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ACCESSING CUSTOMARY LAND FOR URBAN DEVELOPMENT

Lessons from Ahi, Morobe Province



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Discussion Paper No. 126



**Accessing Customary Land for Urban Development:
Lessons from Ahi, Morobe Province**

by

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and
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**NRI
The National Research Institute**

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Cover photo, courtesy of Linda Duncan — Hohola suburb in Port Moresby in the 1960s.

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INTRODUCTION

Past attempts to improve access to land for development have generally failed. Remnants of these attempts reveal a series of laws that tried to empower customary landowners to develop land held under customary tenure for various commercial purposes. Unfortunately, the practical application of these laws has proven difficult to understand for many customary landowners as they have not been made aware of the practicalities and impacts of such laws to enable them to make informed decisions to develop their land. This study attempts to document the application of one of the existing laws, the *Land (Tenure Conversion) Act* 1963 (LTC) in mobilising customary land for urban development in Papua New Guinea (PNG) with the view of exposing its limitations in urban land development.

The study discusses the application of the *LTC Act* 1963, to formalise an urban customary land development initiative in Lae, Morobe Province, and highlights the current challenges faced by the landowners in availing their customary land for modern economic development. The study also gives a brief overview of the improved prospects that the recently passed legislative amendments to the *Incorporated Land Groups (Amendment 2009) Act* and the *Land Registration (Amendment 2009) Act* under the Government of PNG's current land reforms now provide for customary landowners.

This study may provide lessons for potential customary land mobilisations within the urban centres in PNG.

Study Rationale

The case study in Lae was selected for a number of reasons. Firstly, Lae is the second largest city in PNG and is the industrial hub of the country with the busiest seaport and wide transportation links to the country's other regions. It is experiencing increasing demands for different land uses including urban housing. Furthermore, as most of the available State land has been allocated, there is now increasing pressure to acquire peri-urban customary lands to facilitate development.

However, there is no clear legislative framework to guide the development of customary land for urban development even though there is anecdotal evidence of customary land being developed to cater for urban development. This study aims to document the application of the *Land Tenure Conversion Act* in developing urban customary lands and find out the issues and challenges that have been experienced by the landowners to inform and educate policy makers on what is currently happening without appropriate legislative framework and administration.

Research Objectives

The main objectives of the study were to:

- document the current application of *Land Tenure Conversion Act* in mobilising urban customary land for development;

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- highlight the limitations through an understanding of the issues and challenges; and
- discuss improved prospects through the current land reforms including the recent legislative amendments.

Research Methodology

The study was undertaken between late 2008 and early 2009 using a desk-top study, informal stakeholder interviews and field observations to gain insights and capture different perspectives of the stakeholders.

The desk-top study utilised policy documents, online sources, journal articles, conference presentations, books and relevant legislation. Informal interviews were conducted with some of the stakeholders including customary landowners, private investors and provincial government officials. Most of the informal interviews were captured in audio tapes and written notes. Field observations included site visits with photographs of the case study areas.

Research Limitations

A research study would in many instances encounter limitations due to various factors including resources and unavailability of key informants at the time of study. In this study, the main limitation was not being able to gauge the views of other stakeholders including provincial Lands officers engaged on the projects. The study was geared towards the landowner perspective to understand their role and participation in the urban land development process through the application and implementation of the legislation as they participated in the formal property market economy by aiding urban expansion.

BACKGROUND

Accessing land with secure land rights and interests for various development purposes contributes to a country's economic progress and enables the growth of broad based economic industries. International literature has shown that a country's economic development is underpinned by a viable property market that facilitates investment opportunities so that the highest and best productive use is generated which contributes to the sustainable economic growth of a country. This requires the development of a well designed and properly managed land titling system which contributes to a country's socio-economic development (Feder *et al*, 1999).

A formal land registration system enables the recognition of ownership of property rights and is written out in law in a legislative framework and supported by an efficient land administration system. An integrated and formalised property market that advocates land tenure security is a pre-requisite to the economic growth of a country's development. This enables the generation of wealth creation opportunities for its citizens, for example, through obtaining institutional credit from financial institutions using a formal property title as collateral. In order to benefit from the property market there must be clear policies and enforceable laws.

