

"Fore-Sight"



"Fore-Sight"- Quarterly Newsletter of the Association of Surveyors of P.N.G.

Oil & Mineral Exploration Recovery Sparks Interest in PNG Resources

The 2005 Annual General Meeting of the PNG Chamber of Mines and Petroleum highlighted the fact that there has been a recovery in the oil and mineral exploration sectors in Papua New Guinea and this is good news for surveyors.



During the last year over 12 new oil exploration licences in the Papuan and North New Guinea basins have been issued or applied for by companies new to PNG. Active mineral exploration is occurring on more than 70 Exploration Licences (ELs) throughout the country and drilling is underway on 10 of these.

Improved output from the Kutubu and Moran fields is currently about 43,000 barrels of oil per day (bopd) with this to increase shortly when the NW Moran (3,000 bopd) and SE Mananada (10,000 bopd) come on stream this year.

InterOil's Napa Napa refinery and associated marine terminal in Port Moresby have been completed and commissioned. The capacity of the refinery is in excess of 32,500 barrels per day of feedstock and production is currently accommodating all of the country's domestic needs.

Production from the four mines in PNG and alluvial miners was just over 68 tones of gold in 2003, increasing to over 70 tones in 2004. This alone

makes up 49.4% of the country's export revenue.

The PNG Gas Project advanced to FEED stage in October 2004. This will involve expenditure of US\$80 to 100 million over 12 - 18 months. Survey teams from Arman Larmer and Asia Pacific are currently mobilizing for work associated with this project. The project, which is a world class development costing around US\$3.5 billion, involves the export of gas from PNG to Queensland and probably south-east Australia.

Overseas and local companies have renewed investor confidence - mineral exploration expenditure has risen from a low of US\$ 8.2 million in 2002 to over US\$ 25 million in 2004. Continued good macroeconomic management, strong government support for the resource sector, and healthy commodity prices will see further growth in exploration and development in the PNG mining and petroleum sectors.

With all the bloody good news, maybe we should be asking ourselves - do we have enough surveyors to cope (?)

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COMING EVENTS :

- 4-7 July : NARGIS 2005
"Applications in Tropical Remote Sensing" - Darwin, N.T.
- 24-26 July : 12d Model User Conference, Brisbane, QLD
- 25-29 July : International Geo-science and Remote Sensing Symposium, Seoul, Korea

39th PNG SURVEY CONGRESS

Dates : 7th to 9th July 2005

Venue : Holiday Inn Hotel, Port Moresby

Theme : 'Sustainable Land Utilization in PNG for Economic and Social Development and the Role of Surveyors and Allied Professionals'

PROGRAM

Thursday : Registration, Official Opening, Keynote Address, Technical Papers followed by the President's Welcoming Cocktail Party in the evening.

Friday : Technical papers in the morning, ASPNG AGM in the afternoon, Annual Dinner in the evening.

Saturday : AM - Forum, PM - free time and social activities, Evening - Farewell Bar B Que

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General News Items

from Geocomp's "Dimensions" Newsletter (March 2005)

Regrettably Council is busy with arranging the Congress, or work commitments (government guys with electoral boundaries and private guys with FEED or other projects), and this issue of the newsletter has a deadline to meet, so Here's some general news items ...

GEOCOMP SYSTEMS Releases *Terramodel Version 10.40*

Last year GEOCOMP Systems supplied *Terramodel* with its *Geocomp* Update for Vers. 10.30 by CD and 10.31 by email. They have recently released *Terramodel* 10.40 on CD.

Some important changes between 10.30 and 10.40 include :-

- New GCCOORD command with current Australian coordinate systems converts plines
- GCHALEDT Edit horizontal alignments
- Import AutoCAD 2004 / 2005 DWG and DXF files
- New EARTHWORK and XVOLUMES commands

At Last : The Definitive Data Transfer Standard

Every industry needs a good data transfer standard. The latest civil and survey standard is LandXML.

See www.landxml.org for details

Most relevant software applications including *Terramodel*, support the core features of this format. Already it is an easy way to exchange data with *Autodesk*, *Bentley*, *Leica*, and *Carlson* software.

In New Zealand, it's used for fully electronic survey lodgement.

Plotting Order

In *Terramodel* and *Geocomp*, the most recently created objects are displayed and plotted last. But what if the text is plotted over hatching?

To force the objects to plot in pen number order, select "Sort by Pen" when you plot from *Terramodel*. In *Geocomp*, use SDS 268 or SDS 70.

Point 'n' Shoot Surveying

Imagine you are called out to survey a complex structure you can't reach, like a church spire or crane. The only gear you have with you is an ordinary digital camera. No worries, just take the photos and your field survey's done.

