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Maintaining land use agreements in Papua New Guinea Mining: 'Business as usual'?



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ABSTRACT

Most large scale resource extraction projects in Papua New Guinea (PNG) require companies to negotiate with customary landowners for access to development sites. In the discussion of process and challenges of development and operation of projects, particularly mines, the paper, basing as a case study of land use arrangements in PNG mining, has several objectives to address. First, it discusses land use arrangements in the mining industry and how they have evolved over the last few decades. Today, most of these arrangements involve pluralistic framework agreements which have been shaped by land tenure debates, civil uprisings, government initiatives and increasingly politically savvy customary landowners. This pluralistic process encourages key stakeholder involvement, particularly customary landowner participation which has been an innovative piece of sustainable mineral policy development in PNG. Second, the paper argues that 'it is not business as usual' for mining companies as it would generally be the case in developed and many developing countries because they are increasingly forced to be proactive in addressing landowner and community interests while managing mining projects. A brief overview of land use debates in PNG is summarised at the outset to provide background to mining and development in the country. Third, the significance of the corporate social responsibility (CSR) paradigm and its impact on business, particularly the mining industry is acknowledged intermittently in the discussion to shed light on how it is influencing development of local communities. Finally, the paper argues that the post-Bougainville period has led to a change of the old enclave model of mining development to a broad based community driven form of development around mining. However, it is difficult to predict as to how this model of mining led development in rural PNG will span out in the long run. In the meantime, genuine landowner partnerships with developers and government in the management and operation of mining projects in the country are proving to be a positive outcome for everyone despite some major challenges.

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Introduction

This paper is a case study of a larger research on land use arrangements in the PNG mining industry. It is aimed at identifying the leasing and land use arrangements currently in place, and in the process shedding light on how developer, government, and landowner form partnerships in the operation of mining projects. What is evident in this socio-economic assessment of land use agreements (LUA) between developers and landowners is that their relationships are shaped and influenced by their unique histories and the broader challenges to the PNG mining industry. Local landowning communities are exerting considerable influence on the character and shape of land lease and benefit arrangements in PNG, and there is considerable variation in these agreements which partly reflect differences in the characteristics

of landowner groups. The paper argues that it is not 'business as usual' for mining companies as they must, on an everyday basis, maintain viable relationships with landowners particularly, and local communities generally, to operate projects successfully. There is, however, one caveat that warrants mention at the outset. That is the paper's title and introductory remarks might allude to a comparative analysis of LUAs involving PNG with other developing countries, although it is not the intention of this paper.

'Business as usual' is used, in this paper, to imply otherwise the routine procedures and activities mining companies would undertake in dealing with host local communities as part of developing and operating projects in developed and many developing countries. Dealing with local communities is mostly standardised and therefore relatively a smooth process prior to, during and post operational phases of projects. Powerful strong state, long established traditions and nuances of dealing with local communities of project sites, clear economic priorities of government, explicit mining legislative framework and CSR stipulations may be some

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of the factors responsible for assisting companies to undertake local community obligations as business as usual as any other functions of mining operations (Altman and Martin, 2009). It may be the case in those countries, but arguably it is not so in PNG. The unique character of its mining industry with history, culture, weak state and limited economic parameter often imposes challenges, if not issues, for project developers to constantly intervene in local community affairs for continued smooth operations (Imbun, 2006a, 2006b, 2010). Evidence of alienation of landowner rights, environmental degradation and underpaying of mining royalties in large PNG projects such as Bougainville and Ok Tedi mines in recent decades had made business as usual impossible for continued orderly operations. The business as usual approach embraced by the mining industry in particular and extractive industry generally, in PNG and elsewhere, had been significantly altered to acknowledge and prioritise community relations as also essential responsibilities of the industry (Visser, 2008).

This paper, therefore, argues that in recent decades landowners and local communities had not only been seen as *not* business as usual but had to be acknowledged as another integral 'stakeholder' in the pursuit of successful operations of mining in PNG. It further explains that PNG presents a unique case because of its contextual circumstances and local sensitiveness. These have allowed for local communities to heavily influence CSR function of mining companies to actively engage in social and economic development endeavours in their yards. These factors are analyzed in the broader context of mining's other salient factors such as land access and ownership, LUAs, CSR practices and the principles necessary for maintaining viable relationships between mining companies and landowners. However, one caveat is that the paper does not engage better with broader debates, especially on CSR as it is largely confined to the issues and challenges inherent in LUAs in current PNG. The author's previous works (particularly, Imbun, 2010) adequately covers this theme analysing preferential human resource development, community development and economic empowerment of local communities by mining companies as part of CSR in PNG. There are extensive comparisons with others, particularly local mining communities of developing countries acknowledged in the book.

