

# Invisible real estate agents and urban housing development on customary land in Papua New Guinea

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**SUMMARY:** *This paper discusses how urban households acquire land for housing in a country where virtually all land is held in customary ownership. Since no-one has the right to sell in customary ownership, households unable to acquire land through their "clan" have to obtain permission to use land belonging to other clans. This process has become increasingly commercialized, as some clans sub-divide and sell land use rights to non-clan members and become, in effect, major landlords. Although this process has become an important means by which low-income households acquire land for housing, it also remains informal and invisible. It is also controversial as many clan members disapprove of land being allocated to non-clan members and thus no longer available for present or future members of their own clan.*

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## I. INTRODUCTION

**THE AVAILABILITY OF** land for urban housing remains the single most important obstacle for housing development in most urban areas in developing countries. In Papua New Guinea (PNG), there is also a growing shortage of urban land to adequately serve the economic and social needs of the urban population. Indeed, land availability influences the quality of housing and living conditions, for example, in terms of availability and servicing of infrastructure, of public services, and the amount of open and recreational grounds.<sup>(1)</sup>

Where formal land development is very scarce, "illegal" or "informal" land markets are likely to dominate. Unlike in most developing countries, a little over 97 per cent of the land in Papua New Guinea belongs to customary or traditional landowners. For the majority of Papua New Guineans, land is the basis of survival.<sup>(2)</sup> Attempts by successive PNG governments to regularize land through surveying and registration have always been met with widespread protests and demonstrations.<sup>(3)</sup> For Papua

1. Habitat (1996), *An Urbanising World: Global Report on Human Settlements 1996*, United Nations Centre for Human Settlements, Oxford University Press, page 239.

2. Crocombe, R. (1987), "Overview: the pattern of change in the Pacific land tenure" in Crocombe, R. (editor) (1987) (first published 1971) *Land Tenure in the Pacific*, University of South Pacific, Suva.

3. Kaitilla, S. (1995a), "Principles, practices and conflicts of customary land-use rights: emerging socio-economic exchange systems in Papua New Guinea", *Pacific Studies* Vol.18, No.4, pages 95-119; also Kaitilla, S. (1995b), "Informal land arrangements and its contribution to socio-economic development in Papua New Guinea", unpublished research report, Land Studies Centre, PNG University of Technology, Lae.

4. See, among others, Zorn, J.G. (1991), "Making law in Papua New Guinea: the influence of customary law on the common law", *Pacific Studies* Vol.14, No.4, pages 1-34; also Narokobi, B. (1988), "Concept of ownership in Melanesia", occasional paper of the Melanesian Institute No.6, Goroka, Papua New Guinea.

5. Coombs, H.C., McCann, H., Ross, H. and N.M. Williams (1989), *Land of Promise*, Centre for Resource and Environmental Studies, Australia National University and Aboriginal Studies Press, Australian Institute of Aboriginal Studies, Canberra, page 39.

6. It should be pointed out that in Papua New Guinea, almost everyone is a landowner, just as everyone has a village to return to. For this reason, people continually move between rural and urban living, sampling both lifestyles. However, when outside his or her own village a person who occupies another person's land is said to be a non-clan landowner.

New Guineans, customary land belongs to the dead, the living and the unborn.<sup>(4)</sup> The responsibility of the living is one of stewardship of the land, to protect and care for it for future generations.<sup>(5)</sup>

Between 1993 and 1994, a study was conducted in five major towns to find out the extent and the social and economic benefits of informal land dealings in Papua New Guinea. The research canvassed the views of two groups of land users, that is, the traditional clan landowners and non-clan landowners.<sup>(6)</sup> The latter group are often referred to as "squatters" or "illegal settlers". A number of questions formed the basis of the research, including:

- what powers and responsibilities are usually bestowed on traditional clan leaders/elders?
- who allocates land and to whom?
- what are the responsibilities of trustees/custodians/clan leaders/elders? and
- what are their obligations toward other clan members?

