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ISSUES PAPER

DISORDERLY DEVELOPMENT:
THE CASE OF KONEBADA PETROLEUM PARK AUTHORITY

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Key Points

- Concerns relating to orderly development, especially the use of State-established instruments and institutions to facilitate disorderly development in urban and periphery areas in PNG, are discussed.
- The paper presents the case of Konebada Petroleum Park Authority (KPPA) and how its operations contribute to disorderly development.
- There are weaknesses in the implementation of the legislative and administrative framework for orderly development in PNG.
- State-established instruments in the form of legislation, gazette and State leases have been used by KPPA to facilitate disorderly development.
- To promote and achieve orderly development, the systems of land administration and governance need to be strengthened.

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By Logea Nao, Belden Endekra and Lucy Hamago

Introduction

Orderly development has been discussed in policy circles in Papua New Guinea (PNG) for many years. It refers to development of land and physical structures in an organised manner, according to some pre-arranged and approved physical plan or desired concept. It is in fact a process that entails land planning, land acquisition, land use or development and land administration. The situation in PNG is such that although policy discussions around land planning and land use highlight the importance of orderly development, the reality on the ground paints a different picture. In Port Moresby, and periphery areas, in particular, sprawling development of land and properties is resulting in disorderly development. The National Capital District (NCD) Urban Development Plan (2006) acknowledges that land has been allocated and released in a piecemeal manner without the necessary planning input.

For any development of land and physical structures in any setting to reflect orderly development, it requires a holistic approach to land planning, land allocation and land use. Proper land planning requires the physical plan of an area to be comprehensive and done through an exhaustive stakeholder consultation process. Disorderly development arises when either or both land allocation and land use do not comply with an approved physical plan. Similarly, if land planning is done appropriately and the related land allocation complies with the plan but the land allocated is used for a purpose not intended in the related plan, it violates orderly development. Additionally, if land administration is not effective, the likelihood of disorderly development increases.

The legislative and administrative framework for orderly development has been weak. Consequently, urban development in PNG, and Port Moresby in particular, is very poor. The principal government agency that is responsible for administering the law, the Department of Lands and Physical Planning (DLPP) has failed to coordinate orderly development as well as provide checks and balance for proper processing of land acquisition including creation of leases, and physical planning matters (Walter et. al, 2016).

This paper discusses concerns relating to orderly development, especially the use of State-established instruments and institutions to facilitate disorderly development in urban and periphery areas in PNG. The paper presents the case of Konebada Petroleum Park Authority (KPPA). It does so by zooming into the declaration of over 23,000 hectares of land and sea in February 2017 under the administration of the KPPA, the operations of KPPA prior to and after the declaration, and how this is contributing to disorderly development.

The paper aims to contribute to effective policy discussions and decisions on land planning, land allocation and land use. This is done by highlighting the importance of orderly development; discussing the legal and administrative framework; presenting findings in the case of KPPA; drawing policy lessons; and putting forward recommendations.

Importance of orderly development

Orderly development is important as it accommodates competing interests. By accommodating competing interests based on an approved physical plan - in terms of land allocation and land use, land is likely to be put to its most appropriate use with maximum value obtained from it by society. This highlights the importance of orderly development, as found by Ezebilo (2017). In an ideal world, instruments and institutions of the State would be appropriately used to achieve such an objective. In PNG, State-established instruments and institutions have often been used in illegitimate ways to grab land at the expense of customary landowners and developers alike (Nao et al, 2017a). This experience has in many instances undermined orderly development (Transparency International PNG Report, 2017).

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To protect the interest and welfare of all parties with a stake in land development, whether their interest be about land ownership in the case of customary landowners and State lease holders, or access rights and use rights, there needs to be orderly development. According to Gurran (2011), orderly development goes hand in hand with protecting property rights and providing certainty for investment. In this context, orderly development would entail construction of physical structures on land that is serviced with the basic trunk infrastructure such as water and electricity, and preservation of identified portions of land according to some approved physical plan. In Port Moresby, in particular, where in some areas physical structures are built prior to the introduction of or in the absence of basic services, the interest of some stakeholders is compromised. An example of this is the Duran Farm Housing Project (Nao and Ezebilo, 2017).

