

INSTITUTE OF NATIONAL AFFAIRS

# REDD CAPACITY & CONSENSUS BUILDING WORKSHOP

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## Background

### □ The International Trend in the Rush for Agricultural Land.

At the end of 2008 China, South Korea, the United Arab Emirates, Japan, and Saudi Arabia stood out for the extent of their foreign arable land acquisitions. They control over 7.6 million cultivable hectares outside their national territory.

This phenomenon, although going back to the first colonizations, in the opinion of many observers, economists and NGOs, is now accelerating.

The explosion of agricultural commodity prices in 2007 and 2008, made many investors decide to turn to land.

## Background Cont...

### □ "Agricultural Outsourcing"

- The Chinese government is making agricultural land acquisition abroad a priority. It represents 40 percent of the global active agricultural population, but possesses only nine percent of Earth's arable land.
- Japan and South Korea already import 60 percent of their food from abroad.

### □ This strategy is not without consequences.

- **Local populations are directly threatened by this commoditization of the land.**
- **Three-quarters of those who are hungry live in the countryside.**
- **Land registries are often nonexistent. How will those who till and live from the land be indemnified if they have no property titles?**

## Background Cont...

- Although the acknowledgment of property titles may allow the coexistence of family agriculture and the presence of foreign investors to occur, it is deemed that landowners will not have the means to acquire land.
- Even if land is attributed to them, they will rapidly be forced to sell it, should they get in trouble.
- Thus, the Environmental Law Center are of the view that property rights will consequently benefit big operators, whether foreign or not.

## Background Cont...

- The Domestic Trend in the grab for Agricultural Lands
- The special agricultural and business leases, which adopt a process of lease-leaseback from customary land, have been widely used throughout PNG with over 43 such titles being issued over a total area of some 1,330,031.09 hectares of customary land within the last 5 years. ( *Refer Table on Lease-leaseback.*)
- Of the vast number of lease-lease back arrangements being awarded by the State, evidence suggests that at least 80-90% of these kinds of leases are not legally sound in terms of compliance with the Lands Act 1996.

## Part I: Introduction.

## 1. Land Use Models under the Land Act, 1996

- All land in PNG is used and owned communally and is recognised as communal property unless it is declared as State land under Part II of the Land Act 1996.
- There are only two forms of land-
  1. Un-alienated Land (Customary Land, approx. 97%) and
  2. Alienated land (State Land, approx. 3%)
- Existing Mechanisms of land use as provided under law (Land Act) are set as follows:

### 1.1 How State acquires Land from Customary Landowners.

- The State may acquire customary land for the purposes of the State under section 7 of the Land Act 1996 through two specific modes:
  1. By Agreement
  2. By Compulsory Process

## 1.2. Acquisition of Land By Agreement

- Section 10 of the Lands Act - The State can acquire land from customary landowners by agreement.
- The following requirements must be met before State acquires customary land:
  - The Minister for Lands and the landowner representatives must agree to the terms and conditions of the lease.
  - The Minister must carry out an inquiry to ensure that the land to be acquired is not needed by the landowners.

## 1.3 Acquisition of land for Compulsory Purposes

- The State through the Minister can acquire customary land from traditional landowners under s.12 by:
  - Issuing notice to treat to the landowners (s.13)
  - A person served with the notice, not later than 2 months must provide the Minister with the following:
    1. the interest claimed by him in the land;
    2. the monetary amount he agrees to sell his interest in the land; and
    3. the name and address of any other person who has interest in the particular land.

### 1.4 Acquisition of Compulsory Purposes cont..

After satisfying all the requirements under ss.13,14 & 15 the Minister may issue a notice in the National Gazette declaring the particular customary land State Land.

The effect of the above notice is:

- the land and all properties belongs to the State; and
- the land is freed from all interests, trusts, restrictions, reservations, obligations, contracts and licenses.

### Status of Customary land under State Lease

Customary Land



Lease-Leaseback Agreement for 99 years



State Land for 99 years.



- No longer under custom.
- Belongs to the State.

## 1.5 Acquisition of Customary land for Lease-lease back Purposes

Under **section 11** of the Act (read with s.102) it provides for lease of customary land for purposes of a special agricultural & business lease. To give effect to this:

- ❑ The Minister must Liaise and negotiate with the landowners.
- ❑ Sign a contract on behalf of the State and the customary landowners following the correct procedures prescribed by law.
- ❑ The contract is a strong evidence that the State has a good title over that land except stated so in the contract.
- ❑ The rent or other compensation is not payable by the State for a special business & Agricultural lease over customary land.
- ❑ The special agricultural and business lease is for a period not exceeding 99 years.
- ❑ The above lease is effective upon the signing of the agreement by the Minister.

## 1.5 Acquisition of Customary land for lease-lease back purposes cont..

- ❖ Problems arising (Loopholes).
  - There is no prescribed form or regulation to give effect to section 11 and 102 of the Land Act.
  - Section 11 and 102 allows the Minister for Lands to register leases to ILG's or 'Business Groups' where landowners have consented.
  - ILG's are usually incorporated without the majority of genuine landowner's informed consent.
  - These sections allow land to be fraudulently obtained and given to foreign companies.
  - There is stamp duty avoidance with special agricultural and business leases.
  - There is no independent verification of consent from landowners under special leases or agricultural leases.

