

# LAND DEMARCATION IN NEW IRELAND\*

BY

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## I. Introduction

In his speech to the House of Representatives in April 1960, the Minister for External Territories, Mr Hasluck, affirmed that the ultimate objective of Australian administration land policy in Papua New Guinea was 'to introduce throughout the Territory a single system of land holding ... providing for secure individual registered titles after the pattern of the Australian system'.<sup>1</sup> Such a system was necessary, he said, in order to promote agricultural development of the country (e.g. cash cropping) and ease the way for 'rapid economic progress'.<sup>2</sup>

The first attempt to achieve a system of registration had been by means of the *Native Land Registration Act* 1952 (No. 75 of 1952). Under this Act a Native Land Commission had been established to investigate and record customary interests in land, and where necessary to determine disputes over customary land. The Commission had been unsuccessful, Hasluck suggested, because the systems of customary tenure encountered by the Commission were much more complex than at first supposed. Ownership of land was commonly vested in tribe or family or clan groupings rather than in individuals, and different individuals or groups might have distinct but overlapping rights in the same area of land. Consequently, the resources of the Commission were totally inadequate for the task of recording customary interests in land on a systematic basis.<sup>3</sup> Moreover, while the principles of customary tenure might have proved adequate for subsistence agriculture, something more (i.e. a legal title) was needed to ensure the necessary security of tenure for people who wished to make more permanent improvements to the land, especially tree crops such as coffee, cocoa and copra, and to make unused land available for purposes of resettlement. Any changes to the system of customary tenure, Hasluck stressed, would only be

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1. P. Hasluck, 'Ministerial Statement on Land Tenure in Papua New Guinea', *Hansard*, 7th April 1960. Vol. 26, 1019 at 1020-21.

2. *Id.*, 1020.

3. *Id.*, 1019-20.

made with the consent and approval of the people concerned.<sup>4</sup>

Following Hasluck's statement of policy, a new set of legislation was prepared: the *Land Titles Commission Act* 1962 (No. 5 of 1963), the *Lands Registration (Communally Owned Land) Act* 1962 (No. 10 of 1963), and the *Land (Tenure Conversion) Act* 1963 (No. 15 of 1964). Under this scheme the Native Land Commission was replaced by the Land Titles Commission, and a large number of local 'Demarcation Committees' were introduced to assist the new Commission in its task of determining and preparing for registration interests in customary land. For a number of reasons, relating both to the basic assumptions behind the Statutes, as well as to the manpower and resources available to administer them,<sup>5</sup> the system of demarcation and registration also proved a failure, and a third set of legislation was prepared in 1971. As is well known, the 1971 Bills were rejected by the House of Assembly,<sup>6</sup> and subsequently a Commission of Inquiry into Land Matters was established to investigate among other things the whole issue of registration of customary land.

Despite the failure of the overall scheme envisaged by the legislation, it is clear that the appointment and operation of Demarcation Committees did have significant effects for customary land tenure in various parts of the country. The results of the Committee's work, in fact, go well beyond what might have been expected from the description of their purpose and powers in the *Land Titles Commission Act* 1962. In this

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4. *Id.*, 1020; and *cf.* Preamble to *Land (Tenure Conversion) Act* 1963

... AND WHEREAS it is also considered that it is essential that the rights of the peoples of the Territory of Papua and New Guinea to land held in accordance with the native custom should, subject to the laws of the Territory, continue to be guaranteed to them, save insofar as they freely and in accordance with the law desire to exchange those rights for the benefits of such guaranteed individual titles; ...

5. See T. Bredmeyer, 'The Registration of Customary Land in Papua New Guinea' (1975) 3 *Melanesian Law Journal* 267; D.S. Grove, 'Land Use and Land Tenure - The New Legislation' in M. Ward (ed.) *Change and Development in Rural Melanesia*, (1972), 71; and S.R. Simpson, 'Land Problems in Papua New Guinea', in 'Land Tenure and Economic Development: Problems and Policies in Papua New Guinea and Kenya' (1971) *New Guinea Research Bulletin* No. 40, 1.
6. For a discussion of the policies reflected in the Bills, see 'Alualua', 'Four New Land Bills' (1971) *New Guinea* Vol. 6, No. 2, 41; A.D. Ward, 'Agrarian Revolution' (1972) *New Guinea* Vol. 6, No. 4, 25; Grove, *op.cit.*; and articles in P.G. Sack (ed.) *Problem of Choice - Land in Papua New Guinea's Future* (1974)

... of the Barok area. The moieties are referred to as Malam (eagle) and 'ago (fish hawk). In effect, the moiety system classifies people for purposes of marriage; a person belongs to the moiety of his or her mother, and hence one's father (and later, one's spouse) will belong to the opposite moiety. The moiety however is in no sense a corporate group, since its members are widely dispersed, and it has no internal organisation or common affairs.

Each Barok moiety is made up of a number of named clans, which in turn consist of smaller named groups which I shall call lineages. The lineage is a group of people who claim matrilineal descent from a common

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7. In 1974-75 I spent eleven months researching customary land tenure in the Barok district. The description given in this paper refers to that time.

ancestress, usually three to five generations removed from today's members married with children. By contrast the lineages of a clan do not typically claim any common 'clan' ancestress, and while lineages of a clan may be expected to give one another assistance e.g. at feasts, there may indeed be few 'clan' affairs as such, each lineage claiming an original territory (which may be some distance away from the territories of other lineages of the clan), and each lineage having the primary responsibility for its own members' activities.

The lineage is of especial importance for land tenure. In Lokon, at least, the beach land is seen as divided into a series of tracts beginning at the beach and leading up into the bush, to a natural rock wall which marks the boundary between the beach people's land and the bush people's land. Each tract or territory is controlled by a particular lineage, whose members, whether they live in the village or elsewhere, are entitled to use the land for gardens or coconuts. In the case of a large lineage, portions of the lineage territory may in practice be divided between smaller groupings within the lineage, for example the respective matrilineal descendants of two or more sisters in an earlier generation.

