



Papua New Guinea

CONSTITUTIONAL & LAW REFORM COMMISSION

Review on the Laws on the Development and Control of Informal Economy

ISSUES PAPER

You are invited to provide a
submission or comment on this
Issues Paper

ISSUES PAPER 8

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Terms of Reference

CLRC Reference No. 8: Review of the Laws on the Development and Control of the Informal Economy.

I, Hon. Dr. Allan Marat LLB, LLM (with Hons.) D.Phil.,CBE, MP., Minister for Justice and Attorney-General, having regard to:

- the current state of affairs of the informal economy as the full and legitimate partner of the formal economic systems of Papua New Guinea;
- the increasing number of unemployment in Papua New Guinea and the issues associated with economic and social needs confronting Papua New Guinea both in the rural and urban areas;
- the fact that most people in Papua New Guinea earn a living through the informal economy and are financially excluded;
- the fact that lack of provision for public goods and services to the people hinder the development of the informal economy in Papua New Guinea;
- the requirements of the *Banks and Financial Institutions Act 2000*, together with the National Goals and Directive Principles of the Preamble of the Constitution of the Independent State of Papua New Guinea; and
- the application and state of implementation of the Informal Sector Development and Control Act now dealing with the development and control of the informal economy,

note the social implications of the *Public Health Act 1973* and the *Food Sanitation Act 1991*; and taking into consideration the need to achieve maximum participation of citizens, both in urban and rural areas, in the economic opportunities offered by a dynamic and diversified informal economy; therefore, by virtue of the powers conferred on me by Section 12(2) of the *Constitutional and Law Reform Commission Act 2004* (the CLRC Act) refer and direct the Constitutional and Law Reform Commission (CLRC) as follows:

- 1) To review the *Informal Sector Development and Control Act 2004*, in collaboration with the Consultative Implementation & Monitoring Committee (CIMC), to align with the National Informal Economy Policy;
- 2) To enquire into and report on the operation of the Informal Sector Development and Control Act 2004 with a view to identify problems, if any, in the enforcement of the Act, and propose and recommend appropriate remedial action;
- 3) The Constitutional and Law Reform Commission shall report to me within 18 months of the date of publication of this Reference in the National Gazette with the drafting instructions and appropriate draft legislation proposing suitable law reform if and where necessary; and ;
- 4) This Reference shall be referred to as CLRC Reference No. 8: Review of the Laws on the Development and Control of the Informal Economy.

Dated this 01st day of May, 2012.

Hon. Dr. Allan Marat, LLB, LLM (with Hons.) D.Phil., CBE, MP.

Minister for Justice and Attorney-General

Making A Submission

The CLRC is seeking any form of submission from a broad cross-section of the community, as well as those with a special interest in the inquiry.

Submissions are usually written, but there is no set format and they need not be formal documents. Where possible, submissions in electronic format are preferred.

It would be helpful if comments addressed specific proposals or numbered paragraph in this Issues Paper.

Open inquiry policy

In the interests of informed public debate, the CLRC is committed to open access to information. As submissions provide important evidence to each inquiry, the CLRC may draw upon contents of the submission and quote from them or refer to them in publications.

Submissions should be sent to:

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The closing date for submissions in response to this Issues Paper 8 is Wednesday 31st July 2014.

Participants

The Commissioners of the Constitutional and Law Reform Commission (CLRC) are:

- Hon. Benjmin PoPONAWA , MP, Chairman
- Mr. Gerald Linge, Deputy Chairman
- Prof. Betty Lovai, Member
- Prof. John Luluaki, Member
- Dr. Rev. William Longgar, Member
- Hon. Malakai Tabar, MP, Member
- Hon. Jeffery Pesab Komal, MP, Member

The CLRC had initial discussions with key stakeholders when developing this Issues Paper and they are the:

1. Department of Community Development
2. Department of National Planning
3. National Capital District Commission (NCDC)
4. Consultative Implantation & Monitoring Committee (CIMC)
5. Lae City Authority
6. Alotau Town Authority

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Chapter 1: Introduction to the Inquiry

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1.1 The Constitutional and Law Reform

The Constitutional and Law Reform Commission (CLRC) is established under the *Constitutional and Law Reform Commission Act 2004* (CLRC Act), which came into operation on March 04th 2005. The existence of CLRC finds its basis from section 260 (General Constitutional Commission) and Schedule 2.13 (Establishment of the Commission) of the *Constitution*.

The CLRC Act 2004 repealed the *Constitutional Development Commission Act 1997* and the *Law Reform Commission Act (Chapter 18)* and merged the two institutions into one now called the Constitutional and Law Reform Commission. Therefore, the CLRC is a successor in law to the former Constitutional Development Commission and the Law Reform Commission. The CLRC is a constitutional office to which Part IX (Constitutional Office-Holders and Constitutional Institutions) of the *Constitution* applies and therefore enjoys independence in its work.

The CLRC is comprised of one (1) Chairman and six (6) part-time members as Commissioners. Only the Chairman’s office is a full time office. The part-time members consist of two (2) serving members of Parliament, experts each in Constitutional Law, anthropology, sociology and political science, a nominee of the Papua New Guinea Council of Churches, and the Executive Dean of the School of Law, University of Papua New Guinea as ex-officio.

Under Section 12 (1) of the CLRC Act, the Head of State is empowered to issue directives to the CLRC to review the Constitutional laws of the country. In

In addition to the above, the Minister for Justice (the Minister) is empowered under Section 12(2) of the CLRC Act to issue ‘Terms of Reference’ (Reference) to the CLRC to review the laws of Papua New Guinea and make appropriate recommendations for law reform, hence, the Minister, by virtue of this power, issued a reference on the Review of the Laws on the Development and Control of the Informal Economy in Papua New Guinea which this Issues Paper attempts to discuss. Further to the above functions imposed on the Commission by the CLRC Act, Section 19 of the Constitution also empowers the Commission to make Special References to the Supreme Court seeking the Supreme Court’s interpretation of any provision of a law. Under this provision, any opinion given by the Supreme Court has the same binding effect as any other decision of the Supreme Court. An example of this is the current Supreme Court Reference¹ filed by the CLRC on the constitutionality of the practice of “polygamy in Papua New Guinea” which is now before the courts.

Quiet separate to its statutory duties outlined above, the CLRC is also constitutionally mandated to investigate and report to the Parliament and the National Executive on the development and appropriateness of the rules and principles of the underlying law to the circumstances of the country from time to time (Sch. 2.14 of the *Constitution*). This in itself is a very important function of the CLRC as it is mandated to monitor the development of the underlying law of this country.

Above are CLRC’s functions as prescribed under the CLRC Act and the *Constitution*. However, it has also got the powers under Section 11 of the CLRC Act 2004, to consult with any Government Departments, institutions, authority, organization or any member of the public and provide advice and information on a proposal for the reform or amendment of a law. The exercise of this power is an ongoing exercise; whilst the Constitutional Directive and Term of Reference referred to above occur once in a while if and when either the Head of State or Minister Justice issues one. Hence this is considered a very crucial role of the CLRC too.

¹ SCR No. 3 of 2008.

1.2 Objectives of Reference No. 8: Review of the Laws on the Development and Control of the Informal Economy

The main objective of this Reference is to inquire into and review the laws on the development and control of the informal economy (previously known as informal sector) in Papua New Guinea with a view to:

- align it with the National Informal Economy Policy 2011-2015;
- to assess and determine the effectiveness of the laws on informal economy and identify problems, if any, in the enforcement;
- if the laws on the development and control of the informal economy are to be amended, propose and recommend appropriate legislative amendments, or recommend for the enactment of a new legislation; and
- to the extent necessary to achieve the reforms proposed above, whether and how any relevant associated laws and practices should also be modified or amended.

At the conclusion of this review, the CLRC intends to make recommendations on the appropriate actions that may be taken to address the issues and concerns associated with informal economy and will propose appropriate recommendations to Government through the Minister for Justice for appropriate law reform. At the same time, if the Commission identifies through its review, relevant policy or administrative measures that need to be taken to address this issue, then necessary recommendations will be made in the final report for the Government to consider and further progress through other appropriate avenues.

1.3 Conduct of the Review

For purposes of identifying the issues and producing this Issues Paper, the CLRC conducted initial consultations with the Consultative Implementation and Monitoring Committee (CIMC), the National Capital District Commission (NCDC), the Department of Community Development and the Department of

National Planning. The CLRC also received written submissions from the above agencies except the Department of National Planning,

After the release of this Issues Paper, the CLRC will engage in a wider consultation with other stakeholders including selected provincial governments, communities and the general public. We shall then consider all matters arising in response to this Issues Paper and produce and release a Draft Report for further discussions. Following the release of the Draft Report, CLRC will then invite further comments and submissions based on the proposals made in the Draft Report. A National Seminar will also be held to further discuss the proposals made in the Draft Report. CLRC will then proceed to issue its final report on the CLRC Reference No.8 following this process.

The timetable for the review is as follows:

Deliverables	Deadlines
Launch of Issues Paper	Wednesday 9 th April 2014
Release of Draft Report	Yet to be advised
Seminar	Yet to be advised
Finalization of Report	yet to be advised
Presentation of Report to Minister	yet to be advised

1.4 Purpose of this Issues Paper

This Issues Paper is meant to provide background information and context on the subject matter of the Reference and then to focus and state the issues which, at the outset are envisaged. As indicated above, the Issues Paper also sets the timeframe for this review and then invites submissions on any aspects or issues pertinent to this Reference. This Issues Paper will endeavor to raise a series of questions designed to stimulate discussion and response from stakeholders and

the general public. We caution that these questions should not be seen as dictating the issues and indicative of the final outcome of this Reference. Accordingly, the CLRC welcomes submissions on other issues or matters which stakeholders believe should be addressed.

1.5 Structure of this Report

This Paper is structured as follows:

Chapter 2 provides a brief background on this reference

Chapter 3 provides a brief background on informal economy

Chapter 4 provides an overview of the existing law and practice, existing deficiencies in effective implementation and introduces some issues related to enforcement of the laws

Chapter 5 presents the main Issues for consideration in this Reference.

