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TURNING THE TIDE: CORRUPTION AND MONEY LAUNDERING IN PNG

SAM KOIM*

Corruption has a vast impact on Papua New Guinea and its people. Addressing the humanitarian problems that it creates requires a joint proactive effort between Australia and Papua New Guinea. This article provides a renewed insight into the ongoing money laundering in Papua New Guinea and the initiatives of Taskforce Sweep in combating corruption. The article suggests increased efforts by all institutions and persons involved while also placing an emphasis on the fragile, yet growing voices for accountability within Papua New Guinea.

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I INTRODUCTION

Corruption has been affecting Papua New Guinea for many years, the consequences of which have resulted in vast quantities of monies flowing into other nations, particularly Australia. While the opportunities in Papua New Guinea should be plentiful, the risks of corruption becoming out of control have imposed a great strain upon such an ideal. This essay will argue for a renewed approach to corruption, one that includes both Australia and Papua New Guinea. It will do so by focussing on those responsible and their

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dealings, and the financial and humanitarian issues surrounding corruption, before concluding with recommendations and the outlook for “Taskforce Sweep”.

Australia is fast becoming the *Cayman Islands* in relation to money laundering and housing the proceeds of corruption from Papua New Guinea.¹ What prompts such remarks is the significant portion of funds obtained by the corrupt in Papua New Guinea that find their way into Australian bank accounts and real estate.² The Cairns North Registrar of Titles (‘CNRT’) outlines how many properties are owned by Papua New Guineans, including politicians and top bureaucrats.

A recent report in an article from a Cairns newspaper revealed that the residents of Papua New Guinea are the largest investors in far north Queensland, according to the latest figures from the CNRT.³ It is also understood that six known politicians (named) have invested in multimillion-dollar properties up north and in central Cairns, to a tune of AUD\$11.5 million (K\$24.5 million). Respectively, the investments are AUD\$3.8 million, AUD\$1.9 million, AUD\$2.3 million, AUD\$2 million, and AUD\$1.45 million.⁴

Furthermore, it was recently reported that Papua New Guinea’s investment in Australia reached US\$1.2 billion, according to Asian Development Bank economist Mr Aaron Batten.⁵ This does raise the concern that not all of these investments are derived from legitimate funds given the magnitude of investment and the particular assets involved. The question that now begs an answer is whether the banking industry in Australia is doing business with “dirty” money? This is sobering news and, in my opinion, the authorities of Australia should prevent this, or, at the very least seize and return the money if it is not clean. Australia has never repatriated any proceeds of corruption to Papua New Guinea. The corrupt activity has involved the purchase of property and other tangible assets, the shifting of money into bank accounts, and excessive gambling in Australian casinos. To this end, they have never been troubled by having their ill-gotten gains taken off them. Unless the money can be prevented from leaving Papua New

¹ Liam Fox, ‘Australia used to launder PNG’s dirty money’, *ABC News* (online), 10 October 2012 <<http://www.abc.net.au/news/2012-10-10/australia-used-to-laundry-png-money/4304908>>.

² *Ibid.*

³ Nick Dalton, ‘PNG investors eye Far North Queensland’, *The Cairns Post* (online), 11 April 2012 <http://www.cairns.com.au/article/2012/04/11/214095_local-business-news.html>.

⁴ ‘PNG Politicians invest millions in Cairns’, *Pacific Islands News Association* (online), 3 May 2012 <<http://www.pina.com.fj/?p=pacnews&m=read&o=15578956064fa2135ba775094e3eaa>>.

⁵ Todagia Kelola, ‘Aust ‘hides PNG cash’’, *Post-Courier* (online), 8 October 2012 <<http://www.postcourier.com.pg/20121008/news01.htm>>.

Guinea or prevented from entering Australia, then the corrupt few win and the rest of Papua New Guinea suffers. Let it be known, Papua New Guinea is suffering.⁶

II THE PILLAGING OF PAPUA NEW GUINEA: JOINT FRONTIER

Seven million Papua New Guineans live in the nation that is Australia's closest neighbour,⁷ yet 90 per cent do not have access to electricity.⁸ Consider also that 57 per cent live on less than two dollars a day,⁹ 31 per cent have access to a safe water supply,¹⁰ and only 46 per cent complete primary school.¹¹

Imagine a country richly endowed with natural resources, sometimes called an 'island of gold, floating on a sea of oil',¹² so rich, yet its people are so poor. How frustrating it is to watch the richness of one's homeland vanish into the hands of the few. Papua New Guinea is a recipient of more Official Development Assistance (through the Australian Agency for International Development ('AusAID')) than any other nation neighbouring Australia.¹³ A good portion of this is spent trying to combat corruption. AusAID used to be in the form of cash grants to the Papua New Guinean government to support its budget. Yet some years ago, it was converted to *tied* grants.¹⁴ It is understood that, as a result, Australia now spends more money in managing its aid in Papua New Guinea.¹⁵

⁶ Fox, above n 1.