Potential Benefits of Land Tenure Security

The potential benefits from having a formal land market are numerous and have been documented by international literature. Feder *et al* (1999) developed a conceptual framework in their analysis of the land titling program in Thailand. The conceptual framework showed a number of ways in which formal land titling was of benefit to the overall economic growth of the country. The land titling program induced higher productivity, higher prices and higher incomes leading to Thailand's overall economic growth. Fairhead, Kauzi and Yala (2010) further reviewed this framework in their study on quantifying the economic impact of land reforms in Papua New Guinea. Their review of the literature shows that a formal property title may enable the following positive outcomes:

- creates incentives for the registered property titleholder to improve productivity on the property as the registered titleholder has attained tenure security. This means that the registered titleholder is recognised as the owner of a set of property rights and has exclusive rights to the benefits that are obtained from the use of the land;
- lessens the transaction costs that are usually spent in weak and inefficient property rights enforcing agencies as this may hinder the economic productivity of the land;
- creates an asset base in that formal titled properties can be used as security to access credit from financial institutions, increasing the supply of credit to finance investment opportunities;
- creates anticipation value in the flow of income benefits accruing from the use of land. For example, a property can be leased out to other individuals in exchange

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for rental income for a period of time and is a marketable commodity. When this occurs, the value of the property increases as there is demand for it in the property market;

- improves the coordination and flow of transaction information between market participants in the property market through a central data storage facility which protects the integrity of the property titles and ensures the smooth facilitation of property transactions; and
- creates values when they are enforced and are acceptable to the formal financial institutions. Inefficiencies in their design and lack of enforcement can have a negative impact on the overall purpose of achieving tenure security. The absence of state agencies in administering such titles often result in the creation of informal property systems that provide an alternative option for those who cannot afford to participate in the formal property market.

Thus achieving tenure security is the stepping stone to increase economic growth and wealth creation. The absence or lack of tenure security may result in an absent or weak formal property market that may not be able to produce the desired results. This is more so in developing countries, including PNG, where there are more challenges in achieving tenure security. In PNG, these challenges may include the existence of different land tenure systems including Alienated Land Tenure and Customary Land Tenure, where the latter exists outside the formal legal system and is only recognised when it has undergone some form of registration (Armitage 2001); inadequate or inappropriate legislation and institutional framework; and lack of adequate resources.

Land for Development in Papua New Guinea

Land for development in Papua New Guinea is governed under a dual land tenure system. The dual land tenure system includes Alienated Land Tenure (ALT) and Customary Land Tenure (CLT), with ALT accounting for about three percent (3%) and CLT governing the majority of land holdings (97%).

Land Tenure Systems in Papua New Guinea

Alienated Land Tenure is concerned with land that was acquired from the customary landowners, especially during the colonial era, either through a voluntary process or compulsory acquisition (James, 1985). It includes two sub sectors — state land and privately-owned freehold land. Alienated land consists of mostly prime urban and agricultural land in the country (James, *ibid.*).

This land tenure system is governed by written laws, for example the *Land Act No.45* (1996) and is administered by a state agency — Department of Lands and Physical Planning. It makes up the formal property sector in PNG. In this land tenure system, the formal property rights are easily exchanged by property market participants through the property sale and rental sub markets. Individuals, corporate entities and foreigners can participate in this land tenure system.

Customary Land Tenure is concerned with land that is owned and governed by the customary landowners (indigenous people) according to their customs (James, *ibid*). The property rights to such land are unwritten, recorded orally and are passed down the generations within a tribal ethnic grouping. The likelihood of a property market is very minimal as outsiders are usually not allowed to own land that belongs to a particular tribal group.

Overall, the two systems exist alongside each other and are complementary in a number of ways. Armitage (2001) made a comparison of both land tenure systems, which is shown in Table 1. A number of observations from the table are as follows:

- ALT originated from Europe and is formal in the PNG context, whereas CLT is local in nature and informal by western standards;
- The ALT requires extensive and internal changes to adapt to various pressures and the changes are done through legislation and the court system, whereas CLT is administered by the customary landowners and is less responsive to external pressures and it is verbal in nature;
- The ALT is governed and administered by the State through various interests in the land, for example, freeholds, leaseholds, sub-leaseholds and mortgages. These interests are documented and recorded in the title of the property with penalties for infringement. On the other hand, CLT is owned outright by the clan.
- Table 1 shows that ALT is of Western origin whereas CLT is based on PNG traditions and varies from area to area. Both systems have similar roles but opposing characteristics — alienated land tenure is of a formal nature with more tenure security and customary land tenure is of an informal nature which is considered less secure when brought into the modern formal economy. Even though it has existed since time immemorial, it may not be conducive to the modern economic advancement of the country.

