

Review of forest and REDD+ related policy and legislation in Papua New Guinea

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Bikpela tenkyu tru!

List of Acronyms and Abbreviations

AFOLU	Agriculture, Forestry and Other Land Use
AROB	Autonomous Region of Bougainville
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CCDMP	Climate Compatible Development Management Policy
CCDS IAP	Climate Compatible Development Strategy Interim Action Plan
CCDS	Climate Compatible Development Strategy
CDM	Clean Development Mechanism
CLRC	Constitutional Law Reform Commission
CSO	Civil Society Organisation
COI	Commission of inquiry
COP	Conference of the Parties
DAL	Department of Agriculture and Livestock
DCD	Department of Community Development
DCI	Department of Commerce and Industry
DEC	Department of Environment and Conservation
DLPP	Department of Lands and Physical Planning
DM&P	Department of Mining and Petroleum
DOS	Development Options Study
EITI	Extractive Industries Transparency Initiative
EU	European Union
FCA	Forest Certification Authority
FCCFA	Forest and Climate Change Framework for Action
FORCERT	Forest Management and Product Certification Service
FMA	Forest Management Agreement
FPIC	Free Prior Informed Consent
GOPNG	Government of Papua New Guinea
ILG	Incorporated Landowner Group
ITTO	International Tropical Timber Organization
JICA	Japanese International Cooperation Agency
LEAF	Lowering Emissions in Asia's Forests
LFA	Local Forest Area
LMA	Logging Marketing Agreement
LTC	Land Titles Commission
MRV	Measurement, Recording and Verification
NADP	National Agricultural Development Plan
NCCC	National Climate Change Committee
NCCDMP	National Climate Change Development Management Policy
NCW	National Council of Women
NEC	National Executive Council
NFB	National Forest Board
NFDG	National Forest Development Guidelines
NFP	National Forest Plan

NFRI	National Forest Research Institute/PNG Forest Research Institute
NFS	National Forest Service
NGO	Non-Government Organisation
NPO	National Planning Office
OCCCT	Office of Climate Change and Carbon Trade
OCCD	Office of Climate Change and Development
OCCES	Office of Climate Change and Environmental Sustainability
OLC	Office of Legislative Council
OLPLLG	Organic Law on Provincial and Local Level Government
PES	Payment for Environmental Services
PFMC	Provincial Forest Management Committee
PFMP	Provincial Forest Management Plan
PNG	Papua New Guinea
PNGFA	Papua New Guinea Forest Authority
REDD	Reducing Emissions from Deforestation and Degradation
REDD+	Reducing Emissions from Deforestation and forest Degradation plus conservation, sustainable management of forests and enhancement of forest carbon stocks
SFM	Sustainable Forest Management
SES	Social and Economic Safeguards
SME	Small to Medium Enterprise
SABL	Special Agricultural and Business Leases
TNC	The Nature Conservancy
TRP	Timber Rights Permit
TWG	Technical Working Group
UNFCCC	United Nations Framework on Climate Change Convention
UN-REDD	United Nations Program on Reduced Emissions from Deforestation and Degradation
VCM	Voluntary Carbon Market
WCS	Wildlife Conservation Society

Executive Summary

Considerable potential exists in Papua New Guinea to raise forest management standards and reduce emissions from deforestation and degradation by improving implementation of existing laws, policies and regulations. To support implementation of Reducing Emissions from Deforestation and Forest Degradation (REDD+),¹ amendments to the existing policy and legislative framework may also be necessary. This report provides a broad overview of REDD+ in the context of the forestry-related laws and policies of PNG as well as agreements made under the United Nations Framework Convention on Climate Change (UNFCCC). It summarizes the main policy and institutional issues involved in integrating REDD+ and other forest carbon emissions reductions initiatives such as Payments for Environmental Services (PES), as proposed by the Department of Environment and Conservation (DEC) under a draft protected areas policy, and suggests policy and legislative reforms necessary to effectively and equitably reduce emissions from the Agriculture, Forestry and Other Land Use (AFOLU) sector.

Institutional roles and responsibilities for REDD+ and other mitigation activities in agriculture, forestry and other land use need to be clarified to ensure smooth implementation. Currently, institutional responsibilities for REDD+ are poorly defined and in particular the PNG Forest Authority (PNGFA), Office of Climate Change and Development (OCCD), and Department of Environment and Conservation (DEC) are at risk of overlap and conflict. PNGFA appears to be in the best position to lead REDD+ at the national level, although clear roles for all relevant agencies will need to be set out in national legal frameworks in order to ensure REDD+ is addressed in a coherent fashion.

Currently carbon rights are not legally recognized and customary land tenure arrangements lack clarity and legal recognition. Recent legal reviews reassert the foundational legal principles of customary land ownership in all transactions concerning natural resource development. Thus, full local allocation of rights and responsibilities for REDD+ will require identification of land and carbon rights and development of appropriate legislation. However, these goals will require concerted efforts and processes that could delay implementation of REDD+ in PNG. Amendments to forestry and conservation legal frameworks to define carbon as a property interest (and/or as a 'forest product'), and to include recognition of REDD+ and associated activities are recommended. Registration of customary land – such as under the current Voluntary Customary Land Registration System – although necessary will take considerable time and effort. In the shorter-term, a range of actions at the national level and renewed commitment to improved governance can support significant reductions in emissions from the forestry and land use sector.

Land use planning is hindered by lack of a national land use policy and associated uncertainty in the forestry and land use sector, which poses a particular challenge for forest conservation and emissions reductions efforts. The Department of Lands and National Planning Office could play a defining role in sustainable natural resource management in PNG by leading consultative development of a national land use policy to coordinate forest and land use management.

Although the forest sector legislative framework in PNG is strong, gaps in implementation and enforcement (e.g., weak implementing regulations, low institutional capacity and poor enforcement) hinder effective forest sector governance and pose hurdles for REDD+. A joint Forestry/REDD+ oversight committee with representatives from key agencies and CSOs could strengthen implementation and enforcement, especially if vested with quasi-judicial powers. Release of the Report on the Commission of Inquiry into Special Purpose Agricultural and Business Leases (SABLs)²

¹ FCCC/CP.2007/6/Add.1, Decision 1/CP.13. *Bali Action Plan*. UNFCCC, 2008. (adding "conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries" as secondary goals to the original objectives of avoided deforestation and forest degradation in REDD).

² The proper legal term for SABLs is Special Purpose Agricultural and Business Leases as per section 11 of the *Lands Act 1996* (but it is generally referred to without the word 'purpose' as seen throughout this report).

could provide landowners with the option of managing forested land covered by 'illegal' or 'redundant' leases more in accordance with REDD+ objectives. To minimize stakeholder conflicts, the Land Titles Commission (LTC) or a similar independent body would need a mandate to adjudicate disputes.

Various options are available for REDD+ incentive allocation in PNG. The draft Protected Areas Policy offers a viable short-term option in the form of PES for facilitating project-based REDD+. For larger programs, in-kind incentives aimed at providing widespread benefit rather than monetary payments could help avoid to resolve administrative challenges associated with registering land and carbon rights to individuals or groups.

REDD+ implementation in PNG will require political commitment; leadership by an appropriate government agency; strong collaboration between State entities and stakeholders; allocation of resources; and short- and long-term legislative reform. This is not an easy task but it is a necessary one and requires priority on the national development agenda if reductions in the rate of deforestation and degradation are to be realised in the years to come.

The report respects UNFCCC terminology and definitions but does not strictly limit itself to compliance-based systems. REDD projects financed by international development partners and voluntary carbon markets are also considered as a means of financing emissions reduction efforts in the AFOLU sector. To include projects in a national-level REDD+ framework, it will be important to consider integration as early as possible. Steps taken to facilitate implementation of projects and direct participation of forest owners in carbon trading such as defining carbon and land tenure will also enable direct participation of forest owners in the anticipated UNFCCC-compliant national level REDD+ framework. In considering both mechanisms, this review attempts to balance the desire of many forestry stakeholders in PNG to sell forest emissions reductions and removals with the need for an overall national level framework that accounts for all forest related emissions and removals.

Recommendations presented in the final section of the review are divided into short- (<2-3 years) and medium-term (3-5+ years) options. Those that can be implemented in the short-term cover the following:

National development of REDD+ under the UNFCCC including development of a national REDD+ Strategy and designation of a REDD+ focal point.

Implementation of REDD+ related institutional arrangements including establishing a national REDD+ taskforce and a special Climate/REDD+ Parliamentary Steering Committee, and formulating a national REDD+ Policy.

Use of existing policies and measures to support REDD+. Recommendations focus on improving forest sector governance and transparency and also include a range of actions to be taken by PNGFA and DEC that would quickly achieve results.

Improving gender equity in forestry and REDD+ by assessing engagement of women in forestry and natural resources and acting to close the gender gap by promoting gender balanced decision-making and applying lessons from other sectors.

Medium-term options cover the following areas:

Reform of forest-related policy and legislation focussing on allocation of carbon rights and definition of carbon as a forest product to facilitate commoditisation of carbon and direct engagement of forest owners in emissions reduction efforts. Modification of the FMA and timber permit system to include carbon as a forest product and to facilitate establishment of carbon projects is also recommended.

Reform of land-related policy and legislation to facilitate direct participation of forest owners in REDD+ with support from a reactivated Land Titles Commission empowered to register customary land and adjudicate land disputes.

Development of a National Land Use Plan, implementation of gender-inclusive participatory land use planning and implementation of provincial- and local-level land use policies.

Improving gender equity by mainstreaming gender considerations into policies, laws and regulations, guaranteeing equal access to and control over land, natural resources and support services and increasing women's representation in planning and decision-making.

Improve governance by creating a forestry sector oversight agency, establishing an environmental court and including forestry in the PNG Extractive Industries Transparency Initiative (EITI).

1 Introduction

1.1 Background

Deforestation and forest degradation account for 11 percent³ of global greenhouse gas emissions and pose a major threat to biodiversity. In addition, forest fragmentation and loss of crown cover leaves forests vulnerable to fire, which can result in a spiral of accelerating emissions.⁴ In the Pacific Islands, primary forests decreased from around 48 million hectares in 1990 to about 30 million hectares in 2010.⁵ Compared to other countries in the Asia-Pacific region, the Pacific Islands have done little to reduce loss of forests or to replant and restore forest.⁶ In PNG, commercial and subsistence agriculture and large-scale industrial logging are the major drivers of deforestation and forest degradation. Most of the commercially accessible forests in PNG have been designated for logging and log production reached a record high in 2011 as a result of large volumes being sourced from the clear felling of forests under ‘Special Purpose Agricultural and Business Leases.’⁷ Given the fact that PNG is a low income country and largely dependent on extractive industries and agriculture for economic development, great efforts will be required for the country to contribute to international climate change mitigation goals.

Although considerable forest loss is projected in PNG during the next decade, debate continues as to the precise status of forests and associated trends. A 2008 study predicted that 83 percent of commercially accessible forests in PNG will be cleared or degraded by 2021.⁸ However, based on the recent PNGFA/JICA forest mapping and monitoring exercise and the UN-REDD/EU National Forest Inventory PNGFA have contested this projection. Although they have yet to be made public, the PNGFA/JICA and UN-REDD/EU assessments estimate national forest cover at 37 million hectares, which is a much larger area than previously thought.⁹

Reforms of forestry-related policies and institutions have taken place across Asia-Pacific countries as new themes have emerged and efforts to achieve Sustainable Forest Management (SFM) have evolved. State institutions in many countries have begun to decentralize as a means of moving decisions closer to the ground, although outcomes have varied widely. Non-Governmental Organizations have gained prominence during this process and greater pluralism has developed in institutional frameworks surrounding forestry. Today, state agencies are not the only institutions influencing forests and forestry and the increasingly complex demands being placed on forests, including in relation to SFM and REDD+, suggest a need for this trend will to continue if multiple objectives are to be achieved. Rapid responses to emerging threats and opportunities and the ability to redesign and re-align objectives will also be necessary although decisions will need to be technically and politically sound for long-term benefits to be realized.

³ Smith, P. & Bustamante, M. *IPCC 5th Assessment Report: Chapter 11 Agriculture Forestry and Other Land Use (AFOLU)*. IPCC Working Group III, 2014 (“Annual GHG flux from land use and land-use change activities accounted for approximately 4.3–5.5 Gt CO₂ eq/yr, or about 9–11% of total anthropogenic greenhouse gas emissions).

⁴ Curran, L., et. al. *Impact of El Nino and Logging on Canopy Tree Recruitment in Boreno*. 10 December 1999: *Science* 286 (5447), 2184-2188; Curran, L., et. al. *Lowland Forest Loss in Protect Areas of Indonesian Boreno*. 13 February 2004: *Science* 303 (5660), 1000-1003.

⁵ FAOSTAT Database website: <http://faostat.fao.org/default.aspx> (2010).

⁶ Figure 1, *Forest Area by category in Asia Pacific, Subregion, 1990 -2010*. FAO. *Asia-Pacific Forests and Forestry to 2020 Forest Policy Brief 01 – Forests for a greener future*. Bangkok: FAO, 2012.

⁷ Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O’Brien, S. *“REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis”*. Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

⁸ Shearman, P., et. al. *State of the Forest of Papua New Guinea: Mapping the extent and condition of Forest cover and measuring the drivers of forest change in the period 1972-2002*. Port Moresby: University of Papua New Guinea, 2008.

⁹ Information provided by the PNG Forest Authority on July 22, 2014, based on the report produced of these findings as per the first JICA-funded Forest Mapping and Monitoring Project, which ended in March 2014. See also, Filer, C., et. al. *Deforestation and forest degradation in Papua New Guinea*. 26 May 2009: *Ann. For Sci.* 66 (2009) 813. (Note that technical definitions for ‘forest’ has also changed in recent years, contributing to this exponential increase in estimated figures from those of 2008).

Since independence, timber harvesting and export has contributed significantly to PNG's national income. While the contribution of other extractive industries, which together provide more than half of total national revenues, has been much greater, it has been argued that the timber industry has been more consistent in its provision of direct benefits to resource owners in terms of goods and services and monetarily.¹⁰ Currently active commercial logging concessions cover a total of 5.8 million hectares, up from 5.25 million hectares in 2006.¹¹ PNG earns between 700-800 million PNG Kina per annum (including infrastructure related to timber projects)¹² and is the second largest exporter of tropical timber in the world. Ninety percent of logs exported are in raw form.¹³

The findings of the Barnett Inquiry in 1989 resulted in major legal and policy reforms to curb pervasive corruption, non-compliance, extensive violations of landholders' rights and extreme environmental devastation.¹⁴ Recent reviews have nonetheless alleged that improvements in forest governance have been limited.¹⁵

Papua New Guinea's forestry and land-related laws, policies and regulations are of great relevance to the environmental, social and economic development of the country and independent reviews have generally deemed them to be comprehensive and generally sound. Their enforcement is, however, sometimes lacking as revealed in a 2003/2004 review of logging operations in Madang Province, which concluded the following:

- Logging has few long-term benefits for landowners, although they bear the environmental costs.
- At stated log prices, the logging industry appears to be profitable but in most cases it has been observed that companies are not replacing their field equipment and this cannot be sustainable. As such, it is estimated the current logging capacity (i.e., its infrastructure and human resources) will drastically reduce operations within 10-15 years.
- Many breaches of the logging standards go unreported and are not addressed adequately. Field officers have lost faith that their attempts to impose sanctions will be backed up by senior management, who take their cue from political leaders.
- The capacity of the Forest Authority has declined significantly with a "notable lack of strategic thinking and planning, and significant internal divisions."¹⁶

As a result of these and other similar comments, the PNG Forest Authority has made attempts to improve its administrative processes and address the deficiencies.¹⁷ To ensure the livelihoods of the people of PNG and to combat climate change and its effects, these improvements need to continue with greater emphasis on investing in forests. Improvements are particularly necessary in relation to sustainable forest management and preservation of forest carbon stocks, reducing dependence on timber exports and increasing support for relevant government agencies and CSOs working to conserve biodiversity. To help familiarise readers not conversant with forestry in PNG, Box 1

¹⁰ Turia, R. *Outcome of Forest Monitoring Project supported by Japanese Government – Japanese Grant Aid and JICA Technical Cooperation Projects*. Port Moresby: JICA-PNGFA Project for Capacity Development on Forest Recourse Monitoring for Addressing Climate Change, 2014.

¹¹ Ibid.

¹² PNGFA comments, July 2014.

¹³ ITTO Division of Economic Information and Market Intelligence. *Annual Review and Assessment of the World Timber Situation*. Yokohama: ITTO, 2011.

¹⁴ Commissioner Barnett, T. *Commission of Inquiry into Aspects of the Forestry Industry Final Report Volume 1*. PNG: 1989; Commissioner Barnett, T. *Commission of Inquiry into Aspects of the Forestry Industry Final Report Volume 2*. PNG: 1989.

¹⁵ Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O'Brien, S. *"REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis"*. Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

¹⁶ Hurahura, F. *Gap Analysis for Madang Province*. Arlington: The Nature Conservancy, 2014.

¹⁷ Turia, R. *Outcome of Forest Monitoring Project supported by Japanese Government – Japanese Grant Aid and JICA Technical Cooperation Projects*. Port Moresby: JICA-PNGFA Project for Capacity Development on Forest Recourse Monitoring for Addressing Climate Change, 2014.

provides an overview of some of the key features of the PNG forest management system referred to in this review.

