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AN OVERVIEW OF THE
PROSPECTS AND CHALLENGES
OF THE LEGAL MECHANISMS
USED TO FORMALISE
CUSTOMARY LAND FOR
DEVELOPMENT IN PAPUA NEW
GUINEA

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Abstract

- Customary land has been unlocked and released in Papua New Guinea (PNG) for development.
- Legal mechanisms for releasing land in PNG include acquisition by agreement, compulsory acquisition, and Voluntary Customary Land Registration.
- Legal mechanisms for releasing land face challenges such as poor governance, inadequate capacity and costs associated with it.
- Efforts to address the challenges should include improving governance, building capacity, reducing costs, and improving administration of land.
- Addressing the above challenges needs to be accompanied by ongoing research and analysis, policy advocacy, and clear policy directions that inform legislative changes.

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AN OVERVIEW OF THE PROSPECTS AND CHALLENGES OF THE LEGAL MECHANISMS USED TO FORMALISE CUSTOMARY LAND FOR DEVELOPMENT IN PAPUA NEW GUINEA

By Logea Nao

Introduction

Customary land with secure title is critical for the social, economic and physical development of Papua New Guinea (PNG). It is necessary for the delivery of basic goods and services by the government, to facilitate private sector investments, and it can serve as a source of income for landowners – these are critical for the growth of the economy of PNG and are ingredients to improve the livelihoods of people in this country. In order for customary land to be formalised and released for development, customary land needs to be registered and a title obtained for it. Not registering customary land leaves it open to land grabbing, claims over ownership by multiple parties, limits options for private sector investments outside of State land, and affects the timely delivery of public goods and services by the government.

In recent times, efforts to encourage the release of customary land for development as a means to improve the welfare of the people, through introduction of reforms to land have included the 2005 Inaugural National Land Summit which covered State land, land under private ownership and customary land. For State land and land under freehold titles, improving administration was looked into, and for customary land, improving dispute resolution and developing land were looked into (National Land Development Taskforce Report, 2007). Despite these efforts, the release and development of customary land remained a challenge so in 2019, the National Land Summit focused on customary land, on issues such as controversies surrounding Special Agricultural Business Leases, increase in direct and unscrupulous dealings on customary land in urban and peri-urban areas, increasing unplanned development within urban centres, and increasing demand for land compensation for public service facilities and utilities (Niugini Land and Properties, 2019).

There are many options available to release customary land and those options have their own benefits and their own set

of challenges. This often creates confusion for customary landowners and it does not help that information on each option available and their specific use is not readily available or accessible to the public (for example, the process to incorporate a land group and register customary land through the Voluntary Customary Land Registration system – Kwapena et al., 2021) that it brings frustration for most people. Another problem is that customary landowners often do not fully understand and appreciate the overall and specific benefits of releasing customary land before they engage in the process of releasing customary land.

The objectives of this paper, therefore, are:

- i. To inform the public, especially customary landowners, about the potential benefits of releasing customary land for development;
- ii. To identify the different options available to release customary land for development;
- iii. To highlight the issues with each of the different options available to release customary land for development; and,
- iv. To identify strategies to address issues associated with the options available to release customary land for development.

Understanding why unlocking secure customary land in PNG for development is necessary, what the different options to do so are, and what the potential challenges to be faced in the process are as well as what can be done to address the challenges, has the potential to contribute to the effective mobilisation of customary land in PNG. The effective mobilisation of customary land stands to benefit customary landowners as a stable revenue source, the general public through creation of jobs, investors on land as an incentive to invest on customary land, and the State through increase in tax revenue generated from the use of customary land.

