

RECONCILING CUSTOMARY
OWNERSHIP AND DEVELOPMENT



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Land registration among the Tolai people:
waiting 50 years for titles

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A snapshot

Land registration among the Tolai people: waiting 50 years for titles

Papua New Guinea has a long experience of registering land titles but attempts to extend the benefits of registration—secure titles, which can underpin development—to the great majority of Papua New Guinea’s land area under customary tenures have failed. Ten years ago the East New Britain Provincial Government began its own Customary Land Registration Program. The evidence shows that a registration system based on Tolai territorial and social units and on input from traditional leaders in the determination of land rights would be highly acceptable—politically, socially and culturally.

The Tolai experience suggests that:

- » adequate time and other resources are required for a recording and registration system
- » there are community benefits from a process based on recording customary ownership using traditional methods as a first step to registering titles.

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The setting

The Tolai people, with a population of more than 200 000, are one of the largest ethnic groups in Melanesia. Their traditional territory is an area in excess of 1100 square kilometres in East New Britain Province. It covers the rich volcanic hills and plains of the north-east Gazelle Peninsula and the adjacent Duke of York and Watom islands.

The population in rural East New Britain Province is growing at the very high rate of 4.2 per cent a year. For many years there has been migration to the area, 'with people from many parts of Papua New Guinea seeking better access to services, more productive environments and wage employment opportunities provided by the towns and plantations' (Hanson et al. 2001, p. 259). It is one of the wealthiest areas of Papua New Guinea.

European settlement in the Tolai area began in 1875, but the early missionaries and traders were soon outnumbered by plantation owners. It is estimated that by the early 1900s some 40 per cent of Tolai land had been alienated. A century of colonial rule followed European settlement—by Germany until the First World War and then by Australia. The area was a vast Japanese military garrison during the Second World War, but Australian administration resumed after the war, and continued until Papua New Guinea's independence in 1975.

Tolai were quickly recognised for their readiness to innovate, and many new measures (for example, cooperatives, local government, land settlement schemes, savings and loans societies, cocoa production, and women's clubs) were first trialled among Tolai. When moves began in the 1950s to extend the benefits of registering titles to customary land—land still subject to custom—once again the Tolai people were selected for its introduction. But more than 50 years later, there is yet to be any registration of Tolai land.

The cultural and political context of Tolai customary land

The occupation of land under custom is inseparable from other aspects of ethnicity and culture. Tolai have a strong ethnic and cultural identity. While most Tolai live in villages and tend cash crops and food gardens, many are employed in other parts of Papua New Guinea. Among the younger Tolai born to parents living away from the Gazelle Peninsula, the desire to 'return' to customary lands may not be strong. In contrast, many of the Tolai born on the Gazelle Peninsula but living and working away from the area are making arrangements for returning when they retire. For most, 'home' is the village in which they were born.

For Tolai, their identity is not just a matter of their distinctiveness as an ethnic group; it also covers kinship and land (see, for example, Fingleton 1985). As a matrilineal society, Tolai are members of their mother's lineage. The Tolai population is divided into two moieties—Marmar and Pikalaba. This is basically a division of people for marriage purposes. A Marmar person must marry a Pikalaba, and a Pikalaba must marry a Marmar. The two moieties are dispersed across the Tolai territory, and no Tolai villager is in any doubt as to who in the local community belongs to his or her moiety, and who belongs to the other. This moiety division is critical to Tolai social organisation and is an underlying factor in all matters affecting access to land.

The central corporate unit in Tolai society is the *vunatarai*—the group of people who trace their matrilineal descent from a single female ancestor. An individual acquires membership of a *vunatarai* from his or her mother, and from this comes their place in Tolai society and their main avenue for accessing land. Tolai may gain access to land by other well-established customary ways, but their most secure tenure is to the land of their own *vunatarai*. Members of a *vunatarai* acknowledge a common leader and identify themselves by reference to the place of their original settlement, where ancestors are buried and where the members of the *vunatarai* meet for ceremonial activities. If the *vunatarai* is regarded as a clan, Tolai also recognise the subdivision of larger clans into subclans and even separate lineages.

