

Land Disputes Settlement Act 1975

Chapter 45.

Land Disputes Settlement Act 1975.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 45.

Land Disputes Settlement Act 1975.

ARRANGEMENT OF SECTIONS.

1. Purpose of this Act.
2. Interpretation.
3. Application.
4. Exception of certain disputes.
5. Establishment of Provincial Land Disputes Committees.
6. Meetings of Committees.
7. Powers and functions of Committees.
8. Directions by Minister.
9. Declaration of Land Mediation Areas.
10. Declaration of Land Mediation Divisions.
11. Appointment of Land Mediators.
12. Conditions of employment.
13. Tenure of office.
14. Notification and promulgation of appointments.
15. Powers and functions of Land Mediators.
16. Appointment of ad hoc mediators.

Subdivision A – Mediation.

17. Mediation.

Subdivision B – Agreements.

18. Agreements.
19. Approval of agreements.
20. Effect of agreements.
21. Establishment of Local Land Courts.
22. Appointment of Local Land Magistrates.
23. Constitution of Local Land Courts.
24. Clerks of Local Land Courts.
25. Time and place of sittings.
26. General jurisdiction of Local Land Courts.
27. Limitations of jurisdiction.

28. Power to mediate.
29. Disputes, etc., inextricably involved with land disputes.
30. Temporary orders by Magistrates.
31. Applications.
32. Power of Provincial Land Court to direct Local Land Court to proceed to hearing.
33. Transfer of proceedings.
34. Change of membership.
35. Practice and procedure of Local Land Courts.
36. Inspection of land in dispute.
37. Witnesses.
38. Records and returns of cases.
39. Orders generally.
40. Orders relating to return of former interests.
41. Reasons for and terms of orders to be explained to parties.
42. Visit to land after order.
43. Effect of orders.
44. Variation of orders.
45. Establishment of Provincial Land Courts.
46. Appointment of Provincial Land Magistrates.
47. Constitution of Provincial Land Courts.
48. Clerks of Provincial Land Courts.
49. Time and place of sittings.
50. Practice, procedure and powers of Provincial Land Courts.
51. Witnesses.
52. Records.
53. Jurisdiction.
54. Appeal against decision of Local Land Court.
55. Notice of appeal.
56. Action on receipt of notice.
57. Deposit on appeal.
58. Grounds for appeal.
59. Powers on appeal.
60. Effect of decision on appeal.
61. Prosecution of offences.
62. Contempt of Court.
63. Removing marks, etc.
64. Failure to comply with orders.
65. Orders for compensation.
66. Jurisdiction of Land Titles Commission.
67. Presumption as to vesting of interests.
68. Determination of custom.
69. General law to be applied.
70. Judicial notice.
71. Service of notices, etc.
72. Representation.
73. Inspections by Provincial Land Magistrates.
74. Indemnity.
75. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Land Disputes Settlement Act 1975,

Being an Act to provide for the settlement of disputes in relation to interests in customary land, and for related purposes.

PART I. – PRELIMINARY.

1. PURPOSE OF THIS ACT.

The purpose of this Act is to provide a just, efficient and effective machinery for the settlement of disputes in relation to interests in customary land by–

- (a) encouraging self-reliance through the involvement of the people in the settlement of their own disputes; and
- (b) the use of the principles underlying traditional dispute settlement processes.

2. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**agreement**” means an agreement between the parties to a dispute that has been recorded under Section 18(1)(b);

“**dispute**” means a dispute to which, in accordance with Section 3, this Act applies;

“**Division**” means a Land Mediation Division;

“**interest**” includes any interest in land of whatsoever nature that is recognized by the custom of the people of the area in which the land is located;

“**land**” means customary land, and includes–

- (a) a reef or bank; and
- (b) a house or other structure built on land or over water; and
- (c) things growing on land or in water over land, earths and minerals on or under land; and
- (d) an interest in land;

“**Land Mediation Area**” means an area declared to be a Land Mediation Area under Section 9;

“**Land Mediation Division**” means an area declared to be a Land Mediation Division under Section 10;

“**Land Mediator**” means a Land Mediator appointed under Section 11;

“**Local Land Court**” means a Local Land Court established under Section 21;

“**Local Land Magistrate**” means a Magistrate of a Local Land Court appointed under Section 22;

“**party**” means a party to a dispute to which this Act applies, and includes–

- (a) a customary kinship group; and
- (b) a customary descent group; and
- (c) a customary local group or community;

“**Provincial Land Court**” means a Provincial Land Court established under Section 45;

“**Provincial Land Disputes Committee**” means a Provincial Land Disputes Committee

established under Section 5;

“Provincial Land Magistrate” means a Provincial Land Magistrate appointed under Section 46;

“the regulations” means any regulations made under this Act;

“this Act” includes the regulations;

“Village Peace Officer ” means a Village Peace Officer appointed under the *Village Courts Act 1989*.

3. APPLICATION.

(1) Subject to Subsection (2) and to Section 4, this Act applies to disputes as to interests in customary land, or as to the position of boundaries of any customary land.

(2) Nothing in this Act applies to a dispute—

(a) as to whether land is or is not customary land; or

(b) to which Part IV. of the *Land Groups Incorporation Act 1974* applies.

4. EXCEPTION OF CERTAIN DISPUTES.

(1) Where the Head of State, acting on advice, is of the opinion that special circumstances exist that require a dispute to be settled by means other than those provided by this Act, the Head of State, acting on advice, may, by notice in the National Gazette, declare that this Act does not apply to the dispute.

(2) Without limiting the generality of Subsection (1), the matters that may be taken into account in determining whether special circumstances exist within the meaning of that subsection include the following:—

(a) that the dispute is of long standing and that previous attempts at mediation have failed;

(b) that the dispute has already resulted in serious breaches of the peace;

(c) that there is no possibility of agreement being reached between the parties to the dispute;

(d) that it is in the national interest that the dispute be settled in some other manner.

(3) The Head of State, acting on advice, may, by regulation, determination or order, make provision for the settlement of a dispute to which Subsection (1) applies.

PART II. – PROVINCIAL LAND DISPUTES COMMITTEES.

5. ESTABLISHMENT OF PROVINCIAL LAND DISPUTES COMMITTEES.

(1) A Provincial Land Disputes Committee is hereby established for each province.

(2) A Provincial Land Disputes Committee shall consist of—

(a) the senior Provincial Land Magistrate in the province, who shall be Chairman; and

(b) the Provincial Administrator, or a Deputy Provincial Administrator nominated by the Provincial Administrator; and

(c) an officer of the Department appointed by the Departmental Head; and

(d) two persons appointed by the Provincial Government.

(3) The Provincial Government shall cause a notice of the appointment of members under Subsection (2)(d) to be published in the National Gazette.

(4) Before a Provincial Government appoints an officer to the Provincial Land Disputes Committee, it must obtain the written approval of his Departmental Head.

(5) A Departmental Head may withdraw an approval given by him under Subsection (4), and thereupon the officer concerned ceases to be a member of the Committee.

(6) Subject to Subsection (5), a member of a Committee appointed under Subsection (2)(d) holds office during the pleasure of the authority.

6. MEETINGS OF COMMITTEES.

(1) A Provincial Land Disputes Committee shall meet at such times and places, as in the opinion of the Chairman, are necessary for the efficient conduct of its affairs.

(2) At a meeting of a Committee—

(a) three is a quorum; and

(b) the Chairman, or in his absence, a member elected by the members present shall preside; and

(c) all matters arising shall be decided by a majority of the votes of the members present and voting; and

(d) the person presiding has a deliberative and, in the event of an equality of votes on matters, also a casting vote.

(3) A Committee shall cause minutes of its meetings to be kept.

(4) The exercise or the performance of any function of a Committee shall not be invalidated by reason only of a vacancy in the membership of the Committee.

