

Rethinking the need for land reform in Papua New Guinea

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The last couple of years have seen a renewed interest in the subject of land reform in Papua New Guinea. Although it was never really off the agenda, the protests, riots and police killings in Port Moresby that accompanied the World Bank's attempt to promote customary land registration in 2001 meant that land reform moved to the margins of political debate. But the subject is too important to remain marginal for long, and in May 2006 the Prime Minister, Sir Michael Somare, launched a *Land Summit Report* which called for new reforms.

Meanwhile, another debate was running in Australia over the direction of aid policy to Papua New Guinea and the Pacific Islands generally, and the use of development aid to promote land tenure reform. On one side, Helen Hughes called for aid to be tied to the privatisation of customary tenures (Hughes 2004), while others defended customary land tenures as a viable basis for development (Fingleton 2004, 2005). Again, the question was raised whether customary land tenures are an impassable barrier to growth and sustainable development.

Pacific Economic Bulletin 21(1) had as its focus land titling issues in Papua New Guinea. Charles Yala and Ron Duncan, in their economic survey, looked at the need for microeconomic reform, including for land reforms which will encourage the private

sector to invest (Yala and Duncan 2006), concluding that land reforms attempted so far have largely failed (2006:7), but that land mobilisation can best be achieved by the development of secure long-term leases over customary lands (2006:4). Yala follows up with an article headed 'Rethinking customary land issues in Papua New Guinea' (Yala 2006), which I will comment on below.¹

The need for Pacific island governments to strengthen their land tenure systems in response to population increase and the need for economic growth is recognised by the recent Australian Government White Paper, *Australian Aid: promoting growth and stability*, and by AusAID's *Pacific 2020: challenges and opportunities for growth*. In developing land policies and laws, governments require advice that is based on a good understanding of the social, economic, political and cultural issues surrounding land, and an appreciation of the options that are realistically available for reform. The land debate, unfortunately, is plagued by misunderstandings, ignorance of the facts and faulty analysis. Yala and Duncan are right in noting that reform is possible in Papua New Guinea if it is 'based on sound theoretical and empirical foundations', and 'adequately recognises the political and cultural context' (2006:12). Too often lately those calling for reforms fail these tests.

New thinking or short-sightedness?

Yala (2006) begins his article with a number of preliminary observations.

- 'There has been an ongoing and divisive debate concerning land between supporters of customary land reform and opponents of change'²
- 'Melanesian societies have a strong affinity to their land', which is 'rarely understood by outsiders, who are consequently often baffled by the rejection of land reform'
- 'The debate on land reform is primarily driven by economic arguments... Non-economic cultural and political reasons ...have not really been considered' (Yala 2006:129).

Based on these assertions, Yala calls for a rethinking of land issues in Papua New Guinea, and he lists the cultural and political factors that must be taken into consideration in developing a new land policy and legal framework. Some of these factors are easily recognised, for example, the weak linkages that exist between policy discussions, laws and their implementation. Exception can, however, be taken to other of his claims.

In the first place, he says that economic reasons for land reform are dominant. It is true that, over the last 20 years, the debate on land reform in Papua New Guinea has become dominated by the economists (especially from the World Bank), who invariably emphasise the 'constraints' imposed by customary tenures on economic development. But some of us have always taken a more holistic approach, seeing customary land reform as an undertaking involving social, economic and political risks as well as benefits. In particular, the Commission of Inquiry into Land Matters, set up by the Somare-led coalition government in 1973, saw the changes taking place in customary land rights and an emerging land shortage as being the

main reasons for a careful and selective introduction of customary land registration (Papua New Guinea 1973:19–20). Its first 'basic principle' was that land policy should be concerned with increasing productivity, 'but even more concerned with the kind of society that Papua New Guinea should become' (1973:15).

Yala sees three 'strands of argument' associated with the economic justification for land reform—the first being for individualisation of titles (as urged by Helen Hughes), the second being for incremental change (myself being given as the proponent), and the third being to focus 'on understanding the underlying drivers of land reform' (which Yala says he and others advocate, and which he expands on later in his article). I will comment on the 'underlying drivers' option shortly, but first there is a major confusion that needs to be addressed.

