

Registration and release of customary-land for private enterprise: Lessons from Papua New Guinea¹

Satish Chand,

University of New South Wales,

AUSTRALIA.

Email: satish.chand@unsw.edu.au

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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.

Keywords: land tenure, land registration, customary land groups, Papua New Guinea

JEL Codes: O13, O17, P14, Q15, Q24, Q28

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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 & 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.² 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” (ibid, 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 & Binswanger, 1999).

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 & 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).

² 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.

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 & 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\$2,106 (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 1,000 live births: some 40 percent of the population are deemed to be in poverty (Gibson, 2012).³ Some 72 percent of the total labour force is employed in agriculture, which accounts for 35 percent of GDP.⁴ 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.⁵ 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, Lagakos, & Waugh, 2014).

³ Data is the most recent available from United Nations Statistical Division, accessed [online](#) on 10 February 2016.

⁴ 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.

⁵ 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.

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, Emerick, Gonzalez-Navarro, & Sadoulet, 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 1921.⁶ 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 53 of the National Constitution. These provisions have been used sparingly thus the percentage of alienated land has remained at 3 percent since independence.

Leases have been the predominant instrument used to access land held under customary title (GoPNG, 2008, p. 12). A lease-lease-back arrangement or a land-usage agreement entered between the landowning clan and the investor has been commonly used for agricultural investments. The lease lease-back system entails the customary group first leasing the land to the government with a

⁶ Sourced [online](#) from the National Library of Australia microfilm collections on 'Papua New Guinea Records 1883-1942'; accessed on 21 March 2016.

view to being handed back the registered lease, which the group then can trade with private entrepreneurs. These leases can be for up to 99 years and are confined by the *Land Act*, as amended in 1996, to agricultural development (Filer, 2014). They have however been misused for logging operations in the guise of agricultural development. Clan land-usage agreements have also been abused where the most influential members of the clans have been reported to negotiate in camera with developers (often away from home in the capital city) and in complicity with the administrators.⁷ Such abuses have eroded the credibility of the lease-lease-back system and the clan land usage agreements.

The State, which owns most of the alienated land, has leased it for private enterprise. This land has in the main been utilised for the building of houses around the major urban centres. The rights to alienated land and to State leases in particular are protected via Statute and English common law with conflicts adjudicated by the local courts. In contrast, conflicts on customary tenure are resolved using traditional means including through the exercise of physical force. Disputes and violence are serious problems in PNG, and land disputes are particularly serious within the rural regions. Cross tabulations of the responses from the 2009/10 Household Income and Expenditure Survey (HIES) to the question on 'Whether anyone in your household experienced a dispute (of type...) in the past 12 months' reveals that the majority did with disputes over land being the most common (42 percent of the total reported).

The need for a fresh attempt at reforming customary tenure arose out of a build-up in demand for housing in urban centres, and the Capital of Port Moresby particularly, following decades of rural to urban migration (Koczberski, Curry, & Connell, 2001). Registering customary land with the National Department of Lands and Physical Planning (NDLPP) was particularly problematic since multiple leases had been issued to a given piece of land in clear breach of processes but without sanction. The opaque information on kinship claims to a particular piece of land allowed officials within the registry to extract bribes in order to issue duplicate titles (Chand, Nao, & Ondopa, 2013). Combined, these factors eroded the value of documented titles; leading to the use of instruments ranging from informal agreements between the settlers and the landowning clans to outright occupation by some (Chand & Yala, 2012).

The reforms to customary tenure proposed by Dr Temu entailed the incorporation of the land-owning clan, the registration of their land, and then the option for the owners to lease the registered land for up to 99 years. The process of incorporation required the codification of the hitherto unwritten customary practices while registration required surveys of the land to be titled. The proposed reforms as explained later provided an intermediate stage between customary tenure and fee simple whereby the customary group retains the parent title to the registered land with the individual having 'fee simple' rights for the term of the lease for the designated piece of the titled land.