Information sources and material

Information used in this paper was largely sourced from appropriate land legislations, policy documents and related literatures. Government has been encouraging landowners

through the National Land Development Program Phase I and II, inaugural Land Summit held in Morobe in 2005 and the 2019 Stakeholder Consultations in Port Moresby, four Regional Workshops and the National Land Summit in Port Moresby focusing on customary land in PNG, to release their customary land for development. There is therefore, a need to provide information on what the potential benefits of releasing customary land are, what the options to do so are, and what the likely challenges and potential solutions in the process to release customary land are. These information formed the basis of information and material sourcing for this paper.

Secure customary land

The release of customary land for development requires customary land to be secure. Secure customary land requires property rights over the land to be clear. Property rights have a bundle of characteristics including exclusivity, inheritability, transferability and enforcement mechanisms that define the ownership and use of a land (Feder and Feeny, 1991). Secure customary land refers to land that has a secure title. A secure title is one that comes out of a credible process – a process that is transparent and that can be accessed and completed with ease. The process being referred to here is one that encompasses the registration of land, the safety of the record-keeping and the overall management of the title, including identifying the use of the land, the period of use, and the ease of transferring the title.

Potential benefits of releasing secure customary land

Secure customary land can support the legitimate owners of land, allow for current generation of landowners to bequeath ownership to subsequent generations of landowners, discourage land grabbing, increase the value of the land, and promote business and investment (Nao, 2021). To encourage the effective mobilisation of customary land, it is important to highlight the benefits of releasing secure customary land. Releasing secure customary land can benefit landowners, investors on customary land, the general public and the State, in the following manner:

- **Serve as a better alternative to informal arrangements**

A secure title over customary land allows for only the true and recognised landowners by law to deal with any arrangements over the use of their land. This promotes exclusive ownership and inheritance of ownership (Nao, 2021). For example, when a land lease is created from a title that has been formally registered by an incorporated land group (ILG), the law recognises the ILG as the owner so if an individual or business has an interest

on the land, the individual or business would have to consult with that particular ILG. In this way, it protects both the landowners' ownership interest and the other parties' use and access rights. The alternative scenario would be one where the customary land does not have a secure title as it is not registered, any individual or group of individuals other than the legitimate landowners could claim ownership rights. This could potentially create an opportunity for those that genuinely want to do business on customary land to be taken advantage of by opportunists.

- **Allow landowners to do business over their customary land**

When landowners have a secure title to their land, it creates opportunities for them to develop their customary land for business. This is because land with secure title can have leases created from it and a lease has the potential to be used as security to access formal sector finance by landowners themselves or those they want to do business with on their customary land (Nao, 2021). In instances where landowners intend to do business on their customary land but do not have the financial means to do so, they can lease it to an investor (e.g. a local company) to do business on it for a specified and mutually-agreed period and purpose. Another option is for landowners to pursue a joint-venture arrangement. This is where the landowners can put up the land for the business and the joint-venture partner (developer) can provide the funding, provided the partner has the technical and financial capacity to do so. In such instances, the lease can be granted to the joint venture. These indicate that landowners can do business on their customary land either directly or indirectly. Either way, it can serve as a stable source of revenue for landowners.

- **Gives confidence to investors to develop customary land**

The need to unlock secure customary land in PNG is more pressing now because land under State ownership is limited in supply and what is available has already been allocated or is being developed (Wangi and Ezebilo, 2017). Investors on customary land can be an individual, a group of individuals, a small or medium-sized enterprise (SME), or a large business. Customary land can be accessed for development but investors, for example, private property developers, prefer land with formal title (Wangi and Ezebilo, 2017). Banks also prefer formal titles but also require effective enforcement mechanisms to reduce the risk of property lending and hence extend credit to property developers (Chand et al., 2014). When

ownership of customary land has been determined and is recognised by the formal law, it gives confidence to those that have the intention and the means to do business on customary land to engage with landowners to do so.

