

# LAND ACCESS GUIDE



Grow PNG

## FOREWORD

Papua New Guinea (PNG) has great potential for agricultural business development because of its global positioning in the tropics. The wet and dry seasons, vast mountain ranges and tropical rainforests provides the soil the nutrients that are deposited into the valleys and plains through fast flowing rivers and streams making the land fertile for crop cultivation. The Papua New Guinea Government and development partners recognizes this potential and are now placing more emphasis on agriculture investment for economic improvement and sustainability in the country.

Despite the potential for the land to produce significant household incomes, tax revenues and investor returns from agriculture, less than 10% of the land in PNG are actively cropped. A leading cause of this underperformance of agricultural business investment on customary land is that the land is held in common by clans, who lack the resources to develop the land themselves. Landowners are therefore required to enter into an arrangement with an investor or agribusiness in order to realize the agricultural potential of their land. These deals have proven difficult to initiate and sustain and those that have materialized eventually failed. A history of failed deals has left both landowners and businesses wary of investing in agricultural development.

Grow PNG, a subsidiary of Grow Asia Partnership Ltd and an Australian-funded initiative under the PNG-Aus Partnership in partnership with the government, agribusinesses and farmers endeavors resolve some of these barriers. A Land Access Working Group has been established to encourage industry, government and civil society to work together to address the lack of agreements that are effective and workable. At its first meeting, the group agreed to three activities:

(1) Publish a Land Access Guide, (2) Propose an Alternative Dispute Resolution Process to the government, and (3) Map out the different land holdings.

Grow PNG hopes that the user guide, complimented by better land dispute mediation system and hard data on land assets in the Markham will unlock the growth of the agriculture sector in this rich area of the country.

The Land Access Guide is the first activity of the Land Access Working Group that seeks to provide advice and resources to help the customary landowners and the investor or agribusiness reach a durable agreement for agriculture investment in crops cultivation and production on customary land. It is the first such guide to be developed in Papua New Guinea for use in the agribusiness sector and is generic enough to provide guidance in unlocking potential economic empowerment in the agriculture sector elsewhere.

The Land Access Guide is intended as **a guide only** to assist agriculture stakeholders looking at brokering agriculture business ventures reach amicable arrangements and should not be used as a legal document to solicit business partnerships.

The contents in this Guide provides options for different forms of agriculture business partnerships which may not necessarily produce outcomes that may be expected by those going into business partnerships. You should make your own enquiries before making decisions concerning your interests. The contents of this guide should not replace proper legal advice. Clarifications on any sections of this guide especially from the government departments should be directed to the relevant departments.

Care is taken to ensure accuracy of the information contained in this Guide. However, Grow PNG cannot accept responsibility for the accuracy or completeness of the information or opinions contained in this Guide.

Benjamin Samson



Secretary - Department of Lands & Physical Planning.

## EXECUTIVE SUMMARY

The development of this Land Access Guide is the result of the findings by the Land Access Study that was conducted by Grow PNG in December 2019 and commissioned in January 2020. The guide seeks to provide advice and resources for reaching durable land agreement between parties for agribusiness. The guide was developed through a desk top review of relevant literature on customary land access complimented by consultations with stakeholders at the National, Provincial and Local Level within the Markham District of the Morobe province.

The guide provides a discussion on the process and procedures involved in accessing customary land for agribusiness investment. It provides for a discussion on how to go about resolving land related conflicts and issues if such arises. The guide is organized along the following key focus areas.

### Regulatory Context

Chapter 2 provides the regulatory context that focuses on legislations and institutions that governs customary land access. This includes:

1. Regulations that facilitate land registration or alienation of land;
2. Regulation that allows the establishment of entities to enter into business partnerships to create value on the land; and
3. Regulations that deals with conflicts and disputes resolution concerning land.

These legislations are necessary to consult when intending to access customary land for business development as it allows for a progressive and successful investment. These regulations form the basis of the discussions in the guide. The government agencies that are responsible for administering the regulations are further outlined in the chapter.

### Processes for Accessing Customary land for Agribusiness

Chapter 3 spells out the processes for identifying and choosing the customary land for agribusiness development. This includes a discussion on community engagement based on the customary land size requirement. The processes for accessing customary land involves desk top reviews on any anthropological literature on the area, government consultations, district level engagement. All of this should contribute to the feasibility study of the intended agribusiness venture.

Community engagement and customary land size requirement involves community consultation and awareness, social mapping and landowner identification studies and incorporating of land groups into recommended entities. Undertaking these processes properly and diligently will prevent any conflicts on the use of customary land for agribusiness establishment based on an appropriate model.

### Internal Clan Negotiation and Communication

Before customary landowner's support and participate in the investment, the landowning clans or groups first of all must reach a common understanding and agreement among themselves about the agribusiness investment on their land. Chapter 4 presents the strategies and steps that can be utilized for purposes of internal clan negotiation and communication. The community can be more supportive and effectively participate in the investment if they fully understand the investment, the type of agribusiness development, how development will affect their environment, life style and culture, the benefits that they will get as the result of the project development and how they can participate meaningfully in the development.

### Organizing Customary Groups for Land Access

The internal clan negotiation and communication if successfully undertaken will allow for agreement to be made for accessing customary land for investment. Once common understanding and agreement is reached among

the groups, then the processes of formally organizing the groups into corporate entities can take place.

The steps that involve in organizing customary groups for land access is discussed in Chapter 5 and comes under two main categories which are:

- (a) steps that involve land mobilization
- (b) steps that involve creating an entity for business partnership.

Category one involves the incorporation of land groups or establishment of incorporated land groups (ILG) and customary land registration, while the second category involves establishment and registration of cooperatives and business entities. The process and procedures involved are outlined in the chapter and are administered by the respective legislations as discussed in Chapter 2. The organizing of customary landowners must comply with these steps, process and procedures so that they can effectively release their land for investment and fully participate in the development on their land. The organizing of the customary landowners may depend on their understanding and agreement on how they would like to participate in the project.

### **Opportunity Assessment for Land Use for Agribusiness development**

Customary landowners as well as the investor, after being organized for business investment, need to assess the (business) opportunities for investing on the customary land. Chapter 6 of the guide provides the process and procedures on how to go about with opportunity assessment for the use of land for agribusiness development. The chapter defines what the opportunity assessment is, the associate benefits and how opportunity assessment itself as a process can be applied before venturing into agribusiness investment which includes participatory opportunity assessment. The necessary approaches and steps for undertaking opportunity assessment are outlined in the chapter.

### **Investor Negotiation for Agribusiness Investment**

Opportunity assessment is necessary to be undertaken prior to the investment as it helps determines whether the investment will be successful or not. If the outcome of the opportunity demonstrates that the investment will be successful, then the next thing is the need for negotiation between the investor and the customary landowners. There has to be negotiation between the parties to come up with an agreement for accessing and using land for agriculture business investment. Chapter 7 present the strategies that are involved in investor negotiation for agriculture business investment. The strategies cover the community's rights and reviewing relevant documents for the parties for example, the ILG certificates for the landowners, and IPA registration for the company or investor, etc., before reaching a decision and agreement.

### **Agreement structure**

The decision reached from the investor negotiation may determine the type of agreement structure that can be incorporated into the agriculture investment on customary land. The types of farming investment (either large scale farming or small-scale farming) may influence the selection of the agreement structure. Chapter 8 outlined the different forms of agreement structure that the customary landowners and the investor can adopt for agriculture business development on customary land. The agreement structure includes, lease agreement, incorporated land groups (ILG) clan land use agreement (CLUA), memorandum of understanding (MOU) and memorandum of agreement (MOA). The chapter presents existing models of land lease agreement along the Markham Valley.

### **Farming model**

The farming model to be adopted for the agribusiness investment may be influenced by the agreement structure that has been adopted for investment. The farming models are often part of the feasibility study stages of any agribusiness investments. Different forms of farming models are discussed in Chapter 9 as well as the existing

farming model adopted by agribusiness investment along Markham Valley. The farming models include, smallholder farming, co-operative society, out-grower, contracted out-grower and lead farmers. A case study for farming model with Trukai Industries is also presented in the chapter.

### **Revenue Sharing Approaches**

The revenue sharing approaches between the local community or customary landowners and local farmers may depend on the types of agreement structure and farming models that are incorporated in the investment. Chapter 10 provides a discussion on how revenue can be shared or distributed among the landowners or local farmers who have participated in the investment based on the agreement structure and the farming model.

### **Conflict resolution**

Chapter 11 presents the process and procedures on how to go about resolving disputes and conflicts that may arise in the process of agribusiness investment or development on customary land. The processes and procedures involved are governed by the respective legislations outlined in Chapter 2 and administered by the Department of Justice and Attorney General.

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## CHAPTER 1: INTRODUCTION

The work on developing the Land access guide is the result of an outcome of findings from the Land Access study commissioned by GROW PNG in January 2020. This guide intends to provide advice and resources that may assist parties reach durable land agreement decisions. The work on developing the guide commenced with a literature review on land access in Papua New Guinea, especially in agriculture and the non-renewable resources sector. This was complimented by a stakeholder consultation undertaken in Port Moresby and Lae through face-to-face meetings and phone interviews due to COVID-19 situation. The stakeholders consulted as part of data gathering were from the Governance sector (Government agencies), Farmer Groups, Agri-business sector and Development partners. A review of existing legislations is given prominence in this guide to ensure that the Land access guide is based on existing governance mechanisms in Papua New Guinea.

Chapter 2 of the guide presents the government departments responsible for the various legislations. This includes the Department of Lands and Physical planning which is responsible for the administration of the Land Act 1996; Land (ownership of freeholds) Act 1976; Land Tenure Conversion Act 1963; Incorporated Land Groups Act 1974; Land Group Incorporation (Amendment) Act 2009 and; Voluntary Customary Land Registration (Amendment) Act 2009. The Department of Commerce and Industry through the office of the registrar of Cooperative society is responsible for the Cooperative Society Act 1982. The legislations administered by the Investment Promotion Authority in terms of formally registering entities such as customary landowners include Business names Act 2014, Companies Act 1997, Companies Act (Amendment) Act 2014, Business Groups Incorporation Act 1974, Associations Incorporation Act 1966 and Personal Property Securities Act 2011. The Department of Justice and Attorney General also have role in land access through the Land Titles Commission Act 1962 and the Village Court Act 1974.

The use of customary land continues to be a challenge for the agri-business sector. Chapter 3 describes the processes and the steps to be taken if an agri-business investor is interested in acquiring a large area of a customary land through a lease arrangement for investment. The steps and processes have to be undertaken by the agri-business investor in areas of background research through desktop reviews focusing specifically on the area of interest. This would assist the agri-business investor better prepare for its engagement with National, Provincial and District level of Government and prepare its feasibility studies and development plan. The preparation of feasibility study is likely to include field visits. Community engagement and consultation steps discussed in the Chapter are important as part of the processes of Free Prior Informed Consent (FPIC) principles. The completion of the feasibility study and development planning is the final step of the field-based feasibility study which should outline the customary land size requirement and the model of agri-business. The process of community consultation would continue after the completion of the feasibility study. During this phase the processes on identifications of customary landowners discussed in Chapter 3 would begin. This includes the process of social mapping and landowner identification studies and the completion of Land Investigation studies. The conclusion of this step proposes for recommendation on how best to formally mobilize and organize the customary landowners through a corporate entity. The options on how to go about this is discussed in Chapter 5.

A clan group from within the customary landowners, will have to have its own internal clan negotiations and communications on how best to put their customary land to productive use. This can be done either by working as small holders or working with an agri-business investor. Chapter 4 provides strategies; how internal clan negotiations and communications can take place to reach an outcome that is beneficial for the clan. Investment by agri- business on customary land can be a catalyst for change and economic empowerment. The step-by-step processes and strategies are described in Chapter 4. One of the outcomes of the internal clan negotiations and communications is how the clan will have to be formally incorporated based on a number of options to go into business to work with a possible investor or as small holders.

Chapter 5 outlines the step-by-step processes on how to formally mobilize and organize customary landowners through corporate entities. It discusses how to register an Incorporated Land Groups using the 7-step process. This includes preparation, adoption of the constitution, submission of application, gazette of notice and media publication, verification from District Administrator or the Chief Executive officer, gazettal of notice and grant of ILG certificate and step 7, the issuance of the certificate of incorporation. Customary landowners can register their customary land after having registered their Incorporated Land Group. This is done through the process of voluntary customary land registration. This is undertaken through a seven-step process that is outlined in Chapter 5. Registering as a cooperative society enables customary land owners to come together as a group, without any issue associated with landownership. The group get to register as a cooperative society in the agriculture sector to attract a better price for their produce. For customary landowners to go into business and open bank accounts, bank's requirements are that such groups have to be registered with the Investment Promotion Authority and the Internal Revenue Commission. Chapter 5 outlines the steps and processes on how to register a company, business name, business group and association. The forms are attached as appendix A of volume 2 of the Land access guide.

Chapter 6 discusses opportunity assessment for Land access and how it is applied for the purposes of land access. Opportunity assessment can be done as part of the feasibility study as per Chapter 3 and 9. It is indicated to be an early-stage concept screening to revenue forecasting. The application and benefits of opportunity assessment include improvement to the relevance of research and technology delivery, enhancement of livelihood for stakeholders. The steps on how to conduct opportunity assessment as outlined in the chapter include site selection, collection of secondary data, stakeholder analysis, problem analysis and prioritization, developing solutions/ options with farmers, matching solutions with farmers needs and circumstances, and development of action plan.

Chapter 7 of the guide focuses on Investor negotiation for agri-business investment. The chapter highlights some broad strategies on how to go about negotiations. Free, Prior informed consent that evolves out of community engagement and consultation is important for negotiation purposes. The community needs legal, technical and financial information on the project prior to agreeing to negotiate with the agri-business investor. Negotiations with agri-business investors often utilize independent facilitators to guide the process to achieve a mutually beneficial outcome. The community should be in the process of compromising after assessing that the project is beneficial to them. Understanding the project and advance preparation for negotiations, even demanding for a copy of the draft agreement before negotiation would place the customary land group at a better advantage.

Chapter 8 outlines some possible agreement structures that may be negotiated between the parties based on aspects of land access that the parties are concerned with. The agreement structures include land lease, incorporated land groups (ILG), clan land use agreement, memorandum of understanding, memorandum of agreement, contracts and out grower models. Chapter 8 also provides a discussion on the present land access models that are operating in the Markham Valley road corridor. The present models are in alignment with the existing legislations. Agri- businesses such as New Britain Palm Oil, Ramu Agri Industries, Markham Plantations, SP Brewery and Trukai Farm are such that work on state leases.

Chapter 9 presents a discussion on the steps and processes on how small holder farmers can be mobilized to work with large agri-business estates. This is an option in which the customary land owners work on their own customary land, but mobilized as a group through either an association or cooperative society. The agri-business would provide technical support to the small holder farmers through the association or the cooperative society. One such model is Trukai Industries working with farmers to develop rice farms on customary land. Although, is operating well but can be improved. The need to improve the process and the systems of community

engagement is discussed in the chapter. Case studies on existing farming models working with agribusiness are also discussed.

The Customary landowners within the Markham Valley area have used Cooperative societies for small holder cocoa and rice farming. Incorporated Land Group is used for the Morobe Provincial government oil palm project and the PNG Biomass project, land development for agri-business, rice project with Trukai. Contracted out grower model is used by Mainland Holdings for Poultry. PNG Biomass project used the Clan land use agreement for the tree nursery project. NKW Fresh and SP Brewery uses the Lead Farmers model to work with farmers. The existing models can be strengthened through training and capacity building and effectively facilitating their links to the main agri-business operators in Lae.

Every business wants to ensure that the investment is able to generate revenue and that revenue is shared between the parties that originally invested in the project based on initial revenue sharing agreement. Chapter 10 of the guide discusses revenue sharing, including some structure and approaches on how such can be done. Customary landowners often are not well informed on some of the approaches on revenue sharing and what possibilities exist. There is limited knowledge and information that are disseminated. It is important for customary landowners to understand that developing the land and converting that to an economic asset requires investment input such as finance. Once the land is developed and working the investor wants a return on the investment, after paying off the expenses. This is the profit that gets shared between the parties. Other creative means of revenue sharing include crop share lease and fixed cash lease on the land.

Chapter 11 focuses on conflict resolution based on the traditional systems and the contemporary systems including the village court. The Village court system was formally established as a court system in 1974. It is anticipated to use traditional means of dispute resolution. Dealing with land dispute is one of the primary functions of the village court firstly through mediation followed by the Land Dispute settlement process involving a district court magistrate. Three stages of dealing with settlement of customary land dispute are deliberated in the chapter as well as the Land mediation process. The Court system in Papua New Guinea has a role in conflict resolution through the District, National, and Supreme courts. Each of the courts have their own level of jurisdiction especially when dealing with commercial disputes. Alternative Dispute resolution processes through arbitration, mediation and negotiations are some of the means of dealing with commercial disputes that has been advocated by the National and Supreme courts in Papua New Guinea.

## CHAPTER 2: REGULATORY CONTEXT

This chapter outlines the necessary legislations or laws of the Independent State of Papua New Guinea that deals with accessing land for development and the sustainability of the investments on the land particularly the agribusiness investment. The chapter provides a summary of:

1. Regulations that facilitate land registration or mobilization of customary land
2. Regulation that allows the establishment of entities to enter into business partnerships to create value on the land; and
3. Regulations that deals with conflicts and disputes concerning land.

Regulations that facilitate registration and mobilization of land are administered by the Department of Lands and Physical Planning. These laws provide the processes and requirements concerning land tenure, land lease, incorporation of land groups (ILG) and voluntary customary land registration. Legislation that deals with the establishment of business entities are administered by the Department of Trade and Commerce and involve agencies such as Investment Promotion Authority (IPA). These are legislations that deals with the establishment and operation of business groups, organization and cooperatives. The third category of legislation is more on conflicts and disputes relating to land and fall under the Ministry of Justice and Attorney General as well as Lands and Physical Planning Ministry, and the Courts system of Papua New Guinea.

These three categories of regulations are outlined in the Table 1 below. The regulations concerning registration and alienation of land serve to provide the guideline on how to access land (either customary or state land) for development which is the first phase of getting into agribusiness development. Once the land is being secured, the investor or customary landowners will need to establish business entities that enable partnership between the investor and the landowner that can partner to develop the land and add value to the land, which is when they need to consult the legislations that deals with the establishment of business entities. If an issue or conflict arises during the process of accessing land, concerning boundaries and ownership and/or disputes concerning benefit sharing among landowners, the regulations dealing with dispute resolutions are consulted for solutions.

Thus, for a successful investment into agribusiness development, it is necessary that the investor (developer) and customary landowners must at least be knowledgeable and understand the legislation under these three categories. It is important that when venturing into agribusiness development, legal processes and procedures are followed for the benefits of the investment and the parties involved.

*Table 1: Regulations that deals with Accessing Customary land for Agribusiness Development*

Name of Legislations (Law)	Functions/Purpose
<b>Category 1: Regulations concerning Land Registration and / or Alienation of Land. (Administered by the Department of Lands and Physical Planning.)</b>	
Land Act 1996	The Act deals with all the matters relating to land including the purpose of giving effect to the national interest in public order and public welfare, and for public purpose. It administers both alienated and customary land as well as the different type of land leases, process for acquisition of customary land and covers the following areas that are related to agri-business establishment: <ul style="list-style-type: none"><li>• Administers agricultural leases under Section 87 that relates to;</li><li>• Agricultural purposes – for purposes of dairy farming, horticulture, and mixed farming;</li></ul>

	<ul style="list-style-type: none"> <li>• Business groups incorporated under the Business groups incorporation Act (Chapter 144) which is administered by the Investment Promotion Authority (IPA)</li> </ul>
Land (Ownership of Freehold) Act 1976	The Act defines the forms of ownership that are regarded as freeholds, defines the corporations that are regarded as citizens of the land and facilitate the dealings in the land involving freehold ownerships and citizens. The processes of obtaining Free hold title to land is managed through the Lands Title commission under section 15 of the Land Title Commission Act (962).
Land (Tenure Conversion) Act 1963	<p>Relates to the Conversion of the Tenure of Customary Land into Individualized Tenure, and for other purposes.</p> <p>The Act enables the customary land to be granted a title that can be used as security in terms of obtaining a bank loan or mortgages that are essential for investment and economic development. In both the Freehold and Land tenure conversion, the Department of Land's is only responsible for the granting of the Title. The Act is administered by the Department of Justice and Attorney General.</p>
Land Groups Incorporation Act 1974	<p>The Act:</p> <p>(a) recognize the corporate nature of customary groups; and</p> <p>(b) allow them to hold, manage and deal with land in their customary names, and for related purposes.</p> <p>It requires ILGs to be the corporate vehicles through which indigenous Papua New Guineans can organize and engage themselves to work their land – either customary land or state lease, if they acquired one.</p>
Land Registration (Amendment) Act 2009	<p>Being an Act to amend the Land Registration Act (Chapter 191) to apply and give effect to the National Goals and Directive Principles of the Constitution as they relate and apply to ownership of lands held under customary tenure and dealings in those lands, and in particular to:</p> <p>(a) allow development to take place primarily through the use of Incorporated Land Groups; and</p> <p>(b) encourage traditional villages and communities to remain as viable units of Papua New Guinea society, and for active steps to be taken to improve their culture, social economic and ethical quality; and</p> <p>(c) promote and facilitate the registration of land held under customary law.</p>
Land Groups Incorporation (Amendment) Act 2009	The Act empower customary landowners to use their land for economic development in a fair, equitable and convenient manner under a legal system that is designed to ensure that they continue to have control of their land with the ILG as their collective corporate vehicle. It guides the ILG establishment/registration and operation of ILG.
Land Registration (Customary Land) (Amendment) Act 2009	The Acts also empower customary landowners to voluntary use their land for economic development in a fair, equitable and convenient manner under a legal system that is designed to ensure that they continue to have control of their land with the ILG as their collective corporate vehicle. It guides the processes for voluntary registering a parcel of customary land under ILG for development.
<b>Category 2: Regulations on Establishment of Entities and Business Partnerships</b>	
Co-operative Society Act 1982	Provides for the establishment of Co-operative Societies and for related purposes. Administered by the Department of Commerce and Industry
Investment Promotion Act 1992	Provides for the promotion of investment in the interests of national, social and economic development, and for the establishment of the Investment Promotion Authority (IPA); to define its powers and functions and to repeal certain Acts; and for related purposes.
Companies Act 1997	Being an Act amend the Companies Act 1997 (Chapter 146) to reform the laws relating to companies as mentioned in Companies (Amendment) Act 2014. This act gives mandate to any person may, either alone or together with another



	person, applying for registration of a company or certified in accordance with the Regulations under this Act. Administered by IPA.
Business Groups Incorporation Act 1974	The Act provides for: (a) the incorporation of customary groups for business and other economic purposes; and (b) the control and regulation of the conduct of business by such groups, and for related purposes. Administered by IPA.
Business Names Act 2014	Relating to business names and for related purposes. Guides the process for registering and amending business names. It is a legal requirement under this Act every business entity must have a business name. A business name is the trading name the enable customers recognise a business. Administered by IPA.
Personal Property Securities Act 2011	The Act make provisions for the creation, attachment, perfection, prioritization and enforcement of security interests in certain property, and to provide for related transactions and other interests necessary to give notice of the status of property to buyers and prospective creditors. The Act has its greatest impact on financiers, the changes also impact in some way on virtually all commercial enterprises, and individuals. It governs security interest over personal property, including priorities between competing security interest. Administered by IPA
Associations Incorporation Act 1966	The Act provides for the efficient registration and incorporation of associations in Papua New Guinea and also provide efficient registration and monitoring of overseas associations or similar non-profit entities so that they may operate in Papua New Guinea under a proper regulatory regime. It provides increased transparency, orderly liquidation of insolvent associations for incorporated associations. Administered by IPA.
<b>Category 3: Regulations concerning Disputes and Resolutions</b>	
Land Titles Commission Act 1962	The Act determines and protect the rights to land, particularly to native land and provides the authorizing and registration of the customary land as part of the process of tenure conversion. Administered by the Department of Justice and Attorney General.
Village Courts Regulation 1974	Deemed to have been made under the <i>Village Courts Act</i> 1989. Authorized by Section 172 of the <i>Constitution</i> to provide for a system of Village Courts and Village Peace Officers, their jurisdiction, powers, duties, practice and procedure, and for other purposes. Requires a court system that employs the customary methods of mediation and conflict resolution which are basic concepts of restorative justice. Administered by the Department of Justice and Attorney General.
Land Disputes Settlement Act 1975	Provides a just, efficient and effective machinery for the settlement of disputes in relation to interests in customary land by: (a) encouraging self-reliance through the involvement of the people in the settlement of their own disputes; and (b) the use of the principles underlying traditional dispute settlement processes. Administered by the Department of Justice and Attorney General.