## II. OWNERSHIP OF CUSTOMARY LAND

**THE STUDY WAS** conducted in urban settlements in the towns of Lae, Madang, Wewak, Goroka and Mt. Hagen. The questionnaire was aimed at land users, both clan and non-clan traditional landowners living in urban settlements. In each town, three local research assistants were recruited to carry out the fieldwork and the principal researcher ensured that they had clearly understood the purposes of the research.

A total of 416 people from the five towns responded to the questionnaire. Nearly 36 per cent of respondents claimed to be clan landowners whereas 64 per cent were non-clan landowners. Of the 36 per cent claiming to occupy clan land, 83.3 per cent were on land belonging to genealogical clan members. About 16.7 per cent had become clan members by other means, such as adoption (3.9 per cent), inter-marriage (7.2 per cent), integration and/or conquest (1.9 per cent) and "not sure" (2.8 per cent).

However, of the clan members, 22 per cent claimed that the land they occupied belonged to themselves, 42.8 per cent to the family, a little under 27.8 per cent to the whole clan and 7.8 per cent were not sure.

Nearly all (94.4 per cent) of the clan members who owned their land claimed they had customary land rights, arising from tribal rights (6.1 per cent), clan land rights (30 per cent), sub-clan land rights (6.1 per cent), family rights (42.8 per cent) and individual rights (12.8 per cent). Kaitilla has outlined the five levels of clan and non-clan land use rights.<sup>(7)</sup> As will be discussed later, this type of land ownership, where no one can claim absolute ownership of land, is not only complex but also confusing.

It is important to mention that it was normal among customary landowners to have clan leaders/elders who dealt with land

7. See reference 3, Kaitilla (1995a), page 99.

matters, including land allocations. Also, it was, and still is, the norm to have clan members who are given the responsibility of taking care of distant lands. They are known as land "custodians" or "trustees" whose responsibility is to see that no encroachment takes place on their customary/traditional land. Of all clan members, 25 per cent claimed they were leaders/elders, whereas nearly 47.2 per cent were land custodians and 22.8 per cent held other leadership positions within their respective clans. Yet, 80.6 per cent of the clan members felt the responsibility of the leaders/elders was to safeguard clan land rights. Nearly 13.9 per cent of the clan members thought that leaders/elders were responsible for mediating disputes on clan land and 1 per cent thought that their responsibility was to offer land to people in need.

Nearly all (88.9 per cent) clan member respondents claimed that clan members who were either clan leaders/elders (50 per cent), land custodians (10.6 per cent) or head of households (27.5 per cent) were responsible for allocating clan land. According to this finding, therefore, 30.6 per cent of the clan members were allocated land by clan leaders/elders, nearly 16.7 per cent apportioned land to themselves, 47.2 per cent were allocated land by their parents and 3.3 per cent through other means.

8. See reference 3, Kaitilla (1995b), page 11.

On clan lands, everyone has the right to hunt, gather forest produce, collect water, cut timber and use the land for gardening without encountering any major obstacles. This means that land-owning clan members can put forward land claims providing the land is frequently cleared and properly fenced,<sup>(8)</sup> in which case they establish full land use rights. For example, a clan member can claim any garden that is left fallow and whose fence is no longer maintained. This implies that one's land use rights last as long as that piece of land is in use and is well-maintained. Unfortunately, this has been, and continues to be, one of the major sources of land disputes between clans and among clan members themselves.

### III. ACCESS TO LAND BY NON-CLAN MEMBERS

**OF THE 64** per cent of respondents who were non-clan land-owners, 25 per cent claimed to have bought the land they occupied; 10.7 per cent that it had been given as a gift; 19.2 per cent that they had received the land on a loan/borrow basis; 21.9 per cent that they had received the land from *papa bilong graun* ("landlords" in the Western sense) in return for, or in anticipation of, services; and 23.6 per cent had occupied the land through other means, presumably squatting. Thirty-two per cent of clan leaders/elders and 17.3 per cent of clan land custodians had allocated land to non-clan members, that is, nearly half of the clan members had been involved in giving land to non-clan members. According to the data, nearly 70 per cent of the land transactions had the blessing of all clan members.

