

Customary land tenure arrangements between customary land owners and migrant oil palm smallholders: A case study of the Nakanai people of Matururu & Kiawa villages in the Bialla District, West New Britain Province, Papua New Guinea



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Australia**

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Anton Dennis Neinaka

Declaration

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for degree at any Tertiary Education Institution.

Anton Dennis Neinaka

Dedication

To my beloved mother, Maria Prindau Yiszhuwro, and late father, Dennis Nangukian Neinaka.

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Anton Dennis Neinaka

Abbreviations

ADB	-	Asian Development Bank
AusAID	-	Australian Aid and International Development
BOGA	-	Bialla Oil Palm Growers Association
CDC	-	Commonwealth Development Corporation
CLO	-	Customary Land Owner
COPED	-	Community Oil Palm Estate Development
CLT	-	Customary Land Tenure
CLTAB	-	Customary Land Tenure Agreement Booklet
CLTS	-	Customary Land Tenure System
CPB	-	Customary Purchased Block
CPO	-	Crude Palm Oil
CRPB	-	Customary Rights Purchase Block
DAL	-	Department of Agriculture and Livestock
ENBP	-	East New Britain Province
FFB	-	Fresh Fruit Bunch
HOPPL	-	Hargy Oil Palm Limited
HOPPL	-	Higaturu Oil Palm Plantation Limited
IE	-	Independent Estate
LPC	-	Local Planning Committee
LSS	-	Land Settlement Scheme
LTC	-	Land Tenure Conversion
NBPOD	-	New Britain Palm Oil Development
NBPOL	-	New Britain Palm Oil Limited
NDB	-	National Development Bank
OPIC	-	Oil Palm Industry Corporation
PNG	-	Papua New Guinea
PNGPOPA	-	Papua New Guinea Oil Palm Producers Association
PNGLRC	-	Papua New Guinea Law Reform Commission
PNGOPRA	-	Papua New Guinea Oil Palm Research Association
PPL	-	Poliamba Proprietary Limited
PRPL	-	Pacific Rim Plantation Limited
RAI	-	Ramu Agri – Industry Limited
RSPO	-	Roundtable on Sustainable Palm Oil
VOP	-	Village Oil Palm
WB	-	World Bank
WNBP	-	West New Britain Province

Abstract

The development of the oil palm industry in Papua New Guinea has generated a great deal of interest amongst customary land owners along the coastal provinces, encouraging them to open up their customary land and invest in oil palm smallholdings development. In doing so they have become involved in land tenure arrangements that diverge from their traditional practices. In addition, oil palm smallholder opportunities have attracted numbers of migrants from other provinces that are experiencing land shortages. Migrants are seeking to share the benefits generated by the oil palm industry by acquiring leasehold land under Land Settlement Scheme (LSS) smallholding arrangements and/or seeking customary land to set up oil palm smallholdings under various land tenure arrangements.

Mataururu and Kiawa Nakanai villages within the Bialla oil palm project area of West New Britain province are amongst some of the coastal villages that have opened up access to customary land over the last 30 years to migrants. In doing so, they have engaged in a range of verbal, undocumented land transactions and informal tenure practices based on social relationships. As a consequence, customary land owners often find their ownership and usage rights are undermined, while migrants also remain insecure.

Nevertheless, customary land tenure can be flexible and is adaptable in its capacity to accommodate rapid socio-economic change, including large migration in-flows and expanding oil palm and other commodity production. The lingering challenge for the many stakeholders in the oil palm industry is to effectively collaborate in designing and implementing new policies, thereby formalizing customary land transaction agreements that both ensure customary tenure for traditional owners and minimize the risks of insecurity amongst migrants 'purchasing' usage rights on customary land for the development of oil palm smallholdings.

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Chapter: 1. Introduction

Land is one of the fundamental assets of economic development. Rapid economic growth continues to exert demands on accessing land for infrastructure, urban development, agriculture, mining and other economic activities. Land tenure in terms of attainment and inheritance of secure and clearly defined land property rights varies across the world in the context in which it is formulated and practiced within the legal framework of individual countries, and appears to be a necessary basis for long-term economic development to flourish. Therefore, secure land property rights are very significant in the process of development to promote and support harmonious and sustainable livelihoods (Trebilcock 1979).

The study in this thesis therefore examines land tenure with a more specific focus on customary land tenure (CLT) and the transfer of customary land to migrant settlers (that is, people outside of the customary land holding group who migrated from their home provinces to live elsewhere in PNG) in two Nakanai¹ villages, Kiawa and Matururu, in the Bialla District of West New Britain Province (WNBP), Papua New Guinea (PNG) (see Figure 1.1). The two villages - Matururu and Kiawa - researched for this study share customary land boundaries and practices. A more detailed description of these two villages is presented in Chapter Five.

Land in PNG is classified as alienated and unalienated. Alienated land is the term used in PNG to describe land estranged from the traditional owners either through a voluntary or compulsory process. The two basic types of alienated land are: state land (public) and privately-owned freehold land. Only three percent (3%) of the land is classified as alienated land in PNG. In contrast, unalienated land is customary land owned and controlled by indigenous landowning groups in accordance with their norms and or customs. The term “customary land” is widely used in PNG literature and in legislation to refer to unalienated land (James 1985). Ninety-Seven percent (97%) of the land in PNG is customary land, meaning it is held communally under customary tenure with access rights based on a mixture of descent, co-residence and participation in communal activities (Yala 2005). This thesis will also use the term “customary land” to refer to unalienated land.

¹ The Nakanai ethnic group of people inhabit the North East coast of West New Britain Province (WNBP) from Hoskins to Bialla. Matururu and Kiawa villages belong to the Nakanai ethnic group. Most oil palm development in WNBP takes place in the region where the Nakanai people live.

1.1 Customary land tenure in Papua New Guinea and the Pacific Island

Most of the land in Papua New Guinea (PNG) and most other countries in the Pacific remains under customary ownership and administration, while a very small proportion is alienated as state and private freehold land. Customary land tenure in PNG and the Pacific Island nations is the dominant form of land tenure. A recent AusAID report (2008) on land tenure entitled: "Reconciling Customary Land and Development in the Pacific" clearly shows the distribution of the three key tenure practices in the Pacific (see Table 1.1).

Table 1.1 Distribution of land by system of tenure in the Pacific Region

Pacific Island Countries	Public (a)	Freehold (b)	Customary
Cook Islands	Some	Little	95%
East Timore (c)	Some	Some	Most
Fiji	4%	8%	88%
Federal State of Micronesia	35%	<1%	65%
Kiribati	50%	<5%	>45%
Marshall Islands	<1%	0%	>99%
Nauru	<10%	0%	>90%
Niue	1.5%	0%	98.5%
Palau	Most	Some	Some
Papua New Guinea	2.5%	0.5%	97%
Samoa	15%	4%	81%
Solomon Islands	8%	5%	87%
Tokelau	1%	1%	98%
Tonga	100%	0%	0%
Tuvalu	5%	0.1%	95%

Vanuatu	2%	0%	98%
(a) Includes crown land and land own by provincial and local governments. (b) Includes land that is not strictly freehold but similar in characteristics, such as the perpetual estates found in Solomon Islands. (c) East Timor does not as yet have a separate legal category of customary land even though most of its rural land is under customary form of authority.			

Source: AusAID (2008, 4).

Customary ownership represents eighty percent (80%) of the total land area in the Pacific. The significant value of maintaining customary land ownership is that it has been a safety net for the Islanders over countless of generations in the past, at present and into the future, primarily because land is the basis upon which people's subsistence livelihood exists, and therefore reduces risks of poverty and insecure socio-economic livelihoods (McGregor 2006). Moreover, customary land is integrated and embedded into the people's culture, customs and societal norms. Therefore, it always remains very contentious when it comes to the push for alienating customary land through land reform and formal land registration processes based on claims that customary land tenure is static, non-adaptive, uncertain and an impediment to economic prosperity (Fingleton 2005a).

Contrary to such claims, researchers have revealed that customary land owners in the Pacific, and PNG in particular, are able to flexibly adjust their customary land tenure practices to changing economic demands and expectations under the modern socioeconomic environment where there has been an increase in internal migration, new patterns of land settlement, a growing cash economy, new land uses and an increase in population (Fingleton 2005a, 34). For example; over the last decade, agricultural production in PNG – both for domestically-marketed food and export crops - has expanded steadily on customary land. Almost all customary land tenure practices adopt their own complex arrangements – formal, informal, legal and illegal, with varying degrees of security over the rights to own and use customary land (Fingleton 2005a). As such, the need to critically understand the current trend and practice of customary land tenure in PNG is significant to any entity or persons interested in investing in agricultural development in PNG.

Accordingly, governments and economic institutions have placed customary land tenure amongst their priority policy reform efforts, more than they ever did before (AusAID 2008). The significant challenge that PNG and other Pacific Island countries confront is their ability to develop policies and practices that

do not conflict with customary land laws and resource security on one hand, while opening up more access to customary land for economic development on the other.

1.2 Background purpose of this study

Individual provinces, tribes and cultures in PNG continue to face pressures from accelerating economic development. As a result, customary landowners are confronted with the challenges of opening up their customary land to growing investment, using their customary land to develop commercial agricultural activities, especially commodity crop production, to meet their growing socio-economic needs and to maintain their livelihoods. This study is inspired by such ongoing issues and challenges faced by customary land owners (CLOs), the government and land-short migrants seeking customary land to establish sustainable livelihoods through participating in oil palm development in WNBPs. This study also aims to contribute to ongoing discussions on maintaining sustainable livelihoods in the oil palm growing areas of PNG under the recent trend of accessing customary land by migrant smallholders for the development of oil palm (see Koczberski *et al.* 2001; Koczberski and Curry 2003).

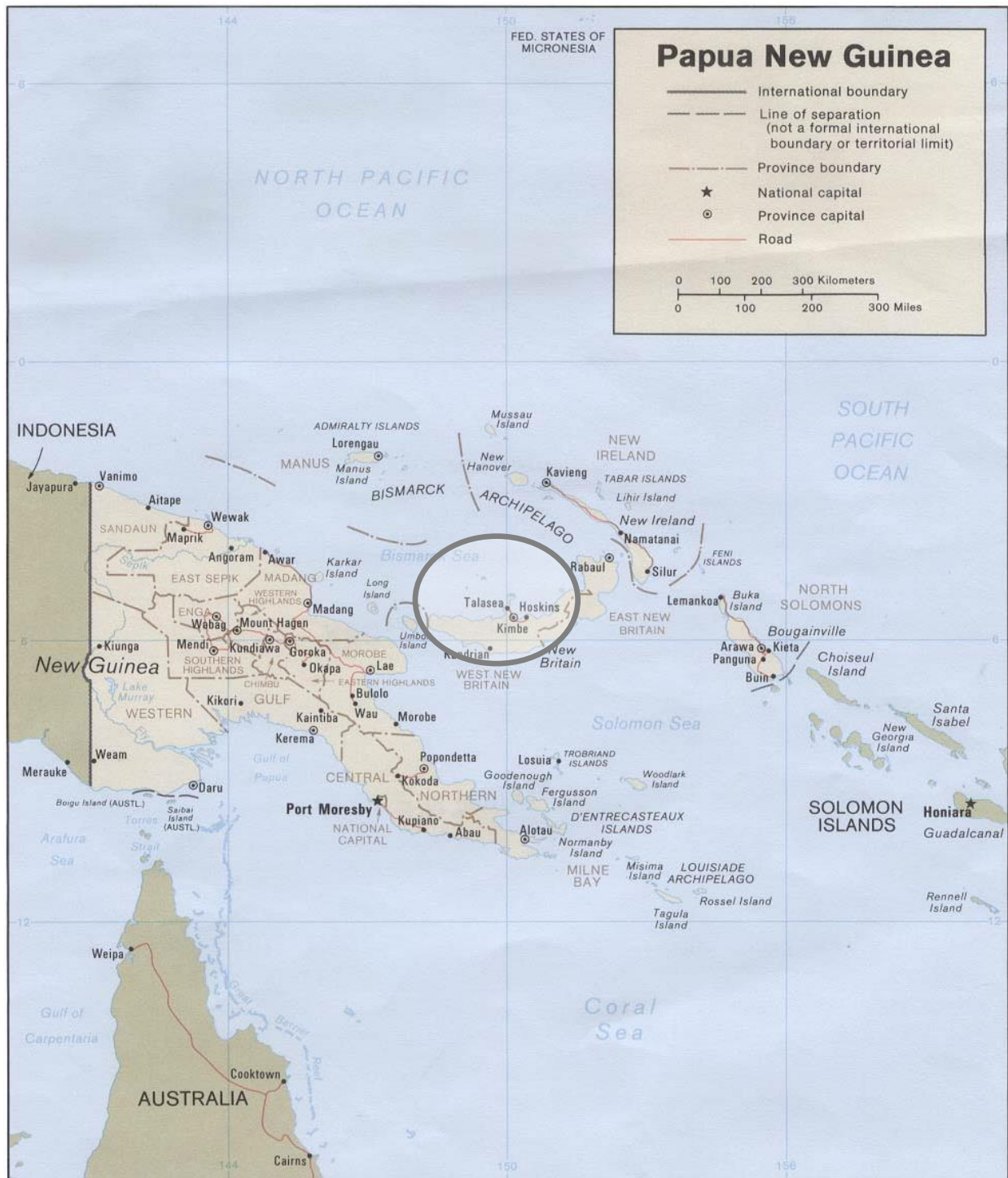
Noticeably, growth in the oil palm industry in PNG can be measured by the increase in the annual production (Chand and Yala 2007), which often directly comes about as a result of new smallholder and estate plantation developments. For that to happen, secure access to land is one of the single most important steps government, companies and smallholders are concerned about. With little or no more state land available, the only option is to invest in opening up access to more customary land. As such, CLOs and the demand on customary land by migrant settlers at present is not only something to consider for the expansion of the smallholder sector, but also a significant area that needs to be thoroughly understood, well managed and properly utilized for the benefit of all parties seriously concerned with the long-term sustainable development of the oil palm industry.

Previous studies (Curry *et al.* 2007) observed that the 'purchase' of customary land by migrant settlers for smallholder development under terms and conditions determined by various landowning groups are often informal in nature. The informal nature of customary land tenure arrangements is generally seen as insecure by all parties involved in the industry, in particular landowners and migrant settlers outside of the local landholding groups who 'purchase'/'lease' customary land in seeking better livelihoods through participating in oil palm production.

This thesis is based on a study of contemporary customary land tenure (CLT) practices in Kiawa and Matururu villages and purposely seeks to understand and critically discuss the underlying issues affecting the ongoing customary land tenure arrangements and the security of both the customary land owners (CLOs) and migrant settlers who continue to 'purchase' customary land to develop oil palm smallholder blocks. The terms: 'buying', 'purchasing', 'leasing' and land 'sales' used throughout this thesis refer to the informal transactions of customary land between migrants and CLOs which gives migrants temporary usage rights to customary land rather than formal alienated freehold title to the land. These terms are in common use in PNG despite the ambiguity that these terms suggest.

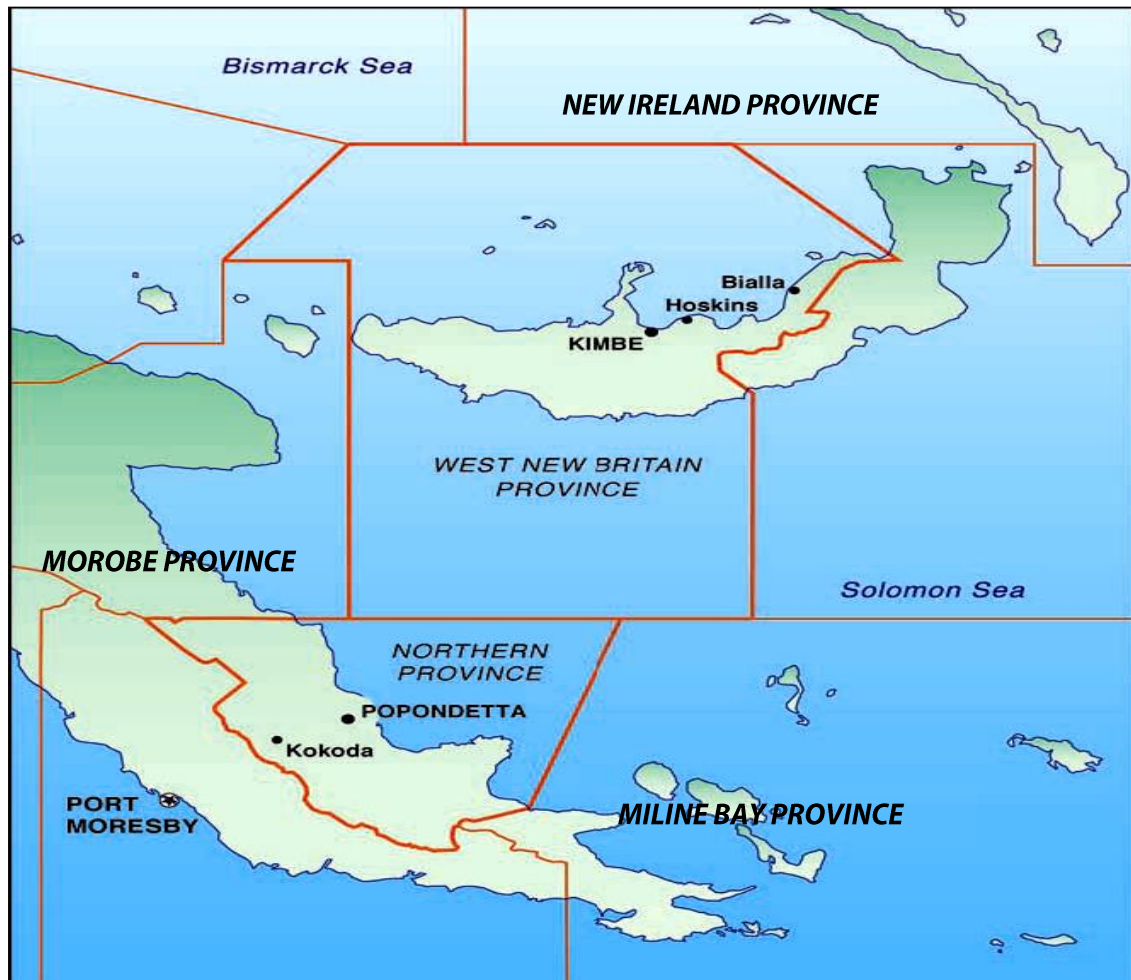
Apart from WNB, oil palm is grown in other provinces in PNG, namely Oro, New Ireland, Milne Bay and Morobe, which also raise customary land issues (Figure 1.2). However, due to time limitations, this study will only focus on a case study area in WNB. While the main focus will be on WNB, comparable experiences within other oil palm growing provinces will be referred to where relevant.

Figure 1. 1. Map of Papua New Guinea showing WNB



Source: www.lib.utexas.edu/maps/papua_new_guinea.html

Figure 1.2. Map of Papua New Guinea showing provinces that developed oil palm projects



Source: Koczberski and Curry (2003).

According to Curry *et al.* (2007) there are four basic land tenure arrangements under which small holder oil palm is cultivated in PNG. Briefly, they are:

1. Agricultural State Leasehold land on land settlement schemes (LSSs);
2. Village Oil Palm (VOP), smallholder holdings on customary land by major and minor clans;
3. Land Tenure Conversion Blocks (LTC);
4. Customary Purchase Blocks (CPBs) on customary land.

A description of each of these land tenure arrangements can be found in Appendix 1.1. The first three on the above listed land tenure arrangements have existed in the four different oil palm growing

provinces² since oil palm development began in PNG. However, Customary Purchase Blocks (CPBs) on customary land are a recent trend which first emerged in the Hoskins Oil Palm Project area in the mid 1980s. In Bialla (WNBP) and Popondetta Oil Palm Project area in Oro Province, CPBs were first recorded in the 1990s (Curry *et al.* 2007, 20).

The term “customary purchase block” (CPB) is also very recent. It was initially used by Yala (2004) and then adopted by the Oil Palm Industrial Corporation (OPIC)³ at Hoskins to describe oil palm planted on customary land that had been ‘purchased’ by outsiders⁴ (Curry *et al.* 2007). Prior to 2007 these blocks were formally recorded by Hoskins OPIC as VOP blocks. Moreover, for the purpose of distinguishing CPBs from VOP, Hoskins OPIC has recently created a new category termed "Customary Rights Purchase Blocks" (CRPB) to classify CPBs. The new classification at Hoskins is in recognition that the land is not alienated from the customary landowning group. In Bialla CPBs are still recorded by OPIC as VOP blocks. Therefore, this thesis will maintain the use of the term CPB for the reason that it is widely used in current research and publications regarding land tenure in oil palm developing provinces in PNG (see for example, Curry *et al.* 2007).

1.3 Key background CLT problem that influenced this study

There is very limited information on CPBs in the Bialla District and the type of land agreements between customary land owners and migrants is not well understood by all stakeholders of the oil palm industry. Even though there is growing research interest in the oil palm development industry in general and land tenure issues in PNG in particular, there has been a limited amount of research specifically focusing on CPBs and the subject of customary land tenure in the oil palm growing areas of PNG. Nonetheless, over the last decade, CPBs have become a popular land tenure option in the Hoskins and Bialla areas of WNBP where there is enormous demand for land by land-short migrants, retirees who want to settle in WNBP, and settlers from the overcrowded LSS blocks who are seeking a future in the oil palm growing areas of WNBP (Curry *et al.* 2007).

² The four different provinces are; WNBP, Oro, Milne Bay and New Ireland. At the time of this research, Morobe (as the fifth) is the most recent province to introduce oil palm development and have not had similar experiences as the first four provinces.

³ A quasi organization set up by the government of PNG to provide the agricultural extension services to oil palm smallholders (More discussion on OPIC can be seen in chapter 2).

⁴ People of a different ethnic, linguistic and cultural background from the landholding groups. Migrant settlers in this thesis are also referred to as outsiders.

Curry *et al.* (2007, 20) state that property rights of CPBs owners appeared to differ from those under Land Settlement Scheme (LSS), Village Oil Palm (VOP) and Land Tenure Conversion Blocks (LTC). Furthermore, land tenure on CPBs is the least secure in comparison with all the other tenure arrangements held by smallholders due to varying degrees of its informal nature. The informality of this tenure arrangement can be gauged by the fact that most of the arrangements underpinning land transactions between the owner (CLOs) and the user (mostly migrants) are not documented (see chapter 5). The insecure land tenure rights as a result of informal transactions increases CPB growers' vulnerability to disputes and conflicts over the exclusive usage rights of the CPB growers and owners (Curry *et al.* 2007).

The majority of the current CPBs land tenure transactions between the CLOs (vendor) and migrant settlers (purchaser) are not conducted in accordance to customary law, despite the fact that section 73 of the PNG Land Act, prohibits the sale, lease or disposal of land that is not in accordance with customary law (Cooter 1991). Nonetheless, CLOs in Mataururu and Kiawa villages have transferred approximately 61 blocks with an average of about 2 hectares each totaling up to about 147 hectares of their land under CPB tenure arrangements, the largest area transferred to settlers under CPBs by any CLO group in the Bialla District. About 61 families of land-short migrant settlers outside of the landholding groups have settled and cultivated smallholdings of oil palm over the last 10 - 30 years. Although CPBs represent a growing trend, there is evidence of an overwhelming sense of insecurity regarding settlement and land usage rights by migrants on 'purchased' customary land.

1.4 Objectives of this study

Given the limited amount of research on CPBs, there is thus a need to thoroughly investigate the arrangements under which customary land is being informally transferred to migrant settlers. Such an investigation will not only contribute to the ongoing research on customary land tenure arrangement in oil palm producing provinces in PNG, but also contribute to offering strategies to solve emerging land tenure problems in and around the oil palm growing areas. This study particularly seeks to explore the current underlying nature of CPB tenure arrangements and land transactions from the experiences of customary land owners (CLOs) of Kiawa and Mataururu villages, and migrant settlers 'purchasing' customary land. Based on field research data, this study will analyze different informal land transactions between CLO and migrant settlers moving into Mataururu and Kiawa to establish oil palm smallholdings over the last 30 years within the framework of the following research objectives:

1. Identify and examine the different ways migrant settlers access customary land for the cultivation of palm oil under CPBs arrangements.
2. Investigate and assess the advantages and disadvantages of the different types of CPB land transactions arrangements between customary land owners and migrant settlers.
3. Discuss the problems that arise as a result of the different and informal customary land tenure arrangement practices within Matururu and Kiawa villages.
4. Offer a set of recommendations for a more sustainable customary land tenure system for the cultivation of oil palm under CPB arrangements as a way forward to ensure customary tenure is not undermined while at the same time providing security of use rights to settlers.

1.5 Chapters of this thesis

After an overview of the topics covered by the thesis in this introduction, Chapter Two provides a background on the history of oil palm development in PNG. Specific discussion of the Bialla oil palm scheme is covered in Chapter Three. Chapter Four will outline the research methodology employed in field research for this study. Chapter Five presents the core discussion on CPBs; it uses the field data and critically analyzes the customary land sales in Matururu and Kiawa, focusing on the different waves of migrants entering Matururu and Kiawa and the changing patterns of land transactions to the present. Chapter Six focuses on the emerging issues and challenges identified as a result of the current informal land transactions between CLOs and migrant settlers on CPBs. In conclusion, Chapter Seven presents recommendations for a more sustainable CLT arrangement that can be implemented by landowners in Matururu and Kiawa and elsewhere in PNG.

Chapter: 2. History and background of oil palm development in Papua New Guinea

This chapter presents a brief history of oil palm development and a background description of current oil palm project areas in Papua New Guinea (PNG). A specific discussion on the development of oil palm smallholders in existing project areas will also be discussed apart from the general structure and operation of the oil palm industry. Further, this chapter also briefly discusses the significance of oil palm in PNG's economy.

Oil palm is cultivated in PNG in five provinces; including Hoskins and Bialla in WNB, Popondetta in Oro province, Milne Bay, New Ireland and Ramu in Morobe province. All oil palm projects operate on a nucleus estate – smallholder model. In this model, the smallholders⁵ harvest and supply oil palm fruits to a centralized oil palm mill, operated by a nucleus estate company which collects and processes smallholder oil palm fruit. Smallholders' production is an integral part of the nucleus estate oil palm developments in all existing projects. Two main categories of smallholders exist in WNB and Oro province: those residing on state agricultural leasehold blocks on the Land Settlement Scheme (LSS), and those growing oil palm on village customary land, known as Village Oil Palm (VOP) blocks. Land Tenure Conversion (LTC) blocks in Popondetta emerged as part of VOP development (Curry *et al.* 2007). Recently, customary land was being opened up for smallholding development under 'customary purchase blocks' (CPBs) in and around Hoskins and Bialla, and in Popondetta.

