

CREDIT, LAND REGISTRATION AND DEVELOPMENT:
IMPLICATIONS OF THE LEASE-LEASEBACK SYSTEM*

By

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I. INTRODUCTION

CONVENTIONAL economic development theory postulates that agricultural productivity in the third world is below potential because of low investment in improved technologies. It is further argued that the provision of credit to village level farmers would enable them to afford the new technologies and so make substantial improvements in productivity.¹ However, loan agencies attempting to provide credit to small farms in developing countries have encountered many obstacles.² A major problem in countries that have retained customary land tenure systems is that lenders find it difficult to ascertain exactly what rights a prospective borrower holds over a piece of land which he wishes to develop. If a credit agency is unsure of a borrower's rights to land, it will generally decide against making a loan. In Papua New Guinea 97 per cent of the land area is held under customary tenure, a situation which makes the acquisition of credit a formidable task for smallholders and village groups.

The Australian colonial administration devoted considerable attention to the creation of titles to customary owned land and was involved in three attempts to institute systems of customary land registration. The earliest of these attempts was the establishment of a Native Land Commission following the enactment of the **Native Land Registration Act 1952**. This Commission was charged with the task of registering customary land throughout the country on a systematic basis. However, it soon became apparent that the Commission's small staff could not tackle such a massive job and so they concentrated on sporadic registration in response to individual applications. The Commission achieved little and by 1962, when it ceased operation, it had examined 472 applications, had made decisions on 176 of these but had not registered a single title.³

In 1963 the Land Titles Commission was established by the **Land Titles Commission Act**. It was charged with responsibilities similar to the Native Land Commission in regard to the registration of customary land, but was to limit its activities to declared 'adjudication areas' and was to utilise 'demarcation committees', comprised of local landowners, to assist in its deliberations. However, the Land Titles Commission encountered problems similar to those which had

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1. W.W. Cochrane, **Agriculture Development Planning** (Praeger, New York, 1974) 26-27; U.J. Lele, 'The Roles of Credit Marketing in Agricultural Development' in N. Islam (ed.) **Agricultural Policy in Developing Countries** (MacMillan, London, 1974) 413-41 at 416.
2. D.S. Thornton, 'Agriculture in Economic Development' (1973) **Journal of Agricultural Economics** 24(2): 225-87 at 252.
3. T. Bredmeyer, 'The Registration of Customary Land in Papua New Guinea' (1975) 3(2) **Mel. L.J.** 267-87 at 269.

hampered the Native Land Commission⁴ and by 1970 it had not registered a single title in the Register of Communally Owned Land. This register was suspended on the advice of a government consultant and the Administration examined the feasibility of a new approach to the registration of customary land.

The third attempt came in 1971 when four new land Bills were tabled in the House of Assembly. These Bills envisaged that communal interests in customary land would be registered in the names of representatives of the landowning group. However, the Bills encountered widespread opposition and were withdrawn from the House.⁵ In the wake of the failure of the proposed legislation a Commission of Inquiry into Land Matters (CILM) was appointed. The CILM presented its report in 1973 and amongst its numerous recommendations it advised that 'legislation and administrative machinery for the registration of customary land should be immediately prepared and introduced'.⁶ It also provided guidelines as to the form which such legislation should adopt. Despite numerous affirmations by the Government and successive Ministers for Lands that legislation for the registration of customary land is soon to be tabled in Parliament⁷ the Bill is still at the drafting stage in 1983.

The lack of legislation enabling the registration of customary land has complicated the work of lending agencies, particularly the Papua New Guinea Development Bank (PNGDB). The Bank receives numerous requests to finance agricultural development on customary land, but is reluctant to commit funds as the prospective borrowers usually have no documentary evidence of their rights to the land. This problem has made it difficult for the PNGDB to achieve its objectives in relation to the provision of loans to the agricultural sector and has led to severe criticisms of the Bank by politicians and businessmen. To surmount the obstacle caused by the lack of legislation the PNGDB has evolved an ingenious administrative-legal mechanism. This procedure permits the creation of a temporary title over customary land using existing legislation, the Land Act 1962, and administrative machinery. Staff at the PNGDB refer to the entities created by this mechanism as 'twenty hectare schemes',⁸ whilst officers of the Department of Lands call them 'twenty-five year lease-leaseback schemes'. These terms are used interchangeably in the present paper. In the following sections this administrative-legal innovation is described and a number of implications are considered.