How does this work ? It's pretty straightforward. Take digital photos at different angles of an object or place you want to survey. Scale them by using a known distance on two photos.

Go back to the office, load the pictures into your computer. Using "*iWitness*", a new photogrammetric system for 3D coordinate location, you mark pairs of points on the photos until there is enough for *iWitness* to compile an image of your subject.

iWitness then constructs your object digitally. With care and several photos, you can pick up to 20mm differentials across the survey. You can adjust each point at pixel level.

iWitness works with anything you can measure, but is especially effective with building facades, landscaping projects, hilly terrain - anywhere you can get a stereo pair of photos.

The breakthrough. This idea is not new, but the difficulty was calibrating cameras - the *iWitness* developers have done the full blown mathematics behind the calibrations, so the method is no longer restricted to highly accurate cameras.

iWitness takes you through a short calibration sequence in which it works out the lens parameters of your camera - you only have to do this once as *iWitness* recognizes your camera forever. Repeat the process for each camera you use : several surveyors can use different cameras on site and merge their information to create one model.

The possibilities are revolutionary : for example you can calibrate a mobile-phone camera - and while this is rough 'n' ready surveying made easy, it'd be an excellent back-up for traditional survey methods : take photos in case you forget a point and it might save a trip back to the site. A 30 day trial version of the software is available.

Enquiries : www.geocomp.com.au/iWitness



NEWS FROM FIG

Mr. Markku Villikka is the Director of FIG, the International Federation of Surveyors, and he has invited members of the ASPNG, and in particular PNG FIG Delegates, to attend the 4th FIG Regional Conference in Havana (Cuba) from September 26th to 29th, 2005.

As in previous FIG Regional Conferences the focus of the conference is on the region - this time in Latin America and the Caribbean. However, the theme of the conference "Capacity Building for Sustainable Development" is of interest for all surveyors over the world. All ten FIG Commissions will participate and many of them will also have their administrative meetings. So all national delegates should consider attending.

At the previous regional conferences they have had 200 - 400 delegates from 30 - 40 countries.

Deadline for submitting abstracts is 31 May, but some late coming abstracts will be considered. The call for papers, list of topics and first invitation are available on the conference web site : www.fig.net/havanva

To contact Markku Villikka, use the email address : markku.villika@fig.net

For more information about FIG, go to their website : www.fig.net

To subscribe to the FIG monthly E-Newsletter check the email address : <http://www.fig.net/pub/subscriptions/getnewsletter.htm>

Alan Dunley, PNG FIG Coordinator

SURVEYOR'S CPD QUIZ

A curve that is formed so that the sum of the distances from any point on the curve to two foci is equal to the sum of the distances from any other point on the curve to the same foci is known as :-

- A. A circle
- B. A parabola
- C. A sphere
- D. An ellipse

Answer "C" was the correct response to the last question.

THE DEVELOPMENT OF THE INDONESIAN LAND LAW FROM ADAT LAW TO MODERN TIMES

By Prof. Boedi Harsono, Professor of Land Law, Trisakti University Jakarta

INTRODUCTION

The basic principles and the main provisions of the Indonesian Land Law (*Hukum Tanah* or *Hukum Agraria*) now in force are laid down in Law 5/1960, often called the UNDANG UNDANG POKOK AGRARIA (UUPA), implementing the Basic National Policy stated in article 33 (3) of the Indonesian 1945 Constitution.

Prior to the enactment of the UUPA on September 24, 1960 the law regulating the legal relationship with land was pluralistic and complicated by the existence of several sets of entirely different systems of land law simultaneously in force. Consequently, there were several categories of land with several sets of titles.

THE FORMER INDONESIAN LAND LAW

First, there were the so-called *adat* lands, covering most parts of Indonesia governed by the *Adat* Land Law. This law which was one of the important parts of the Indonesian native traditional customary law, was unwritten. It had a communalistic character, with the possibility of its members owning land individually.

Originally all *adat* lands belonged to the respective *adat* communities - the so called *ulayat* lands - with the existence of individual land titles with *adat* titles, ranging from the right to mere use of a certain part of the *ulayat* land to individual right of ownership with an unlimited duration. Created by clearing a certain part of the community forest with the consent of the Head of the community, followed by actual occupation and cultivation. In most regions this individual ownership, the so-called *hak milik adat*, was transferable and inheritable, though with certain restrictions. These lands were not registered.

This individual ownership (the *hak milik adat*) was not a roman dominium. It was rather similar to the estate in fee simple, but on communal or *ulayat* lands.

Second, were the some 250.000 parcels of land, scattered mostly in cities, holiday resorts and as large agricultural estates. These lands were individually owned with western titles (*eigendom*, *erfpacht*, *opstal*, *gebruik*) according to the Indonesian Civil Code, imported and inserted during the colonial period from the Netherlands. The Western Land Law applicable was of an

individualistic character.

