



DEPARTMENT OF LANDS & PHYSICAL PLANNING

CUSTOMARY LAND TENURE IN A CHANGING CONTEXT

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FORWARD.

Papua New Guinea is the largest developing country in the Pacific with a landmass of approximately 462 800 square kilometers and a sea area of 3.12 million square kilometers.

It has a total population of over 5 million, of which approximately eighty-five percent live in rural communities.

The paper focuses on ***Customary Land Tenure in a Changing Context***. Customary Land Tenure in this context will be referred to as **that land which is owned or possessed by an indigenous person or community by virtue of propriety or possessory kind, which belong to that individual or community and arise from and are regulated by custom.**

Over ninety-seven percent of the land in Papua New Guinea is under customary ownership. Cultivation of this land, be it in the form of subsistence farming or cash cropping is mostly confined to areas ideally suited for agriculture and offers excellent prospect for more selective arable and tree crops while land in some parts of the country compose of grassland, swamps, steep slopes and infertile soils.

The remaining three- percent is alienated land and is held under state and the private sector. Land under private sector refers to those lands that were acquired under the colonial administration and granted as freehold leases while the land under state ownership is represented by the towns and cities.

The current government policy is geared towards an export driven economy with emphasis on rural development and poverty reduction. This would mean that land has to be accessed to facilitate this policy. However, this has to come at a price and that is addressing the ninety-seven percent of the land that is under customary ownership. It is in this respect that a mechanism has to be put in place to facilitate the process of accessing this land.

The focus of the paper will look at the scenario of the past that paved the way forward, the impact of the modern socio-economic systems, customary land tenure under the microscope and the proposed legislation on customary land registration.

BODY

1. SCENARIO OF THE PAST.

The early colonization of the country during the 18th and 19th century saw a number of very significant changes to the livelihood of the people. The arrival of the missionaries and the establishment of government stations to a certain extent affected the traditional way of life. Under this influence, the people surrendered most of their savagery and hostility while retaining their own primitive charm and manner of living.

The interests of missions were non- secular in nature where people were encouraged to abandon conflicting tradition and become Christians. Over time a symbolic relationship between the introduced religions and the people conceived secular institutions and activities. The establishment of peace led to the changes in the adoption of elements of introduced material culture. The missions offered schooling, medical services and other essentials for those in need and in return the people offered land and labor.

Not all missionary work was concerned with the soul rather it hastened their desire to renovate social conditions and prepare the people for the full blast of the western influence in all aspects their livelihood such as sporting activities. These were introduced with the hope of fostering competitive vigor in place of the spear and shield. They also taught that the Christian had to toil with the sweat of his brow. They believed simply in teaching by example the dignity of labor and thought that the establishment of small self-help projects would help the people into innovative talents. It is such that left a deep imprint and formed an important background for the social and political change-taking place today.

The extension of government administration through organized simple and orderly structures within communities saw an emergence of various levels of administrative functions. Roles and Responsibilities took center stage that gave rise to a form of political structure while the provision of infrastructure and basic services further hastened the desire to innovate.

2. IMPACT OF THE MODERN SOCIO-ECONOMIC SYSTEMS.

Land in Papua New Guinea has become a very contentious resource. The issues are very sensitive and often result in deaths before an amicable solution can be reached. The land vested under states interest is now been fully utilized and the shift is now to accessing customary land for further progress.

Approximately eighty-five percent of the people live in rural areas and depend primarily on land and agriculture for their existence. Land is linked directly with both their social and economic interests and therefore it is important to understand the concepts of their existence. New concepts of governments, changes in methods of production, industrialization, increases in population and modern economic systems are some of the factors which have contributed on the need for re-examination of established customs, institutions and practices relating to land and their relationship to the economic improvement of rural communities. The problems of land policy, land tenure, land reform and land registration and the relationship of these to rural productivity are receiving serious attention in Papua New Guinea.

Like any other developing country, Papua New Guinea has its share of experiences. The exposure to modern socio-economic systems in the pretext of development and the need to retain traditional identity has not been easy. Land is life and plays an important role in the traditional society. It creates relationships and is interwoven with issues such as kinship, family systems and the entire field of human relationships. The practical application of this concept is realized when addressing problems associated with ownership, use, alienation and acquisition.

The need to innovate and technologise in the face of development has portrayed land as a high value economic commodity, a factor of production and a source of wealth. Thus it is widely accepted that land issues among other issues have been the major constraint to development. Whilst faced with this scenario there is still the expectation on government to look after its population in the areas of infrastructure, health, education and the list goes on. It is therefore important for government to develop strategic plans in all sectors thus the issue of land becomes very critical for socio-economic development. It therefore calls for dual responsibility on the part of customary landowners and government to be partners in promoting and advancing development in a sustainable way. In pursuing this common understanding there is substantial justification for government to intervene in land use planning and control, land management, the operation of the land market and providing the framework within which land tenure operates.

