

# ***ILLEGAL LOGGING & THE CRIMINAL LAW CONTEXT IN PAPUA NEW GUINEA***

April 2024

Report into criminal law tools available in Papua New Guinea to deter and punish illegal logging and related criminal activities (forest crimes).

*Authored by Dr Hannah Harris*

*Commissioned by ACT Now!*



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# Illegal Logging & The Criminal Law Context in Papua New Guinea

Report by Dr Hannah Harris<sup>1</sup> – Commissioned by ACT NOW!

April 2024

## Executive Summary

This report identifies criminal law tools available in Papua New Guinea (PNG) to deter and punish illegal logging and related activities (forest crimes). The report responds to the limitations of the current Forestry Law Framework in PNG and is intended as a tool for advocacy and engagement with domestic and international stakeholders committed to combatting illegal logging and its economic, social, and environmental harms. The report provides the foundation for collaborative development of a robust strategy to combat forest crime in PNG and the wider Asia Pacific Region.

### *Key Findings:*

1. The *Forestry Act 1991* and other elements of the ‘Forestry Law Framework’ in PNG are insufficient to combat illegal logging and forest crime. The current Forestry Law Framework in PNG is insufficient due to:
  - a. Failure to acknowledge or address the role of criminal activity (both domestic and transnational) in facilitating illegal logging;
  - b. Failure to utilise enforcement mechanisms under the *Forestry Act 1991* and lack of transparency around monitoring and enforcement of the Forestry Law Framework;
  - c. Insufficient oversight of government bodies responsible for administration and enforcement of the *Forestry Act 1991*, given the potential conflict of interest created by government revenue generation from the forestry sector.
2. The criminal activities most strongly associated with illegal logging in PNG are corruption, money-laundering, and tax evasion. The criminal laws with the greatest potential to combating illegal logging in PNG are:

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- a. **Corruption:** *Organic Law on an Independent Commission Against Corruption Law 2020* ('*OLICAC*') and the *Criminal Code Act 1974* ('*Criminal Code*');
  - b. **Money-Laundering:** *Criminal Code Act 1974* (Chapter 262) as amended by the *Criminal Code (Money Laundering and Terrorist Financing Amendment) Act 2015*; *Anti-Money Laundering and Counter Terrorist Financing Act 2015* ('*AML/CTF Act*'); and *Proceeds of Crime Act 2005* as amended by the *Proceeds of Crime (Amendment) Act 2015* ('*POC Act*');
  - c. **Tax Evasion:** *Income Tax Act 1959*.
3. Other activities criminalised by the *Criminal Code* – including smuggling, stealing and violent acts – are all strongly associated with illegal logging and forest crime in PNG and can also trigger enforcement of anti-corruption and money-laundering regimes. This relationship between legal tools could be utilised to strengthen enforcement action against illegal activity in the PNG forestry sector.
  4. The role of transnational corporate entities and criminal enterprises in committing and facilitating illegal logging and forest crime in PNG requires a combined approach that enforces criminal law provisions against individual criminals (natural persons) as well as enforcement against corporations (legal persons).
  5. There are opportunities to engage the domestic enforcement bodies responsible for the above criminal laws, as well as international counterparts and multilateral organisations, to encourage targeted enforcement of these laws to enhance integrity in the forestry industry and prevent and punish forest crime and illegal logging in PNG.
  6. Relevant transnational stakeholders that may be engaged to combat illegal logging in PNG include – foreign enforcement bodies responsible for anti-corruption, money-laundering and tax law regimes in jurisdictions exposed to illicit flows of timber and money originating in PNG; transnational businesses in the forestry, agriculture, finance, and professional service sectors; and international agencies concerned with combating financial and environmental crime.

### ***Recommendations:***

This report is designed as a tool to support civil society and other activist stakeholders in their efforts to combat illegal logging and forest crime in PNG. Recommendations are directed to actions within the capabilities of these stakeholders. The focus is on advocacy, engagement, and support of research to secure necessary improvements to legal frameworks, law enforcement strategies, government priorities and industry practices.

- ◆ **Advocate** for increased use of criminal law tools to combat illegal logging and forest crime in PNG – focus on anti-corruption, money-laundering, and tax evasion regimes.

- ◆ **Engage** in awareness raising with PNG enforcement agencies, oversight bodies, and the judiciary, about the value of deploying criminal law tools against illegal logging and forest crime.
- ◆ **Advocate** for increased transparency and accountability in administration and enforcement of the Forestry Law Framework – including through use of the powers and obligations established by the *OLICAC* and the now operational Independent Commission Against Corruption (ICAC).
- ◆ **Facilitate** collaboration with transnational stakeholders – foreign enforcement bodies, transnational businesses, and international agencies – in detection, investigation and enforcement of transnational criminal law mechanisms that target offences associated with illegal logging and forest crime.
- ◆ **Advocate** for enhanced enforcement of criminal law tools against corporations (legal persons) engaged in illegal logging and forest crime.
- ◆ **Promote** existing strategies to increase standards of transnational corporate responsibility and accountability – including through amendment of offence structures to streamline detection, investigation and enforcement efforts against corporations and increase corporate penalties; enhance interaction between corporate law and criminal law enforcement frameworks; and encourage establishment of an International Anti-Corruption Court with jurisdiction over States and Corporations, to enhance integrity and accountability in government administration and transnational business conduct.
- ◆ **Facilitate and Support** research to advance knowledge of important relationships between different areas of law, policy and enforcement practice that may valuably support efforts to combat illegal logging and forest crime in PNG. Research is needed to explore a number of key areas, including:
  - i) the relation between illegal logging and organised crime in PNG;
  - ii) the role played by corresponding banks in contributing to illegal logging and forest crime in PNG;
  - iii) the potential role for immigration law and enforcement mechanisms to target forest crime in PNG;
  - iv) the relationship between the Forest Finance provisions of the *Forestry Act 1991* and the enforcement powers of the Inland Revenue Commission (IRC);
  - v) all perverse incentives for tax evasion and corrupt conduct through forestry specific taxes within the *Tax Act* and *Forestry Act* as well as more general corporate taxes and deductions that may be misused;
  - vi) establishment of a robust, efficient, and transparent framework for tax benefits that support afforestation and other pro-forest activities;

- vii) the extent to which PNG Courts are willing to attribute corporate liability under the Criminal Code;
- viii) how offences and penalties under the *Companies Act 1997* may be valuably deployed in the fight against illegal logging and forest crime in PNG.

It is important to emphasise that civil society action cannot be effective in isolation. Government and industry stakeholders must proactively collaborate with civil society, academia, and the international community to more effectively combat forest crime and the social, environmental, and economic harms that this criminal activity produces.

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## Part 1: The Illegal Logging Context in PNG

Part 1 of this report introduces the concept of illegal logging and an overview of the current challenge presented by illegal logging in PNG. The activities that result in illegal logging in PNG are documented, as well as the challenges of enforcing the Forestry Law Framework in isolation of other legal mechanisms. In Part 2, the report details the elements of the Criminal Law Framework in PNG that are relevant to forest crime and maps how criminal law mechanisms may be leveraged to overcome some of the limitations of the Forestry Law Framework.

### *“Illegal Logging” – Introduction & Global Perspective*

Illegal logging has long been recognised as a significant challenge for PNG. In 1989, Justice Thomas Barnett published his interim report resulting from the Commission of Inquiry into aspects of the forestry industry, in which he asserted that some logging companies were ‘roaming the countryside with the self-assurance of robber barons; bribing politicians and leaders, creating social disharmony and ignoring laws and policy in order to gain access to, rip out, and export the last remnants of the province’s valuable timber.’<sup>1</sup> In the more than 35 years since the Barnett Commission of Inquiry, illegal logging has remained a substantial obstacle to the national cohesion and prosperity.

PNG is not alone in its struggle with illegal logging. Harmful deforestation, illegal logging, and forest crime are regarded as some of the most pressing issues facing our planet today.<sup>2</sup> The United Nations office of Drugs and Crime (UNODC) notes the extent of the challenge, with reference to the impact of forest crime on the achievement of the United Nations Sustainable Development Goals (UNSDGs):

Wildlife and forest crime has become a low-risk, high profit transnational organized crime, which is overwhelming countries and communities, affecting biodiversity and development.<sup>3</sup>

At the 2023 meeting of the Asia-Pacific Economic Cooperation (APEC) Expert Group on Illegal Logging and Associated Trade (EGILAT), countries were urged:

*To recommit to ensuring the global forest products market does not become a financial playground to criminal elements who use illegally harvested forest products to drive other transnational crimes, perpetuate civil unrest, threaten global security, and fund terrorist organizations.<sup>4</sup>*

### Import Prohibitions & Forest Risk Commodities

Recognising the extent of the illegal logging challenge, laws have been developed in many countries to prohibit the importation of illegally harvested timber and, more recently, “forest risk commodities” including palm oil and palm products. Import prohibitions on illegally harvested timber operate (to varying degrees) in most major import jurisdictions, including the United States, United Kingdom, European Union, Australia, New Zealand, Japan and Korea. The prohibitions on importation “forest risk commodities” are more recent and limited in scope, but

still represent a significant portion of the global import market covering both Europe and the United Kingdom (the largest importers of palm oil – including palm oil originating in PNG).

The definitions of “illegally harvested timber” under each of these import laws help to clarify the meaning of the term “illegal logging”, while also demonstrating the scope of this transnational framework. As such, a table has been developed in [Annex A](#), which provides details of the relevant laws, the countries where these laws apply, and the definition of “illegally harvested” under each of these laws. The general trend is that import prohibitions base their definitions of legality not on an objective standard attached to laws in force in the import country, but instead, on the legal standard and procedures in place in the country of harvest. As such, these import laws increase awareness and scrutiny of forestry laws and regulatory processes in countries of harvest.

The transnational framework prohibiting the importation of illegally harvested timber and “forest risk commodities” has implications for timber and palm export countries like PNG. The estimated value of wood exports from PNG in 2021 was USD560 million, plus an additional USD706 million from palm oil.<sup>5</sup> More recent statistics suggest that the palm oil export market is growing in PNG, with a value of USD1.5billion in 2022.<sup>6</sup> As such, palm oil represents the third largest export for PNG and the fastest growing export market in the country.

Even with more than 80% of PNG’s wood exports in 2021 (USD479 million) going to mainland China for further processing before export to the global market, more than USD35 million in value was exported directly to countries with prohibitions on importation of illegally harvested timber.<sup>7</sup> Additionally, more than 64 percent of PNG’s palm exports as of 2021 were to European Union countries and the United Kingdom (USD452 million), with active prohibitions on importation of “forest risk commodities”.<sup>8</sup>

The global trend towards prohibiting the import of illegally harvested timber is also likely to increase scrutiny of (and pressure on) Chinese timber products to ensure legality. In 2019 China made changes to its Forest Law for the first time in a decade, effectively banning the buying, transporting or processing illegal timber.<sup>9</sup> China has also taken diplomatic steps to signal its commitment to combating illegal logging and harmful deforestation at international for a including the EU–China High-Level Environment and Climate Dialogue and the 26th Conference of the Parties to the UN Framework Convention on Climate Change (COP26). At COP26, China (along with 141 other countries) signed the Glasgow Leaders’ Declaration on Forests and Land Use, committing to ‘working collectively to halt and reverse forest loss and land degradation by 2030’.<sup>10</sup>

*If PNG is not able to address the challenge of illegal logging, it risks being locked out of key global markets, negatively impacting the economic viability of the forestry industry, and increasing the risk that deviant actors infiltrate and capture the business operations in the PNG forestry sector. Because of the environmental, social, and economic impacts of illegally logging, it is imperative that PNG overcomes this pervasive challenge, to secure its own future, and the future of our planet.*



## *Defining Illegal Logging in PNG – The Current Legal Framework*

Illegal logging will, by definition, involve a breach of law in the country in which timber is harvested. In PNG, “illegal logging” is not expressly defined or criminalised in any legal code or regulation. The forestry sector – and the activities of harvesting, processing, and exporting timber in PNG, are governed by *The Forestry Act 1991*. Other relevant laws include *The Forestry (Amendment) Act 2000*, *The Forestry (Amendment) Act 2007*, *The Environment Act 2000* and the *Conservation and Environment Protection Act 2014*. A useful summary of the current legal framework governing forest legality in PNG is provided by the ‘Timber legality guidance template for Papua New Guinea’ published by the Asia Pacific Economic Cooperation (APEC) Experts Group on Illegal Logging and Associated Trade in 2021.<sup>11</sup>

Implementation and enforcement of the forestry law framework falls primarily to the PNG Forest Authority (PNGFA) and the Provincial Forest Management Committees (PFMCs), with oversight from the National Forest Board (NFB). These laws and the related guidelines and regulations that accompany them set out the processes for granting licenses for the harvest, process, and export of timber products, as well as specifying the necessary approvals and payments to be made to secure these certifications of legality. While *The Forestry Act 1991* does not create a criminal offence of “illegal logging” it does establish offences for non-compliance under Sections 114, 122 and 125 that may result in a fine or imprisonment. Non-compliance with the Act can also enable revocation of the relevant licence. [Annex C](#) of this report provides a summary of all relevant offences under the Forestry Act.

Historical reports have failed to find evidence of the application of these penalties in practice. A 2022 report by the United Nations Office of Drugs and Crime (UNODC) asserts the following:

*Illegal logging practices throughout PNG’s timber industry are well documented and were acknowledged by many government agencies during this assessment...The penalties available under the Forestry Act are not commensurate with the high value of timber resources, the vast profits generated from illegal logging activities, the very large scale of many foreign-owned logging operations in PNG, and the environmental damage caused when offences are committed. Furthermore, it was reported that **there have been no successful prosecutions of illegal logging or other forestry crimes in the PNG court system.**<sup>12</sup>*

There is one documented case of a National Court order against the company Concord Pacific for illegally logging 500 times the legally allotted forest area as part of a ‘road line clearance’ issued in 1994.<sup>13</sup> However, reflecting the challenge of enforcement against corporate entities, the local company was wound up and the fine was never actually paid.<sup>14</sup>

It is illustrative and problematic that the PNGFA does not provide up to date enforcement statistics for the *Forestry Act 1991*. This lack of readily accessible information and transparency around enforcement of the Forest Law Framework is a significant barrier to its effectiveness.

