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AgCLIR PAPUA NEW GUINEA

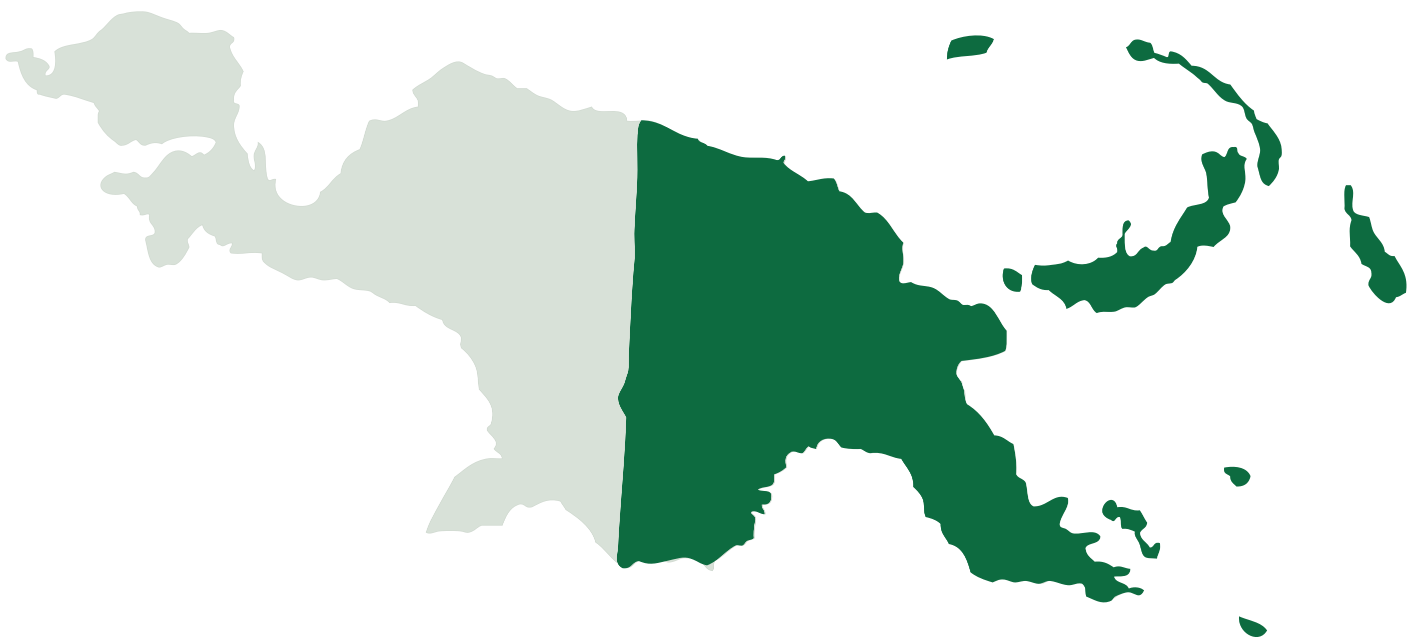
Agribusiness Commercial Legal and Institutional Reform Assessment

AGENDA FOR ACTION

May 2012





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CONTENTS

EXECUTIVE SUMMARY

The Agribusiness Commercial Legal and Institutional Reform (AgCLIR) report addresses the legal, institutional, and social environment for doing business in Papua New Guinea's agricultural sector. Through close examination of agricultural-related policies, laws, institutions, and social dynamics, it aims to inform strategies and decisions by government institutions, donors, nongovernmental organizations, the private sector, and others with respect to the development of agricultural enterprise and economic growth generally. The potential uses of this document are multifaceted: it can be accessed as a foundation for agricultural policy development, a framework for donor intervention, a substantive resource for future projects, a benchmark for assessing change, a tool for academic instruction, and, most immediately, a "jumping off point" for stakeholder discussion and consensus-building.

Papua New Guinea is endowed with abundant natural resources to support a robust agricultural sector. Reliable, abundant rainfall, coupled with fertile soils and a year-round growing season, allow for hundreds of food crops, along with an excellent foundation for agricultural commodities that potential trading partners value highly—including coffee, copra, cocoa, palm oil, rubber, spices, and fresh fruits. In contrast to many of the world's developing economies, Papua New Guinea (PNG) is generally food secure[1] with resilient traditional food production systems and has the potential to expand its participation in international agricultural markets.

Yet starting and operating an agricultural business in PNG is a risky endeavor. Legal and institutional constraints limit access to land, skilled labor, and the investment capital needed to transform PNG's agricultural sector. The AgCLIR team assessed these constraints and identified proposed reforms based on successful practice and the feasibility and potential impact of the reform in the PNG context. These recommendations are included at the end of each main chapter of this report.

UPGRADING PNG'S AGRICULTURAL VALUE CHAINS

PNG's agricultural sector is incredibly diverse, including a wide variety of both "food crops" that feed the people and individual "commodity crops" that put cash into their pockets. Along the value chain for each crop, the AgCLIR team uncovered roadblocks and opportunities for reform. For example, while the AgCLIR team observed considerable entrepreneurial spirit in both urban and rural markets, this is scarcely fostered by adequate access to education and agricultural extension. Educational opportunities, especially for girls, fall far short of meeting the needs of students entering the workforce and, for that matter, of employers seeking workers capable of performing skilled industrial or agricultural work. A lack of enforcement of quality standards, both for certain export crops and local production, also inhibits agricultural sector growth by impeding the generation of added value along agricultural value chains. An effective response to these issues will require advocacy, yet across each commodity subsector, industry participants lack a coherent vision and voice that represents the value chain from producer through trade, processor, and/or exporter.

[1] Although generally food secure, a trend towards urbanization in PNG threatens the food security of the growing ranks of urban poor who lack access to these traditional methods.


PHOTO BY FINTRAC INC.

PUBLIC SECTOR IMPLEMENTATION AND ACCOUNTABILITY

The legal and regulatory framework governing the agricultural sector in PNG is generally sound. While many of the laws could benefit from updating or the drafting of clearer regulations, the greatest problem in Papua New Guinea is a failure to implement the laws and regulations in a clear, consistent, and transparent manner. Whether engaged in licensing a product, trading across borders, accessing marketing infrastructure, or launching a competitive enterprise, agribusinesses face distinct weaknesses in the institutions charged with supporting and regulating the sector.

Of particular note is the gross failure of public financial management and the clear disconnect between budget appropriation and policy formulation. Funds are routinely diverted into special projects and away from comprehensive strategic plans for the development of roads, schools, and other infrastructure necessary for an improved agricultural sector. With a large increase in public funds expected as windfall from a major liquid natural gas project, the need for increased accountability is vital.

SOCIAL DYNAMICS AND ECONOMIC OPPORTUNITY

One key theme throughout this report is the impact of traditional social systems within PNG on the incentives of participants throughout the agricultural sector. The traditional system of social support within one's *wantok* network serves a key function as a social safety net, but can, in some circumstances, also act as a disincentive to individual wealth accumulation. The AgCLIR team found that many successful entrepreneurs operate far from their communities or otherwise seek to conceal their wealth to avoid increased requests for assistance from family members. As a result, economic incentives to increase production or improve quality show less impact in PNG than might be expected elsewhere, reducing the value to outgrower companies.

The *wantok* system also acts in many communities as the de facto basis for the rule of law. Police and judges can harbor bias towards their *wantok*, and lenders have found that it is difficult to enforce delinquent loans in places where the lender is considered an "outsider." This drives up the risk premium and thus the cost of a loan, restricting access to credit throughout the agricultural sector.

As described throughout this report, cultural constraints on women in PNG negatively affect their ability to effectively participate in the formal agricultural sector and belie the notions of equality that exist within Papua New Guinea's constitution. Whether looking at access to infrastructure, access to customary land, or access to finance, women seeking to start up and operate a formal business in PNG's agricultural sector enter the sector at a distinct disadvantage.

Traditional systems of customary land ownership also remain a key constraint to agricultural growth as 97% of the country is held in customary title, yet no clear process currently exists in practice to enable investors to access land while protecting legitimate claims of smallholders. Governmental policy favoring protection of customary land users over investment has led to drastic underinvestment and under-utilization of land. While policymakers have sought to build a national dialogue to identify a new way forward on customary land rights, at present access to land remains a key constraint for investors.

In the period since the team's departure from Papua New Guinea, political turmoil has continued unabated, raising the already high political risk profile for Papua New Guinea. The recommendations to these constraints will require a participatory process and dialogue among key stakeholders to undertake the reforms necessary to improve the enabling environment for the agricultural sector. Importantly, the recommendations made in this report will require unambiguous national leadership as well as a firm commitment to a reform agenda if there is any likelihood for success.

PHOTO BY FINTRAC INC.

LIST OF ACRONYMS

ADB	Asian Development Bank
ADR	Alternative dispute resolution
APEC	Asia-Pacific Economic Cooperation
APTA	Asia-Pacific Trade Agreement
ASEAN	Association of Southeast Asian Nations
ASF	Authorised Superannuation Fund
ASYCUDA	Automated System for Customs Data
BSP	Bank of the South Pacific
CBA	Customs Brokers Association
CBAL	Cottage Business Activities List
CCRI	Cocoa Copra Research Institute
CIC	Coffee Industry Corporation
CIMC	Consultative Implementation and Monitoring Council
CPA	Certified public accountants
CSTB	Central Supply and Tender Board
CSU	Cooperative Societies Unit
DAL	Department of Agriculture and Livestock
DCI	Department of Commerce and Industry
DEC	Department of Environment and Conservation
DFAT	Department of Foreign Affairs and Trade
DLPP	Department of Land and Physical Planning
DPM	Department of Personnel Management
DSIP	District Service Improvement Program
EFT	Electronic funds transfer
EPA	Economic Partnership Agreement
EU	European Union
FPDA	Fresh Produce Development Agency
FTAs	Free trade agreements
GAAP	Generally Accepted Accounting Principles
GDP	Gross domestic product
GSP	Generalized System of Preferences
GST	Goods and services tax
GSTP	Global System of Trade Preferences
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
HAACP	Hazard analysis and critical control points
IBBM	Institute of Banking and Business Management
ICCC	Independent Consumer and Competition Commission
ICFPNG	Investment Corporation Fund of Papua New Guinea
ICT	Information and communications technology
IFAC	International Federation of Accounts
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
ILG	Incorporated land group

ILO	International Labour Organization
INA	Institute of National Affairs
IPA	Investment Promotion Authority
IPBC	Independent Public Business Corporation
IPOPNG	Intellectual Property Office of Papua New Guinea
IRC	Internal Revenue Commission
IT	Information technology
KIK	Kokonut Industri Korporese
KPIs	Key performance indicators
LLGs	Local-level governments
LNG	Liquefied natural gas
LTC	Land Titles Commission
LTI	Legal Training Institute
MCI	Ministry of Commerce and Industry
MFATI	Ministry of Foreign Affairs, Trade and Immigration
MFIs	Micro-finance institutions
MFN	Most favored nation
MHCs	Mobile harbor cranes
MIGA	Multilateral Investment Guarantee Agency
MOU	Memorandum of understanding
MTDP	Medium Term Development Plan
NAMA	Non-agricultural market access
NAQIA	National Agriculture Quarantine and Inspection Authority
NARI	National Agricultural Research Institute
NEC	National Executive Council
NGOs	Nongovernmental organizations
NISIT	National Institute of Standards and Industrial Technology
NRI	National Research Institute
OECD	Organisation for Economic Co-operation and Development
OPIC	Oil Palm Industry Corporation
PACER	Pacific Agreement on Closer Economic Relations
PICs	Pacific Island countries
PICTA	Pacific Island Countries Trade Agreement
PIF	Pacific Islands Forum
PIP	Public Investment Program
PNG	Papua New Guinea
PNGSDP	PNG Sustainable Development Program
PGK	Papua New Guinea kina
POMSOX	Port Moresby Stock Exchange
PPAP	Productive Partnerships in Agriculture Program
PPSA	Personal Property Security Act
RKC	Revised Kyoto Convention
RM	Risk management
RTFP	Regional Trade Facilitation Programme
RTGs	Rubber tired gantry cranes
SABL	Special Agricultural and Business Lease

SCPNG	Securities Commission of Papua New Guinea
S&Ls	Savings and loans
SMEs	Small and medium enterprises
SOEs	State owned enterprises
SPARTECA	South Pacific Regional Trade and Economic Agreement
SPS	Sanitary and phytosanitary
SSEP	Smallholder Support Services Extension Project
SVE	Small Vulnerable Economies
SWF	Sovereign Wealth Fund
TIN	Taxpayer Identification Number
TOS	Terminal Operating System
TRAP	Trade-Related Assistance Program (EU)
TRIPs	WTO's Trade-Related Intellectual Property Rights Convention
TRP	Tariff Reduction Program
TRS	Time Release Study
TSSP	Transport Sector Support Program
TVET	Technical and vocational education and training
USD	US dollar
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
UPNG	University of PNG

INTRODUCTION

This report addresses the legal, institutional, and social environment for doing business in Papua New Guinea's agricultural sector. Through close examination of agricultural-related policies, laws, institutions, and social dynamics, it aims to inform strategies and decisions by government institutions, donors, nongovernmental organizations (NGOs), the private sector, and others with respect to development of agricultural enterprise and economic growth generally. The use of this document is intended to be multifaceted: it can be accessed as a foundation for agricultural policy development, a framework for donor intervention, a substantive resource for future projects, a benchmark for assessing change, a tool for academic instruction, and, most immediately, a "jumping off point" for stakeholder discussion and consensus-building.

Notably, this report represents the first time the recently revised and updated 12-part methodology for USAID's Agribusiness Commercial Legal and Institutional Reform initiative (AgCLIR) has been engaged in full. Since 2008, the AgCLIR initiative has brought greater clarity and understanding to the environments for doing business in the agricultural sectors of more than 10 countries. Updated in 2011, the AgCLIR methodology is now embedded with insights gained through experience. The new methodology incorporates knowledge gained from extensive field-based analysis, along with in-depth, comparative perspectives solicited from more than 60 public- and private-sector experts. This report integrates AgCLIR's data received from private sector activity from along agricultural value chains, ranging from subsistence farmers, through mid-level service providers, to large producers and processing enterprises. It also includes the formal introduction of two new areas of inquiry: Competing Fairly and Accessing Marketing Infrastructure. In this updated form, the AgCLIR report aims to assist PNG in prioritizing and responding to legal, institutional, and social constraints to the development of its agricultural economy.

AGRICULTURE IN PAPUA NEW GUINEA

The natural conditions underlying PNG's agricultural sector are richer than many countries can even imagine. Reliable, abundant rainfall, coupled with fertile soils and a year-round growing season, allow for hundreds of food crops, along with an excellent foundation for agricultural commodities that potential trading partners value highly—including coffee, copra, cocoa, palm oil, rubber, spices, and fresh fruits. In contrast to many of the world's developing economies, PNG is generally food-secure with resilient traditional food production systems[1] and has the potential to expand its participation in international agricultural markets.

Papua New Guinea (PNG) is a nation of approximately seven million people that gained independence from Australia in 1975. It is as different from as it is alike the countries that share its relatively low ranking—153 out of 187 countries—on the United Nation's Human Development index.[2] Geographically, PNG's border with Indonesia, with which it shares the island of New Guinea, has been said to represent the continental border between Asia and Oceania.

1 Although generally food secure, a trend towards urbanization in PNG threatens the food security of the growing ranks of urban poor who lack access to these traditional methods.

2 United Nations, International Human Development Indicators (2011).

Among the most culturally diverse countries in the world, with over 850 indigenous languages, PNG is also among the most rural, with fewer than 20 percent of the population living in urban centers. More than 80 percent of the country's citizens work in agriculture, most in low-level subsistence farming, and together they contribute around 30 percent of the country's gross domestic product (GDP).

A representative profile of PNG's rural citizens is very difficult to draw. National statistics for the country (including its very population) are woefully outdated. There is little recent and meaningful data about public health beyond awareness of the worsening problem of HIV/AIDS. It is known that the PNG's expenditures on health care (3.1 percent of GDP) are among the lowest in the world, as is the average citizen's life expectancy (around 66 years for both sexes).

In rural families, opportunities to earn cash are dominated by commodities for export, including coffee, cocoa, copra and coconut oil, oil palm, spices, and others. Although coffee and cocoa production amounts to just 1 percent of global output, these commodities play an important role in the economy. For example, approximately 1.5 million smallholder farmers receive some income from coffee and 400,000 from cocoa. Even oil palm, the only tree crop with continued large corporate or commercial plantation production, supports around 200,000 people on smallholder oil palm block farms for some portion of their income. In addition, certain products, including poultry, sugar, and pork, are heavily protected from foreign competition but also play an important, if subsidized, role supporting agricultural communities. For producers with good access to markets, a high proportion of the value of each commodity or product can be retained on the farm. Yet while industry positioning and focus on quality to capture higher-value market opportunities have proven reasonably successful, PNG's overall competitiveness has suffered from deteriorating physical infrastructure.

PNG's underlying social structure of *wantok*—literally, "one talk"—is the basis for many cultural practices. Close family relations have produced a safety net that allows the country to avoid fundamental challenges of hunger and care of its neediest citizens. Yet the *wantok* system also is the foundation for an economic and political regime largely grounded on "insider trading." That is, family relations are often prioritized over the important economic values of transparency, equal opportunity, accountability for debts, and even law and order.

Despite its importance to society, PNG's agricultural economy is overshadowed by the country's booming resource sector. In particular, the USD 15 billion ExxonMobil Liquefied Natural Gas (LNG) project is in its construction phase and anticipated to launch operations by 2015. The largest investment project in the country's history, LNG has the potential to double GDP in the near term and to triple export revenue once it begins shipping gas to customers in Japan, China, and Taiwan. At least an equivalent amount has been invested in three new gold mines, and another gas project worth USD 7 billion is projected in the near future.[3] Thus, the vast sums of money pouring into PNG represent an enormous opportunity both for progress and for mischief. Decisions made now about how to minimize "Dutch disease" are hugely important to the long-term prospects of the vast majority of the population.

Drawn from a comprehensive diagnostic process, this report specifically assesses the fundamental question of whether people with sound entrepreneurial ideas in PNG's agricultural sector—including traditionally disenfranchised groups, such as isolated rural populations and women—are in a position to launch and maintain enterprises with reasonable prospects for success. Given the sector's challenges of weather, topography, infrastructure, and other related conditions, the political, legal, institutional, and social dynamics for supporting such activity become all the more critical.

3 Business Advantage, Papua New Guinea, "No longer business as usual" (2011/12), at 6–7.

WORLD BANK DOING BUSINESS CATEGORIES – PNG	2012	2011	CHANGE IN RANK
Doing Business Overall *(183 countries surveyed)*	**101**	**97**	**-4**
Starting a Business	84	83	-1
Dealing with Construction Permits	138	138	0
Getting Electricity	20	19	-1
Employing Workers	NA	NA	-
Registering Property	87	86	-1
Getting Credit	98	96	-2
Protecting Investors	46	44	-2
Paying Taxes	106	103	-3
Trading Across Borders	99	99	0
Enforcing Contracts	163	164	+1
Resolving Insolvency	116	114	-2

AGCLIR: A TOOL FOR UNDERSTANDING THE ENVIRONMENT FOR START-UP AND GROWTH OF AGRIBUSINESS

Through a recently updated structure for analysis, this diagnostic reviews the legal frameworks; numerous public, private, and nonprofit institutions; and social dynamics underlying conditions for reform in the agricultural sector. Based on its findings, a variety of recommendations are made. The underlying diagnostic exercise endeavors to take certain themes found in the World Bank's *Doing Business* initiative,[4] which since 2002 has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth, and investigates how these same issues, along with other key topics, affect the agricultural sector in a given country.

For each of the topics covered by the *Doing Business* reports, the World Bank considers key indicia of how the regulatory environment is "working," measured by such means as the number of procedures involved in achieving a goal (i.e., getting credit, enforcing a contract); the number of days it takes; and the costs of the procedures in relation to per-capita income. The World Bank gathers data from 183 countries and ranks each, thereby demonstrating how, to this limited degree, their respective environments compare to others throughout the world. AgCLIR supplements *Doing Business* by examining key components of the regulatory environment for agricultural enterprise in those developing countries, including PNG, whose economies and workforces are significantly based in agriculture.

In the most recent *Doing Business* report, issued in October 2011, PNG ranked 101 out of 183 countries surveyed. The country fell four spots in the rankings, with the World Bank finding no tangible improvements to the business enabling environment. Targeted to address key issues in PNG's agricultural economy, this diagnostic analyzes 10 out of 11 areas reviewed by *Doing Business*—**Starting A Business, Dealing with Licenses,**[6] **Employing Workers,**[7] **Registering Property, Getting Credit, Paying Taxes, Trading Across Borders, Enforcing Contracts**, and **Resolving Insolvency**. AgCLIR also examines the important regulatory issues of **Competing Fairly** and **Accessing Marketing Infrastructure**.[8]

From January 30 to February 13, 2012, a cross-disciplinary team of consultants convened in Papua New Guinea to conduct interviews across the agricultural sector. The team was advised by both USAID's Port Moresby–based representative and representatives of the New Zealand High Commission and the New Zealand Aid Programme, which are extensively engaged in

[4] See World Bank, Doing Business 2012 (2011) and accompanying literature, available at www.DoingBusiness.org.

[5] In its 2008 survey, the World Bank changed the designation of the category "Dealing with Licenses" to "Dealing with Construction Permits," a title that more accurately reflects the scope of its survey. AgCLIR's focus remains on the broader issue of Dealing with Licenses, many of which are required to do business in the agricultural sector.

[6] In 2011, the World Bank removed Employing Workers from its ranked areas of inquiry, due to ongoing controversies over the issues it evaluates. Nonetheless, *Doing Business* continues to include data about the issue in its reports.

[7] AgCLIR does not cover the World Bank's newest area of inquiry, Getting Electricity.

supporting PNG's agricultural sector. The team met with more than 250 national and local officials; farmers and their associations; small, medium, and large agricultural enterprises; business associations; think tanks and other NGOs; educational and research institutions; the banking, lending, and investment community; donor representatives; and many others. Interviews took place in and around Port Moresby, Lae, Goroka, Mount Hagen, and the province of East New Britain. The AgCLIR diagnostic culminated in a roundtable presentation and discussion in Port Moresby on February 13, 2012, attended by more than 75 stakeholders. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from the participants. This input helped shape the final conclusions of the team, which are found in this report.

SUMMARY OF FINDINGS

Summaries of subject-matter areas examined in this diagnostic are set forth below.

STARTING A BUSINESS

The general processes required to start an agricultural business in PNG are simple. The institutions charged with implementing the legal requirements are capable of performing adequately without significant hindrance to business operation, provided that application is made through Port Moresby. In all cases, however, limited institutional capacity beyond Port Moresby results in double the time required for processes initiated outside of Port Moresby. This creates a real burden on agricultural enterprises, since most of these tend to be rurally based with less access to the facilities in Port Moresby. By contrast, although business registration capacity is adequate, the auditing capacity of the main institutions is extremely limited, which reduces the ultimate value of registration and increases opportunities for corruption. There is a clear need for enhanced monitoring and enforcement of the commitments made by businesses upon registration. The lack of accountability is a consistent theme that diminishes the business registration process and has longer-term and deeper implications for national business development than for the agricultural sector alone.

DEALING WITH LICENSES

The legal framework for the licensing system for agribusiness in PNG is adequate for products destined for export, although it does little to protect the health and safety of domestic consumers. Even for exports, however, there are widespread deficiencies that impact the commercial viability of smaller enterprises. These impacts are less in terms of cost and more in terms of delay in the granting of licenses and permits, especially those permits required for export of raw or processed goods. There is a need both to increase the human-resource capacity of institutions such as the National Agriculture Quarantine Inspection Authority (NAQIA) and some commodity institutions and to streamline the procedures at the port where

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most certifications take place. During this diagnostic, PNG's commodity institutions were widely criticized for their slow licensing performance and general lack of relevance to their subsectors. In some subsectors, such as spices and rubber, the institutions add little value, while in others, such as cocoa and coffee, they are more active and could contribute to the maintenance of standards through effective certification.

The licensing of domestic production requires strengthening in terms of not only human resources but also laboratory capacity and the knowledge of local authorities regarding their legal obligations. Particularly with regard to food-establishment licensing, consideration should be given to an interim flat-rate fee to allow inspection and licensing of food establishments to proceed without further delay, while a more refined license fee structure can be introduced over time.

PHOTO BY FINTRAC INC.

EMPLOYING WORKERS

In a word, the critical issue pertaining to the state of PNG's agricultural workforce is skills. Enormous competition throughout the country for skilled labor, a result of rapid economic growth generally and demand from massive natural gas, gold, and copper operations in particular, means that already scarce skilled labor in the agricultural sector has become even more difficult to find. Larger, formal agricultural enterprises cope with the skills shortage by conducting internal training programs, by trying harder to retain their workers, and by enlisting the comparatively expensive option of expatriate labor. However, for the vast majority of PNG's agricultural workers, many of whom lack the skills needed to deliver added value to a formal employer or to build their own enterprises, options for work beyond subsistence farming remain minimal. At all levels of government, there is pressure to strengthen basic education services so that PNG workers can rise to the opportunities presented by their growing economy, in agriculture and beyond. The demand for skills implicates a wide range of needs in the agricultural sector, some requiring advanced education but many more requiring a "middle level" of competence that can be gained through a stronger, more germane system of primary, secondary, and vocational-technical education. Although the go°°vernment generally allows for outside workers as a means for countering its local labor problems, reliance on foreign workers presents an expensive and potentially destabilizing influence within PNG's economy.

Government measures to bolster the skills and productivity of agricultural workers through extension services are similarly considered weak. In this area, however, the existence of many service providers—including not only government research agencies, crop boards, and educational institutions but also a host of private-sector and NGO options—means that opportunities for training may be stronger than the public perceives.

REGISTERING PROPERTY

The issue of land ownership and land use is a source of deep societal tension in PNG. On the one hand, centuries-old tradition protects the profound connection that specific clans have with individual parcels of land, such that customary landowners may not sell their land. On the other hand, there is increasing desire to transition away from subsistence-level livelihoods and to manage more effectively and fairly the bountiful natural resources that exist throughout the country. After decades of public debate, legal disputes, international donor pressure, and even violence, sensitivities are quite high regarding the next steps for land reform. In PNG, where 97 percent of the land is owned by customary landholders—and where at least 80 percent of the population engages in subsistence-level agriculture—the situation is of a unique scale and of fundamental importance to the future of the country.

In 2005, relaunched public dialogue resulted in the national Land Development Programme, including a reform directive to balance customary land claims with economic and social development needs. Within the present regime of customary land ownership, the government has inserted itself as the intermediary between two distinct parties, namely, investors seeking to unpeel the layers of nearly 800 distinct clans, each with its own system for property transfer and ownership customs, and customary landowners who may not fully understand the gravity of their land transactions. In fact, outsiders do often successfully navigate land restraints; mines and petroleum products are generally built on customary land.[8] PNG's government plays a critical role protecting both sides of land transactions, but there is a long way to go.

GETTING CREDIT

Notwithstanding a generally well-structured legal and regulatory framework for finance, the availability of affordable credit in PNG, particularly for agricultural enterprises, is problematic. At the micro-end of the spectrum, there has been significant growth in micro-savings, allowing for capital accumulation to be used either as equity for investment or as collateral for loans. This may explain a relatively low uptake on loans for many depositors, who now have a place to shield their money from various wealth-reducing cultural obligations and thus accumulate needed capital for smaller investments. As mobile banking expands in PNG, micro-savings can be expected to increase significantly, particularly among populations without access to brick-and-mortar infrastructure.

For some small and medium-sized producers, processors, and traders, bank loans may be available, but the costs are rather high. Interest rates for lending typically fall in the 15 to 25 percent range, often with significant collateral requirements. Deposit rates, however, are no more than 1 to 1.5 percent, leaving a substantial margin in what should be a competitive market. Nonbank financial institutions, such as finance companies, "payday" lenders (lending against formal salaries), and leasing companies, service those who do not qualify for bank loans, but at great cost. Interest rates from such institutions begin around 25 to 30 percent and can go as high as 125 percent, often with little or no disclosure of the actual effective rate.

For commercial lending, risk is key to high rates. Although many secured loans can be enforced effectively, acceptable collateral is limited to equipment, vehicles, some buildings, and almost no land. Moreover, loans to "politically exposed persons"—powerful vested interests—are uncollectable and result in higher nonperforming loan ratios, driving up the costs of lending. New legislation promises to broaden collateral possibilities, but the lack of transferable land rights continues to limit the expansion of secured lending to install agro-industries or to expand farming operations.

Meanwhile, formal savings and lending regimes are providing an important counter to PNG's *wantok* system, which has historically made it

[8] Business Advantage, Papua New Guinea, "Legal Considerations" (2011/12), at 19.

difficult for individuals to hold on to or reinvest their cash. Savings accounts (including mobile banking accounts) have grown dramatically as a way of shielding assets from public view. Electronic transmission of payment for salaried employees, such as those in the public sector or working for larger enterprises, also prevents the "grabbing" of cash received on payday.

PROTECTING INVESTORS

PNG's legal and administrative framework for capital investments is comparatively strong. PNG offers clear, accessible, and predictable laws and regulations pertaining to the rights of investors. The national company law establishes fiduciary duties and defends shareholders from untoward practices of "inside players." A national law on cooperatives similarly creates straightforward structures of governance for farmers and others seeking to invest collectively in the cooperative model of doing business. Financial data that verifies the soundness of investments, including full and reliable disclosure of company information, is relatively accessible from larger enterprises. Investment policy and practice bear out the entitlement of investors to their profits, even if those profits will be repatriated into another country.

On the other hand, PNG presents a formidable set of investment risks. Fundamentally, investors seeking to build agribusiness in PNG see a country anchored in a regime of property rights that is not, in conventional terms, conducive to growth. Landowner companies and associations lease tracts of land to foreign investors (usually mining or gas companies), but these agreements unfold under extremely tenuous and nontransparent terms. In addition, PNG's national infrastructure, public-sector financial management, and conditions for law and order are notoriously poor. For their part, cooperatives do not represent a meaningful avenue for doing business in the agriculture sector, given low degrees of trust and poor adherence to formal mechanisms of cooperative governance.

Moreover, although PNG has managed to remain politically and economically stable in recent years, its constitutional crisis in 2011, which landed the country with "two prime ministers, two governors general, two cabinets and two police commissioners,"[9] leaves less than favorable impressions with potential investors.

PAYING TAXES

In general, PNG's tax system is not saddled with many of the common shortcomings found in the tax regimes of other developing countries. Cumbersome, low-yield taxes that pepper the tax codes of other nations are largely absent. While tax filing and payment is still paper-based, the procedures are straightforward, and efficiency is likely to improve with the introduction of online filing later this year. The Internal Revenue Commission (IRC) has adopted a customer service–oriented approach and conducts taxpayer-awareness training in rural areas when funding allows. By and large, taxpayers consider their dealings with the IRC to be respectful and corruption-free.

As a result, voluntary taxpayer compliance within the formal sector is common, and revenue collection is high. This is the case despite PNG's status as a relatively high-tax jurisdiction. The highest marginal tax rate on individuals is 42 percent, and tax as a percent of GDP is 22.4 percent. In recent years, revenues derived from taxes have steadily increased, while the percentage derived from foreign aid has decreased. With the completion of the LNG project, PNG has the potential to fund its entire national budget from domestic tax revenue within the next few years.

Despite these advantages, PNG has failed to achieve its central development goals and still scores poorly on the United Nation's human development index for poverty, literacy, and health. Government at all levels generally fails to act as a responsible steward to ensure that tax dollars are spent in accordance with national

[9] Blair Price, "From the Editor's Chair," PNGReport (January 2012), at 2.


PHOTO BY FINTRAC INC.

priorities. A complete lack of accountability in public financial management results in a system in which ad hoc political pet projects funnel money to political supporters, while government agencies lack the funds to implement long-term strategies to improve the infrastructure, health, and education of the nation.

COMPETING FAIRLY

PNG's government has identified the development of a progressive, competitive economy as a priority within its guiding long-term strategy, PNG Vision 2050, which aspires for "middle-income" status in the next generation. In recent years, the PNG consumer and economy has benefited from reforms in competition policy, including examples in the telecommunications industry and domestic aviation, yet the agricultural sector continues to see constraints to competition. PNG's Medium-Term Development Plan (2011–15) aims to build upon recent successes, identifying the encouragement of competition to facilitate economic progress as well as service delivery as a near-term, relatively low-cost, policy "key-enabler" to reaching Vision 2050.

While PNG's legal and regulatory framework for encouraging competition has been strengthened over the past decade, certain competition-constraining norms remain. One critical constraint to competition, detailed in this report's chapters on Starting a Business and Protecting Investors, is the portion of the Investment Promotion Act that prevents foreign ownership of a wide variety of agricultural-related enterprises. Although there may be perceived benefits in protecting certain vocations with PNG society, the tangible impacts of higher prices, lower quality, and absence of innovation concurrently abound.

In addition, recent efforts to turn rice production into a state-sanctioned monopoly, though unlikely to succeed, have highlighted the vulnerability of national and local leadership to economic development ideas that are exceptionally unfriendly to consumers. In contrast, PNG's experience with commodity regulatory bodies, unlike that of many other developing countries, has not proven especially to constrain competition, although there remains considerable room for improvement.

ACCESSING MARKETING INFRASTRUCTURE

Transport is the dominant marketing infrastructure concern to PNG's agribusiness community. In some areas, a strong sense that roads and infrastructure are owned by "them" and not "us" results in rent-seeking behavior by communities along national roads, as well as security threats to infrastructure users. In contrast, aggregation infrastructure and storage warehouses are largely privately owned and regarded as sufficient for current production levels. Most fresh markets have decent-to-good physical infrastructure and charge levies and fees that cover all or most day-to-day operational costs, and some receive additional support from municipal and provincial budgets.

Marketing information, including crop estimates, detailed production reports, and market prices, remains inadequate. The majority of poor farmers working in food crops have little access to information about prices and potential customers, including institutional customers such as mining camps or tourist facilities. However, stakeholders along the various commodity value chains share market information that is typically coordinated within the commodity organization or statutory body. There is enough competition among the available buyers of the main cash crops so that most producers are satisfied with their level of information regarding markets and prices.

TRADING ACROSS BORDERS

Trade policy. Since independence, PNG's trade priorities have focused on tariff liberalization and the removal of non-tariff barriers to trade, with exceptions to allow specific local industries to grow. From the late 1990s through the mid-2000s, Papua New Guinea underwent a major Tariff Reduction Program (TRP). The initiative significantly reduced import restrictions, tariffs, and formal non-tariff barriers. Now, PNG's simple average import tariff is 5.1 percent and three quarters of imports enter the market duty-free, making it one of the most open trade regimes in the world. Despite its open-trade stance, in practice, PNG's trade policy has been largely ad hoc, often internally inconsistent, and lacking in adequate implementation. Arbitrarily enacted trade regulations and practices are typically poorly integrated with key economic sectors or wider economic goals. Coordination is lacking between national ministries (of which there are at least 30), and support for policies rarely lasts beyond individual government terms Implementation, where is has occurred, has been isolated and ineffective.

Traditionally, lack of negotiation capacity has threatened PNG's effectiveness in international trade negotiations, although recent concessions on rules of origin with the European Union (EU), and a strong negotiating position with the United States, demonstrate some progress in this regard. According to a comprehensive World Trade Organization (WTO) trade review in 2010, widespread trade-related technical assistance is needed in "almost all areas of unilateral, multilateral, and bilateral initiatives."[10]

Nonetheless, agricultural producers and processors in PNG do profitably engage in international trade. Agribusinesses report general satisfaction with the regulatory framework under which they operate, their main grievances arising from the practical constraints to imports and exports. Of particular need is assistance in overcoming sanitary and phytosanitary (SPS) barriers—that is, extremely stringent product quality standards—to export markets in Australia and New Zealand.

TRADE FACILITATION

Trade facilitation allows for the efficient flow of imports and exports across PNG's international borders. When a border process is simple, predicable, and integrated, delays and, therefore, clearance costs are minimal and do not negatively impact the competitiveness of PNG products. A high level of trade facilitation is critical to PNG's reaching its economic development goals to reduce poverty through expansion of agricultural exports in general and its cash crops of palm oil, coffee, cocoa, and spices in particular. This export objective necessitates efficient import clearance, since the agricultural sector depends on internationally supplied inputs like seeds, feed stock, fertilizer, packaging materials, farm equipment, and organic alcohol for vanilla extraction.

[10] WTO, Trade Policy Review: Papua New Guinea (2010).

PNG does not yet have a simple integrated process for trade facilitation. Although the export of cash crops moves along the logistic chain with some efficiency despite regulatory controls by statutory bodies, the current import/export process is fragmented, requires excessive interventions by multiple parties, and occurs in sequential steps undertaken by the principal border agencies: the Customs Service (Customs) and the National Agriculture Quarantine and Inspection Authority (NAQIA). Each entity operates independently, no data is shared even though each works off the same source documents, and traders are not offered a one-stop processing center. This situation, coupled with major congestion issues at the principal ports, adds significant clearance delays and costs to each international transaction.

Efforts to streamline the import/export process are being undertaken individually by some of the involved entities. Modernization efforts at the major ports (especially Lae, the choke point for import/export for the agribusiness sector) should relieve some of the current congestion. In addition, recent efforts have been made toward creating a comprehensive strategy for improved trade facilitation. Although the Ministry of Foreign Affairs and Trade is committed to this effort, whether the initiative will create the platform for comprehensively addressing the issues and be able to produce significant sustainable results in streamlining the trade process is unknown. Moreover, progress in implementing trade facilitation measures is undermined by the lack of effective public-private engagement. The border agencies do not yet view the private-sector groups with which they work as valued contributors or as resources to improve processes, nor do they always consider the impact of their regulatory actions on trade flow.

ENFORCING CONTRACTS

In PNG, the culture of contracts within the agricultural sector is underdeveloped. Most producers rely on spot sales and conduct little to no long-term business planning. Some cynical agribusinesses described export crop producers as "foragers" rather than farmers, who produce only as needed to pay school fees. Where contracts do exist, however, agribusinesses must rely on the *wantok* system to enforce their agreements and protect their assets. The courts in PNG, although considered largely independent, are slow and expensive, and the rule of law is weak. The *wantok* system acts as a proxy for the judicial system that provides security of investment and enables business to proceed. However, business dealings are necessarily restricted to the community in which one's *wantok* network holds sway. The most sophisticated agribusinesses opt out of the PNG system entirely, preferring instead to have their disputes sent to foreign arbitration.

RESOLVING INSOLVENCY

The process for resolving insolvency among formal enterprises in Papua New Guinea is generally fair and efficient, and does not significantly deter risk-taking among entrepreneurs. Or, as noted during this diagnostic by experienced bankruptcy professionals, the formal mechanisms for dealing with insolvency are minor when compared to other constraints facing agribusiness. Within the agricultural sector, regulatory limitations on land ownership and transactions can lead to protracted periods of liquidation due to difficulties disposing of land in rural locations, raising the cost of liquidation as a percentage of the insolvent estate.

The World Bank's most recent *Doing Business* report notes that bankruptcy professionals and attorneys in PNG estimate that insolvency resolved through liquidation in Port Moresby would take, on average, three years. Yet these professionals noted that liquidation of insolvent estates in rural PNG can take much longer, particularly when dealing with the restraints of freehold land transactions. Moreover, among informal enterprises, intra-clan social safety nets frequently keep local informal enterprises from failure, allowing less efficient small businesses to continue. Nevertheless, strong institutions ensure a relatively predictable, if not always expedient and low-cost resolution to insolvency.

CROSSCUTTING THEMES

This diagnostic is organized so that various components of a healthy and prosperous environment for agricultural enterprise are considered discretely and, where appropriate, in relation to each other. The AgCLIR team identified certain issues and dynamics as especially prevalent across this analytical framework. They are discussed below.

PNG's agricultural value chains: At all junctures, opportunities for reform

In agriculture, value chains have emerged as critical vehicles for understanding and strengthening the overall competitiveness of a given subsector in a developing economy. A value chain consists of the key stages of moving a good or service from conception and raw materials to production and processing, and then to the consumer. Considering a subsector this way brings to light issues, opportunities, and roadblocks that may otherwise be afforded insufficient consideration. The 12 chapters of this report each pertain to key aspects of PNG's major value chains, including both "food crops" that feed the people and individual "commodity crops" that put cash into their pockets. Each of the chapters highlights areas of opportunity and opportunities for reform.

For example, while the AgCLIR team observed considerable entrepreneurial spirit in both urban and rural markets, this is scarcely fostered by adequate access to education and agricultural extension. As a threshold, conditions for primary and secondary education in PNG, particularly in the rural areas, are extremely poor, beginning with limited accessibility for all school-age children—especially girls—but also including the low quality of

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school buildings and classroom materials, poor teacher compensation, and vague or under-enforced curriculum standards. Despite a network of 131 vocational training centers in PNG (82 run by churches or other charitable organizations), there is widespread agreement that technical and vocational education and training (TVET) opportunities in PNG fall far short of meeting the needs of students entering the workforce and, for that matter, of employers seeking workers capable of performing skilled industrial or agricultural work. PNG's system of higher education, however, offers some comparatively promising attributes. As a viable baseline, there is a network of higher-level institutions that, with proper orientation, capacity-building, and increased integration with the private sector and research institutions, stands ready to build on the benefits of increased resources, improved management, and curricular reform.

With respect to extension, much of the responsibility for training farmers has been allocated to the commodity-specific institutions (such as coffee, cocoa, and rubber) or, in some instances, is provided as a service by the largest traders. Most information delivered in agricultural capacity-building programs focuses on production and little relates to business development. Though consistent with a philosophy that farmers are generally producers rather than businesspeople, PNG would benefit from increased emphasis on understanding market opportunities that would allow producers to maximize their capacities in the marketplace.

Another critical value-chain issue pertains to product quality, as it concerns production for both domestic and international markets. The subsistence nature of most agricultural production in PNG means that much of the food produced is circulated or exchanged at very small local markets where it is effectively impossible to enforce licensing or quality standards. Notably, there are no licenses relating to production processes. In contrast to many other countries, there is no licensing requirement to own, breed, or transport animals or poultry. Licensing begins at the point of buying and is applied to processing and all aspects of the value chain thereafter. Subsistence-level production favors the vast informal economy that operates outside of licensing regimes.

For export-oriented commodities, more emphasis has been applied in recent years on raising product quality. But the system by which most quality support comes through statutorily enabled commodity boards has produced uneven results. While coffee and cocoa have benefitted from quality initiatives, the high-potential arena of spices, vanilla in particular, has been essentially neglected.

Finally, across their respective value chains, the commodity industries do not exhibit a coherent vision and voice that represents the value chains from producer through trader, processor, and/or exporter. Some commodity-based institutions view their roles as including advocacy, but best practice has regulatory and advocacy as separate functions within different institutions. Some of the larger agribusinesses themselves are active in the Manufacturers Council or other private-sector advocacy bodies, but the stakeholders in each industry still generally lack a means of convening to work out internally the natural tensions along the chain and to advocate a unified vision for industry development and improvement.

Where the grievances lie: Public-sector implementation and accountability

The enabling environment for doing business in PNG's agricultural sector has many attractive features. Across most of the topics surveyed during this diagnostic, the legal and regulatory framework is sound, with few specific areas demanding immediate legal reform. Certain institutions, including the Investment Promotion Agency and the Internal Revenue Commission, generally serve their respective purposes, notwithstanding considerable constraints in human resources and capacity. Yet the country has little to show for its many advantages in terms of quality roads, schools, and health services. This is due to the gross failure of effective public financial management.

In 1998, Parliament enacted an Organic Law on Provincial Governments and Local-Level Governments for the purpose of improving the delivery of services for rural development by decentralizing power and responsibility to local-level government institutions. By all accounts, this exercise in decentralization has resulted in diminished services and weaker structures for economic development, particularly in the areas of infrastructure, public health, and education. According to stakeholders, national, provincial, and local-level government institutions lack either the capacity or checks and balances necessary to effectively manage government funds. The national budget has been described as “paper money,” and local government agencies complain that funding frequently covers only existing salaries, leaving little available for capacity-building or supplemental programs such as extension services or infrastructure development. According to one local government worker, by the third or fourth quarter of each year, there is simply no money left to spend. One employee of the Cooperative Societies Unit stated that he had received only enough funding to register cooperatives and none to cover the training or start-up grants promised under the program such that he is now embarrassed to meet with the cooperatives in his area.

In addition, appropriations are often diverted to special grant projects such as the District Service Improvement Program (DSIP) that disperse large amounts of money through elected officials. These ad hoc projects benefit small groups or individuals rather than furthering the strategic development plans of government agencies that could benefit the economy as a whole. These programs also create ample room for procurement fraud. Contracts are frequently awarded to companies with no capacity to deliver and with no built-in oversight processes to ensure that they do. During this diagnostic, grant recipients reported being asked for 10 to 20 percent kickbacks in exchange for having their applications approved.

These problems reflect an overarching gap across all levels of government between policy creation and effective budgetary appropriation. Even well-conceived programs are unable to be implemented or sustained. At least 30 Cabinet-level ministries have been established in PNG, a number that, in itself, suggests one reason why public financial management and bureaucracy are perceived to be among the country’s key weaknesses. During the roundtable discussion held as part of this diagnostic, participants identified public financial management as the greatest constraint on long-term development in PNG’s agricultural sector.

With revenue collection projected to increase substantially in coming years due to the LNG project, the need for checks and balances on government spending is more urgent than ever before. The recent creation of a Sovereign Wealth Fund (SWF) is an important first step, but it is not yet clear that the use of these funds will not suffer from the same corrupt practices as other tax revenue. PNG is poised to become a prosperous middle-income country if it can successfully harness this wealth to implement transparent and effective long-range development plans that improve the infrastructure, education, and economic opportunity of all Papua New Guineans.

The impact of culture and tradition: Social dynamics and economic opportunity

A major dynamic constraining the development of agricultural production, processing, and trading enterprises is the strong traditional social cohesion within rural communities that results in the sharing of assets or individual gains. Namely, this diagnostic found the *wantok* system to act as a brake upon the accumulation of capital for investment. Attempts to accumulate funds are often defeated by requests for assistance from family members, so that successful entrepreneurs are often obliged to operate far away from their own communities where they will not be importuned. At the same time, the system of support allows many individuals to minimize their own productive efforts by relying on the support of others. As a result, economic incentives to increase production or improve quality—especially those relevant to organic production, fair trade, or other forms of certification—show less impact in PNG than they might have elsewhere, acting as a further disincentive to investment by potential outgrower companies.

Fortunately, through modern systems of personal financial management, this is changing. Savings accounts (including mobile banking accounts) have grown dramatically as a way of

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shielding assets from public view. Electronic transmission of payment for salaried employees, such as those in the public sector or working for larger enterprises, also prevents the "grabbing" of cash received on payday. Indeed, the demand for savings accounts is reportedly greater than the demand for loans among individuals and small businesses: No more than 10 to 20 percent of bank depositors have loans. The impact of this development is that many Papua New Guineans are slowly able to increase their own capital for small investments and consumption.

While an apparent desire to escape the *wantok* wealth dissipation effect clearly drives increased savings, the traditional system also affects the collection and enforcement of debts. Lenders have found that it is difficult to enforce delinquent loans—whether through repossession of collateral or simply pressure to pay unsecured debt—in places where the lender can be considered an "outsider." Consequently, risk premiums are higher and access to credit is lower for communities that do not have their own lending branch. Lenders contend that first-instance judges frequently rule in favor of debtors in their communities and against the "outside" lender, even though the law clearly compels the opposite outcome.

Moreover, the same bias has been reported among police who may be unwilling to enforce against their kin (defined broadly). Unfortunately, infrastructure constraints make it difficult to expand a brick-and-mortar branch system beyond the larger towns, so that communities that do not have their own branch and do not honor contracts find themselves with little access to affordable capital.

Finally, in the agricultural sector, there is a strong cultural association in PNG between women and gardens. This traditional view of women's work continues to this day. Conspicuously, women who participate in agriculture—which is the majority of women in PNG—concentrate primarily on food crops for household consumption and local sale. Men are overwhelmingly represented among the participants in cash-crop production and trade.

"Men looking down on women has been forever," stated one female farmer who participated in a group discussion as part of this diagnostic. Women themselves are often treated as chattel, in many rural areas offered to polygamous husbands in exchange for a price. They often face difficulties in obtaining government-issued identification, especially in they lack birth certificates, which is not uncommon. Further, Papua New Guinea's Marriage Act of 1963 acknowledges both statutory and customary marriages. Thus, although the law sets the marital age for females at 16 and males at 18, girls often get married at much younger ages, with tradition often accepting menstruation as the threshold for readiness to marry.

The success of PNG's lending reforms, discussed in this report's chapter on Getting Credit, should lead to greater female participation in the agricultural economy, along with greater access to credit for men. However, there are concerns. First, it has been noted that violence against women sometimes increases if they move upward economically by earning more than their husbands or succeeding more visibly in the community. If unaddressed, this violence could act as a brake on opportunity. Savings accounts, however, increasingly allow women to shield their earnings from public scrutiny, thus protecting them from inappropriate reactions. Second, violence against women damages their ability to earn and repay, leaving them vulnerable financially as well as psychologically. Hence, this unfortunate tradition harms economic development generally, as well as the unfortunate individuals who suffer more directly.

HOW THIS REPORT IS STRUCTURED

Each chapter of this report is structured the same way. Following an introduction, each has four substantive sections (Legal Framework, Implementing Institutions, Supporting Institutions, and Social Dynamics), which are followed by recommendations.

LEGAL FRAMEWORK

The chapters first examine PNG's formal policies, laws, and regulations that serve as the structural basis for the country's ability to achieve and sustain market-based development in the agricultural sector. They discuss the following questions: With respect to key components of the business environment, what is the government's policy? How accessible is the law, not only to elite, well-informed groups, but also to less sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do they reflect emerging global standards? How well does law respond to commercial realities faced by stakeholders in the agricultural sector? What inconsistencies or gaps are present in the legal framework? This section examines key laws and regulations that apply throughout the economy and additional laws and regulations underpinning the agricultural sector specifically.

IMPLEMENTING INSTITUTIONS

Next, the chapters examine those institutions that hold primary responsibility for implementing and enforcing the legal framework. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the agricultural sector. Again, the diagnostic seeks to uncover how these implementing institutions function not merely with respect to mainstream business interests in the capital but also in rural areas and agricultural communities.

SUPPORTING INSTITUTIONS

The chapters then look closely at those organizations, individuals, or activities without which the agricultural sector in PNG cannot be fully developed. Examples include business and professional associations, educational institutions, research and extension resources, the media, and donors. The relative awareness of law and practice on the part of each institution is examined, along with the specific ways in which institutions increase public and professional awareness, work to improve economic performance, and otherwise serve their constituencies.

SOCIAL DYNAMICS

As the final point of analysis, the chapters discuss key issues that impact the environment for growth in the agricultural sector. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. This discussion also identifies significant opportunities for bolstering the environment for agricultural enterprise—such as champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters of gender, human capacity, and public health, each of which may have a significant bearing on how the business environment truly functions. Indeed, often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

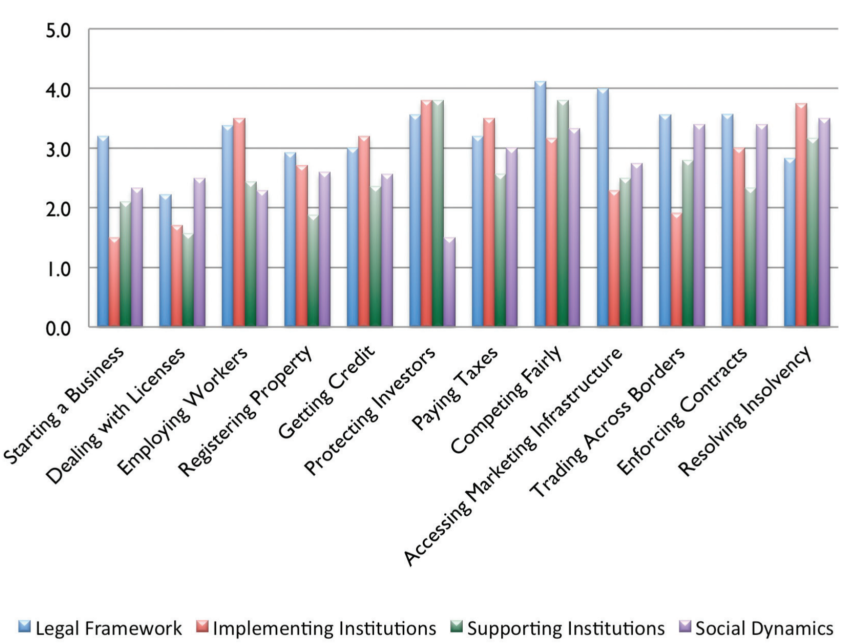
RECOMMENDATIONS

Based on the extensive knowledge and analysis set forth in this report, a series of recommendations are set forth at the end. These are drawn from the key findings in each chapter and reflect current reform capacities, opportunities, and evidence of will to reform. Some of the recommendations within the chapters may overlap—that is, some may be consolidated into a single reform initiative covering two or more topics—and all turn on the priorities and preferences as enunciated by PNG's government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and to inform strategies for improved program design.

AGCLIR SCORES

With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring key questions to develop a thorough analysis. Once as much relevant information as possible is gathered—from written sources, meetings and interviews, and consultation among colleagues—each of the key questions is scored, based on the assessor's best estimate of the issue at hand. The scores are not intended to serve as a stand-alone, number-based pronouncement on the state of the agricultural sector in PNG. Rather, they should simply be considered in conjunction with this report's narrative as a means of understanding the status of certain key indicators of a healthy legal and institutional environment for agricultural enterprise and of identifying priorities for reform.

