Justice and fair treatment of people in Commercial Agreements involving customary land in Papua New Guinea

JUST LAND AGREEMENTS

Archbishop Francesco Panfilo sdb
Catholic Archdiocese of Rabaul
Endorsed by the Catholic Bishops Conference of Papua New Guinea and Solomon Islands

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Archbishop Francesco Panfilo sdb, Archbishop of Rabaul was appointed as Coadjutor Archbishop of Rabaul on 18th March 2010. On 11th August 2011, he was installed as the Archbishop of Rabaul. As shepherd of his flock he has travelled the length and breadth of his Archdiocese on foot, climbed steep mountains and sailed rough seas. Concerned for the welfare of his people and working together with his flock, he has put together this book entitled: **Just Land Agreements**.
May it inspire us!

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Catholic Archdiocese of Rabaul

> *The major issue that we face is the survival of human beings as persons who are fit to live with, and the survival of the earth which is fit for persons to live in.*[1]
>
> *What kind of world do we want to leave to those who come after us, to children who are now growing up? Leaving behind an inhabitable planet to future generations, is first and foremost up to us. It is a test of our dignity*[2]

1. Introduction

The Constitution of Papua New Guinea has adopted five National Goals and Directive Principles to guide the country on its journey of Independence.

The second Goal with the title "Equality and Participation" calls for meaningful participation of all people in every aspect of the life of the country, and that efforts be made to achieve equitable distribution of incomes and other forms of development, such as services.

The third Goal with the title "National Sovereignty and self-Reliance" provides for citizens and governmental bodies to have control of the bulk of economic enterprise and production. Foreign investment and

[1] Archbishop Allen Johnston. Former Anglican Archbishop of New Zealand

[2] Pope Francis, Laudato Si, On the Care of Our Common Home, paragraph, 160.

assistance of any sort must in no way compromise or undermine sovereignty and self-reliance.

The fourth goal, "Natural Resources and the Environment" requires that wise use be made of the country's natural resources and the environment, in the best interests of current development and in trust for future generations.

The aim of these goals is to develop a political structure, which ensures that the resources and the appropriate services, that the country develops are equally distributed amongst all citizens in all areas. While foreign investment is not strictly forbidden, it is to be strictly managed, being aware of the real risk of manipulation and exploitation by multinational countries. In terms of management of the nation's vast and varied resources, responsible stewardship is required, including replenishment of used resources being ever mindful of the responsibility to future generations. Equality, responsible stewardship and self-reliance are the clear focus.

The reality is that, 44 years after independence, these goals for the best interest of integral human development have not been achieved. Remote areas lack services and facilities. There is a shortage of medicines in our health facilities. Many people experience a poor standard of living in informal settlements on a minimum wage of just K3.50 per hour.

Further, there has not been strict control of foreign investment nor the careful management of the environment. This is evidenced in the fact at since independence, when 97 percent of the land was under customary ownership, now ten million hectares of land have been allocated by the Government as logging concession areas.[3] It was followed by 5.5 million hectares being leased to national and foreign entities under the Special Agricultural Business Leases (SABL). This represents 11 percent of Papua New Guinea's total land area.[4] It means that more than one third of the

[3] Papua New Guinea Investment Promotion Authority. Forestry http://wwww.ipa.gov.pg/agriculure/forestry.

[4] Colin Filer *The Political Construction of a Land grab in Papua New Guinea. Canberra: Australian National University,* Crawford School of Economics and Government Discussion Paper 1

country's 46 million hectares are now in the hands of mostly foreign logging firms.[5] Foreign logging companies report that they are making a loss, enabling them to avoid paying Company tax and instead being able to obtain tax credits. Foreign companies are able to manipulate the tax and logging regulations to their benefit and to the detriment of Papua New Guinea. The detrimental impact is clear when we learn that, on the one hand, Papua New Guinea is the world's largest exporter of logs, while, on the other hand, logging only accounts for 3 percent of export revenue.

This is just one example of how large foreign companies are able to manipulate the systems at the national level to their advantage. To gain the maximum benefit from an operation a foreign company needs to be able to obtain land and resources from local people on terms that ensure maximum financial gain to the company. Unfortunately, this often has an unfavourable impact on the local landowners and resource holders. Elements of this detrimental effect are discussed below.

