

INCEPTION REPORT



DEVELOPMENT OF A SUSTAINABLE LAND USE POLICY IN PAPUA NEW GUINEA



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1. TERMS OF REFERENCE FOR THE INTERNATIONAL CONSULTANT

1.1 Background

Papua New Guinea (PNG) has one of the most significant areas of largely intact tropical forest in the world, although these forests appear to be facing acute and imminent threats. Forests are also a vital resource for the local population particularly in the remote rural areas of PNG, providing food, fibre, building materials, and support a variety of wildlife and ecosystem services.

A mechanism for Reduced Emissions from Deforestation and Degradation (REDD+) being developed through the United Nations Framework Convention on Climate Change (UNFCCC) provides an opportunity to support PNG's efforts to reduce levels of deforestation and help to maintain and protect its natural forest. PNG has been a leading proponent of REDD+ at the international level and has made considerable progress towards developing the capacity to engage in an international mechanism on REDD+. This progress has initially been supported by the UN-REDD Programme and is now being aided by the World Bank's Forest Carbon Partnership Facility (FCPF) through a project that will run until the end of 2020. The FCPF project aims to establish capacities for efficient management of REDD+ and developing PNG's National REDD+ Strategy.

PNG's National REDD+ Strategy (NRS) was developed and endorsed by the GoPNG in May 2017. The NRS was developed through a process of structured consultation and awareness rising with key stakeholders from government agencies, civil society and the private sector. It builds on the experiences of early REDD+ readiness activities in the country, including the development of pilot activities, and the on going assessment and analysis work including reviews of forest sector financing, commercial agricultural development, stakeholder engagement processes and land use mapping.

The NRS is based around PNG's 'Vision for REDD+', which is: *'To catalyse transformational change within the forest and land use sector towards a new responsible economy with lower GHG emissions, stronger long term economic growth and community livelihoods and the effective conservation of biodiversity and ecosystem services while ensuring that Papua New Guinea's forest resources are used in a sustainable and equitable manner for the benefit of current and future generations.'*

The Department of Lands and Physical Planning (DLPP) is the central agency working on land use planning across PNG administering the Physical Planning Act 1989, The Act requires the development of land use plans for provinces, districts and local levels. In this way, the Act 1989 is well aligned with the Organic Law on Provincial and Local Level Governments (LLGs) on decentralisation. However, the full implementation of decentralisation of Physical Planning remains a major challenge coupled with lack of finance, infrastructure, human resources, land tenure system and the absence of a policy framework.

The rapid expansion of commercial and family agriculture, commercial logging as well as growing pressure on land use through population, however, has highlighted the potential risks of having no guiding framework for land use planning within customary land areas. These risks are set to increase the with expansion of the PNG road network and further pressure for development activities along economic corridors linked to the current economic challenges being faced by the country as well as the on going pressures of population increase.

There are also examples of how sustainable land use planning at the local level has driven successful economic development and sustainable land management activities. These activities however have often been very location specific and weakly linked with national and provincial planning systems.

The 2015 Planning and Monitoring Responsibility Act provides a strong framework around which sustainable land use planning and development planning can be integrated. For this to be effective,

however, there is a need for a clearer policy and legislative framework on sustainable land use planning in the country.

1.2 Duties and Responsibilities

Under overall supervision of the FCPF REDD+ Chief Technical Advisor and the technical guidance of the Department of Lands and Physical Planning (DLPP) team, the International Consultant will support the *revision and completion of the draft Sustainable Land Use Policy (SLUP)*.

The process will focus on ensuring full and effective stakeholder consultation on the policy with a particular focus on the alignment of the policy with key government planning and development frameworks as well as ensuring effective consultation with civil society groups and land owning communities.

