

# Timber Legality Risk Assessment Papua New Guinea

Version 1.1 | August 2017



The mark of  
responsible forestry  
FSC™ A000535

This risk assessment has been developed by NEPCon with support from the LIFE programme of the European Union, UK aid from the UK government and FSC™.



NEPCon has adopted an “open source” policy to share what we develop to advance sustainability. This work is published under the Creative Commons Attribution Share-Alike 3.0 license. Permission is hereby granted, free of charge, to any person obtaining a copy of this document, to deal in the document without restriction, including without limitation the rights to use, copy, modify, merge, publish, and/or distribute copies of the document, subject to the following conditions: The above copyright notice and this permission notice shall be included in all copies or substantial portions of the document. We would appreciate receiving a copy of any modified version.

This Risk Assessment has been produced for educational and informational purposes only. NEPCon is not liable for any reliance placed on this document, or any financial or other loss caused as a result of reliance on information contained herein. The information contained in the Risk Assessment is accurate, to the best of NEPCon’s knowledge, as of the publication date

The European Commission support for the production of this publication does not constitute endorsement of the contents which reflect the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

This material has been funded by the UK aid from the UK government; however the views expressed do not necessarily reflect the UK government’s official policies.

## Contents

<b>A. Introduction .....</b>	<b>1</b>
<b>B. Overview of legality risks .....</b>	<b>2</b>
<b>C. Overview of the forest sector in Papua New Guinea .....</b>	<b>6</b>
<b>D. Legality Risk Assessment .....</b>	<b>19</b>
LEGAL RIGHTS TO HARVEST .....	19
1.1. Land tenure and management rights.....	19
1.2. Concession licenses.....	29
1.3. Management and harvesting planning .....	37
1.4. Harvesting permits .....	43
TAXES AND FEES .....	48
1.5. Payment of royalties and harvesting fees.....	48
1.6. Value added taxes and other sales taxes .....	50
1.7. Income and profit taxes.....	54
TIMBER HARVESTING ACTIVITIES .....	59
1.8. Timber harvesting regulations .....	59
1.9. Protected sites and species .....	64
1.10. Environmental requirements.....	70
1.11. Health and safety.....	73
1.12. Legal employment.....	76
THIRD PARTIES' RIGHTS .....	83
1.13 Customary rights .....	83
1.14. Free prior and informed consent .....	86
1.15. Indigenous/traditional peoples' rights .....	91
TRADE AND TRANSPORT .....	95
1.16. Classification of species, quantities, qualities .....	95
1.17. Trade and transport .....	99
1.18. Offshore trading and transfer pricing.....	99
1.19. Custom regulations .....	104
1.20. CITES.....	110
1.21. Legislation requiring due diligence/due care procedures.....	113
<b>Annex I. Timber source types .....</b>	<b>115</b>
<b>Annex II. Expert consultation.....</b>	<b>122</b>

---

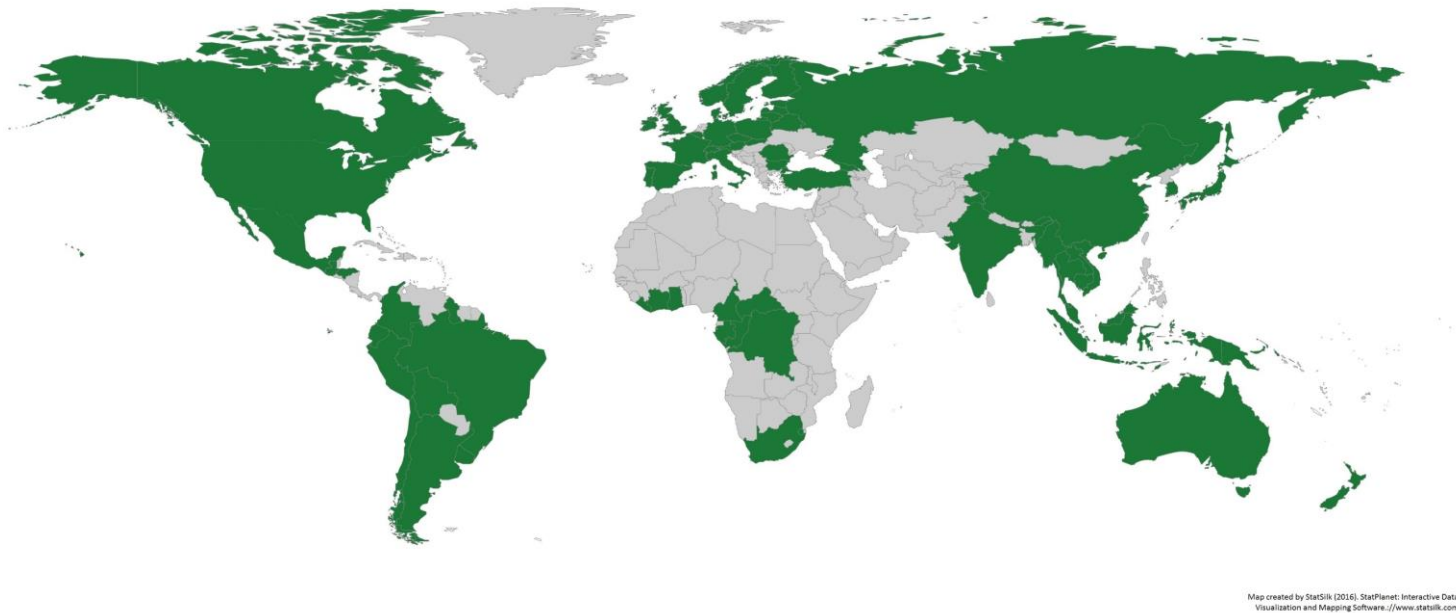
*This page has been left intentionally blank*

---

## A. Introduction

This Timber Legality Risk Assessment for Papua New Guinea provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. NEPCon has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

In that time, NEPCon has developed timber risk assessments for more than 60 countries, illustrated in Figure 1.



*Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber*

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and NEPCon. A detailed description of the methodology can be found on NEPCon's website.

## B. Overview of legality risks

### Timber Risk Score: 3 / 100 in 2017

This report contains an evaluation of the risk of illegality in Papua New Guinea for five categories and 21 sub-categories of law. We found:

- Specified risk for 19 sub-categories.
- No legal requirements for 2 sub-categories.

The Timber Risk Score for Papua New Guinea is 3 out of 100. The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, taxes and fees, timber harvesting activities, third parties' rights, and transport and trade.

For **Legal rights to harvest**, there is a risk that:

- The State fails to gain the free prior informed consent of the customary landowners before timber rights are transferred from the landowners to the State (1.1)
- Corruption and bribery are involved in the issuance of all permits and licences, including concession licences (1.2)
- Management plans do not meet legal requirements and corruption is involved in their approval (1.3, 1.4) due to lack of proper monitoring and enforcement and
- Enforcement monitoring of requirements relating to harvesting permits is not conducted (1.4)

For **Taxes and Fees**, there is a risk that:

- Royalties are distributed to and within clans improperly (1.5)
- Log prices are undervalued to avoid export tax liability (1.6)
- Operational expenses are overvalued by using multiple companies and subsidiaries in logging operations to reduce income tax (natural forest only) (1.7)

For **Timber Harvesting Activities**, there is a risk that:

- The Logging Code of Practice is not complied with (1.8)
- Protected sites (within Forest Management Agreement Areas) and areas are harvested, including by mapping forest management areas incorrectly (1.9)
- Environmental plans and environmental monitoring plans are not prepared or implemented (1.10)
- Health and safety requirements contained in the Logging Code of Practice, including requirements relating to camp hygiene, protective clothing and safety equipment, and equipment safety, are followed (1.11)
- Employment requirements are not followed, including those related to:
  - Minimum wage and maximum working hours
  - Child labour
  - Workplace discrimination

- Forced labour
- Illegal migrant workers
- Rights to strike and freedom of association (1.12)

For **Third Parties' Rights**, there is a risk that:

- Obligations to deliver basic infrastructures (e.g. health, education facilities) to communities are not complied with (1.13)
- The State fails to gain the free prior informed consent of the customary landowners before timber rights are transferred from the landowners to the State, especially under old timber right purchase arrangements (1.14)
- Customary ownership is not recognized (1.14)

For **Trade and Transport**, there is a risk that:

- Documents related to export volumes and species are falsified (1.16, 1.18)
- Taxes are avoided through underpricing and transfer pricing (1.16, 1.18)
- Corruption is involved in the issuance of export permits (1.19)
- CITES implementing legislation is not complied with, and that CITES permits are issued improperly (1.20)

## Timber source types and risks

There are five timber source types found in Papua New Guinea. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found the risks differ between them.

### Natural forest - Forest Management Agreement (FMA)

Timber from a production forest (natural forest), accompanied by a Timber Permit issued by the Minister for Forests to the timber operator with conditions outlined for a specific Forest Management Agreement Area or a Local Forest Area to carryout forest management activities including harvesting by the timber operator.

### Natural forest - Timber Authority (TA)

Timber harvested in natural forest under five specific timber authority arrangements:

- TA-01: harvesting of less than 5,000 cubic metres annually of timber for domestic processing
- TA-02: harvesting of timber for road line clearance
- TA-03: harvesting of timber for clearing in preparation for agriculture or other land use
- TA-04: harvesting of forest produce other than timber



- TA-05: harvesting of timber in plantation area.

Only timber from TA-02, TA-03, and TA-05 can be exported in log form.

**For the purpose of this risk assessment, TA-05 is treated as a different source type.**

**Natural forest - Forest Clearing Authority (FCA).**

Timber harvested under a FCA in a natural forest area.

**Natural forest - Timber Rights Purchase (TRP) – Timber Permit**

Timber from production forests (natural forest), accompanied by a Timber Permit.

**Natural forest - Local Forest Area (LFA).**

Timber harvested in a natural forest within a Local Forest Area

**Plantation – Timber Authority – TA-05**

Timber harvested in plantation under Timber Authority TA-05



This table summarises the findings of the timber legality risk assessment by source type.

Legal Category	Sub-Category	Risk Conclusion	
		Natural forest and privately owned plantations	State owned plantations
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified
	1.2 Concession licenses	Specified	Specified
	1.3 Management and harvesting planning	Specified	Specified
	1.4 Harvesting permits	Specified	Specified
Taxes and fees	1.5 Payment of royalties and harvesting fees	Specified	Specified
	1.6 Value added taxes and other sales taxes	Specified	Specified
	1.7	Specified	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Specified	Specified
	1.9 Protected sites and species	Specified	Specified
	1.10 Environmental requirements	Specified	Specified
	1.11 Health and safety	Specified	Specified
	1.12 Legal employment	Specified	Specified
Third parties' rights	1.13 Customary rights	Specified	Specified
	1.14 Free prior and informed consent	Specified	Specified
	1.15 Indigenous/traditional peoples rights	Specified	Specified
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified
	1.17 Trade and transport	N/A	N/A
	1.18 Offshore trading and transfer pricing	Specified	Specified
	1.19 Custom regulations	Specified	Specified
	1.20 CITES	Specified	Specified
	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A

## C. Overview of the forest sector in Papua New Guinea

Papua New Guinea's (PNG) total land area is 46.284 million hectares. Approximately 72 per cent (33.5 million ha) of the total land mass is forest. The remaining land is made up of approx. 4 million ha of other wooded land, 8.6 million ha of other land and 0.57 million ha of inland water bodies (FAO 2015).<sup>1</sup> In 2010, the plantation forests area was approximately 63 000 ha (FAO 2015). According to the most recent FAO Forest Resource Assessment (2015), PNG has a growing stock volume of 5.1 billion m<sup>3</sup> all of which is broadleaved species. Approximately 50 per cent of this is designated for wood production and other commercial use (PNGFA 2009).

The recent report PNG National Forest Monitoring system (Hitofumi Abe, 2016) includes the following classifications of PNGs forests:

- 2% mangrove, 0.589 million ha,
- 10% swamp forest 2.944 million ha,
- 2% monsoon or dry evergreen forest 0.589 million ha,
- 57% lowland rainforest 16.779 ha,
- 27% lower to mid montane forest 7.948 million ha,
- 2% upper-montane & sub-Alpine forest 0.589 million ha.

Approximately 8.7 million ha has been classified as production forest. Production forests are defined as "areas that have legally been acquired by the State for timber production. Includes all the Timber Rights Purchase (TRP), Local Forest Areas (LFA) and Forest Management Agreement (FMA) areas (FAO 2015, p 33). The FAO report states that this area is increasing as more areas being brought into production through the allocation of new timber permits (FAO 2016, p 22). In 2012, approximately 38 million cubic meters was removed from production forests (FAO 2015, p 40).

Papua New Guinea's forest industry is focused on the harvesting of natural forest areas for round log exports. Most of the timber extracted from PNG comes from natural forests, however, there is a small, conventional plantation sector in PNG. In 2010, the PNG Forest Authority currently manages around 35,000 hectares (ha) of plantation forest and there are three commercial plantations covering around 33,000 ha in total (ACAIR 2011). Gaining access to customary-owned land is a major constraint on the expansion of the plantation forestry industry (ACAIR 2011).

In 2009, FAO reported that PNG has been a net exporter of wood products for many years while its domestic consumption is low. Round wood log exports have been the main export commodity, with about 90 percent of its harvested timber volume exported as logs. In terms of exports, round logs account for 92 per cent of the volume exported, and 80 per cent of the value. The remaining 7.6 per cent of the volume is made up of sawn timber, veneer, plywood

---

<sup>1</sup> FAO defines *forest* as "Forest Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use. *Other wooded land* is "Land not classified as "Forest" spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of 5-10 percent or trees able to reach these thresholds ; or with a combined cover of shrubs bushes and trees above 10 percent. It does not include land that is predominantly under agricultural or urban land use." *Other land* "All land that is not classified as "Forest" or "Other wooded land". And *Inland water bodies* as "inland water bodies generally include major rivers, lakes and water reservoirs".

and balsa wood. Sawn timber accounts for approximately 8.3 per cent of the export value and veneer 7.9 per cent. These figures are from 2004, but are the most up to date available at the time of writing (FAO and PNGFA 2009)

Chatham House, reported that illegal practices are widespread in PNG, and the weight of available information (including independent reviews commissioned by the government, and the views of private sector experts surveyed by Chatham House) suggests that “the majority of timber production in PNG is illegal in some way” (Chatham House 2014). That report states:

Evidence from wood balance analysis suggests that (at least until 2009) industrial logging in PNG does not exceed officially recorded harvests, that completely unlicensed logging represents only around a 10th of production, and that this illegal wood is mostly consumed domestically. Trade data discrepancy analysis suggests that there is also little or no smuggling of wood abroad. However, logging in excess of licensed volumes or without a logging licence, and smuggling of timber are only two forms of illegal logging.

The independent reviews of industrial logging in PNG carried out a decade ago, which examined logging practices in far more detail than is possible for this study, found that the vast majority of logging, while nominally licensed, was occurring in breach of regulations. More recently, serious doubts have been raised regarding the legality of production from forest clearance for large-scale agro-projects, which by 2012 represented almost a third of licensed harvesting in the country.

Chatham House’s expert perceptions survey supports the contention that illegal logging remains more prevalent than the wood balance analysis suggests. If all the production from SABLs is assumed to be illegal (because of breaches of laws regarding issuance of permits) and a further 10% of production is illegal small-scale harvesting that supplies the domestic market, then just these factors, when combined, would suggest that 40% of harvesting in 2012 was illegal. Of the remaining 60% of harvesting (from licensed selective logging concessions), around half was sourced from concessions found to be breaching numerous regulations in 2004 and that have not obtained independent legality verification since. Adding this to the total results in an overall figure of 70%. (pp 25-26)

In 2015, PNG was ranked 158 out of 185 countries in UNDP’s Human Development Index (a drop of 10 places in three years) (UNHDR 2015). Poverty is widespread, with 40% of the population living on less than \$1 a day (UNDP 2012). There is a general risk of corruption in Papua New Guinea. The 2016 Transparency International’s Corruption Perceptions Index ranked Papua New Guinea 136th out of 177 countries assessed and scored it 28 out of 100, meaning it has a high perception of corruption (Transparency International 2016). The 2015 World Bank Worldwide Governance Indicators (WGI) gave Papua New Guinea the following scores out of 100: Voice and Accountability: 49.26; Political Stability and Absence of Violence: 24.29; Government Effectiveness: 29.81; Regulatory Quality: 31.25; Rule of Law: 18.75 and Control of Corruption: 14.42 (WorldBank 2015).

A 2015 report prepared by Transparency International PNG found five key areas with high corruption risk in the forestry sector (Transparency International 2015):

- Regulatory chain: Passing or amending of forestry legislation

- Licensing chain: Incorporation of Land Groups
- Timber supply chain: Awarding timber permits and authority
- Timber supply chain: Monitoring logging operations and the environment
- Timber supply/ Revenue chain: Sale and export of logs

According to the Forest Legality Alliance (2013), “there is general agreement that the forestry legislation in PNG consists of policies, laws, regulations and guidelines that are sufficient to ensure sustainable forest management. However, there are serious implementation and enforcement issues, which allow illegal and unsustainable logging to go unchecked.”

## 1. Key Legislation

The key national laws and policies relevant to forestry in PNG are as follows:

- *The Constitution of the Independent State of Papua New Guinea* (1975) requires Papua New Guinea’s “natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.”
- *The National Forest Policy* (1991) covers forest management, the forest industry, forest research, forest training and education, and forest organization and administration.
- *The Forestry Act* 1991 (gazetted in June 1992 and amended in 1993, 1996, 2000 and 2005) provides for the establishment of the Forest Authority as an autonomous body to replace the former Department of Forests.
- *The Forestry Regulation* 1998 (Consolidated to No 1 of 2001) provides details and procedures that give effect to provisions of the Forestry Act.
- *National Forest Development Guidelines* provide an implementation guide for aspects covered in the Forestry Act, especially in terms of sustainable production, domestic processing, forest revenue, training and localization, review of existing projects, forest resource acquisition and allocation and sustainable development.
- *The National Forest Plan* (1996) provides a detailed statement of how the national and provincial governments intend to manage and utilize the country’s forest resources.
- *The Logging Code of Practice* was prepared in 1996 and came into force in July, 1997. It is given legal effect through the Forestry Act 1991 and the Forestry Regulation 1998 (Reg. 95(1), Reg. 241 and Schedule 2). There is a revision of the CoP in draft form.
- *Environment Act 2000* provides a requirement for developers to obtain permits for the extraction of natural resources, including forests, to ensure the sustainable development of the environment and the prevention of environmental harm.
- *PNG Vision 2050*
- *Small to Medium Enterprise (SME) Policy*

## 2. Forest Governance

The Papua New Guinea Forestry Authority (PNGFA) is a statutory body responsible for the administration of the Forestry Act. The PNGFA comprises the:

- National Forest Board (NFB),
- National Forest Service (NFS); and

- Provincial Forest Management Committees.

The Conservation and Environment Protection Authority (CEPA), formerly known as the Department of Environment and Conservation (DEC), is responsible for the administration of the Environment Act 2000. CEPA is required to approve all major development projects, including forestry projects (see indicator 1.10). The approval is granted by way of an environment permit issued by the Director of CEPA upon his/her acceptance of an environmental impact assessment (Part 5 of the Environment Act). The former Environmental Planning Act 1978 required applicants for timber permits to have an approved environmental plan. These plans are still in force for any timber permits issued prior to the new Environment Act coming into force in 2000.

The forestry sector in PNG has been the subject of ongoing allegations of malpractice, corruption, political interference, inadequate monitoring and poor enforcement (Greenpeace 2002; Laurence et al. 2011, Hoare 2013, Ken 2015, Oxfam 2014, Chatham House 2014, Oakland Institute 2017, Greenpeace 2010). The Barnett Forest Industry Inquiry (1987) was initiated by government following strong representations from the Papua New Guinea Forest Industries Association (PNGFIA), which was concerned about the chronic maladministration of the forestry sector (R. Tate, PNGFIA, pers. comm. in Wilkinson 2013 p17). The Inquiry's report provided compelling evidence of illegal and corrupt activities that led to the reforms under the Forestry Act 1991. Subsequent reviews have continued to express concern in relation to corruption and disregard for process (ODI 2007c; Transparency International 2011 in Wilkinson 2013 p17) although many strongly contest the claims (e.g. Asumadu 2010; PNGFIA 2013 in Wilkinson 2013 p17).

### 3. Ownership and use of the forest resources

The Constitution of PNG recognizes customary land owners as having rights that are acquired by custom and "not necessarily reflected in laws, including rights to all natural resources with exception of minerals, petroleum, water and genetic resources". (Birds et al, 2007a, p.1). The customary institutions, through this recognition, own 97% of the total land area and 99% of forest land. The 2009

Forest land in PNG can fall under the following forms of ownership (FAO 2015):

- Public ownership (state owned plantations): Accounts for 2.9 per cent of forest ownership<sup>2</sup>
- Private ownership
  - Owned by local, tribal and indigenous communities, known as customary ownership: Accounts for 96.8 per cent of forest ownership
  - Owned by private business entities and institutions: Accounts for 0.10 per cent of forest ownership

The vast majority of the timber exploited in PNG comes from customarily owned land. The right to exploit this timber which is held by the customary owners by virtue of their ownership may be given to private companies through a government administered system known as the *alienation of timber rights* under the Forest Policy.

---

<sup>2</sup> These figures are from 2010 but are the most up to date available

Theoretically, customary owners could themselves exploit the timber resources, but the Forest Act does not provide any rights for commercial utilization of the forests by customary land owners: to do so, they must become registered Forest Industry Participants (FIPs) and develop a project under one of the commercial harvest mechanisms described in the section 4 below). According to ACAIR, while very limited, community forestry is developing in two main ways: 'Eco forestry' involving timber from clan forests being processed by the community; and 'community-based reforestation' of clan-owned grasslands (2017).

The government, through the Forest Act and associated regulations, secures timber rights from the customary landowners to develop and manage projects on behalf of the landowners via one of the mechanisms described in Section 4 below. An important aspect of these mechanisms is an ownership structure known as *Incorporated Land Groups*. Incorporated Land Groups (ILGs) were introduced in 1974 as a mechanism for the registration of group titles to allow individual clans to enter into business transactions on the basis of collective decision-making (ODI 2007b).

Essentially, members of a clan, or multiple clans in an area where natural resources (including timber) are present, will group together in order to sell their use rights to private companies. To do this legally, the clan or groups of clans must form a legally recognized entity known as an *Incorporated Land Group* (ILG). The Land Groups Incorporated Act has two main aims:

- a) To enable customary landowning groups to be recognized as legal customary landowning groups and as legal corporate entities (similar to the recognition of companies as legal persons);
- b) To provide for the manner in which they deal with their customary land and resources, so that the dealings will be recognized by law.
- c) The Act provides a legal structure for a landowning group to:
- d) Manage its own internal affair and make binding decisions (using its customary laws); and
- e) Enter into legally-binding agreements with the outside world.

ILGs are recognized in s.57(1)(a) of the Forestry Act as one of the mechanisms by which the government can negotiate with customary landowners to acquire and allocate the rights to timber resources under Forest Management Agreement. In such instances, the customary owners still have the user rights to access other forest, minor forest, and non-timber forest products for local use and consumption, but not for commercial purposes.

#### 4. Forest Management Permit or License Types

Prior to the Forestry Act 1991 the main devices for allocating timber rights in PNG were Timber Rights Purchases (TRPs) and Local Forest Areas (LFAs) (Wilkinson 2013).

- **Timber Rights Purchase (TRPs)** were introduced in 1951 under the Forestry Ordinance as a mechanism by which the State could purchase the timber rights from customary landowners and then control the harvesting of timber through the issue of timber permits and licences to forest companies.
- **Local Forest Areas (LFAs)** were introduced in 1971 under the Forestry (Private Dealings) Act 1971 to give customary landowners the right to sell their timber direct



to the forest industry, subject to the approval of the Forestry Minister. LFAs cover almost one million hectares, do not have expiry dates (PNGFA 2009).

The Forestry Act of 1991 replaced TRPs and LFAs with new devices by which landowners could allocate their timber rights. The Act allowed TRPs and LFAs that were in existence in 1991 to continue in force. The following timber rights are provided for in the Act:

- a **Timber Permit** granted for a Forest Management Agreement (s.73 of the Act); or
- a **timber authority** (s.87); or
- a **forest clearing authority** for the conversion of forest (of >50 hectares) to agricultural or other land use (s.90B); or for the conversion of forest to road (of >12.5 kilometres in length) (s.90D); or
- a **license** issued to a forest industry participant registered by the National Forest Board (s.91).

Where there are no timber permits, authorities or licences in place landowners retain their right to clear their forest for subsistence agriculture and to harvest trees for personal use (Wilkinson 2013). However, landowners may not trade in forest products unless they are a registered forest industry participant in possession of a permit, authority or licence under the Forestry Act (Wilkinson 2013). Where the timber rights have been assigned to a forest industry participant landowners are supposed to comply with any timber permits and logging plans that exist, but retain access rights for customary forest use (Wilkinson 2013).

Section 55 of the Forestry Act provides that only a '*forest industry participant*' may exercise timber rights (as defined in s.2 of the Act). A "forest industry participant" is also defined in s 2 of the Act, and a 'forest industry participant' may only carry out the harvesting and clearing of forest in accordance with the license/authority/permit types listed in the Act.

### ***Forest Management Agreements***

Forest Management Agreements (FMA) are intended to be the primary mechanism for forest exploitation under the Forestry Act. Forest Management Agreements are entered into between customary landowners and the government, and through these agreement landholders sell cutting rights to the PNG Forest Authority in exchange for timber royalties. The Forest Authority may then grant the cutting rights to third parties within the private sector via a Timber Permit. The process for agreeing a FMA is very complex, comprising a 34-step process that includes a broad consultation, open and competitive bidding process, and approval that is dependent on the past reputation of the company seeking the timber permit.

The length and complexity of the process has stalled the completion of Forest Management Agreements being completed, leading to Forestry Companies using the other arrangement which do far less in terms of consultation, environmental planning and rehabilitation.

The nature of the '34 step process' is such that responsibilities for activities, and decision making authority is divided between the customary owners, the PNGFA, the company seeking to exploit the timber resource and various government officials. In particular, divulging the decision making power between levels of government and officers was designed to ensure that 'no government official – not even the forests minister – has the power to decide unilaterally on the issuance of a logging license' (FLA 2013).

Once a FMA has been approved, the PNGFA transfers the right to harvest to the developer via a timber permit. The permit holder is then authorized to implement forest management on



the land. The term of the agreement is 50 years. The harvesting company pays a volume based royalty to the landowners via the PNGFA who act as the intermediary with the responsibility to check that the payment is correct. The royalty payable is fixed by the Forest Minister in the Timber Permit, on the volume of merchantable timber or forest produce calculated at stump. The land group leaders are then responsible for distributing payments to group members.

*Key Elements of the 34-step Licensing Process:*

- Resource investigation (Forest Inventory) – conducted by the PNGFA, usually at the behest of, and with resource support from, the company seeking the timber permit.
- Explanations to landowners (Landowner awareness raising) - conducted by the PNGFA, often with resource support from the company seeking the timber permit.
- Establishment of Incorporated Land Group (ILG), a legal body representing land owners - often carried out with resource support from the company seeking the timber permit.
- Conclusion of the FMA between the PNGFA and the ILG – conducted by the PNGFA usually with resource support from the company seeking the timber permit.
- Project guidelines development with the participation of landowners – conducted by the PNGFA usually with resource support from the company seeking the timber permit.
- Opening for bidding (Call for Project Proposal to the candidate developers)
- Project Agreement signed
- Obtaining the approval for the Environmental Plan by the DEC
- Issuance of Timber Permits

*Timber Authority*

Small operators work under a Timber Authority system, not a license. Here, the Timber Authority allows operations to begin before all pre-requisites are completed or the license is issued. TAs are issued for selective logging operations focused on the domestic market. There are five TAs under s.87 of the Act:

- TA-01: harvesting of less than 5,000 cubic meters, with a 12 month validity period.
- TA-02: harvesting of timber for road line clearance (roads that will be greater than 12.5 kilometers in length require a Forest Clearance Authority)
- TA-03: harvesting of timber for clearing in preparation for agriculture or other land use (if the amount of proposed clearance is greater than 50 hectares total a Forest Clearance Authority is required)
- TA-04: harvesting of forest produce other than timber
- TA-05: harvesting of timber from a plantation area.

*Forest Clearance Authority*

A Forest Clearance Authority (FCA) is the mechanism used to clear forests to make way for any agricultural or other land use development, including roads that will be greater than 12.5 kilometres in length and/or where the amount of proposed clearance of natural forest for the project is greater than 50 hectares in total.

The FCA is subject to the approval of the National Executive Council on the recommendation of the Minister following review by the National Forest Board and relevant Provincial Forestry Management Committee.