All those lands originated from grants by the Government and were entirely registered through a well functioning land registration, under the provisions of the Conveyance Ordinance 1834 for the recording of the deeds of conveyance and the several Cadastral Statutes for the surveying and mapping activities. A certified copy of the deed of conveyance and the plan of the parcel served as evidence of its title, the title holder and the land owned.

During the colonial period there were many Kingdoms and Sultanates which were entitled to have their own land law, originally based on a feudal concept. People could individually hold land of the Kingdom/Sultanate with special titles, mostly through grants. Only a small part of these lands were registered, covering those titles originated from written grants.

After Independence in 1945 all those Kingdoms and Sultanates were abolished and the Kingdoms/Sultanates lands became State Lands, with the exception of those already individually owned.

Finally, were the so called state lands, governed by special statutes, comprising the former Administrative Land Law. This Administrative Land Law was actually the implementation of the colonial land or agrarian policy, which basic principles were laid down in the so-called *Agrarische Wet* of 1870. The agrarian policy embodied in the *Agrarische Wet* was at that time a new policy in favour of foreign private entrepreneurship in conducting large agricultural estates. One of the implementing provisions of the *Agrarische Wet* was the so-called *Agrarisch Besluit* of 1870, in force in the islands of Java and Madura, which contained a very important statement, known as the *Domein Verklaring*. All land that nobody could prove to be his own was assumed to be state land, that is owned by the State. According to the interpretation of the Colonial Government all land which was not owned with the right of *eigendom* was State Land. Several parts of the other islands had also such a Declaration as a basis for the issuance of the so called *erfpacht* title for conducting large agricultural estates.

This Administrative Land Law had a dualistic character, covering both lands with

western and *adat* titles.

So besides the *hak milik adats* on *ulayat* lands, there were also *hak milik adats* granted by the Government on state lands. A small part of these lands were registered according to special provisions for conducting legal security. Within the frame work of the *Domein Verklaring* these titles were not recognized as ownership titles, but as mere possession and called formerly just as "*erfelijk individueel gebruiksrecht*" (inheritable right of use), later on renamed as "*inlands bezitrecht*" (indigenous right of possession).

An administration for fiscal purpose was also conducted by a Directorate within the Department of Finance, with regard to those lands in Java, Madura, Bali and some other regions. Up till 1961, land tax was based on the legal status of the *adat* land as *hak milik adat* (*pajak bumi* and *verponding* Indonesia). With the absence of a legal cadastre the tax bill was considered by people as a kind of evidence of ownership to the parcel and the tax-payer as its owner. As from 1961, the land tax is levied on the user of the land. So theoretically not only the owner but even an illegal squatter can be a holder of a tax bill (*IPEDA* and at present *Pajak Bumi dan Bangunan*).

The dualism in our Civil Law and the pluralism in the land law made it necessary to have a set of principles and rules, called Interpersonal Land Law, which dealt with the question of the law applicable to interpersonal relations with land.

THE CREATION OF A NATIONAL LAND LAW

As soon as Indonesia declared its independence on August 17, 1945 the existing land law was considered no longer in conformity with the spirit of independence. Preparations were made to create a National Land Law that would embody and implement the principles of the Pancasila (the five Basic Principles of our Nation) and the agrarian policy laid down in article 33 (3) of the 1945 Constitution. The Constitution declares that all land, the water and the natural wealth contained therein, are to be managed by the State and should be utilized to achieve the greatest prosperity of the People. In contrast with the statement in the "*Domeinverklaring*" of 1870, the Consti-

-tution does not declare the State as the owner of the land, but rather as an organization of the Indonesian People, it has the right on behalf of the Indonesian People to determine everything in regard to all land without exceptions, regardless whether it is already owned by the people or not. The National Land Law must be an effective tool in the efforts to create a just and prosperous society based on the Pancasila, being the ultimate goal of the Proclamation of our Independence.

In 1960 the effort to stipulate the basic principles and main provisions of the new land law were finalized by the enactment of the UUPA.

The UUPA has made an end to the existing pluralism and created an uniform national land law, based on the concept, principles and system of the *Adat* Land Law. The National Land Law is actually the *Adat* Land Law, modernized and developed so as to meet the demands of a modern society. There will be a written National Land Law, applicable to all lands within the territory of the Republic of Indonesia, supported by an efficient and effective land registration. The modernization will also cover the procedures of conveyancing. These goals, however, are not yet fully completed.

The Western Land Law and the land laws of the former Kingdoms and Sultanates were abolished. The existence of the Interpersonal Land Law became obsolete.

