### III. Environmental ethics revisited

There are hopeful signs in the way people in the media and at community gatherings are starting to voice their concern about the problem of how best to deal with the environmental resources in Papua New Guinea. Some people now recognize that these resources are a heritage that they have received and that they must administer with justice and equity, handing them on to their heirs replenished rather than destroyed.

The recent move (January 2012) by the O'Neill-Namah government to repeal amendments to the Environmental Act is an effort in the right direction.<sup>11</sup> In the midst of controversy over the Ramu NiCo waste management plans the amendments in favour of the Chinese miner MCC had been pushed through Parliament in a single afternoon in May 2011--an attempt to silence protests by the local people. The controversial amendments had removed the rights of PNG citizens to challenge large resource projects and prevent them seeking damages for environmental damage caused by foreign corporations.

The hurried amendment of the Environmental Act and its subsequent repeal warns us to beware of possible rampant and predatory industrial exploitation of the country's forests, lands and other natural resources. PNG needs sustainable economic development that will bring tangible benefits to people in terms of infrastructural developments and services.

From the cases of SABL, Ramu NiCo and LNG--the three current examples summarised in the second part of this paper--one can see the relevance of the eight ethical points listed in part I of this paper.

(Ethical point 1) It used to be that people would bow down and sacrifice to demons and spirits. "But now like the demons of old, the economy has come to be treated as if it were a real entity before which we must all bow down and sacrifice things of value like the air, forests, oceans, and entire ecosystems".<sup>12</sup> Could it be that people liberated from fear of demonic inhabitants of the forest are also losing their sense of the sacred significance of the natural world? When it comes to so-called development projects, how is it that often times indigenous people seem more concerned about money than the environment? If they would get cash compensation, what would they do with it? Would reinvestment be accepted or would the money fund conspicuous consumption like a beer party, buying more wives, or vanish in the pockets of a few in corruption? These and other issues point to the increasing importance of right conduct in our dealings with the natural world.

(Ethical point 2) The view of nature and the relationship of the human person with it is confronted today by a spirit of utility which views the earth as a resource to be used, and we face the future possibility of serious damage to the environment. For example, cutting down forests, without an effective subsequent reforestation may contribute to serious consequences for our rivers, soil, and climate. All three examples provided in section II have become issues principally because the relationship of people with the land (and sea) is being disturbed.

(Ethical point 3) It could be said that neither the State nor the land-owners "own" the land or the resource in the sense that they alone can decide how the land and resources can be used according to their own present needs. Their guardianship is ongoing, and they must consider it from an intergenerational perspective. Moreover, from a theological perspective guardianship is always subordinate to God's ultimate sovereignty.

(Ethical point 4) We could argue that guardianship entails a responsibility and obligation to improve our earthly home.<sup>13</sup> The projects in the cases above are possible due to amazing advances in science and technology – which can be both a blessing and a curse.<sup>14</sup> Unfortunately political and commercial concerns appear to have taken precedence over issues of ecology and environmental ethics. These are public issues in which resource politics and management (economics) triumph at the expense of the *oikos* (ecology).

(Ethical point 5) Besides natural ecology there is also a social ecology since the web of life is one.<sup>15</sup> This is not to support an anthropocentric view of ecology that places human beings in a position of dominion over all other created realities. Rather, it takes into account the fact that everything that exists co-exists and that there is often a social mortgage associated with land ownership. For example, in most of the SABL cases, the land is being leased to a foreign company for 99 years. At the end of the period it will be very difficult to return the land to the "original" landowners. Admittedly, in the modern world people want employment, and we have to be realistic about the possible conflict between the environment and employment. However, we need to invest in forms of development that value the common good for both people and the earth.

(Ethical point 6) Some observers see these issues of development as a matter of foreign agents of global capitalism and a corrupt band of politicians and public servants stealing the birth right of the rural masses. However, as Colin Filer points out, such a view is too simplistic since many rural communities are far from unified and available evidence suggests that some groups of rural villagers, seeing short-term gains, are involved also, even if they might not fully realize the consequences of their acquiescence for future generations.<sup>16</sup> Some betray an attitude of greed in wanting to maximize benefits for themselves or their close associates. They seem almost to welcome ecological damage as an opportunity to demand monetary compensation.

(Ethical point 7) Nature can be reduced to being a mere source of natural resources, and the neoliberal form of economy accepted uncritically presumes that in exploiting nature the country will have resources for social goals – a presumption that in reality is an illusion, particularly for the rural population and the poor in urban settlements.<sup>17</sup>

Twenty-five years ago, in 1988, the Catholic Bishops of Papua New Guinea and the Solomon Islands had this to say.