2.1 Brief History of oil palm in PNG

Oil palm is an introduced crop to PNG. The Germans who controlled the northern part of PNG in the late 1800s were the first to plant oil palm. In 1894 - 95 the Germans planted oil palm on the Rai Coast in Madang Province and later set up trial plantings near Popondetta in Oro Province (Sack and Clark 1979 and Landell Mills 1991, cited in Koczberski *et al.* 2001). In 1967, commercial planting began in PNG. At the time PNG was under Australian colonial administration, which opened up alienated customary land in various parts of PNG (Mugambwa 2007) for the development of estate plantations and for land settlement schemes (LSSs) to resettle rural people from land short areas of PNG. The LSSs were initially

⁵ Smallholder or Smallholdings in the case of this research refers to small blocks of oil palm plantation at the average of 5 hectares that are owned or cultivated by an individual or a family unit. In Oil Palm nucleus farming model, smallholders are mainly practiced under LSS, VOP, CPBs and LTCs arrangements.

established in the late 1950s to mid-1960s to cultivate crops other than oil palm; however, these early schemes suffered from setback such as lack of government supervision and basic management services.

The World Bank assisted and recommended that oil palm be developed commercially using a nucleus estate - smallholder model in the provinces of West New Britain or Bougainville (Grieve 1986, cited in Koczberski *et al.* 2001, 1). Following the World Bank's recommendation, the Australian colonial administration then subdivided alienated land into smallholdings adopting the nuclear estate. Initially, milling companies were jointly owned by the government and a private company. Management of the industry under such a model was shared between the government and the private sector respectively. The government in this joint venture was responsible for opening up large areas of alienated land, developing land settlement schemes, providing extension services, and generally regulating the industry. The company was responsible for managing and operating the processing mill, transporting and purchasing smallholder crop, marketing, growing and supplying seedlings to smallholders, and providing technical services to smallholders (Christensen 1986, cited in Koczberski *et al.* 2001, 3).

Smallholders' production is an integral part of the nucleus estate oil palm developments in all existing project areas. In the nucleus estate smallholder model, smallholders are set up around nucleus estate company's establishments and sell oil palm fruits to the company. In the operation of the oil palm industry, smallholders normally harvest their oil palm fruits (fresh fruit bunches and loose fruits) on a fortnightly basis. Fresh fruits are often stacked in piles of bunches and loose fruits. Loose fruits are also collected, mostly by women, and in most cases loose fruits often constitutes of up to 14 percent of the harvest. Piles of oil palm fruits are then weighed and transported to the company's mills for processing. Smallholders then receive payment either monthly or fortnightly depending on the project area. Prices paid to PNG smallholders are determined by world oil palm prices and a formula which is based on an agreed payment system between the government, the company and the growers associations (Koczberski *et al.* 2001).

The oil palm LSSs in WNB and Oro Provinces were developed based on land holdings of 6 – 6.5 hectares per block. Individual blocks are leased to holders under 99 years agriculture leases (Hulme 1984). Groups of approximately 130 - 320 blocks make up a LSS subdivision. Every subdivision has key government infrastructures set up to provide basic services to the smallholders in each division such as a primary school, health centre, community centre, agriculture extension office, market, stores, church, cemetery and recreational area. The local indigenous people surrounding a nuclear estate are also encouraged to set up Village Oil Palm (VOP) smallholdings. VOP smallholdings are often between 2 – 4

hectares in size and are awarded block numbers by Oil Palm Industrial Corporation (OPIC) according to a set scale based on the number of villages engaging in VOP development and the number of VOP within a village. For example; Matururu VOP is given number 10; thus the first VOP block in Matururu is 10-01 (OPIC Bialla 2008).

2.2.2 Hoskins oil palm project development, WNB

The Australian administration began implementing the oil palm nucleus estate-smallholder model in West New Britain Province (WNB) in the 1950s and 1960s along the North coast of WNB. After applying to develop the oil palm project under the newly designed model in 1966, Harrisons and Crosfield – a British company – entered in to a joint venture arrangement with the government in 1967 and registered New Britain Palm Oil Development Pty Ltd (NBPOD). In 1968 they established the first oil palm project under the nucleus estate-smallholder model in the Hoskins area of WNB (Hulme 1984). Apart from the nucleus estate and LSS smallholders, Village Oil Palm (VOP) blocks were set up. Since 1968, after the first LSS smallholders successfully settled in their respective leasehold blocks, Hoskins has 2,350 LSS blocks. VOP blocks also grew remarkably since customary land owners were encouraged to plant oil palm on their own customary land in 1970. Currently, (at the time of this research) there are 3,614 VOP blocks in Hoskins (Curry *et al.* 2007). Customary Purchased Blocks also increased from 857 in 2006 to 953 in 2008 (OPIC Bialla 2008).

Both the government and the company⁶ (now known as NBPOL) considered the newly developed Hoskins scheme as a pilot project (Longayroux 1972, 2 cited in Koczberski *et al.* 2001). The success of the Hoskins project eventually became the model for all other comparable nucleus estate-smallholder establishments throughout Papua New Guinea (Hulme 1984).

2.2.3 Bialla and Popondetta oil palm project development

Following the success of the Hoskins pilot project the government went on to establish similar oil palm nucleus estate and smallholder schemes in Bialla and Popondetta (Hulme 1984). The Bialla project

⁶ Since establishment, the company had grown by continually acquiring new areas within the province and expanding its project. It retains its entire name, however dropping off the word “Development”; as such it is now known as New Britain Palm Oil Limited (NBPOL (see www.nbpol.com.pg)). In October 1996, Kulim Malaysia Bhd acquired 80 percent of NBPOL shares from Harrisons and Crosfield.

retained all of the Hoskins project structures and was initially set up in 1972. A more detailed description of the Bialla oil palm scheme is discussed in Chapter Three.

Popondetta oil palm project was set up in 1976 after a decision was reached that the existing cocoa scheme in the area needed to be redeveloped as it failed to deliver the expected output. The government joint ventured with the British Commonwealth Development Corporation (CDC) subsidiary company - Pacific Rim Plantation Ltd - and formed Higaturu Oil Palm Plantation Limited (HOPPL). The project began in 1976 and a 4,500 hectares estate and processing facilities were established (Koczberski *et al.* 2001).

The smallholders residing on the LSS in Popondetta are made up of both migrant settlers from land-short provinces in PNG as those in Hoskins and Bialla, as well as existing cocoa settlers who were on state leasehold land before the introduction of oil palm. According to Koczberski *et al.* (2001), by the year 2000 about 1,045 LSS blocks were established. VOP blocks in Popondetta were on both the customary land and "land tenure conversion" (LTC) blocks. VOP development in Popondetta grew remarkably since the World Bank-funded "Oro Smallholder Oil Palm Expansion Project" in 1993 led to more than 7,840 new hectares being cultivated, increasing smallholder holdings to well over 13,000 hectares altogether (ADS (PNG) 2001, 17 cited in Koczberski *et al.* 2001, 8). As a result of increased investment on customary land, it is noted that about 5,191 VOP were organized by the end of 2005 (Curry *et al.* 2007).

2.2.4 Milne Bay, New Ireland and Ramu - Morobe oil palm development projects.

In 1985, the Milne Bay project started after the government approved 60 Million Kina⁷ (AU\$ 30) for the development of oil palm and cocoa scheme (Grieve 1986, cited in Koczberski *et al.* 2001). Milne Bay Ltd⁸ was formed under a joint venture between the government and Pacific Rim Plantation Ltd of CDC. Following Milne Bay project, New Ireland oil palm development began in 1998. A subsidiary company of Pacific Rim Plantation Ltd – Poliamba Pty Limited - operates the estate and oil processing facilities. Like Popondetta and Milne Bay, cocoa and copra plantations were replanted to oil palm. Poliamba Pty

⁷ Papua New Guinea currency

⁸ Milne Bay Estate Limited is now a subsidiary of Pacific Rim Plantations Ltd who also own and operate Poliamba Ltd and Igaturu Oil Palm limited. Pacific Rim Plantation is in fact a subsidiary of CDC (Gelda 2002).

Ltd completed 5,200 hectares of in 1992, (ADS (PNG) 2001, cited in Koczberski *et al.* 2001, 9). CDC estates have recently been purchased by Cargills Ltd.

Ramu Valley Oil Palm Development in Morobe province is the most recent oil palm project in PNG at the time of this research. It is operated by Ramu Agri-Industries Limited (RAI)⁹ - a PNG company active in sugar production and cattle raising. In March 2001 RAI submitted a proposal to the PNG Government to set up an 8,000-hectare oil palm plantation in Usino-Bundi in Madang province. Presently, about 6,500 hectares is operated by RAI. The project received government endorsement in October 2001 (Gelda 2002). RAI current land holding is approximately 30,000 hectares with over 4,500 productive hectares of oil palm plantations, an established mill and associated infrastructure (Ramu Sugar Annual Report 2007).

The VOP establishments in Milne Bay, New Ireland and Morobe account for all smallholding setups outside of company nucleus estates within these provinces. Records show that by 2001 Milne Bay had 536 and New Ireland about 648 VOP blocks (Curry *et al.* 2007). At Morobe, the latest province to establish an oil palm nucleus estate at the time of this research, approximately 1,500 hectares of oil palm are cultivated under smallholders' arrangements (Ramu Sugar Annual Report 2007). Table 2.1 summarizes established oil palm projects and their types of smallholders.

Table 2.1 Smallholders within the current oil palm project areas in PNG.

Oil Palm Project Areas in PNG.	Plantation (Company estate established)	Mini Estate	Smallholdings scheme			
			LSS	VOP	CPB	LTC
Hoskins	✓	✓	✓	✓	✓	
Bialla	✓	✓	✓	✓	✓	
Popondetta	✓		✓	✓	✓	✓
Milne Bay	✓			✓		
New Ireland	✓			✓		
Ramu – Morobe	✓			✓		

⁹ Recently, in this year (2008) New Britain Palm Oil (NBPOL) bought all of RAI shares and now owns RAI oil palm establishment

Future research will show whether or not CPBs will expand in the three provinces of Milne Bay, New Ireland and Morobe. Popondetta, Milne Bay and New Ireland have mini-estates under lease, lease-back arrangements¹⁰.

2.2.5 Growth and development of the smallholders' scheme.

According to ADS (PNG) (cited in Koczberski *et al.* 2001) by 2001 oil palm farming in PNG covered well over 100,000 hectares of which 43,000 hectares included smallholder holdings. With the inclusion of the newly developed Ramu oil palm project in 2006, with approximately 1,500 hectares of smallholder crop, and the continued growth of smallholder oil palm in WNB and other oil palm producing provinces, smallholder production continues to increase as a proportion of total oil palm production in PNG. For example, in 2005 alone, 1.9 million tonnes of oil palm were produced from approximately 125,000 hectares within WNB and Oro provinces. From this total, the smallholders were responsible for over a third of the production (Curry *et al.* 2007, 5). As a result of the growth within the five oil palm producing provinces between 2001 and 2005, smallholders' plantings increased to over 58,000 hectares by 2005 (PNG OPRA 2005).

A closer look at the oil palm industry continues to reveal signs of more active growth and expansion of smallholders over the last ten years. For example, NBPOL announced that in 2007 alone, the oil palm fruit production from the smallholder sector in the Hoskins project area had yielded a record high increase over previous years. The company purchases its fruit from 7,188 smallholders in the Hoskins area. The area under smallholder production covers 25,324 hectares; that is an increase of 855 hectares from 2006 to 2007 alone (NBPOL Annual Report 2007).

While there is continuous growth of the smallholding sector and increases in smallholders' contribution to the overall production of the industry, there will be no further expansion of the LSS schemes. The primary reason is the difficulty faced by the government to alienate customary land. As such, all further expansion in the smallholder sector is now restricted to VOP and CPBs (Curry *et al.* 2007).

¹⁰ Mini-estate under lease back arrangement is a model of oil palm estate development that is adopted by some oil palm milling companies in PNG. In that model, the customary landholding group is encouraged to form an "incorporated land group" (ILG) under the *Incorporated Land Group Act 1974*, and sub-lease their customary land (being identified to be developed) to the company on a 20 – 40 year lease. The landowning group would then benefit from the annual land rentals apart from a monthly royalty depending on the terms of their lease agreement.

2.3 Structure and operation of the PNG oil palm industry

Smallholders and the milling companies are the key stakeholders in the oil palm industry. The government's role in the industry has declined over recent years as it has sold its half share in most of the oil palm milling companies in PNG. However the government maintains its agricultural extension service delivery to smallholders through the Oil Palm Industry Corporation (OPIC). Apart from smallholders and milling companies, several other institutions also exist and play a vital role within the industry such as Oil Palm Industrial Corporation (OPIC), Papua New Guinea Oil Palm Research Association (PNG OPRA), Papua New Guinea Palm Oil Producers Association (PNGPOPA), and the Roundtable on Sustainable Palm Oil (RSPO).

Since the establishment of the industry, the government's Department of Primary Industry (DPI) that is now known as under Department of Agriculture and Livestock (DAL), played a vital role in providing all the necessary agricultural extension services. In 1992, the government established OPIC as a semi-government agency responsible for agricultural extension services that aim at raising smallholders' productivity in the industry. Presently, the OPIC Secretariat is based in Port Moresby (the capital city of PNG), with key project offices within the five major oil palm project sites in the country, (Curry *et al.* 2007). Government funding for OPIC has declined over the last decade and OPIC's major financial support comes from two levies: a smallholders' crop levy of K3.50/tonne (AU\$1.65/tonne), and a milling company levy of K3.50/tonne. Some funds are derived from international aid donors (Koczberski *et al.* 2001, 13).

Under its extension services role, OPIC mainly focuses on encouraging smallholders to increase productivity and provide advice and assistance to smallholders for improving their farming techniques and methods and make sure the general well-being of the smallholders is enhanced. Moreover, OPIC plays a pivotal role in working with the government (at national, provincial and local levels), milling companies, PNG OPRA, RSPO and smallholders to make sure the industry operates efficiently.

The Papua New Guinea Oil Palm Research Association (PNGOPRA) was formed in 1980 by the government, the companies and the smallholders' sector to meet the need of maintaining a single research institution offering research services throughout all the oil palm project sites. PNGOPRA is also

funded by smallholders' and company's levy, with additional funding assistance from overseas donors (Koczberski *et al.* 2001).

Papua New Guinea Palm Oil Producers Association (PNGPOPA) is an organization set up to represent the interests of companies operating processing mills and nucleus estates. Its primary role is to liaise with other stakeholders for the growth and development of the industry. The oil palm growers association (OPGA) is set up within all project areas to serve and represent the interest of smallholders ("growers"¹¹). It has representation on all relevant industry boards and committees to ensure smallholders' interests are taken into account in any new industry policies or developments.

The Roundtable for Sustainable Palm Oil (RSPO) is an international body recently influencing policies and practices within the PNG Oil Palm industry. Its role is to focus on monitoring ecological degradation through promoting sustainable and environmentally friendly farming techniques. Its principal objective is to work with companies and other key stakeholders in promoting a more sustainable palm oil industry with a key focus on addressing concerns about the loss of rainforest, biodiversity, land rights disputes, labour rights, and poverty reduction (NBPOL Annual Report 2007).

2.4 Importance of oil palm in PNG economy

Since it was introduced in the late 1960s, oil palm has become one of the most successful export cash crops in PNG. Oil palm development has grown by 10 percent every year from 1980 to 2000, and since 2001 it generated more export revenue than other major export cash crops in PNG, including coffee, copra, and cocoa (Pacific 2020 2006). On average, approximately A\$200 million entered PNG's economy as oil palm revenue per year between 1980 to 2000. (Pacific 2020, 2006:103). In a recent PNG economic study, Warner and Omuru (2008) highlighted that the PNG economy between 2000 and 2007 had grown steadily, with agriculture - expanding at the rate of 2.9 percent a year since 2002 - contributing one third of that growth. Comparing DAL data from 1990 to 2000, Koczberski *et al.* (2001) observe that oil palm has become one of the fastest growing cash crops in PNG and that by 2000 oil palm exports amounted to about 32 percent of PNG's total agriculture export value and 5 percent of PNG overall exports. In similar comparison recently, Warner and Omuru highlighted that oil palm gained more than 30 percent of the total agriculture export between 1991 and 2007 (Warner and Omuru 2008).

¹¹ The term "growers" are often used interchangeably with the term smallholders. In this thesis "growers" will not be often used.

Globally, PNG oil palm exports account for 1.0 percent and is ranked sixth behind Malaysia (50 percent), Indonesia (33 percent), Nigeria (3 percent), Thailand (2 percent) and Columbia (2 percent) (Oil World Annual Report 2001, cited in Gelda 2002) (see Table 2.2). However, it is noted then that PNG's potential to increase its contribution to global production is feasible due to the continual growth and expansion of the oil palm industry (Gelda 2002). Most of the growth is predicted to come from smallholder expansion, the opening up of more customary land within existing project areas, improved farming techniques and more provinces integrating oil palm development.

Table 2.2 Crude palm oil production per country between 1995 - 2001

Crude Palm Oil CPO production per country (in 1,000 metric tonne)									
Country	1995	1996	1997	1998	1999	2000	2001	Growth	Share
Malaysia	7,811	8,386	9,057	8,315	10,553	10,840	11,804	51%	50%
Indonesia	4,220	4,540	5,380	5,100	6,250	7,000	7,700	82%	33%
Nigeria	660	670	680	690	720	740	770	17%	3%
Thailand	354	375	390	405	495	525	550	55%	2%
Colombia	388	410	441	424	501	524	547	41%	2%
PNG	223	272	275	210	264	336	330	48%	1%
Ivory Coast	285	280	259	275	282	266	247	-13%	1%
Ecuador	180	188	203	205	240	238	240	33%	1%
Others	1,089	1,161	1,206	1,224	1,274	1,354	1,387	27%	6%
World Total	15,210	16,282	17,891	16,848	20,579	21,823	23,575	55%	100%

Source: Oil World Annual Report 2001 cited in Gelda, 2002.

On-going support by the government and financial assistance by international donors such as the World Bank has directly lead to the expansion of oil palm, especially in the smallholder sector. Private investments by existing milling companies have also contributed significantly to expansion in existing project areas. For example, between 1999 and 2000 alone NBPOL spent well over 100 million Kina (Au\$35 million) on expanding its plantations and building new crude palm oil (CPO) milling factories (Koczberski *et al.* 2001). In 2001 the company also built the first oil palm refinery plant in PNG, and a newly-built milling factory at its Numondo plantation that has a capacity to process 60 tonnes of fruits per hour (NBPOL Annual Report 2007).

The growth in the oil palm industry over the last two and a half decades has provided a significant boost to local rural economies. The performance of the industry has persuaded recent successive governments to focus on expanding the development of the industry to other PNG coastal provinces. As such, feasibility studies have been carried out accordingly by the private sector, the national government, provincial governments and landowners in other provinces. Presently negotiation and primary arrangements are underway with customary landowners and provincial government for oil palm development projects in the East Sepik (Fito 2008).

Chapter: 3. Bialla oil palm scheme

This chapter focuses specifically on the Bialla oil palm project area. Discussions in this chapter include: level of oil palm development, major stakeholders of the oil palm industry in Bialla, and the impact of oil palm on the livelihood of CLOs and migrant settlers. A brief discussion on population and land issues will conclude discussions in this chapter. It is hoped that a familiarity of the oil palm industry and its development in Bialla will enhance an understanding of its influence and impact on customary land tenure practices that will further be discussed in the Chapter Five, Six and Seven of this thesis.

3.1 Background to the Bialla oil palm scheme

The Bialla oil palm scheme is located in Bialla District on the far north-eastern end of WNBPP bordering Pomio district of East New Britain Province (ENBP) towards the east and Hoskins to the west. It extends over the volcanic slopes between Whiteman range and the coastline and is sub-divided into three district administrative zones; Central Nakanai (Ceneka Local Level Government (LLG)), Bialla (Maututu LLG) and East Nakanai (Meramera LLG). (see Figures 3.1 and 3.2)

The Bialla oil palm scheme adopted most of the structure and operational format of the Hoskins nucleus estate and smallholder model. In 1972 the Bialla oil palm project was set up in an agreement between the government and a Japanese milling company. However, the project did not start due to a disagreement between the government and the Japanese milling company. In 1977 the government signed an agreement with a new company known as SIPEF (Belgium) and Warrens (United Kingdom) (Christensen 1986, cited in Koczberski and Curry 2003). Hargy Oil Palm Limited (HOPL) was formed as a joint venture company between SIPEF and the PNG government. The government subdivided the alienated land surrounding the company estate plantation into LSS sub-divisions and settled successful applicants on state leasehold blocks from targeted land-short provinces. In 2003 SIPEF Belgium completed the acquisition of all government shares, leaving HOPL 100 percent owned by SIPEF (Koczberski and Curry 2003).

Since its establishment in 1972, the Bialla oil palm scheme has grown remarkably, especially the expansion of smallholder holdings, namely on the LSSs, Village Oil Palm (VOP) blocks and, to a lesser

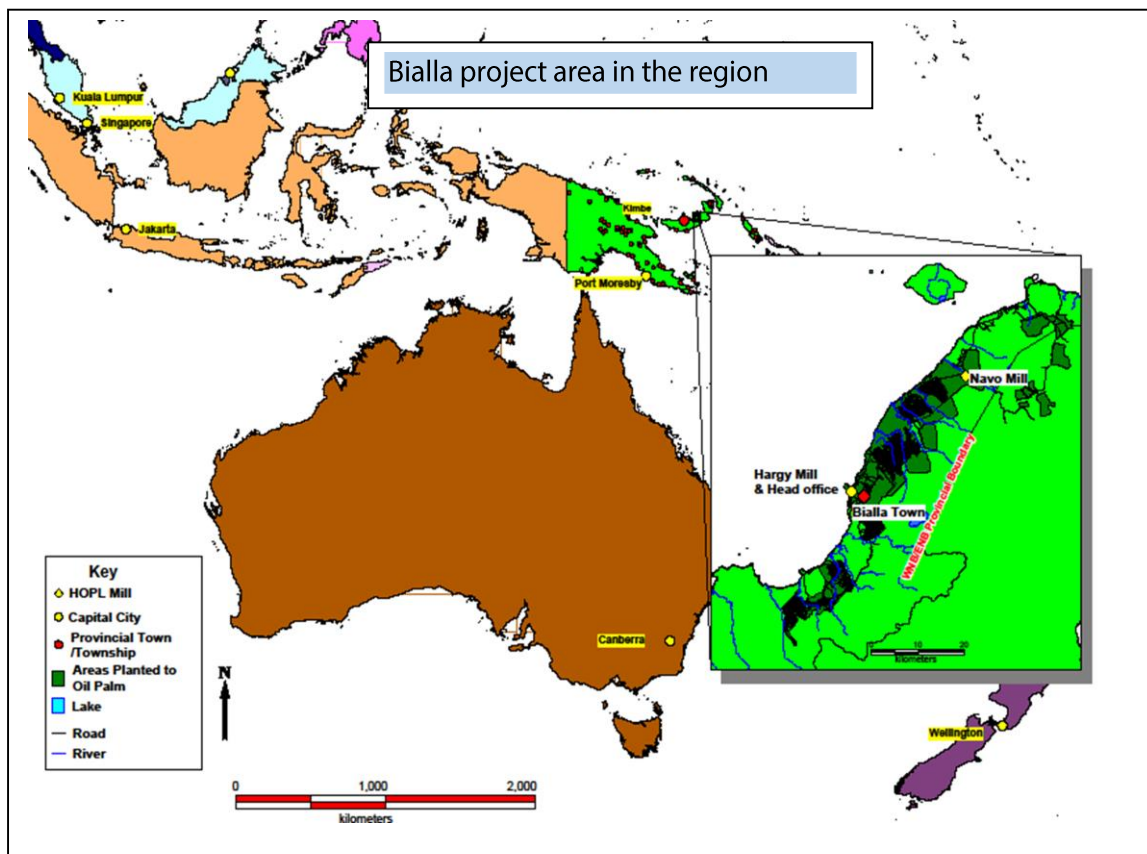
extent, Customary Purchase Blocks (CPBs) (see table 3.1.) Independent estates (IE)¹² (see section 3.1.1) also began to develop in the late 1990s. Presently, more than 20,000 hectares from central Nakanai through to east Nakanai are cultivated, of which over 13,000 hectares (65 percent) are smallholdings, including independent estates (HOPL 2007). Natural disasters such as earthquakes, volcanic activity, flooding and extended dry seasons occur in the area and are amongst some of the major adversities affecting production in the area. According to Koczberski & Curry (2003), oil palm production in Bialla in 2002 was 236,366 tonnes of which smallholders were responsible for about 54 percent. In 2008, OPIC Bialla recorded an average production rate of 12,700 tonnes of fresh fruit bunches per month from smallholders of which LSS contributed 9,900 and VOP 2,800 tonnes. In the whole year OPIC recorded an estimate of 152,400 tonnes of smallholder crop, which is well over 50 percent of the total production.

Recent HOPL data (Table 3.1) reveal that the number of LSS blocks has increased to 2,016, VOP to 1,491, and Independent Estates to 30, totaling 3,598 blocks. OPIC - Bialla¹³ reports an additional 228 VOP blocks are being developed, which will increase the current number of VOP blocks (as recorded by HOPL) to a total of 1,782. CPB developments in Bialla are new, and as such are not defined by the industry separately, but are classified as VOP blocks as they are developed on village customary land. There are approximately 61 CPBs in Mataururu and Kiawa that have acquired VOP status. Moreover, small pockets of CPBs are identified in other villages around the Meramera area of Bialla; however OPIC information on these CPBs is lacking. There was insufficient time for this research field study to acquire information of CPBs existing beyond Mataururu and Kiawa villages. Therefore, discussions about CPBs in this thesis will involve only the case study of Mataururu and Kiawa villages, which reportedly have the highest number of CPBs within the Bialla Oil Palm Scheme. Given the current trend of development, Bialla scheme advancement, strengths and future development continue to depend on the smallholders (Kausa, P. pers. Comm., December 2007).

¹² Individual estate (IE) is a new term used within Bialla oil palm project area and other areas as well to describe the “community oil palm estate development (COPED). IE is the alternative model to Mini Estate (ME). In IE model the community develops and manages their own oil palm estate, thus benefit directly from the sales of the oil palm. The company only provide technical assistance loan whenever needed. The sizes of IE can range from 30 – 300 hectares. IE or ME tenure arrangements will not be discussed in detail in this thesis.

