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# Inception Report

**Consultancy to review Papua New Guinea's (PNG) Climate Change Management Act (CCMA) and regime and provide recommendations for national implementation through Law, Policy and Regulation.**

January 2019

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# Introduction

## Context

### International climate regime

After several years of negotiations and mounting scientific evidence regarding the effect of anthropogenic emissions on the climate, the **United Nations Framework Convention on Climate Change (UNFCCC)** was adopted in 1992 and entered into force in 1994. Parties to the convention were committed to reducing atmospheric concentration of greenhouse gases (GHG)<sup>1</sup>. This was to be done *'Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply'*<sup>2</sup>. It was also similarly recognised that any such steps require being *'continually re-evaluated'*.

The goals set in place in order to tackle man made climate change were to be re-evaluated on a regular basis and through an iterative process taking place annually in the Conference of the Parties (COP)/ These successive meetings of the parties and accompanying decisions now make up a detailed set of rules for practical and effective implementation of the Convention<sup>3</sup>. The convention divided the parties into three different groups in accordance with their capacities, and the requirements made upon them. However, all Parties to the Convention – those countries that have ratified, accepted, approved, or acceded to it – are subject to general commitments to respond to climate change. They agree to compile an inventory of their greenhouse gas emissions and submit reports – known as national communications – on actions they are taking to implement the Convention. To focus such actions, they must prepare national programmes containing:

- Climate change mitigation measures, i.e. measures to control GHG emissions
- Provisions for developing and transferring environmentally friendly technologies
- Provisions for sustainably managing carbon 'sinks' (a term applied to forests and other ecosystems that can remove more greenhouse gases from the atmosphere than they emit)
- Preparations to adapt to climate change
- Plans for climate research, observation of the global climate system and data exchange
- Plans to promote education, training and public awareness relating to climate change.

From the first, however, it was clear that these rules would function only if incorporated into national systems. Thus, following the entry into force of the UNFCCC, parties decided to anchor specific obligations in binding law resulted in the **Kyoto Protocol**.

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<sup>1</sup> United Nations Framework Convention on Climate Change, 1992, New York. <https://unfccc.int/resource/docs/convkp/conveng.pdf>

<sup>2</sup> Ibid, preamble.

<sup>3</sup> IISD, 2007, 'Uniting on Climate' [http://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/pub\\_07\\_uniting\\_on\\_climate\\_en.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/pub_07_uniting_on_climate_en.pdf)

In December 1997, after two and a half years of intensive negotiations, a substantial extension to the Convention that outlined legally binding commitments to emissions cuts was adopted at COP 3 in Kyoto, Japan, with the Kyoto Protocol entering into force on 16 February 2005.

The Kyoto Protocol shares the ultimate objective of the Convention to stabilize atmospheric concentrations of greenhouse gases at a level that will prevent dangerous interference with the climate system. In pursuit of this objective, the Kyoto Protocol builds upon and enhances many of the commitments already in place under the Convention:

- Each Annex I Party must undertake domestic policies and measures to reduce GHG emissions and to enhance removals by sinks. In implementing this commitment, each Annex I Party must strive to minimize any adverse impact of these policies and measures on other Parties, particularly developing country Parties.
- Annex I Parties must provide additional financial resources to advance the implementation of commitments by developing countries.
- Both Annex I and non-Annex I Parties must cooperate in the areas of:
  - Development, application and diffusion of climate-friendly technologies;
  - Research on and systematic observation of the climate system;
  - Education, training, and public awareness of climate change;
  - The improvement of methodologies and data for greenhouse gas inventories.<sup>4</sup>

However, while the obligations for policy measures were aimed at annex I countries, the governance requirements were adopted by other countries and attached to several of the aid measures and extended in the **Paris Agreement**.

The most recent addition to the international climate change regime emerged from, but is separate to, the UNFCCC. The Paris Climate Change Conference was the last stop in a process that started in Durban, South Africa, in 2011, where Parties to the United Nations Framework Convention on Climate Change (UNFCCC) had set themselves the task to complete negotiations on a “protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all parties.”<sup>5</sup>

The agreement strives to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels, and pursuing efforts to limit to 1.5°C, above pre-industrial levels; increase the ability to adapt to climate change and foster climate resilience and low greenhouse gas (GHG) emissions development; and make financial flows consistent with a pathway towards low GHG emissions and climate-resilient development. The agreement also establishes a global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change. It recognizes that adaptation is a global challenge and key to the long-term global response to climate change. Furthermore, the Agreement provides that the global stocktake, shall review the overall progress made in achieving this global goal on adaptation. The stocktake is also to recognize adaptation efforts of developing country parties, enhance the implementation of adaptation, and review the adequacy and effectiveness of adaptation and support provided for adaptation.

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<sup>4</sup> Ibid

<sup>5</sup> <http://sdg.iisd.org/commentary/policy-briefs/taking-stock-of-the-paris-agreement-on-climate-change/>

The main mechanism at the heart of the agreement is the Nationally Determined Contributions (NDC)<sup>6</sup> and the focus on country centred efforts. This is reflected in the goals of the stocktake<sup>7</sup>, which is to consider mitigation, adaptation and the means of implementation, in the light of equity and the best available science.

Indeed, all three international instruments deal with local implementation and, through capacity building and finance streams, have included requirements for domestic governance, either financially binding or through increasing research into how commitments embodied in NDCs are mirrored in national legislation, thus measuring their effectivity: Legally enshrined governance frameworks are crucial to establish and maintain political support for the low-carbon transition and facilitate the implementation of policies. They provide a platform for the political debate, define the tools to establish credible long-term goals and strategies, and set out clear transparency and monitoring mechanisms to enhance transparency and compliance<sup>8</sup>.

Thus, aligning of national and international climate targets through, among others, analysis of domestic governance, is now considered best practice<sup>9</sup>, and is encouraged by, and further promotes an increase in domestic climate legislation not only in developed countries but, increasingly in developing countries and LDCs.

#### REDD+ mitigation

The Government of Papua New Guinea (PNG), in initiating this consultancy, has recognised that REDD+ is to play a large part in it's mitigation efforts, and that this requires elaboration and association with the other climate change mechanisms mentioned here, in keeping with the REDD+ National Policy 2017-2027. PNG legal hierarchy affords a large space to international practices, which are elaborated below.

In recognition of the role forests can play in efforts to mitigate and adapt to global climate change, Parties to the United Nations Framework Convention on Climate Change (UNFCCC) have developed a policy mechanism to contribute to the reduction of global carbon emissions from deforestation and enhance their resilience by providing financial incentives, in the form of 'results-based payments', to developing countries that successfully slow or reverse forest loss. This mechanism is known as Reducing Emissions from Deforestation and Forest Degradation (REDD), and conservation, sustainable management of forests and enhancement of forest carbon stock (+). The UNFCCC Conference of the Parties (COP) has articulated five REDD+ activities that developing countries can implement to be eligible to receive these payments:<sup>10</sup>

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<sup>6</sup> Article 4

<sup>7</sup> Article 14

<sup>8</sup> IDDRI study, 'Toward Paris-compatible climate governance frameworks- an overview of findings from recent research into 2050 climate laws and strategies' **Andreas Rüdinger, Judith Voss-Stemping, Oliver Sartor (IDDRI), Matthias Duwe (Ecologic Institute), Alina Averchenkova (GRI)**. June, 2018.

<sup>9</sup> See for example: LSE and WRI Policy brief, 'Aligning national and international climate targets' October 2018.

<http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2018/10/Aligning-national-and-international-climate-targets.pdf>, The Centre for Climate Change Economics and Policy (CCCEP) and The Grantham Research Institute on Climate Change and the Environment 'Assessing the consistency of national mitigation actions in the G20 with the Paris Agreement' **A. Averchenkova and S. Matikainen**, November 2016 <http://www.lse.ac.uk/GranthamInstitute/publication/assessing-the-consistency-of-national-mitigation-actions-in-the-g20-with-the-paris-agreement/> and European Environment Agency, 'Environment and climate policy evaluation' **EEA report 18/2016**, Lichtenstein, 2016. <https://www.eea.europa.eu/publications/environment-and-climate-policy-evaluation>

<sup>10</sup> UNFCCC Decision 1/CP.16 paragraph 70

- Reducing emissions from deforestation;
- Reducing emissions from forest degradation;
- Sustainable management of forests;
- Conservation of forest carbon stocks; and
- Enhancement of forest carbon stocks

After several years of negotiations and discussions at the international level, the UNFCCC COP adopted the 'Warsaw Framework for REDD+' at its 19th meeting in December 2013.<sup>11</sup> This officially anchored REDD+ to the UNFCCC regime. The Warsaw Framework builds on previous COP decisions and clarifies and consolidates the requirements and methodological guidance countries must meet in order to access results based finance.<sup>12</sup>

## Objectives of this consultancy

Under the overall supervision of the FCPF REDD+ Technical Advisor and the technical guidance of the CCDA and in close coordination with other stakeholders, CLP will be responsible for reviewing the **Climate Change (Management) Act** in line with Government priorities, as expressed in the different policies, but first and foremost in the **National Strategy for Responsible Sustainable Development For Papua New Guinea**<sup>13</sup> and assist CCDA in the harmonisation of existing climate change and REDD+ policy<sup>14</sup>, to aid in submission to the National Executive Council for review and further endorsement.

To achieve this, the CLP will:

- Identify the relevant PLRs to the domestic climate change regime, specifically in the context of REDD+;
- Create, based on international best practices<sup>15</sup>, a matrix by which to assess and review identified legal and institutional framework, in order to identify gaps, overlaps, inconsistencies and limitations in the legal and policy framework and its application;
- Following a review of initial findings, these will be submitted to consultations by stakeholders identified by best practices<sup>16</sup> for comments and adjustments.
- Provide recommendations and actions to address identified issues following consultation review in:
  - CCMA and general Climate Change Regime in PNG.
  - REDD+ policy coherence
- A final workshop validating the revised recommendations and structure.
- Final product including:
  - recommendations for the CCMA and;
  - a Harmonised REDD+ policy in a single policy document.

<sup>11</sup> UNFCCC Decisions 9/CP.19; 10/CP.19; 11/CP.19; 12/CP.19; 13/CP.19; 14CP.19 and 15/CP.19

<sup>12</sup> UNFCCC Decision 2/CP.17 paragraph 63

<sup>13</sup> <http://www.planning.gov.pg/images/dnpm/pdf/StaRS.pdf>

<sup>14</sup> As expressed first and foremost in **Papua New-Guinea National REDD+ Strategy 2017-2027** and the **National Climate Compatible Development Management Policy 2014**.

