



**A Landowner's Handbook**  
of  
**Relevant Environmental Law**  
in  
**Papua New Guinea**

by

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2005

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## **Acknowledgments**

I would like to thank Martin Negai for his comments and additions to this book. Similarly, I would like to thank Toby Ross and Dr. Lisa Dabek for comments on the manuscript. Finally, I would like to thank Damien Ase of the Centre for Environmental Law and Community Rights (CELCOR), and Almah Tararia and Paula Nato of the Environmental Law Center (ELC) for their help and encouragement in producing this book. I would also like to thank John Chittoa and Yat Paol of Bismarck-Ramu for introducing me to the Conservation Deed and the Clan landowners of Tokain for explaining it to me. Finally, I would like to thank Ed Mayer and Sue Brown, formerly of the Nature Conservancy, for developing the Local Level Government (LLG) protected area and explaining it to me.



## **Preface**

Although history has not always been kind to indigenous people and their traditions, Papua New Guinea's colonial history has left an important remnant in leaving most customary law in place. In turn, the new government of Papua New Guinea saw fit to continue this important trend in its constitution. The new nation additionally proclaimed a strong environmental statement as well, attempting to protect its traditional cultures and the lands that they inhabit.

“WE, THE PEOPLE OF PAPUA NEW GUINEA ... pay homage to the memory of our ancestors – the source of our strength and origin of our combined heritage - acknowledge the worthy customs and traditional wisdoms of our people – which have come down to us from generation to generation ...”

“WE HEREBY PROCLAIM the following aims as our National Goals, and direct all persons and bodies, corporate and unincorporated, to be guided by these our declared Directives in pursuing and achieving our aims:

4. Natural Resources and environment.

*We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.*

WE ACCORDINGLY CALL FOR –

(1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in

the interests of our development and in the trust for future generations;  
and  
(2) the conservation and replenishment, for the benefit of ourselves and  
posterity, of the environment and its sacred, scenic, and historical  
qualities; and  
(3) all necessary steps to be taken to give adequate protection to our  
valued birds, animals, fish, insects, plants and trees.”

“ 5. Papua New Guinean ways.

*We declare our fifth goal to be to achieve development primarily  
through the use of Papua New Guinean forms of social, political and  
economic organization.*

WE ACCORDINGLY CALL FOR – ...

(2) particular emphasis in our economic development to be placed on  
small-scale artisan, service and business activity;”

“ WE HEREBY DECLARE that all persons in our country have the  
basic obligations to themselves and their descendents, to each other, ad  
to the Nation: - ...

(d) to protect Papua New Guinea and to safeguard the national wealth,  
resources and environment in the interests not only of the present  
generation but also of future generations; ”

#### **Constitution of the Independent State of Papua New Guinea (1975)**

The message is clear. You, as clan landowners, are legally  
protected to carry out your life and activities on your lands under your  
customary laws and you are encouraged to do so by the Central  
Government. But you also have a powerful responsibility to conserve  
and use wisely those lands, their natural resources and the environment  
and to protect all of the species of plants and animals on those lands.  
This is a great responsibility because it is not only for yourselves and  
your clans but “in trust for future generations”. Further it calls for  
socially appropriate forms of development that will benefit you as

landowners but will use the natural resources wisely and allow them to replenish for future generations. This book is a guide to help you take the first step in that direction.



## **Chapter I. Introduction**

As clan landowners in Papua New Guinea, you are unique in the world. In most countries the native indigenous peoples have been dispossessed of the lands they once lived on. In many countries, rural people do not have enough land for growing their food or for living on. Often, they can only own a small amount of land by law with the government owning most of the land. But in Papua New Guinea 97% of the lands are owned by clans. Not only do your lands give food for you and your families, your lands are part of your history and culture that has evolved over thousands of years. For many landowners, attachment to the lands, rivers, and mountains has been so strong that many rural Papua New Guineans would say that “land is life”.

Your ancestors managed their lands for thousands of years under customary law. Customary Laws are an important part of Papua New Guinea Common Law. Customary Laws are the traditional rules your ancestors developed to control village life and govern the way you deal with disputes. As landowners you are fortunate that it continues to be part of the current legal system guaranteed by the Constitution and is used in all Courts of Papua New Guinea allowing you to maintain and continue your traditions and values, especially regarding

land. Your ancestors recognized the need to protect the environment by declaring certain areas as “ples masalai” (sacred sites) and had traditional laws to protect certain faunal species.

But new times have come. For example, traditional views have been partially supplanted by more recent religious views; and modern technology and commercialism have altered traditional views of natural resources which complicates how land use will proceed in the future of Papua New Guinea. Now there are additional pressures to convert customary land ownership to private land ownership or to sell lands or the resources on them for economic gains. This means that you as landowners will be under more pressure to seek potential opportunities from the lands you own. This book has been written to give you some tools to make the choices on land use that will help you to maintain your traditional attachment to the land and environment while still maintaining ownership and management of your lands and benefits from them into future generations.

You are the connection between your ancestors and your children and your children's children. The choices you make today will determine how the future generations will live their lives. Your national constitution states “natural resources and environment (are) to be conserved and used for the collective benefit of us all, and to be replenished for the benefit of future generations” and “to achieve development primarily through the use of Papua New Guinea forms of social, political and economic organization”. Your land use choices can make this statement reality.

While the sanctity of private clan land ownership is the cardinal principle in Papua New Guinea, there is still the state responsibility to balance public and private interests in land and

resource management. However, despite the fact that Papua New Guinea land and resource management laws have been inherited from Australia where the role of the state is well established, in Papua New Guinea, the state's role has not been effective in helping clans to protect their lands. With the changing social and economical environment, it will be more important for clan landowners to work with the state for the mutual goals of protecting both natural resources and landowner rights. This idea is called co-management that is becoming of interest in a number of countries in recent years. Co-management attempts to balance the interests of local people and landowners while providing a stronger legal basis through government involvement.

