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Developing land-use agreements in commodity cash crop production that meet the needs of landowners and smallholders

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This paper reports on the research to design a Clan Land Usage Agreement (CLUA) for oil palm smallholders planting oil palm on the customary land belonging to others in West New Britain province and Northern Province. These oil palm holdings are known in the industry as customary rights purchase (CRP) blocks and they make up approximately 15% of the total area of smallholder oil palm in West New Britain. The CLUA was designed to deal with the increasing number of land disputes on CRP blocks. To develop the CLUA, lengthy in-depth interviews and meetings were held with smallholders and landowners to document: the types of land transactions on CRP blocks; how tenure and access rights were acquired by migrants; and the underlying causes of the land disputes on CRP blocks. This information formed the basis of a CLUA template that was acceptable to landowners, migrant smallholders and the broader industry. The completed CLUA template provides more secure land tenure for CRP growers and ensures that all members of the landowning group with customary rights to the land where these CRP blocks are located consent to the land transactions with migrants. By designing the CLUA in partnership with landowners, migrant farmers and other industry stakeholders, the likelihood of the CLUA being accepted was significantly improved.

Introduction

Disputes involving land use and land ownership are commonplace in PNG, especially between customary landholders and migrant smallholders who acquire blocks of land from them for cash crop production, including oil palm. One of three objectives of Australian Centre for International Agricultural Research (ACIAR) Project ASEM/2006/127 (*Commercial sector/smallholder partnerships for improving incomes in the oil palm and cocoa*

industries in Papua New Guinea) was to ‘develop effective land-use agreements between the commercial sector and customary landowners’. This paper outlines the research approach and methods the project adopted to design a new Clan Land Usage Agreement for use by oil palm smallholders in West New Britain province and Northern Province, PNG.

Land tenure arrangements

Approximately 31% of the PNG’s oil palm production is from smallholder blocks, with the balance produced on the plantations of PNG’s two oil palm companies, New Britain Palm Oil Ltd and Hargy Oil Palms Ltd. There are three categories of smallholder oil palm producers distinguished by land tenure (Table 1):

- smallholders residing on agricultural state leasehold land on Land Settlement Schemes (LSSs)

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- village oil palm (VOP) growers cultivating oil palm on their own customary land
- non-clan members who have ‘purchased’ customary land belonging to others—customary rights purchase (CRP).

The differences in property rights among these primary types of land-tenure arrangements sometimes influence smallholder productivity, attitudes to replanting, investment levels in farm inputs and tenure security (Koczberski et al. 2001; Curry and Koczberski 2009).

Over the past 10–15 years, customary landowners, largely in the Hoskins area of West New Britain province and to a lesser extent at Bialla (West New Britain) and Popondetta (Northern Province), have been ‘selling’ land to non-clan members for oil palm development. These oil palm blocks are known in the industry as customary rights purchase (CRP) blocks and they make up approximately 15% of the total area of smallholder oil palm in West New Britain.

It is expected that CRP blocks will continue to grow in number, especially in West New Britain. At Hoskins and Bialla, there is enormous demand for land by migrants from mainland PNG attempting to secure a future for themselves and their families in the relatively prosperous oil palm belt bordering

Kimbe Bay. Also, for LSS settlers, especially from highly populated blocks, the acquisition of a CRP block offers a way to reduce population pressure on their existing LSS blocks. The high cost of LSS blocks puts them beyond the reach of most LSS growers (prices for a 6-hectare LSS block at Bialla and Hoskins range from PNG kina (K)40,000 to K80,000 compared with K3,000–4,000/hectare for a CRP block). The acquisition of a CRP block is even more critical for second-generation LSS settlers who have lost access to land in their home villages. Similarly, company and government employees who have spent much of their working lives in West New Britain and raised their children there, see the ‘purchase’ of a CRP block as a way to secure a livelihood in retirement and/or provide a future for their children.

