

# **INDIGENOUS PROPERTY RIGHTS: CUSTOM AND COMMERCE AT THE INTERFACE – A CASE STUDY OF THE AHI PEOPLE’S LAND, MOROBE PROVINCE, PNG**

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## **1.0 INTRODUCTION**

### **1.1 Contemporary issues**

Land resource management in Papua New Guinea (PNG) has been experiencing substantial pressure over the last few years in response to economic and social development and change. Customary tenure is the dominant form of tenure yet it has received very little attention as a resource which underpins such development. Over recent years, the economy has sought to manage the impacts of external influences, such as globalisation and a decline in commodity prices, whilst beset by many internal political upheavals.

Within the context of such structural readjustment, this paper examines the interrelationship between customary and alienated tenure systems, their background, status and prospects in relation to the development process. More specifically, it pursues the theme of appropriate management techniques for customary land in the light of recent and anticipated social and legislative change, with particular reference to the situation of the Ahi People’s peri-urban lands in the Morobe Province of Papua New Guinea (PNG).

### **1.2 Background**

Papua New Guinea is an independent nation of some 4.3 million people with a current annual population growth in the order of 2.3% (LUDP, cited in Ori 2000:6). It is a developing nation with approximately 15% of the population engaged in the market economy and the majority of people engaged in the subsistence economy. It comprises the eastern half of the second largest island in the world and extends to an approximate land area of 476,000 sq. km. It is located just south of the Equator and north of the eastern tip of Australia. It is a country of enormous physical and social diversity: it is frequently cited (Wheeler and Murray 1993) that, with an estimated 740 different languages (not dialects) spoken in PNG, one third of the world’s languages are spoken in PNG. This diversity underpins the challenges for effective land management.

In the context of this diversity, the land tenure system faces pressure from both internal and external sources, generated by the dynamics of the social, economic and political environments. Lakau (1991:13) identifies the broad divisions of the land tenure structure in PNG as shown in Table 1.2.

Table 1.2 illustrates the dominance of customary tenure, being some 97% of the nation’s land. The corollary is that the 3% of land held in alienated title (freehold and leasehold) and is the locus of economic activity and of most urban development.

**Table 1.2: Broad divisions of land tenure structure in Papua New Guinea**

	Customary Title	Alienated Land		Total Area (Ha)
		State Land	Private-Freehold*	
<b>Land Area</b>	46,310,400	870,200	435,100	47,615,700
<b>Percentage of total</b>	97%	2%	1%	100%

\* includes conditional freehold

Source: Lakau 1991:13

### 1.3 Recognised problems of the existing system

Lakau (1991:21) nominates some of the main problems of the existing land law and procedures as being:

- Too many Acts - over 40 – which are not well integrated or complementary
- The legislation is out of date, reflecting colonial development strategies
- The land administration system is highly centralised
- Customary law is extremely diverse and dynamic, limiting its compatibility with legislation, and hence its effectiveness
- Customary land (97% of the nation's land) is outside the existing system of land law. This is where the majority of Papua New Guineans live.
- The existing system is inappropriate for promoting national goals through the various levels of government – national, provincial and community.

When the impact of such a range of land administration problems is combined with other fundamental weaknesses - such as rural-urban drift resulting from population pressure on traditional land settlement and inheritance, and an economic environment characterised by long-term negative growth - the need for a more effective system cannot be ignored. However, the current dire situation has existed in various guises for many years. Many attempts to resolve the problems have also been attempted (see Armitage et al 1998) but without adequate resources and political will, no effective progress has resulted.

The following section compares the customary and alienated systems and highlights their resilience in the face of the pressure for economic development.

## 2.0 ALIENATED AND CUSTOMARY TITLE COMPARED

### 2.1 Overview of the tenure systems

Table 2.1 identifies some of the characteristics of the two title systems that co-exist in PNG. It highlights the origins of the systems, their responsiveness to contemporary pressure for change and then considers political, social and economic aspects briefly.