2. The Special Agricultural Business Lease

Between 2003 and 2011 the Special Agricultural Business lease mechanism has allowed 5.5 million hectares of customary land to pass into the hands of foreign companies. Under section 13 of the Lands Act, there is the requirement of the Minister of Lands to serve on the Landowners a "notice to treat", informing the landowners of the

[5] Oaklands Institute: *The Great Timber Heist. The Logging Industry in Papua New Guinea* p 4-5 www.oaklandinstitute.org

intention to acquire land through the SABL process. The notice must be served on all of the landowners who can be ascertained through diligent enquiry.[6] The landowners are then required to respond to this. In other words, there is supposed to be full consultation with the landowners.

In 1979 the Special Agriculture Business lease known as a lease-leaseback scheme was created. By leasing the land to the Government, a formal title could be granted for the land. This could then be leased back to the landowners and could be used as collateral for a bank loan or as the basis for sub leasing the land to a third party for development purposes.[7]

The sub leasing to a third party was supposed to enable customary land to be developed and utilised for commercial purposes. By leasing it to a third party, the concept of the SABL or lease-lease-back scheme was meant to have provided financial assistance to customary landowners, allowed development to benefit the economy, and to bring infrastructure development and other service to remote areas.

When the SABL scheme was introduced, particular processes were established to ensure that the land could be demarcated and that there was the informed consent of all of the landowners. There is also the requirement to undertake the assessment of the projected population growth and whether, should the lease proceed, there would be sufficient land set aside to cater for the needs of future generations.[8]

Obtaining informed consent of the landowners and undertaking appropriate demarcation of the land to be used is clearly problematic, given the large areas of land involved, one area being two million hectares. How does one determine who the customary landowners are, and are there the personnel to undertake appropriate demarcation as well as appropriate consultation?

[6] Land Act 1996 13 (1).

[7] Oaklands Institute: *On Our Land Modern Land Grabs reversing independence in Papua New Guinea* p 12
www.oaklandinstitute.org

[8] Oaklands Institute: *On Our Land* p 12

A special Commission of Inquiry, set up by Acting Prime Minister Sam Abal in 2011 to look at the operations of the lease-leaseback scheme, found a number of significant flaws with the process of establishing and granting the scheme. These included:

- the majority of the leases were granted under threat, intimidation, and bribery and without the free prior, and informed consent of the landowners;
- people had been intimidated, abused, and misinformed, while individuals were bribed or hired to strike deals on behalf of communities;
- there were incidences of false names and false signatures placed on official documents including signatures of children.
- Land surveys and field investigations were not conducted properly;
- There was not the appropriate documentation completed.[9]

The large areas of land involved, the large number of customary landowners and an inadequate number of public officials with inadequate resources to undertake the required preparatory work, meant that such problems and issues were bound to occur. On a number of occasions, the courts have set aside the decision of the Minister to acquire the land, because the landowners were not properly informed and there were issues with consent as well as the detrimental impact that the development would have. Judicial intervention is positive and shows that there is some scrutiny of the SABL's.

The failure to have an effective mechanism, to ensure that there is informed consent given freely, is one of the inherent flaws of the SABL. The second flaw is that there is no restriction as to whom the land can be leased to. Essentially:

- the customary land is leased to the State;
- it is converted into a State Lease;
- the State then leases that back to the customary landowners as a State lease;

[9] Oaklands Institute: *On Our Land* p 12

- the landowners sub lease the land in the form of a Special Agricultural Business lease to a land group, a business group, or other incorporated group.

This gives the landowners choices as to whom the land can be leased to, including foreign firms. The fact that there has been no restriction on the subleasing to foreign companies has meant that a significant amount of the 5.5 million hectares that has been leased in the form of an SABL, has been leased to foreign companies.

