LAND MOBILISATION PROGRAMME IN PAPUA NEW GUINEA

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INTRODUCTION

The Land Mobilisation Programme document (titled Programme Description)[1] does not purport to be authoritative or, for that matter, exhaustive in its statements of land policies and reforms. It sets out some principles of the Land Mobilisation Programme (LMP) and the justification for and management of the programme funding.

The LMP was proposed for the adoption of the Department of Lands and Physical Planning (DLPP). It evolved from the initiatives of that Department to find reforms in the areas of land information service, land administration and land tenure, consequent upon the Report (1973) of "the Commission of Enquiry into Land Matters" (CILM). More immediately, it was preceded by two recent initiatives within that Department. The first initiative undertaken by DLPP and commenced in 1984 was the Land Administration Improvement Programme (LAIP). This was followed by the Land Evaluation and Demarcation Projection (LEAD) in 1987.

LAIP was conceived as a vehicle for the improvement of land administration and planning through a reorganisation of the DLPP and the revision of existing land administration practices. The implementation of the programme has resulted in the reorganisation of the department, and the introduction of a computerised PNG Land Information System (PNGLIS). There are commitments to proper planning for improved programming of departmental activities, development of an effective system of records management, establishment of an integrated titles office and preparation of detailed procedure manuals.

LEAD was first conceived in 1985 as a follow-on project to LAIP. The aims of the LEAD project evolved from the initial concept of a cross-sectoral project aimed at the development of specific project areas and the establishment of an inventory of the country's land, mineral and forestry resources. Through a change in government priorities and the identification of significant shortcomings in the capacity of DLPP to deliver land services to the country, the LEAD project evolved into a major institution strengthening project within DLPP.

Following a World Bank Identification Mission to PNG in February 1986, it was decided to undertake a feasibility study to formulate the LEAD project. The Australian International Development Assistance Bureau (AIDAB) agreed to finance the study and selected a consortium of Australian-based organisations to undertake it.

The major objective of the project was to facilitate the implementation of agriculture and forest projects through improved land administration, land resources evaluation and

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1. This document was reviewed by the writer at the request of the Law Reform Commission. That Review which is substantially section B of this essay is shortly to be published by that Commission as an 'Occasional Paper'. The Land Mobilisation programme, however, would be best understood in the light of the land policies which are discussed in section A. The models of land administration presented in that document are for short term solution. An alternative model for long term application is discussed in section C.

mapping activities. The project preparation report was completed and submitted in September 1987.[2] Upon review of the report by DLPP and by the World Bank it was concluded that additional project definition work was required before the project could proceed. DLPP and the World Bank Pre-appraisal Mission, which visited PNG in March 1988, agreed to terms of reference for the redefinition of the project and appointed an external consultant to assist with the task. The result of this redefinition work is the Land Mobilisation Programme.

In a sense the 'Programme Description' is an in-house document and justifies the implementation of the various initiatives. Two donor agencies, the World Bank and the Australian International Bureau, were extensively involved in funding and assisting the DLPP in the design and documentation of the LMP. As the project is now a *fait accompli* one can do no more than note some apprehensions set out in the critique below. A review of land tenure and administration policies independently of the DLPP and the World Bank could better inform the Law Reform Commission on the possible impact of the LMP and choices in land tenure and administration options.

The last independent but comprehensive review of land tenure policy was in 1973 by the "Commission of Inquiry Into Land Matters". In the 17 years that elapsed since that Report, the subject has attracted many proposals, comments and conflicting Reports on land policy formulations and legislative reforms. The major ones are listed in an appendix I attached hereto. These, to a large extent, still remain inconclusive and unimplemented. The adoption of the provincial government system has necessitated the re appraisal of policies and in particular the need for a clear policy on decentralisation.

There is an urgent need for an independent study of the issues, in order to find a long term solution. Section A of this paper contains a brief description of policies adopted from the colonial period; section B, reviews the LMP Programme Description; and C, sets out for consideration some policy formulations on land tenure and administration.