- **Allows the government to deliver basic goods and services**

Customary land is needed by the government to deliver basic public goods and services such as construction of roads, bridges and airports, building of education and health facilities, establishment of government services such as offices for provincial and local level governments and court houses (National Land Development Taskforce Report, 2007). The government has, in the past, acquired customary land to deliver basic goods and services for the people of PNG and it will continue to require customary land to do so as the population of the country grows and the demand for government goods and services increases accordingly. Customary land with secure title would serve as a cost-effective option for the government to use because it would allow the government to deal with the legitimate owners of land and therefore, reduce transaction costs for the government. It could also enable the government to address future compensation claims on alienated land.

- **Creates jobs and other income-earning opportunities for Papua New Guineans**

Secure land, when accompanied by complementary enabling policy, social, and governance environment, has the potential to improve access to formal credit (Deininger and Feder, 2009). When there is an increase in the supply of credit in the market, it can result in the reduction of the price of credit. This can encourage local and international businesses and investors to invest on land. When investors invest on customary land in PNG, it can result in the creation of jobs and other income-earning opportunities through spin-off activities in the formal sector. It also has the potential to create income-earning opportunities for the informal sector of the economy as the demand for goods and services increases because more people have the capacity to earn money and spend it too.

- **Promotes broad-based economic growth**

When secure customary land is released for development, it has the potential to contribute to broad-based economic growth in PNG. Economic modelling done by the Department of National Planning and Monitoring in the process of developing the PNG Development Strategic Plan 2010-2030 highlights that if over 20 percent

of land in PNG is made available for development, it will result in an increase of Gross Domestic Product by 57.3 percent by 2030 (PNG Development Strategic Plan 2010-2030, 2010). The release of secure land will encourage investment and expansion of the private sector leading to employment creation and increase in other income-earning activities. This has the potential to increase the tax base and revenue for the government through expected increases in personal income tax, goods and services tax and corporate tax resulting in an increase in income for the country and an improvement in the capacity of the government to provide basic public goods and services.

Historical legal context of releasing customary land in Papua New Guinea

Legislations discussed below have been passed and used from the pre-Independence era to date in PNG to release customary land into the formal market. These legislations have allowed for the use of customary land by landowners for commercial interests, by the private sector for business interests, and by the government of PNG to deliver basic goods and services. Legislations in PNG related to the release and use of customary land include the following:

- ***Land Tenure Conversion Act 1963***

This legislation allows for the conversion of the tenure of customary land into individualised tenure (*Land Tenure Conversion Act, 1963*). In PNG, customary land is communally-owned, however, there are instances where communally-owned land may need to be registered by an individual or group of individuals for a specific purpose (such as private housing or for business), this is what gives it the individualised tenure. *Land Tenure Conversion Act 1963* facilitates the creation of freehold titles which are provided for in law under *Land (Ownership of Freeholds) Act 1976* and is derived from Section 56(1)(b) of the National Constitution of PNG which allows for only citizens to acquire freehold land.

- ***Land Acquisition (Development Purposes) Act 1974***

This Act of Parliament was the legal basis by which the State acquired land by agreement or by compulsion in the pre-Independence period (*Land Acquisition (Development Purposes) Act, 1974*). The State acquired land for subsistence farming, for economic development, for resettlement of residents of urban areas, and for education, social, welfare and community development purposes (*Information Brief on Fit for Purpose Structure for the development and management of the proposed Nadzab Town*, Unpublished). The legislation in Part III and Part IV also provided for the principles of compensation,

the process for claims and process for payment of compensation for alienated land. This legislation was repealed and replaced by *Land Act* 1996.

- ***Land Registration Act 1981***

The *Land Registration Act* 1981 was purposely enacted to register title to land (*Land Registration Act*, 1981). Various sections in the law allows for the registration of customary rights. For example, Division 1 on preparation of Certificates of Title and Register, Division 2 on Issue of Certificates of Title in certain cases, and Division 4 on the Registration Process. This legislation allowed for customary land to be registered and recognised in formal law and released for development, including land that could be potentially acquired by the State for delivery of public goods and services. State acquisition of customary land with title is highlighted because more often than not, customary land acquired by the State for its purposes is land that is not yet registered.