PAPUA NEW GUINEA AgCLIR 2012: INDICATOR SCORES



STARTING A BUSINESS

A large informal sector dominates Papua New Guinea's economy. Fewer than 350,000 people within a population of at least 7 million hold formal jobs with formally established enterprises. Less than 30,000 companies are registered with the state. In the agricultural sector, the imbalance between formal economic activity and informal enterprise is even greater. Despite the fact that 85 percent of the population derives its living from agriculture, just a very small proportion of the agricultural economy—less than 5 percent—functions pursuant to the legal framework for companies, taxation, labor, licenses, and other prescribed rules of commerce. Where PNG businesses are formally registered, they tend to be involved in input supply or the processing of the main export crops, namely, coffee, copra, cocoa, rubber, and oil palm.

The scarcity of formal agribusinesses results from many different factors, including access to finance, worker education and training, and perceptions concerning the value of formalization. In addition, it can be ascribed to the restrictions placed upon agricultural investment under the **Investment Promotion Act (1992)**. Under this Act, foreign enterprises cannot conduct business in a range of activities listed under the Cottage Business Activities List (CBAL). These currently include the following:

- Cultivation and growing of vegetables and other market produce;
- Farming of animals;
- Poultry farming;
- Fishing on a commercial basis; and
- Wholesale and retail sale of wild growing materials.

Other activities are listed, but these are the most relevant to agricultural development. These activities are reserved for the citizens of Papua New Guinea, which may at least in part account for the limited amount of investment in them and the high level of informality at the primary production level in each subsector.

Various types of agribusinesses can be formally established within PNG, but the two forms most commonly found are the limited company, which may be owned privately or publicly, and the cooperative, which is privately owned by shareholders. The concept of agricultural cooperatives linked within a framework of associations has been adopted by PNG's central government as a potential mechanism for rural development and is now being actively pursued. Since 2007, more than 4,500 cooperatives have been registered, although the number productively engaged in business activities is estimated to be substantially less.

The process of starting a business entails two phases. The first involves procedures common to all companies or cooperatives and covers the raising of capital and enterprise registration and identification for the purpose of general taxation. The second varies according to the nature of the business to be undertaken. It may include registration with sector-specific institutions (such as the Coffee Industry Corporation (CIC) or the Kokonas Indastri Korporesen (KIK)), which is undertaken through application for and provision of specific licenses.

Other licenses may also be required if more specific activities, especially food processing, are to be undertaken, or if inputs or products are to be imported or exported. This chapter covers only the first phase of starting a business, while this report's chapter on Dealing with Licenses addresses the second.

IN A NUTSHELL: STARTING AN AGRIBUSINESS IN PNG	
Approximate number of registered companies in PNG	>30,000
Approximate number of registered agribusinesses	>1500
Approximate number of new business registrations per year	1200
Approximate number of new agribusiness registrations per year	50
Approximate number of registered cooperatives	4500

LEGAL FRAMEWORK

The procedures required to launch a formal enterprise in PNG are relatively inexpensive, simple, and few. For enterprises seeking to formalize as companies, the **Companies Act (1997)** and **Companies Regulation (1998)** govern the process. In general, the legal framework is not restrictive and makes few stipulations as to the underlying purpose of companies. It is, however, comprehensive and lengthy and is not readily assimilated by the typical PNG citizen. The Companies Act is currently under review and may be simplified in the near future.

BASIC REQUIREMENTS

Under the Act, enterprises are registered by the Registrar of Companies upon application to the registry housed at the Business Registration and Regulation Division of the Investment Promotion Authority (IPA). The registration of a company does not require articles of association, a constitution, or a minimum share capital, but it does require a name and a registered address. The and **Business Names Regulation (1964)** require that the name should be unique and reserved. The process of registration must therefore incorporate a search of the registry and the reservation of a unique company name. The IPA undertakes this process for a fee of Papua New Guinea kina (PGK) 50 (approximately USD 25). Upon successful application, the registrar issues a certificate of incorporation if the company is newly formed within PNG or a Company Registration Certificate if the company already exists in another country. The fee for registration of a local company is currently PGK 450 (USD 225). Registration of a preexisting foreign company in PNG costs PGK 500 (USD 250).

An application for registration of a domestically owned enterprise requires the signed consent of identified directors, the secretary, and shareholders. An application for registration of a preexisting foreign company requires a single form accompanied by certified copies of the company certificate or a registration document maintained by the registering authority in the country of incorporation.

KEY LAWS

- Companies Act (1997) and Regulation (1998)
- Business Names Act (1963) and Regulation (1964)
- Income Tax Act (1959) and Regulation (1959)
- Superannuation (General Provision) Act (2000)
- Goods and Services Tax Act (2003)
- Workers Compensation Act (1978)
- Cooperatives Societies Act (1982) and Regulation (2003)
- Cooperative Societies Development Policy (2008)
- Organic Law on Provincial Governments and Local-Level Governments (1998)
- Employment of Non-Citizens Act (2007)
- Informal Sector Development and Control Act (2004)
- National Informal Economy Policy (2011–15)

The Companies Act also specifies that a foreign business (50 percent or more foreign ownership) not only must be registered but also must obtain an IPA Certificate from the Companies Office. The process of certification requires a number of supporting documents including the following:

- Copy of Certification of Incorporation or Registration;
- Budget/cash flow forecast;
- Comprehensive business plan;
- Positions and nationalities of the staff to be employed;
- Value of initial capital investment; and
- Copies of any agreements relating to the lease or purchase of capital assets.

Depending on the circumstances, other information may also be requested. In addition, owners of foreign companies must submit identification in the form of copies of their passports, visas, and work permits, together with a police clearance report, curriculum vitae, and bank statements, if the owners are individuals, or financial statements, a register of shareholders and directors, and certificates of incorporation, if the owners are corporate entities. The application fee is PGK 2,000 (USD 1,000).

The Companies Act also requires that a company entering into business contracts or issuing shares possess a registered seal. This is also obtained from the Registrar of Companies. The fee for obtaining a registered seal is PGK 40–80 (USD 20–40), depending on its size.

Following registration, a new company is obliged under the **Income Tax Act (1959)** and Income **Tax Regulation (1959)** to inform the tax authorities of its existence. It does so by nominating a public representative for tax purposes and by filing his or her contact information with the IRC within three months of registering the business. A company that employs staff earning more than PGK 504 (USD 252) per month is also required to register as an employer with the IRC for the purposes of "pay as you earn" tax. Under the **Superannuation (General Provisions) Act (2000)**, a company with 15 or more employees is required to register with an Authorised Superannuation Fund (ASF). In addition, once a company's turnover exceeds PGK 100,000 (USD 50,000) per year, it is required under the **Goods and Services Tax Act (2003)** to register with the IRC for the goods and services tax (GST).

There are few other formal procedural requirements for starting a business in PNG. Under the **Workers Compensation Act (1978)**, an employer is obliged to take out insurance to cover injury to workers as a result of their employment.

Cooperatives have a separate system of registration. The regulations produced under the **Cooperative Societies Act (1982)** require cooperatives to be registered through the Cooperative Societies Unit (CSU), upon submission of completed registration forms. The **Cooperative Societies Development Policy (2008)** stipulates the procedures, responsibilities, and privileges relevant to cooperatives and their members. In particular, no registration fees are required. The process simply requires that at least seven named individuals should agree to come together as a cooperative on a "one person–one vote," not-for-profit basis. The naming of cooperatives requires no special process, and as a nonprofit entity, a cooperative is not specifically obliged to register with the IRC. Nevertheless, if a cooperative meets the standard thresholds, it is obliged to register for and to set aside "pay as you earn" tax on behalf of employees and to take out insurance to cover employees' safety at work. It may also be required to register for, collect, and pay GST, but at present the GST status of cooperatives appears uncertain. (During this diagnostic, while some members of the CSU indicated that cooperatives pay no tax, other sources indicated that a tax exemption for cooperatives had not yet been approved.)

PNG's **Organic Law on Provincial Governments and Local-level Governments (1998)** allows local authorities to license businesses to engage in trading. For example, Port Moresby requires traders to obtain a license from the National Capital District Commission, and similar trading licenses are required by other districts such as Mount Hagen and Goroka. Not all districts, however, mandate trading licenses. The charge for a local license varies both according to the district and according to the size of the enterprise.

ADDITIONAL REQUIREMENTS

The steps listed above cover the main legal requirements for launching a formal enterprise. In addition, businesses often need to engage in other procedures to employ foreign nationals, open a bank account, take out a loan or obtain the necessary land for development. Most of these steps are covered elsewhere in this report, but are briefly summarized below.

Work permits

Pursuant to the **Employment of Non-Citizens Act (2007)**, businesses that wish to employ foreign nationals must obtain a work permit from the Department of Labor and Industrial Relations. Applications for work permits must be accompanied by evidence of a "Training and Localisation Program" designed to ensure the transfer of skills to PNG citizens, together with evidence of the qualifications of each proposed employee. Provided that the employer has shown adequate commitment to the employment of PNG citizens, the work permit is normally issued within three weeks, although a decision may take up to six weeks. The fee for the processing of a work permit is PGK 1,000 for each year of employment requested, up to a maximum of three years.

The work permit application system has been developed after extensive consultation with stakeholders and is designed to be sympathetic to the needs of investors while simultaneously promoting the employment of PNG citizens.

Business representatives interviewed during this diagnostic asserted that, while the requirements to obtain a work permit are not onerous, they believe that the time taken to approve an application could be reduced. They also would prefer that applications be approved for individuals who had already entered the country on a short-term visa, rather than obliging individuals to obtain a work permit prior to entering the country.

Opening a bank account/taking out a loan

The IPA suggests that the presentation of a Certificate of Incorporation or Registration issued by the IPA should be sufficient documentation for commercial banks to allow companies to open a bank account. It is possible for an expatriate to open an account without either of these documents within a day using standard documentation (i.e., a passport or other form of identification, together with a bank reference). For citizens of Papua New Guinea, however, the procedure typically takes longer.

During this diagnostic, many noted that the process of taking out a loan can be cumbersome. Given that land has little collateral value and that the cost of money currently exceeds the profitability of many long-term agricultural crops, small producer operations face great difficulty in obtaining finance. The situation may be easier for larger trading/processing operations where margins are higher and turnover more rapid, but the process is nevertheless fraught with complications. (This aspect of starting a business is detailed in this report's chapter on Getting Credit.)

Obtaining land

The availability of suitable land for development can be a critical constraint to agricultural development in Papua New Guinea. The customary land tenure arrangements (see this report's chapter on Registering Property) are widely cited as a constraint to agricultural development. Indeed, less than three percent of all land can be readily accessed without recourse to traditional authorities. Nevertheless, opinions of local businesses are divided on this point. While many concur with the conventional view that agribusiness is held back by current land tenure arrangements, a number of respondents indicated that land was readily available for lease or purchase. Companies under local ownership stated that there was plenty of traditional land where business could be carried out for those prepared to pay market rates or to negotiate the lease of land from traditional owners. Foreign-owned companies, however, are not entitled to lease traditional land directly from smallholders, which creates a segmented commercial real estate market and drives up costs of formal commercial real estate considerably. This subject is covered in more detail in this report's chapter on Registering Property.

For most businesses in the agricultural sector, the procedures listed above cover the general requirements for starting a business in Papua New Guinea. In addition to these, there will almost certainly be sector-specific license requirements to be met both at start-up and during the course of operations. These are covered under this report's chapter on Dealing with Licenses.

THE INFORMAL ECONOMY AND THE LAW

In 2004, responding to increased public consciousness of the significant role that informal enterprise and labor play in the country's economy, PNG's legislature adopted the **Informal Sector Development and Control Act**. The law conspicuously preceded public consensus about the value of, and challenges facing, the vast majority of people doing business outside the traditional notions of formality. A national policy on the issue, entitled **National Informal Economy Policy (2011–15)**, now aims to support the "grassroots" capitalism that provides a livelihood for the vast majority of the country's people. Among the goals of the policy is increased financial literacy and inclusion of informal workers in the financial system. The policy also acknowledges the importance of health and education as a prerequisite for worker productivity and entrepreneurial development.

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The informal economy law's value is in the acknowledgement of the vast middle ground between subsistence and formal company establishment. Unlike in many other developing countries, the multitude of micro-enterprises and individuals seeking to establish and grow businesses is acknowledged, rather than neglected, by PNG law. However, PNG's informal economy law and policy are somewhat out of step with international consensus—for example, that espoused by the World Bank's *Doing Business* initiative—that bringing workers into the formal economy is ultimately the best way to empower them. In general, efforts worldwide to strengthen enabling environments for doing business, especially for small and medium enterprises (SMEs), do not aim for these stakeholders to remain in the informal economy. Rather, the idea is for all entrepreneurs to be able to seize the tools of law and formality that will allow them, over the long term, to grow.

IMPLEMENTING INSTITUTIONS

The number of government institutions involved in the process of starting a business in Papua New Guinea is relatively small. The IPA and CSU—discussed below—are involved in business registration. Other related institutions include the IRC (registration for tax purposes), an ASF (registration for superannuation purposes), and the Department of Labour and Industrial Relations (issuance of work permits).

INVESTMENT PROMOTION AUTHORITY (IPA)

The IPA is a multifunctional institution that incorporates the functions of the Registrar of Companies, the Companies Office, and Foreign Company Certification. The IPA is based in Port Moresby and has branches in Mount Hagen, Lae, Buka, and Kokopo. The central office in Port Moresby is well equipped and adequately staffed. It undertakes its key functions of business registration and certification and is able to provide assistance to investors in obtaining tax file numbers from the IRC, work permits, and visas. It maintains a website providing procedural advice to investors (including downloadable application forms) and an electronic filing facility. The latter is limited to the submission of some statutory requirements and email requests for registry searches. Private- sector respondents reported that the IPA in Port Moresby discharges its business start-up responsibilities effectively. They did not perceive the two weeks necessary to register a business (including the search and approval of a company name and registration of a business seal) as a constraint to business start-up. Nor were the costs considered prohibitive. The IPA registers approximately 200 businesses per month, and staff numbers are adequate to meet this level of demand with few queues evident at any time during the week. Nevertheless only 50 agribusinesses and 30 manufacturing businesses are registered per year.

KEY IMPLEMENTING INSTITUTIONS

- Investment Promotion Authority
- Cooperative Societies Unit

STARTING AN AGRIBUSINESS: FEES

Registration, new domestic company	PGK 450
Registration, new foreign-owned company	PGK 500
Registration of unique company name	PGK 50
Cost of registered seal	PGK 40-80
Registration, new cooperative	Free
Cost of work permit (foreign worker) per year	PGK 1,000
Approximate cost of lawyer to handle company registration	PGK 2,000 *(sometimes inclusive of registration fee)*

The outlying IPA offices are more limited in capacity. Restricted staffing (to a single representative in most cases) prevents these offices from undertaking on-site business registration. Although they can provide assistance to local start-ups, they must send all completed forms to Port Moresby by courier for processing. This increases business registration and certification times for businesses unable to access Port Moresby to six weeks.

In addition to initial business registration, the IPA is charged with the ongoing monitoring of businesses. All registered businesses are obliged to lodge returns to the IPA every six months. In practice, the IPA appears to be more reactive in its approach to monitoring. Officers indicated that almost all of their monitoring work was undertaken in response to complaints of non-compliance from clients or competitors of registered businesses, with particular regard to the undertaking of CBAL activities by foreign nationals. The level of demand is such that the IPA lacks the capacity to follow up on noncompliant businesses. The IPA instead relies on other offices, including provincial offices of the

Department of Commerce and Industry and even the local chambers of commerce, which provide information in exchange for data from the IPA. Thus, while the IPA is generally capable of meeting its initial obligations for business registration, it is overstretched in terms of providing the necessary follow-up and enforcement to ensure that registered businesses comply with the law.

COOPERATIVE SOCIETIES UNIT (CSU)

Although the law to empower cooperatives was enacted in 1982, little progress was made in cooperative development until the regulations to implement the Act were drafted in 2003. These resulted in the creation of the Cooperative Societies Unit (CSU), under the Department of Industry and Commerce. Little cooperative development occurred until 2007, however, when the CSU began to receive active support to promote the establishment of cooperatives. In 2008, the enactment of the Cooperative Societies Development Act further empowered the CSU, resulting in the following (although CSU management indicated that not all of the guidelines below have yet been endorsed by the government):

- Establishment of a revolving fund operated by the Cooperative Societies Development Agency within the CSU;
- Development of cooperative societies operating guidelines;
- Development of a manual of operations for all CSU staff; and
- Development of cooperative society's savings and loans procedures.

As an institution, the CSU is effectively no more than four years old. It is tasked with the following four functions:

- The registration of cooperative societies and associations;
- The training of cooperative management in administration and financial matters;
- The auditing and oversight of cooperatives; and
- The provision of seed capital to cooperatives in the form of both grants and loans through the Public Investment Program (PIP).

The CSU has a central office in Port Moresby and representative officers at all Provincial Commerce Offices. The central office has a small staff and operates a website providing guidelines and downloadable forms for registration. It also administers the finance available for start-up grants and training. In the four years of its operation, the CSU has registered more than 4,500 cooperatives of approximately 20 members each and a much smaller number of associations (an association is comprised of at least three cooperatives). Management indicated that under the PIP many of these cooperatives had received both initial training and start-up capital of approximately PGK 5,000–10,000 (USD 2,500–5,000) each.

Staff and budget constraints appear to have restricted the operations of the CSU to the extent that it has only been able to register, train, and finance cooperatives, but has undertaken little to no auditing of the cooperatives that have been established.

In the rural areas, respondents indicated that CSU capacity was extremely limited. In most cases a single officer was responsible for all aspects of cooperative development in each province. Moreover, respondents noted that since 2008 few cooperatives have received the funds anticipated, either as seed funding or to finance training or marketing activities. As a result, many of the recently registered cooperatives that had been registered have been almost completely inactive and in some cases have disbanded.

As is the case with the IPA, it would appear that while the institution's capacity for initial business formation may be adequate, the CSU has very little capacity to provide any sort of follow-up in terms of either auditing or support.

The second part of starting a business relates to taxation, including obtaining a tax file number. This does not need to be undertaken immediately but must be completed within three months of business registration. Respondents indicated that this process could take one to two weeks. However, in general the capacity of the IRC to meet its obligations under the law is quite adequate and not a constraint against efficient business start-up.

Responses were similar for most other aspects of starting a business. The one to two weeks required to register with authorized superannuation funds, for example, was not considered a constraint to business. Although respondents would prefer more a more rapid response in the issuance of work permits, the system was nonetheless effective and had no significant detrimental impact on business profitability. The one area where there was more disagreement was in the issuance of trading licenses. This appeared to be slower in Port Moresby, where an application could take up to a month, than in other districts where a license could be obtained within 24 hours in some cases. It is recognized that this may be due in part to the greater demand in the capital city, but respondents also indicated that the process could be accelerated by bribery and that this might be one factor contributing to the delay.

SUPPORTING INSTITUTIONS

Beyond a plethora of lawyers, consultants, and accountants in the capital area, there are few institutional supports available to those wishing to start a business in PNG, especially an agribusiness based in a rural area.

While many businesses are able to complete business start-up procedures themselves, others, especially larger businesses hire a legal representative to act on their behalf. The fee for such services is normally about PGK 2,000, which may include the PGK 500 registration fee, but does not always do so. Respondents indicated that **legal services** are readily available in Port Moresby but more limited outside in the rest of the country.

KEY SUPPORTING INSTITUTIONS

- Legal services
- Accountants
- Business associations and chambers of commerce
- Commodity institutions

Accountants will also undertake business registration (for a similar fee) and provide standard accountancy services to businesses, including auditing and tax management. There are 47 accountancy companies in the country, ranging from owner-operated businesses to branches of the three largest international companies. Of these, 40 have branches in Port Moresby and 17 operate out of Madang, Lae, Mount Hagen, or Goroka. Clearly the provision of local services beyond the capital city is limited.

A number of **business organizations and private-sector associations** support the business start-up process, including business development consultants, of which the PNG 2011 Business Directory lists 16, mainly based in Port Moresby. Respondents indicated that the standard of business consultancy services in PNG is not significantly different from that in Australia, although the scope of services is more limited. The Port Moresby Chamber of Commerce and Industry provides a number of services to support business development. The chamber hosts the Australian Business Volunteer program, under which Australian experts provide time and experience to mentor PNG businesses in specific areas, together with the New Zealand–funded Pacific Business Mentoring Program, which is similarly designed to promote the development of local businesses. Nevertheless, these programs are aimed more at the development of established businesses than start-up situations.

The **commodity-specific institutions**, detailed in this report's chapter on Dealing with Licenses, provide advice to members, but there is no indication that this includes business start-up advice beyond that relating to commodity-specific licenses.

The remaining institution that supports the business start-up process is the **IPA** itself. Support is either provided upon direct request to IPA officers at IPA House, or through the provision of simple printed materials. Such support is minimal but does exist and is provided free of charge.

SOCIAL DYNAMICS

Most respondents indicated that neither the legal process for starting a business in PNG nor the capacity of the implementing institutions (insofar as initial business start-up is concerned) is a significant constraint to business operation. The simplicity of the procedures means that even the lack of supporting institutional capacity is of little concern. Nevertheless, within the agricultural sector there are some central issues that clearly restrict business establishment and growth.

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RESTRICTIONS ON FOREIGN INVESTMENT

The first among these must be the existence of the CBAL that prevents wholly owned foreign investment in most primary production enterprises as well as some trading operations. The CBAL reflects a strongly held and oft-quoted principle that the citizens of PNG should be the primary beneficiaries of the country's natural resources. While this attitude is understandable, its benefits are questionable. Given the limited extent of existing domestic investment in the agriculture sector, such a policy limits the extent to which agricultural resources can be exploited at all. While the country does benefit from some areas of high fertility and a climate that is suitable for the production of many different crops, there are enough infrastructural constraints to deter opportunistic investors in agriculture. Only those with a long-term perspective, willing to invest in the development of both the country's manpower and its infrastructure, are likely to be attracted. It might be more appropriate to develop the capacity to monitor foreign investments effectively and to hold foreign investors to account with regard to their commitments to development rather than to exclude them from production on a de facto basis.

The lack of capacity to undertake effective monitoring and audits of both businesses and the implementing institutions themselves was noted not only in the area of business start-up but also elsewhere throughout this assessment. This lack of capacity appears to reflect a consistent reluctance to hold either individuals or businesses to account in terms of meeting their initial commitments or indeed acting legally. This reluctance may sometimes be (wrongly) confused with a lack of capacity, but that ignores the fact that capacity in other areas of operation may be quite adequate.

Nevertheless, the lack of monitoring capacity results in the regular undermining of the law. The team learned that foreign investors often ignore the CBAL by effectively funding the registration of a locally owned business and subsequently taking over its operations in clear violation of the CBAL. Similarly, the registration of businesses intending to develop areas of land for oil palm production has resulted in the exploitation of high-quality timber resources by logging companies, which have little real interest in oil palm but recognize the advantages to be gained from clear-felling large areas of land on the basis that they might ultimately be replanted with oil palm.

These and other distortions of the investment process have become feasible in PNG as a result of the lack of auditing and enforcement capacity within the IPA and CSU. The common response to such distortions is to put in place the sort of restrictions embodied in the CBAL, but if the capacity for enforcement is limited, the CBAL is itself of little benefit and can further restrict investment in rural areas. The most appropriate response is to enhance the institutional capacity for monitoring and enforcement of investment commitments.

PNG'S AGRICULTURAL COOPERATIVES: OUT OF STEP WITH BEST PRACTICE

The lack of monitoring capacity can also result in inefficiencies within the implementing agencies themselves. This is particularly marked within the CSU, which has registered 4,500 cooperatives to date but has no idea how many are still in operation. Given that many of these bodies were expected to have received PGK 5,000–10,000 each, the potential for the misappropriation of funds under such circumstances is considerable. Indeed, some respondents noted that although funds were apparently allocated for the support and development of cooperatives, little or nothing was ever available for grassroots development. In one instance CSU staff members estimated that PGK 1 million had been allocated but never disbursed. There is an urgent need to put in place effective auditing systems that will allow both external results and internal processes to be monitored closely.

With regard to the formation of successful cooperatives, recent experience throughout the world shows that farmer groups formed as a result of external promotion are rarely as strong as those initiated by farmers themselves. Those groups formed as a result of a cash incentive from the government are usually the weakest. The current CSU policy of providing seed capital to newly formed cooperatives will undoubtedly increase the numbers of cooperatives that seek registration but is unlikely to strengthen or enhance the sustainability of cooperatives at all. Experience elsewhere strongly suggests that the cash incentive will increase the formation of opportunistic and nonviable cooperatives, especially given the observed lack of any capacity to audit the results. Funds currently applied as seed capital should be redirected to finance CSU training and marketing initiatives.

The legislation under which the CSU operates allows for the ministerial appointment of the chief executives of the CSU, as opposed to appointment by the Department of Personnel Management (DPM). This arrangement fosters confusion between politics and the public sector and is conducive to short-term self-dealing and corruption. Participants at the AgCLIR roundtable noted that such confusion was a key constraint to business development and that the boundaries between politics and the public sector should be clearly redefined. In line with this sentiment, legislation should be amended to allow for the appointment of all CSU staff by the DPM.

WORKFORCE AND ENTREPRENEURIAL CAPACITY

While the AgCLIR team observed considerable entrepreneurial spirit in both urban and rural markets, this is scarcely fostered by the existing regimes for education and agricultural extension. Today, much of the responsibility for extension has been allocated to the commodity-specific institutions (including coffee, cocoa, rubber, etc.), as detailed in this report's chapters on Dealing with Licenses and Employing Workers. Most of the information that is delivered in agricultural capacity-building programs focuses on production and little relates to business development. Though consistent with a philosophy that farmers are generally producers rather than businesspeople, there should nevertheless be at least some element of extension that allows producers to maximize their capacity to take advantage of market opportunities should they wish to do so. At its most basic level, this would consist of basic numeracy and fundamental business principles (market research, calculating profit, developing a cash flow, etc.), all of which could be expected to enhance business development in the rural areas.

TRADITIONAL RELATIONSHIPS AND ENTERPRISE DEVELOPMENT

Finally, a major dynamic constraining business development is the strong traditional social cohesion within rural communities that results in the sharing of assets or individual gains. Namely, this system acts as a brake upon the accumulation of capital for investment. Attempts to accumulate funds are often defeated by requests for assistance from family members, so that successful entrepreneurs are often obliged to operate far away from their own communities where they will not be importuned. At the same time, the system of support allows many individuals to minimize their own productive efforts by relying on the support of others. As a result, economic incentives to increase production or improve quality—especially those relevant to organic production, fair trade, or other forms of certification—have less impact in PNG than they might have elsewhere, acting as a further disincentive to investment by potential outgrower companies.

RECOMMENDATIONS

Strengthen the internal auditing capacity and the external monitoring capacity of both the Investment Protection Agency (IPA) and Cooperative Societies Unit (CSU).

Feasibility: Medium
Resources required: High
Potential impact of reform: Low

The capacities of both the IPA and the CSU to undertake internal audits of their own systems and external monitoring of the businesses and cooperatives under their purview are limited. The lack of external monitoring allows businesses to abuse the rights granted to them, including foreign investors using companies registered as locally owned operations and opportunistic businesses registering as cooperatives to take advantage of seed capital funds. The lack of internal auditing capacity results in internal corruption and the abuse of government funds. For example, up to PGK 1 million intended for rural cooperatives was reportedly misused in one district.

Strengthening these capacities would reduce both the number of noncompliant businesses and the extent of internal corruption. Rural farmers would receive more effective services from the CSU, and rural communities would not be exploited through the loss of resources to businesses undertaking opportunistic development. Inadequate enforcement capacity also results in alternative detrimental measures such as the CBAL. However, foreign investors in agricultural production need not be excluded from CBAL operations if their operations could be effectively monitored.

To improve the functioning and service delivery of the IPA and CSU, both an internal auditing methodology and external monitoring methodology should be developed and piloted for each institution in collaboration with international experts. It is likely that these reforms will face active opposition, from the highest level downwards, from key institutional actors who have vested political interests in the status quo or are currently benefitting from the corruption. Accordingly, the key factor for success is the existence of the political will to make this happen. If political will is limited, feasibility will be low; if high, the reform is quite feasible.

Amend the Cooperative Societies (Amended) Act to allow Cooperative Societies Unit (CSU) staff to be appointed by the Department of Personnel Management.

Feasibility: Medium
Resources required: Medium
Potential impact of reform: Medium

Since the key posts within the CSU are political appointments, they are frequently viewed by appointees as short-term positions from which maximum benefit should be derived in the shortest possible time. This political influence within the CSU favors a culture of corruption and has resulted in the misappropriation of funds. Decreasing political interference in the CSU would enable more stable management, increase the availability of funds, and promote more effective service delivery for rural farmers.

First, a legal assessment of the existing Cooperative Societies (Amended) Act and its implications should be undertaken. An amendment that is in line with the existing PNG legal framework should then be drafted to depoliticize the CSU. The amendment must be proposed to the government and PNG civil society, and ample time must be provided for public discussion and comment by all stakeholders. Vested political interests and those within the CSU who are currently benefitting from corruption will likely oppose this measure, and support should be provided to civil society to assist in lobbying in support of the proposed amendment.

The feasibility of this reform is dependent on the existence of the political will for it to succeed.

Redirect cooperative seed capital funds to finance training and marketing initiatives.

Feasibility: Low
Resources required: Low
Potential impact of reform: Low

The CSU is actively pursuing its mandate to encourage and support cooperative development. One of the mechanisms used is the provision of grant finance (of up to PGK 10,000 per cooperative) to cover initial start-up costs. These funds encourage the creation of opportunistic cooperatives formed simply to receive grant funds from the CSU.

The use of financial incentives to promote cooperative formation has been shown to result in weak and unsustainable cooperatives and to be a poor use of resources in many countries, including Zambia, Tanzania, Kenya, and Ethiopia. At the same time, inadequate finance is available in PNG for the training of farmers and for promoting marketing initiatives that support cooperative development. Accordingly, CSU's cooperative seed capital funds should be redirected to finance training and marketing initiatives for cooperatives that demonstrate the desire and potential to operate as viable marketing entities.

Unfortunately, opposition to this initiative is likely to be high both from politicians and from farmers themselves. The political benefit of providing windfall cash to farmers will almost certainly outweigh any political will to address this issue. In addition, farmers who are aware of the current program and expect to benefit from a windfall of cash upon registering as a cooperative would oppose an effort to channel the funds into services such as training and marketing.

DEALING WITH LICENSES

In many developing countries, whether they are agricultural producers, processors, or traders, agricultural enterprises seeking to do business within the spirit and the letter of the law face a daunting scope of requirements to obtain licenses, permits, or other similar forms of government approval. Possible requirements may include local business licenses, permits to sell products in the market, industry-specific permits, occupational health and safety-related permits, food safety-related permits, environmental permits, transport licenses and permits, import and export permits, and more.

Central and local governments worldwide issue licenses and permits for a variety of reasons, including the following: (1) as a way of raising revenue; (2) as a way of tracking market participation and other sector-related data; and (3) as a way of establishing and maintaining minimum standards. With respect to the third reason, standards may be applied for the purpose of consumer protection or public safety. Indeed, licensing requirements allow governments to keep unsafe food off the table, dangerous pesticides out of the field, and untested seed varieties out of retail outlets. In addition, governments may establish minimum standards for the purpose of signaling to potential buyers a threshold level of quality associated with local products. That is, the government may choose to issue a license to participate in the market only if a certain level of quality can be established.

Licenses are implicated at each stage of PNG's agricultural value chains, from the initial importation of seeds and agrichemicals through final sale, whether domestic or export, of the finished product. Licensing is most prevalent in the processing and trading stages and is almost completely absent from the production phase. Moreover, in PNG, five of major agriculture subsectors' activities are regulated by the following commodity-specific institutions:

- The Coffee Industry Corporation;
- The Kokonas Indastri Korporesen;
- The Cocoa Board and Cocoa-Coconut Institute;
- The Rubber Board; and
- The Spice Industry Board.

PNG law empowers these institutions to regulate activities pertaining to their individual subsectors, including through their licensing authority. Consequently, licensing requirements can vary both by stage and by subsector, with some commodities being subject to quite intense licensing while others are scarcely affected at all.

In all cases, however, the value of a licensing system depends upon two factors: the extent to which it meets the needs of consumers, and the extent to which it can be enforced. Licensing systems that exceed consumer requirements for health and safety almost inevitably result in informal markets, while poor enforcement will cause the regime to become valueless.

This chapter addresses the environment for licensing agribusinesses in PNG, including both licenses and permits required to engage in specific activities and certifications attesting that specific standards of production or operation have been achieved. It further addresses the manner in which agricultural licensing in PNG is implemented and the extent to which it is relevant and effective.

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LEGAL FRAMEWORK

In PNG, the importation of agricultural inputs is subject to a number of different licensing procedures. Live animal and plant materials are covered under the **Animal Disease and Control Act (1952**) and **Regulation (1955)** and the **Plant Disease Control Act (1953)** and **Regulation (1956)**, while the importation of agrochemicals is covered under the **Environment Act (2000)**, and specifically the **Environmental Contaminants (Pesticides) Regulation (1988**), which prohibits the importation of all herbicides, insecticides, and other agricultural pesticides without a permit. (Exports of environmental contaminants, although less frequent, are also subject to permit.) Permits are obtained from the Department of Environment and Conservation (DEC) and are valid for three months. The same legislation also requires importing agencies to register each chemical for a small fee. Registration is valid for only 12 months. Chemicals already approved by the DEC can be imported immediately, while new introductions must be approved by the DEC subject to testing by the National Agricultural Research Institute (NARI), a process for which there is no charge but which can take four to five months.

One key omission from the legislation appears to be the licensing of agrichemical storage premises. In other countries, legislation requires such premises to meet minimal specifications in terms of fire prevention, ventilation, and security, but these do not appear to be considered in PNG and agrichemical storage can be undertaken without a license.

KEY LAWS

- Animal Disease and Control Act (1952) and Regulation (1955)
- Plant Disease Control Act (1953) and Regulation (1956)
- Environment Act (2000) and Environmental Contaminants (Pesticides) Regulation (1988)
- Cocoa Act (1981) and Regulation (1982)
- Coffee Industry Corporation (Statutory Functions and Powers) Act (1991)
- Kokonas Indastri Korporesen Act and Regulation (2002)
- Rubber Industry Act (1953) and Regulation (1954)
- Spice Industry Act (1989)
- Organic Law on Provincial Governments and Local-Level Government (1998)
- Pacific Island Countries Trade Agreement (PICTA) (2003)
- National Agriculture Quarantine and Inspection Authority Act (1997)
- Draft Bio-security bill
- Industrial Safety, Health and Welfare Act (1961) and Regulation (1965)
- Food Sanitation Act and Regulation (1991)
- National Institute of Standards and Industrial Technology Act (1993)
- Weights and Measures Regulation (1974)

Commodity-specific legislation covers the value chains for cocoa, coffee, coconut, rubber, and spices. In most cases the legislation allows for the licensing of processing and marketing activities and the certification of produce for export. Specific details are as follows:

The Cocoa Act (1981) provides for the regulation of the cocoa industry by a Cocoa Board empowered to "control and regulate the growing, processing and marketing of cacao, cacao beans, cocoa beans and cocoa products." In particular, the Cocoa Board may set minimum quality standards for cocoa beans and prohibit the sale or purchase of cocoa beans that do not comply with the standard. The board is also empowered to fix maximum and minimum prices at which cocoa beans may be sold, although this authority is rarely invoked. The board's powers are detailed in the **Cocoa Regulation (1982)**, which further requires registration of traders in raw and processed cocoa beans, processors, exporters, and premises used for processing, as well as inspection and certification of all cocoa beans exported from PNG.

The **Coffee Industry Corporation (Statutory Functions and Powers) Act (1991)** consolidated three institutions—the Coffee Industry Board, the Coffee Development Agency, and the Coffee Research Institute—into a single private entity called the Coffee Industry Corporation (CIC). The CIC regulates the production, processing, marketing, and export of coffee. In particular, the CIC is authorized to register coffee dealers, exporters, and processing and manufacturing facilities; to set standards for each grade of coffee; to prohibit sales of substandard coffee; and to set prices, in a manner similar to the Cocoa Board. The CIC is empowered to inspect and certify all coffee presented for export.

The **Kokonas Indastri Korporesen Act (2002)** established the Kokonas Indastri Korporesen (KIK) as a corporation with the mandate to "control and regulate the production, processing, marketing and export of coconut products," together with other promotional functions. Part of its function is "granting licenses and registrations" and "formulating a register of coconut products grading systems." It has the power to prohibit or restrict the sale or purchase of coconut products that fail to comply with prescribed minimum quality. **The Kokonas Indastri Korporesen Regulation (2002)** empowers the KIK to inspect and certify all copra and other coconut products (including oil) and to license all those engaged in the buying and selling, manufacturing or processing, or exporting of coconut product.

The **Rubber Industry Act (1953) and Regulation (1954**) established a Rubber Board, which now sets grades for rubber and inspects and certifies all rubber due for export. In addition, the Rubber Board is empowered to enter and inspect any "place, factory or premises used in connection with the production, treatment, handling or packing of rubber for export."

The **Spice Industry Act (1989)** established a Spice Board for the purpose of regulating and promoting PNG's spice and essential oils industry. The board is charged with registration of all buyers, processors, and exporters of spices and the "prohibition or restriction of sale or purchase of spices which fail to comply with prescribed minimum quality standards." The board is empowered to inspect both premises and factories and to inspect spices destined for both domestic and export markets.

While most of the legislation described above covers the licensing of trade in these specific commodities, additional trading licenses are frequently required both of these and of other commodities as a result of the **Organic Law on Provincial Governments and Local-Level Governments (1998)**. This law was designed to improve the delivery of services for rural development by decentralizing power

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and responsibility to local level government institutions, including the licensing of trading companies. The law has led to the general requirement for a district trading license for any business engaged in the trade of any agricultural commodity.

Processing activities are also subject to licensing, especially if they result in the discharge of any sort of pollutant, in which case they require a permit to be issued by the DEC. This requirement is especially relevant for the processing of coconut and oil palm, the latter in particular being subject to no other form of licensing.

Almost all countries require imported goods to carry a certificate of origin. According to the **Pacific Island Countries Trade Agreement (PICTA) (2003)**, exporters should obtain this certificate from the local Customs Service, although some respondents indicated during this diagnostic that they obtained their certificates from the Department of Trade and Industry in Port Moresby.

The **National Agriculture Quarantine and Inspection Authority Act (1997)** provides for the establishment of the National Agriculture Quarantine Inspection Authority (NAQIA). The Act defines the functions of a national quarantine service for agriculture and the regulation of all agricultural imports and exports. Under the Act, NAQIA is empowered to monitor and inspect all agricultural products that are either imported or exported from PNG. It is charged with the issuance of "permits, certificates and endorsements pertaining to imports and exports of animals, fish and plants and their parts and products . . . to ensure that they are free from pests, diseases, . . ." In doing so, it is currently guided by the Animal and Plant Disease and Control Acts and Regulations. Nevertheless, these pieces of legislation are now considered to be outdated and are in the process of being incorporated within a **draft Bio-security Bill** that, as of March 2012, is before the national legislature.

Food processing generally requires specialized premises that should be licensed under the **Industrial Safety, Health and Welfare Act (1961)** and **Regulation (1965)**. This requires that all factory premises should be registered and licensed by an industrial safety officer, who is empowered to enter and inspect factory premises to ensure that they are not hazardous to employees. The fee for inspection and licensing varies according to the number of employees working on the premises. As detailed in this report's chapter on Employing Workers, this occupational safety and health legislation, as of March 2012, is undergoing review and updating.

The Food Sanitation Act (1991) and **Regulation (1991)** cover all aspects of food processing within PNG for domestic consumption, from "farm-gate to the table." It empowers the

Department of Health to inspect and certify all food products on the basis of Hazard Analysis and Critical Control Point (HACCP) audit procedures. Although all imported foods should also be covered, in practice only one is regularly tested; namely, all imported rice is reportedly tested for adequate fortification.[11] The Act provides for the inspection of all food establishments and the issuance of a food business license at a rate proportional to the level of risk as determined by provincial governments and medical authorities. In practice, this aspect of the Act is scarcely applied and it would appear that many local authorities confuse it with the district trading license.

Finally, the **National Institute of Standards and Industrial Technology Act (1993)** established the National Institute of Standards and Industrial Technology (NISIT). The law empowers NIST to undertake the assaying of weights and measures, as defined according to the **Weights and Measures Regulation (1974)**. NISIT is also charged with accreditation of certification agencies and the certification and development of standards for public use. NISIT's assay capacity provides the basis for accurate weights and measures that underlies much of the formal trade in PNG; hence, it is a critical institution.

In summation, the legal framework that supports licensing within PNG's agricultural sector is comprehensive and should be adequate to protect the domestic consumer and importers of PNG agricultural products. Nevertheless, there are some areas in which it is either confusing or potentially redundant. In particular, requirements that commodity institutions set minimum standards for exports are potentially detrimental to the export of some commodities, and indeed the businesses of lower-quality producers. Namely, although in some instances international buyers may not consider PNG products if quality is inconsistent, certification of quality should not necessarily be a precondition for export. Such an arrangement tends to undermine producers of lower-quality product who might nevertheless be able to find lower-priced markets (and might eventually graduate to higher standards). Ultimately, the law has the effect of protecting the interests of importers rather than the PNG producers.

By contrast, while certification and licensing that might protect the domestic consumer does exist, the relevant legislation is not readily understood and rarely implemented. Neither the Environment Act nor the Food Sanitation Act is invoked with any frequency in PNG, while the Independent Consumer and Competition Commission Act (2002) (ICCC Act) has rarely resulted in the enforcement of standards. The overall perspective is of a legal framework that is concerned with the maintenance of national reputation but is less effective in protecting the interests of either domestic consumers or smaller/informal businesses.

IMPLEMENTING INSTITUTIONS

At least 14 separate institutions are involved in the licensing of activities and products in PNG's agribusiness arena. These range from the DEC, which registers and licenses agrichemicals, to NAQIA, which certifies imports and also provides SPS certificates for export shipments.

KEY IMPLEMENTING INSTITUTIONS

- Department of Environment and Conservation
- National Agriculture Quarantine Inspection Authority
- Commodity institutions:
  - Spice Industry Board
  - Coffee Industry Corporation
  - Kokonas Indastri Korporesen
  - Cocoa Board
  - Rubber Board
- District trade offices
- Department of Health
- Customs Service
- Office of Industrial Safety

[11] Despite the requirement, independent observers noted during this diagnostic that certain brands of rice, tested off the shelf, do not necessarily contain the required fortification.

Between these two ends of the value chain is found a host of licensing processes. The agencies that are mandated to implement those processes are assessed briefly in this section.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION (DEC)

The DEC is mandated to register and license the importation of agrichemicals. An import permit costs PGK 250 per product and is normally issued for approved agrichemicals within four to seven days of presentation of the product data sheet, certificate of origin, and invoice to the DEC in Port Moresby. If the chemical is not on the DEC approved list, NARI must test samples. This process takes four to five months and is financed by the government. Private-sector input suppliers indicated that these costs and time frames are not inimical to their business.

NATIONAL AGRICULTURE QUARANTINE INSPECTION AUTHORITY (NAQIA)

NAQIA is charged with certification of imported seeds. Applications are directed to the Port Moresby office and should be accompanied by the phytosanitary certificate, certificate of origin, certificate of varietal purity, and invoice. Under the worst circumstances, the process of granting a seed import permit may take up to three months, although the time period can be substantially less for regular shipments and if the application is well documented. The importation of new crop varieties cannot be licensed until NARI has tested a sample of the proposed plant material. That process can take up to two years, but is normally completed within 12 months. These time frames are not abnormal for the importation of new seed varieties, and input suppliers do not consider them to be excessive. These time frames refer to plant material imported from approved sources (mainly in New Zealand and Australia). If the material originates elsewhere, NAQIA will undertake pest-risk analysis, including visiting the country of origin, inspecting the production sites, and assessing the local certification processes. The cost of this inspection and assessment must be borne by the importing agency.

NAQIA reportedly handles 50 to 100 import permits per day. According to NAQIA representatives, 10 to 20 percent of these may require physical inspection. Some processes may result in delays, but, according to NAQIA, most import permits can be issued within 24 hours.[12] The only issuing office is in Port Moresby, however, and the number of personnel available to conduct phytosanitary testing is limited.

With regard to the phytosanitary assessment of exports, NAQIA is responsible for the issuance of all SPS certificates. The process is based upon the principles of HACCP auditing but also requires physical inspection and sample analysis in some instances. When fumigation of shipments may be required, NAQIA is obliged to certify the fumigation process. The SPS certification process is slow and can normally take two to three weeks for each shipment. Under extreme circumstances it has reportedly taken six to eight weeks.

NAQIA recognizes that as the volume of exports increases, it is becoming overstretched, a sentiment echoed by almost all private-sector exporters interviewed for this diagnostic. Although as a statutory body NAQIA may determine its own scale of charges for services provided to the public, it is not self-determining with regard to staff but rather is limited by the Department of Personnel Management (DPM) in terms of the number of staff that it can employ and their level of remuneration. As a result, although NAQIA management might be able to purchase operational capacity in the form of equipment, they lack the manpower necessary to operate at the level needed to meet the current demand. The institution is further affected by brain drain, in that trained staff members are regularly lost to the private sector both locally and abroad. The situation is becoming

[12] It should be noted that these estimates differ from those given by the trade community. As detailed in this report's chapter on Trading Across Borders, the trade community estimates that it takes an average of four to five days to receive an import permit and that NAQIA selects 70 to 80 percent of imports for physical inspection.

increasingly critical as 75 percent of the current inspectors are eligible for pensions, and replacement levels are scarcely adequate.

NAQIA's budget does not allow for overtime outside of external operations (e.g., inspection of shipments). General internal business must be conducted within normal business hours, resulting in increasing congestion of paperwork and delays, especially in the issuing of export documentation. Overall, NAQIA lacks the capacity necessary to meet existing and anticipated future demand in the inspection of both imports and exports. More attention should be given to the development of capacity within the institution, especially the human capacity required to undertake the inspection of shipments and to issue the necessary SPS documentation. The process of shipment inspection should be reviewed so that SPS inspection can be carried out simultaneously with all other aspects of customs clearance (as opposed to the current sequential manner of operations).

PHOTO BY FINTRAC INC.

COMMODITY INSTITUTIONS

The statutory commodity institutions differ considerably in their capacity to effectively license processing and marketing activities. Since in almost all cases funds are derived directly from each subsector through license fees and levies, the vigor and effectiveness of each institution depends on the size and condition of its subsector. For example, coffee has enjoyed a short period of growth and high prices, while cocoa production has declined substantially (although there has been a recent resurgence of interest). Coconut production generally stagnated in 2010 and 2011, and spices slumped considerably since the collapse of vanilla prices (from 330 exporters in 2004 to 10 in 2012). These factors are clearly reflected in the services provided by each institution.

The **Spice Industry Board** registers spice and essential oil processors and exporters, of which there are no more than 10 in PNG. Registration is supposed to require inspection and approval of processing and exporting facilities, but companies that have undergone this process indicate that it is cursory. The board also certifies each shipment for export (for a fee of PGK 1000 (USD 500)). The registration and certification/licensing fees are the only revenues flowing to the board, which, as an independent corporation, does not receive state funding. Under current circumstances, it is unlikely that revenues exceed PGK 50,000 (USD 25,000). This low level of funding restricts the activities of the board to registration and licensing. Spice exporters indicate that the board fulfills these functions promptly, apparently using the resources of the Department of Agriculture and Livestock (i.e., the certification of exports took less than a day) but is unable to undertake any form of industry promotion, regulation, or extension. In this regard, the Spice Board is viewed as contributing little to the subsector. Even the processes of registration and certification of exports are perceived to be of little value if the board lacks the capacity to undertake effective inspection.[13]

[13] In the past, inadequate inspection had allowed poor quality shipments to be exported, damaging the reputation of PNG vanilla.


PHOTO BY FINTRAC INC.

The **Coffee Industry Corporation (CIC)** actively undertakes the registration and licensing of coffee dealers, exporters, processing facilities, and manufacturing facilities of buyers, and the certification of shipments of coffee for export. The CIC is wholly funded from registration and certification fees and from the levy that it is empowered to charge on all coffee exports. Despite these sources of income, the CIC contends that resources are inadequate to carry out all of its functions, especially PNG coffee promotion and extension. Nevertheless, the CIC is active in the regulation of the subsector and has recently closed a number of substandard wet-processing factories in order to maintain the standards of PNG coffee.

Private-sector stakeholders generally support the licensing activities of the CIC. They do not consider the process of registration and licensing to be onerous (the CIC is itself aware of the need to keep its fees low in order to encourage subsector growth) and a strong argument has been advanced for maintaining high standards for export shipments. CIC and many of its constituents contend that international coffee buyers have a wide range of options for the selection of quality coffee and will only come to PNG if they believe the quality to be consistent. Exporters believe that it is important for the whole subsector that quality standards should be maintained to protect the reputation of PNG coffee.

Despite this favorable perspective, exporters also note that the process of CIC inspection and certification of shipments can be slow. In particular, the slowness of document preparation by CIC can contribute to delays in payment that can impact significantly upon cash flow, especially for the smaller exporting companies. Increasing staff capacity and automating the process of document preparation (in conjunction with NAQIA and the Port Authority) might significantly improve the profitability of coffee exports, especially for the smaller exporting companies.

The **Kokonas Indastri Korporesen (KIK)** is less active than the CIC. The crop is purchased by 12 buyers, six of which buy in significant quantities. In PNG, 60 percent of production is processed through three large mills. The buyers and mills are inspected and registered by the two regional inspectors of the KIK, and the production, all of which is exported, is also inspected and certified by KIK staff. The institution charges a levy on exports equivalent to 3 percent of value. A portion of this levy is used to finance research and development, but the bulk is used to finance KIK management. Funds received from these sources are not enough to finance KIK activities and it has received additional support from the central government.

KIK itself recognizes that in a slowly declining market (the number of buyers has fallen by 30 percent in the last two years), it makes only a marginal contribution to the industry. Its regulatory activities are not of great significance, although they are reportedly carried out effectively and in a timely fashion.

The **Cocoa Board** has lacked a governing board for the past two years, but it is experiencing a resurgence of interest, including substantial support from both the World Bank and the International Fund for Agricultural Development (IFAD). The Cocoa Board registers and licenses buyers, processing facilities, and exporters, and it also certifies export shipments. Private-sector cocoa producers assert that the board supports smallholder production with the support of the World Bank but that its registration, licensing, and certification functions add little value to the subsector. There were no complaints over the timeliness of export shipment certification. The Cocoa Board's actions have been inhibited in recent years, however, by the lack of a governing board.

The **Rubber Board** oversees a small subsector that aspires to emerge from a chaotic past. The board is supposed to oversee the export of processed rubber. Recently, however, the licensing process has been subject to allegations that large volumes of raw-cup lump rubber have been traded internationally without meaningful quality control. The board itself has been subject to a prolonged legal battle over membership and has only been fully functional since April 2010. It remains to be seen whether it will be able to discharge effectively its obligations of licensing buyers and certifying exports. Currently, a lack of confidence in the volumes and quality of production has obliged foreign buyers to assume all aspects of buying, processing, and exporting in the subsector. The local company W.R. Carpenters runs a similarly inclusive farm-to-market system.

In general, the consensus of private-sector stakeholders is that the licensing operations of the commodity institutions do not amount to an impediment to business (with the possible exception of the CIC) but that the capacities of the boards are such that their inspections and licensing functions add little if any value to PNG production (again with the exception of the CIC which is seen by some to be effective in maintaining the reputation of PNG coffee). There remains the concern that smaller businesses are undermined by a system that prevents the sale of uncertified product (be it coffee, cocoa, copra, spices, or rubber) and that the certification of exports, while valuable as a means of indicating and ensuring quality, should not necessarily be a precondition for export. Uncertified product can be disposed of on a "buyer beware" basis and trade in such products can provide one low-cost entry point for small or informal businesses.

DISTRICT TRADE OFFICES

The district trade offices are expected to issue district trading licenses. This may take place in some districts, but the process is by no means universally applied. The informal nature of much of the rural district economies means that licenses are not always sought, and indeed the process is not always well understood by either the issuing authorities or the businesses that should obtain the licenses. This is also true of the prescribed food business license that is required by all food establishments. According to the food sanitation regulations, fees for the food business license should be set by provincial authorities according to the level of risk associated with each business, as determined by the local medical authorities. Nevertheless, lacking guidance in the assessment process, local authorities have not established an appropriate fee structure and have therefore been unable to issue any licenses. Food establishments continue to operate without licenses and outside of the law.

According to the District Development Authority, in the rural districts "the prefecture is not always competent." There is a widely recognized need to increase the capacity of the district authorities through training in both licensing procedures and responsibilities and in administration generally.

DEPARTMENT OF HEALTH

Under the Food Sanitation Act, the Department of Health is responsible for the testing and licensing of all food products within PNG. However, it has no capacity to do so. Only one imported product (rice) is regularly tested to ensure adequate fortification. The department has only one staff member working at the port and lacks the funding to support additional staff. Under the Food Sanitation Act, the Department of Health has not been empowered to charge fees for the functions it is obliged to perform; rather it relies on inconsistent allocations of government revenue. The Food Sanitation Act does provide for an independent Food Council, but this council has few executive powers. The department has established inspection and licensing procedures based upon HACCP audit principles but has no staff to train in the methodology.

