

# Changing Land Tenure and Informal Land Markets in the Oil Palm Frontier Regions of Papua New Guinea: the challenge for land reform

GINA KOCZBERSKI<sup>1</sup>, GEORGE N. CURRY<sup>1</sup> & JESSE ANJEN<sup>2</sup>,

<sup>1</sup>Curtin University, Australia; <sup>2</sup>PNG Oil Palm Research Association, Papua New Guinea

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## ABSTRACT

This paper reports on the authors' ongoing research with agricultural extension services, customary landowners and migrant farmers to develop a template for a Land Usage Agreement (LUA) that seeks to reconcile customary landowners' and migrants' differing interpretations of the moral basis of land rights. The LUA shows a way forward for land reform that builds on customary tenure while strengthening the temporary use rights of migrants to enable them to generate viable and relatively secure livelihoods. The paper concludes that land tenure reform should draw on what is already happening on the ground, rather than impose external models that do not accord with local cultural mores about the inalienability of customary land and its enduring social and cultural significance for customary landowning groups.

**KEY WORDS:** Land reform; customary land tenure; land rights; oil palm; migration; rural change; relational economies; social embeddedness.

## Introduction

This paper examines informal land transactions between customary landowners (hereafter, landowners) and migrants seeking customary land for small-scale oil palm development in the provinces of West New Britain (WNB) and Oro, Papua New Guinea (PNG) (see Figure 1). The land transfers documented in this paper are occurring in an environment where the demand for land by 'outsiders' is high, where customary tenure is undergoing rapid change and where an effective land administrative system is absent (see Fingleton 2004). The pressure on customary land in PNG emanates from the long-term trend of people migrating from resource-poor areas to urban and peri-urban areas and to rural regions of the country offering relatively good access to employment, education and health services (e.g. mine sites and plantations) (see Numbasa & Koczberski this issue). With land reform back on the policy agenda in PNG, and in other parts of the developing world, it is timely to consider what lessons can be learned from these informal land transactions to inform institutional approaches to land reform that build on existing tenure systems and are tailored more closely to local circumstances.

