

LAND TITLING ISSUES

Rethinking customary land tenure issues in
Papua New Guinea

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Approximately 97 per cent of the total land area in Papua New Guinea is held under a customary land tenure system. Customary land is administered by unwritten rules and principles that vary between different regions (Larmour 1991). The remaining three per cent is alienated land administered according to the *Land Act* and other related laws. Alienated land was originally either purchased, or declared and removed from customary ownership and regulation (Larmour 1991).¹

There has been an ongoing and divisive debate concerning land between supporters of customary land reform and opponents of change. Land reform is predominantly interpreted to mean customary land registration.

Melanesian societies have a strong affinity to their land. The intensity of this feeling is rarely understood by outsiders, who are consequently often baffled by the rejection of land reform. Two attempts at land reform through the introduction of land registration have stirred up riots in the past.

The debate on land reform is primarily driven by economic arguments, especially the need for formalised property rights and rule of law to underpin investor confidence and allow land to be used as collateral for loans. Non-economic cultural and political

reasons—why Papua New Guinea needs a new land policy and a legal framework that deals with land issues and problems—have not really been considered. This paper focuses on these factors.

Rethinking land issues

The following factors are relevant to the debate about land, and need to be taken into consideration when rethinking land issues in Papua New Guinea

- weak linkages between policy discussions, laws, and their implementation
- economic reasons for land reform dominate
- foreigners and foreign ideas dominate land-reform discussions
- the public seems to oppose land reforms because of the uncompromising stand of powerful interest groups, such as students, landowner associations, and non-government organisations
- land with formal title, originally alienated from the traditional landowners by colonial governments, have not been well managed.

Weak linkages between policy discussions, laws, and their implementation

Larmour (1991) stated that a weak link exists between policy statements, laws, and implementation, and this remains just as true in 2005. Two reviews of the land-policy debate reveal extensive discussion, neither implemented nor enacted as law (Larmour 2002, 2003). The existing laws and administrative systems were instituted by the colonial government.

Economic reasons for land reform are dominant

The economic reasons provided for the reform of customary land are influenced by the widely accepted view that secure property rights play a central role in economic development. Customary land tenure is portrayed as a constraint to economic growth and development.

There are three strands of argument associated with the economic justification for land reform

- the first argues for the individualisation of titles through a policy of customary land registration as a key step to formalising property rights for economic development (Hughes 2003; Gosarevski et al. 2004a; Gosarevski et al. 2004b; Lea 2004)
- the second argues for incremental change in response to specific demands from land holders, including recognition of group titles (Fingleton 2004, 2005)
- the third focuses on understanding the underlying drivers of land reform (Chand and Duncan 1997; Yala et al. 2005).

Foreign dominance of land-reform discussions

For a long time, most advocates of land registration have been externally-based academics, commentators, and donor

agencies. The pre-Independence Territorial Administration made several failed attempts to introduce land-registration systems. Most Papua New Guinean responses appear to be mainly informal reactions to the publications and statements proposed by foreigners, especially Australian scholars interested in land issues. Participants in the discussion include academics, bureaucrats, politicians, the private sector, non-government organisations, and interested individuals.

Papua New Guineans have recently begun writing formally about reforms to land tenure. An edited volume, Sullivan (2002), and the forthcoming proceedings of the National Land Summit held on 23–25 August 2005, at the Papua New Guinea University of Technology, both include Papua New Guinean contributions to the debate.²

Opposition to land reforms

Two post-independence attempts at land reform have resulted in student-led riots. The first, in 1995, was a direct reaction to the land-reform condition imposed by the World Bank-sponsored structural adjustment program. The attempt at land reform in 2001 was a local initiative, rumoured to have been hijacked by political opportunists. Foreign non-government organisations also played a role in stirring up protests against land reform. A third reform attempt is now being advanced by the current Minister for Lands and Physical Planning.

Although it is too early to predict the success of this current initiative to reform the customary land-tenure system, the following features may raise the chances of success.

- The Department of Lands and Physical Planning (DLPP) is committed to reforming the customary land-tenure system. The DLPP is advocating voluntary customary land registration at the group level. Having visited the universities, their awareness campaign is currently focusing on the provinces.

