



COMMISSION OF INQUIRY INTO ASPECTS

OF THE

FORESTRY INDUSTRY

INTERIM REPORT No. 1

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November 1987

FIRST INTERIM REPORT TO THE PRIME MINISTER
OF THE
COMMISSION OF INQUIRY INTO CERTAIN MATTERS
RELATING TO THE FOREST INDUSTRY

The Commission of Inquiry was originally established to investigate certain matters relating, mainly, to the Forest Industries Council and its marketing activities. The formal instrument was signed by the Prime Minister on the 24th April 1987 when he stated the Case and referred six matters as the Commission's Terms of Reference. (Appendix 1) Three more terms were subsequently referred as explained below so that the full terms of reference at present are :-

1. *The process by which the Forest Industries Council became involved in the marketing of timber and -*
 - (a) *when, and by whom, a decision was or decisions were made to involve the Council in marketing operations; and*
 - (b) *the nature and extent of the actual operations; and*
 - (c) *the nature and extent of any Ministerial involvement in marketing operations; and*
 - (d) *the role (if any) played by the Department of Forests in the actual marketing operations and resource allocation; and*
 - (e) *the financial effect of the marketing operations on the funds of the Council.*

2. The benefit obtained by Papua New Guinea (if any), from the marketing operations of the Council.
3. Whether any persons associated with the Council or its marketing operations received any direct or or indirect benefits, whether financial or otherwise, as a result of the marketing operations of the Council and whether it was proper or improper for such benefits to be given or received.
4. What is the existing Government policy relating to Forestry and in particular relating to resource allocation and conditions of operations, marketing and pricing of timber within the forestry industry in Papua New Guinea.
5. What are the functions of the Department of Forests, the Minister for Forests, and the Forest Industry Council within the Government policy for the forestry industry.
6. What effect, if any, the involvement of the Forests Industry Council in marketing operations has had on the Government policy and the functions exercised by the Minister for Forests and the Department of Forests.
7. Ascertain whether and to what extent the functions of each of the Minister for Forests, the Department of Forests and the Forest Industries Council under the approved policy for the Forest Industry identified under Term 5 have been interfered with or encroached upon by another or others of such functionaries or any other person.
8. Establish whether any of, or any persons associated with, the Minister of Forests, any officer of the Department of Forests or any member or employee of the Forest Industries Council or any other person has received or attempted or sought to receive any direct or indirect benefits whether financial or otherwise as a result of or in connection with the allocation or promised or prospective allocation of the right to participate in any way in the exploitation of timber resources and establish whether it was proper or improper for such benefits to be given attempted or offered or received attempted or sought.

9. *Ascertain whether any and if so which person or persons associated with the PNG timber industry have been frustrating government policy by misdescribing species, quantity, quality or value of log exports or by deliberately understating income or overstating costs or by manipulating shipping freight charges or by any other similar devices including the practices commonly referred to as transfer pricing.*

I took up the appointment on the 29th April 1987, working initially from my chambers in the National Court House. Most of the first month was involved with the setting up of administrative arrangements for the Commission and some background reading.

ADMINISTRATIVE ARRANGEMENTS

The Commission has been granted an initial budget of K50,000 and is being serviced by the administrative section of the Department of the Prime Minister. An Executive Secretary to the Commission, Mr Jack Nouairi, was appointed and he worked with the Commission fulltime during the difficult formative months. During that time the Commission's office was established in the Parliamentary building and a word processor, typewriters, a photocopier,

other office equipment, telephone services and stationary were acquired. Typing and secretarial services were provided by Miss Hebou Homoka and a succession of temporary typists. Mr John Reeve, then of the State Solicitor's Office, was appointed as Counsel Assisting the Commission and my Associate Mr David Keta, a recent graduate in Law, came over from my chambers in the National Court House to work as Mr Reeve's assistant.

When the formative period was over Mr Nouairi was recalled, with my full agreement, to his position in the Department of the Prime Minister. He was replaced for a short period by Mr Martin Yakopa. It soon became clear however that there was no longer a requirement for a fulltime Executive Officer. At my suggestion, Mr Yakopa was recalled and Miss Hebou Homoka undertook the task of Office Manager in addition to her typing duties. To assist her in typing and secretarial matters Mrs Sheila Robert, my secretary at the National Court, also commenced working for the Commission. Later the task of Office Manager was taken on by Mrs Robert.

When the Commission requires assistance on more substantial executive matters this is provided by the Deputy Secretary of the Prime Minister's Department and his senior

administrative staff. The Commission also has the services of a government vehicle and a driver and my own official car and driver are usually on call.

Conference room facilities have been willingly supplied within the National Parliament by the Clerk through his Building Manager, Mr Briggs, except during sittings of the Parliament when the demand upon them has been too great. Conference rooms in the Government Office Building at Waigani have then been used.

The main unsolved administrative problem is that of typing up the transcripts of tapes of the public hearings, all of which have been carefully recorded. Each day of hearing produces approximately forty hours of typing. The Commission has only one word processor and one playback machine and this is creating a substantial blockage. It has sometimes been possible to "farm out" tapes to secretaries in the Department but the problem remains acute.

On the 2nd August 1987 Mr Reeve's contract with the State Solicitor expired. From that day he has been on a private brief from the Secretary of Justice to assist the Commission. He now employs his own personal assistant who also helps out in general office duties at no expense to the State.

After notification of a threat to the security of the Commission's documents a police guard was mounted. Shortly afterwards the Commission's offices were moved to a more secure area in the Parliament building and major documents were photocopied and stored elsewhere. Documents requiring police investigation have been handed over to the police.

INQUIRIES AND PUBLIC HEARINGS.

The first inquiries were into the definition of Forestry Policy and into the Terms of Reference involving the Forest Industries Council (FIC) and its operations. Approval was sought to examine National Executive Council (NEC) submissions and decisions relating to forestry policy and an analysis of some policy documents was begun immediately after approval was given on 11 June 1987. The matter was also discussed in the early public hearings which commenced on the 20th May 1986. Witnesses were called from the F.I.C. but Executive Director Michael Cowan, after one brief appearance, left the country in suspicious circumstances, and, later, resigned his position. So far he has chosen not to return to Papua New Guinea. I then directed that all documents of the FIC should be seized and issued a summons for that purpose. A preliminary examination of the large number of files produced in answer

to the summons disclosed that proper records of FIC activities and proper accounts had not been kept. Until such time as the accounts were put in order it was clear that a thorough investigation into the Forest Industry Council was going to be very difficult and would exhaust the limited resources of the Commission.

After discussion with the Secretary of the Prime Minister's Department and the Auditor-General, it was arranged for Coopers and Lybrand, Accountants, to prepare accounts of 1986 and the first half of 1987 and dissected financial statements for the same periods in respect of FIC's marketing activities, and for the result of that work to be audited by the Auditor-General. Those accounts were finally presented to the Commission (unsigned) on the 2nd October 1987 and investigation into the FIC has now been resumed. Having set that work in motion I continued background investigations into a number of matters connected with the harvesting and marketing of timber as documentary and verbal information was supplied to me.

EXTENSION AND EXPANSION OF INQUIRY.

Very early in the inquiry it immediately became apparent that the Terms of Reference narrowly constrained the Commission to making inquiries only into matters involving the FIC, but that the problems in the timber industry were much wider than that. On the 14th May 1987 I therefore wrote to the Prime Minister raising the matter of widening the Terms of Reference and extending the time for the Commission to report (*Appendix 2*).

New Terms of Reference 7 and 8 were then given to the Commission and the time for reporting on this much wider Inquiry was extended by two months to the 31st October 1987.

While inquiring into marketing and the effect of FIC marketing operations on government revenue the Commission uncovered what seemed to be widespread transfer pricing by a number of companies which had resulted in extensive tax evasion and the cheating of landowners and government of substantial revenue legally due. I summonsed documents relating to many timber operations in an endeavour to look into the scope of this problem. Amongst the files produced was the complete set of records of Angus (PNG) Pty Ltd which were obtained on summons from its Official Manager.

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The investigation into all these matters required staff and expertise not then available to the Commission. For this reason I arranged with the Chief Collector of Taxes to make an Investigator available to work with the Commission on materials in its possession. As a result Mr Tony Roe commenced work with the Commission in early June. It soon became quite obvious that the Commission's inquiries had opened up illegalities and improprieties in the timber industry of massive proportions. After reporting those findings to the Prime Minister by letter of the 19th June 1987 (*Appendix 3*) the Terms of Reference were promptly extended by the Prime Minister by adding the ninth term.

As the background investigation by the Commission's staff and the tax investigator continued, permission was sought, and promptly given, to pursue the inquiries overseas.

These investigations showed that transfer pricing was far more widespread and far more serious than previously suspected. They also showed, in regard to Santa Investments Pte Ltd, that investigations into a major criminal offence should be commenced. They showed also that the Angus Timber Operation raised questions of Ministerial impropriety, corruption, transfer pricing and the abuse of government policy of a very serious nature.

I then referred the Santa investigation to the Commissioner of Police, commenced protracted and detailed public hearings into the Angus Group of Companies and continued on the trail of transfer pricing in general. At the same time, the Commission commenced preliminary investigations into other timber operations, thus gaining a further indication of the size of the problem.