Orderly development serves well in the campaign against unwarranted and unwanted development and costly legal and administrative challenges (Cullingworth and Caves, 2009). If development of land and physical structures in an area occurs on serviced land and according to some approved physical plan, it serves as a guard against any development that is not part of the approved plan. In the same manner, costly and time-consuming legal and administrative challenges could be minimised or completely avoided. According to Oduwaye (2009), advance action in ensuring orderly development is needed to prevent potential damages and claims for damages. Orderly development is critical in avoiding legal and administrative challenges in land development.

Development that is done in an orderly fashion is important for the benefit of future generations. Well-planned and orderly development provides guidance in shaping the appearance of a specific area in the future. Such a setting supports human existence with an acceptable quality of life both for the present and future generations (NCD Urban Development Plan, 2006). Integrated and coordinated development of land also provides a platform for protection of valuable societal assets such as the natural environment and other valuable resources for the benefit of future generations (PNG Vision 2050). Compliance to due processes in the allocation and use of land goes a long way in ensuring this. The situation in Port Moresby and periphery areas is such that compliance to due processes is often lacking (Walter et. al, 2016).

Legal and Administrative framework

The legal and administrative framework is discussed to provide the required legal context of land acquisition and land administration of either customary or alienated land for the purpose of urban development.

Land acquisition

The power of the State to acquire customary land is exhaustively discussed in Luluaki (2014). According to Section 7 of the Land Act (1996), the State has the power to acquire customary land either by alienation or lease. All land in the country falls into one of two general categories; alienated land and customary land. Customary land is also known as un-alienated land. Alienated land is further divided into two categories; State and private freehold land. Ownership of State land rests with the State while freehold land is owned by private citizens or legal persons like corporations and companies (Luluaki, 2014).

Customary land can be acquired by the State through several processes. Firstly, customary land can be acquired by agreement. Section 10 of the Land Act 1996 provides the legal basis for this mode of land acquisition. Secondly, State can acquire customary land through the process of compulsory acquisition. Section 12 of the Land Act 1996 provides the legal basis for this. The State uses compulsory acquisition for public purposes when agreement, as under section 10, for that land fails. The State has the power to compulsorily acquire customary land or any other alienated (private freehold) land as protected by both the Constitution (section 53) and the Land Act (Parts III and IV).

Thirdly, State can acquire customary land via State leases by agreement. Section 11 and Section 102 of the Land Act 1996 provides the legal basis for this mode of land acquisition. Section 11 is at the moment suspended due to defects in the legal and administrative framework. Fourthly, the Voluntary Customary Land Registration (VCLR) system provides a new approach of customary land development, not necessarily for State acquisition. If the State or private bodies want to acquire land developed under the VCLR system, certain agreements can be reached with Incorporated Land Groups (ILGs). Finally, the Land Tenure Conversion Act 1963 (Land Title Commission) facilitates individual tenureship (private freehold) of customary land. Section 9 of the Land Act 1996 provides the legal basis for such acquisition.

Land allocation for urban development

The land allocated for urban development is subject to one of the above methods of land acquisition. Section 106 and Section 107 of the Land Act 1996 states the use of "government land or State lease" for urban development leases to be created for urban development purposes. In other words, un-alienated land has to be acquired either through Section 10, 12 or through the VCLR system in order for an urban development lease (UDL) to be created. Section 104 provides the administrative process for UDLs to be granted

over land in physical planning areas. The land under physical planning area refers to the alienated land or State leases and must be declared under the Physical Planning Act 1989.

Additionally, Section 108 of the Land Act 1996 provides the terms and conditions for UDLs where Subsection (a)(i) states that an urban development lease - shall be for a term not exceeding five years; and Subsection (a)(ii)(A,B,C,D) and Subsections (b) and (c) provide the covenant conditions of UDLs and requirements under UDLs.

The land allocation for urban development is facilitated through Section 69 of the Land Act 1996. Firstly, a State lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Subsection (2). Section 68 basically provides the legal obligation for the purpose of advertisements of State leases land. The State leases land refers to the land acquired through one of the process as described under the section on land acquisition. Subsection 2 states that the Minister for Lands and Physical Planning may exempt land from advertisement for application or tender for the following reasons:

1. where the lease is granted to a governmental body for a public purpose;
2. where it is necessary to relocate persons displaced as a result of a disaster as defined in the Disaster Management Act 1984;
3. where a lessee applies for a further lease;
4. where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertaking;
5. where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit, providing that the claims of other neighbouring landowners are considered and their views taken into account in deciding whether to exempt the land from advertisement in favour of the applicant;
6. where the Department responsible for foreign affairs recommends that land be made available to the applicant for consular premises;
7. where the land is required for the resettlement of refugees;
8. where the applicant has funded the acquisition of the land from customary landowners in order to acquire a State lease over it;
9. where a lease is to be granted for government buildings or special agriculture and business leases (Section 99) or 102;
10. where a new lease is granted when there is a surrender of land in the subdivision or approval of subdivision of State leases and consolidation of Sate leases (Section 110, 130 or 131).