Box 1. Overview of key components of the PNG Forest Management System

Incorporated Land Groups (ILGs) – are established under the *Land Groups Incorporation Act 1974* (amended 2009) and are the primary means by which customary landowners and customary clans or groups in particular receive legal recognition and power to directly participate in economic activities on their land with either government or third parties including private and commercial entities and foreign investors.

Forest Management Agreements (FMAs) – are the primary mechanism by which the PNG Forest Authority (PNGFA) acquires rights over timber resources on customary land. This mechanism enables customary landowners to be involved in forest industry activities. Acquisition of timber rights under an FMA doesn't affect the customary rights of ownership of the land. For an FMA to be established it requires the consent of the customary landowners through clan registration under an ILG or via 75% majority written consent of the landowners.

Forest Conservation Areas/Protected Areas– are the main mechanisms for managing forests for biodiversity conservation and are set out under the *Conservation Areas Act* and the *National Parks Act 1980*. Biological resources and areas of historical and cultural significance are protected under these mechanisms which are established over customary land (Section 12). Land is vested in the State under the above-mentioned categories for public purposes. The management of conservation areas is in strict accordance with a management plan and all other uses of areas conserved, including local use are excluded.

Special Purpose Agricultural and Business Lease (SABL) - is a system of land tenure set out under the Lands Act 1996 that enables landowners to engage in business development with private investors/ companies. The process converts customary land into State land for a set period through a lease-leaseback system whereby customary landowners agree to lease their land to the State (as leasehold) which then leases it back to the customary landowners under an ILG. SABLs are used primarily for agricultural or agroforestry projects and at the end of the lease period the land reverts to customary land. This SABL process is the simplest means for conversion of customary land tenure.

Forest Clearance Authority (FCA) – is a special license provided by the PNGFA once a directive is given by the Minister to permit clear felling of forests within areas designated for agricultural projects pursued via an SABL and authorized by both the Lands Department and the Department of Agriculture and Livestock. Key legal processes required for forest activities are bypassed via this process.

1.1.1 Implications of REDD+ for forests and forestry

Deforestation is increasing at an alarming rate in PNG, particularly in relation to recent acceleration in grabbing of customary land for agriculture and other business purposes.¹⁸ Following independence, forest clearance resulted largely from subsistence farming but since the 1990s losses primarily resulted from large-scale commercial agriculture and agroforestry. The most significant cause of deforestation in recent years has been clearance of forests under Special Purpose

¹⁸ Filer, C. *The New Land Grab in Papua New Guinea*. Land Deal Politics Initiative, 2011.

Agriculture and Business Leases (SABL) under the Lands Act.¹⁹ Between 2003 and 2010, the total area of customary land allocated to private companies through SABLs was over 4.2 million hectares. Areas granted in 2011 brought the total to more than 5 million hectares, which is more than 10 percent of the total land area of PNG.²⁰ Following provision of consent for forest clearance under SABLs, national timber exports reached a record high of 3.5 million cubic meters in 2011.²¹

The inclusion of REDD+ in international climate change negotiations constitutes an important development for PNG with potential to help reduce rates of forest clearance. REDD+ has developed under the UNFCCC as a means for developing countries to access payments in return for forest-related emissions reductions. PNG played a leading role in advancing REDD+ under the UNFCCC since its introduction in 2005 by PNG and Costa Rica on behalf of the Coalition for Rainforest Nations.²² Since then, PNG has contributed ideas to stimulate action on REDD+ in its UNFCCC submissions,²³ and has played a leadership role in the Coalition for Rainforest Nations and other global climate change initiatives.²⁴

Alongside other highly forested developing countries, PNG has promoted the inclusion of REDD+ in an international climate change agreement and sought funding commitments from developed countries in exchange for efforts to reduce emissions. Investments in REDD+ will also promote provision of ecosystem services that support human and natural communities, which would greatly benefit PNG considering that more than 80 percent of its population are rural dwellers dependent on forests.²⁵

Studies have shown the significant potential role REDD+ can play in keeping the rise in global temperatures to within two degrees Celsius. Implementation of REDD+ will, however, require a number of challenges to be addressed in PNG and elsewhere, as follows:

- Determining baseline emissions, monitoring forest change and estimating country-specific emissions factors. In several countries with high deforestation rates, including PNG, basic inventory data are not available. Under the Warsaw Framework this may not be a constraint and default values may be adequate during initial efforts to address deforestation. Whether associated early funding emerges or not, it is clear that strengthening capacity such that countries are REDD+ ready will take time.
- Most deforestation and degradation is taking place in countries with limited institutional capacity and poor land use governance. Bringing about necessary reforms will take considerable time and effort. Improvements in governance are a fundamental requirement irrespective of REDD+, however, REDD+ implementation may begin under sub-optimal governance conditions and improve over time, providing sufficient political will and support exists.
- Long-standing issues related to land and resource tenure and allocation of incentives to reduce deforestation and degradation pose further challenges. However, it has been argued by UN-REDD that although important, tenure, incentive allocation and the underpinning issue of carbon rights do not necessarily have to be addressed before REDD+ can be

¹⁹ Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O'Brien, S. "REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis". Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

²⁰ Ibid at 15.

²¹ Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O'Brien, S. "REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis". Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

²² PNG and Costa Rica introduced REDD+ into the COP-11 in 2005, leading to COP-13 decision 2/CP.13 in Bali in December 2007.

²³ In particular, to the Subsidiary Body for Scientific and Technological Advice (SBSTA).

²⁴ PNG has worked through the Paris-Oslo process to promote an interim REDD+ agreement as a prelude to a globally applicable, legally binding climate change treaty. It has also held the co-chair position of the Interim REDD+ Partnership Secretariat until January 2011.

²⁵ United Nations Development Program Department of National Planning and Monitoring. *Papua New Guinea – Millennium Development Goals Second National Progress Comprehensive Report for Papua New Guinea 2010*, p. 14. Port Moresby: UNDP, 2010. (Based on 2000 national census which confirmed a total of 13 percent as urban dwellers).

implemented. UN-REDD further argues that “[Carbon rights] is a concept only relevant to a project-based approach, and not to a national approach [to REDD+, under the UNFCCC]” and “[Ownership of trees and carbon is] not an issue for REDD+ under the UNFCCC, only for the [voluntary carbon market].”²⁶

- Substantial funding for REDD+ is still not assured, making the potential for significant impact on the ground by 2020 uncertain if not unlikely.

To support environmentally sustainable economic growth, forest-related policies and institutions should promote clear and equitable allocation of rights and responsibilities, develop appropriate capacity and technology (e.g., for MRV), remove disincentives to forest conservation and sustainable forest management, encourage forest restoration and provide support for the production of environmental services.

1.1.2 Progress with REDD+ in PNG

Under the ‘Cancun Agreement’ developed by Parties to COP-16 in Mexico, *paragraphs 71 and 72* require developing countries to, *inter alia*:

- i) develop a "national strategy or action plan" for REDD+ development;
- ii) address the following issues in their REDD+ national plans or strategies: drivers of deforestation and forest degradation; land tenure issues; gender considerations; and the safeguards referred to in the Cancun decision.²⁷

PNG, like all developing countries seeking to participate in a REDD+ mechanism under the UNFCCC, is working towards a national approach to REDD+ in line with UNFCCC guidance.²⁸ However, given that it may take some years for an international REDD+ mechanism to become functional, PNG is supporting development of interim sub-national approaches and may seek to integrate these into its national REDD+ framework through a ‘nested approach’ designed to provide for the various REDD+ activities taking place in the country.

In this context it may be helpful to outline REDD+ approaches, the differences between which are still not widely appreciated in PNG, as follows:

- **Project approaches** focus on discrete geographical areas managed and measured according to various defined methodologies (e.g., REDD+ pilot projects carried out under PNGFA and OCCD). Such approaches are potentially attractive to private investors as resulting carbon credits can be transacted in the voluntary carbon market (VCM). They may also offer greater security in emissions reductions and more accurate attribution, i.e. assurance of the geographical area in which emissions were reduced by a given amount. However, project approaches although providing accurate attribution may provide less overall reduction in emissions because of the greater chance of leakage to other areas (i.e. logging operations or sources of wood supply moving to other areas). It is also likely that greater emissions reductions and removals could be achieved by addressing the ‘drivers’ (causes) at larger scales.

²⁶ Comments provided on 9th July 2014 by Joel Scriven, Regional Coordinator, FAO; Thomas Enters, Regional Coordinator, UNEP; and Tim Boyle, Regional Coordinator, UNDP (collectively UN-REDD), Bangkok, Thailand.

²⁷ FCCC/CP/2010/7/Add.1, Decision 1/CP.16. *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*. UNFCCC, 2011.

²⁸ FCCC/CP/2011/9/Add.2, Decision 12/CP.17. *Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16*. UNFCCC, 2012 (“Acknowledges that subnational forest reference emission levels and/or forest reference levels may be elaborated as an interim measure, while transitioning to a national forest reference emission level and/or forest reference level. . . .”)

- **National approaches** differ from project approaches in that all emissions from forests in the country are considered in determining the success or otherwise of efforts to reduce deforestation and degradation. As such there are not separate areas where REDD+ is implemented and others where it is not, and although activities, e.g. forest patrolling, may be focussed in some areas all emissions should be counted – including those from adjacent areas where forest clearance for agriculture may be taking place. As such, policies and laws at the national level can serve to reduce emissions even where direct efforts to implement REDD+ related activities on the ground are absent. For example, changes in SABLs approvals processes or enforcement of implementation of the PNG National Logging Code of Practice could reduce emissions without specific local REDD+ activities being implemented. National approaches are less likely than project approaches to result in leakage or displacement of emissions due to the wider area covered and impediments in shifting activities to a different jurisdiction. National approaches are, however, less attractive to private investors as a result of lack of autonomy from government and difficulty in attributing emissions to given actions. Funding for emissions reduction under national REDD+ approaches has also yet to become available.
- **Nested approaches** combine national and project-based approaches and potentially allow countries to benefit from both approaches at the same time, i.e. projects functioning with private financing within an internationally funded national framework. This approach entails additional accounting and administrative complexity but may also bring earlier financing and allow development of capacity at the project scale.

Further to the above, costs incurred in setting up and running voluntary forest carbon projects and afforestation and reforestation (A/R) projects under the Clean Development Mechanism (CDM) of the Kyoto Protocol are high and economies of scale associated with national approaches to REDD+ should considerably lower transaction costs per unit reduction in emissions. While carbon projects offer forest owners the potential for income generation through sale of carbon credits, unclear land tenure and carbon rights combined with the fact that carbon credits are intangible assets has made forest carbon projects susceptible to fraud. Stringent MRV requirements and stipulated needs for transparency and comparability of results make such occurrences unlikely under an anticipated UNFCCC compliant REDD+ framework and Annex 1 parties to the UNFCCC are unlikely to invest in REDD+ unless confident that they are getting what they pay for.²⁹ There are many reliable sources of information³⁰ on these and other climate change and REDD+ related issues, which can be easily accessed online.

In common with other UN-REDD countries, PNG has adopted a three-phased approach to developing REDD+. The plan for PNG in preparing for REDD+ as presented by the Office of Climate Change and Development (OCCD) is as follows:³¹

Phase 1 - Readiness - 2011-2013;

Phase 2 - Result based demonstration activities – 2016-2018; and

Phase 3 - Payments for verified performance - 2018 onwards.

²⁹ Cisneros, J. *Forest Carbon Projects in Africa: A Mapping Study - Background report for the 'Political Ecologies of Forest Carbon in Africa' Research Project*. 2012.

³⁰ For more information on these terminologies refer to the following link on REDD+ basics (<http://theredddesk.org/what-is-redd>).

³¹ Pokana, J. *Overview of National Climate Change and Development Policy and National Monitoring System*. Port Moresby: presented to PNG Forestry Authority Board of Directors, 2013.

PNG has a UN-REDD National Program with funding of US\$ 6.4 million, approved initially from 2011 to 2013, but subject to an extension until the end of 2015 to assist with PNG REDD+ technical capabilities and stakeholder consultations. In addition, it also receives funding from the EU, the World Bank and the Government of Australia via various climate change mitigation/REDD+ programmes. At present, PNG remains in Phase I (Readiness) and is yet to meet all the necessary requirements for moving to Phase II.

Since its initiation in 2005, the development of REDD+ has been hindered by many issues that have prevented the cohesive implementation of related policy.³² Government institutions and management systems for forests, lands and the environment lack adequate resources and capacity to effectively build readiness for REDD+ implementation. During this period, there have been many reported cases of timber operators ignoring legal requirements and breaching timber permit conditions with impunity.³³ Despite their best efforts, the Government of PNG (GoPNG) has not always been able to ensure that relevant timber authorities/licenses are properly enforced and in some instances both national laws and human rights have been breached.

In preparing for REDD+, GoPNG has conducted small-scale REDD+ related consultations across the country. Additionally, under OCCD GoPNG developed an implementation plan that had comprised the Climate Compatible Development Strategy (CCDS) and its corresponding Interim Action Plan (IAP) which aimed to address REDD+, low carbon growth and mitigation, adaption and institutional building. These two policy instruments were recently converted into one overarching policy known as the Climate Compatible Development Management Policy (CCDMP)³⁴ which now supersedes the former instruments, which are only used to provide the background context for the new policy. A National REDD+ Project Guidelines and a Guide on FPIC for REDD+ were also developed by the OCCD. Considering these efforts and the requirements of the Cancun Agreement, several areas remain to be addressed in particular:

- There is no clear strategy for addressing drivers of deforestation and forest degradation, which would require commitment from multiple sectors and several government agencies including in the areas of forestry, environment, lands and OCCD. For example:
 - i) The plan to reduce round log exports in 2010 to stimulate an increase in domestic timber processing has yet to be implemented, and in 2011 a record high in round log export volume was recorded as a result of land clearance under SABLs.³⁵
 - ii) The PNG timber legality standard is still in draft form and its appropriateness remains uncertain, making it difficult to ascertain its possible contribution to reducing forest degradation and supporting sustainable forest management.
 - iii) The conversion of large areas of forest under Forest Clearance Authorities (FCAs) issued by the Forest Authority following fraudulent granting³⁶ of SABLs remains a threat given that they are the source of 20 percent of log exports³⁷ and implementation of recommendations from the commission of inquiry into SABL's is still pending.
- Institutional reforms and capacity building are only occurring in some government agencies. The Office of Climate Change and Development, PNGFA and the Department of Lands and Physical Planning are seen to have undergone the most considerable reforms in recent years compared to agencies in other sectors which impact on forestry (i.e.

³² UN-REDD. *2011 Annual Report Papua New Guinea Programme*. UN-REDD, 2011.

³³ Refer to the following examples of recent forestry cases - Open Bay Timber Ltd v Dekena [2013] PGNC 81; N5109 (26 March 2013); Gogil Naru Resource Owners Association Incorporated v Jant Ltd [2011] PGNC 193; N4472 (19 December 2011).

³⁴ The Climate Compatible Development Management Policy was passed by the National Executive Council in August 2014.

³⁵ Wilkinson, G., et. al. *Report on the First Technical Workshop on reviewing the PNG Logging Code of Practice*. Port Moresby: 2013. (A total of 4.0 million m³ was harvested in 2011, with 3.5 million m³ of logs exported and 0.5 million m³ processed domestically).

³⁶ Tau, J. *Summary of the Final SABL Report as presented by Chief Commissioner, John Numapo*. Pacific Media, 2013.

³⁷ Ibid.

Department of Agriculture and Livestock and Department of Environment and Conservation).

- Land is an important consideration in forestry in PNG since the majority is under customary tenure and not yet formally titled. Although providing an avenue for customary land to be secured for development purposes, current land reforms face practical difficulties that could increase rather than resolve land tenure disputes (see section 4.4.1.1).

These points serve to underline the fact that although REDD+ is progressing in PNG, there remains a great deal to do before emissions can be reduced in a structured fashion and REDD+ can be implemented.

1.2 Purpose of review and overview of sections³⁸

The objective of this review is to facilitate dialogue on REDD+ and identify possible alternatives in establishing a REDD+ policy and legislative framework in PNG. It was initially conceptualised to guide PNGFA on policy and legislative amendments necessary to allow forest carbon from existing REDD+ pilot projects under FMAs to be commoditized and traded. This concept was broadened to include assessment of national forestry-related policies and legislation in relation to implementation of REDD+ and was subsequently further widened to encompass other key legal issues such as land tenure, institutional arrangements and land use planning. Areas such as implementation and enforcement, MRV and incentive allocation have been omitted to avoid deviating entirely from the initial intention and are only referred to in the context of policy and legal issues upon which the review is centred.

Despite the absence of ‘successful’ REDD+ pilot projects in PNG,³⁹ and the associated argument that a REDD+ legislative review is currently unwarranted,⁴⁰ it is clear that many outstanding issues need to be addressed through forestry policy and legislation. Specific REDD+ project-related provisions are absent from the recent PNG Climate Compatible Development Management Policy and this gap needs to be addressed before a national REDD+ program can be effectively supported.

The following section provides a brief background on REDD+ designated agencies in PNG and a summary and analysis of forest-related legislation and policy in PNG, excluding laws and policies governing mining, oil and gas and other extractive industries. Section 3 reviews the implications of key land and forest issues for REDD+ and for reducing forest and land use sector emissions in general and policy, legislative and institutional options to support implementation of REDD+ in PNG are identified. Section 4 focuses on gender issues in relation to forestry and ultimately REDD+ in PNG and provides suggestions for improvement to fill existing gaps in policy and legislation by drawing on examples from the agricultural and mining sectors. Section 5 summarised findings of the review and outlines key recommendations.