**Table 2.1: A comparison of some characteristics of alienated and customary land tenure systems**

**in PNG**

<b>Characteristic</b>	<b>Alienated Land Tenure</b>	<b>Customary Land Tenure</b>	<b>Comments</b>
<b><i>Origins</i></b>	Based on traditional practice in Europe; unfamiliar and formal in the PNG context	Local practice; appropriate for traditional needs; established and well understood by users	Can the CLT system adapt to the demands of the market economy?
<b><i>Responsiveness to change</i></b>	Extensive and on-going modifications to internal and external pressures; formalised through courts and legislation. Control of system and ownership of land are separate.	Responsive to internal pressure; less responsive to external impacts; flexible as verbal. Control by landowners.	With increasing levels of development, more land held under CLT is experiencing a demand for uses generating an economic return.
<b><i>Political aspects</i></b>	'Ownership' is limited to interests in land under the State. Activities are documented and recorded. Penalties for infringement. Conformity at the level of society.	Outright ownership by the clan; individual members have rights to use and occupy land. Based on verbal agreement. Penalties for infringement. Conformity at the level of the clan.	Broadly similar with variation in locus of control.
<b><i>Social aspects</i></b>	Planning and zoning system provides for areas of sporting, recreational, entertainment uses, etc.	The clan sets aside land for meetings, singsings, feasts, rituals and sports etc.	Modification as needed.
<b><i>Economic aspects</i></b>	Economic specialisation generates surplus production, freeing much land and labour from direct production of basic needs.	Role of land is to ensure survival of the clan, traditionally through a high level of self-sufficiency.	Traditional land owners recognise the benefits of receiving rental income as opposed to the application of their own labour
	Estates/interests in land may be traded between individuals as an economic good.	Land is held, securely and in the long term, by the group for the benefit of the group.	Land in locations which are in demand for economic use, creates pressure for change, conflict between and within the tenure systems and insecurity due to a feeling of loss of control.
	Identification of land, interests, ownership and transactions agreed and recorded by parties and by State.	Identification of rights and interests validated by use.	

Source: author 2001

## 2.2 Review of the broad analysis

Some observations may be drawn from this broad analysis presented in Table 2.1 which are summarised below:

- the systems share more similarities than is often acknowledged
- many of the pressures for change are common to both systems
- control of the tenure system is a major difference: the traditional system provides for shared control by owners; the ALT system delegates control to an external authority - the State
- change from a traditional to a market economy is inexorable
- many traditional landowners recognise the need for a strengthening of the CLT system to effectively manage the external pressures in a manner which is acceptable and beneficial to its owners
- any modifications should be sensitive to the pitfalls of previous failed attempts to impose external control over CLT.

Having considered some of the broad aspects of the two systems, it is appropriate to review the more specific characteristics of the role of the registration systems. Modification of the registration system may be one option for incorporating increased flexibility in the CLT system whilst ensuring the rights of all the traditional owners.

### **2.3 Comparison between aspects of the registration of land in the ALT and CLT systems**

As noted above, there have been many attempts to adapt the tenure system to more adequately reflect the needs of traditional owners, particularly where pressure for development is evident. Ori (2000:3) and Lakau (1991:121) discuss the failures of the existing system. Ori (2000:121) questions ‘whether the evolving nature of customary land tenure can be incorporated into the existing administrative system in PNG.’

Table 2.3 presents a comparison of the two systems with particular reference to aspects of registration which may affect their potential for economic development.

If registration of title is considered as a system which records relevant features of land to assist with its use, management and control for the benefit of its owners, both ALT and CLT utilise elements of such systems with the essential difference being the former is written and the latter is oral. One of the impacts of this difference is that the oral form of recording title does not provide sufficient security for recognition by commercial lenders.

This has generated two main avenues for those traditional landowners who wish to access funds secured on their land. One is for title to be converted to a form that is acceptable to commercial lenders and the other is to fund development through non-commercial (invariably public) sources. Ori (2000:9-12) identifies the many attempts to mobilise customary land both prior to and post independence. However, with some few exceptions, the land conversion process has not met with much success.

#### **Table 2.3: Registration Systems Compared**

<b>Characteristic</b>	<b>Alienated Land Tenure</b>	<b>Customary Land Tenure</b>	<b>Comments</b>
<b><i>Role of registration</i></b>	To provide a system which records relevant features of land to assist with its use, management and control for the benefit of its owners		Essentially the same intention for both systems
<b><i>Form of registration</i></b>	Paper/computer based records; held in a Register of Titles	A self-reliant system; all details known and held by owners	Oral basis of CLT records are not recognised by market-based mortgage lenders
<b><i>Security of title</i></b>	Title is guaranteed by government	Security of title is maintained by the landowners	CLT not recognised as providing sufficient security or recourse in the even of non-payment of borrowed funds
<b><i>Land tenure conversion system</i></b>	Not applicable	Lease/leaseback - administered by Lands Dept.; presumption of agreement from all owners Owners form an incorporated land group; generates a freehold title under the ALT system	Concerns by some owners over loss of control  Original tenure expunged; 'alienation' results

Source: author 2001

Ori (2000:8) nominates five reasons that help to explain the landowners' reluctance to part with their traditional lands:

1. land is vested in the social grouping such as the clan, tribe and extended family
2. land boundaries are defined by natural features often with traditional significance
3. land rights are recorded by memory through oral record
4. land rights are inherited through the lineage or by succession.
5. The concept of inalienability prevails, prohibiting the sale of land with ownership vested in the clan.