As from September 24, 1960 the Indonesian land law was no longer pluralistic. Its principles and provisions are laid down in the Constitution, the UUPA, its by-laws and the *Adat* Land Law, as long as its provisions are not yet amended by or transformed into written regulation. Some regulations of the old land law are still in force by virtue of the transitional provisions of the UUPA. So the *Adat* Land Law has become a part of the National Land Law, namely, the unwritten part of it.

The *adat* law itself is well known as pluralistic, *ie*, different from region to region. So, how will it be possible to create a uniform national land law based on that *adat* law? Pluralism in the *adat* law is actually true with regard to the family law and the law on inheritance. But with regard to the land law the concept or philosophical background, the principles, the legal institutions and the system are generally the same.

THE CONCEPTUAL AND STRUCTURAL SET UP

Based on the concept of the *Adat* Land Law the National Land Law has also a communalistic character, with the possibility of individual holdings of land, as is the case within the *adat* communities with regards to *ulayat* lands.

In this national level the ultimate and fullest relationship with land is on the Indonesian People as a whole, covering all lands within the territory of the Republic of Indonesia, stated in the UUPA as a Gift of God. It is the ultimate source of all other legal relationships with land (article 1 UUPA).

Implementing the statement in article 33 of the Constitution, UUPA stipulates the substances of the power of the State as a public organisation, in conducting management activities on behalf of the Indonesian People as is already mentioned above (article 2 UUPA).

The UUPA in article 3 explicitly recognizes the *Hak Ulayat* of the *adat* communities, provided that it is actually still in existence, but at the same time stipulates limitations regarding its execution and implementation. Conceptually, within the system of the National Land Law this *Hak Ulayat* is incorporated in the right of the Indonesian People mentioned above.

Next are the titles obtainable by individuals and legal bodies: the rights on land (the *hak-hak atas tanah*) and the security right on land (the *hak jaminan atas tanah*).

The rights on land as pure surface rights, do not entitle the holder to obtain natural resources contained in the earth underneath. The extraction and the exploitation of those resources requires special permits according to the prevailing mining regulations. According to the *Adat* Land Law and at present the National Land Law, "land" does not include fixtures.

There are primary titles on land granted by the State (at present by or on behalf of the Head of the National Land Agency) and secondary titles granted by other holders on the basis of mutual agreement

The primary titles are:

a. the *Hak Milik (HM)* (which is in substance the *hak milik adat* modernized) the right of ownership, being the fullest individual title to land, with an unlimited

duration, inheritable, transferable and can be used as collateral, charged with *Hak Tanggungan*.

b. the *Hak Guna Usaha (HGU)*, for agricultural purposes, with a limited duration of 25 to 35 years, extendable for an additional 25 years, inheritable, transferable and can also be used a collateral.

c. the *Hak Guna Bangunan (HGB)*, for building purposes, with a limited duration of 30 years, extendable for an additional 20 years, inheritable, transferable and can also be used a collateral.

d. the *Hak Pakai (HP)*, for other purposes with a more limited duration.

The HGB and HP can also be created through a landowner holder of a HM by grant as a secondary title.

The statement on the duration of the HGU and HGB mentioned above needs clarification.

The initial issuance will be for a period of 25 to 35 years for a HGU, depending on the crop which will be cultivated. For the HGB it will be up to 30 years. But the UUPA opens the possibility of extension with another 25 years for a HGU and 20 years for a HGB. So as a total the period of duration will be 50 to 60 years for a HGU and 50 years for a HGB. With such a duration a serious and bona fide entrepreneur will certainly be able to conduct business properly with a fair return of investment.

Though not expressly stated in the UUPA, the idea is that after the expiration of that period of 60 and 50 years, a new title can be granted with the same period of duration. Thus in total the use and enjoyment of the land can be up to 120 and 100 years.

In practice, however, the issuance of a HGU and a HGB is not accompanied by a notion of the granting of that extension in the grant deed. So the title holder is not quite certain, because there is no guarantee that at the expiration of his title he will get an extension. The practice is just the opposite, namely, that he has to apply for a new title. So up to 1992 the UUPA was still understood as only giving the opportunity to use the land for a limited duration of 35 and 30 years, which is considered as not enough to conduct business with satisfaction.

To further stimulate investments, in the framework of the July 1992 packet investments policies, a new policy in conducting the issuance of those titles is formulated in Regulations 3/1992 of the Head of the National Land Agency (Badan Pertanahan Nasional), now in charge with the management of Agrarian/Land affairs on behalf of the President of the Republic of Indonesia. The extension and even the possibility of granting a new title are stated explicitly in that Regulation. According to the statement of the Head of the BPN, he is willing to mention the extension of the duration period in the grant deed, as to give certainly to the investor, that the extension will be granted and on time, before the expiration of the 30 or 35 years period, provided that the enterprise is still in good condition and managed properly.

