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**VALUATION AND EQUITY CONCERNS IN CUSTOMARY LAND TAKINGS  
COMPENSATION: THE CASE IN PAPUA NEW GUINEA**

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**ABSTRACT**

This paper is predicated on the issue of equity in takings compensation and focuses on customary land in Papua New Guinea (PNG) as a case for study. In PNG, customary land tenure coexists with the established legal property system, however, the bulk of the land mass is held under customary land tenure. Due to the prevailing scarcity of State land, customary land becomes the focus of State to pursue its development aspirations and therefore the subject of expropriation and compensation.

The relationship of the land tenure systems is not without tension and controversy. This is because the systems are identifiably distinct, incongruent and incompatible in their nature, characteristics and values and meanings with respect to land. In spite of this, for all formal land administration purposes customary land and tenure is subjugated to the established legal property hegemony and tensions arise when the tenure systems intersect as in land expropriation and compensation considerations. In this status quo, this paper identifies discrepancies that customary land bears in takings compensation and highlights concerns of equity in compensation. In doing so, this paper poses the question, 'Is compensation for customary land takings in PNG just?'

The underlying argument advanced in this paper is that customary land takings compensation predicated on legal property rights takings framework is vulnerable to inadequate compensation outcomes. Literature is instructive of the need to look to alternative forms and meanings to comprehend compensation of customary land. In this respect, this paper advocates the inclusivity of customary land tenure in the established legal property regime in addressing questions of equity in takings compensation for customary land in PNG.

This paper addresses a topic of current research undertaking which is in its preliminary stages and therefore draws primarily from contemporary literature on takings, compensation and customary land rights. Three thematic areas are identified in this paper to address the issue including the standard or measure of customary land compensation, definition of the compensation measure and models of compensation assessment to achieve that measure. Preliminary recommendations are presented for the case in PNG.

**Keywords:** customary land, customary land tenure, takings, compensation, equity

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## **INTRODUCTION**

Compensation is an indispensable condition of legal property expropriation in democratic and private property owning societies and fundamental in its premise and application is the notion of equity. This paper is predicated on this perspective and addresses the issue of equity in customary land takings compensation. It focuses on Papua New Guinea (PNG) as a case for study because of its predominant customary land tenure which coexists with the legal property system. Due to the prevailing scarcity of State land, customary land becomes the focus of State to pursue its development aspirations and therefore the subject of expropriation and compensation.

Though these systems coexist, they are however, distinct and incompatible in their nature, operations, meanings and definitions with respect to land. In this tenure arrangement customary land is subjugated to the established legal property system. Tensions in this relationship arise when they intersect as in expropriation and compensation considerations. Apparently questions and answers to takings compensation are shaped and modelled on legalistic paradigms of the established legal property hegemony. This paper takes issue on the question of equity in customary land takings compensation in this status quo and poses the question, 'Is compensation for customary land predicated on legal property rights system just?' The argument advanced in this paper is that customary land is vulnerable to inadequate compensation outcomes under the compensatory system of the established legal property hegemony.

Moreover, this paper is part of a current academic research endeavour in its preliminary stages. Its discussions are therefore primarily drawn from takings and contemporary literature on customary land rights and compensation to highlight the issue. In doing so, three thematic areas are presented including the measure of compensation for customary land takings, the definition of the compensation measure and models of compensation assessment. The implications with respect to customary land takings compensation in PNG is addressed in the discussion of these themes which is then followed by preliminary recommendations specific to the case in PNG.

From the outset, three caveats are imposed. Firstly, this paper limits its focus to that of compensation in PNG for physical takings of customary land for typical public purposes such as that provided in the Land Act, 1996 (PNG). Other takings by an act of State such as regulatory takings are excluded from this discussion. Secondly, the term 'customary land' is used intentionally as it is the familiar term used in the PNG context. For the purposes of this paper, customary land, customary land rights and customary land tenure would be analogous to indigenous land, indigenous land rights and indigenous land tenure. Thirdly, the term 'takings' is used in the same sense as expropriation or compulsory acquisition.