4. *Ibid.*, 274.

5. P.T. Quinn, 'Agriculture, Land Tenure and Land Law to 1971' in Donald Denoon and Catherine Snowden (eds.) *A History of Agriculture in Papua New Guinea: A Time to Plant and a Time to Uproot* (Institute of Papua New Guinea Studies, Port Moresby, n.d.) 171-84 at 183.

6. *Report of Commission of Inquiry into Land Matters* (Department of Lands, Surveys and Environment, Port Moresby, 1973) 1.

7. *National Development Strategy* (Central Planning Office, Government Printer, Port Moresby, 1976) 24; *The National Public Expenditure Plan 1978-81* (National Planning Office, Government Printer, Port Moresby, 1978) 72.

8. This procedure was first used for coffee projects. The Bank considered that the 'minimum optimum area' for such schemes was twenty hectares, and so they were called 'twenty hectare schemes'; see M.G. Iangallo, *Guide to Papua New Guinea Development Bank Lending Policy for 20 Hectare Coffee Development* (mimeo at PNGDB, Port Moresby, 1980) 1.

II. THE LEASE-LEASEBACK SYSTEM⁹

The starting point for a lease-leaseback scheme generally occurs when an individual or group wishing to develop a portion of customary land with coffee or cocoa approaches the PNGDB for a loan. The Bank requests that a brief feasibility study be conducted to estimate the area of land available and to ascertain whether the soils and physical characteristics of the area are suitable for tree crops. These studies have usually been conducted by personnel from the Department of Primary Industry (DPI), but financial problems in 1982 and 1983 have led to DPI withdrawing this service in several provinces. It is now more common in some areas for agricultural management agencies to conduct the feasibility studies for prospective clients. The PNGDB allocates K3,000 'pre-management' grants to approved agencies to get projects started.

If the preliminary indications are favourable then the group is asked to demonstrate its commitment to the proposed project by preparing a nursery for coffee seedlings, clearing the boundary of the land, putting up fence posts, planting shade trees and digging drainage channels. The Bank regards this work as the group's 'sweat equity' in the project. At the same time the group is advised to contact the province's Division of Commerce and register as a company or business group.

A request is forwarded to the province's Division of Provincial Affairs for the preparation of a land investigation report on the proposed development site. This report records the details of the landowning group and its members and determines whether there are any outstanding disputes over the land. If the land investigation report concludes that rights to the land are not subject to dispute then the Department of Lands arranges for a cadastral survey by either the Survey Section or the Land Settlement Section. During the course of the survey permanent concrete markers are placed at turning points on the boundary. In the early years of the twenty hectare schemes, surveys were conducted at the expense of the Department of Lands, but more recently the Department has begun to levy a survey fee of around K300 to K400 per block.

Once the land investigation report and the survey have been completed a file on the portion of land is forwarded to the headquarters of the Department of Lands requesting that the State acquire a 25 year lease over the land. It is explained to the landowning group that after the State has acquired rights to the land it will allocate the lease which is created back to their business group. This is why the procedure is known as lease-leaseback in the Department of Lands.

Originally, the PNGDB had planned that funds would not be lent to a business group until the group had received its lease documents and the Bank had taken out a registered mortgage over the lease. This has not proved practicable, however, as administrative delays in the

9. The following paragraphs describe the different steps of the lease-leaseback procedure in the order in which they usually occur. However, it should be noted that in many cases the steps have followed a different sequence than that described.