Tolai territorial units centre round the concept of the 'inhabited place'. The largest residential unit is the district around that place, usually the territory of a number of villages that have been traditionally associated. These are divided into subdistricts around individual villages. The smallest territorial unit is a piece of land—which may vary in size from a few square metres in heavily settled areas to more than a hundred hectares in kunai grasslands or areas under primary bush. Each such land unit is named (usually by reference to some natural feature or event that occurred there), and its boundary features are known by the adult members of the community.

The most crucial factor affecting the security of a Tolai's tenure of a piece of land is the intensity with which that person is identified with it. Identification derives from a history of connection with the land—both in a personal capacity and as a member of a kinship group. An individual's local identity pervades the Tolai culture. In summary, there are three basic categories of village resident:

- 1 those most closely identified with a village are the members of the *vunatarai* for which the village subdistrict is their original place of settlement
- 2 members of the *vunatarai* for which a neighbouring subdistrict is their original place of settlement and is within the broad district of their current village—their identities being at a lower order than the identities of people in the first category
- 3 village residents whose original place of settlement is in another district—considered not to be true members of the village.

Back when most people married local residents and they did not move far, there would have been a high degree of correspondence between village residence and village membership. But today many village residents are not members, and many village members reside outside the locality with which they are identified. This is largely a consequence of greatly increased mobility and the modern emphasis on the nuclear family. Children are growing up on their father's land, remote from their own (that is, their mother's) land. These changes, together with the needs of an ever-growing population, are putting pressure on the Tolai system of customary land tenure. The alienation of relatively large areas of village land during the colonial period contributes to this situation.

Papua New Guinea's experience of customary land registration

Land titles registration in Papua New Guinea dates from the earliest colonial times. The current Land Registration Act is a direct descendant (by way of Queensland) of the original Torrens legislation, introduced in South Australia in 1858.

The Torrens system of title was designed to facilitate conveyancing, the transfer of the legal title in land from one person to another. Thus:

Registration of title is a process whereby the State maintains a register of parcels of land showing all the relevant particulars affecting their ownership, and guarantees these particulars to be complete and correct. The Register is the final authority. Transactions are effected by making an entry in the Register—and only by this means. A simple procedure with simple forms exists for this purpose and so dealing in land becomes easy, quick, cheap and certain. (Simpson 1969, p. 4)

Land titles registration was introduced in Papua New Guinea to provide a service to the European settlers by facilitating dealings in land, but it also secured alienated land against claims by the former customary owners.

LEGISLATION BEFORE INDEPENDENCE

In 1952, drawing on a Fijian precedent, Native Lands Ordinance 1905, the colonial administration decreed the Native Land Registration Ordinance to allow for the registration of titles to customary land either in the names of individuals or a community. The Native Land Commission was established to investigate claims and register customary land. If a registration was not challenged within five years it became conclusive evidence of the ownership as registered. When the law was repealed in 1963, no titles had been registered. However, in the Kokopo District of East New Britain almost all group boundaries had been demarcated and the genealogies of the customary landowners had been recorded.

The Native Land Registration Ordinance was replaced by the Lands Registration (Communally Owned Land) Ordinance, as part of major land law reform that took place in 1963–64. The Land Titles Commission was established with exclusive jurisdiction to systematically adjudicate and register titles in customary land. Under this process the ownership of all land in a declared adjudication area would be investigated by demarcation committees, systematically determined, and then registered either as communally owned land or individually owned land.

At this time the Australian administration favoured the individualisation of customary tenures as the basis for indigenous economic development, an approach supported by a World Bank mission to Papua New Guinea in 1964. To this end, provision was made for the sporadic registration of individualised titles under the Land (Tenure Conversion) Ordinance. Under this ordinance all customary interests in land were extinguished and replaced by an individual title, which was then registered under the Torrens system.

REFORM ATTEMPTS BEFORE AND AFTER INDEPENDENCE

By the late 1960s Papua New Guinea had been divided into 536 adjudication areas, and 475 demarcation committees had been appointed (Fingleton 1980). But in 1969 when S Rowton Simpson, the British Land Tenure Adviser, produced a highly critical report of the registration system, its operation was suspended. Despite an enormous amount of work done by demarcation committees in hundreds of adjudication areas throughout Papua New Guinea, when the Lands Registration (Communally Owned Land) Ordinance was suspended no title had been entered in the Register of Communally Owned Land. The Simpson report led to a comprehensive review of the land registration laws and a new scheme was designed.