The lack of staff within the department is compounded by a lack of facilities. The main laboratory available for testing food samples in PNG is the Central Public Health Laboratory, but this facility must be shared with medical establishments and lacks much of the required equipment. In particular, there is no capacity for residue testing so that agrichemical contamination of fresh fruit and vegetables cannot be detected. Similarly, although the University of Technology in Lae maintains some lab facilities, it is not yet at a level through which it can provide significant fee-based services to the local agribusiness community. As a result of these constraints and the lack of any local government licensing of food establishments, domestically produced food is subject to almost no license control whatsoever, and the safety of imported food depends upon the integrity of the exporting country's food safety regulations.

CUSTOMS SERVICE

The Customs Service is responsible for issuing the certificate of origin (although some respondents indicated that they obtained the document from the Department of Trade). In general, the certificate can be obtained within 24 hours, suggesting that the capacity of this institution, with respect to this function, is adequate to meet the needs of the sector. The strengths and limitations of the Customs Service are detailed at length in this report's chapter on Trading Across Borders.

OFFICE OF INDUSTRIAL SAFETY

The Office of Industrial Safety is housed within the Department of Commerce and Industry. Given the emphasis on mining and logging in PNG, it is not surprising that there should be a comparable emphasis within that department on occupational health and safety. Nevertheless, as with other governmental departments, there is concern that industrial safety officers are overstretched and that newly recruited and trained staff are frequently lost to the private sector within a few months of completing training. Private-sector stakeholders report that processing facilities in urban centers are visited and licensed by industrial safety officers on a regular basis. The procedure is not regarded as burdensome, and observations and requests for amendment made by safety officers are generally perceived as reasonable. In rural areas, however, processing facilities are rarely, if ever, visited, suggesting that capacity is only enough to license accessible businesses.

SUPPORTING INSTITUTIONS

BUSINESS SUPPORT ORGANIZATIONS

In terms of business development, the Investment Promotion Agency is the first stop for support in dealing with licenses. The agency

KEY SUPPORTING INSTITUTIONS

- Business support organizations
- Commodity institutions
- Fresh Produce Development Agency
- National Agriculture Research Institute
- National Institute of Standards and Industrial Technology
- Independent Consumer and Competition Commission
- Exporting companies
- Donor agencies and programs
- Lawyers and accountants
- Certified fumigation agents

can provide specific advice as to what specific licenses an investor needs and where they may be obtained. This advice can be obtained both from the head office in Port Moresby and in the branches at Mount Hagen, Lae, Buka, and Kokopo. Other organizations that can provide similar advice and lobby for change in licensing regimes include the Manufacturers Council and the Rural Industries' Council. These are both advocacy bodies that are privately funded through members' subscriptions. They are active within Port Moresby and, to a lesser extent, beyond. The Rural Industries' Council in particular meets with government representatives on a regular basis to discuss issues related to private-sector development, including licensing procedures.

COMMODITY INSTITUTIONS

The commodity institutions serve a number of different purposes, of which licensing is but one. As support and advocacy bodies, they vary substantially in their efficiency, and it is impossible to generalize as to their effectiveness. Nevertheless, overall it appears that their original constitutions aimed to support small producers, including the mandatory inclusion of smallholder representatives on boards or other governing bodies. The commodity institutions can certainly provide advice as regards the relevant procedures for licensing both production and exports, but most are unlikely to be the best vehicles for lobbying for change in those procedures, since they are themselves the agencies doing the licensing. Only in the cases of oil palm, fresh produce, and livestock do the commodity institutions have no direct licensing or regulatory role.

FRESH PRODUCE DEVELOPMENT AGENCY (FPDA)

The FPDA, a nonprofit organization funded by PNG's government with some capacity-building support from donor agencies, stands out as an institution that supports all growers (even those who are not licensed) in meeting standards of production. Based in Goroka, Eastern Highlands Province, FPDA works with semi-commercial farmers and industry partners to facilitate the development of reliable, market-driven production of horticultural products, effective market systems, and efficient supply chains. The agency supports a number of specific objectives, including (1) improved and sustainable productivity along the value chain; (2) competitive scale of production and supply; (3) vibrant, effective, and efficient marketing systems; (4) effective information management, communication, and outreach; (5) improved legal and policy environment for fresh produce; and (6) enhanced institutional capacity, as well as strengthened horticulture industry institutions. In particular, the support the agency provides for marketing systems and institutional capacity relates to the ability of processors and traders to obtain the licenses they need. New Zealand has been supporting the FPDA since its establishment as a semi-autonomous public entity in 1989.

OTHER STATUTORY INSTITUTIONS

Three other statutory institutions provide support to the licensing process. **NARI** undertakes the trials of new seed varieties for importation on behalf of NAQIA and is considered to have adequate capacity in this regard. **NISIT** is responsible to the Department of Commerce and Industry for the development of standards and for metrology—i.e., the calibration and verification of private and public measuring devices, certification, and accreditation. Although NISIT's metrology capacity has been accredited by the Australian National Association of Testing Authorities, NISIT remains limited in its resources and its staff. The institution is based in Port Moresby and lacks the resources to engage with businesses beyond the capital. Technical assistance is provided by the European Commission, but the agency's current capacity to develop appropriate standards that could be used as a basis for licensing of subsectors is limited.

PHOTO BY FINTRAC INC.

The **Independent Consumer and Competition Commission (ICCC)**, detailed in this report's chapter on Competing Fairly, acts on behalf of the consumer in PNG and might play a role in the enforcement of the grades and standards upon which licensing often depends. Nevertheless, in practice, many of the agribusinesses that would be regulated by the ICCC are domestic in nature and subject only to minimal licensing, making the ICCC's role in licensing relatively insignificant.

OTHER PRIVATE-SECTOR RESOURCES

In addition to the various institutions listed above, private-sector actors in PNG provide limited support to the certification and licensing process. **Exporting companies** provide support to growers in meeting various certification requirements (such as fair trade or organic production) that makes accessible niche markets and market premiums. In this they can be assisted by various **donor initiatives** such as the World Bank Productive Partnerships in Agriculture Program (PPAP). In some cases this support is provided as a condition to the granting of an export license and might not be justified by the benefits of certification alone, especially since social factors tend to reduce the advantages of such certification to smallholder growers. Although **lawyers** and **accountants** may play a major role in the initial registration of a business, their involvement in the process of ongoing licensing in the agricultural sector is minimal.

Private-sector laboratory capacity is nonexistent within the agricultural sector (and even public-sector facilities are minimal, so that many soil, animal or plant samples must be sent to Australia for analysis). Fumigation capacity appears to be adequate. NAQIA reports that there is no shortage of **certified fumigation agents**. Nevertheless, the heat treatment capacity[14] that might allow fresh fruit to be certified as fit for export to Australia is not available.

SOCIAL DYNAMICS

THE "DEMAND" SIDE OF LICENSES

Consumers in PNG's domestic market for agricultural products evidence very little concern over the aspects of quality that might be reinforced through licensing, especially in the area of food safety. Even companies provisioning the mining projects show no interest in food quality, literally purchasing everything offered at the market when they are buying supplies. Only the supermarkets in Port Moresby and Lae, which tend to buy on a regular basis from wholesalers, demonstrate an institutional interest in differentiating on the basis of quality. As a result, there is very little pressure to implement the laws related to the licensing of domestic food products. Indeed, were these laws to be implemented, the additional cost of ensuring food safety would almost certainly result in the development of underground markets of unlicensed food, especially in the rural areas.

[14] Heat treatment is required for the control of fruit flies and other insect pests.

Furthermore, the subsistence nature of most agricultural production in PNG means that much of the food produced is circulated or exchanged at very small local markets, where it is quite impossible to enforce any licensing. The widely dispersed and small-scale nature of the production process also discourages the licensing of production itself. Notably, there are no licenses relating to production processes, especially in the area of livestock or poultry. In contrast to many other countries, there is no licensing requirement to own, breed, or transport animals. Licensing begins when the animal is purchased for processing and applies to all aspects of the value chain thereafter. Subsistence-level production favors the vast informal economy that operates outside of licensing regimes. It is only when enterprises enter the formal economy that licensing becomes an issue, but there is a very large transitional area into which many businesses fall, where licenses are officially required but rarely obtained or enforced.

THE "SUPPLY" SIDE OF LICENSES

Given both the infrastructure constraints in rural areas and the limited budget for the staff of implementing agencies, major inadequacies in the capacities of almost all licensing authorities prevent them from imposing or enforcing licenses according to the letter of the law. Licenses tend to be issued in Port Moresby and other urban centers, but the frequency of inspections and licensing drops significantly in the more remote rural areas. Moreover, as noted, there are many licensing requirements that are generally ignored by their implementers. This has two results. First, some authorities tended to be reactive in their licensing requirements rather than indicating in advance what sort of licenses an agribusiness might need and what measures would be required to ensure compliance. This "after the fact" method of enforcement sets the stage for disruptions in economic activity or bribes to enforcers.

Second, there is some confusion regarding the responsibilities of different licensing authorities. During this diagnostic, stakeholders routinely noted, "I think that license should come from department 'x,' but they don't bother." This state of affairs generates uncertainty and can result in delay if producers/processors are obliged to go from one department to another to obtain the licenses that they believe they might need.

Delays in the implementation of licensing, especially the certification of exports, are often expedited through the use of social contacts or small "informal facilitation fees." In most cases, the moneys necessary to speed up processing are of the nature of overtime payments—in fact, a not-unrealistic charge for extra work necessary to expedite processing within an overloaded system. As such, the issue of corruption is relatively small and may result as much from the underfunding of the human resources necessary to meet demand as from any other source. This suggests that there is a strong argument for increasing human-resource capacity before such bribery becomes ingrained within the licensing system.

Overall, private-sector stakeholders emphasized a lack of accountability at all levels of government that resulted in both the uneven application of licensing requirements and a low level of performance generally. This appeared to be a key driver of the slow responses to licensing requests. It was suggested that while this may be partly due to the overloading of the various licensing authorities, it was also an inherent characteristic of the current system that very few within public service were called to account for their performance. The DPM does not allow performance-related remuneration (beyond operational overtime). Neither, however, does it appear to engage in disciplinary procedures to any great extent. This may be one explanation for routine delays in licensing procedures.

LICENSING AND THE INFORMAL ECONOMY

For most participants in PNG's agricultural sector, licensing of agricultural products and activities is of little significance. Nevertheless, within the formal sector of producers, processors, and traders, licensing is an important aspect of business, especially with respect to the main export crops. In fact, licenses are regarded both by the authorities and by many producers as essential to the sustainability of the subsectors. PNG's National Agriculture Development Plan assumes that the agricultural sector will develop at least in part through the migration of businesses from the informal to the formal sector. The plan cautions that the licensing regime should not constitute a barrier to that migration.

Currently, there appears to be little risk that PNG's licensing burden should actively prevent migration. Licensing fees within the PNG agribusiness sector are relatively low. Indeed, almost all of the implementing institutions interviewed for this diagnostic appeared sensitive to the issue of cost and its impact upon compliance. The larger issue of transition of informal enterprises to the formal sector appears to lie in the inadequacy of the licensing authorities. In many instances, they fail to impose any form of inspection and licensing at all (although the law may clearly require it) or, when licensing regimes are in place, their delays in performance impact negatively upon the profitability of the private sector. Delays especially impact the smaller businesses that have tighter cash flows and less resilience in the face of overly long licensing, shipment, and payment processes.

THE CHALLENGES OF PRODUCT CERTIFICATION

Traditional social cohesion in PNG is an important factor affecting the commercial certification of quality, especially such aspects as organic and fair trade certification. These opportunities have been increasingly introduced as a way of securing market niches and increasing revenues. However, in almost all cases, niche-oriented initiatives require producers to make additional efforts in terms of record keeping or other aspects of production. Exporters of products for which such certification might be an advantage noted that PNG producers were not strongly incentivized by the additional revenue that certification might bring. They explained this in terms of the social system, which, on the one hand, allowed for even the least productive in a community to be supported by the rest of the village so that no individual suffered extreme distress, while, on the other hand, the same system obliged those who were able to access more resources (e.g., the beneficiaries of fair trade certification) to share the benefits with the rest of the community. From an individual perspective, therefore, the certification systems would have to offer major benefits before they would justify the additional effort involved. Unsurprisingly, niche market certification is not gaining ground as rapidly in PNG as it has done elsewhere.

RECOMMENDATIONS

Strengthen the human-resource capacity for SPS inspection and certification of NAQIA.

Feasibility: Medium
Resources required: Medium
Potential impact of reform: High

All agricultural export shipments require SPS certification as part of the shipping and payment process. Delays in inspection increase the time spent at the wharf, which increases shipping costs. A slow certification process following inspection can result in delays in the drawing down of letters of credit or direct payment with negative impacts on cash flow, especially for smaller businesses.

Reform is needed to accelerate the process of SPS inspection and certification of export shipments by NAQIA. Expedited SPS inspection and certification would benefit exporting companies by reducing costs and enabling earlier payment. In addition, the buyers that supply exporting companies would be exposed to a wider choice of exporters if the survival of smaller companies was enhanced.

Improvement in NAQIA's customer service delivery requires a two-pronged approach. First, NAQIA currently lacks sufficient staff to carry out its mandate effectively. Four additional NAQIA inspection agents should be recruited and trained. Second, all NAQIA staff must be encouraged to improve their service delivery through the institution of a performance-based remuneration package.

While initial training and reform costs could be donor-sourced, the feasibility of this reform is directly contingent on the budget available to the Department of Public Services to finance the increased manpower within NAQIA, as well as political will within the DPM to adopt a performance-based remuneration approach.

Amend the fee structure associated with the local government licensing regime for food establishments so that implementation of the licensing regime can proceed.

Feasibility: High
Resources required: Medium
Potential impact of reform: Low

In most countries, establishments that prepare and sell food are licensed in order to protect downstream consumers. Although legislation requiring the licensing of all food establishments exists in PNG, it is not effectively implemented. According to the Food Sanitation Regulations, fees for the food business license should be set by provincial authorities according to the level of risk associated with each business, as determined by the local medical authorities. Lacking


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guidance in the assessment process, local authorities have not established an appropriate fee structure and have therefore been unable to issue any licenses. The lack of any form of licensing of food establishments leaves consumers unprotected against poisoning and food-borne diseases due to poorly prepared foods and agrichemical residues.

The implementation of a licensing regime requires action by local government authorities who have limited administrative capacity. The reform process would call for extensive training and possibly additional manpower (although inspection should be carried out by local medical authorities). First, an assessment should be undertaken to determine the most appropriate flat-rate fee for licensing and the key components of inspection. A training program should then be developed and implemented in all provinces to ensure that licensing and inspection are carried out according to the law. Additional staff at each provincial authority should be recruited and trained as needed.

Strengthen the national laboratory capacity to allow for comprehensive testing of high-value domestic and export produ cts for aflatoxins and agri-chemical residues.

Feasibility: High
Resources required: High
Potential impact of reform: High

Currently PNG exports only limited volumes of fresh fruit and vegetables but is developing the capacity to increase those volumes. Yet PNG lacks the necessary laboratory capacity to test fresh fruit and vegetables for several key criteria, including agrichemical residues or aflatoxins. World markets are already sensitive to chemical residues in food and are becoming increasingly concerned over aflatoxin levels. PNG's domestic markets are also beginning to demand more in terms of food safety. The growth of the subsector will be constrained unless adequate laboratory testing facilities are available to support a comprehensive licensing program.

The national laboratory in PNG lacks sufficient financing for the equipment, manpower, and training needed to develop this type of testing capability. A significant government or donor-based intervention is required to identify the required equipment, build and equip the facilities, and recruit and train capable staff. Improved capacity for chemical testing of fresh produce will also benefit domestic market consumers and the fresh fruit and vegetable subsector as a whole by providing the capacity to meet increasing market demand for proven low levels of toxins and chemicals.

EMPLOYING WORKERS

The critical issue pertaining to the state of PNG's agricultural workforce is skills. Enormous competition throughout the country for skilled labor, a result of rapid economic growth generally and demand from massive natural gas, gold, and copper operations in particular, means that already scarce skilled labor in the agricultural sector has become even more difficult to find. Larger, formal agricultural enterprises cope with the skills shortage by conducting internal training programs, by trying harder to retain their workers, and by enlisting the comparatively expensive option of expatriate labor. However, for the vast majority of PNG's agricultural workers, many of whom lack the skills needed to deliver added value to a formal employer or to build their own enterprises, options for work beyond subsistence farming remain minimal.

At all levels of government, there is pressure to strengthen basic education services so that PNG workers can rise to the opportunities presented by their growing economy, in agriculture and beyond. The demand for skills implicates a wide range of needs in the agricultural sector, some requiring advanced education, but many more requiring a "middle level" of competence that can be gained through a stronger, more germane system of primary, secondary, and vocational-technical education. The response of the government in recent years, though not insignificant, is still comparatively tepid. PNG's advantage of actually having jobs for its skilled workers has not generated the same broad-based, institutional commitment to educational access and skills attainment that is found in countries with far fewer economic opportunities.

Measures to bolster the skills and productivity of agricultural workers through extension services are similarly considered weak. In this area, however, the fact of many service providers—including not only government research agencies, crop boards, and educational institutions but also a host of private-sector and NGO options—means that opportunities for training may be stronger than the public perceives. An effort to catalogue extension options and to recast available training according to demand along key value chains could significantly strengthen the relevance and quality of existing services.

As for the content and implementation of PNG's legal regime for labor and employment, there are relatively few complaints from larger agribusinesses, aside from the bureaucracy and expense associated with enlisting foreign workers. These issues are of little concern to the vast majority of producers, processors, and traders who toil in the informal economy. At the same time, entrenched institutional neglect regarding the health, safety, educational access, and political participation opportunities afforded women in PNG dramatically undermines the economic potential of half the country's population. This chapter focuses on these and other issues impacting the engagement and livelihoods of workers in PNG's agricultural sector.

PAPUA NEW GUINEA'S WORKFORCE PROFILE	
Population (2011 est.)	6.3 million
Labor force (2011 est.)	3.896 million
Estimated percentage of labor force working in formal private sector	Less than 10
Estimated percentage of labor force working in public sector	*unavailable*
Percentage of agricultural sector contribution to GDP (2011 est.)	30.3
Percentage of industrial sector contribution to GDP (2011 est.)	37.7
Percentage of service sector contribution to GDP (2011 est.)	32.1
Unemployment rate (% of workforce actively seeking work)	1.9
Literacy (male) (2000 census rate; likely improved)	<65%
Literacy (female) (2000 census rate; likely improved)	<52%
Literacy (youth male—ages 15–24) (2004–08)	65%
Literacy (youth female—ages 15–24) (2004–08)	69%
Percentage of children aged 7–14 engaged in economic activity	*unavailable*
Adults living with HIV/AIDS	0.9% (50th in the world)

LEGAL FRAMEWORK

LEGAL AND POLICY SUPPORT FOR A SKILLED WORKFORCE

In most of the countries examined by AgCLIR diagnostics to date,[15] the chief concern articulated by employers pertained less to the strictness of labor regulations (although these were of considerable concern), and far more to their access to skilled workers. Employers in PNG's agricultural sector echo this concern. Workers interviewed for this diagnostic similarly feel aggrieved that their schooling has generally not positioned them to assume jobs requiring higher-level knowledge, skills, and abilities.

Beyond calling for education to reflect local practices of "participation, consultation, and consensus," and to be responsive to the "needs and attitudes of the People," PNG's **Constitution (1975)** says very little about education. While Universal Basic Education remains a national goal, progress towards its attainment has been slow, especially in the country's vast rural areas. Pursuant to PNG's **Organic Law on Provincial Governments and Local-Level Governments (1998)**, responsibility for the administration of primary and secondary education belongs with provincial and district-level governments. A notable deterioration of services—not only with respect to education but also in health, infrastructure, and law and order—has taken place since that time. On multiple occasions, the reasons for this deterioration have been analyzed

KEY LAWS

- Constitution (1975)
- Organic Law on Provincial Governments and Local-Level Governments (1998)
- National Education Plans (1995–2004); (2004–15)
- Universal Basic Education Plan (2010–19)
- Higher Education Act (1983)
- Tax incentives for training
- Employment Act (1978) and Regulation (1980)
- Industrial Organizations Act (1962) and Regulation (1963)
- Industrial Safety, Health and Welfare Act (1961) and Regulation (1965)
- Draft Occupational Safety & Health Bill (2011)
- Employment of Non-Citizens Act (2007)

Additional laws related to PNG's labor and employment regime can be found in the ILO's databank of labor laws, available at www.ilo.org.

[15] See website of the USAID/EAT project, available at www.eatproject.org.

LITERACY IN THE NEIGHBORHOOD: HOW PNG COMPARES		
Country	**Overall literacy rate (% of adult population)**	**World rank for literacy**
Tonga	99.2	19
Samoa	98.8	47
Fiji	94.4	80
Indonesia	92	92
Philippines	84	93.4
Vanuatu	80.2	128
Solomon Islands	76.6	132
PNG	60.1	159

Source: UNDP (2011). A current youth literacy rate of around 66 percent suggests gradual improvement of the conditions for literacy in PNG.

and proposals for reform put forward. Once it is undertaken in earnest, reform must encompass such issues as administrative capacity at the lower levels of government, responsibility and accountability for the administration of funds, and sufficiency of resources channeled from the central government.

Historic neglect of primary and secondary education is compounded by poor infrastructure and the isolation of significant numbers of people. Basic literacy in PNG—somewhere between 60 and 70 percent—remains the lowest in the region, and close to the bottom in the world. Although initial enrollment at primary school has improved over the past generation, the rate of retention—around 62 percent in 2007—is barely better than the rate in 1995.

Beginning in 1994, PNG developed a series of **National Education Plans**, along with commensurate development and implementation of law, pertaining to increased educational access, equity, and retention. Most recently, a **Universal Basic Education Plan**, endorsed by the national legislature in December 2009, has aimed for universal enrollment of all school-aged children for nine years and a national curriculum that covers core "skills, knowledge, and values." A comprehensive independent review of this plan acknowledges the important steps forward it proposes, including increased community participation and strengthened teacher training.[16] But the review adds that greater attention ought to be paid to the following issues, among others:

- gender and geographic inequities;
- financial underpinnings of the plan, specifically sources of and gaps in funding;
- specific outcome objectives for primary education;
- school infrastructure investments;
- implementation and results monitoring; and
- teacher housing and school libraries.

As a practical matter, administration and funding for primary and secondary schools depends on a sprawling and opaque network of local funding sources, private scholarships, and active participation by religious and charitable institutions. There is also a high expectation of significant, long-term donor support (mostly from Australia) for implementation of the Universal Basic Education Plan.[17] Private institutions are not entirely independent with respect to teaching PNG's children—those that receive public funding are required to teach to the national curriculum. Ultimately, their participation in the system can be viewed as a long-term advantage. In developing countries throughout the world, private education providers have been shown to produce students who achieve stronger testing and mastery results than public providers.[18]

16 Rosemary Bellew, Independent Assessment of Papua New Guinea's Universal Basic Education Plan (September 17, 2010), at 24–27. This paper represents an excellent baseline analysis for tracking future progress in PNG's primary and secondary educational reform efforts.

17 See, e.g., Partnership for Development between the Government of Papua New Guinea and the Government of Australia, Priority Outcome I: Education (October 2011).

18 Abhijit V. Banerjee & Esther Duflo, Poor Economics (2011), at 83–84.

This diagnostic took place during the early days of the implementation of PNG's **new policy of tuition-free education for primary and secondary school**, announced in August 2011. With respect to the national and local governments' obligations concerning the free-tuition policy, a great deal of ambiguity persists. For example, does "free" really mean "free"? As reported in the local press in early 2012, continuing expectations in various districts that parents will pay some fees—reportedly around 25 percent of the previous cost—suggest that it does not. In fact, the national teachers union has supported maintenance of some fees, out of conviction that the government will not meet its school financing obligations. If the clarity on this matter does not emerge, or fee expectations are inconsistently applied in different districts, public confidence in the reform will diminish.

Further, is PNG's government committed to addressing the potential for classroom overcrowding, once up to 50 percent more children attend school? During this diagnostic, the answer was far from clear. Although higher rates of access to education do not necessarily correlate with economic growth,[19] the actual cognitive skills of a nation's students in fact have a large effect on its subsequent economic growth rate.[20] Thus, not only do PNG's students need to go to school, they must *learn* in school. Overcrowding is one way to diminish their chances for doing so. Commitment to the entire educational reform initiative, including preparations that ensure that educational quality will be improved (and certainly not diluted), is key. Yet leadership on the issue of universal access and improved learning, especially from the perspective of agricultural stakeholders interviewed for this diagnostic, remains conspicuously weak. Vastly dispersed (and diluted) pockets of authority over education, including a National Education Board, a Teachers' Commission, and provincially based education boards, means that the "buck stops" nowhere.

This brief summary of recent educational policy developments in PNG just scratches the surface of the skills issue. For the long-term development of the country's agricultural economy, however, the importance of the topic cannot be overstated.

OPPORTUNITIES FOR INTEGRATED EDUCATION

Past AgCLIR reports have underscored the vital role that higher education can play in the agricultural sector, not only as a source of well-trained labor and pertinent research but also as a receptacle of knowledge about the needs of the sector, which responds with appropriate programs, innovations, and links. A 2009 Institute of National Affairs (INA) report similarly speaks to the benefits of integrating religious organizations, NGOs, and the private sector into the delivery of education services in PNG, particularly with respect to post-secondary education and skills development.[21]

The legal backdrop for higher education in PNG generally supports (or, at least, does not interfere with) the notion of integrated education. As discussed later in this chapter, the current infrastructure for higher education and agricultural research in PNG is promising. Nevertheless, there is wide acknowledgement that modernization of the post-secondary educational system is warranted. In 2011, the Ministry for Higher Education, Research, Science and Technology prepared amendments to the **Higher Education Act (1983) (as consolidated in 2000)** for the purpose of aligning the system to the demands of a market economy and technological advancements.[22] The ministry sought comments and feedback and indicated that it aimed for final changes in the bill to take place by the end of 2011. As of the first quarter of 2012, however, public discussion of and press coverage of the nearly 30-year-old law remained minimal. An important reform effort may have fallen by the wayside.

[19] Charles Kenny, Getting Better (2011), at 102–10.

[20] Eric A. Hanushek et al., "Education and Economic Growth," Education Next (Spring 2008).

[21] Anne Booth, Employment, Education and Skills Development in Papua New Guinea (INA, October 2009), at 14–15.

[22] Education News PNG, "Call for Comments on the Amended Higher Education Act 1983" (May 17, 2011).

TRAINING INCENTIVES

Tucked into PNG's tax law are two provisions directly related to the training of the country's workers. First, for companies with annual payrolls exceeding PGK 200,000 per year, a 2 percent training levy is assessed annually. Qualifying training expenses incurred in the training of citizen-employees reduces the amount of the levy payable. In theory, funds from the **training levy** are spent on, among other items, costs for implementing the country's technical and vocational education and training (TVET) programs, discussed later in this chapter.

In addition, all companies may take a **"double deduction"** against the company's income tax for the payment of salary and wages to the following:

- registered apprentices;
- citizen-employees attending a full-time training course at a government training institute or a prescribed place of tertiary education; and
- training officers engaged wholly in training or educational activities.

The tax savings from these deductions are limited to 75 percent of actual expenditures incurred.

THE LEGAL FRAMEWORK FOR EMPLOYING WORKERS

In Papua New Guinea, as in most developing economies, the notion of "employing workers" has only limited connection to the formal employment of workers. That is, a worker who is formally employed is generally engaged by a registered company by written or verbal contract and in compliance with terms and conditions found in a country's body of labor and employment laws. These laws typically concern wages, hours, occupational safety and health, equal opportunity, social security, the right to organize, and collective bargaining.

PHOTO BY FINTRAC INC.

In PNG, less than 9 percent of workers in PNG's labor force of 3.8 million are estimated to work in the formal private sector, and the rate in the agricultural sector is considered to be even less. Formal work is found in the public sector (though exact numbers are inaccessible, if they are in fact maintained), among the country's larger companies (including those in the extractive industries), and in services such as hotels, security, banking, and professional support. Though a relative handful of workers hold formal jobs on large plantations or with big companies, most workers farm small plots held by their families or as casual traders, striving to transport and sell their goods in nearby markets. They do not receive a minimum wage or other benefits of formal employment. Even the more prosperous farmers—those engaged in more sophisticated transactions involving cash crops or livestock—can rarely be said to be formally engaged.

PHOTO BY FINTRAC INC.

Clarity and accessibility of the labor law

Other than anecdotal reports, there is not a great deal of information concerning the relationship between stakeholders of the labor and employment law—including employers and workers—and the law itself. The country's major agricultural employers have access to a strong cadre of lawyers who advise them on their obligations. Smaller employers can take advantage of the knowledge and resources provided by the Employers Federation, a voluntary organization dedicated to both advocacy on behalf of employers and assistance to employers seeking to fulfill their legal obligations. Membership in the federation is relatively low, however, with nonmember employers seeking assistance when they are "in trouble." As for workers, access to the law is stymied by low literacy rates, few efforts to promote legal awareness, and poor access to legal resources, including written law and lawyers. Trust of most lawyers outside of the capital is low, and the cost of access is high. Labor unions, another possible source of access to the law, are exceptionally weak.

Moreover, the internet is not of much use with respect to access to the laws. It is too expensive and unreliable for most. Outside investors can rely on a number of international websites, such as the International Labour Organization's (ILO) legal database or the World Bank's *Doing Business* site, to help them access key labor legislation. Nationally maintained online legal resources are comparatively sparse and poorly maintained.

Key components of the labor law

PNG's basic framework begins with the post-independence **Employment Act (1978)**. Key issues of industrial relations are covered in the **Industrial Organizations Act (1962)**. Occupational safety and health is addressed in the **Industrial Safety Health and Welfare Act (1961**). The Employment Act regulates working conditions and conditions of employment. Among other components, it governs contracts of employment, including contracts for casual workers and piece-rate work, and provides for the termination of contracts. The law establishes maximum daily hours of work (12 per day), sets overtime wage rates, and provides for rest time and leave. It further regulates minimum wage rates (through a Minimum Wage Board) and methods of payment and deductions, specifically prioritizing payment of wages over all other debts of an employer. The law provides for maternity leave, while also limiting the employment of females at night and prohibiting the engagement of women in heavy labor. With respect to child labor, the law prohibits the employment of young persons under the age of 11 and allows for the employment of young persons, aged 11 to 16, with parental permission and as long as the work does not interfere with school attendance.

In general, PNG's legal regime is in step with the core labor standards as enunciated by the ILO, including prohibitions against forced labor, freedom of association, general collective bargaining rights, equal employment opportunity, and bans on child labor. An analysis published in 2010 by the International Trade Union Confederation identifies a number of areas, however, in which the organization believes that full legal protections are either not provided or not adequately enforced by the government.[23]

With respect to occupational safety and health, in early 2012, the Department of Labor and Industrial Relations signaled that it would update the country's legal regime. In addition to the Industrial Safety, Health and Welfare Act of 1961, which authorizes the work of the industrial safety officers discussed in this report's chapter on Dealing with Licenses, this issue is currently governed by the Trade Licensing Act (Chapter 96, 1969), the Inflammable Liquids Act (Chapter 311, 1953), and the Explosives Act (Chapter 308, 1953). A **draft Occupational Safety & Health Bill (2011)** aims to provide clear objectives for occupational safety and health for most workplaces, set forth the roles of various types of employers and workers, establish an OSH service charged with implementing the bill, create an OSH fund to facilitate the promotion of workplace safety and health, and generally consolidate all OSH-related legislation into a single law. The impact of the proposed new legislation on the agricultural sector is not yet clear.

The business community and general public are likely most aware of the national regulation stipulating the minimum wage. In 2008, the Minimum Wage Board raised the minimum wage (for the first time in 16 years) from around 33 toya per hour to PGK 2.29 per hour. For agricultural workers receiving a defined set of benefits—including housing, utilities, and school fees—the minimum wage is PGK 1.14 per hour.

Finally, although not a formal component of the labor law, PNG's unique regime pertaining to the informal economy (discussed in this report's chapter on Starting a Business) represents an acknowledgement through law and policy of the expansive role of the informal sector—an economic and political reality that many countries overlook.

LABOR LAW AND THE AGRICULTURAL SECTOR

As noted, the issues that agribusinesses raise pertaining to labor and employment have less to do with the content of the labor law—which in fact is considered more flexible than many other countries—and more with the dearth and expense of skilled workers. The law allows for seasonal work and does not interfere with useful outgrower schemes through which a company provides farmers with inputs and instructions to produce goods (such as chicken or palm oil) that the company then purchases from them.

Concerning their need for labor, many larger firms, pursuant to the **Employment of Non-Citizens Act (2007)**, bring in expatriates to fill mid-level jobs and management positions, including, for example, agronomists and operations specialists. They often engage private human resources companies, which help streamline the process. Labor is recruited chiefly from neighboring countries such as Australia, New Zealand, Indonesia, the Philippines, Malaysia, and, increasingly, the Indian subcontinent and China. Pursuant to the Employment of Non-Citizens Act, employers seeking to engage expatriate help must obtain a work permit from the Department of Labor and Industrial Relations and an employment entry permit/visa from the PNG Immigration and Citizen Services. The process requires the employer to prove the worker's qualifications for the job and also that it is committed to the employment of PNG citizens. The process takes around three to six weeks to accomplish. The number of work permits issued to foreigners in PNG rose from 6,880 in 2001 to around 30,000 in 2009. Employers attest that they are seeking not only skills but also a commitment to the formal aspects of full-time work—including reliability, self-motivation, teamwork—that are not yet the norm in a workforce generally grounded in informality.

[23] ITUC, Internationally Recognized Core Labor Standards in Papua New Guinea, Report for the WTO General Council Review of the Trade Policies of Papua New Guinea (November 16 & 18, 2010).

IMPLEMENTING INSTITUTIONS

NATIONAL MINISTRIES

At least 30 Cabinet-level ministries[24] have been established in PNG, a number that suggests one reason why public financial management and bureaucracy are perceived to be among the country's key weaknesses. Most of the national ministries maintain an agenda for policy-making, research, and other discrete functions, while implementation responsibilities are delegated almost entirely to the provincial governments with virtually no national-level oversight.

KEY IMPLEMENTING INSTITUTIONS
• National ministries • Provincial and district-level agencies

During this diagnostic, a profound "disconnect" between national government agencies and actual services provided in the region became evident. For example, developers of nationwide health initiatives appear to have little, if any, relationship with their provincial or district-level counterparts that are charged with carrying out public health services. Similarly, national efforts to link PNG professionals with donor-sponsored skill-building opportunities are regularly undercut by sluggishness in communications and disagreements over local participation. Local public and private-sector representatives often speak scornfully of what they perceive as "do-nothing" jobs within the national government. This perception in many cases may be unfair, but it speaks to, among other challenges, a need for the national agencies to more effectively communicate the value of their missions.

From the business perspective, this diagnostic identified a burgeoning perception that national government representatives are in fact seeking to be more informed about and responsive to economic conditions beyond the capital. In recent months, according to one business leader, "Ministers are doing provincial tours—that used to be unheard of!" In addition, a National Working Group addressing impediments to business and investment, chaired by the office of the Prime Minister, has been revived. This regular meeting allows representative private-sector organizations, including the Manufacturers Council, the Rural Industries Council, and the Employers Federation, to relate to PNG national leadership the key private-sector concerns arising from all over the country.

PROVINCIAL AND DISTRICT-LEVEL AGENCIES

Since 1995, when the Organic Law was enacted, PNG's 19 provinces and 89 districts have held the bulk of responsibility for delivering services at the local level, with education, health, transport infrastructure, primary production activities, and village courts identified as their priority activities. As noted previously in this chapter and elsewhere in this report—as well as in a host of other reports issued in recent years—confidence in most local institutions of government is thin. The agribusiness community is as disappointed in their performance, leadership, and accountability as any other stakeholder group. Most conspicuously, the use of funds for such services as education, health, and delivery of extension services to farmers tends to be opaque and inconsistent with how they were originally designated. As an example, one residential high school of "excellence," constructed for grades 11 and 12 with Chinese dollars, has not received promised government funds to supplement the outside investment. Accordingly, as of February 2012, the school has room for 800 students, but only enough teachers and other supplies to serve 400.

SUPPORTING INSTITUTIONS

EDUCATION AND TRAINING INSTITUTIONS

Although educators in PNG work in an environment of poor resources, inadequate infrastructure, and inadequate accountability,

[24] Those ministries that impact the agricultural sector include: Departments of Agriculture and Livestock; Labor and Industrial Relations; Education; Higher Education, Research, Science and Technology; Health; National Planning and Monitoring; Implementation and Rural Development; Forestry and Climate Change; and others.

there are, of course, a great many individuals working in schools, churches, NGOs, and government institutions who strive for improvement of PNG's education regime and attempt to model strong habits of implementation. Unfortunately, monitoring and evaluation of statistics and educational attainment information in PNG remains so anemic that there is little opportunity to assess and quantify the impact of their contributions.

Primary and secondary education

As noted, the conditions for primary and secondary education in PNG, particularly in the rural areas, are extremely poor, beginning with limited accessibility for all school-age children—especially girls—but also including the low quality of school buildings and classroom materials, poor teacher compensation, and vague or underenforced curriculum standards. Future reforms will likely be uneven and weak due to the fact that the Department of Education lacks oversight or implementation authority over the provinces, districts, and local-level implementers. The elimination of school fees is a popular move at the national level, but it has been unevenly applied across the country. Overcrowding of primary and secondary classrooms will be the unintended (but entirely predictable) consequence of the change.

KEY SUPPORTING INSTITUTIONS

- Education and training institutions
  - Primary and secondary
  - Technical and vocational education and training (TVET)
  - University and other tertiary
- Research and extension services
  - Government
  - University and TVET links
  - Research institutions (NARI and statutory crop boards)
  - Private sector
  - NGOs and women's organizations
  - Donors
- Labor unions
- Business councils and other private-sector organizations
- Statistical agencies

PHOTO BY FINTRAC INC.

In theory, changes in educational access and classroom conditions are easily quantifiable and can be tracked—through enrollment and retention statistics, literacy rates, and student achievement—which means that, across the provinces, accountability of public officials and educators can also be assessed. But tracking and accountability of education is essentially on hold in PNG, given the current state of inadequate and outdated statistics. Until results of the 2011 Census and the 2009 Household Income and Expenditure Survey are released, little can be known about the actual performance of PNG as a whole and of each of its 19 provinces individually since 2000, the last time a census was taken. Once available, the data can serve as an important baseline for measuring the reforms implicated by the Universal Basic Education Plan.

Technical and vocational education and training (TVET)

Despite a network of 131 vocational training centers in PNG (82 run by churches or other charitable organizations), there is widespread agreement—from outsiders and insiders alike[25] — that TVET opportunities in PNG fall far short of meeting the needs of students entering the workforce and, for that matter, of employers seeking workers capable of performing skilled industrial or agricultural work. In 2007, the Asian Development Bank (ADB) prepared a lengthy and detailed report on the country's TVET regime, including steps taken by the government to strengthen the regime to date.[26] This analysis remains required reading for anyone seeking to identify the best opportunities for intervention and reform or to monitor reforms since 2007.

By 2009, the TVET division of the national Department of Education began developing and implementing curricular reforms, which, with some assistance from Australia, have begun to be rolled out in facilities throughout the country. For the purposes of this limited discussion, a few points about the current state of TVET are worth emphasizing:

- National officials overseeing implementation of TVET in PNG are mindful of the increasing employment opportunities presented by the extractive industries sector. The LNG project alone has recruited a great number of local workers out of TVET schools, creating even more stringent competition for other companies and sectors, including agribusiness. TVET administrators observe that, with the demand in other fields, interest in obtaining technical skills in agriculture is diminishing. It is "hard to keep students interested in agriculture," according to one TVET implementer.

- The new TVET curriculum was developed in part through substantive contributions from the private sector. It also includes a significant teacher training component. Teachers in the TVET system are often recruited from private industry and also are permitted to take time off every five years to return to the private sector for skills updating.

- The TVET facilities available throughout the country, though often sparse and underresourced, represent an excellent opportunity for technical training in agricultural skills. In fact, short courses (developed in part by the ADB) have proven to be a very popular resource for farmers in rural areas. One area reportedly in demand is that of agribusiness skills—that is, a greater emphasis on marketing, licensing, transport, finance, and other key aspects of transforming a subsistence-oriented micro-enterprise into a jobs-producing business.

TVET in PNG is significantly financed by the training levy, noted above, as well as supported by the ADB, the Australian Agency for International Development (AusAID), the EU, and GTZ. There is room for additional support in this area, but both local and outside interventions should be carefully coordinated with existing efforts and institutional knowledge.

[25] See ILO, Project Concept Note for Technical Cooperation Projects (ILO Office for Pacific Island Countries) (2009).

[26] ADB, Technical and Vocational Skills Development in Papua New Guinea (2007).

LESSON FROM AGCLIR: COMMITMENT TO SKILLS IS KEY

Past AgCLIR diagnostics underscore the need for agricultural workforces that are far more capable of meeting both private- and public-sector demands for skilled labor. The need for enhanced knowledge and use of knowledge-based tools concerns all stages along the value chains, including the following:

- Quality of seed and fertilizer, and proper use of both;
- Use of irrigation;
- Land survey and management;
- Ability of farmers to enter the formal sector as cooperatives or processing enterprises;
- Ability of agricultural enterprises, including farmers' associations, to obtain credit and outside investment, as well as to observe and respect written supply contracts;
- Management of post-harvest losses;
- Compliance with quality standards that represent key conditions for export;
- Transport of products to markets;
- Efficiency of border operations pertaining to agricultural goods;
- Prompt and effective resolution of disputes that arise along the value chain;
- Legislative and regulatory oversight of agriculture; and
- Understanding of how regional and international institutions create both opportunities and obligations with respect to building commerce in agriculture.

University and other tertiary education

Although hardly immune from the national crisis of resources and leadership committed to education, PNG's system of higher education offers some comparatively promising attributes. As a baseline, there is a network of higher-level institutions that, with proper orientation, capacity-building, and increased integration with the private sector and research institutions, stand ready to build on the benefits of increased resources, improved management, and curricular reform.

Specifically, the government recognizes six universities, five technical colleges, seven teachers colleges, five nursing colleges, two business colleges, and three "other" colleges. The universities are stronger than the other tertiary institutions, but all represent an opportunity for reaching out to local constituencies who seek additional knowledge. Agricultural faculties have made a considerable effort—worth reinforcing—to connect their students with the activity of local businesses. University professors teaching agriculture have a long list of improvements they would like to see on their campuses, including better laboratory facilities and more tuition support for disadvantaged students.

PNG conspicuously lacks a veterinary school. Although there are opportunities for students to study this field overseas or to obtain some "vet tech" training in PNG, a deficit of knowledge and expertise in the veterinary fields contributes to the low level of livestock maintenance and trade in PNG.

Over the years, the government of New Zealand has provided significant support to higher education in PNG, with an emphasis on connecting women who are studying agriculture with degree-granting opportunities. A recent finding that investments in undergraduate education for women over several years have not produced significant improvements in the number of women in agricultural leadership positions has resulted in a shift of resources to graduate education.

RESEARCH AND EXTENSION SERVICES

The purpose of agricultural research and extension services—whether provided by the public sector, the private sector, or NGOs—is to supply farmers with the necessary, unbiased knowledge and research information to improve their productivity, processing capabilities, ability to manage pests, quality of outputs, and other key aspects of agriculture. To share this knowledge, extension agents and other knowledge providers must themselves have practical training in their respective areas of expertise, which may include animal agriculture, commercial horticulture, farm health and safety, field crops, food safety and processing, pest management, or specialty crops. Extension representatives also need access to topical and timely research and information about recent experiences and trends on the farms.

Government. Prior to 1977, the Department of Agriculture and Livestock (as it is now known) provided extension services, delivering information by way of four regional "controllers." After decentralization and the creation of 19 provincial governments in 1995, this responsibility was designated to local governments. In copious written reports and conversations conducted during this diagnostic, there is agreement that the local governments have generally done little to reach out directly to provide extension services to smallholder farmers.[27] At the same time, as detailed in this report's chapter on Dealing with Licenses, commodity institutions, along with the Fresh Produce Development Agency, have become increasingly dedicated to providing extension services, though with varying results.

In fact, although many sector participants complain of a "lack of extension services" in PNG, the country hosts a promising network of public- and private-sector institutions that can (and does) contribute to strengthened knowledge, productivity, and opportunities on the farm and in local agricultural markets.[28] The TVET and higher-education facilities discussed earlier in this section represent an important resource in this respect. Many of PNG's training and continuing education institutions could benefit from a greater and more consistent supply of resources, delivered by more accountable government actors.

One national institution that garners a considerable degree of confidence and respect is the **National Agricultural Research Institute (NARI)**, an agency situated, since 2002, under the Ministry of Higher Education, Research, Science and Technology (and, from 1977 through 2002, through the Department of Livestock (DAL)). Overseeing 1,400 hectares of land and 360 "infrastructure units," NARI provides research and advisory services to the agricultural community, particularly with respect to the production of subsistence food crops. Specific research and development initiatives include improving crop varieties, promoting sound farm management, developing and breeding livestock, and growing alternative crops. Headquartered in the eastern port city of Lae, NARI operates in eight locations and employs 136 research management and technical staff, as well as more than 3,000 support staff. NARI receives significant outside support from Australia's aid agency and from the Australian Center for International Agricultural Research, as well as from the EU.

Some of NARI's facilities overlap with university resources, although there remains room for stronger coordination between NARI and the country's university and vocational-technical education providers. NARI publicizes its work through regular newsletters, weekly articles in the national press, and public outreach efforts. Although NARI's mandate does not include direct extension services, the agency is mindful of the need to link its research with the farming community. It therefore endeavors to coordinate its research agenda with needs articulated by farmers. NARI also has an agenda to support the enabling environment for doing business in agriculture, including

27 INA/National Development Forum, Opening Up Opportunities for Agriculture and Rural Development (August 5–9, 2009), at 3.

28 Although this chapter will touch on many components of this network, a good source of detail is found in the National Agriculture Development Plan (2007–16).

promoting stronger marketing practices and the monitoring and evaluation of programs. NARI provides office space and support to one of PNG's major advocates for women, the Women in Agriculture program.

While NARI handles research in food crops and coordinates its research agenda with that of crop-specific boards, including the commodity institutions established for coffee, cocoa, copra, and spices. As discussed in this report's chapter on Dealing with Licenses, these boards vary in their effectiveness, including with respect to their research agendas. They do represent, however, an important component of the national network for extension services.

Private Sector. Among the host of institutions involved in training workers in PNG are **private companies**, including the larger agribusinesses, processors, and retailers in particular. In fact, one motivation for investing in training is found in the tax law: as noted, all businesses with annual payroll expenses of more than K200,000 must pay a tax equal to 2 percent of all wages and benefits paid. This levy can be offset, however, by the amount of any qualifying training expenses incurred during the year. Thus, larger companies such as Mainland Holdings and Trukai Foods provide various types of capacity-building opportunities for workers, not only to fill gaps in the workers' education but also to meet the strong interest of company managers in strengthening their own leadership and administrative skills. For its part, Mainland Holdings works with local chicken farmers, helping them institute high standards that will allow them to sell their chickens back to the company. Trukai's management training program awards certificates for mastery of strong front-line management and supervisory practices.

In addition, irrespective of tax incentives, several companies work in cooperation with local university programs by inviting students into their spaces for first-hand exposure to their work. The University of Technology, for instance, routinely arranges for students learning about livestock to interact with the local pig producer. Moreover, national retailers of agricultural equipment, including rice mills and other light processing tools, provide training directly to farmers who purchase the equipment. There are a number of internship opportunities for students sponsored by local businesses.

Donors and NGOs. Donors are also involved in extension and farmer training initiatives. The **New Zealand Aid Programme**, which has prioritized development of PNG's agricultural sector, supports a DAL initiative called the **Smallholder Support Services Extension Project (SSSEP)**. Launched in 2010, the goal of the SSSEP is to improve the quality of life of male and female smallholder farmers and their families by increasing their access to agricultural support services in remote parts of four provinces in PNG. While extension services are funded by national and provincial government, the New Zealand funding aims to achieve the following:

- Institutionalize the project's processes and systems—first developed in the Eastern Highlands and Morobe provinces—at provincial and district level;
- Harmonize procedures and guidelines for District Agriculture Plans and District Extension Plans between SSSEP and the National Agriculture Development Plan;
- Expand the approach to Central and Simbu provinces;
- Strengthen service providers associations to improve the quality and competence of those delivering extension services; and
- Facilitate the empowerment of women as service providers and smallholder producers by mainstreaming gender equality and women's empowerment into all project activities.

PHOTO BY FINTRAC INC.

In addition, New Zealand supports **Bris Kanda project**, an NGO that aims to support farmers and smallholder families in the Huon Gulf District of Morobe Province to increase household income through the development of agriculture and aquaculture farming. Bris Kanda supports farmers and smallholder families in cocoa, fish-farming, and fresh produce by focusing on developing smallholder farmers as industry models, which in turn assist the other less developed farmers and smallholders in the district. Bris Kanda also encourages the adoption of more efficient production systems to ensure better quality of produce by farmers by providing technical support to the identified farmers to assist with quality management and to link these growers to end markets in various sectors (coffee, cocoa, fisheries, farming, market vegetables, etc.).

The **World Bank** and the **Secretariat of the Pacific Community** also support training and extension programs. The World Bank's recently established Productive Partnerships in Agriculture Program (PPAP) initiative specifically aims to assist PNG's coffee and cocoa smallholders. The World Bank is also supporting smallholder oil palm growers in Oro and West New Britain Provinces through the Papua New Guinea Smallholder Agriculture Development Project. As well as funding extension service improvements and institutional support to the respective producer boards, the projects target improvements in market access infrastructure, particularly roads.

Ultimately, the fact of decentralization and "commercialization" of extension services creates a multifaceted model for helping farmers get the assistance they need. Most stakeholders agree that it is not enough, but there are certainly many promising models and opportunities for strengthening both the quality of and access to services.

LABOR UNIONS

There are labor unions in PNG, but they are not considered particularly influential, especially in the agricultural arena. Occasionally labor actions have resulted in stopped work on large plantations, but, for the most part, labor relations between formal agribusiness and the unions are friendly.

BUSINESS COUNCILS AND PRIVATE-SECTOR ORGANIZATIONS

Relative to many other developing countries, business organizations, including provincial chambers of commerce and national business associations, are relatively well organized and active. As noted, the national government is increasingly responsive to the legislative and policy input of the private sector. The private sector is particularly constrained by PNG's limitations in skills; accordingly, it should be encouraged to continue its advocacy on behalf of the issue.

STATISTICAL AGENCIES

Collecting local, regional, and national statistics in PNG presents a unique set of challenges, due in particular to the isolation and inaccessibility of many groups of people, compounded by the country's poor infrastructure. As of February

2012, valuable information in the form of government-managed or private-sector-collected statistics is widely lacking—social scientists, economists, and others continue to use data from the 2000 Census, which by now has little relevance to PNG society. Particularly with respect to workers and enterprise in the informal sector, statistics are inadequate, if they exist at all. Reports from statistics collection efforts, including the 2011 Census (delayed from 2010) and a National Household Data inquiry in 2009, have been put on hold or never released. The website of the National Statistics Organization promises critical reports but had not been updated in more than a year as of February 2012.

SOCIAL DYNAMICS

STRENGTHENING THE INTANGIBLES: WORKER ATTITUDES AND HABITS

Unfortunately, a common refrain among agribusinesses and other employers is that local workers are lacking not only in tangible, higher-level skills but also in sound work habits and positive attitudes toward work. Employers often take on the expense of enlisting foreign workers due to their perception that, all skills being equal, the productivity and motivation of outsiders is stronger, and therefore their work is more valuable to the firm. This perception is worth understanding better, including through updated statistical data about PNG worker productivity. Whether fair or unfair, the perception also supports the case for integrating such issues as efficiency, punctuality, teamwork, and accountability into formal education and training activities. Strengthening systems for the accountability of local government institutions would also support a message communicated throughout PNG society that employees who are paid for their work are expected to deliver results.

WOMEN WORKERS IN THE AGRICULTURAL SECTOR

In November 2010, US Secretary of State Hillary Clinton visited PNG and made a point of addressing the circumstances of women in the country, which, by almost any measure, are highly prejudiced in favor of men and detrimental to women's long-term health and productivity.

Giving women access to education, health services, economic opportunities, and the structures of power is critical to alleviating poverty and disease in every part of the world. The United States is committed to working with you. That is why, next year, the United States, along with the Government of Papua New Guinea and the World Bank Group will bring together senior government officials and business leaders from across the Pacific to discuss how, together, we can expand vital opportunities for women.

. . . And we want to do more than that. . . . The State Department is working with local organizations to help prepare women voters for the upcoming national elections in 2012. And let's get some more women to run for office in 2012.

Now, we are not only going to be training candidates for office, but we are going to be working very hard to combat violence against women and girls. If a woman or a girl cannot be safe in her own home, or safe in her own family, or safe in her own community, then that woman or girl will not have the chance to make the most out of her life. So we will be working with ExxonMobil and local program aimed at ending the culture of violence against women and girls in Papua New Guinea.

– *Remarks of Secretary of State Hillary Clinton, Women's Empowerment Event, PNG (November 3, 2010)*

The efforts identified by Secretary Clinton are extremely welcome among women's groups in PNG. A US Department of State–sponsored training initiative for women leaders, offered in cooperation with PNG's National Council of Women once in 2011 and again in January 2012, though relatively brief, proved enormously popular.

"Men looking down on women has been forever," stated one female farmer who participated in a group discussion as part of this diagnostic. Women themselves are often treated as chattel, in many rural areas offered to polygamous husbands in exchange for a price. Papua New Guinea's Marriage Act of 1963 acknowledges both statutory and customary marriages. Thus, although the law sets the marital age for females at 16 and males at 18, girls often get married at much younger ages, with tradition often accepting menstruation as the threshold for readiness to marry.