The third inherent flaw with the SABL is that the legislative or regulatory structure provides no protective mechanisms to ensure:

- that the sublease agreements are properly and fairly negotiated;
- that fair rental is paid for the land;
- that the landowners have some form of shareholding in the production process;
- that sufficient land is maintained for food and the conducting of customary practices;
- that customary and sacred sites are respected;
- that there are adequate provisions for environmental protection;
- that there are adequate buffer zones between the crops and villages and water sources;
- that the company will undertake appropriate infrastructure work in the area, including maintenance to health centres and schools as a prerequisite for granting the lease.

The failure to do this has resulted in some lease agreements between customary groups and foreign companies, which are very unfair for the customary landowners. Given the amount of land that has been leased in some areas, the unfair terms and conditions of the agreements have adversely affected the lifestyle and livelihood of many local communities.

In summary, it can be said that the problem is not with the SABL itself, but rather with the lack of regulatory detail to accompany the concept. In particular: there are no restrictions as to whom the lease may be entered into and there are no provisions to ensure that the agreement must be fair and not to exploit the customary landowners.

3. General Agreements that are unfair/unconscionable

Under common law there is provision for the setting aside of a contract on the basis of unconscionability, which means that it is unjust. An agreement may be unconscionable or unjust if:

- One of the parties to the agreement is in a position of dominance or power;
- The other party is in a position of vulnerability for a number of different reasons;
- The stronger party exploits its dominance to its advantage and to the detriment of the weaker party. The unjust or unfair terms and conditions are the result of unfair and manipulated contractual negotiation.

The vulnerability of a party can be attributed to lack of education; illiteracy; lack of understanding of commercial matters; the failure to be given explanation about certain matters when explanation is necessary; poverty; illness; age.

Through the Constitution, common law and the "Fairness of Transactions Act", Papua New Guinea has made a clear commitment to upholding the significance of fairness in transactions especially contracts. The Fairness of Transactions Act notes four particular types of unfairness:

1. the vulnerable party to the transaction did not understand the transaction and no genuine attempt was made to explain it to him;
2. the strength of the stronger party in the circumstances of the transaction in question (be it economically, socially or personally) was such that that, given the background of the vulnerable party, there would be no opportunity to exercise true free of choice in the transaction;
3. that the stronger party had, at the time of entering into the transaction or immediately thereafter, information affecting the fairness of the transaction which was not disclosed to the weaker party;
4. that the weaker party was mistaken in the likely consequences of the transaction or had miscalculated the consequences of the transaction. The negative effect of the mistake or miscalculations

to the weaker party was to such an extent that it is unfair to hold him responsible for the mistake or miscalculations.[10]

When these are shown the transaction in question can be reviewed.

With the SABL contracts, the Commission of Inquiry into SABLs has revealed many unjust contracts.

Looking specifically at the Sikite Mukus oil palm project in ENBP, the Archdiocese of Rabaul, in its advocacy for the people affected, has identified nine issues regarding the contracts regulating the project, which are problematic. These are discussed in what follows.

1. The sub lease agreement for the project in question comprises a significant area of land which has four different areas comprising 15,000 hectares, 11,300 hectares, 16,100 hectares and 13,000 hectares respectively. Each has its own topographical, social and cultural issues. Yet they all have the same agreement, which in effect is a standard commercial lease. A project involving such an extent of land, with different topographies and large numbers of people with different cultural and linguistic backgrounds, needs agreements that recognise this diversity and recognises any unique issues of a particular area.

The agreements are very much weighted in favour of the developer. For example, in one agreement the oil palm trees are said to belong to the developer. This means that if the landowners terminate the contract or default in their contractual obligations, they are liable to pay the developer compensation for losses. This includes loss of projected future profit and all costs incurred in establishing the project. Given that the agreement in question is for sixty years, the loss of profit would be considerable.