With the notion of the extension in the grant deed, the next generation in charge with agrarian land affairs will be committed by law to grant the extension. One year before the expiration of the title the holder has to apply for the extension on the basis of the value of the land at that time. But in certain areas, there is the possibility of paying the fee in advance at the first issuance of a HGB.

Such a solution without revising UUPA is fair enough as a guarantee for the proper use and enjoyment of land with a HGU and a HGB title.

Law 16/1985 on Multi-storey Housing opens the possibility to individually own apartments and separate parts of commercial multi-storey buildings with an individual strata title, called the *Hak Milik Atas Satuan Rumah Susun (HMSRS)* on a condominium basis. The multi-storey buildings can be built on a HM, HGB or HP title land, for housing and/ or commercial purpose. The HMSRS does also include the common ownership of the other parts of the building and the land on which it stands. It is transferable and if owned by individuals, inheritable. It can also be used as collateral charged with hypothec if the land is a HM or HGB. The so-called fiducia can be used as a security of a debt, if the land is commonly owned with a HP title. But at present, since the coming in force of Law 4/1996, HMSRS can be used as collateral with Hak Tanggungan if the land is a HM or HGB or HP.

To become holder of those title one has to meet certain requirements. For instance, the HM can only be obtained by Indonesian individuals and specially appointed legal bodies, as state owned banks.

HGB may be granted only to Indonesian individuals and corporations established according to Indonesian law and domiciled in Indonesia, regardless of nationality of its share holders and the source of capital. The HGU, however, will not be granted to corporations with pure foreign capital. If there is a foreign capital investment the corporation must be a joint venture with an Indonesian partner. Foreigners domiciled in Indonesia can only apply for a HP. Other foreigners can only occupy a building or apartment by way of lease (*sewa*) from the owner.

With the enactment of the UUPA not only the land law but the existing rights in land too had undergone a fundamental reform. The existing land rights on September 24, 1960 were converted into one of the new titles mentioned above. So from that date on there were no old titles anymore.

The present situation in land holdings is generally as follows:

a. Lands held with one of those primary titles mentioned above, consisting of those: -

- originating from the conversion of the former titles, now owned with the HM, mostly still unregistered;
- originating from grant by the Government after commencement of the UUPA. Most of these titles are already registered.

b. State lands, not owned by individuals, directly administered by the Government, consisting of: -

- non forest lands, under the jurisdiction of the National Land Agency;
- forest lands, under the jurisdiction of the Department of Forestry.

The security right on land mentioned in the UUPA is called the *Hak Tanggungan*, the provisions, of which are stipulated by Law 4/1996 similar to the statutory mortgage.

The *Adat* Land Law does not mention a security right on land.

LAND REGISTRATION

In an Indonesian traditional community, with a limited population and a limited area of territory, every member knows the owner of a particular piece of land and where the boundaries are, the owner of the building and valuable trees on there, etc. So the absence of a land registration is not considered as a shortcoming. But in a modern open community the existence of

A land information system is essential. So in implementing the UUPA, a (new) Land Registration System was set up, based on a modified Torrens system, conducted at present by the National Land Agency.

It covers the registration of lands with those primary titles and conducted according to the provisions of the UUPA, presently as from Oktober 1997 implemented by Government Regulation 24/1997. Formerly as from September 24, 1961 implemented by Government Regulation 10/1961.

There is a Register (called *buku tanah*) for the titles, cadastral maps and plans for each parcel. A *certificate*, consisting of a copy of the *buku tanah* and the according plan bound together in a special cover, serves as evidence of title. But different from the pure Torrens system, the Indonesian law on registration does not guarantee, indefeasible title by registration.

Registration of a newly granted title is a condition of its creation. So registration is compulsory. Many of the lands originating from the conversion of the former titles are already registered and provided with a certificate covering some 25 million parcels. But up till now most of these lands (approximately 40 million parcels) are still unregistered. For these titles registration is voluntary, except in cases of conveyance. Registration will then be compulsory.

In conducting the adjudication procedure for the initial registration, both the systematic and sporadic registration of former *adat* lands, an "Investigation Team" has to meet several problems. Most of all it is difficult to have the proper information for the determination of the legal status of the land and its title holder. In most cases there is no document at all. Fixing the boundaries is sometimes also quite a problem.

In Java, Madura, Bali, and some other regions as mentioned above the tax-bill issued before 1961 can be used as a strong indication of the former title and its holder.

But in other regions the Team has to rely mostly only on the fact of factual occupation and/ or cultivation by the applicant, enforced by statements of the Head of the *Adat* Community and some witnesses without document.

