Housing, Land and Property Mapping Project

Papua New Guinea

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses, however these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by Allens lawyers, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

If you would like to make any changes to the document, please submit to the document manager Leeanne Marshall via the below table.

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Housing, Land and Property Law in Papua New Guinea

**1 Key laws and actors**

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| --- | --- |
| [Laws](#Laws) | The key laws governing land, housing, building and planninginclude the [*Constitution*](http://www.paclii.org/pg/legis/consol_act/cotisopng534/), the [*Land Act 1996*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/la199648/la199648.html?stem=&synonyms=&query=land%20act&nocontext=1)(***Land Act***), the [*Land Registration Act 1981*](http://www.paclii.org/pg/legis/consol_act/lra1981191/) and the [*Physical Planning Act 1989*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/ppa1989185/ppa1989185.html?stem=&synonyms=&query=planning&nocontext=1). |
| [Key government actors](#Govt_actors) | The Department of Lands and Physical Planning is the main government body responsible for administering land. Provincial or local government authorities may also play an important role. In Port Moresby, for example, the National Capital District Commission is responsible for administering planning and building laws. |
| [Shelter cluster](#Shelter_Cluster) | There is no shelter cluster in PNG. However, there is a Pacific Shelter Cluster which could potentially be activated in response to a disaster in PNG. |

[**2 Common types of tenure**](#Common_tenure_types)

Land in PNG is divided into two basic categories: (1) **customary land** (also referred to as **un-alienated land)**; and (2) **non-customary land** (also referred to as **alienated land**). Approximately 97% of land is customary land, with the remainder being alienated land.

**2.1 Types of tenure over customary land**

|  |  |  |  |
| --- | --- | --- | --- |
| **Tenure** | **Registered?** | **Key Features** | **Document** |
| [Customary tenure](#Customary_land) | No | Tenure of an indigenous group living on its ancestral land over which it has traditional ownership rights under customary law. | None |
| [Special Agricultural and Business Lease (SABL)](#Special_Agricultural_and_Business) | No | A lease or sub-lease of customary land for a period of up to 99 years. | Lease or sub-lease |
| [Registered customary land](#Registration_of_customary_land) | Yes | Registered customary land held by an incorporated land group (***ILG***). | Certificate of title |

**2.2 Types of tenure over alienated land**

|  |  |  |  |
| --- | --- | --- | --- |
| **Tenure** | **Registered?** | **Key Features** | **Document** |
| [State land](#State_land) | No | Land held by the government; may have been acquired from customary owners by compulsory acquisition or by agreement. | None |
| [Freehold land](#Freehold_land) | Yes | Private, indefinite ownership of land; not available to non-citizens. | Certificate of title |
| [Private lease and sub-lease](#Freehold_land) | Yes | Lease of freehold land; not available to non-citizens. Private leases and sub-leases must be registered, except sub-leases for 3 years or less. | Form of lease or sub-lease |
| [State lease and sub-lease](#State_lease) | Yes | Leases granted by the government over State land for specific purposes (eg, farming) for up to 99 years. A person who holds a state lease may grant a sub-lease. | Form of lease or sub-lease |
| [State licence](#State_Licences) | Yes | A right to use State land for a specific purpose (eg, fishing, mining or grazing). | Form of licence |

**2.3** [**Security of tenure of vulnerable groups**](#Security_of_Tenure_of_Vulnerable_Group)

|  |  |
| --- | --- |
| [Women](#Women) | There are no restrictions on women owning alienated land. However, patrilineal inheritance of land is widely practiced in relation to customary land, meaning that women generally do not inherit customary land and that men hold most decision-making powers over customary land. |
| [Minority groups](#Minority_groups) | Many people belonging to minority groups are unable to acquire legal interests in land due to limited financial resources. Non-PNG citizens face barriers in accessing land: they cannot own customary land and cannot own or lease freehold land. |
| [Informal settlements](#Informal_Settlements) | There are three main types of urban settlement: (1) planned settlements established by, or in conjunction with, the State; (2) unplanned settlements established by groups who move onto land without landowner consent; and (3) village settlements established by landless people negotiating tenure agreements with customary landowners. Residents of unplanned settlements and village settlements do not have legal rights to the land they occupy. |
| [Landless people](#Landless_people) | It is unclear whether squatters acquire legal rights to the land they occupy. However, squatters who have occupied land for a prolonged period with no objection from the owner have a right to 'reasonable notice' before eviction. |
| [Other groups](#Other_groups) | There are groups of landowners who have relocated due to natural disasters, such as the 9,000 people who were evacuated from Manam Island in 2005 due to volcanic activity. Customary land owners from small islands and atolls have also relocated onto larger islands or the mainland due to rising sea levels. |

**3** [**Eviction, expropriation and relocation**](#Eviction_Expropriation_Relocation)

|  |  |
| --- | --- |
| [Eviction](#Eviction) | Media reports indicate that forced evictions from informal settlements do occur. However, in some cases, squatters have successfully applied for court orders preventing eviction until the legality of the eviction can be determined in court. |
| [Expropriation](#Expropriation) | Under the *Land Act* the government may compulsorily acquire land where it is required for a 'public purpose'. The State must comply with the relevant procedures for expropriation which include notice and compensation.  The government may expropriate land without notice if the Minister for Lands certifies that there are 'special reasons' for dispensing with the usual notice requirements. This may include a disaster or national emergency. |
| [Relocation](#Relocation) | If a national emergency is declared, Parliament may pass an Emergency Act which appoints a Controller and provides them with extremely broad powers to minimise damage and alleviate suffering. The Controller may forcibly relocate persons by evacuating them from an area and preventing them from returning. |

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| **Disaster Law Housing, Land and**  **Property Mapping Project**  **Papua New Guinea** |
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**Disclaimer**

This report is the result of a desktop review of publicly available information. This report is not legal advice.

1. Introduction
   1. Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met.

The Australian Red Cross (***ARC***) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies' (**IFRC**) response to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

Australian Red Cross, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

* The first section, entitled ['common tenure types'](#Common_tenure_types), provides an overview of the different types of housing and land tenure in Papua New Guinea (***PNG***). It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled ['security of tenure of vulnerable groups',](#Security_of_Tenure_of_Vulnerable_Group) considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing. This section focuses primarily on women,minority groups, indigenous groups and landless people, each of which face particular legal barriers.
* The third section, entitled ['eviction, expropriation and relocation'](#Eviction_Expropriation_Relocation), considers PNG's statutory and case law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.
  1. Background information on PNG

PNG comprises the eastern half of the island of New Guinea and its many offshore islands to the North-East. As shown in the map on the following page, PNG is divided into four regions: Southern Region; Highlands Region; Momase Region and Islands Region. Each region is divided into provinces which are, in turn, divided into local government areas.

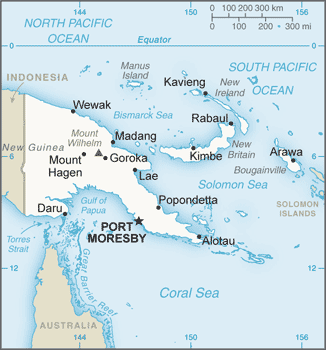
There are 20 provinces in total. In addition, the National Capital District (***NCD***), which encompasses the city of Port Moresby, functions as if it were a province. There is one politically autonomous region: the Autonomous Region of Bougainville.

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(Map sourced from World of Maps, 'Papua New Guinea Regions'   
<http://mapsof.net/papua-new-guinea/papua-new-guinea-regions>.)

According to the 2011 census, PNG has a population of 7.3 million.[[1]](#footnote-1) Approximately 39% of PNG's population lives in Highlands Region, 26% in Momase Region, 20% in Southern Region and 15% in Islands Region.[[2]](#footnote-2)

Approximately 13% of PNG's population lives in urban areas. PNG has three formally declared cities and 17 provincial towns.[[3]](#footnote-3) The three cities are Port Moresby, Lae and Mt Hagen. Port Moresby, with a population of 345,000, is by far the largest city.[[4]](#footnote-4) The map below depicts several of PNG's major urban centres.



