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# SPOTLIGHT

UNDERSTANDING HOW THE  
EFFECTIVENESS OF VOLUNTARY  
CUSTOMARY LAND REGISTRATION  
SYSTEM CAN BE IMPROVED

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## Key Points

- The Voluntary Customary Land Registration (VCLR) system can provide land with proper titles for sustainable development.
- The VCLR system has been developed in Papua New Guinea but at present, it is not user friendly and not well understood by landowners.
- To improve the effectiveness of VCLR: improve customary land administration; decentralise the process to provinces and districts; and government consider subsidising surveying fees.

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# UNDERSTANDING HOW THE EFFECTIVENESS OF VOLUNTARY CUSTOMARY LAND REGISTRATION SYSTEM CAN BE IMPROVED

By Logea Nao

Since 2005, landowners in Papua New Guinea (PNG) have been encouraged to register their land and receive a title. This is to allow them to protect their land and at the same time, use the title to lease their land and benefit from any potential use of their land by those external to their landowning unit. The option to register customary land is voluntary and the system is called Voluntary Customary Land Registration (VCLR). This article focuses on one of the findings from a study by Kwapena et al. (2021) regarding challenges in customary land administration, governance and dispute resolution in PNG. The study reported that the VCLR system is not user friendly and not well understood by landowners. The study was based on interviews conducted in Port Moresby with informants from some key government agencies and officials of commercial banks. In this article, emphasis is placed on the need to improve the VCLR system. In order to achieve this, the system needs to be made simple and more affordable. It is also necessary to consider increasing awareness of the VCLR across the country. However, to improve it, the foremost step to take is to review the VCLR system in close consultation with the users of the system, as called for by most participants of the 2019 National Land Summit. It is important to note that there are other factors that can influence the effectiveness of the VCLR system such as public awareness on the requirements and processes, availability of the services for administering the system in provinces and rural areas, and public perception about the administration of State leases. However, these were excluded from the analysis provided in this paper.

## What is the VCLR system?

The VCLR system is a set of processes by which landowners can register their land and therefore bring it on to the formal land market as a means to engage in legal transactions. The system is administered by the Department of Lands and Physical Planning (DLPP) and involves incorporation

of land group and registration of customary land as the following:

- ***Incorporation of land group***

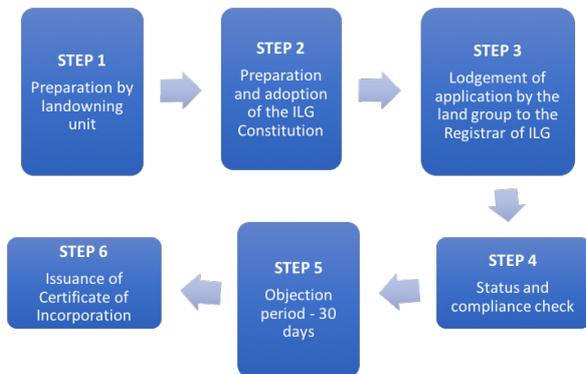
Incorporation of land group is the phase during which a land group is given formal recognition under the law that it claims rights to the identified portions of land and other forms of property listed. A land group can be a clan, a tribe, or other social unit, depending on the landowning arrangements and social structures of the area. The incorporation process is administered by the Incorporated Land Group (ILG) Division of DLPP under the Land Group Incorporation Amendment Act 2009. The incorporation process consists of six steps as illustrated in Figure 1.

The process of incorporating a land group begins with the identification of the interim or future ILG Management Committee by the land group (Figure 1). This committee prepares the sketch map assisted by the National Mapping Bureau. It prepares birth registration forms for members and submits to PNG Civil and Identity Registry (PNGCIR, formerly NID Office) to have birth certificates issued. The leaders of the land group prepare the ILG Constitution (template provided by DLPP) and call a meeting for all members to formally appoint the Management Committee guided by their own landownership arrangements. The meeting also appoints the Dispute Settlement Authority (DSA) of the land group, and by resolution, adopts its Constitution.

