

Land reform and indigenous land (Melanesia)

SDPCW-7, Class notes by Dr. Tim Anderson



Q: How and why does Melanesian customary land pose such a challenge to liberal views of property rights, development and 'land reform'?

overview:

- 1. Land, modernism and tradition**
- 2. land rights in the global context**
- 3. customary land in Melanesia**
- 4. 'accumulative reform' v. customary land**

After human beings, land is the most important resource, providing an ongoing and effectively limitless basis for food, shelter and medicine. A people which controls its own land maintains a sound basis for self-determination.

Anderson, Tim (2011) 'Melanesian Land: The Impact of Markets and Modernisation', Journal of Australian Political Economy, No 68, December, pp.86-107

Deininger, Klaus (2003) Land Policies for Growth and Poverty Reduction, World Bank Policy Research Report, Oxford University Press and the World Bank, Washington, Executive Summary pp. xvii-xxxii

Hildyard, Nicholas; Larry Lohmann, Sarah Sexton and Simon Fairlie (1995) 'Reclaiming the Commons', The Corner House, 31 May,

1. Land, modernism and tradition

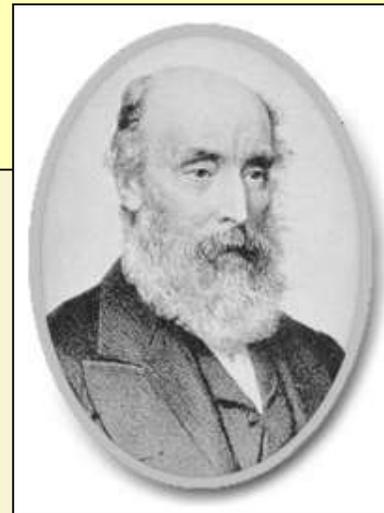
- ❑ There is no satisfactory or accepted general theory on land, because land tenure histories vary so greatly;
- ❑ 'Customary title' in Melanesia belongs to almost all families and clans, the 'little people'; whereas in Europe these days it applies mostly to an old landed aristocracy (so beware Eurocentrism);
- ❑ In many 'settler' colonies dispossession of the original inhabitants was near complete, and enforced by highly commercialised title;
- ❑ 'Land reform' means different things in different historical contexts: an equitable redistribution to land to landless classes; the defence of popular, mass customary title; and accumulative neoliberal reform, which seeks to destroy non-commercial customary title.

In the more recent colonial experience, such as that of Australia, colonists created land law quite distinct to that of the mother country (Britain)

- **Torrens title** - an Australian invention - the most highly commodified form of land title - later 'exported' to Africa;
- Robert Torrens (1830s) engaged in debate with the British colonial office over the possible land rights of indigenous Australians. Torrens believed 'they have none' (Reynolds 1987);
- South Australia's *Real Property Act* 1858 - known as the 'Torrens Title System' - comprises: (i) central registry and (ii) indefeasibility (a concept meant to extinguish customary claims).

Henry Reynolds (1987) *The Law of the Land*, Penguin

Robert Torrens, South Australian and British MP



Modernism and Tradition

- ❑ 'Modernist' ideologies, especially liberalism (but also European socialism), say all tradition (church, family, gender roles) is a hindrance to progress;
- ❑ Yet there is imperial modernism and egalitarian social tradition; and modernist property rights have proven more effective at dispossession;
- ❑ Liberal modernists argued that patrilineal customary land ownership systems (which predominate) dispossess women; the East African experience showed modernist registration dispossessed women more conclusively (Cotula et al 2004: 3-5);
- ❑ European liberals and socialist alike most often saw customary systems as dysfunctional in 'modern' or crowded circumstances, an assumption which fed 'Tragedy of the Commons' theories.

Cotula, Lorenzo, Camilla Toulmin & Ced Hesse (2004) Land tenure and Administration in Africa: lessons of experience and emerging issues, International Institute for Environment and Development, London

Three basic types of 'land reform'	
Redistributive (social democratic)	Equitable redistribution from large estates to landless classes, 'reforma agraria' in Latin America
Accumulative (neoliberal)	Hyper-commercialisation of previous state, community or customary land, 'captalisation', land as a commodity
Restorative (or defensive, of customary title)	Defence or restoration of indigenous land, whether under customary law (e.g. PNG) or under some new form of legal title (e.g. Venezuela, Australia)
Source: Anderson 2021	

Defence or restoration of customary title, developed over millennia, enables community reproduction and thus substantial autonomy; **redistributive** land reform is a socially inclusive practice; **accumulative** 'reform' serves tiny investor groups and is the most anti-social. *A people which controls its own land maintains a sound basis for self-determination.*



Tim Anderson (2021) 'The Meanings of Land Reform', in Franklin Obeng-Odoom (editor) Handbook on Alternative Global Development, Edward Elgar

'Tragedy of the commons'?
or 'Tragedy of the private enclosure?'