Although PNG legislation allows for the selling and buying of land among PNG citizens, providing it is done according to cus-

9. See reference 3, Kaitilla (1995a), pages 104 and 113.

10. Giddings, R. (1984), "Land tenure" in Whiteman, D.L (editor) (1984), *An Introduction to Melanesian Cultures*, Melanesian Institute, Goroka, Papua New Guinea, pages 149-172; also reference 4, Narokobi (1988), page 156; and Rappaport, R. A., (1984), *Pigs for the Ancestors: Ritual in the Ecology of a New Guinea People*, Yale University Press, New Haven.

11. Cleland, R. (1981), *Pathways to Independence: Story of Official and Family Life in Papua New Guinea from 1951 to 1975*, Singapore National Printers (Pte) Ltd.

12. Newton, J. (1985), *Orokaiva Production and Exchange*, the Australian National University Development Studies Centre, Pacific Research Monograph No.11; also reference 3, Kaitilla (1995a), page 101.

13. See reference 3, Kaitilla (1995a), page 101.

tom, this requires further clarification. During the survey, the terms "sell" and "buy" emerged constantly.<sup>(9)</sup> It was usual for clan landowners, especially the clan land trustees, to say *mi-selim graun or block*, meaning "I sell land". On further questioning, what was actually meant was leasing the land. On the other hand, it was common for non-clan land users to say *mi-baim graun or block*, meaning "I buy land", when actually referring to cash or in-kind payment for the temporary use of the land. Among Papua New Guineans, temporarily offering land to those in need for usufruct use only is not a new phenomenon.<sup>(10)</sup> Any land transaction does not, in the mind of Papua New Guineans, necessarily imply an outright sale or disposal of the land, as Cleland succinctly highlights:

"...there is a fundamental difference in the concept of land, what land is and what man can do about it... All these years the two races have been using the same words but they mean quite different things to each side... [In] every discussion and in every transaction they were unknowingly talking about and acting on two quite different concepts, without either side realizing it. *No Papua New Guinean ever thinks of the land itself as a saleable commodity... What is sold is the trees growing on the land, or the right to use the land for one purpose or another - for gardens, for building, for hunting. The land itself is part of the very soul of the clan. It is not the land itself that is sold.*" (page 133, emphasis added)<sup>(11)</sup>

This traditional obligation to offer usufruct land use rights to those in need has increasingly led to both clan leaders/elders and land custodians to misuse the powers bestowed upon them.<sup>(12)</sup> Previously, the apportioning of land would involve full consultation of clan members but now both clan leaders/elders and custodians apportion land as they see fit, especially if payment is involved; they have steadily become *papa bilong graun*.<sup>(13)</sup> They are the invisible real estate agents for most of the low-income urban households. Some are now using land for personal gain, usually by sub-dividing it, for example, to obtain a cash income, political support or social status.

In the city of Lae, land in and around the city belongs to six Ahi clans: the Butibam, the Kamkumung, the Yanga, the Wagang, the Labu and the Yalu people. The Kamkumung and the Butibam own large tracts of land along Malahang Road and Independence Road (see Figure 1). The Yalu, on the other hand, own large tracts of land along the Okuk Highlands Highway, mainly 16 kilometres beyond the city. Much of this land consists of overgrown bush which is used neither for cash crops nor subsistence agricultural farming.

Among the Kamkumung, there are several land custodians who have assumed the responsibility of sub-dividing and allocating land for housing to non-clan landowners (migrants), providing money has changed hands. Some have even established settlement committees whose responsibilities, besides maintaining law and order, include collecting monthly rents from other settlers. Settlers wishing to obtain a "block" (plot) of land for

14. At the time of the research, K 100 was worth about US\$ 110. For the majority of Papua New Guineans, K 100 is a lot of money and constitutes an average weekly wage for most people.

15. See reference 3, Kaitilla (1995a), pages 112 and 114; also Kaitilla (1995b), pages 24-25.

16. For example, one land custodian in the Kamkumung land block claims to have a list of more than 300 blocks of land leased to settlers from other provinces.