By letter of the 24th August 1987, I outlined to the Prime Minister the nature and extent of the matters being uncovered and requiring investigation. The letter concluded as follows:

Extract from Letter to the Prime Minister

dated 24/8/87

"If you wish that a thorough investigation be completed into at least five or six companies, FIC marketing and the other Terms of Reference I believe that it will be necessary to extend the duration of the Commission for a further six months from the 31 October to 30 April 1988.

If this extension is granted it would be my intention to report periodically as the public hearing into each investigation is completed. I would also seek to make recommendations for setting up a very small investigatory unit to train with, and then take over the work of, the Commission on a continuing basis.

I am convinced that the issues and loss of revenue involved are serious enough to warrant both the extension of time and the establishment of a permanent unit. Even with the six months extension it will not be possible for this Commission to properly investigate all that is

coming to light. I believe all companies involved in exporting logs should be thoroughly investigated and that a permanent unit should be set up to carry out that work.

As far as the increased cost of extending the Commission is concerned, I believe this will be offset many times over by the revenue collecting activity that will flow from the revelations the Commission is exposing. I am informed, for instance, that the Chief Collector of Taxes is already preparing revised tax assessments on the basis of information collected by the Commission and that the Collector of Customs is moving to claim unpaid export duty. If successful these activities should raise PNG revenue by several millions of kina.

In conclusion therefore I seek your approval -

1. For me to approach the Department of Foreign Affairs to assist me in acquiring official information from the governments of Japan and Korea.
2. To extend the life of this Commission of Inquiry until the 30 April 1988.

(Signed)
T E BARNETT
Commissioner"

After receiving the Prime Minister's verbal assurance of an extension of time I immediately proceeded to New Ireland to inspect timber operations, to conduct seven public hearings and to consult with the Premier and Ministers of the Provincial Government.

The visit to New Ireland persuaded me that the timber industry, in that province, is almost out of control. The obvious inadequacies of the Forestry Legislation and the weaknesses in the system of administrative controls are being exploited to the full by some timber companies who, sometimes in open and potentially violent competition with each other, are destroying the forests and the legitimate aspirations of future generations of New Irelanders.

On the first October 1987 the Prime Minister formally extended the time of the Commission until 30 April 1988.

(Appendix 3)

In October an information was laid by the police against Michael and Francis Sia, Directors of Santa Investments Pte Ltd and they were subsequently charged with conspiring together with S.J. Park, Papua New Guinea's Honorary Consul in South Korea to, defraud the State of export duty in respect of 2673.038 cubic metres of timber. Those charges were based on information supplied by the Commission and upon evidence obtained during police raids on Santa Investments Pte Ltd Offices. As a result of information discovered during those raids the police have conducted a series of additional raids in New Ireland. The documents seized disclose evidence of serious timber related corruption in very high places.

Documents seized by the police during the first Santa raid were produced on summons in public hearing. Those documents are evidence that -

- (a) *Santa Investments Pte Ltd made payments to some (25) politicians and officials totalling approximately K165,000. The recipients of these payments appear to include a provincial Premier, provincial politicians, national politicians, Forestry and Customs Officers and other people able to favour Santa in its timber operations."*
 - (b) *Minister for Forests Mr E R Diro wrote a letter dated 15 May 1986 to Francis Sia, General Manager of Santa Investments Pte Ltd requesting the sum US Dollars 127500 to fund his political campaign for the coming elections.*
- (Appendix 4)*

Some of these disclosures are now being actively investigated by the Commission and others are being followed up by the police with a view to further prosecutions.

On the 13th October 1987, during a two week adjournment in the Angus hearing requested by Mr Diro, the Commission commenced public hearings at Waigani regarding the timber operations inspected in New Ireland in August. Further hearings on those matters are continuing and, in the meantime, an expert inspection to ascertain the extent of environmental damage was organised in consultation with the Minister for Environment and his department.

ANGUS (PNG) PTY LTD

On the 10th of November the Commission concluded its hearings into the Angus Group of Companies and a detailed report on that matter is being prepared as a separate document.

The Inquiry disclosed that the Timber Permit over the Gadaisu area of Central Province was improperly issued to Angus (PNG) Pty Ltd in complete contravention of Forestry Policy. That company, though posing as a national company, was in fact foreign controlled and funded. Neither it nor its Singapore parent company were pre registered with the Forestry Department nor with N.I.D.A. Angus (PNG) Pty Ltd was hopelessly under-capitalised and inexperienced in timber operations. Its operation was consequently financially disastrous for the company and severely damaged the timber resource, with no benefit flowing to the people.

The detailed report on this investigation is now being prepared as a separate document but some matters of more general concern should be mentioned here.

From the very beginning of its operations, Angus engaged in transfer pricing. It was able to declare a reasonable profit from its first shipments despite the fact that very substantial amounts were "dropped off" in a Hong Kong bank account. When the company was placed under official management a scheme was discovered to be in place based on a six monthly revolving letter of Credit which was calculated to net illegal offshore profits of approximately K9m.

Investigations into other timber companies suggest that transfer pricing schemes are commonly in place and that the illegal profits are similarly high.

Angus was being used by former Minister for Forests E R Dero to raise funds off-shore for the use of his political party. During the inquiry it surfaced that he was also requesting funds from other timber companies. Our investigations suggest that this also is a common practice. Information before the Commission, which is still being investigated, strongly suggests that several other

politicians have taken advantage of the fact that timber companies are making substantial off shore illegal profits. In return for genuine or pseudo promises to assist those companies these politicians are demanding and receiving substantial sums of money from their illegal profits for their personal use and for political campaign purposes. These matters are being further investigated in close consultation with the police.

During the course of the Angus inquiry I directed that Mr Diro be prosecuted on three charges of perjury. Other matters, relating to him and others, have also been referred to the police and the Ombudsman Commission for further investigation.

Towards the end of the Angus hearings, while inquiring whether funds deposited by Mr Diro in an undisclosed Boroko bank account were donations from timber companies, Mr Diro replied that the almost USD 150000 had been a gift given by the head of the Indonesian armed forces in order to fund the electoral campaign of his Peoples Action Party. That evidence was given in camera after an application that it raised a question of national security. After notifying the Prime Minister and receiving a response that no question of national security was involved I ruled that it was in the public interest for the evidence to be made public and it was then read onto the public record.

These matters came before the Commission because term of reference 8 directed an inquiry into whether the Minister for Forests received any direct or indirect benefit in connection with the allocation or exploitation of timber resources. Mr Diro's first explanation, that it was received from a Mr Chen linked those funds to timber interests. His second explanation put the receipt of that money outside the Commission's terms of reference so no further inquiries into it were made. As his reply contradicted his previous evidence given on oath it was highly relevant on the question of his credit.

As a result of the Commission's inquiries Mr Diro resigned his position of Minister without Portfolio on the 9th November 1987.

DEFINITION OF POLICY - TERMS OF REFERENCE 4.

Ascertaining the existing government policy relating to forestry has proved a much more difficult task than anticipated. There is no clear written statement of policy in any single document and a study of all available documents, in an endeavour to piece together a sort of composite or aggregate policy, has not produced a

satisfactory result. At this stage it is fair to say that there is intellectual imprecision and confusion amongst officials and the industry regarding promulgated forestry policy.

Partly for that reason, but mainly because it is the best way to assess true policy, the Commission has adopted a two pronged approach to this question:

Firstly, it is compiling and analysing major documents purporting to state forestry policy.

Secondly, it is examining the government's actions on forestry issues since 1973.

This involves studying the decisions of the NEC, the Minister for Forests and the Secretary for Forests. It also involves studying what those governmental bodies, and the officials responsible to them, are actually doing on a regular basis. It also involves studying what they are not doing and the defaults and breaches of law and policy which are regularly occurring.

To assist it in this task the Commission has actively sought, and obtained, the assistance of the Secretary Department of Forests and his officers. Departing from the normal procedures followed by Commissions of Inquiry.

I have conducted the first of several intended 1-day Seminars on applied forestry policy involving officers of that department, the Acting Executive Director, FIC, and the Assistant State Solicitor (Commercial). The new Minister for Forests, the Honorable Mr Tom Horik and a member of his personal staff attended as observers. The aim of the Seminar was not to evaluate policy but to ascertain it. By studying governmental statements and actions (as well as failures to act) during the last ten years the Seminar sought to define defacto policy. A working paper entitled "Towards a definition of Existing Forestry Policy" was put to the Seminar and discussed. At the conclusion various officers undertook specified obligations to seek out and present documents from departmental files and to compile reports on certain matters, such as the history of various forestry operations and the government's performance in supervising and administering forestry policy in relation to those operations.

As the Commission's investigations proceed important new discoveries about governmental actions are being made almost daily. This requires regular adjustments to be made to the Report on Defacto Policy and, for this reason, my final report on the existing policy is being held back. One example of such newly discovered governmental action should illustrate the need for that delay. Following up instances of clear abuse of the system of issuing timber authorities

in Central, East New Britain and New Ireland Provinces, evidence was recently given that the Secretary for Forests issued guidelines to Provincial Forest Officers which encouraged them to issue Timber Authorities in flagrant breach of the Forestry Legislation. Under the Forestry Act and its regulations, Timber Authorities are to be limited to the purchase of not more than 40 m³ of timber. Such timber was intended to be used for domestic purposes. The guidelines, recognising an established (but illegal) practice, encourage Provincial Forest Officers to write royalty provisions into Timber Authorities (for which there is no legal authority) and to grant Timber Authorities for up to 5,000 m³ of timber.