<sup>15</sup> Following, for example: IDDRI study, 'Toward Paris-compatible climate governance frameworks- an overview of findings from recent research into 2050 climate laws and strategies' **Andreas Rüdinger, Judith Voss-Stemping, Oliver Sartor (IDDRI), Matthias Duwe (Ecologic Institute), Alina Averchenkova (GRI)**. June, 2018. As well as European Environment Agency, 'Environment and climate policy evaluation' **EEA report 18/2016**, Lichtenstein, 2016. <https://www.eea.europa.eu/publications/environment-and-climate-policy-evaluation>

<sup>16</sup> Such as the UN-REDD guidelines on Free, Prior and Informed Consent.

## Structure of the Report

The following inception report aims to outline the tasks and outputs that will be undertaken as part of this consultancy. It will be structured in the following manner:

- Section 2 will outline the international and the domestic requirements with regard to Climate Change Governance and participation in REDD+ result-based payments.
- Section 3 will briefly outline the progress in Papua New Guinea to date in terms of Climate Change Regime and REDD+ policy.
- Section 4 fleshes out the proposed work plan for the consultancy, including the methods, activities, outputs and time frames, based on the consultancy's ToRs and technical proposal.
- The annexes will provide an elaboration of the proposed methodology for analysis and the process through consultation.

To this end this report will cover the process of consultation as well as the methodology. This is with the caveat that the methodology is a unique and iterative product of this consultancy. To that end it will be refined as the consultation progresses.



## Relevant international requirements

In terms of international obligations, two provisos require note at the start: While Papua New Guinea has refused LDC status, it is a developing country or a 'non-annex I' country and, as such, has less obligations under all three of the main instruments to be discussed here<sup>17</sup>: The UNFCCC, the Kyoto Protocol and the Paris Agreement, all three of which have been ratified by Papua New Guinea. With regard to the last, while obligations clearly exist, the 'rule book', elaborating on certain details, having not yet been developed means that specific reporting and policy duties are, as yet, still limited.

### UNFCCC and the Kyoto Protocol

The UNFCCC reflects a delicate compromise designed to encourage maximum participation by parties, to which end it often avoids direct and elaborate legal duties and, specifically, it limits obligations of developing countries. However, international obligations do exist, and have, from the very start: While the UNFCCC has set up different obligations for different parties, some articles create common duties for all ratifies countries: 4.1, 5,6 and 12.1. However, as a *framework* convention, most of these do not compel particular action, but rather encourage countries to formulate their own national agendas to mitigate climate change<sup>18</sup>, and include the following duties:

- The need to formulate and implement national programs to mitigate climate change<sup>19</sup>;
- Cooperate in preparing for adaptation to the impacts of climate change<sup>20</sup>;
- Take climate change into account in existing policies<sup>21</sup>;
- Exchange information<sup>22</sup>;
- Promote scientific research, education, training and public awareness<sup>23</sup>;
- Promote develop and apply measures to reduce, control or prevent emissions<sup>24</sup>, as well as Promote sustainable management, conservation and enhancement, of sinks and reservoirs of GHG<sup>25</sup>;
- Prepare, periodically update and publish a national inventory of emissions by sources and removal by sinks, using comparable methodologies decided by the CoP, of GHG<sup>26</sup>; and
- Communicate information to the CoP on the inventories and the steps taken<sup>27</sup>.

The UNFCCC originally established a relatively weak implementation system, with countries required under article 12 to create a 'pledge and review' system, with the 'pledge' element focusing more on a national communication than actual pledges. Parties were nonetheless forced to state publicly what they are doing. Originally this applied mainly to annex I countries, but The Copenhagen Accord and the Cancun Agreement Strengthened the pledges and review, particularly for developing countries, by requiring more frequent reports (every two years<sup>28</sup>), and elaborating on their content<sup>29</sup> which is to include:

- a) National Inventory Report; and
- b) Information on mitigation:

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<sup>17</sup> See for example the UNFCCC elaboration on the difference in reporting under article 12 of the FCCC in Decision 17/CP.8

<sup>18</sup> 'International Climate Change Law' Bodansky, D., Brunnée, J. And Rajamani, L. Oxford University Press, Oxford, 2017. P. 130

<sup>19</sup> FCCC Article 4.1(b)

<sup>20</sup> FCCC Article 4.1(d)

<sup>21</sup> FCCC Article 4.1(f)

<sup>22</sup> FCCC Article 4.1(h)

<sup>23</sup> FCCC Article 4.1(g-i) and 5-6

<sup>24</sup> FCCC Article 4.1(c)

<sup>25</sup> FCCC Article 4.1 (d)

<sup>26</sup> FCCC Article 4.1 (a)

<sup>27</sup> FCCC Article 12

<sup>28</sup> Which includes both the National Communications, and the Biannual Update Reports.

<sup>29</sup> Cancun Agreements, Paras 40,60

- actions,
- needs, and
- support received.

With guidelines for both types of reports adopted in 2011, in CoP 17<sup>30</sup>. In addition, this resulted in creating an International Consultation and Analysis Process (ICA) for non-annex I reports<sup>31</sup>. The Paris Agreement later institutionalised this in legally binding way<sup>32</sup>.

Thus, the UNFCCC focuses mostly on the reporting and communication where it comes to developing countries such as PNG, while outlining and setting the scene for further domestic action to be taken to both mitigate and adapt to climate change. While many of the guidelines developed over the years can outline the national direction, they do not provide many specific duties which could be directly translated into domestic legislation, but rather, require translation and adaptation to national context. The Kyoto Protocol does not provide any duties for non-annex I countries<sup>33</sup>, as it is aimed specifically at developed countries. It is, however, important to keep in mind as the obligations outlined within it could be used in the future in ascribing the path for other countries wishing to combat and adapt to climate change in the most efficient manner.

## The Paris Agreement

The Paris Agreement was set to take over from the Kyoto Protocols, but represents a significant departure from the previous structure in many terms but, vitally, in terms of differentiation: with some differences in the expectations and leeway given certain countries, its principle mitigation obligations apply to all countries. In the context of the international obligations set out by the agreement, however, three points are worth noting:

- The agreement has an unusual structure with a mixture of hard, soft and preamble language<sup>34</sup>, which have been analysed and divided often into provisions<sup>35</sup>:
  - That create obligations;
  - That generate expectations;
  - That recommend;
  - That encourage;
  - That set aspirations; and
  - That capture understanding.
- The obligations are still unelaborated as the so called ‘Paris rule book’ is planned to be completed by the end of CoP 24 this year<sup>36</sup>. Until they are fully elaborated it will be hard to elaborate the exact duties of each party under the agreement to a level translatable and comparable in domestic legislation.
- The Paris Agreement does not follow the Kyoto Protocol (or FCCC) division and differentiation, but rather starts with a default position of shared responsibilities in several instances (though some division between developed and developing countries does exist in the form of support and enhanced reporting obligations, potentially), but national

<sup>30</sup> Decision 2/CP.17 Annex III

<sup>31</sup> ‘*International Climate Change Law*’ Bodansky, D., Brunnè, J. And Rajamani, L. Oxford University Press, Oxford, 2017. Pp. 143-170.

<sup>32</sup> Paris Agreement Articles 2,4,13-14.

<sup>33</sup> Explicitly excluding new commitments for non-annex I countries already at the preparation stage, see The Berlin Mandate, Para 2(a) and (b).

<sup>34</sup> ‘*The 2015 Paris Agreement: interplay between hard, soft and non-obligation*’ Rajamani, L., Journal of Environmental Law 28/2 (2016): 337.

<sup>35</sup> See *ibid* and again in Bodansky, D. *Et al.* Above.

<sup>36</sup> Marrakesh decision 1 CP/22.

circumstances and capacities are to be taken into account also where a legal duty exists, this creates a situation of 'self-differentiation' according to a party's perception of its own national capacity and context<sup>37</sup>. Combining this with the above as-yet-unelaborated rulebook means that specific forms of obligations are even harder to capture.

Those notes aside, the Paris agreement does have several obligations and, vitally, has already been integrated into domestic PNG law<sup>38</sup>. In general, the Paris Agreement represents an attempt to streamline and unite nationally decided, sovereign commitments, with the obligations associated with transparency of action, enhancement of it, collaboration and reporting, which are elaborated below:

In terms of **mitigation**, with the single exception of the provision of support<sup>39</sup>, obligations are undifferentiated and extend to developing countries as well, and include<sup>40</sup>:

- a) Obligation to prepare a Nationally Determined Contribution,
- b) To communicate the report,
- c) To provide information necessary for clarity, transparency and understanding,
- d) To communicate a successive NDC every five years,
- e) To account for these NDCs through a national inventory and other information necessary to track progress<sup>41</sup>.
- f) Pursue domestic mitigation efforts aimed at achieving these goals<sup>42</sup>.

It is therefore the duty of each party to create emission goals, communicate them, update them, clarify them and **ensure they are domesticised into law and policy**. Indeed, while not an obligatory stance in article 4.4 and others, it is encouraged for developing countries to do so in an economy wide fashion and, though phrased in a slightly less obligatory manner, in an increasing progression of aspiration<sup>43</sup>.

The ambition cycle of the Paris regime includes several additional points in the accompanying decision 1/CP.21, including, in paragraph 25, the requirement, by 2025, to communicate a second NDC, informed by the global stocktake<sup>44</sup>. This would imply that national mechanisms must be prepared to adjust their goals and planning capacity to take such requirements into account and, as a result, is included in the assessment matrix of this consultation, below. This is further strengthened in the mechanism of the Global Stocktake, the results of which are to inform parties in updating their action on future commitments<sup>45</sup>

In terms of **adaptation**, while there are several normative recommendations, there is one 'shall' obligation, in article 7.9, by which parties shall engage in adaptation planning, as well as implementation, and the development of relevant PLRs, which are provisioned- 'as appropriate' and, while the following is not binding, is to serve as potential guidelines, including<sup>46</sup>:

- a) Implementation of actions and efforts;

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<sup>37</sup> Bodansky, D. *et al.* P.223

<sup>38</sup> See both the Paris Agreement Implementation Act and, less directly but very relevant, The Climate Change (management) Act, among others.

<sup>39</sup> Paris Agreement, article 4.5 read along with article 9.1 means that developed countries provide support.

<sup>40</sup> *Ibid*, Article 4.

<sup>41</sup> *Ibid*, Article 13.7.

<sup>42</sup> *Ibid*, Article 4.2.

<sup>43</sup> 'Will' as opposed to 'Shall' in article 4.3. As noted in the text, while awaiting the rule book, many of these terms remain ambiguous.