Despite the length of tradition, the capitalist system is inexorably infiltrating the traditional economic and social mores of the country. The landowners are themselves seeking to respond to such changes whilst protecting their traditional values and this is nowhere more evident than in areas of high commercial activity such as Lae.

Lae is a city of some 180 - 200,000 people is also PNG's most industrialised centre. It is set in some of the most productive agricultural land in the country and is the focus of the nation's most highly developed road transportation network, the only form of land transportation. Consequential urban drift is also putting pressure on land for residential purposes. This is the context for the case study discussed in Section 3.

## 2.4 Comments

Although the needs of the market and of the customary titleholders both require a system which conforms to their essential requirements, there is no evidence to conclude that these needs can only be accommodated through the continued dominance of the ALT system whenever there is interaction between the systems.

It is therefore appropriate to consider what options are available to fulfil the basic requirements of both systems. Many of these revolve around aspects of control and security, and should recognise and avoid the pitfalls of previous proposals which have failed to gain grassroots support.

The Lae Urban Strategy Plan (LUSP) is the policy document through which the local government is working with the Ahi People of Morobe Province to promote the mobilisation of their land for urban development. Some aspects of the proposals are discussed below. It provides an illustration of one opportunity to meet the current demands of the customary landowners whilst ensuring their long-term control.

### **3.0 THE AHI LAND MOBILISATION PROJECT**

#### **3.1 The organisational framework**

During 2000, the Lae District Administration formulated a draft Ahi Land Mobilisation Program as part of the Lae Urban Strategy Plan (LUSP). As Ori (2000:12) comments

‘the inalienability of customary land has been eroding for decades and with the absence of an acceptable mobilisation mechanism, landowners have resorted to quasi-formal mobilisation methods to acquire economic benefits over their lands.’

This is characterised by informal sub-divisions and the leasing of blocks of land to migrant settlers for a monthly rental charge. These areas are known colloquially as the squatter settlements or tent cities. The practice is termed ‘quasi-formal’ as there is an agreement between the landowners and their tenants but it cannot be legally recognised. This is because, under the existing legislation, only land which is alienated can be subject to such leasing arrangements.

A second reason for using the term quasi-formal is that these informal practices mirror the current legislative mechanisms such as land tenure conversion to convert their land into transactable parcels under their Incorporated Land Groups in order to sell or lease their land to individuals.

For such mobilisation practices to be formalised, and hence properly administered, a Land Trust or Land Development Authority needs to be established. The existence of such an authority or trust enables the planning of the subdivisions and the provision of infrastructure such as water, sewerage, drainage and electricity as well as the construction of roads. Whilst the mobilisation remains informal or quasi-formal, the capital to fund such infrastructure provision is beyond the resources of the traditional landowners.

The Lae Urban Strategy Plan has identified, *inter alia*, the Ahi lands as exhibiting these development pressures and is working with the various levels of government and the owners to

establish an effective framework.

The Ahi Land Mobilisation Policy (PNG Morobe Provinsel Gavman: nd) has been developed as a vehicle through which customary land of the Ahi tribe in the Lae district can be administered. The Ahi Local Government Council and the Morobe Provincial Government have adopted the policy for and on behalf of the indigenous Ahi people ‘to protect and use their land in more meaningful development’. (op cit:1)

### **3.2 The study area**

The study area comprises some 1300 ha, identified as Development Area A (DA- A) under LUSP. It is located between the Bumbu and Busu Rivers, and bounded to the north by Unitech and to the east by Busu Road. It is heavily populated by settlers and some villages. The Ahi villages comprise: Kamkumung, Hengali, Yanga and Wagang villages. Some of the land has been surveyed but much has not, and the Ahi People hold it entirely under customary title.

The area is well suited to residential occupation being undulating and fertile although, in parts, subject to inundation. It is close and easily accessible to the urban area and the urban facilities and employment opportunities which this offers.

### **3.3 Existing problems over Ahi Customary Land**

The Ahi Land Mobilisation Policy document (PNG Morobe Provinsel Gavman n.d:1) states that it has long been claimed, and is now ‘obvious’, that the younger generation of Ahi people have been giving land to outsiders for settlement and developments without respect to the wishes or approval of the clan chiefs of the Ahi tribe. There are however some circumstances in which the current leaders may not be acceding to the agreements made by their ancestors which may still be binding today.