Inspired by the Simpson report the colonial administration set up a working party on land registration, a technical team visited Kenya to study the land registration system there, experienced anthropologists and legal academics were consulted, and a package of laws was drafted. The proposed laws were designed to provide:

- » a new system for determining ownership of customary land so as to register it in the names of groups or individuals
- » a system for controlling transactions in all registered land
- » a single Register of Titles and a modified Land Titles Commission.

On the eve of independence, however, the introduction of such sweeping reform was controversial, and in the face of strong Papua New Guinean opposition the draft laws were withdrawn.

Instead, in 1973 the new self-governing administration set up the Commission of Inquiry into Land Matters (CILM). CILM consisted of 10 Papua New Guinean commissioners, assisted by a small support staff of expatriate advisers. Its report made comprehensive recommendations for reforming land policies, laws and administration. With respect to customary land registration, CILM's view was that land policy should be an evolution from a customary base, not a sweeping agrarian revolution. It made the following recommendations.

- » New legislation for customary land registration should be introduced, but it should be used sparingly and only where there was a clear demand from the landowners concerned and a real need to replace customary tenures.
- » The previous emphasis on individual titles to customary land was not appropriate and 'the basic pattern' should be to register group titles and provide for the group to grant registrable occupation rights to group members or leases to non-members.
- » There should be restrictions on dealings in registered customary land.

While some aspects of the CILM report were adopted and implemented, the recommendations relating to customary land registration were not followed through. But the CILM report did have an impact on the existing systems for registering customary land that had encouraged the individualisation of customary tenures. CILM had recommended against individualisation, so the processing of tenure conversions was discontinued from 1975 (although measures to convert land from customary tenure to individual registered title were revived in 1987).

FAILED DONOR-LED EFFORTS TO REFORM LAND TENURE SINCE THE 1980S

In 1983 the Task Force on Customary Land Issues was set up and it recommended reforms to land tenure. About this time the World Bank argued that land reform was necessary for the growth of income and employment, and the Land Evaluation and Demarcation (LEAD) Project was established. Because this project was to review land laws and land administration no other changes were made to the laws pending the results of that review.

Provincial governments were becoming frustrated at having to wait for progress at the national level on customary land registration. In 1986 the East Sepik Provincial Government proceeded with its own legislation. With the approval of the national authorities, in 1987 it enacted two laws based very much on the recommendations of CILM—the East Sepik Land Act and the East Sepik Customary Land Registration Act. A lack of funds and institutional capacity slowed progress in implementing the legislation and the East Sepik land laws were allowed to lapse without a title ever being registered.

In 1989 the large, five-year Land Mobilisation Project funded by the World Bank was commenced, along with an AusAID-funded supporting project to strengthen land administration and develop a land information system. The World Bank project included a component to help formulate the policy framework for registering customary land at the provincial level, to assist provinces to draft customary land registration laws and to develop the necessary administrative procedures and structures to implement the legislation. The project concluded, however, without achieving its objectives.

In 1995 the World Bank attempted to attach a condition to its loan to Papua New Guinea under the Economic Recovery Program that required the legislation for customary land registration be completed and implemented in East Sepik and East New Britain provinces. When this became known, a wave of misinformation swept across the country and resulted in student protests, public meetings and riots. The World Bank loan to the government was seemingly confused with loans by commercial banks to individuals—which are commonly secured by a mortgage—and rumours spread that, upon default in repayments, the World Bank would take over the people's customary land.¹ Although the Department of Lands engaged a private legal firm to draft the legislation, the attempt to legislate for customary land registration again failed.

After the trouble in 1995 outside agencies lost interest in promoting customary land registration in Papua New Guinea, but the Department of Lands pressed on. In June 2001, it was announced that the national government was proposing to introduce draft legislation. There were considerable tensions around this time, caused by government attempts to privatise particular agencies and downsize others. The World Bank had also revived its demands for 'land mobilisation'. Students and unions protested against the government's reform program, rioting ensued, and four people were killed.

¹ During fieldwork in April 2007 for this case study, Tolai villagers mentioned these rumours.