<sup>44</sup> It is worth noting that the issue of common time frames, relevant both to the reporting cycles and the carbon market, is still very much under heated discussion.

<sup>45</sup> Paris Agreement, Article 14.

<sup>46</sup> Paris Agreement, Article 7.9

- b) Process for creation of National Adaptation Plans;
- c) Assessment of climate change impact and vulnerability (with a view to formulating action priorities and plans);
- d) Monitoring and Evaluation efforts in an iterative learning process; and
- e) Building or resilience through diversification and sustainable management practices.

Many articles create potential guidelines for other, related issues, such as Loss and Damage<sup>47</sup>, markets<sup>48</sup> and, critically in this context, **the enhancement of REDD+ mechanism**<sup>49</sup>. However, none of these have yet been fully defined, and are not couched in obligatory terms. While they will be referred to within the methodology below as yardsticks, they have not coalesced into duties at time of writing. In addition, and in keeping with the other instruments of the international CC regime, obligations of capacity building, technology transfer and provision of finance apply to the developed countries and are less directly relevant to processes of domestic legislation in Papua New Guinea.

Finally, since the Paris Agreement does not contain binding obligations of result, relating to parties NDCs, the **transparency mechanism** can be considered the agreements driving force, holding states to account for their planned and executed actions. While it is important to note, again as above, that there is an inbuilt measure of flexibility with regards to the duties and obligations created under the Article 13 Enhanced Transparency Mechanism (ETR) for action and support, (which means that the following articles provide for general framework obligations adjusted to national capacity and context, and hopefully to be elaborated on in CoP24), these duties are still considered binding. These include:

- A biannual report<sup>50</sup> of the national inventory of GHG emissions, and removals and information necessary to<sup>51</sup>:
  - Track progress,
  - In implementing,
  - And achieving mitigation efforts
- This information is subject to an Expert Technical Review<sup>52</sup>. This same article also requires that all parties participate in a ‘facilitative, multi-lateral consideration of progress’.

The Paris Agreement has expanded the obligations of developing countries, passing the previous bifurcated module, while maintaining a differentiation. **For the purposes of this consultancy and a revision of the CCMA, and CC regime in general, obligations to act (unpacifically) to report, to progress and to adjust to changing knowledge and conditions, remain the main obligations.** While awaiting the finalisation of the ‘Paris rulebook’, it is still possible to draw on certain directions and signposts which would aid in planning mitigation, adaptation and other considerations for a domestic, full climate change regime. These will be taken into account when assessing the current work.

## REDD+

The issue of using forest sinks as part of the domestic and international regime in the form of the REDD+ mechanism is of particular interest in the context of Papua New Guinea, as described above,

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<sup>47</sup> Ibid, article 8.

<sup>48</sup> Ibid, Article 6.

<sup>49</sup> Ibid, article 5.

<sup>50</sup> The regular intervals determined in 1/CP.21

<sup>51</sup> Paris Agreement article 13.7.

<sup>52</sup> Ibid, 13.11

and elaborated upon briefly here, the process has been endorsed again through article 5 of the Paris Agreement, and includes the following obligations as conditions for accessing the Result Based Payments (RBP).

According to the Warsaw Framework (see above for context), developing country Parties aiming to receive results-based finance for REDD+ must:

- Ensure that the anthropogenic forest-related emissions by sources and removals resulting from the implementation of REDD+ activities are fully measured, reported and verified (MRV) in accordance with UNFCCC guidance;<sup>53</sup>
- Have in place:<sup>54</sup>
  - a. A national strategy or action plan (a link to which is shared on the UNFCCC REDD+ Web Portal);
  - b. A national forest reference emission level and/or forest reference level, or if appropriate, as an interim measure, subnational forest reference emission levels and/or forest reference level (that has undergone a UNFCCC-coordinated technical assessment process);
  - c. A robust and transparent national forest monitoring system for the monitoring and reporting of REDD+ activities; and
  - d. A system for providing information on how the safeguards are being addressed and respected (SIS)
- Ensure that REDD+ activities, regardless of the source and type of funding, are implemented in a manner consistent with the UNFCCC REDD+ safeguards<sup>55</sup>

Therefore, the context of this consultancy is both the general obligations under the international climate change regime, as well as participation in the REDD+ mitigation and adaptation instrument.

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<sup>53</sup> UNFCCC Decision 1/CP.16 paragraph 73

<sup>54</sup> UNFCCC Decision 1/CP.16 paragraph 71

<sup>55</sup> UNFCCC Decision 2/CP.17 paragraph 63

## Key progress in PNG to date

### Introduction

Papua New Guinea (PNG) signed the Framework Convention on Climate Change (UNFCCC) on 13 June 1992 and subsequently ratified it on 16 March 1993.<sup>56</sup> PNG then signed the Kyoto Protocol on 2 March 1999 and ratified it on 28 March 2002.<sup>57</sup> On 22 April 2016 PNG signed the Paris Agreement and ratified it on 21 September 2016.<sup>58</sup> PNG became one of the first countries to submit its nationally determined contribution (NDC) under the Paris Agreement to the UNFCCC Secretariat on 29 March 2016.<sup>59</sup>

PNG's actions are based upon, and enacted in accordance with, existing legislation, beginning with Pillar 4 (Natural Resources and Environment) of the Preamble to the Constitution, which calls for wise use of natural resources and protection of the environment.

The Office of Climate Change and Development (OCCD) was created to specifically deal with climate change issues in the country. It then transited into the Climate Change and Development Authority (CCDA) following the enactment of the *Climate Change (Management) Act 2015*, later augmented by the *United Nations Paris Agreement (Implementation) Act 2016* and several other sectoral acts and sub regulations.

Complementing these legal instruments, the Government of Papua New Guinea developed various key overarching national strategies, policies and legislation to address the effects of climate change and achieve sustainable management, including:

- Vision 2050 (to conserve 70% of PNG's forest for enhancing and storing carbon purposes);
- National Strategy For Responsible Sustainable Development For Papua New Guinea (STaRS) (encourage Green Growth and Innovation);
- PNG's National Climate Change Action Plan (50% in reduction in emissions by 2030 and for the country to be carbon neutral by 2050);
- Nationally Determined Contributions (NDCs); and
- Papua New Guinea National REDD+ Strategy 2017-2027.

The *Climate Change (Management) Act 2015* is the principal piece of legislation that deals with climate change related issues in PNG. In 2016, Parliament enacted the *United Nations Paris Agreement (Implementation) Act 2016* to ratify and implement the Paris Agreement. Insofar as the *United Nations Paris Agreement (Implementation) Act 2016* is concerned the Paris Agreement will be implemented under both pieces of legislation, with institutional authority given over to the CCDA under the CCMA. The Acts are therefore complementary.

The *Climate Change (Management) Act 2015* states that all climate change related matters must be dealt with under the Act. It sets out the regulation of climate change mitigation and adaptation and caters for the collection of climate data, research and training, among others. Despite the details of regulatory matters prescribed in the Act, reduce emissions from deforestation, forest degradation

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<sup>56</sup> United Nations Climate Change, Parties and Observers. Retrieved 28 October 2018 from [http://unfccc.int/tools\\_xml/country\\_PG.html](http://unfccc.int/tools_xml/country_PG.html).

<sup>57</sup> United Nations Climate Change, Parties and Observers. Retrieved 28 October 2018 from [http://unfccc.int/tools\\_xml/country\\_PG.html](http://unfccc.int/tools_xml/country_PG.html).

<sup>58</sup> United Nations Treaty Collection. Retrieved 28 October 2018 from

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&lang=en&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&lang=en&clang=en).

<sup>59</sup> United Nations Climate Change, *Papua New Guinea Sends in First Climate Plan under Paris Agreement*. Retrieved 28 October 2018 from <https://unfccc.int/index.php/news/papua-new-guinea-sends-in-first-climate-plan-under-paris-agreement>.

and carbon enhancement, environment conservation and sustainability (REDD+) is not prominently provided for in either Act (though mentioned in the 2016 Act).

Hence, in March 2017 the National Executive Council (NEC) when approving the PNG National REDD+ Strategy 2017-2027, also directed CCDA and other relevant State entities to review the existing and or develop the legal framework for REDD+ and its position within the general Climate Change Regime. This review therefore culminates from the NEC decision.

## Legislation and Policy Mapping for Climate Change and REDD+

### Application of International and Regional Treaties

Papua New Guinea (PNG) is the signatory to numerous regional and international treaties and is bound either through ratification or state practice. This treaty law making is governed by Section 117 of the *Constitution*. Section 177 allows for the executive arm of the government to enter into treaties with other countries but normally with the consent of the Parliament.<sup>60</sup> Thus, the United Nation Framework Convention on Climate Change (*UNFCCC*), *Paris Agreement* and other relevant regional and international treaties are applicable in PNG. Consistent with the constitutional mandate the *Climate Change (Management) Act 2015* and *United Nations Paris Agreement (Implementation) Act 2016* are two pieces of legislation that deal with climate change issues in PNG.

### Constitutional Basis of Climate Change and REDD+

Section 11 of the Constitution of Papua New Guinea provides for its supremacy in the following terms:

*“...all acts (whether legislature, executive or judicial) that are inconsistent with them are to the extent of the inconsistency, invalid and ineffective”*

The *Constitution*, at its Preamble, provides five, non-justiciable or non-enforceable (s 25(1))<sup>61</sup>, general guidelines or broad principles for development called the National Goals and Directive Principles (NGDPs). Apart from the other NGDPs, the significant Goal for the purposes of this review is the Goal 4<sup>62</sup> that reminds Papua New Guineans about the importance of their natural resources and their environment. The Goal declares:

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<sup>60</sup> The treaty-law making in PNG was criticized by some commentators for being so “weak” and subject to abuse by the executive. See Kwa, “Treaty Law Making in Papua New Guinea: After Two Decades *Yumi Stap We?*” (1997) 25 MLJ 43.

<sup>61</sup> The National Goals and Directive Principles may be taken into account in the interpretation and application of the *Constitution* and other laws (ss 22 & 25(3), *Constitution*).

<sup>62</sup> Kwa L E, *Constitutional Law of PNG* (Law Book Co., Sydney, 2001), p.14-15. The other Goals are:

- “Goal 1 encourages every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others.
- Goal 2 encourages equality and participation in the development of PNG;
- Goal 3 strengthens national sovereignty and calls on Papua New Guineans to be self-reliant; and

*“We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all and be replenished for the benefit of future generations.”*

This Goal not only promotes the ‘wise use’ but also “sustainable use” of the natural resources and the environment. This means that **any international law that is consistent with Goal 4 may be adopted by virtue of s117**, of the Constitution. Since Climate Change is an environmental problem, any activity that is targeted to mitigate it and adapt to its effects is thus permissible.