³⁸ Note issues paper will not analyse in detail Implementation & Enforcement, MRV, incentive allocation, safeguards, and participation but will include in the list of recommendations, where relevant.

³⁹ Based on research/interviews ‘success’ is measured either through: 1) an ability to commence actual carbon trading via VCM and/or 2) to be able to access funding from UNFCCC for actual emission reductions at a national level. Neither position has been realised as yet.

⁴⁰ Based on comments received from PNGFA and OCCD in response to the draft review provided on the 23rd July 2014.

2 Overview of Institutions, Legislation and Policy

2.1 Institutional Overview

This subsection provides a background of the government agencies identified as most suitable to implement REDD+, focusing on administrative entities and their legal mandates within the existing framework, as well as the legislative and judicial arms of government and their roles in facilitating REDD+. The reason for the review originates from the need to identify the agency or entity most suited to 'leading' an eventual REDD+ program in the country.

2.1.1 Department of Environment and Conservation (DEC)

The Department of Environment and Conservation (DEC) was established in 1985 and vested with powers to protect the environmental values of air, water, soil and biodiversity and promote the sustainable use of natural resources under the 4th National Goal of the Constitution, a role also identified for OCCD.⁴¹ The DEC is empowered to implement its mandate through the various laws and international conventions to which the Government is signatory.⁴² It has a legal framework to support its various policies, programs and initiatives with an administrative structure that includes a Director of Environment, Environment Council, Working Committee, Environment Consultative Group, and Provincial Environment Committees.⁴³

Presently, the OCCD shares the Ministry of Environment and Conservation with the DEC and follows the same system for allocation of funds, resources, reporting and decision making. When considering OCCD as an appropriate REDD+ institution, the extent to which DEC would also be involved and/or able to facilitate therefore needs to be determined.

In 1996 DEC proposed an environmental protection strategy which led to establishment of the *Environment Act 2000*. The act aimed to provide a more efficient assessment, approval and monitoring system for conservation, biodiversity preservation and natural resource development project permits. The system integrated economics and environmental decision-making and applied the precautionary and polluter pays principles to encourage efficiency, consultation and transparency. However, as in other areas of government, enforcement is weak and the DEC lacks direction and financial capacity. Furthermore, the DEC is under-resourced and therefore unable to fulfill its environmental regulatory duties.

In 2012, DEC began collaborating with key GoPNG agencies, international donors/environmental agencies and local environmental NGOs/CSOs to strengthen its biodiversity protection mandate. In 2013 these efforts resulted in a Protected Areas Policy - a precursor to the establishment of a national Protected Areas System. The process to develop the policy included a series of regional consultations aimed at collating input from stakeholders throughout PNG for a policy paper that was submitted to NEC. As part of the ambit of this policy, provision was made for the use of Payment for Environmental Services (PES), potentially including REDD+.

⁴¹Goal 4 of the National Goals and Directive Principles – Natural Resources and Environment.

⁴² The Environment Act 2000, and amended in 2010 and 2012 and its Regulations, The Environment Planning Act 1978 and its Regulations, Environmental (Permits) Regulation, and Environmental (Prescribed Activities) Regulation, Fauna Protection and Control Act 1966 and its Regulation, Conservation Areas Act and International Conventions on the International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973), Wetlands of International Importance, especially as Waterfowl Habitats (RAMSAR, 1971), Conservation of Nature in the South Pacific Region (Apia, 1996) Protection of the Natural Resources and Environment of the South Pacific Region and related Protocols (SPREP, 1986) and International Convention on the Conservation of Biological Diversity (CBD, 1993)

⁴³ Government of Papua New Guinea. *Environment Act 2000*, part 3, secs. 1-29.

2.1.2 OCCD

Following a decision of the NEC, the OCCD was established in 2010 as the designated coordinating entity for all climate change policy in PNG.⁴⁴ It is recognized as the National Authority under the UNFCCC after replacing the Office of Climate Change and Environmental Sustainability (OCCES). The OCCD was initially established in 2008 as the Office of Climate Change and Carbon Trade (OCCCT) with objectives differing slightly from those at present.⁴⁵

The primary objective of OCCD is to take exclusive responsibility for all policies under Pillar Five of the Vision 2050 concerning Climate Change and Environmental Sustainability.⁴⁶ Its main tasks are engaging stakeholders in building a common vision on actions to tackle climate change and working in close collaboration with other entities to achieve these goals.

2.1.3 PNGFA

The PNGFA was established as a statutory body under section 5 of the Forestry Act 1991 and is the governing agency that reports to a Minister of Forests. The PNGFA is responsible for the administration of the Forestry Act and all subsequent regulations and policies. Its primary mandate is set out within the Act and includes the objectives outlined in section 2.2.1 below.

2.1.4 The Office of Legislative Counsel (OLC)

Legislative reforms in PNG fall within the ambit of the OLC, as established by the Constitution⁴⁷ and its founding statutes.⁴⁸ The OLC is responsible for drafting proposed legislative amendments, subordinate legislation and other quasi-legal instruments to be considered by Parliament.

2.1.5 Constitutional Law Reform Commission (CLRC)

The Constitution also provides for the CLRC,⁴⁹ and its powers and functions are set out under the *Constitutional and Law Reform Commission Act 2004*. In addition to its main responsibilities, the CLRC investigates and reports to Parliament and the NEC on the development and adaptation of the Underlying Law, and its appropriateness to the circumstances of the country.⁵⁰

2.1.6 Land Titles Commission (LTC)

The Land Titles Commission was the first body established to adjudicate over and determine customary land disputes under the *Land Titles Commission Act, 1962* and had precise statutory functions that were meant to quickly and independently resolve land rights disputes.

Since its establishment, the Land Titles Commission has been successful in adjudicating numerous land disputes between customary owners. This includes effectively determining issues such as customary lineages and land boundaries, and customary land ownership entitlements (the latter in the conversion of customary title to registered freehold title).⁵¹

Despite its broad powers and relative success in the pre-independence era, the LTC was superseded in part by the Local and Provincial Land Courts established under the *Land Disputes Settlement Act*

⁴⁴ OCCD's mandate is derived from the National Executive Council decision 54/2010.

⁴⁵ OCCCT was tasked with developing the PNG climate change policy and specifically to manage carbon trading under the Kyoto Protocol Clean Development Mechanism (CDM).

⁴⁶ Vision 2050 is the country's key overarching development policy established by the GoPNG in 2008 and used as the roadmap for PNG development and the basis for all development policies drafted.

⁴⁷ Section 100 establishes the power to create an authority to legislate and Sections 109 – 117 of the Constitution outlines the processes involved in prescribing laws and enacting them.

⁴⁸ Office established in 1972 under the *Legislative Drafting Service Act*, chapter 80.

⁴⁹ Within Schedule 2.13 of the Constitution it provides for a Law Reform Commission and its establishment.

⁵⁰ Schedule 2.1.4 of the Constitution of PNG.

⁵¹ In accordance with the *Land Tenure Conversion Act 1963*.

1975.⁵² Parliament phased out the LTC following the latter's overly ambitious attempt to convert and register customary land nation-wide under its authority.

2.2 Overview of forest-related Laws, Policies and Regulations

PNG laws, policies, regulations and guidelines currently prescribe no formal process for incentivizing carbon emissions reductions in the forestry sector (see Table 1). As there is presently no legal framework to regulate REDD+ projects and no national REDD+ policy or legislation, uncertainties remain as to how REDD+ will be implemented. OCCD produced the CCDMP which mentions REDD+ but otherwise the approach towards incentivising forest related emissions reductions across different government agencies has been ad hoc.

Based on current policy in PNG, it is likely that REDD+ and emissions reduction projects based on land use, land-use change and forestry will be administered through the PNG Forest Authority in accordance with the principles outlined in the following:

- a) Forestry Act 1991.
- b) National Forest Policy 1991;
- c) National Forest Plan 1996;
- d) National Forestry Development Guidelines 2009; and
- e) Forestry and Climate Change Framework for Action 2009-2015.

Although the legal and policy framework for forestry is comprehensive there remain concerns in relation to forest governance and related capacity. The current system is based on a co-regulatory model wherein planning and management by forest companies is backed up by monitoring and approval by the PNGFA. In some instances, however, resources available to PNGFA have been inadequate to fulfil all its regulatory functions and the resources of forest companies have been relied upon.⁵³ PNGFA has asserted that when such arrangements do occur companies hire or lease vehicles and other equipment necessary for PNGFA to carry out its core functions.⁵⁴ However, PNGFA is unfortunately perceived to have created a conflict of interest in regulatory capture that potentially hinders capacity to operate independently. Unless appropriately dealt with, such deficiencies in governance and capacity are likely to significantly constrain REDD+ development and implementation in PNG.

2.2.1 Forestry Act 1991 and Regulation

The PNG *Forestry Act 1991* (The Act) regulates the management, development and protection of PNG forest resources.⁵⁵ The Act was gazetted in June 1992 and amended in 1993, 1996, 2000 and 2005 and makes provision for establishment of the PNGFA as an autonomous body with the following objectives:

1. manage, develop and protect the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for the succeeding generations;
2. maximise Papua New Guinean participation in the wise use and development of the forest resources as a renewable asset;

⁵² The history of this transition is recorded in the findings of the PNG Commission of Inquiry into Land Matters in 1973.

⁵³ Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O'Brien, S. "REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis". Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

⁵⁴ Turia, R. *Outcome of Forest Monitoring Project supported by Japanese Government – Japanese Grant Aid and JICA Technical Cooperation Projects*. Port Moresby: JICA-PNGFA Project for Capacity Development on Forest Recourse Monitoring for Addressing Climate Change, 2014.

⁵⁵ In the case of the *Supreme Court Reference No 7 of 1992; Re Forestry Act 1991*, the highest court in the country reasserted this position.

3. utilize the Nation's forest resources to achieve economic growth, employment creation and industrial and increased "downstream" processing of the forest resources; and
4. encourage scientific study and research into forest resources so as to contribute towards a sound ecological balance, consistent with the National developmental objectives.
5. increase acquisition and dissemination of skills, knowledge and information in forestry through education and training;
6. pursue effective strategies, including improved administrative and legal machinery, for managing forest resources and the management of national, provincial and local interests.

Under sections 5 of the Act the PNGFA also administers:

- i) Forestry Regulations (the Forestry Regulation 1998 provides details and procedures aimed at implementing provisions contained in the Forestry Act);
- ii) National Forest Policy;
- iii) National Forest Plan;
- iv) National Forestry Development Guidelines (NFDG); and
- v) Forestry and Climate Change Framework for Action (FCCFA) and numerous other strategies and standards developed to date.

Because the Act preceded the Kyoto/UNFCCC REDD+ Agreements there are no specific provisions that support REDD+. If PNGFA becomes the responsible agency for implementing REDD+, specific provisions referring to it and to forest carbon will need to be incorporated into the Act. Given that the NFDG and the FCCFA provide for operation of REDD+,⁵⁶ discussion is likely to focus on changes to the National Forest Policy and Plan and the principal legislation - the Forestry Act 1991. Discussions on the NFDG and FCCFA are likely to be limited to whether they sufficiently cover REDD+ in the context of forestry development and the issue of carbon property rights.

2.2.2 National Forestry Policy

The National Forest Policy (Policy) was published in 1991 and covers forest management, the forest industry, forest research, forest training and education, and forest organization and administration. Having been drafted in accordance with the Forestry Act and prior to the 1997 Kyoto Protocol the Policy makes no reference to afforestation/reforestation under the Clean Development Mechanism.

The policy provides for natural resource protection as one of two main objectives, thereby promoting the aims of REDD+. In relation to sustained yield management, the policy provides for '*continuous production of non-timber products*'⁵⁷ and if carbon were to be classified as a non-timber forest product, this would be supportive of REDD+. Similarly in broadly referencing forest products as '*forest resources*', it could provide a starting point for the general inclusion of carbon as a separate forest product from timber. Though the Policy makes adequate reference to the protection of forests and continuous production of non-timber products, the bulk of its application is targeted towards production, management and sustainable production of timber as a forest product. With carbon as a forest product distinct from timber,⁵⁸ the Policy would need to be amended to cater for REDD+ or related initiatives.

⁵⁶ 'Operation of REDD+' refers to monitoring, measuring, reporting and verification (MRV) of forest carbon emissions and associated allocation of incentives, although not benefit distribution, the nature of which is yet to be determined by the GoPNG.

⁵⁷ Government of Papua New Guinea. *National Forest Policy*, sec. 3(a), p. 6.

⁵⁸ Refer to analysis conducted in section 4.2 of this report which presents the rationale for this finding and subsequent and generally accepted legal position on customary land tenure and carbon rights in PNG.

2.2.3 National Forest Plan

The National Forest Plan (the Plan) was published in 1996 and like preceding policies and legislation, does not take into account the Kyoto Protocol or REDD+. The Plan provides a detailed statement of how national and provincial governments intend to manage and utilize the country's forest resources and comprises:

- i) National Forestry Development Guidelines;
- ii) National Forest Development Program;
- iii) Annual statements of allowable cut for each province based on the identification of potential forest production areas and the determination of sustained yield from a National Forest Inventory;
- iv) Provincial forest plans, which provide an overview of the role of forestry in the economy of the province and the objectives for industrial, rural, economic and social development.

Changes to the NFDG and other instruments under the National Forest Plan that incorporate the above definitions on carbon and REDD+ should render them suitable for REDD+ purposes without further amendment.

It has been alleged that the current National Forest Plan violates the Constitutional requirement for the "sustainable" use of PNG resources, as it is not based on a certified national forest inventory as required by the Act.⁵⁹ The 35-40 year cutting cycle included in the plan has been alleged to be insufficient to allow sustained yield given that some native hardwood species take 70 – 200 years to grow.⁶⁰ It has, however, been clarified that information provided by the Forest Inventory and Mapping System (FIMS) under the PNGFA and approved by the National Forest Board as the certified national forest inventory permitted this incursion to the Act.⁶¹ Critics have also argued that apart from NFDG the Plan only covers timber production while overlooking the environmental costs of industrial logging and ignoring alternative non-extractive ways of generating income. Additionally, the limited control provided for local people has been criticised given that ownership, use, management and control of forestry resources rests by law in their hands, as per the Constitution, customary law and other Acts enforcing customary law.

As a result of wide-ranging local rights over forests and notwithstanding current criticism the Plan could improve landowner's participation in the forest industry. At present, the Plan is seen to disregard local rights by failing to provide options for local people to be directly involved and benefit commercially from forest resources outside the Forest Management Agreement (FMA) process. Although the Forestry Act requires local people to register as forest industry participants and includes landowner awareness, ILG and FMA processes, the Plan is considered to restrict rather than encourage participation and for effective implementation of REDD+ this will need to be addressed.⁶²

⁵⁹ Arentz, et. al. *Sustaining Papua New Guinea's Natural Heritage: An Analysis Of The Papua New Guinea National Forest Plan*. Suva: Greenpeace Pacific, 1998.

⁶⁰ According to the Forest Policy the annual allowable cut (AAC) for timber concessions in PNG is estimated by initially dividing the total merchantable resources within a production forest by an assumed cutting cycle of 35 years. The basis of the cutting cycle for PNG tropical forests is not clearly known. However, a report by Curtin (2005) in the newsletter of the Commonwealth Forestry Association states that the World Bank imposed the 35-year cycle used in both Indonesia and PNG. With changing circumstances and differing objectives relating to forest management in PNG, there is a need to review the current AAC and cutting cycle to reflect the actual extracted timber volume that is produced in each timber concession area. See Yosi, C., et. al. *Forest management in Papua New Guinea: historical development and future directions*. ACIAR Proceedings Series, 2011.

⁶¹ Turia, R. *Outcome of Forest Monitoring Project supported by Japanese Government – Japanese Grant Aid and JICA Technical Cooperation Projects*. Port Moresby: JICA-PNGFA Project for Capacity Development on Forest Resource Monitoring for Addressing Climate Change, 2014.

⁶² Arentz, et. al. *Sustaining Papua New Guinea's Natural Heritage: An Analysis Of The Papua New Guinea National Forest Plan*. Suva: Greenpeace Pacific, 1998.

2.2.4 National Forestry Development Guidelines (NFDG)

The National Forest Policy and section 47 of the Forestry Act provide the basis for the NFDG in their role of guiding development of the forestry sector. The NFDG provides an implementation guide for provisions included in the Forestry Act, especially in terms of sustainable production, domestic processing, forest revenue, training and localization, review of existing projects, forest resource acquisition and allocation and sustainable development.

Formulated in 2009 when REDD+ was under discussion by the UNFCCC Conference of the Parties, the NFDG specifically mentions climate change initiatives under the UNFCCC and the Kyoto Protocol, and considers PNG's stance in relation to carbon projects and programs,⁶³ including REDD+. Through the NFDG, an attempt was made to update the Forestry Policy and the Forestry Plan to comply with international developments in the forestry sector regarding carbon-trading initiatives.⁶⁴ As such, the NFDG provides the following climate change mitigation opportunities:

- i) increased forest land;
- ii) increased carbon density of existing forests;
- iii) substitution of fossil fuels and other carbon intensive products by sustainably produced forest products; and
- iv) reduced emissions from deforestation and forest degradation.

