

INCORPORATED LAND GROUPS (ILG)

What is an ILG?

An Incorporated Land Group (ILG) is a formally recognised customary group with powers, protections and responsibilities that are governed by legislation.

Original purpose of an ILG

ILGs were originally intended to allow clans to reclaim ownership of previously alienated land like plantations.

What are ILGs used for?

Over the past 30 years, ILGs have been used extensively by the State and resource extraction companies for landowner identification, obtaining consent, and for royalty distribution.

What are the problems with ILGs?

ILGs are being misused with disastrous consequences for customary land and communities.

1. ILGs have been used as proxy for land and resource ownership

ILGs were never intended to and do not give a title to land but they have been widely used to this effect. ILGs are being misused as a kind of proxy or backdoor mechanism to assert or claim land and resource ownership. This misuse has resulted from various law changes, which have allowed ILGs to give landowner consent to resource extraction, such as for forestry and mining.

2. Poor practices for incorporating ILGs

2.1 Fragmentation and proliferation of ILGs

Under the old ILG Act, people could be a member of more than one ILG and as ILGs are commonly used to distribute royalties and compensation, this encouraged the fragmentation and proliferation of ILGs. The 2009 Reforms seek to address this problem by restricting membership to just one ILG, but to be effective this will require close supervision by the Department of Lands and Physical Planning (DLPP) when registering new ILGs.

2.2 The role of the Department of Lands

The process for incorporating land groups has been poorly administered by DLPP. Registration processes are often facilitated by other government departments or mining and logging companies with ulterior motives. The 2009 ILG Reforms impose even greater administrative responsibilities on the Registrar of ILGs but it remains to be seen if the DLPP will be resourced to properly manage this responsibility.

2.3 Poor community engagement

ILGs have frequently been misused by an educated elite who have been able to incorporate ILGs in relative secrecy. The 2009 reforms seek to impose additional obligations to ensure communities are better informed. However, the courts remain skeptical as to whether anything has changed:

“Despite these changes in the law [i.e. the 2009 ILG Reforms], there are still many cases involving ILGs coming to the Courts which suggests, in practice there has been no real change...”

2.4 Poor mapping

There are complexities involved in incorporating large numbers of ILGs over large and remote land areas and mapping large and complex social groupings; many of whom have different land rights. People living in remote areas are often ill-equipped to carry out these tasks themselves, particularly where there are low literacy and numeracy levels. They may also not be able to afford the costs.

3. Who is responsible for organizing people into ILGs?

The law squarely places the obligation to ensure that people are properly organised into ILGs on the State, but the courts have also recognized that others who may be involved must also exercise due diligence. The Supreme Court has stated the position like this:

'The duty is on the State or any other person who wish to enter customary land, to first ascertain who the true and correct owners are. Once they have done that, they would be in a better position to enter into meaningful discussions and negotiations with them and get their free and informed consent before entering, occupying and using their land. The State and any developer have an obligation to properly identify and organise the customary landowning group that owns any land they might be interested in, as part of their obtaining their social license to operate.'

4. ILGs used to alienate customary land

ILGs have been misused to take control of customary land away from communities. One of the worst examples of this abuse is the Special Agriculture Business Lease saga. Weak legislation and poor oversight by DLPP allowed unrepresentative and sometimes fraudulent ILGs to be created which were then used to obtain SABLs. These 99-year leases were granted over an estimated 12% of all customary land in PNG, more than 5 million hectares. Some of these leases have since been declared void by the courts but many still remain.

5. Poor management and accountability

ILGs have been widely criticized for their poor management and lack of financial accountability. Benefits are not distributed fairly within ILGs, and are often misused or stolen by an educated elite. The 2009 reforms have introduced new management and accounting obligations but will these prove effective and how will they be policed and enforced?

6. Negative impacts of ILGs on customary structures

6.1 Break down of Management Structures and Application of Customary Law

ILGs have the potential to change and breakdown customary social structures. Committing social norms to paper inevitably reshapes future rights, privileges and responsibilities. Management and voting structures that mandate 'democratic' procedures with a 'flat' social structure bear little relation to the reality of PNG communities and undermines traditional respect for elders and their leadership. Also, Management Committees have the power to decide who will and will not be admitted as a member once an ILG has been established. This may promote the division of clans into smaller groups and units. The 2009 reform requiring birth certificates may also result in some people being excluded from an ILG. The role and application of customary law is also unclear.

In some parts of PNG, landownership and dealings is through maternal lineage. ILGs can weaken this traditional structure and transfer decision making powers to men who can have different interests.

6.2 Gender Issues

The 2009 reforms make mandatory the inclusion of at least two women on six-member ILG Management Committees and decisions cannot be made by the membership unless at least 10% of those present are women. Do these reforms go far enough to ensure the rights and interests of women?