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Landowner Protection in Papua New Guinea's Petroleum Development

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1. INTRODUCTION

Papua New Guinea ('PNG') possesses substantial petroleum and natural gas resources located predominantly beneath or within areas of customary land. This creates a distinctive legal problem: the State exercises legal control over petroleum resources, while developing those resources directly affects customary landowners whose land, communities, and social structures may be affected by petroleum projects. The legal question is therefore not only whether petroleum development may proceed, but whether the legal framework governing that development provides landowners with genuine recognition, participation and access to the benefits it generates.

The Oil and Gas Act 1998 (PNG) ('Oil and Gas Act') provides the principal statutory framework considered in this article. It establishes a regulatory sequence involving social mapping and landowner identification, development processes, and benefit negotiation. This sits within a broader constitutional framework: National Goal 2 requires equal opportunity for citizens to participate in and benefit from national development; National Goal 4 requires natural resources to be conserved and used for the collective benefit of present and future generations; ss 53--54 protect property and certain lands; and ss 59--60 establish principles of natural justice underlying PNG's administrative law.[1] The resulting framework is therefore not simply a licensing system. The Oil and Gas Act expressly links social mapping and landowner identification to the Development Forum and subsequent petroleum development, so that the interests of affected landowners are intended to be incorporated into the process itself rather than addressed only after a project is approved.[2]

The central difficulty lies in distinguishing formal legal protection from effective protection in practice**.** A framework may recognise landowners, establish representative institutions, require participation through a Development Forum, and provide for financial or other benefits, without ensuring that the persons entitled to those benefits are accurately identified, effectively represented, able to participate meaningfully, or ultimately able to access and control what they are owed. This distinction matters in PNG because customary landownership involves complex social and genealogical relationships, and petroleum projects may affect communities and landowning groups.

The history of the PNG Liquefied Natural Gas ('PNG LNG') project illustrates the problem. Colin Filer describes the project as having been affected by an enduring 'landowner problem' involving the

[1] *Constitution of the Independent State of Papua New Guinea* 1975 (PNG) ('PNG Constitution') National Goal 2, National Goal 4; ss 53--54, 59--60. See also ss 10--11 concerning the requirement that written laws be construed subject to the Constitution and the status of the Constitution and Organic Laws as supreme law.

[2] *Oil and Gas Act 1998* (PNG) ss 47--49. The primary judgment in *Bernard v Duban* expressly identifies ss 47, 48, and 49 as the relevant provisions governing social mapping, landowner identification, and the Development Forum process.

identification and distribution of benefits to customary landowners.[3] Sam Koim and Stephen Howes similarly document significant delays in paying PNG LNG landowner royalties, tracing the difficulty to social mapping and landowner identification studies ('SMLIS'), incorporated land groups, and the interaction between administrative and judicial processes.[4] This literature provides an important empirical starting point, but it does not by itself establish that the Oil and Gas Act is legally inadequate. A landowner problem may result from deficiencies in statutory design, administrative implementation, customary land disputes, contractual arrangements, institutional capacity, or some combination of these. The judicial record demonstrates why the question requires careful legal analysis rather than assumption. In *Yaferaka Incorporated Land Group v Namo'Aporo Landowners Association Incorporated*, the National Court considered proceedings concerning landowner identification, royalties and equity in the Kutubu PDL 2 context, including a claim that proper SMLIS had not been undertaken.[5] The proceeding was ultimately dismissed and the interim injunctions lifted, but it shows that identification and benefit-distribution disputes can become sufficiently serious to produce prolonged litigation.[6] In the P'nyang project, *Bernard v Duban* saw the National Court consider ss 47--49 of the Oil and Gas Act and continue an interim injunction restraining the Development Forum; questions concerning the adequacy of the SMLIS remained unresolved, treating that requirement as an important statutory precondition to further development.[7] That case matters not because it automatically establishes legislative failure, but because it allows the statutory landowner-identification framework to be tested against an actual dispute.

The Development Forum is central to this inquiry. It is the point at which the framework moves from identification and regulatory preparation toward negotiation and the distribution of benefits. In PNG LNG, the Umbrella Benefits Sharing Agreement ('UBSA') followed a consultation process culminating in a forum, the basis for licence-based benefits-sharing arrangements covering royalties, equity, development levies and development grants, among other matters.[8,9] That outcome demonstrates that the legal and contractual framework can produce substantial benefits-sharing arrangements. It does not by itself show that the framework protects landowners effectively — that depends on whether the persons entitled to participate were accurately identified, adequately represented, able to participate meaningfully, and ultimately able to access and control the benefits agreed.

Later projects make this question more significant. Papua LNG and P'nyang offer an opportunity to ask whether the experience of PNG LNG produced real change in landowner identification, representation and participation. The comparative research for this article identifies developments in the Papua LNG

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[3] Colin Filer, 'Methods in the Madness: The "Landowner Problem" in the PNG LNG Project' (Discussion Paper No 76, Development Policy Centre, Crawford School of Public Policy, Australian National University, 2019).

[4] Sam Koim and Stephen Howes, 'PNG LNG Landowner Royalties — Why So Long?' (Development Policy Centre, Crawford School of Public Policy, Australian National University, 16 December 2016).

[5] Yaferaka Incorporated Land Group and Aporo Iwa Gas Association Inc and Fugiki Landowners Association Inc and Foe PDL 2 Resources Owners Association v Namo'Aporo Landowners Association Incorporated and Ors (2020) N8303 (National Court of Justice, Anis J, 18 May 2020).

[6] Ibid. See also Karo Jesse, 'Landowners set to receive benefits' *The National* (online, 19 May 2020), reporting that the National Court dismissed the proceedings and lifted the interim injunctions

[7] Bernard v Duban (2016) N6299; [2016] PGNC 121 (National Court of Justice, Kandakasi J, 27 May 2016) [3], [37], [105] --[118].

[8] PNG LNG Umbrella Benefits Sharing Agreement (May 2009) Preamble, arts 1, 5--6. The agreement records that the process of consultation culminated in a forum and that the agreement provided the basis for subsequent licence-based benefits-sharing arrangements.

[9] Ibid arts 6, 6.6, 6.10--6.11. The agreement provides for, among other matters, royalty, equity, development levy, infrastructure-development funding and business-development funding.

process, including Landowner Beneficiary Identification ('LOBID') procedures and additional representative mechanisms. It does not, however, establish that these changes have already produced better long-term outcomes: the Papua LNG Development Forum remains an evolving process, and its ultimate implementation cannot yet be treated as evidence of successful reform. Later projects can therefore presently provide evidence of institutional evolution, but not yet of successful institutional learning — a distinction that is central to the article, since a reform may alter procedure without resolving the underlying problem. The comparative investigation indicates that the sequence of social mapping and landowner identification, beneficiary determination, Development Forum participation, benefits-sharing and trust administration remains significant across all three projects examined. The research therefore asks not merely whether the framework has changed, but whether those changes have improved the legal system's capacity to protect landowner interests.

1.1 Research Problem

The central research problem is the potential gap between the formal design of benefits-sharing law and its practical operation.

On one level, the legal framework contains multiple mechanisms capable of supporting landowner interests. The Oil and Gas Act establishes the statutory architecture; the Land Act 1996 (PNG) and Land Groups Incorporation Act 1974 (PNG) provide complementary mechanisms concerning customary land and representative structures; Development Forums create a process for participation and negotiation; and benefits-sharing arrangements can translate negotiated outcomes into financial, institutional and development benefits.[10] The research therefore identifies a substantial formal framework rather than an absence of legal protection.

On another level, the experience of petroleum development raises real questions about whether those mechanisms operate effectively. Problems associated with identification, representation, delayed distribution and disputes may arise at different points in the legal chain: an entitlement may exist without being immediately accessible; participation may occur without producing equal bargaining influence; and a representative body may exist without resolving competing claims as to who is entitled to speak for a customary landowning group. A weakness at an earlier stage can undermine the protections available at later ones. If beneficiaries are incorrectly identified, formal benefits may ultimately be directed toward persons who do not represent all affected customary interests; and if representative structures become legally ineffective or contested, the existence of a benefits-sharing arrangement will not necessarily protect landowner interests in practice.

1.2 Research Question

The principal research question is:

To what extent does Papua New Guinea's Oil and Gas Act benefits-sharing framework provide effective protection for landowner interests, particularly in relation to landowner identification, representation, Development Forum participation, benefit entitlement, access, control and remedies?

The question is deliberately framed as an assessment rather than an assumption of failure or success. The article examines whether the evidence supports a conclusion of:

1. substantial legal protection with implementation difficulties;
2. structural deficiencies within the legal framework;
3. institutional learning and improvement across petroleum projects;

[10] Land Act 1996 (PNG); Land Groups Incorporation Act 1974 (PNG); Oil and Gas Act 1998 (PNG).

4. continuing deficiencies despite procedural reform; or
5. a mixed or conditional form of protection in which effectiveness varies according to the stage of the benefits-sharing process.

1.3 Scope

The article focuses on the legal and institutional relationship between the Oil and Gas Act and landowner benefits-sharing in PNG's major petroleum projects, using PNG LNG, Papua LNG and P'nyang as its principal comparators. PNG LNG is the principal completed-project case, permitting examination of the framework's operation after production commenced. Papua LNG provides evidence of contemporary institutional development and the application of newer procedures to an ongoing process. P'nyang provides an important judicial and procedural comparator, since questions concerning social mapping and landowner identification arose before its Development Forum could proceed.[11]

This comparison does not treat the three projects as legally or factually identical — their different stages of development are themselves analytically significant — nor does it treat later projects as definitive evidence that earlier problems have been solved or repeated. Rather, it asks whether identifiable legal and institutional changes address the weaknesses revealed by earlier experience.

A further limitation concerns the availability of primary contractual materials. The full texts of certain Papua LNG and P'nyang project agreements were not publicly available to the research, so reported fiscal and benefit figures for those projects must be distinguished from terms directly verified in the underlying agreements. This is particularly relevant where the article discusses project-specific royalty, equity or levy arrangements.

1.4 Methodology

The article adopts a doctrinal and comparative legal research methodology, supported by project-specific factual and academic evidence. The doctrinal component examines the Constitution, the Oil and Gas Act, related land and land-group legislation, relevant regulations and administrative instruments, agreements, and judicial decisions, to establish the formal legal framework governing landowner recognition, participation, representation and benefits-sharing.

The comparative component then tests that framework against the experience of PNG LNG, Papua LNG and P'nyang, with particular attention to: landowner identification and social mapping; Landowner Beneficiary Identification; Ministerial Determinations; Development Forums; representative bodies; Benefit Sharing Agreements; royalty; equity; development levies; trust arrangements; and dispute-resolution mechanisms.

