

This issues paper by Steven Sukot of the Bismark Ramu Group is an extract from his presentation as the PNG NGO representative to AusAID's Pacific Land Conference in Port Vila, Vanuatu, June 2008.

Papua New Guinea (PNG) is one of the very few countries in the world that has a Customary Land tenure system covering about 97 percent of its total land mass. This 97 percent is the life support of around 80 percent of the total population of PNG. Land is Life to people in PNG. You take land away from people - you take away their Lives! Unlike many other countries such as Australia, our land in PNG means everything to us that money could buy. It is the essence of our lives.

Land remains a highly debated issue in various contexts, such as the customary land tenure system, various governments, NGOs, institutions, industries, donor agencies and most importantly in the Pacific region. Over the years, many workshops and conferences on land have been held on various themes and topics. However, despite the changing of themes and topics to make it appealing to a wider audience, the underlying issue is customary land conversion.



Papua New Guinea

PNG is a small country of just over 6 million people. It is both culturally and environmentally diverse. The country is made up of different tribal groups with over 860 different languages, spread over 20 provinces.

PNG consists of the eastern mainland New Guinea including the islands of New Britain, New Ireland, Bougainville and 600 smaller islands and archipelagos.

Land in the PNG Context

Unlike other countries, PNG is one of the few lucky countries alongside other Melanesian countries; the Solomon Islands, Vanuatu and Fiji, where the indigenous people still retain ownership rights to their land. Sadly, many indigenous people in other countries have lost this and some are fighting a long and hard battle to regain control.

Our people depend on their land for food, hunting, fishing, cultural practices, medicine, and housing amongst other needs. There are also spiritual and cultural connections between land and our people. Our people's culture and traditions are neatly interwoven with their land, often times it is very difficult to untangle. This connection is not easily noticeable as well as relatively and poorly understood by non-indigenous people. Land is one's identity; it is one's existence; it is our birth right.

The intimate association between our people and their land is threatened by globalisation and a kind of neo-colonialism, which is easily accepted by our government. I am glad to say that our country is beautiful and blessed with rich natural resources however at the same time, I am sad to say that the development path pushed by our government puts indigenous land rights and our natural beauty at stake. Our government is pushing a development model that often times results in social dispossession, cultural extinction by the dominant culture and alienation of people from their land.

Because our people own the land, they have choices to make compared to those that have lost their land rights. In PNG, our people have the freedom and the choice as to whether they work and cultivate their land or to go to towns and cities to work in factories or the formal economy. The loss of people's rights to land forecloses the chances of those people having the same choices as people that still retain their land rights. Sadly, this is very evident in countries where the State now owns the land.

People in such situations really don't have a choice as they have to work in factories; or the formal economy if they want to survive. They have limited freedom compared to people that own their land. The struggle that our people are facing in PNG is to maintain control over this ownership right to land from the dominant, powerful, globalised economy, which is alien to us – people of the land.

The Land Registration Timeline in PNG (1995-2006)

1995 – Uprising from civil society in the main towns and cities of PNG against land reform. Several people were injured in the encounter with police. What is now known as land registration was then called land mobilization and land reform. This was strongly pushed by the World Bank at the time.

2001 – The term land registration surfaced, this was no longer a push by the World Bank, but by our own PNG elites and those in the top bracket of our government. Civil society again rose up. The protest in the country's capital Port Moresby by students from the University of Papua New Guinea (UPNG) resulted in 4 deaths and several injured when police open fired on protesters.

2006 – The Land Task Force was established by the PNG government to look into the issue of land.

Making Land Work

Reflecting on the theme Making Land Work is interesting; however it also raises fundamental questions in the context of PNG. Was the Land Not Working? Is the Making Land Work Concept Correct? And for whose benefit?

Was the Land not working?

It would be a fundamental error to think that land has not been working. Looking back since the planet existed; the first evidence of land working is LIFE. The air that we breathe, the resources that we exploit for our benefits, the boundaries of our different cultures, races, traditions, the food that we eat, the environment and our existence are the evidence of the land at work.

That is the value of land beyond Monetary Measurement. That is something that requires appreciation – I don't know how many cultures in the world appreciate land in its infinite value – but the Melanesian culture is the culture of land and in PNG land is appreciated in over 800 ways because to us, land is like a Mother – working very hard night and day for her children.

Is the Making Land Work Concept Correct?

Considering the theme from the angle of people and land – the theme appears to advocate for not only the opposite but a foreign concept, and it does not fit well into the PNG context.