### **1. CUSTOMARY LAND TAKINGS COMPENSATION IN PAPUA NEW GUINEA**

Compensation claims for customary land takings in PNG is a sensitive and also a vexatious issue because it is recurrent, unending, mutable and endemic. The claims are not only for present developments but also for historic and closed takings. The gravity of the situation is that the claims and contestation of compensation is challenging land policy, law, administration and governance. It is a national issue because it adversely affects the legal, moral, political and social foundations of society and raises concerns and questions on equity in compensation.

State responses to the compensation claims have been in the main, temporal and adhoc measures including actions of containment. On the one hand, State sanctioned and established projects can

proceed despite objections, or halted or dismissed if compensation issues are not resolved. On the other hand, aggrieved customary landowner claimants remain disillusioned with the expropriation process and unsatisfied with compensation offered or paid. To date, State actions have not deterred nor deterred the determination of indigenous land owners in staking their claims for compensation usually associated with militant and radical means. Society cannot justify accepting the status quo in which questions of compensation remain unresolved and unsettling. The gravity of the issue signals that containment is not enough and that accountability must also be ensured for compensation processes and outcomes. To this end, literature is explored to highlight the concerns and explore alternatives to resolve the issue.

Literature on compensation for customary land takings in PNG is scarce, however, anecdotal evidence and suggestions advanced by various authors inform this discourse. In PNG, the issue of expropriation and compensation has taken a radical development in the case of rehabilitation of the roads on the Highlands Highway. Certain members of the State legislature are promoting a zero tolerance on compensation claims (Alomp, 2015; EMTV, 2014; The National, 2009). This political initiative is compelled by the difficulties faced in the acquisition of customary land for public purposes and the endemic claims for compensations. Apparently apart from a bona fide agreement between landowners and the State, the problem seen in this initiative is that for customary land owners, their property rights may be compromised by submitting to authority without compensation in what appears to be a violation and abrogation of the constitutional guarantees and protection of property rights. This initiative may also be compromising international obligations like the 'Universal Declaration of Human Rights' (The United Nations, 1948, art. 17.1 and 17.2).

Dwyer, et.al (2000) proposed a uniform, national system for dealing with compensation claims in PNG and recommended the creation of a national database, a Compensation Panel under the auspices of the court and a Compensation Settlements Administration Board. The authors stated that the law relating to compensation is adequate, however, what is required is a way of making the laws work better in practice. Scaglione (2002) offers some insight and criticism of the proposal in that compensation is not clearly defined. He, however, concedes that the proposal is promising with the formalisation of customary legal structure in entirely new institutions such as the proposed Compensation Board. This would bring a measure of uniformity and simplicity to an existing system with procedures widely varying with different authorities that deal with compensation.

Kalinoe (2004) highlights the need for efficiency in compensation decisions and indicates that State institutions in PNG like the National Land Commission which facilitate and feed the compensation dilemma need to be re-examined and reconsidered. He proposes the establishment of a land court specifically to deal with all land dispute and compensation claims. For efficiency in State services, a dedicated court for the purposes of land issues would be a reasonable proposition which in fact has been recently established, however, its effectiveness needs to be seen.

Issues of governance in land administration in PNG are pointed out in Hughes (2000) and Manning and Hughes (2008) highlighting the difficulties posed in the acquisition and compensation of customary land. The result is that infrastructure projects suffer longer delays and increase in costs. This trend is endemic in State provided land administrative functions and services.

PNG is not alone in this issue as other developing countries with customary land also wrestle with the issue of compensation. Literature on compensation for customary land takings from the African continent point out the weaknesses and inadequacies in the systems and procedures of governance, legislation and valuation methodology (Sule 2014, Kumi 2014, Alemu 2014, Odame 2011 and Nuhu

2009). In addition, Ataguba (2014) provides a comprehensive study of compensation for disturbance in Rwanda which provides good guidance for articulating valuation methodologies for current study.

