

Executive Summary

The Land Management and Conflict Minimisation project has its broader origins in national, regional and international discussions, and decisions made over time regarding land. Past interest in land in the Pacific, and decisions made by the Forum Leaders, Forum Economic Ministers, and the Forum Regional Security Committee have often been from an economic perspective (access to land by individuals or groups for economic purposes), or from a conflict perspective (land issues as underlying conflict and crises). Internationally, too, land has been approached from either one of these two perspectives. Rarely, if at all, have economic and conflict-related dimensions of land been pursued simultaneously. Experience globally also emphasises that there can be no peace without equitable development and there can be no development without sustainable management of resources, including land, in a democratic and peaceful space (Maathai 2004).

Recognising the intertwined dimensions of the issue of improving land-based economic development and the minimisation of conflict, the FRSC in 2006 endorsed the Land Management and Conflict Minimisation project.

The starting point for the LMCM project is the recognition of the centrality of customary land tenure in the lives of the people of the Pacific. Therefore, efforts to improve economic and social wellbeing of the people must take customary land tenure as a starting point, and work towards a better fit between introduced land administration systems and customary land tenure.

The LMCM project has taken a dual approach to investigating economic access to land while minimising land-related conflict, thus adding value to previous efforts that have been undertaken to investigate land issues from separate perspectives. Discrepancies between key aspects of introduced land management systems and customary land tenure are potential sources of poor economic development and local level land-related conflict, and can be placed within a broader context of the changes that are taking place in Pacific Island societies, where globalisation and modernisation processes are causing a shift from egalitarian and communal lifestyles to a greater emphasis on individual economic wealth accumulation. Land-related grievances have, in

circumstances where they are combined with other factors, escalated into larger-scale violent conflicts.

As a first step, the Forum Secretariat commissioned 10 consultancy reports (Attachment 1), to cover the breadth of issues relevant to the subject matter. This report reflects the findings of these reports, as well as AusAID's case study reports under its Pacific Land Programme and other regional and international research.

Background

Land is integral to the people of the Pacific, being a traditional source of sustenance, social and political relationships and identity. Traditional access to and use and management of land is closely tied to the social fabric of communities, and customary tenure defines not only the nature and scale of economic development but also social harmony. Land is a sensitive issue because it has a much broader meaning for indigenous Pacific people than just its value as an economic commodity. For the people of the Pacific, ties to land are central to identity and provide a sense of belonging. The importance to the people of the Pacific of acknowledging customary land tenure as the foundation of land management cannot be overemphasised. Sensitivities over land partly also arise because of tensions and conflicts that come to the surface during elections, when people's emotions are manipulated for political ends.

Customary land issues are context-specific and reflect local and national social, economic, cultural and political circumstances and dynamics. However, similar groups of stakeholders are involved and there are common drivers of poor economic growth and conflicts. In addition, there are common causes and processes through which economic and social effects manifest themselves. These commonalities can inform common approaches to solutions.

Land is in most cases the only significant natural asset of Pacific people, and is therefore an integral part of national development efforts aimed at improving social and economic wellbeing.

For the Forum Island countries, this has to occur within customary land tenure systems that have been subject to outside influences. Missionaries and colonisation processes¹ introduced a cash economy and Western land tenure concepts, thus bringing new dimensions to the use and management of customary land, and the distribution of benefits derived from it.

Modernisation and globalisation have brought fundamental changes to Pacific societies, affecting values, goals, and social norms. There is a shift taking place from egalitarian and communal lifestyles, to lifestyles where there is a greater emphasis on individual economic wealth accumulation, leading to increasing pressures to derive economic benefits from customary land. Basic human follies of greed and personal power influence people who are in positions of power, so that their decisions are at times being made for their own personal gains, and not in the interest of the landowning group as a whole. These changes have put pressure on customary land tenure and raised questions about the suitability of the introduced land administration systems, which are largely based on Western notions of property rights, to an environment where customary land tenure predominates.