Chapter 2: Background to this Reference

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2.1 Introduction

This Chapter will provide the background information leading to the Term of Reference being issued to the Constitutional and Law Reform by the then Minister for Justice Hon. Dr. Allan Marat. Enacting a law without any policy guidance is like ‘putting the cart before the horse’, so to speak, hence problems in terms of effective enforcement are bound to happen. It appears that the government realised that the *Informal Sector Development and Control Act 2004* cannot be successfully enforced without a guiding document hence the National Informal Economy Policy 2011-2015 which was recently endorsed to guide the implementation of the Informal Sector Act.

2.2 Background to this Reference

It is worth noting at the outset that the *Informal Sector Development and Control Act 2004* was enacted by Parliament in 2004 in the absence of an overarching national policy to guide the implementation of the Act. The need to develop a national policy on Informal Economy was formally recognised and endorsed by the National Executive Council on 09th August 2006 in its Decision No. 156/2006. Since then the CIMC has been collaborating with the Department of Community Development in developing the necessary policy document. Hence the current National Informal Economy Policy 2011 – 2015 is a result of this collaboration.

The push for review of the Informal Sector Act essentially stems from the fact that there is now the need to review the Act which was passed in the absence of a policy framework to re-align it with the current Informal Economy Policy.

However, this review exercise also provides the leeway to discuss and assess some practical issues associated with implementation of the Informal Sector Act; so that whilst we look at re-aligning the Act with the Policy for consistency, we also try to identify practical solutions to existing issues and propose necessary amendments so that the Act better serves the purpose it was enacted for, i.e. to promote informal business activities as well as improve the health and safety standards of these businesses.

It is also worth noting that whilst we may be specifically directed to review the Act in light of the Policy, the final outcome of our review exercise or our recommendation will usually be dictated by our internal research findings as well as the public / stakeholder consultations that we will conduct after the launch of this Issues Paper. CLRC wishes to state at the outset that as an independent office, the office has not formed any conclusive view on this review work. The outcome of our recommendations, once again, will be dictated by our consultative process with relevant stakeholders including the general public.

2.3 National Informal Economy Policy 2011-2015

The Informal Economy Policy has been described as an attempt to promote the informal economy as the ‘grassroots expression’ of the private sector and a partner in the formal economic system of PNG. In sum, the policy advocates growth of, and greater civil participation in the informal economy regardless of gender, urban or rural location and ultimately socio-economic for all involved. Strategies to promote informal economic activities include an enabling regulatory environment, financial inclusion through micro-finance and provision of improved infrastructure, facilities, education, training, social protection and political representation. Therefore, the policy hopes to link “the economies of rural and urban areas and to reduce inter-regional and inter-personal income inequalities”.

The emphasis of the policy though is on ways to encourage and improve the informal economy through two (2) major strategies. Firstly, through

“financial inclusion” – that should be taken as a central economic policy goal with microfinance as the primary instrument for that goal. Secondly, though the improvement and provision of adequate public goods and services, both tangible and intangible, by the government. Tangible public goods and services include building of bridges and or market facilities; whereas intangible goods and services refer to improving the environment in which an informal activity takes place such as improving the law and order and situation.²

These two strategies will be briefly looked at below; however, it is worth noting at this juncture, the use of the term “informal economy” as opposed to “informal sector”. The national policy has replaced the latter with the earlier. Though interchangeably used to some extent, they have different meanings in context.

Informal Economy vs. Informal Sector

The first notable change between the Informal Sector Act and the informal policy is the use of terminology from ‘informal sector’ to “informal economy”. This section is thus concerned with the term informal sector as in the context in order to appreciate the shift of terminology from informal sector to informal economy; and not on definitional issues which is appropriately covered under Chapter 2 on Background. Early literature discussions on economic development centered around 2 distinct sectors – one rural and agricultural and the other urban and modern. Development was seen as the transfer of labor from the rural sector to the urban sector. People living in the urban towns without any form of employment were simply regarded as the unemployed.³ However, research begin to show that the unemployed living in towns were actually involved in some form of economic activities in order to survive in towns, hence, a third sector was discovered, the ‘urban informal sector’. Unfortunately, to date, the ‘rural informal sector’ is a neglected area though considered very important. Informal sector, therefore, refers to these various sectors.

² For a detailed background on these two proposed strategies, both financial and non-financial, see John D. Conroy, “A national policy for the informal economy in Papua New Guinea” (2010), 25 (1), *Pacific Economic Bulletin*, 189.

³ A National Policy for Informal Economy in PNG, John D. Conroy, 190.

Informal sector is broadly characterized as consisting of units engaged in the production of goods and services with the primary objective of generating employment and income to the persons concerned; and the units typically operate at a low level of organisation with little or no division between labor and capital as factors of production and are usually on a small scale level.⁴

In recent studies, though, the term informal sector has been replaced with the term informal economy, including the national policy of Papua New Guinea. Economists prefer the term informal economy for various reasons but most notably, because the term emphasizes the economic significance of the activities described without any social or cultural attachments⁵; and because formal or informal, both talk about the total economic system of any one country.⁶ Therefore, it is fair to say that “*informal economy*” broadly covers both the urban informal sector, and the rural informal sector.

2.3.1. Financial Inclusion

Of the 2 strategies identified in the Informal Economy Policy to promote informal economy, “financial inclusion” is the first. Financial Inclusion basically refers to people having access to formal financial institutions and services such as opening a savings account, deposit services, remittances (transfer of funds), payments, micro-insurance and credits or loans.⁷ Without this access, people are said to be financially excluded.⁸

Financial exclusion exists in countries throughout the world, including the developed and wealthy ones, but it has been reported that Papua New Guinea suffers from an extremely low level of ‘financial inclusion’ in the informal economy.⁹

⁴ OECD, Glossary of Statistical Terms, <http://stats.oecd.org/glossary/detail.asp?ID=1350> as at 15 April 2013.

⁵ Ibid. Conroy D. John, 190.

⁶ The National Informal Economy Policy, 4.

⁷ Ibid, Conroy, D. John, 195.

⁸ When an individual is financially excluded, it means that that person is unable to access affordable credit, have difficulty obtaining a bank account, is financially at risk due to not having some sort of insurance or does not know how to make the most of his/her money.

⁹ The National Informal Economy Policy 2011-2015, Department for Community Development (2011) 13; see also Conroy, D. John, 195.

In terms of financial inclusion, Papua New Guinea trails at the bottom, as shown in the table below:

PNG	Pakistan	SI	Samoa	Fiji	Singapore
8%	12%	15%	19%	39%	98%

Essentially this means that majority of those involved in informal business activities are excluded or cannot access financial services. Financial inclusion or having access to financial services is seen as one of the ways that can boost informal economy generally, but specifically benefit poor or disadvantaged people.¹⁰

Certainly in PNG, and as mentioned elsewhere in this paper, informal economy in the PNG context is here to stay and so the responsibility is on the government to reassess and improve the environment through necessary policy, administrative or legislative changes to support the informal economy. Most people involved in informal economy activities are denied access to financial services because of their remote locations, the onerous paperwork involved, the high fees or simply because such is seen as a foreign concept.¹¹

But the question remains as to how or what the government can do to encourage banks and financial institutions to open up access to ordinary Papua New Guineans to be financially included by having access to their financial services?

Although there is no official data, Australian Development Bank (ADB) estimates that only 15% of the total population of Papua New Guinea has access to banking (both formal and informal) facilities.¹² Basically, this

¹⁰ For a detailed study on how these financial services can boost the overall economy of a country, see the Worldbank Report by Asli Demirguc-Kunt and Leora Klapper, "Measuring Financial Index, The Global Findex Database" (2012), 6025, *Policy Research Working Paper*.

¹¹ Ibid, n8, National Informal Economy Policy, 13.

¹² Asian Development Bank, News Release, (31 May, 2011) "PNG's Nationwide Microbank signs its 100 000th customer"<
http://www.microbank.com.pg/about_us/media_release/NMB_25-05-11.pdf> at 15th March, 2013.

means the small firms are not able to get the finance they need to expand; and individuals are unable to borrow to either meet their financial needs securely or save their earnings.

(a) **Nationwide Micro bank**

The Nationwide Micro bank, formerly known as the Wau Bank is perhaps the largest micro finance institution not only in Papua New Guinea, but in the Pacific. With a mission to provide financial services to micro and small businesses and a motto to “bank the unbanked”, the bank delivers modern and affordable savings and loans products to ordinary Papua New Guineans from its 12 branches established throughout the country.¹³ As at 2011, NMB recorded 100 000 customers as having a savings account with NMB, making it perhaps one of the most accessible banks apart from the Bank South Pacific (BSP).¹⁴

Micro bank is expanding its services further with an aim to reach the rural areas by offering financial services through the use of mobile phones and other wireless technology. This is an excellent initiative to reach out because it overcomes the problem of clients travelling to urban areas which can be costly and time consuming. The recent launch of its new ‘MiLife’ insurance scheme is evidence how much it is committed to financially include ordinary village people.¹⁵

ADB, which is based in Manila and devoted to reducing poverty in Asia and the Pacific through ‘inclusive economic growth’, supports the Nationwide Micro bank under its Microfinance and Employment Project. Micro bank is also supported by the Pacific Financial Inclusion Program (PFIP), which is a Pacific wide program that serves to provide sustainable financial services to low income households. The PFIP is funded by a number of agencies including the United Nations Capital Development Fund, AusAID, European Union and the United Nations Development Program (UNDP).¹⁶

(b) **Other Commercial Banks**

¹³ Nationwide Microbank, < <http://www.microbank.com.pg/>> at 15 March, 2013.

¹⁴ Nationwide Bank Annual Report (2011), p 5.

¹⁵ This scheme is an insurance scheme that protects families from the financial burdens following deaths; it has an insurance premium as low as K55.00 and pay up to K5, 000.00 to cover funeral costs. See *The National*, 16th April, 2013, 44.

¹⁶ Nationwide Bank Annual Report (2011), p 6.

