



**LOGGING, LEGALITY, AND
LIVELIHOODS IN PAPUA
NEW GUINEA:**

**SYNTHESIS OF OFFICIAL
ASSESSMENTS OF THE LARGE-
SCALE LOGGING INDUSTRY**

VOLUME II



**FOREST
TRENDS**

LOGGING, LEGALITY AND LIVELIHOODS IN PAPUA NEW GUINEA: SYNTHESIS OF OFFICIAL ASSESSEMENTS OF THE LARGE-SCALE LOGGING INDUSTRY

VOLUME II



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COVER PHOTO of logging in the Wawoi Guavi FMA, Western Province, courtesy of the UPNG Remote Sensing Centre

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INTRODUCTION

Between 2000 and 2005, the Papua New Guinea government commissioned five separate reviews of the administration and practice of the logging industry:

- Review of Forest Harvesting Projects Being Developed Towards a Timber Permit of Timber Authority (2000-01);
- Review of the Forest Revenue System (2001-02);
- Independent Review of Disputed Timber Permits and Permit Extensions (2003);
- Review of Current Logging Projects (2004-05); and
- Compliance Audits (2004-05)

In addition, a sixth report from an Ombudsman Commission investigation into the allocation of one concession (Kamula Doso) was published in July 2002.

The five Reviews were conducted under Terms of Reference agreed between the Government of Papua New Guinea and the International Bank for Reconstruction and Development (the 'World Bank'),¹ by teams of experts that included lawyers, foresters, economists and environmental and social scientists. The review teams were given unique access to official records, logging sites and company documents and were able to conduct wide-ranging interviews with industry participants, landowners and government officials.

The findings of the five government-initiated Reviews were presented in sixty-three individual reports that together provide a unique assessment of Papua New Guinea's forest administration system and the sustainability of current and future large-scale logging operations. They provide a thorough examination of the whole timber harvesting process from initial project development through permit allocation to the actual logging operations and their long term impacts. The Reviews considered a range of different criteria for assessing the status of timber harvesting operations and analyzed their impact from the perspective of all the key stakeholders.

Of the five Reviews, only some of the reports were made publicly available through the PNG Prime Minister's website. Copies of the other documents produced were circulated amongst government departments, industry and civil society organizations in PNG and subsequently distributed internationally.² The Ombudsman Commission report was tabled in Parliament and can be viewed in the Parliamentary library

In this Report (Volume II), we bring together all the reports from the five Reviews and the Ombudsman Commission investigation and present a complete summary of their findings. Maps and imagery in this publication were sourced from the UPNG Remote Sensing Centre via www.rsc.upng.ac.pg (and were not part

¹ The first Review was implemented as a condition of a Governance Promotion Adjustment loan between the State of Papua New Guinea and the World Bank. The third Review was to check compliance with a later loan agreement for a Forestry and Conservation project. The fourth and fifth Reviews were conditions contained in the World Bank loan agreement.

² The government may still be considering the recommendations of the Reviews, and therefore not making them widely available.

of the Review Reports). Updates on any follow-up actions on the recommendations in the Review Reports have been added based on publicly available information as of January 31, 2006 (and were not part of the Review Reports).

Volume I of this report summarize all findings to present a clear and concise picture of the legal status, environmental sustainability and social impacts of current large-scale logging operations in PNG. The material from the Reviews that were made publicly available,³ as well as Volume I and II are available on Forest Trends website www.forest-trends.org. Documents that were not made publicly available by the Government, or portions of them, can often be found on other websites.

³ Forest Harvesting Projects Under Development - *published on the Prime Ministers internet website in April 2001*
Forest Revenue System - *published on the Prime Ministers internet website in April 2002*
Ombudsman Commission Report - *available from the PNG Parliament library where it was lodged in October 2002*
Review of Current Logging Projects - *published on the Prime Ministers internet website in April and October 2004 except the Wawoi Guavi report.*

CHAPTER 1: REVIEW OF FOREST HARVESTING PROJECTS BEING DEVELOPED TOWARDS A TIMBER PERMIT OR TIMBER AUTHORITY (2000-01)

This Review was conducted as one of the governance requirements in the conditions attached to a \$90 million budgetary support loan agreement between the government of Papua New Guinea and the International Bank for Reconstruction and Development (the World Bank).

This Review was conducted by an independent team to evaluate compliance in thirty-two proposed forest harvesting projects being developed towards an operating license with the requirements of the Forestry Act 1991 and supporting regulations, legislation, plans, procedures and guidelines.

To oversee and direct the review, the Government set up an Inter-Agency Forestry Review Committee under the auspices of the Department of the Prime Minister and National Executive Council. This committee was headed by the Chief Secretary to Government. This Review was instigated as part of a package of measures attached to a loan agreement⁴ between the Government of Papua New Guinea and the International Bank for Reconstruction and Development (the 'World Bank')⁵ signed in 1999.

The Review commenced in late October 2000 and the final package of reports was presented in July 2001.

The Review was largely a desk-top exercise conducted in the offices of the National Forest Service by a team of five experts,⁶ although as a part of the Review methodology, four site visits were conducted to consult with landowners and Provincial authorities.⁷

The Review findings were presented in a series of individual papers that identified issues of concern in relation to each proposed project and made recommendations for their remediation.

These findings were summarized in an 'Observations and Recommendations' report that also included more general proposals to improve quality and consistency in the administration of the logging industry.

After the Review was concluded, the Government of PNG and the World Bank agreed to the implementation of a Forestry and Conservation Project (FCP) to improve capacity for sustainable forest

⁴ The 'Governance Promotion Adjustment Loan' agreement involved ninety million US dollars of funding assistance to be paid in three instalments.

⁵ The World Bank has maintained an active interest in the management of tropical forests since the global Tropical Forests Action Plan was endorsed by the United Nations in 1985. In PNG the Bank was involved in the design and implementation of the National Forestry and Conservation Action Plan between 1991 and 1995 that introduced a completely new scheme for large-scale forest management.

⁶ The team comprised Mr Ben Everts (Team Leader) – Forestry and Forest Policy Specialist; Mr Kanawi Pouru – Forestry Specialist; Mr Graham Powell – Legal Specialist; Mr Tony Power – Landowner Specialist; and Mr Lukis Romaso – Landowner Specialist.

⁷ The Review methodology was criticized by local non-government groups for not including site visits to all the project areas, consultation with local Forest Management Committees and local Forestry Offices (*Summary and Analysis of the Review Team Draft Reports. PNG Eco-Forestry Forum, June 2001*).

management and specifically to assist in the implementation of the recommendations from the Review which were organized into a 'Forestry Action Plan.'⁸

⁸ The US\$39 million Forestry and Conservation Project was to be funded by a combination of loans and grants.

1.1. METHODOLOGY REPORT

March 2001, 66 pages and one appendix

This Report sets out the background for the 'Review of Forest Harvesting Projects being processed towards a Timber Permit or a Timber Authority' and the methodology used in the review process.

The Report is divided into five sections with the Terms of Reference for the Review attached as an appendix.

The first section details the background to the Review and explains its purpose (to ensure 'all Timber Permits, extensions and Timber Authorities are being processed correctly') and the early implementation steps including the process by which the proposed permits for review were selected and the early consultations with the Forest Authority.

Sections 2-4 set out in detail the background to the criteria used in the Review to assess compliance. These criteria were broken up into three broad areas:⁹

- i. Forest sector planning and control and project resource description
- ii. Assessment of legal compliance
- iii. Review of landowner issues

The fifth section of the Report describes how the work of the Review was split between the different team members and how the individual project review reports were assembled.

⁹ The division of the compliance criteria into three broad areas reflected the different skills and background of the Review team members (forester, lawyer and landowner specialists) but is itself not explained in the Methodology Report. This unfortunate decision by the Review team to follow this methodology (it was not specified in the Terms of Reference) draws criticism as it separated the question of legal compliance from those relating to forestry and landowner issues. The result was that the legal expert in the team was only concerned with whether the designated steps in the Forestry Act had been followed – due legal process – and did not look at the legal implications of flaws in the forestry and landowner aspects of the project. Thus no legal inference was drawn or opinion given on critical issues such as the lack of informed consent from landowners, flaws in the landowner mobilization, and inflated resource figures in the project documentation and a lack of compliance in many cases with the National Forest plan.

1.2. INDIVIDUAL PROJECT REVIEW REPORT NO.1 - MUSA PONGANI (ORO PROVINCE)

December 2000, 13 pages

Size of concession: 215,000 ha

Status of concession at time of review: This proposed forest harvesting project was in the very early stages of development with the landowners still being organized into Incorporated Land Groups and the Forest Management Agreement which would vest the harvesting rights in the State, not yet drafted.

Finding of Review: The Review recorded concern that 49% of the forest area was classified as 'fragile' by the Department of Environment and Conservation¹⁰ and that the resource base was too small to support a conventional log-export project.¹¹ There were also concerns about a declared conservation area over part of the concession and proposals for a large-scale agricultural project which could also impact on the resource base.

Due legal process had been followed and the National Forest Service had made attempts to empower the landowners.

Recommendations of Review: The Review recommended that this project should not proceed as a large-scale harvesting project for log exports. Rather it should provide the resource for medium-scale downstream processing.

Follow-up: This project has not been progressed any further since the Review.¹²

¹⁰ In 1999 DEC commissioned work to evaluate the biological and environmental impacts of logging on the forest types described in the Forest Inventory Mapping System (FIMS). This system is able to be used to map the areas where logging is prohibited by the environmental standards set out in the Logging Code, and is used by the PNGFA to plan logging projects and in particular to estimate the gross loggable area. The work identified a number of forest types, termed fragile forests, for which the sustainable AAC should not be based on the standard 35 year cutting cycle. These forest types were judged to either grow too slowly to be able to support a second harvest in 35 years time, or to not have the regenerative capacity to recover from logging. In the first case logging based on a longer cutting cycle might be possible. The report recommended that all of the forest types identified as fragile not be logged.

¹¹ The Review estimated the annual sustainable cut to be 34,000 cubic meters if fragile forest areas were harvested and 17,000 cubic meters if they were not. PNG Forest Authority guidelines state 30,000 cubic meters as the minimum annual harvest to support a financially efficient harvesting operation and 70,000 cubic meters as the minimum for a viable log-export operation.

¹² Follow-up information through-out this text does not come from any of the official Reviews. This information was compiled for this Report, and reflects *publicly available* information as of January 31, 2006.

1.3. INDIVIDUAL PROJECT REVIEW REPORT NO.2 - ROTTOCK BAY CONSOLIDATED (WNB)

December 2000, 22 pages

Permit Holder: Cakara Alam

Size of concession: 208,000 ha

Status of concession at time of review: This project had been developed to the fourth stage of the seven stage development process. Landowner mobilization, a Forest Management Agreement, Development Options Study and Project Guidelines had all been completed. The remaining steps prior to the issue of a Timber Permit that would have allowed harvesting to begin were the advertisement of the project, selection of the preferred developer and signing of a Project Agreement.

Findings: The Review found due legal process had not been followed in the development of the project in that it was intended not to advertise the project but to allocate the harvesting rights as an 'extension' to an existing logging operation. Very serious issues of legal non-compliance are raised in an appendix to the review report including false documents, false declarations, misleading statements to the Forest Board by Forest Officers and disregard of landowner concerns.

The Review also found inadequate landowner mobilization with very poor awareness at the community level and 'no adequate understanding of the project': "*[A] visit to one village clearly showed that the degree of awareness of the project is negligible and the understanding of the role of the ILG was negligible.*"

The Review identified the resource data had been incorrectly compiled, but concluded the mistakes had balanced each other so that the final assessment was correct. The Review stated that 'Sensible operational procedures had not been complied with' in that some of the resource data was not based on a field inventory.¹³

The Review also noted, but drew no adverse inference from the fact that only two of the projects four components were listed in the National Forest Plan. Under Section 54 of the Forestry Act, only projects listed in the plan can be lawfully developed.

Review Recommendations: The Review recommended the project could proceed as a large-scale log harvesting operation, but subject to further field inventory work; remedial work (including landowner awareness programs) to ensure proper constitution and effective landowner participation; rejection of an application for the project to be treated as an extension; proper public tendering; and attendance of landowner representatives at Provincial Forest Management Committee meetings.

Follow-up: More than four years after this Review was conducted, the Rottock Bay project was the subject of a compliance audit (February 2005) that found the recommended remedial steps had not been

¹³ The Review also notes that were field inventory data was used, the recorded gross merchantable volume figures at 55 and 41 cubic meters per hectare 'seem high.'

implemented and advised against the execution of the Project Agreement - a summary of the audit can be seen at 6.5 below. Since then, the Project Agreement has been signed with no remediation.

1.4. INDIVIDUAL PROJECT REVIEW REPORT NO.3 - MUKUS TOLO (EAST NEW BRITAIN)

December 2000, 20 pages

Size of concession: 65,000 ha

Status of concession at time of review: This project had been developed all the way through to the final stage of the development process which is the signing of a project agreement with the logging company.

Review findings: The Review noted the project was not listed for development in the National Forest Plan as required under Section 54 of the Forestry Act and sensible operational procedures were not followed in that the resource data was not based on field inventory.

The Review concluded that due legal process had been followed although the certification of the landowner mobilization and consent to logging was based on 'insufficient' information.¹⁴

The Review also noted there was insufficient landowner awareness; many complaints about landowner mobilization that have never been addressed; and a 'complex situation' existing between two different landowner factions: *"Landowner involvement in this project has been nothing less than a series of errors from the very beginning. From the landowner point of view it remains very unsatisfactory. There was no adequate landowner identification and mobilization."* (page 9)

Review recommendations: The Review recommended the Project Agreement be terminated as there was insufficient resources for either a financially viable harvesting operation or a sustainable large-scale log export operation, and there be a fundamental reassessment of the feasibility of this project.

Follow-up since Review: No remedial steps have been taken and the Project Agreement has not been terminated. However, no steps have been taken to progress the project towards allocation.

¹⁴ A slightly different picture is revealed in the body of the report which identifies non-compliance at three different stages and incomplete documentation which prevents any conclusions on compliance on another three issues.

1.5. INDIVIDUAL PROJECT REVIEW REPORT NO.4 - KULA DAGI (WEST NEW BRITAIN PROVINCE)

December 2000, 8 pages

Concessionaire: Stettin Bay Lumber Company (SBLC)

Size of concession: ha unknown¹⁵

Status of concession at time of review: This project is one of two projects reviewed that were being developed on the basis of a Timber Authority rather than acquisition through a Forest Management Agreement and the activation of the project through a Timber Permit.¹⁶

The Kula Dagi project was not designed as a sustainable timber harvesting operation but involved the clearance of forest for an oil palm plantation development.

Review Findings: The Review concluded that the Timber Authority should be issued as due legal process had been followed although there had been insufficient landowner consultation and the landowners would benefit from 'sound advice.'¹⁷

The Review highlighted as 'problematic' the fact that landowners were not assisted to obtain independent legal and commercial advice. As a result, the contract '*seems to be biased in favor of the Lumber Company who will get much of the benefit from cutting the timber*' and '*the Project Agreement is good in scope and vision but returns tend to favor the developer, the Oil Palm Company to the disadvantage of the landowners.*'

Review Recommendations: In light of these comments, the body of the report recommends that landowners should be given the chance to review the contractual arrangements with the assistance of independent legal and commercial advice.'

Findings since Review: No review or assistance to the landowners was offered, and the forest was clear-felled under the existing agreements.

¹⁵ This relates to the fact that this was an agriculture not forestry project.

¹⁶ Timber Authorities are designed to permit very small scale logging (up to 5,000 cubic meters per year), or the clearance of forest for either agricultural conversion or new roading development. Consequently Timber Authorities are not designed to support the logging of forest on a sustainable timber yield basis.

¹⁷ This position from the Review Team could be seen as rather inconsistent as the landowners owned the timber resource and it could only be taken from them with their 'free and informed' consent. Insufficient consultation and awareness is not indicative of proper consent having been given.

1.6. INDIVIDUAL PROJECT REVIEW REPORT NO.5 - TRANS VANAPA (CENTRAL PROVINCE)

December 2000, 12 pages

Size of concession: 57,000 ha

Status of concession at time of review: Although identified as a potential large-scale log export operation, no development steps had been taken With respect to this project.

Review Findings: The Review identified that the resource base was too small to sustain either a financially viable harvesting operation or sustainable large-scale log exports¹⁸ and that the area was within a log-export exclusion zone.

Review Recommendations: The Review recommended that the project be declassified and that domestic small-scale processing options be explored.

Follow-up: No known project progress.