According to several women interviewed during this diagnostic, families with limited resources tend to favor boys with respect to educational opportunity. If a poor family must choose which of its children will go to school, it almost always will pay for the boys, not the girls.

In the agricultural sector, there is a strong cultural association in PNG between women and gardens, and this traditional view of their work continues to this day. Conspicuously, women who participate in agriculture—which is the majority of women in PNG—concentrate primarily on food crops household consumption and local sale. While men are involved in local trade as well, they are overwhelmingly in cash-crop production and trade.

Health services for all people living in PNG's rural areas are extremely limited, and women tend to suffer the most. Although some communities offer health clinics near other central services, the long lines outside the clinics evidence that demand outstrips meaningful supply. National estimates suggest that up to 70 percent of women suffer domestic violence in their homes, and many women do not receive help for the physical abuses they suffer. Prenatal care is especially limited in most communities. Some communities even require that women "go away"—that is, isolate themselves from the rest of the community—in the weeks before delivery." As for family planning, "It is nonexistent," according to one female leader in PNG.

RECOMMENDATIONS

Drawing from key PNG value chains, identify the primary demands for agricultural skills implicated over the next generation and share this information with education and training institutions to improve the responsiveness of the education system to workforce demands.

Feasibility: Medium
Resources required: Low
Potential impact of reform: Medium

Though it employs or engages the highest proportion of people, the agricultural sector suffers the greatest shortages of skills in PNG. Growth in the sector is constrained by limited knowledge, skills, and abilities along key value chains, including cash crops, food crops, and livestock. Reform is needed across the sector, beginning with literacy in farm communities, but also at "middle-level" junctures such as management and trade, and also with respect to such higher-order pursuits as agricultural research, policy-making, financial interventions, and science-based professions.

There is increasing awareness that, just as mapping of value chains provides insight for how industries can "upgrade" their products, processes, and functions to meet current and future market demands, it can also highlight key junctures where upgrading of workforce capacities may lead to greater overall competitiveness, and, ultimately, increased economic growth and reduced poverty.[29]

[29] For a lengthy discussion of this burgeoning approach, see Gary Gereffi, Karina Fernandez-Stark & Phil Psilos, Skills for Upgrading: Workforce Development and Global Value Chains in Developing Countries (Duke Center on Globalization, Governance, and Competitiveness and RTI International) (November 2011).

To date, efforts to map and understand PNG's primary agricultural value chains have been inadequate. A set of maps should be developed reflecting the major steps along the value chains for the top 5 to 10 agricultural products in the country. Then, a "skills overlay" should be prepared for each value chain map, identifying the general categories of low-skill, moderate-skill, and high-skill demands for labor. This work should incorporate the perspectives and feedback of both formal employers and informal workers in the respective value chains. Using the findings from the skills overlay, the critical areas of skills deficits in the agricultural sector can be prioritized. Ideas for responding to these critical deficits should be developed through collaboration with major stakeholder institutions, emphasizing the educational and training services that are most likely to produce results, including those in the private sector. Finally, the results of this initiative should be publicized to encourage education and training institutions to respond by adjusting their programs to the actual needs not only in a single community or cluster of activity but also to PNG's overall place in regional and global value chains. This reform will further help PNG target its efforts to produce higher-quality outputs, including those that conform to international standards, and to become more responsive to the demands for its agricultural products.

PHOTO BY FINTRAC INC.

Create a public/private coalition of stakeholders committed to improving conditions for women in the agricultural sector that will set tangible, specific targets for change and help guide a national campaign and accountability initiative that helps PNG achieve these goals.

Feasibility: High
Resources required: Medium
Potential impact of reform: High

Conditions for rural women in PNG are known to be among the poorest in the world, including with respect to access to education, health, meaningful livelihoods, and political participation. With half the population significantly deprived of resources that will help them become more productive, the overall economy of PNG cannot meet its potential for economic development. Worker skills in PNG, especially those of women, are notoriously underdeveloped. This is a major reason why employers engage outside labor and why citizens of PNG have such poor access to formal employment in their own country.

At the very top of PNG government, there is reluctance to accept how poor conditions for women in PNG are, especially compared to conditions and opportunities for women in other countries. There are very few women in positions of economic or political leadership, thus limiting the models for opportunity and reform. In addition, the deficit of meaningful statistics at this time makes the quantification of conditions, and targeting of reforms, extremely difficult.

Nonetheless, this diagnostic found a great deal of "pent-up" demand for improvements to PNG's overall environment for women and girls. Strengthening the overall condition of women will contribute to a more valuable workforce generally. Moreover, this reform aligns with priorities identified by Secretary Clinton in late 2010, and acting on those priorities will strengthen trust in the US.

There are many ways to move forward with a gender initiative, implicating different levels of resources. For example, the most up-to-date statistics could be used to quantify the state of women's education, health, economic participation, and political participation in PNG. However, a thorough gender-specific assessment could also be conducted, which would provide far more detailed information about the relationship between PNG women and economic activity in the country. The major resources for change in PNG, including lead organizations, individuals, programs, and donors, should be identified and leveraged to implement a public outreach plan that seeks to educate men and women about how women's empowerment is good for PNG overall. In the future, a sex-disaggregated statistical tracking mechanism should be created that will allow citizens to watch for change and demand accountability of their institutions, including specific targets for educational enrollment and advancement, female literacy and numeracy, participation of women in the formal workforce, increases to health services, and reduction of domestic violence. To be successful, any women's empowerment initiative would require an investment of no fewer than three years.

REGISTERING PROPERTY

Land in Papua New Guinea is a source of deep societal tension. On the one hand, centuries-old tradition protects the profound connection that specific clans have with individual parcels of land. On the other hand, there is an increasing desire to transition away from subsistence-level livelihoods and to manage more effectively and fairly the bountiful natural resources that exist throughout the country. This includes not only sounder, more productive management of how people use the land but also strengthened regimes for public health, education, and safety.

After decades of public debate, legal disputes, international donor pressure, and considerable violence, sensitivities are quite high regarding next steps for land reform. Tension between economic development and protection of customary title is not a rare phenomenon; indeed, throughout sub-Saharan Africa, South America, and southern Asia, disputes regarding the status of customary rights are familiar. In Papua New Guinea, however, where 97 percent of the land is owned by customary landholders (and at least 80 percent of the population engages in subsistence-level agriculture), the situation is of a unique scale and of fundamental importance to the future of the country.

In 2005, public dialogue over land was relaunched at a national-level land summit. The resulting Land Development Programme, including a directive to balance customary land claims with economic and social development needs, set the stage for much-needed reforms. Within the present regime of customary land ownership, the government has inserted itself as the intermediary between two distinct parties, namely, investors seeking to unpeel the layers of nearly 800 distinct clans, each with its own system for property transfer and ownership customs, and customary land owners who may not fully understand the gravity of their land transactions. In its role as intermediary, PNG's government plays a critical role protecting both sides of land transactions, but there is a long way to go.

LEGAL FRAMEWORK

PNG's current legal framework for the acquisition of property and protection of property interests is inadequate to encourage investment and spur growth within the agricultural sector. More than 97 percent of land in Papua New Guinea is held as inalienable customary title. For the 3 percent of land that exists within the formal tenure system, a generally sufficient system provides certainty that arm's-length transactions can and will be enforced. Adequate mechanisms ensure that the certainty of title will exist to enable users of the land to make capital investments.

As a common law system, PNG's framework for property is a blend of statutory law and doctrines established through case law. The primary statute governing real property is the **Land Act (1996)**, a late-twentieth-century attempt at reform that, when enacted, replaced 21 distinct land laws. The Land Act establishes a comprehensive framework that attempts to balance protection of customary land ownership while unlocking land for development. Within the formal system established under the Land Act, there exists flexibility sufficient for the development of land for agricultural, agro-processing, and manufacturing capabilities. The zoning process is generally equitable, if cumbersome.

The Land Act lays out provisions for acquisition of customary land—both compulsory and by agreement—and essentially conveys to the government an interest in all land not clearly defined as customary and not otherwise secured by an existing estate.

FORMAL LAND REGISTRATION

The process for registering formally tenured land in Papua New Guinea is relatively low-cost and straightforward, and takes little time for landholders with easy access to Port Moresby. According to the World Bank's annual *Doing Business* score, transferring alienable land in an urban area requires approximately 5.1 percent of the value of the underlying property, four distinct steps, and 72 days from initiating a title search at the Registry of Titles in the Department of Land and Physical Planning (DLPP) until the title has been changed and title perfected.[30] In *Doing Business 2012,* PNG ranks 87 out of 183 countries surveyed in this area.

The small number of steps in PNG's land registration process is owed to its Torrens-style registration system for formal tenured land, whereby the state maintains within the registry relevant documents such as a state lease or a certificate of title. Instruments establishing leaseholds or transferring freeholds are perfected at the time of registration. Parties acting in good faith may rely upon the records in the registry as the official record, obviating the need for a title search. However, perfection of title occurs at a centralized location at the Registry of Titles offices in Port Moresby, which can create access issues for individuals and enterprises for which the time and travel to one of the regional DLPP offices poses a hardship.

While in practice this system has proven successful throughout the Commonwealth (particularly in Australia, New Zealand, and parts of Canada), it presents potential drawbacks. For example, such authority in the hands of a single agency can and reportedly has created a significant burden on land transactions when delays and poor record-keeping affect the speed and accuracy of documents. Duplication of title and conflicting titles issued for the same property are not uncommon, though the ongoing, sluggish process of digitalizing records should help with these errors. Particularly for smaller landholders in regions outside of Port Moresby, the access to the registry can lead to delays and errors.

KEY LAWS

- Constitution (1975)

Real Property

- Land Act (1996)
- Land (Tenure Conversion) Act (1963)
- Land Groups Incorporation (Amendment) Act (2009)
- Land Registration Act (1981) and Regulation (1999)
- Land Registration (Customary Land) (Amendment) Act (2009)
- Land Disputes Settlement Act (1975)
- Land (Ownership of Freeholds) Act (1977)
- Married Woman's Property Act (1953)

Intellectual Property

- Trademarks Act (1978)
- Copyright and Neighbouring Rights Act (2000)
- Patents and Industrial Design Act (2000)

DEALING WITH CUSTOMARY LAND

For individuals and enterprises seeking to secure additional land currently held within the customary land system, there are, in theory, three possible methods for accessing the land. In reality, all three options have significant drawbacks, including high costs, long delays, and in some instances uncertainty as to the security of the transaction.

Conversion

The first of three options is to undertake a conversion of the land from customary to freehold through the process outlined in the **Land (Tenure Conversion) Act (1963)** and to

[30] World Bank, Doing Business 2012 (2011), available at http://www.doingbusiness.org/data/exploreeconomies/papua-new-guinea.

undertake a sale of the freehold estate. Through application, including a formal survey of the plat and fee payment to the Land Titles Commission, an owner of customary title can provide adequate public notice and file a request to initiate a public hearing by the commission to identify all plausible claimants—now and in the future—who may have an ownership claim to the parcel, as well as any ongoing servitudes appurtenant to the plot. Upon a thorough investigation and a finding of no competing claims, or upon a finding that potential claimants are made whole, the Land Titles Commission submits a conversion order to the Registry of Titles to draw up a certificate of freehold estate and to confirm that any other possible interests to the land not recognized by the Land Titles Commission are permanently extinguished. Notably, the new owner in fee simple takes the land with certain conditions, including a limitation on the length of a mortgage on the property, limitation on transfer rights beyond 25 years, and other similar measures aimed at protecting new fee simple owners from the burden of their own bad land deals. However, upon filing of a request to the Attorney General, most of these statutory limitations on transfer can be waived.

The land tenure conversion process is intended to be thorough and is thus time-consuming. The sheer amount of time and professional resources required to successfully navigate the conversion process has not been helped by a limited level of effective communication on the benefits of freehold estates. Few landholders have opted to convert their land because the time and cost are so high, and because the limitations on the land—in particular because fee simple estates can only be sold to fellow citizens—drastically limit the value of the transaction. Finally, while the conversion process exists in theory, there is presently no commissioner at the Land Tenure Commission imbued with the authority to execute a conversion order, a position that has remained vacant for nearly 20 years, effectively halting this process until the position is filled.

Lease-leaseback

The second option available to an agribusiness interested in obtaining a leasehold is a provision within the Land Act known as the lease-leaseback process, which results in an instrument now known notoriously as a Special Agricultural and Business Lease (SABL). SABLs were designed with the express purpose of creating a simple, protected leasehold estate for government and interested customary landowners to grant use rights for investment. The lease-leaseback is a two-step process whereby an owner of customary property, upon application to the Minister of Land, may lease the property rent-free to the Minister of Lands and Physical Planning. The minister may then sublease this land for up to a period of 99 years for agricultural purposes to a lessee approved by the customary owner. The process entails a lease back to the customary landowners, who may then lease the land out for a commercial venture. This process establishes a sufficiently clear leasehold title, which adds certainty for lessors. The established leasehold estate temporarily suspends restrictions on transfer of the customary property for the duration of the leasehold, reverting back to customary land at the end of the lease period.

When applied as intended, the lease-leaseback process was undeniably successful at opening up blocks of customary land for large-scale farming, including substantial swathes of land for New Britain Oil Palm. However, in later transactions, the process appears to have been abused through either intentional actions or willful neglect.[31] Allegations have arisen that standard procedures necessary to provide notice to customary landowners were not followed and that clans in the Western, Oro, East and West Sepik, and East New Britain Provinces were displaced with no notice of the SABL.[32] Rather than serving as a process driven by customary landowners, hundreds of SABL instruments are facing a broad inquiry that could conceivably lead to civil or criminal penalties. No final decisions had

31 The numerous flaws associated with the program are discussed in the NRI publication by Elizabeth Moore, The Administration of Special-Purpose Agricultural and Business Leases: Customary Land and the Lease-Lease-Back System (NRI discussion paper 118, June 2011).

32 Katheryn Apelis, Develop Customary Land, available at http://www.pngpeles.com/index.php/commentary-about-papua-new-guinea/95-develop-customary-land.

PHOTO BY FINTRAC INC.

been taken as of the publication of this report. By some estimates, well over 8 million hectares of land have been transferred through transactions that require much more significant scrutiny. It is too early to understand the ultimate fallout from the lease-leaseback scandal, but for the time being the lease-leaseback option will likely not be considered a viable option. At a minimum, the inquiry will have a chilling effect on near-term use of the lease-leaseback process.

Voluntary customary land registration

The third and newest option for accessing customary land is via the voluntary customary land registration process. Through the passage of two key acts, the **Land Groups Incorporation (Amendment) Act (2009)** and the **Land Registration (Customary Land) (Amendment) Act (2009)**, the PNG government is developing a new mechanism with the intended result of building more certainty and formalism within the customary land tenure system through a voluntary registration process. Managed through the DLPP, the process of voluntary customary title registration is a two-step activity. It requires the registration of an incorporated land group, which asserts primary ownership and authority to manage customary land rights at the clan level, followed by a process to confirm ownership of the underlying customary land. Specifically, before a group may be incorporated under the Act, it must satisfy the registrar that members regard themselves as, and are regarded by others as, bound by a common custom.

The process of forming an incorporated land group (ILG), while seemingly simple, is full of hidden complexities that could derail, or at least significantly delay, the use of the voluntary customary land registration process. Under the amended law, the formation process for creating an ILG is straightforward once members of a clan have reached consensus. The ILG must simply file an application at the DLPP in Boroko accompanied by a draft charter, submit birth certificates or other form of identification to establish membership within the defined ILG, and submit a land survey from a certified surveyor identifying the plot of land. The DLPP has created forms for an ILG charter to assist in the formation process. DLPP has also created a bright-line rule that land submitted for voluntary customary registration must have no ongoing disputes over ownership. Final registration will serve to extinguish any future claims and forever associate the ILG with the land parcel, so caution is deemed critical in this process.

In many clans, while simple decisions can be taken by a clan's chief, issues that are fundamental to the clan and its land are often required to be put to a vote of everyone with voting rights in a clan.[33] In most clans, these votes must be unanimous; each member has an opportunity to veto.[34] The decision to form an ILG is a momentous decision of this nature, which should require a high-level of scrutiny within the DLPP as they must verify the validity of ILG membership and acquiescence of the charter in line with customary clan principles.

The clear trend, supported by all levels of government, is towards shifting systems away from conversion to freehold estates espoused by government and donors alike from the 1960s to the 1980s and focusing much more on the move to voluntary customary title. Perhaps the greatest drawback of this transition will be felt in the speed of access. Though some involved in the rollout of the voluntary customary land registration process estimate that as much as 20 percent of customary land can be registered within the next 10 years, two pilot rollouts of the process—one just outside of Goroka, one just outside of Port Moresby—suggest that this time frame may be optimistic at best.

CUSTOMARY LAND DISPUTE RESOLUTION[35]

The system for dispute resolution among competing claims for customary land has an adequate legal framework, but the institutions that implement these services are drastically underfunded and understaffed (as described below), such that in some provinces local land courts simply do not sit.

Under the **Land Disputes Settlement Act (1975)**, the first phase for dispute resolution is compulsory land mediation. If mediation fails, then recourse is found within the local land courts system. No reliable statistics exist for the annual number of disputes resolved each year nationwide, but in the Western Highlands province, over the last three years, approximately 80 percent of the disputes filed were resolved via mediation. Sixty-four mediators serve all of the land across the entire Western Highlands province, over a swathe of land covering 8,500 square kilometers of rural, mountainous property with difficulty securing transport. These mediators, based out of Mount Hagen, often spend upwards of two weeks for any given dispute. Mediators are selected for their reputation of good standing and fair dealing. Nevertheless, a dearth of data in this province and in most others precludes any meaningful analysis of the effectiveness of existing processes.

NON-CITIZENS AND PROPERTY

PNG's **Constitution (1975)**, written at independence, establishes that non-citizens may not acquire title to freehold estates.[36] Life estates with a reversion to a citizen—among other special exemptions—are specifically excepted from the constitutional definition of freehold estate, thus enabling a noncitizen to hold a life estate.[37]

Foreign investors seeking to access land—both individuals and companies—may enter into leaseholds for land that exists within the formal tenure system. Yet the amount of land available to non-citizens is simply insufficient. Further, non-citizens are not permitted to enter into any land transactions—including leasing land—directly from customary landowners. Rather, PNG's government must secure leasehold rights from the customary landowners, and may then sublease the land to the noncitizen.

Owing to insufficient formal tenured land, foreign investors increasingly negotiate informal arrangements directly with customary landowners for use rights. Because these agreements are void, non-citizens enter into these transactions at great risk that the agreements will be breached. However, customary landowners lack confidence in the government's facilitation of the leasehold process, due to a long history of improper procedure and outcomes, as well as problems of delay.

33 Katherine Dixon, *Working with Mixed Commons/Anti-commons Property: Mobilizing Customary Land in Papua New Guinea the Melanesian Way*, Harvard Environmental Law Review (2007).

34 Id.

35 For an excellent reference document providing historical context and overview for the Land Disputes Settlement Act, see Oliver, Norm & Jim Fingleton, Settling Customary Land Disputes in Papua New Guinea, available at http://www.ausaid.gov.au/publications/pdf/MLW_VolumeTwo_CaseStudy_11.pdf.

36 Notably, the Constitution did not strip title from existing foreign owners; rather, the design was one of attrition. To *acquire* land in Papua New Guinea one must be a citizen; thus all future owners of land will be citizens. Several dozen landowners in Papua New Guinea—predominantly religious missions and a plantation—remain foreign owners of freehold title.

37 **Land (Ownership of Freeholds) Act (1976)**, §6 et seq.

INTELLECTUAL PROPERTY

Intellectual property protections are necessary to encourage agricultural entrepreneurs to invest in the research and development that promotes progress and innovation. In PNG, laws protecting trademarks have existed since 1980. The rest of the framework for intellectual property protection was passed through comprehensive reforms in 2000, with implementing regulations passed thereafter. The **Patents and Industrial Design Act of 2000** offers protection lasting 20 years and is compliant with the World Trade Organization's Trade-Related Intellectual Property Rights (TRIPs) Convention. Protections extend to genetic materials, although with respect to plant varieties, the law is silent on the rights of farmers to use patented varieties in the creation of new varieties. Fees applicable to file a patent total approximately PGK 3,000 (approximately USD 1,500), plus annual payments thereafter of PGK 170. Intellectual property rights are enforced through private suits against infringement; national courts have jurisdiction over these cases. PNG's Customs Service is building capacity to support by notifying private patent holders of infractions and ultimately to refuse entry for counterfeit goods, but this remains in development.

IMPLEMENTING INSTITUTIONS

DEPARTMENT OF LANDS AND PHYSICAL PLANNING (DLPP)

This department serves as the primary land administration body charged with implementing land policies and providing most of the services necessary for effective land administration throughout Papua New Guinea. The DLPP is the primary institution charged with implementing most provisions in the Land Act for both the formally tenured land, as well as administering customary land.

The following service divisions exist within the DLPP:

- Land Administration;
- National Mapping;
- Bureau Physical Planning;
- Registrar of Titles;
- Surveyor General; and
- Valuer General.

Forms and schedules of fees for each of the offices within the DLPP are posted both online and in hard copy at the DLPP main office in Boroko, as well as in the provincial land offices. Posted fee schedules are reportedly not updated on a regular basis in each of the regional land offices, but in general there is little reported discrepancy.

Records maintenance by the DLPP is in need of support. Lost files (particularly within the title registry), misplaced files, and water damage are historic problems cited by users of the service. Conversion to digital data storage has started, but it appears to be moving at a slow pace performed in a perfunctory manner. Prioritizing this process would be a worthwhile investment, particularly with an anticipated surge in workload as use of the voluntary customary registration process begins to increase.

The public perception of the DLPP is one of high-level corruption and administrative dysfunction. The perception appears to be based in part on actual corruption, and in part on public misunderstanding of official process within the land administration and registration systems. Petty bribes that serve as speed payments for processing as well as payments requested to "recover" missing documents have been cited.

KEY IMPLEMENTING INSTITUTIONS

- Department of Lands and Physical Planning
- Land Titles Commission
- Land Board
- Land courts and district court
- Intellectual Property Rights Office of Papua New Guinea

LAND TITLES COMMISSION (LTC)

The LTC was established in 1962—pre-independence—as the state agency with the primary mandate to serve the quasi-judicial function of managing complex land disputes and to manage the conversion process from customary to formal, alienated land. Though the LTC exists as a viable governmental authority, it has clearly not been a priority of the government. The LTC has not had a commissioner for nearly 20 years, which has effectively halted the land conversion process. Conversion requests submitted 15 years ago still receive status update requests. According to the LTC, there are nearly 2,000 outstanding, valid applications for conversion of property from customary land to freehold.

LAND BOARD

The Land Board of Papua New Guinea is a statutory authority created under the Land Act to serve as the initial body for individuals seeking to lease or access state-owned land. The Land Board, with secretariat support offered though the DLPP, convenes on an as-needed basis but is not a permanently established board. The board is comprised of members handpicked by the Minister of Land and Physical Planning. The Land Board holds hearings on applications for state land, and the decisions are reviewable by the Minister, subject to a PGK 500 fee paid along with an appeal request. Historically, this system has been perceived as ripe for abuse. Stories of applications submitted numerous times with no action, and favoritism in the process for selection of tenders, are widely shared.

LOCAL LAND COURTS

Local land courts are the courts of first instance that hear cases upon request and upon signed notification from the land mediators that the parties to a land dispute will not reach a mediated settlement. Local land courts are not bound by prior precedent or other rules of law, except for the Constitution and the Land Disputes Settlement Act.[38] Local land court cases are, in theory, officiated by a magistrate. However, as of February 2012 in the Western Highlands province, no magistrates are sitting in the local land courts.

Final appeal for a customary land dispute is made to one of the district courts, which issues the final judgment in a case appealed from the local land court. While the district court may review in its discretion, no right of appeal exists in customary land matters.

INTELLECTUAL PROPERTY OFFICE OF PAPUA NEW GUINEA (IPOPNG)

The IPOPNG was created in 1999 by an act of Parliament to serve as the primary body charged with administering the laws and regulations related to trademarks, patents, and industrial design. IPOPNG is a member of the World Intellectual Property Organization (WIPO). IPOPNG enforces intellectual property rights in collaboration with the Customs Service, the office of the Attorney General, and the police.

SUPPORTING INSTITUTIONS

NATIONAL RESEARCH INSTITUTE

The National Research Institute (NRI) is a government statutory authority charged with providing deep policy research and analysis to support public sector policy-making, as well as private-sector and civil society analysis needs. NRI has taken the lead role developing the core analysis that has helped to frame the current public-sector dialogue for land administration and policy reform. NRI serves a vital function providing clear, accessible analysis of the legal, economic, and policy topics. Reports are publicly accessible via their website, and in print copy at the institute's headquarters in Port

KEY SUPPORTING INSTITUTIONS

- National Research Institute
- Surveyors
- Attorneys

[38] Land Disputes Settlement Act, §35; also see *Ijabiro v. Isoi* (September 9, 2008).

Moresby for a small fee. Researchers with expertise in land, poverty alleviation, agriculture, and economics are well respected throughout local academia, the public sector, and the private sector.

SURVEYORS

Land surveyors exist in Papua New Guinea as an organized profession, regulated under the Survey Act (1969). Under the current workload, stakeholders stated that an adequate number of surveyors can be found in the cities; over 80 surveyors are registered and regulated through the DLPP. Courses leading to degrees in surveying, as well as latest techniques, are offered at the University of Technology of Papua New Guinea. The Association of Surveyors of Papua New Guinea serves as a centralizing institution providing limited technical assistance as well as updates on important topics of interest for surveyors, including regulatory changes, technical skills development opportunities, and advocacy support. Whether the existing supply of local surveyors—particularly out in the rural regions—will be adequate to cope with anticipated higher demand created by the voluntary customary land registration process is a possible concern and an issue to be monitored.

ATTORNEYS

Within the formal land system in Papua New Guinea, attorneys serve a vital role facilitating the entire land acquisition and registration process, ranging from negotiating transactions, drafting transaction documentation, and providing support for navigating the administrative processes, as well as representing clients when transactions break down. However, most agribusinesses face geographic and cost constraints that make legal services inaccessible to all but the largest businesses in the largest cities. Furthermore, while there is an abundance of attorneys in Port Moresby and Lae, agribusinesses headquartered outside of Port Moresby lack an adequate pool of legal support services.

> **"What is my biggest problem with attorneys? We don't have enough of them."**
>
> *– Coffee producer, Mount Hagen*

In Mount Hagen in particular, individuals noted an inadequate number of attorneys familiar with property matters, which has led to difficult choices: whether to pay the exorbitant fees and wait in lengthy queues of clients or simply proceed without legal counsel.

SOCIAL DYNAMICS

LAND AND DEVELOPMENT

The potential economic benefit to Papua New Guinea in freeing up access to land for more efficient, productive uses is significant—as much as a 14 percent increase to GDP over a 10-year period.[39] The broad-based nature of the economic growth likely to be unleashed through access to more secure title is estimated to disproportionately improve investment into the agricultural sector and could result in a gradual transition toward more efficient production.[40] Nevertheless, as the fundamental social safety net in Papua New Guinea, access to customary land by clans and subclan units raises the stakes for the registration/conversion of land by customary landowners. A vocal group of NGOs purporting to speak on behalf of diffuse customary landowners raises concerns that simply adopting the voluntary customary land registration process, without first prioritizing much-needed reforms within the existing land administration for alienated land, would tax a system already struggling to cope with its workload, which could lead to even greater opportunities for systemic abuse.[41]

CRISIS OF CONFIDENCE

At the national land summit in 2005, summit participants sounded a stark warning that the "land administration system is corrupt,

[39] Charles Yala, Land Reform in Papua New Guinea: Quantifying the Impacts (2010).

[40] Id.

[41] National Land Development Taskforce: The NGO Response (2008), available at http://www.aidwatch.org.au/sites/aidwatch.org.au/files/NGO%20Submission%20to%20NLDT%20November%202008.pdf.

inefficient, and dysfunctional and needs an urgent overhaul."[42] These words, reflective of failures to address instances of corruption in past land reform initiatives, were prescient in light of the more recent SABL proceedings. These words also capture an underlying distrust over potential reform activities within the land system. Previous attempts to press for greater formalization have netted stiff resistance, in many instances caused by a failure to effectively communicate the benefits accruing from a more formal tenure system, as well as the protections built within the system itself.

WOMEN AND CUSTOMARY PROPERTY

Related to formal property, immovable property, and marital property, women in Papua New Guinea have equal rights under the law to their husbands. Property owned by each spouse prior to a marriage is presumptively owned by that spouse upon dissolution, absent an equitable argument to the contrary, according to the **Married Women's Property Act (1953)**. Though constitutionally afforded equal citizenship, women in PNG are largely kept from owning customary property throughout much of Papua New Guinea. Customary land in Papua New Guinea is decided by distribution rules that are unique across each of the 800 different clans. Generally, the distribution of customary land occurs either matrilineally or patrilineally. However, ownership rights exist at the clan level; individual families simply have access to a specific area, or rather a specific bundle of use rights within a communally owned plot.

In most of the patrilineal clans, women are effectively removed from the decision-making process in using the land. Even within the clans whose customs apply matrilineal inheritance, with rare exceptions women are often the family's link to the land, but her husband has full decision-making authority in how the land is used. Without the opportunity for active participation in the customary land system ownership structures, women have no voice in the future of Papua New Guinea. Formalization of customary land distribution principles within the charters of ILGs without regard to a need for women's full participation and equal voting rights will simply institutionalize women's inequality in perpetuity.

PHOTO BY FINTRAC INC.

RECOMMENDATIONS

Provide technical assistance to support the institutional development of the Land Title Commission to rebuild institutional capacity.

Feasibility: Low
Resources required: Medium
Potential impact of reform: High

[42] Charles Yala, The Genesis of the Papua New Guinea Land Reform Program (National Research Institute) (2010), at 3.

The LTC in Papua New Guinea serves as the exclusive means of converting land from traditional title to private freehold and resolves complex land disputes. A lengthy vacancy at the head of the commission has left the LTC bereft of adequate organizational strategy and leadership. Thousands of outstanding applications for conversion to formally registered title have left property holders uncertain of their claims and have in effect eliminated conversion to freehold as an option to customary owners, despite a legal framework enabling this process.

To strengthen the LTC, an analysis should be conducted to identify gaps and needs in critical skills, staff training, and roles and responsibilities. In addition, a multiyear strategy for capacity-building, training, and systems support should be developed.

Land reform in Papua New Guinea is a highly politicized topic. A history of perceived corruption in land transactions has led to a distrust of all governmental land institutions in PNG. Further, a political shift toward customary registration has siphoned off support from the LTC in favor of alternative methods, such as lease-leaseback and voluntary customary registration. Absent political commitment to support reform and rebuilding the LTC, interventions—while necessary—will be futile.

Undertake a sensitization campaign to encourage gender equality protections within the voluntary customary land registration process.

Feasibility: Low
Resources required: Low
Potential impact of reform: High

Due to deep-rooted customary practices, a gender bias exists in many clans throughout Papua New Guinea with respect to the distribution and decision-making processes for customary land. This gender disparity most often favors men, but there are some clans based on maternal land distribution as well. Owing to the inalienable nature of land registered through the voluntary customary land registration process, ILGs threaten to establish in perpetuity this gender bias, precluding certain citizens from receiving benefits from the land on the basis of their gender. Reform is needed now, before broad-scale implementation of the voluntary customary land registration process occurs.

The existing institutional framework precluding meaningful access to customary land on the basis of gender is interconnected to other aspects of traditional culture, which is a highly political matter for which it is difficult to effectuate change. A successful reform effort will require the identification of and collaboration with potential champions to encourage the reform effort. A gender-awareness campaign should be adopted to promote greater gender parity among ILGs that are provided recognition by the government of Papua New Guinea. In addition, support should be provided for drafting an amendment to the Land Groups Incorporation (Amendment) Act of 2009 requiring gender equivalence within the membership of ILGs.

Great uncertainty exists regarding reforms to the customary land system. Constitutional recognition of the equality of every Papua New Guinean citizen, plus potential champions within the Ministry of Agriculture and Ministry of Land focused on gender issues, could serve as a stepping off point for a broader campaign.

GETTING CREDIT

Notwithstanding a generally well-structured legal and regulatory framework for finance, the availability of affordable credit in PNG, particularly for agricultural enterprises, is problematic. At the micro-end of the spectrum, there has been significant growth in micro-savings, allowing for capital accumulation to be used either as equity for investment or as collateral for loans. This may explain a relatively low uptake on loans for many depositors, who now have a place to shield their money from various wealth-reducing cultural obligations and thus accumulate needed capital for smaller investments. As mobile banking expands in PNG, micro-savings can be expected to increase significantly, particularly among populations without access to brick-and-mortar infrastructure.

For some small and medium-sized producers, processors, and traders, bank loans may be available, but the costs are rather high. Most lending seems to fall in the 15 to 25 percent range for interest rates, often with significant collateral requirements. "A-list" customers may obtain rates as low as 12 percent. Deposit rates, however, are no more than 1 to 1.5 percent, leaving a substantial margin in what should be a competitive market. The spread may actually be greater, but it is difficult for the average borrower to tell because the fees, costs, and terms are not disclosed as an effective annual percentage rate. This obfuscation may be one reason that competition is not more vibrant. Nonbank financial institutions, such as finance companies, "payday" lenders (lending against formal salaries), and leasing companies, service those who do not qualify for bank loans, but at great cost. Interest rates from such institutions begin around 25 to 30 percent and can go as high as 125 percent, often with little or no disclosure of the actual effective rate.

For commercial lending, risk is at the core of high rates. Although many secured loans can be enforced effectively, acceptable collateral is limited to equipment, vehicles, some buildings, and almost no land. Moreover, loans to "politically exposed persons"—powerful vested interests—are uncollectable and result in higher nonperforming loan ratios, driving up the costs of lending. New legislation promises to broaden collateral possibilities, but the lack of transferable land rights continues to limit the expansion of secured lending to install agro-industries or to expand farming operations.

Potential borrowers complain that it is difficult to obtain start-up capital and *working capital* from banks. Banks generally cannot provide start-up capital due to high risks, but can be expected to provide working capital, if there is appropriate collateral.[43] In PNG, forms of acceptable collateral have been quite limited, but new collateral reforms may address working capital constraints over the next few years. Venture (start-up) capital—especially for small and medium-sized agricultural enterprises—is most likely to be met through savings and development-oriented enterprise funds. Capital markets are still immature, but even as they grow it is unlikely they will produce much capital for agriculture. Credit for medium-scale agriculture is more likely to come through supplier credit and trade credit, albeit incrementally.

[43] Banks worldwide do not lend for start-up needs because of the high risks. At least 50% of all start-ups fail in the first few years, and in many countries—including developed countries—failure can be as high as 70 to 80% within the first five years. Banks are governed by fiduciary duty requirements and risk-management regulations that make lending to start-ups almost impossible. Accordingly, new companies throughout the world rely on "the three Fs"—friends, family, and fools—for their start-up capital. Fortunately, some of those "fools" are highly savvy venture capital firms that can provide equity as well as expertise to increase the likelihood of success. Once a business has proven itself, bank lending is far more accessible. As one business operator noted during this diagnostic: "When I was starting, they wouldn't talk to me; five years later, they're throwing money at me."

Thus, the current situation for finance in PNG's agricultural sector is difficult, but not dire. Strong institutions, good laws, and prudent regulation have created a stable foundation for financial development. Existing gaps, if addressed comprehensively, can be effectively closed and provide for reasonable, affordable credit expansion in the medium term. Most of the near-term opportunities are within value chains, not directly to farmers; increased credit to buyers and suppliers can result in increased credit to their customers—the farmers.

LEGAL FRAMEWORK

The legal and regulatory framework for finance is generally sound and relatively complete, with a few significant gaps. The **Banking Act (2002)** sets forth the basis for prudential regulation of the banking industry, and the regulations of the central bank—the Bank of Papua New Guinea (Bank of PNG)—provide for competent, independent implementation of the law and supervision of banking institutions. The banking laws, however, are not yet adequately nuanced for differing supervision of micro-finance, savings and loan associations, and commercial banks. The Bank of PNG is aware of this problem and has already begun to examine the possible approaches, in concert with the institutions to be regulated. In addition, some finance professionals contend that the capital adequacy requirements are higher than warranted, reducing funds available for lending. Future legal changes should also include the adoption of an anti-money laundering act.

On December 9, 2011, Parliament enacted the **Personal Property Security Act (PPSA)** to expand the possibilities for secured lending through movable and intangible property. The law is in keeping with international best practices, providing for a wide range of collateral, including agricultural produce, livestock, future crops, equipment, stocks, and receivables. It was prepared in collaboration with the ADB, incorporating the best features of Canadian secured lending, but amended based on experience with other island nations and Asian countries. The Act will not come into effect until a registry is in place, which may not be until the end of 2012 (or later). Once installed, the registry is intended to reduce information gaps and increase transparency of borrower exposure. Currently, liens, bills of sale, and other indices of claims are filed in a variety of paper-based and internet-based registries, whose inefficiencies raise the cost of lending. The new registry is expected to be housed in the PNG Investment Promotion Agency (IPA), which has, at best, a middling reputation for effectiveness. However, proper structuring of an internet-based registry system should eliminate implementation concerns.

As noted, the PPSA permits the use of various agricultural inputs and products as collateral. It is also open for use by any person or organization providing credit, not just financial institutions. As a result, suppliers, traders, and others in the agricultural value chain can supply credit to their customers and issue a registered lien at minimal cost. If adopted, this practice can lower lending default risks and increase transparency in credit behavior, which should eventually result in better rates and terms in a competitive environment. Given the cost of direct lending to farmers by banks, near-term opportunity for increased agricultural credit lies with the increase of trade credit to suppliers and buyers; both are better situated to understand and structure finance according to the unique agricultural needs of producers.

KEY LAWS

- Banking Act (2002)
- Personal Property Security Act (2011)
- General law of contracts, including common law dictates on insurance contracts and lending arrangements
- Securities Act (1997) and Regulation (1998)
- Companies Act (1997) and Regulation (1998)

Currently, there is prevalent use of informal value-chain finance arrangements in the agricultural sector. Generally in step with PNG's law of contracts (detailed at this report's chapter on Enforcing Contracts), formal and informal lending agreements between coffee buyers and processors are common. Specifically, processors will often advance money to a buyer to make purchases from producers. Similarly, some coffee buyers loan producers the use of a vehicle in order to deliver a specified amount of coffee for a fee. These arrangements create ample opportunity for side-selling (or theft), yet within the coffee industry in particular, it is reportedly rare. In fact, stakeholders stated that in general, a deal is a deal, and parties do not renege on their contractual agreements.

Land and real estate, as discussed in this report's chapter on Registering Property, are generally not available as collateral for formal lending. Although the legal framework permits the use of mortgages, leases, and other liens, the current land ownership structure is not conducive to mortgage lending. Less than 3 percent of all land in PNG is held in leasehold or freehold; all other land is subject to customary systems and claims. Customary land cannot be effectively repossessed and auctioned upon default, thus making it all but useless as collateral. Although there is mortgage lending on freehold and leasehold estates, the lack of a well-developed land market, plus the ability of powerful interests to avoid foreclosure, reduces the value of land for lending. Many banks simply want no part of it. This is particularly problematic for commercial farmers, as land and buildings often form the basis of their secured credit relationships.

The PPSA should reduce enforcement risks and information collection costs with regard to movable property as collateral, but there are still high risks related to identification and creditworthiness of borrowers. There is currently no unique identification number or system to enable a lender to be certain of the identity of a borrower. (The Bank of PNG is aware of this deficit and, along with other government agencies, is examining a system from India to address it.) Once a person is identified, credit information is still rather limited but improving. The legal system allows for the gathering and reporting of positive and negative credit information, which is taking place through the Credit & Data Bureau Limited, a company established by a number of financial institutions in 2008. Currently, only negative information is reported. Reporting of positive information is permissible and should be the next phase in development of the system. Unfortunately, the lack of a unique personal identification system allows for confusion in credit histories, where a potential

PHOTO BY FINTRAC INC.

PHOTO BY FINTRAC INC.

borrower with the same name as a defaulter can be denied credit. Presumably, some defaulters could also avoid detection by clever manipulation of identity criteria.

One of the most important strengths of the PNG legal framework for credit lies in the ability of creditors to use self-help remedies for default without resort to court action. The legal authority for this approach is derived from contract law, which permits parties to agree to out-of-court enforcement and settlement, which is a standard part of loan contracting. During this diagnostic, a wide range of lenders noted that they are able to repossess collateral through either an internal department or a collection service, although this sometimes requires police presence or involvement. Just as importantly, they can auction the repossessed property with little difficulty and reduce their losses.

As a matter of law, this self-help regime should reduce collection costs and risks. However, problems were also noted. First, some lenders found it untenable to collect *unsecured* loans once they went into default. Although the law would allow for a judgment, followed by execution, the delays and expenses are simply too great; such loans are written off. Second, location of assets often poses a significant constraint to enforcement, especially if the lender is seen as an outsider to the community. In such cases, especially where police are perceived as protecting the locals rather than the law, lenders will write off the debt and stop lending in the area. Indeed, one lender noted several districts where the institution would not loan money, even at higher interest rates. This weakness in the enforcement system has a direct impact on rural credit, where enforcement is perceived to be far more difficult than in the cities.

On the negative side, Borrowers in PNG also lack the protection of any sort of consumer-friendly disclosure regulation, such as a truth-in-lending act or similar legislation. As a result, lenders may advertise their products in ways that simply cannot be compared across the industry and therefore often obfuscate the aggregate cost of finance. In one case, a lender claimed that it was not possible to state the interest rates on its salary-secured loans, because there were too many options. In fact, a quick analysis of the loan amount and the amount and number of fortnightly salary deductions revealed annualized interest rates ranging from 50 percent to 125 percent. Tellingly, no literature provided this information. This lack of standardization reduces the ability of consumers to choose between products and lenders and thus reduces competition in the financial industry.

An important positive development in PNG is the advent of mobile phone banking. Working with international experts, the Bank of PNG is permitting the introduction of mobile banking services that utilize actual savings and deposit accounts, rather than the "wallet" system of MPesa (Kenya), for which risks may be higher. Final regulation will be needed, but the Bank of PNG appears oriented toward emerging international best practices. Several financial institutions (the Bank of the South Pacific (BSP) and Nationwide Microfinance, for example) already offer certain mobile services. This development will be critical to reach the unbanked populations of the hinterlands, especially in those locales where banks have closed branches or have never been able to open them due to cost and security considerations. The use of mobile payments by commodity purchasers provides an impetus and entryway for increased capital accumulation, allowing farmers—who have the greatest trouble obtaining credit—to garner resources more effectively for investment or other needs.

THE FREEDMAN-CLICK FRAMEWORK IN PNG

According to Paul Freedman and Reid Click, there are five principal areas that drive interest rates and access to bank credit:

Factor	Status in PNG
Bank regulation	Good, with minor gaps
Crowding out by bonds	Not a problem
Business environmen	Problematic
Asynchronous information	Incomplete
Capacity:	
• Lender skills	Mixed, but limited
• Borrower skills	Weak

From Paul L. Freedman & Reid W. Click, "Banks That Don't Lend? Unlocking Credit to Spur Growth in Developing Countries," Development Policy Review 24(3): 279–302 (2006).

PNG's legal framework for liability and casualty insurance, overall, is adequate for the time being. There is a significant range of insurance products available for businesses and entrepreneurs, including life insurance for borrowers to reduce lending risks and business interruption insurance for businesses. However, no crop insurance is available for farmers. Insurance rates are not particularly low; This is in part due to overvaluation of the kina, but reasons behind the pricing levels merit further research.

Deposit insurance is a different product altogether, normally offered by governments, and is generally missing in PNG. The semi-public PNG Microfinance Limited was the only institution encountered during this diagnostic that offers deposit insurance, and generously—up to PGK 120,000. Deposit insurance helps to establish consumer confidence in the banking industry, something that can suffer badly if a financial institution collapses without insurance. It also helps to maintain a stable deposit supply. For long-term banking growth, PNG would do well to institute some form of universal deposit insurance for qualified institutions.[44] This may be particularly important if rural populations are to trust the urban banks with their money.

PNG's capital markets may eventually offer equity capital to larger investors, but the stock exchange is still in its infancy, with only 20 companies actively trading, two exchange members, and approximately two dozen trades per day. The **Securities Act (1997)** and **Companies Act (1997)** are sufficient for current activities and eventual growth. As a technical matter, debt securities (bonds) may provide a better investment opportunity over the short term, as PNG companies are generally closely held and unlikely to seek equity input through minority shareholding. Capital market investments tend to be concentrated in nonagricultural industries worldwide, but the overall increase in capital market health has a needed ripple effect throughout the economy, with indirect impact on agriculture.

[44] In 1910, only 10% of the population of the US had bank accounts. This rose to roughly 25% until 1929, when the Great Depression led to capital flight. Only with the advent federal deposit insurance was the US population willing to trust the system again, and now more than 90% have bank accounts.

IMPLEMENTING INSTITUTIONS

There are four essential implementing institutions for Getting Credit in PNG: the Bank of PNG, the Personal Property (or Collateral) Registry, the courts, and the police.

The Bank of Papua New Guinea is the nation's central bank, with supervisory authority over banking and finance activities pursuant to the Banking Act of 2002.The bank is adequately staffed, professionally run, and well respected by the financial institutions under its supervisory authority. It maintains its independence effectively and is perceived to be a fair and capable regulator. Moreover, the bank actively engages the financial community in discussions and analysis concerning reforms and refinements to law, regulation, and practice. This practice appears to arise from good will rather than statutory or regulatory mandate; it may be helpful to ensure that this kind of public discourse be written into the bank's implementing regulations. Although one lender suggested the need for more on-site inspections of financial institutions, most in the financial community are satisfied with the bank's work.

The **Personal Property (or Collateral) Registry** has not yet been established, but is authorized under the PPSA of December 9, 2011. Plans are underway to construct an internet-based registry at the IPA. The IPA's administrative limitations need not be a problem if the registry is designed to limit human interaction to a minimum, as has been done in other countries. Most of the "work" will be done online by lenders as they register their liens, with little need for any decision-making by a registrar or other individual. Given the involvement of world-class experts with the Bank of PNG in establishing the registry, it is expected to function effectively, but it should, of course, be monitored. Other registries in PNG use a cost-recovery basis for pricing their services, in line with international best practices. The new Personal Property Registry will likely follow suit with low-cost services.

KEY IMPLEMENTING INSTITUTIONS

- Bank of Papua New Guinea
- Personal Property (Collateral) Registry
- Courts
- Police
- Commissioner of Insurance

PNG's **courts** are essential for the enforcement of loans in those instances when self-help is either inappropriate or untenable. Courts are a last resort in nonpayment cases; but once engaged, they are the *only* resort. For small amounts (under PGK 10,000), the law permits lenders to sue without use of lawyers, thus lowering litigation costs for relatively simple transactions. Confidence in PNG's courts is mixed. As detailed in this report's chapter on Enforcing Contracts, courts of first instance are considered to be slow, and engagement of lawyers is costly. For agricultural lending, there is an additional problem. Lenders based in the cities tend to believe that courts in rural communities are biased against them; this results in higher-risk premiums, less lending, or both for agricultural communities.

Given the use of self-help in enforcing loan contracts, the **police** are an important implementing institution. Most collection efforts include the presence of police to ensure that there is no breach of the peace (that is, violence) when equipment or goods are repossessed. As noted earlier, however, the effectiveness of the police varies according to location and identity of the defaulting borrower. Some stakeholders were of the opinion that the police are not fully independent of the politically or economically powerful and may even maintain personal loyalties that outweigh professional obligations to uphold the rule of law.

CREATING AN ECOSYSTEM OF REFORM IN PNG

Economic growth and its components take place in an ecosystem of diverse subsystems. Each affects the ability of lenders to provide reasonable access to affordable credit. In PNG, these subsystems have a mixed impact that keeps rates high.

1. **Market for Finance:** High demand for savings; high demand for start-up capital; mixed demand for working capital.
2. **Financial Infrastructure:** Hinterlands physically inaccessible; spotty electrical supply; improving information and communications technology (ICT) connectivity, including mobile banking.
3. **Financial Resources for Lenders:** Increasing deposits; high cost for imported capital due to political risk and underlying collateralization weaknesses; weak capital markets.
4. **Business Enabling Environment:** Inadequate identity and credit information (improving); limited collateral options; inconsistent enforcement capacity; insufficient competition on terms; no "truth in lending" disclosure requirements; weak bankruptcy regime.
5. **Financial Capacity:** Low human resource capacity—high training costs for lenders, low business and financial management skills for borrowers; basic school curriculum not aligned with financial literacy needs.
6. **Governance:** Good central bank performance; mixed capital markets performance; insufficient rule of law for enforcement; high criminality elevating security and insurance costs.

Of less importance for the purposes of this diagnostic, the PNG **Commissioner of Insurance** also qualifies as an implementing institution. Overall, stakeholders found the commissioner's performance to be less than stellar, with long delays afflicting claims under state-run insurance (mandatory third-party liability coverage for motor vehicles), sometimes taking as much as two years. In general, claims against private carriers seem to be better managed. Given that delays in payment have an impact on the financial well-being of the insured, poor performance in the insurance industry has a negative impact on finance. The impact on agriculture comes in losses incurred by "personally maintained vehicles" (PMVs), a principal source of transport for agricultural products and workers.

SUPPORTING INSTITUTIONS

PNG has a number of supporting institutions necessary for improved operation of the financial system. Not all are fully operational or sufficiently widespread to meet the demand for their services, yet several are quite strong and effective at advocating for reforms and improving implementation.

The **Bankers' Association**, the **Port Moresby Chamber of Commerce**, and the **Lae Chamber of Commerce** stand out for their generally positive reviews. These important organizations are perceived to be effective by other stakeholders in formulating and pursuing reform initiatives. The Bankers' Association has only four members, however, and the larger Microfinance Association is not perceived to be as effective. Likewise, various chambers of commerce in other cities are not generally considered to be as strong

KEY SUPPORTING INSTITUTIONS

- Bankers' Association
- Business associations and chambers of commerce
- Leasing services
- Credit & Data Bureau Limited
- Farmer organizations and other rural associations
- Institute of Banking and Business Management
- Micro-finance institutions
- Legal services
- Value-chain finance resources (retailers, wholesalers, etc.)

as those in Port Moresby and Lae. In some cases, they were seen as remnants of colonial involvement in agriculture that were either slowly transitioning to a more productive, representative organization or simply moribund. The full implementation of an improved secured lending regime under the PPSA offers a strong service opportunity for all of these associations. Secured lending can provide for new and less expensive financial products, but their success will require development of new products along with extensive public education to borrowers and potential lenders. Using existing organizations as a vehicle for such education can speed adoption of the new products while providing a useful service for those associations that are currently functioning below capacity.

A number of finance companies and banks offer **leasing services** in addition to loans. Leases, however, tend to carry starting rates of 25 to 30 percent imputed interest, which is considered quite high for farm equipment customers. For leased PMVs, which provide most of the transport services for farm produce, the relatively high cost of finance translates into higher transport costs as well. Leasing organizations tend to offer little in the way of financial literacy education due to the cost structures of their business models. However, if incentives were found to encourage greater financial community involvement in financial literacy, the lenders are replete with qualified personnel who could provide training and public education. For some, a simple tax credit or deduction for costs might be sufficient to promote financial campaigns.

The **Credit & Data Bureau Limited** of Papua New Guinea is a private credit-information system providing negative credit information submitted by its members since 2008. The bureau has approximately 25 members, all in the financial industry, including banks, micro-finance institutions, and finance companies. The bureau is considered quite useful by its members, although some would like to see the eventual inclusion of positive data as well as information on defaults and nonpayment. Membership is open to all companies—including small companies—as well as financial institutions, with membership fees based on size of the company. The bureau's transaction fees are reasonable, ranging from PGK 5 to 10 per transaction, depending on the volume of transactions. The bureau could be quite useful for risk management to companies offering trade credits, but no interviewees for this diagnostic were aware that they could belong to and use the bureau, which is mistakenly believed to be open only to banks and other formal lenders. Increased use of the bureau by those providing agricultural credit would improve the bureau's database while also reducing lending risk for the creditors. The bureau could also be a strong player in financial literacy by providing information on credit behavior and how it affects the ability of borrowers to get credit.

Rural associations, such as **farmers** or **commodity-based associations** vary greatly in capacity, reach and quality. They do not play a significant role in advocating for changes in the financial system, although it appears that the primary reformers—such as the Bank of PNG—would be willing to have their input. For associations seeking to grow by providing services to their members, there are a number of needed services that would help farmers manage their finances and obtain credit more effectively, such as financial literacy courses or basic business skills in farming and agribusiness.

Stakeholders throughout the country repeatedly bemoaned the lack of borrower capacity in applying for loans and in proper business management after the loan was dispersed, leading to higher costs and higher perceived risks in lending. Unfortunately, the education system does not effectively prepare graduates in financial literacy at the secondary level. As detailed in this report's chapter on Employing Workers, PNG has a literacy rate of approximately 60 percent, but with only 55 percent of students enrolled in grammar school, the overall literacy and numeracy capacity is low. Moreover, there is little training in business skills, and even less training available in agriculture as a business. As a consequence, many financial institutions are unwilling to lend to farmers at all, preferring instead to limit their lending to upstream stakeholders, such as input suppliers, who can then take the risk of lending if they so desire. Most such stakeholders do not.

The Institute of Banking and Business Management (IBBM) in Port Moresby offers a wide range of business education classes to adults, without requiring prior education. It also offers training for bank employees and loan officers. Bank managers note the difficulty of finding sufficient numbers of qualified employees to meet existing and expansion needs. In addition, a number of **micro-finance institutions** offer basic instruction to their borrowers in how to fill out an application, how to keep books, and other basic business skills. In both cases, these supporting institutions are doing important and needed work, but it is far from sufficient. Financial literacy skills need to be added to basic school curriculum from grammar through secondary education. In the past, some organizations have even used radio programs to provide basic training. All forms of business and financial literacy education are desperately needed for farmers and others in the value chain to obtain and manage affordable finance.