This assignment will be implemented with the support of a consulting team that will be based in the Policy Division of DLPP and will provide direct support to the DLPP in the development of the revised SLUP. It is anticipated that the assignment will be developed through the following steps:

- **Review of existing policy**

The international consultant with the support of the DLPP team will apply a cross sector analysis to review existing policy and identify areas in which improvements and changes may be needed. Based on this review, the international consultant and national team will propose recommendations for amendments;

- **Review of international best practices on sustainable land-use**

The international consultant with the support of the DLPP team will review and analyze international best practices on sustainable land-use policies and their enforcement measures. This analysis will allow PNG to consider lessons learned from other countries and align with PNG context, when applicable;

- **Broader Consultation**

Following this review a process of consultation will be undertaken on the revised SLUP to solicit the views of stakeholders at the national and subnational level. The consultation process will focus on providing further information to stakeholders on the nature of land use planning, the potential benefits of such planning as well as gaining feedback on the how planning can be developed and implemented;

- **Final policy revisions**

Based on feedback from broader consultations, final amendments will be made to the SLUP prior to final consultations across government and submission to the NEC.

Throughout the process, cross-sector and multi-stakeholder engagement is identified as critical, with the international consultant also required to work in close collaboration with the DLPP working group on the SLUP.

In undertaking this assignment the international consultant – working closely with the national team, the FCPF team and other government counterparts - will work on strengthening the national land use information system as well as sub-national support to integrated land use planning at the LLG, District and Provincial levels.

2. PROPOSED METHODOLOGY AND DELIVERY TIMELINES

2.1 General

The proposed methodology for the current assignment includes a mixture of legal analysis and social science methodology. Legal analysis, roughly speaking, evaluates the internal coherence of the national laws within the national and international legal framework. It includes the analysis of international and national legal principles, standards, understandings and legal documents. Data collection includes legal documents framing the related national and international legal framework, literature review about the national legal history and available information about the customary laws to better understand the similarities and differences among various indigenous and/or social groups.

Social science methodology includes literature review, semi-structured interviews applied and guided from a prepared questionnaire with key informants. In addition open ended and focus group interviews with community members/representatives aims to bring a better understanding on attitudes towards national laws at the local level, and on responses to law (compliance). Finally, the assignment will conduct a validation workshop with key stakeholders to gather opinions on proposed recommendations, and revised SLUD draft with summarized findings and recommendations.

According to the TOR the national team is primarily responsible for identifying, obtaining and providing detailed information on the complexities of land use and change in PNG; supporting linkages with key stakeholders in the country (organize meetings and field mission) and inform about the past and future governance and national goals with guidance from the international consultant.

The contract commenced on **01 July 2018** and will be performed in the following duty stations: **Port Moresby** and **Home based**, and **60 working days** are available under this contract for the International Consultant and all deliverables are expected to be achieved by **28 February 2019**.

2.2 Methodology and Deliverables

A. Initial Desk Work (2 days home based) – July 2018

- Introductory call with Mirzohaydar Isoev (FCPF REDD+ Readiness Project Chief Technical Advisor) and individuals working at the Department of Lands and Physical Planning (DLPP) team for background on the project, deliverables, timelines;
- Identification and initial review of key reports: existing government strategy/policy, general background/research papers, documents, etc. (*A list of key documents reviewed during the initial desk work is presented in section 6*);
- Identification of main national stakeholders and sectors groups for consultation;
- Preparation of mission to PNG (logistics, data collection, methods and analytical approach, etc.)