## 2.1 Summary

This chapter has discussed the various legislation that deals with land access and issues of mobilization of customary landowners through corporate entities that can work effectively on their own customary land. The processes on how to go about doing that is defined further in chapter 7. The state agencies of the Department of Lands and physical planning, Department of Commerce and Industry, Department of Justice and Attorney



General and the Investment Promotion Authority are all entrusted to implement the legislation concerned with land access, and mobilizing and organizing of customary landowners through corporate entities.

## CHAPTER 3: ACCESSING CUSTOMARY LAND FOR AGRIBUSINESS: PROCESSES

This chapter focuses on the processes and steps in accessing customary land for agribusiness development of a small- or large-scale farming. It is important that the legal and necessary processes and procedures are followed in the engagement of customary land for agribusiness development. This helps minimize the social risks including those relating to land ownership and benefits sharing that impact on investment. The small-scale farming involves dealing with few or individual farmers or landowners while the large-scale farming involves clans and ILGs. The following processes focus more on large scale agribusiness investment; however, it can also be applied in a small-scale farming.

### 3.1 Choosing Customary Land for Large-Scale Agribusiness

The steps and processes described in this chapter are more applicable if the agri-business investor requires a large land area for development.

#### 3.1.1 Step 1: Background Research - desk top review

A background research is necessary and should occur prior to the investment process for agribusiness development and other investment opportunities. The process helps acquire knowledge and information about the interest area which includes the geographical, social, cultural and political features and systems of the area. It also draws broad knowledge on the possible investment opportunities and challenges on the area that concern agribusiness development. The focus area of this can include the following:

##### a) Land Area of interest and previous studies done in the area

This is to ensure that the investor has some knowledge of the area that it intends to invest in. As part of the process of opening up the Markham Valley road corridor for investment, accompanying this guide is the ethnographic context of the Markham Valley. This is to ensure that the investor understands that ethnography of the people that reside within the Markham valley. Volume 3 of this guide discusses the land tenure, land rights, social organization, inheritance, marriage and family, leadership, migration and settlement history, colonial contact history and subsistence economy. These are key aspects that investor's willing to invest in the Markham Valley need to understand about the socio-cultural context of the area. This is because customary land is linked to these aspects, understanding the key principles is important for any dealings on customary land.

##### b) Previous agri-business established within the area of interest

Review of previous agri-business established on customary land or surrounding areas, especially technical reports and published materials is important to find out what has worked and what has not worked in the area. This should include reasons for the collapse of the agri-business, local people's attitude towards agri-business and farming. This will assist in terms of agri-business feasibility study and development planning. A review of previous agri-business establishment and operation would assist guide the agri-business development model. This work can be linked to opportunity assessment which is discussed in Chapter 6.

#### 3.1.2 Step 2: Government stakeholder engagement (National and Provincial Level)

It is important to engage government agencies in the negotiation and establishment of agribusiness development on customary land. Customary landowners may have different perspectives about the investor and the slow or delayed government decision making process may prolong the investment process. But when parties come together for negotiation and investment, it allows for clearer understanding and quick decision to engage in agribusiness development.

The government agencies play a key role in governing any agricultural investment in the PNG. Some of these key agencies to be consulted following Step 1 include National Department of Agriculture and Livestock, Department of Lands and Physical planning, Department of Commerce and Industry, Investment Promotion Authority and the Conservation and Environmental Protection Authority. Stakeholders at the Provincial level include the Provincial Administration through the Office of the Provincial Administrator (Morobe). The Provincial administrator of the host province (Morobe) can then invite his line divisional heads for any engagement meetings at the provincial level. The Provincial Administrator may at the first inception meeting start delegating tasks to specific officers to work with the potential Agri-business investor especially in terms of the next steps of the process that includes District and community consultations. It is also the prerogative of the Provincial Administrator to invite the District Administrator (Chief Executive Officer) of the district (s) in which that agri-business investment is being planned for (Markham and Huon). The potential investor in the agri-business sector may have questions to ask at this engagement meetings based on what has been collated as per step 1, and further indicate their project investment plans.

### 3.1.3 Step 3: District level engagement (Markham and Huon District)

It is vital to engage local government officers in the negotiation process for agribusiness development on customary land. If the District Administrator's (CEO's) of the host districts were not present during the first inception and an engagement meeting with the Provincial Administrator, then it is worthwhile to engage with the host districts in the agribusiness investment project at the next level of engagement. The proposed Agri-business investor might want to run through the proposed agribusiness investment that they plan to undertake within the district, and wishes to solicit further information from the District administrator and his line of officers. The engagement meeting at the district level provides a good platform for sharing of information and coming up with a way forward before going down to the community. One of the key documents that the District Administration can share with the agribusiness investor is the District 5-year development plan, which should contain information on the agriculture sector for the district. The agri-business investor would be a partner to assist the district implement that component of the plan.

### 3.1.4 Step 4: Investor's feasibility study and development plan

After undertaking the previous steps, the investor should now be able to conduct a feasibility study and come up with its development plan. A feasibility study involves assessing and analyzing all the aspects of the proposed agribusiness investment. It helps identify possible opportunities and challenges that may have impact on the investment. Opportunity assessment as discussed in chapter 6 can be integrated as part of the feasibility study.

The feasibility study and the development plan are key documents that will determine the customary land requirement for such an Agribusiness establishment. The feasibility study can even recommend for a model of agri-business establishment that should integrate customary landowners. The agri-business investor might want to do field visits during the phase of the feasibility study to come up with the development plan. If field visits are to be undertaken as part of the feasibility study, then the following community engagement strategy will have to be in place.

#### 3.1.4.1 Community engagement strategy- feasibility study

Communities especially villages within the area of interest need to be informed and consulted as part of the feasibility stage of the project. This is part of the free prior informed consent of the local customary groups that

has to be obtained as part of the project. This provides an opportunity for the team from the agri-business investor to directly interact with the communities and collect information including consent for a bio-physical investigation such as assessment of the bio-physical environment. This process has to be managed and guided and the strategy for this should be as follows:

**a) Make contact with the ward councilor for the area of interest**

The ward councilor is the official government representative at the community level, and shall be contacted should feasibility study visits be undertaken in the ward area (villages) that he represents. The establishment of this contact shall be through the District administration and the local level government officers.

**b) Convening of community meeting by the ward councilor and objective**

Once the ward and ward councilor of the area of interest is established and contacted, he or she can then be asked to convene a number of community level meetings perhaps at selected villages for the team from the agri-business to meet with the community/ villages. The main objective of the community meeting shall be to introduce the agri-business entity that wishes to work in their area, and the present activity of undertaking field-based feasibility study, including the objective and anticipated outcome from the feasibility study.

**c) Community meeting process and communicating of key information**

The community meeting should be convened by the ward councilor at selected location (s) of his ward areas depending on the land area of interest that the agri-business investor is seeking. The key message from the agri-business representative/ feasibility study team is to be as follows:

- Feasibility study for the agri-business venture is being undertaken to investigate how to develop the agriculture project.
- The feasibility study will entail undertaking fieldwork in your communities / villages and wishes to obtain consent from you before proceeding with the work.
- The aim of the feasibility study is to find out and assess whether such a project is viable.
- One of the aims of the feasibility study is to find out options on how customary landowners can participate or involved in the project using available PNG Legislative mechanisms and agri-business models.

It is important that in this community meetings clear concise messages be communicated to the villagers. For the agri-business it is important to have a communication strategy in place, using various communication tools and mediums. It is ideal to have a multi-disciplinary team as part of the feasibility study. Having an anthropologist on the team will assist in terms of working through the customs and cultures of the local people. He/ her should be fluent in Tok Pisin so he/ she can communicate effectively in such meetings.

### **3.1.5 Step 5: Completion of the feasibility and development planning**

The feasibility study should have been completed and the stage of development planning would commence. The feasibility study would have identified the following:

- a) Model of agri-business establishment (whether be large plantation and small holders organized around cooperative society, ILG, Business groups or contract farming, lead farmers)
- b) Size of the land area required including possible map of the land area that is required perhaps showing the location of the villages within those land areas
- c) How the process of social mapping and landowner identification studies should process to identify customary landowners of the area of interest?

- d) Models of integrating customary landowners into the agri-business operations of the agri-business investor.

The above four points will then lead to the next stage of the process that will have to be worked on as part of community engagement purpose for development planning for agri-business development and investment.

### 3.2 Community engagement for purposes of development planning

The community engagement process that is covered in this section is part of the project development that should build up on previous community engagement undertaken during the phase of feasibility study. The points that will be followed through this phase are drawn from step 5 are as follows:

- a) Model of agri-business establishment (whether be large plantation and small holders organized around cooperative society, ILG, Business groups or contract farming, lead farmers)
- b) Size of the land area required including possible map of the land area that is required perhaps showing the location of the villages within those land areas.
- c) Planning on the process of social mapping and landowner identification studies for the area of interest.

The identification of villages within the agri-business investor's area of interest is important point of reference as part of the starting phase of customary land access including coming up agri-business model that integrates small holders.

### 3.3 Customary land size requirement

The size of the customary land that is required for investment may depends on the farming scale and the development plan of the agribusiness. This development plan needs to be clearly communicated to and understood by the customary landowners through meetings and negotiations.

The negotiation in the use of customary land for non-renewable and renewable resource is a major challenge especially if the process of identification of customary landowners is not done properly. In the case of the agri-business venture, the process of community engagement and village level meetings would be the beginning of the land negotiation process. In the event that the agri-business investor wants large area of land for its investment then the following process will have to be undertaken:

#### 3.3.1 Step 1: Community consultation and awareness about the project

It is important that community consultation and awareness is presented to the community based on the following topics.

- a) Findings from the feasibility studies especially in relation to the customary land requirements and agri-business development model.
- b) Communicate to the villagers the next steps of the process that should include identification of customary landowners if large land areas will be leased by the agri-business company.
- c) Communicate to the villagers how the landowner identification studies that includes processes of social mapping and landowner identification (SMLI) studies and then based on the SMLI studies compiling of the Land investigation reports (LIR) and appropriate LIR forms.

- d) Communicate to the villagers that after the completion of the SMLI studies (including LIR), the villagers will have to be organized through a corporate entity, there are a number of options as indicated in Chapter 2, and later in Chapter 5. The agri-business investor might agree on a corporate model to use, through which the customary landowners that own the land area be organized. The options might include ILGs, Co-operative societies, associations, business groups and companies.

### 3.3.2 Step 2: Undertaking of social mapping and landowner identification studies

Social mapping is seen as an essential preliminary exercise in the process of negotiating the use of customary land for any form of development. Social mapping should therefore be seen as a pre-condition for detailed land investigations, social impact assessments, or exercises in landowner awareness and participation within the project planning process. The general purpose of social mapping study is to determine the relationship between settlement patterns, land use, land tenure, and social organization within a particular locality. Social mapping is a methodology for understanding the local custom and practice of landowning communities without begging questions about customary land tenure.

Social mapping is defined as the systematic collection of information on customary social groups and the tracts of land with which they are associated with. In the contemporary setting of renewable (Forestry, agri-business) non-renewable sector is involved, this is broadened to include aspects of institutional governance and social development programs within the area of interest by the agri-business investor. Social mapping therefore should entail an understanding of the cultural and historical factors that have shaped the relationship between the people and the environment. This should therefore incorporate a description of the group in relation, the principles which underpin the social organization of a given population, and the manner in which traditional ways of life will impinged upon, or in turn be affected by such investments. Social mapping could therefore be seen as a process of land investigation and landowner identification. This should not be divorced from a more general understanding of the social organization of the landowners. The Land Investigation report forms are attached as appendix 6 in Volume 2 of this guide.

### 3.3.3 Step 3: From Social mapping and landowner identification including Land investigation reports to corporatizing the groups

The Social mapping and Landowner identification studies including Land investigation reports should develop clan to land maps, and recommend options on how to mobilize the customary landowners under existing state mechanism that are covered in the section on legislations and policy. This includes Incorporated Land Groups, Business Groups, Companies and Associations. The Social mapping and landowner identification studies should recommend a best possible model on how to form these groupings as corporate entities.

### 3.3.4 Step 4: Incorporating the groups into recommended entities

The outcome of social mapping and landowner identification studies should highlight the size of land owned by the clans or groups. These clans or land groups can negotiate and come up with an agreement to incorporate the groups into recommended entities for investment on their customary land. This is achievable through internal clan negotiations and communications.

The next chapter of the guide spells out the strategies and steps that is necessary for internal clan negotiation and communication towards corporatizing the groups through various legal mechanisms. Chapter 2 has highlighted the legislative tools that are in place for the purposes of corporatizing the customary groups. Chapter 5 spells

out the processes that are involved in the corporatizing of the groups. The forms that are required to be filled in by the customary groups are attached as appendix to this guide.

The incorporating of the customary land groups as entities to part take in the investment could only be flexible and successful if internal clan negotiation and communication is properly undertaken among the communities of the affected landowners.

### 3.4 Summary

This chapter has been able to describe the steps and processes that the agri-business investor will have to go through as the initial process for accessing customary land for agribusiness development. The steps and process are applicable for large scale farming, however, can also be used for small scale farming where and when necessary. Community engagement is one of the key steps in the process of which the free prior informed consent of the customary landowners can be obtained and it is necessary for both large- and small-scale farming. The discussions in this chapter does relate to the processes that will have to be undertaken as part of the steps towards establishing customary landowners as corporate entities as described in Chapter 5, within the legislative context as discussed in Chapter 2.

## CHAPTER 4: INTERNAL CLAN NEGOTIATIONS AND COMMUNICATION

An internal clan negotiation needs to be undertaken to reach a common understanding among the customary landowners. This allows cooperation and participation of all members of the land groups or clans, after a land area is being identified and chosen for agribusiness investment through the processes prescribed in the previous chapter.

This chapter discusses the steps towards internal clan negotiation and communication for the purposes of agri-business investments on the clan land. Internal clan negotiation is defined as internal communications and discussions within the clan to reach an outcome that is of benefit to the clan. Internal clan communication and negotiation is a matter that each clan should take up either as part of the discussions in Chapter 5. This would therefore entail two main strategies that needed to be considered as part of the internal clan negotiation. The two strategies are as follows:

1. Clan Communication and Understanding of Investment
2. Clan Members Participation and Communication

### 4.1 Strategy 1: Clan Communication and Understanding of Investment

Investment in an agri-business venture on the clan land means that the clan has to be proactively involved in the venture. An agri-business company intends to ensure a return on its investment after having to lease land from the customary landowners and providing equipment in the form of farm machinery, warehousing and downstream processing facility. Customary land not put to productive use would not be of much value. Therefore, the investment in the customary land is the only option to un-lock potential in customary land.

The clan has to sit together and discuss what the investment would mean to them and how they would benefit. The clan has to understand that the agri-business investor that will be putting financial resources to work with the customary landowners has to benefit from the investment. All the clan elders from a particular clan or clans have to be involved in discussing what the investment in agri-business might mean for the clans. Some of the common questions that can be asked internally by the clan groups are as follows:

- a) Define the type of natural resources that is located on their land that is beginning to attract investment, what exist within the area that is attractive for agri-business investment e.g. road access, port facility, availability of electricity within the Markham Valley, travel time to markets and manufacturing sector facilities.
- b) What are the general land forms, including topography, soil types, rainfall and climate (The present market valley is very flat that is conducive for mechanized farming using tractor and implements. Some of these aspects cannot be understood by customary landowners and a role perhaps for a facilitator to explain, or if the clan does have educated elites, they can explain the concepts to the members of the clan.
- c) Which areas of the clan land that can be freed up for such interventions, leaving other areas of the clan land for gardening, hunting and their livelihood activities?
- d) What opportunities can arise out of such direct investment by agri-business companies? The clan has to agree on how they will be mobilized using existing PNG legislations (as discussed in Chapter 2 and processes of registration discussed in Chapter 5).



## 4.2 Strategy 2: Clan Members Participation and Communication

The clan members will have to decide on how they will participate in the venture if they free up their portion of customary land. This will have to be an internal discussion that the clan members will have to have. It is important to ensure that the decision they make over their land area has to be formally documented and signed by the family heads of the clan.

It is important they have to decide on their means of participation and what type of entity they will be using to participate in the project. The guide in Chapter 5 provides some options on what customary groups, can do or follow to properly incorporate their groups as registered entities to be able to negotiate with potential agribusiness investors. The clan has to make a decision on it.

For example, the customary landowners under a lease agreement can lease their land to the agribusiness investor and receive royalties without participating, or can participate in the investment as cooperatives through partnership agreement and benefits from the investment. Refer to Chapter 8 for types of agreements.

For customary landowners to participate in the agribusiness, it shall begin with assessing and analyzing their abilities for participating in the investment. This involves the identification of local farmers and analyzing the types of crops grown in the area and the amount of time, effort and labor spend on farming, etc.

Thus, it is necessary that the following steps are undertaken to guide the customary landowners on their decisions and planning on how they would like to participate in agribusiness investment.

### 4.2.1 Step 1: Visioning of the clan's desired future

The clan members will have to have a vision for their desired future. This process can be facilitated by an external facilitator, or can be done by the leadership of the clan. The process of visioning of the clan desired future is actually part of putting together a business plan or an idea for where the clan wants to be in the future especially if it wants to embrace such investments on their land.

The clan as part of the visioning exercise will have to decide how it will develop its land resources working in partnership with the agri-business investor. This process is sometimes referred to as land resource mapping. The process of land resource mapping is further discussed under the system of voluntary customary land registration and is covered under Chapter 5 of this guide. The clan has to have its own vision to develop its land resources, and as a collective group they have to make a decision on what medium of formal incorporation to follow. Examples are highlighted in Chapter 5. The steps for the clan visioning exercise can include the following steps:

### 4.2.2 Step 2: Remembering the past

Clan members to have a discussion around how their past was, and share memories of those with the clan members. It is important to have the process documented, and to allow all clan members both men and women to speak. Some of the questions to motivate discussions are as follows:

- a) How was the clan land used and managed many years ago?
- b) What land resources and materials did women, men, girls and boys gather from the clan land?
- c) How did the people live and work together in the clan? How did the clansmen and women work together and treat the neighbor's?
- d) How did the clan members make decisions to do with any cultural events within the village that the clan was asked to participate in?

- e) How were decisions made within the clan and how was it enforced?

#### 4.2.3 Step 3: Reflecting on the present

As part of the internal negotiations of the clan, the clan members have to consider how their land resources are being used today. Some of the questions to motivate discussions might include the following:

- a) How is the clan land being used and managed at the present time?
- b) Has there been any change in the land availability for the clan due to increasing population of the clan, and the village?
- c) Are there any land disputes as a result of increase in population and limited land area (resource scarcity)?
- d) How can the returns on the land be maximized both at the level of subsistence and partnership in commercial agriculture?
- e) What are the clan priorities on how to utilize the available land resources and maximize returns?
- d) Has the clan decided on the corporate vehicle it will use to participate for the commercial utilization of their customary land?

#### 4.2.4 Step 4: Envisioning the likely future

This step should be for the clan members to envision how their future will be 25 years from now, for their grandchildren. Clan members have thought through this session as it is more about the future for the clan. It is important the steps in these processes and the answers be documented so that there is a record of the discussion. Some of the key questions to lead discussions are as follows:

- a) What is the present situation of the clan in terms of how it is effectively organized to work on the land resources?
- b) How does the clan plan to go into business through a number of options as discussed in Chapter 5?
- c) How does the clan wish to work with the agri-business investor so that either parties benefit from the potential that exist to work on the customary land?

#### 4.2.5 Step 5: Planning for the future

The following are some of the key outcomes that should be part of planning for the future:

##### **a) Agree on future priorities**

The clan has to agree on what their future priorities should be. One of the first priority that the clan has to agree on is how the clan group will be formally incorporated under the existing legislations of PNG and the steps towards enabling those as discussed in Chapter 5.

##### **b) Decide on how to work towards the future vision and priorities**

The clan should have a well-crafted action plan that provides a clear, practical and achievable step towards realization of the clan's vision

##### **c) Mobilize technical and financial resources to support the clan in its working partnership with the agri-business venture.**

Customary land is one of the main assets that the group has. It is an asset that the group will put up as part of its equity in the agri-business project. The clan will have to take stock of its human resources, perhaps there can be likelihood of educated and experienced personnel within the clan. These are some of the human resource assets of the clan that can be included in the plan for the development.

#### **d) Negotiate with the investor in the agri-business sector**

The clan has to be formally registered to commence the process of negotiation with the investor that they want to work on the customary land. The next chapter provides a number of options on how customary landowner groups can be corporatized so that they are better mobilized and organized to deal with an agri-business investor.

### **4.3 Summary**

This chapter has been able to discuss the importance of the clan having its own internal communications and negotiations and agreeing to some consensus on how the clan will work with an intending investor. The chapter discusses the importance of how such an investment can transform the clan's potential to develop and work on their land. The land has the potential to generate economic and social development but that potential cannot be realized if the land is left idle, and not been put to productive use. To realize the economic potential of the unused customary land, consider and apply the step-by-step processes described above that allows clans and their members to organize themselves and work with an agri-business investor on their customary land in agribusiness development which increases the value and economic potential of their customary land.

## CHAPTER 5: LAND ACCESS THROUGH CUSTOMARY GROUPS

Land Access through Customary Groups requires dialogue to understand each group. This could be achieved through Internal Clan Negotiations.

Internal Clan Negotiations should aim to achieve three things.

1. Make way for the customary landowners to come up with a common understanding about the investment
2. Encourage customary landowners to participate in the investment.
3. Suggest possible approaches customary landowners could take to reach an agreement between them and the investor for the use of their customary land.

### Land Access Approaches

The Land Access Approaches involves (but are not limited to):

1. Land Mobilization
2. Establishing entities for business partnerships

### Land Mobilization

Land Mobilization includes the establishment of incorporated land groups (ILGs) and customary land registration. The process and procedures are guided by the regulations administered by the Department of Lands and Physical Planning (DLPP).

### Establishing Entities for Business Partnerships

Establishment of entities such as corporate societies, companies, business groups or associations for agribusiness investment are guided by their respective regulations administered by Department of Commerce and Industry and Investment Promotion Authority (IPA). The samples of the legislative forms that goes along with these processes and procedures are in Appendix A of the Volume 2 of this guide.