Biologist Garrett Hardin's ideas were adopted by the World Bank:

the 'rational herdsman' will take advantage of a 'free for all'; there will be spoilage from 'non-angels'; the commons only functional in 'special circumstances', with limited populations (Hardin 1968; Lopez 1998).

This theory has been rejected by many commons analysts:

the commons were 'no free for all', there were unwritten rules; the commons were 'too complex' to define and usually 'closely regulated'; 'the tragedy of enclosure' involved mass dispossession; 'development' as enclosure (Ivan Illich 1983; Hildyard et al 1995).

Garret Hardin (1968) *The Tragedy of the Commons*, *Science*, Vol. 162, Issue 3859, pp. 1243-1248, online: <https://science.sciencemag.org/content/162/3859/1243>

Lopez, Ramon (1998) 'The tragedy of the commons in Cote d'Ivoire agriculture : empirical evidence and implications for evaluating trade policies (English)', World Bank Group

Ivan Illich (1983) 'Silence is a Commons', *CoEvolution Quarterly*

Hildyard, Nicholas; Larry Lohmann, Sarah Sexton and Simon Fairlie (1995) 'Reclaiming the Commons', *The Corner House*, 31 May, (pp.1-10) online: <http://www.thecornerhouse.org.uk/resource/reclaiming-commons>

2. Land rights in the global context

Context: three types of colonial experience

- ❑ Complete land dispossession (Latin America, Australia)
- ❑ Hybrids – partial transformation (much of Asia and Africa)
- ❑ Almost undisturbed customary tenure (Melanesia, especially Papua New Guinea, Solomon Islands, Vanuatu, also East Timor)



Review: 'Land rights' might address 'just claims' for:

- Recognition or restitution of community lands (**restorative/defensive**)
- Redress of rural inequality / poverty (**redistributive**)
- To secure individual property rights' --> economic growth (**accumulative**)

Redistributive 'Land Reform' in Latin America

Land reform (reforma agraria) and the 'latifundias'

- ❑ Jacobo Arbenz, United Fruit Company (Guatemala 1954)
- ❑ Cuban Revolution reforms (1959-60), 400 ha cap
- ❑ Washington's '*Alliance for Progress*', land reform and the '*green revolution*'
- ❑ Salvador Allende's reforms (Chile 1970-73) 80 ha cap
- ❑ *Via Campesina, Movimiento Sin Tierra* – land reform groups
- ❑ The Bolivian reforms (2006-2010), 5,000 ha cap

Allende's Chile / 1

Prior land reform:

The Chilean hacienda system meant 80% of land was in 7.5% properties.

500,000 peasants had no viable land. Even the conservative Alessandri government enacted a land reform law - but it was rarely enforced.

The Frei (CD) government promised to redistribute land to 100,000 families. The 1967 land reform law allowed expropriation, but less than a third of the large estates were affected. The new 'cooperatives' only benefited workers from the old estates, not landless families



Allende's Chile / 2

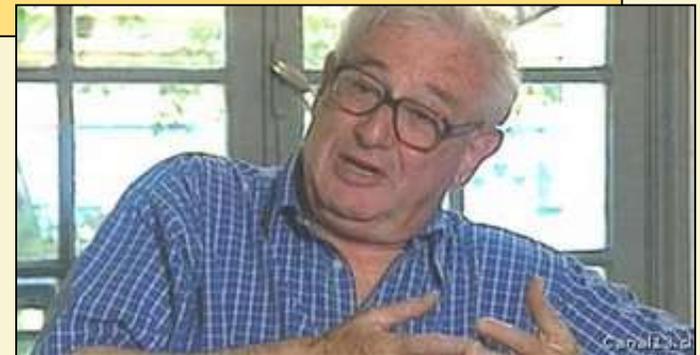
The 'Popular Unity' program:

Allende continued with the Christian Democrat program. He promised to fulfil the social justice aims of the CD agrarian reform, while radicalising its character. He affirmed the commitment to expropriate **all** rural properties of more than 80 hectares.