2. Rental rate. No consideration is given to the amount of returns that the company can expect to make from the project over a period of time and to allow for both a reasonable return for itself and a fair rental for the landowner. Under one agreement the rental paid for land on which planting is taking place is K14.40 per hectare per year. When the lease is for sixty (60) years, it means that the developer is getting the use of land at

[10] Section 5 (2) *fairness of Transactions Act 1993.*

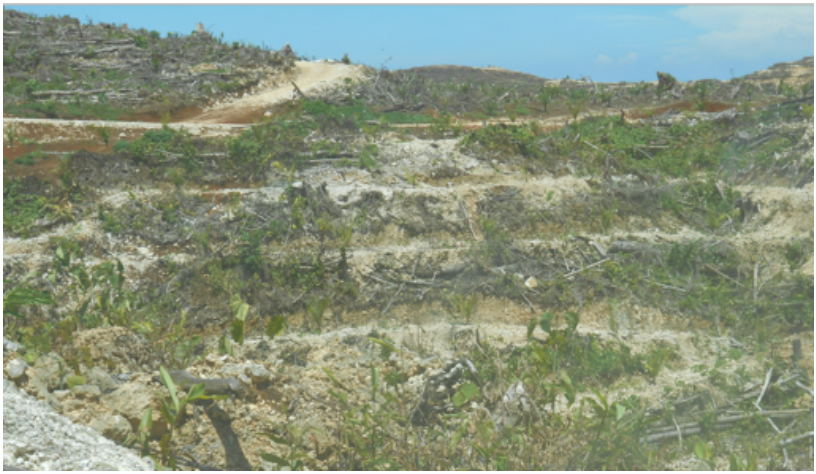
a very cheap rate. While the rental can be reviewed after ten years, the rental increase is limited to thirty (30) percent.

With the logs that have been extracted from the project the amount paid per cubic metre to the local communities is K16.00 per square metre. With one species, Kwila, the export price that the company receives is K838.00 per cubic metre. This means that the developer is receiving K822.00 out of the K838.00. Further, there is no allowance made for payments for the extraction of gravel. The agreement states that the developer has the right to gravel free of charge. In the Sigite Mukus Project the company, by its own admission, has extracted 628,205 cubic metres. Based on local prices that would amount to K59, 679,000 worth of gravel.

3. Environment. One of the core elements of any agreement involving land is that of environmental protection. When land is involved two important provisions are required: Firstly, an environmental impact assessment at the commencement of the project. This will consider the outlay of the area and any special features, which need to be considered when activities are being undertaken on the land. It also needs to take account of water resources, air quality, greenhouse gases, biodiversity and ecosystems, and social impact.

Second, a provision setting out the practices that need to be and will be adopted to ensure respect for the environment, and to ensure that specified practices are adopted to avoid damage to the environment or at least minimise damage to the environment or to rectify any damages done. The agreements for the project in question have no provision for any of these. In terms of the oil palm industry, the Roundtable for Sustainable Oil Palm has adopted principles and criteria for sustainable oil palm production, which are particularly environmentally sensitive. This takes account of the impact of oil palm production on water sources, air quality, green house and other polluting emissions. It acknowledges that there are places that might have particularly sensitive biodiversity or particularly fragile ecosystems. It also notes that contamination of surface and ground water through run off of soil, nutrients or chemicals should be avoided. Also, plantings should not occur on slopes of a gradient of more than 20 percent. None of this is provided for in the conditions of the agreements regulating the project in question.

4. Conservation areas. Another problematic area is the failure to establish, secure and protect conservation sites that provide adequate space for food gardens, the undertaking of traditional cultural practices and to protect flora and fauna. There are Conservation areas within the area of the project in question. However, they are not protected or respected. Landowners face considerable pressure, threats and bribes from project management to make land on conservation sites available for logging and planting of oil palm. Conservation sites are essential to ensure adequate ground for traditional food production, ensuring that cultural practices can be maintained, and that important trees and species are protected. The failure to ensure the protection of these, not only undermines traditional lifestyles, but also has a negative impact on biodiversity. The pressure of local people to allow for conservation area land to be used for the project is evidence of the developers' complete lack of respect for traditional lifestyle and flora and fauna.



5. Buffer zones. A further issue is the failure to ensure that there are adequate buffer zones between oil palm and water sources and oil palm and villages. Buffer zones are essential to ensure that water sources are not polluted, and that people can continue to live their traditional lifestyle in their villages without interference. The Code of Logging practise sets out the appropriate distances that there needs to be between oil palm plantings and water sources and villages. However, there are no provisions for these in the agreement in question. Consequently, plantings go to the edge of villages and to the banks of water sources. This causes erosion, pollution and disrupts traditional ways of life.

