

# In Defence of Melanesian Customary Land

Edited by Tim Anderson and Gary Lee



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**EDITORS**

Tim Anderson and Gary Lee

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## In Defence of Melanesian Customary Land

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AID/WATCH is an independent Australian watchdog on aid, trade and debt working with communities in the Global South. Founded in 1993, AID/WATCH has played a vital role in challenging practices which undermine the ability of communities to determine their own futures, and promoting development alternatives based on social and environmental justice. AID/WATCH works on land and other development issues with communities and organisations in the Pacific, particularly in Melanesia.

19 Eve St, Erskineville  
Sydney, NSW Australia, 2043

**P** +61 2 9557 8944

**F** +61 2 9557 9822

**E** [info@aidwatch.org.au](mailto:info@aidwatch.org.au)

[www.aidwatch.org.au](http://www.aidwatch.org.au)

### About MILDA

Established in June 2009, the Melanesian Indigenous Land Defence Alliance (MILDA) is a regional civil society network that supports and coordinates community efforts to maintain control over their land. Its principal aim is to assist "Indigenous peoples in Melanesia maintain control over their land, sea, water, air and resources through continued use of their customary tenure systems."

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*The views expressed in this report are those of the authors.*

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# Introduction: Understanding Melanesian customary land

By Tim Anderson and Gary Lee

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AID/WATCH has prepared this publication, with its partners, to address many fundamental misunderstandings over Melanesian customary land.

The experience of land tenure in Melanesia and Australia is radically different, despite much other shared colonial history. The Australian colonies completely dispossessed Australian indigenous people of their lands, and that has been only slightly redressed over the past forty years. By contrast, in most of Melanesia, very little land was either registered or alienated. Land thus remained under customary title, controlled by clans and families, a status which is recognised, for example, by the constitutions of Papua New Guinea, the Solomon Islands, Vanuatu and Timor Leste.

It should not be surprising, then, that many Australians understand so little about Melanesian customary land. They do not understand how land title not written down in a government register can be “secure”. They do not understand how people can own land without being able to sell it. And they may not appreciate that families using their own customary lands, in combined subsistence-cash crop operations, can often generate more value than those with paid jobs.

This is before we add in the misinformation produced by the mining companies and banks, and their “think tanks”, pursuing their own economic agendas under the guise of modernist policy. Investment groups want to acquire precious land, and they want to get it cheap. The Sydney-based Centre for Independent Studies (CIS), for example, which receives funding from banks and mining companies, consistently undermines indigenous rights in the region. In her 2004 paper for the CIS, *The Pacific is Viable*, Helen Hughes sets out what she calls “a road map for rapid growth and development in the Pacific” which claims that “the communal ownership of land is the primary reason for deprivation in rural Pacific communities.” Such views perpetuate the misinformation and demand a response which includes Melanesian voices.

To address these misunderstandings AID/WATCH, an Australian-based NGO and member of the Melanesian Indigenous Land Defence Alliance (MILDA), has produced this publication. It presents Melanesian and Australian voices in defence of Melanesian customary land. The chapters touch on the broad themes of customary land in the region, as well as particular issues in Papua New Guinea and Vanuatu. Those issues include land tenure conversion, incorporated land groups, leases, the productive value of customary land, women and land, land tenure reform programs, and the social security features of traditional land tenure systems.

AusAID, the Australian Government aid agency, has financed a large number of land projects in past decades. Its current Pacific Land Program commits \$54 million over four years, but without a clear statement of policy. The Pacific

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Land Program is said to be informed by AusAID's 2008 report *Making Land Work*, which outlines some principles for land tenure reform in the Pacific. This includes "making land tenure a priority", "working with and not against customary tenure" and "balanc[ing] the interests of landowners and land users". However, the government makes it clear that the report "does not seek to advocate any particular policy options or models. Nor does it necessarily reflect AusAID or Australian government policy."

In practice, Australia's Pacific Land Program has backed Pacific government programs, a number of which have focused on peri-urban settlements, urban land conflict and record management. However, the program persists with the idea that Melanesian land tenure must be "reformed" more generally, including the "mobilisation" of customary land, mainly through leaseholds.

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AusAID's "middle way" idea on Pacific land involves substantial financial support...in favour of the registration and leasing of customary land.

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AusAID's 2006 White Paper, *Australian Aid: Promoting Growth and Stability*, which sets the strategic framework for the direction and delivery of Australian aid, states that one of the key initiatives to accelerate economic growth would be a "collaborative and demand-driven **Pacific land mobilisation program**, to explore ways of overcoming the major land tenure constraints to growth in the region" (emphasis in original). That report also identifies what it calls "an emerging consensus that a 'middle way' has to be found that essentially combines customary ownership with long-term leases that unlock the commercial value of land." AusAID's Pacific Land Program activities for 2009-2010 similarly suggest that "Uncertainty over land tenure is also proving to be a constraint to economic development."

It seems clear that AusAID's "middle way" idea on Pacific land involves substantial financial support to "build demand" for an "emerging consensus" in favour of the registration and leasing of customary land. If leasing means customary landowners retain their title, the program can be said to support those village people, who have thereby been provided with an opportunity to move into the commercial world.

This is a vision driven by ideology, Western bias and vested interest. As the articles in this publication point out, even the first step of registration poses a

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threat, not least because of widespread fraud and maladministration. Corruption in land programs is not unrelated to the large, cashed-up aid programs. In Papua New Guinea, logging companies have set up fake Incorporated Land Groups (ILGs) to further confuse the process. Indeed, the “uncertainty over land tenure” is found more pervasively in modernist registration processes than in the smaller scale land conflicts that can mostly be resolved at a local magistrate level.

Registration does serve some social purpose in urban land matters, but when it comes to leasing rural land the tragedies and “market failures” are apparent. There being no real “market” for customary land, long term leases are effectively the same as dispossession. Rural rents are extremely low – as little as one hundredth of the productive value of land – and lease compensation provisions mean that landowners cannot afford to reclaim their land at the end of a long lease. This publication provides some insight into the details of those problems.

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“ There being no real “market” for customary [rural] land, long term leases are effectively the same as dispossession.

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The pressure for registration and leasing customary land means little attention is paid to the often highly productive use of land for subsistence and cash crops, as well as the customary ways in which land has been used for social purposes. Customary land has been shared in informal ways for schools, markets and infrastructure, over many years. With these types of “informal leases”, there is generally no set term and landowners expect to share in commercial benefits, if any. There is no dispossession and little resentment. There is a future in the extension of such arrangements, building on the Melanesian wisdom that has sustained communities for many centuries.

But first there is a need to build an understanding of Melanesian customary land, and elevate Melanesian voices. In producing this publication, and the associated DVD *Defending Melanesian Land*, AID/WATCH hopes to contribute to that process.



## **Downplaying defects in state-systems and overemphasising customary land tenure conversion for development in Papua New Guinea**

### **By Steven Sukot**

Steven Sukot is Campaigns Manager of the Bismarck Ramu Group, Madang Province, Papua New Guinea.

Photo by Howard Sindana  
*One of seven cocoa fermentaries built by the Sausi Poverty Reduction and Alleviation Group.*

The Government of Papua New Guinea (PNG), with backing from donors, is implementing a land tenure reform process that aims to make more customary land available for development. The key argument of the government and its financiers to substantiate its customary land reform plans is that customary land tenure is an impediment to development. However, this argument is based on a very narrow conceptualisation of land that confines it to its commodity value and grossly underestimates the strengths and advantages of the customary land tenure system. Indeed, current available data highlights the importance of the customary land tenure system to PNG's economic and social development, as illustrated in the case studies at the end of this paper.

### **Wrong emphasis on customary land reform**

The broad conclusion of two recent reports, one published by the PNG Government in 2007, and the other by AusAID in 2008,<sup>1</sup> is that there is nothing wrong with customary land. Rather, as Brunton (2008) points out, land-related

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<sup>1</sup>The two reports are National Research Institute (2007) *The National Land Development Taskforce Report: Land Administration, Land Dispute Settlement, and Customary Land Use Development*, NRI Monograph 39; AusAID (2008) *Making Land Work: Reconciling customary land and development in the Pacific*, Vol. 1, AusAID, Canberra.

problems in PNG are due to defects in the state-system: inefficient and corrupt officials, servants, politicians, and entrepreneurs who benefit from “land titling” and thus have an interest in perpetuating titling systems.

Despite these findings, the government has continued to emphasise customary land reform as a way forward. The government and major donor agencies see the customary land tenure system to be a major hindrance to development and economic progress. They argue that access to customary lands is an important factor that will enable economic development in Pacific island countries and a major consideration for investors. Financial institutions are also unlikely to lend money on custom lands; therefore it locks the economic potential and opportunity for these lands to be developed.

There are hidden agendas behind the promotion of land registration and security of tenure that diverts attention away from the overall failure of state systems in the Pacific. An important but silent premise for customary land reform is that it will allow short-cutting of existing laws and facilitate foreign companies and wealthy elites in PNG to access customary land by converting that land to private leases. Moreover, as noted by Brunton (2008:5), “the focus on land registration/security of tenure, is part of an agenda to avoid crucial issues such as carbon sequestration, and mineral and oil rights.”

There have been a number of meetings between the government and NGOs to discuss the issue of customary land reform. NGOs presented their views in a number of meetings and dialogues, including making a submission

to the National Lands Development Taskforce Report in November 2008. Unfortunately, key recommendations from NGOs have not been considered.

### **In whose interest is customary land registration being pursued?**

For customary land custodians to participate in economic development through accessing funding facilities they need to register their land. The current arrangement is voluntary customary land registration. Land groups who wish to register a certain land area for commercial purposes can undertake a process of registration. The government decided to make it milder by inserting “voluntary”. However, the banks’ policies require formal titles for security purposes. That in itself does not seem voluntary at all.

Over 90 percent of landowner businesses in PNG fail for various reasons. The big question is, how will a group of local people who register their land and fail to fulfil a loan repayment regain control of their land? Most commonly, the banks would take over and sell the land to whoever has the money, including foreigners. This is a trap for landowners to lose their land.

Given the high levels of illiteracy in PNG, the majority of people cannot participate adequately in modern business ventures. Requirements for formal land titles is not only a recipe for failure, it also provides an opportunity for a select few to take advantage of the illiteracy levels of their clansmen to make a personal fortune. This is a common scenario in most of the mineral resource development areas in PNG.



*Basamuk Bay, Madang – site approved for dumping of mine waste from Ramu nickel mine into the ocean. Photo by D Baker/MPI*

## **“Development” used as bait for customary land conversion**

“Economic Development” is the catchphrase used by advocates of customary land reform in PNG. As noted by Regenvanu (2009), however, “Development has become a terrible term”, it has lost its true meaning. A corporatized definition of “development” that confines it to monetary standards is absurd, biased, westernised and limited. Unfortunately, the PNG Government has adopted the same view of “development” as corporations.

The development model pursued by the government is donor-driven and facilitates agreements that largely disadvantage the people of PNG. The systems and structures, which are developed top-down, are geared at creating an environment that is conducive to foreign investment, while keeping the lid tight on local business. Large foreign owned businesses are given exclusive incentives such as ten-year tax holidays for mining companies, while local cooperatives struggle to repay loans. The current system not only excludes local people’s participation in decision-making, it also makes it very difficult for them to attain real tangible benefits from major development projects that are currently being implemented. In fact, there is overwhelming evidence of exploitation of communities adjoining major development activities in PNG.

## **Government failing the sector thriving on customary lands**

Over 80 percent of the population of PNG is involved in agriculture and it is this sector which thrives most on customary lands. However, with the exception of oil palm, the agricultural sector is being grossly neglected by the government.

Over 80 percent of cash crop production in PNG is produced on customary lands. This figure brings into question the claim that customary land tenure is withholding the economic potential of land in PNG.

There is a huge gap between the government’s plans and policies to advance export-driven production and the economic and social realities of local farmers, who mainly produce for local markets. Far from paying attention to the needs of local farmers, the government and the Department of Agriculture and Livestock (DAL) in particular, are promoting and supporting multinational agro-industry investments in PNG. The government is signing up to agricultural agreements that are facilitating corporate expansion and exploitation.

So far, oil palm is the only cash crop that multinational companies have monopolised with the support of the government and major funding agencies. Oil palm has been unfairly compared to other cash crops produced by

## **Agriculture statistics in PNG (mostly tree crops)**

- Agriculture contributes 19% of PNG’s total exports and 25% of GDP
- 82% of the total population lives in rural areas
- Tree Crops (cocoa, coffee, oil palm) – contribute 33% of total agricultural production of which 96% comes from smallholders
- Food and Livestock (50% total agricultural output of which 25% is marketed)
- Agriculture contributes to the wellbeing of the majority of people in PNG

*Source: Mua, DAL CIMC Momase Development Forum, 2009*

## **The current coffee production trend in PNG**

- Smallholders (local farmers) produce 85% of the total coffee produced in PNG
- Road buyers and coffee plantations produce 15% of total coffee produced in PNG

*Source: Sukot, Goroka Coffee Festival/Trade Fair & Exposure Visit Report, CIC Interview, 2005*

local farmers like cocoa, coffee and copra (which lack appropriate government support), and held up as the only successful industry in the sector.

In 2009, the PNG Government launched its National Strategic Plan Framework 2010-2050 and regional consultations on the agriculture sector were organised by the Consultative Implementation Monitoring Committee. The National Lands Development Program 2010-2030 was developed to support the government’s National Strategic Plans. The National Lands Development Program recommended changes to land legislation, including customary land registration, which was subsequently passed by PNG Parliament in May 2009. The legislative changes were made to facilitate multinational agro-industries’ access to more customary lands.

## Case studies showing the potential of customary land for economic and social development

The following case studies show there is adequate potential for economic and income generating activities on customary lands.

### Case Study 1: Upper Ramu Story (Madang Province)



Cocoa seedlings are distributed to farmers. Photo by Howard Sindana

The Ramu Valley Land Owners Association (RVLOA) evolved as a result of the Upper Ramu people's fight to protect their land, their lives, and their destiny from outside interests. Between 1998 and 2003, RVLOA's campaign was mostly responsive to the governments' (national and provincial) and the company's (Ramu Sugar Ltd) plans for oil palm plantations, but in time RVLOA felt the need to be more proactive in its campaign strategies.

From 2003 onward there was a strong drive from local communities themselves to explore farming (peanuts, water melons, cocoa, vanilla, rice and other food crops) as a way forward, and that was incorporated into RVLOA's aspirations and plans. The implementation of those aspirations and plans was left to the local leadership within each Local Level Government (LLG) ward and to each village community.

The Sausi area in Upper Ramu (ward 11 of Usino LLG), has organised itself into three zones (1, 2 and 3) each of which works autonomously but in communication with the other two. Each of the three zones has its own planning committee appointed by the people within the zone, and the chair persons of each of the three planning committees are members of the overall planning/governing committee of what the people have named the *Sausi Poverty Reduction and Alleviation Group* (SPRAG).

