



THE NATIONAL
RESEARCH INSTITUTE
PAPUA NEW GUINEA

DISCUSSION PAPER

BANKABILITY OF CUSTOMARY
LAND IN PAPUA NEW GUINEA:
CHALLENGES AND PROSPECTS

Logea Nao
Joecy Kabi
Samuel Awayang
Lindsay P Kutan

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Ms. Logea Nao conceived and designed the project, conducted the stakeholder consultation together with the rest of the authors and members of the NLDP II Technical Working Committee. She also wrote the research methodology and findings sections in this paper. Mr. Samuel Awayang wrote the introduction section. Ms. Joecy Kabi together with Dr Lindsay Kutan conducted a review of literature and Government of PNG policy documents to identify some key papers relevant for this study. Dr Kutan wrote the discussion section of the paper. Mr. Awayang and Ms. Nao wrote the conclusions and recommendations section.

Abbreviations and Acronyms

DLPP	Department of Lands and Physical Planning
ILG	Incorporated Land Group
iTLTB	iTaukei Land Trust Board
IPA	Investment Promotion Authority
IRC	Internal Revenue Commission
NLC	Native Lands Commission
NLTB	Native Land Trust Board
NLDP	National Land Development Program
NLDP I	National Land Development Program Phase 1
NLDP II	National Land Development Program Phase 2
NLDT	National Land Development Taskforce
NRI	National Research Institute
PNG	Papua New Guinea
VCLR	Voluntary Customary Land Registration

Abstract

Land is one of the most important factors of production which can contribute to growth of the national economy and by doing so improve people's livelihood. In Papua New Guinea (PNG), the economic potential of land is far from being realised because majority of the land is customarily owned and is locked up due to complexities surrounding customary land tenure and un-bankability of customary land titles (leases). This is an impediment to investment, income opportunities, and furthermore, socioeconomic development. This study gives an insight into the challenges and prospects of customary land bankability in PNG. It also identifies potential strategies for providing secure and bankable customary land titles (leases). The study was done through qualitative data gathering method with a focus on the perspectives of specific and targeted stakeholders within four major provincial centres in PNG. The study then tied the findings to theoretical framework of property rights, land tenure, and access to credit, and global and regional experiences of customary land bankability, also taking into account ongoing reforms on customary land in PNG relative to bankability. The main point was the lack of confidence by financial institutions in the security of property rights in relation to customary land tenure due to ineffective government administration; ongoing customary land disputes; and bank officials not being fully aware of current customary land processes, legislations and ongoing reforms. Options proposed for consideration to make customary land titles secure and bankable in PNG include establishment of Customary Land Authority, introduction of Customary Land Bill, establishment of Government-funded credit guarantee facility and/or the National Customary Land Bank. Although lessons can be drawn from the experiences of the Fijian and New Zealand models, this needs to be considered in the context of PNG.

Introduction

Land is an important factor of production needed for producing goods or providing services. Those who control the factors of production often enjoy the greatest wealth in a society. Having formal land tenure arrangements contributes to increasing the productivity of the land. Land tenure systems can be classified as formal and informal. Formal land tenure systems are basically land that is recognised by the State, whereas, informal land are those that are only customarily or traditionally recognised. If land is properly released and developed, it can contribute to the growth of the national economy and improve people's livelihoods (National Land Development Taskforce, 2007). The perception is that land can be fully utilised if it is made formal, which is, having clear ownership title or some form of lease arrangement.

Papua New Guinea (PNG), in its efforts to bring customary land into the mainstream of finance, embarked on land reforms over the last two decades. In 2005, PNG held a National Land Summit which resulted in identification of issues regarding land administration, land disputes and customary land. This paved the way for reforms, including the Land Groups Incorporation (Amendment) Act 2009 and Land Registration (Amendment) Act 2009, under the National Land Development Program Phase 1 (NLDP I) (National Land Development Taskforce, 2007).

Two years after the 2009 legislative amendments were gazetted in 2012, Chand et al. (2014) found that customary land leases are not considered as collateral to extend credit. Despite efforts under NLDP I to make customary land suitable for economic development including recognising customary land title, and creating a registration system through which customary land can be registered and leased, all with the intent of providing confidence to commercial lenders, these efforts have not been enough to make customary leases as attractive for mortgage purposes as State leases due to its perceived riskiness (Kwapena et al., 2021). Regardless, it has created a system to which customary land can be registered and leased out for development.

These ongoing challenges created the need for a second land summit. This summit was held in 2019 and focused on developing policy, legal and administrative framework to facilitate efficient utilisation of customary land for the benefit of the customary landowners (Niugini Land and Properties, 2019a). At the 2019 Land Summit, the discussions concluded that customary land, even with title, could not be used as collateral for bank credit. This summit concluded with 17 resolutions aimed at strengthening systems and processes which would ensure the validity of customary land titles and leases derived. To implement the 17 resolutions derived from the summit for the next five years starting in 2020, National Land Development Phase 2 (NLDP II) was established (Niugini Land and Properties, 2019b).

In 2021, a study by Kwapena et al. (2021) on addressing challenges in customary land administration, governance and dispute resolution in PNG, also concluded that customary land leases are still not secure enough to be considered as collateral for loans.

To understand why customary land is still not bankable after so many years and propose possible solutions, this study was undertaken in 2022. The objectives of the study are:

- to identify factors that are contributing to risky customary land titles (leases); and
- to find potential strategies for providing secure and bankable customary land titles (leases) in PNG.

This paper presents the findings from the research conducted and aims to promote bankability of customary land leases. The next section provides a brief literature review on international experiences of making customary land titles secure and bankable and the lessons that can be drawn from other countries on land ownership, land management and accessing development finance for land. This is followed by methods used for data collection, presentation of results and discussion. The paper then concludes with policy implications of the lessons learned and recommendations for further research.

Literature Review

Conceptual Framework

The conceptual framework adopted in the study utilises the concepts of land tenure, property rights and access to credit to understand the issues surrounding the bankability of customary land.

Land tenure and property rights

Secure property rights are considered a key contributor of economic development. This notion generated interest and took prominence in the academic and policy discourse after the seminal work of Feder and Feeny (1991). The study assessed the impact of land titling in rural areas of Thailand. They concluded that land with title enables access to credit and investments and improvements in farm production. Other quantitative and qualitative evidence from around the globe also supported this view that improving land rights will have positive impacts particularly through motivating greater investment and production and increasing the value of land in markets which in turn will drive economic growth (Deininger, 2003; Markussen, 2008). This prompted bilateral and multilateral institutions to advocate for land programs that would either systematically register land or improve the functioning of institutions and land administration (USAID, 2012; FAO, 2011).