By implication the Constitution not only affects the activities relating to climate change and REDD+ but also accords special protection from the deprivation of properties of the citizens<sup>63</sup>. What is important about the latter is that land and other properties being the crucial determinants of the success of climate change and REDD+, are under customary land ownership<sup>64</sup>. Therefore, its implications must be ascertained within the context of implementing REDD+ activities on private lands, customary land and freehold lands, and the use of other private resources.

#### Constitutional Protection of Property

The Constitution also protects citizens of their property. If a citizen’s property is compulsorily acquired, the acquisition must be in accordance with legislation, which must justify explicitly that the property so taken is for public purpose and that the citizen whose property is so acquired must be compensated fairly and justly (s53 (1), *Constitution*). The requirement for compensation is mandatory as it destroys or divests a right exists over a property. If the government or any person fails to compensate the divested owner of the property this will affect the validity of the acquisition and the government will not acquire the title. In this context it acts as deterrence to the government to compulsorily acquire property and thus act as a protection.

The implication of this constitutional protection is that if the government decides to compulsorily acquire private land i.e. customary land<sup>65</sup> or freehold land for climate change<sup>66</sup> and REDD+ purposes, ‘just compensation’ must be paid on ‘just terms’, that is, the value of the compensation must be reflective of the free market value. The State may also vest in itself certain rights in REDD+ regardless of whether activities are conducted on private lands, for example as in minerals and petroleum resources<sup>67</sup>, but again just compensation on just terms must be made and such vesting must be for public purpose, e.g. relocation of climate refugees. It is worth noting that government instruction and clear guidance on each intervention are vital to ensuring the just application of these measures.

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Goal 5 calls on Papua New Guineans to promote and utilize Papua New Guinean ways in their dealings with each other, the state and foreigners.”

<sup>63</sup> See Section 53 of the Constitution.

<sup>64</sup> Papua New Guinea National REDD+ Strategy 2017-2027 states that over 90% fall under such ownership.

<sup>65</sup> Section 12, *Land Act* sets out the scheme of compulsory acquisition.

<sup>66</sup> Compulsory acquisition will also be necessary to accommodate peoples permanently displaced by climate change – “climate refugees”.

<sup>67</sup> *Mining Act* 1992 (s.5) and the *Oil and Gas Act* 1998 (s. 6) vest ownership of minerals and petroleum resources in the State.



## Climate Change Laws

As has been mentioned above, climate change activities are regulated by the *National Climate Compatible Development Management Policy* and the *Climate Change (Management) Act 2015* and *United Nations Paris Agreement (Implementation) Act 2016*. Part IV (Measuring, Reporting and Verification) sets out the processes and procedures for measuring, verifying and reporting the greenhouse gases abatement activities. Parts V (Mitigation) and VI (Adaptation) further set out the procedures for mitigation and adaptation activities. All mitigation and adaptation activities are to be done voluntarily and with due regard to the participating entity's ability and capacity to carry out those activities. It is a requirement that sufficient consultations must be made prior to enforcing the mitigation and adaptation regulations. Pursuant to Sections 65 and 74 of the *Climate Change (Management) Act 2015* all entities in a regulation sector are required to provide to the Climate Change and Development Authority (CCDA) their mitigation and adaptation plans.

The customary landowner's rights to landowners and land-use are given prominence by Part VIII of the *Climate Change (Management) Act 2015*. Prior to implementing any climate change related project on customary land, 85 percent of the customary landowners must give their consent freely and openly.<sup>68</sup>

## Other Sectoral Policies Related to Climate Change

There are a number of policies that partly deal with climate change issues and they include the *Papua New Guinea Vision 2050*, *National Strategy For Responsible Sustainable Development For Papua New Guinea* (STaRS). The Vision 2050 is an overarching policy that aims to achieve environment sustainability and reduce greenhouse emissions by 90 percent to 1990 levels. The STaRS further reinforce the Pillars of Vision 2050. Particularly, STaRS advocate the reduction of greenhouse gases, green growth and sustainable development.

## Policy Legal Framework for REDD+

The *Climate Compatible Development Management Policy*, *Climate Change (Management) Act 2015* and *United Nations Paris Agreement (Implementation) Act 2016* briefly cover REDD+. However, they do not specifically set out the mechanisms under which REDD+ activities can be dealt with. Due to this gap, the government has approved the *Papua New Guinea National REDD+ Strategy 2018-2027*. This Strategy identifies ways in which REDD+ activities may be implemented in PNG. In order for the Strategy to be fully operationalized, a REDD+ Finance and Investment Plan is currently under development.

## Environmental Laws

Environmental laws are intended to promote ecological responsibility and sustainability in the use and management of the natural environment. There are various pieces of legislation that attempt to attain these objectives. The *Environment Act 2000* (s51) provides for the environmental impact assessment, whereby certain procedures are prescribed under sub-section (1) and sub-section (2). Significantly,

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<sup>68</sup> Through the free prior informed consent process pursuant to Section 87 of the *Climate Change (Management) Act 2015*.

the Act provides for wider consultative and planning across various stakeholders such as Director of Environment (s.15), Environment Council (ss.17–19), Minister for Environment (s.14) and various advisory bodies: Environment Consultative Group (ss 26 – 28), Provincial Environment Committees (s.29) and Working Committee(s) (s.24). The Act also sets out some criteria for formulating and implementing national environmental policies<sup>69</sup> and provincial policies<sup>70</sup>. However, nothing in this Act provides for the implementation of climate change and REDD+ projects or generally to mitigate or adapt to climate change.

The preservation of environment and national cultural inheritance is enabled by the *Conservation Areas Act 1978* and *Conservation and Environment Protection Authority Act of 2014*. The Acts principally attempt to conserve the sites and areas related to biological, topographical, geological, historic, scientific or social importance; and the management of those sites and areas. By virtue of ss 17 and 31 of the *Conservation Areas Act*, once a land is declared as a conservation area any development may not be affected unless it is within the management plan of the conservation area or it is so approved by the Minister. Generally, by operation of these sections the concept of *Land Use, Land-Use Change and Forestry* (LULUF) and REDD+ could be implemented within the context of conservation areas or protected areas if such activities are prescribed in the management plan or approved by the Minister. It is also imperative to note that there is no exclusive provision which allows for such activities under both Acts. In the same token REDD+ activities are outside the scope of these Acts.

Indeed, in accordance with the matrix presented below (see table 5), these various acts create a possible administrative overlap which may create lack of clarity in direction of activity and assumption of responsibility, or division of labour between these bodies and, for example, the CCDA.

Following on from the above, the government, through the Conservation and Environment Protection Authority (CEPA), is undertaking a legislative reform. The *Protected Areas Bill* has been undergoing consultation and drafting since 2014. The Bill takes into account REDD+ and climate change issues. The Bill also proposes to repeal Conservation Areas Act amongst others.

## Land Laws

Issues of land use and ownership are particularly vital and require a short note here, for two reasons: the situation on the ground, described below, and the fact that most activities, be they mitigation, adaptation, either within REDD+ or more generally, have been identified strongly as land use issues.

In fact, the state owns 2.5 percent of the land in PNG whilst 0.5 percent is freehold land and the remaining 97 percent is customarily owned by the indigenous landowners under customary law.<sup>71</sup> The *Land Act* (s 132) places a general restriction on private persons from acquiring land directly from the customary land owners. However, the sale or purchase of customary land by government is permissible. Apart from compulsory acquisition under s 53 of the *Constitution* and s 12 of the *Land Act 1996*, the government may enter into an agreement under ss 10 and 11 of the *Land Act 1996* with the customary landowners to acquire or lease customary land for climate change and REDD+ activities. Such an agreement must be voluntary. Apart from lease, the acquisition of customary land, for establishing carbon stocks under REDD+ and for other related purposes, such as adaptation or

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<sup>69</sup> Sections 30, 32, 33, 35 and 36 of the *Environment Act 2000*.

<sup>70</sup> Section 39, *Environment Act 2000*.

<sup>71</sup> James R, *Land Administration and Policy Law: Study Guide* (Waigani Campus: UPNG Open College, 2008) at p.2.

mitigation must be conclusive and the prerequisites under ss10 and 11 of the *Land Act* 1996 must be complied with accordingly.<sup>72</sup> Once the land has been purchased or leased, the subject land becomes government land absolutely for all purposes or, in the case of leased land, for the duration of the lease.<sup>73</sup> Under a lease arrangement, the land reverts to customary status after the expiration of the lease.<sup>74</sup>

The *Land (Tenure Conversion) Act* is a piece of legislation that had, originally, paved the way for converting customary land to freehold or leasehold, areas now under the *Land Registration (Amendment) Act 2009* (Part IIIA –Registration of Customary Land). As most of the land in PNG is commonly held under customary laws, individual titles are not possible and hence the *Land Groups Incorporation Act* was enacted, and the 2009 amended *Land Registration act* allowed for the state to recognize land holding group and specifically, to encourage: greater participation by local people in the national economy by the use of the land; better use of such land; greater certainty of title; and the better and more effectual settlement of certain disputes, by the legal recognition of the corporate status of certain customary and similar groups, and the conferring on them, as corporations, of power to acquire, hold, dispose of and manage land, and of ancillary powers; and the encouragement of the self-resolution of disputes within such groups.<sup>75</sup> One has to appreciate that these two pieces of legislations provide a vehicle for implementation of REDD+ programs on customary land. That is, the land-owning groups may form Incorporated Land Groups (ILGs) under the *Land Groups Incorporation Act* and register their lands under the *Land Registration (Amendment) Act 2009*.with the Director of Customary Land Registration<sup>76</sup>. This may provide a means of security for the respective projects and thereby relieve the State and prospective investors of any land risk concerns.

## Initial Review of the Climate Change (Management) Act 2015

As has been mentioned in previous sections, the Climate Change (Management) Act, 2015, is central to the Climate Change Regime in Papua New Guinea. In addition, and as a result, it is the analysis of this act, and the improvement of the institutions, scope and functions of it that lay at the heart of this consultancy. Therefore, such an analysis, envisioning the entire Climate Change Regime as a framework with the CCMA at its heart and with a focus on REDD+ will be conducted in full through the next outputs.

For the purposes of the current report a succinct and preliminary analysis in accordance with the proposed six main criteria (see annex I) is here presented. We must highlight, however, that this is just an initial review and requires for completion both an analysis of related PLRs (already underway) and engagement with stakeholders in order to understand their application in practice.

