



THE NATIONAL  
RESEARCH INSTITUTE  
PAPUA NEW GUINEA

# DISCUSSION PAPER

STRATEGIES TO ADDRESS  
CHALLENGES IN CUSTOMARY  
LAND ADMINISTRATION,  
GOVERNANCE AND DISPUTE  
RESOLUTION IN PAPUA NEW  
GUINEA

Flora Kwapena  
Logea Nao  
Jerry Birop

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No. 188

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## Authors' contributions

Ms Logea Nao conceived and designed the project, conducted the stakeholder interviews together with Dr Flora Kwapena and Mr Jerry Birop. She also contributed to the write up of the introduction section, overview of customary land tenure and reform in PNG, and the research methodology section in this paper. Dr Flora Kwapena conducted a review of literature and Government of PNG policy documents to identify some key papers relevant for this study. She also analysed the interview responses and wrote the rest of the sections in the paper. Mr Jerry Birop assisted in the conduct of the stakeholder interviews and contributed to the write up of the introduction section and overview of customary land tenure and reform in PNG.

## Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
DLPP	Department of Lands and Physical Planning
ETLR	Evolutionary Theory of Land Rights
ILG	Incorporated Land Group
LTRA	Land Titles Registration Act
LLGs	Local Level Governments
NID	National Identification
NLDP	National Land Development Program
NLDP I	National Land Development Program Phase One
NLDP II	National Land Development Program Phase Two
NLDT	National Land Development Taskforce
NLTB	Native Land Trust Board
PNG	Papua New Guinea
SABL	Special Agriculture Business Lease
SDGs	Sustainable Development Goals
VCLR	Voluntary Customary Land Registration



## Abstract

Customary land is increasingly recognised as an important governance issue in Papua New Guinea (PNG). The aim of this paper is to identify challenges associated with land administration, land governance and land dispute resolution in PNG as perceived by stakeholders; and to find potential strategies for promoting bankable customary land titles. From the 2019 National Land Summit, a need for a new approach that is theoretically better anchored in the current debate on bankable customary land leases has been identified. This paper builds on existing customary land reform issues that remain from the implementation of National Land Development Program (NLDP) Phase I in the areas of customary land administration, land governance and land dispute resolution in PNG. The review of global experiences and perspective in this paper reinforce the fact that customary land reform is highly complex that a more long-term strategy is appropriate for customary land reforms. Customary land reform is challenging, it requires continuous information sharing with key stakeholders for the reform to work.



# Introduction

In Papua New Guinea (PNG), about 97 percent of total land in the country is customarily owned (Niugini Land and Properties, 2019). Although there are some customarily-owned land in PNG that have had titles granted (Duncan, 2018), most of it does not have proper title, restricting economic development on it. The remaining three percent of land have been alienated (Niugini Land and Properties, 2019) and have titles, either belonging to the State or private individuals. However, these types of land are almost exhausted.

For PNG to move forward in achieving sustainable economic development, there is a need for customary land to have proper bankable title and be readily available in the formal market. A bankable title is one which is considered secure by the financial sector and therefore, can be used to extend credit to the holder of the title, thereby, encouraging investment and economic activities. However, accessing customary land with proper bankable title has been challenging due to issues associated with administration of customary land, structures and arrangements of governance on customary land, and the system of resolving disputes on customary land.

The objectives of the study reported in this paper therefore, are:

- to identify challenges associated with land administration, land governance and land dispute resolution in PNG as perceived by stakeholders; and,
- to find potential strategies for promoting effective access, administration and governance of customary land, as well as effective resolution of disputes on customary land, by drawing lessons from the 2019 PNG National Land Summit and from different countries.

Based on available documents and materials as well as consultations with stakeholders, this paper highlights the current status of customary land administration system, the governance arrangements on customary land, and dispute resolution mechanism. It also analyses and discusses challenges that may hinder effective access to, and administration and governance of customary land. It also analyses and discusses effective resolution of disputes on customary land. Furthermore, the paper presents potential strategies to address the challenges identified. The findings of this paper can inform and add value to implementation of National Land Development Program Phase Two 2020-2024 (NLDP II).

Having an effective customary land administration system that delivers a secure and bankable land title of the underlying land for owners and users is necessary for landowners to protect their ownership rights but at the same time, release their land for commercial opportunities. It is also critical for those that invest on the land to obtain optimal returns on their investment on the land. Achieving both has the potential to contribute to an increase in tax revenue for the State. The revenue can be channelled to improve the delivery of basic public goods and services. An effective and secure land administration system, therefore, has the potential to provide a win-win situation for all parties that have an interest on customary land.



# Literature review

## Overview of customary land reform in some developing countries

The departing colonial regimes in various African nations and Pacific Island countries and territories left behind a tenure dualism of customary land tenure and Western property regime of land titling for the newly independent states (Egan, 2013). Upon gaining independence, most post-colonial governments in the Pacific Island countries adopted the land laws originating from the country of the colonists. Effectively, these laws and models were rooted in the traditions of the colonial power rather than those of the newly independent nations (Ray, 1999). The Western property model, also regarded as the formal land tenure regime, promotes individual title as opposed to communal land holding in customary land tenure (Egan, 2013). Remnants of Australian law are predominant in PNG, in the same vein, French laws are adopted in Tahiti and the laws in Cook Island reflect those of its former coloniser, New Zealand (Crocombe, 1978). These adopted land laws and the embedding of dominant property structures and economic ideas arguably contribute to an ongoing “disconnection between informal and formal tenures” (Unruh, 2006). Although, disconnections continue to exist between customary land tenure and the Western systems of tenure in most post-colonisation countries, tenure dualism has been embraced by most post-colonial governments. It is widely accepted that customary land tenure will continue to play its role in indigenous societies and as such efforts in linking both tenure regimes are being pursued in the form of customary land tenure reforms.

The most used arguments in favour of registering title to customary land are:

- i. land registration increases tenure security, reduces land ownership disputes and curbs land grabbing;
- ii. land registration facilitates a rural land market, allowing for land transactions;
- iii. land registration, through the issuance of a title, enhances collateral value of land and hence improves access to credit from financial institutions; and,
- iv. land registration promotes and provides increased investment opportunities (Cotula et al., 2004; Feder & Noronha, 1987).

Lawry et al. (2017), highlighted that land titling promotes secure property rights which in turn increases the incentives for households and individuals to invest through better access to credit from financial institutions. From a theoretical perspective, secure property rights are generally considered to be a precondition for economic growth and development.