DELIVERABLE 1

INCEPTION REPORT (this report)	DUE DATE
A detailed work plan (inception report) shortly after inception describing specific methodologies, work flow, structure of deliverables (e.g., an outline of final report), output delivery timeline, consultation plans, inputs required from national experts and stakeholders, and any other items as appropriate	31 July 2018

B. First Mission to PNG (5 days in country + 4 days travel) – August 2018

Following the initial deskwork and the approval of the inception report by the FCPF and national team, a five days mission to PNG is expected with the following schedule:

06 to 10 of August

Thurs 2, 20:20	Departure Curitiba
Sat 5, 4:50am	Arrival Port Moresby
Mon 6 to Tues 8	3 days government officers and key stakeholders meetings in Port Moresby in accordance with agreed consultation plan presented in the Inception Report,
Wed 9 to Fri 10	2 or 3 days field visits to agreed locations – during the first call meeting a visit to the four regions was included in the schedule
Sun 12, 16:50	Departure
Mon 13, 22:45	Arrival Curitiba

- An estimated 2-3 days government and international officers meetings to understand the main constrains of the current laws and policies from the perspective of conflicting norms, conflicting interests and general individuals' perceptions about current local compliance and enforcement methods (i.e. fines, restrictions) in place. These meetings will also inform deliverables 2 and 3;
- Field visits aim to better understand the difference in the landscape and to understand the ways in which policies and national laws are currently informed to address these differences. Defining the specific challenges in each of these areas and their similarities will be important, also to a) understand their main economic sectors, b) forest cover areas and distribution, and c) differences regarding forest use, land use and stakeholders groups.

C. Analytical Work (5 days home based) – August 2018

DELIVERABLE 2

Review of international best practices on sustainable land-use	DUE DATE
International best practices on sustainable land use policies and their enforcement measures	31 August 2018

Textual analysis of the land use related policies/laws and framework in relationship with international legal requirements and best practices.

The analysis include international law analysis but also guidelines for responsible governance of land use such as: a) human dignity, b. non-discrimination, c. equity and justice, d. gender equality, e) holistic and sustainable approach, f) consultation and participation, g) rule of law, h) transparency, i) accountability, j) continuous improvement.

In the first meeting for this project and considering REDD+ implementation in country, the analysis of the UNFCCC Cancun Safeguards and eventual implementation of Grievances Redress Mechanisms should be considered.

D. Analytical Work (3 days home based) – September 2016

DELIVERABLE 3

Recommendations on revisions to the draft SLUP	DUE DATE
Review the SLUP against other sectors legislation as well as through consultations with key sectors agencies and the DLPP	30 September 2018

Review of existing policy

For the analysis of the existing policy, this work will consider a scale down and bottom up approach and analysis. It includes a) textual analysis of national and state land use related framework, b) analysis of implementation/law enforcement at Provincial and Local Level, c) responses to compliance within the four localities:

a. Data Collection includes: relevant/related legal documents, policy reports, draft of legislations, land use planning and short and long term policy national understanding and goals. This can be organised in layers (i.e. national, provincial and local) considering the data needed to inform each region, sector and stakeholder group, especially in case of harmonization of policies and long term goals.

b. Data collection on national governance includes information about the forest cover, land use patterns, deforestation and degradation rates, agriculture practices, sustainable land use, logging, financing, land management, among others.

As discussed in the first meeting for this project considerations about customary laws, land groups, sector integration, legal implementation and enforcement – and their impact on individuals – are central elements for the analysis and revision.

D1. Second Mission to PNG (10 days in country + 4 days travel) – September 2018

Consultation with key sector agencies and the DLPP

c. Identifying key stakeholders and sectors, in each region, and identifying key stakeholders able to provide interviews to inform and understand the main challenges, conflicting policies and/or interests (*see item 3 in detailed preparation for consultation in country*);

d. The analysis of individual or group's responses to current policy and eventual transitional challenges, can be facilitated by the understanding of the current social arrangement;

e. The analysis will take into consideration data on national and local institutional arrangements as well as enforcement and individual capacity;

Interviews with key stakeholders representatives of each of these areas will inform the way individuals' explain and understand the main challenges in their region, and how they perceive such challenges as similar or different from the other regions.

The methodology applied for these interviews (semi-structure and open-ended interviews).

