THE COMMISSION OF INQUIRY INTO LAND MATTERS 1973:

CHOICES, CONSTRAINTS AND ASSUMPTIONS

By

Alan Ward *

AS is now well known the Commission of Inquiry into Land Matters (CILM) arose out of reaction among indigenous politicians, and some expatriate critics, to a package of four Bills introduced into Parliament in 1971 to assist the registration of selected areas of customary land in Torrens-type titles - titles which would have totally replaced customary interests with interests defined and cognisable under the received law. On the eve of self-government this was felt by **Pangu Pati** leaders in particular, to threaten too heavy an inroad into customary land tenure and customary society to be accepted without careful reconsideration by indigenous leaders, from the best information possible. Certainly a major object of the Australian administration's Bills - an increase in commercial production by indigenous farmers - was shared by the Papua New Guinean leaders. But they wished to see alternative approaches explored, and options presented.

By implication at least these options were to include consideration of increased production under customary land tenure. It is usual at times of nationalistic mobilisation for custom or tradition to be given special reverence or emphasis in order to express, and to harness, popular objection to the impositions of colonial rulers and their values and institutions. Some expatriates too, such as Mr John Ley, the Parliamentary Counsel who drafted the terms of reference for the CILM, and most members of the Commission's staff, had somewhat similar motives for respecting a customary basis of development - notably fear that once land was taken out of the complex pattern of customary controls, for whatever good motive, it would disappear into the legal-bureaucratic process and thus into the clutches of the elite who were able to manipulate that process. The landless misery of millions in Asia and Latin America served as grim warning against this kind of trend.

But was this fear excessive? Was custom already in some areas becoming an empty shell, an unwholesome constraint to rural development? There were dozens of empty villages in Goilala or Kerema territory to the west of Port Moresby and hundreds of able-bodied Goilala and Kerema men in town. Also hundreds of Highlanders, amongst whose complaints was that it was increasingly difficult to get access to land when their own big-men had planted former garden land in coffee or fenced it for cattle. Would it indeed promote greater rural vitality and productivity if the land were registered and marketable, and young men could buy or rent it? These questions relating to customary land were the most important the CILM had to face.

---

* Reader in History, La Trobe University.

However, once it was clear that a Commission was going to be set up, it became expedient to load upon it all the difficult land questions that had been troubling Papua New Guinea for a decade: what to do about the plantations, especially on the Gazelle Peninsula where the Mataungan squatting movement was at its height; what to do about the increasing violence in the Highlands, much of it said to be about land; what to do about the compensation claims for land in Port Moresby, Lae and other towns, already the subject of protracted and expensive litigation. The draft terms of reference ran to nearly three pages. In Cabinet another question was added, apparently at the suggestion of Dr John Guise: should the acquisitions of land by conquest just before the Australian pacification be respected and upheld, or should it be returned to the often clamorous and restive groups who had so recently lost it?

The Commissioners were conscious that they had had many of the hard questions dumped on them and that they were expected to give answers or directions. All were conscious that this was a unique opportunity and occasion, a privilege to share in the founding of their nation. If the Government and the Parliament wanted the Commissioners to give direction the Commissioners were indeed prepared to give it, although the more thoughtful of them reeled at the magnitude of the task. (Commissioner Kilage confessed that it made him sleepless and ill to think about it.) Having manfully shouldered the task the Commissioners then proceeded to recommendations on each subject which were firm and prescriptive.

Whilst the Commissioners were prepared to make up their minds and state what they thought best there was nevertheless a great deal of debate, formal and informal, within the Commission about alternative approaches to land problems and some of this was included in the Report. (To include more, it was felt, would make the Report unwieldly or even unreadable.) It is appropriate here to record a tribute to the earnestness, total integrity and determined industry of the Commissioners, notably the Chairman, Mr Sinaka Goava, and senior men such as Messrs Ignatius Kilage, Edric Eupu and Donigi Samiel. The younger men often brought a sharp intellect to discussion, and a greater awareness of the demands of modernisation. If one or two were also at times seduced by the attractions of modernisation, such as hotel bars, they were very quickly recalled to a sense of duty by their seniors, and the Commission worked together with increasing sense of purpose and unity. Nor did tensions between regional and linguistic groups (then producing secessionist movements in Bougainville and Papua) impair the Commission. The Commissioners elected as their deputy-chairman a member from the New Guinea side (Mr Cletus Harepa of Bougainville) to balance their Papuan chairman and little was heard of regional rivalry.