This book will describe landownership laws, laws concerned with creating protected areas, some innovative laws for protecting land which have been recently tried as well as some laws concerning land tenure. Since understanding law is complicated, I have included references for more reading and contact information of some organizations who know about the laws of Papua New Guinea and who may be of help to you. This book can only be a start for you. Any decisions you make should be well thought out and you should consult trusted knowledgeable people before making any important decisions.



## **II. Land Ownership and Biodiversity**

People get most things they need from nature and nature has been a large part of the peoples and communities of Papua New Guinea. When we save the biodiversity of nature we are saving life. The word “biodiversity” gained importance to the scientific world in the 1980s and it has since become a key word used by scientists to describe the many forms of plants and animals collectively. It has taken on a special important meaning in reference to tropical rainforests as climax vegetation rather than as a vegetation type that has been shaped and maintained by human influence. And Papua New Guinea has become (declared by scientists) one of the “biodiversity hotspots” of the world. However, high biodiversity is also recognized by local people living in the rainforest and often their activities may increase the diversity of living forms so biodiversity is not exclusively a product of a pristine natural process but may be enhanced by human activities.

People in the YUS area (area encompassing the Yupna, Urawa and Som Rivers) appreciate biodiversity both for its usefulness and aesthetic values. Although you, as landowners in the YUS region may

not have heard of the word “biodiversity” or even talked about it amongst yourselves, you live on and own land in what international scientists consider a “biodiversity hotspot” with unique ecosystems and species, some of which are found only in the Huon Peninsula; that is, they are endemic to where you live. Because you commonly know the numerous species of plants and animals on your lands, you may not know how important your forests are to some outside people. Since foreigners see these species as important treasures of Papua New Guinea, many scientists are interested to help you to protect your lands, species, ecosystems and natural resources in general.

As YUS landowners, your culture strongly demonstrates the significance of biodiversity to your daily life, through the use you make of your lands and many of the species living on them, both for utilitarian reasons as well as aesthetic ones. This knowledge was shown through a study of local Nokopo experts by a foreign anthropologist in 1987. One reason that the clans of the YUS area and adjacent areas have been receptive to the Tree Kangaroo Conservation Program (TKCP) is the shared interest in the biodiversity of your lands and their inherent value to both you as landowners and to the outside scientific community. For example, the way the Yupna culture classifies its ecosystem is very similar to how scientists would classify your forests. So, the three forest ecological zones used by YUS landowners of 1) tale (“hot land” up to 1400 meters), 2) koron (“cold land” from 1800-2100 meters) and 3) kapop (“wilderness” above 2600 meters) corresponds to the scientific classification of 1) Lowland Hill Forest (tale), 2) Lower Montane Forest (koron) and Upper Montane Forest and Grasslands (kapop).

The biodiversity knowledge of YUS landowners is also demonstrated by the fact that the experts amongst you, as demonstrated by the study of Nokopo landowners, recognize 800 local species inhabiting your lands. These include over 500 species of plants that are used for many purposes including fuel, construction, medicine, and decoration. Additionally, YUS landowners have a long tradition as excellent gardeners that includes growing over 25 agricultural species with over 250 varieties, some of which you have created through selective breeding. Thus despite being primarily farmers, YUS area landowners are well versed in the biodiversity of their lands.



## **Chapter III. Types of Land Ownership**

### **1. Government Land** (public)

Public land is owned for the main purpose of serving the public good. While the government often establishes a long-term use or protection of the lands, how it is conserved, protected or used, may fluctuate with the politics of the government in power. Usually, where a long term precedent has been set and a strong legal mechanism such as a National Park has been created, the protection of the land is strong in perpetuity. In other cases where the protected restrictions are less, protection of the land and its natural resources may fluctuate with the philosophy of the political party in power or with the general politics of the period.

### **2. Clan Land** (communal or “customary”)

Under Customary Law, your lands and those of most of Papua New Guinea are owned in common by extended families or clans. Traditionally everyone in your clan has the common right to use the land for growing gardens, for firewood, for hunting and for house building materials. Customary law provides an incentive through which people can cooperate with their relatives in the production and

distribution of goods. The land always remains common property even though anything built or developed on the land becomes an individual's property that can be passed on to other individuals. This means that by custom, no individual can sell customary land without the agreement of the entire clan; and only the designated clan leader(s) can responsibly affect such a deal. If custom does not go against the constitution, it will be adopted.

Customary landowners do not have some opportunities to use their lands as do private landowners such as for security in obtaining loans. However, if customary land is converted to freehold or private property, the traditional communal structure will breakdown and destroy what is currently an important part of local tradition. One advantage of using customary law to settle disputes is that it uses consensus to come up with a solution which is agreeable to all parties rather than having a winner and loser. One advantage to communal ownership is that because there are so many common owners, it is very hard to sell or dispense to anyone else. This is what has kept it within the clans for thousands of years. This is also unique, unusual in the world and a valuable asset for you as landowners.

**3. Private or Freehold Land** (also termed “alienated” land in Papua New Guinea which refers to the alienation of people’s resources)

Private lands can be owned by any individual or individuals who may or may not be related. It invests all ownership rights in a single person or group of persons. Usually private landownership begins with the person who buys the land. Thus the owner has neither history nor philosophical history with the land and is more apt to

change, log, mine or sell the land when in need of cash. This is because often land is purchased as a cash investment and the new owner may attempt to turn his investment into cash at any time and without any philosophical land ethic. Private property separates the needs of laborers from their labor. With this detachment of labor from ownership, exploitation of the land is more likely.

If owned by more than one person, selling of the land may be more difficult but it still differs from communally owned lands in that there is not a long traditional history of land ownership and the accompanying land ethic. One distinction of private landownership is that private lands can be used as security for loans. *This should be used cautiously since if the landowner defaults on his loan he may lose the lands to whoever has made the loan to him.*

**4. Open-access Land** - These are lands in which there are neither property rights nor rules limiting access which have been defined.

