

An analytical review of laws and procedures related to dealings with customary land and the interests of landowners, based on qualitative research findings.

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Introduction

- Indigenous people retain customary land tenure.
- CILM report – indigenous land rights in the Constitution
- Underlying Law Act (2000) - customary laws in national constitution
- Protection of customary land tenure - a priority of national leaders
- Today – focus shifted towards using customary land for development

Formal Sector Dealing with Customary Land - The Study

- January to June 2017
- Administrative structures, laws, and policies of the State on customary land dealings and landowner relationships
- Semi-structured interviews with key state agencies
- Popular view - Processes complicated, ineffective and inaccessible to rural communities and the original land claimants

Study Questions - Key Topics

- Views on customary land,
- Legal frameworks,
- Administrative support,
- Collaboration,
- Challenges, and
- Data management of customary land.

State Agencies Interviewed

- Department of Lands and Physical Planning (DLPP)
- PNG Forest Authority (PNGFA)
- Department of Agriculture and Livestock (DAL)
- Department of Mineral Policy and Geohazard Management (DMPGM)
- Department of Petroleum and Energy (DPE)
- Conservation and Environmental Protection Authority (CEPA)
- Department of Petroleum and Energy – Not interviewed

Department of Lands and Physical Planning (DLPP)

❖ Customary Land Branch – 4 Divisions

- Incorporated Land Groups (ILG),
- Customary Leases,
- Acquisitions, and
- Special Projects.

DLPP Divisions - Customary Land Functions

Division	Organisational Functions on Customary Land and Landowners
ILG	Reviews, processes ILG applications and issues ILG certificates to landowner groups.
Customary Leases	Manages the registration of customary land under the VCLR system for customary landowner groups. Registers a portion of ILG land after ILG formed and certificate issued.
Special Projects	Provide support to government vital economic and infrastructure projects on customary land - identify landowners, establish ILGs, and acquire land.
Land Acquisitions	Facilitates state's acquisition of customary land for government infrastructure projects and other land needs.
Registrar of Titles	Register land and maintain land titles register for state land lease titles and freehold land titles converted from customary land and customary land lease titles.
Office of the Valuer General	Provide land valuations primarily for state use on state land, with some consideration extending to customary land.
Office of the Surveyor General	Responsible for overseeing and managing cadastral and geodetic surveys nationwide. Duties include surveying customary land for ILG sketches of ILG applications, conducting land surveys for VCLR and LTC registration. When applying for VCLR, a letter of consent from the ILG chairman is required.

Sub-National Lands Divisions – Customary land functions

Division	Organisational Functions on Customary Land and Landowners
Regional Surveyors Office	Examination and quality control of the region's cadastral surveys, including occasional land surveys. Responsibilities include ILG sketch maps, VCLR, and LTC land boundary surveys.
Regional Lands Office	Oversee and supervise customary land dealings, including ILG applications, land acquisitions, and customary land leases, in the region. Occasionally undertake a Land Investigation Report (LIR).
Provincial Lands Division	Established with delegated powers and functions in the provinces. Customary land function - oversees decentralised services and land dispute resolution - formerly managed by Local-level government.
District Lands Office	Facilitates coordination among various levels of government on land issues at the district level and acts as the liaison with customary landowners. Serve as the government's point of contact for customary landowners within the district.

Legislation & Policies basis of the Lands Divisions

Division	Legal and Policy Basis of the Dealings of the Divisions with Customary Land and Landowners
ILG	Land Act (1996), Incorporated Land Group (amended) Act (2012)
Customary Leases	Land Act (1996), Land Registration (amended) Act (2012)
Special Projects	Land Act (1996)
Land Acquisition	Land Act (1996)
Registrar of Titles	Land Act (1996), Land Registration (amended) Act (2012), Land Tenure Conversion Act (1969), Land Title Commission Act (1962)
Valuer General's Office	Land Act (1996), Valuation Act (1967)
Surveyor General's Office	Land Act (1996), Survey Act (1969)
Regional Surveyors Office	Land Act (1996), Survey Act (1969), Incorporated Land Group (amended) Act (2012), Land Registration (amended) Act (2012), Survey Directions 1990
Regional Lands Office	Land Act (1996), Land Registration (amended) Act (2012), ILG (amended) Act (2012), Valuation Act, Land Dispute Settlement Act (1975)
Provincial Lands Division	Land Act (1996), Organic Law on Provincial and Local-level Government (1998), Land Dispute Settlement Act (1975), Land Registration (amended) Act (2012), ILG (amended) Act (2012)
District Lands Coordinator	Land Act (1996), Organic Law on Provincial and Local-level Government (1998)

Processes of Dealing with Customary Land and Landowners in the Land Sector - DLPP

- Divisions fulfil specific functions aligned with their respective roles, responsibilities, and tasks
- Established processes to achieve defined outcomes, some of which may require cross-divisional collaboration
- Completing tasks within each division is essential to the overall success
- Overall, Processes initiate at the national level, are implemented at sub-national levels, and then return for final assessment.
- In areas lacking qualified land officers, national officers are sent to assist with necessary tasks.

Perceptions of Land Officers on Issues of Customary Land Dealings in DLPP

- ILG - amendments to the ILG Act have addressed several concerns, but further improvements are needed
- Customary leases - handling customary land entails sensitive cultural and spiritual considerations that require careful, knowledgeable management.
- Acquisitions - concerned about procedural adherence because provincial officers are bypassing the Dept. P& Llg and sending reports directly to it.
- Special Projects - noted challenges faced by field personnel within the provincial administration.
- LTC - struggled to conduct effective provincial hearings for applications due to its limited size and budget
- Regional offices - supervise customary land matters but face staff shortages, which force them to oversee multiple processes at the provincial and district levels.