Other commercial banks may also have products and services that is directly beneficial to the ordinary villagers. For example, the Bank of South Pacific (BSP) is the leading bank in terms of established offices throughout the country availing itself to the people to access banking services, even in the most remote areas. One of its products, the *Wantok Moni* is a domestic remittance service that allows one to send money to any person in PNG using a mobile phone so long as the Sender & Receiver are on the Digicel network. One does not need to have a bank account to receive *Wantok Moni* and funds can be withdrawn at any BSP Rural Branch or Cash Agent; it is time saving, cheaper and convenient.¹⁷

The Westpac Bank is also involved in a lot community activities contributing towards community development. Such initiatives include the 'Westpac Women's Education Grant' and 'Westpac Women in Business Awards'. The Bank also has products and initiatives geared towards financial inclusion of ordinary Papua New Guineans. The Bank's new initiative on the roll out of 'in store banking project' has commenced with 40 local merchants which was expected to increase by end of 2013. This is an initiative to bring financial services to those in the remote areas but in partnership with the local merchants.¹⁸

All the commercial banks as well as the Nationwide Microbank also conduct financial literacy programs to help Papua New Guineans know about basics of saving, borrowing, spending and sending money.

(c) **Government Complementary Initiatives**

It is important that the Government of Papua New Guinea must acknowledge these initiatives and complement them by delivering Financial Literacy Programs using its established network at the district offices and local levels governments offices. The national government also needs to ensure it introduces policies and regulatory frameworks that encourage commercial banks and financial institutions to enable financial inclusion of ordinary people.

¹⁷ <http://www.bsp.com.pg/Personal/Ways-to-Bank/Wantok-Moni/Wantok-Moni.aspx>.

¹⁸ See *The National Newspaper*, Thursday 18th April, 2013, 44.

The recent addition of another commercial bank, the People's Micro Bank, a 100% owned and operated subsidiary of the Asian Development Bank (ADB), is a welcome initiative by the current government as it enhances the financial inclusion strategy of ADB. It is hoped that this new bank will stimulate the culture of savings at the micro level and offer more opportunities for the people who are engaged in informal economy to get easy access savings services and small loans to start up or improve their micro-economic and commercial activities.¹⁹ The launch of a new financial center – the Centre for Excellence in Financial Inclusion (CEFI) to empower small people to give them financial clout is also a welcome initiative. CEFI is an expansion of the microfinance expansion project co-financed by the ADB and AusAID, the national government and the Bank of PNG.²⁰

2.3.2. Non-financial Policy to Stimulate Informal Economy

The second strategy identified in the Informal Economy Policy as a way to boost the informal economy is through provision of public goods and services.²¹ The Policy points out that adequate provision of public goods and services will not only support the informal economy but will contribute towards promotion of the formal economy hence the entire economy. However, it also recognizes that it would be unrealistic to expect the government to deliver all relevant infrastructure and services. Hence to be realistic the policy identifies certain public goods that are of particular concern to the informal economy and these include:²²

- transport infrastructure,
- designated, regulated market spaces,²³
- education and health facilities, and

¹⁹ Ibid, *The National Newspaper*, 23.

²⁰ See the *National Newspaper*, Thursday 25th April, 2013, 3.

²¹ In fact, provision and maintenance of public goods, services and infrastructure will lead to promotion of production in the entire economy including the formal sector. This was alluded to by the Prime Minister, Hon. Peter O'Neil when addressing the Australia-Papua New Guinea infrastructure at the Gateway Hotel on Monday 15th April, 2013 (*The National*, 16th April, 2013, 2).

²² Ibid, Conroy, D. John, 198.

²³ Most likely with access to clean water, toilet and storage facilities and garbage disposals.

- Agriculture research stations and training centers.

It is hoped that if these priority goods and services are adequately delivered, informal economy will progress both in rural and urban settings. Included under this strategy is also the need for government to maintain law and order. This will in turn provide a conducive environment for informal economy to flourish. Another aspect of non-financial strategy to boost informal economy is providing the avenue for those in the informal economy to have a political voice. This will enable them to have an influence in overall planning and policy development at the national level. Education (general) and or training (specific, e.g. financial literacy training) also play a big role in promoting informal economy because being literate can assist one to make an informed decision. Non-financial strategy also includes the need to monitor and maintain proper law and order situation so those engaged in informal economy can conduct their business peacefully.

Whilst the policy envisages promotion of the informal economy through these strategies, it also provides for the need to ensure that the health and safety aspect of informal economy are adequately addressed. All these efforts must be complementary.

2.3.3 Coordinated Effort

In order to achieve the objectives of the policy, there has to be a co-ordinated effort from all those agencies identified as being responsible for the implementation of certain aspects of the policy. The police force will be required to maintain law and order; provincial governments, city councils, town authorities and local-level governments will be responsible for the overall implementation of the legislation including designation of informal market areas, providing clean facilities like water and sewerage as well as conducting necessary trainings for informal business people; and the health authorities to regulate the health and hygiene aspect. The Department of Community Development will need to properly identify its roles as the central implementing agency and will need to liaise with Department of National Planning for adequate funding of informal economy activities. Therefore the policy stresses on the whole of government approach from the national down to provincial, district and local levels.

2.4 Conclusion

The National Informal Economy Policy will now provide a clear direction in terms of the responsibilities of various government agencies, administering authorities and informal economy participants. The Informal Sector Act can be reviewed to synchronize with the intent of the Policy; however, it is also very clear that there must a coordinated effort from the national coordinating agency down to the administering authorities and the informal economy participants in order for the informal economy to be properly regulated. Since private commercial entities (banks and financial institutions) are also expected to participate in promoting informal economy through financial inclusion, it seems the government through relevant agencies will need to consider developing appropriate policies that will link this partnership.

Chapter 3: Informal Economy

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3.1 Introduction

A lot has been written about informal sector and or informal economy as societies become more and more aware of the issue faced with the informal sector.²⁴ Although it is said to have developed from studies from the developing countries where the influence is much more significant, studies of informal sector in developed countries have shown that informal sector offers possibility for accumulation and development.²⁵

In this chapter, we briefly look at the definition of informal economy from available literatures bearing in mind that there is no one accepted definition. But because informal economy is usually compared against formal economy, the main features of these two terms will be identified to measure their differences. The chapter also discusses the history and debate (advantages and disadvantages) of informal economy which is useful in order to gain an

²⁴ Klarita Gerxhani, “ Informal Sector in Developed and Less Developed Countries: A Literature Survey”, 2.

²⁵ Ibid, Klarita, 11.

insight into how the study on informal economy evolved, and the extent to which it has impacted on the economies of various countries (developed, developing and transition economies).

3.2 Definition: Informal Economy

The informal economy is known by many names: the hidden economy, the shadow economy, grey markets, working off-the-books, ghosting or moonlighting. But for our purpose, we adopt the common definition agreed upon and used by the EU (1998), which states:²⁶

“Informal work involves the paid production and sale of goods and services which are unregistered, or hidden from the State for tax, benefit and labour law purposes, but which are legal in all other respects”.

Illegal or criminal activities such as drug smuggling and prostitution are excluded from this definition. Besides, this definition was the intent of the Parliament when it enacted the Informal Sector Act.²⁷ Definition of informal business excludes all informal activities which may be illegal or constitute an offence under our existing laws. Some of the characteristics of informal economy as put by the International Labour Organization (ILO) include:²⁸

- The informal sector enterprises usually employ fewer than 10 employees;
- Informal sector is heterogeneous but the major activities include retail trade, transport, repair and maintenance, personal and domestic services, and manufacturing;

²⁶ http://www.wikipreneurship.eu/index.php5?title=Informal_economy

²⁷ Informal Sector Development and Control Act, 2004, Section 2.

²⁸ International Labor Organization, Regional Office for Asia and Pacific, Informal Sector, <http://www.ilo.org/public/english/region/asro/bangkok/feature/inf_sect.htm> at 12 June 2004; see also Ralf Hussmanns and Frahad Mehran, Statistical definition of the Informal sector – international standards and national practices where the writers observe a number of varying definitions by countries at national levels compared with the international definition provided by the International Labor Office, <http://www.unescap.org/stat/isie/reference-materials/Definitions/Informal-Sector/Statistical-definition-Informal-Sector-ILO.pdf> as at 14th April 2013.

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- Entry and exit are easier than in formal sector;
- Capital investment is generally minimal;
- Work is mostly labour-intensive, requiring low-level skills;
- Workers learn skills on the job;
- The employer-employee relationship is usually unwritten and informal;
- The informal sector works in conjunction with rather than in isolation from formal economy.

It is easier to differentiate between formal and informal economy in urban areas, than to include rural areas too due to the subsistence nature of activities. Some common features distinguishing formal and informal economy include the following:

Formal Economy	Informal Economy
people work for regularly paid wages/salary in the public or private sector	people 'get by' earning or producing for their consumption, without having jobs
people pay income taxes and firms pay VAT,	People pay no income tax for their earnings
production is counted in the Gross National Production (GDP),	production is not counted in GDP
workers are counted in the workforce	workers are not counted in the workforce
workers time is structured	Workers time is unstructured
workers have legal rights and protections	workers are without legal rights and protection

Essentially, there are two ways of conducting business in the economy: formally and informally. The activities that occur outside of the State's legal framework are considered informal.²⁹ Informal activities may be legal in nature but are conducted outside without following the formalities established by the official legal framework and therefore considered informal.

3.3 Types of Informal Economy Activities

Informal economic activities vary in many ways: the type of work, the amount of time devoted the amount of income earned and the length of time engaged. These activities also vary among countries (developed, developing or transitional). In a developing country like Thailand, for example, street food vending is more popular;³⁰ whereas in a developed country like the Australia, it would either be construction and building trades or home health aide and elder care.³¹ It is estimated that home-based workers and street vendors are the two largest sub-groups of informal workforce.³²

Street vending is a global occurrence. Millions of people throughout the world earn their living wholly or in part by selling a wide range of goods and services on the streets, sidewalks and other public spaces. Street vendors are often viewed as a nuisance or obstruction to free flow of traffic and other legitimate commercial activities. Since street vendors typically lack legal status and recognition, they are exposed to harassments and evictions by local authorities.

In PNG, informal economic activities also vary from province to province and from rural to urban, though there may be some common features. Food vending may be considered the most common and or popular (though there is no data to verify this). In an urban setting n PNG, informal economic activities would include food vending (cooked or uncooked), betel nut and

²⁹ Omar E. Garcia-Bolivar, "Informal Economy: is it a problem, a solution or both? The Perspectives of the informal business", (2006) 1, *Law and Economics Paper*, Northwestern University School of Law, , (2006) 1.