#### *Special Agricultural Business Leases under Forest Clearance Authorities*

Special Agricultural Business Leases (SABLs), introduced in the 1996 Land Act, allows the government to lease land owned by communities, with their consent, to individuals or companies interested in carrying out agricultural projects (Global Witness 2014). SABLs often require land clearing, and as such, permission to clear forests is also needed, via a Forest Clearance Authorities.

Between 2003 and 2011 there was huge increase in the number and land area of SABLs issued by the government. Amendments to PNG's forestry law made it much easier for companies to obtain permits to clear huge areas of rainforest, ostensibly to make way for large-scale agriculture projects such as oil palm plantations (Global Witness 2014 and Greenpeace 2011). In that period, the PNG Department of Lands and Physical Planning has approved 74 Special Purpose Agricultural and Business Leases (SABLs) covering about 5.2 million ha of forested customary land; 11% of PNG's total land area or about 18% of its remaining forest. Most leases run for 99 years and alienate customary owners who can only remain on their land at the discretion of the leaseholder (Greenpeace 2011).

Evidence suggests that many of the agriculture projects being proposed under SABLs had low viability and were likely to be fronts for logging - a 2014 study analyzed 36 proposed oil palm projects involving 51 SABLs (Global Witness 2014). It concluded that only four of these projects had the potential to produce viable oil palm plantations due to unsuitable soil, developer inexperience, and lack of support from local landowners. According to Greenpeace (2011), in many SABLs, the area subjected to logging far exceeds that being cleared for agricultural purposes, and in some cases logging has occurred without corresponding agricultural activities. Even in the potentially viable agriculture projects, many landowners claim they never agreed to lease their land and allege that fraud and forgery was involved in the SABL allocation process (Greenpeace 2011).

A major legality problem is the failure of government agencies to ensure that the landowners gave free prior informed consent for the leases (IGES 2015).

Complaints from landowners, concerns raised by many international NGOs and a warning letter from the UN High Commission for Human Rights (UNHCHR) in 2011 to PNG's UN Ambassador led the then acting Prime Minister, Sam Abal to announce a Commission of Inquiry (CoI) into SABLs (UNGA 2011). He also announced an immediate moratorium on the issuing of any new SABLs and a suspension of all FCAs until the conclusion of the Inquiry. The aim of the Inquiry (amongst other things) was to determine the legality of forest clearance authorities (FCAs) that have been issued with the leases.

The CoI was only partially completed. One Commissioner failed to submit his findings, meaning that the government lacked recommendations for over a third of SABLs, including several of the largest log exporting projects. Of those reviewed, the COI found that only 4 of the 46 SABLs it investigated had obtained proper landowner consent, with the remainder being secured through corrupt means (Fox, 2013). The Commission found widespread abuse and fraud, failure and incompetence of government officials to ensure compliance, accountability and transparency from the application stage to registration, processing, approval and granting of the SABLs (Tau, 2013).

In June 2014, nine months after the COI's findings were published, the National Executive Council (NEC) issued a decision to follow its recommendations, review the SABLs for which the COI failed to provide recommendations, and repeal the SABL provisions in the Land Act.

According to Global Witness, in the years since the CoI report, the government:

- has failed to revoke or suspend SABLs in line with the recommendations of the COI –
- has not halted logging in the one operational SABL listed for cancellation
- Continues to issue new permits to clear rainforest under SABLs
- has failed to expedite the review of the remaining SABLs; and
- has recently renewed a clearance permit for a controversial SABL

The Prime Minister, Hon. Peter O'Neil announced the cancellation of all SABLs in PNG. This was reported on page 5 of The National newspaper on 7th November 2016.

The recent report prepared by Institute for Global Environmental Strategies (IGES) recommends that companies purchasing timber from PNG 'Check that the timber is not from forest clearance authorities granted under SABLs. Avoid such timber unless considerable proof of legal compliance can be provided' (IGES 2016).

### ***Timber Licence***

The Board may issue to a registered forest industry participant, a licence to engage in forest industry activities other than those carried out, or proposed to be carried out, under a Timber Permit or timber authority held by the forest industry participant.

The number of permits of all types in PNG as of 2011 are set out in the table below (Wilkinson 2013).

There are currently 108 permits for forestry operations in PNG (PNGFA 2011a), as follows (see section 7 for an explanation of the permit system).

Type of permit	Number
Timber Permits (Forest Management Agreements, Timber Rights Projects and Local Forest Authorities)	60
Forest Clearance Agreements	14
Timber Authorities	34
Total	108

The forest harvesting and processing sectors in PNG are dominated by two large companies:

- **Rimbunan Hijau (PNG) Group** (commonly abbreviated to 'RH'), operates 17 forestry concessions, which have a total area of 1,755,408 hectares and an annual allowable cut of 2,084,000 m<sup>3</sup> (ITS Global 2007). According to their website, RH has also recently expanded its operations in oil palm development in East New Britain Province with an approved area for agriculture development of 42,000 hectares, with 31,000 ha allocated for oil palm development (<http://www.rhpng.com.pg/>). According to a 2015 report, the area of land covered by SABLs held by RH and its subsidiaries was actually 235,000 ha (Gabriel and Wood 2015). In his final report tabled in parliament, John Numapo, chief commissioner of the COI into SABLs, stated (without indicating the

relevant SABLs): 'Our investigations reveal that over 50%<sup>111</sup> of the so-called developers' [sic] currently holding subleases on SABLs are connected in one way or another to Rimbunan Hijau (RH) Limited, which by far is the biggest logging operator in PNG'; and

- **The WTK Group** of companies, has a concession area of 400,000ha (WTK 2012)

Together, these companies collectively account for 60-70% of total production. The remaining harvesting under permits is mostly undertaken by medium size companies that have annual cuts of between 50,000 and 100,000 m<sup>3</sup> (R. Tate, PNGFIA, pers. comm. in Wilkinson 2013).

## 5. Export Permit Process

There are three types of export permissions:

- **Export Permit Type 1** – issued by the Minister for Forests following endorsement by the PNGFA for logs and wood products harvested from Timber Permit and Timber License areas. The permit will include: the project name (where the timber was harvested); export permit code and Timber Permit (TP)/ Timber Authority (TA)/ Local Forest Area (LFA)/ Forest Clearing Authority (FCA) number.
- **Export Permit Type 2** – issued by the Minister for Forests for non -timber forest products (e.g. balsa wood, sandalwood, eaglewood, rattan etc.). These products will have been harvested from areas outside the main areas classified as TP/TA/LFA/FCA under a PNGFA license, and therefore will *not have* an associated project name listed on the export permit.
- **Export License** – issued by the Minister for Trade, Commerce and Industry for round log export.

### *Sources*

The list of sources provided in FSC-PRO-60-002a, section 3.3.3 has been reviewed for relevance in regards to the national legality risk assessment of Papua New Guinea. The following sources have been used:

- a) Chatham House: <http://www.illegal-logging.info/>;
- b) ELDIS regional and country profiles: <http://www.eldis.org/>;
- c) Environmental Investigation Agency: <http://www.eia-international.org/>;
- d) EU FLEGT process:  
[http://ec.europa.eu/comm/development/body/theme/forest/initiative/index\\_en.htm](http://ec.europa.eu/comm/development/body/theme/forest/initiative/index_en.htm);
- e) Forest Legality Alliance: <http://www.forestlegality.org/>;
- f) Government reports and assessments of compliance with related laws and regulations;
- g) Independent reports and assessments of compliance with related laws and regulations, e.g., the Royal Institute of International Affairs: <http://www.illegallogging.org/>;
- h) Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- i) Justice tribunal records;

- j) Public summaries of FSC forest management certification reports published at [info.fsc.org](http://info.fsc.org) (information on legal areas where non compliances have been identified during the certification process that are likely to be common for non-certified operations);
- k) Public summaries of other 3rd party forest legality certification/verification systems;
- l) Stakeholder and expert consultation outcomes from NRA development processes;
- m) Transparency International Corruption Perceptions Index:  
[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi);
- n) World Bank Worldwide Governance Indicators:  
<http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- o) In cases where other sources of information are not available, consultations with experts within the area shall be conducted.

Where relevant, they have been specifically referenced under “sources of Information” for each applicable sub-category. The remaining sources was found not to be relevant for the legality risk assessment for Papua New Guinea

***Other sources use for this section:***

- a) ACAIR, 2017. Enhancing the implementation of community forestry approaches in Papua New Guinea. Available: <http://aciar.gov.au/CCI>, accessed 25 July 2017.
- b) ACAIR, 2011. Forestry in Papua New Guinea: a review of ACIAR’s program. Available: [http://aciar.gov.au/files/node/13939/forestry\\_in\\_papua\\_new\\_guinea\\_a\\_review\\_of\\_aciar\\_40462.pdf](http://aciar.gov.au/files/node/13939/forestry_in_papua_new_guinea_a_review_of_aciar_40462.pdf), accessed 27 July 2017.
- c) Colin Filer, Rodney J. Keenan, Bryant J. Allen, John R. Mcalpine, 2009. Deforestation and forest degradation in Papua New Guinea. Available online at < [https://crawford.anu.edu.au/pdf/staff/rmap/cfiler/Filer\\_et\\_al\\_2009.pdf](https://crawford.anu.edu.au/pdf/staff/rmap/cfiler/Filer_et_al_2009.pdf)>, accessed 30 January 2017.
- d) FAO and PNGFA, 2009. Asia-Pacific Forestry Sector Outlook Study II - Papua New Guinea Forestry Outlook Study. Available: <http://www.fao.org/docrep/014/am614e/am614e00.pdf>, accessed 26 July 2017.
- e) FAO, 2015. Global Forest Resources Assessment 2015 - Country Report Papua New Guinea. Available:
- f) Forest Legality Alliance, 2013. Risk Tool – Papua New Guinea. Accessed 11 January 2017 at <http://www.forestlegality.org/risk-tool/country/papua-new-guinea>.
- g) Jennifer Gabriel & Michael Wood (2015) The Rimbunan Hijau Group in the Forests of Papua New Guinea, The Journal of Pacific History, 50:3, 322-343, DOI: 10.1080/00223344.2015.1060925. Available: <https://pngexposed.files.wordpress.com/2016/01/rh-in-the-forests-of-png-jcu-2015.pdf>, accessed 26 July 2017.
- h) Global Witness, 2014. The people and forests of Papua New Guinea under threat: the government’s failed response to the largest land grab in modern history. Available online at < [https://www.globalwitness.org/documents/10526/png\\_brief.pdf](https://www.globalwitness.org/documents/10526/png_brief.pdf)>, accessed 30 January 2017.

- i) Government of Australia, Department of Agriculture and Water Resources and PNG Forest Authority, 2015. Papua New Guinea Country Specific Guidelines. Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.
- j) Graham Wilkinson, 2013. Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice - Report 1 - Project GCP/PNG/003/AUL. Available online at [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) > accessed 13 January 2017.
- k) Greenpeace Australia Pacific, 2011. BRIEFING: Special-purpose agricultural and business leases in Papua New Guinea. Available online at <[http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing\\_smaller\\_F-1.pdf](http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing_smaller_F-1.pdf)>, accessed 30 January 2017.
- l) Greenpeace, 2010. Papua New Guinea: Not ready for REDD. Available: <http://www.greenpeace.org/australia/Global/australia/report/2010/10/papua-new-guinea-not-ready-fo.pdf>, accessed 26 July 2017.
- m) Hitofumi Abe, 2016. PNG National Forest Monitoring System. Available: [http://www.fao.org/fileadmin/user\\_upload/rap/Asia-Pacific\\_Forestry\\_Week/doc/Stream\\_2/ST2\\_24Feb\\_Abe\\_PNGREDD.pdf](http://www.fao.org/fileadmin/user_upload/rap/Asia-Pacific_Forestry_Week/doc/Stream_2/ST2_24Feb_Abe_PNGREDD.pdf), accessed 26 July 2017.
- n) Hoare, A. for Chatham House, 2013. Illegal Logging: Are We Making Progress? Available: <https://www.illegal-logging.info/content/illegal-logging-are-we-making-progress-0>, accessed 26 July 2017.
- o) Institute for Global Environmental Strategies (IGES), 2016. Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber. Accessed 13 January 2017 at <[http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf)>.
- p) Ken, B. 2015. Papua New Guinea - Mapping REDD+ Finance Flows 2009-2014. Available: <https://www.illegal-logging.info/file/2851>, accessed 26 July 2017.
- q) Lawson, S. for Chatham House, 2014. Illegal logging in Papua New Guinea. Available: [https://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](https://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf), accessed 26 July 2017.
- r) Oakland Institute, 2017. Taking On the Logging Pirates, Land Defenders in Papua New Guinea Speak Out!. Available: <https://www.oaklandinstitute.org/illegal-logging-papua-new-guinea-speak-out-palm-oil-corruption>, accessed 26 July 2017.
- s) Oxfam, 2014. Banking on Shaky Ground. Available: <https://www.illegal-logging.info/file/2448>, accessed 26 July 2017.
- t) PricewaterhouseCoopers (PwC) for the Papua New Guinea Forest Industries Association (PNG FIA), 2006. Economic Analysis and Potential of PNG Forestry Industry - Final Report. Available online at <



[http://www.fiapng.com/PDF\\_files/PWC\\_ECONOMIC\\_REPORT\\_07.pdf](http://www.fiapng.com/PDF_files/PWC_ECONOMIC_REPORT_07.pdf)>, accessed 13 January 2017.

- u) Sam Lawson for Chatham House, 2014. Illegal Logging in Papua New Guinea. Available online at < [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf)>, accessed 13 January 2017.
- v) Srivastava, P.B.L. 1991. Management and utilization of forest resources in Papua New Guinea. Proc. of the Session on Tropical Forestry for People of the South Pacific, XVII Pacific Science. Congress, 27-28 May 1991, Honolulu, Hawaii.
- w) Transparency International Papua New Guinea (TIPNG), 2015. Forest Governance Integrity Baseline Report - Papua New Guinea. Available online at < <https://pngforests.files.wordpress.com/2013/05/forest-governance-integrity-report-ti.pdf>>, accessed 17 January 2017.
- x) Transparency International, 2016. Corruption Perceptions Index 2016 – Papua New Guinea. Available online at <<http://www.transparency.org/country/PNG>>, accessed 30 January 2017. World Bank, 2015.
- y) United Nations Development Programme, 2012. UNDP in Papua New Guinea, about PNG. Available online at < [http://www.pg.undp.org/content/papua\\_new\\_guinea/en/home/countryinfo.html](http://www.pg.undp.org/content/papua_new_guinea/en/home/countryinfo.html)>, accessed 30 January 2017.
- z) United Nations General Assembly, 2011. United Nations General Assembly. Report of the Committee on the Elimination of Racial Discrimination Seventy-eighth session (14 February–11 March 2011) Seventy-ninth session (8 August – 2 September 2011), General Assembly Official Records Sixty-sixth session Supplement No. 18 (A/66/18) United Nations, New York, 2011 para 27. <http://www2.ohchr.org/english/bodies/cerd/docs/A.66.18.pdf>. Accessed 17.6.12
- aa) United Nations Human Development Report, 2015. Papua New Guinea. Available online at < <http://hdr.undp.org/en/countries/profiles/PNG>>, accessed 30 January 2017.
- bb) Worldwide Governance Indicators – Papua New Guinea 1996–2015. Available online at <<http://info.worldbank.org/governance/wgi/index.aspx#reports>>, Accessed 11 January 2017.

Consultation with in-country experts was carried out throughout the drafting of this assessment in 2016-2017, including face to face consultation meetings held in Papua New Guinea in late 2016. A broad range of experts were consulted, including representatives from Non-government organizations, a number of relevant Government Ministries and enterprises. Due to confidentiality issues, the experts consulted have not been named specifically in this report, but a full list of experts was provided to the PSU.



## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

*Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.*

##### 1.1.1. Applicable laws and regulations

- The Constitution of the Independent State of Papua New Guinea (1975), Section 53, subsection 5(d) and (e) Protection from Unjust Deprivation of Property section and Section 54 (a) (i) (ii) (b) (c) Special provision in relation to certain lands. Available at: <http://www.parliament.gov.pg/constitution-of-the-independent-state-of-papua-new-guinea>
- National Lands Registration Act (1981), chapter# 357, Division 4, Effect of ownership of National Lands Act, chapter # 357, subsection 14 (a) and (b) ownership of National Land, including customary land. Available at: [http://www.paclii.org/pg/legis/consol\\_act/nlra1977269.rtf](http://www.paclii.org/pg/legis/consol_act/nlra1977269.rtf)
- Forestry Act 1991 and amendment 2005, 2010. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Land (Ownership of Freeholds) Act 1976. Available at: [http://www.paclii.org/pg/legis/consol\\_act/lofa1976268/](http://www.paclii.org/pg/legis/consol_act/lofa1976268/)
- Forestry (2007 Budget Amendment) Bill 2006. Available at: [http://www.fiapng.com/PDF\\_files/forestry\\_2007\\_page3.pdf](http://www.fiapng.com/PDF_files/forestry_2007_page3.pdf)
- National Forest Plan (1996). Available at: <https://pngexposed.files.wordpress.com/2013/01/draft-nfp.pdf>
- Land Group Incorporation Act 1974, amended 2007 and 2009. Available at: [http://www.paclii.org/pg/legis/num\\_act/lgia2009372.rtf](http://www.paclii.org/pg/legis/num_act/lgia2009372.rtf)
- Land Dispute Settlement Act (1975). Available at: [http://www.paclii.org/pg/legis/consol\\_act/ldsa1975276.rtf](http://www.paclii.org/pg/legis/consol_act/ldsa1975276.rtf)
- The Land Act 1996, Section 10,12 and 102. Available at: <http://faolex.fao.org/docs/texts/png20843.doc>. (relevant for SABLs)
- Guidelines for Issuing Timber Authorities (1995). Available at: <http://trove.nla.gov.au/work/21822896?selectedversion=NBD12092202>
- Planning, Monitoring and Control Procedures for Natural Forest Logging Operations under Timber Permit (1995) (referred to as the PMC Procedures), given legal effect through the Forestry Act 1991 and the Forestry Regulation 1998 (Reg. 95(1), Reg. 241 and Schedule 2).

### **1.1.2. Legal authority**

- Papua New Guinea Forest Authority (PNGFA)
- Provincial Forest Management Committees
- National Forestry Board
- Department of Agriculture & Livestock
- Department of Trade & Industry
- Department of Lands and Physical Planning

### **1.1.3. Legally required documents or records**

- Land group incorporation certificates, with proper genealogy and property listing completed in compliance to Land Group Incorporation Act 1974, amended 2009.
- Business Registration, issued by the Investment Promotion Authority, held by the timber business
- Registration as a Forest Industry Participant, a list of Forest Industry Participants kept by PNGFA Head Office
- Certificate Permitting Foreign Enterprise to carry out business activity, issued by the Investment Promotion Authority for Timber business
- Forest Industry Participant Certificate held by the company

As well as one of the following:

#### For timber harvested under a Forest Management Agreement:

- Forest Management Agreement, certified by Provincial Management Committee, signed by landowners through Incorporated Land Groups, endorsed by National Forest Board, signed by the Minister for Forests on behalf of PNG Forest Authority. A copy is held by the PNGFA Head Office and the timber business
- Project Agreement, approved by Finance Minister
- Environment Management Plan, approved by Conservation Environment Protection Authority. Timber Permit (for FMA or TRP), issued by the Minister of Forests, copies held by the PNGFA Head Office

#### For timber harvested under a Timber Authority:

- Sales and Purchase Agreement between the company and the customary owners
- Timber Authority, issued by the Chairman of the PFMC after approval from the National Forest Board.

#### For timber harvested under a timber license:

- Timber License, issued by the National Forest Board

#### For timber harvested under a Forest Clearance Authority (FCA):

- Forest Clearance Authority
- Development plan;

- Evaluation report and certificate of approval from the relevant Government department;
- Certificate from a financial institution to show the developer has the finances needed for the proposed development;
- Evidence of past experience with similar developments;
- Verification of land ownership and evidence of landowner consent; and
- Environment impact statement approved by the DEC

For timber harvested under a Timber Rights Purchase (TRP) Agreement:

- Timber Rights Purchase (TRP) agreement, held by the PNGFA Head Office and the timber business
- Timber Permit (for FMA or TRP), issued by the Minister of Forests, copied held by the PNGFA Head Office

For timber harvested under a Local Forest Area (LFA) agreement:

- Local Forest Area (LFA) agreement, approved by the Minister of Forests, copy held by the PNGFA Head Office

#### 1.1.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.
- Numapo, J. (2013). Final report. [online] coi.gov.pg. Available at: <http://www.coi.gov.pg/documents/COI%20SABL/Numapo%20SABL%20Final%20Report.pdf>
- Mirou, N. (2013). Final report. [online] coi.gov.pg. Available at: <http://www.coi.gov.pg/documents/COI%20SABL/Mirou%20SABL%20Final%20Report.pdf>

##### *Non-Government sources*

- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). *Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP* (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: <http://www.forestry.gov.pg/site/files/1.%20Report%201%20->

[%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](#) [accessed 13. January 2017]

- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- Forestlegalityalliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Odi.org, (2007). *What can be learnt from the past? A history of the forestry sector in Papua New Guinea – Papua New Guinea Forest Studies*. [online] Available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/90.pdf>, [accessed 30 January 2017]
- Armitage, L. (2001). Customary land tenure in Papua New Guinea: Status and prospects. In *Proceedings of the International Association for the Study of Common Property Rights 2001 Pacific Regional Conference, Queensland University of Technology, Brisbane* (pp. 12-23). Available at: <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/589/armitage.pdf?sequence=1>
- Vegter, A. A. (2005). Forsaking the forests for the trees: forestry law in Papua New Guinea inhibits indigenous customary ownership. *Pac. Rim L. & Pol'y J.*, 14, 545. Available at: <https://digital.lib.washington.edu/dspace-law/bitstream/handle/1773.1/675/14PacRimLPolyJ545.pdf?sequence=1>
- Canopy Watch, (N.Y). *Forestry in Papua New Guinea*. [online] Available at: <http://www.canopywatch.org/p/png-forestry.html> [accessed 13 January 2017]
- Canopy Watch, (N.Y). *The Issue of Consent*. [online] Available at: <http://www.canopywatch.org/p/issue-of-consent.html> [accessed 13 January 2017]
- Fao.org, (N.Y). *Forest Resource Development Through Timber Permits*. [online] Available at: <http://www.fao.org/docrep/004/Y2711E/y2711e05.htm>.
- FAO and PNGFA (2009). *Asia-Pacific Forestry Sector Outlook Study II – Papua New Guinea Forestry Outlook Study*. Available at: <http://www.fao.org/docrep/014/am614e/am614e00.pdf> [accessed 26 July 2017]
- FAO (2015). *Global Forest Resources Assessment 2015 – Country Report Papua New Guinea*. Available at: <http://www.fao.org/documents/card/en/c/f02bc430-6fc1-43e7-8f2c-23e5e3643f5c/>
- Kelola, T. (2010). *Madang Timbers goes back to court*. [Blog] Hector-madanginonline. Available at: <http://hector-madanginonline.blogspot.com/2010/07/madang-timbers-goes-back-to-court.html>
- Tararia, A. and Ogle, L. (2010). Incorporated land groups and the registration of customary land: Recent developments in PNG. *Customary Land*, 21. Available at:

<http://milda.aidwatch.org.au/sites/default/files/Incorporated%20land%20groups%20and%20the%20registration%20of%20customary%20lands.pdf>

- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016
- Sam Lawson for Chatham House (2014). *Illegal Logging in Papua New Guinea*. Available online at: [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 13 January 2017]
- Canopy Watch (N.Y.). *The Issue of Consent*. Available at <http://www.canopywatch.org/p/issue-of-consent.html> [accessed 13 January 2017]
- Canopy Watch (N.Y.). *Forestry in Papua New Guinea*. Available at: <http://www.canopywatch.org/p/png-forestry.html> [accessed 13 January 2017]

#### 1.1.5. Risk determination

##### *Overview of legal requirements*

The Constitution of PNG recognizes customary land owners and through this recognition, customary peoples own 97% of the total land area of PNG and 99% of forest land.

Any company or person wishing to remove timber from a forest area in PNG for commercial purposes, must have a valid Timber Permit or timber license, as issued by the PNGFA. These activities must be conducted under one of the following arrangements:

1. Timber Permit under a Forest Management Agreement (FMA)
2. Timber Authority
3. Forest Clearing Authority.
4. Timber License
5. Timber Rights Purchase
6. Local Forest Area.

There are specific requirements under each of these arrangements for obtaining landowner consent prior to harvesting activities taking place.

##### *Acquisition of landowner consent under the FMAs*

Under the Forest Management Agreements (see also **Overview**), the government, through the Forest Act, acquires timber rights from the customary landowners via Incorporated Land Groups and allocates these to timber industry participants (forestry companies) via various mechanisms.

ILGs are recognized in s.57(1)(a) of the Forestry Act as one of the mechanisms by which the government can negotiate with customary landowners to acquire and allocate the rights to timber resources under Forest Management Agreement (see **Overview** for a further description of the ILGs).

The Land Groups Incorporation Act 1974 prescribes the process for incorporating customary groups, as described by Fingleton (2007, pp. 27–8):

- a. Preparation of the group's Constitution;

- b. Submission of the Constitution to the Registrar of Incorporated Land, who is supposed to publicise the application and check the group's suitability for incorporation.
- c. After any comments or objections received have been considered, the registrar can issue a certificate of recognition.

Recent amendments to the Land Groups Incorporation Act 1974 in the form of the Land Groups Incorporation (Amendment) Act 2007, set to come into effect in 2017, impose much stricter requirements on membership (Tararia and Ogle 2010). These include:

- A person may no longer be a member of more than one ILG –members must provide a declaration stating that they are not members of another ILG.
- An application for incorporation must now contain a list of all proposed members of the ILG (which was previously optional), and must include the original birth certificate (or a certified copy) of each person who claims membership of the group.

The Forestry Act 1991 requires landowning groups to be incorporated under the Land Groups Incorporation Act prior to allocating logging companies the right to come in and exploit the forest resource under Forest Management Agreements.

A *Forest Management Agreement* gives ownership of the trees, but not the land, to the PNGFA, which is responsible for negotiating with the logging companies (Kalinoe 2003). The harvesting company pays a volume based royalty to the landowners via the PNGFA who act as the intermediary with the responsibility to check that the payment is correct. The royalty payable is fixed by the Forest Minister in the Timber Permit, on the volume of merchantable timber or forest produce calculated at stump. The land group leaders are then responsible for distributing payments to group members.

Section 57 of the Forestry Act sets out the requirements for obtaining consent of customary owners to Forest Management Agreement.

Regarding land title, and therefore authority to enter into an FMA, the Act requires:

- the title of the land is vested in a land group or land groups incorporated under the Land Groups Incorporation Act 1974; or registered under a law providing for the registration of title to customary land.
- **OR**
- where the title of the land is not incorporated under an ILG, an FMA may be executed on behalf of customary groups who are customary owners, by *agents* of such groups. Agents must be authorized to act on behalf of the groups, and 75% of the adult members resident on the land of each such group must give **written** consent to their group entering into the Agreement.

The acquisition of consent of landowners forms part of the 34 stepwise approach associated with the development of FMAs under the Forestry Act (Described in **Overview**, also see PNG Country Specific Guidelines 2015 p 6 for the full process).

The first ten steps of this process are intended to ensure landowner consent is obtained prior to the allocation of the permits to forestry companies.

1. Identification of Potential Forest
2. Forest area included in Provincial and National Forest Plans

3. Forest Inventory Survey
4. Landowner awareness
5. Documentation of the Incorporated Land Group Step Process
6. Preparation of Forest Management Agreement (FMA)
7. Certification of FMA by the Provincial Forest Management Committee (PFMC)
8. Signing of FMA by Landowners
9. National Forest Board's (NFB) endorsement of FMA
10. Signing of FMA by Forests Minister on behalf of PNGFA

The PNGFA is legally responsible for these 10 steps, and other parties (i.e. the harvesting companies) cannot legally approach the landowners during this period. Note that the landowner consent required in the Forestry Act is for "majority" consent only, which is currently set at 75 per cent. This can be complicated as some individuals with customary rights may not be residing on the land (i.e. they have moved to the city), which complicates the consent process.

#### *Acquisition of consent under a Timber Authority (TA)*

Timber authorities are issued by the Chairman of the PFMC after approval from the National Forest Board for small-scale operations of up to 5,000 m<sup>3</sup>. Timber authorities can only be issued for areas that are outside an existing FMA, and for the following five purposes:

- TA-01: harvesting of less than 5,000 cubic meters, with a permit validity period of 12 months;
- TA-02: harvesting of timber for road line clearance (for road that does not extend more than 12.5 km outside an FMA);
- TA-03: harvesting of timber for clearing in preparation for agriculture or other land use (for less than 50 hectares of trees);
- TA-04: harvesting of forest produce other than timber; and
- TA-05: harvesting of timber in plantation areas.