### **Customs and Law**

The main difference in customary clan rules and formal laws are that customs are not written down. So any customary rules that do not admit exceptions could easily become accepted as laws once they are written down. But customs are often more complex and their rules are guided by broader principles which may include exceptions and are not easily adapted to mechanical applications as simple laws may be.

Freehold land ownership primarily regulates relations between people without strong commitments to each other who are essentially strangers. While there may be some moral codes involved, the

transactions are essentially commercial with minimal obligations to each other. There is a major freedom involved since responsibility is only to oneself. With customary land dealings, a kin network binds people by a web of mutual obligations. The freedom is limited by the person's mutual responsibility to relatives. The concept of absolute, unitary ownership, which is at the core of freehold ownership, is property law for stranger relations whereas customary land law is property law for kin relations. Customary law can be thought of as enhancing coordination and cooperation among kin. Freehold ownership, in contrast enables strangers to transfer property rights in a one shot transaction. Custom is a law of long term relationships while freehold is a law of market exchange.

All land ownership, including customary land, is protected from unjust deprivation under Constitution provision – Section 53. The exception is for a public purpose with just compensation and must be as an Act of Parliament or in accordance with an Organic Law.



## **Chapter IV. Main Laws For Protected Areas**

There are many environmental laws in Papua New Guinea which deal with the conservation of natural resources or the lands themselves, land use and ownership, regulating the use of resources, and general protection of the environment. While all are important, only the conservation of land, land use and ownership are discussed in this book because they are most important for landowners to help them make choices for their lands. This chapter discusses the main laws created specifically for creating protected areas: National Parks, Wildlife Management Areas and Conservation Areas.

### **1. National Parks and Related Designations** (Sanctuaries, Provincial Parks, Nature Reserves, Historic Sites, Wildlife Sanctuaries and Scenic Reserves)

National Parks and other designations under the National Park Act (Chapter 157)(1982) provide the most security for natural resource protection. The Act allows land to be dedicated for a wide range of uses: biological, topographical, geological, historical, scientific and social. The conventional approach to conservation is used where an area of land is set aside from all extractive activities. All national parks are established on State lands which is less than 3% of all Papua New Guinea lands. Thus the Act only applies to conserving government

land. However, the Act contains provisions for the government to lease, accept gifts of land for conservation purposes, or buy land. This short Act which commits the reserve lands to the “care, control and management” of the Director of National Parks gives the Director power to control, manage and develop the land for that which it is reserved. Generally, it requires that landowners cede their rights to the National Government before a National Park can be established. This then means that the landowners would have no legally enforceable means for management or participation in discussion regarding how natural resources within the reserve are used.

## **2. Wildlife Management Areas (WMA)**

In 1976 in Papua New Guinea the Fauna (Protection and Control) Act 1976 (Chapter No. 154) was passed to formalize traditional conservation rules used in creating Wildlife Management Areas (WMA). The Faunal Act is mainly concerned with special protection of specific species threatened with local or otherwise extinction. This law thus provides for establishing three similar areas: 1) Wildlife Management Areas, 2) Sanctuaries and 3) Protected Areas. WMAs allow designated species to be utilized by traditional landowners under an approved management and cropping program. Thus, Wildlife Management Areas are more participatory in their approach and necessitate consultation with local landowners before being established by the Minister of Environment and Conservation. A committee is established and wildlife rules are made by the Minister after consultation with landowners.

Although the Minister creates the WMA and the Managing Committee in consultation with landowners and Local Level Government, such areas maintain a great deal of control and use by landowners but deal only with wildlife protection. A study by Johnson of twelve WMAs indicates that they could be more effective especially as a co-managed protected area with a stronger government hand. WMAs can be created by landowners designating their lands to be incorporated under this Act with rules being agreed upon by the Department of Environment and Conservation (DEC) which are published in the National Government Gazette. Enforcement of the rules is carried out by a committee appointed by the landowners. By 1991 there were twenty WMAs. The term of Wildlife Management Area that refers to a protected area model is reflected in the Tok Pisin term “waillaip” which has come to mean “conservation” in some regions. The reason that WMA areas have been somewhat acceptable is because they incorporate use of the resources.

Poikili WMA, as an example of an early declared WMA, on the Island Province of West New Britain, was one of the first Gazetted in 1975 due to landowner concern for the sustainable harvest of megapode fowl eggs. The committee of this WMA is made up of a representative from each of the nine landowner villages. Rules include mainly stipulations on collecting megapode eggs and restrictions around their nests. These rules can be changed at any time by contacting the DEC. A study by University of Papua New Guinea students showed that most landowners were aware of the rules and there was some enforcement but it was not effective and there were many problems causing an increase in exploitation of the eggs and a change in megapode behavior making harvesting harder. While most

landowners were happy with the agreement, the main motivation being income generation, those farther from the nesting sites felt the protected areas were too large and advocated logging and other development in the area. More education awareness was suggested and there has been some discussion of tourism to generate income.

The *Crater Mountain Wildlife Management Area* project was initiated in 1986 by consensus of a number of clan/landowners and was Gazetted in 1993 at three times its original size. The WMA law requires that landowners submit a legal boundary description, provide a list of clan leaders to be on the Management Committee and provide a list of rules to govern the use of natural resources. A committee was formed with clan representatives from all area villages who established seven rules which they enforce. These included having representatives from each village, elections every three years, annual meetings with a Research and Conservation Foundation (RCF) [local Non-government Organization (NGO)] member present, appointment of a business committee to conduct business, a total ban on hunting of birds of paradise and bower birds and the RCF as its representative in dealing with outside agencies. The 22 clans involved, retain ownership of their customary lands and each clan manages their lands independently. The Crater Mountain project combines tourism, craft production, research and conservation. A group of local, national, government and international people formed the national NGO, the Research and Conservation Foundation in 1986, which took the role of intermediary between the landowners and government authorities to help form the WMA.