With the full knowledge of successive Ministers for Forests and the national Department of Forests, Provincial Forest Officers have on many occasions issued Timber Authorities authorising the purchase of thousands of cubic metres of timber which have been exported as logs. The clear breach of the forestry legislation and the stated government policy by national ministers and public servants has given rise to what is almost a defacto supplementary Timber Rights Permit system administered by Provincial Governments. None of the controls which are built into the national legislation to

protect the forest resource and its owners are operating in this provincial system. Such a situation, which has been tolerated and even encouraged for so long, I consider to be an (unstated) aspect of defacto government forestry policy.

As these matters are still coming to the surface during inquiries, it is necessary to delay the final report on policy for a little longer. Being mindful however that various policy decisions and questions of an administrative nature are being held up awaiting the Report of this Inquiry. I have included a copy of the Working Paper **"Towards a Definition of Existing Forestry Policy"** as *Appendix (5)*.

It has been revised in the light of comments made by senior and experienced officers at the Seminar.

It should be emphasised that the Paper does not cover all policy areas and that the opinions stated in the Paper are tentative. They have however been subjected to intense scrutiny by the experts who attended the Policy seminar. The general consensus was that, so far as they went, the findings are based on a fair and reasonably accurate consideration of promulgated policy statements and a reasonably fair and accurate assessment of government performance in implementing policy during the last ten years. As an indication of the size of the gap between government's stated policy objectives and actual practice

and it should be noted that of the 19 major Policy Aims extracted from the 1979 White Paper, only one has been successfully achieved; and that is the aim of increasing the volume of log exports.

From my studies and discussions to date it is obvious that the lack of clear coherent forestry policy has created a very serious situation. Such formulated policy that does exist is frequently and openly contravened by Ministers, senior officers, inspectors and timber operators. The result is that the national department has lost its sense of purpose and provincial forestry officers are wandering leaderless with no sense of belonging to a profession of foresters. Most are thoroughly demoralised and are coming under more and more pressure from Provincial Governments wishing to stimulate "development" and revenue and of timber operators who are exploiting the lack of clear policy and enforcement of policy to maximise their profits at the expense of present and future generations of landowners.

The following list of worrying aspects of defacto policy is based upon an assessment of government's action and inaction over the last ten years. The stark outline is fleshed in by the accompanying Working Paper (Appendix 5).

DE FACTO POLICY

1. *The Government no longer puts effective emphasis upon the concept of sustainable, renewable resource management for benefit of future generations*
2. *Little effective emphasis is now given to the concept of orderly and balanced forestry exploitation province by province under firm national control.*
3. *There is no effective policy which comes to grips with decentralization. No policy expresses a way to find a proper balance between national and provincial legitimate interests in resource allocation, revenue collection and supervisory and inspection functions.*
4. *There is no policy to ensure in practice proper logging techniques and follow up silviculture practices to stimulate natural regeneration of valuable species. Basic techniques such as marking trees to be felled, indicating the*

the existing operations is already failing badly. The result is that the grand promises of associated infrastructure development and agricultural projects are being broken with impunity and the prospects of a future timber industry are being destroyed.

- 10. The policy is to allow companies in serious and long standing breach of permit and/or project agreement conditions to continue operating for long periods of time to their considerable profit and to the peoples' loss.*
- 11. The policy is to tolerate blatant schemes for transfer pricing and related schemes which are systematically defrauding the government and the local landowners of millions of kina per annum.*
- 12. The policy is to tolerate the continued existence of Forestry Legislation which is dangerously out of date. The Forestry Act itself imposes a permit system which derives from colonial times and, with its full emphasis on central control by the Minister and his department, completely fails to come to grips with the realities of provincial government. On the other hand that*

Act co-exists with the Forestry (Private Dealings) Act which provides for an alternative system which by passes national departmental control and allows for private exploitation with no size limits and few other controls imposed. This Act is now being exploited by alliances of Provincial governments with foreign local businessmen and local landowners with the result that the national department appears to be in real danger of becoming redundant. Recent policy has been to increasingly use this Act by declaring ever larger Local Forest Areas with little thought for forestry planning, the national interest or the true interests of the local landowners.

13. Based on statistics given and comments made at a recent seminar in Lae it seems that the training policy for the timber industry is also in disarray. Based on the declared objectives of the 1979 plan, courses were prepared which train graduates in skills required for timber processing, reforestation, silviculture and forestry inspections. The Colleges and Institutions are still turning out men with

these qualifications but, as the industry's emphasis is now focused substantially on reckless logging practices for exporting logs there is no demand for their services.

CURRENT MATTERS

At present priority is being given to inquiring into the terms of reference involving the F.I.C. and its marketing operations and to completing the study of Forestry policy. Inquiries into transfer pricing and the activities of certain timber companies including apparently widespread corrupt practices are continuing, in cooperation with the police and the Office of Taxation.



DATED at Waigani

The 13 November 1987

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T.E. BARNETT, O.B.E.
Commissioner

INADEQUATE PENALTIES

14. The Forestry legislation does not provide any effective sanction to punish timber operators who are felling or exporting logs in contravention of the Forestry Act or the Forestry (Private Dealings) Act. The Commission's investigations have disclosed many instances of illegal log export operations. These include:

- (a) instances of logging before an LFA has been declared.
- (b) instances of deliberately logging over the boundary of a Timber Permit or Local Forest Area.
- (c) instances of logging with no authority whatsoever.
- (d) instances of logging inside the boundaries of a National Forest.
- (e) instances of log export operations based on illegally issued Timber Authorities.

Some of these operations are occurring within easy distance of Port Moresby, some of them are continuing despite strong objections by the local landowners and in deliberate disobedience of law.

All of the illegal operations referred to were previously known to, or have now been referred to, the Department of Forests. The penalties provided in the legislation for the various offences however are of the order of a K100 fine and the Department does not usually bother with prosecuting offenders.

As the return from a single shipment of logs is often between K200,000 to K300,000 a minor fine has almost no deterrent effect in stopping illegal operations.

As a temporary measure to put a stop to these illegal operations pending a complete re-appraisal of policy and enforcement machinery I recommend urgent and immediate amendments to introduce a severe penalty for felling and/or exporting logs in deliberate contravention of the law.

The following sanctions should be considered:

- (a) a fine not exceeding K100,000; and
- (b) forfeiture of all illegally obtained logs;
- (c) confiscation of machinery and equipment used in the illegal operation;
- (d) a penalty for continuing breach of (say) K10,000 per day.

The virtue powerlessness of the Department of Forests is now being exploited on a large scale and I believe this warrants such an extreme measure. It should apply only to timber companies which are deliberately acting outside the law.

. A P P E N D I C E S

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Commissions of Inquiry Act (Chapter 31).

STATEMENT OF THE CASE

upon which Inquiry was ordered into certain matters relating to the forest industry.

The Forest Industries Council, established by the *Forest Industries Council Act*, has become involved in the marketing of timber. Allegations have been made that this involvement has been to the detriment of Papua New Guinea and that benefits, direct or indirect, have been received by persons associated with the Council or its marketing operations as a result of this activity.

As a result of the activities of the Forest Industries Council questions have been raised as to whether Government policy on forestry in the areas of resource allocation, conditions of operation, marketing of timber and pricing of timber has been followed.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Commissions of Inquiry Act (Chapter 31).

COMMISSION OF INQUIRY.

TO: THE HONOURABLE MR JUSTICE THOMAS EDWARD BARNETT O.B.E.,

Know you that I, PAIAS WINGTI, Prime Minister and Minister for Forests, reposing confidence in your integrity and ability do, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, by this my Commission appoint you, the said MR JUSTICE THOMAS EDWARD BARNETT, to be a Commissioner under that Act, and authorize you to inquire into and report on matters in which inquiry would be, in my opinion, for the public welfare, that is to say to inquire into the following matters:-

1. The process by which the Forest Industries Council became involved in the marketing of timber and -
 - (a) when, and by whom, a decision was or decisions were made to involve the Council in marketing operation; and
 - (b) the nature and extent of the actual operations; and
 - (c) the nature and extent of any Ministerial involvement in marketing operations; and
 - (d) the role (if any) played by the Department of Forests, in the actual marketing operations and resource allocation; and
 - (e) the financial effect of the marketing operations on the funds of the Council.
2. The benefit obtained by Papua New Guinea (if any), from the marketing operations of the Council.

- I direct that the Inquiry shall be held in the National Capital District or at such other place or places in Papua New Guinea or, with my prior approval, elsewhere, as to you may appear necessary or expedient;

And I further direct that you shall commence the Inquiry without delay and proceed therein with all dispatch and render to me your report on or before 31 August 1987.

Toussaint Kluge

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14 May 1987

The Rt Hon Pias Wingti,
Prime Minister of Papua New Guinea
National Parliament
WAIGANI
National Capital District

Dear Prime Minister

At this very early stage in the Inquiry there are three matters relating to the terms of my Commission which I wish to raise with you.