Lending institutions use standardized loan and credit contracts, including standard forms for existing collateral options (such as bills of sale, liens, and assignments of property). New instruments will be needed for movable property lending under the PPSA registry system. Many companies handle collection claims themselves, unless the claim surpasses the statutory maximum of PGK 10,000 for self-representation. Smaller companies find lawyers simply too expensive for many claims, given the likelihood of success, but express reasonable satisfaction

PHOTO BY FINTRAC INC.

with **legal services**. For the most part, farm credit will not involve lawyers other than in the design of the contracts and the occasional suit on behalf of lenders; as noted, small borrowers are generally not worth suing due to costs; larger borrowers may be worth pursuing (if not politically connected), but there are not many of them in the agribusiness sphere.

Value-chain finance—the ability of actors in a value chain to receive finance from or provide finance to other members of the chain—benefits and suffers from the same factors that affect all other potential borrowers and lenders.

PHOTO BY FINTRAC INC.

There is a small amount of value-chain finance taking place in PNG through buyers purchasing crops in advance or offering inputs and services. Better individual identification mechanisms, improved credit information, and new products based on PPSA bode well for expansion of value-chain finance, but depend on reforms to the entire system. On-lending or trade credits through suppliers and buyers are also a function of the cost of capital to these parties. Thus, as long as they are paying high interest rates, they will pass that cost, plus additional for the costs of providing interest, on to their customers.

Attacking problems at the core will be more important strategically than trying to work around these issues through inefficient options.

SOCIAL DYNAMICS

A number of social forces have emerged at this stage in PNG's financial development. Some actively support increased wealth accumulation (equity) and can serve as risk-reduction agents for more affordable credit. Others have the opposite effect, undermining the framework for finance. Cultural tendencies may change slowly, but a good understanding of these behavioral influences can also be used to promote new opportunities.

THE (CHANGING) *WANTOK* SYSTEM

PNG's long-held system of *wantok*—literally, "one talk"—is the basis for many cultural practices affecting access to finance. Originally a clan-based social safety net for subsistence economies, the communal protections afforded by the *wantok* system also have the effect of creating a perceived privilege of taking from those in the clan who have more than others. As a result, individuals are often unable to accumulate sufficient assets within their own communities, because others then have a claim to a share.

Through modern systems of personal financial management, this is changing. Savings accounts (including mobile banking accounts) have grown dramatically as a way of shielding assets from public view. Electronic transmission of payment for salaried employees, such as those in the public sector or working for larger enterprises, also prevents the "grabbing" of cash received on payday. Indeed, the demand for savings accounts is reportedly greater than the demand for loans among individuals and small businesses: no more than 10 to 20 percent of bank depositors have loans. The impact of this development is that many Papua New Guineans are slowly able to increase their own capital for small investments and consumption. As averred by a lender in East New Britain, "Villagers have money," at least at the micro-savings level.

While an apparent desire to escape the *wantok* wealth dissipation effect clearly drives increased savings, the traditional system also affects the collection and enforcement of debts. Lenders have found that it is difficult to enforce delinquent loans—whether through repossession of collateral or simply pressure to pay unsecured debt—in places where the lender can be considered an "outsider." Consequently, risk premiums are higher and access to credit is lower for communities that do not have their own lending branch. Lenders contend that first-instance judges frequently rule in favor of debtors in their communities and against the "outside" lender, even though the law clearly compels the opposite outcome.

Moreover, the same bias has been reported among police who may be unwilling to enforce against their kin (defined broadly). Unfortunately, infrastructure constraints make it difficult to expand a brick-and-mortar branch system beyond the larger towns, so communities that do not have their own branch and do not honor contracts find themselves with little access to affordable capital. However, within a community, reputational pressure helps to maintain more disciplined repayment behavior if the lender is also part of the community. This suggests that lending institutions should take a community approach to their branches.

THE BURDEN OF CUSTOMARY TENURE

Land alone is never sufficient to obtain a loan,[45] yet land is the preferred form of collateral for otherwise bankable projects throughout the world. PNG is therefore bereft of the primary source of secured lending desired by lenders. The customary tenure system is not conducive as structured to repossession and resale, which are the two factors necessary for collateral to have value. The Personal Property Security Act will provide new options and—if there is competition among lenders—should bring down the risk premium and costs of lending. However, personal property is inherently riskier as collateral than real property, and so interest rates are likely to stay higher in PNG than for comparable jurisdictions with vibrant land markets. Customary tenure was developed to provide certain societal safeguards. Whether these are still necessary is debatable, but until some form of alienation right is established for those wishing to use real property to secure loans, customary tenure will constrain credit.

GENDER AND CREDIT

Gender does not figure prominently in credit issues as loans and deposit accounts are technically equally available to men and women. Men have tended to dominate, however, as they customarily have a greater say in family finances or in the use of collateral that belongs to a group rather than an individual. Several micro-finance organizations specifically target women, suggesting either that women are underserved or that the funding agency behind the organization has gender targets, even if they are not underserved. In some regions of the country, women compete squarely with men on owning deposit accounts. In terms of employment, one lending institution employed 90 percent women, but this did not appear to be the general rule.

The apparent lack of gender-related credit issues may be due to a statistical problem: most lenders do not keep ready any statistics on the gender breakdown of accounts, and thus could not provide information beyond anecdotal estimates. It is therefore not clear how much disparity actually exists. It is also not clear from a cultural standpoint whether ongoing reforms will have the inclusive impact found elsewhere. Personal property collateral systems tend to be gender-positive because there are usually few, if any, cultural constraints around ownership of various forms of income-producing equipment that women may purchase with secured credit. Unlike land—which is, worldwide, controlled primarily by men—other collateral is relatively gender-free.

[45] Commercial lenders rely first on income to meet the terms of the loan; failing that, they seek valuable collateral as a "second way out" of default. According to one PNG lender, "collateral is the first way out." The value of the collateral is perceived to be even more important in such an insecure setting.

“PLEASE TELL THEM TO STOP”

Cultural traditions are uniquely sensitive, and therefore cross-cultural comparisons are not always appropriate. Foreign visitors are well advised to be thoughtful, not judgmental, in their appreciation of such differences. At times, however, the national population would prefer a more direct approach where certain rights are concerned.

At a meeting with a women’s group in the Highlands, the issue of violence was raised. Unfortunately, PNG has a poor reputation for violence against women. The women in the group were very straightforward in their feelings on the issue. They did not suggest that the subject should be skirted. Instead, their request was simple:

“Please tell them to stop beating us.”

The success of PNG’s lending reforms should lead to greater female participation in the economy, along with greater access to credit for men. However, there are concerns. First, it has been noted that violence against women sometimes increases if they move upward economically by earning more than their husbands or by succeeding more visibly in the community. If unaddressed, this situation could act as a brake on opportunity. However, savings accounts increasingly allow women to shield their earnings from public scrutiny, thus protecting them from inappropriate reactions. Second, violence against women also damages their ability to earn and repay, leaving them vulnerable financially as well as psychologically. Hence, this unfortunate tradition harms economic growth and the health of the lending system as well as the unfortunate individuals who suffer more directly.

LAW AND ORDER

More generally, the amount of violent crime has a direct impact on the cost of credit. As one lender noted, crime increases the costs of security, the costs of insurance, and the actual losses due to theft or violence. In addition, due to lack of adequate skilled PNG workers, many institutions have to rely in part on foreign employees. Because of safety concerns, those employees require a premium on their salaries to live in PNG, plus costs of security and insurance. All of these extra expenses must be factored into the cost of providing finance, which results in higher fees and interest. These expenses (plus the cost of land and the unreliability of infrastructure services) raise the cost of expanding the branch banking system to serve rural and agricultural populations. Attention to law and order concerns will eventually have a positive impact on finance, not to mention the day-to-day quality of life in PNG.

RECOMMENDATIONS

Finish development of the framework of financial laws and regulations in PNG.

Feasibility: High
Resources required: Medium
Potential impact of reform: High

The legal and institutional framework for credit in PNG is well developed but still incomplete. Each missing component raises the costs and risks of capital in PNG. In the aggregate, these gaps reduce the availability of affordable credit, which in turn limits the working and expansion capital of farms and agro-industries, lowers export income, decreases tariff revenues for the government, and limits job growth in the private sector. Needed legal reforms include adoption and implementation of a personal identity system that creates a unique national identifier for each individual; adoption and implementation of a “truth-in-lending” disclosure law; implementation of the personal property registry under the PPSA; revision of the Banking Act of 2002 to separately regulate banks, micro-finance institutions (MFIs), savings and loans (S&Ls), and mobile banking; and the adoption and provision of national deposit insurance.

Although each reform can be addressed individually, they are actually interconnected parts of a system; until the system is fixed, individual reforms will have limited impact. To ensure a more holistic approach to financial reform, a steering committee should be established at the Bank of New Guinea (with appropriate representation from the executive branch, Parliament, and the private sector) that is charged with (1) establishing a reform agenda and schedule, (2) setting priorities, and (3) coordinating with other stakeholders. Government and the legislature must be oriented to pressing reform needs, including putting National Identity Law (in concert with appropriate ministries), Truth-in-Lending, Banking Act, and deposit insurance reforms on the appropriate executive parliamentary legislative agenda. The resources required to enact these reforms must be identified, including support from international donors to draft reforms, vet drafts with stakeholders, and begin implementation once adopted. As each reform is completed, public education campaigns must be conducted and new training and educational materials created in coordination with educational institutions, business organizations, and other stakeholders to highlight the changes. Finally, a public- and private-sector–based monitoring and evaluation unit should be established to evaluate regularly the status of implementation and any additional reform needs.

The technical capacity of existing human resources in PNG is insufficient to carry out these reforms. Although there are well-qualified individuals in the Bank of PNG and elsewhere who can guide many of the reforms, outside experts will be needed. Donors are already assisting with some of these reforms, but full implementation is likely to take at least five years on most reforms and longer on some. That said, these reforms have low resource requirements, and there are few likely opponents.

Provide public outreach and product development support for lenders to enable swift and effective implementation of collateral reforms under the recently passed Personal Property Security Act.

Feasibility: High
Resources required: Medium
Potential impact of reform: High

The Personal Property Security Act (PPSA) of December 2011 resulted in the adoption of a modern secured lending law and authorized the establishment of regulations and a registry. These reforms are underway. Due to the participatory manner in which this law was drafted, there is great awareness of the reforms, but there is no knowledge—due to no experience—of how to structure loans under the system and what kind of finance products can be offered. For many potential lenders (especially businesses providing trade credits to customers), there is a great need for education and assistance to take full advantage of PPSA.

Development of new products, especially agricultural products, permits an increase in access to capital at more affordable rates. Also, because the loans are properly secured, there is a reduction in risk over unsecured or poorly collateralized practices currently in use. By providing assistance to potential lenders and incorporating new experiences into various training materials, the costs of changing existing practices can be kept low and passed on to the borrowers.

In reforms elsewhere, uptake has sometimes been very slow without public education and industry education and assistance. The agricultural sector in particular may be left out of new product development, or at least develop far more slowly than demand would mandate. These lost opportunities result in lost earnings and growth.

There are few foreign or local lenders in PNG with the appropriate background and experience to develop such products. A steering committee should be established to promote product development by banks and S&Ls, MFIs, nonbank financial institutions, agricultural associations, and businesses that supply customer credit. This includes changes to existing products by preparing appropriate documentation and practices to convert them to the registry system. It also includes development of new forms of secured lending, extending collateral status to various farm products. Local and international experts should be engaged to help develop products for each group, utilizing established successful practices from jurisdictions with similar system as models. Existing resources should be identified and additional funding secured as needed, including funds to cover review by consumer agencies. As products are developed and adopted, public information campaigns should be launched and assistance should be provided for law schools, IBBM, and business schools to create curricula and training materials for business. A public- and private-sector-based monitoring and evaluation unit should be established to evaluate regularly the status of implementation and any additional reform needs. Finally, the judiciary must be included early and continuously to track disputes under the new law. Poor judicial interpretation can completely undermine the reforms if they introduce unintended elements of risk. Specific, detailed training should be provided to judges, lawyers, and others who might be involved in litigation of PPSA cases. As cases come to court, they should be monitored closely and appropriate support should be provided to the court, if permissible, to ensure appropriate decisions based on rule of law.

PROTECTING INVESTORS

From the perspective of a potential investor in agribusiness, Papua New Guinea is a two-sided coin. On the positive side, the country's legal and administrative framework for capital investments is comparatively strong. PNG offers clear, accessible, and predictable laws and regulations pertaining to the rights of investors. The national company law establishes fiduciary duties and defends shareholders from untoward practices of "inside players." A national law on cooperatives similarly creates clear structures of governance for farmers and others seeking to invest collectively in the cooperative model of doing business. Financial data that verifies the soundness of investments, including full and reliable disclosure of company information, is relatively accessible from larger enterprises. Investment policy and practice bear out the entitlement of investors to their profits, even if those profits will be repatriated into another country.

Moreover, specific investment opportunities in PNG agribusiness are tempting. This decade has shown unusually strong growth in commodity prices for palm oil, coffee, rubber, and copra (coconut products). For large and mid-sized investors, there are value-added opportunities in cocoa, tea, vanilla, and other cash crops. The market for agricultural inputs, including fertilizer, seed, pesticides, and machinery, is also booming. Further, investment in livestock and fresh produce could lead to greater local reliance on domestic products as an alternative to expensive imports. The burgeoning potential of the tourism industry also portends promising links to the agricultural sector.

On the other side of the coin, however, PNG presents a formidable set of risks. Fundamentally, as discussed in this report's chapter on Registering Property, investors seeking to build agribusiness in PNG see a country anchored in a regime of property rights that is not, in conventional terms, conducive to growth. Landowner companies and associations lease tracts of land to foreign investors (usually mining or gas companies), but these agreements unfold under extremely tenuous and nontransparent terms.[46] In addition, PNG's national infrastructure, public-sector financial management, and conditions for law and order are notoriously poor. Cooperatives also do not represent a meaningful avenue for doing business in the agricultural sector, given low degrees of trust and poor adherence to formal mechanisms of cooperative governance.

As further detailed in this report's chapter on Employing Workers, PNG's reputation for weak worker skills and low attitudinal readiness presents a disincentive toward investment. Although the government generally allows for outside workers as a means for countering this problem,[47] reliance on foreign labor presents an expensive and potentially destabilizing influence on the investment environment. Further, although PNG has managed to remain politically and economically stable in recent years, its "petty constitutional crisis"[48] in 2011, which landed the country with "two prime ministers, two governors general, two cabinets and two police commissioners,"[49] leaves outsiders with impressions that are far from favorable.

46 See "Wild Times at Porgera," PNGReport (January 2012), at 39–41.

47 Business Advantage, Papua New Guinea, "Strategy to lure top talent" (2011/12), at 10.

48 John F.M. Kocsis, "Papua New Guinea's Great Power Conflict," Harvard Political Review (February 15, 2012).

49 Blair Price, "From the Editor's Chair," PNGReport (January 2012), at 2.

PHOTO BY FINTRAC INC.

ExxonMobil-led PNG LNG project.[50] Success or failure of this initiative, as well as other programs dedicated to wide-scale national development, could make all the difference in shaping PNG as a high-potential destination for future agribusiness investment.

Particularly in the case of agriculture, a sector that requires patient capital and a high tolerance for risk (both market and meteorological), investors require a business climate that minimizes hazards and, to the extent realistically possible, rises to the requirements of international best practice. This chapter discusses these conditions vis-à-vis PNG. In addition, this chapter examines PNG's future as it pertains to the country's investment in itself, that is, through the development and management of a Sovereign Wealth Fund. The purpose of the fund is to help manage future windfall government revenues from the

LEGAL FRAMEWORK

One glance at PNG's "Protecting Investors" ranking under the World Bank's latest *Doing Business* report[51]—and investors surely do consider this ranking—reveals a country that has constructed a relatively friendly legal and regulatory environment with respect to investment. PNG's ranking of 46 out of 183 economies included in *Doing Business 2012* represents a strong showing. In the East Asia and South Pacific region, PNG ranks 7 out of 24 countries, sharing this spot with the neighboring Solomon Islands, Fiji, and Indonesia. Investors will further notice that in this measure, PNG ranks significantly ahead of other comparable investment destinations such as Cambodia, the Philippines, and Vietnam.

The *Doing Business* analysis looks specifically at the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain. The indicators distinguish three dimensions of investor protections: transparency of related-party transactions (extent of disclosure index), liability for self-dealing (extent of director liability index), and shareholders' ability to sue officers and directors for misconduct (ease of shareholder suits index). The data come from a survey of corporate and securities lawyers and are based on securities regulations, company laws, civil procedure codes and court rules of evidence. The ranking on the strength of investor protection index is the simple average of the percentile rankings on its component indicators.

In each of the subindexes created by *Doing Business*, PNG demonstrates a genuine understanding and commitment to a regulatory environment for corporate investors that is

[50] "Nation plans a rainy day fund," PNGReport (January 2012), at 6.

[51] See World Bank, Doing Business 2012, Papua New Guinea (2011), available at http://www.doingbusiness.org/data/exploreeconomies/papua-new-guinea.

accessible, predictable, and transparent, at least with respect to disclosures among company owners. Although *Doing Business* does not consider in its ranking a country's commitment to investment incentives, PNG also endeavors to be regionally competitive through the incentives it offers. Most of its incentives are tax-based; they are discussed at this report's chapter on Paying Taxes. In addition, PNG's **National Investment Policy (1998–99)** prioritizes issues of transparency, equal treatment, and consistency so that potential foreign investors will make "medium-term strategic decisions" to invest in PNG.

The **Companies Act (1997)** and **Companies Regulation (1998)**, significantly drawn from the example of New Zealand, replaced a long-standing company law that was based on the English Company Act of 1948. Supplemented by the **Takeovers Act (1997)**, PNG's company law regulates all matters regarding the establishment, governance, and merger/acquisition of privately and publicly owned companies. Under the law, enterprises may take a number of forms—private companies, public companies, branches of foreign companies, partnerships, joint ventures, and sole traders.[52]

KEY LAWS

- National Investment Policy (1998–99)
- Companies Act (1997) and Regulation (1998)
- Takeovers Act (1997)
- Cooperative Societies Act (1982) and Regulation (2003)
- Cooperative Societies Policy (2008)
- Investment Promotion Act (1992)
- Securities Act (1997) and Regulation (1998)
- Superannuation (General Provision) Act (2000)
- Land Groups Incorporation (Amendment) Act (2009)
- Land Registration (Customary Land) (Amendment) Act (2009)
- Organic Law on the Sovereign Wealth Fund (2012)

Despite a sound legal framework, the process of launching a formal enterprise, as detailed in this report's chapter on Starting a Business, is more cumbersome and time-consuming than it needs to be, as reflected in PNG's *Doing Business 2012* world ranking of 84 out of 183 countries for this topic.

The country's **Cooperative Societies Act (1982)** and accompanying **Cooperative Societies Regulation (2003)** aims to present cooperative governance and administration as an effective alternative for "ordinary citizens," particularly those dwelling in remote rural environments, to invest in agribusiness. The model has never achieved particular success, however, notwithstanding the subsequent development of a **Cooperative Societies Policy (2008)**. Due to lack of trust among actors, weak interest among potential cooperative members in the strict governance requirements, and poor guidance and support provided by government agencies, the establishment of independent, modern cooperatives in PNG remains an essentially untapped option.

The **Investment Promotion Act (1992)** created the Investment Promotion Authority (IPA) and establishes that agency's jurisdiction over key investment functions, including the registration and certification of foreign investments. The investment act guarantees against nationalization or expropriation of foreign investors' property except in accordance with law, for a public purpose defined by law, or in payment of compensation as defined by law. The law defines foreign enterprise is one in which more than 50 percent is owned directly or indirectly by non-citizens or an enterprise controlled by non-citizens.

Registration with the IPA takes a number of steps, but the agency is obliged to process an investment certificate within 35 days. There are restrictions on foreign ownership that the law aims to protect, in particular, small-scale enterprises. As discussed in this report's chapter on

[52] An excellent summary of these options for company formation is found at the PNG Investors Manual (2010), jointly produced by the Asian Development Bank, the Port Moresby Chamber of Commerce, and the PNG Investment Promotion Agency.

Starting a Business (Social Dynamics), these stringent limitations on the types of businesses outside investors may own could have profound results on the availability and quality of many agricultural-related goods and services. The social intent to protect local citizens and entrepreneurs clearly results in negative economic outcomes for consumers, processers, traders, and others. In short, this politically popular law constrains economic development.

Nonetheless, with respect to foreign investment generally, PNG is known as "an attractive destination for investors," due especially to its vast resources of natural gas, copper, gold, and nickel.[53] PNG has bolstered its credibility with respect to foreign investment through its participation in such international vehicles as the Multilateral Investment Guarantee Agency (MIGA), the agency for Asia-Pacific Economic Cooperation (APEC), and the World Trade Organization (WTO). In managing a vast recent inflow of investment, PNG has done a good job of living up to the representations of its investment-related policy and law, thereby meeting a critical threshold consideration for potential investors. In short, through its legal framework, PNG is, at least in part, "broadcasting a confident message that [it] is open for business."[54]

PNG's **Securities Act (1997)** established the Securities Commission, which opened its doors in March 1998. The commission regulates the establishment of stock markets and practices pertaining to the offering of company ownership shares to the public.

Pursuant to the legal framework and regulatory structure for public ownership, domestic companies must pass a "net tangible assets test" or "profit test" in which they show assets of at least PGK 1.5 million or profits of PGK 600,000 over the last three full financial years. Foreign entities must show net tangible assets of PGK 50 million or PGK 10 million in profits over the last three years. Although the terms of establishment and governance are stiff, public ownership of enterprises represents an important model for agribusinesses in PNG to generate capital and grow. The legal framework in PNG, along with the country's positive experience in recent years with the growth of publicly traded companies, bode well for this form of ownership in the future.[55]

The **Superannuation (General Provision) Act (2000)** was established to encourage both long-term savings by the country's workers and responsible investment of retirement incomes. The law extends the requirement for mandatory contributions to all employees, including non-citizens, and mandates superannuation for companies of 15 employees or more. Under the law, corporate trustees, investment managers, and fund administrators are required to be separate licensed companies and to comply with ownership and control provisions. Trustees of authorized superannuation funds are further required to appoint licensed investment managers and fund administrators. Integrating a key feature of responsible corporate governance, the law prohibits certain investments, including loans to members. The Superannuation Act further addresses

FROM BLOOMBERG: MINI-PROFILE OF PNG'S TWO PUBLICLY TRADED AGRIBUSINESSES

New Guinea Islands Produce Company Limited (NGIP) produces, trades, and distributes cocoa. It also provides coastal shipping; hardware, machinery, and agricultural chemicals and products distribution; steel fabrication and engineering; and trucking services. NGIP was founded in 1971 and is based in Rabaul, Papua New Guinea.

New Britain Palm Oil Limited is an integrated industrial producer of sustainable palm oil in Australasia. The company owns and operates palm oil plantations, seed production and plant breed facilities, and two refineries.

53 John F.M. Kocsis, "Papua New Guinea's Great Power Conflict," Harvard Political Review (February 15, 2012).

54 "The changing face of investment in PNG," Business Advantage, Papua New Guinea (2011/12), at 14.

55 "Resources drive stock exchange growth," Business Advantage, Papua New Guinea (2011/12), at 20.

members' rights, withdrawals, and transfers between funds. It also provides that the government will guarantee liabilities incurred by superannuation funds, including through failures of certain investments or fund mismanagement. In fact, the "off the books" contingent liabilities implicated by the Act pose a danger of being activated, thus forcing the government to meet these liabilities at the expense of providing other services.

Another legal regime relates closely to the environment for protecting investors in PNG. Namely, the **Land Groups Incorporation (Amendment) Act (2009)** and the **Land Registration (Customary Land) (Amendment) Act (2009)** have created a new vehicle for customary landowners to join together for the purpose of leasing their tracts (usually to large gas or mining concerns) and, in some instances, investing the proceeds on behalf of their shareholders. Although ILGs, as well as other landowner companies and associations, represent an important investment vehicle in PNG, the exceptionally opaque expectations for their governance and financial reporting practices make ILGs a target rife for abuse. For example, the "cash rich" Porgera Landowners Association, located in a gold-mining region, receives millions of dollars in royalties for land usage each year. There is no apparent requirement or expectation, however, for that association to publish its records to explain how, precisely, its money is spent. At the same time, the organization's leadership is reported to live lavishly.[56]

The **Organic Law on the Sovereign Wealth Fund (2012)**, though not directly pertaining to private investment in PNG, nevertheless represents a very important development with respect to the overall environment for doing business in the country. PNG's Parliament unanimously enacted the law on February 23, 2012. During the public discussion of the law, the Prime Minister said:

PHOTO BY FINTRAC INC.

The setting up of the SWF [Sovereign Wealth Fund] will ensure we manage our windfall revenue from the export of our resources, particularly the oil and gas resources. . . . In the past a lot of revenue have flowed into government from BCL, Ok Tedi, Misima Mines, and Porgera. But if you look around you, there is virtually nothing to show for this enormous wealth. We have squandered our wealth, and the future of our children. With the SWF we will turn things around. We will protect and grow our windfall revenue to ensure our children's future is secured.[57]

56 "Wild Times at Porgera," PNGReport (January 2012), at 38–41.

57 "PNG Parliament approves Sovereign Wealth Fund," Islands Business (February 24, 2012) (quoting Peter O'Neill).

PHOTO BY FINTRAC INC.

As this statement confirms, the fund aims to position PNG to avoid the mistakes of other countries that have found themselves awash in massive profits of the extractive industries—that is, the dreaded "Dutch disease." Given its 19.4 percent equity stake in the LNG project, PNG wants to avoid the fate of countries like Nigeria and Sudan, where, notwithstanding vast oil revenues, the majority of citizens live in poverty while a relative few privileged and corrupt individuals exploit their access to massive amounts of wealth.

IMPLEMENTING INSTITUTIONS

INVESTMENT PROMOTION AUTHORITY (IPA)

The IPA is responsible for the registration of all companies as well as the promotion, facilitation, and certification of foreign investment in PNG. Established by the Investment Promotion Act of 1992, the core functions of the IPA include the following:

- ***Business investment and export promotion/Investor facilitation and servicing.*** This division is the "promotional arm" of the IPA. It is charged with providing information on PNG investment opportunities, educating the business community, answering queries from the public, and facilitating business introductions through its database of foreign and domestic investors.

- ***Business information and facilitation—foreign certification.*** Foreign investors seeking certification must register with this division. The division also conducts research into trade and investment opportunities in PNG for support work on policy formulation by the Ministry of Trade and Industry.

- ***Business registration and regulation—companies office.*** This division manages the administration of Papua New Guinea's key business laws, including the Companies Act, the Business Names Act (Chapter 145), the Business Groups Incorporation Act (Chapter 144), and the Associations Incorporation Act (Chapter 142). It also plays a role in developing regulations pertaining to PNG's securities market.

Aside from its middling reputation with respect to the registration of new businesses, the IPA has a generally solid reputation for responsiveness and service. Its web presence, which is very

KEY IMPLEMENTING INSTITUTIONS

- Investment Promotion Authority
- Other national and local authorities
- Securities Commission
- Bank of Papua New Guinea
- Sovereign Wealth Fund, including stabilization and development funds

important for setting the national tone for foreign investment, is relatively well maintained and useful. The IPA's office in Port Moresby is housed in a building that also rents space to a number of national associations that are dedicated to the success of the private sector, including the Rural Industries Council and the Institute for National Affairs, as well to the practice of good governance, such as Transparency International. The IPA can generally be considered to maintain an effective dialogue with investors and is prepared to respond to questions and requests presented by individuals and companies interested in doing business in PNG. As for trade promotion, the IPA tends to focus on the extractive industries and does not dedicate proportional resources, according to stakeholders, to agricultural concerns.

OTHER NATIONAL AND LOCAL AUTHORITIES

Other agencies are involved in the administrative establishment or operations of foreign investments. The **Department of Foreign Affairs** oversees immigration procedures and visas for noncitizens. The **Department of Labor and Industrial Relations** processes work permits for noncitizens and regulates occupations that are prohibited for non-citizens. The **Bank of Papua New Guinea** administers PNG's foreign exchange controls. Moreover, investors must also be mindful of the regulatory authority over business licensing, infrastructure development, and other key functions held by local authorities.

SECURITIES COMMISSION (SCPNG)

This agency oversees the administration and transfer of shares among of publicly owned companies. SCPNG has the authority to prohibit trading in particular securities where it finds it necessary to protect persons buying or selling securities or in the interest of the public. SCPNG's oversight does include government bonds, superannuation funds, and insurance securities, which are regulated by different entities. It oversees the Pacific Balance Fund (formerly the Investment Corporation Fund of Papua New Guinea (ICFPNG)), owned by 38,000 "ordinary Papua New Guineans," and the Pacific Property Trust, owned by landowners from the oil fields in the Southern Highlands Province. The combined value of these trusts is in the PGK tens of millions.

BANK OF PNG

PNG's central bank, discussed in this report's chapter on Getting Credit, maintains authority over a number of investment-related tools. These include government treasury bills, central bank bills, and government inscribed stock, for which the bank issues invitations to bid and auctions to the highest bidders. The bank also regulates the country's seven authorized superannuation funds.

SOVEREIGN WEALTH FUND

Under PNG's new law pertaining to management of is growing resource-derived wealth, the Sovereign Wealth Fund (SWF) will have two parts: a stabilization fund and a development fund. The purpose of the stabilization fund is to enable the government to respond to fluctuations in mineral and petroleum revenues, including minimizing the impact of resource revenue on the country's exchange rate. The development fund is designed to direct national revenues into discrete projects that support economic and social development in PNG.

The development fund creates two new entities—an infrastructure authority and a state owned enterprise (SOE) capitalization account. Critics aver that these new agencies, though intended to get around current public-finance bottlenecks, may actually duplicate the role of existing agencies and "hollow-out" already poorly resourced government institutions. For example, the SOE account appears to significantly duplicate the mission of the **Independent Public Business Corporation**, which already assists SOEs—including the PNG Ports Corporation, PNG Power, PNG Post, PNG Water Board, and others—in increasing their capacities.

PHOTO BY FINTRAC INC.

One critical feature of the SWF is that it will be managed by an independent board required to abide by stringent standards of governance, transparency, and asset management. Moreover, the Organic Law stipulates that the funds will be invested outside the country, so that conflicts with local investments and enterprises can be avoided.

SUPPORTING INSTITUTIONS

SUPPORT FOR PUBLICLY OWNED COMPANIES

Currently, 22 companies are listed on the Port Moresby Stock Exchange (POMSOX), PNG's only stock exchange. Around half of these are "dual listed" on exchanges in other countries. Most members of POMSOX are energy, gas, or mining companies. Just two agribusinesses are represented, New Guinea Islands Produce Company and New Britain Palm Oil. Only authorized brokers may purchase and sell company shares listed on POMSOX. Two licensed stockbrokers—Kina Securities and BSP Capital—currently operate in PNG.

SERVICES AND FACILITIES TO SUPPORT INVESTMENT IN AGRIBUSINESS

In PNG's capital, there is a generally strong set of professional resources to support the execution of due diligence for investors, and, ultimately, for investment in the country. Major international consulting firms do business in Port Moresby and provide facilitative services for larger outside investors. Specifically, there is a strong cadre of law firms (generally staffed with foreign-educated lawyers) and other services such as accounting, staffing, financial administration, logistics, inspection, verification and testing, and even export promotion. These services are enormously expensive, however—reputedly higher than comparable services available in countries such as Indonesia or the Philippines. Moreover, they tend to be dedicated to the demands of the oil, gas, and mining sectors.

Despite the wealth of potential in PNG's agricultural sector, few business services are dedicated to special issues that arise in agribusiness, aside from navigating complex land constraints (an issue as much of a concern to the mining industry as it is to agribusiness). Outside of the capital, business services are thin and held in low regard. Lawyers and other professionals outside the capital do not have access to consistent and appropriate continuing education opportunities. The one service subsector that appears to be a growth industry in the remote regions is private security.

One critical problem for investors is the high expense and low availability of office space and housing for their employees. Since the LNG

KEY SUPPORTING INSTITUTIONS

- Stock exchange and stock brokers
- Professional support services for investors
- Information resources
- Business associations
- Media
- Institutional investors

project was launched, "costs have gone through the roof," according to an expatriate employer. Temporary quarters for foreign workers at local hotels are some of the most expensive in the world.

INFORMATION RESOURCES FOR INVESTORS

To fully assess the risk of potential projects, investors need information. They require access to laws and information; accurate statistics, including those pertaining to agricultural production and trade; reliable profiles of existing companies; credit information; financial profiles of public officials; accurate media and academic analysis; and so forth. Without prompt and meaningful access to information, potential investors are likely to search elsewhere for opportunity. As a practical matter, where governments and companies endeavor to place key information online, they must also have a plan for keeping that information updated and current.

Relative to many developing environments, PNG provides a generally sound set of information resources for foreign investors. The independent Institute for National Affairs periodically performs a private-sector survey, so potential investors can learn about the experiences of people already doing business in the country. A host of regular print and online publications created by private clearinghouses and consulting firms, as well as some donor-funded investment guides, provide regular analysis and updates concerning the investment environment. They even delve into complex issues of law and order, local community relations, and financial transparency. Although these publications tend to skew toward interests in PNG's resource sector, many also highlight activities and opportunities in agribusiness.

Domestic investors, in light of the extremely limited level of internet access in PNG, may in some instances have less information than foreign investors. As explained by Freedom House, "The government does not restrict access to the internet, but lack of infrastructure limits internet penetration in the country to 1.28% of the population."[58]

Another area that affords extremely poor information coverage for PNG is economic and consumer-related statistics. As of February 2012, valuable information in the form of government-managed or private-sector-collected statistics is widely lacking—investors, economists, and others must continue to refer to data from the 2000 Census, which by now has little relevance. Reports from statistics collection efforts, including the 2011 Census (delayed from 2010) and a National Household Data inquiry in 2009, have been put on hold or never released. The website of the National Statistics Organization promises critical reports, but again, as of February 2012, had not been updated in more than a year.

TRADE AND INDUSTRY ASSOCIATIONS, BUSINESS COUNCILS, AND OTHER PRIVATE-SECTOR ORGANIZATIONS

Relative to many other developing countries, business organizations, including provincial chambers of commerce and national business associations, are well organized and active in PNG. Trade and industry associations represent the investment priorities of the private sector to local and national government agencies and, increasingly, they believe they are being heard. This report's chapters on Dealing with Licenses and Competing Fairly provide greater detail about the major industry associations in PNG.

[58] See Freedom House, Freedom of the Press 2011, Papua New Guinea.

MEDIA COVERAGE OF INVESTMENT-RELATED INFORMATION

In 2011, Freedom House praised the state of media freedom in PNG:

> News media in Papua New Guinea (PNG) remain among the most vital and independent in the South Pacific despite constant pressure from politicians. Under Section 46 of the constitution, freedom of speech, press, and information are guaranteed. Journalists can be sued for defamation in civil cases, but defamation is not a criminal offense. The independent PNG Media Council acts as buffer against government pressure by lobbying for media freedom, managing a complaints process, and undertaking media research. The council also has a well-developed code of ethics, which member journalists follow.
>
> . . . Radio is an important source of news due to country's isolated settlements and low literacy rates. . . . The Post-Courier is owned by the Australia-based News Limited subsidiary of Rupert Murdoch's News Corporation. The National, which has a larger circulation than its older rival, is owned by the Malaysian timber company Rimbunan Hijau, which has major interests in local logging and trading industries. Papua New Guinea's main television station, EMTV, is owned by Fiji Television Limited.[59]

Notwithstanding the freedom (and foreign influence) of the media, an issue that has gone relatively unscrutinized in PNG is the relationship between major foreign investors (resource companies in particular) and the landowners associations from which they lease the land on which they operate. Also, as previously mentioned, the landowners associations are apparently not bound to reporting requirements for their shareholders, so they operate in a context of secrecy and opacity. More media coverage of these issues could result in stronger understanding of the real context for doing business.

INSTITUTIONAL INVESTORS

To a greater and more sophisticated degree than many other developing countries, there are a number of important vehicles for investment in PNG. They serve a variety of purposes, but ultimately each aims to generate the greatest returns for their respective shareholders. For example, certain development funds seek to bring about the best returns on public monies earned through resource deals. Superannuation funds aim to grow the retirement savings of their members. Incorporated land groups seek to grow returns from their incomes from land leases. Private equity and banks aim to generate profits from new enterprises or revitalize older ones. A representative set of these organizations is discussed below.

Development funds

Long-term failures in public financial management in PNG have resulted in efforts to create independently run investment and development initiatives that are committed to good governance, transparency, and accountability. One of the largest, the PNG Sustainable Development Program (PNGSDP), aims primarily to develop infrastructure and other social goods in PNG. PNGSDP was established in 2002, when BHP Billiton divested its 52 percent shareholding in the Ok Tedi Mine following concerns about the mine's long-term environmental impact and the social and economic repercussions of environmental decay. PNGSDP is now charged with applying the funds coming from the mine that are assigned for the development of the PNG, in particular for the people of the Western Province. When the Ok Tedi Mining operation ends in the Western Province around 2013, PNGSDP's charter commits the fund to ensuring that "ongoing and lasting benefits remain with the people of the Western Province and PNG as a whole." According to

[59] Id.

its own literature, PNGSDP "acts as either a development or investment partner in a rapidly expanding portfolio of projects spanning a range of industries, from agriculture, fisheries, and forestry, to tourism, energy, and infrastructure."

Incorporated land groups and other land-based companies and associations

The landholder groups created in 2009 through the **Land Groups Incorporation (Amendment) Act** and the **Land Registration (Customary Land) (Amendment) Act (2009)**, as well as other landowner-owned companies and associations, many which have existed for years, have a great deal of money to invest. Their reputation though, is for the riskiest types of investments—ones that are high stakes but also extremely opaque in their details of implementation.[60] Whether the proceeds from the investment reach the shareholders is rarely known—the system of property delineation makes it very hard to know who the actual landholders are. In fact, according to observers, the incorporated land group model is "grossly abused." That said, some land company investments do reach their stakeholders, such as a purchase of a large truck to serve the transport needs of food producers in the Highlands. Landowner companies also represent an important employer in PNG. They are, for example, responsible for a great deal of the hiring of PNG nationals affiliated with LNG and other large resource projects.[61]

Superannuation funds

The Superannuation Act makes the Bank of PNG responsible for the licensing and prudential supervision of the superannuation industry. To date, the bank has authorized seven superannuation funds to provide superannuation services. These companies are active investors in the PNG economy, including in agribusiness. For example, Mainland Holdings, which produces chicken for domestic consumption and crocodiles for export, has a combined

PHOTO BY FINTRAC INC.

ownership of certain long-standing cooperative societies and, since around 2000, NASFUND, a superannuation fund.

Banks and private equity

One of the most important investors in PNG is the ADB, which has made significant loans and grants to the country to improve a variety of critical services, including transport, power, public sector management, trade and private sector development, and health. ADB's contributions clearly have strengthened the quality of life in PNG. For example, the ADB's equity stake in the country's two phone companies has transformed the quality of mobile services and vastly improved public access to communication. The ADB has also supported the establishment of PNG's only private equity funds, Kula Fund I and Kula Fund II Limited. Other large financial investors in PNG include the country's major commercial banks, ANZ Papua New Guinea and Bank South Pacific.

60 See "Wild Times at Porgera," PNGReport (January 2012), at 39–41.

61 See "A PNG-Flavoured Skills Crunch," PNGReport (January 2012), at 50–51.

PHOTO BY FINTRAC INC.

SOCIAL DYNAMICS

POLITICAL STABILITY

On January 27, 2012, Standards and Poor's downgraded PNG's credit rating outlook from "B+ neutral" to "B+ negative." In defense of this decision, the agency stated:

> The unresolved claims to the prime minister position underlie the vulnerabilities associated with the country's fragmented political structure, public policy development, and service delivery, which have traditionally constrained the ratings on PNG. In addition, there is a lack of transparency in the activities of statutory authorities, trust accounts, and other government-owned or government-controlled entities contributing to PNG's off-balance-sheet liabilities. Further constraining the ratings are the infrastructure shortcomings and security risks that impede investment required to diversify the economy. However, the government's moderate fiscal flexibility and the strong potential of the minerals and allied sectors to boost economic growth support the ratings.
>
> We would lower the ratings if the political friction remains unresolved, leading to a loss of donor support and investment required to diversify the economy and buttress PNG's government finances and external position. A return to a stable outlook would require a normalization of the country's policy and institutional platforms, evident from the election of a government with a clear mandate and an easing in political tension.

PNG elections—scheduled to take place between June 23 and July 6, 2012—could go a long way in assuaging outside concerns about the country's political stability. A relatively quiet, peaceful, and transparent election, producing verifiable and trustworthy results, can have the immediate impact of improving perceptions by potential outside investors. Until then, business leaders believe that most government officials are "distracted" and not especially focused on policy implementation *after* the election.

"LOOK NORTH"?

Increasingly, the foreign investment community in Papua New Guinea is represented by partners from Asia. Though there has been a Chinese community in PNG for 120 years, China is increasingly active in PNG's economy, along with Malaysia and longer-term partner Japan. Even Indonesia, which despite its nearness to PNG has had a limited relationship to date, is increasingly active in PNG's economy. PNG's government is generally receptive to all investors, beginning with its traditional business partners from Australia and New Zealand and now as well with certain developing economies from Asia.[62]

The growing presence of investors from the north creates some tensions. In particular, the growing Chinese presence in PNG underscores key differences between values promoted by the country's western partners, including the US, and China. In its relations, and particularly with respect to growing sovereign wealth, the US emphasizes good governance, transparency, and public financial accountability. During her visit in 2010, Hillary Clinton also emphasized the issues of climate change, women's empowerment, and the environment.[63] For its part, China generally declines to pass judgment over how PNG chooses to spend its resources.

Tensions also exist on main streets throughout PNG, where PNG citizens resent the growing presence of Chinese entrepreneurs, perceiving them to be taking their opportunities. Local businesspeople assert that Asian companies are insufficiently active in business associations and chambers of commerce. Foreign investors are often keen to engage Chinese and other Asian laborers, due to their reputation for hard work.

Notwithstanding reservations of the US and average citizens in PNG about competition issues presented by the Chinese presence in PNG, "many established politicians [in PNG] have a tendency to get along with Beijing just fine."[64]

THE MARKET FOR WORKERS

A common refrain among investors in agribusiness and sectors in PNG is that local workers are lacking not only in tangible, higher-level skills but also in sound work habits and positive attitudes toward work. Competition for strong local workers is fierce, while great amounts of money are spent on bringing in additional labor from other countries. This issue is detailed in this report's chapter on Employing Workers.

LAW AND ORDER

Even if some knowledgeable members of PNG society would argue that the problems with law and order are overstated, the country's reputation remains poor in this respect, and investors have good reason for caution. As noted in this report's chapter on Getting Credit (Social Dynamics), problems with law and order permeate every business. During this diagnostic, one producer and processor of livestock estimated that it loses at least 10 percent of its potential income to theft and fraud. In rural areas, illegal roadblocks and looters pose a significant threat to companies transporting their goods to market. Whistleblowers against illegal logging or similar destructive activities face violence against them in a community to turn. Moreover, tensions between groups—whether they are rural workers who have drifted into urban areas or foreign merchants who are perceived to have "stolen" opportunities that locals believe are rightfully theirs—flare up periodically, sometimes resulting in truly dangerous situations.[65] The Royal PNG Constabulary faces serious problems of resourcing and discipline, and major divisions within the police force are often visible. According to many interviewees, police officers are also at the disposal of privileged benefactors.

RECOMMENDATIONS

Provide technical assistance and administrative support in the creation of the Sovereign Wealth Fund, ensuring that systems for governance, transparency, and accountability are well in place as the fund is launched.

Feasibility: High
Resources required: Medium
Potential impact of reform: Medium

[62] "PNG looks north for investors," Business Advantage, Papua New Guinea (2011/12), at 17.

[63] U.S. Department of State, Secretary Clinton's Visit to Papua New Guinea Underscores U.S. Engagement with Pacific Island Countries (November 3, 2010).

[64] John F.M. Kocsis, "Papua New Guinea's Great Power Conflict," Harvard Political Review (February 15, 2012).

[65] See "Urban Unrest in Lae: The Tip of the Iceberg?" PNGReport (January 2012), at 35–36.

Many of the risks presented by PNG's investment environment, including for agribusinesses, are the result of poor financial management and inadequate infrastructure. The SWF presents an opportunity to counter these risks through productive use of monies earned through large resource-extraction projects. It is critical that the SWF start off "on the right foot."

If the SWF is well managed, the benefit will not only be improved infrastructure and public services in PNG but also a model for good governance that to date has been lacking in the management of public funds. However, local capacity for sound financial management is limited, and the temptations of "inside dealing" among privileged lawmakers who may have some access to the funds will need to be controlled.

All international donors, particularly the ADB, are interested in and committed to the success of the SWF. A coordinating group among donors may be especially useful for this initiative. First, all SWF-related assistance currently planned by donors should be mapped and any gaps or need for technical assistance identified. Then, a two-year plan should be devised that provides leveraged technical assistance to the implementers of the SWF. Guidance should be sought from Norway, which has managed to become one of the world's most stable and prosperous countries, due in significant part to its wise management of profits from its natural resources through the use of a SWF.

PAYING TAXES

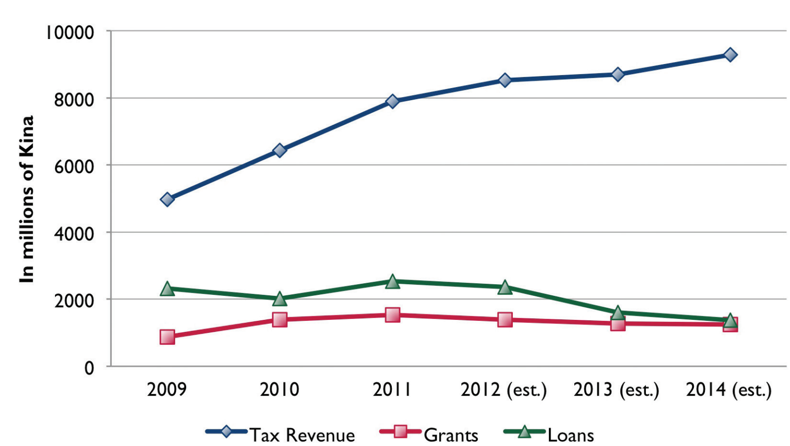
Fair and efficient taxation is the backbone of a strong democratic system. Tax revenue is essential to fund long-term, countrywide strategies to support the health, education, and infrastructure of a nation. Many of these initiatives directly improve the well-being and economic opportunity of farmers and small businesses within the agricultural sector.

In general, PNG's tax system is not saddled with many of the common shortcomings found in the tax regimes of other developing countries. Cumbersome, low-yield taxes that pepper the tax codes of other nations are largely absent. While tax filing and payment is still paper-based, the procedures are straightforward, and efficiency is likely to improve with the introduction of online filing later this year. The Internal Revenue Commission (IRC) has adopted a customer service–oriented approach and conducts taxpayer awareness trainings in rural areas when funding allows. By and large, taxpayers consider their dealings with the IRC to be respectful and corruption-free.

As a result, voluntary taxpayer compliance within the formal sector is common, and revenue collection is high. This is the case despite PNG's status as a relatively high-tax jurisdiction. The highest marginal tax rate on individuals is 42 percent, and tax as a percentage of GDP is 22.4 percent. In recent years, revenues derived from taxes have steadily increased, while the percentage derived from foreign aid has decreased (see graph above). With the completion of the LNG project, PNG has the potential to fund its entire national budget from domestic tax revenue within several years.

Despite these advantages, PNG has failed to achieve its central development goals and still scores poorly on the human development index for poverty, literacy, and health indicators. Of course, collecting tax revenue is only the first step in achieving national goals. The government must also act as a responsible steward to ensure that those funds are spent in accordance with national priorities. In PNG, a complete lack of accountability in public financial management results in a system in which ad hoc political pet projects funnel money to political supporters while government agencies lack the funds to implement long-term strategies to improve the health, education, and economy of the nation.

SOURCES OF GOVERNMENT REVENUE



LEGAL FRAMEWORK

ACCESS TO LAWS

In general, PNG's tax laws are difficult to decipher for a layperson. PNG's Income Tax Act dates from 1959 and, as a result of amendments, now contains more than 350 articles. All of the laws are available online, and the IRC has provided easy-to-read summaries of the laws on its website. However, farmers in rural areas have little to no internet access, and IRC offices are present only in the 19 provincial capitals throughout the country. To educate taxpayers about their rights and obligations, the IRC tries to conduct regular regional taxpayer awareness trainings, as described later in this chapter.

TYPES OF TAXES

Like most countries, PNG law establishes, and the state enforces, a number of types of taxes, as discussed below.

Income taxes

Under PNG's **Income Tax Act (1959)**, the top tax rate for individuals is 42 percent, and the threshold for taxation is low—PGK 7,000 (approximately USD 14,000). By contrast, the top marginal rates in the Cook Islands, Fiji, and the Solomon Islands are 30 percent, 31 percent, and 40 percent, respectively. The income tax threshold will increase slightly to PGK 10,000 on July 1, 2012, to adjust for inflation. Residents are taxed on their worldwide income, while nonresidents are taxed on their PNG-sourced income. All taxes apply equally to women and men, and there is no provision for joint filing by married couples.

The corporate income tax rate is 30 percent for domestic companies. In addition, dividends are taxed at a 17 percent rate. Thus, the effective tax rate on distributed profits is 41.9 percent, roughly equivalent to the top tax rate for individuals. Foreign companies, by contrast, are taxed at a rate of 48 percent. The tax on foreign companies is one of the highest in the world. Accordingly, absent the existence of a Double Taxation Treaty that lowers or eliminates the rate deferential, most foreign companies either: (1) incorporate locally to receive the 30 percent rate or (2) opt to pay a 48 percent rate on 25 percent of gross receipts under the foreign contractor withholding regime as a first and final tax on their earnings in PNG. Under this regime, nonresident companies pay an effective rate of 12 percent on gross income as opposed to 48 percent on net income. The company can elect to use this regime on a contract-by-contract basis. During this diagnostic, interviewees reported that cooperatives are subject to the same tax rate as companies. However, cooperatives may apply for a five-year exemption from income tax under the Income Tax Act if established for a nonprofit, charitable purpose.

All companies, partnerships, trusts, and superannuation funds must file a tax return. Salaried employees' payments are made by the employer on their behalf through withholding on wages, such that employees need not file a return. However, any individual with nonwage income of more than K100 must file a return. Individuals and companies pay taxes on a provisional payment system based on the previous year's assessment of taxable income by the IRC. Companies make three provisional payments on April 30, July 31, and October 31. Individuals make one provisional payment on September 30. Tax returns are due on February 28 of the following year. The final payment is made after the year's tax return has been filed and assessed by the IRC.

KEY LAWS

- Income Tax Act (1959)
- Goods and Services Tax Act (2003)
- Customs Tariff Act (1990)
- Organic Law on Provincial Governments and Local-Level Governments (1998)
- Local-Level Government Head Tax Enabling Act (2003)
- Double tax treaties

SMEs pay taxes at the same rates and under the same administrative regime as large corporations. This creates an undue administrative burden on SMEs. Aware of this problem, the IRC is currently working with the International Finance Corporation (IFC) to design a simplified tax regime for SMEs in line with international best practice.

Goods and services tax (GST)

PNG's GST applies at a flat rate of 10 percent on all sales of goods and services by registered companies. Under the **Goods and Services Tax Act (2003)**, companies are required to register for the GST only if their total nonexempt sales in PNG amount to more than K100,000 in any 12-month period. As of July 1, 2012, this threshold will be increased to PGK 250,000. Voluntary registration by companies who do not reach the threshold is permitted. Furthermore, all exports are zero-rated. Given the high threshold and zero-rating of exports, GST collection in PNG is quite low, comprising only 6.4 percent of all tax revenue in the 2012 National Budget.

Most farmers in PNG do not earn enough income to be required to register for the GST. Without participating in the GST system, however, farmers cannot claim a credit for the GST paid on purchases of inputs such as seed and fertilizer. To compensate the farmers, the Goods and Services Tax Act (2003) permits primary producers to add 1 percent to their prices, which is later claimed as a GST credit by the buyer.

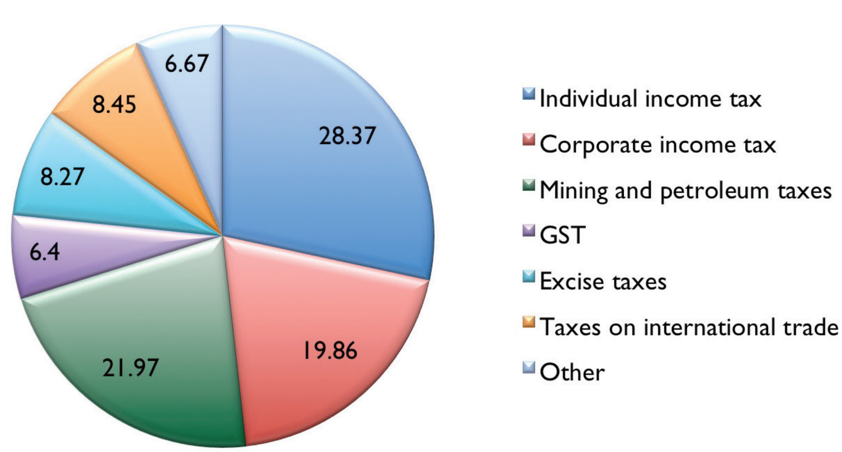
Reportedly, the IRC is considering an amendment to the GST Act that would allow taxpayers with a strong compliance history to defer the payment of GST on imports and to net the amount due to the IRC against credits claimed in the taxpayer's future GST returns. This amendment would decrease the administrative burden on taxpayers and the IRC for transactions that create no net revenue for the government.