(5) Subject to this Act, the procedures of a Committee are as determined by the Committee.

7. POWERS AND FUNCTIONS OF COMMITTEES.

(1) Subject to Section 8, the functions of a Provincial Land Disputes Committee are—

(a) to declare Land Mediation Areas; and

(b) to declare Land Mediation Divisions; and

(c) to appoint Land Mediators; and

(d) to approve the appointment of Local Land Magistrates under Section 22(2).

(2) Subject to this Act, a Committee has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

8. DIRECTIONS BY MINISTER.

(1) The Minister may give directions and may issue written guidelines to any or all Provincial Land Disputes Committees relating to—

- (a) the declaration of Land Mediation Areas; and
- (b) the declaration of Land Mediation Divisions; and
- (c) the number of, manner of and qualifications for appointment of, Land Mediators,

and a Committee shall comply with any directions so given.

- (2) Where an appointment or declaration is made contrary to a declaration under Subsection (1), the appointment or declaration is void.

PART III. – MEDIATION OF LAND DISPUTES.

Division 1.

Land Mediation Areas and Land Mediation Divisions.

9. DECLARATION OF LAND MEDIATION AREAS.

- (1) A Provincial Land Disputes Committee may–

- (a) after receiving a request from a Local-level Government or other body representative of a majority of the people of the area concerned; and
- (b) after consultation with such persons, groups of persons or bodies as it considers necessary to establish the need for a Land Mediation Area; and
- (c) if it is satisfied that there exists a real need in the area for such a declaration,

by notice in the National Gazette, declare an area within its province to be a Land Mediation Area.

- (2) In determining whether there exists in an area a real need for a declaration under this section, a Committee shall consider–

- (a) whether there are land disputes in existence in the area; and
- (b) whether the mediation process established by this Act may assist in the settlement of those disputes or some of them; and
- (c) whether some of the land disputes in existence could lead to breaches of the peace; and
- (d) whether or not an effective customary dispute-settlement authority exists in the area.

10. DECLARATION OF LAND MEDIATION DIVISIONS.

- (1) A Provincial Land Disputes Committee may, by notice in the National Gazette–

- (a) divide a Land Mediation Area into Land Mediation Divisions; or
- (b) declare the whole of a Land Mediation Area to be a single Land Mediation Division.

- (2) A Committee shall not declare an area to be a Land Mediation Division unless it has first consulted with–

- (a) any Local-level Government in whose area the area or part of the area of the proposed Division is situated; and
- (b) any Village Court in whose area the area, or part of the area, of the proposed Division is

situated; and

(c) any other person or group of persons with whom it thinks it desirable to consult,

in order to ensure, as far as practicable, that—

(d) the area of the Division is acceptable to the people residing in it, or having interests in land in it; and

(e) there is a real need by those people to have a Division declared.

Division 2.

Land Mediators.

11. APPOINTMENT OF LAND MEDIATORS.

(1) A Provincial Land Disputes Committee shall, at the same time as it declares an area to be a Land Mediation Division or as soon as possible after, and may from time to time, appoint Village Magistrates or other persons to be Land Mediators for the Division.

(2) There shall be at least one and not more than three Land Mediators for each Division.

(3) A Provincial Land Disputes Committee shall not appoint a person to be a Land Mediator unless it has first consulted with—

(a) any Local-level Government in whose area the area, or part of the area, of the Land Mediation Division in respect of which the Land Mediator is to be appointed is situated; and

(b) any Village Court in whose area the area, or part of the area, of the Land Mediation Division in respect of which the Land Mediator is to be appointed is situated; and

(c) the person to be appointed; and

(d) any other bodies or persons or groups of persons, whom it thinks it desirable to consult,

in order to ensure, as far as practicable, that the person to be appointed—

(e) consents to act; and

(f) is acceptable to the people residing in, or having land in, the Division or Divisions for which he is to be appointed.

12. CONDITIONS OF EMPLOYMENT.

The terms and conditions of employment of Land Mediators are as determined from time to time by the Minister.

13. TENURE OF OFFICE.

(1) The appointment of a Land Mediator shall be reviewed at or before the end of each period of three years after the appointment, and may be revoked at the end of any such period by the Provincial Land Disputes Committee.

(2) The Committee may revoke the appointment of a Land Mediator at any time where it is satisfied on reasonable grounds that—

- (a) he has become incapable of performing his duties; or
- (b) he is guilty of misconduct in relation to his duties; or
- (c) he is no longer acceptable to the people of the Division or Divisions for which he is appointed.

14. NOTIFICATION AND PROMULGATION OF APPOINTMENTS.

(1) The Provincial Land Disputes Committee shall notify each Land Mediator in writing of—

- (a) his appointment; and
- (b) the Land Mediation Division or Divisions for which he is appointed; and
- (c) the terms and conditions of his appointment; and
- (d) his powers, functions, duties and responsibilities under this Act.

(2) The name of each Land Mediator, the Division or Divisions for which he is appointed and his powers and duties under this Act shall be—

- (a) publicly promulgated by the Committee in such manner as it thinks most likely to ensure that they are generally known and understood by the people residing in the Land Mediation Area; and
- (b) communicated in writing by the Committee to—
 - (i) the Provincial Government; and
 - (ii) all Local-level Governments in whose area, or in part of whose area, a Land Mediation Area is situated.

15. POWERS AND FUNCTIONS OF LAND MEDIATORS.

(1) The primary function of a Land Mediator is to assist in the attainment of peace and harmony in the Land Mediation Division or Divisions for which he is appointed by mediating in, and endeavouring to obtain the just and amicable settlement of, disputes.

(2) Subsection (1) does not prevent—

- (a) a Land Mediator from mediating a dispute relating to interests in customary land situated in a Land Mediation Area or Division other than the Area or Division for which he is appointed, if he is requested to do so under Section 17(2); or
- (b) two or more Land Mediators from jointly mediating a particular dispute.

(3) A Land Mediator shall, where he considers it appropriate to do so, seek the assistance of any customary dispute-settlement authority that, in his opinion, has customary jurisdiction in relation to the dispute.

(4) For the purposes of this section, a Land Mediator may—

- (a) appoint a time and place at which mediation is to occur; and
- (b) request the presence of any person or group of persons at the mediation; and
- (c) adjourn the mediation where he is of opinion that by doing so a just and amicable settlement of the dispute may be arrived at by the parties to the dispute.

16. APPOINTMENT OF AD HOC MEDIATORS.

(1) Where a Local Land Magistrate is of opinion that a dispute to which this Act applies is of such a nature that it can most effectively be mediated by a person other than a Land Mediator or a Local Land Court, the Magistrate may appoint a person to mediate the dispute.

(2) For the purposes of this Act, a person appointed under Subsection (1) has, in relation to the dispute for which he is appointed, the same powers, functions and duties as a Land Mediator.

Division 3.

Mediation and Agreement.

Subdivision A. – Mediation.

17. MEDIATION.

(1) Where he is of opinion that—

(a) a dispute exists as to interests in land situated wholly or partly within the area of the Land Mediation Division or Divisions for which he is appointed; and

(b) mediation as a means of settling the dispute may be successful,

a Land Mediator may mediate the dispute if no other Land Mediator has been appointed, or has commenced, to mediate the dispute.

(2) Subject to Subsections (4), (8) and (10), a Land Mediator shall mediate a dispute in any Land Mediation Area when requested to do so, orally or in writing, by—

(a) a party to the dispute; or

(b) a Village Court or Village Magistrate; or

(c) a Local Land Court or a Local Land Magistrate; or

(d) [*Repealed.*]

(e) a Magistrate of a District Court; or

(f) a Provincial Land Court; or

(g) a Provincial Administrator, a Deputy Provincial Administrator, a District Officer (Lands) or an officer in charge of a Subdistrict, Patrol Post or Base Camp.