This process catalysed the '*tomas*' (direct reclaiming of land)' 1,700 during the first 18 months - pushed by the MIR, UP militants and Mapuche groups

The Mapuche indigenous people had never stopped struggling for protection and return of their ancestral lands

Jacques Chonchol, former Chilean minister of agriculture



Allende's Chile / 3



The land reform was called a "striking success". The hacienda system was over. But Allende would be overthrown in a US backed coup;

Land reform was not the basis for reaction. More important were the Mapuche tomas (takeovers): - the Mapuche movement and the massive occupation of lands led the Christian Democrats in particular to take up ... the defence of landed property;

Allende recognised Mapuche land holdings, provided credit, wrote off debts and annulled expropriations. Not all Mapuche demands were met but this was "the only legislation in the history of Chile ... favourable to the Mapuche" (Anaquod et al 1984);

NB. The limits of the US-led Alliance for Progress.

Anaquod, Del; Margaret Thomas and Kenneth I. Taylor (1984) 'Report on the present situation of the Mapuche in Chile, Presented to the Working Group on Indigenous Populations of the United Nations, 27 July, online: <https://www.cwis.org/document/report-on-the-present-situation-of-the-mapuche-in-chile/>

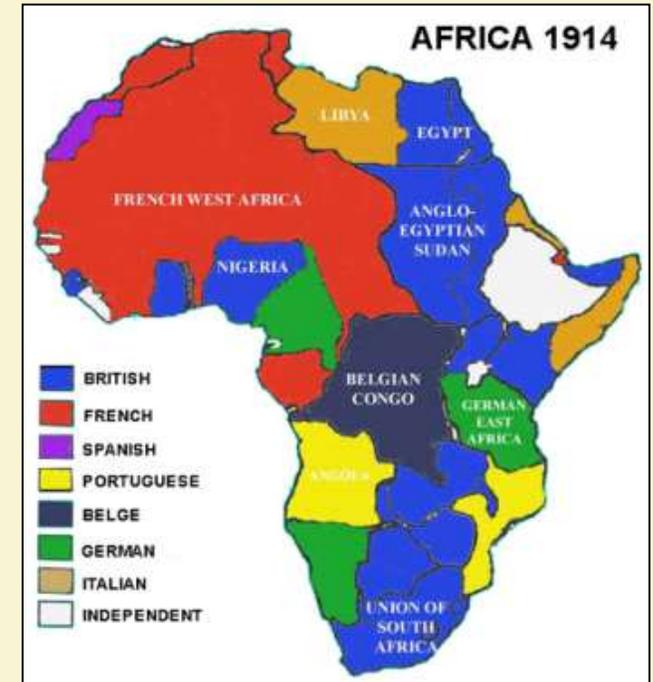
Accumulative 'land reform' in East Africa

Earlier British forms of land acquisition -

1. complete expropriation - land seizure by conquest
2. treaty arrangements – agreement reserving native lands and rights (e.g. Waitangi treaty in New Zealand)
3. non-recognition – denial of indigenous peoples' cultures and rights to land (e.g. 'empty land' in Australia)

Modernisation, including registration of land

- an adaptation of the late and post-colonial period; said to secure agricultural productivity and 'security of tenure' for customary owners and small farmers



Phase One: 'Almost all land registration systems introduced in colonial Africa before 1950 .. were primarily intended to secure European rights to land' (Dickerman et al 1989)

- **Algeria 1840s** - French laws dispossess Algerians on "public interest" grounds, handing land to colonists; **Congo & Rwanda-Burundi:** Belgian laws ban Africans from owning certain land

Phase Two: late colonial period, land registration for select groups of Africans; a 'modernist' compromise 'whose principal goal was to assure Europeans exclusive access to agricultural land' (Dickerman et al 1989)

- **Kenya's Swynnerton Plan 1950s:** access to registered land for Africans; 'greater security to landholders .. freedom to transact land and serve as a basis for agricultural credit' (Swynnerton 1956)

- ❑ **Kenya** soon gained the greatest extent of registered land; creation of 'freehold' land continues after independence in 1963
- ❑ In the **Sudan**, during a large World Bank agricultural expansion program (1969-71) all lands not registered were deemed (*Unregistered Lands Act*) to belong to the government.
- ❑ Breakdown of traditional land rights, commercial crops (cotton) and related desertification contribute to conflict in Darfur region



African registration / modernisation debates

J. Lawrence

- British land administrator calls for registration 'when economic advantages justified it, i.e.': (i) if "general demand" for it, (ii) costs were low and (iii) likely gains in agricultural productivity

Hastings Okoth-Ogendo - former Nairobi Dean of Law:

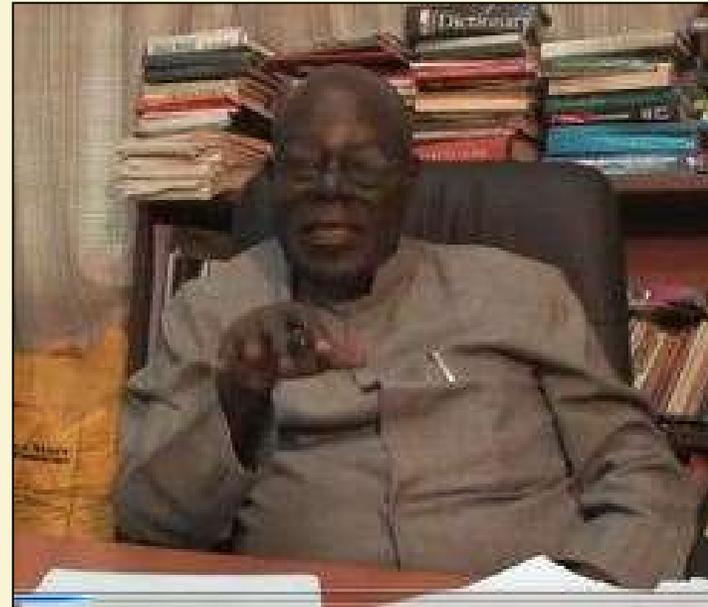
- Any benefits of registration were outweighed by disadvantages: redistribution of political power, creation of economic disparities, 'disequilibrium' in social institutions, failures in rural credit, failure to improve agricultural productivity.
- **'Secondary owners' did not benefit** - less than 5% of new Kenyan landowners were women; regime created "new forms of stratification and status differentials" amongst small farmers

VIDEO (2'48"): the late **Professor Hastings Okoth Ogendo** (1944-2009) on British colonial (and post-colonial) land registration in Kenya

Full video online: http://www.youtube.com/watch?v=_YR0sqne1go

Key points to observe:

- How did the British view Kenyan/African customary land?
- What did they not recognise about customary title?
- In customary Kenyan law, what was the main reason why land could not be sold outside the community?



East African evidence on modernist land reform

Okoth-Ogendo concluded that the benefits of land registration were outweighed by specific disadvantages: the redistribution of political power, creation of economic disparities, generation of a "disequilibrium" in social institutions, failure to develop extension and rural credit, and a general failure to improve agricultural productivity. Of the new registered land owners, less than five percent were women; the new land regime created "new forms of stratification and status differentials" amongst small farming (Okoth Ogendo 1986).

More recently researchers from London's International Institute for Environment and Development concluded that "the hoped for benefits of registration do not accrue automatically and, in some circumstances, the effects of registration may be the converse of those anticipated" (Cotula et al 2004: 3). In Kenya, there was "no significant correlation" between registered land title and rural credit, there were "negative repercussions" on vulnerable groups and "more generally, land registration reinforced class and wealth differentiation" (Cotula et al 2004: 4-5).

SMALLHOLDER AGRICULTURE IN COLONIAL KENYA: THE OFFICIAL MIND AND THE SWYNNERTON PLAN

by Anne Thurston

Recommendations

- i. That, all high quality native land be surveyed and enclosed
- ii. That, all the thousands of fragmented holdings be consolidated and enclosed. The progressive farmers would thereby be allowed credit, which previously they had been denied, and that the new title deeds issued to act as security of tenure which would lead to investments and rural developments.

3. Customary land in Melanesia

“the African saying that ‘land belongs to the few who are living, the many who are dead and the countless yet unborn’ is relevant and deep rooted” – Andrew Lakau



The Melanesian islands; Papua New Guinea is the Melanesian largest nation (popn. about 8 million)

What is customary land in PNG and Melanesia?

'Customary land systems in Papua New Guinea, in part due the country's remarkable diversity, were not distorted by feudalism. No large land owners developed, either through indigenous processes or (as elsewhere) by collaboration with and emulation of the colonial powers. The main pressures on land tenure came from the need to co-exist with neighbours ...

'The dominant mode of land management remained that of a locally controlled, oral tradition, with authority resting in clan leaders. Land rights and land use are administered by the communities. Land itself is inalienable; that is, it cannot be sold or otherwise taken away from the communities. Land is held in trust for future generations, to ensure their livelihoods; a principle also well known in many African cultures ...' (Anderson 2015: 10).

Narakobi (1988: 8) writes: 'land is the link between the earth and the sky, the sea and the clouds, the past and the future; because land is eternal, it is held in trust for succeeding generations'.

Unwritten PNG customary land title is recognised in PNG law, unlike in Australia, where new formal titles have been created to (partially) recognise indigenous rights.