De Soto (2000) emphasised that formalising customary land holding systems by the State through the issuance of instruments such as land titles promotes a means of securing land ownership rights, allows for access to credit and stimulates investment in the rural areas of developing countries. He stressed that the lack of a legal title can inconvenience the poor and further asserts that it can complicate the process of property transactions and obtaining credit (De Soto, 2000). Although convincing, one drawback to De Soto's view is that he did not consider the degree of land tenure differences in developing countries and developed countries. He disregarded communal ownership and promoted that individual and private title could lead to greater prosperity in developing countries. In a subtle stance, De Soto insinuated that customary land tenure regimes were inferior to the Western property structures and he failed to acknowledge that attempts to replace communal ownership may be unsuccessful and may unintentionally undermine existing traditional institutions that prevail in developing countries and some developed countries that have undergone land rights reform for their indigenous people.

It is inevitable that developing countries and their indigenous societies are evolving in the wake of modernity and economic progress. The influence of neo-liberalism has become a powerful process and a ‘normal’ way of life throughout the world, and the dominant logic of neo-liberalism currently in place states that everybody must participate in the mainstream economy as individual subjects or miss out on economic possibilities (Howlett et al., 2011). This continued push for economic growth in various developing countries is prompting governments

to look at indigenous land tenure systems and embark on land reform programs to bring customary land into the formal statutory institutional framework (Ho and Spoor, 2005).

Land reform is not a new phenomenon. They were a crucial element for social transformation in socialist societies like Russia, China, Eastern Europe, parts of Asia and Africa in the 20th Century. The socialist movement was confined to redistributive reform of land by the transfer of rights in land from large landowners to smallholders and the landless (Lipton, 1974 in Muller et al., 2009). The arguments for customary land tenure reforms by the governments in some developing Pacific Island countries such as PNG is largely based on economic development and growth reasoning. Underlying this preoccupation is a belief that customary land tenure systems are a notable bottleneck to a properly functioning rural land market (Anderson, 2006). This economic development perspective that customary land tenure is a serious constraint to the land market in developing countries has been widely highlighted in the World Bank research reports; “World Bank Experience in Land Management & the Debate on Tenure Security”, and Land Policies for Growth and Poverty Reduction. However, in contrast, Ubink (2009) highlights that research by Cotula et al. (2004) and Durand-Lasserve and Selod (2007) found that land titling initiatives have failed to establish conclusive evidence of the expected social and economic impacts of land titling. According to Durand-Lasserve and Selod (2007), customary land systems provide security of tenure even though they are not formally recognised by the State.

According to the World Bank (2003), the 1970s was a period where there was a “wave of nationalisation of land” in developing countries as they became independent nations. The report gives the example of how sub-Saharan Africa land was nationalised to rid private freehold ownership to support agrarian reform and suppress tenure dualism. Adams and Turner (2005) provided a succinct account of various African states in their post-colonial early independence decades. Those authors describe how Tanzania abolished freehold tenure and nationalised all land. The government at that time carried out a resettlement scheme of their populace. In the same stance, Uganda, under President Idi Amin, declared that all land belong to the State and alienated all customary land to the State. In Malawi and Zambia, all lands were vested in the office of the president and any transactions on land required the approval of the president. These reforms obviously were aimed at unifying tenures and transfers of traditional holdings over land to the government. By 1980s and 1990s, land nationalisation proved to be ineffective and less durable in many of the African nations (Adams and Turner, 2005). Customary landowners resisted the land nationalisation moves, creating confusion and operation of various parallel tenure systems. Furthermore, the rejection of nationalistic approach caused a new generation of land policies and laws in Africa. These new laws protected customary land rights as compared to their predecessors (Cotula et al., 2004).

In Uganda, the Land Act of 1998 effectively reversed the laws and land was returned to the indigenous landowners. Customary ownership of land under the customary laws of the area is recognised without the need or evidence of title (Adams and Turner, 2005). That Act also allows certificate holders the right to mortgage, subdivide, lease and transact their land (Fitzpatrick, 2005). Similarly, in Tanzania, the Land Act No. 4 of 1999 and the Village Land Act of 1999 gave customary land occupiers the same recognition as those occupied under the State (Adams and Turner, 2005). Importantly, customary law applies to and continues to govern customary-owned village land (Fitzpatrick, 2005). Mozambique’s Land Act 1997 appears to have embraced the dual tenure more realistically. The State held the radical title but co-titles were created, which are the single form of title known as the Land Use and Benefit Right. They are available to all land users; this recognises customary land ownership and it protects land use rights acquired by all land users. These rights are protected and administered by the local communities and they may involve customary law. This approach is flexible; it provides a legal framework for customary law and presents a single land administration system for the State (Cotula et al., 2004). It is obvious that individual property ownership implanted by colonisers is contested and there is a need to identify through research, the alternatives to individual freeholds or registered leaseholds and the extent to which these alternatives reach the same objectives.

Failure in the nationalisation of land in post-colonial Africa prompted governments and aid organisations to change their views regarding individual titling and large-scale agrarian development. The World Bank (2003) shifted their policies to accommodate customary land tenure laws at the level of communal holding after they

realised that by attempting to force social change with the use of top-down initiatives such as the governments promoting individual titling of land have not reduced poverty. As highlighted by Platteau (1996), the top-down approach has failed in countries with histories of customary tenure or, where customary tenure is being recognised after attempting to nationalise it, “reality shows that in Sub-Saharan Africa, direct State intervention in land is best minimised” (Platteau, 1996). The role of national governments in land administration is being redefined and such that they intervene if and only when required by the community. The Evolutionary Theory of land rights (ETLR) advocates cooperation rather than confrontation between the national government and local communities. Through this process, individual titles can still be achieved as long as customary laws are satisfied (Platteau, 1996).

Fitzpatrick (2005) offers a framework for thinking about relations between communities and national governments that recognise customary tenure. He highlighted that the State must have a minimalist position in which the government recognises customary tenure groups and demarcates and monitors boundaries between communities but leaves internal land administration to each community (Fitzpatrick, 2005). Fitzpatrick’s framework shows an obvious emphasis and support of Platteau’s ETLR model. Dalrymple et al. (2004), in consensus with Platteau and Fitzpatrick, also emphasised that contemporary land policy should take into consideration the existing land arrangements in a society and steer it towards the formalisation of strategies rather than impose dominant property model thinking. Lamour (2005) asserted that more focus needs to be given to what communal systems of traditional ownership can offer the wider world. This is supported in a study by Deininger and Feder (2009) in which they highlighted the lack of rigorous empirical analysis on the management and development of land held under group ownership, such as customary land tenure, as a major gap. This literature highlights that there is nothing wrong with communal ownership in customary land tenure and as such, it is an adequate mechanism that should influence customary land policy framework. This ETLR model indicates that the process of commoditising land does not necessarily change the principles of customary land tenure, but rather there is a more evolutionary process to develop new land tenure arrangements and procedures by the people. The voluntary customary land registration (VCLR) process currently used in PNG reflects the ETLR principles.