Functions & Dealing with Customary Land – Sectoral Agencies

Sectoral Agency	Organisational Functions on Customary Land and Landowners
LTC	Administers the Land Tenure Conversion Act, converting customary land to individual freehold titles
PNGFA	It facilitates forestry development projects at the invitation of landowners.
DAL	It is responsible for managing the PNG agricultural sector.
CIC	Regulates the coffee industry and provides research and grower services nationwide.
CBPNG	Regulates and controls cocoa cultivation, processing, and marketing, and trains growers in PNG.
DMPGM	Deals with the policy and the legislative aspects of the mining industry in PNG
MRA	Is the implementing and regulating government agency for mining in PNG.
CEPA	It is responsible for and regulates all nature conservation activities, and the protection and management of the environment, related to resource development in PNG.
WCS	A conservation organisation that focuses on science and research to assist the communities in using their environment and natural resources sustainably and managing them properly.

Legal & Policy Basis of Dealing with Customary Land - Sectoral Agencies

Agency	Legal and policy basis for dealings with customary land and landowners
LTC	Land Tenure Conversion Act (1963), Land Titles Commission Act (1962)
PNGFA	Forestry Act (1991), Environment Act 2000, Incorporated Land Groups (amended) Act (2012)
DAL	National Agriculture Strategic Plan, Environment Act (2000), Land Act (1996)
CIC	Coffee Industry Corporation (Statutory Functions and Powers) Act (1991), National Agriculture Strategic Plan
CBPNG	Cocoa Act (1981), National Agriculture Strategic Plan
DMPGM	Mining Act (1992), Environment Act (2000)
MRA	MRA Act (2005), Mining Act (1992), Environment Act (2000)
CEPA	Conservation and Environment Protection Authority Act (2014), Environment (Amendment) Act (2014), Conservation Areas Act (1978), National Parks Act (1982), and Fauna (Protection and Control) Act (1966), The National Protected Areas Policy.
WCS	Project Agreements with communities to carry out projects: the Proposed Protected Areas Act would cover the activities of NGOs.

The Customary Land Processes Involving Other Sectors

- These agencies have specific mandates and streamlined operational structures,
- Interactions with customary land and landowners are only a minor aspect of their functions.

Interactions and Relations with Other Sectoral Agencies

- (PNGFA) collaborates with DLPP on ILG applications and
- with the Dept. of Community Development to process landowners' birth certificates.
- PNGFA partners with CEPA to obtain environmental clearances for forest management.
- DAL - engages with landowners through projects linked to provincial and cash-crop agencies.
- MRA - maintains its independence and prefers to engage with landowner associations rather than ILGs

Perceptions of Officers in Sectoral Agencies

- LTC - improvements in funding and administrative structure are needed.
- LTC – legislation 1962 - outdated and requires updates to improve transparency and clarify processes.
- PNGFA - Forest management agreements with landowners pertain only to standing trees and do not encompass customary land.
- DAL - engages with customary land and landowners through key national agricultural projects.
- Most practice smallholder agriculture for subsistence - transitioning to commercial agriculture is vital.
- DMPGM - recommends on-site fieldwork with landowners to address issues at project or mine sites.
- CEPA - acknowledges that its laws from 1966 and 1978 are outdated and need updates - SABL

Analysis & Discussions

- Customary land tenure poses challenges for policymakers who must balance its cultural significance with economic development.
- DLPP Customary branch – 3 classes of functions for landowners
 - ✓1 – ILG & VCLR – to benefit landowners
 - ✓2 – Acquisition & Projects - facilitation service – more to state benefit
 - ✓3 – Land services support – Registrar of Titles manages registration of land titles, VG & SG land value assessments & boundary demarcations

Analysis & Discussions

- ILG & VCLR Processes - steps incur financial costs for customary land groups, and access to provincial and regional land offices is crucial for support in navigating the processes involved.
- Current operational structure assigns important land-related duties to customary landowners without sufficient financial resources or understanding of the processes.
- Also places responsibilities on lower-tier land officers who lack resources, face conflicting priorities, and must meet national demands.
- Lands divisions function hierarchically -The national office oversees land transactions and delegates tasks to lower-tier divisions responsible for identifying and recording customary land and community data.

Analysis & Discussions

- Structure supports the government's decentralisation policy,
- Implementation is hindered by limited resources and capacity, as well as geographical isolation and poor infrastructure.
- Additionally, geographical isolation and inadequate transport and communications infrastructure lead to higher travel and communication costs, resulting in prolonged processing times.
- Disproportionately affect rural communities and customary landowners,
 - leading to isolation and a lack of support.

Analysis & Discussions

- Many processes associated with customary land dealings occur at the provincial and district levels, with national offices responsible solely for conducting final checks and providing approvals.
- Long delays and isolation stem from insufficient recognition of provinces, inadequate office spaces, and a lack of resources and staff.
- While achieving the intended outcomes of decentralisation is feasible, it requires delegating authority to devolved functions for final decisions and adequately staffing and resourcing provincial divisions.
- The effectiveness of the provinces largely depends on how provincial administrations govern and direct provincial affairs.

Analysis & Discussions

- The functions of various agencies align with the state's economic development agenda, and administrative structures adhere to conventional top-down arrangements.
- Lower tiers must provide process outcomes for scrutiny and approval by higher echelons.
 - Most customary land is located in provinces, requiring the execution of menial tasks and processes at the provincial level.
- The success of the decentralisation policy depends on empowering and adequately providing for provinces to fulfil these delegated tasks.