Anderson, Tim (2015) land and Livelihoods in Papua New Guinea

The flags of Papua New Guinea and of Aboriginal Australia and the Torres Strait Islanders (nations with Australia)



VIDEO: three PNG women speak about customary land (2'03")

Full Video: 'Defending Melanesian Land' (2010) online:

<https://www.youtube.com/watch?v=ZngmxruuWgg>

Key points to observe:

- I still feel the sense of "belonging in my father's land";
- "People are not aware of" some changes made to land which do not correspond to customary law;
- Good new law should "add value" to the law we have in traditional society;
- Most food in the world is produced by women;
- We do not see land as parcels to be sold, 'land culminates life'.



Ruth Konia



Elizabeth Tongne



Rosa Koian



PNG customary land and landowners

- clan-based system with family ownership/custodianship;
- patrilineal or matrilineal clan leadership (depending on region);
- oral tradition; local court system;
- often misunderstood as 'communal' land (Fingleton 2005).

PNG land law (specific PNG laws)

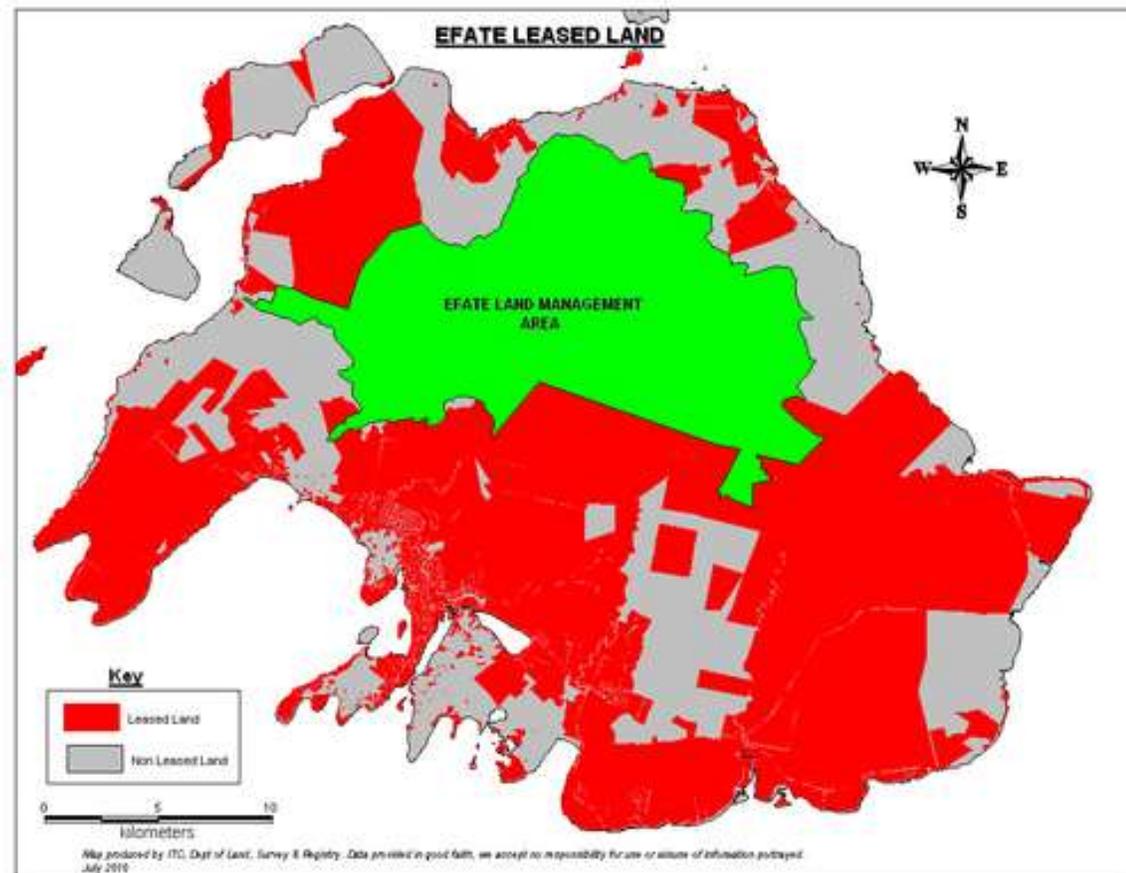
- PNG law recognises both customary and registered land;
- Incorporated Land Groups (ILGs) – allows clans to combine;
- Lease-lease-back – leasing with the state as guarantor.

accommodating new people: how does a child of migrant, mixed-race parents access land in PNG?