In light of the above, land reforms on customary land which is also regarded as communally-owned land by a group of individuals gained momentum. Conversion of communal or nondemarcated rural land to freehold title and registration of such rights in an official registry became a standard approach, under the presumption that communal land tenure rights are inherently insecure (Lawry et al., 2017). These typically consists of adjudicating and assigning land rights, physically surveying boundaries, and registering rights and boundary demarcations in an official land registry. Land titles became synonymous with secure land property rights and this view proliferated government interventions on customary land.

However, critics have acclaimed that simplistic and undifferentiated call for formalisation adopted in the land reform interventions that lacks awareness of the complexity and long history of existing institutional arrangements is inappropriate and can make matters worse (Bromley, 2009). Land titling has also been portrayed as an example of top-down approaches which, rather than responding to real grassroots needs, prescribe solutions without a thorough diagnosis (Easterly, 2008). While such critics may be valid in specific cases, it is important not to lose sight to continue to invest in improving the security of land rights and efficiency of land transactions through improving laws, institutions and practices, particularly in developing countries where lack of an adequate documentation validating property rights in land is prevalent.

Land titling and access to credit

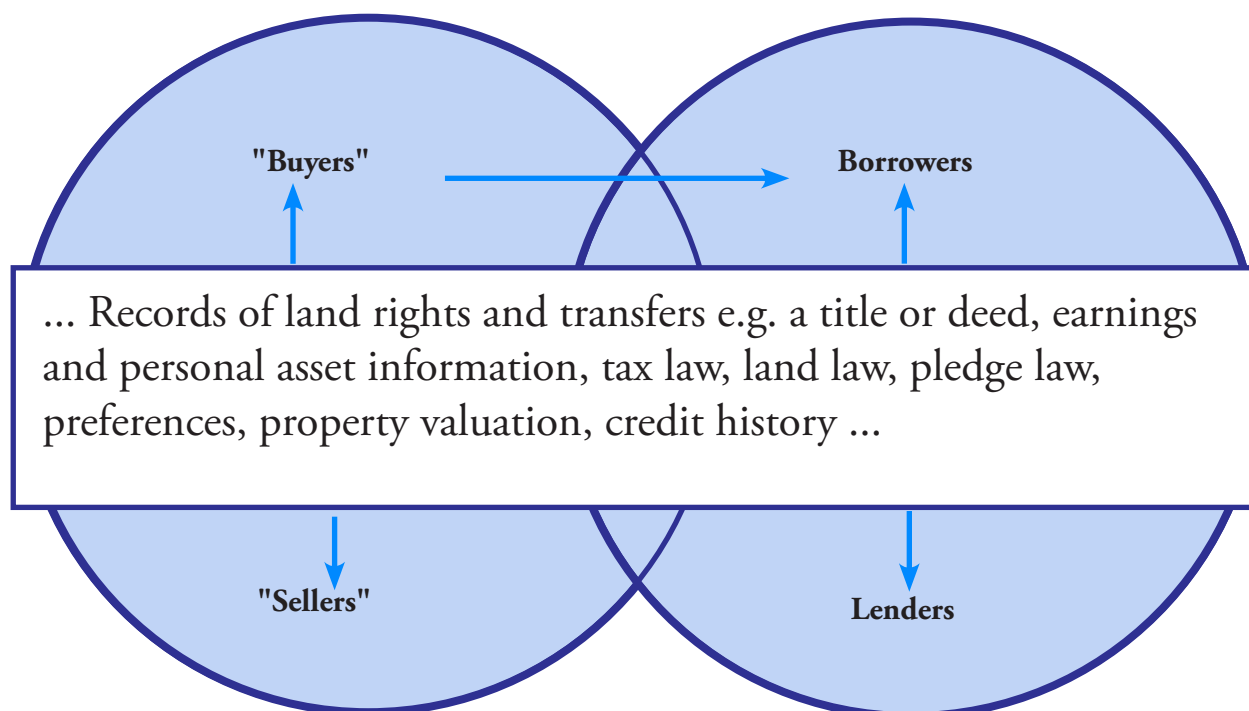
Although series of studies have indicated that land titling significantly improves farm access to credit, they also point out that this requires certain preconditions for this proposition to hold. For instance, Feder et al. (1988) indicated that large-scale farmers with high land values and/or more capital are more likely to use land as collateral, as compared with small farmers. In other words, the contextual factors matter to understand the causal relationship of land titling and access to credit. Land titling alone may not be sufficient to warrant access to credit. However, it should be perceived as a piece of the broader reforms to property rights necessary to create a good environment for credit (Fleisig & Pena, 2003).

Some studies have indicated that land tenure reform in many contexts will not improve access to credit because gaps exist in the readiness of financial markets to recognise customary land as collateral (Carter & Olinto, 2003). For example, the people and businesses targeted to receive land titles are not bankable (their income is too low or their business plan is not financially viable), no supply of capital or loan products are available to the market segment, or the real estate market or social issues limit pledging or enforcement of pledges upon default. This generated an interest of studies in relation to understanding land title and access to credits (Dower & Potamites,

2005; Goyal & Deininger, 2010). However, these volumes of studies focused more on the lending products rather than use of land as collateral. Particularly because the lack of security of land property rights does not warrant financial institutions to use land as collateral. Instead, the loan products that financial institutions accept as collateral are products such as microfinance, supply-chain finance, and use of moveable property, other than land.

In light of the above, the inherent factors that restricts customary land to be perceived by the banks as collateral was identified by Feder and Feeny (1991). These include incentives, asymmetric information and uncertainties, land rights and credit transactions and public sector resources that promote land security. All these factors hinge on the need for reforms towards improvement on the institutional arrangements to promote secure land titles.

Figure 1: Bankability of land title



Source: USAID, 2012

Table 1 provides a general description of the enabling conditions particularly for real estate.

Table 1: Enabling conditions to support mortgage-based lending

Borrower	Borrower has registered and documented title of real estate (land).
	Borrower has sufficient income to repay loan.
Registration and foreclosure of mortgage	Real estate (land) can be mortgaged as a collateral for loan.
	Mortgage can be registered.
	Lender can foreclose if borrower defaults on loan.
	Court process foreclosures expeditiously.
Lending	Lender has capital to lend.
	Lender confident it could resell property if it forecloses (market is functioning, buyers have capital and information, etc.)
	Value of real estate justifies lenders' underwriting and filing costs.