*Enhanced transparency around the administration of the Forest Law Framework is an important topic for advocacy and should be promoted as necessary and aligned with broader objectives of good governance and integrity.*

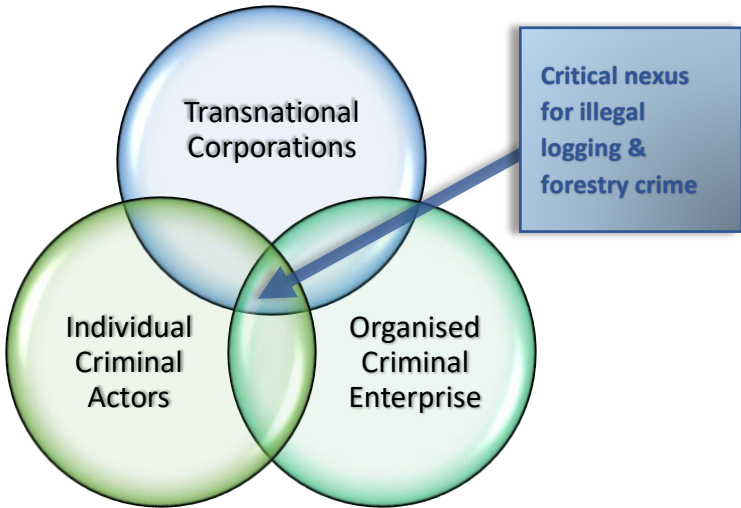
Although enforcement is lacking, alleged breaches of the *Forestry Act 1991* are often associated with and facilitated through other forms of criminal activity. The connection between criminal activity and illegal logging are well documented in many countries that rely heavily on the economic contributions of forestry sector and studies have linked illegal logging to the crimes of corruption, fraud, money laundering, trafficking, theft, and violence.<sup>15</sup>

*Forest crime has all the hallmarks of organized and sophisticated crime, sharing many characteristics with other transnational criminal activities, frequently involving fraud, money-laundering, corruption, and counterfeiting. Large economic incentives, remoteness, lack of traceability, demographic pressure, and the lack of available tools, methods, or even standardized definitions to assess forest loss, among others, make forests fertile ground for corruption. Corrupt acts which occur at early stages of the forest management process, for instance at the land-rights allocation or land classification stages, can render future activities resulting in the destruction or degradation of forest appear completely legal.*<sup>16</sup>

The nexus between criminal activity and illegal logging has also been associated with participation by organised criminal enterprises operating transnationally.

*The illegal timber trade is a complex issue, often involving multiple actors in multiple countries. Illegal activities can occur at all stages in the timber supply chain and range in complexity from local illegal harvesting through to international and highly organized criminal syndicates with established commercial supply chains.*<sup>17</sup>

The below diagram highlights the nexus between organised criminal enterprise, individual criminal activity, and complicity and facilitation of illegal logging and forestry crime by transnational corporations.



The web of interactions between these distinct groups must be considered and integrated into legal mechanisms and enforcement responses, to effectively combat illegal logging and forestry crime.

*The transnational nature of interactions between criminal enterprise, transnational corporations, and individual actors, complicates enforcement efforts targeting illegal logging and forest crime. These actors engage directly and indirectly across the entire timber supply chain from initial harvest through transport, processing, and point of sale. Often, interactions traverse multiple jurisdictions and involve a convoluted web of licit and illicit activities and transactions.*

If the contributions, motivations, and leverage points of any one group of actors is ignored when targeting illegal logging in PNG or elsewhere, prevention and punishment efforts will continue to fall short of expectations. A wholistic approach is necessary to combat forestry crime, which represents a persistent barrier to achieving sustainable economic, social, and environmental outcomes for forest reliant communities.

The crime most frequently associated with illegal logging in PNG is corruption.<sup>18</sup> In PNG, bribery and corruption are criminalised under the *Criminal Code Act 1974*. A range of other criminal activities have also been linked to illegal logging in the PNG context including: tax evasion (under the *Income Tax Act 1959*); money laundering (under the *Proceeds of Crime Act 2005*, *Criminal Code Act 1974* and *Anti-Money Laundering and Counter Terrorist Financing Act 2015*); and fraud, theft, violence and intimidation (under the *Criminal Code Act 1974*). Ultimately, *The Forestry Act 1991* and related laws and regulations do not adequately recognise the nexus between the forestry sector and these criminal acts. In fact, the PNGFA recently defended against accusations of illegality and criminality, stating that the critical views presented in certain reports about illegality in PNG's forestry sector ‘are not fair and there is no justification...merely perceptions with no concrete evidence.’<sup>19</sup>

*Despite a conflicted combination of denial and unsuccessful efforts to enhance the legal framework governing the forestry industry in PNG, illegality and perceptions of criminality remain a persistent challenge.*

A headline search of The National news site turns up 43 headlines containing “illegal logging” between 2012 and 2024. The same search for the other major newspaper The Post-Courier turns up 27 headlines.<sup>20</sup> A wider search of global news sites that reference “illegal logging” and “Papua New Guinea” together returns 331 results. Some examples are extracted below.

PACIFIC / PAPUA NEW GUINEA

## **PNG government scolded over illegal logging**

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## PNG logging industry ‘a major money laundering risk’ – report

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### Alarming photos reveal devastating scale of rainforest destruction in Papua New Guinea

Exclusive: Impact of forest loss on communities and ecosystems revealed in series of images and footage collected by environmental campaigners Global Witness following report on illegal logging in the South Pacific nation

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Prevention and punishment of forestry crimes in PNG remain illusive, despite a long history of attempted amendments and updates to the Forestry Law Framework, beginning with the passage of the *Forestry Act 1991*. Recent efforts include a legislative review of ‘Laws on Land and Natural Resources – Compensation’ initiated in October 2020 by the PNG Constitutional Law Reform Commission (CLRC). The final report was produced in August 2022 and was due to be presented to the National Executive Council shortly thereafter, before being tabled in Parliament.<sup>24</sup> Unfortunately, there is still no publicly available version of this report, which included review of the *Forestry Act 1991*.

The Logging Code of Practice has also been reviewed several times since its initial publication in 1996.<sup>25</sup> A second edition of the Logging Code of Practice was finalised in 2020 and launched with other strategic documents of the PNG Forestry Authority in August 2021. At that launch, the Office of the Prime Minister reports high level political support for enhancing integrity in the forestry sector:

*Prime Minister Hon. James Marape wants to see sustainable forestry that encompasses conservation, preservation and sustainable logging. To this end, he is ordering the National Forest Authority to find the balance between these three aspects of managing the country’s forest resources while working to eliminate corruption and the perception of corruption that has for so long besieged the Authority.*<sup>26</sup>

However, recent reports highlight that illegality and corruption remain a significant challenge in the forestry industry in PNG.<sup>27</sup> The reality of ongoing illegality and ineffective reform begs the question: *given that illegal logging is, by definition, a breach of law, what more can be done to prevent and punish this harmful activity in the PNG context?*

For law to be effective, it must be well adapted to the unique historical, social, economic, and political context where it operates. Any solutions proposed to overcome illegal logging must acknowledge and respond to this context. Until now, the focus in PNG has been on amending the Forestry Law Framework.<sup>28</sup> This approach has failed to consider the criminal dimensions of illegal logging in PNG, including the role of corruption in undermining the effectiveness of the

forestry law framework. As such, the forestry law focus has been ineffective. There are, however, other criminal law tools and supporting transnational mechanisms that may be directed towards overcoming the limits of the Forestry Law Framework in PNG.

### *Limitations of the Forestry Law Framework in PNG*

Before detailing the criminal law tools and mechanisms that can support PNG's efforts to combat illegal logging and forest crime, it is first helpful to summarise the limitations of the Forestry Law Framework, as briefly surveyed above. These limitations are well documented in academic literature and independent reports. Below, three key limitations are summarised, providing specific examples that are helpful for framing the subsequent analysis of alternative criminal law mechanisms and their value in the context of illegal logging and forestry crime.

#### *Limitation 1: Failure to acknowledge or address the role of criminal activity in facilitating illegal logging.*

One of the most substantial limitations of the Forestry Law Framework in PNG is its inadequacy in addressing the role played by criminal activities in facilitating illegal logging. The Forestry Act and supporting regulations focus on process and procedures administered by the PNG Forest Authority (PNGFA) to assure legality. However, the processes and procedures that are established by the law are complex, involving many different steps and verification points, without acknowledging or accounting for the myriad ways that criminal conduct can circumvent legal compliance at any stage – particularly through corrupt or fraudulent means.

Currently, the Forestry Law Framework provides for a 34-step process for ensuring timber legality in the case of Forest Management Agreements (FMA). However, several independent reports provide illustrative examples of how this process is weak to circumvention and manipulation through criminal acts including bribery and corruption, fraud, violence, coercion, and intimidation.<sup>29 30</sup> Most timber exports from PNG are not coming from FMA areas. In 2022, only around 22% of log exports were from FMA areas, while 40% were from areas governed by licences that pre-date the Forestry Act altogether and 35% were from Forest Clearance Authority (FCA) areas. This illustrates the limited value of the 34-step process, and the fact that the process is being largely circumvented. A common mechanism for circumvention of the FMA process is to fraudulently claim that forest to be logged will be converted to agricultural or other land-use, thus allowing the issuance of an FCA. There are numerous reported examples where this conversion never occurs.<sup>31</sup>

The Oakland Institute has exposed how foreign companies often engage in bribery and corruption to obtain timber licenses in PNG.<sup>32</sup> Global Witness has demonstrated how companies manipulated landowner consent through corrupt practices including deception or bribery, to secure the appearance of legality for their operations where legitimate consent through negotiation would not have been possible.<sup>33</sup>

Interpol also highlights that corruption, facilitated by organised criminal networks, can occur at any stage in the timber supply chain, presenting a substantial challenge to effective law enforcement efforts.





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Tax evasion is another form of criminal activity that occurs in the context of illegal logging and forestry crime. Investigations by the PNG government and international NGOs have repeatedly revealed how companies involved in the timber industry in PNG engage in tax evasion to increase profitability. Recently, the Internal Revenue Commission of PNG imposed a large financial penalty on a logging company found to be engaged in illicit tax evasion through transfer pricing, providing conclusive evidence that tax evasion is a significant concern in the PNG forestry sector.<sup>35</sup>

Fraud and forgery in export and import documentation is also a significant concern, as is the fraudulent acquisition of logging licences under the pretence of, for example, agricultural development, when in fact there is no honest intent to develop the area for agriculture. The misuse of Special Agricultural Business Leases (SABLs) is a particularly impactful example of this form of criminality, although no prosecutions were ever secured for the offence of Fraud related to SABLs (or any other criminal offence) despite all SABLs being deemed illegal. More recently, evidence has emerged of fraudulent use of Forest Clearing Authorities (FCAs) under the pretence of agricultural development, despite a lack of informed consent by landowners or any meaningful demonstration of intention to develop the land for agricultural use.<sup>36</sup>

This challenge extends beyond the PNG Forestry Law Framework. Interview research has demonstrated the impact of corruption and fraud on effective enforcement of laws designed to prohibit the import of illegally harvested timber:

*...participants mentioned the limitations of both destination country laws and certification schemes due to corruption and fraud. One interviewee went as far as to say: “if you solve corruption, you solve everything”. Others recounted stories of forged certification stamps and noted the additional challenge of language barriers when attempting to validate documents from foreign jurisdictions.<sup>37</sup>*

Money laundering also has strong links to forestry crime in PNG and globally. Money laundering is generally defined as ‘the act by which the proceeds of crime are made to appear

legitimate.’<sup>38</sup> Due to the substantial profits generated from illegal logging and forest crime, money laundering is necessary to enable criminal enterprises to deploy the profits generated; contributing to the continued financial incentive to engage in forest crime. The Bank of Papua New Guinea’s National Money Laundering and Terrorist Financing Risk Assessment of 2017 established that the logging industry was a sector at high risk for money laundering activities in PNG, reflecting similar risks associated with logging and forestry crime on a global scale.<sup>39</sup> A full analysis of the AML provisions relevant to forest crime in PNG is undertaken in [Part 2](#).

The use of violence and intimidation by logging companies to secure landowner consent is also serious issue. Reports have brought to light instances where violence and threats have been used to suppress community dissent against logging activities. A Forest Trends report from 2004 notes ‘allegations of police squads being used to beat and intimidate landowners and employees who complained about the activities of the logging company.’<sup>40</sup> More recently, a 2017 report highlights that violence and intimidation remain a concern for rural forest reliant communities in PNG:

*People's resistance has been met with violence and intimidation. In a number of cases, local villagers resisting these land deals through peaceful protests have been arrested, beaten, or relocated.*<sup>41</sup>

Human rights abuses are also a concern in the forestry sector in PNG, although they fall outside of the scope of this report. International efforts to combat illegal logging are increasingly aware of the nexus between forestry crime, corruption, and human rights abuses and have recommended a coordinated approach to address associated harms.<sup>42</sup>

Finally, there is a strong link between illegal logging and forest crime and other organised criminal enterprises, including trafficking of drugs, arms, and people.

*It has been observed that fuel, food, machinery and other material are not purchased domestically but are smuggled into PNG on the logging ships.*<sup>43</sup>

Illegal logging in PNG contributes to a wider illicit network of organised criminal activity with serious implications for the safety and security of the wider Asia Pacific region.