If a lineage becomes extinct, its land may be taken over by another lineage (often, but not always, of the same clan). Even where a lineage is not moribund, portions of its territory may be transferred to another lineage. In former times, for instance, a person's death in battle was sometimes followed by a gift of land to the victim's lineage. A more common form of transfer, both formerly and today, arises out of the presentation of pigs at feasts. Parts of the land of one lineage might be given to another lineage in return for the latter's having presented pigs, shell money or other assistance at the former's feasts. In this way, for example, some of the 'bush' lineages, whose original land lies unused today in the mountainous interior, have gained access to areas of land near the beach suitable for hamlets. Today cash may also be given, either instead of or in addition to pigs or other valuables.

It is important to stress however that land transactions among the Barok typically imply continuing relationships rather than instant procedures. That is to say, the transfer of control between lineages may occur as a gradual historical process, whereby members of a lineage granted initial access to land are able to strengthen their position over time, e.g. by further presentations at feasts, until the formerly entitled lineage no longer claims any effective interest in the land. Further, the view is commonly expressed that only by becoming extinct does a Barok lineage lose all rights to its original territory. Control of the land in a practical sense may have been given to another lineage, but these transactions are nevertheless thought to be 'reversible' if, for example, an argument breaks out between the two groups. The original lineage, that is, can reclaim its land at a later date by repaying the pigs etc. received, and making compensation if necessary for improvements to the land. Original rights are stronger, in this sense, than subsequently derived rights.

For the individual lineage member, the basic right to use lineage land is acquired by the member at birth, and is retained whether the member resides in the village or elsewhere. But depending upon the type of use for which land is desired, a person's ties with other individuals and groups are also very important (and of course, for those people who

live at some distance from their own lineage land, or whose lineage land is no longer inhabited, these other relationships are crucial). Such ties may be of an economic nature, but are more often based on personal kinship, affinity, or friendship.

Temporary rights of cultivation (for gardens, or occasional fruit trees) may be obtained in a number of ways, usually without any specific payments or degree of formality.<sup>8</sup> For example a person could normally expect to be allowed to make gardens on his or her spouse's land (used jointly during the marriage; only by permission of the spouse's lineage subsequently). The father's lineage is also an important source of support - a Barok father is expected to provide sustenance for his children during his lifetime, and on his death the children (who, of course, belong to the mother's matrilineage) are expected to make formal repayment for the father's care, or 'strength', by presenting pigs at his funeral feasts. Thus children whose father is still alive or who have given proper assistance at his funeral feasts may be allowed to garden on part of the father's lineage land.

Other possibilities for access to gardening land may also be found through another lineage of one's clan, or through a lineage 'allied' to one's own (i.e. sharing a tradition of mutual support and assistance at feasts), and sometimes (e.g. for bush people) through a beach lineage with which there had been little or no prior relationship at all. Thus within a system founded on lineage control of separate territories, there were several ways by which individuals could obtain temporary use of the land of other lineages for subsistence purposes.

The use of land for cash crops (mainly coconuts) however, has not been regarded in the same flexible way as land for gardens. Serious cash cropping only began in the early 1950s as new palms planted in the process of post-War reconstruction began to bear fruit and the first copra-drying sheds were erected by villagers. Renewed attention was given to planting in the 1960s, under the impetus of administration and Local Government Council exhortations concerning the need for local economic development. By 1975 the urge to further plantings had been checked and most villagers spent considerably more time in cropping than in planting.

Whether looked at on a lineage or individual level, however, a great imbalance is evident in the extent of coconut holdings. As a result of a common feeling among beach people that only lineage members should be able to make money from the use of lineage land, access for members of other lineages has been refused, and today there are on the one hand lineages with considerable areas of unused territory, and on the other hand lineages (especially bush lineages) with very few claims to land near the beach suitable for cash cropping.

In response to this situation, a number of villagers have attempted, through cash payments as well as traditional pig presentations, to obtain permission to use a deceased person's coconuts, or to acquire

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8. Gardens are used for one or at most two crops of taro or sweet potato. The land is then allowed to lie fallow for at least five years.

a portion of beach land on which coconuts may be planted. For example, children are not normally allowed themselves to plant coconuts on the father's lineage land, but if appropriate assistance is given at the father's funeral feasts, they may at least be allowed to use some of the coconuts planted there by the father. Alternatively, the father may wish to benefit the children by planting coconuts on the land of the children's lineage, or by attempting to buy part of his own lineage land to pass to his children. It is within this setting, of recently developed cash cropping and emerging Barok attitudes relating to the use of land to earn money that the effects of land demarcation must be considered.

### III *Land Demarcation in the Barok District*

Pursuant to the *Land Titles Commission Act* 1962 the functions of the Commission were twofold - to hear claims and disputes concerning native customary land, and to determine the boundaries and ownership of native land. This second function was to be carried out in three steps - after an area had been declared as an 'adjudication area' by the Commission, plans (maps) were to be prepared in respect of that area, and the Commission was then to determine the ownership of each piece of native land within the area.<sup>9</sup> The results of the Commission's determinations were to form an 'adjudication record' which was supposedly to provide the basis of subsequent registration of interests in the land, either by conversion to individual freehold tenure under the *Land (Tenure Conversion) Act* 1963, or, if the 'owners' did not wish the land to be converted to individually-owned parcels, as 'communal' land under the *Lands Registration (Communally Owned Lands) Act* 1962.<sup>10</sup>

To assist the Land Titles Commission in the second step of the process, that of demarcating the land within an adjudication area, the Commission was empowered to appoint a Demarcation Committee for that area (to consist of three or more persons, of whom a majority were to be Papua New Guineans). The tasks of the Demarcation Committee were to prepare the plan of the adjudication area, indicating the boundaries of all pieces of native land within it, and to see that markers were placed where necessary 'to enable the boundaries on the demarcation plan to be located on the ground'.<sup>11</sup>

The declaration of a Barok 'adjudication area' was gazetted in September 1965. This was later divided into two adjudication areas, Barok Eastern and Barok Western, the declaration of which was gazetted in June 1966,<sup>12</sup> when the first members of the two Committees were appointed. The Barok Eastern Committee had nine members, one from each village, under the chairmanship of a man from the adjoining Mandak district. The first

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9. *Land Titles Commission Act* 1962, ss.15-25.