ADDITIONAL TERMS OF REFERENCE

Terms of Reference 6 is in the following terms:

- "6. What effect, if any, the involvement of the Forests Industry Council in marketing operations has had on the Government policy and the functions exercised by the Minister for Forests and the Department of Forests".

That term is limited to inquiring into interference to government policy and ministerial and departmental functions which may have been caused by F.I.C. marketing operations. It may well be however that there has been detrimental overlap in the activities of other functionaries and just caused by F.I.C. marketing operations. If it is your intention that this possible wider overlap or interference be inquired into the existing terms of reference may not be wide enough to permit it.

I ask you therefore to consider whether you wish to add another term of reference along the following lines:

- "7. Ascertain whether and to what extent the functions of each of the Minister for Forests, the Department of Forests and the Forest Industries Council under the approved policy for the Forest industry identified under term 5 have been interfered with or encroached upon by another or others of such functionaries or any other person".

(Appendix)

Similarly, term of reference 3 limits the inquiry into possible personal benefits to those received by "persons associated with the Council or its marketing operations".

If you wish the Commission to inquire into whether benefits have been received by public servants, politicians or others, the existing terms may not be wide enough to permit it.

I ask you therefore to consider whether you wish to add another term of reference along the following lines:

- "8. Establish whether any of, or any person associated with, the Minister of Forests, any officer of the Department of Forests or any member or employee of the Forest Industries Council or any other person has received or attempted or sought to receive any direct or indirect benefits whether financial or otherwise as a result of or in connection with the allocation or promised or prospective allocation of the right to participate in any way in the exploitation of timber resources and establish whether it was proper or improper for such benefits to be given attempted or offered or received attempted or sought".

REPORTING PERIOD

My Commission directs that I report on or before the 31 August 1987. Based upon a surface scan of the matters to be covered and after hearing the opinions of my staff it appears that it will almost certainly be necessary to seek further time. That being the case it would be preferable if the reporting date could now be extended to 31 October 1987. Knowing from the outset that there will be a guaranteed 6 month duration to the Commission would enable me to plan my inquiries in a more orderly way, dealing with each section thoroughly as I proceed.

Yours faithfully

T E BARNETT
Commissioner

19 June 1987

Rt Hon Prime Minister

ADDITIONAL TERMS OF REFERENCE

My investigations at this early stage are showing that there has probably been a great many transactions concerning log shipments where the companies concerned have deliberately engaged in large scale deception aimed at defeating government policy in the timber industry. The deception involved a variety of devices. These include understating income, over stating costs, misdescribing species, quality and quantity of logs shipped and manipulating shipping and other costs.

These facts are being disclosed during my inquiries into the effect of F.I.C. marketing on revenue and during my inquiries into possible corruption. Mr Roe from the Tax office is devoting a lot of effort into these questions.

Although I have proceeded so far in the belief that an inquiry into these matters is covered by a free interpretation of my terms of reference the matter is not certain. The information is meanwhile jumping at me from the various departmental and company files being studied and from witnesses being interviewed. It looks as though a great deal of "lost" revenue to the national government, provincial governments and local landowners is involved.

To avoid possible later challenge (and assuming that you wish me to continue uncovering these matters) I believe it is important that the Commission's terms of reference be widened once again.

I seek therefore your approval to add an additional term as follows:

- "9. Ascertain whether any and if so which person or persons associated with the PNG timber industry have been frustrating government policy by misdescribing species, quantity, quality or value of log exports or by deliberately understating income or overstating costs or by manipulating shipping freight charges or by any other similar devices including the practices commonly referred to as transfer pricing".

Yours faithfully

T E BARNETT
Commissioner



Brigadier General E.R. DIRO, CBE, O St J. MP
P.O. BOX 322, PORT MORESBY, PAPUA NEW GUINEA.

15th May, 1986

(Appendix 4)

Mr Francis S H Sia
General Manager
Santa Investments Pty Ltd
P O Box 88
PORT MORESBY

Dear Mr Sia,

As you are aware, Papua New Guinea's General Elections are scheduled for March-June 1987. As from June this year, no doubt, your office will be flooded with requests for financial assistance. Two political parties have already launched their fund raising programmes.

I am writing to seek your kind assistance in providing funding support for my Party. I would like to point out that the laws relating to donations to political parties do not set a ceiling for funding assistance and I have felt at liberty to propose to you my budgetary forecasts for your consideration.

Our budget is necessarily designed to meet our election strategy which serves to return up to 20 members. Initially, there must be a major drive to increase the numbers within the current Parliamentary Wing.

This is necessary, in order to gravitate for bigger numbers in 1987. We, therefore, require an immediate cash injection followed by a planned programme of expenditure up until the day of voting. From then on, post election strategy commences where even greater injection of financial effort is most crucial in securing the required numbers.

According to our budget forecast and based on our mutual desire that we must be victorious at the coming elections we sincerely request your support as follows:

- | | |
|--------------------------------------|--------------------|
| a. Immediate cash grant | K25,000.00 |
| b. 1st June until 31st December 1986 | K 2,500.00 monthly |
| c. 1st January, 1987 cash grant | K50,000.00 |
| d. 1st June, 1987 cash grant | K50,000.00 |

This request is being submitted in the full knowledge that the Party will serve our mutual interests and the interests of our people and the nation as a whole.

Yours sincerely,

Les Diro

direction of fall, follow-up damage assessment and post logging silviculture techniques are not required by our policy.

5. *Very little emphasis is now being put on reafforestation plantations or the natural regeneration of forests.*
6. *Main thrust of forestry policy is to maximise revenue by a startling over emphasis on encouraging operations for exporting logs.*
7. *The encouragement of local processing seems to have been abandoned and there has been a drastic reduction in the production of sawn timber over last ten years.*
8. *The effective policy is to allow foreign capital, foreign control and foreign profits to dominate the timber scene to the severe detriment of local landowners who are loosing their resource for very little benefit; sometimes for no benefit at all.*
9. *The Policy is to continue to expand the log exporting industry in the full knowledge that the administrative capacity to supervise and control*

*Appendix 5*COMMISSION OF INQUIRY INTO FORESTRY MATTERS

WORKING PAPER
TOWARDS A
DEFINITION OF FORESTRY POLICY

There are two ways of seeking to define Forestry Policy:

- (a) Find clear statements which define the Policy;
- (b) Adopt Carson's definition:
"The Forest Policy of a Country is a course of action adopted by its Government".

(G.L. Carson "Forestry and Forest Policy in Papua New Guinea" 1974 p.4)

This paper adopts both approaches.

STATEMENTS OF POLICY

It is not possible to find a single document which purports to comprehensively sets down existing Forestry Policy. For this reason each person seeking to understand, administer or alter policy must search a variety of sources.

For the major policy objectives we must turn to the Constitution. The starting point there is in the Preamble where the National Goals and Directive Principles are set down. Those of relevance are:-

"2. EQUALITY AND PARTICIPATION.

We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.

WE ACCORDINGLY CALL FOR -

- (1) an equal opportunity for every citizen to take part in the political, economic social, religious and cultural life of the country; and
- (2) the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity; and
- (3) every effort to be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country; and
- (6) the maximization of the number of citizens participating in every aspect of development; and
- (7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities."

"3. NATIONAL SOVEREIGNTY AND SELF-RELIANCE.

We declare our third goal to be for Papua New Guinea to be politically and economically independent, and our economy basically self-reliant.

WE ACCORDINGLY CALL FOR -

- (1) our leaders to be committed to these National Goals and Directive Principles, to ensure that their freedom to make decisions is not restricted by obligations to or relationship with others, and to make all of their decisions in the national interest; and
- (4) citizens and governmental bodies to have control of the bulk of economic enterprise and productions; and
- (5) strict control of foreign investment capital and wise assessment of foreign ideas and values so that these will be subordinate to the goal of national sovereignty and self-reliance, and in particular for the entry of foreign capital to be geared to internal social and economic policies and to the integrity of the Nation and the People; and
- (6) the State to take effective measures to control and actively participate in the national economy, and in particular to control major enterprises engaged in the exploitation of natural resources; and
- (7) economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not in dependence on imported skills and resources; and
- (8) the constant recognition of our sovereignty, which must not be undermined by dependence on foreign assistance of any sort, and in particular for no investment, military or foreign-aid agreement or understanding to be entered into that imperils our self-reliance and self-respect, or our commitment to these National Goals and Directive Principles, or that may lead to substantiate dependence upon or influence by any country, investor, lender or donor."

"4. NATURAL RESOURCES AND ENVIRONMENT.

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.

WE ACCORDINGLY CALL FOR -

- (1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and
- (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and
- (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees."

"5. PAPUA NEW GUINEAN WAYS.

We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.

WE ACCORDINGLY CALL FOR -

- (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and
- (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and

- (4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality."

BASIC SOCIAL OBLIGATIONS

WE HEREBY DECLARE that all persons in our country have the following basic obligations to themselves and their descendants, to each other, and to the Nation :-

- (d) to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations;

Carson's 1974 report on policy, which pre-dated the Constitution, turned to a 1973 Document entitled "**Forestry Policy in Papua New Guinea 1973**". This in turn was based on the pre-independence coalition government's Eight Point Plan. As *Carson* pointed out, the 1973 document was an attempt to translate the "National Eight Point Improvement Plan" into a "National Forest Policy".