Table 1: Comparative Features of Alienated and Customary Land Tenure Systems in Papua New Guinea

| Characteristic | Alienated Land | Customary Land |
|---------------------------------|--|---|
| Origin | Based on traditional practice in Europe; unfamiliar and formal in the PNG context. | Local practice; appropriate for traditional needs; established and well understood by users. |
| Responsiveness to change | Extensive and ongoing modifications to internal and external pressures; formalised through courts and legislation. Control of system and ownership of land are separate. | Responsive to internal pressure; less responsive to external impacts; flexible as verbal. Control by landowners. |

Table 1 (Cont'd)

| Characteristic | Alienated Land | Customary Land |
|--------------------------|--|--|
| Political aspects | 'Ownership' is limited to interests in land under the State. Activities are documented and recorded. Penalties for infringement. Conformity at the level of society. | Outright ownership by the clan; individual members have rights to use and occupy land. Based on verbal agreement. Penalties for infringement. Conformity at the level of the clan. |
| Social aspects | Planning and zoning system provides for areas of sporting, recreational, entertainment uses, etc. | The clan sets aside land for meetings, singsings, feasts, rituals and sports etc. |
| Economic aspects | Economic specialisation generates surplus production, freeing much land and labour from direct production of basic needs. | Role of land is to ensure survival of the clan, traditionally through a high level of self-sufficiency. |
| | Estates/interests in land may be traded between individuals as an economic good. | Land is held, securely and in the long term by the group for the benefit of the group. |
| | Identification of land, interests, ownership and transactions agreed and recorded by parties and by State. | Identification of rights and interests validated by use. |

Source: Armitage (2001)

In order to promote economic development of PNG, and as PNG was basically an agricultural economy, there was a push to develop large agricultural lands to produce cash crops. An answer to this was the formulation of a series of land laws to enable individuals to obtain property titles that were to be used as collateral to obtain loans to facilitate agricultural production. As society evolves to embrace the socio economic changes in the country (Kalinoe *et. al*, 2002), there is increasing anecdotal evidence that customary lands are now being used to accommodate economic uses such as urban development and agricultural crop plantations; and traded in the informal property market sector between PNG citizens. These series of laws are still evident today and their application has proved problematic as this case study shows.

Availing Customary Land for Development under Current Legislative Framework

The *Land (Tenure Conversion) Act* 1963 and the Lease-Leaseback provision in s.11 of the *Land Act* 1996 purportedly deal with making land available for development by voluntary agreement. These enable customary landowners to directly avail their customary lands for commercial agricultural activities by undertaking a formal process of land registration that results in a freehold title or a Special Agricultural/Business Lease.

The *Land Groups Incorporation Act* (1974), *Business Groups Incorporation Act* (1974) and *Association's Incorporation Act* (Ch.142) exist to formalise customary land owning social units, be it at a clan or tribe level.

Historically, the current legislative framework to develop customary lands was enacted to address political agendas for increased agricultural land uses in the rural areas. However, as the demand for other land uses increase, the existing laws are now also being used to facilitate other land uses. For example, there is mounting pressure on customary landowners in urban areas including Port Moresby and Lae to mobilise their customary lands to accommodate increasing demands for urban services such as housing and other commercial land uses. This has proved problematic in developing customary land within the urban areas to cater for such demands. In 2005, the Government of Papua New Guinea (GoPNG) through the National Research Institute (NRI) organised a Land Summit at the PNG University of Technology in Lae to look into ways of improving the accessibility of land (alienated and customary) for economic development. At the end of the summit, a National Land Development Taskforce (NLDT) was appointed to look further into ways in which PNG can improve access to land to enable wealth creation opportunities for its citizens and promote the overall economic development. Their final report highlighted that *'the current legal framework is riddled with problems and limitations and therefore it is not conducive to the mobilization of customary land'* (NLDT, 2007).

LAND (TENURE CONVERSION) ACT 1963

The *Land (Tenure Conversion) Act* (LTCA) was enacted in 1963 and later amended in 1987 to enable the conversion of land held under customary tenure into freehold land title issued in the name of the applicant. The applicant is an individual, an incorporated land group, an incorporated business group or a number of individuals up to a maximum number of six people.

Objectives of LTCA

The main objectives of this *Act* were to:

- promote agricultural development in Papua New Guinea (PNG) and the economic well-being of its citizens having a secure freehold title;
- recognise that Papua New Guineans own their customary lands in accordance with custom and that this law was provided for the customary landowners who wished to legitimise these interests; and
- enable customary landowners to freely exchange these rights with other PNG citizens.

The LTCA Procedure

The *LTCA* is administered by the Land Titles Commission (LTC); a legal entity established in the early sixties. When an application is submitted for land to be registered under the *LTCA*, the LTC is required to investigate this piece of land and verify its ownership. Once a piece of land is registered under the *LTCA*, all customary land rights and interests are abolished. The new rights created under this law restrict ownership of the registered portion to the titleholders. Given the permanent termination of customary rights, the LTC is required to ensure that all parties understand and are clear about the legal implications of their decision to have customary land tenure converted to formal tenure over the identified portion through the *LTCA*.

If there are no disputes and the requirements of the *LTCA* are complied with, the LTC issues a Decision Conversion order. This order declares that the applicant is the owner of an 'estate in fee simple'; which simply means that the applicant has full ownership over the subject land but is bound to the laws of PNG. The order also directs the Registrar of Titles at the Department of Lands and Physical Planning (DLPP) to issue a certificate of title in the name of the applicant.