Department of Lands mean that it takes from 3 to 6 years for a lease to be issued. In consequence, the Bank has modified its plans and the disbursement of a loan usually commences as soon as four conditions have been met. These are: (i) the group has completed its 'sweat equity'; (ii) a satisfactory land investigation report has been prepared; (iii) the land has been surveyed; and (iv) a Bank approved agricultural management agency¹⁰ has been appointed to supervise the project.

III. THE PRESENT SITUATION

The lease-leaseback programme started in 1979 in the Western Highlands Province and by June 1983 more than 160 projects had been approved and were being developed. The Eastern Highlands Province with some 55 coffee projects and the Western Highlands Province with 35 coffee projects have led the way. Cocoa schemes are being developed in the Madang Province with 35 projects, North Solomons Province with 20 projects and the Morobe and East Sepik Provinces with 5 projects each.¹¹ More than 500 groups are presently on the waiting list for loans under the lease-leaseback programme and several new requests are received each week.

Although the PNGDB regards 20 hectares as the 'minimum optimum area',¹² projects vary in size from 15 hectares to 25 hectares and there is one project of 40 hectares. Development costs work out to around K4,000 per hectare and approximately K13,000,000 of Bank funds is already committed to approved projects. The major costs of the coffee projects include management agency fees at a rate of K300 per hectare per annum, fencing materials, fertilizer and the payment of wages to an assistant manager and labourers. The model budgets assume an f.o.b. coffee price at Lae of K1,500 per tonne, and a yield of 2.5 tonnes per hectare. The repayment schedule permits the Development Bank to take a major share of a project's earnings during the first few years of production. It is planned that 13 years after project initiation the original loan and interest at 9 per cent per annum should be repaid to the Bank.

Preliminary results indicate that there is considerable enthusiasm for the projects and in the Highlands the PNGDB has been inundated with requests from business groups. Some of the early projects have achieved their planting targets, but others are behind schedule or have failed to reach their target despite the drawing down of their full loan. Two major problems have become evident in recent months. The first relates to existing projects. Development Bank officers are concerned that there is a considerable variation in the quality of agricultural management services provided by different agencies. In particular, it is felt that some management agencies are attempting to take on more projects than their staff can competently handle. Such a situation could lead to lower yields and make it difficult for business groups to meet loan obligations.

10. For further details of the role of agricultural management agencies see D. Hulme, 'Agricultural Extension: Public Service or Private Business?' (1983) *Agricultural Administration* 14(2): 65-79.

11. I. Oxenford 1983, personal communication.

12. See footnote 1.

The second difficulty relates to the expansion of the programme and the creation of new projects. In recent months the World Bank has indicated that it is no longer keen to provide the PNGDB with funds for the development of new coffee plantings. This is because the World Bank believes that there is a serious imbalance between coffee production and consumption at the global level. If the World Bank withdraws its support for coffee projects under the lease-leaseback system, then the expansion of the programme in the Highlands may be curtailed. It must be noted, however, that a large number of business groups in the Highlands have already contributed their 'sweat equity' to projects and that the PNGDB will almost certainly have to provide loans in these cases. The situation with regard to cocoa is more optimistic as it seems likely that the World Bank will provide credit for cocoa planting to assist Papua New Guinea in halting the decline in the national production of cocoa that has occurred in the last few years.

IV. SOME IMPLICATIONS OF THE LEASE-LEASEBACK SYSTEM

1. Agricultural Production and Earnings

The lease-leaseback programme has the potential to make a major contribution to the production of coffee and cocoa by village groups. Already some 1,800 hectares of coffee and 1,200 hectares of cocoa are scheduled for planting under the system. If the 90 coffee projects already established in the Highlands achieve the target yield of 2.5 tonnes per hectare,¹³ then at maturity they will produce 4,500 tonnes of green bean per annum with an annual export value of around K6,750,000 at prices of K1,500 per tonne. If the 70 cocoa projects are included in the projections then the potential export value of production from existing projects exceeds K10,000,000 per annum. The satisfaction of present demands for the creation of twenty hectare schemes would be likely to lead to the development of around 500 ventures with projected export earnings of the order of K30,000,000 to K40,000,000 per annum. Clearly, the programme has the potential to make a major contribution to economic growth at the national level. It must be borne in mind, however, that it remains to be seen whether or not the projects can achieve their target yields per hectare.