In Fiji, since 1940, the control of all native land in Fiji has been vested under the Native Land Trust Board (NLTB). The NLTB has the power ‘to administer the lands for the benefit of the Fijian landowners and has the power to grant leases and licenses that are registered under Fiji’s Torrens system’ (Fingleton, 2008). With most of the land already surveyed in Fiji, titles issued by the NLTB are either leasehold or freehold which makes obtaining credit through financial institutions easier.

In Vanuatu, at Independence in 1980, all rural lands were returned to the customary landowners and a ‘village land trust’ concept was implemented. Incorporating a trust company and then vesting village lands under the trust company to underpin investment and provide tenure security, for the villagers was the feature of the concept (Fingleton, 2008). The village land trust combined customary land tenure elements with a modern structure of a company, the land trusts were established by drawing on the NLTB of Fiji (Fingleton, 2008). Despite the popularity of land trusts at Independence in Vanuatu, the village land trust concept has gone into a decline for two main reasons; firstly, the land trusts were incorporated at the village level and not at a landowning group level; and secondly, land management and business operations were not separated as individual activities (Fingleton, 2008).

In Samoa, the Land Titles Registration Act (LTRA) passed in 2008 adopts the Torrens system of titling to register customary land leases. One of the purposes of the LTRA 2008 is to establish ‘ownership of interest in land by registration’ (Ye, 2009). However, critics of the new legislation highlight that because customary land registered under LTRA 2008 loses its customary nature through converting to freehold, this may open opportunities to bypass the constitution and promote privatisation of customary land grab (Ye, 2009). The Torrens system is also the titling system that is a formalised western land registration system that awards title to the current owner and is basically concerned with identification of legal rights in support of an efficient land market, while the system provides for indemnification of any legitimate claimants; it does not adequately address informal and customary rights and is not a land reform (Simpson, 1976). The Torrens system is the titling system also used in PNG for

alienated land (State leases).

For many developing countries, one of the key governance issues in relation to customary land reform is land disputes. “The critical governance issue regarding disputes, however, is not whether there are disputes, but rather what rules, processes and mechanisms are in place to address grievances, manage disputes and to enforce” (Palmer et al., 2009).

According to Palmer et al. (2009), strengthening security of tenure through land reform is essential to reducing land disputes. The authors provided experiences from various African nations like Ethiopia who, through their large-scale certification process, have significantly reduced conflict. Similarly, in Botswana, the implementation of a Tribal Lands Information Management System in 2005 has significantly reduced the number of ownership disputes. The literature shows that the use of traditional and alternative dispute resolution techniques proves to be effective in dealing with land disputes in several countries. The challenge is to ensure that the local mechanisms are clearly linked to State systems for both appeal and enforcement (Palmer et al., 2009). Capacity building in the institutions that deal with land matters and disputes is critical from the customary land reform perspective. The qualitative literature reflects several positive experiences to customary land titling.

## Overview of customary land tenure and reform in PNG

PNG exhibits a common element in that, existing patterns of development including institutional, administrative and legislative structures are a legacy of the colonial era of Australian rule. Most of the current towns in PNG began as centres for the colonial administrators and this was followed by economic activity in commercial, wholesale and agriculture (Lamour, 2002). Since Independence in 1975, statehood growth has accelerated the country’s economic base of the urban centres and there has been a rapid diversification of economic development throughout the country (in both the renewable and non-renewable resource sectors). Post-independence, there has been a rapid increase in population in almost all the towns in the country (particularly notable in Port Moresby and Lae). The common pattern evident in most urban centres in PNG is that urban and peri-urban areas are interspersed with informal and squatter settlements, on both State land and peri-urban customary land (for example Motu-Koita in Port Moresby and Ahi in Lae). The major towns in the country are being reinforced as primate cities, generally attracting the greater share of the national urban population growth. Socio-economic factors including education, lifestyle choices, centralisation of Government services, improved access to communications and transport and increasing private sector and investor development, have contributed to the ongoing movement of the rural population to the main towns in PNG. Collectively, these present indicators of modernity and change reflect transformation in all aspects of life in contemporary PNG.

Despite increasing changes, the influence of traditional customs remain strong. An individual’s connection to their rural community are commonplace, primarily because of an individual’s traditional attachment to customary land as a source of identity to personal space and place. Customary land tenure and the continuing strength of traditional attachment to land remain dominant in the rural areas of PNG. Often, the cultural attachment to customary land constrains and hinders the development of potential of customary land (Filer, 2011). Customary land in PNG is concentrated in the rural areas of the country. The perception of property and the value attached to it together with the people/land relationship vary according to place. This relationship is seen as an obligation of an ongoing stewardship by the current generation for the future generations, a relationship that notably sits uncomfortably with the dominant Western property model (Boydell, 2007).

The history of policy transfer for customary land reform and registration from the colonial times to post-independence in PNG is best described below (Lamour, 2002):

- 1950’s-60’s – Policy transfer from Africa to PNG;
- 1970’s – Policy transfer from other South Pacific (NZ) consultants/foreign academics to PNG;
- 1980’s – Liberal Wave geared by USA and Canadian economies to PNG, establishment of the Institute of National Affairs which still remains;



- 1990's – World Bank use of loan conditions to PNG;
- 2005 onwards – NLDP.

There are two land supply systems operating in the country; customary land (traditional/informal system) and State land (formal system). Given that the majority of land in PNG is held under the customary land, tenure regime engaging landowners in land development is essential. Basically, there are three common types of land tenure in PNG; customary land tenure, freehold land and State land (alienated land). Pockets of freehold land are generally fragmented amongst the rural and urban areas. As the supply of undeveloped tracts of State land are increasingly diminishing, the focus for urban growth and development is on customary land.

The focus for the physical development and extension of urban centres in PNG is the expansion onto peri-urban customary land areas; similarly, natural resource development is largely dependent on rural land where customary land tenure is dominant. Clearly, disruptions due to globalisation and customary land commoditisation together with changing cultural values towards customary land are evident in PNG. An example is the large-scale industrial production of oil palm in PNG. There are some landowners in PNG who are carrying out economic development on their customary land and there are others who want to participate and realise the economic potential of their land, and are willing to consider a diverse range of land tenure and other commercial arrangements (Koczberski et al., 2012).

Land is no longer viewed as a resource for its ability to provide a subsistence livelihood but rather as a scarce commodity that has cash value. Evidence from this research shows that the desire to forge modernity with local place-based social and cultural frameworks by landowners has resulted in hybrid property spaces and has spurred customary land reform in PNG.