The NFDG includes the intention to establish permanent forest estates in strategic locations throughout the country including eight million hectares of 'dedicated' production forest and 0.8 million hectares of plantation forests for the purpose of sustaining forests in the national interest and in perpetuity.⁶⁵ This arrangement potentially provides support for reducing emissions from forests and land use.

2.2.5 Forestry Climate Change Framework for Action (FCCFA)

Following endorsement of the NFDG, the Forestry and Climate Change Framework for Action 2009-2015 (FCCFA) was formulated to complement the NFDG while meeting PNG obligations under international agreements and arrangements.⁶⁶ The Framework includes consideration of Clean Development Mechanism and REDD+ initiatives in PNG and acknowledges the potential for carbon trading to generate revenue for stakeholders including landowners. It also refers to the concept of avoided deforestation, which it defines as the conservation and protection of forest ecosystems for the future whilst using the underlying forest resources in accordance with principles of sustainable forest management.

Table 1 summarises key observations concerning the implementation of REDD+ in relation to current forestry legislation and policy.

⁶³ Example, those carbon projects and programs are categorized as flexible mechanisms under the Kyoto Protocol which include International emissions trading, clean development and joint implementation mechanisms and involve activities regarding renewable energy and energy efficacy to name a few.

⁶⁴ PNG National Forest Authority. *National Forestry Development Guidelines*. Port Moresby: Government of PNG, 2009.

⁶⁵ *Ibid.*, Section C, Forest Management Prescriptions,(1)(ix), Statement of Guidelines (i)(b), p7

⁶⁶ Examples include the Millennium Development Goals, Kyoto Protocol and Johannesburg Plan of Implementation.

Table 1. PNG Forestry Laws, Regulations and Policies: REDD+ compliance and gaps

ACTS & POLICIES	POTENTIAL RELATION TO REDD+	GAPS
<p>Forestry Act 1991 and Forestry Regulations 1998 (PNGFA)</p>	<p>Section 47 of the Act provides the foundation for the NFDG to guide development of the forestry sector and update the Policy and the Plan in compliance with international developments.</p> <p>s6 refers to the 4th National Goals and Directive principles (Constitution) to ensure the protection and sustainable use of forests</p> <p>Provides for protecting and maximizing PNG forest resources in its objectives</p>	<p>No specific reference to the <i>Kyoto Protocol</i> 1997/UNFCCC or other relevant international instrument as basis for the concept of carbon sequestration/storage or trading.</p> <p>Application is targeted towards harvesting and production of timber only as forest product.</p>
<p>National Forest Policy 1991 (PNGFA)</p>	<p>Policy provides for protection of resources, which <u>may</u> support implementation of REDD+.</p> <p>Reference to '<i>continuous production of non-timber products</i>' <u>may</u> support REDD+.</p> <p>Provides for afforestation and reforestation which would support emissions removals under REDD+.</p> <p>Broad definition of forest resources provides for the inclusion of carbon as a forest product.</p>	<p>No reference to the <i>Kyoto Protocol</i> 1997/UNFCCC or other relevant international instrument as basis for the concept of carbon sequestration/storage and trading.</p> <p>Emphasis is on timber harvesting and production though reference is made to protection of forests.</p> <p>Lack of specific reference to REDD+.</p>
<p>National Forest Plan 1996 (PNGFA)</p>	<p>Makes provision for the application of REDD+ only in the NFDG, a component of the National Forest Plan.</p>	<p>Despite the NFDG and reference to carbon initiatives the Plan applies largely to timber production and makes no provision for non-extractive form of production with positive environmental impacts.</p> <p>Other components of the Plan i.e. provincial forest plans etc. do not provide for REDD+ or carbon-related activities.</p> <p>Plan recognizes PNG customary land tenure system but landowners may only participate in the industry through FMAs.</p> <p>Questionable whether based on a valid forest inventory as required by the Act.</p> <p>Outdated/inaccurate application of the current forest inventory.</p>

<p>National Forestry Development Guidelines 2009 (PNGFA)</p>	<p>Mention of climate change initiatives under UNFCCC and Kyoto Protocol in relation to carbon based projects.</p> <p>Provides for climate change mitigation via:</p> <ul style="list-style-type: none"> i) increased forest land; ii) increased carbon density of existing forests; iii) substitution of fossil fuels and less carbon intensive sustainably produced forest products; and iv) reduced emissions from deforestation and forest degradation. 	<p>Though part of the National Forest Plan, guidelines/goals under the Climate Change initiatives are not reflected in the Plan to allow for implementation.</p> <p>Adequately provides for application of REDD+ as above, however, REDD+ is not included in forestry instruments implemented by PNGFA.</p> <p>Does not require clarification of carbon rights under climate change initiatives.</p>
<p>Forestry Climate Change Framework for Action 2009 - 2015 (PNGFA)</p>	<p>Refers to Kyoto Protocol</p> <p>Complements NFDG & PNG obligations under international arrangements.</p> <p>Provides for application of CDM and REDD+ in PNG and underpins current GoPNG REDD Pilot projects.</p> <p>Acknowledges carbon trading as a potential revenue source for stakeholders</p> <p>Adequately caters for the concept/activities of avoided deforestation and provides definition allowing for CDM activities.</p> <p>Implements 3 of the 7 Cancun safeguards (i.e., recognizing rights of indigenous people (IP); participation by IPs; and consistent with objectives of National Forest Program. Also includes FPIC principles)</p> <p>Clarifies carbon rights as belonging to customary owners</p>	<p>Lack of collaboration with OCCD during formulation resulted in duplication with other instruments, i.e., initial Climate Compatible Development Strategy (CCDS) regarding CDM⁶⁷ and REDD+.</p> <p>Principles and strategies yet to be realized in the Forestry Act and other applicable instruments.</p> <p>Inconsistency/ambiguity with ownership of carbon principle under P.1 by conferring carbon ownership to customary owner, yet enforcing its management by the State. This creates an issue because timber rights (already over 12 million hectares) are acquired by the State, and so ownership of trees /carbon will also revert to the State.</p>
<p>Organic Law on Provincial & Local Level Governments</p>	<p>Provides avenue for communities to collaborate with local and provincial governments to create law providing control over their conservation areas and community land use plans, which can also support REDD+.</p>	<p>Dependent on political will in provincial and local level government.</p>
<p>Conservation Areas Act 1978 (DEC)</p>	<p>Provides for conservation of forest areas and could act as a mechanism supporting REDD+ project implementation under the Conservation Areas Management plan.</p>	<p>Carbon benefits will accrue to the State, which will control conservation areas and this could disadvantage landowners wanting to benefit directly through, e.g. VCM projects.</p> <p>Minister has discretion under the Act to re-allocate conservation areas for other public purposes, which creates a threat to security of tenure.</p>

⁶⁷ Clean Development Mechanism (CDM) is included because CDM projects were the most vaunted carbon project at the time and were also cited in the Forestry Framework for Action.

3 Institutional Arrangements for REDD+

3.1 Existence/adequacy of REDD+ designated institutions in PNG

This section assesses the capacity of national agencies and coordinating structures involved in forestry, land management and climate change that are most relevant to REDD+ implementation⁶⁸ (OCCD, DEC and PNGFA and, where required, the Department of Finance.)⁶⁹ Presently, issues of duplication of roles, lack of legal mandate, lack of adequate financial and human resources and inadequate horizontal and vertical coordination systems pose significant hindrances to furthering the REDD+ agenda in PNG. Identifying the institution responsible for addressing these problems will provide a clear mandate for leadership and direction in the various aspects of REDD+ legislative reform and development and other national level initiatives/incentives.

Like all countries planning to join a REDD+ mechanism under the UNFCCC, PNG needs to clarify its official REDD+ institutional arrangements. Under the UNFCCC, the “Warsaw Framework” established in 2013 at COP-19 directs, among other issues, REDD+ countries such as PNG to designate institutions to serve as official liaison with the Secretariat and other UNFCCC bodies, and to designate agencies to receive international REDD+ finance.⁷⁰ Although such questions go outside the scope of this report, such mandates underscore the need for PNG to delineate the respective legal mandates of its forestry-related agencies and institutions in order to respond effectively to climate change.

REDD+ implementation requires a cohesive approach involving all relevant line agencies of government, particularly those dealing with forest, land and the environment but not exclusive to these departments. However for the purpose of this report, the PNG Forestry Authority (PNGFA) would need to work with the Department of Environment and Conservation (DEC), the Department of Agriculture and Livestock (DAL), the Office of Climate Change and Development (OCCD), the National Planning Office (NPO) and the Department of Lands and Physical Planning (DLPP) to ensure their different policies and functions support the implementation of REDD+. Table 2 at the end of this subsection summarizes key institutions and outlines the potential of each agency for ‘housing’ a REDD+ program in PNG.

3.1.1 OCCD

The OCCD was formed by executive decision, but has no legal mandate to execute many of its programs due to the absence of a supporting legal framework on climate change in PNG. This is particularly true for programs relating to REDD+, which requires adequate institutional mechanisms such as for recording data, monitoring forest usage and enforcing compliance with relevant forest-related legislation.

Although the OCCD is relatively independent from its parent Ministry (which has alternated between either the Ministry of Environment and Conservation or the Ministry of Forestry in recent years), it still faces challenges associated with frequent repositioning between different Ministries and Ministers.⁷¹ This creates political interference when Ministers make changes to bureaucratic heads

⁶⁸ This does not take into account the specific aspect of benefit sharing as this is presently a sensitive issue which requires further and wider stakeholder consultation before a suitable mechanism can be proposed. This only reviews what is currently being carried out in each respective department.

⁶⁹ However, the role of the Dept. of Finance has not been covered in detail within the scope of this review, as it pertains to receipt and distribution of finance from development partners for REDD+.

⁷⁰ FCCC/CP/2013/10/Add.1, Decision 10/CP.19. *Coordination of support for the implementation of activities in relation to mitigation actions in the forest sector by developing countries, including institutional arrangements*. UNFCCC, 2014.

⁷¹ The main Departments which have ‘housed’ OCCD are the Department of Prime Minister and NEC (2008 – 2009), Department of Forestry (2011 – 2013) and Department of Environment and Conservation (2010 & 2014).

and key personnel, which results in administrative delays to implementation of key activities during the adjustment period and sometimes even in changes to the program or activities.

3.1.2 DEC

As mentioned in the previous section, DEC is established under a comprehensive legal framework of Environment and Conservation legislation and policy and was initially identified in this report as one of the government departments possessing a suitable mandate for leading a REDD+ program. However, weak enforcement and implementation capacities as a result of insufficient administrative and human resources mean that any proposal for DEC to assume responsibility specifically for REDD+ implementation would be inappropriate and ineffective. If it were to be involved in REDD+ it would need to limit itself to certain aspects of the implementation in which it is able to perform, i.e., development of supportive systems and policies within conservation such as the draft Protected Areas Policy. Considerable measures would still need to be taken however, to improve its monitoring and compliance overall.⁷²

3.1.3 PNG Forest Authority (PNGFA)

A third government institution suitable for housing REDD+ is the PNG Forest Authority (PNGFA). The PNGFA has been proposed by various international and national bodies as having the most appropriate mandate for REDD+ development and implementation due to its exclusive scope of responsibility within the forest sector.⁷³ Despite this mandate, the main objectives of the PNGFA are more focused on commercial harvesting of forest resources as opposed to the conservation of forests set out under REDD+.

Since the introduction of REDD+ into PNG policy in 2008,⁷⁴ the objectives of the PNGFA have shifted further towards sustainability, despite it already being captured in the 1991 Forest Policy. This shift is mirrored in PNG international efforts in REDD+ and domestic priorities set by the Government. As such, certain initiatives within the PNG Forest industry were begun.⁷⁵ These include:

- review of the Logging Code of Practice to improve the standard of logging operations in the country;
- development of a plantation recovery strategic plan to bring some existing plantations, particularly those managed by GoPNG, back into sustainable management and commercial viability;
- approval by NEC of a forest and climate change policy integrating climate change and conservation issues in its forestry operations;⁷⁶
- refinement of strategies to move the forest industry to a more sustainable level;⁷⁷ and
- collaboration between PNGFA and OCCD on identifying and establishing REDD+ pilot projects to test concepts outlined in the climate change framework.

In relation to the final point above, only two out of five initial REDD+ pilot sites are under development: a reduced impact logging site in Central Suau, Milne Bay (64,000 hectares), and April Salome Sustainable Forest Management Project in East Sepik Province, which is under a Forest

⁷² Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O'Brien, S. "REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis". Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

⁷³ United Nations. *UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries – National Programme Document for 2008 – 2012*. FAO, UNDP & UNEP.

⁷⁴ The FCCFA was drafted in 2009 in accordance with key international agreements that had transpired at the time and the inclusion of developing countries in the process of REDD+ implementation.

⁷⁵ Ibid.

⁷⁶ E.g., areas of conservation value could be set aside as 'reserves' within Forest Management Areas earmarked for large scale logging.

⁷⁷ For example, in September 2009 the Minister for Forests announced that no new FMA timber concessions would be allocated with round log export entitlements.

Management Agreement (344,900 hectares). In both project sites the following activities have been conducted, with some in collaboration with OCCD:

- Climate Change and REDD+ awareness conducted with Provincial Forest Management Committees (PFMC), Provincial Administrations, District Administrations and village communities,
- Free Prior Informed Consent (FPIC) obtained from Landowners,
- Land Groups incorporated;
- Development Option Study conducted;
- Forest Inventories, above-ground biomass, soil and litter assessments conducted;
- MRV plots established; and
- Field data compiled.

In support of these initiatives, the PNGFA has also tuned its various administrative structures to suit REDD+. For example, the newly created Climate Change and REDD+ Branch of the Forest Policy and Planning Directorate is primarily responsible for coordinating efforts both towards undertaking REDD+ projects in PNG and with national and international agencies on climate issues (i.e. 'horizontal coordination').

The PNGFA also demonstrates 'vertical coordination' and decentralization of support through the National Forest Service (NFS). The NFS is the implementing arm of the PNGFA, whereas the governing body is the National Forest Board (NFB). The PNGFA also includes PFMCs and the Papua New Guinea Forest Research Institute (PNGFRI) based in Lae, Morobe Province.

The PNGFA represents the most complete institutional structure for REDD+ because of its exclusive forestry mandate, legal framework, broad national administrative structures, coordination with national and international climate and REDD+ institutions, and its REDD+ pilot projects. However, weak implementation of the forestry regulatory framework resulting from a shortage of human and financial resources has plagued the forestry industry over the last 20 years and has also presented significant challenges, as outlined in numerous reports on the administration of the logging industry between 2000 and 2005.⁷⁸

Although these reports revealed that the majority of the logging activities were legally compliant with relevant legislation and practice,⁷⁹ they also identified core weaknesses associated with poor funding, lack of human resources and capacity to monitor forest projects and field activities. These factors were reported to have led to corruption, the continuation of which would undermine sustainable forest management and REDD+.⁸⁰ Although the PNGFA is striving to improve the enforcement of regulations, some assessments suggest these efforts will not be sufficient to address its problems and that more oversight and checks and balances are needed to ensure strong forest governance on paper and in practice.⁸¹

⁷⁸ Review of Forest Harvesting Projects Being Developed Towards a Timber Permit of Timber Authority (2000-01); Review of the Forest Revenue System (2001-02); Independent Review of Disputed Timber Permits and Permit Extensions (2003); Review of Current Logging Projects (2004-05); and Compliance Audits (2004-05).

⁷⁹ It was found that all but 5 of 32 proposed new logging projects had fulfilled due legal process.

⁸⁰ Also supported by a review conducted by the International Tropical Timber Organization (ITTO) — Diagnostic Mission to PNG in 2007.

⁸¹ Friends of the Earth Japan & Global Environmental Forum. *Evaluation of Social and Environmental Risks Accompanying the Procurement of Timber from Papua New Guinea*. Yokohama: ITTO, 2011.

Table 2. Key Institutional Arrangements

Institution	REDD+ Mandate	Legal Framework	Capacity	REDD+ Activities	Horizontal Coordination	Vertical Coordination
OCCD	No legal mandate established by Statute Mandate established by NEC and through shared Ministry with DEC	Drafting of various climate change policy documents in place No policy document for REDD+ as yet	Executive Director overall power with support from three Directors and support staff	REDD+ pilot projects implemented in collaboration with PNGFA	Extensive coordination of its programs across Depts. and Sectors through NCCC and TWGs incl. REDD+	No provincial branches or district branches Centralized Institution only based in POM
PNGFA	Legal mandate established under Forestry Act Own Dept. & Ministry of Forestry	Drafting of various Forestry and Climate policy documents in place, includes option for REDD+ projects No policy document for REDD+ alone	NFS implementing arm with, NFB, PFMCS, NFRI. Managing Director Six directorates incl. Climate Change and REDD Branch	REDD+ pilot projects implemented in collaboration with OCCD under existing FMAs	Coordination with OCCD and other key agencies through NCCC and in particular TWG on REDD+	Extensive coordination of its programs through NFS Provincial agencies & branches (NFRI), (PFMC)(decentralized)
DEC	Legal mandate established under Environment Act DEC is its own department, but shares a Ministry with OCCD	Drafting of various Conservation, Protected Areas and Climate policy documents in place, includes option for broader PES policy (could include REDD+ projects) No policy document for REDD+ alone	Director of Environment, Environment Council, a Working Committee, Environment Consultative Group, and Provincial Environment Committees Not enough human resource to monitor compliance	No REDD+ pilot projects. Conservation areas in place, with option for Protected areas. PES not yet being applied so no option for REDD+ yet	Coordination with OCCD and other key agencies through NCCC & and in particular TWG on REDD+	Coordination of its programs through central agencies & decentralized provincial agencies Not functioning effectively due to inadequate resources

3.2 Existence/adequacy of horizontal coordination

3.2.1 Alignment of institutional responsibilities and actions

In 2010, the National Executive Council (NEC) approved a governance structure to coordinate government climate change actions in PNG known as the National Climate Change Committee (NCCC). This committee was set up to ensure exhaustive measures were taken by all relevant departments to address climate change and a direct reporting channel to the Prime Minister was created.⁸² The OCCD was appointed to act as the secretariat to the NCCC and expected to co-

⁸² They include the Department of Agriculture and Livestock, Department of Environment and Conservation, Department of Foreign Affairs, Department of Justice, Department of Lands & Physical Planning, Department of National Planning and Monitoring, Department of

ordinate all related activities (including REDD+) arising as a result of their broad climate change mandate.