Customary land tenure

Customary land is ‘owned’ by groups with different rights held by individuals, defined by inheritance and social relationships. In traditional societies ‘ownership’ of land relates to the notion of custodianship, where individuals and society jointly have a responsibility and duty of care towards current and future generations. Customary land is also a source of social insurance. For indigenous Pacific people, ties to land bring together ecological, geophysical, social, spiritual and economic dimensions, as captured in traditional terms used to describe the notion of customary land, such as *vanua* in Fiji, *fenua* in Tuvalu, *enua* in Cook Islands, and *whenua* in the Maori language.

¹ Tonga is the only Forum island nation that was not colonised.

Decisions about the transfer of land (through gift or purchase) were usually made communally or, in chiefly societies, by chiefs or ‘big men’. At the community level, individuals made decisions about land over which they had individual use rights. Conflicts were mediated by senior members of the community with expert knowledge of group genealogy and history and using sanctioned mediation processes.

Economic development

Market-based economic systems are generally based on the Torrens Title property rights system, where individualised property rights are clearly defined – individuals or entities own a piece of clearly specified land and thus have the right to make decisions about its use and enjoy the exclusive benefits of its use. Land ownership and associated rights such as those of exclusivity, divisibility and transferability are defensible and enforceable by law. The maximisation of personal and national economic benefits is the primary motivation behind the use and management of private property.

There is an apparent disjoint between the notion of group ‘ownership’ in customary land tenure and the Western concept of private property rights that is seen as fundamental to a modern market-based economy. This misalignment has been at the core of less-than-desirable use of customary land for commercial purposes, particularly where customary landowners have not been formally recorded and landownership rights in groups are not accepted by financial institutions.

Rural to urban migration and emigration are adding others layers of demands on customary land tenure. Urbanisation and migration have raised the issue of lack of clarity of the rights of members of landowning groups who are away from their land for extended periods of time, as well as the issue of access to customary land for settlement, while ensuring that landowners do not lose their superior rights. Not only do these challenges cause local-level anxiety and disagreement, they can lead to conflicts that are taken to courts. Such conflict resolution processes can be time consuming and affect economic growth.

Land-related conflict

Land-related conflict takes place at two broad societal levels in the Pacific region. Inequitable economic development, perceived or real differences in benefits derived from land, as well as the inability to access Government services, public resources and information have played a role in local-level land-related conflicts between different stakeholders with differing agendas, interests and power, including customary landowners, State agencies, investors and residential settlers.

As indigenous people have become more integrally involved in market economies, and the demand for personal wealth to meet basic needs and aspirations increases, conflicts over fair returns arise between landowners, landowners and investors, and landowners and the State. The increasing value of land has led to the misuse of representational and distributional authority of those landowning group members who hold such powers, with decisions made for personal gains rather than in the interests of the landowning group as a whole.

In some circumstances, where land-related grievances are compounded by a number of additional factors, escalation of large-scale conflict or crisis has taken place. Experience in the region and elsewhere confirms that political, ethnic, cultural or class differences play a role in conflict escalation but inter-group differences do not lead to large-scale conflict or crisis in themselves. Such escalation is bound up with other factors including the manipulation of inter-group differences and imbalances of power by actors for their own political interests.

Key challenges

Customary and introduced land systems have coexisted almost independent of each other. Periodic efforts have been made to improve land administration by addressing specific aspects of introduced administration systems with the aim of facilitating access to customary land. Such efforts have been met with limited success. They often did not explicitly address the strengthening of customary land tenure systems or the better alignment of customary and introduced land management practices.

Group ownership and individual use rights

The disjoint between customary and Western notions of ownership has been considered a major constraint on the increase of economic activity. However, it is now generally accepted that individualisation of customary ownership rights is not a necessary condition for increased economic activity. Improved economic activity can be achieved by maintaining and protecting the group-based customary tenure and allowing individuals to use rights consistent with the requirements of a market-based economy.