The paper concludes that the country's pluralistic process of mineral development and consultation has been developed in recognition of landowner and community pressures and actions. In other words, LUAs and ongoing relationship between mining companies and local communities have been shaped and influenced by the unique histories and challenges. It also contends that a new model of mining led development coupled with CSR emphasised intervention is emerging in rural PNG. This is a significant departure from the old enclave model of development. But at the outset, the paper begins by summarizing some of the main arguments characterising land use and economic development pertaining to the country.

This paper is based on a scoping survey of secondary data coupled with the author's experiences of long association with the PNG extractive industry in various capacities (mainly as a researcher and as a consultant), particularly in mining spanning for more than two decades. The main themes and arguments analysed are therefore the result of a combination of reviewing of relevant literature on the industry and personal observations. The notable issues and challenges of the stakeholders of the industry are selectively reviewed to highlight the current and ongoing arrangements under which LUA are operating.

Scene setting—PNG land debates

In the quest for accelerated economic development, reforming land in PNG had lately become a necessity (AusAID, 2008). It has

become imperative against the background of 97% of the country's landmass being customarily owned and thus regulated by complex tribal and lineage affiliation. The evidence of this hurdle is apparent as after nearly 40 years of the country's political independence, only 3% of the landmass had been alienated for administrative and economic purposes. While many commentators (see Hughes, 2004; Mugambwa, 2007) have identified the rigid land tenure system as a stumbling block to economic development, there has been a snail pace rate of progress in rectifying the obstacles. This is despite the country having a long political history of successive land reform proposals (for example, The National Land Development Taskforce, National Research Institute (NRI), 2007). Almost all of them have been met with either lack of political will or stiff opposition from some sections of governments and polity.

However, scholarship wise, a body of literature (for example, Weiner and Glaskin, 2007) has emerged on PNG land tenure which acknowledges dilemmas, issues and challenges confronting the country's development progress. The commentators, all but agree on one thrust and that is to initiate appropriate administrative structures and policies for enabling mobilization of the land tenure system for development without alienating traditional landowners. Proponents (Gosarvski et al., 2004a, 2004b) of radical reform contend that consolidating from the portion of land already alienated, there should be accelerated progress towards alienating more land to enable capitalism to occur. While antagonists (Lea, 2004; Anderson, 2006; Anderson and Lee., 2010; Fingleton, 2007) view that development is taking place, complying with existing policy arrangements by investors in un-alienated land should occur naturally. They maintain that against all odds, Papua New Guineans should not relinquish their customary ownership of their lands as historical records of land registration in African and some parts of the Pacific does not support modern development arguments. In other words, the rural credits, greater security of title and greater agricultural productivity which had been the central plank on which land reform had occurred in these places had not delivered in abundance as reformists had predicted.

On the other hand, Curtin (2000) and others (such as Yala et al., 2005; World Bank, 1985) contend that the subsistence economy have only supported the population without contributing significantly to any meaningful economic participation in the country. For them real economic growth have resulted only in industries such as mining and petroleum, agriculture (oil palm) and forestry where some form of land alienation had occurred previously. They would, therefore, rather see more land being alienated to enable economic activity on a far greater scale than what has being currently occurring. In fact, in the 1980s and 90s, the World Bank would only make its loans available to the country on the condition that it reformed its land tenure system. Despite their varying positions on the PNG land tenure system, the commentators share one assumption and that is any form of alienation of land in the current context is either obstructed by an obsolete policy framework or else successfully opposed by a coalition of national political interests.

The PNG Parliament, however, after many decades of toying with the concept of reforming the country's land tenure system has reached a major milestone in 2009 with the passage of two Acts—the *Land Groups Incorporation (Amendment) Act 2007* and *Customary Land Registration (Amendment) Act 2007*). There is an overwhelming perception held amongst policy markers, bureaucrats, business community, and landowners that the country's 'locked-up lands would realize their 'true' potential when owners and investors transform them to economic entities, as they take advantage of the Acts. Although, this watershed land tenure law would only become productive as its advocates had intended if Papua New Guinean landowners become receptive to the concept and register their lands for formalization to enable them for

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