Whilst most of the Ahi customary land is occupied by settlements, there is a mixture of legal and illegal ones. Some have been permitted by the customary owners and others may be the result of intermarriage settlements outside the tribe.

The government recognises and accepts that it has an obligation to its people which is universal. The growth of settlements is a challenge which demands an effective response to ensure basic goods and services to all people. Unless permitted by the customary landowners, the strategic management of socio-economic development cannot be achieved in peri-urban locations such as this. Ironically, it cannot be achieved without a government role either.

The Ahi customary lands have been identified by both the landowners and the government as being prime land for city development as Lae is faced with urgent and major pressures on land for future expansion. With the city encircled by customary land, the city’s options are severely limited without the mobilisation of such land. A plan for managed expansion is seen an opportunity to provide more effectively for the needs and aspirations of the landowners, the settlers and the broader urban population

### **3.4 Aims of the Ahi Land Mobilisation Policy (ALMP)**

The Ahi people were the former customary landowners of all the land now under alienated title and occupied as the City of Lae. The Lae City Council therefore, whilst representing the interests of all members of the local community, has a particular responsibility to ensure the protection of the Ahi customary lands and to assist the traditional owners to manage their current land holdings prudently, given the socio-economic pressures of the market economy.

Therefore, the Mobilisation Policy document identifies nine aims to assist the landowners to achieve these objectives. They are detailed in Appendix 1: 'Aims of the Ahi Land Mobilisation Policy.' They refer to aspects relating to the protection of Ahi land, guidelines for customary use, the establishment of a Land Trust, rights over ownership and use of land; to the situation of existing settlements and their relocation; the role of the Lae Physical Planning zone, registration and development of customary land and assistance from government or other agencies.

### **3.5 Proposed development structures**

The Ahi Land Mobilisation Project is still in its early stages. The first round of public meetings was held in October 2000 and it is expected that the consultation phase will need to access all landowners to obtain their views if a workable solution is to evolve and be endorsed by the stakeholders.

In 1999, an identification survey was carried out (Wardlaw 1999) which proposed the nomination of the Ahi lands (known as DA-A) under this program. Subsequently, approval was granted by the Morobe Physical Planning Board (MPPB) and by Lae City Council. The MPPB directed the Lae District Administration to establish the Lae Land Development Corporation as the administrative vehicle under which ALMP will operate. It also recommended the recruitment of a forward planner to assist the traditional owners to plan the utilisation of their land. It is anticipated that those clan groups in the Ahi tribe who intend to participate in the DA-A will organise and form themselves into Incorporated Land Groups (ILGs) which will then have to decide and agree which parcels of their land should be surveyed and registered for development. The ILGs will then be represented on the Ahi Land Trust which negotiates, as trustee, on behalf of the landowners, with the Land Development Corporation (LDC). This latter body, operating as a limited company under the Investment Promotion Authority, has the responsibility – along with the government - for facilitating development which may require offshore assistance to fund development.

## **4.0 THE PROJECT CONTINUES**

At the date of writing, June 2001, no updated information has been received regarding the progress of the consultation which commenced in October 2000. Whilst it is recognised that land mobilisation has had a very chequered history in PNG, the impact of economic change and opportunity and the high level of involvement in the market economy of the majority of the decision-makers in the landowner group suggest that the will may exist to achieve the desired outcomes. Whilst Lakau (1991:123) represents the view that administrative and legal reform are required to enable mobilisation to occur, the Lae Project may be successful if the economic imperatives of the Ahi people drive their will to operationalise the process. The land would be mobilised despite the comprehensiveness of the land tenure system's procedures, not because of them. Many people across PNG are eagerly following the progress of this scheme.

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## APPENDIX 1

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### Appendix 1: 'Aims of the Ahi Land Mobilisation Policy'

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1. To protect the customary land from illegal occupation and use by non-Ahi people.
  2. To determine the future of the illegal settlements on Ahi customary land and repossess the land for proper development purposes.
  3. To set proper guidelines for land use and ensure that the traditional customs of the Ahi people are followed in terms of acquisition and permissive use of land.
  4. To determine the right of ownership and, in accordance with custom, who should preside over the land at the clan level.
  5. To determine who has the right over use of customary land and who can use the land on a permissive basis.
  6. To recognise that the Ahi Customary Land is prime land for further expansion of Lae City because it falls under the physical planning zone.
  7. To ensure that the land is utilised for meaningful developments and the benefits go back to the indigenous Ahi landowners either directly or indirectly.
  8. To facilitate avenues for relevant assistance that may be given by all levels of government in PNG or any other donor agencies.
  9. To facilitate developments on DA-A by the Land Development Corporation of Lae or the Lae Chamber of Commerce and Industry.
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