All but two of the Commissioners, who were public servants, had been called out of private life as agriculturalists or businessmen in their districts, and found it difficult to spend long periods of time away from their families and their private work. They enjoyed reasonable stipends but not the same expenses as the politicians in the Constitutional Planning Committee, for example. These factors tended

to inhibit any desire to prolong the work of the Commission in the way that the Constitutional Planning Committee politicians were able to prolong their work.

But the Commission did as much as was humanly possible. Many tiring, and sometimes very scaring flights in small planes to remote centres, long hours of patient and invariably courteous attention to submissions at public hearings, protracted discussion sessions in the evenings and weekends - and always the difficult, seemingly intractable, problems to deal with. At the end of ten months it was scarcely surprising that the Commissioners and support staff alike were tired and wanted to complete their task quickly, fully aware that the bureaucracy and various interest groups would fall upon it and that a very full discussion would occur when any aspect of the report was considered for implementation.

The Commission's mode of proceeding was to alternate two to four weeks periods of visits to district centres and villages with similar periods of discussion and consideration of draft papers. The first four weeks of 'shake-down' were devoted to discussion papers on each of the terms of reference, written by the support staff, at which broad policy alternatives were set out - for example, freehold versus leasehold tenure, public versus private ownership of urban land, systematic registration of land by administrative process versus sporadic registration emanating from court decisions, etc. The sessions were useful in establishing a common vocabulary of terms and in creating awareness that amongst them the Commissioners themselves had a good deal more insight from their experience than they had perhaps realised. Some were farming customary land, some held registered titles under the **Land (Tenure Conversion) Act** 1963; some had individual urban plots, some lived in their traditional villages; some came from areas of patrilineal succession, others from areas of matrilineal emphasis. All of them, however entrepreneurial and progressive, shared a very strong respect for the custom of their own areas, even though most, if not all, wanted to see it modified or relaxed in some regard and to some degree.

Theoretical discussion, however, soon became wearing and the Commission was always glad of the stimulus of public hearings. A point that can not be too strongly emphasised in this context is that again and again the witnesses who offered the most helpful and reasonable submissions and discussions, showing an appreciation of the difficulties of choice while quietly arguing their point of view, proved to be the leaders in remote villages. These people had little or no formal education. They sometimes came to meetings from the gardens still carrying their spades and had initial difficulty in understanding what the Commission was about, but within an hour settled to surprisingly thoughtful, detailed discussion. Sadly, the converse was often true of the organised political movements (though they, of course, expressed their viewpoints forcefully) and also of the formally educated peoples detached from village culture with, at best, rather half-baked notions of land problems in their own country and elsewhere. The least helpful submissions, regrettably, came from the University of Papua New Guinea. Those from Lae and Kerevat Agri-

cultural College were rather better. Something about village life, however, its great complexity of checks and balances, clearly produced a maturity in the village leaders - an ability to listen and weigh argument, to reason and to distrust excesses. This seemed then, and seems to me still, to be one of the great strengths of Melanesian culture - where it is not traduced or seduced by political or quasi-intellectual rhetoric.

Although all the major problems requiring consideration were present in some degree in all districts each district in turn seemed to be dominated by one overriding issue. Thus, although the Gazelle Peninsula was a focus of controversy over registration of customary land, the burning issue of the day in that area was the extent of alienation of land and the unresolved tensions relating to the Mataungan squatting movement. A serious constraint in these situations was the inevitable difficulty of getting people, highly politicised about the issue, to think beyond the solution to the immediate problem. The real difficulty concerning alienated land was not about getting it back from settlers (that had been falsely exacerbated by the rigid and unimaginative policies emanating ultimately from Canberra) but in redistributing the land among Melanesian claimants once it had been re-acquired. However discussion centred keenly on the former problem. The Mataungan leaders of course did not believe that redistribution was a problem. The land was, in their view, to go back to the traditional claimants, and they said they knew, or could quickly establish, exactly which traditional claimants were entitled to which portions of the plantation. This was despite (for example) actual physical clashes between villagers on either side of a disputed plantation in the Toma area, and despite the small groups of people who waited for a quiet moment to tell the Commission that the Mataungans were claiming land that was not traditionally theirs. Nor was it possible to get much consideration in public discussion about criteria like needs. It seemed likely that some well situated villagers would recover a lot of land, but that some land-short ones would remain land-short.