³⁰ See Narumnol Nirathron (ILO), "Fighting Poverty from the Street: A Survey of Street Food Vending in Bangkok", *Thailand Series* (1) 2006.

³¹ Jan L.Losby, Marcia E. Kingslow, John F. Else, "The Informal Economy, Experiences of the African Americans", Institute for Social and Economic Development (ISED) Solutions, (2003).

³² International Labour Office, *Women and Men in the Informal Economy: A Statistical Picture*" (2002).

cigarette sales, sale of traditional artifacts, second hands, shoe polishing and car wash, just to name a few obvious ones. In a rural setting, informal economic activities would include food vending and sale of traditional artifacts and cash crops, among others. The issue of street vending above is also seen as one of the biggest challenges in PNG. Unless it is properly regulated, it will continue to put pressure on administering authorities.

3.4 History: Informal Economy

Keith Hart, a social anthropologist was the first to introduce the term “informal sector” in the third world context; hence according to Hart’s analysis, “informal sector” was a part of the urban labour market, but it existed outside of the formal labour market.³³ In other words, according to this author, the urban labour market comprised of two sectors – informal sector and formal sector. Hart considered the ‘informal sector’ as equivalent to ‘self-employed’. This view was expanded as more literature was developed around informal sector.

A pioneering research on informal sector is considered to be the report of the International Labour Office on Employment in Kenya (ILO, 1972). This report characterised informality as ‘avoidance of government regulations and taxes’. According to the International Labor Organization (ILO), migration from the countryside into the cities resulted in two major impacts – unemployment, and increase in informal sector activities.³⁴ ILO also found that when urban sector does not provide enough job opportunities, then this results in rural migrants and urban dwellers both finding employment in small-scale and micro-level production and distribution of goods and services; hence these largely unrecognized, unrecorded and unregulated small-scale business activities make up the informal sector.³⁵

Other research work that followed distinguished informal from formal economy strictly in the absence / presence of their legal status dictated by the legal framework established within their countries.

³³ Klarita Gerxhani, “Informal Sector in Developed and Less Developed Countries: A Literature Survey” < <http://www.ifwea.org/@Bin/217843/Gerxhani.pdf>> at 13 March, 2013.

³⁴ Ibid, ILO: Informal Sector.

³⁵ Ibid, ILO: Informal Sector.

Recent studies though, have indicated that informality is an extension or conversion of customary practises created by tradition hence is the only order known to them; formal order is seen as a foreign concept that is imposed on them.³⁶ It could be fair to say that Papua New Guinea perhaps falls within this classification, although not in its strict terms. Our barter system where goods were exchanged for goods may have now transformed into goods for cash hence modernisation of customary practise.

3.5 Advantages and Disadvantages of Informal Economy

Despite various studies and researches conducted on informal economy, there is general consensus that informal economy constitutes a significant part of any one country's economy as a whole. However, there have been varying opinions on the advantages and disadvantages on informal economy;³⁷ these varying opinions fall into three main categories. They fall into either (1) political, (2) economic or (3) social advantages or disadvantages.³⁸

3.5.1 Political

Advantage:

- the existence of the informal sector can be used as a safety valve for public dissatisfaction and social tensions;
- informal sector activities are often tolerated or even encouraged as a way to promote political support.

Disadvantage:

- due to the fact that informal economy activities are often not included in measuring the GNP, the available statistics will

³⁶ Ibid, Omar E. Garcia-Bolivar, 5.

³⁷ See for example Bouwe R. Dijkstra, "Good and Bad Equilibria with the Informal Sector", Discussion Paper No. 6/01 (2006); Omar E. Garcia-Bolivar, "Informal Economy: Is it a Problem, a Solution or Both? The Perspectives of the Informal Business", Law and Economics Papers, 1 (2006).

³⁸ Read more on the opinions on the advantages and disadvantages of informal economy in Klarita Gerxhani referred to above, n 30 at 12 – 15.

provide a misleading view of the state of the economy to the policy makers;

- their operation may increase corruption.

3.5.2 Economic

Advantage:

- informal sector activities may help in maintaining the competitiveness and flexibility of production;
- informal sector activities may bring growth if supported and encouraged;
- informal sector puts downward pressure on wages in the formal labour market;
- it offers alternative goods and services;
- it offers lower prices for goods and services;
- it generates substantial personal income;
- it involves minimal labour costs;
- may result in higher productivity of capital, as a result of low labour cost and no bureaucratic costs;

Disadvantage:

- some authors argue that no development strategy and growth is expected from the informal sector;
- informal sector can cause distortions in some main national economic indicators such as unemployment rate, inflation rate and economic growth rate;
- tax evasion causes financial losses in the State revenues;³⁹
- can lead to increased tax rates as a result of loss in taxes;

³⁹ Since a lot of concerns have been raised by economists on this subject, it will be briefly discussed separately under 3.4.4 below.

-
- unfair competition to formal sector businesses.⁴⁰

3.5.3 Social

Advantages:

- informal sector activities provide families with employment, enables them to meet their basic needs and increase their well-being;
- it offers freedom and opportunities for initiative and creativity;
- it is a better alternative than being dependant on State benefits, or starving.

Disadvantages:

- informal economy participants are worse off than those of the formal sector regarding their working conditions (environment); and
- informal economy participants are excluded from social benefits and security.⁴¹

3.5.4 Tax Evasion

One common reason used by commentators to oppose informal economy is in the area of “tax”. They argue that the informal sector does not pay taxes for the public goods it uses which means that the formal sector is heavily taxed on than it would otherwise.⁴² On the other hand, the government misses out on revenue it would have collected from tax. Those who oppose informal economy argue that the use of some public goods, such as road, by informal economy reduces the quality of that public good for the formal sector. If the informal economy grows in favor of formal economy, this will result in

⁴⁰ An example would be a person selling a school bag in front of Ori Lavi Shops, Tabari Place, when a shop inside Ori Lavi is selling the same product inside.

⁴¹ The list is extracted from the article by Klarita Gerxhani, pp 12-15; Ibid, n 34.

⁴² See for example, Bouwe R.Dijkstra, “Good and Bad Equilibria with the Informal Sector” (Discussion Papers in Economics No.06/01, University of Nottingham, 2006) 2.

increase in taxing the few in formal economy by the government to raise enough revenue for purposes of providing adequate public goods and services. And yet, the Informal Economy benefits from the public goods and services paid for by the formal sector through tax.

The more the government cares about the informal sector's benefits from the public good, the higher the tax rate it will impose on the formal economy to raise adequate revenue to build and or maintain the public good and services. The imposition of higher tax rates on the formal sector makes it less attractive for formal sector growth and can be a major concern for the government as more formal sector business goes into informality to avoid high taxation.⁴³

When the informal sector is large, the government serves them with a low tax rate, which makes the informal sector relatively attractive. On the other hand, when the formal sector is large, the government serves them with a low tax rate, which makes the formal sector attractive. To overcome this so that a balance is struck or there is equilibrium, the government must ensure one sector does not grow too strong for the other. Hence it is essential that government must take into account informal economy when developing fiscal economic policies of the country.

3.6 Informal Economy Practice Around the Globe and Pacific Region

The average percentage of informal economy varies between the developed countries (18%), developing countries (41%) and transition countries (38%).⁴⁴ Informal economy that exists in the developed world, for example, the USA, cannot be compared with the informal economy that exists in a developing country like PNG as there will be considerable differences. The nature of the informal activities, the reasons why people participate in informal economy and the perceived advantages and disadvantages of informal economy will also vary. However, for comparative purposes, we shall discuss informal economies as they exist in one or two of the other countries. Informal economy exists across the globe, irrespective of the status of a country.

⁴³ Ibid, Dijkstra, R. Bouwe.

⁴⁴ Ibid, Omar E. Garcia-Bolvar, 7.

It is estimated that the size of informal economy (as percentage of GDP) in the USA is at 8.8 percent.⁴⁵ The US is an industrialized country and most of its economic activities have advanced to attain a formal status hence, leaving, very low percentage of informal economy. Due to the potential impact that informal economy has on the formal economy, even industrialized countries like the US are keen on conducting further research to test the potential of microenterprise development programs to serve the informal economy participants.⁴⁶

According to a survey conducted on the global economy between 1999 and 2007, Thailand (a developing country) ranked 7th among the countries with the highest ratio of revenue generated by the informal sector to the overall economy, with the informal sector responsible for producing 57.2 percent of the GDP; whilst Philippines (transitional country) ranked 25th with 48.4 percent of GDP.⁴⁷ The same survey indicated that the United States had the lowest ratio of informal economy and as a result has been able to collect up to 1.2 trillion dollars in tax revenue annually. The survey further indicated that informal economy appears to be growing across the globe generally. Experts have suggested that the reason for the growth of informal economy may be attributed by businesses attempting to avoid the increasing stricter tax and regulations imposed by their authorities;⁴⁸ however as stated earlier, the reason could vary.

In the Pacific, Fiji Islands informal sector is assessed against urban squatting and poverty in its urban towns. The growth of urban squatter settlements is a common problem in developing countries and Fiji is no exception. A study on rural-urban migration in Fiji showed that a lot of people ended up squatting, resulting in competition for limited public utilities and services, further resulting in the squatters resorting to informal business activities to sustain their livelihoods. The informal sector therefore plays not only a supplementary role in providing employment and generating income for the

⁴⁵ See for example, *ibid*, n7, Conroy.

⁴⁶ Jan L. Losby, Marcia E. Kingslow and John F. Else, "The Informal Economy: Experiences of the African Americans", (2003), Institute for Social and Economic Development (ISED) Solutions.

⁴⁷ Information obtained from: http://leavefreedom.blogspot.com/2010/thailand-ranked_7th_in_countries_with.html

⁴⁸ *Ibid*. (Thailand web)

squatters, thus absorbing unemployment; but it also complements the role of providing goods and services.⁴⁹ Vanuatu has a very low percentage of formal employment or economy.⁵⁰ Most people are therefore left to either lead a subsistence life in their villages, or work in the informal economy in towns; however informal economy in towns is further restricted due to over congestion and limited opportunities for informal economy activities. Nonetheless, it can be seen that informal economy accounts for bulk of its population, and studies have identified informal economy as potential employer of surplus labor.⁵¹ Both Fiji and Vanuatu do not have a comprehensive policy or an enabling legislation on informal economy as there is need for a total understanding of how the sector operates.