In PNG, people and land work together. The land is there but people have to use their intelligence to cultivate it for their survival – our people have done this through the test of time and can be regarded as experts in working the land. PNG still holds the traits of a system before modern civilization in which, people worked the land to sustain their livelihood. Despite being placed in the doldrums of various systems developed, introduced or imposed, when one looks practically into the essence of life which is survival, this system of working the land is the source of hope for around 80 percent of the PNG population.

In the context of the existing customary land tenure system in PNG, the concept of making land work would form the opposite system, it does NOT fit into the two way process as described above.

John Chitua of the Bismark Ramu Group explains the interconnections of land and people in PNG and how the two forces (People and Land) relate to each other:

Land is supposed to be whole. People are an integral part of the land and likewise land is an integral part of the human society. It provides not only a space for food production/supply but an important element for connecting groups of people. Through these connections there is security, there is support, and a whole lot of other things. It is a total system. It is the basis for the social fabric in Melanesian societies.

Today the corporate world is separating people from the land. Land becomes a commercial asset with no connections whatsoever to human and other life forms on earth. When this happens as indicated in the illustration below the gap in between (arrow) people and land widens. Instead of living and enjoying this land they become labourers on the piece of land that their forefathers enjoyed and cared for. As people drift away from their land they become individualistic and they forget the clan system and start to fight among themselves. The more they fight and lose touch with their land, the more they drift away and the gap becomes bigger.

The corporate world is using money as a powerful tool to widen this gap between people and their land. The corporate sector is arguing that people should appreciate more money instead of their land.

Our struggle is about making sure the gap doesn't get bigger. It is about making sure people maintain their connection with the land and stay in control of themselves (the mind) and everything around them including their land. Our most powerful tool in ensuring our people see this connection is for us to educate them. We provide relevant information to them. The corporate world is taking advantage of our people as the illiteracy rate in the country is still very high and our people lack basic information in-order to make informed decisions regarding land.

For Whose Benefit?

We have been told that reforms are for our benefit. We have been told reforms will improve our livelihoods. In reality we are experiencing the opposite of what was promised. The political reforms, economic reforms, health reforms, education reforms and other reforms have NOT delivered – these are fundamental pillars of a nation's sovereignty, sad to say we lost out in the reforms which are working well for the minority elites and the corporate sector. We never asked for them – These were imposed by the major financial institutions and the corporate sector and adopted by our government. Land is the only thing the people of PNG have. Even though we don't see land a problem, the same people who pushed for the other reforms see its current status a problem.

Is it a problem to us or to them? Will Making Land Work solve our problems or theirs?

Related issues

There are a number of issues related to the push for land registration.

Multinational Corporate Push

Customary land conversion is the primary agenda of the corporate world. The Customary Land Tenure System is obviously their biggest road block; they tell us that it is blocking development. The current trends in land titling show land going into the hands of foreign businesses and few elites. Moreover, as a result of our government's foreign policies there has been an increase in land pressure. Our forests, our rivers, our oceans are being exploited at an alarming rate by transnational corporations. It's sad to see that these are mostly large foreign companies. The number of logging, mining, fishing and oil palm operations in PNG has escalated in the last couple of years. Therefore we view the land reform push as aligned with corporate interests and the elites.

Serious Governance Problems in PNG

PNG is plagued with serious governance problems and the Land Administration in PNG is no exception. Already the Lands Department has problems in adequate management of the 3 percent state and alienated land. There is NO guarantee that these bodies can adequately serve the people.

The National Land Taskforce has also been tasked to work out strategies to improve Land Administration. However, putting strategies and mechanisms in place cannot be used as a guarantee for adequate land administration. These new mechanisms and strategies must be tested with the current 3 percent state and alienated land to prove their effectiveness before targeting customary land.

Other concerns are the inadequacies of an ineffective and expensive land court system and the integrity of political parties, which set the pace for new laws and policies in PNG including land.

Case Study

Doini Island, Milne Bay Province

Doini Island, not far from Samarai in the China Strait area of the Milne Bay Province, was alienated from its traditional owners at the beginning of the 20th century. It was held by various colonial plantation companies on a 99 year agricultural lease from the state. In the final five years of the 99 year lease, at a time when there was no commercial plantation on the island, the Doini islanders made representations to the Minister for Lands to have Doini Island returned to them when the lease expired.

The basis of the Doini Island claim was they had always used the island prior to alienation for hunting, gathering, and gardening. They had continued to visit the island during the period of alienation and the skulls of their ancestors were buried in a cave on the island. Like their Melanesian brethren on Murray Island in the Torres Strait, in the celebrated Australian Mabo case the Doini Islanders never lost their connection with the island.