It is immoral for the benefits generated by the mineral resources to end up principally with the international consortia. It would be a failure in moral responsibility for leaders of today to permit these benefits to be indiscriminately used up on present needs or to allow the profits from the sale of them to be channelled to a privileged minority. The extraction of such mining resources

is only fully justified if the benefits are channelled into permanent investments, which would permit our future generations to enjoy a just share of the benefits. Planning to provide for future generations is necessary if our successors are not to be condemned to lives of deprivation in a depleted environment. Thus eco-justice must receive consideration along with economic and political issues.<sup>18</sup>

(Ethical point 8) Taking intergenerational responsibility into account, we might ask what sort of world would we like to have a generation from now? Those in power to influence decisions ought not to be moved just by motives of immediate economic or political benefits, but to also consider the needs of future generations. Future generations will experience whether fears for serious environmental damage prove to be true. Even the chance of great financial gain does not justify the risk of serious harm to the environment that is shared with all beings including future generations.

Having heard the Supreme Court judgment, blogger Martin Namorong wrote a letter to the future generations of the Bismarck Sea. He writes,

I hope that in the year 2050 when you're reading this, the sea birds still fly above the Astrolabe Bay, the sea is still clear and tuna still feed near the shoreline. Today the Astrolabe Bay is the closest one could get to Heaven, indeed it is Heaven on earth. ...A sovereign people who by a heritage of 50,000 years lived in harmony with the environment, are presented with a disaster--their gift from the Independent State of Papua New Guinea. We were let down by the system. If this is what development looks like, it is as good as the mine waste that is about to be discharged into Basamuk canyon.<sup>19</sup>

### Legacy

We hear about "Future Generations Trusts" and investment in "Sovereign Wealth Funds", but considering the many reports on the poor management of funds in PNG, one must question how safe are these schemes? Certainly the income produced by the exploitation of non-renewable resource must be invested wisely to provide income for the future generations which may no longer have the benefit of such resources, but is money all that our children will want if the sea is no longer good for fishing or the primary forests no longer exist? An adequate proportion of the benefits obtained in operations that disturb the ecological balance of any environment must always be deployed for the restoration of what is lost to the greatest possible extent. Renewable

resources such as forests, soils and water, which are so necessary for life, must be used with due regard for their constant renewal so that provision is made for the future generations to whom they also belong.

### Endnotes

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- 3 Filer, "New Land Grab", p. 2.
- 4 "PNG suspends controversial grants of community forest lands to foreign corps." <http://www.pngblogs.com/2011/05/png-suspends-controversial-grants-of.html> (Accessed 14 August, 2011).
- 5 <http://www.actnowpng.org/content/png-timber-industry-says-record-logging-will-continue> (accessed 12 February, 2012).
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- 7 "Ramu Mine Waste Dumping: Injunction Refused." <http://ramumine.wordpress.com/2011/07/26/ramu-mine-injunction-injunction-refused/> (Accessed 14 August, 2011).
- 8 <http://ramumine.wordpress.com/2011/12/29/reflections-on-medaing-vs-ramunico-mcc-a-great-day-for-legal-academia-a-sad-day-for-png/> (Accessed 12 February, 2012). The Supreme Court judgment may be found at <http://ramumine.files.wordpress.com/2011/12/judgement-on-sca-84-of-2011.pdf>
- 9 Lawrence Goldman, *Papua New Guinea Liquefied Natural Gas Project, Social Impact Assessment* 2008, 3.7.2.3 (p. 3.324). Appendix 26 of Environmental Impact Statement, Papua New Guinea Liquefied Natural Gas Project.
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- 12 David Suzuki, *The Legacy: An Elder's Vision for our Sustainable Future* (Vancouver: Allen & Unwin, 2010), 38.
- 13 John Hart, *What are they saying about Environmental Theology?* (New York: Paulist Press, 2004), 25.
- 14 "LNG – Blessing or Curse? A Question for the People of Papua New Guinea to Answer," Pastoral Letter of Catholic Bishops' Conference of Papua New Guinea and Solomon Islands, April 18, 2010.
- 15 U.S. Catholic Bishops, *Renewing the Earth: An Invitation to Reflection and Action in Light of Catholic Social Teaching* (Washington, DC: United States Catholic Conference, November 14, 1991). Section IA, p. 2.
- 16 Filer, "New Land Grab", p. 27. For a detailed account of the internal politics associated with logging in PNG, see Andrew Lattas, "Logging, Violence and Pleasure: Neoliberalism, Civil Society and Corporate Governance in West New Britain," *Oceania* 81.1 (2011): 88-108.
- 17 Some of the urban and rural poor respond in holdups on the roads, and demands for large sums of monetary compensation for any government or commercial "development" on the land.
- 18 "Creating an Environment for Tomorrow--1988," in *Justice and Development Inside Papua New Guinea* (Boroko: Catholic Bishops Conference of Papua New Guinea and the Solomon Islands), 52.
- 19 <http://ramumine.wordpress.com/2011/12/23/a-letter-to-the-bismarcks-children-of-2050/http://ramumine.files.wordpress.com/2011/12/judgement-on-sca-84-of-2011.pdf>