Unlike FMAs, the Forestry Act does not contain explicit requirements relating to the process for acquiring the use rights from land owners for Timber Authorities. Forest Industry Participants (FIPs) may have 1 TA at a time and/or develop a series of TAs. However, the TAs must not be > 10km apart or they are treated as 1 TA see s.87(5).

#### *Acquisition of consent under a Timber License*

Under the Forestry Act 1991 the National Forest Board may issue a license to a Forest Industry Participant (FIP) that already has a Timber Permit or authority to conduct a forestry activity that is outside the scope of the permit/ authority. The maximum term of the license is 12 months. Where the FIP holds a Timber Permit, the acquisition of landowner consent would have been carried out in accordance with the 34 step process for FMAs.

#### *Acquisition of consent under a Forest Clearing Authority (FCA) – including Special Agricultural Business Leases (SABLs).*



Unlike timber permits, which are given for selective logging, Forest Clearance Authorities (FCAs) are for the clear felling of natural forest. FCAs can be issued for agricultural or other land use development and road construction.

The application for a FCA for land development requires:

- a development plan;
- evaluation report and certificate of approval from the relevant Government department;
- a certificate from a financial institution to show the developer has the finances needed for the proposed development;
- evidence of past experience with similar developments;
- a verification of land ownership and evidence of landowner consent; and
- an approval of the environment impact statement by the DEC.

The following activities are provided for via FCAs in the Forestry Act:

- 90A: enables large scale conversion of forest to agricultural or other land use over an area over 50 hectares, but in less than 500 ha blocks with a maximum of 4 blocks, as set out in 90B;
- 90C: enables large scale conversion of forest to roads that will be greater than 12.5 km in length. S 90D stipulates that the maximum of 20 km sections can be approved at a time to ensure the road actually gets built. Clearance is allowed max 20 m either side of the road centre (40 m X 20,000 m = 800,000 m<sup>2</sup> or 80ha);
- 90E: prescribes the process of cancellation of a forest clearing authority.

The most common (and controversial) FCA issued in PNG in recent years have been those issued in association with Special Agricultural Business Leases (SABLs).

SABLs are provided for in Sections 11 and 102 of the Land Act 1996 (the Land Act). Under that Act, the State acquires customary land through an "instrument of lease in an approved form". The Land Investigation process and associated Acquisition by Agreement, is intended to obtain free, prior and informed consent of the affected landowners before their customary land is acquired and converted to SABL. Land acquired under this process is then leased on to an "agreed" person or entity (COI Report Numapo, 2013).

Where a SABL has been granted for the purpose of a proposed agricultural development in a forested area that will forest clearance, and where the removed forest products are to be used commercially including sale, a Forest Clearance Authority is required (COI Report Mirou, 2013)

*Acquisition of consent under a Timber Rights Purchase (TRP) and Local Forest Area (LFA).*

Prior to the enactment of the Forestry Act in 1991, timber rights purchase (TRP) was the main instrument for large scale timber extraction. Under TRPs, the State acquired the rights for timber harvesting from the forest-owning communities and then invited timber companies to log the forest. Local forest area (LFA) agreements were later introduced to allow the customary owners to directly negotiate a logging project with timber companies.

Through the mechanism of LFA agreements, customary owners were allowed to form a landowner company to negotiate a logging and marketing agreement directly with a logging contractor. For LFAs the consent is a private agreement between the landowner and company.

Both TRP and LFA processes were repealed by the Forestry Act 1991; however, the Act recognized the validity of existing TRPs and LFAs, and logging continues to take place under them (until their expiry or extension). Most of the LFAs have expired but many TRPs are still valid.

### *Description of risk*

#### *Risks relating to the incorporation of land groups*

- There are anecdotal reports from experts consulted that the process for incorporating land groups is often coopted by the timber companies seeking the extraction rights for the land. The incorporation process is sometimes funded by the timber companies, making the ILGs indebted to those companies (Expert consultation 2016). According to experts consulted, the ILG process is being fast-tracked where forestry companies identify desirable land for development, this leads to clans are being improperly grouped together (i.e. where there are conflicts over land ownership between clans, or traditionally warring clans become grouped under a single ILG) or insufficient landowner consultation to ensure all individuals with a claim to the land have been included. There are reports that frequently individuals from clans who have been in discussions with timber companies, will improperly enter into ILGs on their clans behalf without properly consulting other clan members. This has led to numerous disputes over royalties, and conflicts within communities.
- The new requirements for the provision of birth certificates of members of the ILGs has been criticized by some non-government organizations in PNG. They argue that the requirement may be unrealistic and may encourage the fabrication of birth certificates given that hardly any births in remote areas are registered and many elderly citizens do not have one (Tararia and Ogle 2010).

#### *Risks relating to the acquisition of land and consent*

- According to the Institute for Global Environmental Strategies (IGES) (2016) the legality risks associated with PNG export timber are "wide ranging, but are mostly associated with the failure of the State to gain the free prior informed consent of the customary landowners before timber rights are transferred from the landowners to the State, especially under old timber right purchase arrangements."
- In almost all cases, proper consent has not been secured or due process has not been followed (ODI 2007a; ITTO 2007; Forest Trends 2006).
- Chatham House, (Lawson 2014) states that the types of illegality recorded in PNG include licenses to harvest timber being issued or extended in breach of regulations (especially those relating to consultation with indigenous landowners).
- According to Vegter (2005), the Forestry Act restrains customary landowners' abilities to directly negotiate and consult with commercial timber industries by mandating that all such transactions must go through the forest administration, thereby severely weakening

customary ownership. Unclear definitions of customary ownership within the common law further weaken indigenous groups' abilities to control their forests (Vegter 2005).

- Vegter (2005) also contends that the lack of formal definitions of customary ownership means a court may not recognize indigenous groups' claims of ownership (see for example *State v Giddings* [1981]).
- Landowner consent has been raised as one of the most significant issues with the SABL process. The COI inquiry concluded that "the SABL scheme, both at the policy level and in the manner it was implemented, has failed....developers and people with vested interests have hijacked the SABL process to suit their own ends. Greed and corruption at all levels... have tainted a noble landowner empowerment initiative". The CoI found that of the 42 SABLs reviewed by the COI, only 4 SABL had qualified landowners consent and have produced successful agriculture projects, while the rest was obtained through corrupted means.
- According to many sources, the dramatic increase in the number of SABLs applied for and issued from 2009-2011 was because the logging companies realised the process for obtaining a new FMA was quite difficult, particularly in relation to the landowner consent requirements (Expert consultation Port Moresby November 2016).
- Experts also noted, in relation to the consent requirements under the FMAs that, although the requirements are very clear, they are sometimes not complied with. In some instances, approval from only *some* of the landowners is obtained. Experts cited corruption and undue influence of large companies at the highest level as key drivers for the non-compliance (Expert consultation Port Moresby November 2016). According to the PNGFA, The records of the stakeholder consultation and consent should be available upon request.
- Regarding the now-superseded TRPs, as there were no requirements for ILGs with these permit types, it is very difficult to determine the correct landowners have provided prior consent.
- For LFAs, as the consent is a private agreement between the landowner and company it is difficult to determine the validity of the process retrospectively.
- Regarding the SABLs, Commissioner Mirou (2014) found that "in some instances [...], inferences from very strong evidence suggests that not only the Dept. of Lands and Physical Planning officials but landowner companies and ILG executives have been compromised. These will be noted in instances where grants of title were made directly to foreign entities (developers) as well as where transfer of shares of the SABL title holding company to other or foreign entities resulted with control of title to be in foreign hands." Mirou goes on to states that:
- "In respect of Forestry (PNGFA), many FCAs were issued in questionable circumstances. Many of these FCAs issued, were not supported by authentic, verified and approved agriculture development plans. Even if these FCAs were supported by properly approved agriculture development plans, during the operations in many instances it had been noted that the operators or developers departed or digressed from the approved agriculture plans.
- In other instances, the proportionate agriculture development phased out per every 500 hectares maximum area over which clear felling of forests can take place, it has been

noted that FCAs were nonetheless given and logging generally continued into areas not immediately within the 500 hectares phases but over the whole areas of SABLs.”

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities

#### **1.1.6. Risk designation and specification**

Specified risk

#### **1.1.7. Control measures and verifiers**

Ensure the required documentation described in 1.1. is in place.

Regarding the risks associated with the ILGs:

- Obtain a copy of all the ILG Certificates relevant for the forest area in question.
- Obtain copy of the ILG constitution
- Consultation with customary owners and members of the ILG to determine the validity of the process for forming and registering the ILG.

Regarding risks regarding disputes over land claims:

- A dispute settlement mechanism exists within the constitution of the ILGs, consultation with landowners shall confirm that the mechanism is used to resolve disputes.

Regarding consent:

- For FMAs, obtain a record of the consultation showing a 75 per cent consensus, this may be obtained from the PNGFA. Ask for minutes of consultation from the policy and planning – FMA signing meeting minutes are taken.
- For all other permit types (and for FMAs to be sure), field verification, including consultation with local landowners is necessary.

## **1.2. Concession licenses**

*Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.*

### **1.2.1. Applicable laws and regulations**

- Forestry Act 1991,
  - Section 73 - timber permit;
  - Section 87 - timber authority; or

- Section 92 - a license
- Regarding Forest Clearance Authorities, including SABLs:
  - 90A: enables large scale conversion of forest to agricultural or other land use over an area over 50 hectares, but in less than 500 ha blocks with a maximum of 4 blocks, as set out in 90B;
  - 90C: enables large scale conversion of forest to roads that will be greater than 12.5 km in length. S 90D stipulates that the maximum of 20 km sections can be approved at a time to ensure the road actually gets built. Clearance is allowed max 20 m either side of the road centre (40 m X 20,000 m = 800,000 m<sup>2</sup> or 80ha);
  - 90E: prescribes the process of cancellation of a forest clearing authority.

Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)

### **1.2.2. Legal authority**

- PNG Forestry Authority

### **1.2.3. Legally required documents or records**

- Land group incorporation certificates, with proper genealogy and property listing completed in compliance to Land Group Incorporation Act 1974, amended 2009.
- Business Registration, issued by the Investment Promotion Authority, held by the timber business
- Registration as a Forest Industry Participant, a list of Forest Industry Participants kept by PNGFA Head Office
- Certificate Permitting Foreign Enterprise to carry out business activity, issued by the Investment Promotion Authority Timber business
- Forest Industry Participant Certificate held by the company

As well as one of the following:

#### For timber harvested under a Forest Management Agreement:

- Forest Management Agreement, certified by Provincial Management Committee, signed by landowners through Incorporated Land Groups, endorsed by National Forest Board, signed by the Minister for Forests on behalf of PNG Forest Authority. A copy is held by the PNGFA Head Office and the timber business
- Project Agreement, approved by Finance Minister
- Environment Management Plan, approved by Conservation Environment Protection Authority. Timber Permit (for FMA or TRP), issued by the Minister of Forests, copied held by th PNGFA Head Office.
- Timber Permit, issued by the Minister for Forestry

#### For timber harvested under a Timber Authority:

- Sales and Purchase Agreement between the company and the customary owners

- Timber Authority, issued by the Chairman of the PFMC after approval from the National Forest Board.

For timber harvested under a timber license:

- Timber License, issued by the National Forest Board

For timber harvested under a Forest Clearance Authority:

- Forest Clearance Authority
- Development plan;
- Evaluation report and certificate of approval from the relevant Government department;
- Certificate from a financial institution to show the developer has the finances needed for the proposed development;
- Evidence of past experience with similar developments;
- Verification of land ownership and evidence of landowner consent; and
- Environment impact statement approved by the DEC

For timber harvested under a Timber Rights Purchase (TRP) Agreement:

- Timber Rights Purchase (TRP) agreement, held by the PNGFA Head Office and the timber business
- Timber Permit (for FMA or TRP), issued by the Minister of Forests, copied held by the PNGFA Head Office

For timber harvested under a Local Forest Area (LFA) agreement:

- Local Forest Area (LFA) agreement, approved by the Minister of Forests, copy held by the PNGFA Head Office

#### **1.2.4. Sources of information**

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

##### *Non-Government sources*

- Colin Filer, Rodney J. Keenan, Bryant J. Allen, John R. Mcalpine (2009). *Deforestation and forest degradation in Papua New Guinea*. Available at: [https://crawford.anu.edu.au/pdf/staff/rmap/cfiler/Filer\\_et\\_al\\_2009.pdf](https://crawford.anu.edu.au/pdf/staff/rmap/cfiler/Filer_et_al_2009.pdf) [accessed 30 January 2017]
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]

- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Oakland Institute (2017). *Taking On the Logging Pirates, Land Defenders in Papua New Guinea Speak Out!* Available at: <https://www.oaklandinstitute.org/illegal-logging-papua-new-guinea-speak-out-palm-oil-corruption> [accessed 26 July 2017].
- Oxfam (2014). *Banking on Shaky Ground*. Available: <https://www.illegal-logging.info/file/2448> [accessed 26 July 2017].
- Transparency International Papua New Guinea (TIPNG) (2015). Forest Governance Integrity Baseline Report - Papua New Guinea. Available at: <https://pngforests.files.wordpress.com/2013/05/forest-governance-integrity-report-ti.pdf> [accessed 17 January 2017].
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- Global Witness (2014). The people and forests of Papua New Guinea under threat: the government's failed response to the largest land grab in modern history. Available at: [https://www.globalwitness.org/documents/10526/png\\_brief.pdf](https://www.globalwitness.org/documents/10526/png_brief.pdf) [accessed 30 January 2017]
- Greenpeace Australia Pacific (2011). *BRIEFING: Special-purpose agricultural and business leases in Papua New Guinea* Available at: [http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing\\_smaller\\_F-1.pdf](http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing_smaller_F-1.pdf) [accessed 30 January 2017]



- Greenpeace (2010). *Papua New Guinea: Not ready for REDD*. Available: <http://www.greenpeace.org/australia/Global/australia/report/2010/10/papua-new-guinea-not-ready-fo.pdf> [accessed 26 July 2017].
- Hoare, A. for Chatham House (2013). *Illegal Logging: Are We Making Progress?* Available at: <https://www.illegal-logging.info/content/illegal-logging-are-we-making-progress-0> [accessed 26 July 2017].
- Jennifer Gabriel & Michael Wood (2015) *The Rimbunan Hijau Group in the Forests of Papua New Guinea*, The Journal of Pacific History, 50:3, 322-343, DOI: 10.1080/00223344.2015.1060925. Available at: <https://pngexposed.files.wordpress.com/2016/01/rh-in-the-forests-of-png-jcu-2015.pdf> [accessed 26 July 2017].
- Ken, B. (2015). *Papua New Guinea - Mapping REDD+ Finance Flows 2009-2014*. Available at: <https://www.illegal-logging.info/file/2851> [accessed 26 July 2017].
- Lawson, S. for Chatham House (2014). *Illegal logging in Papua New Guinea* Available at: [https://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](https://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 26 July 2017]

#### 1.2.5. Risk determination

##### *Overview of Legal Requirements*

Once land use rights have lawfully been acquired (according to the requirements set out in section 1.1), the use rights are then allocated to a Forest Industry Participant via a process prescribed by law which is specific to the type of permit or license.

##### Timber permit allocation for Forest Management Agreements (FMAs):

Under an FMA, the Minister for Forests is responsible for granting of a timber permit upon recommendation of the National Forest Board. This decision of the National Forest Board is based on the adequate completion of the prerequisites to issuing a timber permit which is part of requirements of the *Forestry Act 1991*. These requirements are generally known as the Thirty Four (34) steps for processing timber permit, **the allocation** process (the selection of the company to receive the permit) is set out in steps 11-27 of the *34 step process* for FMAs. They are:

11. Development Option Study (DOS)
12. Project Guidelines
13. Tendering
16. Proposal Evaluation Report - PFMC
17. NFB's endorsement of the preferred Developer
18. NFB consult Forest Minister on the selection of Developer
19. Appointment of State Negotiation Team
20. Parameter of Project Negotiation set
21. Project Negotiation to formulate a project Agreement

22. NFB's endorsement of Project Agreement
23. NFB's consultation with relevant stakeholders
24. Approval of Project Agreement by Finance Minister
25. NFB Executes the Project Agreement
26. Environmental Plan Approval (under another government agency – Conservation and Environment Protection Authority)
27. Proponent applies for a Timber Permit
28. Forest Minister issues Timber Permit

Allocation of permits under Timber Authorities:

The **Timber Authority** (TA) arrangements allow timber rights to be acquired without the requirement for the Development Option Study used for FMA allocations, therefore requiring less processing time by comparison. The TA arrangement are designed for small scale operations and can only be issued for areas that are not covered by a current FMA and for one of five specific forestry activities.

The process for allocating a timber authority can be summarised as:

- Landowner or Forest Industry Participant submits application for a Timber Authority depending on the nature of the project (TA01-TA05)
- The project allocations directorate assesses the application and deems it satisfactory or incomplete.
- Satisfactory applications are referred to the Provincial Forest Management Committee (PFMC) for review.
- If PFMC is satisfied, it recommends to the Provincial Chairman for Forestry Matters to grant a Timber Authority.
- The Provincial Chairman for Forestry Matters gives notification to the National Forest Board of his intention to grant a Timber Authority.
- If the National Forest Board does not give its consent within 4 weeks, the Timber Authority is deemed to have been granted.
- The Provincial Chairman for Forestry Matters issues the timber authority

Allocation of permits under Forest Clearance Authorities (including Special Agricultural Business Leases):

The Forest Clearing Authority (FCA) are set out in section 90 of the Forestry Act 1991, specifically subsections 90A, 90B, 90C, 90D and 90E. The approvals process for the allocation of an FCA can be summarised as:

- The Forest Industry Participant submits an application for a FCA.
- The application is assessed by the Project Allocations Directorate of the PGFA who may deem it satisfactory or incomplete.
- Provincial Forest Management Committee (PFMC) for review.

- The PFMC then makes a recommendation to the National Forest Board to either issue or not issue the FCA.
- The National Forest Board then either issues, or does not issue the FCA.
- Issued FCA's are printed by the PNFA Project Allocations Directorate.

#### Allocation of Timber Rights Purchase Agreements (TRPs):

Some harvesting activities are continuing to operate under older arrangements and are currently provided for in the Forestry Act 1991. These arrangements will no longer be valid once the existing project arrangements expire. Approximately 32 Timber Rights Purchase (TRP) Agreements are still current, with expiry dates ranging up until 2 December 2031. Under this arrangement, once land use rights have been lawfully obtained by the state, the state then issues a **Timber Permit** (TP) to a timber operator in accordance with established procedures to remove the timber on agreed terms and conditions, including the payment of royalties.

#### Allocation of Local Forest Areas (LFAs):

- Landowners are required to form and incorporate their landowner companies;
- Individual landowners then enter into a 'private dealings' agreement with the landowner company as a business entity.
- After signing the private dealings (agreements), the landowner's company then enters into a Logging and Marketing Agreement (LMA) with a contractor of their choice to conduct logging operations in the LFA project area.
- Logging will only commence once the Minister for Forests gives their **consent**.

#### *Description of risk*

- According to some experts consulted, there is essentially 100 per cent occurrence of bribery and/or corruption with all permits and licenses allocated in PNG, i.e. bribes are involved in all permits and licenses issued in some way. Experts also report that it is very difficult to obtain evidence of this taking place.
- Detecting bribery and corruption are very difficult to trace in a supply chain, and the complexity, and multitude of layers of authority and decision making in PNG makes this even harder.
- The Forestry Act 1991 amended and regulations allows for Provincial Forest Management Committee to have a say on who develops the project, based on technical and economic guidance of PNG Forestry Authority, but as the process goes to the National Forest Board and Minister, the Minister on several occasions has made decisions in contrary to PFMC recommendations to the Board. For example, before the Supreme Court ruling in 2009, the National Forest Board had granted Timbers PNG the license to log the area despite the PMFC's choice which was Madang Timbers Ltd (Expert consultation 2016).
- The official line of the PNG government is that a government issued timber export permit is evidence of legal compliance in a supply chain (PNG Country Specific Guidelines 2015), but the government also refuses to acknowledge the risk of bribery and corruption in the forest sector – which is widely reported by varied actors (Filer et al 2009, Expert consultation 2016, Forest Legality Alliance 2015, Global Witness 2014, Greenpeace

Australia Pacific 2011, Greenpeace 2010, Chatham House 2013, Institute for Global Environmental Strategies 2016, Gabriel & Wood 2015, Ken 2015, Chatham House 2014, Oakland Institute 2017, Oxfam 2014, Transparency International Papua New Guinea 2015)

- Chatham House, (Lawson 2014) states that the types of illegality recorded in PNG include licenses to harvest timber being issued or extended in breach of regulations (especially those relating to consultation with indigenous landowners).
- According to many sources, the dramatic increase in the number of SABLs applied for and issued from 2009-2011 was because the logging companies realised the process for obtaining a new FMA was quite difficult, particularly in relation to the landowner consent requirements (Expert consultation Port Moresby November 2016).
- Experts also noted, in relation to the consent requirements under the FMAs that, although the requirements are very clear, they are sometimes not complied with. In some instances, approval from only *some* of the landowners is obtained. Experts cited corruption and undue influence of large companies at the highest level as key drivers for the non-compliance (Expert consultation Port Moresby November 2016). According to the PNGFA, The records of the stakeholder consultation and consent should be available upon request.
- Regarding the SABLs, Commissioner Mirou (2014) found that “in some instances [...], inferences from very strong evidence suggests that not only the Dept. of Lands and Physical Planning officials but landowner companies and ILG executives have been compromised. These will be noted in instances where grants of title were made directly to foreign entities (developers) as well as where transfer of shares of the SABL title holding company to other or foreign entities resulted with control of title to be in foreign hands.” Mirou goes on to states that:
- “In respect of Forestry (PNGFA), many FCAs were issued in questionable circumstances. Many of these FCAs issued, were not supported by authentic, verified and approved agriculture development plans. Even if these FCAs were supported by properly approved agriculture development plans, during the operations in many instances it had been noted that the operators or developers departed or digressed from the approved agriculture plans.
- In other instances, the proportionate agriculture development phased out per every 500 hectares maximum area over which clear felling of forests can take place, it has been noted that FCAs were nonetheless given and logging generally continued into areas not immediately within the 500 hectares phases but over the whole areas of SABLs.”
- There is a general risk of corruption in Papua New Guinea. The 2016 Transparency International’s Corruption Perceptions Index ranked Papua New Guinea 136th out of 177 countries assessed and scored it 28 out of 100, meaning it has a high perception of corruption. The 2015 World Bank Worldwide Governance Indicators (WGI) gave Papua New Guinea the following scores out of 100: Voice and Accountability: 49.26; Political Stability and Absence of Violence: 24.29; Government Effectiveness: 29.81; Regulatory Quality: 31.25; Rule of Law: 18.75 and Control of Corruption: 14.42.

- The issuance of Timber License to a company outside scope of Timber Permit and Timber Authority creates room for corruption and illegal processes, which could lead to non-payments of taxes, royalties and fees.

#### *Risk conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities. Risk have been identified associated with the incorporation of land groups and the acquisition of landowner consent.

#### **1.2.6. Risk designation and specification**

Specified risk

#### **1.2.7. Control measures and verifiers**

- Proper legal procedures for obtaining concession licenses shall be followed.
- Valid concession license agreements shall exist.
- The process of obtaining concession shall follow an open and transparent process based on clear criteria and be confined to eligible organisations.
- Retrospective verification of the validity of a permit allocation process to reduce the risk of corruption and bribery is not possible. Independent 3<sup>rd</sup> party verification of a secure supply chain is the only way to mitigate this risk.

### **1.3. Management and harvesting planning**

*Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.*

#### **1.3.1. Applicable laws and regulations**

- Forestry Act 1991, Section 58-60, 99, and 101-102. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Forestry Regulations 1998. Available at: [http://faolex.fao.org/cgi-bin/faolex.exe?rec\\_id=034471&database=faolex&search\\_type=link&table=result&lang=eng&format\\_name=@ERALL](http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=034471&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL)
- Logging Code of Practice 1996. Available at: [http://www.fiapng.com/PDF\\_files/PNG%20LOG%20CODE%20OF%20PRACTICE.pdf](http://www.fiapng.com/PDF_files/PNG%20LOG%20CODE%20OF%20PRACTICE.pdf)
- Environment Act 2000. Available at: <http://faolex.fao.org/docs/texts/png70607.doc>

#### **1.3.2. Legal authority**

- PNG Forest Authority
- Department of Labour and employment
- Department of Commerce, Trade and Industry

- Conservation Environment Protection Authority

### 1.3.3. Legally required documents or records

For timber harvested under Forest Management Agreements, Timber Rights Purchase Agreements or Local Forest Area agreements:

- 5-year logging plan, approved by the PNGFA Managing Director, copies held by the Timber business and the Provincial Forest Office; and
- Annual logging plan, approved by the PNGFA Managing Director, copies held by the Timber business and the Provincial Forest Office
- Set-up plans

### 1.3.4. Sources of information

#### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

#### *Non-Government sources*

- Forest-trends.org, (2006). *Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I*. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]

- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- Colin Filer, Rodney J. Keenan, Bryant J. Allen, John R. Mcalpine (2009). *Deforestation and forest degradation in Papua New Guinea*. Available at: [https://crawford.anu.edu.au/pdf/staff/rmap/cfiler/Filer et al 2009.pdf](https://crawford.anu.edu.au/pdf/staff/rmap/cfiler/Filer_et_al_2009.pdf) [accessed 30 January 2017]
- Global Witness (2014). *The people and forests of Papua New Guinea under threat: the government's failed response to the largest land grab in modern history*. Available at: [https://www.globalwitness.org/documents/10526/png\\_brief.pdf](https://www.globalwitness.org/documents/10526/png_brief.pdf) [accessed 30 January 2017]
- Greenpeace Australia Pacific (2011). *BRIEFING: Special-purpose agricultural and business leases in Papua New Guinea* Available at: [http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing\\_smaller\\_F-1.pdf](http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing_smaller_F-1.pdf) [accessed 30 January 2017]
- Greenpeace (2010). *Papua New Guinea: Not ready for REDD*. Available: <http://www.greenpeace.org/australia/Global/australia/report/2010/10/papua-new-guinea-not-ready-fo.pdf> [accessed 26 July 2017].
- Hoare, A. for Chatham House (2013). *Illegal Logging: Are We Making Progress?* Available at: <https://www.illegal-logging.info/content/illegal-logging-are-we-making-progress-0> [accessed 26 July 2017].
- Jennifer Gabriel & Michael Wood (2015) *The Rimbunan Hijau Group in the Forests of Papua New Guinea*, *The Journal of Pacific History*, 50:3, 322-343, DOI: 10.1080/00223344.2015.1060925. Available at: <https://pngexposed.files.wordpress.com/2016/01/rh-in-the-forests-of-png-jcu-2015.pdf> [accessed 26 July 2017].
- Ken, B. (2015). *Papua New Guinea - Mapping REDD+ Finance Flows 2009-2014*. Available at: <https://www.illegal-logging.info/file/2851> [accessed 26 July 2017].
- Lawson, S. for Chatham House (2014). *Illegal logging in Papua New Guinea* Available at: [https://www.illegal-logging.info/sites/default/files/Lawson Papua New Guinea PP 2014.pdf](https://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 26 July 2017]
- Oakland Institute (2017). *Taking On the Logging Pirates, Land Defenders in Papua New Guinea Speak Out!* Available at: <https://www.oaklandinstitute.org/illegal-logging-papua-new-guinea-speak-out-palm-oil-corruption> [accessed 26 July 2017].
- Oxfam (2014). *Banking on Shaky Ground*. Available: <https://www.illegal-logging.info/file/2448> [accessed 26 July 2017].



- Transparency International Papua New Guinea (TIPNG) (2015). Forest Governance Integrity Baseline Report - Papua New Guinea. Available at: <https://pngforests.files.wordpress.com/2013/05/forest-governance-integrity-report-ti.pdf> [accessed 17 January 2017].

### 1.3.5. Risk determination

#### *Overview of Legal Requirements*

Holders of Timber Permits issued under Forest Management Agreements (or the now superseded TRPs or LFAs) are required to produce the following plans (extracted from Wilkinson, 2013):

- Five-Year Plan
- Annual Plan
- Set-up Plan

The *five-year plan* is a strategic plan that is required under s 101 of the Forestry Act to be produced every three years to show where logging is intended to occur over a rolling five year period. It contains a project statement, inventory data and the location of permanent roads, log ponds and logging base camps. It is submitted to the PNGFA for the approval of the Managing Director.

The *annual plan* is required to be produced under s 102 of the Forestry Act. The plan shows the location of the set-ups that are to be harvested over the next 12 months, together with inventory data, the location of log ponds, logging base camps and the proposed construction and de-commissioning of roads. It is submitted to the PNGFA Regional Office for evaluation and forwarding to the PNGFA Managing Director for approval.