It first appears in Yala's introductory comments, where he characterises the land debate as being between 'supporters of customary land reform and opponents of change' (see above). This is a poor start to understanding the options, for the main issue is not whether to reform or not, but how much to reform. Thus, the real disagreement is between those who argue for the adaptation of customary tenures (as I and others do), and those who argue for their replacement, by individual freeholds or other forms of introduced tenures (as urged by Helen Hughes and others, see Fingleton 2004:99). If the choice is seen as being between either land reform involving the replacement of customary tenures or no reform at all, then the debate becomes limited. The question 'are you in favour of land reform?' becomes, 'are you in favour of abolishing customary tenures?' And 'are you in favour of customary tenures?' becomes, 'are you opposed to any land reform?' The key point is that there is a middle road between abolition of customary tenures and retention of the status quo, and

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that is to facilitate the adaptation of customary tenures to the new demands that people are putting on their land.

Yala's next point is that 'foreigners and foreign ideas dominate land reform discussions' (2006:129). 'For a long time', he says, 'most advocates of land registration have been externally based academics, commentators, and donor agencies' (2006: 130). There is some merit in this observation, but, again, it is only true over the last couple of decades. In 1970, when I first became involved in Papua New Guinea's land affairs as a legal officer in the Public Solicitor's Office, there had been a very active research program into land reforms run by the New Guinea Research Unit, and this had largely been carried out by academic researchers. But during the 1970s, prominent Papua New Guineans like (Sir)³ Albert Maori Kiki and (Sir) John Guise increasingly spoke up on land reform issues, in particular on the Australian Administration's proposals for sweeping land reforms in 1971. When these proposals were abandoned, the House of Assembly moved to set up the Commission of Inquiry into Land Matters (CILM), which reported in 1973.

The CILM was a turning-point for Papua New Guinean involvement in decision-making on their land issues. Made up of eleven Commissioners, all prominent Papua New Guineans, the CILM brought down a report in 1973 that made 132 recommendations on matters ranging over customary land, alienated land, urban land, state-owned land, land dispute settlement, land administration and so on.⁴ The report drew on visits to 135 centres in all provinces, and 141 public hearings, as well as 258 written submissions. Funded by the Australian Administration, the operation was unique in the Pacific for its degree of local involvement, and the authority this gave to its recommendations. From 1973, the CILM report was the basis for all policy

formulation on land, and during the 1970s laws such as the Land Groups Incorporation Act and Land Disputes Settlement Act were passed by the National Parliament based on the CILM report's recommendations.

For Charles Yala to say that foreigners have 'dominated' land discussions and, since before independence, 'Most Papua New Guinean responses appear to be mainly informal reactions to the publications and statements made by foreigners' (2006:130), is to deny the influence of CILM Commissioners like the Chairman (Sir) Sinaka Goava and (Sir) Ignatius Kilage, and the Minister for Lands at the time of the 1970 reforms, (Sir) Thomas Kavali. Does Yala think that the National Executive Council during the 1970s simply rubber-stamped all the submissions on land policy and law reform that were brought before it? And that the National Parliament did the same, with draft land legislation? I can assure him, as someone present, that they did not.

Yes, the CILM had its foreign advisers, Dr Alan Ward (an authority on Maori land affairs), Professor Rudi James (then Professor of Law at the University of Dar-es-Salaam and afterwards Professor of Law at the University of Papua New Guinea) and Professor Ron Crocombe (then Professor of Pacific Studies at the University of the South Pacific).⁵ The report was the product of teamwork between national leaders and the special expertise brought in from outside, but it was informed by what the people themselves said they wanted.

The final factor that Yala says has not really been considered in the current debate on land issues is the unsatisfactory administration of alienated land. This is another illustration of his short-term frame of reference. Not only did the Commission of Inquiry into Land Matters devote a chapter to the need for reform in land administration, but it was the subject of repeated reform proposals during the 1980s and 90s, including the Coopers and

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Lybrand Report 1981, the AusAID-funded Land Evaluation and Demarcation (LEAD) Report 1987 and the World Bank-funded Land Mobilisation Project 1989–95. None of these reports led to the necessary reforms to the Department of Lands and Physical Planning, and the reasons why reform has been so difficult need to be addressed. But it is quite wrong to say, as Yala does, that the problems were never really considered.

The trouble with Yala's short-sighted view of these three factors—the dominant influence of economics and foreigners in the land debate, and the disregard for state-owned lands—is not just that they do a disservice to recent history, but more important is that such a view restricts the analysis of what reforms might work in Papua New Guinea. What has been tried before? Did it work? If yes, why? If no, why not? This is all part of establishing the essential 'sound theoretical and empirical foundations', which Yala himself acknowledges must underpin any sustainable reform.

Are there 'underlying non-economic drivers for land reform'?

Yala, having set up the argument that Papua New Guinea's land reform debate has so far been dominated by economic considerations and foreign commentators, then proposes a set of 'broader cultural and political issues' that will determine the way forward. Of the six, I will comment on four here.