(3) Where any of the persons or bodies referred to in Subsection (2)(b) to (g) (inclusive) requests that a dispute be mediated he or it shall, as soon as practicable, forward the request to the Local Land Magistrate located nearest to the land, and the Magistrate shall decide which Land Mediator shall mediate the dispute and forward the request to him.

(4) A request under Subsection (2) shall be made to a Land Mediator for the Land Mediation Division within which the land in dispute is wholly or partly situated unless the Local Land Magistrate located nearest to the land is of the opinion that special circumstances exist that make it more appropriate for a Land Mediator from another Land Mediation Division to mediate the dispute.

(5) Without limiting the generality of Subsection (4), the matters that may be taken into account in determining whether special circumstances exist include the following:—

- (a) that the parties to the dispute prefer a Land Mediator from another Land Mediation Division;
- (b) that the Land Mediator appointed for the Land Mediation Division is personally interested or involved in the dispute;
- (c) that no Land Mediator appointed for the Division is available;
- (d) that the nature of the dispute is such that in all the circumstances it would be preferable to have the dispute mediated by a Land Mediator from another Land Mediation Division.

(6) This section does not prevent two or more Land Mediators being requested to mediate jointly a dispute if there exist special reasons for doing so.

(7) Where a Land Mediator—

- (a) decides to mediate a dispute under Subsection (1); or
- (b) is requested to mediate a dispute under Subsection (2),

he shall, as soon as practicable, inform the Local Land Magistrate located nearest to the land in dispute.

(8) Subject to Subsection (6), where a Local Land Magistrate is aware that a dispute has been referred for mediation to two or more Land Mediators individually, he shall, where there is no agreement between the mediators themselves as to who will mediate the dispute, request one of the Mediators to mediate the dispute and the other Mediator or Mediators not to mediate the dispute.

(9) After mediation of a dispute has commenced under this Act—

- (a) the Land Mediator mediating the dispute; or
- (b) the parties to the dispute or any of them,

may apply to a Local Land Magistrate for an order requesting another Land Mediator to continue the mediation.

(10) A Local Land Magistrate who has received an application under Subsection (9) may, where he is of the opinion that any of the special circumstances specified in Subsection (5) exist, request another Land Mediator to continue the mediation.

Subdivision B. – Agreements.

18. AGREEMENTS.

(1) If an agreement is reached between the parties to a dispute as to the whole or part of the dispute, the Land Mediator shall—

- (a) record that an agreement has been reached; and
- (b) unless he thinks it inappropriate to do so—record the terms of the agreement; and
- (c) ensure that the terms of the agreement are understood by the parties and are formally and publicly acknowledged by or on behalf of the parties; and
- (d) where the terms of the agreement are recorded—forward a copy of the record to the nearest Local Land Court.

(2) Where the terms of an agreement include agreement as to the location of a boundary, the Land Mediator shall—

- (a) as far as practicable, walk the boundary with the parties; and
- (b) unless he thinks it impracticable to do so, direct the parties—
 - (i) to inform him of all prominent natural features located on the boundary; or
 - (ii) to mark the boundary in such manner and with such marks as he thinks appropriate; and
- (c) record the boundary in such manner as he thinks will enable it to be readily identified; and
- (d) record the names of not less than three witnesses who are prepared to testify to the position of the boundary as determined in the agreement.

(3) A Local Land Court to which a record is forwarded under Subsection (1) shall forward copies of the record—

- (a) to the Provincial Land Court for the province in which the land is wholly or partly situated; and
- (b) on request, to any Local-level Government in whose area the land in dispute is wholly or partly situated; and
- (c) on request, to the parties to the dispute or any of them.

19. APPROVAL OF AGREEMENTS.

(1) The parties to an agreement may apply to a Local Land Court to have the agreement approved.

(2) On receiving an application under Subsection (1), the Court shall make such inquiries as it thinks necessary to ensure that—

- (a) the terms of the agreement are fully understood by the parties; and
- (b) where a party to the agreement consists of more than one person, a substantial majority of the persons comprising the party concur with the terms of the agreement; and
- (c) the agreement is not in breach of any law, or contrary to natural justice or public policy.

(3) Where the Court is not satisfied as to any matter specified in Subsection (2), it may—

- (a) mediate between the parties in order to reach a satisfactory agreement; or
- (b) by order direct the Land Mediator who mediated the dispute or another Land Mediator specified in the order to conduct further mediation, with, if it thinks fit, a direction as to how any defect in the original agreement might be overcome.

(4) Where further mediation has been carried out under Subsection (3)(b) and an agreement has been reached and recorded, the parties may re-apply to the Court to have the agreement approved in accordance with this section.

(5) Where the Court is satisfied as to the matters specified in Subsection (2), it may approve the agreement.

(6) An agreement approved under Subsection (5) has effect as an order of a Local Land Court made under this Act.

20. EFFECT OF AGREEMENTS.

Until approved under Section 19–

- (a) an agreement is, in any legal proceedings, evidence of the interests of the parties to the agreement in the land in dispute as at the date of the agreement; but
- (b) the agreement or any admission or concession made by a party in arriving at the agreement, is not binding on a party, his heirs, successors or assigns.

PART IV. – LOCAL LAND COURTS.

Division 1.

Establishment.

21. ESTABLISHMENT OF LOCAL LAND COURTS.

The Minister may, by notice in the National Gazette, establish a Local Land Court in and for a province specified in the notice.

22. APPOINTMENT OF LOCAL LAND MAGISTRATES.

(1) The Minister may, by notice in the National Gazette, appoint a Magistrate to be a Magistrate of a Local Land Court.

(2) Notwithstanding Subsection (1), where the Minister is satisfied that–

- (a) there exists in an area a need for a Local Land Court; and
- (b) there is no Local Land Magistrate located in the area,

he may, by notice in the National Gazette, appoint a District Officer to be a Magistrate of a Local Land Court for the area.

(3) An appointment under Subsection (2) shall not be made unless the approval of the Provincial Land Disputes Committee for each province in which the area to be served is wholly or partly situated has first been obtained.

(4) A Provincial Land Disputes Committee may, at any time during the period of an appointment of a Local Land Magistrate under Subsection (2), advise the Minister that it has withdrawn its approval of the appointment, and the Minister shall thereupon, by notice in the National Gazette, terminate the appointment.

23. CONSTITUTION OF LOCAL LAND COURTS.

(1) A Local Land Court shall be constituted by a Local Land Magistrate, who shall be Chairman, and–

- (a) subject to Subsection (2), an even number of Land Mediators (not being more than four);
or
- (b) where the Court is constituted for the purpose of a dispute in an area other than a Land Mediation Area, an even number of persons (not being more than four) who are normally resident in the area in which the land the subject of the dispute is located,

appointed by the Local Land Magistrate in respect of each dispute before the Court.

(2) In relation to a dispute, the Land Mediators referred to in Subsection (1)(a) shall—

(a) where he is available, include the Land Mediator who attempted to mediate the dispute, unless the Local Land Magistrate, for a special reason, excludes him; and

(b) where practicable, include all or some of the Land Mediators for the Land Mediation Division in which the land the subject of the dispute is wholly or partly situated.

(3) A decision of a Local Land Court shall be by majority vote, and where there is an equality of votes on any matter before the Court, the Local Land Magistrate has a casting, as well as a deliberative, vote.

24. CLERKS OF LOCAL LAND COURTS.

(1) ^[1] ^[2] Subject to the *Public Services (Management) Act 1995*, there may be a Clerk of each Local Land Court.