A. Land Policy - A Conspectus

The land policy adopted by the Colonial powers was one of paternalism. This policy was reflected in a variety of legislation which *prohibited* direct dealings between traditional owners and expatriates, and *protected* the former from expropriation of their lands by the state so that they would have no land shortage. Notwithstanding the element of dualism in the laws and ownership, that policy remained the single most dominant one and its success is reflected in the fact that alienated land still represents less than 3 percent of the total land area of the country.

In the 1960s, policy statements reflected an urgency to increase the extent of the modernised sector at the expense of the subsistence one by the options of principle of "parallel development". Paternalism, however, remained dominant. Proposals for land reforms in the 1970s were expressed by the options of 'westernisation' and 'indegenisation'.[3] They represented on the one hand Simpson's transformation model and on the other hand the recommendations of the Commission of Enquiry into Land Matters for group titles mirroring the traditional base. Both models responded inter alia to the call for land mobilisation, but whilst the former individualised the system of land ownership, the latter emphasised the collectivist process and inspired the *Land Groups*

2. Land Evaluation and Demarcation Feasibility Study Project Preparation Report by AIDAB (Sept. 1987).

3. R.W. James, 'Land Tenure Reform in Developing Countries: From Westernisation to Indegenisation', UPNG Professorial lecture, 1975.

Incorporation Act. This act facilitates the incorporation of traditional groups for purposes of registering their group titles but no national legislation was introduced for registration of such titles.

The national government, beyond the passage of this enactment, procrastinated on adopting one or the other policy and the pressure for improved access for land and finance for development resulted in the number of piecemeal legislation and the recognition of fictitious arrangements to achieve land mobilisation. These include tenure conversion mainly on a sporadic basis, state leases, lease-leaseback and clan lands agreement. The commodity notion of land increased in the 1980s and restrictions and prohibitions on land alienation came to be expressed as 'transactional costs', which should give way to 'direct dealings'.[4]

The LAIP and LEAD reports were essentially concerned with land administration and information service. They defined land tenure reform needs in terms of -

- simplifying and amending the laws and consolidating land legislation;
- providing for certainty of title to owners whether they are the state, groups or individuals;
- ensuring that land disputes are quickly and efficiently settled;
- allowing for the more efficient administration of land by state officials.

They expressed the view that beyond these activities a government is best if it governs least. There was therefore in the view of the authors of these reports, an urgent need to remove the barriers to 'direct dealings'. These reforms were intended to accelerate the processing of land transactions and improve access to land and therefore finances for agricultural development and promotion of land based industries such as logging. They were justified as attempts to eschew (i) paternalism, by reversing the assumption that automatic citizens are unable to protect and promote their own best interests, and (ii) heavy - handedness and bureaucratic intervention in the affairs of the people.

The land tenure component of the LMP was conceived in an atmosphere characterised by policy indecision and lacking of creativity. It therefore held out stop gap measures as the interim solution. The East Sepik experiment which adopted a radical approach, effected an important break-through in the stalemate. Dr Fingleton, who drafted the two provincial laws - the *Land Law* (1987) and *Customary Land Registration Law* (1987) - evaluated the model as being:

> The most significant break through in the field of customary land tenure reform, not only in Papua New Guinea but in the South West Pacific generally.[5]

This land tenure structure emphasised systematic registration of group titles in the manner proposed by the CILM, "subject", however, "in all respects to and regulated by custom".

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4. J. Trebilcock and L. Knetsch, Land Policy and Economic Development in Papua New Guinea (1981) 9 MLJ 102.

5. See his contribution to the forthcoming publication (ed.) P. Larmour, *Decentralisation and Customary Land Registration*, (forthcoming) chap.12 captioned "The East Sepik Legislation" p.1.

Technically it attempted to juxtapose some *irreconcilables* in matters of title registration, e.g. certainty and flexibility; conclusiveness and presumptiveness; written laws and unwritten customs. In matters of policy administration it resulted in the existence of two competing levels, that of the national government regulated by *the Land Act,* 1962 and *the Land Titles Commission Act (1963),* and the provincial government informed by the two provincial laws.