The Minister for Lands, and the Department of Lands agreed that Doini Island should be returned to the landowners. However new shareholders in the lease holding company who wanted to use the island for a tourist resort, went to the Milne Bay Land Board, and got the Land Board to change the purpose of the lease from agricultural to commercial purposes, and to extend the lease.

The Lands Board sitting in Milne Bay, with the now deceased Ralph Guise from Milne Bay as its chair, was aware of the notoriety of the claims of the Doini Islanders, but chose to ignore them. It neglected to notify the Doini Islanders, an obvious interested party, of the hearing for the application before it. In addition, it failed to take into account in its decision evidence that ought to have been taken into account, namely that both the landowners and the Minister for Lands would oppose any extension of the lease. Aside from these failings in proper process, the Lands Board simply did not have the statutory power to extend the leases. The Lands Board behaved in a disgraceful manner, and certainly the spectre improper dealing was raised.

Quite properly, the Secretary for Lands went to court to over-turn the decision of the Lands Board on behalf of the Landowners. It was clear to the Department that the lease should never have been renewed, and that the policy of the Department was to return the land back to the landowners. But the Solicitor-General's office handled the case incompetently, and delayed to such an extent that the National Court threw out the case. The landowners heard that the Minister for Lands had failed in his attempt to protect them and they attempted to intervene in the case as they were not parties to the original action, and applied for the matter to be heard in substance by the Supreme Court. At the final hearing, the Supreme Court refused to look at the merits of the landowners' case.

The arguments why the Milne Bay Lands Board acted unlawfully were put to the Court by both the Solicitor-General, and the landowner's lawyer. However, the Court was generally dissatisfied, with the delay and incompetence of the Solicitor-General in getting the case into court. It saw this as a gross injustice to the expatriate businessmen who owned the Doini Island company that held the lease. It also rejected the intervention by the landowners on the basis that the procedures used by the landowners were improper. The bench of the Supreme Court ruled that the Chief Justice, who had on a summons for directions, determined those procedures by which the landowners intervened in the case, had got the law of procedure wrong. The Supreme Court said that the use of the summons on directions was incorrect: the landowners used the wrong piece of paper. The Court did not face up to the issues of substance that had deprived the landowners of their land rights.

The Doini Island case is an example of the difficulty landowners face going to court in defence of land rights, and the inappropriateness, and inflexibility of the rules of civil procedure, the deference of civil procedure to the rights of capital, as opposed to customary land rights, and the supremacy of the lawyers' mind-set, over the culture of the people. It demonstrates why the current court system does not work for landowners, why its structures favour the rich and powerful, why it needs thorough renovation.

Case Study

Collingwood Bay, Oro Province

The Collingwood Bay landowners always rejected the idea that outsiders should tell them what to do with their land. They chased away outsiders, and they decided in 1993, that their forest would be conserved, because the forest gives them food, medicine, water, and they know that their culture and their way of life rests upon them controlling the forests.

However the forest was of large commercial value, attracting interest from loggers and the government, who wanted to make money from the forest. Landowners at the most would receive Kina 10 a cubic metre from any logs felled.

In 1995 a group of urban-dwelling people from Wanigela tribe in the Collingwood Bay area, using the lease-lease-back provisions of the Lands Act, secretly obtained leases over about 38,000ha of customary land in Collingwood Bay. This was facilitated by a middle-man from Malaysia working for a logging company. The middle-man kept custody of the leases.

These registered land titles were completely illegal, because they had been obtained by fraud. This is a very good illustration of the struggle that the PNG NGOs have with the definition of illegal logging. The government and companies said that the leases were legal. However they were improperly obtained. The landowners and PNG NGOs maintained they were illegal.

The Collingwood Bay landowners had to show that the Wanigela landowners, who supported the company, had no customary rights over the land. It took three years to get the courts to declare the leases illegal. Once the leases were registered in the name of a company, by law, the Collingwood Bay landowners were not the lawful owners.

Due to the company deceiving the Registrar of Titles, the Collingwood Bay landowners had in effect, lost their customary land. Two separate areas of land were stolen in this way. Together they made up the stolen 38,000 ha.

This type of fraud usually involves a Malaysian company working with renegade landowners and elements in the government.