(Map sourced from: Central Intelligence Agency, *Papua New Guinea* <https://www.cia.gov/library/publications/the-world-factbook/geos/pp.html>)

PNG is immensely ethnically and linguistically diverse. The population comprises five major ethnic groups: Melanesian, Papuan, Negrito, Micronesian and Polynesian.[[5]](#footnote-5) There are hundreds of sub-ethnic groups indigenous to PNG, a large number of which have their own language.[[6]](#footnote-6)

Approximately 850 languages are spoken throughout the country.[[7]](#footnote-7) The three official languages are English, Tok Pisin and Hiri Motu.[[8]](#footnote-8) Tok Pisin, a creole language, is widely used and understood.[[9]](#footnote-9) English is spoken by 1% to 2% of the population, while Hiri Motu is spoken by less than 2% of the population.[[10]](#footnote-10)

1. Common tenure types
   1. Tenure types
      1. **What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.**

The key pieces of legislation governing housing, land, building and planning are as follows.

* [*Constitution of the Independent State of Papua New Guinea (1975)*](http://www.paclii.org/pg/legis/consol_act/cotisopng534/) (the ***Constitution***);
* the [*Land Act 1996*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/la199648/la199648.html?stem=&synonyms=&query=land%20act&nocontext=1) (the ***Land Ac***t);
* the [*Land Disputes Settlement Act 1975*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/ldsa1975276/ldsa1975276.html?stem=&synonyms=&query=land%20disputes%20settlement%20act&nocontext=1);
* the [*Land Groups Incorporation Act 1974*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/lgia1974292/lgia1974292.html?stem=&synonyms=&query=Land%20Groups%20Incorporation%20Act%201974&nocontext=1);
* the [*Land (Ownership of Freeholds) Act 1976*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/PG-consol_act_1986/lofa268/index.html?stem=&synonyms=&query=freehold);
* the [*Land Registration Act 1981*](http://www.paclii.org/pg/legis/consol_act/lra1981191/) (the ***Land Registration Act***);
* the [*Land Titles Commission Act 1962*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/ltca1962246/ltca1962246.html?stem=&synonyms=&query=land%20titles%20commission%20act&nocontext=1);
* the [*Physical Planning Act 1989*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/ppa1989185/ppa1989185.html?stem=&synonyms=&query=planning&nocontext=1); and
* the [*Physical Planning Regulation 1990*](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/consol_act/ppr1990276/ppr1990276.html?stem=&synonyms=&query=planning&nocontext=1).
  + 1. **What types of tenure exist?**

Land in PNG is divided into two basic categories:

* **customary land**, which is also referred to as **un-alienated land**; and
* **non-customary land**, which is also referred to as **alienated land**.

Approximately 97% of land in PNG is customary land, with the remainder being alienated land which has been acquired from its customary owners.[[11]](#footnote-11) There are two main types of alienated land: **State land** and **freehold land**.

The term '**State land**' refers toland that has been acquired from customary owners by the State, either by compulsory acquisition or by agreement.[[12]](#footnote-12) The term '**freehold land**' refers toland that has been granted by customary owners, either to the State or to private persons. A grant of freehold land gives the grantee absolute and perpetual ownership of the land.[[13]](#footnote-13) Freehold land may be transferred or leased.

The first diagram below depicts the basic categories of land in PNG, while the second diagram depicts the different tenure types which exist in each category.

These tenure types are discussed in greater detail below.

* + - 1. **Customary land**

Section 2 of the *Land Act* defines 'customary land' as 'land that is owned or possessed by an *automatic citizen or community of automatic citizens* by virtue of *rights of a proprietary or possessory kind* that belong to that citizen or community and *arise from and are regulated by custom*'.[[14]](#footnote-14)

* + - * 1. **Persons who may hold customary tenure**

The identity of persons who may hold customary tenure is governed by custom. However, section 2 of the *Land Act* establishes that customary land can only be held by an '*automatic citizen or community of automatic citizens*'.

The term 'automatic citizen' refers to a person who is a citizen by virtue of sections 65 or 66 of the *Constitution*.[[15]](#footnote-15) These sections provide the following persons are citizens of PNG:

* a person born in PNG before Independence Day (ie, 16 September 1975) who has two grandparents born in PNG or an adjacent area;
* a person born outside PNG before Independence Day who has two grandparents born in PNG and who has successfully applied for citizenship; or
* a person born in or outside PNG on or after Independence Day who has one parent who:
* is a citizen;
* would have been a citizen if they had survived to Independence Day; or
* would have been entitled to become a citizen had they survived to Independence Day.[[16]](#footnote-16)

The term 'adjacent area' means the Solomon Islands, Irian Jaya (a province of Indonesia) and the Torres Straits Islands.

The effect of the foregoing provisions is that customary land cannot be held by naturalized citizens or foreigners. It can only be held by persons with family ties to PNG or nearby areas.

* + - * 1. **Restrictions on the use of customary land**

Section 132 of the *Land Act* provides that a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than in accordance with custom. There are several exceptions to this provision, which are discussed in more detail below.

* First, customary landowners may enter into an agreement to sell their land to the State.[[17]](#footnote-17)
* Second, customary landowners may lease their land to the State in order for the State to subsequently grant a Special Agricultural and Business Lease of the land.[[18]](#footnote-18)
* Third, customary landowners may register parts of their land which are suitable for development and subsequently develop those parts of the land, including by granting a lease to a third party.
* Fourth, customary land may be converted to freehold, by application to the Land Titles Commissioner.

Each of these exceptions is discussed in greater detail in sections [(C)](#Sec_C), [(D)](#Sec_D), [(E)](#Sec_E) and [(F)](#Sec_F) below.

* + - * 1. **Agreement to sell customary land to the State**

Section 10 of the *Land Act* provides that the Minister may, on behalf of the State, acquire customary land on such terms and conditions as are agreed between the Minister and the customary landowners. The Minister must not, however, acquire customary land by agreement unless satisfied, after reasonable inquiry, that the land is not required or likely to be required by the customary landowners or by persons to whom the land will or may devolve by custom.[[19]](#footnote-19)

* + - * 1. **Special Agricultural and Business Leases**

The *Land Act* establishes a lease-leaseback system, which permits customary landowners to circumvent the prohibition on leasing or otherwise disposing of their land otherwise than in accordance with custom. This system operates as follows.

* First, the Minister leases customary land pursuant to section 11 of the *Land Act*. No rent or compensation is payable by the Minister.
* Second, the Minister grants a Special Agricultural and Business Lease (***SABL***) either to the customary landowners themselves, or a person or entity of their choice, for a maximum period of 99 years.[[20]](#footnote-20) If the customary landowners are the lessee under a SABL, they may, in turn, sub-lease the land to a person or entity of their choice.

The SABL system effectively allows customary landowners to lease their land to themselves, or to a third party, in order to develop the land for agricultural or business purposes.

A moratorium on the grant of SABLs was introduced in 2013, however SABLs granted prior to the moratorium remain in force.