⁷ United Nations Children's Fund ('UNICEF') (PNG), *Papua New Guinea - A diverse people and landscape* <<http://www.unicef.org/png/overview.html>>.

⁸ New Zealand Aid Programme, New Zealand Ministry of Foreign Affairs and Trade, *Improving on 10% - delivering electricity to PNG's remote communities* (November 2012) <<http://www.aid.govt.nz/media-and-publications/development-stories/november-2012/increasing-access-electricity-remote-areas->>.

⁹ Population Reference Bureau, *Population Living Below US\$2 per Day* <<http://www.prb.org/DataFinder/Topic/Rankings.aspx?ind=26>>.

¹⁰ United Nations Educational, Scientific, and Cultural Organization ('UNESCO'), *Access to electricity and water for domestic use* <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/wwap_wwdr3_10_Annexed_table_access_to_electricity_and_water.pdf>.

¹¹ UNESCO, *National Report On The State-Of-The-Art Of Adult Learning And Education In Papua New Guinea - A Situational Analysis* (30 June 2008) <http://www.unesco.org/fileadmin/MULTIMEDIA/INSTITUTES/UII/confintea/pdf/National_Reports/Asia%20-%20Pacific/Papua_New_Guinea.pdf>.

¹² Byron Chan, 'Give resource ownership back to the people: Chan's full speech' (Speech delivered at the Office of the Minister for Mining, The Yacht Club, 11 August 2011) <<http://ramumine.wordpress.com/2011/08/22/give-resource-ownership-back-to-the-people-chans-full-speech/>>.

¹³ Australian Agency for International Development ('AusAID'), *About Australia's Aid Programme* (30 August 2012) <<http://www.ausaid.gov.au/makediff/Pages/default.aspx>>.

¹⁴ AusAID, *A Review of the Effectiveness of the Development Import Finance Facility (DIFF)* (January 1996) <<http://www.ausaid.gov.au/Publications/Documents/diffrevw.pdf>> (emphasis added).

¹⁵ *Ibid*.

However, it is not only Australia. The Asian Development Bank ('ADB') has also switched its approach and is now managing its own projects.¹⁶ It is my consideration that one of the main risk factors in that change of operation is corruption. Corruption does not only impact Papua New Guinea, it is a transnational force that affects Australia as well. We believe that Australia understands Papua New Guinea more than any other nation, which is owed to our historical and continued mutual relationships. Based on this premise, both nations can and should collaborate in devising mechanisms that help detect and combat money laundering and cross-border corruption.

III CORRUPTION IN PAPUA NEW GUINEA: IMAGININGS AND COMPARATIVES

Taskforce Sweep was charged with addressing corruption so far as possible with relatively limited resources. The enormity of such a task should not be underestimated. Imagine what would happen in Australia if the Department of Finance refused to answer to the Parliament. Imagine if its members disbursed money without recourse to the national accounts, or if they colluded both internally and externally with the department to circumvent all controls. Imagine if this misappropriation amounted to half of the annual government budget. To this extent, imagine corruption so pervasive that half of the annual funding intended for policing, the judiciary, correctional facilities, the ombudsman, Financial Intelligence Unit, the taxation office, the crime commission and any other anti-corruption body, was misappropriated even before it was disbursed to the authorities. Imagine you have a Fraud and Anti-Corruption Unit that is given just under AUD\$94,000 annually to combat corruption. What if that meant that the police cars had no fuel, did not get serviced, the power went out in the police stations (and across the cities) for hours every day, or the water and phones were cut off for weeks or months because the bills were not paid? These are the experiences of Papua New Guinea.

What is more, despite the new government spearheading changes and making some headway,¹⁷ many who have acted corruptly in the past are still in positions of authority

¹⁶ Asian Development Bank, *Operations-Project Design and Management* <<http://www.adb.org/projects/operations>>.