The same can be said of Malaysia where Alias and Daud, (2006, 2012) writing about land compensation for indigenous property in Malaysia identify weaknesses and inadequacies in the systems and procedures of governance, legislation and valuation methodology in compensation assessments and awards.

Though questions of compensation are context defined and empirical, the problems articulated by the literature point to two identifiable issues;

1. the inadequacy of the established legal regime to deal with takings compensation of customary land and
2. the inadequacy of compensation outcomes as a consequence of the process or system of the established legal regime.

These inadequacies are reflective of the status quo in PNG and are intimated in the discussions below.

## **2. MEASURE OF COMPENSATION**

### **Compensation defined**

This paper confers with the description of compensation provided by Kalinoe (2004) that compensation is a payment to restore balance i.e. to place the person who has suffered a loss back into the original position prior to the occurrence of the event, act or omission that resulted in the loss. He provides further clarity by differentiating compensation in land expropriation in PNG from other forms of payments or benefits that customary landholders receive including royalty payments, occupation fees or even equity in a venture or rent.

Thus, compensation in the context of land takings is a payment to the dispossessed owner, to place him or her, back into the original position prior to the expropriation of his or her land that resulted in the loss (dispossession).

### **Equity in Compensation**

Equity in compensation as a fundamental principle in land expropriation connotes the idea of fairness or justice and in takings compensation it is given various descriptors as noted in the examples provided below.

‘Just Compensation’ is the concept used in America which is defined as

Ordinarily the amount based upon the loss to the owner, as opposed to the gain by the taker whereby the owner should be fairly and fully indemnified for the damage that he or she has sustained. The owner has a right to recover the monetary equivalent of the property taken and is entitled to be put in as good a financial position as he or she would have been in if the property had not been taken (West's Encyclopedia of American Law, 2008).

In addition, ‘Just Terms Compensation’ as used in Australia is described by Mangioni (2008) as compensation predicated on the principles of placing the dispossessed party in the same or similar position prior to the acquisition of their land.

These definitions attest to the principle of equivalence where the compensation payment must be able to restore balance or to make whole again by placing the dispossessed party in the same or similar position prior to the acquisition of their land and that the dispossessed party should be fairly and fully compensated for the loss they have suffered as a result of the acquisition. There are subtle differences between the American and Australian definitions, however, the above interpretation is sufficient for the purposes of this paper.

In PNG, the *Constitution* guarantees and protects property rights and when property rights are divested by State in actions of expropriation, ‘... just compensation must be made on just terms by the acquiring authority ...’ to the divested owners (*Constitution* (PNG), s. 53). Statutes, more particularly, the Land Act, 1996 (PNG) provide substance to this Constitutional measure of compensation.

Muroa (1998) in presenting the extent of the protection of land rights in PNG defines “just compensation” as generally referring to the full monetary equivalent of the land taken and describes “just terms” as that which is fair and reasonable in the particular circumstances and refers not only to the interests of the divested landowner but also to those of the community in general.

Limitations imposed on the compensation standard under sub-ss (2) and (3) of s 53 of the *Constitution* is that it must be consistent with the provisions of the National Goals and the national interest to the effect that a fair provision may be made to

- defer payment,
- effect payment by instalments,
- effect payment otherwise than in cash or
- effect payment partly in cash and partly in kind.

In addition, such payments, made for purposes of giving effect to the National Goals and national interest, are quite consistent with the notion of just compensation made on just terms.

This paper holds that in PNG, the Constitution sets the standard of compensation for which compensation for the legal expropriation of property rights including customary land rights must proceed. The considerations pertaining to this standard which is interpreted above is important to the extent that it frames the context of the discourse.