Then, an application for incorporation of land group (template provided by DLPP) is to be filled in and upon completion endorsed by the Provincial Lands Adviser. There is no application or processing fee. The application is to be lodged at the Office of the Registrar of ILG, DLPP accompanied by records of ILG meeting minutes, certification on adoption of Constitution, list of ILG members and corresponding number of birth certificates, list of properties (including land, rivers, mountains), and

sketch map of customary land the group owns. At the point of lodgement, the Registrar of ILG verifies that the application has complied with all requirements.

**Figure 1:** Process to incorporate a land group



Source: Adapted from ILG Process Flowchart (ILG Division, DLPP), personal communication with ILG Division, DLPP, and National Land Development Program Flowchart

The application is then put through an objection period of 30 days via a public notice in the newspaper which is paid for by the applicant land group. During this period, if there are any internal disputes such as on adoption and disagreements over composition of ILG Management Committee, the issues are referred to the DSA of the ILG for mediation.

Other disputes including ownership, user rights and boundary matters are first registered with a clerk of Village Court and Land Mediation Secretariat, Department of Justice and Attorney General, for three mandatory attempts at mediation (Information provided by Mr. Clivson Philip, Magistrate & Chairman - Land Court Core Project Committee, Port Moresby District Court, Magisterial Service). The mediation can only be heard by a gazetted local land mediator. If the mediation is successful and an agreement is reached, an Application for Approval of Agreement is made with the clerk of the District Court. The matter goes before a magistrate and two mediators to confirm, verify and validate issues. If the three mediation attempts fail, it is mandatory for the matter to be referred to a Local Land Court (LLC) for adjudication by a magistrate who sits with two LLC mediators.

If parties are aggrieved by the decision of the LLC, an application for a review (with a fee) can be filed with the Provincial Land Court (PLC) through the clerk of

PLC. The matter is heard by a single senior provincial lands magistrate without any mediators. A decision of the LLC and PLC can be varied after 12 years with the application (with payment of appropriate fees) to be either lodged with the clerk of LLC or PLC and listed for adjudication. Where parties are aggrieved by a verdict of the PLC, they can file a review (with payment of appropriate fees) to National Court and lodge a review book with a clerk of National Court who lists the case for a judge to preside over.

Once disputes are resolved, a verification report is sought from the district administrator. Finally, the Registrar of ILG issues a Certificate of Incorporation to the applicant land group.

• **Registration of customary land**

This phase involves registration of a portion of land as identified under the property listing of an ILG during the land group incorporation phase. The registration of customary land is administered under the Land Registration Amendment Act 2009 by the Customary Land Leases Division of DLPP. The registration allows for the portion of land that is released for development by the ILG to be formally recognised under the law and issued with a title. It involves six steps as illustrated below (Figure 2).

The land registration process begins with the lodging of an application by an ILG to register a portion of their land (Figure 2). The application is to be accompanied by the sketch map used in the land group incorporation phase. There is no application or processing fee. At the point of lodgement, the Director of Customary Land Leases Division (CLLD), henceforth, verifies that the application has met all the requirements.

The application is then put through an objection period of 90 days via a public notice in the newspaper as per Section 34 of Land Registration (Amendment) Act 2009. The notice is prepared by CLLD and paid for by the ILG. During this period, if there are any ILG internal disputes, the issues are referred to the DSA of the ILG for mediation. For disputes on ownership, user rights and boundary, the issues go through the same dispute resolution process as in the land group incorporation phase highlighted above.

**Figure 2:** Process to register customary land



Source: Adapted from National Land Development Program Flowchart and personal communication with Customary Land Leases Division, DLPP

Once disputes are resolved, Director of CLLD gives instructions for Land Investigation Report and survey to be conducted. Representatives of CLLD, Provincial Lands Office, District Lands Office, the ILG and boundary-sharing ILGs go on-site to walk the boundary and agree on the boundary. The outcome is then used to compile the LIR which must be approved by either the district or provincial administrator.

Based on the agreed boundary, the ILG engages a private surveyor to survey the portion of land and prepare the Survey Plan. The surveying fees are charged according to a Professional Scale of Fees (available on the Association of Surveyors PNG website – <http://www.aspng.org>; personal communication with Office of the Surveyor General, DLPP). The Survey Plan is then submitted to the Regional Surveyor for examination and endorsement. If the Survey Plan is done without proper awareness within the ILG or ownership and boundary disputes still arise at this stage, an objection can be lodged through the Office of the Surveyor General by those concerned and the matter referred to the same dispute resolution process highlighted above to be resolved. Once the Survey Plan is endorsed by the Regional Surveyor, the Surveyor General approves and registers the Survey Plan. The Director of CLLD registers the land and issues a Certificate of Title. This title is to be owned by the landowners into perpetuity.