Existing literature shows that there is no unique recipe to integrate the formal and the informal sectors. Each case is different, and so how to deal with this issue depends on the circumstances of each country, its economy, its industries and the different sectors of the informal economy. Each country will require assessing its own circumstances before any recommendations for reform can be initiated.

3.7 Economic Overview of PNG

PNG has a dual economy comprising a formal corporate based sector and a large informal sector where subsistence farming (agriculture) accounts for the bulk of economic activity. The formal sector provides a narrow employment base, consisting of workers engaged in mineral production, a relatively small manufacturing sector, public sector employees and service industry including finance, construction, transportation and utilities. The majority of the population is engaged in the informal sector. Migration to major cities in the past decades has contributed to urban unemployment and social problems.

Real GDP was projected to grow at 7.5 per cent in 2012. Growth is supported by a recovery of mining output and construction activity connected with the PNG LNG project. Risks to the economy include the possibility of ‘resource

⁴⁹ Manoranjan Mohanty, “Urban Squatters, the Informal Sector and Livelihood Strategies for the Poor in Fiji Islands”, (2006) 70, *Development Bulletin*, 65, 67 .

⁵⁰ International Labor Organisation (ILO) ‘Decent Work Country Program, Vanuatu: accessed at <http://www.ilo.org/public/english/anniversary/>.

⁵¹ Ibid,

curse' impacts from LNG and mineral sector growth and the disruption to the economy should major resource projects not proceed as expected. PNG government revenues remain vulnerable to unpredictability in global prices for gold copper and oil.

But in terms of measuring GDP, there is lack of statistics to show how much the informal sector has actually contributed in real terms to the overall economic performance of PNG.⁵² In terms of its economic performance over the recent decade, PNG has proved fairly resilient. GDP growth was estimated at 5.5 per cent in 2009, 6.2 per cent in 2010 and 7.7 per cent in 2011. Services grew by 7 per cent (communication and constructors sectors), industry grew by 4.6 per cent and agriculture by 2.3 per cent. Employment in the non-mining formal sector also rose. However, this formal sector accounts for only one-fifth of the labor force. The bulk of the workforce is still in the informal sector, creating the huge problem with tax base.⁵³

The creation of job opportunities is a major, crucial and pressing issue in all developing countries. To create job opportunities, PNG should encourage and promote a diverse mix of markets and trading opportunities and economic assets such as trading sites and other facilities. This will create steps for the informal economy to start going the formal route, therefore availing of facilities is very important.

In order to do the above, the planning (sites), management (registrations and rentals), and support (training, advice, referrals, etc) is crucial. New markets and trading opportunities must be properly planned, bearing in mind the economic needs of traders, the need for more vibrant land use, and the need for orderly town, spatial and transport planning, as well as health and safety. Allocation of street trading sites or designated market areas is also crucial to promote a healthy informal economy. There should be clear allocations criteria that are transparent and less strenuous. The allocations criteria have to consider demographic imbalances, the socio-economic profile of the area, and a balance of existing traders and new entrants, together with local industry and market opportunities. Generally, restrictions should be placed on mobile

⁵² Most of this information was extracted from:
http://www.dfat.gov.au/geo/png/png_brief.html.

⁵³ Bertelsmann Stiftung, BTO 2012 – Papua New Guinea Country Report. Gutersloh: Bertelsmann Stiftung, 2012.

traders to ensure proper management and control. An adjudication and appeals process should be in place to attend to misunderstandings related to informal trading.

Importantly, it should be a condition that all people doing informal business in public places must register as small businesses. The granting of permit should also mean an acceptance of responsibility by the applicant to be responsible for things such as rentals and cleaning of sites. The registration process though, must be simple enough. Conducting responsible business should be promoted and one way of enforcing that is by way of charging some sort of fees.

3.8 Conclusion

Informal sector or economy has had a long history as is evidenced from this Chapter. Informal economy activities existed in PNG long before, except that it was only recognized in early 2000s with the enactment of the Informal Sector Act to give it the legal recognition. Compared to the countries discussed for comparative analysis above, Papua New Guinea's informal economy is quiet complex. Our informal economy comprises the rural (agricultural) informal sector and the urban informal sector. Rural informal sector participants may consider infrastructures development as key strategy for promoting informal economy; whereas the urban informal sector participants may view financial inclusion and public utilities such as sewerage, storage and garbage facilities. This latter group may also see law and order as a vital service for them. In this context, if the Informal Sector Act is to adequately reflect the views and concerns of both the rural and urban informal sector participants, proper research is required to see the extent of informal sector activities in these two settings and what is considered priority, otherwise, the law may be considered bias and practical for only one sector.

Chapter 4: Current Law and Practice on the Development and Control of Informal Economy

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4.1 Introduction

The primary legislation that deals with informal sector is the *Informal Sector Development and Control Act 2004* (herein referred to as the Informal Sector Act).

As stated earlier in this paper (Background) the Informal Sector Act was enacted by Parliament in the absence of an overarching national policy to guide the implementation of the Act. Enacting laws without any guiding policy framework or incomplete policy analysis can be disastrous in terms of effective implementation of the legislation.⁵⁴ Any prudent law making process involves some sort of policy first, then drafting of laws - because a law is a translation of government intention (policy) into a legally effective scheme.⁵⁵

⁵⁴ USAID, Legislative Drafting Manual, “*A Practitioners Guide to Drafting Laws*”.

⁵⁵ More information on the drafting process can be obtained from <
<http://www.premiers.qld.gov.au/publications/categories/policies-and->

However, it is not the intention of this paper to dwell into this issue because this anomaly has been corrected with the recent endorsement of the national informal economy policy. We are now faced with the task of reviewing the Informal Sector Act to ensure that the government intent expressed in that policy document is appropriately covered under the Act.

This review exercise, nonetheless, also provides the leeway to discuss and assess some practical issues associated with implementation of the Informal Sector Act; so that whilst we look at re-aligning the Act with the Policy for consistency, we also try to identify practical solutions to existing issues and propose necessary amendments so that the Act better serves the purpose it was enacted for, i.e. to promote informal business activities as well as improve the health and safety standards of these businesses.

4.2 Scheme of the Informal Sector Development and Control Act 2004

The enactment of the Informal Sector Development and Control Act was an attempt by the government to regulate the informal business by:

- (a) providing the facilities and encouraging the development of informal businesses both in urban and rural areas; and
- (b) providing the regulatory and control mechanisms for the protection of public health and safety for the informal businesses.

The intention of the legislation therefore is very clear and that is firstly - to promote informal businesses and secondly - to improve the health and safety standards in this sector of the economy.

However, it has been found that the health and safety standards have been totally neglected rendering the Informal Sector Act a total failure. Little or no attention has been given to the health and safety issues associated with promoting informal economy.

Besides, the Act has been widely criticized as urban focused and having little or nothing to do with rural based informal businesses.⁵⁶ This has brought its application into question, hence the review must result in a law that is seen and accepted as a national legislation with nationwide application.

4.2.1. Definition of Informal Business

“**Informal business**” is defined as a business carried on by citizens of Papua New Guinea comprising no more than five (5) persons and is characterized by the following:⁵⁷

- (a) it is a very small-scale unit
 - (i) producing goods, or
 - (ii) distributing goods, or
 - (iii) producing and distributing goods or
 - (iv) providing services (non-professional services), or
- (b) operates with no or very little capital; or
- (c) utilizes low levels of skills or technology; or
- (d) is not illegal; or
- (e) it operates at a low level of productivity.

Business activities that are specifically excluded from the above list include businesses that:

- (a) provide professional services, for example, a private lawyer operating from his private residence; or
- (b) businesses that act as an agent of another business which is not an informal business, for example, young boys at Boroko selling items in and around the Ori Lavi Building; or

⁵⁶ This was a concern raised separately by the administering authorities of the Informal Sector Act in Lae and Alotau that the law was urban focused and that it should have been used as a pilot project perhaps only for NCDC before applying it nationally.

⁵⁷ *Informal Sector Development and Control Act* s 2.

- (c) a business that is liable to pay tax.

The Act in its current form does not define “informal sector” to draw in where “informal business” fits in. There is the need to define the term “informal sector”; however, now that the Informal Economy Policy has replaced the term “informal sector” with “informal economy”, it is “informal economy” that needs to be properly defined. In addition, relevant agencies who administer laws relating to businesses, for example, the Department of Labor and Industry, will need to be consulted when deciding on definitional issues.

4.2.2. Administration of the Informal Sector Act

The responsibility to administer the Informal Sector Act is placed primarily with the National Capital District Commission (NCDC) as the “Administering Authority”. Under Section 2 of the Informal Sector Act, “Administering Authority” is defined as:

- (a) “in the National Capital District – the National Capital District Commission; and
- (b) in an area outside the National Capital District where there is a Local Level Government, that Local Level Government; and
- (c) in an area outside the National Capital District where there is no Local-Level Government, then the Provincial Government of the province in which the area is situated”.

Careful reading of the above interpretation implies that it is NCDC that is primarily responsible for administering this law; but in consultation with other relevant bodies on certain implementation issues such as declaring certain designated areas for informal business to be conducted [Section 3 (1) (a)]. This definition together with the powers and functions vested in the administering authority, which will be discussed immediately below, has convinced many to believe that the Informal Sector Act was enacted with an urban focus, and perhaps more specifically, NCD focused.

Issue No. 1

Amend Section 2 (interpretation) of the Informal Sector Act and re-define administering authority to reflect that all local level governments are administering authorities for purposes of this Act. And that where there is no Local Level Government present in that area, then the Provincial Government plays that role. And that in the case of NCD, it is the NCDC

The Administering Authority has a wide range of powers and functions under the Informal Sector Act. The table below provides a list of those powers and functions.

	Power/Function	Section	Issue
1	Declare designated areas for informal business	3 (a)	May consult, but then their respective laws do not apply? Building Act Chapter 301, Physical Planning Act 1989 and Public Health Act Chapter 262 are excluded from applying to the informal business – Section 18. There is no penalty for operators who sell outside the designated areas.
2	Must ensure compliance with this Act	3(b)	Funding seems to be a major constraint.

