

**OMBUDSMAN COMMISSION
OF
PAPUA NEW GUINEA**

**INVESTIGATION INTO ISSUE OF
A PERMIT TO TURAMA FOREST
INDUSTRIES PTY LTD BY THE
FOREST AUTHORITY
CF.657/95**

*FINAL REPORT IN TERMS OF SECTION 22
OF THE ORGANIC LAW ON THE OMBUDSMAN COMMISSION*

AUGUST 1997

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OMBUDSMAN COMMISSION

FINAL REPORT UNDER SECTION 22 **OF THE ORGANIC LAW ON THE** **OMBUDSMAN COMMISSION**

CHAPTER 1 JURISDICTION AND PURPOSE OF THE INVESTIGATION

1.1 Introduction

This is an investigation into the awarding of a Timber Extension Permit in the Turama Forest Area in the Gulf Province by the Forest Authority to Turama Forest Industries Pty Ltd as an extension to the existing project undertaken by the Company. Several articles appeared in the Newspapers alleging that the award of the permit to the company was in violation of the provisions of the Forestry Act. The main allegation was that there was no National Forest Plan, and in the absence of it, the award of the timber resource to the company was improper and wrong. It was also alleged that the members of the Forest Authority Board were not granted an opportunity to study the proposals made to the Board in depth before voting and that the proposal was submitted in haste as an urgent matter at the Board Meeting held on 30 May 1995 and passed without proper discussion.

1.2 Jurisdiction

The Ombudsman Commission conducted the investigation under section 219(1)(a) of the Constitution and section 13 of the Organic Law on the Ombudsman Commission. These Constitutional Laws allow the Ombudsman Commission to investigate either on its own initiative or on complaint by a person affected, any conduct on the part of any Government body or any of its officers.

The Commission can thus investigate the conduct of any arm, department, agency or instrumentality of the National Government including a Statutory Authority such as the National Forest Authority.

1.3 The Scope of the Investigation

In accordance with Section 219(1)(a) of the Constitution the purpose of the investigation was:

- to determine whether any conduct under investigation was wrong; and
- to determine whether there were any defects in the laws or administrative practices.

1.4 Method of Inquiry

The Ombudsman Commission issued notice on 19th September 95 under section 17(1) of the Organic Law on the Ombudsman Commission to the then Managing Director National Forest Service Ms Jean Kekedo OBE, of its intention to investigate the allegation.

Section 17(1) states:-

"Before investigating any matter within its jurisdiction, the commission shall inform the responsible person of its intention to make the investigation."

The Ombudsman Commission obtained documents and other evidence from a number of different sources and used its powers under Section 18 of the Organic Law on the Ombudsman Commission to require the production of documents and information.

Section 18 states:

- *(1) "Subject to the provisions of this section and Section 20, the Commission may from time to time require any person who, in its opinion, is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person."*

(2) Subsection (1) applies whether or not -

- (a) the person is an officer, employee or member of any State Service, provincial government body, local government body or statutory body, and
- (b) the documents, papers or things referred to in that subsection are in the custody or under the control of any State Service, provincial government body, local government body or statutory body.

(3) The Commission may, by instrument in writing, summon any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission, to attend the Commission at a time and place specified in the summons for examination by it on oath or affirmation.

(4) The Commission may administer an oath or affirmation to a person appearing as a witness before the Commission whether the witness has been summoned or appears without being summoned, and may examine the witness on oath or affirmation.

(5) A witness attending before the Commission has the same privileges and is subject to the same penalties in relation to the giving of information, the answering of questions and the production of documents, papers and things as a witness before the National Court.

(6) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commission is admissible in evidence against any person in any court or at any inquiry or any other proceedings, and no evidence in respect of proceedings before the Commission shall be given against any person.

(7) Where any person is required by the Commission to attend before it for the purposes of this section, the person is entitled to the same fees, allowances and expenses as if he were a witness in the National Court."

However, the Commission initially had difficulties in obtaining certain files and Board meeting minutes from the National Forest Authority. Although the present Chairman and Managing Director Mr Guao Zurenuoc expressed his willingness to give full co-operation to the Commission when he was interviewed on oath on 5 March 1996, the assured cooperation was initially not forthcoming when the officers of the

Commission visited his office to collect certain files. This appears to have been due to the fact that Ms Bibiana Kenatsi office manageress had informed him that certain files required by the Commission do not relate to the matter concerning the Turama investigation. The Project Lawyer, Mr Maurice Coughlan, who was consulted by the Managing Director had also informed him, (obviously without studying the Organic Law on the Ombudsman Commission), that the Commission had no authority to call for those files and documents. The situation reversed when the Project lawyer after studying the Organic Law Ombudsman Commission informed the Managing Director that the Commission has wide powers to call for information and documents. The files and documents were then released but because of this misunderstanding the investigation virtually came to a stand still for nearly three weeks. In this context we wish to quote the following from the Judgement delivered by Amet J in Jimmy T TJEONG and GARAMUT ENTERPRISES v Ombudsman Commission (July 1993):

"It is quite clear and I accept the submissions of the Ombudsman Commission in this respect that once a matter is being investigated by the Ombudsman Commission within its jurisdiction, the Commission is entitled to require "any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that in the opinion of the Ombudsman Commission relate to any matter being investigated by it and that may be in the possession of or control of that person" [Organic Law Section 18(1)]. The Commission can also by instrument in writing, summon "any person who in the opinion of the Ombudsman Commission is able to give any information relating to any matter that is being investigated by the Commission, to attend the Commission at a time and place specified in the summons for examination by it on oath or affirmation" [Organic Law, Section 18(3)].

These enabling powers to require any person to attend for examination and production of material to assist the commission either by invitation or by instrument in writing, that is by summons, do not in my view have to be confined to officers of the governmental body. As long as the investigation is within jurisdiction the commission is enabled wide powers to require any person a public employee within the organisation or governmental body of any service which is being investigated or any private individual in private enterprise that in the opinion of the Commission is able to give any information relating to any matter that is being investigated by the commission and also to furnish to the Commission any information or documents or to attend upon the Commission for examination in respect of any matters that it is investigated."

The following persons were interviewed:

1. Mr Guao Zurenuoc Chairman and Managing Director National Forest Service
2. Ms Jean Kekedo OBE Then Chairman and Managing Director National Forest Service
3. Ms Bibiana Kenatsi Office Manageress to the Managing Director PNG Forest Service
4. Mr Chris Marlow Corporate Secretary PNG Forest Service
5. Mr Maurice Coughlan Project Lawyer PNG Forest Service
6. Mr Keith Dolman General Manager, National Forest Service
7. Mr Soiat William Acting First Assistant Secretary, Department of Personnel Management
8. Mr Gaikovina Kula First Assistant Secretary, Nature Conservation Division of the Department of Environment and Conservation
9. Mr Iamo Ila Secretary of the Department of Environment and Conservation
10. Mr Goodwill Amos Manager Projects National Forest Service
11. Mr Dike Kari Divisional Manager Policy & Planning National Forest Service
12. Mr Johnson Mantu Acting Divisional Manager Operations - National Forest Service
13. Mr Joseph Badi Supervisor, Landowner Liaison - National Forest Service
14. Mr John Painap Secretary Department of Lands and Physical Planning
15. Mr Terry Wara Director Forest Research Institute, Lae, National Forest Service.
16. Mr Keai Semesse Supervisor Technical Service Southern Region, National Forest Service
17. Mr Kanawi Pouru Acting General Manager National Forest Service
18. Mr Hakiso So-omba Manager Allocation, National Forest Service
19. Mr Dambis Kaip Forest Management Agreement Supervisor, National Forest Service
20. Ms Ruth Turia Manager Acquisition National Forest Service
21. Mr Henry Wasa Project Officer - Department of Lands and Physical Planning
22. Mr Andrew Tagamasau Divisional Manager Operations National Forest Service
23. Mr Isau Par Forest Management Officer, National Forest Service

- 24. Mr Paul Barker
Economic Adviser - Prime Ministers
Department
- 25. Mr Allen Ross
Special Project Officer National Forest
Service
- 26. Mr Lindsay Giddeon
Registrar of Titles, Department of Lands and
Physical Planning

CHAPTER 2 - FACTS

2.1 General

In this chapter the Commission states the facts, on which it has based its findings of wrong conduct. The events leading to the granting of Timber Permit No. TP 2-12A to Turama Forest Industries Pty Ltd have been dealt with in fair detail. Special attention has been given to incorporation of land groups, the signing of Forest Management Agreements relating to Turama, Kikori and Baimuru areas as well as the Board Meeting of 30.05.96 at which the issue of Timber Permit was taken up and passed as a resolution.

2.2 Timber Permit N°. 2-12A

Timber Permit N°. 2-12 (Turama Timber Project - Gulf Province) was issued to Long Term Trading Pty Ltd in March 1988 for a period of 20 years. The company changed its name from Long Term Trading Pty Ltd' to Turama Forest Industries Pty Ltd on 21 July 1989.

2.3 The Forest Act 1991 N° 30 of 1991.

In 1991 a National Forest Policy document was formulated. Subsequently the Forest Act of 1991 was introduced to give effect to these proposals. The main changes, inter alia, were:-

- 1) the establishment of the PNG National Forest Authority,
- 2) the need for the preparation of the National Forest Plan,
- 3) the need to negotiate Forest Management Agreements.

From the time the Act was implemented no new forest development project could be undertaken in any area without first negotiating and signing of the Forest Management Agreements relating to that area.

2.4 The Papua New Guinea Forest Authority and the National Forest Board.

The Papua New Guinea Forest Authority officially came into existence on 1st January 1993. The National Forest Board met in February 1993 for the first time. A moratorium on new projects was strictly enforced with no new permits approved during the year 1993.

2.5 Forestry (Amendment) Act - 1993

Amendments to Forest Act 1991 were approved by the Parliament in April 1993. These Amendments corrected some anomalies in the original Act and provided for the modified National Forest Board structure.

2.6 National Forestry Development Guidelines

In 1993 the Honourable Tim Neville MP Minister for Forests proposed National Forestry Development Guidelines. These guidelines were endorsed by NEC in November 1993.

2.7 National Forest Development Programme

According to the National Forest Board Policy document of 1991, it was the responsibility of the National Forest Board to prepare the National Forest Development Programme for approval by the National Executive Council. However, this was not done.

2.8 Timber Supply Agreement (TSA) Concept

In 1993 the Honourable Tim Neville MP Minister for Forests introduced the concept of the Timber Supply Agreement (TSA) based on a decision of National Executive Council. This concept is not mentioned anywhere in the Forestry Act of 1991. According to the TSA concept the entire country was demarcated into 24 separate TSAs. The intention was to grant the Timber Supply Areas to large logging companies to ensure that they get adequate timber to carry on timber development on a sustainable basis.

In the case of Turama Project area the concept was advertised in early 1994 as TSA 5 and the Honourable Tim Neville MP Minister for Forests requested the developers who were interested in the project to submit Feasibility Study proposals. The Turama Forest Industries Pty Ltd submitted a detailed proposal giving importance to down stream processing and setting up of a Plywood factory. Proposals for

development were also submitted by other companies. However, with the change of Government in September 1994 the TSA concept was abandoned. Turama Forest Industries Ltd thus failed to get additional areas for logging under the TSA concept.

2.9 Baimuru/Kikori Area or TSA 5 is not for any specific company.

On 14th November 1994 the then Managing Director, Ms Jean Kekedo, OBE informed the Chairman of Kikori Timber Investment Company Pty Ltd that the Land Group Incorporation in the Baimuru/Kikori area or TSA 5 is not for any specific timber company, but it was a requirement of the Forest Act 1991 that before the Forest Management Agreements (FMAs) were signed the resource owners must be incorporated into their land groups. *(Exhibit 1).*

2.10 The then Managing Director National Forest service Ms Jean Kekedo OBE, outlined the Government Policies and procedures to Goeheae Landowner Company

On 3rd January 1995 then Managing Director National Forest Service, Ms. Jean Kekedo OBE sent a letter to Goeheae Landowner Company wherein she discussed the Government policies and the various procedures that have to be followed in terms of the Forestry Act as follows:-

"Present Government forest policies and legislations are geared towards proper use and management of the nation's forest resources on a sustainable basis and the benefits accruing from forest developments are far reaching to especially the resource owners.

Among the various government policy reforms, those you need to note are:-

- forest resources are used and managed on a sustainable basis;*
- on-shore processing and export of finish wood products;*
- phase out log export;*
- increase monetary benefit to resource owners; and*
- reviewing of all existing projects.*

In keeping with the above stated policy reforms, there are set procedures (by legislation) for the acquisition and allocation of timber resources. To acquire and allocate the Upper Purari Timber Area therefore, the following summarised procedures shall apply:-

Step 1. *The Gulf Provincial Government to recognise the potential of the Upper Purari timber area and have it listed in it's Provincial Forest Plan as required under Section 54 of the Forestry (Amended) Act 1991;*

Step 2. The PNG Forest Authority (PNGFA) assisting the Gulf Provincial Forest Management Committee (PFMC) and the Provincial Government to identify the true landowners and incorporate them into their respective Land Groups or Clans as required under the Land Groups Incorporation Act. This task will satisfy the legal requirements of Section 57 of the Forestry (Amended) Act 1991;

Step 3. The PNGFA to execute a Forest Management Agreement (FMA) with all the registered incorporated Land Groups or Clans as required under Section 58 of the Forestry (Amended) Act 1991;

Step 4. The National Forest Board (NFB) shall advise the landowners, the Provincial Government and the National Member of Parliament for the area it's intentions to allocate the timber resource as required under Section 59 of the Forestry (Amended) Act 1991;

Step 5. The NFB shall then advertise the resource area to seek expressions of interest from registered forest industry participants as required under Section 64 of the Forestry (Amended) Act 1991. However, where the resource area is an extension of an existing approved operation or project the Board may consider proposals without advertisement for open tender;

Step 6. After receiving and complete evaluation of development proposals by the PFMC (assisted by the PNGFA), it shall forward it's report and recommendations to the Board as to the proponents with whom further negotiation should proceed;

Step 7. After the PFMC (assisted by the PNGFA) has successfully negotiated a project agreement in accordance with Sections 70 and 71 of the Forestry (Amended) Act 1991, it shall submit the final draft of the project agreement to the Board for consideration;

Step 8. Where the Board is satisfied with the final draft of the project agreement, it shall execute the project agreement on behalf of the Authority and recommend to the Minister to grant a timber permit (Section 72 of the Forestry (Amended) Act 1991);

Step 9. The Minister shall then invite the person with whom the Authority had entered into a project agreement to make an application and after satisfactory completion be issued a timber permit (Section 73 of the Forestry (Amended) Act 1991);

Step 10. Having granted a timber permit and approval to the project's environmental plan and the forest working plans, logging operations may commence.