Under the OCCD, three Technical Working Groups (TWGs) were formed to coordinate selected REDD+ activities across designated agencies. The REDD+ TWGs are hosted by various agencies including the lead OCCD, where the position of Chair is rotated among all TWG members, including DEC and PNGFA. REDD+ capacity building is only conducted in the OCCD and PNGFA and not other line departments (e.g., DLPP and DAL), which also however need to be kept informed on REDD+ to facilitate harmonized development.

Despite these initiatives, there are underlying issues concerning overall leadership of REDD+ and the responsibilities of OCCD and PNGFA. Although instruments such as the FCCFA exist to regulate forest carbon related activities, they frequently emphasize the role of the PNGFA but make no specific mention of the OCCD or its role/s despite its jurisdiction in the area of climate change. Conversely, the Climate Compatible Development Management Policy formulated by OCCD and recently passed, makes mention of the Forestry Act and the processes set out therein as a tool for regulating REDD+. ⁸³ This demonstrates inconsistencies in REDD+ related policy and legislation and in the roles of the two leading agencies. These deficiencies will require attention in any future policies and legislation.

The OCCD is actively involved in ensuring a workable REDD+ program for PNG initially under the CCDS and now under the CCDMP which sets out the three phases of REDD+. ⁸⁴ However, there appears to be no roadmap for REDD+ Readiness even in the CCDMP, which means that no clear direction or framework for collaboration in the implementation of REDD+ activities is provided. A possible consequence is premature or defective negotiations regarding any bilateral REDD+ initiatives and such occurrences could have serious implications for REDD+ and forests in PNG.

3.2.1.1 The role of Civil Society Organisations

In PNG, REDD+ initiatives are undertaken not only by government institutions but also by local and international environmental NGOs and bilateral donors. Prominent projects in PNG include the Wildlife Conservation Society (WCS) Village project in Manus, Manus Province; The Nature Conservancy (TNC)/USAID Lowering Emissions in Asia's Forests (LEAF) REDD+/Land Use Planning in Almami, Madang Province; and the Forcert Payment for Environmental Services (PES)/REDD project in Nakanai, West New Britain Province. These activities focus primarily on forest conservation and biodiversity protection and can provide important lessons on a wide range of issues including community engagement, land tenure and community project management. In addition, lessons can be incorporated into the REDD+ readiness process and REDD+ mechanisms can also be piloted.

The DEC and OCCD have already established links with many of these projects and in many cases representatives of the implementing organisations are represented in the REDD+ Technical Working Groups under OCCD. Given the multiple institutions and organisations working in REDD+, the GoPNG will need to clarify the institutional lead for REDD+ and outline the agencies responsible for administrative and technical aspects. Strong coordination mechanisms will also be required to ensure engagement of stakeholders at all levels.

Personnel Management, Department of Petroleum and Energy, Department of the Prime Minister and National Executive Council, Department of Treasury, National Fisheries Authority, Office of Climate Change and Development, and the PNG Forest Authority.

⁸³ NB: At the time of writing this review this policy was in its draft stage, hence all references to it as a 'draft' policy. It was recently endorsed by NEC a week before the media release on the 17th and 18th August 2014 in the Sunday Chronicle and Post Courier newspapers respectively. The policy is now officially referred to as "The Climate Compatible Development Management Policy."

⁸⁴ UN-REDD. 2011 Annual Report Papua New Guinea Programme. UN-REDD, 2011.

3.2.2 Clarity of Roles of Legislative and Judicial Branches of Government

This section reviews the roles and responsibilities of government legislative and judicial arms with respect to potential legal reforms relevant to REDD+. Additionally, the capacity of judicial institutions to effectively adjudicate on REDD+ related disputes is assessed (e.g., disputes over ownership of proposed REDD+ activities on customary land or claims to incentives received for REDD+ activities).

3.2.2.1 Legislative Bodies

OLC and CLRC

The mandate of the CLRC extends further than the OLC because it can go beyond law arising from Ministerial reviews and recommendations and can respond directly to the changing needs of society, as in the case of REDD+. The mandate of the OLC is limited to drafting legislation directed to it by Parliament, and thus it cannot act of its own accord. The broad powers of the CLRC enable it to conduct its own research or reviews of laws and initiate the process of legislative amendments, where deemed necessary. For this reason the CLRC is most appropriately placed to conduct amendments to forestry, conservation, or related legislation to accommodate REDD+ in PNG.

3.2.2.2 Judicial System

The National Judicial System is established under the Constitution⁸⁵ and within the relevant provisions are tribunals and other quasi-judicial bodies established outside the scope of the traditional judicial agencies. Examples are the Land Titles Commission, Ombudsman Commission and Public Services Commission. As mentioned in section 2.1.6, a quasi-judicial body like the LTC would be most appropriate to adjudicate over complaints arising from REDD+ implementation.

Land Titles Commission (LTC)

The LTC was primarily tasked with determining customary land disputes, registering customary land and converting tenure (to avoid complexities often accompanying customary land tenure rights in PNG). Although the LTC exceeded its mandate in exercising its powers and was deemed unconstitutional, land registration would have determined 'clear' title over a large percentage of the national forest area. This process would have removed the need for additional adjudication measures for determining rights over customary land as presently seen in most major resource development projects. Despite its disbanding, the LTC mandate remains and can still be used to determine customary land disputes.⁸⁶ Additionally, the LTC may address customary land tenure issues in current REDD+ projects.⁸⁷

Land Disputes Settlement Act and Land Tribunals

Other forms of dispute settlement apart from the LTC that may be utilized for determining disputes arising from REDD+ - and in particular for settling customary land disputes - are set out within the *Land Dispute Settlement Act*. The Act incorporates both mediation and court processes to achieve settlement between disputing parties, and it incorporates an appeals process that can proceed to higher courts in the country.⁸⁸

⁸⁵ Section 155 of the Constitution.

⁸⁶ *Yanta Development Association Inc v Piu Land Group Inc* [2005] PGSC 24; SC798 (29 August 2005)—the Supreme Court gave orders for a matter to consider resolution via the Land Titles Commission due to the nature of the customary land dispute and its exhaustion of all other legal avenues of redress within the current customary land dispute settlement process.

⁸⁷ Steven O'Brien, 2012. *REDD and forestry carbon rights in PNG*, at p. 20.

⁸⁸ Basic hierarchy of the judicial system commences with Village Courts and Land Courts and then proceeds to the District Courts or Provincial Land Courts and finally ends with the National and Supreme Courts of Papua New Guinea as the courts of highest jurisdiction, however, the National and Supreme Court will only adjudicate over customary Land matters in the event that a settlement is not reached at that level.

Such dispute resolution mechanisms are important to note with regard to REDD+ and in relation to the Cancun Safeguards in particular.⁸⁹ However, the adequacy of such a mechanism for managing disputes arising from rights associated with REDD+ and carbon projects on customary land yet been tested and therefore remains unknown.

⁸⁹ The 'Cancun Safeguards' call for REDD+ countries to ensure "c) respect for the knowledge and rights of indigenous peoples and local communities; d) effective participation of stakeholders; and f) permanence." UNFCCC. (2010). 'Cancun Agreements.' Decision 1/CP. 16, Appendix I, par 2.

4 Tenure and REDD+

4.1 Clarity of Land and Forest Carbon Rights

Customary tenure and ownership apply to 97 percent of land in PNG. Ownership and control of forest, and the carbon sequestered in the forest, derives from the customary ownership of the land on which the forest grows. The Constitution recognizes and (in the absence of existing applicable law) guarantees enforcement in PNG courts of the unwritten customary law rights of land and forest owners as provided for under customary law and governed by custom.⁹⁰ Ownership and usage of land is governed by the *Land Act 1996*, which recognizes the existing customary ownership of land. Customary law, including its applicability or non-applicability and content, must be considered in all aspects of land law and tenure.

The Constitution also allows for Courts to be engaged in the development of the underlying law, which includes customary law. In the qualified rights of citizens,⁹¹ the Constitution further enhances the judiciary's role by providing for protection and enforcement of the rights of a person unjustly deprived of their property.⁹² Other Acts that support the usage of custom and regulate its usage include the *Underlying Law Act 2000*⁹³ and the *Customs Recognition Act*, which provide tests to determine what can be considered suitable custom and enforceable as law by courts.

The extent of land ownership in PNG jurisdiction is subject to various legal and customary principles/rules. The common law rule is the principle most commonly applied i.e., that land ownership generally includes the airspace above the surface and everything below the surface of the earth unless qualified or expressed otherwise by law.⁹⁴ Various sectoral legislation and parliamentary acts enacted so far operate to limit that right.⁹⁵ Some examples of such acts of Parliament include the Mining Act and Oil and Gas Act.

In cases of both alienated land and customary land, Papua New Guinea law recognizes the whole of the rights attaching to land and things in and on it as property of the owner of the root title. The use and enjoyment of different interests in such land may be devolved to others in accordance with the law applicable to the creation of such interests. Hence the person who owns the land upon which the tree and other carbon pools stand may rightfully claim 'carbon' as a natural property following custom in PNG.⁹⁶ In this instance, depending on the type of tenure held, the rightful claimant would be the forest resource owner.⁹⁷

Considering that carbon in the form of CO₂ is not easily detectable, it is necessary to define the solid forms in which it exists in forests to clarify what property is in fact being laid claim to. As such 'forest carbon' is categorized into five pools,⁹⁸ and forest carbon rights are effectively the rights to carbon

⁹⁰ Schedule 2.1, *Constitution of the Independent State of PNG*

⁹¹ This is distinct from 'fundamental rights' under the Constitution, meaning that these rights may be exercised by citizens but under conditions stipulated in specific statutes that regulate them (e.g., freedom from unjust deprivation of property is subject to the Land Act and Properties Act which would set the circumstances under which land may be acquired).

⁹² s53, s 54 and s 57, Qualified Rights of Citizens, *Constitution of the Independent State of PNG*

⁹³ A subordinate constitutional law mandated by section 20 of the *Constitution*, which specifically recognizes the predominance of customary, law and regulates its adoption and application under the *Customs Recognition Act*.

⁹⁴ O'Brien, S. "REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis". Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

⁹⁵ See s5, PNG, Mining Act, "All minerals existing on, in or below the surface of any land in Papua New Guinea, including any minerals contained in any water lying on any land in Papua New Guinea, are the property of the State", s6, Oil and Gas Act, *Subject to this Act, but notwithstanding anything contained in any other law or in any grant, instrument of title or other document, all petroleum and helium at or below the surface of any land is, and shall be deemed at all times to have been, the property of the State.*

⁹⁶ Refer to explanation of this below at 98.

⁹⁷ Andersen, E. September 2012. *Opinion on ownership of carbon, trees and the Right to benefit from REDD schemes in PNG.*

⁹⁸ The UNFCCC has requested that REDD+ countries estimate and report emissions and removals from five forest carbon pools when preparing their national greenhouse gas inventories. The UNFCCC has asked countries to use the most recent IPCC guidelines, as adopted or encouraged by the COP, as a basis for estimating anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks (Dec. 4/CP. 15, para. 1(c)). See Eggleston, S., et. at. *2006 IPCC Guidelines for National Greenhouse Gas Inventories*. Kanagawa: IPCC, 2006. The five carbon pools specified by the IPCC 2006 Guidelines also apply to mangroves: i) Above-ground biomass (stems, branches and

found in these pools. In most situations the largest portion of carbon stock is found in aboveground biomass, which includes stems, branches and foliage and as such covers trees and other vegetation. The material within trees is property and the owners of trees located on customary, freehold and State Land in PNG are the owners of carbon located therein.⁹⁹

4.2 Status of Carbon Rights in the REDD+ context

There is currently no definition of carbon rights under international law or the UNFCCC framework for REDD+. The UNFCCC recognizes the sovereignty of State Parties in addressing land tenure issues within national REDD+ strategies but establishes guiding principles relevant to how countries should develop their framework for rights related to forest carbon sequestration and storage (e.g., within its Social and Economic Safeguards known as the 'Cancun Safeguards').¹⁰⁰

The Pacific Islands Regional Policy Framework¹⁰¹ for REDD+ requires REDD+ programs to align with international instruments to protect the rights of indigenous peoples and calls on countries to develop their REDD+ policies, strategies, action plans, guidelines and legislation to define forest carbon rights, forest carbon financing and incentive allocation arrangements.¹⁰² For emissions reductions to be commoditized it is important to consider the distinction between land and carbon tenure. For a person or group to demonstrate that they own or have control over forest carbon rights in a certain area of land, they would need to show:

- i) ownership or legal control over the land;
- ii) ownership or legal control over the forest resource, to the exclusion of all other competing interests, such as forestry rights, mining rights, leasehold interests or competing usufructs (e.g., competing customary rights), or by having reached agreement with those who hold competing interests; and
- iii) that they can maintain their control over the land and forest and can manage and protect the forest resource to ensure permanence.

Regarding applicable law, ownership of forest carbon follows from the ownership of the trees according to customs in PNG.¹⁰³ REDD+ regulatory frameworks will need to incorporate the following principles of the PNG legal context:

- i) Customary landowners 'own' the trees and (to the extent relevant) the carbon within the trees, which is personal property under Customary Law.¹⁰⁴
- ii) Owners of trees located on customary, freehold and state land in PNG also own the carbon-based material located therein.¹⁰⁵
- iii) The eligibility to be paid for conserving or sequestering the carbon material in trees flows from the ownership of the trees but there is no 'right' yet to be paid for conservation or sequestration of carbon therein.¹⁰⁶

foliage, etc.); ii) Below-ground biomass (live roots more than 2mm diameter); iii) dead wood, iv) litter; and v) organic soil carbon (including organic carbon in mineral soils. This includes live and dead roots of less than 2mm diameter.

⁹⁹ Supra, at footnote 64.

¹⁰⁰ UNFCCC. (2010). 'Cancun Agreements.' Decision 1/CP. 16, Appendix I, par 2. Available at:

http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf

¹⁰¹ The Pacific Islands Regional Policy Framework for REDD+ was endorsed at the 3rd Regional Meeting of Ministers of Agriculture and Forestry held by SPC in Fiji on 28 September 2012.

¹⁰² <http://thereddesk.org/sites/default/files/Pacific%20Islands%20Regional%20Policy%20Framework%20for%20REDD%2B.pdf>

¹⁰³ Supra, footnote 63 & 64

¹⁰⁴ Eric Andersen, Sept 2012. Opinion on ownership of carbon, trees and the Right to benefit from REDD schemes in PNG, p. 49.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

Recent studies concluded that PNG has a well-developed legal system with various elements including comprehensive laws and policies, especially in the forestry sector, that can support creation of a national REDD+ framework including forest carbon rights.¹⁰⁷ Additionally, the studies also concluded that the ownership and control of forests, and carbon sequestered in forests, derives from the customary ownership of the land on which the forest grows.¹⁰⁸ However, ownership of carbon does not convey rights to benefit. Under both project and national level REDD approaches, a baseline or reference level first has to be established against which emissions reductions or removals can be measured. Incentives can then be allocated following verification.

Despite the above definitions and references relating to ownership of carbon rights, many CSOs and landowners in PNG contend that creation of carbon rights will make it “legally possible for these rights to be alienated or signed away in a similar way to the timber harvesting rights from the customary landowners and as such is unwanted and unnecessary”¹⁰⁹ Their basis for such assertions is that:

Such rights, and separation of these virtual “rights” over a virtual “commodity/property” from the land from which they were “created”, and from the landowners that are the custodians of the land and its resources . . . will only make acceptance of PES/REDD+ management & financing schemes in PNG more difficult, and will negatively influence the permanence of carbon sequestration & storage and/or other environmental services under any PES/REDD+ agreements on customary land.¹¹⁰

As such, the decision on whether to introduce legal definitions for carbon rights within existing or new legislation is still disputed and subject to ongoing stakeholder dialogue at the national level.