Prior to the recent customary land reform dealing with the revised Incorporated Land Groups (ILG) registration process and the new customary land registration system, the two most common methods available for registering customary land in PNG are firstly, the Lease-leaseback system more commonly known as Special Agriculture Business Leases (SABLs) which was introduced in 1979 and was incorporated in the PNG Land Act. It is a mechanism where customary land is leased to the State and then a State lease is granted back to the customary landowners or to a body approved by the landowners for a period of 99 years. The primary objective of this vehicle is to enable economic activity to be undertaken by the landowners or another entity. The current Land Act of 1996, Section 11 (1) states that, *“The Minister may lease customary land for the purpose of granting a special agricultural and business lease of the land”*. Section 102 (2) further states that, *“A special agricultural and business lease shall be granted:(a) to a person or persons; or (b) to a land group, business group or other incorporated body, to whom the customary landowners have agreed that such a lease should be granted”* (Land Act, 1996).

Although the initial intention of the lease-leaseback method was to promote commercial agriculture and forestry development on customary land, the system, throughout the decades, has been wrought with corruption and conspiracy in the issuance of the leases and the process has resulted in the land grab of some 5.5 and 5.6 million hectares of customary land converted to SABLs (Filer, 2012). In 2011, a moratorium was imposed on the grant of new SABLs and a Commission of Inquiry was set up into those leases granted (Filer, 2012). To date, the Government of PNG has yet to make a decision on the outcome of the inquiry.

The second mode of converting customary land is Land Tenure Conversion, which was introduced in 1963. It is a mechanism where customary land is alienated by the landowning group or an individual member of the customary group and a freehold title is issued to the owners. The notable legal implications to these titles are that there is a maximum lease period (25 years) and the property cannot be transacted by the lessee or mortgagee. This system is rarely resorted to by customary landowners, given its duration restrictions.

Institutional failure to address land reform issues in the country has led to growing informal developments on customary land often with inequitable benefit structures. The most recent customary land reform in PNG stems from the recommendations of the National Land Summit held in 2005. Following the summit, the National Land Development Taskforce (NLDT) was established in 2007 with the three main policy options; to establish

efficient land administration systems; to introduce a single land court system; and to implement a voluntary process to bring customary land into the formal economic sector and empower customary landowners (Fairhead et al., 2010). The NLDP at present is based fundamentally on the integration and application of the amended ILG Act and Land Registration Act that provide the basis for the VCLR process.

Table 1 summarises the key features of the difference between customary land tenure and customary land under the VCLR process. The table shows that the VCLR system retains some features of customary land tenure, but it has transitioned customary land into a formal legal context in which it now operates to interface with the forces of economic globalisation and provides codification of customary land tenure systems. The key differences are the formalisation of customary landowning group, security of customary land tenure, and the incorporation of customary tenure practices into statutory law (ILG Constitution).

**Table 1: Customary Land Tenure compared to VCLR**

Features	Customary Land Tenure	VCLR
Customary land tenure	Customary land is not recognised as real property. It is governed by local traditional law.	Customary land tenure is recognised as real property under the VCLR process.
Authority and day to day decisions over land	Traditional landowners – clan leaders, chiefs and elders.	A hybrid situation where customary land tenure is captured in the ILG Constitution that pertains to the ILG Association.
Relationship to State institutions	Independent from State institutions and the land legislations of the country. Can be subjected to the Power of Eminent Domain.	Customary land tenure is integrated into the formal legal system. The ILG Association is subject to the Land Group Incorporation Amendment (2009) and Land Registration (2009) Amended Acts. Customary leases created under the parent title are subject to the Land Act 1996.
Record keeping	Informal record keeping – verbal agreements embedded in local memory that is passed down over generations.	VCLR process is administered within the Customary Land Division in DLPP.
Tenure security	Informal, individual and collective use rights with ability to exclude others. Limited to no right of disposal.	Formal due to statutory protection of collective use and ownership rights possible. Disposal rights to outsiders/ developers through formalisation and title registration and creation of leases. No alienation of land.
Boundary mapping	Informal record keeping of land boundaries based on naturally occurring features such as rivers, trees and mountains.	Land boundaries are based on a boundary map sketched by the landowners; a formal survey is conducted prior to registration of customary land. Mapping work is done by professionals with the aid of modern technology.

Dispute settlement	Embedded traditional dispute resolution mechanisms that include the principles of participation, consultation and consensus under customary law of the local area.	Integration into national judiciary system but there is scope for local dispute resolution through village court and land mediation.
Women's access to land	Gendered access to land is dependent on the custom of the local area and is mediated either by the patriarchy or matriarchy.	VCLR upholds the local custom of the ILG in the constitution and gendered access is dependent on the custom of the local area. But this can be affected by market transactions of the leases.
Commoditisation of land	Customary is rarely transacted. However, with modernity, there is an increase in informal sale and rental of customary land.	Land leases created under the parent title through VCLR process enable possible transaction of customary land with developers and investors.

Source: Authors

The VCLR has involved to varying extent privatisation of ownership through enabling individual leases from the parent title. Specific actions like documentation and registration of customary landowners and physically surveying boundaries make customary land tenure more legible. VCLR formally recognises landowning groups through the ILG process. VCLR also creates marketisation of customary land and facilitates the emergence of a more formal customary land market ensuring that a formal system of valuation is introduced to customary land that has undergone reform. The VCLR is a hybrid system that incorporates traditional customary land tenure systems and its practices within statutory law. Basically, the land ceases to be under 'customary law' however, custom still applies to inheritance of rights (Chand et al. 2014). In effect, an ILG is alienating a portion of its own customary land to itself and subsidiary rights can be granted in the form of 99-year leases.

The land reform process (VCLR) is an economic model based on communal ownership (Fairhead et al., 2010). The Customary Land Title possesses similar characteristics of a freehold interest representing the perpetual ownership in land as the title of the property remains with the clan/family members of the ILG irrespective of any dealings on the land. VCLR as seen (on paper at least) incorporates customary land tenure into statutory law.

The VCLR process is a two-stage process which involves the incorporation of the land group, and the registration of a portion of land ripe for economic development. The amended Land Group Incorporation Act established a process which applicants for the incorporation of a land group may take (*Land Groups Incorporation Amendment Act 2009*).

1. Preparation of a sketch map of all customary land owned by the ILG, including all land holdings and natural features. The sketch map should include disputed boundaries which are to be verified, acknowledged and signed by leaders of the disputing clans.
2. Birth certificates for all members of the landowning group are to be obtained from the Department of Community Development.
3. Interim ILG executive committee members are elected to prepare a draft ILG constitution; the first meeting is called, and executives are formally appointed by all members of the ILG.
4. Submission of application for the ILG is made to the Registrar of ILGs (submission includes the map, birth certificates, constitution and the minutes of the first meeting).
5. Registrar of ILGs publishes a notice of application in the National Gazette with a copy of the application forwarded to the district administrator (district where ILG originates) and village courts. This is a 30-day statutory period to allow for any objections.

6. Verification report from the district administrator confirming the information on the application is forwarded to the Registrar of ILGs.
7. The Registrar of ILG incorporates the ILG and issues an ILG certificate.