Clarity regarding customary land tenure, group ‘ownership’, membership and decision-making authority

Lack of clarity over customary landowning groups and their claims plays an important role in the apparent disjoint between customary and introduced notions of ownership. In most countries there is limited formal recording of customary landowning groups, their membership and decision-making processes. Even where efforts have been made to formally record and register customary land, these have had limited successes, and in some countries have itself been a source of conflict.

There is also a lack of clarity and in some cases uncertainty around the processes used to identify members of landowning groups, in particular the members with authority to represent the group in land dealings. Customary and formal rules can lack clarity or contain restrictions that impede access to land and the equitable sharing of returns to land between landowners and investors, and among landowners.

Informal arrangements

In many countries, the use of customary land by members of landowning groups under informal arrangements has helped landowners achieve some improvement in their economic wellbeing. Such uses are generally negotiated using customary practices, including the making of ‘payments’ or traditional token gifts. Such payments can be significant in size, although they are

usually less than formal land rent payments. It is found that informal arrangements over customary land may help produce some economic wealth, particularly where customary rules allow exclusive use and outside funding is not required. However, without proper legal backing, they do not provide sufficient certainty for individuals to invest in longer term productive activities. Nor do they provide sufficient security for lending agencies to give loans. Informal arrangements also do not give security to people using customary land as residential sites, particularly in urban areas. Settlers often ask for greater security of ‘tenure’ but landowners can be reluctant to provide this, fearing that doing so will erode their ownership claims to the land.

Formal leasehold conditions and inequity

Leasehold conditions are guided by State legislation and include the tenure of lease, lump sum premium and/or periodic land rent payments, conditions for renewal, and compensation for improvements on expiry. Some leasehold conditions may encourage the optimal economic use of land but they can also become a source of conflict between landowners and investors and between generations of landowners. Landowners may not know the economic value of their land at the time of entering into a land lease agreement. As new information becomes available to a next generation of landowners, this may become a source of conflict. Such conflicts can in turn discourage outside investors. Where the State has acquired land for public purposes, inadequate compensation and lack of due process can be a source of conflict.

Benefit sharing between landowners and investors and asymmetric information

Most countries do not have an active land rental market. Therefore, governments have used administratively determined rental systems which usually do not reflect local market conditions. Where land rent and lease conditions are directly negotiated between landowners and investors, differences in access to information between investors and landowners, and at times, between different members of landowning groups can result in the inequitable distribution of returns between landowners and investors, and among landowning groups. Such inequitable economic

development, combined with changing needs and aspirations of individual landowners, can become a source of tension and conflict. In combination with other factors, land-related grievances when manipulated for political or personal gain, particularly in the context of incomplete information or misinformation, can escalate into large-scale conflict or crisis.

Inequitable benefit sharing among landowners and decision-making authority

The inequitable sharing of benefits between members of landowning groups is linked to the nature of customary land tenure and decision-making rights over land matters. Under customary land tenure, the authority to make decisions rests with key individuals but they may not always make decisions in the group's interests. Instead, with changing values and lifestyles and in the absence of appropriate rules to ensure accountability and transparency, individual interests may override customary group responsibilities. This can become a source of contention over inequitable economic improvements among landowners and can lead to local-level conflict.

Local-level land-related conflict and escalation into larger conflict

Most countries face challenges in resolving local-level land-related conflicts because customary conflict resolution mechanisms are becoming less suitable, and people increasingly turn to formal court processes which can be costly and time consuming. Local-level land-related grievances, when not appropriately addressed, can transform into larger-scale conflict or crisis when fuelled by other factors like the manipulation of (mis)perceptions and (mis)information for personal or political gain.

No single conflict resolution mechanism can be applied across the region or sometimes even within one country due to a difference in local contexts. A combination of customary and introduced conflict resolution mechanisms may be desirable depending on the circumstances.