Limitations of LTCA

Freehold titles obtained under *LTCA* are subject to several limitations under s.26. These limitations are such that:

- titles can only be transferred to other PNG citizens, therefore non-citizens are not eligible to acquire a freehold title;
- titles can be transferred or leased out for more than 25 years only with the consent of the Land Board;
- the land may be mortgaged up to only 25 years; and
- the lender is not entitled to lease the subject land to a third party for more than 25 years.

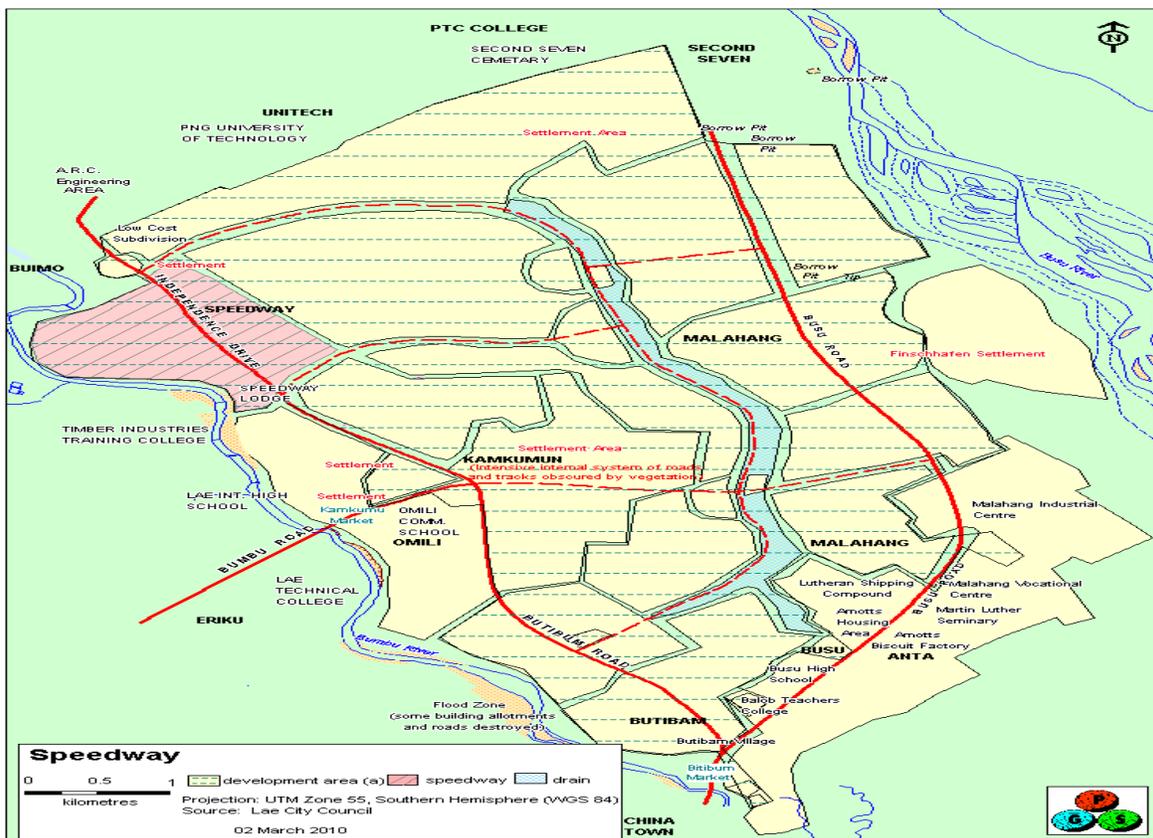
However, s.26A contains provisions for the applicant to apply to the Attorney-General to have these limitations cancelled. The cancellation is in the form of a directive from the Attorney-General to the Registrar of Titles. A specific requirement of this order is that, the Attorney-General must be satisfied, after the completion of investigations that the proposed dealing will not affect the interests of the registered owners.

CASE STUDY: PRACTICAL APPLICATION OF LTCA IN URBAN LAE

To gain a practical perspective of the application of the LTCA and the challenging issues that await customary landowners and other stakeholders, it is pertinent to study and document existing customary land mobilisation initiatives to inform policy makers and the general public about the challenges and lessons that are being experienced so that future initiatives will be better informed to undertake similar exercises. A real estate (residential housing) development situated on customary land was selected because it utilised the LTCA to gain formal registration and enable the property development process to occur.