The set-ups are the individual harvesting areas, sometimes called coupes in other jurisdictions. A plan is required for each set-up under the Planning Monitoring and Control (procedures) under the Logging Code of Practice (LCoP). The set-up plan is a detailed, operational plan with pre-logging inventory and a map at a scale of 1:5000 or 1:10000 that shows harvest boundaries, proposed roads, skid trails, landings, stream crossings and buffers, cultural sites and other areas that are excluded from harvesting. The set-up plans are prepared by the permit holder and forwarded to the responsible PNGFA project supervisor for evaluation and approval. The plans are evaluated in accordance with two standard forms contained within the PMC Procedures-

- Set-up Plan Approval Evaluation Procedure Part 1: Data Review comprises 30 factors, covering landowner consent, cultural sites, map details, watercourse crossings, road decommissioning schedule, inventory data and tree tagging.
- Set-up Approval Evaluation Procedure Part 2: Pre approval Field Inspection comprises 25 factors and five key standards of the Logging Code of Practice, including the set-up map, boundaries, roads, watercourses, crossings, buffers, skid trails, landings and tree selection

#### *Description of Risk*

##### *Risk associated with the preparation of the plans*

- According to Wilkinson (2013), many of the larger forestry companies in PNG have adequate resources to carry out their planning and implementation functions, including: trained professional foresters with skills in inventory, survey, GPS and GIS/mapping; advanced technical tools including GPS and GIS systems, which enable the production of accurate contour maps and accommodation, transport and communication systems.
- These views were broadly echoed during expert consultation meetings, the planning process was described as good, largely due to the resources available to the large foreign owned companies acting in the PNG forestry sector. Experts stated that most companies have sophisticated in house capacity for forest management planning, and did not perceive this to be an area of particular risk.
- However, Bob Tate of the PNGFIA noted in the Wilkinson report that 'the resources and capacity within forest companies in PNG is variable.' (Wilkinson, 2013).
- Experts consulted also noted that there is no independent review carried out of the management plans, reducing the likelihood that poor planning is identified.
- Wilkinson also states that the lack of resources within PNGFA, particularly at the forest level (project officers), has raised concerns about the adequacy of the PNFGA process for the evaluation, approval and monitoring of set-up plans (Wilkinson 2013).
- There are numerous reports (both formal and anecdotal) of widespread corruption in PNG, and particularly in the forest sector. As there is no independent oversight of the planning process, there is a risk that companies may pay bribes to officials to approved inadequate or poor forest management plans (Filer et al 2009, Expert consultation 2016, Forest Legality Alliance 2015, Global Witness 2014, Greenpeace Australia Pacific 2011, Greenpeace 2010, Chatham House 2013, Institute for Global Environmental Strategies 2016, Gabriel & Wood 2015, Ken 2015, Chatham House 2014, Oakland Institute 2017, Oxfam 2014, Transparency International Papua New Guinea 2015)

*Risk associated with compliance monitoring and enforcement*

- While PNG has a strong legal framework for forest management, it is weakly enforced, meaning that there are significant legality risks associated with PNG export timber. In a confidential survey of expert perceptions covering about 30 respondents from government, the private sector, non-governmental organizations (NGOs) and others, a Chatham House study found that 90% of the experts interviewed felt illegal logging to be either a major or the main cause of forest destruction in PNG (Chatham House 2014).
  - Corruption was felt, on average, to be the most important type of illegality in the forest sector in PNG, including corruption within the forest service and among the police and judiciary. Illegal issuance of logging licences was also judged to be especially important, as was illegal activity by licensed loggers. Illegal artisanal logging was scored the lowest, on average, on a scale of importance of different types of illegality, together with other unlicensed illegal logging and log smuggling (Chatham House 2014).
  - All of the different possible types of illegal activity by licensed logging companies were considered to be present to some extent, but the most prevalent were judged, on average, by respondents to be logging under-size trees and breaches of obligations to local communities. Logging in protected areas or of prohibited species were felt to be less prevalent. The former may be partly because there are

relatively few protected areas,<sup>78</sup> while those that do exist are very inaccessible (Chatham House 2014)..

- Expert consultation reinforced the key risks associated with this indicator are in the monitoring and enforcement of the legal requirements, and of capacity. Issues cited by experts related to: the vast and often inaccessible areas of the forestry projects (the largest of which is 400,000 hectares, and is monitored by a single PNGFA Project Officer, who does not have their own vehicle); and the dependence of the Project Officers on the logging companies. Often the under resourced project officers live onsite with the companies, sharing meals and accommodation for extended periods. Officers are often dependent on the companies for transport, either via the vehicles of the companies or for repairs on government vehicles. This dependent relationship makes independence and impartiality from the project officers very difficult.
- There is a general risk of corruption in Papua New Guinea. The 2016 Transparency International's Corruption Perceptions Index ranked Papua New Guinea 136th out of 177 countries assessed and scored it 28 out of 100, meaning it has a high perception of corruption. The 2015 World Bank Worldwide Governance Indicators (WGI) gave Papua New Guinea the following scores out of 100: Voice and Accountability: 49.26; Political Stability and Absence of Violence: 24.29; Government Effectiveness: 29.81; Regulatory Quality: 31.25; Rule of Law: 18.75 and Control of Corruption: 14.42.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.3.6. Risk designation and specification**

Specified risk

#### **1.3.7. Control measures and verifiers**

- 5 year FMP approved by the MD and annual logging plan, approved by the PNGFA shall exist for the FMU where the harvesting is taking place.
- Maps showing harvesting areas (in compliance with the harvesting plan) can be reviewed to confirm harvesting takes place in the legally prescribed areas
- Forest management plans shall contain all legally required information and procedures.
- Annual logging plans shall contain information and procedures, according to all legal requirements.
- The contents of the operating and harvesting plans shall be consistent with approved forest management plans.
- Harvesting restrictions shall be identified in management plan and maps if legally required.
- Harvesting inventories shall be conducted according to legal requirements.
- Field verifications carried out by independent third party shall indicate that the contents of the harvesting plans are adhered to in the field.

- Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process.
- The Forest Management Plan shall have been approved according to the legally prescribed process. Record of correspondence for the approval process shall be in place. Clear evidence (e.g., maps) shall confirm that the management plan area is located within the licensed FMU.
- If legally required, annual operating or harvesting plans shall be in place and approved by legally qualified authorities. (Required for all concessionaires)
- If legally required, a current, approved operating or harvesting plan shall exist.

Required documents for concessionaires include:

- Five Year Working Plan authorized by PNGFA as per the Forestry Act.
- Annual Logging Plan authorized by PNGFA as per the Forestry Act
- Operational Set-up Plan (harvesting plan) authorized by PNGFA as per the Forestry Act.

## 1.4. Harvesting permits

*Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.*

### 1.4.1. Applicable laws and regulations

- Forestry Act 1991. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Forestry Regulations 1998. Available at: [http://faolex.fao.org/cgi-bin/faolex.exe?rec\\_id=034471&database=faolex&search\\_type=link&table=result&lang=eng&format\\_name=@ERALL](http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=034471&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL)
- Logging Code of Practice 1996. Available at: [http://www.fiapng.com/PDF\\_files/PNG%20LOG%20CODE%20OF%20PRACTICE.pdf](http://www.fiapng.com/PDF_files/PNG%20LOG%20CODE%20OF%20PRACTICE.pdf)
- Environment Act 2000. Available at: <http://faolex.fao.org/docs/texts/png70607.doc>
- Planning, Monitoring and Control Procedures for Natural Forest Logging Operations under Timber Permit (1995) (referred to as the PMC Procedures), given legal effect through the Forestry Act 1991 and the Forestry Regulation 1998 (Reg. 95(1), Reg. 241 and Schedule 2).

### 1.4.2. Legal authority

- PNG Forest Authority
- Department of Labour and employment
- Department of Commerce, Trade and Industry
- Conservation Environment Protection Authority

#### 1.4.3. Legally required documents or records

- Set-up plans
- Project officer log book
- Set-up approval
- Log tally sheets -showing how many logs being scaled as royalty will based on volume scaled as well as taxes and other fees.

#### 1.3.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

##### *Non-Government sources*

- Tomimura, C. (2013) Rainforest Alliance Standard for Verification of Legal Compliance (VLC) for Forest Management Enterprises (FME) in Papua New Guinea. [pdf] Rainforest Alliance, principal 5 (page 9). Available at: [http://www.rainforest-alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26\\_RA\\_VLC\\_Standard\\_for\\_FMEs\\_PNG\\_24Oct13.pdf](http://www.rainforest-alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26_RA_VLC_Standard_for_FMEs_PNG_24Oct13.pdf)
- Forest-trends.org, (2006). Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: <http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20refer>

[ence%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](#) [accessed 13. January 2017]

- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.

#### 1.4.5. Risk determination

##### *Overview of Legal Requirements*

In PNG, individual loggings areas (a.k.a. harvesting blocks or coupes) are referred to as set-ups. Once the 5-year forest working plan and annual logging plan are approved by the PNGFA, the logging operator (applicable to holders of Timber Permits issued under FMAs, or under TRPs or LFAs), must prepare and submit a set-up plan to the PNGFA Project Supervisor responsible for the FMA, for evaluation and approval. The PNGFA places project supervisors (often called project officers) in each concession to monitor the forestry operations. The role of the project supervisors includes ensuring the logging operations comply with the Logging Code of Practice and Key Standards for Selective Logging in PNG.

The project supervisors (employees of the PNGFA) evaluate the plans in accordance with two standard forms contained within the PMC Procedures:

1. The Set-up Plan Evaluation Procedure Part 1: Data Review comprises 30 factors, covering landowner consent, cultural sites, map details, watercourse crossings, road decommissioning schedule, inventory data and tree tagging; and
2. Set-up Approval Evaluation Procedure Part 2: Pre approval Field Inspection comprises 25 factors and five key standards of the LCOP, including the set-up map, boundaries, roads, watercourses, crossings, buffers, skid trails, landings and tree selection.

The project supervisors must approve the set-up plans prior to the opening of a coup for logging, and must also review the harvesting operation after logging has taken place, to ensure the requirements of the set-up plan was complied with.

##### *Description of Risk*

Lack of proper monitoring and enforcement, failure to carry out field inspections as required

- Expert consultation and available reports indicate that the lack of resources within PNGFA, particularly at FMA level, has raised concerns about the adequacy of the PNGFA process

for the evaluation, approval and monitoring of set-up plans (Wilkinson 2013, ODI 2007). Wilkinson states that 'forest companies complain about delays in the approval of plans, alleging that the checks are often limited to an office-based process, which is bureaucratic and superficial in nature with few field checks' (Wilkinson 2013). It is worth noting that field inspections are a requirements of the PMC Procedures.

- Forest concessions can be very large, the largest is 400,000 hectares, where a single project officer has been assigned for monitoring and enforcement. The vastness of the concessions, the nature of the terrain and the lack of resources of the PNGFA (i.e. project officers often do not have their own vehicles) make it very difficult to comply with the inspection requirements (Expert opinion of co-author F. Hurahura, supported by the opinion of experts consulted).
- According to Wilkinson, 'PNGFA officers readily concede that financial resources are not sufficient to support field inspections of every set-up.'
- The FAO, in 2009 noted that 'One of the continuing problems for the PNG Forest Authority [...] is that often it does not have adequate resources (in terms of finances and logistical support) to properly monitor and regulate compliance by the timber companies' (PNG Forestry Outlook Study, FAO, 2009, page 13).
- Wilkinson pays close attention to the issues of under-resourcing of project officers (and the findings are supported by the opinions of experts consulted in the preparation of this report), the issues may be summarized as: Inadequate access to vehicles or fuel to travel to operational areas; Many logging operations are located in remote areas that are only accessible by boat or by air and Operational budgets are not adequate to cover travel and accommodation costs.
- This under resourcing means that many officers are required to work closely with forest companies and rely upon them for basics such as housing, transport and communications. This presents a conflict of interest for officers and places them in a situation of regulatory capture (Wilkinson 2013) where the PNGFA as the regulator is not able to operate in an independent manner.
- Wilkinson also contests (and was confirmed by expert discussions in Port Moresby), that there is inadequate training and education programs for supervisory staff, operators and landowners. This significantly reduces compliance with many/all legal requirements in the field.
- Actions have been taken to try to improve the situation in the field, including increasing the pay of the project officers to make them less susceptible to accepting bribes, but anecdotal reports note that this is still a systematic issue. Increasing the pay of the project officers was reportedly a strategy to reduce the likelihood of officers accepting bribes (expert discussions in Port Moresby).
- The risk of a lack of field verification is present in almost all FMAs, and is very difficult to detect retrospectively.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.



#### **1.4.6. Risk designation and specification**

Specified risk

#### **1.4.7. Control measures and verifiers**

- Review log book to determine if monitoring and enforcement is being carried out.
- Field verification is necessary to determine if the harvesting permit is being complied with.
- Field visits shall verify that maps are in compliance with reality
- Field inspection shall confirm that harvesting takes place within limits given in the harvesting permit.
- Field inspection shall confirm that information regarding area, species, volumes and other information given in the harvesting permit are correct and within limits prescribed in the legislation
- Onsite verification shall confirm that harvesting permits are issued after logged out set-up is assessed and new setup is released once necessary requirements as per logging code of practice and project monitoring control procedures are adhered too.

## TAXES AND FEES

### 1.5. Payment of royalties and harvesting fees

*Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.*

#### 1.5.1. Applicable laws and regulations

- Forestry Act 1991 and amendment 2005, Section 118, 119, 120 and 121. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Procedures of the identification, scaling and reporting (including royalty self-assessment) on logs harvested from natural forest logging operations PNGFA 1996.

#### 1.5.2. Legal authority

- PNG Forest Authority
- Internal Revenue Commission

#### 1.5.3. Legally required documents or records

- Royalty payable is fixed by the Forest Minister in the Timber Permit on the volume of merchantable timber or forest produce calculated at stump. A price is set per cubic metre of log recovered. The volume is then based on the log volumes as per the tally sheets. See the Procedures of the identification, scaling and reporting (including royalty self-assessment) on logs harvested from natural forest logging operations (PNGFA, 1996). This is a key requirement.
- Timber Permit / license / approval
- Project Agreement

#### 1.5.4. Sources of information

##### *Non-Government sources*

- Lawson, S. (2014). *Illegal Logging in Papua New Guinea*. [online] Illegal-logging.info Available at: [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 13 January 2017].
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.

- PricewaterhouseCoopers (PwC) for the Papua New Guinea Forest Industries Association (PNG FIA) (2006). *Economic Analysis and Potential of PNG Forestry Industry - Final Report*. Available at: [http://www.fiapng.com/PDF\\_files/PWC\\_ECONOMIC\\_REPORT\\_07.pdf](http://www.fiapng.com/PDF_files/PWC_ECONOMIC_REPORT_07.pdf) [accessed 13 January 2017]
- Roberts, G. for the Age (2002). *Landowners rebel as loggers cut a path of destruction* Available at: <http://www.theage.com.au/articles/2002/04/12/1018333417644.html> [accessed July 2017].
- Roberts, G. for the SMH (2002). *Sold down the river* Available at: <http://www.smh.com.au/articles/2002/04/12/1018333418610.html> [accessed 27 July 2017]
- Greenpeace (2002). *Partners in crime: Malaysian timber markets and the politics of self-interest in Papua New Guinea*, Greenpeace International, The Netherlands Available at: <http://www.greenpeace.org/australia/PageFiles/320427/partners-in-crime-malaysian-l.pdf>

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

The National Forest Policy prescribes that Forestry Industry Participants must pay royalties on the logs harvested to landowners, via the PNGFA. Royalty payable is fixed by the Forest Minister in the Timber Permit on the volume of merchantable timber or forest produce calculated at stump. A price is set per cubic metre of log recovered. The volume is then based on the log volumes as per the tally sheets (in accordance with ss 118-121 of the Forestry Act and the Procedures of the identification, scaling and reporting (including royalty self-assessment) on logs harvested from natural forest logging operations PNGFA 1996).

Once a log is harvested in PNG, it is moved to the snicking point (log landing site) where it is measured and labelled by a log scaler. The Log scaler works for the concession company, but are licensed and monitored by the PNGFA. There is a strong incentive for landowners ensure the scaling is being done properly because their royalties are determined by the scaling. Declarations are made by companies to the government about what has been harvested the preceding month. The Government issues an invoice to the company for a preceding period, they receive a receipt upon payment. The royalties are then distributed to clan leaders by the government.

Overall, the PNG forestry industry is regarded as one of the more heavily taxed industries in the economy and the high taxation regime, according to PWC, 'the royalty and tax burdens on the forestry industry in PNG appear high', PWC states that this is seen as a disincentive for companies to invest in the sector (PWC 2006).

##### *Description of Risk*

##### *Risk of non-payment of royalties*

- According to Chatham House (2014), "there are no systems in place within the PNGFA for checking actual harvest volumes against revenues and investigating discrepancies. The office of the auditor-general sought to carry out such checks during its last audit in 2009, but found that to do so properly would have required it to examine direct log scaling sheets kept by each individual provincial forest office, which was beyond its capabilities.

Using available collated data stored at headquarters, it was nevertheless able to demonstrate significant discrepancies that had apparently gone unnoticed. It compared harvesting records against amounts of royalties collected for January 2001–August 2008, finding that almost \$4 million was missing.”

- According to the experts interviewed, the landowners themselves are a credible control to ensure compliance with requirements for the payment of royalties. Landowners are usually present at the log landing site to ensure the scaling and grading is done correctly as it impacts the royalties they receive.
- A number of experts interviewed mentioned reported issues with the distribution of royalties both to the clan leaders from government, and within clans by the clan leaders (Expert consultation 2016, Roberts 2002, FAO 2009, ). The Chairman of the Incorporated Land Group (i.e. and usually the Clan leader) is supposed to receive the payment from the government and then distribute within the clan, but this is not happening. According to some sources, the ILG chairmen are getting paid by the companies to mount legal claims, or defend against them, from their own clans people for improper distribution of royalties.
- According to Roberts (2002) “Logging royalties are often not paid to landholders as required, a point demonstrated by a World Bank audit of Balokoma, a New Britain landowners' company which received royalties. The audit found funds were misused by management and no tangible benefits were passed to landowners. Money used to support a hire care service was written off after vehicles were crashed, and the wives of managers cashed account cheques "on a daily basis".

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.5.6. Risk designation and specification**

Specified risk

#### **1.5.7. Control measures and verifiers**

- Receipts shall exist for payments of harvesting related royalties, taxes, harvesting fees and other charges.
- Volumes, species and qualities given in sales and transport documents shall match the paid fees.
- Classification of species, volumes and qualities shall match the royalties and fees paid.
- Stakeholder consultation with landowners shall verify proper distribution of royalties in accordance with the law.

### **1.6. Value added taxes and other sales taxes**

*Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

#### **1.6.1. Applicable laws and regulations**

- Forestry Act 1991 and amendment 2005, Section 117 (Quality Control). Available at: [http://thereddddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://thereddddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Income Tax Act 1959, section 118 (Control, etc., of transfer pricing). Available at: [http://www.paclii.org/pg/legis/consol\\_act/ita1959116.rtf](http://www.paclii.org/pg/legis/consol_act/ita1959116.rtf).
- Valued Added Tax Regulation 1999. Available at: <http://policy.mofcom.gov.cn/GlobalLaw/english/flaw!fetch.action?libcode=flaw&id=1540ead6-42d1-4e84-811b-7437c3e0cdbb&classcode=560>
- Goods and Services Tax (08 Budget Amendment) Act 2007. Available at: [http://www.treasury.gov.pg/html/legislation/files/acts/Goods%20&%20Services%20Tax%20\(2008%20Budget%20Amendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Goods%20&%20Services%20Tax%20(2008%20Budget%20Amendment)%20Act%202007.pdf)

#### 1.6.2. Legal authority

- PNG Forest Authority
- Internal Revenue Commission

#### 1.6.3. Legally required documents or records

- For logs: Commercial invoice from SGS
- Receipts for payment of all applicable levies (stated in the Project Document).
- Export permit signed by the Minister.

#### 1.6.4. Sources of information

##### *Non-Government sources*

- PricewaterhouseCoopers (PwC) for the Papua New Guinea Forest Industries Association (PNG FIA) (2006). *Economic Analysis and Potential of PNG Forestry Industry - Final Report*. [pdf] PricewaterhouseCoopers. Available at: [http://www.fiapng.com/PDF\\_files/PWC\\_ECONOMIC\\_REPORT\\_07.pdf](http://www.fiapng.com/PDF_files/PWC_ECONOMIC_REPORT_07.pdf) [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2012). *The Report: Papua New Guinea 2012: Tax*. [pdf] Oxford Business Group. [online] Available at: <http://www.oxfordbusinessgroup.com/node/779733/reader> [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2015). *Papua New Guinea 2015: Agriculture & Fisheries - PNG's export of raw logs support growth*. [online] Available at: <http://www.oxfordbusinessgroup.com/country/papua-new-guinea/agriculture?page=2> [Accessed 13 January 2017].
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]

- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- Lawson, S. (2014). *Illegal Logging in Papua New Guinea*. [online] Illegal-logging.info Available at: [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 13 January 2017].

#### 1.6.5. Risk determination

##### *Overview of Legal Requirements*

In addition to the royalties described in 1.5., Forest Industry Participants in PNG are also liable to pay:

- Log export levy (a.k.a log export tax)
- Follow-up development levy
- Agriculture development levy
- Forest management levy
- Resource replacement levy
- PNGFA levy

The levies and forest related charge (i.e. the reforestation, agriculture, landowner levy) are calculated at the point of export and are based on the sale price of the timber. The Log export levy is calculated on a progressive scale on the price of exported logs. It is currently approximately 8kina/m<sup>3</sup>. SGS, the private inspection and verification company contracted by the PNG government, monitors log exports and reports on volumes and prices on a monthly basis.

The PNGFA has a log price barometer where they collate a sample of log prices claimed for the key species as a bench mark of price.

### *Description of Risk*

- Payment of export levies for log exports has been independently monitored since 1994 by SGS and this has effectively ensured that all export taxes charged have been paid – although questions have been repeatedly raised about whether the full amounts due are in fact being charged, since there is evidence that log values may be being deliberately under-declared (Chatham House 2014).
- Regarding SGS's role, Chatham House 2014 states "The independent monitoring of log exports by SGS does involve a computerized system that includes volumes exported and taxes paid by individual logging concessionaires, but the database only captures a part of the timber administration system. The problems with data collection and management are demonstrated by apparent confusion over one of the most fundamental factors – the amount of timber officially harvested. Research by Chatham House for the wood balance analysis in this report exposed large differences in data for licensed harvests reported by the PNGFA's Field Services Division (as cited in the country's REDD+ R-PP) and that reported in PNGFA annual reports."
- Undervaluing the price of logs that are sold and exported has been reported as means for forestry companies in PNG to reduce their export tax liabilities (according to the Oakland Institute report and expert consultation conducted in Port Moresby in November 2016). According to the Oakland Institute (2015), there is no mechanism in place to verify the prices or what happens to the logs once they are exported from the country. There are strong reasons to believe that underpricing is practiced by the logging companies in PNG. That report further states "The declared export prices for PNG timber are significantly lower than those of other major exporters of tropical logs.<sup>8</sup> For the past 15 years, the average price per cubic meter is 20% lower for PNG than the average of the other five major exporters of tropical timber. In 2014, the PNG export price per cubic meter was \$210 vs. \$388 for the average of the five other major exporters of tropical wood (making PNG timber 46% cheaper). Applied to the 2014 volume of log exports (3.8 million cubic meters), this variation makes a \$679 million difference in annual revenue for the industry."
- Chatham House 2014 states "there is evidence that log values may be being deliberately under-declared". "Official independent reviews into log export taxes in 2000,<sup>88</sup> 2002,<sup>89</sup> and 2004 all found evidence suggesting that declared log export values may be being fraudulently understated in order to avoid taxes, and recommended further investigation. No such investigation was ever carried out, however. The 2002 review examined prices declared at export from PNG and at import in China, Japan and Korea, and found that the differences were too large to be explained by the costs of insurance and freight.
- Export prices declared for PNG timber are significantly lower than those declared by other major exporters of tropical logs—except Malaysia, which has similarly low prices. At an average of \$184 between 2000 and 2014, the price per cubic meter for PNG exporters is 20% lower than the average of the other five major exporters of tropical timber and 26% lower than the average for the rest of the world. (Oakland Institute 2015). The above



elements concur to indicate the strong likelihood that transfer pricing is happening in PNG through underpricing.

- The IGES Report (2016) also states that 'the export log monitoring system does not guarantee that export timber is fully legal. The system only allows traceability of timber back to the harvesting block, not the stump, and was never intended to provide assurance of legality.'

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.6.6. Risk designation and specification**

Specified risk

#### **1.6.7. Control measures and verifiers**

- Sales documents shall include applicable sales taxes.
- Receipts for payment sales taxes shall exist.
- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Sales prices shall be in line with market prices.
- Harvested species, volume and qualities shall match the sales documents.
- Authorities shall confirm that operation is up to date in payment of applicable sales taxes.
- Consultation with financial authority to verify that all required income and profit taxes have been paid
- Comparisons of the sale price/export tax paid with market value can be undertaken to determine the risk of tax minimisation.

### **1.7. Income and profit taxes**

*Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.*

#### **1.7.1. Applicable laws and regulations**

- Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates (08 Budget Amendment) Act 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/Income\\_Tax\\_Div\(With\)%20Tax\\_Interest%20\(With\)%20Tax\\_Rates%20\(2008%20Budget%20Amendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Income_Tax_Div(With)%20Tax_Interest%20(With)%20Tax_Rates%20(2008%20Budget%20Amendment)%20Act%202007.pdf)
- Value Added Tax Act 1998. Available at:  
[http://www.paclii.org/pg/legis/consol\\_act/vata1998132/](http://www.paclii.org/pg/legis/consol_act/vata1998132/)
- Value Added Tax Regulation 1999. Available at:  
[http://www.paclii.org/pg/legis/consol\\_act/vatr1999223/](http://www.paclii.org/pg/legis/consol_act/vatr1999223/)

- Companies Act 1997 consolidated to No 66 of 2000. Available at:  
<http://www.treasury.gov.pg/html/legislation/files/acts/2012.companies-ammendment.act.pdf>

#### 1.7.2. Legal authority

- Internal Revenue Commission (IRC)
- Investment Promotion Authority

#### 1.7.3. Legally required documents or records

- Audited Financial Statements
- Balance sheet
- Profit and Loss statements

#### 1.7.4. Sources of information

##### *Non-Government sources*

- PricewaterhouseCoopers (PwC) for the Papua New Guinea Forest Industries Association (PNG FIA) (2006). *Economic Analysis and Potential of PNG Forestry Industry - Final Report*. [pdf] PricewaterhouseCoopers. Available at:  
[http://www.fiapng.com/PDF\\_files/PWC\\_ECONOMIC\\_REPORT\\_07.pdf](http://www.fiapng.com/PDF_files/PWC_ECONOMIC_REPORT_07.pdf) [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2012). *The Report: Papua New Guinea 2012: Tax*. [pdf] Oxford Business Group. [online] Available at:  
<http://www.oxfordbusinessgroup.com/node/779733/reader> [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2015). *Papua New Guinea 2015: Agriculture & Fisheries - PNG's export of raw logs support growth*. [online] Available at:  
<http://www.oxfordbusinessgroup.com/country/papua-new-guinea/agriculture?page=2> [Accessed 13 January 2017].
- Lawson, S. (2014). *Illegal Logging in Papua New Guinea*. [online] Illegal-logging.info Available at: [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 13 January 2017].
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at  
[http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture

Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at:

[http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]

- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- Transparency International (2012). *Tackling Forestry Corruption Risks in the Asia Pacific* Available at: [https://issuu.com/transparencyinternational/docs/2012\\_tacklingforestrycorruption\\_asiapacific\\_en](https://issuu.com/transparencyinternational/docs/2012_tacklingforestrycorruption_asiapacific_en) [accessed 13 January 2016]
- Forest Trends (2006). *Logging, Legality and Livelihoods in Papua New Guinea – Synthesis of Official Assessments of the Large-Scale Logging Industry* [online]. Volume I. Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf)

#### 1.7.5. Risk determination

##### *Overview of Legal Requirements*

Businesses operating in PNG are generally required to adhere to the following main tax legislation:

- the Income Tax Act;
- the Goods and Services Tax Act;
- the Customs Act and
- the Income Tax (International Agreements) Act.

The Income Tax Act specifies two types of rules: specific and general. The specific rules apply to taxpayers involved in mining, petroleum and designated gas projects. The general rules of taxation apply to all other taxpayers. The act also provides for various incentives to promote certain type of industries. These include citizen training and employment, and rural and export development.