Generally speaking, the CCMA is very comprehensive and coherent, covering all sectors and elaborating on the process, while creating a duty to act. It provides for participation of stakeholders and landowners, and MRV, and adheres closely to international best practices, allowing and indeed enforcing regular, frequent revision of standards and actions. It provides for an elaborate governance and institutional structure which allows for the bodies to determine their activities and be independent from political cycles through financial independence, while also allowing for civil society monitoring through explicit duties.

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<sup>72</sup> See *Safe Lavao v The State (Re Kerema Town and Airstrip Land)* [1978] PNGLR 15.

<sup>73</sup> Muroa, *ibid* at p. 81.

<sup>74</sup> See *Resena v State* [1991] PNGLR 475.

<sup>75</sup> Section 1 of the *Land Groups Incorporation Act*. For further discussion see James R, *Land Administration and Policy Law: Course Materials* (UPNG Open College, Waigani, 2008) at p. 22.

<sup>76</sup> Section 34D of the *Land Registration (Amendment) Act 2009*.

The CCMA is a framework legislative instrument. This means that throughout it was created with the intent (and many of the instruments) to collect the administration of the totality of its subject material. As has been mentioned, the act is **comprehensive** in its capacity to require action across sectors as well as administrative sectors<sup>77</sup>. Indeed, binding of the state in general to the goals later elaborated is first and foremost in the act<sup>78</sup>. In terms of sectors covered, while those are initially elaborated, an inbuilt mechanism ensuring both **comprehensiveness** and **flexibility** exists from the first<sup>79</sup>. (It is, However, worth noting that two large sectors: international aviation and shipping, are specifically excluded in the accounting system of the act<sup>80</sup>.) All actions in aid of mitigation are subject to Measuring, Reporting and Verification (MRV) in accordance with changing international standards<sup>81</sup>, which follow best practices, allowing not only for the above flexibility, but for **transparency** as well.

The section dealing with MRV also creates a national and a specific duty on each implementer and active entity in each sector to provide the relevant information, in accordance with international best practices, and in accordance with mitigation and adaptation plans provided. This creates a **coherent** framework for collection and dissemination of information.

Central to all of the elements elaborated in this section, but vitally to the comprehensive and flexible nature of the CCMA, is the **institutional arrangement** under the Act. This is dealt with exclusively in Part II of the act and establishes both the Climate Change and Development Authority (CCDA) and the National Climate Change Board (NCCB). These bodies hold sway over the issue in general<sup>82</sup>, and not just sections of it, allowing for freedom of activity. Vitally, however, these are bodies which are **liable** for their action, and, by inference, hold a duty, not only a mandate<sup>83</sup>. There is a full, clear, and coherent description of the types of activities required in the discharge of the CCDA function, which allow for greater monitoring by civil society groups. These functions include creation, updating, monitoring, publishing, educating, implementing and more, each elaborated clearly in article 11. The capacity to coordinate with other ministries, which aids in the upholding of internal **coherence** is explicitly created as well<sup>84</sup>. The CCDA is <sup>85</sup>monitored by the NCCB, which provides a vital link and guidance on the political plane, helping direct and ensure the implementation on such a level, of the CCDA<sup>86</sup>. The role and the membership of the NCCB enhance this capacity for inter-ministerial collaboration. It is also clear that, in terms of appointment and conflict of interest, every attempt was made to ensure **independence** of both bodies through a system of screening and specific accounting for modes of operation.

This is further enhanced where financial independence is dealt with, through the combination of several existing funds into a single *Climate Change and Green Growth Trust Fund* and ensuring further continued finance of the activities independent to yearly budget struggles<sup>87</sup>. It is worthwhile noting that the activities of these bodies are subject to auditing and follow a **transparent** process of appointment, disbursement and other execution of function.

In terms of **Flexibility**, while article 5 states a limitation of the power to add new gasses to the list of controlled emissions, this limitation recognises both the international scientific element, and the

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<sup>77</sup> See Parts 5 and 6 for sectoral and general action, and section 2 for both financial and administrative capacity.

<sup>78</sup> See part II Division 3.

<sup>79</sup> Section 53.

<sup>80</sup> Section 7.

<sup>81</sup> Section 54(2).

<sup>82</sup> Section 10

<sup>83</sup> Section 8(2)(d), as well as the language used under Section 11.

<sup>84</sup> Section 11 (2).

<sup>85</sup> Sections 17-25,29-30.

<sup>86</sup> Part II, Division 2.

<sup>87</sup> Sections 37-9.

capacity of the Minister to create implementing regulation. This falls in with a general list of sections throughout the act which denote both international best practices as a standard, and a need to review these standards regularly and frequently.

In terms of **participation**, as has been mentioned above, participation is central to the PNG system both for ideological and practical reasons, and is demonstrated in each section, sector, and administrative unit. In addition, the general duty to make each consultation effective is explicitly mentioned throughout. It is worth noting, however, that many exemptions exist within the legislation which allow for forced (though compensated and through process) removal and action in accordance with public good.

Future analysis (output 2 and onward) would require 4 points:

1. Institutional clarification where there is conflict as mentioned in the previous section.
2. In practice feedback on the actual function of the bodies on the ground.
3. An analysis of the CCMA as part of a full framework, and not as a stand-alone piece of legislation.
4. An elaboration of the participation in cases where the actions elaborated in the act creates forced action or movement.

In addition, many of the mechanisms require recurrent analysis in accordance with the discretion of the ministers or officials charged with their realisation.

This analysis will be expanded in the context of the PLR below as part of the second output, and reviewed and repeated after each consultation.

## Proposed tasks, outputs and work plan

As noted above, the present consultancy aims to assist the Government of Papua New Guinea in reviewing and updating its domestic climate change governance structure in general. For this reason, the tasks and outputs proposed below have been developed in consideration of these requirements.

The following section is composed of three tables:

- Table 1 outlines the tasks that will be undertaken as part of this assignment, an explanation of each task, the reason for it being undertaken, and its objective.
- Table 2 outlines the outputs linked to the tasks in table 1 and specifies (tentative) expected dates for delivery. Please note that the delivery of certain outputs will depend on the scheduling of trips, consultations and workshops held in Papua New Guinea. As these are yet to be finalised, the delivery dates for the outputs may vary slightly.
- Table 3 outlines the chronology of the consultancy and proposes tentative dates for the trips and workshops.

Table 1: Proposed tasks under this assignment

TASKS	Explanation and objectives
<p><b>Task 1:</b> Review current international best practices regarding the measuring of effectiveness of domestic Climate Change Regime and creating initial standard for analysis.</p> <p>Reviewing Climate Change Regime and REDD+ policy documents as well the sectors most relevant: Commercial Logging, Commercial Agriculture and Subsistence Agriculture.</p> <p>Use this as basis for the proposed tasks and prepare work plan with clear milestones for interim and final deliverables.</p> <p>This is also <b>Output 1: Inception Report</b></p>	<p>This task was carried out to produce the inception report for this consultancy.</p> <p>The report explains the international requirements directly applicable to Papua New Guinea (UNFCCC, Paris Agreement) and highlights some of the key progress made in Papua New Guinea to date.</p> <p>The report, drawing on our international best practices and knowledge regarding climate change legislation and governance in general and those of PNG forestry and land use legal framework in particular, includes a draft matrix with proposed parameters, which will be discussed and validated through both governmental review and stakeholder consultation (next task). It also outlines the general criteria and methodology by which the following output (output 2) is produced: an analysis of the CCMA, its relation to the Paris Implementation Act, in the context of, and associated with REDD+ identified issues (such as forest management and the drivers identified in policy) will be defined and analyzed prior to review.</p> <p>Following this analysis, the report details the tasks planned under the consultancy, the outputs linked to each task and the timeline for their delivery, as well as an estimation of the timing for the expected trips.</p>

	<p>Finally, the process of review and consultation is elaborated in the attached annex.</p>
<p><b>Task 2:</b> Analysis of Policies, Laws and Regulations (PLRs) based on the criteria and matrix created and followed by a gap analysis of Papua New Guinea’s domestic climate change regime.          Analysis of existing forestry, agriculture and land use PLRs and harmonization of them followed by an analysis of the coherence of these PLRs with existing and potential Climate Change Regime.          This constitutes <b>Output 2: PLR Analysis</b></p>	<p>The aim of this task is to:</p> <ol style="list-style-type: none"> <li>1. review the climate change framework coherence created through current policy and legislation and the use of land-based resources to assess existing limitations in the legal and policy framework and challenges in their application;</li> <li>2. review all relevant sectoral legislation, in accordance with those identified as being of particular interest, with a focus on forestry, agriculture and land use, to assess compatibility, conflict or otherwise with climate change governance framework, with a view to streamlining activities that will enable the relevant government agencies to perform their mandated responsibilities without hindrance. This ties in with institutional review, which is intrinsic to any PLR review.</li> <li>3. review international best practice in strengthening climate change legislation and implementation and overlaps between different sectoral regulations into the domestic legal framework;</li> </ol> <p>The consulting team will apply methodologies outlined in inception report to carry out this assessment. We foresee that parameters against which the assessment will need to be carried out, will need to be developed and agreed upon.</p>
<p><b>Task 3:</b> Preparation of and participation in a 2 single day consultation process for which a mapping will be conducted of relevant stakeholders by the CCDA, to be consulted from different sectors, and a coherent but open template will be developed and used for review and collection of inputs.</p>	<p>The aim of this task is to:</p> <ul style="list-style-type: none"> <li>• Consult with national and sub-national level governments, the CCDA, the Technical Working Committee (TWC) on REDD+, civil society, and other relevant organizations and individuals on the findings of the report;             <ul style="list-style-type: none"> <li>• The structure of the matrix for analysis itself- the parameters.</li> <li>• The content of the analysis- identification of gaps as well as preliminary recommendations both to PLRs and to institutional structures.</li> </ul> </li> <li>• Hold two, one-day national level consultation workshop to disseminate findings of the review and collate inputs for further discussion.</li> </ul> <p>The consulting team will help, as needed, prepare and apply clear materials and tools (surveys, interviews, etc.), and participate in consultations carried out by the CCDA, with relevant stakeholders on the report.</p>

