

**DISCUSSION PAPER**

**By**

**SCCP Module 2, Class 2008**

**On the**

**EASTERN HIGHLANDS PROVINCE  
(EHP)**

**FOREST PROTECTION BILL 2008**

**For the Eastern Highlands Provincial  
Government**

## Background

The Eastern Highlands Province is one of the most populated Provinces in the Highlands region, with a current population of 427,000 and an increasing growth rate that is contributing to the 2.7% growth in Papua New Guinea. The majority of this population, like many other parts of PNG are living in rural areas and their every day needs for survival is dependent very much on the forests and the products from forests, whether it be medicine, firewood, food, clean water or building materials to build houses.

With the increase in population the demand for these services has put a lot of pressure on the forest, leading to clearance of large tracts of forests by local communities thus resulting in the abundant grassland that is now evident in the province. People are now forced to travel long distances to forests to access forest services that they had in the past, easy access to, for instance, the collection of building materials, where communities are now traveling long distances in order to get timber to build their houses. Other social problems are emerging as a result dwindling forests, especially when communities are competing amongst themselves to access forest resources.

The Forest Protection Bill for the Eastern Highlands Province is aimed at addressing this problem by managing the remaining forest resources of the Province, with an ultimate aim of; rehabilitating and improving the grassland forest areas and managing the remaining remnant forests scattered in different parts of the Province so that the future generations will continue to have access to these services for their everyday survival.

The Forest Protection Bill is aimed at implementing the National Forest Policy on forest conservation. This policy is not complemented by the Forestry Act 1991. This policy initiative has not been implemented in the country since the adoption of the Forest Policy in 1990, until recently when the Madang provincial government initiated the formulation of its Forest Protection Law 2007.

The enactment of a provincial forest conservation law is not contrary to the provisions of the Forestry Act nor the *Organic Law on Provincial Governments and Local-level Governments* 1995 (OLPGLLG ). Provincial Governments are in fact given the legal mandate under Section 42(1)(s) and (y) to make laws on forestry and parks and reserves. It must be noted that the Forest Protection Bill covers only areas of protection and conservation of forest resources as distinct to harvesting of such which is specifically restricted under s42 of the OLPLLG.

The Bill has been drafted using the normal drafting style. It is progressive in some ways because it promotes gender balance, public participation, and protection of customary rights, sustainable development, and protection of natural resources.

The structure and scheme of the Bill is similar to other pieces of legislation. The provisions of the Bill have been drawn from various pieces of legislation, particularly the *Forestry Act*, *Conservation Areas Act* and the *Fauna (Protection and Control) Act* and the *Almami Local-level Government Environment Law*.

Most of the provisions of the Bill are similar to the provisions of other laws and therefore require little explanation here. Other provisions are unique and will require some explanation.

The Bill has 8 parts and the following are the main ideas captured in the draft Bill.

## **A. The Preliminary Section of the Bill**

Like every other piece of legislation, whether at the national or local level, the first part of the legislation is focused on making express statements in respect to compliance with other existing legislation and to whom the Bill would apply to, whether individual or institution.

Statements in respect to compliance of the Bill with national laws are essential as they re-enforce the idea that when there is a difference in meaning and or interpretation amounting to a conflict between a provision of a national law and a provision of a provincial bill in respect to the same matter, the national level law provision will be applied. This statement acknowledges this principal of conflict of laws.

The extent of application of a Bill is also important as it defines to whom the Bill will apply to. Those that are identified as having application by the Bill are bound to give effect to the Bill. This provision also works to state at the outset that those who have been named as having application over are recognized as having obligations under the Bill. They are under an obligation to ensure that they implement the provisions as expressed.

Interpretation clauses are essential in every piece of legislation. Where it is desired that a particular phrase or term will be given a more specific and limited definition, that term or phrase will be listed and defined. The interpretation clause operates to define the limits of interpretation of a particular word or phrase. Hence, when the same term appears throughout the Bill, no other interpretation would be given to it apart from that already defined and listed.