Strengthening the administration of customary land and conflict minimisation

An effective and sustainable land administration mechanism linking customary land systems with formal land administration systems managed by the State is essential if improved access to customary land for economic purposes and minimisation of local-level conflicts are to be achieved. Similarly, mechanisms to resolve local-level land-related conflict can be strengthened by finding an appropriate balance between customary and introduced conflict resolution processes. Such improvements must reflect basic principles of accountability and transparency at all levels of Government and within landowning groups.

Key areas of customary land and formal land administration systems that need particular attention include recording and – where demands for land are high - registration of customary land; recording of customary laws, including inheritance rules, decision-making authority and processes to obtain group consensus; and the clear demarcation of the role of Government and customary landowners in land dealings. The availability of appropriate information needs to be improved to support customary landowners to effectively engage in land dealings and negotiate land lease arrangements that provide fair and equitable returns on their land, and to prevent the mobilisation of (mis)perceptions and (mis)information, which can lead to conflict escalation.

Specific solutions and institutional design pertaining to land issues will however need to be ‘home grown’, to reflect local aspects of customary land tenure. These aspects are different in each country and can even vary within one country, depending on local and national social, economic, cultural and political conditions and dynamics. Some common key lessons from the region and abroad are summarised in Attachment 2.

National land policy and improving customary land administration

The strengthening of customary land administration must occur in the context of broader national development and be guided by a national customary land policy linked to national development

goals. To overcome sensitivities over land, stakeholder-based consultative processes are vital, in order to arrive at a common understanding of issues and concerns, and to agree on a framework for land administration reforms, supported by a technical assessment of the current situation and past efforts.

The development of a national land policy would ideally precede any improvements made to land administration systems. Governments, through their land policy, would indicate the broad outcomes expected from reforms of customary and introduced land administration in the context of national development goals. It is at this stage that the dual objective of improving access to land for economic development and conflict minimisation would be emphasised.

A national land policy would guide Government and key stakeholders in their efforts to identify short-term and long-term strategies to address the national land reform agenda, reflecting policy goals, institutional capacity and resource availability. The prioritised land reform programme of initiatives if used to engage with development partners can also help achieve the goals of the Pacific Principles of Aid Effectiveness.

LMCM Guiding Principles

The principles outlined below are intended to provide member countries with a framework within which to discuss country-specific matters of land reform. These principles are consistent with the principles set out in the Biketawa Declaration (Forum Leaders 2000) and the Forum Principles of Good Leadership (Forum Leaders 2003), and also build on the Forum's Potential Guidelines for Good Land Policy (FEMM 2001).

The guiding principles when considered together with the implementation framework that follows, will guide the identification of strategies to bring about desired reforms in customary land administration and management.

The improvement in land-based economic development while minimising land-related conflict, entails the two following closely intertwined dimensions:

- A. The improvement of customary land administration and land management to facilitate economic use of customary land while minimising local-level land-related conflict; and
- B. The improvement of land-related conflict resolution mechanisms for local-level land-related conflict and the prevention of escalation of land-related grievances into large scale conflict.

In addition there is a set of principles that are applicable to both dimensions:

- C. The role of Government, information and capacity development.

A. The improvement of customary land administration and management to facilitate economic use of customary land while minimising local-level land-related conflict

Principle 1: Customary land policy reforms should respect and protect customary ownership and individual use rights as defined by social relations and customary laws.

Principle 2: Customary land reform efforts should be placed in the broader context of national development goals, recognising that there can be no security without equitable development and that optimal economic development cannot be realised without an enabling social and political environment that also promotes democratic and peaceful existence.

Principle 3: Customary land reform efforts should be based on the recognition that Pacific societies are in a state of flux, with changing needs, values and aspirations of people as a result of modernisation, global integration and imperatives of the cash economy.

Principle 4: Active participation of customary landowners and other stakeholders in customary land management efforts is essential if nation-wide ownership of the process and outcomes is to be secured.

A nation-wide or incremental approach to customary land reforms should be guided by a stakeholder-based national land policy that articulates a clear national vision about the balance between customary laws and the formal systems of customary land administration and land management.