For their part the Commissioners, including the Tolai member (a non-Mataungan from an area which had not suffered much land alienation) had an eye for stability in the national economy, as well as for Tolai agitation, and, while recommending that the government legislate for compulsory re-acquisition of plantations where necessary, stressed that un-developed land should be recovered first, and that redistribution should have regard to needs, at least as much as to traditional association with the land. But deep down they knew that the Central Government would have to acknowledge the balance of forces on the ground in the Gazelle. Their recommendation that responsibility for redistribution be left to local Tolai authorities acknowledged that fact.

As far as the planters were concerned the New Guinea Planters Association formerly declined invitations to meet with and make submissions to the Commission, saying that they preferred to deal directly with the Government. The Papuan Planters Association did make a submission but only a belated and very general one. This was

a serious mistake in tactics by the Planters Associations, the New Guinea planters in particular, because the Commission included no hard line antagonists of the planters and the forming of ties with leading Commissioners at that stage might have helped forestall some of the difficulties that later arose over the Plantation Redistribution Scheme. Instead the Rabaul planters, through their secretary, Mr Hamilton, sought a discussion with me as consultant to the Commission and, with the Chairman's permission, I agreed, of course reporting back to the Commission. I found that some of the planters were quite obtuse as to why dispossessed groups of New Guineans, such as the Enuk Islanders, persisted in wanting **their** land back rather than accepting undeveloped land somewhere else. Nor did they appreciate that cultural and political nationalism rather than economic motives provided the main impetus to the drive to recover land. But Hamilton and some of the others realised that they were indeed living in fast changing times, knew that some land had to transfer, and were prepared to get down to discussion on the machinery of the transfer - especially the valuation of the land and the sources of funds for payment. There was some awareness that the defence of freehold title by the previous administration and the excessive asking prices of the planters had underlain the previous dangerous deadlock on the Gazelle. I foreshadowed that either all freehold would be converted to government leases or that land would only be able to be sold to Papua New Guinean citizens. The planters' representatives also took the point that there was no way that the incoming government would either pay for the unimproved value of land as if there were still to be a freehold market in plantations, nor allow villagers to be saddled with overhead costs of such repayments. Payment on the basis of the income-earning capacity of improvements, however, was another matter and Mr Hamilton suggested formulas for this which were later discussed with the Valuer-General. The Commission recommended in favour of payment on the basis of unexhausted improvements and felt that there was no insuperable difficulty in achieving satisfactory principles for the transfer. The power of compulsory acquisition was thought necessary to reduce excessive asking prices. The Commission left the Gazelle feeling that it could make an important contribution to breaking a long deadlock and easing the tension and violence there, and produced an Interim Report, embodying its views on the alienated land question.

The next pressing issue that confronted it was the question of machinery to determine customary ownership of land, especially disputed land. The background to this was the increasing violence in the Highlands, the subject of an official report at that time, and the Commissioners' views were largely formed during their tour of the Highlands. An important aspect of evidence received was an almost universal loss of confidence in the Land Titles Commission (LTC) - a body which had been created under an Ordinance of 1962 mainly to assist in the systematic investigation of undisputed land but which had tended to become drawn heavily into adjudicating disputes. Under the Chief Land Titles Commissioner of the early 1960s the LTC had also been drawn into over-ambitious attempts at systematic adjudication over large areas of the country. Attempts to define ownership in the Highlands and near Rabaul had aroused suspicion and resentment

amongst traditional claimants. Witnesses to the Commission lamented that the land groaned under the weight of the LTC's cement markers. The local committees appointed to hear claims were distrusted as meddlesome and biased. The Land Titles Commissioners themselves were criticised because as outsiders they could not understand custom and were misled by witnesses, interpreters etc.

Much of the criticism was ill-informed of course. It did little justice, for example, to the very valuable efforts by men like Commissioner Sydney Smith who had spent two years collecting genealogies of the matrilineal groups around Kokopo and relating them to the scattered territories to which the matrilines were primary claimants, definable by natural features and patterns of usage. Smith's maps and genealogies were still valuable as a basis for settling claims in the mid-1970s. That kind of systematic gathering of evidence amidst a people with fairly regular tenure patterns, and not accompanied by expensive ground-marking exercises or threats of registration and tenure conversion, was perhaps not sufficiently emphasised or appreciated in the evidence or in the CILM's subsequent comments.