## 5.1 Land Mobilization Process

The process of land mobilization involves;

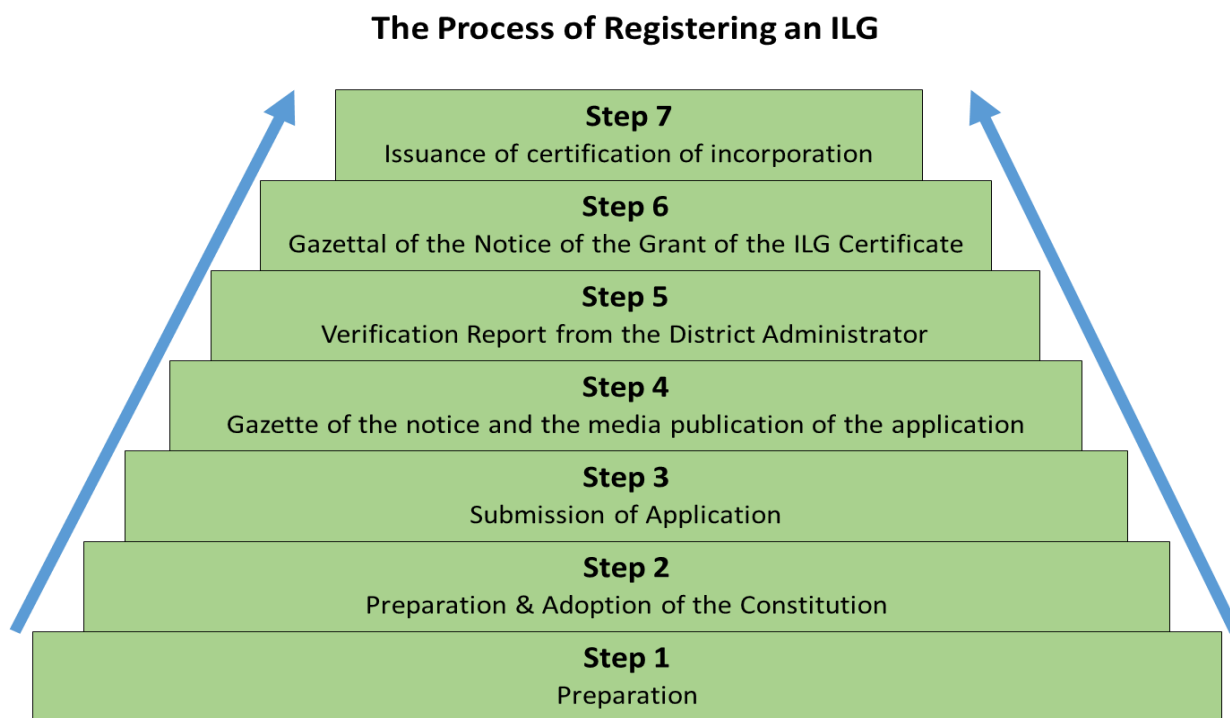
1. Establishment of incorporated land groups (ILGs) and customary land including alienated land2. Registration of incorporated land groups (ILGs) and customary land including alienated land

This sets a legitimate foundation for dialogue to happen leading to agreements is be reached between landowners and potential agribusiness investor.

### 5.1.1 Incorporated Land Groups

The Land Groups Incorporation (amendment Act 2009) is derived from Section 102 of Land's Act (1996) which strengthens the legal process of mobilizing customary landowners through the ILGs. Social mapping and landowner identification studies including the compiling of Land investigation reports provides the basis of incorporating land groups. The registration of an ILG involves seven (7) processes based on the 2009 amendment Act.

Figure 1: Steps on how to register an ILG.



#### 5.1.1.1 Step 1: Preparation

The process of registering an ILG begins when the customary landowners or land-owning unit (clan, etc.) becomes interested in using customary land for development. According to the ILG Act 2009, when applying to register an ILG, the group must complete the following tasks.

1. Knowing the purpose of establishing ILG
2. Preparation of Sketch Map,
3. Organizing Birth Certificates
4. Appointment of the Management Committee.

##### a) Why Establish an ILG (Purpose)

As part of preparation, the proposed ILG need to understand why they want to register an ILG. The purpose of the Incorporated Land Group Act 1974 is to have Papua New Guineans use ILGs as a corporate vehicle to work on their land for economic growth and development. The group attempting to incorporate a land group should have a clear purpose and a vision on why they want to incorporate an ILG. They can begin the process by asking some of the questions below.

- What is the purpose of the ILG?
- What will the role of the ILG for the clan?
- What do we want to attain/achieve from incorporating our land groups (ILG)?
- How will this ILG benefits us?
- How can we (clan) use the ILG for economic empowerment and business development opportunities using our land?

In the oil and gas sector and mining industries, the main purpose for establishing ILG is for benefits sharing between the landowners. In other sectors, ILG is also necessary not only for benefits sharing between landowners but also to be a mechanism that allows and drive economic empowerment of the local communities. The primary focus of the new *Land Groups Incorporation (Amendments) Act 2009* is to empower customary landowners to voluntarily register and use their land for economic development in a fair, equitable and convenient manner under a legal system that enables them to continue to have control of their land with ILG as their collective corporate vehicle.

#### b) Sketch Map

The propose ILG (or customary LOs/clans who wish to incorporate their land group) is required to prepare or come up with a sketch map of all the land owned by the group (or by them). It is one of the significant documents to be included in the application for ILG registration. The sketch map of customary land must be prepared in accordance with Section 5(2) of the ILG Act (see Appendix A, attachment 5, Form 5). A sketch map of the land the group owns can be prepared using conventional method or using global positioning systems (GPS), or, Google earth and remote sensing if the technologies are available.

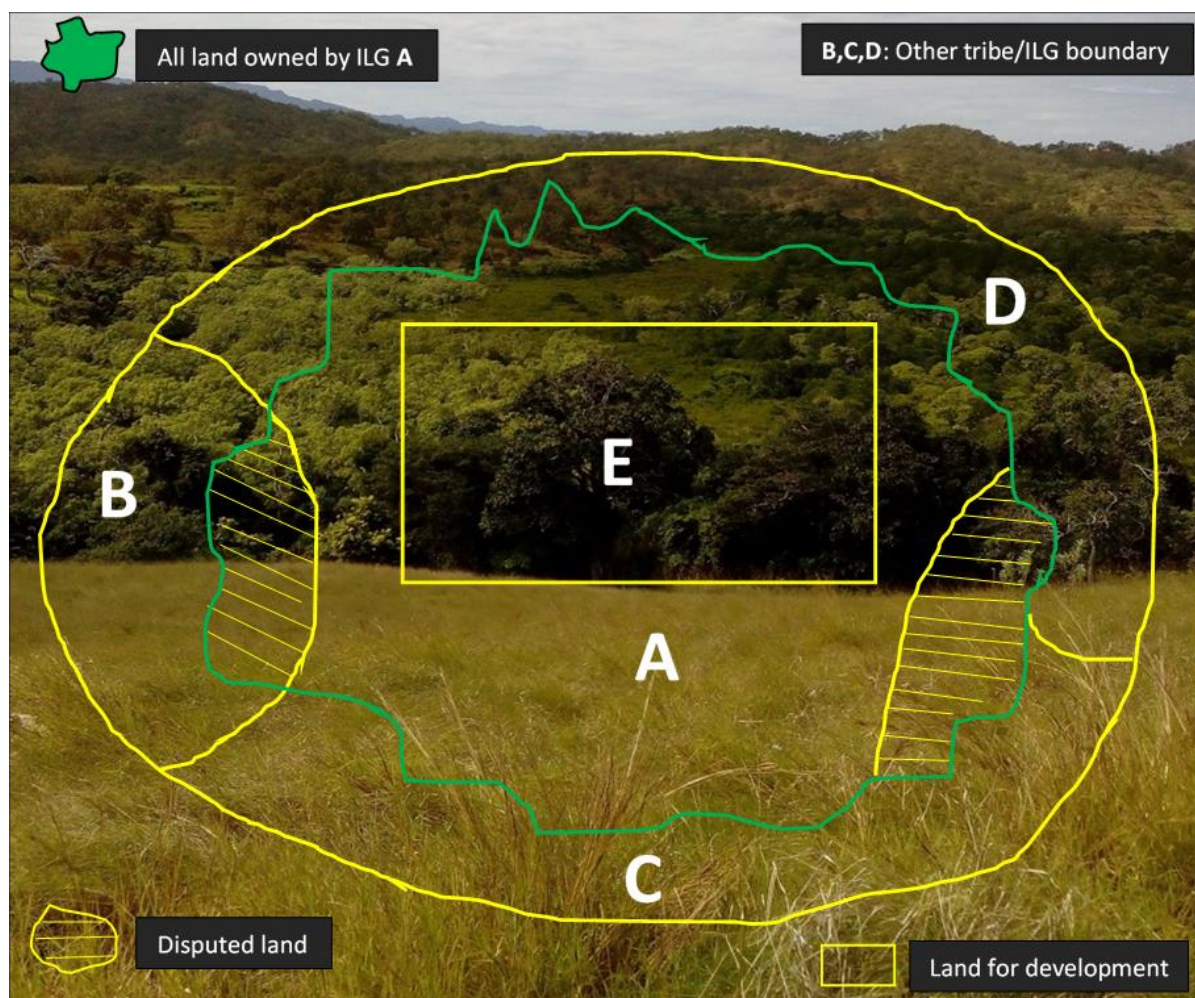
The following must be considered when preparing the sketch map:

1. The sketch map must include all its total land holdings in adjoining areas by using natural features such as mountains, valleys, rivers, creeks trees, plants, etc. as coordinates for the demarcation of its boundaries.
2. Any disputed boundary with other groups must be clearly marked out with the nature of the dispute noted on the sketch map.
3. The chairman or the vice chairman of the land group must sign the sketch map and it must be dated.
4. The existence of a boundary dispute must be acknowledged by a relevant neighbor(s), or in his absence or refusal, a Village Court Official or Councilor/ward member can counter sign the document.

All the above points are illustrated in Figure 2 below.

*Figure 2: Sample of a sketch map for ILG registration.*





The idea of signing on the sketch map to acknowledge disputes is to avoid prolonged court proceedings over disputed boundaries that could prevent the process of ILG registration.

The sketch map should be signed by the ward councilor and/or Village Land Mediator of the ward in which the land group (proposed ILG) resides in. This is to ensure that the ward councilor and the village court land mediator recognizes the group trying to incorporate the ILG, and are well aware of the land boundaries of the group and the boundary disputes if there is any.

Apart from the preparation of the sketch map, there has to be information provided on;

1. The land tenure system of the area (whether Patrilineal/ or Matrilineal)
2. How land is passed from generation to generation
3. What is the type of social organization that exist among the group that is trying to incorporate an ILG?

Such information needs to be attached with or accompany the sketch map.

### c) Birth/Death Certificate – ILG Membership

It is required under ILG Act to include formal birth certificate(s) obtained under the *Civil Registration Act* in an application for ILG registration. This means that each member of the proposed ILG (land group) must have an original or a certified copy of their formal birth certificate attached to the application before submitting the application to the registrar for ILGs. The inclusion of birth certificates serves to confirm and verify a citizen against his or her name on the membership of the land group. This helps prevent uses of ghost names on the

membership and adds credibility to the membership of a land group by using a formal statutory instrument. The sample of the form is included in Volume 2 of the Guide under *Appendix A, attachment 5, Form 10*)

Since it is a requirement for ILG registration, the proposed ILG (land group) must ensure that all members have birth certificate and for those who do not have one to ensure to obtain it from the Office of the Registrar General of the Civil Registration (now PNG Civil & Identity Registry/NID). Applications for NID (Birth Certificate) can be lodged at any of the four regional offices (Civil Registry Offices) in the country or at the provincial NID Office.

#### Process of obtaining a Birth Certificate

1. Information on an application for birth certificate can be obtained from the Registrar General Office of the Civil Registration (now PNG Civil & Identity Registry/NID) and there are four (4) regional offices in the country
2. The application has to be completed. Care must be taken to fill out the application for the Birth Certificate correctly as this is a significant formal legal document that the government may also use for other purposes, such as development planning etc. See Appendix A, Attachment 5, Form 10 (Appendices) for sample application form.
3. The application of Death Certificate must be completed only when updating ILG's membership. See Appendix A, Attachment 5, Form 12 – sample death application form.
4. The application has to be sent with the application fee to the regional office of Civil Registration (now PNG Civil & Identity Registry/NID). There is no fee imposed for birth application for children from 0-18 years old.

#### d) Application fee categories

- K15.00 – for adult application to be processed in the normal time frame.
  - K10.00 is added to K15.00 – for application that has to be processed immediately or urgently
  - K10.00 – for an application for a child that has to be process immediately or urgently.
  - Free application for a year in an area where training was offered by request from the District Administrator.
5. The Civil Registration Office (now PNG Civil & Identity Registry/NID) will process the application. The details of the applicant will be entered into the database.
  6. The birth certificate is issued to the applicant. (*Appendix A, attachment 5 Sample 11*)

It is also important as part of the preparation for the ILG registration that membership to the ILG should be qualified in the ILG constitution in that whether both male and female members have the same right, especially considering the patrilineal and matrilineal systems of land tenure in our society.

#### d) Management Committee Membership and Obligations

The membership of the Management Committee of the proposed ILG must be identified at the preparation stage before they are being formally appointed at the ILG's first (general) meeting. The land group Management Committee (MC) is the body that controls the operations of the land group and should consist of not less than 6 and not more than 10 members.

- Chairperson



- Vice Chairperson
- Treasurer
- Secretary
- 1 Male Committee member
- 2 Female Committee members

It is important that the ILG members ensure that none of the members of the Management Committee has been convicted of a crime involving fraud or dishonesty when appointing them (s.14G).

All office bearers (executives including chairperson, Vic Chairperson, treasurer and secretary) of the ILG are to be elected by an open ballot at the ILG's inception or Annual General Meeting (AGM). A Committee Member shall not take up office unless and until he or she subscribes to the Code of Conduct. A person ceases to be a member of the Committee if removed by a resolution of the group at the AGM, or he or she;

- (a) is unable to perform the functions of his or her office, whether through illness or any other cause
- (b) retires
- (c) is disqualified because of being convicted for a crime involving fraud or dishonesty.

The Management Committee's (MC) Code of Conduct is part of the ILG training on how to register ILG. The Code of Conduct for new ILGs should be signed and lodged with the registrar of ILG when a group is lodging its application for ILG registration. The signing of the code of conduct should be witnessed by ward councilor from the Ward in which the ILG is based and the District Administrator in which the ILG originates from. Having the ward councilor and the District Administrator sign as witnesses to the Code of Conduct will ensure that the executives of the ILG conform to the code of conduct. For the ILG to be effective and fulfilling its responsibilities, it needs to be up skilled to perform its role. The training offered by SERACS under 'capacity building' is to assist build ILG capacity.

The MC is responsible for the efficient conduct of the affairs of the ILG and in particular shall:(a) call meetings of the members sufficiently often to keep them well informed of the affairs of the group; and (b) make sure that suitable records of the meeting and other affairs of the land group are properly kept.

Any member of the MC may be removed by the members of the ILG at a properly arranged meeting in accordance with the provisions of the ILG Constitution and the Land Groups Incorporation Act. A vacancy in the Committee may be filled by a nominee appointed by the Committee and last for such time until the office is filled through an election at an AGM.

A provision (legal condition) has been made in the Act aimed at improving the accountability and transparency of the ILGs. The *Land Groups Incorporation (Amendment) Act* 2009 has introduced strong managerial and accountability mechanisms into the management of ILGs. The ILG management committee is held responsible and accountable through the imposition of a Code of Conduct with strong fiduciary (trustful) obligations and the imposition of criminal sanctions where there is a failure by the management committee to discharge the various duties and obligations imposed under the new provisions of the law.

Under this new Law (ILG Act 2009) all members of the Management Committee upon taking office, are automatically subject to the Code of Conduct. This Code of Conduct imposes fiduciary (trustful) duty on the management committee members to act at all times in the best interest of the ILG. The management committee is entrusted with the power to act on behalf of and for the benefit of the members of the ILG. In Schedule 6 (Chapter 4.6, page 31) it states that the provisions of this code are in addition to and not in derogation of provisions in the principal Act, the *Criminal Code Act* or any other rule of law or equity. Failure by any member(s)

of the Management Committee to adhere to the requirements of the Code of Conduct becomes a criminal offence with a fine of K5000.00 and or imprisonment of six (6) years.

#### e) Duties and Responsibilities of the Management Committee

Other duties and responsibilities imposed by the ILG Act 2009 on the Management Committee.

1. Call Annual General Meetings (AGMs) – The Incorporation Land Group (ILG) is required to hold an AGM within three (3) months of incorporation of the ILG and subsequently once annually within the area from which the ILG is from to execute legally specified agenda. As outlined under Section 14A (2) of the Act, at the AGM the ILG is required to:
  - decide on monthly and/or quarterly meetings;
  - appoint the Management Committee (MC) and other Officers;
  - appoint members to the Dispute Settlement Authority (DSA);
  - receive and consider the Chairman’s report and financial report; and
  - consider matters referred to the meeting by the Registrar.
2. The Chairman of an ILG may be required to convene (call) a meeting within 14 days if fifty percent (50%) of the members of the ILG request it.
3. Ensure ILG is complying with meeting requirements and decision-making conditions as stipulated under meeting provisions in the new ILG Act. The group business can only be conducted at the meeting when 60% or more members of the ILG are present and of that at least 10% are of the other gender. At the meeting, resolution voted by 60% or more of the ILG members becomes a decision. Only 70% of a vote is required to remove a member from the Management Committee.
4. The Management Committee is authorized under the Act to make changes on the membership of the management committee.
5. Establish and maintain proper bank accounts for the operation of the ILG and maintain proper records of those accounts (s.14H).
6. Maintain proper statements of assets and liabilities for the ILG on a form approved by the Registrar (being Form 9) and lodge those with the Registrar of ILG within three (3) months of preparation of these statements (s.14I). *(Refer to Appendix A, attachment 5, Form 9)*
7. Comply with whatever directions which the Registrar of ILG may give concerning the management of the ILG, including the manner of keeping financial accounts and statements, and the disclosure of information concerning the affairs of the ILG. Failure to comply with any of such directions from the Registrar is an offence that carries fines of up to K1000.00 or imprisonment for a term not exceeding 12 months or both (s.14K).
8. Maintain at all times an up-to-date register of all the members of the ILG in whatever form the Registrar of ILG may require (being Form 4) but must contain the names of each and every member and the date at which the member attained the membership (s.20(3)). *(See Appendix A, Attachment 5, Form 4)*
9. The Management Committee is required to be transparent in its administration and management of the ILG by making available to its members or the Registrar of ILG either the list of membership of the ILG or its books and accounts (s.20(4)).
10. The ILG is required to have the first meeting 3 months after the incorporation of an ILG. It is important that the ILG meetings are held monthly and quarterly with a final AGM at the end of the year. The ILG

executive committee members will need to be trained on how to run the affairs of the ILG. Such training is covered in the 'ILG Capacity Building Training'.

### 5.1.1.2 Step 2: Preparation and Adoption of the Constitution

The landowner group (proposed ILG) is required to comply with some more legal conditions in documenting the application for ILG registration. These requirements are:

- Preparation of Draft Constitution of the ILG and conducting of the first meeting to formally and by resolution, adopt its Constitution;
- Formally appoint the Management Committee;
- Formally appoint a Dispute Settlement Authority;
- Endorse the membership and the list of the members of the ILG.

#### a) ILG Constitution

The leaders of the proposed ILG are required to prepare a draft Constitution for the ILG. Section 5 and 8 of the amended ILG Act contains and suggests some issues and matters for proposed ILG to consider and where appropriate, adopt in its Constitution. (*Appendix A, attachment 5, schedule 1 – draft constitution*)

Also, under Section 5 & 8 of the amended ILG Act 2009, are some basic issues and matters that apply automatically by operation of law. (*Appendix A, attachment 5 schedule 1- draft constitution*).

The ILG constitution is one grey area in that the standard constitution is issued and often there are areas in which the ILG Executive committee overlook. Some of those areas are:

- ILG Membership – qualification to be a member of the ILG – the issue of do you have to be a member of that clan to be a member of the ILG, how do others that get married into the clan become members of the ILG. For women that have married out of the clan, in normal practice in patrilineal society, would she be a member of the ILG?
- Benefit sharing – the ILG will often have to undertake its activities and generate revenue. That revenue that is generated often has to be shared by the ILG members. Experience in the oil and gas industry is that when benefits are not shared well, the ILG breaks apart and those that did not receive any share of the benefit, go and form another ILG.
- Benefit sharing clause in the ILG constitution – this has to be included in the ILG constitution, so that the members are well aware of how the benefits from the ILG activities that generates an income are going to be shared.
- Amendment to ILG constitutions – if this has not been included in already registered ILG, amendments can be made to the ILG constitution during one of its meeting to address the issue. The amendment process is covered in the 'ILG Capacity Building' training'.

#### b) The first meeting of the proposed ILG

Under the new law (ILG Act 2009), the leaders of the proposed ILG must convene/call the first meeting to make the following decisions after the draft Constitution has been prepared:

1. By resolution adopt its Constitution;
2. Formally appoint the Management Committee (MC);
3. Formally appoint the Dispute Settlement Authority (DSA); and

4. Adopt full and complete list of all the surviving members of the ILG who would constitute the initial full membership of the proposed ILG.

Although the ILG may not be officially incorporated by then, it is advisable that the proposed ILG at its first meeting comply with meeting requirements and decision-making conditions. The law states that group business can only be conducted when 60% of the members and of that at least 10% of other gender is present at the meeting. The resolution for adoption of the Constitution must be voted by 60% or more members. This information must be recorded in the minutes of the first meeting.

The ILG is required to have a first (general) meeting three (3) months after registration or incorporation followed by monthly or quarterly (operational) meetings and an Annual General Meeting (AGM) every year. A meeting is an opportunity to share and provide information. It is an important tool for group communication. 'Communication can be defined as an interactional process which gives, receives, and checks out meaning, and occurs when people interact with each other in an effort to transmit messages, receive transmitted messages, and check out meanings' (Compton & Galaway, 1979:204).

### c) Format of Meeting Agenda and Meeting Procedure

The proposed ILG Secretary is responsible for preparing a meeting agenda. A meeting agenda has a general format as outlined below.

#### 1. The letter head of the Group (ILG) appears on top of the paper

Example:           Laloki Incorporated Land Group  
                        P. O. Box 296, Boroko. NCD  
                        Telephone:  
                        Fax:  
                        Email:

#### 2. A statement outlining the number of the meeting, what type of meeting, date to be held, time of the meeting and the venue for the meeting.

Example:           This is an agenda for the **3<sup>rd</sup>** (the meeting number) **Annual General Meeting (AGM)** (type of the meeting), of **the Laloki Incorporated Land Group** (whom the meeting is for) to be held on the **6<sup>th</sup> June 2009** (date of the meeting) at **4.00pm** (time the meeting will start) at the **Community Hall** (place of the meeting).

#### 3. Below the statement about the meeting, the word Agenda appears. The agenda items are listed in order of the meeting proceedings.

- Before the agenda is prepared for the meeting, the members of the group (ILG) should be invited to submit items to be included on the agenda.

#### 4. The Agenda

The agenda is a list of items/points to be considered at the meeting. The agenda is followed in a sequential order in the meeting as presented below

##### (i) Welcome address by the Chairperson

- Chairperson welcomes the old and new members to the meeting.

##### (ii) Adoption of Agenda

- Chairperson invites the members (of ILG present) to include any additional items, if they have any, under Any Other Business (AOB).
- A motion is passed to accept the agenda with or without additional items and the meeting commences.

(iii) Attendance & Apologies

- Attendance is checked against the membership list.
- An apology is a provision to note the members of the ILG who are unable to attend the meeting and may pass their apology through another member or in writing or through phone advising the chairman of their unavailability.

(iv) Declare any conflict of interest

- Chairperson invites the members to declare any conflict of interest in relation to the agenda items.

(v) Amendments to the Minutes of the previous meeting

- This agenda item provides an opportunity for the members to make changes to the minutes in terms of typing errors and seek clarification if the minutes do not reflect the discussion in the meeting.
- If the outcomes of the decisions and discussions are not recorded correctly, this provision provides an opportunity to correct them.

(vi) Matters arising from the minutes

- Chairperson invites the members (of ILG present) to discuss any matters in the minutes of the previous meeting that may require clarification, provide update on the issue.

(vii) Motion to accept the minutes of the Previous Meeting

- A motion is passed to accept the minutes of the previous meeting with amendments or changes.

(viii) Chairperson's report

- Chairperson presents the report at the annual general meeting (AGM) as so required.
- The members (of ILG present) are expected to comment and discuss the report.

(ix) Financial report

- The Treasurer presents the financial report.
- The members (of ILG present) are expected to comment and discuss the financial report.

(x) Update the membership

- This is a provision to update the membership list by adding new members or deleting the names of those members who have died or withdrawn/ceased their membership. (Consider to include death certificate).

