

## TRADITIONAL SOCIETY AND ITS TRANSFORMATION

### — Land Tenure in Papua New Guinea—

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It is said few people in Papua New Guinea (PNG) could dispute the view that land policy and its problems are one of, if not the greatest preoccupations and unresolved issues faced by its people and its leaders. And even fewer of those in responsible positions in the development and management of the industrial-commercial sector of the economy, would fail to agree that land problems are the greatest obstacle faced by those wishing to expand existing enterprises. The evidence for the latter second point was provided by P. A. Management Consultant in their 1978 survey of 142 companies operating in PNG whom they had asked to list in order of importance of the difficulties they faced in achieving growth. Land problems were top of the list of responses.

Let us consider land problems in PNG. The first legislation on land tenure in PNG was enacted under the control of the German and British colonial systems in the 19th century. Before that time, the land was owned and cultivated by native groups according to local custom. Under the colonial system, many laws were enacted. There are controversies concerning the colonial legal system among scholars. They can be divided into two groups. One group holds that colonial laws were the instruments for control and imperialist exploitation; and the other group admits that they were certainly instruments for control and exploitation, but that the colonial powers accommodated themselves to the local customs. According to NAROCABI, colonial law was used not only to destroy Melanesian culture, but also as a device for exploitation. The revival of customary law would thus be a liberating influence. In contrast, Fitzpatric insists that while colonization had a great exploitative and destructive influence, it also had the positive effect of preserving the traditional mode of production. This was because traditional society performed important functions for the colonial economy: in particular, it provided cheap labour. The capitalist sector of the economy could rely on the traditional society to rear potential workers and to look after them in their old age. In fact, while traditional society was clearly subordinated to colonial interests, customs were preserved in the area of land tenure, family and personal relations. In the post-colonial period, there was tension between the advancement of rural capitalist interest and the preservation of traditional society.

Strategies for customizing the law may easily but not necessarily, be a perpetuation of colonial strategies in a different form.

Chalmers, in his examination of the historical development of the court system, sees a persistent refusal of the colonial powers to accept customary law. The establishment of village courts by the Somare government in 1973-74 is seen as an exercise in restoring power to the people.

In relation to land, FINGLETON points out that one of the main problems of colonial land policy was that customary tenure was regarded as unsuitable for cash crop production

and therefore unsuitable for economic development. Thus, a crucial aim of the Commission of Inquiry into Land Matters 1973 was to integrate customary tenure into the economic system. Thus, for example, the Land Dispute Settlement Act 1975 attempts to balance the flexibility of customary law with the new need for certainty in land rights. On the other hand, as we have seen above, Fitzpatrick argues that the Commissions emphasis on group ownership is consistent with the colonial strategy of preservation of the traditional mode. At the same time, it would be possible for powerful peasants to manipulate the customary group in order to achieve personal economic interests. The Commission has failed to resolve the conflict between the interests of powerful peasants and groups.

A major proposal of the Commission was the acquisition of plantations, and the legislation was introduced to acquire plantations. However, FINGLETON points to the problems of implementation and particular to the difficulties of obtaining appropriate finance and to the opposition of sections of the bureaucracy to the policies. An important feature of the colonial period was the denial of access for Papua New Guineans to economic activity in the capitalistic sector. Therefore of the "Eight Aims" of the new state is a rapid increase in the proportion of the economy under the control of Papua New Guinean individuals and groups and in the proportion of personal and property income that goes to PNG.

During the colonial period from 1884 to 1972, 1.4 million hectares of land were alienated to expatriates, of which 0.16 million hectares were freehold, and 0.34 million lease land. In 1980, the total area of PNG was 46.17 million hectares, of which 43.97 million hectares were owned by natives, thus 97 percent of total area of PNG was non alienable land. Only 0.22 million hectares were owned by expatriates and 1.4 million hectares by government. In the post-colonial period, the land owned by expatriates decreased, and the land owned by the government increased. This was due to the Land Acquisition Act 1974. Under which the government could compulsorily acquire land owned by expatriates by paying compensation.

The land which the government possesses is divided into various purposes; for native freehold, public purposes, and lease for agriculture and pasture. It was very difficult for government and enterprises to acquire the land, because the lands are owned by collectives, so it become necessary to demarcate and register the owners of the land. In 1977, the National Registration Act was introduced, but it has been an almost total failure. In 1981, Professors Jack KNETSCH and Michael TREBILCOCK reserched the land problem in PNG and had publish some discussion papers valuable in understanding the land problem. But, for my regret, I have no space to discuss them in this paper.

### Conclusion

There are various system of land tenure in the Pacific Island countries. Generally speaking, in the islands where colonial control was long, cash earning economies have developed and the system of land tenure has changed from collective to individual. For example, in Tonga in Polinesia, in the early times, the land were not given to the collective but to individuals, the lands were given to families. Also in Fiji, with the development of the cash earning economy, the significance of the land has changed. In the earlier self sufficient economy, there was little interest among the natives in land ownership. But nowadays, with the evolution of cash economy, the lands are divided among the individuals, causing serious social problems. In addition to the above, christianity has caused social transformation. Missionaries could not understand collective ownership of land, and encouraged individual ownership.

In PNG, which had the latest contact with European Imperial Power, the collective ownership of land is now dominate. But the government has policies for industrialization, and so land reform is again becoming a serious problem.

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