¹⁷ AusAID, *Joint statement on zero tolerance to fraud in Australia's aid programme to PNG* (4 October 2012) <<http://www.ausaid.gov.au/Publications/Pages/png-fraud-statement.aspx>>.

in government departments and are still able to misappropriate vast sums of money.¹⁸ This misappropriation is the combined result of thousands of offenders, some of whom are in positions of considerable influence, and they are not about to give up their income streams without a fight.

IV WHEN YOU FIGHT CORRUPTION, IT FIGHTS BACK

The sad reality is that, until recently, Papua New Guinea was estimated to be losing about half of its government budget annually as a direct consequence of fraud and corruption.¹⁹ Numerous inquiries by the government, including those made into the Department of Finance and the Parliamentary Public Accounts Inquiry, described the terrible state of the public service and the leakage of money. In some instances, Papua New Guinea was losing billions of dollars a year in public revenue and, to a lesser extent, is still losing large amounts of money to corruption.²⁰

Through the investigations carried out by Taskforce Sweep, there have been multiple incidents that have been uncovered involving institutionalised and syndicated corruption. This complex network of corrupt activity occurs where private companies, through collusions with public officials and politicians, have infiltrated the government budgetary processes under the pretext of development projects, and squandered billions of kina. Corruption has distorted open markets for government contracts, as institutions that are established to administer the public procurement process wantonly apply the rules and have instead become havens, orchestrating government contracts under a thick veil of secrecy.

The government relies heavily on the private sector to drive its development agendas,²¹ but once the market is distorted, bogus companies of political cronies float to the top of

¹⁸ *Papua New Guinea* (10 March 2013) Shaping Change – Strategies of Development and Transformation <<http://bti2006.bertelsmann-transformation-index.de/118.0.html?L=1>>.

¹⁹ Dylan Welch, 'Expert Says Australia is housing proceeds of political corruption', *Sydney Morning Herald* (online), October 11 2011 <<http://www.smh.com.au/national/expert-says-australia-is-housing-proceeds-of-political-corruption-20111009-1lfvd.html#ixzz1aKX1OXHC>>.

²⁰ Cathy Devani, Maurice Sheehan and Don Manoa, 'The Commission of Inquiry Generally Into the Department of Finance – Final Report' (Report, 29 October 2009) <<http://pngexposed.files.wordpress.com/2010/08/final-report.pdf>>.

²¹ Papua New Guinea Embassy, Beijing, *Investment Profile* <<http://en.pngembassy.org.cn/info/infoview.asp?infold=354>>. See also ABC Radio Australia, 'World Bank urges PMG to support private sector growth', 21 December 2012 (Tim Bulman) <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/world-bank-urges-png-to-support-private-sector-growth/1064724>>.

the list while genuine and reputable companies sink to the bottom. With the support of their connections in government, these front companies squander funds while the people continue to lack basic goods and services. A powerful minority mob establishes potent networks to decide who should get what. They plunder the rich resources of the country at the expense of the vast majority, turning the constitutional democracy of Papua New Guinea into a *mobocracy* and *kleptocracy*. In corrupt circles “who you know” is the mantra that builds the channels of wealth creation and wealth transfer.

There exists some irony because the challenge is not identifying offenders; that is all too easy in the scheme of things. Indeed, much of the corruption is carried out using government cheques placed into accounts under the offender’s own name and companies with which they have direct links. The challenge rather is to prevent the continuation of offences, providing a deterrent to those who are still in the process of acting corruptly and those who might do so in the future. This approach is also intended to reduce the ease with which the corrupt are able to shift the proceeds of their activity and remove the opportunity for them to enjoy their ill-gotten gains.

Taskforce Sweep has started to restrain the proceeds of some of the offences, but again there are a significant amount of offenders and so many continuing offences that, unless their “gateways” are squeezed, Taskforce Sweep will never be able to achieve a significant impact. Only 100 miles north of Australia is Papua New Guinea. Papua New Guinea has so many leakages that they have created a pool of illicit monies floating around its territorial banks in search of an opening offshore. It is arguable that Australia has passively allowed those illicit funds to be channelled into this country.

V TASKFORCE SWEEP: A PROACTIVE APPROACH TO MONEY LAUNDERING

The Government of Papua New Guinea has taken a proactive approach to combat corruption and money laundering by appointing Taskforce Sweep, which has arrested politicians, senior public servants and business persons. Moreover, Taskforce Sweep has also recuperated millions of kina through tax and proceeds of crime recovery. The necessity to change is too great and the people of Papua New Guinea demand it. Yet, up until recently, regardless of public outrage, offenders have known that there was little

that could be done even if everyone knew what they were doing.²² Allegations have been published in both Australian and Papua New Guinean newspapers,²³ but unless there is something to stop the offender, or to confiscate these illicit funds, they will carry on with impunity. There have been instances where suspects of corruption escape jurisdiction and continue to live and access their ill-gotten gains in Australia. This must be a thing of the past, as recent events between both nations indicate there will be a much greater level of cooperation between both governments.