10. *Land Titles Commission Act* 1962, s.25.

11. *Land Titles Commission Act* 1962, ss.20-21.

12. File 36-4-9, Department of Lands, Survey and Mines, Port Moresby.

meetings of the Committee were held in June 1966, and the Committee continued in existence (subject to changes in membership and periods of inactivity) until November 1971 when it was disbanded, in the words of a Senior Commissioner 'because of lack of interest and paucity of results'.<sup>13</sup> Similarly the Barok Western Committee was made up of six members (one from each village) appointed in June 1966, and its last meeting was held in January 1972.

Each Chairperson attended a course of instruction at the offices of the Land Titles Commission in Rabaul, and this instruction was then passed on by the Chairperson to the other members of the Committee. 'Meetings' of the Committee were held from time to time in each village, when a number of members of the Committee (three or more) were present to discuss land matters with the villagers.

The four most common interpretations offered by Committee members and other Barok people of the role of the Committee were the following:

(i) to settle all land disputes (other than especially intractable disputes, which were to be referred to the Commission) so that the land would be 'straight' before independence;

(ii) to teach villagers about the new laws concerning land;

(iii) to place boundary markers (cement pegs if these were available, or shrubs, etc.) for lineage land, or smaller plots, which had the effect of making the land 'look like a box';

(iv) to encourage people to give details of their land to the Committee so that the land could be 'registered' by the Commission in Rabaul.

Clearly, then, the assumed functions of the Committee went well beyond those set out in the legislation. On the first point, different opinions were expressed as to the role of the Demarcation Committee in resolving land disputes. Most Committee members were inclined to say, at least in retrospect, that the Committee had been largely successful in hearing and settling disputes. A Lokon member of the Committee, for instance, claimed that many disputes in each village had been brought to an amicable solution, and only one dispute had been referred to the Land Titles Commission. This latter point may have been true, although it was not necessarily a result of the Committee's skill and success, since very few Barok disputes reach officialdom in any event, and it was difficult to gauge the frequency of disputes in other than general terms, because almost no records were kept of the hearings.

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13. Personal communication dated 27/3/75 from Mr W.J. Read, then Senior Commissioner, Land Titles Commission, Rabaul.

The Committee regarded the activity of hearing disputes as part of its general competence in land matters, not necessarily connected to its other tasks. In the file on the Barok Eastern Committee, held by the Land Titles Commission in Rabaul,<sup>14</sup> there are only two references to the hearing of disputes, both of which are very cursory. One reference, to a dispute brought before a Committee meeting in February 1970, shows that members took the idea of the 'meeting' quite seriously - the substance of the fragmentary report is as follows:

The land X was discussed in front of the Demarcation Meeting. This land was claimed by Y group, many of whom were at the meeting. The opposing group had only two people there. A (Committee member) moved the motion that the land is owned by Y group. Seconded by B (Committee member). All in favour.

On the other hand, a number of Barok people were less complimentary about the effectiveness of the Committee in deciding disputes. Apart from complaints against specific members (e.g. as to accepting payments from the interested parties), it was said that the Committee had had no more success than anyone else in resolving the more persistent disagreements,<sup>15</sup> and further that the Committee's work in marking boundaries, and advising on the 'new laws', had created more disputes than would otherwise have occurred, disputes which the Committee was also unable to settle. In consequence, it was claimed, many people lost interest in the Committee and its work, and finally the Committee itself had to be dissolved.

The second function accepted by the Committee was to inform villagers of the 'new laws concerning land'. There was some confusion among Barok people as to what the 'new laws' amounted to, but the most commonly asserted 'laws' were firstly that people should not *sindaun nating* (Pidgin: squat, occupy without proper cause) on another lineage's land, but should rather pay cash for it, and secondly that fathers should buy land for their children. It is clear that statements such as these were made by Committee members, who in doing so regarded themselves as passing on the wishes of the government to the people.

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14. I am grateful to Mr W.J. Read, Senior Commissioner, and to Mr Onias Tomano for permitting me access to the Commission's files on the Barok Eastern and Barok Western Committees. Unfortunately I was unable to discuss the files with Mr Read before leaving New Guinea, and hence I am solely responsible for the interpretation of the contents of these files.
  15. Some Barok disputes are in the nature of permanent disagreements between lineages over entitlement to land, and may remain dormant for years until a particular event (e.g. an attempted sale of land, or a question of timber royalties) brings the argument to the surface again. For example, of twenty-six hamlet sites in Lokon in 1975, seventeen were affected by arguments over original rights to land.



With respect to the first 'law', the idea that people without firm rights to land should regularise their position by making cash payments did not come solely from the Committee, but has to be seen in the context of recent cash cropping and opinions relating to the use of land to make money. The Committee's apparent emphasis on the matter did, however, serve to strengthen and extend the notion so that, for example, bush people resident in Lokon felt obliged to make cash payments for land intended for residential and gardening purposes, and not merely for land desired for cash cropping.

Again, although no Committee member to whom I spoke suggested that it was government policy that old land transfers (e.g. resulting from deaths in battle, or presentation of pigs at feasts) should be updated, some people at least began to review past transactions. I noted several instances, in fact, where ratification by cash payment was requested and given in respect of land transfers occurring up to seventy years previously.

