

Removal of the rights of indigenous peoples to protection of their lands and resources in Papua New Guinea:

Respectfully submitted by the Centre for Environmental Rights (CELCOR) as at 3rd November 2010.

INTRODUCTION

The Centre for Environmental Law and Community Rights is a Public Interest Environmental and Conservation NGO that utilises the Natural Resources Laws and others laws that give recognition to citizens' basic rights as human beings to progress and or develop towards the sustainable management of ones' natural resources for current and future generation. In practice, the laws enacted to affect protection to the land ownership rights of traditional land owners in Papua New Guinea are weak and ineffectual and this constitutes a grave threat to the continued cultural survival of such traditional landowners.

CELCOR has an excellent rural base with the many and diverse resource owning communities that it works with. Most of this information was gathered from people whose livelihoods are threatened by large scale logging, land development in terms of Oil Palm blocks, oil palm mills, effects of Climate Change on the environment, Oil and Gas Explorations and Mining activities prevalent in the country of Papua New Guinea.

CELCOR has as it's core feature, a program that warrants awareness raising and education of rural based communities bulk of whom depend entirely on their natural resources for sustenance. Specified activities within this program enable CELCOR to widely consult and gauge information pertaining to any real development occurring in their setting. The organisation strongly believes and emphasises the need for resource owners to be made aware of any development issues in relation to their resources so as to make informed decisions. These are the principles of Free Prior Informed Consent (FPIC).

In almost all matters relating to CELCOR and the work it undertakes, the organisation feels that grievances that are aired by the people can vary from lack of consultation so as to enable the FPIC principles, Illegal logging- there is grave concern amongst forest owning communities that logging concessions/licenses that are being issued are being, most logging companies are found to be logging outside of the designated area, another concern is that there is no adherence to customary sacred sites and traditional systems by the logging companies, drinking water is polluted, there are also policeman employed by the companies who threaten and cause brutality to landowners who attempt to bring their concerns to the companies

Environmental Act Amendment 2010: effectively extinguishing real ownership and custodial rights

On May 28th the parliament in Papua New Guinea passed a sweeping amendment that protects resource corporations from any litigation related to environmental

destruction, labour laws, and landowner abuse. All issues related to the environment would now be decided by the government with no possibility of later lawsuits.

Uniquely in the world, over 90 percent of land in Papua New Guinea is owned by clan or communally, not by the government. However this new amendment drastically undercuts Papua New Guinea's landowners from taking legislative action before or after environmental damage is done. Essentially it places all environmental safeguards with the Environment and Conservation Director. The amendment seeks "to remove the checks and balances of the Environmental Act for projects and protect the developer's interests at the cost of the landowners and the environment". These amendments basically suppress the rights of third parties to seek remedies for imminent /potential environmental damages and furthermore, There is the absence of free prior informed consultation or even if it exists, it (consultation) is not wide enough.

LEGISLATIVE FRAMEWORK

The inalienable dignity of the human person means that all people have an equal status which must be acknowledged through the legal system both internationally and nationally. The diversity of human beings is our gender, racial, social, cultural, religious and philosophical differences, that is our natural differences that must be acknowledged and respected through the law.

On a matter of Public Interest and in order to uphold the collective customary rights of the ordinary landowners of Papua New Guinea to challenge adverse developments that threaten their basic livelihood off their land inclusive of their fisheries waters within the three nautical miles there are qualified right(s) stipulated in the Constitution that may set the premise to challenge the proposed Environmental Amendments. Under the second goal (Equality and Participation) there is a collective recognition and commitment to achieving the equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country, which will be both beneficial to themselves and contribute to the common good of the community and the country.

From the religious perspective the right is based upon the principle that all man has an inherent dignity in the eyes of God. Both views, the secular and religious perspectives are combined in the Universal Declaration of Human Rights and form the basis for the principle of "inalienable dignity" of the human person.

The Constitution of the Independent State of Papua New Guinea in itself promotes Human rights and in all its post independence legislations at all times uphold basic human rights principles, however at the turn of the century with ambitious development goals the rights of Customary Landowners or Indigenous peoples are not respected. Customary landowning is estimated to be 97% on which the customs of each tribe or land owning group takes precedence over any other form of

legislation or policy for that matter. The other 3% of the land in the country is state land where the land legislations are used.

The land meaning the soil on which they make gardens, the water which they drink water from, the forest which they get their food, materials to build their houses with and also where they get their medicine from.