6. Respecting the boundaries. When agreements are entered into, there are specific boundaries within which oil palm or other activities can take place. However, there are continual complaints that when companies enter into areas and start planting, they encroach onto areas which are not a part of the agreement. In other words, they are taking over other peoples land. Not only do they do this, but the complaints also state that pressure is placed upon the people, whose land they encroach upon, to move off their own land. This is totally unfair and displays a lack of respect for boundaries and the people whose land different projects.

7. Sacred sites. Another problem is the failure to identify, record and respect sacred sites and cemeteries within the project area. Sacred sites include areas which have important ancestral stories; important stones or

other historical features; ples malaslai; former village sites and the like. The failure to identify, record and protect such sites results in sacred areas being encroached upon, cemeteries have roads built upon them and old villages have oil palm planted on them. This is both disrespectful and offensive to local communities.

8. Infrastructural development. A further issue is the failure to make provision in the agreements for appropriate contribution by the developer to infrastructure development, and contribution to health and educational facilities, as well as other social services. One of the aims of the SABLs was to encourage development in remote areas. The agreements, regulating the project that the Archdiocese of Rabaul has been involved with, make no provision for appropriate contributions by a major developer to infrastructure, health, educational and other social services. A major developer, gaining substantial financial benefits from an area and in so doing undertaking actions which affect the local community's lifestyle, must make appropriate contributions.

9. The failure to regulate what happens to the land at the end of the agreement. The duration of the project in question is for sixty years. This allows for the planting of three oil palm cycles. Oil Palm has a detrimental impact on the environment. Consequently, at the end of such a long-term project, it is essential that provision is made for replanting to provide for the reestablishment of native species and the rejuvenation of different forms of biodiversity. Again, there are no provisions for this. The failure to make such provisions, given the evidenced attitudes and practices of developers in such developments, would mean that large areas of exploited areas would be left barren.

In sum, such practices in SABL and other contracts identify: Inadequate consideration for use of land, timber, and other resources such as gravel and water; the lack of any respect for the environment which indirectly allows for damaging exploitation of the environment; the lack of any respect for sacred and cultural sites and the traditional lifestyle of local communities. Not only does this have a detrimental impact on the current generation but also on future generations. Reference is made to the actions of the developer at the end of the contract. If enforceable provisions are not made for replanting, the areas will be left barren.

All of this is totally contrary to the National Goals and Directive Principles as set out in the Constitution: there is no strict control of foreign enterprise activities as evidenced by the practices of logging companies; the inadequate consideration paid for the land and other resources means that there is no attempt to ensure equitable distribution of incomes and other benefits of development among individuals and throughout various parts of the country; citizens in such projects do not have control of the economic enterprise and production; wise use of natural resources is not ensured; there is no provision made for conservation and replenishment, nor is there thought given to the needs of future generations.

In such projects and the contracts regulating them the local communities are clearly in the subordinate position. The reasons for this include: The failure of the Government to strictly regulate and monitor actions of foreign and other large companies; the fact that local land owners experience a special disadvantage through lack of education, lack of understanding of the dynamics of the business activities, prices and the like, which relate to the project in question; and the fact that the land owners often do not have access to independent legal advice when entering into contracts.

These points are aggravated by the fact that foreign companies, usually from Asia, and local landowners have a different pace of life and indeed way of life. Customary landowners like to take time to talk about matters which directly concern them all and attend to customary obligations. Foreign companies, which are monetarily oriented, wish to do things not just quickly but immediately. This creates a direct clash between cultures. Foreign businesses are quick to tell people of immediate benefits that can be received from projects. However, they are told, if they wish to receive such benefits, they need to enter into agreements immediately. This is evident in the Sikite Mukus project in the East New Britain Province. The directors of landowner companies were brought to Kokopo to sign the agreement. They thought that they were signing an agreement for downstream logging. When they found out that it was for oil palm, they said that they needed time to go back and discuss the matter with their people. The response from the developer was that, if they didn't sign the contract immediately, the project would not proceed, and the developer would go elsewhere. This pressured them into signing.