(2) Subject to this Act, where no person is appointed to be the Clerk of a Local Land Court or where the Clerk of a Local Land Court is not available—

(a) the duties of the Clerk may be performed by a Local Land Magistrate; or

(b) the Local Land Magistrate presiding at the hearing of a dispute before the Court may appoint a person to be the Clerk of the Court for the duration of the hearing or for part of the hearing.

(3) The Clerk of a Local Land Court shall keep such registers and books, and has and shall perform such other duties and functions, as are determined by the Minister.

(4) The terms and conditions of service of a Clerk appointed under Subsection (2)(b) are as determined by the Minister.

25. TIME AND PLACE OF SITTINGS.

(1) Subject to Subsection (2), a Local Land Court shall sit at such times and places as are necessary for the convenient and speedy dispatch of the business of the Court.

(2) The Court shall sit on or near the land in dispute, unless it is not reasonable and practicable to do so.

Division 2.

Division 2.-General Jurisdiction of Local Land Courts.

26. GENERAL JURISDICTION OF LOCAL LAND COURTS.

Subject to Section 3 and 4 and to this Part, a Local Land Court has jurisdiction over and in relation to—

- (a) a dispute as to an interest in land where the land in dispute is situated wholly or partly within the province for which the Court is established; and
- (b) the approval of agreements under Section 19; and
- (c) a dispute to which Section 29 applies; and
- (d) any other action or decision that it may be required to take under this Act.

27. LIMITATIONS OF JURISDICTION.

(1) Where a dispute relates to land either wholly or partly in a Land Mediation Area, a Local Land Court has no jurisdiction over the dispute, unless a Land Mediator has certified that he has acted in relation to the dispute and that—

- (a) an agreement for which approval is sought under Section 19 is the agreement reached between the parties seeking approval; or
- (b) an agreement was reached between the parties by mediation, but the agreement is no longer acceptable to any or all of the parties to the dispute; or
- (c) the parties have, in his opinion, made reasonable efforts to reach agreement but have been unable to do so; or
- (d) the party applying to the Court has made reasonable efforts to reach agreement but has failed to do so because of some default on the part of the other party; or
- (e) in his opinion—
 - (i) there is no reasonable likelihood of agreement being reached through mediation; and
 - (ii) there is good reason for the dispute to be dealt with without delay.

(2) Where a dispute relates to land that is not situated either wholly or partly in a Land Mediation Area, a Local Land Court has no jurisdiction in relation to the dispute unless a Magistrate of a District Court, after having satisfied himself that, if there is a customary dispute settlement authority the dispute has been considered by it, has first certified that—

- (a) there is no reasonable likelihood of the dispute being settled without a court hearing; and
- (b) in his opinion, there is good reason for the dispute to be dealt with without delay.

(3) An application to a Magistrate of a District Court for a certification as to the matters referred to in Subsection (2) may be made by—

- (a) a party to a dispute; or
- (b) a Village Court; or
- (c) a Village Magistrate; or
- (d) a Provincial Land Court; or
- (e) a Provincial Land Magistrate; or
- (f) a Provincial Administrator, a Deputy Provincial Administrator, a District Officer (Lands) or an officer in charge of a Subdistrict, Patrol Post or Base Camp.

(4) A Local Land Court shall not proceed to hear and determine a dispute, other than an application under Section 44, unless it has first satisfied itself that no previous order has been made in relation to the land by—

- (a) a Provincial Land Court or a Local Land Court; or
- (b) the Land Titles Commission.

28. POWER TO MEDIATE.

(1) At any stage of a hearing before a Local Land Court, the Court may mediate between the parties in order to reach a just, effective and amicable agreement between the parties to the dispute.

(2) The Local Land Court may adjourn a hearing, if it appears that by doing so an agreement may be arrived at between the parties.

(3) Where a Local Land Court mediates a dispute under this section, Sections 18 and 19, with the necessary modifications, apply as though the mediation were a mediation under those sections.

Division 3.

Ancillary Jurisdiction.

29. DISPUTES, ETC., INEXTRICABLY INVOLVED WITH LAND DISPUTES.

(1) Notwithstanding this or any other Act, where, in the opinion of the Local Land Magistrate presiding at a sitting of a Local Land Court, a dispute that is the subject of proceedings before the Court is so inextricably involved with another dispute or with pending criminal proceedings that the Court should not proceed to deal with the dispute until the other dispute or the criminal proceedings is or are dealt with, the Local Land Magistrate may—

(a) where a Local Court or a Village Court has jurisdiction to deal with the other dispute or criminal proceedings, as the case may be, direct the Local Land Court—

(i) to adjourn the proceedings in relation to the land dispute until the other dispute or the criminal proceedings has or have been dealt with by that other Court; or

(ii) to proceed to hear and determine the other dispute; and

(b) where a Local Court or Village Court does not have jurisdiction to deal with the other dispute or criminal proceedings, direct the Local Land Court to adjourn the proceedings until the other dispute or the criminal proceedings has or have been dealt with.

(2) A Local Land Court that proceeds to deal with a dispute under Subsection (1)(a)(ii) shall be deemed, for the purposes of the dispute, to be and, as far as practicable, to have all the powers, duties, functions and responsibilities of a District Court or Village Court, as the case requires.

Division 4.

Preventive Jurisdiction.

30. TEMPORARY ORDERS BY MAGISTRATES.

(1)^[3] ^[4]A party to a dispute, a District Officer, a member of the Police Force or a Village Peace Officer may apply to a District Court Magistrate, or to a Local Land Magistrate, for a temporary order over land in dispute.

(2) Notwithstanding this Act or any other law, where the Magistrate to whom application is made under Subsection (1) is satisfied that—

- (a) there is likely to be a delay of not less than one month before the dispute can be heard and determined in the Local Land Court; and
- (b) prompt action is needed to preserve peace and order in the area,

he may make a temporary order—

- (c) authorizing the use or occupation of the land or part of the land in dispute by a party or parties to the dispute, or any other person for such purposes and subject to such conditions and restrictions as are specified in the order; or
- (d) prohibiting the use or occupation of the land by any or all of the parties to the dispute; or
- (e) restraining any of the parties to the dispute or any other person from interfering with the authorized use or occupation of the land by the party or person specified in an order under Paragraph (c),

pending an agreement between the parties or a decision of a Local Land Court.

(3) Where a Magistrate makes a temporary order under Subsection (2), he shall promptly forward to the nearest Local Land Court a true copy of—

- (a) the record of the proceedings; and
- (b) the depositions; and
- (c) any documentary evidence relating to the dispute.

(4) The Local Land Court referred to in Subsection (3) shall commence to hear the dispute within three months after the date of the making of a temporary order under Subsection (2).

(5) Where an appeal has been lodged against the decision of a Local Land Court, the Local Land Magistrate who presided at the hearing of the dispute, the decision on which has been appealed against, may, where he is satisfied that—

- (a) there is likely to be a delay of not less than one month before a Provincial Land Court can hear and determine the appeal; and
- (b) a breach of the peace is likely to occur unless a temporary order is made over the land in dispute,

make a temporary order in accordance with Subsection (2)(c), (d) or (e) pending the determination of the appeal by the Provincial Land Court.

(6) A person who refuses or fails to comply with a temporary order made under Subsection (2) or (5) is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K2.00.

(7) No appeal lies against a temporary order made under Subsection (2) or (5).

(8) This section does not affect the operation of Sections 41, 43 and 48 of the *Village Courts Act 1989*, but the reference in that section to the Land Titles Commission shall be read as a reference to a Local Land Court having jurisdiction over the dispute.

Division 5.

Practice and Procedure of Local Land Courts.

31. APPLICATIONS.

(1) Subject to this Act, all proceedings in a Local Land Court shall be commenced by an application made to—

- (a) a District Court Magistrate; or
- (b) a Local Land Magistrate.