3	Must monitor the designated areas for informal business regularly	3 (c)	In NCD, e.g. there are designated areas, but still operators, e.g. betel nut sellers do not comply. Yet the legislation does not create an offence for these buai sellers who sell at locations other than the designated areas.
4	Must carry out awareness and conduct basic trainings to food handling, sanitation, etc...at no cost to the operators	3(d)	Inspector has the duty to refer an operator to attend training done by AA if operator is found to be lacking compliance...s 5(4). Costs incurred on NCDC are huge
5	Review decisions of inspectors	3(e); 5(1) ©(ii)	On request by operator
6	May make laws not inconsistent with the IS Act for its proper implementation	3(3)	For example, the Alotau town authority provides for Peddler's license under its by-law.
7	The power to determine whether or not a business falls within the meaning of informal business	3(4)	

8	May appoint inspectors	4(2)	Concerns raised regarding confrontation issues between inspectors and informal economy participants leading to costs incurred on AA.
9	Must issue a certificate to the inspector who must display it at all times when inspecting	4(1)	Concerns raised that such an inspector undergoes short term training and questions his/her qualification
10	Power to authorize mobile traders to operate in one location for more than 2 hours	9(2)(h)	Could be ideal if this is regulated through by-laws
11	Power to decide whether or not a mobile trading offender can operate again	9(6)	Can be very difficult to monitor. Offenders get away easily.
12	Power to issue authority for operators to manufacture goods or provide services out from their homes	16	This power is absolute and AA need not consult physical planners, building boards, health authorities etc... Even if the AA decides to consult, Section 18 makes the consultations irrelevant because their respective legislation cannot be applied.

Under Section 3 of the Informal Sector Act, the administering authorities are required to consult with ward committees, police, health agents and physical planning and building agents for purposes of declaring a designated area for informal businesses to take place. But unfortunately, the consultation will not serve any purposes because their respective laws are specifically excluded from application by Section 18 of the same Act, rendering the consultation process meaningless.

Issue No. 2

Whether or not Section 18 of the Act which excluded the application of a number of related legislation should be amended so the Informal Sector Act is consistent with all other related laws including the ones referred to under Section 18

Once areas are designated as informal market areas, the administering authorities are required to regularly monitor the area to ensure it is being used for the intended purpose. In our initial discussions with NCDC, we learnt that even if designated markets were declared, sellers, especially of betel nut and cigarettes, were deliberately avoiding such designated areas and moving to places where there are customers, which happen to be public places. Though this is a direct contradiction to the efforts of administering authorities, the Act does not provide any penalties for those who choose to sell their products in a place other than the designated area. This raises the issue of whether or not these vendors should be penalized and how?

Issue No. 3

Whether or not the Informal Sector Act should be amended to include a penalty provision for those people who chose to sell in places including public places like the bus stops, other than in designated

Section 4 (2) of the Act empowers the administering authorities to appoint inspectors for purposes of conducting inspections for informal business operators to ensure that there is compliance with the requirements of the Act in terms of health and safety standards. If the inspector finds that the informal business is operating contrary to the requirements of the Act, he or she can request that the operation cease.

In our initial consultations with NCDC, concern was raised that these types of inspectors usually undergo very short-term training, at least three (3) months before qualifying as inspectors for purposes of the Informal Sector Act, which is affecting quality performance. When compared with the existing health inspectors appointed under the Public Health Act, who undergo years of training, the inspectors appointed under the Informal Sector Act obviously lack that qualification. Sometimes these inspectors end up in confrontations with informal business operators. For this reason, there was suggestion that the exclusion clause under Section 18 be seriously reviewed and amended so that the administering authorities can have that flexibility to consult with the health authorities to engage their health inspectors, who are qualified.⁵⁸

Apart from the powers and functions performed by the administering authorities directly, they also play an indirect role through the inspectors that they supposedly appoint under section 4 (2) of the Informal Sector Act. Thus, the table below summarizes the indirect roles of the administering authorities through the inspectors.

No.	Roles	Section	Comments/Views
1	Responsibility to display his/her certificate of appointment at all times when inspecting	4 (3)	
2	Power to enter any premises and conduct inspection for informal business operations	5 (a) (b)	This has led to confrontations with informal business

⁵⁸ This leads us back to Issue No. 2 raised above for the need to amend Section 18 of the Act and lift the exclusion clause.

			operators. It was suggested that police should also accompany the inspectors.
3	Power to order an informal business to cease operation if found to be operating contrary to the Informal Sector Act	5(1)(c)(i)	The Inspector has the duty to inform the operator of his decision; but if there are health and safety risks at hand, inspector can by-pass this requirement.
4	Power to inspect operators involved in providing cooked food for purposes of establishing health and safety standards	6 (1) – (3)	Most often ineffective.
5	Power to apply to District Courts for forfeiture of articles found to be unsafe	6(4)	
6	Power to sue an operator who obstructs an inspector	7	Experience of NCDC-lengthy court process and costs involved discourages such measures to be taken.

The minimum standards and conditions established under Part IV of the Informal Sector Act concerns the minimum standards for:

- sale of food [section 10]; and
- sale of cooked food, ice blocks and drinks [section 11]; and
- frozen fish and meat [section 12]; and
- sale of live animals [section 13]; and

- sale of betelnut [section 14]; and
- sale of second-hand clothing and second-hand goods [section 15]; and
- the manufacture of goods and provision of services [section 16].

Except for Section 16 that clearly mentions and requires the administering authority to issue permits to operators to operate out from their residential homes; the minimum standards referred to in sections 10 to 15 of the Act may be imposed directly by the administering authorities, or indirectly through the inspectors, as these provisions fail to specify who is actually responsible for ensuring that these minimum standards are observed and complied with by the informal business operators.

The table below shows a list of offences and their penalties found under the Informal Sector Act. The purpose of doing so is to show that fines are uniform irrespective of the nature of offences.

Section	Offence	Penalty	Comments
7	Obstructing an inspector	K50 fine	NCDC raised concern regarding an increase in confrontation between informal business participants and inspectors sometimes incurring liabilities on NCDC.
9(5)	Breach of mobile trading condition	K200	Enforcement has been difficult.
9(7)	Breach of peddler's condition	K50	Considered too low.

10 (2)	Breaching minimum standards for sale of food.	K50	Considered too low.
11(2)	Breaching minimum standards for sale of cooked food	K50	Considered too low.
12(2)	Breaching minimum standard for sale of frozen meat	K50	Considered too low.
13(2)	Breaching minimum standard for sale of live animals	K50	Considered too low; never been enforced.
14 (2)	Breaching minimum standard for sale of betel nut	K50	Considered too low; appears to be the most abuses
15(2)	Breaching minimum standard for second hand clothing	K50	Considered too low.

Penalty fines should not necessarily be uniform across. Fines should be determined to reflect the severity of the offence, and the severity should be determined taking into account the an informal business activity's impact on the environment, hygiene, health, safety and the nature of the items sold whether it is addictive and other relevant factors.

4.3 Aligning the Informal Sector Development and Control Act with the Informal Economy Policy 2011-2015.

The enactment of the Informal Sector Act was an attempt by the government to regulate the informal business generally; however it has been widely criticized for its urban focus. Basically the Act was passed with the primary intention to promote the development of informal economy, and little attention was given to the health and safety issues associated with promoting informal economy. As stated briefly in the Chapter on Background above, there is now the need to synchronize the Act with the National Informal Economy Policy.

The current policy sets out a broader policy framework by addressing the issues of encouraging informal businesses both in urban and rural areas; as well as addressing the health and safety issues associated with such activities.

The policy discusses two strategies on how to improve the informal economy. They are through (1) “financial inclusion” – that should be taken as a central economic policy goal with microfinance as the primary instrument for that goal; (2) through the improvement and provision of adequate public goods and services by government. This will require a whole new provision being inserted into the current Informal Sector Act apart from amending existing provisions to improve on enforcement.

4.4 Consequential Amendments

The primary piece of legislation under review is the current Informal Sector Act. The Term of Reference specifically calls on the review of this law and proposes relevant amendments in light of the National Policy on Informal Economy. The Policy however, touches on other related issues such as the need to improve the financial services system in Papua New Guinea so as to enable those in the informal economy to access the various financial services such as “savings, transfer of monies, and loans. This may have consequential effects on other legislation such as the *Banks and Financial Institutions Act* 2000. Since the Policy is comprehensive, other legislation may also require review and perhaps consequential amendments, too. These may include the *Public Health Act* 1973 and the *Food Sanitation Act* 1991, and any other related laws that may have some implications.

4.4.1 Banks and Financial Institutional Act 2000

The *Banks and Financial Institutional Act 2000* is an Act that makes provision for the licensing and regulation of banks and financial institutions. “Financial Institution” is a body corporate that has applied to the Central Bank for a license to operate as a licensed financial institution to carry on the business of banking or banking business. “Banking business” means the business of taking money on deposit and using that money to (1) lend to others; or (2) to finance other activities of the business out of the capital or interest on money received by way of deposits.⁵⁹

The purpose of this Act is:

- (a) to make provision for promoting the general stability of the financial system⁶⁰ in PNG;
- (b) to make provision for regulating Authorized Institutions; and
- (c) to protect the interest of depositors of Authorized Institutions; and
- (d) to regulate the use of certain names and descriptions; and
- (e) to confer upon the Central Bank certain functions and powers with respect to regulating Authorized Institutions.⁶¹

In terms of (e) above, the core function of the Central Bank under this Act is to promote the general stability and effective working of the financial system of

⁵⁹ See Sections 10 and 3 of the *Banks and Financial Institutions Act 2000* for the definitions of ‘financial institution’ and ‘banking business’ respectively.

⁶⁰ There are multiple components that make up that make up the financial system of different levels, i.e. within a firm, a region or country and globally. In light of this Act, the financial system of PNG would include banks, financial institutions, financial markets and financial services that enables lenders and borrowers to exchange funds either directly or indirectly.