Despite the existence and legitimacy of these constitutional provisions, there is tension in the definitions and measure of compensation accorded to customary land. Toft (1997) captures the tension between the legal property framework and customary land tenure through the question of compensation in the resource development context and highlights the confusion and misgivings arising from this complex interaction. This is further clarified where

Arguments about ‘compensation’ . . . are not merely the result of conflicting evaluations of things which have been lost, damaged or destroyed; they also seem to reflect a deeper division over the definition of ‘compensation’ itself, and hence the conceptual and emotional relationship between ‘compensation’ and the other forms of property or value which engage the minds of the participants (Filer 1997).

The reason for this is that

indigenous peoples have a unique or distinctive connection to the land with deep social, cultural, and spiritual meaning. The claim is not casual or incidental but rather integral to the increasing assertion and recognition of indigenous land rights at many levels (Dannenmaier, 2008).

This paper suggests that the compensation dilemma in PNG stems from the conflict of dual land tenure systems whereby the two systems concurrently provide protection of property rights from very different ideological basis and positions of power. Furthermore, if there be any formulation of a solution to this compensation dilemma, it must begin from this understanding.

### **3. DEFINING THE CONSTITUTIONAL STANDARD OF COMPENSATION FOR CUSTOMARY LAND TAKINGS IN PNG**

Conventional property discourses generally ascribe just compensation and its equivalent descriptors to market value of the property taken. Valuation theory acknowledges market value as the primary basis to assess compensation with a caveat to its inadequacies. Despite this, market value is still applied in compensation assessments for practical reasons.

Where expropriation of customary land is concerned, takings and contemporary literature on customary land contend that the market value basis would be inadequate to attribute a fairer compensation outcome. This is because indigenous property rights is fundamentally undergirded by subjective or non-market values which emanate and derive from its customary tenure system such as values accorded to cultural significance, spiritual attachment, perpetual reversion, inalienability, immediate succession, generational rights and etc. However, from the perspective of legal property concepts, subjective value is neither observable or verifiable therefore a moot point in the compensation assessment. This appears to be the case in PNG and it is arguable that indigenous concepts of value ought not to be disregarded given that specific protections contained in the Constitution are to be respected. Achieving just compensation on just terms for indigenous property takings should in this sense be understood and undertaken on the basis of customary land tenure. This paper advances the view that adherence to market value concepts and the strictures of the legalistic established conventional (legal) property regime renders expropriated customary land vulnerable to inadequate compensation outcomes.

#### **Definition of compensation measure**

In PNG, statutes provide the processes to achieve the constitutional measure of compensation. Section 23 of the *Land Act, 1996* (PNG) expressly provides the statutory heads of compensation claims that can be awarded including

- the value of the land at the date of acquisition;
- any damage caused by severance of the land from other land in which the claimant has an interest; and
- the enhancement or depreciation in the interest of the claimant, at the date of acquisition, in other land adjoining or severed from the acquired land by reason of the carrying out of, or proposal to carry out, the public purpose for which the land is acquired.

Under this arrangement, just compensation on just terms would be achievable for conventional property rights because the meaning of compensation can be understood and clarified through the definitions, standards and processes provided by the established legal property framework together with guidance obtained from case law and practice. The valuation practice in PNG is predicated on this convention in its compensation assessments.

In the case of indigenous property, Nau (2009) and Smith (2001) make the observation that there is an absence of just forms and measures of compensation for native title. Similarly, in PNG, the (operative/functional) definition of the constitutional standard of just compensation on just terms in respect of customary land is not clear and there appears to be no statutory guidance. It would appear that the established legal property regime tends to treat all takings compensation on the same footing, irrespective of their tenure orientations.

This sentiment is highlighted for native title compensation in Australia, that it becomes difficult to determine what just terms compensation means and whether it is achievable through the pathways prescribed by statute (Smith, 2001).