For most Barok people, however, the practice of making cash payments was not regarded as replacing the giving of pigs as an acceptable means of obtaining rights to land. More importantly, I do not think that the making of cash payments was generally seen as resulting in transactions which were any more definite in their terms than traditional land transactions.

From my enquiries in Lokon it appeared that between 1966 and 1971, some twenty-six transfers of land in exchange for money payments were proposed, although in five or six instances the transfer was never completed. In up to half of the cases where cash payments were made, the payments were not made in isolation, but in the circumstances of a feast, and often in combination with presentations of pigs, shell money, or food (e.g. taro, coconuts or betel nut). As well, I found considerable variation of opinion (especially in those transactions involving bush people) as to what the cash payments had been intended to achieve - to buy land, to obtain permission to use land for houses and gardens, to plant coconuts, to compensate for past use of the land, or for something else. By 1975 disputes had already broken out between beach lineages and bush people over the status and permanency of these arrangements. Even in cases of substantial cash payment, it was accepted that continuing friendly relationships between the parties were important, in that if dissension subsequently arose, the controlling lineage could threaten to reverse the transaction by refunding the payment and reclaiming the land. On the other hand, if the new occupants were to remain on the land, it was likely that further payments would be required from time to time. Finally, it was not generally known what would or should happen on the deaths of the 'purchasers' - would the land revert to the original lineage, or would it be taken over by the purchasers' lineage mates (or for that matter by the purchasers' children), and in any case with or without the need for giving pigs at funeral feasts? In short, the use of money in recent Lokon land transactions, a practice encouraged by the Demarcation Committee, has more in common with the use of pigs in traditional land transactions than with the use of money in market (contract)-type transactions.

The other 'law' which the Demarcation Committee is said to have made known is that 'fathers should buy land for their children'.

The confusion surrounding this matter is indicated by the variety of versions given - that fathers can buy land for their children if they wish to (from their own or another lineage); that fathers must buy land for their children; that father and mother together should buy land for their children; that children should assist their fathers (by contributing part of the purchase price) to buy land for the children; and so on.

The rationale given by several Committee members (Committee members did not themselves all agree as to the precise content of this 'law') was that the government wanted people to think of the *famili* (family) and not just of their *bisnis* (New Ireland Pidgin: here, lineage). Not everyone considered this to represent much of a change from traditional ways (since fathers had always looked after their children). Some people were nevertheless moved to speak out against the Committee's meetings, on the ground that the Committee was trying to reduce the importance of matrilineage control of land. Other people decided to ignore the Committee's pronouncements, either because they disapproved of the Committee's work or of particular members of the Committee, and did not consider the 'law' to be compulsory in any event, or because they thought the children were adequately looked after by planting coconuts on the children's own lineage land. As one man explained, 'why should I buy land for my children when they already have land of their own?' Even so, I did record three cases where fathers had actually paid money to buy land for their children from the children's own lineage, which seemed to other observers to be nonsensical, and on one occasion a passer-by was pointed out to me as someone who had 'broken the law of Demarcation' because he had not purchased land for his children, even though the man concerned was a Manam Islander, married to a Lokon beach woman whose small lineage controlled a large tract of Lokon territory.

The more complex and pertinent cases arise where as a result of a marriage between a beach man and a bush woman or a non-Barok woman, the children live on their beach father's land, and have no practical claims to land of their own. Several recent dealings in land in Lokon (and in other Barok villages) have resulted from this situation, where fathers (sometimes with assistance from wife and children) have purported to buy a plot of the father's lineage land to go to the children. It is too early to predict the outcome of these transactions, i.e. as to whether the land will in fact go to the children (and if so, what is likely to happen later when the children die), but it is clear that in addition to the ambiguities and sources of uncertainty already mentioned, dealings which involve the father's lineage-child relationship will also be affected by the requirement that children repay their father's 'strength' on his death.

Among several examples, one Lokon man who married a Madang woman has purchased a large tract of land which he has planted with coconuts, and which he has announced will pass to his children. But since any cash payment by the father, even to his own lineage, may conceivably be construed as 'strength' expended by the father on behalf of his children, it would be open to the father's lineage to expect that this 'strength' will be appropriately repaid on the father's death. If insufficient repayments were made, the father's

lineage mates might well feel justified in refusing or at least placing restrictions on access by the children to the land supposedly purchased on their behalf.

In the absence of case material, the outcome of these recent dealings must remain conjectural. Again, however, the fact that cash payments were made does not mean that these dealings can simply be regarded as 'sales' of land in the Western sense. Rather, the cash payments are interpreted according to customary norms of behaviour, namely the father's duty to provide sustenance, and the children's duty to make repayment, and within a system of customary tenure in which matrilineage control of land is still fundamental.

The remaining aspects of the Committee's work, namely marking boundaries, and recording details of land for 'registration', may be considered together. At the Committee's regular meetings people were requested to provide details of claims to parcels of land. This information was recorded (as minutes of the meeting) on mimeographed forms which had been provided by the Commission. These forms indicated the number and date of the meeting; the Committee members present; and in respect of each claim, the name of the block of land, the name of the claimant, particulars of the claim - e.g. whether made on behalf of a kinship group, or by a man who had purchased a block for his children (and if so, date of purchase, price paid, name of seller, etc.) - and whether or not the claim was disputed. The completed forms were then forwarded by the Chairperson to Rabaul, where they were included in the Committee's file held by the Land Titles Commission.

The 'paucity of results', given by the Senior Commissioner as the reason for ultimately disbanding the Committee, is indicated by the fact that by August 1968 only 160 blocks had been recorded from the nine Barok Eastern villages, and eighty-one blocks from the six Barok Western villages.<sup>16</sup> In Lokon, for instance, only twenty-two blocks (twenty from Lokon itself, two from the interior) had been recorded by this time; of these, it appeared that three claims related to original lineage territories (part or whole), two to earlier traditional land transactions (one resulting from a death in battle, one from a pig presentation), four to 'sales' prior to the establishment of the Committee, and thirteen to sales which had occurred since the Committee had started work.

