

Land, people and governance: Conflicts and resolutions in the South Pacific

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Introduction

Land is the key to resolving many of the conflicts and problems of Melanesia. Solutions have to involve ways that will work for the majority of the people of the region.

A characteristic of the Melanesian South Pacific is that control of the land and virtually all other natural resources is not held exclusively by the state. Only small percentages of the region's land resources have been alienated to the state. In Papua New Guinea (PNG) it is less than 3 per cent; in the Solomon Islands about 12 per cent, and in Vanuatu all land was deemed to return to its customary owners at independence. These natural resources are held in various combinations of customary group rights and customary individual rights. These rights continue to operate within a range of customary land tenure and land use systems.

National constitutions of these countries specifically recognise the validity of these customary systems within the modern state; the majority of citizens want them to continue. Such determination in the face of significant continuing outside as well as internal pressures implies that there is much about these customary tenure systems that is not appreciated by outside forces that try to undermine and destroy them. Why are these systems so important and how can other activities link up with such customary institutions?

With these customary rights come expectations and responsibilities in value systems that channel and direct both social and economic behaviour patterns of people living within those systems. Over time the strong links between rights and responsibilities have begun to fade and integrated patterns of beliefs, values and behaviour have become less integrated and more diffuse. Critical areas such as leadership, for example (Holzknecht 1997), have taken on new characteristics, expectations and behaviour patterns to such an extent that many modern leaders act with virtual impunity within their 'fiefdoms', especially in dealings with natural resources.

The conjunction between land, people and governance in Melanesia must underlie efforts to resolve Melanesia's current problems and malaise. To speak constructively about 'South Pacific Futures' the critical importance of land in these societies must be addressed to find forward-thinking ways to resolve Melanesian dilemmas.

Melanesian systems of rights and responsibilities

An overview of Melanesian customary property rights and regimes and some of the changes within them includes:

- The ownership of natural resources is not ownership, but the control, management and inheritance of different sets of rights to different parts of the resources by different groupings or categories of people. These rights are essentially privatised in that without conforming to particular criteria (such as clan membership) there is no access; they are acquired at birth, membership in customary groups being inherited through kinship systems;
- Each set of customary rights has a concomitant set of expectations and responsibilities acquired through socialisation and maintained by customary sanctions;
- Thus customary resource tenure and use systems in PNG are kinship-based social systems with associated lines of inheritance;
- Melanesian tenure systems are adaptive systems (Berkes and Folke 1998) with feedback loops so that customary managers and users can adjust parts or all of each system;
- There are institutionalised customary resource management and inheritance practices in each particular Melanesian society through customary tenure systems. Pressure factors on these systems include population growth, resource exploitation and increasing areas of perennial export tree crops;
- There are increasing pressures from the influences of globalisation and increasing commodification of natural resources that push socioeconomic and sociopolitical change in PNG; and
- All three Melanesian states are currently experiencing major difficulties with customary land systems and trying to find ways to upgrade them. This is at a time when the government in each country is desperately looking for workable solutions to issues of economic productivity, employment strategies and income generation (individual as well as for the state) and appropriate methods to alleviate the worst effects of poverty for its populations. Natural resources, especially land, forests and fisheries, are seen as essential ingredients to finding solutions to these dilemmas. The temptation in the region is to pursue simplistic solutions while under extreme pressure from various national and international interest groups.

Colonial and post-colonial contexts and constructs

The registration of customary land rights

Customary land tenure consists of sets of traditional rights related to natural resources as well as obligations that preceded and continue to coexist with colonial and post-colonial land legislation. Customary law may be officially recognised as an alternative to modern law or, alternatively, the introduced legislation may simply be ignored, unknown or irrelevant outside the big cities or in the squatter settlements that surround them. These customary land tenure systems are recognised and validated by PNG's National Constitution

The aim of land registration or land titling is to make these customary rights and relationships legal. This kind of new land system involves investigation, survey, and registration as well as the creation of systems to manage dealings in registered titles, once created. Many arrangements outside modern and customary law exist in societies that are under increasing pressure. Traditional landowners, for example, are said to know where their boundaries are; it is then a matter of registering them and allowing the title to be used for collateral. The process and effect of registration, of course, also changes these systems.