So considering this situation it is clear, that for the time being it is impossible for the Indonesian Government to guarantee an indefeasible title by initial registration of those previous *adat* lands. But in gener-

-al one can rely on the data stated in the connected certificate or supplied by the National Land Agency Office.

OBTAINING LAND

Introduction

In obtaining land some essential points have to be considered. Firstly, the land use plan established by the Local Government, must be observed.

If the location of the land is not in conformity with the existing plan, one will face the possibility of not getting the licence to make use of it as planned before. Even if such a formal land use plan does not exist yet for the area, local authorities must, nevertheless, be consulted to prevent subsequent difficulties. In some cases a reservation and location permit from the local authorities is required.

The legal status of the one, who needs the land and the legal status of the land itself are points of importance, to determine the procedure, which has to be followed to obtain the land. If he does not meet the exact requirements for the holder of the title to the land, he intends to acquire, a direct conveyance by way of purchase is not allowed. In that case a so-called "release of title" procedure must be followed, to make the transaction legally valid.

In case of registered title, its certificate shows the status of the registered title, its legitimate holder, its duration of validity, the encumbrances applied to it, the description of the land (its location, area and boundaries) and other information of legal importance. To know the legal status of unregistered lands and the rightful owners, further investigation is needed through a special procedure.

The presence of squatters can also create a problem.

Obtaining Land from the State

Where State lands are available for the intended purpose, one can apply for the proper title to the Head of the National Land Agency. After payment of the so-called *uang pemasukan* ("entrance fee", being the price of the land) the title granted, must be registered at the Local Land Office, in order to obtain the certificate. Registration, in case of granting a title by the State, is a legal requirement for the establishment and existence of the title.

Obtaining Land by Way of Purchase

If the prospective buyer meets the exact requirements for the holder of the title to the land he intends to buy, it may be obtained through direct conveyance, for instance, by way of purchase. In that case the transaction must be carried out before a Land Deed Official [*Pejabat Pembuat Akta Tanah* (PPAT)], who is authorized to execute the deed. If the land is not registered yet (and, therefore, no certificate is available), the act must be witnessed by the village head and a member of the village administration. They do not merely act as witnesses, but especially in their capacity as village dignitaries, they guarantee the rightfulness of the transaction, with regard to the legal status of the land and the identity of the seller.

After the execution of the deed, registration follows, at the Local Land Office. In some cases registration of the transfer requires the consent of an authorized official. Registration in this case means the noting of the event in the *buku tanah* of the title and its certificate. If the land is not yet registered, a special procedure must be followed to investigate and determine the exact status of the title and the identity of the seller, before the title can be registered and its certificate granted to the new owner. Under the existing system, the certificate follows the holder of the title.

In conformity with the principles of the *Adat Land Law*, the transfer of the title to the buyer takes place at the moment of the execution of the deed of sale. This transaction is a so-called "cash-transaction", consisting of the transfer of the title by the seller to the purchaser and the payment of the price by the buyer to the seller, both acts taking place at the same moment. The deed of sale, executed by the Land Deed Official serves as its evidence. The registration of the transfer at the Local Land Office does not affect the validity of the sale, but is intended to provide the new holder of the title with a legally stronger evidence as stated in the UUPA. The records of the local Land Office are open to the public, which is not the case with those of the Land Deed Official. So, registration does constitute public notice of the transfer of the title to the new holder.

Obtaining land through a "Release of Title" Procedure

If one does not meet the requirements for the holder of the title to the land he intends to acquire, a "release of title" procedure must be followed. A direct conveyance will face legal sanction stipulated in

the UUPA. The transaction will be void ab initio, the land becomes State Land and all payments received by the landowner may not be reclaimed.

The "release of title" procedure is in short as follows. The owner of the land is requested to release his title in favour of the party, who wants to obtain it, in exchange for compensation money, equal to the price of the land in a selling transaction. So, the land will become State Land, to be subsequently granted by the National Land Agency to him with a title, which he is qualified to hold. By following this procedure, he can obtain and hold the land legally; without violating the UUPA. After receiving the grant, registration of the title follows, in order to get the certificate.

Obtaining Land by Way of Lease

Obtaining the land by way of lease (*sewa*) from the owner is, of course, possible. As is already mentioned above the land needed can also be held on basis of the HGB or HP granted by a landowner. However, in case of ventures with large capital investments, the corporations generally desire title, which do not derive from other parties. They prefer titles granted directly by the State.

Obtaining Land through Industrial

Estates

Obtaining land through the above mentioned procedures, especially if it has not been registered, takes time and money. If the land required covers a large area, the negotiation with the several owners will indeed prolong that time.

So, to overcome difficulties and in order to encourage industrial development, land can be obtained through industrial estates conducted by the State and private corporations.