Disputes over land ownership

Increasingly, the Oil Palm Industry Corporation (OPIC), the government agricultural extension service, was noting a growing number of disputes and evictions on CRP blocks. The disputes indicated that the current procedures of OPIC for dealing with new oil palm plantings on CRP blocks needed revision. While many of the early CRP land transactions were

Table 1. Numbers of smallholder blocks and areas of cultivation by project site

Land tenure type	Project site				
	Bialla (West New Britain province)	Hoskins (West New Britain province)	Popondetta (Northern Province)	Milne Bay province	New Ireland province
<i>Land Settlement Scheme (LSS)</i>					
No. of blocks	1,593	2,368	1,128	–	–
Area (ha)	7,755	12,928	4,215		
Area as a % of total smallholder area	64	51	30		
<i>Village oil palm (VOP) (customary)</i>					
No. of blocks	1,782	4,114	4,554	773	1,256
Area (ha)	4,068	9,140	10,020	1,837	2,478
Area as a % of total smallholder area	34	36	70	100	98
<i>Customary rights purchase (CRP)</i>					
No. of blocks	70	959	25	–	26
Area (ha)	200	3,114	50		55
Area as a % of total smallholder area	2	13	0.4		2

undocumented, with only oral agreements between the clan leaders and ‘outsiders’ acquiring blocks, many of the more recent transactions have been recorded on a Clan Land Usage Agreement (CLUA) form, which was initially designed by OPIC for village oil palm (VOP) producers planting oil palm on their own customary land.

However, there were problems with the existing CLUAs on CRP blocks:

- The size and boundaries of land parcels were not specified.
- Written agreements typically did not specify the agreed sale price of the land, nor the amount and timing of payment instalments.
- No details were provided on the specific land-use rights of the ‘purchaser’.
- There was no written evidence that the clan had agreed to the land ‘sale’ and for the land to be released to a non-clan member for the cultivation of oil palm.

This lack of written documentation has led to much misunderstanding and disputes between the ‘purchaser’ and the customary landowners. Furthermore, because most of these land transactions were not in accordance with customary law, they were technically illegal. This meant that the transactions did not comply with the Roundtable on Sustainable Palm Oil (RSPO) principles and therefore risked undermining PNG’s RSPO accreditation. RSPO accreditation aims to ensure fair and transparent agreements between oil palm growers, milling companies and other stakeholders in the industry, as well as limiting detrimental environmental impacts. Its principles and criteria stipulate a commitment to transparency and a participatory approach to establishment of land-use agreements with landowners.

Requirement for improved land-use agreements

It became apparent early in the ACIAR project that there was an urgent need to prevent the land disputes by developing an effective new CLUA for smallholders cultivating oil palm on the customary land belonging to others. In addition, it was necessary that this new CLUA be designed to comply with RSPO principles, provide more adequate land-tenure security for CRP growers and ensure that all members of the landowning group agreed to, or benefited from, such land transactions.

Methods and process

As part of developing a new CLUA for use by smallholders cultivating oil palm on someone else’s customary land, the ACIAR research team set out to:

- document the types of land transactions occurring and how tenure and access rights were acquired by migrants and maintained through time
- understand the underlying causes of the rising number of land disputes on CRP blocks
- develop a template for a new CLUA that met the needs of, and was acceptable to, landowners, migrant smallholders and the broader industry
- develop guidelines for OPIC for dealing with land transactions on CRP blocks
- raise awareness of the new CLUA.

The research team spent considerable time conducting meetings, informal interviews and workshops with members of landowning groups involved in the ‘sale’ of customary land and with migrant farmers cultivating oil palm on customary land. The team also worked closely with OPIC because it was the organisation’s role to eventually implement the new CLUA and to oversee land transactions on customary land. Thus, numerous meetings and workshops were held with OPIC extension officers and land officers. The methods and approach used to meet the points above are discussed below.

Document land transactions and understand the underlying causes of the land disputes on CRP blocks

This first step in the research entailed interviewing individual members of landowning groups involved in ‘selling’ land and migrant smallholders who had ‘purchased’ customary land to cultivate oil palm. Several focus-group meetings were also held with landowning groups. The purpose of the interviews and meetings was to gather information on the types of agreements and land transactions that permitted ‘outsiders’ access to customary land to cultivate oil palm. The research team interviewed dozens of smallholders and landowners in several villages in the Hoskins, Bialla and Popondetta areas.