The land tenure reforms that began in 2005 led to the passage of two separate pieces of legislation, namely the *Land Registration (Amendment) Act 2009* (LRA henceforth), which is an amendment to the original act of 1981, and the *Land Groups Incorporation (Amendment) Act 2009* (LGIA

⁷ See Australian Broadcasting Commission report on 'PNG land scandal' of 14 October 2012 at: <http://www.abc.net.au/radionational/programs/backgroundbriefing/2012-10-14/4303012#transcript>, accessed online on 1 March 2016.

henceforth) which is also an amendment to the original act of 1974. Both laws came into effect on 1st of March 2012 following country-wide consultations led by groups of indigenous reform champions from the NLDT. The two amendments provided the procedures for the incorporation of land groups and the registration of their land. Both the decision to incorporate and register was left to the clans. The amendment to the *Land Groups Incorporation Act* allows for incorporation of existing social units, giving them legal persona, while amendments to the *Land Registration Act* permit grants of indefeasible title to surveyed pieces of land held free of dispute from the surrounding clans. Following incorporation of a group and the registration of their land as per procedures spelt out in the legislation (explained in the next section), the owners are permitted to grant leases of up to 99 years at a mutually agreed rent for the purpose of private enterprise within the preserve of national laws and regulations.⁸

While the ownership of the parent title to the leased land under the new laws resides permanently with the customary group, the rights to the lease are governed by Statute rather than Customary Law. The amendments provide an avenue for customary owners to lease land held under group ownership for individual enterprise. It is envisioned that the individual members of the land-owning clan living within urban fringes will acquire the leases to build residences to live in and/or rent out. There is no compulsion to use the new laws but several clans have already elected (i.e. 'opted-in') to incorporate and register their land under the new laws, providing evidence that the benefits of doing so as assessed by the clans exceed the perceived costs of the venture. The procedure for incorporation builds on the foundations of customary practices; but the codification of their norms and the registration of their leases deliver the administration of the rights to the leases to the formal centralised system.

PNG embarked upon the first land reform with a view to providing secure rights to fixed chattels in the 1950s, and all of the past attempts failed (Larmour, 2002). The reasons for the failure are many but in the main include the lack of local leadership, the mistrust of the foreign champions given the lessons from the colonial past, and the absence of contextualised institutional details. The most recent reforms were initiated and locally led, thus in the one sweep addressed each of the above mentioned. Dr Temu's leadership and the contribution of the local champions were critical to the achievements; but digging deep into their personal motivations for reform remains part of ongoing research. For now I will side-step this issue by attributing the reform success to charismatic leadership (Willner & Willner, 1965), noting the empirical fact that "leaders do affect some policy outcomes" (Jones & Olken, 2004, p. 837). The importance of political commitment is highlighted by the fact that "the near-universal failure by African countries to put the innovative aspects of recent legal reforms into practice" was due to its absence (Deininger, Ali, Holden, & Zevenbergen, 2008, pp. 1806-1807).

3. Details of incorporation of a clan and registration of their land

A succinct summary of the key design-features of the incorporation and registration processes that are relevant for the subsequent discussions is presented next. The incorporation of the customary owners via the LGIA and the linking to a designated piece of land via the LRA are centrally managed through the NDLP. On the former, the incorporation of a land group is initiated by the customary owners. Economic considerations, including the opportunity cost of not registering the land, play a

⁸ Large scale mining and forestry for example require approval from the national and provincial governments.

pivotal role in this decision. The registration of a designated piece of land is allowed only through the explicit consent of the members of the clan and the tacit recognition of the ownership claims by the neighbouring clans. The objective of the reforms is to enable the customary owners to realise the economic potential of their land-holdings whilst preventing disputes between members of a given clan over the use of their land by others (GoPNG, 2008, p. x). The responsibility to administer the two new laws is vested in a central office; that of the Office of Customary Lands Development which was established in February 2016.⁹