2. Regional Inequality

Lease-leaseback schemes can only be established in areas where soils and climate are suitable for tree crops, where there is a reasonable transport infra-structure and where agricultural management agencies operate. In consequence the vast majority of projects are located in provinces that can be classified as relatively well developed in comparison to national averages. Even within provinces the lease-leaseback schemes have a tendency to be concentrated in the best developed areas; close to major towns and transport arteries. At present there are no projects located in the six provinces that the National Planning Office has defined as 'agriculturally least

13. Some agriculturalists believe that this figure is unrealistic and that yields of 1.5 to 2.0 tonnes per hectare should be the target.

developed'.¹⁴ It seems certain, therefore, that the programme will strengthen existing patterns of regional inequality.

This problem has already become evident in the Highlands, where prominent Simbu leaders have demanded that the lease-leaseback programme be extended to their province. The Development Bank has recently examined a number of possible project sites in Simbu, but a large proportion of these have proved to be environmentally unsuited to the development of a contiguous 20 hectare coffee planting. The steep slopes and poor soils typical of much of the northern part of Simbu are unfavourable for the establishment of medium-scale plantations. However, political pressures make it likely that several economically non-viable projects in Simbu will receive approval for loans.

There is little that the Bank can do by itself to correct the provincial imbalance which its activities are fostering. A coordinated plan of action between the Development Bank and Government Departments to fund the construction of roads in less developed areas, and to offer incentives for management agencies to operate in such areas would be necessary to remedy this situation.

3. Socio-economic Stratification

Statements about the impact of the lease-leaseback programme on socio-economic stratification must be made with caution as only limited information is available. Nevertheless, concern is already being expressed in the Eastern Highlands Province about the number of twenty hectare schemes which are controlled by or closely associated with prominent individuals. These men are generally politicians, ex-politicians or successful businessmen. If such individuals are able to acquire a major share of PNGDB loans for lease-leaseback schemes, then Donaldson and Good's¹⁵ 'rich peasantry' will get richer.¹⁶ Detailed field research will be necessary, however, before such propositions can be affirmed or rejected.

Of equal concern is the pattern of labour relationships that is developing. Once the initial 'sweat equity' has been completed, then most business groups withdraw their labour from the project and let the management agencies recruit labourers from outside of the project area. This is contrary to PNGDB policy which argues that landowners should be encouraged to work on their own schemes. It makes good sense, however, to the management agencies as they find it much easier to control and discipline labourers who are not local landowners. On the majority of projects in the Highlands the labourers involved in planting and maintaining the coffee blocks originate from disadvantaged areas. For example, in the Eastern Highlands Province many of the labourers are from the Okapa District, Simbu Province or the Bundi region of the Madang Province. In consequence the pattern

14. *The National Public Expenditure Plan 1980-83* (National Planning Office, Government Printer, Port Moresby, 1979) 49.

15. Mike Donaldson and Kenneth Good, 'The Eastern Highlands: Coffee and Class' in Denoon and Snowden (eds.) *op.cit.*, 143-69 at 166.

16. Such a situation would be by no means unique. The tendency for privileged individuals to have favoured access to institutional credit is well documented for the third world. For more details see Lele, *op.cit.*, 418.

of labour relationships that is developing is broadly analogous to that of the plantation system. Groups of labourers from disadvantaged areas are working to produce dividends for the members of business groups in relatively well-developed regions. Indeed, the role of the members of the business groups, who neither manage nor labour on the project, becomes similar to that of 'landlords'. This is a situation which the Commission of Inquiry into Land Matters was keen to avoid.¹⁷

