



JUBILEE AUSTRALIA
Digging to the roots of poverty

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February 12, 2015

Mr. Stephen Burain
Minister for Mining
Autonomous Government of Bougainville

Dear Mr Burain,

As part of our enduring commitment to the mine affected communities in the Panguna region we would like to comment on the *Bougainville Mining Bill 2014* drafted by Adam Smith International at the direction of the Autonomous Bougainville Government (ABG).

We gratefully received a copy of the draft mining legislation and regulations from the ABG in December. Our understanding is that the legislation is slated to be voted on in March. As the window is limited for commentary on the documents – which come to 508 pages in length – we have decided to enumerate below some preliminary feedback on the legislation, and the consultation process preceding its proposed approval by Bougainville’s parliament.

1) Consultation and Independent Assessment

Given that the legislation will lead to the temporary alienation of customary land, with wide ranging effects on the social, economic, cultural and physical life of impacted communities, it is important that the draft mining bill and regulations are subject to a widespread and thorough process of consultation, discussion and independent scrutiny, as affirmed in international treaties,¹ as a principle of international law,² and in international best-practice reporting.³ As the final draft of the mining bill was delivered during November by Adam Smith International, it would seem appropriate to allow a significant period for consultation and revision, in order to give communities across Bougainville adequate time to organise themselves, seek independent expert advice, discuss the legislation, and prepare their response. While a prolonged consultation period would not be appropriate for all draft bills, given that mining has historically been a highly contentious issue on Bougainville, building a legislative framework over which all communities feel a sense of ownership is vital. Coupled to this, the legal complexity of the draft mining bill and associated regulations, make such a prolonged consultation period necessary, so that communities are afforded the time and space to appreciate all the relevant provisions and their long-term implications.

¹ *ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*, Article 6; *International Covenant on Civil and Political Rights*, Article 27; *International Covenant on Economic Social and Cultural Rights*, Article 15; *UN Declaration on the Rights of Indigenous Peoples*, Article 19

² *Kichwa Indigenous People of Sarayaku v. Ecuador, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 242, (June 27, 2012), at para. 164.*

³ UN-REDD (2012) *Free, Prior and Informed Consent for REDD+ in the Asia-Pacific Region: Lessons Learned*, report available online:

http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8047&Itemid=53
(accessed on 20 January 2015)

2) Financial Support to Impacted Communities

It is important that financial resources are made available to those communities who reside on or near mineral resources that are likely to be affected by the bill in the foreseeable future, so they may acquire independent expertise to help them evaluate the draft and share their concerns with the ABG.⁴ It is critical that communities are empowered to choose their own sources of independent expert advice, while observing relevant good governance procedure.

3) Free, Prior and Informed Consent

More specifically on the contents of the draft *Bougainville Mining Bill 2014*, in light of mining's contentious history on Bougainville it is especially important that the legislation should encompass best practice with respect to free, informed, prior consent, and echo the standards set out in key international covenants including the *International Covenant on Civil and Political Rights*, *International Covenant on Economic Social and Cultural Rights*, *UN Declaration on the Rights of Indigenous Peoples*, and *ILO Convention 169*. In this respect we would like to highlight a number of preliminary concerns to take into consideration:

a. Access to Information

In order to conform to best practice the legislation must empower traditional landowning communities by inscribing them with a number of positive rights, including the right to access independent sources of information and expert advice, coupled to a right to receive adequate financial support to seek this advice.⁵ By independent sources of information and expert advice, we mean recognised experts who are not linked with the extractive industries or government, whether it be through position or financially, and who can be relied on to act in the best interests of the contracting community. It is concerning that the current draft bill does not appear to afford communities these fundamental positive rights.

b. Independent Community Consultation

There needs to be more robust mechanisms included in the bill assuring the comprehensibility and independence of the community-consultation process, preceding a mine's initiation.⁶ As it stands, the bill places responsibility on mining companies holding an exploration license or mining lease to develop and enact community engagement plans. While mining companies, of course, have a legitimate place in the consultation process, it is essential that the plan and strategy is implemented by an independent arms-length organisational actor, with an overarching responsibility to act in the best interests of landowners and the public.

⁴ *UN Declaration on the Rights of Indigenous Peoples*, Article 27 & 39.

⁵ *ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*, Article 7; *UN Declaration on the Rights of Indigenous Peoples*, Article 27 & 39

⁶ *ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*, Article 15; *UN Declaration on the Rights of Indigenous Peoples*, Article 32

c. Inclusive Consent Processes

More robust measures of consent should be set out in the bill which ensure a clear majority of adult aged landowning community members, whose social, economic, cultural and physical life will be seriously impacted by the project, support the venture, after receiving comprehensive, independent advice on the project's economic, social, cultural and economic impacts.⁷ At the moment, a landowner association approved by the Bougainville Executive Council, can consent to exploration licences and mining leases on behalf of the communities they represent. In light of historical examples in Bougainville, there is serious risk that without further safeguards landowner associations will not be inclusive of vulnerable groups and customary leaders, particularly if association processes and procedures are in a language and cultural form which are inaccessible to a large section of the affected population. Therefore, this current model does not appear to offer a robust mechanism for assuring community-wide participation in the consultation process or when measuring consent. We believe the legislation needs to adopt more robust mechanisms for measuring consent that ensure mining projects are supported by a clear majority of adult-aged landowning community members, whose social, economic, cultural and physical life will be seriously impacted by the project, after receiving comprehensive, independent advice on the project's economic, social, cultural and economic impacts. It should also include measures that help communities build cooperative, culturally inclusive organisational frameworks that will empower them to participate in the consultation and negotiation process.

d. Access to Remedy

There need to be independent grievance and accountability mechanisms inscribed into the legislation that empower communities to seek remedies for abuses of rights or legal procedure, whether by a private or governmental actor.⁸ This grievance mechanism and body must be at arms-length from all mine stakeholders. Currently no such mechanism exists in the draft bill.

e. Human Rights Due Diligence

The draft bill needs to include robust human rights standards that mine operators must observe or face serious sanction, with remedies in place for violations of these standards.⁹ Not only have mining operators on Bougainville participated in human rights abuses, this behaviour may also be witnessed across Papua New Guinea. Currently the bill does not offer a robust framework for addressing this enduring issue¹⁰.

⁷ Ibid

⁸ *UN Declaration on the Rights of Indigenous Peoples*, Article 11, *UN Guiding Principles on Business and Human Rights*, Principles 25, 26, 27, 28, 31,

⁹ *UN Guiding Principles on Business and Human Rights*, Principles 6, 7, 9

¹⁰ *Un Guiding Principles on Business and Human Rights*, Principle 3



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As you will appreciate, these comments are based off a preliminary reading of the draft bill. Nonetheless, we hope you find this feedback useful, and we welcome a continuing conversation on the issues raised within.

With sincere regards

Brynnie Goodwill CEO

Co-signed by



Bismarck Ramu Group

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