(2) An application may be made by—

- (a) a party to the dispute; or
- (b) a Village Court; or
- (c) a Land Mediator; or
- (d) a Local Land Magistrate or a Local Land Court other than the Magistrate or Court before whom the application is made; or
- (e) [*Repealed.*]
- (f) a Magistrate of a District Court; or
- (g) a Provincial Land Magistrate or Provincial Land Court; or
- (h) a Provincial Administrator, a Deputy Provincial Administrator, a District Officer (Lands) or an officer in charge of a Subdistrict, Patrol Post or Base Camp.

(3) An application—

- (a) may be made orally or in writing, but if made orally it shall be reduced to writing by or on behalf of the applicant before the hearing commences; and
- (b) shall be accompanied by a general description of the land in dispute.

(4) Where an application is made to a Magistrate of a District Court under Subsection (1), he shall, subject to Section 30, forward it to a Local Land Magistrate apparently having jurisdiction over the dispute.

(5) On the making of an application, the Local Land Court shall cause notice of the application to be given in accordance with Section 71.

32. POWER OF PROVINCIAL LAND COURT TO DIRECT LOCAL LAND COURT TO PROCEED TO HEARING.

(1) A Local Land Court to which an application has been made under Section 31 shall not proceed to hear and determine the matter unless—

- (a) the Local Land Magistrate presiding has satisfied himself that the Court has jurisdiction in the matter; and
- (b) where two or more Local Land Courts have jurisdiction in the matter—
 - (i) the Local Land Magistrates concerned have agreed that the first-mentioned Court shall hear and determine the matter; or

(ii) the Provincial Land Court within whose province the land the subject of the dispute is situated has directed that that Court shall hear and determine the matter.

(2) Where a Local Land Court has received an application under Section 31 and the Local Land Magistrate presiding is of the opinion that some other Local Land Court has jurisdiction either in addition to or in the place of the first-mentioned Court, he shall forward a copy of the application to the other Court.

33. TRANSFER OF PROCEEDINGS.

(1) Where proceedings have been commenced in a Local Land Court, then at any time before it has given a decision in the matter the Court may, of its own motion or otherwise, for reasons that shall be recorded, make an order—

- (a) staying the proceedings; and
- (b) transferring, on such terms as seem to it just, the proceedings for hearing and determination by some other Local Land Court.

(2) At any time before a decision has been given in any matter, a Provincial Land Court may, of its own motion or otherwise, make an order—

- (a) staying the proceedings before a Local Land Court; and
- (b) ordering that the proceedings be taken before another Local Land Court.

(3) An order made by a Local Land Court in contravention of an order under Subsection (2) is void and of no effect.

(4) Where proceedings are ordered to be transferred to or heard before a Local Land Court other than the Court in which the proceedings were instituted, the Court in which the proceedings were instituted shall report the proceedings to the other Land Court, and thereupon that Court shall proceed to hear and determine the matter as though proceedings had been instituted before it.

34. CHANGE OF MEMBERSHIP.

(1) Where, after the commencement of a hearing by a Local Land Court, the Local Land Magistrate presiding—

- (a) dies; or
- (b) is transferred to another area; or
- (c) is for any other reason unable to continue to preside,

the Provincial Land Magistrate may direct another Local Land Magistrate to preside at the hearing, and the hearing shall continue as if that Magistrate had presided from the commencement of the hearing.

(2) Where, after the commencement of a hearing by a Local Land Court, a member of the Court, other than the Local Land Magistrate—

- (a) dies; or
- (b) is for any other reason unable to continue to act,

the Local Land Magistrate presiding may appoint a person to fill the vacancy.

35. PRACTICE AND PROCEDURE OF LOCAL LAND COURTS.

(1) A Local Land Court—

- (a) is not bound by any law or rule of law, evidence, practice or procedure other than this Act; and
- (b) may call and examine, or permit the parties to call and examine, such witnesses as it thinks fit; and
- (c) may otherwise inform itself on any question before it in such manner as it thinks proper; and
- (d) subject to Section 40, shall endeavour to do substantial justice between all persons interested, in accordance with this Act and any relevant custom.

(2) Where a Local Land Court informs itself on any questions in accordance with Subsection (1)(c), it shall—

- (a) make the information available to the parties; and
- (b) call for and hear argument on the information.

(3) Notwithstanding Subsections (1) and (2), where a Local Land Court proceeds to hear and determine a dispute under Section 29(1)(a)(ii) it is bound, as far as is practicable, by the same rules of law, evidence, practice and procedure as those by which the Village Court or Local Court having jurisdiction in the matter would be bound.

36. INSPECTION OF LAND IN DISPUTE.

(1) A Local Land Court to which an application has been made under this Part, shall, before giving a decision on the matter, inspect, with the parties to the dispute, the land in dispute and shall satisfy itself as to—

- (a) the scope and extent of the land, where the dispute concerns interests in the use or possession of the land; and
- (b) the scope and nature of the produce of or improvements to the land, where the dispute concerns the produce or improvements; and
- (c) the location of alleged boundaries, where the dispute concerns a boundary to land; and
- (d) any other aspect of the land that will assist the Court in reaching a just decision,

as the case requires.

(2) Subject to Subsection (3), all the members of the Court shall inspect the land in accordance with Subsection (1) except where the land in dispute is situated in a place to which access is difficult, in which case it shall be a sufficient compliance with Subsection (1) if one of the members of the Court inspects the land.

(3) Subsection (2) does not apply to a member of the Court suffering from any physical disability, and an inspection by all the other members shall be deemed to be an inspection for the purposes of that subsection.

37. WITNESSES.

(1) In any proceedings under this Act, a Local Land Court may order any person–

- (a) who is, or who in its opinion may be, a party, or a member of a party, to the dispute; or
- (b) who in its opinion may be able to give any relevant information; or
- (c) in whose possession or control there is any document or thing that may, in the opinion of the Court, be relevant to the proceedings,

to appear before it, at a time and place specified in the order, and to answer questions or to produce the document or thing to the Court.

(2) An order under this section may be oral or written.

(3) In addition to any other action that may be taken under this Act, where a person fails to comply with an order under Subsection (1) the Court may direct–

- (a) a member of the Police Force; or
- (b) a Village Peace Officer appointed for the area in which the person normally resides,

to arrest the person and bring him before the Court or to seize and produce to the Court any thing the subject of the order.

38. RECORDS AND RETURNS OF CASES.

(1) As far as practicable, a Local Land Court shall keep, or cause to be kept, a record of the proceedings in a form approved by the Minister.

(2) The record of proceedings shall include minutes of any evidence or information given in the proceedings before the Court.

(3) The reasons for the decision of the Court shall be recorded by the Local Land Magistrate on the record.

(4) The record of proceedings shall be certified by the Local Land Magistrate presiding at the hearing, and when so certified is prima facie evidence of the matters set out in it.

(5) The Local Land Magistrate shall forward a copy of the record of each proceedings to the Provincial Land Court.

(6) Nothing in this or any other Act prevents the conduct of proceedings, keeping of records or taking of minutes in *Pisin*, *Hiri Motu* or a vernacular language understood by all the parties.

Division 6.

Orders, etc.

39. ORDERS GENERALLY.

(1) On the completion of a hearing under this Part, the Local Land Court shall make an order in accordance with this section.

(2) In making an order under Subsection (1), a Court shall, subject to Section 68, apply the customs of the area concerned, and in particular shall consider the customs of the area in so far as they relate to—

- (a) interests in land that are recognized by custom; and
- (b) the process by which such interests are allocated or re-allocated by custom.

(3) Subject to Subsection (2), the customary interests in relation to land that a Court may take into consideration include customs as to—

- (a) the exclusive use or possession of land; and
- (b) the disposal of land or an interest in land; and
- (c) the use or possession of land for limited purposes; and
- (d) the growing or harvesting of garden crops or tree crops; and
- (e) the exclusive use or possession of trees or improvements on land; and
- (f) the use or possession of trees for limited purposes; and
- (g) the fishing, farming or grazing of animals; and
- (h) the hunting or gathering of animals or vegetable matter; and
- (i) the collecting or mining of earths and minerals permitted by law; and
- (j) passages or landing places.