4.3 The Role of Customary Law and Rights in Land Tenure

Laws and dispute resolution mechanisms in PNG incorporate traditional Melanesian customs related to land ownership and compensation claims arising from destruction of the natural resources growing on it. In the PNG context, ‘customs’ refers not only to traditional practices exercised by the customary owners of and occupiers of land but also to the historical and geographical origins of the group or clan, and the communal standards, behaviours and village way of life.¹¹¹

PNG customs are not codified in written laws or regulations. Each specific instance of custom and claim to customary land or natural resource emanating from the land needs to be deliberated in a relevant court of jurisdiction.¹¹² Such deliberations require taking into consideration facts giving rise to the claim and assessing whether there are laws in place to cover certain aspects of the issues in dispute. This customs determination is usually a lengthy process, depending on the nature of the land in dispute, its claimants and the factors to be considered.¹¹³ With regard to REDD+ and forest carbon emissions reductions, all aspects of customary land tenure are of importance for purposes of resolving disputes over claims to land and related benefits and need to be considered, as discussed in section 3.2.2.2.

¹⁰⁷ Steven O’Brien. November 2012. REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis.” SPC/GIZ.

¹⁰⁸ Ibid.

¹⁰⁹ Comments by Peter Dam, Executive Director, FORCERT, July 2014.

¹¹⁰ Ibid.

¹¹¹ Dr Luluaki. Customary Land Tenure Law in PNG. . 1997. UPNG Law Resource Books. UPNG Publishing.

¹¹² Village Courts and Land Tribunals – Land Titles Commission and Local Land Courts.

¹¹³ Examples include i) location, ii) potential economic value (in terms of natural resource development projects), iii) history of tenure (e.g., whether a reversion to customary land from a section 11 lease) and iv) history of possession of the land by each claimant or certain rights which may arise by virtue of the claimants ancestry. See *Guba v Administration of the Territory of Papua and New Guinea* [1971] PGSC 51 (31 May 1971).

4.4 Existence/adequacy of systems for registration of Land Rights and ILGs

4.4.1 Registration of Land

Lack of secure customary land title will need to be addressed in PNG via the establishment of a broad range of instruments compliant with the requirements of the *Land Registration Act*. Identification of land and associated recipients of REDD+ incentives may need to be determined during REDD+ implementation to limit the potential for fraud and corruption. Because customary land is held jointly by a community, clan or family, it would be virtually impossible for one member of such a group to use his or her individual rights to include the group in efforts to reduce emissions from forests. As such, options have already been considered for registration or conversion of customary land tenure to encompass the rights of the clan or group as a whole.

To this end, the *Land Registration Act 1981* and subsequently the *Land Registration Amendment Act 2009* were established. They provide for a system of indefeasible title in respect to registered land.¹¹⁴ This means that land would need to undergo a process of registration for such a title to be legally established.¹¹⁵ However, this process is not mandatory. Even in the case of non-registration of land on which REDD+ activities are being undertaken, participation of any clan or group of clans should be possible. However, it must be shown that the land has been declared as customary land and is held in their name as an Incorporated Land Group (ILG).

As mentioned in section 3.1.2.2, voluntary registration of customary land is quicker than a process of adjudication under the Land Titles Commission Act and Land Disputes Settlement Act. Voluntary registration ensures that once land is freed from its customary hold (e.g., by conversion to freehold or registration as Registered Clan Land, as outlined within the Act),¹¹⁶ the processes stated in the Act would immediately come into effect to administer ownership rights. As such, this should be considered a possible medium-term option to address issues of tenure and customary rights associated with direct inclusion of landowners in REDD+ implementation. Notwithstanding, this option to register land would still require awareness raising to ensure legal implications are clear to all customary landowners.

The primary difference between the initial process of Land Registration as outlined in the Land Registration Act 1981 and the Land Registration Amendment Act 2009 is that the latter only allows a registered Incorporated Land Group (ILG) to apply for registration of their customary land, as opposed to individual customary landowners.

4.4.1.1 Incorporated Land Groups

For Land Registration to take place, customary clans or clan groups need to be registered as a legal entity known as an Incorporated Land Group (ILG) under the *Land Groups Incorporation Act 1974* (amended 2009). This Act is the primary 'vehicle' by which customary landowners and clans or clan groups are able to receive the legal right to participate in economic development on their land, whether through government initiatives or by private/commercial dealings with third parties (typically foreign investors.) However, despite the positive benefits of such an arrangement, ILGs have received considerable criticism in recent years due to issues¹¹⁷ such as:

- clan members registering in multiple ILGs for the purpose of receiving benefits from multiple projects;

¹¹⁴ NB: An 'indefeasible' title over land/property is one that cannot be altered or voided - i.e. cannot be disputed, defeated or undone.

¹¹⁵ Section 17 of the Land Registration Act 1981.

¹¹⁶ E.g., a conversion to freehold or registration as 'Registered Clan Land' under section 34D of the Land Registration Amendment Act 2009.

¹¹⁷ Identified as part of the National Land Summit held in 2005 which led to the establishment of the National Land Development Taskforce (NLDT) to implement the recommendations and particularly to look into identifying the problems and issues relating to land administration, land dispute resolution mechanisms and how best to access land held under customary tenure arrangements for development purposes.

- one or two members of the clan forging signatures on behalf of a group;
- fraudulently misrepresenting the clan/group and committing its members to business/development agreements without acquiring majority consent, or otherwise bypassing such processes for individual gain;
- lack of consensus in decision making by management committee on clan issues due to poor communication and accessibility of clan/group;
- weak legal status of the ILG instruments (e.g., ILG Constitution);
- poor corporate responsibility of the management committee;¹¹⁸ and
- inability of clan members to ensure accountability of management committee over administration of clan/group finances and affairs.

Based on the above concerns, ILGs have been described as ‘insecure’ and therefore inapt as a mechanism for facilitating participation of customary landowners in REDD+. ¹¹⁹ However, amendments to the Land Groups Incorporated Act enacted in 2009 have now been effected to address these issues.¹²⁰ These amendments have shown promise of significant improvements to the process of forming ILGs, enforcing their proper management and ultimately strengthening their legal status and discouraging fraud.¹²¹

Despite the 2009 amendments, ILGs continue to receive limited support from civil society organizations and customary landowners as the main vehicle for REDD+ engagement. This has resulted both from a lack of confidence in the amendments and a lack of awareness of their implications. The former results partly from the impracticalities of the requirements imposed (e.g., the need for all clan members to acquire birth certificates when birth registry offices are located only in Port Moresby and Lae, and there are no roads in many areas). These issues have complicated the incorporation process, and as a result the amendments have not yet been implemented in many areas of the country.

4.4.1.2 *Voluntary Customary Land Registration*

As mentioned above, Voluntary Customary Land Registration as introduced through amendments to the Land Registration Act is slightly different from the initial process of land registration. Voluntary customary land registration attempts to establish a legal framework that ensures security of investor property rights while guaranteeing ownership of the customary landowning unit via the use of an ILG as the titleholders of the land.

Such a voluntary registration framework appears to satisfy the requirements upon which local-level REDD+ activities could be based, as it would require a degree of agreement by involved parties whilst at the same time protecting customary rights. As stated earlier, this would arise because carbon within trees would acquire value in its standing state whilst not altering the landowner rights of the customary groups (ILGs) engaging with them (i.e., title to land remains with the customary landowners via the ILG).

The *Land Registration Amendment Act 2009* sets out this process and recognizes ILGs as the only entity that can apply for registration of customary land subject to the conditions set out within those provisions, and the only entity that can retain the title to the land.¹²² Under these provisions, once the registration has been effected, customary land ceases to be subject to customary law and all

¹¹⁸ As seen through makeshift templates used for ILG Constitutions and a lack of clear duties and responsibilities, roles and functions of the Executive Committees within the instruments of incorporation, and within former Act.

¹¹⁹ Steven O’Brien, Nov.2012. REDD and forestry carbon rights in PNG, at p. 39.

¹²⁰ As per recommendations of The 2005 National Land Summit held in Lae, Morobe Province, PNG.

¹²¹ Ibid.

¹²² Land Registration Amendment Act 2009, amendments to sections 34D – J.

dealings in the land are then subject to the Amended Act. Customary law only continues to apply in respect of transfers of the member's rights.

4.5 Options for REDD+ within current land and forest management frameworks

4.5.1 Forest Management Agreements (FMAs)

To date, specific forest sector activities, and REDD+ projects in particular, have been established in the same way as timber concessions to ensure:

- i) adequate time to allow for carbon emissions reduction and sequestration;
- ii) rights to the project area are secured and will not be tampered with; and
- iii) processes governing allocation of the land or forest resource have been adequately provided for by law.

Some of the above processes include feasibility studies as important first steps in addressing key issues. A Development Options Study (DOS) set out under section 62 of the Act forms part of the application process for a forest development project under section 61 of the Act but only applies to projects involving timber volume exceeding 5000m³. It nonetheless forms a necessary step in ensuring proper allocation of resources towards forest development, compliance with constitutional/statutory requirements and industry best practice.

Presently, all REDD+ pilot projects are carried out pursuant to this particular provision of the Act, which is seen as the most versatile and most suitable provision for REDD+ projects. Although it is unlikely that any REDD+ project area would contain less than 5000m³, it would be prudent to include the DOS for all REDD+ projects for the following reasons:

- DOS requires that a full investigation into all feasible options for forest development projects be undertaken by the PNGFA prior to an approval (which would provide for REDD+ projects).
- DOS will require a forest inventory to be implemented.
- DOS will require that environmental and social impact assessments are carried out and used to develop guidelines for the specific development project (which should include REDD+). This process is not limited to forestry however, since it also normally requires a separate environmental impact assessment to be carried out under the Environment Act for Class 3 Projects (large forestry activities), which will take into consideration specific issues such as biodiversity conservation and other environmental concerns not covered under forestry legislation/policy.
- DOS will require awareness raising with customary resource owners on the most suitable option for forest development in their area and their agreement and input to guidelines for the forest development project which will support learning and participation, which is essential in a new field such as REDD+.

In addition to the steps covered by a DOS, the Forestry Act outlines a 34-step process for acquiring timber rights under the forestry development guidelines, which constitutes a thorough process of consulting with land and forest owners, and complies with the process of Free, Prior and Informed Consent (FPIC).¹²³ This process is adhered to in the UNFCCC Cancun safeguards for REDD+, which require: "Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account . . . national circumstances and laws, as well as noting that the UN General Assembly has adopted the UN Declaration on the Rights of Indigenous Peoples

¹²³ Danny Nekitel, "Revised Draft Guidelines on Free, Prior and Informed consent for REDD+ in Papua New Guinea, Version 2." Office of Climate Change & Development and UN-REDD.

[UNDRIP]” and “The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities.”¹²⁴

The 34-step process for acquiring timber rights is considered thorough because it requires both an explanation of the timber project by the PNGFA and consent of all ILG members. Although more related to implementation of REDD+ projects this kind of process could underpin implementation of local activities under a national REDD+ programme. One potential problem, however, is that the FCCFA policy document states that carbon rights belong to the customary owner while the State manages the carbon on their behalf via an FMA.¹²⁵

A possible problem with State management of forest carbon under an FMA is that landowners who want to implement REDD+ activities in FMAs through reduced impact logging or conservation of ‘unused’ forest concession areas will need to renegotiate the initial terms of the FMA to cater for activities other than or in addition to logging, as per the original agreement. Furthermore, if ownership of the rights to the trees and the carbon is vested in the State under an FMA, then this right will transfer to logging companies which presently hold timber rights over 9 million hectares of land (under timber permits) out of a total of 12 million hectares acquired.¹²⁶ Disputes will undoubtedly arise if customary landowners enter into REDD+ activities within the ambit of existing or new FMA arrangements as per the FCCFA Policy and Forestry Act. Otherwise, FMA areas could also be realigned to include 10 percent for conservation as REDD+ areas with the full concurrence of landowners.¹²⁷

If carbon and associated rights were managed by the PNGFA the issues of participation and incentive allocation to landowners would need to be considered. Logging royalty rates under FMAs, i.e. PGK 30 (USD\$11) per cubic metre since 2008,¹²⁸ are considered insufficient given that many argue that this amount does not reflect the value of the resource or costs associated with environmental damage incurred. REDD+ should ensure lower levels of environmental damage or no damage at all, and although USD\$11 per cubic metre equates to approximately \$20 per tonne of CO₂ a higher rate would encourage forest protection and provide environmental benefits beyond climate change mitigation. For any proposed REDD+ mechanism to succeed it would need to take these factors into consideration as implementation will rely heavily on landowner support.

To implement REDD+ activities under an FMA, re-negotiation of timber purchase agreements or FMA requirements prescribed under the National Forest Policy will be required to reflect the new purpose and impacts on parties’ rights and obligations.

4.5.2 Areas outside of Forest Management Agreements (FMAs)

In addition to the FMA-related options outlined above, options should also be provided for landowners to implement REDD+ activities outside of an FMA. In such cases, an ILG should be sufficient to cover the requirements of land ownership, identity and participation of its members in economic activities and provide a legal structure to encompass the clan/group’s rights and responsibilities and enable them engage in REDD+ and receive and distribute associated incentives.

¹²⁴ UNFCCC (2010). ‘Cancun Agreements.’ Decision 1/CP. 16, Appendix I, par 2 (c) and (d).. The Cancun Safeguards do not explicitly require FPIC but only ‘take note of’ the UNDRIP, which requires FPIC under five provisions. See UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: Resolution, adopted by the General Assembly, 2 October 2007, A/RES/61/295, Available at: <http://www.refworld.org/docid/471355a82.html>.

¹²⁵ PNGFA, Forest & Climate Change. Framework for Action , Principle 1

¹²⁶ UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, Joint Programme Document, 2010, p. 6.

¹²⁷ Food and Agriculture Organisation of the United Nations. Global Forest Resources Assessment. 2010 Country Report. Papua New Guinea. FRA 2010/161, Rome, 2010.

¹²⁸ Lamb, D. 2011. Re-greening the Bare Hills. Tropical Forest Restoration in the Asia-Pacific Region. Springer and taken from the online resource - http://www.cfa-international.org/country_report_5.php.

In this instance, landowners within an ILG should be given the option of retaining and managing their timber and carbon rights using a system similar to the timber permit system instead of an FMA to facilitate incentive allocation for implementation of REDD+ activities. Such permits could be provided for through amendments to existing forestry legislation and policy, new forestry legislation and policy, or, if a specific REDD+ organization were designated, then a separate REDD+ law or policy.

A PNGFA proposal to establish permanent forest estates to ensure sustainable timber supply could support REDD+ objectives. Under the NDFG the goal is to gazette 8 million hectares of natural forest and 0.8 million hectares of plantation forest. The natural forest target is not realistic, however, given that 12 out of the total 15 million hectares of production forest identified by the PNGFA¹²⁹ have already been earmarked for logging and it is questionable whether any of the 12 million hectares can be classified as permanent estate because the acquired timber rights do not confer land ownership rights. Any arrangement to secure rights to land will have to be in accordance with the acquisition procedures stipulated under the Lands Act 1996.

4.5.3 Conservation Areas

Among the legislation administered by the Department of Environment and Conservation (DEC), the *Conservation Areas Act* and the *National Parks Act 1980* relate to management and protection of forests for the purpose of conserving biodiversity. Biological resources and areas of historical and cultural significance are protected by the Conservation Areas Act, which reflects the World Heritage Convention and Apia Convention. The Conservation Areas Act provides for protected areas on customary land upon declaration by the Minister for DEC (Section 12 of Act) and requires an inventory of persons living on, owning, and using the land.

Land vested in the State under the above-mentioned categories is reserved for public purposes and under the power of the Minister, and any other uses of the areas conserved (including local use) are excluded.¹³⁰ An application can be made to the Minister to alter the purpose of conservation land to other purposes for the general public good.¹³¹ Thus, protected areas under this Act and other acts are not precluded from mineral and gas exploration. The Act further provides that the decision of the Minister is subject to agreement by the Conservation Council, the landowners and the Management Committee that the proposed alternative land use is in the public interest.¹³² It also stipulates that the management of the conservation area must be in strict accordance with the management plan.

Establishment of conservation areas could be considered as a means of reducing emissions from forest in PNG and as such, incentives could be received through an international REDD+ mechanism. Areas constituting 10 percent of FMAs/TRPs and LFAs identified and proposed to be set aside for conservation should also be considered as a means of reducing emissions under REDD+¹³³ and should be adequately reflected in the draft Protected Area Policy under the DEC.

4.5.4 Organic Law on Provincial and Local Level Governments

In 1995, reforms to the Organic Law on Provincial and Local-Level Governments (OLPLLG) decentralized administrative, political, law-making and financial powers and created a new regime for biodiversity conservation. This has allowed communities to develop local environmental protection laws in collaboration with local-level governments. A system for approval of community

¹²⁹ Government of Papua New Guinea. *National Forest Policy*.

¹³⁰ Government of Papua New Guinea. *Conservation Areas Act*, sec. 31

¹³¹ *Ibid.* at sec. 32

¹³² *Ibid.* at sec. 33

¹³³ CTFS/SIGEO (Smithsonian Tropical Research Institute) to study forests of Papua New Guinea: October 20, 2008 - http://www.stri.org/english/about_stri/headline_news/news/article.php?id=884

land-use plans by the local-level government has also encouraged communities to take the initiative in developing ways to conserve their land and resources in a sustainable manner while also providing for livelihood needs. In the absence of specific legislation or policy on REDD+ or land use planning at the national level, the organic law could facilitate local-level reductions in emissions from forests. The powers devolved to provincial and local level governments, could also empower Ward Development Committees at the district/ward level to oversee implementation.

