Review of Legislation and Policies Relevant to Community Forestry in Papua New Guinea

ACIAR Project FST/2011/057 ‘Enhancing the implementation of community forestry approaches in Papua New Guinea’

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Acronyms

ACIAR  Australian Centre for International Agricultural Research
ASEAN  Association of Southeast Asian Nations
CEPA   Conservation and Environment Protection Authority
DAL    Department of Agriculture and Livestock
DEC    Department of Environment and Conservation (see CEPA)
DLPP   Department of Lands and Physical Planning
EFP    Eco Forestry Program
FMU    Forest Management Unit
ILG    Incorporated Land Group
IRECDP Islands Region Environment and Community Development Program
LGIA   Land Group Incorporation Act
LOC    Landowner Company
MTDS   Medium Term Development Strategy
NADP   National Agricultural Development Plan
NFS    National Forest Service
PNG    Papua New Guinea
PNGFA  PNG Forest Authority
SABL   Special Agricultural and Business Lease
SFM    Sustainable Forest Management

Definitions

Communal land tenure systems: This terminology is often used to describe land tenure systems found in PNG. Unfortunately, besides its use being misleading and incorrect it is also too vague a term; as such it is not very useful. Melanesian land tenure systems are kinship-based systems in line with each cultural group’s dominant ideology (patrilineal/matrilineal, etc.). These systems are essentially privatised land tenure systems: if an individual belongs to the kin group and meets the kin group’s membership criteria then he/she is considered to be a permanent land group member and therefore has permanent rights to access house sites, garden and cash cropping areas, and other natural resources. Without meeting the relevant membership criteria, the most an individual can hope for is to arrange temporary use within another land group’s domain through their contacts there. All this is consistent with common property tenure – generically referring to rights obtained through membership of a defined group. Within common property, the specifics of individual rights vary between systems.

Customary Tenure: Customary tenure can be defined as land and resource tenure systems that follow customary practices. In the case of PNG (and other Pacific countries) these customary tenure systems are also recognised in the modern constitutions and laws of those countries. What is important to determine is what the basis of these customary tenure systems are. In PNG they are generally based on kinship ties and related groupings such as sub-clans, clans or tribes.

Ecoforestry: This term can be used interchangeably with the terms ‘social forestry’ or ‘community forestry’ for native forest management by landowners. This can be defined as being forestry carried out at a local level by one or more communities and with a range of goals – not just economic but also social, income creation and employment.
**ILG:** Incorporated Land Group/s are defined in the Land Groups Incorporation Act (1974, subsequently amended 2009). Essentially this Act, if its procedures and requirements are followed, would give formal legal recognition to what are customary kinship groups through which customary land and natural resource rights are managed, and within which, these rights pass from one generation to the next.

**LOC:** Landowner company/ies are legal entities set up through the Companies Act that in theory represent all holders of customary rights in a particular area and usually allied with a particular resource development concession. In practice such shareholder membership is not always rigorous or complete, particularly when control of the LOC is most usually tightly held by a small elite.

**Patrilineal/matrilineal:** These are terms used in kinship-based social, political and tenure systems. ‘Patri’ here refers to linkages and a range of rights that are passed down the generations through the male line, and thus create permanent membership and permanent access to clan resources. ‘Matri’ refers to linkages and a range of rights that are passed down from generation to generation through the female line, and thus create permanent membership and permanent access to clan resources. In PNG, patrilineal social systems (with some relatively minor internal variations) predominate. There are also a relatively small number of bilineal social structures that take into account kinship ties and access to a range of rights through both male and female lines.

**SABL:** ‘Special agricultural and business leases’ (initially ‘Special purpose agricultural and business leases’) were originally devised in 1979 as part of PNG’s land legislation. These came under the category of ‘lease-leaseback schemes’ and were incorporated into PNG’s Land Act as a stopgap measure to compensate for the absence of any effective legal mechanism for the registration of customary land titles.

**Sustainable Forest Management (SFM):** The PNGFA prepared two formats to report progress towards SFM (PNGFA 2003); one format focuses on the national level, the second at the Forest Management Unit (FMU) level. Indicators of progress at the national level are both quantitative and qualitative, covering enabling conditions for SFM, forest resource security, forest ecosystem health and condition, flow of forest produce, biological diversity, soil and water, and economic, social and cultural aspects. Indicators for progress at the FMU level are still being determined.

For the PNGFA, SFM is “the process of managing forest to achieve one or more clearly specified objectives of management with regard to the production of a continuous flow of desired forest products and services without undue reduction of its inherent values and future productivity and without undue undesirable effects on the physical and social environment” (PNGFA 2003: 6).
1. Introduction

1.1 Introductory Remarks

This report presents a review of policy relevant to the community forestry sector in Papua New Guinea (PNG) as required in the project document for the ACIAR Project 2011/057 ‘Enhancing the implementation of community forestry approaches in Papua New Guinea’. The document sets out the project’s aim, as a whole, to work towards identifying how community forestry in PNG can be enhanced and scaled up to achieve better economic, social and environmental outcomes in the country. One of the specific research objectives of the project is:

*Objective 3: Analyse policy and institutional systems that can support enhanced implementation of community forestry in PNG*

One of the tasks under this objective was to prepare a review of policy relevant to the implementation of community forestry within PNG. This report addresses that task. It is a complement to a second task which is to prepare a separate report on the impact of policy on decision-making by landowners, effectively a report on the impact of policy on community forestry.

1.2 Scope of this Review

This report is both a compendium and a critical review of PNG state policies, laws, regulations and other instruments including those relevant to the community forestry sector in Papua New Guinea. It should be emphasised that critical discussion needs to go beyond what the policies present and identify the potential strengths and weaknesses, and opportunities and threats inherent in various policies and regulations including comments on the implementation of the policies.

The report reviews existing and relevant PNG state policies, laws and associated official documentation in the sectors of forestry, land, rural development, and environment and conservation in terms of implications (at least) and stated official positions in relation to policy and legal instruments as they could/might/will impact on the introduction of, survival of, and expansion of community forestry. The review considers a range of sectors and areas and higher level policies, including:

- Papua New Guinea National Constitution;
- Higher-level planning strategies, planning documents and frameworks;
- Forest policies, laws and other instruments;
- Approaches to rural development and coordination across sectors;
- A range of issues around the theme of customary land ownership, and its control, management and use for a variety of purposes;
- Environment and conservation policies, laws and other instruments; and
- Customary communities – what they need and what they can do for themselves.
1.3 Limitations of the Review

There are necessarily limitations to this review due to factors such as a limited amount of documentation. These likely limitations include:

- Access to the relevant documentation is the most critical factor, both for the reviewer and for subsequent readers.
- Documents accessible through the internet are not always the most recent or most up-to-date iterations of policy, of law, or of instruments to apply the policies and laws. Much other documentation, commentary and literature is available but mostly as grey literature and so not or rarely available via internet sources.

1.4 Background and Overview

Much of the broader historical, cultural and political PNG background will not be set out here in great detail since this material can be conveniently found in many other authoritative studies (e.g., Filer & Sekhran 1998; ODI 2007a, 2007b, 2007c; Shearman et al. 2008; ITTO 2005). However, a brief overview is useful: PNG has a land area of 46.3 million hectares (ha) and a population of 7.8 million people (January 2014; National Statistical Office) spread over the four regions of the country: Islands, Momase, Highlands and Papua.