Import/export taxes

Apart from crocodile skins, log exports, and sandalwood, agricultural products are exempt from export taxes. Reports by the WTO and KPMG from 2010 both describe an export tax on vanilla of PGK 10 per kilogram, but neither the Customs Service nor the PNG Spice Board was aware of this tax and no such tax appears in the most recent publication of Schedule 2 of the **Customs Tariff Act (1990).**

In contrast, import duties apply to many items, including agricultural equipment and chemicals, although these rates have been reduced in recent years. During this diagnostic, one business owner complained that tariff rates change frequently, making it difficult to plan and conduct business.[66]

DISTRIBUTION OF TAX REVENUE



[66] See this report's chapter on Trading Across Borders.

PHOTO BY FINTRAC INC.

Land taxes

Property tax applies at varying rates in each province on the unimproved value of alienated land, which makes up only 3 percent of PNG's total land area. Provincial governments have the sole authority to collect land taxes.

Social security contributions

Employers with 15 or more employees must make contributions to an authorized superannuation fund equal to 8.4 percent of the employee's gross salary in addition to the 6 percent withheld from wages and paid on behalf of the employee. Certain agricultural subsectors are exempt from this requirement, including coffee, copra, cocoa, oil palm, rubber, and tea.

Training levy

All businesses with annual payroll expenses of more than PGK 200,000 must pay a tax equal to 2 percent of all wages and benefits paid. The levy can be offset by the amount of any qualifying training expenses incurred during the year.

Transportation taxes

Formal taxes on transportation (such as vehicle or fuel taxes) are low, but informal taxes by the police or private individuals are sometimes demanded as well. There are anecdotal reports that the police in Port Moresby conduct random stops of vehicles and demand on-the-spot compensation if safety violations are found. In addition, it is not uncommon for villagers along the Highlands Highway to construct roadblocks and exact informal payments for road repairs.

Administrative fees

All agricultural industry boards charge one or more fees for their services. These levies are low (around 3 to 4 percent of the value of an export shipment) and are generally not considered a substantial burden by the agribusinesses interviewed. However, agribusinesses resent paying the fees to industry boards that they do not feel provide any valuable services in return. For their part, industry boards complain that they lack the necessary funding to fulfill their mandates, as the levies reportedly do not cover their operational expenses, and budget shortfalls must be supplemented by allocations from the national government.

Local taxes

PNG's Constitution gives sole power to levy income tax to the national government. Under the **Organic Law on Provincial Governments and Local-Level Governments (1998)**, however, the national government has delegated certain taxation powers to the provincial and local-level governments. Provincial governments have the authority to impose land taxes, transportation taxes, and various licensing fees. Provinces may also levy their own sales and services tax in addition to the GST. In doing so, however, the provincial government would forfeit its right to 60 percent of the national GST revenue collected in the province. Thus, none of the agribusinesses interviewed during this diagnostic reported paying a provincial-level sales and services tax.

Local-level governments (LLGs) may charge fees for trader's licenses, domestic animal licenses, and community services such as water and sanitation. LLGs also have the authority to impose a general corporation and/or personal head tax. Head taxes were reportedly informally charged in some provinces for many years before being legitimized in the **Local-Level Government Head Tax Enabling Act (2003)**. Nonetheless, neither the IRC nor any agribusinesses interviewed were aware of any head taxes currently collected in PNG.

TAX INCENTIVES

The IRC offers many tax incentives to encourage investment in the agricultural sector, including accelerated deductions for capital improvements, research and development expenses, and the cost of extension services provided to primary producers. From 2004–11, the IRC offered a concessionary income tax rate of 20 percent for 10 years for any new investments in the agricultural sector worth more than K1 million. Stakeholders criticized these incentives as poorly suited to the agricultural sector and largely out of reach for many SMEs. In addition, many of these incentives required the taxpayer to submit and receive approval from the Department of National Planning and Monitoring for the designated project or expenditure to qualify for the tax break. Taxpayers report that the application process was slow, and few taxpayers ever received approval.

On the whole, the tax incentives available to the agricultural sector are not as favorable as those offered to resource-sector investors. The income tax rate on nonresident mining, petroleum, and gas companies ranges from 30 to 40 percent, and these companies pay no GST. This discrepancy puts the agricultural sector at a weaker position economically than the resource sector.

INTERNATIONAL AGREEMENTS AND COMPETITIVENESS

PNG has signed **double taxation treaties** with nine countries, including most of its main trading partners other than Japan. Treaties with the US, New Zealand, and the Philippines are currently under consideration.

IMPLEMENTING INSTITUTIONS

INTERNAL REVENUE COMMISSION (IRC)

The IRC has adopted a customer service-oriented approach that emphasizes voluntary compliance and the motto of being "fair, respected, professional, honest and open." The IRC maintains offices in 19 provincial capitals and conducts free regional taxpayer awareness events that specifically target rural individuals. Tax return forms are available for download on the IRC website, which also contains summaries of different types of taxes and links to the major laws and their amendments as well as practice statements, gazette notices, circulars, and tax guides. Agribusinesses and tax agents stated that audits are rare and are conducted without corruption or undue hassle.

Nonetheless, the IRC suffers from inefficient procedures and a lack of sufficient funding to effectively carry out its mandate. The IRC's

KEY IMPLEMENTING INSTITUTIONS

- Internal Revenue Commission
- Income Tax Review Tribunal and National Court
- Department of Treasury
- Customs Service
- Provincial and Local-level governments

budget was cut substantially in 2010, and accountants interviewed for this diagnostic noted that service has deteriorated as a result. Businesses and accounting firms report that the IRC is one or more years behind in processing tax returns and issuing final assessments for many taxpayers. Some businesses have not been assessed in five or six years. This delay works in taxpayers' favor as the final annual tax payment is not made until the assessment has been received. However, the delay also increases the administrative compliance cost for businesses, which must maintain financial statements and other tax records for each of the years that remain unassessed. Taxpayers also report a wait for as long as 12 to 18 months to receive a GST refund. These problems are particularly acute for SMEs that lack the time and cash flow to manage these delays.

PNG's 2012 National Budget provides for a 16 percent increase in the IRC's budget. In addition, a new information technology system known as SIGTAS is expected to be rolled out by July 1, 2012. This system should improve the efficiency of processing tax assessments and help eliminate the current backlog. The new system will also permit online tax filing and payment in lieu of the current reliance on paper forms. In addition to SIGTAS, the IRC is currently working with the IFC on several initiatives intended to simplify tax forms, lower the compliance burden on SMEs, and encourage better data-sharing between the IRC and the IPA.

INCOME TAX REVIEW TRIBUNAL AND NATIONAL COURT

Tax disputes are handled at the administrative level by the Income Tax Review Tribunal. After an assessment is issued, the taxpayer has 30 days to make the final tax payment or lodge an objection to the assessment. According to the IRC, the tribunal currently lacks a chairman and has not sat since 2006, resulting in a significant backlog of cases. If an objection is disallowed by the tribunal, the taxpayer may appeal to the National Court.

DEPARTMENT OF TREASURY

Tariff rates for all imports, including agricultural equipment and other inputs, are set by the Department of Treasury. The Trade Division of the PNG Customs Service (Customs) and elected government officials are permitted to provide input and advice on these decisions, but stakeholders report that these consultations often occur in the eleventh hour, when few substantive changes can be made. As a result, some tariff provisions are in practice very difficult for Customs to enforce, such as those based on the identity of the end user. The Treasury also drafts and sets the annual state budget, which includes an analysis of the annual cost of all available tax incentives.

CUSTOMS SERVICE

The PNG Customs Service is required to collect tariffs and GST on imports on behalf of the IRC. Agribusinesses reported that Customs lacks sufficient staff to carry out this portion of its mandate. For example, only one employee has the authority to issues receipts when import tariffs are paid. If that employee misses a day of work, the entire clearance process comes to a halt. A more detailed discussion of import and export procedures can be found in the chapter on Trading Across Borders.

PROVINCIAL AND LOCAL-LEVEL GOVERNMENTS

As described above, the national government has delegated authority to provincial and local-level governments to charge a variety of taxes and fees. However, many stakeholders report paying little or no provincial or LLG taxes of any kind. Accordingly, provinces and LLGs rely heavily on appropriations from the central government, which are set annually in the budget. The GST collected in a province is traditionally split 60/40 percent between the provincial and national governments, respectively.

Provincial governments and LLGs vary significantly in their effectiveness. While some provinces, such as Western Province, generate significant internal revenue, others are heavily dependent on transfers from the national government. The tracking of expenditure by the National Economic and Fiscal Commission has seen some better alignment between service delivery needs and expenditure. However, many provincial governments reportedly have just enough funding to pay salaries but none to cover supplemental public programs and services. Agribusinesses complain that, although they pay fees to their LLG for water delivery and sanitation, water service is regularly interrupted and garbage not picked up.

As one means of coping with their limited resources, the province of East New Britain established a business arm of the provincial government, the profits of which supplement disbursements from the national government. This corporation has enabled the provincial government to fund many of the services it wishes to provide, and public service delivery in the province is considered quite strong. While this approach has been successful in East New Britain, public-sector participation in the market has the potential to crowd out private-sector activity and should not necessarily be replicated in other provinces. The example does, however, show that increased local-level control over revenue can lead to more accountable results.

SUPPORTING INSTITUTIONS

INVESTMENT PROMOTION AGENCY (IPA)

The business registration process conducted by the IPA is not formally tied to obtaining a Taxpayer Identification Number (TIN) in PNG. The IPA does inform newly registered businesses that they need to go to the IRC to apply for a TIN, but proof of registration with the IRC is not required to receive the business certificate.[67]

KEY SUPPORTING INSTITUTIONS

- Investment Promotion Agency
- Department of National Planning and Monitoring
- Accountants and tax agents

PHOTO BY FINTRAC INC.

One IRC employee complained that the IPA has been reluctant to formally share data with the IRC because the IRC cannot return the favor due to taxpayer confidentiality issues. IPA offices do, however, provide the IRC with an extract containing basic information about new businesses. According to the IFC, the IRC and IPA are negotiating an interagency Memorandum of Understanding (MOU) to permit more formal data-sharing.

67 A TIN is, however, required to apply for bank finance, government funding, or a long-term mobile contract.

PHOTO BY FINTRAC INC.

DEPARTMENT OF NATIONAL PLANNING AND MONITORING

Many tax incentives available to the agricultural sector require the taxpayer to lodge an application and business plan with the Department of National Planning and Monitoring. The project must be approved before the taxpayer may claim the deduction or credit on a tax return. In practice, the approval process can take more than a year, if a response is received at all. Most businesses simply submit a note to the IRC with their tax returns indicating that the application is pending, which the IRC will usually consider sufficient to honor the deduction.

ACCOUNTANTS AND TAX AGENTS

Many agribusinesses use accountants to assist them in fulfilling their tax filing and record-keeping requirements. To prepare a tax return for a third party, an accountant must be registered as a tax agent by the IRC, which requires the individual to pass a fit and proper person test, be over the age of 21, and be considered of good fame, integrity, and character. The Certified Public Accountants Papua New Guinea (CPA PNG) handles the registration and certification of accountants. CPA PNG is a member of the International Federation of Accounts (IFAC), and CPA qualification requires passing a set of examinations modeled after international standards for CPAs, including an understanding of Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS).

According to agribusinesses and the IRC, there are enough accountants and tax agents in PNG cities and towns to serve the needs of small and large agribusinesses. The Big 4 accounting firms of PwC, Deloitte, KPMG, and Ernst & Young are represented in Port Moresby, and there are many smaller tax agents available as well. However, accountants charge high fees that can be difficult for SMEs to afford.

SOCIAL DYNAMICS

THE INFORMAL ECONOMY

In general, taxpayers in PNG do not express a negative attitude toward the tax system or the staff and functioning of the IRC. During this diagnostic, larger businesses indicated an understanding of and respect for paying taxes as required under the law. For their part, many SMEs, instead of avoiding taxation by remaining informal, reportedly formalize their businesses in complete ignorance of the associated tax obligations. As a result, many go out of business in subsequent years due in part to the tax burden. There are also anecdotal reports from the IRC that attendees at taxpayer awareness outreach events in remote rural areas have been very receptive to understanding and complying with their tax obligations as a form of national pride.

The IRC is given high marks by taxpayers for its professionalism in delivering services and handling taxpayer accounts. Audits and tax returns are reportedly handled transparently, and tax filing requirements and forms are by and large straightforward. The IRC maintains a customer-focused approach that taxpayers agree largely lives up to the IRC motto of being "fair, respected, professional, honest and open." Corruption within the IRC is generally limited to isolated, small-scale kickbacks such as "speed money" for processing returns. These crimes of opportunity reflect the IRC's lack of funding and manpower more than a broader culture of corruption within the agency.

Nonetheless, as detailed in this report's chapter on Starting a Business, PNG's formal economy is small. In general, 85 percent of the adult population in PNG is considered to be informal, the majority who are smallholder farmers. Statistics on the number and location of formal taxpayers are difficult to analyze. Statistics are collected on employers and corporations according to their registered offices, which sways the data in favor of Port Moresby and Lae, even when the company may conduct most of its operations in another province. The SME sector in general is considered underdeveloped, and formal SMEs are particularly rare. The World Bank reports that there are only two to three formal SMEs for every 1,000 people, which is roughly 5 percent of Organisation for Economic Co-operation and Development (OECD) density, 10 percent of the density in Latin America, and only 20 percent of the average density in East Asia and sub-Saharan Africa. In recent years, the number of informal businesses owned and run by illegal immigrants has increased, and the IPA reports an uptick in fraudulent business registrations in which illegal immigrants pay Papua New Guineans to register phony businesses in their names. These small businesses work in cash and do not pay taxes.

As in many developing countries, the vast majority of agricultural producers do not pay income taxes, even though many smallholders, particularly in coffee and oil palm, arguably make gross incomes well above the annual threshold of PGK 7,000. For example, the IRC acknowledged that an oil palm producer with a six-hectare plot could conceivably make as much as PGK 7,000 in a fortnight. Those farmers who have shifted from primary production to processing, as in the coffee industry, may also pass the threshold that obligates them to charge, collect, and submit GST.

For the most part, the IRC has determined that the administrative burden of pursuing these individuals is greater than the revenue to be earned through enforcement. Accordingly, it makes no attempt to collect income taxes from smallholders. The IRC does, however, occasionally conduct random "sweeps" in commercial areas. An IRC field team will map a commercial area, which may include farms, according to section and lot numbers, and then go door to door to involuntarily assign a tax number to those enterprises encountered in those areas. After this action, the business or farmer will receive automatic notices when taxes are due.

Where the foregone revenue is significant but the IRC lacks the resources to track down offenders, the IRC has occasionally shifted the administrative burden to other taxpayers in the system. For example, in the early 2000s, many coffee buyers failed to register and pay GST on their sales to coffee exporters. In response, the IRC enabled the coffee exporter to withhold GST on the purchase price and submit it directly to the IRC on the buyer's behalf. While effective in terms of revenue collection, this rule has increased the compliance burden for coffee exporters. The IRC is considering imposing a similar withholding requirement for income taxes on oil palm producers, but the proposal is politically sensitive and may not be able to proceed.

Recently, PNG's national government adopted a National Informal Economy Policy (2011–15). This policy is unique in that it favors encouraging the development of the informal economy rather than seeking to formalize it. The drafters recognized the importance of entrepreneurship and economic opportunity at the informal level as a critical first step toward joining the formal economy. The policy focuses on increasing access to finance and public goods and services for informal businesses.

PUBLIC FINANCIAL MANAGEMENT

In paying taxes, taxpayers must trust that the government will put their funds to productive use for the common good, according to priorities determined in consultation with the population or indirectly through their elected officials. In PNG, the government has not held up its end of the bargain. Despite a proliferation of public-sector initiatives aimed at improving service delivery, few gains have been achieved.

According to stakeholders, national, provincial, and local-level government institutions lack either the capacity or checks and balances necessary to effectively manage government funds. The national budget has been described as "paper money," and government agencies complain that funding frequently covers only existing salaries, leaving little available for capacity-building or supplemental programs such as extension services or infrastructure development. According to one government agency worker, by the third or fourth quarter of each year, there is simply no money left to spend. One employee of the Cooperative Societies Unit stated that he had received only enough funding to register cooperatives and none to cover the training or start-up grants promised under the program so he is now embarrassed to go meet with the cooperatives in his area. These problems reflect an overarching gap across all levels of government between policy creation and effective budgetary appropriation. Even well-conceived programs are unable to be implemented or sustained.

In addition, appropriations are often diverted to special grant projects such as the District Service Improvement Program (DSIP) that disperse large amounts of money through elected officials. These ad hoc projects benefit small groups or individuals rather than furthering the strategic development plans of government agencies that could benefit the economy as a whole. These programs also create ample room for procurement fraud. Contracts are frequently awarded to companies with no capacity to deliver and with no built-in oversight processes to ensure that they do. During this diagnostic, grant recipients reported being asked for 10 to 20 percent kickbacks in exchange for having their applications approved.

There is a drastic need for procurement reform in PNG. Many agencies, industry boards, and provincial and local-level governments have their own individual procurement procedures, making it difficult to track funding and protect against fraud. In recent years, the Central Supply and Tender Board (CSTB) has attempted to centralize power over the procurement process and implement standardized bidding forms and procedures. However, the CSTB is understaffed and underfunded, and the tenders it manages often experience long delays. Accordingly, many public-sector entities continue to try to circumvent the CSTB.

The Ombudsman's Commission has the authority to investigate allegations of corruption and misconduct by government officials. Through its Leadership Tribunal procedure, the Ombudsman's Commission has successfully brought some politicians to justice. In particular, the Ombudsman's Commission has been quite visible in recent years due to the Sir Michael

Somare Leadership Tribunal and the ongoing case against Sir Michael Somare's son, Arthur Somare. However, there are reports of threats to the safety of the ombudsman, and delays in the court system, as described in this report's chapter on Enforcing Contracts, significantly slow down the cases.

The Department of Justice and Attorney General, with technical assistance from the OECD, is working on legal reforms to correct gaps in the law to make it easier to prosecute corrupt officials. For example, bribery, money laundering, and other corrupt activities are not chargeable offenses under current law.

Overall, PNG benefits from a hardworking IRC, largely law-abiding taxpayers, and relatively high revenue collection. Yet the country has little to show for these advantages in terms of quality roads, schools, and health services. This is due to the gross failure of effective public financial management. With revenue collection projected to increase substantially in coming years due to the LNG project, the need for checks and balances on government spending is more urgent than ever before. The recent creation of an SWF is an important first step, but it is not yet clear that the use of these funds will not suffer from the same corrupt practices as other tax revenue. PNG is poised to become a prosperous middle-income country if it can successfully harness this wealth to implement transparent and effective long-range development plans that improve the infrastructure, education, and economic opportunity of all Papua New Guineans.

RECOMMENDATIONS

Introduce the use of performance-based budgeting methods for provincial and local-level governments.

Feasibility: High
Resources required: Medium
Potential impact of reform: High

PHOTO BY FINTRAC INC.

The national budget in Papua New Guinea has been described as "paper money"—citizens rarely see the budgetary line items translate into concrete benefits in their communities. The budgets of provinces and local-level governments, which rely predominantly on allocations from the national government, similarly lack transparency. Poor public financial management reduces public faith in government and limits economic growth opportunities for the population as a whole. In the Ukraine, the use of performance-based budgeting has transformed municipalities across the country. With greater transparency and public oversight of municipal spending, spending has become more efficient, and the communities have seen tangible results of government funds going to projects that they support.

There is a lot of interest in public-sector reform in PNG, but the public as a whole feels powerless to effect change. Performance-based budgeting, particularly at the community level, invites taxpayers to participate in setting budgetary priorities, monitoring progress, and holding elected officials accountable for the use of public funds. To test the effectiveness of this model in PNG, several provinces and LLGs should be selected as pilot locations for performance-based budgeting on the basis of available physical and human resource capacity, the presence of government champions, and the openness of the government and local community to the project. Training must be provided for provincial or LLG staff, and assistance should be provided in identifying budgetary priorities in consultation with the community to develop a performance-based budget for each pilot location. The budget should then be implemented in each pilot location, and frequent public forums should be held to discuss progress and review priorities. To give the reform a chance to demonstrate results, the budgetary process from setting priorities to implementing public works must continue to be refined and tested over a minimum period of two to three years. After the pilot phase, regional workshops should be held with other provinces and LLGs to discuss lessons learned and prepare to roll out the project more broadly.

There are many entrenched interests in Papua New Guinea that might resist this type of reform—for example, politicians and companies that currently benefit from procurement fraud and government waste. However, if the pilot locations can demonstrate to the PNG people that public-sector spending can occur in an effective and transparent fashion, local ownership over and commitment to the project will likely be strong.

COMPETING FAIRLY

Effective competition policy can improve agricultural efficiencies, outputs, and quality; lower prices; and advance overall economic growth and development. Private-sector competition compels producers to be more efficient and innovative and to produce their most appealing array of prices and products in response to consumer demand. In competitive markets, buyers may choose among many sellers. If they dislike the offerings of one seller, they can shift their purchases to another, thus imposing a rigorous discipline on each to satisfy consumer preferences. Sellers that are more responsive to consumer demand take sales away from those who are less efficient and responsive. Consumers all along the value chain benefit from greater choice and quality and lower prices.

Liberalization of markets alone, however, does not ensure fair competition and its associated benefits. Left unchecked, producers and sellers may engage in practices that harm the competitive process and consumers. They may enter into cartels and other anticompetitive agreements, abuse dominant positions, or combine through anticompetitive mergers, thereby creating or maintaining illicit power to charge prices above the competitive level for a sustained period of time. The agricultural sector is not immune to this type of behavior. Indeed, competition in agriculture is often of heightened concern because the sector produces essential products bought by all consumers, including the poor, who are disproportionately affected by anticompetitive activities.

An effective competition law and enforcement agency help keep anticompetitive behavior in check. But this is only half the solution. Government policies, laws, and regulations can also interfere with the proper functioning of markets. Although regulations are sometimes needed to protect consumers or to correct some market failure, the secondary effects of these regulations on competition, prices, and consumer welfare are not always well understood. In some cases, their secondary effects may be as disruptive to the competitive process as a cartel, an abuse of dominance, or an anticompetitive merger. Because such regulations are sanctioned by the government, however, they do not violate the competition law, and law enforcement is not an option. Intervention in the form of competition advocacy, whereby the competition authority assesses the competitive effects of the law or policy and advises the appropriate governmental body, may be the only means to ensure that consumers enjoy the full benefits of competition.

In Papua New Guinea, the government has identified the development of a progressive competitive economy as a priority within its guiding long-term strategy, PNG Vision 2050. In recent years, the PNG consumer and economy has benefited from reforms in competition policy, including examples in the telecommunications industry and domestic aviation. PNG's Medium-Term Development Plan further aims to build upon recent successes, identifying the encouragement of competition to facilitate both economic progress as well as service delivery as a near-term, relatively low-cost, policy "key-enabler" to reaching Vision 2050.

While PNG's legal and regulatory framework for encouraging beneficial competition has been strengthened in the past decade, certain competition-constraining norms remain. One critical constraint to competition, detailed in this report's chapters on Starting a Business and Protecting Investors, is the portion of the Investment Promotion Act that prevents foreign ownership of a wide variety of agricultural-related enterprises. Although there may be perceived benefits in protecting certain vocations with PNG society, the tangible impacts of higher prices, lower quality, and absence of innovation concurrently abound. In addition, recent efforts to turn rice production into a state-sanctioned monopoly, though unlikely to succeed, have highlighted the vulnerability of national and local leadership to economic development ideas that are exceptionally unfriendly to consumers. In contrast, PNG's experience with commodity regulatory bodies, unlike that of many other developing countries, has not proven to especially constrain competition, although there remains considerable room for improvement.

KEY LAWS

- Independent Consumer and Competition Commission Act (2002)
- Prices Regulation Act (1948, amended in 2000)
- Copra Act (1953) and the Copra Inspection Act (1953)
- Rubber Industry Act (1953) and Regulation (1954)
- Cocoa Act (1981) and Regulation (1982)
- Copra Marketing Board Act (1983)
- Kokonas Indastri Korporesen Act and Regulation (2002)
- Spice Industry Act (1989)
- Coffee Industry Corporation (Statutory Functions and Powers) Act (1991)
- Oil Palm Industry Corporation Act (1992)
- Investment Promotion Act (1992)
- Oil Palm Industry Corporation Act (1992)
- Various tariffs on agricultural goods

LEGAL FRAMEWORK

COMPETITION LAW

PNG's principal competition law, the Independent **Consumer and Competition Commission Act (2002) (Competition Act**), is progressive and comprehensive. Modeled after New Zealand's Competition law, the Competition Act created an Independent Consumer and Competition Commission (ICCC), empowered to administer both the competition law and the **Prices Regulation Act (1948, amended in 2000)**, along with any other act pertaining to the issuance, administration, and enforcement of regulatory contracts. The ICCC's stated objectives are the promotion of competition and fair trading, the regulation of prices for certain goods and services, and the protection of consumers' interest. The Competition Act provides the ICCC authority over business acquisitions, market prices (not only consumer prices), and trade practices, except where stated otherwise in the law. In terms of agriculture, this means that the ICCC has no authority over the price-setting authority of some statutory commodity boards, discussed below. The law provides for an advocacy function within the ICCC, which indeed advises the government on competition-related issues.

COMMODITY OVERSIGHT

As discussed in this report's chapter on Dealing with Licenses, commodity-specific legislation dates back decades. The **Copra Act (1953)** and the **Copra Inspection Act (1953**) established the parameters for copra commerce, both what was permissible for sale within PNG as well as the exportable grades (and means of inspection) for the international market. Around the same time, the first commodity board was established via the Rubber Act (1953). The **Rubber Act** established the parameters of rubber commerce, in much the same way the Copra Act did for copra. But the Rubber Board was given the final say on grading of product for export, and that authority has not been amended since.

The **Cocoa Act (1981) (amended in 1997 and 2006)** and **Copra Marketing Board Act (1983, amended in 1986 and 1997)** established PNG's second and third commodity marketing boards, respectively. The boards are empowered to engage in commodity trade and processing themselves; to set prices along their respective commodity value chains; to regulate all growing, harvesting, handling, trading, processing, and export; to collect levies and fees; and to provide extension services to producers. The **Spice Industry Act (1989)** established a Spice Board for the purpose of regulating and promoting PNG's spice and essential oils industry. That board is charged with registration of all buyers, processors and exporters of spices and the "prohibition or restriction of sale or purchase of spices which fail to comply with prescribed minimum quality standards." The Spice Board is further empowered to inspect both premises and factories and to inspect spices destined for both domestic and export markets. The **Coffee Industry Corporation Act (Statutory Functions and Powers) (1991)** established the Coffee Industry Corporation (CIC), shortly followed by the **Oil Palm Industry Corporation Act (1992)**, which established the Oil Palm Industry Corporation (OPIC). The CIC's rights and responsibilities resemble those for cocoa and copra, while OPIC, because of the higher degree of vertical integration and relationships between growers and processors, has a scope more focused on smallholder productivity and production technologies and a broader mandate related to industry information and statistics collection, analysis, and dissemination.

Thus, while PNG's legal framework for commodity oversight allows for a relatively interventionist approach to regulating and participating in the respective commodity industries, the commodity agencies themselves are fairly committed to the principles of competition and open markets for the benefit of all stakeholders. For example, in 2011, the Rubber

PHOTO BY FINTRAC INC.

Board suspended its operations pertaining to licenses, permits, and other authorizations in order to conduct a review of the nearly 60-year-old law under which it operates. The cocoa and coffee laws are also expected to be reviewed and appropriate amendments made as a part of the World Bank–funded Productive Partnerships in Agriculture Program (PPAP). Nonetheless, while the organizations are not currently acting upon their ability to intervene in prices or trade, they have the legal right to do so and remain outside of the ICCC's authority to intervene.

INVESTMENT PROMOTION ACT (1992)

As discussed in this report's chapters on Dealing with Licenses and Protecting Investors, PNG's central investment law contains far-reaching institutional restrictions on foreign ownership of certain enterprises, many that relate to agriculture. The list includes small-scale growing of tree crops, small-scale growing of crops and market gardening, poultry farms, processing of coffee from the stage of green beans, all forms of real estate management, equipment rental, transport of freight and passengers by land (excluding transport of own goods and staff), and coastal and inland water transportation.[68] Though aimed at protecting the livelihoods of small-scale actors, the limitations on the types of businesses outside investors may own are not insignificant, may have profound effects on the availability and quality of many agricultural-related goods and services, and can result in negative outcomes for consumers, processers, traders, and others. It also may result in negative social outcomes; for example, protectionist policies that benefit the poultry industry may have a direct result on the relatively low consumption of protein in certain areas, a result of comparatively high chicken prices.

TARIFF RESTRICTIONS

As detailed in this report's chapter on Trading Across Borders, PNG also restricts competition among certain key players in the agricultural sector by way of trade policy. The tariff rate on imported poultry is 57 percent. The rate on sugar was lowered in 2011 from 70 percent to a still-high 40 percent. The pork industry is also heavily protected through tariff restrictions.

IMPLEMENTING INSTITUTIONS

INDEPENDENT CONSUMER AND COMPETITION COMMISSION

While institutions in PNG struggle to attract and retain highly skilled human resources, the ICCC has a reputation for strong human resource capacity and good leadership. The organization has three divisions: (1) the Prices, Regulatory Affairs, and Special Projects Division; (2) the Competitive Market and Fair Trade Division; and (3) the Consumer Protection Division. The Competitive Market and Fair Trade Division promotes competition, fair trade and commercial practices, and industry efficiency. The ICCC also has authority over SOEs, except where Parliament has passed an act specifically exempting the SOE from ICCC jurisdiction.

KEY IMPLEMENTING INSTITUTIONS

- Independent Consumer and Competition Commission
- Commodity institutions:
  - Spice Industry Board
  - Coffee Industry Corporation
  - Kokonas Indastri Korporesen
  - Cocoa Board
  - Rubber Board
  - Spice Industry Board

In the past, the ICCC has used its authority to set profit margins along the rice value chain. In 2003, it attempted to impose maximum margins at wholesale and retail points, but quickly realized that the differences in cost of operations among different actors made this level of intervention in markets inappropriate. In addition, one company, Ramu Sugar, essentially controls the domestic sugar market. To protect its market position, the company benefits from a legislatively established tariff restriction. Fuel is also a legislatively controlled market. Nevertheless, the ICCC tracks the prices and requests explanations if and when price changes in these subsectors do not track international markets.

One other area that the ICCC has been watching, of particular relevance to agriculture, is domestic shipping and user charges and fees. The ICCC sets the domestic freight charges, but the shipping companies often use "other fees and charges" as a means of covering their own costs and maximizing profits. Domestic shipping is an example of a sector with limited competition, which the ICCC actively monitors and investigates for anticompetitive behavior and consumer interests.

[68] See website of Price Waterhouse Cooper, Papua New Guinea (2012), available at http://www.pwc.com/pg/en.

COMMODITY INSTITUTIONS

As detailed in this report's chapter on Dealing with Licenses, the capacity and level of engagement in regulating commerce among specific cash crops varies greatly by commodity board. For example, the Spice Board's engagement of its functions and responsibilities as outlined in its enabling act has been negligible. That board remains largely government-funded and only issues annual export licenses to the handful of spice exporters currently in the market. The exporters are required to submit monthly reports to the Spice Board with information on purchases and exports, to facilitate the tracking of industry statistics. Due to its funding challenges and resulting service delivery shortfalls, the board is viewed as virtually defunct.

At the other extreme is the CIC, one of four boards with financial independence. The CIC is mandated as the sole exporter of coffee from Papua New Guinea. In practice, however, the CIC licenses specific coffee dealers to export PNG products. The board also inspects, regulates, and collects fees from coffee processors, manufacturers, traders, and exporters. The CIC has also been tasked with research and extension delivery, which it addresses through its Research and Grower Division. While the CIC is financially independent, its service delivery is viewed as constraining the industry's efficiency and profitability. The various fees and levies collected have not significantly improved productivity or quality, while the industry suffers significant bureaucratic delays in the procedural requirements prior to export. The CIC does not offer preference to any particular entity, but small businesses can find the regulations and cost structure prohibitive to market entry and success.

The cocoa industry has a regulatory body that is separate from its research institution. PNG's Cocoa Board has not had a governing board in two years. While the board is financially self-sufficient, the industry reports that it is not satisfied with the board's structure for research, which requires dispensing funds for research to the Cocoa Copra Research Institute (CCRI). These concerns may result from the overwhelming impact of the cocoa pod borer pest that has dominated industry focus in recent years.

SUPPORTING INSTITUTIONS

PRODUCTIVE PARTNERSHIPS IN AGRICULTURE PROJECT

The Cocoa Board of PNG and the CIC are partners in PPAP, a new World Bank–funded program that will review and endeavor to update the underlying acts guiding the functions and authorities of the commodity boards. The project will also fund service delivery to smallholder farmers via industry stakeholders, including growers, traders, processors, exporters, NGOs, and universities or research institutions. From a competition perspective, it will be interesting to see the impact of new service delivery methods via buyers and traders on grower marketing options and decisions.

MEDIA

PNG's newspapers and other media sources serve an important supporting role in promoting competition and exposing instances of anticompetitive behavior. As stated by Freedom House in 2011, "news media in PNG remain among the most vital and independent in the South Pacific despite constant pressure from politicians."[69] With respect to competition, the ICCC, pursuant to its advocacy function, often identifies to the media key issues warranting further

KEY SUPPORTING INSTITUTIONS

- World Bank Productive Partnerships in Agriculture Project
- Media
- Producer and industry advocacy institutions
- Livestock Development Company
- Fresh Produce Development Agency

[69] Freedom House, Freedom of the Press 2011, Papua New Guinea, available at http://www.freedomhouse.org/report/freedom-press/2011/papua-new-guinea.

PHOTO BY FINTRAC INC.

investigation. The newspapers in particular have reported various stakeholder views over the negotiations pertaining to the Central Province Rice Project, discussed in the following section. The newspapers carried full-page paid advertisements from some opponents, offered space for op-ed pieces, and published perspectives from public-sector project proponents.

One caveat regarding the media is that there is a perception among some in the business community that it does not consistently reach out to the companies themselves for comment when issues of corporate behavior are raised, and that there is often not sufficient follow-up coverage for a full picture to be reported to civil society.

PRODUCER AND INDUSTRY ADVOCACY INSTITUTIONS

PNG has witnessed a reemerging movement in recent years to promote and register producer cooperatives in PNG. But the challenges and opportunities for cooperatives is colored by their less-than-successful history, which began in the 1940s. For generations, the public sector promoted, registered, and supported cooperative development, including sometimes taking an active role in management. In the mid-1970s, Parliament eliminated the specific legal framework for cooperatives in favor of amending the Companies Act of 1963 to include provisions for cooperatively owned companies. The legal framework for cooperatives was revived in the early 1980s, but no institutional entity was established to support cooperative development until 2000, when the government established the Cooperative Societies Unit (CSU). In the last few years, CSU has begun promoting cooperatives and registering new ventures. Its resources, however, have only been sufficient to promote and register, without resources to audit and regulate.

Because the revitalization of producer cooperatives is relatively recent, these cooperatives have no capacity for advocacy on behalf of smallholder producers. This corresponds with a lack, throughout the commodity industries, of a coherent vision and voice that represents the value chains from producer through trader, processor, and/or exporter. Some of the commodity boards view their roles as including advocacy, but it is best practice to separate the regulatory and advocacy functions between different institutions. Some of the larger agribusinesses themselves are active in private-sector advocacy bodies such as the Manufacturers Council, but the stakeholders in each industry still generally lack a means of convening to work out internally the natural tensions along the chain and to advocate a unified vision for industry development and improvement. (OPIC, more than other boards, views its role more specifically as representing smallholders.) And while many of the larger businesses are active in the chambers of commerce (both national and provincial), the Manufacturers Council, and the Business Council of PNG, many businesses use their employee's *wantok* networks for specific advocacy at the operations and service-user level.

OTHER COMMODITY RESOURCES

Two additional commodity-specific agencies are in place in PNG, though without direct regulatory authority over their respective sectors: the **Livestock Development Company** (wholly owned by the Independent Public Business Corporation) and the **Fresh Produce Development Agency** (FPDA).

The Livestock Development Company was established in the early 1980s to commercialize the livestock subsector, but it largely functions as a stand-alone, for-profit business today. The company operates two abattoirs, while also producing vegetables, cashews, and mangos. Currently, the country's domestic livestock supply is held or controlled by a small group of larger companies, including Mainland Holdings (chicken), Ramu Agri Industries (cattle), and Trukai (cattle).

The donor-funded FPDA, on the other hand, aims to expand fresh produce handling and market infrastructure and to improve internal produce trade. For example, FPDA has launched a cell-phone-based vegetable market information system and provides extension services as well. The agency is seen as the advocate for smallholder vegetable production but does not have any strong links with other segments of the industry, including fresh pack wholesalers or large-scale catering companies—the large 'formal' market for produce within PNG.

SOCIAL DYNAMICS

RICE AND SOCIETY: PUBLIC DEBATE OVER A PROPOSED MONOPOLY

During this diagnostic, broad media coverage and industry debate took place regarding a proposed rice market concession that could grant to a single company, Naima Agro-Industry Ltd (Naima), the exclusive, renewable rights over 20 years to operate commercial rice production and import, market, sell, and trade rice within PNG. The proposed deal would ban other companies from participating in the market, particularly with respect to rice imports.

Rice is of particular interest to food security in PNG, as urban populations are increasingly opting for rice consumption over traditional roots and tubers, largely based on price and convenience. (Roots and tubers are less perishable, but bulky to transport from production areas, thus making them expensive relative to imported rice in port-accessible urban centers.) The vast majority of rice is imported from Australia, with the market dominated by one firm, the foreign-owned Trukai Industries, Ltd. Among Trukai's marketing strategies is its "single price" charged for rice all over the country, regardless of the transport costs. Trukai fortifies the rice it imports pursuant to PNG law.

The principal attractive aspect of the exclusive agreement requested from Naima is that it would invest in commercial rice production and milling in Central Province, along with significant infrastructure investment. Among the myriad concerns raised by major business associations throughout the country is the potential negative impact on smaller-scale rice production and milling that already takes place in other provinces. In addition, opponents contend that protecting and developing a local large-scale producer may result in near-term (or even longer-term) increases in consumer rice prices, as well as vast swaths of land cleared for the unfair short-term advantage of timber sales. In addition, as one opponent asserts, the initiative "tells the people of PNG that they will be eating [a type of] rice they do not like for the next 20 years." The opposition to the initiative is led by competing importers, consumer advocates, and the National Research Institute.[70] In contrast, smaller rice promoters, producers, and millers interviewed during this diagnostic had not conducted any discussions with the public sector to voice their concerns over the matter.

In January 2012, the ICCC submitted comments to the Department of Commerce and Industry and the Department of Agriculture and Livestock regarding the impact of the proposed rice market arrangement on competition and consumers. As summarized by the local press, the ICCC made the following points:

> The PNG economy has had bad experiences with business operating with monopoly power in delivery of particular products or services in the past and present, and rice now being the staple food for all PNG citizen, it is obviously too risky to allow a monopoly in the rice industry as the welfare of all rice consumers in the country will be at stake. [The proposed initiative] undermines at one stroke the long-standing policy of successive governments to encourage and create income-earning opportunities for Papua New Guineans who are not part of the formal economy, and to create additional such opportunities in small-scale rice farming. This will remove income-earning opportunities for many Papua New Guinean small-holders growing rice, particularly the rural population, who are already under financial and economic pressure which is causing "urban drift," which is putting additional pressure on our towns and cities.
>
> Rice will be produced considerably in excess of domestic demand, as per the estimated rice production projected by the developer, of which about 90 percent will be exported. Around 10 percent of the rice produced will meet the annual domestic rice demand for the country. This will mean the entire rice market requirement in the country will be taken up by the Naima and rice supplied by the current players will no longer be purchased, milled, and sold, thus putting them out of business and there will not be possibilities for any new players to invest in rice production in competition with Naima, because of the exclusivity to be granted to it. The Commission is also against the concession requested by Naima to impose 60%–100% levy on other rice importers for at least 24 months. The Commission assumed that this is a strategy whereby the developer is anticipating to utilize onerous concessions to capture 100% rice market share in the country.[71]

Rice is one of the three products whose prices are tracked and questioned by the ICCC on an ongoing basis; the other two are flour and sugar. The ICCC could intervene in the implementation of any agreement of exclusivity in the rice market only if it is not endorsed and enacted by Parliament.

A significant concern voiced by opponents to this proposed measure is that, despite its anti-competitive stance, the proposed rice monopoly received a relatively receptive ear among policymakers. The fact that a single company could come close to negotiating such a dramatic change in the way PNG citizens produce, process, purchase, and consume rice, an arrangement highly favorable to one market player but damaging to so many others, suggests that some lawmakers may not have full information on the negative impacts of such arrangements.

COMPETITION AND GOOD GOVERNANCE

The largest social dynamic is the expectation and acceptance of political capture of public expenditures and projects. Civil society

[70] See Logea Nao & Dr Modowa Gumoi, Created Monopoly in the Rice Industry Detrimental to Overall Welfare (NRI Spotlight series, January 25, 2012).

[71] "Monopoly is not good says ICCC," The Post-Courier (January 20, 2012).

recognizes the benefit from deregulation and increased competition resulting from recent reforms. Competition in mobile phone service providers and domestic aviation come up most often as examples of direct consumer benefit from competition. Possibly due to the successes and impact from these two recent experiences, the ICCC considers itself highly valued by the public and respected within the business community as an independent and reliable institution.

There remains a need for strong advocacy mechanisms and a public sector receptive and responsive to advocacy. Although stakeholders generally agree that the legal framework is strong and improving in PNG, most feel it has largely developed without meaningful consultation.

Transparency International ranks Papua New Guinea among the countries with the worst Corruption Perceptions Index—154 of 178 countries ranked.[72] PNG's Vision 2050 found that the systems and processes are not the root of the corruption problem, rather "the increasing lack of respect and compliance within the community and leadership level," combined with "inadequate capacity among oversight audit and enforcement agencies," are the source of the problem. Political capture of projects is generally accepted and expected both within the public sector and civil society. This will need to change before a significant improvement in actual and perceived levels of corruption is to occur.

RECOMMENDATIONS

Review and update all statutory board legislation; separate out advocacy from regulatory functions.

Feasibility: High
Resources required: Low
Potential impact of reform: High

PHOTO BY FINTRAC INC.

Best practice advocates the separation of regulatory functions from industry and commodity advocacy to allow stakeholders to comment on and inform regulatory reforms. While the current statutory boards in PNG are not overly interventionist in regulating the commodity commerce, the legal framework allows them to intervene with anticompetitive practices. Active advocacy, representing complete value chains with a unified voice, is largely absent. Legal reform will open up the possibility of strong commodity associations, separating advocacy from the regulatory functions of the statutory bodies.

72 Corruptions Perceptions Index 2011, Transparency International.

The current iterations of the statutory board acts are largely outdated, and only a few are slated to be reviewed and updated in the near term. The World Bank is already funding, via PPAP, the review and update of the Cocoa Board Act and the Coffee Industry Corporation Act. Each statutory board act should be reviewed in the context of the experience to date with broad stakeholder consultation. Updated acts should be drafted and submitted to Parliament. There may be some resistance to separating out advocacy from the commodity boards as these boards may feel that they are currently serving adequately in that role.

Active private-sector associations (inclusive of diverse stakeholders) are often indicative of a receptive and collaborative regulatory framework, as seen in many developed commodity markets.

Develop industry-led commodity associations to develop a common industry development vision and provide advocacy.

Feasibility: Medium
Resources required: Medium
Potential impact of reform: High

There are natural tensions between stakeholders along a value chain. A mechanism is needed where this tension can be resolved and a coherent voice developed. In PNG, there is a significant communication gap between the agricultural sector and the public sector at all levels of government. There are few to no independent stakeholder-driven industry groups for the public sector to turn to for input representing a complete value chain. Advocacy by the private sector would be strengthened through the creation of industry-led commodity associations that can develop a common vision for each industry. This reform would also facilitate effective government decision-making – the public sector often receives differing perspectives from individual value-chain stakeholders, requiring them to weigh the priorities instead of the value-chain participants themselves working out the trade-offs.

The natural tensions between value-chain participants could create resistance to the work required to develop a shared industry perspective. A fact-based industry roadmap exercise would be the starting point for identifying key industry rallying points around which to form an initial advocacy platform. Technical assistance and a subsidized secretariat operating budget should also be provided over the medium term to support the new associations. However, independent stakeholder-driven industry groups are not possible without first undertaking regulatory reform to separate advocacy from the regulatory functions of the statutory boards (as discussed above).

ACCESSING MARKETING INFRASTRUCTURE

In PNG, after access to land, transport infrastructure and service delivery represent the most important constraints to the establishment and growth of formal agricultural enterprises. During this diagnostic, although companies did not report any specific "go/no-go" investment decisions based on infrastructure, many noted that physical infrastructure-related costs in time, attention, and money directly impact PNG's competitiveness, particularly for key export-focused agricultural commodities.[73] As emphasized within PNG's Vision 2050, poor infrastructure and the constrained service delivery it produces result in high domestic transportation costs, especially in coastal shipping and internal airfreight; high utility costs; and unfavorable pricing arrangements for critical inputs.

Transport emerged as the dominant market infrastructure concern to the Papua New Guinea agribusiness community. In some areas, whereas the underlying land is owned by the community, local communities often have a strong sense that the roads and infrastructure on the land are owned by the government and engage in rent-seeking behavior along national roads to obtain compensation for the ongoing use of the land. In contrast, aggregation infrastructure and storage warehouses are largely privately owned and regarded as sufficient for current production levels. Most fresh markets have decent-to-good physical infrastructure and charge levies and fees that cover all or most of day-to-day operational costs, and some receive additional support from municipal and provincial budgets.

Market information on food crops, including crop estimates, detailed production reports, and market prices, is inadequate. The majority of poor farmers working in food crops have little access to information about price and potential customers, including institutional customers.[74] However, stakeholders along the various commodity value chains share market information that is typically coordinated within the commodity organization or statutory body. There is competition among the available buyers of the main cash crops to the degree that most producers are satisfied with their level of information regarding markets and prices.

PNG has unique geographical challenges.[75] Domestic shipping acts as a critical constraint and opportunity in some commodity value chains. For example, approximately 50 percent of cocoa is aggregated, prior to export, from communities with no road connections, requiring some type of small vessel with the ability to load from beaches or from basic community jetties. Steep mountain terrain and heavy annual rains result in regular landslides that damage bridges or cover critical highways. Many communities have no road or water access at all, along with only irregular air service. Remote communities have higher transport costs, particularly those served only by air, and do not have a high enough demand for regular transport services to drive down the costs. Thus, it is even more important that cost-effective transport systems are combined with development of the highest value agricultural production by weight and volume.[76]

[73] Studies in East Africa have found, as an example, that transport costs can represent more than 75% of the marketing costs in the maize value chain. An example of an analysis model for quantifying transport-related costs in marketing is included in Eastern Africa: A Study of the Regional Maize Market and Marketing Costs, World Bank (December 31, 2009).

[74] One bright spot, however, is the recent introduction of a cell-phone-based vegetable market information system by the FPDA.

[75] See Frank Jacobs, "Who Bit My Border?" N.Y. Times (March 13, 2012) (online commentary).

[76] This point was confirmed during interviews held during this diagnostic. Producers will choose to use their own or family labor to physically carry product to market or a more affordable aggregation point in order to maximize the value retained on farm. The existence of road or air service alone does not guarantee that it is economically appropriate or affordable for most agricultural commodities—particularly those that are bulky and of low perishability.

This chapter looks at both "hard" and "soft" infrastructure for marketing agricultural products in Papua New Guinea—that is, both the physical conditions (including transport and storage) and information systems necessary for producers, processors, and traders to make strategic decisions and effectively prepare for and engage in trade. The inquiry looks at the laws, institutions, and dynamics that have led to the current state of marketing infrastructure and those that promise to lead it forward.

KEY LAWS

- Organic Law on Provincial Governments and Local-Level Governments (1998)
- Protection of Transport Infrastructure Act (2010)
- Food Sanitation Act (1991)
- Laws establishing commodity institutions, including:
  - Cocoa Act (1981) and Regulation (1982)
  - Coffee Industry Corporation (Statutory Functions and Powers) Act (1991)

LEGAL FRAMEWORK

MARKETING INFRASTRUCTURE: THE LEGAL BACKDROP

In PNG, infrastructure is built, managed, and maintained at the national, provincial, and local (including district) administrative levels. The **Organic Law on Provincial Governments and Local-level Governments (1998)** allocates the responsibility of key service provision for constituents to the provincial and local-level governments, including transportation and related infrastructure. For example, of the approximately 30,000 kilometers of roads in PNG, only about 8,500 kilometers are under the auspices of the National Roads Authority. About 22,000 kilometers are provincial or district roads. The responsible institutions for each road (port, community jetty, airport, etc.) are generally known not only by the respective public-sector entities (noted in the table presented below in the Implementing Institutions section) but also by the private sector and civil society. While the Department of Transport has an overarching role leading policy and planning for all infrastructure, including land, maritime, and aviation, the Organic Law empowers provincial governments in particular to make laws related to transportation and facilities.

Also pursuant to the Organic Law, provincial and local-level governments may legislate and oversee trading and commercial activities within their respective jurisdictions. In particular, traditional barter and locally based trading falls within the purview of the local-level government. Although the Organic Law does not specifically address trading infrastructure, the authority can be interpreted to include the investment, maintenance, commercial oversight, or regulation of public retail or wholesale marketplaces. The Organic Law does give the right to the provincial and local-level governments to hold, manage, and dispose of property. Retail markets are largely managed at the provincial level as provincial property, with some local-level government engagement. Management and oversight of these markets vary between localities.

TRANSPORT

PNG's transport-related legal framework is generally clear and straightforward. It has recently been subject to focus and attention from the lead institution, the Department of Transport, with support of the Australian-funded Transport Sector Support Program (TSSP).

Launched in 2007, TSSP represented a transition from direct investment in maintenance to increased focus on improving governance and capacity-building and strengthening PNG's transport institutions to strengthen service delivery. The program has provided both management and policy advisors to six agencies, including the Department of Transport, the Department of Works, the Civil Aviation

Authority, the PNG Ports Corporation, the National Maritime Safety Authority, and the Department of National Planning and Monitoring. The legal and regulatory framework benefited from TSSP support by way of a Transport Sector Legislative Drafting Plan, led by the Department of Transport, which reviewed key legislation and aimed to update, amend, or draft new legislation where appropriate to provide modern and comprehensive laws for the PNG transport system.[77]

Issues related to customary land rights and a general civil society perspective (stronger in some areas than others) that views roads as "theirs" and not "ours" have resulted in rent-seeking behavior that disrupts and vandalizes transport infrastructure.[78] The Highlands Highway was built in the 1960s and is one example of a road where customary landowners may or may not have been uniformly paid during construction. Recent years have seen communities alongside the roads demand compensation from government maintenance crews before landslides can be cleared from the road. In other cases, communities have intentionally caused road damage to disrupt traffic and require the government to respond—essentially holding the road for ransom.

The **Protection of Transport Infrastructure Act (2010)** was written specifically to criminalize the damage or obstruction of publicly owned transport infrastructure as well as any action that unlawfully seeks to gain compensation from transport authorities. The measure also provides a process for legitimate outstanding access-related compensation claims from communities owning land through which roads have been built.[79]

STORAGE

The legal framework for agricultural storage and marketing should guide the construction, maintenance, and management of buildings or other infrastructure where commodities and food are handled and stored. The PNG law most directly related to these issues is the **Food Sanitation Act (1991)**, which governs food handling, processing, and preparation, including provisions for inspection and enforcement. But the main commodities—coffee, copra, rubber, cocoa, and similar commodities, as detailed in this report's chapter on Dealing with Licenses and Competing Fairly—are not typically handled or processed in any manner that would be relevant under the Food Sanitation Act. The legal framework for each of the commodity boards provides for the inspection and management of the related commodity, including some guidelines for handling, grading, and storage. The **Cocoa Act (1981)** is the only commodity act that provides for the board's right to condemn warehousing intended for cocoa storage and handling if the premises do not need meet the board's requirements. The **Coffee Industry Corporation Act (1991)** allows for inspection of coffee and processing premises, but only allows for the condemnation of bags of coffee. While the CIC does issue licenses for processors, the Act itself does not provide for the board to specifically determine and enforce warehousing infrastructure requirements, as the Cocoa Act allows within the cocoa industry. No other commodity act allows for specific warehousing or storage infrastructure requirements, though the laws do allow the statutory commodity boards to govern the marketing and trade.

IMPLEMENTING INSTITUTIONS

While the legal and regulatory framework has been under review and, where appropriate, is already under amendment and improvement, public-sector implementation and accountability

KEY IMPLEMENTING INSTITUTIONS

- Department of Transport
- Department of Agriculture and Livestock
- National Agricultural Research Institute

[77] There are 45 laws or regulations noted in the PNG Transport Sector Legislative Drafting Plan for review, amendment, consolidation, or update. Papua New Guinea is not unique in having a few very old laws still on the books, including the Roads Regulation 1937, which prohibits the transport of copra between the hours of 7:00 p.m. and 5:30 a.m. This regulation, though, is the exception and not the rule in PNG, and is one legislative weakness identified in the Legislative Drafting Plan for review.

[78] This is discussed further in the Social Dynamics section below.