For provincial governments to support REDD+, clear legal definitions in primary legislation (i.e., legislation enacted via Parliament) may be required before secondary legislation can be enacted by provincial or local level governments. Without an established definition of REDD+ and its key terms in primary legislation, challenges to the 'legality' of secondary legislation referring to REDD+ would be inevitable. For provincial governments to support REDD+ definitions having been included in primary legislation, activities that contribute to REDD+, such as reduced impact logging, forest conservation, afforestation and reforestation would need to be framed directly rather than through REDD+ itself.

4.5.5 Special Purpose Agricultural and Business Leases (SABLS)

Various PNG stakeholders have identified the SABL system set out in section 11 of the *Lands Act 1996* as a potentially useful tenure arrangement for facilitating REDD+ in the short-term.¹³⁴ However, due to controversial and fraudulent dealings having recently taken place under this system,¹³⁵ pre-conditions will have to be satisfied prior to implementation.

The main advantage of SABLS in relation to REDD+ is the ease with which customary land could be included. The SABL process achieves this through a lease-leaseback arrangement, whereby customary landowners opt to lease their land to the State for a period, during which the land becomes the subject of a leasehold. This land is then leased by the State back to the customary landowners (under an ILG) to engage in business development projects with private investors or directly with private companies. Approval by the Department of Agriculture and Livestock (DAL) is a prerequisite for all agriculture or agroforestry projects. At the end of the period of the lease, the land reverts back to customary land.

Despite the relative flexibility of this arrangement for accessing land and involving customary landowners in development projects, misuse of SABLS under the Land Act has resulted in a negative perception both nationally and internationally. Specifically, the majority of SABLS issued were used to facilitate forestry activities including forest clearance not in compliance with provisions of the Forestry Act, Regulations and Plans. In most instances, agricultural development subsequent to land clearance never took place.¹³⁶ Loopholes in the Land Act exacerbated the situation¹³⁷ by allowing the government to lease to other corporate entities allegedly nominated by the ILG rather than back to the landowning ILG itself as intended. In many cases the ILG "nominating" the corporate entity comprised only one or two individuals purporting to act on behalf of the clan but without the necessary power of agency.

Over 5 million hectares of land in PNG are recorded as having been placed under SABLS, many for the maximum period of 99 years. Given the problems cited above, it may be possible to use redundant SABLS in contributing to REDD+ but subject to pre-conditions including the following:

- revocation of all leases to foreign companies found to be in breach of the Land Act and subsequent agreements/contracts placed back in the hands of the ILGs under this provision;

¹³⁴ PNG stakeholder consultations, April 2014.

¹³⁵ Tau, J. *Summary of the Final SABL Report as presented by Chief Commissioner, John Numapo*. Pacific Media, 2013.

¹³⁶ Ibid.

¹³⁷ Government of Papua New Guinea. *Land Act 1996*, sec. 10.

- amendments to be made to section 11 and related provisions of the Land Act to allow alteration of the purpose of the lease-leaseback from agricultural projects to REDD+ projects or for REDD+ activities; and
- a clearly legislated option to convert existing and new SABLs from agricultural development.

The initial concept behind SABL was to allow customary landowners to engage in and benefit from land and natural resource related economic opportunities. This goal should be supported where feasible by promoting conversion of the 5 million hectares under SABLs for REDD+ projects and activities after the present moratorium on new SABLs has been lifted.

5 Land Use Planning and REDD+

Despite its natural resource wealth, PNG is a poor nation by global standards as per its low international rankings on the Human Development Index, with one of the highest rates of corruption according to the Corruption Perception Index.¹³⁸ PNG has a high population growth rate relative to other Pacific countries (~2.3 percent per annum)¹³⁹ and since independence has followed a piecemeal approach to land use planning. With rapid economic expansion and need for increased food production deforestation rates have risen.

Though an institutional framework exists allowing for centralized planning and coordination, no specific legal or policy framework exists to guide sustainable use of PNG's natural resources. Government REDD+ related line agencies currently lack harmonization, which combined with the lack of a REDD+ regulatory framework has led to institutional ineffectiveness. The lack of foresight and coordination is demonstrated by the ad hoc approach taken towards resource development, which has led to many of the conservation issues faced in the country today (e.g., threats from mining and logging, and undue delays in processes for conservation of high biodiversity areas).

5.1 Coordination across sectors

Poor coordination between sectors and activities including mining, logging and conservation have resulted in conflict and heightened challenges for forest conservation. These issues have become impediments to sustainable development and economic advancement. Land use policy and legislation therefore need to set out criteria for prioritizing resource development to guide usage of land at the national level.

With respect to coordination between forestry and conservation, Payment for Environmental Services are being discussed under the proposed protected areas policy and could support efforts to reduce emissions from protected areas. Currently, the government has secured 53 forest sites as protected areas, which could result in avoidance of significant quantities of emissions. The protected areas need not necessarily be registered for REDD+ activities and all that has to happen is for a forest emissions accounting framework to be set up together with a Safeguards Information System. Emissions can then be reduced through whatever means the country has at hand, or wants to implement, for incentives to be accessed. In the longer-term land and carbon tenure may need to be determined for incentives to be allocated in return for implementation of activities that support REDD+, such as forest patrolling on customary land. Tenure will not necessarily require immediate reconciliation for REDD+ to progress as broader means may be used to encourage reduction in emissions from deforestation and degradation such as provision of means to develop alternative livelihoods that reduce pressure on forests. Subnational and national land use plans and policies will need to provide for different options in how REDD+ could be implemented while focusing on minimizing chances of disputes arising between competing land holder interests.

5.2 Coordination between national, provincial and local levels

Although land use planning is fundamental to sustainable natural resource management and has been advocated by CSOs and practiced successfully by communities at the local level,¹⁴⁰ there is no associated national policy framework. In Madang and Oro Provinces, land use planning experience suggests that participatory approaches involving entire communities as well as local and provincial governments are necessary to ensure ownership, commitment and sustainability.

¹³⁸ United Nations Development Program. *2012-2013 Annual Report – Supporting Global Progress*. UNDP, 2013.

¹³⁹ *Ibid.*

¹⁴⁰ Hurahura, F. *Gap Analysis for Madang Province*. Arlington: The Nature Conservancy, 2014.

Land-use plans – and a legislative framework to give effect to the plans - are important in providing land-use guidance in not only communities, but at the provincial and national level as well. As seen in many CSO-led efforts, participatory land-use planning facilitates equal consideration of community interests and provides a sense of ownership. These processes have also enabled local and provincial governments to be informed of community needs and in doing so have facilitated more effective planning and decision-making.

National level planning should build on local level land use planning experiences if REDD+ is to function in PNG. Local and provincial land use planning must be integrated into a national land use-planning framework, e.g., in the Provincial Forest Plans (PFPs), which address provincial-level forest management.¹⁴¹ Currently PFPs are too general, do not include land-use planning co-ordination between the provincial and local levels, and do not address REDD+ related activities. Any amendments to PNGFA forest policies should integrate REDD+ related mechanisms and activities and lay out a framework for reducing emissions within the context of land-use planning in PFPs.

¹⁴¹ Section 47 & 49 of the Forestry Act 1991 establish a National and Provincial Forest Plan respectively and section 30 gives the PFMC the power to develop them in accordance with set criteria outlined within the Act.

6 Gender Equality and REDD+

Gender equality is a basic human right captured within the *UN Convention on the Elimination of Discrimination against Women (CEDAW)*. This instrument was ratified by PNG on 12th January 1995 and since domesticized into various criminal and family laws and policies.¹⁴² Addressing gender issues is both a safeguard and performance issue that needs to be addressed in designing REDD+.¹⁴³

The Constitution of PNG recognizes the important roles of women in development.¹⁴⁴ Despite this and other legislative efforts associate with international commitments, women continue to be discriminated against in PNG, especially amongst the rural population which accounts for 80 percent of the population as a whole.¹⁴⁵ PNG women earn only a third of the wages earned by men; female literacy and school enrolment rates lag significantly behind those of males¹⁴⁶ (despite a policy priority of equal opportunity in education¹⁴⁷); women are restricted from accessing credit facilities; and women encounter high levels of domestic violence and sexual assault.¹⁴⁸

Women members of the rural population of PNG deal directly with the environment and natural resources¹⁴⁹ and it is imperative that they participate directly in all aspects of sustainable development. Some of the substantive gender gaps relevant to forestry and REDD+ include lack of recognition of women and their constituencies as legitimate stakeholders, lack of women's access and representation to influence REDD+ policies and programs, and lack of rights to benefit-sharing from forestry and REDD+. Gender considerations concerning women's equitable participation, leadership and decision-making are significant to discussions on REDD+, especially in relation to land tenure, land use planning and incentive allocation.

One example of the positive effects of gender inclusion in the forestry sector in PNG was seen where women's groups were able to mobilize support to petition the Government of the Autonomous Region of Bougainville (ARB) to ban the export of round logs. Despite initial opposition, persistence by women's groups resulted in this policy being considered, endorsed and subsequently implemented. Presently the only form of timber harvesting in the ARB is through 'wokabaut' sawmills, which are primarily used by men to produce timber for domestic purposes.¹⁵⁰

6.1 Gender and Land Tenure

As referred to in section 4.4.1 above, the *Land Registration (Amendment) Act 2009* permits a customary group or clan's communal rights to land under an ILG to be held on behalf of the clan and recognizes the need for social security and social ownership. Although ILGs include women, their land ownership rights do not include controlling rights where customary norms may discriminate against a woman who marries outside of her tribe/clan and comes under the responsibility of her husband. This effectively renders women clan- and land-less through customary promotion of male family members as principle land owners, especially where the wife would not be permitted to 'control' land or other property under her husband.

¹⁴² See *Papua New Guinea National Policy for Women and Gender Equality 2011-2015* and *Family Protection Law 2013* and various amendments made to the Criminal Code relating to increase in penalties and process of conviction for acts of sexual violence committed against women and children.

¹⁴³ FCCC/CP/2010/7/Add.1, Decision 1/CP.16, paragraph 72. *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*. UNFCCC, 2011.

¹⁴⁴ The Preamble to the Constitution, The National Goals and Directive Principles – Goal 2 – Equality and Participation.

¹⁴⁵ Trading Economics – Rural population (% of total population) in Papua New Guinea website: <http://www.tradingeconomics.com/papua-new-guinea/rural-population-percent-of-total-population-wb-data.html>.

¹⁴⁶ United Nations Development Program. *Papua New Guinea – Millennium Development Goals Progress Report 2004*. Port Moresby: UNDP, 2004.

¹⁴⁷ Education Plan 2003 – 2010.

¹⁴⁸ Ibid.

¹⁴⁹ Nita, A. *Papua New Guinea National Assessment Report*. New York: Commission for Sustainable Development, 2006.

¹⁵⁰ Local Pidgin language and term used for 'transportable' sawmills.

Responding to this situation, recent amendments to the *Land Groups Incorporation Act 2009* require two female representatives to be elected to ILG management committees. Inclusion of women representatives is intended to ensure women's interests in the clan also considered, especially in relation to land use and benefit sharing. In turn, this should prevent male clan leaders from formally dispossessing women of whatever customary right to land and resources they may hold.¹⁵¹

In light of the above, it is also important that where genealogical assessments claim an area to be within a maternalistic society, whereby ownership of female descendants is evident and supported by custom, this must be reinforced within subsidiary legislation/regulations or rules to ensure male members respect and adhere to the custom.

Additionally, amendments have been proposed to the PNG property and business regulatory frameworks to permit movable assets (e.g., machinery, jewellery, and other household objects) to be used as collateral.¹⁵² This should enable women without formal title to collective/customary land to access credit facilities.¹⁵³ Such amendments have significant potential to better enable women to participate in initiatives such as REDD+. Both the Women in Business Initiative within the GoPNG and National Development Bank's SME credit support initiative have addressed this process to some degree recently in PNG.¹⁵⁴ These proposed changes should ensure a stronger enabling environment for women to engage directly in REDD+ projects and programs.¹⁵⁵

6.2 Gender in Forestry and Agriculture

There is little or no public debate in PNG about gender issues in forestry sector governance, although other issues concerning impacts and sustainability are widely discussed. The only institutional mechanism for raising these issues is the seat held by the National Council of Women (NCW) on the National Forest Board of the PNGFA.¹⁵⁶ While there are no specific policies relating to women in forestry, one of the eight priority areas of the *National Agriculture Development Plan 2007-2016* (NADP) is "to promote equal participation of women in all aspects of agriculture and livestock development, so as to improve the status of women through economic development, and also to ensure that, gender, ... [is] mainstreamed in all agriculture development programs."¹⁵⁷ In order to prove its commitment to addressing the needs of women in forestry activities and ultimately in the community (especially children) in forested areas, the PNGFA/FIA and other key stakeholders within GoPNG need to consider replicating a similar Strategy or Plan within the Forest sector as is currently seen in the Agriculture sector. Women have an integral role in forest conservation and sustainable management of forests that will need to be specifically provided for within relevant Policy and legislation if REDD+ is to become effective in the future. Without specific measures to integrate gender considerations into key forestry and REDD+ activities, women will continue to be sidelined in future initiatives within forestry and REDD+.

6.3 Gender and Land Use Planning in PNG

Authority over land and fixed assets in systems of traditional tenure usually resides with men, though women often have use rights. As a result, women are excluded from claims to control the disposition of the land and to negotiate with foreign investors. The recent surge in foreign

¹⁵¹ Government of Papua New Guinea. *Land Groups Incorporation Amendment Act 2009*, sec. 14(b) & schedule 6.

¹⁵² Such amendments include the Companies Act and Regulations, the Associations Incorporation Act and to a number of laws and regulations governing Banking and Financial (or microfinance) Institutions.

¹⁵³ The World Bank. *Doing Business 2012: Doing Business in a More Transparent World*. Washington, DC: The World Bank, 2012.

¹⁵⁴ These initiatives created more opportunity for women to access credit facilities by introducing less stringent requirements on amount of loan, process of repayments and security than other financial institutions in PNG.

¹⁵⁵ Naumann, U. & Shawe, L. *Lending and taking security in South Africa: overview*. Bowman Gilfillan, Inc., 2012.

¹⁵⁶ PNG National Council of Women. *The Cedaw Shadow Report On the Status of Women in Papua New Guinea and the Autonomous Region of Bougainville*. Port Moresby: 2010.

¹⁵⁷ Priority Area 6 - Gender, social and HIV/AIDS related issues of the National Agricultural Development Plan 2007 – 2016.

investment in PNG, including in land and mineral development, has generally reduced women's financial stability and power.¹⁵⁸ In most parts of PNG men typically negotiate land rights without women's knowledge or consent. Consequently, women seldom have the ability to either halt a process or suggest adjustments to land rights negotiations except through legal means, i.e., via court directions/orders (where they have legal title to property). Women's and men's roles, use patterns and knowledge of forests all shape their experiences differently. An inability to fully comprehend these differences and to cater for them appropriately, could lead to inappropriate land use policies affecting forestry, REDD+ and also agriculture and mining, etc.¹⁵⁹ To avoid these kinds of disconnects and prejudices, effective and meaningful participation of women must take place.

Based on lessons from recent initiatives in PNG such participation is likely to require strict rules. For example, in the village REDD+ demonstration project initiated by the Wildlife Conservation Society (WCS) in Manus Province, attempts to ensure equal gender participation have faced challenges due to cultural practices that promote men's exclusivity in decision making including the tradition of decision making in a 'Haus Boi' or Men's House. In contrast, WCS found that women put in charge of managing community money under a micro-financing scheme introduced by the Department of Commerce and Industry (DCI) were accepted by men due to strict external requirements set by DCI.¹⁶⁰ These lessons imply that strategic enforcement mechanisms on gender-responsive approaches are more likely to influence transformative changes over and above customary practices in the communities.

¹⁵⁸ Javia, I. & Siop, P. *Paper on Challenges and Achievements on Small-scale mining and Gender*. New York: Wau Small Scale Mining Training Center, 2010.

¹⁵⁹ Nita, A. *Papua New Guinea National Assessment Report*. New York: Commission for Sustainable Development, 2006.

¹⁶⁰ Interview with Grace Dom, Legal & Policy Officer of Wildlife Conservation Society. Port Moresby: 14 July 2014.

7 Recommendations

Based on the previous sections of this report, this section proposes recommendations to the forest-related law and policy agenda in PNG. In order to help prioritize issues, recommendations are divided into options to be pursued in the short and medium term.