These are the words we have defined:

- “Compatible economic development “
- “ Conservation Agreement”
- “ Council”
- “ forest protection area”
- “ forest Resources”
- “natural Resource development project”

## **B. General Principles of Forest Resources Conservation.**

Having a provision on principles effectively summarizes what premise the Bill is being formulated. The provision states the major principles that need to be considered in dealing with any matter under the proposed law. The general principles referred to here are the general principles of protection and preservation of the forest for the use and enjoyment that are provided under the National Forest Policy 1990 which came about as a result of the Barnett Enquiry, investigating the corrupt status of the forest industry in PNG. One of the key policy is forest conservation and promoting the sustainable use of forest resources.

A provision on objectives basically outlines the purpose or intent for formulating this Bill. These are the objectives that the stakeholders will strive to achieve under the Bill. The objectives express the main idea, being to protect and preserve the forest resources while allowing for sustainable economic development in a manner that aims to improve the quality of life and maintain the ecological processes.

Regulation must occur in an integrated, cost effective and systematic manner to mitigate adverse and harmful effects of activities on forest resources. The process also encourages openness and transparency. This ultimately leads to wide consultation, implementation and monitoring by relevant stakeholders.

### **C. Protection of Forest Resources.**

This provision basically gives legal support to the Forest Policy 1990 on protection of forests. A clear statement has been made as to the identification of an area that can be regarded as a protection forest. Further to this, rather than mere recognition and or identification of a protection forest, a further option is provided. Where a forest resource owner desires to protect this area, a further option allows for such establishment.

### **D. Forest Protection Advisory Council.**

This Bill is intended to allow forest resource owners to set aside forest areas.

In order for this to be done, it is necessary to create a body and give it the power to establish, coordinate and manage forest protection areas, whilst at the same time, providing an advisory role to the Provincial Executive Council. The Council will effectively become the administrative structure to implement and enforce the provisions of the Bill.

The Bill establishes the EHP Forest Advisory Council and sets out the procedures on eligibility and appointment of members of the Council. Provisions outlining membership of the Council is important as it restricts membership and makes it mandatory for those identified to sit on the Council to provide the advisory support. The Bill is unique in that it provides for 9 members of the Council who shall represent the various stakeholders in the province. To promote gender balance, special preference is given to women by the allocation of two spaces on the Council. This provision further promotes the concept of good governance which requires that the process must be transparent and promote accountability of leadership.

Members of the Council are required to declare their interests in a matter before the Council before a decision is taken on the matter. This ensures that any decision taken will be transparent and made in a fair manner and it maintains the Council's integrity in the performance of its functions, as they are aware of prevailing interests that may jeopardize the Council's and or its members' reputation. In addition to this, members are afforded protection from being personally liable for any action or omission occurring whilst he/she was faithfully discharging his or her duties in their capacity as a member of the Council.

It also provides rules in relation to quorum and proceedings of meetings of the Advisory Council. Such procedures are standard and ensure fair conduct at meetings. In upholding good governance, the advisory Council is required to provide annual reports on its operations and conduct for the past year. The council is accountable to the Provincial Government through the PEC. The Bill further ensures that the work of the Council is open and transparent and will lead to accountability of actions as a group. By including such a provision, the public is aware of the operations of the Council in a year. A mandatory guide on what should be provided in the report is also stated. This allows the Council to evaluate and monitor its activities or progress in carrying out its functions and not only as a reporting mechanism to the Provincial Government. The Annual Report shall also

include financial statements or a report of funds being expended in the past year. As a body created under a provincial Law, they will require revenue to carry out their responsibility and such revenue is likely to come from the Provincial Government. The Bill does not define where the Council can and may receive funding from, so this effectively leaves it open to the Council to seek alternative funding to operate. In that respect, they are bound to report on such financial transactions.

It is acknowledged that the Council, in effectively carrying out its functions, may require technical expertise on various subject matters from time to time and therefore enables the Council to seek expert advice on technical matters where it lacks the knowledge or capacity to make the judgment. This is important as it ensures that every decision made is based on information and expert advice made available to it thus, providing the justification for a decision.