The standard line on Melanesian customary tenure systems is that absence of title can be seen only as an obstacle to development. This view is based on two elements of an 'evolutionary theory' of land rights (Platteau 1996; 1999) with a marked tendency towards individualisation and formalisation. Firstly, indigenous land tenure arrangements have been evolving in the face of population pressure and commercialisation. Secondly, there is a public sector response to this: by providing land titles, governments can reduce the associated disputes and bring about other economic benefits. Thus farmers with land titles are said to be more willing and able to invest, mortgage and sell their land. Having land titles also enables governments to better tax land. This kind of reasoning has underpinned land-titling schemes across the Third World.

These arguments often are less meaningful among people who, through colonial history, corruption or post-colonial conflict, see government intervention more as a source of insecurity rather than guaranteeing security. Processes of 'individualisation' of land and other natural resources held by customary means do challenge and undermine local community-linked value systems (including local customary tenure systems) and do increase levels of insecurity, even when local users of these resources use them individualistically.

In reality much also depends on other factors in place and functioning, including that banks are willing to lend; farmers are willing to mortgage land to borrow; that there are projects that are worth lending for; extension services are in place to provide the necessary technical and other support; and, above all, what patterns of leadership and representation exist and their effectiveness in motivating people.

Changes in official thinking about customary land

Using PNG as a Melanesian case study, four periods characterise development of official thinking about customary land:

(i) A 'modernising' period

A 'systematic adjudication' system (Simpson 1976) from colonial central Africa and systematically applied in Kenya resulted in a land title register through which any subsequent dealings in land were recorded. This system was proposed for PNG, followed by the drafting of a package of land ordinances (1962–63). A subsequent report led to the drafting of a Land Adjudication Bill (Simpson 1971). Visits were made to Kenya to see the system in action and system details were explicitly part of the preparation of the 1970 land legislation.

(ii) The nationalist reaction

The Kenyan model was abandoned in PNG following a strong nationalist reaction to planned land ordinances and their allied provisions. PNG politicians and the legal profession opposed the land bills, specifying lack of consultation. A Commission of Inquiry into Land Matters (CILM) developed a more nationalist and homegrown approach using different sets of models and strategies, for example, from Maori land tenure and from other Pacific Islands (Ward 1972; 1983). The CILM in its final report (Government of PNG 1973) recommended a less individualistic system of registering group titles and conditional freeholds. However, of all the proposed bills only one, the *Land Groups Incorporation Act*, was finalised and approved in 1974.

(iii) The liberal period

Activities revolved around the private enterprise-funded Institute of National Affairs (INA) and were more recently institutionalised in a National Development Forum. INA invited overseas scholars to focus on particular issues of concern. Knetsch and Trebilcock (1981), for example, assumed that Melanesian landowners, like everyone else, were self-interested maximisers. Their report influenced government policy in the early 1980s and led eventually to the drafting of new legislation for the sporadic, rather than systematic, registration of customary land rights, an approach abandoned after World Bank criticism (Noronha 1985). Robert Cooter's proposals to INA (1991) were more subtle, rejecting the centralisation of Kenyan and other models of adjudication, and instead proposing a 'common law' process that built decisions on custom in particular cases. Over time, a practice-based nationwide common law on customary law would emerge and be built up out of ad hoc decisions. Cooter also encouraged realistic processes and noted the high costs of centralised approaches.

(iv) World Bank involvement

The World Bank line on customary land matters remained unclear because in the 1990s the bank espoused different views. The

bank became more influential in these matters early in this period as PNG sought loans as a result of several economic crises (Kavanamur 1998). Bank consultants followed conventional and conservative economic approaches, but were also less suspicious of state activity and involvement than INA's public choice advocates. The bank increasingly used conditionalities to structural adjustment loans to push its ideas and preferred approaches.