*Limitation 2: Failure to effectively enforce the Forestry Law Framework, compounded by a lack of transparency around monitoring and enforcement activities.*

One of the most significant limits of the Forestry Law Framework is a lack of enforcement by the relevant authorities. Without strong enforcement, the Forestry Act 1991 is a “toothless tiger”, perpetuating continued illegality by deviant actors who can reasonably assess the risk of detection or penalty as negligible. A recent report notes that the PNGFA recognises its own poor enforcement record:

*PNGFA has recently expanded its legal team with a new legal officer and three supporting officers, who are responsible for providing legal advice and prosecuting forest crime cases. Most previous cases were handled with fines and letters of reprimand, but PNGFA recognises that this approach is*

*ineffective for major cases that should be dealt with through the court system.*<sup>44</sup>

Compounding this lack of enforcement, is a lack of transparency around the monitoring and preventive efforts of government agencies responsible for administering the Forestry Law Framework – most notably the PNGFA. To date, there are no records of monitoring or enforcement activities by the PNGFA. This can be contrasted with mandatory record keeping and monitoring of forestry laws in other jurisdictions, including Canada, where the law requires the responsible enforcement agency to report annually on monitoring, investigation, and enforcement activities.

A lack of transparency in the Forestry Law Framework extends beyond enforcement. The *Forestry Act 1991*, as amended by the *Forestry (Amendment) Act 2000*, requires the establishment of a public register (Section 103A) detailing (with some limitations) summaries of decisions of the Forestry Board, forest maps, and details of registered Forestry Industry Participants and all forms of forest licence holders. Unfortunately, the register proscribed under Section 103A of the Forestry Act has never been established.

It is worth noting that other organisations also play a role in the administration of the Forestry Law Framework in PNG, including the Investment Promotion Authority (IPA), Department of Lands and Physical Planning (DLPP), and the Conservation and Environmental Protection Authority (CEPA), as well as the previously mentioned Provincial Forest Management Committees (PFMCs). However, primary responsibility for enforcement fall to the PNGFA under the *Forestry Act 1991*.

Under the *Forestry Act 1991*, the PNGFA is effectively comprised of the members of the National Forest Board (established under Section 9 of the Forestry Act). While Section 20(1) of the Act requires the Board to publish an Annual Report, it is exceedingly difficult to access clear records of monitoring, investigation and/or enforcement activities of the PNGFA. Aligned with this observation, the 2017 Summary Report of the PNGFA Retreat noted ‘strengthen monitoring and enforcement capacity within PNGFA’ as a cross-cutting issue to be addressed.<sup>45</sup> Progress on practical monitoring and enforcement capacity since 2017 is impossible to evaluate due to the transparency deficit that exists across PNGFA operations. There is no evidence that the Board is complying with the requirements of Section 20(1). At time of last search (April 2024) there were no Annual Reports available on the PNGFA website or other online sources, making informed and independent evaluation of the PNGFA exceedingly difficult and hampering accountability efforts.

In 2022, the United Nations highlighted that government awareness of illegality was not the primary concern in PNG, but rather a lack of enforcement action:

*Many of the main wildlife and forest crime issues are well known among the various government agencies, particularly the high risk of illegal logging...However, there is almost no oversight or enforcement on the ground, incidents are not recorded, and no data is available to indicate the scale or extent of these issues. This assessment found that there have been no*



*investigations and prosecutions of wildlife and forest crime cases by government agencies...In addition, there are reports of systemic corruption, an absence of cooperation with police (which is dealing with its own serious, systemic issues), and a lack of coordination and information sharing between key government agencies.<sup>46</sup>*

Even more recently, a government report by PNG Climate Change and Development Authority directly references the need for enhanced enforcement and transparency in the forestry sector:

*Although PNG has a strong framework of environmental safeguards, there is little detailed guidance on their application and limited monitoring and enforcement capacity. This has resulted in gaps in their application and, in some places, significant environmental impacts, including forest degradation and loss. Strengthening the application of these safeguards — through improved guidance on their use, better management of information on their application, which will also help other agencies implement their own regulations, and increased monitoring and enforcement capacity — will help reduce environmental degradation levels, particularly when linked to poorly planned and implemented forestry or agricultural projects that are driving land use change.<sup>47</sup>*

It is well established that a lack of enforcement, confounded by a lack of transparency around the conduct of relevant enforcement bodies, is a significant limitation of the Forestry Law Framework in PNG.

*Limitation 3: Insufficient oversight of the relevant government body responsible for administration and enforcement, given the potential conflict of interest created by government revenue generation from granting of licences for timber harvesting, processing, and exportation.*

A third significant limitation of the Forestry Law Framework in PNG is that it was designed to regulate an industry that generates substantial revenue for the government through license fees and tax revenue, although there is evidence that much of this tax revenue is being lost to criminal evasion, transfer pricing and other corporate misconduct by logging companies operating in PNG.<sup>48</sup>

*There is a conflict of interest between enforcement of the restrictive elements of the Forestry Law Framework – designed to protect the environment and forest reliant communities from unsustainable logging practices and preserve and develop forest resources, and the facilitative elements of the Framework – designed to enable a productive and profitable forestry industry.*

This conflict is apparent within the wording of the long title of the Forestry Act itself, which is said to be an Act to both ‘manage, develop and protect the Nation’s forest resources and environment’ and to ‘utilize the Nation’s forest resources to achieve economic growth, employment creation and industrial and increased “down stream” processing of the forest resources’. Even in reference to protecting the Nation’s forests, the focus is on forests as an “asset” and the commercial value of forest resources is a central concern of the Act.

*An economic growth focus can undermine objectivity in administration of legal frameworks, particularly in sectors that are substantial contributors to the economy.*

Furthermore, sections 6 and 7 of the Forestry Act, which establish the PNG Forest Authority (PNGFA) and its functions, create a conflict between the objectives of administering the Act and enforcing it. It is arguable that the responsibilities of the PNGFA under Section 7(1) subsections (d), (e), and (i) – broadly, the authority to grant licences and control market participation, should be carried out separately to those under Section 7(1) subsections (g) and (h) – broadly, the oversight and enforcement of the Act and related customs and export. The overlapping responsibilities may contribute to increased risk of corruption between the PNGFA and industry participants.

Considering the risks of conflict inherent to the *Forestry Act 1991* and allegations of corruption that have plagued the forestry sector and the PNGFA for decades, independent oversight and scrutiny are essential. Oversight should be focused on ensuring that the inherent conflict of interest between revenue generation and environmental protection established by the Forestry Law Framework is not compromising the quality of law enforcement in the forestry sector.

Unfortunately, there are limited mechanisms for ensuring such oversight, and the mechanisms that do exist are not being utilised effectively. For example, a Risk Assessment published in 2023 notes that efforts by the Judiciary to enhance transparency around the granting of logging licences have not had any impact on the conduct of the PNGFA and other government agencies:

*In July 2021, the Deputy Chief Justice sitting as a judge in the National Court issued an order calling for ‘an immediate ban’ on any logging in Timber Rights Purchase areas until the Forest Authority and a number of other government agencies provided the court with a series of detailed reports on the environmental impacts of all logging operations in the country. It was reported in February 2023, that while the Forestry Authority had not complied with the terms of the court order and logging in TRP areas was continuing, no enforcement action had been taken by the court.<sup>49</sup>*

There are also several examples of PNGFA payments to logging companies that have been deemed to be unlawful by the National Court but have not resulted in an action against the Authority to address this apparent maladministration.<sup>50</sup> Given the above documented limits of the Forestry Law Framework in PNG, efforts to combat illegal logging and forestry crime must be expanded to include the use of criminal law mechanisms and related transnational legal tools, enabling enforcement efforts to target the criminal activities that facilitate illegal logging and undermine effectiveness of and compliance with the Forestry Law Framework.

### ***Summary***

The PNG context presents some substantial barriers to effectively combatting illegal logging, particularly when the focus is limited to compliance with the Forestry Act, administered by the PNGFA whose interests are self-proclaimed to be focused on the economic value and development potential of the forestry sector.

There is an opportunity to leverage existing criminal law mechanisms to combat illegal logging in PNG, supplementing the forestry law framework while responding to the known relationship between illegal logging and criminal activity. Utilising such mechanisms could assist in overcoming the identified limitations of the Forestry Act, especially when combined with other regulatory and policy tools.

Expanding the application of the criminal law to activities that contribute to illegal logging may also lead to increased awareness (and responsiveness) of key stakeholders, regarding the risks of engaging in illegal logging and criminal acts that facilitate forest crime. Stakeholders including government, industry, civil society, global financial institutions, international donors and other multilateral organisations, all have an important role to play in overcoming illegal logging and forest crime in PNG and the wider Asia Pacific region.

The next section of this report summarises all relevant criminal law mechanisms that may be deployed to deter and punish illegal logging and related activities in PNG.

## Part 2: The Criminal Law Framework

A summary table has been constructed in **Annex B** that provides a summary of legal mechanisms deemed relevant to illegal logging and forest crime in PNG. The table includes details of the relevant law, responsible enforcement agency – including links to websites where available, and notes on cooperative elements that may be leveraged to improve enforcement outcomes.

Each of the laws documented in **Annex B** have a role to play in deterring and punishing the criminal activities associated with illegal logging and forest crime in PNG. Enforcement agencies responsible for administering these laws should be encouraged to target their monitoring and enforcement efforts towards criminal activities occurring in the forestry sector. By leveraging other criminal laws and the enforcement capacity of these agencies, it may be possible to overcome some of the limits of the Forestry Law Framework and enhance integrity of the PNG forestry sector.

A targeted analysis is provided below, to enable more focused advocacy and engagement. This analysis provides an overview of the criminal laws in PNG that target activities most strongly associated with illegal logging: corruption, money-laundering, and tax evasion. The laws that target each of these criminal activities have been selected based on the following criteria:

- i) they contain offences relevant to forestry crime;
- ii) there are examples of successful use of such offences in the forestry crime context (in PNG or in other jurisdictions with similar laws);
- iii) the laws have an empowered enforcement agency;
- iv) there is a track record of successful enforcement of the relevant laws – not limited to the forestry crime context;
- v) the laws have a transnational dimension and potential for multilateral cooperation to enhance impact.

The analysis to follow is designed to support informed engagement with relevant stakeholders, including enforcement agencies, civil society organisations, media and advocacy groups, and international counterparts with relevant expertise that may be deployed to combat illegal logging and forestry crime in PNG.

### *Corruption*

There are two laws in Papua New Guinea that are key to addressing the nexus between illegal logging and corruption: 1) The *Criminal Code 1974* as amended, specifically Division 2 ‘Corruption and Abuse of Office’; and 2) the *Organic Law on the Independent Commission Against Corruption 2020* (OLICAC).

Additionally, the *Whistleblower Act 2020* is also relevant. The objectives of the *Whistleblower Act 2020* are set out under Section 3: to provide procedures for employees to report suspected improprieties in the workplace; to protect employees who make protected disclosures; and to provide remedies for employees who suffer occupational detriment because of protected

disclosures. However, the Act fails to provide any penalties for non-compliance and no Ministerial guidance has been provided to clarify protective pathways for reporting or otherwise implement key elements of the Act.<sup>51</sup> The scope of the Act is extremely narrow, limiting application to direct employee/employer relations and as such seems entirely unfit for purpose. In support of this critical position, it has been noted that the act meets only three of the 24 international best practice guidelines.<sup>52</sup> Consideration should be given to substantially amending or repealing and replacing the Act to ensure appropriate scope, enforcement mechanisms, and methods for securing the safety and anonymity of whistleblowers within the constraints of the unique context of business operations in PNG.

Looking to the whistleblower protection frameworks in other jurisdictions across the Asia Pacific may be helpful in improving the model in PNG. For example, the Solomon Islands *Whistleblowers Protection Act 2018* addresses both penalties and reporting authorities, although it has also been criticised for its limitations and poor enforcement to date.<sup>53</sup> New Zealand recently reformed its whistleblower protection laws under the *Protected Disclosures (Protection of Whistleblowers) Act 2022*.<sup>54</sup> Australia has a far-reaching whistleblower protection framework that has been subject to review and amendment in recent years.<sup>55</sup> This includes protections for whistleblowers under the *Corporations Act 2001*, the *Taxation Administration Act 1953*, and the *Public Interest Disclosures Act 2000* as amended in 2023. These various jurisdictions may provide valuable insight and support for enhancing the whistleblower protection framework in PNG.

#### [Criminal Code Provisions](#)

The Criminal Code under Division 2 establishes several offences that fall into the category of corrupt conduct. Under Section 87, it is a criminal offence to offer a bribe to ‘a person employed in the Public Service or the holder of any public office’ or to accept a bribe as such a person. The definition of ‘a person employed in public service’ is established under Section 83A and is extremely broad. Any person employed or acting on behalf of the PNG Forest Authority or other body responsible for administration of the Forestry Law Framework would be captured by this definition. There is some overlap between the offence of ‘Official Corruption’ under Section 87 and the offence of ‘Bribery of a Member of the Public Service’ under Section 97B. While this has been raised as a point of confusion, it does not impact the application of the law to possible corrupt conduct in the forestry sector.<sup>56</sup> Subsequent provisions of Division 2 of the criminal code provide for additional corruption offences under specific circumstances, including: Extortion (Section 88); interest in private contracts (Section 89), Administration of Property of a Special Character (Section 90); False claims (Section 91); Abuse of Office (Section 92); Corruption of Valuator (section 93), False Certificates (Section 94), Duty of Person Offered Gratification (Section 97C).

Division 2A of the Criminal Code criminalises ‘Secret Commissions’ (Section) which involve corrupt offer or receipt of valuable consideration intended to influence a person’s actions or inactions. This type of offence is often referred to as ‘private sector bribery’ as it does not require involvement of a public official.<sup>57</sup> It is useful to have access to such an offence, but it is

unclear whether the offence has been tested in the courts, or the extent to which investigative agents or prosecutors are aware of these provisions and their potential.