Taskforce Sweep will provide a list of politically exposed persons to the Australian Transaction Reports and Analysis Centre ('AUSTRAC') and the Australian Federal Police ('AFP') through the normal information sharing between national agencies. Where Taskforce Sweep observes instances of remittance to Australia by such persons in the future, it will be providing the AFP with the evidence that the funds are proceeds of crime and making a specific request that the institution involved be investigated for potential offences against Division 400 of the Australian Criminal Code.²⁴

Where that occurs, the Attorney-General of Papua New Guinea has been briefed to ascertain the process of obtaining damages from Australian financial institutions that have been found to have acted negligently with respect to the facilitation of money laundering from Papua New Guinea. There is no doubt that Papua New Guinea is a high-risk nation when it comes to corruption. As a nation, its risks concern Australian institutions when they receive remittances with such a provenance, but particularly from people categorised as 'politically exposed'.²⁵

These persons have chosen Australia as their preferred place to launder and house the proceeds of their crimes because it is easy. Cairns is only a short flight from Papua New Guinea and property can be bought off the plan and without permission. The financial system is stable and it has been, up until now, an extremely simple process to get their money into the Australian system. Again, one need only conduct a search at the CNRT to ascertain how many properties are being bought by Papua New Guineans, including

²² Malum Nalu, 'PNG sharpens up fraud and corruption tackling skills', *Pacific Media Centre* (online), 27 February 2011 <<http://www.pmc.aut.ac.nz/articles/png-sharpens-fraud-and-corruption-tackling-skills>>.

²³ *Ibid.* See also Welch, above n 19.

²⁴ *Criminal Code Act 1995* (Cth).

²⁵ 'ExxonMobil LNG project blighted by corruption and security concerns' on *Crime and Corruption PNG: The Issues Behind the Headlines* (19 January 2010) <<http://crimeandcorruptionpng.wordpress.com/2010/01/19/exxonmobil-lng-project-blighted-by-corruption-and-security-concerns/>>.

those by politicians.²⁶ It is hoped that, in the very near future, Australia will commence conducting enhanced due diligence in its dealings with these persons and, as part of this process, inform AUSTRAC.²⁷

Taskforce Sweep has become increasingly dissatisfied as it has progressed. This dissatisfaction is perpetuated by the Australian financial system which is being used to systematically launder tens of millions, and possibly hundreds of millions, of kina that should be used for other ends. These include providing healthcare, education, and infrastructure for Papua New Guineans, all of which are the priority areas of the government that the author represents.

VI AUSTRALIA'S INTERNATIONAL ANTI-MONEY LAUNDERING OBLIGATIONS

Australia maintains its obligations under the G20 Anti-Corruption Plan,²⁸ the United Nations Convention Against Corruption ('UNCAC'),²⁹ and the Financial Action Task Force ('FATF').³⁰ However, the most compelling reason to maintain these obligations is Division 400 of the Australian Criminal Code because it reflects the need to sanction such corrupt conduct as a clear means of deterrence.³¹ One must also compare the *Financial Transaction Reports Act 1988*³² and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* against the *Proceeds of Crime Act 2005*.³³ These laws impose on Australians, as cash dealers, duties to conduct due diligence when dealing with customers. The task force wants these dealers, in conducting enhanced due diligence, to ensure that the transactions being conducted are consistent with their knowledge of the customer and their business. In addition to this, when they are conducting large transactions or frequent smaller transactions, that dealers assure Taskforce Sweep of the source and legitimacy of the funds.

²⁶ Dalton, above n 3.

²⁷ AusAID, above n 16.

²⁸ Group of Twenty Research Group, *Annex III: G20 Anti-Corruption Action Plan* (12 November 2010) University of Toronto <<http://www.g20.utoronto.ca/2010/g20seoul-anticorruption.html>>.

²⁹ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption* <<http://www.unodc.org/unodc/en/treaties/CAC/index.html>>.

³⁰ The Asia/Pacific Group on Money Laundering and The World Bank, 'Mutual Evaluation Report: Anti-Money Laundering and Combating the Financial System' (Report, 21 July 2011) <http://www.apgml.org/documents/docs/17/PNG%20MER_July%202011.pdf>.