The justification for the East Sepik model as an interim measure was the urgent need to pursue a provincial LMP in order to fill the vacuum caused by inaction at the national level. Dr Fingleton eloquently articulated the frustration which some provincial governments, including that of East Sepik, felt because of the lack of central government initiatives in this matter:

> [A]lthough customary land registration proposals were brought forward in 1978, for various reasons no progress was made, and the subject was then "kicked around" for a further decade. In many respects this was ten years lost, and a complex and sensitive subject was more and more put into the hands of non-professionals, and exponents of "New Right" free market theories, supported by the privatisation and deregulation trends becoming fashionable from the early 1980s. In a climate of political indecision, associated with the constant threat to the Government of the day of being brought down by a "no confidence" vote on the floor of the National Parliament, law reform in general slipped into a backwater. The Provincial Government system, introduced by an Organic Law in 1977, was progressively implemented throughout the country, but, almost from the beginning, it suffered from a lack of clear commitment by the national leadership. By 1986 doubts were being expressed openly whether not only decentralisation of political decision-making, but also the constitutional commitment to achieving development primarily through the agency of Melanesian forms of organisation, afforded a desirable - or even practicable - process for development in the modern circumstances of PNG. Ironically, it was in this climate of doubt about fundamental aspects of PNG's constitutional system that a Provincial Government achieved the crucial break-through in the field of customary land tenure reform.[6]

It should be noted that, theoretically, both the initiatives of the East Sepik Provincial government in arrogating to itself land policy powers, and the Bougainville Land Owners Association in adopting a self help strategy,[7] arose from inter alia frustration, i.e. the inertia of the central government to address meaningful land tenure reform. To state this proposition is in no way intended to detract from the merits of the East Sepik model, it is to impress the urgency for long term policy solutions.

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6. J. Fingleton, Proposed National Framework Legislation for Customary Land Registration: Final Report (World Bank sponsored report, 1988), p.13.

7. Cf. Colin Filer; 'The Bougainville Rebellion, The Mining Industry and the Process of Social Disintegration in Papua New Guinea' (unreported mimeo. Jan. 1990) pp. 13-20.

B. LMP Programme Description - Analysis and Critique

Stripped of all euphemism, the LMP is directed at mobilising alienated and customary lands in support of the development of land based economic activities. The thrust is upon -

(1) the implementation of selected diverse and conflicting land tenure proposals, which were made from time to time and discussed above;

(2) the decentralisation of land administration; and

(3) putting into place machinery for land and resource information.

The LMP - description document[8] - does not argue any land tenure policy preference. It adopts current practices. It has, however, given high priority to land administration policy and presented two models for decentralising services and information. For want of better legal terminologies these models may be described as decentralisation by "delegation of some central government functions" to provincial governments; and decentralisation through "central government agencies". These agencies are to be located at the regional and provincial levels.

Surprisingly, it does not discuss decentralisation by devolution, though in adopting the East Sepik programme as a pilot project, it implicitly gives recognition to this third model. This, it presents as an example of an oddity which central government would have to confront if it continues to be recalcitrant in delegating functions to provincial governments. Its cynicism towards the East Sepik model is reflected in the level of its statements of the risks associated with that model. These are expressed as follows:

- the registration is new and as yet untried;
- acceptability of title to financing institutions has yet to be demonstrated;
- support by foreign investment has yet to be demonstrated;
- support and involvement from customary landowners has yet to be fully demonstrated;
- control on dealings may be excessive and may lead to excessive delays in the administration of the Act;
- the provincial government appears to guarantee title, but the Act does not require the establishment of an assurance fund;
- there are problems of inconsistency between existing national legislation and there are possible constitutional problems; and
- the Acts are complex;
- the wholesale abandonment of the existing systems in favour of customary Land registration at this point in time would probably lead to chaos in an already weak area.[9]

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8. Land Mobilisation Programme: Programme Description (DLPP, Dec. 1988).