Crater Mountain WMA has a long history making it valuable for other clan projects to learn from. One major problem has been that

the landowners and villagers have not taken ownership of the project. The laws that have been established by the Management Committee have been good, but enforcement has been difficult due to the relatedness of the community people. Another problem is in maintaining openness in communication through more open meetings and more open postings.

### **3. Conservation Area (CA)**

The Conservation Areas Act (Chapter No. 362)(1980, 1992) has similar objectives to the National Parks Act but is more comprehensive. A Conservation Area applies to land under any form of ownership including customary, government and private lands and involves participation and consent of landowners. It provides for the declaration of an area as a Conservation Area with its own Management Committee which has the responsibility to prepare a management plan for the designated area which restricts any development in the area except in accordance with the management plan. It is similar to the National Parks Act which provides for establishing a five member National Conservation Council (NCC) to advise and assist the Minister in administering the Act's provisions on identifying and managing protected areas. They should have technical or special knowledge for their representation on the Council and one must be nominated by the Local Level Government Association of Papua New Guinea. The Council's duties are to 1) decide the criteria to be met by a CA, 2) advise the Minister to recommend a site as a CA, 3) help the Minister write the rules and regulations for the CA, 4) advise the Minister on administration and control of the CA, 5) consider

development proposals affecting the CA, 6) inform the public and generate interest in Conservation Areas.

While a CA is an interesting protected area status, it has the least use at present. Although the Act was enacted in 1980, it has not yet been implemented because the Minister of Environment and Conservation had not appointed a National Conservation Council which is responsible for determining criteria for CA, and developing rules and regulations for Case, as required by the Act. However, in 2003 a National Conservation Council has been appointed so that it is now possible to create a Conservation Area.

It may have some potential for maintaining landowner representation on the Conservation Management Committee and has the potential for more comprehensive, long-term natural resource protection. The law inhibits any development unless it is in accordance with the Management Plan and Minister's approval. The Conservation Areas Act applies to land under any form of ownership and encourages participatory conservation. The Management Committee that prepares a Management Plan for the area that restricts development by enforcing the plan. The Committee also coordinates responsible staff.

The CA can provide legal protection against unplanned development and to maintain long-term sustainability of natural resources while supporting meaningful social, cultural and religious institutions and preserving biodiversity.

In summary, the Wildlife Management Area is currently the most used law in Papua New Guinea. While it affords landowners good participation, it is not comprehensive and considers only wildlife protection. Both the National Park and Conservation Area are comprehensive laws but the National Park cedes all landowner rights to

the government. The Conservation Area is comprehensive and allows good landowner participation but it has not yet been tried. Now that the necessary Council is in place, it may be the most important law for use in creating a protected area.

### **Appendix I. Steps in Establishing a Conservation Area**

Conservation Areas (under the Conservation Act of 1978, Chapter No. 362) follows a series of required steps in its formation. First, the process may be initiated by a written request to the Head of State by the Minister of the Department of Environment and Conservation or by written requests by clan landowners, individual persons or groups.

The Minister then recommends to the National Executive Council (NEC) (composed of all government Ministers which carries out executive functions of government) the area to be declared a Conservation Area based on criteria established by the Council because of its biological, topographical, geological, historical, scientific or social significance or other special values for the existing or future generations. This recommendation should include a) a description of the area including its boundaries, b) a list of everyone who lives in the area, the landowners and what the land is used for and c) an explanation of why the land is special and why its conservation is important. This is followed by a notification of the public for comments where the Minister must leave copies of the recommendation at 3 places a) Office of Environment and Conservation, b) office of the provincial government where the land is located, c) office of Local Government Council where the land is located as well as inform the public of the recommendation in the National Gazette, in radio broadcasting in the area where the land is and in any other appropriate places.

There is then a 90 day period when written representations or comments can be submitted to the Minister after which the Minister then submits a final recommendation and official papers to the National Executive Council (NEC) for it to make the final decision to declare the Conservation Area.

This declaration must again be publicly announced by head of state or NEC as done earlier. Then the Minister records it in the Register of Conservation Areas and the Minister may also issue a

certificate to indicate the area is in the Register that may be used as proof of registration in a court of law.

Once declared, a Conservation Area Management Committee is constituted and appointed by the five member National Conservation Council to advise and assist the Minister in administering the Act's provisions. The committee should reflect the interests of the landowners as well as Provincial and Local governments. The Conservation Area Management Committee then is responsible to prepare a management plan for the area which may include area development and an operational plan.

The Minister then approves the Management plan and with consultation of the Management Committee makes the rules for the Conservation Area after consulting with the committee, National Conservation Council and landowners. Failure to abide by the rules results in a 500 kina penalty. Once the plan is in place no one may alter it or the Conservation Area use except in accordance with the management Plan or with written approval of the Minister. Sections 32-34 in the Act provide the process for seeking Ministerial approval via an application with accompanying plans, etc.

This plan thus limits development or if landowners agree to such development with Ministerial approval. It requires owners to cede a considerable degree of their existing rights in return for unspecified future benefits. For example, for development by the state for a public purpose, landowner consent is not necessary. The penalty for permitting contrary development in a CA is a 40,000 kina fine with 4,000 kina default for continuing offenses. Such a penalty includes even land that is only recommended as a CA.

The customary landowners have the following roles or statutory powers under this Act:

1) to request the declaration of a CA and make representations on the proposed CA, 2) to be represented on the Conservation Area Management Committee, to veto any development contrary to the plan, and they may be appointed as staff on the CA.



## **Chapter V. Innovative Laws For Protected Areas**

Recently two innovative uses of laws have been experimented with. Although they seem to have specific merit, they have not yet been tried for any length of time and are still being used experimentally.

### **1. Conservation Deed**

The Conservation Deed is a recent innovation which might be considered something like a "People's Conservation Area". It became a reality as a result of Bismarck-Ramu Group's village training program in recent years. Although it is new and has not been tested, some lawyers feel it may be the strongest kind of legal land protection. It has flexibility in that clans may put any kind of restriction they wish to have on the deed.

