

## STATUTORY REVIEW

### REFORMING CUSTOMARY LAND TENURE SYSTEM: THE EAST SEPIK (PNG) LAND AND CUSTOMARY LAND REGISTRATION ACTS (1987)

In May 1987, the East Sepik Provincial Government passed two legislations, the *Land Act* and the *Customary Land Registration Act*. The power to enact both legislations undoubtedly derives from the Organic Law on Provincial Government (Chapt.1) ss.27 and 28 of which set out the subjects of concurrent legislative powers between the National Government and Provincial Governments, especially "land and land development". In time of conflict however national laws prevail (see A.J. Regan, 'Provincial Powers Over Land' in *Customary Land Tenure*, (Waigani: IASER, 1989, forthcoming; Jim Fingleton, 'The East Sepik Land Registration', *Ibid*; Tony Powers, 'Policy Making in East Sepik Province', *Ibid*; and Kathy Whimp, 'Inconsistencies between Provincial and National Laws', *Ibid*).

The potential for conflict is greatly minimised by the Land Act's delineation of State Land (National or Provincial) which it leaves to the regime and preserve of the received common law or non-customary law especially the law of leases, thus leaving every other land which is not the concern of the *National Land Act* (Cap.185) subject to customary law.

Flowing from the strategy of identification of State Land by the *Provincial Land Act* which follows in the main the essential provisions of the *National Land Act* (Chapt. 185), the *Provincial Customary Land Registration Act* provides a machinery for the registration of group title or ownership and individual title or an interest lesser than the group absolute title. This Act effectively takes over the task designed to be undertaken by the long-abandoned *Land (Tenure Conversion) Act* (No.15, 1964). In respect of group title, provision is made for both systematic (Part IV) and sporadic registration (Part V). But while group title under a system of systematic registration (Customary Land Register Area) is *conclusive* evidence of the absolute title of the group (a Torrens inspired position) because the Provincial Land Management Committee would have been satisfied that this is the case, in a system of sporadic registration, registration of group title is only *prima facie* evidence of the facts stated therein as at the date of entry in the register.

And the foregoing leads us to perhaps the most crucial aspect of the *Customary Land Registration Act*, ie. that an interest so registered is not taken out of the regime of customary law but remains *subject* to customary law, a position which is the direct opposite of the effect of registration under the *Land (Tenure Conversion) Act*. And while this interest cannot be defeated by an adverse claim based on custom, it is only evidence of the facts stated therein as at the date of registration. And since custom continues to apply to the land and given custom's nature of adaptability to change to meet changing circumstances, it is possible that with time the ownership of the registered interest and the land may become modified, thus effectively undermining the tenant's security of interest. However, the burden of proof lies on he who asserts a change in the state of facts at the time of registration, a position which provides the registered interest holder *some* comfort. An added safeguard for the registered interest is that it takes precedence over an unregistered interest.

These two legislations provide a model for the decentralisation of land matters. And given the current trend in the National Government to involve local landowners in concession grants, they have arrived not a moment too soon. The rest of the Provincial Governments are watching the experiment with avid eyes. It is reported that already

requests have been made to Mr. Jim Fingleton, the Australian land expert who drafted the two East Sepik Acts by the Provincial Governments of East New Britain, North Solomons (where the Bougainville Copper Limited affair is threatening the political integrity of the nation) and Eastern Highlands to similarly advise on the introduction of customary land registration in those provinces (Fingleton, *op.cit.*).

And whether these kind of legislations will ultimately solve the perennial problem of the economic viability of interests at customary law remains to be seen.

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