9. *Id.* 36-7.

Medium Term Objectives and Programme Components

The strength of the LMP lies in its perceptions: that a PNGLIS is necessary to create the information and transaction base of land administration; that both land tenure and land administration policies are critical to the mobilisation of land; and that progress rests on an increased capacity of the department to render service. In this context it sets out medium term objectives (of 10 to 15 years timeframe). These include -

(i) effective land services to all land users-physical planning, surveying, title registration, valuation, land transfer and disposal, land acquisition, dispute settlement and mapping;

(ii) the transfer of land administration responsibilities from the national to provincial governments and simplifying the supporting procedures;

(iii) optimisation of the stock and use of alienated land; and

(iv) the establishment of cross-sectorial links and support programmes to facilitate land development.

However, despite the stated commitment to transfer 'land administration responsibilities' to provincial governments, the LMP adopted the status quo option i.e centralised policy and administration. It argues as the new strategy, 'a need for an increased capacity of central government agencies'. Statements of priorities and the components of the programme and their costings are the central feature of the document. The programme priorities are defined in terms of improving the management and institutional capacity of the DLPP. In particular to provide the following services:

to support the lease - leaseback system and other methods of providing land registration services to customary landowners in the short to medium term;

to provide research and technical resources to establish customary land registration in the provinces in the medium term.

The Programme Components are set out as follows:

Component 1:

Programme Management - provides for improved supervision and management of the Department, of both personnel and Programmes, in particular staff training, performance monitoring, staff accountability and the maintenance of quality control; an element of capital works is included.

Component 2:

General Institutional Building - this component will assist land use planning and administrative institutions to upgrade their performance, by improving the policy formulation and staff development and training capacity of DLPP.

Component 3:

Mobilising Alienated Land - this component will improve the efficiency in the mobilisation and administration of alienated land and will include a survey and evaluation of the current and potential use of the existing stock of alienated and freehold land. In particular it aims to speed up the acquisition of both customary and alienated land; improve the process of allocating state leases; expedite conveyances; make the law and procedure of land administration simpler and easier to understand; and consolidate all land legislation.

Component 4:

Mobilising Customary Land - this component will expedite the mobilisation of customary land by the active promotion of lease-leaseback, tenure conversion, improvements of group incorporation procedures, support of East Sepik initiatives, improvements and provisions for research and technical resources to establish customary land registration mechanisms in the provinces.

Component 5:

Decentralisation - this component enables land administration powers to be transferred to the provinces together with the necessary resources required to establish an administrative capacity in the province; five provinces will receive full decentralisation over the first five years of the Programme.

Component 6:

Land and Resource Information - the national land information base will be improved, including the updating of maps for development purposes and the further development of the computerised land information system (PNGLIS).

Critique

The weaknesses of the programme are apparent:

(1) It commits Kina74.4 million in institutionalising -

(a) land tenure structures which it argues are complex and confusing;

(b) procedures and processes (tenure conversion, clan land usage agreements, lease-leaseback arrangements etc) which were regarded by LEAD report as cumbersome and time consuming; and

(c) a decentralisation process which ignores the political reality of provincial government and the lessons of the North Solomon's crisis.

(2) Its unimaginativeness is reflected particularly in (1)c above.

(3) Land administration is the handmaiden of tenure. Without a clear notion of the latter, such an expenditure to implement the programme, as a new strategy, is premature and may prove wasteful of time and resources. This

is particularly apparent from the large number of 'unresolved issues' and 'conflicting options' projected in the document.