¹⁸ The Review gives 15,000 cubic meters as an initial estimate of the annual sustainable cut but this is not based on any resource inventory.

1.7. INDIVIDUAL PROJECT REVIEW REPORT NO.6 - WES (WEST SEPIK PROVINCE)

December 2000, 9 pages

Size of concession: 100,000 ha

Status of concession at time of review: This proposed forest harvesting project was in the very early stages of development with the landowners still being organized into Incorporated Land Groups and the Forest Management Agreement which would vest the harvesting rights in the State, not yet drafted.

Review Findings: The Review identified that the resource base was '*too small to support a financially efficient logging investment or a conventional stand alone log export project.*'¹⁹

Although there had been general compliance with due legal process, the landowner awareness and mobilization was considered 'unsatisfactory' with no Forest Authority supervision.

Review Recommendation: The Review recommended that the project could not proceed as envisaged and that options to consolidate or pursue alternative processing options should be considered. The Forest Authority should ensure that proper land groups were established and landowner awareness carried out on the status of the project and future options.

Follow-up since Review: In 2004, the Forest Authority advised landowners to pursue an amalgamated project with Aitape East Coast, Tadji Romei and South West Wapei. The development of this combined project was in progress as of 31 January 2006.

¹⁹ The Review estimates the sustainable annual harvest at 21,000 cubic meters.

1.8. INDIVIDUAL PROJECT REVIEW REPORT NO.7 - VAILALA (MEPORO) (GULF PROVINCE)

December 2000, 12 pages

Size of concession: 79,000 ha

Status of concession at time of review: At the time of the review, this proposed forest harvesting project was in the very early stages of development with landowners still being organized into Incorporated Land Groups and the Forest Management Agreement which would vest the harvesting rights in the State, yet to be drafted.

Review Findings: The Review found the ‘estimated sustainable cut is too small to support a financially efficient logging investment or a conventional stand alone log export project.²⁰

Due legal process had not been followed with a general assumption that proper allocation procedures would not be followed and the resource given to an existing operator as a geographical ‘extension’ to another harvesting project²¹ without any formal application, consideration or Board approval. This is identified as ‘a serious and unwarranted departure from due process.’

The Review was concerned about the current performance and bona fides of the proposed permit holder, China Long Kong,²² and its logging contractors and landowner dissatisfaction. “*There are clear and admitted failings on the company’s part in its current operations. Landowners have called for the permit to be revoked and it is difficult to see why their representations should be ignored.*”

The Review also commented unfavorably on the logging operations in another adjacent timber area, stating that ‘*a Commission of Inquiry may be warranted in relation to the manner in which Vailala Blocks 2 and 3 were acquired in 1995.*²³

The Review was not able to comment on landowner mobilization With respect to this project as it had not yet been initiated, but the report does include the comment that ‘the work done over the years in other Vailala blocks shows confusion, conflict and uncontrolled operation of Landowner Companies (LANCO).’

Review Recommendation: The Review recommended the project should proceed through the proper development process but as a medium-scale domestic processing operation and not for large-scale log export.

Follow-up: No known project progress.

²⁰ The Review estimates the sustainable timber yield to be 20,000 cubic meters per annum if identified fragile forest areas were not protected from logging.

²¹ That adjoining logging operation, Vailala Block 1, was reviewed as part of the Review of Current Logging Operations and a summary of the findings can be seen at 5.7 below.

²² The Report names China Long Kong as the adjoining concessionaire, but this was likely outdated information. Rimbunan Hijau owned the concessions to Vailala 1 and Vailala 2/3.

²³ That adjoining logging operation, Vailala Blocks 2&3, was reviewed as part of the Independent Review of Disputed Timber Permits and Extensions, as part of the Review of Current Logging Operations, and as one of the Compliance Audits. Summaries of all the findings can be seen at 4.4, 5.8 and 6.6 below.

1.9. INDIVIDUAL PROJECT REVIEW REPORT NO.8 - KEREVAT PLANTATION (EAST NEW BRITAIN)

December 2000, 13 pages

Size of concession: 1,800 ha

Status of concession at time of review: This project was still in its initial stages with the Forest Management Agreement only partially signed, however the Review found legal compliance had not been achieved.

Review Findings: Deficiencies in the incorporation and certification of the landowner groups led to flaws in the Forest Management Agreement which vested the timber rights in the State. These flaws had in turn led '*to a disorderly approach to facilitating the harvesting and management of this resource.*' The Review also describes as 'inexcusable' the failure by the Forestry Authority to remedy any of the deficiencies or flaws once they were apparent.

On landowner issues the Review found mobilization was not complete and 'confusion and conflict abound.'²⁴

In the absence of a valid Forest Management Agreement, various groups have been harvesting timber in small-scale projects under Timber Authorities. The Review classified some of this harvesting as 'illegal activities' while other operations were 'far from satisfactory.'

The Review noted the 'whole scenario indicates an inability by NFS²⁵ to undertake a thorough commercial development involving detailed land investigations and landowner negotiations thus precluding any long term forest development.'

Review Recommendation: The Review recommended that a Forest Management Agreement was not the appropriate vehicle to manage the harvesting of plantation resources and that until an alternative structure is put in place through amendments to the Forestry Act, Kerevat be harvested under a series of Timber Authorities.

Follow-up: The area is being logged under short-term agreements amid considerable controversy over due process as of January 2006.

²⁴ The Reviewers seem already to be wearied by the consistent pattern of poor landowner mobilization they are finding across all projects, recording in this report under landowner awareness 'the usual superficial awareness and readiness to sign up for a project without understanding the implications!'

²⁵ NFS: National Forest Service – the operational arm of the Forest Authority.

1.10. INDIVIDUAL PROJECT REVIEW REPORT NO.9 - MOROBE SOUTH COAST (MOROBE PROVINCE)

December 2000, 11 pages

Size of concession: 68,000 ha

Status of concession at time of review: This project was in the very early stages of development with only the landowner awareness and mobilization components completed at the time of the review.

Review Findings: The Review concluded that the resource data for this project had been considerably overstated²⁶ and '*in truth is not sufficient for a conventional stand alone log export project.*'

Full legal compliance was also an issue as the project had been considered for allocation as a geographical 'extension' to an existing log harvesting operation without due process being followed.

In this project the Review found that the landowners were 'involved and empowered' but they opposed granting the logging rights to the logging operator in the adjoining concession area. In its body, the report identifies that the landowner mobilization and incorporation has been well done because of the involvement of the logging company to fund the work; but this has led to false expectations on the part of the company and confusion for the landowners.

Review Recommendation: The Review recommended that after reassessment of the resource data, the project should proceed through proper allocation procedures as a medium scale domestic processing operation for domestic processing.

Follow-up: No known project progress.

²⁶ The Review Team estimate of the net sustainable timber yield is 36,000 cubic meters per annum. This is less than half the 79,000 cubic meters stated in the project documentation.

1.11. INDIVIDUAL PROJECT REVIEW REPORT NO.10 - NUNGWAIA BONGOS (EAST SEPIK)

December 2000, 10 pages

Size of concession: 110,000 ha

Status of concession at time of review: This is another project that has not advanced beyond the prerequisite stage of mobilization of the landowner groups.

Review Finding: The Review found insufficient timber resources²⁷ to sustain a large-scale log export project. The Review concluded that although due legal process had been followed there had been insufficient landowner awareness to allow them to make any informed decisions²⁸ about the use of their forest resources, and additional awareness programs were recommended.

Review Recommendation: The Review recommended that it proceed for medium-scale domestic processing – if the landowners confirmed that this was what they wished.²⁹ Further consultations about the use of their forest resources and additional awareness programs were recommended for landowners.

Follow-up: No known project progress.

²⁷ The Review estimates the net sustainable timber yield to be 37,000 cubic meters per annum (based on a gross volume per hectare of 57 cubic meters which the Review notes 'seems high' but which is nonetheless accepted).

²⁸ Landowner empowerment is recorded as 'so unsatisfactory that the signing of an FMA (*Forest Management Agreement*) would be suspect.'

1.12. INDIVIDUAL PROJECT REVIEW REPORT NO.11 - AMANAB 5&6 (WEST SEPIK PROVINCE)

December 2000, 11 pages

Permit Holder: At the time of the Review, there was no concession holder³⁰

Size of concession: 297,000

Status of concession at time of review: The review found that this project had not advanced beyond the prerequisite stage of mobilization of the landowner groups with the Forest Management Agreement still to be finalized between the landowners and the State.

Review Findings: The Review noted that the project was not listed for development in the National Forest Plan as required under Section 54 of the Forestry Act and recommended the Plan be updated.

This project was regarded as having sufficient resource to be treated as a stand alone log-export project,³¹ but a determination was needed on how to treat the 11% of the project area classified as 'fragile' forest.

The Review was satisfied there had been legal compliance up to that stage, but was concerned by indications that the project would be treated as a geographical 'extension' or may be merged with another proposed project (Amanab 1-4).

The Review identified that '*landowner mobilization was led by a Landowner Company with little supervision by National Forest Service*' and concluded that '*this is not a sound basis for future landowner decision making and partnership with Forest Authority.*'

Review Recommendation: The Review recommended that the National Forest Board make a determination on how the project was to proceed and that the National Forest Service 'validate existing Incorporated Land Groups and Landowner Companies as a means of awareness raising and empowerment.'

Follow-up: Project tendered with no known remediation.

³⁰ The concession was later allocated to WTK.

³¹ The Review estimates the net sustainable timber yield to be 182,000 cubic meters per annum.

1.13. INDIVIDUAL PROJECT REVIEW REPORT NO.12 - EAST AWIN (WESTERN PROVINCE)

February 2001, 18 pages

Permit Holder: GL Niugini (now a subsidiary of CS Bos Limited)

Size of concession: 184,000 ha

Status of concession at time of review: This Project was at the very final stage of the allocation process with the National Forest Board having already approved a Project Agreement with the selected logging company, GL Niugini (now a subsidiary of Malaysian company CS Bos) and an advice to issue a Timber Permit having been sent to the Minister for Forests.

Review Finding: The Review concluded the Timber Permit could be issued subject to a few minor rectifications and re-checking of the resource data.

The Review noted that there was a lot of confusion about the extent of the timber resource and the sustainable harvesting level³² but was content that whatever the true figures were, there was sufficient resource to sustain a viable log export operation.

Legal compliance with due process was found to be satisfactory although the Review noted '*no evidence of landowner participation in the allocation process as required by law and a lot of 'landowner confusion.'*' The Review report identifies at least four stages at which the landowners were denied the opportunity to be consulted or give their approval and describes this as 'a significant oversight' but no adverse conclusions are drawn and no remediation steps are recommended.

Review Recommendation: The project could proceed after remediation of procedural errors and confirmation of the resource data.

Follow-up: Three years after this Review was conducted and following the granting of a Timber Permit allowing logging to commence, the East Awin project was the subject of a compliance audit that concluded there was not sufficient resource to sustain a viable log export operation and recommended the Timber Permit be cancelled. A summary of the audit can be seen at 6.1 below.

³² The Project was advertised as supporting an annual harvest of 141,000 cubic meters per annum over the intended span of 35 years while the selected developers own estimates ranged from 100 to 120,000 cubic meters and these figures were used in the approved Environmental Plan.

1.14. INDIVIDUAL PROJECT REVIEW REPORT NO.13 – JOSEPHSTALL (MADANG PROVINCE)

February 2001, 17 pages

Proposed Permit Holder: Sustainable Forest Resources

Size of concession: 98,000 ha

Status of concession at time of review: The development of this Project was entering the end of the allocation process with the forest harvesting rights having been acquired from the landowners, the project advertised and a preferred developer selected. Negotiations for a project agreement had however been terminated by the Forest Authority because of further demands made by the logging company, Sustainable Forest Resources.³³

Review Findings: The Review found that the potential timber volume had been 'hugely overstated' by the Forest Authority³⁴ and that there was insufficient resource to support a financially efficient logging investment, or a conventional stand-alone log export project.

The Review also found that there had been general legal compliance with due process, although a lack of documentation meant that in some instances compliance could not be confirmed.

Although the level of landowner awareness was found to be 'adequate' the Review was concerned by the manner of the landowner mobilization and that the local people had been organized in family rather than clan groups. This did not provide 'a sound basis for ongoing management of the land and forest resource.' In addition, there was no independent verification of the landowner groups or their consent to logging as required under the Forestry Act.

The Review also noted that the project was not listed in the National Forest Plan as required under Section 54 of the Forestry Act and that the Plan needed to be updated.

Review Recommendation: The Review therefore recommended that the viability of the project be reassessed and a decision made on whether to readvertise the project. Before any other remedial steps were conducted.

Follow-up: Project was tendered as a smaller domestic processing operation.

³³ These demands related to the wild overestimation of the sustainable harvest in the project documentation produced by the Forest Authority (see below) and the need for further forest areas to be added to make the project viable.

³⁴ The Project documentation estimated the sustainable annual harvest to be 132,000 cubic meters over the project period of 35 years while the Review identified the sustainable harvest to be only 26,000 cubic meters.

1.15. INDIVIDUAL PROJECT REVIEW REPORT NO.14 – SEMABO (WESTERN PROVINCE)

February 2001, 16 pages

Size of concession: 54,000 ha

Status of concession at time of review: Although this Project had been through almost the complete allocation process to the stage where a preferred developer was selected, the logging company later withdrew. The project was then re-advertised as a solely domestic processing operation and only one expression of interest was received and that was from a landowner not a logging company. No negotiations with that company had yet taken place.

Review Findings: Despite all the work undertaken in developing this project, the Review conclusion was that there were many inconsistencies in the resource documentation and that the true situation was that the sustainable annual cut was too small to support a financially efficient logging investment, or a conventional stand alone log export project.³⁵

In addition, the Review found that 99% of the forest area was classified by the Department of Environment and Conservation as 'fragile' and that if this area was excluded from logging, there could be no project of any type.

Due legal process was found to have been '*generally followed, although some of the legally required stages of landowner consultation did not take place and the incorporation of the land groups was 'flawed'* and '*would not be a very good basis for management, for decision making or for benefit distribution.*'

Review Recommendation: The project should not proceed.

Follow-up: Project has not progressed.

³⁵ The Review concluded that the sustainable annual harvest was 20,000 cubic meters based on a net loggable area of 16,000 hectares and a total net harvestable volume of 0.7 million cubic meters. The Forest Management Agreement used figures that were considerably higher – a net loggable area of 26,000 cubic meters and a net harvestable volume of 2.0 million cubic meters. But the Development Options Study and the Project Development Guidelines gave the sustainable annual harvest as only 11 and 10,000 cubic meters respectively.

1.16. INDIVIDUAL PROJECT REVIEW REPORT NO.15 - AMANAB BLOCKS 1-4 (WEST SEPPIK)

February 2001, 14 pages

Permit Holder: Permit subsequently awarded to WTK.

Size of concession: 243,000 ha

Status of concession at time of review: This Project was well advanced through the allocation process with the landowners mobilized, their timber rights acquired, the parameters of the project defined and advertised and seven project proposals awaiting evaluation.

Review Findings: The Review found 75% of the forest area was classified by the Department of Environment and Conservation as 'fragile' and that the project was only viable if logging was allowed in these designated areas.³⁶

The project was not listed in the National Forest Plan as required under Section 54 of the Forestry Act and the review recommended the Plan be updated to amend this 'flaw.'

Due legal process was found to have been 'generally' followed, although some of the legally required stages of landowner consultation did not take place and the incorporation of the land groups was 'flawed' and provided an 'unsatisfactory basis for ongoing management of the land and forest resource.'

There was no independent verification of the landowner groups or their consent to logging as required under the Forestry Act.

Review Recommendation: The Review recommended that this project proceed only if a decision was made that identified 'fragile' types could properly be subjected to logging and then only after the National Forest Plan had been updated and the landowner mobilization had been revisited and remedied.

Follow-up: Three and a half years after this Review was conducted, and following the granting of a Timber Permit (with no known remediation) to WTK allowing logging to commence, the Amanab 1-4 project was the subject of a compliance audit that found serious flaws and advised that the Timber Permit was void and that the Environmental Plan should be cancelled. A summary of the audit can be seen at 6.3 below.

³⁶ The sustainable annual harvest was calculated by the Review to be 107,000 cubic meters if identified 'fragile' forest areas were included, but only 27,000 cubic meters if they were excluded. The Forest Management Agreement stated the sustainable annual harvest to be 120,000 cubic meters but this was lowered to 94,000 cubic meters in the Development Options Study and the Project Development Guidelines.