The interviews and meetings were conducted in a way that encouraged landowners and migrant smallholders to tell their ‘stories’; that is, to tell the research team about their own experiences, anxieties and perspectives on land transactions. It was not

unusual for these interviews and meetings to run for 2–3 hours. The lengthy open discussions helped the research team to develop a sound understanding of the land transactions with ‘outsiders’ on customary land and were important in shedding light on the following:

- the broad range of land transactions and agreements occurring between migrants and landowners—most were informal, with ambiguous oral or written agreements (typically not including the agreed ‘sale’ price of the land and the amount and timing of payment instalments)
- how tenure and access rights were acquired by migrants and how they were maintained through time
- the near absence of land surveys undertaken on CRP blocks to record their boundaries
- clan members’ knowledge of and consent to land transactions. There was little evidence the majority of the clan members had consented to the land transactions or had received a share of the cash from the land ‘sale’ (youth, in particular, felt they had lost out and had been denied their ‘birthright’)
- factors underlying the land-tenure disputes between migrants and customary landowners that sometimes led to the eviction of migrants
- essential elements of any new CLUA that both landowners and migrants desired to see included.

Understanding and documenting in detail the disputes between ‘outsiders’ and landowners were crucial for the design of a new CLUA that would meet the needs of the two groups and reduce the incidence of land disputes. It became apparent in interviews that landowners and migrants had very different interpretations of their land dealings and this was the basis of many misunderstandings leading to the disputes. For example, many of those acquiring land believed that:

- they owned the block outright and their children could 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 had permanent ownership of the block, and therefore had the right to poison and replant their senile palms without the consent of the customary landowners. Many customary landowners argued that the initial grant of land for oil palm was for a single planting round and the land could be resumed by the customary landowners at the end of a cultivation cycle

- they had the right to invite anyone to reside on the block, such as their relatives from their home villages. Customary landowners often claimed that it was only the ‘purchaser’ and their immediate family who had been granted residency rights.

Customary landowners believed that:

- they had the right to evict those who caused law-and-order problems. Many ‘purchasers’ thought this was none of the business of the customary landowners
- when blocks were ‘sold’ in the past at a lower price than the current going price, they were entitled to be paid the difference in the value between the earlier ‘sale’ price and the current value
- when the price of oil palm rose sharply, as it did in early 2008, they had been cheated because they ‘sold’ the land when oil palm prices were lower. Landowners thought that the ‘purchaser’ was receiving benefits unfairly from the higher prices. This could lead customary landowners to demand additional cash payments from CRP blockholders.

A key point underlying disputes was that many migrants interpreted the land transfer as a commodity transaction that conferred on them individual and permanent ownership (like freehold title). From this perspective, the land was to be held in perpetuity by the migrant. In contrast, the original landowners involved in the transaction drew on customary principles that viewed land as an inalienable resource held by the kinship group and thereby argued that ‘outsiders’ were ‘guests’ on their land and had only acquired use rights for oil palm and not permanent and exclusive land rights. These use rights were contingent on migrants’ participation in customary exchange and fulfilling other social and economic obligations. Importantly, they did not extend to other land-use activities apart from oil palm cultivation.

By understanding the factors leading to land disputes and the differing views of land transactions held by the two groups, the research team was able to identify two important elements required in a new CLUA template. First, both groups wanted a more transparent process in land dealings and, especially from the customary landowners’ perspective, they wanted the land transaction to accord with customary law. Second, given that customary landowners and migrants interpreted land transactions differently, there was a need in the negotiations to design a new CLUA to reconcile their disparate perspectives, with the objective of giving greater tenure security to

‘outsiders’ while recognising the underlying customary tenure rights of the landowning group.