Some achievements of the SPRAG so far include:

- seven cocoa fermentaries built and operating;
- one micro rice mill bought and operating;
- enough money raised to buy ten thousand cocoa seedlings from the Cocoa and Copra Institute (CCI) in Madang, which have been distributed to farmers;
- two water supply systems built by the people (one for the community and the other for the primary school); and
- on-going fundraising for the purchase of a six-tonne truck to serve the Sausi (ward 11) people.

All these are being funded by the people themselves.

SPRAG is not legally incorporated and people do not see any real need to. Smallholder (mostly subsistence-based) farming of rice, cocoa and fish are intensifying, without outside support. The people are in control of their own destiny.

SPRAG also set up a scholarship scheme for students. So far three students have graduated with Diplomas in Primary Education and another student is doing his final year at the Madang Lutheran School of Nursing.

Sausi (ward 11) does not have a ward development committee, mainly because they are too busy organising themselves around their SPRAG initiative, but also because they don't see any real need to form one. Despite not having a ward development committee, Sausi people have been able to initiate a scheme for collecting taxes, and they have even opened a community bank account where all ward monies like head taxes are deposited. All adult constituents of Sausi (ward 11) are required to pay taxes, and these are collected annually.

## Case Study 2: Women roadside sellers in Madang

A survey of women roadside sellers in Madang Province, PNG, was conducted by Tim Anderson of the University of Sydney in 2006. He observed the poor returns from the *Mama Lus Frut* scheme, the decline in diversity of produce at local markets as a result of oil palm domination, and the lack of income generating opportunities. Thus, he initiated a pilot study to examine income generating possibilities through increased crop diversification.

The survey showed that the average earning in the informal sector (roadside vendors) was considerably higher than the minimum and average rural wage in the formal sector. The survey also found that the relative economic success of roadside vendors relies to a large extent on access to good-quality customary land and proximity to major roads (Anderson 2008).

Summary of figures obtained from the survey (Anderson 2008).

### **Formal Economy (employees of industries):**

- As of June 2006, the minimum wage was 37.20 kina per week (Bank of Papua New Guinea 2006:S50).
- RD Tuna workers (mostly women) were paid 0.85 toea per hour. 46-47 hours a week = 40 kina (Sindana 2007).
- Ramu Sugar new oil palm plantation workers (mainly males) were paid 1.05 kina per hour (Sindana 2007).
- In early 2007, 50 male workers at the Ramu Nickel went on strike over wages of 10 kina a day (Albaniel 2007:9).

### **Informal Economy (roadside sellers):**

- 36 of 44 (82%) of people surveyed earned at least 50 kina per week, which is higher than the minimum wage of 37.20 kina.
- 22 of 44 (50%) of people surveyed earned at least 100 kina per week, which is three times more than the minimum wage.
- Roadside sellers surveyed attended markets less than five working days (an average of 2.93 days per week).
- Most reported that they had other sources of income.
- Most of those earning higher incomes had their success through some combination of betel-nut, peanut, melons and mangoes.
- 38 of 44 (86%) were engaged in growing and selling of export cash crops such as cocoa, coconut and vanilla. However, in no case did their income from export crops exceed their income from roadside marketing.

The survey of women food vendors in roadside markets showed they earned an average income that is three times higher than the national minimum wage or real formal sector wages for women, and more than four times higher than the income of women working under the PNG Oil Palm Industries' *Mama Lus Frut* Scheme. The roadside sellers achieve these by attending markets on an average of three days a week (Anderson 2008).

The survey covered the Trans Ramu Markham highway which links up with the Okuk highway. This area attracts many agro-business proposals for oil palm development because of its accessibility to the main highway and port services. However, the survey demonstrates that domestic, informal-sector markets can play an important role in the livelihoods of rural women in PNG (Anderson 2008). These findings have important implications in a country like PNG, where women are commonly perceived to be disadvantaged in terms of income generation opportunities. In fact, rural women and their families in PNG are lucky to retain fairly equitable access to good-quality productive land that supports subsistence activities, which is the key to rural livelihoods (Anderson 2008).

## Case Study 3: Kongo Coffee Ltd scheme

Kongo Coffee Ltd is a leading nationally-owned coffee mill and exporter in PNG. Kongo Coffee is unique because it does not have its own plantations to feed its mill; yet it is the fastest growing mill in PNG and is highly ranked for its quality exports to countries like Japan, U.S. and Germany. It is difficult to maintain quality control from smallholders' coffee production due to the lack of technical support and incentives among local farmers. However, Kongo Coffee devised an innovative approach to address this challenge.

Kongo Coffee Ltd works with 300 farmers from Elimbari (Chuave, Simbu Province). In order to ensure a reliable supply of high quality coffee, Kongo Coffee provides the farmers with free technical support on crop management and quality control measures from harvesting to processing. These 300 farmers are paid two kina more per kilo of coffee than the normal market price. For instance, if the price for parchment is five kina per kilo in the country, Kongo Coffee pays the farmers seven kina per kilo. This special arrangement has enabled Kongo Coffee to obtain a Premium 'A' grade (Elimbari Specialty Coffee) and break into the highly competitive Japanese and U.S. markets.

The 300 local farmers have their coffee plots on customary lands. While there is no written agreement between the farmers and Kongo Coffee Ltd, they are able to do business with Kongo Coffee and reap a better price for their coffee than other local coffee farmers in PNG. The 300 farmers are thus able to maintain customary ownership of their land and still participate effectively in the coffee business.

## Conclusion

Although its own findings and those of many NGOs show that customary land arrangements are economically and socially important in PNG, the government continues to downplay defects in the state-system and grossly exaggerate the need for customary land conversion, disguising it under a "voluntary" approach.

The economic potential of customary lands in PNG is fundamentally undermined and downgraded because of the government's plans for large-scale agro-business investments. It is a tragedy that the government's intentional neglect in providing incentives and innovative approaches to utilise customary land continues to strangle local initiatives that embrace local people's involvement in economic activities.

There is overwhelming evidence showing that customary land has the potential to assist economic development without altering its current status. This paper provided three cases studies, but there are many other untold success stories all over the country. What we need is more innovative approaches to economic development and greater scrutiny of the government's smallholder agriculture funding policies.

The current push by the government – with strong financial backing from major donors – for customary land reform and registration in PNG is facilitating a foreign agenda and constitutes a "death trap" for local communities who will, in the long run, lose their lands. Unfortunately, the formal sector is dominated by multinational corporations and accessing more customary land through customary land registration will simply expand their playing field.

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# Land registration, land markets and livelihoods in Papua New Guinea

**By Tim Anderson**

Tim Anderson is a Senior Lecturer in Political Economy at the University of Sydney.

Photo by Lara Daley

Customary land in Papua New Guinea (PNG) is a form of collective and inalienable title which adapts and sustains common benefits, over many generations. Unusually in the world, most people in PNG have access to land. However, this form of title is under persistent attack from international financial institutions, aid agencies, large corporations and some groups within PNG.

Under PNG law, customary land cannot be sold; however those wanting to commercialise this land have developed mechanisms to transform its character. The first step is land registration, a process which defines title and opens it up to transactions. An immediate problem of this is that a once priceless asset is opened to the vagaries of the commercial world, in a traditional environment where price often has little to do with value. On the few occasions where customary land has been registered, then leased, given over or sold, enormous disputes revolve around loss of benefits, or over sharing the benefits of land. The question of valuing customary land, therefore, is of considerable importance to the small landholders who happen to make up the vast majority of PNG's population.

This article considers what comparative histories and fuller valuations of subsistence production can tell us about the problems of commercialisation of customary land in Papua New Guinea. Is this a neocolonial drive for dispossession, consistent with the colonial history of registration, or is there evidence that it represents the modernist claim of opportunities for subsistence farming families to enter the cash economy?

Papua New Guinea has probably the most equal distribution of land on earth. Commentators generally accept that 97 percent of PNG's land is owned by families and administered by clan leaders under customary law. This form of ownership, recognised by law, is recorded in local knowledge and tradition, not in a government register or database. While many modernists (e.g. Hughes 2004, Lea 2004) insist that customary land is a barrier to development, some western commentators (e.g. Fingleton 2004) accept that customary land groups are essential to the viability of communities. Unlike in Latin America and India, there are no big landlords. PNG is a country in which the colonial regimes (British, German and Australian, from 1884 to 1975) did not markedly upset traditional land tenure. Nevertheless, commercial operators such as logging companies, large plantations and miners have often carried out operations on leased customary land.

The discussion here presents a historical perspective on land registration, tries to explain the failure of land markets in PNG, compares livelihood options for customary land owners and then raises some questions over proposed land commercialisation in PNG.

## 1. A historical perspective on land registration

AusAID, which has run land titling and administration projects for decades, claims that these projects enhance the security of land rights and target rural poverty (AusAID 2000). In Papua New Guinea, AusAID put many millions of dollars into land projects linked to forestry, natural resource information systems, regional development, coastal management and direct "land mobilisation" (see Rusanen 2005). Bachriadi (2009: 16) says that when AusAID, World Bank and recipient government land projects in the region are added together, they amount to almost a billion dollars. The aim of such projects has been to organise for either (i) the leasing of customary land or (ii) shifting whole areas of land under customary title into a registered title system, where land can be mortgaged and sold. At this stage, of course, the customary character of land breaks down completely. More recently AusAID released a report called *Making Land Work*, which includes some recognition of the value of customary land; however this has not changed policy. Indeed the report states: "*Making Land Work* does not seek to advocate any particular policy options or models. Nor does it necessarily reflect AusAID or Australian government policy. It [is] an information resource" (AusAID 2008: vii). This disclaimer happens to reflect the Australian Government's lack of a clear policy behind its Pacific land programs.

Powerful interests have not been so hesitant in expressing opinions. Giant mining companies such as BHP have been directly involved in World Bank land titling projects across the Asian region (Burns et al 1996). These powerful interests are backed by some academics (eg. Lea 2004), who have argued that the institution of customary land has obstructed agricultural productivity and output. Some even claim customary title is "the primary reason for deprivation in rural Pacific communities" (Hughes 2004: 4). In the general clamour for registration, arguments suggest the macroeconomic desirability of "mobilising" land for export oriented resource industries and cash crops such as oil palm. They assert that ordinary communities can better make use of their land assets through registration, which could provide greater recognition of customary tenure and thus access to mortgage finance, as well as potential income from leases. The banks, for their part, have made it clear they will not provide finance on land that cannot be exchanged.

Land registration processes clearly have their origins in the dispossession of indigenous peoples. On the African continent, in the colonial period, land registration was initially about colonists accessing indigenous land: "Almost all land registration systems introduced in colonial Africa before 1950 ...were primarily intended to secure European rights to land" (Dickerman et al 1989: viii). The Torrens Title system, introduced in South Australia in 1857-58 (see Esposito 2003), combined a system of registration with "indefeasibility", a legal protection from almost all other claims except fraud. This Australian colonial innovation, designed specifically as part of a process which denied all indigenous claims to land (see Reynolds 1987), was later adapted by French and British colonial regimes in Africa (Dickerman et al 1989: ix). Registration was also used for political settlements. In the conflict ridden kingdom of Uganda, for example, registration was introduced in 1900 to allocate lands to "members of the royal family, nobles and 1,000 chiefs and leading private citizens" (Dickerman et al 1989: x).

In the late colonial period, land registration for select groups of Africans ("native purchase areas") was introduced in Southern Rhodesia, "the result of a compromise whose principal goal was to assure Europeans exclusive access to freehold agricultural land". The Swynnerton Plan in Kenya in the 1950s similarly backed access to registered land for Africans, with modernist goals of "greater security to landholders, enhance the freedom to transact land and serve as a basis for agricultural credit" (Dickerman et al 1989: x-xi). These are essentially the same arguments used today by the World Bank. However, the Swynnerton Plan was also a response to rebellion at colonial rule, and was aiming to "create a class of African freeholders,

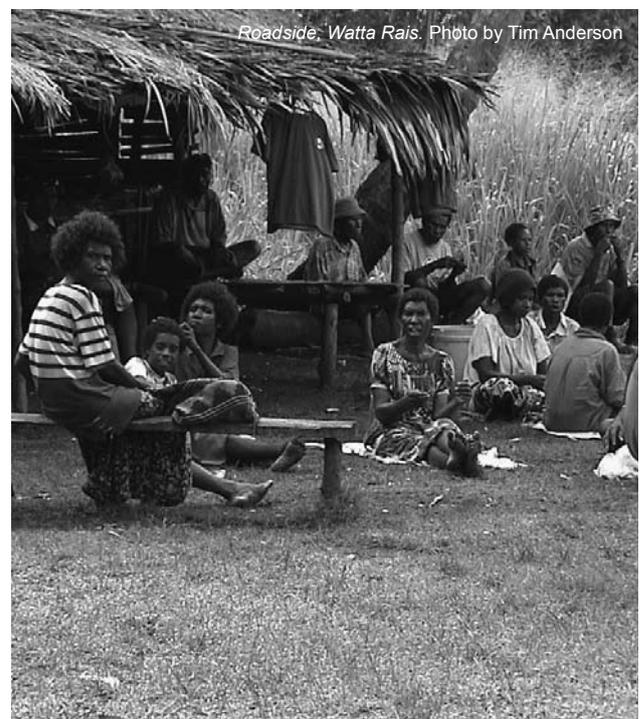
yeoman farmers,” who would have a stake in the regime (Dickerman et al 1989: xi).

Kenya became the African country with the greatest extent of registered land, and therefore also the greatest field for study of the lessons of registration. Reliance on the development of freehold land continued after independence. Lawrence, the chief British expert on and proponent of land registration, came to the view that registration should be used only when the economic advantages justified it. That is, when there was a “general demand” for registration, when the costs were not high and where there were likely gains in agricultural productivity (Lawrence 1970). More critical of the registration process was Okoth-Ogendo, former Dean of Law at Nairobi University, who concluded that the benefits were outweighed by specific disadvantages: the redistribution of political power, creation of economic disparities, generation of a “disequilibrium” in social institutions, failure to develop extension and rural credit, and a general failure to improve agricultural productivity. He noted that, of the new registered land owners, less than five percent were women; further, the new land regime was “creating new forms of stratification and status differentials” amongst the small farming sector (Okoth-Ogendo 1986).

Looking at the African evidence more recently, researchers from London’s International Institute for Environment and Development have concluded that “the hoped for benefits of registration do not accrue automatically and, in some circumstances, the effects of registration may be the converse of those anticipated” (Cotula et al 2004: 3). Registration may exacerbate land disputes, elite groups may claim land beyond their entitlements under the customary system, those without education or influence may find their land registered to someone else, secondary owners of land such as women “often do not appear in the land register and are thus expropriated”. In Kenya, there was “no significant correlation” between registered land title and rural credit, there were “negative repercussions” on vulnerable groups and “more generally, land registration reinforced class and wealth differentiation” (Cotula et al 2004: 4-5).