More fundamentally of course the LTC was in a no-win situation. The Ordinances and instructions they worked under assumed a view of customary land rights in which there were fairly clearly definable tenure rules and priorities of claim, that the evidence could elicit these together with the history of the land, and the disputed land could be awarded and distributed according to these principles. This ideal situation obtained only rarely. Most recent analyses of Pacific land tenures show that land rights are not separable from the whole complex of social, political and economic relations of the groups and sub-groups which occupy the area concerned. Groups, subgroups and individuals own a variety of kinds of rights at various levels and the groups themselves are not immutable. Dispute is inevitable in a constant process of adjustment in which many claims are theoretically legitimate. This view of land disputes was broadly confirmed by evidence in the Highlands. For example, people sometimes pleaded with the CILM to remove boundaries placed by well-meaning officials in an effort to resolve disputes - boundaries which in fact had obtruded heavily into the intricate pattern of social relations and land use and attracted dispute rather than resolved it. In consequence the Commissioners, well aware of the real nature of land disputes from their own communities, very soon resolved to recommend a process of compulsory informal mediation, which it was expected would see most disputes re-absorbed into the social flux from which they arose and prevent them going into formal litigation. They also resolved to recommend that both mediators and arbitrators (at the level of formal courts) should be empowered to recognise and award a much greater distribution of rights to land than had been open to the LTC. In this context an effort was made to accomodate Dr Guise's concern about recently conquered land, by provision of payments or possible return of land, especially when the losing side was also losing in respect of the tally of dead - a custom previously observed, but in abeyance since the pacification.

The Commission debated at length whether land matters should

continue to be dealt with in a separate system of courts from that which heard general disputes about the pig trespass, insults, assaults etc. which were often associated with land disputes. It was decided that, because land disputes were not strictly separable from the usual flux of society, the local land court should be chaired by the local magistrate of the area, who had general jurisdiction. At this point the Commission became aware that considerations of manpower were going to be an important constraint on any of its proposals being implemented. Local magistrates whom the Commission met on tour had almost always agreed that land disputes and common crimes were not easily separable and that they should have a general jurisdiction over both but they were also aware that they were very hard pressed as it was; the administrators of the judiciary in Port Moresby also wanted to shield them from the burdens of the land jurisdiction. The Commission went ahead with its recommendation but with grave fears that the local court magistrates and mediators would not be appointed in sufficient numbers or backed with sufficient transport, secretarial and other aid, to enable them to get to grips with their task.

The other looming fear was whether arbitrated decisions, when made, would be enforced. The Commissioners were most emphatic that they should be enforced and concurred in recommending that summary offences proceedings for violation of court awards relating to land should be provided for. They knew that large scale clan fighting was of another order again and would require what was then being called 'political settlement' by the Highlands leaders. And they had all heard, and duly acknowledged, the emphatic view of their own Western Highlands member, Mr John Kup, that no matter what rationalization and finesse were attempted, Highlands fighting would be unlikely to decline in the foreseeable future, 'because we like fighting'.

In these respects the Commissioners, while eager to recognise and support many traditional values, often held a much more hard-headed view of 'custom' than obtains in the rhetoric of political nationalists, who sometimes support and romanticise idealistic and impractical proposals. It was entirely reasonable and indeed necessary to respect the force of tradition in shaping the principles of dispute settlement. But everybody knew that, traditionally, power and authority were extremely dispersed, and that if the exigencies of the nation-state were that there should be a minimising of dispute and a maximising of production, some authority had to be established to control traditional resort to violence. The Commissioners knew very well that claims such as 'we all know our boundaries' or 'we only need to sit down together and talk to resolve disputes' were, if true at all, true only in very favourable circumstances. However, this was not the time for disturbing all the comfortable rhetorical statements or demanding that government grasp all of the nettles. Most statesmen (and the Commissioners tried to be statesmenlike) had to show respect for custom even if they had doubts about it.

One important nettle which the Commission hoped the Government would grasp, however, was the question of compensation claims for land taken for urban development. Claims by clans in Lae and Port

Moresby had been the subject of lengthy and expensive litigation, with the administration opposing the claims, from the very justifiable fear that to grant them would be to open a Pandora's Box of claims on every township in the country. On the other hand the nationalist politicians, now in power, had jumped onto that particular bandwagon for electoral purposes and were promising considerable **ex gratia** cash payments to the more demanding claimants.