* + - * 1. **Registration of customary land**

An alternative to a SABL is for customary land to be registered and subsequently developed. In order for customary land to be registered, the customary owners must first apply to the Registrar of Incorporated Land Groups to become an incorporated land group (***ILG***).[[21]](#footnote-21)

The application must contain a copy of the proposed constitution for the ILG which specifies:

* the name of the group;
* the qualifications for membership of the group;
* the title, composition, membership and manner of appointment of the committee or other controlling body of the group;
* the name of, or other means of identification of, any custom in accordance with, or subject to which, the group is to act; and
* details of the proposed dispute-settlement authority and the rules (if any) applicable to the group.[[22]](#footnote-22)

If the application is successful, the group is issued a certificate of recognition, and a copy of their application and certificate is entered onto the register.[[23]](#footnote-23) The certificate of recognition contains the ILG's constitution.[[24]](#footnote-24)

After registration, the ILG is a corporation and may do all of the things which a corporation may do.[[25]](#footnote-25) The ILG must, however, act consistently with its constitution and any other relevant custom.[[26]](#footnote-26)

An ILG may apply to the Director of Customary Land Registration to register parts of its customary land that are suitable for development.[[27]](#footnote-27) Upon registration, a certificate of title is issued in the name of the ILG and customary law ceases to apply to the registered land, with the exception of customary laws governing inheritance.

Registration of customary land therefore permits customary landowners to develop their land by, for example, leasing the land to a third party, or mortgaging the land to raise funds for development.[[28]](#footnote-28)

* + - * 1. **Conversion of customary land into freehold**

Customary land may, upon application to the Land Titles Commissioner (the ***Commissioner***), be converted into freehold land under the *Land (Tenure Conversion) Act 1963*. The Commissioner will only make a conversion order if:

* the land is customary land;
* all persons with interests in the land are in agreement with the application; and
* adequate provision has been made to compensate persons whose interests will be abolished or reduced.[[29]](#footnote-29)

A conversion order directs the Registrar of Titles to register the applicant, or another person, as the owner of an estate in fee simple in some or all of the land the subject of the application.[[30]](#footnote-30)

* + - 1. **State land — Leases**

The State may grant leases over State land, which are referred to as **State leases**.[[31]](#footnote-31) There are no restrictions on who may acquire a State lease. However, as a general rule, State leases must be advertised for application or tender.[[32]](#footnote-32) Therefore, obtaining a State lease is generally a competitive process, with the most attractive applicant being granted the lease.[[33]](#footnote-33)

The *Land Act* establishes several categories of State lease. The table on the following page outlines the name, purpose, conditions and duration of the main types of State lease.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Purpose** | **Conditions / Limitations** | **Maximum duration** |
| **Agricultural lease[[34]](#footnote-34)** | Agricultural purposes (ie, farming) | Lease must prescribe minimum improvements to be carried out by the lessee | 99 years[[35]](#footnote-35) |
| **Pastoral lease[[36]](#footnote-36)** | Pastoral purposes (ie, animal grazing) | Lease must prescribe minimum stocking required of the lessee |
| **Business and/or residence lease[[37]](#footnote-37)** | Business and/or residence purposes | Lease may specify the class or classes of business for which the land may be used  Where State-owned buildings are located on State land, the land may only be leased for business or residence purposes, or for business and residence purposes.[[38]](#footnote-38) |
| **Mission lease[[39]](#footnote-39)** | Establishing/running a Christian mission | - |
| **Special purposes leases[[40]](#footnote-40)** | Residual category of lease; granted where any other type of lease would not be possible or appropriate | - |
| **Urban development leases[[41]](#footnote-41)** | Urban property development projects | Can only be granted to property developers[[42]](#footnote-42) | 5 years[[43]](#footnote-43) |
| **National Housing Corporation leases[[44]](#footnote-44)** | Developing and leasing public housing[[45]](#footnote-45) | Can only be granted to the National Housing Corporation, a statutory authority whose function is to provide public housing[[46]](#footnote-46) | 99 years[[47]](#footnote-47) |

A person who holds a State lease is entitled to:

* grant a **sub-lease** over the land;[[48]](#footnote-48)
* **transfer** the lease to another person;[[49]](#footnote-49) or
* secure a debt through a **mortgage** or **charge** of the lease.[[50]](#footnote-50)

The Minister's approval is, however, required to create a sub-lease or to transfer a lease, if the term or remaining term of the lease exceeds five years.[[51]](#footnote-51) If a lease is subject to a mortgage or charge, a sub-lease will not bind the mortgagee or chargee unless they have consented to the sub-lease before it is registered.[[52]](#footnote-52)

Lessees of State land are obligated to pay:

* a prescribed application fee;[[53]](#footnote-53)
* survey fees arising from their lease application;[[54]](#footnote-54)
* a prescribed amount of rent;[[55]](#footnote-55) and
* amounts for improvements to the land.[[56]](#footnote-56)

In relation the last category of payment above, an 'improvement' is an extremely broad term encompassing any kind of structure, fixture, landscaping or flora which improves the amenity of the land.[[57]](#footnote-57)

* + - 1. **State land — Licences**
         1. **Licences under section 125**

Pursuant to section 125 of the *Land Act*, the State may grant licences to enter onto State land for one or more of the following purposes:

* to graze stock or a specified kind of stock;
* to strip, dig and take away any valuable material or substance;
* for fishermen’s residences and drying grounds; or
* for any other temporary purpose approved by the Minister.[[58]](#footnote-58)

A licence empowers the licensee to:

* make such temporary improvements and do such things on the land as are necessary or convenient for the purposes of the licence; and
* to remove such of those improvements as are severable on or before the termination of the licence.

There are no restrictions on who may acquire a licence from the State. A licence has a maximum duration of 1 year.[[59]](#footnote-59)

Payment for a licence takes the form of a prescribed fee.[[60]](#footnote-60) Where a licence is for the purpose of stripping, digging and taking away any valuable material or substance, the licensee may also be required to pay royalties for the material or substance extracted from the land.[[61]](#footnote-61)

* + - * 1. **Licences over acquired land**

Where land has been compulsorily acquired by the State, the Minister may grant a licence to the person from whom the land was acquired, for the purpose of allowing them to use the land for the purpose or purposes for which it was used immediately before the date of acquisition.[[62]](#footnote-62) This type of licence does not have a maximum duration.[[63]](#footnote-63) It is subject to the payment of a fee determined by the Minister.[[64]](#footnote-64)

* + - 1. **Freehold land**

A freehold landowner is entitled to sell or lease their land, and to secure a debt through a mortgage or charge over the land.[[65]](#footnote-65) However, the Minister's approval is required to create a lease for a term exceeding five years.[[66]](#footnote-66)

A person who holds a lease over freehold land is entitled to:

* grant a **sub-lease** over the land;[[67]](#footnote-67)
* **transfer** the lease to another person;[[68]](#footnote-68) or
* secure a debt through a **mortgage** or **charge** over the lease.[[69]](#footnote-69)

The Minister's approval is required to create a sub-lease or transfer a lease, if the term or remaining term of the lease exceeds five years.[[70]](#footnote-70)

The holder of freehold land can apply to the Minister to have their freehold land converted into a 99-year lease from the State.[[71]](#footnote-71) This is referred to as a ***substitute lease***.

Section 56(i)(b) of the *Constitution* provides that non-citizens cannot acquire freehold land. Freehold land can, however, be sub-leased to non-citizens if it is first converted into a substitute lease.

* + 1. **Which, if any, of these types of tenure provide a high degree of security of tenure?**
       1. **Registered interests**

PNG has a Torrens title system under which registration of an interest in land confers indefeasible title and operates as conclusive proof of ownership.[[72]](#footnote-72) Consequently, as a general rule, registered interests in land confer a high degree of security of tenure.

Certain registered interests do, however, create a higher degree of security of tenure than others due to two factors:

* first, the *duration* of the tenure; and
* second, the circumstances in which the tenure can be *terminated*.

Registered holders of freehold or customary land have the highest degree of security of tenure because they have a perpetual interest in the land.[[73]](#footnote-73) Leases and sub-leases, however, confer a lesser degree of security of tenure because they have a finite duration and may be prematurely terminated in certain specified circumstances.

Compared to registered leases and sub-leases, registered licences confer a lower degree of security of tenure because they have a very short duration of 1 year. Further, a licensee has no procedural protections in the event that the Minister decides to revoke their licence.

