

17.7.1

The Chief Minister,
Department of the Chief Minister and Development
Administration,
Konedobu,
PAPUA NEW GUINEA.

1-11-73

8th February, 1974.

Dear Mr. Somare,

Thank you for your letter of 22nd January including the kind remarks about my work for the Commission of Enquiry into Land Matters last year.

Over recent weeks the Report of the Commission has been read by a number of specialists at this Institute and by Mr. Gerry Lawrence, Land Tenure Adviser in Britain's Overseas Development Administration. We have discussed the main strategy of the Report, and a number of its details in a series of very lively seminars. I have also been invited by Gerry Lawrence to get the latest available information from him and his people in London on recent developments in Africa and South East Asia insofar as they may be helpful to Papua New Guinea, and I will make several calls there over the next fortnight.

I should like to pass on to you, to Mr. Kavali, and to others concerned with land policy, the conclusions emerging from this work. They do not involve a fundamental criticism of the Report; on the contrary it has been warmly praised. Nor do people want to interfere in the basic aspirations of Papua New Guineans in land matters. But there are some important technical points and questions of emphasis which should, I think, receive further consideration. I shall mention some of those in a short appendix to this letter.

However, I am thinking that perhaps I should take up your kind suggestion that you would like to see me in Papua New Guinea again in the near future, and come out to discuss more fully the points I have uncovered here. Presumably there will also be comments on the Report from the House of Assembly, and from officials and members of the public, which should receive close consideration.

(Continued page 2)

The Chief Minister,
PAPUA NEW GUINEA

8th February, 1974

Would it be appropriate to make a short, searching reappraisal of the Report just after the February/March sitting of the House, taking up both the comments made in Papua New Guinea and the comments of the specialists here? This could, if you wished, result in a Cabinet submission for a programme of action to be taken on the Report.

Last November Mr. Kavali kindly asked me to stay on to assist in the follow-up work. It did not seem to me worth your paying my salary and expenses then because some time was needed for quiet consideration of the Report, and I suggested to Mr. Kavali that it might be more worthwhile to pay my fare to and from Britain this year. I can then work without extra salary, since I am on my University pay now, and perhaps could stop in the Rana/guri Hostel. If it seems to you like good timing I could come on this sort of arrangement for three weeks in the latter half of March and early April, to assist with the kind of re-appraisal and programme of action referred to in the previous paragraph. (Unfortunately, I have committed myself here till about 16th March).

Alternatively, I could stop over for two or three months about September/November on my way back to Australia. This need cost nothing to Papua New Guinea for fares or salary but I would have my family with me and would need a house. Indeed, both visits would be possible if you wished. If these suggestions have any merit I should be grateful if you would discuss them with Mr. Kavali as I presume I would be working closely with him. If you would like me to come in March/April, please let me know fairly soon so that I can make travel plans - probably via Fiji to talk with Ron Crocombe.

Yours sincerely,

Dr. John Hall

Appendix

Report of the Commission of Inquiry into Land Matters, Papua New Guinea.

Useful suggestions from seminars held to discuss the Report in the Institute of Development Studies, University of Sussex, England, on 23rd January and 6th February 1974. (Papers presented by Alan Ward, former Consultant to the Commission).

Among those present:

- Gerald Lawrence - Land Tenure Adviser at the Overseas Development Administration, London.
- Harold Brookfield McGill University, Montreal, co-author of Struggle for Land (on Kimbe land tenure).
- Scarlett Epstein - of I.D.S., author of Capitalism, Primitive and Modern (on Tolai society)
- ^{Sorenson}
Keith Sorenson - University of Auckland, author of Land Reform in the Milnayu country.
- Brian Hardacre - University of New England, agricultural economist working on land and productivity in Tonga.
- Mal Colbatch - of I.D.S., formerly of the Administrative College, Port Moresby.
- Elton Brush, - English Department, University of Papua New Guinea.

1. The two basic tenures recommended by the Commission when customary land is registered are clearly appropriate ((a) the 'conditional freehold' where individuals or small families already hold all the important rights on the land without reference to a wider group; (b) 'group titles' with subsidiary 'occupation rights' and so on, where the rights of individuals and the wider group are still closely inter-related). But while groups may now still be strong, they are likely to weaken over time and there is a danger that the creation of 'group titles' will give an artificial rigidity to them. (Not nearly as extreme as occurred in Fiji but something of that kind).