(4) An interest referred to in Subsection (3) may be—

- (a) in relation to a particular class of things or of a general nature; and
- (b) for a definite or indefinite period or subject to a contingency.

(5) Without limiting the generality of the preceding provisions of this section but subject to Subsection (6), an order under Subsection (1) may include provisions that—

- (a) the parties be allocated interests in the land in dispute in accordance with the order; or
- (b) the land in dispute be divided, or a boundary to the land be declared; or
- (c) the land in dispute or an interest in the land be held in common by the parties with or without conditions or limitations as to use; or
- (d) none of the parties has established any interests in the land in dispute; or
- (e) one or more of the parties have established interests of a limited nature only in the land in dispute, but none of the parties has established an interest in the exclusive use or possession of the land; or
- (f) compensation or customary tributes be paid; or
- (g) a feast be given,

or any other provision that the Court thinks appropriate.

(6) Notwithstanding Subsection (5), an order shall not include—

- (a) a provision regarding an interest that did not form the subject-matter or part of the subject-matter of the dispute over which the order is made; or
- (b) a provision regarding a person or group who was not a party to the dispute.

40. ORDERS RELATING TO RETURN OF FORMER INTERESTS.

Notwithstanding this Act, if a Local Land Court is satisfied in relation to an application under this Part that—

- (a) one of the parties to the dispute is short of land and another party has an abundant supply of land; and
- (b) the party that is short of land has within 100 years before the making of the application held an interest or interests in the land or part of the land of the other party; and
- (c) the return of all or part of the interest or interests in the land referred to in Paragraph (b), or the grant of some other equivalent interest or interests by the other party, will lead to a peaceful and effective settlement of the dispute; and
- (d) the party deprived of land will still have an abundant supply of land after the return or grant of the interest or interests has been made,

the Court may order that—

- (e) all or part of the interest or interests previously held by the one party be returned to it by the other party, or that the last-mentioned party grant to the first-mentioned party some other equivalent interest or interests in its land; and
- (f) such compensation or customary tribute be paid or feast given as in its opinion is just,

subject to such conditions and limitations as the Court determines.

41. REASONS FOR AND TERMS OF ORDERS TO BE EXPLAINED TO PARTIES.

(1) As soon as practicable after the conclusion of a hearing, the Local Land Court shall—

- (a) explain the reasons for its decision; and
- (b) state clearly the terms of its order,

in the presence of the parties to the dispute.

(2) On making an order under this Part, other than a temporary order under Section 30, the Court shall give notice of the terms of the order in such form as it thinks fit, in accordance with Section 71.

42. VISIT TO LAND AFTER ORDER.

(1) On making an order under this Part, other than a temporary order under Section 30, a Local Land Court shall—

- (a) visit the land with the parties or the representatives of the parties and not less than five witnesses from the same or an adjacent area; and
- (b) satisfy itself that the parties and the witnesses understand—

- (i) the nature of the order; and
- (ii) the scope and extent of the land over which the interests as declared in the order may be exercised.

(2) Where the order includes provision as to the position of a boundary to the land in dispute, the Court shall—

- (a) as far as practicable, walk the boundary with the parties; and
- (b) unless it thinks it impracticable to do so, direct the parties to indicate the boundary on the ground by such natural features or such marks as it thinks appropriate; and
- (c) record the boundary in such manner as it thinks will enable it to be readily identified; and
- (d) record the names of not less than five witnesses who are prepared to testify to the position of the boundary.

(3) Section 36(2) and (3) apply to a visit under this section as though it were an inspection under that section.

(4) The Court shall include in the record of proceedings—

- (a) the fullest possible description of the land in dispute, having regard to the resources for describing land available to the Court; and
- (b) the names of all witnesses who visited the land with the Court.

43. EFFECT OF ORDERS.

(1) Subject to Section 44, an order of a Local Land Court made under this Part is, as between the parties and all persons claiming through them, conclusive evidence that the interest or interests in the land the subject of the dispute that is or are specified in the order may be exercised by the person or group of persons named in the order as being the person or group of persons vested with the interest or interests.

(2) An order under Subsection (1) is not a bar to any claim of right by any person to exercise any interest other than the interest, as set out in the order, over the land or part of the land the subject of the order.

(3) An order under Subsection (1) has effect, subject to Section 59, from the date on which it is made.

44. VARIATION OF ORDERS.

(1) Notwithstanding Section 43, a party may apply to a Local Land Court for a variation of an order of that Court if he can show that circumstances have changed so that the enforcement of the order is causing hardship.

(2) Where an application is made to a Local Land Court under Subsection (1), the Court shall cause a copy of the application to be served on any other interested persons and Section 71 applies as though the copy of the application were a notice within the meaning of that section.

(3) An application under Subsection (1)—

(a) may not be made within 12 years after the date of the order; and
(b) may be made only by a party who was originally a party to the dispute or by a party claiming through such a party.

(4) In considering whether to vary the order, the Court shall take into account—

(a) the past and present use and occupation of the land the subject of the order; and
(b) the past and present use and occupation of the area surrounding the land; and
(c) the relative numbers of people holding interests in and using and occupying the land and the area surrounding the land; and
(d) any other matters that it thinks relevant.

(5) The Court may vary the order only if it is satisfied that in all the circumstances it is just to vary it, and that the party applying will suffer hardship if the order is not varied.

(6) Where a Local Land Court decides to vary an order under this section, it may include in the variation any provision that it may include in an order made under Section 39.

PART V. – PROVINCIAL LAND COURTS.

Division 1.

Establishment of Provincial Land Courts.

45. ESTABLISHMENT OF PROVINCIAL LAND COURTS.

The Minister may, by notice in the National Gazette, establish a Provincial Land Court in and for a province specified in the notice.

46. APPOINTMENT OF PROVINCIAL LAND MAGISTRATES.

^[5](1) The Minister may, by notice in the National Gazette, appoint a Principal Magistrate to be a Provincial Land Magistrate.

(2) For the purposes of this Act, the relative seniority as between themselves of Provincial Land Magistrates is in accordance with their respective appointments as Principal Magistrates.

47. CONSTITUTION OF PROVINCIAL LAND COURTS.

(1) A Provincial Land Court shall be constituted by a Provincial Land Magistrate.

(2) Subject to Subsection (1), a Provincial Land Magistrate may, where he considers it appropriate to do so, request one or more Land Mediators for the Land Mediation Divisions in which the land in dispute is wholly or partly situated to sit with the Court as an assessor or assessors to advise it on any matter on which it requests his or their advice.

48. CLERKS OF PROVINCIAL LAND COURTS.

(1) ^[6] ^[7] Subject to the *Public Services (Management) Act 1995* there shall be such clerks of Provincial Land Courts as are necessary.

Note The *Public Services (Management) Act 1986* was repealed and replaced by the *Public Services (Management) Act 1995*.

(2) A clerk of a Provincial Land Court shall keep such registers and books, and has and shall perform such other duties and functions, as are determined by the Minister.

49. TIME AND PLACE OF SITTINGS.

(1) Subject to Subsection (2), a Provincial Land Court shall sit at such times and places as are necessary for the convenient and speedy dispatch of the business of the Court.

(2) Where in the opinion of the Court it is reasonable and practicable to do so, a Court shall sit on or near the land in dispute.

Division 2.

Practice and Procedure of Provincial Land Courts.

50. PRACTICE, PROCEDURE AND POWERS OF PROVINCIAL LAND COURTS.

(1) Subject to this Part, the practice and procedure of a Provincial Land Court are as prescribed.