The subsequent section will direct the focus of the study towards the global, regional, and PNG experiences on customary land tenure, reforms, and bankability. It is envisaged that lessons learnt from global and regional experiences may contribute towards addressing the challenges of bankability of customary land titles in PNG.

Global and regional experiences of customary land bankability

Globally, it has been realised that private freehold ownership of customary land and the top-down nationalistic approach of individualising customary land will not work especially in developing countries (World Bank, 2003). In the 1970s, a lot of developing countries that gained independence undertook land reforms that nationalised land in an attempt to rid private freehold ownership of land that was instilled by colonisers, and thus, unify tenures and transfer all customary land holdings to the government (Adams & Turner, 2005; World Bank, 2003). These were done to generally promote agrarian reforms and suppress tenure dualism (World Bank, 2013). Such reforms were undertaken by some Sub-Saharan African countries including Tanzania, Uganda, Malawi, and Zambia (Adams & Turner, 2005). By the 1980's and 1990's, these land nationalisation reforms turned out ineffective as there was a lot of resistance from customary landowners (Adams & Turner, 2005). The failure to implement these land reforms led to new land reforms in these countries, that was more towards protecting customary land rights than before (Cotula et al., 2004). In the case of Uganda, its Land Act of 1998 did away with nationalisation of land and returned land back to customary landowners (Adams & Turner, 2005). Those who held titles were given the right to mortgage, subdivide, lease and transact their land (Fitzpatrick, 2005).

In Tanzania, Sanga (2009) looked at farmers accessing credit and reported that the willingness of a bank to provide a loan appeared to be decisively dependent on the size of the land parcel, and all the farmers that got loans had parcels with acreage above 25. Banks are willing to provide loans; however, the low land value, high transaction costs compared to creditworthiness and high competition in the banking sector hinders banks from providing loans to poor farmers (Sanga, 2009). Also, banks consider security of tenure as an important factor when approving loans. If the land used as collateral is not properly secured, it may become difficult for the bank to repossess and sell it in case of loan default. Additionally, potential buyers may be hesitant to purchase a property involved in ownership disputes, as they may face retaliation from the disputing parties. Therefore, lenders are mainly interested in the ease of liquidation of the asset used as collateral to recover the loan, and this is a crucial consideration when accepting an asset as collateral for credit (Domeher & Abdulai, 2012).

Many Latin American countries and their governments have realised the economic and social importance of formal land titling and have mounted massive land-titling programs. For instance, through loan intervention, the Peruvian Government, under the Urban Property Rights Program, had assisted close to 7 million Peruvians in securing land titles, introducing more than US\$4 billion of previously informal real estate to the organised capital market which resulted in property values increasing (Gilbert, 2002). The Urban Property Rights Program also resulted in a reduction in titling cost and time. Chile, during the period between 1979 to 1998 gave out 650,000 land titles (Gilbert, 2002). These reforms, however, had their own challenges.

For countries within the Pacific Region, the post-colonial era has brought about numerous challenges, including the issue of bringing customary land into the mainstream of finance. This issue has been a persistent challenge for countries such as Fiji, New Zealand, Australia, Vanuatu, and PNG. In Melanesia, the land trust model is used to help customary landowners legalise their landowning group and formalise institutional arrangements that allows other users (tenants) to use their surplus land (Boydell & Baya, 2014).

The Fijian experience

Fiji, in its efforts to make customary land available for development, has undertaken a number of initiatives. Some of these initiatives include the establishment of Native Lands Commission (NLC), the establishment of iTaukei Land Trust Board (iTTLTB) which is the successor of the Native Land Trust Board (NLTB), and introduction of the Land Bank.

When NLC was established, it was sanctioned to ascertain what land in each province in Fiji were rightfully, and

through hereditary connections, property of native Fijian owners (Boydell & Baya, 2014). During the period of 1884 to 1926, NLC had official sittings around the islands to determine land titles. As part of the recording process, NLC noted genealogies of the customary landowners. A register of landowning unit living members was created from this exercise which mandated the listing of customary landowning units' membership that held land according to native custom (Boydell & Baya, 2014). These records became the source documents which are used to assist the NLC Chairman in resolving ownership claims, boundary determinations and chiefly title disputes (Boydell & Baya, 2014).

The Fijian land trust model, considered to be successful in managing customary land on behalf of landowners is the iTaukei Land Trust Board (iTTLTB), formerly known as the Native Land Trust Board (NLTB) and established in the 1940s (Boydell & Baya, 2014). The iTTLTB has the power to administer all customary land (Fingleton, 2008), and thus provide legal, valuation, financial, lease management and spatial advice to customary landowners to protect their customary rights, and ensure they benefit from any investment on their land (Boydell & Baya, 2014). Through this land trust model, land administration has been effective which has ensured security of customary land titles and thus bankability (Fingleton, 2008).

The iTTLTB was vested control of all native lands in Fiji under a trust arrangement between landowners and the board. The arrangement is such that the iTTLTB administers all native land such as leasing out native land for development whilst the ownership rights remain with the landowning units. Such an arrangement provided a legal framework for leasing native land in accordance with the Fiji Native Lands Act (CAP 133). This is the preferred practice by banks and lending institutions in Fiji when vetting refinancing applications against leases on native land as collateral (Boydell & Baya, 2014).

Comparatively, the iTTLTB is unlike PNG's incorporated land groups in that it offers a high level of professional capacity (including legal, financial, lease management and valuation) towards assisting its members (Boydell & Baya, 2014). Also, a major contributing factor towards Fiji's successful customary land administration is Fiji's recorded genealogies since the 1880s (Boydell & Baya, 2014).

The Maori model

New Zealand, on the other hand has five principal categories of land which are Māori general (crown-granted) land, crown land, Māori freehold land, Māori customary land, and common marine and coastal area land (Boast, 2013). The first four categories are individually defined in the Māori Land Act of 1993 while the latter was later created under the Marine and Coastal Act 2011 (Boast, 2013). Māori general land, Māori freehold land, and Māori customary land are known as Māori land (multiple-owned land) which makes up 5.6 percent of New Zealand's total land area (Kingi, 2008). Māori general land is land that has passed out of Māori ownership, while Māori customary land is land owned under customary tenure but has not been registered with a certificate of title (Kingi, 2008). Maori freehold land is unique to New Zealand and found nowhere else (Boast, 2013), and it makes up 98 percent of Maori land. This land category refers to customary land that has been individualised and feudalised under permanent Māori ownership (Boast, 2013). Maori freehold land in particular makes up majority of Maori land and is administered by incorporations and trusts (Kingi, 2008) which contributes around NZ\$700 million a year to the New Zealand economy (New Zealand Institute of Economic Research, 2003).