The case study is part of a larger parcel of prime land situated along Independence Drive in the urban Lae towards the suburb of Taraka. It is considered to be highly suitable for residential and commercial property developments and it is considered prime land for the expansion of Lae city as it is located within the Lae-Nadzab Urban redevelopment zone A (see Pink shading in Map 1 below). This piece of land is ideally suited for housing and commercial land uses (Smith, 2005; Kaitilla, 1999). It is a portion of customary land known as 'Pikus Estate' located along Independence Drive, neighbouring the new Lae Biscuit factory and headquarters and leads to some of PNG's leading state institutions including the PNG University of Technology, Telikom Training College and the PNG Defence Force's Igam Barracks.

Map 1: Map showing Independence Drive, Lae city where study setting is located (pink shading)



Source: PGS (2010)

Real Estate Development under LTCA

Using the existing legal framework under the *Land (Tenure Conversion) Act*, the landowner group applied for and obtained a Certificate of Title (Freehold) in the early 1990s to develop a housing estate. They engaged a registered licensed surveyor to survey and formalise the land boundaries. As there were minimal disputes, the process of surveying was undertaken in an orderly manner.

The real estate development process entailed various development costs which have to be met by the developer. These costs include surveying boundaries, physical planning subdivision costs and infrastructure service installation. In this case, the landowner group paid the various costs including the survey fees and other associated costs. For example, the landowner group in this case study paid well over K4 000 in survey fees for the sub-divisional proposal which was submitted to the Physical Planning Board for approval as the land is within the urban planning zone. In this case, the group was able to meet the development costs because they have a road works contracting business so that the extra income earned from this business venture was able to offset the development costs.

The group also registered a company as a corporate vehicle to facilitate the development of the housing estate for interested corporate and individual investors to build houses targeting middle to high income earners. The estate is being developed in two stages. The first stage was developed in the early 1990s and subdivided into over 50 allotments mostly for residential purposes with several allocated for commercial purposes to service the residential estate and comply with physical planning regulations. Service infrastructures including water pipes, electricity and telephone lines have been connected to the housing estate, with assistance from the service providers.

Most of the residential allotments in Stage 1 were purchased by a corporate investor for its staff housing scheme. Some of the investors took their freehold titles to the commercial banks on the assumption that they could secure a loan with the freehold title as collateral to build their homes. Commercial banks refused to take the individual land titles as collateral¹ because of the mortgage time limitation on the freehold title. They advised that 25 years was too short for their lending requirement to mortgage the allotments and they were more interested in longer term leases such as 99 year leases. The banks further advised the investors that freehold titles will only be recognised and accepted if the limitations were lifted to include longer term lease conditions. As an interim measure while awaiting the landowners to sort out the title restrictions with the relevant state agencies, the investors had to look at other alternative financing options to build their homes. At the time of writing, the landowner group temporarily halted work in Stage 1 to sort this outstanding issue and develop Stage 2 having learnt the lessons from the earlier application.

¹ Informal Interview with Investor's Home Ownership Scheme Coordinator, (23/10/08).

Stage 2 is slowly being developed with a good number of the allotments being purchased by another corporate investor to provide housing for its staff. The landowner group is now ensuring that the titles are formalised and this activity is in progress. At the time of writing, the landowner group has been advised by provincial Lands officers to apply to the Attorney General to lift the restrictions on the freehold titles as per s.26 of the *LTC Act* and increase the lease period to 99 years to achieve tenure security and attract further investment opportunities.

Current Type and Level of Investment

There is evidence of substantial property investments on the estate, all occurring in a vacuum of secure land titles. These include residential houses and commercial ventures. These property investments are at the moment 'unbankable' and cannot be traded in the formal land/ properties market. Examples are shown in the following photographs:



Figure 1: A commercial business (lodge)



Figure 2: A residential property

Case Study Analysis

The process of obtaining and using secure titles for formal property investment has been a difficult journey spanning over 10 years since it was first initiated. A number of challenging issues have emerged from this Case Study. These include:

- An inadequate legal framework to aid urban development on customary land that may result in tenure insecurity;
- lack of financial resources;
- lack of technical knowledge and support; and
- an undeveloped sub-sector of the land/properties market.

An inadequate legal framework to develop urban housing customary lands — tenure insecurity

The case study analysis shows that the freehold titles do not provide full tenure security to enable the titles to be used as collateral for the proposed development unless the title limitations of 25 years are lifted. LTCA is more suitable for agricultural land uses which are usually based on the cash cropping cycles thus the short term leases of 25 years. If LTC is used for urban expansion which requires a longer term lease as security to access credit to develop properties, then an application has to be made to the Attorney General's Office for the lifting of the restrictions. This can be time consuming and expensive for landowners outside Port Moresby if they have not been educated and made aware of the benefits and challenges of the law when they practically apply it to develop their land. The current freehold titles are insecure to be used as collateral for long term investment purposes because of the lease period limitations.