Throughout, the research distinguishes legal design from implementation. A documented landowner problem is not automatically treated as evidence that the Oil and Gas Act itself is defective; instead, the article asks whether the problem arose from statutory design, administrative implementation, contractual arrangements, customary landownership disputes, institutional capacity, or another identifiable cause. Secondary academic literature — particularly on the PNG LNG landowner problem and delays in royalty distribution — is used to provide historical, empirical and analytical context, but primary authorities remain controlling on the content of the law.[12]

1.5 Structure of the Article

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[11]Bernard v Duban (2016) N6299; [2016] PGNC 121. The National Court restrained the P'nyang Development Forum at the interlocutory stage in connection with the adequacy of the SMLIS.

[12] Filer (n 3); Koim and Howes (n 4).

The article begins by establishing the constitutional, statutory and institutional framework, before examining Development Forums, landowner identification and representation, and then analysing benefits-sharing, including royalties, equity, compensation and related agreements. It then assesses implementation through the PNG LNG experience and examines judicial oversight through *Yaferaka* and *Bernard v Duban*, before turning to Papua LNG and P'nyang as evidence of institutional learning. The analysis closes by synthesising the findings and identifying the statutory, institutional, customary and contractual factors affecting landowner interests.

The article therefore does not assume either legislative failure or the adequacy of formal protections. It asks whether the Oil and Gas Act's protections remain effective through landowner identification, representation, participation, benefit allocation, access, control and dispute resolution.

2. CONSTITUTIONAL, STATUTORY AND INSTITUTIONAL FRAMEWORK

Papua New Guinea's petroleum benefits-sharing regime operates within a legal framework in which the State's control over petroleum resources must coexist with constitutional protection of property, customary land interests, and principles of participation in national development. The framework is therefore broader than the statutory regulation of petroleum extraction: it also determines the institutional conditions under which customary landowners are recognised, incorporated into petroleum-development processes, and given access to the benefits of resource development.

The Constitution is the supreme law of PNG and supplies the normative context within which the Oil and Gas Act 1998 must operate. National Goal 2 expresses a commitment to equal opportunity for citizens to participate in and benefit from national development and to an equitable distribution of development benefits. National Goal 4 similarly directs that natural resources and the environment be conserved and used for the collective benefit of present and future generations.[13] The Constitution also protects property interests and establishes principles of natural justice relevant to the exercise of public power.[14]

These provisions do not, however, create a constitutional entitlement for every customary landowner to control petroleum development or to receive a predetermined share of petroleum revenues. Recognition of customary land interests, State control of petroleum resources, and entitlement to petroleum benefits are legally distinct questions. The Constitution establishes principles against which the statutory regime may be assessed; it does not itself prescribe the royalty, equity or other benefits that must be provided to landowners.

The Oil and Gas Act supplies that more specific statutory framework. Section 6 provides that petroleum and helium at or below the surface of land are the property of the State, separating ownership of the petroleum resource from ownership of, or customary interests in, the land from which it is extracted.[15] This is the basic legal relationship underlying the benefits-sharing problem examined throughout the article: the State controls the resource, while customary landowners may hold legally recognised interests in the land and communities affected by its development.

The Act does not, however, treat landowners merely as recipients of benefits after a project has been approved. Section 47 makes social mapping and landowner identification studies a statutory component

[13] Constitution of the Independent State of Papua New Guinea 1975 (PNG) ss 10--11, Preamble (National Goals and Directive Principles).
[14] Ibid ss 53--54, 59--60.
[15] Ibid s 47.

of the licensing and development process,[16] and the Act connects that identification with the Development Forum and subsequent arrangements concerning development and benefits. Their identification and participation therefore occur within the development process itself, so that the legal architecture attempts to connect recognition, participation and benefit entitlement rather than treating them as separate matters.

Two further statutes complete the layered framework. The Land Act 1996 provides procedures relating to the acquisition and administration of customary land and mechanisms for determining interests in land where the State requires land for public purposes — relevant because petroleum development may require the State to deal with underlying customary land interests even though petroleum itself is State property.[17] The Land Groups Incorporation Act 1974 establishes Incorporated Land Groups ('ILGs'), a legal structure through which customary landowning groups can organise their interests and interact with external institutions, and which therefore becomes central to the representation of landowners and the administration of project benefits.[18]

Taken together:

- **the Constitution** provides the overarching principles of property, participation, equity and administrative fairness;
- **the Oil and Gas Act** regulates petroleum development and establishes the statutory mechanisms for landowner identification, participation and benefits-sharing;[19]
- **the Land Act** addresses customary land interests and land acquisition; and
- **the Land Groups Incorporation Act** provides an institutional structure for customary landowner organisation and representation.

The significance of this layered structure is that landowner protection cannot be evaluated solely by reference to the benefits provisions of the Oil and Gas Act. A landowner's ability to obtain and exercise a benefit depends on whether the relevant customary group was correctly identified, whether it possesses an effective representative structure, whether its representatives have authority to negotiate, and whether the resulting benefits can ultimately be accessed and controlled. This is why the distinction between formal and effective protection is central to the article: the statutory regime contains mechanisms for identification, participation, representation and benefits-sharing, but their existence does not establish that they operate successfully in every case.

The PNG LNG experience illustrates the distinction concretely. The research literature identifies longstanding problems concerning landowner identification and the distribution of benefits, including delays in royalty payments and difficulties associated with social mapping, landowner identification studies and incorporated land groups.[20] Those problems are important evidence of the framework's operation in practice, but they do not by themselves establish that the statutory design is defective, since the difficulty may arise at several different points in the legal and institutional chain: a statutory entitlement may exist but remain inaccessible because beneficiaries have not been conclusively

[16] Ibid ss 48--50.
[17] Land Act 1996 (PNG), pt XX, especially ss 132--135.
[18] Land Groups Incorporation Act 1974 (PNG) ss 5, 8, 13.
[19] Oil and Gas Act 1998 (PNG) ss 47--50, 169--170.
[20] Colin Filer, Methods in the Madness: The 'Landowner Problem' in the PNG LNG Project (Discussion Paper No 76, Development Policy Centre, Crawford School of Public Policy, Australian National University, 2019); Sam Koim and Stephen Howes, 'PNG LNG Landowner Royalties — Why So Long?' (Development Policy Centre, Crawford School of Public Policy, Australian National University, 16 December 2016).

identified; a representative institution may exist but face internal disputes over authority; a Development Forum may provide an opportunity to participate without guaranteeing equal bargaining power; and a negotiated benefits arrangement may establish entitlements while subsequent administrative or judicial disputes delay their distribution. The legal framework is therefore best understood as a **chain of protection**, whose strength depends on every link, not merely the existence of the chain itself. The following chapters examine whether each link operates sufficiently to translate formal legal protection into practical protection.

There is also an important institutional dimension. Petroleum regulation in PNG has undergone recent structural change, including the establishment of the National Petroleum Authority under the National Petroleum Authority Act 2025 and the Oil and Gas (Amendment) Act 2025.[21] These reforms matter because the effectiveness of landowner protection depends not only on statutory rules but also on the institutions responsible for administering them. At the same time, institutional reform should not automatically be treated as evidence of improved landowner protection: a change in the machinery of regulation is not, without evidence of implementation, a better outcome for customary landowners. This distinction becomes particularly relevant when the article later considers whether Papua LNG's institutional developments represent genuine learning from earlier petroleum projects.

The constitutional and statutory framework therefore presents a mixed starting point for the research question. PNG law does not leave customary landowners without legal recognition or institutional mechanisms — the Constitution supplies a normative framework of participation, equitable development, property protection and administrative fairness, while the Oil and Gas Act, Land Act and Land Groups Incorporation Act establish more specific mechanisms bringing petroleum development and customary land interests together. But the existence of these mechanisms does not itself answer whether landowners are effectively protected. The central issue is what happens when the legal framework moves from statutory design to identification, representation, participation, benefit allocation and access — a question examined next through the Development Forum, landowner identification and representation as the mechanisms through which customary landowners are incorporated into petroleum-development decision-making.

3. DEVELOPMENT FORUM, LANDOWNER IDENTIFICATION AND REPRESENTATION

The constitutional, statutory and institutional framework already outlined established the formal legal foundation for recognising and incorporating customary landowners into petroleum development. The significance of that framework, however, depends upon the mechanisms through which particular landowners are identified, represented and brought into the development process. The Development Forum occupies an important position here: it is the point at which the statutory regime moves beyond the general regulation of petroleum development and engages directly with the interests of affected landowners.

The Oil and Gas Act 1998 establishes a sequence in which social mapping and landowner identification precede the Development Forum. Sections 47--49 are significant not simply because they impose procedural requirements, but because they establish a legal relationship between identifying affected customary landowners and enabling their participation in development — a relationship examined in detail below through *Bernard v Duban*, where the National Court considered the adequacy of the social

[21] National Petroleum Authority Act 2025 (PNG); Oil and Gas (Amendment) Act 2025 (PNG).

mapping and landowner identification process undertaken for the proposed P'nyang Development Forum.[22]

This sequence matters to the article's central question because participation cannot be meaningfully assessed without first considering who is entitled to participate. If the persons or groups affected by a project are incorrectly identified, omitted or inadequately represented, the subsequent opportunity to participate may provide only formal rather than effective protection. A dispute over identification does not, however, necessarily establish that the statutory framework is defective: it may instead reflect the complexity of customary landownership, competing claims between groups, or administrative shortcomings.

3.1 The Development Forum

The Development Forum can be understood as the central institutional mechanism through which the petroleum-development regime attempts to reconcile State and developer interests with those of customary landowners. The statutory framework places the Forum after the relevant identification process and before the conclusion of the Development Agreement, with ss 48--50 establishing that relationship.[23] Its significance is consequently greater than that of a conventional administrative consultation: it provides a structured setting in which Government, developer and affected landowner interests can negotiate the arrangements associated with a petroleum project, forming an institutional bridge between the State's legal control of resources and the interests of the customary communities affected by its development.

This does not mean that participation in a Development Forum is equivalent to equal bargaining power. A statutory opportunity to participate may satisfy a formal requirement while leaving unresolved significant differences in information, technical expertise, financial resources and negotiating capacity between the State, multinational project proponents and customary landowners. The legal question is therefore not merely whether landowners are present at the Forum, but whether the institutional design gives their participation sufficient legal significance to influence the outcomes negotiated.

The PNG LNG experience illustrates why this distinction matters. The 2009 Umbrella Benefits Sharing Agreement ('UBSA') created a two-phase benefits-sharing structure involving the Kokopo UBSA Forum and subsequent licence-based forums, providing for substantial financial and development benefits alongside procedures for delegate selection and participation.[24] At the same time, delegate selection was based in part on venue quotas rather than on the completion of social mapping and incorporated land group processes — demonstrating that a formal participatory structure may operate even while questions concerning the underlying identification and representation of beneficiaries remain unresolved.[25] The Development Forum should therefore not be assessed in isolation from the identification process that precedes it, since the quality of participation depends partly on the quality of the information and institutional decisions on which it is based.