Maori Land is administered using both the land trust arrangement system, which is similar to that of Fiji and/or the incorporation system. According to Kingi (2008), both systems are guided by the Te Ture Whenua Act, 1993. However, unlike Fiji, Maori freehold land has titles of each land parcel. This subdivision was done during the colonial era when the Land Court was established. The transfer or sale of Maori land is restricted, and therefore, the rights of access and use are granted through a lease agreement. With the titles readily available, the owners choose whether to lease the land for development through a trust body or the incorporation arrangement system. Regardless of having titles to their land, challenges still exist in trying to take part in economic activities.

These days, landowners in New Zealand choose to use the trust structure to administer their land interests rather than incorporating their land (Kingi, 2008). Each trust requires land vested in the trust to be trust property, a

trustee to have control of the property, and beneficiaries. Thus, it is the Maori Land Court that facilitates the better use of Maori land through improving and providing quality land information to landowners. Through its Maori Freehold Land Registration Project, a lot of Maori freehold land has been registered and given titles. Upon provision of titles, land can be used by the landowners as collateral to access finance for development on the registered land. Despite this, trusts and incorporations still have difficulty gaining access to credit due to multiple ownership, lack of information flow between landowners and financial institutions, and restriction of sale of Māori land (Kingi, 2008).

The Native Land Court has established a few initiatives to help landowners mobilise land for development. These include the establishment of Maori Freehold Land Registration project and the Maori land online system. The role of Maori Freehold Land Registration project is to register all outstanding Maori Freehold titles. This will enable title holders to obtain a provisional or fully registered title which can be used as collateral (Kingi, 2008).

In doing business with Maori land, the Maori trusts and incorporations use limited liability companies to separate land ownership from business activities. The Maori Land Court has been supportive of this arrangement structure. The use of limited liability companies is a way of raising venture capital to meet the requirements of financial institutions. In a sense, the company, through its capital used as collateral, access credit from financial institutions which correlates with the other dimension of accessing credit put forward by Gilbert (2002) and Sanga (2009).

The PNG experience

Over the last two decades, the Government of Papua New Guinea (PNG) embarked on a journey of land reforms to release customary land into the formal market, thus the first National Land Summit in 2005. Issues were identified and recommendations were made during this land summit; a key recommendation being that ownership of customary land remain with landowners, but a lease system be developed where land can be mobilised and leased out for development (National Land Development Taskforce, 2007). This key recommendation led to the amendment of the Incorporated Land Groups Act 1974, and the Land Registration Act 1981, under the National Land Development Program Phase 1 (NLDP I) (National Land Development Taskforce, 2007). As a result of these legislative amendments, the Voluntary Customary Land Registration (VCLR) system which covers the processes of incorporation of landowner group, and registration of customary land, was established. The VCLR concept was acceptable to the banks and the community at large then (National Land Development Taskforce, 2007). It was, however, emphasised that for this concept to be implemented effectively, land administration and dispute resolution mechanisms must be efficient, and operating effectively (National Land Development Taskforce, 2007). Continuous information sharing with key stakeholders is also required for such customary land reform to work (Kwapena et al., 2021).

Unfortunately, the application of the VCLR system has not been feasible nationwide, and leases that were managed to be derived from the system were not accepted by commercial banks (Niugini Land & Properties, 2019a). According to Chand et al. (2014), customary land leases were not secure enough to be considered as collateral for loans. Three reasons why customary land titles are not bankable in PNG is that, financial institutions are not conversant with the Land Groups Incorporation (Amendment) Act 2009 and the Land Registration (Amendment) Act 2009, land leases are illiquid due to its thin secondary market, and land titles are not secure (Chand et al., 2014). Insecure land titles is a major concern for lenders due to their inability to establish the authenticity of titles over State land and freehold land. It has also been reported that financial lenders in PNG are lending more for property development on State land in urban areas, and to those who have shown to have the capacity to service a loan (Chand et al., 2014).

These ongoing challenges created the need for a second National Land Summit which was held in 2019. During the 2019 National Land Summit, major financial institutions in PNG that participated pointed out that they were more in favour of State leases than freehold titles, Special Agricultural Business Lease (SABL) titles, and customary leases arising from the VCLR, due to uncertainties and risks involved (Niugini Land & Properties, 2019a). The existing issue of un-bankability of customary land titles led to Resolution 15, which was to ensure

bankability of land titles. The main point raised under Resolution 15 was that security of tenure was fundamental to ensure the bankability of land titles. The adopted resolution was for customary land reforms to ensure security of tenure and bankability of titles (Niugini Land & Properties, 2019b).

Financial institutions expressed concerns regarding poor administration of State land by DLPP. As this was already the case, DLPP may not be able to properly administer customary land as well. It was then recommended by the financial institutions for a new agency to be established to interact between DLPP, customary landowners and financial institutions. Fiji's Native Land Trust Board and the Land Bank were suggested to be used as models for consideration. Establishing a separate agency to manage customary land was also proposed by other stakeholders during the 2019 National Land Summit (Niugini Land & Properties, 2019a). It was thus resolved in Resolution 7 of the Summit that an independent agency be established to administer customary land (Niugini Land & Properties, 2019a).