Generally, it is difficult to find data on the number of investigations and prosecution of bribery offences under the Criminal Code in PNG. This points to a larger challenge of lack of transparency and consistent reporting across many government agencies in PNG. The agencies that should be targeted for enhanced reporting on investigation and enforcement of the corruption provisions of the Criminal Code are the Royal PNG Constabulary and the Office of the Public Prosecutor, Attorney General's Department. These bodies are empowered to investigate and prosecute offences under the criminal code but fail to provide sufficient data surrounding these efforts.

There are also concerns of police complicity in illegal logging and forest crime in PNG. In 2011, Papua New Guinea's police commissioner ordered the withdrawal of all officers from logging sites across the country following numerous complaints of abuse against police stationed in logging camps.<sup>58</sup> Cases of police violence and misconduct have continued in the decade since, with further reports of resulting violent conflict and death.<sup>59</sup>

A directive to withdraw police personnel from logging sites was issued again in 2022 by Police Commissioner David Manning. In response to this directive, Chief Superintendent Jacob Singura reported withdrawal of three officers from logging camps in Morobe province, noting 'officers have been on dual employment payrolls and were only serving logging camps for more than two years'.<sup>60</sup> This 'dual employment' would amount to extortion under Section 88 of the Criminal Code, a corruption offence subject to a penalty of up to three years imprisonment. Failure of the police officers to report this 'dual employment' would also amount to an offence under Section 97C.

Police complicity, combined with well documented capacity limitations in the Constabulary and the AG Department, are the most significant limitations to the deployment of these provisions to combat illegal logging. These limitations may be partially remedied by through engagement with the Independent Commission Against Corruption in PNG, analysed below.

#### OLICAC

The *OLICAC* establishes an Independent Commission Against Corruption ('Commission' or 'ICAC'), pursuant to the PNG Constitution Division VIII.3.<sup>61</sup> The constitutionally established purposes of the Commission are 'to contribute, in cooperation with other agencies, to preventing, reducing and combatting corrupt conduct.'<sup>62</sup>

While the Constitution was amended to establish the Commission in 2014, the *OLICAC* was not passed until 2020, with Commissioners sworn in on the 4<sup>th</sup> of July 2023 to serve a 3-year term. The inaugural commissioners of the ICAC are Australian and New Zealand expats: Commissioner Andrew Forbes (legal background), Deputy Commissioner Operations Daniel Baulch (policing background) and Deputy Commissioner Prevention and Corporate Graham Gill (policing background).<sup>63</sup> In the first six months of operation from July to December 2023 the ICAC had received 70 complaints for investigation.<sup>64</sup>



Under the *OLICAC*, the Commission has authority to engage in preventive efforts (section 33), to investigate and prosecute corrupt conduct (section 34), and to cooperate with other agencies and bodies, including through information exchange, referral and participation in committees and task forces (sections 35-38). Corrupt conduct is defined within the *OLICAC* section 5 and section 34 establishes that investigation and prosecution of corrupt conduct by the Commission can extend to any offences that fall within the definition of ‘corrupt conduct’, including those in the Criminal Code and other laws of PNG.

As defined within the *OLICAC*, corrupt conduct involves any conduct that could amount to a disciplinary offence or criminal offence where the conduct ‘constitutes or involves or is engaged in for the purpose of’ misuse of official or public functions or perverting the administration or course of justice. As such, both offering and receiving a bribe under the Criminal Code fall within the definition of corrupt conduct, as do all other offences under division 2 of the Criminal Code. The definition of ‘corrupt conduct’ under section 5 is extracted below to provide additional detail.

*Extract from OLICAC – Section 5 Definition of Corrupt Conduct*

**5. CORRUPT CONDUCT.**

- (1) Conduct of a public official is corrupt conduct if –
  - (a) the conduct constitutes or involves, or is engaged in for the purpose of –
    - (i) dishonestly exercising official functions; or
    - (ii) abusing official functions; or
    - (iii) exercising official functions in a way that is not impartial; or
    - (iv) misusing information or material acquired in the course of official functions; or
    - (v) obstructing, interfering with or perverting the administration or the course of justice; and
  - (b) the conduct could amount to a disciplinary offence or a criminal offence.
- (2) The conduct of a person (whether or not a public official) is corrupt conduct if –
  - (a) the conduct affects or influences, or could affect or influence, any of the conduct mentioned in Subsection (1) by a public official; and
  - (b) the conduct could amount to a disciplinary offence or a criminal offence.
- (3) The conduct of any person (whether or not a public official) is corrupt conduct if the conduct –
  - (a) allows, encourages, causes, aids, abets, incites, induces, counsels or procures or assists to conceal corrupt conduct; or
  - (b) is an attempt, preparation or conspiracy to commit corrupt conduct; or
  - (c) is directly or indirectly connected with, or is a part of a course of activity involving corrupt conduct.
- (4) Conduct may be corrupt conduct regardless of whether the conduct or part of the conduct occurred before the commencement of this ***Organic Law***.

The definition ‘corrupt conduct’ requires understanding of the definition of ‘public official’. This definition is provided in Section 9 and is extremely broad. It includes all persons subject to the Leadership Code and all members of a Public Body or persons employed or contracted to a Public Body. All representatives of the PNG Forest Authority and other related entities responsible for the administration of the Forestry Act and related regulations are subject to authority of the ICAC.

Utilisation of the powers given to the ICAC under the OLICAC, in addition to leveraging the specific offences under the Criminal Code – including ‘Official Corruption’ (Section 87), ‘Bribery of a Member of the Public Service’ (Section 97B), ‘Secret Commissions’ (Sections 97G-K) – present unique opportunities to target the corrupt conduct that enables illegal logging and forest crime in PNG and contributes to the ineffective operation of the Forestry Law Framework (documented in Part 1). Under-resourcing presents a significant barrier to the ICAC’s effective operation – the current budget has been quoted as only two thirds what is needed to ensure growth and effectiveness.<sup>65</sup> Underfunding of the ICAC must be addressed and operational support from intergovernmental organisations such as the United Nations (tied to PNG’s status as a state party to the United Nations Convention Against Corruption) should also be leveraged where possible.<sup>66</sup>

### Action Points

The following action points are recommended to leverage the anti-corruption laws in PNG to combat illegal logging and forest crime:

- Advocate for increased transparency and consistent reporting of investigation and prosecution statistics across all areas of the Criminal Code, with a particular focus on corruption offences.
- Advocate for a clear reporting policy for ICAC annual reports that includes details of the number of complaints and which public bodies these complaints refer to, as well as number of investigations initiated and closed, number of referrals to other agencies, and other key statistics. This data will allow for detection of corruption trends, including any consistent references to those agencies responsible for administering the Forest Law Framework.

Reporting of this data will further support the objectives of the ICAC to detect and address systemic corrupt conduct: ‘instances of corrupt conduct...that reveal a pattern of corrupt conduct in one or more public bodies, or by one or more public officials.’ (Section 4) Data should be made publicly available in a consistent format that allows for external monitoring over time and comparison of trends as the ICAC continues its mandate year on year.

- Advocate for participation of ICAC in other law enforcement taskforces and working groups, including a possible Illegal Logging or Forest Crime Taskforce.
- Advocate for increased government funding of the ICAC to ensure its effective operation and monitor the government budget to ensure that ICAC funding is maintained over the long term to facilitate continued growth and development of this important integrity institution.
- Educate stakeholders and utilise the reporting channels of the ICAC to report on instances of corruption in administration of the Forestry Law Framework. Some persons have an obligation under the *OLICAC* to report corrupt conduct (Section 45). It would be helpful to promote this obligation publicly and to provide educative information on how complaints



can be made to the ICAC. Educative efforts should be directed to those persons most likely to be exposed to corrupt conduct in the forest sector: community representatives; local, regional, and national government officials and civil servants; journalists; civil society actors; and members of the public.

- Engage in education around the application of the criminal code to corrupt conduct that commonly occurs in the forestry sector in PNG. Raising awareness that certain activities are criminal will help to overcome public apathy and acceptance of corrupt conduct in the context of the forestry sector and may encourage whistleblowing and increased reporting of corrupt activities that facilitate illegal logging and forest crime. Efforts may need to be collaborative, with other civil society groups, media, and international organisations operating domestically in PNG. This effort should include highlighting that any acceptance by police of payment by logging companies amounts to corruption under the criminal code and establishes an obligation to report this to the ICAC under Section 45(4)(a) of the *OLICAC*.
- Advocate for review, amendment, and implementation of whistleblower protection laws in PNG, as well as establishment of anonymous reporting channels to facilitate detection and investigation of illegal logging and forest crime.

Without adequate protections, individuals are unlikely to come forward with quality information about corrupt conduct in the forestry sector or any other sector of the PNG economy.

In the absence of such protections, it may be valuable for civil society groups to aggregate accounts of corruption and act as an intermediary in conveying these accounts to the ICAC for investigation. Complaints on behalf of others are enabled through Section 47 of the *OLICAC*. Framing such accounts as a complaint of ‘serious and systemic corrupt conduct’ will increase the weight given to the complaint by the ICAC (Section 50), with implications for investigation procedures (Sections 76 and 87).

### ***Money Laundering***

There are three laws in Papua New Guinea that comprise the Anti-Money Laundering (AML) Framework which may be deployed to combat illegal logging and associated criminal conduct: 1) *Anti-Money Laundering and Counter Terrorist Financing Act 2015* (‘AML/CTF Act’); 2) *Criminal Code 1974* as amended by the *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015*, specifically Part VIA Division 1 ‘Money Laundering’ covering Sections 508A – 508G; 3) *Proceeds of Crime Act 2005* as amended by the *Proceeds of Crime (Amendment) Act 2015*. Deploying these laws to combat illegal logging is likely to have a significant impact:

*According to PNG’s Money Laundering and Financing of Terrorism National Risk Assessment, illegal logging is one of the country’s most significant proceeds-generating crime threats for money laundering.<sup>67</sup>*

The AML regime established by the above-mentioned laws was intended to bring PNG in line with international AML standards, to enhance capacity to detect and deter money laundering and terrorist financing, and to expand the obligations of financial institutions to support these efforts.<sup>68</sup> In fact, the National Risk Assessment quoted above was the result of new reporting requirements established by Section 6 of the *AML/CTF Act*. Another valuable dimension of the AML regime is the new Financial Intelligence and Supervision Unit (FASU) of the PNG Central Bank, established under the *AML/CTF Act*. FASU has been active in investigating and enforcing the regime, including against BSP Financial Group (Bank of the South Pacific). Reporting on the sanctions against BSP, the Australian Financial Review reports:

*FASU said the sanctions were in response to “significant levels of financially-motivated crime suffered by PNG”. It singled out “money laundering, corruption, tax evasion/avoidance, organised crime, illegal logging and wildlife trafficking”.*<sup>69</sup>

***It is not only valuable, but in fact essential, for PNG to utilise its AML regime to target illegal logging and forest crime – because these criminal activities are providing substantial financial value to criminal enterprise with links to other illicit and harmful activities that undermine the safety and security of PNG and the wider region.***

Another benefit of utilising the AML regime is that it directly targets corporate entities (commercial banks and other financial institutions) who are enabling illegal logging through their business activities.<sup>70</sup> These financial institutions can be incentivised by the AML regime – through risk of sanction combined with loss of correspondent banking relationships that enable their operations and profit generation, to become allies in the fight against illegal logging and forest crime.

***When banks become gatekeepers against illegal activity, the profitability of this activity is undermined, and the incentive to engage in illegal logging and forest crime can be largely eliminated.***

#### *Anti-Money Laundering and Counter Terrorist Financing Act 2015*

The *AML/CTF Act* provides for a framework of reporting and due-diligence obligations to prevent and detect money laundering. The Act establishes requirements for financial institutions under Part II, including to conduct risk assessments (Division 1), engage in due-diligence (Division 2), meet reporting requirements (Division 3). The Act establishes significant penalties for non-compliance with these obligations that extend to individuals as well as corporations.

Part VI of the Act establishes the Financial Analysis and Supervision Unit (FASU) to oversee and enforce the Act and related laws that form part of the AML regime. FASU sits within the Central Bank of PNG and has been actively investigating illegal logging and environmental crime as a primary criminal enterprise generating illicit financial flows laundered out of PNG. In a 2022 speech, the Acting Director of FASU made the connection clear:

*Papua New Guinea is a country blessed with richness in natural resources and is home to one of the largest rainforests in the world. But unfortunately, our forests are being exploited by unscrupulous individuals and foreign logging companies facilitated by a network of tax-havens, local and foreign banks, lawyers, accountants, corrupt officials and politically exposed persons.<sup>71</sup>*

Unfortunately, that same speech articulates some of the limitations of the AML/CTF regime in the context of illegal logging and forest crime:

*The bulk of the proceeds of illegal logging never return to PNG ... the private sector do not want to forgo, or even risk, the profits to be made from the facilitation of illegal logging in PNG ... Tax-haven jurisdictions do not want to cease providing anonymous companies and anonymous banking services to logging companies involved in illegal logging in PNG ... Foreign jurisdictions do not typically want to expend valuable law enforcement resources to address a crime that has been committed in some tiny, far-off nation ... The evidence required to prove beyond reasonable doubt that logs have been taken illegally is difficult to obtain and even more difficult to use ...<sup>72</sup>*

Despite these limitations, the AML/CTF regime has already had a documented impact on business practices in PNG. A 2021 investigation demonstrates bank awareness of the legal and financial risk exposure presented by the forestry sector in PNG:

*Westpac PNG indicated that it had ceased, or started closure activity, for any banking relationship (including transaction services) with entities involved in the logging/ timber industry who do not meet Forest Stewardship Council (FSC) or Programme for the Endorsement of Forest Certification (PEFC) standards. ANZ PNG also indicated it had reviewed its exposure to the sector and now only has a banking relationship with one customer involved in logging, which holds FSC certification.<sup>73</sup>*

In Australia, enforcement of the AML/CTF Act by FASU against BSP Financial Group has garnered attention:

*The largest lender in the Pacific, BSP Financial Group, has been ordered to remove senior managers following breaches of anti-money laundering laws in Papua New Guinea, putting further pressure on Commonwealth Bank of Australia and National Australia Bank to cut ties with the troubled institution.<sup>74</sup>*

Whilst repatriating assets stolen through illegal logging and corruption in PNG remains a substantial challenge, the AML/CTF Act creates a powerful incentive for enhanced compliance with reporting standards that reduce the risk that locally domicile banks and other corporate entities will inadvertently or intentionally participate in the provision or laundering of funds derived from or intended to enable illegal logging activities.