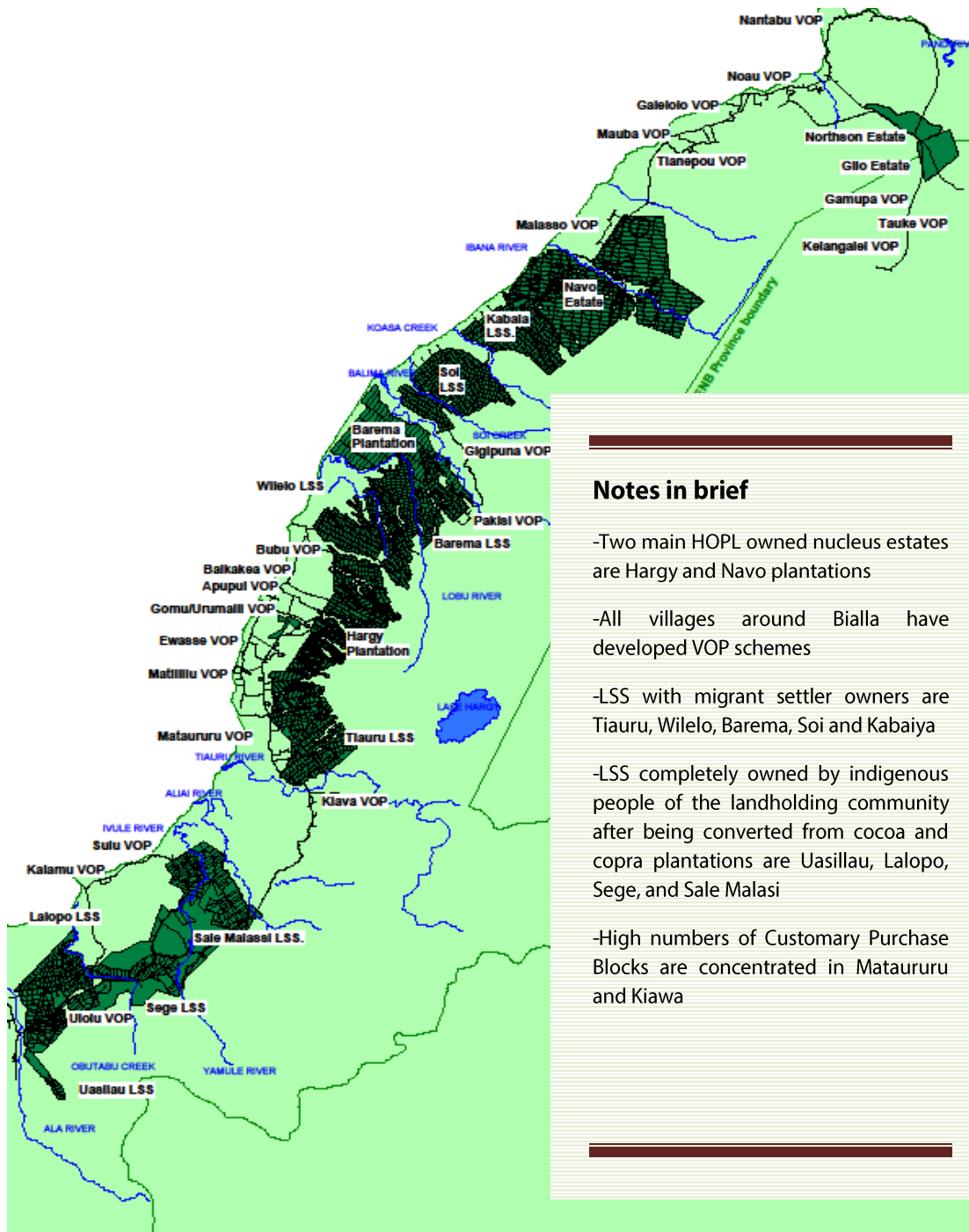
¹³ OPIC project office that administratively manage smallholders extension services around Bialla oil palm project area.

Figure 3.1 Bialla oil palm project area in Papua New Guinea and the region.



Source: Hargy Oil Palm Limited, 2007

Figure 3.2. Map showing Bialla oil palm project area in WNB



Source: Hargy Oil Palm Limited, 2007

Table 3.1 Number of smallholder blocks in the Bialla oil palm scheme.

<i>LLG</i>	<i>Location</i>	<i>Division</i>	<i>LSS</i>	<i>VOP</i>	<i>I. Estates</i>	<i>CPBs</i>	<i>TOTAL</i>
Ceneka	Central Nakanai	Uasilau	196				
		Lalopo	135				
		Malassi	230				
		Sale	92				
		Sege	79				
		Ulolu		48			
		Kaiamu		101			
		Sulu		35			
		Independent Estate			9		
		TOTAL	732	184	9	0	925
Maututu	Bialla	Tiauru	221				
		Wilelo	312				
		Barema	204				
		Kiawa		74		23	
		Mataururu		44		38	
		Matililiu		92			
		Ewasse		67			
		Gomu/Urumaili		68			
		Apupul		44			
		Baekakea		42			
		Bubu		61			
		Pakisi		36			
		Independent Estate			10		
		TOTAL	737	528	10	61	1336
Meramera	East Nakanai	Soi	317				
		Kabaiya	230				
		Noau		292			
		Gigipuna		48			
		Galelolo		39			
		Tianepou		105			
		Kelangalel		51			
		Gamupa		124			
		Mauba		52			
		Malaso		21			
		Nantabu		18			
		Tauke		29			
		Independent Estate			11		
		TOTAL	547	779	11	0	1337
		OVERAL TOTAL	2016	1491	30	61	3598

Source: Hargy Oil Palm Limited 2007.

The key stakeholders within the function and operation of the Bialla scheme include OPIC – Bialla, Hargy Oil Palm Limited (HOPL) and smallholders.

3.1.1 Hargy Oil Palm Limited (HOPL)

HOPL has a total of 6,315 hectares of estate plantation and maintains its capacity to process fresh fruits bunches (FFB) from well over 13,000 hectares of smallholder oil palm. Koczberski and Curry (2003) note that over the past decade the company has undertaken a number of key developments, including:

- The expansion of its plantation at Navo¹⁴ to an additional total of 3,853 hectares
- Replanting around its existing plantation
- Enhanced the processing capacity of its Bialla mill to produce 45 metric tonne of fresh fruits bunches per hour (45 Mt-FFB/hr)
- Completed construction of a new mill at Navo with the same processing capacity as the existing Bialla mill.

Unable to access additional state leasehold land to further develop its plantation estates, HOPL supported landowners to formalize management of their customary land to develop Independent Estates with sizes ranging from 20 to over 600 hectares (Koczberski and Curry 2003). This particular model began as the “Community Oil Palm Estate Development” (COPED), and later changed to “Independent Estates” (IE). Under the IE model the landholding communities are encouraged to develop and manage their own oil palm estates while the company assists with technical and transport support, apart from a start-up credit support package as well (HOPL 2007).

Since being encouraged to develop, the IE model appears to be the favoured model for most landholding groups. It provides an alternative model to the lease, lease-back model¹⁵ adopted by other oil palm processing companies in PNG. The major difference is that under the lease, lease-back model the land owners sub-lease registered customary land to the milling company for the period of 20 to 40

¹⁴ Navo is the local name of HOPL nucleus estate setup and its second oil mill processing factory towards the far eastern end of Bialla.

¹⁵ In the lease, lease-back (LLB) model, the landowners are encouraged to form ‘Incorporated Land Groups’ (ILG) identify their land sub-lease it to the oil palm milling companies for the maximum of 40 or 50 years and benefit from rental fees, annual lease fees and or royalties.

years. Milling company funds the development and maintenance of the plantation estate and manages the estate. In return, the land owners are paid royalties either on monthly or annually, apart from the annual lease rentals from the company that they sub-leases registered customary land. For IE farmers, the landowning group funds the development and maintenance of the estate and, after bank and company loan deductions, enjoys maximum benefit directly from selling the oil palm fruits to the milling company. The landowning group also manages the estate. HOPL presently records that there are about 30 IEs existing in the Bialla oil palm project area (Koczberski and Curry 2003). Due to the specific nature of this thesis, IE and other estate tenure arrangements will not be discussed further in this thesis.

3.1.2 Bialla - OPIC

OPIC Bialla administrative office is located at Baubata Station¹⁶ and is managed by a project manager and a team of divisional managers and field officers. Financial constraints over the recent past caused a major cutback to resources and staffing. OPIC – Bialla has been left with 13 staff, which is around 50 percent below its expected officers needed to maintain effective extension services. Also lack of government assistance in maintaining existing project infrastructure such as roads and other social services also affects OPIC services. However, at present, renewed funding from the government, the HOPL levy, and smallholder levy has gradually increased OPIC staffing and services to smallholders (P. Kausa, pers. comm. December, 2007). A Local Planning Committee (LPC), which includes representative from OPIC, HOPL, Bialla Oil Palm Growers Association, PNG OPRA, National Development Bank (NDB) (previously known as Rural Development Bank) meet on a monthly basis to discuss smallholders and OPIC issues along with its working policies.

Over the past 10 years a number of significant developments have occurred in Bialla OPIC Including:

- In 1998, OPIC assisted in developing and integrating the “mama¹⁷ loose fruit” scheme as a harvesting practice which encourages women to be actively involved in household oil palm production. Under the scheme, women pick and sell loose oil palm fruits and are paid separately from men. According to OPIC and HOPL, the “mama loose fruit scheme” produced about 15 percent of the total production in 2001 (Koczberski and Curry 2003). There was a significant increase in the mama loose fruit scheme production in 2008. OPIC recorded 21 percent of the total production.

¹⁶ Baubata Station is OPIC office location in Bialla oil palm project area.

¹⁷ The term ‘mama’ in tok pisin (PNG’s lingua franca and a variety of pidgin-English) refers to mother.

- In 2008, OPIC introduced a smallholder payment card known as 'Smallholder Mobile Card' as the most recent OPIC smallholder intervention to assist smallholder farmers pay for hired labour and family labour working on family oil palm plots.
- Presently, OPIC is preparing to extend into new projects in areas towards the eastern end of the district through to Open Bay in East New Britain Provinces (OPIC – Bialla 2007).

3.1.3 Bialla smallholders

Smallholders in the Bialla scheme are located on government LSSs and on customary land under VOP and Customary Purchase Blocks (CPBs). The LSS in Bialla was the second oil palm settlement scheme in PNG to be established after the Hoskins project, and adopts similar arrangements to those introduced in the Hoskins scheme mentioned in Chapter Two. Settlers ascertained a 99 year lease on holdings of between 6 – 6.5 hectares and were given a loan from the then PNG Development Bank that covered the cost of oil palm seedlings, housing, tools, land rent and initial living expense for the early period before the first harvest (Jonas 1972, Hulme 1984, cited in Koczberski and Curry 2003). The first LSS subdivision was Tiauru, followed by Wilelo and Barema. Later, cocoa and coconut blocks at Sege, Sale Malasi, Uasilau and Silanga were also replanted with oil palm and converted to oil palm LSS subdivisions. Two new recent LSS subdivisions in Bialla Scheme were Soi and Kabaiya. These were established in 1991 following an Asian Development Bank (ADB) loan (Koczberski and Curry 2003).

The choice of settlers who applied for the leasehold blocks for each of the first three LSS sub-divisions (Tiauru, Wilelo and Barema) was the same as that of Hoskins. Settlers were selected from provinces experiencing land pressures such as; East Sepik, Morobe, Simbu, Eastern Highlands and East New Britain Province (ENBP). Local land owners were encouraged to occupy the redeveloped cocoa and copra blocks. Applicants for leasehold blocks on the newly developed Soi and Kabaiya subdivisions had to meet a different set of selection criteria from earlier applicants on the initial subdivisions. Priority was given to WNBK applicants, followed by ENBP and the sons and daughters of first and original settlers of older sub-divisions in Hoskins and Bialla project areas (Koczberski and Curry 2003).

VOP blocks in Bialla were established in 1980 and grew rapidly in number over the next five years. By 1986 OPIC - Bialla recorded that 244 blocks were fully established (Koczberski and Curry 2003). Presently, VOP developments are amongst the fastest growing smallholder scheme (see Table 3.1). All future

smallholder oil palm developments will be VOP or CPB blocks on customary land because there is no more state leasehold land available.

3.2 Livelihood strategies within the oil palm development areas – Bialla.

Although the Bialla Scheme has experienced positive growth and expansion over the years, smallholders continue to pursue other means of accessing additional income either on or off their oil palm blocks to support their livelihoods. Livelihood strategies in this case refer to the different economic, household and customary activities that smallholders are involved in. Oil palm is one economic livelihood strategy that smallholders utilize to satisfy their socio-economic needs. Apart from that, Koczberski and Curry (2003) reveal a number of non-oil palm economic activities in which smallholders invest labour, effort and time to generate additional income. They are:

- cocoa and copra production.
- Small business enterprises such as poultry, canteens and passenger motor vehicles (PMVs).
- Off-farm employment such as working with government organizations or private companies such as HOPL.
- Informal marketing of garden produce.
- The sale of betel nut¹⁸; in 2002 alone, about 17 percent of smallholders in Bialla claimed that betel nut sales were the second or third significant source of household income (Koczberski and Curry 2003).
- The sale of kerosene.

Smallholders also allocate substantial time to subsistence gardening for their own consumption and sale at the local markets, and to customary activities, such as raising bride wealth and mortuary payments.

3.3 Population growth and land issues

One reason why some smallholders pursue income sources other than oil palm is because of the increase in the population residing on the oil palm block, especially on the LSS blocks. For example, based on an assessment of the relationship between numbers of non-oil palm income sources and

¹⁸ Seed of betel palm; chewed with leaves of the betel pepper and lime as a digestive stimulant and narcotic in south-eastern Asia and across Melanesia in the Pacific. Betel nut is widely chewed across PNG.

mean block population on the Bialla and Hoskins LSSs, Koczberski and Curry (2003) found that economic diversification among LSS smallholders was primarily influenced by population pressure (see Table 3.2).

Table 3.2 Number of non–oil palm income sources by mean block population for Bialla and Hoskins LSSs.

	Mean Population per LSS Block		
LSS Scheme	One non-oil palm income source	Two non-oil palm income source	Three or more non –oil palm income sources
Bialla LSS	9.4	10.1	12.2
Hoskins LSS	11.2	13.1	15.9

Source: Koczberski and Curry (2003)

Income security for smallholders with a growing population apart from the fluctuating oil palm commodity prices is one of the main reasons why many smallholders continue to pursue other income options.

National Census population figures for 2001 (cited in Koczberski *et al.* 2009) shows WNBPs has a 3.7 percent annual population growth, which is amongst the highest population growth rate in PNG for the period 1980 to 2000. The high population growth rate resulted from in-migration and high fertility rates. Koczberski *et al.* (2009) further noted that population density on the Bialla LSS increased considerably from 5.9 persons per block in 1970s to 11.1 persons per block in 2002 (Koczberski *et al.* 2009).

Population and economic pressures on LSS blocks are also leading to increasing numbers of settlers searching beyond the LSSs for land on which to plant oil palm. For example, on the LSS access to land is limited beyond the 6 hectares leasehold blocks and the conditions of the lease specify that at least 4 hectares of the block be planted to oil palm, thereby restricting the planting of other commodity crops. As such, the second and third generations of settlers within the Bialla LSS often face problems such as:

- Disagreements over the rights to harvest and the distribution of income generated from the sales of FFB or loose fruits.
- Land shortages for subsistence cropping or gardening.
- Family disputes and conflicts.
- Overcrowding.
- Lack of food, basic necessities and insufficient income to meet the needs of the growing population on the block.

Moreover, Koczberski and Curry (2003) observe that the second and third generation settlers on the LSSs who are not able to access or retain land and resources in their home provinces will continue to reside on the LSS blocks. This leads to increase population on the LSS blocks, resulting in the search for alternative land to establish economic livelihoods in WNBPs. For an increasing number of second and third generation LSS settlers, the 'purchase' of customary land to plant oil palm is one such livelihood strategy.

Chapter: 4. Research methodology

This chapter describes the methodology employed in the field study of this research under the following four sub-headings: research problem; case study area; ongoing land tenure problems that influence the study; and key aims of this study along with research questions and the research design and data collection methodologies. All data collected for the thesis were done during fieldwork in Matururu and Kiawa villages while I was employed as a research assistant on a larger research project on migration and land issues in PNG led by Curry and Koczberski. Prior to field work and data collection the researcher's ethics committee's approval was granted, accordingly permitting the collection and use of field data in this study (see Appendix 4.1).

4.1 Research problem

This study and its specific focus builds on existing research on land tenure disputes emerging on oil palm holdings planted by migrants on customary land (see Koczberski *et al.* 2001, Koczberski & Curry 2003; Curry *et al.* 2007). These studies identify the growing number of migrant smallholders 'purchasing' customary land to plant small holdings of oil palm under Customary Purchase Block (CPB) tenure arrangements. Curry *et al.* (2007) particularly analyze current land tenure practices being incorporated in the oil palm industry and highlight potential land tenure problems that may emerge during infill¹⁹ and replanting²⁰ of oil palm in the current and new development sites within oil palm project areas. Of all the problems emerging under the different types of land tenure arrangements (see Chapter 1), Curry *et al.* (2007) stress that the security of ownership and usage of customary land for oil palm cultivation by non-core members of the landholding groups such as migrant settlers remain as one of the major sources of ongoing land disputes and conflicts (Curry, *et al.* 2007: 16).

In the Bialla oil palm project area in general, and Matururu and Kiawa in particular, major modifications have occurred to customary land tenure practices over the last 30 years. Migrants purchasing customary land to develop CPBs face varying degrees of land tenure security. Similarly, customary land owners (CLOs) are confronted with a number of socio-economic pressures, (such as the need for income to

¹⁹ Infill refers to planting of oil palm seedlings in a newly developed area.

²⁰ Replanting refers to planting of oil palm seedlings in areas where mature oil palm reaches their maturity and has been cleared. Most replanting normally happens after 20 years of infill planting.

improve livelihoods) to 'sell' or informally 'lease' land to migrant settlers. My family were the first migrants to acquire and 'purchase' land from the customary owners in Matururu villages in 1975 and have thus far witnessed a great deal of changes relating to customary land 'sales'. Besides, we have experienced disputes, challenges and issues relating to our right to own and use customary land, despite establishing a long-standing relationship with the landowning group and apart from meeting other informal tenure expectations (such as participating in customary obligations) and payments made for the portion of our acquired land. (see Case study 1).

Likewise, a lot of migrant families who 'purchased' customary land following our example, though they may have unique personal experiences since settling on their CPBs, continue to face similar challenges over their right to own and use customary land. On the other hand, a younger generation of CLOs which face potential land shortages as a result of informal land 'sales', are seeking to claim all land that is currently under informal tenure arrangements. Such land tenure issues and challenges are predicaments this study is eager to explore.

4.2 Key research questions

Beyond the increase in the number of CPBs lie complex ways in which land owners and migrants settlers enter into land transaction agreements that need thorough investigation. Reflecting on the experiences of Matururu and Kiawa customary land deals and inspired by existing research on CPBs in the Biella District, this research seeks to critically understand the pragmatic deals and arrangements permitting the use of customary land for the development of smallholder oil palm on CPBs in Matururu and Kiawa villages. The main focus of this study attempts to critically explain the following key research questions:

1. What kinds of agreements, terms and conditions do the customary land owners and CPB owners conform to when engaging in selling and purchasing customary land for the development of oil palm smallholdings?
2. What are the advantages and disadvantages of the different types of CPB arrangements operating between customary landowners and migrant settlers?
3. How do members of the landowning groups decide on what area of land is to be 'sold' to outsiders²¹, and how are benefits shared among the members of the landowning groups?

²¹ The term "outsiders" in this study is adopted from the manner it was used in the previous study (see Koczberski *et al.* 2009), which refers to people outside of landholding groups who acquired customary land and live within the community but are not well embedded to the society. The term "insiders" is often used as the opposite to outsiders – in the case where foreigners are culturally and socially well integrated in to the land owners' community by being able to speak the language, participate in community activities etc.

4. Why does customary land acquired by migrant settlers and others outside of the landholding group appear to be insecure?
5. What can be done to improve the current CPB arrangements at Bialla within Matururu and Kiawa villages that would offer sustainable and secure tenure rights for the purchaser/user, whilst protecting the interests of the Customary Land Owners?
6. What model of land usage rights would work satisfactorily to the desire of both the purchasers and customary land owners?

4.3 Research design and data collection methodologies

The above research questions were incorporated into a mixed qualitative and quantitative methodological framework that comprised questionnaire surveys, informal and formal interviews, and group discussions. The targeted respondents of this study are the customary land owners (CLOs), migrant settlers (including the sons and daughters of LSS smallholders) who subsequently 'purchased' CPBs, and OPIC extension officers along with HOPL employees involved with smallholder production. The fieldwork for this study took place in Kiawa and Matururu villages over a four-week period from 2nd December 2007 to 2nd January 2008.

The fieldwork began with meetings and interviews with OPIC officers and HOPL senior employees to purposely outline the objectives and purpose of the study as well as soliciting the required field assistance. An OPIC extension officer who works with oil palm smallholders in Kiawa and Matururu conducted awareness sessions amongst the landowners, CPB and VOP owners two weeks prior to the field research. The officer then accompanied the researcher to all the CPBs and VOP blocks within Kiawa and Matururu. OPIC also provided necessary transportation to all the CPBs around the research site (Matururu and Kiawa) as well as providing other logistical support such as office space to conduct interviews and meetings with OPIC staff.

A multi-method approach was used for data collection because it was considered most appropriate for examining various customary values, the social interaction between customary landowners and migrants, economic and institutional factors, demographic issues, migration trends and land tenure disputes as experienced by the research participants and the communities at the research sites. Apart from the primary data sources, secondary data from recent publications and data provided by institutions such as the PNGOPRA, the PNG Land Reform Commission (PNG – LRC), and HOPL were also integrated respectively.

Although a multi-method approach was utilized, qualitative methods were preferably used in gathering information from the key respondents, CLOs and CPB owners for the following reasons:

- Qualitative approach enables the gathering of other valuable surrounding data such as the gestures, emotions and psychological attributes that are being expressed apart from the specific or targeted responses.
- The primary respondents – CLOs and CPB owners appear to be more comfortable in participating in informal discussions, interviews and meetings where they become very expressive, rather than having to write answers/responses on paper.
- Qualitative methods are more compatible with the culture of the participants and or respondents. A common practice in the Melanesian culture to which the targeted respondents belong is that people do not normally provide direct answers to questions as expected by surveys etc, instead they often tell a story to answer a simple question or provide an indirect answer.

4.3.1 Meetings

Five community meetings were held with Matururu CPBs owners, Kiawa CPBs owners, Kiawa land owners, Matururu land owners, and elders from neighboring villages such as Matiliulu, Ewasse, Gomu and Rumaili who have an interest in or secondary rights to some of the land sold to outsiders (see Appendix 4.2). Numbers of people who attended those meetings varied from 6 to 15 with more male attendees than females. The primary purpose of the meetings was to inform the smallholders, customary land owners and general community at large about the research and its objectives as well as soliciting their general views regarding the subject.

4.3.2 Questionnaires

A survey questionnaire was used to obtain basic information from the selected customary land owners in Matururu and Kiawa villages and the current settlers on CPBs. Forty participants in total were selected to participate in the survey questionnaire and interviews. Of the 40, 20 were CLOs and the other 20 selected from the existing 61 CPB owners in the two villages. From the 20 selected CLOs, 10 were chosen from Kiawa and Matururu villages respectively. Similarly, 10 CPB owners were selected from around Kiawa areas and the other 10 from Matururu land area.

The selection of the participants for the survey questionnaire was based on one or more of the following criteria:

(A) Customary landowners

- Principal landowner
- Clan leader who is active in making decisions regarding land transactions
- Member of the land owning group clan
- Family member of the principal land owners

(B) CPB Owners

- Principal owners of CPBs who entered into the land arrangement that gave him/her the rights to use the customary land
- Family members of CPBs owners (spouses and dependents)

Despite selecting the participants for the questionnaire based on the above criteria, the researcher also involved other additional participants who voluntarily sought out the researcher to contribute to the study.

The questionnaire is divided into three main parts: part 1 focuses on the responses from the CPB owners; part 2 is directed to CLOs; and, part 3 accommodates responses from both CPBs owners and CLOs. The table below further outlines the specific sections of the questionnaires under its 3 main parts.

Table 4.1 Three major sections of the research questionnaire

Part 1. Migrants settlers on CPBs or CPBs Owners	Part 2. Customary Land Owners (CLO)	Part 3. Critical assessment of CPB arrangement by CPB owners and CLO
(a) History of migrant settlers, (b) Migrant's relationship, familiarity and levels of participation with customary land owners' cultures, customs, rituals and community activities, (c) Customary land purchase arrangements, (d) Sustainability of the tenure arrangements (e) Advantages and disadvantages of land arrangements	(a) Reasons for the sale of customary land and the tenure arrangement used in the sale of land, (b) Relationship with the CPBs owners, (c) Sustainability of the customary land sale arrangement, (d) Advantages and disadvantages of selling customary land as perceived by the CLOs.	(a) General assessment of the current CPB tenure arrangements, (b) Collective opinions and actions of / on improving the current CPB tenure arrangements.

(See Appendix 4.3 for a sample of the questionnaire)

The survey questionnaires were completed with the help of the researcher in cases where the respondents lacked basic literacy skills to understand the questions and the general meaning and expectations of the questionnaires. All surveys were conducted in Tok Pisin²² - the language all respondents are familiar with.

4.3.3 Interviews

Formal and semi-formal interviews were the second major means by which data were sourced. Participants of the interviews include the CLOs, CPBs owners, LSS smallholders, Oil Palm Industrial Corporation (OPIC) officers, the District Lands Officer, Hargy Oil Palm Limited (HOPL) officers, and the PNG Land Reform Commission senior officer (see Appendix 4.4 for details). For the sake of interpreting the data accurately, all the interviews were recorded and transcribed. Formal interviews with CLOs and CPB owners were conducted following the completion of the survey questionnaire, whereby set questions were asked and the interviewee's responses were recorded. In these formal interviews, CPB smallholders and CLOs were encouraged to express their views about the current land tenure practices,

²² *Tok pisin* is the lingua franca of PNG. *Tok pisin* inherited English linguistic structures.

problems arising as a result of the informal nature of the arrangements and their thoughts on the future sustainability of the current land tenure arrangements.

Semi-formal²³ interviews were conducted to accommodate opinions, views, concerns and experiences of other members of the communities regarding the current emergence of CPBs in the research sites. The interviews provided reliable in-depth qualitative data relating to:

- Formal and informal approaches to acquiring and using customary land.
- Level of insecurity involved in current customary land tenure practices underpinning Customary Purchase Blocks.
- Weaknesses in the current governments systems, OPIC management regime and company regulatory practices relating to properly incorporating CPB arrangements within the parameters of the existing legal and formal land system of PNG.
- The advantages and disadvantages of the CPB arrangements.
- Current disputes and potential future disputes relating to land ownership and its general value amongst the customary land owners and between CLO and CPB owners.
- General suggestions for more sustainable land arrangements on CPB practice that would protect the settlement and usage rights of the CPB owners and protect the CLOs' rights and offer them economic benefits.

The interview conducted with the OPIC officers, HOPL officers, government officers, Local Level Government (LLG) officers concerned the corporate policies, management and regulative measures affecting the growing numbers of CPBs and potential strategies for minimizing the risks of disputes and maintaining stable oil palm production. Due to time constraints, interviews with CPB owners and CLOs outside Mataururu and Kiawa was not practically feasible; instead OPIC officers were interviewed to gain a wider cross-section of CPB tenure arrangements across Bialla District.