The Commission's view on this question was that some clans (not necessarily all who had claimed but probably including some who had **not** claimed) had indeed lost land for little or no payment. But they were also concerned about large payments being made in cash which could quickly be spent, leaving the grievance still remaining. The real objective, the Commission felt, was to give the village communities living on the edges of the towns, in addition to some cash payment intended to benefit the older generation, a significant share in the enterprises of the towns so that they were not marginal to its development but paticipants in the process. Mr Goava, the Chairman, himself a Hanuabadan, felt strongly on this issue. But the Commissioners knew that the politicians were getting themselves committed to the immediate cash payments.

Related to this was an acceptance in the Commission of the view that **value** in land was created by the community - the whole community that built the shops, the roads, the factories, the schools, the hospitals and the port facilities. Therefore it was simply not just for customary owners to claim the whole improved value on land, as some were doing. The Commissioners were also impatient of the villagers who, all around the country, were demanding rent for land used for schools, hospitals and other public utilities. In this sense the Commissioners were acting as leaders of a modern nation-state, and were respectful of the efforts of government to provide community services. They were not indifferent to the fact that villagers had sometimes permanently given up land for these services and some of them felt that this should indeed be recognised, not in direct money payments, but in such ways as provision of free places in schools. But whereas nationalism, and the assertion of custom, had thrown up centrifugal forces, with claims by local clans against the national government such as had previously been asserted against the white colonialists, the Commissioners were strong supporters of central government - or perhaps the incipient provincial governments, then represented by Area Councils in which many of the Commissioners themselves were deeply involved.

On the general question of added value in urban land the Commissioners were consistent in recommending that most of the value created by the community should accrue neither to the original villagers nor to the (mostly white) owners of freehold in the towns. Rather that all freeholds should be converted to government leases and that the added value should go, by way of rent revision, to the local and national governments on behalf of the whole community.

This concept was taken a step further in the development of the idea of 'national land'. It was realised that the independent gov-

ernment was going to have even more difficulty in acquiring land from the customary rightholders than the colonial regime had had; it would even have difficulty holding on to what it had inherited from the colonial period. Professor Ron Crocombe, a consultant to the Commission, suggested that a term needed to be found to try to harness national pride then flowing and overcome the adverse attitudes held towards 'government land' or 'public land'. 'National land' was the choice and the Commission discussed ways of acquiring such land other than by outright purchase, which had already become difficult for the administration. The Commissioners were influenced in their support for a national interest rather than the local particularism about land, by the representations of visitors such as Professor Rudy James, formerly Professor of Law at Dar-es-Salaam, and the late Tom Mboya of Kenya who came through Port Moresby at this time. But here again the Commissioners were well aware that the fierce and intensifying determination of villagers to assert control over their land would make acquisition very difficult for the national government.

One area where this was particularly important was the pressing need to acquire land for land-short Papua New Guineans such as the people from the limestone valleys of the Chimbu or the crowded coastal plain of the Gazelle and the swamp lands of the Gulf. Some wanted land even for a basic subsistence, some for cash-cropping. Others, migrants to the towns, wanted house sites. Many had already entered into a variety of relationships with the traditional owners of peri-urban land - relationships more or less satisfactory depending on which was the physically stronger group. Often host clans had been glad to welcome migrants for the payments they made, but as the migrants' kin arrived and they grew in numbers the host groups saw control passing from them. This was a matter of great concern to the Motu people of Port Moresby, for example, including Mr Goava.

Advisers to the Commission, tending to see the land as a national resource, and believing that most host groups were not really land short, urged generous terms for the migrants such as actual sale of land through the government, or perpetual lease on low rental. But the deep-seated sense of tribal or clan patrimony intruded. Whilst the Commissioners were often willing to see this over-ridden in the case of government acquisitions for public purposes, they were much more reluctant to recommend transfer of rights to alien groups of migrants. In a sense the issue was dodged by the adoption of a recommendation that the public purposes for which government could acquire land should include the purpose of urban expansion. Few on the Commission felt that the government would be politically strong enough to exercise such a power in the foreseeable future, except in relation to small and specific areas.