To date, FASU has only used its enforcement powers once (against BSP Financial) and was reported to have chosen the “least punitive” response.<sup>75</sup> To ensure maximum impact of the *AML/CTF Act*, enforcement action should be deterrent where possible and may need to utilise the more punitive measures available to FASU if deterrent impact is to be achieved.

Provisions that could be valuably utilised in the context of illegal logging and forest crime include provisions for enhanced due-diligence (Sections 26-29); provisions prohibiting engagement with shell banks (Section 38); provisions for beneficial ownership disclosure (Section 59).

FASU should be encouraged to use its powers under Section 73 to develop compliance rules specific to financing of forestry activities or provision of financial services to entities associated with the forestry sector, with a view to establish enhanced due-diligence with respect to such entities and activities. FASU should also be encouraged to develop a beneficial ownership database of companies operating in the forestry sector in PNG, based on reporting under Section 59. Aligned with these forestry specific actions, FASU should make their Forestry Sector AML Risk Assessment (conducted in 2020) publicly available – to motivate a sector response and enable other stakeholders to take action where appropriate.

[Criminal Code 1974 as amended by the Criminal Code \(Money Laundering and Terrorist Financing\) \(Amendment\) Act 2015](#)

Section 508B of the Criminal Code establishes the offence of money laundering, this offence is simply constructed: ‘A person who deals with property that is criminal property and who knows or reasonably ought to know that the property is criminal property is guilty of an offence.’<sup>76</sup> The meaning of terms included within the definition are important. These terms can be framed as elements of the offence and include the *subject* of the offence or ‘person’, the *conduct* required ‘deals with property’ and the *nature of the property* ‘criminal property’.

The subject of the offence or ‘person’ includes a natural person and a legal person or ‘a body corporate’ (*Interpretation Act 1975*, Section 3). Individuals as well as corporations can be guilty of money laundering under the Criminal Code.

The conduct that results in criminal liability is when a person ‘deals with property’. Under Section 508B(3) this conduct includes actively engaging in (or consenting to or enabling) the concealment, disguise, conversion, transfer, removal from PNG, bringing to PNG, receiving, acquiring, using or possessing of the property.

Regarding the nature of the property, Section 508A states: “‘criminal property’ means property that is, in whole or in part and whether directly or indirectly, derived from, obtained or used in connection with criminal conduct’. Criminal conduct is subsequently defined as conduct that does or would constitute an offence in PNG ‘for which the maximum penalty is death or a term of imprisonment for at least six months.’

***Every offence under the Forestry Act meets the threshold of ‘criminal conduct’ under the AML provisions of the Criminal Code.***

All offences set out under Section 122 of the Forestry Act have a maximum penalty of between three and five years. Additional offences including under Sections 124, 125 and 126 all have a maximum penalty of between one and three years. Offences under Section 114 have a maximum penalty of one year. The only exception is the offence of export of certain timber without a forest officer or inspector brand under Section 134(2) which provides for a financial penalty only. (See [Annex C](#))

*A person or corporation found to be engaged in (or consenting to or enabling) the concealment, disguise, conversion, transfer, removal from PNG, bringing to PNG, receiving, acquiring, using or possessing of illegally harvested timber or funds derived from illegally harvested timber, could prosecuted for money laundering under the Criminal Code.*

All other criminal activities documented as occurring to facilitate illegal logging in PNG are also subject to at least six months imprisonment and thus would also meet the requirement for a predicate offence under the AML provisions. Relevant crimes include: failure to comply with reporting and due-diligence obligations under the AML/CTF Act, bribery and corruption, fraud, tax evasion, violence and intimidation, trafficking and theft.

Importantly, Section 508C establishes the offence dealing in property reasonably suspected to be criminal property. Section 508C(4) provides a useful list of circumstances in which it would be reasonable to suspect that property was criminal property. Finally, Section 508F establishes that it is not necessary to prove who committed the ‘criminal conduct’, nor is it necessary for there to be a charge or conviction for this conduct. It is only necessary to prove ‘either the general type or types of criminal conduct from which the property derived’ or to rely on evidence that the circumstances in which the property is handled infer that it can only be derived from criminal conduct. Therefore, it may be possible to successfully prosecute illegal logging via the AML provisions of the Criminal Code, in cases where enforcement of the Forestry Act is unlikely due to established limitations.

Due to the far-reaching scope of the AML provisions under the Criminal Code, it is recommended that investigation and prosecution under these provisions is pursued in cases of illegal logging. Such investigations could extend not only to suspected individuals directly involved in illegal logging, but also to individuals facilitating illegal logging through related criminal activities, as well as directly to logging companies, the banks and financial institutions that service these companies, and the companies that transport and otherwise ‘deal with’ illegally harvested timber.

#### [Proceeds of Crime Act 2005 as amended by the Proceeds of Crime \(Amendment\) Act 2015](#)

The *Proceeds of Crime Act 2005* (‘POC Act’ or ‘Act’) was the first effort in PNG to combat money laundering and provide for the forfeiture of property used in connection with criminal acts, as well as depriving persons of the proceeds and benefits derived from such acts. The Act was substantially amended in 2015, including the repeal and replacement of many sections of the Act.

The most relevant provisions of the amended Act in the context of illegal logging and forest crime are contained in Part III which sets out the confiscation scheme under Division 1 ‘Restraining Orders’, Division 1A ‘Freezing Direction’, Division 2 ‘Forfeiture Orders’ and Division 3 ‘Pecuniary Penalties’. The confiscation scheme generally allows for the Court to control property related to a criminal prosecution and ultimately enables the forfeiture of the proceeds of crime to the state. It is appealing to potentially be able to repatriate the proceeds of illegal logging and forest crime to PNG, considering the scale of the financial losses calculated as a result of such crime. One report asserts that in PNG ‘recent studies and analysis conducted with UNODC estimate that illicit proceeds generated from forestry crimes exceed the funds earned in the legal timber market’.<sup>77</sup> A World Bank study expands:

*By concentrating on the financial aspects of criminal enterprises, law enforcement officials are not only better able to investigate and discover the full scope of the criminal activity— how much timber is being harvested and how much money is being generated—but also where the proceeds are hidden, and who has been involved in recycling those proceeds into the legitimate economy. This knowledge enables prosecutors to proceed with confiscating and actually recovering the ill-gotten gains. Stripping criminals of the proceeds of their crime raises the cost of conducting this illegal business and consequently helps to deter further criminal activity.*<sup>78</sup>

Targeting the proceeds of crime is also a valuable tool in addressing corruption linked to illegal logging. If bribe payments can be effectively detected, seized, and forfeited, the incentive to participate in corrupt schemes is reduced. However, there are substantial challenges with practical implementation of the *POC Act* in PNG, particularly when funds have already left the country and enforcement requires cooperation with enforcement authorities in other jurisdictions. Some of these limitations were addressed by the Director of FASU in his speech quoted above. Additionally, detection can be a significant challenge:

*illicit proceeds of illegal logging are often hidden through trade-based money laundering, the process of disguising proceeds of crime by moving value through trade transactions to legitimize their illicit origin.*<sup>79</sup>

FASU has highlighted restraint of the proceeds of crime as a key objective in its Strategic Report 2023-2027 and has further suggested legislative amendment may be necessary to ensure FASU is sufficiently empowered to enforce the Act.<sup>80</sup> Additionally, it may be valuable to increase transnational cooperation around the Act with enforcement agencies in other jurisdictions. ‘Return of assets is possible only when there is close and effective cooperation between states involved.’<sup>81</sup>

This is a particularly important point considering the nature of the forestry sector in PNG, which is largely extractive with limited productive engagement with the domestic economy.

*Indications are that entities engaged in illegal logging use the PNG financial system to move only small amounts of money – often routed through tax havens - to be used to pay only for those goods and services that cannot be easily*



*smuggled into PNG on logging ships. Expenditure on costs, such as the salary and wages for workers are paid into accounts in the foreign employee's home country from accounts held by the logging companies offshore. It has been observed that fuel, food, machinery and other material are not purchased domestically but are smuggled into PNG on the logging ships.*<sup>82</sup>

The above insights from FASU investigation and analysis reflect broader trends regarding the operating practices of criminal enterprises engaged in illegal logging and forest crime. The Financial Action Task Force report: "Money Laundering from Environmental Crime" provides insights that mirror the findings of FASU:

*In addition to the challenges in separating legitimate and illicit financial flows due to comingling, the placement of funds in a different jurisdiction from where then underlying crime was committed creates an additional barrier to identification and prosecution while also facilitating a secondary crime of tax evasion.*<sup>83</sup>

The PNG Forest Authority itself notes that 'logging operations in PNG are foreign-dominated' citing Rimbunan Hijau (RH) Cakara Alam and Vanimo Forest Productions as the dominant operators. Each of these operators have been subject to various investigations and court actions for misconduct in their logging operations and all are ultimately owned by Malaysian companies. As such, ***cooperation between authorities in Malaysia and PNG should be encouraged, as it would benefit efforts to combat money laundering and the financing of illegal logging operations by these questionable foreign entities in PNG.***

To motivate such cooperation, it may be valuable to emphasize the connection between illegal logging and organised criminal enterprise. Research in other jurisdictions has shown that 'the growing involvement of organized crime in illegal logging and related activities...greatly increased levels of violence, displacement, vulnerability to being trafficked and deforestation.'<sup>84</sup> A 2020 report links the PNG forestry sector to similar forms of criminal activity:

*Malaysian and Chinese logging companies arrange for some foreign women to enter the country...After their arrival, many of these women—from countries including Indonesia, Malaysia, Thailand, China, and the Philippines—are turned over to traffickers who transport them to logging and mining camps, fisheries, and entertainment sites and exploit them in sex trafficking and domestic servitude. Sex traffickers also reportedly exploit foreign children in Papua New Guinea. Chinese, Malaysian, and local men are subjected to forced labor at commercial mines and logging camps.*<sup>85</sup>

The link between organised crime and illegal logging was highlighted by the 2023 Pacific Transnational Crime Network event which reported discussion of 'child exploitation, illicit drugs and illegal logging.'<sup>86</sup> Emphasising this link between illegal logging and criminal enterprise may enhance effective cooperation with jurisdictions where the proceeds of illegal logging activities are being laundered and used to fund other criminal activities.

Returning to the potential to enhance relations between PNG and Malaysia to address money laundering related to illegal logging and forest crime, both countries are signatories to the United Nations Convention against Corruption (UNCAC) and Malaysia is also a signatory to United Nations Convention against Transnational Organised Crime (UNTOC). Both international treaties promote law enforcement cooperation and mutual legal assistance between member states and, considering the links between illegal logging and organised crime, PNG should consider becoming a member to UNTOC to further support international cooperation.

Emphasising the links between illegal logging in PNG and bank lending practices in Malaysia may also encourage the Malaysian financial sector to enhance compliance practices on both AML and environmental risk assessments. Such efforts could also be expanded beyond Malaysia to other financial centres at risk of funding the enterprises that contribute to illegal logging and forest crime, not only from the perspective of sustainable business, but also from the perspective of reducing risk exposure to criminal activity.

A recent report by Forest & Finance highlights the importance of targeting the role of banks and finance companies in combating forest crime and related environmental harm on a global scale:

*Given the prolific harms documented in their clients' forestry and agribusiness operations – often spanning several decades – banks and investors appear to be systematically ignoring egregious harms in order to maintain highly profitable business relationships. Meanwhile, a litany of corporate-devised initiatives offers financial institutions platforms to make lofty pledges on sustainability without any real transparency or accountability, enabling business-as-usual greenwashing.<sup>87</sup>*

This report reflects much of the insight and recommendations provided by the 2021 report into the financing of illegal logging in PNG, which highlighted the role of corresponding banks (particularly in Australia) that may facilitate illegal logging in PNG and, by doing so, breached Australian anti-money laundering law.

*Providing credit or other banking services to logging companies is a major liability for commercial banks operating in PNG...The commercial banks' exposure to the logging sector also creates risks for the banking system as a whole...Until illegal logging is stamped out, bank involvement in the logging sector is a liability...some banks have already taken positive steps...For these banks, continued due diligence is vital, including scrutinising the actual impact of the logging operations they continue to finance. It is also important they identify and end banking relationships with companies in the same corporate family as the logging companies, to avoid supporting the industry through the back door.<sup>88</sup>*

There is a clear argument in favour of a coordinated transnational approach to combat money laundering associated with illegal logging and forest crime in PNG and the wider Asia Pacific. This coordinated approach requires participation of law enforcement and financial sector stakeholders in foreign jurisdictions including Malaysia and Australia.