1.17. INDIVIDUAL PROJECT REVIEW REPORT NO.16 –KAMULA DOSO (WESTERN PROVINCE)

February 2001, 14 pages

Proposed Permit Holder: Rimbunan Hijau

Size of concession: 791,000 ha

Status of concession at time of review: The history of this Project was unusual as very early in the allocation process, after the mobilization of the landowners, a decision was made by the National Forest Board to award this concession as a geographical ‘extension’ to a much smaller existing logging operation. At that point the normal allocation process was terminated.

The Board decision attracted a lot of controversy and the matter was referred to Papua New Guinea’s Ombudsman Commission and at the time of the Review that investigation was ongoing. The Ombudsman Report was published in July 2002.³⁷

Review Findings: The Review found the project was large enough to support a conventional stand-alone log-export operation although sensible operational procedures had not been followed in assessing the extent of the timber resource.³⁸

The project comprised three blocks of forest, only one of which was listed in the National Forest Plan as required under Section 54 of the Forestry Act. The Review recommended the Plan be updated to amend this ‘flaw.’

The Review found the decision to allocate the project as a geographical ‘extension’ cast doubt on the legal observance of due process and concluded the absence of any public tender ‘cast suspicions on the project.’ These suspicions were based specifically on six concerns identified in the Review with the decision of the National Forest Board: (a) it was directly contrary to the advice given by the NFS that the project should be advertised. This advice had been consistently stated as the view of the NFS and had always been supported by convincing argument; (b) there was clearly sufficient resource for the project to be a stand-alone one; (c) the views of some landowners and of the Provincial Government did not favor an extension; (d) none of the forms required by the Regulations concerning the application for an extension, or its approval, have been sighted; (e) there seems to be an unsettling determination on the part of one or two Board members, and a number of NFS officers, to see the project proceed as an extension; and (f) the NFB has exposed itself to claims of impropriety by departing from the usual and transparent process of public tender.

According to the Review, the landowner mobilization was flawed with insufficient care being taken and a lack of supervision from the Forest Authority. There was no independent verification of the landowner groups or their consent to logging as required under the Forestry Act.

³⁷ A summary of the Ombudsman Report can be found in section 3 below.

³⁸ The Review assessed the annual sustainable harvest level to be 319,000 cubic meters, making the project the largest log harvesting operation yet seen in Papua New Guinea.

The Review endorsed the view of the Forest Authority legal staff that the Forest Management Agreement as signed by the landowners was invalidly executed and certified and therefore of no effect.

Review Recommendation: The Review recommended that the Board decision to allocate the project as an extension should be revoked and the normal development process as set out in the Forestry Act should be followed beginning with a reassessment of the landowner mobilization and forest resource acquisition.

Follow-up: In December 2005, the National Forest Board reaffirmed its decision to award the project, with no known remediation, to Rimbunan Hijau as an extension to its existing Wawoi Guavi operation.

1.18. INDIVIDUAL PROJECT REVIEW REPORT NO.17 - IOMA BLOCK 5 (ORO PROVINCE)

February 2001, 14 pages

Size of concession: 227,000 ha

Status of concession at time of review: This Project was about half way through the allocation process with the landowners having given up their timber rights and the project guidelines agreed. The next stage was to have been to advertise the project and select a preferred developer from the submitted expressions of interest.

Review Findings: The Review found there was considerable confusion over the resource data and inconsistencies between different documents and concluded that the correct sustainable annual cut was too small to support ‘a financially efficient logging investment or the extensive landowner “wish-list” set out in the draft Timber Project Guidelines.’³⁹

The Review concluded that due legal process had been followed, although there were ‘deficiencies’ in the ‘landowner awareness exercises, the certification and the form of the Forest Management Agreement and the lack of consultation concerning the Project Guidelines.’

The Review found ‘no evidence’ of any independent verification of the landowner groups or their consent to logging as required under the Forestry Act.

Review Recommendation: The Review recommended a number of measures to address the deficiencies in legal process and additional field inventory work to verify the estimated sustainable yield and confirm the potential for a sustainable forestry project.

Follow-up: The current status of this project is unclear due to contradictory information from landowners and the National Forest Service.

³⁹ The sustainable annual harvest was calculated by the Review to be 26,000 cubic meters if identified ‘fragile’ forest areas were included, and only 21,000 cubic meters if they were excluded. The Forest Management Agreement stated the total net timber volume to be 1.9 million cubic meters, more than double the Review estimate of 0.9 million. Although the figures in the Forest Management Agreement indicated a sustainable cut of 53,000 cubic meters per annum, this was lowered to 30,000 in the Development Options Study.

1.19. INDIVIDUAL PROJECT REVIEW REPORT NO.18 - AITAPE EAST COAST (WEST SEPPIK)

February 2001, 14 pages

Size of concession: 41,000 ha

Status of concession at time of review: The Aitape East Coast Project was almost half way through the allocation process with the landowners having given up their timber rights and the project guidelines awaiting approval. The next stages were to have been to approve the guidelines, advertise the project and select a preferred developer from the submitted expressions of interest.

Review Findings: The Review found that the resource data had been exaggerated and concluded that the correct sustainable annual cut was too small to support 'a financially efficient logging investment.⁴⁰

The Review concluded that due legal process had been followed although landowner representatives were not present at some relevant meetings; consultation with landowners and the Provincial Government did not take place at key stages; and the incorporation of the land groups was 'unsatisfactory' and provided an 'unsatisfactory basis for ongoing management of the land and forest resource.'

The Review found 'no evidence' of any independent verification of the landowner groups or their consent to logging as required under the Forestry Act.

Review Recommendation: The Review recommended a number of measures to address the deficiencies in legal process, landowner mobilization and resource data if a sustainable forestry project was 'judged to exist.'

Follow-up: In 2004, the Forest Authority advised landowners to pursue an amalgamated project with Wes, Tadji Romei and South West Wapei. The development of this combined project was in progress at 31 January 2006.

⁴⁰ The sustainable annual harvest was calculated by the Review to be 17,000 cubic meters if identified 'fragile' forest areas were included, and only 12,000 cubic meters if they were excluded. The Forest Management Agreement stated the available timber resource to be 1.6 million cubic meters but because the net area and volume per hectare were exaggerated this was almost three times the Review estimate of 0.6 million.

1.20. INDIVIDUAL PROJECT REVIEW REPORT NO.19 - MIDDLE RAMU BLOCK 1 (MADANG)

February 2001, 13 pages

Size of concession: 159,000 ha

Status of concession at time of review: The Middle Ramu Project was at the second stage of the development process, with the landowner awareness and mobilization completed, and the agreement to acquire the timber harvesting rights approved by the National Forest Board and in the process of being signed by the landowner groups.

Review Findings: The Review found that the resource data had been exaggerated and there was considerable discrepancy between various documents but concluded that the corrected sustainable annual cut was probably sufficient to support 'a conventional stand alone log export project.'⁴¹

Due legal process had been followed, but the land groups were flawed as they were based on family rather than clan groups.

Review Recommendation: The Review recommended that the project proceed subject to verification of the timber volume data and a 'revisit' to the land groups.

Follow-up: Project has been tendered with no known remediation.

⁴¹ The sustainable annual harvest was calculated by the Review to be 122,000 cubic meters if identified 'fragile' forest areas were included, and 117,000 cubic meters if they were excluded. The Forest Management Agreement stated the gross loggable area to be 147,000 hectares but the Review reduced this to 91,000 hectares. The FMA gross loggable volume of 61 cubic meters per hectare was also rejected by the Review which preferred the figure of 79 cubic meters in the Forest Inventory database – although commenting that this 'intuitively seems high.'

1.21. INDIVIDUAL PROJECT REVIEW REPORT NO.20 - EAST PANGIA (SOUTHERN HIGHLANDS)

February 2001, 10 pages

Size of concession: 92,000 ha

Status of concession at time of review: This Project was at the second stage of the development process with the landowner awareness and mobilization completed and the agreement to acquire the timber harvesting rights approved by the National Forest Board and in the process of being signed by the landowner groups.

Review Findings: The Review found that the resource data had been 'significantly over-stated' but concluded that the corrected sustainable annual cut was sufficient to support 'a conventional stand alone log export project.'⁴²

Due legal process had been followed, but the land groups were 'totally inadequate' and needed to be 'revisited.'⁴³

Review Recommendation: The Review recommended that the project proceed subject to verification of both the timber volume data and the land groups. They also stated that because of its location in the Highlands, the project should be considered as a domestic processing operation.

Follow-up: Project to be tendered with no known remediation.

⁴² The sustainable annual harvest was calculated by the Review to be 75,000 cubic meters (using a stocking density of 54 cubic meters per hectare which the Review noted 'seems high' and a 35 year logging cycle despite the 40 years specified in the National Forest Policy). The Forest Management Agreement overstated the gross loggable area by 8,000 hectares and the gross loggable volume by 9 cubic meters per hectare resulting in a total over estimation of the available resource of some 30%.

⁴³ The Review notes that 'it will be a challenging task to weld such diverse and assertive landowners into working together for one project.'

1.22. Individual Project Review Report No.21 - East Collingwood (Milne Bay Province)

February 2001, 12 pages

Size of concession: 81,000 ha

Status of concession at time of review: The East Collingwood Project was at the second stage of the development process with the landowner awareness and mobilization completed and the agreement to acquire the timber harvesting rights approved by the National Forest Board and ready for signing by the landowner groups.

Review Findings: The Review found that the resource data had been exaggerated and concluded that the correct sustainable annual cut was too small to support 'a financially efficient logging investment.⁴⁴

Due legal process had been followed, but there had been 'no proper consideration given to development options' and no evidence of landowner awareness in the early stages. Empowerment of the landowners 'is not really apparent.'

Review Recommendation: The Review recommended that the possible development options be identified and that if none were feasible the 'project should be shelved.'

Follow-up: Project has not progressed.

⁴⁴ The sustainable annual harvest was calculated by the Review to be 24,000 cubic meters if identified 'fragile' forest areas were included, and 23,000 cubic meters if they were excluded. The Forest Management Agreement stated the net loggable area to be 20,000 hectares higher than the Review estimate of 41,000 cubic meters.

1.23. INDIVIDUAL PROJECT REVIEW REPORT NO.22 - ASENGSENG CONSOLIDATED (WNB)

February 2001, 17 pages

Permit Holder: Project agreement subsequently signed with Rimbulan Hijau

Size of concession: 147,000 ha

Status of concession at time of review: This project had reached the third stage of the seven stage development process with landowner mobilization and a Forest Management Agreement already completed.

Review Findings: The Review found the project was large enough to sustain a large-scale log export operation although the resource information in the Forest Management Agreement was incomplete.⁴⁵

Due legal process had not been followed, with the Review specifically identifying interference by a former Forest Minister and his associates as the cause of many of the legal problems. Although there had been adequate landowner awareness, the incorporation of the land groups was ‘flawed’ and should be treated with the ‘gravest suspicion.’⁴⁶

The Review concluded that legal compliance was compromised at a number of stages⁴⁷ and there was no verification of the landowner mobilization or consent to the logging project. The Review found the proceedings of the Provincial Forest Management Committee (PFMC) had been ‘manipulated’ and its integrity ‘compromised.’ The Review identified interference by a former Forest Minister, Andrew Posai, and his associates as the cause of many of the legal problems.

The Review also noted only one of the projects three components was listed in the National Forest Plan as required under Section 54 of the Forestry Act, and suggested that the plan be updated to correct this anomaly.

Review Recommendation: The Review recommended the project should proceed as a large-scale log harvesting operation, but subject to remedial work to correct all the legal non-compliance matters, revisit and verification of the incorporated land groups and landowner consent being obtained to the amalgamated project.

The Review also recommended that ‘*the composition of the PFMC should be reviewed and its further deliberations in relation to “high profile” projects such as this should be closely scrutinized.*’

Follow-up: Four years after this Review was conducted, the Asengseng project was the subject of a compliance audit that found the recommended remedial steps had not been implemented and advised against

⁴⁵ The Review estimated the sustainable annual timber yield to be 96,000 cubic meters.

⁴⁶ The Review commented that the landowner groups were ‘based on family groups. This is likely to lead to disputes when harvesting starts as several families will have claims to cash payments from each harvesting area.’

⁴⁷ The Review found that the project files did not indicate compliance with most steps concerning the Development Options Study, Project Guidelines and Project Proposals and these had been ‘overlooked or treated in an irresponsible manner.’

the execution of the Project Agreement. A summary of the audit can be seen at 6.4 below. The Project Agreement was subsequently signed.

1.24. INDIVIDUAL PROJECT REVIEW REPORT NO.23 - RAI COST (MADANG PROVINCE)

March 2001, 14 pages

Size of concession: 76,000 ha

Status of concession at time of review: This Project had not been developed under the 1991 Forestry Act but rather was an older project under which the timber permit had been cancelled.⁴⁸

Review Findings: The Review concluded that the old project did not provide a suitable basis for a new logging operation and in any event the sustainable annual cut was too small to support 'a financially efficient logging investment'.⁴⁹

Review Recommendation: If the project was to be resurrected, the Review recommended that it proceed under the new Act as a Forest Management Agreement with landowner awareness and mobilization as the first steps required for development.

Follow-up: Project progressing without any known remediation.

⁴⁸ The permit was cancelled in 1998 based on the poor performance of the logging company related to 'an insufficient level of both log export and domestic processing, and also too many deficiencies in the provision of infrastructure and services.'

⁴⁹ The sustainable annual harvest was estimated by the Review to be 22,000 cubic meters, this was higher than the Forest Authorities own estimate in the project documentation of just 19,000 cubic meters.

1.25. INDIVIDUAL PROJECT REVIEW REPORT NO.24 – PONDO (EAST NEW BRITAIN)

March 2001, 14 pages

Size of concession: 12,000 ha

Status of concession at time of review: This is another Project that had not been developed under the 1991 Forestry Act but was based on an older timber purchase.⁵⁰

Review Findings: The project was not listed in the National Forest Plan as required and the very small resource base⁵¹ (which had been substantially over estimated in the project documentation) led the Review to conclude that a ‘financially efficient logging project’ was not possible.’

The Review concluded that the failure to develop the project under the Forestry Act of 1991 was in ‘breach of due process’ and the project could not be granted as a geographical ‘extension’ to an existing logging operation⁵² as was indicated by the Forest Authority. Both approaches to this project by the Forest Authority are described in the Review as ‘ill conceived’ and should be ‘abandoned.’

The Review found no evidence of landowner awareness or proper mobilization and doubted Forest Authority claims that the landowners were the same as for an adjoining logging area.⁵³

Review Recommendation: Because of the very small resource base the Review recommended developing the project for domestic timber supply only under the mechanism of a Timber Authority.

Follow-up: Project was logged as an extension against the advice of the Review.

⁵⁰ The original acquisition of the timber rights appeared to date back to the 1940’s and may have already expired or be due to expire in 2005. This confusion was due to the fact that no copy of the original purchase document seemed to exist and ‘probably did not survive the Japanese invasion of Rabaul’ in 1945.

⁵¹ The review estimated the gross loggable area to be only 1,600 hectares - considerably less than the 8,000 hectares stated in the project documentation – and estimated the total timber resource to be only 32,000 cubic meters (and not 195,000 cubic meters estimated by the Forest Authority).

⁵² That itself had only 11 months to run.

⁵³ The later Review of Existing Logging Projects found that Pondo was being logged under the Timber Permit for another concession named Seraji - see at 4.6 below.

1.26. INDIVIDUAL PROJECT REVIEW REPORT NO.25 - APRIL SALUMEI (EAST SEPIK PROV.)

March 2001, 14 pages

Size of concession: 521,000 ha

Status of concession at time of review: This Project had reached the third stage of the seven stage development process having finalized the Development Options Study.

Review Findings: The Review found that the estimated sustainable cut was sufficient to support a viable log export operation, even if the 44% of the gross area classified as 'fragile' forest was excluded from logging,⁵⁴ but noted the lack of adequate roading into the project area.

Due legal process had been followed although in this regard the Review noted 'the project has not really progressed in any substantive way' since 1986.

Review Recommendation: The Review noted that the project area was 'beset with confusion and conflicting aspirations' and recommended as a first step that the National Forest Board should undertake a consultation exercise to ascertain whether there was sufficient support for logging and decide whether the project was to proceed.

Follow-up: Project has not progressed.

⁵⁴ The Review estimated the annual sustainable cut to be 155,000 cubic meters with 'fragile' areas included for logging and 94,000 if they were excluded.

1.27. INDIVIDUAL PROJECT REVIEW REPORT NO.26 - CLOUDY BAY (CENTRAL PROVINCE)

March 2001, 14 pages

Proposed Permit Holder: Northern District Sawmill Limited

Size of concession: 148,000 ha

Status of concession at time of review: The Cloudy Bay Project was about half way through the allocation process with the landowners having given up their timber rights and the project guidelines approved. The next stages were to have been to advertise the project and select a preferred developer from the submitted expressions of interest.