I hope the above now provide you an insight to the various steps we need to consider and take in acquiring and allocating forest resources.

In so far as the Upper Purari timber area is concern, my staff have completed the job of incorporating the various Land Groups within the area in August, 1994. As soon as the Lands Department have completed registration, we will return to the area to execute the Forest Management Agreement with the said registered Land Groups.

Furthermore, in regard to the allocation of the Upper Purari Timber Area, it has been a long term intension of the Authority to see that a major forest industry development is established within the Kikori - Baimuru region of the Gulf Province. In order for this to happen in the shortest possible time, we should consider allocating the resource to an existing forest industry participant.

If you share this view or have any others, I will be delighted to hear them from you.

Yours sincerely

J.L. KEKEDO OBE
MANAGING DIRECTOR."

cc: *Divisional Manager - Resource Development*
cc: *Divisional Manager - Landowner Liaison*
cc: *Regional Manager - Southern* **(Exhibit 2A)**

2.11 The Forest Agreement to be drafted in consultation with TFI and landowners

Then Managing Director, Ms J.K Kekedo, OBE in her letter dated 18 February 1995 to Turama Forest Industries Pty Ltd mentioned, inter alia, the following:

"...given our firm view that this project meets the essential tenets of the National Forestry Development Guidelines, the NFS is pursuing project actualization with vigor.

To this end we anticipate the following developments:

Field work for Incorporated Land Groups (ILG) has been obtained. This is now written-up and awaiting gazettal by the Department of Lands and Physical Planning. Given the present Government's desire for new projects, NFS will anticipate full Gazettal of ILGs and press on with next step of seeking a Forest Management Agreement;

NFS will travel to Gulf on or before 27 February and in association with the Provincial Government will seek a Forest Management Agreement (FMA) with landowners. It is anticipated that this will be obtained within 10 days field work and no later than 20 March 1995;

A priority action now is to draft forest regulations and we are presently debating the rightful place and format of much of the regulatory environment, essentially to determine the shape and composition of the Project Agreement and Timber Permit. At this point in time we are disposed to put as much as possible in Regulations.

Pending agreement on the above, a Project Agreement will be drafted in consultation with TFI and Landowners and this will form the basis for negotiating TFI's procurement of the said FMAs. It is envisaged that a draft Project Agreement will be available from 20 March and negotiations commencing shortly thereafter.

TFI might usefully seek a meeting with the Department of Environment and Conservation with view to ascertaining their requirements for environmental plans or similar under the Environmental Planning Act. Once this requirement is clear, TFI may wish to commence preparation;

Awarding of the Timber Permit will follow contingent on a Project Agreement. This may be a very simple document. It may be necessary to resolve an ambiguity in the adjoining East Kikori TP should the holders exercise proprietary interest in future development in blocks 1 & 2 East Kikori. NFS have applied for a legal ruling through the Courts and will in any event strongly contest this 'Right' on the basis that the State can not allocate customary land which has not been acquired.

I trust that this progress is satisfactory and our position agreeable.

Yours sincerely,

J.L. KEKEDO, OBE
MANAGING DIRECTOR* (Exhibit 2B)

2.12 The then Managing Director Ms. Jean Kekedo OBE, suggested to Turama Forest Industries Pty Ltd that it will not be necessary for them to respond to the advertisement.

Turama Forest Industries Pty Ltd in their letter dated 2 March 1995 to the Managing Director PNG Forest Authority mentioned that they were of the opinion that TP2-12 and formerly TSA5 must necessarily be linked to ensure operating costs are minimized.

On 17 March 1995 Ms. Jean Kekedo sent a reply to Turama Forest Industries Pty Ltd as follows:-

"Thank you for your letter of 2 March, 1995 in which you respond to our earlier comments regarding the proposed plymil factory. Your points are clear and for the most part in harmony with our position, with discussion yet required on benefits, charges and incentives. These are points for detailed discussion and negotiation at the time of forming a project agreement. We accept responsibility for leading this process and will shortly open dialogue with concerned agencies to that effect.

The key point though is that we now have three FMAs in waiting (so as to speak) - the FMAs being conditional on gazettal of the respective land groups. You may recall that to save time, NFS agreed to anticipate land groups and pursue FMA in anticipation of land groups. We have allocated additional resources to this and have offered to second a staff member to the Department of Lands and Physical Planning to complete the requisite gazette notices."

I should also point out that notwithstanding any commitments made by the former Minister for Forests through the TSA process, this office is now obligated to go through the formal allocation process by virtue of being deluged by alternative claims on this resource. Accordingly our strategy will be as below:

1. *PNGFA to draft Project Guidelines - essentially for one project covering the three FMAs with a demonstrated commitment to processing and sustainable development. Proponents will be required to present a detailed feasibility study;*
2. *Gulf Provincial Government to form PFMC - inaugural meeting is set for 22 March. PNGFA will assist in selecting the two permanent landowner representatives and advocate PFMC adoption of Project Guidelines;*

3. PNGFA to advertise the proposal according to the agreed Guidelines. We hope to lodge this advertisement by Friday 24 March, 1995 and to allow one month for response. Only registered forest industry participants need apply;
4. (in meantime) PNGFA to commence discussion with concerned Government agencies on concession and incentive environment for a bona fide downstream processing factory in Gulf Province;
5. After consulting with incorporated land groups, PFMC to evaluate proposals and select developer (prior commitments to be taken into consideration);
6. PNGFA to Negotiate a Project Agreement with selected developer;
7. Board to execute Project Agreement and recommend to Minister to grant timber permit (subject to Environmental Plan).

I trust you will appreciate the reasons behind the above observance and that it will not be necessary for TFI to respond to the advertisement.

Yours faithfully.

MS. J.L. KEKEDO, OBE
MANAGING DIRECTOR"

(Exhibit 2C)

2.13 Awareness campaign in Gulf Province and incorporation of landowner groups

Awareness campaign was conducted by the National Forest Service Landowner Liaison Section in August 1994 which was followed by preliminary steps being taken for land groups incorporation. The relevant forms completed by the land groups were handed over to the Department of Lands and Planning for gazettal. The gazettal was done and the certificates of recognition were expected to be issued if there were no objections.

2.14 Signing of Forest Management Agreements

The Forest Management Agreements were done in February/March 1995 under the supervision of the Divisional Manager Policy and Planning. At that time the Certificates of Recognition were not issued by the Registrar of Titles to the various Landowner Groups. The Land Groups were interested to know whether the resources were ear marked for anybody when the Forest Management Agreements were signed. They were told that the process of selection would be by advertisement in the gazette.

2.15 National Forest Development Plan is a requirement under the new Forestry Act

On 23rd March 1994 the then Managing Director Ms. Jean Kekedo informed Mr Geoffrey Kiwale of Kiwule Business Group Inc. who wanted to start a sawmill project as follows:-

"Please be advised that the Minister for Forests has instructed that no work on new projects by way of a sawmilling project will take place until the following has been completed:-

- (a) PNG Forest Authority is properly set up,
- (b) Provincial Forest Management Committees are established, in each province,
- (c) Registration of Forest Industry participants which includes your Business Group have been completed,
- (d) A National Forest Development Plan is in place.

These are requirements of the New Forestry Act." (Exhibit 3)

2.16 Forest Management Agreement report submitted in April 1995.

According to the report on Forest Management Agreement submitted in April, 1995 by Dambis Kaip, Forest Management Supervisor, the landowners of Baina and Sawiti were told that the Forest Management Agreement exercise which PNG Forest Authority was co-ordinating was not for one particular company. It was a legislative requirement that before any forestry developments take place, Forest Management Agreements must be executed. The selection of the preferred developer would be made in accordance with the Government's established procedures.

The Forest Management Agreements in respect of Turama area were carried out during the period 27th of February 1995 to 15th of March 1995.

2.17A Land Owners withdraw signatures from the Forest Management Agreement relating to Kikori Forest Area.

On 3rd April 1995 Landowners represented by Hekiko Forest Pty Ltd who earlier signed the Forest Management Agreement informed Ms Jean Kekedo OBE Managing Director that they withdraw their signatures from the documents purported to be Forest Management Agreement Block I resource area effective as from the date of the letter.

The main objections stated in that letter were:-

- "1. By signing the document, we have given consent for Turama Forest Industries Pty Limited (TFI) to be the Developer of our forest resources in Kaiam, Siawiti and Baina areas.

(We must make it clear that, that was not our intention of signing the document. In fact, this was not what we were told by the officers at the time of signing in the villages. We never intended to sign for TFI. It was for this reason that, a tribal fight almost broke out between certain clans of Kaiam No. 1 village against the clans from Baina and Siawiti villages.)

2. The proposed Block 1 area covering our resources is the same as the TSA No. 5 concept. We understand that, for this reason, the TFI survey on TSA No. 5 that was carried out during the period of March 1994 to September 1994 was accepted by Forests Authority for the purposes of the proposed Block 1 FMA.

(The TFI survey was for TSA No. 5 which was abolished. The use of TSA No. 5 Survey Report for Block 1 FMA is very confusing to us. We did not understand at all on what basis were we signing the document. It was unclear to us at that time.)

3. The Forest officers visiting villages advised us that:-

- (a) The FMA was for Block 1 forest area which covers part of the Hekiko forest area.
- (b) The FMA was to be signed between the Forest Authority and the Landowners concerned.
- (c) The FMA was not for any particular company nor for TFI.

The Landowners believed in good faith, it was not for TFI so they signed the FMA. We now believe that, this is not the case after signing the FMA. The Forest Authority have now collected our signatures and are pursuing for TFI to be the developer.

The Forest Authority by the actions of the officers concerned had misrepresented their intentions, had misguided us to believe them that they were doing Government business and had obtained our signatures by such ill conceived motives to promote TFI. The motives and actions of the officers concerned are questionable.

4. *If the Forest Authority is recommending TFI to be the Developer of the area, this is clearly against our wishes and desire for a separate Developer to develop our forest resources. (Exhibit 8A)*

2.17B Landowners were not given an opportunity to discuss and negotiate Forest Management Act with their Lawyers.

On 7 April 1995 the Honourable Andrew Posai MP, Minister for Forests informed the former Managing Director Ms. Jean Kekedo OBE that the land owners were not even given the opportunity to discuss and negotiate the Forest Management Agreements with their Lawyers. He alleged that this was unacceptable business conduct. As a result they signed a document which they did not understand. Landowners deserved better treatment from the Forest Authority officers and specially when such officers were fellow country men. Further, the following were mentioned:-

"The Landowners wish for and desire a development of their Hekiko forest resources. They also desire a separate developer for their timber resources. Their reasons for a separate development were as follows:-

1. *To allow for competitiveness in provisions of benefits and participation for the local people.*
2. *To ensure immediate development impact under a separate package of investment."*
3. *To support the Government on its desire to bring PNG more foreign investments to boost our economy.*
4. *To avoid the TFI experiences of lack of infrastructural support to Kikori District, lack of support to the water way people continuous division and conflicts among the people due to political differences created by TFI in Kikori.*

I consider that their wish and desire genuine and worthy of notice and favourable consideration. As you know our Government abolished the TSA concept for the main reason that the concept was foreign and did not recognize our people's customs, beliefs and tenurial rights over customary land on which the forest resources stand. In view of this Government policy I direct you to ensure your forest officers take all necessary actions to:-

1. *Exclude Landowners from Kaiam No. 1, Siawiti, Baina, Kakedemaiyu, Fogomaiyu and other villages situated between these villages along the western side of the Kikori river from the FMA recently executed covering Block I including a part of Hekiko Forest area. Their letter formally withdrew their signatures to the FMA; and*
2. *Process the Hekiko Forest area as a separate timber project with a separate FMA over it to be signed by traditional Landowners from Kaima No.1, Siawiti, Baina, Kakedemaiyu, Fogomaiyu and other villages situated between these villages along the western side of Kikori River." (Exhibit 8B)*

2.18 Reply from Ms Jean Kekedo OBE to the Honourable Andrew Posai MP, Minister for Forests.

On 15th April 1995 Ms. Jean Kekedo OBE, Managing Director sent a reply to the Honourable Andrew Posai MP, Minister for Forests, as follows:-

"In the first instant be advised that I have asked my staff to do a full analysis of the background dealings concerning this project, and will not be in a position to firmly advise on allocation of the three FMAs until this is to hand. You will appreciate that whilst the TSA concept has been abandoned, certain and in this instance, significant, commitments were made by the previous government with respect to allocation of resource in the vicinity now described by the three FMAs. On the basis of this development both East Kikori and TFI have an historical claim on these forests. Hekiko is to my knowledge a new player and is without any earlier government implication as regards commitments to future resource. The point of reminding you of these is to firmly establish the reality of a substantial cost claim against the State should we get it wrong. In the case of TFI, who were invited to undertake a very expensive feasibility study we may expect this claim to be measured in the 10's of millions, hence our caution.

I must reiterate that our staff have in no respect made any decisions on allocation and the signing of FMAs was firmly undertaken on the basis of assignation of rights to the State and not to any given developer. I must defend this position as regards your accusation that our staff have behaved improperly. To the contrary it would have been wrong and illegal for our staff to have then engaged in discussions/negotiations on a developer. This responsibility is firmly assigned to the PFMC which regrettably has chosen to delay formation despite our protestations. I must also object to your comment that the PNGFA is unreasonably delaying development in

this area. We have taken all reasonable steps, including some short cuts, and would be even further on if it were not for the prospecting interests of the new would be developers.

*I trust this clarifies our position.
Yours sincerely*

**MS. JEAN KEKEDO OBE
MANAGING DIRECTOR"**

(Exhibit 8C)

2.19A Statement made by Ms Jean Kekedo that the Forest Management Agreement (FMA) is not for a particular company.

