

Needing a Balanced View to Investment, and Promoting Respect for the Law and Legal Safeguards

In recent weeks public sentiment has been stirred over various issues, with government leadership appearing out of touch with public opinion, notably over various legislative Amendments being pushed through, against the perceived wider public interest. Political leaders need more independent advice (from Ministers and advisers) which is frank, rather than reiterating what their bosses want to hear. The country deserves much wider consultation before sweeping amendments or deficient development plans are approved, including informed Parliamentary debate. Some civil society organisations should also more balanced or conciliatory over some positions they take.

PNG needs foreign and domestic direct investment to achieve its economic and social development objectives, including the Millennium Development Goals. Certainly, public infrastructure and services would be much better than they are if public funds were better prioritised, with less waste and greater emphasis on maintenance and avoiding costly subsequent restoration or reconstruction. Many people can survive on their subsistence agriculture and fishing, but population pressure and expectations are growing, so, for the population to achieve those aspirations and access schools, health facilities, markets and jobs, private investment is needed to drive the economy, creating formal and informal sector employment and providing revenue to fund public goods.

But this should not be investment at any cost. With its large rural population dependent upon land and sea resources for their livelihood, safeguarding PNG's rich environment and natural resources, including rivers and aquatic life, is crucial. The prospects for sustainable industries, like agriculture and tourism, which provide broad-based opportunities for the future, depends upon ensuring the highest international social and environmental Standards in the extractive industries, as well as minimising negative impacts from "Dutch disease", notably from extractive industries, undermining the viability of agriculture, manufacturing and tourism and overall employment.

So we need diverse investment, not exclusively in enclave industries, which meets high standards, whilst avoiding activities prejudicial to sustainable enterprises and long term employment creation. Oil/LNG and mining are clearly valuable for providing the backbone of the country's revenue, needed for public infrastructure services. Despite the global hunger for energy and raw materials, PNG should be prepared to phase resource extraction projects to its own needs, and certainly not approve projects until knowledge, safety and standards can be assured. If, for example, the regulator cannot provide necessary oversight for deep water drilling in the US, and the company has no backup capacity, then that technology is unready for use in the US. Unproven and risky technology and internationally obsolete waste management techniques have no place in extractive industries in PNG, with its far weaker analytical and regulatory capacity.

Attracting sound foreign and domestic investment requires suitable and stable investment conditions. The big extractive industries construct much of their own core

infrastructure, but business generally requires reliable roads/ports, adequate security of tenure (with land and/or necessary exploration or production licenses, permits etc), suitable regulatory conditions and a not unduly onerous tax regime, telecommunication services and utilities, and reliable application and respect for law and order. In PNG, particularly, they must establish sound and trusting relations with the local community. Unsuitable investment conditions frighten off longer term investors in particular, although companies with short time horizons, expecting a quick return, and/or those working outside normal rules (i.e. thriving on corrupt contracts/licenses) may be less concerned.

It's impressive to see civil society coming together, old and young, including much of the country's immensely talented and energetic generation of young professionals and students, concerned about the country's future, raising awareness and standing up against corruption and misconceived policies and legislation, such as weakening the Ombudsman Commission's powers and the Amendment to the *Environment Act*. The Constitutional and Leadership amendments appear especially dangerous leading up to the 2012 Election, with large sums of public money in District and other Trust funds already unaccounted for, and less scrupulous leaders perhaps eager to minimise prospects for Leadership Code and/or criminal penalties. The *Environment Act* Amendment is presented as needed to safeguard mining and LNG investors from risk of disruption from vexatious claims. However, this amendment goes much further and makes Environment Permits (and other licenses etc) sacrosanct and unchallengeable in law. This is neither in the interests of landowners nor sound long term investors in the mining or other sectors.

Long term investors need good relationships with neighbouring landowners and the wider community. This must be achieved through their own commitment and effort to do things right and not cut corners. It also requires government implementing its responsibilities. Many genuine developers are let down by respective Authorities, like the Petroleum or Lands Departments failing to perform their responsibilities, leaving companies attempting patching up the mess.

