

Submission to ABG Parliament's Legislation
Committee on Bougainville Mining
(Amendment) Bill 2019

JUBILEE AUSTRALIA

About Jubilee Australia

Jubilee Australia engages in research and advocacy to promote *economic justice* for communities in the Asia-Pacific region and *accountability* for Australian corporations and government agencies operating abroad. Its work focuses on three areas: (1) sustainable economies, (2) the right of affected communities for justice and consent, and (3) policy reform in Australia to ensure that Australian government and corporate practices support community wellbeing and a just and sustainable global economy. Jubilee's work on extractives has mainly focussed on the impact of Australian companies in PNG and Bougainville in recent years.

Introduction

After a 26-year absence of mining on Bougainville, the Bougainville Mining Act was passed on March 26 in 2015. The introduction of the Act paved the way for the re-introduction of mining despite long-standing grievances, lack of information and dissent. Jubilee Australia is the only organisation that has provided an independent analysis of the legislation, and we released our report *'The Devil in the Detail: An Analysis of the Bougainville Mining Act'* in November 2015. The report found that a number of the provisions under the Act gave rise to concern as they could violate international covenants and Bougainville's constitution because it authorises the central government to take land regardless of landowner consent by defining mining to be 'in the public interest'. Further, the Act imposes significant penalties on landowner who protest mining on their land, such as imprisonment and large fines. Based on this, Jubilee Australia suggested to change the Mining Act to ensure that it upholds democratic processes and human rights for the people of Bougainville.

In January 2019, the Autonomous Bougainville Government tabled three bills, Bougainville Advance Holdings Trust Authorisation Bill 2019, Bougainville Advance Holdings Limited Authorisation Bill 2019 and Bougainville Mining (Amendment) Bill 2019. The latter proposes significant changes to the Bougainville Mining Act from 2015. It is our view that the proposed amendments fail to account for the concerns mentioned above, nor does it account for the recommendations outlined in *'The Devil in the Detail'*. As an organisation with considerable experience working with communities affected by mining, and with mining in Bougainville specifically, we have significant concerns regarding the proposed amendments to the Mining Act. Based on our analysis, we recommend that this Bill should be rejected on the grounds that it undermines the principle of the Principal of Free, Prior and Informed Consent, and cuts landowners out of decision-making processes when distributing mining leases.

Instead, Jubilee Australia recommends a reform of the Bill as proposed in *'The Devil is in the Details'* in 2015.

The Bougainville Mining (Amendment) Bill 2019

The Bougainville Mining (Amendment) Bill 2019 proposes a number of amendments to the Mining Act from 2015. The most notable change is the suggestion is the insertion of Section '378: *Special Bougainville Mining Licence*'. Here, the Bill states that

The Bougainville Executive Council in conjunction with the Minister for Mineral and Energy Resources shall issue a Special Bougainville Mining Licence to the Special Bougainville Entity on the assent of the Bougainville Mining (Amendment) Act 2019, that will grant the Special Bougainville Entity large-scale mining leases over all land in Bougainville available for reconnaissance, exploration and mining, that is not subject to an existing exploration licence or mining lease.¹

This change would give the ABG the power to hand over a single mining lease to all parts of the island not under existing leases to the Special Bougainville Entity, including cases when existing licences expire. As stated in the Bill, this entity would be Bougainville Advanced Mining Limited (BAM),² a new entity created for this purpose.

To further clarify what this means, the Bill states that all types of payments and rights granted to landowners in the Mining Act will not apply to BAM nor the Special Bougainville Mining Licence. Instead, ABG will determine which landowners would be affected by the mining lease, which in turn would have to negotiate an agreement with the ABG outlining preferential benefits. According to the Bill, the benefits will be better than those granted to landowners in the Act,³ however, no further information is given on what such an agreement or benefits would look like.

In addition to this, BAM is granted a number of exemptions and favourable considerations throughout the Bill. This includes, but is not limited to, not having to submit an application for the granting of a mining lease, be granted a mining lease that could be valid for up to 100 years and a general exemption to comply with "remaining requirements in part 1 to 16 of the existing Act as determined by the Bougainville Executive Council in conjunction with the Minister for Mineral and Energy Resources".⁴

Changes and concerns

Landowners rights

As it stands, the Mining Act of 2015, although flawed and in need of a comprehensive reform, does preserve some rights of landowners to determine what happens on their land.⁵ The

¹ The Bougainville Mining (Amendment) Bill 2019.