7.1 Short-Term Options

To develop a fully functional REDD+ framework will take considerable time and effort but to accelerate implementation it should be possible to commence actions that facilitate establishment of a REDD+ framework and allow emissions reduction activities to begin. With greater experience and better information, a process of continuing refinement will allow for incremental improvements. If taken immediately, the following should promote timely and effective REDD+ implementation in PNG:

7.1.1 Support national development of REDD+ under the UNFCCC

In fulfillment of PNG requirements under the UNFCCC to potentially receive REDD+ finance, the GoPNG will need to pursue the following. Most of these will require no or minimal policy and/or legal reform:

- i) **OCCD and PNGFA to develop a National REDD+ Strategy** in conjunction with existing TWGs, UN-REDD and other key agencies, linked to the National Climate Compatible Development Management Policy (CCDMP). The strategy could provide a roadmap for a National REDD+ Policy or similar instrument to guide legislation and initiatives related to REDD+ (see below) and should include plans for the following:
 - a. **Measurement, reporting and verification (MRV) system** to provide information on REDD+ activities through biennial update reporting, as consistent with UNFCCC decisions.¹⁶¹
 - b. **National forest reference emission levels (RELs) and/or forest reference levels (RLs)**, as consistent with UNFCCC decisions.¹⁶²
 - c. **National forest monitoring system (NFMS)**, in keeping with UNFCCC decisions.¹⁶³
 - d. **Safeguard information system (SIS)** to provide information on how safeguards are being addressed and respected.¹⁶⁴
 - e. **Policies and measures to address drivers of deforestation and forest degradation** and report work on the UNFCCC REDD+ online platform.¹⁶⁵
- ii) **GoPNG to designate a national REDD+ focal point or entity** to liaise with the UNFCCC Secretariat and other relevant UNFCCC bodies for REDD+.¹⁶⁶ GoPNG may designate the entity or focal point to receive results-based payments,¹⁶⁷ and the entity may also share information on and coordinate REDD+ activities.¹⁶⁸

¹⁶¹ UNFCCC Decision 14/CP.19 para 3-7.

¹⁶² UNFCCC Decision 1/CP.16 para 71(b); Decision 12/CP.17 paras 1, 8; Decision 4/CP.15 para 7.

¹⁶³ UNFCCC Decision 1/CP.16 para 71(c), footnote 7; Decision 11/CP.19 paras 2-3, 4(a)-(d).

¹⁶⁴ UNFCCC Decision 2/CP.17 para 63; Decision 1/CP.16 para 71(d), Decision 9/CP.19 para 3; Decision 12/CP.17 para 3; See also Decision 1/CP.16 para 69 and Appendix I.

¹⁶⁵ UNFCCC Decision 15/CP.19 para 3-4.

¹⁶⁶ UNFCCC Decision 10/CP.19 para 1.

¹⁶⁷ UNFCCC Decision 10/CP.19 para 1.

¹⁶⁸ UNFCCC Decision 10/CP.19 paras 3-4.

7.1.2 Support Institutional Arrangements for REDD+

- i) **GoPNG to establish a National REDD+ Taskforce** chaired by PNGFA, DEC and OCCD in rotation, and including relevant GoPNG agencies and stakeholder group representatives. The Taskforce should focus on policy and legislative reform and other medium-term recommendations below.
- ii) **GoPNG to establish a special Climate/REDD+ Parliamentary Steering Committee** to which the National REDD+ Taskforce would report.
- iii) **National REDD+ Taskforce to oversee implementation of REDD+** in accordance with existing policies and consider recommendations included in this review.
- iv) **National REDD+ Taskforce to formulate a National REDD+ policy** to define institutional responsibilities for REDD+ and clearly delineate powers between PNGFA and OCCD as the two main agencies responsible for leading REDD+. It is suggested that PNGFA be given primary responsibility for implementing REDD+ with policy support from OCCD. This arrangement will ensure both agencies use their existing strengths in terms of human and financial capacities and other institutional capabilities to effectively implement REDD+. However, to determine the lead REDD+ agency a thorough analysis should be carried out by an independent body such as the CLRC to avoid potential bias. The CLRC could also review the appropriateness of the chosen agency's policies and legislation to accommodate REDD+. The National REDD+ policy would pave the way for an eventual Climate Change or REDD+ statute, which would ensure a clear legal framework and foundation for REDD+.
- v) **DEC to establish a national-level biodiversity conservation steering committee** with institutional linkages to the National REDD+ Taskforce.

7.1.3 Expand review process and extend consultations

- i) **All sectoral legislation relevant to forestry and land use to be reviewed** for provisions that run contrary to objectives of REDD+ (e.g., incentives that promote deforestation or forest degradation).
- ii) **Further Regional Stakeholder Consultations on REDD+** to be carried out by PNGFA and OCCD to ensure this review's recommendations are subject to adequate and broad dialogue at the Regional and Provincial level. This will need to be coupled with capacity building and knowledge exchange.
- iii) **Examine the potential for providing REDD+ incentives in kind** rather than solely as monetary payments to avoid problems associated with ascertaining land and carbon ownership. Incentives could be offered in the form of education (schools), health (hospitals) and basic infrastructure that broadly benefit groups involved.

7.1.4 Use and strengthen existing policies and measures to support REDD+

- i) **PNGFA to improve enforcement and implementation** through the following recommendations made in recent studies:¹⁶⁹
 - a. **Increase resources** to enable meaningful oversight of the forestry sector.
 - b. **Apply penalties**, including the cancellation of logging licences, to discourage serious breaches of forestry law.

¹⁶⁹ Lawson, S. *Illegal logging in Papua New Guinea*. London: Chatham House, 2014. O'Brien, S. "REDD+ and Forest Carbon Rights in PNG – Background Legal Analysis". Port Moresby: SPC/GIZ Regional REDD+ Project, 2012.

- c. **Overhaul and improve transparency** of forest-related information to enable third parties to assist in monitoring forestry activities and detect corruption.
 - d. **Enact regulations to mandate publication of key documents** and data.
 - e. **GoPNG to make auditing and compliance mandatory for all timber harvesting** in the country.
 - f. **GoPNG to finalize and implement mandatory chain of custody** and information management system.
 - g. **GoPNG to publish full reports of parliamentary commission of inquiry into SABLs.** Subject to findings of report, this should enable landowners to consider options of converting 'illegal' or 'redundant' leases on forested land into REDD+ activities. This can be considered by relevant GoPNG agencies as the next step for SABLs, whilst they are suspended, and to consider feasibility of the option in light of the problems presented by the COI.
- ii) **DEC to develop implementation plans and enforcement measures** based on existing policy and legislation to support REDD+ objectives.
 - iii) **Requirement for 10 percent of timber concessions to be set aside** for conservation to be included in the new draft Protected Areas Policy.
 - iv) **Payment for Environmental Services (PES)** as included in the draft Protected Areas Policy and relevant environmental legislation to be considered as a means of supporting REDD+ outcomes by engaging landowners in generating emissions reductions and removals.
 - v) **Implement clause 10 of the National Forest Policy**, which allows for customary resource owners to enter into environmental arrangements with the state in high conservation value areas over which a timber permit has been issued. Benefits that result from activities under this clause are likely to go to the timber permit holder.
 - vi) **PNGFA and DEC to consider providing incentives to forestry industry** (e.g. reductions in forest levies) in return for achieving forest management certification and associated emissions reduction.
 - vii) **PNGFA to encourage adoption of the timber legality standards** developed under the ITTO Project to allow verification of the legality of harvested timber.
 - viii) **The Forestry Amendment Act 2007 (sections 90A–E) should be revised** to regulate the four agencies involved in issuing Special Purpose Agricultural and Business Leases/Forest Clearance Authorities (DLPP, DEC, DAL and PNGFA). PNGFA should take responsibility for ensuring all requirements under this section are met before a FCA is issued and for ensuring REDD+ projects will not be affected.
 - ix) **GoPNG should review the PFMC composition** to facilitate REDD+ at the provincial level, to include DEC, OCCD, DLPP and DM&P.
 - x) **Integrate REDD+ projects into national or sub-national REDD+ accounting** to allow inclusion of emissions reductions and removals from projects and subnational REDD+ activities in national level carbon accounting and reporting in keeping with UNFCCC requirements.

7.1.5 Improve Gender Equity

- i) **Collect gender-specific data** to assess women's engagement in the natural resources sector, particularly in forestry and land use-related areas, to enable assessment of impacts on women and inform REDD+ policies in PNG.

- ii) **Forthcoming Climate Change Bill to make specific reference to ‘gender inclusion’** in decision-making and planning processes and ensure ‘gender equality and participation’ in activities at local and national level, especially where management committees for REDD+ funds or incentive allocations are concerned.
- iii) **Promote gender-balanced decision-making** at national, sub-national and community levels. Provisions for at least 30 percent women representation on ILG Management Committees/Executive Committees to be replicated in similar mechanisms (e.g., Corporate Societies, Landowner Associations/Companies, and other forms of customary legal corporations).
- iv) **Mandate equitable benefit sharing** between men and women in REDD+ demonstration projects and activities.
- v) **Implement draft National FPIC Guidelines** with emphasis on gender equity in REDD+.
- vi) **Government agencies to include women in policy and advocacy** at all levels so their needs in the forest and land use sectors are effectively represented.
- vii) **Apply lessons learned from mining sector to forestry sector** on including women in negotiations, consultation, dispute resolutions and benefit sharing.¹⁷⁰

7.2 Medium-Term Options

7.2.1 Reform Forestry Policy and Legislation

To facilitate development of REDD+ projects and enable direct participation of forest owners in nationally-led REDD+ efforts the following recommendations are made:

- i) **Carbon rights, as distinct from land and resource rights, should be defined within the Forestry Act.** Forest carbon should be defined as a forest product contained within the five pools defined under the UNFCCC and forest resources should be developed in strict accordance with the National Forest Policy. Procedures for carbon and associated permissions as separate from timber and timber permits may also need to be specified.
- ii) **Resource allocation and forest development projects (Forestry Act sections 61-65) to refer to REDD+ as a ‘climate change mitigation option’** and subsequently a ‘development option.’
- iii) **Include REDD+ in the Forestry Act as a ‘forest development activity’ and a ‘forest industry activity’** together with relevant interpretation clauses.
- iv) **Allow REDD+ projects to be carried out within timber concessions and current FMAs** via provision in the Forestry Act.
- v) **National Forest Policy and Plan to include carbon as a forest product** to facilitate REDD+ activities within FMAs (e.g., Reduced Impact Logging and implementation of the PNG Logging Code of Practice) and allow landowners to engage in REDD+ rather than have FMA or timber permit holders take priority.
- vi) **Use the community forestry provision under the National Forest Policy (clause 11)** to engage local people in REDD+ activities and facilitate allocation of incentives using the same process under a FMA/timber permit and without formally registering land or allocating

¹⁷⁰ The OK Tedi Women’s Association is a successful initiative by the women in Tabubil, Western Province, PNG, to set up a body to represent the women and to ensure they have a voice in all decisions made with the GoPNG and the Mining Company over the use and distribution of benefits derived from the royalties and other equity payments received from the OK Tedi Gold mine, as well as to be involved in the process of negotiation and dispute resolutions in the event of pending conflict/dispute between the parties.

carbon rights, i.e. incentives could be received by the community forestry association. This should be possible if carbon is recognized as a forest product.

- vii) **Broaden the functions of the State Marketing Agency (Forestry Act section 42) beyond timber products by recognising carbon as a forest product** and including promotion of REDD+ as a forest industry activity.
- viii) **Include provisions for promoting REDD+ and marketing avoided carbon dioxide emissions in National Forest Policy** sections aimed at promoting and marketing timber.
- ix) **National Forest Development Guidelines (NFDG) and related forestry legislation and policy to make specific reference to ‘gender gaps’ and ‘women’s leadership and empowerment’.**
- x) **Requirements similar to those for areas with annual allowable cut >5000 m³ to register as forest industry participants and be managed by the State and the PNGFA not to apply to REDD+ projects or areas in which REDD+ activities are to be focused.** This will facilitate establishment of large scale forest carbon projects outside the FMA system and permit landowners to participate in REDD+ and exert control over their own forests.
- xi) **Development options feasibility study waiver for smaller forest areas (annual allowable cut <5000 m³ (section 62(a))) not to apply to REDD+ projects or areas in which REDD+ activities are to be focused** as development options studies provide learning opportunities for resource owners whose participation is also required in negotiating the terms of REDD+ agreements.
- xii) **REDD+ projects should be considered small-scale forest industries** under the National Forest Policy. Minimum size requirements for REDD+ projects similar to those for timber harvesting and other forest activities would need to be considered before adopting related provisions.
- xiii) **Goals and guidelines under the climate change initiative included in the FCCFA and the NFDGs should be translated back into the National Forest Policy and National Forest Plan** to facilitate implementation through all forest legislation and policy.

7.2.2 Reform Land-related Policy and Legislation

- i) **Lands Department to fully implement 2009 amendments to the Land Groups Incorporation Act (ILG amendments)** to support direct participation of forest owners in REDD+, in collaboration with the Department of Youth, Religion and Community Development, to ensure requirements for fingerprinting and numbering of members of Incorporated Land Groups are achieved through provincial branches of the civil registry office.
- ii) **Registration of clan lands under the Land Registration Amendment Act 2009 to be adopted** following an appropriate trial period (e.g. 2014–2017) as a secure form of customary land tenure supporting equitable REDD+ incentive allocation.
- iii) **LTC Act to be amended to recognise forest carbon as being associated with land and the Interpretations Act to be amended to include a definition of forest carbon** and carbon rights that can then be consistently referred to throughout all law and policy.
- iv) **LTC to be reactivated and empowered** to implement voluntary conversion and registration of customary land to assist ILGs to engage in REDD+ activities.
- v) **LTC to be given a specific mandate for adjudicating land disputes on customary land** by extending the definition of land in Section 4 of the LTC Act to include carbon, e.g. *“Land includes any substance derived from land and contained in the natural resources on it, and shall include any solid, liquid or gaseous element.”* These changes will need to be consistent

with other legislation such as the Land Act, the Forestry Act, the Conservation Act and, potentially, the Interpretations Act.

7.2.3 Develop Land Use Policy and Support Land Use Planning

- i) **Department of Lands and National Planning Office to develop a National Land Use Policy** in collaboration with all relevant government sectors and stakeholders to balance national land use priorities and to coordinate ward/local-level, provincial and national levels. The Policy should address the need for prioritizing land-uses in accordance with Vision 2050, MTDP's and other National Development Plans, with emphasis on sustainable development.
- ii) **Integrate bottom-up participatory land-use planning into existing Forestry, Climate and Conservation Plans** (e.g., Provincial Forest Plans) to support provincial forest conservation and management and explore mechanisms to address any unnecessary deforestation and degradation resulting from subsistence agriculture and shifting cultivation. All amendments should integrate activities supportive of REDD+ and lay out a framework for forest conservation and REDD+.
- iii) **Identify gender gaps in the proposed National Land Use Policy and planning processes and propose solutions** based on information on women's forest use patterns and knowledge.
- iv) **Encourage implementation of current laws under OLPLGs permitting creation of provincial- and local-level land-use policies.**

7.2.4 Improve Gender Equity

- i) **Mainstream gender considerations into policies, laws and regulations** relevant to REDD+. Such mainstreaming should be conducted in close coordination with the *Papua New Guinea National Policy for Women and Gender Equality 2011-2015* and identify opportunities for coordination between the various policies and institutions including NCW
- ii) **Forestry and REDD+ implementing agencies to identify and address gender bias** via policy and legislative reforms relevant to REDD+, and through forest management (e.g. by promoting women's equal access to and control over land and water, and supporting equal access to formal and informal markets and credit and support services).
- iii) **All commodities and statutory boards to include 30 percent female representation.** Ward Development Committees to include 30 – 50 percent women members to ensure equal gender representation at the community level.
- iv) **Promote women's involvement in local-level planning in Medium Term Development Plan,** especially related to land use and natural resources.
- v) **Designated REDD+ related agencies to implement leadership training for local women and raise awareness of women's rights, forestry and REDD+,** in liaison with the Department of Youth, Religion and Community Development and relevant CSOs.
- vi) **Empower women to settle local forestry and REDD+ related grievances** by promoting female representatives and spokespersons in all REDD+ activity sites and encouraging female village court magistrates in all major districts.

7.2.5 Support Good Governance and Transparency

- i) **Establish an Internal and/or External Oversight Agency:**
 - a. **GoPNG/NEC to empower external institution(s) to investigate forest sector corruption and enforce findings** (e.g., the Ombudsman Commission or a new agency) Such institution also to provide routine oversight of the PNGFA or other

designated REDD+ institutions independent of traditional government bodies to ensure a high-level system of checks and balances; and/or

- b. **PNGFA to introduce internal oversight agency** including representatives from OCCD, DEC, Department of Lands, Department of Justice and Attorney General and civil society to mitigate corruption risk within the PNGFA and other designated REDD+ institutions. This agency should ensure proper implementation and enforcement of forestry/REDD+ regulations by PNGFA and other designated REDD+ agencies and would receive complaints and refer breaches of regulations for prosecution by relevant legal bodies. Quasi-judicial powers may be needed to ensure sufficient authority to implement and enforce measures in event of failure of traditional government agencies.
- ii) **GoPNG to consider options for a separate Environment Court or ‘environmental track’ under the existing Judicial Court system** to adjudicate environmental issues using appropriate grievance redress mechanisms for the Natural Resource Development sector. This would cover Mining, Agriculture, Forestry, Environment and Conservation and REDD+, and allow the LTC to adjudicate or mediate Land Tenure and REDD+ grievances mentioned above.
- iii) **GoPNG to include forestry in the PNG Extractive Industries Transparency Initiative (EITI)** in order to promote transparent forest governance, with support from relevant government agencies, i.e., PNGFA, DEC, DAL, DM&P and others.¹⁷¹ Liberia is the only country that has successfully included forestry in the EITI process and may be used as a comparative model.¹⁷²

¹⁷¹ See Extractive Industries Transparency Initiative website: <http://eiti.org>.

¹⁷² See Liberia Extractive Industries Transparency Initiative website: <http://www.leiti.org.lr/>.

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