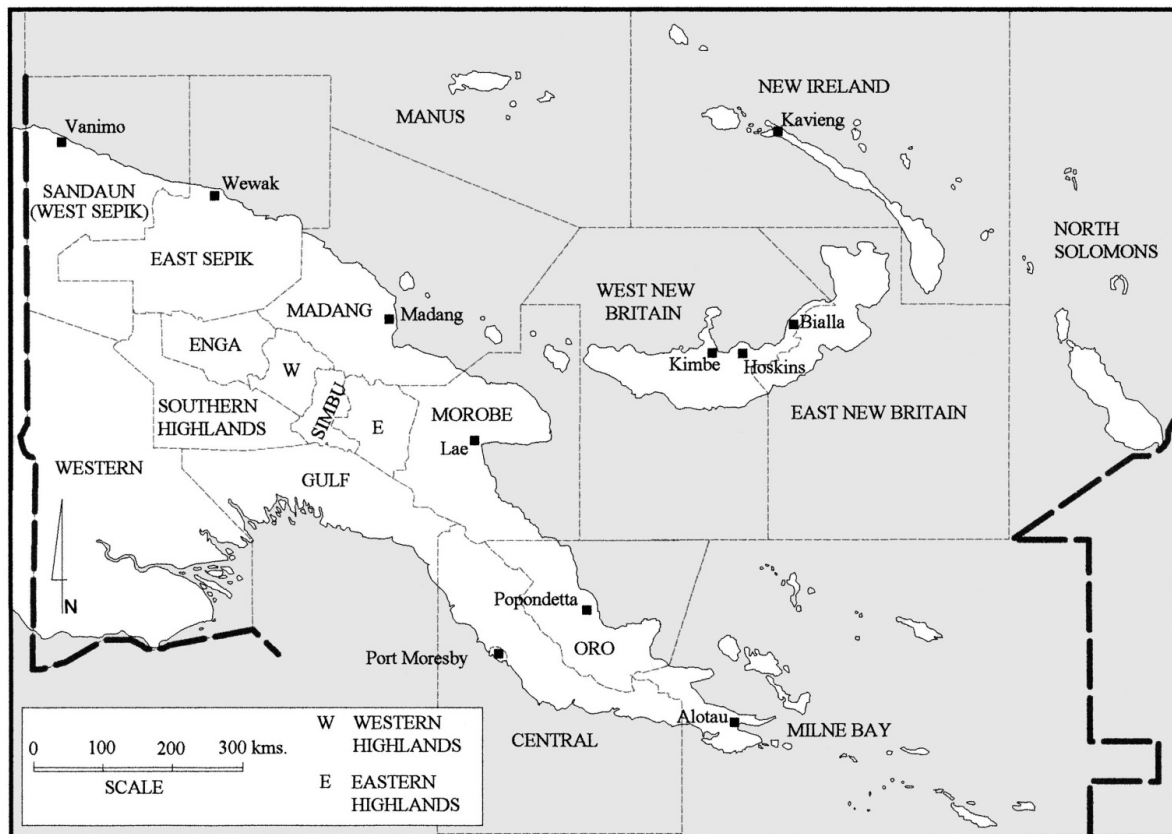


Figure 1. Location of study sites.

Landowners in PNG are not alone in responding to the large demand for land by ‘outsiders’ through informally ‘selling’, ‘leasing’ or gifting land. Across many parts of the Global South where land remains under customary tenure there is a proliferation of informal (and often illegal) land transfers occurring in rural and peri-urban areas as land-poor migrants enter into agreements with customary landowners to gain short- and long-term access to land (e.g. Amanor & Diderutuah 2001; Elmhirst 2001; Li 2002; Sjaastad 2003; Potter & Badcock 2004; Daley 2005; Chimhowu & Woodhouse 2006; Hagberg 2006; Martin 2007; Peters 2007; Koczberski *et al.* 2009; Chand & Yala 2012). Whilst informal land transactions vary greatly in type, typically most involve cash payments for the sale or leasing of customary land to outsiders and some form of written documentation.

Although the large demand and pressures on customary land by ‘outsiders’ helps explain the growth of informal/illegal land transfers in the Global South, it is important to note other factors. Population growth, the trend to commodification and individualisation of customary land, the ineffectiveness of government land administration agencies and an absence of suitable state-led land reform that enables private dealings in customary land are also driving this trend. Regarding the latter point, government efforts in land reform often lag behind what is happening informally as customary landowners and migrants develop their own systems of tenure for land transactions regardless of state policies (Benjaminsen & Lund 2003; Chimhowu & Woodhouse 2006; Peters 2007; Yaro & Abraham 2009; Yaro 2010). In Fiji, where customary land was being sold to Fijian Indians despite the prohibitions of both law and custom, proposed changes to land laws have ‘lagged well behind practice’ (Ward 1995, p. 247). In the absence of an effective land administration system in PNG, landowners seeking to capitalise on the demand for land by outsiders are developing their own informal

arrangements for land mobilisation (Curry & Koczberski 2009; Koczberski *et al.* 2009). This is occurring not only in the oil palm regions of PNG but also in rural areas of the Gazelle Peninsula (see Curry *et al.* 2007b; Martin 2007; Fingleton 2008) and in urban and peri-urban locations (Fingleton 2008; Chand & Yala 2012; Numbasa & Koczberski this issue).

The rapid growth in informal and illegal land transactions presents a challenge for policy makers: how to develop an effective reform program and land administration system to accommodate the wide range of informal and semi-formal arrangements occurring in areas where demand for customary land by outsiders is high. Whilst land reform has long been the subject of policy debate in many developing countries, much of the discussion has been dominated by the view that customary tenure is incapable of providing the necessary security to facilitate investment and productive uses of land (e.g. Gosarevski *et al.* 2004; IIED 2005; Peters 2007). Thus a key driver of land reform in PNG, and in other parts of the developing world, has been based on the notion that secure individual property rights through titling of land are a fundamental prerequisite for building a modern economy and stimulating economic growth (Gosarevski *et al.* 2004). This ‘individualisation’ approach emerged from Africa half a century ago, and it still has wide support, despite the evidence that full individualisation and registration of customary tenures has often failed to deliver the anticipated increase in agricultural investment and productivity (Mackenzie 1993; Shipton 1994; Lastarria-Cornhiel 1997; Lund 2000; Peters 2007; Fingleton 2008).