Under the reform, the registration of customary land can only be applied after the incorporation of an ILG following the process described below (*Land Registration Amendment Act 2009 PNG*).

1. Preparation of the survey plan by a registered surveyor of the subject portion of the customary land to be registered.
2. The ILG executives apply to the Director of Customary Land for registration on behalf of the ILG (the draft survey plan showing the demarcated boundaries is included in the submission).
3. The Director of Customary Land verifies the correctness of the survey plan submitted as per Section 34E and 34F of the Land Registration Act.
4. Following verification and registration of the plan, it is forwarded to the Regional Surveyor to publish the plan and call for any objections within 90 days of the notice.
5. On the expiry of 90 days following publication of the survey plan, the Director of Customary Land prepares a final registration plan that is forwarded to the ILG. If there have been any objections, these must be corrected before proceeding any further.
6. If the final registration plan is free of objections, a copy of the ILG certificate and the final plan are forwarded to the Registrar of Titles to issue the customary land title.

Several elements of the land reform process outlined above are potentially expensive and remote to the rural people (e.g. obtaining national identification (NID) certificates for all members and sourcing a surveyor). From the process described above, the VCLR system appears to be a cumbersome and lengthy process and the paperwork, accounting and administrative responsibilities demanded of an ILG from the amended laws far exceed the capacity of rural communities that are characterised by low levels of literacy, and poor and low understanding of formal legal concepts, business and administrative processes of corporations.

Discussion in the 2019 National Land Summit centred around reviewing the implementation of NLDP I. Much of the dialogue among the participants was concerned with the incorporation of customary land groups and the voluntary land registration process under the legislations that were passed by the National Parliament in 2009 but effected in 2012. There was consensus that the VCLR process, through the implementation of both amended acts had not proven to be an effective way of customary land reform and bringing customary land into the economic domain for land development. The VCLR process has also not solved the issue of bankable land titles for customary landowners, and the amended *Land Groups Incorporation Act* and the amended *Land Registration Act* make no reference to the possible role of village courts, land mediators or local land courts in the process of dispute settlement.

Considering the prescribed procedure discussed for customary land registration under the amended acts, it appears that objections are dealt by the Director for Customary Land Division, Department of Lands and Physical Planning (DLPP). Further, a review of the amended *Land Groups Incorporation Act* and the amended *Land Registration Act* show that the acts make no reference to the village courts, land mediators or local land courts in dispute settlement between parties. This is a predicament to the registration process and viability of customary land titles. The role of land mediators and magistrates with information about what is appropriate in the context of customary land disputes should be incorporated in the amended legislations. Protracted disputes create uncertainty among stakeholders such as developers and financial institutions.

Land continues to be a cause of social, ethnic and cultural conflict in PNG and in many other global societies. As land becomes less available, individuals are making false claims on land and this leads to customary land disputes. The introduction and rise of the cash economy in the rural areas (agricultural cash crops) is another factor which has contributed to the problem of land disputes. The introduction of cash crops and development

on customary land also leads to ownership issues and land disputes. More and more, communal ownership of land is challenged with customary land commoditisation. This is to say that some of the customary practices that were once effective are no longer effective arising out of modernity. Land disputes is an issue that proves problematic for customary land reform and unsettled disputes are not conducive to financial institutions as this is a hindrance to bankability of customary land titles.

The legal system in PNG refers to the Local, District, National and Supreme courts. This system is based on foreign concepts. There are certain areas of the law where western legislations are at wide variance with local customs in PNG. The Constitution of PNG calls for the use of customary principles of participation, consultation and consensus. It is therefore, imperative to have appropriately functioning village court systems and trained individuals in land mediation and reconciliation as these are the foundations for customary law in PNG. While the specifics of land tenure vary widely from culture to culture in PNG, there are similarities. In general, land is communally owned and there is never any total alienation of customary land. Usufruct land rights are usually granted in perpetuity under agreement. The VCLR process captures this whereby alienation of customary land is not allowed but long-term leases are negotiated under the parent title.

Despite certain downfalls, the VCLR provides tenure security that is needed to attract and safeguard long-term investments; and in turn provides permanence in relation to the income from the activity of land development through more effectively demarcating land boundaries that cannot be contested by other non-members. This is in line with Cotula et al., (2004) and Feder et al., (1987), who point out that the most commonly used arguments in favour of registering title to customary land is that land registration increases tenure security, reduces land ownership disputes and curbs land grabbing.

Of the 54 NLDI recommendations, 47 are about land administration, one is about land dispute settlement, and six are about customary land development. Certain achievements were recorded during NLDI I. One of the successes of NLDI I is the implementation of recommendations 49 to 52 of the Customary Land Development Committee through adoption of the *Land Groups Incorporation (Amendment) Act 2009* and the *Land Registration (Amendment) Act 2009* that were gazetted in 2012 (Duncan, 2018). Challenges in their implementation remain and it appears that these challenges will be carried into NLDI II. Following the 2019 Land Summit and stakeholder consultation workshops, implementation of NLDI II may continue to experience problems in the areas of land administration, land dispute settlement, and customary land development.

Drawing from the literature, it is evident that customary land reform often coincides with the incorporation of a landowning community into the expanding world economy and this in turn, increasingly rearranges customary land tenure systems. The literature reviewed also implies that, land reforms do not fit neatly into traditional local systems and processes and there is often a mismatch between government policy and indigenous cultural practices.

## Research methods

The research strategy for this study comprises of a literature review and analysis of stakeholder interviews. In this project, the current emphasis on customary land reforms is examined in literature together with the concepts of customary land tenure systems and customary land reform global lessons. The goal of the literature review is to provide knowledge and an appreciation of global perspectives on the topic of customary land reform and land registration. Furthermore, the literature review provides familiarisation with the body of knowledge available on the issue and links it to the project to integrate what is known and works globally and to stimulate new ideas to successfully deliver and implement NLDP II. The publications used in the literature review were identified based on these key words: customary land reform, customary land administration and registration. The publications used were scholarly articles sourced online from Google Scholar, various online databases and journals, PNG Government policy documents such as the *Land Groups Incorporation Amendment Act 2009*, *Land Registration Amendment Act 2009* and *Land Act 1996*.

This research adopted a qualitative data gathering and analysis approach with an exploratory focus on the perspectives of specific and targeted stakeholders. For interviews, we selected key stakeholders purposively and they were approached for interview. Of all that were approached, only 11 accepted to be interviewed. The questions used for interviews was developed by the authors using their experience in the activities of the National Land Development Program (NLDP) and relating to the key objectives of the research; land administration, land governance, land dispute resolution in PNG and bankability of customary land titles.

Requests for interviews with stakeholders were done via emails, phone calls, and a combination of the two, over a period of one month (September-October 2020). The researchers determined the most appropriate mode of interview in consultation with participating stakeholders. The mode of interview included phone interviews, face-to-face interviews, and online Zoom meetings during which interviews were conducted.

