

## **ECONOMIC DEVELOPMENT AND RESPECT FOR THE LAWS OF PNG**

*Over 5 million hectares of customary land Papua New Guinea have been converted to Special Purpose Agriculture and Business Leases (largely for 99 years) over recent years, largely without the landowners' informed consent. This vast conversion, disempowering the landowners, is seen widely as a part of a controversial worldwide land grab, extending across developing countries. The majority of PNG's population remains dependent upon their land for their livelihood, despite the influx of major new extractive projects. Following earlier INA Focus columns highlighting this issue, the Institute invited **Tony Power** to discuss this critical challenge facing the country and resource owners: -*

The grant of Special Purpose Agricultural and Business Leases (SPABL) over, to date more than 5 million hectares, while the amendments to the *Land Groups Incorporation Act* (LGIA) and the *Land Registration Act* (LRA) are still not being implemented, raises very significant questions about the present government's commitment to, or understanding of, development for the customary landowners of PNG. Is the present government engaged in a massive conspiracy to undermine customary land ownership in PNG?

**True development in PNG will only come about when the masses of village people are empowered to participate meaningfully in their own name, utilizing their own resources, in the modern economy under one rule of law!**

Three decades of foreign investment based development have produced a lot of revenue for government but the enclaves created remain just that: enclaves – the vast majority of the people in the rural areas remain at slightly above subsistence level. They are poor participants in the economy and are reminded daily by public servants, bank officers and potential employers that they are individually insignificant in the economy.

### **Land reform since 2006**

Land reform has had two contrary drivers. **On the one hand**, customary land reform must clearly empower the owners of the land, in order for them to possess secure title to their land, to enable them to capture the capital value of their land, and thereby enter into the modern economy (the market) under one rule of law. This pathway would require correct identification of the landowners and their land and formation of Incorporated Land Groups followed by registration of their land. By such mechanisms customary landowners would thereby build up fungible instruments (business tools) that fit them to become reliable agents in the market place. This process must be done to relate “the specific group to the specific ground” in accordance with custom in PNG.

**On the other hand**, the second driver in the land reform equation was the oft-stated very clear intention to “overcome the constraints” of customary land-holding, and “free up” land for investors. Recent events, such as the issue of over 5 million hectares under SPABLs for 99 years executed by a very dubious lease lease-back mechanism, seems to indicate that the present government is engaged in a massive conspiracy to undermine customary land tenure in PNG.

The amendments to the *LGIA* have focused on the establishment and maintenance of the customary land-owning corporate entity – an Incorporated Land Group (ILG). Great

improvements have been made, strengthening the legal status of the ILG and the corporate responsibility of the Management Committee. But it is not yet implemented.

### **Challenge facing the Nation**

The greatest challenge facing the Nation now is the empowerment of customary landowners to be able to assume the understanding and skill and commitment to manage their corporate entity (ILG) so that it can become a reliable player in the modern economy. Is there any indication that the newly formed Customary Lands group in DLPP understands this challenge and is gearing up to meet it? Recent actions by this group and the Registrar of Land Groups indicate negative to both these considerations. To meet the challenge the following are required:

- Certification of the amended laws, *LGIA* and *LRA*
- Nationwide awareness campaign to educate and empower ILG members
- Establishment of Customary Land Mobilization function in the Lands Offices in all provinces
- Education of Customary Land Mobilization Officers by special courses at one or more universities 'asap', and on-the-job training for existing Lands Officers
- Establishment of Customary Land Registration Offices in Lands Offices in all provinces
- All new registrations of ILGs and re-registrations must follow the requirements of the amended Act
- Land Group Incorporation Officers must be trained and accredited. Simple gathering of signatures must be banned
- Cessation of any more ILG registration until these measures are in place.

### **99 Year Special Purpose Agricultural and Business Leases**

The lease lease-back provision of the Land Act is a stop gap legislative sleight-of-hand designed to give some form of recognized title to customary land to bring it into the market place. It should be repealed once customary land registration legislation is in place. Amendments to S.102 of the Land Act provided a loophole allowing government not to leaseback to the landowning ILG, as originally intended, but to lease to another corporate entity allegedly "nominated" by the ILG. Meanwhile, the government action in making these sweeping 99 year allotments clearly rejects the empowerment model outlined above, dealt with in more detail below. The ridiculous practice of cobbling together dozens of clans/ILGs from unprepared and un-empowered people from several villages, as seen in the Forest Management Agreements (FMA), is now given a new lease of life. Genuinely informed consent is still a long way away. These developments are creating more problems for the orderly development of Melanesian capitalism in PNG. It seems that the government was not really honest in the land reform initiative. Rather than strengthening customary land management, the 99 year leases are undermining custom.

### **What is development?**

Empowerment of customary landowners must be the essential focus of land reform. For this to happen we need a workable customary land registration law to give village people security of title and empower them to enter into a variety of dealings on their own land. In order to ensure that such a law will work we need to empower provincial lands offices to manage the registration process and establish a provincial branch of the National Customary Land Registry. In spite of good intentions beginning in the last parliament, the government efforts in land reform are proving to be a smoke screen for an alternative absurd development, the SPABLs.

## **What is wrong with the massive leases?**

Are they misguided attempts to shortcut mobilisation of customary land, or a deliberate attempt to subvert customary land tenure? The fundamental error is that they muddle the basic land tenure concept of “group and the ground”. The clan/ILG is removed from a one-on-one control of their patrimony. Control of the land is left to the tender mercies of landowner companies that have failed everywhere, backed up by so-called “investors” hungry to log forests. More importantly, it signifies that no element of the State is prepared to use land registration as a mechanism for developing the managerial skills of resource owners to empower them to engage in the modern economy.

Giving 99 year leasehold title over huge tracts of customary land to a landowner company (and even one foreign company) is wrong because it is contrary to the land reform initiative designed to provide an ILG with a land title, a head title, upon which leases for whatever purpose may be negotiated and issued by the ILG. Hence the land reform program is a sham.

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