The Commission was inhibited in its thinking on this issue also by strong objections to direct leasing between Papua New Guineans. Direct leasing had been part of the Australian administration's strategy in the planning before the 1971 Bills, although that aspect had not been made explicit outside the planning meetings of officials and surveyors. It had been seen as one way in which enterprising Papua New Guineans, as well as expatriates, could acquire sufficient land

for their purposes. Yet the administration itself had hesitated to lease land on the edges of towns, preferring to purchase the land outright (despite the increasing resistance of customary owners to sell) so that they would not in effect become prisoners of their policy and never be able to acquire the freehold again.

Something of this attitude affected the CILM, perhaps surprisingly since the customary system of making regular gifts or contributions to feasts came close to a rental system. Nevertheless there was reluctance to shift such relationships onto an entirely commercial basis - a reluctance shared by some of the support staff, including myself. The advisers' reluctance stemmed from a general distrust of landlordism, where the landlord group could capture local State power, control the local courts, exploit the migrant groups and live as rentiers rather than as producers. Perhaps this was doctrinaire to some extent but the spectre before the eyes of the advisers was the appalling social division based on landowner/tenant relationships into which much of Asia and Latin America had slid. Unless the State could guarantee that tenants' rights could be respected we were reluctant to see the old checks and balances of the customary system abandoned. The CILM report is therefore shot through with dire warnings about the dangers of introducing direct leasing.

I have since come to believe that this was an over-cautious line. Certainly in the vicinity of the main towns the migrant groups were already strong, and capable of organising and resisting exploitation. In such cases, to a very large degree, it was the traditional owners rather than the migrants who needed the protection of the State. In towns such as Lae, tenant groups had in fact begun organising themselves to make contractual arrangements of a leasehold nature with the host clans. This was going on even while the Commission was working and the administration officers were drawing up unofficial agreements, which were in effect leases, to regulate the rights of both sides. In rural areas it would certainly be a stimulus to cash cropping if tenants (and the agencies which lend them money for development) had contracts secure enough to protect their investment of labour and capital, at least sufficiently to reap their crops. Yet I still believe that direct leasing between Papua New Guineans has to be approached with caution. It is not generally needed to secure land for subsistence purposes, for which there are customary mechanisms which usually suffice, and which are a good deal more efficient than formal State-run land development schemes. Moreover, the danger of exploitation of small and isolated rural tenant groups is real and would be difficult to control.

Much of the fear that Papua New Guinean society could divide itself into landed and landless classes also affected the Commissioners' attitude to the great question of registration of customary land. In this area the Commission was greatly helped in its reflections by the experience and attitudes of two of its members, Mr Donigi Samiel and Mr Edric Eupu, who already held blocks under the **Land (Tenure Conversion) Act** 1963. Under this law all customary incidents of title were extinguished and the registered titleholders were free to sell, gift, will, mortgage or lease their blocks under

the received law. Despite this, however, neither Mr Samiel nor Mr Eupu then considered themselves to be free to transfer the land in any way without the consent of the village community who had been the traditional rightholders, except perhaps by natural succession to their sons. Because of various stimuli to cash-cropping, land-rich villagers on the Popondetta plain had felt emboldened to pool their complex interests in part of their **surplus** land and make new dispositions of the land so that individuals among them secured defined areas for cropping and cattle raising. But this was not considered to imply any intention to alienate the land outside the clan cluster. For example Mr Eupu (who, incidentally, was not a member of the primary descent group by birth but had become a member of the relevant community by virtue of his marriage into it and by his able leadership) understood that he had secured the right to develop the land and to pass it to his son who helped to work it. Otherwise residual rights remained with the village. Mr Samiel, in the Wewak area, felt similarly. So did most block holders interviewed by the Commission. The road was therefore open for recommendations that land registration, or land tenure conversion, need not mean conversion to a fully negotiable freehold. In this way the Commission hoped to balance encouragement for development by safeguards against total undermining of village community relationships with the land.

The Commission also placed great emphasis upon registration of group title so that the indigenous community of rightholders would retain the title while subsidiary interests such as registered rights of occupation, could be granted by the group to some of their number. This was another attempt to balance tradition and custom with the requirements of modern farming. It rather begged the question of how the group should be defined - a notoriously difficult problem in some Papua New Guinean societies - but this (and the related question of succession to land rights) was felt to be a matter best left to local custom and the local machinery of dispute settlement.