At its own independence in 1975, Papua New Guinea embedded in its Constitution two contrasting principles of land law. First, the recognition of customary law and customary land title, which had been maintained almost intact (except for some alienation of land for the townships, some plantations and returned soldiers schemes). Second, there was in principle recognition of the Australian colonial innovation of Torrens title. In contrast to customary title, Torrens title represents possibly the most highly commodified form of land title in the world. Since PNG’s independence, these two elements,

customary title and Torrens title, have enjoyed an uneasy coexistence, with registration hovering as the available means of converting the former to the latter. In between (in what is sometimes called a “middle way”) lies the mechanism of leasing customary land, under the PNG system of “lease-lease-back”. Here the customary owners nominally lease to the state, the state then provides a title which the custodian can use to lease their land to a third party, such as a logging company or an oil palm company. Nevertheless, due to the compensation provisions of lease law, it is virtually impossible for ordinary villagers to reclaim leased land. In these circumstances leasing land becomes a form of self-dispossession.



## 2. The failure of rural land markets

The main obstacle to land registration in PNG is that it is unwanted; there is no popular demand for it and, on the contrary, popular opposition has been expressed strongly on several occasions, sometimes leading to loss of life (see Uni Tavor 2001). The second obstacle is the absence of a functioning rural land market, one that might deliver some satisfaction to all parties concerned. The small amount of rural land that has been given over, leased, sold or simply stolen from customary owners is riddled with disputes. These disputes involve complaints about the misappropriation of customary land (e.g. Yambai 2003), complaints of environmental damage to the land and to surrounding areas (e.g. from logging and mining on customary land), complaints over the failure of promised benefits from land development (e.g. promised roads or health centres) and complaints

concerning the unfair sharing of benefits of commercial development (e.g. from plantation cash crops; Koja 2005). The persistence of these complaints indicates the endurance of belief in customary rights and responsibilities. The complaints also demonstrate the extent of dissatisfaction with past land agreements and land transactions. When we look at some of the lease values, it is not hard to see why there is dissatisfaction.

Lease values on rural land (relying on the economic liberal principles of willingness to pay and prior transactions) have come up with values as low as 20 kina per hectare per year, plus some royalties (Gou and Higaturu 1999). In one case, royalties appear to have lifted 20 kina rents to 100 kina per hectare per year (King 2001; Higaturu 2003). In another case, a group of West New Britain villagers leased over 700 hectares of land for forty years for only 20 kina per hectare (Mara et al 1999). Valuer-General schedules on rentals for residential, commercial and industrial land show much higher values (DTI 2001) but these are mostly urban based and reflect the highly restricted supply of urban property.

Rural land markets in PNG are highly limited; the customary land owners are asset-rich, cash poor and have very little information on the real opportunity cost value of their land. Better information on the opportunity costs might encourage higher lease values, but an oversupply through large scale registration and transactions could lower them.

One example of the broader dissatisfaction with rural land transactions can be seen in the oil palm industry, where there are multiple land disputes associated with estate, mini-estate and land settlement scheme (LSS) land – in other words with all the forms of land tenure associated with oil palm. These disputes are aggravated by customary landowners observing large amounts of money being extracted from traditional lands by oil palm mills, and the proceeds not being properly shared by local communities. There have been ongoing conflicts on the LSS blocks in both Hoskins (West New Britain) and Popondetta (Oro). In 1993 settlers on 173 leased blocks at Kavugara (WNB) abandoned their block following pressure from local customary landowners. This land was handed back to the original owners, who developed part of it as a mini-estate, and then leased it to the local milling company (Koczberski et al 2001: 124). Similar evictions occurred in Popondetta, and a major election issue in 1992 was “Oro for those from Oro.” Many blocks were abandoned across all LSS divisions (Koczberski et al 2001: 128). At the root of these land conflicts is customary owner non-acceptance of dispossession, and a maintenance of relationships with ancestral land, despite lease or even “sale” of land.

In 1999, the Higaturu company in Oro Province extended its plantation lands by acquiring 20-year leases on customary land for “mini-estate” plantations. Lease-lease-back arrangements go through a formal process of the land being leased to the state for a “peppercorn rent” (say 10 kina) then leased back to the company, with the state playing a protector’s role over the use of precious customary land. The Gou lease involved a 20-year lease on 91 hectares of land, with a set rent of 20 kina per hectare and royalties at 10 percent POPA per tonne FFB (subject to review) (Gou and Higaturu 1999). “10 percent POPA” means 10 percent of the farmer gate price per metric tonne. The Heropa lease, for 88 hectares, went through some negotiations in which the landowners were unsuccessful in raising base rents and royalty percentages. They had little bargaining power. Actual payments to the Heropa group of landowners in 2001 suggest that rents were also fixed at 20 kina per hectare per year, with royalties at about 10 or 15 percent of the farm gate price (King 2001; Higaturu 2003). This amounts to an annual royalty of about 80 kina per hectare. Putting the rent and royalty figures together we come up with a combined land value payment of about 100 kina. A payment of 100 kina per hectare per year might seem significant for “unused” land held by cash poor families; however it is a very small fraction of the potential earning capacity of good agricultural land in PNG.

This example from the oil palm industry demonstrates that the value of customary land has been set at a nominal and extremely low rates. “Low” may also mean zero. In calculating the “costs” incurred by village oil palm farmers, for the purpose of a profit sharing agreement with the milling companies, Burnett and Ellingsen (2001: 31) did not include any rent component. The fixed capital and



Madang market. Photo by Tim Anderson

depreciation costs of the company were considered as costs, but the villagers' contribution of customary land was not. However, customary land clearly has alternative economic uses which are precluded by serving the large local mill. It does seem to be a common non-indigenous assumption that customary land, because of the virtual absence of rural land markets, has no economic value at all. Yet such an assumption has serious consequences for small families.

My calculations of subsistence values (Anderson 2006a) show that a hectare of customary land can easily produce several thousand kina per year in food and housing value equivalent, as well as another several thousand kina per year in cash crop revenue. Customary owners are to some extent aware of this value; so why have some of them agreed to rents of between 20 and 100 kina per hectare?

I suggest several factors are at work in this "market failure":

1. Landowners generally lease just some of their land, maintaining enough for houses and gardens. This is not necessarily "surplus" land, as fertile agricultural or forest land is most often targeted by those wanting access. However, at the same time, land that has not been developed for gardens is not necessarily given an exchange value, and the strong custom of sharing assets has not always required a market "premium".
2. The lessees are most often a single company, and often a company backed by the regional or national government. There is no real competition, in the sense of another bidder for the lease. Thus "competition", the key ingredient of the liberal theory of "allocative efficiency" in markets, is missing.
3. Cash poor, asset rich families are vulnerable in exchange, as there are pressures to earn money to pay their children's school fees and health service fees. They are vulnerable to cash offers, and can easily undervalue their assets.
4. Cash crops are valued in exchange terms, but undeveloped or potential cash crops are often not factored into the calculations of customary land owners with little information and little education.
5. The subsistence value of land (for most villagers with productive land) is usually regarded as a given (until it is taken away) rather than an equivalent exchange value, which might have to be compensated. This is particularly the case for customary land owners with little information and little education.



6. False promises of the likely benefits from "development" are common in PNG. Logging companies promise roads and health centres, which often do not materialise. Mining and logging companies do not properly advise of environmental and social impacts. Oil palm companies promise inflated income opportunities. Poor families are vulnerable in the face of such misinformation.
7. Finally, there is fraud in the setting up of Incorporated Land Groups (ILGs) and the leasing of customary land. One such case at Collingwood Bay (Oro Province) was overturned by the courts, in 2002 (Tararia 2003).

Combinations of these factors, I suggest, have led to a massive undervaluing of customary land in PNG, on the few occasions that there have been transactions. A general sense of this undervaluation continues to fuel substantial dissatisfaction and disputes over land.

### 3. Land and livelihoods in Papua New Guinea

In face of the failure of PNG's rural land "markets", we need some means to estimate the minimum value of customary land, not necessarily to determine a sale or lease price, but at least to indicate what quantum of compensation lease prices would have to meet. The simplest way to do this is to sum the estimated opportunity cost of minimal subsistence (food and housing) production, plus some measure of the current cash crop production on customary land. This can conveniently be done per nuclear family, which in Papua New Guinea represents two adults and four or five children.



Customary land has important subsistence value, as well as cash crop potential, even for those participating in large cash crop industries. This is noted in practical surveys, though usually not given a monetary value. Koczberski et al (2001: 50 & 57-58) note that about 80 percent of the diet of Kavui and Popondetta LSS farmers was from garden food, and that most women (100 percent on LSS blocks and 52 percent on village oil palm blocks) regularly sold market food, many relying on the market as their main source of income.

Based on food market values and a consumption survey I estimated the subsistence value of food and housing from customary land at a rough average of 13,400 kina per year (see Anderson 2006a). This figure represents the amount an average family would have to spend on food and housing, in local markets, if they did not have their land and gardens. This subsistence figure is in most cases greater than the cash income from crops sold by families.

The assumptions behind these calculations are as follows: first, production on customary land has been reduced to an estimate for an average family of six or seven; second, land alienation in the model means complete dispossession – where, in practice, only a portion of the family's land might be leased. Third, account is made for the different prices in regional town and capital city markets. Fourth, "subsistence" value was only estimated for food and housing, and so excludes many other benefits from customary land (see Powell 1976), such as access to materials for medicines, fuels, fences, weapons, tools, canoes, textiles, string bags, cords, musical instruments, artworks, articles of personal adornment, ritual and

magic (the equivalent value of these resources is much more difficult to calculate.). Fifth, the additional costs of urban lifestyles and processed food consumption have been excluded. Estimating the actual opportunity costs of customary land in particular circumstances is complicated; however the principle of a real opportunity cost is, I suggest, very clear. Daily consumption figures were then multiplied into an annual figure, which could be set alongside annual cash income and annual rents in regional towns. The annual cost of purchasing the food consumed by such families ranged from 3,431 to 6,169 kina (in regional markets) and 7,260 to 11,388 (in Port Moresby). I have rounded this to create a value range of 3,400 to 11,400 kina per year, or an average of 7,400 kina as an equivalent value of the family's annual food (Anderson 2006a).

Rental equivalent values are difficult to apply, as town housing is limited and expensive, while village housing is constructed cooperatively, mostly from local materials, and is rent free. School teacher rentals in villages in Madang and the Highlands seem to range from zero (where housing is simply provided for the teacher) to 20 kina per fortnight (Sinemila 2004; Paol 2004). But teachers' accommodation is a special case. A more likely alternative housing option for landless families is settlement housing, on the fringes of the towns. However I have chosen "basic" town rental housing as the most reasonable equivalent. The annual cost of housing in Madang town, can be as much as 1,500 to 2,000 per month for a "decent" house; however a "basic" house in town would rent for 500 kina per month, or 6,000 kina per year (Chitoo 2004). This seems the closest substitute for secure, village housing. The figure of 13,400 kina per year "subsistence value" is thus gained by summing subsistence food (7,400) and basic housing value (6,000) equivalents (Anderson 2006a).

What about cash crops, whether crops grown specifically for market or income from sale of excess garden produce? In two pilot studies of small farmers' cash crops in Madang and Oro Province (in 2004 and 2005) I asked about their crops and their market income. While it is not possible to say that these pilots are representative for their regions, a few important observations can be made.

1. Virtually all small farming families (almost all on their own land) relied on cash income from markets, and marketed a mixture of crops for domestic and export markets.
2. Cash income from crops varied widely (some families also had outside work), from several hundred to several thousand kina per family per year. The median cash income was 3,000 and 4,200 kina, for the Oro and Madang pilot groups, respectively.

3. Most families had one hectare or less under cultivation, though some worked up to 2 hectares, and many oil palm farmers worked up to 4 or 6 hectares. The oil palm farmers had to tend subsistence gardens, on top of their oil palm trees.
4. Those engaged in the oil palm industry had medium incomes, though not the highest incomes of the two groups. The oil palm area seemed to be associated with lower general diversity of crops marketed (Anderson 2006b).
5. The highest income earning families (some earned up to 16,000 kina per year) were those farmers who focused on two or three crops for the domestic markets (typically peanut, betel nut and fruits) plus a couple of export crops, which could be companion planted (such as cocoa, coconut and vanilla) (Anderson 2006b).

These are conservative estimates, which do not take into account a range of other benefits that accrue from the holding of customary land. Any variant of these figures is impossible to reconcile with the current rural lease rents of 20 to 100 kina per year.

Table 1 shows the great disparity between rural land rents and actual production value from land, whether subsistence or commercial. The data on oil palm returns comes from estimates based on the Indonesian experience (Grieg-Gran 2009: 13). Much of this was copied across in the ITS Global study (2009), which then added (without much explanation) a much higher figure.

Apart from the great disparity between rural rents and productive value of land, I draw attention to the fact that the combined value of subsistence production for consumption, combined with cash crops, is greater than any of the commercial oil palm options, with the exception

**Table 1: Rural customary land in PNG is undervalued**

	Per hectare/year (kina)
Rural lease rents (Oro Pr.) *	20
Rural lease rent plus oil palm royalty (Oro Pr.) **	100 (est.)
Subsistence consumption value (Madang, WHP) ***	13,400 (est. av)
<b>Commercial returns</b>	
Small holder cash crops (Madang, EHP) ***	3,100 (est. av.)
Smallholder oil palm +	2,553 (US\$960)
Large scale oil palm +	8,884 (US\$3,340)
Large scale oil palm ++	24,671 (US\$9,275)

Sources: \*Gou and Higaturu 1999; \*\*King 2001 & Higaturu 2003; \*\*\*Anderson 2006a; +Grieg-Gran 2008; ++ITS Global 2009 Note: conversion rate used is 2.66 kina = 1US\$

**Table 2: Formal sector incomes are very low**

	Average weekly earnings (kina)
<b>Formal sector incomes</b>	
Ramu Sugar basic wage, 2006 (Madang Pr.)	42
RD Tuna factory wage, 2006 (Madang Pr., women)	34
Ramu Nickel construction wage, 2006 (Madang Pr., men)	50
VOP/LSS oil palm growers, 2006 (Oro Pr.)	61
LSS growers, 2002 (Oro Pr.)	43
Mama Lus Frut income, 2000 (WNB Pr., women)	28
National minimum wage, 2006	37.20
<b>Informal sector incomes</b>	
Informal sector survey 2003 (Central Pr.) *	158
Informal sector survey 2003 (ENB Pr.) *	124
Informal sector survey 2003 (Morobe Pr.) *	130
Informal sector survey 2003 (Western Highlands Pr.) *	138
Women roadside sellers, 2006 (Madang Pr., women)	138

Sources: from Anderson 2008, except \* Sowe et al 2003

of the ITS Global figure. In any case, it should be clear that the great bulk of the value of oil palm production goes to the company, and not to the leasing or participating local farmer.