PNG’s land and forests are, to a very large extent, held under customary legal arrangements that are recognised in the country’s constitution and protected by it. Before the impact of the Special Purpose Business Leases an estimated 97.8% of PNG land and other resources (including forests) were held under customary tenure. The great majority of this vast area under customary tenure is held through the customary institution of the clan (the vast majority of these being patrilineal clans), according to the accepted specific tenure and inheritance practices in place with each of these clans, also called ‘customary landowner groups’. In their essential form, most Melanesian land tenure systems are privatised systems, but privatised to one or other level of customary grouping. If an individual has the required criteria for permanent membership in a customary group such as a clan, then that individual has access to a particular clan’s resources on a permanent basis.

In order to access particular resources for mining or logging or any other ‘development’ purpose, the State is required to negotiate a legal arrangement with the customary landowner groups. In order to be able to do this in a particular area, the preferred method, under a recent amendment, is for customary landowners to register their clans as ‘Incorporated Land Groups’ [ILGs]. Negotiations are then carried out between the State, a particular developer and ILGs to reach a suitable arrangement. ILGs are most often grouped into ‘landowner companies’ [LOCs] with modern corporate structures and management, and with legal agreements in hand if the LOC was linked to a Forest Management Area (FMA) to be logged by a developer. Where ILGs have been identified and registered and are shareholders in a LOC, that LOC becomes the local partner to the State and the developer in a particular instance, and then royalties would be paid to landowners through each ILG. Not all current FMA projects have registered ILGs. In those cases, royalties would be paid out to the individuals who have been identified as having the right to receive royalties.
In effect, this process of acquiring a particular group of rights to access particular resources and setting up the required legal arrangements to do so has the theoretical result that no permanent land rights should be lost in perpetuity to customary landowners. In addition and an important factor, landowner groups are both customarily and legally entitled to be actively involved in decisions concerning the use and management of their forestland.

The framework of PNG’s current national forest policy was approved in 1991 with a number of subsequent amendments. The main objectives were (and remain): (i) the management and protection of the nation’s forest resources as a renewable natural asset; and (ii) the utilisation of the nation’s forest resources to achieve economic growth, employment, greater PNG participation in industry, and increased viable onshore processing. A National Forest and Conservation Action Plan was officially approved in 1996. Three sub-policies linked to the national forest policy were released in 2003 as drafts: an ecoforestry policy, a reforestation policy and a downstream processing policy.

The legal authority for the various recommendations of the national forest policy and the ways to achieve them are contained in the following instruments:

- the Forestry Act [1991] as subsequently amended;
- National Forestry Development Guidelines [1993];
- Planning, Monitoring and Control Procedures for National Forest Logging Operations [1995];
- Key Standards for Selection Logging in Papua New Guinea [1995];
- PNG Logging Code of Practice [1996];
- Procedures for Exporting Logs [1996]; and
- Forestry Regulation [1998].

Some of these instruments will be referred to in detail in sections 3 and 4, below.

There are a number of regulatory instruments to support sustainable forest management (SFM), though there are still some gaps in implementation. Finally, other legal instruments relevant to forestry include:

- Land Groups Incorporation Act [1974] and as subsequently amended in 2009; and
- Environmental Act [2000].

**Institutional arrangements:**
The PNGFA was established in 1991 as a statutory corporation with regulatory and administrative responsibility for the management of the forest sector across PNG. This is one of the few remaining centralised government bodies in the country. The PNGFA is controlled by the National Forest Board while the National Forest Service [NFS] is the grouping of staff within the PNGFA. Some of the PNGFA’s regulatory and administrative responsibilities have been delegated to the provincial level. The PNG Forest Research Institute also comes under the PNGFA. The PNG Forest Industries Association is an independent incorporated national association whose membership represents and promotes various aspects of the forest industry in PNG; essentially it is an association that represents industry players. Monitoring and surveillance of the log export trade have been contracted to Societe General de Surveillance (SGS). PNG’s stated overall forest policy goal is to establish and maintain SFM.
As part of the national forest policy, the LOC concept was developed in order to increase national participation in the forestry sector. Shareholders of a LOC are the registered ILGs within the area of a particular proposed logging concession and, in theory at least, it is through the ILG membership of a LOC that local customary landowner voices, representing the customary owners of various parts of the forest area being targeted, may be heard. In fact, many of the LOCs have over time been plagued by mismanagement and infighting between different landowner factions to the extent that the management groups of many LOCs have become alienated from the very people that they were created to represent. Inherent problems in this situation include a lack of education and a general lack of business knowledge (Filer and Sekhran 1998).

Finally, it is important to note also that over the years a number of non-government organisations [NGOs] - international, national and local - have been very active at the community/village level. NGOs have been carrying on their community forestry work with low and barely adequate levels of funding and with no or virtually no official recognition. In various areas across the country it has been the NGOs that have focused on community forestry/ecoforestry over many years during a long period when the PNGFA (and its predecessor organisations – Office of Forests, Department of Forests) were engaged almost exclusively on working with and expediting overseas companies focused on extracting PNG’s timber resources. The PNGFA belatedly came to realise the importance of engaging at this community level in relation to the area of community forestry, and essentially only after the European Union offered multi-year funding for a national ecoforestry program.

An example of this kind of long-term involvement by an NGO is that of the Foundation for People and Community Development (FPCD). This is a PNG organisation that has for many years championed the applicability and use of Forest Stewardship Council standards in forest management and developing practical ways in which local communities could benefit directly from the use of their natural resources in a wider marketplace. Production of merchantable timber and export timber by village-based community forestry projects occurred on an irregular basis.

**Approaches to forest management:**
Before the Forestry Act came into force in 1991, timber rights held under customary ownership were acquired by the State through a ‘timber rights purchase’. Rights acquired in this way were only for the harvesting of merchantable timber and did not transfer any further rights to land or the responsibility for forest management to the State or the concessionaires. The 1991 Act confirmed the State’s intention to proceed with the acquisition of timber rights in this way and to provide for their long-term management. This approach did not state how the latter was to be achieved in the very large tracts of the country under customary ownership; nor does the current approach, through forest management areas (FMAs), which is outlined below.

The process since the 1991 Forestry Act focuses on the creation of FMAs. Through these the PNGFA in theory secures a commitment from the customary resource owner groups to follow recommended SFM practices while also offering logging companies (i.e. the ‘developers’) access to a specified forest area for a minimum period of 35 years. To implement the logging of an FMA, the State issues a timber permit under which it will manage a specific area of forest on behalf of the customary landowners for the duration of the FMA. The management roles of the State, including timber harvesting and construction of infrastructure, are usually devolved to the concessionaires. Some management
Responsibility could also be delegated to legally established LOCs, in particular the division and distribution of royalties. The State was a key partner to ensure that customary landowners, who owned the timber resources, got a fair deal from developers.