The table below summarises the duration of different types of registered leases, sub-leases and licences, and the circumstances in which they may be terminated.

|  |  |  |
| --- | --- | --- |
| **Interest** | **Process for termination** | **Duration** |
| **State lease** | The *Land Act* establishes two processes for revocation of a State lease.  **First Process**  The Minister may revoke a State lease if:   * rent remains due and unpaid for a period of six months; * fees are not paid in accordance with the *Land Act*; * the amount payable in respect of improvements is not paid in accordance with the *Land Act*; * the lessee does not comply with: * a covenant or condition of the lease; * a provision of the *Land Act* relating to the lease; * a requirement of a notice under section 91 relating to the lease; or * the lease was obtained wholly or partly as a result of statements that were, to the knowledge of the lessee, false or misleading.[[74]](#footnote-74)   Before revoking a lease, the Minister *must* serve the lessee with a notice requiring them to show cause why the lease should not be revoked on the ground specified in the notice.[[75]](#footnote-75)  The Minister cannot revoke the lease unless the lessee has failed to comply with a notice, or has failed to show good cause why the lease should not be forfeited.[[76]](#footnote-76)  **Second Process**  If a term, covenant or condition of a State lease is not complied with, the Minister may serve the lessee with a notice calling on him to show cause why a non-compliance fee should not be imposed.[[77]](#footnote-77)  If the lessee fails to show good cause, the Minister may impose a non-compliance fee for each month for which the non-compliance has continued or continues.[[78]](#footnote-78)  If a non-compliance fee is not paid, the Minister may then revoke the lease without any further formalities or notice requirements.[[79]](#footnote-79)  Short of these processes, the Minister *may* serve the lessee with a notice requiring them to comply, within a specified time, with the covenants or conditions of the lease or the provisions of the *Land Act*.[[80]](#footnote-80) | Up to 99 years |
| **Lease of freehold land**  **Sub-lease of freehold land**  **Sub-lease of State lease** | The lessor may re-enter on and take possession of the property if:   * the rent or part of the rent is in arrears for a period of six months; * the lessee has failed to comply with a covenant of the lease for a period of six months; or * if the lessor issues the lessee with a notice requiring them to repair the property and the lessee fails to repair the property within the time specified in the notice.[[81]](#footnote-81) | No upper limit (except a sub-lease cannot exceed the term of the head lease) |
| **State licence** | The Minister may revoke a State licence if the licensee has failed to comply with the conditions of the licence.[[82]](#footnote-82) In contrast to a State lessee, a State licensee is not guaranteed an opportunity to show cause why their licence should not be revoked, or to retain the licence by rectifying their conduct. | 1 year |

* + - 1. **Unregistered interests**

Sub-leases for less than three years *may*, but are not required to be, registered.[[83]](#footnote-83) If a sub-lessee does not register a sublease, they will generally have a lower degree of security of tenure. Without the indefeasibility of title conferred by registration, there will be greater scope for another person to assert a competing interest in the land.

* + 1. **How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**
       1. **Urban areas**

Urban areas are predominantly located on State land. Urbanisation is, however, exhausting the supply of State land in urban areas and creating a trend towards the development of customary land on the urban fringe. As an example, in the city of Alotau in Milne Bay Province, the increasing population has exhausted the supply of State land resulting in residential property development on three areas of customary land: *Ravens Estate*, *Toudikwa* and *Modewa Silabe*.[[84]](#footnote-84)

* + - 1. **Rural areas**

Land in rural areas is predominantly customary land, although some alienated land does exist. For example, State land is used for government infrastructure (eg, hospitals, schools, court houses) and freehold land is used for agriculture and churches.

The introduction of SABLs has significantly reduced the proportion of rural land which is *actually* held by its customary owners. As discussed further in section [3.2](#Sec_3_2) below, since 2003 SABLs have been granted over 11% of PNG's total land area.

Land subject to a SABL *technicall*y remains customary land (ie, it is not alienated land). However, most SABLs are for a term of 99 years, to a third party, and provide that customary owners may only remain on their land at the discretion of the leaseholder. Thus, land subject to a SABL is, in practice, held by a third party, rather than its customary owners.

* + 1. **What are the main government and non-government bodies (eg, representative bodies) which administer or deal with housing, land and property?**

The Department of Lands and Physical Planning is the main government body which is responsible for land and property. It has numerous Divisions with different areas of responsibility including:

* the ***Office of the Registrar of Titles***, which is responsible for the system of land registration, which is discussed in section [2.2](#Sec_2_2) below;
* the ***Development Planning Division***, which is responsible for land use planning, subdivision design, infrastructure plans for rural and urban areas, and urban resettlement plans;
* the ***Incorporated Land Group Division***, which is responsible for registering ILGs;
* the ***Customary Land Registration Division***, which is responsible for the registration of customary land and SABLs;
* the ***Customary Land Acquisition Division***, which is responsible for administering the acquisition of customary land by the State, either by agreement or compulsorily;
* the ***Alienated Land Division***, which is responsible for administering State leases, including granting and renewing leases, and monitoring compliance with leases; and
* the ***National Mapping Bureau***, which is responsible for providing mapping products and services.

The ***National Housing Corporation*** is the national body responsible for developing and providing social housing stock.

Authorities at the provincial or local government level may also play an important role in housing, land and property. For example, in Port Moresby, the National Capital District Commission is responsible for administering laws relating to planning, building and development.[[85]](#footnote-85)

* 1. Documenting tenure
     1. **What statutory instruments or legal documents (eg, title deeds or leases) are used to create or transfer tenure?**

The *Land Registration Act* provides for a system of conveyance and registration of title to land. It establishes the position of the Registrar of Titles, whose function is to maintain two registers: the Register and the Register of State Leases.

The Register is a register of freehold land and interests relating to freehold land. Freehold land is evidenced by a certificate of title, which is prepared in duplicate. One copy of each certificate of title is entered onto the Register, while the remaining copy is held by the titleholder.

The process of registering a dealing relating to freehold land is as follows.

* The parties must complete an instrument in the 'approved form' for the transaction. Forms are approved and provided by the Registrar.[[86]](#footnote-86)
* The parties must present the instrument to the Registrar, together with any instrument of title affected by the transaction.[[87]](#footnote-87)
* If the Registrar is satisfied that the instrument is in registrable form, he must register the instrument as follows.
* First, the Registrar enters a memorial of the instrument on the Register. The memorial states the day and hour of the instrument of title being produced for registration.[[88]](#footnote-88)
* Second, the Registrar records the same memorial on any instrument of title affected by the transaction which has been provided by the parties.[[89]](#footnote-89)
* Third, the Registrar endorses the instrument with a memorandum of the day and hour on which the memorial was entered in the Register, and authenticates the endorsement by signing his name and affixing his seal.[[90]](#footnote-90)
* Fourth, the Registrar files the original instrument of title in the Register and returns the duplicate, if any, to the new landholder.

The Register of State Leases operates in the same manner as The Register, except for the fact that certificates of title are replaced by State leases.[[91]](#footnote-91)

Customary land may, but is not required to be, registered. As discussed in section [2.1](#Sec_2_1) above, an ILG can apply to the Director of Customary Land Registration to register part of its customary land that is suitable for development.[[92]](#footnote-92) Upon registration, a certificate of title is issued in the name of the ILG.[[93]](#footnote-93)

* + 1. **What non-legal documents or actions (e.g. verbal agreements or handshakes) are used to create or transfer tenure?**

It is not possible to transfer or create an estate or interest in alienated land other than in accordance with the process of registration outlined in the preceding section.[[94]](#footnote-94) The only exception to this is a sub-lease for a term of three years or less, which does not have to be registered.[[95]](#footnote-95) Further, no interest in land can be created or disposed of except in a written document signed by the person creating or disposing of the interest.[[96]](#footnote-96) Therefore, even sub-leases for three years or less must be in writing in order to be legally enforceable.