17. See reference 3, Kaitilla (1995a) and (1995b); Grossman, L. S. (1984), *Peasants, Subsistence Ecology and Development in the Highlands of Papua New Guinea*, Princeton University Press, Princeton, New Jersey; Zorn, J. G. (1992), "Graun bilong mipela: local land courts and the changing customary law of Papua New Guinea", *Pacific Studies* Vol.15, No.2, page 8; Oram, N. (1974), "Urban expansion and customary land" in Sacks, P. (editor) (1974), *Problems of Choice: Land in Papua New Guinea's Future*, Australian National University Press, Canberra, page 172; and Payne, G.K. (1983), "Housing agents in the towns of Papua New Guinea", *Built Environment* Vol.8, No.2, pages 125-137.

18. Smart, A. (1986), "Invisible real estate: investigations into the squatter property market", *International Journal of Urban and Regional Research* Vol.10, No.1 pages 29-45.

housing pay, theoretically, a fixed refundable deposit of about K 100.<sup>(14)</sup> If settlers wish to return to their home village they are refunded the K 100 provided they pull down the house. Alternatively, they can sell the house to another settler who, in turn, pays the refundable deposit to the land custodian. Monthly rents now range between K 10-20 depending on the proximity of the settlement to urban services. Other land custodians apportion land to themselves, survey and register it in their own names and subsequently lease it for more lucrative commercial or industrial development.<sup>(15)</sup> They also keep a list of settlers in their respective areas.<sup>(16)</sup> Custodians who are "selling" land to settlers do so without the approval of other clan members and have consequently become outcasts despite the fact that they claim to share the proceeds from land sales with other clan members.

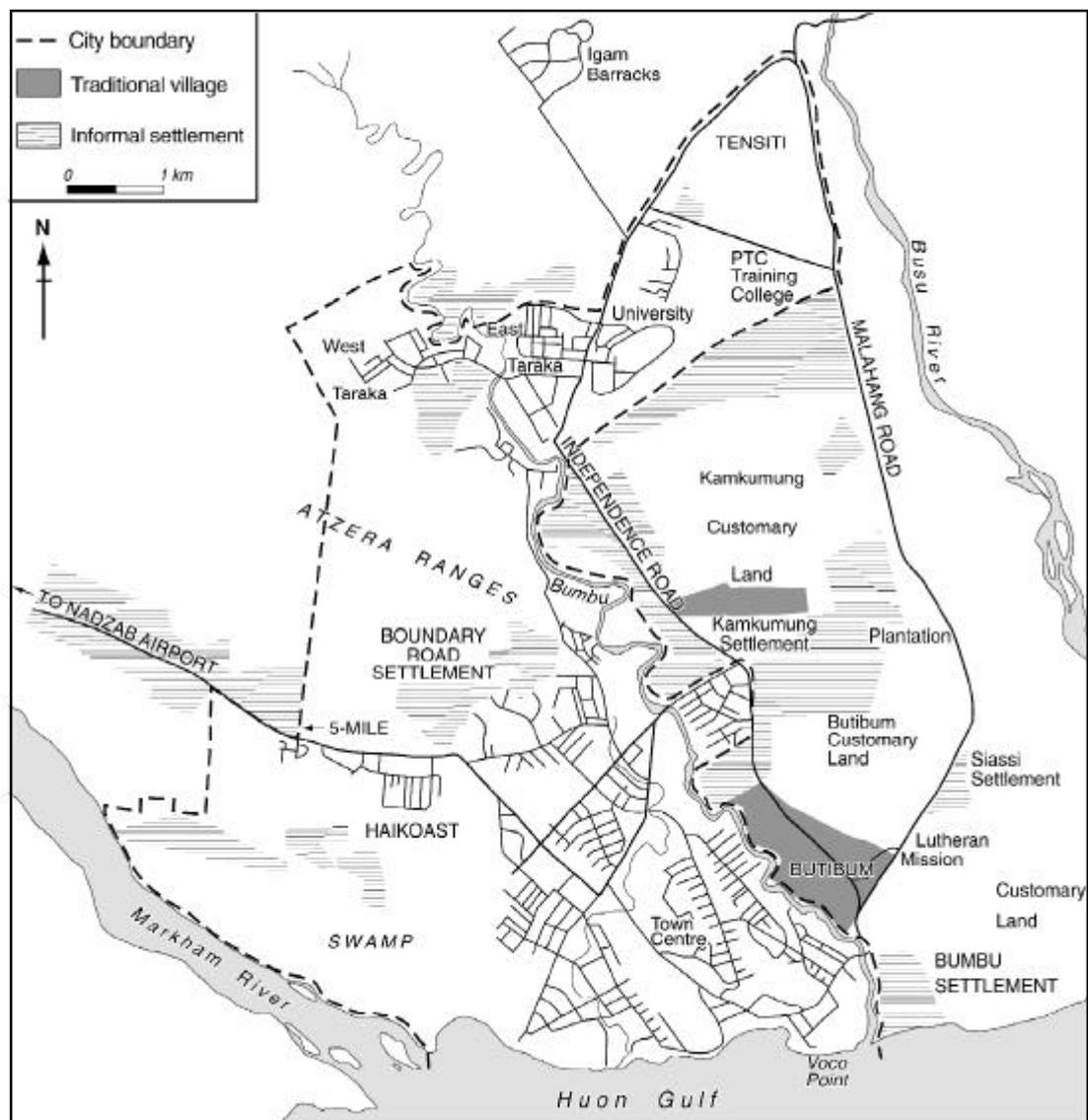
The activities of land custodians are by no means limited to Lae. Available evidence suggests that similar land transactions are taking place in other urban centres of Papua New Guinea.<sup>(17)</sup> For example, the majority of those who were affected during the 1991 Lae forced evictions sought and obtained residential plots on customary land in and around the city. Until then, the Kamkumung lands housed only a handful of settlers; the current estimate is that they accommodate more than 20,000 Lae inhabitants (see Figure 1).