Review Findings: The Review found that the timber resource in this project was sufficient to sustain a viable log-export operation if logging was permitted in identified 'fragile' forest areas.⁵⁵

Due legal process was found to have been 'generally observed' although, as in almost every other project, there was no evidence the Provincial Forest Management Committee had independently checked the incorporation of the land groups or the consent of the landowners to the project (as required under the Forestry Act) or that landowner representatives had attended relevant PFMC meetings.

Review Recommendation: The Review recommended that a position be reached between the Forest Authority and the Department of Environment and Conservation on whether logging was permissible in identified 'fragile' forest types before the future of this project was determined.

Follow-up: Project agreement has been negotiated with no known remediation.

⁵⁵ The Review estimated the annual sustainable cut to be 82,000 cubic meters with 'fragile' areas included for logging and 63,000 if they were excluded. The project documentation prepared by the Forest Authority provided for an annual sustainable cut of 75,000 cubic meters.

1.28. INDIVIDUAL PROJECT REVIEW REPORT NO.27 – TUWAPU (WEST SEPIK PROVINCE)

March 2001, 13 pages

Size of concession: 6,750 ha

Status of concession at time of review: This Project was almost half way through the allocation process, with the landowners having given up their timber rights and the project guidelines awaiting approval. The next stages were to have been to approve the guidelines, advertise the project and select a preferred developer from the submitted expressions of interest.

Review Findings: The Review found the sustainable level of timber harvesting had been ‘significantly overestimated’ in the project documentation⁵⁶ and that the true situation was that there was not sufficient resource to support any level of sustainable harvesting.⁵⁷

Due legal process was found to have ‘generally been followed’ subject to the failure to independently verify the incorporation of the land groups and the consent of the landowners. There was also an ‘unfounded’ assumption that the project would be treated as a geographical ‘extension’ to another existing harvesting operation and ‘defects’ in the form of the Forest Management Agreement.

The Review also noted that the project was not listed in the National Forest Plan, as required under Section 54 of the Forestry Act, and recommended the Pan be updated.

Review Recommendation: The project should not proceed as an independent operation but adjacent developers should be contacted to see if there was interest in logging the area as an extension to an existing project.

Follow-up: Unbeknownst to the Review Team at the time, the Tuwapu area was already being logged under an unlawfully granted extension.

⁵⁶ The Review estimated the sustainable annual cut to be just 219 cubic meters and not the 3,100 cubic meters advertised in the project documentation.

⁵⁷ The Review stated the project area contained only 426 hectares of un-logged forest as 6,200 hectares ‘has already been logged.’

1.29. INDIVIDUAL PROJECT REVIEW REPORT NO.28 - SOUTH WEST WAPEI (WEST SEPPIK)

March 2001, 13 pages

Size of concession: 117,000 ha

Status of concession at time of review: This is another Project that was almost halfway through the allocation process.

Review Findings: The Review found there was not sufficient resource⁵⁸ to support the proposed log-export operation.⁵⁹

The Review concluded due legal process had been 'generally observed' but there were many unsatisfactory aspects to this project as well as defects in the form of the Forest Management Agreement and the usual concerns about verification of the land groups and the landowner's willingness to proceed.

Landowner awareness was not regarded as satisfactory and the landowners had not been 'empowered' by the mobilization process.

Review Recommendation: The Review recommended consideration be given to amalgamating this project with others in its vicinity to increase the financial viability and ease access concerns.

Follow-up: In 2004, the Forest Authority advised landowners to pursue an amalgamated project with Aitape East Coast, Tadji Romei and Wes. The development of this combined project was in progress at 31 January 2006.

⁵⁸ The Review estimated the sustainable annual cut to be 68,000 cubic meters, or 63,000 if the identified areas of 'fragile' forest were excluded from logging.

⁵⁹ The Report criticized the 'evident' 'lack of strategic planning with regard to this and a number of adjoining projects.'

1.30. INDIVIDUAL PROJECT REVIEW REPORT NO.29 - WIPIM TAPILA (WESTERN PROVINCE)

March 2001, 14 pages

Size of concession: 244,000 ha

Status of concession at time of review: The Wipim Tapela Project had reached the half way point in the development process with the project guidelines completed when the National Forest Board decided that the project would be treated as a geographical 'extension' to the Oriomo Wimare logging project.

Review Findings: The Review found the sustainable level of timber harvesting had been 'over stated' in the project documentation⁶⁰ and that the true situation was that there was not sufficient resource to support a conventional log export operation.⁶¹

The Review described the decision of the National Forest Board for the project to be treated as an extension as 'questionable' as there was no evidence of any formal application under the Regulations from the logging company.

Legal compliance with proper procedures was also in issue with the certification of the land groups and the willingness of the landowners to sign the Forest management Agreement.

The Review notes that there was clear opposition to the 'extension' proposal among some landowners:
'Landowner opposition to this had been stated in the clearest possible terms since 1996.'

Review Recommendation: The Review recommended that consideration be given to whether logging should be permitted in identified 'fragile' forest areas. If logging was approved then the Board should reconsider its decision to treat the project as an 'extension.'

Follow-up: Project was ready to be tendered with no known remediation in January 2006.

⁶⁰ The advertised gross loggable area of 187,000 hectares was according to the Review an overestimation by 75,000 hectares. The Review also noted unconfirmed reports that as much as 50% of the forest area had been lost to fire and subsistence agriculture.

⁶¹ The Review estimated the sustainable annual cut to be 46,000 cubic meters (the FMA gave a figure of 75,000, the Project Guidelines 60,000, and the logging company's own proposal 32,000) if forest areas identified as 'fragile' were harvested. If these areas were protected from logging then there was insufficient remaining recourse, 2%, to justify any logging.

1.31. INDIVIDUAL PROJECT REVIEW REPORT NO.30 - HEKIKO (GULF PROVINCE)

March 2001, 24 pages

Size of concession: 196,000 ha

Status of concession at time of review: This Project had almost reached the final stage of the allocation process, with a Project Agreement concluded with the selected logging company, when a recommendation was made that the Board terminate the agreement.

Review Findings: The Review found that there was insufficient resource to support a conventional log export project and, if logging was not permitted in identified 'fragile' forest areas,⁶² there was not sufficient resource to support a financially efficient logging operation.⁶³

Concerns were raised about the Forest Management Agreement documentation and the allocation of the project. The selected company, Yeungs Group Limited, had a paid up capital of two Kina (about 65 US cents) and had no logging experience. It did not provide any financial information and did not identify any markets. The decision to base the project on the documents prepared for another project was 'ill-advised' and 'entirely inappropriate.' Subsequent attempts to regularize the situation were 'not handled with competence'

Despite these failings, due legal process was found to have 'generally been observed' in the project summary. This description may seem at odds with the conclusion later in the report under the legal compliance checklist that 'this project is a disaster'; that the National Forest Service has 'been seriously remiss,' and it 'is impossible to make sense of the Forest Management Agreements.'

The Review found that there was a lot of landowner confusion and the registered land groups had 'fractured.' There was no evidence of landowner involvement at a number of key stages in the project development process.

The Review also noted that the project was not listed in the National Forest Plan, as required under Section 54 of the Forestry Act, and recommended the Plan be updated.

Review Recommendation: The Review endorsed the decision to terminate the project agreement and recommended that a decision then be made on whether the project should proceed.

Follow-up: Project has not progressed.

⁶² The Review noted that 38% of the gross forest area was identified as 'fragile.'

⁶³ The Review did not estimate the sustainable level of harvesting as there was no resource inventory data available but relied on the estimate in the Project Guidelines which was 35,000 cubic meters per annum – although the Review says this figure 'must be considered unreliable.' The project documentation revealed a lot of confusion about the extent of the timber resource and the sustainable level of harvesting. The project Guidelines indicated 35,000 cubic meters per annum, the National Forest Board had recommended this be reduced to 24,000, the Project Agreement permitted 53,000 (subject to a re-survey) while in its environmental plan the logging company was proposing to cut 63,000 cubic meters for the first ten years and then reduce to 23,000 per annum.

1.32. INDIVIDUAL PROJECT REVIEW REPORT NO. 31 - AIAMBAK-KIUNGA ROAD (WESTERN)

March 2001, 8 pages

Concessionaire: Samling

Size of concession: Not known as logging has strayed over an undefined area

Status of concession at time of review: This highly controversial project was based on a Timber Authority for road construction and had actually been operating for some years with substantial log exports. It was included in the Review as there were suggestions that the project was to be 'extended.'

Review Findings: The Review found the project was in breach of both the National Forest Policy and the Forestry Act as the logging was not '*regulated through either a proper Forest Management Agreement or a proper Timber Authority.*'

On legal compliance the Review concluded '*at no time since the purported issuance of the Timber Authority in April 1994 has any aspect of due process been observed.*' The Review found '*since Minister Neville purported to approve TA No 24 in April 1994 no procedural step under the Forestry Act 1991 has been duly observed*' and '*in giving his approval the Minister exceeded his powers.*'

The Review concluded that the landowners had never been mobilized and 'this so called project has been a disaster from day one' and 'should be shut down and assets seized to reimburse landowners for loss of their standing crop.'

Review Recommendation: The Review recommended that Court action be taken 'forthwith' to review the logging operation and any application to extend the scope or term of the project 'be soundly rejected.'

Follow-up: Project stopped through legal action.

1.33. INDIVIDUAL PROJECT REVIEW REPORT NO.32 - HEKIKO (SOUTHERN HIGHLANDS PROVINCE)

March 2001, 12 pages

Size of concession: 199,000 ha

Status of concession at time of review: This Project was at the second stage of the development process with the landowner awareness and mobilization completed and the agreement to acquire the timber harvesting rights approved by the National Forest Board and ready for signing by the landowner groups.

Review Findings: The Review found that the sustainable annual harvesting rate was not sufficient to support a conventional log-export project⁶⁴ and the documentation significantly over-stated the gross loggable area.⁶⁵

The Review was also concerned that no regard seemed to have been given to two conservation areas that the State had agreed to over the proposed project area and which the Forest Authority 'appear to have agreed to exclude from logging.'

The Review found that the certification of the willingness of the landowners to sign the Forest Management Agreement 'was a breach of due process given that all landowners subsequently refused to sign the Agreement.' The Review further notes '*The landowners have clearly never been willing to sign it and in the four years since certification not one signature has been obtained.*'

The landowner awareness and mobilization were commended in the Review although it had not resulted in a willingness to sign the project proposal being put forward by the Forest Authority.

Review Recommendation: The Review recommended that either the Forest Authority negotiate a project agreement that was acceptable to the landowners or the 'project should be shelved.'

Follow-up: Project has not progressed.

⁶⁴ The Review estimated the sustainable annual logging rate to be 34,000 cubic meters and 31,000 if areas identified as 'fragile' forest were excluded.

⁶⁵ According to the Review the correct gross area was 42,000 hectares not 61,000 as stated in the proposed Forest Management Agreement.

1.34. OBSERVATIONS AND RECOMMENDATIONS REPORT

October 2001, 55 pages and six appendices⁶⁶

This Report was the final document prepared as part of the 'Review of Forest Harvesting Projects being processed towards a Timber Permit or a Timber Authority.'⁶⁷ This report sets out the overall observations and recommendations from the Review for consideration by the PNG Government.⁶⁸

The Report is divided into five sections preceded by an Executive Summary.

The main points identified in the Executive Summary were:

- While many Ministerial directions had been given on matters relating to forestry projects which were often interpreted as political interference, these had not led to short-cuts or deviations from due process although far too many projects had been initiated and a large number were poorly considered and prepared
- To perform its functions the Forest Authority required the support of other Government Departments and institutions
- The quality of landowner awareness and mobilization was poor and landowners were not making informed decisions and their expectations were unlikely to be met
- Forest resource descriptions are generally 'unreliable' and in some case 'wildly misleading'
- Due legal process was generally observed although five specific cases were identified where this was not so⁶⁹
- Four "in process" projects, out of the twenty-nine being developed towards a Timber Permit, were identified which had the potential to become sensible viable log export projects subject to remedial actions.
- A further six projects were identified that may have the potential to be viable projects subject to policy decisions and remedial actions
- It was recommended that the remaining projects 'be shelved'

⁶⁶ Location map; List of submissions; Material review criteria; Broad Discussion on Forest Resource and Planning Issues; Broad Discussion on Legal Issues; Broad Discussion on Landowner Issues

⁶⁷ This Report was presented in October 2001; seven months after the final batch of Individual Project Reports and the Methodology Report were completed.

⁶⁸ It was envisaged the Report might assist in defining the work program under the planned Forestry and Conservation Project which was under negotiation between the Government and the International bank for Reconstruction and Development and which was to include provision for a review of forestry sector policy, and planning and control mechanisms. The final arrangements for the Forestry and Conservation project were agreed between the Government and the World Bank in December 2001.

⁶⁹ Kiunga-Aiambak; Trans Island Highway; Pondo; Tuwatu and Vailala Blocks 2&3

The Report also included fifteen 'key recommendations' to improve the forest resource acquisition and allocation process, and the policy legal and regulatory framework within which it operates.⁷⁰

The first recommendation was that in the interests of good governance, the present Forest Authority should be divided to separate the policy development function and the implementation, monitoring and control functions.

The body of the report contains 'positive findings', a summary of the outcome of the individual project audits, and a list of recommendations including 'priorities for action.'

⁷⁰ This program of reforms was subsequently endorsed by the PNG Government in a 'Time Bound Action Plan' approved by the National Executive Council in November 2001.

CHAPTER 2: REVIEW OF THE FOREST REVENUE SYSTEM (2001-02)

March 2002, 184 pages

This Review⁷¹ was commissioned to provide recommendations for reform of the forest revenue and taxation system to make it more ‘efficient, robust and equitable’ and thereby ‘underpin long-term sustainable development.’⁷²

The Review found the logging industry was of limited economic importance⁷³ and faced a number of adverse conditions, including low log prices, reduced export volumes, a diminishing resource base and poor growth in the two primary markets (sawmilling and plywood). The data collected was used to estimate that an efficient logging operation would cost about US\$60⁷⁴ per cubic meter⁷⁵ – before any provision was made for landowner royalties or government taxes. In the current fiscal regime in PNG, logging could not be profitable at market prices.

Landowner costs of logging were estimated to be between US\$6 and US\$7 per cubic meter⁷⁶ under the most favorable circumstances.⁷⁷

The Review investigated the issue of transfer pricing and found ‘unexplained and substantial discrepancies’ in declared prices that ‘warrant further investigation.’ This investigation was fairly vigorous and included visits to Hong Kong, China and Japan to collect and verify data.

Of the seven processing models developed as part of the Review,⁷⁸ sawmilling provided the only options considered to be financially viable.

The Review found the current tax exemption for processed timber made processing less beneficial for PNG than log exports. Log export tax was the primary income source for government from the logging industry as ‘very little’ was earned from corporate income taxes as most logging companies did not declare taxable

⁷¹ The Review was based at the National Forest Service headquarters and team members travelled to the Provinces to collect data and consult with industry participants.

⁷² The Review Team was: Lachlan Hunter (Leader); Jim Belford (Forestry); Chris LaFranchi (Economist); Alan Ogle (Forest Industry); Craig Sugden (Economist); and Ivan Tomaselli (Products Marketing).

⁷³ The Review found exports were dominated by crude oil and gold (77% of total export values). Primary agricultural exports were palm oil and coffee, with timber products contributing 4.9% of total export values. Log export taxes of Kina 134 million contributed 5.8% of government tax revenues and 4.5% of total income.

⁷⁴ The Review pointed out this ‘must be treated as *an estimate* based on “average” PNG conditions and current costs. As an average, it can’t be applied as a reliable cost indicator of any single operation, as productivities, log stocking per hectare, terrain, weather, distances to ship loading, age of equipment, agreement conditions for landowner benefits, compliance with the PNGFA Logging Code of Practice, overheads and other cost factors vary considerably from one operation to another.’

⁷⁵ This included \$39 as the production cost; \$12 for depreciation; and \$9 was allowed as profit.

⁷⁶ This was made up of \$2.10 to compensate for the loss of the timber, \$3.25 for environmental damage and \$1 for reforestation and post harvesting management.

⁷⁷ Favorable circumstances would include sufficient economic and institutional infrastructure to facilitate flow on effects, low or negligible social conflict, no transfer pricing or other malfeasance, and low to modest conservation values.