3. CUSTOMARY LAND TENURE UNDER THE MICROSCOPE.

The impact of the modern socio-economic systems in Papua New Guinea has greatly affected the livelihood of the people and will continue to do so in the years to come.

Large-scale agriculture, forestry and mining developments have changed the perspective of land and related issues thus land use patterns have shifted from purely subsistence to semi-subsistence activities. This has further led to in some instances venturing into activities such as trucking, trade stores, fuel and lubricants etc. on customary land.

The communal ownership continues to vest under the clan system while user rights are granted to clan members to venture into activities that returns benefit and satisfaction. You will find that most or if not all of these activities are confined to areas of accessibility whether it be land, sea or air transportation. The irony of the situation is that the people are willing to work their land but lack of infrastructure in many areas which has been the major concern in so far as having access to markets and basic necessities. On the other extreme the current three percent of the land under state interest is being fully utilized due to urban expansion in some of our towns and cities. The need to access more land has been met by stiff opposition from customary landowners who live at the fringe of the towns and cities. To them it means the last bit of their life considering the fact that most of their land had already acquired by the state.

You turn to find that there is more land in areas further away from urban centers while it becomes scarce for those closer or in the vicinity of the urban area. I believe there is legitimacy on the part of landowners under such circumstance that calls for the government and the people to amicably come to some understanding so that both parties benefit in the process.

Population pressure and the need for government to meet social obligation in terms of health and education and the provision of infrastructure to enable people to access these facilities have been hampered due to land issues throughout the country. The provision of these services is vital for a healthy population that will in turn contribute to the development of the country. These are facilities that will benefit the population at large and therefore require the land to be either compulsory acquired or outright purchase on a case by case basis.

4. THE WAY FORWARD.

Under this sub-heading I intend to present information on the proposed law on the Registration of Customary Land which is seen as a mechanism to facilitating voluntary registration in the light of current Government policy to foster development and reduce poverty. The issue of customary land registration has long been in existence but never taken seriously until in recent times where the need to revisit the issue in the face of changing circumstances.

4.1 BACKGROUND TO CUSTOMARY LAND REGISTRATION.

- **NATIVE LAND REGISTRATION ORDINANCE 1952.**

The Native Land Ordinance 1952 was the first true customary land registration law and provided for an investigation of title and registration for a period of five years after which registration was conclusive evidence of ownership. The land remained subject to customary law. It was repealed in 1963 and no titles were ever registered because of legal doubts and lack of resources given to the investigating authority.

- **1963-1964 LAND LAW REFORM.**

Four important pieces of legislation were passed in 1962-1963. These were the Land Act, Land Titles Commission Ordinance, Land Registration (Communally Owned Land) Ordinance and the Land (Tenure Conversion) Ordinance 1963. Under the Communally Owned Land legislation, the Registrar of Titles was required to set up a Register of communally owned land. The Land Titles Commission findings as to ownership under custom were to be recorded in that register and the registration was conclusive evidence of ownership. The Tenure Conversion Ordinance provides for the registration of individual freehold titles in customary land. The Land Titles Commission was established to hear disputes over ownership of customary land. In 1970 the Communally Owned Land Ordinance was suspended and at that time no title had ever been registered.

- **1969 SIMPSON REPORT**

S. Rowton Simpson was a British expert in Land Registration. In the 1969 report he strongly criticized the 1963 legislation which led to a comprehensive review by the administration. In 1971 the new legislation was presented to the House of Assembly but due to opposition to the legislation preceding immediately before independence it was withdrawn.

- **THE COMMISSION OF ENQUIRY INTO LAND MATTERS 1973.**

The Commission comprising of ten Papua New Guinea Commissioners was established to consider the failed law on Land Reform. Their task was to tour the whole country and carry out extensive consultation. The Commission in its report revealed that there was need for customary land registration believing that it would assist in dealing boundary disputes and enable people to raise finance for cash cropping. Between 1974 and 1977 the Commissions proposals were put to government and some legislation was drafted. The actual draft of Customary Land Registration was done in 1978 but due to administrative delays coupled with the change of Government in 1980 the legislation was never introduced.

- **THE LEAD PROJECT.**

Between 1983 and 1984 the Department of Lands and Physical Planning prepared drafting instructions for the land registration legislation. A World Bank consultant visited the country to assess the viability of the legislation and following a critical report further action was postponed. In 1986 the Government endorsed World Bank proposals for Land Evaluation and Demarcation (LEAD) Project. That Legislation has been reviewed by the present consultants and a number of changes have been recommended.

- **FUTURE ACTION.**

Following the revised proposals for legislation the consultants are required to consult throughout the country and prepare a final report and legislation ready for the National Executive Council.