On 3rd May 1995 the Managing Director Ms Jean Kekedo OBE informed Hekiko Forest Landowners as follows:-

4. ***The purpose of signing the Forest Management Agreement (FMA) in the area is not for any particular company (including your intended developer) but rather to advertise and to select the best developer that can offer the best for the landowners rather than just any one that appears first at the "front door". This is the Authority's position as required under the Forestry Act.***

5. ***The Authority is not recommending Turama Forest Industries (TFI) as the sole developer of the resource. But rather to advertise the resource as mentioned above and select the best company. TFI may be one of the contenders for the development of that resource. Therefore, I do not see any basis for withdrawing the signatures, you are not consenting to forest development over your land. Landgroup Incorporation (ILG) and Forest Management Agreement (FMA) are only two (2) of the many prerequisites for forest industry development. I advise you to re-look at the position you had taken and to see if it is in your interest to withdraw your signatures."***
(Exhibit 5)

2.19B Mr Dike Kari's Paper dated 23rd May 1995.

On 23rd May 1995, Mr Dike Kari Divisional Manager Policy and Planning submitted a paper which the Managing Director wanted him to utilise in his negotiation. The relevant sections in that paper read as follows:-

"TURAMA-KIKORI-BAIMURU FOREST MANAGEMENT AREA

1. INTRODUCTION

It has been decided by the Papua New Guinea Forest Authority (PNGFA), in consultation with Gulf Provincial Government through the Provincial Forest Management Committee (PFMC), and the landowners of the Turama, Kikori and Baimuru Forest Management Areas, that a forestry project covering the above Forest Management Area's (FMA's) will be established in the Gulf Province.

The Project will involve the harvesting and utilisation of the forest resources of the Turama/Kikori/Baimuru Forest Area (Hereon stated as the Forest Area). This paper provides specific information and guidelines to assist the potential investor who are intrested in participating in this project.

GUIDELINES

Proposals for developing the Forest Area should be consistent with both the National Forest Policy (1991) and the National Forestry Development Guideines (1993)

SPECIFIC GUIDELINES

(a) Area Nett

-	Turama	-	41,600 HA
-	Kikori	-	44,600 HA
-	Baimuru/Purari	-	180,000 HA
	<u>Total</u>	-	<u>266,200 HA</u>

(b) Forest Resource Volume

-	Turama	-	852,00m'
-	Kikori	-	847,400m'
-	Baimuru	-	3,150,000m'
	<u>Total</u>	-	<u>4,849,400m'</u>

(e) Timeframe

We envisage this project to commence as soon as an agreement is reached and all approvals for the Forest Working Plan, Environment Plan and the manning and localization plans are received.

.....
DIKE KARI

Divisional Manager - Policy & Planning

23rd May 1995." (Exhibit 8)

2.20 Gulf Provincial Forest Management Committee inaugural meeting

The members of the Gulf Provincial Management Committee were gazetted on 4th February 1994 (**Exhibit 6**). The Gulf Provincial Forest Management Committee held its inaugural meeting on 26th May 1996 which was attended by the former General Manager Mr Keith Dolman. According to Section 22(1)(d) of the Forestry (Amendment) Act 1993 two persons are to represent Land-owning groups in the province to be nominated by the Provincial Forest Management Committee. This was not done at the inaugural meeting.

The views expressed by Keith Dolman and Ben Everts of the National Forest Service at the inaugural session were recorded in the Committee Meeting minutes as follows:-

***Mr Keith Dolman**

It is important that we control all forestry activities not only in Gulf but throughout Papua New Guinea. By doing so, we have the forestry Act, Forestry Policy, the Forestry guideline are in place. All forestry project in the country will have to follow all legal requirement under existing laws of this country.

Gulf was the first province being tried out at present under the new forestry concept. Introduce to the Committee members the extension of Turama Project (TP 2-12). A proposal has been put through for an extension of the project to Baimuru.

The proposal has been put through by 45 clans and chief including their elected leaders in the Gulf Provincial Government.

Existing projects such as Gopera Investment and the current concession under TFI is not being affected by the proposal.

Requested the Committee to look at the project guideline and approve them if we could at the Provincial Forest Management Committee level and enclose the project guideline to the National Forest Board level.

There is no better deal than the one that has been put forward by TFI and the committee should be mindful of that."

Mr Ben Everts

The proposed project have gone through all legal requirement except the formal endorsement from the P.F.M.C."

2.21A Gulf Provincial Forestry Committee meeting held on 26 May 1995.

The following members were present.

- | | | |
|----|---------------------|---|
| 1. | Mr. Albert K Milala | Acting Secretary, Department of Gulf
(Chairman of Committee) |
| 2. | Mr Andrew Tagamasau | Regional Manager, PNGFA (Southern Region) |
| 3. | Mr Farema Harivita | Alternate Member representing Local Level
Government |
| 4. | Mr Lari Heni | Member representing N.G.O |
| 5. | Mr Thadeus Soeka | Alternate Member representing N.G.O |
| 6. | Mr Michael Wanaliu | Forest Manager, Gulf Province and minute
secretary to the committee. |

The Chairman introduced the submission of Turama Extension to the Committee Members. After discussion it was resolved as follows:-

1. To recommend to the National Forest Board that it adopts the Guidelines.
2. To advise the National Forest Board that the Project Proposals meets the Guidelines.
3. To advise the National Forest Board that the Proposal submitted by TFI has the full support of the GPFC.
4. To recommend to the National Forest Board that it further process the proposal towards formal signing by the Board and the Board's recommendation to the Minister to issue a Timber Permit in the terms and conditions of the project agreement annexed.

However, Mr Lari Heni member representing NGO, mentioned during the discussion that they were not given enough time to see the submission and if it was endorsed without proper consultation they would have problems. There was an existing problem with the project which they should address first before they endorsed the submission for new areas. He was aware of the water way problem which might blow out anytime with permit review which had been talked about for the last two to three years (Exhibit 7).

The Chairman and acting Provincial Secretary Mr Albert K. Malala mentioned that the committee would not consider any more new projects for development unless they had a Provincial Forest Plan in place.

2.21B Mr Andrew Tagamasau a member of the Gulf Provincial Forest Management Committee signs the FMA certificate as 'Secretary' to the committee.

Mr Andrew Tagamasau signed the certificate required under section 58(5) without any authority from the Gulf Provincial Forest Management Committee. This was brought to his office in Port Moresby by Mr Joseph Badi on the instruction of the former General Manager Mr Keith Dolman. Although the certificate was dated 26 May 1996 it was signed very much later. (Exhibit 9).

2.22 National Forest Authority Board Meeting held on Tuesday 30 May 1995.

The following persons were present at the Board meeting.

Chairperson: Ms. Jean Kekedo OBE (National Forest Service)

Members: Mr. Anthony Honey (Forest Industries Association of PNG)
 Mr. Sinai Brown OBE, MPA (National Premiers Council)
 Mr. Brian Brunton (National Alliance of Non-Governmental Organisation)
 Mr. Soiat Williams (Nominee of the Secretary, Department of Personal Management).
 Mr. Guy Kula (Nominee of the Secretary Department of Environment & Conservation)

Secretariat: Mr. Alan Ross OBE (Secretary)
 Mr. Chris Marlow (Corporate Secretary)

Observers: Mr. Keith Dolman (National Forest Service)
 Mr. Geoff Stocker (National Forest Service)
 Mr. Dike Kari (National Forest Service)
 Mr. Maurice Coughlan (National Forest Service)
 Mr. Hakiso So'omba (National Forest Service)

The Board meeting commenced at 9.15am. At 12.45 the acting Minister for Forests Honourable Mr. Titus Philemon and the Vice Minister for Forests the Honourable Bitan Kuok attended the meeting.

The acting Minister in addressing the Board said that if differences arose they could be ironed out and that in some important cases because of the nature of a project and demands of landowners that the Board needed to give special consideration to dealing with such matters even though the distribution of Board papers to members may be late. The Minister gave as an example the project in the Gulf Province where such special consideration by the Board needed be given.

2.23 The Policy Paper Number P2

The Chairperson circulated to the Board a policy paper P2 although it was originally not on the agenda of the Board meeting fixed for 30 May 1995 and advised the Board that it was an urgent matter that needed to be dealt with by the Board. The paper was prepared by the Project Lawyer Mr. M. Coughlan and was approved by Mr Keith Dolman, the General Manager, on 29.5.96 and presented to the Board by Ms. Jean Kekedo OBE Managing Director. The Policy paper reads as follows:-

"FOR THE BOARD **POLICY PAPER NO. 2**

SUBJECT: Turama Forest Industries - Project Agreement

A. RECOMMENDATION:

- (1) That the Board dispense with advertising the Project under Section 64 of the Forestry Act and,
- (2) That the Board consider the Project Agreement and when satisfied;
 - (i) Execute the Project Agreement
 - (ii) Recommend grant of a Timber Permit by the Minister in favour of Turama Forest Industries.

B. FACTS AND CONSIDERATION:**BACKGROUND:**

The Board have previously considered this matter in relation to a letter of intent to Turama for the Kikori area (1994) and authorisation for Forest Management Agreements to be entered into 1995. This has now been done.

In reference in the letter of intent Turama Forest Industries has carried out a survey of the area and a map based on the agreement (FMA's) has been prepared. In accordance with the provision of the Act due consideration was given to alternative development options and TFI were encouraged to proceed on the basis that their activity was the most suitable use of the area for the benefit of customary landowners.

A project agreement has been negotiated with the applicant in accordance with the Act and having regard to matter of sustainable yield and appropriate downstream processing undertaken by Turama Forest Industries.

In accordance with the Act the Provincial Forest Management Committee has deliberated on the matter and (with assistance from officers of the National Forest Service):-

- (a) Adopted project guidelines for this project.
- (b) Evaluated the Project Agreement
- (c) Recommended consideration by the Board and recommendation for issuance of a permit by the Minister.

The matter is now before the Board for:-

- (1) Dispensation from advertisement as extension of an existing approved project. This is recommended for approval as appropriate under the Act, Turama Forest Industries having a permit for an existing area.
- (2) Consideration of the Project Agreement and recommendation to the Minister for execution as recommended in the Gulf Provincial Forest Management Committee's decision of the 26 of May 1995.

All matters having been fully covered, further attention by the Board is sought to finalise implementation of this proposed operation.

Section 64 of the Forestry Act 1991 states as follows:-

"(1) Subject to Subsection (3), after completion of -

- (a) a development options study under Section 62; and

- (b) project guidelines under Section 63, the Board shall advertise the forest development project and seek expressions of interest from registered forest industry participants.

(2) Advertisement under Subsection (1) -

- (a) shall be made in Papua New Guinea; and
- (b) may be made outside Papua New Guinea; and
- (c) shall be done in the manner considered by the Board likely to be most effective; and
- (d) shall specify a date on or before which project proposals for timber permits may be lodged.

(3) Where a forest development project -

- (a) is an extension of an existing approved operation; and

is consistent with the National Forest Development Program, the Board may consider proposals without advertisement for open tender under Subsection (1).

COMMENT

This section requires no specific comment apart from the fact that as no National Forest Development Program exists the application cannot be said to be inconsistent with this criterion. As Turama Forest Industries have an existing permit, their operation is clearly extension of an "existing" approved operation.

Section 72 states:-

"(1) The Board shall -

- (a) negotiate a project agreement in accordance with Section 70; and
- (b) where satisfied that the draft project agreement makes adequate provision for all aspects of the project -
 - (i) execute the project agreement on behalf the Authority; and
 - (ii) recommend to the Minister to grant a timber permit to the person with whom the project agreement has been entered into; and
- (c) where not satisfied that the draft project agreement makes adequate provision for all aspects for the project - return the draft project agreement to the Provincial Forest Management Committee with details of the matters therein requiring further negotiation.

- (2) Where a draft project agreement has been returned to a Provincial Forest Management Committee under Subsection (1), the Provincial Forest Management Committee shall carry out such further negotiations as are necessary and submit a further final draft project agreement for consideration by the Board in accordance with Subsection (1).

At the sixth meeting of the Board on the 12 January 1994 the Board approved the following resolutions:-

- (1) Authorise the Minister to enter into a "letter of commitment and intent" with Turama Forest Industries that the Minister will grant TSA 5 to Turama Forest Industries so that Turama may now commence the final aspects of its feasibility study.
- (2) Make the approval in 1 above subject to the Board making a recommendation on the TSA 5 document before it is issued to Turama Forest Industries.

Whilst the TSA concept and advertising (with the exception of Josephstaal and Kikorl) have been abolished it is consistent with the course of conduct of the Board including the authorising of the above letter of commitment to Turama and their response by way of expenditure on feasibility studies and other costs that the matter, rather than being reopened by way of public tender, be considered extension of an existing approved operation and advertising be dispensed with in accordance with Section 64.

Accordingly, we seek consideration of the attached project agreement by the Board and recommendation to the Minister.

C. STAFFING IMPLICATIONS:

Nil

D. LEGAL IMPLICATIONS:

This is the first Permit to be forwarded for consideration since implementation of the Act three years ago. It will be a landmark as the first permit under the 1991 Legislation and Forestry guideline.

E. FINANCIAL IMPLICATIONS:

The project in its forestry aspect delivers 180,000 cm per year at a time when Logging levels are at an all time low for weather and other reasons. This is compatible with requirements from government for productivity. The accompanying processing aspect will be fully in accord with sustainability, investment and downstream processing required by the guidelines.

F. ATTACHMENTS:

- (1) The Minutes and Resolutions of the Gulf Provincial Forest Management Committee dated 26 May 1995.
- (2) Project Agreement.

SOURCE:

PROJECT LAWYER

Paper approved by:

Mr. Keith Dolman
General Manager29.05.95Date

Paper endorsed for presentation to the Board:

Ms. Jean Kekedo OBE
Managing Director29.05.95Date**2.24 Board Resolution on Turama Extension - Board Meeting held on 30 may 1995**

The Chairperson circulated to the Board Policy Paper No. P.2 and advised the Board that it was an urgent matter that needed to be dealt with by the Board.

Mr. Honey declared that he had an interest in the matter and thereupon left the Board meeting.

After being invited so to do, Mr Coughlan and Mr Dolman both spoke on the Board paper.

Resolved:

(Mr. Brunton abstaining)

- "(a) That the Board exercise its powers under Sections 64 and 72 of the Forestry Act 1991 and dispense with advertising the project and after having considered the matter and it having been satisfied with the project resolved to execute the said Project Agreement and to recommend a grant of a Timber Permit by the Minister for Forests in favour of Turama Forest Industries; and
- (b) That the Board notes that Mr Brunton needed time to read the papers and that he would give his views on the project within 48 hours to the Board Secretary who will then advise all Board members of Mr. Brunton's views."