4.3.4 Women's survey and interviews

A short survey was conducted to assess women's roles as land owners under their customary matrilineal inheritance system and whether or not matrilineal principles are still significant in the present situation

²³ The term semi – formal in this case refer to interviews conducted with people outside to the targeted respondent's groupings who expressed their personal opinions on CPB development in the area.

where customary land tenure is being transformed (see Appendix 4.5). Ten women were selected for the survey. Five of these women were from Kiawa and five from Mataururu. All these women are from different clans within their respective villages. Due to the varying level of literacy amongst respondents, the researcher assisted in completing the survey forms by translating the English texts and explaining the meanings. Besides participating in the survey the same group of women was also interviewed.

Chapter: 5. Customary land sales in Matururu and Kiawa villages

This chapter focuses critically on the core areas of this study on Customary Purchase Block (CPBs) in Matururu and Kiawa villages using the field data acquired through the qualitative and quantitative techniques outlined in Chapter Four. The chapter commences with a background explanation of Matururu and Kiawa's customary land inheritance norms, existing landholding group clans and land gifting practices. Changes to customary land tenure practices in Matururu and Kiawa will also be discussed. The rest of the sections of this chapter will detail the principles and practices underlying land transactions between customary land owners (CLOs) and migrant settlers that facilitate the current CPB tenure arrangements. These principles and practices will be critically discussed in relation to the three different waves of migrants acquiring land at Matururu and Kiawa and the different manner in which land transactions have occurred for each of these waves of migrants over the last 30 years as identified through the field study.

Through individual responses from interviews, discussions, meetings and questionnaires it became apparent that the style and the manner in which migrants and customary landowners ventured into land transaction agreements has changed since 1975 when the first migrant settlers acquired land. The first group of migrants' experiences with the landowners in terms of land transactions, social relationships, payment for land, and other general expectations were quite different to those of the second and third waves of migrants. The three waves of migrants are discussed separately below.

5.1 Matururu and Kiawa villages – customary land

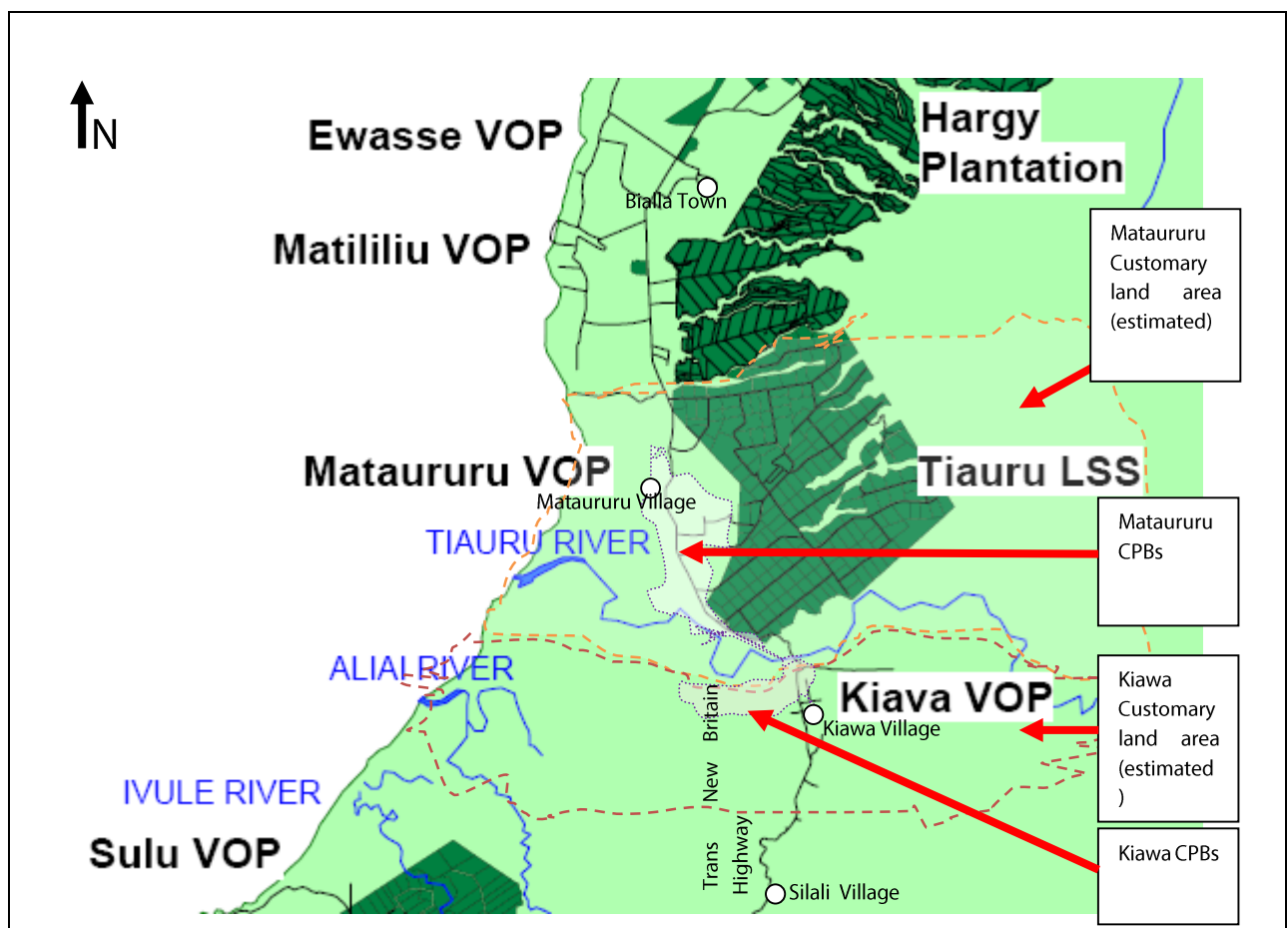
Matururu and Kiawa villages are located approximately 5.5 to 7.5 kilometers south-west of Bialla town along the north-east coast of West New Britain Province (WNBP). The two villages are about 2 kilometers apart and physically separated by the Tiuru River. The trans-New Britain highway from the West New Britain Provincial capital of Kimbe to Bialla passes through both villages, and thus provides villagers with easy access to goods and services either from Bialla or Kimbe town. The fertile volcanic soil around the area is ideal for subsistence agriculture and commodity cash cropping. Both villages share customary land borders adjacent to the Tiuru River. Matururu is situated on a coastal plain adjacent to Kiawa and Tiuru LSS ²⁴ on the slopes towards the east, and Matiliulu Village towards the

²⁴ What is now the Tiuru Land Settlement Scheme was initially alienated from Matururu land owners and developed into the first LSS under the Bialla Oil Palm scheme around the late 1970s.

north coast. Kiawa is located on a small plateau with most of its land on hills, mountains, and stretches of swamp towards the coastline. (see Figure 5.1).

At the time of the fieldwork, the total population of Matururu was approximately 289 and Kiawa 231 (population census, December 2007). Everyone in both villages is Christian. About 70 percent of people in Matururu are literate, while literacy for Kiawa is estimated to be about 60 percent. People of both villages speak the local indigenous Nakanai language; however, more than 80 percent of Kiawa's population are bilingual as they are able to speak Nakanai and Atah – a variety of the proto Nakanai language which is widely used around the inland areas of Nakanai, locally known as central Nakanai (see Figures 3.2 and table 3.1). People of Matururu and Kiawa are closely related and some clans have lineages living in both villages.

Figure 5.1 Matururu and Kiawa villages' estimated customary land boundaries.



Source: Hargy Oil Palm Limited 2007,

5.2 Brief land inheritance history and structure

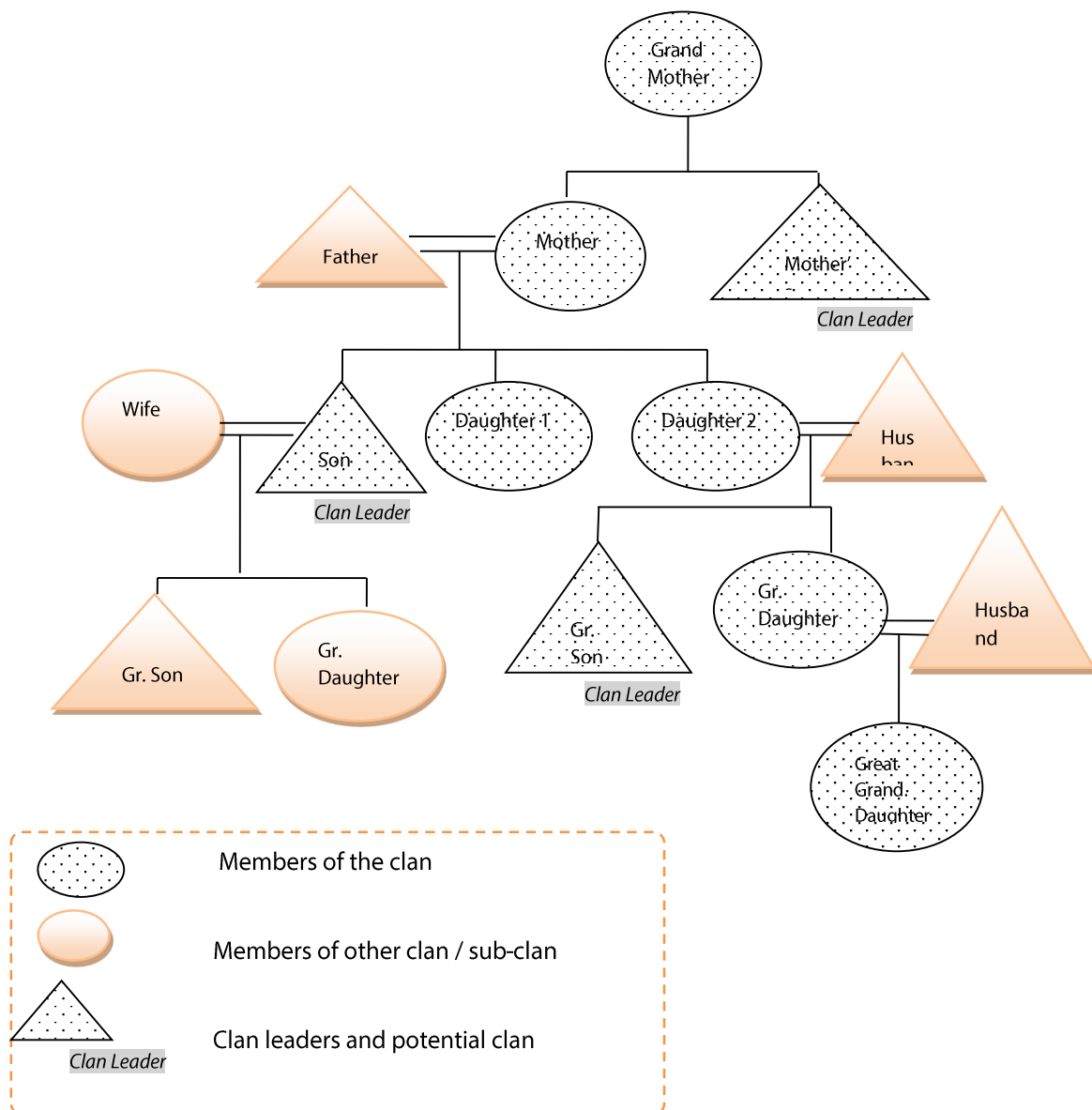
Customary land tenure and inheritance systems in PNG tend to be more complex than many western land tenure systems (Sack 1973). In PNG the land tenure system of a particular linguistic or cultural group can be totally different to another even though they may share similar matrilineal or patrilineal inheritance principles (Fingleton 2005b). As such, the matrilineal system of Nakanai societies varies in the way it is practiced in comparison with other matrilineal societies in the island provinces of PNG.

Customary land in Matururu and Kiawa villages, like elsewhere in PNG is owned by groups rather than individuals. Land inheritance rights within matrilineal Nakanai clans are usually acquired at birth and rarely by succession at the death of parents and or clan leaders. However, inheritance of clan leadership can be through succession within strict parameters of the clan kinship and lineage power structures as defined by societal norms. While female members of each landowning group maintain inheritance rights, male members of each clan are normally entrusted with the clan leadership roles from one generation to another with rights moving from mother's brother to sister's son (clan leadership will be further discussed below).

Children in a nuclear family are automatically members of their mother's clan, however there is special consideration for the first born child in the family. Apart from being members of the mother's clan, the first born can at the same time be accepted by the father's clan as someone who can legitimately inherit his/her father's personal share of the clan's land and other assets. However, such rights are limited to him/her only, and cannot be passed on to the next generation (his/her children), but will revert back to his/her father's clan. In the matrilineal Nakanai, the father remains as a member of a different clan. His clan members are his nephews, nieces, brothers, sisters, and cousins who are born from his mothers' siblings.

Clan leadership roles are allocated to male members of each clan. Clan leadership is often awarded to the son of the eldest female member of a clan. In most cases, the first born son whilst being able to inherit his father's land can also be a leader in his mothers' clan. The successor to the clan leader is normally chosen from amongst younger male siblings or cousins of the clan leaders or even from within the next generation of clan members. See figure 5.2 below for further illustration.

Figure 5.2 Overview of a how a clan in Nakanai is defined



Power structures within Nakanai matrilineal societies between clan leaders and female landowners are closely knitted and intertwined. Despite male dominance of clan leadership roles, female members of the clan maintain certain powers and rights over land tenure decisions and the selection of new clan leaders. Hence Nakanai women, to a certain extent, make a substantial contribution to all decisions relating to customary land matters.

Regardless of having the power and rank within the clan structure, every member of a landholding group or clan shares the right to own and use their clan's land for subsistence and commodity crop production. Sharing of rights does not mean that all members have equal access. Some clan members have distinct and/or different usage rights and control over the land than other clan members. For example, a principal land owner or leader of a clan may have a larger area of land compared to others. Likewise, each clan in Matururu and Kiawa has different portions, access, control and usage of customary land within their boundaries. The section below elaborates the backgrounds of the different clans identified in Matururu and Kiawa.

5.3 Different land owning clan groups within Matururu and Kiawa

There are ten main clans in Matururu. These are: Voregarega, Kevemuke, Kabulialala, Vauva, Ugeuge, Kabulubulu, Vauvatu, Ababe, Abuyaiyaya and Babeka. Kiawa has four main clans. They are: Ugeuge, Kabulubulu, Voregarega and Gibolo. The two clans with the largest land holdings in both Matururu and Kiawa are the Ugeuge and Voregarega clans. Historically, these two clans have a lot of members and have occupied most of the land area which they still own today. The majority of the customary land that is 'sold' to migrant settlers in Matururu and Kiawa are from Ugeuge and Voregarega clan land. Having a bigger area of land does not necessarily reflect the size of the population of each clan. Some of the larger clans have smaller areas of land.

In some cases, concerns have been raised by migrant settlers who acquired land from a clan with a small population and face having no members to oversee the ongoing tenure practices over the land that has been 'sold'. For example, the last member of the Ugeuge clan in Matururu was a male who solely facilitated all the current informal CPBs 'sales' on Ugeuge clan land. Following his death - which occurred approximately a year and a half before the field study of this research - it appears that there are no surviving members of the Ugeuge clan to manage the clan's current and existing land tenure arrangements with migrants under Customary Purchase blocks (CPBs). According to the Nakanai matrilineal system (as explained above) in such a case, children born from the last surviving male

member of the Ugeuge belong to their mothers' clans; thus they do not have any rights to dictate or manage the current CPBs and the existing land transactions. Even the eldest son of the late sole male member of the Ugeuge clan has not lived in Mataururu for the last 20 years to oversee his father's land transactions as permitted by the Nakanai matrilineal system. Therefore, in such a scenario according to Nakanai customary land norms, the land will be reverted back to the other remaining clans in Mataururu village. As such, the current CPB owners on Ugeuge land who acquired land informally fear other clans (with big populations) that will take over ownership of Ugeuge land may seek to repossess all the land 'sold' by the last male member of the Ugeuge clan and pass it on to their highly populated clan members.

Furthermore, this study also identified that although Ugeuge and Voregarega clans exist in both Mataururu and Kiawa, they manage their land affairs separately from one another within the structure of their respective kinships and lineage. The same is also observed widely across all other Nakanai villages. For example, the Ugeuge clan in Mataururu does not interfere into Kiawa's Ugeuge land matters and vice-versa. Hence, any development or customary land transactions remain the exclusive responsibility of each clan within each village. Consequently, in the case of no existing Ugeuge clan member in Mataururu, Kiawa Ugeuge members have no right to infiltrate Mataururu to oversee Ugeuge land. Instead, other clans in Mataururu will automatically assume power to revert Ugeuge land, besides overseeing the current land usage and tenure agreements.

The theory behind such a case evolved from the traditional way in which Nakanai societies originally dealt with land issues under their traditional land tenure system. Land was conquered by villagers in tribal fights against another village (in some cases current neighbouring villages) and was shared amongst clans of the particular village. Through intermarriage amongst clans of a village, land was then protected and continues to be shared amongst members of particular clans besides being given to others as gifts within the framework of Nakanai matrilineal land use norms. Therefore, it is only right for land within a village to be distributed amongst members of a clan in that village. Thus in cases where a clan is diminishing, other clans can rightfully bear the responsibility to take on the land, based on the underlying understanding that their ancestors have also fought for it. For the same clan in another village to infiltrate and take on land ownership would not be accepted as their ancestors did not fight for it. Their actions would be seen as a direct act of aggression and could potentially lead to land conflicts.

Moreover, despite clans and villages maintaining separate land and assets management, some clans across two different Nakanai villages or all clans in a village do work together on certain customary matters and or obligations such as:

- Bride price payments²⁵.
- Feasts and customary ceremonies.
- Funeral obligations.
- Share oral history in any event of dispute regarding the customary land boundaries amongst clans and between two villages.
- Collectively working together to oversee the land of the clan in the village that appears to diminish in numbers – especially after the death of the last member of a clan (as in the case of the Ugeuge clan described above).

5.4 Concept of gifting in traditional customary land tenure in Matururu and Kiawa

Generally, Nakanai land usage arrangements and tenure practices are very flexible, thus gifting of land to family, clan or non-clan members from the same or related villages by certain clans is common in Nakanai villages. According to the landowners in Matururu and Kiawa, gifting of land normally occurs within the same family and clan or with members of other village clans who are closely related as a way of reinforcing that relationship communally. Much land gifting has also occurred between clans that have more land and clans that do not have enough land to develop smallholdings of oil palm (usually 2 hectares plots). For instance, a few years ago the last surviving member of the Ugeuge clan in Matururu Village gave approximately 8 hectares of land to people from another village clan with limited land to plant oil palm. Almost all these 8 hectares are now planted with oil palm.

Land can also be given to adopted clan members and also to people *outside* of the landholding clan group for reasons that support the social interest of the respective clans or for purposes of social inclusion (making an outsider become insider). *Outsiders* are defined as people outside of the landowning group (Sack 1973). Matururu and Kiawa landowners generally classify outsiders as “new comers” into their societies from other distant Nakanai villages or language groups incorporated through friendship, marriage and adoption. This study also uses the term ‘outsiders’ to refer to migrants,

²⁵ Bride Price payment is a traditional practice of marriage exchange common in PNG, where the groom and his family give the bride’s family money and gifts. The bride also exchanges gifts with the groom in return; however the groom’s gifts are expected to be proportionally bigger in size and value.

mostly from the other provinces in PNG, who have been 'gifted' land or who have 'purchased' a CPB (see Koczberski *et al.* 2009). Furthermore, gifting of land sometimes happens reciprocally, where land is exchanged for marriage or other forms of gifts. According to the customary landowners interviewed, any form of land gifting is mutually agreed upon by all immediate members of the clans engaging in gifting to avoid future disputes.

5.5 Changes on customary land tenure in Matururu and Kiawa

Recent demographic and economic change through the growth and expansion of oil palm smallholder developments over the recent past has changed the traditional way customary land tenure is practiced (Curry *et al.* 2007); so too has the demand for land by the large number of migrants entering West New Britain (WNB) over the last 10 – 25 years. Most of these migrants initially settled in with relatives on the LSSs, and some illegally resided on government land, or sought customary land to secure their livelihood. Customary land owners (CLO) who wish to 'sell' their land have quickly responded to the desperate needs of landless and land-short migrants by selling them land to establish livelihoods. In doing so, they infringe on, and to an extent modify the basic land practices of the Nakanai. For instance, the gifting of land of any kind or sort previously had to happen through the collective decision of the clan, but this is now being done by individual clan leaders and members with limited or no consent from the clan. Consequently, internal clan disagreements, and conflicts emerge. For example, all young members of Voregarega clan in Matururu and Kiawa, when asked whether all clan members make decisions over current CPBs and the selling of land to the migrants, blamed the current clan leaders for 'selling' off their land for quick money without consultation with the entire clan.

The general concerns that were raised regard the shifting away from familiar and formal customary land tenure procedures to an unfamiliar style which is new to indigenous customary land laws. Thus, the way in which customary land tenure in Matururu and Kiawa was practiced in the past has changed greatly since oil palm was introduced. The situation in Matururu and Kiawa is similar to Martin's (2007) description of the "Tolai"²⁶ matrilineal land tenure system which rapidly changed to accommodate the modern capitalist environment. Martin's study found that landowners began to adjust and relax their customary norms regarding land tenure in response to the introduction of cocoa production and the desire by clan members to allow their children, rather than their sisters' sons, to inherit the 'family' cocoa

²⁶ Tolai is a generic name of the indigenous "Kuanua" language people of East New Britain Province of PNG.

block after their death. This was done by clan members paying 'compensation' to the clan for exclusive use rights to the land by the next generation.

Hence, the land at Matururu and Kiawa which was once gifted to family or village clan and non-clan members is now 'sold' as a commodity to migrants under various arrangements which both the vendor and the purchaser are not too familiar with, thereby increasing the risks of conflicting assumptions and tenure insecurity. Koczberski *et al.* (2009) noted that most CPB transactions were informal and legally insecure. Informal in this sense refers to undocumented and unrecorded tenure arrangements, while insecure in this instance refers to the absence of legal customary processes that are necessary for secure tenure. The history of the evolution of CPBs under the three waves of migration will further highlight the pattern of changes that has affected Matururu and Kiawa customary land tenure practices as a consequence of the growth and expansion of the oil palm industry in Bialla district.

5.6 History of Customary Purchase Blocks (CPBs)

Although, earlier research shows that CPBs as a new trend of tenure first began in Hoskins in the mid 1980s and then spread across to Bialla (Curry *et al.* 2007), this research noted that the practice of 'buying' land from customary land owners by migrants existed for quite some time in Bialla. (see Section 5.7 below for details). Migrants first moved to Matururu and Kiawa through purchasing land from land owners well before CPBs emerged in the Hoskins area in the 1980s. From field interviews, it appears that there are 61 migrants settlers who have CPBs in Matururu and Kiawa. From the estimated 200 hectares of CPBs in Bialla (Curry *et al.* 2007), Matururu and Kiawa villages account for about 147 hectares. Approximately 65 percent and 35 percent of the total area planted to oil palm is under CPB tenure arrangements in Matururu and Kiawa villages respectively.

Migrants settled in Matururu and later into Kiawa in groups within three specific time periods. The movement by migrants 'purchasing' land within these three specific periods is described in this thesis as the three waves of migrants. The basic differences that distinguish these three waves of migrants as observed through the field study of this research are based on:

- The time period the migrant acquired/'purchase' the land from the customary owners,
- The social relationships of these three wave of migrants with the land holding groups,
- The prices 'paid' and level of tenure security.

In addition, the more specific and critical analysis of the three waves of migrant settlers in Mataururu and Kiawa as observed during the field study will cover the following sections:

- History of each wave of CPBs by migrant settlers.
- Migrant settlers' reasons for 'buying' land.
- Relations between migrant settlers and CLOs.
- Process of land sales to migrant settlers.
- Approximate area of land 'sold' to each of the different waves of migrant settlers.
- Land prices and how they are determined.
- Types of land transaction and tenure security.
- A case study of each of the three waves of migrants.

5.7 First wave of migrants settlers on Customary Purchased Block.

5.7.1 Brief history of migrant settlers (of the first wave) on CPBs

The first wave of migrants settled in Bialla from the late 1960s to the late 1970s. They later acquired land in Mataururu between 1975 and 1985. There are only three migrant families who belong to this first wave of migrants. Two of the three migrant families are from East New Britain Province (ENBP) and one is from East Sepik Province. The latter includes my father. My family acquired 5.5 hectares of land at Mataururu in 1975. The last two surviving members of the Ugeuge clan at that time gave²⁷ the land to my family, while the two other families 'bought' land from the Kevemuke clan.

5.7.2 Migrant settlers reasons for 'buying' land.

There are two basic reasons why the three migrant families acquired land from the CLOs. Firstly, to set up income generating activities such as trade stores and cocoa smallholdings. In the mid 1980s the cocoa holdings were replaced with oil palm when the VOP program was introduced. Another reason for acquiring land was to secure their livelihoods in West New Britain Province (WNBP) because all three

²⁷ Our family was given the land by the principal owner based on his promise and our long standing relationship developed over more than 5 years prior to acquisition of the land. However, later we 'paid' for the land and provided foods and other essentials as a way of maintaining our social relationship with the land owner and his family (see case study 1).

migrants believed that they could not easily be accepted back into their place of origin and given land should they return to their respective home provinces²⁸.

5.7.3 Relationship between migrant settlers and customary land owners.

The social relationship between the migrant settlers in the first wave and the surviving members of the landholding group whom they acquired the land from is regarded as very strong. In fact it was due to the pre-existing social relationships that the landowners were willing to allocate a portion of land to the three migrant families in the first place. Prior to acquiring customary land in Mataururu, all three migrants at different times and through different engagements had established good personal reputations among the indigenous population and the wider community in the Bialla District. They were all employed by private companies or government departments as drivers and carpenters, and over time contributed to the development of the district's infrastructure and general economic development. Their long presence, along with the kind of work they did and their personal relationships with the local population were such that they earned respect amongst the indigenous communities. Therefore they were welcomed to acquire land in Mataururu.

At a personal level, each of the three migrant families maintains a close daily relationship with the host community (Mataururu). Two out of the three families have sons who married into Mataururu village (I am one of them), thereby being adopted into a local clan. The marriages further enhanced the already strong relationships between the settlers and the land owners. Besides intermarriage, the children of the three migrants continue on the same path of their fathers and maintain relationships through:

- Supporting / participating in community works in the village,
- Providing financial support to the clan, other clans, families and village community development projects,
- Carrying out customary obligations, rituals and ceremonies
- Offering assistance regarding – funeral, wedding, feasts, etc.
- Participating in community sports and recreational activities
- Supporting local school and church programs.