(4) The process of decentralisation by delegation of central government powers leaves much to be desired. The Report itself sets out the major problems of this model as being:

> The first steps towards decentralisation of alienated land administration were taken in 1985 with a ministerial delegation of selected land powers, from the National Minister for Lands to his provincial counterpart in the provinces of East Sepik and East New Britain.
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> These initial delegations have met with only limited success due to certain omissions resulting in a number of problems being encountered with their implementation at the provincial level. These difficulties have been raised by both provinces receiving the delegations.
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> Some of the powers delegated by the Instrument of Delegation were previously delegated to officers in the provinces and these have not been revoked. The responsibilities between the national and the provincial governments require definition.
>
> One of the main problems relates to the mechanism of delegation. Having received delegations from the National Minister, the Provincial Minister cannot delegate further; delegations to the administrative staff would have to be given out again from the National Minister.
>
> A provincial concern is that the National Minister can at any time withdraw the delegations which leave the provincial governments at some risk. If they are to commit limited provincial resources to support provincial land administration the resources invested could be wasted should the delegations be withdrawn on a political whim.
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> The delegations made were incomplete precluding any meaningful land administration occuring in the provinces. For example, the Provincial Minister has no power to receive a report from Land Board but he has the power to refer a matter back to Land Board. In addition the power to advertise land under the Land Act (Chapter 185) is not a ministerial function and cannot be delegated; this remains with the Departmental head of DLPP. Administrative understandings would have to be reached to allow any form of land administration in the provinces.[10]

(5) The successful implementation of the programme relies heavily upon the Department's existing management and staff. Performance indicators of the DLPP were assessed as 'low' and the appraisal of its personnel was not creditable. These weaknesses are reflected in the following statements:

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10. *Id.* 21-22.

> There currently exists little performance accountability, the direct impact on the Department being the continuation of low output and poor technical performance.[11]
>
> DLPP lacks credibility with the public and other agencies of government... Procedural changes are being implemented under LAIP, but the capability and motivation of the people in the organisation remain major constraints to institutional performance.[12]

There is an apparent chicken and egg conundrum. What is clear, however, is that it would be a breach of faith if the funds for the programme are utilised on extraneous factors such as the threatened court reference to determine the constitutionality of the East Sepik legislation. That model features prominently in the programme document for support as a pilot project. It was acknowledged that the provincial government did not have adequate administrative capacity to implement the legislation, and support would be forthcoming from DLPP under the LMP arrangement. The Department is obviously committed to the experiment and it would lose credibility were it to act otherwise. In fact the LEAD Feasibility study recommended that the National Minister for Lands should seek the opinion of the State Solicitor on the extent of any inconsistency with a view to amending the national laws to make the East Sepik laws fully operational.

C. *Centralised Policies, Decentralised Administration*

Introduction

Reference is made above to the need for an imaginative approach to decentralisation by devolution as the long term model. This option vests policies, tenure and administration, in the central government, but the implementation structures are the responsibilities of the provincial governments. The model envisages a truncated role for the DLPP in land administration in the long term, though an all-important and pervasive role in policy directives.

The arguments for a unified national policy on tenure and administration are overwhelming. It is essential that there should be uniformity of the forms of land tenure and common structures of administration. These structures should involve the provincial and local governments and the landowners. Stated negatively, this model avoids the danger of the emergence of a variety of inconsistent and/or discriminatory tenure and administrative systems in various parts of the country. It addresses the criticisms of government's new approach of giving landowners *carte blanche* in the exploitation of their lands. It safe-guards the national interests in conservation and protection of the environment and is the best means of realising the National Goals and Directive Principles pledged in the Constitution. It offers the best means of achieving uniformity of the much desired objective of collaboration between central and provincial governments and the resource owners in development.

Given the provincial base of land mobilisation, meaningful programmes must ensure that in the long term control of provincial lands are vested in capable provincial governments. Central government should retain only such lands and powers that are necessary to satisfy its occupational needs and to effect its constitutional obligations, including those

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11. *Id.* 15.

12. Land Evaluation and Demorcation Feasibility Study, (World Bank sponsored report, 1986), p.13.

of its instrumentalities. These include the provision of roads, public utilities, national parks, reserves, etc.

Because of the diversity of needs of the provinces and in their administrative capacity, a selective approach needs to be adopted to devolution. Centralised policies and decentralised administration are the best means to accommodate diversities in unity.