- The National Land Summit held in August 2005 was part of the land-reform agenda. The Summit was expected to generate strategic options for a new land policy. This objective was achieved, and a review of the existing legal and administrative systems is now planned, with a view to introducing a new legal and administrative system for customary land development, land administration, land compensation, and land dispute settlement.³
- Issues concerning customary land reform are openly being debated within the country by Papua New Guineans. For example, arguments for and against customary land registration were presented by Papua New Guineans in the same session during the National Land Summit.
- Students and non-government organisations—the traditional opponents of customary land tenure reform—are engaged in the discussions. Part of the summit involved an essay competition to engage high-school and tertiary students in the debate, and students, non-government organisations, and landowner groups participated as presenters at the summit.
- The political commitment for land reform is present. The Deputy Prime Minister and Minister for Petroleum and Energy, Hon. Sir Moi Avei, delivered the keynote address and the Minister for Treasury and Finance, Hon. Bart Philemon, delivered the closing address. Most notably, the Minister for Lands and Physical Planning, Hon. Dr Puka Temu, and the Member for Rabaul and Chairman of the Law Reform Commission, Hon. Dr Alan Marat, participated in the summit for the entire two and half days.
- The composition and dedication of the members of the Land Summit Coordinating Committee typifies institutional ownership of the land-reform agenda. The committee is represented by two research institutes, two universities, and three line departments. The National Research Institute and the Institute of National Affairs are two of the country's leading applied socioeconomic research institutions, funded by the public and private sectors, respectively. The University of Papua New Guinea and the Papua New Guinea University of Technology are Papua New Guinea's two premier universities. The Department of National Planning and Implementation is responsible for devising and coordinating development planning in the country, while the Department of Lands and Physical Planning is responsible for land administration. The Department of Justice and Attorney-General provides legal advice to the State and its agents.
- Concern about Papua New Guinea's weak levels of economic growth and rapid population growth has prompted discussion of the possible benefits of alternative approaches to land management as a way to promote increased investment.

It is too early to predict the success of this current land reform initiative, but there are positive signs pointing towards a successful outcome.

Unsatisfactory administration of alienated land

Problems concerning alienated land have not been widely debated or analysed. The administration of alienated land was neglected in the debate over land reform for a long time. Evidence of the inefficiency of the land administration system in Papua New Guinea was documented in a case study of the smallholder oil palm growers from the Hoskins Project, West New Britain Province

(Yala 2004). Although the smallholder oil palm growers had formal 99-year agricultural leasehold titles to alienated state land, poor administration was a significant issue, which restricted development of the land, as well as financial markets.⁴ Discussions and recommendations from the National Land Summit described a deteriorated, corrupt, and inefficient land administration system.

The following discussion focuses on the non-economic drivers of the land reform agenda in Papua New Guinea. The people of Papua New Guinea, like their Melanesian counterparts, have a strong affinity for their land,⁵ making land reform a vexed undertaking. Equipped with this knowledge, this paper focuses on the underlying non-economic drivers of land reform so that Papua New Guineans come to realise that there are important non-economic justifications for a new land policy and law.

Underlying non-economic drivers for land reform

The need to change the customary land tenure system to suit the social and economic changes taking place in Papua New Guinea is recognised (Kalinoe 2002; Kalinoe and Kanawi 2005). In reality, reform of the customary land tenure system is inevitable, largely as the result of what may be seen as significant issues separate from the economic arguments about property rights and investment. The broader cultural and political issues include

- the traditional land tenure systems are unsuitable for a modern society
- squatting on state or customary land
- alienation by threat
- threat to sustainable livelihoods
- dislocation by natural disasters
- rent-seeking.

Traditional land tenure systems are unsuitable for a modern society

Papua New Guinea is known to have more than 800 distinct languages. Linked to the diversity of languages are differences in cultural practices. Dissimilar land tenure arrangements are a consequence of these language and cultural differences. Two important determinants of ownership over land by customary law in Papua New Guinean societies are inheritance by gender and continued association with the land.

In Papua New Guinea, inheritance of land may be by matrilineal or patrilineal means. This is discriminatory because either practice makes one gender landless. This is particularly true for women who want to remain single—something that may become more common as women become better educated and earn independent incomes. Also, because these practices are culturally specific, cross-cultural marriages, especially between matrilineal males and patrilineal females, facilitated by education and mobility through modernisation, is creating a landless generation, as the siblings can lose inheritance rights from both parents.

Continued association with land guarantees the retention of customary title. People who, for one reason or another, have not been associated with their land through land-use almost invariably lose their title or inheritance to it. Many educated Papua New Guineans and emigrants from their villages are affected in this way. The children of these groups may also be affected, if they are born and raised outside of their parents' place of origin.