²⁸ Many Papua New Guineans from land shortage provinces who live away from their home villages and provinces for many years and completely neglect their relatives and people in their home villages, lose access to land and livelihood back in their home villages. Most of the land would be taken by other clan members who live, participate in the clan's obligations and serve their communities. As such, the three migrants described in the first wave feared they would not have any land to live on and may not be accepted back easily since they left their village when they were very young and have neglected their relatives for so many years.

Apart from contributing support to the late landowner and his family and the members of the clans who gave them the land, the three migrants offer similar support to all other people in Matururu villages as well. Such, integrative interaction continues to maintain relationships and provide the tenure security. I will return to my family's experience as a case study at the end of this section.

5.7.4 Process of land 'sales' to migrant settlers

The process of acquisition by these three migrant families was quite easy after they had developed a strong relationship with the landowners. Based on that level of relationship, the people of Matururu and the principal landowners²⁹ of the Ugeuge and Kewemuke clans easily decided that it would be a good idea to allow them to secure a livelihood amongst them, so they could carry on with the same relationship that was cherished. Therefore, when the migrant settlers asked to have a portion of land where they could live, build trade stores and establish cocoa smallholdings, the land owners willingly gave them each a fair portion of land and asked them to 'pay' any amount they may want to on an installment basis using income raised from the trade store or cocoa. The transaction of land was flexible and very informal based on respect and mutual understanding between the CLOs and the settlers. The consent of the entire clan and the village people was sought; however, no written form of agreement was signed between the parties (see Section 5.7.7). Instead gifts of food, money and other essentials were often provided to the landholding group by the three settlers in appreciation of the land being given.

5.7.5 Size of land being 'sold'

Each of the three first migrant settlers was allocated a fairly large piece of land in comparison to other CPBs owners in Matururu from the second and the third waves. The land size held by first wave migrants ranges from 4 to 5.5 hectares, compared with 1.5 hectares to 4 hectares among the later waves.

²⁹ Principal landowners refer to the clan leaders who come from the main kinship group and customarily have the right and the power to lead the clan and allocate its land in consultation under Nakanai matrilineal system.

5.7.6 Land 'prices' and how they are determined

As briefly outlined above, the land 'prices' offered to the first three settlers were very flexible; they were not based on any certain rate per hectare, as was the case with the second and third wave of migrants. The landowners asked the migrant settlers to 'pay' any amount they wished at anytime, whenever they had the money. However, through this research field interview it became evident that the migrant settlers paid K500.00 (AU\$ 230.00) over a period of time following the example of my family's (as the first of the three migrants to acquire land) 'payment' of K500. Apparently the landowners then used that amount as a benchmark for other later land 'sales' (see Section 5.8.6)

It is also noted that apart from the money, the migrant settlers have shown their appreciation to the landowners by giving them other valuables such as foods, clothing, fishing nets, tools, etc. This even included extra financial assistance as a means of social support, such as paying for children's school fees, medical fees, transportation costs, funeral expenses, etc, over a long period of time. For example, when Thomas one of the two last remaining Ugeuge clan members and principal owners, died, our family met most of the funeral expenses and the costs of customary obligation associated with the death and funeral which totaled K1,500.00 (AU\$730.00). The other two migrants also contributed money and other assistance. (see Case study on 5.7.8 for details). Similarly our family and most migrants under the second and third wave contributed money and gifts valued at K3,700.00 to the funeral of the last member of the Ugeuge clan who passed away a year and half before this study. With no more Ugeuge clan members, all other clans in Matururu who now oversee all Ugeuge land accepted the gifts and recognized the assistance on behalf of the Ugeuge clan.

5.7.7 Types of land transactions and tenure security

Land transactions between the three early migrant settlers and the CLOs were founded on trust, confidence and enduring relationships between the migrants and CLOs. Likewise their security of land tenure depends on the maintaining the on-going social relationships. Apart from the principal landowners who primarily engaged in the initiation of the land transaction, the clan along with the people from the village endorsed the transaction. There was no evidence of any written agreement to facilitate the transaction at that time. Despite the lack of a written agreement, the three first generation CPB migrant owners remain confident that their future on their respective CPBs is secure as long as they continue to maintain good social relationships with the landholding group.

Presently, two out the three first CPBs owners along with the principal landowners who led the authorization of the three migrants to acquire land have passed away leaving the next generation to carry on with the relationship and maintain the current land tenure agreements. It became apparent through the interviews that despite having confidence based on their experiences of the long standing relationship, members of the second generation of the three migrants express concern about protecting their respective settlement rights, as more migrants continue to enter Mataururu and Kiawa, creating disputes and conflicts with the landowning committee which three migrants of the first wave believe can potentially undermine their settlement rights. Beside, as more migrants under wave two and three entered into some form of written agreement, it motivates them (the second generations of the first wave of migrants) to also seek proper written agreements. They believe that such an additional agreement will further strengthen their existing social and formal rights, already established through their long standing relationships, to use the land.

5.7.8 Case study 1: First wave migrant land acquisition in Mataururu

This following case study concerns my family's experience as one of the three families under this first wave of migrants to acquire customary land in Mataururu.

My late father, Dennis and the late Thomas Dau, clan leader and principal landowner of the Ugeuge clan in Mataururu Village, were very good friends since they first met in Rabaul, the provincial capital of East New Britain Province of PNG in the mid-1960s. Their relationship grew and Thomas invited Dennis to come over to Bialla where Thomas could give him a piece of land to settle on. In the early 1970s my father moved to Bialla and worked with the Department of Primary Industry (DPI) as a truck driver. The rest of our family joined him in 1973. We met Thomas and the relationship continued to grow. As promised, Thomas gave my father a 5.5-hectare piece of land in Mataururu. The name of the piece of land given to my father is "Lalo". Beside Lalo, my father also made a successful application for a 6 hectare block in Tiauru Land Settlement Scheme.

Lalo was not 'priced'. Instead Thomas, the Ugeuge clan and the rest of the villages agreed that my family pay any amount when we were ready to 'pay'. My father gave Thomas K500.00 (AU\$230.00) in small cash installments from revenue generated from the small canteen and cocoa plantation he established at Lalo. The relationship grew further to such an extent that Thomas considered and treated our family like "insiders" rather than outsiders or migrant settlers. He even showed my father and elder brothers the boundaries of his clan's land and asked us to help in keeping an eye on the land to avoid exploitation by Land Settlement Scheme settlers. Over the years our family further contributed extra financial assistance to Thomas and the rest of the clan and participated in other customary obligation and social support practices. For example; in 1984 our family spent well over K400.00 to assist Thomas and the rest of other clans in Mataururu to conduct a number of significant customary rituals and initiations

including feasting and celebrating the first born children (a significant initiation in the Nakanai culture of West New Britain Province). In 1996, we further assisted in setting up a mini service station belonging to the Mataururu. The service station was named "Latatu" in Nakanani language which means 'belonging to our children'. We spent K11,000 to buy petrol, diesel and oil. Eventually, Thomas with the support of his clan further allowed our family to apply to the Lands Department to register the land called Lalo through the formal land registration process under the land title commission to acquire freehold title. Thomas with other members of his clan along with other landowners of Mataururu also signed a statutory declaration permitting us to complete the land registration of Lalo. We continued with the registration process and are now awaiting the final stage in the process of registration before freehold title is granted. (To convert customary land to freehold title is a very lengthy procedure and title has not yet been granted by the Land Title Commission).

The reasons why such a rare decision was made by Thomas, the clan and the entire Mataururu land owners was because we have lived with the community for so long and have never entered into any conflict with the host community in our history since settling in Mataururu and are so integrated with the community. Such a case is rare because after the government alienated land from customary owners to set up nuclear estate and the LSS at Bialla, no customary owners have allowed outsiders to register land being purchased or acquired from them. They also do not see the need to register their own land or even allow members of their clan to register their land because they believe they already have exclusive rights as customary land owners. However, according to them, allowing migrants like us to register land is a way of passing on to us full control and title over the land. Such an act is permitted so long as all customary land consent is secured and legal procedures are followed.

After my father died, Thomas, his clan and leaders in Mataururu advised the family that it was not necessary for us to vacate the land and return to our village in the East Sepik Province (where we are originally from). Rather our family was told to stay on at Lalo, finalize the land registration process and be called children of Mataururu – as a form of being included as "insiders". We continued to have the same relationship with Thomas and his family until his death in 1999, 13 years after our father died. Upon his death we spent a reasonable amount of money on funeral expenses as we see ourselves more as 'insiders' and are obligated to offer all necessary assistance. (refer to Section 4.7.6 above). His successor, who was the last member of Ugeuge clan in Mataururu (and who also died in 2006), although well versed with our land transaction, reckoned that we did not 'pay' enough money in the first place. He intended to split our land and in 2003 insisted we pay another K500.00 (AU\$230.00) which we did pay accordingly, even though we were in the final stage of the registration process. For the first time, we encountered a dispute after more than 30 years since acquiring Lalo. It appears to us that even though our family has spent many years in good relationships, contributed extra financial assistance to customary events, and were treated as 'insiders' with the intention of enhancing our settlement rights and securing our tenure on customary land, it has not protected us from land disputes on the basis of our status as migrant settlers. We felt we needed to urgently start proper documentation of our land transactions. Regardless of additional demands for payment, we believe our tenure is secure, and as long as we are on good terms with the landholding community we will still remain at Lalo. Further, my marriage to Ababe's clan member directly boosts our tenure security. In the absence of any Ugeuge clan member to oversee all its land, Ababe and the rest of the clans at Mataururu are now in charge (as mentioned earlier) Thus, my daughters who are members of the Ababe clan and are landowners by

birthright are fully recognized by all other clans and people in Mataururu to live at Lalo, thus enhancing our rights to Lalo.

5.8 Second wave of migrant settlers on CPBs

5.8.1 Brief history of migrant settlers (of the second wave) on CPBs

According to the data from interviews and meetings during the field study, it appeared that the second wave of migrants began acquiring customary land in Mataururu between 1985 and 1995. (Kiawa landowners were still not keen on 'selling' land until very recently.) Almost 10 years after the first wave of settlers, a second wave of migrants began seeking customary land to plant oil palm and develop Village Oil Palm (VOP) smallholdings. There were about 14 migrants within this wave. Like the first wave, most of the people in this wave originally hail from East Sepik and East New Britain provinces. It is further noted that all migrants within this wave have settled in Bialla for more than 5 to 10 years and have developed relationships with CLOs prior to settling on the land. Eighty percent of this group were former employees of either the government or companies operating in Bialla. Twenty percent are original LSS leaseholders at Tiauru subdivision. The basic tenure principles and manner in which land transactions occurred differed to those under the first wave.

5.8.2 Migrant settlers' reasons for 'buying' land.

Through the interviews, it appeared that each of the 14 migrant settlers within this wave individually settled onto customary land at different times between 1986 to 1995; however their reasons for acquiring customary land were more or less the same. The migrants who were employed at the time of securing customary land gave the following reasons for seeking access. They wanted to:

- Plant oil palm to generate additional income beside their current employed wages.
- Prepare a place to settle after retiring from current employment.
- Secure land to assist relatives to settle in and earn income from harvesting fresh fruits bunch (FFB) and loose fruits under caretaker arrangement³⁰.

³⁰ In the caretaker arrangement, the original owner of the purchased block who may at the same time have other commitments such as being employed or owning an LSS block would arrange for his relatives or friends to take care of the CPB, harvest and sell the FFB, and loose fruits and share the income accordingly.

Their ambition was primarily influenced by the expansion program of VOP and LSS around Bialla at that time, which was encouraged after Asian Development Bank (ADB) loan funding was made available for that purpose (Koczberski and Curry 2003, 13).

Twenty percent of the migrants in this wave are current owners and original leaseholders of LSS blocks who ventured onto CPBs because:

- They intended to expand their production beyond the standard 6 hectares by securing additional land where they could plant more oil palm under VOP.
- They fled from LSS neighbors who they believed were sorcerers with whom they had a bad relationship.
- Internal disputes arose between their sons over LSS ownership, sale of fruits and income distribution.

5.8.3 Relationship between second wave migrant settlers and customary land owners

All 14 migrants prior to acquiring customary land at Mataururu, had developed some form of social relationship with the customary land owners, and the general population of Mataururu long before acquiring the land. Eighty percent of the second wave migrants who were in employment at the time of acquiring land in Mataururu stated that they established relationships with the CLO through:

- Assisting them with money and goods in meeting their customary obligations prior to moving to Mataururu.
- Taking stranded CLOs to and from Bialla town using their vehicle or the company/government vehicle.
- Serving the people of Mataururu whilst working for the government or company offices.
- Worshiping together in the same Christian church.

Although migrants from this wave see the above as the genuine essence of the relationship, CLOs on the other hand are not convinced such deeds reflect true relationships. They believe the motive behind the above deeds was to lure the CLOs to allow acquisition of their land. In general, the kind of social relationships maintained by the second wave are not as strong as those established by the first wave of migrants. For instance, according to the landowners about 57 percent of the second wave of migrants do not maintain an ongoing relationship with the landowners as they did prior to 'purchasing' the land. In consequence, they do not know the younger generation of CLOs nor pay attention to CLO's socio-

economic needs. Hence, the social distance between second wave and landowners is greater than that between first wave and landowners. As a consequence, their tenure security is regularly questioned. On the other hand, 43 percent of the CPB owners and their families under this wave claim they enhance their relationship with the CLOs by frequently contributing financial assistance, foods and other necessities to landowners and general members of the landholding communities, thus facing fewer risks of disagreement that could lead to tenure insecurity.

5.8.4 Process of land 'sales' to migrant settlers

Land 'sale' arrangements between the second wave migrants and CLOs are slightly different from those of the first wave. Instead of gifting land prior to attaching a monetary value to the land, the CLO nominated the area of land for 'sale' and the price of the land, and expected migrants to pay some amount of money upfront prior to developing the CPB land for oil palm, while the balance was paid off in installments. Further, it appears that not all members of the clan were involved in witnessing or agreeing to the land 'sale' processes. It appears from interviews that only the principal landowner and a few close relatives were dealing with the land 'sales', to the exclusion of other clan members and the rest of the Mataururu community. Clan members were often told about the new CPB owners after the land 'sales' had been finalized. No documentation or receipts were provided as proof of purchase or the value of the 'sale'.

5.8.5 Size of land being 'sold'

The size of the land being sold varied between 2 and 4 hectares. Four out of the fourteen CPBs have 4 hectares, three have 2 hectares while the rest consist of 3 hectares. All areas are planted with oil palm with no area for subsistence gardening. Some CPBs owners arrange with CLOs for the use of an extra portion of land temporarily for subsistence gardening on a short term basis. Other than this arrangement, CPB owners rely on buying food from the local fresh vegetable markets.

5.8.6 Land 'prices' and how they are determined

Regardless of the sizes of land, all blocks were being 'sold' at K500.00 (AU\$230.00) to migrants in the second wave, which is the same as the amount the first wave of migrants 'paid' for the land acquired from the CLO. However, there were significant differences in the character of these transactions. The CLOs were strict on the types of payment and the payment period. Money was the only acceptable form

of payment. Valuables, foods and goods were acceptable gifts of generosity rather than means of payment. The initial deposit payments are expected to be half of the total costs (K250). The prices are entirely determined by the principal land owners and only a few close clan members, who apparently also share the money 'paid' for the land.

With no evidence and lack of records of money transactions such as receipt of the 'purchased' land, there have been cases where CLOs demand additional amounts of money above the initial K500.00 land price already paid by CPB owners. In fact, 5 out of the 14 CPBs within this wave stated they paid an extra K200 – K300 after they paid the initial K500 as the price of the land. They felt reluctant to argue with the land owners for fear that CLO may dishonor their initial agreements and repossess the land. In these circumstances, the CLOs continue to maintain the upper hand and are free to manipulate informal tenure arrangements at any time, leaving CPB owners with considerable levels of uncertainty and insecurity. Reasons provided by CLOs regarding such an action (of additionally charging migrant settlers beyond the initial land 'price') varied. Approximately 60 percent of the CLOs argued that the reason why those CPB owners were charged extra money was because they failed to support the village in community working days and other customary obligations. While about 40 percent claimed the initial payment of K500.00 was insufficient compared with the production the block generated and the income the CPB owners earned, thus they (CLO) feel the CPB owners deserve to pay additional amounts of money. Moreover, it was also observed during the field study that after the land price rate was introduced to the third wave of migrants (see Section 5.9.6) the CLOs are now reviewing the K500.00 price of the land being 'sold' to the second wave.

5.8.7 Types of land transactions and tenure security

Land transactions have been mostly informal. However, since 1999 CPBs owners have begun to urge CLOs to sign statutory declarations and Clan Land Usage Agreements (CLUA)³¹. The shift to written documentation emerged after the passing of Thomas the second last principal owner of the Ugeuge clan, and was initiated by OPIC as a way of assisting parties manage and improve informal land transactions between CPB owners and CLOs and properly managing infilling and the future oil palm replanting program (Paul Kausa, per. comm. December 2007). Besides, CPBs owners indicated that their push for written documentation was aimed at protecting their usage rights over the land. On the other

³¹ The CLUA is a signed agreement between a clan and an individual acknowledging the latter's right under customary law to have access to the land for oil palm and receive the income of the palms for the life of the individual

hand, the landowners wanted to make it clear to the migrants that they had not purchased the land outright, but rather were purchasing usage rights.

Prior to that, all agreements between the 14 CPB owners under the second wave were verbally instituted. Presently, 10 out of 14 migrant CPBs owners hold written document proof of the agreement between them and the landowners. Five of the ten documents sighted during the field study were Clan Land Usage Agreements (CLUA), three Statutory Declaration forms and two signed agreements lodged with the office of Land Mediator³² (see Appendices 5.1, 5.2, and 5.3 for copies of CLUA, Land Mediator Office forms and Statutory Declaration Form). Regardless of written forms of agreement, CPB owners still express concern over the general nature of the agreement. For example, most terms set out within the Statutory Declaration as dictated by CLOs only allow their land to be used for a generation, however, CPB migrant owners (who are looking to establish long term livelihoods) mostly prefer permission for their children to inherit the CPBs. Contrary to the conditions offered to migrants under the second wave, the first wave migrants were not given any specific time duration for living on the land, nor signed Statutory Declarations that set out time limits on the use of the land. According to these landowners, they can live for more than two or three generations depending on the level of the relationship maintained amongst them (CLOs and CPB owners).

5.8.8 Case study 2. A second wave migrant's experience in Mataururu

The flexible nature of customary land dealings in Mataururu attracted a lot of land-short migrants wishing to set up their own oil palm holdings on customary land to generate reasonable household income. As a result, many resorted to verbal and informal tenure arrangements. Johnou's (not his real name) case below reveals experiences that many of those second wave migrant settlers are currently facing.

Johnou is a bachelor who moved to Bialla in the early 1980s. He worked at Hargy Oil Palm Limited (the oil palm milling company) and lived within the labourers' compound. He was approximately 48 years old when he first arrived in Bialla. He knows the landowners in Mataururu quite well and sometimes goes fishing with them. After hearing that a fellow company manager purchased a 4 hectare block and started clearing the bushes to plant oil palm, he protested that he should purchase a block of land also. He explained that he wanted to come around closer to Mataururu and live with the people in the village

³² The Office of Land Mediator mainly deals with settlement of customary land disputes and *"Agreement for use of customary land on terms and lease agreements"*.

and plant oil palm. After being given a 3.5 hectares block, he brought in his adopted son and his family to help him clear the bush, plant oil palm and live with him. His adopted son also lived and worked with the company at that time.

Johnou paid K200.00 as a deposit on an agreed price of K500.00 and did not sign any document that certified the land transaction. He also continuously provided food and money at any time when requested by landowners. After the principal land owners passed away in 1999, all second wave migrants owners of CPBs ('registered' with OPIC as VOP blocks) were advised to sign a CLUA by the succeeding land owner. Because Johnou is illiterate, he asked his adopted son to assist by signing the CLUA form. During the time of field research, Johnou indicated that he wanted to transfer his CPB to his son because he is very old and could not harvest the oil palm.

Immediately after being aware of his intention, the landowners arrived at Johnou's CPB and advised him not to sell the land or even to pass it on to his adopted son. The landowners told him that after he passed away, the land would automatically go back to them. Johnou was stunned and furious that despite wasting all his time, money and energy in developing the CPBs, he could not do as he wished. When his adopted son protested, the new clan leader said they only knew Johnou and agreed to give him the land to live on and not his son. When his son said he signed the CLUA and not Johnou, they argued that he did not cosign the CLUA in their presence and his section was signed prior to their signature. As such they reiterated that Johnou's acted without their consent and complained that Johnou's son should not have signed in the first place.

Presently, the situation is gloomy for both Johnou and his adopted son. Though they recently protested that landowners should contemplate repaying their labour and investment in the development of the block, the CLO insisted that they (Johnou and his adopted son) have benefited more from the income generated in comparison to the one-off payment of K500.00 which they (the landowners) initially received from the 'sale' of land. Johnou commented that OPIC has no power to dictate decisions on customary land matters and was not able to help him when he encountered the dispute. He remains in the block, while his adopted son continues to harvest the oil palm and is hoping the land owners will have mercy on them and change their minds to allow Johnou pass the block on to his son.

5.9 The third wave of migrants settlers on CPBs

5.9.1 A Brief history of migrant settlers (of the third wave) on CPBs

The third wave of migrant settlers came very recently - starting in 1996. For the first time, Kiawa land owners from the Voregarega clan became involved in selling land to the third wave of migrants, approximately 20 years after the first migrant purchased customary land in Matururu. The clan that spearheaded the sale of land to this wave in Matururu was the Ugeuge, under the leadership of the

sole member of the clan who passed away a year and a half prior to this study. There is a sharp increase in the number of CPBs within Matururu and Kiawa at present, and the area of land 'sold' to third wave migrants comprises more than 60 percent of the total customary land area sold to migrants since the first wave. Out of the current 61 CPBs, 44 emerged over the last 10 years under the third wave.

Most of the migrants are young with an average age of 25 years and appear to fall under one of four main categories: (1) second generation of the current Land Settlement Scheme (LSS) owners; (2) recently arrived migrants to WNB coming in from other mainland Provinces in PNG, in particular from the land-short provinces such as Simbu, East Sepik and East New Britain Province (ENBP); (3) long time residents of Bialla District; and (4) the second generation of the first wave of migrants under CPBs. About 60 percent of migrants in this wave are sons and daughters of Land Settlement Scheme (LSS) owners in the Bialla District, while 25 percent are newly-arrived migrants from other provinces and 10 percent are people who have lived and worked in Bialla for more than 15 years. About 5 percent are sons and daughters of the first three people in the first wave. Migrants under this third wave originate from diverse backgrounds; a circumstance very different to the first two waves of migrants who were predominantly people from ENBP and East Sepik Provinces (ESP). Most sons and daughters of LSS migrants entered into mixed marriages with different ethnic groups living in the settlement scheme.

5.9.2 Migrant settlers' reasons for 'buying' land.

The general reasons why migrant settlers purchased customary land in this third wave are similar to the second wave as described above. Reasons that are most frequently expressed by the different categories of migrants under this wave can be seen in table 5.1 below:

Table 5.1 Categories of respondents' reasons for buying land in Matururu and Kiawa

Category 1. <i>Second Generation from LSS</i>	Category 2. <i>New migrants from outside WNB</i>	Category 3. <i>Long time residents of Bialla</i>	Category 4. <i>Second generation of migrant settlers of the 1st wave</i>
<ul style="list-style-type: none"> • Establish my own livelihood away from my other siblings and parents in the LSS • Generate income to support my young family 	<ul style="list-style-type: none"> • Heard about opportunity to acquire land and have come to establish my own home, earn reasonable income from oil palm sales, 	<ul style="list-style-type: none"> • I have been in Bialla for so long and my children are raised here. We could not go back to our home province because we may not be 	<ul style="list-style-type: none"> • I have been around with CLOs for a long time. I was born here while my parents live on customary land. I have my own family now and

	and raise my family away from our home province where there are a lot of problems such as land shortages, tribal fights and sorcery.	accepted after been away for so long. Thus our best option now is to acquire a piece of land, plant oil palm, earn income from its sales and live here.	could not live in the same CPBs because other siblings also need a fair share of the income from the oil palm. Therefore, I have chosen to buy this piece of land.
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Even though all four categories of migrants in this wave expressed different personal reasons based on their own unique experiences, the underlying reasons remain the need to establish better socio-economic livelihoods through participation in the oil palm industry.

5.9.3 Relationship between 3rd wave of migrant settlers and customary land owners

Most migrants in this wave other than children of migrants in the first wave do not have close social ties with the land owners and other members of the landholding community. The only person they know is the person who claimed to be the leader of the clan and 'sold' the land to them. When asked regarding their personal knowledge about the clan and the customary land norms of the host community, 70 percent of migrants in this wave said they are not too sure or don't know at all. Further, most migrant settlers do not participate in their host community's social gatherings, rituals or ceremonies; however 30 percent claim to occasionally contribute financial assistance for funerals and emergencies. Thus, the social distance between them and the landholding community is greater than for migrants of the first and second waves.

5.9.4 Process of land 'sales' to migrant settlers

The processes involved in land 'sales' have changed very much since the second migrant wave. It is noted, however, that all land 'sale' processes under this third wave of migrants were conducted by a sole CLO of respective clans that were engaged in land 'sales'. Individualized action by a sole CLO to transfer land to migrants from this wave was a significant shift away from communal practices. After a migrant expressed interest to purchase a piece of land and the land was identified, the principal landowner proceeded with the 'sale' agreement, accepting cash payment and allocating the piece of land without due process. There are different agreements forms increasingly used in the process land transaction between the CLO and the CPB owners, such as the Clan Land Usage Agreement, the Land

Mediator Agreement and the Statutory Declaration form. More explanation on the use of these agreements can be seen under Section 5.9.7 below.

‘Sales’ of land in Mataururu to this third wave of migrants emerged after the land owner (the sole late owner from the Ugeuge clan) attempted to set up a 70 hectare oil palm estate which failed. OPIC intervened and assisted the landowner to divide the land into 2 hectares plots and designed a lease agreement form to facilitate leasing the divided blocks to the migrants (see ‘OPIC designed Lease Agreement’ in Appendix 5.4 for details). A total of 34 blocks out of the 44 CPBs in this wave emerged as a result of that arrangement.

5.9.5 Size of land being ‘sold’

The average size of land sold under this wave was 2 hectares. OPIC and the general oil palm industry requirement of a viable production block for an oil palm smallholder is at least 2 to 6.5 hectares (OPIC Bialla 2007). However, a number of CPBs fail to meet the set standard with some blocks below the 2 hectare minimum. Approximately 4 CPBs under this wave have only 1 to 1.5 hectares.

5.9.6 Land ‘prices’ and how they are determined

Under this wave, for the first time the price of land was determined at a set rate. The template of this concept was copied from similar CPBs set up elsewhere in Hoskins (Curry *et al.* 2007), where CPB owners paid K1,000.00 (AU\$450) per hectare. In Mataururu and Kiawa villages one hectare of land is now priced differently. The prices are determined by the respective land owners and entered into the designed written agreements. One hectare in Mataururu is now K6,000.00 (AU\$2,300.00) and Kiawa is K3,000.00 (AU\$ 1,300).