Logging companies in PNG are liable for income tax which is currently set at a level of approximately 30 per cent. Resident corporations are required to pay a 30% corporate income tax on their profits less any deductible credit or rebate.

### *Description of Risk*

Overvaluing operational expenses through the use of multiple companies and subsidiaries in logging operations have been reported as a means for forestry companies in PNG to reduce their income tax liabilities (according to the Oakland Institute report and expert consultation conducted in Port Moresby in November 2016).

The Oakland Institute conducted an analysis of the largest logging company in PNG, Rimbunan Hijau. According to their report, 16 subsidiaries of the RH Group who cumulatively account for at least a quarter of PNG's total log exports by volume and value, have been working at a loss for over a decade. During the period analysed (2000-2011), RH PNG, the local parent company, declared nine years of losses and only two years of profits. Their two years of profits made a total of \$2.8 million while their nine years of losses amounted to \$42.2 million. This trend is consistent with most of the other 15 subsidiary companies analysed. According to tax filings for the period 2000 to 2011, most of the 16 RH companies analyzed have been working at a loss and never paid any income tax.

The Oakland Institute report further contends that the RH findings 'reflect a more general pattern with the rest of the logging industry in PNG. The financial records of the industry show low profit margins resulting in low corporate taxes.<sup>35</sup> Whereas the annual revenues of the PNG forest industry have been oscillating between \$200 and \$300 million in recent years, profits in the sector appear to be surprisingly very low—generally around \$8 to \$9 million per year' (Oakland Institute, 2015).

Significantly, the Oakland Institute report does state that the risk related to under reporting of profits does not apply to the state owned plantations operating in PNG: "PNG Forest Product Ltd's records show an average profit margin of about 15% between 2008 and 2011. During the same period, the average profit margin of the rest of the industry was only 2%, including two years when the margin was close to zero." PNG Forest Product Ltd is a supplier of timber and wood products that exclusively uses wood harvested in plantations run by the National Forest Services and is 20% state-owned.

Chatham House (2014) states "all exports from PNG must be considered 'high-risk', with the possible exception of the small volumes of plantation species and the even smaller volumes of natural forest timber that are independently verified legal or independently certified legal and sustainable by FSC."

### *Risk Conclusion*

Natural forests and privately owned plantations: This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities. This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

State owned Plantation forests: This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities

#### **1.7.6. Risk designation and specification**

Plantation forests: Low risk

Natural forests: Specified risk

**1.7.7. Control measures and verifiers**

- Consultation with financial authority to verify that all required income and profit taxes have been paid.
- Access to audited financial statements shall confirm correct taxes have been paid.
- Third party verification of audited financial statements can further confirm that correct taxes have been paid.

## TIMBER HARVESTING ACTIVITIES

### 1.8. Timber harvesting regulations

*Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.*

#### 1.8.1. Applicable laws and regulations

- Forestry Act 1991. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Forestry Regulations 1998. Available at: [http://faolex.fao.org/cgi-bin/faolex.exe?rec\\_id=034471&database=faolex&search\\_type=link&table=result&lang=eng&format\\_name=@ERALL](http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=034471&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL)
- Logging Code of Practice 1996. Available at: [http://www.fiapng.com/PDF\\_files/PNG%20LOG%20CODE%20OF%20PRACTICE.pdf](http://www.fiapng.com/PDF_files/PNG%20LOG%20CODE%20OF%20PRACTICE.pdf)
- Planning, Monitoring and Control Procedures for Natural Forest Logging Operations under Timber Permit (1995) (referred to as the PMC Procedures), given legal effect through the Forestry Act 1991 and the Forestry Regulation 1998 (Reg. 95(1), Reg. 241 and Schedule 2).

#### 1.8.2. Legal authority

- PNG Forest Authority
- Department of Works and Transport
- Department of labour & Employment
- Conservation Environment Protection Authority

#### 1.8.3. Legally required documents or records

- Five Year Forest Working Plan
- Annual Forest Working Plan
- Set-up plans which shows main access road, skids tracks, log landings, etc.

#### 1.8.4. Sources of Information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

### Non-Government sources

- Tomimura, C. (2013) Rainforest Alliance Standard for Verification of Legal Compliance (VLC) for Forest Management Enterprises (FME) in Papua New Guinea. [pdf] Rainforest Alliance, principal 5 (page 9). Available at: [http://www.rainforest-alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26\\_RA\\_VLC\\_Standard\\_for\\_FMEs\\_PNG\\_24Oct13.pdf](http://www.rainforest-alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26_RA_VLC_Standard_for_FMEs_PNG_24Oct13.pdf)
- Forest-trends.org, (2006). Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- ODI, (2007). *What can be learnt from the past? A history of the forestry sector in Papua New Guinea - Papua New Guinea Forest Studies*. [online] Overseas Development Institute, London. Available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/90.pdf>. [Accessed 30 January 2017].
- Greenpeace, (2002). *Partners in crime: Malaysian timber markets and the politics of self-interest in Papua New Guinea*. [pdf] Greenpeace International, The Netherlands. Available



at: <http://www.greenpeace.org/international/Global/international/planet-2/report/2002/4/partners-in-crime-malaysian-l.pdf>

- Forest Trends (2006). *Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging Industry* [online]. Volume I. Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf)
- FAO and PNGFA (2009). *Asia-Pacific Forestry Sector Outlook Study II - Papua New Guinea Forestry Outlook Study*. Available at: <http://www.fao.org/docrep/014/am614e/am614e00.pdf> [accessed 26 July 2017]
- Tararia, A. and Ogle, L. (2010). Incorporated land groups and the registration of customary land: Recent developments in PNG. *Customary Land*, 21. Available at: <http://milda.aidwatch.org.au/sites/default/files/Incorporated%20land%20groups%20and%20the%20registration%20of%20customary%20lands.pdf>

#### 1.8.5. Risk determination

##### *Overview of Legal Requirements*

The Logging Code of Practice (LCOP) and the Planning, Monitoring and Control Procedures for Natural Forest Logging Operations under Timber Permit (1995) (referred to as the PMC Procedures) are given legal effect through the Forestry Act 1991 and the Forestry Regulation 1998 (Reg. 95(1), Reg. 241 and Schedule 2).

Forest industry participants must only operate in accordance with a timber permit, timber authority or licence (s.122 of the Act) and in compliance with the LCOP and PMC Procedures (Reg. 241).

The PMC Procedures are specifically written in relation to operations under a timber permit (FMAs, TRPs and LFAs) and not all of the provisions are fully relevant to timber authorities and licences.

Forest Clearance Authorities (including those associated with SABLs) do not require compliance with either the LCOP or the PMC procedures.

##### *Description of Risk*

Risk of non-compliance with the LCOP by forestry companies

- According to IGES (2016), Legality risks associated with PNG export timber are wide ranging, but are mostly associated with [...] the failure of logging companies to comply with the regulations governing timber harvesting.
- Chatham House (2014) includes "extensive breaches of harvesting regulations by concessionaires."
- Many of the larger companies have adequate resources to carry out their planning and implementation functions (Expert consultation 2016 and Wilkinson 2013), including-
  - Trained professional foresters with skills in inventory, survey, GPS and GIS/mapping
  - Advanced technical tools including GPS and GIS systems, which enable the production of accurate contour maps
  - Accommodation, transport and communication systems.

- The skill levels of the fellers and machine operators are variable between companies. Some, particularly those that are pursuing FSC forest management certification, employ long term employees and have training systems in place for staff and contractors. However, in other operations, companies employ contractors who have markedly lower skills and a poor capacity to achieve reasonable environmental standards under the LCOP. Across the industry, the turnover of logging operators can be as high as 30% per year, creating significant challenges for maintaining adequate skills and capacity within the forests (R. Tate, PNGFIA, pers. comm. Cited in Wilkinson 2013).
- Many operators lack the training necessary to comply with LCOP procedures. (Wilkinson 2013)
- There is a need for training to improve operator skills (Wilkinson 2013).
- The overriding conclusion from the Government of Papua New Guinea's own forestry review process, however, is that although all timber harvesting operations may be officially licensed, there are serious issues of legal non-compliance at almost every stage in the development and management of these projects. For these reasons the majority of forestry operations cannot credibly be characterized as complying with national laws and regulations and are therefore 'unlawful.' (Forest Trends 2006)

#### Risk of inadequate monitoring and enforcement

- The implementation of the LCOP is seriously hampered by inadequate training and education programs for supervisory staff, operators and landowners. A major effort in training was conducted by the PNGFA immediately after the release of the LCOP in 1996 but the training program was not completed for all staff and no further training programs have been conducted (K. Pouru, PNGFA, pers. comm.).
- Those responsible for ensuring that the standards are met (the Government regulatory institutions) need to improve their performance in meeting their statutory responsibilities in this area, and to ensure that their field officers are well trained and supported by management. (Wilkinson 2013)
- Low levels of monitoring, inadequate research on the application of the LCOP, inadequate silvicultural prescriptions and lack of resources for PNGFA, and lack of capacity for 'independent' monitoring and enforcement contribute to the risk in this indicator (Enters 2006 in Wilkinson 2013).
- The PNGFA has limited capacity to undertake monitoring and reporting. (Tropical Forest Foundation 2010 in Wilkinson 2013).
- An ongoing problem for the PNGFA is that often it does not have adequate resources (in terms of finances and logistical support) to properly monitor and regulate compliance by the timber companies. There are laws in place but enforcement and regulatory role lacks commitment by the Government to ensure mandated agencies perform their policy and regulatory role to ensure objectives of the sector and country is achieved (PNG Forestry Outlook Study, FAO, 2009, p 13).
- The resources of the PNGFA appear to be uniformly inadequate for it to undertake all of its regulatory functions (Wilkinson 2013). The key databases used for inventory, growth modeling and planning have not been maintained within the PNGFA due to an ongoing lack of resources (Turia 2010). Similarly, staff resources within the Field Services

Directorate fall well short of those needed to monitor operations within 108 projects, some of which contain up to 30 individual set-ups (ODI 2007b). The Directorate aims to have at least 2-3 officers in each of the larger projects and at least 1-2 officers in each of the smaller ones (B. Taupu, Director of Field Services, pers. comm. Cited in Wilkinson 2013). The Directorate has a nominal staffing of 173 officers but its current strength is 147 due to financial constraints and a shortage of field-based accommodation (Wilkinson 2013).

- Field Services officers lack many of the resources required to carry out their duties. This is exacerbated by the fact that many assets such as vehicles and radios are not operational (PNGFA 2011 in Wilkinson 2013). Many officers do not have adequate access to vehicles or fuel to travel to operational areas. In addition, many logging operations are located in remote areas that are only accessible by boat or by air. Operational budgets are not adequate to cover travel and accommodation costs. For example, the annual operating budget (excluding salaries) for the West New Britain Province is 130,000 kina (PGK1). Of this amount, 120,000 kina are consumed on the generation of electricity for the office and houses in the main forestry complex, leaving only 10,000 kina for the non-salary operational costs of 31 staff across 25 harvesting projects (J. Kowin, PNGFA, pers. comm. In Wilkinson 2013). As a result, many officers are required to work closely with forest companies and rely upon them for basics such as housing, transport and communications. This presents a conflict of interest for officers and places them in a situation of regulatory capture<sup>2</sup> (sensu Gunningham 1987 in Wilkinson 2013), where the PNGFA as the regulator is not able to operate in an independent manner.
- The limited resources of the Field Services Directorate, together with the involvement of officers in matters concerning the local community means by default that great reliance is placed on self-regulation by the forest companies (ODI 2007b in Wilkinson 2013) and the capacity of the PNGFA to act as an independent regulator is very constrained.
- The lack of training in the LCOP for new staff is widely recognized as a major problem within the PNGFA (see Annual Report Area West New Britain 2011 in Wilkinson 2013).
- PNG has a Harvest Training Advisory Board, which is funded by a levy paid by the forest industry. However, the work of this board is not well known and it does not appear to be active in areas relevant to the LCOP. Some companies advise that they conduct internal training courses but most commentators within industry and PNGFA report that deficiencies in knowledge and skills are the major obstacles to the achievement of satisfactory standards in the field (Wilkinson 2013).
- There is a lack of consistency in the manner in which the LCOP is interpreted and applied. In some cases officers routinely accept outcomes under the LCOP that technically should be reported as non-compliant. This can be described as a form of 'institutionalized non-compliance' (Wilkinson 2013). There are no formal requirements for the training and accreditation of forest operators other than for log scalers and timber treatment supervisors who must be accredited and licensed by the PNGFA. Throughout PNG the tyranny of distance makes formal training programs expensive other than through local, in-house programs. There are also challenges presented by poor levels of literacy, which are as low as 30% (R. Tate, PNGFIA, pers. comm. In Wilkinson 2013), and a large number of overseas field operators who do not speak or read English or Pidgin (forest manager, PNGFA, pers. comm. In Wilkinson 2013).

- Legal enforcement of rules relating to the conduct of forestry operations in PNG in general has been criticized as ineffective for a number of reasons:
- According to Wilkinson 2013, the PNGFA exercises its discretion to waive action or to set fines that do not constitute sufficient deterrence
  - Box-cutting followed by severe erosion of pumice soils on a skid track, West New Britain. Local PNGFA officers had judged this to be compliant with the LCOP, highlighting problems with the interpretation of the LCOP and with the monitoring and assessment procedures.
  - The system of performance bonds has not been actively used as an enforcement tool
  - Under-resourcing and regulatory capture of PNGFA officers
  - Allegations of corruption of PNGFA officers
- When interviewed in the preparation of this report, the PNGFA have stated that they do not perceive this indicator to be an issue in the field. They did concede that ideally project officers would be rotated more regularly.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.8.6. Risk designation and specification**

Specified risk

#### **1.8.7. Control measures and verifiers**

- Harvesting shall be conducted within the authorised boundaries of the FMU.
- Harvesting shall not take place in areas where harvesting is legally prohibited.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be listed in operational plans.
- Harvesting restrictions shall be observed in the field.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be marked in the field.
- Ensure the Five Year Forest Working Plan, Annual Forest Working Plan and Set-up plans are in place, and have been verified in accordance with the law.
- Onsite verification shall ensure the Logging Code of Practice (LCOP) is being complied with during the harvesting process.
- Onsite verification, review and stakeholder consultation shall verify that the Planning, Monitoring and Control Procedures for Natural Forest Logging Operations under Timber Permit (1995) (referred to as the PMC Procedures) are being enforced properly by the project officers.

### **1.9. Protected sites and species**

*International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

#### **1.9.1. Applicable laws and regulations**

- Forestry Act 1991 and amendment 2005. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Environment Act 2000. Available at: <http://faolex.fao.org/docs/texts/png70607.doc>
- Forestry Regulation 1998.
- Trade Measurement Act 1978, Chapter 286. Available at: [http://www.paclii.org/pg/legis/consol\\_act/tma1973187/](http://www.paclii.org/pg/legis/consol_act/tma1973187/)
- Customs (Prohibited Exports) (2008 Budget Amendment) Regulation 2007. Available at: [http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20\(Prohibited%20Exports\)%20\(2008%20Budget%20Amendment\)%20Regulation%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20(Prohibited%20Exports)%20(2008%20Budget%20Amendment)%20Regulation%202007.pdf)
- Fauna Act 1982.
- Conservation Areas Act 1980, 1992.
- International Trade Act 1982
- Conservation Area Act 1978
- Papua New Guinea Policy on Protected Areas 2014. Available at: [http://www.pg.undp.org/content/dam/papua\\_new\\_guinea/docs/environment%20and%20energy/DEC%20signed%20PNG%20Protected%20Areas%20Policy-lowrespgs.pdf](http://www.pg.undp.org/content/dam/papua_new_guinea/docs/environment%20and%20energy/DEC%20signed%20PNG%20Protected%20Areas%20Policy-lowrespgs.pdf)

#### **1.9.2. Legal authority**

- PNG Forest Authority
- Conservation Environment Protection Authority (CEPA)
- Department of Commerce, Trade and Industry
- Department of Customs and Immigration

#### **1.9.3. Legally required documents or records**

- Five Year Working Plans
- Annual Working Plans
- Set-up operational plans

#### **1.9.4. Sources of Information**

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

- National Strategic Plan Taskforce, (2009). *Papua New Guinea Vision 2050*. [online] Government of PNG. Available at: <http://actnowpng.org/sites/default/files/png%20version%202050.pdf>
- Finin, G. A. (2008). Strategic Directions for Human Development in Papua New Guinea- Asian Development Bank, AusAID and World Bank. *Asian-Pacific Economic Literature*, 22(2), 62-63. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/13543/40924.pdf?sequence=1&isAllowed=y>
- Department of National Planning and Monitoring, (2010). *Papua New Guinea Development Strategic Plan*. [online] Department of National Planning and Monitoring, Port Moresby. Available at: [http://www.health.gov.pg/publications/PNGDSP\\_Final%20Version%20for%20Print.pdf](http://www.health.gov.pg/publications/PNGDSP_Final%20Version%20for%20Print.pdf)
- Department of National Planning and Monitoring, (2010). *Medium Term Development Plan, 2011-2015*. [online] Department of National Planning and Monitoring, Port Moresby. Available at: [http://www.treasury.gov.pg/html/publications/files/pub\\_files/2011/2011-2015.png.mtdp.pdf](http://www.treasury.gov.pg/html/publications/files/pub_files/2011/2011-2015.png.mtdp.pdf)

#### *Non-Government sources*

- Tomimura, C. (2013) Rainforest Alliance Standard for Verification of Legal Compliance (VLC) for Forest Management Enterprises (FME) in Papua New Guinea. [pdf] Rainforest Alliance, principal 5 (page 9). Available at: [http://www.rainforest-alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26\\_RA\\_VLC\\_Standard\\_for\\_FMEs\\_PNG\\_24Oct13.pdf](http://www.rainforest-alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26_RA_VLC_Standard_for_FMEs_PNG_24Oct13.pdf)
- Forest-trends.org, (2006). Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]



- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- ODI, (2007). *What can be learnt from the past? A history of the forestry sector in Papua New Guinea – Papua New Guinea Forest Studies*. [online] Overseas Development Institute, London. Available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/90.pdf>. [Accessed 30 January 2017].
- Greenpeace, (2002). *Partners in crime: Malaysian timber markets and the politics of self-interest in Papua New Guinea*. [pdf] Greenpeace International, The Netherlands. Available at: <http://www.greenpeace.org/international/Global/international/planet-2/report/2002/4/partners-in-crime-malaysian-l.pdf>

#### 1.9.5. Risk determination

##### *Overview of Legal Requirements*

In PNG, Under the new CEPA Protected Areas Policy, all National Parks and Wildlife Sanctuaries provided for under the National Parks Act (1982), all Wildlife Management Areas under the Flora and Fauna Act (1966) and Community/Provincial Conservation Areas under the Conservation Act (1978) have been reclassified into National and Regional Protected Areas. Some existing conservation areas that don't meet the IUCN category will be abolished. The policy aims to create an effective network of Protected Areas in PNG given that previous conservation efforts have been fragmented and ineffective.

The new Protected Areas Policy also provides for communities to declare communal land as Protected Areas as provided for in the Conservation Act (1978) and the Flora and Fauna Act (1966) and in accordance with prescribed regulations and guidelines. There are currently five National Protected Areas: Kokoda Initiative, Varirata National Park, YUS Conservation Area (Proposed National Park), Tenkile Conservation Area and Tuna Bay Marine Park (Proposed Marine National Park)

Within logging areas, the identification of protected and sacred sited and species is part of the planning processes associated with Timber Permits issued under Forest Management Agreements (or the now superseded TRPs or LFAs). The Five Year Plan, Annual Plan and Set-up Plans must identify these factors, and include provision for their protection (Logging Code of Practice). For example, the Logging Code of Practice requires that all cultural sites, reserves, conservation and garden areas have a buffer zone with a minimum width of 100 metres. During the planning process, landowners go into the field with surveyors to ensure all protected sites are properly marked.



The Project Monitoring and Control Procedures require that project officers (from the PNGFA) evaluate set-up plans, ensuring, among other things, landowner consent and cultural sites have been properly identified and respected.

The PNG Government, in the Customs Tariff Act 1990, has banned a number of timber species from export in round log form due to their scarcity in the natural forest. However, these species may still be exported as processed products, and are therefore still being harvested and exported in relatively small quantities (see Overview):

- Kauri Pine AGA *Agathis* sp.
- Hoop Pine ARH *Auracaria cunninghamii*
- Klinkii Pine ARK *Auracaria hunsteinii*
- Celery-Top Pine CLP *Phyllocladus hypophyllus*
- Cordia COR *Cordia dichotoma*
- Dacrydium DAC *Dacrydium nidulum*
- Ebony EBO *Diospyros ferrea*
- Kerosene wood KEW *Cordia subcordata*
- Libocedrus LIB *Libocedrus pauanus*
- Podocarp POD *Podocarpus* sp.
- Brown Podocarp POB *Decussocarpus swalichianus*
- Highland Podocarp POH *Dacrycarpus imbricatus*
- Rosewood ROS *Pterocarpus indicus*
- Balsa BAL *Ochroma lagopus*
- Blackbean BLB *Castanospermum austral*

### *Description of Risk*

#### *Risk of improper mapping of sites*

- According to expert consultation, there is a risk associated with the protected site mapping. Experts contend that there is strong incentive for landowners to allow logging of the largest number of trees to obtain the royalties. This leads in some cases to moving buffer zones and logging in riparian strips in the mapping process and/or of not decalring protected sites and species to increase harvest volumes (Expert consultation, Port Moresby 2016).
- While experts noted that landowners are generally onsite, and have a role in monitoring the forestry activities, they do not have monitoring and control authority over the planning process. Landowner approval of plans is not required, but the landowners have the best knowledge of the land, and potential protected sites and species (including sacred sites). As their input is not formally required, a potentially significant input into the mapping accuracy is missed.
- As stated in previous sections, serious concerns have been raised with the capacity of the PNGFA to properly monitor the forest management and planning process.

#### *Risk of logging protected sites w/in FMAs*

- Experts also noted risks of logging within protected sites in FMAs.
- As landowners gain royalties based on the size of each log harvested experts contend that there is strong incentive for landowners to allow logging of the largest number of trees, sometimes from the protected sites (Expert consultation, Port Moresby 2016).
- Experts also stated that there have been instances of landowners being paid off by companies to allow them to log protected areas/sacred sites.
- Repeated non-compliance with plans by logging companies have been reported. Such illegal activities should be controlled by the project officers employed by the PNGFA, but, as stated in previous sections, there are serious issues with the capacity and competencies of these officers (IGES 2016, Wilkinson 2013, Greenpeace 2002 and Expert consultation, Port Moresby 2016).

#### *Risk of logging in Protected Areas (National Parks etc...)*

- Some experts also stated that there have been some instances of logging in National Parks in PNG and of species prohibited from round wood export being logged and exported as logs through misclassification, but this was based on anecdotal evidence (Expert consultation, Port Moresby 2016).
- Chatham House (2014) states "logging in protected areas or of prohibited species were felt [by experts consulted] to be less prevalent. The former may be partly because there are relatively few protected areas, while those that do exist are very inaccessible.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities

#### **1.9.6. Risk designation and specification**

Specified risk

#### **1.9.7. Control measures and verifiers**

- Harvesting shall be conducted within the authorised boundaries of the FMU.
- Harvesting shall not take place in areas where harvesting is legally prohibited.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be listed in operational plans.
- Harvesting restrictions shall be observed in the field.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be marked in the field
- All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation.
- Legal established procedures for surveying, managing and protecting endangered or threatened species within the management unit shall be followed.

- Cultural sites shall be marked clearly in the field by landowners for industry to observe and protect.

## 1.10. Environmental requirements

*National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.*

### 1.10.1. Applicable laws and regulations

- Forestry Act 1991 and amendment 2005. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- The Land Act 1996. Available at: <http://faolex.fao.org/docs/texts/png20843.doc>
- Environment Act 2000. Available at: <http://faolex.fao.org/docs/texts/png70607.doc>
- Prevention of Pollution of the Sea Act 1979. Available at: <http://faolex.fao.org/docs/texts/png53714.doc>
- Forestry Regulation 1998
- Dumping of Wastes at Sea Act 1979. Available at: <http://faolex.fao.org/docs/texts/png51667.doc>
- Environment (Amendment) Act 2002
- Environment (Water Quality Criteria) Regulation 2002
- Environment (Prescribed Activities) Regulation 2002
- Environment (Fees and Charges) Regulation 2002
- Environment (Procedures) 2002
- Environment (Permits and Transitional) Regulation 2002
- Conservation Areas Act 1978
- Water Resources Act 1982
- Environmental Contaminants Act 1978

### 1.10.2. Legal authority

- Conservation Environment Protection Authority (CEPA)
- PNG Forest Authority
- Department of Lands & Physical Planning

### 1.10.3. Legally required documents or records

- Environmental Plan, approved by the Minister for Environment and Conservation, held at the head office of the Conservation and Environment Protection Authority (CEPA), formerly known as the Department of Environment. A copy is also held by the timber business.
- Environmental Management and Monitoring Program, with endorsement, approved by the Conservation and Environment Protection Authority (CEPA), formerly known as the Department of Environment and Conservation (DEC), held by the Timber business.
- Environmental Impact Statement (only required for Level 1 FMAs where annual production exceeds 70,000m<sup>3</sup>), approved by the the Conservation and Environment Protection Authority (CEPA), formerly known as the Department of Environment and Conservation (DEC), held by the Timber business.
- Waste Management Plan, with endorsement, approved by the Conservation and Environment Protection Authority (CEPA), formerly known as the Department of Environment and Conservation (DEC), held by the Timber business.

#### 1.10.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

##### *Non-Government sources*

- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]

- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Lawson, S. for Chatham House (2014). *Illegal logging in Papua New Guinea* Available at: [https://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](https://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 26 July 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.

#### 1.10.5. Risk determination

##### *Overview of Legal Requirements*

Prior to the issuance of a timber permit, the developer must submit an environmental plan, an environmental monitoring plan and a list of personnel responsible for the monitoring to the Conservation and Environment Protection Authority (CEPA). CEPA, formerly known as the Department of Environment and Conservation (DEC), is required to approve all major development projects, including forestry projects. The approval is granted by way of an environment permit issued by the Director of CEPA upon his/her acceptance of an environmental impact assessment (Part 5 of the Environment Act). The Director may also require an applicant to lodge an environmental improvement plan as a condition of the environment permit (Part 6 of the Environment Act). Note that the former Environmental Planning Act 1978 required applicants for timber permits to have an approved environmental plan. These plans are still in force for any timber permits issued prior to the new Environment Act coming into force in 2004.

The National Forest Policy 1991 requires CEPA to undertake policing of obligations in environmental plans.

In timber production areas it is now mandatory that 10% be set aside for biodiversity conservation, and a further 15% being set aside to cater for buffer zones along creeks and watershed management and to act as village reserves and other social services. Again this is an arbitrary percent. The total of 25% only came into effect in Year 2000 and prior to that only 15% was being reserved for buffer zones etc.

Forest Clearance Authorities require an Environmental Permit prior to the clearance of forests commencing.

##### *Description of Risk*

Poor or non-existent monitoring and enforcement

- CEPA set up a forestry monitoring unit in 1992 but this was disbanded in 1996 due to a lack of recurrent funding (The 2003/2004 Review Team 2004 in Wilkinson 2013) and its capacity to implement the Environment Act continues to be constrained by a lack of funding and resources (PNGFA 2009 in Wilkinson 2013).

- According to experts, CEPA has always been poorly resourced, therefore, compliance monitoring has never been conducted to expected standard. It is only the forestry officers usually on site performing multiple functions. Experts state that CEPA is even more underfunded than PNGFA, and they have no regional or provincial setups (Expert consultation 2016).
- Chatham House 2014 states that eight of the 14 concessions analysed in that report had Environmental Plans that had expired. It also states that It also appears that some active SABLs began clear-felling without obtaining the required Environmental Permit.
- Citing a 2007 IITO mission, Chatham House (2014) reports "the Department for Environment and Conservation (responsible for monitoring compliance with environmental controls on logging) [now CEPA] has no enforcement capacity at all. The IITO mission concluded that 'satisfactory monitoring of logging operations and development projects is next to impossible'; and, based on field visits, declared that it was 'obvious that monitoring and enforcement was seriously inadequate, especially with respect to the adverse impacts of logging on the forest ecosystem and the communities living in them'".

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.10.6. Risk designation and specification**

Specified risk

#### **1.10.7. Control measures and verifiers**

- Ensure all required documentation is in place.
- Requirements for environmental monitoring shall be observed.
- Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc
- Third party verification, that includes field observations is necessary to ensure the environmental requirements are adhered to.