⁷⁸ Ranging from a portable sawmill processing 330 cubic meters of round logs per year through to a fibre board mill processing 175,000 cubic meters.

profits. It recommended the rate of log export tax⁷⁹ be reduced, if proven there was no transfer pricing. However, it also conversely suggested that landowner royalties be increased to compensate for the loss of real value caused by the declining Kina value.

Further studies were recommended to supplement the attempts made in the Review to assess the true economic value of the forest estate.

CHAPTER 3: OMBUDSMAN COMMISSION REPORT ON KAMULA DOSO (2002)

July 2002, 142 pages

This Report was the final stage of a three year Ombudsman Commission investigation into a decision of the National Forest Board to give the logging rights for Kamula Dosso forest management area in Western Province as a geographical 'extension' to an existing logging operation under the Wawoi Guavi Timber Rights Purchase.

As the Report explains, the decision of the Forest Board 'aroused widespread concern' because the new logging area was almost double the size of the existing timber operation. In addition, by treating the project as an extension, the public advertising requirements of the Forestry Act were by-passed.

The Report focuses on the propriety of the National Forest Board decision and in particular the considerations taken into account when the decision to grant an extension was made.

The Report's principal findings were:

- The Forest Management Agreement entered into between the Kamula Dosso landowners and the PNG Forest Authority was void for non compliance with the Forestry Act.
- The decision to award the forest management area as an extension was based on improper considerations.
- There were many irregularities surrounding the Forest Board's decision.
- The conduct of certain members of the Board and consecutive Ministers for Forests was wrong.

The Ombudsman made a series of recommendations including revocation of the decision to grant the extension, changes to the Forestry Act to reduce political interference and the dismissal of two Board members.

CHAPTER 4: INDEPENDENT REVIEW OF DISPUTED TIMBER PERMITS AND PERMIT EXTENSIONS (2003)

In December 2001 the PNG Government had agreed upon a new project with the International Bank for Reconstruction and Development (World Bank) designed to improve environmental sustainability in the forestry sector. The World Bank Forestry and Conservation Project had a number of different components to increase capacity in government departments and improve landowner involvement. Furthermore, it was underpinned by a loan agreement for some US\$17 million.

The financial contract for the project included a clause that all new timber permits and extensions approved during the currency of the loan would be reviewed to determine their status of compliance with the Forestry Act.

In November 2002 the Bank received a complaint that three new timber harvesting projects⁸⁰ had not followed due process and were unlawful. To determine the veracity of these allegations, in January 2003, an independent team of two specialists were retained under the Forestry and Conservation Project to carry out an investigation according to a written term of reference, with the objective to evaluate compliance with the Forestry Act for a number of new timber permits and permit extensions.

The consultants were commissioned to produce a report for each project detailing the level of compliance, the reasons for any non-compliance and an overall appraisal of the veracity of the complaints made. The reports were to be presented to the Inter Agency Forestry Review Committee chaired by the Chief Secretary to Government.

While the reviews were being conducted, complaints were made about a further three timber harvesting projects⁸¹ and these were added to the Review Teams remit.

After the completion of the first three project reports, the Reviewers also presented a 'Confidential Report' to the Chief Secretary containing an assessment of the current state of management of the forest estate by the National Forest Service.

⁸⁰ These were the extensions to the Kiunga-Aiambak and Bonua Magarida projects and the Timber Authority for Simbali.

⁸¹ Passismanua, Wawoi Guavi and Vailala Blocks 2&3.

4.1. REVIEW TEAM FINAL REPORT ON KIUNGA/AIAMBAK, SIMBALI AND BONUA MAGARIDA (WESTERN, EAST NEW BRITAIN AND CENTRAL PROVINCES)

February 2003, 18 pages

Concessionaire / Permit Holder:

Kiunga / Aiambak: Concord Pacific (Samling)

Simbali: Kerawara

Bonua Magarida: Milne Bay Industries

Size of concession:

Kiunga / Aiambak; undefined area

Simbali: 11,700 ha

Bonua Magarida: 60,000 ha

Status of concession at time of review:

Kiunga / Aiambak; *Mainly logged out*

Simbali: *Logging on-going*

Bonua Magarida; *No logging*

Review Findings: The Review found 'significant breaches' of the Forestry Act in each of the three projects that it investigated.

Kiunga-Aiambak: With the Kiunga-Aiambak Project, the Review found the National Forest Service had been holding a copy of the logging license for more than twelve months, despite denying its existence. The license was 'illegal and in breach of the Forestry Act.'

Logging had been authorised in a 3000 meter wide corridor despite the legal maximum being only 40 meters and the Forest Service had, by allowing logging in areas identified for large-scale harvesting under a Timber Permit, breached 'all aspects of the lawful process for approving timber operations.'

Bonua Magarida: For Bonua Magarida, the Review found that misleading representations had been made about events and the timber project was 'improper and in breach of the Act.' 'Highly suspicious paperwork' had been used in support of the 'illegal amendment' of the Timber Permit.

Simbali: The Simbali project was deemed by the review to be 'illegal,' with logging occurring across 11,700 hectares when the approval was for only 40 hectares; more than 34,000 cubic meters of logs had been exported when the approval was for 1,000.

The Review commented that the logging operator in the Simbali project was 'known to have illegally logged a previous area' and during the currency of the review had been granted permission for a further four such projects.

Review Recommendations: The review recommended immediate action to end logging in all three projects and the enforcement of a code of conduct for logging companies so that improper practices would serve as a disqualification from further involvement in other projects.

The Review considered that the actions of two individuals and three companies, Milne Bay Industries, Concord Pacific (Samling) and Kerawara was sufficient to ‘warrant de-registration and disqualification from further participation in the industry.’

Follow-up:

Kiunga / Aiambak; halted by courts

Simbali; Logged out

Bonua Magarida; Permit cancelled

4.2. REVIEW TEAM REPORT ON CONFIDENTIAL MATTERS

February 2003, 11 pages

The Review report on the first three projects investigated was accompanied by a 'Report on Confidential Matters' addressed to the Chief Secretary to the Government.

This report presented a general conclusion in these terms:

In his Report in the late 1980's Justice Barnett made reference to "Robber barons" of the forest industry roaming the countryside at will. The overwhelming conclusion of the Review Team, following its inquiry into the Kiunga-Aiambak, Bonua Magarida and Simbali matters, is that the robber barons are now as active as they ever were. They are not only free to roam, but are in fact encouraged to do so by persons whose proper role is to exercise control over them....Only a Commission of Inquiry could hope to unearth the entire picture and unravel the web of deceit.'

The Report lists a series of actions by four different individuals that the review considered warranted 'further inquiry.' Two of the named persons, Thomas Nen and David Nelson, had been Managing Director of the Forest Authority; one, Wari Iamo, was a senior Forest Board member⁸² and the other a Provincial Forest Minister.

However, the Review was clear to point out that, of the three projects studied, it had found no evidence of wrongdoing emanating from the Office of the Minister, the Forest Authority Board (with the one notable exception), the Office of the General Manager of the National Forest Service or forestry officers generally.

⁸² Interestingly, the Ombudsman Commission report summarised above had, in 2001, recommended that this same Board member, Dr Wari Iamo, be dismissed. No action was taken on this recommendation.

4.3. REVIEW OF WAWOI GUAVI BLOCKS 1, 2&3 (CONSOLIDATED) (WESTERN PROVINCE)

March 2003, 21 pages

Permit Holder: Rimbunan Hijau

Size of concession: 448,300 ha with a permitted annual harvest of 350,000 (one of the largest in Papua New Guinea)

Status of concession at time of review: The original Timber Permit was granted in April 1992 for a period of 10 years. The Minister for Forests signed a 10 year extension to the Timber Permit in February 2002. It was that extension that the Review was tasked with investigating.

Review Findings: The Review found serious fault in three important areas. The rights and interests of the resource owners (the local landowners) had not been observed or protected; the legal requirement for sustainability had not been applied; and, due legal process had not been followed.

The Report records '*it cannot be said that the interests of the resource owners or the nation have been secured in relation to the initial grant of the timber permit, or its extension*' and '*the actions of the permit holder and its affiliate⁸³ and of the former Managing Director, Thomas Nen, require a full inquiry.*'

The Report records that the landowner's resource rights had '*not been properly acquired by the State*' and the local people had been deprived of '*any clear and enforceable legal rights.*' Landowner benefits and social and infrastructure commitments were described as '*totally unsatisfactory and inadequate.*'

In processing the application for the extension,

- The rights of the landowners were 'overlooked';
- The binding recommendation of the Provincial committee was ignored;
- The Forest Board never gave its required approval, with the Report noting that the Board had been deliberately denied the opportunity to consider the proposed extension;⁸⁴
- The Managing Director had purported to act under delegated powers that he did not possess. The power to extend the Permit probably did not exist under the Forestry Act; and
- There had been no attempt to bring the project into line with the Forestry Act as that statute requires.

⁸³ This was a reference to the permit holder's parent company, Rimbunan Hijau, that had also been censured by the Ombudsman Commission in 2001 – see above – and was involved in the Vailala project considered below.

⁸⁴ The Managing Director withdrew the Board Paper before it was considered.

The issue of sustainability had been ‘*overlooked*’ and the report states ‘*it is clear that the resource will be exhausted well within the period of the extension.*’ The Review found there had been no attempt to apply a logging cycle to ensure sustainability.

The Report also notes that at the time of the Review, more than 150,000 cubic meters of logs valued at over K30 million (US\$ 10 million) had been exported since the extension was granted.

Follow-up: Logging still continues with no known remediation.

4.4. REVIEW OF VAILALA TRP BLOCKS 2&3 (GULF PROVINCE)

March 2003, 19 pages

Permit Holder: Rimbinau Hijau

Size of concession: 268,000 hectares with a permitted annual harvest of 300,000

Status of concession at time of review: The original Timber Permit was granted in June 1992 for a period of 10 years. The extension the Review was tasked with investigating was signed by the Minister for Forests in July 2002.

Review Findings: The Review found that there '*were most serious departures from due process*' when the original Timber Permit was granted in 1992 and that the permit was 'unlawful' as the State had not yet acquired the timber harvesting rights from the customary owners when logging permission was given to the permit holder.⁸⁵

The Report also reveals serious faults in the granting of the extension. The rights and interests of the resource owners (the local landowners) had not been observed or protected; the legal requirement for sustainability had not been applied⁸⁶; and due legal process had not been followed. The Review also concluded that the permit holder, Frontier Holdings (a subsidiary of Rimbunan Hijau) was "*not an appropriate company to hold an operating right in Papua New Guinea's forestry sector. Its share capital is insubstantial and its major shareholder is a company registered in the British Virgin Islands.*"⁸⁷

In processing the application for the extension,

- The rights of the landowners were 'denied';
- Proper sequences for events were not followed;
- Forest Board procedures were used that had 'no legal basis';
- The extension was granted after the permit had already expired - which the "Act does not allow;"
- The power to extend the Permit probably did not exist under the Forestry Act; and
- There had been no attempt to bring the project into line with the Forestry Act as that statute requires.

The Report also records that at the time of the Review, more than 134,000 cubic meters of logs valued at over K29 million (US\$ 10 million) had been exported since the extension was granted.

⁸⁵ Similar findings about this project were also noted when the Review of Forest Harvesting Projects being developed towards a Timber Permit or Timber Authority considered the proposed Vailala (Meporo) project in December 2000 (see Individual Project Review Report No.7 at 1.7 above)

⁸⁶ The Review concluded that the annual allowable cut for this project was probably more than three times the sustainable limit which was estimated at 90,000 cubic meters per year.

⁸⁷ At page 3

4.5. FINAL REPORT ON PASSISMANUA LOCAL FOREST AREA (WEST NEW BRITAIN PROVINCE)

March 2003, 27 pages

Logging Company: Rimbunan Hijau

Size of concession: 72,500 ha

Status of concession at time of review: This was a review of another Timber Permit extension, this one granted in January 2003.

Review Findings: The Review 'had no hesitation in finding the extension was unlawful.'

The Review found the extension should not have been granted as the Permit had already expired in March 2002; there was no lawful power to extend; and, the extension was given to a company that had been deregistered by the Registrar of Companies seven months earlier.

There were also serious departures from due process⁸⁸ noted in the Review report and a complete failure to ensure sustainability. The remaining resource was estimated by the Review at just 50,000 cubic meters but the 5 year extension allowed 150,000 cubic meters to be cut each year. The Review calculated the sustainable cut to be just 1,428 cubic meters per year.

The logging company involved in this timber harvesting project, Kerawara Limited, was the same as in the two previous review investigations. The Review thought this pattern of conduct was 'deserving of a full inquiry.'

Review Recommendation: The Review recommended that the actions of the permit holder, logging company, former Managing Director of the National Forest Service, Thomas Nen, and forestry officers involved in the extension were 'deserving of full inquiry.'

Follow-up: The extension was cancelled. Landowners sued claiming K2.7 million, and the NFS has conceded liability (wrongly in many opinions).

⁸⁸ The Review concluded that although it appeared the application for the extension was dated March 2002, it had been received in October and then back dated, and the landowners statutory rights not been observed.

CHAPTER 5: REVIEW OF CURRENT LOGGING PROJECTS (2004-05)

The Review, which began in June 2003 and was concluded in October 2004, was implemented as a condition of the loan agreement between the State of Papua New Guinea and the International Bank for Reconstruction and Development (World Bank), for the initiation of the Forestry and Conservation Project.

The Review was instigated under the auspices of the Department of National Planning and Monitoring with all reports directed to the Chief Secretary to Government in his role as the Chair of the Inter Agency Forestry Review Committee.—a committee which had been established as part of the earlier **Review of Forest Harvesting Projects being developed towards a Timber Permit or Timber Authority (2000-01)**.

This Review was conducted by an independent team to evaluate ‘overall compliance in existing logging projects’ and ‘review the standards and procedures available for monitoring and control of the industry.’⁸⁹ The six person team of consultants comprised two foresters, two lawyers, a landowner specialist and an environmental expert.⁹⁰

The Review was tasked with *‘identifying weaknesses and problems within the operation, monitoring and control of the PNG forest sector, which may be hindering progress towards meeting the Government’s key forestry objectives, which include ensuring the management of the nation’s forest resources as a renewable natural asset.’*⁹¹

The Review studied 14 existing logging projects, conducting both site visits and desk top studies of documentation held by the National Forest Service.

Six projects were selected for more in-depth case studies, with the Review Team members being assisted by representatives of Government Departments and Authorities who play a role in the management of the industry. This aspect of the Review was not wholly successful, with only two of eight invited Departments fully participating.

Although no methodology report was presented, the usual procedure was for the Review Team to examine Forest Service files, conduct a site visit, and prepare and distribute a draft project report, which was then finalized after consideration of stakeholder submissions.

The Review findings were presented in a series of individual papers that identified issues in relation to each logging project and made project specific recommendations for future action and identified wider forestry sector concerns.

The Project Review reports are each broken into nine sections with a series of ‘pertinent’ photos included as the first appendix. The nine sections are:

⁸⁹ All quotes taken from the Terms of Reference for the Review

⁹⁰ The team comprised Mr B. Everts (Team Leader) – Forestry and Forest Policy Specialist; Mr T. Vigus (Field Team Leader) – Forestry Specialist; Mr P. Harricknen and Mr G. Powell – Legal Specialists; Mr L. Romaso – Landowner Specialist; Mr T. Nagari – Environmental Specialist

⁹¹ This was stated to be in response to concerns to *‘ensure that the forest industry is moving satisfactorily towards a sustainable harvest yield basis, environmentally acceptable logging practices and is providing meaningful long term benefits to landowners.’*

1. Legal Basis, Parties and Contractual Relationships
2. Sustainability of Log Production
3. Field Work
4. Review Team Observations
5. Landowner Voiced Concerns
6. Provincial Administration District Office
7. Observations Regarding Silviculture
8. Broad Recommendations
9. Broader Forestry Sector Issues

The overall findings of the Review were presented in an “Observations and Recommendations” report and a series of detailed appendices.

5.1. INDIVIDUAL PROJECT REVIEW REPORT NO.1- IVA INIKA (CENTRAL PROVINCE)

November 2003, 21 pages (Field Review, July 2003)

Logging Company: Kerawara

Size of concession: 134,000 ha

Status of concession at time of review: For the Iva Inika project, the Report records the rights to harvest logs were acquired by the State in January 1972, and the original Timber Permit allowed the resource to be cut over a period of 10 years (December 1988 to December 1998). Harvesting targets were not met and the permit was extended for 5 years (to December 2003), five months after the original had expired. Therefore, the Review describes this extension as 'legally questionable.'