Up to 2003, the PNG government had acquired timber rights to about 5 million ha of forest (usually through 50-year timber lease arrangements although there is an increasing number of 90-year leases). Significant concerns have built up over time about the manner in which timber concessions have been awarded and controlled, how approvals are gathered from the area, accuracy of the resource inventory, the determination of the appropriate cutting cycle, the management of fragile forests and conservation set-asides, and the manner in which landowner involvement has been handled. This last item is the key one on which the sustainability of the other concerns and aspects depends.

In terms of socio-economic aspects, by 2014 forestry-related revenue provided some 7% of PNG’s GDP (a decrease from the preceding years). The State collects revenues from a log export tax and a reforestation levy; customary resource owners receive a range of royalties (beginning at Kina 10/cu. m. and increasing, depending on the tree species involved) on timber harvested and other levies and premiums. These latter levies and premiums also vary a great deal from one harvesting project to another (in some FMA agreements the developers have been exempted from having to pay these). However, it is likely that many of the benefits of forestry operations have not filtered through to customary landowners through their LOCs (and then whatever trickles down to their ILGs and then to individuals). Village level income from forestry operations, relatively meager as it is, has not been saved or invested to ensure long-term development.

Regarding social relations, customary landowners participate in the processes by which the PNGFA purchases timber rights but are not much involved in the subsequent management and development of forest resources. The purchase of timber rights usually involves payments or royalties and levies to landowner groups, and this has led to conflicts and tensions within such groups. The presence of logging camps (and the associated disruptions to social and cultural environments brought about by strangers camping close by village communities) has also created tensions in many communities.

**Community forestry – IRECDP and the PNG/EU Ecoforestry Program:**
Other than communities themselves (either by individuals or by groups), non-government community forestry players have been involved in working with landowner communities. From 1995 to 2001, the European Commission supported and funded an Islands Region Environment and Community Development Program (IRECDP). By the end of that program, 32 communities and their NGO partners had established small-scale saw-milling operations that brought benefits to those communities, including markets for sawn timber. IRECDP was nominally under the Department of Environment and Conservation which had very limited capacity for monitoring or implementing program activities, resulting in no ongoing government framework to promote community forestry. The program was active only in the Islands region of PNG. For these reasons the program was unsustainable. This activity was followed by the PNG-EU Ecoforestry Program, a broader national program that was well funded for a planned term of seven years. The eventual term was five years and the program ended on 31 August 2006. This Program built on lessons learned in the IRECDP. Control of this new program and its funds was retained by the PNGFA at its headquarters in Port Moresby despite the fact that the FA had previously not shown any interest in community forestry.
The aim of this Program was to facilitate a systematic introduction of ecoforestry to the whole country, enabling landowners to benefit sustainably from their forest resources. The program outlined the procedures to ensure that resource management met certain basic standards for sustainability of the forest resource as well as encouraging communities to develop other enterprise options.

There were a number of results from the PNG-EU Ecoforestry Program (Akivi 2007). Participating groups and individuals were considered to have become more aware of the ecological and productive potential of their forest resources. Evidence suggests that PNG forests are not particularly productive and that, in commercial logging projects at least, harvesting cycles should be longer, or harvest rates lower. A number of options for ecoforestry were also explored and developed - economic, environmental and social. The program developed and tested six options, two of which were based on earlier IRECDP projects, aimed at managing the natural forest. Others, outsourced to program partners, focused on reforestation (including the construction and operation of nurseries), ecotourism, downstream processing and non-timber forest products. However, none were developed or tested in meaningful ways.

Ecoforestry standards were further developed. A draft ecoforestry policy for PNG was produced (issued in 2004 and tabled for consideration with the National Executive Council). This was necessary because both existing policies and the Forest Act 1991 did not address community management of their forests. The draft policy has not yet been adopted or revised, so no code of practice has been developed and institutional arrangements have not been finalised.

Although the ecoforestry policy has not been approved or implemented, ecoforestry continued for some time as a programmatic activity.

Ecoforestry as an approach began to be integrated into the training programs of existing institutions. Portable sawmill and chainsaw manuals were prepared to support training of project personnel in the field and some 455 persons were trained. The Small Business Development Corporation included two training modules specifically targeting small-scale forest enterprises. Under the ecoforestry program, landowners were also able to market their ecoforestry products, subject to the usual provisions of the Forest Act. But these provisions seriously limit marketing opportunities.

In August 2006, the PNGFA established a new division of ecoforestry into its organisation. However, with the removal of international funding, the activities of the Division are essentially in limbo¹.

Ecoforestry, as it was envisaged, meets the requirements and directions of the national Medium Term Development Strategies. Had the draft policy been approved, communities could potentially have become more self-sufficient in, for example, building community infrastructure such as school classrooms, teachers’ houses, aid post buildings, community

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¹ The PNGFA webpage on the Eco-Forestry Programme is dated 2007 and has apparently not been updated, although it remains online: [http://www.forestry.gov.pg/site/page.php?id=33](http://www.forestry.gov.pg/site/page.php?id=33) (accessed 20 February 2017).
centres, all using their own timber and labour.

Summary and key points:
While two-thirds of PNG has been under forest cover and the official timber harvest is well below the estimated national sustainable timber yield, the majority of the country’s people live in rural areas and they still largely live in poverty. There are some key challenges to meet if SFM is to be achieved, including:

- PNG communities through their social groups (‘clans’ or clan-like structures) own and control the natural resources; these communities need to be part of the solution. Are they part of the solution and how best can this be achieved?
- Reducing the social, cultural and environmental disruption of logging.
- Increasing the active involvement of and real benefit from forests for local customary resource owners.
- Increasing the allocation of resources to the active and on-the-ground monitoring of logging and other forest-related activities and the implementation of forest policies at the national level.

Key points here include:

First, the PNG National Constitution guarantees the ongoing existence in theory and practice of customary land ownership as it applies from place to place and cultural group to cultural group. This is the key factor that has had and will continue to have the most significant influence over and ongoing impacts on the sustainable use of the country’s forests since a huge proportion of the land is held under customary tenure and so on the evolving practice and implementation of ecoforestry/community forestry.

Second, for at least 1.5 million ha of natural forest Permanent Forest Estate, there is currently no estimate of the extent to how it is managed because it is not controlled by the State. The 1991 Forestry Act established the PNGFA as a statutory corporation with regulatory and administrative responsibility for the management of PNG’s forests. PNG is a major exporter of tropical logs, shipping out an estimated 2.02 million cu.m. (2003 figures) to China, Japan and other mostly Asian destinations.

Customary landowners participate in the processes by which the PNGFA purchases timber rights but are not much involved in the subsequent management and development of their forest resources. The LOC concept was developed as part of the 1991 national forest policy in order to increase national and local participation in forestry. However, this has not been wholly successful.

2. Higher level documents which guide policy and practice

2.1 Introduction

The laws and policies and other relevant documentation discussed below are the higher level documents to guide policy and practice. These documents present the broader view and provide the underpinning frameworks for PNG policymakers and implementers. Each of them has been the product of a long and broad-based consultation process through special commissions tasked with developing a particular document as well as cross-departmental
working groups. The final step has usually been province-by-province consultations and/or information-sharing meetings, usually with selected personnel.

2.2 The Papua New Guinea National Constitution

PNG’s National Constitution (ISPNG 1975) provides the basic underlying legal document for the country, adopted at independence in 1974. The preamble sets out the National Goals and Directive Principles of integral human development, equality and participation, national sovereignty and self-reliance, national resources and environment, and PNG ways. It also sets out every citizen’s basic rights and basic social obligations.