Proposed Travel Dates:

07 Sept	Departure Curitiba
09 Sept	Arrival Port Moresby
10 to 19 Sept	2 days government officers meetings in Port Moresby in accordance with agreed consultation plan presented in the Inception Report
	8 days meetings with key sectors agencies, land users representatives/individuals
20 Sept	Departure
22 Sept	Curitiba

E. Desk Work (10 days home based) – October 2018

DELIVERABLE 4

SLUP awareness material	DUE DATE
Drafting a set of awareness raising materials and communications tools intended to increase understanding of the SLUP	31 October 2018

Note taking from previous consultation and individuals' understanding about the challenges, concerns and perceptions of each stakeholder groups need to guide the elaboration of such materials.

F. Desk Work (10 days home based) – November 2018

DELIVERABLE 5

Report on Consultation Meetings	DUE DATE
Summary report outlining the feedback of stakeholders during the consultation meetings and recommendations for action based on this. The report should be linked to summaries of workshops delivered by DLPP	30 November 2018

G. Desk Work (5 days home based) – January 2018

DELIVERABLE 6

Draft of the Revised Policy for Final Consultation	DUE DATE
Revised SLUP draft for final workshop consultation	15 January 2018

At this stage the draft under validation should have taken into consideration the main concerns of each stakeholder group and sector as identified upfront as well as considerations about the harmonization of national laws and policies and/or with international requirements.

G1. Third Mission (5 days in country + 4 days travel) – January 2018

Workshop consultation

Proposed Travel Dates:

Fri 25	Departure Curitiba
Sun 27	Arrival Port Moresby
28.01 to 01.02	5 days workshop consultation
02.02	Departure
04.02	Arrival Curitiba

Participants should be informed about the workshop and provided with the final draft at least 10 days before the workshop dates.

E. Desk Work (5 days home based) – February 2018

DELIVERABLE 7

Final SLUP draft	DUE DATE
Final SLUP draft including report summarizing main findings and recommendations	20 February 2018

The final policy revision will draw from the previous analysis to provide a clear and informed revision about the social context, policy and legal arrangements, challenges, findings and recommendations.

3. PROPOSED CONSULTATION PLAN

3.1 General

For the analysis of the existing policy, this work will consider a scale down and bottom up approach and analysis. Interviews and consultation should apply several methods that can inform a well-structured analysis covering the main areas and goals aimed in this project.

A *multi-stakeholder* approach will be reflected in the consultation process. Local legitimacy leads to increased legal inclusion and compliance and can be secured through transparency, facilitated by the proper identification and inclusion of key stakeholders, sectors and representatives. Interviews will be conducted with the following stakeholder groups: government agencies, civil society organizations, smallholder farmer organizations, donors and the private sector.

The consultation will apply semi-structured interviews. Interviews will aim to understand:

- a. Knowledge of rules – to assess the level of people’s understanding of national policies and laws, the perception of their complexity and how these policies are ‘translated’ and/or understood by sectors and people at the local level
- b. How local residents/sectors perceive current land use practices and their attitudes, aiming to understand the reasons for compliance and its limitations
- c. Existing local codes of behaviour in opposition to policies and laws (national and international) to understand what kind of rule prevails within the social context and what are the considerations that justify this behaviour
- d. Parameters for (non) compliance: that will lead me to understand variables that directly influence agent’s decisions but external to them; such as particularly property land regime, social needs, fines’ value;

Values that can influence compliance: moral, economic, social, cultural

The analysis of the interviews can include qualitative and quantitative methods that will be taken into consideration for the final draft.

3.2 Consultations in Port Moresby

There are 10 days consultation in Port Moresby. Considering 3 to 5 meetings with stakeholders to be interviewed in a day (best case scenario), it will be possible to interview around 40-50 key stakeholders and/or organizations.

Key stakeholders and sector’s representatives need to be informed about the project and invited to participate in advance.

Ideally, it would be relevant to conduct interviews – semi-structured or focused group - with individuals (land users/small holders) at the local level outside Port Moresby. Due to time constraints a focused group methodology can be considered.