In this definitional vacuum, recourse is had to the adaptation of legal definitions and conventional concepts of compensation to indigenous property takings for convenience and practical reasons. This is fraught with risks as it tends to undermine the customary land tenure concepts of value and arguably the protections and guarantees provided under the Constitution.

This is reflective of the status of takings compensation for customary land in PNG. The outcome is clearly manifested by the prevalent restiveness of customary land owners to expropriation actions and compensation awards and payments. This begs the question of whether PNG is achieving the legal measure of just compensation on just terms for customary land takings.

### **Differences in Definition due to Incompatibility of Tenure Systems**

Small and Sheehan (2008) contend that conventional (legal) land tenure system is incompatible with indigenous land tenure. Similarly sentiments pertinent to compensation for native title in Australia express that

The Aboriginal discourse about compensation is not always compatible with Western legal principles or market valuation models. Nor is it always comprehensible to other parties involved in statutory negotiations or determinations of compensation (Smith, 2001).

The incompatibility argument is also supported by Nau (2009) that there is a discrepancy in understanding indigenous property rights because its comprehension is shaped by legal property rights framework based on prescribed legalistic paradigm and discourses.

Differences in the definition, purpose, function, meanings and processes of compensation exist because the land tenure orientations upon which the interactions occur are incompatible. Each party to the expropriation action and compensation question is informed and operating from different orientations and power positions. The State is exercising its sovereign powers, legal backing and agency and financial resources and informed and operating from a legalistic paradigm whilst customary land owners are informed and operating from their customary land tenure system. Therefore the meaning of compensation, purposes and functions of the process would be understood differently and has a bearing on the outcomes.

### **Vulnerability of Indigenous Property to inadequate compensation outcomes**

In fact, the whole expropriation and process in PNG is built and shaped by a legalistic property paradigm with customary land tenure having no veto on the process or its outcomes. It appears that customary land tenure system is subjugated to the legal property regime. The implication is that the transference and adaption of conventional (legal) property definitions to customary land rights does not grasp the quintessential and inherent essence and definition of customary land rights.

This incompatibility consequently creates a dilemma in understanding and assessing compensation for customary land takings and therefore renders customary land vulnerable to inadequate compensation outcomes.

The power of discourse in legal vocabulary as characterised in the valuation process of the established legal property regime in PNG is vague to the point of being detrimental to indigenous peoples (Burton 1997, cited in Snyder R et.al (2003), p.118). This highlights the inadequacy of the legal system to define customary land rights and value customary land.

The logical conclusion in this status quo is that the system produces incongruent meanings and expectations of compensation and is therefore reflected in the resultant exchanges and consequences that follow.

### **Customised or Contextualised Compensation**

From the intimations discussed above, it becomes apparent for the need to look to alternative forms and meanings of compensation for customary land. The logical recourse is to recognise that which customary land is based on and operates from which contemporary literature on the discourse suggest and is captured in the following statement.

Indigenous peoples' land rights should be recognised not as heirs to a European conception of property, but as peoples with a distinctive historical, cultural, and spiritual relationship to the land and environment (Dannenmaier, 2008)

Smith (2001) agrees with this view of indigenous peoples' distinctive connection with land by suggesting that aboriginal regimes of compensation should be legally recognised, its core compensatory principles and values understood and translated for application to native title compensation. This suggestion supports an inclusivity model which makes appeal to the case in PNG where custom and customary land tenure is given legal recognition, however, its practical translation to tangible outcomes is absent at many levels including the issue of customary land takings compensation.

Moreover, the suggestion taken to its pragmatic and radical ideal supports the notion that customary land takings compensation should be customised or in effect contextualised. Here the recognition and inclusivity of customary land tenure in the interpretation of the just compensation on just terms constitutional provision is implied. The challenge is in its formulation which Smith (2001) opines is a matter for innovative jurisprudential consideration. However, for the case in PNG, it may be that the responsibility is not only of the courts but extends to include practitioners and academics in this discourse.