LATEST EVENTS

Despite the extraordinary sensitivity about land reform, the subject is too important for it to be ignored by governments. In early 2005 the then new Minister for Lands, Dr Puka Temu, revived the subject of land policy reform. After a nationwide process of consultation, the Land Development Programme was established to implement reforms under three broad themes (National Research Institute 2007; see also Case Study 14, 'The paths to land policy reform in Papua New Guinea and Vanuatu'). The mobilisation of customary land for development purposes was one of these themes.

Rather than customary land registration per se, the registration of incorporated land groups features as the main vehicle for mobilising customary land (see Case Study 1, 'Incorporated land groups in Papua New Guinea').

SUMMARY OF THE MAIN LAND TITLE INITIATIVES, 1952–2007

Date	Initiative	Results
1952–63	National Land Registration Ordinance	No titles registered.
1963–70	Lands Registration (Communally Owned Land) Ordinance	No titles registered.
1963–75	Land (Tenure Conversion) Ordinance	737 titles registered.
1971	Administration's draft land bills	Bills withdrawn.
1973	Commission of Inquiry into Land Matters (CILM) recommendations on customary land registration	Policy approval given but legislation never drafted.
1983	Task Force on Customary Land Issues	Proposals opposed by World Bank.
1987	East Sepik provincial land legislation	No titles registered.
1987–95	World Bank and AusAID land mobilisation projects	No policy approval. Land administration and land information systems improved, but not sustained.
2001	World Bank revival of the Land Mobilisation Project proposals	Riots and four deaths—no further action.
2007–	Land Development Programme	Customary land registration not a priority area of land policy reform.

Efforts to register Tolai customary land in the 1950s and 1960s

RESULTS UNDER THE NATIVE LAND COMMISSION

Papua New Guinea's experience of customary land registration included attempts to register Tolai customary land. The Native Land Registration Ordinance of 1952 was introduced first in the Tolai area, and it is there that it had its greatest impact. Although not a single title had been registered when the law was repealed a decade later, a great deal of preparatory work had been done.

A former District Officer, Sydney Smith, was appointed Native Land Commissioner at Kokopo in 1956. Aware of the legislation's Fijian precedents, he corresponded with the Fijian Native Lands Commission and adopted its practice of using the indigenous territorial and social units for purposes of recording landownership (Fingleton 1985). On the advice of Tolai leaders, he first identified the boundaries of the districts and subdistricts that they recognised. Starting east of Kokopo, he then systematically recorded the names of the 'communities or matrilineages' that owned parcels of unalienated land right across to the coast of St Georges Channel.

By 1960 the ownership of some 6750 hectares had been recorded in this manner. There were decisions on 47 land parcels, ranging in area from 2 to 578 hectares. The landholdings of groups within each parcel (as many as 26 groups) were not differentiated. Despite the lack of registrations, this work was highly valued by Tolai, and the records that remain from this period are being used as the basis for the provincial government's current Customary Land Registration Program.

RESULTS UNDER THE LAND TITLES COMMISSION

The Land Titles Commission established as a result of the land law reforms of 1963–64 had two main methods for registering title to customary lands:

- » registration after *systematic* demarcation and adjudication in the Register of Communally Owned Land
- » registration after *sporadic* tenure conversion in the Register of Titles (called the 'Register Book' in the legislation).

Either individual or group ownership could be entered in the Register of Communally Owned Land, and the land remained subject to custom. Only individual ownership could be entered in the Register of Titles, and the application of custom to the land ceased in all respects once registered in this way.

By the middle of 1966, all customary land in the Tolai area had been divided into 95 adjudication areas, the first step towards registration in the Register of Communally Owned Land. Demarcation committees of local Tolai leaders had been appointed for each adjudication area. The next step was for claims to be made, which the demarcation committees would then investigate. After the period allowed for claims had passed (three months from declaration of the adjudication area), the committee was required to start preparing a demarcation plan, showing the boundaries of all customary land that was the subject of claims.

Information on each land parcel was kept on index cards, and the minutes of the meetings held by the demarcation committees were recorded, detailing the business conducted. As agreement was progressively reached on the location of the boundary, wooden stakes placed on the boundary of parcels were replaced by the cement markers of the Land Titles Commission. Any disputes were noted on the parcel card, and the matter was left to be resolved by the Land Titles Commission.