² The Bougainville Mining (Amendment) Bill 2019.

³ The Bougainville Mining (Amendment) Bill 2019.

⁴ The Bougainville Mining (Amendment) Bill 2019.

⁵ Jubilee Australia (2015) "The Devil is in the Details"

<https://www.jubileeaustralia.org/_literature_149703/Bougainville_Mining_Act_-_October_2015_Report>.

proposed Bill is designed in such a way that it removes all landowners in Bougainville of any rights given to them in 2015, by giving the President the power to unilaterally distribute leases without any consultation or permission from landowners.

Instead, as mentioned above, ABG will identify the landowners they think will be impacted by the potential mining lease, and then the landowners have to negotiate their rights with the ABG or an associated entity of the ABG. Worryingly, the Bill does not grant the landowners access to technical expertise or independent bodies that can oversee this process.

If approved, this Bill runs the risk of gravely undermining Bougainvillean landowners right to Free, Prior and Informed Consent (FPIC); which is especially important in Bougainville as the cite of the Pacific's largest civil war.⁶ Given that the severe social, cultural and environmental impacts of the Panguna mine were a central trigger for this decade long war, it is necessary that any amendments to the Mining Act reforms it to ensure that it is at the forefront of international best practice with respect to FPIC and Indigenous rights.⁷

Unconstitutional changes

As outlined in the Devil's in the Detail, the Act restricts a number of constitutional rights, including the freedom from arbitrary search and entry (s 44 of the PNG Constitution) and the right to freedom of information (s 51).⁸ In our opinion. the proposed changes would restrict constitutional rights much further by depriving landowners of property, thus potentially breaching both the PNG and Bougainville constitutions.

This view is echoed by Michael Hart, a long-time lawyer and consultant with that has specialised in mining, saying that he is horrified by the proposed amendments and that he has never seen anything like the changes proposed by the ABG.⁹

Reinforces the political census that Bougainville needs large-scale mining to be independent from PNG.

Statements made by President Momis justified the move based on the need to hold the Bougainville independence referendum, stating that

The people of Bougainville are determined to have the referendum and they must find the money to fund the referendum... One way of doing it would be if we started

⁶ Jubilee Australia (2018) "Growing Bougainville's Future", <https://www.jubileeaustralia.org/_literature_163735/Growing_Bougainville's_Future_2018>

⁷ See Jubilee Australia (2015) "The Devil is in the Details" for specific recommendations for reform.

⁸ Jubilee Australia (2015) "The Devil is in the Details" <https://www.jubileeaustralia.org/_literature_149703/Bougainville_Mining_Act_-_October_2015_Report>

⁹ Liam Fox (2019) "Mining lawyer "horrified" by proposed changes to Bougainville's mining law", *ABC's Pacific Beat*, <https://www.abc.net.au/radio-australia/programs/pacificbeat/mining-lawyer-horrified-by-proposed-bougainville-mining-law/10845022>

our own company and generated the revenue to enable us to conduct the referendum. We cannot sit on our hands.¹⁰

However, as Jubilee Australia recent study demonstrates, it is highly unlikely that copper-gold mines such as the Panguna mine could ever raise enough revenues to satisfy both foreign investors and the people of Bougainville.¹¹ Even so, in the unlikely event that it will raise revenues for both, this will take years as there are a number of important processes that need to take place before the mine can generate revenue, including the building and repair of infrastructure and environmental studies. Therefore, it is virtually impossible that the mine will raise any revenues before the independence vote, which at this stage is to be on 12 October 2019.

Removal of safeguards in favour of foreign interests

Adding to this, the move would remove safeguards and give one company, BAM, ownership of all land currently not under a mining lease. The ownership of BAM would be split between the ABG (60%) and a foreign partner (40%). Recent comments by president Momis suggests that this foreign partner would be Caballus Mining, a Perth-based company headed by Jeff McGlenn. The company has no mining experience.¹²

¹⁰ Radio New Zealand (2019) "Bougainville to change Mining Act for new investor", <<https://www.radionz.co.nz/international/pacific-news/381258/bougainville-to-change-mining-act-for-new-investor>>

¹¹ Jubilee Australia (2018) "Growing Bougainville's Future", <https://www.jubileeaustralia.org/_literature_163735/Growing_Bougainville's_Future_2018>

¹² Radio New Zealand (2019) "Bougainville to change Mining Act for new investor", <<https://www.radionz.co.nz/international/pacific-news/381258/bougainville-to-change-mining-act-for-new-investor>>

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