[79] Anecdotally, it was reported that that the storage of physical land titles relating to any customary land acquired prior to or during some previous highway construction may have been stored in the basement of a government building that flooded, and thus at least part may have been lost.

have severely hampered the effectiveness of infrastructure. Stakeholders noted that infrastructure prioritization and investment is more likely to suffer from political capture than other government services. At the provincial and district levels in particular, which are responsible for the vast majority of the road network, politicians often involve themselves in final decisions regarding infrastructure funding. The expectation and acceptance of political capture is a key social dynamic of competition and is discussed in this report's chapter on Competing Fairly.

TRANSPORT AGENCIES

Institutional implementation begins with planning. The Department of Transport leads the policy-making and planning for all transport sectors. The table below shows the many agencies and institutions involved across the transport sector.

Planning is given strong direction and clear targets at the national level by the PNG Vision 2050, the Development Strategic Plan 2010-2030 (PNGDSP), and the Medium Term Development Plan 2011-2015 (MTDP), all of which have identified transport infrastructure as critical for creating economic vibrancy and for improving public-sector service delivery to citizens. In turn, the Department of Transport leads the sector's planning through the development of the National Transport Strategy and the Medium Term Transport Plan (which then filters down to Agency Corporate Plans and Annual Work Plans). This reflects a higher prioritization on improving consistency via improved policy alignment and planning across the government.

Many of the agencies have been receiving capacity-building assistance from TSSP. This project has included a focus on planning and operations, as well as on the legislative framework already mentioned. The 2010 TSSP report indicates that all transport agencies now have corporate plans in place.[80] While planning is the first step, resources (human resources and allocated budgets) and accountability are the subsequent steps.

Funding of infrastructure in PNG receives significant donor investment, with funds coming mostly from the World Bank, the ADB, the Japanese government, and the Australian government. The critical rural roads and community access roads, however, are meant to be largely funded from the District Service Improvement Program. Political leaders often route resources available through this program to new construction of pet projects instead of maintenance or strategically planned improvements or expansions of existing roads. This occurs without any accountability or coordination at any institutional or government administrative level to the structured planning process described above, which is meant to have already built buy-in with key stakeholders and to reflect alignment across national, regional, and sectoral priorities. Institutions across the board reported having little to no capacity to monitor or evaluate performance. And few within these institutions wanted to assume responsibility for plan implementation given their resource constraints and their lack of final decision-making ability in infrastructure investments. As an example, the PNGDSP sets a long-term target of 25,000 kilometers of roads in good condition by 2030.

TRANSPORT SECTOR IMPLEMENTING INSTITUTIONS

	Land	Maritime	Aviation
Policy	Dept of Transport	Dept of Transport	Dept of Transport
Infrastructure	Dept of Works	PNG Ports	National Airports
Operations	Dept of Transport	PNG Ports	PNG Air Services Ltd.
Safety	National Road Safety Council	National Maritime Safety Authority	Civil Aviation Authority

80 2010 Annual Transport Sector Performance Report, Papua New Guinea—Australia Transport Sector Support Program (TSSP) (AusAID, May 2011).

PLANNING FRAMEWORK				
		Strategic Level		
Time Frame	International (Global)	National (Papua New Guinea)	Sectoral (Transport Sector)	Agencies (Sector Agencies)
Long-term (e.g. 20 to 40 years)	MDGs International Conventions	PNG Vision 2050 Development Strategic Plan (Dept of National Planning and Monitoring)	National Transport Strategy (Dept of Transport) 20 years	National Airports
Medium-term (e.g. 5 years)	PNG-Aust Partnership for Development International Agreements	Medium-term Development Plan (Dept of National Planning and Monitoring)	Medium-term Transport Plan (Dept of Transport) 5 years	Corporate Plans
Annual		Development Budget (Dept of National Planning and Monitoring	Transport Sector Development Budget Submission (Dept of Transport) 1 year	Annual Work Plans

After two years, there is already a budget shortfall of 75 percent. The project is roughly PGK 3 billion short, based on the MTDP estimates of the budget required to reach targets.

Although the framework for setting goals and developing work plans has improved and both near-term and long-term priorities have been aligned, implementation and accountability are nearly nonexistent. This is due to unpredictability of funding and general under-resourcing of desired outcomes as well as the previously mentioned political capture that is particularly prevalent in infrastructure investments.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK (DAL)

PNG's central agency dedicated to agriculture has not, to date, had an active role in constructing or managing marketing infrastructure. Rather, the commodity institutions have largely been given oversight over commodity handling and marketing. While current DAL leadership champions a national focus on the opportunities the PNG agricultural sector presents, DAL does not actively participate in the Department of Transportation–led planning process to assist in identifying the most economically important transport infrastructure maintenance and construction projects. DAL is in the best position to assist the transport sector by quantifying the impact of potential infrastructure investments on the prices received by smallholder farmers and the international competitiveness of PNG production. Leading the commodity boards to analyze the marketing costs across their value chains, DAL could promote specific prioritization of transport infrastructure investments as national and provincial priorities with measurable impacts.

DAL does have an Agricultural Information Branch (AIB), which is tasked with collecting, organizing, and distributing agricultural-related information at the national and international levels. The small staff largely relies upon the relevant agricultural agencies to collect and prepare primary data and research. The AIB maintains a library of publications and information resources as well as managing the DAL website. The individual commodity boards must collect, analyze, and report the appropriate market information and statistics for each commodity; this should be reported on a timely basis to the AIB for collation and dissemination.


PHOTO BY FINTRAC INC.

Almost all stakeholders interviewed chiefly access any useful market information from their own commodity board or value chain and do not use the AIB. The AIB functions mostly as a repository and does not have the resources or the mandate to actively pursue a prioritized market information agenda of its own. While the AIB should facilitate fact-based policy development through the provision of information, there is currently nowhere for the public sector to access timely and accurate agricultural statistics for utilization in decision-making.

RESEARCH AND INFORMATION

An important source of marketing support, particularly with respect to food crops and livestock, is the **National Agricultural Research Institute (NARI)**. Since 2002, NARI has been situated under the Ministry of Higher Education, Research, Science and Technology (and, from 1977 through 2002, under DAL). Overseeing 1,400 hectares of land and 360 "infrastructure units," NARI provides research and advisory services to the agricultural community, particularly with respect to the production of subsistence food crops. One of NARI's key areas of emphasis is "information and knowledge," with its major initiatives characterized as follows:

- Information effectively packaged and disseminated to NARI clients and stakeholders;
- Information effectively managed by NARI;
- Appropriate and effective information facilities used in NARI and assistance provided to partners and stakeholders; and
- Learning needs of smallholder farmers addressed.

NARI enjoys a strong reputation, but alone it cannot meet the needs of its vast constituency of smallholder farmers. Headquartered in the eastern port city of Lae, NARI operates in eight locations and employs 136 research management and technical staff, as well as more than 3,000 support staff. NARI receives significant outside support from AusAID and from the Australian Center for International Agricultural Research as well as from the EU.

SUPPORTING INSTITUTIONS

PRIVATE CONSTRUCTION ENTERPRISES

In PNG, the road network developed based on demand and has lacked strong planning and been inconsistently implemented and continually under-resourced (see the table below indicating the condition of national roads). The

CONDITION OF NATIONAL ROADS, 2010 (DEPT OF WORKS)			
Condition	**All Roads (8,700km)**	**Priority Roads (4,200km)**	**Non-Priority Roads (4,500km)**
Good	32%	48%	18%
Fair	44%	41%	45%
Poor	20%	9%	31%
Not Accessible	4%	2%	6%

predictability of business required for further expansion of private construction investments is further hampered by the political diversions of focus and funds from maintenance and long-term investment to near-term pet projects. The industry is mainly located in larger markets. Demand from large resource projects also drives up prices. For smaller maintenance projects or projects in remote areas, equipment must often be shipped or hauled long distances, which substantially increases the costs. This results in minimal competition for infrastructure contracts in some districts and provinces. When domestic shipping of equipment is required to complete the work, the construction company may require a significant advance in payment to cover this shipping, which can equal nearly half of the total project cost. There is also a lack of trust in government payments. The tendering process, however, does not allow for advance payments prior to work commencing and thus makes it even more difficult to attract construction bids.

CONSULTATIVE IMPLEMENTATION AND MONITORING COUNCIL (CIMC)

The CIMC is a publicly funded organization charged with facilitating dialogue between the public and private sectors with civil society participation. It was established in 1998 and hosts quarterly meetings of committees on transport and infrastructure, agriculture, and commerce support services, among others. At the time of this diagnostic, the transport and infrastructure committee was pushing the National Roads Authority to consider a fuel excise tax to fund maintenance on the critical Highlands Highway. The committee has also raised issues related to coastal shipping rates, maintenance of rural roads, and district plans and capacity to maintain district-owned infrastructure, which includes not only roads but also agricultural infrastructure services and extension delivery infrastructure. The Business Council of PNG is an active participant in the CIMC Transport and Infrastructure Committee, along with PNG Ports, National Truckers Association, and some manufacturers. The CIMC Agriculture Committee has discussed and debated freight cost subsidy schemes in the past. The Agriculture Committee includes the Rural Industries Council, the Business Council of PNG, the commodity industry boards, a few agribusiness companies, and research institutions.

In PNG, there is a significant gap with respect to organized advocacy across value chains, representative of all key stakeholders from producers through trade and marketing to exporters and consumers. The CIMC is the one organized means of broad-based, public-private dialogue, though the agribusiness voice in the transport and infrastructure sector is dominated by the larger business community.

KEY SUPPORTING INSTITUTIONS

- Private construction enterprises
- Consultative Implementation and Monitoring Council
- Commodity and Transport Aggregation Services
- Media

COMMODITY TRANSPORT AND AGGREGATION SERVICES

Oil palm is a unique value-chain example where almost all palm fruits are originated using mill logistics. Because oil palm fruit must be processed relatively quickly after harvest, producers in PNG have only one mill close enough to their production blocks for marketing. Because of this low market density, the value chains are more integrated and the milling companies are able to invest larger amounts of money in infrastructure and logistical support to their producers. The mills know that every dollar they spend on road maintenance, extension services, and origination logistics is a direct investment in their own supply chain and improves the efficiency and return for their suppliers/producers.

The other commodities, such as coffee, cocoa, and copra, have more vibrant market competition with multiple buyers vying for the producers' raw output. These companies are not as able to invest in hard infrastructure because the investment may actually support production volume that is subsequently sold into a competitor's business. Producers benefit, however, as margins become tighter downstream to offer the best producer prices. This said, some companies do own transport for product origination. A significant volume of cocoa is originated and purchased from isolated communities accessible only by small vessels capable of beach landings. The cocoa companies (traders and exporters) own their own vessels to facilitate market access for those producers (though they are buying the cocoa at the community jetty or beach, not providing separate transport services).

Much of these commodities arrive at market brought directly by the producer or a producer agent (that is, a community member selling some aggregate of local production). By water, the product arrives most often in small privately owned boats that may be chartered for a larger volume or carry product with passengers heading to town for other pursuits. By road, the commodities most often utilize PMVs, which are generally locally owned vehicles providing the varied transport services required by the community—children to school, women with fresh fruit or vegetables heading to market, access to banking services or health services in town, etc. In the commodity value chains, the cost of transport for the cash crops is not charged on a per-sack or per-weight basis, as is common in many other developing economies where multi-use transport moves product. Rather, in PNG it is very common for the PMV to charge a percentage of commodity value—charging more when commodity prices are good but decreasing prices when the commodity value falls. There are agribusiness companies that have investigated these practices with an eye toward increasing efficiency of commodity transport, whose cost directly impacts the percentage of the commodity value received by the producer. There are some initiatives to provide commodity transport services to improve value-chain efficiency and hopefully secure larger volumes of product. The social counter, however, is that, in the event of a community emergency, the PMV is obliged to provide critical transport services (for example, in the case of a health emergency requiring immediate hospitalization), and the cost of this obligation is built into the fee structure for other transport services. In general, producers and traders recognize the social value included in the fee structure and want to find a balance that improves value-chain efficiency but also does not fundamentally threaten the livelihood for the PMV driver, who obviously provides a broad range of services to the community.

MEDIA

The media in PNG plays an important role in promoting competition among enterprises, which is particularly relevant in relation to transport service provision. Given the contribution of transport service cost within the value chain and commodity marketing costs, an efficient and competitive transport sector is critical for maximizing smallholder prices. In PNG, whereas domestic trucking services and PMVs reflect the expected dynamic and competitive transport service sector, the domestic shipping and air transport services do not have nearly the number of service providers one might hope for, particularly given the roles that shipping and air transport play in market access for so many PNG producers. The media plays an important role, as do others, in attempting to ensure competitive and appropriate transport service rates where the market is not large enough to attract additional service providers. This media role is discussed further in this report's chapter on Competing Fairly.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SOCIAL DYNAMICS

TROUBLE ON THE ROADS

As noted above, community demands for compensation along the main national roads increases the cost of maintenance. Just as important are the security and law and order problems, particularly in the Highlands provinces. Diverse stakeholders reported that armed robbery, vandalism, and other types of rent-seeking harassment are common. The Protection of Transport Infrastructure Act (2010) was a direct response to these ongoing challenges, but broad social acceptance of the behavior threatens the public sector's ability to respond.

The compensation claims manifest themselves in a number of scenarios. For new roads, it should be reasonably straightforward to negotiate the compensation of customary landowners for the land used for road and road reserves prior to the commencement of new road construction. In reality, it may be difficult to determine who the customary landowners are, especially if no communities or production are situated in the planned road path. In practice, as soon as new road sites are identified and possibly even after construction has begun, communities will rush to clear and plant in the path of or alongside the proposed new road. Compensation is based on economic use, and if production is active and ongoing (even if only started post-road-planning), the communities demand higher compensation for the new roads.

PHOTO BY FINTRAC INC.

Along existing roads, landslides regularly cover roads and require maintenance crews to arrive and clear access. Communities see this as an opportunity to request compensation for the land displaced or overtaken by the landslide. Maintenance and clearing activities may be stalled or halted by various criminal means until payment is made. On the flip side, legitimate compensation claims have a difficult time establishing that the land was not adequately compensated at the time of road construction. Access to land and legally binding transfer of customary land, even to the government, have been discussed in more depth in this report's chapter on Registering Property. It is important though to note that this social dynamic is just as challenging in the infrastructure sector.

GENDER ACCESS TO MARKETS

PNG contains a strikingly diverse array of cultures. However, it is fair to say that generally men focus on the traditional export-targeted cash crops (largely tree crops), and women manage the household gardens and food crops. To date, women have largely been excluded from access to production of the traditional cash crops, with some limited exceptions. Even in areas where women are active participants in export crop production, they typically play roles within the production process and do not engage in marketing. Men generally travel to town with their commodities for negotiation and sale to traders and exporters.

In locations where horticulture straddles household food and emerging cash crops, both men and women participate along the value chain. Rather than having constraints on market access within the horticulture subsector, women dominate the markets—as producers and traders/retailers. Women producers are most likely to be the retailers themselves. They will often travel once or twice a week with their own production to the retail market in town and spend the entire day devoted to sales. At times if they have traveled a significant distance to reach the market and do not sell all their produce in one day , they will remain in the area to resume sales the following day; often they have family or *wantok* in the area with whom to stay. In the larger Port Moresby markets, some of the women traders travel from the Highlands via Lae by boat with their cabbages, kaukau (sweet potato), and potatoes. They pay PGK 2 per day for retail space within the market and may stay for two weeks marketing their production. Other women in the market live in Port Moresby but retail their families' production from the Highlands.

Women are extremely vulnerable to intimidation and violence, including sexual violence at some markets. UN Women are targeting this problem through the Port Moresby: A Safer City for Women and Girls project. As the fruit and vegetable value chains develop, targeting the resource projects and urban markets, income opportunities for women may increase. The work of New Zealand and the FPDA on developing wholesale fresh produce market infrastructure in Port Moresby may provide one such opportunity.

Whether driven by donor-funded project mandates or by the identification of opportunities to increase access to additional product, some commodity exporters are making specific efforts to expand women's access to income within the value chains. For example, some of the oil palm companies have started a program to include women in the income potential from the cash crop. The companies pick up oil palm fruit either near or at the farms, using nets to weigh each bundle. Swipe cards, given to each producer, allow the oil palm company to directly deposit the payment for each bundle collected into the producers' bank accounts. Women and youth have also been issued cards to facilitate their participation in the oil palm sector. The oil palm companies based the initial market participation of women and youth on the collection of the loose fruit that had fallen among the trees when the men collected the marketable bundles. This loose fruit was largely left on the ground. The companies thus identified an opportunity to increase the volume of fruit they purchased, increase the income to the family, and diversify the recipient of the income within the family. Because of this initial concept, the swipe card is called the Mama Lus Frut card. The program has improved overall access to market participation on behalf of women and youth. Often men will place fruit in their wives' nets—this may in fact represent an easier marital negotiation than a direct request for cash.

RECOMMENDATIONS

Develop realistic, long-term plans for the development and maintenance of PNG's transportation infrastructure, particularly the road network, including clear targets, performance incentives, and multi-year financing.

Feasibility: Medium
Resources required: High
Potential impact of reform: High

High costs related to transportation directly impact PNG's competitiveness in global commodity markets, which are dominated by other production zones. The proportion of final commodity value received by producers is directly related to cost of transport in competitive commodity markets. Improving delivery and implementation of transport infrastructure maintenance and development should directly impact the proportion of commodity value received by producers.

Transport infrastructure in PNG suffers from the under-resourcing and political capture of infrastructure projects. Politicians prefer cutting ribbons on new projects to filling potholes. Accordingly, a lack of implementation and accountability related to planning is the largest challenge to improving PNG's infrastructure.

The government's budgetary process must be modified to encourage multi-year financing in alignment with long-term infrastructure planning. An education program for politicians and constructive public awareness must be put in place that emphasizes maintenance plans, especially the quantification of cost over the life of the infrastructure and the impact on related transport costs (access to services, access to markets, etc.). The public-sector planning and implementation process should be included in the education program to indicate where decisions are made and input points for both politicians and civil society. Finally, strengthening of monitoring and evaluation capacity and public reporting within each of the transport-related agencies is needed to ensure plans are followed. This reform is a long-term investment requiring ongoing education and reinforcement.

Launch a public awareness campaign to develop local ownership of infrastructure and raise awareness of the importance of shared stewardship, particularly highlighting the relevance of infrastructure and its maintenance to service delivery.

Feasibility: Low
Resources required: Medium
Potential impact of reform: Low

The lack of civil society ownership of public infrastructure and the monetary success of public officials from rent-seeking behavior is increasing the cost of maintenance and infrastructure investment. These social dynamics drive up the cost of transport, which directly impacts the efficiency of business and the delivery of public services to communities.

A public awareness campaign should be developed and implemented to increase a sense of ownership over infrastructure by local communities and to raise awareness of the importance of shared stewardship of public resources. An increased sense of ownership should also drive accountability from public officials, improving delivery of transport-related investment and implementation as a result.

PNG has such a rich cultural diversity that developing a cohesive sense of communal ownership and stewardship for public infrastructure will require significant effort and expertise. Also, a campaign without simultaneous improvements in service delivery to the same communities will fall flat. The campaign should be continually adapted based on evaluation of impact and the need for message and delivery modification.

TRADING ACROSS BORDERS

Papua New Guinea depends heavily on cross-border trade for economic growth, with exports of goods and services accounting for 90 percent of GDP in 2009.[81] Minerals (gold, copper, and oil) account for the majority of export value, approximately 77 percent in 2009. Agricultural products, including palm oil, coffee, cocoa, copra, vanilla, tea, and rubber, account for 17 percent of exports. PNG's primary trading partner is Australia, which accounts for 47 percent of exports and 42 percent of imports. The next largest trading partners for imports are the US (22.1 percent), Singapore (11.4 percent), and China (5.1 percent). For exports, Japan (14.5 percent) and the Philippines (7.3 percent) are the next largest markets.[82] PNG pursues an open trade regime, focused on processing and value-added production of its natural resources, which have a natural market in resource-hungry industrial economies.[83]

This chapter reviews the legal, institutional and social dynamics relating to PNG's trade in agricultural products, including both topics of **trade policy**—that is, policies, laws, agreements, and relationships underlying regional and international trade—and **trade facilitation**, the system of procedures and documentation for international trade, with an emphasis on the work of the Customs Service and other border agencies. A country blessed with enormous prospects for export-led development in the agricultural sector, PNG has numerous opportunities to strengthen the enabling environment for regional and international trade.

LEGAL FRAMEWORK

PNG's legal framework for agricultural trade consists of a disparate set of treaties, laws, regulations, and commitments. Several of the key trade laws date back to before independence, while the regional and international commitments have come later. The legal framework is generally available to those seeking to examine its terms, most conveniently through the use of international websites, such as the World Bank's *Doing Business* online law library or various trade organizations' websites.

TRADE POLICY

PNG has never had a comprehensive trade policy, and its trade framework has been constructed in a predominately ad hoc, intermittent, and uncoordinated basis. PNG underwent significant reform in the 1990s and early 2000s, but since then trade-related legal reform has been slow.[84] A new round of the TRP commenced in February 2011, after previous attempts were deferred due to macro-economic concerns.

International treaties

PNG has been a full member of the **WTO** since its establishment in 1996. PNG is included within the WTO's Small Vulnerable Economies (SVE) group for agriculture, its Non-Agricultural Market Access (NAMA) program, and rules negotiations. PNG is not part of the Global System of Trade Preferences (GSTP) but does benefit from being a member of the Generalized System of Preferences (GSP). PNG is party to agreements with the European Union, APEC, the South Pacific Regional Trade and Economic Agreement (SPARTECA), the Pacific Agreement on Closer Economic Relations (PACER), and the Pacific Islands Countries Trade Agreement (PITCA), as well as bilateral agreements with Australia, Fiji, and Indonesia.

[81] WTO, Trade Policy Review: Papua New Guinea (2010).

[82] Id.

[83] Id.

[84] Id.

KEY LAWS

- World Trade Organization (acceded 1996)
- Pacific Island Countries Trade Agreement (2001)
- Melanesian Spearhead Group Trade Agreement last revised 2007)
- Interim EU Economic Partnership Agreement (2009)
- South Pacific Regional Trade and Economic Cooperation Agreement (1981)
- Pacific Agreement on Closer Economic Relations (2001)
- National Agriculture Quarantine and Inspection Act (1997)
- Quarantine Act (1953) and Regulation (1957)
- Animal Disease and Control Act (1952) and Regulation (1955)
- Plant Disease Control Act (1953) and Regulation (1956)
- Customs Law and Regulation (1951, as amended)
- Customs Tariff Act (1990)

The **Pacific Island Countries Trade Agreement (PICTA)**, concluded in 2001, provides a free-trade area among pacific island countries (PICs), including the Cook Islands, Fiji, Kiribati, Micronesia, Nauru, Niue, PNG, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. The agreement entails the gradual elimination of tariffs (except on alcohol and tobacco) and the phasing out of quantitative import restrictions. PICTA was seen as a stepping-stone agreement, through which PICs set out to ensure a progressive, but gradual, integration with the global economy in line with their respective capacities.[85] However, implementation has been much slower than anticipated, and recently the organization extended tariff reduction deadlines from 2016 to 2021. Due to administrative and technical capabilities, PNG has not started incorporating PICTA tariff rates into its schedules.[86] Another inter-PIC agreement, the **Melanesian Spearhead Group Trade Agreement (MSGTA)**,[87] calls for the eventual elimination of tariffs, as well as an end to import and export restrictions. Although negative lists were to be phased out by 2005, to date PNG has not phased out any tariff reduction commitments. For PNG, gains from PICTA and MSGTA are likely to be minor due to the small size of the regional market and its own nondiscriminatory liberalization.[88]

In July 2009, PNG (and Fiji) signed an **Interim EU Economic Partnership Agreement (EPA)**. This was a necessary condition to replace the preferential access to the EU market under the expired Cotonou Partnership Agreement. The interim EPA covers market access, improved rules of origin (particularly for agri-processing and fish products), SPS, and duty-free, quota-free access for all products, except rice and sugar. PNG is required to eliminate tariffs on 88 percent of EU imports, excluding the most sensitive economic sectors (meat, fish, and vegetables) and luxury products (jewelry). The impact of the interim EPA is likely to be limited as the EU is a marginal source of imports for PNG, although PNG did negotiate improved rules of origin for fish that will strongly benefit the tuna-processing industry.[89] The agreement does, however, trigger an automatic negotiation clause with Australia and New Zealand, which is likely to have a much wider impact.

PNG's exports currently enter Australia and New Zealand duty-free without restriction under the **South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)**, established in 1981. Benefits of the agreement have been limited, however, due to restrictive value-added rules of origin and the erosion of tariff preferences through expanding free trade agreements (FTAs), including with the 10 Association of Southeast Asian Nations (ASEAN) countries, China, and the US.[90] In addition, the **Pacific Agreement on Closer Economic Relations (PACER)** is a framework agreement that sets out the basis for future trade relations with Australia and New Zealand. It is not in itself a free-trade agreement but rather requires negotiation with Australia

85 UNU-CRIS, South-South and North-South Trade Agreements: The Pacific Islands Case, Working Papers W-2010/7 (2010).

86 WTO, Trade Policy Review: Papua New Guinea (2010).

87 The MSGTA is between Papua New Guinea, Vanuatu, Solomon Islands, and Fiji.

88 UNU-CRIS, South-South and North-South Trade Agreements: The Pacific Islands Case, Working Papers W-2010/7 (2010).

89 ADB, "Pacific Trade Issues," Pacific Studies Series, Philippines (2010).

90 WTO, Trade Policy Review: Papua New Guinea (2010).

and New Zealand in the event that PICs commence trade negotiations with other parties, or within eight years of PICTA coming into force.[91]

In return for increased market access, PACER provides for trade facilitation measures to benefit the PICs. This has led to the creation of the Regional Trade Facilitation Programme (RTFP), a donor-supported initiative that has focused on, among other priorities, customs and quarantine management and standards and product conformance. PNG's interim EPA with the EU has triggered PACER-Plus negotiations, which were launched in 2009. Compared to the EPA, the PACER-Plus would have much greater adjustment implications in opening up PIC markets, as Australia and New Zealand account for nearly half of all PNG imports. As PICs already benefit from duty-free, quota-free access under SPARTECA, market access gains are less clearly identifiable. PICs have expressed apprehension over the negotiations and believe that benefits to PICs are unlikely unless matched with substantial capacity-building, more constructive approaches to SPS, and improved rules of origin conditions.[92] For the benefits of the PACER-Plus agreement to be meaningful to PNG, effective trade facilitation, particularly in overcoming SPS barriers, is needed. PNG is in the process of bringing issues papers to the negotiations, the only party other than Australia and New Zealand to do so.

Since 1976, PNG has held "special observer" status in the Association of South-East Asian Nations (ASEAN). It has pursued full membership but currently remains defined as a candidate country. PNG has acceded but not yet ratified the Asia-Pacific Trade Agreement (APTA) and is a member of Asia Pacific Economic Cooperation (APEC) organization and the Pacific Islands Forum (PIF). Both the UN and ADB have raised concerns that emphasis on trade relations with the EU, Australia, and New Zealand has prevented PNG from significantly focusing on the development of its regional ties. While there are numerous transport barriers to be addressed, there are also considerable trade and economic partnerships to be explored. The recent proliferation of FTAs in the region puts PNG at a disadvantage as it is faces increasing discrimination vis-à-vis other countries in the region.[93]

Tariffs and other trade barriers

As a result of the Tariff Reduction Program (TRP) in the late 1990s and mid-2000s, PNG's average (unweighted) applied Most Favored Nation (MFN) tariff fell from 20.5 percent in 1999 to 5.1 percent in 2006, where it has stayed.[94] This is much lower than average for lower-middle-income countries, including those in the East Asia and Pacific region.[95] Three-quarters of tariff lines are duty-free, with three other enforced bands of 15 percent, 25 percent, and 40 percent. PNG has a bound tariff rate at an unweighted average of 32.7 percent. Although applied tariffs have been raised infrequently, the WTO has expressed concern about the potential scope for raising tariffs due to the large difference between PNG's applied and bound rates.[96]

While progress has been made in all sectors, agricultural tariffs remain five times higher than those imposed on nonagricultural goods. On the other hand, their average of 12.5 percent is much lower than the pre-TRP average of 33.2 percent. The bound rate is 45 percent for agricultural production, with higher rates on sensitive agricultural products such as sugar, pork, and poultry. The rate on sugar was lowered in 2011 from 70 percent to 40 percent. The tariff rate on imported poultry is 57 percent. Tariff revenue decreased from 17 percent of total revenue in 1998 to less than 3 percent in 2012. This loss of revenue was offset with the introduction of a general sales tax of 10 percent.

Export taxes are infrequent and apply mainly to logging and crocodile hides. PNG does not have import duties or quotas and has minimal import licensing, with the exception of poultry.[97] PNG also has no non-preferential rules of origin legislation, as set out in specific trade agreements.

91 Pacific Island Forum Secretariat, PICTA and PACER Frequently Asked Questions, available at http://www.forumsec.org/resources/uploads/attachments/documents/FAQs%20PICTA%20PACER.pdf.

92 UNU-CRIS, South-South and North-South Trade Agreements: The Pacific Islands Case, Working Papers W-2010/7 (2010).

93 ADB, Free Trade Agreements in East Asia: A Way Towards Trade Liberalization (2010).

94 WTO, Trade Policy Review: Papua New Guinea (2010).

95 Available at http://info.worldbank.org/etools/wti/3a.asp.

96 WTO, Trade Policy Review: Papua New Guinea (2010).

97 Id.

PHOTO BY FINTRAC INC.

TRADE FACILITATION

PNG law clearly defines the roles and responsibilities of the country's two principal border agencies. First, the **National Agriculture Quarantine and Inspection Act (1997)** established the **National Agriculture Quarantine and Inspection Authority (NAQIA)** as the regulatory authority over the import and export of all animal and plants products, including processed items. The law charges NAQIA to provide for the protection of animals and plants, natural resources, and the environment from pests and diseases. NAQIA also holds regulatory authority with respect to the (generally superseded) **Quarantine Act (1953)** and **Regulation (1957)** as well as the **Animal Disease and Control Act (1952)** and **Regulation (1955)** and the **Plant Disease and Control Act (1953)** and **Regulation (1956)**.

Second, the **Customs Law (1951 as amended)** established and now guides the operations of the national Customs Service (Customs), PNG's primary border agency. In 2006, a diagnostic exercise reviewed the level of the law's compliance with the **World Customs Organization's Revised Kyoto Convention (RKC)**, which memorializes international best practice for trade facilitation. As a result of that exercise, the government addressed inconsistencies, and now the law permits application of all the international standards outlined in the general annexes of the RKC and about 80 percent of its specific annexes. Recently, a binding rulings procedure mandated by RKC was adopted whereby traders can request a determination of value and classification prior to importation. However, the Customs Service still struggles to implement all the core processes outlined in RKC, notably with respect to transit cargo and rules of origin.

Despite efforts at compliance, PNG has not yet fully acceded to the RKC. This is due primarily to lack of stability in the Ministry of Foreign Affairs, which must initiate the process. Accession is a priority for Customs, among other reasons because of its leadership position in the Oceanic Customs Organization and its good standing in the World Customs Organization (WCO).

The PNG Customs Law permits the licensing of individual customs brokers but not of companies. Companies wishing to perform such work in-house, which are the majority, employ licensed agents as staff. Although the law provides Customs with adequate sanction authority, the fact that companies are not licensed limits the service's ability to take action against a firm for negligence or fraud. The exclusive licensing of individuals also creates a disconnect between clients and their brokers and further lowers accountability between the parties, opens more potential for misconduct, and invites a poorer quality of work, all of which result in increased clearance delays.

PNG's legal framework for customs valuation is in compliance with **Article VII of the WTO General Agreement on Tariffs and Trade (1994)**. Moreover, the Customs Service's application of these principles is consistent and transparent. Throughout PNG, forms and requirements of clearance of international cargo are fairly standardized. Both Customs and NAQIA have well-maintained websites that generally provide transparency in policies and procedures. However, due to high internet costs and unreliable information technology (IT) networks, SMEs interested in expanding into international markets often lack access to needed information beyond the urban areas. Moreover, NAQIA's restrictions on such items as seed varieties are not posted online and are known only after applications for import permits are denied.

IMPLEMENTING INSTITUTIONS

TRADE POLICY

As detailed below, the major institutions charged with implementing trade policy in PNG include the Trade Division of the Department of Foreign Affairs and Trade; the public export promotion authorities; and the Department of Treasury. A number of other government departments, agencies, and statutory bodies also hold important trade-related responsibilities.

KEY IMPLEMENTING INSTITUTIONS

- Trade Division, Department of Foreign Affairs and Trade
- Investment Promotion Authority
- Commodity boards and agencies
- Department of Treasury
- Customs Service
- National Agriculture Quarantine and Inspection Authority (NAQIA)
- Ports Authority

Trade Division, Department of Foreign Affairs and Trade

Responsibility for external trade policy formulation and implementation is held by the Trade Division of the Department of Foreign Affairs and Trade (DFAT), under the Ministry of Foreign Affairs, Trade and Immigration (MFATI). These responsibilities were transferred from the Department of Trade and Industry in 2007, which then became the Department of Commerce and Industry (DCI) under the Ministry of Commerce and Industry (MCI). The DCI is responsible for the development and facilitation of the trade industry, commerce, and investment.[98]

The Trade Division lacks the capacity to sufficiently coordinate or implement trade policy decisions. It is currently understaffed, and only four staff members have been there longer than eight years. Trade policy is largely determined and implemented ad hoc, and political influence plays a critical role in developing and implementing policy. Coordination is lacking between the Trade Division and other ministries, and support for policies has often not lasted beyond individual government terms. Other ministries often do not respect the authority of the Trade Division or are not sufficiently aware of trade rules. For example, in 2011, there was a push from the Department of Agriculture and Livestock to ban imports of lamb flaps, which would have conflicted with WTO regulations.

Lack of capacity has led to PNG's ineffective participation in international trade negotiations. There is poor institutional knowledge of how to conduct negotiations, and different staff members often turn up for different negotiations. The UN has noted that PNG often follows other countries without properly considering

[98] Id.

the impact of possible changes on its own economy. PNG does not have a permanent mission in Geneva and is represented by the WTO Pacific Islands Forum Representative Office. Lack of capacity has also meant that PNG has failed to meet its WTO notification requirements since 2000. As of June 2010, there were 43 agricultural notifications outstanding.[99]

The Trade Division is supported by the EU Trade-Related Assistance Program (TRAP), which recently completed the first phase of its program to support trade policy development, trade facilitation, and private sector development for export promotion.

Export promotion agencies

Export promotion is delegated to multiple public bodies and as such lacks a cohesive, effective strategy. At the national level, both the **Investment Promotion Authority (IPA)** and the DFA's **Trade Division** (discussed above) share export promotion responsibility. This role is also delegated to the **commodity institutions**—including CIC, the Cocoa Board, the Copra Board, and others—that regulate the cash crop sectors, although most lack sufficient resources to launch effective promotion efforts. No commodity entity has a dedicated field staff to work with potential exporters to encourage production for export and explain existing requirements. Thus, limited resources are wasted in duplicated efforts, and the trade community lacks a centralized source of information.

The IPA's Export Promotion Division appears to have the most organized program. Its efforts focus on processed food products, coffee, and spices, but its inability to gauge results, its limited use of IT systems to track inquiries and provide information, and its poor communication links outside major urban areas limit effectiveness. Additionally, high turnover rates (70 percent in the last year, due in significant part to uncompetitive salaries) continually drain trained personnel and fail to attract qualified recruits.

Attempts have been made to incorporate trade policy into the government's implementation of Vision 2050, which is led by the Prime Minister's Office and the National Executive Council (NEC), the cabinet of the national government, through the Public Sector Reform Management Unit. However, financial and institutional capacity constraints persist.[100] In early 2012, the NEC announced a restructuring of DFAT and DCI to better formulate and implement a modern trade policy. As part of the restructuring, DCI will lose all trade-related functions, and the International Business Division of DCI will relocate to the Trade Division in DFAT. The Trade Division will be elevated under DFAT with a dedicated third deputy secretary for trade and will have primary responsibility of policy development, negotiations, and implementation of reforms. Under the plan, a Trade Commission will be formed to develop a trade policy and restructuring agenda. The Trade Commission will take over responsibility for trade and investment promotion, and the IPA will lose all trade promotion functions.[101] The Trade Division has also set up working groups on issue chapters of PACER-Plus, led by the relevant line agencies, to engage with key public- and private-sector stakeholders to help formulate PNG's policy positions.

Department of Treasury

Tariffs are set yearly by the Department of Treasury. Additionally, in 2012, the TRP was renewed, led by the Department of Treasury. Despite pressure from the NEC, the DAL and the DCI, there had been, as of the time of this diagnostic, no consultation on the program with any department or other stakeholders.

TRADE FACILITATION

Although many public and statutory groups regulate various sectors of international trade in agricultural commodities, Customs, NAQIA, and the PNG Ports Authority are the key institutions whose processing and handling of export and import cargo most directly impact the ability of PNG to create a sound trade facilitation environment.

99 Id.

100 Id.

101 See PNGINFORMEDIA, "NEC moves to set up Trade Commission" (February 2, 2012), available at http://pnginformedia.blogspot.com/ 2012/02/nec-moves-to-set-up-trade-commission-in.html.

Customs Service

The PNG Customs Service was created as an independent agency under the Ministry of Treasury when it separated from the IRC in 2009. Since 2009, Customs has struggled to transform from a tax collection–oriented agency to one that embraces the full range of border management responsibilities. Since Customs must meet assigned revenue targets and collect the 10 percent GST on all international shipments, controls on collections will continue to compete with trade facilitation for the attention of the limited resources of the agency.

Staffing. Pursuant to the 2009 separation, Customs was stripped of all corporate function personnel. It is now understaffed and unable to meet all border-management responsibilities or allocate needed personnel to key operational activities. Understaffing also leads to more crisis management than strategic planning. The current staff of 270 positions distributed among 20 field locations is little more than 50 percent of the 470 allocated. Workload for 2011 included processing of 122,402 import declarations and 9,184 export declarations. Lack of available staff at critical points in the import/export process, as well as failure to adjust working hours to meet service demands, are constant complaints from the agency's stakeholders.

Staffing is constrained by a burdensome recruitment process, where the Department of Personnel Management (DPM) is involved in every stage of the process. If freed from this restriction, the hiring process could be reduced from two to three years to one or two months. Staffing is also constrained due to a lack of adequate office space and equipment. Many officers work out of their cars, and transportation to work sites is often provided by Customs Service users, which invites opportunities for inappropriate interactions.

Customs has no program facilities for training new recruits or for continuous training of staff. Few standard operating procedures are in place to provide guidance or uniformity. A recently imposed USD 15 entry user fee will go directly to the agency and should improve working conditions, but it is insufficient to address infrastructure or staffing inadequacies. Recent leadership has strived to expand opportunities for the hiring and advancement of women, who now occupy some supervisory positions.

Customs lacks qualified IT staff who can handle reoccurring problems and who have the standing within the organization to influence operational changes based upon system capabilities. High turnover rates and increases in workload with the separation from the IRC have created a lack of institutional knowledge within the IT department to address the underutilization issues.

Officer accountability is lacking and measurable performance standards are not in place to give management the tools needed to address the issue. Customs is currently revising its Code of Conduct and recognizes integrity as key personnel issue. Despite efforts to reassure the trade community that officer misconduct should be reported, it recognizes that reluctance to report persists. An Office of Internal Affairs, charged with investigating misconduct, is in place, and disciplinary action, including removals, has occurred.

Finally, work hours of the border agencies need to be realigned to port operations so that clearance can occur without advanced scheduling and overtime fees. Although this might be difficult to achieve with existing limited resources, efforts should be made for some accommodation at the heavy volume locations. AUS Aid/Australian Customs have assisted PNG Customs in both policy and process development, providing four full-time advisors, training, and equipment.

Operating systems. The Automated System for Customs Data (ASYCUDA) captures about 95 percent of the workload and is operational at all but eight ports. Customs has used the

UNCTAD-developed ASYCUDA ++ IT operating system since 2004 and cannot upgrade to the more advanced web-based system of the program due to unreliable IT networks. Customs brokers currently transmit import/export declarations and shipping agents transmit manifest data for Port Moresby and Lae through dial-up connections. About 100 filers are certified to transmit.

ASYCUDA is underutilized, and management views ASYCUDA primarily for data, so many of its modules are not activated. The import/export process was not redesigned prior to implementation, a step that is especially desirable to simplify processes through improved management controls. Users often have to try repeatedly to access the system, and extended delays, especially at Lae, have caused major disruptions in cargo clearances and added to port congestion. Current Customs manual procedures are inadequate to deal with the volume of cargo that accumulates when the system fails for long periods of time. The Lae trade community and Customs need to partner to develop a more efficient back-up process which could serve as a standard practice at all locations.

Customs will locate the two x-ray vans it is purchasing for Lae and Port Moresby outside the port limits. An extensive effort will be needed to train and build the facilities for the operations if this investment is to yield improved compliance levels. Trade community concerns about the impact of the units on traffic flow and therefore release times must be considered as final operating plans are developed.

PNG Customs currently holds the lead coordinator position at the self-supported regional ASYCUDA operations center in Fiji. Fiji is currently using almost all of the system's modules. This experience must translate into increased awareness on how to use ASYCUDA to employ modern best practices. System integration into operations is critical to process redesign and can only be achieved through a committed training effort.

Import processes. The current import process is time-consuming, creates significant additional costs to transactions, and negatively impacts PNG's ability to meet its goal of economic growth through export expansion. Normally, Customs takes four to five days to clear cargo once the entry document is transmitted, unless the cargo is selected for further inspection. Additional inspection occurs for 20 percent of imports and adds an additional two to three days. The entry file is then processed by NAQIA (three days' average) and then proceeds to the Port Authority where storage fees of about USD 50 per day per 20-foot container are collected because the cargo has remained in the port beyond the free five days. Payment must be made only by check or cash. The entire process can easily take several weeks to complete. On average, containers remain at Lae and Port Moresby ports for more than 20 days, whereas the international standard is 5 days.

Customs considers imports to be its core business process and has initiated steps to streamline the procedures. Process mapping has been completed and the follow-up Time Release Study (TRS) based on the 2011 WCO model will start in March 2012. This study will measure the time taken for all procedures from manifest filing to clearance and should provide firm evidence of processing inadequacies, motivate a redesign of the import process, and provide a measureable baseline to determine effectiveness. This same approach should be applied to exports and incorporate all elements in the clearance process for both imports and exports. PNG Customs prides itself on being a reputable and influential member of the WCO, and the chance to present a successful outcome from the TRS application is an incentive for meaningful results. However, the unanswered question remains as to whether Customs will remain committed to the strategy and have the capacity to implement changes in line with modern practices.

Customs' recent decision to require sea carrier manifests to be filed prior to entry declaration filing has limited pre-arrival processing, a significant procedure in expediting clearances and reducing port congestion. Although Customs initiated the move to eliminate multiple filings by brokers seeking "green lane" processing and assist tracking of irregular deliveries, the practical result has been to slow cargo release. The law permits the trade community to pre-file entries up to five days prior to arrival. However, a review of 2011 covering a two-month period indicates that, in Port Moresby, 50 percent of manifests were lodged less than one day before arrival. The requirement for carriers to file manifests up to 48 hours prior to arrival is not enforced.

Manifest filing is also slowed by the inability of all but one carrier to upload the data directly into ASYCUDA. The shipping agent must rekey data that is generally already in the carriers' IT systems. Customs and the carriers should explore direct manifest downloading to expedite filing and eliminate errors created with keying. This should not be a major undertaking since carriers prepare manifests using the EDIFACT format, which can be accommodated by ASYCUDA.

Export processes. Export processing is a less time-consuming process. Hard copies of export documents, however, must be submitted to Customs after electronic submission of the declaration, despite the fact that no payments are due and Customs will not intervene in the exportation. This review of documents should be eliminated except for those commodities where value is added. Electronic releases could be issued to filers upon transmission with random selections periodically. Customs verification of export licenses and certificates of origin is unnecessary. Proper documents to fulfill contract requirements and allow the ultimate purchaser to import are the responsibility of the exporter.

PHOTO BY FINTRAC INC.

Risk management. Risk management (RM) is the tool for a systematic and disciplined approach to managing workload effectively and efficiently in a modern customs operation. PNG Customs is in the preliminary stages of institutionalizing such an approach. Selectivity in processing is in place with about 80 percent of imported cargo designated green (released without Customs review or inspection), 10 percent yellow (document review), and 10 percent red (document review and inspection). Most agricultural inputs, including fertilizer, chemicals, and equipment, fall into the green category. Criteria to establish these levels is determined by a national profiling group called together as needed. There is no risk management unit to continually analyze results, gather intelligence, and update criteria.

Compliance. There is widespread acknowledgement that compliance levels among the trade community and the customs brokers sector are inadequate. The formal trade community complains of its inability to compete with traders who do not pay taxes. Many underpriced commodities in the market are either smuggled into the country or falsely declared. Although Customs has strengthened its border enforcement position to a limited extent, it cannot effectively address the issue. Customs has no institutionalized and comprehensive regime in place to measure compliance levels and identify irregular actions. Although the law provides the agency with adequate sanction authority, Customs is unable to improve the poor compliance levels due to implementation constraints in the port audit program. The current post-audit unit borders between nonfunctional and defunct, has no national plan for effective utilization of its limited resources, and lacks the capacity to build an effective operation.

Without compliance measures in place, Customs cannot establish a trusted trader program, which could offer accelerated services to compliant traders such as periodic entry and payment procedures. Such expedited processing would benefit agribusinesses that import repetitive shipments of agricultural inputs or export cash crops. When the LNG project requested expedited service, the solution was to assess an increased user fee of USD 125 rather than the standard USD 15. This payment for service, although perhaps necessary in view of pressure exerted to accommodate such a large investment project, sets a bad precedent and implies that payments are required for quality service rather than it being an expected outcome of the agency.

National Agriculture Quarantine and Inspection Authority (NAQIA)

NAQIA regulates the import and export of all animal and plants products, included processed items, with the exception of rice. The agency issues sanitary (animal) and phytosanitary (plant) certificates (SPS). It is also responsible for ensuring that all containers entering and exiting the country are free of pests and disease by overseeing all fumigation and quarantine services. NAQIA charges users fees for all services. These fees go directly to the agency for operations and amount to a significant part of the overall budget. Fees range from USD 120 for seed import licenses, to USD 55 for all other import permits (100 to 150 permits daily), to USD 20 for an SPS export certificate.

Traders view NAQIA as providing good and generally efficient service in a transparent manner. Although all processes are manual, NAQIA has allowed traders to establish accounts where fees can be withdrawn automatically, although this has limited application. This drawn-down account program should be explored to allow for periodic payments from high-volume traders.

The agency maintains about 20 offices, which are understaffed and underequipped. Unlike Customs, the NAQIA recruitment process is efficient, taking only about two months to hire, and qualified candidates are reportedly available. No formal training is provided on entrance but generally inspectors who have been on the job for several y ears are cognizant of international food safety standards and competent in their application due in part to training from international sources. Although the agency indicates short staffing to be a major problem, effective use of risk analysis could significantly decrease workloads and reduce processing delays.

Institutionalization of RM programs accompanied by applicable IT systems to manage workload would modernize a process that has remained relatively unchanged for a long period and assist the agency in targeting its limited resources.

NAQIA's central office at Port Moresby is the sole authority for issuance of import permits. Requests must be submitted prior to arrival. Turnaround time is normally four to five days, according to the trade community, although a new variety of seed can take about 12 months to receive authorization. NAQIA's stringent enforcement of quality controls on import of seeds is known in the trade community and compliance is not an issue. Blanket permits for identical repetitive shipments are not available. The importer must continually follow up to see if the permit has been issued, and information on restricted items is not generally available to the trade. SPS certifications issued by NAQIA are regarded favorably by importing countries. Exporters report some delays in securing the SPS certifications with some issued after export and even after arrival at importing location in cases of short shipping routes. These certifications indicate the condition of the product in regard to pest and disease, not the quality.

All import entries are screened by NAQIA's field offices and subject to quarantine inspections. According to the trade community, around 70 to 80 percent are selected for physical inspection and about 10 percent of those require fumigation. Private companies certified by NAQIA perform fumigation services that are supervised by NAQIA. The quantity of fumigations appears to be rather high. User fees of USD 80 per hour are assessed for NAQIA's services. At Port Moresby, payment is made at the headquarters rather than the port office. Receipt of payment must then be taken to the port office, which affects final clearance. The average time between entry submission and final release is estimated at three days.

NAQIA has a program through which large-volume traders can have shipments inspected at their premises. Such facilities must be registered with the agency. Unfortunately, this program is underutilized, such that the opportunity to relieve port congestion has not been seized. Current conditions for inspection and fumigation in the ports are inadequate and, due to congestion, much time is expended in having containers available for inspection.

PNG Ports Authority

PNG ports are overseen by the PNG Ports Authority, an SOE under the auspices of Independent Public Business Corporation (IPBC) as outlined in the Harbors Act (2006). Of the 16 ports the Port Authority oversees, Port Moresby, Lae, and Kimbe handle 75 to 90 percent of the international trade, with Lae the predominant player overall, especially regarding agricultural products. Port leadership generally is highly politicized and has a high turnover rate, which negatively impacts sustainability of modernization efforts.

Port congestion and handling inefficiencies constitute a major obstacle to trade facilitation and have increased costs significantly. The ports were designed and equipped as small coastal ports. Capital investment to cope with the rise in international traffic was neglected for many years. Currently, 66 percent of the Lae cargo is international. Existing infrastructure cannot handle present trade levels. Lae operates at 90 percent capacity, while the standard for top port efficiency is 55 percent. International cargo volumes continue to grow at an 8 to 10 percent rate, with Lae exceeding 22 percent growth in container volume between 2010 and 2011.

The excessive time for vessel turnaround, due principally to a lack of available berths, has increased shipping costs. Shippers report up to a four to six days' wait for a berth (port records at Lae show 29 hours) and then another three

PHOTO BY FINTRAC INC.

to four days to complete loading operations. The stevedoring companies that carriers use are undercapitalized and lack sufficient equipment to handle both off-loading responsibilities and deliverables and receivables. At any time, up to 20 percent of forklifts are nonoperational. Adoption of a pre-booking service for exportsthat cannot be delivered to the port more than five days before sailing would improve stevedoring efficiency.

Shippers estimate that costs USD 20,000 per day to operate a vessel, and some carriers report that delays at Lae exceeded 400 days in 2011. The delays at Lae alone are estimated to cost the industry USD 23 million in 2011. To compensate, carriers now add a congestion fee of USD 100–250 per 20-foot container, the size mandated for coffee, to shipping rates. Although rates are generally reasonable due to competition in the major routes, the addition of congestions fees, the reduction in ports of call due to high turnaround times, and the withdrawal of some lines because of port inefficiencies have caused costs to increase and the level of service to drop. Some lines now offer direct service into either Port Moresby or Lae or offload cargo scheduled for other ports at the first point of discharge. The result is the additional expense of domestic transport to get to the final destination.

Internationally, certain key performance indicators (KPIs) measure port/terminal efficiency. Shippers look to these to determine whether to open or continue service at a port. According to the KPIs, PNG ports operate well below industry standards. At Lae, stevedoring moves are 10 per hour, while the benchmark is 21 to 29. Time to clear all formalities is 14 days, while 3 days is the standard. Container dwell times that should be 5 days are 28 days at Lae and 29 days at Port Moresby. The ports allow 5 days of free storage after which it charges about USD 50 per day per container. One company reported USD 3 million in such charges at Port Moresby and Lae during 2011 and estimated such fees add about USD 1,000 per container to transaction costs. Expansion of pre-arrival clearances by Customs and improved coordination among the border agencies would reduce charges by moving cargo more quickly off the wharf.

Currently there is more than a sufficient supply of international carriers calling at ports to meet demand. Shipping rates to Australia are more expensive than to South East Asia, while US rates are the highest at USD 8,000 per container for agricultural equipment.

The PNG Ports Authority is making major capital investments in improved port handling equipment and modernization of facilities at both Lae and Port Moresby. However, progress is slow, inadequate user consultation is evident, and the coordination needed to achieve desired results is sometimes lacking. A major investment in mobile harbor cranes (MHCs) and rubber tired gantry cranes (RTGs) for Lae and Port Moresby should expedite clearance and relieve port congestion. MHCs can offload and load up to 18 containers per hour, doubling productivity, while the RTGs can stack containers six high rather than the current three, doubling storage capacity. Necessary wharf modifications have not been completed to use the equipment, which currently sits on the wharf taking up valuable space in already congested ports. The planned Terminal Operating System (TOS) must be activated soon. Without this to track location and movements, stacking to six high will increase time to locate containers.

The plans for modernization of Lae include expansion, redesign of the port layout for international container terminal operations, and incorporation of modern port IT systems, which are lacking today. The pace of the Lae Port Development Project, the first phase of expansion into the tidal basin which would add up to three berths, has been slow and is jeopardized by political influence. ADB loans, which represent 70 percent of projected costs, were secured in 2008 but to date the bid has not been awarded. Relocations of residents on the land took several years and now procurement irregularities have delayed selection of a qualified contractor. The original cost of USD 154 million has more than doubled and, in the best-case scenario, the project will not be completed until 2015.

SUPPORTING INSTITUTIONS

The degree to which supporting institutions affect the flow of agricultural trade in PNG is mixed. The private sector is represented in policy dialogue by a number of organizations, primarily the PNG **Manufacturers Council**, which regularly consults with government departments and the statutory bodies. Other private associations include the **Business Council of PNG**, the **Chambers of Commerce**, and the **Rural Industries Council**. The **Consultative Implementation and Monitoring Council (CIMC)** facilitates policy dialogue between civil society, the private sector, and government. CIMC sectoral committees on commerce and agriculture discuss trade-related issues and are regarded as relatively active. The **National Research Institute (NRI)**, the public-sector public policy think tank, and the private **Institute of National Affairs (INA)**, both play a policy advisory role. However, overall private-sector involvement is ad hoc and there is no consistent platform for policy engagement.