<p><b>Task 4:</b> Following the consultations, and immediately after, the team will also lead a one-day consultation workshop following the consultations, in order to validate results and recommendations.</p>	<p>The purpose of this is to validate all information from the consultations with a core group of more intimate stakeholders and set the basis for future discussion where questions arise. In addition, this will allow consultants to further deepen and review the PLR supplied, in preparation for the draft amended CCMA.</p>
<p><b>Task 5:</b> Making use of the review and the report on it, recommendations directly relating to the CCMA, as well as to the regime it heads: Sustainable Land Use, Forestry, Agriculture and Logging.</p> <p><b>Output 3</b> A draft amended CCMA in preparation for Papua New Guinea Finance and Investment Planning Process.</p>	<p>In creating an additional, updated version of the PLR and of the recommendations, the institutional capacity of the CCDA to handle these issues, and a direction in doing so, are suggested. This also prepares the basis for the following regional workshops.</p>
<p><b>Task 6:</b> Preparing, should funding exist the regional consultations encompassing representatives of all relevant stakeholders from all five regions. It is expected that the government of Papua New Guinea and UNDP will lay the groundwork for these regional workshops.</p>	<p>The purpose of the regional consultations and workshops is to review:</p> <ul style="list-style-type: none"> <li>• At a national and sub national level;</li> <li>• At a government and private sector;</li> <li>• On a regional basis</li> </ul> <p>Several elements of output 4:</p> <ul style="list-style-type: none"> <li>• The methodology used, and the implementation of the previous consultancy.</li> <li>• The recommendations themselves,</li> <li>• The institutional recommendations and potential responsibilities of the CCDA.</li> <li>• The draft harmonized REDD+ Policy document.</li> </ul> <p>Such a review is meant to provide both on the ground general insight and regional and local context to several of the recommendations.</p>
<p><b>Task 7:</b> Integrating the feedback provided in the workshop within the preparation of final report outlining the methodology for the assignment and key findings as well as recommendations implementing the goals of the CCMA on a national scale through Law Policy and Regulation</p> <p><b>output 4:</b> The Final Policy Submission of the recommendations for the revision of the CCMA, and a review of the NEC submission</p>	<p>The aim of this task is to:</p> <ul style="list-style-type: none"> <li>• Determine what measures are available within PNG to address key issues without parliamentary amendments to legislation</li> <li>• Make recommendations to strengthen existing policy, law and regulations through the implementation and awareness of existing legal requirements;</li> <li>• Determine the extent to which each issue should be addressed in climate change policies and legislation directly and where the issue would be better dealt with in other primary or secondary laws or regulations.</li> <li>• Where it is determined that regulation is not required, propose non-legal measures that could be adopted to adequately address the issue;</li> <li>• Determine how identified issues can be addressed through review of the CCMA, including potential</li> </ul>



	<p>implications of various options, as well as institutional analysis of the CCDA;</p> <ul style="list-style-type: none"> <li>• Where the issue should be addressed in climate change law and policy, relevant options will be suggested, and their implications considered. This may include suggesting amendments to existing sections or adding new sections. Where relevant, the implications for further regulation will be considered, although actual options for further regulation will not be suggested.</li> <li>• A review of the NEC policy submission prior to its actual submission.</li> </ul> <p>The consulting team will prepare a clear report outlining the relevant recommendations to address any gaps and weaknesses identified.</p>
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Table 2: Outputs and consultations/workshops

<b>Outputs</b>	<b>Description</b>	<b>Dates (tentative)</b>
<b>Output 1</b> [payment 1]	<b>Inception Report</b>	23 <sup>rd</sup> November 21, 2018
<b>Output 2</b>	<b>PLR Analysis which includes:</b> <ol style="list-style-type: none"> <li><b>1. Sample Matrix for analysis.</b></li> <li><b>2. Content of analysis of relevant sectors.</b></li> </ol>	1 <sup>st</sup> February, 2019
<b>Output 3</b>	<b>Following participation in national consultations on output 2, above, recommendations for CCMA and institutional arrangements for CCDA in light of consultations.</b>	Consultation 7 <sup>th</sup> -8 <sup>th</sup> March 2019 28 <sup>th</sup> March, 2019
<b>Output 4</b>	<b>Following regional consultations on output 3 a final report elaborating on methodology and including recommendations for CC regime will be created. This will include a review of the NEC Policy Submission formulation of the recommendations and work.</b>	Regional event, 23 <sup>rd</sup> -26 <sup>th</sup> April, 2019 Report, 27 <sup>th</sup> May 2019.

## Work Plan

The following work plan shows the activities and outputs detailed in the previous section to be implemented and delivered over a 6-month period. The schedule is consistent with the requirements of the ToR and consequent discussions. Specific dates for the delivery of outputs and implementation of workshops/meetings can be discussed and agreed with the government of PNG and UNDP when developing the consultancy inception report (Output 1) which includes the delivery of a detailed work plan.

Table 3: 12-month work plan

Output: O      Workshop/Consultation: W      Trip: T

	2018		2019				
	Nov	Dec	Jan	Feb	Mar	Apr	May
<b>Task 1</b>	O.1						
<b>Task 2</b>				O.2			
<b>Task 3</b>					T.1 W.1		
<b>Task 4</b>							
<b>Task 5</b>					O.3		
<b>Task 6</b>						T.2 W.2	
<b>Task 7</b>							O.4

For the delivery of activities and outputs of the consultancy listed above, CLP is planning several trips to Papua New Guinea. Please note the number of trips and duration of these can be discussed/modified with UNDP and PNG government as necessary. These dates are mentioned in the table above, and are tentative.

## Annex I: Methodology

### Introduction

This section offers a methodological framework to assess and facilitate the identification of implementation barriers and solutions for PNG's CCMA. Please note this framework does not identify whether CCMA is the most effective or appropriate policy to address GHG emissions reductions.

The measuring of the effectivity of a domestic climate change regime requires an adequate standards and criteria by which a matrix can be created. There is no set of criteria or recognized and exclusive international guidelines to apply when examining a complex domestic legal framework in its compliance with, and implementation of, global climate targets.

However, this consultation has reviewed current international best practices and formulated<sup>88</sup> the matrix presented in Table 5, below. This matrix is itself a draft and welcomes feedback both externally and as part of the iterative process of analysis. That is to say: it is expected to change in some of its details as the research progresses but will remain mainly true to current form in its central tenants.

As has been indicated, while there may be no single set of criteria, the field is far from vacant. A review indicated several recent works which have addressed analysis of domestic climate change regimes, including (but certainly not limited to):

- An analysis of domestic regimes as they compare to NDCs.
- A compilation of existing Climate Change Legislation by country.
- An economic analysis of CC regimes.
- Specific country and regional analysis methodologies.
- Measure of progress of countries in achieving the goals of the Paris Agreement.
- Measuring of institutional capacity and needs to meet CC regimes.

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<sup>88</sup> 'Aligning National and International Climate Targets' Grantham Research Institute, WRI, University of Leeds Policy Brief, October 2018. See also Grantham Research Institute On Climate Change and the Environment and London School of Economics 'Climate Change Laws of the World', the first, most comprehensive and constantly updating collection. <http://www.lse.ac.uk/GranthamInstitute/climate-change-laws-of-the-world/>

**Fankhauser, S. and Stern, N.** 'Climate Change, Development, Poverty and Economics' in K. Basu, D. Rosenblatt and C. Sepulveda (eds), *The State of Economics, the State of the World* (MIT Press, 2017).

See, for instance: **European Environment Agency** 'Environment and Climate Policy Evaluation' EEA Report 18/2016, Luxembourg, 2016. Which focuses of EU countries analysis, but is not limited in use. See also

**Fankhauser, S., Averchenkova, A., and Finnegan, J.,** '10 Years of the UK Climate Change Act' London, 2018 <[http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2018/03/10-Years-of-the-UK-Climate-Change-Act\\_Fankhauser-et-al.pdf](http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2018/03/10-Years-of-the-UK-Climate-Change-Act_Fankhauser-et-al.pdf)>. See also **Burck, J., Marten, F., Hohne, N., Bals, C., Uhlich, T., Riechers, K., Von Rosenberg, V., Gonzales, S., Moisiso, M.** 'Climate Change Performance Index: Background and Methodology' Bonn, November 2017.

**Rüdinger, A., Voss-Stemping, J, Sartor, O (IDDRI), Duwe, M. (Ecologic Institute), Averchenkova, A (GRI).** 'Toward Paris-compatible climate governance frameworks- an overview of findings from recent research into 2050 climate laws and strategies' IDDRI Study 4/18 June, Paris, 2018.

Several compilations of writing on domestic climate regimes have also emerged<sup>89</sup> as well as general reviews of trends<sup>90</sup>. As climate change shares the traits of a global, and thus collaborative, scientific, and thus changing, and domestic, and thus unique issue, the terms applied to evaluating any regime require a broad basis. In building upon the above publications and more<sup>91</sup> the matrix below has been constructed. It includes 4 general components, each analysed in accordance with 5 general governance principles. Best practices have dictated the need for the general criteria, with the specific application and type of sub criteria potentially changing according to context. Below is an elaboration of the criteria, followed by the method by which they are to be applied and revised.

## Criteria

CC legislation implementation does not necessarily follow smoothly from its adoption. It requires the mobilization and allocation of resources, monitoring, as well as active administration and enforcement. Unlike adoption, implementation is not binary: While a given Policy, Law and Regulation (PLR) is either adopted or not adopted, implementation exists along a continuum – it is not necessarily meaningful to state that a given policy either “is” or “is not” implemented. Rather, PLRs are often partially implemented, or implemented with varying degrees of effectiveness.

This climate law assessment framework focuses on four components that are deemed most relevant to assess and facilitate the identification of implementation barriers and solutions:

- 1) Finance
- 2) Implementation activities
- 3) Monitoring and evaluation
- 4) Compliance and enforcement

The analysis of these four components will be carried out in relation to five governance principles, as follows:

- 1) **Clarity of Role and Responsibility:** determines which institutions are responsible for the activities, and monitoring dimensions of the domestic climate change legal framework implementation, whether specific roles and responsibilities are clearly defined, and whether there are specific rules that govern how these roles should be performed.

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<sup>89</sup> See most recent: *Trends in climate change legislation* Ed: **Averchenkova, A., Funkhauser, S., Nachmany, M.** Edward Elgar Publishing, 2017.

<sup>90</sup> *Global trends in climate change legislation and litigation* Grantham Research Institute, WRI, University of Leeds Policy Brief, May 2018.

<sup>91</sup> See for example: **Averchenkova, A. and Bassi, S.**, *Beyond the Targets: Assessing the Political Credibility of Pledges for the Paris Agreement – Policy Brief* 2016 <<http://eprints.lse.ac.uk/65670/1/Averchenkova-and-Bassi-2016.pdf>>. and **Doda, L.B.**, *How to Price Carbon in Good Times . . . and Bad!* 2016 7 (1) *Wiley Interdisciplinary Reviews: Climate Change* 135–44.