(xi) Any Other Business (AOB)

- This provision allows members to add items to the agenda before the meeting.

The law (ILG Act 2009) requires the proposed ILG to prepare the minutes of the first meeting as a formal record to be included in the application for ILG registration. As a requirement to be added to the application, Form 3 must be filled out to certify the holding of the meeting and the adoption of the constitution. Form 2 is also filled out to certify the record of the decisions made at the meeting. It is required for Form 2 & 3 to be completed and submitted with Form 1 the “prescribed” form for application for registering ILG. *(See Appendix A, Attachment 5)*

**Note:** By this stage, it is anticipated that a sketch map and birth certificates for the members of the proposed ILG whose names appear on the list of membership would have been completed and ready.

#### d) Format of Meeting Minutes

The Secretary of the (proposed) ILG is responsible for recording the discussions and decisions taken at the meeting, writing of the meeting minutes and the distribution of the signed minutes. After the meeting, the Secretary writes the minutes of the meeting and forwards it to the Chairperson of the meeting to proof read. When satisfied, the minutes are signed and distributed to the members of the (proposed) ILG before the next meeting.

The minutes of the meeting are presented in a certain style, which is the standard format outlined below and is applicable to all the general and operational meetings of the ILG.

#### 1. Opening Sentence

The opening sentence should indicate the date and the venue of the meeting and the sequential number of the meeting minutes of the ILG.

Example: The meeting minutes (*content of the document*) of the first Annual General Meeting (*sequential number of the meeting*) held by the Laloki Incorporated Land Group (*name of the ILG*) on the 6<sup>th</sup> June 2009 (*date of the meeting*) at 4.00pm (time of the meeting) in the Community Hall (*meeting venue*).

#### 2. Attendance

List the name of the members of the group who attended the meeting and number the names. The order of listing begins with the Chairperson and listing of members of the Management Committee followed by other members of the ILG.

##### Attendance

2.1.	Mr. John Baunde	-	Chairperson
2.2.	Mr. Peter Waoo	-	Deputy Chairperson
2.3.	Mr. Martin Kwar	-	Treasurer
2.4.	Mr. Joseph Boko	-	Secretary
2.5.	Mrs. Cathy Waput	-	Committee Member
2.6.	Ms. Mary Danaru	-	Committee Member
2.7.	Mrs. Nancy Ere	-	Member
2.8.	Mr. Tom Negeri	-	Member

2.9. Ms. Martha Naru - Member

2.10. Mr. Gerry Tapo - Member

*(..... continue listing all members who attend .....)*

### **3. Apologies**

List the names of the members who have informed the chairperson or others who attended the meeting that they won't be attending the meeting. (Those who sent their apologies for not attending the meeting).

### **4. Absent**

List the names of the members who are not available at the meeting and did not sent their apologies.

### **5. Opening Remarks by the Chairperson**

Write or state what the chairperson says in the welcome remarks.

Record also the name of the person who opened the meeting with a prayer.

Example: The Chairperson welcomed the members of the first meeting of the ILG Annual General Meeting and invited Mr. Peter Wao to open the meeting with a word of prayer.

### **6. Minutes of the Previous Meeting**

The minutes of the previous meeting is presented before the meeting either through distribution of copies of the minutes or the secretary reads out the minutes.

The change or amendments made to the previous meeting minutes are recorded with reference to the item number in the minutes. The motion to accept the minutes with amendments is recorded. The names of the ILG members who moved and seconded the motion to accept the minutes with amendments are also recorded in the minutes.

### **7. Matters arising from the Previous Meeting Minutes**

As the above under Minutes of the Previous Meeting, this item is not applicable for the first meeting of the group but it becomes relevant from the second meeting and thereafter. The items discussed are recorded with reference to the item number in minutes.

### **8. Chairperson's Report**

The details and aspects of the report presented and discussed are recorded. The motion to accept the resolution to adopt and endorse the chairperson's report is recorded.

### **9. Financial Report**

The details and aspects of the financial report presented and discussed are recorded. The motion to accept the resolution to adopt and endorse the financial report is recorded.

### **10. Update the ILG membership**

The details of the new membership by birth, other new members, removal of the name from the list and the resolutions to accept each of the changes are recorded.

10.1 The names of the new members by birth and confirmed with birth certificates are added to the ILG membership registry.

- 10.2 The names of other new members are confirmed with birth certificates and are added to the ILG membership registry.
- 10.3 The names of the members who have deceased/died are noted and removed from the membership list. *(See Appendix A, Attachment No.5, schedule 13)*
- 10.4 The motion to accept the resolution to accept the changes in 10.1, 10.2 & 10.3 is recorded.

## 11. Any Other Business (AOB)

The discussion and decisions on the items listed under any other business (AOB) are recorded under this section.

## 12. Acknowledgement of the closure of the meeting

Example: The Chairperson declared the meeting closed at 6pm.

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Chairperson	Date	Secretary	Date
Laloki ILG		Laloki ILG	

## d) Dispute Settlement Authority (DSA)

Every ILG (including the proposed ILG) is required to have a Dispute Settlement Authority (DSA). Section 21(2) of ILG Act states that a dispute settlement authority may be a person or a number of persons specified by name; or by office or position or determined by the constitution of the group.

Section 20 of the Act defines deputed (delegates authorities) which the provision of dispute settlement in the Act applies. These are disputes between an ILG and a member of the Group; member of an ILG concerning the property or the affairs of group that has to do with the distribution or disposal of any property; income of the group; transaction between the group and any of its members. The powers of the dispute settlement authority also extend to disputes relating to membership or right to membership of an ILG.

The dispute settlement authority (DSA) has jurisdiction to decide on any matter outlined above and its decision is not open to challenge in any court. However, if the dispute settlement authority refers any dispute to court, its advice is open to challenge and the court is not bound to accept the advice.

Other court may have the jurisdiction to deal with a dispute on the following grounds:

- (1) parties to the dispute agree to refer the matter to the court; or,
- (2) the constitution of the ILG may permit; or,
- (3) any relevant agreement between the disputing parties; or,
- (4) the dispute settlement authority refers a dispute to the court.



### 5.1.1.3 Step 3: Submission of Application to the Registrar of ILGs

The application for the registration of an ILG must meet the legal requirements. The landowner group (proposed ILG) must ensure they present the application in the “prescribed form”, being Form 1, and submit it together with the required documents to the Registrar of ILGs. *(See Attachment No. 9 – Form sample)*

The following are the prescribed form and required documents for ILG registration:

- (a) The application in the prescribed form. *(Appendix A Attachment 5)*
- (b) A copy of the proposed Constitution. *(Appendix A, Attachment 5, schedule 1)*
- (c) A list of all members of the group. *(Appendix A, attachment 5, Form 4)*
- (d) Further information as stated in Section 5(2) of the amended ILG Act, being such certified information required in the application form. *(Appendix A, attachment 5)*
- (e) A sketch of the boundaries of the land to which the applicants claim ownership, including clearly marked areas of disputed boundaries if any, to which the applicants claim ownership as required under Schedule 2. *(Appendix A, attachment 5, Form 5)*
- (f) Such other information as the Registration requires.

In preparing the application for the registration of the ILG, the land owner group (proposed ILG) must pay attention to material prescribed by law. The prescribed materials to be provided in the Application for the Registration of an ILG are listed in Section 5 (2) of the ILG Act. *(Appendix A, attachment 5, Form 5)*

Form 2 and Form 3 relates to the certification of the decision taken to adopt the Constitution and to register the ILG; and the records of the decision taken at the meeting, are the additional documents to be added to the prescribed material.

### 5.1.1.4 Step 4: Gazette of the Notice and Media Publication of the Application

#### a) Gazette the Notice of Application

The Registrar of ILGs receives the application from a land owner group (proposed ILG) and when he/she is satisfied that the application has met the legal requirements, he/she is required to publish the notice of application for the registration of the proposed ILG in the National Gazette (national newspapers). The Registrar of ILG forwards a copy of the notice to the District Administrator (DA) of the District from which the application was received. Where there are Village Courts operating in the area, the Registrar of ILGs is also required to forward a copy to the Village Court officials from the village which the application was received.

#### b) Publication and Acknowledgement of the Application

The involvement of the District Administrator (DA) and the Village Court Officials has been incorporated into the Act to formalize and tighten up the process of incorporation and to ensure greater transparency and accountability in the registration process of the ILG. The DA is required to publicize the acknowledgement of an application and ensure that it is widely known to persons having knowledge of or interest in the affairs of the land group or its members (s.5B(1)(b)).

Under the law (ILG Act), the Village Court within whose jurisdiction the application for registration of ILG is received also has the power to publicize the notice of application after receiving it from the Registrar of ILGs (s.5B(1)(b)).

After the notice of application for ILG registration is publicized, a statutory period of 30 days is allowed for any persons to raise any objections or so concerning the application for the ILG registration.

You will note that from the beginning of the process at the stage of preparation of the sketch map and enabling that sketch map to be signed off by the Ward Councilors and Village Court land mediator, is to ensure transparency in the process from the beginning. The District Administrator should be part of the witness to the sketch map, after it is signed off by the Ward Councilor and the Village Court land mediator from the village in which those trying to register the ILG come from. This helps to minimize the hold-ups of the registration process at this stage.

#### 5.1.1.5 Step 5: Verification Report from the District Administrator

The District Administrator (DA) is required to perform two (2) important responsibilities in the process of registering ILG.

The Act (law) requires the District Administrator (DA) in whose area the land group or any of the property claimed on behalf of the land group is situated **to confirm with the Registrar** that the notice of application was received and publicized to persons having knowledge of or interest in the affairs of the land group or its members (s.5B (2)).

The District Administrator is required by the law **to report to the Registrar of ILGs** at the expiration of the 30 days statutory period using Form 6 after the inspection and verification of the information in the application.

#### 5.1.1.6 Step 6: Gazettal of Notice of Grant of Certificate

- 6.1 At the expiration of the 30 days statutory period and after receiving the Verification Report on Form 7 from the District Administrator giving approval to issue the ILG Certificate, The Registrar of ILG will then allocate an ILG Registration Number and prepare an instrument of “Notice of Grant of Certificate”.
- 6.2 The Notice of Grant of Certificate is then published in the National Gazette (national newspapers) to formalize the process of issuance of the certificate.

#### 5.1.1.7 Step 7: Issuance of Certification of ILG by the Registrar

The Registrar of ILGs will only proceed to register the ILG and issue a certificate of Incorporated Land Group (ILG) to the ILG concern upon receiving verification report as Form 7 from the District Administrator confirming the information in the application for the ILG registration at the expiration of the 30 days statutory period.

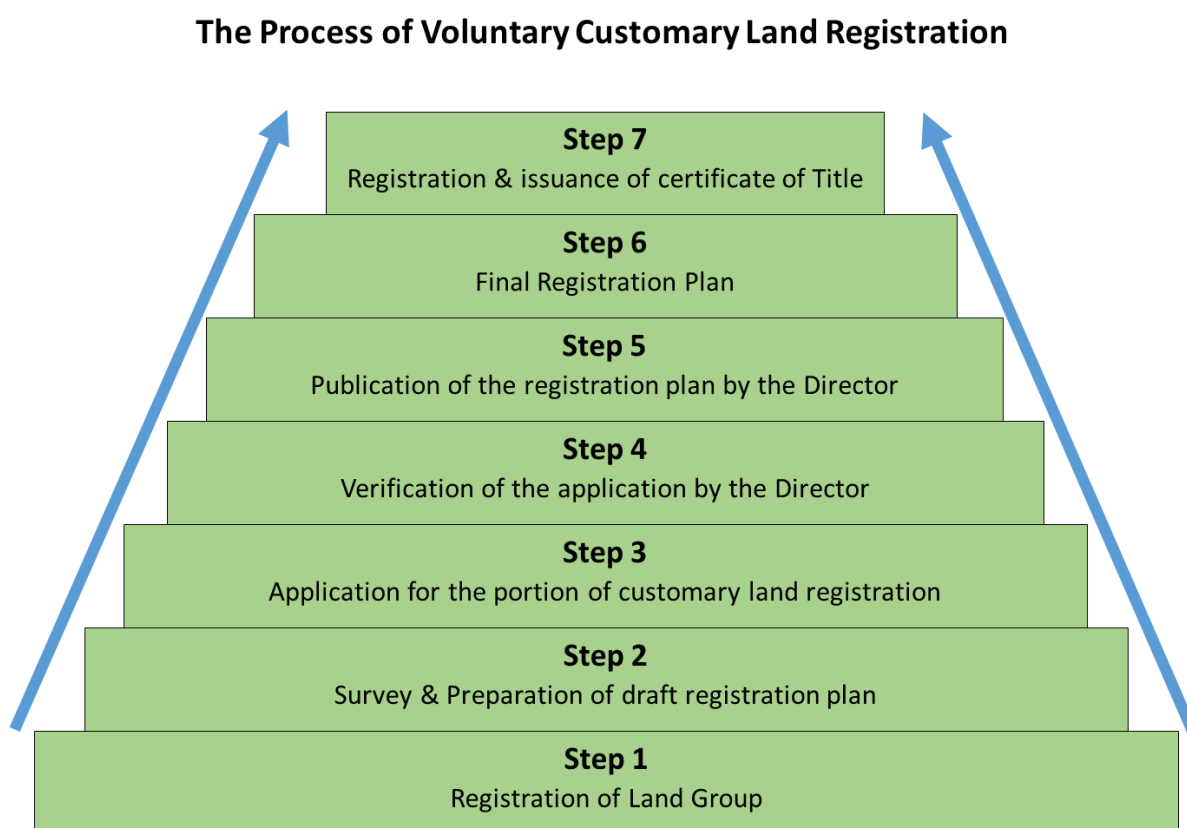
A clan after registering their ILG and obtaining their ILG certificate can also apply for Voluntary customary land registration under the Land Registration (Amendment) Act 2009.

### 5.1.2 Voluntary Customary land Registration

A clan after obtaining an ILG certificate can apply for Voluntary customary land registration VCLR which involves the registration of a portion of customary land that the Incorporated Land Group (ILG) wishes to use for an economic development activity with secured title.

Figure 3 below illustrates the seven (7) steps for Voluntary Customary Land Registration. Details of processes involved in these steps are elaborated further below.

Figure 3: Process and procedures of voluntary customary land registration (VCLR).



The law identifies the Director of Customary Land Registration, the Deputy Director of Customary Land Registration, the Regional Surveyor, the Registrar of Titles and, Registrar of Incorporated Land Group as key people in the Voluntary Customary Land Registration process.

#### 5.1.2.1 Step 1: Registration of Incorporated Land Group

Voluntary customary land registration only follows after a landowner group has been incorporated following the process described in the previous section (Section 5.1.1: *'Incorporated Land Groups/ILG Registration'*). Incorporation of land group is a compulsory legal prerequisite for Voluntary Customary Land Registration.

#### 5.1.2.2 Step 2: Survey and Preparation of draft Registration Plan

After an ILG has been formed the group may wish to use a portion of the group land for development. The sketch map becomes a useful guide to identify a portion or portions of the land an ILG may wish to register.

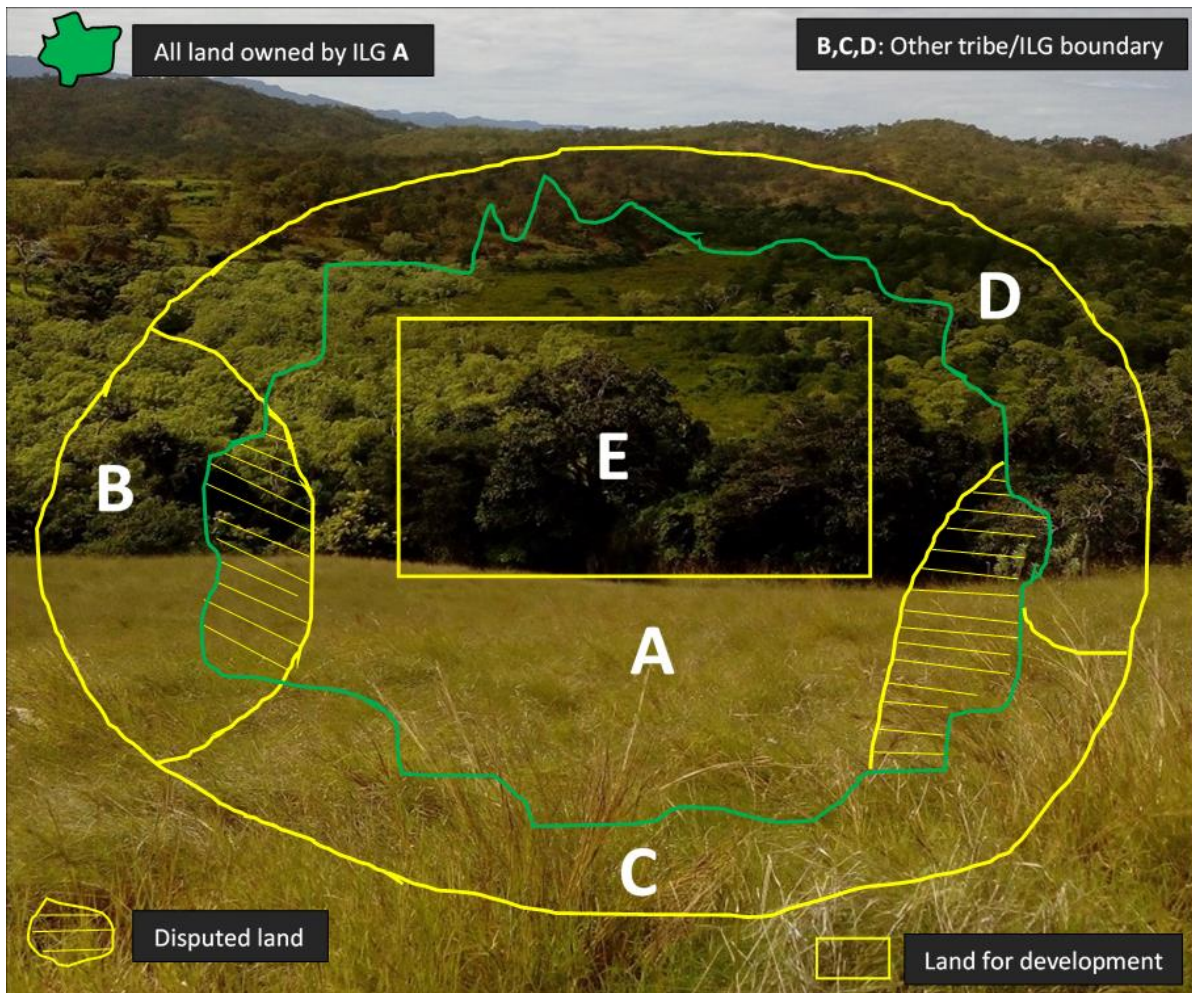
At the preparation stage of the process of incorporation of Land Group, the landowner group prepares a sketch map of all land owned by the group. *(Refer Figure 4 on page 41 for the full process)*. A major variation made to the sketch map of all the land owned by the ILG, is a portion of land labelled E as illustrated in Figure 4 below. This information is the baseline data for a Surveyor to be engaged by the ILG to prepare the proposed Survey Plan.

The next step in the process is for the ILG to engage the services of a Surveyor to do a proper survey of the land, and then prepare a proposed Survey Plan. The service fees and costs of a Surveyor is the responsibility of the ILG.

#### *5.1.2.3 Step 3: Application for Registration*

The Director of Customary Land prescribes the format of the application for registration of customary land and so, when preparing an application, it must be in accordance with the prescribed form and manner. The application for registration of a portion of land includes a proposed survey plan. At this point in the process the registration plan is considered as the proposed Survey Plan. It describes the land or parcels of land owned absolutely by the ILG under customary land tenure and the land boundaries surveyed and demarcated is an essential part of the application (s.34D). The law points out that where necessary, information on other parties who are interested in the land identified for registration should be included in the proposed survey plan (34D (2) (b)). The representatives of the ILG prepare an application for registration of a portion of land (see label E in Figure 4 below) and submit it to the Director of Customary Land for consideration.

*Figure 4: Sample of a Sketch Map of the area labelled E for VCLR.*



#### *5.1.2.4 Step 4: Verification of the Application by the Director of Customary Land (s.34E and 34F)*

The process of verification involves conducting an investigation to check and confirm the membership of the customary group and an inspection of the land with appointed representatives of ILG to check and confirm the identity and the boundaries of land claimed in the registration plan by the group.

The process of checking information involves consulting others who are knowledgeable about the affairs of the ILG at the village, ward, local level government and district levels. It also involves checking relevant official documents. It is important that the process of verifying the information in the application is transparent and not questionable. After the Director completes the investigation, he/she prepares a proposed Survey Plan.

#### *5.1.2.5 Step 5: Publication of the Proposed Survey Plan by the Director of Customary Land*

At this stage, a number of requirements must be met. The Director of Customary Land upon acceptance of a proposed survey Plan after verification is required to perform two important tasks.

- (1) Submit a copy of the proposed survey plan to the Regional Surveyor and who is not the same person the ILG engaged in step two (Step 2) of the process. The Regional Surveyor is empowered to make appropriate and necessary adjustments to the proposed Survey Plan at this stage (s.34H) with regard to the situation of the land. This involves checking and ensuring that the land has not been acquired by the State for public purposes and that the land has not been previously granted title under any law. The



proposed Survey Plan becomes an Approved Survey Plan with the changes incorporated by the Regional Surveyor (s.34H).

- (ii) Publish a notice of the application as widely as possible inviting any person with interest in the matter to make any objections or submissions on the Approved Survey Plan within 90 days of the notice (see s.34G).

Any party may register objections to the Approved Survey Plan in writing and must clearly state whether he/she is expressing personal objections or acting as a representative of a customary group. The objection must be specific to the matters and the area or areas in the Approved Survey Plan, and state the grounds upon which the objection is made.

#### *5.1.2.6 Step 6: Final Registered Survey Plan*

The Director Customary Land is required to facilitate a Final Registration Plan but that is subject to any dispute that may arise after Publication of the Approved Survey Plan. Depending on this, two (2) options are available to the Director Customary Land to proceed with the process of facilitating the Final Registration Plan.

- (i) If there are no objections registered within the period of 90 days, the Director Customary Land asks the Surveyor General to register the Approved Survey Plan.
- (ii) If there are objections, the Director Customary Land shall first hear and determine the matter and clear and settle the objections before proceeding with the facilitation of the Final Registration Plan (s.34J).

#### *5.1.2.7 Step 7: Registration of portion of Customary Land and Issuance of Certificate of Title*

The Director of Customary Land shall send to the Registrar of Titles the Final Registered Survey Plan and a copy of the Certificate of Incorporation of the ILG, if there are no objections to the Proposed Survey Plan and if there were objections and such objections have been adequately settled. The Incorporated Land Group must ensure to include the fee for the preparation and issuance of Certificate of Title.

- (i) The Registrar of Titles confirms by proof of the Certificate of Incorporation of Land Group that the customary group has been registered as the owner of land.
- (ii) The payment of the prescribed fee is mandatory for the Registrar of Titles to prepare and issue a Certificate of Title.
- (iii) The Registrar of Titles shall prepare a copy of the Title to record with the register of the Office of the Registrar of Titles the ILG as the owner of the land.

#### *5.1.2.8 Step 8: Effect of Registration*

The Registrar of Titles in preparing a Certificate of Title makes a copy of it for the purpose of recording the details in the register of the Certificate of Title. The implication of registration has two (2) aspects.

1 It improves the legal status of the ILG and it protects the ILG from challenges of other interest groups.

2 The registration has no effect if there is evidence to show that the registered land has outstanding issues that were not cleared. Registration of Customary Land is subject to other existing laws and failure to meet those requirements would give no effect to the registration.

