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UNDERSTANDING HOW CUSTOMARY LAND LEASES CAN BE MADE BANKABLE IN PAPUA NEW GUINEA

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Key Points

- Bankable customary land leases can provide landowners with the opportunity to benefit from the use of their land while retaining ownership of the land.
- Customary land leases have been encouraged through the Voluntary Customary Land Registration (VCLR) system.
- However, the VCLR system has not been able to produce bankable leases because of concerns around certainty of ownership and administration of land.
- In order to make customary land leases bankable, there is a need to minimise and deal with disputes over ownership locally and promptly; reduce costs and streamline process involved in land registration; and improve customary land title registry and management.

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UNDERSTANDING HOW CUSTOMARY LAND LEASES CAN BE MADE BANKABLE IN PAPUA NEW GUINEA

By Logea Nao

This paper focuses on one of the findings from a study by Kwapena et al. (2021) concerning challenges in customary land administration, governance and land dispute resolution in Papua New Guinea (PNG). Customary land makes up 97 percent of land in PNG (Wangi and Ezebilo, 2017). The administration of customary land in PNG, which includes incorporation of land group and registration of customary land, is done by the Department of Lands and Physical Planning (DLPP) through the Voluntary Customary Land Registration (VCLR) system (Nao, 2021). At the point of registration, customary land receives a title. One of the benefits of having title to customary land is that leases can be derived from the title and used by landowners or leaseholders to apply for loan from banks in order to develop the land and benefit from its use. However, currently leases created from customary land titles that emerge from VCLR have been found to be unbankable due to risk and liability around ownership as well as land administration (Kwapena et al., 2021). The study by Kwapena et al. (2021) also reported that leases can be made bankable if risks associated with ownership and administration of title were effectively addressed. The study was based on interviews conducted in Port Moresby with key informants from some key government agencies and officials from commercial banks. This paper stresses the need for customary land leases to be made bankable. It is important to note that there are other benefits of having formal title to customary land such as inhibiting land grabbing and increasing the value of the land, but these were excluded from the analysis provided in this paper.

What are bankable leases?

The online Merriam-Webster dictionary defines bankable as 'being acceptable to or at a bank' (<https://www.merriam-webster.com/dictionary/bankable>). In the context of land, bankable leases mean that leases created from land titles are considered as security to extend credit to the leaseholder. In the case of customary land, bankable leases are concerned with the authenticity of the title that the lease is derived from.

The title is the product of the VCLR system, whereby, ownership is formally recognised under the *Land Groups Incorporation (Amendment) Act 2009*, and the land is given

title and released for development under the *Land Registration (Amendment) Act 2009*.

Customary land administration affects the authenticity of the title and the leases derived from it. The title on its own is not sufficient, the enforcement mechanisms are critical to reducing the risk of property lending and thereby giving confidence to lenders to extend credit (Chand et al., 2014). The enforcement mechanisms are those that define the ownership and use of land through land registries and title documents (Deininger, 2003). These mechanisms include the process that determines the ownership of land and produces the land title, the safety of the title and associated land records, the transferability of the leases, and the management of the title.

Customary land title and customary land lease

The process of obtaining a customary land title and customary land lease in order to apply for a loan involves several steps as illustrated in Figure 1. The VCLR system begins with the incorporation of a land group. Next, is the registration of customary land that the incorporated land group (ILG) intends to release for development. Once all requirements are met, the customary land receives a customary land title.

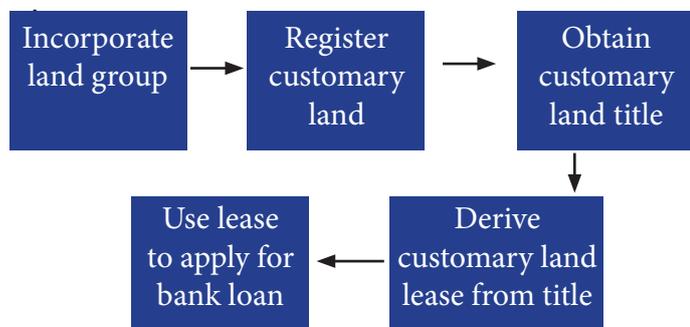
A customary land title is a legal document that recognises, under formal law, the ownership of the registered land. This parent title is created under section 34K of the *Land Registration (Amendment) Act 2009*. This title is not transferrable and not tradable by virtue of section 34O (3) of the *Land Registration (Amendment) Act 2009*. In other words, the title and the underlying land is owned by the landowners into perpetuity.

A customary land lease is a legal document that recognises the leaseholder to use the land for the duration of a mutually-agreed period up to 99 years. This transferrable and tradable lease is created under section 34O (1) of the *Land Registration (Amendment) Act 2009*.

A customary land lease once created can be used to apply for a loan as the land has the potential to be used as collateral. Key considerations by formal sector lenders are capacity to service the loan and the adequacy of collateral in securing the loan (Chand et al., 2014). In order to check the adequacy of collateral, the authenticity of the land title needs to be checked through a title search at DLPP. Factors that affect the genuineness of the title include how reliably land ownership

has been determined, how safely the title and associated land records are kept, how easily the leases derived from the title can be transferred or sold, and how the title file is managed overall.