3.2 Landowner Identification

Landowner identification is a foundational component of the benefits-sharing framework. Section 47 of the Oil and Gas Act requires social mapping and landowner identification studies at the relevant stages

[22] Bernard v Duban (2016) N6299; [2016] PGNC 121 (National Court of Justice, Kandakasi J, 27 May 2016) [3], [37], [105]--[118].
[23] Oil and Gas Act 1998 (PNG) ss 48--50.
[24] Ibid cl 5.2.
[25] Oil and Gas Act 1998 (PNG) s 47.

of development, reflecting a recognition that customary ownership cannot simply be assumed from geographic proximity to a project — a process is needed to establish which communities, clans or groups hold the customary interests connected to the relevant development area. This is particularly significant in PNG because customary ownership is embedded in social and genealogical relationships that may not correspond neatly with administrative boundaries or project-defined areas. In the PNG LNG project, the original social mapping and landowner identification processes did not necessarily correspond with the Government's later benefit-sharing segments; Colin Filer identifies this mismatch as an important component of the broader 'landowner problem' associated with the project.[26]

The more difficult question, then, is not whether land exists within a project area, but which customary groups possess the relevant interests and should consequently participate in and receive benefits from it. This distinction becomes especially important where several groups assert competing claims: if the identification process recognises one group while excluding another, the recognised group may obtain representation, negotiate benefits and receive project payments, while the excluded group must pursue administrative or judicial remedies after the development process has already advanced. The statutory identification requirement can therefore be understood as a protective mechanism that seeks to prevent the benefits-sharing process from proceeding without first establishing the relevant beneficiary population — though its existence does not guarantee that the resulting identification will be accurate.

The development of Landowner Beneficiary Identification ('LOBID') procedures is particularly relevant here. LOBID was introduced in the PNG LNG context after concerns arose about the relationship between earlier social mapping and the Government-defined benefit-sharing segments,[27] and the later Papua LNG process also incorporated LOBID procedures, including village-based verification and Clan Consent Forms in the relevant areas.[28] This can be viewed as an institutional response to the practical difficulties associated with earlier identification processes, but the existence of a later verification mechanism does not itself establish that the underlying problem has been solved: verification may resolve some competing claims and provide a stronger evidentiary basis for benefit allocation, but it may also generate new disputes where previously recognised groups are challenged or different geographic scopes produce different beneficiary lists.

The Papua LNG evidence illustrates this caution. Different landowner figures are associated with different stages and geographic scopes of the project: a wider Ministerial Determination subsequently identified hundreds of clans across the broader project footprint, while earlier material concerning the PRL15 core area referred to a much smaller number of principal landowners.[29] These figures are not necessarily contradictory, since the relevant geographic scopes differ, but they demonstrate why precise identification of the project area and beneficiary category is essential before conclusions can be drawn about who is protected by the benefits-sharing framework. LOBID is therefore best understood as part of an evolving identification process rather than as conclusive evidence of effective landowner protection.

[26] Colin Filer, Methods in the Madness: The 'Landowner Problem' in the PNG LNG Project (Discussion Paper No 76, Development Policy Centre, Crawford School of Public Policy, Australian National University, 2019).

[27] The comparative research records the introduction of LOBID in 2017 in the PNG LNG context as a response to concerns concerning SMLI and benefit-sharing segment alignment.

[28] The Papua LNG LOBID process is recorded as village-based and involving Clan Consent Forms in the relevant Gulf Province areas.

[29] The research record distinguishes between the smaller number of principal landowners identified for the PRL15 core area and the later, wider Ministerial Determination covering the broader project footprint.

3.3 Representation

Identification alone does not resolve the participation problem. Once landowners have been identified, a further question arises: who has authority to speak and negotiate on their behalf? The Land Groups Incorporation Act 1974 provides an important mechanism here through Incorporated Land Groups ('ILGs'), allowing customary groups to obtain legal recognition and organise their interests through an incorporated structure.[30] ILGs have consequently become significant in the administration of customary land interests and in the petroleum benefits-sharing context — but the existence of an ILG should not be treated as synonymous with effective representation, since questions may remain concerning its membership, internal authority, leadership and relationship with the customary groups it purports to represent.

This distinction matters because representation has consequences beyond consultation: representatives may participate in Development Forums, negotiate benefits, enter agreements and become involved in the administration or receipt of benefits, so a dispute over representative authority can affect the entire benefits-sharing chain. Later judicial authority concerning the operation and continuing validity of incorporated land groups, including disputes associated with statutory changes affecting ILGs, confirms that representation is not merely an administrative detail — it can determine whether a group has legal standing and whether the institution through which it claims to represent landowners continues to possess legal existence or authority.[31]

The legal framework therefore contains two distinct questions — *who is the customary landowner*, and *who has authority to represent that landowner* — which may overlap but are not identical. If landowners are correctly identified but their representatives lack legitimate authority, participation may still fail to represent the interests of all beneficiaries; conversely, a formally valid representative body may participate in negotiations without ensuring that every customary owner understands or supports the resulting decisions. Representation in a customary land context has both a formal legal dimension, through incorporation or recognised institutional structures, and a customary dimension, through clan leadership, genealogical relationships and community acceptance — and the two forms of authority do not always coincide. The legal system therefore faces a difficult institutional task: it must provide a structure sufficiently formal to enable negotiations with the State and project proponents, while remaining responsive to the customary relationships through which land rights and community authority are organised. This cannot simply be solved by creating another statutory body, since a representative institution provides legal capacity without necessarily eliminating competing customary claims or internal disputes; its effectiveness must ultimately be assessed by whether the recognised representatives actually enable the intended beneficiaries to participate in and benefit from petroleum development.

3.4 Identification, Representation and Benefits

The connection between identification and representation becomes most significant when the benefits-sharing system is considered, because a benefits entitlement is meaningful only if there is a reliable mechanism for determining who is entitled to receive it and who may lawfully act on their behalf. The PNG LNG experience provides an important illustration: the research record identifies discrepancies between earlier social mapping and later benefit-sharing arrangements, difficulties involving ILGs, and

[30] Land Groups Incorporation Act 1974 (PNG) ss 5, 8, 13.
[31] See Land Groups Incorporation Act 1974 (PNG) s 36 (as amended in 2018); Case Tumu (2025), concerning the continuing legal existence of ILGs.

delays in the distribution of landowner royalties.[32] These problems should not be attributed automatically to the Oil and Gas Act; rather, they show how difficulties in identification and representation become connected to later questions of benefit distribution. The existence of a formal benefits arrangement therefore cannot by itself establish effective landowner protection — if beneficiaries cannot be conclusively identified, if their representative institutions are disputed, or if the institutions responsible for administering benefits cannot determine who is entitled to receive them, the practical value of the underlying entitlement may be substantially reduced.

3.5 The Judicial Record

The importance of these mechanisms is reinforced by the judicial record. In *Bernard v Duban*, the National Court considered whether the social mapping and landowner identification process undertaken for P'nyang satisfied the statutory requirements preceding the Development Forum — a dispute of particular significance because it arose before the Development Forum could proceed, rather than after benefits had already been distributed.[33] The Court's consideration of ss 47--49 demonstrates that landowner identification is not merely an administrative preliminary that can be disregarded once a project has advanced; it forms part of the statutory sequence governing petroleum development.

The PNG LNG experience also generated litigation concerning landowner identification, royalties and equity. In *Yaferaka Incorporated Land Group v Namo'Aporo Landowners Association Inc*, the National Court considered proceedings involving competing landowner interests in the Kutubu PDL 2 context, including a claim that proper social mapping had not been undertaken and seeking orders concerning the identification of rightful beneficiaries.[34] Although the proceeding was ultimately dismissed and the interim injunctions lifted, the case demonstrates that identification disputes can become sufficiently consequential to produce judicial proceedings affecting the administration of petroleum benefits.

These cases do not automatically prove legislative failure — the opposite interpretation is equally possible: the availability of judicial scrutiny may itself demonstrate that the legal system provides a mechanism through which landowners can challenge alleged defects in identification or representation.

3.6 Papua LNG: A Contemporary Example

The Papua LNG process provides an important contemporary illustration of how the identification and representation framework has developed. Papua LNG has employed social mapping and landowner identification processes and subsequently incorporated LOBID procedures intended to verify beneficiary groups; in the Gulf Province component of the project, the LOBID process reportedly involved village-level verification and Clan Consent Forms. Previously identified downstream or offshore groups were carried over from earlier PNG LNG-related determinations rather than subjected to an entirely new identification exercise. These developments suggest that the contemporary framework has become more institutionally elaborate — identification is no longer a single exercise undertaken at the beginning of the project, but can involve subsequent verification, beneficiary identification and Ministerial Determinations. Greater procedural complexity should not, however, automatically be equated with

[32] Colin Filer, Methods in the Madness: The 'Landowner Problem' in the PNG LNG Project (Discussion Paper No 76, Development Policy Centre, Crawford School of Public Policy, Australian National University, 2019); Sam Koim and Stephen Howes, 'PNG LNG Landowner Royalties — Why So Long?' (Development Policy Centre, Crawford School of Public Policy, Australian National University, 16 December 2016).

[33] Bernard v Duban (2016) N6299; [2016] PGNC 121 (National Court of Justice, Kandakasi J, 27 May 2016).

[34] Yaferaka Incorporated Land Group and Aporo Iwa Gas Association Inc and Fugiki Landowners Association Inc and Foe PDL 2 Resources Owners Association v Namo'Aporo Landowners Association Incorporated and Ors (2020) N8303 (National Court of Justice, Anis J, 18 May 2020).

greater protection: each additional stage may provide an opportunity to correct errors, but it may also introduce further administrative decisions that can themselves become contested.

Papua LNG therefore provides evidence of institutional evolution, but not yet conclusive evidence of institutional success. The research record expressly cautions that the Papua LNG Development Forum remains an evolving process and that its eventual Benefit Sharing Agreement and implementation outcomes cannot yet be treated as established evidence of improved landowner protection. Papua LNG should not be judged simply by whether its procedures appear more sophisticated than those used for PNG LNG; the relevant question is whether those procedures ultimately improve the capacity of customary landowners to be accurately identified, genuinely represented and effectively included in petroleum-development decision-making.

The Development Forum, landowner identification and representation mechanisms occupy an intermediate position within the legal protection framework. At the formal level, PNG law provides a recognizable sequence — social mapping and identification, Development Forum, development arrangements, benefits — together with institutional mechanisms through which customary groups can organise and participate. At the practical level, however, the evidence reveals a more complicated picture: identification may be contested, representative structures may become disputed, benefit-sharing segments may not correspond neatly with earlier identification exercises, and disputes may require judicial or administrative intervention.