The Malaysians say they plan to develop an oil palm project; they cut down all the trees in a clear-fell operation, export the timber, and then, disappear. With this type of scheme, no oil palm is actually developed. It was calculated with the Collingwood Bay project that the timber would be worth US\$45 million if they were sold at that time. This was really a scheme to steal \$45 million worth of timber.

In the long-run, the only hope for land-owners is the court-system. That is expensive and slow. We see tensions coming from population growth, rising youth unemployment, rising prices associated with the oil and export economy, the effect of AIDS as it will decimate the rural work-force, a growing political sophistication in the rural areas impatient with cronyism, pork-barrel politics, and dependency; we see the threat of violence. This is simply not a time to promote the registration of customary land.

The Doini Island struggle to reclaim customary rights once land is alienated and the Maisin, rightful landowners in Collingwood Bay trying to recover stolen customary land are cases which are examples of an inefficient and unjust system. The land administration and court systems are too slow, too expensive, or inefficient for ordinary landowners to obtain certainty or justice.

The Kokopo Experience, East New Britain

The idea of getting people to register their land is misleading and it's the first step toward people losing control of their land. We don't need to register our land in-order to get our land to work for us. A perfect example is at Kokopo, a town in East New Britain Province in PNG and a focus of various foreign aid. Corporate bodies, the government including private individuals are negotiating directly with landowners of Kokopo. They are renting customary land from these people. Customary landowners in Kokopo don't need to register their land with the government as they know that their land is their land and they want maximum benefit from their land by renting it without registering it. This approach needs to be studied carefully and could be an alternative to customary land registration and if successful could be replicated.

Conclusion

To conclude, the different reforms imposed, introduced or adopted by our various governments have not benefited the people. Multinational businesses are booming and exploiting our resources with no tangible benefits for people, igniting various, mostly unresolved landowner issues. We are beginning to see the symptoms of the Haves and the Have Nots, the widening gap between the Rich and the Poor - a common phenomenon of the western world. We are beginning to question our sovereignty as an independent nation in terms of politics and economics in the doldrums of globalization. Consequently, adding to the dilemma - our country is plagued with gross corruption in all sectors.

Having said this, even though in PNG we may not have adequate technologies, infrastructure, or the cash and the materials that other countries in the world have, our people have the freedom, the pride; they grow their own food and access free water from rivers in abundance and all other essentials that are required to sustain Life from our LAND. They do not have to beg and sleep on the streets.

As we also note, the world is currently facing a major food crisis. The world food crisis is skyrocketing – steadily rising prices are squeezing billions and triggering food riots from Bangladesh to South Africa. Aid agencies say 100 million people are facing starvation. Thousands and thousands of people are dying because food prices have inflated beyond what people can afford. The current development path pushed by the corporate world has led people to believe that their system is sustainable. This is no longer the case. Most people are dying from this food crisis are those that once held on to their land but were misled which resulted in them losing their land. Our land is our food security and guarantee to survival; we don't want to pay the prices of losing our land just like our other brothers and sisters who are currently dying because of shortage of food. Land = Food Security in PNG.

Concerns with Land Registration:

- Loss of land leads to cheap labour.
- Use of force to throw people out of the land.
- Foreign court systems adopted favours the rich and powerful.

Finally, I would like to revisit the PNG Constitutional Planning Committee's Dream. The Constitutional Review Committee (CPC), a body made up of some of our leaders had a very good vision which guided them in formulation of our constitution. Their vision was:

We see the darkness of neon lights. We see the despair and loneliness in the urban cities. We see the alienation of (the people) that is the result of the present machine orientated economy. We see true social security and (the people's) happiness being diminished in the name of economic progress. We caution therefore that large-scale industries should be pursued only after very careful and thorough consideration of the likely consequences upon the social and spiritual fabric of our people... There is overwhelming evidence to suggest that a significant number of people who live by the fruits of multi-million dollar multi-national corporations live in misery, loneliness and spiritual poverty. We believe that since we are a rural people, our strength should be essentially in the land and the use of our innate artistic talents. (Papua New Guinea Constitutional Planning Committee, 1975).

PNG NGOs stand by this vision! It is the dream of our country and of our people. It is the star of our destiny. We also share this dream with our Melanesian brothers in the Pacific. Let's put our people before other interests. And as much as we the people of PNG appreciate the assistance from Australia through AusAID and various other arrangements, our country's development should be in line with this dream.

PNG NGOs hereby, stand by and reiterate our position— NO to any forms of Customary Land Conversion. The Customary Land Tenure System is our people's security – To us, it is not an impediment to the development of our country, but to corporate expansion, exploitation and modern imperialism.