Under Section 72 of the Land Act 1996, the Minister may grant State lease directly to application on lease over any land acquired under the land acquisition for development purposes (Land Acquisition Act Chapter 192) (Repealed); and a lease over land which has been the subject of a declaration for government housing development under Section 111; and a lease granted for agriculture and business leases under Section 102; and a lease for government-owned buildings under Section 99, without referring the matter to the Land Board.

Land administration

The land acquired through the processes as discussed above for urban development is subjected to the Land Act 1996. In other words, the Land Act provides the administrative functions for the DLPP to administer the land under UDLs. In compliance with the constitutional requirements, the DLPP is responsible for physical planning matters.

The Physical Planning Act 1989 provides the provincial government with physical planning powers for urban planning and development. In compliance with the Constitutional requirements, the Physical Planning Act 1989, provides definition of physical planning matters primarily of provincial interest, the conduct of the Provincial Physical Planning Board, the functions of a Provincial Physical Planning Board, the establishment of Local Physical Planning Boards and delegation by a Provincial Physical Planning Board, suspension of a Provincial Physical Planning Board, appeal re-instatement of suspended Provincial Physical Planning Board, and provincial and urban development plans.

Section 17(1) of the Physical Planning Act 1989 provides that the National Physical Planning Board shall consider and determine - (a) all physical planning matters that are considered to be primarily of national interest except those which are wholly within the National Capital District; and, (b) all physical planning matters from provinces where a Provincial Physical Planning Board has not been established or is not presently empowered to hear matters due to suspension of physical planning powers under Section 30.

In considering physical planning matters under the Physical Planning Act 1989, the appropriate authority shall take into account the following matters that are of relevance to the matter under consideration: (b) the impact on the environment and, where harm to the environment is likely

to be caused, any means that may be employed to protect the environment or to reduce that harm; (e) the social and the economic aspects of the matter; (r) whether any development will affect the operation of a port; (v) any other matters which can be considered reasonably relevant to physical planning.

Methods and materials

Information used in this paper was largely sourced from three blog articles published by the authors earlier in 2017. The same information was obtained through investigative research done by the same authors. The paper is also informed by consultation of appropriate legislations and various policy documents.

The use of government-sanctioned authorities and legal instruments to promote disorderly development is increasing and needs urgent policy intervention. In light of what has transpired recently over the Manumanu land deal, and the sporadic developments of Taurama Valley where the State has used its authorities such as the Office of Urbanisation to facilitate customary land grabbing. Other examples include the use of Section 11 of the Land Act 1996 (Special Agricultural and Business Leases) by DLPP to facilitate illegal agriculture and business activities, and the recent action of Konebada Petroleum Park Authority (KPPA) in increasing the size of the Konebada Petroleum Park (KPP). All these have contributed to disorderly development in different forms.

The Manumanu land deal and the suspended SABL system, Taurama Valley and the KPPA experiences indicate that there is an urgent need for policy intervention to minimise and discourage scams and to promote orderly development that benefits every citizen. The following analysis presents the findings of the operations of KPPA in relation to orderly development or the lack thereof.

The KPP was initially identified and granted as Portion 578 Milinch Granville, some 200 hectares of land. According to Nao et. al (2017a), the idea of the KPP emerged during the consultations round of the PNG Queensland Gas Pipeline Project in the early 2000s. The KPP was to accommodate a gas-based petrochemical industry. Although the PNG Queensland Gas Pipeline Project did not eventuate, the idea of a petroleum park materialised when in 2007, Portion 578 was granted as an UDL to Konebada Petroleum Park Authority Limited (KPPA Ltd).

Findings

The blog articles of April, May and October 2017 on the KPPA present the following findings which have a bearing on orderly development. The declaration in National Gazette No. G76 dated 07 February 2017 of over 23,000 hectares of land and sea as the new KPP Zone, to fall under the administrative authority of the KPPA, takes centre stage as this paper considers instances in which orderly development has been jeopardised.