Education restricts any association with land during the early stages of a child's life because the child has to leave home to pursue his or her education. When a person has completed his or her studies, employment commitments restrict his or her association with the land. These inbuilt systems minimise

regular contact and attachment to customary land. As a result, these people and their children will be restricted from accessing customary land and could become landless if they are unable to secure a piece of land in their place (town or city) of work and residency.

Squatting on state or customary land

Squatting on state and customary land is common in Papua New Guinea, and there are factors that make it inevitable. While squatting frustrates town planners, customary landowner antagonism towards settlers and ethnic differences within the settler communities can cause disputes that may turn into violent large-scale ethnic conflicts. From a generational perspective, children of squatters will be locked into the settlements and away from their parents' villages, thereby creating a class of landless people.

In Papua New Guinea, peri-urban squatting should be viewed as a national security issue because it entrenches ethnic tensions, which can lead to violence. Settlements that are occupied by squatters have limited access to government services, and formal law enforcement is virtually non-existent. Squatter settlers congregate into ethnic groups, because this provides an inbuilt private security system. Squatting on customary land also creates landowner antagonism, and the drivers of this hostility are many. However, population pressure and envy are common factors. Population growth within the indigenous and settler communities creates pressure concerning access to land. Resentment that is motivated by envy may also be a factor because migrant settlers are usually more productive and successful.

Increasing incidences of threat

There is an increasing trend of alienation of customary land by threat. The breakdown in law and order and the accumulation of

modern weapons contribute significantly to the claiming of land by threat. The victims are usually those with smaller populations, lacking access to modern weapons, and with more females than males. This is evident in parts of the Highlands, where tribal fighting is prevalent.

Traditional Papua New Guinean institutions play a significant role in modern day transactions and society. The formal recognition of customary inheritance is testimony to this reality. One significant problem, however, is the identification of the beneficiaries. Disputes amongst beneficiaries and the use of force to 'grab' properties are common. Anecdotal evidence points to many mothers and children being deprived of assets that are owned by a deceased husband and father. Relatives, including the father of the deceased husband, may forcefully 'grab' the assets from the widow and her children.

In some cases, corrupt transactions deprive wives and children of their inheritances, even if there is a formal will. Financial institutions that have a mortgage claim over the same property can suffer a loss as a result. These examples show that the dominance of customary inheritance erodes title security and contributes to the ever-escalating law and order problems in the country.

Threat to sustainable livelihoods

Subsistence farming functions as a social safety net in Papua New Guinea, and is an important reason why customary land reform should be cautiously pursued. This generality is a dangerous assumption, however, because increasing population density, more intensive cultivation, and global warming are threatening sustainable livelihoods in certain parts of the country. It would be wrong to assume that subsistence farming will support an increasing population. Global warming will inevitably create pressure to adopt new farming patterns and crop types.

Dislocation by natural disasters

Natural disasters have occasionally destroyed communities, necessitating permanent relocation, but resettling the victims has remained an unresolved issue. Two examples are the relocation of the victims of volcanic eruptions on Manam Island in Madang Province, and Rabaul in East New Britain Province.

An unfortunate consequence of customary land tenure is that communities must remain on their own land, regardless of the threat posed by natural disasters, even if that such a disaster could obliterate an entire generation or community. It is difficult enough to obtain land for resettlement without compensating the traditional customary landowners, but even after the rights to the land are agreed and the settlers have moved their future remains insecure.

Rent-seeking

Rent is income earned through ownership rather than through effort. Rent-seeking is the assertion of right to income from ownership, even where right to this income is not clear, for example with demands for unreasonable levels of compensation payments from investors to landowners. For example, structures for distributing landowner benefits from resource projects have proven to be instruments for squandering the resource rents, in particular allowing a layer of middlemen to siphon them off. This problem pervades the distribution of rents from mining, petroleum, gas, and forestry projects.

Most mining, petroleum, gas, forestry, and large-scale agricultural developments (oil palm in particular) occur on customary land. Developers in these sectors are foreign-owned, multinational corporations. Customary landowners receive land rents, royalty payments, equity shares, and preferences for

contracts and employment. Payments for land rents, royalty, and equity are made through Incorporated Land Groups (ILGs). A typical ILG has a register of every clan member in the project development area. Koyama (2004), who described the agency problems with ILGs, traces the history of ILGs to Chevron Texaco, the petroleum and gas developer, which introduced it as a resource rent-distribution mechanism during the early 1990s.