NATIONAL FRAMEWORK LEGISLATION

Concept

Central to the success of the model discussed above is the 'national framework legislation' on land tenure, and land administration policies. The concept formed the basis of the land reform strategy of Nigeria in 1978. It has been adopted by Dr Fingleton who proposed a 'National Framework Legislation for Customary Land Registration" (*Final Report,* 1988). The latter is proposed as an integral part of a joint national - provincial governments legislative approach to customary land registration. The objectives of both initiatives are theoretically the same. They are stated in the 'Fingleton Proposals' as being:

> [To establish] the broad national policy on the subject...while the details and implementation of that policy are covered by provincial (or state) enactments - the other part of the joint approach. (appendix 4 A.1).

They, however, differ in some material particulars. The Nigerian model adopts a holistic approach to the statements of land policy, the latter is characterised by its particularity. The former unlike the latter is general and eschews consideration of details. Finally the level of abstraction of the subject matter differs, the former is a complete code of policies of land tenure and administration, the latter sets out policies on customary land registration and its administration. Dr Fingleton explained that his detailed Terms of Reference called for him to prepare drafting instructions for a national framework legislation on customary land legislation alone. The aims were to avoid the emergence of a variety of inconsistent and uncoordinated land legislation systems, and to protect the rights and interests of the customary owners. As such the exercise was not for a framework act on national policies on land tenure in general, but on land registration issues. Provincial legislation would 'flesh out the skeleton,' so to speak, as, and when necessary.

Whilst the framework legislation ensures uniformity on matters of national concern, provincial legislation would address the situation and problems unique or of particular concern to the individual province. The Fingleton model is contained in appendices 4 A and 4 B of his Report, to which the reader is referred. He proposed in addition to the National Framework Act, a model Provincial Act which would be the counterpart of the National Framework Act. The Nigerian model is of paramount importance because of the technique it adopts. There has been no discussion of it outside of Nigeria and it deserves closer consideration.

Nigerian Land Use Act

Historically, land policy in Nigeria was no different from what it was in Papua New Guinea - paternalism prevailed. With the adoption of a federal status both policy and administration were vested in the states. Paternalistic policy continued by the Northern State, but new commitments to transformation were made by the Southern states following the *Simpson Report,* 1957 (in Lagos), and that of the Lloyd's Committee, 1959 (in Western Nigeria).

The concept of decentralising *land policy* was criticised during the military regime and instead a centralised policy was substituted by the passage of the *Land Use Decree*, 1978. This was in furtherance of new economic and social commitments which were defined in the *Development Plans* and, subsequently, in the 'Goals and Principles' in the Constitution. The latter included-

(1) the political objective of 'national integration'; and

(2) the economic and social objectives of 'controlling the natural resources' and 'the environment', and providing adequate 'shelter for all Nigerians'.[13]

The centralisation of land policy by the Military evoked no controversy at the time. Its unpopularity, however, became apparent on the return to constitutional government. It was seen as conflicting with State sovereignty in land matters. The limitations on the forms and contents of interests in land were thought to be too restrictive. The *Land Use Act* was therefore stigmatised by some as the 'land useless act'. So detested was it that the Chief Justices of a number of states' purported to hold the Act void in their States. Their reasoning being that:

> The Land Use Decree must be regarded as a series of Commands issued by the Head of the Federal Military Government and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria to his Military Governors. It is therefore patently not meant to be administered by our present state governors who are democratically elected to office .... Since 1st October, 1979, we had returned to the land tenures that obtained in Oyo State prior to the enactment of the Land Use Decree: only we were slow to realise that fact.[14]

The Land Use Act was however entrenched in the Constitution therefore land policy could not be tampered with by State governments, less the State judiciaries.

The advantages of centralised land policy were not difficult to find. It promoted centralised environmental planning and conservation; national unity and uniformity of land tenure and ownership. It guaranteed the commitments of the basic rights contained in the Constitution.

