



Background analysis of forest carbon rights in PNG

A way forward: Needs, Challenges and Opportunities for PNG on Climate Change, Land Use and Forest Resources Management and Payments for Environmental Services/REDD+

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Goodwill Amos
Manager REDD and Climate Change
PNG Forest Authority
gamos@pngfa.gov.pg

Overview of land tenure in PNG

- 97% of land held as customary land
- Customary land is unregistered

Who owns the carbon in the forest?

- For all forms of land tenure (customary, freehold, government land, leasehold), owner of land owns the carbon rights
- But on customary land:
 - Landowners can alienate forest use/ownership to other customary users, but must be done in accordance with custom
 - Forest and landownership can therefore be divided between the different groups
 - Difficult to identify who owns forest carbon rights under the existing law

Restrictions on alienating customary land

- PNG has strong restrictions prohibiting the alienation of customary land:
 - “...a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom, and a contract or agreement made by him to do so is void (Land Act, s 132.)
 - Rights of future generations cannot be taken away
 - A REDD+ contract is likely to be an alienation of customary rights

Conclusion on REDD+ Projects

- As the law stands now, it is not possible to carry out a REDD+ project on customary land because of the restrictions on alienation
- Note: a national approach to REDD+ is still possible, because this does not depend on defining forest carbon rights
 - But, benefit-distribution must still be fair and equitable or it will constitute a 'taking' of property
- So what are the legal options to overcome this restrictions?

Legal options to overcome restrictions on customary land

- We have identified 4 potential options:
 1. Amend Land Act to provide that REDD+ contracts will not constitute an alienation of land
 2. Register customary land and Clan Land
 3. Convert land to a Special Agricultural and Business Lease
 4. Integrate carbon rights into Forest Management Agreement Structure

1. Amend Land Act

- This would require an amendment to the Land Act saying that a contract dealing with the carbon sequestration rights in the land does not constitute an alienation of land rights
- But, this would be a significant change to the nature of customary land tenure in PNG

2. Register land as Clan Land

- This is a new process for registering customary land
- Explain process:
 - Advantages: clear landowners, clear land boundaries
 - Disadvantages: customary law ceases to apply to the land
- Still not clear whether it is possible to sign a REDD+ contract over land because only customary interests can be alienated from Clan Land.

3. Special Agriculture and Business Leases (SABL)

- It is possible to lease customary land under a SABL
- BUT, SABL process has been discredited
- There are many land disputes over SABLs
- Unlikely to give a high level of certainty to REDD+ project developer

4. Integrate carbon rights into Forest Management Agreements

- Alienation of timber rights are permitted under FMAs, so long as done in accordance with custom
- Carbon rights could be integrated in a similar way as timber rights under the Forestry Act
- The National Forest Plan could identify potential areas for REDD+
- 80% (12 million ha) of the 15 million ha of Production Forest is already under an FMA

Conclusion

- Current restrictions on alienation of customary land and customary rights means REDD+ projects are not currently possible
- Amendments will be required to legislation if this is to be permitted