Moreover, money from developers may be used to bribe certain individuals to get support and to pressure their own people to enter into agreements which are not, in the long term, beneficial to local communities. Such bribery divides families and communities, resulting in another negative impact of the project. In difficult economic times the temptations to be bribed are strong when people are looking for funds for school fees and other important obligations. This results in unfair contracts which have a long-term detrimental impact on their lifestyle and on the environment on which they live.

All of the above comes from experience of logging company activities at West Pomio. However, the negative issues above are not inevitable. Detailed below are the practices that need to be adopted in any agreement concerning land and/ or resources of local people and foreign or major companies.

4. Essential Requirements in Negotiating Agreements

"*The local population should have a special place at the negotiating table; they are concerned about their own future and that of their children and can consider goals transcending immediate economic interest. They need to be informed about the different risks and possibilities of such projects*". (Laudato Si, 183)

"*In any discussion about a proposed venture, a number of questions need to be asked, in order to determine whether or not it will contribute to genuine integral development. What will it accomplish? Why? When? For Whom? What are the risks? What are the costs? Who will pay the costs and how?*" (Laudato Si, 185)

The necessary requirements in adopting an agreement between Landowners and large foreign or local companies are:

1. <u>The need for full consultation before an agreement is entered into</u>. Any effort by a foreign company to go into an area to establish a project requires the broad consensus of the community. Foreign companies, seeking short cuts, will approach and lure people with money and other benefits. Before any project can proceed it is crucial to identify all of the

clans who have a customary interest in the land upon which the proposed project will take place, and convene a public meeting where all interested parties, especially leaders, can freely express their views. Notice of the meeting needs to ensure that at such a meeting there is appropriate representation of Government, church, and women.

Further, some investigation needs to be made about the reputation of the company and the practices and standards that it follows. What sort of a record does it have and how has it behaved in other similar circumstances?[11] Relevant behaviour includes: how much time they give people to make decisions; how much they consult with the people; how much they listen to the people; do they put pressure on the people and if they do how, do they apply such pressure?

2. The Government and the people need to make a clear statement that the influencing and manipulation of people through bribery and indirect threats is an unacceptable practice and undermines the Melanesian principles of participation, consultation and consensus. It divides people and communities and results in exploitation. Foreign companies, wanting to embark upon projects in areas, need to ensure that they have the respect and support of the majority, once the people have been fully and honestly informed about the project and its impacts both negative and positive.

3. The landowner group needs to establish itself into an appropriate legal entity. If it concerns one clan the appropriate vehicle may be an ILG. If it involves a number of clans, the appropriate entity may be a Business group. Whatever group is incorporated, it is important that the executive comprises representatives from all sectors of the landowners who have an interest in the land. The entity needs to have a Constitution which is carefully drafted. Also, accurate financial statements must be presented at each meeting. For full transparency and to ensure that the people who have an interest in the land are kept informed, the executive must have at least four meetings with the Landowners, who have an interest in the land,

[11] For example one group of landowners informed us that they chose a particular company because it was incorporated in Papua New Guinea, it had funds and it had a good relationship with the Government. What they didn't do was to consider and investigate the behaviour of the company in similar circumstances.

each year. Full financial reports need to be presented to the people at such meetings.

4. The developer needs to provide the people with a full environmental impact statement, which sets out the impact of the project on the environment and whether this can be effectively managed. If it can be effectively managed, the required management and the costs need to be set out. The developer must take responsibility for the costs. The assessment needs to be done by an independent expert. It needs to be emphasised to the local people that they need to ensure that the expert is impartial and has the adequate expertise and qualifications. As Pope Francis states in Laudato Si*: "An environment impact assessment should be interdisciplinary, transparent and free of all economic and political pressure".*[12]

In projects involving Oil Palm, it is suggested that a core consideration is whether the developer is a member of or is prepared to become a member of the *Round Table for Sustainable Oil Palm*. This organisation provides very strict environment practices and standards, which must be complied with. If a company is not prepared to be a part of the Round Table for Sustainable Oil Palm, it is strongly recommended that landowners do not proceed with any agreement with such a company. *Further provisions need to be made to ensure that the provisions for environmental management are adopted and implemented during the duration of the agreement.*

5. The company needs to transparently communicate to the people the cost of initiating the project and the projected profits from it. This means that detailed costings must be produced and presented in a manner which is meaningful to the people. From this, fair rental and royalties can be determined. The landowners need to get independent advice on such matters and be given reasonable time to obtain such advice.