- ***Land Act 1996***

Land Act 1996 is at present the principal land legislation in PNG, and is the legal basis for the acquisition of customary land by the State. It has provisions for acquisition of customary land by agreement for public and private purpose, by compulsion for public purpose and by other lease arrangements to facilitate private sector development. Once customary land is acquired and becomes State land, leases can be created from it. These leases include agricultural leases, pastoral leases, business and residence leases, mission leases, lease of Government-owned buildings, special purpose leases, special agricultural and business leases, and urban development leases (*Land Act*, 1996). Section 132 of *Land Act* 1996 prohibits customary landowners from selling, leasing or other ways of disposing of customary land or customary rights other than to citizens in accordance with custom (*Land Act*, 1996).

- ***Land Registration (Amendment) Act 2009***

This Act of Parliament emerged from amendments made to the *Land Registration Act* 1981 to allow landowners to develop their land through an incorporated land group, to encourage traditional villages and communities to remain viable and grow holistically, and to promote and facilitate the registration of land held under customary tenure (*Land Registration (Amendment) Act*, 2009). The amendments to the *Land Registration Act* 1981 was constituted by a new section (Section 34) in the Act to enable landowners, through their incorporated land group (ILG) to retain ownership of their customary land but release it for development through a lease arrangement. The registration process gives the proprietor

an indefeasible title including guarantee of the physical boundary of the parcel of land (Constitutional and Law Reform Commission Report, 2008).

Options for release of customary land

There are various options available for customary land in PNG to be released for development. These options can be explored depending on what the land will be used for. There are two broad uses of land - land to be used for provision of public goods and services, and land to be used for private purposes. The options currently available for the release of customary land are as follows:

- ***Acquisition of customary land by agreement***

Acquisition of customary land by agreement is provided for in law under Section 10 of *Land Act* 1996 and is currently administered by the Department of Lands and Physical Planning (DLPP). This form of acquisition is done by the Minister for Lands and Physical Planning, on behalf of the State (*Land Act*, 1996). The agreement for acquisition of customary land is between the State, through the Minister, and the customary landowners. This acquisition of customary land can only be done after reasonable inquiry establishes that the land is not required by the current or future customary landowners, or the land is not likely to be required for a certain period which the Minister may lease wholly or partly for (*Land Act*, 1996). This provision can be used for the delivery of public goods and services by government and for private purposes by the private sector.

After customary land is acquired by agreement and issued with a State title, and therefore, making it State land, different types of leases can be created from it. The leases include agricultural leases under Section 87 and 88; pastoral leases under Section 89, 90 and 91; business and residence leases under Section 92 to Section 95; mission leases under Section 96 to Section 98; lease of Government-owned buildings under Section 99; special purpose leases under Section 100 and 101; and, urban development leases under Section 103 to Section 110 (*Land Act*, 1996). This mode of acquisition of customary land allows for customary landowners to negotiate for a better deal compared to acquisition of customary land by compulsion.

A recent example where the acquisition of customary land by agreement has been successfully applied is the Napanapa Pilot Project, covering an estimated 318 hectares and located in the outskirts of Port Moresby, on the border of National Capital District (NCD) and Central Province. In this project, customary land was transferred to the State through a Section 10(2)

Agreement in return for a special purpose lease under Section 100 of *Land Act 1996* (*Information Brief on Fit for Purpose Structure for the development and management of the proposed Nadzab Town*, Unpublished). Furthermore, two State leases were granted to a company owned by the landowners and a joint venture partially owned by the landowners, with a trust company to collect, hold and distribute proceeds from development of the land through a Trust Deed Instrument.

