

Reforming Papua New Guinea's Legal Framework for Urban Land Acquisition: From Compensation to Co-Development

A Paper for the 58th Association of Surveyors of Papua New Guinea Congress

Theme: Surveyors' role in reclaiming the land: Redefining and addressing the current administrative laws and legacy issues in a changing PNG

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Executive Summary

This paper presents a comprehensive analysis of the legal and administrative reforms necessary to enable the Papua New Guinea (PNG) government to acquire additional land for sustainable urban development. It argues that the current framework, based on one-off cash compensation, is fundamentally inadequate and creates a cycle of disadvantage for customary landowners, exemplified by the experience of the Motu Koita people of Port Moresby. The paper proposes a paradigm shift: moving from simple compensation to a model of long-term economic participation, effectively giving landowners a permanent "seat at the table" in the development of their formerly owned land. This requires targeted legislative amendments to the *Lands Act 1996* and related laws, establishing a new legal basis for equity-sharing, joint ventures, and structured partnerships. Crucially, this paper foregrounds the indispensable and evolving role of professional surveyors in implementing this new framework. Surveyors will be essential not only for technical demarcation but also as mediators, valuers of non-monetary assets, and designers of the complex tenure arrangements that co-development requires. The recommendations herein are designed to inform legislative amendments, administrative restructuring, and professional practice standards, supporting the sustainable and equitable development of PNG's urban centres in alignment with the Congress theme.

1. Introduction: A Call for a New Dawn in Land Acquisition

As Papua New Guinea celebrates 50 years of nationhood, it stands at a critical juncture in its urban development trajectory. With increasing urbanisation, the demand for land in cities like Port Moresby, Lae, and Mt. Hagen has never been greater. However, the current legal and administrative framework for acquiring land for public purposes is a relic of a bygone era, ill-suited to the complexities of a modern, independent PNG. It is a system that has, in many ways, failed both the state and the customary landowners. The landmark 2019 National Land Summit identified the lack of clear legal and administrative pathways to address land compensation as a critical flaw. This paper argues that we must move beyond merely addressing compensation to fundamentally rethinking the relationship between the state, developers, and the traditional landowners.

The experience of the Motu Koita people, the traditional owners of the land upon which the nation's capital, Port Moresby, sits, serves as a powerful case for this paradigm shift.

As Logea Nao (2025) articulates, the Motu Koita have suffered a "double disadvantage." They have not only lost their customary land, their primary economic and cultural asset, but have also been largely excluded from the prosperity generated by its development. One-off lump sum compensation payments, even when paid, offer short-lived benefits and fail to provide sustainable livelihoods or address intergenerational equity. This situation directly challenges the constitutional protection from "unjust deprivation of property" enshrined in Section 53 of the National Constitution.

The 58th ASPNG Congress theme, "Surveyors' role in reclaiming the land," provides the perfect platform to discuss a new approach: reclaiming the value of land for its original owners through structured, long-term economic participation. This paper proposes that the goal of legal reform should be to guarantee landowners a "seat at the table" - not as passive recipients of cash, but as active partners in urban development. This transformation will require a new legal architecture and a redefined, elevated role for the surveying profession.

2. The Inadequacy of the Status Quo: The Case for "More Than Money"

2.1 The Flawed Principle of "Fair and Just Compensation"

The current legal framework, primarily the *Lands Act 1996*, is built on the principle of providing "fair and just compensation" for land acquired for a "public purpose." Section 23 of the Act outlines the principles for assessing compensation, which are primarily monetary. This framework, however, suffers from several critical flaws:

- **Narrow Definition of Value:** It fails to account for the non-monetary, cultural, and spiritual value of land to customary owners.
- **One-Off Payments:** It promotes a system of one-off lump sum payments that are quickly dissipated, leaving landowners no better off in the long term and creating a burden on the national budget for recurrent "top-ups" or new claims.
- **Exclusion from Future Value:** It severs the landowner's connection to the land entirely, excluding them from the immense value uplift that occurs once state services and infrastructure are provided and land is developed for commercial or residential use. This is the "double disadvantage" described by Rooney (2015).

2.2 The Motu Koita Experience: A Cautionary Tale

The Motu Koita people's experience is a stark illustration of these flaws. Despite being the traditional owners of the site of the national capital, many Motu Koita villages lack basic services like reliable water and sewerage. They have had to compete with migrants for access to schools and health facilities on land they once owned. Their means of subsistence, gardening and cultural practices have been severely diminished. While some compensation claims have been settled, the fundamental promise of a better life through development has not been realised for many. As Nao (2025) notes, this situation persists even as the national government faces outstanding compensation claims totalling hundreds of millions of Kina. The current system is therefore both inequitable and fiscally unsustainable.