The popularity of ILGs is driven by the need to distribute resource rents from development on customary land. Consequently, this process institutionalises rent-seeking. Data on ILGs in Papua New Guinea support this assertion. For example Southern Highlands Province, which hosts most of Papua New Guinea's oil and gas projects, has the largest number of ILGs in the country (Wagi et al. 2005).

Koyama (2004) identified the following problems with ILGs in Southern Highlands Province

- proliferation of ILGs (some are ghosts and fabrications)
- misuse of the revenue by landowner group leaders
- ILG leadership struggles
- inequality in the distribution of benefits
- lack of accountability and transparency.

Lea (2004) concluded that ILGs encourage political expediency and undermine individual interests.

Rent-seeking behaviour is inherent in the formation of ILGs. An ILG is a formal list of members from the clan that claims ownership over the land, and is necessary in distributing resource rents because of the uncertainty resulting from customary land tenure practices. Agency problems are inevitable, and rent-seeking behaviour is a predictable outcome.

Conclusion

The land-reform debate is at the heart of Papua New Guinea's social and economic development agenda. As demonstrated by the discussions in this paper, land issues have multidimensional aspects that, quite apart from being economic assets or factors of production, pose important issues for

- law and order
- national security
- poverty
- justice and equality
- threat to livelihoods
- threat, even to the point of extinction, to groups of people.

Land alienation by threat, land disputes turning into violence that sometimes escalates to large-scale tribal wars, and ethnic-based conflicts in urban centres are examples of law and order problems in which land tenure plays a contributing role.

Tensions that arise from the illegal occupation of customary land, and settlers congregating along ethnic lines leads to ethnic tensions. Without rapid economic growth, large-scale ethnic conflicts, which have significant national security implications, are possible outcomes. Land was at the centre of the bloody Bougainville conflict in Papua New Guinea and the Solomon Islands, and the military coups in Fiji. These situations show that land issues have national security implications.

Subsistence production—a system that is often described as the safety net for the majority of the people who live in the rural areas of Papua New Guinea—cannot feed the growing population. To keep up with population growth, land reform is needed to facilitate large-scale production. This reality must be clearly understood by policymakers because, if it is neglected, it will lead to

poverty. Therefore, land issues are important for poverty alleviation.

Customary land tenure systems do not promote justice and equality. The traditional land inheritance systems of matrilineal and patrilineal societies prevent one gender from accessing land. Land alienation by threat, and illegal squatting on customary land, a common practice on urban peripheries, are forms of injustice. Consequently, land issues have implications when it comes to natural justice and equality.

Overpopulation, climate change and extensive cultivation threaten livelihoods, and customary land tenure is not able to address these issues. Consequently, customary land tenure will contribute to poverty and even starvation of the people who are affected. Land issues, therefore, have significant implications for livelihoods.

Large-scale natural disasters in Papua New Guinea have made permanent relocation the only option for affected people. For example, people who live near active volcanic eruptions are threatened. Rising sea levels from global warming could affect islands in parts of Papua New Guinea. Global warming is also leading to changes in food crop cultivation techniques and species. The combination of land alienation by threat and law and order problems—especially tribal fighting—will have major negative effects. These examples show that land issues have significant implications, even to the point of driving groups of people to extinction.

These issues go beyond the usual discussion of land in terms just of property rights and investor confidence, showing that land matters need urgent attention. Policies, not just discussion, are needed to resolve problems associated with the traditional land tenure system. The laws based on these policies need to be enforced, their effects and impacts monitored and evaluated. The consequences of failure could be dire.

Notes

- ¹ These data have not been recently verified. The ratio of 97:3 per cent has been used since independence in 1975.
- ² This author is currently compiling the proceedings.
- ³ This author is drafting the report to the Minister for Lands and Physical Planning from the Land Summit Coordinating Committee. The report will provide recommendations to the Minister concerning the directions to pursue in relation to the land reform agenda in Papua New Guinea.
- ⁴ The fieldwork was part of the research for the author's PhD. Chapter 5 of that thesis discusses property rights. Threats to the leaseholders from claimants of customary rights over this alienated land mean that there is a high degree of insecurity to their tenure and reduces the asset value of the lease.
- ⁵ Melanesian countries are Papua New Guinea, Solomon Islands, Vanuatu and Fiji.

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