Interviews were conducted over the same period (September-October, 2020) and were done so as and when stakeholders confirmed their participation in the study. In instances where a phone, face-to-face or online interview was not possible, participating stakeholders were asked to complete the questionnaire and return it to the researchers.

The semi-structured nature of the interviews offered the researchers the freedom and flexibility to approach the schedule to specific circumstances with further questions dependent on the individual responses of the key informants.

The stakeholders consulted and the responses obtained are as follows:

- Department of Lands and Physical Planning (DLPP) - responses from four key informants;
- Department of Justice and Attorney General, specifically Office of the State Solicitor - response from one key informant;
- Magisterial Services - response from one key informant;
- PNG Investment Promotion Authority - responses from two key informants; and,
- Commercial banks (Bank South Pacific and Westpac Bank) - responses from three key informants.

There were 11 people interviewed across the six government agencies and private organisations. One private organisation declined to participate because it has recently experienced a business restructure and therefore considered this external engagement as “too early”.

Ethical considerations have been used to address the respondents’ privacy, confidentiality and avoidance of harm. Data analysis for the stakeholder responses have been used to derive themes that satisfy the research objectives.

## Stakeholder interviews

The thematic analysis method framework was employed to analyse the data generated through the interviews. The raw data that was accumulated from this research mostly comprised of verbatim transcripts of interviews and telephone conversation notes. Data management involved identifying recurring themes from each interviewee. To make meaning of the interview responses, the research used Excel to input data and aid the manual theming process.

In taking a qualitative data gathering and analysis approach, the research employed semi-structured interviews with key informants in relevant government agencies and private organisations. The interviews were guided by a set of questions in the form of a questionnaire, on the areas of land administration, customary land governance and land dispute resolution.

The set of questions to stakeholders were as follows:

- In your opinion, what are the main challenges in accessing customary land in PNG?
- In your opinion, what is your assessment on the legal and policy frameworks of customary land reforms in PNG?
- Do you think that incorporated land groups (ILGs) are appropriate in identifying landowners in PNG? Yes/No. Explain your answer.
- Do you think that the voluntary customary land registration (VCLR) process, including incorporation of a land group and registration of land, is user friendly? Is it easily understood?
- In your opinion, what are the main administrative challenges for customary land reform in PNG?
- In your opinion, what is the best practice for effective resolution of disputes on customary land in PNG?
- In your opinion, what are the main challenges for systems and processes of land dispute settlement? How can they be reviewed to enable development of customary land?
- Even though customary leases (issued under VCLR) are administered under Land Act 1996, why are customary leases issued under VCLR not bankable?
- How can customary leases issued under the VCLR process be made bankable?
- Would an independent office solely for customary land improve administration and governance of customary land in PNG? Yes/No. Explain your answer.
- Any additional comments

There were also supplementary questions to commercial banks:

- What is your understanding of the VCLR process?
- Goal nine of the Sustainable Development Goals (SDGs) states “Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation”. Considering this goal, would it be possible to make your lending requirements more accepting of customary land leases in PNG? Yes/No. Explain your answer.

## Limitations of the interviews

We were not able to test the questions before the interviews. Interviews were conducted during a time where measures surrounding COVID-19 had already been introduced. This created an uncertain environment for stakeholder participation forcing the researchers to narrow the scope to specific individuals in government agencies and commercial banks directly involved with and impacted by customary land administration, land governance and land dispute resolution.

# Key research findings

The discussion in this section is focused on the main research results that emerged from the data generated from stakeholder interviews. There were 11 people interviewed across six government agencies and private organisations.

## 1. Main challenges identified in accessing customary land in PNG

When asked about the main challenges in accessing customary land, the common sentiments shared by the interviewees were as follows:

- The VCLR process can often take three to four years or more for a land group to be incorporated and have their customary land registered.
- The VCLR process is centralised in Waigani (NCD) and is not accessible to people in the rural areas of PNG. VCLR should be operationalised by the Local Level Governments (LLGs).
- LLGs should be mandated to deal with the process of accessing customary land by identifying local customary landowners willingly to make their land available for development and participate in the VCLR process.
- Land disputes over boundaries is a constraint to accessing customary land for development.
- Customary land tenure system promotes communal ownership, and this is a challenge, in terms of getting people to agree on a decision or set of decisions in regard to customary land development.

## 2. Stakeholder assessment on the legal and policy frameworks of customary land reforms in PNG

In response to stakeholder's assessment on the legal and policy frameworks of customary land reforms in PNG, all the interviewees perceived that DLPP does not have the capability to administer the legal and policy frameworks of customary land under VCLR. Other findings include the following:

- DLPP does not efficiently administer the three percent of land held under alienated land tenure (duplication of titles was given as an example by the financial institution respondents). The stakeholders questioned the capability of DLPP to administer customary land under VCLR under the existing legal and policy framework.
- There are lengthy delays in the registration process for State land titles and insecurity of records (through loss and fraud); and this may occur with customary land titles.
- The amendments to the ILG Act and Land Registration Act should be contained in a separate Customary Land Legislation.
- The operationalisation of the legal and policy frameworks of the VCLR process is centred in Waigani and is not readily available to the public; for efficiency VCLR legal and policy frameworks should also be operationalised at the provincial government level to serve the people in the rural areas.
- The public may not know a great deal about how the VCLR works. Customary land development and reform are areas which the core agencies involved in NLDP need to provide more information and educate the public on if VCLR is to be implemented effectively.

## 3. Are Incorporated Land Groups (ILGs) appropriate in identifying landowners in PNG?

All the respondents agreed that ILGs were appropriate in identifying landowners. There was consensus in the results that the ILG process provides tenure security, protects future hereditary rights and records the genealogy of a landowning group.

One of the disadvantages identified by some of the interviewees was the process in obtaining National Identification (NID) cards and birth certificates. The stakeholders identified that with NID process



centralised in Port Moresby, this handicapped rural communities in the districts and prolonged the process of ILG registration. It was suggested that within each provincial land's office an NID section should be established. This would be convenient for the majority of landowners who reside in the rural areas.

Perceptions from the financial institution interviewees stressed that because they rely on a working land administration system, their key concern in regard to ILGs is the 'identification' of the true and legitimate owner/s of the land.

#### **4. Is the VCLR process user friendly and easily understood?**

The stakeholder responses highlighted the following drawbacks in the implementation of VCLR:

- The process is costly and cumbersome, especially for the rural landowners who have minimal access to services.
- Land disputes are not addressed effectively because of the delay in land mediations at the local level.
- Inadequate public awareness on the requirements and the different sub-processes of the VCLR; public awareness should be ongoing so that there is wider understanding of the VCLR legal and policy frameworks.
- With the low literacy level in the rural areas, VCLR is a complicated process to understand given the various requirements (with the VCLR process) expected from the landowners.