The one that I have a major disagreement with is Yala's view that 'the traditional land tenure systems are unsuitable for a modern society' (2006:132). Yala bases this dismissal of his own culture on two planks of customary tenures—inheritance by gender and continued association with the land. Regarding the first, he says

[i]n Papua New Guinea, inheritance of land may be by matrilineal or patrilineal means. This is discrimin-

atory because either practice makes one gender landless (2006:132).

This is an extraordinary statement—it implies that half of the population of Papua New Guinea is not entitled to land. What Yala seems to be saying is that, under a matrilineal system, only women have land rights, while under a patrilineal system, only men have land rights. The truth is that, whether a community's descent system is matrilineal or patrilineal, both sexes have land rights by virtue of their birth into their clan or other kinship group. What Yala may, in fact, have meant is that, under either system, the children of a marriage may, in certain circumstances, be landless. This meaning is borne out by the example he gives, of a 'cross-cultural marriage' between a matrilineal male and a patrilineal female (2006:132). According to strict principles, the child of such a union would have land rights neither through the father nor the mother.

These situations were unusual in earlier times, when under conditions of restricted mobility people seldom married outside their local cultural area, but they were not unheard of. I have examples from my fieldwork among the Tolai of East New Britain Province (a matrilineal society) of Tolai women marrying Tolai men from a village remote from their home area. If the women moved at marriage to live with their husbands (as was usual), the children would grow up remote from the land to which they were entitled under custom. According to strict principles (that is, Yala's 'theoretical foundations'), such children would have had no land rights, yet in practice (that is, Yala's 'empirical foundations') they were provided with land, by recognised customary methods.⁶ This illustrates a very important aspect of how customary tenures work—it is not just what people tell you are the rules ('the theory'); it is also important to see what people do ('the practice').

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Regarding the second aspect that Yala finds problematic about customary tenures—the requirement for continued association with the land—I agree that this could cause problems with an educated/emigrant minority. In my experience, if such non-residents maintain their connections with their home villages (for example, by return visits and contributions to local ceremonies, and so on), their entitlement to return and activate their customary land rights is usually recognised. Just as their land rights originate from kinship and social relationships, they can also be preserved by maintaining those relationships. What an individual does is largely a matter of personal choice.

The second example Yala gives for his 'non-economic drivers' for reform of customary land tenures is 'squatting' on State or customary land. This is a product of increased social mobility, under modern conditions, but it also has an economic dimension, as people seek better lives and employment opportunities. The appropriate response is *not* to see it mainly as a 'national security issue' (2006:133), as Yala does, but to provide mechanisms for the orderly adjustment of customary land rights, to accommodate the new settlers. This is what the Morobe Provincial Government and customary landowners around Lae are trying to do, and what the National Capital District Commission is planning to do on customary lands in Port Moresby. The 'squatting' problem is not caused by a failure of customary land tenures, and a solution won't be found by blaming them.

A third criticism Yala makes of customary tenures is that they prevent resettlement after natural disasters.

An unfortunate consequence of customary land tenure is that communities must remain on their own land, regardless of the threat posed by natural disasters (2006: 134).

Volcanoes and other natural disasters are hardly a new phenomenon, nor is the sort of spontaneous resettlement that usually follows. The threatened communities do not just 'remain on their own land'. It is the very flexibility of customary tenures that allowed such refugees to be accommodated in the past. They did so then just as they try to do so now—by invoking long-standing cultural connections to resettle on neighbouring lands. Of course, this can lead to tensions, and in cases of major displacement caused by events like the volcanic eruptions around Rabaul, it may take decades for new land tenure arrangements to settle in. But whether people move because of natural disasters, population pressures or the search for better incomes or services, arrangements for access to customary lands are constantly being adapted to accommodate these new demands.

A fourth 'non-economic driver for land reform' proposed by Yala is that customary land tenures encourage 'rent-seeking'.⁷ Like other commentators, he blames Incorporated Land Groups (ILGs) for the 'rent-seeking' and squandering of resource rents from mining and petroleum.

The popularity of ILGs is driven by the need to distribute resource rents from development on customary land. Consequently, this process institutionalises rent-seeking (2006:134).