5.9.7 Types of land transactions and tenure security

The (late) leader of Ugeuge and Voregarega clan leader in charge of land ‘sales’ to this wave of migrants do not always use the same methods or types of available agreement forms to facilitate all land transactions. The ‘lease’/ ‘purchase’ agreements used and the period allowed for the land to be used by the purchaser to use / ‘lease’ the land in Mataururu and Kiawa are also different. For example, CPB

migrants in Mataururu are allowed to use the land for a maximum period of 20 years, while in Kiawa for 25 years.

However, 13 of the 34 CPBs migrant owners in Mataururu who secured land after the failed estate project still have not paid any money since they settled on their respective CPBs, whilst the rest have paid some amount on an arrangement agreed between them and the customary land owner (CLO). Further investigation revealed that the ones who did not pay did not sign the OPIC designed lease agreement or other forms of agreements which outline the expected 'price' of the land (K6,000.00/hectare), and thus believe they are not obligated to pay, while the others who paid the money did sign an agreement. With lack of proper records kept by the late clan leader who solely handled all the land transaction matters, it is very difficult for the other clans in Mataururu who now oversee Ugeuge clan land to manage the existing CPBs.

At the time of the field study, many of those CPB owners in Mataururu who have not paid for the land expressed great fear of being removed from the land. Similarly even for those who have signed the OPIC designed Lease Agreement, but have not lived up to the terms of agreements regarding continuous payment, express concern. The main other types of agreement forms that are used apart from OPIC designed Lease Agreement form are CLUA, Statutory Declaration and land Mediator Agreement forms³³. The passing of the principal landowner whom they dealt with solely created a general sense of insecurity about how the other clans in Mataururu who now oversee the Ugeuge's land will manage the existing tenure arrangements.

Land transactions around Mataururu for this wave have been conducted in two different ways:

1. CPBs converted from failed Independent estate projects:
 - 80 percent used OPIC designed lease agreement forms which set out purposely to assist CPBs owners and CLOs record the land agreement in a written format.

³³ Clan land Usage Agreements (CLUA) and Statutory Declarations are the two major forms and instruments most CPBs and CLOs use to sign and seal customary land transactions at present. CLUA forms were developed by the Lands Department of PNG as an agreement form that can be used to protect the use of customary land by people outside of the landholding group. The Statutory Declaration is a legal document made available by the government publicly for anyone/parties wishing to declare his/her/their rights. The OPIC designed lease agreement form is a form developed by OPIC in Bialla specifically to assist the sole Ugeuge clan principal owner to facilitate the transfer of his 70 hectares of failed estate to CPB smallholdings that are by now converted into VOP.

- 15 percent used Customary Land Use Agreements (CLUA) and
- 5 percent did not sign any formal agreement with the landowner.

2. CPBs that are directly 'sold' by CLO:

- 60 percent use CLUAs
- 30 percent used Statutory Declarations and Land Mediator Agreement forms.
- About 10 percent did not sign any formal agreement with the landowner.

(see Appendices 5.1, 5.2, 5.3 and 5.4 for details of the content of each of these types of formal agreement).

The landowner in Kiawa concludes most of his land transactions at the Bialla District Court house in the presence of a third party – normally a legal officer. He principally uses Statutory Declaration forms which are often signed by him and the migrant. Part or full amount of the land price is often paid as well, and receipts are provided. In so doing, the CLO and the CPB owner believe the transaction is secured, thus any disputes whatsoever should be dealt with through the same procedure. However, most clan members complained during the interviews that they don't normally get their share of the money being paid by CPB owners, indicating that the clan leader does not usually distribute revenue from the 'sales' of land fairly.

5.9.8 Case study 3: Third wave migrant land acquisition in Mataururu

Sam (not his real name) is from East Sepik Province (ESP) and moved to Bialla when he was a very young person. He worked as a missionary in his Christian church. During that time he married his wife who is also from ESP. They now have 4 children. Sam and his family were allowed by his church to live and help harvest oil palm from the LSS block which the church bought from an original customary land owner. The church arranged that a certain percentage of proceeds from the sales of fresh fruit bunches and loose fruits would become Sam's pay. When his children started attending school, he found the percentage allocated to him insufficient and sought a CPB from Mataururu. He was one amongst many who first acquired the land after the Independent estate by the landowner failed. Sam and his family acquired a 1.5 hectare block and planted oil palm.

He did not sign any agreement forms and has not 'paid' any money to the landowners since settling on the CPBs. He continues to enjoy the income from the oil palm thus far. However, after the death of the principal owner, he heard that all clans from Mataururu had expressed concern about the informal nature of the current tenure arrangement under which all newly acquired CPBs were allocated, and had threatened to review all the existing agreements and repossess all land that was not properly 'sold'. Sam nervously approached OPIC and the Land Mediator separately for proper documentation. He was advised that they do not have any power to provide any documents and basic assurance without the

consent of the entire clan. Because Sam does not have and or has not maintained a constant relationship with the general landholding communities and has not 'paid' for the land, he fears that his interests will not be protected. After the death of the principal owner, there is no one else he can appeal to. He remains in his CPB and prays that he will be permitted to live on should the CLO proceed to review all the current tenure arrangements.

5.10 Summary of customary land sales in Mataururu and Kiawa

The integration of the different waves of migrants into Mataururu and Kiawa through transfer of customary land for oil palm smallholder development has been accompanied by major changes in tenure arrangements over the last 30 years. As James (1985) rightly claims, modern day practices of planting cash crops such as oil palm which directly demand constant use of land for a number of years could no doubt lead to the modification of the concept of land in traditional tenure. The experiences of 'sale' and use of customary land in Mataururu and Kiawa as discussed reflect a great deal of significant changes in the way traditional land norms are practiced. Traditional customary law is known to be flexible, and it clearly has changed a great deal to accommodate the changing socio-economic circumstances (James 1985).

Chapter: 6. Emerging issues and challenges

This chapter presents some of the key findings of this study in the context of the major issues and challenges that emerge from the Customary Purchased Block (CPB) tenure arrangements in Matururu and Kiawa. It also draws on comparisons with other CPBs previously studied at the Hoskins oil palm project area in general (Koczberski *et al.* 2001). A specific focus of this chapter will be on critical observations of CPB tenure arrangements that the waves of migrants and land owners have experienced; particularly the types of land transaction agreements (either verbal or written) on which the land tenure is based. Further, critical general analysis of the emerging and ongoing issues regarding tenure disputes, conflicts and tenure security apart from the advantages and disadvantages of CPB tenure arrangements as perceived by both the migrant settlers and customary land owners (CLO) will also be discussed in comparison with similar discussions by Curry *et al.* (2007). Finally, this chapter will conclude with a brief critical assessment of the rise of CPB tenure arrangements and the challenges faced by major stakeholders of the oil palm industry in Bialla project areas in dealing with this new trend of land tenure practice.

6.1 Problems and critical emerging issues identified within the existing CPB tenure arrangements in Matururu and Kiawa

There are a number of general problems observed to be common in areas where there has been a high concentration of CPBs emerging over the last decades, particularly in Hoskins and Bialla (Curry *et al.* 2007). Among all problems and issues, one of the fundamental challenges CLO, CPB migrant owners, and other stakeholders face is to find a comprehensive and appropriate procedure that allows the use of customary land by migrants with the consent of the clan and in accordance to customary laws as stated in section 73 of the Papua New Guinea Land Act (Cooter 1991). Land transactions in Matururu and Kiawa have experienced a wide range of land tenure issues since the first wave of migrants acquired land. These include: increased population of migrants, the use of different land usage agreement forms, disputes and conflicts with migrants, disagreements between older and younger generations of land owners over land 'sales', etc. So far, as at Hoskins (Curry *et al.* 2007), several different land transaction procedures are occurring in Matururu and Kiawa. The five most common ones are:

- 'Sales' and 'purchase' of land based on verbal agreements.
- The use of Clan Land Usage Agreements (CLUA).
- Agreements provided at the district and provincial office of Land Mediator.
- Transfer of land through the use of Statutory Declaration forms.
- OPIC designed lease agreement forms (only observed in Mataururu).

6.1.1 Current land transaction agreements between CLO and migrants settlers

Critical observation of customary land tenure practices and transaction agreements underpinning the transfer of usage and ownership rights across the three waves of migrants discussed in Chapter Five exposes various limitations, as outlined below:

(a) 'sale' and 'purchase' of land based on verbal agreements

Land transactions based on verbal agreements are open to different interpretations (Curry *et al.* 2007). The first and the second wave of migrants into Mataururu established arrangements based on verbal agreements between the migrants and the land owners mostly eventuated on the basis of the social relationship bonds between the parties. Thus, disputes and disagreement are likely to occur over the years because:

- Land values are rising, resulting in land owners demanding extra payment. For example, the price on the land in Kiawa which was 'sold' for K3,000.00 (AU\$ 1,700.00) per hectare in 1998 is now being valued at K6,000.00 (AU\$3,400.00) (see Case study 1 in Chapter Five);
- Migrants desire to pass the land over to their children which may not be agreed upon by the landowners, (see Case study 2 in Chapter Five);
- Growing realization amongst younger generations of land owners of land shortages resulting in CLOs seeking to repossess land being 'sold' by their elders.

(b) Use of Clan Usage Agreements (CLUA)

As outlined in Section 5.9.7 in Chapter Five it becomes evident that most CLOs and migrants in Mataururu prefer to sign the CLUA form permitting the transfer of usage rights from CLOs to migrant CPB owner. However as recognized by Curry *et al.* (2007), and evident through this study, CLUA forms do not outline the specific usage rights of the migrants moving onto customary land. While it is

generally accepted by the CLOs that the land will be used for oil palm, disputes usually arise when settlers want to start other businesses on the land like small trade stores or chicken businesses. CPB owners do not normally have clear authorization to use the land at their own disposal because CLOs still claim the right to dictate the character of CPB owners' use rights, thus creating ambiguity over who has the ultimate exclusive usage rights.

(c) Agreement provided at the district and provincial office of Land Mediator

Agreements signed at the office of land mediator (See Appendix 5.2), which do have a number of official land transfer procedures outlined, include:

- Form 10 Application for approval of agreement.
- Agreement for use of customary land.
- Lease agreement – transfer of lease.
- Notice of change of ownership form.

Though such agreements may seem official and uncontested, the land area 'leased' still lacks a formal survey. In most cases, CPB owners do not pay 'lease' 'rentals' as agreed upon and their land use rights are often challenged by land owners as a consequence (See third wave discussions in Chapter Five).

(d) Agreement based on the use of Statutory Declaration form (SDF)

Generally, a Statutory Declaration form (SDF) is a legal document defined under the law of certain Commonwealth nations such as PNG that is commonly used to allow a person to affirm something to be true for the purposes of satisfying some legal requirement or regulation when no other evidence is available (James 1985). A statutory declaration lacks legal enforcement when it is not properly used or has been signed by a single land owner and witnessed by other people instead of clan members or people from the village. Further Statutory Declarations like the CLUAs, do not record the 'purchase price', the deposit paid, or the size of the land (Curry *et al.* 2007). Therefore, merely depending on agreements based on the use of Statutory Declarations or CLUAs has resulted in disputes over the wrong declaration by people outside of the landholding group, and concerns about the appropriateness of Statutory Declarations to legitimize land lease and use agreements.

(e) OPIC designed lease agreement form (only observed in Mataururu)

The Oil Palm Industrial Corporation (OPIC) designed lease agreement form could be a vital tool for bonding both parties in agreement together; however, it was only designed in 2006 to be used in Mataururu when the failed estate was converted to CPBs and has not been widely used since (see Section 5.9 and Appendix 5.4). Also the complicated legal language used in this agreement mostly resulted in misunderstanding and misinterpretation by both vendor and purchaser who entered into land transaction agreements, especially when both lack basic literacy skills. For example, more than 50 percent of CPB owners under the third wave in Mataururu who used this agreement (see Section 5.9.7 in Chapter Five) commented that they do not understand the agreement primarily because the legal language used is quite difficult for them to comprehend.

6.1.2 Other Major issues

Apart from the types of agreements and their respective challenges as outlined above, other major issues observed throughout the field research are listed below.

- Despite the 'sale' of customary land under any agreement outlined in the preceding section, it appears that ownership of the land still legally remains with the customary land owners, and migrant settlers only have access and usage rights stipulated verbally or within the terms and conditions of the signed agreements.
- Although the notion of land gifting in Nakanai was popular in the past and is only practiced in a limited way between indigenous groups at present, its influence on current practice is very much evident in the leniency and the flexible character of landowners' practices of land 'sales'.
- Informal land transactions that are based on social relationships are maintained through constant maintenance of social relationships which must flexibly adjust to new generations of landowners in order to maintain tenure. Maintaining relationships depends upon meeting host communities' socio-economic needs, customary obligations and ongoing involvement in communities' activities.
- In the absence or lack of government assistance in helping CLOs develop proper management practices on their customary land within the oil palm project areas such as Mataururu in Bialla, CLOs continue resorting to any means which appear to fit their immediate needs to respond positively to the rapid flow of development on the one hand, whilst protecting their interests on the other.

- Current practices of informally individualizing land agreements which should traditionally be a communal and or collective effort directly distort customary land tenure principles and undermine women's matrilineal rights of land inheritance and decisions over existing CPB tenure arrangements.
- CLO decisions on the land 'sales' have changed a lot since the arrival of the first migrants. The second and the third wave of migrants acquired land from only one landowner who did not seek the consent of all clan members and did not keep any records of land transactions and 'purchase' 'prices'. The tenure practice was informally individualized (see also Koczberski *et al.* 2009). After the clan leader's death (in the case of Mataururu), all CPB owners appeared vulnerable to disputes and conflicts either amongst themselves over boundaries or with all clans that are overseeing the late clan leader's land.
- About 80 percent of the younger generation belonging to the clans that are involved in 'selling' land in. Mataururu and Kiawa villages believe they will have not enough land to set up their own oil palm smallholdings within 10–15 years because most of their land is now being sold to migrant settlers.

6.1.3 Ongoing population challenge

Curry *et al.* (2007) discuss the rapid expansion of CPBs in the Hoskins oil palm scheme and more recently in the Bialla area as a result of the growing inflow of migrants over the past 10-15 years in the oil palm growing areas of WNB. For instance in Gaungo Village³⁴ in the Hoskins scheme, more than 900 hectares of oil palm have been planted by migrants on land 'purchased' from customary land landowners, which represent about 84 percent of the total area planted to oil palm in the village (Curry *et al.* 2007). The same study estimated that in the Bialla area approximately 200 hectares of customary land have been 'sold' under CPB tenure arrangements.

Due to the high number of migrants entering West New Britain Province (WNB) over the last 10 – 15 years needing to secure land for oil palm smallholding development, customary landowners around

³⁴ Gaungo is a village in Hoskins project area where there a high concentration of CPBs being established.

the oil palm belt in WNBPs are now faced with enormous pressure to 'sell' land. According to data from the PNG National Population census cited in Koczberski *et al.* (2001), in 2000 about 38.5 percent of the population in Gaungo were migrants from other provinces of PNG. According to the questionnaire and interviews for this thesis, it appeared that more than 60 percent of the migrants under third wave arrived in WNBPs between 1995 and 2006.

This study also noted that apart from the inflow of migrants, people from overpopulated LSS blocks are seeking CPBs as a means of easing over-crowding. Insufficient income distribution amongst members of the family is also a serious issue among most LSS smallholders. Many second and third generations within LSS who have lost almost all contact with home villages in their respective provinces and are not employed now find the CPB to be the best option or the only hope of securing a better future. Apart from the second and third generation within LSS, Retirees from any form of employment in WNBPs continue to 'purchase' CPBs as a better alternative settlement option to illegal squatting on urban or rural state land.

6.1.4 Disputes, conflicts and resolution relating to CPB land tenure arrangements

Disputes, conflicts and tenure security differ from one oil palm project area to another in PNG, (Koczberski and Curry 2003). However, the common cause of all land disputes and conflicts regarding CPB land tenure arrangements is often about the rights to use and own the land that is being 'sold' and 'purchased'. There are different levels of dispute and conflict observed within Maturu and Kiawa between landholding groups and CPB owners. The table below outlines the parties engaging in CPB land transactions and some of the common disputes that subsequently end up in major conflicts, as well as the common reasons behind each one of the primary disputes.

Table 6.1. Disputing parties and common reasons for disputes

Parties involved in CPBs land deals	Disputes & conflicts between/among:	Common reasons for disputes:
Landholding groups	Principal land owners and the entire clan	Individualized 'sales' of land to migrants without clan's consent.
	Elder members of the landholding groups and younger generations	Younger generation facing land shortage after a lot of land has been 'sold' to migrants
	Women and men involved in land 'sales'	Over matrilineal inheritance rights and the exclusion of women from involvement in

		land sales to migrants, apart from the general abuse of customary land law of the landholding community
Customary Purchase Block owners	Owners of the CPBs and his family	Income distribution and land inheritance rights
	Owners of CPBs and Care takers	Over the fair distribution of income generated from harvesting oil palm by care takers
	Owners of CPBs and principal land owner	Over full payment for the land, rights to integrate other income generating activities and the right to own and resell the land purchased to someone else.
	Owners of CPBs and younger generation of Customary landholding communities	Conflicts often occur between sons of CPB and the next generation of customary landowners who tend to see migrants as stealing their rightful land which they want to develop into their own oil palm smallholdings in the future.

Apart from the dispute itself, the resolution processes and procedures are often an area of concern. Because of the lack of documentary evidence of the land transaction, many land disputes on customary land cannot be properly dealt with by the higher formal court systems. Customary land tenure remains governed by customary law and disputes are heard under the village and land mediation court systems that debate issues on the basis of the customary law of the land of the particular landholding groups (Cooter 1991). Due to the lack of written records for CPB land transactions, the purchaser, and even in some cases the vendor, has insufficient evidence to support their disputed case in any court. Disputes between clan members are also a problem, and are likely to end up in court. Furthermore, lack of knowledge of or general misunderstanding of the different court systems' suitability to settle different matters arising as a result of the informal land transaction is also a major issue many disputing parties face. The case study below clearly shows an example of the major challenge legal institutions are facing regarding the informal nature of CPB tenure arrangements.

6.1.4.1 Case study 4: Land dispute case between CPB owner and CLOs

Api (not his real name) is currently residing on a CPB which was first sold in 1985 to a man from East Sepik Province (ESP). Api helped in taking care and harvesting the oil palm because the original 'owner' was too ill. When the CPB owner died, the landowners attempted to harvest the oil palm and subsequently reclaim the land. Api mobilized his relatives and attacked the landowners almost killing two. The landowners, regrouped and attacked Api and his relatives, and took him to the police station where he was placed under police custody. Api was later charged with assault and committed to pay a fine by the District Court. The magistrate heard that under the powers of the district courts he could not make any decision on the customary land dispute or ownership of the land because there was no written evidence to prove any land transaction had occurred. He ruled that the matter about land disputes and ownership rights be heard by the land mediation court and that other alleged cases be dealt with by the village courts. Both disputing parties did not proceed any further in the land mediation or village court systems for various reasons. Api believed that the village and land mediation courts would prejudicially rule in favour of the CLO, while the CLO did not bother as he maintained that the land remains clan land and he sees no reason to waste time and money in the courts. Api and his relatives have left the land in fear of further attacks and intimidation by the landowners.

6.2 Advantages and disadvantages of CPBs as perceived by migrant owners of current CPBs and CLO.

There are general advantages and disadvantages of the current trend of CPB land tenure arrangements in Matururu and Kiawa that stem out of the discussions in this thesis. The advantages and disadvantages in this case basically refers to the positive and negative aspects of the current CPB tenure arrangements as perceived by the customary land owners and the three waves of CPB owners. All responses recorded below are based on the practical experiences of customary owners and migrants living under/with CPB tenure arrangements in Matururu and Kiawa villages.

6.2.1 Advantages

Table 6.2 Advantages of Customary Purchase Blocks (CPBs)

Customary land Owners (Why selling land?)	Migrant owners of CPBs (Why buying land?)
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<ul style="list-style-type: none"> - Generate income through the sales of land - Developing social relationships with people outside of the landholding group who can provide labour, and social and economic assistance for the clan when needed. - CPB owners help clear the land and set up oil palm smallholdings. After the tenure period of 10 – 20 years expires it then become easier for landowners to carry on harvesting or replanting. 	<ul style="list-style-type: none"> - A place to establish a livelihood - Generate ongoing income to support the family from the sales of FFB and loose fruits - Secure a future for family and children away from conflicts in home village/province. - Provide opportunity to avoid illegal squatting on government land in slums around the towns and cities. - Reduce the risks of poverty for land short migrants
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6.2.2 Disadvantages

Table 6.3 Disadvantages of Customary Purchase Blocks (CPBs)

Customary land Owners	Migrants owners of CPBs
<ul style="list-style-type: none"> - One off payment collected as the price of CPB is insufficient. - 'Sales' of land have the potential to lead to land shortages for the next generations of CLOs - New CPB owners do not know the culture and custom of customary land, and thus end up disrespecting the community and destroying its heritage sites such as cutting down fruit trees planted by ancestors that mark the traditional land boundaries - CPB owners and their children engage in conflicts and confrontations with youth of the village raising social security consciousness amongst customary landowning communities within environments which were once peaceful. - CPB owners host many relatives from their home provinces who are new to the area, sometimes resulting in a range of social problems and crime such as stealing, rape and abuse of fishing and hunting grounds. - Customary land tenure practices within the matrilineal Nakanai system are distorted through the practice of land 'sales' at present; thus CPBs can be a major cause of clan disputes and general conflicts amongst landowning groups. This is creating much social disharmony in the village. 	<ul style="list-style-type: none"> - Tenure insecurity affects the level of energy input in the oil palm production and investment in the development of the CPB - Tenure is totally informal – undocumented, verbally agreed upon and payments are not receipted for basic records purposes. - All agreements signed thus far are only with one member of the clan and thus are subject to dispute by the rest of the clan - The death of the sole vendor of customary land increases uncertainty on the future of the current CPB tenure arrangements under the responsibility of new landowners, - Absence of basic records of transaction by CLOs makes it difficult to settle land disputes under the existing court system. - Quest to attain freehold title is extremely difficult. The nature of customary land tenure is such that even individual customary landowners in Mataururu and Kaiwa would find it almost impossible to convert customary land to freehold title.

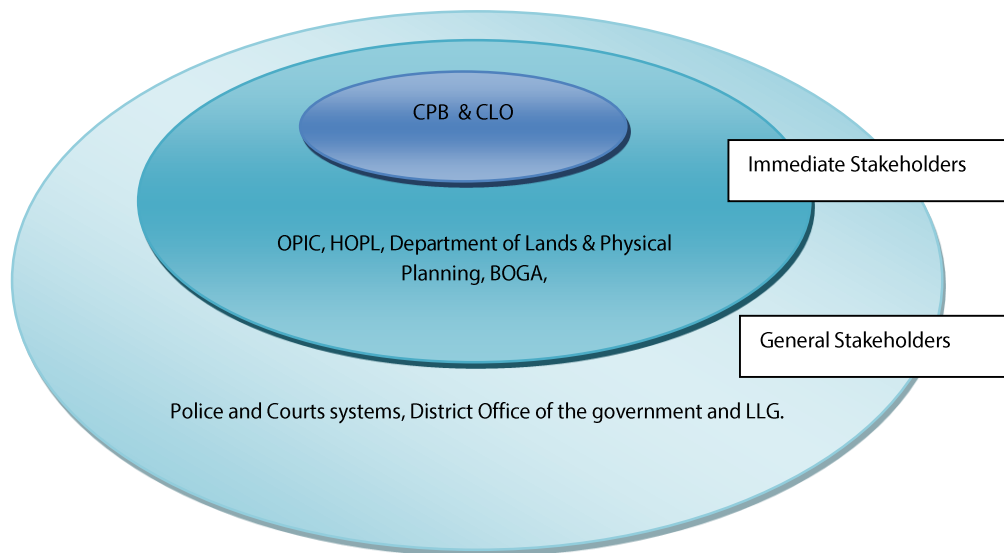
- Absence of basic records of transaction by CLOs makes it difficult to settle land disputes under the existing court system.	<ul style="list-style-type: none"> - Land use rights are limited and recent agreements stipulate short (20 year) lease periods. - The size of land is small, thus income is limited. - Disputes, conflicts, intimidation and threat by younger generations of CLOs are common, thus increasing social insecurity
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As seen from Tables 6.2 and 6.3 the disadvantages of the current inadequately documented and regulated system outweigh the advantages of the present system of land transactions for both CLOs and migrants. Likewise the advantages identified by migrants seeking CPBs outweigh the advantages land owners identify for selling land. The negative aspects emerging from CPB tenure practices lead to social, cultural and economic disharmony.

6.3 Critical challenges primary stakeholders of Bialla oil palm project face due to CPB developments.

Apart from the challenges being faced by CLOs and CPB owners in Matururu and Kiawa regarding the current trend of CPB tenure arrangements, at the macro level this study further recognizes two levels of stakeholders that are affected by the growing trend of CPB tenure arrangements within the oil palm development in Bialla District. They are grouped together as immediate and general stakeholders. The immediate stakeholders are: OPIC, HOPL, Department of Lands – represented by the district lands office, and the Bialla Oil Palm Growers Association (BOGA). The general stakeholders in this case are: district legislative agencies such as the police and the courts, the district offices, and the Bialla Local Level Government (LLG). These levels of stakeholders can be illustrated as follows:

Figure: 6.1 Stakeholders of Bialla oil palm scheme



Immediate stakeholders consist of entities that are primarily engaged in the oil palm industry and have a direct connection with CPBs and their tenure practices, and therefore face a very different level of challenges. For instance, presently the district and provincial lands offices have not been effective in sorting out CPB land matters and have left OPIC to take on extra responsibilities to deal with land matters on smallholder oil palm blocks. OPIC, apart from its role as the sole organization responsible for meeting the needs of growers, ends up in a very difficult position of working out how to deal with this growing trend of customary land 'sales' to migrants for oil palm cultivation and the informal nature of these transactions which are causing many land disputes between the migrants and CLOs, as well as among the landowning groups themselves. For example, the use of the OPIC designed agreement form was one of OPIC's attempts to ease an emerging problem when the proposed estate development in Matururu failed (see Section 5.9.4 in Chapter Five and Appendix 5. 4). Hoskins OPIC has started to address some of the tenure insecurity issues (for both migrants and clan members) of CPBs by devising new CLUAs for CPBs (Curry *et al.* 2007).

General stakeholders, on the other hand, consist of entities that do not directly deal with CPBs and CLOs, and accept if CPB tenure arrangements have spill-over effects that raise concerns within social, political

and administrative arenas that may need their attention, such as conflicts resulting from land disputes amongst CLO and CPB owners, or other general social problems cause by migrants settlers on CPBs.