### The importance of VCLR in securing customary land

To secure customary land, property rights to customary land must be clear. Property rights on land are a bundle of characteristics including exclusivity, inheritability,

transferability, and enforcement mechanisms that define the ownership and use of a portion of land (Feder and Feeny, 1991). Land registration has led to a better access to formal credit, higher land values, higher investments in land, and higher output (Feder and Nishio, 1998). The VCLR system in providing title to customary land gives landowners the opportunity to secure their customary land in the following manner:

- **Promotes exclusive ownership**

When landowners register their customary land and get a title, it allows for transactions on customary land to be handled by only the legitimate landowners of the land. In this way, customary land is protected from those with ill intent.

- **Promotes inheritance of ownership**

The land title is owned by the ILG into perpetuity. This allows for land to be owned and used by different generations of the land group over time and ensures that customary land is secure.

- **Protects customary land from land grabbing**

Land grabbing undermines security of customary land because people or entities illegally settle on land. By giving title to customary land, it allows landowners to protect their customary land from those that intend to grab their land.

- **Promotes business and investment**

A customary land lease can be created from a land title. The lease has the potential to be used as collateral to access formal sector finance from commercial banks by either the landowners or a developer that partners with the landowners for business purposes. This promotes business and investment on customary land.

- **Increases the value of the land**

When customary land is given a title, it becomes more attractive to potential investors and therefore the demand for that land increases. This has the potential to increase the price of customary land and hence, the value of the land.

### Policy interventions to improve the effectiveness of VCLR

The potential for the VCLR system to secure customary land is only as good as the effectiveness of the system that delivers it. The VCLR at present is not user friendly

and not well understood by landowners (Kwapena et al., 2021). The effectiveness of the VCLR can be improved through the following interventions:

- **Improve customary land administration**

Reduce the turnover time for each step and the whole process of incorporating a land group and registering customary land. For example, if all disputes can be addressed at the ILG level, it can minimise or eradicate disputes during land registration and potentially cut down the 90 days objection period (Personal communication with CLLD, DLPP).

- **Streamline the process**

Link up all the agencies involved in the system so that those steps that can be done concurrently, and those steps that need to be done successively are picked up by the appropriate authority as soon as the preceding step is completed.

- **Decentralise the process**

There are certain approvals that need to be obtained from authorities such as district and provincial administrators as well as provincial lands advisers, before ILG and land registration applications are lodged at DLPP headquarters in Port Moresby. Build capacity in the provinces and districts by setting up offices of the ILG Division and CLLD there to undertake all necessary checks and receive applications before sending to headquarters for processing.

- **Government subsidise surveying fees**

Engaging a private surveyor to do the Survey Plan is a major cost for landowners. To address this, provincial and local level governments could subsidise surveying fees for the landowners under mutually-agreed terms and conditions.

- **Government encourage mapping of all land**

Provincial and district authorities could work together with DLPP, Land Titles Commission (LTC) and National Lands Commission (NLC) to re-visit all Central Claims and other LTC and NLC determinations to map out each district and eventually each province. This has the potential to address potential ownership and boundary issues at the land group incorporation and land registration phases and therefore, improve the effectiveness of the VCLR system.

## Conclusion

This article highlights the need to improve the effectiveness of the VCLR system. The system involves incorporation of a land group and registration of customary land. The VCLR is important in securing customary land as it promotes exclusivity and inheritance of ownership. It protects customary land from land grabbing and promotes business and investment on customary land, and increases the value of land. However, the system is currently not user friendly and not well understood by landowners. If the intention is to improve the effectiveness of the VCLR, the government should consider improving customary land administration, streamlining the process, decentralising the process to provinces and districts, subsidising surveying fees, and encourage mapping of all land in each district and province. This article contributes to the debates surrounding how to best avail customary land in the formal land market in PNG so that landowners, investors and the State can benefit from transactions on customary land.

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