PNG's customary law - whether in the patrilineal or matrilineal system - easily recognises migration and mixed race families. That is far more difficult in centralised land registration databases

Efate island, Vanuatu



The fragility of customary land tenure under pressure:

- ❑ Left: in red, land alienated on Efate (Vanuatu's main island) since independence in 1980
- ❑ All foreign owned land was reclaimed at independence, but
- ❑ most Efate land was turned over to foreign owners (through leases) in a very a short time
- ❑ Customary land owners are asset rich and cash poor, and vulnerable to cash offers

Alienated land (red) on Efate, Vanuatu, 2010 - see Eric Wittersheim (2011) 'Paradise for sale. The sweet illusions of economic growth in Vanuatu', *Journal de la Société des Océanistes*, No. 133

VIDEO (3'07"), Chief Selwyn Garu: customary land in Vanuatu

Full Video: Chief Selwyn Garu on land in Vanuatu, 2011,
online: <http://www.youtube.com/watch?v=Ur35kjLCf60>

Key points to observe:

- Which social and business activities seem compatible with customary land?
- Why does he say it is not possible to put a price on land?
- Why does he see selling land as a crime?
- What are the pressures on Vanuatu families to lease or sell land?



Using evidence to assess modernist claims: formal v. informal sector in rural (non remote) PNG, where most families have land

Formal sector incomes in rural PNG generally compare badly compared to those in the informal sector

Formal sector incomes -	AWE (Kina)
Ramu Sugar basic wage, 2006 (Madang Pr.)	42
RD Tuna factory wage, 2006 (Madang Pr., women)	34
Ramu Nickel construction wage, 2006 (Madang Pr., men)	50
Chicken factory workers, 2011 (Morobe)	102
Private store works, 2011 (ENB)	45 to 100
VOP/LSS oil palm growers, 2006 (Oro Pr.)	61
Mama Lus Frut income, 2000 / 2006 (WNB Pr., women)	28 / 49
National minimum wage, 2006 / 2011	37.20 / 91.60
Informal sector incomes -	
Various informal sector incomes, 2003 (av. four provinces)	124 to 158
Roadside sellers, 2006-2011 (weighted av. four provinces, women)	144 to 230

Sources: Sowe et al 2003, Anderson 2011, Anderson 2015; Note: informal sector includes: sale of fruit and vegetables, sale of cooked and packaged food, small store, transport, other micro business.



Are women in the informal sector always marginalised?

In PNG women selling fruit by the side of the road can earn 3 to 4 times more than those in formal sector employment.

NB special PNG conditions:
 (1) legally recognised customary land tenure
 (2) even distribution of land

Characterised examples of 'hybrid livelihoods' in PNG, based on actual survey data

PNG rural hybrid livelihoods characterised by productive value, based on actual survey data, per family

1. NO LAND	Kina p.a.
Land rent and royalties (10ha)	1,000
2 jobs (50 and 100 KPW)	7,500
TOTAL	8,500

2. BASIC RURAL	Kina p.a.
Subsistence garden value (equiv.)	13,000
Low domestic market sales	2,000
TOTAL	15,500

3. GOOD HYBRID	Kina p.a.
Subsistence garden value (equiv.)	13,000
Average local market sales	6,500
Export crops	2,500
Small business (chicken, store)	2,500
TOTAL	24,500

4. SUPERIOR HYBRID	Kina p.a.
Subsistence garden value (equiv.)	13,000
Better local market sales	10,000
Export crops	5,000
Small business (chicken, store)	2,500
1 job (100 KPW)	5,000
TOTAL	35,500

4. 'accumulative reform' v. customary land

the neoliberal response:

utilitarian arguments

- "Communal ownership has not permitted any country to develop ... [it is] the principle cause of poverty [in PNG] ... endorsement of individual titles by the traditional landowning communities [is needed] ... where land reform has effectively led to individual land ownership it has been successful in rapidly raising the living standards of rural communities .. no country in the world has developed without individual property rights" (Hughes 2003; Gosarevski, Hughes and Windybank 2004 – CIS reports)
- failures in formalisation held back capitalism in developing countries (de Soto 2000)

leverage arguments:

- Based on 'mutual obligation' Hughes (2004) says aid should be made conditional on the individualization of customary tenure

De Soto, Hernando (2000) *The Mystery of Capital*

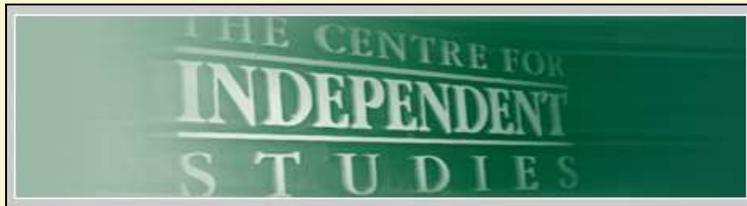
Hughes, Helen (2004) 'The Pacific is Viable!', *Issues Analysis*, No 53, CIS



A similar approach to indigenous land in Australia

"An individual property rights land ownership framework must be established to enable Aborigines and Torres Strait Islanders to develop enterprises and attract investment to create jobs and incomes. 99-year leases are essential to facilitate individually owned private housing."