An effective and efficient industrial estate will be able to provide the entrepreneur instantly with the land he needs, which title is already clear stated in a certificate and the price fixed.

At present there is also a provision for the supply of land for large scale settlements projects.

Obtaining Land through Expropriation

Obtaining land for any purpose, whether by private persons or the Government, must be carried out though negotiation with the owner.

This article concludes on page 7 ...

Should the respective parties fail to come to an agreement, the State is entitled to take the land by force (that means without the landowner's permission), provided the land is required for the public interest. The acquisition is subject to conditions, stipulated in the UUPA and Law 20/ 1961 on Expropriation.

Law 20/1961 clearly states the expropriation must be a last resort, if negotiations failed to settle the matter.

The only authority authorized to declare expropriation is the President of the Republic of Indonesia, who acts by Decree. The Presidential Decree also fixes the form and amount of the compensation to be given to the landowner (s).

The Presidential decision to carry out expropriation may not be questioned. The expropriation law has given the President plain power to decide for himself, whether the application for expropriation is for the public interest, and the purpose for which the expropriation is made, can not be carried out at another place. The President determines what constitutes "public interest". The law itself, does not give a definition, leaving room for the President to make use of its provisions effectively.

The form and amount of the compensation determined in the Decree, however, may be put to Court, which decision will be final and binding both parties, with the provision that the social and economic status of the landowner shall not be less than before.

Expropriation results in nullification of the title, so, the land becomes State Land, to be granted subsequently with a new title to the party for whom the expropriation has been conducted.

In case of emergency, when the lands are needed immediately, the Head of the National Land Agency is authorized to issue a decree, authorizing the party who has applied for the expropriation, to take possession of the required land immediately. The President's decree on the expropriation may be requested later, if negotiations failed to settle the compensation by mutual agreement.

Editor's Note : All care has been exercised in getting the preceding article 'right' - given it was originally 30 x A5 pages that were scanned and converted to text using "OCR" techniques. If there are any 'hiccups', I do apologise to the original author, Professor Boedi Harsono.

Letters to the Editor



12/4/05

The Editor,
Fore-Sight,
PNG

Dear Sir,

Enclosed is a recent (ie now !) white paper on land reform in Indonesia which may be suitable for publication in Fore-Sight.

It may highlight the need to create added value to land use,

Cheers & Beers,

Graeme Arman
P.O. Box 693, Burleigh Heads,
Qld. 4220. Australia

Thanks Graeme for the contribution. Certainly something for us to think about in PNG and an insight on how our neighbours tackle land administration problems - ... Ed

9th March 2005

Alan,

I have enclosed a disk containing my latest West New Britain Cadastral Mapping Series in .pdf format. As no-one wants to buy the datasets I will try and sell them as cadastral noting maps.

This is the "beta" version and there are a few things that may need attention such as the title blocks, grid ticks, standardization of font sizes and styles etc. I have shown PSMs where I have good data and I will compile an index map at some stage. Have also enclosed for your information metadata on Urban and Rural datasets compiled to date.

Not much else happening at the moment, bummer all work and it is pissing down rain as well. Also my phone has been u/s apart from the odd week every now and again, I do however access my email through a mate's computer every week or so.

On another tack whatever happened to the ASPNG website ? The times that I have had email/internet access I have done a bit of searching for GIS datasets of Papua New Guinea and come up with GeoScience Australia as well as GeoMapping Technologies amongst few others. I am sure that if one had a website with the right words it may prove beneficial and at least get maybe a few enquiries.

Regards,

Bill McKibben.
McKibben & Associates Limited
Trading as NIUGINI SURVEYS

Thanks Bill for your sample data and general update from West New Britain. I've often wondered what happened to the ASPNG website myself - I'd like to get Fore-Sight on it for a start !!! Also I know you're keen to find out what the latest situation is on the Scale of Fees. Hopefully your letter will elicit a response. Your datasets are first rate and an example of how private enterprise is trying to keep things up to date - ... Ed



"Post Card from Milne Bay" (above)

Feb / Mar / April - 2005.

To the Guys in the Office !!!

Life is really tough doing the marine survey work at Nuakata. I may be delayed getting back to POM for a while.

Regards,

Marvin Paisawa.

Got any spare berths for an old GIS honcho down there ? ... Ed

"Fore-Sight",
P.O. Box 1271,
Port Moresby, N.C.D.
Papua New Guinea



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Newsletter contributions
can be sent to the Editor
at P.O. Box 1234, Wai-
gani, NCD or via fax to
325 8813 or by e-mail
to:
alsurvey@daltron.com.pg

Members & Other News ...