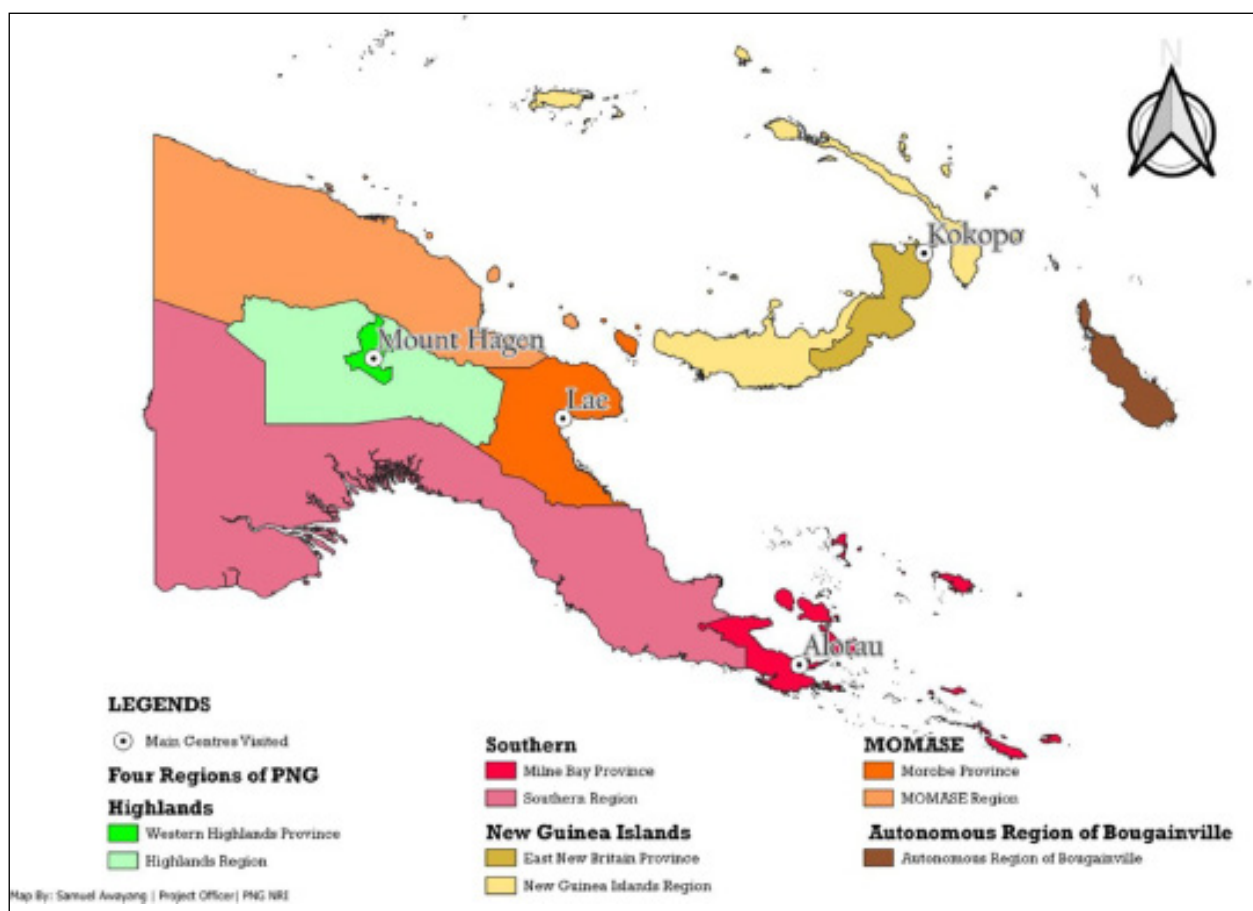
Property developers further emphasised the need to make customary land title bankable in order to make customary land work (Niugini Land & Properties, 2019a). This was also emphasised by most regional participants who pointed out that the whole VCLR process would be a waste of time if titles are not made bankable. Property developers pointed out that there was a need for continuous dialogue and education process with financial institutions to ensure they appreciate land reforms that are being introduced. This was a way to avoid biases surrounding customary land tenure reforms which may undermine bankability of customary land. A call was also made by the Minister for Lands and Physical Planning at that time, Hon. Justin Tkatchenko, to have the financial sector involved in land reform initiatives if bankability of customary land titles is to be achieved. This is to ensure that customary land titles that are produced through customary land mobilisation follow systems and processes that are consistent with the expectations of the financial institutions (Niugini Land & Properties, 2019a).

Research Methodology

This section provides a summary of the research methodology applied for this study. The methodology includes focus group discussion for data collection and analysis of data.

To have an understanding and appreciation of the different environments and unique set of complexities and challenges faced by stakeholders in different parts of PNG, the study was conducted in four regional centres - Mt Hagen for the Highlands Region, Alotau for Southern Region, East New Britain for the New Guinea Islands Region, and Lae for Momase Region (Refer Figure 2 for map of study sites).

Figure 2: Map of PNG indicating study sites in the four regions of PNG



Data collection

This research study adopted a qualitative data gathering method with a focus on the perspectives of specific and targeted stakeholders. To collect data, stakeholder workshops were held in four provinces during which focus groups were used to gauge stakeholder views.

For the stakeholder workshops, key stakeholders were purposively selected and approached for participation. Invitations to stakeholders for participation in the study were done via emails, phone calls, combination of the two, and physical delivery of letters where required.

The list of stakeholders invited to participate and their representation at the workshop is shown in Table 2.

Table 2: List of participating stakeholders and number of attendees

Stakeholder	Number of people in attendance			
	Mt Hagen	Alotau	Kokopo	Lae
Office of the Provincial Administrator	2	1	1	3
Provincial Lands Office	6	8	1	3
Regional Lands Office (where applicable)	Nil	Nil	9	5
Commercial Banks	2	3	4	2
Municipal Authority (or Urban Local Level Government)	2	Nil	1	Nil
Selected Incorporated Land Groups (including those with leases registered) – by number of landowners	4	2	29	16
Selected Developers (including those with investments on customary land)	Nil	2	2	3
Provincial Chamber of Commerce	Nil	Nil	3	Nil
TOTAL	16	16	50	32

The key stakeholder for the study was commercial banks. In observance of official protocols, invitations for the workshops for each of the commercial banks were sent to the head of the respective organisations based in Port Moresby, but with specific request for branch managers in each of the regional centres to participate.

The consultations were held in four centres in the four regions of PNG – Mt Hagen, Alotau, Kokopo, and Lae. This was a different approach to the approaches used in the previous studies done on bankability of customary land by Chand et al. (2014) and Kwapena et al. (2021), in that the consultations were not just done in Port Moresby where the headquarters or head offices of commercial banks are based, but also in other regional centres of PNG. The stakeholder workshops were held from April to June 2022.

To ensure that all stakeholders received their invitations and to confirm their participation, the research team made courtesy visits the day before the workshop to the invited stakeholders in all the regional centres. The courtesy visits also enabled the research team to have prior discussions with the stakeholders on customary land reforms as well as provide background on the study to the stakeholders. This approach proved useful for the consultations during the day of the workshop.

