

Functions of the Land Titles Commission

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The Land Titles Commission (LTC) is a quasi-judicial tribunal established by a statute¹ in the early sixties. When the *Land Disputes Settlement Act* came into effect in 1974, it removed a substantial jurisdiction of the LTC to the Land Courts. The LTC now has limited jurisdiction over customary land. Its jurisdiction is limited to tenure conversion applications and the determination of disputes as to whether a subject land is or is not customary land.

Additional jurisdiction is given to the LTC by other legislation, for example, the *Land Act* and section 4 of the *Land Disputes Settlement Act*. The LTC has not received any application as yet under the *Land Act* but it has received applications under the *Land Disputes Settlement Act*. It must also be kept in mind that the Commission of Inquiry into Land Matters² (CILM) recommended that the *Land Titles Commission Act* be replaced by the *Land Disputes Settlement Act*.³

The LTC processes applications for land tenure conversions under section 7 of the *Land Tenure Conversion Act* and applications under section 15 of the *Land Titles Commission Act*. Tenure conversion, as the name implies, simply means converting the status of the land from customary tenure into a fee simple. The objective is to allow customary land to be made secure with a form of title. It is presumed security comes with the title, in terms of loans and mortgages both of which are essential to investment and economic development.

The LTC cannot approve and make an order in favour of the applicant if there are objections to the conversion. Instead, it must refer the dispute to the land courts to be resolved under the Land Disputes Settlement Act. The decision of the Land Court is forwarded to the Commission and, if favourable to the applicant, the Commission then approves and issues a tenure conversion order to the Registrar of Titles in the Department of Lands and Physical Planning. The registrar registers and issues the Certificate of Conversion to the successful applicant. The land courts cannot make orders for tenure conversion as this power is given to the LTC under the *Land Tenure Conversion Act* and to no other courts.

There is much confusion among the people of Papua New Guinea as to the surveying of land and the tenure conversion of land. Most prefer the boundary identification and expect the law's protection from trespassers, but refuse tenure conversion from customary to fee simple. Experience shows that the law protects titles and acts upon court orders. Police will not act unless there is an eviction order, for example.

There are certain aspects of the *Land Tenure Conversion Act* that should be understood clearly.

First, no application can be heard unless at least 30 days notice has been given. The hearing must take place in public on or as near as possible to the land that is the subject of the application.

All persons with any customary rights, titles or interests in the subject land must be in agreement with the application, and be adequately compensated (if required) by the applicant before any application can be approved.

If at the hearing it becomes evident that the subject land is in dispute, the LTC has no power to decide this dispute but must adjourn and refer it to the relevant Local Land Court.

If there is (no dispute) full agreement and adequate compensation paid or waived and all the requirements of the Land Tenure Conversion Act complied are with, the LTC then issues a Decision Conversion Order.

This order declares the applicant to be the owner of an estate in fee simple over the subject land and directs the Registrar of Titles at the Lands Department to issue a certificate of title in the name of the applicant

This order is published and circulated throughout the relevant province together with a notice describing the land and the content of the order and calling for any aggrieved party to request a review or lodge an appeal within 90 days of the date shown on the order. This is the appeal period of 90 days.

Until the expiry of the appeal period, the LTC holds the original Decision Conversion Order. If there is no appeal the original order is forwarded to the Registrar of Titles for processing and issue of the certificate of title.

Once the order has been forwarded to the Registrar of Titles, the LTC has no further jurisdiction in the matter and the issue of the title and all subsequent dealings on the title are the jurisdiction of the Lands Department.

The process of registering customary land by way of the Land Tenure Conversion Act is not quick. With a statutory period of notice and appeal totalling four months, together with the hearing and registering process, the shortest period between application and issue of the title would be at least six months.

The final product of a successful tenure conversion application is a certificate of title. This title differs from any normal certificate of title in that it has several limitations on dealings, which are set out as follows.

The registered proprietor is competent to transfer or otherwise deal with the land in the same way, and to the same extent, as any other registered proprietor. And the Registrar of Titles will register against the proprietorship a limitation that

- the land may be transferred or leased for no longer period than 25 years only with the consent of the Land Board; and
- the land may be mortgaged or charged but, notwithstanding any law in force to the contrary, the mortgagee or the chargee is not entitled (a) to remain in possession for more than 25 years; or (b) to lease that land to a third party for more than 265 years; or (c) to foreclose the right of the mortgagor or the chargor to redeem the mortgaged or charged land; and the land will not be taken under a writ of execution or under or in consequence of a bankruptcy or insolvency or in any similar or analogous manner; and
- subject to Section 26A, the Minister will not approve under Part VIII of the Land Act (Chapter 186), and the Registrar of Titles will not register a transfer or dealing contrary to a limitation registered under paragraph (b).