Similar informal land transactions have also been reported in Hong Kong. For instance, a study by Smart revealed that some agents went as far as advertising the sale of land and/or houses in the local media.<sup>(18)</sup> In Lae, and in PNG in general, these transactions are not advertised anywhere. News regarding any sale of land is done by word of mouth among the settlers themselves. Open advertising would infuriate those land-owning clan members who, generally, neither support nor encourage the "sale" of land by their own people. The reasons for their disapproval include the fact that:

- they see their land being invaded by outsiders at a very small economic return to the whole clan;
- they fear that, given the current rates of land "sale" and invasion, their children and future generations may not have any land left for their use; and
- many landowners disapprove of the cultural traits some settlers bring with them such as gambling, prostitution and excessive alcohol consumption.

There are obvious reasons, however, why settlers choose to deal informally rather than seek surveyed and serviced residential plots in the formal market. For example, over half (55.6 per cent) of all respondents chose informal dealings because 83.8 per cent of them claimed that such arrangements were either easily understood by all or problems associated with them were often of a temporary nature. Only 16.2 per cent of the respondents had no substantive reasons for choosing informal dealings. Importantly, however, over one-third (34.5 per cent) chose informal dealings because either there was no other choice

Figure 1: Lae City and the Growth of Traditional and Informal Settlements



19. Kaitilla, S. and W. Sarpong-Oti (1993), "Employer provided housing in Papua New Guinea: its impact on urban home ownership in the city of Lae", *Habitat International* Vol.17, No.4, pages 59-74; also Kaitilla, S. and W. Sarpong-Oti (1992), "Issues influencing the demand for employer provided housing in Papua New Guinea: the case study of Lae city", unpublished research report, Unitech, Lae.

20. Brookfield, H.C. and P. Brown (1967) (first published 1963), *Struggle for Land: Agriculture and Group Territories Among the Chimbu of the New Guinea Highlands*, Melbourne Oxford University Press, Melbourne; also Rowley, C.D. (1965), *The New Guinea Villager: A Retrospect from 1964*, Cheshire Publishing, Melbourne; reference 3, Kaitilla (1995a), page 103; and reference 3, Kaitilla (1995b), page 23.

21. See reference 17, Oram (1974); also Ward, A. (1981), "Customary land, land registration and social equality" in Denoon, D. and C. Snowden (1981) (editors), *A Time to Plant and a Time to Uproot: A History of Agriculture in Papua New Guinea*, Institute of Papua New Guinea Studies, pages 249-64.