1. An entry in the Register is conclusive evidence of the facts about the Incorporated Land Group from the date of the entry. It is a proof beyond all doubt that the portion of land belongs to the ILG and the boundaries of the land owned by the ILG are legally recognized and the ILG exists as a legally recognized entity.
2. An entry in the Registry is a guarantee that the area belongs to the ILG and the boundary of the land owned by the ILG is legally recognized.
3. An entry in the Register means that the ILG is subject to the rights and interests as are recorded in the Register.
4. The registration of the customary land is not legally effective if it fails to satisfy the provisions under section 34M(2)(a)(b)(c). These provisions require that the name of the ILG as stated on the Certificate of Incorporated Land Group must be the same name on a Certificate of Title. If the land registered is still subject to state ownership or the objections by other interested parties had not been settled the registration has no effect.

## 5.2 Process of creating an Entity for Business Partnership

Cooperative societies, companies, business groups, associations and registration of business name are entities that could form business arrangements with investors. These entities can also be established by the customary landowners and local farmers of the area who have the ability to venture into agribusiness investment.

### 5.2.1 Cooperative Society

Cooperative societies or farmer cooperatives (cooperatives) mobilizes and organizes low income farmers and when they are mobilized as part of a larger group, they can be able to attract better pricing for their commodities. This approach boosts local economy not only through income generation and local spending, but the cooperative also allows local people/farmers to access and own resources that they are unable to afford individually.

The process of establishing a cooperative society as outlined in the Co-operative Societies Act (1982) is as follows:

#### 5.2.1.1 Step 1: Pre-registration requirements

Hold a meeting for the proposed society and the meeting must be attended by at least 7 members. Members must be PNG citizens above the age of 18 years with the aim of getting together to promote a common economic and social interest.

1. The meeting must agree to a written statement showing;
  1. The objectives of the proposed society
  2. The reasons why you believe that the proposed society will achieve its objectives.
  3. The rules under which the proposed society will operate
2. In accordance with the rules,
  1. Elect a board of directors
  2. Other officers provided for in rules
3. Members must sign an application form for membership of the proposed society



4. Within two months from the election of the Board, the board shall apply to the Registrar for registration as a society under the Co-operative Societies Act of 1982.

#### *5.2.1.2 Step 2: Attachments to applications*

Make two copies of the registration form and the following documents;

5. The agreed written statement from the first meeting
6. Proposed rules signed by any of the two Directors
7. List of members
8. Full name, address and titles of other office holders
9. Statement showing the name of the society

#### *5.2.1.3 Step 3: Registration decisions by Registrar*

The Registrar may;

10. Register the proposed society, or
11. In writing, request the proposed society to amend their application or amend the application as a fresh application, or
12. By notice of his/her seal to the proposed society, refuse to register the proposed society and refund the registration fee according to the rules of the Cooperation Act.

#### *5.2.1.4 Step 4: Registration process for successful applications*

Where the Registrar registers the Society, he/she will;

13. Issue a certificate of registration, and
14. Publish a notice of registration in the National Gazette
15. Endorse all or part of the proposed rules to be the rules of the society

The date shown on the certificate is the date the society was registered and the society will;

1. be a corporation under the name it is registered
2. have perpetual succession and a common seal
3. have the power to;
  - Hold property
  - Enter into contracts
  - Can sue and be sued in a court of law
  - Do all things necessary to implement its objectives as set out in the rules

The liability (legal responsibility or accountability) of a member will be limited to the nominal values of shares held by him/her or any fees/charges due and unpaid by him or her to the society. The name of a society will include the “Co-operative” or “Co-op” and the word “Limited” or “Ltd” must be the last word in the name. For example, Sogeri Farmers’ Co-operative Limited can be called Sogeri Farmers Co-op Ltd.

## 5.2.2 Investment Promotion Authority related corporatization of customary groups

The following are processes of registration of corporate entities under the IPA related legislations. It is of importance to take note that, banks and lending institutions want to only deal with entities that are registered through the Investment Promotion Authority. There are options available in which a customary landowner group can register as an ILG, and then to do business they have to register with the Investment Promotion Authority. Some referral path ways are discussed below.

### 5.2.2.1 Registration of Companies

An application for registration of a company shall be submitted to the Registrar, and shall be -

- a) in the prescribed form;
- b) accompanied by a document in the prescribed form signed by every person named as a director, containing his consent to being a director and a certificate that he is not disqualified from being appointed or holding office as a director of a company;
- c) accompanied by a document in the prescribed form signed by any person named as a secretary, containing his consent to being the secretary;
- d) accompanied by:
  - (i) a document in the prescribed form signed by every person named as a shareholder, or by an agent of that person authorized in writing, containing his consent to being a shareholder and to taking the class and number of shares specified in the document; and
  - (ii) where the document has been signed by an agent, the instrument authorizing the agent to sign it; and
- e) accompanied by a notice reserving a name for the proposed company;
- f) where the proposed company is to have a constitution, accompanied by a certified copy of the company's constitution.
- (a) Without limiting Subsection (1), an application under Subsection (1) shall state –
  - a. the number of persons named as directors of the proposed company; and
  - b. the number of persons (if any) named as secretaries of the proposed company; and
  - c. the postal address of the proposed company; and
  - d. the registered office of the proposed company; and
  - e. the address for service of the proposed company.

The relevant forms for the incorporation of a company are all attached in the appendices of this guide (Appendix A, attachment 2)

### 5.2.2.2 Registration of Business Name

- A. An application for a certificate of business name registration shall be submitted to the Registrar and shall be in the prescribed form and accompanied by the prescribed application fee.
- B. The application may be submitted in any medium permitted by the Registrar, including electronic media. The application shall include;
  - a) the business name as it is used in the transaction of business
  - b) the true name and residential address of each person who has an ownership or other controlled interest in the business to be transacted under the business name, provided:
    - i. if the registrant is an entity registered with the Registrar, only the name and registration number must be indicated; or

- ii. if the registrant is a partnership or unregistered organization, the true name and address of each partner and managing person must be indicated;
- c) identification of the registrant as a natural individual, partnership, incorporated company, incorporated association, incorporated business group, incorporated land group, any other incorporated entity or unincorporated entity, joint venture or other collection of natural individuals;
- d) the principal business address at which business is conducted under the business name. If there are additional addresses at which business is conducted under the same business name, all such addresses must be indicated;
- e) a general description of the type of business to be transacted under the business name;
- f) the date or proposed date of commencement of business in the country under the business name, which date may not be more than three months after the date of registration;
- g) the signature of an authorized person for the registration.

C. The application may be submitted in any medium permitted by the Registrar, including electronic media.

The forms for registration of Business name are attached in Appendix A, Attachment 4 of the Guide.

#### *5.2.2.3 Registration of a business group*

1. Proposed name of group
  - a. The name must end with “Business Group (Inc.)” or “Business (Inc.).
  - b. If the name is not written in English, state its meaning in English.
1. State the postal address of business group.
2. Qualifications for membership.
4. Committee
  - a. Title of the Committee.
  - b. Number of members of committee (minimum allowed 3).
    - How are committee members selected?
  - c. What is the least number of committee members needed to hold a meeting?
    - Composition of committee.
5. - How are decisions made by the committee which are binding on the group?
  - Who can sign documents on behalf of the group?
6. The names of first members of committee.
7. The group will be bound by the traditional law of which customary group?
8. Are there any other matters which the group would like to include in their constitution, or any changes the group wishes to substitute for relevant customs?
9. The Dispute Settlement Authority (Names and Address).
10. Name, Signature and Address of members making the application.
11. Payment of the prescribed registration fees.

The sample of the form is attached in Volume 2, Appendix A, Attachment 3 in Volume 2 of the Land Access Guide.

#### 5.2.2.4 Registration process for an association

An Association is formed by a group of people with a common interest (such as a sporting club, women's group, church bodies, youth groups and non-government organizations in general). The members of the association may decide to seek to incorporate the association. The advantages of incorporation are that the liability of the members in respect of debts of the association is limited and that the association may hold property in its own name. To incorporate the association, the members authorize a person to act on their behalf and apply for incorporation. To register your Association, you will need an IPA Online Registry System (ORS) account. Click on "Register Account" under the "Do It Online" menu to register an account.

Each step of the registration process is outlined here:

1. Submit a notice of intention attached with the constitution (Upload).
2. Publish your approval of your notice of intention in either the two daily papers (The National or Post-Courier). A month after the date of publication submit your application for Incorporation of an Association.
3. If there are no objections to your intention to register an Association, your application will be reviewed for approved. But if there is (are) objections the Registrar will notify the applicant /notifier advising him/her of the Objector reasons for objecting. The Objector will also receive confirmation that the Registrar has approved the objection.

The sample of the related Forms are contained in Appendix A, Attachment 1 of Volume 2 of the Land Access Guide. When filling the forms, consider the noted points below.

**Note:**

- Address: You must provide both an address for communication and that is a postal address when registering Association.
- Notifier: The Notifier is the person submitting the Notice of Intention of the Association and whose details must be provided.
- Declaration: An authorized person or the Notifier of the Association must certify that all information provided or uploaded is true and correct. Review; Review your application details before proceeding to the final step. Payment: You must pay the application fee to complete your application. Payment currently can be made using a Credit/Debit Card.

## CHAPTER 6: OPPORTUNITY ASSESSMENT

It is important to understand the processes of Opportunity Assessment and how it is applied in accessing and using land asset for agricultural business development. The Opportunity Assessment requires corporation and commitment from agriculture businesses that have the ability in terms of resources and capacity. The process may involve some cost which requires funding that has to source from or by the corporation. Thus, the establishment of the corporate bodies and entities through the process described in the previous chapter should guarantee the undertaking of the opportunity assessment for agribusiness development on customary land. The benefits and approaches including the steps involved in undertaking opportunity assessment for accessing and using land asset for agribusiness development are outlined in this chapter. It is important to understand what an opportunity assessment is in this context before looking at benefits, approaches and processes involved.

### 6.1 Defining Opportunity Assessment

Opportunity assessment is a continuum spanning early-stage concept screening to revenue forecasting. Forecasting is, itself, a continuum of activities that may begin before the organization has committed to an investment. Opportunity assessment is therefore an early stage of systematic screening and evaluation of business concepts and advantages before investment. It helps to identify and understand the required needs and the possible opportunities and risks associated with the business investment and improvement.

### 6.2 Application of Opportunity Assessment to Land access

Accessing land asset for agricultural usage especially for crop farming and production is a crucial part of the investment and requires opportunity assessment of its own. Opportunity assessment in accessing land for smallholder farming and production involves stakeholders consultation with a systematic assessment and analysis on the geographical aspects of the area including the amount of rainfall and terrains, socioeconomic factors such as average income, infrastructure and public services accessibility, farming and cropping systems (including the type of soil, soil fertility, type of crops cultivated, farm sizes, laborers and technology input), and farming and production issues.

These assessments can be done through participatory needs and opportunity assessment (NOA). Successful completion of participatory needs and opportunity assessment may allow land accessibility for smallholder crop farming and production.

### 6.3 Participatory Opportunity Assessment (OA)

The participatory needs and opportunity assessment (NOA) are considered a powerful approach that can help diagnose farmers' real problems and constraints and help develop appropriate solutions to them through relevant research and technology development. The process involves many stakeholders as possible related to the interested crop(s) farming and production. It provides an opportunity for direct interaction with farmers and other stakeholders of the target area and share farming and related information and knowledge with them.

The participatory needs and opportunity assessment (NOA) involves few approaches including secondary data collection, transect walk, consultation, verification and partnership which have been integrated into 8 steps that needs to be undertaken which involves stakeholders (including farmers) consultation and analysis, site selection, secondary data analysis, problem analysis and prioritization, developing solutions/options with farmers, matching solutions with farmer's needs and circumstances, action plan development and establishment of baseline for monitoring progress. The approaches and steps are outline further below.

## 6.4 Benefits of opportunity assessment / NOA

Opportunity assessment helps to:

- Improve the relevance of research and technology delivery,
- Improve stakeholder buy-in of the research-delivery process,
- Increase the probability of technology adoption, and
- Enhance the livelihood of the stakeholders.

When selecting the land for crop farming and production, needs and opportunity assessment is helpful as it:

- Observe farmer's production systems as well as resource utilization and flow patterns;
- Identifies constraints and problems as well as potential opportunities for improvement;
- Leads to development of appropriate solutions and/or interventions to address the identified problems and opportunities for improving farmers' income and livelihood; and
- Provides understanding towards farmers' real problems.

## 6.5 Approach

The approaches for doing NOA or opportunity assessment when selecting land asset for farming may vary depending on the environment and geographical aspects of the area. However, a well-coordinated NOA involves undertaking the following activities:

- **Secondary data:** The collection of secondary data to enrich the planning process and ensure the relevance of the project;
- **Transect walk:** A transect walk and discussion with farmers and other stakeholders (e.g. laborers, input suppliers, etc.) in the proposed site and/or community to learn firsthand about the farming systems, resources and resource flow patterns, field activities, etc.;
- **Consultation 1:** An interactive discussion with farmers and other stakeholders to identify and prioritize problems, and to explore the causes for priority problems;
- **Consultation 2:** Consultation and working with farmers and other stakeholders to jointly develop farmer-acceptable interventions to identified problems and opportunities;
- **Verification:** Verification of information, problems, solutions, etc. with farmers; and
- **Partnership:** Joint development of an action plan and assignment of responsibility to local staff for follow-up on project implementation in the village.

These approaches are undertaken when applying the 8 steps outlined below.

## 6.6 Steps

The following are the necessary steps involved in needs and opportunity assessment (NOA) for selecting land asset for crop farming and production:

- (1) site selection;
  - (2) collection of secondary data;
  - (3) stakeholder analysis;
  - (4) problem analysis and prioritization;
  - (5) developing solutions/options with farmers;
  - (6) matching the solutions with farmers' needs and circumstances;
-

- (7) next steps (development of action plan for implementation); and
- (8) establishment of key variables for baseline survey.

Brief description of these steps is below. Successful implementation of these steps may allow access to land asset for crop farming and production.

### 6.6.1 Step 1: Site Selection for a project

Initially the investor(s) collaborates with the relevant government agencies and local communities (or landowners) to come up with a list of the proposed sites or interested project location(s) which includes the land space and target group(s) to be engaged in crop farming and production such as integrated cropping management (ICM). Screen and evaluate the propose sites list before selecting the site(s) for the investment. The following criteria can be used for assessment and site selection:

- **Current situation:** consider current situation of the site, which include different crops farming systems of the area, socioeconomic factors (income, farm size, credit, infrastructure, input availability), cropping systems, soil type, types of problem experienced, land type and use, water availability, and topography.
- **Access:** Select area with good access (no more that about 2 hours' drive from the commercial center) for easy contact, follow up and management and operation of the business.
- **Avoiding clutter:** Avoid areas where there are too many ongoing projects and government programs, and where farmers are not eager or sensitive to yet another new project.
- **Willing collaborators:** Choose areas where farmers engage in full time farming and are enthusiastic about the initiated farming business.
- **Impact potential:** Select areas with high potential for improving farm-level productivity and farmers' income (impact) through appropriate technical intervention.
- **Transfer potential:** Select areas that can serve later as training center for technology dissemination agents including farmer groups.
- **Management potential:** Locate areas with good irrigation (and drainage) system. If the project is designed specifically for tail end area of an irrigation system, select a site from the tail end area of the canal irrigation system.
- **Political considerations:** Be pragmatic and prepared to accommodate political considerations in selecting sites, when necessary.

### 6.6.2 Step 2: Secondary Data

Analysis of the secondary data is also important when selecting sites for crop farming and production. The following information need to be collected and assessed through consultation with local officials, community, farmers, key informants and other sources of secondary information. These information are helpful for deciding and planning the type of intervention(s) most suitable for the selected area.

- Types of crops cultivated in the area and their production statistics
- Farm size and numbers
- Rural infrastructure – the availability and accessibility of the follow:
  - Road network
  - Transportation facilities
  - Telecommunication
  - Electricity/Power supply
  - Marketing and warehouse facilities



- Processing facilities (eg, rice mills)
- Drinking water sources
- Health centres
- Sanitation and drainage facilities
- Educational institutions
- Recreation facilities
- Physical resources: rain fall experience, irrigation type, water issues if any, water quality, land use patterns, soil types, level of soil fertility and soils issues if any.
- Institutional linkages in the target village, such as:
  - Village structure & governance (local govt, community council, etc.);
  - Co-operatives;
  - Farmer groups;
  - Local extension service (govt, NGO, private, etc.);
  - Training facilities: Farmer field school (FFS), training materials, radio & TV programs, etc.
  - Sources of information: Farmer networking on communication
- Socioeconomic factors and constraints to change (focusing on the cultivated crop/s): capital accessibility, labour and wages, inputs availability and price, land tenure, market and price, farmer knowledge, farmer receptivity and adoption of technology.
- Cropping system
- Production practices
- Organic manure & crop residues
- Local fertilizer recommendations
- Local pest control recommendations
- Harvest and post-harvest practices

### 6.6.3 Step 3: Stakeholder analysis

It is necessary to identify and consult the stakeholders, institutions and/or service organizations who may directly or indirectly influence the farming and related rural development activities in the interested project area. An analysis of the institutions and stakeholders related farming of the area is important to assess their relative influence and contributions to farming. This analysis will also help to identify suitable partners for project implementation.

### 6.6.4 Step 4: Problem analysis and prioritization

Once the project site is selected, consult the farmers and local staff of the area as a single group (plenary) to identify problems and issues that they experience. The following procedures can be adopted:

- Allow farmers to list their problems one by one on paper. Problems may be technical and/or infrastructure -/policy-related.
- Request farmers to choose, by consensus, five problems they consider most important. Keep this list of farmer-perceived priority problems separately.
- Make a ranking matrix of all problems: Discuss the problems one by one and assign scores (1 to 5) for each problem using the different criteria as given in Table 1 below.
- From ranking matrix, sum up the scores for each problem and prioritize them based on total scores. If total scores for different problems are very close to each other (e.g. 24.0, 24.5, & 25.0), treat them as one category for prioritization purpose. In other words, adopt the range of scores (e.g. I = 24-25; II = 22-23; III = 21-22, IV = 19-20, and V = 17-18) rather than absolute scores for prioritizing problems.

Table 2: Criteria and Scoring for Prioritizing Farmer's problems.

Ranking Matrix of Problems								
Problem	Scoring: 1 to 5*						Total Score	Rank
	Area affected	Frequency of occurrence	Extent of damage	Estimated yield loss	Feasibility of solution	Others		

\* Scores: 1=Very low; 2=Low; 3=Medium; 4=Fairly high; 5=Very high

Note: In Table 5, the first four criteria refer to severity of problems, while the criteria of “Feasibility of solution’ looks at the level of efforts needed to solve a problem. This criterion (‘Feasibility of solution’) can be removed from Table 5, if the participants do not feel comfortable dealing with it.

### 6.6.5 Step 5: Developing Solutions – farmers’ and researchers’ solutions to problems

Consult farmers, local staff, and other stakeholders on possible solutions to identified problems and suggestions to exploit potential opportunities. Encourage farmers to come up with their own solutions to prioritized problems first, before other solutions or options are suggested. The options for addressing the problems can be outline in a table format as shown in Table 2 below.

Table 3: Selection of Options for Addressing Problems.

Problem	Cause(s)	Farmers’ solutions/options	Scientists’ solutions/options	Selected opinion

### 6.6.6 Step 6: Matching solutions with farmers’ needs and circumstances

Careful matching of proposed solutions with farmers’ needs and circumstances is critical. Get the farmers to express their opinion on the utility and compatibility of selected solutions and/or technology options to their own circumstances and needs. The criteria given in Table 3 (below) can be used to analyze farmers’ opinions on technology options. The same method of ranking used in Step 7 can be applied.

Farmers generally prefer technology options that have low risk, high benefits, low labour requirement, and low input costs, that are easy to learn, and that will fit the existing farming systems well. Finally, get local farmers’ consensus and agreement to try out in their farms the commonly agreed solutions to their problems through participatory evaluation and adaptation.

Table 4: How to determine the probability success or the potential level of farmer adoption.

Technology options	Farmers' score: 1 to 5*							Total scores	Rank
	Benefits	Risks	Cost of inputs	Additional labour need	Learn to use	Fit with farming system	Other		

\*Scores

Benefits:	1. Very low;	2. Low;	3. Moderate;	4. High;	5. Very high
Risks:	1. Very high;	2. High;	3. Moderate;	4. Low;	5. Very low
Cost of inputs:	1. Very high;	2. High;	3. Moderate;	4. Low;	5. Very low
Labor need:	1. Very high;	2. High;	3. Moderate;	4. Low;	5. Very Low
Learn to use:	1. Very difficult;	2. Difficult;	3. Less difficult;	4. Easy;	5. Very easy
Fit with FS:	1. Very poor;	2. Poor;	3. Moderate;	4. Good;	5. Very good

### 6.6.7 Step 7: Development of an Action Plan

Develop an action plan including all the follow up activities and assign responsibility to appropriate local staff for implementation. This includes:

#### (a) For options ready for delivery

- Identify the domain(s) where the technology fits in most.
- Develop criteria and simple protocol for farmer testing of delivery options.
- Design testing procedure; e.g. key farmers with test or demonstration plots.
- Identify and train partners to work with farmers for testing the options in their fields.
- Farmers' Day for key farmers to explain the test/demo results to fellow farmers.
- Distil the information (option) to key principles and in simple language so the message can be passed on to farmers at large.
- Develop strategies for packaging the message to attract farmers' attention.
- Identify the types of partners and mass media for spreading the message.

#### (b) For technology options that require on-farm validation or verification

- Develop simple on-farm experimental designs to evaluate and/or verify the technology options in farmers' fields.
- Researchers/extension staff and farmers jointly execute the trials and collect the data.
- Identify and train local partners to work with farmers in evaluating the technology options in their fields and to collect the data.
- Farmers' Day for farmer-evaluators to explain the technology evaluation results to fellow farmers and others.
- Finally, develop delivery strategies for successful technology options.

### (c) For problems that require further research (research gaps)

- Convey research gaps or researchable issues to researchers.

### (d) For problems and issues related to infrastructure and/or policy

- Convey infrastructure and policy related issues to decision-makers in the government for positive action.
- Work with decisions-makers to address the policy-related issues and develop a favorable environment for affected farmers to operate efficiently.
- Wherever possible, make arrangements for farmers to interact with concerned government authorities directly or through any communication system to discuss and, if possible, resolve their policy-related problems and issues.
- Work with decision-makers to create an environment for enhanced farmer adoption of new technologies.

## 6.6.8 Step 8: Establishment of baseline for monitoring progress

Once the land asset is being selected and fully agreed for investment in crop farming and production, establish a baseline (value standard) for monitoring progress. The establishment of baseline may include the following:

- Identify key variables to establish the baseline in relation to chosen technology options.
- Develop a simple methodology including the questionnaire for data collection.
- Conduct individual local farmer-survey to collect the data.
- Establish a simple and common database for all sites for data entry, analysis and management.
- Train the local partners on data analysis and database management.
- Analyze the data and establish the baseline information for key variables.

## 6.7 Summary

The steps discussed here are broad and can be contextualized to specific projects in agribusiness. Opportunity assessment is often undertaken in the agri-business sector as part of the feasibility study for any agri-business investment projects. A discussion of feasibility studies as part of project planning and development is discussed in Chapter 3 and 9. The templates for opportunity assessment are provided as Appendix C in Volume 2 of this guide. Opportunity assessment for agribusiness development on customary land is necessary since the processes involved should initiate the negotiation phase of the investment.

## CHAPTER 7: INVESTOR NEGOTIATION

Negotiation for investment should have already been initiated in the Opportunity Assessment processes. There are six simple strategies that can be used for negotiating agreements between customary landowners and investors. The clans that own land within the area that the agribusiness investor is planning to lease customary land should use these strategies for negotiation. The seventh strategy is a proposed hybrid process for negotiation that can be adopted at different levels of farming and agribusiness investment. The strategies are as follows:

### 7.1 Strategy 1: Understanding a community's right to be consulted

Community engagement is one of the priority tasks for any negotiations with an investor. This is all part of the free prior informed consent (FPIC) principle that applies as part of project negotiations. Community engagement with a potential investor is usually accompanied by government officials visits to the community, and the government official is usually the one that informs the community about the proposed investment project. Elsewhere in this guide community engagement and consultation is one of the key principles that is highlighted in all aspects of investment in customary land for agribusiness purposes.