A Madang village group which was trained in decision making and empowerment signed the first conservation deed which presently functions like a permanent legal easement on their land deed. A second Madang village group after visiting the initial signers and liking what they saw, decided to sign a more conservative conservation deed. Their deed was signed for 5 years as a trial. In this deed, after

two years of meetings, three clans came to a consensual agreement to place approximately one third of their collective land under the Conservation Deed.

The main focus of the deed was to protect their lands from outsiders from any type of interactions on their lands. They have decided to prohibit any kind of environmental alterations such as hunting or logging to occur on the approximately 1000 hectares under the signing. As part of the agreement the deed stipulates that if the three participating clans are in agreement they can change or even nullify the existing agreement. However, if one clan breaks the agreement they can be taken to court by the other clans. The deed was signed at a public ceremony in which those with user rights to those clan lands not under the deed were present. Finally, copies of the deed were sent to all relevant parties including Local Level Government, Provincial and Central Governments as well as the Ministry of Environment and Conservation, Department of Forestry, interested NGOs and other interested parties.

Although the Conservation Deed is potentially a very strong law, it is essentially a business agreement between clans. Thus it is only as strong as the word of each clan and more importantly, as strong as any stipulation of penalty, in the event of one clan breaking the agreement. Therefore, any Conservation Deed should have a strong penalty stipulated in order to maintain the strength of the deed. One idea might be that the defecting clan must share a large percentage of any profits made as a result of breaking the deed.

Below is a sample Conservation Deed that has been used by other clans. However, it is important to know that as clan landowners

you can have a lawyer draw up a different Conservation Deed specific to your desires and needs.

### Sample Conservation Deed

Name of Clan

#### THE DEED

- **This Deed** is made on the .....(date)..... and we declare that this Deed binds the .....(names of clans).....Clans in the .....(district)..... of the .....(province).....
- **We declare** that the .....(names of clans)..... Clans control those areas of land described and marked on the map attached to this Deed.
- **We agree** that for the next .....(time period)..... that we the people shall conserve our land, including the forests, water-resources, native plants and the animals in their current state.
- **We agree** that only members of the .....(authorized group of people - this is optional)..... described in the schedule to this deed may:
  - a) enter the areas of land marked on the map attached to this Deed
  - b) authorize any other person, including other clan members to accompany committee members when entering the areas of land marked on the map
- **We agree** that we will **NOT** during the next .....(time period)..... negotiate or sign a Forest Management Agreement (FMA) with the Papua New Guinea Forest Authority, or any other body.
- **We agree** that we will **NOT** during the next .....time period.....enter into any agreement to allow timber to be harvested under a Timber Authority (TA), or any other commercial basis.
- **We agree** that we will **NOT** allow any form of hunting and fishing using guns, dogs, traps, poisonous vines, diving, fishing lines, fishing with lamps, hunting paths, in the areas of land marked on the map.
- **We agree** that no one will be invited onto our land to conduct surveys, exploration or any other activities of a commercial nature, without all clans consenting.
- **We agree** to work together to control development on our land in the future. Any proposed development of our land after the expiration of the said .....(time period)....., shall only proceed if all the said clans agree.

- **We recognize that this Deed is a legal document** which binds the parties to their promises and can be enforced in the National Court of Justice.
- **This Deed** will still be in force even if one of the persons who signs it dies or gets very sick.
- **This Deed** will be signed by at least three persons appointed and acknowledged by each clan as their leaders and representatives and these three persons who are authorized to sign on behalf of their clan.
- **The Deed was signed** at a public gathering held at .....(location - place of signing)....., on the .....(date)....., in the presence of the following witnesses:-

|               |         |           |
|---------------|---------|-----------|
| Title<br>Name | Address | Signature |
| _____         | _____   | _____     |
| Title<br>Name | Address | Signature |
| _____         | _____   | _____     |
| Title<br>Name | Address | Signature |
| _____         | _____   | _____     |
| Title<br>Name | Address | Signature |
| _____         | _____   | _____     |

**Signed by**

| Name of Clan | Name of Person | Signature |
|--------------|----------------|-----------|
| 1.           | _____          |           |
| 2.           | _____          |           |
| 3.           | _____          |           |

| Name of Clan | Name of Person | Signature |
|--------------|----------------|-----------|
| 1.           | _____          |           |
| 2.           | _____          |           |
| 3.           | _____          |           |

## **2. Local Level Government Protected Area**

Another recent innovation in laws concerned with land protection began with the Organic Law on Provincial Government established in 1997. It had its beginnings in east Sepic Provincial law in 1987 to devolve decision-making and government administration to lower levels than the national level. However, it has not been used much especially in regard to the Provincial Government level, but it can be used with local level governments on WMAs. Section 42 (1) (y) gives power to the Provincial Legislature to make laws on parks, reserves, gardens and scenic and scientific centers similar to creating Conservation Areas at the Central Government Level.

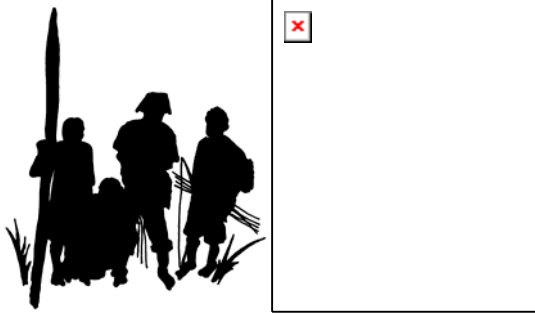
Section 44 of the Organic Law is relevant to the local level government whose development policies are conducive to assisting land use planning and sustainable rural development at the village level. Under section 44 local-level governments are empowered to make laws on the local environment, protection of sacred sites, local tourism facilities and can impose fines for breach of such laws. This law is being used to meet the challenge of finding an appropriate strategy to both protect the high biodiversity of an area and to provide for local sustainable growth. This idea came about after a series of meetings with local landowners from the Adelbert Mountains during 2000-2002 that included some legal workshops to put the proposed legislation before landowners for discussion. A former dean of the Papua New Guinea Law School drafted innovative conservation legislation in consultation with the Nature Conservancy and the Almami Local Level Government to protect and conserve the biodiversity of the Adelbert Range. The legislation allows clan groups

to maintain control of their lands while developing conservation management strategies for protection. Voluntary conservation agreements were made between traditional landowners and their Local Level Government (LLG). It promotes conservation planning and management within the framework of LLG community development planning. In return, the clans and LLG will receive aid in developing and managing the land and for finding appropriate livelihoods

