

## **The Reform of Maori Land Tenure and the Quest for Sustainability in New Zealand**

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### **Introduction**

Many of the countries of the Pacific region (including Australia and New Zealand) have a British colonial legacy. This history has had wide implications for the development of the region: economically, politically and socially. The cadastral (property based) systems in these countries have been influenced by British land conveyance and registration practices, and by colonial history. To date, Australia and New Zealand are still trying to resolve land tenure and information problems which are steeped in historical and ethnic dimensions. Land is the single most important factor for Maori development in New Zealand, and has great implications for the development of this country.

As we have learnt from experience elsewhere in the Pacific region, without adequate land tenure and tenancy arrangements (including cadastral reform), it is quite impossible to have sustainable land use practices. Insecure land tenure, and the lack of a proper land information system go hand in hand with environmental degradation, especially in rural areas (Latu and Grenfell 1994).

In an important study of the link between land tenure and environmental sustainability, Dorner and Thiesenhusen (1992) observed that land tenure problems are often the root cause of environmental degradation. The authors examined land tenure and deforestation links in several countries where customary land tenure systems are under increasing stress as a result of growing population and the commercialisation of agriculture. The authors emphasise that traditional tenure systems usually embody both rights and duties (of participants) that ensure the sustainable use of land resources. However, tenure reform alone, in the form of individualisation and titling, may lead to the concentration of land-holding by a small elite. The key issue is to develop incentives for environmental sustainability that have the widest possible appeal, through appropriate land tenure regimes and information policies (Lea 1993).

The increasing political influence of the modern conservation movement in New Zealand has been mirrored by a parallel rise in Maori concerns. Land tenure claims brought by the Maori people under the Treaty of Waitangi Act, particularly since 1983, have enabled an alliance of Maori and environmental interests to be forged. This linkage however is only in its infancy, and if the current unsustainable land use practices are to be mitigated in New Zealand, a synthesis of the essential elements in both cultural traditions is necessary (Horsley 1989).

The sharp increase in Maori land claims and the subsequent settlement of a number of land confiscation grievances, accompanied by historic environmental legislations, have also prompted calls for cadastral reform. Although there is no apparent consensus among experts about the shape of these desired reforms, environmental planners and Maori leaders generally concede the need for an overhaul of current land information management practices. However, any future reforms will have to reconcile seemingly incompatible goals, by being legally sound, culturally appropriate and environmentally sustainable.

### **Tenure reform of Maori land**

Land tenure is a major institutional concern in any society. While the relationship between land and people is relatively dynamic in any society, it is not always appropriate to treat land as an ordinary asset subject to market mechanisms. In both traditional and modern societies, land is a primary element of the social and ecological fabric, and a crucial link in a delicate balance between economic, environmental and cultural agencies. The lack of recognition of cultural values (and other institutional conditions) is probably the most common cause for the ineffective functioning of a cadastre (Dale and McLaughlin 1989: 183-206).

Cultural factors have often been cited to explain the failure to reform Maori land tenure. As a New Zealand judge has observed, 'the European land tenure system, in its present form, is a veritable engine of destruction of Maori land holdings' (Winmill and Morton 1993: 36). Historically, Maori society did not recognise individual ownership, and Maori land tenure was held communally (a system known as *papatupu*). *Whanau* (families) and *hapu* (clans) were allocated land, according to their need, by tribal chiefs (Winmill and Morton 1993: 28). However, despite the popular willingness in New Zealand to address Maori land grievances, the present cadastral system is European and favours individual land titles; and although most urban Maori recognise this principle, their rural counterparts are seldom enthusiastic about individual land titles.

New Zealand's British legacy can also explain some of the complexities facing the reform of Maori land tenure. Maori land grievances and the subsequent wars may have been compounded by the slow development of the British land registration system in Britain itself. As the notable cadastral expert Gerhard Larsson observed (Larsson 1991: 42):

‘Land registration as such had great difficulty winning acceptance in England. Rights in land were commonly transferred by private conveyance... both the 1862 and the 1875 Acts failed completely to achieve their purpose. In 40 years fewer than 1000 titles were registered... The government showed no interest in encouraging registration, and the English solicitors were hardly enthusiastic advocates for registration.’