Recently, however, there has been growing recognition amongst policy makers in PNG, other Pacific Island nations and in many African countries that land reform should aim to support and build on existing customary tenure to meet contemporary needs and demands rather than replace it. This has grown out of the adaptation approach to land tenure reform that was promoted at the 2004 FAO (Food and Agriculture Organization) Land in Africa conference (Fingleton 2008). This ‘adaptation’ approach to land tenure reform is more likely to be acceptable to customary landowners. As Fingleton (2008) noted in a paper on land reform in the Pacific:

there is now a general acceptance that adaptation, not replacement, of customary tenures is the way forward. The Food and Agriculture Organization (FAO) of the United Nations endorses the adaptation approach to land tenure reform. Even the World Bank, for long a critic of customary tenures, has given ground, now recognising customary tenures as a viable basis for growth and development. At the Land in Africa Conference, held in London in November 2004, the adaptation approach was given strong support by all the governments and aid agencies that took part. (2008, pp. 10-11)

Thus, contemporary approaches to land reform in the Pacific now seek to develop adaptation models that balance the goal of providing security to investors/individuals to facilitate economic development on customary land while at the same time protecting existing customary tenure systems and the underlying rights of landowners. This paper presents a template developed recently for a new Land Usage Agreement (LUA) for use among oil palm smallholders. It is argued that the LUA presents a way forward for land reform that builds on customary tenure while strengthening the temporary use rights of migrants to enable them to generate viable and relatively secure livelihoods.

We begin with a discussion of the types of land transactions occurring in the oil palm areas of PNG and explore some of the attendant problems. Then we report on our ongoing research with agricultural extension services, customary landowners and migrant farmers to develop a template for a more formal contractual LUA that seeks to accommodate customary land tenure while providing migrant farmers with secure use rights to land. The new LUA shows a way forward that builds on customary tenure while strengthening the temporary use rights of outsiders to enable them to generate viable and relatively secure livelihoods. The paper concludes with a discussion of the implications of the case study for land reform policy for rural and urban areas undergoing rapid economic and demographic change, and where increasing numbers of people, without customary or formal use rights to land, are accessing land for residence and livelihood activities.

## **Background to customary land and land reform in PNG**

### *Customary tenure in PNG*

Customary land tenure in PNG has evolved to accommodate a diverse array of physical and social environments. Despite the diversity of land tenure regimes, there were two common sets of general principles across most of the country. First, exclusive individual ownership of land was rare as nearly all land was vested in landholding groups grounded in kinship (Ward & Kingdon 1995). Second, principles of customary land tenure were pragmatic, which ensured most people had sufficient access to land to meet their livelihood requirements (food, materials for shelter and cultural needs). Without direct inheritance of individual land rights (because land reverted to the group during fallow periods), the changing demographic fortunes of individual lineages were able to be accommodated (Crocombe & Hide 1971; Curry 1997; Ward 1997).

However, the cultivation of perennial export tree crops such as oil palm, cocoa and coffee induced de facto changes in land tenure (see Epstein 1969; Foster 1995; Curry *et al.* 2007a; Martin 2007). The long-term cultivation of perennial crops has meant that exclusive rights over land planted to export crops are now held by individuals for long periods, thereby reducing the flexibility and pragmatism of land tenure that characterised swidden systems. Yet, despite these changes, land continues to be fundamental to household food production, and for sustaining spiritual beliefs, social and ritual activities, individual and group social identities, and for underpinning social organisation. This explains why in many areas of PNG the notion that land can be alienated permanently is rarely comprehended or internalised by customary landowners.

### *Land reform in PNG*

With over 90 per cent of land in PNG under customary tenure, attempts at land reform to facilitate investment, trade and other entrepreneurial activities have long been perceived by policy makers to be critical to economic development. In the colonial and post-colonial periods various land reform measures were promulgated to encourage the shift from communal tenure to individual leasehold or freehold title. Three major programs to register land and facilitate individual freehold title have been initiated over the years (Kalinoe 2008). These are, first, the Land (Tenure Conversion) Act of 1963 to permit the transfer of customary land to individual freehold title. Land tenure conversion was based on the assumption that the individualisation of title would promote individual family farms, thereby creating the conditions for the emergence of commercial agriculture (Morawetz 1967). Land Tenure Conversion (LTC) blocks were promoted in the PNG Highlands to facilitate development of the smallholder coffee industry, and in Popondetta, Oro Province, where village oil palm growers were encouraged to convert their land from customary control to

individual freehold title. LTC blocks were considered an intermediary step towards freehold title registration (Morawetz 1967). However, few, if any, of the approximately 450 ha of village oil palm in Popondetta registered as LTC blocks were converted to freehold title.

The second attempt at land reform was the lease, lease-back scheme which commenced in 1979 to facilitate the extension of credit for agricultural developments on customary land (Filer 2011). It was first used in the coffee industry with limited success, and has since been adopted by forestry ventures and more recently by the oil palm industry for plantation estates. Apart from oil palm, the lease, leaseback has not resulted in extensive areas of customary land becoming available for commercial agricultural development. Indeed, recent reports of abuse of the lease, lease-back system have undermined trust in the Lands Department's capacity to effectively manage these leases (Filer 2011).