Forestry Officers understood that a further extension had been applied for and would likely be granted. The Review could find no evidence of the application being lodged or processed and noted an opinion exists that such projects cannot be lawfully extended.⁹²

The Review also noted that while an approved Environmental Plan was a legal requirement under the Forestry Act, the EP for this project expired in 1998⁹³ and the Review 'was unable to confirm' that the legal requirements for sub-contracting the logging rights had been observed.⁹⁴

With respect to the harvesting operation, the Report notes that while a 'fair effort' was being made to comply with relevant operating regulations, a number of 'key requirements' were not being met in the forest, log pond and camp area.

The Review also noted a number of other compliance issues including logging outside the project boundary, a failure by the Permit holder to lodge the required performance bond, employment of ex-patriot workers in positions legally reserved for nationals and the non-implementation of reforestation activities.

The Report includes lists of landowner and logging company employee concerns about the logging operation and the provision of benefits and details of the benefits that had been provided.

Follow-up: No recommendations from this Review have been implemented.

⁹² The Review also noted that the project area would in any event be 'logged out' within 6 months of the Field Review.

⁹³ The Review further notes that the requirement in the Environmental Plan for a monitoring and management program to be implemented had not been complied with and no Environmental Officer was engaged as stipulated in the Approval.

⁹⁴ The Review did not draw any conclusions on these issues although the evidence presented would seem to provide good grounds to further question the legality of the logging operation.

5.2. INDIVIDUAL PROJECT REPORT NO.2 WEST COAST MANUS (MANUS PROVINCE)

March 2004, 28 pages (Field Review, July 2003)

Logging Company: Rimbunan Hijau

Size of concession: 32,500 ha

Status of concession at time of review: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation. It is recorded that the rights to harvest logs were acquired by the State in February 1988, and the Timber Permit, granted in May that year, allowed the resource to be cut over a period of 15 years.⁹⁵

Due to various reasons, such as landowner disputes, adverse weather, and a lack of gravel for roads, logging targets were not met during the currency of the Permit; and at the time of the Review approximately half the resource remained to be cut and the Permit holder had applied for an extension.⁹⁶

The Review noted that a change in ownership of the logging contractor was legally ‘questionable’ as the Timber Permit holder did not give its prior written consent as required in its contract with the logging company.

With respect to the harvesting operation, the Report notes that while a ‘fair effort’ was being made to comply with relevant operating regulations, a number of ‘key requirements’ were not being met in the forest, log pond and camp area.

In this project, the Timber Permit was held by a company whose shares are owned by local landowners and which ‘in theory’ is operated on their behalf. The Report records that despite its considerable income from the logging project (‘estimated to be in excess of K7.2 million (US\$), based on amount of timber harvested’) there has been ‘very little tangible development in the project area.’ In part, this is blamed on ‘inappropriate use of funds’ and the example is given of an overseas marketing trip for 70 people.

The Report includes lists of landowner and logging company employee concerns about the logging operation and the provision of benefits and details of the benefits that had been provided.⁹⁷

Follow-up: No recommendations from this Review have been implemented.

⁹⁵ The Review does not expressly comment on the fact that at the time of the field visit the Timber Permit had already expired and therefore any continuing logging operations were unlawful under the Forestry Act

⁹⁶ Applying the reasoning used in the previous report, such an extension would have to be ‘legally questionable’ given that the Timber Permit had already expired. The earlier Review of Disputed Allocations found the extension of the Passismania Timber Permit in similar circumstances to be ‘unlawful.’

⁹⁷ The Review was not able to confirm the amount of royalty paid to the landowners during the lifetime of the project because of ‘inconsistencies in payment amounts, process and source of information.’ Based on the amount of timber harvested, the Review estimated that the amount paid should have been about K3.5 million.

5.3. INDIVIDUAL PROJECT REPORT NO.3 BUHEM MONGI BUSIGA (MOROBE PROVINCE)

March 2004, 27 pages (Field Review, August 2003)

Permit Holder: Willis Kent

Size of concession: 88,500 ha

Status of concession at time of review: It is recorded that the rights to harvest logs were acquired by the State in two agreements signed in 1996 and 1997, and the Timber Permit was issued in September 1997, allowing the resource to be logged over a 35 year period.

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

No copy of the agreement between the Permit holder and the logging contractor was available for the Review Team and the Report notes that the logging companies license to operate expired in August 2003.

The Report expresses reservations about legal compliance both in the development of the Timber Permit⁹⁸ and the licensing of the logging company.⁹⁹

The Review notes the stocking density used to calculate the total timber resource and the sustainable level of harvesting was 'unrealistically high,'¹⁰⁰ but makes no attempt to offer a realistic figure or explain the consequences.

With respect to the harvesting operation, the Report notes that while a 'fair effort' was being made to comply with relevant operating regulations, a number of 'key requirements' were not being met in the forest, log pond and camp area.

There were no reforestation activities being carried out by the logging company or Permit Holder despite their contractual obligations and there was no monitoring or enforcement of the Environmental Plan and its conditions.

The Report includes lists of landowner and logging company employee concerns about the logging operation, the provision of benefits and details of the benefits that had been provided.

Based on Forest Authority records, the Review found that since 1997, K1.1 million (US\$366,000) had been paid by the logging company as the 'Project Development Levy' to fund infrastructure developments,¹⁰¹ and K1.75 million (US\$582,000) had been paid to landowners as a royalty calculated on the amount of timber exported.

Follow-up: No recommendations from this Review have been implemented.

⁹⁸ The decision to exempt this project from public tender and grant it as an extension is described as legally 'questionable' and some landowners did not sign the Forest Management Agreement.

⁹⁹ The license application was 'flawed.'

¹⁰⁰ A net average volume of 44 cubic meters per hectare was used.

¹⁰¹ In fact, the Review notes that 60% of this money was paid out as cash to the landowners.

5.4. INDIVIDUAL PROJECT REPORT NO.4 MAKAPA (WESTERN PROVINCE)

April 2004, 27 pages (Field Review, September 2003)

Permit Holder: Innovision

Size of concession: 301,500 ha

Status of concession at time of review: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

It is recorded that the rights to harvest logs were acquired by the State in 1991 and that the Timber Permit was issued the following year, allowing the resource to be logged over a 10 year period. The permit was extended in January 2003 for a further 10 year period.¹⁰²

The State and the Permit holder signed a project agreement in 1996 that estimated the total timber resource to be 7.9 million cubic meters. This was later revised down to 5.9 million and the annual allowable cut set on a 35 year logging cycle at 170,000 cubic meters. The Report notes the Permit holder now considered the resource to have been over estimated and that the correct total figure is around 3.6 million cubic meters.

The Permit holder has engaged a logging contractor to deal with timber harvesting and marketing.

Review Findings: With respect to the harvesting operation, the Report notes the rules are being followed ‘reasonably well,’ although a number of ‘key requirements’ were not being met in the forest, log pond and camp area. Residual damage from the harvesting operation was noted as ‘minimal’ and was attributed to the low stocking density, gentle slopes and quality of the harvesting.

The Report includes lists of landowner and logging company employee concerns about the logging operation and the provision of benefits and details of the benefits that had been provided.

The Report commends the Permit holder for embarking on a process that could lead to the certification of its forest management practices and for *‘employing a cadre of national officers with professional qualifications in forestry and forest management, both experienced personnel as well as recent graduates.’*

Based on Forest Authority records, the Review found that between 1999 and July 2003, just under K6 million (US\$2 million) had been paid by the logging company to landowners as a royalty calculated on the amount of timber exported and K735,000 (US\$245,000) had been paid as a log export ‘Premium.’

Review Recommendations

Follow-up: No recommendations from this Review have been implemented.

¹⁰² The Report describes the fact of the extension as legally ‘questionable’ and applies the same judgment to the fact the extension was granted after the permit had expired.

5.5. INDIVIDUAL PROJECT REPORT NO.5 KAPULUK AND EXTENSION (WEST NEW BRITAIN)

April 2004, 28 pages (Field Review, September 2003)

Logging Company: Samling

Size of concession: 165,500 ha

Status of concession at time of review: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

It is recorded that the rights to harvest logs were acquired by the State in two agreements signed in 1971 and 1975. A Timber Permit was issued in 1988 allowing the resource to be logged over a period of 20 years.¹⁰³

In 1997 the Timber Permit was transferred to a different company, and in 2001 they engaged a contractor company for the harvesting and marketing activities.¹⁰⁴

The Review notes that the original project agreement included the requirement for a woodchip mill and reforestation activities to ensure supply. According to the current logging company a mill was built by the original permit holder but was never commissioned because it was not financially viable.

Review Findings: With respect to the harvesting operation, the Report notes that while a ‘fair effort’ was being made to comply with planning requirements, the ‘actual felling and extraction of the timber is generally done with little care.’ A number of ‘key requirements’ are listed that were not being met in the forest, log pond and camp area. Further, the harvesting was described generally as ‘destructive.’

Some reforestation activities had been attempted but the quality ‘varied from area to area.’ There was no monitoring or enforcement of the Environmental Plan and its conditions. As a result, the Report notes ‘the resource is expected to be exhausted within the next 8 years, with no meaningful resource replacement having been achieved, except for the areas of regeneration treated, much of which has been degraded by fires.’

The Report includes lists of landowner and logging company employee concerns about the logging operation, the provision of benefits and details of the benefits that had been provided.

Based on Forest Authority records, the Review found that between January 1993 and June 2003, US \$1.4 million was paid out to landowners as a royalty calculated on the amount of timber exported, and a further \$193,000 was awaiting distribution. In contrast, the Permit holders records showed that the landowners benefits were almost US \$1.9 million, although this did include \$123,000 for security contracts and \$83,000 in stevedore fees.

Follow-up: No recommendations from this Review have been implemented.

¹⁰³ The Review notes that the Permit holder had in fact begun logging in the project area some 7 years before signing the Project Agreement under a different Timber Permit.

¹⁰⁴ The Review could find no evidence of the requisite approval for this arrangement under the terms of the Timber Permit.

5.6. INDIVIDUAL PROJECT REPORT NO.6 SERAJI AND SERAJI EXTENSION (EAST NEW BRITAIN)

April 2004, 20 pages (Field Review, October 2003)

Logging Company: Deegold

Size of concession: 47,000 ha

Status of concession at time of review: It is recorded that the rights to harvest logs were acquired by the State in 1988 and the Timber Permit was issued in November 1995, allowing the resource to be logged over a 10 year period.¹⁰⁵

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

The Review found the Timber Permit was granted using forms under a repealed Forestry Act and that the ten-year term of the permit was not in compliance with either the National Forest Policy or the then current Forestry Act.

According to the Report, the Timber Permit was held by what was ‘in theory’ a landowner company.¹⁰⁶ That company had logging and marketing arrangements with two different logging companies – only one of which had been approved as required under the terms of the Permit. The actual logging operation was being carried out by a third, unlicensed company.

With respect to the harvesting operation, the Report notes that set-up plans were ‘not properly prepared’ and the logging operator admitted on-site that the key logging standards were not being followed. The Report lists a number of ‘key requirements’ that were not being met in the forest, log pond and camp area and concluded that ‘the operation was not being carried out in an appropriate manner.’

According to the Permit Holder landowner financial benefits totalled K226,000 while infrastructure developments had been provided to a value of ‘about K1million.’¹⁰⁷

The Review found that the Department of Environment and Conservation did not have a copy of any Environmental Plan for this project, nor any instrument approving an Environmental Plan and no record of any site visits since the project commenced.

¹⁰⁵ There is a little confusion in the Report as to the length of the Timber Permit. In two places the Permit is described as a 10 year permit, issued in 1995 but expiring in 2004. Logic suggests either the permit was issued in 1994, or it was for 9 years, or it expires in 2005.

¹⁰⁶ The Review notes that the company has only two Directors who are also the only shareholders and ‘records show nothing about landowners being shareholders and ultimate beneficiaries.’

¹⁰⁷ The report contains no verification of these figures from Forest Authority data or independent log export monitoring. The Report also contains no mention of the fact that part of the area being logged under this Timber Permit was included three years earlier in the Review of Timber Harvesting Projects being developed towards a Timber Permit – see at 1.24 above.

The Report includes lists of landowner and logging company employee concerns about the logging operation and the provision of benefits.

Follow-up: No recommendations from this Review have been implemented.

5.7. INDIVIDUAL PROJECT REPORT NO.7 VAILALA BLOCK 1 (GULF PROVINCE)

April 2004, 25 pages (Field Review, October 2003)

Logging Company: Rimbunan Hijau

Size of concession: 113,400 ha

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

It is recorded that the rights to harvest logs were acquired by the State in 1989 and the Timber Permit was issued in February 1991, allowing the resource to be cut over a 12 year period. The Permit had since been transferred from the original holder to the current incumbent.¹⁰⁸

The Timber Permit was extended in April 2003 for a further term of 6 years. The Review regarded this extension as 'legally questionable' as it was done after the expiry of the original and as 'a legal opinion exists,' that extensions of projects that pre-date the 1991 Forestry Act are not permitted.

The Permit holder had engaged a succession of different companies to carry out logging and marketing activities, the latest in 2002. The Review was unable to locate a copy of the relevant agreement between the Permit holder and its contractor.

The Review found 'no evidence' that the Permit holder was abiding by its obligation to implement natural regeneration management over an area of 300 hectares each year.

With respect to the harvesting operation, the Report notes that set-up plans were 'inadequate' and lists a number of 'key requirements' that were not being met in the forest, log pond and camp area. The Report concludes that the logging practices are 'causing excessive damage to the residual stand.'

The Review estimated from log export data that some K2.5 million (US \$832,000) had been paid to landowners from January 1997 to November 2003 but noted '*neither the Regional Office nor the Headquarters of the Forest Authority could furnish any statistics regarding royalty payments.*'

The Report includes lists of landowner and logging company employee concerns about the logging operation and the provision of benefits and provides a list of key infrastructure requirements that had not been met by the Permit holder.

The Review found that the Department of Environment and Conservation had archived the Environmental Plan for this project and had failed to monitor compliance with the EP Approval Conditions – many of which had been breached.

Follow-up: No recommendations from this Review have been implemented.

¹⁰⁸ The Review could find 'no evidence' of any formal transfer of the Timber Permit.

5.8. INDIVIDUAL PROJECT REPORT NO.8 VAILALA BLOCKS 2&3 (GULF PROVINCE)¹⁰⁹

April 2004, 19 pages (Field Review, October 2003)

Logging Company: Rimbunan Hijau

Size of concession: 267,820 hectares and a maximum allowable annual cut of 300,000 m³

Review Findings: The Report set out the key requirements of the Timber Permit for this project and provided a list of the other legal documents that underpinned the timber harvesting operation.

The Report records that the rights to harvest logs were acquired by the State in December 1995 – more than three years after the Timber Permit was issued in June 1992,¹¹⁰ allowing the resource to be cut over a 10 year period.¹¹¹

The Timber Permit was extended in 2002 for a further term of 10 years. The Review regarded this extension as 'legally questionable' as it was done after the expiry of the original permit and as 'a legal opinion exists' that extensions of projects that pre-date the 1991 Forestry Act are not permitted.¹¹²

At the time of its field visit the Review found logging operations suspended as a result of court action brought by the landowners, but the Report lists a number of 'key requirements' that were not being met in the forest, log pond and camp area.

The Report notes the 'need for improved observance of the Key Standards' and the Review's conclusion that 'current logging practices are causing damage to the watercourses and residual stand.'

The Review estimated from log export data that some K5.5 million (US \$1.8 million)? had been paid to landowners from January 1997 to November 2003 but noted '*neither the Regional Office nor the Headquarters of the Forest Authority could furnish any statistics regarding royalty payments.*'

The Report includes lists of landowner and logging company employee concerns about the logging operation¹¹³ and the provision of benefits.

Follow-up: No recommendations from this Review have been implemented.

¹⁰⁹ Some of the circumstances surrounding this project were also considered in the Individual Project Report for Vailala (Meporo) as part of the year 2000 Review of Forest Harvesting projects being developed towards a Timber Permit – see at 1.7 above

¹¹⁰ The Report also discloses that there was no approved Environmental Plan when the Timber permit was issued and approval was only granted in January 1996.

¹¹¹ The Report notes the Timber Permit was controversial because the timber rights had not yet been acquired from the landowners and although signed by the Minister, the Permit was not a document produced by the Forest Authority

¹¹² The circumstances and details of the extension were more extensively examined as part of the Review of Disputed Permits and Extensions – see 4.5 above.

¹¹³ These include allegations of serious labor abuses.