In all centres, except in Mt Hagen, participants were then separated into groups for discussions guided by a set of questions provided by the team (Refer Appendix for Guiding Questions). The stakeholder groups included banks (Focus Group 1), provincial authorities (Focus Group 2), landowners (represented by selected ILGs, as Focus Group 3), developers/Chamber of Commerce (Focus Group 4), and municipal authorities (Focus Group 5). Members of the research team were allocated to a stakeholder group of their choosing to observe the discussions and to provide clarification where necessary.

Questions used for focus group discussions were developed by the authors based on the objectives of the research and informed by their experience in the activities of the National Land Development Program (NLDP). The questions were designed to enable stakeholders to identify why customary land leases were currently risky and therefore not bankable, and what could be done to make customary land leases bankable. The focus was on what was not working, why it was not working, and what could be done to improve the process.

The discussions were followed by feedback from stakeholder groups. Ethical considerations have been used to address the respondents' privacy and confidentiality.

Data analysis

Raw data that was accumulated from this research comprised of transcripts of verbal feedback by the focus groups based on their discussions during the workshops. To make meaning of the focus group responses, researchers used Microsoft Word to input data to assist in the manual theming process. Data was managed by synthesising the responses from stakeholders in each of the regional workshops. In order to satisfy the research objectives, the thematic framework analysis method was employed to analyse the data generated through the feedback from the focus groups. The framework involved manual coding and then translating codes into themes. The results will be presented in the Findings section.

Limitations of the study

Despite continuous attempts to consult with all invited stakeholders, not all stakeholders invited to participate in the workshops were represented in all the regional workshops. Results of this study, therefore, only include views and observations from participating stakeholders. Additionally, some focus groups had less than three participants, so groups were merged, whilst others had more than 10 participants. Also, for noting, discussions in Mt Hagen were held in one big group although representation of stakeholders and focus groups were noted.

Findings

This section presents the results that emerged from the focus group discussions during stakeholder consultations in Mt Hagen, Alotau, Kokopo and Lae. There were 114 participants across five focus groups.

Current process and principles of creating and issuing customary land leases

Participants across Alotau, Kokopo and Lae, except for landowner representatives in Alotau and participants in Mt Hagen, responded positively that the current process and principles of creating and issuing customary land titles and leases in PNG should be retained but with improvements made on specific areas. These areas are highlighted below as issues. Landowner representatives in Alotau called for the development of a new legislation to administer customary land, whilst majority of participants in Mt Hagen expressed that ILGs are not working for them.

During the stakeholder consultations, the discussions were centred around issues that are contributing to risky customary land titles and leases as well as what could be done to make customary land titles and leases secure and acceptable by banks in PNG. The issues will be presented first then options will follow.

Issues impacting on the bankability of customary land leases

According to the stakeholders consulted, issues that impact on the bankability of customary land leases are as follows:

Insufficient awareness on ILG and land registration process

Participating representatives of commercial banks reported that the concept of Incorporated Land Group (ILG) is new to the banks. Bank officers either do not know the process and requirements or do not fully understand the process and requirements of incorporating an ILG. For instance, a banking officer at Mt Hagen responded that there was lack of awareness on the 2009 amendments to Land Groups Incorporation Act 1974 and Land Registration Act 1981. This limited knowledge or lack of knowledge and awareness influences bank officers' decision in considering a land lease as collateral against a loan application.

Limitations on customary lease arrangements

Representatives of a particular commercial bank in Mt Hagen and Alotau expressed a concern that some contracts of land sale by ILGs state that the lease can only be sold back to the ILG, which is difficult for foreclosure when a bank loan has been given on the lease. Most participating landowners across the four regional centres responded that the maximum lease period of 99 years is too long and that the maximum lease term should be reduced. These limitations on customary leases affect the viability of customary land leases as collateral.

Loss of trust in the ability of DLPP to administer customary land

A Provincial Lands Officer in Alotau expressed dissatisfaction in the manner with which land titles have been kept and managed by DLPP. The officer added that duplicity of State land titles is eroding the trust and confidence of people in the government agency responsible to administer land in PNG such that a new agency should administer customary land in the country. Landowner representatives in Mt Hagen pointed out that some Lands Department officers solicit money from the public so people have lost trust in the department. Landowner representatives in Alotau expressed that there is loss of trust in DLPP due to their experience of lack of coordination in past pilot projects such as Toudikwa Estate, Ravens Estate and Modewa Silabe, leaving landowners and developers confused and frustrated. Representative of a developer in Alotau stated that there is often non-compliance by government officers, either through incompetence or delays, in the administration of customary land that there is little trust in DLPP to effectively administer customary land. Bank officers pointed

out that lack of confidence in the process that produces customary land leases to be presented to commercial banks for consideration as collateral as well as land records, influences officers' decision in considering land leases as collateral.

Security of developments on customary land is not always guaranteed

Landowner representatives in the Lae workshop expressed concern that PNG is a risky place for doing business because of various social issues. Because of this, security of developments on customary land is not always guaranteed. This lack of guarantee on security of developments on customary land undermines the collateral value of customary land and poses a risk on customary land being considered as collateral for loans.

Fear surrounding recovery of loan after a default

This particular issue was raised by commercial bank representatives. Banks expressed concern that their officers cannot go to customary land and acquire the land when the landowners are not able to repay the loan because of personal safety. A banking official in Kokopo highlighted that her current employer used to give loans over customary land, but it became difficult to recoup payment because of landowner issues such as refusal by landowners to cooperate with banks, so this particular bank has stopped extending credit on customary land. Because of this fear, banks are hesitant to use customary land leases as collateral for loans to develop customary land.

Difficult to determine legitimacy of landowners

Participants representing commercial banks responded that it is difficult to determine which landowner groups are genuine or legitimate owners of the land they claim, and which ones are not. Participants representing developers or investors on customary land shared the same sentiments. One banking official stated that it does not help that not all landowner groups are registered with DLPP. A commercial bank representative in Alotau highlighted that there is no information readily available to confirm the status of ILGs. This uncertainty about the legitimacy of landowners and the land that they claim provides little confidence to banks to give loans on customary land using customary land leases.

No map and proper record to check land boundaries

Representatives of ENB Provincial Lands Office highlighted that there is a lot of overlapping ILG land boundaries due to engagement of private surveyors. This problem is compounded because there are no proper records and no map available at the Provincial Lands Office to be used as reference to check ILG land boundary claims. This uncertainty over land boundaries poses a risk to the collateralability of customary land leases for bank loans.