## **4. MODELS OF COMPENSATION ASSESSMENT**

Models of compensation assessment for indigenous property takings is an evolving theme in current takings compensation literature, however, for the purposes of this paper, much of the literature is drawn from the Australian native title compensation discourse. The reason for this is that PNG has a shared history with Australia being historically a territory of Australia before independence and adopted its legal property framework in its existing legal property regime.

Moreover, the literature on compensation for loss or impairment of native title is rich in Australia arising from the prominent land rights case (*Mabo and Others v. Queensland* 1992) and the response

in creating legislation recognising native title. The scholarly material on the subject analysis draws from law, economics, sociology, anthropology and governance pertaining to native title which is indicated below.

According to Fortes (2005) despite a clear precedent set in Australia in the Mabo case, there is still not one compensatory model adequate for native title. However, the necessity for the development of methods for assessing compensation is compelling because,

increasing acceptance internationally of notions of equity and fairness has raised an urgent need for the development of a legally defensible method of assessing compensation for customary lands. Such a method must be acceptable not only to the community at large, but also to traditional landowners (Sheehan, 2002).

Drawing from the discourse on compensation for native title in Australia, Fortes (2005) presents an eclectic list of approaches including conventional formulaic property valuation methods listed below.

- Adoption of Financial Model for compensation based on many statutes throughout the common law world
- Present Value using rental model
- Comparative Market Approach
- Using other available methods including granting of rights like profits-a prendre, solatiums, easements, reservations and leases. In PNG, the State has, for historical and closed expropriation cases, paid additional monetary compensation in the form of ex-gratia payments to disgruntled indigenous property owners. The reason is to appease them and allow essential public services to operate unhindered. This may be likened to solatium payment.
- A comparison of bundle of rights concept in common law to rights under native title for purposes of valuation.

The compensation models are very much informed and shaped by established legal paradigms and conventional valuation discourse as discussed in the measure and definition of compensation in the paper. In the absence of any statutory or practical guidance to takings compensation assessment for customary land, recourse to conventional means appears to be the option for convenience and practical reasons. This appears to be the case for PNG where valuation practice adopts the conventional valuation models.

Inclusive compensation models are also promoted by various authors including the following;

Smith (2001) promotes more culturally appropriate models incorporating Aboriginal compensatory values and approaches such as categorisation of claims under 'Heads of Damages' developed on the basis of actual losses experienced by individual, communal and future generation native title holders. This is instructive to addressing the case in PNG where values emanating and deriving from customary land tenure can be incorporated in the assessment and determination of compensation for customary land.

Fortes (2005) suggests compensation as redressing events and wrongs emphasising empathy as practiced in culture and reiterates Smith's suggestion above on constructions of a new paradigm outside of existing Anglo-Australian property compensation case law system. Fortes adds that quite unfamiliar and even unknown notions of property might have to be conceived by the Courts, utilising case law and other principles from quite diverse areas.

Restitution is also proposed as an alternative to monetary compensation where alternative land of equivalence is provided as compensation (Nau, 2009). This is practiced by developers in the extractive industry (mining and petroleum developments) in PNG.

Sheehan (2000) suggests ad hoc compensation agreements as in the case of PNG to be an alternative compensation approach. This appears to be the most practical approach applied in PNG, especially in the extractive industry sector.

Boydell and Baya (2012) contribute to the discourse by proposing an equitable integrated compensation model for resource rich countries in Melanesia citing PNG. The authors propose five models including

1. Compensation tailored to exact rights of customary landowners
2. Assumption of a prevailing common set of property rights and compensation tailored accordingly
3. Developer driven quantification of compensation
4. Compensation by Negotiated Agreement
5. Hybrid approach accommodating Total Economic Value Concept

Building on their prior research, Boydell and Baya (2013) add option pricing model as an alternative to assessing compensation.