### **1.11. Health and safety**

*Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.*

#### **1.11.1. Applicable laws and regulations**

- Forestry Act 1991 and amendment 2005. Available at: [http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- The Land Act 1996. Available at: <http://faolex.fao.org/docs/texts/png20843.doc>

- Environment Act 2000. Available at: <http://faolex.fao.org/docs/texts/png70607.doc>
- Labour and Employment Act 1978 and Regulations
- Industrial Safety, Health and Welfare Act 1973, and Regulations
- Public Health Act 1973
- Worker's Compensation Act 1978, and Regulations

#### **1.11.2. Legal authority**

- PNG Forest Authority
- Conservation Environment Protection Authority
- Department of Labour and Industrial Relations
- Department of Health and HIV & AIDS

#### **1.11.3. Legally required documents or records**

- Health and Safety Plan
- Environment Plan
- Environment Permit
- HIV/AIDS awareness and training program
- Waste Management Plan
- Environment Monitoring Plan

#### **1.11.4. Sources of information**

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

##### *Non-Government sources*

- Forest-trends.org, (2006). *Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I*. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under



Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at:  
[http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]

- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- International Trade Union Confederation (ITUC), (2010). *Internationally recognized core labour standards in Papua New Guinea - Report for the WTO General Council Review of the Trade Policies of Papua New Guinea*. [online] International Trade Union Confederation, Geneva. Available at [http://www.ituc-csi.org/IMG/pdf/report\\_PNG-final.pdf](http://www.ituc-csi.org/IMG/pdf/report_PNG-final.pdf) [Accessed 16 January 2017].

#### 1.11.5. Risk determination

##### *Overview of Legal Requirements*

As well as the general workplace health and safety requirements contained in the Labour and Employment Act and Regulations and the Industrial Safety, Health and Welfare Act and Regulations, the The Logging Code of Practice includes health and safety requirements for logging in PNG, and covers areas such as camp hygiene, protective clothing and safety equipment and equipment safety. The LCOP, amongst other things, requires that all personnel on logging sites must be provided with, and wear:

- Steel capped footwear
- High visibility jackets; and
- A first aid kit.

Chainsaw operators must be provided with, and wear:

- A safety helmet which meets the relevant ISO standard;
- Ear muffs; and
- Leg protection.

The LCOP also requires that all staff are trained to follow safe work practices.

Monitoring and enforcement responsibility for workplace health and safety rests with the Department of Labour and Industrial Relations.

#### *Description of Risk*

According to experts consulted in the preparation of this report, the Department of Labour and Industrial Relations is poorly resourced and compliance monitoring has not been conducted to expected standard. The PNGFA project officers do conduct some monitoring activities, but there is a level of ambiguity about where the responsibility lies given the legislative requirements, as well as the provisions contained in the LCOP. The Department of Labour and Industrial Relations has no regional or provincial setups.

Experts consulted in the preparation of this report noted that many workers in the logging industry in PNG experience very difficult and often dangerous conditions.

While the LCOP includes comprehensive health and safety requirements, non-compliance with the legal requirements has been observed, even in FSC certified forest areas (Expert consultation Port Moresby 2016).

Experts also noted that while there is official record keeping of workplace incidents and fatalities, there are numerous anecdotal reports of unsafe equipment, unregistered vehicles and workplace injuries.

According to the International Union of Food Workers (IUF) and the ForestNetwork (in ITUC 2010), Malaysian timber company Rimbunan Hijau abuses workers' rights through "cheating and dishonesty, cramped and unhygienic living conditions, racial and sexual abuse and complete disregard for the [workers'] health and safety."

Also referring to Rimbunan Hijau, in their 2004 report the Department of Labour of Papua New Guinea According stated that the company "has no interest in the training and development of local workers and implements no health and safety practices to protect its workers." (in ITUC 2010)

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.11.6. Risk designation and specification**

Specified risk

#### **1.11.7. Control measures and verifiers**

- All safety and health regulations shall be followed and all required safety equipment shall be used
- Occupational health and safety requirements shall be observed by all personnel involved in harvesting activities.
- Interviews with staff and contractors shall confirm that legally required protection equipment is required/provided by the organisation.
- Field verification by independent third parties is necessary.

#### **1.12. Legal employment**

*Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

#### **1.12.1. Applicable laws and regulations**

- Employment Act 1978 (Consolidated up to 31 March 2001).
- Labour codes
- Labour and Employment Act 1978, and Employment Regulations 1980
- National Minimum Wages and Allowances as from 29 March 2006.
- Industrial Relations Act 1962 and Regulations.
- Industrial Organizations Act 1962 and Regulations.
- Industrial Safety, Health and Welfare Act 1961 and Regulations.
- Public Health Act 1973.
- Worker's Compensation Act 1978 and Regulations.
- Industrial Organisations Act 1962.
- Papua New Guinea has ratified all eight core ILO labour Conventions.

#### **1.12.2. Legal authority**

- Department of Labour and Employment

#### **1.12.3. Legally required documents or records**

- Foreign workers need to have valid visa and work permit in order to be employed and working in any industry in Papua New Guinea
- Papua New Guineans need to have required trade certificates and relevant qualifications to be employed and working and to be above age of 18 years
- Employment contract

#### **1.12.4. Sources of information**

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.
- Department of Labour and Industrial Relations (DLIR) Independent State of Papua New Guinea, Commissioned by the International Labour Organization, (N.Y). *National Action Plan to Eliminate Child Labour in Papua New Guinea*. [online] International Labour Organisation. Available at: <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro->

[bangkok/---ilo-suva/documents/publication/wcms\\_360536.pdf](http://bangkok/---ilo-suva/documents/publication/wcms_360536.pdf) [Accessed 16 January 2017].

#### *Non-Government sources*

- Gadens (2016). *Doing business in Papua New Guinea* [online] Available at: [http://www.gadens.com/publications/Documents/Gadens%20Doing%20Business%20in%20Papua%20New%20Guinea%202016\\_Web.pdf](http://www.gadens.com/publications/Documents/Gadens%20Doing%20Business%20in%20Papua%20New%20Guinea%202016_Web.pdf) [accessed 31 July 2017]
- Forest-trends.org, (2006). Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- Bureau of International Labor Affairs, (2015). *Child Labor and Forced Labor Reports - Papua New Guinea*. [online] US Department of Labor. Available at: <https://www.dol.gov/sites/default/files/images/ilab/child-labor/PapuaNewGuinea.pdf> [Accessed 16 January 2016].

- International Trade Union Confederation (ITUC), (2010). *Internationally recognized core labour standards in Papua New Guinea - Report for the WTO General Council Review of the Trade Policies of Papua New Guinea*. [online] International Trade Union Confederation, Geneva. Available at [http://www.ituc-csi.org/IMG/pdf/report\\_PNG-final.pdf](http://www.ituc-csi.org/IMG/pdf/report_PNG-final.pdf) [Accessed 16 January 2017].
- International Labour Organisation, (2013). *Papua New Guinea - Decent Work Country Programme*. [online] ILO. Available at: [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/genericdocument/wcms\\_404478.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/genericdocument/wcms_404478.pdf) [Accessed 16 January 2017].

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

In Papua New Guinea, terms and conditions of employment are generally governed by the Employment Act (Chapter 373) and, in the case of non-citizens, by both the Employment Act and the Employment of Non-citizens Act (Chapter 374) (collectively, the "Employment Acts"). These include requirements for contracts of employment, minimum wages and maximum working hours.

There is both a national minimum wage and a national minimum youth wage which are set by the 'Minimum Wages Board'. These minimum wages apply to all employees in PNG, other than apprentices. The determination of the board may be displaced by more generous terms and conditions offered by an employer.

It is an offence, under the Workers Compensation Act, for an employer to employ any worker in any employment without a policy of insurance or indemnity, issued by a licensed insurer, for any injury to the worker arising out of or in the course of their employment.

Where businesses are paying salary or wages to employees, they will be required to withhold salary or wages tax at the prescribed marginal rates, and remit to the IRC on the 7th day of the month following the month of payment. Where a company has any unpaid obligations, the directors will be personally liable and may be penalised at a rate of 20% of the unpaid tax liability per annum.

Other key labour law provision include:

- *Freedom of Association and the Right to Collective Bargaining* - The Constitution and the Industrial Organisations Act of 1962 prescribe the right to form and join trade unions. For trade unions to be legal registration with the Department of Labour and Industrial Relations (DLIR) is necessary. The law prohibits discrimination against workers seeking to join a union or engage in its activities, but the law has not been effectively enforced.
- *Discrimination and Equal Remuneration* - The Constitution prohibits discrimination on the grounds of race, origin, colour, or sex. There is no specific employment anti-discrimination law but the Employment Act of 1978 provides protection against wage discrimination for the same work. Sexual harassment at the workplace is not prohibited, except in the Public Service Orders.
- *Child labour* - The minimum age for admission to work is 16 years of age. There is no list of hazardous occupations. Children between 11 and 18 can work in family enterprises

after a special permit is granted by the labour inspectorate and provided that it does not interfere with school attendance.

- *Forced labour* - The Constitution prohibits forced labour and slavery. Not all forms of trafficking are prohibited and there is no specific anti-trafficking law.
- *Employment of non-citizens* – For all non-citizens employed in PNG, an employer must obtain both: a. an entry permit (visa) under the Migration Act; and b. a work permit under the Employment of NonCitizens Act.

### *Description of Risk*

According to the ITUC (2010), in practice, there are grave violations of workers' rights, especially in the logging industry.

According to the ILO: The presence of other significant social problems in PNG has a significant negative spill-over into workplaces by undermining productivity and the effective participation of women and men in the labour market. Social exclusion brought about by widespread disability discrimination, gender discrimination and sexual harassment, Sexually Transmitted Infections (including HIV/AIDs) as well as Non-Communicable Diseases (NCD) requires specific strategies focused on workplaces. (ILO 2013)

According to experts consulted, minimum wage and maximum working hours not observed and illegal migrant workers are common. While there have been isolated enforcement activities, they have been followed through to prosecution. Although the enforcement agency, the Department of Labour and Employment, are stationed in the provinces, they are not doing the field verification. (Expert Consultation Port Moresby 2016).

#### Risk of the use of child labour:

According to the ILO (2013), a growing number of children in PNG are engaged in the worst forms of child labour, illicit activities and hazardous work. [...] It is especially common in subsistence agriculture, forestry and fishing, and in urban street vending, tourism and entertainment.

#### Risk of discrimination:

The law prohibits discrimination against workers seeking to join a union or engage in its activities, but the law has not been effectively enforced (ITUC 2010).

In the ITUC Report (2010) states that the government has indicated that there are no courts or tribunals that have issued decisions relating to the application of Convention No. 100, no grievances filed in the public service relating to unequal remuneration and no statistics available on the level of earnings of men and women in the private sector.

ITUC also report that persons with disabilities faced discrimination in accessing employment and social services. ITUC also report that there is reported to be increasing violence against Asian workers and entrepreneurs, who are blamed for "taking employment opportunities.

#### Risk of forced labour:

The ITUC state that forced labour occurs in mines and logging camps.

Regarding Malaysian timber company Rimbunan Hijau, in their 2004 report the Department of Labour of Papua New Guinea found that "[t]he company's treatment of its citizen employees reflects labour exploitation and slavery and should be condemned at all levels".



Moreover, the 2004 report of the Department of Labour and another 2004 report of the Department of Community Development reveal that the company seems to have bribed the police in order to promote its interests. (ITUC 2010)

ITUC states that forced labour occurs as women and girls, especially from the tribal areas, are forced into prostitution or domestic servitude and men are forced into labour in logging camps and mines. In these sites many men are paid very low wages and are obliged to buy food and goods from the sites' shops in very high prices on credit. In this way the workers are coerced into becoming debt peons. [...] Police and border control officers are reported to receive bribes to turn a blind eye on undocumented immigration, trafficking in human beings and forced labour and prostitution. ITUC further contends that the state does not protect victims of trafficking, has made no effort to recognise such persons and has repeatedly failed to refer victims to NGOs. The authorities have even incarcerated victims of trafficking.

Risk of illegal migrant workers:

This was a significant issues raised during expert consultation. Many experts cited reports of illegal foreign workers, or foreign workers being fast tracked through the immigration system and apparently not complying with all visa requirements, in particular, language requirements. (Expert consultation, Port Moresby 2016).

Regarding Malaysian timber company Rimbunan Hijau, in their 2004 report the Department of Labour of Papua New Guinea found over one hundred foreign workers with no valid work permit or visa working on unskilled or semiskilled positions that could had been easily done by locals, extremely low wages (15 US cents/hour), "exorbitantly high" prices in the canteen where the employees were obliged to buy their food, no leave fares for workers from outside the province, cramped and unhygienic accommodation of workers, sexual abuses and rapes of local women, as well as trafficking of Indonesian women to work as sex workers in the camps. The Department of Labour report concluded that "the company has total disrespect for the Employment of Non Citizens Act".

Most logging companies are Asian origin owned and there is presence of Asian nationals working without relevant Visas and work permits performing jobs Papua New Guinean nationals would be able to undertake (Expert consultation, 2016).

Labour Department does limited checks on legal requirements of these foreign workers to ensure workers do have legal requirements to work in Papua New Guinea (Expert consultation, 2016).

Risk of violations of rights to strike, freedom of association etc:

The DLIR is reported to have begun an active policy of interference in industrial relations by seeking to prevent strikes, even when legal requirements have been complied with. Moreover, it is reported that some employers have taken retaliatory measures against striking workers and that the law was not enforced (ITUC 2010).

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.12.6. Risk designation and specification**



Specified risk

**1.12.7. Control measures and verifiers**

- All workers are employed according to the regulation and required contracts are in place
- Persons involved in harvesting activities shall hold required certificates of competence for the function they carry out.
- At least the legally established minimum salaries shall be paid for personnel involved in harvesting activities.
- Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in hazardous work.
- All foreign workers must have valid visa and work permits otherwise deported/ or should not be allowed to enter the country.
- Stakeholders shall confirm that forced or compulsory labour is not involved in harvesting activities.
- Given the extensive risks associated with this indicator, independent third party verification that includes field verification is strongly recommended.

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable laws and regulations

- Constitution of Papua New Guinea; Section 53, subsection 5(d) and (e) Protection from Unjust Deprivation of Property section; Section 54 (a) (i) (ii) (b) (c) Special provision in relation to certain lands. Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=199188](http://www.wipo.int/wipolex/en/text.jsp?file_id=199188)
- Land Act 1996 - <http://extwprlegs1.fao.org/docs/pdf/png20843.pdf>
- National lands Registration Act 1981; Chapter 357, Division 4, Effect of ownership of National Lands Registration Act 1977, Chapter 357, subsection 14 (a) and (b) ownership of National Land, including customary land. Available at: <http://faolex.fao.org/docs/texts/png24837.doc>
- Forestry Act 1991; Section 2, subsection Xlvii "customary owners" in relation to an area of customary land, means persons having customary rights (a) ownership over the land; or (b) ownership over forest produce growing on the land or (c) over forest relating to the use of the land; Section 46, Customary resource ownership, the rights of the customary owners of the forest resource shall be fully recognized and respected in all transactions affecting the resource. Available at: [http://www.fiapng.com/forestry\\_act\\_1991.html](http://www.fiapng.com/forestry_act_1991.html)

#### 1.13.2. Legal authority

- Papua New Guinea Forest Authority (PNGFA)
- Conservation Environment Protection Authority (CEPA)
- Provincial Forest Management Committees
- National Forestry Board
- Department of Agriculture & Livestock
- Department of Trade & Industry
- Department of Lands and Physical Planning

#### 1.13.3. Legally required documents or records

- Copies of the land group incorporation certificates, with proper genealogy and property listing completed in compliance to Land Group Incorporation Act 1974, amended 2009.
- Certification of Forest Management Agreement by Provincial Management Committee
- Signing of Forest Management Agreement by landowners through Incorporated Land Groups
- Endorsement of Forest Management by National Forest Board.
- Signing of Forest Management Agreement by Minister for Forests on behalf of PNG Forest Authority.

#### 1.13.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

##### *Non-Government sources*

- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- Forestlegalityalliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Oxfordbusinessgroup. com, (2012). *The Report: Papua New Guinea 2012: Tax*. [pdf] Oxford Business Group. [online] Available at: <http://www.oxfordbusinessgroup.com/node/779733/reader> [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2015). *Papua New Guinea 2015: Agriculture & Fisheries - PNG's export of raw logs support growth*. [online] Available at: <http://www.oxfordbusinessgroup.com/country/papua-new-guinea/agriculture?page=2> [Accessed 13 January 2017].
- Fao.org, (N.Y). *Forest Resource Development Through Timber Permits*. [online] Available at: <http://www.fao.org/docrep/004/Y2711E/y2711e05.htm> .
- Wri.org, (2014). *Sourcing Legally Produced Wood: A Guide for Business*. [online] Available at: <http://www.wri.org/publication/sourcing-legally-produced-wood-guide-businesses> [accessed 17 January 2017].
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.

#### 1.13.5. Risk determination

##### *Overview of Legal Requirements*

The Forestry Act 1991 recognises customary ownership of PNG's forest resources. Under the FMA arrangements provided for in the Forestry Act (also applicable to TRPs and LFAs), customary owners retain their user rights to access the forest and collect and use non-timber forest products for local use and consumption, but not for commercial purposes. Project agreements also include requirements relating to the provision of infrastructure for local communities. These usually include access roads and health and education facilities.

The situation for Forest Clearance Authorities, including Special Agricultural Business Leases is different. A number of section of the Land Act 1996 are relevant:

- Sections, 10, 11 and 102 provide for what is known as the “lease leaseback system”. In summary, the Act authorises the Minister for Lands & Physical Planning to acquire customary land by agreement (i.e. with the consent of the landowners) either permanently or temporarily. The Act requires that the Minister may only proceed with such acquisition on being satisfied after reasonable inquiry that the land is not required by the customary landowners or will be required after a period of time and by authentic instruments (i.e. in a manner prescribed by the minister) may proceed with such acquisition with the express agreement of the customary landowners.
- Section 11, applicable only for temporary acquisitions, allows the Minister to lease customary land for the purpose of granting a special agricultural and business lease of the land. Under section 11, *all* customary rights in the land except those specifically reserved for the customary owners are suspended for the period of the lease to the State.
- Section 102 requires that for SABLs, the customary landowners must agree and consent to the entity to be granted title to a SABL after the land had been acquired under Section 11.

For FCAs, there is no reservation for the continued rights of the landowners to hunting, fishing, collecting, fishing and access to sacred sites, cemetery and so on, meaning customary owners do not maintain the access rights.

#### *Description of Risk*

Experts consulted stated that access to land for customary purposes is usually not an issue in FMA areas, however there are numerous reports of companies not complying with their obligations as per project agreement to deliver basic infrastructures, i.e. health, education facilities etc... (Expert consultation, Port Moresby 2016).

Given the significant issues associated with the acquisition of land use rights, it is not clear that the handover of customary use rights is always lawful.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities

#### **1.13.6. Risk designation and specification**

Specified risk

#### **1.13.7. Control measures and verifiers**

- Ensure the documentation described in 1.1. is in place.

#### Regarding the risks associated with the ILGS:

- ILG Certificates shall be available for the forest area in question.
- Each ILG shall have a constitution
- Consultation with customary owners and members of the ILG to determine the validity of the process for forming and registering the ILG.

#### Risks regarding disputes over land claims:

- Dispute settlement mechanism shall exist within the constitution of the ILGs.

Regarding consent:

- For FMAs, a record of the consultation showing a 75 per cent consensus shall be available, this may be obtained from the PNGFA.
- Minutes of consultation from the policy and planning –signed by FMA shall be available.

For all other permit types (and for FMAs to be sure), field verification, including consultation with local landowners is necessary.

## 1.14. Free prior and informed consent

*Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.*

### 1.14.1. Applicable laws and regulations

- Constitution of PNG Section 53, subsection 5(d) and (e) Protection from Unjust Deprivation of Property section and Section 54 (a) (i) (ii) (b) (c) Special provision in relation to certain lands. Available at:  
[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=199188](http://www.wipo.int/wipolex/en/text.jsp?file_id=199188)
- National Lands Registration Act 1981, chapter# 357, Division 4, Effect of ownership of National Lands Act, chapter # 357, subsection 14 (a) and (b) ownership of National Land, including customary land. Available at:  
[http://www.paclii.org/pg/legis/consol\\_act/nlra1977269.rtf](http://www.paclii.org/pg/legis/consol_act/nlra1977269.rtf)
- Forestry Act 1991 and amendment 2005; section 2, subsection Xlvii "customary owners" in relation to an area of customary land, means persons having customary rights (a) ownership over the land; or (b) ownership over forest produce growing on the land or (c) over forest relating to the use of the land and Section 46, Customary resource ownership, the rights of the customary owners of the forest resource shall be fully recognized and respected in all transactions affecting the resource. Available at:  
[http://theredddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://theredddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Land (Ownership of Freeholds) Act 1976. Available at:  
[http://www.paclii.org/pg/legis/consol\\_act/lofa1976268/](http://www.paclii.org/pg/legis/consol_act/lofa1976268/)
- Forestry (2007 Budget Amendment) Bill 2006. Available at:  
[http://www.fiapng.com/PDF\\_files/forestry\\_2007\\_page3.pdf](http://www.fiapng.com/PDF_files/forestry_2007_page3.pdf)
- National Forest Plan. Available at:  
<https://pngexposed.files.wordpress.com/2013/01/draft-nfp.pdf>
- Guidelines for Issuing Timber Authorities.
- Planning, Monitoring and Control Procedures for Natural Forest Logging Operations under Timber Permit (1995) (referred to as the PMC Procedures), given legal effect through the Forestry Act 1991 and the Forestry Regulation 1998 (Reg. 95(1), Reg. 241 and Schedule 2).
- Land Group Incorporation Act 1974 amended 2007 and 2009. Available at:  
[http://www.paclii.org/pg/legis/num\\_act/lgia2009372.rtf](http://www.paclii.org/pg/legis/num_act/lgia2009372.rtf)

- Land Dispute Settlement Act 1975. Available at: [http://www.paclii.org/pg/legis/consol\\_act/lds1975276.rtf](http://www.paclii.org/pg/legis/consol_act/lds1975276.rtf)
- The Land Act 1996, Sections 10, 11 and 102. Available at: <http://extwprlegs1.fao.org/docs/pdf/png20843.pdf>

#### **1.14.2. Legal authority**

- Papua New Guinea Forest Authority (PNGFA)
- Provincial Forest Management Committees
- National Forestry Board
- Department of Agriculture & Livestock
- Department of Trade & Industry
- Department of Lands and Physical Planning

#### **1.14.3. Legally required documents or records**

- Land group incorporation certificates, with proper genealogy and property listing completed in compliance to Land Group Incorporation Act 1974, amended 2009.
- Business Registration, issued by the Investment Promotion Authority, held by the timber business
- Registration as a Forest Industry Participant, a list of Forest Industry Participants kept by PNGFA Head Office
- Certificate Permitting Foreign Enterprise to carry out business activity, issued by the Investment Promotion Authority Timber business
- Forest Industry Participant Certificate held by the company

As well as one of the following:

##### For timber harvested under a Forest Management Agreement:

- Forest Management Agreement, certified by Provincial Management Committee, signed by landowners through Incorporated Land Groups, endorsed by National Forest Board, signed by the Minister for Forests on behalf of PNG Forest Authority. A copy is held by the PNGFA Head Office and the timber business

##### For timber harvested under a Timber Authority:

- Sales and Purchase Agreement between the company and the customary owners
- Timber Authority, issued by the Chairman of the PFMC after approval from the National Forest Board.

##### For timber harvested under a timber license:

- Timber License, issued by the National Forest Board

##### For timber harvested under a Forest Clearance Authority:

- Forest Clearance Authority
- Environment impact statement by the DEC

For timber harvested under a Timber Rights Purchase (TRP) Agreement:

- Timber Rights Purchase (TRP) agreement, held by the PNGFA Head Office and the timber business
- Timber Permit (for FMA or TRP), issued by the Minister of Forests, copied held by the PNGFA Head Office

For timber harvested under a Local Forest Area (LFA) agreement:

- Local Forest Area (LFA) agreement, approved by the Minister of Forests, copy held by the PNGFA Head Office

#### 1.14.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.
- Numapo, J. (2013). Final report. [online] coi.gov.pg. Available at: <http://www.coi.gov.pg/documents/COI%20SABL/Numapo%20SABL%20Final%20Report.pdf>
- Mirou, N. (2013). Final report. [online] coi.gov.pg. Available at: <http://www.coi.gov.pg/documents/COI%20SABL/Mirou%20SABL%20Final%20Report.pdf>

##### *Non-Government sources*

- Forest Trends (2006). *Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging Industry* [online]. Volume I. Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf)
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]



- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- ODI, (2007). *What can be learnt from the past? A history of the forestry sector in Papua New Guinea – Papua New Guinea Forest Studies*. [online] Overseas Development Institute, London. Available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/90.pdf>. [Accessed 30 January 2017].
- Armitage, L. (2001). Customary land tenure in Papua New Guinea: Status and prospects. In *Proceedings of the International Association for the Study of Common Property Rights 2001 Pacific Regional Conference, Queensland University of Technology, Brisbane* (pp. 12–23). Available at: <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/589/armitage.pdf?sequence=1>
- Vegter, A. A. (2005). Forsaking the forests for the trees: forestry law in Papua New Guinea inhibits indigenous customary ownership. *Pac. Rim L. & Pol'y J.*, 14, 545. Available at: <https://digital.lib.washington.edu/dspace-law/bitstream/handle/1773.1/675/14PacRimLPolyJ545.pdf?sequence=1>
- Canopy Watch, (N.Y). *Forestry in Papua New Guinea*. [online] Available at: <http://www.canopywatch.org/p/png-forestry.html> [accessed 13 January 2017]
- Canopy Watch, (N.Y). *The Issue of Consent*. [online] Available at: <http://www.canopywatch.org/p/issue-of-consent.html> [accessed 13 January 2017]
- Kelola, T. (2010). *Madang Timbers goes back to court*. [Blog] Hector-madangonline. Available at: <http://hector-madangonline.blogspot.com/2010/07/madang-timbers-goes-back-to-court.html>
- Tararia, A. and Ogle, L. (2010). Incorporated land groups and the registration of customary land: Recent developments in PNG. *Customary Land*, 21. Available at: <http://milda.aidwatch.org.au/sites/default/files/Incorporated%20land%20groups%20and%20the%20registration%20of%20customary%20lands.pdf>
- Lawson, S. for Chatham House (2014). *Illegal logging in Papua New Guinea* Available at: [https://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](https://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 26 July 2017]

#### 1.14.5. Risk determination

### *Overview of Legal Requirements*

See 1.1 for a detailed description of the landowner consent requirements for each permit/license type.

### *Description of Risk*

According to the Institute for Global Environmental Strategies (IGES) (2016) the legality risks associated with PNG export timber are “wide ranging, but are mostly associated with the failure of the State to gain the free prior informed consent of the customary landowners before timber rights are transferred from the landowners to the State, especially under old timber right purchase arrangements.”

In almost all cases, proper consent has not been secured or due process has not been followed (ODI 2007a and ITTO 2007 in Wilkinson 2013; Forest Trends 2006).

The Chatham house, (Chatham House 2014) states that the types of illegality recorded in PNG include licenses being issued or extended in breach of regulations (especially those relating to consultation with indigenous landowners).

According to Vegter (2005), the Forestry Act restrains customary landowners’ abilities to directly negotiate and consult with commercial timber industries, thereby severely weakening customary ownership. Unclear definitions of customary ownership within the common law further weaken indigenous groups’ abilities to control their forests.

Vegter (2005) also contends that the lack of formal definitions of customary ownership means a court may not recognize indigenous groups’ claims of ownership.

Landowner consent has been raised as one of the most significant issues with the SABL process. The COI inquiry concluded that “the SABL scheme, both at the policy level and in the manner it was implemented, has failed....developers and people with vested interests have hijacked the SABL process to suit their own ends. Greed and corruption at all levels... have tainted a noble landowner empowerment initiative”. The CoI found that of the 42 SABLs reviewed by the COI, only 4 SABL had qualified landowners consent and have produced successful agriculture projects, while the rest was obtained through corrupted means.

According to many sources, the dramatic increase in the number of SABLs applied for and issued from 2009-2011 was because the logging companies realised the process for obtaining a new FMA was quite difficult, particularly in relation to the landowner consent requirements (Expert consultation Port Moresby November 2016). The onerous consent requirements associated with the FMAs led companies to seek out SABLs as a way to exploit forests, as the consultation requirements are less intensive.

Experts also noted, in relation to the consent requirements under the FMAs, that although the requirements are very clear, they are sometimes not complied with. In some instances, approval from some of the landowners is obtained. Experts cited corruption and undue influence of large companies at the highest level as key drivers for the non-compliance (Expert consultation Port Moresby November 2016). Written records of stakeholder consultation must be kept, and should be available upon request.

Regarding the now-superseded TRPs, as there were no requirements for ILGs with these permit types, it is very difficult to determine the correct landowners have provided prior consent.