6. Each Province needs to have a list of appropriate people to do environment impact assessments and assessment of costs and profits. Landowners must be encouraged to carefully select the appropriate

[12] *Laudato Si, paragraph 183*

people. All costs for assessments and projections need to be met by the developer.

7. The landowners need to identify and make a register of sacred sites and important cultural sites. This would include sites of former villages. The compulsory acknowledgement of and respect for such sacred sites needs to be included in all agreements.

8. The landowners should be the drafters of the agreement. They need to identify a lawyer who is totally supportive of the rights of indigenous landowners to draft the agreement. It is essential that all members of the executive, of the entity responsible for the lease, understand the terms and conditions of the contracts and the implications of these. This means that explanation and clarification are necessary. The person responsible for signing the contracts needs to be absolutely certain that all the members of the executive understand the terms and conditions of the contract and that the landowners, with an interest in the project, are in agreement with the project proceeding. Any agreement should include the following points:

1. The clear description of the boundaries of the project/operation in question;
2. The activities that will be carried out in the agreement;
3. The duration of the Contract;
4. The rental and benefits that are to be received by the Landowners. How are they calculated?
5. The practices that are required to be conducted to ensure that there is appropriate respect
   for and protection of the environment;
6. Employment provisions for the local people in terms of the project;
7. Services that are to be provided to communities within and affected by the project areas;
8. Methods of consultation between interested parties in the project;
9. How disputes are to be addressed.

9. The agreement must set out the duration of the lease and whether there are any rights of renewal. If there are rights of renewal, the rental

and other important matters must be determined by the economic circumstances of the time. If a project is not going to be continued then specific and detailed provisions need to be included, to set out how the company must depart from the area and the actions that it must undertake to ensure that there is no environment damage that has not been attended to. Such provisions should also promote sustainability. In other words, companies should be required to replant areas in native trees which have had oil palm grown on.

10. The agreement must specify the land on which the project is taking place and the clans who have a customary connection with this land. (A map must be included). The agreement should specify the business activities which will take place on this land and set out in detail the consideration which is to be paid for the land. This includes both rental and royalties, and how much consideration is to be allocated for different resources such as gravel and water. The agreement must state how the consideration is to be paid and in what periods. The agreement must also set out the dates for any reviews.

11. The agreement must set out the environmental practices that must be followed by the developer. This is based on the environmental impact assessment. The agreement must also state how the environmental practices are to be monitored. For example, there could be members of the landowners who have the necessary experience and training and meet regularly with the developer to ensure that the required practices are followed.

12. The agreement must include as an annexure the list of important cultural and sacred sites on the land in which the project is taking place and require that they all be respected;

13. The agreement must state the distances of the buffer zones between the project and water resources and the project and villages situated within the project. It is recommended that the distances set out in the Code of Logging Practices

14. If necessary, the agreement must establish sufficient conservation areas, which must be acknowledged and respected by the developer as places which are reserved for gardening and cultural practices. These

conservation areas are to be included in the map referred to in Clause 10 above.

15. The agreement must set out other benefits, which the developer will provide. This refers to maintenance of schools, health centres, establishment of water systems, provision of certain scholarships and the like. It needs to state the expected benefits for any particular year.

16. The agreement needs to have an implementation clause. This is to ensure that the terms and conditions of the agreement are complied with. The suggested way is to have regular meetings between representatives from the entity representing the landowners and the developer. If there are any issues that cannot be resolved, then the matter should be referred to mediation.