As information was being gathered from customary landowners and migrant smallholders to develop a new CLUA, the research team also kept in close contact with OPIC and provided it with summaries of the findings being gathered from interviews and meetings. Working closely with OPIC ensured it was part of the process of developing a new land agreement. Throughout the process, the team stressed that the new CLUA was a joint initiative of the PNG Oil Palm Research Association (PNGOPRA) and OPIC to ensure that OPIC felt it had a stake in the research process and the changes being proposed.

Develop a template for a new CLUA and guidelines for OPIC to manage CRP blocks

Once sufficient information had been obtained from customary landowners, migrants and OPIC, work began on developing a new CLUA template. This was an iterative process over several years wherein regular consultation took place with landowners, migrants and OPIC. During this process, the team conducted many workshops and meetings with OPIC at Bialla, Hoskins and Popondetta to refine the template. The discussions regarding the CLUA template were concerned with making CRP land transactions more transparent and developing clear definitions of the rights and obligations of both parties (see Koczberski et al. 2012 for further detail). Another point discussed at length was the request by landowners that the template should state explicitly that the outsider acquiring the land was not purchasing the land outright as in freehold title, but rather obtaining usufruct rights to land for defined purposes and for a specified period of time.

When a final draft of the CLUA template was complete, OPIC arranged for members of the research team to meet at its headquarters in Port Moresby with the project and field managers from each site to discuss the draft template. This meeting was essential for OPIC’s endorsement of the CLUA at the national level.

The key elements incorporated into the new CLUA template included:

- clarification that the person was not purchasing the land outright as in freehold title, but rather leasing the land for a specified period (one planting cycle of 25 years)
- a three-party signatory process involving the lessee, clan leaders and an OPIC lands officer

- transparency—public witnessing of the signing of the CLUA in the village
- agreement that the customary owners relinquish any use rights or management rights to the land for the duration of the CLUA
- clearly defined land boundaries
- a description of the rights and obligations of the clan leaders disposing of the land, other clan members and the lessee
- provisions for future contingencies (for example, consideration of what provisions should be made for dealing with renewal of the CLUA, the death of the lessee during the term of the CLUA, or if the CLUA were to be revoked for some reason)
- payment details
- inclusion of dispute resolution procedures
- inclusion of an approved block inspection report.

Arriving at the final CLUA template took almost 3 years. While this may appear to be a long period before an outcome was achieved, this unhurried process was critical to allow time for detailed deliberation and discussion on this very sensitive topic. OPIC and the research team were keenly aware that the introduction of the new CLUA had the potential to destabilise the tenure security of some migrant smallholders if not handled well.

Alongside the new CLUA template, the research team assisted OPIC to modify its land administration system to manage CRP blocks and the new CLUA. To achieve this, the research team and OPIC designed a document, ‘Step-by-step guidelines for dealing with smallholder customary rights purchase blocks’, which provided a seven-step set of guidelines of how to deal with CRP enquiries, conduct community meetings with landowners when a CRP request is made to OPIC, a template for a block inspection survey report and instructions for the final signing and lodgement of the new CLUA.

Conduct awareness raising of the new CLUA

To introduce the new CLUA, it was necessary to conduct extensive awareness-raising among customary landowners and migrant smallholders. OPIC and PNGOPRA have continued to increase awareness of the new CLUA among smallholders in West New Britain province since the conclusion of the ACIAR project in December 2012. The awareness-raising meetings with landowners and migrant smallholders are important because they provide smallholders with an understanding of the need for a new CLUA

on CRP blocks and an awareness of the potential benefits of the new CLUA for both landowners and CRP growers. Also, detailed information is provided on the rights of the landowners and CRP growers and the importance of transparency. Thus, clan members are made aware of their right to be aware of all land transactions on their customary land, the agreed 'sale' price of the land and how payments will be made. Finally, awareness is heightened on how the CLUA complies with RSPO requirements.

