



The

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Towards Sustainable Land Use Agreements for Smallholder Oil Palm on Customary Land*

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Social Assessment of the Smallholder Agriculture Development Project. Report prepared for World Bank.

In this final issue on land tenure, we consider some of the causes of land disputes on customary land. Tenure disputes over oil palm planted on customary land can arise between customary landowners and two distinct groups: 1) other village lineages who were granted land for oil palm in the past; and 2) 'outsiders', often from other provinces, who were granted access to land for oil palm production usually under a financial arrangement with a leader from the customary landowning group. Each group is discussed below.

1. Land Tenure Disputes Between Customary Landowners and Other VOP Growers

With the initial introduction of village oil palm, clans, subclans and lineages that were land-short or lacked land for oil palm cultivation near a harvest road, were usually allocated land belonging to the major landholding group to plant oil palm, in the same way they were granted access to land for subsistence gardens. Because oil palm locks up land for 20+ years, this meant in some villages there was a redistribution of land from primary landholding groups to minor clan groups. The effect was to reduce potential income inequalities amongst village families by allowing most households access to land for oil palm.

Now, 20 or more years on, the redistribution of landholdings that occurred when oil palm was first introduced is increasingly being questioned by the present generation of members of the primary landowning group who oppose replanting by other villagers who are not part of the primary landowning group. This is to forestall long-term claims on the land by people outside the primary landowning group. Also, members of many customary landowning groups are becoming more resistant to non-clan/subclan villagers developing new blocks on their customary land. The reasons for this shift in attitude are varied, but relate largely to increased demographic pressures, functional land shortages for oil palm production (e.g., the need for oil palm holdings to border a harvest road), increased reliance on cash, and a growing recognition of the potential of land to generate wealth.

Although VOP tenure disputes between customary landowning clans/subclans and land-short village clans/subclans are beginning to emerge in some VOP subdivisions in Bialla and Hoskins, these problems have been present in Popondetta for a longer period and are a major cause of tension in some villages. Individuals from minor clans who were granted access to land to plant oil palm are now seen by some members of the primary landowner group to be enjoying better lifestyles and living standards than the 'true' landowners (*papa graun tru*). These growers are envied by members

of the primary landowning group, partly because the wealth generated from these VOP blocks is viewed by customary landowners as being derived from 'their' land and, as such, is wealth being siphoned from the clan. Typically, the customary landowning group tends to emphasise the role of the land in wealth generation over the role of labour or capital in generating that wealth. Replanting senile palms can be a trigger for customary landowner to reclaim their land or to demand compensation and/or the imposition of landowner 'rental fees' on 'tenants' before replanting can proceed.

The functional land shortage for oil palm relates largely to the uneven distribution of village landholdings amongst village clans/subclans, and the requirement that oil palm blocks be located along feeder roads. The road requirement means that landowner groups without a feeder road on their land are dependent on the generosity of other landowner groups for access to land for oil palm. OPIC, rightly, does not approve applications for new VOP blocks if the proposed site is not located along an existing road. The road network is therefore an important determinant of the income potential of different landowning groups within villages.

Whilst absolute and functional land shortages may be the root cause of disputes over planting (and replanting) of VOP blocks, other social variables are at play too that may serve as triggers for these disputes.

These include: 1) the death of the clan leader who allocated land to a non-clan/subclan member; and 2) the death of the blockholder who was granted the land to plant oil palm. Thus the children of



Grower at Popondetta standing in front of his pig pen.

the blockholder who was the recipient of the land, may face an uncertain future with regard to oil palm production.

The moral basis of customary landowner demands for the return of the land is strengthened if two important conditions are not met.

These are the perception amongst customary landowners that the:

1. blockholder did not contribute adequately to the mortuary payments (or participate sufficiently in mortuary-related activities) of the deceased clan leader who allocated the land; and/or
2. blockholder or deceased blockholder did not fulfil customary obligations to the 'host' landowning group to an appropriate level, or failed to share a sufficient amount of his oil palm wealth with the 'host' landowning clan members.