For the purposes of this Review, the Constitution’s National Goals and Directive Principles enjoins the country, especially in clauses 1(6), 4(1), 5(1) and 5(3) to use PNG forms of social and political organisation and a continuous adjustment to and renewal of these organisations to the needs and attitudes of the PNG population in making wise and sustainable use of all natural resources.

Sections 53 and 54 of the Constitution have been widely seen as being the basis for the National Constitution’s protection of the customary land and resource tenure systems through which customary institutions have controlled the access, use and inheritance rights to land and natural resources across PNG. Section 53 sets out the various aspects under which property can be possessed or acquired or maintained. Section 54 sets out special provisions in relation to customary land.

2.3 PNG Strategic Planning Documents

Overview:
Vision 2050 (PNG 2009) gives the framework for PNG’s official development pathways into the future. This process consciously began in 2010 with the implementation of a long-term strategy, using the Human Development Index rankings as one of the main development indicators (UNDP 2011). Sub-sections below set out relevant documentation and goals in incremental and rolling timeframes through the Medium Term Development Strategy (2011-2015) to PNG Vision 2030 (2015 – 2030) [PNG Vision 2050 (2030 – 2050) will not be discussed further below since it sets out much the same for the forestry sector as the earlier documents]. A PNG Medium Term Development Strategy (2005 – 2010) preceded these strategy documents.

The strategy as a whole aims to set the future directions for the country and to reflect the aspirations of the people. Seven strategic focus areas or ‘pillars’ underpin the strategy:

- Human capital development, gender, youth and people empowerment;
- Wealth creation;
- Institutional development and service delivery;
- Security and international relations;
- Environmental sustainability and climate change;
- Spiritual, cultural and community development; and
- Strategic planning, integration and control.

All agencies of the government were expected to align their individual corporate plans to integrate with the ideals of PNG Vision 2050. This also incorporates the government’s
strategic statements to drive development initiatives over that timeframe. As Ambang (2012) indicates, “The nation will focus all its efforts and will strive to achieve the following key outcomes:

- Changing and rehabilitating the mind-set of our people;
- Having strong political leadership and willpower;
- Improvement in governance;
- Improvement in service delivery;
- Improvement in law and order;
- Development of a strong moral obligation; and
- Rapid growth potential which can be realised in a reasonable time.” (2012: 84)

**Papua New Guinea Vision 2030 (2011):**
PNG’s rolling ‘Vision’ planning document restates the Medium Term Development Strategy (MTDS) for forestry through targets such as the percentage share of processed timber in the value of total timber exports, percentage share of the log harvest coming from virgin forests and areas of plantation forests, using strategies such as accurate forest resource inventory, promoting sustainable forest management, focusing away from virgin forests with reforestation/afforestation programs, pursuing downstream processing, strengthening the regulatory and policy framework, and enhancing the research and extension services of the forest industry.

The visions of strategic planning, integration and control, of human capital development and people empowerment, of wealth creation, of environmental sustainability, of spiritual, cultural and community development are not included in the ways in which the forestry sector is envisaged in this and earlier Vision documents. Some 80% of PNG’s population lives in the country’s rural areas and they own and manage the natural resources in their respective domains. ‘Development’ must also be seen to be taking place at the rural community level, encouraging, empowering Papua New Guineans to become more empowered for themselves, their village, their district, their province and their nation.

**MTDS, 2011 – 2015:**
With regard to an overall goal, the MTDS (as a subset of the broader and long-term PNG Vision) as it applies to the forest sector, states simply that it is ‘to build a forestry sector that is sustainable and highly profitable’, moving forward to build constructive and progressive aspects of forest policy and regulation to wisely use and develop its forest resources. Community forestry rates a mention in Sector Strategy 8, but only in so far as to promote community forestry activities with the view of empowering rural communities and alleviating poverty.

**2.4 Summary and Comments**

The higher level planning approach and related documents and strategies described above come to the fore only when the annual review of planning strategies and implementation plans are aired. The National Goals and Directive Principles, for example, are closely linked to and derived from the PNG National Constitution and are not directly brought into the framework to drive strategies and their practical application and implementation.
3. Sector policies, strategies and laws

3.1 Sector laws, policies, regulations and practice

This section provides an overview of the range of sector laws, policies, regulations and practice, presented in summary form where possible, and discussed in terms of their relevance to the development of a community forestry sector. These include primarily the forestry sector, but also other sectors that impact on forestry issues including the lands and physical planning sector, the environment and conservation sector, and the agriculture and livestock sector.

Regarding the forestry sector, some developments (subsequent to the passing of the Forestry Act 1991) in laws, guides and regulations – such as the Planning, Monitoring and Control Procedures for National Forest Logging Operations document [1995], the Key Standards for Selection Logging in Papua New Guinea [1995], the PNG Logging Code of Practice [1996], the Procedures for Exporting Logs [1996], and Forestry Regulations [1998] – can be found but will not be reviewed here because they relate directly to industrial and commercial logging in PNG and are not directly relevant to community forestry.

For the purposes of this Review (i.e. possible impacts of an increasing community forestry or ecoforestry sector), the current and most recent Draft Ecoforestry Policy (PNGFA 2004) is the most relevant document.

3.2 PNGFA

National Eco-Forestry Policy:
All PNGFA policy documents and the related laws and amendments that have been put into effect to guide the forest sector may be considered as important. However, the Draft National Eco-forestry Policy (EFP) (PMGFA 2004) is potentially the most important document in relation to the development of a community forestry sector in PNG.

The government through the PNGFA introduced a draft EFP to complement the National Forest Policy by strengthening the management and protection of the country’s forest resources through the regulation of eco-forestry activities. Several key features of the draft EFP clearly signal a shift in government thinking about the future of the country’s forest resources. These features since include plans for:

- National Forest and Biodiversity Inventory;
- Small and Medium-Scale Sawmills;
- Biodiversity Conservation;
- Support for Eco-Tourism;
- Non-Timber Forest Products;
- Agroforestry/Eco-Forestry/Community Forestry;
- Woodlots; and
- Community Tree Nurseries.

To date, few of these plans have been completed nor made available for public comment, nor indeed approved by the PNGFA Board and none have been forwarded to the National Executive Council for approval at that level.
Under the draft EFP, a national forest inventory is to be undertaken jointly by several institutions ranging from universities to national government departments and non-governmental organisations. The inventory is intended to cover all forestry resources including flora and fauna species and will become a national database to be updated every 20 years. This policy also promotes institutional collaboration and seeks to strengthen institutional networking.

In terms of biodiversity conservation, the draft EFP seeks to strengthen the status of protection forests. Under the draft policy, the National Forest Authority will establish a network of conservation areas throughout the country. In practice, the goal of setting up such a network will not be achievable or achieved if local communities – who ultimately own and control these resources – do not rate this kind of activity very highly, are not actively involved, and themselves cannot provide the on-ground management of such areas.

The draft EFP summarises some of the inherent problems that the PNGFA has in proposing activities that are (a) based on customary land, (b) working with customary landowner communities and on natural resources such as forests and land over which it as a State organisation has no jurisdiction or control.