The community should be in a position to mobilize as a group and should seek advice from external sources. A worst-case scenario can be that the investor or the government official could simply inform the community about the project that it had been approved by the National Government. There can be scenarios that the investor can only meet with few selected leaders, bribing or otherwise pressuring them to give consent on behalf of their community. As part of the free, prior, informed consent (FPIC), the consultation process between the community and the investor will include meetings and opportunities for the community members to request and review relevant information about the proposed project, voice their concerns, and influence decisions regarding the potential project.

Consultations create space for the community to influence fundamental elements of an investment project's design. A community consultation does not occur during the investor's very first meeting with the customary landowners. There should be a series of meetings that provide the community with the necessary information to fully understand the scope and aims of the investment. The consultation should involve all the community members, and should not be just held with few selected leaders in town. At this consultation meetings, the community members can ask questions, review documents and discuss the agribusiness investments among themselves.

It is important to allow the community members to have their own internal meetings, and after the own internal meeting provide feedback to the investor. Community members may decide to agree to the investment as offered, reject the investment or provide feedback about how the investment would need to be modified to be acceptable to them. Consultations are often characterized by very significant power imbalances. Investors often arrive for the first time, accompanied by government officials who tell the community, 'that they are being consulted' and demand an immediate 'yes'. Many investors / or government officials may run 'consultations' as opportunities to only inform the community that an investment is happening. Communities may feel that they have no choice but to approve a project that has already been approved by the government.

- Factors that will make consultations invalid

a) Communities may face coercion through the use of threats of violence, criminalization and false arrests by either the government, or the investor and its agents. The military, police or hired ‘thugs’ may be used to intimidate people, burn homes and property and use violent tactics to silence community dissent and opposition. These are strategies to try to get the community consent or stop community members from asking for more information or demanding better contract terms. Investor’s may act corruptly either by bribing community leaders to sign consent forms or pass around ‘attendance sheets’ at meetings that they then claim represent community members consenting signatures. Such ‘consultations’ may be used by the company or the government to give false impression to external interest – for example, international standards certification bodies – that the communities have genuinely given consent.

b) Investors and government officials may not give community enough information to fully evaluate the advantages and disadvantages of the proposed investment. Communities may be pressured by the government officials to agree to deals that they do not fully understand. The investor may not inform the community members of the key aspects of the investment, knowledge of which is necessary to properly negotiate a contract that is truly beneficial to the community. Some of the examples of the key information that they may withheld could be:

- The market value of the community land and natural resources
- The expected annual profits the investor will gain from the venture
- The overall net worth of the company
- The expected impacts on the community’s water, air, forest and health. Even information may not be communicated in a language that communities could understand. The result of this being that the community members may not be properly informed about the proposed investment and its potential impacts on the community’s environment, economy, health and wellness.
- Investors and government officials might ask communities to sign vague or undetailed contracts that do not include clear definitions of the boundaries of the land being asked to be acquired, granted or leased, timelines, payments and benefits, adjustment for inflation over time to rental payments or a clear articulation of how the community can hold the investor accountable to timely and full payment of benefits, environmental protection and other key terms of the contract. For these reasons and more, a community should seek the presence and support of a paralegal, lawyer, trusted NGO advocate, or a government official at the consultation and not sign or agree to anything until a formal negotiation process has ended.

## 7.2 Strategy 2: Ensuring that the community is meaningfully consulted

Meaningful Community consultation is covered in a range of International Treaties and Conventions, the domestic laws of Papua New Guinea advocate strongly for such consultations with customary landowners. Factors that may strengthen or weaken a community’s right to reject a proposed project in their area are -:

- (a) If the community that owns the land and the natural resources simply decide not to lease its land or not to enter into any contract with the investor
- (b) If the project is a mining project or concerns subsoil resources that are solely under the government’s control, then the community may not have the right to reject the project and may have to focus on negotiating a least negatively impactful deal.

Community leaders, advocates and community members can take various actions to ensure that a legitimate consultation does take place such as:

### 1. Refuse to give immediate consent and seek legal support

If an investor asks the community to agree to something they do not understand or agree to or give a contract to the community to simply sign, community members should tell the investor that they:

- Do not yet consent to the investor's project
- Have the right to seek legal advice before signing anything or consenting and
- Are not yet ready to negotiate and need some more time and information before they are able to update the company on the community's position.

### 2. Record every interaction with the investors by video or in writing

The community should write down, video record, or audio record (using a smart phone) every interaction with the investor and his representatives. Every information that is disseminated by the investor should be recorded, written down, photographed to create both a paper and digital record. The community should keep copies of any notes, letters, email exchanges or text messages between the investor and the community members. These records can be used in any legal proceedings as proof of the content of all relevant community – investor interactions.

### 3. Identify legal requirements for consultations

Community leaders and advocates can identify the International conventions on free prior informed consent and National laws that requires consultations. Using these provisions, the community members can remind the investor and the government officials regarding the legal requirements for consultations. If no such laws exist, advocates can look at the company's own internal policies, rules and requirements including external standards that the company should follow including ISO. The external standards and certification are what are required by the banks and financial institutions that provide finance in the form of loans for the companies to operate. International Financial institutions do have stringent requirement for Free prior informed consent and working with indigenous people that include resettlements.

Advocates may need to seek assistance from a national or international NGO to discover which financial institutions are funding the project and what procedures those institutions rules require.

### 4. Demand that an authentic consultation process is followed

Community leaders and advocates can help the community demand that the consultation occurs in line with best practices. This means demanding that the consultations must:

- Occur before the government authorizes the project development to proceed.
- Take place at the earliest possible stage in the design and conception of the project.
- Allow a community to provide or withhold its free, prior and informed consent (FPIC)
- Offer opportunities for the community to learn about the project and influence decisions about the project.
- Be held in community's language or Tok Pisin
- Be conducted according to the community's rules and customs
- Provide opportunities for all community members, including women, youth and members of marginalized groups to participate and

- Be properly funded (ideally independently) to enable the community to access legal and other technical assistance to build their capacity to address likely power imbalances between the community and the company.

## 5. Do not let community leaders approve deals without consulting the community

Investors and government officials that work with them often prefer to meet alone with a community leader or groups of leaders or male elders. It is much easier to persuade, intimidate, or bribe a few people than to get authentic approval from the community. Communities should take every effort possible to ensure that their leaders do not have private, secret meetings with investors. Advocates and leaders can help communities make local rules that require full community participation in investment decisions and mandate that the leaders call a large meeting of the entire community whenever an investor arrives to discuss the proposed investment.

If the leaders do make a decision about the investment without consulting the community, the community should seek advocates support to take action against these leaders. In some cases, these can be done through public shaming tactics. Having community bylaws is one way to addressing such deals by leaders. Deals that does not involve community consultations have to be cancelled. If the company is unwilling to consult with the community, the media can be used for advocacy as part of the Free Prior informed consent.

## 7.3 Strategy 3: Review of all relevant legal, technical, financial information

To make an informed decision about how to respond to an incoming investor as part of the consultation process (and if the community decides to negotiate with the investor, during the negotiation process), a community must be able to access and understand key information about the investor, the proposed project, and all of the project's potential positive and negative impacts. Having this information will put community members in a better place to decide whether or not to negotiate with the investor and what demands they can make during negotiations. Community members should seek the support of legal and technical experts who can help request this information, research the investment and the company's history, founders, directors and funders.

### 1. As a start, community and their community leaders should ask the investor a series of questions directly.

Such questions might include:

- What is the name of the company seeking land?
- Is the company legally operating in the country? (If Yes, ask to see the papers proving government permission and registration with the Investment Promotion Authority and with the Central Bank)
- What kind of investment is planned? What activities are planned to take place on the land?
- What land does the investor want to use for the investment? Why did the investor or company choose this specific community land? Details of feasibility studies undertaken be made available.
- How long is the lease the investor is seeking? Or is the investor seeking for the state to lease customary land from the customary landowners, and then the investor deal with the state, what are the options for the use of customary land.
- What is the level of profits the investor is expecting to earn?
- What are the expected environmental and social impacts of the investment?
- What benefits will the investment bring to the community?
- How will the investment affect the community member's prosperity and wellness?



- How does the investor intend to interact and communicate with the community?

## **2. Communities should ask the investor and the government to provide copies of the following documents**

### **(a) Feasibility studies**

Feasibility studies are a requirement by major investors. This is to assess the viability of the project in the area. In Chapter 4 of this guide, feasibility studies have been covered as part of applying for the use of customary land for agri-business investment. The feasibility study should define whether the proposed project is practical and likely to succeed and make a profit to achieve an outcome. The community can ask to review the findings from the feasibility study to help them understand whether the project is likely to fail or succeed. This information will help community members avoid negotiating and contracting with investors whose projects have a high risk of failing.

### **(b) Investor's business plan**

Investors are required by IPA and Central Bank regulations to submit business plans to the government before approval of an investment project. Chapter 4 of this guide has detailed the work on the feasibility study and community engagement during the phase of the feasibility study of which should include land access. The feasibility study should help develop the business plan which should contain information on how the investor plans to develop the land including a detailed work plan and timeline. The business plan should have information about the investor's expected annual profits and or expected profits over time (a few years). These details can help community members understand how the project may affect them and how much income the investor expects to make.

### **(c) Permits and Licenses**

Investors are required to obtain different permits or licenses from the government to carry out agricultural activities. Such permits and licenses require the investor to do (or not to do) certain things on or near the community. If the investor is using customary land then all processes outlined in Chapter 4 should apply, and community should be well versed and aware of it. Communities should not take word from the investor that they have government's permission to access land and should demand to see copies of all necessary licenses and permits. The investor is required to address all the issues of licenses and permits as part of the work on feasibility study as outlined in chapter 4 of the guide.

### **(d) Investor – state contract regarding the proposed project**

In certain cases, an investor must negotiate a contract with the government to carry out its planned investment. Community members may request copies of any contract between the government and the investor in order to see what contractual rights and obligations have already been created between the government and the investor. The investor – state contract may limit or increase the community's bargaining power with the investor. Communities that may be affected by the investment should still need to be consulted and their concerns addressed. The Investor- state contract might have provision on community benefit. This information is important to hold the investor accountable for providing those benefits. This would give community members an opportunity to specify the terms on which they would like to receive the benefits, and possibly allow them to ask for additional benefits beyond those the investor was already contractually required to provide.

Alternatively, the state- investor contract may include terms that significantly limit what protections the community may insist upon or the benefits it can ask for.

(e) Investor's reputation, track record, or performance on other projects

Communities may want to request information about the investor's other projects, including documents showing how those projects have performed over time. This information can help clarify how the company operates and whether it is committed to ensuring that its operations will benefit communities and ensure community member's human rights.

(f) Information about who is funding the potential investment

Companies are often subsidiaries of larger 'parent' companies operating under different name. Investment projects often seek funding from a wide range of sources. Advocates or NGOs can help communities to discover and map out who has pledged money to the potential investment, and who the 'parent' company of the investor is. This information can assist the community advocate for its interest in cases where the company acts in bad faith.

## 7.4 Strategy 4: Completing the consultation process and decision making for negotiations

Chapter 4 outlines the processes of community engagement and consultations between the investor and the community. This is part of the process of building understanding and trust with the community. The community members would have reviewed a lot of the information about the company including the feasibility study and the business plan and they would need to hold community discussions and make decisions on whether or not they will allow the company to carry out the project on their land. A lot of preparatory work in relation to how it will be utilizing customary land through various forms and means is as highlighted in chapters 4 and 5.

(a) If the community decide to let the investor access and use its customary land – proceed with negotiations

The community will end the consultation process and indicate its willingness to negotiate the terms on which the investment will proceed. By this time, the processes highlighted in Chapter 4 that focuses on large scale estates on customary land would have been completed. The investor would have used its resources to mobilize and organize customary landowners through corporate entities as indicated in chapter 5. A negotiation is a discussion or dialogue between two or more parties intended to reach a beneficial outcome or agreement over one or more issues. It can be an interaction process between entities who compromise to agree on matters of mutual interest.

In the negotiation process, the community and the investor each come to the table with their specific desired outcomes and discuss until they reach a compromise that both parties are happy with. Negotiation is a process and will take time, effort and resources to reach an outcome. There will be a series of meetings as part of the negotiations that are often facilitated by independent facilitators. The role of the facilitators is to guide the process and make sure that an outcome of all provisions in the agreement is reached. During negotiations, the investor and community make offers and counter offers, with each party pushing for terms that will most benefit them and protect their interest. As part of the negotiation, community members must know what they want (for example increase monthly rental on the use of their customary land), including what they are willing to compromise (for example protection of their community sacred sites and clean water supply).

## 7.5 Strategy 5: Going into negotiation with the investor

This strategy is now focused on going into negotiations with the investor. The earlier strategies as highlighted above has prepared the community well in terms of negotiating with an investor. The community must create a negotiating team and agree on the processes going forward that should include when they should consult with the community after meetings with the investor and the community's plans and priorities going into the negotiations. As part of going into the negotiations, the communities should plan for the following:

- (a) Revisit the community's priorities, understand what the investor wants, and prepare to compromise

The community members on the negotiating team should prepare well before going into the negotiations. The negotiation usually follows a structured process facilitated by an independent facilitator. The common strategy in negotiations is that a draft agreement is prepared and given to parties to consider. The process that the community can undertake after a draft agreement is given to them on the use of their customary land is as follows:

- Get the negotiations team, community members and their technical experts that should include lawyers to go through the contents of the draft agreement. The lawyers should be in the position to explain to the villagers what the relevant clauses in the agreement mean to them, and how does it relate to their community's future vision and accompanying land use plan.
- Go through the contents of the draft agreements and to include community input into the draft agreement. The community with support from the lawyer and the technical advisors should be guided to make an input on the draft agreement and take it back for negotiations. Some of the key clauses in the agreement that the community should look at include (a) the amount of land that the investor intends to use (hectares), (b) land use plan for the land that is to be used, (c) what period of time (duration of the agreement), (d) benefits streams for the customary landowners and (e) how the benefit streams would be shared with the groups that own the land that the investor is anticipating to use (f) community grievance management process in relation to any issue that the community level (g) compensation for the loss of land or foregoing of land and livelihood benefits from the land
- Draft agreement be taken back for negotiations with the investor that is willing to use the customary land. The draft agreement with inputs from the community should then be put up for discussion through an open forum negotiations and compromise be reached on areas of common ground. There might be points of differences during negotiations but the independent facilitator should guide the discussions for the parties to agree.
- If there are major differences on key clauses in the agreement, the independent facilitator should call for break out groups, so that the issues can be best clarified within each party and convening the negotiations again.
- Through this approach and process, the negotiations will reach a compromise where both parties would agree on a common ground thereby concluding the negotiations.

## 7.6. Establish Hybrid Process for Investor Negotiation

This section proposes a hybrid process for investor negotiation that can be adopted in different level of farming and agribusiness investment. The processes involve negotiation between the appointed representatives or heads of the project funder (could be a government or donor), the service provider of the project (could be public, private or NGO) and the local farmers or communities who are the landowners. The negotiation

processes could be facilitated by the local district officers like the District Administrator or by an appointed officer as discussed in Chapter 3. The steps involved are:

- Step 1: Establish contacts** – establish contacts between the parties for the purpose of communication. The facilitator should have contacts for all the parties involved.
- Step 2: Appointment of the representatives** – the parties involved to appoint representatives who can present them in the negotiation and communicate the information to the facilitator.
- Step 3: Schedule the meeting** – organize and arrange for the meeting. The selection of meeting date, time and venue should be convenient for all the parties involved to attend.
- Step 4: Hold the Meeting** – all parties attend the first meeting which should serve the purpose for introducing the bodies involved, the project and should initiate the negotiation.
- Step 5: Internal Negotiation** – allow a period for the representatives to discuss the outcome of their meeting with their members or authorities.
- Step 6: 2<sup>nd</sup> Meeting** – hold a second meeting after the period is up to discuss about the feedback of the internal negotiation. Discusses and plan for what needs to be done next.
- Step 7: Reach Understanding and Agreement** – the meetings and negotiation should aim at reaching an understanding and agreement that will allow for agribusiness investment to take place. It may require few more meetings and negotiations before the objective is reached.

Undertaking investor negotiation through the seven steps helps saves time, energy and even saves cost. The steps are simple and could be adopted depending on the scale and level of investment, while maintaining the full element of the proposed project. The negotiation processes should conclude with reaching understanding and agreement between the parties for venturing into agribusiness. If the objectives are not met, it depends on the parties to decide whether to continue on with negotiation or quit the process. Quitting the process may result in missing the opportunity for venturing in agribusiness investment.

## 7.7 Summary

The basis of these strategies is the need to have communities mobilized and organized and to ensure that community consultations as part of the free prior informed consent is in place. The understanding of the agribusiness investor's legal, technical and financial information is critical to better prepare the community or clans that own the land for negotiations. Having access to company information on the project is one of the main agendas going into negotiations. At the negotiations there should be room for compromise, companies often have draft agreements ready for the other party to go through. The use of independent facilitator to guide the discussions around the draft agreement is one of the best strategies to ensure that negotiations reach an outcome that both parties expect. The understanding and agreement reached from the negotiation for the investment should lead the parties especially the customary landowners and the investor to decide on which agreement structure they prefer to apply for the agribusiness development.

## CHAPTER 8: AGREEMENT STRUCTURES IN LAND ACCESS

After reaching an understanding and agreement from the negotiation process of the investment, an agreement structure must be selected to be used for agribusiness investment on customary land. This chapter discusses the various agreement structures that can be negotiated and used by agri-business investors and the customary landowners. The agreement structures are linked to the primary legislation that is concerned with customary land, particularly the *Lands Act* (1996). There are a number of options for use of customary land through various legal arrangements that can be negotiated between the agribusiness and the customary landowners. These agreement options are:

1. Types of land access agreement
  - Land Lease Agreement
  - Clan Land Use Agreement (CLUA)
  - Memorandum of Understanding (MoU)
  - Memorandum of Agreement (MoA)
2. Existing agreement structure along Markham Valley
  - State Lease
  - Incorporated Land Groups (ILG)
  - Clan Land Use Agreement.

### 8.1 Types of Land Access Agreement

#### 8.1.1 Land Lease Agreement

A land lease agreement can be signed between the customary landowners and the agribusiness investor. The customary landowner through the lease agreement has agreed to lease the land to the agribusiness investor in return for a lease payment. A lease is an estate in land (a type of interest in land) and gives a person all of the use and occupation rights of a landowner to a piece of land or portion of land for a determined period of time in exchange for rent paid to the landowner.

A lease agreement for purposes related to semi-commercial agriculture or agri-business should include the following key aspects:

- (a) Customary landowner entity to which the land lease agreement is being entered into
- (b) Duration of the lease, and clauses for renewal of the lease
- (c) Size of the land area that is being leased, and the basis for lease payments – cropped land, or the overall land area under the lease.
- (d) Different options for the leaser, which involves sub-leasing to other agribusiness operator wanting to grow crops or use the land
- (e) Terms and conditions of the lease
- (f) Lease payment amount and whether to be based on unimproved value of land
- (g) Frequency of lease payments whether annually or monthly
- (h) Dispute resolution clause

#### 8.1.2 Clan Land Use Agreement

### 8.1.3 Memorandum of Understanding (MoU)

A MoU can be signed between an agribusiness company and customary landowners that are organized through an appropriate entity as outlined in Chapter 7 of this guide. MoU is not legally binding but signals the willingness of the parties to move forward with a memorandum of agreement (MoA). An MoU is seen as the starting point for negotiations as it defines the scope and purpose of the talks between the parties.

To write a MoU, clearly outlines specific points of an understanding. Name all the parties involved, and describe the project on which they are agreeing on. Define the scope and details of each party's roles and responsibilities. All participating parties need to reach a mutual understanding. In that process, each side learns what is most important to the others before moving forward. The process often begins with each party effectively drafting its own best-case MoU. It considers its ideal or preferred outcome, what it believes it has to offer to the other parties, and what points may be non-negotiable on its side. This is each party's starting position for negotiations. MoUs should contain the following provisions:

- a listing of the parties involved;
- a purpose;
- terms and conditions;
- appropriate bilateral signatures;
- duration of the agreement; and
- any special provisions as applicable

### 8.1.4 Memorandum of Agreement (MoA)

MoA is a conditional agreement between the agribusiness and the customary landowners organized through an entity (as highlighted in chapter 7) where benefits are anticipated to flow on from an investment in an agriculture project. The wordings of MOA be kept simple, concise and clear wordings.

Whenever possible, use the wording of the parties when drafting the mediation agreement. Your agreements should be balance. Start with 'both parties agree' then state what each individually agrees to then close with "both parties agree."

The Agreements should be written in a positive language which means that stating something parties will do and not what they will not do. Agreements should be specific. As much as possible address: who, what, when and how questions. Careful reality checks should be done with the parties to ensure that the terms of the agreement are realistic and within their scope of authority. Carefully review each item in the terms of agreement with both parties to ensure that each item is correct and appropriately captures each party's intent. You should read each item out loud and ask each party if the wording is accurate. Each party should be able to understand their responsibilities in the terms of agreement. Keep in mind that the Memorandum of Agreement is a Settlement Agreement; therefore, appropriate personnel will need to clearly understand the terms of the agreement in order to effectuate the contents of the agreement. Be absolutely sure that all parties sign the agreement. All parties should receive a written copy of their agreement before they leave the session.

A MoA can also be referred to as a contract and is legally binding. MoAs must contain, but are not limited to:

- a listing of the parties involved;
- a purpose/statement of work;
- terms and conditions;
- appropriate bilateral signatures;

- duration of agreement;
- modification of termination and
- any payment/ benefit terms or special provisions as applicable.

## 8.2 Existing Agreement Structure along Markham Valley

### 8.2.1 State Leases

State lease are customary land acquired by state from the customary landowners and leased to a person or a company for a purpose for a period of 99 years. After the leasing period is up or towards the end of that period, the person or company renew the lease agreement if they want to continue doing business on the land. If the person or company cannot continue using the land and/or cannot renew the lease agreement, the state takes the land back and leases to a new party who is interested on the land for a purpose or the state gives the land back to the customary landowners, which may depend on the initial agreement made between the state and the landowners. The state lease is necessary when the proposed project is interested in a land area of customary land for plantation. The conditions and regulations concerning state lease are outlined under Division 2 to Division 5 of the *Land Act* (1996).

There are number of state leases given to large agribusiness establishment that exist in the Markham Valley road corridor. Some examples of these are Markham Plantations, New Britain Palm Oil, Ramu Agri industries, SP Brewery, Trukai Farms. The land on which these agribusinesses are operating are part of the alienated land that are under special business agricultural and pastoral leases.

### 8.2.3 Incorporated Land Groups (ILG)

ILG is required and considered under *Incorporated Land Groups Act* (1974) to be the corporate vehicles through which indigenous Papua New Guineans (customary landowners) can organize and engage themselves to work their land – either customary land or state lease, if they acquired one. The process for registering ILG or incorporating land groups are outlined in *Land Groups Incorporation (Amendment) Act* (2009) is discussed in Chapter 2 and 5 earlier. Accessing customary land through ILG as the agreement structure is best when the proposed project involves land areas that are owned by different clans or landowning units.

Incorporated Land Groups model is used as an agreement structure in a number of agricultural and forestry projects in the Markham Valley road corridor. These are as follows:

#### a) Morobe Provincial Government Oil Palm project

This was project for the Morobe Provincial Government, and it mobilized the customary landowners through the Incorporated Land Groups to plant oil palm on their customary land. A total of 21 ILGs were incorporated in the former Act of 1974, and have not been brought over to the amended act (2009). NBPOL and Ramu Agri business have not been collecting oil palm kennels from the project, due to issues about their planting standards not been complied with. This continues to frustrate the ILGs that have used their customary land for oil palm plantings.