The problem for the customary land owner in face of a modernisation process which seeks to alienate land and propose greater engagement with the formal economy, is compounded by the poor prospects offered by PNG's formal sector. As Table 2 shows, most of the wages, or returns on programs which engage with the commercial plantations, are significantly lower than many of the surveyed informal sector activities. And most of these activities are carried out alongside (i.e. supplementing) subsistence production on customary land. Alienating land and seeking options in the formal sector looks to be a very bleak path for ordinary people.

#### **4. Valuing land and livelihoods can inform choices**

Neither the historical experience of land registration in Africa nor the PNG experience supports the argument that land commercialisation in PNG will benefit customary land owners. In particular, the precedents look bad for promises of rural credit, greater security of title and greater agricultural productivity. The existing value of subsistence and cash crop production, when compared with the current value of land leases, suggests a great undervaluation of customary land is taking place. It also seems that the PNG Government, in its role as protector of the interests of customary owners (through the lease-lease-back system) is failing in its responsibilities by allowing such low rural rents.

However, the role of the state is not made easier with the combined forces of banks, mining and logging companies, aid agencies and western academics joining in the chorus for land registration. Commenting on an earlier version of my subsistence value calculations Curtin and Lea (2006: 172) express incredulity that customary land could be delivering many thousands of kina in present value to its owners. They do not believe that PNG landowners "would sell themselves short" in land markets, where rents are as low as 20 kina per hectare. They correctly note that a minimum sale figure for a hectare of land, adding up opportunity costs over many decades, would be very high indeed. But that is the point: land is so valuable as to be virtually priceless, a point PNG customary owners have repeated many times. The point of land value calculations here has been to point to the inadequacy of market compensation, not to indicate a practical price that might encourage transactions.

Some time back, Bernard Narakobi wrote: "because land is eternal, it is held in trust for succeeding generations" (Narakobi 1988: 8). Indeed, it is precisely the inter-generational value of land that renders such calculations inadequate, and helps draw our attention to the danger for communities in converting such a precious and potentially sustainable asset into some short term cash. It seems to me the historical record, and current valuation evidence, places a strong onus on the advocates of land commercialisation in Papua New Guinea to address these questions:

1. Why should customary owners not see land registration and its associated promises as a step towards the dispossession of indigenous peoples, the purpose for which it was explicitly designed in the colonial period?



2. Why should PNG not have proper regard to the sad lessons of registration in colonial and post-colonial Africa?
3. How could registration possibly keep pace with family changes (adoption, migration, births and deaths) in the way that customary law now does? Is it not a certainty that many thousands of people will be left out of registers, due to the inability of databases to be regularly updated?
4. How could the formal dispossession of women be prevented if and when registration takes place, and entrenches the names of male clan leaders in patrilineal areas?
5. What can justify such low valued rural leases (20-100 kina per hectare per year), when the value of domestic cash crops on such land can easily amount to thousands of kina and the value of subsistence food and housing is many thousands of kina?

These questions deserve wider consideration.




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# Incorporated land groups and the registration of customary land: Recent developments in PNG

**By Almah Tararia  
and Lisa Ogle**

Almah has worked with various groups including Individual and Community Rights Advocacy Forum and the Environmental Law Centre. In 2005, Almah joined the PNG Eco-Forestry Forum and worked as instructing solicitor in two major court challenges against the largest logger in PNG – a Malaysian logging giant and PNG Forest Authority. Almah now provides environmental legal consultancy services to various groups including the Wildlife Conservation Society.

Lisa has practised in the area of environmental law since 1994. From 1995 to 2000, she worked as a solicitor with the Environmental Defender's Office in Sydney, and in 2001 to 2002 she worked with the United Nations as its Environmental Policy Advisor in East Timor. Lisa now works as an environmental legal consultant, specialising in climate change law and carbon trading for tropical deforestation.

Photo by Lara Daley

Papua New Guinea (PNG) has one of the highest levels of customary land ownership in the world, estimated at about 97 percent. However, in practice, this apparently high level of local control has not always been reflected in effective control over land or natural resources. This has been due in large part to the use of incorporated land groups (ILGs) as the main vehicle for facilitating landowner representation and benefit sharing from natural resource development, as ILGs have generally lacked accountability and transparency for the landowners they are intended to represent.

In 2007, the Government of PNG introduced sweeping legislative reforms intended to remedy the defects in the manner in which ILGs are registered and managed.<sup>1</sup> At the same time, legislation was passed establishing a new procedure by which ILGs can voluntarily register the title to their customary land, thus releasing it for development.<sup>2</sup>

These policy changes bring both opportunities and risks for landowners within the current development context of PNG. Customary landowners are under increasing pressure, both from within their own communities and from external sources, to make their land available for development. These pressures are many: urban expansion, industrial logging, oil palm development, mining and

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<sup>1</sup> *Land Groups Incorporation (Amendment) Act 2007.*

<sup>2</sup> *Land Registration (Customary Land) (Amendment) Act 2007.*

more recently, carbon sequestration.<sup>3</sup> Indeed, the National Land Development Taskforce, which recommended that changes be made to the ILG and land registration system, had as its key focus the issue of how to release land for such development purposes.<sup>4</sup> Yet serious concerns remain that land registration should not compromise the ability of local communities to continue to access their customary land: almost 85 percent of Papua New Guineans depend on customary tenure for food, water and shelter for survival.<sup>5</sup>

This article describes how these recent policy changes will affect ILGs and land registration, and concludes by identifying some of the preconditions for their ultimate success.

## Historical context of ILGs

Since 1974, landowners in PNG have been able to form a corporate body under the *Land Groups Incorporation Act 1974* (Land Groups Act). Although the intended purpose of the Land Groups Act was to allow ILGs to manage their own customary land, ILGs have not generally been used for this purpose, partly because complementary land registration legislation was not enacted at the same time.

Rather, ILGs have largely been used as a “short cut” to obtain landowner consent for resource exploitation, such as for industrial logging, and have also been used as a mechanism to distribute benefits to landowners from forestry, oil and mining projects, although there are frequently complaints that benefits are not distributed fairly.<sup>6</sup> These uses may in part explain the enormous proliferation and fragmentation of ILGs. One commentator estimates that in 2004 there were over 10,000 ILGs registered, with 10 to 15 new applications being received daily.<sup>7</sup> Given that, from a population of about six million people in PNG, there are about 850 language groups (clans or *wontoks*), the proliferation of ILGs would appear to indicate a widespread opportunistic use of the ILG mechanism.<sup>8</sup>

The Land Groups Act 1974 established a very lax process for incorporation, and the incorporation process itself has been very poorly administered by the Department of Lands and Physical Planning, which has been severely understaffed. The consequence of this is that the ILG mechanism has been widely misused, to the detriment of those landowners who may have been excluded from the incorporated group or who fail to receive any benefits.<sup>9</sup>

## Incorporated Land Groups

Recent legislative changes have attempted to remedy some of the problems involved in incorporating and managing ILGs, through the *Land Groups Incorporation (Amendment) Act 2007* which was passed by the National Parliament on 19 March 2009.<sup>10</sup>

The amendments have introduced two major changes to the ILG process: one is to tighten the requirements for incorporation; the other is to improve the manner in which ILGs must be managed – each of which are discussed below.

### New requirements for incorporation

The *Land Groups Incorporation (Amendment) Act 2007* imposes much stricter requirements on membership. For example, it will no longer be possible for a person to be a member of more than one ILG – indeed members must provide a declaration stating that they are not members of another ILG.<sup>11</sup> In this regard, an application for incorporation must now contain a list of all proposed members of the ILG (which was previously optional), and must include the original birth certificate (or a certified copy) of each person who claims membership of the group.<sup>12</sup> However, as noted by some non-government organisations in PNG, this requirement may be unrealistic and may encourage the fabrication of birth certificates given that hardly any births in remote areas are registered and many elderly citizens do not have one.<sup>13</sup>

<sup>3</sup> The mechanism for paying governments and landowners carbon credits for retaining forests which might otherwise have been logged, thus releasing carbon, is known as Reducing Emissions from Deforestation and Forest Degradation (or “REDD”) credits. REDD payments can also be described as Payments for Environmental Services. The Government of PNG is currently developing its policy and legislative framework for REDD.

<sup>4</sup> National Research Institute (2007) *The National Land Development Taskforce Report: Land Administration, Land Dispute Settlement, and Customary Land Use Development*, NRI Monograph 39, p. xv.

<sup>5</sup> *National Land Development Taskforce Report: NGO Response*, November 2008, p. 8.

<sup>6</sup> See Filer, C. (2007) Local Custom and the Art of Land Group Boundary Maintenance in Papua New Guinea, in Weiner, J. F. and Glaskin, K. (eds) *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*, ANU, E-Press, p. 135.

<sup>7</sup> Fingleton, J. (2007) A Legal Regime for Issuing Group Titles to Customary Land: Lessons from the East Sepik, in Weiner, J. F. and Glaskin, K. (eds) *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*, p. 31.

<sup>8</sup> Cammack, D. (2008) *Chronic Poverty in Papua New Guinea: Background Paper for the Chronic Poverty Report 2008-2009*, Chronic Poverty Research Centre, p. 6, online at: [www.chronicpoverty.org](http://www.chronicpoverty.org)

<sup>9</sup> See Filer, C. (2007) Local Custom and the Art of Land Group Boundary Maintenance in Papua New Guinea, in Weiner J. F. and Glaskin K (eds) *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*, ANU, E-Press.

<sup>10</sup> *The Land Registration (Customary Land) (Amendment) Act 2007* was passed on the same day. Note: as at 30 January 2010, neither of these Acts were in force as their commencement date has not yet been published in the National Gazette. Copies of the Acts as passed are not yet publicly available and have therefore not been sighted by the authors who have relied upon the drafts of the two Bills in Appendices 1 and 2 of the Report by the Constitutional & Law Reform Commission, May 2008. As at 31 January 2009, the *Land Groups Incorporation (Amendment) Act 2007* was not yet in force as it is still awaiting certification. The authors have only cited the version of the Bill contained in Appendix 1 of the Constitutional & Law Reform Commission’s Report dated May 2008.

<sup>11</sup> *Land Groups Incorporation (Amendment) Act 2007*, new s 5(2), First Schedule, cl 5.

<sup>12</sup> *Land Groups Incorporation (Amendment) Act 2007*, new s 5(2)(c), First Schedule, cl 4.

<sup>13</sup> *National Land Development Taskforce Report: NGO Response*, November 2008, p. 22.

The ILG must also declare all the land over which it claims ownership by providing a sketch of the boundaries of the land (not previously required), which must highlight any areas of dispute.<sup>14</sup> This is a significant improvement on the previous arrangements which did not require an ILG to identify its land boundaries, thus giving rise to many disputes. It is important to note, however, that while boundaries must be generally identified in an application, the creation of a new ILG does not result in the registration of land title, which is a separate and voluntary process (see section on land registration below).

### **New management obligations for ILGs**

ILGs are to be managed by management committees. One reason for the poor performance of ILGs to date has been the absence of clear guidelines for management of ILGs under the *Incorporated Land Groups Act 1974*, coupled with a lack of training and support for the executive officers of ILGs.<sup>15</sup>

The recent amendments to the *Land Groups Incorporation Act 1974* introduced many improvements to the way in which ILGs must be governed, including:

- The obligation to hold an Annual General Meeting each year;
- The requirement for each Management Committee to have between six to 10 people, at least two of whom must be women;
- The requirement for a quorum of at least 60 percent attendance at meetings in order for business to be transacted, with at least 10 percent present being of the other gender;
- A requirement that the Management Committee keep bank accounts, which must be open to inspection at all times by the Registrar, the dispute-settlement authority, or any ILG member;
- A requirement that the Management Committee maintain an up to date register of its members; and
- A detailed Code of Conduct for members of the Management Committee, which expressly prohibits “self dealings”.<sup>16</sup>

These provisions will give much needed guidance to the management committees of ILGs, but to be effective they will require a program of education and training in order for

the people on the committees to fully understand their new corporate obligations.

Finally, the *Land Groups Incorporation (Amendment) Act 2007* contains transitional provisions which stipulate that all existing ILGs will automatically cease to exist five years after the amending Act comes into force.<sup>17</sup> During the five year transitional period, existing ILGs can choose to reapply for incorporation, but must do so in accordance with the new provisions. Clearly it will be necessary for the government to adequately resource and train staff within the Department of Lands and Physical Planning so that it is able to meet its new administrative obligations under the new Act.

## **Land registration**

### **Protection of customary land**

Customary land enjoys special protection under Papua New Guinea law. It cannot be sold, leased, mortgaged or disposed of except in accordance with custom.<sup>18</sup>

The rationale for prohibiting dealings in customary land is described in the recent *Report of the Constitutional & Law Reform Commission (2008)*:

“...the [customary land] system gives the members of the community self-sufficiency and security, and unites them as a unit. Under existing law, customary landowners are protected from losing their land or becoming a landless class.”<sup>19</sup>

### **Land registration: the historical context**

The issue of land registration has a long history in PNG. Since the 1960s, customary land owners have been able to convert their customary land to private freehold under the *Land (Tenure Conversion) Act 1963* by applying to the Land Titles Commission. In 1987 the Act was amended so that ILGs and other customary groups could apply for registration of their land.<sup>20</sup>

However, in practice, very little land has been registered. Landowners have generally been reluctant to convert their customary titles to freehold for a range of reasons, one being that registration removes the statutory protection over the land thus allowing it to be sold, leased, mortgaged or subdivided. Upon registration, custom ceases to apply to the land which becomes permanently

<sup>14</sup> *Land Groups Incorporation (Amendment) Act 2007*, new s 5(2)(e), First Schedule, cl 6.

<sup>15</sup> These new provisions are in Division IIIA – “Management of Incorporated Land Groups” of the *Land Groups Incorporation (Amendment) Act 2007*.

<sup>16</sup> *Land Groups Incorporation (Amendment) Act 2007*, new s 14B, and Sixth Schedule.

<sup>17</sup> *Land Groups Incorporation (Amendment) Act 2007*, s 22.

<sup>18</sup> Customary land gains its protection from section 132 of the *Land Act 1996*, which provides as follows:

“Subject to Sections 10 [State acquisition] and 11 [lease leaseback], a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom, and a contract or agreement made by him to do so is void.”

<sup>19</sup> Constitutional & Law Reform Commission (2008) *Review of Incorporated Land Groups & Design of a System of Voluntary Customary Land Registration*, Report No 5, May, p 2.

<sup>20</sup> *Land (Tenure Conversion) Act 1963*, s 4 definition of “citizen” includes a land group, and s 7.

alienated.<sup>21</sup> Conversion to freehold is thus potentially very destructive of the traditional system of land ownership.

Another reason for the low level of registration is the poor administration by the Land Titles Commission of the registration process and the titles which are issued. The procedure for registering titles is largely inaccessible to landowners because of the cost and the extensive delays within the Land Titles Commission which deals with applications.<sup>22</sup> The prevalence of fraud and corruption within the land administration system means that titles can

be easily issued, tampered with, or destroyed, through poor file management or fraud.<sup>23</sup> These problems are amply demonstrated by the Collingwood Bay case (see case study below), in which the customary landowners were compelled to bring a lengthy and expensive court case to establish that their customary land had been leased without their consent before the state agencies involved (the Registrar of Land Titles and the PNG Forest Authority) would cancel the invalid titles and return the land to the customary landowners.