The PEC is given the discretion to determine the kind and level of allowance receivable by Council Members for sitting on the Council. This provision is only effective upon an affirmative decision of the PEC. The Bill also provides instances for vacation of office of Members of the Council.

## **E. Access to Customary Land And Forest Resources**

This part of the Bill is an innovation in the legal framework in PNG. It was first introduced in the Draft Biosafety and Biotechnology Bill 2005 and the recently enacted *Motu Koita Assembly Act 2007*. This intervention in legislative drafting by the draftsman is in recognition of the position of customary resource owners and their ownership and control over their natural resources in PNG. These provisions set out the rights of resources owners to give permission for access to their resources and the sharing of benefits that may accrue from the development of their natural resources which in this case is forest resource.

The Bill actually provides that any person who intends to collect or harvest biological resources must first obtain a license. Before this license is issued, it is also a requirement under the Bill that consent is obtained from the forest resource owners and the process by which this consent is obtained must be transparent and allows for participation by the local communities. The Bill also allows the Council to create and formulate appropriate guidelines and the manner in which consent of local communities should be obtained. It further provides that the absence of such guidelines does not take away the duty of the Council and the developer to ensure the prior informed consent is obtained before any license is issued under this Bill.

The general provisions regarding benefit sharing under this part require that a contract be signed between the relevant forest resource owners, the relevant national government agencies, the provincial government, the applicant / developer and the Council regulating the manner in which benefits relating to the access and utilization of forest or biological resources are to be distributed. Where a national law does provide the way in which such benefits should be distributed the national law supersedes the Bill in the specific subject matter and will take effect.

## **F. Forest Protection Areas**

### **a) Declaration of Forest Protection Area**

This part of the Bill will allow the creation and or declaration of Forest Protection Areas (FPA) and define the process and those involved in the declaration process; their powers and obligations.

The EHP Government is authorized under the Bill to declare a forest protection area not on its own volition but after receiving a recommendation from the PEC. It follows that every declaration of a FPA can only be lawfully made if the Provincial Government is acting upon a recommendation from the PEC. Such recommendation must be accompanied by;

1. Forest Conservation Agreement, and
2. Forest Conservation Area Management Plan

Immediately after receiving the above two documents, the PEC is under a legal obligation to *inform*;

1. the Provincial Forest Management Committee as established under the *Forest Act* 1991,
2. the Local level Government in whose area the proposed forest protection area will be declared, and
3. the Department of Environment and Conservation (DEC).

Such notification would constitute the PECs' intention to declare the area as a forest conservation area. Having done this, they are further obliged to *publish* this intent within the provincial gazette, at the LLG office and the District office in whose area the subject of the recommendation is situated and through specific radio media broadcasting service that serves in that area.

The Bill requires the Provincial Forest Management Committee and DEC to make written representation within 30 days to the Council. While any private individual is allowed a period of 60 days (commencing from the date of publication of that notice), to make a written representation to the Council.

Upon receiving representations whether from individuals, the Provincial Forest Management Committee or the DEC, the Council has an option to invite these individuals or their representatives to either provide further information or enter into consultation with the Council. This ensures that any existing or prevailing interests are addressed at this stage during the consultation process. Once resolved, the PEC can proceed with its recommendation to the Provincial Assembly. Once the declaration is made, this instrument of declaration must be published in the Provincial Gazette. Thereafter, the PEC is required to notify relevant government agencies responsible for environment and conservation, forests, mining, petroleum and agriculture matters about the forest protection areas.

#### **b) Forest Protection Agreement.**

It is a requirement under the Bill that a Forest Protection Agreement be signed between the forest resource owners and the provincial government regarding the allocation for their forest resources for protection. It also provides that such an agreement must be in writing and specifies matters that should be covered in the agreement. Provisions are specific as to whom the resource owner signatories should be, in taking into account prevailing clan interests and practices to prevent inter-clan disputes. This provision in itself identifies who can represent a clan to endorse such agreement. The Council is under an obligation to ensure that negotiations to enter into a forest protection agreement are conducted within a 12 month period and no longer than 18 months. These negotiations will commence after a determination has been made by the Council itself that a forested area is suitable for setting aside for protection under this Bill.