The landowner group has realised that mobilising their customary land to aid urban expansion through the real estate sector is very challenging under the current legal framework. They have struggled over 13 years to develop their land to participate in the real estate investment market, however the titles obtained are not secure as they had envisaged attracting investors and in turn enabling investors to build their homes. Therefore the present titles acquired under LTC Act for urban expansion are considered risky and lack tenure security.

Lack of financial resources

The case study reveals that there are development costs of mobilising customary land for development. The lack of adequate financial and technical resources can have a negative effect on the entire mobilisation exercise and cause unnecessary delays in freeing up the land on the market. In this particular case, the landowner group was able to meet the development costs because it has a road works contracting business so that

the extra income earned from this business venture was reallocated to the property development venture.

Infrastructure services have been planned out and most of the necessary services like water, electricity and telephone services are available in the locality. In this case study, two service providers have been supportive of this mobilisation initiative by connecting the services at a negotiated cost because of their interest in securing available land to cater for their staff housing. So there is an established win-win relationship to progress the property development. However, the road access has not been fully developed with proper drainage and kerbing (see Figure 3). This must be improved and completed to complement the housing estate as good access roads attract demand from investors and enable the property values to increase. However, in normal situations this is not usually the case and the responsibility is on the customary landowners to negotiate with the service providers and fully finance the cost of installing infrastructure services.



Figure 3: Incomplete access road through the housing estate

Apart from the development costs, there are other associated costs that are yet to be met. These include logistical costs to lift limitations on the base titles and other potential costs which may include legal advice, marketing and professional fees should the need arise.

Overall, the group stressed that availability of finance is an important factor in customary land development as lack of it can hinder timely and efficient mobilisation of customary land for development.

Lack of technical knowledge and support

Lack of technical knowledge and support on the procedures including landowner rights and obligations is a limiting factor in developing customary lands (Aldrich, 2002). This case study has found similar evidence to support this conclusion.

The study found that the landowners had not sought any real professional assistance because they did not know where to go or whom to seek assistance from. In this analysis, it seems that technical knowledge and assistance should have been provided to guide the landowners to weigh out different options to mobilise their land. In the current framework, the LTC does not accommodate this and the responsibility is left with the landowners to undertake this, unlike in the administration of state land where the *Land Act 1996* guides the development process with the Lands department facilitating the process. For example, state leases are administered by the Lands department in terms of setting terms and conditions, whereas in customary land development, the landowners are tasked with administering transactions on their land with sometimes minimal experience and lack of technical expertise to do this for their benefit. In this case study, the landowners had set certain terms and conditions on the titles including the imposition of a lease premium² to secure the land and setting annual land rents.

The lack of proper guidelines or training to assist the landowners in developing their land has also been a delay factor in the development process as landowners do not understand current procedures. Obtaining titles under LTC is quite a lengthy and cumbersome process which can make it logistically and financially difficult for landowners who are outside of Port Moresby to seek assistance. This is because the two implementing state agencies – LTC and Department of Lands are based in Port Moresby. The entire process has been frustrating and cumbersome as there is more than one state agency tasked with implementing the *Act*.

The landowners should also be equipped with knowledge and tools to secure their own land interests and ably supported by appropriate agencies to complete the mobilisation process (Aldrich, 2002).

An incomplete land/property sub-market

This case study is showing that if all else was equal, there would have emerged a land/property submarket to cater for the city's housing demands and at the same time improve the economic wellbeing of the customary landowners. However, the lack of tenure security, lack of financial and technical resources and support is hindering the development of a property sub-market. Because of the delay in sorting out these deficiencies, landowners are losing out on the potential land rental incomes from the leaseholders while existing tenants still do not have tenure security to use to access credit from financial institutions to build properties on land that they purchased.

² The lease premium is charged on the potential leaseholder to secure the lease and provides a guarantee that the potential investor is serious to invest on the land. It is a cost-recovery measure to recover initial costs of developing the land.

Have the objectives of the LTCA being achieved?

Since the LTCA was applied, it is appropriate that the study make a comparative analysis of whether the objectives that have been set out in the *Act* have been met in the case study. Table 2 outlines the case study findings against the LTC objectives.