Except for the recent cases of purchase encouraged by the Committee, most people were in fact not sufficiently interested to go to the trouble of cutting boundaries, and placing corner markers, especially for land which was regarded as original lineage territory where an attempt to demarcate would be likely to provoke dispute. Also, in those instances where portions of lineage territory had been assigned to individuals or smaller groupings within the lineage, this type of division was usually regarded as an internal and provisional matter, relating to the use rather than the control of the land, and hence not something which should be recorded by the 'government'.

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16. The figures are taken from the Commission's files on the Barok Eastern and Barok Western Committees, and in particular from a document in each file entitled 'List of Blocks as at 12/8/68'.

Despite the 'paucity of results' however, the actions of the Committee deserve attention. Pursuant to instructions received from the Land Titles Commission, the Barok Demarcation Committees had employed a system of recording the names of blocks of land, and names of claimants, on forms provided for the purpose which were then sent to the Commission's office in Rabaul. Both the villagers, and most Committee members to whom I spoke, regarded this procedure as a form of official land registration, which it assuredly was not. It is not easy to see what was intended by the Commission in encouraging such a system, moreover, since the records, as prepared, would have been quite useless for any subsequent 'determination' of customary interests by the Commission - the recording was not systematic, was not accompanied by maps, did not indicate the acreage of the plots concerned, and often did not result in any marking of boundaries on the land itself.

The Commission of Inquiry into Land Matters, which held several meetings in New Ireland during April 1973, noted in its Report that

(P)eople are ... dealing in land unofficially through extensions of traditional ways that are not always accepted by others claiming rights in the land. For example in the Gazelle Peninsula (Tolai area of New Britain) and New Ireland men are buying small portions of land from the mother's line so that their sons can inherit them. Hundreds of these dealings are being recorded in the offices of the Land Titles Commissioner but the practice is not sanctioned by law.<sup>17</sup>

Bredmeyer also refers to the 'informal practice' of recording Tolai land sales in the Commission's office in Rabaul, which although conferring no title on purchasers was apparently valued for the documentary evidence of the sale and the publicity of the payment made at the

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17. *Report of Commission of Inquiry into Land Matters* (1973) 19. The Commission of Inquiry presumably regarded such transactions as 'unofficial' because on the one hand they did not follow the procedure laid down by the *Land Act* 1962 for disposal of native land 'otherwise than to natives in accordance with native custom' (s.16), which required dealing through the administration, and on the other hand dealings between villagers for money, in pursuance of non-traditional motives such as the desire to obtain land for cash cropping, might not have amounted in official eyes to a disposal of native land to natives 'in accordance with native custom' (ss.16, 81). This suggestion has been confirmed by Mr J. Fingleton, formerly a research assistant attached to the Commission of Inquiry (personal communication, dated 29/3/77). The contrary argument would be that as such dealings become common they constitute a new 'custom'.

office.<sup>18</sup> He also suggests that the records were valuable for the government in showing 'how much customary land is being bought, by whom from whom, and the prices paid'.<sup>19</sup> As indicated it is unlikely that the Barok records would have been of much value to the government, but it is possible that the Barok system was introduced because Commission officials believed that similar dealings were already taking place among the Barok, and felt that these transactions should be accommodated. Whatever the reason, the effect of the introduction of the registration system, backed by the Committee's pronouncements of 'new laws', was in fact to encourage cash dealings in land.

That officers of the Commission also felt that a change from matrilineal to patrilineal inheritance was either taking place at that time or could be expected to occur in the future is suggested from the terms of a mimeographed Pidgin brochure supplied to the Barok Demarcation Committee in 1968. The brochure is entitled *Toktok Long Rul Long Iusim Graun* ('Information concerning Rules of Land Use'). Its main point is to suggest that as the procedure of demarcation and adjudication had not progressed very far, because of the lack of surveyors, the Local Government Council (with the assistance of the Demarcation Committees) should set up a Land Use Register and make 'Land Use Rules' as interim measures,<sup>20</sup> so that, for example, an intending cash cropper could obtain security of tenure by entering into an agreement for the use of land, to be signed by all persons with any interest in the matter.<sup>21</sup> In so recommending, the Commission was merely drawing attention to s.54 of the *Local Government Act* 1963, which gave the Council power to set up such a register and make land use rules.

However, the brochure also suggests that the Council should consider whether or not to change the basis of customary inheritance in respect of a block of land entered in the Council's register, so that the land might pass to a man's son instead of to his sister's son.<sup>22</sup> In fact, the Council as such had no specific power to alter customary land tenure (see ss. 50-54) and ss. 51-52 appear to prohibit such a step.

In summary there are difficulties in interpreting the significance of the work of the Barok Demarcation Committees. The discrepancy between theory and practice is not simply between an 'official' view of

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18. Bredmeyer, *op.cit.*, 279-80.

19. *Id.*, 280.

20. In the event, the Central New Ireland Local Government Council, which is responsible for the Barok district, did not proceed with the proposal.

21. On land use registers, see Bredmeyer, *op.cit.*, 279, and Simpson, *op.cit.*, 26-27.

22. Brochure (mimeographed) *Toktok Long Rul Long Iusim Graun* (1968) para. 21.

demarcation, and the particular actions of the Committee. Rather, a full account would have to consider perceptions of Committee activity at four levels at least - that of the central government (the source of the legislation), that of the Land Titles Commission, that of the Committee members themselves, and that of the average villager.