MULTI LATERAL AGREEMENTS AND OR OBLIGATIONS

The country of PNG is a party to the various international and regional conventions that give effect to these rights that are already enshrined in our Constitution and in the other Natural Resource legislation. These international and regional conventions enforce the protection of the terrestrial and marine environmental rights including the social livelihoods of the people of this country. Such conventions that give rise to these issue of protecting one's rights are the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, also known as the London Dumping Convention (adopted 1972, came into force 1975; amended 1980). Indigenous and Tribal Peoples Convention 1989 – (adopted 27th June 1989) – The main objective of this convention was to give recognition to indigenous and tribal peoples rights to use the environment, express their opinions and have a say in the decision and planning processes and to help indigenous peoples develop holistically. The RAMSAR Convention for the Protection of Natural Resources and Environment of the South Pacific Region, also known as the SPREP Convention (adopted in 1986; into force 1990) –aimed to protect and manage the use of the natural resources and the environment of the South Pacific region – includes pollution and the transport and storage of hazardous wastes and in addition, there is present the Convention for the Protection of the Marine Environment And coastal area of the south-east pacific (Adopted in 12 November 1981) – The focus of this convention was geared towards the protection of the marine environment and coastal zones of the South-East Pacific within the 200-mile area of maritime sovereignty and jurisdiction of the Parties, and beyond that area, the high seas up to a distance within which pollution of the high seas may affect that area.

Promotion and protection of human rights

Although the country has in place the police and the Ombudsmen Commission to defend and advocate for human rights, these issues are prevalent in communities experiencing large scale logging, the misinformation or absence thereof of vital information to resource owners with regards to various development projects occurring on their land demonstrates otherwise.

The Ombudsmen Commission are tasked with recommending public figures that have been alleged to have misappropriated public monies or for misconduct in office etc to stand trial. It merely recommends. The police have been used in instances where there is a logging camp, as security personnel of the company in question. These 'security' are feared by the very people they are responsible for protecting and defending etc.

Overall, there is no sense of security felt by resource owners and or those that dwell in rural areas. CELCOR has documented varied forms of Human Rights abuses experienced by the communities we work with and it is very unpleasant to note that most have gone unreported unless the courts have intervened.

BEST PRACTISES/ACHIEVEMENTS:

- CELCOR since it's inception has been advocating for freedom of information and compilation and collation of information and or knowledge by the resource owners we work closely with. A program within CELCOR emphasises the need for awareness raising and community legal education CELCOR believes very strongly that knowledge is power and since inception, has provide basic information and awareness o these communities.
- Successful outcomes of Court Cases that have come to CELCOR's attention as a result of these rural based communities being made aware of their rights and pursuing their interests in a Court of Law.
- Formation of Associations and or land owning groups to enforce communal ownership within the legal arena has had tremendous success and impacted the general rural populace in a positive manner. This has been done with assistance from CELCOR in terms of capacity building for these communities.

CHALLENGES/CONSTRAINTS

- Low literacy rate – The bulk of CELCOR's target communities are rural based, who are mostly illiterate.
- Remoteness – Most of the communities that CELCOR has worked with are situated in remote area. This means that most of the human rights abuses go unreported. The lack of proper infrastructure compounds this situation making it difficult for CELCOR and other responsible bodies to address human rights issues.
- Stakeholder consultation – Poor cooperation and coordination between responsible government agencies and environment and conservation NGO's.
- Inconsistencies in implementing policies and laws – A general lack of consistency by government agencies in addressing environment, conservation and sustainable development issues, makes CELCOR's tasks at community level more difficult.
- PNG does not have a Freedom of Information Act

Initiatives and or commitment to overcome challenges and constraints

On 20 December 1995 the National Executive Council approved drafting instructions attached by a Policy Submission No. 265/95 for the establishment of a Human Rights Commission for Papua New Guinea as an Independent Constitutionally entrenched body as a matter of priority. The necessary Amendments to the Constitution and

Organic Law were subsequently approved by the National Executive Council on 26 September 1996 and published in the National Gazette on 2 October 1996.

In compliance to this NEC Decision, the Department of Justice and Attorney General in conjunction with the UN Centre for Human Rights conducted a Need Assessment Study in 2003 to determine which option is appropriate for PNG to adopt as a model. The Study concluded that there is an urgent need to establish a National Institution to promote and protect human rights in PNG. Also the same UN Team recommended four options where PNG can choose it establishment of the Commission.

This is viewed as an excellent initiative of the Government and all stakeholders, including Civil Society members, have been consulted. It is imperative that the Government of the day proceeds with the endorsement of these Bills.

RECOMMENDATIONS

- Human Rights training for CELCOR staff (eg by the Regional Rights and Resources Team - RRRT)
- Specific human rights awareness and training workshops for target communities that CELCOR works with.
- Capacity building for community leaders to equip them to deal effectively with human rights abuses occurring within their communities;
- Assistance in how to properly document these abuses, this includes help with obtaining and compiling data on HR abuses. This assistance should be provided at community level and also at organisational level;
- Assistance in maintaining and improving the reporting and data management system in place, within CELCOR and other environmental and conservation NGO's.
- the Government of Papua New Guinea immediately repeals the Environment Amendment Act 2010 and reinstates adequate judicial review to all decisions affecting the lands and resources of traditional landowners in PNG;