- 2) **Institutional Capacity:** assesses the extent to which the relevant institutions have the skill and capacity to manage resources, address technical issues, and ensure compliance with domestic climate change legal framework. Aspects of institutional capacity include: human and financial resources, as well as access to appropriate technology; adequate skills and training regarding relevant subject matter; and adequate political and bureaucratic leadership of policy-relevant institutions.
  
- 3) **Coordination:** examines the extent to which the goals of relevant government agencies tasked with implementing the climate change legal framework are in alignment, and the extent to which there are clear lines of communication between responsible agencies. Policy implementation often requires actions by multiple agencies and groups, and coordination among different groups in the form of “information sharing, resource sharing, and joint action.”
  
- 4) **Transparency:** determines the extent to which actions and information are disclosed to stakeholders. Facilitating access to information is essential to engage investors and public constituencies, maintain political support, and to ensure that government is held accountable for achieving the goals set out. Aspects of transparency include: ease of access to information, comprehensiveness (sufficient level of detail), timeliness, comprehensibility, and level of effort made to reach affected and vulnerable groups, as appropriate.
  
- 5) **Stakeholder Engagement:** identifies stages in the policy implementation process where engagement might be needed to improve acceptance. Attributes of strong stakeholder engagement processes include: formal opportunity for stakeholder engagement in various forums; appropriate and sufficient mechanisms to invite stakeholder participation (including public participation), allowing also for adequate comment periods; inclusive and open engagement processes, representative of a broad range of perspectives; accountable consideration of stakeholder inputs.

Effective stakeholder engagement might overlap with transparency provisions; stakeholders need access to background documents and analyses in order to make meaningful inputs.

**The key methodological steps in this analysis are:**

1. First, we will identify the relevant and applicable PLRs linked to the application of the CCMA, by completing the worksheets in annex I. These include the agriculture sector, forestry sector and land Use sector.

And, to the extent that they arise from the general section of the CCMA, related regime, and the sub-criteria:

- The transport and infrastructure sector
- Energy sector
- Construction

2. Second, we will assess the CCMA and the identified PLRs following the methods and completing the matrix outlined below.

3. Thirdly, we will prepare a report synthesising the findings of the analysis and associated recommendations. These will be collected in the format both tabular and verbal and following the principles of Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis, in light of the regime structure created by the CCMA and focusing on the sectors highlighted in the ToR.

These criteria are a combination of terms suggested elsewhere and try to include integrate them. Examples include *robustness, effectiveness* and *institutional set-up*<sup>92</sup>, or elsewhere, the terms are *Relevance, Effectiveness, Efficiency* and *Coherence*<sup>93</sup>. We have made use of these indices as well as examples given above for regional or specific assessments in developing the sub criteria within each standard and intend to test these against each stage of drafting.

## Elaboration of methodology

### Finance

Financial resources are a critical input to support the implementation of the climate change legal framework. They support subsidies and other incentives, build or upgrade infrastructure, and support the institutions charged with the various functions of implementation, including administration; monitoring, and evaluation; and compliance and enforcement. Despite this need, low-carbon policies sometimes fail to identify a specific, intended source of funding, and a range of long-standing policies and programs have faltered when funding evaporated. This section assesses the extent to which adequate financial resources have been made available to support policy implementation. Of course, the existence of adequate funding is not sufficient to promote intended policy outcomes – funds must also be managed properly, with transparent processes to discourage corruption.

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<sup>92</sup> Rüdinger, A., Voss-Stemping, J, Sartor, O (IDDRI), Duwe, M. (Ecologic Institute), Averchenkova, A (GRI). 'Toward Paris-compatible climate governance frameworks- an overview of findings from recent research into 2050 climate laws and strategies' IDDRI Study 4/18 June, Paris, 2018.

<sup>93</sup> European Environment Agency 'Environment and Climate Policy Evaluation' EEA Report 18/2016, Luxembourg, 2016

In identifying whether sufficient financing has been allocated, we will consider the following factors:

- Any specific sources of funding that have been identified (for example, budget appropriations, international public finance including bilateral/multilateral, consumer or user fees, carbon taxes, specific national fund), and
- Any institution(s) that have been designated as the recipient of budget allocations, donor contributions, or other forms of finance

Principle	Questions	Findings
<p><b>Clarity of Role and Responsibility</b></p>	<p>Are transparent funding level assessments structured into the activities elaborated?</p> <p>Are analyses of cost-effectiveness and distributional impacts (impacts on various stakeholders – including utilities, the general public, and the poor) required for each intervention/activity?</p> <p>Have sources of funding been identified (for example, budget appropriations, international public finance including bilateral/multilateral, consumer or user fees, carbon taxes, specific national fund)?</p>	

	<p>Which executive institution is the designated recipient of budget allocations, donor contributions, or other forms of finance?</p> <p>Does the CCMA and relevant PLRs identify support for the full range of institutional needs, including training and capacity building, monitoring and evaluation, stakeholder engagement, etc.? (it is possible that this question will come out as part of the consultations, as well as part of this desk based research)</p> <p>What rules/guidance govern how finance will be spent (for example, language in appropriations bill; tariff methodology)?</p>	
<p><b>Institutional Capacity</b></p>	<p>Do the relevant institutions mandated by the CCMA (sectorally or the CCDA) have their own budget that is not dependent upon periodic approval by the legislative/executive branches?</p> <p>Does the institution (s) responsible for managing finance have a clear process and criteria governing programming and allocation decisions? (for example, project budget, institutional budget)</p> <p>Are the qualifying criteria for individuals involved, to have adequate technical knowledge and capacity to implement it?</p>	



	<p>Does the institution (s) responsible for managing finance have strong auditing and accounting procedures, including:</p> <ul style="list-style-type: none"> <li>- Terms of reference for accountants and other financial managers, hiring plans for financial managers?</li> <li>- Mechanisms to track how financing is programmed and spent?</li> <li>- Processes for managing and distributing funds</li> <li>- Tools and resources to manage and distribute funds?</li> </ul>	
<b>Coordination</b>	<p>Does the CCMA designate coordination between agencies distributing and agencies receiving funds?</p> <p>In the case of multiple institutions involved in providing financing, what is the process for ensuring that financing from different institutions/sources (including domestic and international sources) is being allocated in a complementary (and transparent) fashion?</p>	
<b>Transparency</b>	<p>Are there systems in place for the executive institutions to disclose information on the use of finance?</p>	

	<p>Are there rules/laws governing disclosure of information regarding use of finance, for example overarching national legislation.</p> <p>Are there clear criteria governing disclosure of such information?</p>	
<b>Stakeholder Engagement</b>	<p>To what extent does the CCMA and relevant PLRs provide for stakeholder consultations around each of the sources of financing, including:</p> <ul style="list-style-type: none"> <li>- Hearings around budget allocations</li> <li>- Consultations around project-specific financing decisions</li> <li>- Hearings around tariff implications</li> </ul>	
<b>Synthesis evaluation</b>	<p>Overall, how robust is the CCMA and relevant PLRs in its treatment of finance when viewed through the lens of the five governance principles?</p> <p>If the CCMA and relevant PLRs has not addressed all governance principles regarding finance, does this appear to have posed barriers to implementation in practice, or have these factors seemed not to be important in implementation?</p>	

	<p>What options does this section of the assessment suggest for strengthening the administration of finance?</p>	
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## Implementation activities

Identifying the administrative functions relevant to the implementation of the CCMA is key to assess its effectiveness.

In identifying whether administrative functions are effectively allocated, we will consider the following factors:

- Any ongoing administrative functions required by the CCMA (as well as the other institutional bodies which fall under its purview)
- The institution(s) responsible for each function
- The quantitative metrics (for example, number of permits delivered, credit lines opened, etc.) that might indicate that the functions have been carried out

Principle	Questions	Findings
<b>Clarity of Role and Responsibility</b>	Are the requirements to address climate change mainstreamed into ministerial/departmental administration?  Are high level goals set (mitigation and/or adaptation actions, long-term emission targets and so on).  Are implementation mechanisms (for example, regulations for feed-in tariffs; rules for allocating water and land; carbon tax law) elaborated in the CCMA or any of the other related PLRs?	

	<p>Are considerations such as ecosystems approach as well as precautionary principle legislated into considerations for activities?</p> <p>Does the CCMA provide a mandate to restructure the institutions identified above in line with their policy administration functions?</p> <p>Does the PLR align with Vision 2050 and with StaRs?</p>	
<b>Institutional Capacity</b>	<p>Are periodic assessments and adjustments of goals and activities legislated into PLRs?</p> <p>Are the skills, resources, and technology are necessary to implement the functions identified above, elaborated upon in the PLRs?</p> <p>In what way, if at all, does the CCMA, or PLRs under it's purview, provide for these resources?</p>	
<b>Coordination</b>	<p>Are economy wide emission standards legislated (or sector wide)?</p>	

	<p>Do the administration functions identified above require coordination between different institutions? If so:</p> <ul style="list-style-type: none"> <li>- What mechanisms have been designated in order to facilitate this coordination (for example, information sharing protocols, multi-sectoral bodies, advisory committees, designated liaisons, etc.)?</li> <li>- Have institutions and coordination committees been established for the purpose of achieving CCMA goals?</li> <li>- Are the mandates of these bodies obligatory?</li> </ul>	
<b>Transparency</b>	<p>Is there high level oversight over the activities of the mandated body?</p> <p>Does CCMA and relevant PLRs provide for transparency around:</p> <ul style="list-style-type: none"> <li>- Background analysis informing the policy design</li> <li>- Criteria and procedures pertaining to licensing, permitting, procurement?</li> </ul>	
<b>Stakeholder Engagement</b>	<p>What provisions do the PLRs governing the policy administration functions identified above (vis-à-vis permitting, implementing regulations, promulgation of standards, etc.) contain regarding stakeholder engagement?</p>	

	<p>In particular, what legal provisions exist for environmental and social impact assessments, including procedures for public consultations and consideration of stakeholder concerns?</p>	
<p><b>Synthesis evaluation</b></p>	<p>Overall, how robust is the CCMA and relevant PLRs in its treatment of implementation activities (including licensing, permitting, and procurement) when viewed through the lens of the five governance principles?</p> <p>If the CCMA and relevant PLRs has not addressed all governance principles, does this appear to have posed barriers to licensing, permitting, and procurement in practice, or have these factors seemed not to be important to licensing, permitting, and procurement?</p> <p>What options does this section of the assessment suggest for strengthening licensing, permitting, and procurement activities?</p>	

## Compliance and enforcement

Effective compliance and enforcement are critical dimensions of effective legal implementation. Compliance activities are not limited to enforcement – for example, they can include collecting information from regulated entities.