According to the government, the Demarcation Committee's duties were essentially administrative, to prepare plans of native land and place markers in anticipation of the Commission's later determinations. For the Land Titles Commission, the Committee was seen as capable of additional functions, and became a means of helping villagers (e.g. by the introduction of an unofficial system of registration) to adapt to what were apparently seen by the Commission as new social and economic necessities. The Committee members came to share this more positive view of their role and powers, becoming a 'Court' for hearing and deciding land disputes, and also the mouth-piece for what was understood to be government policy concerning land tenure and economic development. For many villagers, however, the Committee's activities were regarded as disruptive, their meetings only serving to promote or revive land disputes, and their pronouncements of 'new laws concerning land' being sometimes nonsensical, of doubtful authority, and in any event unwelcome because of the emphasis placed on cash payments, or on the interests of 'family' at the expense of 'lineage'.

The initial flurry of sales promoted by the Committee had ceased some time before the Committee was formally disbanded in 1971. In retrospect, the most enduring effect of the Committee's five years of intermittent activity was to confirm the making of cash payments as a regular feature of village land transactions. As mentioned, by 1975 some of the 'sales' had already become subject to reinterpretation or outright dispute, the position of bush people remained insecure, and 'lineage' claims were still generally seen as having priority over those of 'family'.

#### IV. *The Effects of Land Demarcation in Papua New Guinea*

Of the three proposed stages described in the *Land Titles Commission Act 1962*, of declaration, demarcation, and determination with a view to registration, only the first stage was reached in the Barok district. Even in those parts of New Ireland where a degree of systematic demarcation may have been achieved, there were few if any resulting determinations by the Commission, and thus so far as I am aware no 'adjudication records' were prepared.<sup>23</sup> The scheme envisaged by the legislation was thus a failure in New Ireland, as happened in

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23. I have not heard of any district of New Ireland where systematic demarcation, let alone adjudication, was successful. In a summary prepared by the administration for Mr. S.R. Simpson, however, reference is made to an adjudication intended to be carried out for one part of New Ireland by the end of 1969 (Appendix, 'Brief history of land demarcation in Papua New Guinea' to Simpson, *op.cit.*, at 34).

Of course even if adjudication was completed, it would then remain to be seen whether future tenure of the land conformed to the [cont.]

Papua New Guinea generally, and led to the halting of demarcation and the preparation of the 1971 draft legislation. During its years of operation however, the Barok Committee introduced a number of innovations in land tenure, which if thoroughly implemented and consistently observed would have had far-reaching effects on a community in which matrilineal descent groups were of fundamental importance for the control of land.

That the actions of the Barok Committees were not isolated or exceptional is apparent from reports of Committee activity in other parts of the New Ireland Province, namely the Tigak, Kara, and Mandak districts.

Lomas, who worked in the Tigak area of New Ireland during 1967-69 states:

[T]he activities of the local land Demarcation Committee had contributed significantly to the general use. This [all indigenous] Committee had been operative in the Kavieng area for a few years and had already endeavoured to consider the ownership of most plots in Kulangit close to [Kavieng]. As the significance of the work of the Committee became apparent to villagers, they came to believe that the marking of the boundaries by little cement blocks and handing out of paper titles (which had not begun) would 'freeze' ownership in the hands of current users. This began to generate something approaching panic amongst some segments of the village population, and the Committee was recalled many times to hear disputes that had emerged from its earlier work ... Instead of solving disputes the [demarcation] meetings served to generate still more, so that by 1969 villagers were even less sure of their position than they had been before the Committee started work ... The work of the Land Demarcation Committee is likely to have considerable effect on the organization of cash cropping activities within the villages, furthering the trend to individual peasant farming and undermining the influence of village leaders still further.<sup>24</sup>

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23. continuation

official record, or rather reverted to patterns determined by pre-existing social and kinship relationships, as noted for example by Morawetz for the Ombi-Tara (see D. Morawetz, 'Land Tenure Conversion in the Northern District of Papua' (1967) *New Guinea Research Bulletin* No. 17).

24. P.W. Lomas, *Economic and Political Organization in a Northern New Ireland Village* (Ph.D. Thesis, Simon Fraser University), (1974) 161-2, 163, 439.

Billings, who worked in the village of Mangai, Kara area, in 1965 and 1966-67, noted that

... with the Demarcation Committee set on marking land now and for all time, real disputes about boundaries must follow. Land means coconuts and coconuts are the only road to ease for most people ... Currently it is not the [traditional] fluidity but stability ... that is sought, in compliance with government orders.

The government has sent out the message that people should get back on their mother's lands to plant coconuts, and thereby avoid disputes in the future. The government is closing its official eye to other traditional legitimate modes of claiming both land and coconuts. Individuals could always own coconuts their fathers had planted for them, for the life of the individual or the tree.<sup>25</sup>

In their studies of the northern Mandak village of Pinikindu in 1970-71, R.B. and B.J. Clay refer to recent innovations in land tenure introduced by the 'government', which I take to mean the Demarcation Committee. R.B. Clay indicates that in addition to use of one's own clan land for gardens and planting of 'economic trees', a Mandak person could also obtain access to land of the father's clan, by continued presentation of pigs, shell money, and cash to the father's clan on the deaths of its members.<sup>26</sup> It was not however traditionally possible for land to be alienated permanently to the children's clan; nevertheless:

[T]he government has now introduced land registration and the implicit possibility of land sale. It remains to be seen what effect this will have on the pattern of ownership ... Pinikindu men now point out that the government expects them to buy outright their father's land, including that upon which they have planted coconuts. This, they feel, violates their traditional right to use the land, paying for it in a traditional manner. Clearly, such alienation was not possible in the past and is not considered correct today.<sup>27</sup>

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25. D.K. Billings, *Styles of Culture: New Ireland and New Hanover* (Ph.D. Thesis, University of Sydney) (1971) 155-6.

26. R.B. Clay, 'The Persistence of Traditional Settlement Pattern : An Example from Central New Ireland (1972-73), 43 *Oceania* 40, at 46.