#### **5. What are the main administrative challenges for customary land reform in PNG?**

From the perception of stakeholders, there is poor administration of State leases, poor customer service relations, and a slow turn-around timeframe for accessing services such as title records. Some of the respondents highlighted that the existing land administration system does not mitigate issues such as double titling for State leases because of poor land title recording system. The concern raised was that given the poor track record of State lease administration, DLPP may not effectively and efficiently administer customary land titles and ILGs.

Some of the respondents pointed out that duplication of titles was an issue that affected credit support to some State leases. The banks have only dealt with State land titles and SABLs. They have not had direct exposure to customary land titles under VCLR.

#### **6. Best practice for effective resolution of disputes on customary land in PNG**

The use of Alternative Dispute Resolution (ADR) and mediation specific to customary land were suggested by the respondents for effective resolution of customary land disputes. Core implementing agencies stakeholders recommended mediation in resolving customary land disputes (under the *Land Dispute Settlement Act 1975*). All respondents proposed that village courts and local level governments should be empowered so that customary land disputes are addressed at the community level where the customary land is situated, and boundary walks are conducted to establish boundaries and true landowners.

#### **7. What are the main challenges for systems and processes of land dispute settlement to enable development of customary land?**

The lack of effective land dispute resolution was one of the areas of concern raised by all the interviewees. The results suggest that for effective resolution of disputes on customary land, there is a need to establish a separate land court system that is made available in every province. This will serve as an avenue for customary land disputes to be heard and addressed locally.

Some of the respondents suggested that recurrent funding should be made available so that the land court and land magistrates are stationed throughout the country. Certain stakeholders proposed that there

needs to be a fully-fledged mediation process administered by Magisterial Services in all districts. Other respondents stressed that within the VCLR system, there is no judicial body to determine ownership between two disputing parties and this should be remedied.

**8. Even though customary leases (issued under VCLR) are administered under Land Act 1996, why are they not bankable?**

Results from the stakeholder interviews show that State leases over alienated land is the preferred form of collateral for the formal banking institutions. This is because of the lack of adequate documents to validate ownership of customary land.

Some of the interviewees highlighted that the problem with the leases created under the customary land title is the risk and liability involved around ownership issues in dealing with any subject in customary land. Concerns were raised regarding the certainty of ownership and how subjective ownership is if challenged in court and the robustness of the land court.

**9. How can customary leases issued under the VCLR process be made bankable?**

Based on the findings, to make customary leases bankable, financial institutions need to have confidence in the title and the system/process involved in delivering it. Most of the interviewees felt that the existing mechanisms to administer customary land are inadequate. Others reported that the key elements that would make customary leases bankable are:

- Recognition of the title as a bona fide form of title;
- The framework that exists around its identification and its validity;
- How it is going to be perceived in the event of disputes; and,
- Favourable conditions to be included in the lease for defaults whereby the bank can foreclose and find a new lessee on mutually agreed terms with the ILG.

Some of the interviewees highlighted that credit risk would be a prevalent issue with ILGs and suggested that the *Bank and Financial Institutions Act 2000* should be linked to the land legislations. All the interviewees suggested that there is a need for further consultation with the financial institutions. This is so that there is agreement on the terms and conditions that allow and ensure that whenever defaults present, financial institutions and the leaseholders' interests are protected.

**10. Would an independent office solely for customary land improve administration and governance of customary land in PNG?**

The views on having a separate customary land authority varied among the participants. The interviewees from the government agencies were all of the opinion that having an independent office for customary land would improve the administration and governance of customary land. The main reasoning behind a sole office was that it would have its own structure and mechanisms in place to exclusively concentrate on the VCLR process and link developers with ILGs. The interviewees from the private organisation disagreed on the idea of a separate office for customary land. The respondents highlighted that having a separate office may not be feasible, as it may face similar integrity and accountability issues experienced by DLPP.

## **A potential strategy for promoting effective access, administration and governance of customary land, and effective resolution of disputes on customary land**

A potential strategy for promoting effective access, administration and governance of customary land, and effective resolution of disputes relies on a successful land administration system. Given that the implementation of NLDP I had its shortcomings as was discussed in the 2019 Land Summit, the first action of the NLDP Committee should be to conduct a profile analysis of the existing customary land administration and governance

systems identifying any shortcomings, constraints and opportunities. This would be the equivalent of a needs analysis and assessment of thematic development areas such as land administration and governance and effective resolution of disputes on customary land.

The advantage of developing a framework for NLDP II is that it can provide a sense of strategic direction and priority based on the experiences and outcomes of NLDP I and the recommendations of the 2019 Land Summit. The framework should be such that it deals with issues and concerns arising from customary land reform. The framework can be developed as a tool to systematically deal with detail while providing a sense of coherent direction in developing and managing effective access to customary land, administration and governance of customary land, and effective resolution of disputes. As a framework, it should provide a structured approach encompassing land reform related activities at district, provincial, regional and national levels, to determine what works, what has worked and what does not work. Some of the common themes emerging from the 2019 Land Summit and the findings from this research could form the basis of priority objectives at the national level. A robust customary land administration system should possess sustainability elements including but not limited to the following:

- a. Capacity building and sufficient recurrent budget to maintain the operations of all organisations involved in NLDP;
- b. Promote good governance, transparency and accountability particularly within DLPP;
- c. Ensure security of land records from loss, destruction and fraud (a common point raised by interviewed stakeholders);
- d. Promote and develop computerised workflow systems to better manage and monitor DLPP administrative processes and officers;
- e. Ensure that survey and legal data that is recorded in the field, together with maps and titles are held in a relational database, with a GIS spatial system providing records management, so there is ease of data processing and management;
- f. Defining coordination mechanisms for ongoing stakeholder participation and public awareness on customary land reform issues.

One of the more radical suggestions in the stakeholder interviews in relation to progressing NLDP II, was to relook at the narrative on the VCLR process and promote land tenure security as the main basis of customary land reform rather than promoting the economic empowerment stance. This is because implementation of NLDP I has shown that customary land leases in the broad scheme of financial sector development is not enough to bring about more immediate access to credit, especially for customary landowners and their ILGs. Formalising local customary land tenure practices at the rural/local levels and addressing customary land tenure practices paves the way to reducing land disputes, expands access to customary land and may in turn encourage customary land registration and development of a customary land market.

# Discussion

The discussion is focused on the main research findings that were analysed as themes that emerged from the data generation of stakeholder interviews. The main themes that emerged from the stakeholder interviews were; ongoing land administration and land governance issues, particularly within government agencies responsible for land administration and governance; that the VCLR process has not proven to be an effective way of customary land reform that promotes bankable titles; and despite the implementation of a single land court within Magisterial Services to handle disputes over the ownership of customary land, land disputes have not been addressed effectively in the land reform process.