4.2 PROPOSALS FOR REGISTRATION OF CUSTOMARY LAND THROUGH LEGISLATION.

- **PURPOSE.**

It is intended to pass legislation, which provide for the registration of customary land. The objective is to mobilize customary land for development and in particular to make land available as security for finance.

- **REGISTRATION.**

Registration is the process of recording a description of the land and its boundaries and the ownership of that land. Registration is recorded in a Register of Customary Land and registration is conclusive evidence of ownership.

- **TITLE.**

A title is a description of the kind of ownership of that land. It is proposed that customary land be registered with “**absolute ownership title**”. This means exactly that the land is owned absolutely by the group in whose name it is registered.

- **CUSTOMARY LEASE.**

A group may grant a lease of the land a right to occupy the land to a person, company or group. A lease does not amount to a transfer of ownership. It is only a right to use and occupy the land. There will be a Register of Leases of Customary Land and other dealings in customary land can also be registered.

- **PROCEDURE.**

In order to qualify for registration there must be a procedure to identify ownership and boundaries.

- **LAND TITLES COMMISSION (LTC).**

It is proposed that the LTC will investigate boundaries and title and prepare a plan showing the boundaries of the land, the names of the members of the customary groups claiming ownership. The plan will then be advertised publicly and a period allowed for public objections. These objections will be heard and determined by the LTC before a final plan for registration is prepared.

- **REGISTRAR OF CUSTOMARY LAND.**

The Registrar will receive the final registration plan, register the boundary and ownership and issue a certificate of title to the customary group. Since the group must have legal status the title will only be issued to a group incorporated under the Land Groups Incorporated Act. This means that at some stage the owners will have to become incorporated.

- **EFFECTIVENESS OF REGISTRATION**

Registration of title is conclusive of evidence that the group is the owner of the land. The title cannot be changed until after a period of twenty (20) years and then only on the grounds of evolutionary changes occurring naturally under custom, demographic changes or geological or other natural changes. Adjustment of title will be possible to consolidate titles relating to adjoining parcels of land or for the purposes of a subdivision of land. An inquiry process will be followed for title adjustments.

- **TRANSFER OF TITLE**

Currently the ownership of customary land may not be transferred except to the State or to another citizen or customary group. It is proposed that this continue to be the law.

- **CUSTOMARY LAW**

Custom will continue to determine ownership and matters affecting land generally. For example, whether or not a lease should be granted of registered land is a matter to be decided by custom. Ownership rights within a group, which has a registered title to land, will be decided by custom.

- **BOUNDARIES**

The proposals require boundaries to be marked but not to be properly surveyed. The Registrar of Titles can call for boundaries to be surveyed and if this is done the Certificate of Title will so indicate. In practice, it is likely that most boundaries will be properly surveyed.

- **COMPENSATION**

It is proposed that a fund be set up to compensate persons suffering loss or damage by reason of an error in the register or because the register is rectified for some good reason. The amount of compensation is decided by the National Court.

4.3 BENEFITS OF REGISTRATION

- **CUSTOMARY LAND AS SECURITY**

A customary group can choose whether or not to register customary land. A demand for registration will arise once landowners are aware that institutions providing loans and finance require that customary land be registered if it is offered as security.

- **ALIENATION**

Registration will not have the effect of making the land available for sale to outsiders so that they can gain permanent ownership. Also, banks lending finance on the security of customary land will not be elsewhere. It should be understood however, that if a long lease of customary land is granted, the lessee will have the right to occupy and use that land as he wishes according to the terms of the lease. The group cannot interfere with that right.

- **EVIDENCE OF TITLE**

Registration is conclusive evidence of ownership of the land. It states that the land is owned by a particular group and no other group will be able to deny that title.

- **BOUNDARIES**

Once land is registered with properly surveyed boundaries, those boundaries cannot be questioned. In practice, although not required under the proposed law, it is likely that most boundaries of registered land will be properly surveyed as this will be required by finance institutions approached for loans.

- **TITLE INVESTIGATION**

This will be carried out by an independent and competent body, the Land Titles Commission that already has experience and expertise in dealing with land disputes. There will be no more political involvement in the process of registration.

5. CONCLUSION

In Papua New Guinea the relationship between man and land is expressed in various ways and one of the common one being, land is life or life is land. Accordingly you take one away there is no existence.

The communal ownership and the land use patterns are characterized by a number of factors be it climatic, cultural, religious, economic and political. Whilst this is so the process of change in all sectors of the economy will no doubt have a dramatic effect on the customary land tenure system.

It is therefore extremely important for an efficient system to be put in place to address the issues of land administration and land use which benefit the landowners, the government and the other partners in the development process. This in fact gave rise to considering the proposed legislation on voluntary customary land registration, which is seen as a measure to addressing customary land issues in the country. The proposed legislation will further assist the government to formulate policies in development planning and at the same time ensure ownership rights and transactions in land are more effective.

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