³¹ *Criminal Code Act 1995* (Cth).

³² *Financial Transaction Reports Act 1988* (Cth).

³³ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); *Proceeds of Crime Act 2005* (Cth).

Taskforce Sweep also wants Australia to extend its due diligence checks by conducting a “means test”. This is under the proviso that Australia will not err if one is conducted for every transaction that derives from Papua New Guinea. This extends to Western Union money transfers, chartered accountants, law firms, financial investment companies, and other cash dealers such as heavy equipment dealers and real estate agents that appear to be commonly used to launder funds. These too require some form of scrutiny. There also appears to be some structuring and layering of money amounts. If Australian cash dealers are unable to comply with those requirements, Taskforce Sweep asks that the performance of the transactions be refused and that the termination of the business relationship be pursued. This can be addressed by posing these questions:

- Request their tax returns and their business tax returns and ask for their bank statements. If it is a politician, ask them for the asset and income declaration they are required to provide every year to the Ombudsman Commission.
- If they claim that the money is from a business, ask for copies of that business’ bank statements. If they claim the business has a large government contract, ask to see the contract and make sure it is not from the department they work for.
- If it is for investment by a company, does the bank statement show that the company was in business and, if so, what sort of business? Has it received any funds from the government and, if so, had the purposes to which the funds were paid fulfilled?
- If it is from a personal account, ask them for their salary slips and evidence of loan.
- If it is from an Australian-based company transacted within Australia for the benefit of a Papua New Guinean, ascertain whether that company had received some funds from Papua New Guinea and, if so, make enquiries to establish whether that company was used as a front to launder proceeds of corruption.
- Ask them for information so that it can be reasonably assured that they are not engaging in a money laundering transaction.

The answers to such questions should be made available to AUSTRAC in further consultation with them on what is required to ensure that Australians are not being negligent or reckless under Division 400 of the Criminal Code.³⁴ If the AFP come

³⁴ *Criminal Code Act 1995* (Cth).

knocking, it will be necessary to show that conduct was sufficient to satisfy due diligence and to ensure that a reasonable person would not have thought the institution involved was negligent or reckless in its dealings. The responsibilities may seem onerous but the stakes are high.

VII CONCLUSION

The environment has changed. The government of Papua New Guinea has also changed and will actively seek to ensure that Australian authorities stop funds being laundered between both nations. Taskforce Sweep has been instructed to collaborate with Australian authorities to make this happen. This is not so much about the process as it is the result. Until the offenders cease using Australia as a *Cayman Islands*, Taskforce Sweep will continue to increase the pressure. While bilateral assistance will prove crucial, Taskforce Sweep will also seek to have those who continue to turn a blind eye punished in order to bring them into line. This process starts today.

Corruption is a humanitarian problem and dramatic emphasis on this is necessary. Papua New Guineans are suffering and dying because of corruption. This is no theoretical process. When money that is supposed to build hospitals or buy medical equipment is used to buy real estate in Cairns or Brisbane, people die. Those that turn a blind eye to this are as guilty as the offenders. In Papua New Guinea, Taskforce Sweep is doing all that is possible to stop corruption and to prevent the proceeds of corruption from entering the financial system. However, very limited resources and the extent of corruption means there is a long way to go before corruption is stopped altogether. Corruption must be met with a proactive and joint frontier. It is time Papua New Guinea faces a renewed and shared outlook as a nation and, like a big ship, it is taking a while to turn. As this happens, it is crucial that Australia be prepared to abide by its international anti-money laundering obligations.

Some may ask whether it is unfair that such pressure be applied to bankers and not police. When the time is taken to peruse the examples of money laundering that have been conducted through the Australian financial system as outlined in this article and to understand the ramifications in human cost, the answer will be obvious.³⁵ The view of

³⁵ Nalu, above n 23.

Australia as the *Cayman Islands* is not a personal one,³⁶ but that of Papua New Guineans.³⁷ This article has argued for a renewed focus and cooperation between Australia and Papua New Guinea when dealing with corruption. It has explored the repercussions of corruption for both nations while also identifying the ongoing fight with corruption and its institutionalisation. Lastly, the article concluded with recognising current international obligations and recommendations to begin eliminating corruption. The cries of the people of Papua New Guinea must be heard, they must be given a voice.

³⁶ Ibid.

³⁷ Fox, above n 1.

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