In 1995 the bank included as a condition in a structural adjustment loan the completion of framework legislation for customary land registration and completion of land registration in East New Britain and East Sepik provinces. A private lawyer was contracted to report on how various provincial governments dealt with land matters and to develop national framework legislation on customary land. This eventually became public and provoked a nationwide backlash with massive and violent demonstrations in urban centres. The government backed down, promising that the issue of customary land registration would not be proposed again and the Bank dropped this particular condition (Filer 2000: 32–37). Six years later, in mid-2001, the public realised that the PNG government, despite earlier promises, was still persisting with the development of a draft bill for the registration of customary land. Once again violent demonstrations forced the government to shelve the plan. This kind of non-participatory way of secretly working out policy concerning an issue known to be extremely sensitive to the general PNG public is obviously unacceptable.

Softening the hard line

There has been a softening in the orthodox view to register all customary land despite regular statements from sectional interest groups. Arguments are advanced, for example, that registration systems must be 'appropriate' or more harm than good will result (Williamson 2001:12). Security, therefore, does not necessarily mean freehold, rights must be adjudicated systematically and not in a sporadic way. A recent PNG-specific draft paper from the World Bank on strategies for agricultural and rural development (Anderson and Parker 2001) also presents sensible views. Platteau (1996:76), in a review of land rights in southern Africa, says governments should only intervene if or after local informal methods are no longer reliable.

How to proceed? One approach is to view both costs and benefits; another may examine methods of implementation; but both need to consider the relevance of governance.

Cost and benefits

The costs and benefits approach to land registration issues can be variously seen as related to subsidies, opportunity costs for government or in the transaction costs to users of formal over informal systems.

Demand-driven systematic adjudication, which is possibly more efficient and fairer than sporadic registration, requires a higher rate of subsidy. Sporadic registration, because costs can be charged to demanding specific individuals, may require lower subsidies. However, the latter brings likely negative consequences (for

example, dangers of land grabbing by entrepreneurial individuals; potentially serious border conflicts with neighbours). In practice, the growing middle class can usually find ways to attract subsidies at the expense of the government budget, of equity and at the expense of the majority. Compare also the high opportunity costs of large numbers of skilled survey and adjudication resources towards land registration with the costs of developing and strengthening the courts system for the proper adjudication of land disputes as required (as Cooter's common law proposal suggested).

A 'transaction costs' approach that looks at the costs and benefits of making and securing agreements would not prejudice the outcomes of choice between formal and informal institutions. In some cases registration may be more efficient than self-management, but in other cases this may not be so. As a result, therefore, what will be likely is a mixture (Larmour 1990).

Implementation

Land registration may also be a problem in terms of policy implementation. Successful implementation suggests that simple policies consistent with local values are likely to be more successfully implemented than complex policies that challenge or undermine local values. A successful process requires dialogue and interaction, not the imposition of an inflexible blueprint.

Good governance

Platteau notes that the success of registration is dependant on the quality, character and capacity of the state, in other words, 'good governance'. Here critical factors include transparency, the basis of law (which/whose law?), participation and the taking of responsibility (2000). A land registration scheme is unlikely to have popular support or local-level cooperation if there is widespread distrust of government and suspicion of corruption among officials administering it.

The story so far ...

Melanesian populations, most particularly rural-based communities, do not wish to see major changes taking place in their customary resource use and tenure systems. This wish itself sets up tensions between different interest groups, both locally and nationally. The *Land Groups Incorporation Act 1974*, almost dormant since its promulgation, has been used sporadically firstly by logging companies using acts of parliament to bypass strict state supervision of their activities, then increasingly by mining and petroleum exploration and development companies.

This Act was one of the few acts of parliament enacted as an outcome of the Commission of Inquiry into Land Matters, and it has been virtually the only law in PNG that has managed to retain important elements of Melanesian flexibility. Through a process spelled out in the Act, the appropriate level of customary grouping can register itself as a modern legal entity, an Incorporated Land Group (ILG). While PNG law does not allow registration of

customary land rights, nevertheless, the ILG process does allow such groupings to list their 'properties' (named areas of bush, forest, grasslands, river, reefs, etc). Attached genealogies also show kinship connections between the persons listed as ILG members — members are not only self-identified as legitimate members but also by others. The importance of Melanesian flexibility is that for certain customary purposes, the customary grouping operates but in other contexts the legal character of the grouping, as an Incorporated Land Group comes to the fore. Such an ILG can sign contracts and act as any other legal entity can in PNG.