The expression finding yourself in deep water (or getting in over your depth) implies this is not the ideal situation to be in - but not always ... On the 8th January this year the *USS San Francisco*, a Los Angeles Class attack submarine, was moving at 30 knots at a depth of 130 metres when it ran aground some 560 km south of Guam. One sailor died and 23 others were injured, but the hull of the submarine was not breached by the sudden impact. This incident underpins the fragility of sea floor mapping. High resolution charts of shallow seas can now be produced from remote sensing techniques using airborne laser depth sounders, but charts of the deep sea floor can only be produced by echo sounders. The swath of these may only be a few kilometers wide, so there are many parts of the ocean that have never been surveyed to any degree of accuracy. (*Information source "POSITION" magazine April May 2005*).

Surveyor Bob Curley now holds the position of Senior Lecturer, Land Management & Development Dept., School of Social & Economic Development, University of the South Pacific, Suva, Fiji. He can be contacted via his e-mail address: curley_r@usp.ac.fj

Surveyor Mathew Papai resident in Alotau, is still keeping his hand in with the occasional stint of survey work down in Milne Bay. Mathew was in the first group of 4 to graduate from UniTech in 1970 - and he graduated as a *photogrammetrist*, turning to ground survey work a bit later.

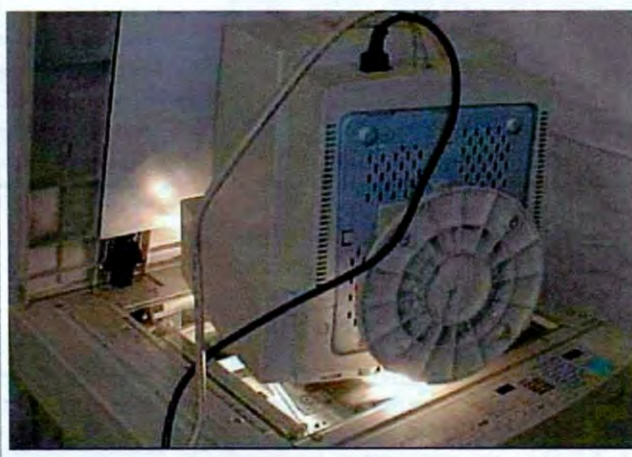
Strange but true ... in the book *Masta Mak*, two aircraft are mentioned - both having the Australian registration *VH-AEA*. One is a DeHaviland Dragon (circa 1937), the other is Qasco's ex Turbo Baron. Unlike car number plates, aircraft registration is a bit more limited, so the same registration may be re-issued at some point in the future. Talking of aircraft registrations, "*Obscene Airways*" ran a trio of "P2's" in PNG - 'COC' (Piper Aztec), 'TIT' (Cherokee 4), and 'BOX' (Helio Courier) - later joined by 'DNA' (Partenavia).

"Light Refreshments ..."

"New approach to Jacksons Airport suspect" ...



'So How Do Blondes Copy a Word Document??'



Editorial Comment : 'Why Are Trig Stns on Hilltops?'

Having been involved with computers and digital mapping technology over many years, it seems to me that we are becoming dependent or reliant on "the machine" - trusting it will 'do the right thing'. Very often the associated advertising hype assures us that indeed we have chosen 'the best tool for the job' ... and that the software is so intuitive, that's its merely child's play. In many cases this may well be correct (kids are good with computers).

And while its an absolute delight to work with the latest in technology (remembering it may not be the very latest) there will come a time when you have to 'get back to basics'. A simple plumb-bob is still needed to plumb down a position from a GPS antenna. A GPS traverse needs to be closed like any other traverse. Good field notes are as important in GPS surveying as they are in 'conventional surveying' (and what is "conventional surveying" these days ???).

So with all this 'good kit', and previous experience, what could possibly go wrong (?). Same as any other job, you really don't find

out about it until you're back in the office. 'Jeez, we're getting some funny results with the differential correction' - 'Yeah, but the guys were always in rainforest' - 'Not the guys out on the water' - 'Yeah, that's right'. So did we have the latest technology (?) - pretty much, but there was a software upgrade we didn't get until after the job had finished, (and a 'firmware upgrade'). And that new manual, boy it's a lot thicker than before. And hey look at this ... there's a new module in the software that let's you do proper GPS Mission Planning. Sound familiar (?), we can all be caught out like this. Fortunately, a lot of time in the office was able to sort out most of the problems.

So what did we learn from this experience. We learnt the answer to the question - "Why Are Trig Stns on Hilltops?" - its because they have great inter-visibility with their mates and have a clear view of the sky and were put there by surveyors who knew someday a GPS surveyor would ask the question 'where should my base station antenna be located' (!!!).
(Still doesn't solve the problem of a GPS in a bouncing boat) Ed.