To prevent conflicts arising, the Bill is quite specific as to the form in which the Agreement should be in and identifies specific details that should be contained within the Agreement. By implication, an Agreement will not constitute a proper Forest Protection Agreement under this Bill unless it sets out the items specified accompanied by relevant maps. Such Agreement must be executed between the forest resource owners and the Provincial Government prior to the declaration of a Forest Protection Area

This is the most critical document under the proposed Bill. This agreement sets out the terms and conditions of the forest protection area and the rights and duties of the parties. This Agreement does not in any way take away the land ownership rights of the forest resource owners over their land on which the forest conservation area is declared.

**c) Rights and Duties of Forest Resource Owners.**

The Bill also protects the existing and continuing rights of forest resource owners in the forest protection area. These rights are not extinguished nor frozen under the proposed law.

**d) Forest Protection Area Management Plan.**

The Council is required to formulate a Forest Protection Management Plan (FPMP) to regulate the manner in which the protected forest area is developed. No declaration regarding forest protection areas shall be made unless a Forest Protection Management Plan is completed and approved by the Provincial Executive Council. All development and related activities in the forest protection area will be governed by the management plan. A violation of the management plan is also an offence under the Bill. This process is 'borrowed' from the *Conservation Areas Act*.

A violation of the FPMA attracts a K10,000 fine or term of imprisonment not exceeding 3 years.

**G. Management of Forest Protection Areas.**

*Manager of the Forest Protection Area*

The Bill establishes the office of the Manager who is responsible for the efficient management of the forest protected area and sets out the functions of the Manager and conditions of his termination where termination arises. The PEC will appoint this Manager, who will be a contract officer, on the advice of the Council.

The Manager's functions will include the management of the forest protected are in accordance with policy directives of the provincial government, advise the Council on any matters referred to him, ensure full implementation of the forest protection area management plan and such other duties defined under the Bill and or his contract of employment.

The Bill is aimed at strengthening, promoting and maintaining forest protection areas. It is proposed that each forest conservation area be managed by a manager who shall be given attractive working conditions to enable him to perform well in their jobs.

*Appointment of Ranger*

The Bill permits the appointment of rangers who shall assist the Manager in monitoring the forest conservation area. The ranger may be an individual or a group of individuals. The Bill provides the opportunity for the engagement of youth groups or clans to perform the roles of a ranger. To enforce the requirements and functions of a ranger, the Bill also prescribes a penalty against anyone who hinders, obstructs or refuses to comply with the directions of the ranger.

## **H. Miscellaneous**

This part of the Bill provides for offences. These are actions or activities that are restricted from being conducted within a forest protection area. Anyone found to have done any one of this restricted activities will have committed an offence against this Bill.

The first of these offences is the restriction placed on the collection of flora (plants) and fauna (animals). Only persons who have customary rights over and within an area of a forest protection area are permitted to collect or take both flora and fauna within a forest protection area. The method they use must be an acceptable customary method. This does not include the use of commercially manufactured weapons. If a resource owner is found using such an item he would be guilty of committing an offence against this Bill. The exercise of such customary rights are however, further restricted to that of the particular individual's area within which his customary rights applies.

The only exception for collecting or taking of certain species of fauna and or flora is only with the approval of the Council for purposes of managing, monitoring and evaluating the biodiversity of the forest protection area. Further activities that are restricted within a forest protection area and listed as offences are;

- the restriction of use of firearms for hunting,
- lighting of fires other than in accordance with the management plan,
- disposal of rubbish/refuse,
- camping, and
- cutting trees.

The penalty provided under this part for violation of the Bill is separate for individuals and corporations. The standard of proof is on the balance of probabilities. Such offences can be prosecuted at the District Court. All fines imposed under this Bill and collected shall be paid to the Provincial Government.