For LFAs, as the the consent is a private agreement between the landowner and company it is difficult to determine the validity of the process retrospectively.

Regarding the SABLs, Commissioner Mirou (2014) found that “in some instances [...], inferences from very strong evidence suggests that not only the Dept. of Lands and Physical Planning officials but landowner companies and ILG executives have been compromised. These will be noted in instances where grants of title were made directly to foreign entities (developers) as well as where transfer of shares of the SABL title holding company to other or foreign entities resulted with control of title to be in foreign hands.” Mirou goes on to states that:

“In respect of Forestry (PNGFA), many FCAs were issued in questionable circumstances. Many of these FCAs issued, were not supported by authentic, verified and approved agriculture development plans. Even if these FCAs were supported by properly approved agriculture development plans, during the operations in many instances it had been noted that the operators or developers departed or digressed from the approved agriculture plans.

In other instances, the proportionate agriculture development phased out per every 500 hectares maximum area over which clear felling of forests can take place, it has been noted that FCAs were nonetheless given and logging generally continued into areas not immediately within the 500 hectares phases but over the whole areas of SABLs.”

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.14.6. Risk designation and specification**

Specified risk

#### **1.14.7. Control measures and verifiers**

- For FMAs, obtain a record of the consultation showing a 75 per cent consensus, this may be obtained from the PNGFA. Ask for minutes of consultation from the policy and planning – FMA signing meeting minutes are taken.
- For all other permit types (and for FMAs to be sure), field verification, including consultation with local landowners is necessary to ensure consent has been provided in accordance with the law.

### **1.15. Indigenous/traditional peoples' rights**

*Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.*

#### **1.15.1. Applicable laws and regulations**

- Constitution of Papua New Guinea; Section 53, subsection 5(d) and (e) Protection from Unjust Deprivation of Property section and Section 54 (a) (i) (ii) (b) (c) Special provision

in relation to certain lands. Available at: <http://www.parliament.gov.pg/constitution-of-the-independent-state-of-papua-new-guinea>

- National lands Registration Act 1981; Chapter 357, Division 4, Effect of ownership of National Lands Act and Chapter 357, subsection 14 (a) and (b) ownership of National Land, including customary land. Available at: <http://faolex.fao.org/docs/texts/png24837.doc>
- Forestry Act 1991; section 2, subsection Xlvii “customary owners” in relation to an area of customary land, means persons having customary rights (a) ownership over the land; or (b) ownership over forest produce growing on the land or (c) over forest relating to the use of the land and Section 46, Customary resource ownership, the rights of the customary owners of the forest resource shall be fully recognized and respected in all transactions affecting the resource. Available at: [http://www.fiapng.com/forestry\\_act\\_1991.html](http://www.fiapng.com/forestry_act_1991.html)

#### **1.15.2. Legal authority**

- Papua New Guinea Forest Authority (PNGFA)
- Conservation Environment Protection Authority (CEPA)
- Provincial Forest Management Committees
- National Forestry Board
- Department of Agriculture & Livestock
- Department of Trade & Industry
- Department of Lands and Physical Planning

#### **1.15.3. Legally required documents or records**

- Copies of the land group incorporation certificates, with proper genealogy and property listing completed in compliance to Land Group Incorporation Act 1974, amended 2009.
- Certification of Forest Management Agreement by Provincial Management Committee
- Signing of Forest Management Agreement by landowners through Incorporated Land Groups
- Endorsement of Forest Management by National Forest Board.
- Signing of Forest Management Agreement by Minister for Forests on behalf of PNG Forest Authority.

#### **1.15.4. Sources of information**

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

### *Non-Government sources*

- Forestlegalityalliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Oxfordbusinessgroup. com, (2012). *The Report: Papua New Guinea 2012: Tax*. [pdf] Oxford Business Group. [online] Available at: <http://www.oxfordbusinessgroup.com/node/779733/reader> [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2015). *Papua New Guinea 2015: Agriculture & Fisheries - PNG's export of raw logs support growth*. [online] Available at: <http://www.oxfordbusinessgroup.com/country/papua-new-guinea/agriculture?page=2> [Accessed 13 January 2017].
- Fao.org, (N.Y). *Forest Resource Development Through Timber Permits*. [online] Available at: <http://www.fao.org/docrep/004/Y2711E/y2711e05.htm> .
- Wri.org, (2014). *Sourcing Legally Produced Wood: A Guide for Business*. [online] Available at: <http://www.wri.org/publication/sourcing-legally-produced-wood-guide-businesses> [accessed 17 January 2017].
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.

#### **1.15.5. Risk determination**

##### *Overview of Legal Requirements*

See 1.1 for a detailed description of the customary land rights in PNG. The Forestry Act 1991 recognises customary ownership of PNG's forest resources. Under the FMA arrangements provided for in the Forestry Act (also applicable to TRPs and LFAs), customary owners retain their user rights to access the forest and collect and use non-timber forest products for local use and consumption, but not for commercial purposes. Project agreements also include requirements relating to the provision of infrastructure for local communities. These usually include access roads and health and education facilities.

For FCAs, there is no reservation for the continued rights of the landowners to hunting, fishing, collecting, fishing and access to sacred sites, cemetery and so on. I.e. the rights are not retained.

##### *Description of Risk*

Experts consulted stated that access to land for customary purposes is usually not an issue in FMA areas, however there are numerous reports of companies not complying with their

obligations as per project agreement to deliver basic infrastructures, i.e. health, education facilities etc.(Expert consultation, Port Moresby 2016).

Given the significant issues associated with the acquisition of land use rights, it is not clear that the hand over of customary use rights is always lawful.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.15.6. Risk designation and specification**

Specified risk

#### **1.15.7. Control measures and verifiers**

- Ensure the documentation described in 1.1. is in place.
- Onsite verification to ensure all requirements of the project document, including local infrastructure developments, have been complied with.

#### Regarding the risks associated with the ILGS:

- ILG Certificates shall be available for the forest area in question.
- Each ILG shall have a constitution
- Consultation with customary owners and members of the ILG to determine the validity of the process for forming and registering the ILG.

#### Risks regarding disputes over land claims:

- Dispute settlement mechanism shall exist within the constitution of the ILGs.

#### Regarding consent:

- For FMAs, a record of the consultation showing a 75 per cent consensus shall be available, this may be obtained from the PNGFA.
- Minutes of consultation from the policy and planning –signed by FMA shall be available.
- For all other permit types (and for FMAs to be sure), field verification, including consultation with local landowners is necessary

## TRADE AND TRANSPORT

### 1.16. Classification of species, quantities, qualities

*Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).*

#### 1.16.1. Applicable laws and regulations

- Forestry Act 1991 and amendment 2005. Available at: [http://thereddddesk.org/sites/default/files/forestry\\_act\\_1991\\_png\\_0.pdf](http://thereddddesk.org/sites/default/files/forestry_act_1991_png_0.pdf)
- Customs Act 1951. Available at: [http://www.customs.gov.pg/06\\_legislation\\_and\\_publications/1\\_legislation/01\\_customs\\_act\\_1951.pdf](http://www.customs.gov.pg/06_legislation_and_publications/1_legislation/01_customs_act_1951.pdf)
- Procedures for the Identification, Scaling and Reporting (including Royalty Self-Assessment) on Logs Harvested from Natural Forest Logging Operations, September 1996.

#### 1.16.2. Legal authority

- PNG Forest Authority
- Commerce, trade and Industry

#### 1.16.3. Legally required documents or records

- Production tally sheets
- Royalty price /cubic metres
- Project Agreement which specifies various levies need to be paid.

#### 1.16.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.
- Forestry.gov.pg, (N.Y). *Registration of Log Scalpers with PNG Forest Authority* as at 1st January 2008. [online] Available at: <http://www.forestry.gov.pg/site/files/log%20scalpers%20010108.pdf>

##### *Non-Government sources*

- Tomimura, C. (2013) Rainforest Alliance Standard for Verification of Legal Compliance (VLC) for Forest Management Enterprises (FME) in Papua New Guinea. [pdf] Rainforest Alliance, principal 5 (page 9). Available at: <http://www.rainforest->



[alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26\\_RA\\_VLC\\_Standard\\_for\\_FMEs\\_PNG\\_24Oct13.pdf](http://alliance.org/business/sites/default/files/site-documents/forestry/documents/VER-26_RA_VLC_Standard_for_FMEs_PNG_24Oct13.pdf)

- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
- Lawson, S. (2014). *Illegal Logging in Papua New Guinea*. [online] Illegal-logging.info Available at: [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 13 January 2017].

#### 1.16.5. Risk determination

##### *Overview of Legal Requirements*

The 'Procedures for the Identification Scaling and Reporting on Logs Harvested from Natural Forest Logging Operations' set out the controls for the scaling of logs at the log landings and the reporting on species and volumes, as well as for self-assessment of royalty payments. Logs must be identified and scaled by a licensed scaler on the log landing in the forest after being trimmed and cut to length.

The PNGFA project supervisors are required to carry out periodic log scaling checks by

undertaking their own scaling and must address any major discrepancies between their checks and those provided by the licensed scalers. The timber business is required to submit monthly or more frequently a 'Declaration of Logs Harvested and Royalty Self-Assessment,' which is based on the 'Log Scaling Record Sheets.' (IGES 2016)

The classification of logs is then verified prior to export through the Timber Export Monitoring System (TEMS) by the SGS. The Government contracted Société Générale de Surveillance (SGS) in May 1994 to provide an independent, arms length monitoring of all log exports from PNG, to ensure that logs exported are sold at the prevailing market prices. SGS' monitoring was also to ensure that export shipments were correctly declared with respect to log volume and species.

The log monitoring system currently in place in PNG involves the following:

- Log tags are affixed to the end of each log by producers at the time of scaling at the log landing as prescribed by the PNGFA;
- Pre-shipment log inspections to check species identification and log scaling; and
- Monitoring of ship loading to verify the species and volumes actually loaded.

#### *Description of Risk*

According to the experts interviewed, the landowners themselves are a credible control to ensure compliance with requirements regarding classification, as this has a strong implication for the payment of royalties. Landowners are usually present at the log landing site to ensure the scaling and grading is done correctly as it impacts the royalties they receive. (Expert consultation, Port Moresby 2016).

According to Lawson (2016), there are no systems in place within the PNGFA for checking actual harvest volumes against revenues and investigating discrepancies. The office of the auditor-general sought to carry out such checks during its last audit in 2009, but found that to do so properly would have required it to examine direct log scaling sheets kept by each individual provincial forest office, which was beyond its capabilities. Using available collated data stored at headquarters, it was nevertheless able to demonstrate significant discrepancies that had apparently gone unnoticed. It compared harvesting records against amounts of royalties collected for January 2001–August 2008, finding that almost \$4 million was missing.

Regarding SGS's role, Chatham House 2014 states "The independent monitoring of log exports by SGS does involve a computerized system that includes volumes exported and taxes paid by individual logging concessionaires, but the database only captures a part of the timber administration system. The problems with data collection and management are demonstrated by apparent confusion over one of the most fundamental factors – the amount of timber officially harvested. Research by Chatham House for the wood balance analysis in this report exposed large differences in data for licensed harvests reported by the PNGFA's Field Services Division (as cited in the country's REDD+ R-PP) and that reported in PNGFA annual reports."

Given the serious issues raised with the payment of export levies (detailed above in section 1.6), the strength of the export controls is also relevant for this indicator. Payment of export levies for log exports has been independently monitored since 1994 by SGS and this has effectively ensured that all export taxes charged have been paid – although questions have

been repeatedly raised about whether the full amounts due are in fact being charged, since there is evidence that log values may be being deliberately under-declared (Lawson, 2014)

Undervaluing the price of logs that are sold and exported has been reported as means for forestry companies in PNG to reduce their export tax liabilities (according to the Oakland Institute report and expert consultation conducted in Port Moresby in November 2016). According to the Oakland Institute (2015), there is no mechanism in place to verify the prices or what happens to the logs once they are exported from the country. There are strong reasons to believe that underpricing is practiced by the logging companies in PNG (Oakland Institute 2015).

Export prices declared for PNG timber are significantly lower than those declared by other major exporters of tropical logs—except Malaysia, which has similarly low prices. At an average of \$184 between 2000 and 2014, the price per cubic meter for PNG exporters is 20% lower than the average of the other five major exporters of tropical timber and 26% lower than the average for the rest of the world. (Oakland Institute 2015). The above elements concur to indicate the strong likelihood that transfer pricing is happening in PNG through under-pricing.

The Oakland Institute conducted an analysis of the largest logging company in PNG, Rimbunan Hijau. According to their report, 16 subsidiaries of the RH Group who cumulatively account for at least a quarter of PNG's total log exports by volume and value, have been working at a loss for over a decade. During the period analysed (2000-2011), RH PNG, the local parent company, declared nine years of losses and only two years of profits. Their two years of profits made a total of \$2.8 million while their nine years of losses amounted to \$42.2 million. This trend is consistent with most of the other 15 subsidiary companies analysed. According to tax filings for the period 2000 to 2011, most of the 16 RH companies analyzed have been working at a loss and never paid any income tax.

The IGES Report (2016) also states that 'the export log monitoring system does not guarantee that export timber is fully legal. The system only allows traceability of timber back to the harvesting block, not the stump, and was never intended to provide assurance of legality.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.16.6. Risk designation and specification**

Specified risk.

#### **1.16.7. Control measures and verifiers**

- Products shall be correctly classified (species, quantities, qualities etc.) on sales documents, custom declarations and other legally required documents
- Evidence shall be provided upon request (photographs of labelling)
- Physical control where it should be verified that the present material equals what has been invoices and marked

- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Sales prices shall be in line with market prices.

### 1.17. Trade and transport

*All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.*

#### 1.17.1. Applicable laws and regulations

N/A (There are no laws in place governing the transportation of timber in PNG (apart from the export of timber). As PNG is generally very inaccessible, land transport is not common. Most harvesting sites are relatively close to the coast, and logs are moved swiftly from harvest site to export point)

#### 1.17.2. Legal authority

N/A

#### 1.17.3. Legally required documents or records

N/A

#### 1.17.4. Sources of information

N/A

#### 1.17.5. Risk determination

N/A

#### 1.17.6. Risk designation and specification

N/A

#### 1.17.7. Control measures and verifiers

N/A

### 1.18. Offshore trading and transfer pricing

*Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.*

#### **1.18.1. Applicable laws and regulations**

- Income Tax Act 1959, Division 15 of the Act (Transfer Pricing: Determination of the taxable income of certain persons from international transactions and Papua New Guinea's double tax agreements). Available at: [http://www.paclii.org/pg/legis/consol\\_act/ita1959116.rtf](http://www.paclii.org/pg/legis/consol_act/ita1959116.rtf) - section 118
- IRC — Taxation Circular No. 2011/2 — Commissioner General's interpretation and application of the Taxation Laws on Division 15 of the ITA 1959 (the Circular).

#### **1.18.2. Legal authority**

- Internal Revenue Commission
- Investment Promotion Authority

#### **1.18.3. Legally required documents or records**

- Audited Financial Statements
- Balance sheet
- Profit and Loss statements

#### **1.18.4. Sources of information**

##### *Non-Government sources*

- Forest-trends.org, (2006). Logging, Legality and Livelihoods in Papua New Guinea - Synthesis of Official Assessments of the Large-Scale Logging - Industry Volume I. [online] Available at: [http://www.forest-trends.org/documents/files/doc\\_105.pdf](http://www.forest-trends.org/documents/files/doc_105.pdf).
- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture

- Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at:  
[http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
  - ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
  - Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
  - Lawson, S. (2014). *Illegal Logging in Papua New Guinea*. [online] Illegal-logging.info Available at: [http://www.illegal-logging.info/sites/default/files/Lawson\\_Papua\\_New\\_Guinea\\_PP\\_2014.pdf](http://www.illegal-logging.info/sites/default/files/Lawson_Papua_New_Guinea_PP_2014.pdf) [accessed 13 January 2017].
  - PricewaterhouseCoopers (PwC) for the Papua New Guinea Forest Industries Association (PNG FIA) (2006). *Economic Analysis and Potential of PNG Forestry Industry - Final Report*. [pdf] PricewaterhouseCoopers. Available at: [http://www.fiapng.com/PDF\\_files/PWC\\_ECONOMIC\\_REPORT\\_07.pdf](http://www.fiapng.com/PDF_files/PWC_ECONOMIC_REPORT_07.pdf) [Accessed 13 January 2017].
  - Oxfordbusinessgroup. com, (2012). *The Report: Papua New Guinea 2012: Tax*. [pdf] Oxford Business Group. [online] Available at: <http://www.oxfordbusinessgroup.com/node/779733/reader> [Accessed 13 January 2017].
  - Oxfordbusinessgroup. com, (2015). *Papua New Guinea 2015: Agriculture & Fisheries - PNG's export of raw logs support growth*. [online] Available at: <http://www.oxfordbusinessgroup.com/country/papua-new-guinea/agriculture?page=2> [Accessed 13 January 2017].
  - Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.
  - Transferpricingnews.com, (2016). *PNG responds to claims of transfer pricing abuse in logging industry*. [online] Available at: <https://transferpricingnews.com/2016/04/18/papua-new-guinea-png-claims-transfer-pricing-logging-industry/> [Accessed 17 January 2017].
  - Ey.com, (2015). *Worldwide Transfer Pricing Reference Guide Papua New Guinea*. [online] Available at: <http://www.ey.com/gl/en/services/tax/international-tax/transfer-pricing-and-tax-effective-supply-chain-management/2015-16-worldwide-transfer-pricing-reference-guide---papua-new-guinea> [Accessed 17 January 2017].
  - Transparency International (2012). *Tackling Forestry Corruption Risks in the Asia Pacific* Available at:

[https://issuu.com/transparencyinternational/docs/2012\\_tacklingforestrycorruption\\_asiapacific\\_en](https://issuu.com/transparencyinternational/docs/2012_tacklingforestrycorruption_asiapacific_en) [accessed 13 January 2016]

#### 1.18.5. Risk determination

##### *Overview of Legal Requirements*

The tax laws of PNG include requirements covering cross border transactions and anti-avoidance. The general requirements of the Income Tax Act require taxpayers to keep proper records relating to their transfer pricing. However, there is no specific statutory requirement to prepare and maintain transfer pricing documentation. Division 15 and the double tax agreements entered into by PNG do not prescribe any particular methodology for ascertaining an arm's-length consideration. Given that there is no prescribed legislative preference, the Commissioner General generally would seek to use the most appropriate method, per the OECD Guidelines.

The IRC requires an International Dealings Schedule (IDS) to be filed with each tax return when the international related-party dealings exceeded Papua New Guinean kina (PGK) 100,000 in value (excluding the capital value of any related party loans) or when loans with related parties have an aggregate capital value exceeding PGK2 million at any time during the year. Information to be disclosed on the IDS includes:

- International related-party transaction types and quantum
- Countries with which the taxpayer has international related-party transactions
- Percentage of transactions covered by contemporaneous documentation
- Transfer pricing methodologies selected and applied for each international related-party type
- Details of branch operations

The Act does not impose specific penalties in respect to non-arm's-length pricing practices and the general additional tax and penalty provisions will apply to default, evasion or omission relating to transfer pricing.

Transfer pricing is a way for companies to evade tax by under-declaring values of export consignments or by overstating tax deductible values of their imports (Bird, Wells, van Helden, & Turia, 2007c, p. 27 in IGES 2016.). Transfer pricing occurs through the **overvaluation** of imported goods and services and **undervaluation** of exported goods and services. Forest operations in PNG are heavily dependent on imported capital goods and also consumables and services. In importing goods and services, transfer pricing can take place through:

- Overpricing of imported equipment, machinery, spare parts, and consumables.
- Transfer of overhead costs from headquarters and the costs of unrelated business activities to local operations.
- Overpricing of services and expatriate consultancy work.

Regarding the export of forest products, transfer pricing through underpricing may take place in two ways:



- A direct agreement between buyer and seller on an extra payment to be made in addition to the formal invoice presented by the exporter to the exporting country authorities.
- Selling logs to an offshore parent company that will then re-invoice or re-export for a substantially higher price.

### *Description of Risk*

According to the Oakland Institute (2016), Transfer pricing appears to be a significant problem for PNG, but is difficult to detect. In the 1980s nearly all forestry companies were found to be practicing transfer pricing (Barnett, 1989 in IGES 2016). A recent analysis of logging company financial and tax records in PNG concludes that massive transfer pricing seems to be taking place in the country's forest industry, leading to lost tax revenue that may exceed US \$100 million per year (Mousseau, 2016, p. 5, in IGES 2016).

There is a strong likelihood that transfer pricing is happening in PNG. In 1999, it was estimated that PNG lost \$9 to \$17 million in tax revenue due to transfer pricing.<sup>49</sup> Although unable to obtain formal proof, a 2002 government review found "unexplained and substantial . . . discrepancies in price and volumes . . . that could be evidence of transfer pricing." The review called for further investigation into the matter. (Oakland Institute 2016)

A 2014 Chatham House study found that there was a \$20 price difference per cubic meter between export prices from PNG and import prices for logs to China, accounting for freight and insurance costs.

The unexplained discrepancies found in different reviews, the difference between PNG export prices and the export prices of other major exporters, and the operational losses declared year after year by many logging companies seem to indicate that transfer pricing is taking place in PNG's forest industry— resulting in a loss of hundreds of millions of dollars to the country. (Oakland Institute 2016)

According to the Tax Justice Network, "round tripping is one of the main reasons people use tax havens." This describes when businesses leave proceeds from export sales and share offerings in a tax haven for a period of time, then send them back to their home country disguised as foreign direct investment (FDI). This helps the business to avoid paying capital gains or income tax. The majority of Ribunan Hijau's holding companies are located in the British Virgin Islands (BVI): for example, Super Acme Ltd., Mooningham Ltd., Wilmington

Co. Ltd., Subang Inc., and Proexcel Ltd. The other holding companies are spread across Singapore (i.e. Monarch Logging Pte. Ltd.) and Hong Kong (i.e. Gotha Co. Ltd. and Glasfield Co. Inc.). The role of BVI, Singapore, and Hong Kong in facilitating illicit financial flows, such as tax avoidance and transfer pricing, is well documented. BVI boasts an attractive zero tax rate and corporate secrecy laws that obfuscate the true ownership structure of the 900,000 companies registered there. (Oakland Institute 2016).

A press release from the Internal Revenue Commission (2016) in response to the Oakland Institute report stated that "the Data Collection and Risk Assessment Phase for the new transfer pricing regime confirmed the logging sector as a high-risk sector and flagged international related-party transactions as a particular high-risk issue." (Transfer Pricing News 2016)

According to EY (2015), the low level of resources available to the IRC means that the likelihood of an annual tax audit is low. If an audit is conducted, the likelihood that transfer

pricing will be reviewed as part of the audit is high. The Commissioner General, as a rule, allocates resources for transfer pricing cases according to the perceived risk to revenue from taxpayer noncompliance with the arm's-length principle. The more significant and the broader the scope of the dealings, the more likely it is that a taxpayer will be subject to a transfer pricing review. Businesses with significant levels of international dealings that are constantly returning losses are at the greatest risk of a transfer pricing review.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.18.6. Risk designation and specification**

Specified risk

#### **1.18.7. Control measures and verifiers**

- If illegal in the country of the supplier or sub-supplier, the products shall not have been traded through countries known as "tax havens".
- There shall be no illegal manipulation in relation to the transfer pricing.
- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Sales prices shall be in line with market prices.
- Consultation with financial authority to verify that all required income and profit taxes have been paid
- Comparisons of the sale price/export tax paid with market value can be undertaken to determine the risk of tax minimisation.

### **1.19. Custom regulations**

*Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).*

#### **1.19.1. Applicable laws and regulations**

- Customs (08 Budget Amendment) Act 2007. Available at: [http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20\(2008%20Budget%20Amendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20(2008%20Budget%20Amendment)%20Act%202007.pdf)
- Customs (2008 Budget Amendment) Regulation 2007. Available at: [http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20\(2008%20Budget%20Amendment\)%20Regulation%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20(2008%20Budget%20Amendment)%20Regulation%202007.pdf)
- Customs (Prohibited Exports) (2008 Budget Amendment) Regulation 2007. Available at: [http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20\(Prohibited%20Exports\)%20\(2008%20Budget%20Amendment\)%20Regulation%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Customs%20(Prohibited%20Exports)%20(2008%20Budget%20Amendment)%20Regulation%202007.pdf)
- Customs Tariff Act 1990. Available at: [http://www.customs.gov.pg/06\\_legislation\\_and\\_publications/1\\_legislation/08\\_Customs\\_Tariff\\_Act\\_1990.pdf](http://www.customs.gov.pg/06_legislation_and_publications/1_legislation/08_Customs_Tariff_Act_1990.pdf)

- Excise (08 Budget Amendment) Act 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/Excise%20\(2008%20Budget%20Amendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Excise%20(2008%20Budget%20Amendment)%20Act%202007.pdf)
- Excise Tariff (08 Budget Amendment) Act 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/ExciseTariff%20\(2008%20Budget%20Amendment\)%202007%20Act.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/ExciseTariff%20(2008%20Budget%20Amendment)%202007%20Act.pdf)
- Fiscal Responsibility Act 2006. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/PNGFRA\\_No%5b1%5d.9-2006.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/PNGFRA_No%5b1%5d.9-2006.pdf)
- Goods and Services Tax (08 Budget Amendment) Act 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/Goods%20&%20Services%20Tax%20\(2008%20Budget%20Amendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Goods%20&%20Services%20Tax%20(2008%20Budget%20Amendment)%20Act%202007.pdf)
- Income Tax (08 Budget Amendment) Act 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/Income\\_Tax%20\(2008BudgetAmendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Income_Tax%20(2008BudgetAmendment)%20Act%202007.pdf)
- Income Tax (2008 Budget Amendment) Regulation 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/IncomeTax%20\(2008%20Budget%20Amendment\)%20Regulation%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/IncomeTax%20(2008%20Budget%20Amendment)%20Regulation%202007.pdf)
- Income Tax (Salary and Wages Tax ) (Rates) (08 Budget Amendment) Act 2007. Available at:  
[http://www.treasury.gov.pg/html/legislation/files/acts/Income\\_Tax%20\(S&W\)\(Rates\)\(2008%20Budget%20Amendment\)%20Act%202007.pdf](http://www.treasury.gov.pg/html/legislation/files/acts/Income_Tax%20(S&W)(Rates)(2008%20Budget%20Amendment)%20Act%202007.pdf)

#### **1.19.2. Legal authority**

- Department of Customs and Immigration

#### **1.19.3. Legally required documents or records**

- Log Tally Sheet
- Price Endorsement PNGFA
- Export Permit issued by the issued by the Minister for Forests following endorsement by the Papua New Guinea Forest Authority (PNGFA):
  - Export Permit Type 1 – for logs and wood products harvested from Timber Permit and Timber Licence areas.
  - Export Permit Type 2 – issued by the Minister for Forests for non-timber forest products (e.g. balsa wood, sandalwood, eaglewood, rattan etc).  
Export License Department of Trade and Industry
- Export license, issued by the Minister for Trade
- Letter of Credit Consignee's bank
- Customs Duty
- Bill of Lading Shipmaster
- Copy of Export Summary

- Inspection Report (only for logs) SGS SGS Office Port Moresby, Timber business, Provincial Forest Office
- Phytosanitary Certificates National Agriculture Quarantine and Inspection Authority Customs declaration materials for export Customs

#### 1.19.4. Sources of information

##### *Government sources*

- Australia.gov.au, (2015). *Papua New Guinea Country Specific Guidelines*. [online] Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/png-csg.pdf>.