* 1. Customary ownership
     1. **Is customary ownership of land legally recognised? If so, what is the basis for legal recognition?**

As is evident from section [2.1](#Sec_2_1) above, customary land ownership is legally recognised. The legal basis for the recognition and protection of customary ownership are the following key provisions of the *Constitution* and the *Land Act*.

* Schedule 2.1.1 of the *Constitution*, which provides that customary law is adopted and shall be applied and enforced as part of the underlying law of PNG.
* Section 2 of the *Land Act*, which defines 'customary land' as land that is owned or possessed by an automatic citizen or community of automatic citizens by virtue of rights of a proprietary or possessory kind that arise from and are regulated by custom.
* Section 132 of the *Land Act*, which precludes customary owners from selling, leasing or disposing of their land or rights otherwise than in accordance with custom.
  + 1. **What are the sources of customary rules?**

The source of customary rules is village elders, leaders or chiefs, who disseminate the rules orally, rather than in writing.

* + 1. **What are the customary rules governing housing, land and property?**

The indigenous population of PNG is extremely heterogeneous comprising several thousand separate communities.[[97]](#footnote-97) The content of customary rules governing housing, land and property varies between groups.

In most areas of PNG, rights of ownership to land are patrilineal, meaning that land is transmitted via the male line, from father to son. In some areas of PNG, particularly in the New Guinea Islands region, rights of ownership to land are matrilineal, meaning that land is transmitted via the female line, from mother to daughter.[[98]](#footnote-98)

Customary land may be held communally, meaning that a male heir may need to seek permission from his customary group before dealing with the land. For example, among the *Amahop (Balif) Arapesh* people from the East Sepik Province, the fact that land is held communally means that a male heir must seek permission before building on the land.[[99]](#footnote-99)

* + 1. **What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?**

The introduction of a system of traditional legal ownership has not supplanted customary ownership. Traditional legal ownership and customary ownership are both recognised and co-exist under PNG law.

Customary rights may, however, be extinguished or temporarily suspended in accordance with processes established by the *Land Act*. For example, as discussed above:

* customary land may be alienated if it is acquired by the government through agreement or by compulsory acquisition;[[100]](#footnote-100)
* customary rights may be suspended for a period of up to 99 years if customary land is subject to a SABL;
* customary rights may be extinguished permanently through the registration of customary land by an ILG;
* customary rights may be extinguished permanently through the conversion of customary land into freehold land.
  1. Informal Settlements
     1. **What are the locations and boundaries of informal settlements?**

There are three main types of urban settlement in PNG. The table below summarises the main characteristics of each type of settlement.

|  |  |  |
| --- | --- | --- |
| **Category** | **Features** | **Main land type** |
| **Planned settlements**[[101]](#footnote-101)  (aka formal settlements) | * Settlements established by, or in conjunction with, the government * Residents generally have access to basic services and infrastructure | State |
| **Unplanned settlements**[[102]](#footnote-102)  (aka squatter settlements) | * Settlements established by communities, or groups of families, moving to an area without landowner consent * Generally located on State land, often on prime urban land which the government wishes to use for development * Residents generally lack access to basic services and infrastructure | State |
| **Village settlements**[[103]](#footnote-103) | * Settlements established by landless persons negotiating tenure arrangements with customary landowners * Level of services and infrastructure varies between settlements * In some cases, the customary group's ownership of the land is itself disputed and the land may actually belong to the State | Customary |

A large proportion of PNG's urban population live in informal settlements, meaning either unplanned settlements or village settlements.

In Port Moresby, as of 2010, approximately 45% of the population lived in informal settlements.[[104]](#footnote-104) As of 2013, there were 44 unplanned settlements and 37 village settlements.[[105]](#footnote-105) Village settlements in Port Moresby are referred to as Motu Koitabu settlements, reflecting the fact that Port Moresby is located on the traditional lands of the Motu and Koitabu peoples (as well as the Koiarai people).[[106]](#footnote-106) The map in Schedule 1 depicts the location of formal and informal settlements in Port Moresby in 2013.

Informal settlements are also highly prevalent in PNG's other urban centres, including the two other official cities: Lae and Mt Hagen.

* + 1. **What kinds of tenure arrangements are in place in informal settlements?**

Although tenure arrangements vary, it is possible to make the following generalisations about the types of tenure arrangements in place in different types of settlements.

In **planned settlements**, also known as formal settlements, the National Housing Corporation generally holds a head lease over the land and sub-leases parcels of land to residents. Residents of planned settlements generally have legal rights to reside on the land and, therefore, a reasonable degree of security of tenure.

In **unplanned settlements**, residents do not have legal rights to reside on the land and, therefore, generally have a lower degree of security of tenure.[[107]](#footnote-107) Residents may be evicted by the government at any point in time, subject to the notice requirements discussed in section [3.4](#Landless_people) below.

Unplanned settlements are often located on prime urban land. Some unplanned settlements are, however, located on land comprising steep slopes and gullies, which is less desirable to government and developers. Residents of informal settlements may receive threats of eviction from the government, particularly if they are located on land which the government wishes to develop.

Although residents of unplanned settlements do not have legal rights to reside on the land, there may be practical arrangements in place which provide them with some degree of security of tenure. For example, certain settler groups claim to have been settled by former politicians and use ongoing political patronage to minimise the possibility of being evicted.[[108]](#footnote-108)

In **village settlements**, residents have negotiated tenure arrangements with the customary owners of the land. For example, residents may have negotiated to pay the landowners an annual rent, or to fulfill customary obligations on behalf of the landowners.[[109]](#footnote-109) This type of agreement is likely to be unlawful because:

* customary owners are precluded from leasing their land; and
* interests in land cannot be created through oral agreement.[[110]](#footnote-110)

In light of the foregoing, tenure arrangements that are negotiated between customary owners and settlers are likely to be incapable of creating legal rights and obligations. Although residents of village settlements do not have legal rights to reside on the land, there may be practical arrangements in place which provide them with some degree of security of tenure. For example, the Oro Development Community, which leases customary land, has a sophisticated system whereby a formal intermediary collects rent, stores records and deals with disputes between settlers and the customary land owners.[[111]](#footnote-111)

Land and housing in informal settlements is commonly sold and purchased, notwithstanding the fact that residents do not have legal rights to their land or housing.[[112]](#footnote-112) Although these transactions are not legally effective, they may be practically effective due to widespread social acceptance.

In Port Moresby, the UN Habitat, the Office of Urbanisation and the National Capital District Commission (**NCDC**) are attempting to formalise selected settlements by providing residents with legal title.[[113]](#footnote-113) Efforts to formalise informal settlements have focussed on unplanned settlements, rather than village settlements, because the landowner (ie, the State) is easy to identify.[[114]](#footnote-114) It appears unlikely that the majority of informal settlements will be formalised in the near future given there is a large number of informal settlements and that number is growing quickly.[[115]](#footnote-115)

1. Security of Tenure of Vulnerable Groups
   1. Women
      1. **Can women own, rent or inherit land and housing?**
      2. **In practice, do they? If not, why not?**
         1. **Alienated land**

There are no restrictions on women with PNG citizenship owning, renting or inheriting alienated land. Women can and do possess interests in alienated land, such as State leases and freehold title.

Statistics about the proportion of alienated land held by women are not readily available. Given there is a significant degree of gender inequality in PNG,[[116]](#footnote-116) it is reasonable to presume that a lower proportion of women than men hold interests in alienated land.

* + - 1. **Customary land**

The rights of women to own, reside upon or inherit customary land depend on the customary practices of a particular group, and differ throughout PNG. However, in most areas of PNG land inheritance is patrilineal.