The most recent attempt at land reform was the Land Mobilisation Program (LMP) which began in 1987 in the East Sepik Province to promote registration and development of customary land. The strategy has been promoted repeatedly since the mid-1980s. The East Sepik LMP was based on two related Acts the Provincial Lands Act and the Customary Land Registration Act (Larmour 1991) which together allowed for recognition of group 'ownership' and various tenure arrangements on customary land such as joint ventures between Incorporated Land Groups (ILGs) and investors, and leases to individual clan and non-clan members. These reforms acted to 'free up' and facilitate land mobilisation for economic development and other land use requirements in the province (Fingleton 1991; Larmour 1991; Kalinoe 2008). The East New Britain provincial administration experimented with a similar LMP, and in the 1990s a National Land Mobilisation Program to register customary land was witness to public condemnation and rioting (1995 and 2001), resulting in land registration in PNG largely coming to a halt.

Each of the three land reform programs discussed above has had limited success (Larmour 1991; Fingleton 2004; National Research Institute 2007). Some have attributed their failure to the weak institutional frameworks and a lack of support at the regional and state levels to develop and enforce a formal property rights regime that provides security for access to resources and capital investment (e.g. Jones & McGavin 2000). However, it is not only institutional weakness at the macro level that explains the limited success of these measures but also their incompatibility at the village level with indigenous concepts of the moral basis of land rights and the emphasis on relational identities for land access (discussed further below) (Curry & Koczberski 2009).

Land reform is once again on the policy agenda in PNG, with a National Land Summit in 2005 and a National Land Development Taskforce (NLDT) being instituted in the same year. One of the central goals of the NLDT was to identify ways to facilitate access to customary land for economic development which provided security for individuals and investors while ensuring customary land remained under the ownership of customary landowners (National Research Institute 2007). The specific type of land tenure reform required to achieve these twin objectives is still under discussion, but it is clear that contemporary approaches to land reform in PNG are becoming more adaptive. This adaptation approach was reflected in the overall goal of the 2005 reform program of the Customary Land Development Committee of the NLDT which proposed that 'customary land will remain in the possession (ownership) of the landowning group, yet can be comfortably leased and utilized freely, in the modern business environment' (National Research Institute 2007, p. xvi).

### **Field sites and methods**

Commercial production of oil palm began along the north coast of WNB Province in 1968 and in Oro Province in 1976 with state acquisition and conversion of customary land to state agricultural leases for the establishment of government land settlement schemes (LSSs) and plantation estates (see Figure 1). Families, largely from mainland PNG, were voluntarily resettled on the schemes at Hoskins and Bialla, WNB and in Popondetta, Oro Province, and allocated individual 99-year state agricultural leases over landholdings of 6.0-6.5 ha.

Following the establishment of the oil palm LSSs, neighbouring customary landowners living on their village lands began planting oil palm. Later, in WNB, some landowners began 'selling' customary land to outsiders to plant oil palm, and over 3500 ha of customary land in the Hoskins and Bialla areas have been 'sold' to outsiders, many of whom are second-generation LSS settlers or employees of companies or government seeking to retire in the province and/or secure a future for their children (Koczberski *et al.* 2009). The oil palm LSSs are one of the few cases in PNG of significant long-term rural-to-rural migration. The success of the oil palm industry (the leading export cash crop by value) is dependent on workable land tenure regimes that are able to accommodate outsiders (Koczberski *et al.* 2001).

Data were collected from 2006 to 2010 from numerous meetings, informal interviews and workshops with members of landowning groups involved in the 'sale' of customary land, migrant oil palm smallholders cultivating oil palm on customary land, and agricultural extension officers of OPIC. Initially, the research documented the types of land transactions occurring and how tenure and access rights were acquired by migrants and maintained through time. This involved examining landowner and migrant understandings of land transactions and the underlying causes of the rising number of land disputes. As it became apparent that landowners and migrants had different interpretations of their land dealings and both sought more formal processes for land transactions, including written documentation of the rights and obligations of both parties, work began with landowning groups, migrants and OPIC to develop an LUA template. This was an iterative process over several years in which the initial concerns of both migrants and customary landowners about land transactions were documented and brought back to both groups for further discussion and refinement.