- ***Acquisition of customary land for the grant of special agricultural and business lease***

For acquisition of customary land for the purpose of granting a special agricultural and business lease, parties use Section 11 and Section 102 of *Land Act 1996*. The Land Act and therefore this mode of acquisition is administered by DLPP. Section 11 of *Land Act 1996* allows for customary land to be acquired through a lease-leaseback arrangement, whilst Section 102 of the *Land Act 1996* facilitates the grant of special agricultural and business leases for a term not exceeding 99 years (*Land Act, 1996*).

Special Agricultural Business Lease (SABL) was facilitated through lease-leaseback arrangements. The lease-leaseback process was started in 1979 partly due to the requirement for collateral by the Agricultural Bank for loans to coffee farmers in the Highlands (Aldrich, 2014). Lease-leaseback arrangements require customary landowners to surrender their land to the State, then the State lease title is granted to the landowners who then sub-lease it to interested developers who have the capacity to develop the land. For an SABL, at the expiry of the 99 year lease term, the underlying land reverts back to customary tenure or ownership (Aldrich, 2014).

An example where customary land has been acquired for special agricultural business leases (SABLs) is the subdivisional development of customary land over 95 allotments under Toudikwa ILG, located in Portion 289C Milinch Gehua, Fourmil Samarai, Alotau, Milne Bay Province (Aldrich, 2014). In this development, customary land was surrendered to the State in return for an SABL under Section 11 and Section 102 of *Land Act 1996*. However, efforts were being made to convert the SABLs under this development to a better way by which current and future customary landowners can be better placed to participate in the development of their land and economic development more broadly (Aldrich, 2014).

- ***Compulsory acquisition by the State for public purposes***

Acquisition of customary land from landowners under compulsion by the State is provided for in Section 12 of

Land Act 1996. This provision in the law is administered by DLPP and is purposely for the delivery of public goods and services. This mode for acquisition of customary land is used for instances where the national, provincial or other levels of government require land for the provision of public goods and services such as roads, bridges, drainage and declared open spaces, schools, health facilities, airports, court houses and government administration buildings. Customary land permanently loses customary tenure and joins the formal market for use by the government.

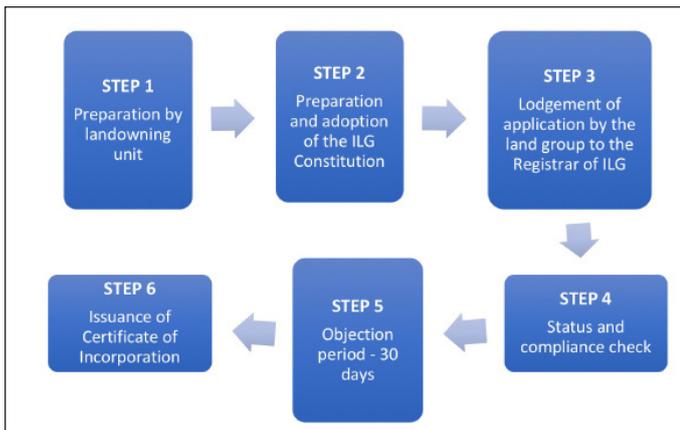
Examples in Port Moresby of customary land that were acquired using Section 12 of *Land Act 1996* include the Poreporena Freeway that runs from Konedobu through Hohola to Waigani (located in the north western part of the city) and Gordons (located in the north eastern part of the city); and, more recently, Koura Way that runs from Konedobu through June Valley and Tokarara (all located in the north western part of the city).

- ***Voluntary Customary Land Registration***

Customary landowners have the option to register their customary land voluntarily and benefit from the use of their customary land. This option is provided for under the *Land Groups Incorporation (Amendment) Act 2009* and *Land Registration (Amendment) Act 2009*. The amendments made in 2009 to the *Land Groups Incorporation Act 1974* and *Land Registration Act 1981* created an avenue for customary landowners to register their customary land through an ILG, obtain a customary land title to enable landowners to retain ownership rights, then create customary land leases from the title as a means to release customary land for development. The *Land Groups Incorporation (Amendment) Act 2009* and *Land Registration (Amendment) Act 2009* constituted the Voluntary Customary Land Registration (VCLR) System.