The specifics of incorporation of a land group involves documentation of the identity of the members of the clan,¹⁰ their rights to the land and obligations to the clan, the spatial boundaries of their land, and the governance structures of the proposed ILG so as to ensure that the elected representatives act in the collective interest of the clan at all times. Membership of a clan is established through genealogical records linking lineage back three generations via birth certificates secured from the civil registry.¹¹ Applications for registration of an ILG are published in the National Gazette and one of the daily newspapers, and forwarded for verification of the submitted information to the relevant District Administrator. An individual is allowed membership of a single incorporated land group (i.e. ILG). This is done to prevent any one individual belonging to multiple incorporated land groups. The architects of the reforms knew that membership of a clan is determined by the place of birth; thus the clan of an individual is unique. They also knew that the transmission of rights across generations depends on the gender of the individual and the local cultural norms in terms of being a matrilineal or patrilineal society. The architects were also aware of the practice of individuals having use rights to land belonging to other clans: maternal cousins in a patrilineal society, as an example, may be given the rights to use the land belonging to his mother's clan. The proposed legislation therefore allows for an individual to have the rights to use land registered to an ILG of which they are not members.

The legislative process of incorporation of the land group is spelt out in considerable detail within the LGIA. It involves the following steps. First, the members of the group must initiate the process by holding a meeting at a pre-announced place and time in an area where the members reside to elect between three and ten persons to form a management committee. The management committee is to include the chairperson of the ILG, the secretary, the treasurer, and at least one female person elected by those present. A quorum of 60 percent of the total membership is required to pass resolutions of the ILG, except for the case of the removal of a member of the management committee where a quorum of 70 percent is mandated. Five specific forms have to be lodged with the Registrar of ILGs located within the NDLPP: namely, Form 1, which is an application to be recognised as an incorporated land group; Form 2 provides a record of the decision of the first meeting; Form 3, which is an application for incorporation; Form 4, which requires lodgement of the list of members and their birth certificates; and Form 5, which is for the dissemination of the notice of incorporation.

Similarly, the legislated process to be followed in registering a piece of land to an ILG is spelled out in detail in the LRA. The registration process involves the lodgement by the ILG, on prescribed forms,

⁹ See National Executive Council Decision Number 33/2016 of 16th February 2016.

¹⁰ A clan is defined by kinship and via descent.

¹¹ Registration of birth certificates requires names of parents and grandparents and their affiliate kinship ties to a village.

of an application with a description of the land and its boundaries plus names of individuals and customary groups with derivative interests in that land (LRA, s. 8). This process is overseen by the 'Director of Customary Land Registration', an office set up by the Government to ensure compliance with the LRA. The Director has the powers to "screen, vet, verify and ensure compliance with all legal requirements pertaining to registration of customary land or dealing in such land and related matters" (LRA; s. 5(d)). Following acceptance of the application, the Director is required to forward a copy of the Plan to the Regional Surveyor and give notice to the public in forms deemed appropriate so as "to bring it to the attention of all persons who may have an interest in the land or parcels of land the subject of the Registration Plan" (LRA; s. 34G). A 90-day period is allowed for objections to the application with the Director to determine if registration is to proceed.

Disputes between clans over the boundaries of their land are to be recorded on the map and elders of the disputing clans are to sign off on the foot of the sketch map acknowledging this. The Registrar may in the case of disputes reject the application or withhold processing until the dispute is resolved. The application for registration is to be completed with the assistance of the Provincial Customary Lands Officer, have the endorsement of the Provincial Lands Office, and all prescribed fees are to be paid for by the applicants. A certificate of title to the land in the application is granted by the Registrar of Titles following authentication by the Director of Customary Land Registration (LRA; s. 16) following which it constitutes "conclusive evidence of the facts therein stated as at the date of the entry" and "unless endorsed otherwise, shall be deemed to guarantee the area and the boundary of the land to which the entry relates" (LRA; s. 17). Customary law henceforth ceases to have effect in relation to the registered and titled land with all subsequent transactions being governed by Part XVII of the *Land Act* (LRA; s.20).