The Eight Point Plan was a statement of the government's ideology during the run up to Self-Government and Independence. In an endeavour to create a degree of coherence in Papua New Guinea's national stance all departments were directed to re-define their policies in the light of the Eight Points. I believe that the 1973 Document was Forestry's attempt to comply with that direction. It presented the National Policy as follows:

"National Eight Point Improvement Programme Translated To A National Forest Policy

1. Increase opportunities for local participation in activities and encourage the development of

locally owned or predominantly locally owned forest enterprises including reafforestation.

2. Direct a greater share of the benefits from forest development towards the landowners and other nationals involved in the industry.
3. Forestry is a rural industry - promote forest industries in rural areas, stimulate village participation - involve forest owners and local government in all phases of forest development, including reafforestation and management.
4. Create opportunities for local businessmen and artisans to participate in transport, logging and all other activities related to forest industry.
5. Promote the use of local forest products to replace imported goods.

Replant and manage the forests so that they will continue to provide for the needs of future generations of Papua New Guineans.

6. Promote the development of profitable forest industries to improve revenue returns through royalties and taxes.
7. Explore ways of increasing opportunities for women to participate in forest activities.
8. Forests are a national asset and must be managed in the national interest.

To ensure the people of Papua New Guinea both now and in the future receive maximum benefits from the management of the forests the National Government will formulate and regulate policies governing the use of forest resources."

Carson saw that the next urgent step was to prepare a draft White Paper setting out Forestry Policy and the directives required to implement it. He apparently had access to a 1974 draft memorandum which set forth the major objectives of that proposed policy as:-

- (a) to have the forest resources of Papua New Guinea managed as a national asset in the interests of the present and

future generations of the people
(who are the forest owners);

- (b) to preserve, develop and maintain through reforestation such as forest areas as will enable full advantage to be taken of export opportunities;
- (c) to accept the need for protection and management of watersheds, control of soil erosion, conservation of animal and plant communities, and the use of forests for recreational and other indirect benefits;
- (d) to encourage the development of permanent forest industries and to provide opportunities for the forest owners to become involved in these industries;
- (e) to promote research into forest technology in order to improve the efficiency of forestry and forest industries, to reduce imports and increase export earnings, and to improve the social and economic benefits to the nation and the forest owners;
- (f) to promote education in all branches of the forest industry and to encourage a better understanding by the people of the value of their forests in both their own and the national interest;
- (g) to provide the laws, the organisation and funds to manage effectively the country's forests having regard to overall development policies and forestry's ability to compete successfully with other demands on the nations' resources." (Carson Report P.3)

Carson said some wise words on control and management of the forest estate and industry:-

"Economic forest, especially main timber tracts, is an important part of the wealth of the whole country, and requires to be properly controlled and managed to develop its full economic potential. The object of management is the implementation of the forest policy which should be clearly stated and well-known to all forest officers responsible for management. The main

management objectives in Papua New Guinea are the controlled exploitation of the existing forest natural asset and its regeneration in order to produce another economic tree crop as soon as possible.

Seeing that the forests are regarded as a renewable national asset and because of the peculiar ownership problems in Papua New Guinea, it is essential that expenditure on regeneration of the forest resource should be the first charge on the sale of that resource." (Carson p6)

After the *Carson Report* it must have been clear to all concerned that there was an urgent need to translate those broad policy objectives into detailed statements and management plans. Equally, if not more urgent, was the need to completely revise the Forestry Legislation.

I will quote *Carson's* words on the Forestry Legislation in full as (Carson pp 6-8) there have been no significant amendments to it since he wrote his report.

"The current situation is far from satisfactory; the law provides for exploitation of forests in three ways:

(1) Timber Rights Purchase

This is the vehicle for large scale exploitation and is administratively complex. Under Section 9 of the Forestry Ordinance, Government acquires timber rights provided the native owners are willing; then issues a permit or licence to remove the timber on agreed terms and conditions, including the payment of royalty a portion of which is handed over to the owners. This method allows for management control.

(2) Native Timber Authority (*Forest Regulation 1506*)

Forest Inspectors are empowered to issue these authorities, on payment of a fee of fifty cents, to any person to purchase direct from a native owner a very limited quantity of timber. Generally speaking, except for this form of authority, no person other than a native can purchase forest produce from a native or the

landowner. There is no management control other than the quantity of timber that may be purchased; and, contrary to the implied intention, it is possible to sustain a continuing operation by making application for further Native Timber Authorities.

(3) Agreements under the Forestry (Private Dealings) Ordinance 1971

In effect the Ordinance provides a means for native owners to dispose of their timber to whom-ever they wish, provided:

- (a) the interests of the owners are protected;
- (b) there is no conflict with national interest;
- (c) prospects for economic development are considered;
- (d) the Administrator's assent in relation to the above has been obtained.

The Ordinance places no restriction on the size of the area covered by the Agreement. The department's interpretation was that sales under the Ordinance would relate to small forest areas or to small scale industries; in the event, this has not proved to be the case.

There are many technical deficiencies in the application of the *Private Dealings Ordinance*. Theoretically, the owner could stipulate regulations giving adequate control, but without a clear procedure laid down in the Ordinance it cannot be expected that satisfactory conditions would ever be demanded or enforced. These deficiencies include:

- (1) no limitation of size of the forest area;
- (2) no revenue to Government from such exploitation;
- (3) lack of control over operations other than by agency (sale of timber) agreement;
- (4) inadequate or no reforestation or other development obligations;
- (5) no control over the completeness and format of information to be supplied by the applicant.

That the owners of individual areas should negotiate separate deals on a direct basis, without reference to national forest resource planning, is diametrically opposed to what owners of natural resources throughout the world are trying to achieve by cooperating in their dealings with consumer countries. The concept of the *Private Dealings Ordinance* in its present form is contrary to the national policy for distribution of wealth from resource rich to resource poor areas, and to co-ordinate economic development.

Under the *Private Dealings Ordinance* the land owners enjoy short-term benefits vis-a-vis their counterparts under Timber Purchase Rights Agreements; indeed, a stage could be reached where all forests would be so worked, there would be virtually no forest revenue, and the Department would become superfluous in its present form. Government could end up with all accessible forest creamed of its best timber and a situation where it might be cheaper to import timber rather than extract it from the remaining remote and difficult areas.

It is urgent to retrieve the situation before too much damage is done.

It is recommended that this be achieved in the first instance without recourse to legislation, but continuing to acknowledge and safeguard the interest and rights of the owners to dispose of their timber to Government or any person. The Minister, by exercise of his powers under the "national interest" clause of the *Private Dealings Ordinance* (Section 7(1)(b)), would impose such terms and conditions in Agreements under that Ordinance as would safeguard the owner's interests and conform to national policy considerations. The appropriate solution is for all forest legislation to be incorporated into a single new Ordinance while retaining flexibility in provision for a number of forest management options.

Current policy favours the expansion of the timber industry which is orientated towards export markets. In these circumstances the home front tends to be neglected. In a developing country, however, it is important to make an impact on the ordinary person so that he may appreciate the policies, which are designed for his benefit. Although an important and laudable aim, its practical fulfillment cannot be achieved until there is a true sense of national unity."

Despite the known urgency of the situation the expected Policy Paper never materialised and despite many critical comments and express directives from the National Executive Council, the forestry legislation has still not been revised. The inherent dangers, especially those inherent in the *Forestry (Private Dealings) Act* have now, I believe, exploded into reality.

Since Carson's time two major events have occurred, both of which have made the requirements for a clear policy statement and legislative reform more urgent.

1. The Attainment of Independence:

For want of creative policy revision and development the basic assumptions of the "Colonial Past" had simply continued on during the early 1970s as the basis for action by (colonially trained) foresters. Broadly speaking, their thinking accepted the prime need to protect the forests against over-exploitation and to allow controlled but modest exploitation on a sustainable yield basis, in accordance with balanced national priorities. It was a way of thinking rarely subjected to challenge during colonial times where all major decisions were made from the centre, often from Canberra. The attainment of Independence demanded a rethink of these inherited thought patterns for reasons which must include the following:

- (a) The *Constitution* imposed clearly stated duties on the Government regarding the use and the protection of Timber Resources;
- (b) The level of Australian aid was intended to be scaled down progressively, making the generation of revenue from natural resources

more urgent;

- (c) The independent country's stated philosophy was for government to be more responsive to the local aspirations of the people: -
- (d) The rapid loss of almost all expatriate staff.

Provincial Government

The second major event was the introduction of Provincial Government in 1976. It became necessary to work out how a policy based on the concept that forests are a national asset, to be husbanded and exploited by a national government for the benefit of the nation, can co-exist with a political philosophy of decentralising effective power to active provincial governments. By its very nature a provincial government will inevitably seek to control the resources of its province for the benefit of its people and of its own provincial revenue. In the past the national Minister for Forests had only to consider the claims of the scattered people living in the forests. Now he has to face the concerted demands of nineteen powerful provincial governments speaking on their own behalf and on behalf of those people. Also in the past, the Minister could rely on his departmental head to preside over the implementation of national policy through his extensive provincial field staff. Now that department is decentralised and dismembered. The lines of authority from the Secretary down to the field staff are by no means clear. The field staff have professional and historical links to headquarters but their prime loyalty is to the provincial government.