Finally, mention must be made of the lack of thought that has been given to the distribution of earnings amongst the members of business groups involved in lease-leaseback schemes. Discussions with business groups in the Eastern Highlands revealed that there was a great deal of confusion about the methods for allocating an individual's share in the earnings that coffee blocks would produce. Some members reported that each member would receive an equal share; others that shares would be proportional to the area of land which individuals and families contributed to a project; others that shares would be related to the amount of effort members and their families put in during the 'sweat equity' stage. On a few projects members of the business group are continuing to work during the planting and maintenance stages for a wage that is below the statutory rural minimum wage. The management agencies keep records of each individual's 'self help contribution' to the scheme and members claim that future earnings will be apportioned according to the size of these contributions. Exactly how these different criteria for the allocation of project earnings will be reconciled is unclear. Optimistic observers argue that traditional social mechanisms will ensure that profits are equitably distributed and that all the members of a business group will be satisfied. Others, however, believe that there will be a free for all in which the powerful will do best. If such a situation does arise then intra-group disputes could cause some projects to cease operation. The Development Bank, with millions of Kina out on loan, appears to be waiting on the sideline with its fingers crossed.

4. Administrative-Legal Aspects

The lease-leaseback system is administratively cumbersome and has generated a substantial volume of extra work for the Department of Lands. In provinces such as the Eastern Highlands and Western Highlands, the Department's field staff report that they are spending a major proportion of their time processing lease-leaseback applications. At the Department's headquarters in Waigani the programme is creating a large amount of paperwork. Each scheme is individually processed as a government land acquisition, and subsequently processed for allocation back to its original owners. The programme has placed a considerable additional burden on the administrative capacity of the Department and some officers believe that much of the work is unnecessary. 'Why', they ask, 'is it necessary to go to the trouble of acquiring a portion of land merely to reallocate it to its original owners?'. The net result is that the time that prospective lessees have to wait for the processing of a lease application continues to lengthen. These delays often threaten the viability of other types of projects on which development cannot commence until a

17. Report of Commission of Inquiry into Land Matters, op.cit., 12-13.

lease is granted and frustrate the private sector.¹⁸

The PNGDB favours the lease-leaseback system as it provides a mechanism by which it can determine that an area of land is not subject to dispute and can obtain a cadastral plan. In addition, the PNGDB can take out a registered mortgage over the title which is created, as a form of security. This may be a 'paper' security only, however, as it is unlikely that the Bank would be able to takeover the management of many twenty hectare schemes should the borrowers fall behind on repayments. In the Highlands, where the rule of law is fragile, an attempt by the PNGDB to assert its legal rights over the lease-leaseback lands of a defaulting business group would almost certainly result in a civil disturbance. Most landowners believe that they retain their customary rights to twenty hectare blocks and they do not appreciate the legal implications of the lease-leaseback arrangements.

V. CONCLUSION

The failure of successive governments to enact legislation relating to the registration of customary land during the decade following the recommendations of the Commission of Inquiry into Land Matters has forced the PNGDB to seek alternative methods of creating title over customary land. The Bank has evolved an ingenious mechanism which permits it to create a form of title over customary land by utilising existing legislation and administrative machinery. The lease-leaseback system has permitted the PNGDB to expand its lending to the agricultural sector and initial indications are that this has stimulated economic growth. However, the programme has produced an undesirable side effect in terms of its tendency to strengthen existing patterns of provincial inequality. Its impact with regard to socio-economic stratification is far from clear, but some evidence suggests that the programme may increase the gaps that exist between different economic groups.

The lease-leaseback mechanism has generated a considerable administrative workload for the Department of Lands. This has added to the Department's efficiency problems and has lengthened the time it takes the Department to process land acquisitions and lease applications. The popularity of the programme shows the desire for credit and further cash crop development by village groups. In addition, it provides an indication of the demand that exists for the creation of some form of title to customary land throughout Papua New Guinea. It underlines the need for the present government to make the enactment of customary land registration laws and the establishment of a body to administer these laws a top priority. Such legislation could contribute significantly to the achievement of economic and social policy objectives and reduce the administrative strain from which certain sections of the Department of Lands are presently suffering.

18. M.J. Irebilcock, *The Role of the Private Sector in the Economic Development of Papua New Guinea* (Institute of National Affairs, Port Moresby, 1983).