As the stakes were replaced by cements markers, commission staff carried out low-level surveys. The demarcation plan was progressively updated, until it was ready for an inquiry by the Land Titles Commission. Any disputes were then heard and determined, and the findings over the whole adjudication area were finally set out in an adjudication record. After any appeals were resolved, the Land Titles Commission certified the adjudication record and demarcation plan and forwarded them for registration.

The commission's demarcation and adjudication process took over and expanded the main elements of the Native Land Commission's previous practice in the Tolai area. Both systems based demarcation and adjudication on Tolai territorial and social units and traditional leadership. Tolai valued these processes highly, not only for recording existing landownership but also for documenting the basis of the tenure of each land parcel. The local identity of owners, associations between groups, and kinship and marriage relationships between individuals are crucial to Tolai land tenure, because land interests not only derive from these factors but also depend on them and are influenced by changes in them over time.

The considerable amount of work involved saw only one adjudication record completed, before the operation of the law was suspended in 1970. The record was for the Rakunat Adjudication Area, outside Rabaul in East New Britain. Demarcation had been completed in a number of other adjudication areas in readiness for adjudication, and was close to completion in some others.

Research conducted at Rakunat in the early 1980s (Fingleton 1985) found that:

- » the boundaries of land parcels were generally known and accepted
- » very few parcels (less than 10 per cent) were disputed
- » most of the parcels (almost 70 per cent) were recorded under group ownership in the name of the *vunatarai* (matrilineal group)

- » where parcels were recorded in the names of individuals, these people were usually relatives who formed a small matrilineal segment—for example, male and female siblings, and the children of the female siblings.

The research also revealed that transactions in land between groups and individuals were not new, but had occurred at Rakunat since its first settlement. Every transaction depended on a pre-existing relationship between the parties or a longstanding association between *vunatarai*. The consistent pattern emerging from transactions was the redistribution of land from comparatively ‘land rich’ *vunatarai* to members of ‘land poor’ groups.

No evidence existed of a trend towards the individualisation of customary tenures and this continued in modern times, with Tolai placing little importance on tenure conversion—the other main method introduced in 1964 for registering titles in customary lands. Twenty years later, only about 40 tenure conversions had been carried out in the whole of East New Britain Province.

Revival of land demarcation efforts

THE CUSTOMARY LAND REGISTRATION PROGRAM

When the East New Britain Provincial Government heard that East Sepik had passed its provincial land legislation in 1987, it became one of a number of provinces that also moved to bring in their own laws for customary land registration. The national authorities became fearful of losing control of the land reform agenda and of having 20 different land laws within the country. They set in train the preparation of ‘framework’ legislation, ‘to avoid the emergence of a variety of inconsistent and uncoordinated provincial land administration systems’ (Terms of Reference for Preparation of Drafting Instructions for the Framework Legislation 1988).

Drafting instructions were prepared and a working party was set up to draft the national ‘framework’ law for customary land registration and a model provincial law. But after reforms were introduced in 1995 that reduced the powers of provincial governments, this approach was abandoned. Soon after, the East New Britain Provincial Government began its own Customary Land Registration Program.

The Administrator of East New Britain Province had been delegated many of the national minister’s powers under the 1996 Land Act, and a Lands Division was set up in the province to assist in exercising those powers. Much of its work concerns the administration of state-owned lands, but it has a small Customary Land Section responsible for collecting data, settling disputes and monitoring land dealings. The section is currently staffed by

the Provincial Customary Lands Officer, the Provincial Land Court Officer, land mediators and a collector of land data. It operates on an annual allocation from provincial funds, which in 2007 was K100 000.

There is general support for the Customary Land Registration Program—from the Provincial Executive Council and the Administrator to community governments and district administrators, as well as local members of the national parliament. In 2003 provincial funds were used to send six people to Fiji on a study tour in recognition of the Fijian precedents for the Native Land Commission. Their report concluded that basing land registration on the local social structure in East New Britain was the right approach, but also recommended that a large-scale public awareness campaign take priority over implementing new legislation.