Accountability of the elected officials and good governance of the ILG were of primary concern. The LGIA built in provisions to allow for any member of the ILG to have access to all records of the ILG through the Registrar, and the Registry to be the repository of records on the current membership and financial statements of each and every ILG. The ILGs are mandated by law to hold an annual general meeting within 3 months of incorporation and annually thereafter to appoint members of the management committee, receive the chairperson's annual report, and to consider any matters referred to the meeting by the Registrar of the ILGs. A code of conduct was created for members of the management committee, breaches of which would lead to criminal prosecution with a fine of up to K5,000 and/or imprisonment for a period of six years (LGIA; Section 14B(3)). Lessons from fraudulent uses of ILGs and leases over the past informed the design of institutions to prevent the repeat of such abuses. Criminal sanctions were included to punish management for abuse of trust, birth certificates from the central registry were required to establish warm-bodied (rather than ghostly) membership of ILGs, surveys of the land from registered surveyors were mandated, and supporting documentation from local-level governments were required to confirm the claims made on an application to incorporate an ILG and register a piece of land.

Why would an ILG register a piece of land? The benefits of securing registration are that the land can be released onto the market for private enterprise. The titled land ceases to be subject to customary law, allowing the owners (i.e. the ILG) to grant derivative rights to others, including to its membership except for the transfer of allodial title which is prohibited (*ibid*, Section 34O). Registration allows for the grant of leases on terms and conditions agreed to by the owner and the lessee subject to common law and the statutes of the nation. Leases granted by the ILGs are treated

by the courts similar to State leases; thus bringing them within the fold of the formal system of property-law. The process of incorporation of a customary group and that of registration of a parcel of their land is completely voluntary. The costs of incorporation and registration are met by the clan. Incorporation may not be cost-effective for each and every clan. Similarly, not all land claimed by an ILG may be registered, since the process of registration incurs costs: those relating to incorporation of the customary group and the registration of title to the land. Thus the decision to register is made by the clan on the basis of their assessment of the net benefits arising from the leasing of their land.

The architects of the recent reforms noted that the ILGs could be effective in leasing their land if ex-ante the authenticity of the membership and the ownership of the designated land to be registered were credible. They therefore spent a lot of energy ensuring that the processes of incorporation and that of registration were beyond reproach. Furthermore, the voluntary nature of incorporation of a clan and the registration of their land did not threaten pre-existing practices. The incorporation of the owners preceding registration of their land was deliberate and intended to protect clan-ownership of the land, a non-negotiable demand conveyed to the NLDT during its national consultations (GoPNG, 2008; Yala, 2011).¹²

The proposed reforms have not, to date, created any controversies. Reasons for this include the voluntary nature of incorporation of the land group and the registration of pieces of land whose ownership is not in dispute. The goal of land reform has also been clearly articulated: to release land under customary tenure for private enterprise. The clans are lent the opportunity to weigh the net benefits of releasing land into the formal/centralised system via the new laws.

The centralised features of the incorporation of a land-group and the registration of their land include a uniform set of procedures and the establishment of a central authority in the form of the Director of Customary Land Registration. Information on the membership of an ILG and the application to register a piece of land is publicised to those who may have an interest. Objections are allowed and adjudicated upon, with registration proceeding only after disputes have been resolved. The provincial office is engaged from the very first step of the registration process.

The decentralised components include the holding of the meeting of the members of the clan on the land claimed to be owned by the group. The clan is also responsible for their constitution, which codifies cultural norms on the rights to their land and the means of distributing proceeds arising from the leasing of the land across the membership, including between males and females, and how the now codified claims are transmitted across generations. Templates of the application process were prescribed to ensure adherence to the legislation; offices within the bureaucracy were created to oversee enforcement of the newly crafted legislation; and transparency in the membership of the ILG and the spatial details of the designated piece of land to be registered were mandated, with severe penalties for infringements to provide incentives for good governance.