This situation is not unique to the Motu Koita. The Ahi people of Lae, the traditional owners of that city, face similar challenges. The status quo creates a class of urban landowners who are marginalised in the very cities built on their land, fostering resentment and social instability. It is a legacy issue that the surveying profession, with its commitment to accurate records and equitable outcomes, has a duty to help address.

3. Proposed Legal Reforms: Institutionalising a "Seat at the Table"

To move beyond this flawed system, PNG requires a new legal framework that facilitates co-development. The goal is to transform customary landowners from compensated ex-owners into long-term economic partners. This requires amendments to the *Lands Act 1996* and other relevant legislation to create new mechanisms for land acquisition and development.

3.1 Amending the *Lands Act 1996* to Enable Equity-Based Transactions

The core of the reform is to amend Part IV of the *Lands Act 1996* to provide a legal basis for alternatives to one-off cash compensation. The amended Act should explicitly recognise that "fair and just" consideration for the alienation of customary land can include, and in many cases should prioritise, long-term economic participation.

The following options should be codified in law:

1. Equity Shareholding: The State (or a developer), on acquiring a lease over customary land, must allocate a guaranteed percentage of equity in the development project to the recognised customary landowners. This could be held by a legally recognised body like the Motu Koita Assembly (MKA) or an Incorporated Land Group (ILG) on behalf of the people. This transforms compensation into an income-generating asset that provides dividends and appreciates (value) over generations.

2. Land as Equity (Leasehold Equity): The law should formally recognise a model where the customary landowners do not alienate their land for a cash payment but instead lease it to the State (or a developer) in exchange for an equity stake. The landowners retain underlying customary ownership while the development proceeds on a long-term state lease, with the leasehold interest forming the equity contribution.

3. Reserved Spin-Off Businesses: Legislation should mandate that a portion of contracts for services related to a development (e.g., security, catering, landscaping, supply of materials) be reserved for businesses owned by the affected customary landowners. This ensures immediate, tangible economic benefits flow to the community.

4. Structured Revenue-Sharing Agreements: For developments like marketplaces or commercial centres built on previously alienated land, the law could mandate a revenue-sharing agreement between the state/municipal authority and the landowner community, providing a perpetual income stream.

3.2 Strengthening Landowner Representation and Governance

For landowners to take their "seat at the table," they must have a legitimate and capable representative body. The *Land Groups Incorporation Act 1974* needs significant strengthening. The process for incorporation must be made more accessible, and ILGs must be given clearer powers to enter into complex commercial joint ventures, hold shares, and manage financial assets on behalf of their members. The *Motu Koita Assembly Act 2007* provides a model of a more formalised governance structure that could be adapted for other urban landowner groups. The reformed legal framework should mandate that any equity-sharing or partnership agreement must be negotiated through and overseen by such a legally recognised, democratically accountable body to ensure transparency and prevent elite capture of benefits.

3.3 Establishing a National Policy Framework for Co-Development

A key recommendation from the 2019 National Land Summit was the need for a structured policy dialogue. This paper proposes that the government, through a newly established National Land Development Authority, lead the development of a comprehensive National Co-Development Policy. This policy would provide clear guidelines on:

- Valuation methodologies for determining equity shares.
- Standard-form joint venture agreements between the State, developers, and ILGs.
- Dispute resolution mechanisms for co-development partnerships.
- Fiduciary standards for ILGs managing commercial assets.

4. The Evolving Role of Surveyors in a Co-Development Era

The shift to a co-development model dramatically expands the role and responsibility of the professional surveyor. No longer just custodians of boundaries, surveyors become key facilitators of complex, multi-stakeholder land transactions.

4.1 From Boundary Demarcation to Asset Definition

In a co-development model, the surveyor's first and most critical task is to provide the undisputed factual foundation for negotiation. This goes beyond simply marking boundaries. Surveyors will be responsible for:

- **Defining the "Asset":** Creating precise cadastral records of the land proposed for development, which forms the basis for the equity calculation.
- **Documenting Customary Interests:** Using participatory mapping and community engagement to help document and clarify the various clan and family interests within a project area, providing the essential data for ILGs to legitimately represent their members.
- **3D Cadastres for Complex Developments:** As urban development becomes more complex, surveyors will need to map and register rights in three dimensions—distinguishing between air rights for high-rise apartments, surface rights for a market, and sub-surface rights for infrastructure. This is essential for landowners to retain value in different strata of their former land.