The PNGFA proposes a number of scenarios in which it would or could be involved with landowner communities, all of which directly state or at least imply that it is the PNGFA which is in charge and in control of any subsequent developments related to those lands and/or forests that are under customary ownership. That the PNGFA’s past and current stewardship of forests does not have an unblemished record certainly makes the building of trust between the organisation and landowners much more difficult, particularly if the current top-down relationship and method of working between the PNGFA and customary landowners continues.

The draft EFP contains a surprising number of suggestions by which landowners’ options and abilities to maintain, use and manage their own natural resources are much hedged about, constrained, and in many cases, undermined. The impression this gives is that the PNGFA wishes to be placed in total control of all forests, whether or not alienated from their customary owners, operating as FMAs or under customary ownership. To summarise this briefly: to date the PNGFA’s draft policies in relation to forests held under customary tenure are more about controlling such resources from PNGFA headquarters and not about enabling or facilitating customary community resource owners to take control of their own natural resources and manage them for their communities’ benefit (including conservation, exploitation, expansion through replanting, etc.). The draft EFP seeks to extend and tighten the PNGFA’s control over all forests. If this is the intent of the EFP then this approach will likely not be widely acceptable across PNG and will be strongly opposed.

Therefore proposals set out in the 2004 draft EFP need to be studied in detail and their implications carefully analysed. However, it should be clear from views put forward in this review that a possible productive partnership between customary resource owners and the State (in whatever form) cannot be built without understanding, respect and trust between

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2 These include both the relatively small areas of forests directly under its control and the much larger areas under commercial logging projects for which the PNGFA has interposed itself as an intermediary between the developer and resource owner.
the parties. The EFP proposals to date appear not to be working towards developing productive partnerships of mutual respect.

**Recent EFP additions:**
At an ACIAR Policy Workshop\(^3\), two presentations by Kaip (2015) and Akivi (2015) shed further light on government thinking. In terms of forest policy, Kaip set out future policy areas being determined as follows:

Areas not adequately implemented under the current forest policy include log exports leading to at least minimal in-country processing; a minimal forest replenishment program; insufficient personnel at project sites to adequately monitor operations; the whole community forestry sector; and the national forest inventory. Each of these areas can be unpacked to lay open a number of critical issues requiring analysis and practical implementation as well as coordination between activities.

Emerging issues and trends include:
- Climate change;
- Forest certification;
- Timber legality;
- Regulatory measures by importing countries;
- Growing interest by people in growing trees themselves, possibly as cash crops; and
- The forest resource base.

Each of these areas in relation to forest policy presents a complex set of issues and challenges that need to be carefully thought through and decisions made in tandem with customary resource owners.

Kaip (2015) saw challenges as including:
- Land tenure;
- Competing land uses;
- Insufficient resources; and
- Large-scale agricultural clearance.

These challenges require crosscutting links with customary resource owners and government bodies as well as innovative methodologies to identify practical outcomes and achievable resolution.

Kaip (2015) further noted that forest-related issues are fast evolving and cutting across all sectors and that dialogue with stakeholders is very significant to forest policy development in sustainable forest management. He saw that the relatively little dialogue with stakeholders (and most especially with customary landowners) is a major roadblock to further forest development.

Akivi (2015) made the following points:

- Establishment of eco-forestry within the PNGFA (2006), renamed as the Community Forestry Section, has the goal of enhancing the economic welfare of the people of PNG

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\(^3\) Held in May 2015.
by promoting community-based sustainable forest management practices as well as other areas of non-timber forest products;

- The functions and responsibilities of the Community Forestry Section are to strengthen and improve the community forestry section performance, and to ensure consistency between community forestry and overall National Forest Policy and the Forestry Act, maintain consultation and dialogue between all stakeholders, and draft a Community Forestry Code of Practice as required by policy;
- The Community Forestry Section is to provide assistance to communities through forest planning and management of community-based forests with community-initiated land-use planning, coordinate training on small business development and marketing, and coordinate technical training and course delivery;
- Policy legislation and the regulation framework now needs to be reviewed, e.g. to coordinate and seek funding to establish a National Community Forestry Working Group. The concept of community forestry in the PNGFA mindset shows that the Forestry Act 1991, with revisions and regulations, does not cater for community forestry. Where NFS officers are not involved in FMA project supervision, they tend to focus on extension, seedling production and distribution. There is also a perception that small-scale sawmilling is opposed to industrial logging;
- The challenges of policy and field practice include partnership and confidence-building among all stakeholders, council wards, local-level governments (LLG) and district administrations, empowering the council wards and LLG to decide what is best for the community, and setting rules of compliance and enforcement; and
- Expected outcomes include establishing viable community-based SFM, an increased capacity of the PNGFA to regulate community forestry, increased capacity of partner organisations to provide ongoing training awareness and extension services, control and monitoring of the proliferation of mobile sawmills, and effective implementation and coordination of non-timber forest products (including eaglewood and the carbon trade).

From a Highlands perspective, Akivi (2015) noted that provincial forest plans have been revised and activities planned for provinces to fund seedling production. He describes community forestry as operating through networking by conducting training programs with this networking being achieved through linkages with provincial governments and district development authorities.

Akivi ended by making recommendations, focusing on ways forward:

- Both the 2004 Eco-Forestry Policy and the Forestry Act 1991 need to be revised to take proper account of community forestry;
- PNGFA Community Forestry Coordinators need to be appointed; and
- A vision of the development and significance of community forestry to undertake and strengthen decentralisation policy (by establishing District Development Authorities) needs to be developed.

In terms of the potential for development of a community forestry sector, the highlights of these recent contributions are that:

- Recognition that the current Forest Act 1991 (with revisions) is quite deficient in a number of areas;
- The continuing centralisation of major forestry decisions is becoming a major roadblock for more regional or local forest development priorities;
The fact that ‘land tenure’ and ‘competing land uses’ are mentioned as challenges to the implementation of forest policy is an unfortunate reflection on the disjunction between what is the reality for 85% of PNG’s population and what can take place at the higher levels of planning and policy direction;

Many of the statements by both commentators were aspirational in character and set out possible goals for the future;

Both authors note the importance of a high level of networking and sharing of information, training programs, opportunities and related activities;

An underlying assumption was that customary resource groups are (or will be) passive and compliant and will be the recipients of all these community-oriented programs, training courses and the like. There was no discussion related to the empowerment of communities;

Customary resource owner communities have for a very long time been seeking active, productive, successful and inclusive ways by which they themselves can manage their own resources for income generation, for job creation and employment, and for sustaining their own communities. This is an important and a critical challenge – how best will it be grasped and who/what will provide the necessary spark that will lead forestry development in these directions?;

In some regions, such as the Highlands Province, there has for some time been a wave of interest in planting and growing trees for various purposes and this interest is growing. There is insufficient positive and inclusive response by any government institution. In contrast, NGOs so far have provided consistent and the most responsive support to these local-level attempts by communities to become modern managers of their own natural resources; and

Akivi’s comments in particular highlighted the critical need to link all participants in the agroforestry/ecoforestry sector, from the local level, to district level, to provincial level and the national level.