Figure 1. Process to obtain a title and lease to apply for



Source: Adapted from *Understanding how the effectiveness of Voluntary Customary Land Registration system can be improved* (Nao, 2021).

In the event of a loan default, the leaseholder can lose the right to occupy or use the land and the lender (e.g. bank) can have the right to use the land transferred to it under section 66 of the *Land Registration Act* 1981. The lender can use the land for the period of the lease and pay the necessary and appropriate rates to the owner of the land. The lender can also sell the lease to recover the loan and any related costs incurred in the sale under section 68 of the *Land Registration Act* 1981.

The title and ownership of the customary land remains with the customary landowners. It is the leases derived from the title that can be transferred or sold in the event of a default in order to allow the lender to recover its money. This is the same arrangement for a State lease in PNG.

The role of bankable customary land leases in improving livelihoods

Bankable customary land leases have an important role to play in improving the livelihoods of people. There are several benefits of making customary land leases bankable. These include the following:

- **Promotes business and investment**
A bankable lease has the potential to encourage businesses and investors to invest on customary land. It is attractive to businesses and investors because a bankable lease provides security for credit to be extended by lenders, including banks and financial institutions.
- **Impacts on the economy via business and investment**
Increased access to formal credit can result in an increase in investment opportunities. When investment increases in the economy, it can result in creation of

jobs and income-earning opportunities, and increase in corporate and income taxes. It also provides revenue for the government through building permits and utility service charges, and tax collected from landowners through land rent.

- **Steady source of income for landowners**
Revenue streams from customary land leases include lease rents, which can be made on a regular basis. This form of revenue can serve as a steady source of income for landowners.
- **Protects customary land from being sold outright**
A customary land lease grants user rights to the leaseholder for the period of the lease while the landowner continues to receive regular lease payments instead of a one-off lump sum payment in the case of an outright sale. A bankable lease can protect customary land and discourage outright sale.
- **Promotes orderly development of land**
With a bankable customary land lease, leaseholders can have ease of applying for utility services such as electricity, water and sewerage. Formally administered use of land also allows for better coordinated provision of trunk infrastructure services including road networks, electricity, water and sewerage by the government. This promotes better planned towns and cities in PNG.

Policy interventions to make customary land leases bankable

Customary land leases derived from the VCLR system have been found to be unbankable due to risk and liability around ownership and land administration according to Kwapena et al., 2021. They also reported that the leases can be made bankable if risks associated with the ownership and administration of the titles are addressed. Several policy interventions to address risks concerned with ownership and administration of land can be introduced to make customary land leases in PNG bankable. These include the following:

- **Reduce disputes over ownership**
At present, lenders are not certain of the genuineness of the title due to existing and potential disputes over ownership of customary land. To reduce disputes over ownership, landowners need to be encouraged to address disputes as a landowning unit before engaging in the formal process. This can give confidence to lenders.
- **Strengthen the dispute resolution mechanism**
Dispute resolution is a critical element in determining ownership, use and access rights and therefore, the authenticity of a title. A dedicated land court already exists but it requires strengthening and adequate

resourcing at the provincial and district level. This can be done through the appointment and appropriate remuneration of magistrates as well as adequate training and appropriate remuneration for land mediators so that land disputes can be heard locally and promptly. This can provide confidence in the genuineness of the title.

- ***Make the VCLR system user-friendly***
The VCLR system is currently not user-friendly (Nao, 2021). The process needs to be streamlined and costs minimised or subsidised where appropriate to encourage landowners to register their land. The effectiveness of the system that delivers customary land leases can give confidence to potential lenders to extend credit to leaseholders.
- ***Improve management of titles and associated land files***
Tracking and retrieval of applications for ILGs and customary land registration as well as titles has the potential to increase confidence in customary land administration. This may require the government investing in a dedicated digitised titles and records registry and management system for customary land, possibly set up outside of DLPP. The safety, storage and management of titles and files are critical for the security of the title.
- ***Learn lessons from the way State land is administered***
A key ingredient to making customary land leases bankable is improving the administration of customary land. Lessons can be learnt from the administration of State land, with the hope that problems experienced, such as duplicate titles, are not experienced in the administration of customary land.

Conclusion

The VCLR system was developed to encourage landowners to register their customary land and lease it for development. This is essential for customary land to join the formal market and for landowners to engage in formal and legal transactions over the use of their land. However, in practice, customary land leases derived from the VCLR system have been found to be unbankable due to risks concerning ownership and administration of land. If the intention is to make customary land leases bankable, the government should consider cutting

unnecessary costs and steps involved in land registration, and improving title registry and management; and the government together with landowners should consider minimising disputes. This would give confidence to lenders to extend credit, allowing business and investment to grow, create jobs, increase government revenue, provide revenue streams for landowners and safeguard customary land. It is hoped that this article will contribute to the discussion around retaining ownership of customary land but releasing it for development through a lease arrangement.

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