The resulting issue is not whether PNG law has any mechanism for protecting landowners — the evidence demonstrates that it does. The more difficult question is whether those mechanisms operate sufficiently effectively to ensure that the people intended to benefit from petroleum development are the people who are identified, represented and ultimately able to participate in decisions concerning those benefits. The analysis now turns from the process of participation to the substance of the benefits the petroleum framework makes available, examining royalty, equity, development levies, compensation and negotiated arrangements, and asking whether the legal and contractual entitlement created through those mechanisms is capable of becoming meaningful access for customary landowners.

4. PETROLEUM BENEFITS AND LANDOWNER ENTITLEMENTS

The significance of landowner participation ultimately depends on what it produces. A Development Forum may provide an opportunity for customary landowners to engage with the State and developers, but participation has limited practical value if it does not translate into identifiable and enforceable benefits. The benefits-sharing framework must therefore be examined not merely by asking whether benefits exist, but by considering their legal source, their intended beneficiaries, and the mechanisms through which they can be accessed.

This distinction is particularly important in Papua New Guinea because petroleum itself is State property. Section 6 of the Oil and Gas Act 1998 provides that petroleum and helium at or below the surface of land are the property of the State.[35] Customary landowners therefore do not obtain a petroleum entitlement simply because development occurs beneath or around their land; their interests arise instead through the statutory and negotiated mechanisms established by the petroleum regime. That regime performs an important distributive function, creating a means through which affected communities can receive a share of the economic and developmental value petroleum generates. Yet the existence of a

[35] Oil and Gas Act 1998 (PNG) s 6.

benefits package does not itself establish effective protection — the central issue remains whether the entitlement created by law or agreement can be translated into meaningful access for the intended beneficiaries.

4.1 Royalty

Royalty is one of the most direct financial benefits associated with petroleum production. The statutory framework provides for a royalty calculated by reference to the value of petroleum produced, with s 159 establishing the 2 per cent royalty mechanism.[36] Its importance lies partly in its character as a production-linked benefit: unlike a one-off compensation payment, royalty is connected to petroleum production and therefore potentially provides a continuing economic return throughout the productive life of the project, distinguishing it from compensation, which addresses particular impacts arising from petroleum activities.

PNG LNG illustrates how the statutory mechanism was translated into a project-specific arrangement. Project materials describe a 2 per cent royalty [37]calculated on the wellhead value of petroleum produced from the relevant licence area, distributed among landowners, provincial governments and local-level governments. This is a significant strength of the framework, providing a legally structured economic connection between petroleum production and affected communities — but the existence of the entitlement does not by itself establish effective protection. Research into the project identified substantial delays in the distribution of landowner royalties, with problems associated with social mapping, landowner identification and incorporated land groups contributing to the delay.[38] This does not mean the statutory royalty mechanism failed; rather, it shows that the effectiveness of a royalty entitlement depends on the earlier stages of the protection chain. A royalty system therefore requires more than a percentage in legislation — it requires accurate identification of beneficiaries, functioning representative structures, and an administrative mechanism capable of distributing the money to those entitled to it.

4.2 Equity

Equity provides a different form of participation. Rather than a payment calculated directly from production, it creates an interest connected to the ownership or participation structure of the project. The Oil and Gas Act provides a statutory equity benefit, including a 2 per cent equity benefit under the statutory framework,[39] and the PNG LNG arrangements went beyond that baseline: project benefits materials record 2.78 per cent free equity for project-area landowners and local-level governments, together with an opportunity for project-area landowners and provincial governments to acquire additional indirect equity up to a collective maximum of 4.22 per cent.[40]

Equity's significance is that it potentially gives landowners a continuing economic interest in the project rather than merely a periodic payment, so that dividends from a successful project may provide long-term, intergenerational value. At the same time, equity exposes an important distinction between a

[36] Oil and Gas Act 1998 (PNG) s 159.
[37] PNG LNG Project, Benefits Sharing – PNG LNG Project, Appendix VIII; PNG LNG Project, Umbrella Benefits Sharing Agreement (2009).
[38] Colin Filer, Methods in the Madness: The 'Landowner Problem' in the PNG LNG Project, Discussion Paper No 76 (Development Policy Centre, Crawford School of Public Policy, Australian National University, 2019); Sam Koim and Stephen Howes, 'PNG LNG Landowner Royalties — Why So Long?' (Development Policy Centre, Crawford School of Public Policy, Australian National University, 16 December 2016).
[39] Oil and Gas Act 1998 (PNG) s 167.
[40] PNG LNG Project, Benefits Sharing – PNG LNG Project, Appendix VIII.

nominal entitlement and a financially meaningful interest. The PNG LNG arrangements concerning additional equity required substantial capital to exercise the relevant purchase option.[41] An option to acquire equity may therefore appear generous in strictly legal terms, while its practical value depends on whether the intended beneficiaries possess the financial capacity to exercise it — not because an equity option is inherently inadequate, but because its effectiveness must be assessed by economic accessibility, not merely its nominal percentage.

4.3 Development Levies

Development levies perform a different function again, directed toward development expenditure rather than a production-linked financial return. The PNG LNG project materials identify a 2 per cent development levy calculated by reference to wellhead value, operating through provincial and local-level government mechanisms rather than as a direct cash payment to individual landowners.[42] This distinction between individual economic entitlement and community or public development benefit matters: an infrastructure project may improve the welfare of an affected community without giving individual landowners control over the value generated, while direct financial benefits may provide greater individual control without the same collective infrastructure outcomes. The PNG LNG framework included substantial infrastructure commitments alongside royalty and equity, including an Infrastructure Development Grant of K1.2 billion allocated over two five-year periods for infrastructure development and maintenance in affected project areas and provinces.[43] The existence of that expenditure cannot, however, by itself establish that individual landowners received the benefits to which they were entitled.

4.4 Compensation

Compensation occupies a different legal and conceptual category from royalty, equity and development benefits: its purpose is to address loss, damage, deprivation or displacement associated with petroleum development, rather than to distribute a share of petroleum wealth. The PNG LNG project reported that customary landowner clans received compensation for damage and deprivation caused by the project in accordance with the Oil and Gas Act, alongside procedures for physical and economic displacement including compensation, relocation assistance and livelihood-restoration measures; by June 2013, approximately 700 households had reportedly been physically or economically displaced, or both, by construction activities along the project's onshore pipeline and associated facilities.[44] This demonstrates that compensation may involve substantially more than a monetary payment: where petroleum development causes displacement, a meaningful compensation framework may require relocation assistance and measures directed toward maintaining or improving living standards. Treating royalty and compensation as interchangeable would therefore risk understating the protection required when petroleum development causes physical or economic displacement.

4.5 Negotiated Benefits and Project-Specific Arrangements

The statutory framework does not operate as a closed list of every benefit that may arise from petroleum development. The Development Forum creates a mechanism through which Government, developers and landowner interests can negotiate project-specific arrangements, and PNG LNG provides the clearest example: the 2009 Umbrella Benefits Sharing Agreement translated the Development Forum process

[41] Ibid.
[42] Oil and Gas Act 1998 (PNG) s 160; PNG LNG Project, Benefits Sharing – PNG LNG Project, Appendix VIII.
[43] Ibid.
[44] PNG LNG Project, PNG LNG Quarterly Environmental and Social Report 2013 Third Quarter, 'Providing transparent resettlement, compensation and livelihood restoration options'.

into a substantial package comprising royalty, equity, development levies, infrastructure grants and business-development support, making the UBSA an important primary authority because it translates the statutory framework into concrete benefits.[45] This negotiated dimension is a strength of the system, since a statutory framework cannot anticipate the circumstances of every project, and negotiation allows the parties to address project-specific impacts, geographical circumstances and development priorities. Yet negotiation also creates a vulnerability that a fixed statutory entitlement does not: negotiated benefits may depend on the relative capacity of participants to understand, negotiate and enforce the resulting arrangements. The question is therefore not whether negotiated benefits are desirable — they may be essential — but whether negotiation operates on top of a sufficiently secure statutory floor.

4.6 Access, Administration and Control

The final issue is not the existence of benefits but their accessibility and control. Sections 175--176 of the Oil and Gas Act provide for project-benefit trusts and corporate trustee arrangements through which certain landowner benefits are administered,[46] an important protective function given that large resource revenues may require professional administration and long-term investment rather than immediate distribution. But the effectiveness of a trust structure depends on governance, transparency, identification and dispute resolution — elaborate institutional arrangements intended to protect beneficiaries still depend on the institutions administering them. The PNG LNG evidence demonstrates the consequences of disputes at this stage: court injunctions obtained by smaller factions have affected distribution across wider licence areas, potentially delaying benefits to beneficiaries who were not themselves parties to the underlying dispute. This raises an important question of proportionality — a mechanism designed to protect disputed beneficiaries may simultaneously prevent undisputed beneficiaries from accessing what they are owed. Effective protection therefore requires not merely a trust or distribution mechanism, but procedures capable of distinguishing legitimate disputes from claims that unnecessarily immobilise benefits owed to other beneficiaries.

4.7 The Benefits Architecture

The benefits-sharing framework is best understood as a layered system rather than a single entitlement: royalty provides a continuing production-linked return; equity a potential continuing economic interest; development levies and infrastructure benefits contribute to collective development; compensation addresses particular damage, deprivation and displacement; negotiated agreements allow project-specific benefits to be added to the statutory floor; and trust and administrative arrangements determine how benefits are held, distributed and preserved. This architecture demonstrates that PNG law provides substantial formal mechanisms through which petroleum development can generate benefits for affected communities — but formal breadth should not be confused with practical effectiveness. The same evidentiary record that documents this architecture also identifies delayed royalty payments, problems with social mapping and landowner identification, difficulties involving ILGs, and disputes that have affected access to benefits. These problems do not establish that every element of the statutory framework is defective; they show instead that the protection offered by the benefits architecture depends on the effectiveness of the institutional mechanisms through which benefits are identified, administered and distributed.

[45] PNG LNG Project, Umbrella Benefits Sharing Agreement (2009).
[46] Oil and Gas Act 1998 (PNG) ss 175--176.

The strength of a benefits-sharing framework, in other words, cannot be measured solely by the size or number of benefits created by law or agreement — it must also be measured by whether the intended landowners can actually obtain, control and use those benefits. PNG LNG provides the necessary test of this proposition. The analysis therefore turns from the design of benefits to their operation in practice, examining whether the benefits established through the PNG LNG framework were successfully delivered to the landowners for whom they were intended.

5. THE COMPLETED IMPLEMENTATION EXPERIENCE

The PNG LNG Project provides the most significant opportunity to test whether PNG's petroleum benefits-sharing framework protects customary landowners in practice. Unlike the statutory provisions examined in the preceding chapters, PNG LNG has operated as an actual large-scale petroleum project, allowing the relationship between legal entitlement, institutional process and practical access to benefits to be examined over time.