3.3 Department of Lands and Physical Planning (DLPP)

The available information on the DLPP sets out a Vision and a Mission for the department. It is responsible for the day-to-day administration of ILGs, a task that the DLPP to date has ranked low in priority. Following the National Land Summit in 2005, a National Land Development program and a National Land Development Taskforce (NLDT) were established and funded in 2006 (Manning 2008 provides an excellent background to the process of land policy reform in PNG). One of the NLDT’s tasks was to review the existing land laws and to revise and update the Land Groups Incorporation Act (LGIA) 1974. This, in turn, led to the Incorporated Land Groups (ILG) (Amendment) Act 2009 and the associated Land Registration (Amendment) Act 2009. Information on these matters is set out below.

Of the policies and related laws for which the DLPP is responsible, for the purposes of establishing a community forestry sector, the original LGIA (LGIA, 1974) and its successor, the ILG (Amendment) Act 2009 and the Land Registration (Amendment) Act 2009 can be seen as the most important. Further comments need to be made here.

**ILG (Amendment) Act 2009:**
The Incorporated Land Groups (Amendment) Act, 2009 was passed in March 2009, following recommendations on land reform on customary land tenure system. The new laws became operational in March 1, 2012. The amended Act gives ‘effect to the National Goals
and Directive Principles of the Constitution as they relate and apply to ownership of lands held under customary tenure and dealings in those lands, and in particular to:

- Allow development to take place primarily through the use of PNG forms of social and political organisation;
- Encourage active steps to be taken to facilitate the organisation and legal recognition of groups engaging in development activities;
- Ensure the integrity and viability of those associations; and
- Provide for their transparent and effective management’ (CLRC 2008: 54).

The amended law aims to:
- Formalise and tighten the ILG incorporation process for greater transparency and accountability;
- Link a person named through a formal statutory instrument by obtaining a formal birth certificate under the Civil Registration Act\(^4\);
- Restrict membership to ILGs;
- Multiple memberships are prohibited - every person should be a permanent member of only one clan, tribe or other such landowning unit;
- Link actual customary land to the ILG by requiring a full and complete standardised sketch map to be provided by the ILG;
- Inject greater transparency and accountability into the ILG Management Committee by way of imposing a strong Code of Conduct and criminal sanctions; and
- Submit revised returns to the ILG annually.

**Land Registration (Amendment) Act 2009:**

In association with the amendments made to the LGIA 1974, the existing Land Registration (Amendment) Act was also promulgated in 2009. These amendments were made to provide a system of registration of those portions of customary land that the customary landowners, through their ILGs, decide to register for economic development activity.

The main features of these amendments are:
- Appointment of a Director of Customary Land to oversee and manage the administrative process;
- Application for registration in the form of an application and a copy of a sketch map of the land or parcels of land for verification and later public notice and invitation of appropriate submissions;
- Proposed survey plans are to be verified within 90 days by the Regional Surveyor and to take full account of any amendments arising from the public submissions;
- Facilitates a Registered Survey Plan as soon as practicable and return it to the ILG, leading to issue of a Certificate of Title;
- Under the amended legislation, the involvement of State agencies in the registration of customary land is minimal and landowners are in control of the registration process through their ILGs;

\(^4\) The implications of this in practice are that very few individuals across PNG, but especially in rural areas, know their birth dates nor have written birth certificates. Even at district administration head offices this would be a mammoth undertaking to rectify and accurately commit to paper. In addition, many people regard the costs of obtaining a birth certificate as unaffordable or unnecessary given perceived benefits.
Landowners are responsible for taking a decision to register customary land and to prepare the proposed Plan and submit that plan to the Director of Customary Land through their ILGs; and

If there are disputes over boundaries of the land at the land registration stage, the application for registration will not be progressed until the dispute is settled before the appropriate court.

**General Comments:**
In general, the amendments brought into law through the revisions of the LGIA 1974 introduce some important and necessary clarifications and requirements into the former law. But they should be introduced with care, compassion and respect, knowing how difficult it would be for rural-based individuals and groups with very limited income to meet some of the new requirements for ILGs. They also introduce elements such as voluntary registration of customary land that will have to be very carefully carried out so that customary landowners are not hoodwinked and cheated by their own leaders and entrepreneurs (whether inside or outside each landowning group) or outsiders.

On matters of implementing some of the new provisions contained in the amended 2009 ILG Act, the requirement to acquire statutory birth certificates for all ILG members is onerous and a needlessly complicating element, especially for older ILG members. The Minister should consider suspending this requirement until every district has the required documentation and district staff members are able to adequately service this requirement at reasonable cost.

### 3.4 Conservation and Environment Protection Authority (CEPA)

**General Comments:**
By and large, most of the legislation that the CEPA administers is not of direct relevance to a community forestry sector. The exception to this statement is that the previous Department of Environment and Conservation (DEC) had been a government department that, under the 1992 Forest Act, has had an important consultative role with the PNGFA. The overplaying of this role (in association with similar actions by officers in the DLPP and the Department of Agriculture and Livestock [DAL]) was one of the key factors in allowing the Special Agricultural and Business Lease (SABL) proposals and subsequent illegal land developments to slip through without much scrutiny. Section 11 of the Forest Act allows the Minister to approve such leases and Section 102 gives the general conditions for granting such leases. In 1987, the requirement to advertise proposals for public comment was removed. The advent of the oil palm industry rekindled major interest in this kind of arrangement (see Filer 2011). Town-based educated elites managed the manipulation of approvals from the Department of Lands, the Department of Agriculture and the PNGFA.

The PNGFA had to issue Forest Clearing Authorities over specific areas of land so that oil palm plantations and other agricultural projects could be developed, such potential projects having been identified in each SABL’s proposals. The last part of the process – the eventual purpose to which land under a SABL was to be devoted – was most usually not achieved. This end result, of course, called into question the whole SABL process. Long-term rights to approved SABL areas – up to 99 years – have been sold, often to overseas interests, by elite landowner individuals and small groups for significant amounts of money. Overwhelming, backlash arose across the board in each SABL area when the information on what had been
done became public knowledge, with demands for the return of land rights to the relevant customary groups.

By mid-2011, almost 5 million ha of customary land had been leased to private companies, some 11% of PNG’s total land area, most usually without the knowledge of the rural-based customary landowners. Following major public unrest on this issue, the State set up a Commission of Inquiry into SABLs (Filer 2012). This body has now submitted its report and has set out a number of positive recommendations to remedy this complex situation. Unfortunately, to date there appear to have been no attempts to implement these recommendations.

3.5 Department of Agriculture and Livestock (DAL)

**General Comments:**
The DAL has major interests which can approach and overlap some of the interests of a community forestry sector, namely in the broader cash crop area that covers, amongst other things, coconuts, cocoa, oil palm, sugar cane, tea, coffee, pyrethrum, and food crops. DAL itself through the National Agricultural Development Plan (NADP) shows evidence of a very narrow focus on these tree crops but none of the plan proposals even mention community forestry. In reality, community forestry could incorporate one or more of these tree cash crops as well as timber species.

The area of DAL’s interests that could be of practical support for the development of a community forestry sector is that of land use, land use planning and applications of the PNGRIS database.