Helen Hughes and Jenness Warin (2005) 'A New Deal for Aborigines and Torres Strait Islanders in Remote Communities', Centre for Independent Studies



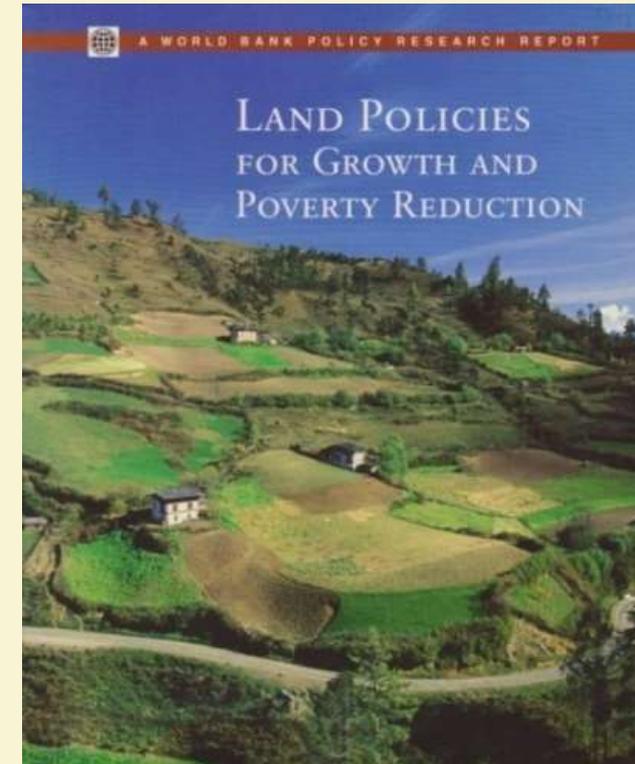
CIS Directors are also directors of: Westpac, Macquarie Bank, JP Morgan, News Corp, Deutsche Bank, CSR, Newmont Mining, Gates Foundation, Telstra, ASX, USSC

Revised modernist themes

The World Bank at first pressed for full commodification of customary land but, after substantial resistance, shifted to advocacy of 'other market forms', maintaining an 'evolutionary' approach;

- earlier 'market interventions' were 'poorly designed' and had failed due to lack of popular and institutional support (Deininger 2003);
- less attention should be paid to land sales and more to auxiliary markets (rents, leases, taxation) and to local institutional capacity;
- 'indefinite property rights' (sales) were 'the best option', but a gradual movement towards individual rights was seen as desirable, by the Bank.

Deininger, Klaus (2003) 'Land policies for growth and poverty reduction', Report Number 26384, World Bank



In defence of the commons

- ❑ The formal rights argument was “too often ... not grounded in local realities” and could worsen the position of ordinary land users (Meinzen-Dick 2009: 5; Lavigne Delville 2006: 18-19; Hunt 2004: 174).
- ❑ Claims of increased tenure security and rural credit were not supported by evidence; formalisation processes may be expensive and expose many to homelessness (Cotula 2004; Cousins et al 2005: 4).



Meinzen-Dick, Ruth (2009) 'Property Rights for Poverty Reduction?', DESA Working Paper No. 91, United Nations Department of Economic and Social Affairs

Lavigne Delville, Phillippe (2006) 'Registering and Administering Customary Land Rights: PFRs in West Africa', Paper at World Bank conference on 'Land Policies and Legal Empowerment of the Poor'

Hunt, Diana (2004) 'Unintended Consequences of Land Rights Reform: the case of the 1998 Uganda Land Act', *Development Policy Review*, 22 (2),

Cotula, Lorenzo, Camilla Toulmin & Ced Hesse (2004) *Land Tenure and Administration in Africa: lessons of experience and emerging issues*, International Institute for Environment and Development, London

Cousins, Ben; Tessa Cousins, Donna Hornby, Rosalie Kingwill, Lauren Royston and Warren Smit (2005) 'Will Formalising Property Rights Reduce Poverty in South Africa's 'Second Economy'?', Policy Brief No 18,

