

## BOOK REVIEW

J.T Mugambwa and H.A Amankwah, *Cases and Materials on Papua New Guinea Land Law and Policy*, Hobart, Pacific Law Press (1996) pp.500 + xxiv.

This is an exciting book which provides a solid foundation for the development of legal literature in Papua New Guinea. Although it is written as a teaching text, providing cases and materials for undergraduate law students at the University of Papua New Guinea, it will also be of great value to practitioners, and those who are broadly concerned with Land Law and Policy issues in Papua New Guinea. It is well thought out and contains the leading cases, at times in extensive extracts, and at others, neatly condensed. Perhaps the main achievement of the book is the comprehensive collation of Papua New Guinean primary sources.

Books published on Papua New Guinea law should be welcomed because there are so few of them and it is necessary to start a tradition of writing for Papua New Guineans, as these are still early days in the existence of the nation and there is a need to encourage writing. Since the market in Papua New Guinea is very small, the effort of writing is not rewarded by royalties. Those who take the time to write, therefore, do so not for the monetary benefits or reward, but for the sake of contributing to the development of the law in the country. They should be congratulated for their efforts.

This book in particular is welcomed because it is concerned with those laws that relate to the most important resource in Papua New Guinea. It is insightful because unlike land as understood in western context, in Papua New Guinea, land is sacred; it is the next best thing to a man's family. Land forms the basis of the economic, social and political structure of the village communities. Land creates a link between the past, present and future generations. A man will protect his land with his life, as he would his family.

The authors, Dr John Mugambwa and Dr Alex Amankwah, have previously taught at the Faculty of Law, University of Papua New Guinea. Each has carried out in-depth research and written extensively on land law and policy issues in Papua New Guinea. They are, therefore, eminently qualified to write on the subject of Land Law and Policy; this book is a testimonial to their thorough knowledge of the laws and policies in the country.

The book deals with various land policies, laws and cases decided by the National and Supreme Courts in Papua New Guinea as well as those decided by courts in other jurisdictions that deal with issues of interest to Papua New

Guinea. All of the cases chosen to illustrate the development of the law are from pre- as well as post- Independence periods. This is not a matter of chance or preference; it is a matter of choice in order to put policies and Land Law in context since the commencement of the colonial era in 1884.

The authors use an unusual, but nevertheless, effective format. The book is largely cases and materials with text added. The sequencing and choice of materials are coherent and relevant; the case law is exclusively Papua New Guinean. This is important pedagogically because it makes the text of the law so much more accessible to Papua New Guinean law students; it deals with known places, institutions and people. The knowledge that is required to understand the cases does not extend beyond the legal or cultural setting of lawyers in Papua New Guinea. This is important because it enhances confidence in the materials of law, and removes the hesitancy, the uncertainty that has in the past been part of the cultural dominance of an alien law. Nevertheless, the links with the United Kingdom and to a lesser extent, Australian law, will be apparent to students who read the Papua New Guinean cases.

Some of the cases and extracts from the cases are repeated in different parts of the book. One may wonder whether it is necessary. Would the same effect not be achieved by cross-referencing? Although weaker students will benefit from the repetition of the material, it appears to be unnecessary for the brighter and more confident student. However, this is not a significant consideration when the overall quality of the book is assessed.

The opening chapters of the book establish the historical development of the policies and the laws in Papua New Guinea. In particular, it is divided into a number of sections which examine the policies and laws that were in force at various times since the declaration of Protectorate in 1884 over both Papua and New Guinea by British and German imperial powers respectively. For instance, the land policies and laws in the Protectorate over Papua 1884-1906; New Guinea 1885-1914; Papua New Guinea 1906-1945; New Guinea 1914-1921; Mandated New Guinea 1921-1945; Papua New Guinea 1945-1962; Papua New Guinea 1962-1973.

The second chapter puts land law and policies into its Papua New Guinea context by examining the basic principles of the Commission of Inquiry into Land Matters Report; restoration of land to indigenous people; securing state land; land and the economy of Papua New Guinea; and land reform and land use. The authors use some of the experiences of other Third World Nations to demonstrate how the issues of land administration policies and laws can be best dealt with.

Chapter three deals with legal conception and the nature of interest in land which essentially examines the definition of land under the statute and the underlying law; definition and concept of land at customary law; legal classification of land; the doctrines of estate and tenure; interests in land at customary law; and the distinction between legal and equitable interests in land.

In the fourth chapter the authors examine the different types of co-ownership. The fifth chapter is concerned with mortgages; it examines the nature and effect

of a mortgage; the creation of a mortgage; rights and remedies of a mortgagee; and the rights of the mortgagor. Chapter six deals with the classification of leases; creation of leases; rights and duties of landlord and tenant; remedies for breach of covenants; and termination of leases. The seventh chapter examines, inter alia, the nature, creation and extinguishment of easements and restrictive covenants.

The final chapter is devoted to the registration of titles. It examines easements; judicial inroads on the concept of indefeasibility; protection of unregistered interests; remedies for wrongful deprivation of an interest in land and the national lands registration.

Drs Mugambwa and Amankwah's *Cases and Materials on Papua New Guinea Land Law and Policy* is part of the first generation of law texts in Papua New Guinea. It has already proved to be an exciting material for use by students not only in their course in Land Administration and Policy where it is the prescribed text, but also in Land Tenure Law which is usually taught in the semester preceding the Land Administration and Policy course.

Although the book is designed as a student text, it has already proven to be a very popular reference book for practitioners. The popularity of this book is evidenced by the fact that the first order was sold out within a few months after being received.

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