The predominance of patrilineal inheritance means that women generally do not inherit customary land and that men hold most decision-making powers over customary land.[[117]](#footnote-117) When customary land is developed, men are generally the main actors who are consulted by developers, sign legal documents and have control over income generated from development.[[118]](#footnote-118)

Even in customary groups where land inheritance is matrilineal, women do not *necessarily* have a high degree of control over or responsibility for land.[[119]](#footnote-119) In some matrilineal societies, men still manage the land and exercise decision-making powers, while women play an advisory role.[[120]](#footnote-120)

Women in matrilineal societies are generally more likely to have greater control over land if the post marital residence is matrilocal (rather than patrilocal), meaning that a husband and wife reside on the wife's land after marriage.[[121]](#footnote-121) This is also true where post marital residence is bilocal, meaning that a husband and wife reside on *either* the husband's or wife's land.[[122]](#footnote-122)

* 1. Indigenous groups
     1. **Is indigenous customary ownership (or custodianship) of land legally recognised?**

Yes, customary ownership of land is legally recognised and accounts for approximately 97% of land in PNG. Section [2.1](#Sec_2_1) above outlines how customary ownership of land operates.

* + 1. **Does customary ownership provide indigenous people with a high degree of security of tenure?**

Theoretically, customary ownership of land provides indigenous people with a high degree of security of tenure. Customary ownership of land is perpetual and, as discussed in section [4.2](#Expropriation) below, the State may only expropriate customary land by following the procedures outlined in sections 10 and 12 of the *Land Act*. There are, however, a number of practical factors which undermine indigenous groups' ability to own and live on their land.

* + 1. **If not, what are the barriers to indigenous people owning and/or living on their land?**

A large number of SABL leases and sub-leases have been granted on terms that are unfavourable to customary owners.[[123]](#footnote-123) As discussed in section [2.1](#Sec_2_1) above, SABLs are a lease-leaseback arrangement, which permit customary owners to lease their land to third party, in order to develop their land for agricultural or business purposes.

Customary owners agreeing to SABL leases, or entering into SABL sub-leases, often lack independent legal advice and, consequently, agree to terms which are almost entirely to the benefit of the third party.[[124]](#footnote-124) SABL sub-leases may be for a period of up to 99 years, meaning that customary owners may be alienated from their own land for generations.

Further, largely due to corruption in the Department of Lands and Physical Planning, a large number of SABL leases and sub-leases have been granted without the involvement or agreement of the *proper* customary owners of land.[[125]](#footnote-125) Thus, certain customary owners have been alienated from their land without their consent.

In May 2011, the acting Prime Minister of PNG announced a Commission of Inquiry into SABLs, and an immediate moratorium on the issuing of any new SABLs.[[126]](#footnote-126) The Commission conducted an audit of 42 SABLs and, in June 2013, reported that there was only genuine landowner consent for four SABLs.[[127]](#footnote-127) The Commission recommended that 30 of the SABLs be cancelled, and a further 11 suspended.[[128]](#footnote-128)

The Commission's recommendations have not been implemented, meaning that SABLs issued prior to the 2013 moratorium remain in force. There is no readily available information about the number of customary owners who have been dispossessed of their land due to SABLs. However, this number is likely to be very large given that, prior to the moratorium, 72 SABLs were granted, covering 5.1 million hectares of customary land and over 11% of PNG's total land mass.[[129]](#footnote-129)

* + 1. **Is there conflict between indigenous groups regarding land ownership? Are there mechanisms for resolving these conflicts?**

Land disputes are common to all regions of PNG and occur both between and within customary groups.[[130]](#footnote-130) Although land disputes have been prevalent since pre-colonial times, there is evidence that land disputation has intensified in many parts of PNG in recent decades.[[131]](#footnote-131)

Land disputes are particularly prevalent in the Highlands region, especially the Southern Highlands province, where they have caused inter-group violence.[[132]](#footnote-132) Land disputes are also particularly prevalent in areas where large numbers of migrant-settlers have occupied customary land, such as in the oil palm growing regions of West New Britain Province.[[133]](#footnote-133) Land disputes have caused internal displacement, with certain customary groups mass migrating to urban areas.

There are two pieces of legislation which provide mechanisms for resolving disputes over ownership of customary land: the *Land Disputes Settlement Act 1963* (the ***LDSA***) and the *Land Titles Commission Act 1962* (the ***LTCA***).

* + - 1. **LDSA**

The LDSA applies to disputes concerning interests in customary land, or the boundaries of customary land.[[134]](#footnote-134) The LDSA establishes a three-stage process for resolving disputes:

* first, land mediation;
* secondly, a hearing at the Local Land Court; and
* thirdly, an appeal to the Provincial Land Court.

Each of these will be discussed in turn.

* + - * 1. **Mediation**

The LDSA establishes a Provincial Land Disputes Committee (***Committee***) for each province. The Committee is responsible for declaring Land Mediation Areas and Land Mediation Divisions.[[135]](#footnote-135)

These are areas which the Committee has determined would benefit from the availability of mediation due to the prevalence and severity of land disputes, as well as the effectiveness (or lack thereof) of customary dispute-settlement authorities in the area.

The Committee is also responsible for appointing Land Mediators, who are local persons and, in practice, always male.[[136]](#footnote-136) Before appointing a Land Mediator, the Committee must consult with the local community and government, in order to ensure that they are acceptable to the community.[[137]](#footnote-137)

A Land Mediator may mediate a dispute when requested to do so, orally or in writing, by a party to the dispute.[[138]](#footnote-138) A Land Mediator may also, of their own volition, decide to mediate a dispute provided that no other Land Mediator has been appointed, or has commenced, to mediate the dispute.[[139]](#footnote-139)

In mediating a dispute, a Land Mediator must, where he considers it appropriate to do so, seek the assistance of any customary dispute-settlement authority that has customary jurisdiction in relation to the dispute.[[140]](#footnote-140)

If the parties to a dispute reach an agreement, the Land Mediator must record the terms of the agreement, and ensure the terms of the agreement are understood by and formally and publicly recognised by the parties.[[141]](#footnote-141) The Land Mediator must also forward a copy of the record of the agreement to the nearest Local Land Court.[[142]](#footnote-142)

The parties to an agreement may apply to a Local Land Court to have the agreement approved.[[143]](#footnote-143) Once approved, the agreement will have the effect of an order of the Local Land Court.[[144]](#footnote-144) If an agreement is not approved, it constitutes evidence of the interests of the parties, but does not bind the parties.[[145]](#footnote-145)

* + - * 1. **Local Land Court**

If the parties fail to reach agreement during mediation, the dispute may be heard by a Local Land Court.[[146]](#footnote-146) The Court's function is to do 'substantial justice' between all persons interested in the dispute, in accordance with any relevant custom.

The Court comprises the Local Land Magistrate, as chairman, and either two or four land mediators.[[147]](#footnote-147) This normally includes the Land Mediator who initially attempted to mediate the dispute.[[148]](#footnote-148)

There are no authoritative written sources of custom, and decisions under the LDSA have not been circulated between Local Land Courts.[[149]](#footnote-149) Therefore, when attempting to apply custom to a dispute, the Local Land Court must rely on the local Land Mediator's knowledge.[[150]](#footnote-150)

Importantly, the normal rules of evidence and procedure do not apply in the Local Land Court, meaning the Court has considerable freedom in the types of evidence it receives.[[151]](#footnote-151) The Court will typically hear witnesses on the genealogy of the parties, and rely on geographical markers (eg, mountains, rivers, streams and trees) to demarcate the boundaries of the land in dispute.[[152]](#footnote-152)

The Court is also required to visit the dispute area twice. The purpose of the first visit it to understand the nature of the problem before beginning to hear evidence. The purpose of the second visit is to hand down its decision, give the reasons for the decision and show the parties any boundaries decided.

The Court's decision is binding on the parties and is evidenced by its orders.

