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SPOTLIGHT

ESTABLISHMENT OF AN ENTITY
TO ADMINISTER CUSTOMARY
LAND IN PAPUA NEW GUINEA
SHOULD BE CONSIDERED

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Key Points

- The administration of customary land has been done under Voluntary Customary Land Registration (VCLR) by the Department of Lands and Physical Planning (DLPP).
- However, customary land administration is currently not effective because of long and costly land registration and land dispute resolution process.
- Concerns have been raised around the capacity of DLPP to administer customary land given their current inefficiencies in administering State-owned land.
- In order to improve the administration of customary land, there is a need to establish an entity whose primary responsibility is to administer customary land.

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ESTABLISHMENT OF AN ENTITY TO ADMINISTER CUSTOMARY LAND IN PAPUA NEW GUINEA SHOULD BE CONSIDERED

By Logea Nao

The administration of customary land refers to the registration, documentation and titling of land, transfer of title, storage and management of title and transaction records, the planning and use of land, and the provision of land information. In Papua New Guinea (PNG), the function of customary land administration is currently done by the Department of Lands and Physical Planning (DLPP). Customary land administration in the country has experienced various challenges since amendments were made in 2009 to the *Land Groups Incorporation Act 1974* and the *Land Registration Act 1981*. The two amended legislations - *Land Groups Incorporation (Amendment) Act 2009* and the *Land Registration (Amendment) Act 2009* were aimed at facilitating the mobilisation and administration of customary land. Challenges in the administration of customary land include costly and cumbersome process of land registration via Voluntary Customary Land Registration (VCLR), long and protracted disputes over ownership and boundaries of customary land that delay registration and titling of land, and questions around the capacity of DLPP to administer customary land given their current inefficiencies to administer State land (Kwapena et al., 2021). This paper draws attention to the establishment of an independent agency responsible solely for the administration of customary land.

The study by Kwapena et al. (2021) based on interviews conducted in Port Moresby with informants from some key government agencies and officials of commercial banks found that views on having a separate customary land agency varied among participants. Interviewees from the government agencies opined that an independent agency responsible solely for the administration of customary land would improve the administration and governance of customary land whilst the interviewees from the private organisations disagreed and added that having a separate office may not be feasible, as it could potentially face similar integrity and accountability issues experienced by DLPP (Kwapena et al., 2021). This paper presents the case for the establishment of an authority for the administration of customary land, that is, the Customary Land Authority (CLA). In order to establish a fully functional, accountable and sustainable authority, interim arrangements need to be made within the existing setup, and preparatory work on the policy and legal front need

to take front and centre. It is also critical to clearly define the roles and responsibilities to be retained at the national level and those to be decentralised to the subnational level, as well as promote security of customary land titles and derived leases through the set up of an electronic-based title record and management system based outside of the proposed authority. It is important to note that there are other factors that can affect the effectiveness of customary land administration in PNG such as public awareness on the role and importance of customary land administration, and capacity building at the subnational level, but these were excluded from the analysis provided in this paper.

Customary land administration reforms in Papua New Guinea

In the pre-independence era, an attempt was made in 1974 to introduce land reforms in PNG, through the Commission of Inquiry (COI) into Land Matters. However, the report of the 1974 COI was shelved after it was decided then that any consideration of customary land reform would be postponed for future Papua New Guineans to consider (Niugini Land and Properties, 2019a).

After more than 30 years, the inaugural National Land Summit was held in 2005. At the summit, the participants clearly decided that they wanted reforms introduced to customary land tenure in which customary land ownership would be retained but a lease system to be developed to enable customary land to be released for investment and development purposes. The thematic issues that emerged from the 2005 summit included improving land administration, improving land dispute settlement, and developing a system for customary land development.

To design such a system would require a lot of critical thinking and extensive consultations. This challenge gave birth to the National Land Development Taskforce (NLDT) whose work culminated in the 2007 NLDT Report (published as NRI Monograph 39) which had 54 recommendations including review of the *Land Groups Incorporation Act 1974* and *Land Registration Act 1981* to set up the VCLR system consisting of the incorporation of

a land group and registration (titling) of customary land.

In 2007, the Constitutional and Law Reform Commission (CLRC) took on the responsibility of reviewing the *Land Groups Incorporation Act 1974* and designing the VCLR system. The *Land Groups Incorporation (Amendment) Act 2009* and the *Land Registration (Amendment) Act 2009* were considered and passed by the PNG Parliament in 2009, and gazetted in 2012.

Implementation of the two amended legislations saw the administration of customary land under VCLR, with the final product being customary leases derived from registered customary land with title. However, implementation to date has shown that banks and financial institutions are not accepting customary land leases as security to extend credit for investment and development (Chand et al., 2014).