##### *Non-Government sources*

- Scheyvens, H., Samejima, H., Kawai, M. and Fujisaki, T (2016). *Legal framework, legality risks and risk mitigation - A reference for buyers of Papua New Guinean export timber*. [pdf] Institute for Global Environmental Strategies. Available at: 2017 at [http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book\\_1.pdf](http://pub.iges.or.jp/modules/envirolib/upload/6455/attach/Book_1.pdf) [Accessed 13 January]
- Oaklandinstitute.org, (2016). *The Great Timber Heist: The Logging Industry in Papua New Guinea*. [online] Available at: <https://www.oaklandinstitute.org/great-timber-heist-logging-industry-papua-new-guinea> [Accessed 11. January 2017]
- Wilkinson, G. (2013). Background report on forests and forestry in Papua New Guinea with reference to the implementation of the Logging Code of Practice, A report under Project GCP (p. 3). PNG/003/AUL for the PNG Forest Authority, the Food and Agriculture Organisation of the United Nations and the Australian Government Department of Agriculture, Fisheries and Forestry. Available at: [http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20\(by%20Wilkinson\).pdf](http://www.forestry.gov.pg/site/files/1.%20Report%201%20-%20Background%20on%20forests%20and%20forestry%20in%20PNG%20with%20reference%20to%20the%20implementation%20of%20the%20Logging%20Code%20of%20Practice%20(by%20Wilkinson).pdf) [accessed 13. January 2017]
- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- Avosa, M., (2015). *Forest Governance Integrity Baseline Report - Papua New Guinea*. [online] Transparency International Papua New Guinea. Available at: <https://pngforests.files.wordpress.com/2013/05/forest-governance-integrity-report-ti.pdf> [Accessed 17 January 2017].
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]

- PricewaterhouseCoopers (PwC) for the Papua New Guinea Forest Industries Association (PNG FIA) (2006). *Economic Analysis and Potential of PNG Forestry Industry - Final Report*. [pdf] PricewaterhouseCoopers. Available at: [http://www.fiapng.com/PDF\\_files/PWC\\_ECONOMIC\\_REPORT\\_07.pdf](http://www.fiapng.com/PDF_files/PWC_ECONOMIC_REPORT_07.pdf) [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2012). *The Report: Papua New Guinea 2012: Tax*. [pdf] Oxford Business Group. [online] Available at: <http://www.oxfordbusinessgroup.com/node/779733/reader> [Accessed 13 January 2017].
- Oxfordbusinessgroup. com, (2015). *Papua New Guinea 2015: Agriculture & Fisheries - PNG's export of raw logs support growth*. [online] Available at: <http://www.oxfordbusinessgroup.com/country/papua-new-guinea/agriculture?page=2> [Accessed 13 January 2017].
- Expert consultation carried out in Port Moresby by NEPCon, 21-25 November 2016.

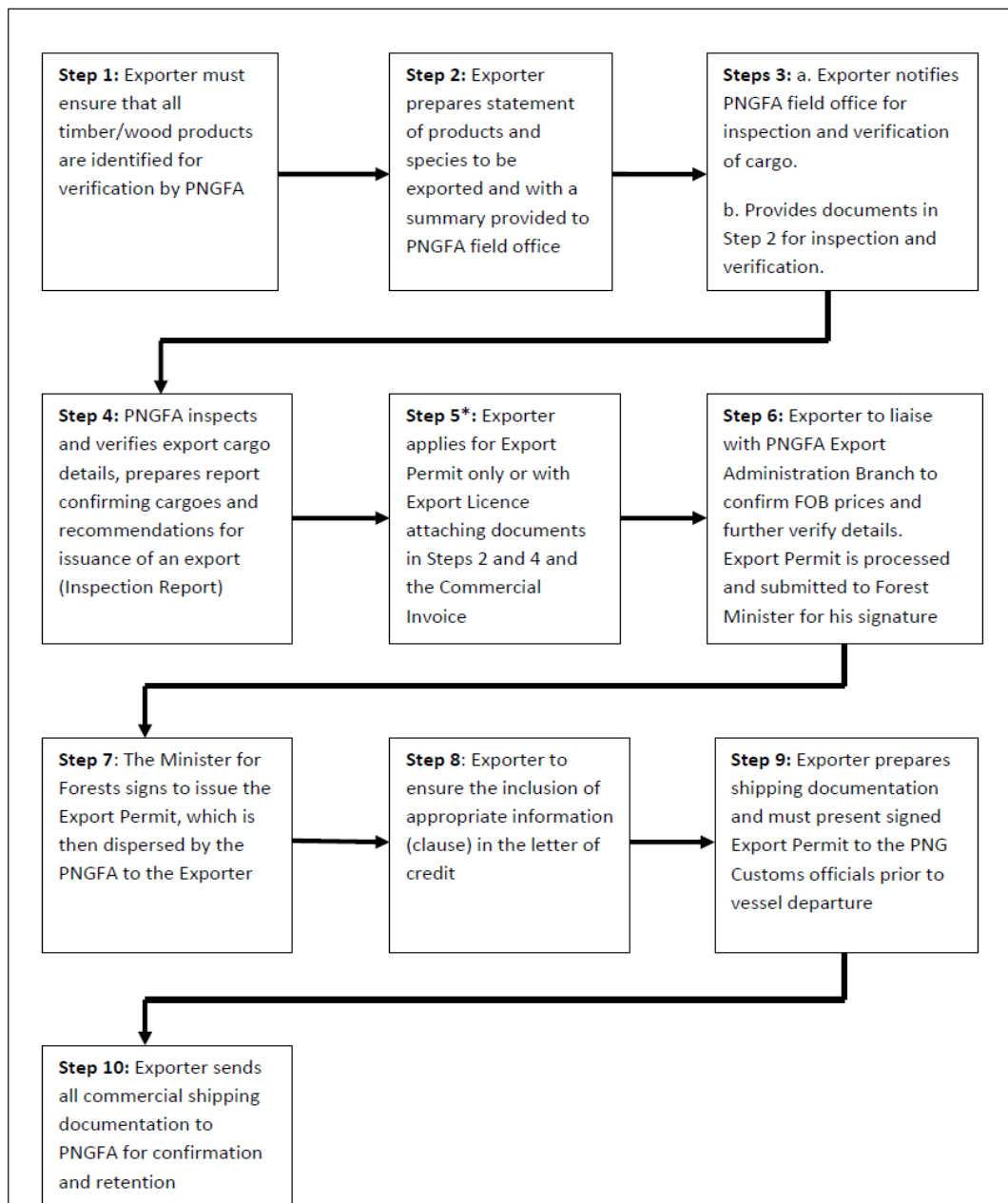
#### 1.19.5. Risk determination

##### *Overview of Legal Requirements*

The approval process for the export of logs and other wood products from PNG requires exporters to apply for and obtain an Export Permit Type 1 from the Minister for Forests and then an Export Licence from the Minister for Trade, Commerce and Industry. Both an Export Permit Type 1 and an Export Licence are required for round logs export.

If an exporter is only exporting other wood products (i.e. processed wood products such as sawn timber, plywood, etc.), they only need to apply for an Export Permit Type 1. If an exporter is only exporting non-timber forest products (such as rattan), they only need to apply for an Export Permit Type 2. The granting of export permits is a delegated function under the Customs Tariff Act 1990 to the Minister for Forests.

##### Application process:



It is a requirement under section 41 of the Forestry Act 1991 that a trained forester who is employed by the PNGFA must verify that the contents of the parcel are consistent with those items indicated in the Export Permit Type 1 application (including timber species). The inspecting officer will also confirm that the logs and wood products nominated in the application have originated from an authorised area.

The inspection will also ensure that all statutory payments and other payments for the logs and other wood products have been made, by verifying all receipt for payment including timber royalties, levies and taxes (if any).

The inspection report should be attached with the application and submitted to the Export Administration Branch, PNGFA. All follow-up work and enquiries relating to applications are to be undertaken by the exporter.

Upon receiving an application for an export permit for logs and other wood products, the Export Administration Branch allocates a shipment identification or export permit number. This number is the reference used for the clearance, by PNG Customs, of the parcel of logs or other wood products for export.

The Export Administration Branch verifies that all documentation is in order and that the Free On Board (FOB) value of the parcel of logs and wood products is consistent with the prevailing export market value. In instances where the confirmation of the prevailing export market FOB value is not possible, a decision is made on these values based on the current indicative FOB values to respective markets.

Since 1994, the Government has contracted Société Générale de Surveillance (SGS) PNG Pty as an agent of the PNGFA to support the log export monitoring and control procedures. The roles of SGS are:

- Providing log tags (Figure 2.2.2) to be affixed to the end of each log by producers at the time of scaling at the log landing;
- Conducting pre-shipment log inspections to check species identification and log scaling;
- Monitoring ship loading to verify the species and volumes actually loaded;
- Verifying commercial invoices before they can be presented against a letter of credit.

The PNG Government has banned a number of timber species from export in round log form due to their scarcity in the natural forest. However, these species may be exported as processed products:

- Kauri Pine AGA *Agathis* sp.
- Hoop Pine ARH *Auracaria cunninghamii*
- Klinkii Pine ARK *Auracaria hunsteinii*
- Celery-Top Pine CLP *Phyllocladus hypophyllus*
- Cordia COR *Cordia dichotoma*
- Dacrydium DAC *Dacrydium nidulum*
- Ebony EBO *Diospyros ferrea*
- Kerosene wood KEW *Cordia subcordata*
- Libocedrus LIB *Libocedrus pauanus*
- Podocarp POD *Podocarpus* sp.
- Brown Podocarp POB *Decussocarpus swalichianus*
- Highland Podocarp POH *Dacrycarpus imbricatus*
- Rosewood ROS *Pterocarpus indicus*
- Balsa BAL *Ochroma lagopus*
- Blackbean BLB *Castanospermum australe*



### *Description of Risk*

Allegations of wrong doing and corruption have long plagued the export permit system in PNG. Some experts acknowledged issues with discrepancies between described species and actual species, or log grading and a lack of transparency in the pricing process. (Expert consultation, Port Moresby 2016).

Illegal trading of banned species and illegal cross border trade were not seen to be an issue with experts consulted.

A number of experts and reports have questioned the robustness of the SGS administered system. SGS have held an exclusive contract with the government for more than 20 years. Manual verification of the volumes is only being carried out for 10 per cent of logs, and some experts questioned the veracity of the claims from SGS of 100 per cent species verification. As stated by TIPNG (2015), "physical inspections on export logs are only done on 10% random sampling. Thus, random sampling is seen as providing opportunity for logging companies to falsify documents relating to export volumes and species and thus export logs illegally."

Other experts noted the risks of bribes being paid as part of the export permit process and raised concerns over the impartiality of SGS.

Transparency International PNG (2015) claim that "in order to evade taxes and royalties due on their exports or to export banned volumes or species of trees, companies may seek to avoid inspections on their logs." Some experts consulted said there are some reports of blatant wrong doing, ships leaving at night etc, which are sometimes reported by NGOs (Expert consultation 2016).

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.19.6. Risk designation and specification**

Specified risk

#### **1.19.7. Control measures and verifiers**

- Obtain copies of all legally required documents.
- Products shall be correctly classified (type, custom code, species, quantities, qualities, etc.).
- All required import and exports permits shall be in place.

### **1.20. CITES**

*CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).*

#### **1.20.1. Applicable laws and regulations**

- Convention on International Trade in Endangered Species of Wild Fauna and Flora

- International Trade (Fauna & Flora) Act 1979. Available at: [http://www.pacii.org/cgi-bin/sinodisp/pg/legis/consol\\_act/itafa1979304/itafa1979304.html?stem=&synonyms=&query=timber#fnB121](http://www.pacii.org/cgi-bin/sinodisp/pg/legis/consol_act/itafa1979304/itafa1979304.html?stem=&synonyms=&query=timber#fnB121)

#### 1.20.2. Legal authority

- Department of Environment and Conservation
- Conservation Environment Protection Authority
- PNG Forest Authority
- Department of Customs and Immigration

#### 1.20.3. Legally required documents or records

- CITES Permit

#### 1.20.4. Sources of information

##### *Non-Government sources*

- Transparency.org, (2016). *Corruption Perceptions Index 2016 – Papua New Guinea*. [online] Available at: <http://www.transparency.org/country/PNG> [accessed 30 January 2017]
- Avosa, M., (2015). *Forest Governance Integrity Baseline Report - Papua New Guinea*. [online] Transparency International Papua New Guinea. Available at: <https://pngforests.files.wordpress.com/2013/05/forest-governance-integrity-report-ti.pdf> [Accessed 17 January 2017].
- ForestlegalityAlliance.org, (2013). *Risk Tool – Papua New Guinea*. [online] Available at: <http://www.forestlegality.org/risk-tool/country/papua-new-guinea> [Accessed 11 January 2017]
- Worldbank.org, (2015). *Worldwide Governance Indicators – Papua New Guinea 1996–2015*. [online] Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Cottingham, D, (2009). *Convention on International Trade in Endangered Species (CITES)*. Available at: [http://www.nmfs.noaa.gov/sfa/hms/advisory\\_panels/hms\\_ap/meetings/sept\\_2009/documents/hms\\_ap\\_meeting\\_cites\\_9-11-09\\_final.pdf](http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/sept_2009/documents/hms_ap_meeting_cites_9-11-09_final.pdf)
- Schwartz, J. (N.Y). *Endangered Species and International Law*. [online] USA: International Law and Institutions. Available at: <http://www.eolss.net/Sample-Chapters/C14/E1-36-02-05.pdf>
- Zich, F. and Compton, J. (N.Y). *Agarwood (Gaharu) Harvest and Trade in Papua New Guinea*. [online] CITES. Available at: <https://cites.org/sites/default/files/eng/com/pc/11/X-PC11-Inf. 11.pdf>
- Cites.org, (2016). *CITES Country Profiles - PNG*. [online] Available at: <http://www.cites.org/eng/cms/index.php/component/cp/country/PNG>

- Cites.org, (2016). *CITES Species Checklist*. [online] Available at: [http://checklist.cites.org/#/search/country\\_ids\[\]=66&output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=0&show\\_english=1&show\\_spanish=1&show\\_french=1&scientific\\_name=Plantae&page=1&per\\_page=20&locale=en](http://checklist.cites.org/#/search/country_ids[]=66&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20&locale=en)
- Speciesplus.net, (2017). *Homepage*. [online] Available at: <http://www.speciesplus.net/>
- Cites.org, (2017). *Review of Significant Trade Aquilaria malaccensis*. [pdf] CITES. Available at: <http://www.cites.org/eng/com/pc/14/E-PC14-09-02-02-A2.pdf>
- Cites.org, (2017). *Proposal for the inclusion of Gonystylus spp (Ramin)*. [pdf] CITES. Available at: [http://www.cites.org/common/cop/13/raw\\_props/ID-Ramin.pdf](http://www.cites.org/common/cop/13/raw_props/ID-Ramin.pdf)
- CITES, (2002). *Twelfth meeting of the Plants Committee Leiden (The Netherlands), 13-17 May 2002*. [online] CITES. Available at: <http://www.cites.org/common/com/pc/12/E-PC12-05-06.doc>
- Botanic Gardens Conservation International (2008). Agarwood: saving a precious and threatened resource. *BGCI (Bot. Gardens Conserv. Int.)*, 51(1), 1-4. Available at: <http://www.bgci.org/resources/article/0576/>
- Traffic (2000). Heart of the matter: agarwood use and trade and CITES implementation for *Aquilaria malaccensis*. *TRAFFIC International, Cambridge, UK*. Available at: <https://portals.iucn.org/library/node/8133>

#### 1.20.5. Risk determination

##### *Overview of Legal Requirements*

PNG ratified the CITES Convention in 1975. The Department of Environmental Conservation is responsible for overseeing the CITES process in PNG. There are CITES listed species that are found and traded in Papua New Guinea. These include:

- *Aquilaria* spp, a timber that can produce agarwood, a fragrant wood extremely valuable for incense, perfume and traditional medicine and where overharvesting has led to the listing of *Aquilaria* spp in CITES. Papua New Guinea forms the eastern limits of the range of genus, where harvesting for trade has only developed over the last few decades. The CITES listing for *Aquilaria* spp applies to all parts and derivatives, except seeds; seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; and cut flowers of artificially propagated plants.
- Ramin (*Gonystylus* spp) is a highly prized and popular as a decorative timber for furniture and interior decoration but also for veneer and plywood. Declines in natural forests are associated with excessive harvest by illegal logging for international trade. There is one known species in Papua New Guinea, *G. macrophyllus*, although there is little information regarding the extent of harvesting and trade. The CITES listing for *Gonystylus* spp applies to all parts and derivatives, except seeds; seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; and cut flowers of artificially propagated plants

### *Description of Risk*

According to experts consulted, there is possibility of non-compliance to CITES implementing legislation due to plant species variation between regions (i.e. miss-classification of species), however literature could not be found to support this assumption.

There is a risk that CITES listed species could be improperly issued export permit by Conservation Environment Protection Authority if a small number of such species were present in a logging area. This could lead to deliberate mixing by forest companies of restricted species with non restricted species.

There is a general risk of corruption in Papua New Guinea. The 2016 Transparency International's Corruption Perceptions Index ranked Papua New Guinea 136th out of 177 countries assessed and scored it 28 out of 100, meaning it has a high perception of corruption. The 2015 World Bank Worldwide Governance Indicators (WGI) gave Papua New Guinea the following scores out of 100: Voice and Accountability: 49.26; Political Stability and Absence of Violence: 24.29; Government Effectiveness: 29.81; Regulatory Quality: 31.25; Rule of Law: 18.75 and Control of Corruption: 14.42.

Given the corruption and poor governance risks (Transparency International 2016), a precautionary approach has been applied to the risk evaluation for this indicator.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.20.6. Risk designation and specification**

Specified risk

#### **1.20.7. Control measures and verifiers**

- All cross border-trade of CITES-listed species shall be documented and accompanied by required export, import and re-export certificates issued by competent authorities (CITES Management Authorities).

### **1.21. Legislation requiring due diligence/due care procedures**

*Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.*

#### **1.21.1. Applicable laws and regulations**

N/A

#### **1.21.2. Legal authority**

N/A

#### **1.21.3. Legally required documents or records**

N/A

---

**1.21.4. Sources of information**

N/A

**1.21.5. Risk determination**

N/A

**1.21.6. Risk designation and specification**

N/A

**1.21.7. Control measures and verifiers**

N/A

## Annex I. Timber source types

The table **Timber Source Types in Papua New Guinea** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- a) **Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- b) **Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- c) **Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- d) **Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- e) **Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- f) **License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

## TIMBER SOURCE TYPES in PAPUA NEW GUINEA

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural Forest	All areas	Production forest	Customary Ownership	Allocation of management rights assigned to a Forest Industry Participant via a process designated in law.	Forest Management Agreement (FMA)	<p>Timber from a production forest, accompanied by a Timber Permit – issued by the Minister for Forests to the timber operator with conditions outlined for a specific Forest Management Agreement Area or a Local Forest Area to carryout forest management activities including harvesting by the timber operator.</p> <ul style="list-style-type: none"> <li>• Western Province – 3 FMA areas, 2 current and 1 court battle.</li> <li>• Gulf - 5 FMA areas, all are current.</li> <li>• Central Province - 3 acquired under FMA current.</li> <li>• Milnebay - 1 FMA is current.</li> <li>• Oro - 1 FMA is current.</li> <li>• Southern Highlands - 1 FMA is current.</li> <li>• West Sepik - 7 FMAs, all are current.</li> <li>• East Sepik - 1 FMA (REDD+pilot) is current</li> <li>• Madang – 2 FMAs, 1 is current while the other is under dispute.</li> <li>• Morobe - 3 FMAs, all are current</li> </ul>



						<ul style="list-style-type: none"> <li>West New Britain - 7 FMAs, all are current</li> </ul>
					Timber Authority (TA)	<p>Timber harvested under a timber authority cannot be exported in log form except for a road line clearance (TA-02), site preparation for an agriculture project (TA-03) and those harvested in forest plantations (TA-05).</p> <ul style="list-style-type: none"> <li>TA-01: harvesting of less than 5,000 cubic metres annually of timber for domestic processing</li> <li>TA-02: harvesting of timber for road line clearance</li> <li>TA-03: harvesting of timber for clearing in preparation for agriculture or other land use</li> <li>TA-04: harvesting of forest produce other than timber</li> <li>TA-05: harvesting of timber in plantation area.</li> </ul>
					Forest Clearing Authority (FCA).	<p>Timber harvested under a FCA in a natural forest area.</p> <p><b>Note: risks associated with Special Agricultural Business Leases</b></p> <p><b>Western Province:</b></p> <ul style="list-style-type: none"> <li>Gre-Dringas Road Project, FCA 01-01 29/11/10 Not operational</li> </ul> <p>Central Province:</p>

					<ul style="list-style-type: none"> <li>• Mekeo Hinterland Integrated Agriculture Project FCA 03-01 29/06/2009 Not operational, under dispute</li> <li>• Abeda Integrated Agriculture Project FCA 03-02 22/04/2010 Active but currently under dispute</li> <li>• Yumi Agro-Forestry Development Project 115,500 FCA 03-03 03/05/2007 Operations suspended due to non-compliance.</li> </ul> <p>West Sepik:</p> <ul style="list-style-type: none"> <li>• Aitape East Integrated Agriculture Project FCA 10-01 07/03/2008 Operational</li> <li>• Aitape West Integrated Agriculture Project FCA 10-02 21/04/2008 Operational</li> <li>• Bewani Oil Palm Development Project FCA 10-03 26/03/2009 Operational</li> <li>• Scotchiao Cocoa Estate Development Project FCA 10-04 26/03/2009 Operational</li> </ul> <p>East Sepik</p> <ul style="list-style-type: none"> <li>• West Turubu Integrated Agriculture Project FCA 11-01 26/03/2009 Operational</li> <li>• Angoram (Marienberg) Integrated Ag Project FCA 11-02 29/06/2009 Operational</li> </ul> <p>East New Britain:</p> <ul style="list-style-type: none"> <li>• Illi Waswas Roadline FCA 15-01 05/03/2007 No progressive report to date.</li> <li>• Illi Waswas Integrated Agriculture Project FCA 15-02 05/03/2007 Operations suspended.</li> </ul>
--	--	--	--	--	---

					<ul style="list-style-type: none"> <li>• Illi Standalone Agriculture Project FCA 15-03 05/03/2007 Expired. New application lodged.</li> <li>• Inland Lassul Baining Integrated Agriculture Project FCA 15-04 15/01/2008 Operational</li> <li>• Suikol Makokol Integrated Agriculture Project FCA 15-05 15/12/2009 Operational</li> <li>• Mukus Mekoi Integrated Agriculture Project FCA 15-06 07/10/2010 Non-operational, pending inquiry</li> <li>• Sigta Mukus Integrated Rural Development Project FCA 15-07 07/10/2007 Operational</li> </ul> <p><b>New Ireland</b></p> <ul style="list-style-type: none"> <li>• Danfu Integrated Agriculture Project FCA 16-01 11/09/2009 Operational</li> </ul>
					<p>Timber Rights Purchase (TRP) – Timber Permit</p> <p>Timber from production forests, accompanied by a Timber Permit.</p> <ul style="list-style-type: none"> <li>• Western Province – 5 TRP acquired areas of which 4 are current and 1 expired</li> <li>• Gulf – 11 TRP acquired areas of which 7 have expired and 4 are current.</li> <li>• Central Province - 12 TRP acquired areas of which 4 are current and 8 have expired</li> <li>• Milnebay - 7 TRP acquired areas, all have expired</li> <li>• Oro - 7 TRP acquired areas, all have expired</li> <li>• Southern Highlands - 10 TRP acquired areas, all have expired</li> </ul>

					<ul style="list-style-type: none"> <li>• Eastern Highlands – 10 TRP acquired areas, all have expired.</li> <li>• Western Highlands - 17 TRP acquired areas, all have expired.</li> <li>• Enga - 7 TRP acquired areas, all have expired.</li> <li>• West Sepik - 5 TRP acquired areas, all have expired.</li> <li>• East Sepik - 3 TRP acquired areas, all have expired.</li> <li>• Madang - 10 TRP acquired areas of which 2 are current and 8 expired</li> <li>• Morobe - 29 TRP acquired areas of which 3 are current and 26 expired.</li> <li>• West New Britain - 42 TRP acquired areas of which 1 is current and 41 expired.</li> <li>• East New Britain - 35 TRP acquired areas of which 3 are current and 32 expired.</li> <li>• New Ireland – 23 TRP acquired areas of which 3 are current and 20 expired.</li> <li>• Autonomous Region Bougainville - 12 TRP acquired areas of which 2 are current (but not operational) and 10 are expired.</li> <li>• Manus - 3 TRP acquired areas of which 1 is current and 2 expired</li> </ul>
					<div>Local Forest Area (LFA).</div> <div>Timber harvested in a natural forest within a Local Forest Area</div> <ul style="list-style-type: none"> <li>• Central Province - 1 LFA is current</li> </ul>

						<ul style="list-style-type: none"> <li>Oro - 1 LFA is current</li> <li>West Sepik - 2 LFAs, both are current</li> <li>East Sepik - 2 LFAs, both are current</li> <li>West New Britain – 14 LFAs, all are current</li> <li>New Ireland - 14 LFAs, all have expired.</li> <li>Manus - 3 LFAs, all are current.</li> </ul>
Plantation Forests	All areas	Production forest	Customary Ownership	Allocation of management rights assigned to a Forest Industry Participant via a process designated in law.	Timber Authority (TA) – TA-05	<ul style="list-style-type: none"> <li>Milne - 1 project under TA-05 current.</li> <li>Madang - The plantation was sold by Japanese company ( JANT Limited) to Vietnamese Company and could not make it profitable and left. To date the plantation is rundown with no management company investing.</li> </ul>

## Annex II. Expert consultation

	Name	Email	Address	Job title	Organisation	Area of expertise (category/sub-category)	Contact made	Meeting time/date
1.	Bruce Telfer	Bruce.Telfer@sgs.com	SGS PNG LTD	General Manager	SGS	Exporting Monitoring	Yes	21 November 16
2.	Kelly Kalit	kkalit@tnc.org	P.O.BOX 2750 Boroko, NCD	Policy Adviser & Government Relations	TNC	Environment Economist	Yes	21 November 16
3.	Steven Magil	<a href="mailto:Smagil.pngcinc@gmail.com">Smagil.pngcinc@gmail.com</a>	PNG Certification Incorporated	Coordinator	PNG Certification Incorporated	Forestry	Yes	22 November 16
4.	Peter Dam	<a href="mailto:Peter.c.dam@gmail.com">Peter.c.dam@gmail.com</a>	PNG Certification Incorporated	Technical Adviser	PNG Certification Incorporated	Certification Adviser	Yes	22 November 16
5.	Mary Boni	mboni@gmail.com	PNG Eco forestry Forum	Program Director	PNG Eco Forestry Forum	Lawyer	Yes	25 November 16
6.	Ismael Libitino	ilibitino@pngfa.gov.pg	P.O.Box 5055, Boroko, NCD.	Manager Exports	PNGFA	Export licensing/permits etc	MD assigned	23 November 16
7.	Helen Kulukulu	hkulukulu@pngfa.gov.pg	P.O.Box 5055, Boroko, NCD	Officer marketing and exports	PNGFA	Export licensing/permits	MD assigned	23 November 16

8.	Dambis Kaip	dkaip@pngfa.gov.pg	P.O.Box 5055, Boroko, NCD.	Manager Policy & Aid Coordination	PNGFA	Forester/ Policy Analyst	Yes-confirm	23 November 16
9.	Magdale ne Maihua	mmaihoa@pngfa.gov.pg	P.O.Box 5055, Boroko, NCD	Divisional Manageress Project Allocations	PNGFA	Project allocations compliance	MD-assigned	23 November 16
10.	Jackson Uwa Kaumb		P.O.Box 5055, Boroko, NCD.	Project Allocations	PNGFA	Economist		23 November 16
11.	Tom Bukon	tbuon@pngfa.gov.pg	P.O.Box 5055, Boroko, NCD.		PNGFA	Legality compliance	MD-assigned	23 November 16
12.	Andrew Ingles	aingles@TNC.ORG			The Nature Conservancy			
13.	Allison Lewin	alewin@TNC.ORG			The Nature Conservancy			
14.	Jack Hurd	jhurd@TNC.ORG			The Nature Conservancy			
15.	William McGoldrick	william.mcgoldrick@TNC.ORG			The Nature Conservancy			
16.	Richard Hamilton	rhamilton@tnc.org			The Nature Conservancy			
17.	Robyn James	rjames@TNC.ORG			The Nature Conservancy			



18.	Rick Jacobson	rjacobsen@globalwitness.org			Global Witness			
19.	Braden M. Jenkin	braden@sylvasystems.com.au	PO Box 1175, Warragul, Victoria, 3820. Australia	Managing Director	Sylva Systems Pty Ltd			
20.	Bruce Telfer	Bruce.Telfer@sgs.com	SGS PNG LTD	General Manager	SGS	Exporting Monitoring	Yes	21 November 16
21.	Kelly Kalit	kkalit@tnc.org	P.O.BOX 2750 Boroko,NCD	Policy Adviser & Government Relations	TNC	Environment Economist	Yes	21 November 16



The mark of  
responsible forestry

FSC™ A000535

This risk assessment has been developed with funding from FSC™. FSC is not otherwise associated with the project **Supporting Legal Timber Trade**. For risk assessment conducted according to the [FSC-STD-40-005](#), ONLY entries (or information) that have been formally reviewed and approved by FSC and are marked as such (highlighted) can be considered conclusive and may be used by FSC candidate or certified companies in risk assessments and will meet the FSC standards without further verification. You can see the countries with approved risk assessment in the FSC document: [FSC-PRO-60-002b V2-0 EN](#) [List of FSC-approved Controlled Wood documents 2015-11-04](#) .

## About

### Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

NEPCon | [www.nepcon.org](http://www.nepcon.org) | [info@nepcon.org](mailto:info@nepcon.org)  
FSC™ A000535 | PEFC/09-44-02 |