⁶¹ *Banks and Financial Institutions Act 2000*, Section 2

Papua New Guinea.⁶² Authorized Institution refers to a bank or a licensed financial institution;⁶³

The Central Bank has a number of initiatives aimed at getting financial services to the ordinary people. One notable is in the area of promoting microfinance services.⁶⁴ The Central Bank's oversight in the establishment of the Nationwide Microbank Ltd (formerly the Wau Bank) and the recent opening of the People's Micro Bank⁶⁵ are an enhancement of the financial inclusion strategy of the Central Bank. In welcoming the new micro finance institution, the Deputy Governor of the Central Bank, Mr. Benny Popitai was quoted as saying: "*We hope to see more of these financial institutions spring up and provide advantage for the small people...the micro bank are to serve the economically-disadvantage population of our country...*"⁶⁶. The Central Bank has also taken an interest in and is working with others (World Bank and INA) to develop a strategy for financial literacy programs that can be regulated through policy measures.⁶⁷

Further and close consultations is required to see how best these initiatives can be enhanced, either through administrative, policy or legislative changes.

4.4.2 Public Health Act 1973 and the Food Sanitation Act 1991

The Public Health Act provides for the regulation of public health and mental disorders; whereas the Food Sanitation Act was enacted for the purposes of securing wholesome, sound and safe food for human consumption and is a legislation that is made for purpose of giving effect to the public interest in public health. These two pieces of legislation provide for health inspectors and food inspectors respectively who are required to conduct inspections to ensure

⁶² *Banks and Financial Institutions Act 2000*, Section 5. Apart from the functions of the Central Bank as prescribed under this Act, i.e. to regulate the banking system of PNG, the Central Bank also implements the country's monetary policies, manages its gold and foreign currency reserves, acts as the government's banker and as lender of last resort to the banks in PNG.

⁶³ *Banks and Financial Institutions Act 2000*, Section 3.

⁶⁴ Speech by Mr Benny Popitai, Acting Governor of the Bank of PNG, at the launch of the National Informal Economy Policy, Port Moresby, 24th February, 2011, accessed at: <http://www.bis.org/review/r110323d.pdf>.

⁶⁵ *The National Newspaper*, Thursday, 18th April, 2013, 23.

⁶⁶ *Ibid*.

⁶⁷ *Ibid*, Speech by Benny Popitai.

health and safety requirements prescribed under their respective laws are adhered to. These two legislation thus, have a direct social implications on the public health, hygiene and safety aspects of the informal activities. However, the Informal Sector Act has specifically excluded their application to informal business. With the Informal Economy Policy emphasizing on the need to address public health issues, the exclusion clause under the Informal Sector Act will have to be amended to allow application of these two legislation so that the public health aspect can be appropriately dealt with under these existing legal frameworks.

4.5. Whether or not the *Act* was Effectively Implemented in the Rural Areas?

As discussed elsewhere in this paper, the purpose of the *Act* is to:

- (a) to provide the facilities and encourage the development of informal businesses in urban and rural areas; and
- (b) to regulate and control the development of informal businesses for the protection of public health and safety.

The *Act* provides for respective administering authorities under Section 2 to provide facilities and encourage the development of informal business in both urban and rural areas. When looking closely at Informal sector in the rural areas as opposed to that of urban areas, activities generating income in the rural areas and the challenges associated with are not similar to that of the urban areas. In rural villages, people farm the land to survive and to raise income. This income generated from subsistence farming then sustains their living. The type of subsistence farming varies, but generally, agriculture is seen as the main mode which stimulates the economy of one given rural area or village for that matter.

In rural areas where the population is small with no shops or town the people sell their produce at a designated place called a community market place, usually by the road. Only one day or two days in a week are chosen as marketing days. Rural people sell their garden foods at such market places. Commodity such as coffee, cocoa and copra are also sold at a very small scale. For example, in the highlands region, where coffee is planted and owned by individuals at a small scale, they sell bags at the side of the road for buyers to buy. The money is then used in sustaining their lives.

When applying the meaning of informal business under Section 2 of the *Act*⁶⁸ to rural informal business, rural markets best suit that meaning. However, to what extent has the administering authorities implemented the *Act* in rural areas to support, sustain and improve our rural economy? At this juncture that question cannot be adequately answered on the positive.

Obviously, the word “rural areas” used in the preamble to the act has no real meaning in its application. There are no facilities provided in rural areas to encourage and improve the already established community markets. In its application the NCDC has allocated land and provided stalls for informal markets, like the Lareva market at Hohola. On the other hand, our rural villages have no such markets built with proper sanitation facilities and stalls except for communal but occasional market places especially on the sides of main roads.

Also lack of tangible services in our rural areas seems to be factors associated with the lack of implementation of the *Act*. The *Informal Sector Development and Control Act 2004* came into effect at a time when the rural areas lack proper government services. In the absence of proper market facilities, good roads, bridges, aid posts, water supply and/or power supply in our rural areas, **rural urban drift** is on the rise. Prior to the *Act* Port Moresby’s population was not that crowded. However, today every part of the city is over populated the same for Lae and Mt. Hagen. Rural people are attracted to Port Moresby to buy and resell betel nut, saw and sell clothes like dress and meri blouse, buy and resell fresh fruits, buy and resell garden foods. The money they earn then sustains them and caters for their kid’s school fees, and medical bills.

Rural villages are abandoned in the hope to do marketing in the city as called for by the *Act*. However, this has given rise to overcrowding in the city, whilst

⁶⁸ Section 2 “informal business” means, subject to Section 3(3), a business carried on by citizens comprising no more than five persons, and which is characterized by the following: –(a) it is a very small-scale unit –producing goods, it operates with no or very little capital; or (c) it utilizes low levels of skills or technology; or(d) it does not engage in activities which constitute an offence.

(e) it operates a low level of productivity, and includes a mobile trader, but does not include a business which –

(i) provides professional services; or(ii) acts as an agent of a business which is not an informal business; or

(iii) is liable to pay tax under the law;... (*emphasis mine*)

at the same time market facilities are not managed properly by the administering authorities. Further small makeshifts or filthy stalls pop up in front of offices and shopping centres, beetle nut stain covering street walls, building walls and pavements.

Most importantly **this legislation has been seen as one of the pull factors of rural urban drift**, causing rural people to abandon the cultivation of their land.

Strictly speaking, the *Act* was not implemented in rural areas in PNG though the purpose includes such. It is now for this review exercise to seriously consider how the rural informal sector can be appropriately accommodated.

4.6 Conclusion

This chapter has attempted to bring to the fore existing law and practices governing informal economy in the country. Generally, we note that there are a lot of inconsistencies in the enabling legislation itself, the Informal Sector Act. If the legislation is to reflect the current thinking of the government as reflected in the National Informal Economy Policy, some more detailed research is required before any legislative proposals can be recommended. This is suggested given the very narrow scope of the Informal Sector Act against the very broad statement echoed in the policy document.

Whilst we may be specifically directed to review the Informal Sector Act in light of the Policy, the final outcome of our review exercise or our recommendation will usually be dictated by our internal research findings as well as the public / stakeholder consultations that we will conduct after launch of this Issues Paper.

Chapter 5: Issues

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5.1 Introduction

Several issues have already been raised in the preceding Chapter. We continue to raise further issues in this Chapter which have been derived mainly from the discussions in Chapters 2 and 3. Such issues emanate from literature on informal economy, enforcement of the *Informal Sector Development and*

Control Act 2004, the National Informal Economy Policy 2011-2015 and CLRC's initial consultations with some of the key stakeholders.⁶⁹

5.2 Poor Implementation/Enforcement of the Informal Sector Act

Through our initial consultations, we find that *the Informal Sector Development and Control Act* has failed in fulfilling its intended purpose, which is to promote informal business operations within a safe and healthy environment resulting in poor enforcement of the legislation. Some of the reasons giving rise to its failure may be caused by absence of a policy framework as guide; lack of understanding of roles both by the administering authorities and the informal business operators; lack of awareness on the part of the government and the administering authorities; or lack of funding; or all of these combined. There could be other reasons too resulting in poor implementation.

5.2.1 Absence of Clear Policy Direction

In our initial consultations, we found that there was a gap in terms of overall coordination of efforts aimed at implementation of the legislation. The Informal Sector Act existed in a vacuum. Without any policy directions, coordinated efforts by various responsible agencies proved to be non-existent. It is hoped that with the current National Informal Economy Policy, implementation of the Act will be more effective.

5.2.2 Lack of Understanding of Roles (administering authorities and operators)

In our initial consultations with administering authorities in Law, we found that there was confusion as to who or which agency should be responsible for regulating the informal businesses under the Informal Sector Act despite Section 1 of the Act which provides that administering authorities are NCDC,

⁶⁹ Prior to drafting the Issues Paper, CLRC held two meetings with key stakeholders including the Department of Community Development, National Capital District Commission (NCDC), Department of National Planning and the Consultative Implementation and Monitoring Committee (CIMC). CLRC also met separately with NCDC for half a day at Lamana; and visited the Alotau Town Authority and Lae City Authority to gauge their views as well as identify practical issues faced by implementers on the ground.

within NCD; LLGs outside of NCDC and PGs in the absence of an LLG outside NCD.

In NCDC, police also come into conflict with informal business operators, and whether or not they liaise with NCDC on such matters remains an ongoing concern. City Rangers engaged by the office of the NCD Governor also remains a concern. Administering authorities can only act within the ambit of the Informal Sector Act, any actions taken outside of the framework of the Act has to be through a by-law otherwise these actions may have negative consequences.

Apart from the administering authorities, the informal business operators also lack proper understanding of their roles under the Act and what purpose the Act was enacted to achieve. There is a misunderstanding by the informal business operators that the legislation is there to assist them to conduct their informal businesses the way they want, wherever they like and whatever product or service they want to provide. They care less or are not even aware of their responsibility to conduct their businesses in designated areas where health and sanitation problems can be properly regulated.

5.2.3 Lack of awareness and coordination

Lack of awareness relates to the above – lack of understanding of roles. If the administering authorities and informal business operators lack understanding alike, then there is great need for awareness from a national central lead agency that is responsible for overall implementation of the Informal Sector Act. Ironically, there is no one central agency at the national level who is vested with that responsibility.⁷⁰ Ironically, the Informal Sector Act is not listed under the Determination of Titles and Responsibilities of Ministries list,⁷¹ either this was a genuine oversight or omitted on purpose because no one specific ministry could be identified as having the overall responsibility over the Act.

One of the representatives from the Lae administering authority queried as to which national agency was responsible for the implementation of the Informal Sector Act as this related to the problem of coordination in terms of work as

⁷⁰ This was revealed in our initial stakeholder consultations and was a concern expressly stated by the Department of Community Development.