Customary obligations include contributions to the brideprices and mortuary payments of the host group and often, nowadays, contributions to the school fees of children of the landowning group. In the case of a deceased blockholder, moves by his sons or other male relatives to take control of the block will be resisted vigorously by the landowning group, which can result in the block being locked out of production for a prolonged period with replanting postponed indefinitely. These grievances reveal the continuing influence of traditional socio-cultural values in relation to land access.

2. Land Tenure Disputes Between Customary Landowners and 'Outsiders' Acquiring Land

As reported in *OPRATIVE Word* 18, the acquisition of customary land by 'outsiders' from other regions of PNG is a recent trend. At Bialla and Popondetta these oil palm blocks are classified as VOP blocks and at Hoskins, where the majority of these blocks exist, a new category has been created, termed "Customary Rights Purchase Blocks" (CRP) in recognition that the land is not alienated permanently from the customary landowning group.

Most CRP land transactions are informal and are often not in accordance with customary law. Seldom is there written evidence that the transaction has the approval of the clan. Land surveys are rarely undertaken, and written agreements typically do not specify the agreed 'sale' price of the land, the amount and timing of payment instalments, and the specific rights of the purchaser. This can lead to much misunderstanding and disputes between the 'purchaser' and the customary landowners.

Many of those acquiring land believe that:

- Their children can inherit the land. This is not the case in law as the land remains customary land with the potential for the block to be reclaimed by the customary landowners on the death of the 'purchaser'.
- They possess the right to sell the land to someone else without consulting the customary landowners. This is also a frequent cause of disputes.
- They have the freedom to invite anyone to reside on block such as their wantoks from their home villages. The customary landowners often do not agree and think that it is only the 'purchaser' and his immediate family who have residency rights.

Customary landowners often believe that they:

- have the right to evict those who cause law and order issues. Many 'purchasers' think this is none of the business of the customary landowners.
- are entitled to be paid the difference in land value between the price of a block 'sold' in the past and its current value. For example, a CRP grower who paid K1,000 for a 2 ha block 10 years ago, might now be faced with a demand for an additional

payment of K2,000 because the current value of his block has risen.

- are being denied rightful income when the price of oil palm rises sharply like it did in early 2008. They feel that the 'purchaser' is benefiting unfairly from the higher prices because the block was 'sold' when prices were lower. This can lead customary landowners to demand extra money from the CRP blocks.
- Have the right to reclaim the land, or at least be compensated financially if the 'purchaser' wishes to sell the land or transfer the block to his immediate or extended family.
- Have control over who is allowed to reside on a CRP.

Towards a Solution

The second part of this issue examines potential solutions to address the concerns of both customary landowners and 'outsiders' acquiring land, and which should contribute to more stable relationships and more productive relationships between customary landowning 'hosts' and 'outsiders' producing oil palm on their land.

Current procedures for dealing with new oil palm plantings on CRPs and existing Clan Land Usage Agreements (CLUA) do not provide adequate land tenure security for the outsider 'purchasing' or leasing land; nor do they ensure that all members of the landowning clan agree to, or benefit from, these land transactions. Therefore, there is a need to review current practices relating to the establishment of CRPs.

A set of preliminary guidelines that should be considered in the design of a new and suitable land administrative system for oil palm planted by 'outsiders' on customary land is provided below. There are two main elements:

1. The design of a new Clan Land Usage Land Agreement (CLUA).
2. Completion of a Land Investigation Report.

1. Clan Land Usage Agreement (CLUA)

A CLUA should be designed specifically for each project area and be endorsed by local landowners before being promoted by OPIC. It should include the following elements:

- a) Clarification that the person is not purchasing the land outright as in freehold title, but rather is *leasing* the land for a specified period of time (25-50 years – one or two planting cycles).
- b) Three party signatory process comprising landowning clan members (at least four(senior clan members, including women leaders), individuals from the clan who have use rights on the land under customary law and the proposed tenant. These signatures should be witnessed by the OPIC Lands Officer and a senior staff member of the Provincial Lands Mediation Committee.
- c) Agreement that the customary landowners relinquish any use rights or management rights to the land for the duration of the lease period.
- d) Land boundaries are clearly defined (preferably surveyed and marked with Cordyline '*tanget*' or palms).
- e) A description of the rights and obligations of the clan leaders disposing of the land, other clan members and the tenant. For example, the rights of the tenant to plant other cash crops and food crops, and to establish businesses, houses and other assets should be specified. The transfer rights of the tenant should also be defined, as should the rights of the clan leaders to repossess the land due to breaches of the terms of the CLUA. OPIC could act as referee in such disputes. Similarly, all covenants on the lease should be specified, such as restric-

tions on the transfer or sub-leasing of all or part of the block to another person during the lease period, or any conditions on the disposal of the lease payments by clan leaders. Conditions may also be imposed on certain behaviours of tenant and family (e.g., illegal activities) or on clan members (e.g., intimidation of tenant or demands for money beyond specified lease payments).