(2) Subject to this Part and the regulations, a Provincial Land Court—

(a) is not bound by any law or rule of law, evidence, practice or procedure other than this Act; and

(b) may call and examine, or permit the parties to call and examine, such witnesses as it thinks fit; and

(c) may receive fresh evidence; and

(d) may otherwise inform itself on any question before it in such manner as it thinks proper; and

(e) subject to any guidelines laid down in the regulations, shall endeavour to do substantial justice between all persons interested, in accordance with this Act and any relevant custom.

(3) Where a Provincial Land Court informs itself on any question in accordance with Subsection (2)(d), it shall—

(a) make the information available to the parties; and

(b) call for and hear argument on the information.

(4) A Provincial Land Court may, where in its opinion it is necessary to do so, inspect the land in dispute before or during a hearing.

51. WITNESSES.

(1) In any proceedings under this Act, a Provincial Land Court may order any person—

- (a) who is, or who in its opinion may be, a party, or a member of a party, to the dispute; or
- (b) who, in its opinion, may be able to give any relevant information; or
- (c) in whose possession or control there is any document or thing that may, in the opinion of the Court, be relevant to the proceedings,

whether within or outside the area in and for which the Court is established to appear before it, at a time and place specified in the order, and to answer questions or produce the document or thing to the Court.

- (2) An order under this section may be oral or written.

52. RECORDS.

- (1) A Provincial Land Court shall keep, or cause to be kept, a record of its proceedings in a form approved by the Minister.
- (2) The reasons for the decision of the Court shall be recorded by the Court on the record.
- (3) The record of proceedings shall be certified by the Court, and when so certified is prima facie evidence of the matters set out in it.

Division 3.

Appellate Jurisdiction.

53. JURISDICTION.

Subject to this Part, a Provincial Land Court has jurisdiction to hear and determine appeals from a decision of a Local Land Court where the land in dispute is situated wholly or partly within the area of the Provincial Land Court.

54. APPEAL AGAINST DECISION OF LOCAL LAND COURT.

- (1) Subject to this section, a person aggrieved by a decision of a Local Land Court may appeal within three months after the date of the decision to the Provincial Land Court.
- (2) Where the Provincial Land Court is of opinion that it is desirable in the interests of justice to do so, it may, whether or not the time fixed for appeal under Subsection (1) has expired, extend the time fixed for appeal, but leave shall not be granted after the end of the period of 12 months after the date of the decision appealed against.

55. NOTICE OF APPEAL.

- (1) An appeal under this Division shall be instituted by notice of appeal lodged with—
 - (a) the Provincial Land Court to which the appeal is made; or
 - (b) the Local Land Magistrate who presided at the hearing of the dispute the decision in relation to which is appealed against.

(2) A notice of appeal may be given orally or in writing, but if given orally it shall be reduced to writing by the Provincial Land Court or the Local Land Magistrate to whom it is given.

(3) A notice of appeal shall state the grounds of appeal.

(4) Where notice of appeal is given to a Local Land Magistrate, he shall, within 14 days after receiving the notice, forward a written copy of the notice to the Provincial Land Court or Courts having jurisdiction over the appeal.

(5) A written copy of the notice of appeal shall be served on the respondent personally or, in accordance with Section 71(4), by an officer authorized by the Court for the purpose.

56. ACTION ON RECEIPT OF NOTICE.

(1) Where a Provincial Land Court receives a notice of appeal under Section 55, the Court shall not proceed to hear and determine the appeal unless—

(a) it is satisfied that it has jurisdiction in the matter; and

(b) where two or more Provincial Land Courts have jurisdiction in the matter—

(i) the Courts concerned have agreed that the first-mentioned Court shall hear and determine the appeal; or

(ii) the Court constituted by the senior Provincial Land Magistrate has directed that the first-mentioned Court shall hear and determine the appeal.

(2) Where a Provincial Land Court receives a notice of appeal under Section 55, and it is of opinion that another Court has jurisdiction either in addition to it or in its place, it shall forward a written copy of the notice of appeal to the other Court.

57. DEPOSIT ON APPEAL.

(1) Subject to Subsection (2), a party appealing against a decision of a Local Land Court shall lodge with the Government a deposit in the prescribed amount or in accordance with the prescribed scale.

(2) A Local Land Magistrate or a Provincial Land Magistrate, may, for good cause, on application by the party lodging the appeal, waive or reduce the amount of the deposit.

(3) A Provincial Land Court shall not proceed to hear and determine an appeal unless it has first satisfied itself that the appellant has paid the required deposit (if any).

(4) A Provincial Land Court—

(a) shall, if the appeal is upheld; and

(b) may, in any other case,

order the return of the deposit in whole or in part to the appellant.

58. GROUNDS FOR APPEAL.

An appeal under this Division may be made only on one or more of the following grounds:—

- (a) that the Local Land Court exceeded or refused to exercise its jurisdiction; or
- (b) that the Local Land Court conducted its hearing in a manner contrary to natural justice; or
- (c) that in the circumstances of the case no court doing justice between the parties would have made the decision appealed against; or
- (d) that, in the case of an appeal against a decision given under Section 40, the order for the return of the interest or interests in land or the grant of another equivalent interest or interests was not supported on the facts.

59. POWERS ON APPEAL.

(1) In determining an appeal under this Division, a Provincial Land Court may—

- (a) affirm the order; or
- (b) quash the order and—
 - (i) make such other order as, in the opinion of the Court, will dispose of the appeal and the dispute; or
 - (ii) where, in the opinion of the Court, justice demands that the matter or part of the matter of the appeal be remitted to the Local Land Court, remit the matter, or that part of the matter to the Local Land Court.

(2) In remitting a matter to a Local Land Court under Subsection (1)(b)(ii), a Provincial Land Court may give such instructions, directions or guidelines to the Court as to the manner in which the matter remitted is to be dealt with as it thinks proper.

60. EFFECT OF DECISION ON APPEAL.

A decision of a Provincial Land Court on an appeal under this Part is final and is not subject to appeal.

PART VI. – OFFENCES.

61. PROSECUTION OF OFFENCES.

A charge of an offence against this Part shall be prosecuted before a District Court.

62. CONTEMPT OF COURT.

(1) A person who is ordered to appear before a Provincial Land Court or Local Land Court or to produce a document or thing to a Provincial Land Court or Local Land Court under Section 37 or 51, who refuses or fails, without reasonable excuse (proof of which is on him), to attend or produce the document or thing in obedience to the order, is guilty of an offence.

(2) A person who, without lawful excuse (proof of which is on him)—

- (a) refuses or fails to give evidence; or
- (b) refuses to answer a lawful question,

when required to do so by a Local Land Court or a Provincial Land Court is guilty of an offence.

(3) A person who—

- (a) wilfully interrupts, interferes with or disrupts the proceedings of a Provincial Land Court or a Local Land Court; or
- (b) wilfully obstructs or attempts to obstruct—
 - (i) a Provincial Land Court, Local Land Court, Local Land Magistrate or Land Mediator; or
 - (ii) a person in attendance on the Court; or
 - (iii) a person acting under this Part,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

63. REMOVING MARKS, ETC.

(1) A person who, unless authorized by a Provincial Land Court, a Local Land Court or any other law, wilfully or negligently removes, obliterates or defaces a mark that is placed or fixed to indicate a boundary or for the purposes of this Act is guilty of an offence.

(2) A person who, unless authorized by a Provincial Land Court, a Local Land Court or any other law, wilfully or knowingly removes, obliterates or defaces a natural feature indicating a boundary on land to which this Act applies is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

64. FAILURE TO COMPLY WITH ORDERS.

A person who refuses to comply with an order or direction lawfully given by a Provincial Land Court or Local Land Court is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

65. ORDERS FOR COMPENSATION.

(1) A court trying an offence against Section 63 or 64 may order the payment of compensation in addition to or instead of any penalty under this section.