When the Treaty of Waitangi was signed in 1840, the Maori tribes owned nearly 99% of New Zealand land; today the percentage is nearer the 5% mark (less than half their population share). Historically speaking, Maori vendors may not have appreciated the finality of a land transfer deed between their chiefs and the Crown (Benwell 1993). Furthermore, nearly 1.2 million hectares of Maori land (approximately 5% of New Zealand land) was confiscated in the second half of the 19th century from tribes ‘believed to have been in rebellion’. Much of this confiscated land has since found its way into private titles which are not covered by modern compensation schemes.

Today, Maori holders who have continued to hold a communal ownership of their land resources are predominantly tribal, and Maori land holdings are difficult to demarcate because of multiple successions and counter-claims. Also, a partition sanctioned by law often fails to acquire full cadastral status, because of lack of interest on the part of the beneficiaries to survey and register the title. Maori community leaders experts fear that individual titles may encourage a wave of borrowing on the part of Maori owners, which may lead to further alienation of Maori land where loan repayments are not met (Winmill and Morton 1993: 36-38).

Concern about the unsuitability of individual land tenure titles in Maori society is widely shared by legal experts. According to a notable Maori Land Court judge (Durie 1979: 48), apart from its legal mandate, a Maori Land Court often performs a cultural role in settling land disputes within the Maori community. In his words:

‘It could be said that the main function of the Maori Land Court is not to find for one side or other, but to find social solutions for the problems that come before it: to settle differences of opinion so that co-owners might co-exist with a measure of harmony ...to reconcile family groups.’

### **Maori land tenure and the Quest for sustainability**

Most of the land in New Zealand is subject to legislation enacted within the past 12 years that incorporates concern for both the issues of sustainability and of Maori cultural values and ancestral rights. The presence of this legislation and of a growing capacity among Maori to be involved in the process of formulating public policy for the management of land and other natural resources, means that Maori concepts of land tenure and sustainable management are receiving increasing attention in New Zealand, and are likely to influence the shape of future cadastral reforms for Maori lands.

Resource managers are now required by law to consider the cultural values and concerns of Maori in relation to land, and Maori are developing an increasing capacity to be involved. This process is likely to increase as the legislation becomes entrenched, and will have flow-on implications for land information requirements as the concerns of Maori become recognised and recorded for land management purposes.

Recent environmental legislation illustrates this concern for Maori sensibilities by incorporating environment-related Maori terms within the body of legislation (Crengle 1993). The historic Resource Management Act was enacted 'to promote the sustainable management of natural and physical resources'. Among the principles articulated by the RMA, is that all persons exercising functions under it, 'shall recognise and provide for... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, *waahi tapu* (sacred sites) and other *taonga* (treasures)'. They must have particular regard to the exercise of *kaitiakitanga* (guardianship) and must, 'take into account the principles of the Treaty of Waitangi.' The Conservation Act 1987 is another important legislation that combines concern for Maori principles of resource management, with conservation of natural and physical resources. Section 4 of the Act states that: 'This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.'

The concept of *kaitiakitanga* is one which perhaps most explicitly reflects and incorporates the relationship between Maori land management and environmental sustainability. It is defined in the Resource Management Act as 'the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself'. *Kaitiaki* or guardians are those with rights to ancestral land who are recognised by others of the land-owning group as having special knowledge in relation to the management of resources within that land. They are expected to protect the integrity of those resources in trust for future generations.

However, it cannot automatically be assumed that all Maori will necessarily view environmental sustainability as a key consideration in management of ancestral land. There is a divergence of views among Maori about protection versus development, and many are of the view that 'development' is necessary for the social and economic welfare of their people (Horsley 1989).

### **The cadastral implications of Maori land reform**

The complex cadastral situation of Maori land has evoked much discussion in legal, surveying and planning circles in New Zealand. Non-Maori experts have often argued that progress can be made by a programme of title improvement, whereby all unsurveyed Maori land should be surveyed. However, as stated earlier, for cultural reasons, the Maori population are generally reluctant to accept freehold ownership, especially in rural areas. Maori culture is steeped in communal values, and the prospect of freehold ownership is impractical where multiple ownerships and successions would involve fragmenting a fast shrinking acreage, held in small and isolated parcels.