Policy development leading to appropriate legislation was essential to reconcile these conflicting pressures.

The cumbersome Timber Rights Purchase system is geared towards allowing a national minister to give maximum attention to even-handed development as between provinces and to protection of the environment and the timber resource. It hails from patronising colonial times when Central Government expected its view of peoples' best interests to be accepted without too much opposition.

With the old legislation still in place and a new powerful alliance of provincial politicians, bureaucrats and "foreign developers" speaking "for the land owners" the stage was set for a battle to be fought in the forests. The provincial forces have been able to exploit the very flaws in the *Forestry (Private Dealings) Act* which Carson pointed out in 1974. The result is that large areas have been declared Local Forest Areas. Dealings have been pushed through and approved, sometimes even before the Local Forest Area is gazetted.

I believe that the situation is now chaotic, especially in New Ireland where the first Local Forest Areas were declared. Local Forest Area Applications are now coming from other provinces as provincial and national politicians and their constituents realise the potential for quick cash returns and the possibility of developing their rural economy. Recent applications for L.F.A. declarations involve 300-400 thousand hectares. Foreign timber enterprises are exploiting the situation to the full as to some of them at least, it promises quick "in and out" "mining" operations, without the burdens of fulfilling the onerous conditions imposed by the Minister as part of a timber permit.

The Timber Authority system is also being deliberately and systematically abused with the knowledge and encouragement of previous Ministers and officials. Forestry records disclose that official guidelines have been issued which quite deliberately break the law. Although Timber Authorities are by law to be limited to purchases not exceeding 40 cubic meters the guidelines permit up to 5,000 cubic meters. There are several log exporting operations which are now based entirely on timber authorities and they are being issued by Provincial Forests Officers, with the connivance of the Department, in such a way as to allow the purchase and export up to 20,000 cubic meters or more at a time. The situation at present is that the National Authorities have allowed the development of an illegal defacto Timber Rights Purchase system controlled by Provincial Forest Officers responsible to Provincial Governments.

As *Carson* predicted in 1974 the national Minister and Department of Forest are in real danger of becoming redundant. There are no controls in this defacto Timber Rights Purchase system (based on Timber Authorities) and few controls in the L.F.A. system as it presently operates. The future timber industry and the forests themselves could well be destroyed. It is incredible therefore that there is still no clear statement of national policy and no revision of the Legislation.

In 1979 a White Paper entitled "**Revised National Forest Policy (1974)**" was approved by the National Executive Council. Its grand title heralded it as the major policy statement urged by *Carson* back in 1974. Unfortunately it is not the long-awaited, balanced statement of National Forest Policy which he called for.

Going to some disappointing performances in the results produced by existing timber enterprises, and a temporary let-down in attracting new investors, the government of the day decided to ease the long established policy of strict control over log exports. The 1979 White Paper is in fact little more than an investment guide for the timber industry which sets out the guidelines within which an increased volume of log exports will be allowed.

It commences by quoting passages from the *Preamble to the Constitution (National Goals and Directive Principles)* and a brief reference to the "Eight Aims" and the "National Development Strategy". Without further consideration of these broad principles to the particular requirement of Forestry Policy the White Paper then states:-

"1.3 THE CENTRAL CONCERN AND STRUCTURE OF THIS REVISION"

The intention of this Policy Revision is to specify guidelines, consistent with foregoing objectives, for investment in the major forest products industry and with particular reference to that section of the industry which is engaged in production for export."

Other aspects of forestry policy, such as village level forestry, integration of forestry and agriculture, research and training are specifically put to one side to be dealt with in future budget speeches while the White Paper gets on with the business of encouraging log exports. The need to reconcile national and provincial interests in the newly decentralised political environment was not addressed.

Part 2 sets out guidelines for the formation and operation of PNG Log exporting enterprises

Part 2. Proposals and Guidelines for the
Operation of Papua New Guinea
Log Exporting Enterprises.

1. Assist with finance and advice the formation of PNG owned log exporting enterprises. (Dept. of Commerce (Business Development) and Dept. of Forests to act jointly).
2. Strict national government control over allocation of concessions and granting of export entitlements.
3. National government will specify guidelines for allocating concessions fairly between various areas and provinces.
4. Monitor log export prices and market projections and fix total log export quotas.
5. There will be a State Marketing Agent to sell some logs directly.
6. Restrict foreign investment to more capital intensive projects (involving woodchip reforestation ... etc.) and give preference to PNG enterprises when allocating log export quotas.
7. Log export entitlements will not be issued to operations being financed by the log buyer as part of a sole rights purchase agreement.
8. To spread the benefit more widely, shareholding in PNG log export enterprises will be

held by one or a combination of the following groups --

- 1. National Government;
- 2. Provincial Government;
- 3. People of the Forest Area.

PNG log export enterprise to be managed for first 10 years by an approved contract manager.

PNG log export enterprise to be freed from "non-profitable" infrastructure obligations".

Early profits to be used to repay loan.

- (a) Follow up land use plan (agriculture or reafforestation) to be drawn up before logging operation is approved and submitted with the log export proposal. But funding will be by national government and it will be managed separately from the log enterprise.
- (b) A land use planning group to be set up within Department of Primary Industry to evaluate and monitor the entire follow up land use project.
- (c) Land for it must be acquired prior to commencement of logging.

13. Forest Management Controls --

- (a) firm control of volume of log exports;

- (b) approved forest management plan to be basis for government control;
 - (c) standard environment protection clauses to be included in permits and agreements.
14. (a) Department of Forest and Forest Industries Council to expand market promotion overseas;
- (b) 25% of log volume to be available for marketing by State Marketing Authority.

These detailed policies to develop PNG owned log enterprise came to very little. Only two were ever formed and neither have been very successful in realising the hopes held for them.

Part 3. Sets out Investment Guidelines for enterprises involved in timber processing.

1. Firms seeking to invest in timber processing will be assessed on the following criteria:
 - (a) experience with similar processing;
 - (b) record of profitable and efficient processing activities;
 - (c) experience in forest products marketing;
 - (d) financial capacity.
2. Measures to encourage timber processing:
 - (a) allow more log exports if enterprise has poor access to domestic market for

processed product or an inferior resources composition;

- (b) taxation incentive (set out in some detail);
- (c) possible reduction in royalties payable;
- (d) non application of proposed 10% export tax if processing commitment is fulfilled;
- (e) assistance in technical and managerial training of PNG employees;
- (f) release from reafforestation requirement
- (g) failure to meet processing commitments may result in -

- . loss of export tax rebate;
- . reduction of log export quota;
- . cancellation of permit and recovery of damages;

3. All conditions (or revised conditions of agreement and permits will be enforced fully.

4. Foreign enterprises may be allowed to combine log export and processing within the following guidelines:

- (a) at least 30% of log harvest must be processed (higher for enterprises with good access to a domestic market or a good resource);
- (b) processing schedules and planned expansion to be negotiated at the outset;
- (c) no log exports near a domestic market

if forest resources there are limited or in other places if forest resource is too limited to sustain a long run commercial log export operations.

5. Foreign enterprises may also be allowed to export logs on a large scale without any processing in accordance with Part 4 or as part of a log export - road construction agreement in accordance with Part 5.
6. The general rule is the enterprise must construct the infrastructure it requires. This is negotiable and in some case the governments might assist by constructing facilities and charging for their use or doing so in return for a share of the equity.
7. The government may negotiate the purchase of equity at par in potentially profitable enterprises.
8. To assist the development of PNG enterprises associated with timber operations conditions are imposed on large operations harvesting in excess of 40 000 m³ per year over a 10 year permit or longer. Such enterprises must :-
 - (a) adhere to a local business development programme to involve local enterprises tree felling, log extraction and supply of materials.
 - (b) employ a business development officer to assist, and liaise with the government on business development.

9. Training and localisation:

(a) Each negotiated timber concession will include a requirement that it will adhere to an approved training and localisation programme.

(b) A "Training Grants Scheme" is discussed for possible future implementation.

10. Timber enterprises will not be obliged to undertake reforestation. This will be done in selected areas by National and Provincial Governments.

11. Marketing guidelines for processing enterprises will be the same as for large log exporters set out in Part 4.

PART 4 SETS OUT THE GUIDELINES FOR FOREIGN ENTERPRISES INVOLVED IN LARGE LOG EXPORTING OPERATIONS AND NOT PROCESSING WITHIN PAPUA NEW GUINEA

(1) The basic premise is that such a concession should only be granted for operations which are combined with substantial additional activities such as agro-industrial projects or woodchipping which require large amounts of capital or advanced technology.

The foreign enterprise must prove it has enough experience, expertise, capital and marketing skill to handle all aspects of the proposed venture.

(2) Such large scale of log export operations will be restricted to forest areas which:

- (a) have a large resource which will last until a reafforestation plantation is ready for harvesting or until other follow up development is able to sustain economic activity; and
- (b) where the forest mix is unsuitable for processing, (this limitation is difficult to understand and, apparently, not followed) and
- (c) where the forest is not required for a nearby domestic market for processed timber (such as Port Moresby, Lae, Kavieng ...etc).