2.25 Facsimile message to National Forest Authority by Mr. B. D. Brunton on 31.05.95

Mr. B.D. Brunton sent a facsimile message to the National Forest Authority for the attention of Ms. Jean Kekedo on 31.05.95 explaining the reasons for the stand he took at the Board Meeting held on 30.05.95. His message reads as follows:-

"To : National Forest Authority
 Attention : Ms. Jean Kekedo OBE
 Subject: Turama Forest Industries - Project Agreement

Dear Chairperson,

1. At yesterday's Board meeting I undertook to get you a response on this matter, after I declined to vote. The reason why I declined the vote was because I and other board members were not given sufficient time to study the papers put before us. I note that no member of the board had time to read the project agreement that was put before us.
2. My vote in this matter should be recorded as "No."
3. The reasons for my negative vote are that it is my view that the Authority is obliged to advertise this concession, and that the explanation given to the board, to the contrary, was inaccurate.
4. I also believe that it is a requirement of the Act for a National Forest Plan to be in place, and for a provincial forest plan to be in place.
5. For these reasons alone, it is my view that it would be improper for you to recommend to the Minister that he signs a timber permit over this concession, and I would appreciate it if you conveyed my view, namely: that if he signs he will be committing an illegal act, to the Minister.
6. I have other worries about the project agreement.

 In law, it is really a 35 year export logging concession, with an agreement to agree on the construction of a plywood mill. I do not believe the Authority should be entering into such a loose arrangement. The obligation on the company needs to be much firmer in law. This is because market conditions could change to such an extent that the company would not wish to process. We would then be left with a 35 year logging concession. I am mindful that the World Bank is insisting that the same tax regime apply to round log exports and to downstream processing.
7. I do not believe that we should rush this project without advertising. The basis of private enterprise and plural democracy, as we know it in Papua New Guinea, is fair competition. We should not encourage a monopoly-like situations. Let the different companies bid openly, and let the board and the provincial forest management committee assess the bids, and make a recommendation to the minister.

8. *The fact that the members of the board who voted in favour of the project, did not read the Project Agreement, is a major flaw in the conduct of the board.*

B.D. BRUNTON

31st of May 1995" (Exhibit 10A)

2.26 Honourable Titus Philemon Minister for Forests signed Timber Permit No. 2.12A on 1.6.95.

Honourable Titus Philemon, acting Minister for Forests signed the Agreement between the Papua New Guinea Timber Authority and Turama Forest Industries Pty Limited on 1 June 1995 whereby Permit N° 2-12A was granted to Turama Forest Industries Pty Ltd (Exhibit 10B).

2.27 A meeting between a landowner group from FMA Block III of Baimuru-Purari Area meeting and Mr. Dike Kari Divisional Manager Policy and Planning on 2.6.95.

A landowner group from FMA Block III belonging to Landowners company called Baimuru District Resources Pty Ltd met Mr Dike Kari Divisional Manager Policy & Planning on 2 June 1995 to present their complaint over signing of TP over Blocks I, II and III to Turama Forest Industries Pty Ltd. Mr. Dike Kari there upon submitted a memo to the Managing Director on this matter on 5.6.95. The main issues mentioned in the memo were as follows:-

1. *They suspect political involvements in this project resulting in by passing of procedures.*
2. *The project was not advertised for other contenders to submit development proposals.*
3. *The Forestry guidelines were not followed.*
4. *The landowners from Baimuru District were not consulted. This was their request at the signing of FMA.*
5. *Premier for Gulf is supporter of TFI therefore decision of PFMC is biased.*

6. *TFI is Rimbunan Hijau related. Therefore landowners of Baimuru do not wish to see any Rimbunan Hijau related company in their area.*
7. *Project should be stopped because the forestry guidelines were not followed. (Exhibit 11).*

Ms. Jean Kekedo's comments on these matters were as follows:-

1. *No comments.*
2. *Act allows for extension.*
3. *Guidelines were followed.*
4. *Not aware of this.*
5. *Premier not Member of PFMC, he was not there when the decision was made.*
6. *TFI is not Rimbunan Hijau.*
7. *They were followed. (Exhibit 11)*

2.28 Article in the Saturday Independent of 10 June 95 urging Ombudsman to Probe Turama Deal.

On 10 June 1995 the Saturday Independent carried a news item on the front page titled "Ombudsman to probe Turama deal." The article mentioned that the National Alliance of Non-Governmental Organisation (NANGO) has claimed that the acting Minister Titus Philemon signed and granted a timber permit to Turama Industries to develop a logging project over 2,666,000 hectare in the Gulf Province contrary to the requirement of the Forestry Act.

The NANGO also called upon the Ombudsman Commission to investigate into all aspects of the allocation of the Turama Project, alleging that political pressure was brought to bear on the National Forest Authority and the Board. They also want the timber permit to be withdrawn and the project advertised and an assurance from the Government that it would honour its commitment to conservation in the area.

2.29 Letter to Honourable Titus Philemon MP, Acting Minister for Forests, from Ms Jean Kekedo OBE Managing Director.

On 13.6.95 Ms Jean Kekedo sent a letter to the then acting Minister for Forests with copy to the Ombudsman Commission. The letter reads as follows:-

"Date: Tuesday, 13 June 1995

To: Hon Titus Philemon, MP
Acting Minister for Forests
P.O. Box 5055
HOHOLA

From: Jean Kekedo, OBE
Managing Director

Subject: Turama

Please find the following background to the recent criticism through the press against awarding of a timber permit to Turama Forest Industries. I seek your advice on this, noting particularly the headline call in the 'Saturday Independent' on 10/6/95, and the Post Courier on 13/6/95 for an Ombudsman Inquiry.

1. ALLEGATION THAT PROJECT IS ILLEGAL IN-AS-MUCH AS IT IS NOT AN EXTENSION AND SHOULD BE ADVERTISED.

The following chronology clearly indicates passage through two governments and three Ministers for Forests and a consistent intent to extend timber permit TP2-12 as basis for a large downstream processing plant in Gulf Province.

March 1988 TP2-12 was issued to Turama Forest Industries (TFI) for a 20 year period;

September 1992 At the behest of Government (and under threat of losing their timber permit) TFI submitted a proposal for additional resource on which to develop a plywood mill;

September 1993 TFI prepared a submission for a veneer and ply processing facility to be based on a 243,000 Ha extension to existing TP2-12. After analysis PNGFA

indicated that the area between TP2-12 and TP2-15 would be made available to TFI. TFI asked that should (after inventory) the resource not be sufficient, then additional resource be made available;

November 1993 PNGFA advised TFI that the log supply area reserved for Turama will initially be from the Western boundary of the Gulf Province to the Purari area in the East, excluding TP's 2-13, 2-15 and 2-19; and a corridor up the Kikori river, up to 20km wide, to accommodate the NEC approved ICAD project of chevron/WWF;

March 1994 Conceptual proposal for development of TSA No. 5 submitted by TFI outlining basis for 2-4 line plymill;

March 1994 Forest Minister wrote to TFI outlining PNGFA Board approval and providing letter of intent to enter into TSA under specified terms and conditions.

Area as previously described

Entitlement to 80% of Merchantable Timber

No Guarantees on FMA's (as yet to be negotiated)

but assurance of best endeavours to obtain FMA's

Feasibility study due by 31/7/94.

April 1994 Press statement from Minister for Forests noting that TFI will have the exclusive right for 80% of the merchantable timber in TSA 5 as it becomes available and PNGFA to negotiate FMA's with view to making timber available;

July 1994 TFI submitted a fully detailed feasibility study for plywood facility inclusive of conditions for investment and requesting additional resource.

November 1994 Letter from Deputy Prime Minister to Forest Minister confirming agreement to granting extension to TP2-12 for areas from Gulf/Western Border as per application, excluding Kikori TRP area;

January 1995 PNGFA advised TFI that FMA's under way, and indicated acceptance of Project Proposal.

FACT: THE FMA/PROJECT AREA IS CONTIGUOUS WITH TP2-12 AND HENCE THE USE OF "EXTENSION" IS JUSTIFIED IN PHYSICAL AS WELL AS CONCEPTUAL TERMS.

2. ALLEGATION THAT PROJECT HAS BEEN DEVELOPED UNDER POLITICAL DURESS AND WITH INDECENT HASTE.

The above (1.) chronology indicates development over two years and through two governments and three forest Ministers.

Prior to acquisition of resource rights, PNGFA conducted awareness programs and facilitated the formation of incorporated land groups

- The first of its kind over a large undeveloped area.

Subsequent to FMA the PNGFA received numerous submissions and held numerous meetings with resource owners and has consistently maintained the position that:

The merchantable resource in the FMA areas will support only one plywood mill (having regard to the ICAD corridor);

Selection of Developer will follow due process with the Gulf Provincial Forest Management Committee (PFMC) recommending to the National Board of PNGFA;

However holding that the background precedent (1. above) engenders a strong claim by Turama Forest Industries. This position was supported by the State Solicitors Office who held that "Damages" were incurred and that it was best to settle with TFI.

This is the first new timber permit awarded in Papua New Guinea in three years. This is hardly indecent haste.

3. **ALLEGATION THAT THE BOARD DID NOT ADEQUATELY CONSIDER THE SUBMISSION AND JUDGED WITHOUT BEING SUFFICIENTLY INFORMED.**

To have provided more time to consider this project agreement would have delayed this project by another two months, noting that:

The Gulf PFMC was several times delayed and only deliberated on the proposal one working day prior to the board meeting.

Resource owner pressure for a result has been considerable.

As entitled to do so, Acting Minister for Forests requested board to deliberate on this submission.

PNGFA professional and legal officers provided a full briefing on this project during the board meeting;

The board was on no occasion pressured to take any particular course of action;

Of the five board members present (industry representative in absentia), four voted in favour of granting the TP to TFI on the basis of an extension to TP2-12. Dr. Brunton, chose not to vote noting his concern at not having time to read the full project agreement.

This project has been before the board on two previous occasions, firstly to approve a letter of comfort to Turama, and secondly to approve the commencement of FMA. This was Dr. Brunton's first meeting (although not gazetted) and he may be unaware that this matter had been before the Board twice, although this was read out in the briefing provided on the day.

4. ALLEGATION THAT PROJECT WAS NOT IN ACCORDANCE WITH THE PROVINCIAL FOREST PLAN.

On board day Dr. Brunton commented that the proposal is half a Provincial Plan by virtue of the ICAD Environmental corridor and the existing projects, ALL of which are respected;

Lamentable though the absence of National and Provincial Plans are, they are not mandatory preconditions to the issue of a permit and especially where it is an extension to an existing one;

As there is no Provincial Plan at this time, (due to longstanding and ongoing financial constraints), this agreement can not be inconsistent with the plan;

There are many requirements of the new Forestry Act which are yet to be implemented. It is not reasonable to hold all Forest Development pending realisation of these.

The issue of Provincial Plan (as with issue of advertisement) were raised with the Board. They were not concealed. The Board was asked to exercise judgement on these;

5. ALLEGATION THAT THIS PROJECT UNDERMINES CONSERVATION INTERESTS.

The agreement effectively conserves a large area of forest (approximately 1.5 million hectares), and in particular protects it from spurious oil palm schemes. The area has the potential and now be developed into a large and secure ICAD;

The Department of Environment & Conservation is on the Board and voted favour;

The PNGFA have fully briefed world wide fund for nature (WWF) who have indicated happiness with this development in-so-far as it relates to their interest in the integrated conservation and development (ICAD) proposal for the Kikori river.

The 'D' of 'ICAD' is for development and significantly the forest available to TFI occupies in area terms only 9% of that part of the ICAD within Gulf province (which incidentally is now considered to cover the full Kikori catchment and as such is very much larger than the proposed 20km strip up the Kikori river (as we understand was agreed by NEC);

This 9% is for selective felling at sustainable rates to accord with Government Policy (since 1990), and the preconditions of the IMF/World bank support for structural adjustment and financial stabilisation;

This is the first large scale forestry development project to be designed strictly in accord with principles of sustainable development;

The agreement provides for implementation of a PNG Logging Code of practice which is the standard for environmental acceptable and economically desirable development.

6. THE ABOVE DEVELOPMENTS RAISE THE QUESTION AS TO WHETHER NANGO SHOULD BE REPRESENTED ON THE BOARD?

Even should the occasion have permitted, there is issue of appropriateness of distribution and consideration out-of-board of legal documents of this kind which are commercially sensitive and confidential. The ensuing passage to press vindicates caution;

Subsequent denial by NANGO of this board's democratic right to choose may be construed as arrogant, patronising, disrespectful and unprofessional. It certainly makes the board unworkable.

Similarly, presentation 'Out of School' (To press) after an overwhelming vote in favour, is an abuse of protocol and could undermine credibility of the Board.

This is not the first time within the context of the board of the PNGFA, that NANGO has acted against project development. Dr. Brunton has called for an inquiry against PNGFA staff actions in the East Sepik area and the Sagarai Gadaisu project, and presently his parent NGO organisation is actively promoting landowners dissension to the April Salumei project over which the state has acquired the timber rights.

With this Background, Minister, you will appreciate that the officers of the National Forest Service are extremely concerned at the allegations against the granting of the Turama Timber Permit.

We believe that this is a worthy development which should be acclaimed as a positive stride toward responsible and sustainable Forest Development and are understandably aggrieved to now be subject to such damaging and one-sided allegations.

Given the high political profile and extremely negative portents against the Board, the PNGFA, and the Forestry Act, may I request that you pass this briefing to the Deputy Prime Minister and at your discretion, the Prime Minister and having considered all options, advise me on an appropriate action.

J.L. KEKEDO, OBE
MANAGING DIRECTOR

cc : Rt. Hon Sir Julius Chan, KBE, GCMG, MP
 Prime Minister

: Hon. Chris Haiveta, MP
 Deputy Prime Minister & Minister for
 Finance & Planning

: Mr. Kenneth Noga, CBE
 Director General - National Intelligence
 Organization

: Mr. Sao Gabi
 Auditor General

: Mr. Simon Pentanu
 Chief Ombudsman

: Mr. Sinal Brown, MP
 Premier - East New Britain Prov. Govt.