## Case study: Collingwood Bay case (1999 - 2002)

*Ben Ifoki & Ors v The State, Registrar of Land Titles, Keroro Development Corporation Ltd, and Deegold (PNG) Ltd [1999] OS 313 of 1999, & OS 556 of 1999\**

The Maisin-Wanigela people of Collingwood Bay in the Oro Province of Papua New Guinea own over 200,000 hectares of customary land. They have long rejected the use of their land for large-scale industrial logging or agricultural development.

However, in early June 1999, to the surprise of many customary landowners, barges began to arrive on the beaches near Collingwood Bay carrying bulldozers and other industrial logging equipment. After making inquiries, the Maisin people soon discovered that a few local people had incorporated a land group, the Keroro Development Corporation Ltd (landowner company), which had purported to lease 36,000 hectares of Maisin land to the state as a special state agricultural lease under the lease-lease-back procedures under the Land Act 1996. The lease was for a period of 50 years. The landowner company then sub-leased the land to a Malaysian logging company, Deegold (PNG) Ltd (Deegold) which in turn had applied to the PNG Forest Authority for a timber authority for agricultural land use clearance with the apparent intention of clearing the timber from the land and converting it to an oil palm plantation.

Upon discovering this arrangement, a group of about 43 Maisin landowners obtained an urgent injunction from the PNG National Court in mid-June 1999. The Court ordered a temporary stop to all logging activities on the land until the Court could decide whether the lease-lease-back arrangement was legal. The next day, the Lands Department cancelled the special agricultural lease between the State and the landowner company, but this still left the sub-lease to the logging company on foot.

The customary landowners argued that the land had been leased by the landowner company without their consent, and in May 2002, after a lengthy and expensive court case, the National Court declared the lease and leaseback to void. The Court also ordered the Registrar of Lands to amend the Register of Titles, thus restoring the land to its customary title. Finally, the Court issued a permanent injunction restraining the landowner company and Deegold from dealing or attempting to deal with the land and prohibited the PNG Forest Authority from issuing any timber authority, permit or licence to harvest forest products in respect of that area.

The Maisin customary landowners were represented in this case by the Environmental Law Centre in Port Moresby.

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\* Note: The judge in the Collingwood Bay case failed to give a written judgment in the matter. The authors have therefore relied on the following public reports of the case: "Collingwood Bay landowners reclaim land", Peter Maime, Independent, 23 June 1999; "Collingwood's landmark ruling", Eric Kone, Post Courier, Friday, 10 May 2002, p 3; Diwai, April 1999, Issue No 3, p 1 and 6; Diwai June-July 1999, Issue No 4, p 2 and 7; "The current legal and institutional framework of the forest sector in Papua New Guinea", Overseas Development Institute, January 2007, p 4.

In 1995 the World Bank triggered a revival of the debate on customary land registration when it imposed a condition that PNG undertake land reform as part of the Bank's structural adjustment program.<sup>24</sup> Subsequent attempts at land reform were abandoned due to strong community opposition until the debate gained momentum again with the National Land Summit at Lae in August 2005.<sup>25</sup>

The next major policy initiative was the release of the *National Land Development Taskforce (NLDT) Report* in February 2007 which had as its key focus the issue of how to access customary land for development purposes. The NLDT Report has been criticised by NGOs in PNG for a range of reasons, including its failure to include a gender analysis identifying the potential impacts on women of land registration, and its failure to include an economic analysis which demonstrates that landowners (and not just multinational corporations) will be better off economically if they pursue land registration.<sup>26</sup>

The NLDT Report was quickly followed in May 2008 by the Report of the PNG Constitutional & Law Reform Commission (CLRC) which contained detailed recommendations and draft legislation to improve the process for incorporating and managing ILGs, and for the land registration process.

### **New law for registering customary land**

In accordance with the CLRC recommendations, the Somare Government introduced the *Land Registration (Customary Land) (Amendment) Act 2007* (Customary Land Act), which was passed by the National Parliament on 19 March 2009.<sup>27</sup> Given the earlier controversy surrounding land reform, the Act passed with surprisingly little debate.<sup>28</sup>

The purpose of the Customary Land Act is to facilitate the voluntary registration of customary land to make land available for development through the use of ILGs.<sup>29</sup> Such land will be known as "registered clan land".<sup>30</sup> The intention is not for an ILG to register the whole of their customary land, but only those individual land parcels which are suitable for development. For landowners who wish to develop their land, this will provide an alternative to two options which are currently available: registration under the *Land (Tenure Conversion) Act 1963* (which results in permanent alienation), or a lease-lease-back arrangement.<sup>31</sup>

Applications for registration of clan land are made by representatives of an ILG to the newly created Director of Customary Land Registration.<sup>32</sup> Upon registration, a certificate of title is issued in the name of the ILG and the ILG can then lease or mortgage the land to raise funds for development. Customary law ceases to apply to the land, with the one exception that customary laws of inheritance will continue to apply to the members of the ILG (and thus the right to own the land, which is held by the ILG).<sup>33</sup>

It is not clear whether registered clan land can be sold or not, and this will remain unclear until such time as a copy of the Customary Land Act as passed by Parliament is made available to the public. The Report by the Constitutional & Law Reform Commission contains a clear recommendation that the *Land Registration Act* should be amended to prohibit clan land from being sold.<sup>34</sup> However, this provision seems to have been omitted from the draft Customary Land Bill which appears in Appendix 2 of the CLRC Report – thus omitting a critical safeguard which will prevent the permanent loss of registered clan land through sale.

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<sup>21</sup> *Land (Tenure Conversion) Act 1963*, s 16.

<sup>22</sup> The *Land Development Taskforce Report (2007)* notes that the Land Titles Commission had only one employee – the Chief Commissioner – who had no time to process the applications because she was fully occupied resolving land disputes concerning major project development sites (p 14).

<sup>23</sup> For a detailed review of the problems affecting land administration in PNG, see the *Report of the Committee on Land Administration* which forms Part 2 of the *National Land Development Taskforce Report (2007)*.

<sup>24</sup> For a history of the land reform debate in PNG, see the *National Land Development Taskforce Report (2007)*, pp 1 – 4.

<sup>25</sup> A report of the Summit was made to the Minister for Lands and Physical Planning, the Hon Dr Puka Temu, and sent to the National Executive Council, subsequently published as Webster, T. (ed.) (2006) *The National Land Summit: A Report on the Presentations and Recommendations*, Special Publication No 39, available from the PNG National Research Institute.

<sup>26</sup> *National Land Development Taskforce Report: NGO Response*, November 2008, pages 14 and 16. The NGO Response was prepared by various local NGOs in PNG, and was published by AID/WATCH on 4 February 2009. It is available at: <http://www.aidwatch.org.au/publications/papua-new-guinea-ngo-response-to-the-national-land-development-taskforce>.

<sup>27</sup> The *Land Groups Incorporation (Amendment) Act 2007* was passed on the same day. Note: as at 30 January 2010, neither of these Acts were in force as their commencement date has not yet been published in the National Gazette. Copies of the Acts as passed are not yet publicly available and have therefore not been sighted by the authors who have relied upon the drafts of the two Bills in Appendices 1 and 2 of the *Report by the Constitutional & Law Reform Commission*, May 2008.

<sup>28</sup> Pers. Comm: Dr Tim Anderson.

<sup>29</sup> A range of NGOs in PNG have criticised this approach, and argue that no justification has been given as to why the land registration process should take place through the ILG method: see the *National Land Development Taskforce Report: NGO Response*, November 2008, p 23.

<sup>30</sup> *Land Registration (Customary Land) (Amendment) Act 2007*: Objectives.

<sup>31</sup> Under the lease-lease back arrangement, customary land can be released for development if landowners lease the land to the government, who then leases it back to the landowners. The landowners can then sublet the land to a third party: *Land Act 1996*, s 11. This arrangement is mainly used in PNG to facilitate oil palm development.

<sup>32</sup> *Land Registration (Customary Land) Amendment Act 2007*, new s 34D(1). Note: it is not clear from the legislation whether the representatives must be elected representatives or whether they could be external people appointed by the ILG.

<sup>33</sup> *Land Registration (Customary Land) (Amendment) Act 2007*, new s 34N.

<sup>34</sup> CLRC Report, p 13, and p 50 (Recommendation 6-1).

## Changes to registration process

The Customary Land Act introduces two main changes to the land registration process. The first is that upon receiving an application, the Director must independently verify the membership of the ILG and make a preliminary check of the proposed boundaries to make sure that it is a legitimate application.<sup>35</sup>

The second improvement is that, once the Director has accepted an application on a preliminary basis, there is a more thorough process to identify any boundary disputes or competing interests over the land before registration occurs. For example, the Director must place the proposed registration plan on public exhibition for up to 90 days, and must call for and resolve any objections before a Certificate of Title can be issued.<sup>36</sup>

The Director of Customary Land Registration will clearly exercise a great deal of control over the whole registration process, and it will therefore be crucial that the Director operates in a transparent and open manner. Landowners already lack confidence in the Land Titles Commission to properly manage land titles, as files are often lost or misplaced, or the registration process may be subject to fraud or corruption.

The Somare Government has supported these legislative reforms by introducing changes to the system of land administration and the court system. A designated section for customary lands has been established within the Department of Lands and Physical Planning. To improve the system of dispute resolution in relation to land, and in accordance with a key recommendation of the National Land Development Taskforce, a single Land Court System is being established within the Magisterial Service to hear all land disputes in PNG.<sup>37</sup>

## Conclusion

The ILG mechanism and land registration have been beset with difficulties for many years in PNG. The Somare Government has recently embarked on an ambitious program of legislative reform intended to address these problems. With ILGs now being encouraged to register their customary land, the success of the land registration regime is directly linked to the ability of ILGs to operate openly and transparently. If the ILG process fails, the integrity of the land registration process will fail too.

Despite the more stringent provisions contained in the new laws, the success of the reforms for both ILGs and land registration will both depend in large part on the same factors, namely, the ability and commitment of the government to administer and enforce the new laws. Landowners are already reluctant to engage in land registration of their customary land under the existing system and are likely to remain so until the state can demonstrate that it has improved its system of land administration.<sup>38</sup>

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<sup>35</sup> *Land Registration (Customary Land) Amendment Act 2007*, new s 34E.

<sup>36</sup> *Land Registration (Customary Land) (Amendment) Act 2007*, new s 34E - L.

<sup>37</sup> *National Land Development Taskforce Report (2007)*, pp 86 – 87.

<sup>38</sup> This issue was identified in discussions at the National Land Summit in 2005: see Land Development Taskforce Report, p 4. See the extensive list of recommendations for improving the system of land administration made by the Committee on Land Administration in Part 1 (pp 4-14) and Part 2 of the *National Land Development Taskforce Report (2007)*.

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# Women in patrilineal and matrilineal societies in Melanesia

**By Rosa Koian**

Rosa Koian is the Information Services Coordinator of the Bismarck Ramu Group in Madang Province, Papua New Guinea.

Photo by Lara Daley

A Melanesian woman's role is usually associated with childbearing, yet she is more than that. As she brings children into this world she must make sure she secures a piece of the most important asset – land – for them. And as she uses this land to bring in food she adds value to the land and brings in valuable information and knowledge about the land.

Land is so important that it has not left the discussion table in public offices. While many from the West look at land for its economic value, the people of Papua New Guinea, especially women, look at it for social security. Land is the one thing that has kept Papua New Guineans going for more than 50,000 years.

In Papua New Guinea there are patrilineal and matrilineal societies whose main asset – land – is passed down through the male line and female line, respectively. Therefore, women's responsibilities in securing, protecting and maintaining land for their children vary between these two societies. Land is communally owned by clans who dictate how it is used. However, decision-making processes and the status of women differ greatly in these two societies.

In patrilineal societies, which make up about three quarters of Papua New Guinea, a woman hardly speaks up in public when it comes to land decisions, as men own the land and therefore make all the decisions regarding their land. However, she has the responsibility to convince her husband to decide what is best for their sons. This responsibility is not often easy in this modern world.

Some women in patrilineal societies also own land. This is possible if there are no male children in her family, in which case the land is passed on to the female children, usually to the eldest daughter. However, she is expected to pass this land back to a male child when she is old. In the meantime, while the land is in her custody, she depends on her male cousins or uncles to speak on her behalf.

For example, in a village in East Sepik Province, two women acquired land from their fathers because they had no brothers. The first woman had all daughters but only one survived. This daughter automatically claimed her mother's land. Now she is getting old and has named her eldest son to take the land. She has made her intention known to her uncles who have made a public announcement. The second woman had three sons and she named her third son to inherit her land when she died. Again, this intention was communicated through an elder male uncle who made sure the young man took over the land when he was old enough.

In the second scenario, the land went back to the male line as soon as her son was old enough. In the first scenario, the woman took care of the land and since she also had no sons, she passed the responsibility on to her daughter. As the rules dictate that the land must go back to a male child, her daughter is passing it on to her eldest son.

So in this case, the women are custodians of the land as long as there are no male members of the family alive.

A wedded woman in a patrilineal society is often a stranger in the clan. She is usually an outsider from another clan or from a neighbouring village marrying into the clan. As such, she must be on her best behaviour in the first couple of years for her mother-in-law. This will help her gain information and knowledge about her husband's clan and their land.

In order for her family to survive and be recognised in her husband's clan she must diligently observe the clan's requirements, study her husband's clan land boundaries and learn about how each piece of land can be used before setting out to use it. She must understand how decisions are made and know when and how she can display some disagreements.

As she gives sons to her husband's clan she assumes the responsibility of passing on her knowledge of her husband's land to her sons. Her sons would learn about their father's land from her first, as they are always with their mother up until the age of about 10. In their early years, she must take them out daily and point out where the land is. Usually this is done by her cultivating the land so that her sons know and feel the land they belong to and understand why they must protect it.

Her status thus depends on her ability to raise her sons well and educate them on their prized asset – the land – as well as meeting all other expectations from her husband's people. Her services as food producer, cook, nurse and more is lost to her own family when she leaves, but her husband's clan gains.

As the main food producer of the family, she is always on the land. She knows the physical form of the land and over time would grow and acquaint herself with it spiritually. Even though women from these patrilineal societies do not own land, they are acknowledged for their contribution in helping to keep the land within the clan – firstly by bearing male children who will help protect the land, but more importantly by working the land. The women make gardens, fish in the rivers, gather fruits, nuts, herbs, eggs or other food from the wild. By regularly keeping in contact with the land, the clan, especially the men, value them more.

Often it is the women who keep the history of the clan because they remember the stories associated with land acquisition well. In some societies, sons often seek their mother's or aunt's advice on the clan's history before they set out to discuss matters relating to their land. They also seek advice on the traditional processes involved.