The centralised functions of a single registry and dispute resolution process are explained by their public-good features. Rights of ownership and the mapping of a particular piece of land must be common knowledge if these rights are to be recognised across the wider community. The

¹² This addresses the common fear amongst rural folks of dispossession of their principal source of livelihood and their major asset (Anseeuw, Wily, Cotula, & Taylor, 2012).

decentralised process of separate constitutions for each ILG caters for the diversity in cultural institutions across clans and tribes in the country. Note that the knowledge of these practices is specific to the clan who take charge of documenting them. The constitution of the ILG serves as the instrument that codifies the cultural norms whilst lending the opportunity for evolution of these institutions. Thus the combination of the centralised and decentralised features of the recent reform meld traditional practices into a modern system wherein land held under customary title can be leased on long and secure terms. In many respects the new laws have retrofitted pre-existing practices into a formal, modern, system of leases. In doing so several innovations have been made.

4. Innovations to increase security of the rights to land

A number of innovations have been made to ensure that the customary practices are codified and aligned with the formal registration process, the opportunities for land-grabbing is minimised, and the processes for registration and leasing kept credible to all stakeholders.

The innovations in the current round of reforms have been informed by the failures of the past. An office of the customary land registration was set up within the National Department of Land and Physical Planning to facilitate incorporation of land groups and the registration of land that the group deems as being ready for mobilisation. An opt-in system was created so as to leave the decision to the owners to use the new laws. Thus, land with latent economic potential, as judged by their owners, is envisioned to be registered and then leased for private enterprise. And once the registered land is leased, customary law ceases to apply with disputes being handled by the formal court system. In conformity with tradition, an individual is deemed to belong to a single clan. This mandate has reduced room for confusion in terms of kinship ties and land holdings. Access to information and governance of ILGs were major hurdles to be overcome. The responsibility for the dissemination of information on incorporation of a land group and registration of a piece of land was placed within a centralised authority, while breaches of accountability and governance procedures by the management of an ILG were deemed criminal offenses.

The two new laws are being utilised to codify customary norms and create individual rights by the members of a clan to land that is owned as a group. Such a transition delivers several benefits including the capacity to transfer leases across generations and to others who custom may leave bereft of a scarce resource. On the latter, cultural norms determine as to whether the son or the daughter will receive the rights to communally-owned land once the parents have died. Widows and single women oftentimes fall into 'no men's land' given that the bulk of the nation has a patrilineal system of the transmission of rights to communally-owned land. The sale or gifting of land to non-members of the landowning clan is frowned upon, with the legitimacy of transfer questioned with the passage of time. Individual leases granted via the two new laws bring clarity on ownership, thereby helping resolve these problems. More of such transfers over time could change social norms on the rights to property.¹³

The test of success of the newly instituted reforms will be in the form of increased investment in land held under customary title and reduced land-related conflicts. Secure rights to land encourages

¹³ Di Tella, Galiani, and Schargrotsky (2007) note for the case of squatter settlers in Buenos Aires who were randomly assigned land titles to having changed a wide range of their beliefs and values to those consistent with the accumulation of social capital.

investment for at least four reasons: (i) it strengthens the claims to the fruits of investment; (ii) it improves access to financial capital; (iii) it allows for a market in land leases, thus delivering the gains from trade; and, (iv) it incentivises innovation (Besley, 1995). As envisioned, members of at least one clan have acquired leases in their individual names so as to build modern homes. The leases so acquired have been purchased by locals and foreigners, and used to secure loans from at least one commercial bank. There is no evidence yet of the development of a secondary market in leases on customary land but it is too early to pass judgement on this (Brasselle, Gaspart, & Platteau, 2002).

Evidence, while preliminary, on the first-time registration and leasing of land held under customary tenure reveals that the reforms were implemented as planned, the legislative procedures were adhered to, and disputes over boundaries of land between clans were avoided. The first certificates of registration were issued to customary owners in Alotau on 5th June 2015. The leases on the registered pieces of land at the time of writing were being used as collateral to access finance from one commercial bank. Notwithstanding the above, the efficacy of the dispute resolution systems remains to be tested: thus land reform in PNG remains a work in progress.