Over the past few years, there has been mounting interest in New Zealand in the use of information technology in indexing Maori land records and demarcating Maori land assets. Government sources indicate that the Maori Land Court has already embarked on an information system strategy aimed at digitally replicating Court transactions, and compiling a digital list of owners (*New Zealand Official Yearbook 1996*: 326). It is well recognised in legal and Maori circles that Maori Land records are very vulnerable to physical damage and loss. The complexity of multiple ownership, succession and cross-claims (which characterise Maori land transactions) necessitate an efficient storage, indexing and retrieval system. The new information technology system is needed to facilitate document searches, and inform the Maori Land Court and its clients.

The New Zealand Digital Cadastral Database (DCDB) is now widely employed as a base map in municipal and natural resource Geographic Information Systems (GIS) throughout the country. However, the DCDB does not include partitioned Maori lands, which have been approved by the Maori Land Court but have not yet been surveyed. Only 2,500 Maori land titles were available for digitisation when the DCDB project was conceived (Dale and McLaughlin 1989: 203), although independent estimates suggest that these only represent a proportion of all possible titles. This gap in the cadastre has prompted a call for an overhaul of the country's cadastral information system in the country (Winmill and Morton 1993).

Eager to take advantage of this new technology, some Maori trust boards have begun employing GIS as a key component in their IT strategy. The trend has been facilitated by the availability of DCDBs, drafted especially for Maori purposes, such as lands recently returned by the state to tribal authorities. Theoretically, the Maori adoption of GIS could be hailed as a vindication of the view that GIS can serve as a democratising tool (Goodchild 1995), or even as an instrument for self determination (Marchand and Winchell 1994)!

Although some Maori-based information has been transcribed, in the course of use and occupancy studies, there is no systematic inventory of this material. Similarly, despite some recent imaginative approaches to incorporating cultural values into land use inventories and resource plans, there is no established way of incorporating Maori land information into official practice (Harmsworth 1995).

## **Conclusion**

Recent land planning legislation in New Zealand has imposed an obligation on resource managers to respect the traditional rights of Maori in relation to ancestral land and tenure arrangements. The role of *kaitiaki* mentioned earlier is one that has become incorporated into legislation, to promote a Maori-based practice of sustainable land management. Furthermore, rights to ancestral land, and involvement in the consultation procedures required to formulate public policy for that land, has fostered awareness of the connection to past and future generations.

The reform of Maori land tenure in New Zealand can only be achieved by aiming to serve the client groups that are affected by the supply and use of land and the gathering of land information. From a policy perspective, it is very important to appreciate the cultural constraints under which the prospective land tenure reform will work, in order to secure the support of the client community. It is scarcely useful, therefore, to draw a land management strategy that is not backed up by cultural considerations.

Maori lands are the obscure pieces in New Zealand's cadastral jigsaw, because most partitions and cadastral adjustments remain unsurveyed for years. Maori land issues therefore pose a considerable cadastral challenge. Numerous legislations and commissions of inquiry have been formed over the past decades to address the problem, but progress has been slow. Furthermore, it can be said that the land information community in New Zealand is beset by wider cultural failures, including a gender imbalance in the ranks of the surveying community (Ballantyne and Hanham 1993).

The land tenure system in New Zealand has been highly structured by a politically dominant settler culture which places strong emphasis on individual private property rights. The European identification of private property rights has gone hand in hand with the development of a property records system that allows trading in land 'parcels', as commodity units unlinked to the cultural and environmental properties of space and place. This tenure system fits well with a mercantile and settler culture in which historic roots are often shallow.

As discussed earlier, Maori land tenure and its environmental consequences present planning and cadastral experts with a complex set of problems. The situation has arisen from a legacy marred by land confiscations, the intensification of agricultural production, and an apparent intolerance of Maori land management practices. A solution of these problems will have to embrace modern legal, environmental and economic standards, as well as acknowledge Maori cultural values. As a Maori scholar studying the history of Maori land tenure system once observed (Kawharu 1977: 310-311):

'Choices open to tribal groups and to the individual were much as they had ever been. But since the Treaty of Waitangi in 1840 they have become increasingly qualified by the operations of a sophisticated market economy. And whatever the action taken by the Maori in terms of these qualified choices, almost all have lent their own special impetus to the disintegration of his [sic] community life. Yet land still offers him opportunity, both for raising his material level of living and for maintaining his cultural identity as a Maori.'

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