This Organic Law is empowered to make laws on local environment, protection of sacred sites, and local tourist facilities. It can impose fines for breach of its laws and it provides local level enforcement. This first drafting of an LLG law also contains items of the Environment Act 2000 that were modified to suit the Almami LLG. Thus, the proposed law is subject to the Environment Act 2000, the Conservation Areas Act 1978 and the Fauna (Protection and Control) Act as well as any provincial laws on the environment. It can thus be superseded by Central Government laws. Under this proposed legislation, the declaration of an environment and conservation area made by the LLG will become operational when it is Gazetted in the LLG Gazette 6 months after recommendation to the government appointed Monitoring Committee which is to be made up of 2 women from the LLG area, an NGO representative, a Ward Councilor, a person representing a Ward church, a representative of Ward youths and 3 landowner representatives.

The Adelbert Mountain Conservation Project program has four components. The Almami LLG enacted conservation under the Organic Law of LLG to create a mechanism that allows clans to propose their land for conservation and to develop an integrated management plan for their lands as the basis for the rules and

regulations of the conservation are. Under this plan the ownership and management of the lands remain with the traditional clan landowners. Secondly, a team which includes a training coordinator and community and conservation development facilitators make regular field patrols to the involved communities.



## **Chapter VI. Land Tenure and Land Use Laws Relevant to Protected Areas**

Land tenure is the system of relationships within a group of people with regard to the land and the resources on it. Land rights are a subcategory of property rights defined by the social system and its history. Both land tenure and rights are flexible and change over time as conditions change. Land rights have been classified into 6 categories and such rights have accompanying duties or social obligations:

1. rights (claims) to direct use which may include agriculture, access to and water use
2. rights of indirect economic gain such as rental
3. rights of control
4. rights of transfer by will, sale, mortgage, gift, etc.
5. residual rights in the case of death without heirs
6. symbolic (identification) rights

Laws related to land tenure and land rights are important to clan landowners because they can be used in a first step in formalizing clan landownership from customary to formal law. The Land Groups

Incorporation Act is an important law because it involves clans looking closely at their traditional mechanisms for land ownership, land use and for passing lands on.

### **1. Land Groups Incorporation Act 1974.**

The Land Groups Incorporation Act 1974 was produced from the Commission of Inquiry into Land Matters (CILM) conducted by the Australian Administration in 1972-3 which laid the foundation for many new land laws following independence in 1975. It provided for local communities to establish control over their land and natural resources and can be seen as a method of re-empowerment. It recognizes customary land groups that control access to major land rights and gives them legal status under Papua New Guinea law. This Act recognizes the corporate nature of these groups to hold, manage and deal with the lands. The main powers of the Act in Section 13 are 1. acquire, hold and dispose of customary lands and rights in customary manner, 2. acquire hold and dispose of rights in other land, 3. to use, manage and enter agreements for such, 4. borrow money for land development, 5. distribute products or profits from land.

Once having gone through the incorporation process, an Incorporated Local group (ILG) is recognized by law as the only group having the right to hold, manage and make decisions about the land which they have customary ownership to. In essence it can be an opportunity to move customary law from oral to written tradition while solidifying existing customary landowners as the legal landowner.

It gives legal power to a group of landowners to act as a business organization and to make decisions concerning the land. The

Act recognizes that while individuals own improvements, and have use rights of the land, land ownership is vested in the clan. The ILG establishes clan membership and clan genealogy and adopts a constitution. Its formal registration gives it power to incur contractual obligations, to sign legally binding documents and to avoid interference by non-clan individuals. The decisions of the ILG have authority over other clans, government, businesses and banks in regard to their customary lands. Formal organizations, recognized by law, are probably preferable to informal groups, however democratic. The Papua New Guinea Forest Authority (1995) suggests that ILG formation can be a precursor to company formation and to more complex Landowner Associations, which could carry on a variety of enterprises.

The Act basically establishes group membership by determining who are the primary right-holders through the use of self and mutual recognition supported by genealogies and property lists. Primary right-holders belong to a group by virtue of both descent and residence. Other rights such as contingent right-holders (by descent and by past or future residence), secondary right-holders (by descent but not residence) and marital and permissive right-holders (by residence but not descent) are not recorded but are maintained by continued customary practice and arrangement. This law empowers the customary landowners and solidifies the group ownership by requiring consultation among group members for making major group decisions. It also requires consultation and cooperation between incorporated neighboring land groups.

While it is important for landowners to explore all the legal possibilities for the conservation and protection of their lands and

natural resources, one of which is the Land Group Incorporation Act, its use is not essential but may become more important in the future especially when clan landowners wish to enter into business or other contracts. The present law already provides for landowner representation in Wildlife and Conservation Area Management Committees. However where a greater responsiveness of landowners is desired, the following steps should be taken to form an Incorporated Land Group: 1) Preparation of the land group's first draft of a constitution, 2) Application for incorporation, 3) Notification and publicizing the application, 4) Consideration of any comments as a result of the publicity, 5) Incorporation by the Registrar.