Consultation and active participation by all stakeholders in the negotiation of leases is crucial to ensure their acceptability and to minimise the opportunity for future disputes.

Consensus-based solutions should include the strengthening of customary and formal institutions and decision-making processes that suit local social, cultural (customary) and political characteristics, and reflect principles articulated in the Biketawa Declaration, principles of good leadership and gender equity.

Principle 5: Customary land tenure can be strengthened by the clarification of its core elements.

The clarification of customary land tenure requires the recording of landowning groups and their membership, claimed land area, the rights of members residing on customary land, the rights of absentee members, representational and distributional authority, and the customary laws that are used to determine such rights and roles. These processes would be consistent with national commitments on equity, including gender equity where the country is signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Formal registration of landowning groups may be attempted as a second step but only in high demand areas where the need for more formalised land registration is essential.

Customary land reform processes adopted in a country should allow for diversity in customary laws found across landowner groups, and the recognition that communities differ in the strength of their traditional lifestyle and degree of individualism found in the group.

Principle 6: Dealings in land should be fair and reflect equitable returns to customary landowners, investors and lessees, based on the economic value of their inputs and market principles.

Leases should be secure and lease conditions should be clear about key factors including exclusivity, duration, renewal on expiry, compensation for any improvements at the time of expiry, amount of premium and annual rent, and conditions regarding sub-leasing or trading of leases.

Returns to landowners, in the form of land rent plus premium, and lessees must be based on market principles and be fair to the lessees' investment and landowners' superior interests.

Governments must follow due process of acquisition for public purposes and provide landowners a fair market-based compensation for land acquired. Alternatively, governments may consider negotiating a long-term leasing arrangement under 'fair' market rental conditions instead of outright acquisition.

Distribution of returns to land among current and future generations of members of landowning groups should be based on core principles of equity, taking into account agreed local customs. This distribution can be facilitated using landowning units (LOUs)/ village-level trusts or similar arrangements, combining elements of traditional systems and company structures and processes, and guided by good governance principles.

B. The improvement of land-related conflict resolution mechanisms for local-level land-related conflict and prevention of escalation of land-related grievances into large scale conflict.

Principle 7: Customary and formal resolution mechanisms should be treated as part of a continuum of the resolution of local-level land-related conflicts.

The improvement of land-related conflict resolution mechanisms should consider the balance between the need for impartiality and contextual knowledge pertaining to land, and the balance between the need for win-win and win-lose solutions. These questions, in turn, need to be balanced with considerations of cost and accessibility.

The improvement of land-related conflict resolution mechanisms should be based on the recognition that Pacific societies are in a state of flux, resulting in changes in customary authority and decision-making processes. This implies that land-related conflict resolution mechanisms may need to be revised at various points in time.

Principle 8: The prevention of large-scale land-related conflicts and crises requires the prevention of the mobilisation of land-related grievances and misperceptions.

For the prevention of the mobilisation of often long-standing grievances into large-scale conflicts, easily accessible, accurate and comprehensive information on different aspects of land use is essential, including information about leasehold conditions and distribution of returns to customary landowners.

For the prevention of the escalation of conflict, a whole-of-country approach is important to ensure equitable economic development, mutual respect regardless of differences, and the rule of, and respect for, law.

C. The role of Government, information and capacity development

Principle 9: Governments should play a supporting role in customary land dealings by creating an enabling environment for recognising, protecting and enforcing customary land tenure, encouraging and enforcing fair dealings in the fair use of land, as well as resolving conflicts over land.

A clear legislative framework should provide for integrated customary institutions and formal land administration systems, removing overlap and increasing clarity and coordination of formalised land administration.

A clear legislative framework for dispute resolution should provide for the appropriate mix of customary conflict resolution mechanisms and introduced conflict resolution processes and mechanisms to suit local situations.

Principle 10: Governments should provide for a central geo-referenced information system of landowning groups, their claims, customs and customary laws, and a registry of land dealings and other selected land use and management related information.