The legal basis of the KPPA revolves around the Konebada Petroleum Park Authority Act 2008 (amended 2009). Section 50(1) of the KPPA Act (2008) states that "all Acts apply to the Authority with the exception of the following Acts (and subordinate instruments made under them), which do not apply to the Authority and the Park – these include (i) Building Act (Chapter 301); (ii) Harbours Act (Chapter 240); and (iii) Physical Planning Act 1989. This provision in the Act suggests that any buildings and related structures that are built at Konebada Petroleum Park may not be subject to the approval of the Physical Planning Board and the Building Board. One would think that the approvals process is standard practice for quality checks to ensure that building and related standards are upheld and complied with, and orderly development is upheld. In this light, the KPPA, a State-sanctioned institution, has used a State-sanctioned instrument in the form of the KPPA Act, to create confusion and work against orderly development.

As discussed earlier under the legal and administrative framework, the modes of acquisition provided for under the Land Act 1996 that can be used by any authority, include acquisition by agreement or acquisition by compulsion. Additionally, land that is under customary tenure can first be brought onto the formal land market through the VCLR system then acquired by the State either through agreement or compulsion. Section 3(4) of KPPA Act 2009 which gives powers to the Minister for Lands and Physical Planning to change the area of the KPP as he deems necessary, has been used for the declaration of over 23,000 hectares as the new KPP zone. Given that the new zone includes traditional villages and their fishing and hunting grounds, and gardening areas, as well as existing businesses with their investments, the declaration has created an avenue for disorderly development. By virtue of the said provision in the Act, the KPPA and the (immediate former) Minister for Lands and Physical Planning have used the KPPA Act as a legal and State-sanctioned instrument to promote disorderly development.

KPPA Ltd, the company incorporated in 2005 to start the process of creating the petroleum park (Nao et. al, 2017) was granted an UDL over Portion 578 Milinch Granville, Fourmil Moresby, Central Province, out of PNG Land Board No. 01/2007 and by gazette dated 12 April 2007. The UDL

then would have expired on 11 April 2012 as per Section 108(a)(i), which states that an UDL is not to exceed a term of five years. According to Nao et. al (2017a), on 23 March 2012, one month prior to the expiry of the UDL, three Business (Light Industrial) Leases were issued over Portions 2669, 2670 and 2671. It is possible to conclude that the three titles have since been transferred to others. We have been reliably informed that one of these portions is now being developed as a private port. This has implications for PNG Ports, which is the recognized government body to administer ports in the country. This is a situation in which a State-sanctioned instrument in State Leases have been used to contribute to disorderly development, by not following due processes and creating problems for other mandated institutions of the State.

Section 3(4) of the KPPA Act 2009 states that the area of the Park shall be defined by notice published by the Minister for Lands and Physical Planning (Minister for Lands henceforth) in the National Gazette from time to time, but in the event that such a notice includes any area of land that is within the LNG Project Area, the notice shall be deemed void and of no force or effect. This provision of the Act was breached when National Gazette No. G76/2017, the gazette containing the new KPP Zone, excluded Waypoint No. 9, one of the points bearing coordinates outlining the zone boundary, and by doing so, including the LNG Project in the new KPP Zone (Nao et. al, 2017c). This would create problems for land tenure arrangements and the operations of the PNG LNG Project and its spinoff activities, if it has not done so already. This again presents an example of the use of State-sanctioned instruments such as a gazette, in this case, to legitimise scams and promote disorderly development.

The Minister for Lands in his Press Statement of 13 April 2017 stated that the declaration of the new KPP Zone was done to give that area an economic zone status. It should be noted that by giving KPPA the administrative authority over the Park, the KPPA has the powers to dictate the activities of the economic zone. Additionally, KPPA would have to meet the (special) requirements of an economic zone, such as investments in and construction of physical infrastructure and other administrative services for over 23,000 hectares of land and sea (Nao et. al, 2017b). Given that KPPA had very little to show for in the development of the initial 200 hectares of land, there is no guarantee that KPPA will be able to deliver orderly development of the new zone. In fact, KPPA is now selling and leasing parcels of un-serviced land through Hausples.com.pg (Nao et. al, 2017c). These indicate that the KPPA is not in the business of promoting orderly development. By using National Gazette No. G76/2017 to declare an economic zone with no intention to provide the necessary infrastructure and services, the KPPA is contributing to disorderly development.