* + - * 1. **Appeal**

If one party is dissatisfied with the Local Land Court's decision, it may wish to consider appealing to the Provincial Land Court. A right of appeal is, however, only available in extremely limited circumstances, namely where there has been an excess of jurisdiction, non-observance of the rules of natural justice and/or travesty of justice.[[153]](#footnote-153)

* + - 1. **LTCA**

The three-stage process established under the LDSA does not apply to *all* land disputes. The Head of State may declare that the LDSA does *not* apply to a dispute, with the result that the Land Titles Commission (the ***Commission)*** has jurisdiction over the dispute.[[154]](#footnote-154)

The Head of State may make a declaration that the LDSA does not apply if there are 'special circumstances', including:

* the dispute is long standing and previous attempts at mediation have failed;
* the dispute has already resulted in serious breaches of the peace; and/or
* it is in the national interest that the dispute be settled in some other manner.[[155]](#footnote-155)

The Commission may make all such inquiries and investigations as it deems necessary for the purpose of hearing and determining the dispute.[[156]](#footnote-156)

* 1. Minority groups
     1. **Can minority groups (i.e. ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**
     2. **If so, are they subject to special conditions or restrictions?**
        1. **Customary land**

The only circumstances in which a non-PNG citizen may acquire an interest in customary land is through a SABL or a lease of registered customary land.[[157]](#footnote-157) However, a non-PNG citizen can no longer apply for the grant of a new SABL due to the moratorium introduced in 2013.

A non-PNG citizen cannot own or purchase customary land because:

* customary land can only be held by an automatic citizen, or community of automatic citizens;[[158]](#footnote-158) and
* customary landowners have no power dispose of their land otherwise than to citizens in accordance with custom.[[159]](#footnote-159)
  + - 1. **Alienated land**

A non-PNG citizen may acquire any type of interest in State land. There are no special conditions or restrictions on non-citizens possessing a State lease or licence, or a sub-lease of a State lease. The Constitution does, however, prevent non-citizens from acquiring freehold land.[[160]](#footnote-160)

* + 1. **In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

Many people belonging to minority groups do not acquire legal interests in land due to limited financial resources. As an example, there are approximately 10,000 West Papuan refugees living in PNG.[[161]](#footnote-161) West Papuan refugees are generally impoverished and unable to rent land or housing. A large number of West Papuan refugees live in camps on the PNG-Indonesia border administered by the UNHCR or the PNG government, or in informal settlements in Port Moresby.[[162]](#footnote-162)

* 1. Landless people/squatters

Squatters do not have legal rights to use or reside upon land. Section 145 of the *Land Act* provides that a person who, without authority, enters, occupies or uses Government land or customary land is guilty of an offence. The maximum penalty for a first offence is a fine of K500 or 6 months imprisonment. The penalty for any subsequent offence is K1000 or 12 months imprisonment.

The case law is unclear on whether squatters may acquire equitable rights to occupy the land on which they reside. In the case of *PNG Ready Mixed Concrete Pty Ltd v The Independent State of Papua New Guinea (****PNG Ready Mixed Concrete****)*, the National Court of Justice held that squatters had acquired an equitable licence by virtue of the fact that they had resided on State land for five years without receiving any objection from the State.[[163]](#footnote-163) However, in a later case, *Kameku v Gamato*, the National Court of Justice held that a person who occupies land unlawfully cannot acquire an equitable interest in the land. The Court considered that this outcome was dictated by the equitable principle that he who comes to equity must come with clean hands.[[164]](#footnote-164)

In both cases the Court held that squatters could not be evicted without 'reasonable notice'. However, it is unclear exactly how much notice is required. In *PNG Ready Mixed Concrete*, the Court held that the squatters, who had been present for five years, were entitled to six months' notice. In *Kameku v Gamato*, the Court held that 30 days was insufficient notice to evict squatters who had been present for 50 years. However, it did not indicate how much notice would be required.

Media reports indicate that forcible evictions of squatters do occur in PNG. Although, in some cases squatters have successfully applied for court orders preventing the eviction from occurring until its legality can be determined in court. Two recent examples are set out below.

* In August 2015, approximately 700 squatters were evicted from the 'Four Mile' settlement in Port Moresby. Squatters were given two weeks to vacate the settlement, which was located on State land.[[165]](#footnote-165)
* In mid-2016, attempts were made to evict squatters in an informal settlement in Hohola, Port Moresby. The squatters were predominantly West Papuan refugees. They successfully applied for a court order staying the eviction.[[166]](#footnote-166)
  1. Other groups
     1. **Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

There are groups of landowners who are unable to access their land due to natural disasters or climate change.

For example, in 2005 approximately 9,000 people were evacuated from Manam Island in the Madang Province to the mainland due to volcanic activity.[[167]](#footnote-167) The majority of the evacuees have remained on the mainland and live in 'care centres' located on State land.[[168]](#footnote-168) The evacuees' presence has caused tension with local landowners due to increased competition for access to marine resources, land and water.[[169]](#footnote-169)

Customary land owners from small islands and atolls have also been relocated onto larger islands or the mainland due to rising sea levels. For example, the grassroots group Tulele Peisa is working to relocate persons from the Carteret Islands in North Solomons Province to the Autonomous Region of Bougainville.[[170]](#footnote-170) The group was formed in late 2006 after the Islands' Council of Elders decided to establish its own relocation program.[[171]](#footnote-171) It aims to relocate half of the population by 2020.

1. Eviction, Expropriation and Relocation
   1. Eviction
      1. **Are there laws or regulations prohibiting forced evictions?**
      2. **In practice, are those laws adhered to?**

We have been unable to locate any laws or regulations prohibiting forced evictions.

* 1. Expropriation
     1. **Are there laws or regulations permitting the government to expropriate land?**

The State can acquire land, either alienated land or un-alienated land, by agreement with the landowners, or by compulsory acquisition.[[172]](#footnote-172) The State may acquire land where it is required for a 'public purpose', which is defined by section 2 of the *Land Act* to include:

* hospitals, schools and public libraries;
* parks and recreational areas;
* industrial development and economic development;
* subsistence farming; and
* roads, track, bridges, culverts ferries or canals.[[173]](#footnote-173)

Sections 12 and 13 of the *Land Act* set out the procedure for compulsory acquisition of land by the State. The process ordinarily operates as follows.

* First, the Minister serves a landowner with a 'notice to treat', which invites the landowner to treat with the Minister for the sale or surrender of their land to the State.[[174]](#footnote-174) This step is not, however, required if:
  + after diligent search and enquiry, the Minister is satisfied that the owner of land cannot be located;[[175]](#footnote-175) or
  + the Minister has certified that there are special reasons why a notice should not be provided.[[176]](#footnote-176)
* Second, within two months of receiving the notice, the landowner provides the Minister with particulars of their interest in the land and the amount which they are prepared to sell the interest for.[[177]](#footnote-177)
* Third, the Minister may, but is not required to, enter into an agreement for acquisition of the land with the landholder.[[178]](#footnote-178)
* Fourth, the Minister declares, by notice in the National Gazette, that the land has been compulsorily acquired.[[179]](#footnote-179) On publication of the notice, the land vests in the State.[[180]](#footnote-180)
* Fifth, the notice is served personally on the landowner, published in a local newspaper and affixed on a conspicuous part of the land.[[181]](#footnote-181)

The third step above is optional: the Minister may acquire the land even if there is no agreement for acquisition with the landholder. However, the absence of an agreement does not mean a landholder will not receive consideration for their land. On publication of the notice of acquisition, the landholder's interest in the land is converted into a right of compensation.[[182]](#footnote-182)

* + 1. **Are those laws or regulations applicable in the context of a disaster?**

The laws governing expropriation may be applied in the context of a disaster in order to provide land for persons who have been displaced. This is for two reasons.