27. *Id.*, 46-7.



The latter point is expressed differently by B.J. Clay:

Traditionally a man could give part of his [clan] land to his offspring, although the major portions of land remained with the owning [clan]. This practice has been complicated, though not abandoned, by the Australian government which read a strictly matrilineal interpretation into local customs and decreed that a man must pay for all land transfers out of the clan. This law angers and frustrates the Mandak ....<sup>28</sup>

From the basis of these reports, it is obvious that the Demarcation Committees in other parts of New Ireland had also not confined their activities to those described in the legislation. That the Committees heard disputes is hardly surprising; indeed as the Commission of Inquiry into Land Matters observed, the Committees had to hear disputes or become 'virtually useless'.<sup>29</sup> What is more striking is the local understanding of what purported to be government policy, which again one assumes was ultimately derived from the Land Titles Commission in its capacity as instructor and supervisor of the work of the Committees.

Turning to the mainland, the actions of Committees have been described for the Chimbu and Minj-Wahgi areas, and for Karkar Island in the Madang District. In the Minj-Wahgi (Kuma) area, land was traditionally controlled by patrilineal clans, which were internally divided into smaller segments (subclans etc.). No clan used its available land to the full however, and it was not difficult for an immigrant clan, or a clan dispersing as a result of battle, to obtain land from another clan, for example in exchange for brides. Boundaries between such friendly intermarrying clans were fluid.<sup>30</sup> Within the clan also, access to land was not determined by rigid rules, although patrilineal inheritance was common. As Reay notes, however, 'rules of inheritance use and transfer served simply as guidelines in ensuring availability of land to all who needed it'.<sup>31</sup>

The work of the Demarcation Committee within such a system is not described in detail, although Reay does mention that

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28. B.J. Clay, *Pinikindu - Maternal Nurture, Paternal Substance* (1977) 65.

29. *Report of Commission of Inquiry into Land Matters* (1973) 23; cf. Bredmeyer, *op.cit.*, 273-4.

30. M. Reay n.d. *Land Tenure as a System of Political Change* (mimeographed) at 8-9.

31. *Id.*, 13.

the government has been encouraging individuals to apply for permanent land titles or as it sometimes seems, insisting that they must ultimately do so.<sup>32</sup>

Specifically the Committee attempted to create fixed and permanent boundaries for plots to which individuals would be exclusively entitled, and promoted a stricter observance of patriliney as the sole means of land inheritance. As a result the process of demarcation threatened to create inequality of land holdings both at the group and individual levels.<sup>33</sup>

Similarly, McSwain<sup>34</sup> argues that on Karkar Island the Committee's work resulted in a simplification of customary tenure. There also land was held by patrilines, each comprising several patrilineages; clan members were entitled to use the clan sections of the reef and the bush land, and build houses and make gardens on that section of the clan territory assigned to their lineage. But through ties of marriage, cognatic kinship, or simply as a result of co-operation in gardening, rights to use land of another clan could be obtained.<sup>35</sup> Further, with the consent of the clan, pieces of land could be alienated permanently, e.g. as a dowry, or by gift to a man's sister's son. As a result:

[T]he custom of holding land rights in two (or more) clan areas at one time was a powerful incentive for a man to identify with members of both, and a valuable asset in extending social relationships. For emotional as well as practical reasons, people particularly valued ties formed through non-agnatic inheritance.<sup>36</sup>

Demarcation began in 1966, but was suspended in 1968 as a result of disputes, poor surveying and 'an inadequate official programme'.<sup>37</sup> The Committee had tried to define discrete clan blocks, thereby ignoring the scattered nature of some clan holdings. Thus

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32. *Id.*, 20.

33. *Id.*, at 13, 17.

34. R. McSwain, *The Past and Future People - Tradition and Change on a New Guinea Island* (1977)

35. *Id.*, at 11, 17.

36. *Id.*, 17.

37. *Id.*, 37.

while patricians (some with newly consolidated territories) were reaffirmed as the basis of Karkar social structure, cross-linking relationships were weakened through official ignorance of methods of obtaining land rights outside the patrician. The Committee acted as a court in hearing land disputes, but in fact the ferocity of disputes increased as people saw in the scheme being pursued by the Committee a 'last opportunity for litigation', and the Committee emphasis on definition of boundaries highlighted existing land shortages and led to panic as people rushed to plant up areas in order to secure their claims. The suspension of the scheme in 1968, McSwain comments, allowed people to revert to traditional means for equalising access to land and resolving disputes.<sup>38</sup>

The only detailed study of demarcation in Papua New Guinea is that of Hide for the Nimai section of Chimbu district.<sup>39</sup> Hide notes that the Nimai Committee considered itself primarily as a dispute settling body,<sup>40</sup> and much of his analysis is directed to determining the reasons for the Committee's so seeing its role and for its singular lack of success in resolving disputes (a similar lack of success has been noted by Meggitt for the Committees active in the Mae-Enga area).<sup>41</sup> For the failure of the Chimbu scheme generally, Hide refers to the difficulties faced by the members themselves, in that they were not paid and no transport was provided, the lack of governmental efforts to encourage and stimulate agricultural progress, and lack of resources given the magnitude of the task undertaken.<sup>42</sup>

More specifically, the Committee members, one appointed from each sub-clan, faced problems in trying to impose boundaries in a situation where land tenure was very much a matter of political process, and boundaries were fluid and unstable, representing the balance of political power between competing groups at a particular moment. As appointees from individual sub-clans, moreover, members were subject to role conflicts, being unable at the one time to be both group spokesmen and independent arbiters. With no means of enforcing decisions, the Committee's attempts at defining boundaries merely became another episode in the continuing inter-group hostilities.<sup>43</sup>

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38. *Id.*, at 121, 123-4.