The recognition of existing group rights is desirable now as a means of controlling rapid transfer of land by individuals (assuming that control by bureaucracy of 'central board' is likely to be weak); and there may be wider implications of policy which make the reservation of group titles (thus for government rather than Land Commissioners to decide). ~~Under~~ If the land rights of groups, sub-groups and individuals are to continue to find their 'natural level' there is probably merit in the suggestion that provision should be made to limit transfers (a, and (b) above, by creating a simple legal and administrative mechanism by which the holders of group tenure could convert at a time of their own choosing into individual holdings, or at least to smaller groups. The Land Law has a provision of this kind.

2. The provisions for recovering alienated land (plantations) have some awkward features. It is clearly desirable not to pay market value of the kind ruling about 1965 - 70 for the land because that will cost the Government a lot and make the land dear for subsequent Papua New Guinea occupants. The recommendation to pay for unexhausted improvements only is a reasonable way of approaching the problem. But it is contradicted by the recommendation that the holders of customary land should be paid at least £50 an acre, which recognises that the unimproved land does have a market value of a kind through not a 'free market' value. There was indeed, in the Commission of Inquiry, some embarrassment that the recognition of a price for unimproved land for Papua New Guinea and the non-recognition of it for planters, constituted a racial discrimination against Europeans. It was overcome by the recommendation that all freeholds be first converted to Government leaseholds, but this is not entirely satisfactory because (a) leases, like freeholds can have a market value, if allowed (b) this method also has the appearance of something of a 'dodge'. The conversion of freehold to leasehold should definitely be proceeded with for other very good reasons. (The revenue the Government of Hong Kong recovers from its leaseholds should convince anyone.) But where planters' land is being compulsorily recovered (whether from freehold or leasehold) it may be better to be quite frank and say that while the land may have potential market value, at least like that recommended for unimproved customary land, the Government is simply not going to pay it (a) because it has to keep the whole price structure down to make it easier for Papua New Guineans who are not well off to subsequently acquire holdings. (b) because the plantation companies get most of it for a pittance and had some handsome profits from it and from cheap labour. If the planters feel aggrieved they can go to the Australian Government for extra compensation.

Special consideration could then be given, for those who have bought land in recent years, not for a pittance but at quite high prices. If this remains unimproved and is compulsorily acquired they would lose a great deal, and in a sense they are innocent parties. The Commission in fact discussed this point and agreed that people in this position should be entitled to appeal to the Minister of Land for special consideration, not as a matter of right (because the concept of a 'free market' price should not be admitted) but as a matter of grace. The recovery of the necessary land with the minimum of ill-feeling would have benefits in terms of goodwill to Papua New Guinea and it is probably worth paying something for this. A recommendation to this effect should have been in the Report, and I fear that it was omitted in the drafting.

3. Nevertheless the way the planters are refusing Government valuation and bargaining for something like free market price, is ridiculous. This will largely be overcome by the Government promptly taking the power to compulsorily acquire alienated land for the purpose of resettling Papua New Guineans, and a short bill to achieve this should be proceeded with on a matter of urgency, as the Commission recommends.

4. The suggestion in paragraph 6.12 of the Report that the House of Assembly should be able to give a notice of compulsory requisition is impressive. It is true that such notices should be given on a Minister responsible for authorising such notices so as to minimise mistakes or even to pressure and bully. But to give it to parliament to scrutinise each requisition is to do a bad and a potentially political matter. It may be better to give powers on the basis of this to a more suitably nominated by the Minister, if there are already mechanisms a process of consultation between Central and Provincial authority on each case/

5. The status of the Land Register recommended by the Commission seems weak. Recommendation 19 puts no time limit on people to appeal against exclusion from a registered interest, and the Register is regarded as 'substantial' not 'conclusive' proof of title, since subsequent lawful dealings can be recognised. The Commission was influenced by the knowledge that in Kenya many transfers in land after registration were not being entered in the Register, especially succession to title after death of the initial titlholder. Also that in Indonesia the standards of competence of the initial registering authorities was not high. The Commission feared that in Papua New Guinea many people entitled to be registered might be left out. Gerry Lawrence argues, however, that the neglect to register transfer and succession in Kenya is only a passing phase - that sons and daughters now do normally go into the office to register their rights on a parents' death. Also that to leave the Register too open to amendment is to make it so weak that people will never get to respect it and enter their transfers and 'cessions'. It may be desirable to tighten the provisions and at least allow amendment only after order by a fairly superior court such as the proposed District Land Court. I shall go into this further in London with Mr. Lawrence and with Nick O'Neill, former Legal Counsel to the Commission.

Alan Ward.

AU/ID

8.2.1974.