22. See reference 3, Kaitilla (1995a), page 104; also reference 21, Ward (1981), page 259.

23. See reference 21, Ward (1981), pages 255-258; also reference 17, Oram (1974).

24. See reference 1, pages 239-244.

(22 per cent) or land obtained informally was cheaper (12.5 per cent).

Increasingly, therefore, customary land offers a housing development alternative in the absence of formal residential plots. In an earlier study of 400 employees from 90 businesses in Lae, Kaitilla and Sarpong-Oti found that only 16 per cent of all respondents owned houses in Lae.<sup>(19)</sup> The majority lived either with relatives in houses received from employers, or rented privately. Remarkably, however, of the 16 per cent of respondents who owned their houses, nearly 44 per cent had built them in settlements where the land belonged to customary landowners. Even among respondents who had no urban house of their own (9.3 per cent), 46 per cent shared accommodation with relatives in settlements that are on customary land.

It would be beneficial to explore the reasons for these recent developments. Prior to the introduction of a cash economy in Papua New Guinea, land had no commodity value although individuals derived economic value from it through the sale of garden produce.<sup>(20)</sup> The desire to receive cash has, as a result, overwhelmed many Papua New Guineans.<sup>(21)</sup> Some land custodians would, however, argue that it is not the desire for money that forces them to apportion and allocate clan land to non-clan members. Rather, they are extending traditional hospitality which obliges those with surplus land to offer it to those in need who can put it to efficient use. The only, and significant, difference is that current land dealings carry with them economic cash returns.<sup>(22)</sup> Income from such dealings is, in turn, invested in more lucrative businesses, hence promoting wider economic participation by Papua New Guineans. It was evident from the study in the five major towns that nearly 28 per cent of respondents received cash returns ranging from K 8-100 (17.8 per cent), to K 100-1,000 (6 per cent) to over K 1,000 (4.3 per cent). Others (4.3 per cent) received payment in kind for the use of their land. Although it was difficult to put a monetary value on such a form of payment, the respondents estimated that it ranged from K 2 to more than K 1,000. One must remember, however, that any questions requiring respondents to reveal their income should be treated cautiously, although these findings coincide with those by Ward and Oram that the strongest motive for land custodians to sub-divide and sell their land is money.<sup>(23)</sup>

These invisible real estate agent activities have, in the last 30 to 40 years, been very effective in providing residential land to thousands of low-income urban households in developing countries. Without them, the housing situation would have been much worse than it currently is. Formal housing markets in most developing countries are either unable or incapable of providing residential plots at the rate of urban population growth or at prices low-income households can afford. Similar patterns of informal land markets have been observed elsewhere, stretching from Abidjan in the Ivory Coast to Bamako in Mali, Dar-es-Salaam in Tanzania, Hyderabad in India, Karachi in Pakistan, Bangkok in Thailand, Mexico City in Mexico, Bogota in Colombia and Valencia in Venezuela.<sup>(24)</sup>

## IV. DISCUSSION

**WHAT IMPLICATIONS CAN** be drawn from these informal land transactions? Should governments harness or discourage the proliferation of informal land dealings by these invisible, yet efficient, real estate agents? Since it is unlikely that the present or any future PNG government will ever again transfer large tracts of land, as it had done previously, it is important for the government to forge partnerships with customary landowners.<sup>(25)</sup> Most customary landowners wish to reap high economic returns from the use of their land. Although many of the settlements are stigmatized for their lack of basic services, the houses the settlers build do represent a substantial investment on their part. Therefore, land mobilization must first seek active involvement and participation on the part of those who own the land. The fact that many customary landowners are reclaiming, or pressing for compensation for, previously alienated land, can no longer be ignored. Increasingly, urban traditional landowners are calling to be actively involved in any land development initiatives, just like their counterparts in mineral and timber rich resource areas.