### Action Points

The following action points are recommended to leverage the Money Laundering laws in PNG to combat illegal logging and forest crime:

- Encourage FASU to utilise deterrent enforcement action against financial institutions for breach of reporting and due-diligence obligations under the *AML/CTF Act*.
- Encourage FASU to use its powers under Section 73 of the *AML/CFT Act* to develop compliance rules specific to financing of forestry activities or provision of financial services to entities associated with the forestry sector.
- Encourage FASU to develop and publicise a beneficial ownership database of companies operating in the forestry sector in PNG, based on mandatory reporting under Section 59 of the *AML/CTF Act*.
- Advocate for use of the money laundering provisions under the *Criminal Code* to investigate and prosecute individuals and companies suspected to be directly involved in illegal logging activities, but also to target individuals and companies facilitating illegal logging through related criminal activities and provision of goods and services to these companies.
- Support necessary law reform to ensure FASU is sufficiently empowered to enforce the *Proceeds of Crime Act*.
- Engage in research and advocacy to articulate the relationship between illegal logging and organised crime in PNG and promote increased transnational cooperation through the *Proceeds of Crime Act* to support repatriation of illicit funds derived from these criminal activities.
- Promote and facilitate (through research and stakeholder engagement) enhanced understanding of the role played by corresponding banks in contributing to illegal logging and forest crime in PNG.

This research can be used to support corresponding banks to enhance compliance with AML laws in their home jurisdictions to avoid legal risk and complicity in criminal enterprise and harmful deforestation.

### ***Tax Evasion – Income Tax Act 1959***

Recently, the Inland Revenue Commission (IRC) of PNG has begun actively pursuing penalties for corporations that engage in tax evasion, with a particular focus on transfer pricing. According to the IRC:

*Transfer pricing tax evasion, in simple terms, refers to the act of manipulating the prices at which goods or services are transferred between related parties or companies within a multinational group. The purpose of this manipulation*

*is to reduce the taxable income of one party, typically in a high-tax jurisdiction, by artificially inflating expenses or lowering revenues. By doing so, the company aims to shift profits to lower tax jurisdictions, thereby evading or minimizing its tax liabilities. This practice can result in significant loss of tax revenue for governments and is considered illegal.<sup>89</sup>*

This form of tax evasion has been well documented in the forestry sector in PNG and globally. As referenced by a 2021 report by the Financial Action Task Force, ‘[t]he World Bank estimates that governments lose between USD 6 and 9 billion annually in tax revenue from illegal logging alone.’<sup>90</sup> The referenced World Bank report expands on the scope of the challenge:

*The use of tax havens or transfer pricing by companies in the fishing and forest sectors are common practices to reduce tax bills, increasing the potential financial losses...In some cases, payments for illegal activities are made directly to overseas accounts by a foreign entity, and never enter the formal national financial systems. In addition, the laundering of illegal revenues can undermine the integrity and stability of financial systems in local countries.<sup>91</sup>*

In mid 2023, the IRC imposed a K140million (USD 40 million) tax assessment against an undisclosed logging company ‘for engaging in illicit tax evasion, specifically through transfer pricing.’<sup>92</sup> More recently, in February 2024, the IRC – in cooperation with the Immigration and Citizenship Authority (ICA) issued a K11.79 million tax assessment against a mining company found to have engaged in tax avoidance and visa violations.<sup>93</sup> The successful enforcement action is the first for “Project Masta” which focuses on investigating foreign worker and employer compliance with tax law. The Director of the IRC Mr Sam Koim explains the details:

*We are aware that foreign workers come on a work visa of one company but then end up working for multiple companies. We know that foreign workers are paid through their overseas/home bank accounts but are paid a lousy living allowance here in Papua New Guinea to avoid taxes...Our investigations revealed alarming discrepancies, including foreign workers entering on business visas to work in inline positions within companies, thereby avoiding paying the appropriate taxes due to the PNG Government. We have uncovered significant mismatches between the number of foreign workers holding work visas and the group employee declarations submitted to the IRC.<sup>94</sup>*

Cooperation between the IRC and ICA may be an effective way to address the cross-border dimensions of illegal logging too. The relationship between logging practices and immigration and labour law abuses has been well documented in PNG, including documented cases of illegal migration and human trafficking. The US Department of State reports on some alarming examples:

*...government officials reported law enforcement accepted bribes from incoming vessels in Papua New Guinea waters and logging companies, which greatly hindered anti-trafficking efforts in those industries. Logging companies*

*bribed officials to bypass inspections and not take law enforcement action against employees accused of crimes, such as sexual abuse and exploitation, including potential trafficking crimes. Enforcement agencies and most government offices remained weak as a result of underfunding, corruption, cronyism, lack of accountability, and a promotion system based on patronage.*<sup>95</sup>

Given this reality, a tax law approach is valuable – targeting the corporate actors and criminal enterprises profiting from immigration violations and other criminal activity. Further research into the role of immigration law and law enforcement to target illegal logging and forest crime is also warranted but is beyond the scope of this report.

From a tax law perspective, the various mechanisms for establishing an offence and penalty for breach of the *Income Tax Act 1959* are complex and extensive. In fact, there would be some value in reviewing and streamlining taxation law in PNG to reduce complexity and make reporting and enforcement more efficient and effective. Some of the most impactful provisions for use in the context of illegal logging and forest crime are documented below.

Part III Division 1A on Export Incentives and Division 1B on Rural Development Incentives both establish penalties for attempts to gain improper advantage through access to these incentives (Sections 45H and 45K), here there is overlap between the tax framework and the anti-corruption framework which present an opportunity for cooperation between the IRC and the ICAC.

Part III Division 3 covers deductions. This is an important section of the act that has been subject so some scrutiny, particularly in relation to deductions for losses (Section 101).<sup>96</sup> Section 69 provides for deductions for gifts to political parties. Given the extent of corruption in PNG, this section should be subject to review and potential restriction or repeal.

Part III Division 11 refers to Timber Operations specifically. Section 167 provides for deductions for specific expenditure. Division 14 applies to Overseas-Ships and may be worth exploring in the context of ships transporting logs from PNG. This is because these provisions may be used to restrict departure of illegally harvested timber on such ships. Under Section 196, a customs officer ‘shall not grant a clearance to the ship until he is satisfied that any tax that has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner General’. This demonstrates the value of cooperation between the IRC and Customs in the context of illegal logging.

Part VI of the Act – Collection and Recovery establishes a penalty tax of 20% for unpaid assessment under Section 262 and Section 264 establishes that unpaid tax ‘may be sued for and recovered in any court of competent jurisdiction by the Commissioner General suing in his official name’. Section 264A allows for inclusion of additional costs in these proceedings. This prohibitive penalty tax is a valuable disincentive for failure to pay an established tax assessment.

Part VII – Penal Provisions and Prosecution establishes clear offences and penalties that are further intended to deter tax evasion and misconduct and are the core provisions that can be

relied upon by the IRC to take legal action against entities that misreport or attempt to avoid legitimate taxation. Section 313 establishes an offence of failure to provide information or comply with requirements within the act. The penalty is financial only, up to K5,000 plus K50 for each day the failure to comply continues. This penalty extends also to the offences of refusal to give evidence (Section 314) and failure to comply with an order (Section 315).

Perhaps the most relevant and direct offence for pursuing tax avoidance related to illegal logging and forest crime is the offence of lodging a false return under Section 317. This offence can result in a penalty ‘not less than K1,000.00 and not exceeding K50,000.00’. Additionally, the court may order payment of up to double the amount of the tax that would have been avoided.

Other relevant offences include False Declarations under Section 319, which can result in imprisonment for up to four years and understating income under Section 320 and Fraudulent Avoidance of Tax (Section 321). Sections 320 and 321 are both subject to the same financial penalty as Section 317, but in the case of Section 320, a guilty person may be imprisoned for up to five years.

While all offences under Part VII apply to natural and legal (corporate) persons, there is no variation in the proscribed penalty based on whether the accused is an individual or a corporation. As such, it is arguable that the deterrent is substantially stronger for an individual than a corporate entity.

*Review of the penalty regime for corporations under the Tax Act should be explored, with a view to increase penalties in proportion to factors such as corporate revenue. It is also recommended that alternative penalties such as debarment from certain industries or government contracts should be considered as an alternative to imprisonment which can only apply to natural persons.*

Additional legal provisions of note from a tax perspective include those regarding royalties and levies for forestry operators as set out in the *Forestry Act 1991* Part VI – Forest Finance (Sections 119, 120, 121). Another possible point of cooperation and collaboration is between the IRC and the PNGFA. Further research is recommended to map the relationship between the Forest Finance provisions of the *Forestry Act 1991* and the enforcement powers of the IRC, to explore whether reform or alteration of enforcement practice is needed in light of the established limitations of the Forestry Law Framework discussed in Part 1.

Regardless of its interaction with the *Forestry Act 1991*, enforcement of the *Income Tax Act 1959* against illegal logging and forest crime holds substantial promise. Unfortunately, the significant costs involved in investigation and prosecution are prohibitive – costs are not only financial but relate to investigative capacity and the time taken to conduct audits and form a robust case.

Referring to the successful action against a logging company in 2023, the IRC notes the challenges presented by the audit that led to this action:

*During the audit, the taxpayer was not cooperative and provided limited information, which made the IRC's audit, verification, and enforcement tasks more difficult and burdensome. The taxpayer even denied the existence of any association with the overseas parties and disclosed their residence to be in certain jurisdictions. However, thanks to the IRC's progress in international tax cooperation in recent years, powerful tools like the exchange of information standard (which allows for the IRC to obtain information on foreign taxpayers from tax administrations in other jurisdictions) allowed the IRC to confirm the existence of the association... The taxpayer's failure to disclose the truth about the actual corporate residency of its log buyer was an indication that it intended to hide something.*

The reflections of the IRC illustrate the importance of international cooperation in tax investigations and highlight the value of simplifying the taxation framework to remove loopholes, streamline reporting, and increase the efficiency of oversight processes. As such, PNG's ratification of two major international treaties addressing tax issues is commendable and provides an avenue for access to continued support and capacity building.<sup>97</sup>

To increase efficiency and effectiveness of tax law enforcement in PNG, it may be helpful to draw further on international expertise and support, including through expanded cooperation with the OCED and Tax Inspectors without Borders Program<sup>98</sup> and by utilising membership of the Global Tax Forum other cooperative organisations to seek guidance and share best practices on legal structure and enforcement.<sup>99</sup>

Finally, linking of the taxation frameworks with other regulatory frameworks should be promoted in PNG. Joint investigations (as in the case of the cooperation between the IRC and ICA) are powerful and should be continued. There is also potential to connect regulatory frameworks more directly – through legislative review and amendment. For example, a finding of tax avoidance against a Registered Forest Industry Participant (FIP) should conceivably result in the revocation of that registration. This extension of the implications of tax avoidance could valuably enhance the impact of a tax evasion finding by the IRC.

***There is scope for extending the impact of IRC enforcement against logging companies under the Forestry Act 1990.***

Section 112 of the Forestry Act covers 'Cancellation of Registration' including in cases of conviction for an offence under the forestry act or an offence involving dishonesty under any law. However, the wording of the provision gives discretion to the Minister and the Forestry Board, rather than requiring an immediate revocation of Registration upon conviction.

***Ministerial discretion that allows for continued operation of criminal enterprises in the forestry sector is inappropriate and should be eliminated. Misuse of ministerial discretion could result in allegations of corruption, investigation by the ICAC, and potentially criminal liability for the minister concerned under the Leadership Code, OLICAC or Criminal Code.***

To reduce corruption risk in administration of the Forestry Law Framework, a policy should be developed by the PNGFA in collaboration with the IRC to establish a standard operating procedure for revoking FIP registrations in the case of an IRC enforcement. This policy could operate until substantive amendments are made to the Forestry Act to eliminate unwarranted discretion and enhance its operational effectiveness and integrity. Failure to implement such a policy on the recommendation of the IRC could be grounds for the ICAC pursue an investigation of the PNGFA, Forestry Board and Minister of Forests.

#### Action Points

The following action points are recommended to leverage the tax laws in PNG to combat illegal logging and forest crime:

- Advocate for a PNGFA policy of revoking FIP registrations when the IRC makes a finding of a *Tax Act* violation against a registered Forest Industry Participant. Suggest further investigation by ICAC for possible corrupt conduct in the use of ministerial discretion if such a policy is not supported or effectively implemented PNGFA.
- Advocate for participation of the IRC in an illegal logging task force with other agencies including FASU, ICAC and ICA and Customs, to streamline enforcement action against logging companies and other enterprises supporting illegal logging and forest crime in PNG;
- Support research to map all perverse incentives for tax evasion and corrupt conduct through forestry specific taxes within the *Tax Act* and *Forestry Act* as well as more general corporate taxes and deductions that may be misused;
- Advocate for simplification of the taxation framework based on analysis of perverse incentives and loopholes, to streamline enforcement efforts and reduce opportunities for corruption and misconduct in the taxation framework. In particular, reduce or eliminate the allowable deductions under Section 167 of the *Tax Act*.
- Advocate for review of the penalty framework for tax offences to increase the deterrent impact of prosecution on corporate offenders relative to individual offenders.
- Advocate for and support research into a robust, efficient, and transparent framework for tax benefits that support afforestation and other pro-forest activities.

#### ***Other Crimes under the Criminal Code and a note on Corporate Liability***

It is beyond the scope of this report to review all possible provisions of the Criminal Code that may be used to combat illegal logging and forest crime in PNG. As with any law enforcement challenge, combating illegality in the forestry sector in PNG is complicated by local dynamics – geography, the presence of different forest industry operators, levels of community support or conflict related to a particular logging site, the relationship between local community and police, proximity to metropolitan areas and development infrastructure, all these dynamics will influence the nature and extent of criminal activity.



Despite the complicating dynamics that make it difficult to predict or definitively summarise all criminal activities associated with illegal logging and forest crime; certain activities are consistently documented in reports of criminal activity in the PNG forest sector. Many of these activities have already been discussed in [Part 1](#), and flagged as predicate offences to money laundering, or as offences that motivate bribery and corruption, as a means to avoid accountability for the underlying criminal act.