The models and approaches advanced are in the main conventional though in some instances theoretical and novel, however, informs the discourse and instructive for study and research. The main contribution drawn from literature for the purposes of this paper is the recognition of customary land tenure as an equal in addressing the question of compensation for customary land. Its definitions, meanings and processes in customary land tenure should be considered in the compensation process, thus promoting an inclusive approach. The question of how this can be achieved will need the contribution of practitioners and academics and is a matter of study, research and dialogue in this evolving discourse.

## **RECOMMENDATIONS**

From the discussions presented in the paper, the following recommendations are made. These are preliminary and specific to the case in PNG as a topic of current research undertaking.

### **1. Compensation based on Negotiated Agreement**

The current practice of achieving an agreement by negotiation between customary land owners and the acquiring authority (State) is one that should be continued. In a negotiated agreement, both parties are informed and operate from their positions of land tenure orientation. An agreement is better than effecting the expropriation powers and compensation strictures of the established legal property regime which can only complicate and prolong the acquisition process.

### **2. Learning from industry practices on how land compensation issues have been addressed and resolved**

‘Developer driven quantification’ of compensation as espoused by Boydell, et.al (2012) informs this discourse, though it is handicapped by issues of compensation adequacy and transparency as argued

by (Smith (2001). Industry practices in PNG, especially the mining and petroleum sector, after decades of operation, are experienced and knowledgeable to contribute to the discourse.

### **3. Inclusiveness of legal processes of acquisition and compensation to accommodate and facilitate customary land tenure in the land dealings**

The constitutional measure of just compensation on just terms must be viewed as inclusive to customary land tenure with respect to customary land takings. One way is to define what just terms compensation would mean in terms of custom as advanced by Smith (2001). This is rather a novel and innovative approach that would need multidisciplinary contributions to shape discussion and formulation.

### **4. Post land acquisition measures – Closure provisions**

The incidence of recurring, unending and mutating compensation claims on a parcel of land that is successfully negotiated, settled and closed gives reason for attention to post acquisition measures. This may include providing clarity to customary land owners on the existing closure provisions or creating clearer closure provisions in expropriation and compensation. Also the expediting of the establishment of the public purpose for which the land is acquired, may act as confirmation of the acquisition and title to the State and therefore deter unjustified ownership and compensation claims on the land especially, for historic and closed expropriations.

### **5. Build on the strengths of the titling of customary land for the purposes of compensation assessment**

Some positive development in land policy and legislation in PNG is embracing the inclusivity of customary land in its legal property regime. The Land Groups Incorporation (Amendment) Act 2007 (PNG) provides legal recognition of customary land owners and their customary land and the Land Registration (Customary Land) Amendment Act 2007 (PNG) enables the registration of their customary lands in the State land registry and provides customary land title to the customary land owners.

With these advances PNG is seeing the recognition, formalisation and codification of customary land rights within the existing legal property framework. This may provide the way forward for assimilating customary land rights to conventional forms. Thus, the adoption and application of the conventional property framework and valuation methodology may be practical for assessing compensation where these assimilated property rights are expropriated.

## **CONCLUSION**

This paper has asked the question ‘Is customary land takings compensation in PNG just? The answer presented from the discussion and supported by literature appears to be in the negative and highlights the concern of discrepancy from equity in customary land takings compensation. The distinctive connection that customary land owners have to their land under customary land tenure needs be integrated into valuation and compensation considerations. To this end this paper concludes with the challenging statement that

While a distinctive connection has been repeatedly advanced by contemporary literature, its contours remain uncertain and it has not been fully deployed to address natural resource and ecological concerns of indigenous peoples (Dannenmaier, 2008).

The literature cited support this observation and this paper identifies with it and makes the case for PNG in addressing equity concerns in takings compensation for customary land. The analytic framework within which this distinctive connection concept might be further understood with regards to takings compensation for customary land and the quantification of the discrepancy from equity is the subject of ongoing current research endeavour.

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