In identifying whether compliance and enforcement functions are effectively allocated, we will consider the following factors:

- Is there a clear definition of compliance and/or noncompliance?
- What are the consequences, if any, for failing to comply with the CCMA?
- What action is the responsible authority required or authorized to take to ensure compliance (for example, collecting information from regulated entities, carrying out enforcement activities)?
- What information would indicate that compliance officers are using their authority to take actions to ensure compliance? For example:
  - Number of information requests issued and complied with
  - Number of visits made to site (for example, forest, power plant, etc.)
  - Number of incidents of enforcement (arrests made, penalties levied, etc.)

Principle	Questions	Findings
<b>Clarity of Role and Responsibility</b>	Which authorities are responsible for taking actions to ensure compliance?	



	<p>Are all sub sectors and activities (such as logging and mining) covered by the mandate created here?</p> <p>Do EIAs include specific reference to emissions, and are these requirements elaborated upon in accordance with best practices?</p> <p>Do the PLRs curtail activity through use of overarching climate principles (such as ecosystems approach, precautionary, or intergenerational equity)?</p> <p>Does the CCMA provide a mandate to restructure the institutions identified above in line with the compliance and enforcement functions?</p>	
<p><b>Institutional Capacity</b></p>	<p>Does the PLRs cover most emitting elements of the sector?</p> <p>Are there mandates or duties to act on related CC issues?</p> <p>Are the courts empowered to rule against development projects that jeopardise PNG's ability to meet its climate change targets?</p>	

	<p>Do the institutions responsible for ensuring compliance with the CC regime exist? And do they receive appropriate human resources and access to technology?</p> <ul style="list-style-type: none"> <li>- Provisions for enforcers to be trained to recognize noncompliance</li> <li>- Knowledge of environmental laws and issues by prosecutors and judges</li> <li>- Have the responsible institutions planned for the appropriate number of staff members to carry out enforcement of the policy?</li> <li>- Are there technological support systems to enforce the policy (for example, GIS, emissions monitoring systems, energy efficiency testing facilities)? Are there resources to maintain this technology?</li> </ul>	
<b>Coordination</b>	<p>If there are multiple agencies responsible for actions in the monitoring and reporting, and compliance and enforcement, is there a defined process for coordination among these agencies, including information sharing?</p>	

	<p>If a specialized enforcement agency is responsible for ensuring compliance, specify and describe how this agency links to the national judicial processes.</p> <p>What interaction between the institutions identified above are needed to enforce?</p> <p>Have mechanisms been designed or designated to facilitate this action?</p>	
<p><b>Transparency</b></p>	<p>Is there high level oversight over the activities of the mandated body?</p> <p>What laws govern disclosure of compliance policy?</p> <p>What systems are in place for disclosure of compliance and enforcement policies and mandate?</p> <p>What systems are in place to disclose compliance and enforcement actions taken?</p>	

<p><b>Stakeholder Engagement</b></p>	<p>Are there provisions in CCMA and relevant PLRs to engage stakeholders in compliance measures? Including:</p> <ul style="list-style-type: none"> <li>- Engagement in designing compliance policy</li> <li>- Whistleblowing provisions</li> <li>- Process for appealing licensing, permitting, or procurement decisions in order to ensure compliance with the law</li> </ul>	
<p><b>Synthesis evaluation</b></p>	<p>Overall, how robust is the CCMA and relevant PLRs in its treatment of compliance and enforcement when viewed through the lens of the five governance principles?</p> <p>If CCMA and relevant PLRs has not addressed all governance principles regarding compliance and enforcement, does this appear to have posed barriers to implementation in practice, or have these factors seemed not to be important in implementation?</p> <p>What options does this section of the assessment suggest for strengthening compliance and enforcement?</p>	

## Monitoring and evaluation

Information collection, monitoring and evaluation are important aspects of policy implementation, and especially so when the delicate balance of climate related activities are involved.

Principle	Questions	Findings
<p><b>Clarity of Role and Responsibility</b></p>	<p>Is there a system in place to monitor the intermediate effects of the CCMA? This includes the activities themselves, as well as matrix of measurements and methodologies (such as mandating the use of one or any of the IPCC guidance notes or other best practices).</p> <p>What aspects of implementation and impacts of the CCMA (for example, targets, climate targets, co-benefits) are to be monitored)?</p> <p>Which institution/team is responsible for monitoring the impacts of the CCMA?</p> <p>Is there is any external agency monitoring the results of the department, or is reporting solely internal?</p> <p>Does the monitoring system include a schedule for regular reporting of results?</p>	

	<p>To which institution/team are the results reported?</p> <p>Does the CCMA require a review and course correction process?</p>	
<b>Institutional Capacity</b>	<p>Are accounting practices comprehensive and able to be adapted to each sector in accordance with IPCC guidance?</p> <p>Are the skills, resources, and technology necessary to implement the monitoring, reporting, and review functions identified above recognised and outlined?</p> <p>In what way, if at all, does the CCMA provide for these resources?</p>	
<b>Coordination</b>	<p>Are there protocols for sharing information?</p> <p>Are there provisions for factoring results of monitoring and evaluation into relevant climate (or other benefit) planning processes?</p>	

<b>Transparency</b>	<p>Does the law require public disclosure of:</p> <ul style="list-style-type: none"> <li>- The monitoring and evaluation system?</li> <li>- The findings of the monitoring and evaluation system, including results and impacts?</li> <li>- The policy review and course correction process?</li> </ul> <p>Are triggers and criteria for course correction defined and transparent?</p>	
<b>Stakeholder Engagement</b>	<p>What provisions does the CCMA include for stakeholder input into monitoring, review, and course correction?</p>	
<b>Synthesis evaluation</b>	<p>Overall, how robust is the CCMA as written in its treatment of monitoring and evaluation when viewed through the lens of the five governance principles?</p> <p>If the CCMA as written has not addressed all governance principles regarding monitoring and evaluation, does this appear to have posed barriers to implementation in practice, or have these factors seemed not to be important in implementation?</p>	

	<p>What options does this section of the assessment suggest for strengthening monitoring and evaluation?</p>	
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Worksheet for Identification of relevant PLRs

**Title:**

(Title of PLR instrument)

**Type:**

(Type of instrument)

**Date adoption:**

**Responsible:**

(Which entity or entities implement(s) the PLR) policy

**The broad objective/significance of the instrument**

(Brief overview of the broader objective/context for understanding the significance and relationship of the instrument in relation to CCMA)

## Application

This section describes the actions taken in the analysis in general, as well as the repeated process, through each iteration, which will be reapplied following consultations.

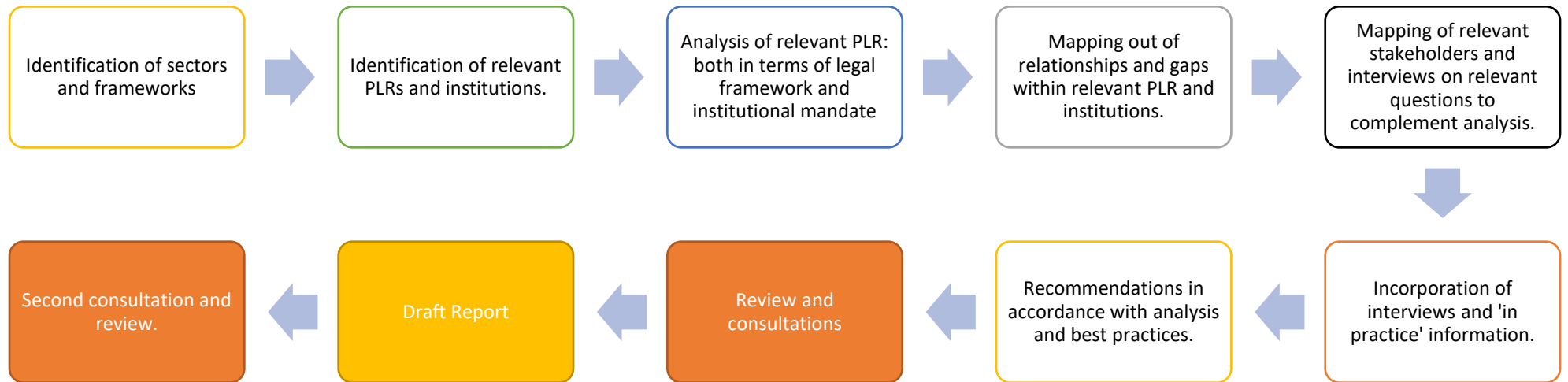
In accordance with the requirements set forward in the ToR for this consultancy, this analysis and methodological approach will be applied to:

- the CCMA
- Related framework legislation such as the Paris Agreement Implementation Act
- Agriculture sector,
- Forestry sector
- Land Use sector.

And, to the extent that they arise from the general section of the CCMA, related regime, and the sub-criteria:

- The transport and infrastructure sector
- Energy sector
- Construction.

The process of identification of elements for the table is as follows:



Please note that following the analysis phase, it is expected this matrix will help identify recommendations required, and these will be provided in accordance with international best practices (such as the IUCN protected areas management, the FAO Climate Smart Agriculture guides and so on).

In accordance with the ToR and subsequent discussions, the institutional focus (though not exclusively so) will be on the following bodies and their capacity to implement the goals set forth by the different Papua New Guinea goals (such as StaRS), **if found applicable in the PLR**. Where it is not, this will be applied to the recommendations:

- 1) Climate Change Development Authority
- 2) Department of Agriculture and Livestock
- 3) Department of Lands and Physical Planning
- 4) Conservation and Environmental Protection Authority.

The above tables will, as mentioned, be incorporated into a single, **Strength, Weaknesses, Opportunities and Threats** methodology organised in light of the structure conferred by the CCMA, in the regulated sectors defined.

Finally, the process of review and consultations, both as part of the workshops and other such events, will follow two concurrent methodologies:

- 1) Semi-structured interviews with mapped stakeholders and representatives on issues identified through research.
- 2) In accordance with request from UNDP and following on the method employed by the NSLUP team, the following table (table 4) will be handed out and feedback addressed:

Table 4: Revision template for review of Climate Change research:

Section/Page	Comment	Response

## Annex II: Process of work

Figure 1: Flow of project from inception to final report.

The following graphic provides an overview of the process of the work in accordance with the requirements set forth by UNDP as well as in coordination with concurrent projects on land use and on forestry.

**Blue boxes** represent analytical work and description of recurring events.

**Green Boxes** represent preparation for or summary of consultations and workshops.

**Yellow Boxes** represent consultation points, including workshops, interviews and any type of stakeholder consultation.