### **Changing land tenure regimes in the oil palm growing areas of West New Britain**

Land tenure regimes have changed considerably in the oil palm belt of WNB in response to the high demand for land by migrants for oil palm and non-oil palm livelihoods (see Table 1). Although Table 1 uses the dichotomy of customary and alienated land to describe the two categories of legal tenure in PNG, it is evident that the different tenure arrangements within each category challenge this simple division. For example, in an environment where national institutional governance is weak, state land is being appropriated by migrants and 'reclaimed' by those who claim to be customary landowners. Also, the principles of customary land tenure are being manipulated by clan members to allow the temporary/partial alienation of land through land 'sales' leading to the emergence of new property and social relations. Thus, a wide range of overlapping tenure regimes and arrangements have emerged as ideas of individual and communal ownership and property relations have been reworked on both alienated and customary land (see Table 1).

Table 1. The types of formal and informal tenure systems operating in the oil palm belt of West New Britain.

<b>Alienated Leasehold Land</b>	<b>Description</b>
State agricultural leasehold land	Oil palm smallholder land settlement schemes and plantation estates on 99 year state agricultural leases. Estimated area of State agricultural leases planted to oil palm in WNB is 43 280 ha.
Formal and informal reclamation of State agricultural leasehold land.	Informal reclamation of State land by landowning groups and individual members of the landowning group. Some reclaimed State land is ‘rented’ or has been ‘sold’ illegally to migrants. Migrant farmers also known to informally reclaim State agricultural leasehold land.
State land in urban areas	Informal urban and peri-urban settlements illegally occupied by migrants.
Lease, lease-back system (since 1996)	Registered sub-leases of 20-40 years between customary landowning groups and the milling company for the development of oil palm plantation estates on customary land. The lease suspends customary land use. Over 36 000 ha are under lease, lease-back arrangements in WNB.
<b>Customary Land</b>	
Village Oil Palm (VOP) holdings	Individual clan members’ oil palm blocks on customary land and ‘registered’ with the Oil Palm Industry Corporation. Some VOP blocks are under ‘Clan Land Usage Agreements’ and some are occupied by village non-clan members by arrangement with customary landowners.
Community-managed oil palm plantations (Bialla project area)	Amalgamations of clan land. Approximately 6500 ha under Community Oil Palm plantations.
Informal and semi-informal transfers of customary land to non-clan members.	Transfers are largely ‘sales’ of land to ‘outsiders’ to plant oil palm. Transfers of land are sometimes ‘gifted’ to outsiders to allow short-term or long-term access to small parcels of customary land.
‘Renting’ of customary land to migrants	Informal rental agreements give migrants access to land for food gardening and house sites in return for cash and/or labour.

*The ‘sale’ of land to outsiders and rising discontent*

When migrants ‘purchased’ customary land for oil palm cultivation, a ‘price’ for the land was agreed upon, although transactions usually tended to be informal with ambiguous verbal or written agreements made between the outsider and customary landowners.<sup>1</sup> Land surveys

were rarely undertaken and written agreements often did not specify the agreed ‘sale’ price of the land, the amount and timing of payment instalments, and the specific rights and obligations of the migrant or the landowners. Seldom was there any written evidence that the land transaction had the approval of the clan. Disagreements could arise within the landowning group when some members had not consented to the land transaction or did not receive a share of the cash from the transaction. Such disputes sometimes led to the eviction of migrants who found little recourse through the courts because of the lack of written evidence regarding the land transaction.

Disputes between migrants and customary landowners often arose because of the conflicting interpretations of land transactions (Koczberski *et al.* 2009). Many migrants acquiring land interpreted the land transfer as a commodity transaction that conferred on them individual and permanent ownership (like freehold title). From this perspective the land was to be held in perpetuity by the migrant which therefore gave his sons inheritance rights or allowed him to on-sell the land to a third party. Those migrants who discursively constructed the land transfer as a commodity transaction also believed that they were free to pursue other livelihood activities on the land, such as operating small business enterprises, and that there were no obligations on them to share the wealth generated from the land with the landowners or to maintain social relationships with them.

Landowners, in contrast, drew on customary principles that viewed land as an inalienable resource held by the kinship group, a perspective that was held by most members of the landowning group (Curry & Koczberski 2009). As customary landowners they believed they had the power to determine what livelihood activities migrants could pursue on the land. They argued that outsiders had acquired only use rights for oil palm and not rights to pursue other income-earning activities. Also, for landowners, land rights granted to outsiders were not permanent and exclusive. Instead, a less exclusive set of rights pertained that were contingent on migrants’ continued participation in indigenous exchange and fulfilling other social and economic obligations — expectations similar to more traditional concepts of land tenure where access rights granted to outsiders for subsistence gardens depend on the maintenance of social and economic relationships with landowners.