## **Ongoing land administration and land governance issues**

Generally, land administration includes the systems for accessing land, land registration, land use planning, land management and property taxation. In 2007, of the 47 NLDT recommendations directed towards the reform of land administration functions of the DLPP, most have not been implemented (Duncan, 2018). By the same token, discussion in the 2019 National Land Summit also showed that the implementation of these 47 NLDT recommendations, through the NLDP Phase I, did not produce the desired outcomes for land administration issues. Similar, perspectives were identified from the stakeholder interviews in this research, there was broad consensus on the ineffective DLPP practices responsible for land administration (for both alienated and customary land).

Reforming DLPP and the practices responsible for land administration (for alienated and customary land) would be a difficult governance challenge. The VCLR process is a legal reform that ultimately should be operationalised through the existing system of land administration. In the same vein, efforts to improve customary land governance should directly target the existing land administration system. Duncan (2018) appropriately highlighted that land administration reform is a critical task because progress with voluntary customary land registration and the settlement of land disputes depends, to a large extent, on the smooth operation of land administration processes.

The views on having a separate customary land authority to deal with customary land administration issues were varied among the participants. A general consensus was that an independent office may give rise to duplication of processes as it seems there are similarities in nature between State leases and leases derived from the customary parent title on registration. It is recommended that the current NLDP Committee will need to discuss this at length, during implementation of NLDP II. This is because it is highly likely that customary tenure will be complementing rather than being an alternative to statutory tenure.

## **VCLR process has not proven to be an effective way of customary land reform that promotes bankable titles**

The 2009 land laws were amended to provide economic empowerment to landowners and facilitate ease in accessing credit from banks with respect to the validity of the collateral (Duncan, 2018). Findings from the stakeholder interviews show that State leases over alienated land is the preferred form of collateral for the formal banking institutions in PNG. Although, the leases derived from the customary land title are indefeasible in nature, lack of adequate documents to validate ownership was identified as one of the major concerns in providing access to credit. This is because customary land lease land rights remain vested in landowning groups, which makes it hard for such land to be used as collateral to access credit from formal financial institutions. Concerns were raised regarding the certainty of ownership and how subjective ownership is if challenged in court and the robustness of the land court.

Basically, in order for the subsidiary leases created under the parent customary title to be bankable, 'existence of legal clarity about land tenure, formal record of property rights, effective contract enforcement and dispute resolution mechanisms, and efficient administrative systems for recording interests in property allow lenders to assess and price risk, reduce transaction costs in doing a loan deal, and enforce their rights in the event of loan

default' (USAid, 2012, p.6). Findings from this research highlighted that credit risk may be a prevalent issue with ILGs. The argument raised here is that, registration of customary land may do little to expand credit capability of most rural landowners who are already in the low-income earning category. The results from the literature review shows that bankability of customary leases remains difficult despite the implementation of NLDP Phase I. Similarly, the outcome from each of the regional workshops that were held prior to the 2019 National Land Summit shared the sentiment that customary leases under the VCLR process were not bankable. It is important to note that the success of land reforms is based on the bankability of the land titles (Chand et al. 2014).

### **Land disputes have not been addressed effectively in the land reform process**

Lastly, the lack of effective land dispute resolution is one of the areas of concern raised by the interviewees. Despite the establishment of a single land court, the findings from the stakeholder experiences suggest that support should be provided to the existing dispute resolution mechanisms. This is because at present, there is a lack of stakeholder confidence in the process. Palmer et.al, (2009) pointed out that land disputes are directly linked to a successful land registration program. The main challenge is the land court system in PNG. The findings from this research suggest that there is a need to progress the separate land court system throughout the country, that it is appropriately supported and is available in every province so there is an avenue for customary land disputes to be heard and addressed locally. Recurrent funding should be made available so that the land court and land magistrates are stationed throughout the country. Certain stakeholders proposed that there needs to be a fully-fledged mediation process administered by Magisterial Services in all districts.

Further, this research found that land mediation needs to be considered as a critical element in efforts to effectively resolve disputes on customary land. This is because, before any dispute goes to the land court, it should be mediated at the local level. The Land Dispute Settlement Act 1975 declares that a mediation area, once established, should have a mediator for that local area. An interesting point raised by one of the stakeholders was that in the VCLR system, there is no judicial body to determine ownership between two disputing parties and the decision is often decided by the Director for Customary Land. This may be detrimental because he/she is not a judicial officer. Without robust and effective land mediation structures in place, the VCLR process which highlights that disputes should go through mediation is pointless. This is because there are often no mediators available at the district level. This in turn protracts the registration process and as discussed previously, proves to challenge bankability of the leases. Notably, the findings from this research reaffirm the outcome from the 2019 Land Summit that the existing land dispute administration system was inefficient, dysfunctional, and protracting cases (Niugini Land and Properties, 2019).

The pressing issues discussed above puts into perspective that the implementation of NLDP Phase I has not produced the desired policy outcomes of the National Land Summit 2005 recommendations with regards to land administration: bankability of customary lease titles and land dispute resolutions. Furthermore, the outcomes from the 2019 Land Summit amplify the same and that customary land development and reform remains a work in progress with direct policy implications. VCLR is a revolutionary process that continues to evolve. This means that policies and legislative amendments that arose from the National Land Summit of 2005 may need to be reviewed to counter the ongoing issues and concerns from NLDP Phase I and 2019 Land Summit.

## Conclusion

This discussion paper shows that substantial customary land reforms may take years and even decades to implement. The critical challenges associated with non-bankability of customary land titles that emerged from this study were:

1. Ongoing land administration and land governance issues particularly within government agencies responsible for land administration and governance;
2. The VCLR process has not proven to be an effective way of customary land reform that promotes bankable titles. There is a clear lack of an efficient administrative system for recording interests in customary land; and,
3. Despite the implementation of a single land court within Magisterial Services to handle disputes over the ownership of customary land, land disputes have not been addressed effectively in the land reform process.

Fundamental reforms to land administration systems and dispute resolution systems are critical to institutionalising legal and policy reforms. Customary land reform requires continued government funding and political will to secure the behavioural change required to sustain a secure land administration system for sustainable development in PNG. Global literature shows that what is “best practice” for one country is not necessarily “best practice” for another.

In order to successfully implement NLDP II, it is imperative to adopt a broad coalition for change and sustained public engagement is fundamental for the customary land reform to succeed. Participation of all key stakeholders is needed if problems are to be addressed holistically, rather than in narrow sectoral terms. The financial institutions should be part of the NLDP II committee. This is because when strategies are developed, they can take into account the inter-linkages and potential consequences of reforms to all stakeholders. This research shows that customary land reforms require changes in the behaviour of citizens and in organisational culture. A holistic national ownership of customary land reform is essential if NLDP II is to be implemented successfully.

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