(3) The large foreign log exporter (not processing) must undertake an activity which:-

- i) integrates well with a logging operation; and
- ii) will sustain economic activity in the timber area on a permanent basis; and
- iii) together with logging requires a total investment of at least K5 million; and
- iv) is included as a priority or open activity in the National Investment Priorities Schedule; and
- v) otherwise conforms to the policies of the National Government and the Provincial Government concerned.

(4) STATE MARKETING AGENT

A condition is to be inserted in each new or reviewed Permit that up to 25% of the export allowance must be sold to or at the direction of a State Marketing Agent.

The enterprise will receive no less than the contract price less reasonable handling charges and marketing commission.

(5) MEASURES TO PROTECT LOG EXPORT REVENUES

(a) Strict control of volume of log exports by setting national priorities for the allocation of timber permits and log export quotas.

(b) "minimum guidelines prices" will be imposed;

(c) Marketing agreements and arrangements for sale of logs to be subject to government approval;

(d) Encourage domestic sales of processed timber but not by imposing tariffs or import quotas which would raise prices.

(6) Increase log export taxes to 10% FOB price for all "non-processing log export operations". (This 1979 decision has been implemented).

(7) Failure to satisfactorily perform the associated projects within the given timetable may result in the imposition of monetary damages as well as curtailment of the permit.

(8) For all other matters large foreign log exporters will be subject to the same conditions as are imposed on processing enterprises under Part 3 of the White Paper particularly regarding infrastructure;

equity;

PNG associated enterprise
and training and
localisation.

- (9) Joint Ventures between a PNG log exporting enterprise and a foreign log exporter may be approved. The foreign company would hold a minority shareholding in such a venture.

**PART 5 SETS OUT THE GUIDELINES FOR FOREIGN ENTERPRISES
INVOLVED IN LIMITED LOG EXPORT ROAD CONSTRUCTION CONTRACTS**

1. A log export permit may be granted to an enterprise in exchange for it constructing a priority road.
2. It must be capable of building the road to the required standard and within the given timetable.
3. Selection will be based on a tender system and the enterprise requiring the least volume of log exports will be considered the lowest tenderer. But the contract may be allocated without putting to tender to an existing timber enterprise already working in the area.
4. The proposed road must be a clear priority road which would not normally be constructed as part of an existing timber operation or within the required time period or at less cost under a normal road construction contract.
5. The forest resource must be capable of sustaining the

amount of logging required.

6. The term of the timber permit will normally be less than 5 years.
7. Export tax on logs will be 10% F.O.B. price and normal royalties will be paid..
8. No infrastructure or other associated conditions will normally be imposed.
9. All standard timber permit conditions will apply.
10. It is not intended that the log export road construction contract should imply, or lead to, the allocation of additional resources in the area and this intention must be shown in the contract.
11. An initial fixed log quota will be granted to facilitate commencement of road construction. An additional specified log quota will be granted for each kilometre of road completed and approved.

Operations which have constructed roads in exchange for log export quotas pursuant to this guideline include Stettin Bay Lumber Company, Open Bay, Namyang and Leytrak.

The great bulk of the White Paper thus sets out investment guidelines for the various types of timber operations. Then comes PART 6, "ASPECTS OF NATIONAL FORESTRY POLICY " which offers brief notes attempting to reconcile the detailed investment guidelines set down in Parts 2 - 5 with a broader approach to national forestry objectives. It attempts to rationalise the aims behind the increased tempo of log exporting and to set out the future aims and intentions.

There are suggestions of how the Minister could exercise his discretion, despite gaps in the legislation, so as to achieve national goals.

Checking those statements and assumptions off against actual performance measured today, 7 years down the track, gives cause for great alarm. It provides a lead-in to the second method of seeking to define policy; by reference to government activity (or lack of activity). This can be conveniently demonstrated in tabular form with sufficient accuracy for present purposes as follows:-

INDICATORS OF DE FACTO POLICY

	1979 aims and intentions as set out in Part 6 of White Paper in Forestry Policy.	Measure of 1987 performance.
6.2	inadequate and inappropriate existing forestry legislation will be replaced by new legislation 1979-80.	Bills still not presented despite specific NEC directions and despite long ago acknowledged desperate need for new legislation.
6.3 (a)	investment emphasis will be on formation of PNG owned timber operations.	the local Forest Development Corporations have failed to provide meaningful PNG ownership and control of operations. Only 2 were formed and they have suffered major problems requiring government intervention. The problem of Kumusi Timber Co Pty Ltd wasy

mismanagement and for Ulabo Timber Co Pty Ltd at Sagarai Gadaisu it was insufficient timber resource. The proposed Tonolai Development Corporation was bypassed at the last minute when the concession was granted to a private company. A development corporation at Umboi was ready to proceed but it was opposed by the landowners. On Manus, a proposal for an F.D.C. was delayed through difficulties in completing the timber purchase.

- (b) Minister will release draft national "Forest Development Plan" for consultation and agreement with Provincial Governments.

This has not happened although stated to be an essential element of orderly national development. Spasmodic attempts have been made to achieve such a plan but they failed to achieve agreement between national and provincial governments.

- (c) No further large local forest areas to be considered.

This position was held until quite recently. Now however many large areas have been declared and some very large ones are under active consideration despite the fact that the operation in existing L.F.A's

has created major problems and left forestry policy in shreds.

6.4	formation of PNG enterprises in association with foreign timber enterprises	the PNG enterprises are being used as a "front" and being dominated by the foreign "partner" who takes an unfair share of the profits
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6.5	Proposed to integrate forestry and agricultural administration and operations more fully.	This has not been sustained.
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6.6	Cooperation between the people of the forests areas, relevant provincial government and national government in making land available and utilising it properly in areas logged.	This has almost never happened. Perhaps the sole exception being the Gogol Cocoa Project. (But see C.D'arth "The Throwaway People" which is very critical of the impact which the foreign company has had on the lives of the local people).
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6.7	Inadequacies and inconsistencies in timber acquisition and exploitation will be removed by new legislation.	This has not happened. Neither the bills nor detailed drafting instructions have been prepared.
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6.8	i. Detailed Environmental Protection provisions will	Timber Permits are usually issued with
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be written into agreements prior to the issuing of timber permit.

purely formal protection conditions which are than rarely enforced. Individually "tailor made" conditions are rarely imposed. Although environmental protection legislation exists it has not been used effectively. If environmental impact studies are called for this usually does not occur until after the Permit has been issued.

- ii. A forest working plan will be approved before commencement of logging.

Failure to submit a Forest Working Plan seems to be the rule rather than the exception. It is usual to give a period of grace so that the plan is not required until 60 days after the commencement of the operation. It is often not submitted and if it is submitted, it is almost never followed. Inspections show that gross damage to the environment is routinely occurring and is being (reluctantly) tolerated by the government.

6.9 The national government will play a more active role in reafforestation.

Virtually no government reafforestation plantations have

This will involve a limited number of large economically viable reafforestation projects. Also there will be several smaller reafforestation plantations to be undertaken by Provincial Governments.

been established except a few trial plots.

Where existing plantations have been handed over to provincial government control, they have been badly neglected.

The new plantation programme has slowed right down. National funds are provided as unconditional grant money which Provinces rarely allocate to reafforestation projects. Student Foresters are trained in the techniques of reafforestation and silviculture techniques designed to stimulate natural regeneration of desired species. They get little opportunity to put these skills to good use however as the industry is basically geared to "mining" type logging operations with little attention being given to the future of the industry.

6.10 Rural extension programmes must be gradually strengthened with closer integration of forestry and agricultural extension activities.

Extension work became a provincial function. About five provincial governments have shown interest in

extension work but nothing significant. Some agro-forestry is occurring but the two agencies may not really be co-operating in the provinces. Earlier extension work being carried out in the Highlands is gradually running down.

6.11 (a) An adequate advisory service will be available to small scale industry operations (especially small sawmills).

A permanent advisory unit has not been established but advice is given by H.Q. staff and the Timber Industry Training College Staff when requested. The advisory service is severely constrained by lack of funds. F.I.C. helps a bit.

One unit working from TITC advises small sawmill operators in the provinces.

(b) Forest Products Research Centre will continue to provide information.

Research is continuing but the dissemination of information directly to the public is not a major focus of the Centre's activities. It advises on request. The F.I.C. also uses the Centre's information and disseminates it on request and during timber promotions.

6.12 Foreign investment to be very selectively promoted in relation to the calibre of the foreign enterprise, the source of capital. Direct it towards more capital intensive, higher technology projects.

Pre registration scheme was introduced in 1982 to control the incoming foreign investment. But guidelines are often not followed and undesirable investors have been allowed to come. By allowing foreign investment into log exporting was to direct it into low technology activities contrary to this policy.

Many foreign enterprises are employing inexperienced operators. The high technology aspect of their operations (processing) is often ignored or soon abandoned.

6.13 (a) Royalties and other charges. Royalties should be based on a fair return criteria.

It is hard to judge what is fair but royalties have not been increased since 1981 yet prices have approximately doubled. Export tax has remained at 10% since 1979 and has been charged on MEP rather than f.o.b. value. It appears that royalty distribution is contrary to s.67 Organic Law on Provincial Government.

(b) introduce 10% F.O.B. export tax.

This has occurred but it has been calculated on 10% of

MEP rather than FOB price thus causing a substantial loss of revenue.