Conflicting interests about laws and policies can create tension within a group and among stakeholders’ groups, also leading individuals to withdraw their opinions. Therefore, discussion about the most appropriate methodology and location for conducting interviews will be discussed with the national team and planned accordingly.

At local level I propose to use a simple random sampling to choose locals’ individuals for interview – aiming to keep the integrity of the data collection.

Please, find below a general indication of the main stakeholders' group and considered at this stage. A more detailed identification will be considered with an increased understanding about the local dynamics, also debated with the national team and informed in the final report.

	Stakeholder Group/Sectors	Organization	Individual(s)
1	Donor	FCPF REDD+ Readiness Project Team	Chief Technical Advisor (Mirzohaydar Isoev)
			Project Manager (Peter Katapa)
2	Government	Climate Change and Development	
3	Government	Forest Authority (PNGFA)	
4	Government	Department of Agriculture and Livestock (DAL)	
5	Government	Indigenous groups' government representative (?)	
6	Government	Department of Environment and Conservation	
7	Government	Land use and planning	
8	Government	Department of community	
9	Government	Department of Provincial and Local Level Government Affairs	
10	Government	Government officers – working with law enforcement, legal inspections and/or policy implementation in the ground	
11	Government	Policy and Legal Division	
12	Government	Department of Trade and Industry Department	
13	Government	Government officers – working with law enforcement, legal inspections and/or policy implementation in the ground	
14	Civil Society	Institute of National Affairs (private research institute)	
16	Civil Society	International NGO	
17	Private Sector	PNG Palm Oil Council	

18	Private Sector	Coffee Industry Corporation	
19	Private Sector	PNG Cocoa and Coconut Institute	
20	Smallholders	Palm Oil Growers Association	
21	Smallholders	Coffee Growers Association	
22	Smallholders	Local associations	

4. Ethical Considerations

Confidentiality, discretion and trust are indispensable when debating matters about laws and national authorities in any particular country and with members of close-knit networks.

All data collection and analysis will be carried out following ethical guidelines respecting the rights of those participating in interviews.

5. Data Collection on the national legal framework and policies

Main Questions	Data Collection	Methodology/ Analysis	Outcomes (results)
<i>a) How the land use related laws were historically constructed?</i>	Grey literature on history and political ecology, sustainable land use and environmental law	Literature review	Enhance knowledge about legal regulations and policies as a national strategy Current framework and changes on the legal framework, also in consideration international laws
<i>b) Which are the core laws, regulations/policies and its enforcement features within the National and Provincial framework?</i>	National and state level Government official data on complementary features of the enforcement approach: market-oriented (economic incentives: incentives, subsidies, loans, forest certification) Semi-structured interviews	Data and legal regulation document analysis Interview analysis	
<i>c) How laws and policies are</i>	Legal regulation and policy data	Legal regulation	

<i>meeting or providing guidelines for sustainable land use?</i>	collection Semi-structured interviews with key stakeholders	document analysis Interview analysis	Increase knowledge about limitations and allowances by existing laws and how it can inform and guide efforts for legal restructuring and reform
<i>d) How legal framework and policies' understanding and perceptions by different actors affect its outcomes?</i>	Government official data on social control such as support to legal "translation" or advice on legal regulation to stakeholders Government official data on Land tenure and land security control Semi-structured interviews	Data and legal document analysis Interview analysis Direct observation	

6. INITIAL LIST OF REVIEWED DOCUMENTS

This is a list of key documents identified and briefly reviewed during the initial deskwork. More documents will be identified and reviewed during the study with support from the National team and other stakeholders as appropriate.