If respective government agencies performed their tasks reliably, including the Environment Department in scrutinising Social and Environmental Impact Statements rigorously and overseeing standards, then there would be less grounds for landowners seeking legal redress. However, the performance of government agencies is widely poor, and in some cases prone to corruption over approvals or subsequent enforcement.

A system for administrative and legal appeal is needed, to enable review, and if necessary halt, revise or seek compensation when damage and loss of livelihood has occurred. A major function of the law and separation of powers, between Executive, Legislature and Judiciary, in place for centuries, is to hold the Executive in check from abusing its power, including capacity to appeal to the Courts. Denying this capacity, with respect to the Environment (or other) legislation, risks forcing landowners, or other parties, to seek redress through other, potentially less orderly means, which is what the State (and investors) should avoid.

The *Environment Act* was introduced following lengthy consultations. Any Amendments should entail further wide dialogue, include with both private sector and

wider community, to examine the deemed problem; notably whether it entails the legislation itself, or its application by government, developers or other parties and whether there are better ways of managing compensation claims (not just from environmental claims) to standardise the process, including a possible cap, or guidelines to avoid great disparities, avoid repetitious claims and minimise vexatious claims; but this should not seek to rule out compensation per-se, which (along with criminal prosecution) provides sometimes justified recompense for accidents, longer terms injury or environmental damage, but also a stimulus to improve health, environmental and safety standards and technology and penalises abuse. It is in everyone's interest to avoid major social or environmental impacts in advance, through adequate planning and preparation, but the developer (and potentially the State) should remain liable where failure occurs.

Papua New Guineans should know the law is there for them, and applied even-handedly. The public condemns the levels of crime in society, but penalties are uneven; with family and sexual crimes, supposed sorcery killings, well connected and white collar crime and corruption addressed inadequately, whilst tough pre-judicial punishments are inflicted by police upon selected suspects, including petty offenders and minors. Greater police numbers, improved training and management are all critical, along with greater resources for the wider justice system. However, the recent report by the UN Special Rapporteur on Torture provides gruesome reading, identifying PNG as imposing his worst observed levels of violence (including against women detainees) and torture on inmates in police cells. The authorities cannot shrug this off. Whilst the public commends tough action against criminals, violence breeds violence and disrespect for law, if authorities ignore it. The country must unify to address the level of violence and weaponry in the community. The authorities must show leadership in respecting and applying the law, but should not restrain communities from using legal (mediation and political) processes to address environmental, land or other disputes, thereby pressuring them into more confrontational action, between households, communities or against investors or the State.

Some civil society leaders, in turn, also need greater balance in their assessments. They should recognise that business and investment are needed and be more selective in their criticism. Some industries and companies have shown long term commitment to PNG, and made considerable efforts to set high or raise health and safety, social and environmental standards. There should be some recognition of good performance, whilst also exposing companies, industries and/or practices which fail to meet acceptable standards. Logging, oil, palm oil, mining and fishing industries are sometimes condemned universally, but, despite an atrocious track record of non-compliance by the logging industry in PNG, there is demand for timber and paper, and forestry, like agriculture, can be achieved sustainably; some communities and companies worldwide and even in this region are prepared to make the commitment. Oil palm is universally condemned by some activists, and for many options with justification, yet it has a strong market and provides sound income and employment opportunities, and is a suitable crop in a few parts of PNG (but not extensively); again some companies within PNG have raised performance and made substantial commitments to achieve social and environmental standards (under RSPO) on relatively restricted project areas, other enterprises are either disguised logging operations or not committed to any standards, with reports of 7 year olds working in

the nurseries in Pomio, for example. More informed and selective criticism, even some commendation and partnerships, are more effective at enhancing standards and removing abuses and destructive practices, than universal condemnation.

Vision 2050 is an initiative to create shared National purpose. It may need refinement but the intent is sound. In the spirit of that Vision, government must strive to promote unity, opportunities and mutual respect, and stop imposing selective interests by undermining the country's basic legal rights and safeguards.