As the results of this study suggest, large-scale regularization of customary land may not be possible in the foreseeable future. This is due to many factors, among them, a lack of capital and manpower to carry out the work. It may also be due to the fact that among many customary landowners, the regularization of land, in itself, is of little value since land has changed, and continues to change, hands in its absence. Moreover, many customary landowners are sceptical of government initiatives to regularize and mobilize land matters. Historically, land regularization has often been used as a basis for imposing land taxation, and many customary landowners cannot really conceive of why they should pay tax on the land of their ancestors who cared for and preserved it for future generations. It is also likely that land regularization may spark land controversies, especially arising from boundary disputes between neighbouring clans. Often, boundaries are vehemently disputed by clans with interests in the same land and this usually results in bloody confrontations, and massive destruction of cash crops and/or houses.<sup>(26)</sup>

For these reasons, many traditional landowners see no strong reason for regularizing their customary land. Probably, what is needed is not land regularization for "absolute ownership" of title *per se*. Rather, it is proposed that land survey and eventually registration take the form of an agreement to use, lease or deal in the land.<sup>(27)</sup> For example, Cooter proposes that regularization of customary land could be used to determine the jurisdiction of a group's customary land rather than to erode customary rights.<sup>(28)</sup>

25. Turtle, C. (1991), "Administrative reforms and land mobilisation" in Larmour, P. (editor) (1991), *Customary Land Tenure: Registration and Decentralisation in Papua New Guinea*, Monograph No.29, Institute of Applied Social and Economic Research, Papua New Guinea, page 87.

26. The documentary films "Joe Leahy's Neighbours" and "The Black Harvest" are cases in point. The former depicts Joe's attempts to establish coffee plantations with his highlands neighbours, the Ganiga. It is seemingly an uneven distribution of profits which leads to bloody events and the death of Madang in the latter film.

27. Ward, A. (1991), "Time to make a new start" in Larmour, P. (editor) (1991) (see reference 25), pages 177-193; also Larmour, P. (1991), "Registration of customary land: 1952-1987" in Larmour, P. (editor) (1991) (see reference 25), pages 51-71.

28. Cooter, R. (1991), "Kin groups and the common law in process" in Larmour, P. (editor) (1991) (see reference 25), page 43.

## V. CONCLUSIONS

**THE FINDINGS OF** the studies reported in this paper, however, suggest otherwise. They seem to indicate, rather, a steady shift from collective to individual land ownership. It is increasingly recognized that a customary land ownership system cannot effectively support current demands for residential land, a clear indication that collective ownership is not harmonious with the modern pressures of rapid urban growth. For many Papua New Guineans, the absence of formal land markets has not been a significant deterrent to urban housing development.<sup>(29)</sup> As a result, a few powerful individuals have begun to amass land to enhance personal social and economic gains;<sup>(30)</sup> for instance, available evidence shows that nearly 9,250 hectares of land have already been subject to regularization.<sup>(31)</sup> Between 1975-1987 the Land Commission received a total of 1,034 applications for land survey and registration. This low volume of applications over a 12-year period may appear to indicate a lack of desire for individual and freehold titles but the number had either doubled or tripled between 1984-1987. What can be said, however, is that the Land Commission is either slow in its land-processing procedure or that the whole process is complex and protracted.

By 1983, for instance, there was an estimated backlog of between 8,000-10,000 applications with the Department of Lands following the "lease-lease-back" Act of the 1970s. This was an arrangement whereby the government was to lease land from customary landowners, only to lease it back to them after it had been regularized. Although the Act was designed to simplify ownership procedures, it has been found to make them protracted and costly. For example, if a Papua New Guinean sells land to another Papua New Guinean, according to custom, the Minister for Lands who approves the deal must be convinced beyond reasonable doubt that the land will not be required by any other clan members in the future. This is a difficult task for any minister. How could they know that future generations would not press land claims?<sup>(32)</sup> There is a need to relax and expedite land application procedures if the overall quality of housing is to improve. The invisible real estate agents are likely to continue as dominant providers of residential land for urban housing and urban development in general. A better understanding of this process and devising appropriate solutions in response will be a major challenge for policy makers and urban managers in Papua New Guinea.

29. McKillop, B. (1991), "Land mobilisation in the highlands" in Larmour, P. (editor) (1991) (see reference 25), pages 73-85.

30. See reference 3, Kaitilla (1995a).

31. See reference 28, page 49.

32. See reference 11, page 132.