Activities associated with illegal logging that are also offences under the Criminal Code include violent crime – often used as a tool to subdue landowner discontent; fraud and forgery of documents to give the appearance of legality despite logging occurring in contravention of the Forestry Law Framework; and trafficking and transfer of illegally harvested timber and other contraband on logging vessels – both entering and exiting logging camps. Additionally, the act of illegally harvesting timber could be constructed as a simple offence of theft, or ‘stealing’ under the Criminal Code.

There is some value in utilising more traditional offences such as ‘stealing’, ‘assault’, ‘smuggling’ and ‘forgery’ in the forestry crime context because these offences are often more familiar to police, the Courts, and the community – compared to more complex offence types like bribery and corruption, money laundering or tax evasion. Familiarity with traditional criminal offences may enhance instances of reporting by community members, improve effectiveness of investigation and evidence gathering by police, simplify prosecutorial arguments, and result in clear application of well-established legal principles by the Courts.

Given the potential benefits of relying on traditional offences for enforcement action against crimes in the forestry sector, it is useful to survey relevant offences, as set out under the PNG Criminal Code. The offences of ‘*Stealing*’ under Part IV Division 1 (Section 372, Sections 363, 364, 365, 370, and further Sections 373, 375, 380), ‘*Smuggling*’ (Sections 68 and 69, and Sections 70, 76 and 77), ‘*Robbery*’ and related offences (Sections 386-392), ‘*Receiving Stolen Property*’ (Sections 410 and 412), ‘*Assault*’ (Sections 243, 335, 340, 241), ‘*Cheating*’ (Sections 403 and 406), ‘*Conspiracy to Defraud*’ (Section 407), and ‘*Making Documents without Authority*’ (Section 468) may all be usefully deployed to combat illegal logging – both as standalone offences, or as the starting point for investigating more complex prosecutions under the previously discussed corruption, AML and tax regimes.

It is recommended that a review of the above offences be conducted to assess current investigation and prosecution rates in PNG and the proportion of cases that can be directly or indirectly linked to illegal logging, forest crime, and/or more complex criminal activities such as corruption, money laundering and tax evasion. This review and analysis will provide guidance on whether opportunities exist to further utilise these traditional offences in the context of illegal logging.

A limitation of relying on traditional offences under the Criminal Code for prosecution of illegal logging and forest crime is that these offences and the penalties (primarily imprisonment for

between 2 and 10 years) tend to be targeted at individuals rather than corporations or criminal entities. While all offences under the Criminal Code in PNG apply to corporations as well as individuals (as per the definition in the *Interpretation Act 1975*), attributing the intent required for guilt to a corporation is more challenging than for an individual. The challenge of attributing intent to corporations under PNG law has not been the subject of much judicial or scholarly consideration. Additionally, having not become a party to the United Nations Convention against Transnational Organised Crime (UNTOC), PNG has not developed a stand-alone regime for addressing organised criminal activity or the conduct of criminal enterprises, which is often transnational, complex, and integrated with apparently legitimate business activities including forestry operations, agriculture, and transportation.

It is recommended that further research be undertaken to map the extent to which PNG Courts are willing to attribute corporate liability for traditional crimes under the Criminal Code, as well as exploring how offences and penalties under the *Companies Act 1997* may be valuably deployed in the fight against illegal logging and forest crime in PNG.

It is further recommended that PNG consider participating in international initiatives (including becoming a State party to UNTOC) to enhance capacity to address organised criminal activity and the conduct of criminal enterprises linked to illegal logging, forest crime, and related harmful activities including trafficking in drugs, arms, and people.

Finally, PNG should consider participation in (and support of) evolving efforts at the international level to establish clear legal responsibilities for corporations to prevent, detect and be held accountable for criminal acts that occur in the course of their business activities and supply chains. One such effort to enhance corporate accountability at the international level is the negotiation of an International Anti-Corruption Court (IACC) with jurisdiction over both States and Corporations.<sup>100</sup> Such a court may be a valuable supportive institution for domestic anti-corruption efforts targeting corporations actively engaged in illegal logging and forest crime or facilitating such criminal activity through failures to implement or enforce effective due-diligence or other compliance policies.



## Part 3: Summary & Recommendations

This report has demonstrated the substantial limitations of the Forestry Law Framework in PNG and highlighted opportunities to utilising existing criminal law tools to combat illegal logging and forest crime.

Recommendations centre around increasing targeted enforcement of anti-corruption, money laundering and tax law regimes to combat illegal logging and forest crime in PNG, with a focus on enforcement against corporate actors and criminal enterprises operating transnationally.

In Part 2, each section – [Corruption](#), [Money Laundering](#), [Tax Evasion](#), and [Other Crimes](#) – provides a list of specific action points to enhance use of the documented criminal law tools to prevent and punish illegal logging. Drawing on the extensive action points provided in the body of the report and the recommendations articulated in the [Executive Summary](#), the report concludes as follows:

- ◆ **A purely domestic focus is insufficient to effectively combat illegal logging and forest crime** – advocacy must leverage interaction with domestic and international stakeholders to enhance the use of criminal law tools that address corruption, money laundering and tax evasion in the forestry sector.
- ◆ **Criminal law tools are only as effective as the enforcement agencies responsible for administering them** – advocacy should be targeted towards supporting those agencies that demonstrate the highest level of integrity and efficiency in their operations. In parallel, advocacy can also promote the use of accountability frameworks and criminal law tools against actors and enforcement agencies that fall short of their mandates and fail to operate with integrity.
- ◆ **Corporate entities are central to ongoing illegality and criminal harm in the forestry sector** – advocacy should promote review of criminal penalties for corporations, support amendments to enhanced efficiency of corporate prosecution and increase corporate penalties for criminal offences. Parallel efforts should advocate for clearer international responsibilities and robust accountability regimes for corporations that contribute to social and environmental harms.

## ANNEX A: Import Laws Prohibiting Illegal Logging and Trade in Forest Risk Commodities

Name of Law	Country/Countries	Definition of “Illegally Harvested” / “Forest Risk”
<a href="#">EU Timber Regulation (EUTR) No 995/2010</a>	27 member states of the European Union <sup>101</sup>	<p>Article 2</p> <p>“(g) ‘illegally harvested’ means harvested in contravention of the applicable legislation in the country of harvest;</p> <p>(h) ‘applicable legislation’ means the legislation in force in the country of harvest covering the following matters:</p> <ul style="list-style-type: none"> <li>— rights to harvest timber within legally gazetted boundaries,</li> <li>— payments for harvest rights and timber including duties related to timber harvesting,</li> <li>— timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting, — third parties’ legal rights concerning use and tenure that are affected by timber harvesting, and</li> <li>— trade and customs, in so far as the forest sector is concerned.”</li> </ul>
<a href="#">Lacey Act 1900 as amended 2008 (16 U.S.C. § 3373)</a> <sup>102</sup>	United States	<p>§3372 ‘Prohibited Acts’</p> <p>“(2)(B) any plant —</p> <ul style="list-style-type: none"> <li>(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—               <ul style="list-style-type: none"> <li>(I) the theft of plants;</li> <li>(II) the taking of plants from a park, forest reserve, or other officially protected area;</li> <li>(III) the taking of plants from an officially designated area; or</li> <li>(IV) the taking of plants without, or contrary to, required authorization;</li> </ul> </li> <li>(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or</li> <li>(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants”</li> </ul>
<a href="#">Illegal Logging Prohibition Act 2012 (Cth)</a>	Australia	<p>Section 7</p> <p>“illegally logged, in relation to timber, means harvested in contravention of laws in force in the</p>

		place (whether or not in Australia) where the timber was harvested ”
<a href="#">Forest Act 1989 as amended by the Forests (Legal Harvest Assurance) Amendment Act 2023</a> <sup>103</sup>	New Zealand	<p>Section 77</p> <p>“(1) In this Part, timber is legally harvested if the person who harvests the trees or woody plants from which the timber derives—</p> <ul style="list-style-type: none"> <li>(a) has the right to harvest them; and</li> <li>(b) has all necessary legal authority to exercise that right; and</li> <li>(c) does not contravene the harvest laws of the place or country of harvest when carrying out the harvest.</li> </ul> <p>...</p> <p>(3) The harvest laws of a place or country are laws that—</p> <ul style="list-style-type: none"> <li>(a) affect how or whether a harvest is to be carried out; and</li> <li>(b) set requirements, conditions, or restrictions relating to— <ul style="list-style-type: none"> <li>(i) land and resource use; or</li> <li>(ii) property rights or interests in what is harvested; or</li> <li>(iii) property rights or interests in the land where the harvest occurs; or</li> <li>(iv) access to the land where the harvest occurs; or</li> <li>(v) any other matter that the Secretary considers relevant for the purposes of this Part and specifies in a notice.”</li> </ul> </li> </ul>
<a href="#">Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (S.C. 1992, c. 52)</a> <sup>104</sup>	Canada	<p>Section 6(1)</p> <p>“No person shall import into Canada any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.”</p>
<a href="#">Act on Promoting the Distribution and Use of Legally Harvested Wood and Wood Products Act No. 48 (May 20, 2016)</a> <sup>105</sup>	Japan	<p>Article 2</p> <p>“The term "legally harvested wood and wood products" as used in this Act means wood made from trees logged in accordance with the laws and regulations of Japan or the country of harvest.”</p>
<a href="#">Act on the Sustainable Use of Timber as amended 21 March 2017</a> <sup>106</sup>	South Korea	<p>Article 4(2)</p> <p>“The Minister of the Korea Forest Service shall formulate and implement necessary policies to ensure the distribution and use of timber or timber products produced (hereinafter referred to as "legally felled") in compliance with the timber harvest-related statutes of the Republic of Korea or the country of origin.”</p>
<a href="#">UK Environment Act 2021</a>	United Kingdom	Section 166(2)

		<p>“A regulated person in relation to a forest risk commodity must not use that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity...In this Schedule “relevant local law”, in relation to a forest risk commodity, means local law—</p> <ul style="list-style-type: none"> <li>(a) which relates to the ownership of the land on which the source organism was grown, raised or cultivated,</li> <li>(b) which relates to the use of that land, or</li> <li>(c) which otherwise relates to that land and is specified in regulations made by the Secretary of State.”</li> </ul>
<p><a href="#">Regulation (EU) 2023/1115 on deforestation-free products</a></p>	<p>27 member states of the European Union</p>	<p>Article 3:  “Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless all the following conditions are fulfilled: (a) they are deforestation-free; (b) they have been produced in accordance with the relevant legislation of the country of production; and (c) they are covered by a due diligence statement.</p> <p>Article 2(40):  “relevant legislation of the country of production’ means the laws applicable in the country of production concerning the legal status of the area of production in terms of:</p> <ul style="list-style-type: none"> <li>(a) land use rights;</li> <li>(b) environmental protection;</li> <li>(c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting;</li> <li>(d) third parties’ rights;</li> <li>(e) labour rights;</li> <li>(f) human rights protected under international law;</li> <li>(g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples;</li> <li>(h) tax, anti-corruption, trade and customs regulations.”</li> </ul>

## ANNEX B: Criminal Laws with application to Forestry Crime in PNG

Name of Law	Enforcement Agency	Cooperative Elements
<a href="#">International Trade (Fauna and Flora) Act 1979</a>	Section 3A: “Departmental Head of the department for the time being responsible for environment and conservation matters.” <a href="#">PNG Conservation and Environment Protection Authority (CEPA)</a>	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the CITES Secretariat: <a href="#">here</a>
<a href="#">Environment Act 2000</a>	<a href="#">PNG Conservation and Environment Protection Authority (CEPA)</a>	<ul style="list-style-type: none"> <li>- UN Environment Programme;</li> <li>- Pacific Regional Environment Programme</li> </ul>
<a href="#">Forestry Act 1991</a>	<a href="#">PNG Forest Authority</a>	
<a href="#">Criminal Code Act 1974</a>	<a href="#">Royal PNG Constabulary</a> ; <a href="#">Department of Justice and Attorney General</a>	<ul style="list-style-type: none"> <li>- Australian Federal Police <a href="#">PNG-APP Partnership</a></li> <li>- International Organisation for Migration <a href="#">Counter-Trafficking Programme</a></li> <li>- <a href="#">Interpol</a></li> <li>- UNODC</li> </ul>
<a href="#">Customs Act 1951</a>		
<a href="#">Anti-Money Laundering and Counter-Terrorist Financing Act 2015</a>	<a href="#">Royal PNG Constabulary</a> ; <a href="#">Department of Justice and Attorney General</a> ; <a href="#">Financial Analysis and Supervision Unit (FASU)</a>	<ul style="list-style-type: none"> <li>- <a href="#">AUSTRAC</a> and Pacific Financial Intelligence Community</li> <li>- <a href="#">Interpol</a></li> <li>- <a href="#">Egmont Group</a></li> </ul>
<a href="#">Organic Law on the Independent Commission Against Corruption 2019</a>	<a href="#">ICAC</a>	<ul style="list-style-type: none"> <li>- EU Partnership for good governance: <a href="#">here</a></li> <li>- <a href="#">UNCAC Secretariat</a></li> <li>- <a href="#">UNDP</a></li> <li>- <a href="#">UNODC</a></li> <li>- <a href="#">OECD</a></li> </ul>
<a href="#">Proceeds of Crime Act 2005</a>	<a href="#">Royal PNG Constabulary</a> ; <a href="#">Department of Justice and Attorney General</a>	<ul style="list-style-type: none"> <li>- <a href="#">AUSTRAC</a> and Pacific Financial Intelligence Community</li> <li>- <a href="#">Interpol</a></li> <li>- <a href="#">Egmont Group</a></li> </ul>
<a href="#">National Agriculture Quarantine and Inspection Authority Act 1997</a>	<a href="#">National Agriculture &amp; Quarantine Inspection Authority</a>	<ul style="list-style-type: none"> <li>- <a href="#">UNDP Green Commodities Programme</a>: <a href="#">here</a></li> <li>- UN Environment Programme;</li> </ul>