: Mr. Riddler Kimave
 Premier - Gulf Provincial Government."
 (Exhibit 12)

2.30 Ms Jean Kekedo OBE Managing Director informed other Members of the Forest Authority about Mr. Brunton's Decision.

On 15.6.95 Ms. Jean Kekedo OBE Managing Director informed the other members that Mr. Brunton has provided to her his views and his decision was not to support the Board's resolution on the project. However the copy of Mr. Brunton's reply received in the Managing Director's office on 31.05.96 was not circulated. (Exhibits 13A to 13D)

2.31 Concern of Mr Iamo Ila Secretary, Department of Environment and Conservation on the Board decision of 30.05.96.

Mr. Iamo Ila who is a member of the Forest Authority expressed his grave concern on some issues relating to Turama Forest Industries after discussing the matter with Mr. Gai Kula who attend the Board Meeting that day as nominee on his behalf. The main features mentioned in his letter dated 07 June 1995 were:-

1. Lack of Demonstrable Provincial and National Forest Plans.

The Turama project (a major project for the province) appears to have been promoted in the absence of particularly a considered provincial forest plan or even a national forest plan. This demonstrates adhoc planning that I prefer not to see repeated in future instances. The Forest Act has been in place for 3 years now, which is surely adequate time for proper preparations to be in place. I believe we urgently need a board policy that - even apart from the legalities - recognises the circumstances when a timber consent is to be considered with or without the background of a provincial forest plan.

2. Legal authority to issue such consents. I would like a clear legal opinion to be placed in front of the Board demonstrating how such consents can be issued having regard section 54 of the Forestry Act which states that "Forest Resources shall only be developed in accordance with the National Forest Plan."

3. Uncertainties in the recent conditions

It is not clear from the consent conditions as to whether Turama Forest Industries can operate in the wider area of the Forest Management Area. The conditions attached should make it clear that operations can only take place within certain specified boundaries. I do not want to be faced at some future date with reports of logging outside the specified areas; or some executive decision to "extend" operations with the wider area on the basis that the consent actually covers half of Gulf Province. I have specific concerns relating to the impact of the Forest Management Agreement on the ICAD area and I write to you specifically on this issue.

4. **Lack of Adequate Prior Circulation of the relevant agenda item.**

The matter, as you will have recorded in the Minutes was only tabled and considered at the same meeting. The primary purpose of the agenda under discussion was the issuance of a logging contract to Turama Industries for several sites in the Gulf Province. This was, to my knowledge, the first significant consent to logging under the current Forest Act. Due to the vast timber size of the area to be allocated, and the fact of it being the first allocation of the resource in this fashion, there is a need for the Board to be given sufficient time to adequately discharge its duties to consider the implication of such a proposal as the policy implication for elsewhere in PNG are considerable. It is an abuse of procedures to table such a matter at the meeting and to expect proper consideration by Board members is grossly unfair.

I believe that such an issue, being the first time such a proposal was to be considered should have had adequate prior circulation of the documents. It is not sufficient I believe for such a major policy step to be tabled as a late item.

As a result of this new adhoc procedure (the absence of a formal planning framework and lack of sufficient time for board members to consider the implications) being established I am worried that now we can now expect such further proposals to arrive for Board's consideration, in the same adhoc manner. I, for one do not want to see this practise repeated." (Exhibit 14).

2.32 Acknowledgement of Mr. Iamo Ila's letter.

On 3rd July 1995 Mr Chris G. Marlow Corporate Secretary acknowledged receipt of letter dated 7th June 95 from Mr. Iamo Ila and mentioned to him that the letter would be listed in the agenda for consideration by the Board at its next scheduled meeting on 25th July 1995. (Exhibit 15)

2.33 Acting Managing Director Mr Keith Dolman's reply Mr. Iamo Ila.

On 4th July 1995 Mr. Keith Dolman acting Managing Director sent a reply to Mr. Iamo Ila making the following comments:-

1. *As a Board member you have entrusted your duties to an alternate who has discharged those duties conscientiously. As a general rule it appears inconsistent with the trust placed in the alternate to now review Board decisions by majority, after the event, outside the Board room and in your absence.*
2. *The fact that the Turama project pre-empted a National Plan is incontestable. If this is a criticism then the same will apply to the Kikori ICAD and for that matter the LAC ICAD, as they too have not been approved through the planning process. In the Turama situation the Project has at least been subject to extensive consultation with Landowners, industry, and community and national government and has twice been before the Board. The issue of the national plan was clearly raised in the submission to the Board, and it was the Board who agreed with the interpretation to effect that the Project need not be constrained in the absence of a Plan. I note your criticism on the delay in effecting these plans and agree that it has taken too long. I do feel however, that DEC has some responsibility in this regard.*
3. *I agree also that the paper was late however there was little option given that the PFMC only met two days before the Board meeting. To miss this occasion would have incurred a minimum delay of two months, and given the enormous and conflicting pressures on us I believe the Board's discomfort over timing is a small price to pay. This Project has already taken three years to develop. There will always be matters of an urgent nature for the Board to consider and we must allow them that flexibility. The key point is that again the Board was not obliged to make any decision even though we hoped of course that they would.*

At Mr. Brunton's request, an opinion was sought from a barrister of his choice. This confirmed the ability of the Board members to draw upon their own experience having regard to this submission and the paper before them. The Board elected to proceed after discussing the questions of the National Plan and the issue of advertisement which was similarly flagged for Board attention.

4. *I will leave the matter of Board submission of your paper to the chairperson who may at the time also wish to raise a serious issue of breach of Board confidentiality, having noted that within twenty-four hours of the Board meeting your Department had provided a copy of the sensitive Turama agreement to a Northern American non-government organisation.*

Keith Dolman
Managing Director"

(Exhibit 16).

2.34 Mr. Chris Marlow Corporate Secretary sees Ms. Jean Kekedo, OBE Managing Director.

On 5.07.95 Ms. Jean Kekedo, OBE requested Mr. Chris Marlow to see her in relation to his acknowledgement sent to Mr. Iamo Ila (Para 2.32) The nature of the discussion was not recorded but Mr. Iamo Ila's letter was not tabled at the next Board Meeting held on 25th July 95.

2.35 Decision of Ombudsman Commission to Investigate the issue of Timber Permit to Turama Forest Industries Pty Ltd.

On 8 August 1995 the Commission on its own initiative decided to investigate the award of Timber Permit to Turama Forest Industries Pty Ltd.

2.36 Notice Under Section 17(1) of the Organic Law on the Ombudsman Commission issued to Ms. Jean Kekedo OBE, Managing Director.

On 19 September 1995, the Ombudsman Commission issued notice under Section 17(1) of the Organic Law on the Ombudsman Commission to Ms. Jean Kekedo OBE requesting her in terms of Section 18(1) of the Organic Law on the Ombudsman to produce the file relating to Turama Forest Industries within 7 days of the receipt of the letter.

2.37 Reminder sent to Ms. Jean Kekedo OBE Managing Director reply dated 19th September 1995 to Ombudsman Commission.

As there was no response to Ombudsman Commission's letter of 19 September 1995 a reminder was sent to Ms. Jean Kekedo OBE to produce file relating to Turama Forest Industries and her report pertaining to Turama Forest Industries.

2.38 Reply of Ms. Jean Kekedo OBE Managing Director

On 2 October 1995 Ms. Jean Kekedo OBE replied Ombudsman Commission as follows:

"Dear Mr Waugla

*Re: Allegations of Corrupt Dealings & Illegal Issuance of Licence To
Turama Forest Industries.*

*I note your intention to investigate the Turama project and will make
the file you request available to you. I have no idea what your item
no. 2. refers to - ie the "report pertaining to Turama Forest
Industries."*

*While you will receive an open and easy assistance from the
National Forest, I will say that it is somewhat disappointing to see
that you have decided to investigate without first discussing this
issue with my office. We have nothing to hide and I am very sure
that the complainant in this instance will show himself again in a
less than favourable light. You may be aware that the NFS is
defending a major court action in respect to the Turama allocation
and there are a number sensitive court issues which may be sub
judice at the present time. We will take advice as to disclosure of
certain matters having regard to the current court proceedings.*

*You will understand therefore the frustration of my team to yet again
be called to question and particularly when we know this as a very
good and proper project and yet all around it flagrant abuses
continue their merry way, and apparently without so much as a
raised eyebrow from your office.*

Yours sincerely.

JEAN KEKEDO, OBE
MANAGING DIRECTOR"

2.39 Letter to Ombudsman Commission from Baimuru District Timber Resources Pty Ltd.

On 21 November 1995 the Ombudsman Commission received a letter from Baimuru District Timber Resources Pty Ltd. The salient features mentioned in that letter were as follows:-

- "1. That they were advised by several lawyers the NGO, ICRAF and many others that the appointment of TFI to become the developer for Baimuru was illegal.
2. Between 3 May and 5 May 1995 elections were held in the villages to set up the landowner Company in accordance with the new Forestry Guidelines. Between 9 May and 11 May 1995 Baimuru Timber letters were delivered to all respective members before the National Forest Board Meeting. That scared the politicians. They then acted fast to counter the landowners moves to legally set up the project along the New Forestry Rules and Guidelines. That resulted in the snap NFA meeting to deliberate on the project and TFI appointment.
3. Between 16 May to 31 May 1995 the National Forest, the politicians the Forest Minister and the Managing Director would not see anyone about the project.
4. National Forest Board met to deliberate on the "Baimuru " Project for Blocks 1, 2, and 3. The issue was pushed through appointing TFI as the developer using "TSA" concept as was advised by Dike Kari.
5. The NFA and papers reported that Baimuru was an extension of the Kikori Project. That was all rubbish as it could also be a part of the Gopera TRP extension as well if the same argument was used." (Exhibit 17)

2.40 Summons Served on Mr Guao Zurenuoc Managing Director

On 29 February 1996 a summons was served on Mr. Guao Zurenuoc the newly appointed Managing Director of the National Forest Authority to attend in person at the office of the Ombudsman Commission on 5 March 1996 at 10.00am to give evidence on the matter investigated by the Commission.

2.41 Letter of Resignation of Mr. Keith Dolman, General Manager

On 13th March 1996 Mr. Keith Dolman submitted his letter of resignation as General Manager which was accepted by Mr Guao Zurenuoc Managing Director. Mr. Keith Dolman has mentioned 29th March 1995 as his effective date of departure on which day he left the country.

2.42 Letter of Resignation of Mr. B.D. Brunton, member Forest Authority

Mr. B.D. Brunton submitted his letter of resignation to the Managing Director from his position as a Board Member on 22 April 1996. The important issues mentioned therein were as follows:-

"I have a number of complaints that stem from rapid politicisation, in the context of a bureaucracy that has always ruled and cannot get use to the idea of community participation, and continual external pressure to access forest resources for profit and gain,

* failure to comply with Forestry Act Section 9

The Board under section 9 of the Forestry Act is meant to manage the affairs of the National Forest Authority. But I have never thought this to be so in practice. Instead, the Board and its agenda are manipulated by Forest Authority officers, loggers and politicians, to such an extent that the Board cannot be thought of as an independent managerial unit. This is a matter of major consequence, because board members at law are responsible for their decisions, and can be held accountable. But the decisions of the board are in fact made for them by others.

Agenda items are not infrequently put on the agenda at the last minute so that Board members cannot have an adequate time to reflect on the matters put before them. Board members are then pressured on the basis that the matter is "of national importance", in order to get a quick decision.

Frequently the agenda of the Board is structured in such a way that only formal information is before the Board. The Board is generally kept in the dark about what is going on the ground, either through inadvertence, or in some cases deliberately.

* failure to comply with section 6(1)

The first objective of the Forest Authority, under the Forestry Act, section 6(1) is "the management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations".

In my view mere lip-service is given to this objective. Forest projects have been started without provincial and national forest plans. Projects are started without environment plans. Forest Authority officers have blatantly misled the Board on a number of these key issues, and even when these deficiencies have been plain for all to see, all objections have been brushed aside.

Of particular concern is the attitude of some Forest Authority staff that it is not their job to be concerned with conservation (in contradiction of section 6(1) of the Act, above). So, it is said: conservation is for the Department of Environment and Conservation, and not the National Forest Authority. Rubbish!

** delegation of Board responsibilities to Managing Director*

The power to delegate Board responsibilities under the Act has been misused. In effect the Board now is a rubber-stamp. This is particularly so with the delegation of the power to renew and extend permits, timber authorities and licences. I am also concerned at the way logging plans are dealt with in an entirely uncritical manner.

All the logging plans pass without a word of criticism from Forest Authority officers, even those controversial projects which were described in the Barnett Report, or are notoriously bad.

** failure to reform the Forest Management Agreement*

It is now well established (see the writing of Professor Ron Duncan) that the FMA is an unfair, unjust and one sided agreement that puts the benefits of logging in the pockets of the loggers, and gives the landholders only a small share of the surplus. The Forest Authority, and the politicians seem to be at one with the loggers to keep it that way. The points of reform that I have sought (landholders to be included in a tripartite consultative process throughout the life of a project, and infrastructure, as a matter of contractual right under the FMA), is not taken seriously. Frankly I cannot be a party to dud contracts that in equitable terms are fraudulent.

In particular a system which allows a logging contractor to control the marketing of logs does not make sense. Loggers should be mere contractors, and should be paid their cost of production (which should be well-known in advance) and a fair return on capital. Papua New Guineans should be the only people allowed to operate the chainsaws, bulldozers, timber-jinkers that constitute a

logging operation, and we should get rid of foreign capital in the log contracting industry. Foreign capital and expertise should be reserved for the downstream processing sector.

* granting new concessions with no ability to regulate

The Forest Authority neither has the ability, nor in my view, the will, to regulate existing projects. The review process which since the passing of the Act in 1991 has only managed to scrutinize two projects, shows that the Authority does not have the ability to regulate or review.

To my knowledge, there has been no prosecution under the Act, and Forest Authority officers have fought to keep security bond provisions ineffective. The review system has been done behind closed doors, with no transparency, and in both cases has produced, at best mediocre deals, but in reality a continuation of the colonial TRP model.

In that context the pressure to grant more concessions must be seen as irresponsible.

* failure to support small scale and medium-scale indigenous processing

A major failing of the Board has been its reluctance to move away from the large scale export-logging model. This is a result of the mind-fix of the Forest Authority advisers who are locked into big projects. It is a further indication of the policy strangle-hold that Forest Authority staffers and politicians have over the Board." (Exhibit 18).