The process of Land Group Incorporation has been described in detail in books edited by Tony Powers, including its strengths, weaknesses and opportunities in going through the process for clan landowners (see Important Literature for Landowners). The Land Group Incorporation Act of 1974 gives fundamental legitimacy by the state to customary land groups. In addition, the present Forestry Act gives preference to resource owners organized according to the Act who apply by official application form to the Managing Director of the Forest Authority for "recognition". Forestry Officers can assist landowners in the process.

This incorporation is the basic level of formality in land group organization. Local Level Governments should eventually recognize Incorporated Land Groups (ILGs) within each Council Ward. Village Development Committees (VDCs) may be the next level up to bring together a number of ILGs which can deal with all kinds of area projects. VDCs would be assisted by a Village Lands Team which

would be represented on the VDC. All group meetings and interactions would be recorded so any ILG would need a literate Secretary.

These community structures are needed to deal with outside situations under a legal basis. The VDC is a management tool not a political, government or even a legal body. Incorporation means formation of a single body that represents many people recognized by the laws of Papua New Guinea. Land Group Incorporation recognizes the customary landowners and gives recognition to these groups to manage their lands “A land group is that group of people who by custom have the right and responsibility by inheritance or any other customary means to control their customary land and who can make fundamental decisions about their land without reference to other groups”. Usually they are members of a clan (lain wanpisin) or a sub-clan. The reason to go through the trouble to incorporate is because of the changing times that have brought additional threats to lands and land tenure. Resources can now be sold off for cash and lands can be destroyed. The Act recognized the fact that the land group which is a corporate body in existence under custom is the social, economic, and political basis of life in Papua New Guinea. Legalizing the group gives it recognition by outside agencies. It can also strengthen clan leadership. All money from ILGs should go in an ILG bank account rather than being directly distributed to individuals.

There are other landowner groups that can be formed for specific reasons. A landowner company (LANCO) is a corporate vehicle in which clans own shares to enable them to participate in and benefit from resource development impacting their community owned land. All members of each clan must be beneficiaries. A Landowner Association is a group which can have an important role in sustaining

the long term future of landowners. It is a legal body set up by a group of landowners from a region or a specific project. It can deal with impacts which affect each other's lands including long term sustainability. Some have set up a Future Generations trust, to provide 30% of ILG income invested for long term benefit.

## **2. Land Disputes Settlement Act 1975**

The Lands Disputes Settlement Act (Chapter No. 45) sets up a decentralized system of mediators and courts for resolving landowner disputes over lands under customary law. The process should accompany any ILG process because it establishes a decentralized process for resolving property rights conflicts during and after the land incorporation process.

There is a three level process for disputes. First a land dispute is brought before a mediator(s) appointed by the Provincial Land Disputes Committee. Such mediators are usually appointed on a case-by-case basis. The mediators are usually older, respected men who may not have formal education but are experienced and respected for their knowledge of customary law. After hearing both sides the mediator may propose a possible settlement. If accepted the legal process may end or may be forwarded to a local magistrate for approval.

If not accepted the matter may be referred to the Local Land Court for a trial decision. At the trial the magistrate accompanied by two or more mediators (usually who have not heard the dispute before) and a decision is made by majority vote. A dissatisfied party, at his own expense, can still appeal the court decision to the Provincial Land

Court which will examine the local court's record and call additional witnesses. Rarely, a final appeal can be brought before the National Court.

Each village needs at least one expert in custom, who is recognized as such, who knows the history, to act as advisor to the lands team. He must be able to make clear, how tumbuna stories guide decisions on land issues. He would participate on a committee to settle disputes called the Dispute Settlement Authority (DSA). Each clan should be represented on the Village Lands Team (VLT). The VLT asks clans to nominate representatives for the DSA for the ILG. The DSA looks at all documents, etc. and should keep accurate records.

### **3. Land Registration Act 1981 and the Land Act**

Land Registration has had a negative history because it was misused and identified with the misinformed idea that having lands under customary law was retarding progress in Papua New Guinea and that there was a need to replace customary land ownership with freehold or private land ownership or lease. However, this idea disregarded the traditional social fabric of Papua New Guinea and the traditional kinship base for commerce through traditional land ownership.

Thus two National laws were introduced for the purpose of converting customary land to private land. Land Tenure Conversion was introduced in 1963 to provide for the transfer of customary land to individual freehold title. The idea was to facilitate a smooth change from a communal system to one of "free enterprise". Under the Land (Tenure Conversion) Act, customary land may be "alienated" or

converted into freehold title, thus freeing it from restrictions on dealings in customary land set out in the Land Act. The Land Act also provides for a lease-lease-back scheme under which customary land may be acquired as leasehold by the state then leased back to the original owners for agricultural development to provide credit for loans.

However, the Land Act also imposes restrictions on dealings in customary land. Section 73 makes provisions for customary land stating that customary land can only be disposed of to “natives (automatic citizen) in accordance with customs” or the state. Section 73 of the Land Act prohibits sale, lease, or disposal of land except to Nationals in accordance with customary laws. It is generally agreed that this provision forbids dealings in customary land amongst private individuals. However, Section 15 of this act does permit government to purchase or lease land from customary owners. This in essence defeats the original idea. Thus the “Lease-and-lease-back” is an arrangement where government leases land from customary owners and then leases it back to them in order to bring the land out from under the constraints of Section 73. Thus Section 15 can be used to defeat the purpose of Section 73 which is to prevent violation of Customary Law. However, fear of loss of land through indebtedness has led to limits being placed on customary landowners’ freedom in this respect to mortgage or sell the lands.

By registering lands it does not have to lose its customary quality. But it may do so by legal definition or the law may provide or insist that all customary rules still apply to the registered land. Registration includes the making and keeping of maps and records of land ownership. Until the 1960s this was only done with private lands.

Registration has the potential to bring together into one place, information about ownership which have traditionally been scattered within different communities. It also can give advantage over non-registrants.

The process of registration is detailed with safeguards. It requires hearings to establish that the customary owners wish to register their lands and that others do not object. Registration converts unwritten records of boundaries into written records. It does not change the substantive law of property which continues to be custom as interpreted by the land courts. After registration, property rights are still allocated according to customary law with no absolute, unitary ownership.