In striking these balances the Commission also discussed the question of indefeasibility of title. Dr Peter Sack, an A.N.U. academic who had encouraged the move for the setting up of the Commission, made a submission to the effect that a registered title need not be indefeasible. This meant, for example, that if A (a registered titleholder) transferred land to B who then developed it but C came along and showed that, under custom A did not have the rights to register and transfer the land in the first place, B (and his heirs and assigns) might not be protected in his title by the State; rather the State might enforce compensation to B for his efforts and C's interest in the land would be recognised (as it would **not** have been after the process of registration had been completed according to the 1971 Bills). The Commissioners were doubtful about this. They were quite firm that if B (in the example above) acquired a registered interest and developed the land he should be protected in that interest. The entitlements of A (who granted the interest) might, however, be modified if C's subsequent claim was proved valid. That is why the Commission recommended that registration of title should only be 'substantial evidence' rather than 'conclusive proof' of the facts represented in the register. The point was perhaps not made as

clearly as it might have been[1] but the Commissioners, thinking mainly in terms of group title, did not consider that adjustment of the interests of various primary rightholders of the group would present any serious difficulty. The interests of people (like B in the example above) who took leases or rights of occupation from the current group leaders did, however, require to be protected against subsequent capricious changes of mind, within the group. On this the Commissioners felt strongly, not only in the interests of development, but from a sense of honouring commitments.

In 1973, the CILM recommended in favour of full registration of **some** land, but sparingly, and only where the expected development (such as urban growth, intensive cropping or rural industry) warranted the expense. In recommending that the registration process should be used sparingly they were not in fact all that far from the thinking of the more responsible members of the Australian administration who had planned the 1971 Bills. But there were some distance from them in advocating that in many cases a **title less than a fully negotiable freehold is appropriate.**

The Commissioners' fear of reckless alienation and division into landed and landless classes also led them to recommend bureaucratic restrictions on the number of registered titles a person could own, and to recommend drastic penalties, such as the loss of the land, for any breaches. These recommendations were based on optimistic beliefs that land administrators could be trained to administer the system. Among those who spoke with the Commission were some senior bureaucrats such as Mr Paul Ryan, who had a very clear perception of the limitations of manpower in a newly emergent State, and cautioned the Commission against over-reliance on bureaucratic controls. I have since come to a much warmer appreciation of what such people were saying. The Commission was on safer ground when it recommended restrictions in the title itself, rather than in bureaucratic controls on the transfer.

This outline of the Commission's discussions and recommendations should, I hope, serve to demonstrate the Commissioners' very serious concern to evolve tenure principles suitable to Papua New Guinea, drawing on the experience of other States, old and new, but slavishly imitating none of them. It was an enterprise which deeply absorbed the Commissioners because it reflected their own deepest values and day-to-day concerns. They were men who were both respectful of custom and tradition, for the stability and identity it gave to their race and nation; but they were all interested in development, and wanted to facilitate it. The debates about the extent of modification of custom, the direct leasing issue, and land values, for example, were protracted and frequently heated. At times support staff

1. The Commissioners really intended that the register should indeed be conclusive proof of the interests of B (in the example above) and people to whom B legitimately transferred his interest. In respect of the rights of the first recognised owner (A in the example) the Commission did not intend that the register should be used to block a legitimate original right held by C, if C could prove his claim by due process.

were able to contribute technical proposals which were taken up, at other times their influence was marginal. Nothing was accepted by the Commissioners that, according to their sense of their people's feelings, did not 'fit' Papua New Guinea.

They believed, and sincerely hoped, that a **comprehensive adoption of their recommendations would provide the basis for an increased rural vitality, giving scope to commercial farming by many thousands of villagers, while safeguarding against a total destruction of customary checks against landlessness.**

For the Commissioners then, this was anything but an academic exercise. Men like Messrs Goava and Kilage were not about wasting their time. They must now be rather disappointed that their hard work has been given relatively little consideration by government. They expected critical scrutiny of their Report before implementation; they did not expect the indifference and hostility that has been shown in some sections of government towards key elements of the Report, notably the approach to development of customary land through **appropriate** forms of registration. Even the **Land Disputes Settlement Act** 1975 which did closely follow the Commission's recommendations, was weakened in application by a parsimonious attitude towards staffing, training, payment and ancillary services for the land courts.

However, in many key areas of land policy, Papua New Guinea has been marking time, rather then embracing inappropriate models. If now, or in future, these matters are to come under consideration, or reconsideration, I cannot personally but recall the genuine efforts of the CILM to wrestle with the very difficult problems presented to them, and hope that the careful balances they worked out will not be lightly dismissed.