## **I. CONCLUSIONS**

### **The Legal Test**

It is essential to note that this Bill is based on the Madang Provincial Government's Forest Protection Bill 2007. The Madang Provincial Assembly is about to enact the Bill following wide consultations with the DEC and the National Forest Authority and other stakeholders, both at the provincial and national government levels. Therefore we are confident that this Bill will be similarly accepted and sanctioned by the relevant authorities. It is not a new concept.

However considering the circumstances in the Eastern Highlands which differ from the Madang Province we provide the following recommendations.

## **J. RECOMMENDATIONS**

There is now an urgent need to rehabilitate the grassland areas through afforestation programs through planting of selected tree species, and to conserve the remaining natural forest and its biodiversity as part of the rehabilitation process, and to continue to provide the vital services to its majority of the rural communities. Considering the scarcity of forest reserves within the province and the need for rehabilitation of forest reserves, it is crucial to assess the rate of degradation of the forests and its resources and to impose effective measures to restock and rehabilitate these reserves, hence, the need for afforestation and reforestation.

Reforestation is the practice of re-planting after cutting. It is quite obvious in the province that trees are being cut down for various domestic uses at a rapid rate and will soon be depleted if there is no control over the rate in which it is being cut. Therefore the need for reforestation.

Afforestation is the conversion of grassland areas into forests by planting. This will address the need for more forest resources taking into account the global concern on forests.

1. Consistent with our recommendations ‘there should be a new part to deal with Afforestation and Reforestation in the Bill in a separate part to be inserted after Part 5.
2. With the inclusion of the new ideas of ‘reforestation and forestation’ there is need for a change of name to reflect the scope and application of the bill.
4. ‘Afforestation’ and ‘Reforestation’ to be defined under the bill.
5. Grammatical errors s24 (3) of the bill ‘Conservation’ in Forest Conservation Agreement to be changed to ‘protection’ and to be read as Forest Protection Agreement.  
  
‘Forest protection Agreement’ should be defined in the interpretation section and not the phrase ‘ Forest Conservation Agreement’
6. A new provision to be added to s 23 to provide that in the absence of a written representation as required under ss3 if not forthcoming will be taken as agreement to the recommendation.

## **New and Additional Provisions**

### **New Sub-Section under Section 23**

(6) Where no representations are received within the period referred to in Subsection (3) and (4), a recommendation shall be deemed to have been endorsed by the Provincial Forest Management Committee or the Department of Environment and Conservation or any other person that may be concerned with the proposed intention to declare a forest protection area.

### **Proposed Part VI: Afforestation and Reforestation**

#### ***Division 1 Afforestation***

#### **28. Afforestation**

(1) The Council may in consultation with owners of areas that have been identified as suitable for afforestation give directions for afforestation activities to be undertaken in respect of that area.

(2) An afforestation activity shall be carried out by the owners of the area under an agreement with the Council.

(3) An agreement may provide for the sharing of any benefits that may be derived from the afforestation activity or the resources that may be realized by the afforestation activity.

(4) The Council shall in consultation with the resource owners make rules concerning the management and use of the afforested area.

(5) A person who breaches a rule commits an offence, the penalty for which shall be stated in the rules, if no other penalty is prescribed.

#### ***Division 2 Reforestation***

#### **29. Reforestation**

(1) An area that has been the subject of commercial logging or other intensive logging activity shall be subjected to reforestation, if there is no land use plan in respect of the area.

(2) The Council may make directions and rules concerning the reforestation of the area.

(3) A person who undertakes the commercial logging or other intensive logging shall be responsible for the reforestation of the area.

(4) A person who fails to comply with a direction or rule made by the Council commits an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a period not exceeding six months, or both.

Default penalty: A fine not exceeding K500.00

#### Consequential Changes throughout the Bill

1. Section 7(2) to add to function;
2. Define 'commercial logging' and 'intensive logging' in Interpretations (Section 3);
3. Add to Objectives under Section 5, establishment, management and use of afforested and reforested areas; and
4. Part VII (Section 30) refer to Management of Afforested and reforested areas.

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