



# Registration and release of customary-land for private enterprise: Lessons from Papua New Guinea



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## ABSTRACT

Land held under customary tenure has proven difficult to register and release for private enterprise globally. This is because the costs of developing secure rights to land held under communal ownership is high given that such ownership rules out a 'pay-to-use-the-property' system while punitive negotiation and policing costs make a 'pay-him-not-to-use-the-property' system ineffective (Demsetz, 1967, p. 355). Here I document reforms to institutions governing access to land held under customary title in Papua New Guinea that has imbedded collective ownership whilst allowing for a 'pay-to-use-the-land' for private enterprise. Reforms put in place over the past decade have allowed for voluntary incorporation of landowning clans, the registration of their land, and the leasing of this land for up to 99 years. The ongoing reforms provide lessons both for Papua New Guinea and for others wrestling with the challenges of making available land held by customary groups for individual enterprise.

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## 1. Introduction

Humans from their earliest days realised the social and economic benefits of secure and well-defined rights to land, and thus developed customs and traditions to protect these rights over generations (Deininger and Feder, 2009). However the impact of different institutional structures related to the rights to land and their role in facilitating private enterprise has been hotly debated in the literature (Fenske, 2011; Obeng-Odoom, 2012; Place, 2009). The evidence in support of the proposition that improved security of rights to a piece of land leads to increased investment is mixed, the reasons for which are many including the endogeneity of the granting of property rights to investments opportunities and the use of such opportunities to strengthen property rights – meaning that any correlation between tenure security and investment is not necessarily causal.<sup>1</sup> Furthermore, land titles that constitute

the codified rights of the owner to a surveyed piece of land may not necessarily imply security of tenure (Place, 2009).

There is however an emerging consensus amongst economists that individually-owned land provides the incentives for private enterprise whilst reducing the potential for conflict (Deininger, 2003). International financial institutions have thus sponsored programs to register individual rights to land held communally to improve the functioning of land markets with a view to raising private investment and growth of income. However, imbedding individual rights to land held in allodium by groups such as traditional clans has proved difficult. Demsetz (1967) was amongst the first to recognise this difficulty, noting that: “[c]ommunal property rules out a ‘pay-to-use-the-property’ system and high negotiation and policing costs make ineffective a ‘pay-him-not-to-use-the-property’ system” (Demsetz, 1967, page 355). Past attempts at entitling communally owned land for economic development have faced the challenges of land grabbing by the better informed and well-connected within the community (Cotula, 2009; Zoomers, 2010). After some 25 years of experimentation the World Bank concurs noting that communal tenure systems can be more cost-effective than formal titles but land reform is likely to reduce poverty through the operation of land markets if undertaken in a decentralised fashion (Deininger and Binswanger, 1999).

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<sup>1</sup> Deininger and Jin (2006) for example find that security promotes terracing while insecurity encourages planting of tree crops in Ethiopia. Farmers may title those plots of land on which they have invested, raising econometric problems of identification.

While titling programs for land held under customary tenure has proved difficult, the benefits of providing secure and long-term access to such land is well recognised. These benefits, as noted in the literature, arise from four distinct channels, namely from: enhanced incentives for private enterprise (Demsetz, 1967); gains from trade between the owners of plots of land (Alchian and Demsetz, 1973); improved access to credit (Feder, 1985); and, better allocation of household labour across space including the reduced need for 'guard labour' to protect the home and the gardens (Field, 2002). Inextinguishable allodial title, as is the case for land held by clans in Papua New Guinea (PNG), lends itself as an ideal case study where the costs of providing individual tenure are large, but its success in doing so over the recent past has lessons for others in a similar predicament. PNG moreover provides a good test case for reform to customary tenure given that some 97 percent of all land is held by traditional clans and provide the basis for 'social protection' for the majority of the population (Filer, 2014, p. 80).

The most recent attempt at land reform in PNG was initiated by Dr Puka Temu, a medical doctor turned politician and made the Minister for Lands and the Deputy Prime Minister in 2005. Dr Temu argued for a fresh attempt at reforming customary tenure with the explicit goal of increasing private enterprise, employment, and income (Temu, 2009). He campaigned in and outside of the national parliament for reform to customary tenure on the promise of 'turning landowners into landlords', explaining to his constituents that the reform was necessary to improve the livelihoods of 'his people'. The political risks were significant given that previous attempts at reforming customary tenure had failed: spectacularly in 2002 when a government lost office following widespread protests on the proposed reforms to 'mobilise customary land for development' in the lead-up to national elections (Yala, 2010). Minister Temu was cognisant of the political risks but equally committed to selling his slogan of 'turning poor landowners into rich landlords'. Other leaders joined in as the reform got underway.