Table 2: Case study analysis comparing LTC objectives and whether these objectives have been met in case study findings

| Objectives of LTCA | Has the objective being met in the case study? |
|---|---|
| To promote agricultural development and economic well-being of its citizens by having secure freehold title. | No, the case study has not promoted agricultural development because it is located in an urban environment and is more suitable for urban expansion. At the time of writing, the landowner group has not obtained secure freehold title over its land because of the title restrictions on dealings of freehold titles. |
| To give Papua New Guineans the recognition that they own their customary lands in accordance with custom and LTCA was provided for those customary landowners who wished to legitimise these interests. | Yes, the customary landowners have been able to obtain a freehold title to participate in the formal economy. |
| To enable customary landowners to freely exchange these rights with other PNG citizens. | No, the freehold titles obtained under LTCA for real estate development are currently not freely available to be exchanged with other PNG citizens because of the title restrictions and have turned out to be more problematic in that they cannot be used as collateral to access credit. |

The LTCA has a number of objectives which aim to promote agricultural development and economic livelihood of the people by enabling them to secure freehold title of their land; give recognition to Papua New Guineans that they own land through their customary land tenure system and LTCA is a tool that can be used by those who would like to formalise their land interests and to enable them to freely trade these land rights with other Papua New Guineans in the land or property market.

The case study suggests that the LTC framework is biased towards the agriculture sector and proves challenging when applied in the real estate sector for urban development. This is because obtained titles as they are, lack tenure security when trying to negotiate access to credit unless the title conditions are lifted to enable the accessing of security to develop or exchange the titles in the land or property market. In this case, the landowners felt they were not given adequate advice and support to

understand the process and ensure that this process was followed. They are now slowly trying to work on this step to ensure that the title restrictions are lifted to allow their individual freeholders to gain access to credit.

In the process of safeguarding the landowners' of being dispossessed from their land by the conditions, this particular law seems to undermine the development of a viable land/property market as investors do not have confidence in purchasing these titles in exchange for a stream of rights to use the land for various purposes.

There is also a need to strengthen institutions to provide professional advice for the enterprising landowners in terms of land administration processes and procedures, human resource capabilities, finance options, investment and business marketing strategies as there is a current void in this area.

The case study is enlightening in providing an insight of the various issues, challenges and paints a realistic picture of the plight of peri-urban customary landowners in their pursuit to participate in economic development of their land to cater for urban expansion under the LTCA.

NEW DEVELOPMENTS

But there is hope for customary landowners with new developments to reform the current land administration, land dispute settlement process and developing a framework for customary land to be utilised for economic development through GoPNG's land reform program – National Land Development Program. This reform program was launched in 2007 after the recommendations of a National Land Development Taskforce (NLDT) report which highlighted the need for land reforms through legislative amendments and institutional strengthening to enable land to be efficiently made available to the market while at the same time enabling customary landowners to become active participants in the development process through their incorporated land groups.

The NLDT report recommended the following areas of improvement:

- improve the current land administration and land dispute settlement systems;
- provide a framework for customary land to be utilised for economic development; and
- improve other areas of general concern such as the physical planning processes and procedures which will potentially enable the development of a vibrant property market that is conducive to all market participants including the customary landowners, investors, the state and the community.

The Amended legislations — Land Groups (Incorporation) (Amendment) Act 2009 and Land Registration (Amendment) Act 2009

As a result of the NLDT recommendations, a state agency the Constitutional Law Reform Commission (CLRC) was tasked to 'consider and recommend appropriate legislation for the implementation of some of the recommendations regarding the development of customary land' (CLRC, 2008). The CLRC completed the task in 2008 in which they recommended a two-stage system of voluntary customary land registration:

- by incorporating amendments to the use of Incorporated Land Groups (ILGs) to maintain the cultural identity of clan and tribal groups owning customary lands with tighter accountability and management procedures to promote effective governance; and
- using the ILGs as the corporate vehicle to voluntarily register portions of the ILG's customary lands for economic development, with the ownership still being vested in the ILGs which is composed of all the people who claim to belong to a particular land group.

The amended legislations — *Land Groups (Incorporation) (Amendment) Act 2009* and *Land Registration (Amendment) Act 2009* were passed in March 2009 in Parliament as part of the Government's land reform process under the National Land Development Program (NLDP) to improve the framework for utilising customary land for economic development. They are considered to be an improvement of the current legislative

framework governing the access and development of customary lands and one of its intended outcomes is to minimise the problems and challenges such as highlighted in the case study.

Intended Improvements

The amended legislations must be seen as an improved option amongst other available options such as the LTCA and Lease-leaseback. These legislative amendments have been undertaken to enable customary landowners develop portions of their customary lands voluntarily for a variety of economic land development uses such as agricultural farming, real estate development and natural resource extraction.