5.9. INDIVIDUAL PROJECT REPORT NO.9 TURAMA (GULF PROVINCE)

April 2004, 28 pages (Field Review, November 2003)

Logging Company: Rimbunan Hijau

Size of concession: 1,722,000 hectares with a sustainable annual allowable annual cut of 340,000 m³

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

The Report records that the rights to harvest logs were acquired by the State in May 1995 and that the Timber Permit was issued in the following month, allowing the resource to be cut over a 35 year period.

The Report notes that although the project appeared to be '*soundly based, the security of project documents and records did not allow the Team to satisfy itself of legal compliance and due process.*'¹¹⁴

The Review found the permit covered 'large areas' of limestone karst country that was excluded from logging in the Code of Practice but that were being harvested. The Report also lists a number of 'key requirements' in the Logging Code that were not being met in the forest, log pond and camp area.

The Report records that outside the limestone karst areas, logging activity is 'causing excessive damage to the topsoil and streams due to the breaches of the Key Standards.'

The Review estimated from log export data that some K14.3 million (US \$4.8 million) had been paid to landowners from January 1997 to November 2003 but noted '*neither the Regional Office nor the Headquarters of the Forest Authority could furnish any statistics regarding royalty payments.*'

The Report includes a list of landowner concerns about the logging operation and the provision of benefits and a separate report from the Department of Labour on employment issues.

The main issues covered in the Labour report are: the employment of excessive numbers of overseas workers and the lack of skills training for national employees; the total absence of any safe working practices or safety equipment; the inadequate and unsanitary housing conditions; and the workers concerns about their pay and entitlements.

Follow-up: No recommendations from this Review have been implemented.

¹¹⁴ The Review seemed to be unaware that the issue of the Timber Permit had been investigated in 1996 by the Ombudsman Commission which concluded the Permit was 'improper and had no legal backing.' The Ombudsman found failures to observe due process at almost every stage and a deviation from key clauses of the Forestry Act. The Ombudsman Report recoded 'there are reasons to believe that there was political interference.'

5.10. INDIVIDUAL PROJECT REPORT NO.10 WATUT WEST (MOROBE PROVINCE)

April 2004, 23 pages (Field Review, December 2003)

Permit Holder: PNG Forest Products

Size of concession: 37,400 ha

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

This project is the only harvesting operation reviewed where all the logs were domestically processed through a local sawmill and ply-mill.¹¹⁵ The maximum allowed annual cut in the project area was reported to be 34,000 cubic meters.

The Report records that the rights to harvest logs were acquired by the State in 1992, and a Timber Permit was issued immediately allowing the resource to be cut over a 10 year period. This permit had since been extended for a further five years.¹¹⁶

The Review found '*a good effort is being made to meet Planning Monitoring and Control Procedures*'...and '*the actual felling and extraction of the timber is also done in a generally satisfactory manner, including decommissioning of roads and establishing water bars along snig tracks.*' The Review did, however, note that despite the 'generally high standard' of felling and extraction, damage to the residual stand was 'often quite severe.'

The total landowner royalties generated by the project from July 1992 to August 2003 were recorded at K1.1 million with an additional K550,000 (US \$183,000) paid in various levies by the Permit holder.

The Report includes a list of landowner concerns about the logging operation and the provision of benefits and a separate report from the Department of Labour on employment issues, which provides a favorable assessment of the project.

Follow-up: No recommendations from this Review have been implemented.

¹¹⁵ The Watut project supplies about 20% of the raw material processed in the saw and ply mills – the rest is sourced from local plantations.

¹¹⁶ The Review notes legal opinions exist that such extensions are not permitted under the Forestry Act and may 'need to be revisited.'

5.11. INDIVIDUAL PROJECT REPORT NO.11 ANIA KAPIURA (WEST NEW BRITAIN PROVINCE)

September 2004, 40 pages (Field Review, February 2004)

Logging Company: CS Bos

Size of concession: 188,000 ha

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

The Report records that the rights to harvest logs were acquired by the State in 1969, in 38 individual transactions with different landowner groups. A Timber Permit was issued in 1989 allowing the resource to be cut over a 25 year period and requiring substantial areas of plantation to be established.

The Permit allowed an annual harvest of 300,000 cubic meters. By year 11, 20,000 cubic meters was to be sourced from the plantations, with this figure rising to 300,000 cubic meters (or 100%) by year 21 (2010).¹¹⁷

On legal compliance, the Report notes that the five year extension of the Timber Permit was 'legally questionable' although no details are given as to when the extension occurred.¹¹⁸

The Review found a 'good effort' was being made to properly plan the harvesting operations but a number of 'key requirements' in the Logging Code were not being met. Generally the log pond and camp area were of a good standard.

Between 1993 and June 2003, the Permit holder had paid K7.75 million (\$2.6 million) in timber royalties to the landowners and between 1997 and 2002 paid just over K2 million (\$666,000) as an additional 'Project Development Benefit.'

The Review noted that although the Permit holder had fulfilled most of its infrastructure obligations, particularly road construction, most of these were now 'not trafficable' and only one permanent bridge remained.

The Review found that the Department of Conservation had archived the Environmental Plan for this project and was unable to locate a copy of the Plan Approval Conditions or details of its last monitoring visit.

A separate report from the Department of Labour on employment issues highlights the lack of cooperation from the company newly engaged to carry out the timber harvesting in verifying its employment of overseas workers and the total absence of any safe working practices or safety equipment.

¹¹⁷ The Review found that approximately 10,000 hectares of plantation had already been established and the level of plantation harvesting had reached 75,000 cubic meters per annum.

¹¹⁸ Elsewhere, the Report describes the Timber Permit as being granted in 1989 for a 25 year period. If this is accurate then it raises a question about why any extension has been affected.

A supplementary report from the Department of Community Development concludes that there were no visible signs that local people had benefited from over 15 years of logging. People were still living in bush material houses with no toilet facilities, and the children were displaying common symptoms of malnutrition. Local people were not benefiting from direct employment in the project, women received only a tiny part of royalty incomes, and environmental impacts had affected fish stocks and water quality and access to firewood.

Follow-up: No recommendations from this Review have been implemented.

5.12. INDIVIDUAL PROJECT REPORT NO.12 OPEN BAY (EAST NEW BRITAIN PROVINCE)

September 2004, 37 pages (Field Review, February 2004)

Permit Holder: Open Bay Timbers (owned by Kowa Lumber)

Size of concession: 15,600 ha

Review Findings: The Report sets out the key requirements of the Timber Permits and Agreements for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

The Report records that the rights to harvest logs were acquired by the State in 1967, and the first Timber Permit was issued in 1986. Since then a number of short periodic extensions had been granted, the latest in December 2002 for two years.¹¹⁹

Like the previous project reviewed, the Project Agreement for this operation required the Permit holder to progressively establish an area of forest plantation to provide continuity of supply. The holder was also required to install a woodchip mill.

The Review found 12,000 hectares of plantation had already been established; the harvesting of plantation material began in 1997 and has risen from 40,000 cubic meters in year one to 82,000 cubic meters in 2003. Harvesting continued in the natural forest area, with 21,000 cubic meters of logs exported in 2003.

The Review found a 'good effort' was being made in forest harvest planning and logging was being carried out in 'strict compliance' with the Code and Key Standards.

The Report records that since 1994 landowners had received almost K4.2 million (US \$1.4 million) in royalties.¹²⁰ The logging company had also complied with many infrastructure obligations, including road construction and the provision of permanent culverts and bridges. The company had established a small township with well equipped schools and hospital.

Again, the Review found that the Department of Conservation had archived the Environmental Plan for this project and was unable to locate a copy of the Plan Approval Conditions or any details of its last monitoring visit.

The Report includes a list of landowner concerns about the logging operation and the provision of benefits and a separate report from the Department of Labour on employment issues.

The Labour report commends the Permit holder for its training of national staff and localization of positions, but is critical of the complete absence of health and safety measures.

¹¹⁹ The Review found past permit extensions were 'not done in accordance with the current Act' and 'cannot be lawfully maintained.' There was also the problem that the extension of a Timber Permit issued under the old Act is 'legally questionable.'

¹²⁰ Records prior to 1994 were destroyed by a major volcano.

A supplementary report from the Department of Community Development presents a generally positive picture of the impacts of the timber harvesting and management operations.

The Review found: *'The project at Open Bay illustrates the potential for a sustainable timber industry based on natural forest logging combined with the establishment of a suitable area of high yielding forestry plantations, and furthermore the potential to phase out logging of natural forests if a suitable area of forestry plantations can be established with secure land tenure.'*

Follow-up: No recommendations from this Review have been implemented.

5.13. INDIVIDUAL PROJECT REPORT NO.13 VANIMO (WEST SEPIK PROVINCE)

September 2004, 41 pages (Field Review, March 2003)

Permit Holder: Vanimo Forest Products (owned by WTK)

Size of concession: 292,000 ha

Review Findings: The Report set out the key requirements of the Timber Permit for this project and provided a list of the other legal documents that underpinned the timber harvesting operation.

The Report records that the rights to harvest logs were acquired by the State in 1967, and a Timber Permit was issued in 1991 allowing the resource to be cut over a 20 year period.¹²¹

The Permit allows an annual harvest of 250,000 cubic meters with 85,000 to be processed through the Permit holders sawmill.¹²²

The Review found a 'lack of compliance' with the rules governing the planning of harvesting operations, and a number of 'key requirements' in the Logging Code were not being met in the forest and camp area. The log pond was noted to be 'generally well set up and managed.'

The Review also notes that approximately 8,000 hectares of logged forest had been treated to encourage revegetation, although some of these areas had then been re-logged.

According to the Report, the Permit holders own data showed that between 1990 and 2002, almost US \$13 million was paid in timber royalties and levies to the landowners and US \$38 million to the Government in export duties.

The Review noted that although the Permit holder had fulfilled many of its infrastructure obligations and had provided some additional items, there were also many obligations that remained outstanding.

A separate report from the Department of Labour on employment issues is critical of the Permit holder's employment of ex patriot workers, absence of any formal training programs, and complete lack of any health and safety procedures. The report lists a number of serious concerns raised by the company workforce about their employment terms and conditions.

A supplementary report from the Department of Community Development lists a number of serious negative social and environmental impacts from the logging operation that have an impact particularly on women and their families.

Follow-up: No recommendations from this Review have been implemented.

¹²¹ The Review points out that the State's agreement with the landowners will expire in 2007, and with it the projects 'legal foundation,' this is four years earlier than the expiry date on the Timber Permit.

¹²² The actual harvesting level is recorded as averaging 203,000 cubic meters between 1997 and 2003, with an average of 43,000 cubic meters processed through the sawmill.

5.14. INDIVIDUAL PROJECT REPORT NO.14 WAWOI GUAVI (WESTERN PROVINCE)

March 2005, 51 pages (Field Review, April 2004)

Permit Holder: Rimbunan Hijau

Size of concession: 488,300 ha and a maximum allowable annual cut of 300,000 m³

Review Findings: The Report sets out the key requirements of the Timber Permit for this project and provides a list of the other legal documents that underpinned the timber harvesting operation.

The Report records that the rights to harvest logs were acquired by the State in three separate transactions in 1981, 1985 and 1989. A Timber Permit was issued in 1992 allowing the resource to be cut over a 10 year period and was extended in 2002 for a further ten years.¹²³

At the time of the Review, the Permit allowed an annual harvest of 350,000 cubic meters with 100,000 to be processed through the Permit holders sawmill and veneer plant.

The Review found a lack of compliance with the rules governing the planning of harvesting operations and a large number of 'key requirements' in the Logging Code were not being met in the forest, log pond and camp area.

Forest Authority data quoted in the Report records that between 1992 and 2003, almost 3.9 million cubic meters of logs were harvested, and US \$11.6 million was paid in timber royalties, premiums and levies to the landowners and US \$40 million to the Government in export duties.

The Review noted that although the Permit holder had fulfilled many of its infrastructure obligations and had provided some additional items, there were also many obligations that remained outstanding

The Report includes a long list of landowner concerns about the logging project and records the '*use of physical force by the Police Task Force to intimidate employees and landowners was one of the major issues raised by all members of the community.*'

A separate report from the Department of Labour on employment issues is critical of the Permit holder's excessive employment of ex patriot workers, absence of any formal training programs, complete lack of any health and safety procedures, and poor housing and sanitation. The report lists a number of serious concerns raised by the company workforce about their employment terms and conditions. The Report concludes the treatment of National workers '*reflects labour exploitation and slavery, and should be condemned at all levels.*'

A supplementary report from the Department of Community Development notes the provision of medical facilities within the logging camp, but is very critical of the employment conditions for women and a number of negative social impacts from the logging operation.

Follow-up: No recommendations from this Review have been implemented.

¹²³ That extension was examined as part of the Review of Disputed Timber Permits and Extensions in 2003 – see at 4.3 above.

5.15. REPORT TO THE INDEPENDENT REVIEW COMMITTEE INTO THE OPERATIONS OF THE ROYAL PNG CONSTABULARY

June 2004, 12 pages

At the same time that the Review of Current Logging Projects was being conducted, an entirely separate and independent Review was taking place into the operations of the Royal PNG Police.

The Team Members for the Review of Current Logging Projects, apparently voluntarily, decided to submit some of their findings to the Police Review.

The Report from the Forestry Review Team contains a summary of the allegations heard by them from landowners and logging company employees about the activities of police officers in certain logging project areas.

The Report contains extracts from five Individual Project Reports¹²⁴ that contain allegations of police officers being hired or paid by logging companies to suppress legitimate opposition to the logging operations and suppress any dissent by using physical force and intimidation.

¹²⁴ No.1 Iva Inika; No.8 Vailala Blocks 2&3; No.9 Turama; No.13 Vanimo; No.14 Wawoi Guavi.

5.16. BRIEF SITUATION REPORT ON WAWOI GUAVI (WESTERN PROVINCE)

July 2004, 6 pages

The Review of Current Logging Projects encountered various difficulties in its attempts to assess the Wawoi Guavi logging project.¹²⁵

Following its successful field visit in April 2004, the Review Team submitted a brief report to the Chief Secretary to Government, Director General of National Security and the Police Commissioner.

The Report includes a diary of the field visit starting with the arrival of the advance security contingent on the 15th of April through to the last departures on 24th April.

The Report contains information that the Timber Permit holder / logging company tried, in breach of a Court order, to disrupt the field visit by paying landowners to agitate trouble.

The Report also presents information on allegations of serious human rights abuses, gun and drug smuggling, people trafficking and immigration offenses and abuses by police officers paid by the logging company.

¹²⁵ The Review Team was prevented from carrying out its first field visit by an angry mob that greeted them at the local airstrip and forced them back onto their plane. Court proceedings were then initiated by the Timber Permit holder / logging company to try and prevent the field visit and publication of the Review findings.

5.17. FINAL REPORT

August 2004, 124 pages (plus eleven appendices¹²⁶ of 154 pages total)

The final document produced by the Review of Current Logging Projects was the Observations and Recommendations Report, which presented the main findings from the whole Review process.¹²⁷

The overall conclusion was that given current market and fiscal conditions, the current non-compliance with environmental standards, and the inadequate monitoring and control, timber production as currently practiced is not sustainable.

This conclusion was underpinned by a number of broad but definitive findings:

1. Logging has little long-term beneficial impact on landowners, although they bear the environmental costs. Personal income is directed to immediate consumption, and community income tends to be squandered and is generally too small to impact significantly on rural living standards.¹²⁸
2. Government extracts some US \$36.6 million per annum out of the sector that goes into consolidated revenue and does not deliver any social services to the communities in the logging projects.
3. At current log prices, the logging industry is not profitable and companies are not replacing their field equipment. This is not sustainable and it is estimated the current logging capacity will cease to exist within 10-15 years.
4. Many breaches of the logging standards go unreported and are not actioned.¹²⁹ Field based officers have lost faith that their attempts to impose sanctions will be backed up by senior management, who take their cue from political leaders.
5. The capability of the Forest Authority has declined significantly with a 'notable lack of strategic thinking and planning, and significant internal divisions.'
6. The Department of Environment is 'ineffective in the forestry sector' and its ability to undertake effective monitoring and control has been 'fatally damaged.'

¹²⁶ Review terms of reference; List of logging projects to be reviewed; Letter to industry; Questionnaires and summarised responses; Review of the application of the planning monitoring and control procedures; Compliance with key standards; List of issues noted during the field work; Socio-economic and financial impact report; Status of forestry and environmental measures introduced since 1993; Appropriateness of current legislative and regulatory requirements; Breakeven log fob price to support sustainable timber production at 1.8 million m³ per annum.