Similar to the situation applying to CEPA and forestry, DAL has had a consultative role in forestry decisions in that when alternative land uses for cleared forest areas are to be considered, the DAL land use base in theory should come in to play. Along with the DEC (now CEPA) and the DLPP, DAL has allowed, in many cases encouraged, the illegal SABL land dealings to proceed with very little if any scrutiny.

In contrast to these comments on DAL, the National Agricultural Research Institute (NARI; [www.nari.org.pg/](http://www.nari.org.pg/)), created through an Act of Parliament in 1996, has a much broader mission, which is to ‘promote innovative agricultural development in PNG through scientific research, knowledge creation and information exchange’. As an independent organization, NARI works on a very broad base and has major interests in linking up diverse or related areas of knowledge and implementation.

3.6 Summary and Comments

The sectors considered above – PNGFA, DLPP, CEPA and DAL – all have major or minor importance in how a community forestry sector would operate in the future.

Of first priority it is obvious that the PNGFA and the laws it administers and applies across the country would be the most important. These laws could be used to make the operations of a community forestry sector much more difficult to implement but they could also be used to help establish a new sector. Through the creation of a division of ecoforestry to administer the PNG-EU Ecoforestry Program, the PNGFA maintains an interest in an area in which it was previously not at all interested, suggesting at that time that these were matters
that should be managed by provincial governments. But in the meantime this has obviously changed, to the point where draft policies posit increasing PNGFA controls over customary forests.

Without active recognition of and respect for customary resource owners and their groups and leaders, the PNGFA will struggle to become accepted as an honourable partner and player. The distrust brought about by the involvement of a number of officers from the PNGFA, DLPP and DAL in the illegal SABL activities will take a long time to dissipate.

4. Implications and potential impacts of selected PNG policies and legislation for community forestry

The higher level guiding documents – the PNG National Constitution, the National Goals and Directive Principles, and the planning documents subsumed under the title of PNG Vision (including the rolling Medium Term Development Plan) – all attempt to show in various ways that everything is to move more or less in the intended right direction. There is a sense, however, that the ideals of the Constitution and the overarching directions laid down by the National Goals and Directive Principles are there mainly as icing on the cake rather than actively underlying the strategies and programs. As a result, there is often an apparent lack of fit between the higher-level statements and the policies, strategies and programs.

This becomes more apparent in looking at the sectors reviewed above - forestry, lands, environment and conservation, and agriculture and livestock. The PNGFA, for example, is maintaining a very centralised and top-down management style but based on a dwindling resource base that is not under its moral or legal ownership and control. Is the draft 2004 Eco-forestry Policy putting forward ways in which the PNGFA can continue to hold and extend its control over forests even if they are held under customary ownership? The answer to this question is of critical importance for the establishment of a community forestry sector. Current policies and legislation in the forestry sector and around the PNGFA can be seen as potential future clashing points with the development of a community forestry sector.

The strengths of an active and flourishing community forestry sector must lie in the areas of individual and community empowerment, self-reliance and community management, and use of their own natural resources. These can only be achieved by the State giving a very active recognition of customary ownership of forests and land and the practical respect that this should engender for communities and their leaders. Communities themselves wish to benefit from their own resources but not at any price; they seek creation of employment for their members and income generation for their active adults. Finally, these goals must be built on the basis of sustainability and responsible resource management and use.

5. Potential ways forward

5.1 Customary communities as critical components of any constructive way forward
Though the focus of this Review has been on a range of policies, laws and PNG state strategies, there have also been a number of underlying themes or ‘threads’ running through it. These ‘threads’ include:

- Natural resource tenure and use systems in PNG;
- State/community relations and community involvement in the development of natural resource policy and law; and
- Strategies that will enable the State and local customary resource owner communities to productively work together.

These threads draw attention to the fact that there are other levels of reality regarding natural resources, their ownership and their management in PNG. It is these threads and their levels of reality that provide the challenges to establishing and developing realistic and achievable ways of the State being able to move forward in step with customary landowner communities and their natural resources for everyone’s benefit. What follows is a relatively brief commentary on each of these threads.

**Natural resource tenure and use systems:**

The great majority of PNG’s natural resources lies in the hands of the customary owners of the country’s land, inland waters, rivers and forests. This control is and will continue to be through customary institutions such as customary clans. These institutions vary according to the underlying socio-cultural orientation of each society making up the State of Papua New Guinea (i.e., a great majority of patrilineal societies, a smaller number of matrilineal societies and a significantly smaller number of societies that have other characteristics). This historic and current fact, enshrined in law in the National Constitution and in practice in just about every other way, must be clearly understood and accepted on the way to identifying and developing acceptable and achievable outcomes in moving forward in the community forestry sector.

The State has taken unto itself, without any consultation with customary landowners as a whole, the right to regulate and control various types of the natural resources of the country. This is often as a reflection and adaptation of laws imported during the colonial period, usually from Australian colonialists. This has taken place to a large extent in the forestry, land and mining sectors.

**Mining, forestry and land sectors:**

In most recent times, the State’s absolute control over mining has been challenged by customary landowners and some possible changes have begun to be discussed (Chan 2011). In the forestry sector, too, there is an indication that logging from natural forests will be scaled down and an increasing plantation forest sector will be developed on existing large grassland areas. What has emerged in the land sector is that there is more than one tenure systems now co-existing in PNG: land under customary tenure and land areas sold to (or acquired by) the State and so under State ownership and tenure with leasing possibilities (including freehold). The very small percentage of the country’s land area currently under State control is managed by the Department of Land and Physical Planning through a system of leases. The current leasehold system could be managed much more tightly. The issue of the relatively large land areas ‘sold’ as part of SABL transactions, carried out behind closed doors and without informed consent of other customary holders of rights, is now hopefully in the process of being resolved and these land areas returned to customary tenure along the lines recommended by the State’s own Commission of Inquiry into SABL’s.
**Customary systems:**
As has been set out at some length above, customary land and resource tenure systems operate by the systems of rights (including inheritance) established by the ideology that underlies the social system (e.g. patrilineal, matrilineal, etc.) maintained by each social group. Persons in each such group who meet the right criteria have unfettered access to and use of the natural resources on the group’s land and can pass these permanent rights on to their children in the ways sanctioned by that social group.

While it is evident that a number of leading PNG individuals in many of these social groups have the knowledge and contacts to respond to the pressures of modern living to subvert their society’s ideology and practice for their own individual benefit, the great majority of these social groups adhere closely to their groups’ ideology and practice so that those groups’ customary tenure and use systems continue working to the benefit of all permanent group members.

**Incorporation of ‘land groups’:**
This is a critical point in identifying and developing appropriate and acceptable ways to move forward in terms of resource tenure and use. The LGIA (originally enacted in 1974) showed the way to give concrete - in contrast to ideological - recognition to customary resource rights to the customary social groups through which they hold and manage such rights on behalf of their permanent members. The LGIA also established the mechanisms and processes by which the permanent holders of these rights in each such social group were to be identified, and registered through a ‘land group’ incorporation process. The outcome of these mechanisms and processes was to establish ‘Incorporated Land Groups’ (ILGs) under modern PNG law. ILGs can thus be seen as the modern legal embodiment of customary social groups such as ‘clans’. As the 1974 Act eventually became activated, it has been administered through the Department of Lands and Physical Planning. This department has allocated the minimum amount of personnel to oversee the ILG incorporation and registration process, currently being 1 to 1.5 persons.