39. R. Hide, 'The Land Titles Commission in Chimbu - An Analysis of Colonial Land Law and Practice 1933-68' (1973) *New Guinea Research Bulletin* No. 50.

40. *Id.*, at 57, 89.

41. M. Meggitt, *Blood is their Argument* (1977) 167.

42. Hide, *op.cit.*, at 43, 97-100.

43. *Id.*, 89-95.

Another factor which contributed to the Commission's difficulties, Hide observes, was the way in which members were instructed in their duties. Distortion and misunderstanding resulted from the linguistic and cultural differences between members and the Land Titles Commission officers at Madang who taught them. For instance, in Chimbu it was common for sub-clan territory to be considerably fragmented, and for a man to be able to use land belonging to his wife's sub-clan as well as that of his own sub-clan. At the Madang instruction course, however, the impression was given that 'one man cannot control two lands'. The gist of the field instruction received by the members was that demarcation

was concerned with the marking and recording of neat parcels of land owned without question by discrete and closed groups of people.<sup>44</sup>

Whether the Madang instructors were ignorant of or determined to simplify the complexities of Chimbu tenure is not clear. As Hide indicates

I do not know if the tenure situation in the vicinity of Madang was as uncomplicated as this prior to demarcation, or whether demarcation imposed a set of new restrictions on the customary means of acquiring both usufruct and title to land.<sup>45</sup>

#### V *Summary and Conclusion*

In this paper I have outlined the process of demarcation in one district of New Ireland and referred briefly to reports of Committee work elsewhere in New Ireland and on the mainland. Certainly demarcation was not pursued in quite the same way in each area, nor were the effects identical in every place. Nevertheless, a common theme has emerged in the several accounts referred to, namely the widespread, perhaps universal, confusion and misunderstanding both by villagers and Committee members concerning the 'official' role and powers of the Committee. For example, whether or not they were seen as having official sanction, the Committees commonly attempted to resolve disputes, rather than simply marking an obvious boundary or encouraging claimants to agree upon a particular partition of land.<sup>46</sup> So accepted did this function of the Committee become, in fact, that the arrangement was to have been formally recognised and sanctioned in those sections of the

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44. *Id.*, 109. Another instruction given to the Committee members was that in order to prevent disputes, rights to land and rights to trees on the land should be consolidated where possible, e.g. by the landowner buying the trees (*Id.*, 103).

45. *Id.*, 109.

46. The reasons for this development may have varied from place to place, being due to the ambitions and political position of local Committee members, problems of communication with officials, or even encouragement by officials given the Commission's inability to handle more than a fraction of the disputes revealed during attempts at demarcation. See e.g. Bredmeyer, *op.cit.*, 273-4; Hide, *op.cit.* at 89ff.

1971 legislation dealing with systematic adjudication.<sup>47</sup>

A second, and more important, point is that Committee work always seemed to be directed towards simplifying and rationalising the principles of customary land tenure. Again it is necessary to consider in each instance whether this was due simply to the Committee members misunderstanding their role, or perhaps to ignorance, prejudice or deliberate activity on the part of officials. The flexibility of traditional land tenure was affected not simply by the definition of boundaries, but by the restrictions on alternative means for individuals and groups to obtain access to land. Efforts were made to consolidate scattered pieces of land, customary forms of land transaction were discounted or ignored, and common forms of land acquisition or inheritance were made the sole and unvarying rule.<sup>48</sup> In this way, as Reay argues, opportunities provided by the traditional system for equalising access to land and for accommodating local demographic and political changes were narrowed if not closed off.<sup>49</sup>

In New Ireland also, the encouragement of individual holdings and the reduction of customary alternatives can be observed, together with a new emphasis on making cash payments for land, and the suggestion that paternal connection should become more important as a source of land rights. What seems to be distinctive, indeed, in the New Ireland example, is the effort made by the Commission officers to accommodate if not facilitate changes to the basis of customary tenure outside the framework of registration provided by the legislation. Such an effort, while perhaps consistent with the ultimate objective of Hasluck's policy, was made despite the inadequate knowledge of New Ireland conditions, and the limited nature of the Commission's statutory powers. That the consequences were not more far reaching is due both to the Commission's lack of resources, which prevented it following up on the work of the Committee, and local rejection of or lack of interest in the goals urged by the Committee.

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47. Grove, *op.cit.*, 73-76.

48. On official misunderstanding of the principles of customary tenure systems in the Pacific, see R. Crocombe, 'Land Reform' in R. Crocombe (ed.), *Land Tenure in the Pacific* (1971) 375, at 388, 397. *cf.* Zorn's discussion of the neglect of the content of customary law in disputes heard by the Papua New Guinea Land Titles Commission and Supreme Court - J. Zorn, 'The Land Titles Commission and Customary Land Law: Settling Disputes between Papua New Guineans' (1974) 2 *Melanesian Law Journal* 151.

49. M. Reay, *op.cit.* at 3,5. *Cf.* the activities of kiaps in marking boundaries after 'pacification' in the Highlands - see e.g. R. Salisbury, 'Changes in Land Use and Land Tenure among the Siane of the New Guinea Highlands' (1964) 5 *Pacific Viewpoint* 1.

In its 1973 Report the Commission of Inquiry into Land Matters, in considering the proper foundation of future land law reform in Papua New Guinea, recommended that

... [ 1] and policy should be an evolution from a customary base not a sweeping agrarian revolution .... Registration should be used only where there is a clear demand and need for it and clear understanding of it among [the] people concerned.<sup>50</sup>

The Barok experience of demarcation clearly indicates the wisdom of such a policy.

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50. *Report of Commission of Inquiry into Land Matters* (1973), Recommendations 1, 6. The Committee of Inquiry considered that the 'basic pattern' of registration should be of group titles; the registered group could then grant occupation rights to individuals or sub-groups wishing to use the land (Recommendation 11). Cf. Crocombe, *op.cit.*, 385.