- f) Payment details. This should include details of any up-front payments made or owing, the annual rental fees and when due, any royalty component based on production and the penalties incurred in cases of default. All payments and payment arrangements should be transparent and accountable. Ideally, payments should be deducted through the smallholder payment system with payments paid directly into an account of the landowning group, so that there is a permanent record of payments.
- g) A component of the fee should be similar to a royalty based on the value of production, so that as the value of production from the block increases through time, landowners will feel they are also benefiting from the rise in the value of the production (e.g., when oil palm prices rise).
- h) Provisions for future contingencies. For example, consideration should be given to what provisions should be made for dealing with lease renewal, the death of the tenant, or if the lease were to be revoked for some reason (compensation of the tenant).
- i) Inclusion of a Land Investigation Report (see below).

2. Land Investigation Report

Before a CLUA is signed, the OPIC Lands Officer and a member of the Provincial Lands Mediation Committee should, in the company of representatives from the landowning group, inspect the designated land and complete a Land Investigation Report to verify ownership claims of the land and that the land portion is not under dispute. The boundaries of the designated land should be clearly defined. Investigations should be conducted to determine what other forms of secondary rights, if any, exist over the land. Also, land availability should be assessed to ensure that the leasing of land to the 'outsider' will not lead to land shortages for members of the landowning group during the lease period.

As part of the Land Inspection Report a community meeting should be held with a sizable representation from the landowning group (including women) and/or those individuals or families identified by the community to deal in land. The community meeting should in the first instance:

1. Record the individual/family unit identified and supported by the landowning group to have the rights, under customary law, to deal in the designated land for lease.
2. Give members of the landowning group an opportunity to object/support the proposed land agreement.
3. Define the conditions under which that portion of land be released on a lease basis.

The meeting should also be used as a forum to determine/alter the following: use rights of the lessor; appropriate levels of rentals/royalty payments and how they will be distributed to members of the landowning group; and dispute resolution mechanisms. Whilst there will be standard rights, obligations and restrictions written into all agreements (e.g., rights of tenant to plant oil palm and prohibitions on clan members transferring the land to another party during the lease period), the customary landowners of the designated land should be given the opportunity to impose additional conditions on the land during the lease period (e.g., thoroughfare right of way). This meeting should be announced publicly several weeks in advance. The meeting should be deemed invalid if a sizable proportion of the landowning group is not present.

The Land Investigation Report must be approved by OPIC, the Provincial Lands Mediation Committee and the customary landowners prior to the signing of a CLUA and the supply of seedlings. Approval of the Land Investigation Report should only be given if all of the following conditions are verified:

- The landowners have the right to dispose of the land for lease.
- Land boundaries are clearly defined.
- The land is not under dispute.
- Secondary rights to the land are acknowledged.
- Leasing the land will not negatively impact on clan members' access to land or undermine their livelihoods and everyday needs.
- Attendance at the publicised community meeting to discuss the Land Investigation Report was representative of the landowning group (e.g., women, youth and elderly clan members).
- The landowning group agree that the land be leased and are aware of their rights and restrictions on the land under the lease agreement.
- The landowning group have in place or are preparing a system for the collection of rentals/royalties and its fair distribution to clan members.
- That RSPO criteria for oil palm cultivation are met.

The design of a modified CLUA agreement together with the Land Investigation Report incorporating the principles described above should lead to more stable tenure arrangements for both 'outsiders' acquiring land and customary landowners who continue to retain the underlying customary ownership of the land. This will help ameliorate many of the present frustrations of both landowners and 'outsiders' thereby creating a more stable environment for oil palm production.

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