The project was established through agreements between the State, the project companies, provincial and local-level governments, and project-area landowners. Central to that framework was the 2009 Umbrella Benefits Sharing Agreement ('UBSA'), which established the overarching basis for sharing project benefits and provided for subsequent licence-based agreements. The UBSA records that it followed consultation culminating in the Kokopo Umbrella Benefit Sharing Agreement Forum and was intended to provide the basis for the Licence-Based Development Forums required under the Oil and Gas Act 1998.[47]

This makes PNG LNG important; it allows the article to move from the question of what the law provides to the more difficult question of whether those legal and negotiated arrangements produced effective protection for landowners. The evidence should not be treated as establishing a simple success or failure. The project produced a substantial benefits package — royalty, equity, development levies, infrastructure funding and business-development support — while serious difficulties emerged concerning landowner identification, social mapping, incorporated land groups, distribution and access to benefits. The existence of these difficulties does not automatically establish that the Oil and Gas Act is defective; some problems may instead reflect the complexity of customary landownership, administrative capacity, institutional arrangements or project-specific implementation. PNG LNG is therefore best understood as an implementation test, revealing both the strengths of the statutory and negotiated framework and the points at which formal protection can become weaker in practice.

5.1 From the Development Forum to the Benefits-Sharing Agreements

The PNG LNG benefits-sharing structure demonstrates the Development Forum's importance as the institutional bridge between statutory entitlement and negotiated project benefits. The 2009 UBSA, negotiated between the State, affected Provincial Governments, local-level governments and project-area landowners, established general principles for sharing benefits and expressly contemplated subsequent licence-based agreements.[48] The Licence-Based Benefits Sharing Agreements were completed in December 2009 and addressed the distribution of benefits among landowners, local-level governments, provincial governments and the State.[49]

[47] PNG LNG Umbrella Benefits Sharing Agreement (2009) preamble and provisions concerning the Kokopo Umbrella Benefit Sharing Agreement Forum and subsequent Licence-Based Development Forums.
[48] Ibid.
[49] PNG LNG Project, 'Benefits Sharing', PNG LNG Project.

The significance of this structure is that the statutory framework did not itself determine every detail of the final distribution of project benefits; the legislation instead established the legal architecture within which project-specific negotiation occurred. This can be viewed as a strength. Petroleum projects differ considerably in their geographical footprint, affected populations and infrastructure requirements, and a rigid statutory formula may not adequately address those differences, whereas the Development Forum and subsequent agreements provide flexibility to accommodate them. But flexibility also raises an important question of bargaining power. Where substantial benefits are determined through negotiation, the quality of protection may depend on the capacity of landowner representatives to understand the arrangements, participate effectively, and ensure that negotiated commitments are subsequently implemented — an early indication that formal participation and effective participation are not necessarily identical.

5.2 The Landowner Identification Problem

The most persistent difficulty associated with PNG LNG concerns the identification of the persons and groups entitled to receive benefits. This is significant because identification operates at the beginning of the benefits chain: if the persons entitled to benefits are not correctly identified, subsequent arrangements concerning royalty, equity or other benefits become difficult to implement. Colin Filer describes the PNG LNG experience as a particularly large and complex manifestation of the 'landowner problem', attributing its scale partly to the enormous number of landowners involved and the substantial economic value at stake.[50] These cautions against attributing every landowner dispute directly to legislative failure, since customary ownership in PNG is inherently complex and competing claims may exist independently of petroleum legislation.

Nevertheless, the statutory requirement for social mapping and landowner identification means that the State and project institutions cannot simply treat that complexity as external to the legal framework — the identification process is itself a component of petroleum governance. The later judicial experience reinforces this point: in *Bernard v Duban*, the National Court considered the adequacy of the social mapping and landowner identification process for the proposed P'nyang Development Forum.[51] The significance of that case to PNG LNG is not that it retrospectively invalidates the entire PNG LNG benefits framework, but that it demonstrates the legal consequences that can arise when identification becomes contested. The PNG LNG experience therefore reveals a fundamental weakness in the protection chain: a statutory entitlement cannot operate effectively where the beneficiary of that entitlement cannot be reliably identified. That does not necessarily mean the Oil and Gas Act failed — it means the Act's effectiveness depended heavily on the quality of the institutional processes through which its beneficiary categories were constructed.

5.3 The Benefits Package

The PNG LNG project produced a substantial benefits-sharing package. The UBSA provided for a 2 per cent royalty benefit based on wellhead value,[52] together with 2.78 per cent free equity for project-area landowners and local-level governments in greenfield areas and an opportunity for project-area landowners and provincial governments to acquire additional indirect equity up to a collective maximum

[50] Colin Filer, Methods in the Madness: The 'Landowner Problem' in the PNG LNG Project, Discussion Paper No 76 (Development Policy Centre, Crawford School of Public Policy, Australian National University, 2019).
[51] Bernard v Duban (2016) N6299; [2016] PGNC 121.
[52] PNG LNG Umbrella Benefits Sharing Agreement (2009) relevant royalty provisions.

of 4.22 per cent.[53] The agreement also provided for a 2 per cent development levy payable to affected provincial and local-level governments,[54] and the State committed K1.2 billion in Infrastructure Development Grants and K120 million in Business Development Grants.[55]

These arrangements show that the PNG LNG benefits framework was not limited to direct cash payments to individual landowners: it combined royalty, equity participation, government development revenues, infrastructure investment and business-development support, and was designed to address both individual economic participation and wider community development. It would therefore be misleading to evaluate the project solely by whether individual landowners received cash payments. At the same time, the existence of a substantial package cannot itself establish effective protection — the central question remains whether the benefits were capable of reaching the persons for whom they were intended, and whether those beneficiaries could exercise meaningful control over them.

5.4 Distribution and Access to Benefits

The distinction between entitlement and access becomes particularly important in the PNG LNG experience. The project's benefits-sharing framework created legal and contractual entitlements, but the distribution of some landowner benefits was delayed by unresolved identification issues. In 2016, the Development Policy Centre reported that landowners had yet to be fully identified in some areas and consequently had not begun receiving benefits including royalties.[56] This is one of the most important findings for the present research: the problem was not the absence of a royalty entitlement — the entitlement existed — but the difficulty of moving from that entitlement to the identification of the individuals and groups who could lawfully receive it. The distinction can be expressed as a sequence, from legal entitlement → identification → representation → administration → payment, in which a failure at any stage can prevent the beneficiary from enjoying the entitlement. This is also why benefit-sharing should not be evaluated exclusively through the language of agreements. A legally sophisticated agreement may establish substantial benefits while leaving unresolved the institutional question of how those benefits will be distributed among competing customary claims.

The picture is not, however, one of complete non-payment. The PNG LNG project's 2017 Environmental and Social Report recorded first royalty payments exceeding K15 million to 90 landowner clan accounts in the LNG plant-site area in September 2017.[57] The evidence therefore establishes that benefits were eventually paid, but that distribution was delayed and affected by identification and institutional problems. The UBSA also records a dispute concerning distribution of the development levy between Southern Highlands and other affected provinces; pending judicial resolution, the relevant levy was to remain in an escrow account controlled by the State.[58] This demonstrates that even after negotiation, uncertainty concerning the distribution of benefits could remain — illustrating the broader distinction between formal entitlement and practical access.

5.5 Institutional Responsibility and Administration

[53] PNG LNG Project, 'Benefits Sharing', PNG LNG Project.
[54] PNG LNG Umbrella Benefits Sharing Agreement (2009) relevant development levy provisions.
[55] PNG LNG Project, 'Benefits Sharing', PNG LNG Project.
[56] Sam Koim and Stephen Howes, 'PNG LNG Landowner Royalties — Why So Long?' (Development Policy Centre, Crawford School of Public Policy, Australian National University, 16 December 2016).
[57] PNG LNG Project, Environmental and Social Report — Annual 2017.
[58] PNG LNG Umbrella Benefits Sharing Agreement (2009) provisions concerning the development levy and escrow arrangements.

A further important question is institutional responsibility. The PNG LNG project's Independent Environmental and Social Compliance review states that the PNG Government was responsible and accountable for determining and paying landowner beneficiary royalty and equity dividends.[59]This matters because implementation problems should not automatically be attributed to the private developer: the benefits-sharing system involved several institutional actors — the State, petroleum authorities, landowner representative structures, trustees and project companies — whose responsibilities were not identical. A delay in payment or dispute over beneficiary identification may therefore reflect a problem in governmental administration, landowner representation, customary ownership verification or institutional coordination, rather than a direct failure by the developer. This institutional fragmentation creates an analytical problem of its own: the more actors involved in the benefits chain, the greater the possibility that responsibility becomes dispersed, so that a landowner may know a benefit exists without knowing which institution is responsible for releasing it, resolving a dispute, or authorising payment. Practical effectiveness therefore depends not only on the existence of legal rights but also on clear institutional responsibility and accountability.

Taken together, PNG LNG demonstrates that Papua New Guinea's petroleum benefits-sharing framework is capable of producing a substantial and legally recognisable package of benefits, but that its effectiveness depended on identification, representation and administrative mechanisms that proved difficult to implement in practice. The experience shifts the analysis from how much the law provides toward the more demanding question of whether the landowner can actually obtain and control what the law or agreement says they are entitled to receive. PNG LNG alone cannot establish whether the underlying problems lie primarily in statutory design, customary landownership complexity, institutional capacity or implementation. The analysis therefore turns to P'nyang, where these issues were brought directly before the courts, providing a more precise test of the legal safeguards surrounding landowner identification.

6. LANDOWNER IDENTIFICATION AND JUDICIAL CONTROL IN P'NYANG

The P'nyang litigation provides a different test of PNG's petroleum benefits-sharing framework from the completed PNG LNG experience. Whereas PNG LNG shows how benefits-sharing arrangements operated after a major petroleum project had progressed, P'nyang placed the statutory requirements governing landowner identification and the Development Forum directly before the courts.

The dispute arose in connection with the proposed P'nyang LNG Project in Western Province. Alex Bernard, claiming to be a customary landowner and representative of the Wokflyak Clan of Kayangabip Village, challenged the adequacy of the social mapping and landowner identification studies undertaken for the project. The National Court initially continued an interim injunction restraining the Development Forum. On appeal, however, the Supreme Court allowed Esso P'nyang Limited's appeal and dissolved the injunction, disposing of the proceeding on procedural and standing grounds rather than determining the substantive adequacy of the social mapping studies.[60]

P'nyang is important for two reasons. First, it shows the legal significance attributed at first instance to social mapping and landowner identification as prerequisites to petroleum development. Secondly, the Supreme Court's decision exposes the limits of judicial protection where procedural rules, the statutory

[59] Independent Environmental and Social Compliance, PNG LNG Desktop Monitoring — Final Report

[60] Bernard v Duban (2016) N6299; [2016] PGNC 121; Esso P'nyang Limited v Bernard [2017] PGSC 62; SC2001.

review mechanism and standing requirements become decisive. The case therefore cannot be characterised simply as either a failure or a success of the benefits-sharing framework; it presents the more difficult question of whether the legal system provides an effective remedy when landowners challenge the identification process on which their participation and benefits depend.