#### b) PNG Biomass project

The PNG Biomass project has undertaken social mapping and landowner identification studies in their project area within the Markham Valley to identify customary landowners to sign up Clan land use agreement (CLUA)



and then mobilize them through Incorporated Land Groups. They have developed 6 land access principles that are as follows:

- Respect for individual and collective rights of landowners and communities
- Protection of customary land rights of the traditional owners of the land
- Use of the latest national legislation to get secure legal tenure over land
- Use of degraded, underutilized or weed invaded land
- Landowners or communities remain on their own customary land
- Protection and promotion of female landownership and usage rights.

The plan is to have well over 16,000 hectares of tree plantations, and the final plantation development will be 20 million trees over a three to five-year period. The plantation has been developed using short rotation species such as *Eucalyptus pellita*, a species that is indigenous to PNG. The plantation will be the principal feedstock for the PNG Biomass power project. The project has used the Clan land use agreement (CLUA) model for the pilot trial sites. This will be further discussed. After the use of CLUA for pilot trials, land leases are being finalized with ILGs. The ILGs will sign voluntary land lease agreement with the developer PNG Biomass for a period of 30 years. Any extension of lease will require further agreement between the project and the customary landowners through their ILGs.

#### c) Land lease for Agri-business through Incorporated Land Group

Hore Agricultural Supplies have been leasing customary land from Mesiang ILG in the Wampar area of the Markham valley area just opposite Nazab airport. The total area leased from the ILG is about 1200 hectares, but only 300 hectares is being worked on, a lease rental is for the cropped hectare (300 Hectares). A lease payment per annum is K300 per hectare of cropped land. Maize is being grown on the land and sold to Farmset for their stock feed mill. Farmset and Trukai industries are interested in working with Hore Agricultural services, as they don't want to directly interface with the customary landowners. The ILG members are given group contracts to work on the land, and get paid for manual tasks. The customary landowner has seen this initiative working and are interested in growing maize to sell through Hore Agricultural Supplies to Farmset. Land lease through ILG provides growth opportunity through supply value chain from small holder maize farmers.

#### d) Incorporated Land groups in the Rice sector

Luhu ILG from the Pohom area, Nawaeb District have signed a memorandum of agreement for Rice development agreement. Trukai Industries was to assist landholders/ growers through the ILG to develop cash business by growing and harvesting of rice for purchase by Trukai. The obligations by Trukai under the MOA are as follows:

1. The amount of land to be committed by the landholder/Grower to the project during a trial period and subject to the trial being successful further land over an agreed period of time
2. Communication to the ILG is well maintained on issues and risks that can affect the operation.
3. Regular meeting at the first week of each month to be held with the landholders to discuss actions to date, next steps, issues and risks, adjustments to the program or plan, expected outcomes and operational successes.
4. Issues identified be brought to the attention of the ILG for discussion and rectification
5. Monthly meeting minutes be distributed to ILG with clear resolutions on issues per agenda discussed
6. Reserve the right to terminate the agreement by providing one months' written notice if the Rice landholders and growers continue to breach the agreement and issues raised are consistently not rectified within the agreed timeframe.



Landholder/ Grower's obligations are as follows:

1. That appropriate land is committed to the project during the trial period and an agreed expansion phase thereafter over an agreed period of time.
2. Assist Trukai in establishing appropriate security, safety and procedures to protect parties specifically Trukai employees, plant and equipment.
3. Use of best endeavors to protect land, equipment, employees of Trukai from whatever form of risks, damage, destruction whether caused by criminal action, disputes or other events.
4. Pay full costs if any dispute arises causing the cessation of development
5. Ensure that that the operation is not disrupted or at risk.

This is a similar arrangement with Chingwam Cooperative Society, only difference is that the ILG mechanism is used in this context.

#### 8.2.4 Clan land use agreement (CLUA) – PNG Biomass

The clan land use agreement (CLUA) structure is best suitable to apply when individual clan wish to make decisions concerning agribusiness development in their respective land that they own. The negotiation of the agreement under CLUA involves only the particular clan and the investor. The CLUA structure is best suitable for 'Out Grower' and 'Small Holder Farming' (see chapter 9).

The clan land use agreement process has been extensively used in the Oil Palm sector in West New Britain for the purpose of clans freeing up customary land for oil palm plantings by investors such as New Britain Oil Palm and Hargy in West New Britain. In the cocoa sector, Clan land use agreement has been used by Productive Partnership for Agriculture Project for purposes of developing and building nursery sheds by the lead partner. In the Markham Valley Road Corridor, CLUA has been used by PNG Biomass project for the pilot phase in which the customary landowners after being identified through social mapping and landowner identification studies signed the clan land use agreement that enabled PNG Biomass to conduct agreed activities. This included the establishment of the trial plantations to test the tree species for period of specified time and payment of monthly land usage fee.

### 8.3 Summary

This chapter provided a broad over view of some of the agreement structures in terms of land access. The chapter also presents the existing agreement structures used in agribusiness development within the Markham Valley area. Sample agreements are presented as Volume 3 of the guide. The sample agreement structures can be tailored to a specific context within the Markham Valley area. The sample agreements will still need legal guidance and clearance to ensure that the sample agreements are within the country's legal framework. The analysis and selection of the agreement structure should propose the types of business model that could be incorporated for the agribusiness development.

## CHAPTER 9: MOBILIZING SMALL HOLDER FARMERS WORKING ON INDIVIDUAL CUSTOMARY LAND

After deciding on which agreement structure is to be used for an agribusiness development on customary land, a business model that suits the agreement structure should be applied for investment.

This chapter presents possible agribusiness models that can be adopted for agriculture investment on customary land. Business models for large scale agribusiness investment can be drawn from the state lease and ILG agreement structure as discussed in the previous chapter. This chapter focuses on small holders working on their own customary land since such models prevents the social risk of the agribusiness investor trying to spend resources to identify, organize and mobilize customary landowners. It is important the organizing of the smallholder farmers and the selection of the agribusiness models are based on the existing abilities and resources. The chapter consist of three main sections:

1. Process involved in smallholder farming;
2. Smallholder farming model; and
3. Existing farming models along Markham Valley.

## 9.1 Process Involved in Smallholder Farming Model

Smallholder farming in this context refers to the engagement of customary landowners and or local framers into agribusiness as production unit. They grow crops on their own land and supply the production to the production plant or investor through a contract or agreement made between them and the investor. The smallholder farming initially involves the following steps:

### 9.1.1 Step 1: Farmer mobilization and Identification of the current practice and challenges

Use of rapid rural appraisal study of current practice of customary landowners working on their land to sell produce and crops would be the process to get started. The Rapid rural appraisal study should be complimented by District and farmer level stakeholder consultations to establish the current situation of agriculture. In the stakeholder focus group discussion – explore also the challenges that they face and explore options on how those challenges could be addressed.

This should explore options on how the farmers from the village want to be organized. It is recommended that they can follow simple structures such as a farmer's organization under the *Associations Incorporations Act* (1966) of IPA or *Cooperative Society Act* (1982) of Department of Commerce and Industry stated in Chapter 2 in the second category of the regulations. This step should not only be a one-off process but there should be regular contact with the farmers to get them properly organized and structured through either a farmer's association or a cooperative society. The use of farmer's association or cooperative society model is proposed as these are options that are focused on mobilization and organizing farmers, and does not have anything to do with landownership.

### 9.1.2 Step 2: Undertake an assessment of quality of crops supplied

This step is extension services related towards working with farmers that are interested to sell their produce through the supply chain. This process is linked to step 1 but because it is to do with crop agronomy and the farming practices, it is kept separate.

### 9.1.3 Step 3: Organizing and mobilization of farmers

The farmers that are working on their own customary land will have to be mobilized through an entity either association or cooperative society. These two options are recommended as they are focused on mobilizing groups, and does not link to issues about customary landownership. The customary landowners who will be small holders shall be working on their own land. Training and extension support will be available through the

entity. Partnership can then be established between agri-business operators and the entity that has mobilized small holders

#### 9.1.4 Step 4: Collaboration between Farmers Association, Cooperative society and Agribusiness

The established agribusiness will have to meet with the farmer's association or cooperative society. The purpose of this engagements is for the agribusiness to undertake and assess the following:

- a) Communicate what their expectations are in terms of working together to improve performance of the agriculture sector.
- b) Spell out to the farmers' association/ cooperative society what the agribusiness requirements in terms of purchasing produce from the farmers, and what the process of engagement will be such as registering with the agribusiness entity, level of technical support that will be provided to the farmers through their association or the cooperative society
- c) The first engagement will be beginning of the process in which the agri-business will still have to work with the farmers to build capacity in terms of improving the quality of the produce they produce and supply to the agribusiness operator.

#### 9.1.5 Step 5: Ongoing support by the Agribusiness to the farmers

The agribusiness as part of this step will provide ongoing support through buying of produce, training and technical support to the farmer's group. The agribusiness operator will develop its own programs to interact with the farmers at the community level.

### 9.2. Smallholder Farming Model

The following are some of the farming practices and models that can be incorporated for small holder farming on customary land.

#### 9.2.1 Contract farming

Contract farming (CF) involves engaging landowner companies, ILGs or local farmers through an appropriate entity (as discussed in Chapter 5 – as a production unit) to meet the demand of production that the firm wants. The demand is usually written into the contract. In CF, the firm exercise necessarily controls on the raw material production without ownership of the production unit. The production unit in contract farming is still retained by customary landowners that work on their own land to supply the required produce. Contract farming does revolve around small holders supplying the produce. CF scheme is best for the food processing firms/industries which have high fixed costs. The stages and processes involved in the contract farming are illustrated in the diagram below.

Figure 5: Main stages and processes of establishing Contract Farming.



### *9.2.1.1 Stage 1: Preparing for Contract Negotiations*

Preparing for contract negotiations require the following process:

- Consider which business models, type of farmers/production units, crops and so on to prioritize.
- Consider how prospective farmers/productions unit fit with the firm/industry development plans.
- Map out all existing users of land and water of the project interested area(s)
- Engage the local community in a full and transparent way.
- Conduct business feasibility studies and prepare a business plan based on outcomes.
- Screen the farmers/productions units with respect to technical and financial capabilities
- Conduct social and environmental impact assessment and implement finding into the management plan
- Ensure transparency about the process to access land and make investment.

### *9.2.1.2 Stage 2: Drafting and Developing the Contract*

The drafting of the contract to engage farmers/production units require the following:

- State applicability of domestic laws, for example, labor, health and safety, environment.
- Define rights of the farmers/production units to use and access project sites, including maps
- Include binding commitments for feasibility studies and business plans, impact assessments and management plans, and incorporate milestones in the contract.
- Include, as appropriate, targets/requirements for job creation and training, out growers' schemes, technology transfer, processing facilities, purchase of local goods and services, and destination of produce.
- Include commitment for agree-on community development programs.
- Include provisions for grievance mechanisms and dispute settlement.
- Include assignment and termination clauses to deal with potential failure.
- Define what information will be made public.
- Farmers/production units to sign the contract (become contractors to the firm); engagement or work commence as per the contract signed.

### *9.2.1.3 Stage 3: Negotiation and Contract Signing*

The negotiation and the signing of a contract or agreement to engage the smallholder farmers or farming units for contract farming includes the following:

- Free Prior Informed Consent (FPIC) – conducting detailed awareness about the propose project/agribusiness investment, the project partnership and the related impacts of the project is necessary before the parties engaged into a form of agreement for project establishment. The parties involved including the local communities and local farmers must be fully aware and understand the project, the partnership involved and the possible impacts that they will experience from the project as the result of signing the agreement/contract. Community engagement and consultation are important part of the process of FPIC.
- Disclosures – making known any information to the parties involved such as the strategic plan of the farming investor and the local farmers association, the project/farming benefits and disadvantages, etc. Disclosure of any financial information on the project and likely benefit to be shared between parties to the contract.

- Explanation – detail explanation of the contract/agreement to the parties involved is necessary. The agreement/contract must be fully understood by the parties (or local farmers) before signing for contract farming/project partnership. This may require language translation (a translator) to get the contract communicated to the local farmers in their local language.
- Public signing – The ‘signing of the agreement/contract’ must be done in public witnessed by every members of the parties involved including the farming units/local farmers and the communities especially villages. This is to ensure that the members of the parties involved have trust and confidence on the project and the project partnership. It also allows for transparency in the management of the project and the project partnership.
- Statutory declaration of contract (in public): A statutory body (commissioner of oath/a lawyer) from the State should declare (over-sign, stamp & announce) the signed agreement/contract as legally bound and thus the breaching of the contract by any of the parties involved is subject to Court and penalty shall be imposed if found guilty. This should also be done in public witnessed by the members of the parties involved and should occur right after the parties have signed the contract. This allows the parties to maintain and fulfil the agreements they made at all times throughout project operation.

#### *9.2.1.4 Stage 4: Monitoring and Enforcement*

For effective monitoring and enforcement, do the following:

- Monitor adherence to domestic laws.
- Monitor farmers/production units use of land, water, and other resources are in accordance with agreement.
- Report on and monitor adherence to business plan and environmental and social management plans, and agree to any material changes.
- Report and monitor adherence to other commitments and targets.
- Ensure ongoing dialogue between local communities, farmers/production units, and government with means for communities to raise grievances.
- Ensure sanctions for noncompliance with domestic laws material breach of contract provisions.
- Apply contingency plans in the case of failure.

The diagram below (Figure 6) summarizes the stages and process involve in contract farming.

*Figure 6: Stages and process involved in Contract Farming.*



## 9.3 Existing Farming Models along Markham Valley

This section presents the existing farming models along the Markham Valley. The models are legally based as the process and procedures involved in the framing of these models guided by the respective legislation that are listed in Chapter 2 of this guide. It is important that the models are legally developed and bonded by all means for a successful investment and for the fair benefits of the parties involved.

### 9.3.1 Cooperative society

The Cooperative society model has been used in the Markham Valley Road corridor for a number of crops. The Cooperative society is used as basis of mobilizing of groups working on their own customary land. The customary land is not alienated from them by the state or an investor. The cooperative is being used for the following:

#### a) Cocoa small holders

Cocoa small holders are organized under cooperative society arrangement to go into growing cocoa. The small holder cocoa growers sell their wet bean to the cooperative society that owns the fermentary. This



arrangement is slowly eroding as small holder cocoa farmers are now able to afford to have their own fermentary.

#### **b) Rice farming**

Cooperative society is being used by Chingwam villagers from Ragiampun village to grow rice. The cooperative and its members have been working with Trukai Industries. The villagers are organized under Chingwam Rice Cooperative society to free up their land for rice cultivation. Trukai piloted and progressed the project to a commercial level, however, because of leadership issues and land dispute with a neighboring clan the project was halted. The same group have now applied for registration as an incorporated land group.

### **9.3.2 Out Grower models**

Out grower models are referred to as 'out grower schemes' which is simply the integration of local farmers into agriculture business. It involves contracting local farmers to cultivate crops on the customary land to sell it to the plantation or processing plant. This model is currently being used by SP Brewery in their cassava plant at Erap within the Markham Valley. The lead farmers approach is being used in the out-grower model.

The establishment of out grower schemes usually requires the following process:

1. Include a provision in the contract requiring the establishment of an out-grower scheme with local farmers alongside the land investment agreement.
2. Create a separate contract between investors and out growers, linked to the main lease agreement.
3. Specify who should be included, the support and assistance to be provided by the investor/firm, and how to establish a fair price-setting mechanism
4. Give preference to out grower schemes that prioritize women and marginalized farmers.

The United Nations Conference on Trade and Development (UNCTAD)-World Bank consider out grower schemes as the best for agriculture project models for developing countries since it allows for the transfer of technology and knowledge to the local farmers. SP Brewery is using the lead farmers as the lead in the out-grower scheme. Other farmers in the villages congregate around the lead farmers. The lead farmers and the farmers around them come together for training, and any extension support that SP Brewery provides.

### **9.3.3 Contracted out-grower - Mainland**

Contracted out-growers is being used by Mainland Holdings for broiler chicken projects. Under this model, Mainland has up to 400 contracted out-growers. Most of the contracted out-growers are nuclear families that have chicken shed that can hold up to 5,000 birds. Most of the contracted out-growers have been on contract for more than 10 years. Poultry raised by the out-growers compliment the ones raised in Mainland Holdings own farms. The out-growers are paid six times per year based on sales. Mainland Holdings is responsible for supply of day-old birds, stock feed, extension services and regular supervision. The nuclear family-oriented chicken out-grower scheme has worked well for Mainland. The out-grower poultry farmers sign a 14-page contract to be out-grower farmers.

### **9.3.4 Lead Farmers- NKW Fresh and SP Brewery**



### 9.3.5 Current Model with Trukai Industry: A Case Study

In the box below (Box B) is a case study involving Trukai Industry Limited working with a group of customary landowners in Markham Valley for rice farming.

### Current model with Trukai industries (Case Study)

Trukai industries has been working with customary landowners working on their own land. The following analysis is based on the review of the Chingwam Cooperative Society and the Luhu Incorporated land group. The likely processes that will have to be undertaken to make the model work effectively is as follows:

**Step 1: Community expresses interest to free up their land and work with Trukai to establish a trial rice project and later venture into commercial rice farming.**

Communities will express interest to work with Trukai on their own land. This would usually consist of a formal letter being sent to Trukai or office visit and meetings held there. Trukai will have to verify per below step 2.

**Step 2: Trukai to visit communities to verify the status of customary land**

Trukai shall then visit the community and verify with the leadership in the village the status of customary land that the clan members want to have Trukai Industries work with them. As part of this discussion, Trukai industries should consult with the following:

- a) Ward and village leadership
- b) Clan leadership from the clan that have expressed working with Trukai and the neighboring clans that they share land boundaries with.
- c) Possibly meeting with the whole community so that the process is open and transparent, as well as to draw interest on rice farming at the community level.
- d) Use of free prior informed consent principles as part of the community engagement processes.

At this meeting Trukai shall inform the community that it will do its own due diligence in terms of working with the clan that have expressed interest to work with Trukai. This is even if the clan has registered itself as an ILG or the groups in the community have mobilized around a cooperative society.

**Step 3: Trukai industry to undertake its own social mapping and landowner identification study on the proposed area of development and complete the land investigation report.**

Trukai industry is required to undertake its own social mapping and landowner identification study of area in which the particular clan wants to work on. This will include consulting with the neighboring clans, and the neighboring clans to verify land boundaries. The information from the social mapping and landowner identification study shall then be used to compile the Land investigation report for the specific site that the clan want to work with Trukai on.

**Step 4: Trukai after completing Step 3 should bring the study back to the community and commence discussion on the rice development and purchasing agreement.**

The process in step 3 should then be used to discuss the Rice development and purchasing agreement. Particular focus be on internal direct benefit sharing agreements after the clan receives the income from the growing and the cultivation of rice. If the group has not been formalized as an ILG, then they have to follow the process of registering an ILG that is also the subject of the guide.

If the clan already has an incorporated land group, the process in step 3 is only a verification of the group, and further followed through in Step 4. The rice development and purchasing agreement template is further attached as an appendix to the Guide book.

## 9.4 Summary

This chapter outlined the processes and business models concerning smallholder farming on customary land which involves customary landowners working on their own land as small holders to supply the production plant or the investor based on a legal agreement made. The option of mobilizing groups under association or cooperative society is discussed in this chapter. Associations and cooperative society approaches are ideal as they focus on mobilizing and organizing the groups and does not involve the land. The present model with Trukai working with customary landowners has been reviewed and a refined approach and highlighted in this chapter as a case study. The selection and framing of the agribusiness model should at least provide pathways on how the revenue or benefits from the investment can be shared among the parties involved.

## CHAPTER 10: REVENUE SHARING

The business model that are selected to be adopted in the investment should already indicate how the revenue can be shared among the parties involved. This chapter discusses revenue sharing approaches in the agri-business sector that involves the agri-business investor and the customary landowners that are organized through a number of entities as described in Chapter 5. Revenue sharing is defined as the distribution of the total amount of income generated by the sale of the produce, after expenses are deducted. It is therefore the profit that is shared by the parties or shareholders of a business. In dealing with customary landowners this provides often a challenge especially when customary landowners do not put up an equity in a project, but only lease their customary land to the agribusiness investor. Customary landowners need to understand this very well as part of the consultation and negotiation processes. The chapter provides a broad overview of revenue streams and the options for sharing that are available. The broad-based discussion can then be applied to context specific cases in the types of agribusiness investment models.

### 10.1 Defining Revenue Sharing

Revenue sharing is the distribution of the total amount of income generated by the sale of goods or services between the stakeholders or contributors. Every business or investment involves revenue sharing among its shareholders and there are different approaches depending on the business type and the agreements that are in place. The selection of the revenue sharing approach may depend on the types of the farming business (either large scale or small scale) and the arrangements and agreement between the parties.

### 10.2 Structure of Revenue Sharing

Farming is a business in which land, labour, and capital are combined through the application of management. Where each of these factors are owned or contributed by different parties, the payment for each factor should be equal to their value as an input to production. That means the revenue sharing structure should involve the following:

#### 10.2.1 The Investors

The investors will always want the quality and quantity of the farm produce that suits the demand of its consumer. To ensure that the required quantity and quality are produced, the investor will provide farm input such as seeds, fertilizers, machineries and technologies for farming based on the required standard. The related service fee for supplying the farm inputs will be deducted by the investors upon purchasing the farm produce based on the agreement between the parties. The purchasing amount goes to the farmers to compensate the labor input.

#### 10.2.2 Farmers - Labor

The farm inputs such as seeds, fertilizers and machines and technologies need labour force to fulfil their purpose. Thus, the farmers who provides the labor deserves a fee. The labour fee in large scale farming business comes as wages while in small scale it is the amount earned from selling the farm produce. It tends to be a common practice that the laborers on the farm are paid the minimum wage. The customary landowners and communities near such agribusiness establishments tend to be the ones providing labour. Where the agribusiness model is based on contract farming, then the return for labour is the amount per the contract for each supply of produce.

### 10.2.3 Customary Landowners

It is the customary landowners who agree for their land to be used by the investor for farming based on a valid signed written agreement between the parties. They deserve rent to be payable to them by the investor for the lease of their land based on the lease agreement in place.

### 10.2.4 Land Owning Unit / Land Groups

A land-owning unit is the entity that owns the customary land that an agribusiness investor might be leasing land from. A rent is usually paid on the lease of the land, and depends on the size of the land, and how the lease agreement is structured. There are a number of approaches for possible revenue sharing that can be worked out. A customary land-owning group can negotiate a better option for revenue sharing based on the following:

## 10.3 Proposed Approaches based on Local Context

This section proposes some local context approach for revenue sharing that could be applicable in agribusiness development on customary land depending on the farming size or business model. The following are few farming situations that the revenue sharing can be drawn on.

### 10.3.1 Approach A: Cash Rent (Lease)

With a Cash Rent Agreement, the landowner acts only as landlord. A tenant farmer – who in this context is the investor or agriculture industry – pays an amount per acre per year for the right to farm the land. In most cases, it involves direct dealings between the investor and the individual land-owning groups or land-owning unit of the project area. May also involve ILGs if it is a large-scale farming which requires large area of customary land. This involves landowners not being interested to participate in the farming activities but just leasing their customary land for farming.

Under the approach, the farmer (who is the investor) uses his own equipment, assumes all input expenses, and, for the most part, conducts his business as he sees fit. In turn the tenant pays the annual rent to the landlord, usually before planting begins each season, which is typically 3% to 5% of the land value.

For example, if you have 100 acres of farm land valued at K3, 000 per acre, you could reasonably expect to charge a tenant farmer anywhere from K90 to K150 per acre for a total annual cash rent of K9, 000 to K15, 000.

The tenant pays the total annual cash rent for the entire project lease area to landlord who are the customary landowners through their land groups depending on the sizes of land being leased for the project. The clans then distribute the revenue among the family and individuals who made up the clan and may depend on the lineage (next of kind) and age category. In the family, the father gets and distribute among the family members if it is a patrilineal society or a matrilineal society.

If the cash-rent approach involves ILGs, the revenue distribution among the landowners can be considered under the approach below.