		- Pacific Regional Environment Programme
<a href="#">PNG Income Tax Act 1959</a>	<a href="#">Inland Revenue Commission (IRC)</a>	OECD, World Bank, IMF, United Nations. See examples: <a href="#">here</a>
Tax Administration Act 2017	<a href="#">Inland Revenue Commission (IRC)</a>	OECD, World Bank, IMF, United Nations. See examples: <a href="#">here</a>

## ANNEX C: Offences under the Forestry Act 1991

Section	Offence	Penalty
114(1)-(5)	<p>(1) A person who makes application for a timber permit, timber authority or licence without being registered under this Part, is guilty of an offence.</p> <p>(2) A forest industry participant, and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in a forest industry activity without the forest industry participant being registered under this Part in respect of that activity, is guilty of an offence.</p> <p>(3) A person who, not being registered under this Part, claims to be so registered, or holds himself out as being so registered, is guilty of an offence.</p> <p>(4) A person who, not being registered under this Part, enters into negotiations with a landowner in relation to any activity, to engage in which that person would require to be registered under this Part, is guilty of an offence.</p> <p>(5) A consultant, who provides or offers services in the capacity of a consultant, without being registered as a consultant under this Part, is guilty of an offence.</p>	<ul style="list-style-type: none"> <li>- Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both (subsections 1, 3 &amp; 4)</li> <li>- Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding five years, or both (subsection 2)</li> <li>- A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both. (subsection 5)</li> </ul>
122(1)-(4)	<p>(1) A forest industry participant, and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in forest industry activities except under and in accordance with a timber permit, timber authority or licence, held by the forest industry participant, is guilty of an offence.</p> <p>(2) A person who –</p> <p>(a) without lawful authority, fells, cuts, injures, destroys, obtains or removes any forest produce in, on or from –</p> <p>(i) a National forest or other Government land; or</p> <p>(ii) land held under lease from the Government; or</p> <p>(iii) land the subject of a Forest Management Agreement; or</p> <p>(iv) a timber rights purchase area; or</p>	<ul style="list-style-type: none"> <li>- Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding five years, or both.</li> <li>Default penalty: fine not exceeding K10,000.00. (Subsection 1)</li> <li>- Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding three years, or both. (Subsection 2)</li> <li>- Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding three years, or both. (Subsection 4)</li> </ul>



	<p>(v) the project area of a timber authority; or</p> <p>(b) counterfeits or unlawfully affixes to any forest produce a mark used by Forest Officers or Forest Inspectors; or</p> <p>(c) without due authority –</p> <p>(i) makes or causes to be made; or</p> <p>(ii) uses or causes to be used; or</p> <p>(iii) has in his possession, a brand or stamp usually used by Forest Officers or Forest Inspectors; or</p> <p>(d) unlawfully alters, obliterates, defaces, pulls up, removes or destroys a boundary mark or any stamp, mark, sign, timber permit, timber authority, licence or order, used or issued by the Minister, Chairman of the Provincial Forestry Committee, Managing Director or a Forest Officer or Forest Inspector; or</p> <p>(e) unlawfully –</p> <p>(i) cuts, breaks, throws down or otherwise destroys or damages any building, fence or gate in or enclosing a National forest; or</p> <p>(ii) cuts through, breaks down or otherwise destroys the bank, dam or wall of any part of any natural or artificial reservoir or pond of water within or partly within and adjoining any National forest; or</p> <p>(f) for the purpose of obtaining –</p> <p>(i) a favourable report, recommendation, certificate, valuation or royalty assessment, whether in respect of any place, employment, sale, auction, timber permit, timber authority, licence, lease or any other benefit; or</p> <p>(ii) any abstention on the part of a Forest Officer or Forest Inspector or any member of the National Forest Service from any act which forms part of his duties, exercises compulsion on a Forest Officer or a Forest Inspector or any member of the National Forest Service by violence or threats, or corrupts or attempts to corrupt him by promises, offers, gifts or presents; or</p>	
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	<p>(g) refuses or fails to comply with a lawful direction of a Forest Officer or Forest Inspector; or</p> <p>(h) knowingly furnishes the Minister, Chairman of the Provincial Forestry Committee, Managing Director, Forest Officer or Forest Inspector with a false or incorrect statement of any forest produce felled, cut, split, sawn or removed by the person or by an agent or employee of the person and on which fees, royalties, levies or charges are payable to the State or to the Authority; or</p> <p>(i) knowingly makes or causes to be made any entry or writing that is false in any material particular, in any book, return, declaration or statement required by this Act to be kept or made; or</p> <p>(j) unlawfully occupies land for the purpose of carrying out forest industry operations; or</p> <p>(k) ignites or maintains an open fire in a restricted area except under and in compliance with a burning permit issued to him, unless the fire is used only for cooking or warmth; or</p> <p>(l) ignites or maintains an open fire in or near a forest and who –</p> <p style="padding-left: 40px;">(i) leaves the fire unattended; or</p> <p style="padding-left: 40px;">(ii) fails to extinguish the fire before leaving it, is guilty of an offence.</p> <p>(3) <i>repealed</i></p> <p>(4) A person who –</p> <p style="padding-left: 40px;">(a) by intimidation or threat hinders or prevents a person from making an application for a timber permit, timber authority, licence or registration under this Act; or</p> <p style="padding-left: 40px;">(b) for an improper purpose threatens to make an application for a timber permit, timber authority, licence or registration under this Act; or</p> <p style="padding-left: 40px;">(c) participates in or is a party to an agreement or arrangement among two or more persons, under which –</p> <p style="padding-left: 80px;">(i) one or more of the persons agrees or undertakes not to make an application</p>	
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	<p>for a timber permit, timber authority, licence or registration under this Act; or</p> <p>(ii) particulars of an application made for a timber permit, timber authority, licence or registration under this Act, or the amount of an offer to pay royalty or bonus to the State or to the Authority are arrived at, is guilty of an offence.</p>	
124(1)	<p>(1) A person who –</p> <p>(a) is found within –</p> <p>(i) a National forest or other Government land; or</p> <p>(ii) land held under lease from the State; or</p> <p>(iii) an area covered by a timber permit or timber authority, or in the vicinity of any such forest, land or area; and</p> <p>(b) has in his possession any forest produce; and</p> <p>(c) on being required to do so by a Forest Officer or Forest Inspector, refuses or fails to give an account to the satisfaction of the officer of the manner in which he came into possession of the forest produce, is guilty of an offence.</p>	- Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.
125	A person, who receives any forest produce knowing it to have been unlawfully obtained, is guilty of an offence.	- Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.
126(2)	(2) A person, who obstructs or hinders the Minister, the Managing Director, a Chairman of the Provincial Forestry Committee, a Forest Officer or Forest Inspector in the exercise of his powers under Subsection (1), is guilty of an offence.	- Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year.
134(2)	(2) A person, who exports any timber to which a notice under Subsection (1) applies and which does not bear a mark or brand affixed by a Forest Officer or Forest Inspector indicating that permission has been given under that subsection, is guilty of an offence.	- Penalty: A fine not exceeding K10,000.00 and a further penalty of a fine not exceeding K15.00 for each cubic metre of the timber exported.

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- <sup>67</sup> UNODC: [https://www.unodc.org/res/environment-climate/asia-pacific\\_html/PNG\\_Assessment.pdf](https://www.unodc.org/res/environment-climate/asia-pacific_html/PNG_Assessment.pdf), p19
- <sup>68</sup> Pacific Legal Network: <https://www.pln.com.au/single-post/2017/02/15/png-new-aml-framework>
- <sup>69</sup> Australian Financial Review: <https://www.afr.com/companies/financial-services/nab-and-cba-exposed-over-png-money-laundering-20210712-p588x2>
- <sup>70</sup> ACT NOW!: <https://actnowpng.org/sites/default/files/publications/The%20Money%20Behind%20the%20Chainsaws.pdf>
- <sup>71</sup> UNODC: [https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_31/expert\\_discussions/statements/day2/Wilson\\_ONEA.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_31/expert_discussions/statements/day2/Wilson_ONEA.pdf)
- <sup>72</sup> *ibid*
- <sup>73</sup> ACT NOW!: <https://actnowpng.org/sites/default/files/publications/The%20Money%20Behind%20the%20Chainsaws.pdf>, p9
- <sup>74</sup> Australian Financial Review: <https://www.afr.com/companies/financial-services/nab-and-cba-exposed-over-png-money-laundering-20210712-p588x2>
- <sup>75</sup> *ibid*
- <sup>76</sup> Criminal Code Act 1974, Section 508B(1) (as amended). Note that online repositories of PNG legislation do not include an updated Criminal Code Act or Proceeds of Crime Act, incorporating 2015 amendments. The provisions cited are drawn from the amending Act (*Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015*) not the consolidated Criminal Code.
- <sup>77</sup> FATF: <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Money-Laundering-from-Environmental-Crime.pdf.coredownload.pdf>, p13
- <sup>78</sup> World Bank: <https://openknowledge.worldbank.org/server/api/core/bitstreams/848d6ecc-c541-54e5-aa63-7bb249393882/content>
- <sup>79</sup> National Whistleblower Centre: <https://www.whistleblowers.org/combating-corruption-in-the-timber-trade/>
- <sup>80</sup> Bank of PNG: <https://www.bankpng.gov.pg/wp-content/uploads/2023/03/FASU-Strategic-Plan-2023-2027.pdf>



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- <sup>81</sup> UNODC: [https://www.unodc.org/roseap/uploads/archive/documents/indonesia/forest-crime/Following\\_the\\_money\\_in\\_illegal\\_logging.pdf](https://www.unodc.org/roseap/uploads/archive/documents/indonesia/forest-crime/Following_the_money_in_illegal_logging.pdf)
- <sup>82</sup> FASU Annual Report 2021: <https://www.bankpng.gov.pg/wp-content/uploads/2023/03/Financial-Analysis-and-Supervision-Unit-Annual-Report-2021.pdf>
- <sup>83</sup> FATF: <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Money-Laundering-from-Environmental-Crime.pdf.coredownload.pdf>
- <sup>84</sup> Global Initiative: <https://globalinitiative.net/analysis/oc-trafficking-deforestation-mexico/>
- <sup>85</sup> US State Department: <https://www.state.gov/reports/2020-trafficking-in-persons-report/papua-new-guinea/>
- <sup>86</sup> Australian Federal Police: <https://www.afp.gov.au/news-centre/media-release/enhancing-partnerships-pacific-law-enforcement-agencies-combat>
- <sup>87</sup> Forests and Finance: [https://forestsandfinance.org/wp-content/uploads/2023/12/BOBC\\_2023\\_vF.pdf](https://forestsandfinance.org/wp-content/uploads/2023/12/BOBC_2023_vF.pdf)
- <sup>88</sup> ACT NOW!: <https://actnowpng.org/sites/default/files/publications/The%20Money%20Behind%20the%20Chainsaws.pdf>
- <sup>89</sup> Inland Revenue Commission PNG: <https://irc.gov.pg/news/media-releases/major-logging-operator-charged-k140m-for-tax-evasion>
- <sup>90</sup> FATF: <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Money-Laundering-from-Environmental-Crime.pdf.coredownload.pdf>
- <sup>91</sup> World Bank: <https://pubdocs.worldbank.org/en/482771571323560234/WBGReport1017Digital.pdf>
- <sup>92</sup> IRC: <https://irc.gov.pg/news/media-releases/major-logging-operator-charged-k140m-for-tax-evasion>
- <sup>93</sup> NBC: <https://www.nbc.com.pg/post/11353/mining-company-charged-for-income-tax-evasion>
- <sup>94</sup> *ibid*
- <sup>95</sup> US State Department: <https://www.state.gov/reports/2023-trafficking-in-persons-report/papua-new-guinea/>
- <sup>96</sup> National Research Institute PNG: [https://pngnri.org/images/Publications/DP142\\_-\\_201410\\_-\\_Odhuno\\_-\\_Taxation\\_Policies.pdf](https://pngnri.org/images/Publications/DP142_-_201410_-_Odhuno_-_Taxation_Policies.pdf)
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- <sup>98</sup> Tax Inspectors Without Borders: <https://www.tiwb.org/programmes/>
- <sup>99</sup> Inland Revenue Commission PNG: <https://irc.gov.pg/pages/about-irc/corporate-information/international-affiliations>
- <sup>100</sup> Harris (2023) ‘Corporate Liability within the ICAC Framework’, *Transnational Criminal Law Review* 2(1): 74-89 available at: <https://ojs.uwindsor.ca/index.php/nlj/article/view/7906/5606>
- <sup>101</sup> European Union: [https://european-union.europa.eu/easy-read\\_en](https://european-union.europa.eu/easy-read_en)
- <sup>102</sup> See also a useful summary document here: [EIA Global](#)
- <sup>103</sup> Note that this act received royal assent on 19 May 2023 but is not yet enforceable. The Act will be enforceable as specified in Section 2 commencement (19 May 2026 or sooner with an Order in Council). Note further that the Act takes a positive approach and defines “legally harvested”. As such, “illegally harvested timber” is understood to mean any timber that was not “legally harvested” under the Section 77 definition.

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<sup>104</sup> Note that this law is primarily concerned with wood listed as protected under the CITES treaty. It does not expressly apply to all wood products. This is achieved through the definitions of ‘plant’ and ‘Convention’ under section 2 of the Act.

<sup>105</sup> This law focuses on promoting trade in legal timber and uses a positive definition of “legally harvested”. For a summary, see: <https://forestlegality.org/article/japans-new-legal-timber-law>

<sup>106</sup> The Korean law requires importers to verify timber was “legally felled” and thus the contrary definition of illegally felled is established to mean NOT in compliance with the timber-harvest-related statutes of the Republic of Korea or the country of origin. Proof of legality is required in the form of certification or other approved documentation.