These ‘guests’ on customary land were expected to share a portion of their income from oil palm or other income activities on the land and contribute to community and village events. Ideally, income sharing with hosts should reflect the benefits that migrants were deriving from the land. When oil palm prices rose significantly, some landowners felt they were being cheated because they ‘sold’ the land when oil palm prices were lower. This led some to believe that migrants were receiving benefits unfairly from the higher prices which could induce landowners to demand additional payments from migrants. When landowners believed outsiders had failed to maintain exchange relationships adequately, the moral basis of a migrant’s land claim weakened, and there was a corresponding strengthening of the customary landowners’ own moral claims to the land. For landowners, the transactions were very much interpreted in terms of indigenous principles of land tenure that stressed the inalienability of land and the relational basis of land rights.

### **Elements of a template for a new clan Land Usage Agreement**

The differing interpretations of land transactions by landowners and migrants, together with the associated rising incidence of land disputes, indicated a need to review current practices regarding the transfer of customary land to outsiders. Moreover, as mentioned above, landowners and migrants both sought more formal land transaction processes and OPIC



increasingly acknowledged that the existing informal arrangements and LUAs used for customary land transactions with outsiders for the planting of oil palm did not provide adequate tenure security for outsiders, and nor did they ensure that all members of the landowning group consented to, or benefited from, these land transactions. Thus, following wide consultations with landowners and migrants, the important elements of an LUA emerged which formed the basis of a template that migrants and landowners could modify to meet their own particular needs and circumstances.

There were two broad aims in developing a template for a LUA. The first aim was to create a more transparent process in accordance with customary law, so that all individuals with a stake in the land would be brought into the process of negotiation. Second, given that landowners and migrants interpreted land transactions differently, there was a need in these negotiations to reconcile their disparate perspectives with the objective of giving greater tenure security to outsiders while recognising the underlying tenure rights of the landowning group. We did not seek to be proscriptive in developing a template but rather sought to bring into discussions matters that potentially could lead to disputes if they were not considered during initial negotiations.

#### *Transparent transactions*

The main components of the LUA template were concerned with making the land transaction more transparent and developing clearer definitions of the rights and obligations of both parties. The main point of agreement amongst landowners was that the template should state explicitly that the outsider acquiring the land was not purchasing the land outright as in freehold title, but rather obtaining usufruct rights to the land for defined purposes (oil palm production, food gardening for household consumption and family residence) and for a specified period of time. Their objective was to ensure that the underlying customary rights of the landowning group were preserved.

Transparent land transactions were also important for migrants. Many migrants attributed the discontent of the younger generation of landowners towards migrants to the fact they were not party to land transactions and some had no knowledge that land had been transferred until it was being cleared by migrants. To enhance transparency, a three-party signatory process was included in the LUA template which comprised the landowning clan members (at least four senior clan members, including women leaders), individuals from the clan who, under customary law, had use rights to the land, and the outsider acquiring the land. These signatures were to be witnessed by the OPIC Officer, the local government Land Mediator, the Ward Councillor, a local church leader and a clan leader from a neighbouring landowning group. The agreement was to be signed publicly, with good representation from the landowning group present, including those individuals or families authorised and identified by the community to deal in land matters. Prior to signing the LUA, confirmation would have to be made that a majority of landowners with an interest in the land gave free prior and informed consent and supported the proposed land transaction. If the majority opposed the transaction, the agreement was not to be signed and the transaction cancelled. In reality, the consensus form of local governance that is common in rural PNG meant that eventually everyone would reach a unanimous decision as to whether or not the transaction should proceed. To complete the transaction, a block inspection report was to be undertaken which identified the land parcel and confirmed its suitability for oil palm. Rather than undertaking an expensive land survey of the block, the cost of which was beyond the means of most smallholders, land boundaries were to be surveyed by GPS and clearly demarcated using

traditional means such as planting along plot boundaries with *Cordyline (tanget)* species, coconut or betel nut palms.

#### *Specific rights and obligations*

Other rights and obligations of the clan leaders and clan members disposing of the land, and the outsider, that emerged during discussions, and which were incorporated into the template, included clarification that the landowners relinquished any use or management rights to the land for the duration of the agreement and stipulated the specific rights of, and restrictions on, migrants. For example, the rights of the migrant to plant other cash crops and food crops, to establish small businesses, houses and other assets and to bury their dead on the block were often major sources of conflict between landowners and migrants. For instance, burials of migrants' family members on the block were opposed by all landowners because such practices were a way to assert permanent land rights. As an alternative, the LUA specified that burials could take place on prescribed village cemeteries free of charge. These rights and obligations were specified in the template.