In contrast the Land Use Act vested responsibilities for land administration in the Federal government only over lands which the Federation or its instrumentalities held in the States, including the Federal Capital District. It vested all other lands including administrative responsibility over them in the 19 States, including Lagos, the National Capital, which was regarded as a State for purposes of land administration.

By retaining control of its lands, the national government has access to land in the Federal Territory and in the States in order to pursue its constitutional assigned duties, including providing low cost public sector housing programmes. These activities were frowned upon in States wherever the regime in power was in opposition to the central government at the centre.[15] These projects were vote catching! All land not in use by

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13. See R.W. James, *Nigerian Land Use Act: Policy and Principles* (University of Ife Press), (1987) chap.2.

14. *Id.* 35.

15. For an account of the various bitter conflicts between the states and the central government see B. Nwabueze, *Nigeria's Presidential Constitution 1979-83* (Longman, 1985) chap.4.

the Federal government are vested in the States, the former, however, has an entitlement to land from a State government if required for federal purposes.

Though land policy is centralised, implementation is vested in the State governments and governed by State legislation eg. land registration enactments, land control acts, survey legislation etc. These are however fairly uniform.

For purposes of land administration, the Land Use Act entrenched Land Administration policy. The scheme of the Act is to apportion powers of management and control between the States, local governments and landowners. For example each State is required to establish 'Advisory Committees' to advise on specified matters of land administration. The land is divided into urban and rural sectors, with the former under the control of the State government and the latter managed by the local governments.

The *Land Use and Allocation Committees* are important in advising on matters of *urban* land administration (e.g. allocation and revocation of interests in state lands, resettlement of persons dispossessed on ground of overriding public interests, etc). These Committees are established under state legislation and therefore their composition varies from State to State. Their membership must, however, include:

(a) not less than two persons possessing qualifications as estate surveyors or land officers; and

(b) a legal practitioner

The *Land Allocation Advisory Committee* is established in each local government area. It has the responsibility of advising the local government on matters connected with the management of land in non-urban areas within its area of jurisdiction. The state executive appoints the members of this committee after consultation with the appropriate local government. Consultation, like advice, does not mean consent or accord. It must, however, be meaningful and allow for a genuine consideration of their views.

It was suggested that an attempt could be made to reestablish some of the authority of the traditional rulers in land matters by appointing them as members of the Land Allocating Advisory Committees. This has been the approach in Oyo State where the presidents of the traditional councils are appointed chairmen of the committees.[16]

The Future

Legislative statements relevant to land policy are not new in Papua New Guinea. The Constitution articulated some major policy statements using varying degrees of abstraction. Some are more specific. Examples of the former are statements on the 'National Goals and Directive Principles' and on the division of powers in land matters between the national and provincial governments.

The national government responded speedily to implement some of the *specifics* on such subjects as (limitations on) freehold tenure, and (restrictions on) compulsory acquisition and compensation.[17] It has only partially responded to the preference for the Land Group Corporation as the instrument of land mobilisation, by providing the means of group incorporation. It is with reference to abstract policy statements that there are

16. James, *op.cit.* 80.

17. See R.W. James, *Land Law & Policy in Papua New Guinea*, (Law Reform Commission of PNG, 1985),chaps.8-10.

confusion and uncertainties. For example, the CILM recommended an embargo on the creation of freehold titles. It suggested new principles to govern valuation for compensation. These need to be re-examined.

This review addressed issues of land tenure and land administration policy reforms, and in particular the respective roles of the national, provincial and district governments assisted by the resource owners in the land mobilisation programme. It suggests the technique of the 'national framework legislation' as the best means of realising lower level national policies. It is for the provincial governments to address the specifics within the policy formulations contained in the framework legislation. No consideration has been given to the mechanics of customary land registration which are of exclusive provincial interest. The way forward is the East Sepik customary land registration proposals. This may be reviewed in the light of national policy formulation for adoption by those provincial governments which are well established and are able to manage a land mobilisation programme.