In addition, one of the significant challenges migrant owners of CPBs, CLOs, immediate stakeholders and general stakeholders is the need to work together to enhance the smooth progress and development of the oil palm industry regardless of the different issues faced. Many CLOs and migrants owners of CPBs have so far relied heavy on OPIC and HOPL for land matters, even those matters are outside of the function and policies of these immediate stakeholders. This research shows that there is a need for more proactive cooperation by the relevant government departments such as 'Lands and Physical planning' to match up with the rapid flow of development of the palm oil industry and to be involved in all land matters emerging between CLOs and CPB owners in order to develop policies and work out strategies to minimize all tenure risks effectively.

Chapter: 7. A way forward

One of the defining tasks this study aims to achieve is to contribute meaningfully to the development of a better way forward for customary landowners and migrant smallholders seeking land for oil palm development. This chapter provides the conclusion of this study and outlines recommendation for improving current CPB tenure arrangements. Key recommendations adopted in this thesis build on existing recommendations outlined by Curry *et al.* (2007) and elaborate on minimizing shortcomings experienced by the current land tenure practices in Matururu and Kiawa as described in Chapters Five and Six.

7.1 Conclusion

The Customary Land Tenure (CLT) practices observed in the case study of Matururu and Kiawa thus far have exposed a range of agreements along with their issues, challenges and shortcomings (see Chapter Six). The demographic, social and economic changes over the past 20 years since the oil palm project began in Biella in 1977 (Koczberski & Curry 2003), have caused major changes among the local indigenous people of Matururu and Kiawa. For instance, the communal land tenure norms in the matrilineal inheritance system have been partially ignored as more and more individual land owners continue to shift focus from the clan's interest to favour their nuclear family's livelihood interests. Instead of letting their children (both male and female) remain in their mother's clan, they are increasingly keeping them within their father's clan by giving them land to develop their own oil palm smallholdings.

Moreover, the focus on 'selling' land to migrants seeking land to cultivate oil palm in Matururu and Kiawa villages saw a massive shift in the way the customary land tenure occurred in the Nakanai matrilineal system. Hence, customary land tenure practices have been modified significantly since the first wave of migrants commenced acquiring land in Matururu. In all three waves of migrants it appeared that both the CLOs and CPB owners have experienced shifts in tenure practices.

This study also observed that the basic problems of insecurity over the rights to own and use customary land that are associated with the informal 'purchase' of land by CPB owners from CLOs occurred principally when CLOs attempted to flexibly adapt to new sets of economic opportunities associated with the expansion of oil palm within the context of the modern capitalist environment, whilst

maintaining some aspects of traditional land values and undermining others. The experiences of Mataururu and Kiawa can be apparent in the notion of two systems: customary institutions (based on oral traditions) and modern nation state institutions (written law and literature) with their respective sets of norms and laws on how land should be governed (AusAID 2008). Customary land tenure experiences observed in Mataururu and Kiawa partly reflect the test of the ability of CLOs to adapt and blend the new expectations of rapidly changing socio-economic forces with the expectations of their customary land laws and culture. That experience is similar to observations by Fingleton, who writes that amongst the 'Tolai' communities in East New Britain Province, "People operating under the flexibility of their customary tenures are able to adjust to the changing demands they make on their land under modern circumstances" (2005, 34)

However, the key challenge CLOs and CPBs along with all immediate stakeholders of the oil palm industry face is the need to establish a better customary land tenure practice beyond the flexible nature of customary land that can work well for the benefit of both migrant settlers and customary landowners. Also the need for effective land administration within existing systems and resources is a vital and practical measure to ensure reasonable tenure security amongst CPB owners and CLOs over land ownership and usage rights. The effectiveness of any such initiatives will depend on the practical level of collaboration by all stakeholders, in particular the Oil Palm Industry Corporation (OPIC), Hargy Oil Palm Limited (HOPL), Bialla Growers Association (BOGA, Department of Lands & Physical Planning, CPB owners and CLOs. Furthermore, acknowledging and working with customary institutions in the design of any new land tenure policies and land usage agreements is fundamentally crucial.

7.2 Recommendations for a better way forward

This study found that five different kinds of agreements were being used throughout Mataururu and Kiawa (as discussed in Chapter Six) to facilitate the land transaction: verbal agreements; the use of CLUAs; agreement forms from the office of the Land Mediator; Statutory Declaration forms; and OPIC designed lease agreement forms (only in Mataururu). Moreover, all these forms and agreements have varying shortcomings. The recommendations below aim at improving the current informal and insecure CPB tenure practices that have been discussed in Chapters Four and Five, and which are outlined above. Improvement in this case specifically refers to developing only *one form of agreement* that can be used by CLO and CPB owners, and must be accepted by the industry as whole.

At this juncture, this study acknowledges that similar recommendations have been suggested earlier by Curry *et al.* (2007), which proposed the introduction of one agreement which should comprise the following three elements: (1) a Customary Land Tenancy Agreement (CLTA); (2) completion of a Land Investigation Report; and (3) the design of a statutory declaration form. It was recommended that before a CLTA is signed, a land investigation report has to be done. Finally, a statutory declaration should be signed between the agreeing parties following the signing of a CLTA (Curry *et al.* 2007, 26 – 30). This study's recommendation adopts element 1 and 2 of the previous study's recommendation. However, it proposes to avoid the use of Statutory Declarations, due to observations of their shortcomings that emerged from this research (see 6.1.1 in Chapter Six). Instead, it is proposed to adopt a similar document to the OPIC designed lease agreement (that was used in Mataururu) with the integration of relevant parts of all the above mentioned agreements to be shaped as a standard form of 'lease'³⁵ agreement. It should encompass all important facets required by the oil palm industry on one hand, and protect the usage and ownership rights of parties engaging in agreement on the other.

7.2.1 OPIC in collaboration with HOPL, CLO, CPB owners, BOGA and the Department of Lands to develop a new 'Customary Land Tenure System Agreement'

It is recommended that OPIC as the only active government entity within the Bialla oil palm project area working with smallholders and an immediate stakeholder of the oil palm smallholders program (which CPBs come under) will have to coordinate the development of the Customary land tenure system (CLTS) and the processes for its implementation. Preference of OPIC to oversee the CLTS development process is also the reason that the government's Department of Lands and Physical Planning through provincial and district Lands Offices has been ineffective thus far and lacks basic administrative capacity to deal with such matters. From the outset, in recommending that OPIC oversee the CLTS, this study acknowledges that OPIC's expansion to include such a role will require additional funding and staffing – staff with expertise in customary land law to be attached with OPIC to oversee all aspects of this recommendation. However, it is strongly recommended that a government lands officer actively assist OPIC on all land matters as well.

³⁵ The shift of fundamental concepts from the current trend of tenure practices base on outright land 'sale' and 'purchase' (see section 1.2 in chapter 1) to a trend of land 'leasing'. Due to tenure insecurity issues associated with the current practice of 'selling' and 'buying' of customary land (see chapter 5), the recommendation will focus on discussing a model of land transaction agreement that will focus on 'leasing' tenure arrangements.

This study recommends that there should be two major phases in the process of developing a new CLTS:

- First, the designing and compilation of the agreement. This study proposes that the agreement should be designed in the form of a booklet best described as a “one stop shop³⁶” document. That booklet could have the title, ‘Customary Land Tenancy Agreement Booklet’ (CLTAB). CLTAB should contain all the required agreement forms, land investigation reports (Curry *et al.* 2007), records of meetings, minutes and other necessary facets of the agreement in the form of a single book (document). Hence, it could also be easily signed and kept as a record as well as maintaining consistency and uniformity in CPB tenure arrangements across the entire project area.
- The agreement implementation is the second phase. It is the actual ‘carrying out’ of the agreement contained in the CLTAB. In brief, the implementation stages would be:
 1. Negotiating and specifying the intentions to relinquish land usage rights (by CLO) and to lease the land (being identified),
 2. Carrying out of the land investigation report,
 3. Signing and approval of land investigation report,
 4. Signing of the Customary Land Tenancy Agreement - which should be named as: ‘Customary Land Lease/Rental Agreement’.

These two elements will be described together under the brief description of CLTAB of the recommended land tenure system below.

7.2.2 Brief description of the sections of CLTAB of Customary Land Tenure System.

The Customary Land Tenure Agreement Booklet (CLTAB) should be comprehensively designed by all immediate stakeholders of the oil palm industry and include all key components deemed necessary to be part of the customary land tenure agreement between the lessees and owners of the customary land. There should be effective consultation between OPIC, legal experts on land matters and land owners during the process of compiling the CLTAB. The key parts/sections of CLTAB should include:

³⁶ The phrase “one stop shop” used in this context refers to the proposed “Customary Land Tenure Agreement Booklet” that should contain all the different agreements, forms, legal and administrative documents that a CLO and CPB owner require, as well as signed records of their land transaction and tenure arrangements. The phrase was the rhetoric used during the meeting by attendees to explain a kind of document consisting of all significant areas that encompass land transactions between CLO and migrant settlers.

(a) **Introductory section** - consisting of :

- clarification of the nature of 'lease' agreement on the customary land and its distinction from freehold title,
- statement clearly defining the land as customary, that will remain under customary law and ownership,
- outlining step by step the procedures by which the agreement process will take place that need to be understood by parties engaging in agreement; for example, specifying that before a customary land tenure agreement is signed, a full land investigative report has to be compiled.

(b) **Section on expression of intention** - consisting of the agreeing parties' intentions to 'lease' by migrant settler and the temporary relinquishing of use rights by the customary land owners. Based on the intentions set out, the next step would be to conduct a land investigation.

(c) **Section on land investigative report** – this section of the CLTAB should consist of pages of land investigative report that need to be carried out under the land investigative and assessment process. The idea is to keep all records together as part of the booklet. All reports would be recorded and copies could be duplicated for filling in other OPIC records, while original copies could be kept by the agreeing parties. Part of this section of the CLTAB would include:

- Names of village representatives from the CLOs ,
- Land Assessment – status of the land; for example, whether it is under dispute or not, record of the boundaries, sketch map of the area, local name of the area where the portion of land is identified, assessment of the present and future need of the land by CLOs, and whether or not relinquishing land is likely to create land shortages, etc.

(d) **Clan consent and approval** – This section of CLTAB should be designed to be carried out alongside Section (c) above at the time of the field report. It is the forum in which a clan's or landowner's intention to relinquish land usage right for 'lease' and proposed tenant or leaser's intention to 'lease' is discussed, debated and approved. Some of the significant elements of this meeting that would need to be recorded are;

- Number of attendees (should be more than half as well as a fair proportion of male, female, families, youths and elderly with legitimate customary ownership rights over the proposed portion of land under offer),
- Percentage of objection and support of the intentions made in section (a) of CLTAB,

- Rights of the lessee, agreeable rents (rates), how disputes can be resolved, methods of distributing lease payment fairly amongst clan members, and any additional rules and regulations the clan intend the tenant to adhere to during the term of the lease,
- Discussions regarding the clan members' rights and restrictions of the 'lease' and agreement.

Finally, after completion of the report, landowners should be given the opportunity to read through to make sure the report represents all the views and discussion during the meeting. Then it can be approved and signed by four clan members nominated by the clan. The clan members should consist of a young male and female, their mother and the clan leader. The signatories should be members of the family within the clan that have the immediate interest and control over the land.³⁷ The OPIC officer concern will have to also sign the report. It is strongly recommended that the signing of the report should be done openly and must be witnessed by all clan members and attendees of the meeting.

(e) **Customary land Lease Agreement** – This section of the CLTAB contains the main agreement form which the intended tenant and the customary land owners will sign to finally seal the customary 'lease' agreement. It should be based on the status of section (c) and (d). This study recommends that the basic sections of this agreement should adopt similar sections from the OPIC designed lease agreement form (See Appendix 5.4). This section of the agreement should include:

- Date and place the agreement is entered and signed
- Three parties as signatories – composing four members of the land owner's family and clan, a representative from OPIC and the district lands officer. It is important that all four signatories from the land owning group should be the same as specified above in the signing and approval of the land investigation report. Similar to the signing ceremony

³⁷ In Nakanai, the power and land inheritance matrilineal structure is easily defined and understood (see Section 5.2 in Chapter Five), as such signatories within the immediate clan and family grouping can be easily identified. Each clan's land can be distributed amongst members of the clan within family groupings. As such, it is recommended that the signatories must/will be from the family within the clan that have an immediate control over the proposed portion of the clan's land that is now under offer. The family would include the mother who is the owner, one of her sons and daughters and the clan leader. For a father who is the land owner, his first born apart from his nieces and nephew (his sisters' children) will be the signatories apart from the clan leader. The clan leader as one of the signatories represents the entire clan. However, in cases like the Ugeuge (see Chapter Five) where all members of the clan have died, all other clan leaders and the first born child of the last member of the Ugeuge clan could be the signatories. In such a case all the clan's consent will have to be sought accordingly. This study noted that since the last Ugeuge clan member died, there is no case of Ugeuge land being 'sold' or 'lease'.

in the approval of the land investigative report, the signing of the agreement should be done openly (preferably in the village) and must be witnessed by majority of clan members, leaders and people who are present in the signing ceremony to maintain a high level of transparency. The OPIC representative and the district lands officer should counter sign as witnesses to the agreement.

- Important statements that declare that customary land owners are relinquishing usage rights of the portion of land (its location, size, boundaries and if possible a sketch map) to the tenant and the period of the lease.
- Terms of the 'lease' agreement – this section of the agreement should outline all the prescribed terms and condition put forward by the CLO for the tenant to adhere to during the 'leasing' period in section (d) of CLTAB. Key components of the terms of lease include:
 - Rights granted to the tenants for the use of the land to generate income from the land, cultivate subsistence and commercial crops (oil palm), establish other income generating activities such as poultry and maintain assets like a house, car, etc.
 - Rights of the CLO to repossess the land should the terms and conditions of the agreements be breached.
 - It is recommended also that other important conditions of the lease cover such matters as a tenant's right to transfer the land to another person during the lease period, restrictions on the number people living on the land with the tenant, and on general behaviors that could cause social disharmony.
 - Specific terms regarding future aspects of the lease in instances where the tenant dies during the lease period and the allowance of his/her family to live on, as well as conditions for renewal of lease and/ or conditions upon which the land can be reverted to the CLO.
- Lease/Rental payments – This section of the agreement should include details of the payments and the agreed terms of payment such as up front, installment, 'rental' and 'leasing'. It should also include the methods of payment, for instance whether payment is to be deducted from the income generated from the block and deposited directly into the account of the CLO, which should then be distributed to other clan members according to the arrangements agreed upon by the CLO in section (d) of the CLTAB. It is strongly recommended that forms of payment made upfront prior to setting up bank deposit arrangements should be transparent and witnessed by three party signatories to this agreement. Also standard receipts, bank statements and other records of

monetary transactions (which could be attached to or be part of the CLTAB), should be well maintained by agreeing parties, and copies held by OPIC under the respective block's file. It is recommended that CLOs should be encouraged to open up bank accounts which will be used to transfer the lease or rental payments. Furthermore, consideration should be given to fluctuating productions, thus provision regarding lease payment rates could use a standard measurement based on the capacity of production in the block. For example, when the oil palm (fresh fruits bunch) price is high, the tenant can increase his/her rental payment and vice versa.

- (f) **Dispute and resolution procedures** – pages at the end section of CLTAB should incorporate basic dispute and conflict resolution procedures, which would assist both parties engaging in agreements to understand the roles of the different courts systems and relevant measures to take to resolve issues. For example a land mediation forum should be organized by OPIC that should include the presence of: disputing parties, village committee, OPIC, a representative of the land department and a community police officer.

It is further recommended that:

- OPIC, with the support of all stakeholders of the Bialla oil palm industry, secures necessary funding to improve its capacity to handle all matters discussed above, by training its staff to work on: genealogy, record keeping and maintaining a data base of agreements and block files etc., apart from sourcing legal experts as stated in the earlier part of this recommendation.
- Landowners should be encouraged to keep proper records of CLTABs with personal filling system and liaise closely with OPIC, and report any matters arising that can potentially contest the nature of the agreement.
- CLTAB should use plain language that would be easily understood and interpreted by the agreeing parties. Use of Tok Pisin (PNG lingua franca) can be an option if unanimously agreed upon.

7.2.3 Concluding comments

Effective collaboration between all major stakeholders is required for designing and implementing any new policies such as the recommended customary land tenure agreement in the form of CLTAB. Therefore, and reiterating the argument of Curry *et al.* (2007), it is important that all immediate stakeholders in the Bialla oil palm scheme work together to assist OPIC in developing, implementing

and reviewing the proposed customary land tenure agreement system. This study also notes that the use of term 'sale' and 'purchase' of customary land and its connotation have caused ambiguity and misunderstanding of ownership and usage rights. For example; more than 45 percent of current CPB owners after purchasing the land believe they have a right of usage similar to that of settlers on Land Settlement Schemes (LSS), but found that these assumptions were not held by landowners who still maintain ownership authority.

The fundamental goal in establishing a better way forward should be one that ensures customary tenure and CLO rights are not undermined, and that the risks of insecurity amongst migrants or people purchasing usage rights on customary land to develop oil palm smallholdings are minimized (Koczberski *et al.* 2009). It is therefore hoped that this research study and its recommendations clarify and contribute to solving the key ambiguities over the rights to use and own land that is 'sold' and 'purchased' throughout Matururu and Kiawa. Due to time constraints and limited resources, this study is not able to cover the wider community of land owners and migrants engaging in CPB tenure arrangements across the entire Bialla oil palm area. Therefore this study concludes by recommending that more research needs to be done in order to understand the range of informal tenure practices in other villages in the Bialla District that can further reshape and refine the nature of the responses as recommended in this study. Finally, it is an over-simplification to think that the recommendations outlined in this chapter offer the perfect ingredients to solve the ongoing informal customary land tenure issues in Matururu, Kiawa and Bialla. However, it would be wise to consider these recommendations as stepping stones towards further concrete developments for dealing with land transactions on customary land with non-clan members in the future.

Bibliography

- Armitage, L. 2005. Customary Land Tenure in Papua New Guinea: Status and prospects, Queensland University of Technology, Brisbane, Australia.
- AusAID. 2006. Land: Pacific 2020: Challenges and Opportunity for Growth. 81 - 89.
- . 2008a. Making Land work: Case study on Customary Land and Development in the Pacific. 2.
- . 2008b. Making Land Work: Recognizing Customary Land and Development in the Pacific. 1.
- Burton, J. 2007. Determinacy of Groups and the owned Commons in Papua New Guinea and Torres Strait. In Weiner, F. and Glaskin, K. (eds.) *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*. Asia Pacific Environment Monolgue 3:175 - 196.
- Chand, S., and Yala, C., 2006. *Improving access to land within the settlements of Port Moresby*. Canberra: Crawford School of Economics and Government, Australian National University.
- . 2007. *Land tenure and productivity: Farm level evidence from Hoskins Oil palm project*. Canberra: The Australian National University.
- Constitutional & Law Reform Commission of PNG. 2007. Review of Incorporated Land Groups and Design of a System of Voluntary Customary Land Registration. Port Moresby.
- Cooter, R. 1991. Kin groups and the common law process. In: P. Larmour (ed.), *Customary Land Tenure: Registration and Decentralisation in Papua New Guinea*, Monograph 29. Boroko, National Research Institute.
- Curry, G., Koczberski, G., Omuru, E., Duigu, J., Yala, and C. Imbun, B. 2007. Social Assessment Report for the Smallholder Agriculture Development Project (SADP), Papua New Guinea. Curtin University of Technology, Perth.
- Curtin, T., Holzknicht, H. and Larmour, P. 2003. Land Registration in Papua New Guinea: Competing Perspectives: Research School of Pacific and Asian Studies, Australian National University.
- Fingleton, J. 2005a. Introduction. In: J. Fingleton (ed.), *Privatising Land in the Pacific: A defence of customary tenures*, Discussion Paper No. 80, The Australia Institute, Canberra.
- Fingleton, J. 2005b. What a curve up? Customary Land Tenure in the Pacific is a good basis for evolving and changing societies, which is why the right are so desperate to end it. *Arena Magazine* 78:16 -17.
- Fito, G. *Oil Palm project in East Sepik to start*. The National News, 12, 02, 2008 2008 [cited. Available from <http://www.thenational.com.pg/021208/biz2.htm>].
- Gabut, J. 2000. Land Tenure and Land Registration in Papua New Guinea. Problems and Perspectives on Customary Land Tenure and Registration in Australia and Papua New Guinea, University of Queensland, Brisbane.

- Gelder, J. W. 2002. Australian economic links with the oil palm sector of Papua New Guinea: a research paper prepared for Humane Society International. Netherlands.
- Hargy oil palm Limited. 2007. Maps and production report. Bialla: Hargy Oil Palm Limited.
- Hughes, H. 2004. Can Papua New Guinea Come Back from the Brink?, Center for Independent Studies, Sydney.
- Hulme, D. 1984. *Land Settlement Scheme and Rural Development in Papua New Guinea*. James Cook University, Queensland: Unpublished Phd thesis.
- James, R. W. 1985. Land Law and Policy in Papua New Guinea. *Monograph No. 5*. Papua New Guinea Law Reform Commission, Port Moresby.
- Kalinoe, L. and Yala, C. 2006. *A Guide to Will Making in the Papua New Guinea's Smallholder Oil Palm Growers Sector*: PNG National Research Institute.
- Kandakasi, A. 2005. Customary Mediation under PNG Land Dispute Settlement Act. Supreme and National Courts of Justice of Papua New Guinea. Port Moresby .
- Kausa, P. 2007. OPIC and Customary Purchase Block: OPIC designed lease Agreement form. Bialla, December 2007.
- Keesing, R. 1989. Creating the Past: Custom and Identity in the Contemporary Pacific. *The Contemporary Pacific* 1:19 - 42.
- Koczberski, G., Curry, G., and Gibson, K. 2001. *Improving Productivity of the Smallholder Oil Palm Sector in Papua New Guinea: A socio-economic study of the Hoskins and Popondetta Schemes*. Australia National University, Canberra.
- Koczberski, G., Curry, G. 2003. *Sustaining Production and Livelihoods Among Oil Palm Smallholders: A Socio-economic study of the Bialla smallholders sector*. Perth: Research Unit for the Study of Societies in Change, Curtin University of Technology, Perth.
- Koczberski, G., Curry, G., and Imbun, B. 2009 (in press). Property rights for social inclusion: migrant strategies for securing land and livelihoods in Papua New Guinea. *Asia Pacific Viewpoint*, 50(1).
- Koyama, S. K. 2004. Reducing Agency Problems in Incorporated Land Groups.' *Pacific Economic Bulletin* 19 (1):20 - 31.
- Martin, K. 2007. Land, Customary and Non-Customary in East New Britain. In: Weiner, F. and Glaskin, K, (eds). *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*. Asia Pacific Environment Monologue 3:39 - 56.
- McGregor, A. 2006. agriculture. In *Pacific 2020 background paper*. Canberra: AusAID.
- Mugambwa, J. 2007. A Comparative Analysis of Land Tenure Law Reform in Uganda and Papua New Guinea. *Journal of South Pacific Law* 11 (1):40 - 51.
- Muroa, G. 2003. *Land Reform Policies in Papua New Guinea: Successes and Failures of the Plantation Acquisition and Unused State Lands Redistribution Schemes*. University of Papua New Guinea, 14 / 01 / 2009 2003 [cited 5]. Available from <http://www.paclii.org/journals/MLJ/2003/5.html>.

- New Britain Palm Oil. 2007. Annual Report. Kimbe, West New Britain Province, PNG.
- Ngidang, D. 2005. Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak. *Southeast Asian Studies* 48 (1): 47 - 75.
- OPIC, Bialla. 2008. Smallholders Progress Report: Oil Palm Industrial Corporation Office, Bialla.
- Ramu Agriculture Industry. 2007. Annual Report. Lae, Morobe Province, PNG.
- Sack, P, G. 1973. *Land Between Two Laws: Early European Land Acquisition in New Guinea*. Canberra: ANU Press.
- Texas, University, Library,. 2008. Map of Papua New Guinea:
www.lib.utexas.edu/maps/papua_new_guinea.html.
- Trebilcock, M., J. 2008. *Land law in Papua New Guinea: Law, Economics and Property Rights in a Traditional Culture* 1983 [cited 14.07.08 2008]. Available from
http://digital.library.adelaide.edu.au/dspace/bitstream/2440/43931/1/alr_V9n1_1983_TreCus.pdf.
- Warner, B., Omuru, E. 2008. PNG commodity prices—an opportunity not to be missed. *Pacific Economic Bulletin* 23 (1):1 - 15.
- Weiner, J. and Glaskin, K. 2007. Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives. *Asia Pacific Environment Monologue* 3.
- Yala, C. 2004. The Costs of Funds and Access to Credit: The Case of Smallholders Oil Palm Growers in Papua New Guinea, PhD Thesis, The Australian National University,, Canberra.
- . 2005. Rethinking Customary Land Tenure Issues in Papua New Guinea. Paper read at Oceania Development Network Conference, 12 - 14 October, 2005, at Port Moresby, Papua New Guinea.

Papua New Guinea legislation:

- Land Act* 1996. Independent State of Papua New Guinea
- Underlying Law Act* 2000. Independent State of Papua New Guinea
- Land Groups Incorporation Act* 1974. Independent State of Papua New Guinea
- Land Registration (Communally Owned Land) Ordinance* 1962. Independent State of Papua New Guinea
- Land (Tenure Conversion) Ordinance* of 1963. Independent State of Papua New Guinea
- Land Acquisition Act* 1974 (No. 66 of 1974). Independent State of Papua New Guinea
- Land Dispute Settlement Act* 1975. Independent State of Papua New Guinea

Appendixes

Appendix 1.1 Different land tenure arrangements identified in oil palm project areas of Papua New Guinea

This research further identified from current publication of Koczberski and Curry (2003), and Curry *et al.* (2007), that there are four (4) main oil palm smallholder cultivation arrangements and each of them involves distinct land tenure arrangements. The table below outlines these four land tenure types, their descriptions and legal status.

Different Land Tenure practices governing smallholders within Oil Palm Industry	Descriptions	Legal status of each of the tenure arrangements / Dispute settlement processes
Land Settlement Scheme (LSS), State Agricultural Leasehold land.	State Agricultural leasehold land is State land alienated from customary ownership. Smallholders residing on the LSSs hold individual leasehold title over approximately 6–6.5 hectares. Each lease is for a period of 99 years and a lease rental is paid annually to the government's department of Lands and Physical Planning. Approximately 40 percent of land involves smallholder oil palm planted on state agricultural leases throughout the oil palm development provinces in PNG.	Alienated State leasehold land is land registered under the Land Registration Act. The land is removed from customary regulations and is governed by <i>Section 69 of the Land Act 1996</i> . Leasehold arrangements are administered by the Department of Lands and Physical planning through the lease titling process. Any land disputes are dealt with by the appropriate national land court. Leases are governed by state land laws.
Village Oil Palm (VOP)	Developed on village customary land. Under customary land regulations and principles, customary land owners are encouraged to develop their own customary land by establishing individual smallholding oil palm blocks of 2-4 hectares. Approximately 50 percent of smallholders in the oil palm producing provinces in PNG are on VOP.	VOP planted on village customary land is governed by regulations of customary law and its land tenure principles. The <i>Underlying Law Act 2000</i> and the PNG constitution recognize customary land tenure principles and practices. Allocation of VOP blocks is usually controlled by clan leaders. Clan Land Usage Agreements are sometimes signed between a clan and an individual to recognize that the land may be planted to oil palm and the individual has use rights over the land for the life of the individual (see Curry <i>et al.</i> 2007).