According to Nao (2021), the VCLR system is a two-phase process which involves incorporation of a land group in the initial phase and the registration of customary land in phase two. The process is currently administered by DLPP. More details on the two phases are presented below in Figure 1 and Figure 2.

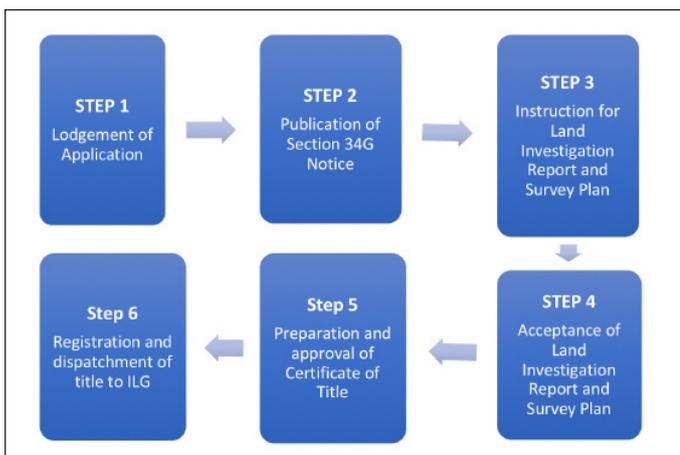
Figure 1: Process to incorporate a land group



Source: Nao, 2021.

Incorporation of land group involves steps by which a land group (dependent on the social construct in a particular landowning community, whether it be clan or tribe, or otherwise) is given formal recognition under the law that it claims rights to the identified portions of land and other forms of property listed (Nao, 2021).

Figure 2: Process to register customary land



Source: Nao, 2021.

Phase two involves registration of a portion of land as identified under the property listing of an ILG during the land group incorporation phase (Nao, 2021). This is the process by which customary land receives title which is not transferrable. In other words, ownership of customary land cannot be transferred.

This option of releasing customary land for development is voluntary, it empowers landowners to determine who they do business with on their customary land, and allows for customary land to be owned by landowners into perpetuity.

- **Land Tenure Conversion process**

Land Tenure Conversion Act 1963 allows for customary land to be converted into freehold land. Once customary

land is converted into freehold land, customary tenure ceases to apply. The tenure conversion process (in no particular order) involves application for and dealing with the application under Section 7 and Section 8 of the Act; and preparation of a conversion order under Section 9 of the Act to be accompanied by a conversion plan (*Land Tenure Conversion Act, 1963*). The Act also provides for boundaries of land on a conversion plan to be permanently identifiable on the ground under Section 13; and, provides for hearings under Section 18 to Section 21 of the Act (*Land Tenure Conversion Act, 1963*). After all requirements are met, including resolution of disputes identified in the process, a conversion order is forwarded to the Registrar of Titles at DLPP, under Section 15 of the Act (*Land Tenure Conversion Act, 1963*). The Registrar of Titles then issues a Certificate of Title which serves as the freehold title over the land of interest.

The tenure conversion process is administered by the Land Titles Commission (LTC). The process provides a different pathway for landowners to benefit from the use of their customary land.

Issues concerning options for release of customary land

Under the options available for the release of customary land into the formal market for development, several issues have emerged. These issues/challenges include the following:

- **Long delays in the execution of contracts**

An issue that affects State land more broadly, but that could potentially affect land acquired by agreement is weak capacity to enforce contracts (Chand et al., 2014). This is often related to long delays in the execution of legal contracts due to weaknesses in governance for instance. This creates uncertainty in the land market and can serve as a disincentive for investors to invest on land.