There is confusion here between causes and effects. As I have pointed out before (Fingleton 2004:101), the Land Groups Incorporation Act was brought in to provide legal recognition to customary groups for purposes of land ownership and decision-making over the use and management of their land. Instead, it has overwhelmingly been used for royalty distributions, without any of the necessary controls being introduced to control such distributions and supervise ILGs. With more than 10,000 ILGs, no regulation of distributions and a single

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supervising officer, a breakdown in the operation of ILGs was entirely predictable. The cause is the hopelessly inadequate administration of the Act, not the Act itself.⁸

From his 'rethinking' of the land issues and his identification of the 'non-economic drivers of reform', Yala concludes that customary land tenures do not promote justice and equality, they cannot address population growth and the need for increased agricultural production, and they are driving people 'to poverty and even starvation' (2006:135). These conclusions are not supported by the evidence, and smack of preconceptions. In fact, as pointed out by the five authors who contributed to *Privatising Land in the Pacific: a defence of customary tenures* (Fingleton 2005), the weight of evidence is to the opposite effect—customary tenures *do* promote equitable land distribution and the most advantageous use of land, and they are sustaining an increase in land use and productivity.

Conclusion

What is needed are measures that facilitate this adaptation of customary tenures, not measures that undermine them. At the end of the day, despite his attacks on customary tenures, Yala comes round to endorsing their adaptation, by supporting measures for the leasing of customary lands (see above). He thus returns to the recommendations made by the Commission of Inquiry into Land Matters, over 30 years ago.⁹

While Charles Yala is a welcome (if reluctant) convert to the cause of customary land adaptation, two other contributors to the *Pacific Economic Bulletin* on land titling issues are beyond redemption. Tim Curtin and David Lea are committed abolitionists. Their long and rambling article (Curtin and Lea 2006) starts off by suggesting some kind of impartiality in the land debate ('Fingleton and Hughes—both right and both wrong', 2006:153), but their solution is unequivocal.

The only way forward is to abandon informal customary land tenure and introduce individual interests in land (Curtin and Lea 2006:160).

It is difficult to treat seriously people like Curtin and Lea, who think that all the forested land in Papua New Guinea 'is indeed available for 'undifferentiated access' by all and sundry' (2006:154), or that the violent overthrow of farm titles in Zimbabwe followed by their forced re-occupation by Mugabe's henchmen is somehow a stellar example of customary land tenure in action (2006:169). Their article is replete with mistakes and misunderstandings, not to mention the personal insults, misrepresentations and derogatory reflections that seem to typify contributions from this side of the land reform debate.

Good policy requires a good understanding of the issues, and the ability to learn from the lessons of the past. Yala's timeframe is too short for these purposes, and his attempt to identify 'non-economic drivers' for land reform is not helpful. A longer and deeper perspective shows that the most fruitful reforms are achieved when there is a combination of strong local leadership and good policy advice. Among the outcomes of the National Land Summit, held in Lae in August 2005, Yala includes the political commitment to land reform, and the 'institutional ownership' of the land reform agenda (2006:131). These are positive developments.

What I feel is lacking, however, is an appreciation of the fact that these land issues are not new, and that they were addressed before—by Papua New Guineans—in the 1973 Report of the Commission of Inquiry into Land Matters. The National Lands Task Force, in its deliberations, should review the operation of laws like the Land Groups Incorporation Act, the Land Disputes Settlement Act and the National Land Registration Act, all based on the CILM report, to see what problems have been

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encountered in the operation of those laws. In particular, they should look at how far the laws have been frustrated by lack of commitment of funds, personnel and other administrative resources. Charles Yala is absolutely right that laws need to be enforced, and their effects and impacts monitored and evaluated (2006:135). But do that first, before assuming that solutions lie in 'introducing a new legal and administrative system for customary land development, land administration, land compensation, and land dispute settlement' (2006:131).

Notes

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- ¹ The comments that follow were made by me to Charles Yala well before his article was published, so it must be assumed that he retains his views despite my criticisms.
- ² As I point out below in the text, this characterisation of the two sides of the debate is mistaken and causes problems.
- ³ The knighthoods came after independence in 1975.
- ⁴ Yala and Duncan's account of the CILM's 'thrust' as being about reverting alienated land to customary control (2006:7) does not do justice to its true scope and priorities.
- ⁵ I was engaged as the CILM's research officer.
- ⁶ The historian, Bill Gammage, gives another example of the native police who accompanied the early European expeditions into the Highlands, and who stayed on and married local women. Although living in patrilineal societies, where the children could only get land through their father's (not their mother's) local line, their children's land needs were readily accommodated (Bill Gammage 2006, pers. com.).
- ⁷ Like his other reasons, 'rent-seeking' is hardly non-economic.

- ⁸ In a forthcoming publication, I show that much of the criticism of incorporated land groups is misinformed (Fingleton 2007).
- ⁹ And, incidentally, embraced by the East Sepik Provincial Government in the late 1980s, in enacting its own provincial land legislation. This is yet another example of locally inspired land policymaking and legislation that Yala overlooks.

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