Reaching consensus on matters relating to land is difficult in PNG. A mishandled discussion on reform to customary tenure can quickly snowball into a melee and thus is an issue largely avoided by the leaders. With some 840 language groups and several thousand clans and tribes, PNG has a deeply divided society: it is the most ethnically and culturally factionalised nation on the planet (Fearon, 2003; Reilly, 2006). There is wide diversity across space in customary practices on the use and transmission of rights to customary land. These practices have evolved over millennia and remain largely uncodified thus each clan has its own interpretation of the norms governing land use and transfer. The opaqueness of the rules on the rights to a piece of land, the heterogeneity in terms of the norms for the transmission of these rights across generations and between parties, and the torturous processes of resolving ownership disputes have been a constant source of conflict between neighbouring clans and tribes (Oliver and Fingleton, 2008). Minister Temu instructed the Director of the National Research Institute, a government funded think-tank, to investigate options for land reform. The Director in turn organised a land summit to solicit views from experts on the way forward. The summit resolved to create a National Land Development Taskforce (NLDT) charged with the responsibility to produce the blueprint for reform.

Land is the primary source of livelihood for the 7.5 million residents of Papua New Guinea who have an average per capita GDP of US\$2106 (figure for 2013 at current prices), a life expectancy of 62 years (figure for 2012), and an infant mortality rate of 47.6 for every 1000 live births: some 40 percent of the population are deemed to be in poverty (Gibson, 2012).<sup>2</sup> Some 72 percent of the total labour

force is employed in agriculture, which accounts for 35 percent of GDP.<sup>3</sup> Most of the agricultural output is produced by members of extended families working on land held under customary title. The implied productivity of labour in agriculture is 4 percent that of industry and half that of services.<sup>4</sup> There is thus the potential to raise income by moving labour from agriculture and the rural sector to the rest of the economy (see Gollin et al., 2014).

The extant rights to land held under customary title in PNG are maintained through continuous occupation, and sometimes defended through the exercise of physical force. These means of sustaining ownership to communally owned land creates economic losses arising from at least three sources; namely, from the need to have the land occupied at all times, through outlays to defend or deter conflict, and from the inability to reallocate land to more productive users who may not be the customary owners themselves (see de Janvry et al., 2015 for the case of Mexico). Land certification and titling programs sponsored by national governments and international development agencies attempt to address these problems so as to facilitate transactions to raise productivity (Heath, 1992). Thus, delinking land rights from land use in PNG has the potential to raise productivity and income, and could lower the costs of mobility of the people across space within the nation. However, past attempts at reforms to customary-owned land largely failed (GoPNG, 2008; Larmour, 2002; Yala, 2010) with the one exception that is discussed here.

The rest of the paper is structured as follows. Section 2 presents contextual information; Section 3 presents the details on the recent-most land reform; Section 4 presents the innovative features, followed by concluding remarks.

## 2. Land tenure in PNG

PNG has a dualistic land tenure system wherein the traditional decentralised undocumented systems of land tenure coexist with a modern system with centrally promulgated laws and codified rights to surveyed pieces of titled land. The mix offers both the opportunity to grab communally held land for individual enterprise and provides the space for conflict (Larmour, 2002). The form of rights to customary-land is specific to the place of birth and contingent on the social placement of the individual to the resident kinship group comprising the clan and the tribe. Formal rights to the balance of the 3 percent comprising alienated land are held fee simple by private individuals or the State.

The origins of alienated land predate the creation of the nation state of PNG in 1975 following independence from Australia. Britain and Germany who first divided up the archipelago in 1885 acquired land through registration that entailed the outright loss of ownership by the resident customary groups: a process that has since been viewed with suspicion by the aborigines (Larmour, 2002, p. 154). Australia took over as the colonial authority on British New Guinea in 1906 while the League of Nations handed it the administration of German New Guinea in 1921.<sup>5</sup> Alienation was outlawed at independence except for the legacy of the *Land (Tenure Conversion) Act* of 1963, which provides for issue of individualised tenure on customary-owned land. Furthermore, the State may compulsorily acquire customary land for public purposes through Section

<sup>3</sup> The figures for employment by sector are from the World Development Indicators which is published for the year 2000 only; WDI accessed online on 9 March 2016.

<sup>4</sup> The services sector includes wholesale and retail trade, transport, and government, financial, professional, and personal services. It includes many self-employed workers and covers many unrecorded economic activities such as the contribution to GDP of domestic services.

<sup>5</sup> Sourced online from the National Library of Australia microfilm collections on 'Papua New Guinea Records 1883–1942'; accessed on 21 March 2016.

<sup>2</sup> Data is the most recent available from United Nations Statistical Division, accessed online on 10 February 2016.

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