- **Abuse in the administration and use of SABLs**

The original intent of the provision for lease-leaseback and grant of SABL were for the mutual benefit of customary landowners and developers of SABLs, but issues began to emerge as SABLs were being created and released over the years. These issues include the presence of gross abuse and failure by parties to SABL arrangements to comply with due process in the granting and administration of SABL titles (Luluaki, 2014), and that over 90 percent of all SABLs covering over five million hectares of land were illegally obtained from traditional landowners (Transparency International PNG, 2017).

- ***Constant and increasing incidences of exorbitant compensation claims***

Although compulsory acquisition of customary land by the State for public purposes facilitates the delivery of goods and services by the government, the use of this provision in the law is not free of issues. Such issues include constant and increasing compensation claims on the government by customary landowners for land that has been acquired for public facilities and utilities, and concerns around lack of updated and standardised Valuer-General rates for all public service delivery projects (Niugini Land and Properties, 2019).

- ***Lengthy and costly VCLR process***

The VCLR process is long and costly and not readily available at the subnational level, that is, in the provinces, districts and wards, for the services to be easily accessed by people especially in the village communities (Kwapena et al., 2021; Nao, 2021). A major contributing factor is that the implementation of the 2009 legislative amendments (*Land Groups Incorporation (Amendment) Act 2009* and *Land Registration (Amendment) Act 2009*) that created the VCLR system have no accompanying regulations as a means to effectively administer the legislations.

- ***Customary land leases not accepted by banks as collateral***

Customary land leases created from the title that is the product of the VCLR system cannot be accepted as security to access formal sector finance (Chand et al., 2014; Kwapena et al., 2021). The intention of the VCLR system is to produce a land title that can be used by the landowners, as title holders, just like the State uses its State leases over land that it owns. However, due to disputes over ownership and boundaries of customary land that delay registration and titling of customary land as well as concerns around the capacity of DLPP to administer customary land given their current inefficiencies to administer State land (Kwapena et al., 2021), banks are hesitant to accept customary land leases as collateral to extend credit.

- ***Ownership of freehold titles by people from outside the custom area***

At the moment, freehold titles are being granted to citizens from outside the custom of the area (Niugini Land and Properties, 2019) – for example, Papua New Guineans who are not originally from Port Moresby (non Motu-Koitabuans) owning freehold titles over land in Port Moresby or Central Province. Another issue is the limitations on freehold titles under Section 26 of the Act prohibiting the proprietor from transferring or leasing

the land for a period longer than 25 years unless the Land Board consents to it (*Land Tenure Conversion Act, 1963*).

Strategies to address issues associated with access to customary land for development

To address issues associated with release of customary land for development, the following strategies are recommended for relevant authorities to consider:

- ***Enforce penalties for delay in contract enforcements***

Stricter enforcement of penalties for public officials that knowingly delay enforcement of contracts and those that abuse due process should be considered. This could be complemented by rewarding public officials who competently and without delay enforce contracts and follow due process through bonuses or other such incentives. This has the potential to repair the image of DLPP but also encourage investments on customary land.

- ***Lift blanket ban on SABLs and improve administration of SABLs***

The blanket ban on SABLs could be potentially harming businesses that currently hold mortgages on their land under SABL titles. Lifting of the blanket ban should be considered. Although the Government has already indicated that the SABLs that followed due process as identified through the Commission of Inquiry should be converted to customary land titles and leases under VCLR, given that the VCLR process is tedious and costly, the Government needs to be clear as to what becomes of the investments on existing proper SABLs in the meantime. The approval process for SABLs should be contingent upon parties meeting statutory requirements, with strictly enforceable penalties introduced for non-compliance.

- ***Review provisions in the law on compensation***

Land compensation claims made to the State by landowners continues to be a challenge. One way that this could be addressed is to review provisions on compensation in *Land Act 1996* in close consultation with provisions on compensation in *Land Acquisition (Development Purposes) Act 1974* with a view to minimise constant incidences of exorbitant compensation claims on the State.