6.1 Identification Before Participation

Section 47 of the Oil and Gas Act 1998 requires a licensee applying for a petroleum development licence to submit a full-scale social mapping study and landowner identification study covering customary landowners in the relevant licence area and other affected areas.[61] Section 48 then provides for the Development Forum, at which project-area landowners determined under s 169(2), or their duly appointed or elected representatives, are invited to participate.[62] Section 169(2) further requires the Minister to determine the persons entitled to specified benefits and the incorporated land groups or other permitted entities that will represent and receive benefits on their behalf.[63] Identification therefore precedes or accompanies the process through which affected landowners participate in the Development Forum.

In *Bernard v Duban*, Kandakasi J treated the social mapping and landowner identification requirements as more than a technical administrative exercise, describing them as statutory preconditions to petroleum development and emphasising the need for the State and developer to demonstrate compliance.[64] His Honour also distinguished landowner identification — the identification of natural persons and properly incorporated land groups who own or have an interest in the affected customary land — from social mapping, which provides a broader picture of landowner groupings, leadership structures, relationships, culturally significant places, ways of life, traditions, environments and the potential impacts of petroleum development.[65] This reasoning gives the identification process substantive significance, its purpose is not merely to create a convenient list of beneficiaries, but to establish the social and customary context within which participation and benefits-sharing are to occur.

6.2 A Preventive Safeguard

The National Court proceedings were interlocutory. Bernard sought to prevent the proposed Development Forum from proceeding on the basis that the statutory requirements for social mapping and landowner identification had not been adequately satisfied.[66] Kandakasi J found a serious question concerning statutory compliance and continued the interim injunction until the substantive issues could be resolved, treating the requirements in s 47 as conditions precedent that had to be demonstrated before the project could legally proceed to the Development Forum.[67,68]

This reasoning is significant for landowner protection. If the Development Forum is the principal mechanism through which affected landowners participate in negotiations over benefits, then allowing that process to proceed before the relevant landowners have been adequately identified risks undermining the legitimacy of participation itself. The first-instance decision therefore supports a preventive conception of protection: the law should not merely provide a remedy after benefits have been distributed

[61] Oil and Gas Act 1998 (PNG) s 47(5).
[62] Ibid s 48(1).
[63] Ibid s 169(2).
[64] Bernard v Duban (2016) N6299; [2016] PGNC 121, [73].
[65] Ibid [49], [73], [77].
[66] Ibid [1] --[3].
[67] Ibid [118].
[68] Ibid [73].

to the wrong persons, but should require sufficient identification before the process that produces the benefits-sharing arrangements advances. The Court also treated the social mapping exercise as requiring appropriate expertise and a sufficiently complete account of customary ownership, including the existence of disputes between persons claiming rights or interests in the relevant land[69] — recognising that landowner protection begins before entitlement is calculated, since the identity of the beneficiary is itself part of the legal problem.

6.3 Procedural Control and the Dissolution of the Injunction

The Supreme Court took a materially different approach. In *Esso P'nyang Limited v Bernard*, Logan, Toliken and Higgins JJ allowed Esso's appeal and dissolved the interim injunction, concluding there was no serious question to be tried in the proceedings as framed.[70] The Court considered that Bernard's challenge was, in substance, directed at the exercise of public power and that proceedings seeking judicial review relief were required to comply with the relevant procedural framework — including s 169(10) of the Oil and Gas Act, which restricts review of a Ministerial Determination made under s 169(2) to an application made within 28 days.[71] The Court further concluded that the customary landowners lacked standing to seek judicial review on the basis advanced, because as persons entitled to compensation under ss 167 and 168, they were not persons aggrieved by the relevant decisions in the required sense.[72]

The practical consequence was significant: the National Court had prevented the Development Forum from proceeding while the identification issue remained under challenge, and the Supreme Court dissolved that protection without determining, on the merits, whether the underlying social mapping studies were substantively adequate. That distinction must be preserved here — the appellate decision should not be read as finding that the P'nyang social mapping studies were legally adequate; it established only that Bernard's proceeding, as brought, did not disclose a serious question capable of sustaining the injunction.

6.4 What the Appellate Outcome Means for Landowner Protection

The appellate decision creates an important tension. On one view, it demonstrates that judicial control exists but is structured by procedural rules. Landowners cannot obtain substantive judicial scrutiny merely by alleging that a statutory process was inadequate; they must bring the challenge through the appropriate procedural mechanism and satisfy applicable standing and review requirements. On another view, the case reveals a protection gap — the substantive complaint concerned the adequacy of the process by which customary landowners were identified, yet the appeal was resolved without the Court determining the merits of that complaint, so a dispute over the statutory identification process never received a final merits determination.

This distinction matters because a judicial remedy is only practically protective if the affected landowner can successfully invoke it and obtain a determination of the substantive issue. P'nyang therefore complicates the proposition that judicial review necessarily provides an adequate safeguard: the legal system may contain a formal avenue of review while still presenting procedural barriers to landowners seeking to use it.

[69] Ibid [49], [73], [77].
[70] Esso P'nyang Limited v Bernard [2017] PGSC 62; SC2001, [22].
[71] Ibid [15]; Oil and Gas Act 1998 (PNG) s 169(10).
[72] Esso P'nyang Limited v Bernard [2017] PGSC 62; SC2001, [16].

6.5 The Standing Problem and Customary Landowners

The Supreme Court's treatment of standing is particularly significant because the beneficiaries of petroleum development are not simply economic claimants — their interests arise from customary relationships with land that may encompass social, cultural and communal dimensions. The Court's reasoning linked the entitlement to compensation under ss 167 and 168 with the question whether the customary landowners were persons aggrieved for purposes of judicial review.[73] This creates a conceptual tension: a landowner may simultaneously be a beneficiary of petroleum compensation and a person whose customary interests are threatened by the manner in which petroleum development proceeds.

The first-instance judgment placed greater emphasis on the potential consequences of petroleum development for customary life, culture and environment when considering the interlocutory injunction.[74] Academic commentary has criticised the appellate approach on precisely this point. Sophia Bleakley argues that the Supreme Court's treatment of standing failed to sufficiently account for the significance of customary land ownership within PNG's legal and social order — a critique that should be understood as academic analysis rather than a finding of the Court.[75] For this research, the significance is analytical: the case shows that landowner protection cannot be assessed solely by asking whether compensation exists, but must also consider whether landowners have an effective legal capacity to challenge the administrative processes that determine their participation in petroleum development.

6.6 Conclusion

P'nyang complements the PNG LNG experience discussed earlier by moving the analysis earlier in the protection chain: rather than asking what happens when benefits exist but beneficiaries struggle to access them, it asks what happens when the identity of beneficiaries is disputed before the Development Forum can proceed at all. Section 48(1)(b) of the Oil and Gas Act links participation in the Forum directly to landowners determined under s 169(2), so a serious challenge to identification is capable of halting the process itself.[76] The National Court treated that safeguard as substantial; the Supreme Court's subsequent decision to dissolve the injunction on procedural and standing grounds, without reaching the merits of the identification dispute, shows that the safeguard's practical strength depends on whether an affected landowner can actually bring it before a court in a form the court will hear.[77]

P'nyang therefore supports a finding of partial protection: the statutory framework contains a meaningful identification safeguard, and the judiciary demonstrated willingness at first instance to enforce it, but the appellate outcome shows that judicial intervention is not guaranteed. Effective landowner protection depends not only on the existence of rights and procedures, but on the accessibility and design of the remedies available to enforce them — a question examined next through Papua LNG.

7. INSTITUTIONAL LEARNING AND AN ONGOING TEST

Papua LNG provides the contemporary test of whether PNG's petroleum benefits-sharing framework has learned from the difficulties associated with earlier projects. Unlike PNG LNG, which permits assessment based on completed implementation, Papua LNG remains an evolving project; unlike

[73] Ibid.
[74] Bernard v Duban (2016) N6299; [2016] PGNC 121, [105] --[106].
[75] Sophia Bleakley, 'Redefining Landscapes: Administrative Law and Customary Land Ownership in Esso P'nyang Limited v Bernard' (2023) 2 Journal of South Pacific Law 23, 28--33.
[76] Oil and Gas Act 1998 (PNG) s 48(1)(b).
[77] Esso P'nyang Limited v Bernard [2017] PGSC 62; SC2001, [15] --[22].

P'nyang, its significance for this chapter lies in the institutional processes through which landowner identification, verification and participation have themselves been developed.

The available evidence shows a more elaborate identification sequence than earlier projects, involving Social Mapping and Landowner Identification ('SMLI'), Landowner Benefits Identification ('LOBID') and Ministerial Determinations before the Development Forum. The project's regulatory framework describes SMLI as identifying customary landowning clans and recording socio-cultural information, followed by LOBID verification and a Ministerial Determination identifying project beneficiaries.[78] The process has nevertheless remained contested: a 2023 Ministerial Determination identified 277 clans across the project applications, comprising 191 clans in Gulf Province and 86 in Central Province,[79] and in 2026 the Petroleum Minister stated that landowner identification and verification had resulted in 239 clans being identified, while acknowledging concerns about clans that had been missed.[80] Papua LNG should therefore be treated as evidence of institutional evolution, but not yet as conclusive evidence of institutional success — a distinction developed throughout this chapter.

7.1. From SMLI to LOBID and Ministerial Determination

The Papua LNG process demonstrates a more layered approach to landowner identification than a single initial exercise. The project's published regulatory framework identifies three principal stages. First, SMLI identifies customary landowning clans and provides socio-cultural information concerning ethnography, settlement patterns, land use and tenure, social organisation, genealogy, natural-resource use, livelihoods, migration and the history of land disputes; the Papua LNG SMLI studies were conducted in 2022 and amended in 2025.[81] Secondly, LOBID involves confirmation by the relevant authorities, including the National Petroleum Authority, of the legitimate landowners identified through SMLI. Thirdly, the Ministerial Determination officially identifies project beneficiaries and provides the basis for their participation in the Development Forum.[82]

7.2. Ministerial Determinations and the Beneficiary Population

The December 2023 Ministerial Determinations represented an important administrative milestone: Government reporting stated that Gazette Nos G967, G968 and G969 identified 277 clans across the relevant project applications, comprising 191 clans in Gulf Province and 86 in Central Province.[83] Their significance lies in their legal and institutional function — moving the identification process from investigative and verification stages towards an official determination of project beneficiaries.