The improvements in comparison to the LTCA are in the following areas:

- To potentially provide better tenure security in which there are longer lease terms to be decided by landowner ILGs which guarantee longer term investment opportunities and may enable access to credit facilities. This is unlike the LTCA whereby there are limitations on the number of years that the land is to be mortgaged; the land can only be leased out for more than 25 years with the consent of the Land Board and if the land is being mortgaged, third parties have only 25-year duration to lease the land. In availing customary land for urban expansion, this is a more preferred option because it is on a long term basis and frees up land for urban land uses and enables access to credit facilities.
- There are improvements in the implementation process with the emphasis on greater involvement of the landowners to be assisted by the newly created Customary Lands Division in the Department of Lands and Physical Planning with the involvement of the provincial and local level administration in the verification process. In theory it provides a better option than the current process involved in LTCA whereby there are a number of state agencies involved with its implementation.
- Because the ownership of land is vested with the ILG, it removes the option of including limitations as the ILGs are vested with 'a state guaranteed title of land to which they established ownership, including its boundaries' (CLRC, 2008). The registration of the ILG's portion of land enables it to lease or sub-lease its land to its members or outsiders including other citizens and non-citizens. This is an improvement from LTCA whereby only citizens can participate in the trading of conditional freehold land.
- The ownership of the land is vested in the ILG and the ILG is comprised of all the members who have been registered as being its members with accompanying birth certificates as proof. This is a further improvement from the LTCA which only allows registration to be in the name of the ILG, an individual, a business group or a group of individuals to a maximum of six people.

On the other hand, the amended legislations are similar to the existing legal framework in the use of financial and technical resources in the process of developing land. For example, the surveying aspect is an important and integral part of the voluntary customary land registration process to formalise clan boundaries and register conforming to the physical planning laws and regulations if the proposed customary land is located within the urban land boundaries. In this aspect, financial resources are

needed to accomplish this task. Therefore, innovative strategies of financing this aspect will have to be developed. This may include the creation of partnerships with investors and the state in a win-win relationship that promotes economic and social development while at the same time enabling and promoting landowner participation.

CONCLUSION AND RECOMMENDATIONS FOR THE WAY FORWARD

The study has attempted to provide an insight into the current problems and challenges faced in developing customary land in the urban areas using the LTCA. The overall case study analysis shows that this landowning group has learnt that the processes provided for under the LTCA are lengthy, costly and yield unbankable land titles. The impact of this is that the supposed development of a viable sub-property market for residential purposes does not eventuate and stagnates investment growth as landowners lose out on the potential income stream options which are available in state land leases.

The customary landowner group has also realised that professional technical assistance and support is needed to assist in the entire land development process. This enables them to be educated on the processes and technicalities and enables them to explore investment options to enable more productive and economically best use of their land, including the risks and threats that may be encountered. This is lacking at the moment.

A number of challenges await customary landowners in developing their customary lands. This is more so for urban areas as there is immense pressure to accommodate urban expansion. Apart from the legislative amendments which are seen as an improvement in the legal process, there are other issues that need to be worked at for the benefit of the stakeholders especially the customary landowners. These include the implementation and administration process, technical and financial resources aspect, and education and awareness of such mechanisms. The latter need to be brought to the household level in order to gauge the support of customary landowners for taking ownership and embracing these changes for their benefit.

The implementation and administration of the customary land reforms is essential to monitor the effectiveness of these reforms. As part of the NLDP activities, the Office of Urbanisation (OOU) is piloting the amended legislations in selected sites in the country including in the nation's capital, Port Moresby. In these pilot activities, the State, through the OOU, is using its resources to develop these customary lands including meeting surveying, planning and infrastructure service fees. This should be welcomed and embraced by the customary landowners in the pilot areas as they will not be 'sweating their guts out' to source finance to develop their land. The customary landowners should be working in partnership to get their land developed so that they can realise the much awaited benefits and provide motivation and inspiration for all other customary landowners to benefit gainfully from their land.

Conducting education and awareness programs in customary landowner communities is a vital aspect of the customary land reform process as it can assist and motivate customary landowners to feel important in being involved and considered partners of the development process. In this way, it may change their mindsets of the role of government as at present, they have negative views of the government because of past experiences in which their land was alienated for development purposes without their full participation and understanding, which resulted in them being 'spectators' of the developments that occurred on their land.

For this to occur, GoPNG needs to take steps to communicate to the customary landowners its seriousness and interest in assisting them to facilitate development on their land. In the absence of such commitment, urban customary landowners may resort to quick fast money from other entrepreneurial Papua New Guineans who settle on their

land. These settlers develop uncontrolled and unplanned settlements resulting in the suppression of PNG towns and cities that lack economic growth (investment opportunities) and hinder social development.

Ongoing technical support in developing their land and the various options that are available should be adopted and an agency or state authority given this task. For example, a Customary Land Development Agency could be given the task of assisting in all aspects of the development process. This may include sourcing investment options, facilitating development and marketing the project to the market.

The first step is implementing the land reforms under NLDP as a matter of utmost importance. The relevant legislation has been passed and needs to be administratively in place. This will allow the implementation process to occur and will inform the whole of PNG of the outcomes and progress of the land reforms in achieving sustainable economic growth and bringing improvement to the livelihood of ordinary customary landowners in PNG.

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