General Papua New Guinea

Readiness Preparation Proposal (R-PP) Papua New Guinea. December 2013 Forest Carbon Partnership Facility (FCPF)
Papua New Guinea Vision 2050
PNG Development Strategic Plan (2010-2030)
PNG Medium Term Development Plan 2 (2016-2017)
National Agriculture Development Plan (2007-2016)
National Climate Compatible Development Management Policy (& previous CCDS)
2014 National Human Development Report – UNDP
PNG's National REDD+ Strategy
FCPF REDD+ Assignments Reports
Sector-based retreat reports

National Laws

Land Act 1996
Land Registration (Amendment) Act 2009
Incorporation Land Group (Amendment) Act 2009

Environment Act 2000
Physical Planning Act 1989
National Housing Commission Act
Building Act Chap.301
Mining Act 1992
Informal Sector Development and Control Act 2003
Organic Law on Provincial Governments & LLGs 1998
PNG Vision 2050
PNG Development Strategic Plan 2010-2030
Climate Compatible Development Management Policy 2013-2015
National REDD+ Strategy 2017-2027
National Protected Areas Policy
National Food Security Policy
National Forest Policy
National Land Development Program
National Urbanization Policy 2010-2030
Medium Term Development Goals/post 2015 Goals
Public Private Partnership Policy
National Sustainable Land Use Policy
2015 Planning and Monitoring Responsibility Act
1989 Physical Planning Act

International Legal framework

Millennium Development Goals 2015
United Nations Framework Convention on Climate Change
United Nations Convention on Biological Diversity
United Nations Convention on Combating Desertification as well as international agreements such as the Agenda 21 or the Declarations on forests
Sustainable Development Goals (SDGs) 2030
United Nations Convention on Environment and Development (Rio Declaration)
United Nations Convention on Biological Diversity (UNCBD)
United Nations Convention on Human Settlement (UNCHS)
The Cartagena Protocol on Biosafety
The Kyoto Protocol on Stabilizing Greenhouse Gas Emissions
The Paris Agreement on Keeping Global Temperature Well Below Two Degree Celsius

General Deforestation, legal reform and law enforcement

Larson, A. M. (2011). Forest tenure reform in the age of climate change: Lessons for REDD. *Global Environmental Change*, 21(2), 540–549. <http://doi.org/10.1016/j.gloenvcha.2010.11.008>

Richardson B. (2000) Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum. *Colo. J. Int'l Env'tl. L. & Pol'y* 11: 1-82.

Geist H and Lambin E. (2002) Proximate Causes and Underlying Driving Forces of Tropical Deforestation. *BioScience*: 143-150.

Gunningham, N. (2011). Enforcing Environmental Regulation. *Journal of Environmental Law*, 23(2), 169–201. <http://doi.org/10.1093/jel/eqr006>

7. OUTLINE OF FINAL REPORT

EXECUTIVE SUMMARY

ABBREVIATIONS

INTRODUCTION

National Governance Structure	Overview of land use national related laws, policies, conflicting norms and interests, institutional and individual capacity overview for legal implementation and enforcement measures in PNG
Harmonization of national norms and policies / identification and harmonization of conflicting interests in key sectors and stakeholders groups	Main findings about the revisions to the draft SLUP – based on review of the SLUP against other sector legislation as well as through consultations with key sector agencies and the DLPP
Harmonization of national laws with international laws and best practices on land use	Main findings about the International best practices on sustainable land use policies and their enforcement measures in relationship with the current national law/policy
National legal/policy awareness: inclusion/compliance and policy dissemination	Main findings about the knowledge of national laws, policies, implementation structures and enforcement methods
Stakeholders consultations, findings and recommendations	Summary report outlining the feedback of stakeholders during the consultation meetings and recommendations for action based on this. The report should be linked to summaries of workshops delivered by DLPP

RECOMMENDATIONS

(Recommendations for policy and institutional change, measures for multi-stakeholder engagement, next steps for grievances mechanisms implementation and suggestions for supporting legal reforms in related laws such as forest and climate change laws)

ANNEX 1: List of Interviews

ANNEX 2: Draft of the revised policy