Q: explain these principles and claims

Principles and claims of customary and modernist land systems		
Customary principles	Modernist principles	Claimed modernist benefits
Focus on sustainable family livelihoods	Focus on individual appropriation	Greater security of title
Social inclusion	Exclusive and exclusionary boundaries	Improved agricultural activity
Community-controlled	Central regulation by the state	Enhanced rural credit
Flexibility and adaptation	Definitive rules based system	Improved status of secondary title holders (esp. women)

critical responses:

- “[Customary land is] a complex but flexible system of rights and obligations at individual, clan and tribal levels ... a balance between group and individual rights and obligations, with land ownership being held at group level and land use being exercised at the individual or household level” (Fingleton 2005: 3)
- Bourke (2005) demonstrates that production of all agricultural commodities by villagers on their customary land has expanded

Critical readings:

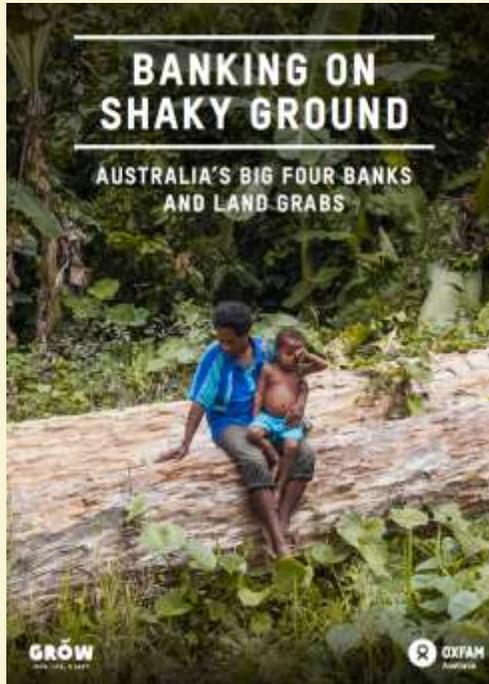
Fingleton (2005) *Privatising Land in the Pacific*, The Australia Institute, online at:
<https://www.tai.org.au/index.php?q=node%2F19&pubid=80&act=display>

Anderson and Lee (2010) *In Defence of Customary Melanesian Land*, Aid/Watch, online at:
<http://www.aidwatch.org.au/publications/publication-in-defence-of-melanesian-customary-land>

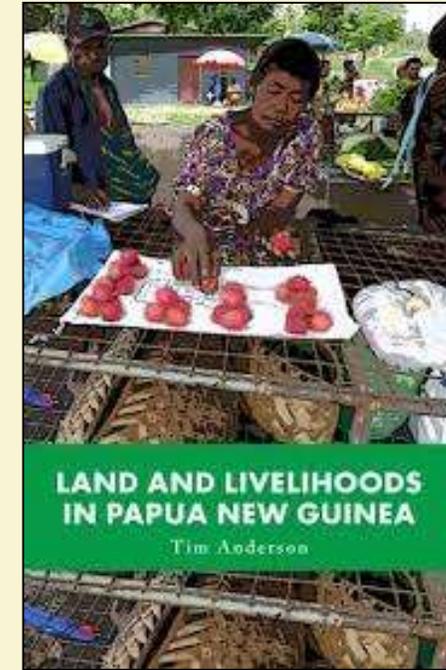


Summary – land reform and indigenous land

- ❑ A people which controls its own land (and therefore food supply, also dwelling space and medicines) maintains a sound basis for self-determination;
- ❑ 'land rights' and 'land reform' carry different meanings in different historical contexts: (i) redistributive (ii) accumulative (iii) restorative or defensive;
- ❑ Key elements affecting land tenure: feudal history? colonial legacy? distribution?
- ❑ Modernist land reform has been effective at dispossession; while some non-feudal traditional land tenures (e.g. in Melanesia) are sustainable and highly egalitarian;
- ❑ Colonial and neo-colonial regimes developed modernist land registration mainly to remove land from indigenous populations; also to privatise social or state land;
- ❑ 'Tragedy of the Commons' ideas have been used in support of privatisation and for modernist land titling, stressing individualisation and markets;
- ❑ Later modernisation arguments argued registration or 'mobilisation' for (i) security of tenure (ii) agricultural productivity, (iii) equity-capitalisation, (iv) the benefit of women, and (v) rural credit – these claims were not backed by historical evidence.



Further reading



OXFAM/GROW critique – Australian Banks financing land grabs, in SE Asia and PNG – in PNG under the guise of Special Agricultural Business Leases (SABLs: 5.2m h.a. 2003-2012). Most SABLs were declared illegal by PNG Commission of Inquiry (2011-2014), but they continue

ACTNOW – PNG campaign group, working against land grabs, defending customary systems

Tim Anderson (2015) Land and Livelihoods in Papua New Guinea