In the future, customary clans can become viable units of production. Thus a clan acting as a corporate body can become owners and managers of the land. Clans, by forming Incorporated Land Groups, with traditional leaders serving on the Board of Directors can make business decisions. Thus, land registration would hopefully take a clan through an invigorating process that will increase its ability for corporate action.



## **Chapter VII. Conclusions and Recommendations to Clan Landowners**

In Papua New Guinea, while there are strong laws protecting the customary landowner rights, there is also a current cultural/historic changing of ideas and values that has created some major threats both to the land use and local clan ownership. Hopefully, a combination of laws can be interwoven to create protected areas that strengthen customary land ownership and management but also strengthen a legal basis for protected areas which balances natural resource protection with sustainable natural resource use by local clan landowners. This balance would intimately involve local landowners and villagers in the management and wise use of the resources and protection of the rich biodiversity, while maintaining the desired rural environment and allowing for increased appropriate economic growth.

Since carrying out any land action such as declaring it for conservation depends on full and accurate knowledge of landownership, clans may want to go through the process of creating a formal Incorporated Land Group or go through that process informally. Going through that process noted in Chapter VI will help to formally and in writing let all landowners within each clan agree on the identity of the traditional clan leaders with the authority to act for a unified clan.

Although not fully tested, the Conservation Deed is said to be the strongest legal protection for lands. Therefore, it may be a pivotal legal device to be used with either the Conservation Area, the Wildlife Management Area or the Local Level Government Protected Area. Of those three, the Conservation Area is the strongest because it gives the lands protection under the National laws. WMAs also do this but they are more restricted to wildlife protection whereas the Conservation Area is more comprehensive. The Local Level Government is also comprehensive but could be superceded by national laws. However, as used by the Almami LLG, it appears to be attractive in two respects: it involves the local Level Government and it is quicker to effect because it doesn't require the time for passing laws through the National Level Government agencies.

Although the WMA laws have already been used most extensively in Papua New Guinea, and they do give important participation to local landowners and other village members, it is my feeling that a strengthening of a true co-management concept needs to be developed both within existing laws and in a true practical sense. For example, an anthropological study of the Crater Mountain WMA indicates that participating villagers of one of the village complexes, Maimafu, see the management committee as belonging to the NGO, RCF rather than as belonging to them. Thus, clan landowners and other local participants must be involved throughout the process and must be encouraged and or trained to begin to make the land use decisions. The Management committees must be composed of membership which encourages this empowerment.

Since much of the government powers are stipulated in specific laws, government and NGO membership in the managing

committee are merely for overseeing, coordination, advising and teaching. Whereas a committee heavily weighted with a majority of landowners will help the committee to take charge of the management responsibilities both for their own benefit and for that of the conservation and sustainable use of the natural resources.

It has been stated by one author “The formulation of laws and the “writing down” of culture to satisfy a bureaucratic procedure is potentially the first step in a process of disempowerment of local people in the establishment of a WMA”. While in essence this statement is true, in reality it sweeps aside the powerful forces of modernity and technology that are constantly impinging on indigenous people. Specifically, it also disregards the government changes in Papua New Guinea that govern the clan landowners. Thus, teaching clan landowners to use these modernizations will only help them to protect themselves and attempt to guide these changes to include and adapt some of the customary ways into the modern legal system.

Conservation of certain protected areas has been presented as specific clan no-use areas which would serve as wildlife “banks” whose resources would always be owned by the people and which would provide “interest” of young animals which would disperse to other areas to be hunted. This idea has been understood by the YUS clan land owners and has led to the “pledging” of lands by a number of clans within the YUS area (area encompassing the Yupna, Urawa and Som Rivers) as no-use zones which has been supported by the local government. The next step is to begin a process to formalize these pledges into a legal protected area with agreement by the landowners and various levels of government.

One main long term goal of this book is to help clans within the YUS area and adjacent areas to create a formal protected area agreed upon and respected by all participating clans, adjacent non-participating clans, other area residents and all levels of government. This protected area would allow continued customary land ownership with continued customary uses and would allow land owners to create a legally respected management plan for protection and sustained use of the natural resources on these lands with accrued benefits (where feasible) going to participating landowners on an equitable basis.

One main point that should be considered by clan landowners is that it is important not to equate conservation solely with economics. This is a hard concept to eliminate since there are hopes on the part of landowners and rural people to understandably have interest in increasing their economics through use of the natural resources. Instead landowners need to think more about the broader aspects of protecting the lands and resources that they have and its long term effects on their culture and the rural lifestyle for future generations. In reality, it is the whole landscape that is the resource. In Papua New Guinea all aspects of natural resource use are interwoven with the whole landscape culture



## IMPORTANT LITERATURE FOR LANDOWNERS

(\* indicates primary importance)

### General/Legal

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**Remember :**

In Papua New Guinea “ Land is Life”

*When you as landowners do not understand the law regarding your lands, consult a trusted lawyer before acting . If in doubt, contact the following organizations :*

Centre for Environmental Law and Community Rights, Inc.  
(CELCOR)

Suite 1, Level 1, Malangan Haus,  
Reke St., Boroko, (P.O. Box 4373)  
Port Moresby,  
tel. (675) 323-4509, cel. 1323-4237, fax (675) 311-2106,  
email: [info@celcor.org.pg](mailto:info@celcor.org.pg)  
[www.celcor.org.pg](http://www.celcor.org.pg)

Environmental Law Centre (ELC),  
Malangan Haus, Suite 2, Level 1  
Reke St., Boroko, (P. O. Box 49, University, Angau Drive)  
Port Moresby, NCD  
tel. (675) 323-4480, fax (675)323-4483, email:  
[atararia@hotmail.com](mailto:atararia@hotmail.com), [atararia\\_elc@daltron.com.pg](mailto:atararia_elc@daltron.com.pg)

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