### Gazetted Leases in Momase as of 2006

- **Vanimo Jaya & One Uni Dev. Corp (Grantee)**
  - Date : 20.07.06
  - Gazette No.: G143
  - Term : 99 years
  - Area: 47, 626.00 hectares
  - Land Description: Tadj/Aitape
  - Province : West Sepik
  
- **Zifasing Cattle Ranch**
  - Date : 21.09.06
  - Gazette No.: G183
  - Term: 50 years
  - Area : 8,374.23 hectares
  - Land Description: Onga/Markham
  - Province: Morobe

- **Brilliant Investment Ltd.**
  - Date : 15.02.07
  - Gazette No.: G224
  - Term: 99 years
  - Area : 25,600 hectares
  - Land Description: Angoram/Marienberg
  - Province: East Sepik
- **Note:** Receiver Manager appointed by the National Court – Public Notice Dated 13.08.07.
  
- **Oil Palm Plantation Ltd.**
  - Date: 14.08.08
  - Gazette No.: G145
  - Term: 99 years
  - Area: 116,840 hectares
  - Land Description: Tring/Wewak
  - Province: East Sepik

## Part II: Abuses under Legislative & Administrative Systems

### 1. Use/Abuse of Lease-leaseback Systems

- The current lease-leaseback arrangements are too long resulting in three (3) generations of PNG customary landowners missing out on the use of that land for their traditional purposes.
- The lease-leaseback arrangements under the *Land Act 1996* needs to be changed so that rights and benefits are more accessible by the Landowners.

## 2. Case Study: Collingwood Bay

- ❑ In 1995 some people from Wanigela in the Collingwood Bay area, Oro Province used a lease-lease back to obtain a lease over 38,000 hectares of customary land.
- ❑ Facilitated by an Asian expatriate in the logging industry in PNG the “urban landowners” registered a company with IPA.
- ❑ 38,000 hectares of land was registered in the lease under the name of this company and as result the Collingwood Bay landowners lost the land.
- ❑ In 1997 despite protests from the Collingwood Bay Landowners the Provincial Forest Minister, having made deals with the expatriate, approved the timber authority.

## 2. Case Study: Collingwood Bay Cont..

- ❑ In 1997 the landowners filed an action in the National Court challenging the legality of the registered land title.
- ❑ The landowners obtained a temporary court order to stop the loggers and the government from entering on the land whilst the case continued.
- ❑ The case was complex and was fought long in the courts.
- ❑ The costs of the case were immense.
- ❑ However, in 2001, the National Court ruled that the title was obtained by fraud and was thus, null and void.
- ❑ The 38,000 hectares of forest land was returned to the customary landowners.
- ❑ This case demonstrates how easily customary landowners can lose their land and points out the discrepancies and loopholes in the existing system.

### **3. Implications of Legislative Changes**

- ❑ The prerequisites provided for in the process of voluntary land registration are burdensome and expensive, almost impracticable considering that 90% of our population are rural dwellers and many areas are inaccessible because they are too remote. Such processes are –
- Production of Birth Certificates for all ILG applicants.
- Surveys to be conducted over the portion of land to be registered.

## **Part III. Conclusion**

❑ **1. Failure in Development Policy.**

- The National Goals and Directive Principles (Goal No. 2) provide a model of development using customary land, knowledge and skills.
- Promote small and medium scale enterprises, with emphasis on agriculture and food production.
- Size of the development structures and institutions create space for lack of transparency where corruption breeds and multiplies.

❑ **2. Vested Interests**

- Renovations and reform should be achieved to allow a clean up of the log of bad decisions and outstanding cases.
- There is an absence of political leadership, or will, that grasps the complex nature of these problems.
- There is a fundamental lack of trust of government because of incompetence and dishonesty.

❑ **3. Property Rights are not Dependent on a Public Register**

- There is a strong argument that traditional landowners may be able to hold onto their land rights even if it is not registered, because government does not know the true size and nature of traditional land-holding.
- Any number of third world failing, or failed states have land registries.
- Formal land tenure systems alone are not a magic solution for a struggling economy.
- The rich bosses of these countries own most of the land, and have pieces of paper to prove it.

❑ **4. Papua New Guinea land Administration and Adjudication**

- The land administration and court systems are either too slow, too expensive, or inefficient for ordinary landowners to obtain certainty or justice. E.g, ethnic clash between Watut's and Biangai's in the Wau/Bulolo area over McAdam National Park dating back to 1970's.

## Part IV: Recommendations

### 1. Recommendations on Improvement of Lease-Leaseback Systems.

- Immediate action is required to suspend the increasing abuse of customary land through a challenge in the courts of the legality of the present laws & leases under the Lease-leaseback system in PNG. Politicians have clearly failed in addressing this issue.
- Overall, New voluntary registration laws should be delayed until the infrastructure to regulate it is in place.

## 2. General Recommendations on Land Registration

- The existing land adjudication system needs to be completely renovated to bring efficiency and effectiveness.
- PNG needs a top to bottom restructuring of the institutions, practices, rules of adjudication that deal with land matters.
- What is required is an integration of Land adjudication from District Court level to the Supreme Court – I.e., One system, bottom to top, is needed to deal with land, planning, environment and resource issues.

## 2. General Recommendations Cont..

- The State must attend to the inefficiencies
- The existing land titling offices must have integrity, efficiency, independence, accountability, and kept quite separate from the Department of Lands, because the issue of credibility of titling is quite distinct from the issue of land policy. (I.e., They need to be made resistant to corruption, and relatively free from mistake.)

## 2. General Recommendations Cont..

- Access to titles should be decentralized, so that they can be readily accessed at the provincial level, with an objective of allowing accessibility at District level.

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