### 10.3.2 Situation B: Landowner's Entity Approach

If the customary landowners are involved in the farming investment or activities through landowner entities (i.e., ILG, LANCO, business groups, cooperatives or association) for the purpose of reaching an agreement for the investment, the revenue distribution could be as follows and may be affected by the type of agreement made between the parties.

The revenue generated from the entire project is payable to the project-wide business enterprise. The business enterprise of the project then distributes the revenue among the number of landowner entities who have been a partner or shareholder in the business based on the agreement made. The entities may then get the share that is needed for its operation and sustainability purpose and the remaining share of revenue can be distributed based on the two categories below.

#### 10.3.2.1 Category 1: Leased-Land Rent

- The distribution under this category is based on the size of the leased land and is payable as rent to the landowners if the landowners are just leasing the land and not participating in farming activities. This involves landowners forming an entity out of their ILGs for the purpose of going into agreement for leasing the land to investor for the agribusiness development.
- The total rent payment of the leased land of the entire project is paid to the landowner entity, most often formed by ILGs. The umbrella landowner entity, after it gets its share for operational and sustainability purpose, distributes the remaining share among the number of ILGs that formed the entity based on the amount of leased land that the ILG owned.
- The ILG then distribute the revenue among the landowning units that formed the ILG (i.e. land groups or clans) according to the size of leased land that they owned.
- The clan or land groups then share the revenue between each family that they are composed of. The amount shared may depend on the size of the family.

The agreement made under this approach by the parties may influence the revenue sharing in terms of the payment.

#### 10.3.2.2 Category 2: Farming-Production-Labour (Custom Farming)

This approach basically involves compensating the labour effort contributed to the farming and production by the local farmers who are the landowners. Under this approach, the landowners can establish an entity (cooperatives, association, LANCO) and partner with the investor to provide local farmers and labour for farming. The landowner entity, under an agreement with the investor, allows customary landowners to farm their own land under their ILGs and from time-to-time undergo training provided by specialist from the industry, while the investor is responsible for providing equipment and other resources apart from labour.

The compensation of the labour input in the farm and production can be done seasonally during the harvest and the total payment is payable to the landowner entity. For the operational purpose and sustainability, the entity gets its shares and the remaining can be distributed as follows:

- After entity gets its operational share, the remaining shares of revenue can then be distributed among the number of ILGs based on the number of farms and farmers and production that the ILG is responsible.

- The revenue is then distributed among the farms that are under the ILG depending on the size of the farm and the number of farmers and production.
- The local farmers within the farms should then have a share on the revenue based on the size of the farm and production each are responsible for.

These approaches may involve the deduction of necessary fees (like Goods and Services Tax or GST) due to the establishment of the entities under legal authorities and process through the regulation discussed in Chapter 2.

## 10.4 LANDOWNER ENTITY APPROACHES

### 10.4.1 Landowner Company (LANCO), Business group, ILGs and Cooperative societies

Customary landowners can organize themselves through a number of entities as highlighted in Chapter 5 of this guide. Revenue sharing and distribution can be structured in the way the revenue sharing agreements are structured between the parties. The agribusiness investor can be the entity that will be managing the overall agribusiness project or business enterprise. The agribusiness enterprise can then distribute the profits after paying off the expenses from the revenue. All of these depends on the agreements that are in place before commencement of the operations of the enterprise. It is important to educate and empower the customary landowners that they have potential to organize themselves and be involved in the agribusiness sector.

The customary landowner entity through the above form would then further distribute its share (profits – income) to each member based on the land holding of the area used. The approach of revenue sharing may involve the deduction of necessary fees (such as tax, farm input fees, etc.) in the due process.

### 10.4.2 Smallholder Farming – Revenue Sharing

If the farming project is a smallholder farming that involves the participation of land groups as farmers, the revenue distribution could be done as follows.

The investor or industries pays the farm produce from the land groups (farmers) who have participated in the farming and production as local farmers at the village upon deducting the supply service fee for supplying the farm inputs such as seeds and fertilizers. The land groups then distribute the revenue among the number of families in the land group involved in the farming activities depending on the size of the farm that there are responsible.

If the local farmers' inputs have been recognized as a smallholder farming and receive funding support from donor agencies (government/NGO) apart from the investor for farming improvement, the funding may go through the local-level government, then goes to the village development committee/council (VDC). The VDC then distribute the funds among the number of villagers that are involved in the farming project. The village through the traditional village forum then distribute the funds to the land groups/clans where the fund is further distributed among the families or lineages of that clan to sustain their farming and SME as in the government perspective. The distribution of funds among land groups may depend on the sizes of the farm and the number of farmers who are involved in the farming.

### 10.4.4 Farmers' Cooperative

Farmers' cooperative can be one of the best approaches for revenue sharing among the investors and the farmers who wish to participate in agribusiness on their own customary land. Farmers' cooperative is an

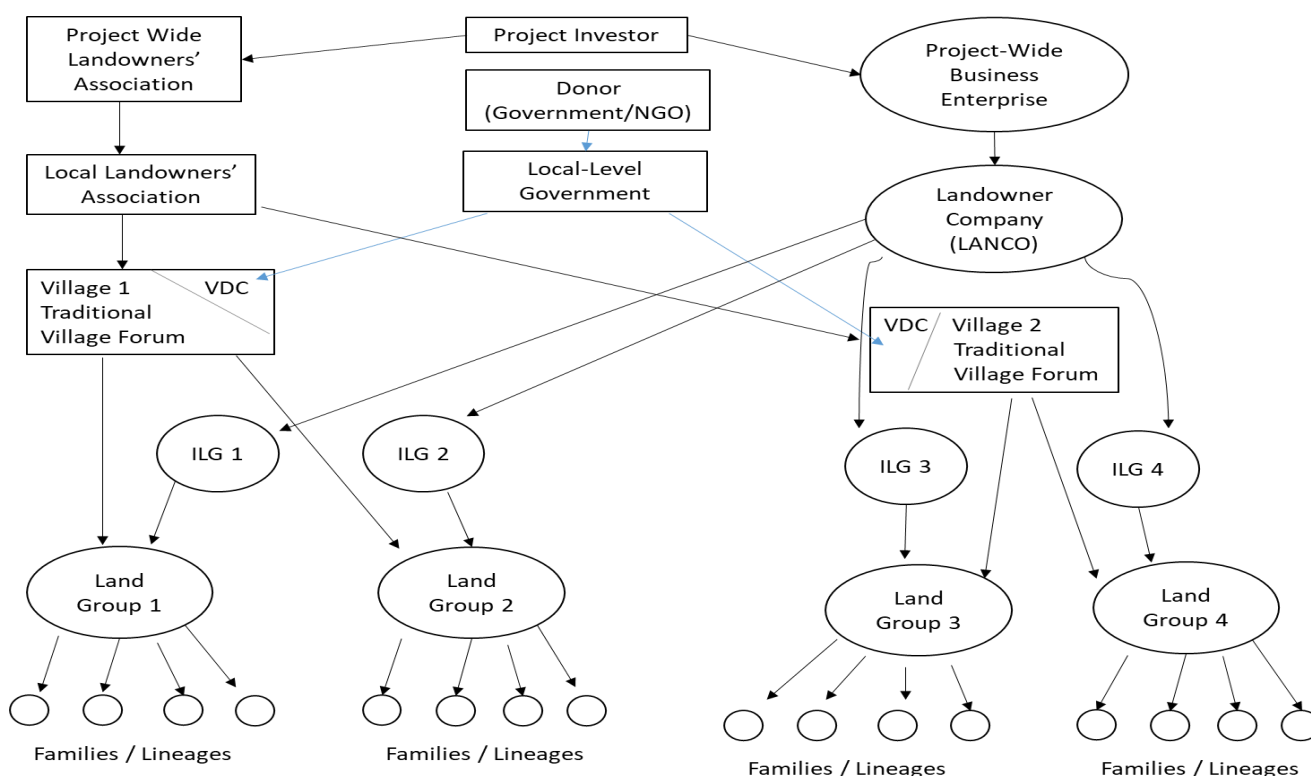


organization of farmers for marketing their products or buying their supplies. Local farmers who are also the landowners may form a farmer's cooperative under their ILG through the legal process under the respective regulations stated in Chapter 2. The cooperative may be responsible for the supply services for farming and production. The supply services involve the supplying of 'farm inputs' such as seeds, fertilizers and technologies etc., to the members for farming and supplying of farm produce for marketing purpose.

The cooperative buys farm inputs from the investors or license trader to supply its members (the farmers). The trading money goes to the investor or trader. The cooperative delivers the farm inputs and sell them to the farmers with a little mark-up cost for delivery service. During the harvest, the cooperative then buys the produce from the farmers at the farm at a reasonable price considering the cost of farm inputs, and deliver to the production plant or factory, industry or firm with a mark-up. The mark-ups are to cover for the delivery cost for the farm inputs and farm produces. The trading money from the buying of the farm produces by the cooperative goes to the famers for their household use and savings. The money from selling of farm inputs to the farmers and from the farm produces goes to the cooperative for business sustainability and improvement for the future benefits of the local farmers and their community.

The general ideal on revenue distributing based on all these approaches are illustrated in the diagram below (Figure 7).

Figure 7: The Revenue Sharing Ideology for Investment on Customary Land



The revenue sharing ideology as illustrated in above diagram (Figure 7) which can be incorporated in all the farming arrangement and agreement structure.

## 10.5 Summary

This chapter discussed the revenue sharing options including areas of cost sharing. Different revenue sharing approaches such as land leasing, landowner companies, business group, ILGs and cooperative are covered. Some

of the more creative approaches on revenue sharing include crop share approach and fixed cash lease. Small holder farming does continue to be the main means of which revenue is generated by small holders working on their own customary land. Of all the options discussed here, cash rents or lease offer the lowest relative risk and require the least amount of activity for the landowner. Since many cash rent contracts are fully prepaid before planting season, this arrangement prevents landowners from taking on any crop risk from the farmers and prevents farmers from taking on any credit risk from the landowners. Cash rents are a truly passive income opportunity with relatively little risk.

## CHAPTER 11: TITLE DISPUTE RESOLUTION

Conflicts and disputes concerning land may arise along the processes of agribusiness investment and development on customary land. Such issues should not be neglected for an investment to be successful. This chapter discusses how such issues can be addressed. The chapter outlines the conflict resolution processes that exist within the traditional system and how they are connected to the formal system of courts through the Village court system. It describes the process of land mediation from the village courts to the Provincial land court. The processes involved in land mediation are further spelled out in terms of what is expected from the mediator's dealing with land mediation. The PNG formal court system overview is provided in this chapter. Alternative Dispute Resolution is a form of conflict resolution that exist under the jurisdiction of the National and Supreme Courts of Papua New Guinea.

### 11.1 Traditional Systems of Dispute Resolution

There are traditional systems of dispute resolutions that exist within communities in rural areas of PNG including the Markham Valley. Some aspect of documentations of the sources of disputes is provided in Volume 2 that accompanies this guide. The traditional system of dispute resolutions often uses traditional leaders from the clans in the village to mediate between disputing parties. There are traditional leaders in the community that the community recognize for their role in conflict resolutions within the community. Some of this leadership have been brought onto the formal system through the Village Court System which is the lowest level of court system that exist in rural PNG.

### 11.2 Village Court System

The village court system deals with matters coming before it with mediation before going through the formal full village court process. The requirement is mandatory. Section 53 of the Village Courts Act provides:

- (1) The mediatory jurisdiction of a Village Court may be exercised by a single Village Court Magistrate.
- (2) In all matters before it relating to a dispute, a Village Court:
  - (a) shall, before exercising its jurisdiction under Division 3 or 4, attempt to reach a settlement by mediation; and
  - (b) may, if it thinks that by doing so a just and amicable settlement may be reached, adjourn any proceedings in which it is exercising jurisdiction under those Division.It is arguable that a Village Court that proceeds directly to a contested hearing, without attempting mediation, acts without jurisdiction. This does not appear to have been tested.

Although mediation may be attempted in relation to disputes in the District, National or Supreme Courts (mediation is required in relation to some matters, for instance, matters under the Adultery and Enticement Act), mediation in the Village Courts is integral to their existence, and its application is wider than in other courts. Section 54 mentioned that, where a dispute is settled in accordance with this Division, the terms of the settlement shall be – (a) recorded in the prescribed form; and (b) treated and enforced as an order of the Village Court as between the parties to the settlement and persons claiming through them.

The *Land Dispute Settlement Act* (1975) is one of the primary legislations that is administered by the village court. The purpose of this Act is to provide a just, efficient and effective machinery for the settlement of disputes in relation to interests in customary land by– (a) encouraging self-reliance through the involvement of the people in the settlement of their own disputes; and (b) the use of the principles underlying traditional dispute settlement processes.

### 11.3 Three Stages of Attempted Settlement of Customary Land Dispute

The following are three stages for the attempted settlement of disputes over customary land.

- (a) Stage one – This is a compulsory mediation by a land mediator that is outside of the area and whom the local community agree to be the mediator for the matter. This stage is sometimes blended with traditional mediation practices in which local mediator can come from the local community, but ensuring that the mediator is not affiliated to the parties in dispute.
- (b) Stage two – If the mediation does not settle the dispute, the dispute will be taken to the local land court for arbitration. A local land court comprising of a local land court mediator will preside over the matter as the chairman with either two or four land mediators. The process for this stage can include the local land court and the mediator's visiting the site of the land dispute, and having the hearing on site and can include boundary inspections. The local land court has wide powers under the act to enable a process for the settlement of the dispute between the parties, but if no agreement is reached it can make a decision.
- (c) The local land court is authorized to deal with other matters 'inextricably involved' with the land dispute before it. The land disputes cannot go beyond the local land court. The Land dispute Settlement Act does allow a limited time of appeal (against a local land court's decision) to the Provincial Land Court. Mediated settlements are evidence of land rights but they do not bind the parties (unless approved by a local land court).

### 11.4 Land Mediation Process

Mediation is a process of negotiation where the parties make use of a third party (mediator) to assist them. The mediator has no authority to impose a solution on the parties or even to advise them. The parties retain ultimate control over the process. Land mediation has to take place within jurisdictions defined in the Land Dispute Settlement Act (1975). The Land Dispute Settlement Act makes reference to 'Land mediation area' under section 9, 10 and 11.

The objective of the mediation is to achieve a clear and voluntary settlement of the dispute. A good mediator facilitates communication between the parties and keep discussions focused and provide support to the parties. It is important in land dispute mediations that all parties involved should come forward for the mediation, rather than later when resolutions have been reached. The following are some of the processes involved in mediation.

#### 11.4.1 Preliminary Steps

- The mediator should make sure that the parties know where and when to attend a mediation.
- Prepare an appropriate site with comfort, privacy and a place to hold a caucus.
- Ensure that parties are advised to bring all relevant documents.
- If a mediation is being attended by a representative of a party (for instance, if a party is a cooperation), the representative should be advised that he or she must come to the mediation with authority to represent the party and authority to negotiate and settle on behalf of the party.

#### 11.4.2 Stage 1: Introducing the Process

- Establish rapport and set a positive tone for the meeting.
- The mediator should display qualities that are desired of the parties (fairness, patience).
- Describe the process, including the use of caucusing and the caucusing format.
- Clarify the roles (participants and mediators).
- **Mediator's role:**
- Not a judge.
- Not an advocate or advisor.
- Helps parties communicate and assists them to reach their own settlement.
- Manages the process.
- Disqualification from hearing case if mediation is unsuccessful.
- Stress the need for movement and get express commitment from the parties.
- Verify time limits for the mediation (if any).
- Clarify that each party or representative has authority to settle.
- **Address ground rules of the process:**
- Only one party speaks at a time.
- No insulting language or personal attacks.
- Either party can ask for a time out or a caucus.
- Need to listen carefully to the perspective of the other side.
- Need for disclosure of information

#### 11.4.3 Stage 2: Identifying and Framing the Issues

- Allow each party an opportunity to tell their story in their own words.
- Summarize the issues and both sides' perspectives.
- Check out accuracy and seek clarification of facts and issues where needed.
- Identify the areas of agreement.
- Organize the information by separating issues and prioritizing.
- Establish, and get an agreement on the agenda by framing the issues.

At this stage the parties should have agreement on the issues (questions) that have to be dealt with.

#### 11.4.4 Stage 3: Exploring and Resolving the Issues

- Identify existing areas for potential movement by the parties.
- Clarify and ensure understanding of any new information shared.
- Identify assumptions and seek clarification.
- Invite the parties to make proposals based on objective criteria.
- Facilitate the exchange of information (using questions).
- Emphasise existing and emerging areas of agreement.
- Act as an agent of reality – help to dispel unrealistic expectations.
- Identify areas of progress and areas where movement is needed.
- Discourage parties from taking fixed positions, and encourage parties to discover common interests.

- Set and maintain an appropriate pace of negotiation.
- Break down larger issues into smaller ones.
- Utilise caucusing whenever appropriate.
- Stress the consequence of not reaching an agreement.
- Manage personalities to maintain a rational and positive momentum.
- Discourage 'bottom lines' and ultimatums.
- Challenge the parties to continue negotiating.

#### 11.4.5 Stage 4: Finalizing the Settlement

- Clarify each area of agreement and set it to one side.
- Summarise and ensure understanding of each agreement reached.
- Encourage the generation of additional options that will lead to agreement and closure.
- Test options by objective criteria already established.
- Provide a written memorandum of consensus to the extent needed.
- Discourage ambiguity by ensuring the parties clarify details.

### 11.5 The Court System in PNG

The court system in PNG does have its area of focus and jurisdiction including the level of amount of money it can deal with especially in relation to commercial disputes. A brief overview of the court system is as follows:

#### 11.5.1 The Supreme Court

The Supreme Court is the highest court and the final court of appeal in the country. It has the inherent power to review all judicial acts and has the original jurisdiction to the exclusion of all other courts also has jurisdiction under the Constitution to give advisory opinions, called 'references' on the constitutionality of legislation.

#### 11.5.2 The National Court

The National court is the second superior court in PNG. It has unlimited jurisdiction to hear and decide on any criminal and civil matters and has the powers to enforce the constitution and has also the powers to hear appeals from the district court and deals with matters on monetary amounts of above K10, 000. 00.

Both the National Court and the Supreme Court are courts of records which the National Court is always the superior trial court and Supreme Court is an appellate division of the National Court: It has the same Chief Justice which is also the Chief Justice of the National Court and its bench consists of National Court judges sitting as an ad hoc appellate tribunal.

- The National Judicial System includes other special courts such as Military Courts, Taxation Courts, Mining Warden Courts, Traffic Courts, Committal Courts and Grade five courts under the national and Supreme Courts.

#### 11.5.3 The District Court

The District Court is the first court under the inferior courts. The District court has territorial jurisdictions, which means its jurisdiction is limited only to the district it is in. The District Court can try summary offenses and some

indictable offenses. In an indictable offense, the District Court only does committal proceedings, and if there is enough evidence, the case shall be referred to the National Court. The District court can determine cases with the monetary amount of up to K10, 000. 00.

- Local Land Court, this court is created under the Land Dispute Settlement Act 1975(for the settlement of disputes in relation to interest in customary land);
- Juvenile Court – originally established by the Juvenile Courts Act 1991. This Act has been repealed and replaced by the Juvenile Justice Act 2014 – the Juvenile Court is now established by s14 of the 2014 Act; and
- Coroner’s Court - established by the Coroners Act 1953 as amended.

## 11.6 Alternative Dispute Resolution – Out of Court Settlement

There is currently a National Court accredited ADR center based within the National Court of Papua New Guinea. The center promotes Alternative Dispute resolutions especially for cases that have gone through the court process and the parties agree to settle their matter through the alternative dispute resolution process. There are several different types of ADRs which are as follows:

### 11.6.1 Arbitration

This is the most formal type of alternative dispute resolution. In arbitration, the disputing sides bring their disagreement before a neutral third-party arbitrator. The arbitrator acts very much like a judge does in court, presiding over the dispute and imposing decisions in much the same way a judge would impose a ruling or a judgment. In arbitration, each side is there to try to persuade or convince the arbitrator, who is responsible for evaluating each side’s position and making a ruling or decision.

Arbitration process involves rules and procedures which are less restrictive and govern the litigation process. Arbitration allows the sides to come to an agreement based on rules that are applied during the process or to decide on how formal or informal they want the process to be. For example, before presenting their arguments to the arbitrator, the two sides might come to an agreement about how long they have to gather evidence, what kind of evidence they do or do not wish to allow, and whether they want the arbitrator to issue a detailed opinion when issuing a ruling.

### 11.6.2 Mediation

Mediation is an ADR process in which a neutral third party referred to as a mediator, meets with the disputing parties in an attempt to help them reach an agreement that ends their conflict. Mediators are typically trained professionals – often attorneys – who provide the disputing sides a neutral place in which to meet, discuss their problem, and try to resolve their differences. As with arbitrators, state rules determine who can serve as a mediator. Mediators may arrange joint meetings, meet with the disputing parties individually, suggest potential solutions, provide a structured way to negotiate a settlement, or give advice and guidance – but they do not impose solutions or forcibly resolve the conflict. In mediation, you and the other party are responsible for reaching an agreement. Unlike arbitration, your role in mediation is not to try to persuade the mediator, but to try to reach an outcome you and the other disputing party find acceptable. Mediation is a voluntary process that may or may not be successful in arriving at a settlement of the dispute. Mediators utilize specific skills to assist the parties in reaching a solution.



### 11.6.3 Negotiation

Negotiation is one of the most commonly used forms of ADR, and can include everything from picking up the phone to talk to your spouse about your divorce, to your company scheduling formal meetings involving executives, attorneys, experts, and anyone else with an interest in resolving the disagreement. Alternative dispute resolution is not a single process, and it is not something that is available – or desirable – in every situation where you have a legal dispute or problem. Also, evaluating its positive and negative characteristics and determining whether it is right for you and your needs is not always easy to do.

### 11.7 Summary

This chapter discussed conflict resolution within a traditional context, and how some aspects of this traditional context is used through the village court land mediation processes. The village court system is part of the formal court system that exist at the rural village level throughout PNG. The processes for dealing with land disputes through mediation and then taking that through the provincial land court process as highlighted in this chapter. The court system is briefly described including their level of jurisdiction involving commercial disputes. The Alternative Dispute resolution centre of the National and Supreme Court is one such avenue to deal with disputes through the three main forms of alternative dispute resolutions.

## CHAPTER 12: CONCLUSION

Customary land access has been one of the challenging areas in dealing with the non-renewable and renewable resources sector in Papua New Guinea. There is a lot of potential for the development of customary land using some of established legislations in Papua New Guinea. The potential for unlocking customary land for agribusiness investments is available especially within the Markham Valley. The Markham Valley has a significant opportunity for agriculture development. Grow PNG is attempting to bringing together stakeholders to try and seek means and ways to increase productivity, profitability and environmental sustainability of agriculture across the Markham Valley. One of the ways in which Grow PNG has commenced its work on trying to unlock the potential is by commissioning a Land Access study. This study was undertaken by Rural Development Services in January 2020. The study recommended for a land user's guide that is based on Free Prior Informed Consent (FPIC) principles and implementation principles. This Land Access Guide is therefore the outcome of the Land Access study. It provides discussion on the process and procedures involved in accessing customary land for development including how the customary landowners can participate meaningfully in the development project.

The development of the guide was based on the legislations which involves regulations that facilitate land registration or alienation of land, and, regulations that create entities that can enter into partnerships with business to create value on the land. Legislation concerning registration and alienation of land includes Land Act 1996, Land (Ownership of Freehold) Act 1976, Land (Tenure Conversion) Act 1963, Land Groups Incorporation Act 2009, Land Groups Incorporation (Amendment) Act 2009 and Land Registration (Customary Land) (Amendment) Act 2009. Legislations that concern with creating business entities includes Co-operative Society Act 1982, Investment Promotion Act 1992, Companies Act 1997, Business Groups Incorporation Act 1974, Business Name Act 2014, Personal Property Securities Act 2011 and Associations Incorporation Act 1966. Legislations regarding disputes and resolutions are also considered which includes Land Titles Commission Act 1962, Village Courts Regulations 1974 and Land Dispute Settlement Act 1975.

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