(2) A person who fails to comply with an order under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

PART VII. – MISCELLANEOUS.

66. JURISDICTION OF LAND TITLES COMMISSION.

(1) Where a Local Land Court is established under Section 21 in and for a province, the Land Titles Commission—

- (a) ceases, subject to Subsection (2), to have jurisdiction to and in relation to land to which this Act applies in the province; and
- (b) shall, as soon as practicable after the Court is established, notify the Provincial Land Court for that province as to all disputes to which this Act applies that are the subject of an

application before the Land Titles Commission and have not been heard and determined by the Commission.

(2) Subsection (1) does not apply to or in relation to applications under Section 9 of the *Land Act 1996*

(3) Where a Local Land Court is established under Section 21 in and for a province, Local Courts cease to have jurisdiction under Section 15A of the *Land Titles Commission Act 1962* (Adopted), in relation to land to which this Act applies in the province.

(4) The Provincial Land Court may request a Land Mediator to mediate any dispute notified to it under Subsection (1)(b) in accordance with this Act.

67. PRESUMPTION AS TO VESTING OF INTERESTS.

(1) Notwithstanding any other law, proof that a party to a dispute has exercised an interest over the land the subject of the dispute for not less than 12 years without the permission, agreement or approval of any other person sets up a presumption that that interest is vested in the first-mentioned party.

(2) Where a presumption is set up under Subsection (1), it may be rebutted only by evidence leading to clear proof that the interest is vested in some other person.

68. DETERMINATION OF CUSTOM.

(1) Subject to this section, in all matters before a Provincial Land Court or a Local Land Court the Court shall determine, on the evidence before it, the relevant customs of any group appearing or represented before it.

(2) In applying custom the Court shall have regard to any guidelines laid down in the regulations, and may modify custom to give effect to the guidelines.

(3) The *Customs (Recognition) Act 1963* does not apply to the determination or application of custom by a Provincial Land Court or a Local Land Court.

(4) Insofar as the power to make laws conferred on a Local-level Government by the *Organic Law on Provincial Governments and Local-level Governments* extends to the making of laws declaring what is to be taken to be the custom relating to any matter, any such law is evidence in any Provincial Land Court or Local Land Court of the matters set out in the rule.

69. GENERAL LAW TO BE APPLIED.

In exercising its jurisdiction under this Act, a Provincial Land Court or a Local Land Court is not bound by any law other than this Act that is not expressly applied to it, but shall, subject to Section 68, decide all matters before it in accordance with substantial justice.

70. JUDICIAL NOTICE.

All courts, Judges and persons acting judicially shall take judicial notice of—

- (a) the signature of a person who is or has been a Provincial Land Magistrate, a Local Land Magistrate or a Land Mediator; and
- (b) the fact that that person is or has been a Provincial Land Magistrate, a Local Land Magistrate or a Land Mediator,

if the signature purports to be attached or appended to an order or other document issued out of a Provincial Land Court or a Local Land Court.

71. SERVICE OF NOTICES, ETC.

(1) Subject to this Act, where a Local Land Court is required to give notice under this Act the notice shall be given by—

- (a) giving it to the parties to a dispute or the representatives of the parties; and
- (b) publishing it at the office of, and notifying it at the next meeting of, any Local-level Government in whose area the land or part of the land is situated; and
- (c) forwarding it to any Village Court within whose area the land or part of the land is situated; and
- (d) publishing it by any radio broadcasting service that specifically serves the province in which the land or part of the land concerned is situated,

and, in addition, may be given by—

- (e) posting a copy of the notice in a conspicuous place on the land concerned; or
- (f) posting a copy of the notice at any appropriate meeting or gathering place throughout the area concerned; or
- (g) informing all concerned, or possibly concerned, parties residing on the land concerned or in the general area surrounding the land concerned; or
- (h) notifying it at any appropriate meetings throughout the area concerned; or
- (i) notifying it in the area concerned by any method by which it is customary to transmit orders or news within the area; or
- (j) notifying it in such other places and in such other manner as the Court thinks appropriate.

(2) For the purposes of giving notice under this section, a Local Land Court may require—

- (a) a Local-level Government; or
- (b) the Provincial Government; or
- (c) a District Officer,

to act as its agent.

(3) A notice referred to in Subsection (1) may be given in any language or languages that the Local Land Court or a person or authority acting for the Court under Subsection (2) thinks appropriate.

(4) For the purposes of Subsection (1)(a), where a party consists of more than one person it is sufficient if the notice be given—

- (a) where a representative of the party has commenced acting on behalf of the party—to that representative; or

(b) in any case—to a member of the party apparently over the age of 18 years, provided that the person is informed that the notice is a notice that is required to be given to the party.

72. REPRESENTATION.

(1) Subject to Subsections (2) and (3), a party to any proceedings before a Provincial Land Court or a Local Land Court is entitled to be represented by any member of the party other than a lawyer.

(2) Notwithstanding Subsection (1), a Provincial Land Court or Local Land Court may for the purposes of any proceedings before it, permit a person other than a lawyer to represent—

(a) an infant; or

(b) any other person in a case where it is customary for such a person to be represented before customary tribunals; or

(c) any party who the Court considers will be severely disadvantaged without representation.

(3) Notwithstanding Subsection (1), where it appears to a Provincial Land Court that a proceeding before it involves a matter of unusual difficulty or complexity, it may grant the right to legal representation to all parties to the dispute where—

(a) all parties agree that legal representation is necessary; and

(b) the Court is satisfied that legal representation is necessary.

73. INSPECTIONS BY PROVINCIAL LAND MAGISTRATES.

(1) When directed to do so by the Minister, a Provincial Land Magistrate shall make regular inspections, as directed by the Minister, of—

(a) each Local Land Court within the province; and

(b) each Land Mediator appointed for a Land Mediation Division within the province,

and of its or his records, and shall inquire as to its or his functioning.

(2) The inspecting Magistrate shall—

(a) point out to the Local Land Magistrates, members of Local Land Courts and Land Mediators any shortcomings in practice or procedure; and

(b) encourage the adoption of uniform practices and procedures.

74. INDEMNITY.

(1) A Provincial Land Magistrate, Local Land Magistrate, member of a Local Land Court or Land Mediator, or any other person acting under or for the purposes of this Act, is not liable for any act or omission done or made in good faith for the purposes of this Act, whether or not the act was within his lawful power or jurisdiction.

(2) The burden of proof of a lack of good faith is on the person who relies on the lack.

75. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are

necessary or convenient to be prescribed for carrying out or giving effect to this Act, and generally for facilitating the attainment of the purpose of this Act, and in particular for prescribing—

(a) guidelines relating to—

(i) the determination of custom; and

(ii) the application of custom; and

(iii) the use and occupation of land; and

(b) penalties of fines not exceeding K200.00 or imprisonment for terms not exceeding three months for offences against the regulations.

Office of Legislative Counsel, PNG

^[1] Section 24(1) amended by the *Public Service (Management) (Consequential Amendments) Act* 1986 (No. 29 of 1986), s10.

^[2] Section 24(1) amended by the *Public Service (Management) (Consequential Amendments) Act* 1986 (No. 29 of 1986), s10.

^[3] Section 30(1) amended by (No 10 of 2000).

^[4] Section 30(1) amended by (No 10 of 2000).

^[5] Section 46 repealed and replaced by No 10 of 2000.

^[6] Section 48(1) amended by *Public Service (Management) (Consequential Amendments) Act* 1986 (Act No. 29 of 1986), s11.

^[7] Section 48(1) amended by *Public Service (Management) (Consequential Amendments) Act* 1986 (Act No. 29 of 1986), s11.