Under Section 56 of the Constitution, only citizens of Papua New Guinea can hold freehold titles. Consequently, only citizens are eligible to make an application under Section 7 of the Land Tenure Conversion Act. Companies registered under the Companies Act are not eligible to apply, as they do not have the legal status as a citizen. Incorporated Land or Business Groups,

however, may apply. The maximum number of individuals that can appear on any title registered as a result of a tenure conversion application is six.

The section 15 applications under the Land Titles Commission Act

The section 15 application involves disputes between customary landowners and the state. The removal of the Commission's once exclusive jurisdiction over customary land makes the Commission a clearinghouse rather than a quasi-judicial tribunal. Where a section 15 application is filed before the Commission, the Commission then seeks from the Registrar of Titles confirmation of the state's title. The confirmation and the production of the title document effectively preclude the Commission from entertaining the application because any decision to the contrary does not negate the state's title. This doctrine of indefeasibility of title is indirectly confirmed in section 12 of the LTC Act. It is very rare to find the state not protected with title.

It must also be noted that another tribunal, the National Lands Commission (NLC), is charged with jurisdiction over national (state) land. The NLC, established under the *National Lands Registration Act*, has the specific objective of establishing a Register of National Land which comprises all land acquired before or after Independence Day (16 September 1975) which is required for public purpose. Any grievances from traditional landowners are settled by the NLC by providing for settlement payments. If the dispute persists as to customary ownership of land compulsorily acquired, the NLC must refer the dispute to the LTC. Again, since 1974, this jurisdiction has been with the Land Courts.

Declaration under section 4 of the Land Disputes Settlement Act appears to be an avenue utilised frequently to avoid the jurisdiction of the land courts. This exception provision enables the Head of State to remove from the Land Disputes Settlement Act disputes of long standing which have resulted in serious breaches of the peace and where the national interest would be served by the dispute being settled in some other manner.⁴ The Commission has dealt with two such disputes and is currently processing another.⁵

The LTC is by definition a court exercising judicial function.⁶ It relies, however, on the Department of the Attorney-General for all its manpower and financial support. The LTC and the NLC⁷ together make up the Lands Tribunal Division of the Department of the Attorney-General. The Department of the Attorney-General also administers the Village Court. There

is a need to remove the ‘quasi-judicial tribunals’ and the ‘grassroots court’ from the department’s bureaucratic and administrative control to ensure a clear separation of powers between the separate arms of government.

The commissioners are appointed by the NEC, and the Head of State acting on advice appoints the Chief Commissioner. According to the Act, the commissioners have the same privileges and immunities as a judge.⁸

There exists a public misconception about the functions of the various tribunals and courts dealing with rights to customary land. The Land Titles Commission was intended to be replaced by the Land Courts. The National Lands Commission was to have concluded its objective and be made redundant. It is time for an urgent structural adjustment program within the National Justice Administration and the National Judicial System in Papua New Guinea. The inability or the ineffectiveness of the system may be contributing to the many obstacles to investment.

Laws which have a direct impact on customary landowner participation in economic development are

- The *Land Groups Incorporation Act*
- The *Land Groups Business Act*
- The *Land Redistribution Act*.

Since independence was gained on 16 September 1975, this ‘obstacle’ to development has been a blessing in disguise—forestalling developments until we ourselves find the right medium to mobilise our customary land for nation building. The basis of our landowning status must be given legal personality/corporate status and this is present in the *Land Incorporation Groups Act, 1974*. We need only improve on it to make it work for us.

The parameters of our field of play is dictated for us under our Constitution and the National Goals and Directive Principles. We should keep that in sight and encourage our government/people through their land groups to be partners in nation-building. The law itself is a powerful agent for change. But the law must be acceptable to the people who are subject to it. The passage of the *Underlying Law Act 2000* will help in the development of the underlying law.

Our customary land tenure and rights are determined by our customary law. There is hope for some consistency and clarity in the development of our underlying law in keeping pace with our development as a modern nation state. It is particularly important that when, the IMF and the World Bank are dictating the structural adjustment program they too are mindful

of the Constitution and the National Goals and Directive Principles, so that their dictates do not indirectly create an imbalance in favour of the predominant economic considerations and to the detriment of the equilibrium of a balanced society envisaged under the Constitution and National Goals and Directive Principles.

Notes

- ¹ *Land Titles Commission Act 1962*, which repealed the Native Land Registration Ordinance.
- ² Appointed on 16 February 1973 under the *Commission of Inquiry Act 1951–1970*.
- ³ The Norm Oliver report also recommends for the LTC to be amalgamated into the Magisterial Services Commission.
- ⁴ Section 4(2), *Land Disputes Settlement Act 1974*.
- ⁵ The Hides Gas case, the Gobe Petroleum case and the Ramu Nickel case.
- ⁶ In view of the principle of separation of powers between the judiciary, the executive and the legislature, the Commissions must be separated from the Departments control.
- ⁷ A distinct and separate tribunal from the Land Titles Commission established under a separate Act, the *National Lands Registration Act*, Chapter No. 357.
- ⁸ Section 8, *Land Titles Commission Act 1962*.