4.2 The Surveyor as Valuer and Negotiator

The concept of "value" in a co-development model is far more complex than in a simple cash compensation claim. Surveyors, with their deep understanding of land and its potential, are ideally placed to advise all parties.

- **Valuing Non-Monetary Contributions:** Surveyors can contribute to developing methodologies to value the "land contribution" to a joint venture, not just as bare land, but as a strategic asset with development potential. This involves assessing current use, location, development constraints, and future highest and best use.
- **Informing Equitable Negotiations:** By providing objective data on land area, topography, development potential, and infrastructure access, surveyors empower landowner groups with the information they need to negotiate effectively with the state and developers. This levels the playing field and makes the "seat at the table" meaningful.
- **Community Engagement and Mediation:** Surveyors are often the first technical professionals to engage deeply with a landowning community on a project. Their role in explaining the process, listening to concerns, and building trust is paramount. They become crucial mediators, helping to translate complex legal and commercial concepts into terms the community can understand and debate.

4.3 Designing and Managing New Tenure Arrangements

Once a co-development agreement is reached, surveyors will be responsible for giving it legal and physical form.

- **Subdivision and Strata Title Creation:** The creation of new lots for commercial sale, public infrastructure, and the portion of land (or air rights) to be retained by the landowner community as their equity will require expert survey work.
- **Maintaining the Cadastre for Co-Ownership:** Surveyors will manage the cadastral database to reflect these complex new ownership structures, ensuring that the landowner community's ongoing interest (e.g., a strata lot in a commercial building) is formally and indefeasibly registered.

Table 1: The Surveyor's Expanding Role in the Co-Development Model

Phase of Land Transaction	Traditional Role	New Role in Co-Development Model	Required New Competencies
Pre-Acquisition & Negotiation	Boundary identification for acquisition	Participatory mapping with ILGs; providing data for equity valuation; facilitating community meetings	Community engagement; conflict resolution; understanding of customary tenure; joint venture structures
Agreement & Structuring	Preparation of survey plans for lease	Designing subdivisions to carve out landowner equity; drafting descriptions for strata/3D interests	3D cadastral surveying; commercial and property law fundamentals
Post-Development & Ongoing Management	Maintenance of cadastral records	Updating records to reflect complex co-ownership; monitoring physical changes to the development over time	Advanced GIS and land information systems; strata title management

5. Implementation and a Call to Action

The path to this new future requires a concerted effort from all stakeholders. This paper proposes the following actionable steps:

- 1. For the National Government:** Immediately initiate a review of the *Lands Act 1996* and the *Land Groups Incorporation Act 1974* with the explicit goal of drafting

amendments that enable equity-based compensation and co-development, as detailed in Section 3.

2. For the Department of Lands and Physical Planning: Partner with the ASPNG and the National Research Institute (as suggested by Nao 2025) to develop the valuation guidelines and standard-form agreements needed to support the new legal framework.

3. For the Association of Surveyors of PNG (ASPNG):

- Form a dedicated task force to develop a competency framework and professional development program for surveyors in co-development facilitation, community engagement, and 3D cadastral surveying.
- Update the Code of Professional Conduct to provide ethical guidance on navigating the complex interests in landowner-state-developer partnerships.
- Advocate strongly for these legislative reforms, positioning the profession as a key partner in building a more equitable and prosperous PNG.

4. For the Motu Koita Assembly and Other Urban Landowner Bodies: Seize the initiative by developing your own model for co-development partnerships, based on the principles outlined by Nao (2025), and present them to the government as a basis for negotiation and policy formulation.

6. Conclusion

The call for a "reset" in PNG, as it marks 50 years of independence, is an opportunity to build a fairer and more prosperous nation. Nowhere is this reset more needed than in the way we handle urban land. The experience of the Motu Koita people shows us that the old model of one-off compensation is a failed experiment. It has created a legacy of disadvantage and unfulfilled promises. The future lies in co-development. By changing our laws to give landowners a permanent "seat at the table," we can unlock not just land for urban expansion but also unlock the economic potential of thousands of Papua New Guineans. This new model is a genuine win-win: a win for landowners who gain sustainable, intergenerational wealth, and a win for the government and nation, which gains development partners instead of compensation claimants, increased tax revenue, and greater social stability. The surveying profession, with its unique skills and trusted position, is ready to lead the way in **reclaiming the land** - not just as a physical space, but as a foundation for shared and lasting prosperity.

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