That figure of 277 clans should not, however, be treated as a simple measure of improved landowner recognition. Different landowner figures may relate to different geographical scopes and stages of the project: the wider Ministerial Determination covered multiple project applications, while earlier project material concerning particular areas referred to smaller groups of principal landowners. Apparently different beneficiary numbers therefore cannot safely be treated as contradictory without first establishing the geographical and legal scope to which each relates — a distinction directly relevant to

[78] Papua LNG, 'Regulatory and Benefit Sharing Framework' (Web Page, 2026) <https://papualng.com.pg/papua-lng/regulatory-framework>; Oil and Gas Act 1998 (PNG) ss 47–49.
[79] Department of Petroleum and Energy, 'Department of Petroleum Completes National Ministerial Determination for Papua LNG Project' (12 December 2023) PNG Business News <https://www.pngbusinessnews.com/articles/2023/12/department-of-petroleum-completes-national-ministerial-determination-for-papua-lng-project>.
[80] Ginnah Mini, 'Papua LNG Development Forum aims to reach benefit sharing agreement' (10 July 2026) PNG Bulletin <https://thepngbulletin.com/news/papua-lng-development-forum-aims-to-reach-benefit-sharing-agreement/>.
[81] Papua LNG (n 78).
[82] Ibid.
[83] Department of Petroleum and Energy (n 79).

the research question, since accurate landowner protection requires not only identification of persons and customary groups, but clarity about the project area and beneficiary category to which a determination applies.

7.3. Continuing Identification Disputes

The more elaborate institutional process has not eliminated disputes concerning landowner identification. Following the 2023 Determinations, objections were raised concerning the adequacy of the social mapping and consultation process and whether all affected customary interests had been recognised.[84] In January 2026, Papua LNG project-impacted landowners publicly raised concerns about consultation and demanded that outstanding issues be addressed before the Development Forum.[85] In June 2026, the Purari Development Association warned that it might seek urgent court intervention over alleged exclusion of tribes and clans in Baimuru District, arguing that the identification process had excluded customary interests it considered legally protected; the government responded by indicating that the submissions would be reviewed.[86] These allegations are claims requiring verification rather than established findings of legal invalidity. More recently, coastal communities in Central Province claimed that 26 clans had been left out of the landowner process, while NBC reported that 15 clans had been recognised.[87]

These developments do not establish that the Papua LNG identification process is legally defective, but they do show that the central problem identified in earlier petroleum projects — determining who should be recognised as a beneficiary — remains contested even within the more elaborate Papua LNG process.

7.4. The Development Forum

The Development Forum is the point at which the identification process moves into formal negotiation over project benefits. The Papua LNG regulatory framework describes the Forum as a statutory process under the Oil and Gas Act bringing together the State, affected project-area landowners and local governments to agree benefit-sharing arrangements, with the outcome intended to be recorded in a Benefit Sharing Agreement.[88] The State moved the Papua LNG Forum into its operational phase in July 2026; the Petroleum Minister described it as involving project-area landowner representatives, the State, project proponents, provincial governments and local-level governments, and stated that identification and verification had produced a figure of 239 clans, with consultations continuing on missed-out clans.[89] The government also expanded representation through district-level participation, with affected District Development Authorities authorised to nominate additional representatives so that wider community concerns could be raised.[90] This is potentially significant, since the formal number of participants in a

[84] 'Concerns Raised After Determination of Papua LNG Project' (14 December 2023) PNG Haus Bung <https://pnghausbung.com/concerns-raised-after-determination-of-papua-lng-project/>.

[85] 'Papua LNG landowners demand grant before forum' (13 January 2026) NBC Papua New Guinea <https://www.nbc.com.pg/post/31401/papua-lng-landowners-demand-grant-before-forum>.

[86] Risk Masters, 'Papua LNG Project Landowner Association Threatens Court Action' (2026) LinkedIn <https://www.linkedin.com/posts/riskmasterspacific_landowner-association-threatens-urgent-court-activity-7477850968630602-_e8x>.

[87] 'Coastal clans seek inclusion in Papua LNG landowner process' (2026) NBC Papua New Guinea <https://www.nbc.com.pg/post/37447/coastal-clans-seek-inclusion-in-papua-lng-landowner-process>.

[88] Papua LNG (n 78).

[89] Mini (n 80).

[90] 'Papua LNG Development Forum Expands Representation as Government Seeks Inclusive Benefit-Sharing' (10 July 2026) PNG Business News <https://www.pngbusinessnews.com/articles/2026/7/papua-lng-development-forum-expands-representation-as-government-seeks-inclusive-benefit-sharing>.

Development Forum cannot realistically encompass every individual affected by a large petroleum project — though expanded representation should not be equated automatically with effective representation. The relevant question remains whether representatives have sufficient authority and accountability to speak for the customary interests they claim to represent.

7.5. Institutional Learning and Its Limits

The evidence supports the proposition that Papua LNG incorporates elements of institutional learning, in three respects. First, identification has become more layered: SMLI is followed by LOBID verification and Ministerial Determination rather than being treated as the sole basis for identifying beneficiaries. Secondly, the Development Forum has incorporated broader representative mechanisms, with government statements on the 2026 Forum emphasising participation by affected provincial and district interests.[91] Thirdly, the process appears to recognise that identification disputes may continue after an initial determination — the Petroleum Minister stated that options were available to address the aspirations of people who considered themselves excluded, suggesting a willingness to treat identification as capable of further review rather than as an entirely closed process.[92]

These developments are consistent with institutional adaptation, but they do not demonstrate that the underlying problems have been solved. Institutional learning means that procedures or institutional arrangements have changed in response to experience; institutional success requires evidence that those changes produce better outcomes for the persons the framework is intended to protect. The basic legal sequence remains substantially the same — identification, determination, Development Forum, negotiated benefits and implementation — and the principal difference is that more verification and representative mechanisms have been introduced within it. Papua LNG has undergone SMLI, LOBID and Ministerial Determinations, and the Development Forum has commenced, but the project has not yet completed the benefits-sharing cycle: the Benefit Sharing Agreement remains an outcome of the negotiation process rather than a completed result, and long-term distribution and access to benefits cannot yet be assessed. The evidence presently supports institutional learning more strongly than institutional success.

The current status of the Forum reinforces that caution. In July 2026, the National Court made an order affecting the Forum, and the Supreme Court subsequently granted a stay allowing the Forum process to proceed pending the appeal.[93] That judicial intervention does not establish that the Forum is unlawful or that landowners have been inadequately protected, but it does show that Papua LNG is already generating legal disputes concerning the institutional process through which benefits are to be negotiated. Papua LNG should accordingly be characterised as an ongoing institutional test rather than as a completed reform.

7.6. The Lesson from Papua LNG and P'nyang

P'nyang provides a useful comparator. There, the adequacy of social mapping and landowner identification became sufficiently contested to produce judicial proceedings before the Development Forum could proceed; Papua LNG appears to have responded to the broader identification problem by introducing or formalising additional stages of verification and beneficiary determination before the

[91] PNG Business News (n 90).
[92] Mini (n 80).
[93] 'Talks to go ahead. Court lifts stay on Papua LNG forum' (12 August 2026) The National <https://www.thenational.com.pg/talks-to-go-ahead-court-lifts-stay-on-papua-lng-forum/>.

Forum. The comparison should not, however, be reduced to 'P'nyang failed, and Papua LNG fixed the problem' — the evidence does not establish that proposition. A more defensible comparison is that P'nyang demonstrated the legal consequences that can follow when identification is seriously disputed, while Papua LNG demonstrates an institutional attempt to make identification and verification more elaborate before benefits negotiations proceed. The persistence of exclusion claims in Papua LNG shows why that distinction matters; procedural reform may provide additional opportunities to correct identification problems, but it does not remove the underlying complexity of customary ownership and competing claims.

7.7. Conclusion

Papua LNG occupies an intermediate position between the completed PNG LNG experience and the judicially contested P'nyang experience. It demonstrates a more elaborate institutional process for identifying beneficiaries — SMLI, LOBID, Ministerial Determinations and the Development Forum — providing credible evidence of institutional adaptation. At the same time, continuing disputes over beneficiary identification and the recent judicial intervention concerning the Development Forum show that procedural elaboration has not eliminated the underlying difficulty of determining who should participate and benefit.

The appropriate conclusion at this stage is therefore limited: Papua LNG demonstrates institutional adaptation, but its capacity to deliver effective landowner protection remains unproven. This completes the three-project evidentiary sequence developed in the article — PNG LNG tests implementation, P'nyang tests judicial control, and Papua LNG tests institutional learning. The remaining analysis now draws these three strands together to ask whether the framework's apparent institutional development has translated into meaningful protection across the full chain of recognition, representation, entitlement, access and remedy.

8. COMPARATIVE LEGAL ASSESSMENT

8.1 From Procedural Reform to Substantive Protection

The preceding chapters reveal a consistent difficulty in Papua New Guinea's petroleum benefits-sharing framework. The law has progressively developed mechanisms intended to recognise customary landowners, facilitate their participation in petroleum development, and secure a share of project benefits for them. Yet the existence of these mechanisms does not necessarily mean that the persons whom the law intends to protect will actually receive the protection promised to them.

The comparison between PNG LNG, P'nyang and Papua LNG is important because the three projects represent different stages in the development of the same institutional framework: PNG LNG provides the principal experience of implementation; P'nyang demonstrates the legal consequences of disputes concerning landowner identification and representation; and Papua LNG demonstrates the State's attempt to refine the process in response to earlier difficulties. The comparison therefore allows the article's question to be examined not simply as one of statutory design, but as one of institutional learning.

The evidence does not support the proposition that PNG's benefits-sharing framework has simply failed, nor that the problems associated with PNG LNG have been fully resolved. Rather, it demonstrates a framework that has adapted procedurally without yet establishing consistent substantive protection for customary landowners. The central weakness of the framework lies not in the absence of benefits-sharing mechanisms, but in the points at which customary ownership must be translated into legally recognised beneficiaries, legitimate representatives and practically accessible benefits.

8.2 What PNG LNG Revealed About the Framework

PNG LNG remains the most important reference point because it demonstrates both the capacity and the limitations of the existing model. The project produced a substantial benefits package through the statutory and negotiated framework, giving landowners access to royalties, equity interests, development-related benefits and other arrangements negotiated through the Development Forum and subsequent agreements. The problem was not that the framework provided nothing to landowners; the difficulty emerged in implementation, where identifying beneficiaries, establishing legitimate representation and distributing benefits proved to be prolonged and contested processes. A formal entitlement did not necessarily guarantee timely access to it.