In matrilineal societies (mainly the New Guinea islands region and Milne Bay Province), women own the land and therefore are responsible for land decisions in their clans. This ownership of land gives these women a relatively higher status in their communities compared to women in patrilineal societies. In Bougainville, a woman's decisions are conveyed through a brother or an uncle who speaks on her behalf and is trusted to convey her decisions at meetings attended by men only. The women decide the ownership and the usage of land.

Here the land is passed down to her daughters who pass it down to their daughters and so on. Unlike women in patrilineal societies, women in matrilineal societies do not have to leave the land they have known as children. Over the course of their lives they have studied their land and come to understand its value well. In this sense they maintain the longest relationship with the land, as they become one with it.

This gives these women more power as they do not have to move to make a new life like their sisters in patrilineal societies. They remain in their childhood neighbourhoods. They do not have to re-learn a new way of life or another history. They understand that their chief responsibility is to use the land in such a way that it continues to provide for them and their clan. They understand that in distributing the land they must be fair to all.

## The Challenges

Today, women in both patrilineal and matrilineal societies experience all sorts of pressures with regard to land. In patrilineal societies women must speak up if they want a future for their sons and women in matrilineal societies must not rely on their brothers and uncles.

This is especially important now as development agencies often by-pass women when they undertake consultations for development projects. Women in patrilineal societies must decide whether to save a piece of her husband's land for her son, or give her consent on behalf of her son for developments to take place on her husband's land. This is often a very painful experience as many women can see far into the future and while they already know the difficulties that lie ahead, they must also decide what is best for the present.

For example, mining and logging activities have pushed women in matrilineal societies so far that they have had to stand up and show some resistance. In Bouganville, women resisted the mine long before the mine started pouring out millions of kina. In Misima, Milne Bay Province, even though the mine is now gone, women remain scared.

Another trend that has not received much attention in the last decade concerns land acquisition, ownership and user rights.

These issues are important in cases where, for example, a woman from a patrilineal society marries into a matrilineal society. She would leave her land and her people and go to her husband's people and land as dictated by her culture. However, her sister-in-law, who is the landowner, has not left the land and may not even decide to pass some piece of land to her brother. He may be granted user rights and he will have to live with that as prescribed by his matrilineal culture. Alternatively, his wife could decide to take him with her to her people. Her brothers will welcome her and her family but again will grant her user rights to the land. So she is left out in this asset distribution.

On the other hand, if a woman from a matrilineal society marries into a patrilineal society she may leave her land temporarily to live on his land, but maintains all the decision-making powers. As she enters her husband's land she has gained a portion of it for her sons and her own land for her daughters.

So while this scenario works in favour of women in matrilineal societies as they accumulate more land through marriage, women in patrilineal societies must be stronger if they want to be recognised as genuine members of their clan.

Current economic development trends have also placed women in a tight spot as men strive to find ways to

bring in development, while all the time forgetting to involve women in the process. Land discussions without women's involvement will not achieve true development as Melanesians, men or women, are tied to the land, but women understand land better as the motivation is family survival.

Furthermore, development agencies are pushing for land registration in Papua New Guinea in order to facilitate development. This raises the question of what kind of development, and development for whom? Papua New Guineans have lived from their land for thousands of years, and land registration wants to alienate land from its people.

This is dangerous for people whose livelihood depends on the land. Land registration, whether voluntarily or other, is taking land away from people. While those pushing land registration argue that the land will remain with the people, history has proved that in the end, people will lose control of it and thus become dependent on other people. This will not solve the poverty problem. It will only add to it.

It is best to leave the land with the men and women who understand it better. Those who are pushing for large-scale developments must speak to the women who relate to the land better. Women in matrilineal societies own land and women in patrilineal societies are respected for their guardianship of the land.



Photo by Lara Daley



# The traditional economy as source of resilience in Vanuatu

**By Ralph Regenvanu**

Ralph Regenvanu is a Vanuatu Member of Parliament and Director of the Vanuatu National Cultural Council. This article is an edited version of a speech presented at “Pacific Islands and the World” Conference in Brisbane, 3 August 2009. The full speech is available at: <http://aidwatch.org.au/publications/the-traditional-economy-as-the-source-of-resilience-in-melanesia>.

Photo by David Becker  
*An exchange ceremony on Tanna.*

A survey undertaken by Oxfam in 2009 found that the impacts of the global economic crisis on families in Vanuatu had been negligible (Feeny 2010). The biggest impact reported by families was in fact from the global food crisis of late 2007 and 2008, which affected urban families reliant on imported rice and flour for daily sustenance, and rising transport costs resulting from the global fuel crisis of 2008. Generally, however, the global economic crisis has had little impact in Vanuatu compared to the massive impacts it has had in more industrialised countries. As the Oxfam report notes, one of the principal reasons for this is the very low level of integration of the great majority of our population into the cash economy.

Vanuatu, along with our two immediate neighbours, Papua New Guinea and the Solomon Islands, is among the last places in the world where the “subsistence economy” – which I prefer to call the “traditional economy” – still outweighs the cash economy in terms of providing livelihoods for the population. While today even the most isolated rural dweller needs cash to pay for tea, sugar, kerosene, metal implements, boat, ship or truck transport, and school fees, the participation of the great majority of people in the traditional economy is far more important and pervasive than their involvement with the cash economy.

In Vanuatu today, the great majority of people (roughly 80 percent) live in rural areas. Almost all of this 80 percent of the population:

- live in settlements (villages) with other members of their traditional extended families, on land that is theirs under the rules of custom;
- satisfy most of their food and other requirements using traditional methods and forms of land, sea and resource utilisation (e.g. gardening practices), on their customary land and sea;
- speak their indigenous language;
- are governed by traditional leaders (chiefs and chiefs councils);
- have their disputes resolved within communities by traditional leaders using traditional dispute-resolution approaches; and
- have participated in custom ceremonies which cement their place as members of their community.

In addition, a large portion of the other 20 percent of ni-Vanuatu living in urban areas also participate in and rely on the traditional economy to a significant degree. They utilise kinship networks to access food and other resources, provide manual labour, child care, aged care, and deal with their disputes in the traditional way.

The traditional economy constitutes the political, economic and social foundation of contemporary Vanuatu society and is the source of resilience for our populations, which has allowed them to weather the vagaries of the global economy over past decades.

### The benefits of the traditional economy

There are many important benefits that Vanuatu gains from the strength of its traditional economy. One of the most important is that everyone has access to land on which to make gardens for food, from which to access materials to make homes and from which to otherwise make a living. The traditional concept of the right to use land to make food gardens and access resources means that individuals or families who do not have access to their own customary land (or enough of it) to meet their needs can be given the right to use other families' land, with "rent" or "use rights" being paid for using the products of the land.

Another important benefit of the traditional economy is its excellent sustainable management of the natural environment. The main contributing factor to the New Economics Foundation's declaration of Vanuatu as the "happiest country in the world" in 2006 was our "extremely rich natural capita, with unspoilt coastlines and unique rainforests" (Marcs et al 2006: 35). This rich natural capital has been achieved through thousands of years of excellent resource management traditions and practices by our ancestors, traditions that are still practised today.

Another important characteristic of the traditional economy which provides many social benefits is that establishing, maintaining and mending relationships between groups (be they families, clans or larger communities such as villages, language groups or even islands) is the most desired outcome of any ceremonial activity undertaken. Consequently, there is a sense of a shared identity, "community" and "belongingness" among the large extended family groups that make up the basic building blocks of Vanuatu society. This gives a high level of social security for all family members.

Recognising that "many of the functions of modern growth – well-being, stability, equity, social cohesion and sustainable livelihoods for an expanded population – are also well provided for through Vanuatu's strong and deeply held customary values including its custom economy," a 2006 report sponsored by AusAID and NZAID stated that efforts to promote the traditional economy in Vanuatu "should be supported" (Bazeley and Mullen 2006: 12). To build resilience, we must make deliberate efforts to maintain the traditional economy where it exists in the Pacific and ensure that it remains a buffer from the uncertain global economy into the future. Some ways in which we could maintain and strengthen the traditional economy are outlined below.



Photo by Coch

## **Recognising the traditional economy in policy**

Most importantly, policy-makers at all levels must begin to do more to recognise the reality and the promise of the traditional economy. All too often in our national development plans and charters, and in our regional and international prescriptions for development in Melanesia, there is little or no mention of the traditional economy and the predominant role it plays in providing sustainable livelihoods and many of the sustainable development outcomes we say we wish to achieve. More regrettably, many policies and activities that are implemented in the name of development directly displace and erode this traditional economy. In terms of achieving many of the catchword markers of well-being in development-speak: “equity”, “environmental sustainability”, “food security”, “social security”, “good governance” and “social stability”, the traditional economy already provides an excellent foundation upon which they can be achieved.

The traditional economy has also proved its capacity to cope with the needs of a rapidly growing population – which is one of our greatest national challenges. As the 2006 report sponsored by AusAID and NZAID points out, “Although growth of Vanuatu’s formal GDP has not been spectacular, it must be realised that its traditional, largely non-monetarised, rural economy has successfully supported a 90% increase in the rural population since Independence (from about 95,000 in 1980 to an estimated 180,000 now).”

It would seem obvious, therefore, and “efficient” in terms of allocating and using resources and capacities already at hand as a basis for development, to focus on strengthening the traditional economy so that it can continue to satisfy most needs of the majority while also finding ways to develop its application to satisfying other non-traditional basic needs (in particular, access to health and education services). Governments also need to prioritise the putting in place of safeguards to prevent the growth of the cash economy from negatively impacting upon the traditional economy – that is, to adopt a “precautionary” approach to development through such means as proper and broad-based planning, genuine community consultations, thorough impact assessments, and so on.

### **“Count” the traditional economy**

A principal reason why the traditional economy does not feature in our current economic policies is that we are not measuring or quantifying the contribution of the traditional economy to national well-being. Unfortunately, the only measure of national well-being that seems to matter to

many policy-makers these days is that of Gross Domestic Product (GDP) per capita – a crude measure of only the cash value of activities or production. GDP per capita is a misleading measure of economic activity and well-being not only because it masks inequalities, but also because it often counts environmentally and socially destructive practices that undermine people’s well-being.

To use a current example from Vanuatu, the simple act of leasing and clearing a piece of land would add to Vanuatu’s GDP – and therefore count as positive “development of the economy” – because the lease of the land, the hire of the bulldozer and the chainsaw, the purchase of the fuel to run them and the payment of labour can all be counted in cash. What would not be counted in cash would be the loss of gardening land and access to bush resources for the children of the land-holding family for at least two generations; the cutting down of ancient trees and the clearing of bush that provides habitat for wildlife and holds the rainwater in the ground; the pollution of the air, land and water with fuel and chemicals; the destruction of cultural sites important to identity; the weakening of the natural sea barrier resulting from removal of sand; and whether the amount each labourer was paid constituted a decent living wage.

On the other hand, a large extended family of 40 or so people producing all the food and other materials they require to live from their land and sea areas, providing food to other families as part of traditional relationships, as well as safeguarding their natural environment and important places of identity for the benefit of their future descendants, do not add one vatu to the GDP.

Obviously, GDP as a measure of well-being does not reflect the many tangible social and economic benefits delivered by the traditional economy, but which do not have a cash value. The lack of recognition of the traditional economy in most policy is directly related to the lack of any measures we have for valuing it – it is indeed a truism that what we cannot measure, we cannot value.

In 2008, the Melanesian Spearhead Group at its Leaders’ Summit in Vanuatu endorsed a pilot project to develop alternative indicators of well-being for the Melanesian context that are able to take into account and measure the substantial traditional economy and its contribution to quality of life. This project is now being implemented with the proposed new set of indicators of well-being to be identified by 2011. We place much faith in this initiative to provide us with a tool to factor the traditional economy into policy making.

## **Making food security a primary focus of development efforts**

Climate change is making food security – and water security – the issues of our time. As the global food crisis demonstrated, over-dependence on imported staple foods can turn climatic or market phenomena on one side of the world into political and social crises on the other. Most people in Vanuatu already enjoy a high level of food security. Extending the food security provided by the traditional economy to our urban populations is a key measure that needs to be implemented to achieve food security across the board, as well as greater distribution of cash into rural areas. The greater processing of our traditional staple foods – such as bananas, taro, yams, cassava and sweet potato – is a key strategy to provide urban families with access to these staples and to get them to demand more, thus boosting rural production.

## **Maintaining customary land tenure as a basis for food security**

It is important to recognise that the high level of food security enjoyed by most of the populations in Vanuatu, the Solomon Islands and PNG comes from food gardening on customary land, and this is despite ongoing land disputes and the insecurity of tenure in conventional terms. One of the important principles of the traditional economy is that everyone has access to land on which to make gardens for food and access resources, even people with no traditional claim over the land being used. However, the ill-considered alienation of land from the traditional economy in Vanuatu through leasehold title, for example, is removing the means for ordinary people to be economically productive and enjoy food and social security, in addition to often massively degrading our natural environment. The maintenance of customary land tenure needs to be seen as part of the solution to shocks such as the global economic crisis, not an obstacle to development as it has been portrayed in the past.

## **Transforming our basic education system**

Of particular importance to maintaining the traditional economy is to ensure that our young people continue

to participate in it. To achieve this objective, it is essential that we transform the structure and syllabus of our basic education system to reflect and address the reality of the central role the traditional economy plays in providing livelihoods, security and sustainable development outcomes. It is a sad fact that our basic education system is still largely premised on the colonial rationale of producing bureaucrats to run the state administration. Formal schooling at primary and secondary levels actively contributes to the loss of the knowledge and skills that allow an individual to function as a member of their own community and a part of the traditional economy.

The ongoing loss of traditional knowledge and growing problems with marginalised youth are, I believe, a testament to the failure of our basic education system to provide a pathway to an appropriate and sustainable development which must have, at its base, a strong traditional economy.

## **Conclusion**

We must shift our thinking to consider the traditional economy not as a problem to be solved, but rather as an enormous asset to be utilised. Vanuatu is at a critical stage in its development where it can still continue to enjoy the best of both worlds – the benefits and the safety net of the traditional economy and the benefits of the cash economy and Western technology. In light of the experiences of the global economic crisis, the government needs to adopt and pursue development strategies for Vanuatu that strengthen and enhance the traditional economy, and revoke policies that displace and degrade it. The remarkable opportunity we are now presented with is to make renewed efforts to strengthen our traditional economy through innovative policies that integrate strategies for enhancing the traditional economy alongside our strategies for promoting economic growth. Better incorporation of the traditional economy into national development policies will expand the menu of options for our future generations. The traditional economy has been the key source of resilience in this global economic crisis. The question we need to ask now is: are we adequately planning for it to be able to provide this resilience when the next global crisis inevitably comes around?

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# Hijacking development futures: “Land development” and reform in Vanuatu

**By Lara Daley**

Lara Daley is former co-director of AID/WATCH. This paper is an edited version of a briefing paper released by AID/WATCH in September 2009. The author would like to thank the Search Foundation for supporting the field work undertaken for this article.