6.14 More active marketing promotion and some state marketing agent to control transfer pricing.

Marketing has been notoriously dishonest with widespread transfer pricing defrauding government and land owners of amounts totalling millions of Kina.

FIC commenced acting as State Marketing Agent but ran into difficulties requiring an official inquiry.

6.15 Control and monitoring: Relax conditions of permit and project agreements but then impose rigid and consistent enforcement of reviewed conditions.

The political will and administrative supervising capacity have both proved completely inadequate. In most if not all operations substantial breaches of important conditions have been tolerated.

(Reluctantly) Administrative capacity is falling because:

(a) staff level has fallen while timber operations have trebled.

(b) decentralisation has removed all central control over provincial staff.

A study of the

history of most major TRP operations shows a depressingly similar pattern. Very positive conditions are written into the permit and/or project agreement. The permit holder/contractor ignores these for several years while it concentrates on log exports. The DOF's attempts to enforce the conditions or cancel the permit leads to a re-negotiation of the conditions in favour of the company. The new, less onerous conditions are then broken. This finally may lead to cancellation of the permit but meanwhile the logs are gone and the "infrastructure" and other associated conditions have not been met.

6.16 Training

6.17 Research

- (a) The Forest Management Branch will continue.
- (b)

6.18 Decentralisation

A Provincial Forest Development Plan will be written with assistance

Despite the fact that this was stated to be an

from National Authorities
before 1-7-80.

essential element
in a national
forest programme
it was never
carried through.

The Plan will form part
of the National Forest
Development Programme
proposed by the Minister.

Various attempts to
formulate the
programme were
abandoned for want
of adequate consul-
tation and agreement
between national and
provincial forestry
authorities.

A draft of a
National Forest Plan
aiming to coordinate
TRP acquisitions and
surveys was prepared
in 1985/86.

It did not seek to
control the making
of LFA declarations
and it was never put
before the NEC.

6.19 Policy will be to increase
log exports.

This has been
achieved.

The aim of increased log
exports is to

(a) increase rate of
development in
forest sector.

The so called
"development" has
mostly, been limited
to the extraction of
logs, the des-
truction of the re-
generative capacity
of the forest, and
the construction of
rapidly deterior-
ating roads. By
and large the
promised sawmills
and chipmills and
reafforestation
plantations never or
rarely eventuated.

The restructured
Open Bay operation

is involved in some reafforestation and so is the Stettin Bay Lumber Company in exchange for a log quota. The JANT chipmill is the only one operating and its production is declining the Namyang mill is unused. At one stage 6 pulp mills had been planned and expected.

(b) Increase Papua New Guinea Ownership.

About 30 so called "land owner companies" have been formed. Some of these are permit holders and they contract out the logging and marketing arrangements.

Some are in joint venture with a foreign company and so (on paper) they have a share in the whole operations.

In both type of operation the local company is gaining only a small portion of the potential profits and benefits being generated by the enterprise.

(c) increase national and provincial government revenues

In TRF areas the total amount of royalties has been increased significantly because of the increased volume of log exports. It has been shared between national and

provincial governments and agents for land owners in varying proportions.

In declared Local Forest Areas royalties are not necessarily paid to government at all (unless pursuant to some clause in the dealing with the (agents)).

A report by J.K. Jackson for the United Nations Centre on Transnational Corporations estimates that PNG government receives approximately half of the average revenue that is received by the Phillipines and one third of that received by the Government of Sabah. (Goodwood Report 1986 p.8).

- (d) increase incomes to the people of the forest areas.

The 25% share of royalties received by the people of TRP areas does not provide a significant income per head

In Local Forest Areas a greater income is received by way of payment through Agents depending upon the terms of the agreement. In some cases studied however, the land owners' rightful entitlements are apparently being

syphoned off at 2 or 3 points. The foreign contracting or joint venture company uses a variety of devices to underpay the "landowner company" its fair share. That company may be under-paying the agents and it is not clear how fairly the so called agents handle the distribution to the land owners. Agents are frequently changed and there is no government supervision of this process. Very inadequate records are being kept.

The local company which obtained the approval to purchase and harvest the timber has occasionally made a small profit for its shareholders. Frequently however the operation is showing a loss and no profits are distributed to shareholders.

The Commission's investigations indicate that it is quite common for the directors of the "landowner company" to receive secret benefits from the foreign partner.

The foreign joint venture company or contractor has usually found some

way to manipulate the profits away from the local company.

The potential income to be received from associated activities such as processing, contract transporting, agricultural project timber mills ... etc has not been great as those activities have rarely been sustained or even begun.

(e) Increasing employment in rural areas.

There has been some increase but the full potential has not been reached because :

- (a) Logging operations are capital rather than labour intensive and many equipment operators, mechanics, and even chain saw operators tend to be expatriates brought in by logging companies.
- (b) The more labour intensive projects such sawmill, chipmill, processing agricultural scheme and re-afforestation have rarely been established as continuing enterprises

- (f) Establishing a market base for the future export of processed wood products.

There is no evidence of this. Sawn timber exports have in fact been decreasing drastically since 1979.

- (g) Ensuring social stability in logging areas.

There is little evidence of this is fact the opposite is more likely. Forest potential has been damaged or destroyed and the quick cash input has generally not been put to lasting good use. When the loggers move out they seem to leave behind a devastated forest with environmental damage and poorly constructed roads collapsing for want of maintenance.

The people are left with no means of continuing the supply of cash revenue they have become accustomed to. In at least two areas inspected by the Commissioner even peoples' villages have been taken over by the logging operators.

The capacity for these "selectively logged forests to regenerate is now being assessed by UNDP consultants.

In some areas it seems that some regeneration is occurring but the necessary actions to stimulate and

protect the re-
growth for the
benefit of a
future industry
are not being taken.
There is no effect-
ive DOF plan to
supervise timber
operations in a way
which will ensure
natural regeneration
Consequently what
regeneration is
occurring tends to be
of species with
little or no
commercial value. A
UNDP expert, after a
recent inspection
of some New Ireland
operations,
commented that in
many areas he saw
there would be no
regeneration at all.
In the others he
estimated it would
take 70 to 80 years
years for valuable
species to
regenerate in
commercial quan-
tities because of
the present reckless
standard of logging
operations.

DEFACTO POLICY AS SHOWN BY THE COURSE OF ACTION
THE GOVERNMENT HAS ACTUALLY FOLLOWED

Outline of this section:

1. Brief history of all timber operations highlighting:
 - (a) How the resource was allocated and whether it was within the legislative framework and policy guidelines or an illegal or improper commencement.
(Describe the number of operations based on illegal Timber Authorities improperly or unwisely allocated permits or declared Local Fores Areas, "claim jumping", operations with no legal basis, ... etc.)
 - (b) The breaches of conditions which have occurred and the government activity or inactivity in responding to those breaches.
2. Comments on the known effectiveness or ineffectiveness of the system of supervision and control. It appears that governments have continued to allocate new resources in full knowledge that it has not got the capacity to effectively police the conditions and that major breaches are therefore likely to occur. Some relevant factors are:
 - (a) lack of control over provincial staff;
 - (b) lack of staff;
 - (c) lack of transport;
 - (d) lack of support from political or bureaucratic superiors;
 - (e) lack of support from the local landowner

Company or the landowners themselves.

3. Assessment of the nature of the logging practices which are occurring and the failure to provide legislation and official supervision to protect the forests.

The Commission's inspections in Central and New Ireland Province so far have revealed:

- (a) reckless "mining" type operations;
- (b) no pre-marking of trees or follow up check on damages;
- (c) ineffective administration of the environmental protection legislation and of environmental conditions in permits and project agreements;
- (d) considerable damage being done to the regenerative capacity of the forests;
- (e) inefficient types of inspections being attempted. Provincial Forest Officers are dependent on the loggers for hospitality and transport. An assessment of the Landdim Draw License should be made. Some inspectors appear to be reluctant to carry out field inspections, even when the operation is close to the office. There are many complaints of inspectors "fraternising" too much with company employees.
- (f) In some instances inspectors have been bribed.
- (g) no emphasis is given by the authorities to post

logging clean up and repair operations in
follow up silviculture techniques to promote
new forest growth.

4. Assess the practical results of reafforestation programmes (national and provincial). It seems that no great effort is being made but factual information is required.
5. Assess the practical result of agricultural follow-up projects. It seems no great effort is being made but factual information is required.
6. Assess the lasting benefits to the people of road construction efforts by logging companies. From inspections it is obvious that some good roads have been completed. It is also obvious that many of the forest roads were only temporary affairs which have washed out after completion of logging operations. Some of these, especially in the mountainous areas appear now to be an environmental hazard and the cause of massive erosion problems. The national or provincial governments' ability to maintain such roads and whether or not there is a long term need for them needs to be assessed.
7. Assess the actual revenue received by national or provincial governments by way of royalties, export tax, income tax, etc. Make an enlightened guess at the extent of revenue loss by transfer pricing and similar devices which is being reluctant to generate by the government.
8. Assess the rate at which areas are now being logged and predict the time it will take to log out the existing national and provincial timber resources at the current rate of logging.

Forestry Policy is a course of action adopted by government

In order to make an accurate assessment of what is the true forestry policy the Commission is seeking official and private comments on the matters raised in this Working Paper.

The Paper is designed to stimulate discussion and to promote the urgently required process of policy formulation.