This produces an important legal distinction between entitlement and enjoyment. A landowner may have a legal entitlement to a benefit, but that entitlement is of limited practical value if the institutional mechanism through which it is to be delivered cannot determine who is entitled to receive it, who is authorised to act on behalf of the beneficiaries, or how disputed funds should be administered. PNG LNG therefore exposed a weakness that cannot be solved simply by increasing the number of benefits available: the effectiveness of benefits-sharing depends on the reliability of the institutional chain through which benefits reach customary communities.

8.3 The Legal Significance of Landowner Identification in P'nyang

The P'nyang experience demonstrates that landowner identification is not merely a preparatory administrative exercise. In *Bernard v Duban*, the dispute concerned the adequacy of the social mapping and landowner identification process required before the Development Forum; the National Court's interim injunction restraining the Forum and related project progression treated compliance with s 47 of the Oil and Gas Act as legally significant, rather than as a matter that could be overlooked because the project was otherwise advanced.[94] This establishes an important principle: procedural requirements concerning customary landowners can have substantive legal consequences, and the Development Forum cannot be understood simply as a political negotiation that may proceed regardless of unresolved identification issues. Where statutory identification requirements are seriously disputed, the legality of proceeding may itself become subject to judicial scrutiny.

P'nyang therefore strengthened the legal significance of the identification stage. At the same time, litigation is an imperfect mechanism for resolving complex questions of customary ownership — it can be expensive, slow and difficult for communities to access. The lesson is consequently twofold: statutory safeguards must remain legally enforceable, but the system should also provide an effective means of resolving identification and representation disputes before they escalate into major litigation.

8.4 The Evidence of Institutional Learning from Papua LNG

Papua LNG represents the clearest evidence of an attempt to learn from the difficulties revealed by earlier projects. Social Mapping and Landowner Identification is now followed by Landowner Benefits Identification and then a Ministerial Determination identifying the beneficiaries who are to participate in the Development Forum — three stages the Papua LNG regulatory framework describes as preceding the Forum.[95] This recognises a central problem revealed by earlier experience: identification cannot safely be treated as complete merely because a social mapping exercise has been undertaken, and the

[94] Oil and Gas Act 1998 (PNG) ss 47--49, 169.
[95] Papua LNG, 'Regulatory and Benefit Sharing Framework' (Web Page, 2026) <https://papualng.com.pg/papua-lng/regulatory-framework>.

introduction of additional verification creates an opportunity to identify errors, examine competing customary claims, and establish a more reliable beneficiary population before benefits are negotiated.
The evidence also demonstrates the limits of this learning. Disputes over inclusion and exclusion have continued: the 2023 Ministerial Determinations were followed by further identification work and 2026 determinations, with the petroleum minister later stating that 239 clans had been identified while consultations continued on missed-out clans. These figures arise from different stages and determinations and should not be treated as directly contradictory without establishing their legal and geographical scope.[96] They do not establish that the Papua LNG process is unlawful, nor that the new procedures have failed; they demonstrate something more precise — that institutional reform can improve a process without eliminating the underlying problem. Papua LNG should therefore be regarded as an ongoing test of whether procedural improvements can ultimately produce more reliable landowner outcomes, with the evidence at present establishing institutional adaptation more strongly than institutional success.

8.5 The Problem of Translating Customary Ownership into Legal Entitlement

The comparison between the three projects reveals a deeper structural problem: the petroleum benefits-sharing system must translate customary systems of landownership — involving clans, sub-clans, genealogical relationships, overlapping rights and different forms of authority over land and resources — into statutory and administrative categories capable of receiving negotiated benefits, and identifying beneficiaries and representatives capable of entering and administering agreements. This is a problem of institutional translation. PNG LNG demonstrates what can happen when that translation produces continuing disputes after benefits have already been established; P'nyang demonstrates what happens when the adequacy of that translation is challenged before the Development Forum; and Papua LNG demonstrates an attempt to make the translation process more elaborate and verifiable. The most vulnerable point in the framework is therefore the movement from customary ownership to identified beneficiary, recognised representative and legal entitlement — if that first transition is inaccurate, every subsequent stage is affected. Future reform should therefore concentrate not merely on negotiating benefits, but on the legal quality of the beneficiary-identification process itself.

8.6 Why More Representation Alone Will Not Solve the Problem

The development of Incorporated Land Groups, landowner companies, associations and other representative arrangements reflects an important effort to give customary landowners institutional capacity. But representation must be assessed by more than the existence of an incorporated entity — the central question is whether the representative institution possesses a legitimate and continuing mandate from the people it represents. A representative structure can improve participation by providing a legally recognisable negotiating body, but it can also create another layer of dispute if competing groups claim authority to speak for the same customary interests. The lesson is not that representative institutions should be abandoned, but that representation should be accompanied by demonstrable accountability: representatives should be required to explain how they were selected, whom they represent, what authority they possess, and how decisions made in the Development Forum will be communicated to beneficiaries.

[96] Department of Petroleum and Energy, 'Department of Petroleum Completes National Ministerial Determination for Papua LNG Project' (12 December 2023) PNG Business News; Jimmy Maladina, Petroleum Minister, statement reported in 'Papua LNG Development Forum aims to reach benefit sharing agreement' (10 July 2026) PNG Bulletin. The figures arise from different determinations and stages and are not treated as directly comparable beneficiary totals.

8.7 From Benefits on Paper to Benefits in Practice

The comparative evidence demonstrates that the legal existence of a benefit is not the same as its practical enjoyment. PNG LNG provides the clearest example: the project established substantial benefits, but disputes concerning identification, representation and administration could delay or complicate access to them. The contemporary record confirms the problem remains live. In 2025, the Prime Minister stated that more than K800 million was held in trust for landowners and that prolonged disputes and court cases were delaying access for some beneficiaries;[97] MRDC separately confirmed that certain Hides PDL1 royalty and equity benefits remained unpaid because a court order had prevented the bank-account opening and director-election process from being completed.[98]

Trust structures can protect disputed funds from improper distribution, but a protective mechanism becomes counterproductive where funds remain inaccessible for extended periods without an effective means of resolving the underlying dispute. The legal objective should therefore be a balance between protection and accessibility: where a dispute affects only part of the beneficiary population, the undisputed portion should be capable of distribution while the disputed portion remains protected pending resolution.

8.8 Remedies and Judicial Oversight

The judicial record demonstrates that PNG's framework is not without remedies. *Bernard v Duban* confirms that the courts can intervene where statutory requirements concerning landowner identification and the Development Forum are seriously contested, providing a meaningful legal safeguard before development negotiations proceed.[99] But the PNG LNG experience demonstrates another dimension: disputes can continue long after benefits have been established, and the P'nyang litigation shows that judicial proceedings protecting particular claimants may also delay benefits to beneficiaries whose entitlements are not themselves disputed. The difficulty, then, is not simply whether a remedy exists, but whether it is accessible, timely and capable of protecting both the claimant and the wider beneficiary population — which is why the evidence supports an administrative dispute-resolution mechanism operating before litigation, dealing with identification, representation and benefits-distribution disputes while preserving judicial review for questions of legality, jurisdiction and procedural fairness.

8.9 Has the Framework Learned from PNG LNG?

The answer to the article's central comparative question is yes, but only partially. The framework has moved beyond a simple identification process towards additional verification through mechanisms such as LOBID and Ministerial Determinations; representation has become more institutionally developed; and judicial decisions have clarified that statutory landowner-identification requirements carry real legal significance. But the evidence does not show that the framework has yet learned the most important lesson from PNG LNG: that benefits-sharing succeeds only when recognition, representation and distribution operate together as a coherent system. The persistence of identification disputes in Papua LNG shows that the first link remains vulnerable; P'nyang shows that serious weaknesses at that stage can interrupt the statutory process itself; and PNG LNG shows that even where benefits have been negotiated, the protection chain can break down at the point of delivery. The framework has therefore

[97] Department of Prime Minister and National Executive Council, 'Prime Minister Marape Appeals for Landowner Unity and Dispute Resolution to Unlock Over K800 Million in PNG LNG Benefits' (29 October 2025).
[98] Mineral Resources Development Company, 'MRDC clarifies position on royalty and equity benefits' (1 October 2025).
[99] Alex Bernard v Nixon Duban (2016) N6299 (National Court of Justice, Kandakasi J, 27 May 2016) [13], [118].

demonstrated procedural learning without yet demonstrating complete institutional learning: PNG has changed the process, but the long-term effectiveness of those changes remains to be demonstrated.

8.10 A More Effective Approach to Landowner Protection

The comparative evidence does not justify replacing the entire petroleum benefits-sharing framework; the more defensible approach is targeted reform at the points where the existing system repeatedly demonstrates weakness.

First, landowner identification should become independently reviewable before the final beneficiary determination, so that communities have an opportunity to challenge proposed identification results before those results become the basis for benefits negotiations. Secondly, representation should be supported by demonstrable mandates, with the law requiring evidence that representatives have been selected through a legitimate process and remain accountable to the customary groups concerned. Thirdly, landowners should have access to independent legal and financial advice during Development Forum negotiations, since formal participation is insufficient where one party possesses substantially greater technical and bargaining resources. Fourthly, benefit-distribution disputes should not automatically freeze undisputed entitlements — the disputed portion can remain protected while uncontested amounts are distributed. Fifthly, trust and benefit-management structures should be subject to stronger transparency and auditing requirements. Finally, PNG should establish an accessible administrative dispute-resolution mechanism specifically for landowner identification, representation and benefits disputes, to complement rather than replace judicial review.

These reforms seek to strengthen the existing framework rather than create an entirely new system: the evidence suggests PNG has the basic legal architecture for benefits-sharing, but requires stronger connections between its individual components.

8.11 Conclusion

The comparison of PNG LNG, P'nyang and Papua LNG demonstrates that PNG's petroleum benefits-sharing framework provides substantial formal protection by design — recognising customary landowner interests, requiring landowner identification, establishing participation through Development Forums, and providing mechanisms through which royalties, equity and other benefits can be negotiated and distributed. But formal protection does not consistently translate into effective protection: PNG LNG demonstrated the consequences of prolonged identification and distribution problems after benefits have been established; P'nyang demonstrated that identification failures can become serious enough to interrupt the statutory process itself; and Papua LNG demonstrates institutional adaptation whose reforms, given continuing disputes, cannot yet be treated as proven evidence of successful landowner protection.

The central finding is therefore neither that the framework has failed nor that it has fully succeeded. Papua New Guinea's petroleum benefits-sharing framework has learned from PNG LNG at the level of procedure, but it has not yet demonstrated that this procedural learning consistently produces substantive landowner protection. The continuing weakness lies in the translation of customary ownership into recognised beneficiaries, legitimate representatives and accessible benefits. A stronger framework must therefore move beyond asking whether the required procedures have been completed, to asking whether those procedures have produced a result that is accurate, representative, transparent, accessible and legally accountable. That is the point at which procedural compliance becomes meaningful landowner protection.