**Revision of the LGIA:**
The ultimate culmination of a State-initiated National Land Development Taskforce consultation process was to review the 1974 LGIA and recommend changes to the law with the revised law being approved in 2009. Some major amendments were made including linking penalties to the body of PNG common law, and requiring ILG applications to include birth certificates for all ILG members. All existing ILGs were required to re-register under the new provisions within a two-year period. The requirement for ILG members to produce written birth certificates, in particular, has proved to be a major hurdle in a country with low literacy rates and with most births still taking place within a rural village environment and not in rural health centres or hospitals. Even younger members of the population at large do not receive birth certificates. Since the amended LGIA came into force, very few, if any, new ILGs have been registered and virtually no existing ILGs have re-registered themselves.

**State/community relations - community involvement in the development of natural resource policy and law:**
Communities in PNG have never had any direct and very little indirect involvement in the development of natural resource policy, law and implementation. This is despite the reality that almost all ownership of land and other natural resources is held under customary tenure
and so not subject to direct State control. In other words, no attempt has been made either in planning or implementation of relevant laws to identify and implement ways for the ‘top-down’ legal controls to meet and interact with ‘bottom-up’ customary land tenure and use systems.

Where there have been accommodations, these have been made by the customary systems giving way to State requests or directives arranged through special purpose leases, usually in exchange for money. In areas where forestry and mining resources are identified to be developed and a developer puts forward a proposal to do so, a tripartite process is put in place (Filer 2008). Such processes involve government, landowners and the developer that should produce an agreement that will be of benefit to all three parties. Landowners – through their LOCs – generally receive royalties as well as provisions of infrastructure such as construction of access roads, bridges, school buildings, medical aid posts and, in some areas when a village has to move, house construction, but with no commitment for training or involvement in a project’s workforce.

In the forestry sector, forest management agreements (FMA - between customary landowners, the state and a developer company) most usually have had conditions attached, in particular the requirement to replant and regenerate logged-over forest areas. The most common response by developers has been to ignore this condition or only pay lip service to it. No training of landowners has taken place so that they themselves would be in a position to continue this work. Conditions surrounding the provision of local infrastructure, too, especially roads and bridges, have been minimally adhered to so that infrastructure most usually lasts from one rainy season to the next or just long enough for the developers to extract the resource they wanted and then leave. The management of these agreements ‘on behalf of landowners’ has always left a great deal to be desired. There is typically little or no training or inclusion of local landowners (e.g. in aspects to help guarantee forest regeneration activities) and infrastructure is degraded (e.g. bridges and roads being washed away, leaking buildings).

5.2 Strategies

With regard to the range of strategies that may be activated by Government or the PNGFA in order to find constructive and achievable ways of moving forward, the main options, discussed in more detail in the following sub-sections, are:

**Strategy 1 - Continue current processes and procedures:**
Continue with the present process of ‘divide and rule’, imposing control on particular areas and in a number of sectors when there is something to be developed that will benefit the State and, in minor ways, to customary resource owners. Once the resource has been mined out or harvested then return all relevant land rights to the customary resource owners.

**Strategy 2 - Establish genuine partnerships between customary resource owners and the state for sustainable natural resource management:**
This strategy would require both the *de facto* and *de jure* situation across PNG being recognised by the State, not only in principle but also in practice, based on the principle that customary resource owners not only need to but also deserve to become full partners in the

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5 PNGFA policy appears to be in place to regulate and control, not facilitate or enable or encourage, customary communities to find a direction in their own management and control of their natural resources.
further management and development of their, and (generally speaking) the country’s, natural resources.

Reviewing these in somewhat more detail, the following comments can be made:

5.2.1 Strategy 1: Continue current processes and procedures
This strategy would continue with the current laissez-faire approach by the State to land issues, an approach that is divisive, manipulative and piecemeal, inefficient and to some degree unproductive. Except when the State is confronted by customary resource owners when it wishes to achieve a particular end, customary communities receive short shrift from the State. These customary communities are not included in any meaningful way in development planning, nor natural resource management, and receive relatively minimal benefits from any resource development planning and implementation.

The long-term intent and goals of this kind of strategy are not at all clear although recently amended Acts – i.e. the ILG (Amendment) Act 2009 and the Land Registration (Amendment) Act 2009 in particular – set out current State thinking on at least some aspects of customary land tenure and how the State wants to deal with and control it. A shorter-term effect is that both the State and well-connected individuals and entrepreneurs continue to nibble away at matters related to customary land and whittle away more and more of the land and natural resource domains for themselves. One example of this is the call for the PNGFA to take over and control all developments in customary-owned forests, including reforestation. However, the PNGFA has not been a shining example of best practice in the management of the forest areas under its direct control nor in supervision and ensuring best practice in the developer-managed logging projects around the country.

Customary communities have continued over many years to call on the State for more meaningful involvement both in the planning and implementation of natural resource management with a view to engage local communities more productively and sustainably in the long-term management of their own natural resources. These communities control the use rights but do not have access to technical know-how on how best to proceed in ways that provide both local employment and local income and other benefits. Nor do these local communities have a significant financial base that would allow them to engage their own technical expertise.

5.2.2 Strategy 2: Establish genuine partnerships between customary resource owners and the State for sustainable natural resource management
This strategy puts forward the proposition that meaningful partnerships in which the rights held by customary groups under customary law are respected and built upon to bring customary groups into active management of their resources.

With goodwill and negotiation, productive arrangements between customary groups (as the holders of the rights) and the State and its agencies (as technical experts and advisers) will be able to be achieved. A range of activities can be covered, including:

- Community-level planning and implementation, linking up with both provincial governments and the national State and its agencies;
- Reforestation of logged-over forests;
- Reforestation of PNG’s large grassland areas;
- Community forestry activities;
- Sustainable management (including conservation) of major forest areas with a view to eligibility for forest carbon credits under climate change conventions (see Filer 2012; Filer and Wood 2012) for the customary rights-holder communities;
- Building and maintenance of community infrastructure (e.g. school buildings and teacher houses, clinics, community centres, access roads to communities from province- or State-maintained road networks); and
- Training of natural resource managers at PNG’s universities and other training centers.

Though this second strategy will need much more work to be developed for wider consideration, it has the potential to give wider equality and recognition and acceptance of customary land groups by the State, to bring technical expertise, advice and mentoring to the local level, and to empower local communities to manage their natural resources on more sustainable levels for a wide range of benefits.
References


Akivi, A. 2007. Capturing Opportunities in Forest Harvesting and Processing to Benefit the Poor in Papua New Guinea. Ch. 15 in Oberndorf, Durst, Mahanty, Burslem and Suzuki (eds.).


Chan, B. The Hon. 2011. Give resource ownership back to the people. [Speech by PNG Minister for Mining widely reported; see <namatanaielectoratepng.blogspot.com>]


Ancillary references not quoted in the main report


Independent State of Papua New Guinea (ISPNG)


UNEP-WCMC 2004. Spatial analysis of forests within protected areas in ITTO countries. Cambridge, UK: UNEP-WCMC.