The Customary Land Registration Program is a conscious attempt to ‘revive’ the system of data collection used by the Native Land Commission and the Land Titles Commission during the 1950s and 1960s. Land disputes were hindering development, and the provincial government believed that the records of demarcation committees would establish the ‘history of landownership’ and preserve the knowledge of clan elders collected and recorded in the 1950s and 1960s, which was being lost as they aged and died. The Provincial Executive Council adopted a policy of accepting demarcation committee decisions as ‘binding’ in the event of later disputes.

The Customary Land Section’s main activities are to collect and update *vunatarai* genealogies and, using the demarcation committee records, establish village boundaries and then clan boundaries on the ground. The work at village level is preceded by a public awareness campaign, and it is intended that the clan landholdings will be surveyed and eventually registered.

PROGRESS SO FAR

The Customary Land Section is small, with a small budget and responsibility for mediating land disputes and dealing with other customary land issues as well as for its land registration tasks. So it is not surprising that it has not made much progress on land registration. Also, the officer responsible for supervising the section has many other duties as head of the Lands Division in the East New Britain provincial administration.

Over the past few years work under the Customary Land Registration Program has consisted mainly of collecting the records from the 1950s and 1960s that can be located, reviewing them and entering them in a computer database. Unfortunately many of the early records were lost in the volcanic eruption in 1994, which damaged the Rabaul Court House. And, recently, the office of the Customary Land Section was burgled and the computer storing the entered records was stolen.

The main focus so far has been on Raluana and Bitapaka community governments, two of the four local-level governments in the Kokopo District. In Raluana the public awareness program has been conducted in most villages, and staff from the Customary Land Section is carrying out fieldwork to locate parcel boundaries based on the demarcation committee records. In Bitapaka there are major gaps in the demarcation committee records held by the section, but the community government is very keen to proceed and has started its own public awareness campaign.

PROBLEMS AND CHALLENGES

The task at hand for the Customary Land Registration Program is considerable and it is unlikely that the key objectives of achieving customary land registration can be met for two key reasons.

- » The provincial government funding of the program is not sufficient to meet the requirements of a long-term, sustainable, customary land registration system.
- » There is no suitable customary land registration law at the national or provincial level. This means there is uncertainty about the legality of registering customary land.

There are additional problems for the program to overcome. The early records being used to establish the database are seriously deficient. They consist mainly of minutes of meetings, scraps of Native Land Commission decisions and deteriorating genealogies, which the section's staff try to make sense of. There are no Native Land Commission decision books, demarcation plans or even parcel cards. The minutes of meetings held are only work-in-progress documents. Many genealogies are missing.

Many of the missing records are likely to be held in the archives of the Land Titles Commission in Port Moresby.² But even if these can be located and copied, there is little point in sending them to East New Britain until appropriate facilities and systems are in place to store documents in a safe and accessible way.

The provincial government is well aware of the necessity for good communication, and it is emphasising the importance of ensuring the public is fully aware of the effects of registering customary land. Informed consent is critical to the success of any land registration measure. Public awareness campaigns need to be properly designed and conducted, but current efforts are haphazard.

Training in procedures and work practices is also lacking. The provincial government understands this, but so far training has been 'on the job'. Goals, guidelines and procedural steps need to be established and the necessary forms and possibly a manual of laws and procedures prepared. These can then be used as the basis for recruiting and training staff.

² Checks made during this case study were inconclusive. The Land Titles Commission had recently moved, and much of its material was still in boxes.

Some underlying principles, concepts and policies

Land registration is a process designed in western countries to facilitate the passing of land from one owner to another. But in developing countries registration has often been used as a vehicle for reforming land tenure. Land registration schemes, not just in Papua New Guinea but in the Pacific islands generally and elsewhere in the developing world, have mostly fallen well short of their intended goals and have led to unintended and harmful consequences. Customary land registration is something to be approached with great care—and without being too ambitious.

A basic policy question must be answered in any measure to register customary land: is it intended only to record the existing status quo or is it intended to change the nature of landownership and distribution? If the latter, what sort of change is intended? In some cases land ‘rationalisation’ has been the goal, with consolidated landholdings taking the place of many scattered parcels. In more ambitious reforms, land ‘individualisation’ has been the goal, with the landholdings of groups being divided among their current members. The history of land registration in developing countries shows that the more ambitious the reform, the less its chance of success and the more its chance of undesirable consequences.