⁷¹ National Gazette, No. G340, Port Moresby, Friday, 10th August, 2012.

well as funding. On the ground, funding is a big concern, and yet some of these administering authorities do not know which national agency to resort to when in dire need of funding for purposes of implementing the Informal Sector Act.

5.2.4 Lack of Funding

One of the major problems associated with successful implementation of the Act is to do with lack of budgetary allocations. The Act places huge responsibilities on administering authorities without considering the financial implications. For instance, administering authorities are responsible for hiring and training of inspectors (Section 4), regular monitoring of designated areas, including provision of garbage bins and garbage collection (Section 3 ©) and carry out awareness and conduct basic trainings to food handling, sanitation, etc...at no cost to the operators. In NCDC alone, millions of kina are spent every year in regulating informal business activities.

It is only recently when the Department of Community Development was identified in the National Informal Policy as the lead agency in terms of implementing the Informal Sector Act. With this, it is hoped that appropriate budgetary allocations will be made to the Department that will assist in effective implementation of the Informal Sector Act. However, this is something that can only be speculated.

5.3 Defining “informal economy”

Definition of informal economy has been discussed in the previous chapters above. We note that the term is a very broad one encompassing the entire informal business activities and covers the rural agricultural based and urban based informal economic activities inclusive.

Careful construction of the Informal Sector Act in its current form suggests that its application only extends, in practice, to informal business activities within the urban towns and cities. It seems to have no relevance to rural agricultural informal business activities. Perhaps the title ‘Informal Sector Act’ best describes its limited application, as it was meant for urban informal businesses. Now that the term informal sector has been replaced with the informal economy, definition of this new term will have to be properly defined in the Informal Sector Act.

Issue No. 4

Properly define “informal economy” so that the definition is inclusive of informal business activities both within the urban towns and rural agricultural sector.

5.4 Informal Sector Development and Control Act 2004

Following on from Chapter 3 which talks about the need to review the Informal Sector Act to realign it with the national policy and 4.4 above (Defining “informal economy”), it would seem that the policy introduces a whole new concept. The national policy emphasizes on two major strategies as a road to promoting informal economy – financial inclusion and provision of public goods and services. These are totally new concepts that are not in any way reflected in the current Informal Sector Act. This then raises a number of possibilities in terms of law reform recommendations, and that is whether to make substantive amendments to the current Act; or repeal and replace the entire Act with a new one that reflects the policy aspirations; or repeal the Act in its entirety and allow informal businesses to operate under other applicable existing legislation.

5.4.1 Whether to Amend Only?

If the Informal Sector Act is to be amended, it will be two way process. Firstly, the amendments will have to be made with reference to specific provisions of the Act; then a whole lot of insertions will have to be made to reflect the policy aspirations. This will require a substantive amendment. This then raises the next possibility which is to simply repeal and replace the Act.

Issue No. 5

Whether to only amend the Act which will require substantive amendments as the amendments will relate to the provisions of the Act in its current form as well as new insertions to reflect the policy aspirations.

5.4.2 Repeal and Replace the Act with a New One

As discussed above, the Informal Economy Policy introduces a broad concept that is informal economy which encompasses a whole range of informal activities from rural to urban settings. The policy also introduces the concept of financial inclusion through micro-finance which requires new innovative regulatory frameworks that will get banks and financial institutions to align with government policies to promote access by informal businesses people to access financial services. The Policy also emphasis on the need for government to provide better and effective public goods and services to promote informal businesses; and in the same vein, calls on relevant government departments to take full responsibility in areas that fall within their jurisdiction to promote informal business. For e.g. the Department of Health is identified as a key partner in ensuring that health and hygiene standards in public places are set and maintained at all times; whilst the Police Department is identified as a key partner in maintaining law and order within informal activity areas. The Policy also now identifies Department of Community Development as the lead agency in the implementation of the Policy, something which was lacking since enactment of the Informal Sector Act. If the Informal Sector Act is to be amended, it will involve a substantive work in trying to incorporate all these various policy concerns. This raises the question of whether to repeal the Act in its entirety and introducing a whole new piece of legislation that properly reflects government intention contained in the policy document.

Issue No. 6

Whether to repeal the Act and replace it with a new one; The current Act appears to have limitations in its application focused on urban informal sector, whereas the policy document talks about the broader informal economic activities extending to rural agriculture sector as well introducing a whole list of new concerns including financial inclusion, public utilities, co-ordinated government actions, etc...

5.4.3 Repeal/Abolish the Act in its Entirety

In our initial consultations with NCDC, we were informed that the Informal Sector Act has not achieved any benefits but has brought more problems and challenges. Perhaps this was due to the fact the Act was enacted without a proper guiding principle through a policy document or poor drafting of the Act itself. Whether or not the Act will be better implemented with the guide of the new Policy document remains to be seen. However, the question remains, whether there is real need for a separate law to regulate informal businesses; or let informal businesses be regulated under existing legal framework without a separate legislation.

Issue No. 7

Whether to repeal the Act in its entirety and allow informal economic activities to operate within relevant existing laws or legal framework?

5.5 Other Related Issues

Other related issues emerged during our initial consultations with specific stakeholders especially in urban areas. Although there were similar sentiments raised in view of the Informal Sector Act and the activities it intends to regulate, there were also challenges faced that were unique to each town. This indicates that challenges faced in rural areas will also vary not only from urban areas, but from rural setting to another.

5.5.1 Land Disputes over areas designated for informal markets

Our discussions with the Lae Town Authorities revealed a number of issues. The first was issues of land ownership which continues to have an immense impact on land allocated for informal markets. In Lae city itself, the customary land, that of the Ahi Landowners, overlaps into the city boundary. State land has become scarce. This means that some informal markets are being conducted on customary or private land which leads to a lot of disruptions. The need to free up more customary land within the precincts of towns and cities is ever increasing. In this context, customary landowners will need to be educated to register their land and perhaps lease them to the State for purposes of designating informal markets.⁷²

5.5.2 Ethnic Clashes in towns and cities

In Lae, we were told by participants during our consultative meeting that one of the causes for ethnic clashes is ‘informal market’ business. Lae City Authorities expressed concern that selling of betel nut and cigarettes, especially, in main public areas like bus stops and shopping centers were seeing to be conducted by outsiders, particularly the Highlanders and the Sepiks. This led to the Morobeans youths mobilizing and attacking the outsiders to prevent them from conducting informal businesses in public places.

5.5.3 Rural-Urban migration

Through our initial discussions with various administering authorities, we also found a common concern expressed regarding increase in rural-urban migration. We were told that a lot of people were migrating into towns and cities with a view to improve their lives through participating in informal businesses. Hence the misconception that the Informal Sector Act was enacted to empower ordinary people in urban towns to be involved in all sorts of informal business activities.

⁷² The Ahi LLG President in fact requested CLRC to assist in educating the Ahi customary landowners on the need to register their land for economic development purposes, instead of selling them outright to outsiders.

Further concerns were raised that due to increase in rural-urban migration, settlements were growing in an alarming rate. In Lae, we were told that this led to outsiders settling on customary land which was identified yet as another cause for ethnic clash. Increased settlements meant increased population, placing a strain on limited government services. People compete to access the limited government services that are available, and sometimes resort to illegal means for survival. Criminal activities and petty crimes also increase as a result. It is interesting to note that this concern coincides with the World Bank finding that rapid increase in rural-urban migration is one of the drivers of crime and violence in Papua New Guinea.⁷³

This concern was raised in Lae as well as Alotau, except in Alotau, they have not experienced any ethnic clashes but are fearing this is bound to happen if the government does not address this issue soon enough.

5.5.4 List of Goods and Services Appropriate for Informal Business

Another issue that arose during our initial consultations is the need to clearly identify goods sold and services provided as falling within informal business activities. This is particular concern in urban areas where for example, street sellers are selling dangerous and risky and unsafe items such as knives, scissors and even medicines. In NCDC, there was an incident where a dispute arose between two individuals and one of them ran towards a street seller, grabbed one of the bush knives on sale and stabbed the other. These are related concerns that need to be seriously addressed to avoid further social problems.

5.6 Conclusion

The purpose of the Informal Sector Act is two-fold. Firstly, it is intended to provide the facilities and encourage the development of informal businesses in both urban and rural areas. Secondly, it is to regulate and control the development of informal businesses for the protection of public health and safety. However, during our initial consultations, we found that the informal business operators knew more about the first purpose (promote informal

⁷³ See Briefing Note No. 2 by Sadaf Lakhani and Alys M. William, "Drivers of Crime and Violence in Papua New Guinea", World Bank, Social Cohesion and Violence Prevention Team, Social Development Department, November 30, 2012.

business) and less about the second (promote health and hygiene). This in turn forced the administering authorities to divert more of their attention and resources towards the area of health and hygiene. In the process, conflicts and disputes arise because those involved in informal business (operators and regulators alike) were pursuing different interests when they should be complementing each other in their efforts.

International best practice shows that good standards of environmental health are fundamental to the quality of life and well-being of citizens, and to healthy and sustainable economic development.⁷⁴ A clean and healthy environment, in which it is hygienic and pleasant to work and to live, is a basic need for all. Environmental health, occupational health and public health are all important in the development of the economy. Therefore environmental health should be integrated into all aspects of planning, management, support and regulation. Whilst this has health and safety concerns, they also impact on efficiency and productivity of businesses.

In order for informal economy to progress successfully alongside formal economy as part of our economic system, both purposes of the Informal Sector Act, i.e. (1) promote informal business and (2) promote public health and safety are addressed must be given equal attention.

We hope that the issues raised as well as related concerns and findings expressed in this Issues Paper will stimulate further discussions in order that the Commission can come up with a recommendation for change (whether through policy, administration or legislation), that best suits Papua New Guinea and is practical for all purposes. We conclude by reiterating that as an independent and neutral office, CLRC has not formed any conclusive opinion on the measures for reform. Our recommendation will be determined through our consultative process.

⁷⁴ See for example, Durban's Informal Economy Policy, December 2001, accessed at <http://www.durban.gov.za/Resource_Centre/Policies/Documents/INFORMAL%20ECONOMIC%20POLICY%20FINAL%20DOCUMENT.pdf> as at 19th April, 2013.