¹²⁷ The final report comprised three volumes: (1) Observations and Recommendations Report; (2) Appendices; and (3) Consultation Material (a summary of the consultations with key stakeholders on the draft Observations and Recommendations Report of May 2004 and the written submission received).

¹²⁸ *'To date there is little evidence of logging providing landowners with any long term sustainable benefits, or that as a result of logging there is a sustainable improvement in the average standard of living. In some instances where logging stops, and the cash flow to landowners stops, landowners are worse off as they have learned to depend on store bought food.'*

¹²⁹ The Review found among logging companies 'a general contempt (with notable exceptions) for environmental and conservation values.'

The Report identifies a number of key requirements considered necessary before sustainable timber production could become a reality. The first item on the list is ‘political will and support from Ministers.’¹³⁰

¹³⁰ The Report notes PNG has ‘all the necessary policies, laws, regulations and guidelines required to ensure that sustainable timber production can be achieved,’ but that regulatory authorities do not have the will or capacity to achieve compliance.

CHAPTER 6: COMPLIANCE AUDITS (2004-05)

Eight Audits were conducted between February 2004 and March 2005 to assess compliance with applicable laws for new Timber Permits and Permit Extensions. The results of the audits were presented in six separate reports.

The Audits were requested by the Government of Papua New Guinea, through the Office of the Chief Secretary, as part of its obligations under the loan agreement with the International Bank for Reconstruction and Development (World Bank) for the Forestry and Conservation Project.

Under the agreement,¹³¹ the Government was required to have all new logging permit applications reviewed by consultants to determine the status of compliance with the Forestry Act.

The Audits were all completed by the Team Leader for the Review of Current Logging Projects, which was ongoing at the same time the Compliance Audits were required.

The findings of each Audit were presented in individual Reports submitted to the Chief Secretary.

¹³¹ Schedule 5 Clause 10

6.1. AUDIT OF COMPLIANCE OF THE ALLOCATION OF THE EAST AWIN FORESTRY PROJECT (WESTERN PROVINCE)

February 2004, 10 pages (plus four attachments of 29 pages total)

Permit Holder: GL Lumber (owned by CS Bos)

Size of concession: 184,000 ha

Review Findings: This was a review of legal compliance in the granting of timber harvesting rights for the East Awin project.¹³²

The Review found the Timber Permit granted in September 2003 was void by virtue of the logging company's failure to lodge a required performance bond within the stipulated period.

The Review also considered the Minister for the Environment 'erred' when he approved an Environmental Plan without the advice of his Department and 'without adequate environmental consideration.'

The logging company had, in any event, failed to comply with the conditions attached to the approval and the Review recommended that the Minister exercise his powers to cancel it.

Further, the logging project was found not to be in compliance with the sustainability requirements of the Forestry Act and National Forest Policy as the annual allowable cut had been set 'far too high.'¹³³

The Review estimated the correct sustainable harvest to be 37,500 cubic meters per year, 'significantly less' than the 140,000 cubic meters allowed under the Timber Permit (and less than the 70,000 cubic meters considered the minimum for a viable log export operation).¹³⁴

Review Recommendation: The Review recommended the logging company be advised the Timber Permit was void and a field inventory be conducted before a decision was made on whether the project could proceed.

Follow-up: The Audit findings have been ignored and no action was taken. In 2005 the Permit Holder mobilized its resources and began construction of a base camp and other logging infrastructure in the project area. In December these activities were halted by court injunctions under a legal challenge to the validity of the permit brought by the NGO representative on the Forest Board.

¹³² This proposed logging project had also been considered at an earlier stage of the allocation process during the 2001 Review – see at 1.12 above.

¹³³ The Review considered the error was a result of the failure of the National Forest Service to implement the recommendation of the 2001 Review that additional field inventory work be carried out and its reliance on estimates of the timber stocking density that were manifestly too high.

¹³⁴ Such a reduction in the annual harvest would presumably not only impact on the viability of the log export operation but would also have implications for the viability of the proposed sawmill and veneer plant.

6.2. OBSERVATIONS REGARDING THE EXTENSION OF THE TERM OF THE TIMBER PERMIT FOR WAWOI GUAVI (WESTERN PROVINCE)

April 2004, 31 pages

Permit Holder: Rimbulan Hijau

Size of concession: 488,300 ha

Review Findings: This was a Review of a ten-year extension to the Timber Permit for the Wawoi Guavi logging project, granted in February 2002,¹³⁵ and the on-going negotiations to agree a new set of Permit Terms and Conditions to assess legal compliance.

The Review found that 'at no time' since the Timber Permit was extended in February 2002 were its terms and conditions in compliance with the Forestry Act or National Forest Policy and that the terms currently under negotiation would also not achieve compliance.

The Report records that there was no legal basis for the extension of the Timber Permit and draws the conclusion that '*current ongoing logging operations also have no legal basis.*'

The Report questions whether legal compliance could ever be achieved given the limited extent of the remaining timber resource¹³⁶ and the number and extent of the steps that would have to be taken.¹³⁷

The question is therefore posed in the Report as to whether economic and social considerations favored allowing the project to continue, and therefore whether a change to the law through legislative amendments should be contemplated to legalize the logging operations.

The Review noted the legal validity of the project was currently being challenged through the courts by a group of landowners and the Report recommended this be determined as 'a matter of urgency' before any other measures were taken.

Review Recommendation: A number of recommendations are made in the Report both to achieve legal compliance for the particular project and to improve procedures in the future.

Follow-up: No known remediation measures taken; logging continues.

¹³⁵ This same Permit Extension was also considered as part of the Review of Disputed Permits and Extensions, see at 4.3 above, and as part of the Review of Current Logging Operations, see at 5.14 above

¹³⁶ This is assumed to be around 850,000 cubic meters - which if logged over a 40 year period would yield only about 20,000 cubic meters a year. This is much less than the minimum considered necessary for a viable forestry operation (30,000 cubic meters).

¹³⁷ These steps included setting up Incorporated Land Groups, negotiation of a Forest Management Agreement, the determination of a sustainable annual allowable cut, the completion of a Development Options Study, the issuance of Project Guidelines, and public advertisement of the resource.

6.3. AUDIT OF COMPLIANCE OF THE ALLOCATION OF THE AMANAB BLOCKS 1-4 FORESTRY PROJECT (WEST SEPILK PROVINCE)

August 2004, 12 pages (plus four appendices of 49 pages total)

Permit Holder: WTK

Size of concession: 243,000 ha

Review Findings: This was a Review of legal compliance in the granting of harvesting rights for the Amanab Blocks 1-4 forestry project in a Timber Permit dated June 2004.¹³⁸

The Report highlights what it describes as a '*divergence of political opinion that can also be seen in Government Departments and Authorities on the priorities within the forestry sector.*'

One political 'bloc' is described in the Report as wishing to see new projects processed quickly, while the other wishes to see them developed in accordance with the Time Bound Action Plan that incorporated the recommendations from the earlier Review of Forestry Projects being developed towards a Timber Permit and which formed the lynch-pin of the Forestry and Conservation Project.

The Report considers the Timber Permit granted in June 2004 to be void by virtue of the Permit holder's failure to lodge a performance bond with the 21 day period prescribed by the Forestry Act.

The annual allowable cut set out in the Project Agreement and the Timber Permit is not considered by the Review to be sustainable. The Report estimates the sustainable annual allowable cut to be just 17,500 cubic meters,¹³⁹ while 94,000 cubic meters is set out in the project documentation.¹⁴⁰

Various other compliance issues are noted including the fact the Project is not listed for development in the National Forest Plan which is a requirement in the Forestry Act and a failure to implement the conditions attached to the Minister of Finance's approval of the Project Agreement.¹⁴¹

The Report also highlights the fact the Minister for the Environment approved the Environmental Plan for the logging project before receiving the considered advice of his Department.

Review Recommendation: A number of recommendations are made in the Report both to achieve legal compliance for the particular project and to improve procedures in the future.

Follow-up: No known remediation.

¹³⁸ This project had also been considered at an earlier stage of the allocation process during the 2001 Review – see at 1.15 above

¹³⁹ This is significantly lower than the 70,000 cubic meters required for a viable log export operation and less than the minimum 30,000 considered necessary for a viable harvesting project

¹⁴⁰ The main reason for this divergence is that the Review excluded from logging the 74% of the project area classified as 'fragile forest.'

¹⁴¹ The Minister of Finance made his approval conditional on the findings and recommendations of an independent compliance audit

6.4. COMPLIANCE AUDIT OF PART OF THE ALLOCATION PROCESS FOR THE ASENGSENG FORESTRY PROJECT (WEST NEW BRITAIN PROVINCE)

February 2005, 22 pages (plus four appendices of 46 pages total)

Proposed Permit Holder: Rimbunan Hiau

Size of concession: 147,000 ha

Review Findings: This was a review of legal compliance for the Asengseng logging project which was almost at the completion of the resource acquisition and allocation process.¹⁴²

The Review found that there was no reliable forest resource description¹⁴³ and that the project was not listed in the National Forest Plan as required under the Forestry Act.

Due legal process had been followed since the previous Review of the project in 2001, but the failings highlighted then had still not been dealt with. These related to defects in the incorporation of land groups and the original Forest Management Agreements.

The Report therefore recommended that the Project Agreement between the State and the preferred logging company should not be executed.¹⁴⁴

The Report also highlighted that the new Environment Act 2000 would impact the proposed Asengseng logging project. The Act requires a full Environment Impact Assessment and Environment Impact Statement before the project can be approved and an Environment Permit issued. The Environment Permit is a legal requirement that must be issued before a Timber Permit can be granted.

The Review concluded that '*neither the Department of Environment and Conservation nor the National Forest Service have yet come to understand clearly the requirements of the Environment Act 2000, and that discussions are urgently required.*'

The Review found that the responsible Authorities had not complied with due process in failing to implement the Time Bound Action plan that was approved by Government following the recommendations of the 2001 Review (see above).

The Report is unusually critical of the capacity of the National Forest Service. and describes a lack of professionalism '*especially with regard to the poor quality of the forest resource descriptions which underpin new forestry projects, and which despite recommendations made four years ago, have not yet been improved.*'

Review Recommendation: A number of recommendations are made in the Report to achieve legal compliance for the particular project.

Follow-up: Project agreement proceeded without any known remediation.

¹⁴² This proposed logging project had also been considered at an earlier stage of the allocation process during the 2001 Review – see 1.22 above.

¹⁴³ *The net loggable volume per hectare estimates at 38 – 42 m³ per hectare are judged to be too high to be credible. The conclusion drawn is that the forest resource description for Asengseng Consolidated is not sufficiently reliable to ensure that the sustainability requirement of the National Forest Policy is being met.*'

¹⁴⁴ Newspaper stories in Port Moresby dated 14 September 2005 reported the project Agreement had been signed.

6.5. COMPLIANCE AUDIT OF PART OF THE ALLOCATION PROCESS FOR THE ROTTOCK BAY CONSOLIDATED FORESTRY PROJECT (WEST NEW BRITAIN PROVINCE)

February 2005, 24 pages (plus 4 attachments of 49 pages total)

Proposed Permit Holder: Cakara Alam

Size of concession: 208,000 ha

Review Findings: This was a review of legal compliance for the Rottrock Bay logging project which was almost at the completion of the resource acquisition and allocation process with a Project Agreement between the State and the selected logging company awaiting execution.¹⁴⁵

The Review found that the Environment Act 2000, which had come into force on the 1st of January 2004, had major implications for new forestry operations, but these had not yet been considered with respect to the proposed Rottrock Bay project.

The Act requires an ‘extensive process’ for a full Environment Impact Assessment and Environment Impact Statement before a project can be approved and an Environment Permit issued. The Environment Permit is a legal requirement that must be issued before a Timber Permit can be granted.

The Review also found that due process had not been observed in the development of the project as there was no reliable forest resource description;¹⁴⁶ no policy decision on whether to allow logging in fragile forest areas; and, the proposed higher allowable annual cut in the first five years of the project jeopardised the projects long term ‘viability and sustainability.’

Also due legal process had not been followed, as the project was not listed in the National Forest Plan as required under the Forestry Act, and there was no instrument to record landowner agreement to the consolidation of the project.

The Report is again critical of the capacity of the National Forest Service and repeats the view that there is a lack of professionalism, *‘especially with regard to the poor quality of the forest resource descriptions which underpin new forestry projects, and which despite recommendations made four years ago, have not yet been improved.’*

Review Recommendation: The Report therefore recommended that the Project Agreement between the State and the preferred logging company should not be executed.

Follow-up: Project agreement signed with no known remediation.

¹⁴⁵ This proposed logging project had also been considered at an earlier stage of the allocation process during the 2001 Review – see at 1.2 above.

¹⁴⁶ *‘It is the opinion of the Audit Team that a sound reliable basis for estimating the sustainable Annual Allowable Cut for Rottrock Bay still does not exist’.*

6.6. OBSERVATIONS REGARDING THE EXTENSION OF THE TERM OF THE TIMBER PERMIT FOR VAILALA BLOCKS 2&3, OPEN BAY AND BULOLO¹⁴⁷

March 2005, 32 pages (plus 2 attachments of 22 pages total)

Permit Holder:

Vailala: Rimbunan Hijau

Open Bay: Open Bay Timbers

Bulolo: PNG Forest Products

Size of concession:

Vailala: 201,300 ha

Open Bay: 15,600 ha

Bulolo: 37,400 ha

Audit Findings: This Audit examined legal compliance in three logging projects which were the subject of recent 'extensions' to the term of their Timber Permits.

Vailala Blocks 2&3: For Vailala Blocks 2&3, the extension was in 2002, but renegotiation of the underlying Project Agreement was still on-going. The Audit concluded that 'nearly everything regarding the acquisition and allocation of this project has been irregular or illegal.'¹⁴⁸

The Audit also found that the forest resource estimates were 'too high to be credible'¹⁴⁹ and would allow the resource to be logged out within 13 years - in breach of the sustainability requirements of the Forestry Act.

The Report recommended the extension to the Timber Permit be recognised as 'not legal' and the logging operator be directed 'to cease all activity.'

Open Bay: For Open Bay,¹⁵⁰ the Audit found the first Timber Permit was issued in 1984 and had been repeatedly extended since 1995. The last extension expired in December 2004 and at the time of the Audit there were no logging operations in natural forest areas.

The Audit concluded the Timber Permit extensions granted since 1995 had been 'illegal' and as the latest extension had already expired the Permit and Project Agreement were deemed 'no longer effective.' The Audit also noted the current negotiations to vary the Project Agreement were inappropriate as the Permit had expired.¹⁵¹

Bulolo: The Audit found that the Bulolo forestry project was based on a Timber Permit and an agreement with the State that were both legally questionable.¹⁵²

¹⁴⁷ Gulf, West New Britain and Morobe Provinces respectively.

¹⁴⁸ This same Permit Extension was also considered as part of the Review of Disputed Permits and Extensions, see at 4.4 above, and as part of the Review of Current Logging Operations, see at 5.8 above.

¹⁴⁹ The Timber Permit provides for an annual allowable harvest of 300,000 cubic meters while the Review makes a 'conservative' estimate of the sustainable cut to be just 72,000 cubic meters.

¹⁵⁰ The Open Bay project was also assessed in the Review of Current Logging Projects - see at 4.12 above.

¹⁵¹ The Audit also noted the logging company's request for an annual harvest & export quota of 50,000 cubic meters would put the project below the standard harvest for a commercially viable log export operation.

The agreement, dated in 1996, was found by the Audit to be in breach of the Forestry Act as it attempted to give pre-emptive rights to forest resources. This is described as ‘not lawful’ and ‘illegal.’ The Audit recommended the Forest Authority apply to the Court to have the agreement declared null and void.

The Timber Permit was found not to be in compliance with ‘basic legal process under the Act’ and to be ‘legally defective both in form and substance.’

Audit Recommendation: For all three projects, the Audit recommended the remaining resource base should be assessed and if sufficient, a new logging project be developed according to the provisions of the Forestry Act. It also recommended that harvesting in the plantation elements of the Open Bay and Bulolo projects should continue using the mechanism of a Timber Authority.¹⁵³

Follow-up:

Vailala: No known remediation; logging continues

Open Bay: No known remediation; logging continues

Bulolo: No known remediation, logging continues

¹⁵² There is a third component to the Bulolo forestry project, the Watut Timber Permit, that was not part of this Audit but which was assessed as part of the Review of Current Logging Projects – see at 4.10 above. This Audit did though refer to the Watut Permit as having been ‘extended illegally’ in June 2002.

¹⁵³ Timber Authorities are designed to permit very small scale logging (up to 5,000 cubic meters per year), or the clearance of forest for either agricultural conversion or new roading development.