5. Conclusion

Designing institutions that provide secure and long-term access to land held communally for private enterprise has proved elusive for much of humanity (Deininger & Feder, 2009; Demsetz, 1974). This paper has presented evidence of the successful registration and release of land held under customary title for private enterprise in Papua New Guinea. The reforms that were initiated in 2005, leading to the enactment of two new laws in the form of amendments to incorporation of land groups and to registration of their land, demonstrate that institutions can be created to provide long-term secure access to customary-owned land in a deeply divided society. This judgement is reached on available preliminary evidence in terms of the use of long-term leases for housing within the urban fringes. It also underscores the need for more detailed and longitudinal analysis to assess the effects of land registration and release on investment, entrepreneurship, and growth. However, here are lessons from the ongoing reforms to customary tenure in PNG.

The reforms were aimed at maximising the economic value of communally-owned land through releasing land for private enterprise on leases for up to 99 years. The longevity of the leases rests on the credibility of the institutions mediating the registration of the land, thus care was taken to ensure that the legislated processes had buy-in from the community. A political champion in Dr Puka Temu, the Deputy Prime Minister and the Minister responsible for the Department of Lands, articulated the case for reform, with the promise of turning landowners into landlords. The crafting of the reforms was undertaken by a competent group of local technicians under the banner of the National Research Institute, a taxpayer funded think-tank. The technicians consulted widely to seek input from the wider population and to inform them of their thinking. The inclusive process allowing for discussion and debate across stakeholders was as important as the final outcome. It took some seven years from the formation of a taskforce to craft the reforms to the passage of laws permitting the leasing of customary land on long-term leases.

The key features of land reform are summarised next. Legislation was crafted to allow the incorporation of the landowning clan as a prerequisite to the registration of land deemed to be owned by the group under customary law. The process of incorporation involves codification of the customary norms on the rights to the land in the form of a constitution, which is deposited into a

central registry. The membership of the clan is authenticated via genealogical records. Similarly, the process of registering ownership of a piece of land involves cadastral mapping and the lodgement of the application with the Registrar of Customary Lands who once again establishes authenticity of the claims. Title to the land is granted only after the requisite information is deposited and authenticated. The incorporated owners are allowed to issue derivative rights in the form of leases on the registered land. Disputes over the leases are resolved by the courts akin to those on State-owned land.

The decision to incorporate and register land is made by the clan. This presumably is done by weighing the one-off costs of incorporation and the registration of a piece of land held under customary tenure against the perpetual benefits of owning titled (indefeasible) property that may be leased for private enterprise. The clan holds the parent title to the registered land in perpetuity whilst benefitting from leasing their holding. The investors in turn do their sums in terms of the benefits of leasing the registered land, taking into account the security of their rights to the land and investments therein. The government provides public goods in the form of authentication of the membership of the landowning group (i.e. clan) and ownership of the designated piece of land submitted for registration.

Several lessons have been drawn from past experience to inform the current round of reforms. The process of incorporation of a land group and the registration of land was designed from the centre with its implementation being decentralised to the level of individual clans. Clans with pre-existing customary rights to land were put under a 'cloak of incorporation' (GoPNG, 2008) and the management assigned trustee-obligations to their members: breaches of trust incur criminal sanctions under the new laws. Overseeing the centralised functions is the Registrar of ILGs who is given powers under the new provisions of the Incorporated Land Group Act and the Land Registration Act to demand annual statements of accounts and records of membership from each ILG.

The advantages of the centralised-functions are in the maintenance of records in the central registry, thereby allowing the state to underwrite the claims to a lease and the parent title to a given piece of land. The advantage of the decentralised implementation include: (i) transparency in the determination of rights to a given piece of land; (ii) adherence to the local institutions and traditional norms on the allocation of the rights; and, (iii) the alignment of interests of the investors with those of the owners so as to give longevity to the leases. Rather than creating a parallel process to the leasing of customary-owned land vis State-owned land, the reforms in PNG has attempted to integrate the two. In sum, the recent land reforms in Papua New Guinea have retrofitted leasing on the foundations of customary institutions to provide secure and long-term leases for private enterprise. It may be too early to judge if these reforms have been successful but the initial evidence in the form of the leases being used as collateral to access finance from the formal sector is promising.

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