Similarly, most landowners were opposed to members of the migrant's extended family residing on the block. Landowners pointed to blocks that were like small villages because so many of the migrant's relatives were living there. The default option in the LUA was that only the migrant and his/her immediate family could reside permanently on the block. Interestingly, several migrants were not opposed to the restrictions on who could settle with them on the block. Migrants saw it as a way to prevent relatives from residing with them indefinitely, and it gave them an acceptable excuse to avoid what could become onerous financial obligations.

Regarding the land itself, all landowners were opposed to migrants on-selling or sub-leasing the land to a third party or allowing migrants' relatives to manage oil palm holdings. Landowners argued they had the right to repossess the land and return it to common property because in such cases migrants were seen as forfeiting their rights to the land because they were terminating the relationship with their host lineage upon which land access depended. From the perspective of the landowners, because the new occupants of blocks did not have relationships with landowners, they did not have a moral claim to occupy the land. Similarly, some landowners were of the view that oil palm blocks should pass back into customary ownership if migrants were to die before the LUA expired, the rationale being that transactions were only with migrants, not their families. However, this view was uncommon, and most landowners agreed to include a clause in the template that the immediate family, typically the spouse, should inherit the block for the remaining period of the LUA.

#### *Payments and compensation*

Another topic discussed extensively was payment for use rights to the land. Customary land 'sells' for between K500 and K3000 per hectare (AUS\$1.00-K2.50, Westpac exchange rate 20 September 2011), and payment is made in instalments over several years, although no formal agreements are usually in place for this. Landowners requested, as part of the new LUA, that alongside the initial payment for the land, migrants should make regular payments to the landowning group to retain long-term access to the land. This ongoing payment was to be based on the value of production from the oil palm holding, similar to a royalty, and applied for the duration of the agreement. Thus, as production from the block increased through time and/or oil palm prices rose, landowners would receive a share of the increase in the value of production. Similarly, if oil palm prices fell, landowners too would share the pain of migrants as their returns would also fall. A production fee of 5-10 per cent of the value of

production was considered an appropriate rate. In line with the emphasis on transparency, both parties agreed that all payments and payment arrangements should be transparent and documented, preferably by automatic deductions from growers' payments.

A final area for inclusion in the LUA template, and which was raised by migrants, related to compensation for non-removable assets such as coconut/betel nut palms and water tanks if the LUA were not renewed on expiry. One suggestion for handling compensation for non-removable assets involved the suspension of the oil palm production fee for the last 5 years of the agreement. Deductions would continue but be held in trust until it was decided whether or not the LUA would be renewed. If it were not renewed the lump sum would be paid to the migrant as compensation for vacating the block; if it were renewed, the lump sum would be paid to the landowners and considered to be *hamamas pei*<sup>2</sup> (see below), that is, a gift to renew the relationships for a another planting round of oil palm.

#### *Indigenising land transactions: nurturing social relationships*

To further enhance the transparency of land transactions and legitimise them in terms of customary practices, landowners and some extension officers recommended that land transfers should be indigenised rather than simply mimic Western ways of dealing in land which had less legitimacy in the eyes of most villagers because they were not relational based. In Oro Province, for instance, many of the early oil palm blocks in the 1970s and 1980s were established on land gifted to fellow villagers. Often these land gifts were reciprocated with large feasts hosted by the person receiving the land at which cash, pig meat and large quantities of other foods were presented to customary landowners. These large celebratory feasts were attended by most members of the host landowning group as well as by clan leaders from neighbouring groups who witnessed the land transaction and the gifts received by the customary landowning group (Curry & Koczberski 2009; similar processes for legitimising land rights have been noted in Africa, e.g. Mathieu *et al.* 2002; Chauveau 2006; Chimhowu & Woodhouse 2006). Large-scale communal feasting and gift giving thus legitimised and gave public recognition to the moral rights of the outsider to produce oil palm on the land of his 'host'.