Policy Lessons

Exclusion of some legislations to accommodate the interest of one legislation will result in disorderly development. Section 50(1) of the KPPA Act excludes Building Act (Chapter 301); Harbours Act (Chapter 240); and (iii) Physical Planning Act 1989. This affects the process of orderly development as the Building Act and Physical Planning Act play a vital role in the process. By precluding the Building Act (Chapter 301) and Physical Planning Act 1989, it undermines the importance of these two crucial legislations and subsequently orderly development. If PNG wants to promote orderly development, especially in its urban and periphery areas, it must allow all legislations to work in harmony.

Broken systems of administration and governance allow for disorderly development. The DLPP in the absence of proper monitoring issued leases to KPPA in March 2012, one month prior to the expiry of the UDL held by KPPA Ltd, and these same leases were not registered until August 2016. If the system of land administration and governance were strong, this oversight would have been picked up and appropriately addressed then. Additionally, weak institutions compounded by ineffective monitoring and quality control allowed for a technically defective national gazette (No. G76/2017) to be published. This, legitimising land grabbing and scams, and contributing to disorderly development. Orderly development can only be achieved through strong institutions, systems and processes.

Institutionalising a process for land grabbing and, therefore contributing to disorderly development. The manner in which KPPA has been operating in the development of KPP mirrors that of a scam. It is evident that the KPPA and the (former) Minister for Lands have knowingly used legal instruments such as the KPPA Act and National Gazette No. G76/2017 to obtain more land in the guise of an economic zone. Inaction to date by the national government in retracting the gazette and repealing the KPPA Act, suggests that there is potential for land grabbing in the future - through a process that can be seen to have been institutionalised. This has the potential to result in uncontrolled and sporadic development of land. Such a process needs to be addressed appropriately to discourage disorderly development.

Conclusion and recommendations

Orderly development plays an important role in the growth and sustenance of any economy. It is evident that the

developments in PNG, particularly in Port Moresby, are often driven by political and business interests, and through this, resulting in disorderly development. The legislative and administrative framework for orderly development which includes land acquisition, land for urban development and land administration including physical planning, does not do much in addressing this trend. For this reason, urban development in PNG and especially in Port Moresby is disorderly and chaotic. It is clear that legal means have often been used to facilitate disorderly development.

State-established instruments and institutions have been increasingly used in PNG to grab land and legitimise scams. Consequently, orderly development of land and physical structures has been undermined in many instances. The preceding analysis highlights that the KPPA using the powers granted to it under the KPPA Act, has not been considerate of other stakeholders and their interests on the land and sea declared as the new KPP Zone to fall under its administrative authority. These stakeholders include landowners with their customary land, existing businesses with their investments, and other institutions of the State with jurisdiction over portions of land and sea in the newly declared zone. In addition, the situation on the ground is such that there is no physical infrastructure and support services to facilitate the development of the KPP into a fully-functional operation. These action and inaction, respectively indicate that there is lack of orderly development, and benefits to society that could be gained from orderly development are non-existent.

The use of government legislations to facilitate scams has to be stopped, and State-sanctioned authorities must deliver the expected output for the benefit of citizens in the process of promoting sustainable economic growth and development. State-sanctioned institutions and instruments must be used to promote orderly development. When there is poor governance and an inefficient system of land administration, the land development application process is greatly hindered, causing inconvenience for other State-established institutions and their operations. Such an environment aided by inaction of the State to correct inappropriate actions of institutions and individuals creates the space for illegal scams to be normalized. Therefore, creating a conducive environment for disorderly development to flourish. Appropriate actions need to be taken in order achieve orderly development.

To promote orderly development, the systems of administration and governance need to be strengthened. In this regard, the following measures can be considered by the National Government: (i) a comprehensive review of the Land Act 1996, with a view to incorporate recommendations of the National Land Development Taskforce Report; and (ii) re-instate the Office of Customary Land Development to administer customary land alone, with DLPP to remain as the authority responsible for administering State land.

In order for benefits from an economic zone, as in the case of the KPP to be maximised, the KPPA Act must work in tandem with other related legislations in PNG. However, given that there is little to show for on the ground in terms of the development of the Park, and the questionable nature of the operations of KPPA, especially the use of the power of the Minister for Lands to alter the boundary of the zone as he deems necessary, it calls for the KPPA Act to be repealed. In short, State-established instruments and institutions must be seen to be serving the common good of the people of PNG.

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