Photo by Lara Daley  
*Signs are erected along the coast of Efate highlighting that certain land is “private property”.*

*“There is a lands process that...technocrats have once again hijacked...taking it away from what the people really wanted to see and made sure that it has become a bureaucratic nightmare and nobody is going to be able to work with it.”*  
(NGO land advocate 2009)

## Introduction

Ni-Vanuatu<sup>1</sup> have a strong history of fighting for their lands and their right to determine their own development futures. Australian debates about land and development in the Pacific region, as well as donor programs emphasising growth-led development have consistently been at odds with ni-Vanuatu interests in supporting and strengthening their customary systems of land and the traditional economy.

This article provides an overview of the land situation in Vanuatu from pre-independence to today. It shows that Australian interests and aid relationships are often in opposition to the needs and aspirations of the majority of ni-Vanuatu and risk hijacking their development futures.

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<sup>1</sup>Ni-Vanuatu is a term which refers to the indigenous peoples of Vanuatu.

## Land and independence

*“The struggle for independence was mainly to do with lands because most of our lands were alienated in the first place. [W]e thought the best thing to do was to fight the two colonial powers and become [an] independent country so that we can have all our lands back. When we became independent all the lands were reverted back to the original owners, the custom owners that is.”*

(Community member 2009)

The loss of lands during the French-British Condominium sparked the political consciousness that led to the rise of Vanuatu’s independence movement. After independence in 1980, all lost or alienated land was returned to the rightful custom owners as dictated by the Constitution. According to Article 73 of the Constitution, “All land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants.” Importantly, it also states under Article 74 that “The rules of custom shall form the basis of ownership and use of the land in the Republic of Vanuatu” and Article 75 that “only indigenous citizens of the republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.”

However, following independence, a series of laws were introduced which facilitated the protection of European and foreign interests. Whilst some European planters were driven from the land, the majority were granted long-term leases, and existing titles within the Port Vila municipal area were protected by an urban leasehold system (Cox et al 2007).

Land booms resulting in the alienation of customary owners from their lands have been a key feature of Vanuatu’s historical and ongoing interactions with foreign powers. The first was in the 1860s with the establishment of European cotton plantations on the islands of Efate and Epi. By 1972 over a third of the country’s land had been seized

for agricultural purposes, alienating people from their land and livelihoods (Cox et al 2007). Even where customary landowners had not yet been evicted, the ground was literally sold or stolen from underneath their feet. Most recently the foreign controlled real-estate sector has fuelled a land boom resulting in 90 percent of coastal land on the main island, Efate, being alienated and developers moving further afield to Santo and Epi (Cox et al 2007).

## Leasehold loopholes and land alienation

*“Paradise for sale...around \$NZ150,000 (\$AUD120,000) will secure you 10,000sqm of virgin ocean front rainforest, coconut palms and tranquillity on Aore, Island, 1km off the coast of Santo in Vanuatu.”*

(First National Real Estate Advertisement, Island Spirit, Air Vanuatu Inflight Magazine, January – March 2009)

Since independence, the continued evolution of land and land related laws has served the interests of investors, whether or not this has been the intention. Land laws have been created in order for Vanuatu to develop economically and be attractive to investors, which can be seen as a clear departure from customary laws and the Constitution (see Table 1). The current model of “land development” driven by foreign investment is not benefiting ni-Vanuatu and hijacks their control over their lands and development futures.

Whilst the lease system is not technically or legally synonymous with the “sale” of land, such as in the freehold system, in practice it is facilitating rampant land alienation. Land leases are generally granted for 75 years (the life of a coconut palm) for a single payment rather than annual rent, with leases normally dictating that customary owners – if they wish to reclaim their own land at the end of a lease – compensate the leaseholder for any improvements or value added to the land (Stefanova 2008). This is something that is far out of reach for the majority of ni-Vanuatu.

Such agreements are often entered into where custom owners possess little understanding of the commercial value of their land (Stefanova 2008) and have limited opportunities to turn any cash payment received from the land into a viable source of alternate livelihood. In addition, the use of the Strata Titles Act to subdivide rural land beyond its intended application for buildings (Stefanova 2008; Lunnay et al 2007), the alleged abuse of the power of the Minister of Lands to intervene on land dealings where a dispute exists (Cox et al 2007), as well as community level confusion or abuse over legitimate authority to enter into land transactions have all further removed control over land from community hands.



**Table 1: Land and Land Related Laws in Vanuatu**

Law	Year	Purpose
Land Reform Act	1980	To return alienated lands during the Condominium to the rightful custom landholder.
Alienated Land Act	1982	To assist the aims of the Land Reform Act in providing an option for custom landholders to either create a new lease with the alienator or to gradually pay compensation for improvements to the property made by the alienator.
Lands Referee Act	c.1982	To assist the aims of the Alienated Land Act by creating a Lands Referee office to determine the value of improvements made by the alienator.
Land Leases Act	1983 (Amended 1988)	To support both the Land Reform Act and the Alienated Land Act by defining the procedure for lease agreements between custom landholders and those wanting to use their land. Leases are for a maximum of 75 years. Established Land Records Office.
Land Reform Act	1988	Allows the Minister of Lands to act on behalf of the custom landholders where the rightful landholder is not known or there is a land dispute.
Land Acquisition Act	1992	To define the process for the Government in compensating custom landholders for land acquired for public purposes (whether to relocate communities or to acquire urban land).
Urban Lands Act	1993	To define the Government process in declaring urban land in Vanuatu. It introduced a Land Tax and Dweller's Tax for urban leaseholders to pay.
Freehold Titles Act	1994	To enable indigenous ni-Vanuatu to purchase land outright in urban areas.
Customary Land Tribunal Act	2001	To promote the use of custom land tribunals in settling land disputes. This Act established the Customary Land Tribunal Office.
Strata Titles Act	2000	To enable lessees to have title to a part of a larger property. This Act has been applied horizontally for peri-urban subdivisions and is responsible for the current land grab on Efate.
<b>Other relevant legislation</b>		
Environment Act	2003	This Act establishes the need for proposed developments to complete environmental impact assessments prior to receiving government approval.

(Adapted from Naupa and Simo 2008; and Simo 2005)

## The National Land Summit

In response to indigenous landholders again losing control of their lands, the national government, with the involvement of the Vanuatu Cultural Centre, a national cultural heritage management and statutory body, held a National Land Summit in September 2006. The Summit was preceded by a series of consultations at the provincial level and addressed land ownership, fair dealings in land and sustainable land development.

Between 500 and 600 people attended the Summit with 20 resolutions being adopted from over 1000 that were put forward (Portegys 2006), the intention being that these resolutions would form the basis of a national land policy. Whilst the *Malvatumauri* (Council of Chiefs) had requested through the Summit a moratorium on *all* land leases, the government adopted a weaker position for fear of driving away investors. It implemented a temporary moratorium on all new subdivisions and applications to convert existing agricultural leases into residential subdivisions (Portegys 2006), as well as a partial curbing of the power

of the Minister of Lands to intervene when land is disputed (Lunnay et al 2007).

Similarly, the resolutions which purport to form the basis of current land initiatives were weakened on key points when approved by the Council of Ministers in November 2006. Resolution 1 from the Summit, which clearly stated that land in Vanuatu is owned by groups (tribes, clans or families) not individuals, and that all members of a traditional owning group (male and female) must be involved in decision-making about their land, was altered to read: "that all custom land in Vanuatu is owned in accordance with the traditional land tenure system of each island" (Lunnay, et al 2007). Whilst the resolution might still be applied in the spirit of the original, its wording leaves it open to interpretations that could undermine community control. Other resolutions were also altered in a way which allows group ownership to be questioned, undermining the essence of customary land and leading to the strong possibility of land ownership and use being privatised to individuals.

## **The Vanuatu Land Program: The bureaucratisation of a peoples' process**

*"The issue is with how it's done, the bureaucratic way it's done ...that whole process is inaccessible to even people like me who are well educated. [T]he way they format their stuff and the way they do these evaluations, and then they do a design and then they do an evaluation of it and then there's some peer review and this whole process is...I would say three-quarters Australian citizens all the time in all of these processes. There's always some ni-Vanuatu but less than a quarter. And those people, I don't know if they know what's going on."*

(Government/civil society land advocate 2009)

AusAID has assisted in funding a number of land initiatives in Vanuatu. The latest is the Vanuatu Land Program worth \$8-9million (AusAID 2009). Whilst the program may be well intentioned in adopting objectives such as: Informed Collective Decisions by Customary Landholders; Participatory Land Governance; and Effective and Enabling Services, it cannot be separated from broader land, development and trade interests at play. There are a number of issues and potential risks arising from AusAID's involvement in land reform, even where AusAID's primary role appears to be that of a "cash cow". Important questions vital to the program's effectiveness in reflecting the needs and aspirations of ni-Vanuatu remain unaddressed: Who is driving the land reform process? Who sets the overarching objectives of the broader land reform agenda? On whose terms is aid funding disbursed and managed?

A number of interviews conducted by AID/WATCH with key people involved in the land reform process highlighted several issues concerning the level of democratic

ownership over the program, which questions the veracity of AusAID's claim that land policy reform "must be driven by Pacific governments and communities, not by donors" (AusAID 2008a: vii).

### **Reform process: The Summit resolutions and aid agendas**

The 2006 National Land Summit provided clear resolutions and an interim way forward for reforms relating to land. However, it is questionable whether the current land tenure reform process adequately reflects the intent of the resolutions, which were an attempt to return control to customary landholders and limit the control of foreign investors in land. Altering the resolutions through the government approval process and opting out of a continued broad-based participatory approach for a program design process are major issues. Program design is still dominated by Australian personnel. This undermines trust and risks distorting program priorities in favour of those which fit more neatly into bureaucratic processes or Australia's overall "development" agenda. The Vanuatu Government's draft Land Sector Framework also includes scope for the registration of customary lands and prioritises access to new customary land for "development" over dealing with current leased lands – an initiative that sits squarely outside of the Land Summit mandate (Vanuatu Ministry of Lands 2008).

When asked about the current direction of the land program one interviewee stated:

*"As far as we're concerned the resolutions are sufficient. When a Chief speaks, everybody knows what they've said. But here's what they've done. They want to take it and put it into some aid language. That aid language is completely incomprehensible to the ni-Vanuatu. The aid*



*Some fences run all the way to the shoreline preventing local access to the sea on the island of Efate. Photo by Lara Daley*

language is able to source money from Australia but is not going to meet our needs. Our needs are very clear. It was clearly articulated in the resolutions. Take it or leave it but don't come and repackage it in the way that AusAID wants to be able to swallow it and then bring something that is completely different from what we had said.”

*(NGO land advocate 2009).*

As the above quote indicates, donors control the design of the land program, leaving few opportunities for genuine community participation. Ni-Vanuatu who are engaged to varying degrees with the land process through civil society and government forums have indicated that they lack proper understanding of the Vanuatu Land Program design, suggesting the process is far from community-driven or participatory, being consultative at best. In an area as sensitive and vital to life as land, to institute “consultation” and “stakeholder engagement” risks reducing the role of “community” to a rubber stamp on land initiatives, legitimising a process where no real community control exists.

This also has the potential to be exacerbated by an inability of the program to reflect the Melanesian way of doing things, which avoids confrontation and communicates dissent in other ways. A culturally biased process of engagement could assume consent where there is actually clear disagreement. Another hurdle for AusAID is how it will keep to its intentions to be flexible on issues such as the pace of the program and timeframes when the money is clearly tied to a four to five year program (AusAID 2008b; 2009).

Appropriate and lasting reforms will only be ensured if the land program genuinely reflects the culture, needs, and aspirations of ni-Vanuatu and through honouring the Land Summit resolutions and actively engaging people at the community level.

### **Reform management: Inappropriate aid delivery**

Another key concern regarding the control of the program is its delivery. AusAID is planning to make the Vanuatu Land Program available for tender by an international company, which will most likely be an Australian company, whose advisors will be responsible for the overall management of the program. This is both a costly way to deliver aid, with contractors being paid a base salary upward of \$180,000 per annum and also threatens to undervalue local control and expertise. An additional complicating factor in this mode of delivery is the actual conflict of interest, as many contractors have a wide portfolio of development and commercial interests

and are potential beneficiaries of easier access to land. Major contractors in the lands sector include:

**Coffey International** an engineering company that boasts being one of the top 300 companies on the Australian Stock Exchange. It operates in over 80 countries through several “specialist companies,” including Coffey International Development, which specialises in development contracts. Its Asia-Pacific office is one of Australia’s largest development contractors, managing over \$400 million of development activities for AusAID (Coffey International 2009).

**Hassal and Associates** is a “wholly owned subsidiary of GHD” (Hassall & Associates 2009) following a merger in 2008. GHD deals with engineering and architecture, manufacturing, and resource industries such as energy, oil, gas, mining, metals, water, and geotechnical areas (GHD 2009).

**Land Equity** formed in 2001 by key members of a land titling team from another company, Hatch Associates Pty Ltd, formerly BHP Engineering Pty Ltd. Land Equity specialises in land titling and administration development programs (Land Equity International 2009). BHP Billiton is a multi-billion dollar corporation involved heavily in mining and oil industries (BHP Billiton 2008).

Corporate entities that have conflicting commercial and humanitarian interests, be they direct or indirect, are clearly compromised as an ethical deliverer of aid, particularly in an area as sensitive as land.

### **The broader development agenda**

Australia’s approach to land and development is closely aligned with strategies for economic growth. This approach to development in the Pacific is echoed by the Australian Government’s current push for PACER Plus, a regional free trade agreement masquerading as a development deal. In the free market model of trade, customary land ownership is interpreted as a barrier to trade and as such a barrier to growth.<sup>2</sup>

The intersection of land reform agendas and strategies for economic growth based on foreign investment is dangerous territory, particularly where donors have strong influence and clear trade and commercial interests in the region. The conflicts of interest are poorly recognised. In its comments on the NZAID Pacific Strategy Consultation Draft, Oxfam New Zealand (2006: 8) raised similar concerns, stating “The inclusion of land tenure reform in the section that relates to economic growth indicates that New Zealand’s interests are also driven by economic

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<sup>2</sup>A study commissioned by the Pacific Islands Forum Secretariat on barriers to trade in services and investment cited customary land in multiple Pacific island countries as a barrier to trade. In Vanuatu’s ongoing WTO accession process customary land ownership has been a controversial point to reconcile with free trade norms.

considerations... the solution is not just to shift land tenure into another section of the strategy, but to question why NZAID should be involved.”

However, it is not only the Australian Government and other aid donors who are prioritising investment and growth when dealing with customary land. As Vanuatu MP Ralph Regenvanu (2008: 67) notes, “Determining customary land ownership has become an obsession of government, reflecting its own obsession with promoting capitalist development.” The role of national elites in determining government policy as well as pressure from donors to adopt particular strategies are both factors which may limit the extent to which national development strategies and priorities reflect the development aspirations of Melanesian peoples.