CHAPTER 3 - RELEVANT LEGISLATION

3.1 Constitution of the Independent State of Papua New Guinea

National Goals & Directive Principles N° 4.

3.1.1. Natural resources and environment.

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

WE ACCORDINGLY CALL FOR -

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

3.1.2 Division 2 - Ombudsman Commission

Section 219 Functions of the Commission

- (1) Subject to this section and to any Organic Law made for the purposes of subsection (7) the functions of this Commission are:
 - (a) to investigate, on its own initiative or on complaint made by a person affected, any conduct on the part of.....

....Specified by or under the Organic Law in the exercise of a power or function vested in it or him by law in cases when the conduct is or may be wrong, taking into account amongst other things, the National Goals and Directive Principles,.....

3.1.3 Division 4 - The National Executive

Subdivision B - The Ministry

"Section 148 of the Constitution states as follows:-

- (1) Ministers (including the Prime Minister) have such titles, portfolios and responsibilities as are determined from time to time by the Prime Minister.**
- (2) Except as provided by a Constitutional Law or an Act of the Parliament, all departments, sections, branches and functions of government must be the political responsibility of a Minister, and the Prime Minister is politically responsible for any of them that are not specifically allocated under this section.**
- (3) Subsection (2) does not confer on a Minister any power of direction or control."**

3.2 Forestry Act - 1991

Section 2. Interpretation

"Authority" means the Papua New Guinea Forest Authority established by section 5.

"Forest Development Project" means a project to develop forest resources within; -

- (a) an area the subject of a forest management agreement, or
- (b) Government Land.

"Managing Director" means the Managing Director of the National Forest Service appointed under Section 34.

"National Forest Plan" means the National Forest Plan drawn up in accordance with Section 47.

Section 6. Objectives of the Authority

In carrying out its functions under this Act, the Authority shall pursue the following objectives:-

- (a) the management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations; and
- (b) the maximization of Papua New Guinea participation in the wise use and development of the forest resources as a renewable asset; and
- (c) the utilization of the Nation's forest resources to achieve economic growth, employment creation and industrial and increased down-stream processing of the forest resources; and
- (d) the encouragement of scientific study and research into forest resources so as to contribute towards a sound ecological balance, consistent with the National development objectives; and

- (e) the increased acquisition and dissemination of skills, knowledge and information in forestry through education and training; and
- (f) the pursuit of effective strategies, including improved administrative and legal machinery, for managing forest resources and the management of National, provincial and local interests.

Section 7. Functions of the Authority

- (1) The functions of the Authority are -
 - (a) to provide advice to the Minister on forest policies and legislation pertaining to forestry matters; and
 - (b) to prepare and review the National Forest Plan and recommend it to the National Elective Council for approval; and
 - (c) through the Managing Director, to direct and supervise the National Forest Service; and
 - (d) to negotiate Forest Management Agreements; and
 - (e) to select operators and negotiate conditions on which timber permits, timber authorities and licences may be granted in accordance with the provisions of this Act; and
 - (f) *(repealed)*
 - (g) subject to the *Customs Act, Customs Tariff Act* and *Exports (Control and Valuation) Act*, to control and regulate the export of forest produce; and
 - (h) to oversee the administration and enforcement of this Act and any other legislation pertaining to forestry matters, and of such forestry policy as is approved by the National Executive council; and
 - (i) to undertake the evaluation and registration of persons desiring to participate in any aspect of the forestry industry; and

- (j) to act as agent for the State as required, in relation to any international agreement relating to forestry matters; and
 - (k) to carry out such other functions as are necessary to achieve its objectives or as are given to it under this Act or any other law.
- (2) Subject to this Act and any other law, the Minister may give to the Authority, through the Board, any direction in regard to the carrying out of the functions of the Authority as he considers necessary for the purposes of achieving the objectives of the Authority.

Section 8. Powers of the Authority

The Authority has, in addition to the powers otherwise conferred on it by this Act and any other law, all powers to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and the achievement of its objectives.

Section 9. National Forest Board

There shall be a National Forest Board which shall carry out the functions and objectives, manage the affairs and exercise the powers of the Authority.

Section 16. Calling of Meetings

- (1) The Board shall meet as often as the business of the Authority requires, and at such time and places as the Board determines, or as the Chairman or in his absence, the Deputy Chairman, directs, but in any event shall meet not less frequently than once in every four months.
- (2) Where he receives a request to do so by the Minister or by not less than two members, the Chairman, or in his absence the Deputy Chairman, shall convene a meeting of the Board within 14 days.
- (3) For the purposes of Subsection (1), the Chairman or the Deputy Chairman shall give, to every member, at least 14 days notice of the meeting.
- (4) The Minister may, from time to time, request the Board to meet and consider and advise him on matters he may put to the Board.

- (5) Where he receives a request under Subsection (4), the Managing Director shall convene such a meeting within 14 days.

Section 20. Reports

- (1) The Board shall, by 31 March in each year, furnish to the Minister a report on the progress and performance of the Authority in relation to its functions during the year ended 31 December previously.
- (2) As soon as practicable after he has received the report referred to in Subsection (1), the Minister shall forward -
- (a) the report to the Speaker for presentation to the Parliament; and
 - (b) copy of the report to each provincial government.

Section 21. Provincial Forest Management Committees

The Board shall establish a Provincial Forest Management Committee for each province.

Section 22. Membership of Provincial Forest Management Committees

- (1) A Provincial Forest Management Committee shall consist of -
- (a) a senior officer in the administration of the province, nominated by the provincial government, who shall be the Chairman; and
 - (b) an officer of the National Forest Service, nominated by the Managing Director; and
 - (c) one person to represent the local or community governments situated within those areas of the province which contain forest resources, who shall be the president of such a local or community government nominated by the provincial executive; and
 - (d) two persons to represent land-owning groups in the province nominated by the Provincial Forest Management Committee; and

- (e) one person to represent non-governmental organisations concerned with environmental, social or developmental issues nominated by the National Alliance of Non-Governmental Organisations.
- (2) The members of a Provincial Forest Management Committee -
 - (a) shall be appointed by the Board by notice in the provincial gazette;

Section 27. Calling of Meetings

- (1) A Provincial Forest Management Committee shall meet as often as the business of the Committee requires, and at such times and places as the Chairman determines, but in any event shall meet not less frequently than once in every four months.
- (2) Where he receives a request to do so by the Board or by the Director-General or by not less than two members, the Chairman shall convene a meeting of the Provincial Forest Management Committee within 14 days.
- (3) For the purposes of Subsection (1), the Chairman shall give, to every member, at least 14 days notice of the meeting.

Section 28. Meetings of the Provincial Forest Management Committee

- (1) At a meeting of a Provincial Forest Management Committee -
 - (a) four members constitute a quorum; and
 - (b) the Chairman shall preside, but, if the Chairman is absent, the members present shall appoint a Chairman for the meeting from among their own number; and
 - (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
 - (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

- (2) A Provincial Forest Management Committee shall cause minutes of its meetings to be recorded and kept.
- (3) Where a Provincial Forest Management Committee is deliberating in respect of a particular forest resource, the owners of that particular forest resource shall be entitled to be represented at the meeting of the Provincial Forest Management Committee by two of their number selected by them, who shall be entitled to take part in the deliberations but shall not be entitled to vote.
- (4) Subject to this Act, the procedures of a Provincial Forest Management Committee are as determined by the Provincial Forest Management Committee.

Section 33. National Forest Service

- (1) There is established a National forest Service consisting of -
 - (a) the Managing Director appointed in accordance with Section 34; and
 - (b) other officers appointed in accordance with Section 36.
- (2) The National Forest Service constitutes the staff of the Authority.

Section 47. National Forest Plan

- (1) The Authority shall cause to be drawn up a National Forest Plan to provide a detailed statement of how the national and provincial governments intend to manage and utilise the country's forest resources.
- (2) The National forest Plan shall -
 - (a) be consistent with the national forest policy and relevant government policies; and
 - (b) be based on a certified National forest Inventory which shall include particulars as prescribed; and

(c) consist of -

- (i) National Forestry Development Guidelines prepared by the Minister in consultation with the Board and endorsed by the National Executive Council; and
- (ii) the National Forest Development Program; and
- (iii) a statement, prepared annually by the Board, of allowable cut volumes, being the amount of allowable cut for each province for the next succeeding year which will ensure that the areas of forest resource set out in the Provincial Forest Plan, for present or future production, are harvested on a sustained yield basis.

(3) For the purposes of Subsection (2)(c)(iii), "allowable cut" means the amount of timber which may be cut annually.

Section 48. National Forest Plan to be Presented to Parliament

As soon as practicable after the National forest Plan has been drawn up, the Chairman shall send a copy to the Minister who shall table it in the Parliament.

Section 49. Provincial Forest Plans

- (1) Each provincial government shall, as soon as practicable after the coming into operation of this Act in consultation with the Provincial Forest Management Committee, and in conformity with the National forestry Development Guidelines, draw up a Provincial Forest Plan.
- (2) A Provincial Forest Plan shall contain -
 - (a) Provincial Forestry Development Guidelines; and
 - (b) a five year rolling forest development program.
- (3) Provincial Forestry Development Guidelines referred to in Subsection (2)(a) shall
 - (a) provide an overview of the role of forestry in the economy of the province; and

- (b) be broadly directed towards areas of industrial, rural, economic and social development objectives; and
- (c) set out broad objectives and predictions for the long term of 40 years and, in greater detail, for the medium term of 10 years; and
- (d) state how the forestry sub-sector is expected to contribute to the economy; and
- (e) be renewed every three years.

Section 50. Provincial Forest Plans to be submitted to Board, etc.,

- (1) The provincial Minister shall, on completion of a Provincial Forest Plan, submit a copy to the Board.
- (2) The Board shall consider a Provincial Forest Plan submitted to it under Subsection (1) and, where it considers that the Plan is inconsistent with the National Forest Policy or with the National Forestry Development Guidelines, shall refer it back to the provincial government with details of the inconsistency.
- (3) Where a Provincial Forest Plan has been referred back to a provincial government under Subsection (2), the provincial government shall remove the inconsistency and the provincial Minister shall resubmit the Provincial Forest Plan to the Board.

Section 54. Forest Resource Development to Accord with National Forest Plan

Forest resources shall only be developed in accordance with the National Forest Plan.

Section 55. Types of Land on which, and manner in which Forest Industry Activities may be permitted.

- (1) The subject to Subsection (2), a forest industry participant may exercise timber rights on land which is -

- (a) Government land - as approved by the Board; and
- (b) State leasehold land - where the lessee consents and subject to the conditions of the lease; and
- (c) private leasehold - where the owner consents; and
- (d) private freehold - where the owner consents; and
- (e) customary land - where -

- (i) a Forest Management Agreement in accordance with this Division has been entered into between the customary owners and the Authority; or

- (ii) a timber authority has been granted

- (2) A forest industry participant may carry out forest industry activities only under and in accordance with -

- (a) a timber permit granted under Section 73; or
 - (b) a timber authority granted under Section 87; or
 - (c) a licence issued under Section 92.

Section 56. Acquisition of Timber Rights, etc., by the Authority

- (1) Subject to this Division, the Authority may acquire timber rights from customary owners pursuant to a Forest Management Agreement between the customary owners and the Authority.
- (2) An acquisition under Subsection (1) is not valid, and no Forest Management Agreement is valid, unless it is approved by the Minister.
- (3) No acquisition under this section shall affect the customary rights of ownership of the land.

Section 57. Obtaining Consent of Customary Owners to Forest Management Agreement

- (1) Where it is proposed to enter into a Forest Management Agreement over customary land, the title of the customary owners to that land shall be
 - (a) vested in a land group or land groups incorporated under the **Land Groups Incorporation Act** (Chapter 147); or

- (b) registered under a law providing for the registration of title to customary land.
- (2) Where it is impractical to give effect to the requirements of Subsection (1)(a) or (b), a Forest Management Agreement may be executed on behalf of customary groups who are customary owners in respect of the land covered by the Agreement, by agents of such groups provided that -
 - (a) such agents are authorised to so act in a manner which is consistent with the custom of the group they represent; and
 - (b) 75% of the adult members resident on the land of each such group give written consent to their group entering into the Agreement.

Section 58. Forest Management Agreement

A Forest Management Agreement shall -

- (a) be in writing; and
- (b) specify the monetary and other benefits, if any, to be received by the customary owners in consideration for the rights granted; and
- (c) specify the estimated volume or other measure of quantity of merchantable timber in the area covered by the Agreement; and
- (d) specify a term of sufficient duration in order to allow for proper forest management measures to be carried out to completion; and
- (e) be accompanied by a map showing clearly the boundaries of the area covered by the Agreement; and
- (f) contain a certificate from the Provincial Forest Management Committee to the effect that it is satisfied as to -
 - (i) the authenticity of the tenure of the customary land alleged by the persons or land group or groups claiming to be the customary owners; and

- (iii) the willingness of those customary owners to enter into the agreement.

Section 59. Board to Consult with Customary Owners and Provincial Governments.

Where the Authority has entered into a Forest Management Agreement the Board shall consult with -

- (a) the customary owners who are parties to that Agreement; and
- (b) the provincial government for the province in which the area covered by the Agreement is situated; and
- (c) the member or members of Parliament for the Province and the electorate or electorates in which the area covered by the agreement is situated, in relation to the intentions of the Board in recommending the allocation of a timber permit over or in relation to that area.

Section 64. Advertisement of Project

- (1) Subject to Subsection (3), after completion of -
 - (a) a development options study under Section 62; and
 - (b) project guidelines under Section 63, the Board shall advertise the forest development project and seek expressions of interest from registered forest industry participants.
- (2) Advertisement under Subsection (1) -
 - (a) shall be made in Papua New Guinea; and
 - (b) may be made outside Papua New Guinea; and
 - (c) shall be done in the manner considered by the Board likely to be most effective; and

- (d) shall specify a date on or before which project proposals for timber permits may be lodged.
- (3) Where a forest development project -
 - (a) is an extension of an existing approved operation; and
 - (b) is consistent with the National Forest Development Program,

the Board may consider proposals without advertisement for open tender under subsection (1).