There are two main aspects of a land registration system—what is called ‘first registration’, and then registration of ‘subsequent dealings’. The first registration of land titles establishes the legal status of the land at the time of registration. But if the ongoing benefits of ‘indefeasibility’—the guarantee that the particulars in the register are always complete and correct—are to be available, all subsequent dealings in the land must also be registered. This is where so many registers in the developing world have fallen down. If subsequent dealings (transfers, transmissions on death, etc.) are not recorded the register falls out of date and cannot be relied on.

In the Tolai area of East New Britain the measure that has enjoyed the greatest support is the systematic recording of the *existing* ownership of groups under custom of *existing* land parcels. This measure was based on a Fijian precedent dating from the early 1900s, but the Fijian system contains a mechanism for *dealings* in land after ownership is determined, which has not been adopted in East New Britain.

Without a mechanism for recording subsequent dealings, the system in East New Britain does not provide the flexibility necessary for adapting customary land tenures to modern circumstances and modern demands on land, including the ability to use land to raise finance. What is lacking therefore is not just the long-awaited law for registering group titles, but the equally important law for dealings in such titled customary lands.

Lessons

ADEQUATELY RESOURCE THE LAND REGISTRATION PROCESS

LESSON 1

Substantial and sustained funding is required to set up and maintain a register for customary land.

LESSON 2

There is limited value in pursuing a registration process if funding for setting it up and maintaining it are inadequate.

Land registration is a demanding process, involving the demarcation of boundaries and adjudication of existing land rights, the opportunity for appeal, surveys, the entry of titles in the register of titles, and the keeping of the register up to date. Skilled personnel and technical resources are essential for the process to work fairly and efficiently. Inadequate funding and administrative capacity have limited the success of the land registration aspirations of the Tolai people. Without guarantees that sufficient resources will be available to undertake the necessary tasks in the registration process and to maintain the register, it may be better not to start the process.

PROVIDE SUFFICIENT TIME AND AN ENABLING ENVIRONMENT

LESSON 3

Any program that aims to systematically register customary land must accept and incorporate an extended timeframe for completing the program.

LESSON 4

In view of the time needed, the success of a program for systematically registering customary land depends on a stable legislative and regulatory environment with respect to customary land registration.

The initiatives in the 1950s and 1960s to undertake a systematic process of customary land registration of Tolai lands demonstrated two things.

- » The task for accumulating the information needed for registration is considerable.
- » The time needed for preparing for registration can be measured in years or even decades. Ultimately the pace of these initiatives could not keep up with the pace of change in national land policy.

PROMOTE THE BENEFITS OF RECORDING CUSTOMARY LAND

LESSON

5

Communities may find the recording of genealogies, social structures and land boundaries to be desirable and beneficial.

Despite attempting to systematically register land titles for more than 50 years, no title among the Tolai people has been registered. But a great deal of work was done in preparation for registering group titles in customary lands and this work was highly valued by the Tolai people. It became the basis for the provincial government's present Customary Land Registration Program. The main reason for its popularity relates to the recording of Tolai territorial and social units, which are fundamental to Tolai identity and their relationships with land.

Appendix: 2007 interviews

EAST NEW BRITAIN PROVINCIAL ADMINISTRATION

- » Aquila TuBal, Administrator
- » Horim Ladi, Deputy Provincial Administrator, Policy, Planning and Evaluation
- » Mary Dadatliu, Acting Lands Adviser, Division of Lands
- » ToPuiPui, Provincial Customary Lands Officer, Customary Land Section, and five other officers from the section
- » Rachael Moore, Development Specialist, Australian Government Sub-National Strategy

KOKOPO DISTRICT OFFICE

- » Edward Lamur, District Administrator

RALUANA COMMUNITY GOVERNMENT

- » Tio Wawaga, President
- » Peter Lapim, District Manager
- » Apolinaris Duamuga, Agricultural Officer

FIELD VISIT

A site inspection of land demarcation activities and a meeting were held at the Kunakunai and Ravat wards of the Raluana Community Government, attended by Horim Ladi, ToPuiPui, the Provincial Land Court Officer, land mediators and other officers from the Customary Land Section, the President of the Raluana Community Government, the Raluana Coordinator, two councillors (Kunakunai and Ravat) and about 30 villagers (including one woman and six young men).

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