		<p>Many clan agreements to the planting of oil palm on customary land by an individual clan member are informal agreements.</p> <p>Disputes regarding ownership and usage rights are resolved through customary processes by respective landowning groups' norms. Higher level disputes between clans and villages are resolved through the formal courts systems such as; Customary land Mediation by the Land Mediator through the Village Courts and the District Land Court. Court decisions are based on customary rules and principles.</p>
Land Tenure Conversion (LTC)	<p>LTC was introduced in an attempt to individualize land tenure apart from encouraging cash crops production for export. The two requirements of LTC are: it must have an LTC declaration identifying its owners and can be surveyed and registered in order to be granted a freehold title. It was first introduced to PNG by the Australian Colonial administration and was tested in Popondetta when coffee, cocoa, and rubber plantations were introduced. Later oil palm were planted on LTC land. LTC was not introduced in WNB, thus it is not present in Bialla oil palm project area. In total as few as 3 percent of smallholders in Popondetta remain under LTC, however most have not been granted freehold title (Curry <i>et al.</i> 2007). These blocks are registered with OPIC as VOP blocks.</p>	<p>LTC was set up under Australian Colonial administration, which introduced the <i>Land Tenure Conversion Act 1963</i> which allowed for customary tenure to be transferred to individual freehold. Disputes over LTC ownership and usage rights are resolved through the established court systems; such as Land Mediation, Village courts, Districts and National courts. LTC land without a title remains customary, as such customary law and its dispute resolution procedures apply. Where freehold is issued customary law then ceases to apply, Therefore any disputes over land and its usage are dealt with by the appropriate formal courts.</p>
4. Customary Purchased Blocks (CPBs)	<p>CPBs refer to oil palm planted on customary land that has been 'purchased' by non clan,</p>	<p>Legally, CPBs are governed by customary land laws as the land remains customary land.</p>

	<p>landholding group members, usually migrant settlers. The selling of customary land for smallholder oil palm cultivation is a recent trend. That practice is popular in Hoskins and Bialla oil palm project areas in West New Britain Province, (WNBP). Hoskins has approximately 3 percent of smallholders development and Bialla have about 1.7 percent as CPBs.</p>	<p>Most CPB transactions are undocumented and are based on informal verbal agreements between the vendor and the purchaser. Thus land tenure rights remain very insecure in nature. The majority of CPB arrangements are not conducted in accordance with customary law (Curry <i>et al.</i> 2007). Some CPBs written agreements have been in the form of Clan Land Usage Agreements (CLUA) and Statutory Declarations. A CLUA acknowledges that the clan has granted individual access and use rights to the land. The land itself remains 'owned' by the clan group. Disputes are common under CPBs either between purchaser and seller or among clan members. Resolution of disputes varies based on the types of formal or informal agreement between parties involved in CPB tenure arrangements.</p>
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Appendix 4.1 Research Ethics Committee Approval



Research Ethics Office
Division of Research and Development

www.murdoch.edu.au

Monday, 7 January 2008

Dr Jane Hutchison
School of Social Sciences and Humanities
Murdoch University

Dear Jane,

Permit No.	2007/284
Project Title	Developing a Sustainable Land Tenure System for the Cultivation of Oil Palm on Customary Land in the Bialla, West New Britain Province, Papua New Guinea

Thank you for addressing the conditions placed on the above application to the Murdoch University Human Research Ethics Committee. On behalf of the Committee, I am pleased to advise the application now has:

OUTRIGHT APPROVAL

Permits are granted for three years. You will need to submit an annual report to the Research Ethics Office. Please note you are required to report immediately any unforeseen or adverse events especially if they might affect the ethical standing of the project. Once the project has been completed, please submit a Permit Closure Report. All forms are available on the Research Ethics web-site.

I wish you every success for your research.

Please quote your ethics permit number in all correspondence.

Kind Regards,

Dr. Erich von Dietze
Manager of Research Ethics

cc: Anton Dennis Neinaka

HREC Approval Letter 221107

CRICOS Provider Code: 001251
ABN 81 615 369 313

Appendix 4.2 Research meeting program

2nd December, 2007 – 2nd January 2008

Meeting dates	Attendees of the meetings
3 rd December 2007	Mataururu Land Owners
4 th December 2007	Mataururu CPBs owners
5 th December 2007	Kiawa CPBs owners
6 th December 2007	Kiawa land owners
7 th December 2007	Elders of Matililiu, Ewase, Gomu and Rumaili villages

Meeting Agendas;

1. Objectives of this research field study,
2. General Discussion on CPBs and the current land tenure agreements
3. Issues and challenges arising based on experiences of the attendees,
4. General discussions of a better way forward

Appendix 4.3 Research Questionnaire

Research Title: **Customary land Tenure arrangements between customary land owners and migrant oil palm small holders: a case study of the Nakanai people of Matururu & Kiawa villages in Bialla District, West New Britain Province, Papua New Guinea**

Objective of the Questionnaire

This questionnaire consists of both opened and closed questions and is designed to support the qualitative nature of this research. The main objectives of this questionnaire are to;

1. Acquire information from the migrants on the customary land around Bialla, West New Britain Province, Papua New Guinea; especially in and around Kiawa and Matururu villages, regarding the current formal and informal Customary Purchase Blocks (CPBs) arrangements governing their rights to use of customary land to develop Palm Oil Plantation.
2. Obtain the responses from the customary land owners' underlined economic reasons regarding the informal and formal sales of their customary land for the Oil Palm Plantation development and their view of the sustainability of the arrangements.
3. Assess whether or not the current Customary Purchase Blocks (CPBs) arrangements are feasible and sustainable in serving the interests of both the land owners and the settlers.

Parts of the Questionnaire

There are three main parts of this questionnaire which would seek to attain the three objectives accordingly. Part 1 focuses on CPB owners or settlers part 2 would specifically be focused on the land owners. The third part would then be responded by both; the Customary Land Owners (CLO) and the CPB settlers.

Privacy Information

Because of the sensitivity of the subject, all private, personal information and data obtained from and by this research survey would be kept as confidential and in accordance to Australian Privacy Act 1998.

Part: 1. Migrant Settlers on Customary Purchase Blocks (CPBs)

Personal Information:

Name		Place of Origin		Religion		Spouse's Date of Birth	
Age		Marital status		Spouse's Name		Spouse's Place of Origin	

Date of Birth		No of Children		Spouse's Age		Spouse's Religion	
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A. History of the migrant Settlers

(Answer the following questions with short answers)

1. How long ago did you come to Bialla? (please state the year)

2. Where did you stay before acquiring this customary land?

3. When you did first hear about the possibility of purchasing and settling customary land?

4. Why did you leave where you resided or your home province and to move to settle on customary land?

5. What are your main reasons for settling in customary land?

6. How many children did you have prior to settling in this customary land?

7. How many children and grandchildren do you have while living on this land?

B. Migrant's relationship, familiarity and level of participation with Customary Land Owners, Culture, Customs and community activities

(Multiple choice: circle the answers that suit you)

1. How much do you know about the Nakanai people, particularly people from Mataururu and Kiawa villages?
 - A. I know most people in those villages,
 - B. I know all the elders and not the younger generations
 - C. I know only a few of them
 - D. I do not know any one apart from the Customary Land Owner and his family.
2. Rate your personal knowledge about their customs and customary land inheritance norms.
 - A. Excellent

- B. Very Good
 - C. Good
 - D. Fair
 - E. Not too sure
 - F. I do not know
3. Rate your personal relationship with the customary land owner you purchase the land/block from.
 - A. Excellent
 - B. Very Good
 - C. Good
 - D. Fair
 - E. We do not get along well
 - F. I do not know them very well
 4. Do you normally participate in customary ritual and ceremonies?
 - A. Yes I always participate
 - B. Not so often
 - C. Only when I like to
 - D. Not at all
 5. Do you attend the community working day instituted by the respective villages within your proximity?
 - A. Yes I always attend
 - B. Not so often
 - C. Only when I like to
 - D. Not at all

C. Customary land purchase arrangements

(Answer the following questions with short Answers)

1. When did you purchase the block from the customary land owner?

2. How much did you spend? And do you still owe any amount?

3. How many people apart from the Customary Land Owner (CLO) received the payment?

4. Did they provide you a receipt?

5. Did you formalize the purchase arrangement? If so, what formal arrangement did you have in place?

6. Do you have a record to your customary land usage agreement or any document showing your legal rights to settle on CPBs?

D. Sustainability

(Answer the following questions with short Answers)

1. Do you think the current CPB arrangement sustainable? Explain the reason for your answer.

2. Are you planning to live on your CPB through out your entire life?

3. Do you have any land disputes with the customary land owner (CLO) since you settle in your CPBs?

4. Were there any instances where the CLO threaten to reposes their land? If so, then why did it happen?

5. Will your children still maintain the CPB agreement and arrangement?

E. Advantages and Disadvantages

List at least 3 advantages and disadvantage about obtaining customary land under the current CPB arrangements

Advantages	Disadvantages

Part 2. Customary Land Owners of the CPBs

A. Reasons for the sale of Customary Land and the Land tenure arrangement used in the sale of land (Write short answers to these questions)

1. Are the customary land you own and sell for CPBs belong to you alone or your clan as a whole?

2. Do the clan from which you come from have any say over the land you sold out to migrants?

3. What prompt you to sell your customary land to migrant settlers?

4. What kind of Customary Land Tenure arrangement do you apply in the sale of your land?

5. Do you formalize the sale of your land by signing any documents formulating permitting the usage of your land? If so describe the formal documentation you normally use.

6. Do you issue a set of guidelines and or rules to the migrant settler on your customary land to abide by? Yes or No.
7. If your answer is yes, are those guidelines written or verbally provided?

8. What price ranges do you sell your land for? (Circle your preferences)
 - A. K100 – K1000
 - B. K100 – K5000
 - C. K5000 – K10 000
 - D. Any amount I feel appropriate.
9. What kind of payment arrangement do you utilize for the sale and usage of your land? (Circle your preferences)
 - A. On going on a regular basis
 - B. One off payment
 - C. Payment on installment basis
 - D. Informal arrangements – “I ask for more whenever I need money”.
10. Other than the money, do you accepted other valuable rewards, generosity or gifts as a form of payment for your land? If so describe what you accepted.

11. Do you normally receipt the money collected from the sale of your customary land? (Yes / No).
12. How do you use the money acquired from the sales of your customary land? (Circle your preference below)
 - A. Support my livelihood – buy food, use the money to work on my house, pay my children school fees etc
 - B. Save the money in the bank
 - C. Share with other members of my family
 - D. Share with all members of my clan
13. Do you keep a formal / written record of the quantity of land you sell for CPBs? If you don't, then how do you keep the record?

B. Relationship

1. How well do you know the migrants who settled on your customary land under CPB tenure arrangement? *(Choose the answer that suit you).*
 - A. Very well over more than 20 years.
 - B. Well over 10 years
 - C. Less than 10 years
 - D. Not really well
 - E. I do not know much about the person.

2. Is the migrant related to you? If so, state how he or she is related to you.

3. Do you know the total population of all the people living with the migrant on your customary land?

4. How often do you pay a visit to the migrant in his / her CPB? *(Choose the answer that suit you)*
 - A. Daily
 - B. Once a week
 - C. Once a fortnight
 - D. On Monthly basis
 - E. Once a term
 - F. Once a year
 - G. Not often

C. Sustainability of the Customary Land Sale arrangements
(Write short answers to these questions)

1. Do you continue to sell your land for CPB arrangement at present? *(Circle your answer)* Yes / No

2. Do you have any land still available for your own use?

3. Do you still maintain customary ownership of the land being sold under CPB arrangements? *(Circle your answer)* Yes / No

4. If your answer to question 3 is yes, then describe how you maintain your ownership.

5. Are you happy with the current CPB system? Give your reasons to support your answer.

6. How will you sustain the sales of your land to migrants under CPB arrangement in the future?

D. Advantages and Disadvantages

List at least 3 advantages and disadvantage about selling your customary land under the current CPB arrangements

Advantages	Disadvantages

Part 3. Critical assessment of CPB arrangement by migrant settlers and Customary Land Owners

A. General Assessment of CPB tenure arrangements

Questions	Short Answers (circle your suitable answer)	Reasons, explanation or description of your short answers
Is the current CPB tenure arrangement appropriate to your need?	Yes or No	
Do you like to see improvement in the Customary Land Tenure practices?	Yes or No	
Do you like OPIC and Department of Lands to help in formalizing the informal arrangements of land use?	Yes or No	
Do you like to maximise your benefits under the CPB tenure arrangements	Yes or No	
Are you receiving the kind of benefits you expected thus far?	Yes or No	

B. Collective opinions and actions of improving the current CPB tenure arrangements

1. Do you see a way of improving the land arrangements for migrants on customary land? Describe your ideas below.

2. How could you help in improving the customary land arrangement?

3. How could OPIC help improve the land arrangement for the migrants and customary land owners?

4. How could the Department of Land assist?

5. list in the below your proposed sustainable benefit that would best fit your expectation as a migrant settler on customary land and the customary land owner in any formal CPB tenure system which could be refined.

<i>Migrant settler under CPB tenure arrangements</i>	<i>Customary Land Owner</i>
Eg; Have a legal total usage rights	Eg; Maintain overall ownership of the land and collect regular land lease payments

Appendix 4.4 Research interview guide

Interviewee	Areas that are covered in the interviews
Customary Land Owners (CLO)(Mataururu & Kiawa)	Relationship with the CPB owners, land sales agreement, clan participation in the transaction, matrilineal and traditional land management practices, Prices of land and how it is determined, ongoing benefit, Sustainability of the current arrangements, recommendation of an appropriate way forward.
Migrant Owners of Customary Purchase Blocks in Mataururu and Kiawa	time of migration to Bialla and purchasing land, reasons for purchasing land, amount spent, relationship with CLO, land purchase agreement, tenure security, advantages and disadvantages of current CPB tenure arrangements, other income activities, future plans of CPBs, recommendation of an appropriate way forward.
Oil Palm Industrial Corporation (OPIC)	Management of CPBs as new trend of development, criteria used in recognizing CPBs, OPIC designed lease agreement form, record keeping, land dispute resolution procedures, CPBs access road infrastructures, infill and replanting requirements in CPBs, future CPBs management plans, recommendation of an appropriate way forward.
Hargy Oil Palm Limited (HOPL)	Expansion of oil palm industry in Bialla project area, access to customary land, CPBs productions history and significance in the industry as a whole, regulation procedures/requirements of awarding seedlings to CPBs, technical assistance and tools loans to CPB, future plan of involving CLO in the expansion of the industry, recommendation of a better way forward.
Lands Officer - Department of Lands & Physical Planning	How the Lands department is regulating the ongoing CPB development, agreements and keeping records. Lease agreement in LSS and CPBs, processes and requirements of registering a CPB, governments recognition of CPB and CLO tenure agreements, government policies on Customary land use and future plans of improving CPBs, recommendation for a better way forward

Appendix 4.5 Survey form for female customary land owners

This survey is focused on Women in Matururu and Kiawa. The aim of this survey is to assess women's level of involvement in the present CPB tenure arrangements in Matururu and Kiawa under their status in Matrilineal Nakanai culture as legitimate land owners.

Name: **Clan:** **Village**
.....

Questions: <i>"How often do you involved in</i>	TICK your preferred answers. Refer to the rating lists below for details.				
	1	2	3	4	5
1. discussions on customary land inheritance matters?					
2. meetings regarding customary land boundaries?					
3. disputes between clans regarding the right to own and use land?					
4. land gifting to other clan members and members of the clan?					
5. discussions and decisions regarding the 'sales' of customary land to migrants?					
6. land transactions between the customary landholding community and migrants?					
7. land disputes and conflicts resolutions between CLO and migrant CPB owners					
8. discussions of a better way of improving the current trend of customary land tenure arrangements?					

Rating lists
1. Always involved 2. Occasionally involved 3. Less involved 4. More less involved 5. Not involved anymore

Appendix 5.1 Clan Land Usage Agreement (CLUA)

CLAN LAND USAGE AGREEMENT

Date:.....20.....

TO HARGY OIL PALMS LIMITED AND THE OIL PALM INDUSTRY CORPORATION

We the undersigned, being representative of theClan hereby acknowledge that.....has/have the right under native law and custom for the whole of his/her lifetime to use the land knownand which has been allocated the Village Oil Palm Block no.....of the.....Village Oil Palm area (and which is more particularly described in the plan below),for the purpose of planting oil palm and with the right to receive the proceeds of crops, trees and palms, livestock grazed and/or business on the described land provided the following condition are complied with;

- (a) The occupant actually plants at least 2 ha of oil palm
- (b) The occupant at all time maintains and applies fertilizer to these plantings to the standard required by OPIC and Hargy.
- (c) The occupant harvests regularly and sells the FFB in his own name and block number to Hargy.

If these conditions are not complied with we reserve the right to reallocate the land to another clan member or person who will also be bound by these conditions or failing that we agree that Hargy will have the right to nominate a contractor to work the block until such time as any and all outstanding debt to Hargy is repaid in full. I/We further agree that during the currency of the period while debt for inputs remains in the favor of Hargy Oil Palms no member will interfere in anyway which will affect the smooth running of the development.

We certify that all members of the said clan agree to this agreement and that we are persons authorized by the clan to sign on the clans behalf.

.....
Signature of Witness	Full name of Clan Leader	His Signature/Mark
.....
Signature of Witness	Full name of Clan Leader	His Signature/Mark
.....
Full name of block holder	His Signature/Mark	
Witnessed by:.....
Full Name	Position/OPIC	Signature
Witnessed by:.....
Full Name	Position/OPIC	Signature

SKETCH PLAN

BLOCK NO:

Appendix 5.2 Agreement provided at the district and provincial office of land Mediator

Part 1. Application for approval of Agreement

SET: 28

PAPUA NEW GUINEA

FORM 10

LAND DISPUTE RESOLUTION ACT 1975

APPLICATION FOR APPROVAL OF AGREEMENT

TO; The local Land Court at

.....
.....

We

.....
.....

Parties to a dispute over interests in land known as

.....

Hereby make application for approval of the agreement reached by us after mediation on the

.....day of

.....

The terms of agreement are;

Dated the Day of

.....

.....
.....

(Signature and Clan,)

(Signature and clan name)

Certification under section 26 (a);

I/We

.....

..... Land Mediator(s) certify that the above agreement for which approval is now sought is the agreement reached between the parties after mediation by me/us.

Date;
.....
.....

Land Mediator(s)
.....
.....

In the land court at on
.....

Theday of
.....

Before Local Land
Magistrate

The parties to this agreement have this day applied to the court for approval of the agreement under section 27 (1) of the Land Dispute Settlement Act 1975.

Being satisfied that the agreement fulfils the provision of the section 28 (2) of the Land Disputes Settlement Act 1975 the agreement is APPROVED and now becomes an Order of this court.

OR

The agreement is defective and is not approved and is referred back to
Mediator for further mediation, with the following directions;

OR

The agreement has been further mediated by me and after acceptance by the parties the following agreement replaced the agreement originally reached, an now become the order of this court.

Date;
.....

(Local Land Magistrate)

.....

Govt. Print. ----- 10172/3 000 – 9.77

Part: 2. Agreement for the use of customary land on terms

AGREEMENT FOR USE OF CUSTOMARY LAND ON TERMS

This Agreement is made on _____ day of _____ between _____ (herein after called the Vendor) and _____ of _____ (Herein called the leaser).

Whereby it is agreed and declared as follows:

1. The vendor declared that he is the owner of the piece of Customary Land know as _____ situated at _____ and of all trees and other improvements on the said land to authorise the said land to be use on lease for _____ years as on the agreement.
2. The vendor agreed to lease the said land for the purpose of planting oil palm and other business as poultry, piggery and Tradestore for a term of _____ years from the date this agreement to _____. There on the leaser has to pay _____
Paid as follows:
 - a. The sum of _____ on the signing of this agreement and the vendors acknowledged he has received this amount as occupational fees.
 - b. That the sum of _____ on or when first harvest starts.
3. On payment of the said Leaser price in full the vendors right title and interest in the said land shall pass to the purchaser to be used according to this agreement.
4. The vendor shall be entitled to go into possession of the said land on a payment of the sum referred to in clause 2(a) of this agreement on payment of the Leaser price in full.
5. In the event that the Leaser shall fail to pay the sum referred to in 2 (b) hereof on or before the due date or between the such further time as the vendor may give him/her in writing or orally this agreement will terminate, and
 - a. The vendor retain 10% of the total price referred to herein the refund the balance of that the vendor has received from the Leaser and
 - b. Where the Leaser is in possession of the said land he shall vacate the land forthwith.
6. The Leaser shall not while any monies are owing to the vendors under this agreement attempt to sell or transfer the said land or any part there of or his interest under this agreement, to any person. If the Leaser does support to this the vendor may be Oral or Written notice to the leaser to terminate this agreement and thereupon:
 - a. The vendor shall keep 10% of the leaser price referred to herein and
 - b. Where the leaser is in possession of the said land he shall vacate the said land forthwith.
7. That the leaser has to work or remain with his business not more than what is in the agreement and
 - a. Leaser is free to sell or remove his house, cash crops, garden or after or before due date of this agreement.
 - b. He may ask the vendor to renew the terms of an agreement for another term.

IN WITNESS WHEREOF – this agreement has been executed the day and year herein after written.

SIGNED by the said _____

In the presence of _____ Vendor

Signed by the said _____

Leaser

Part: 3. Lease Agreement

LEASE AGREEMENT

An agreement made

Between:

And:

Here to referred to as the Lease

Terms and Condition

- i. The Lessor hereby confirm and declare that he is the owner of the customary land described in th schedule
- ii. The lessor hereby confirm and believe that he has leased to the Lessee a portion of the customary land described in the schedule to the Lessee for Cash.
- iii. The lessor hereby confirm and declare that he has received the money in full on
- iv. The lessor and the lessee hereby agree that the lease agreement is for a period of years.
- v. The lessor and the lessee hereby agree that the years period will commence on the date of signing
- vi. The lessor and the lessee hereby agree that this agreement is enforceable in a court of law

Signed by the lessor:.....

In the presence of:

Signed by the said lessee: In the presence

of.....

Schedule:

Description of Customary Land:

Appendix 5.3 Statutory Declaration Form

PAPUA NEW GUINEA

STATUTORY DECLARATION

I, (a)

Do solemnly and sincerely declare that:- (b)

And I make this solemn declaration virtue of this Oath, Affirmations and Statutory Declarations Act 1962 conscientiously believing the statements contained therein to be true in every particular.

Declared at.....) (c).....

Before me

the.....) day of.....

(d).....

(e).....

(a) Here insert name, address and occupation of person making the declaration.

(b) Here insert the matter declared to. Where the matter is long it should be set out numbered paragraphs.

(c) Signature of person making the declaration.

(d) Signature of a person before whom the declaration is made.

(e) Here insert title of person whom the declaration is made.

Note--- Any person who wilfully makes a false statement in a Statutory Declaration is guilty of an indictable offence and is liable to imprisonment with or without hard labour for four (4) years.

Appendix 5.4 OPIC designed lease agreement form

PAPUA NEW GUINEA

LEASEE AGREEMENT

AN AGREEMENT: made on the day of 2006

BETWEEN:

(On behalf of the Ugeuge Clan)

Mataururu Village, Bialla

c/- OPIC P.O. Box 265, Bialla, West New Britain Province

(herein after called "the landlord") of one part.

AND:

..... Bialla,

West New Britain Province

(herein after called "lessee") of the other part.

WHERE IT IS AGREED AND DECLARED as follows:

1. DESCRIPTION OF PROPERTY

THE Landlords permits/lets and the Lessee leases portion of the landlord's estate, right title and interest in and to all that piece of parcel of land (portion Mataururu VOP) known locally as Totoru situated at the back of Mataururu Community School, Mataururu Village, Bialla, West New Britain Province together with the improvement erected thereon, including the chattels.

2. PURPOSE OF LEASE

The lease shall be used bona fide for:

- a) Oil palm cultivation and husbandry purposes
- b) Rentals & fees shall be re-assessed by the due processes of the Landlord's customary traditions
- c) Improvements being brushing, clearing, felling, lining and planting of oil palm seedlings for the purpose of selling FFB produce shall be performed on the said land within on (1) year from the date of this agreement or grant and minimum value of the improvements shall be to a minimum value of Fifteen Thousand Kina (K15,000) and population on the said lease shall be maintained to a minimum of a nuclear family size.

3. LEASE RENTAL AND FEES

THE lease rental for the property, the subject of this Agreement is the sum of Six Thousand Kina only (K6000.00) in the case of an area of 2 hectares or less and Twelve Thousand Kina only (K12000.00) in the case of area of 4 hectares or less.

4. PAYMENT OF LEASE RENTALS & FEES

THE said lease rentals & fees shall be paid by the Lessee to the Landlord in the manner following that is to say;

- a) Upon signing of this Agreement the Lessee will pay the sum of Six Thousand, Kina (K6000.00) or twelve thousand Kina (K12000.00) as the case may be (as in (3) above) to the Landlord and or;
- b) Pending completion which deposit upon by virtue of completion shall then vest in the Lessee and shall be accounted for to the Landlord and upon receipt of an order from the Landlord periodic payment of K20.00 harvest until such time completion of K6000.00 is completed.

5. ENCUMBRANCES

THE lease is arranged free to encumbrances of any nature whatsoever save and except the covenants conditions and reservations noted herein.

6. REQUISITIONS

THE Lessee shall be deemed to have accepted this lease and to have waived any objection or requisition which he has not made and brought to the attention of the Landlord.

THE FIRST SCHEDULE

THAT land being (portion Matururu VOP) known locally as Totora situated at the back of Matururu Community School, Matururu Village, Bialla, West New Britain Province.

THE SECOND SCHEDULE

IN WITNESS WHEREOF this agreement has been executed the day and year first herein before written.

LANDLORD

Signed by the said)

In the presence of)

.....)

(Full name of witness))

.....)

Matururu Village, Bialla, West New Britain Province)

(occupation and address))

.....)

(Signature of Witness))

LESSEE

Signed by the said)

In the presence of)

.....)

(Full name of witness))

.....)

Matururu Village, Bialla, West New Britain Province)

(occupation and address))

.....)

(Signature of Witness))