Ongoing landowner conflicts

Bank representatives responded that there are often many unresolved disputes between landowners over customary land. Landowners in all four regional centres expressed concern that there is often lack of transparency by some ILG executives or leaders. Furthermore, some clan members who have individually sold portions of their land are going back to benefit from customary land title obtained by the ILG they are a member of. This is deemed as unfair to those clan members that did not sell their land but have registered their ILG land and have brought development to their land. Such occurrences provide a source of ongoing conflict between landowners. Ongoing internal landowner disputes pose a risk to the collateral value of customary land leases.

Options to improve the bankability of customary land leases

Several options were recommended by participants from stakeholder groups across all four regional centres, for consideration by the government and relevant stakeholders involved in the process of producing customary land leases. Any mix of the following options can be considered for possible action:

Undertake extensive awareness

Participants recommended that the ILG and land title registration processes be taught broadly so the general public understand the due processes and the requirements. There is a massive need for extensive awareness on the processes and requirements so that landowners can confidently engage in the process. Some participants also expressed that bank officers need to be aware of the ILG and land registration processes so that they are fully informed when considering customary land leases as collateral for loans.

Establish a database for customary land boundaries

Officers from the New Guinea Islands Regional Lands Office proposed for PNG to have a database containing all land boundaries registered or being registered. This would ensure there is no overlapping of land boundaries. This has the potential to reduce or minimise landowner disputes over boundaries and increase the collateral value of customary land leases, giving confidence to banks to consider customary land leases as collateral for loans.

Establish separate entity to administer customary land

An officer in the Milne Bay Provincial Lands Office suggested that to protect the indefeasibility of the customary lease title, customary land needs to be separately administered from State land. It must not be administered together with State leases. This can be done through the creation of a stand-alone entity to administer only customary land title and leases. This will give confidence to banks that any title presented to them for consideration as collateral is the one and only title of the land for which an application is being submitted.

Develop Customary Leasehold Act

Landowner representatives in Alotau expressed concern that the current processes and systems are not delivering a secure bankable customary lease title. Furthermore, this can be addressed through a separate legislation to administer customary land, with the proposed name being Customary Leasehold Bill/Act. This process should look at regulations, strengthening enforcement of the law and associated penalties, as well as review of customary lease conditions. This is to strengthen the legal framework around which customary land is administered as well as improve confidence in the customary land titles.

Credit guarantee facility

Provincial Lands Office and municipal authority representatives in ENB recommended for the Government to consider establishing a credit guarantee facility for customary land similar to the funding facility currently available to small-medium sized enterprises (SMEs). Landowners with customary land titles can then be allowed to access loans, including startup capital, from money that is being parked with commercial banks such as Bank South Pacific (BSP) or National Development Bank (NDB). Developer representative in Kokopo proposed that if legislation is required to make provisions for landowners to have start-up capital to develop their land, such as through the proposed credit guarantee facility, this needs to be done. This will also add value to the ability of landowners to negotiate better outcomes with interested developers.

Establish Customary Land Bank

A recommendation was made by Provincial Lands Officers in Kokopo for the Government to consider establishing a National Customary Land Bank purposely to provide financing for landowners to engage in the ILG and land registration processes, and to provide direct financing for developments on customary land.

Explore innovative sources of financing

Provincial and Regional Lands Officers in Kokopo pointed out that ENB Provincial Lands Division has a land mobilisation fund which they distribute to districts. This could be accessed by landowners as capital for mobilisation and development of customary land. Furthermore, it was suggested that Land Mobilisation Fund and other innovative sources of funding should be explored as a potential source of capital for development of

customary land across all provinces in PNG. This is a form of direct financing for development of customary land.

Innovation required by banks

A landowner representative in Lae suggested that banks need to be innovative and give customary leases a go. Landowner representatives in Lae suggested that banks be involved in drafting customary land lease titles. Provincial Lands Officers in Kokopo suggested that banks consider flexibility in the application of their terms and conditions for landowners to access funding through loans such as through the SME funding facility, for example, landowner companies access this money as their capital/financial base.

Banks consider alternative sources of collateral

Landowners in Alotau proposed that banks consider crops and livestock as collateral for loans apart from land. For instance, banks use crops or farms as collateral for loans instead of land lease only. Landowners must create value for land, for example, through commodities, so these can become collateral for their land. They must also create value for their land by ensuring that their landowner companies have good credit history with banks. A named commercial bank in Alotau is already giving loans to farmers on customary land using oil palm as collateral upon guarantee provided by the oil palm company (developer).

Discussion

Contributing factors promoting insecurity of customary land tenure

What are the contributing factors that discourage commercial banks from recognising customary land and its intended titles as collateral to expand credit? As indicated in the findings, the main issue is the lack of confidence in the security of property rights in relation to customary land tenure. In other words, there is a lack of confidence in the institutional arrangements on the administration and management of customary land and the processes involved in the registration of customary land titles. This finding supports the results of earlier studies undertaken with regards to customary land issues on land administration, governance and land disputes mechanisms (NLDT Report 2007; Kwapena et al., 2021; Niugini Land & Properties, 2019a).

The results of the preceding section of the study was juxtaposed within the theoretical framework of property rights, land tenure and access to credit. As highlighted in the seminal work of Feder and Feeny (1991), the following issues continue to plague the insecurity of customary land tenure in PNG. These include issues of incentives, asymmetry of information and uncertainty, land rights and credit transactions, and lack of public sector resources to promote land security. These will be subsequently discussed in light of the findings.

Secure customary land rights should provide incentives to invest and improve the land. However, officials of the banks acknowledged that they are not fully aware of the land registration and ILG processes required in the issuance of a customary land title. There is still a lack of awareness on the customary land reforms from the bank's perspective and even the civil society at large. On the other hand, unresolved disputes are triggers of ongoing conflicts between landowners over customary land which in turn discourages investment. Lessons from the global and regional experiences regarding customary land reforms reiterated the need for security of customary land tenure systems. For instance, the Peruvian Government has intervened by facilitating the process with direct capital investments to provide titles for the landowners. In addition, in the Maoris case in New Zealand, land held under freehold land tenure arrangements were registered and surrendered into either an incorporation and/or various trusts which in turn provided some form of security thus encouraging investment and development. However, in Fiji's case, the iTLTB administers all the customary land and plays an intermediary role between potential investors and the landowners.