During the Stakeholder Workshop of the 2019 National Land Summit, banks and financial institutions called for a new agency which would interact between them, DLPP and landowners. Fiji's Native Land Trust Board and the Land Bank were suggested as models for consideration (Niugini Land and Properties, 2019a). At the 2019 main National Land Summit, participants resolved to ask the government to establish a new agency to administer customary land in PNG (Niugini Land and Properties, 2019b).

An entity to administer customary land

The new entity could take the form of an authority, that is, the Customary Land Authority (CLA). The CLA will be fully responsible for the administration of customary land. Its role will be to provide oversight and quality control as well as manage the policy issues relating to customary land at the national level. Several interventions can be made as either contributing to the set up of the new authority or complementing the same. These include the following:

- **Re-organise customary land divisions within DLPP**
At present, there are two customary land divisions within DLPP that directly deal with the administration of customary land – Incorporated Land Groups Division; and, Customary Land Leases Division. These two divisions would need to be fully resourced in terms of funding and manpower as both divisions evolve into establishments within the new authority.
- **Set up the Office of Customary Land Development**
Consideration needs to be made to set up the Office of Customary Land Development (OCLD) in transition to the establishment of the CLA. The OCLD needs to have all the functions/branches and divisions similar

to DLPP including but not limited to surveying, valuation, and physical planning.

- **Preparatory legal and policy work for customary land**
To establish a new authority would require preparatory groundwork around the policy on customary land and related complementary policies. Clear policy directions on customary land issues would then inform drafting instructions for a new bill on Customary Land Authority and also drafting instructions for amendments to existing principal legislations such as Land Act 1996 and consequential amendments to other land-related legislations.
- **Decentralise customary land administration functions to the provinces**
Provinces can be given the opportunity to take on the responsibility of administering customary land. This is because customary land is located in villages and towns which are administered under provinces, and pockets of customary land are located in cities, which are administered under municipal authorities. Furthermore, customary landowners live in the provinces, not in Port Moresby where the services are currently accessed. Customary land administration functions would include facilitating the process of giving formal recognition to ownership of land through incorporation of land groups as well as facilitating the process of registering customary land, including conduct of boundary walks and subsequent compilation of land investigation reports.
- **Set up an electronic-based title record and management system outside of the CLA**
Security of the customary land title and leases that are derived from the title is critical for the potential of customary land as collateral for loans to be realised in PNG. Current paper-based customary land title record and management arrangement at DLPP is open to loss and fraud. Duplication of State land titles and insecurity of records (Kwapena et al., 2021) are major lessons that can inform the design, management and maintenance of an electronic-based title record and management system for customary land. A model from the Australian Capital Territory could be considered where land titles are the responsibility of the Office of Regulatory Services, which falls under the Justice and Community Safety Directorate and operates as an independent body (Levantis, 2016). The equivalent in PNG would be allowing the Department of Justice and Attorney General (DJAG) or the Courts to record and manage land titles. It would be ideal to park the electronic-based customary land title record management system at either DJAG or the Courts.

- **Improve efficiency in land administration within DLPP**

Fix the administration of State land as a pre-condition to bring customary land into the formal domain. Integrity and accountability issues experienced by DLPP need to be addressed effectively and at the earliest. Such efforts would include enforcement of penalties for non-performing or incompetent officers as well as those found to be involved in illicit dealings related to their duties. These would need to be complemented by rewarding high performing staff with training opportunities and financial incentives (such as bonuses, if funding permits). The 2007 NLDL Report also provides guidance, through specific recommendations, on how efficiency in land administration within DLPP can be improved. To succeed, these efforts require political will and bureaucratic will at the highest level. Such undertakings have the potential to restore the image of DLPP and serve as a complement to the CLA in creating an enabling environment for the mobilisation of customary land for investment and development.

Conclusion

The *Land Groups Incorporation (Amendment) Act 2009* and the *Land Registration (Amendment) Act 2009* which created the VCLR system were aimed at facilitating the mobilisation and administration of customary land. However, the administration of customary land under these arrangements has not been working. If the intention is to improve the administration of customary land, the government should consider establishing the CLA. The set up of the CLA would require re-organising customary land divisions within DLPP, setting up the OCLD in transition to the new authority, the appropriate preparatory legal and policy work, decentralisation of customary land functions to provinces, set up of an electronic-based title and record management system at DJAG, and improving efficiency in land administration within DLPP as a pre-condition to bring customary land into the formal domain. This would give confidence to the general public to mobilise customary land for investment and development. The views expressed in

this paper will assist policymakers and legislators in decisions related to the role of customary land in triggering sustainable and broad-based economic growth.

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