Research outcomes

The project has been successful in achieving endorsement of the new CLUA by OPIC at the national level, and there is a commitment to introduce it to all sites where land is being transferred to non-clan members for oil palm cultivation. A version of the new CLUA has been introduced at Hoskins (over 90% of CRP blocks are in the Hoskins oil palm project). It is anticipated that the new CLUA will:

- reduce disputes between customary landowners and outsiders and within landowning groups because land transactions are more transparent, and the rights and obligations of each party are clearly outlined
- assist CRP blockholders to obtain interest-free loans from the milling companies for farm inputs
- support the companies to comply with RSPO requirements relating to land-use rights for both the lessor and lessee (in particular, proof of land ownership and defined land boundaries)
- provide lessons for how wider land-reform policies could be undertaken in PNG
- be suitable for introduction at all sites. The CLUA template has a considerable degree of flexibility in it and can be tailored to individual circumstances in terms of payments, land-use rights and the period of the agreement.

Reaching a successful conclusion to the ACIAR project in the form of a CLUA template that was accepted by the industry was the result of several factors. Three key elements are highlighted here. First, and most importantly, were the very lengthy consultations and discussions the research team held with all stakeholders. The interview data highlighted how differing interpretations of land transactions between landowners and CRP growers were the cause of many land disputes. It was also made clear in interviews that landowners wanted the new CLUA to ensure customary ownership was maintained

at the group level while migrant farmers sought secure use rights to the land for oil palm cultivation. Recognising these key principles early in the project helped pave the way for discussions on the design of a new CLUA template that provided use rights for 'outsiders' for a fixed time period with clear recognition of the underlying and inalienable land rights of the customary landowners.

Second, a strong commitment by OPIC, PNGOPRA and the Australian partners that a solution to the land disputes on CRP blocks was essential, despite the challenges. In collecting information from landowners and CRP growers for the design of a new CLUA, the research team and OPIC were mindful that by publicly focusing on ways to improve CRP land transactions, there was the potential that the research could stir up tensions between migrants and customary landowners. Thus, the project required commitment and sensitivity by team members to pursue such a challenging and time-consuming task. The commitment is reflected in the ongoing work by OPIC and PNGOPRA, since the project finished last year, to facilitate the introduction of the new CLUA.

Third, introducing the new CLUA benefited from two measures taking place within the oil palm industry during the project. In late 2010 to early 2011, a World Bank-funded project, the Smallholder Agricultural Development Project (SADP), began in West New Britain province and Northern Province. Part of the SADP project was to assist with the infill planting of oil palm in villages. Several of the villages in the Hoskins area had CRP blocks and the World Bank team would not approve planting on CRP blocks without evidence of a formal and 'legal' land agreement between the customary landowners and migrant smallholders. This helped to reinforce the necessity of introducing the new CLUA. At the same time, the oil palm industry was seeking RSPO certification. The new CLUA assisted the companies to comply with RSPO criteria relating to land-use rights (in particular, proof of land ownership and defined boundaries of the land) and transparency in land transactions.

Conclusion

The large number of smallholders cultivating oil palm on customary land belonging to others presents an enormous challenge to the industry, especially given the rising disputes and insecure tenure of CRP blocks. The ACIAR project found that current

procedures for dealing with new oil palm plantings on CRP blocks and the CLUA used on village oil palm (VOP) blocks did not provide adequate land tenure security for the ‘outsider’ ‘purchasing’ or leasing land. Nor did the existing CLUA ensure that all members of the landowning clan agreed to or benefited from these land ‘sales’. Therefore, there was a need to develop a new CLUA for CRP blocks and review current practices relating to land transactions on customary land.

The methodological framework adopted focused on lengthy periods of fieldwork, collecting qualitative data from key stakeholders. Numerous meetings, interviews and workshops were conducted with members of the landowning groups involved in the ‘sale’ of customary land, CRP growers and OPIC extension officers to gather information on the underlying causes of the rising number of land disputes on CRP blocks and the differing interpretations of land transactions by landowners and ‘outsiders’. This engagement at the local level ensured the design of a new CLUA template was based on a clear

understanding of the local sociocultural context and, in particular, indigenous principles and concepts of property rights. By designing the new CLUA in collaboration with landowners, migrant farmers and OPIC, the likelihood of the CLUA being accepted was significantly enhanced.

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