By constructing these land dealings as indigenous exchange transactions they are excised from the realm of commodity exchange and given a moral underpinning amongst landowners that serves to strengthen the tenure security of migrants acquiring the land. Embedding the land transaction in large-scale communal feasting and gift exchange established three critical points for establishing a moral basis to land rights: (1) that the transaction and its meaning is transparent and apparent to all; (2) by partaking in the feast, participants are acknowledging the transfer of land rights to the outsider and endorsing the latter's access rights to the land; and (3) that migrants' land rights are relational based, a relation created by communal feasting and gift exchange. It therefore becomes difficult for landowners to renege on these agreements — there are simply too many witnesses to the moral basis of the land rights of the outsider. Communal feasting and exchange also ensures that migrants acquiring land are drawn into these exchange relationships and therefore know and understand their future obligations for maintaining these relationships and, by extension, their ongoing access rights to land.

Similarly, whilst the notion of a production fee mentioned above received universal support amongst landowners, some migrants were opposed to this idea. These migrants held the view that their acquisition of land was a commodity transaction which entailed no further obligations to and relationships with the customary landowners beyond initial payments.

However, a significant proportion of migrants realised that the absence of an ongoing relationship with landowners was often the principal reason for the disputes and strained relationships with their hosts. The proposed production fee draws on indigenous value registers where the bounty of the block is shared with the host lineages in ways that enhance and strengthen the social relationships between them (Curry & Koczberski 2012). The production fee is similar to payments in indigenous exchange for granting outsiders access to land for food gardening, and again places the relationship within the realm of indigenous exchange thereby enhancing the moral legitimacy of outsiders' land rights.

### **Conclusions and implications for policy reform**

Like other landowners in developing countries, particularly in Africa (Peters 2007; Yaro 2010), landowners in PNG are keen to realise the economic opportunities on their land, and have demonstrated their desire to do so by entering a diverse array of tenure arrangements with outsiders. However, as discussed in the introduction, land reform programs based on Western models of land tenure have had limited success in PNG, and increasingly policy makers are acknowledging that land reform should aim to support and build on existing customary tenure rather than replace it. The LUA template described in this paper accords with this shift to an adaptation approach to land reform. One of the central goals of the new LUA was to develop a template that maintained customary ownership at the group level but strengthened the use rights of individuals for the full cultivation cycle of oil palm. This endorses Fingleton's recommendation that a 'two-tier registration system, with group titles as the 'head title' (i.e. ownership), and then subsidiary titles (such as leases) granted by groups to the users of the land' (2005, p. 35) is a feasible reform.

By designing an LUA template in collaboration with landowners and outsiders, the case study has three implications for policy reform. First, the ways in which customary tenure has been adapted, manipulated and modified in response to migrants' demand for land demonstrates the capacity of customary tenure to accommodate new challenges and generate 'new forms out of old' for the modern context. It shows that solutions are to be found in what is already happening on the ground, rather than in externally imposed models that do not fit well with local cultural mores about the inalienability of customary land and its enduring social and cultural significance for customary landowning groups.

Second, and related to the first point, while landowners are eager to realise the income potential of their land, they are only keen to do so if their customary tenure rights are preserved. The LUA template provides use rights for outsiders for fixed time periods with clear recognition of the underlying and inalienable land rights of customary landowners. Thus, as recently proposed by the NLDT, adaptation of existing land tenure systems rather than wholesale change is a way forward. Indeed, the informal land transactions already taking place in WNB illustrate to a large extent that it is not necessary to convert customary land to individual freehold title to improve economic performance of the smallholder sector, as argued by some (e.g. Curtin & Lea 2006; Gosarevski *et al.* 2004). Despite their insecure and temporary tenure, migrants cultivating oil palm on customary land have very high productivity. Their production levels are much higher than those of landowners and are comparable with smallholders residing on state agricultural leasehold blocks registered to individual farmers (unpublished data).

Third, land use agreements must be based on a clear understanding of the local socio-cultural and environmental contexts. One of the key elements of the LUA template is that it draws on indigenous principles and relational concepts of property rights. Thus, the search for potential

models to mobilise land are not necessarily to be found in externally imposed models that treat land as an alienable commodity. Potential solutions and models can be derived by drawing on what is already happening at the local level and the adaptations and modifications that are already taking place on customary land outside government structures as landowners and migrants themselves develop solutions to meet new circumstances. These innovations draw on customary principles for their validity and moral basis, and the goal of policy should be to strengthen these aspects rather than undermine them.

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### NOTES

1. Section 81 of the Land Act prohibits the sale of customary land except to citizens of PNG in accordance with customary law.
2. *Hamamas pei* is a form of gift exchange that refers to 'payments' to elicit positive feelings towards the giver by the receiver of the payment.

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