Asymmetry of information and uncertainty of customary land rights were overwhelmingly highlighted during the stakeholder consultations. These include the lack of sharing of information among the stakeholders involved in the ILG registration, land registration, land administration, land financing and land development. All relevant agencies work in silos and are not complementing each other to make customary land rights secure. In addition, the commercial bankers and the private developers alluded that it is difficult to obtain the legitimacy of the landowners. In particular, when there are no proper records and maps available to confirm the authenticity of the ILG land boundaries. Experiences from reforms undertaken in the global and regional cases indicated the importance of having a centralised database system that acts as a repository of information on land ownership, land management and land administration. This is critical to ensure transparency and accountability which the commercial banks are concerned with in relation to the security of customary land tenure.

It is widely acknowledged that land is regarded as the best collateral given its character of immobility and immunity to damage. However, with regards to customary land potential as collateral to access credit, the security of customary land title derived from the VCLR system and the issue of foreclosures are obstacles that needed to be addressed. In addition, concerns were raised on the limitations of the customary lease arrangements. For instance, contract of land sales by ILG required that the leases be only sold back to the concerned ILG, raising the issues on foreclosure.

Options on the way forward

On the way forward regarding the strategies that will enable the recognition of customary land leases as collateral by the banks, the stakeholders in the workshops highlighted several options. These options are framed and discussed with the thematic areas of land administration in regard to recognition of customary land rights, the legal framework that protect these rights and the enforceability aspect.

The recognition and administration of customary land rights is critical to bring confidence to the commercial banks in their dealings with customary land. There is a need to improve the upkeep of land records through a proper and systematic approach. This may include the use of technology to transit from an analog system to a digitised repository or database system that accommodates the information on the land rights claims and maps of the customary land boundaries. Additionally, there were strong sentiments with regards to the establishment of a separate entity to administer customary land. To address asymmetry of information, there is a need for extensive awareness among landowners, banks, developers and the wider public regarding customary land reforms.

Within the legal framework required to legitimise and protect customary land rights in the use and control of the land, the options were directed towards the need for the government to be more proactively involved. These include the government developing a Customary Land Bill that will specifically focus on customary land issues, particularly in the administration, implementation and the enforceability aspect. Other options include the need for government to be more innovative towards providing a conducive environment that will promote the security of customary land. These include the government setting up a Credit Guarantee Facility or a Customary Land Bank that provides the financial incentives for the landowners to avail their land for commercial interests. However, the banks also have informed that there are specific cases where landowners used the business activities on their customary land as collateral to access credit instead of the use of customary land title as collateral.

In summary, the factors contributing to the un-bankability of customary land leases in PNG is not isolated from experiences in other countries that have undergone land reforms to ensure customary land are bankable. The pertinent issues are in relation to the confidence in the processes of identification, the legal framework that establishes and recognises the landowning groups, and enforceability of the rights in the event of disputes and default. Lessons drawn from the experiences of countries especially within the region emphasises on the need for government direct interventions on the security of customary land titles, establishment of the legal framework that will promote independence among entities or organisations that will facilitate the interest of the State, the banks, potential developers and the landowners. However, going forward, the compatibility of the systems that will address the fears of the banks to recognise customary land leases as collateral has to be pragmatic in terms of its application to customary land in PNG as the contexts in which they are applied are very different from the experiences of other countries.

Conclusions and recommendations

This study aimed to understand factors that are contributing to risky customary land titles (leases) in PNG such that commercial banks are hesitant to accept the leases as collateral and to identify what could be done to provide bankable leases to access credit.

It was discovered from the study that customary land titles are considered risky because there is a lack of confidence in the institutional arrangements and the processes employed by Government in granting the title. Additionally, ongoing customary land disputes undermines confidence in the title deeming titles risky. On the other hand, banks are not fully aware of current processes and legislations as well as ongoing reforms on customary land, hence, their lack of confidence in the title.

To give confidence to potential financiers and investors, a proposal was made to establish a new agency to administer customary land. This proposed agency is to be called Customary Land Authority (CLA) and is an alternative to the current arrangements under DLPP. Responsibilities of the CLA will include proper recording and storage of land records and associated genealogical records, providing a database and associated map for customary land boundaries, and providing extensive awareness on the ILG and land title registration processes to all parties concerned. The Fijian iTLTB and the Maori land trust arrangements are models that can be considered but it requires identification of legitimate landowners and all customary land boundaries across the country as a prerequisite for it to work in the case of PNG.

For the Government to provide a conducive environment that promotes the security of title and development of customary land, study participants proposed a Government-funded credit guarantee facility and/or a National Customary Land Bank similar to the current SME credit facility. However, just as SME loan applicants are expected to meet the necessary requirements, landowners must meet the necessary requirements in order to benefit from the proposed credit guarantee facility/Customary Land Bank for customary land development.

The proposed options are significant undertakings for any government to take as they have policy, legal and cost implications. Lessons drawn from the experiences of other countries such as Fiji and New Zealand can be useful for PNG, however, the options need to be considered in the context of PNG.

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Appendix

Annex 1 – Guiding questions (provided to workshop participants)

PROMOTING SECURE AND BANKABLE CUSTOMARY LAND TITLES (LEASES) FOR SUSTAINABLE DEVELOPMENT IN PAPUA NEW GUINEA

At present, customary landowners are encouraged to register their customary land as a means to protect their land as well as release their land for development. The process to register customary land involves two phases – incorporation of land group and registration of customary land. Incorporation of land group is the process by which a landowning group (e.g. clan) is given formal recognition under formal law that it claims rights to identified portions of land and properties. The land registration phase involves registration of the identified land under formal law and a title is issued. A lease for a portion of land to be released for development is then derived from the parent title. Currently, banks are hesitant to accept the customary leases as security to extend credit for development of the land due to risk. This research, therefore, aims to identify and examine factors that are contributing to risky customary land titles (leases) in PNG, and to identify a potential strategy for providing secure and bankable customary land titles (leases) in PNG.

Guiding questions for group discussions

1. Can the process and principles of creating and issuing State land titles and leases in PNG be applied in the context of customary land in PNG?
If no, why not?
If yes, why are customary leases being considered risky?
2. In your view, what specific aspect of the process of creating and issuing customary land titles and deriving leases in PNG is contributing to risky customary land titles and leases?
3. What sort of title and lease system would you consider suitable for PNG?
4. What should be done to make customary land titles (leases) bankable in PNG?
5. Any additional comments/discussions?



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