## Conclusion

The problems with Australian involvement in Vanuatu’s land reform process are less to do with the specific short-term objectives of the program than with the program’s alienating bureaucratic processes and its collusion with a wider development and trade agenda that is counter to ni-Vanuatu control over land and development.

What’s needed is a more sophisticated way of measuring development than economic growth, one which can account for the real world in which the majority of ni-Vanuatu live. Less confusion between the humanitarian and democratic development aims and Australia’s commercial interests would be aided by removing AusAID from the Department of Foreign Affairs and Trade and would also assist in building trust in Melanesia.

It is vital that Australia’s aid program is able to account for the strengths and needs of Pacific island countries and identify the opportunities to learn from these strengths – such as customary land – and to build upon, rather than undermine them. Aid, whether focused on problems or strengths, must allow autonomy for governments and communities to take control of their own development futures and support grassroots processes rather than displace them.

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# Land and the traditional economy: “Your money, my life” *Hu i kakae long basket blong laef?*

## By Joel Simo

Joel Simo is the Director of the Land Desk at the Vanuatu Cultural Centre, Port Vila.

Photo by Lara Daley

Land has always been of the highest value to the lives of Melanesian peoples and so it will be for generations to come. Research on land tenure in the region has indicated that in all Melanesian traditions, land is regarded as a non-alienable resource that cannot be parted with. In some cultures land is considered to be the mother and the source of life for the people. Land secures life, and fosters and strengthens relationships that sustain life in a Melanesian society. Under traditional land tenure, most lands, beaches, seas and reefs are held and looked after collectively by the members of families and clans and their utilisation is governed by unwritten customary laws which are administered by different customary leaders. Melanesian traditions also consider whatever is on the land or below the surface of the land to be held by the traditional users of the land.

## Land and people

To ni-Vanuatu land is everything: it embodies their link to their past, present and future. It sustains everything they do in life – their beliefs and their daily interactions and activities. It is normally the clan or the tribe that are the custodians of the land and within these clan and tribal areas families are allocated individual holdings that they work on to sustain themselves. Ni-Vanuatu see land as sacred and as part of themselves. Land is not seen

as a mere commodity that can be used and then dispensed with when it is no longer needed. Not only do Melanesian beliefs affirm the sanctity of land, but they also totally contradict the imported notion of “ownership” of land. Land is held rather than owned by the people, who are entrusted by their society to be the custodians of the land in the interests of their children and future generations.

If you ask a ni-Vanuatu, “Where are you from?” you will always receive the reply, “I am from this or that island.” If you question the person further you will learn the particular area where they are from, and the relationship that person has with a particular piece of land that is held by their clan and ancestors. The land to which the person refers is not theirs exclusively but is shared with other members of the person’s family and clan, who may also use the land for houses, gardens, and anything else that might support them in their lives. Melanesians’ entire lives are grounded in their land. The relationship that ni-Vanuatu have to their land is like that of children to their mother (Van Trease 1987: xi). Every piece of land has a story that tells of the origin of those who hold the land as well as of how they came to settle there.

In Melanesia in general and in Vanuatu in particular, people have a special relationship with their land because they know that it is their only safety net and social and food security system. They are also aware that it is traditional land tenure that enables them to be self-reliant, because traditional land is always available if and when a ni-Vanuatu cannot find a cash-paying job in town. In Vanuatu, people rely more on the traditional subsistence economy for their survival than on cash. The land guarantees more than 80 percent of the population freedom from hunger, homelessness and unemployment.

The stories and legends that are attached to the land in Vanuatu do not simply refer to the places where people have built their houses and made their gardens but also to the areas of surrounding forest. The forest is like a warehouse for the people, a place where they can get food, medicine, timber for houses and many other essential resources. There is no area of forest that is unused because people utilise forest resources to satisfy a great number of needs.

Land is an important part of the heritage of a community because of the belief that ancestral spirits inhabit the land and look after present and future generations. The belief that people who are alive today share their land with those who have died and also with those who are not yet born makes it particularly difficult to remove a community from their land.

Land is something that ni-Vanuatu cannot separate from their lives. For a person to understand land practices

s/he must intimately know how people relate to and manage that land. Over time, people have developed ways to manage their land in a manner that best meets their needs. Thus, it has proved difficult to introduce and enforce new systems of land tenure.

For example, on the island of Tanna, if a tree bears fruit on a man’s land, he must ask his sister to pick the first fruits as customs forbids him from doing so. This is a way to show respect to the man’s sister as well as to the clans into which she has married (Simo 2006). The sister has a right to things on her brother’s land as they share the same father. It is therefore important to understand the relationships between people within a community and how they relate to the land before interfering with traditional practices. Only through an understanding of these relationships can land matters be settled in a peaceful manner without disputes.

To sum up, land is valued by ni-Vanuatu because it symbolises their whole being, their identity, and the basis upon which their subsistence requirements are met. It has always been common practice throughout the nation that land tenure is vested in groups and families rather than in individuals. These customary “laws of the land” remain with the people of Vanuatu to this day. If we analyse each land practice we’ll find that no man, woman or tribe is left without land. Each and every person under a chief or a head person has their plot of land from which to live and enjoy the abundance that the land provides. It is the chief’s duty and responsibility to ensure that everyone has a place to live, to obtain food and to build a house. These traditional land laws prioritise the life of each and every person and leave no one landless. Without landlessness in Vanuatu there is no real poverty because everyone has land to live on and cultivate to meet their daily needs. The traditional economy has sustained people for thousands of years. For this reason landlessness, hunger, homelessness, and unemployment are rare throughout the archipelago.

## **Land alienation before and after independence**

Land alienation never occurred prior to the arrival of the Europeans in Vanuatu. At times, land was exchanged under customary laws and under the supervision of the responsible chiefs. Most land that was purchased during the colonial period was paid for in kind (e.g. with a few yards of cloth, a knife or a gun). Land alienation in Vanuatu started when traders began to frequent the islands in search of land for plantations. Much of the land that they acquired was obtained through fraudulent means.

Land registration in Vanuatu was formalised in 1913 under British-French Condominium rule. Under

colonial rule, much more land was taken away from the indigenous population, leading to the formation of a movement to reclaim the land. Land alienation was the key issue that allowed certain political parties to mobilise the indigenous population to fight colonial rule, which eventually led the country to independence in 1980. When Vanuatu gained its independence, traditional land tenure was enshrined in its Constitution, which states that all of the land belongs to the people of Vanuatu and their descendants and that customary law will determine land tenure and the use of the land.

However, since independence, new laws have been introduced that contradict this constitutional mandate in the name of bringing more “money development” into the country. As in other colonised countries with substantial indigenous populations, these new land laws have been promoted as beneficial to Vanuatu’s cash economy, despite the fact that the majority of ni-Vanuatu live off their traditional non-cash economies, which depend on traditional land tenure practices.

Under the new adopted land laws the country is gradually moving from customary land tenure to privatised ownership by individuals. And many of these individuals are foreigners with Western concepts of land ownership that see it primarily as a financial investment, rather than a part of themselves and something to be cared for.

It is now some thirty years since independence and over 80 percent of the coastline of the island of Efate has been sold off, with little real or long term benefit going either to the alienated traditional landholders or to the nation of Vanuatu as a whole. Slowly but surely, these new laws are impoverishing and marginalising most ni-Vanuatu by depriving them of their traditional power and control over land. Most indigenous people who have leased out their land under these new laws are already experiencing difficulty in securing back their land when the leases expire. What is happening to the land today seems to be a repeat of the expropriations that took place before independence.

### **The de-customisation of land in Vanuatu**

Pressure from investors and from neoliberal development models prescribed by foreign consultants and adopted by the government are paving the way for the indigenous population to lose their traditional power over land. Under the current introduced land registration laws the government and private investors can negotiate a renewable lease of up to 75 years from the customary

landholders. When a lease has gone through a formal registration process, there is very little recourse for the custom owners to rescind the deal no matter what the circumstances. These land dealings are basically meant to protect the developers and businesses that supposedly provide jobs for the people.

A number of these leases have created disputes in local communities. Loopholes in the system have allowed corrupt dealings by some investors, government ministers and the Land Department to continue unabated. This has accelerated the sale of customary land to real estate agents, investors, and private individuals with access to cash. The customary landholders become easy victims of these dealings due to a number of factors:

- Propaganda that lures traditional landholders into registering and leasing out their land has been intense. Very little effort has been made by the government or others involved in implementing the new land registration laws to promote information and awareness on the part of customary landholders of the potential negative impacts on the lives of present and future generations.
- Lease contracts are written in technical language which is not easily understood by the traditional landholders. Little or no effort has been made to assure that people fully understand the implications of signing these documents.
- While land is traditionally held by communities and not individuals, the new land laws and the people responsible for implementing them allow and even encourage individuals to register and sell land that is not wholly their own. This has caused deep divisions in local communities because many community members have been deprived of their power over their land without prior informed consent.
- Ministers and other government officials responsible for land often accept and even demand bribes for service, which means that most disputed cases are decided in favour of businessmen who have access to cash, rather than in favour of the customary landholders.

These and other corrupt practices are widespread within the Lands Department and among the political elite – and there appears to be a lack of political will to address this problem. This puts into question the real intentions behind the acquisition of land for “development”. Meanwhile,

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<sup>1</sup> Land Registration Act section 14( 2) and Land Lease Act section 15.

those who have had their customary lands registered are left to fend for themselves when problems arise. All of this makes one question both the spirit and the letter of the government's land tenure reform program that is jointly being funded by AusAID and NZAID. Despite all of their rhetoric about "socially responsible" and "sustainable" development, there is strong support from AusAID and NZAID for this shift in land tenure practices that facilitates investors, developers and real estate speculators to buy or stake a claim on much of the land in Vanuatu.

The current de-customisation of land in the interest of investors and those with hard cash has already expropriated land from some ni-Vanuatu and will, if not stopped, transform the country from a nation of self-sufficient subsistence producers into an impoverished mass of landless wage-labourers, willing to work for less than subsistence wages. Land registration permanently transfers customary control and power over land to a corporate and globalised system that has already driven hundreds of millions of people around the world off their land and into urban shanty towns. The land, work, communities and cultures that were once controlled by all and used to satisfy the needs of all are being enclosed, appropriated, diverted and distorted to feed the insatiable greed of a system that serves profit, not people (Faraclas 2001).

### **Applying the wrong developmental model**

Most land in Vanuatu and Melanesia still remains under customary tenure. The land has always worked for the

benefit of the people of Melanesia and will continue to do so as long as traditional power over land is maintained through customary land tenure.

However, with the current neoliberal wave of corporate globalisation, the governments of Melanesia (including Vanuatu) are led to believe that traditional land tenure, which was designed to serve the people's interest, is an obstacle to "development" and that a new land tenure system must be embraced in the name of "progress". As a result, most Melanesian countries are being encouraged to "free up" more land under new land registration laws for the purposes of "development" and "security". To achieve this, land must be put under the power of the state through registration and the right to its usage restricted to individuals through privatisation. When customary land is registered, privatised, and leased or sold, the customary landholders not only lose power and control over their lands, but more often than not, benefit very little from the resulting "developments" on their lands.

The trend by which the indigenous populations are gradually losing their grip on their only safety net is highlighted in a 2009 United Nations report, *The State of the World's Indigenous Peoples*, which "identifies displacement from lands, territories and resources as one of the most significant threats for indigenous peoples, citing many examples, including in Malaysia, Indonesia, Thailand, Hawaii, Rwanda, Burundi, Uganda, Democratic Republic of the Congo (DRC) and Colombia" (UN News Center 2010).

## **Land alienation in Efate**

Land registration, privatisation, and leasing have already led to a catastrophic situation on the island of Efate, where 80 percent of the coastal land has passed from the hands of customary landholders into the hands of investors and land speculators. Pango village residents outside Port Vila have been deprived of their traditional beaches and reefs as investors barricade them from their properties. As expressed by one young man from Pango village:

"When our land was not yet in the hands of the investors we had the freedom to walk and swim on our beaches and to fish on our reefs. We have been promised development, but to this day I have seen no benefit from the activities of these developers. We are gradually being marginalised and sandwiched in like sardines trapped in a tin. Every Saturday I mobilise the boys in the village to clean up the beaches to let the investors know that this is where we belong."

Real estate profiteers are pocketing millions while the indigenous custodians get almost nothing from these deals. Concerns raised by a number of chiefs on the island have so far fallen on deaf ears. If this situation continues, it may lead to tragic civil unrest similar to what happened in Bougainville and in Guadalcanal, Solomon Islands, in recent years.

This and other reports which highlight the plight of indigenous people who are being forced off their lands by land registration and privatisation programs are a clear indication that the model of registration of land for development purposes will not work for the people of Melanesia. Development that disturbs traditional economies and land tenure practices are inappropriate and will encourage more dependency on the national government, and in turn, international development agencies and investors that often have their own agenda linked to liberalising trade and accessing natural resources.

The critical question now is whether Melanesian countries and in particular Vanuatu can learn from the experiences of other developing countries where adopted land laws have led to the dispossession of indigenous peoples from their land, at immense human cost. Will Melanesian countries allow land speculators, developers and profiteers to transform their indigenous populations from relatively well-housed, well-fed and productively employed citizens into landless, homeless and underemployed wage labourers? Or will traditional Melanesian creativity and resourcefulness prevail? The achievements of our ancestors already provide a solid foundation upon which we can build an alternative model in line with the Melanesian philosophy of land.

As the United Nations report (2009: 7) clearly states “indigenous peoples themselves must be free to determine their own development. This entails that indigenous peoples’ rights to their own lands and territories must be respected and that indigenous peoples need to develop their own definitions and indicators of poverty and wellbeing.”

## Key recommendations

1. Just as Melanesians are expected to obey the laws of Australians or New Zealanders when they want to do business in those countries, so should foreign companies, investors, and business people be expected to obey the customary and national land laws of Vanuatu when they want to do business in Vanuatu.
2. All land laws that are not in line with Vanuatu’s Constitution and customary land laws should be revoked. Vanuatu’s Constitution clearly states that all land in the country should be governed under traditional law, rather than under the insidious new land laws that outside governments and businesses have persuaded the Vanuatu Parliament to accept.
3. A comprehensive process involving the examination of all land transactions that have been completed under the new and unconstitutional land laws should be established, with the power to expose unethical and illegal practices by businesses, investors, politicians, and government officials, the power to restore land to customary landholders under their traditional laws, and the power to compensate customary landholders for damages incurred as a result of these practices.
4. A process of dialogue must take place with traditional landholders with the goal of creating a ni-Vanuatu vision for development that is designed to serve the needs of the people of Vanuatu, rather than to serve the interest of foreign investors and a government looking for revenue.

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19 Eve St, Erskineville. Sydney NSW Australia 2043

p +61 2 9557 8944 f +61 2 9557 9822

e [info@aidwatch.org.au](mailto:info@aidwatch.org.au)

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