KEY SUPPORTING INSTITUTIONS

- Manufacturers Council
- Business Council of PNG
- Chambers of Commerce (Port Moresby, Lae, and others)
- Rural Industries Council
- Consultative Implementation and Monitoring Council
- National Research Institute
- Institute of National Affairs
- Commodity boards and agencies
- Customs brokers/freight forwarders
- Air transport services

COMMODITY INSTITUTIONS

Statutory boards related to the major cash crops (palm oil, coffee, cocoa, spices) regulate exports to various degrees. These bodies vary in strength, capacity, and effectiveness. Generally exporters view their functions as an impediment to trade and see little benefit from their required payment of dues. Political interference and the dominance of vested interests influence decision-making. Some boards are not operational **(Cocoa Board)** or merely serve as data collection bodies **(Spice Board)**.

The **Coffee Industry Corporation (CIC)** regulates the export of coffee. Generally exporters consider its requirements burdensome and as adding little to the value chain. Three to five major international companies control 85 to 90 percent of the export market with the rest spread among 8 to 10 smaller players. Exporters operate under a yearly CIC license. Consideration to extending the license period should be given since sector players are fairly static. The outlay of significant capital for extended periods prevents new players, especially SMEs, from entering the export market.

CIC quality tests each shipment and certification must be completed prior to the cargo entering the port for export. The sample is taken while the shipment is at the exporter's premises or in the freight forwarder's yard. The move to sampling from each container rather than shipment has significantly increased the number of samples and time taken for issuance of the certificate. EU shipments generally travel in 10 container lots with cargo to the US and Australia in three to six container lots. Exporters perform their own quality testing to ensure product meets contract requirements, and CIC testing is deemed equal or less than that performed by industry. The CIC should consider adopting a RM approach to sampling and testing to expedite permit processing.

CUSTOMS BROKERS AND FREIGHT FORWARDERS

A licensed Customs brokers is required to clear international cargo. They represent the importer/exporter before the border agencies, advise the client on border formalities, prepare all entry declarations, and arrange for clearances. Their competency directly impacts the speed and integrity of the trade process.

Customs oversees the licensing of brokers; 80 to 100 of the 140 licensees are active, and 3 are women. The initial license is USD 500 with a yearly renewal fee of USD 500. Each individual must post a USD 10,000 guarantee with Customs. Most work for trading companies rather than as individuals. Customs training/testing for potential candidates is rigorous and extensive (three weeks/eight hours per day) as demonstrated by the passing of only 6 candidates out of 71 in the recent examination. However, once licensed no refresher training is available.

There is general consensus that only about 30 to 40 percent of the licensed brokers are competent. Customs has no broker oversight program and is unable to use its sanction authority as a tool to upgrade professionalism. Customs is developing a broker's code of conduct, but the ability of the agency to enforce those standards or the brokers to self-regulate is doubtful. Customs continues to struggle with how to improve professional standards within the industry due to its limited resources.

The industry is aging and few new recruits are entering the field (although more women are applying to enter). This situation applies to the freight forwarding community as well. There is growing concern that the limited number of firms regarded as professional to handle current volumes is already stretched to capacity and will not be able to handle the rising volume of trade. Some firms considered best performers are either not taking on new business or are stretched to the point where service levels have declined.

Lack of effective dialog between Customs and brokers hinders development of trade facilitation efforts. A partnership that can identify issues and develop streamlined processing that meets the needs of both the border agencies and the private sector must be created. Interaction is complicated by the lack of a viable and industry-recognized association. The

Customs Brokers Association (CBA), to which 40 percent of licensees are members, is not considered a strong enough organization to serve as the point of contact for the industry and performs no regulatory oversight of the sector.

AIR TRANSPORT SERVICES

Exports of limited quantities of green coffee beans, vanilla, and fish are carried by air freight. Competition among the four current international carriers and charter flights keeps rates reasonable although some exporters complain that rates are higher than those of neighboring countries like Indonesia. Of the USD 15 per kilo export price for vanilla, 20 to 30 percent is attributable to freight, which is not unreasonable. Supply exceeds demand, especially for exports because of the 70 to 30 percent ratio of imports to exiting products. The variety of routes, including Australia, the surrounding islands, and South East Asia, offers necessary options to traders.

Lack of firm adherence to air freight schedules is a concern. Departure delays occur with some regularity and negatively impact the quality of agricultural-related products such as fresh seafood that require special handling. Low-grade packaging material for exports often necessitates repacking prior to loading, adding delays and costs to shipments. Each carrier handling fresh or frozen products provides its own cold storage facilities, but due to lack of a complete and adequate cold storage supply chain, product deterioration prevents export at times.

Clearance of imported and exported agricultural-related cargo via air express and air freight is efficient and responsive to the needs of the trade community. Vanilla, green bean coffee, and fish exporters use air freight for export, and items like seed samples are carried by the air express industry. NAQIA and Customs are on site at the Jackson airport and complete clearance procedures, including the required SPS and origin certifications within hours after presentation. Incoming air express packages move without filing of entry documents or payment, and processing is close to international standards. However, the review of manifest and selection of inspections by Customs and NAQIA is performed using paper copies. Access to the manifest should be provided electronically to those agencies and their requirements noted and controlled within the carrier's systems.

SOCIAL DYNAMICS

PUBLIC ADMINISTRATION AND INFORMALITY: THE IMPACT ON TRADE

Cross-border trading in PNG is conducted primarily through the formal sector. This sector is dominated by a few large-scale firms owned by overseas residents and expatriates. Agribusinesses express no major concerns with the trade policy framework, reporting more practical constraints to import and export. Political uncertainty often prevents timely and sustainable implementation of improved trade facilitation. Progress at the key institutions is hampered by change or vacancies in leadership positions, and the needed structure for a comprehensive approach to simplified border processing has yet to be put in place. Although recognized as the ultimate goal, no national strategy for a single-window trade approach whereby all parties to a transaction work through a central IT system for transmission and feedback is in place. Although some entities such as the Port Authority and Customs are making efforts to improve levels of service through strategic planning, political interference and/or lack of adequate resources and a continuous commitment to success often prevents achievement of desired results.

Often an agency lacks adequate resources for implementation of its statutory responsibilities to expedite the movement of international goods and thereby lower trade costs. Efficiency initiatives will not totally address the understaffing issues that affect many institutions. The private sector views the government generally as unresponsive to their needs and believes that public employees are not service oriented and do not display good work habits. Increased accountability through the use of measurable performance criteria, improved working conditions, and a focus on the balance between agency's roles of regulation and public service is needed to reverse this perception.

Each border agency has a well-defined role and each is fairly protective about that responsibility. Most are not strong organizations and feel threatened by the concept of data-sharing and process integration, especially if initiatives might impact user fee revenue. Until an executive-level authority with jurisdiction over the border agencies mandates adoption of a coordinated streamlined approach to border processing, the agencies will hesitate to move in that direction.

The low level of trust and good faith between Customs and the trade community can act as a roadblock to the partnership required to devise common solutions to important trade facilitation objectives. Customs is hampered by the lack of a strong and professional organization to represent the customs brokers, and industry leaders can be confrontational in their demands to Customs. Neither party fully understands the practical business reality or constraints of the other. This unproductive dialogue fails to achieve desired improvements because of a lack of "buy in" from those affected or the inability of the new approach to be incorporated into business practices.

Corrupt practices within border agencies and payment of facilitation fees are not prevalent. Customs has a management structure and code of conduct in place to address misconduct and has demonstrated the will and ability to implement disciplinary measures, although it admits more aggressive action is required.

ISSUE SPOTLIGHT: APPRECIATION OF THE KINA—"DUTCH DISEASE"

Papua New Guinea's economy has been highly exposed to fluctuations in commodity prices, due to the importance of resources such as oil and gold to the economy. The Bank of PNG has found that a 10 percent increase in commodity prices causes an immediate 4 percent appreciation in the kina, followed by a further 6 percent over two additional quarters. In addition, the LNG project has been projected to double GDP by 2025. A major challenge for PNG trade policy will be in managing the "Dutch disease" effects on the kina, whereby the boom in natural resources causes substantial foreign inflow of investment, raising inflation and the value of the currency and making the tradable exports and import-competing activities very competitive.

PNG has a floating exchange rate regime set against the US dollar. Since 2005, the Bank of PNG has bought a total of PGK 3.1 billion, offsetting foreign currency inflows and slowing the kina's depreciation. However, renewed upward exchange rate pressures are likely, and the real effective exchange rate has appreciated substantially since 2008. A study for the 2011 budget estimated that the LNG project would conservatively appreciate the kina by 11 percent over the life of the project. Agricultural activities, including food processing, and traditional export commodities, including coffee, cocoa, palm oil, and copra, are particularly at risk. The study also estimated that the impact of the LNG project could decrease the value added in the plantation crop sector at rates from 3 percent to 9 percent, and value added to smallholders of up to 13 percent for coffee and 61 percent for palm oil.*

There is no single solution to managing the danger of this "resource curse." Despite substantial investment and development needs in the economy, there is a limited capacity to absorb the large amount of LNG revenue without overheating the economy. The anticipated SWF is being pursued to manage and invest some of the funds. However, this initiative needs to be balanced with a strong medium- and long-term investment plan, greater accountability and transparency in government decisions, and an open trade and investment regime.

**WTO, Trade Policy Review: Papua New Guinea (2010).*

A one-way informal trade is ongoing in border areas with Indonesia, particularly in vanilla. People cross freely into Indonesia to visit readily available markets to purchase daily necessities. This does not appear to significantly impact domestic market demands or influence export trade. The border management agency is attempting to establish formal border posts along the traditional routes, but there is uncertainty as to the commitment and revenue needed for implementation.

GENDER AND TRADE ACROSS BORDERS

Women are in management and supervisory positions in both Customs and NAQIA, with the former one of the lead agencies in promotion of qualified women to senior positions. Advancement for women in supporting institutions is developing but tribal/village affiliations are a major factor in determining career development. Companies report that sensitivity to PNG cultural traditions at times prohibits promotion of qualified women to positions of leadership over men.


PHOTO BY FINTRAC INC.

RECOMMENDATIONS

Implement a one-stop shop for processing by Customs and NAQIA at the ports in Lae and Port Moresby to create a centralized location for importers and exporters to present entry documents.

Feasibility: High
Resources required: Low
Potential impact of reform: High

Current combined processing times of Customs and NAQIA exceed five to six days due to the use of sequential procedures. This inefficiency increases port congestion because imports remain on the wharf awaiting clearance. Export cargo has difficulty getting into port on a timely basis due to the congestion caused by inbound cargo. In addition, the current delays require import cargo to incur port storage charges because clearance times often exceed the five days of free storage provided.

A one-stop shop would significantly decrease processing time for import and export clearance by public agencies, thereby relieving port congestion and reducing transaction and transport costs for all users. Implementation of this reform, however, requires a coordinated approach. Neither Customs nor NAQIA has the authority to commit the other to the project. A higher authority (e.g., the Port Authority) must mandate their cooperation and oversee the joint plan to accomplish the objective in a timely manner. The Port Authority should issue a mandate to create integrated processing through creation of a one-stop shop for traders and require NAQIA and Customs to map new processing procedures under the one-stop approach. Input from the trade community should be sought at all stages and considered an integral part of decision-making. Measurable criteria should be established to evaluate the timeline for implementation and expected results as well as accountability.

Office space at the ports will have to be reconfigured to accommodate a one-stop shop. The Port Authority should be consulted on accommodations required for implementation, and a phased approach should be devised if required. Only those Customs and NAQIA officers who are essential for clearances should be reassigned to the new one-stop shop, and it will be their responsibility to coordinate all phases of clearances with officers located in other offices. Prior to opening, adequate notice and information should be given to the trade community, and procedures should be put in place to measure the results of the new system and to modify its operating procedures as required to achieve a significant reduction in processing times.

Expedite receipt processing by Customs and NAQIA through the use of electronic funds transfer (EFT) payments and account processing.

Feasibility: Medium
Resources required: Medium
Potential impact of reform: High

Both Customs and NAQIA spend excessive time accepting taxes and user fee payments, which currently are paid in cash or by check. Receipt takes an average of one to two days for each agency to complete. For NAQIA's Port Moresby location, payments can only be made to the headquarters office. Brokers now wait several days to receive checks from clients after their transmission has been accepted by Customs while the cargo sits on the wharf. The current receipt process significantly delays clearances and adds to transaction costs.

EFT payments and account processing as used by Customs administrations worldwide would simplify and expedite border processing, especially for major repetitive agribusiness traders who are compliant. It is a required step for paperless transactions for Customs and could allow immediate release of all cargo designated "green" (80 percent of all cargo) immediately after ASYCUDA transmission.

To implement EFT and account processing, a Customs team, including selected Customs managers and ASYCUDA personnel, should be appointed to oversee the project. This team should develop a work plan for implementation with realistic goals for the level of participation and the reduction in processing times. Accountability for meeting objectives should be well established. Customs should work with the banking community to create a work plan for the activation and designation of participating banking institutions. When systems are in place, a pilot program should be conducted with selected banks, major traders, and Customs to test the transmission process. As a compliance measure, post-audit reviews and random checks should be built into the system. When the reliability of EFT is established, the program can be expanded based on the trade volumes and compliance levels of major players.

Lack of IT capabilities within NAQIA and the unreliability of PNG's IT networks could slow implementation. NAQIA must simplify receipt processing by accepting payment at the same location where a bill is issued, expand use of its existing ATM drawdown system, and explore account-based collections. Customs can process

EFT payments within its IT system, ASYCUDA, but will need training in how to utilize these capabilities and ensure accountability of collections. The limited capacity of Customs personnel to understand the complexity involved in establishing an EFT payment process could prevent development of a feasible work plan and effective oversight of project implementation.

Simplify and expedite Customs import processing at Lae by devising modern practices to alleviate the bottlenecks identified in the Time Release Study (TRS) completed in 2012.

Feasibility: Medium
Resources required: Medium
Potential impact of reform: High

Customs processing at Lae has the most impact on the agribusiness sector due to the high volume of related trade at the port. The current process is inefficient and takes too long to complete, especially in light of the low percentage of cargo that Customs predetermines it can release without intervention. Excessive Customs clearance times often result in untimely delivery of critical agricultural inputs and excessive port storage charges that increase transaction costs. Inefficient processing also does not make good use of the limited resources available to Customs, resulting in critical steps in the process such as receipt of payment being understaffed.

A team of senior and mid-level Customs managers and private-sector representatives should be appointed and tasked with redesigning procedures to address bottlenecks at Lae as identified by the TRS. The Lae Chamber of Commerce, which has the goodwill and respect of the trade community, should be invited to oversee these meetings. The team should develop a strategic plan to address problem areas comprehensively with a timetable for implementation, accountability, and measurable results. The plan must incorporate modern Customs procedures and facilitate trade processes. Upon determination of revised and expedited procedures, a pilot program should be devised for implementation at Lae. The Lae Chamber of Commerce can be used to publicize and train the private sector on the simplified requirements. The results of the pilot program should be measured according to a methodology that includes a user survey and uses the results of the TRS as a benchmark.

There should be little, if any, opposition to a simplified process. However, limited staffing and capacity within Customs to address bottlenecks and sustain reforms is a concern. The generally unproductive working relationship between Customs and brokers may also hinder securing the required level of cooperation needed to address issues in a timely manner and with quality results. Unless a level of trust and acceptance of the mutual interest in success of the process redesign is gained, the project could be jeopardized.

Establish selective processing using RM techniques as the key operating principle for CIC and NAQIA in conducting their regulatory oversight of imports and exports.

Feasibility: Medium
Resources required: Medium
Potential impact of reform: High

Currently, NAQIA reviews 100 percent of all import and export declarations, and CIC inspects and samples 100 percent of all coffee exports. CIC's intensive quality testing delays coffee shipments from entering the ports on a timely basis and therefore jeopardizes shipping schedules. NAQIA's review of all shipments increases processing times for all cargoes, including those with a strong history of compliance. These procedures impede efficient border processing and result in additional storage charges and transaction costs for all importers and exporters.

The use of selectivity in processing based on sound risk profiles according to RM techniques would expedite clearance of low risk cargo and allow allocation of NAQIA's limited resources to shipments that present the highest potential for pests and disease. However, acceptance of the RM concept and the use of selectivity in processing as an improved means of fulfilling their role may be a difficult sell to agencies. Agencies may resist the use of RM techniques due to a fear of loss of control and the associated decrease in user fee collections. Lack of modern business practices that integrate IT capabilities would also slow development and implementation of the RM methodology. Training in how and where to apply RM would be needed.

To overcome this opposition and successfully implement an RM approach to processing, an RM group should be selected to establish an RM strategic plan detailing the objectives and priorities of the program. Management and staff should be trained as to the value of RM as an operational tool to enhance facilitation and controls. A risk analysis should be conducted to identify cargo that presents the lowest and highest potential for noncompliance, establish risk profiles, and determine the level of controls required to address high-risk shipments. No- or low-risk shipments should be permitted to proceed without intervention. Since there are only 8 to 10 coffee exporters, it should be relatively easy for CIC to determine the quality-testing capabilities and compliance of exporters, which will form the basis to initiate selective rather than 100 percent sampling and testing. NAQIA officers can identify high/low risk cargo and input criteria into a selectivity module in Customs' ASYCUDA system that will inform traders and Customs of the level of review required by the agency. An effective monitoring mechanism should be put in place to gauge results and update criteria as needed.

ENFORCING CONTRACTS

Contracts and contract enforcement are critical to a well-functioning economy. The ability to structure one's affairs in reliance on a certain course of dealing by business partners enables the kind of long-term planning and access to credit essential to business growth. Where a general respect for contracts, or "culture of contracts," is lacking, an individual's business network is often limited to his or her immediate community. Where the rule of law is weak or the judicial system corrupt or inefficient, the effective use of contracts depends on the availability of other enforcement mechanisms, usually community-based systems that may exact their own form of justice. This type of arrangement limits the scale of business dealings and restricts outside investment.

In PNG, the culture of contracts within the agricultural sector is underdeveloped. Most producers rely on spot sales and conduct little to no long-term business planning. Some cynical agribusinesses described export crop producers as "foragers" rather than farmers, who produce only as needed to pay school fees. Where contracts do exist, however, agribusinesses must rely on the *wantok* system to enforce their agreements and protect their assets. The courts in PNG, although considered largely independent, are slow and expensive, and the rule of law is weak. The *wantok* system acts as a proxy for the judicial system that provides security of investment and enables business to proceed. However, business dealings are necessarily restricted to the community in which one's *wantok* network holds sway. The most sophisticated agribusinesses opt out of the PNG system entirely, preferring instead to have their disputes sent to foreign arbitration.

LEGAL FRAMEWORK

Contract law in PNG is drawn from a mixture of statutory law and common law, i.e., the principles of justice and equity as developed through judicial decisions.

STATUTORY LAW

At independence, the Papua New Guinea **Constitution (1975)** adopted a variety of pre-independence statutes, many of which were drawn verbatim from English or Australian laws. Although some of these statutes, such as the **Goods Act (1951)**, touch on areas of contract law, the general principles of contract law have not been codified and are largely governed by common law. Only one law has been passed in PNG that directly addresses the use of contracts. The **Fairness of Transactions Act (1993)** provides that the National or Supreme Court may review a transaction and may alter the agreement in the event that it is deemed not to be genuinely mutual or to be manifestly unfair to either party. A transaction for purposes of the Act is defined as "any contract, promise, agreement, dealing or undertaking of an economic or commercial nature," including informal and customary transactions. The standard of "fairness" applied under the Act is similar to the concept of unconscionability in American jurisprudence.

COMMON LAW

Common law in PNG consists of the principles and rules of common law and equity in England as of the date of independence (September 16, 1975) and the common law of PNG thereafter.

KEY LAWS

- Constitution (1975)
- Statutory law, including:
  - Goods Act (1951)
  - Fairness of Transactions Act (1993)
  - Personal Property Security Act (2011) (see Getting Credit)
- Common law
- Customary law
- Regulations or directives issued by commodity institutions

According to scholars and a PNG judge, there have been very few Supreme Court cases since independence that address substantive principles of contract law, and no unique PNG principles of contract law have yet been developed. For the purposes of developing the underlying law, judges may also take into account legislation and common law of any country with a legal system similar to that of Papua New Guinea. In practice, judges have often made reference to the decisions of courts in Australia, New Zealand, and other Commonwealth countries, as well as the US.

CUSTOMARY LAW

In theory, commercial contracts could also be governed by principles of customary law. Under the Constitution, any legal principle not governed directly by the Constitution or statute is governed by the "underlying law." The underlying law consists of both custom and common law. However, customary law, to the extent that it is not considered "repugnant to the general principles of humanity," is given preference over common law, which should not be enforced to the extent that it is inconsistent with custom or "inapplicable or inappropriate to the circumstances of the country."[102]

In practice, to date neither the National Court nor the Supreme Court has decided a contract case on the basis of customary law. In part, this is because lawyers have failed to make arguments or provide evidence on the basis of custom. According to one judge, customary law is rarely pleaded, and most arguments against the application of common law are on the grounds that the English rules should not apply in Papua New Guinea due to differences between the two jurisdictions. Parliament adopted the Underlying Law Act of 2000 to encourage the affirmative development of customary law by the courts. According to stakeholders, the Act has not yet had much effect.

ACCESS TO LAW

The sheer number of sources of PNG contract law creates complexity that makes it difficult to decipher which principles should apply. Statutory law is largely outdated and written in flowery language that is difficult to read. Traditional case law research is typically beyond the skills of a layperson, and there is no widely recognized restatement of PNG contract principles to simplify the analysis. Only one treatise on PNG contract law has been written since independence, a 1984 treatise by law professors at the University of PNG School of Law that has not been updated.[103] A new treatise on commercial and business law in PNG, published in 2007, provides a thorough analysis of PNG statutes and case law as it relates to the sale of goods.[104] However, no stakeholders interviewed, including staff members at two law libraries, were aware of its existence.

Paper copies of the statutes and case reports can be found in the University of PNG (UPNG) law library in Port Moresby as well as courthouse libraries throughout the country. The UPNG library is open to the public without fee. Courthouse libraries are often restricted to lawyers and judges who must pay membership fees. All legislation and case law is also available online through the PacLII website, a searchable database of the laws and case reports from a variety of Pacific jurisdictions.[105] While this website is a wonderful resource, its impact is limited in a country where only an estimated 6 percent of the population has access to the internet. As

[102] PNG Constitution, Schedule 2.1.1 & 2.2.2.

[103] Derek Roebuck, Dhirendra Kumar Srivastava & John Nonggorr, The Context of Contract in PNG (1984).

[104] John Mugambwa, Harrison Amankwah & C.E.P. (Val) Haynes, Commercial and Business Organizations Law in Papua New Guinea (2007).

[105] See Pacific Islands Legal Information Institute, available at http://www.paclii.org.

a result of all of this complexity, one commercial lawyer reported that it is not uncommon to specify the applicability of Australian contract law in a contract instead of PNG law.

FREEDOM OF CONTRACT

Under PNG common law, freedom of contract extends equally to all individuals (women and men) as well as companies and cooperatives. Although oral contracts are permitted under the Goods Act (1951), oral contracts for the sale of goods worth PGK 20 or more cannot be enforced unless the goods have been accepted or some consideration or partial payment has been given to bind the seller. In practice, this provision is largely irrelevant, because most informal sales within the agricultural sector that might rely on oral contracts actually take place as spot sales where delivery and acceptance are instantaneous. A valid contract will be enforced by PNG courts unless it is found to be void as a matter of public policy under the common law or manifestly unfair to one of the parties under the Fairness of Transactions Act (1993). The use of a notary is not required to formalize a contract.

In general, the terms of a contract can be set by the parties with few restrictions. However, specific restrictions on certain types of contracts directly impact the agricultural sector. For example, contracts for the major agricultural export crops are governed by industry boards, many of which have the statutory right to set minimum prices for crops under their jurisdiction in order to protect the interests of producers. In addition, many industry boards require exporters to report details of their sales contracts for purposes of observing trends in the industry. For example, the Spice Board requires licensed exporters to submit monthly returns showing the volume of sales for buyers and producers.

There are very few absolute prohibitions on the sale of goods and services in PNG. However, customary land is one such item. Property

PHOTO BY FINTRAC INC.

ownership is an extraordinarily complex issue in PNG, and there are heavy restrictions on the sale or lease of customary land. More information on this topic can be found in the chapter on Registering Property.

PNG law recognizes the right to recovery of compensatory damages in the case of breach of contract as well as equitable remedies such as specific performance, injunctions, rescission, and repudiation. Both the District Courts Act and the National Court Rules also allow for the expedited sale of seized goods if such goods are perishable.

IMPLEMENTING INSTITUTIONS

Like most countries, there is a hierarchy of courts in PNG, as well as related organizations that are directly involved in dispute resolutions. The judicial profession also represents a critical implementing institution.

KEY IMPLEMENTING INSTITUTIONS
• District, National, and Supreme courts • Judges • Alternative Dispute Resolution Centre • Village courts

DISTRICT, NATIONAL, AND SUPREME COURTS

The district courts are the courts of first instance for small-scale commercial disputes in PNG. District courts have jurisdiction over commercial matters for which the amount in controversy does not exceed PGK 10,000. There are approximately 50 district courts in PNG, located in each provincial capital and many other district population centers. District court proceedings are presided over by magistrates, and proceedings tend to move more quickly than cases in the higher courts. Legal representation is permitted, but many litigants choose to represent themselves.

The **National Court** hears all appeals from the district courts as well as cases of first instance where the amount in controversy is greater than PGK 10,000. National Court judges are resident in Port Moresby and seven other major provincial towns. In towns where the National Court does not have a resident judge, the court travels on circuit on a monthly basis to hear cases. In practice, the District Court in Mount Hagen stated that the National Court sits in Mount Hagen only quarterly.

In 2005, the Department of Justice and Attorney General introduced a new Commercial Division within the National Court. Despite the limited jurisdiction, National Court judges who sit in the Commercial Division do not receive specialized training and are required to rotate between the Commercial Division and other divisions, such as criminal and family court. Thus, the division has not improved docket flow, and lawyers stated that the Commercial Division is underutilized and has not had the popularity or workload anticipated.

The **Supreme Court** is the highest court in PNG. The Supreme Court accepts appeals from the National Court on a case-by-case basis and provides advisory opinions to Parliament on issues of constitutional law. The Supreme Court justices and National Court judges are the same individuals, although a minimum of three justices are required to hear any case in the Supreme Court. Under the Constitution, Supreme Court decisions are binding on all other courts in the country. National Court decisions are binding on all courts other than the Supreme Court. Village courts (described below) are not subject to this requirement.

There are no time standards in PNG courts, and cases are routinely adjourned multiple times over a period of years. According to the World Bank's *Doing Business* report, it takes 591 days for a case to go from filing to enforcement in PNG. Recently, judges have been encouraged to take more charge over their dockets and limit the number of adjournments in an effort to reduce the estimated backlog of 60,000 cases in the system. Judges are now conducting "call-overs" of dormant cases, during which a case will be dismissed if neither party shows up for the hearing.

A computerized case management system has been partially implemented that contains basic details about each case, including filing and hearing dates and the name of the assigned judge. Some interviewees complained that the system does not function as intended and that the slow, manual process of inputting all case files limits

its usefulness. In addition, the system does not permit digitization of the case file, which leaves room for loss or tampering with the physical files. Given these shortcomings, the National Court is considering upgrading to a more high-tech system that will include the capability for online filing of pleadings.

The fee for filing a case in National Court is PGK 50, which is both very affordable and not a deterrent to frivolous lawsuits.

JUDGES

PNG is blessed with a judiciary that is largely considered independent and impartial. Lawyers reported that biases and tendencies toward corruption do sometimes occur at the village and district court levels, but most clients trust the courts to come to the right decision on appeal. In addition, some judges are known to be anti-foreign, and forum-shopping is not uncommon. Judges are subject to a code of ethics, and parties can apply to have a judge disqualified if a conflict of interest is perceived to exist.

Magistrates and judges are selected on the basis of their character and credentials as well as their status and reputation in the community. Most judges were formerly state lawyers or respected private attorneys, although some magistrates are promoted to judges. Judicial appointments are made by the Attorney General on the basis of recommendations from the Judicial and Legal Services Commission. While magistrates are paid low public-sector salaries, some judges can make as much as private attorneys. Judges serve for renewable 10-year terms with mandatory retirement between the ages of 60 and 65.

ALTERNATIVE DISPUTE RESOLUTION CENTRE

Alternative dispute resolution techniques such as mediation have a long history in Melanesian culture. In recent decades, however, Papua New Guineans have turned more and more to formal litigation to resolve their disputes, swamping the court system in the process.

The Alternative Dispute Resolution (ADR) Centre was created in 2009 to develop mediation, arbitration, and conciliation procedures for the district and National courts. With the help of the IFC, mediation rules were created and adopted in the National Court, and more than 40 mediators are in the process of being accredited under the new system. The ADR Centre reports there have been 25 mediations thus far, 60 percent of which were settled, including a 17-year-old dispute that was settled in one week. The impact mediation will have on the backlog of cases in the National Court is still unclear, but initial reports from lawyers and parties has been positive.

The mediation rules are based on a mixture of mediation rules from Australia and Singapore. National Court judges refer cases to the ADR Centre for mediation based on a set of guidelines. The ADR Centre selects a mediator after a conflict of interest check. Following mediation, the mediator submits a report to the judge indicating which matters were settled and which matters remain for trial. The mediation agreement becomes a binding contract between the parties. To date, no mediation agreements have been challenged in court.

Mediation has been mandatory in all district courts for many years, but no formal procedures were ever adopted to guide these mediations. Instead, district court magistrates often referred cases to village chiefs to mediate. These informal hearings were frequently corrupted by parties offering money or pigs in exchange for a favorable outcome. The ADR Centre is now working to expand its model of mediation to the district courts but will have to battle the legacy of misconceptions and mistrust harbored by many Papua New Guineans due to the district court's history.

There is no domestic arbitration in Papua New Guinea. The Arbitration Act (1951) is outdated, and there are neither Papua New Guinean arbitrators nor an association or body to accredit them. Although parties do occasionally put international arbitration clauses in their contracts, judges lack understanding of these provisions and will often adjudicate the matter instead of referring it to arbitration. Domestic arbitration and conciliation procedures will be developed by the ADR Centre in the future, subject to available funding.

VILLAGE COURTS

The lowest level of the judicial system in PNG consists of the village courts. In recognition of the importance of customary law, the village court system was created to allow for small local-level disputes to be resolved according to customary principles and procedures. Village courts have jurisdiction over disputes arising in their geographic area, whether civil or criminal in nature, although the types of offenses over which a village court can preside are restricted to small-scale infractions that do not involve jail time. In practice, village court proceedings of a commercial nature are limited to small, often family-level disputes over rights to income earned by one family member or debts worth no more than PGK 1,000. While village courts cannot adjudicate the technical aspects of contractual agreements, they often mediate such disputes prior to referring the case to a lawyer or the district court.

Village court magistrates are selected by the community. They do not have legal training, but they are guided in their work by the Village Court Handbook, which describes the jurisdiction, duties, and procedures of the village courts. Under the Constitution, village courts are expressly exempt from the application of judicial precedent. Accordingly, each magistrate makes decisions on the basis of his or her own interpretation of custom, without regard to prior cases. In addition, lawyers are not allowed in village court hearings, but parties may be represented by a friend or family member.

The village courts are largely respected by their local communities and are considered efficient and effective in resolving disputes. Appeals of village court orders are made to a district court panel consisting of one district court magistrate and two village court magistrates, often including the village court magistrate who made the initial decision. The village court system has frequently been criticized in scholarly literature as being discriminatory against women. Recent research has purported to debunk this characterization. Which view is correct is well beyond the scope of this assessment, but substantial donor resources have been expended to educate the population on women's rights and increase the number of female village court magistrates.

SUPPORTING INSTITUTIONS

LAWYERS

During this diagnostic, stakeholders provided conflicting accounts of whether there are sufficient attorneys in PNG to meet demand. The Legal Training Institute graduates approximately 160 new lawyers each year, and there are many foreign lawyers working in PNG. Lawyers are effectively unavailable to many businesses, however, because legal fees are exceptionally expensive. The World Bank's *Doing Business* report estimates that the total cost of pursuing a claim in PNG courts is 110 percent of the value of the claim itself. Lawyers' fees alone amount to on average 82 percent of the value of the claim. Although some attorneys work on commission, many individuals must borrow from their families or communities when a lawyer is

KEY SUPPORTING INSTITUTIONS

- Lawyers
- Office of the Public Solicitor
- Legal education and licensing bodies
- Court staff
- Enforcement personnel

needed. Many sophisticated international law firms maintain branches in Port Moresby and provide highly skilled services to those who can afford them.

The archaic practice of the "taxation of the court costs" raises the cost of legal representation. Judges frequently make the "taxation of court costs" a prerequisite to the enforcement of a judgment. This practice requires attorneys on both sides to prepare and submit a detailed accounting of their fees for review by the court. Lawyers report that the review can take an entire day, during which time the taxation registrar reviews the fees and settles any disputes.

OFFICE OF THE PUBLIC SOLICITOR

For those who cannot afford an attorney, the Public Solicitor's office provides pro bono representation in civil and criminal matters. The Public Solicitor currently has offices in Port Moresby and Lae and plans to open offices in other provinces. For towns without an office, the Public Solicitor is available when the National Court comes to town on circuit. The Public Solicitor's office is heavily overburdened by the number of requests for assistance and is not always able to take every case. Public solicitors earn low public-sector salaries, which has contributed to attrition in the staff. The Department of Justice and Attorney General is trying to hire more staff but finds it difficult to compete with the draw of private-sector salaries.

LEGAL EDUCATION AND LICENSING BODIES

The UPNG School of Law is the only law school in the country. The law of contracts is a part of the core curriculum, and there are elective courses that cover issues of commercial and company law, customary law, and the law of cooperatives and customary land groups. UPNG also provides a clinical training program through which law students can provide free legal advice to clients through seminars.

All UPNG School of Law graduates must complete an additional year of training at the Legal Training Institute (LTI) before receiving a license to practice. While at LTI, students are permitted to provide pro bono representation under supervision.

The PNG Law Society administers the bar exam and licenses new graduates and foreign-trained lawyers. Annual bar dues are high: PGK 1,800 per year for PNG citizens and PGK 2,500 per year for foreign lawyers. PNG lawyers are not required to complete annual continuing legal education courses.

COURT STAFF

The administrative aspects of the judicial system are managed by the court staff. National and Supreme Court staff consist of employees of the registrar's office and the judge's personal assistants, known as associates. Associates were traditionally law students, but now many are civil servants with no legal training. Court employees are not required to undergo ethics training, and many stakeholders believe that court employees are the source of most if not all of the corruption that exists within the judiciary. For example, an assistant registrar in the National Court Registry was recently dismissed for falsifying a judicial order. Associates routinely handle the physical case files, and one lawyer suspected that associates may be involved when key case files or documents go missing.

ENFORCEMENT PERSONNEL

In general, the police enforce court judgments when the decision requires the seizure of goods or assets. However, the police in PNG are considered highly corrupt and frequently demand illegal payments for their services. For those who can afford them, private bailiffs are also authorized to execute judgments. In village court matters, bailiff-type duties are the domain of the village court peace officers. Peace officers have the authority to serve summonses, investigate damages, and (with the approval of the district court) seize assets to satisfy a judgment.

SOCIAL DYNAMICS

CULTURE OF CONTRACTS

Papua New Guinea has been described as a "pre-contract society" in which the use of contracts is simply not understood or accepted as a way of doing business.[106] At the lowest level, sales between producers and traders within the agricultural sector do indeed seem to follow this model. In the coffee industry, for example, most farm gate sales are spot sales that take place without any sort of preexisting formal agreement regarding quantity or price. Even between farmers and traders who routinely conduct business, no formal arrangements (whether written or oral) are made. Similarly, most vegetable and fruit producers sell exclusively to cooperative associations or through public markets using spot sales.

However, the prevalent use of informal value-chain finance arrangements in the agricultural sector is largely underappreciated. For example, formal and informal agreements between coffee buyers and processors are common as processors will often advance money to a buyer to make purchases from producers. Similarly, some coffee buyers loan producers the use of a vehicle in order to deliver a specified amount of coffee for a fee. These arrangements create ample opportunity for side-selling (or theft), yet within the coffee industry, it is reportedly very rare. In fact, stakeholders stated that in general, a deal is a deal, and parties do not renege on their contractual agreements.

This outcome is in part due to the highly competitive and close-knit nature of the industry. Participants know that they will need one another again in the future, and developing a bad reputation has a clear negative impact on future business dealings. By contrast, in the oil palm industry, New Britain Palm Oil Limited regularly provides inputs to producers on credit, the cost of which is deducted from later sales. Since the oil palm industry is a monopoly, producers have little opportunity to engage in side-selling. However, "crop-shifting" has become common, whereby a producer will transfer some of his crop to a debt-free neighbor's nets to avoid repayment of the loan.

RULE OF LAW

The rule of law in Papua New Guinea is notoriously weak. Crime is common; the roads are not safe, and theft is prevalent. Agribusinesses often hire private security to protect their assets. A significant number of producers use bank accounts—rare in a developing country—as a means of protecting their money from theft. The police, many of whom live in settlements with the same "raskols" responsible for much of the violent crime, cannot always be trusted to carry out the letter of the law.

In this environment, commercial dealings are fraught with risk. In the event of a breach of contract, businesses have few reliable formal avenues for redress. Courts, although considered largely independent, are slow and expensive and are not viewed as an effective means of enforcement and protection of one's rights. Even if a final judgment is obtained, there is no guarantee that the court's order can be enforced. Police frequently demand illegal payments for seizing assets under a court order, and communities occasionally physically block the police from carrying out an order or demand compensation based on their own theory of justice, regardless of the court's ruling.

Absent a trustworthy police service and an effective court system, most successful businesses learn how to navigate and leverage the support of the *wantok* system to protect their assets and enforce their agreements. Some businessmen are "big men" in their communities by birth; others cultivate the support of the local community by providing medical care and school fees for local villagers as a form of indirect bribery. With the backing of the local community, a business can generally rely on threats—banning an individual from future dealings or calling

106 Asian Development Bank, Reforming Pacific Contract Law (2009).

friends within the police department—to coerce compliance. Where a party cannot fulfill his or her contractual obligations, businesses generally prefer to "trade out" of the situation or take a loss rather than going to court.

The need to rely on the *wantok* system to enforce contractual commitments creates a heavy barrier to market entry for outsiders and limits investment within the agricultural sector as a whole.

TRADITIONAL CONTRACTUAL OBLIGATIONS

Papua New Guineans are subject to a range of traditional contractual obligations that arise by virtue of membership in a tribe or community. These obligations include monetary contributions to family events, such as funerals and brideprices, as well as the unspoken requirement for more well off members of a family to provide for those less fortunate. These communal requirements lack many of the traditional elements of a contract (such as offer and acceptance) yet are no less binding on the individual. For example, traditional obligations can be created unilaterally, without any opportunity for bargaining and without both parties expressing the intention to be bound. The exact terms of the obligation are often unspoken and variable.

The practical effect of this system is that an entrepreneur does not get to enjoy the fruits of his labor but rather inherits the responsibility to care for his extended family. To escape these obligations, many entrepreneurial-minded individuals move away from their communities to establish their businesses and may go to great lengths to hide their wealth from their families. For example, the ADR Centre reported that in at least one case, two parties to a commercial dispute that took place in Port Moresby but who originally came from the same village rejected a mediator who was from the same village out of concern that the amount in controversy would be shared with individuals back home.

This social dynamic suggests that approaches for improving the business environment in Papua New Guinea must take the context of the intervention into account in structuring an incentive program. For example, business opportunities within a traditional village community are unlikely to be successful unless they provide a means of lifting the entire community together, rather than focusing on creating opportunities for individuals. In addition, there is a clear shift toward a preference for maintaining confidentiality in one's business matters. The development of district-level mediation procedures should address this growing interest by providing a sufficient number of neutral nonlocal mediators.

WOMEN AND CONTRACTS IN PNG

There are no legal limitations on a woman's right to contract. The Constitution guarantees women and men equal rights, and under the Married Women's Property Act, married women have the same capacity at law as unmarried women. While there are no legal limitations on women in business, in practice there is gender segregation in commercial activities. For example, coffee is viewed as a "man's job" while raising vegetables is largely left to the women. Women do, however, generally keep whatever they earn and thus have some financial autonomy. It is also less common for women to own businesses. The IPA office in Mount Hagen reported that out of 200 new companies registered each month, only four to five of the applicants are women.

Women have equal standing to bring suit in court, although there is currently a debate within the literature (as discussed above under Implementing Institutions) over whether women receive a fair hearing in the village courts. There are women throughout the judicial system as magistrates, judges, lawyers, mediators, and court administrators. Sex-disaggregated statistics were not available for these professions, but efforts are ongoing to increase women's participation on the bench, particularly in the ranks of the village court magistrates.

RECOMMENDATIONS

Implement a system for reviewing and dismissing dormant cases automatically based on the time since the last action in the case file (e.g., two years). Allow plaintiffs to object to the dismissal and have the case reinstated within a set period of time (e.g., one month).

Feasibility: High
Resources required: Low
Potential impact of reform: Medium

There is currently a backlog of an estimated 60,000 cases in the PNG court system, many of which have been in progress for five or more years. These dormant cases likely include cases that the parties no longer wish to pursue or for which mediation could resolve any lingering issues quickly. In an attempt to clear some of the backlog, judges are currently spending a significant amount of time conducting "call-overs" of dormant cases. Although these hearings may result in dismissal of the case for lack of appearance of either party, they are a drain on time the judges could be spending to conduct trials on active cases. They are also a drain on the registrar's office, which is currently charged with identifying and referring matters to the judge for summary determination.

Implementing a system for reviewing and dismissing dormant cases automatically would decrease the backlog of cases and free up judicial resources, benefiting all users of the court system. The Listing Rules of 2005 currently require the registrar to send a notice to the plaintiff with a copy to the defendant stating that the case will be referred to the judge for summary determination in 30 days, citing the reasons for summary determination, describing the procedure through which the plaintiff can object, and proposing a court date for the next hearing. Similar provisions appear the rules governing appeals. All court rules should be analyzed to determine whether a procedure for automatic dismissal would be legitimate under those rules or whether the rules must be amended to allow for the dismissal of a case without notice. Next, a working group should be formed to delineate criteria for which cases should be dismissed under the new process, including the amount of time since the last activity in the file and the estimated likelihood that the parties will not wish to proceed. Consideration should also be given to whether the backlog consists predominantly of one kind of case for which an expedited hearing procedure might be effective and appropriate. It is crucial that registrar staff be trained to implement the new guidelines correctly and that strict controls be put in place to prevent improper dismissal of an active claim. Similarly, a clear procedure must be created to enable plaintiffs to object to the dismissal that ensures their rights are adequately respected. Finally, a broad campaign should be conducted to educate the public and ensure that all parties are clearly informed of their right and responsibility to object within 30 days of the dismissal of their dispute.

Since procedures for identification and summary dismissal of dormant cases already exists, the reform should be relatively easy to implement while removing a significant amount of the administrative hassle and cost of prehearing notification.

RESOLVING INSOLVENCY

Private enterprise is a risky endeavor. Even in the best circumstances, the majority of formally established enterprises reach a point in the natural course of taking reasonable risk that it simply makes sense to close their doors. Agribusinesses face even greater risks than most, as unpredictable weather patterns, volatile prices, and the higher cost of doing business in rural settings place extra strains on entrepreneurs. While bankruptcy is rarely a popular topic among policy-makers, donors, and even the private sector, an efficient system for resolving insolvency in a predictable manner for the agricultural sector is critical for l owering the costs of agricultural finance, encouraging new investment, and supporting innovation.

The process for resolving insolvency among formal enterprises in Papua New Guinea is generally fair and efficient and does not significantly deter risk-taking among entrepreneurs. Or, as noted during this diagnostic by experienced bankruptcy professionals, the formal mechanisms for dealing with insolvency are minor when compared to other constraints facing agribusiness. Within the agricultural sector, regulatory limitations on land ownership and transactions can lead to protracted periods of liquidation due to difficulties disposing of land in rural locations, raising the cost of liquidation as a percentage of the insolvent estate. The World Bank's most recent *Doing Business* report notes that bankruptcy professionals and attorneys in PNG estimate that the insolvency process in Port Moresby going through liquidation would take, on average, three years. Yet these professionals further know that liquidation of insolvent estates in rural PNG can take much longer, particularly when dealing with the restraints of freehold land transactions. Moreover, among informal enterprises, intra-clan social safety nets frequently keep local informal enterprises from failure, allowing less efficient small businesses to continue. Nevertheless, strong institutions ensure a relatively predictable, if not always expedient and low-cost, resolution to insolvency.

LEGAL FRAMEWORK

PNG's legal framework for resolving insolvency is a patchwork quilt of laws spread across three primary acts, modeled to resemble the insolvency laws of New Zealand. Laws governing insolvency of various types of organization include the **Companies Act (1997)**, the **Insolvency Law (1951)**, and the **Cooperative Societies Act (1982)**, which covers cooperatives. Formal companies registered under the auspices of the Companies Act apply the insolvency tests and procedures outlined in the Companies Act. The insolvency of commercial entities not covered under the Companies Act or Cooperative Societies Act, including partnerships and personal insolvencies, continues to be governed by the Insolvency Law of 1951.

Although the insolvency process can be cumbersome, and at times focused on speedy liquidation rather than on potential alternatives, it provides a generally sound framework to deal with insolvent enterprises. The legal framework is most problematic in issues related to land—particularly freehold land—where restrictions on transfer and ownership reduces the potential market for resale, reducing the overall sale price of the land and often increasing the time required to solicit offers from prospective buyers.

PHOTO BY FINTRAC INC.

INITIATING A LIQUIDATION

Ample protections exist within the bankruptcy law framework to protect creditors, including the ability to initiate the request for liquidation within the National Court. The Companies Act provides that liquidation may be initiated by the board of directors based upon the company's bylaws, by shareholders holding voting stock by virtue of a special resolution, or by the National Court upon application by any creditor or the registrar of companies. A court may appoint a liquidator based upon an enterprise's inability to pay its debts that occur in the ordinary course of business and a failure to abide by terms of the Companies Act, as well as when the interests of equity are served by liquidation. The National Court has certain discretion to encourage compromise but ultimately will support application for liquidation when the law or interests of equity are served.

KEY LAWS
• Companies Act (1997) and Regulation (1998) • Insolvency Law (1951) • Cooperatives Act (1982) and Regulation (1992)

OPTIONS UPON INSOLVENCY

Under the Companies Act, there are several options available to creditors and corporate insolvents, including structured compromise resulting in a renegotiation of debts to seek turnaround, receivership, equitable workouts, and ultimately liquidation when the insolvent can no longer function as a going concern. There is ample protection of creditors within the insolvency system, including a high degree of creditor participation in the selection and operation of an administrator. This high degree of creditor participation within the insolvency process encourages greater levels of confidence among creditors that their interests will be represented throughout the process, reducing the risk of providing credit.

The insolvency process is fine. We can work with [this process.] It can take time, but it is predictable. It is the land market that causes us the most problems. There is no market for freehold estates because you can only sell it to citizens, and then, there is always an undercurrent of risk that a clan might claim ownership. Or worse yet, it belongs to a politician.

– Administrative Receiver, Port Moresby

WORKING IT OUT

While distressed companies oftentimes reach the point where insufficient residual value or risk of repayment necessitates liquidation, creditors must often settle for a significantly lower value than if the company could remain a viable entity.[107] Restructuring debts through a negotiated settlement with creditors within

[107] In Papua New Guinea, for example, the World Bank's *Doing Business* indicators for Resolving Insolvency in 2012 indicates that creditors receive 23.7% of the value of their claim through a court-administered liquidation of an insolvent's estate, as compared to 68.7% average within OECD countries.

INSOLVENCY AND INCORPORATED LAND GROUPS

Incorporated Land Groups (ILGs) are a new legal entity designed to establish a more formalized structure for customary land registration. As legal persons, ILGs will be able to enter into contracts and leases and take on debts. However, land registered with the Registrar of Title that is owned by the ILG is not subject to liquidation or confiscation. As the primary asset of the ILG, land protected from confiscation effectively eliminates the ability of an ILG to obtain financing secured by the underlying land claim. Absent subsequent legislation to the contrary, insolvency of ILGs will occur based upon the terms of the Insolvency Act of 1951. In practice, it is unlikely that ILGs will be able to operate as a risk-taking venture due to the legal limitation placed on the ability to liquidate land ownership to settle debts.

the process for dealing with insolvency can often net a greater share of debt repayment to creditors, while enabling a company to stay in business and focus on its more profitable activities. The Companies Act provides for a clear and systematic process through which creditors and distressed companies can seek to renegotiate debt servicing through a process designed to result in workouts when possible.

PRIORITIZATION OF CLAIMS

The prioritization that insolvency systems place on claims in a liquidation says much about the importance a country places on the protection of secured creditors. A higher prioritization of secured creditors enables greater lending in riskier endeavors, as secured creditors are likely to receive a higher proportion of proceeds from liquidation.

Under the Companies Act, claims are prioritized clearly and consistently. Employee entitlements,[108] superannuation payments, debts owed to government entities, the liquidator's reasonable costs, costs of seeking a compromise settlement, and secured creditors are all given preference in liquidation. These prioritized claims are given equal weight and receive equal shares where the insolvent's estate is insufficient to dispose of each of these claims. Section 15 of the Companies Act establishes the priority among secured debts when all charges are registerable. Within and among unregisterable charges, or between registerable and unregisterable charges, prioritization of charges according to the underlying law occurs based upon the timing of registration; the first to register receives higher priority, all factors of equity being equal.[109] All other legitimate, unsecured claims are given lowest priority and are not paid out until the preferential claims are paid in full.

IMPLEMENTING INSTITUTIONS

COURTS

The National Court has jurisdiction over insolvency cases in Papua New Guinea. The final hearing in an insolvency proceeding under the Insolvency Act can be heard by a magistrate if outside of the National Capital District. There is no bankruptcy court, and no commercial court that has established a specialization in bankruptcy cases. Nevertheless, insolvency proceedings are largely perceived to be fair and generally efficient.

LIQUIDATORS AND RECEIVERS

There is reportedly an adequate supply of experts competent to handle liquidation, though the supply of competent receivers capable of seeking turnaround was said to be insufficient in the rural regions, particularly for agricultural enterprises.

KEY IMPLEMENTING INSTITUTIONS

- Courts
- Liquidators and receivers

[108] This includes wages and other certain employee entitlements, subject to a PGK 20,000 limitation per employee, absent determination of the court to the contrary.

[109] *Cave v. Cave* (1880), as cited in John Mugambwa, Harrison Amankwah & C.E.P. (Val) Haynes, Commercial and Business Organizations Law in Papua New Guinea (2007), at 524.

SUPPORTING INSTITUTIONS

ATTORNEYS

Attorneys in Papua New Guinea generally exist in sufficient quantity for the number of insolvencies, yet the high price of legal services, coupled with the centralization of trained attorneys in Port Moresby, limits the access of distressed companies seeking qualified legal counsel to higher-value agribusinesses. Access to qualified legal counsel for agribusinesses outside of Port Moresby can be quite restricted, leading many to retain firms based in Port Moresby, incurring higher costs for representation.

ACCOUNTANTS

Accounting firms in Papua New Guinea exist in sufficient numbers for the present workload. Some of the larger accounting firms are reducing their number of staff focused on insolvency procedures due to a reduction in the number of insolvency clients during this boom time for Papua New Guinean agriculture and extractive resource firms. Accounting professionals still exist for the larger insolvency proceedings, yet lower-value insolvency estates do not always have sufficient access to low-cost, high-quality accounting services.

KEY SUPPORTING INSTITUTIONS
• Lawyers • Accountants

SOCIAL DYNAMICS

BANKRUPTCY AND TRADITIONAL SOCIAL COHESION

Within the traditional social structure, opinions vary considerably on the social obligations required of *wantoks*. As described above, the ability of individuals to fail in entrepreneurial endeavors is a critical component of an effective market economy. Competition drives innovation and change, and agribusinesses must either adapt or yield to competitors that more efficiently and effectively meet the needs of the market. For subsistence-level smallholders, the traditional social cohesion within *wantok* networks helps to mitigate risk for weather-based risks, price shocks, and other exogenous variables. Less clear is the social obligation to provide support to a failing commercial venture.

RECOMMENDATION

Encourage the introduction of simplified bankruptcy procedures for small businesses, particularly with perishable goods.

Feasibility: High
Resources required: Low
Potential impact of reform: Low

The process of receivership can be cumbersome, yet the perishable nature of agricultural products can require speedy decision-making not always consistent with the length of time required for receivership. Small businesses, particularly agribusinesses with perishable goods, need a more rapid process or risk losing the value in their underlying assets quickly. The speed required to encourage a work out or encourage highest value for creditors at liquidation is not always feasible under PNG's existing insolvency law, which discourages its use.

A simplified bankruptcy procedure for small businesses should be introduced to encourage greater use of formal processes to dispense with insolvency more efficiently. This would provide greater assurance to creditors and reduce the costs of finance for agricultural enterprises. First, a deeper-dive analysis of the insolvency law should be conducted. This analysis should be accompanied by stakeholder outreach through consultations with practitioners, agricultural firms, and creditor representatives. Second, support should be provided for the legal drafting of revised terms for small businesses, and an impact analysis of the proposed regulatory reform should be undertaken. Finally, a communications plan should be developed and implemented to promote public awareness as the reform is introduced.

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