* First, responding to a natural disaster will qualify as a 'public purpose' under section 2 of the *Land Act*. It may qualify as one or more of the following public purposes:
* 'defence or public safety of PNG'; and
* 'public health, utility, necessity or convenience'.
* Second, a compulsory acquisition may take place at short notice if the Minister certifies that there are 'special reasons' for dispensing with the requirement to provide a landowner with a notice to treat and two months to respond.[[183]](#footnote-183)

Another option available to the government is to grant a State lease to persons displaced by a disaster. Ordinarily, a State lease must be advertised for application or tender. However, section 69(2)(b) of the *Land Act* provides that the Minister may exempt land from this requirement where it is necessary to relocate persons displaced as a result of a disaster as defined in the *Disaster Management Act 1984*.

* 1. Relocation
     1. **Are there laws or regulations governing relocations?**
     2. **Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?**

The National Disaster Committee and any Controller appointed under an Emergency Act each possess powers which may be used to facilitate the relocation of persons affected or displaced by a disaster.

* + - 1. **National Disaster Committee**

The *Disaster Management Act 1984* establishes a National Disaster Committee (the ***NDC***) and a Provincial Disaster Committee (***PDC***) for each province.[[184]](#footnote-184) The NDC's functions include assigning responsibilities for disaster-related activities to government Departments and coordinating Departmental relief actions.[[185]](#footnote-185)

The NDC has a broad power to do all things necessary or convenient in connection with the performance of its functions under the *Disaster Management Act*.[[186]](#footnote-186) The NDC may, therefore, direct and coordinate government Departments to relocate persons displaced by disasters. For example, the NDC may direct the Department of Lands and Physical Planning to compulsorily acquire land, or to grant a State lease, in order to provide land for displaced persons.

* + - 1. **Emergency Acts**

Section 228 provides that the Head of State (ie, the Governor General) may, on the advice of the National Executive Council, publicly declare a national emergency in relation to the whole or part of the country.[[187]](#footnote-187)

Before or during a period of declared national emergency, the Parliament may pass Emergency Acts to make provision for dealing with the emergency.[[188]](#footnote-188) Under an Emergency Act, a Controller is appointed who has a general duty, subject to directions from the NEC, to do such things as he considers necessary and within his powers to alleviate suffering and minimize damage arising from the national emergency.[[189]](#footnote-189)

The Controller has broad powers enabling him to:

* control the movement of persons, animals, vehicles, goods and things;
* evacuate persons from one part of the emergency area to another or to a place outside the emergency area;
* regulate or prohibit the use of roads, water ways and sea; and
* enter land, buildings and structures, if necessary by force and with assistants;
* erect buildings or structures, or do any other matter or thing on land;
* authorize persons to enter upon and search any premises; and
* order persons to perform labor of such kind and in such places as he thinks fit.

A controller under an Emergency Act may, therefore, play an important in relocations following a natural disaster. A controller may, for example, use his powers to:

* evacuate persons to land which is less affected, or not affected, by the disaster;
* prevent persons from returning to the whole or part of an emergency area; and/or
* direct persons to construct shelters and amenities on a piece of land to which persons have been relocated.
  + - 1. **Specific Acts**

Specific acts have been enacted to establish public authorities to assist groups displaced by disasters. For example, the *Manam Resettlement Authority Act 2016* was passed in response to the large number of persons (approximately 9,000) who were displaced by volcanic eruptions in on Manam Island in Madang Province in 2004.

This Act establishes the Manam Resettlement Authority,whose function is to permanently resettle displaced Manam Islanders, by:

* identifying and acquiring land for the resettlement of displaced persons;
* providing services and infrastructure for the resettlement area, including building access roads, an airstrip, schools, aid posts and ensuring a safe water supply;
* providing for care centers and associated services, such as health care, education, food and a safe water supply, until such time as displaced persons are resettled;
* liaising with donors and international organizations to ensure services to displaced persons are properly coordinated and satisfy generally acceptable international standards; and
* ensuring that the human rights of displaced persons and the members of the host communities are protected.[[190]](#footnote-190)

A further example is the *Gazelle Restoration Authority Act 1995*, which established the *Gazelle Restoration Authority* in response to volcanic eruptions in the Gazelle Peninsula area of East New Britain Province in 1994. The Authority relocated approximately 10,000 persons, from both urban and rural areas, to safer areas on the Peninsula.[[191]](#footnote-191)

* 1. Compensation for expropriation and relocation
     1. **Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?**
     2. **In practice, are these laws or regulations adhered to?**

Both the *Constitution* and the *Land Act* provide for just compensation to be paid to persons whose lands have been expropriated by the State. Section 53(2) of the *Constitution* provides that just compensation must be paid on just terms by the expropriating authority. Section 14(1) of the *Land Act* establishes that, on the date that a notice of acquisition is published, the landholder's interest is converted into a right to compensation.

There is no statute which provides for compensation to be paid to be people who are forcibly evicted. Case law establishes, however, that squatters who have been unlawfully evicted may be entitled to damages if their property has been destroyed. For example, in 2002, the State evicted hundreds of people from an informal settlement in Madang Province in breach of a court order.[[192]](#footnote-192) It subsequently set fire to the houses in the settlement. In *Tipaiza v Yali*, the National Court of Justice ordered the State to pay damages compensating the squatters for the destruction of their property.[[193]](#footnote-193)

There are no laws or regulations that provide for compensation to be paid for loss of land to people who have been relocated as a result of a natural disaster, or similar event.

* 1. Shelter cluster
     1. **Is there an active shelter cluster in the country?**
     2. **If not, has the shelter cluster been activated during any previous disasters?**

It appears that there is no shelter cluster in PNG. There is, however, a Pacific Shelter Cluster, which is a group of organisations that have an operational interest in the provision of humanitarian shelter following disaster events in Pacific Island countries.[[194]](#footnote-194) The Pacific Shelter Cluster may be activated in response to a disaster in PNG.

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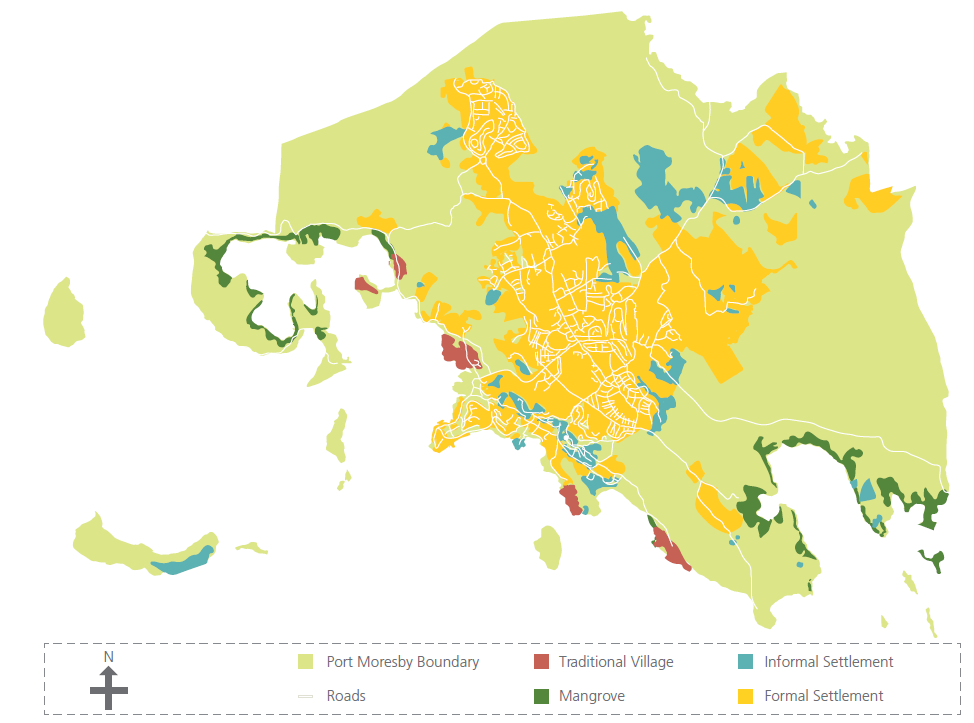
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