Governments must adopt a national framework to support landowners documenting and recording, and registering where relevant, their landowners' groups, membership rules, customs and customary laws about land, consistent with the national land information framework.

Customary land information should be made available to end users, the landowners and other stakeholders in an appropriate form to support them in land dealing negotiations, land use and management decisions, and conflict resolution.

Land use planning and zoning of customary land should be adopted in areas of high demand to systematically guide development.

Principle 11: Customary landowners and outside investors should have appropriate understanding about customary land tenure and introduced land leasing requirements to negotiate fair and equitable land leases and benefit sharing arrangements, minimising the scope for local-level conflict.

Potential investors should have a good understanding of customary tenure systems, including customary laws and decision-making processes, in addition to formal land leasing processes.

Customary landowners should have sufficient understanding regarding customary land tenure and its relation to commercial use, land lease arrangements and financial management to ensure land lease conditions provide fair and equitable returns to the landowners and equitable distribution within landowning groups.

Principle 12: Public land management institutions should be well resourced, competent and responsible.

Public land management institutions should have the necessary knowledge, skills and tools to implement customary land administration and management in a transparent and cost effective manner. Included in this set of knowledge, skills and tools are those related to social aspects of customary land tenure and mediation, in order to support customary land dealings and minimise the scope for conflict.

Implementation Framework

Experience in customary land reform efforts in the region over the last two to three decades suggests that for the implementation of the guiding principles, political commitment and a nationally-owned land reform process are critical. Further, given the sensitivities associated with customary land, systematic and measured reform processes supported by robust information would help overcome misplaced perceptions and fears.

Member countries may take the following steps in land reform efforts, based on a national sustainable development strategy, that emphasises stakeholder-based outcome focussed adaptive program planning and budgeting cycle (Dalal-Clayton and Bass 2002). This is consistent with the Pacific Plan Initiative 5.1, which emphasises the strengthening of national sustainable development strategy based national development planning and budgetary allocation. These steps can help countries to be in the driver's seat of their own land reform process and better coordinate national efforts and resources with those of development partners to address their high priority initiatives, consistent with the Pacific Principles of Aid Effectiveness.

Step 1: Obtain political commitment for a customary land reform process.

Step 2: Adopt a stakeholder-based approach and hold nationwide discussions on land-related matters, to define the land reform agenda. This could be facilitated by (a) nationally respected champion (s), who could be politicians, community leaders or public officials.

Stakeholder consultation

Countries may choose from different forms of stakeholder dialogue. They could choose to take national land forum approaches, as followed recently by Papua New Guinea and Vanuatu (Manning 2007 (draft)), where land issues were addressed in a holistic manner. On the other hand, they could hold consultation as part of a development land project, such as is the case in an the ADB funded project in Samoa (Grant 2007 (draft)).

Whatever pathway is chosen, it is critical that a nationally-driven process is adopted that involves all the stakeholders in open and objective dialogue and discussion, which is supported by objective information about issues based on local experiences.

Topics for discussion

To focus stakeholder discussions, key user-friendly discussion papers prepared by various stakeholders, officials and professionals could help in the identification of relevant issues and a common understanding of the issues involved. Key issues for discussion may include the current status (based on practical examples), key constraints to any changes; root causes of disputes and conflicts and areas that need strengthening as related to topics summarised in Attachment 3.

Step 3: Once a common understanding has been achieved, stakeholders together identify a national vision and national land policy framework for customary land reforms, which articulates expected outcomes and key guiding principles to underpin land reforms.

Step 4: Obtain Government endorsement of the national land policy framework with clear land reform outcomes linked into national development goals.

Step 5: Government and key stakeholders decide on strategies to address the national land reform agenda focussing on the key outcomes desired, reflecting national land policy goals.

Governments could adopt an area specific pilot project approach and implement a package of initiatives appropriately sequenced to collectively help achieve the desired outcome.

Step 6: Obtain development partner support for priority outcome-focussed programmes of initiatives.