Section 66. Project Proposals

- (1) A registered forest industry participant may make project proposals in relation to a forest development project advertised under Section 64.
- (2) Project proposals under subsection (1) shall -
 - (a) be in the prescribed form; and
 - (b) be lodged with the Managing Director; and
 - (c) be lodged on or before the date specified in Section 64(2)(d); and
 - (d) be accompanied by -
 - (i) the prescribed fee; and
 - (ii) the prescribed particulars.

Section 67. Project Proposals to be Referred to Provincial Forest Management Committee for Evaluation.

- (1) The Managing Director shall refer project proposals lodged under Section 66 to the Provincial Forest Management Committee for evaluation.

- (2) An evaluation of project proposals will be made against -
- (a) the National Forestry Development Guidelines; and
 - (b) the specific guidelines for the project prepared in accordance with Section 63; and
 - (c) the National Forest Policy; and
 - (d) any relevant provincial government policies, provided that they are not inconsistent with the National Forest Policy; and
 - (e) the commercial viability of the project (including the financial resources of the applicant, the past performance of the applicant in forest industry and other projects, analysis of projected cash flows and the anticipated net benefit to the resource owners and to the State).
- (3) In making an evaluation under this section, a Provincial Forest Management Committee shall at all times obtain the assistance of the National Forest Service and of any relevant Department.

Section 72 **Board to consider agreement and make recommendation to the Minister.**

- (1) The Board shall -
- (a) consider a draft project agreement submitted to it under Section 71 or Subsection (2); and
 - (b) where satisfied that the draft project agreement makes adequate provision for all aspects of the project -
 - (i) execute the project agreement on behalf the Authority; and
 - (ii) recommend to the Minister to grant a timber permit to the person with whom the project agreement has been entered into and

- (c) where not satisfied and the draft project agreement makes adequate provision for all aspects of the project - return the draft project agreement to the Provincial Forest Management Committee with details of the matters therein requiring further negotiation.
- (2) Where a draft project agreement has been returned to a Provincial Forest Management Committee under Subsection (1), the Provincial Forest Management Committee shall carry out such further negotiations as are necessary and submit a further final draft project agreement for consideration by the Board in accordance with Subsection (1).

Section 73 Duties of Minister on recommendation

- (1) Where the Minister accepts a recommendation from the Board under Section 72, he shall invite the person with whom the Authority has entered into a project agreement under Section 72(1)(b)(i) to make an application under Section 77 and, within 30 days of a duly completed application being made, grant a timber to that person.

Section 77 Application for a Timber Permit

- (1) A person invited to do so under Section (73(1) or 75(1) may make application for a timber permit.
- (2) An application under Subsection (1) shall be -
 - (a) in the prescribed form; and
 - (b) lodged with the Managing Director; and
 - (c) accompanied by -
 - (i) the prescribed fees; and
 - (ii) the prescribed particulars; and
 - (iii) an environmental plan which has been approved under the Environmental Planning Act (Chapter 370)

CHAPTER 4 - EVIDENCE ON OATH

4.1 General

The Ombudsman Commission interviewed several persons during the course of the investigation. The evidence cited in the following paragraphs mainly related to the facts already stated in chapter 2.

4.1.1 Mr. Guao Zurenuoc Managing Director and Chairman of Papua New Guinea Forest Authority in giving evidence on Oath on 4th March 96 said that:-

He took over office on 2 November 1995 and he found a letter sent by Ombudsman Commission in September 1995 to which no response was sent. It was very unfortunate that only one person was heavily involved in the Turama Project and that person was Mr. Keith Dolman the General Manager. The other person involved in the Turama Case is the Project Lawyer Mr. Maurice Coughlan. He thought that only those two were mainly involved. He checked with all his divisional heads and found that they were not directly involved with Turama. He also checked with the Board Secretary Mr. Chris Marlow. He asked Terry Wara who said that he could not remember. He asked Dike Kari who said that he was not involved. These persons should appear before the Commission and confirm that. According to the Board Secretary Mr. Chris Marlow, most of the talking at the Board Meeting held on 30 May 1995 was done by Mr. Keith Dolman.

4.1.2 Mr. Johnson Mantu acting Divisional Manager Operations in giving evidence on oath on 24 April 1996 said that:-

The greatest involvement relating to Turama Forest Industries Pty Ltd extension came from the former General Manager Mr. Keith Dolman and the Project Lawyer Mr. Maurice Coughlan.

4.1.3 Mr. Paul Barker Economic Adviser to the Prime Minister's Department in giving evidence on oath said that:-

Forestry resource is a major national resource and it was essential that the country and the resource owners get reasonable benefit on a long term and sustainable basis. Corruption inevitably comes into an industry like forestry because it is an industry in which there are fixed prices. The major danger of it was that it results in misallocation of resources and poor decision making. It is a trade very much managed and operated by the industry itself and the Government tried to get a handle on what the prices should be and on a range of different issues. Because it is a fairly closed trade and because the operation of Timber Industries were occurring in isolated parts of the country, the Government owned supervisory capability is limited and different government agencies often do not coordinate well with each other as they might be expected to do. That inevitably allowed the different operators to get away with a lot of profit.

When the Forestry Act was put through in 1991 it had a system of checks and balances. The Act was gazetted in June 1992. There was a delay of one year in the gazettal and in the meantime a lot of activity took place. There were a lot of TRPs that got signed up and Timber permits approved and many of them were signed right in the last couple of days in June before the gazettal. His impression was that it was gazetted in 24th June 1992 although it was meant to be gazetted in April 1992. In the case of Turama area, Turama Forest Industries Pty Ltd was in possession of a TRP and with the concept of FMA in the new legislation there were doubts as to whether the TRP can be extended to service non adjoining areas.

4.2 Access to files and document maintained by National Forest Authority.

Mr Guao Zurenuoc, Managing Director in response to the summons served on him produced certain documents and files. One of the files produced was a file bearing number MD2/2. The Commission after examining that file wanted file numbers MD1/1, MD 1/2, and MD 2/1. Ms. Bibiana Kenatsi office manageress informed the Managing Director that the three files had nothing to do with Turama Forest Investigations. Thereafter the Managing Director sought the opinion of Mr. Maurice Coughlan, Project Lawyer who too advised him not to release the files. However, on the insistence of the Commission the files were finally released by the Managing Director. On examination it was found that these files contained several documents related to the Turama permit which have been shown as exhibits in the report. In this connection the Project Lawyer was questioned on the role he played in that matter.

4.2.1 Mr. Maurice Coughlan Project Lawyer in giving evidence before the Commission on Oath said that:-

He advised the Managing Director that the summons issued to him related to Turama Forest Industries. The Managing Director suggested that there should be some authority to take possession of the files MD 1/1, MD 1/2 and MD 2/1. At that time the Project Lawyer had not read the Organic Law on the Ombudsman Commission. He then went through the Act and found that the Commission had wide powers and had the right to take any documents which in their discretion were related to the inquiry.

4.2.2 Ms. Bibiana Kenatsi Office Manageress to the Managing Director in giving Evidence on Oath before the Commission on 12 March 1996 said that:-

She knew from the filing index that those files were irrelevant to the inquiry as they did not contain documents relating to Turama. She pointed that to the Managing Director who then took the position that the files had nothing to do with Turama Forest Industries. She mentioned that she did not have any interest in the investigation. Managing Director subsequently instructed her to release the files after numbering the letters. She wanted to remove a letter from one of the files as that letter was wrongly filed there, but did not do so as the Commission objected to it.

4.3 Incorporation of Landowner Groups

In terms of Section 57 of the Forestry Act where it is proposed to enter into a Forest Management Agreement over customary land, the title of the customary owners to that land shall be vested in a land group or land groups incorporated under Land Groups Incorporation Act.

4.3.1 Mr Johnson Mantu acting Divisional Manager Operation National Forest Services in giving evidence on oath said that:-

The role he played in Turama Forest Timber permit was in organising the land groups to be incorporated. That was done in his capacity as Divisional Manager for Landowner affairs at that time. He sent his officers to assist the resource owners to organise themselves into landgroups and to get the documents signed for the purpose of incorporating the land groups. Basically the exercise was firstly to identify who the owners of the land were and then to sign the necessary documents which were subsequently handed over to Lands Department for incorporating the Land Groups under the Land Groups Incorporating Act. Why that was important to the Forest Authority was that under section 57 of the Forest Act the Land Groups have to be incorporated for the purpose of entering into a Forest Management Agreement with the resource owners.

4.3.2 Mr. Joseph Badi Supervisor Landowner Liaison Papua New Guinea National Forest Authority in giving evidence on oath said that:-

In terms of the Forestry Act for any new timber project in order to acquire timber rights from the landowners they first have to undertake land groups incorporation. The Land Groups incorporation is basically to identify the landowners in timber areas in order to incorporate such groups under the Land groups incorporation Act administered by the Lands Department. Only incorporated land groups were permitted to sign the Forest management Agreement in terms of Section 57 of the Forestry Act. There were more than 300 landowner groups. But when they conducted the patrol, that is visiting the villages to get the forms signed, between 15th and 29th August 1994. During this period 250 Land Groups were enrolled. Since that was a wet monsoon period some landgroups were left out. They then launched a subsequent patrol in February/March 1995 to incorporate those who were left out.

During the incorporation stage they found that some landowner groups were supporting Turama Forest Industries and some were supporting Rimbunan Hijau. They mentioned to the landowners that once the Forest Management Agreements were signed the resource was to be tendered by advertisement. Mr. Dambis Kaip supervised the signing of the Forest Management Agreements.

4.3.3 Ms Ruth Turia, Manager Acquisition, Papua New Guinea Forest Authority in giving evidence on oath said that:-

Basically the job of the Manager acquisition was to acquire resources from the resource owners. The requirement of the Forestry Act was that before the Forest Authority acquired the right, the Forest Management Agreement had to be signed. The landowners have to be first incorporated as landowner groups under the Land Groups Incorporation Act (Chapter No. 147). Once that was done then the Forest Management Agreement could be executed. But the certificate of incorporation (ie the certificate of recognition) had to be issued by the Lands Department. What they had to do was to prepare everything and forward them to the Lands Department to get the certificates of recognition. The Land Groups incorporation section in the Lands Department attended to that.

4.3.4 Mr. Henry Wasa Project Officer in the lands Group Incorporation Division of the Lands Department in giving evidence on oath said that:-

Basically the land groups incorporation is to incorporate the landowner groups in clan lines. They receive application from Landowner groups for incorporation which were carefully examined to ensure that they were completed correctly. They then checked that there was no duplication of names. The receipt of the application were then gazetted. A copy of the gazette together with a letter was sent to Local Government Council, District Magistrate and the landowner groups. Normally a period of two months was given to make their objections and if no objections were received the certificate of incorporation of Land Groups would be issued. The period of two months was not stipulated in the Act but only a procedural arrangement.

4.4 Forest Management Agreement.

Before any forest resource development could take place the Forest Management Agreements have to be signed between the customary owners and the Forest Authority. An acquisition is not valid and no Forest Management Agreement is valid unless it is approved by the Minister in terms of Section 56(ii). In the case of customary land in terms of Section 57(1)(a) the title of the customary owners to that land shall be vested in land groups incorporated under the Land Groups Incorporation Act. The Board has to consult the customary owners and Provincial Governments in relation to the intentions of the Board in recommending the allocation of timber permit over that area according to Section 58 of the Forestry Act. The Forest Management Agreement shall contain a certificate from the Provincial Forest Management Committee regarding the authenticity of the customary land and the willingness of the customary owners to enter into the agreement as mentioned in Section 58(1) and (ii) of the Act. The Forest Management Agreements in relation to Turama Blocks I, II and III were entered into in February/March 1995.

4.4.1 Mr. Dike Kari, Divisional Manager Policy and Planning in giving evidence on oath said that:-

His first dealing with Turama was at the time he actually instructed the officers to go out and acquire the Forest Management Agreements. He specifically instructed them to explain the whole procedures to the landowners and land groups at what ever specific convenient location. After completing the Forest Management Agreements a report was submitted by Dambis Kaip in April 1995 to the Management.

There were many questions raised by the Landowners and the key issue was who would get the resources when acquired by the Forest Authority. In the event that question came up he told them that they should mention to the landowners that it was not earmarked for developer and the procedure for selection would be according to the Act. This was clearly indicated in that Report as the question was raised over and over again.

Turama Blocks I, II and III was a large resource and he should say that it was one of the largest resources acquired under Forest Management Agreements. It was the Second Management Agreement that was done after the Marshall

Lagoon Agreement in Central Province. It covered the area from the Western Province and extends right up to Purari and so it was a large resource and covered about 1.5 million hectares including swamps, lakes etc although the actual production area was less than 300,000 hectares.

In terms of feasibility studies Turama Forest Industries Pty Ltd had produced a report under TSA (Timber Supply Area). The TSA concept was formulated by the former General Manager Mr. Smith. His concept was endorsed by the NEC decision. But when the Government changed and Mr. Andrew Posai was appointed as Minister for Forest he decided to rescind that decision by taking it back to the cabinet and got the TSA concept abolished. But in the case of Turama area it was advertised as TSA area N° 5. When it was advertised a number of companies put in detailed feasibility studies. Although the Forest Management Agreements were done after Marshall Lagoon in terms of preparation it was well ahead of other projects. The Turama extension was given ahead of Marshall Lagoon. The TSA concept was a policy decision for long term supply of logs for down stream processing. The reservation about down stream processing was the lack of supply or continuity of log supply and so the General Manager decided that the way to encourage down stream processing was to amalgamate certain timber areas in a province and call it a TSA.

TSA was a policy decision made to encourage down stream processing. Down stream processing was the processing of whole logs into finished timber products like sawn timber, plywood, furniture etc... The TSA 5 proposal was evaluated and it was found that Turama Forest Industries Pty Ltd was the most acceptable proposal but no permit was granted under TSA 5. Once the decision was made to abolish the TSA concept the National Forest Services decided to acquire Timber Rights from customary owners by means of Forest Management Agreements. The consideration in favour of Turama Forest Industries Pty Ltd was based on two grounds. One was that the company put in the best proposal with substantial investment and spent a lot of money in engaging professional engineers to come and work on the proposal. The second reason was that they were next door to the existing timber area which is TP 2-12 called Turama Timber Permit. The fact that Turama Forest Industries Pty Ltd had invested large sum of money in the feasibility studies was not binding on the Forest Authority to consider their proposal. The National Forest Service thought that since there was somebody who has put in money

and is serious about it and in view of the difficulties in operating in that area due to unfavourable weather conditions and the remoteness they should be given preference. It was on those grounds that the Board decided that Turama Forest Industries should be given the extension.