Melanesian conflicts and resolutions?

Land mobilisation/land registration

No-one in PNG has yet satisfactorily set out the actual details of how land mobilisation and land registration is to help PNG as a whole and, more importantly, how it will help ordinary rural people. Without undertaking public information campaigns, any state attempt to refocus land issues and 'mobilise' the use of land is doomed. The major problems and questions associated with land registration raise a serious doubt about the state's capacity to effectively implement such a program. If the state cannot manage the less than 3 per cent of alienated land, how can it properly manage 100 per cent of the land area? To date in all the speeches and demonstrators' objections to land mobilisation and land registration in PNG:

- No individual or group presented any viable alternatives;
- No thoughtful discussions have taken place regarding the choices PNG has regarding land development (and their pros and cons); and
- No middle way was presented between the extremes of the current dual tenure systems in PNG and the foreign-based idealistic technocratic but ultimately unrealistic and unimplementable solutions.

There *are* alternatives available that need to be explored in much more detail and not dismissed out of hand.

Productivity

The assumption that customary resource systems are unproductive and inefficient needs to be countered (Holzknecht 1999). In 1996 just five groupings of rural products from lands based on customary resource tenure make up 83 per cent of this rural income — Arabica coffee, fresh food products, cocoa, betelnut and pepper, and coconut and copra — worth a total of 162,082,404 kina.

Customary tenure systems are not inefficient or unproductive; only when implicit and unwarranted comparisons are made with western systems do they appear so. Note that productivity levels do not depend solely on land registration. Anyone, anywhere will work harder, produce more and make other uses of their land if there are favourable services such as transport, credit, extension and market facilities available to support them. The state took over such systems on independence and over time these services have virtually ceased.

Institution building

Despite the National Constitution and lessons from the 1995 and 2001 demonstrations, the state since 1975 has consistently ignored and often actively undermined these customary tenure systems. The existing active customary tenure systems and institutions have been bypassed and ignored. Virtually all programs and projects are 'top-down' with little explanation, little opportunity for any internalisation of new ideas, and offering no new ways of doing things. There is no evidence of capacity building at local or provincial levels, which is the real need in PNG. This would be most effectively achieved by working with customary resource tenure systems and the people within them, as customary tenure systems are grounded and active at this level. The second level need is for appropriate systems and processes to link and activate bottom-up systems with the top-down state approach. Land tenure systems should therefore not be looked at in the abstract or without a particular context that tells us about local institutions, about local choices, local priorities, local risk-taking and local benefits. It is also about making the absolutely critical linkage between rights and responsibilities work in real contexts.

Conclusion

Many assumptions are made about PNG customary land tenure. Most are based on a lack of knowledge about how these systems work or how productive they are. These systems are efficient and productive within their own terms and continue to provide safety nets to PNG's custom-based societies and to ensure that everyone has access to land and other resources on which to maintain a reasonable living standard. They support the frameworks for leadership patterns and status acquisition, for customary inter-group cultural competitiveness and rivalries. There can be no strict comparison between customary systems and Western tenure systems where different criteria apply and from which a very large part of the sociocultural aspects and frameworks have been removed. Melanesian systems are as much about social as they are about economic issues.

Melanesian countries must become more aware that there are other ways to move forward than by the Western-style individualisation of land title. Recognition of clan land boundaries needs to be pursued and clarified. The PNG *Land Groups Incorporation Act 1974* is the only operationalised approach and methodology across Melanesia able to give modern legal recognition to customary groups such as clans and, by extension (but not directly), a recognition that such customary groups can and do control resource rights in their customary clan land areas.

This and related approaches need to be explored and refined further so that Melanesians can build upon and benefit from their own institutions through an evolutionary process (Holzknecht 2002). Such developments would be welcomed across Melanesia, where great interest has been expressed in the approach being adopted in PNG.

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