5. Implementing the National Goals and Directive Principles

It is important that the Landowners, as the leaser, are responsible for drafting the agreement. This allows them to set out the initial terms and conditions. The developer will no doubt want to negotiate, but this is when counsel needs to be taken from the lawyer.
It needs to be noted that if the environmental impact assessment is carefully prepared and costed, if the costs and profits with associated rental and royalties are thoroughly done, and if reasonable assistance is requested for help with services, the result might well be that it is not viable for the developer to undertake the project. This should not be seen as a bad outcome. A number of projects have proceeded where the agreements have not required appropriate environmental protections, have not provided for fair rental and have not required assistance with infrastructure and different services. This has had a negative impact on both the communities and the environment. **A viable agreement must benefit both landowners and developer and must protect the environment**. **If this is not possible, then the agreement should not proceed.**

Mention has been made of the Roundtable for Sustainable Palm Oil. This is an organisation that is focused on adopting and implementing environmental and social criteria which oil palm producers should comply with. There is also the Forest Stewardship Council whose mission is to promote environmentally appropriate, socially beneficial and economically viable management of the world's forest.[13] Both of these organisations have certification criteria which companies must follow to be certified. A number of forestry and oil palm companies already have accreditation with these two bodies. The Papua New Guinea Government should be promoting both of these organisations with a view to making it mandatory for organisations, undertaking forestry and oil palm production, to be accredited under these organisations. This would promote in the strongest manner appropriate environmental protection. In the meantime, the standards and criteria of these organisations be used when determining appropriate environmental standards to be contained in the relevant contracts. We have provided examples from the Sigite Mukus project in Pomio ENB, but much of the detail provided can be applied to SABL projects in other parts of the country. It can be said therefore that: the

[13] Taken from their mission statement.

country is not implementing the National Goals and Directive Principles of Equality and Participation, National Sovereignty and Self-reliance and Natural Resources and the environment. Indeed, many people are suggesting that the encroachment of foreign companies into all aspects of business, as well as with the acquisition of land, is compromising national sovereignty.

There are many situations of serious inequality which lead to exploitation of the vulnerable as evidenced in agreements between landowners and foreign or large commercial companies (*Second National Goal and Directive Principle*). The ability of foreign companies to manipulate agreements to their advantage and to the disadvantage of landowners, and to avoid paying tax, reveals the fact that there is not strict control of foreign investment (*National Sovereignty and Self Reliance, Third National Goal and Directive Principle*).

The damage done to the environment in different projects shows that there is not the commitment to conservation and replenishment that is envisaged under the *Fourth National Goal and Directive Principle.* The manner in which foreign companies pressure local landowners, to hastily enter into agreements without firstly consulting with all their people or seeking independent legal advice, shows that there is no respect for the Melanesian principles of participation, consultation and consensus (Fifth National Goal and Directive *Principle*). Many of the issues need to be addressed by Governmental agencies. For one thing, regulations need to be enforced and appropriate policies adopted. However, one way of addressing the concerns and providing protection to local communities is by assisting and empowering them to negotiate and enter into agreements which are fair, beneficial to the local communities and are protective of the environment. The above guidelines, if implemented, will hopefully assist in this.

The purpose of the National Goals and Directive Principles are to guide the company on its journey of development. The promotion of equality, commitment to national sovereignty and Papua New Guinean principles are all values which need to be applauded and upheld. Unfortunately, this has not been the case. Rather than ensuring that Papua New Guinea remains in the hands of and under control of Papua New Guineans, the country has allowed different foreign entities to acquire large amounts of

land and to control business and investment. Sovereignty has been compromised. Further the poverty and significant lack of services in most parts of the country, especially in remote areas, shows that the goal of equality has not been given a priority. These points have to be acknowledged.

However, it is not too late for people to take a stand and ensure that all agreements that are entered into from now on are based on justice, ensure equitable sharing of benefits and are protective of the environment. Further the Government needs to be challenged to review all existing arrangements. In all of this it needs to be remembered that '*God em nambawan papa bilong graun'*. When we act in a manner which is disrespectful of and damaging to the environment, we are being disrespectful of God and of future generations who require the use of such land. Let us give God the appropriate acknowledgement by honouring the land that he has created and given to us.

Archbishop Francesco Panfilo sdb, Archbishop of Rabaul was appointed as Coadjutor Archbishop of Rabaul on 18th March, 2010. On 11th August 2011, he was installed as the Archbishop of Rabaul. As shepherd of his flock he has travelled the length and breadth of his Archdiocese on foot, climbed steep mountains and sailed rough seas. Concerned for the welfare of his people and working together with his flock, he has put together this book entitled: **Just Land Agreements**. May it inspire us!