Apart from land tenure and administration there are other urgent areas identified by S R Simpson and the CILM that need to be addressed. These include the perennial issues of the 'rights of squatters'[18] and 'succession to land'. Both reports raised issues of policy on these subjects and suggest solutions that are no longer acceptable. These are not discussed in this paper. It is also not suggested that all land matters raise issues of competing or/and complementary national and provincial interests. Some might be exclusively matters of national or provincial interests. One would need, as a first step, to identify those matters which are of-

(1) competing and/or complementary national provincial interests;

(2) exclusively national interest; and

(3) exclusively provincial interest.

This categorisation would then determine the agenda for and contents of land law reform. The Law Reform Commission could take the initiative to propose legislation on matters identified as falling within (1) and (2). The reform of the land laws is germane to that Commission's reference on 'National Resources'. This is set out in appendix below for information.

18. Recent legislation acknowledges a squatter's title by limitation after a period of 30 years adverse possession - see s.22(4), *Statute of Frauds and Limitations Act*, 3/1988. The scope of the Act must remain problematic. Simpson recommended a law of prescription.

LAW REFORM COMMISSION TERMS OF REFERENCE: NATURAL RESOURCES

I, Bernard M Narokobi, LL.B. M.P., Minister for Justice, by virtue of the power conferred on me by Section 9 of the Law Reform Commission Act Chapter 18 and all other powers me enabling, refer the following matter to the Law Reform Commission for enquiry and report:

Because -

1. the Constitution calls for -

   (a) a fundamental re-orientation of attitudes and institutions of government and commerce towards Papua New Guinean forms of participation, consultation, consensus, and a continuous renewal of the responsiveness of those institutions to the needs and attitudes of the people; and

   (b) particular emphasis on small-scale artisan, service and business activity in economic development; and

   (c) recognition that Papua New Guinean cultural values are a positive strength and are to be applied dynamically and creatively for the purposes of development; and

   (d) every effort to be made to achieve an equitable distribution of the benefits of development among individuals and throughout the various parts of the country; and

   (e) citizens and government bodies to have the control of the major part of economic enterprise and production; and

   (f) strict control of foreign investment capital; and

   (g) the State to take effective measures to control major enterprises engaged in the exploitation of natural resources; and

   (h) economic development to take place primarily by the use of skills and resources available in the country; and

   (i) the wise use of natural resources and the environment and their conservation and replenishment in the interests of the People's development and in trust for future generations; and

2. there has been a rapid, large-scale expansion of developmental activity in the harvesting of mineral, forests and fisheries resources; and

3. the expansion of resources extraction has resulted in social and political disturbances in different parts of the country; and

4. the scale and method of resource extraction, in some parts of the country, have already given rise to environmental damage, including the

destruction of river systems, forests and marine life, and the disruption of social and cultural patterns of life; and

5. despite national Goal Three of the Constitution, which calls for national self-reliance and economic independence, Papua New Guinea is a net importer of capital, commodities and technology within the global economy, and in raw materials is at present a price-taker and not a price-setter; and

6. Papua New Guinea is bound by its international undertakings to conserve the environment, and certain species of plant and animal life,

I direct you to enquire into and report to me on:

1. the current state of the law regarding mining, petroleum extraction, fishing, forestry, and other natural resource development; and

2. the current state of the laws which protect and conserve the environment, eco-systems, plant life, animal life, and which prevent or control pollution; and

3. the changes needed to these laws to ensure-

   (a) the just, equitable and peaceful development and conservation of natural resources; and

   (b) the replenishment of renewable resources for future generations; and

   (c) the exploitation of non-renewable resources so as to conserve the resource and minimise the effects of extraction on the physical, biological, social and cultural characteristics of the affected environment.

When making your report on this subject you will-

1. make proposals to eliminate defects in the laws and to modernise and simplify them; and

2. consider whether any of the laws should be re-arranged or combined to simplify their understanding; and

3. attach drafts of any legislation required to give effect to the recommendations in your report.

Dated this 29th day of November, 1989.