- ***Improve the administration of the VCLR process***

To improve the administration of the VCLR process, regulations should be considered for the *Land Groups Incorporation (Amendment) Act 2009* and *Land*

Registration (Amendment) Act 2009. These should be complemented by considering combining some steps in the VCLR process or cutting down some steps, and also decentralise the customary land administration functions to the subnational level and complement it with the necessary technical and financial resources for effectiveness and efficiency in the delivery of the process.

Apart from strategies to address issues associated with release of customary land for development, the following recommendations should be considered to fully realise the benefits of releasing customary land for development:

- ***Review all necessary land legislations***

Current customary land reform initiative to review *Land Groups Incorporation (Amendment) Act* 2009 and *Land Registration (Amendment) Act* 2009 as well as *Land Act* 1996 and all related legislations should consider each of the options currently available for the release of land on their own merit, amend laws where appropriate, and repeal laws where appropriate with proposed new laws (replacement legislations).

- ***Provide ongoing awareness on the different options to release customary land***

The government to consider providing ongoing awareness on each of the different options to release customary land for development, that includes information on the specific purpose of each of the different options, and the term or period the land will be released or used for. These information could be made available to all provincial and district offices on pamphlets using Motu, Tok Pisin and English. To complement this, every Provincial Lands Officer should be educated on these information and be trained to relay the same to the public in their respective provinces.

- ***Promote capacity building for landowners***

Communicating with external parties to an ILG requires a minimum level of language and communication skills, and doing business on customary land requires a minimum level of understanding of doing and managing business. Landowners must be encouraged to undertake literacy training, business management and business development skills training so they can build capacity internally to manage their ILG affairs.

The success of the above interventions to address specific issues and to realise the full benefits of releasing secure customary land for development will depend on ongoing research and analysis, policy advocacy, and clear policy directions that inform legislative changes for positive change.

Conclusion

Customary land has been released and used for development in the pre-Independence period and since then in PNG. This has included alienation of customary land by law through acquisition by agreement under Section 10 of *Land Act* 1996, through acquisition for grant of a special agriculture and business lease under Section 11 and Section 102 of *Land Act* 1996, and compulsory acquisition for public purpose under Section 12 of *Land Act* 1996. *Land Act* 1996 including all provisions for alienation of customary land are administered by DLPP.

Customary land has also been released for development under the tenure conversion process facilitated by Land Titles Commission (LTC) under *Land Tenure Conversion Act* 1963 and administratively by Registrar of Titles based at DLPP. Of late, customary land has been released for development through the VCLR system as provided for under *Land Groups Incorporation (Amendment) Act* 2009 and *Land Registration (Amendment) Act* 2009.

Releasing customary land with secure title has several benefits. These benefits include providing a better alternative to informal arrangements for both landowners and those who intend to do business with them on their customary land; allowing landowners to do business on their customary land; giving confidence to investors to do business on customary land; allowing for the government to deliver basic public goods and services; creating jobs and other income-earning opportunities for Papua New Guineans; and, promoting broad-based economic growth.

There are options available to formalise customary land and release it into the formal market for development. These include acquisition by agreement, compulsory acquisition, SABLs, VCLR process, and tenure conversion process. The application of these options has raised some issues including long delays in the execution of contracts, abuse in the use and administration of SABLs, and constant and increasing incidences of exorbitant compensation claims. Other issues include lengthy and costly VCLR process, hesitancy by commercial banks to accept customary land leases as collateral, and ownership of freehold titles by people from outside the custom area (or non-locals).

State land is limited in supply and most of the land in PNG is still under the traditional ownership of the people of PNG. This suggests that to grow the economy and develop the country requires the release and development of customary land. To give confidence to landowners, this needs to be done in a sustainable manner that allows customary landowners to benefit now and into the future. Efforts to achieve this should include consideration of the strategies highlighted above to

address issues associated with options to release customary land, recommendations to fully realise the benefits of releasing customary land, and ongoing research and analysis.

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