During the period of signing the Forest Management Agreements it was found that some resource owners were supporting Rimbunan Hijau operating in Urama Copera Area. Some were supporting Turama Forest Industries Pty Ltd. He did not know at that time that Turama Forest Industries Pty Ltd would be selected. His officers were told that it was up to the Board to decide on the course of action. The Impression was given to the resource owners that the selection would be done by advertisement. When the resource owners signed the Forest Management Agreement they were of the view that the project would be advertised.

However, at the time the Forest Management Agreements were signed the certificates of recognition were not issued to the Land groups. As Divisional Manager he did not ensure that the Certificates of Recognition were obtained before the officers went to obtain the signatures for the Forest Management Agreement. There was pressure from the General Manager. It was only this year (1996) that they realised that the Forest Management Agreements could not be done without the certificates of recognition. Verbal instructions were given by the General Manager to get the FMAs done. In the process of getting the FMAs he was not aware that the Land Groups Incorporation was not in order. After the FMAs were done Ms Ruth Turia Manager Acquisition said that the certificates of recognition were not issued. He did not realise that after the initial gazettal of the application the certificates of recognition were not issued.

4.4.2 Mr. Dambis Kaip Forest Management Agreement Supervisor in giving evidence on oath said that:

Turama Project was one approved by the previous Government to be considered as a TSA concept. When the new Government came into power in September 1994 they did away with the TSA concept. The new Government considered Turama project as one of the priority projects in 1995. Under the new Forestry Act the timber rights have to be acquired from the customary owners by way of Forest Management Agreement. One of the prerequisites of the Forest Management Agreement is the incorporation of land groups. That was undertaken in September/October 1994.

In February 1995 the signing of the Forest Management Agreements were undertaken which were the first set of Forest Management Agreements under the New Act. In Turama's case there were three blocks. Block I is called Turama Block I, Block II is called Kikori Block II and Block III is called Baimuru Block III. Thus there were three separate Forest Management Agreements that were signed.

The correct procedure for Forest Management Agreements was that the incorporation of Land Groups had to be done first and then a certificate has to be issued by the Gulf Provincial Forest Management Committee. This certificate has to be given by the Chairman of the Gulf Provincial Forest Management Committee to the effect that the land groups were the rightful landowners and that they were willing to sign the Forest Management Agreements. But what actually took place was that the Forest Management Agreements were signed and they came back. The documents were given to the project lawyer in mid April 1995 and later according to the documents they found that they were signed by the 'secretary' to the Gulf Provincial Forest Management Committee. That was not the correct procedure. They were told that it was a priority project for the Government which was conveyed by Ms. Jean Kekedo through the General Manager to Mr. Dike Kari.

One of the major issues raised by the resource owners was whether the project would be advertised. They told them that the project would be advertised and the developer submitting the best proposal would be selected. He compiled a report in April 1995 incorporating all these matters which was submitted to the management and so the management ought to have been aware of those matters.

4.4.3 Ms. Ruth Turia Manager Acquisition in giving evidence on oath said that:-

She was appointed as Manager Acquisition in April 1995 and so she was not directly involved in getting the Forest Management Agreements signed for Blocks I, II and III of Turama Forest area. Since then she realised that proper procedure was not adhered to in obtaining the Forest Management Agreements. First the land groups have to be incorporated and that was not done as the certificates of recognitions were not issued. Then before Forest Management Agreements were signed approval had to be obtained from the Gulf Provincial Forest Management Committee. That too was not done, but approval was obtained from the 'secretary' after the Forest Management

Agreements were signed. That too was also improper as the certificate in terms of section 58(f) of the Forestry Act had to be signed by the Chairman of the Gulf Provincial Forest Management Committee.

4.4.4 Mr Keai Semesse Supervisor Technical Services Southern Region in giving evidence on oath said that:-

For allocation of resources Land Groups Incorporation has to be done first and certificates of recognition have to be obtained. Then the Land Groups Incorporation Certificates and the FMA documents are sent to the Provincial Forest Management Committee for endorsement. Once those were received there the documents were examined by the Committee and certified by the Chairman. Then those documents were sent to the Forest Authority. The FMA team was then sent to the field to get the FMAs signed.

4.4.5 Mr Hakiso So-omba Manager Allocation in giving evidence on oath said that:-

Forest resources development work was undertaken in accordance with the National Forest Plan. But that plan was not ready. Whether a developer is selected by advertisement or not the Forest Management Agreement has to be done first. It is the allocation section with the assistance of the Corporate Secretary that normally submits project papers to the Board for consideration. On the contrary, in the case of Turama extension it was handled at General Manager's level.

4.5 Timber Supply Area (TSA) Concept

The timber supply area concept is not mentioned in the Forestry Act. It was a proposal put forward by the then General Manager Mr. Conrad Smith and approved as an NEC decision when Honourable Mr Tim Neville MP was the Minister for Forests. When the change of Government took place in 1994 the Honourable Mr. Andrew Posai new Minister for Forests again took the matter before the NEC and the TSA concept was abolished.

4.5.1 Mr. Terry Warra Director Forest Research Institute Lae in giving evidence before the Commission said that:-

Since the former Minister Tim Neville was committed to downstream processing he came up with the new concept of Timber Supply Area(TSA). The country was divided into 25 or 26 TSA regions. The Turama area fell under TSA 5. The Honourable Minister Tim Neville MP in 1993 asked the Timber Industry to send in proposals for TSA 5 area and gave them 8 months time. Turama Forest Industries Pty Ltd submitted its proposal. Urama Gopera a subsidiary of Rimbunan Hijau too submitted proposals. Turama Forest Industries wanted Blocks I, II and III. In the timber permit already issued to Rimbunan Hijau there was a clause which committed Block III and parts of I and II. National Forest Service sought legal advice and found that the areas mentioned in the permit were with the customary owners. The permit should not have included Block III and parts of Blocks I and II without acquiring the resources from the customary owners. What the Minister wanted was to lock up the resources through TSA so that there would be security for the existing industry and any potential investor who wanted to come in. TSA concept was nothing but to lock up the resources.

4.6 The Turama Extension Board Paper as an urgent submission

Turama Forest extension Board paper was only submitted by the National Forest Service to the Board to be considered as an urgent matter at the meeting held on 30.05.96. It was not included with the rest of the agenda items given to the Board members earlier. The Corporate Secretary who is also the corporate solicitor was not aware until the Board sat on 30.5.96. The paper was prepared by the Project Lawyer Mr. Maurice Coughlan and endorsed by the General Manager Mr. Keith Dolman (who resigned during the course of our investigation) and the Managing Director Ms. Jean Kekedo OBE. The Honourable Titus Philemon MP, acting Minister for Forests addressed the Board Members at the same meeting.

4.6.1 Mr. Chris Marlow Corporate Secretary PNG Forest Authority in giving evidence in oath said that:-

The Board paper was submitted as a late paper to the members and he did not see it. Mr. Dolman the former General Manager who attended the meeting indicated that everything had been done as required. Unless the paper came to him, even if it was a late paper he could not give his legal comments on it. Had the paper been given to him, he would have indicated what steps still required to be completed, if at all. If he was not asked he couldn't give it. The paper was a bit late and the chairperson stood up and said that everything was completed in relation to it. He has not been asked by the General Manager for comment on this matter. If the General Manager said that everything was in order he certainly was not going to embarrass the Chairperson of the Board or the Members of the Board by saying that he had not seen the Board paper. He would not do that. It would be quite improper. The procedure he adopted in preparing the minutes was that they reflected whether or not the resolution was passed. The minutes did not reflect the pros and cons of the arguments unless a Board member specifically requested that it be recorded in the minutes.

4.6.2 Mr. Maurice Coughlan Project Lawyer in giving evidence on oath said that:-

All instructions came to him through the General Manager. One of his functions was to draft forest agreements. The General Manager wanted him to prepare a Board paper in a hurry on Turama Forest Extension as the Gulf Provincial Forest Management Committee made a decision in favour of Turama Forest Industries Pty Ltd on 26 May 95 (Exhibit 7). He was informed

only the day before the Board Meeting scheduled for 30 May 1995. If that was missed there would be a delay of nearly 2 months before it could be taken up at the next Board meeting.

In answering a question that was put to him by the Commission he admitted that there was provision in the Act to call for meeting giving 2 weeks notice. He did not know what the former Managing Director had in her mind when she mentioned that the Turama Extension was to be considered as a matter of urgency. As far as he knew that was the only project considered as an extension to an existing project.

4.7 Turama Forest Industries Pty Ltd.

Turama Forest Industries Pty Ltd was given a Timber Permit in 1988. It was originally known as Long Term Trading Pty Ltd.

4.7.1 Mr. Keith Dolman in giving evidence on oath on 20.03.96 said that:-

Turama Blocks I,II and III constituted a large area of land with timber resources. First, they explained the FMAs to the landowners and then the FMAs were signed. Then they talked to those parties who were the project developers. The next thing was that the Gulf Provincial Government and the Gulf Provincial Forest Management Committee were expected to consider those in their meetings. He only knew of one meeting which he attended. But there had been many Provincial Forest Management Committee meetings on that matter and at the same time there was a dialogue with various parties. He could not remember when the earlier two Board Meetings at which Turama issue were discussed. The Board agreed to the project as an extension to TP2-12 but he could not remember the dates of the Board meetings.

At the time they acquired the resources they knew who the resource owners were. Industry was the only one that was not widely consulted on this project because pre-history indicated that it would go to one particular company and would not be advertised. But that was not a Board decision. He could not remember when the decision to award to the particular company was made.

In 1993 Turama Forest Industry Pty Ltd submitted to the Forest Authority a very serious proposal for Veneer and Ply process facility. His understanding to the background to that was that they were invited by the then Government presumably by the Forest Minister and the proposal submitted by the company was a very serious one. His thinking was in this Turama area Honourable Tim Neville MP, Minister for Forest wanted to establish a big processing facility.

He identified an area which was relatively free of other incumbents and the only projects in this area were TP2-12 itself and Urama Gopera Project TP2-15. What the Honourable Tim Neville Minister for Forests did was to divide the country into 14 areas each to be brought under a TSA. What he was aiming was to allocate each one to the big developers like Rimbunan Hijau, Turama, Little Player etc..

Anyhow the TSA concept was rescinded as it became highly controversial. By then Turama Industries Pty Ltd had submitted a very serious proposal which would have cost them many, many thousands of kina.

When land groups were incorporated however, the developer was not mentioned and all that they had to say at that stage was that they came for incorporation only.

Under the Act the landowners have a minor role and technically it was not necessary for them to know who the developer would be. The selection of the developer was left to the Board.

When he mentioned that there was extensive consultation with the National Government what he meant was extensive consultation with Government agencies like Environment and Conservation Department, Department of Agriculture, Prime Minister's Department. Discussions were held with Mr Paul Barker, Economic Adviser to Prime Minister, Department of Prime Minister and in the case of Environment and Conservation with Mr. Gai Kula, First Assistant Secretary.

4.7.2 Mr Goodwill Amos Manager Projects in giving evidence on oath said that:-

Turama Forest Industries Pty Ltd have been logging since 1988. In 1992 the company realised that it would not have enough resources to operate for the full 20 years and it asked whether the adjoining area called Omati could be given. Their permit covered by TP2-12 was a TRP ie Timber Rights Purchase and it was only for production. The company went there only to harvest the resource. But with the current FMA it was for production and management.

4.7.3 Mr Keai Semesse Supervisor Technical Services Southern Region in his evidence on oath said that:-

Turama Forest Industries asked for 10,000 hectares in Omati area but that was not given as the new Forest Policy was coming in. According to the new Policy FMAs had to be signed before allocation.

4.8 Discussion at the Board Meeting held on 30 May 1995.

The Turama Extension Board Paper was given to the Board Members only at the Board Meeting itself. It was taken up as an urgent matter and was considered as an extension in terms of section 64(3) of the Forestry Act. Section 64 of the Act reads as follows:-

ADVERTISEMENT OF PROJECT

"(1) Subject to Subsection (3), after completion of -

- (a) a development options study under Section 62; and
- (b) project guidelines under Section 63, the Board shall advertise the forest development project and seek expressions of interest from registered forest industry participants.

(2) Advertisement under Subsection (1) -

- (a) shall be made in Papua New Guinea; and
- (b) may be made outside Papua New Guinea; and
- (c) shall be done in the manner considered by the Board likely to be most effective; and
- (d) shall specify a date on or before which project proposals for timber permits may be lodged.

(3) Where a forest development project -

- (a) is an extension of an existing approved operation; and
- (b) is consistent with the National Forest Development Program,

the Board may consider proposals without advertisement for open tender under subsection (1). •

4.8.1 Mr Keith Dolman giving evidence on oath said that:-

In his opinion the conditions stipulated in Section 64(3) were satisfied but he didn't check. The significant thing was that they recognised a barrier in proceeding with the project. The barriers were two fold. The first thing they recognised was the prehistory. He came in to the job and there was a best commitment made to that project probably in good faith by the previous Government. They already had that commitment there. They sought various interpretations as to what that meant in legal terms and cost claims to the State.

Then it became clear to them that if possible they should work with that commitment. They struck a barrier. The barrier was the National Forest Plan. The National Forest Plan was a prerequisite to any development. Unofficially their lawyers sought advice. What he did was that all these matters were put to the Board openly. They did not at any stage underwrite, understate or hide those issues. They put those to the Board with their explanation.

There was every opportunity to promote that as an extension within that area as it was contiguous to the existing project.

In the absence of the National Forest Plan whether the recommendation was ultra vires or not was a matter to be decided by the Ombudsman Commission.

There were many things in the Act that were not workable. They found that it was not possible to give one National Development Program without Provincial Plans. This was an extension not a new project. They could have argued that it did not qualify to be subject to the National Forest Plan because it was an extension. Further how could it be inconsistent when there was no National Forest Development Program?

Further they didn't have enough time to prepare. Had they missed the submission at that board meeting, they had to wait for 2 months for the next board meeting. He agreed that a meeting could have been summoned by giving 2 weeks notice. They did not consult the project lawyer as they had other matters to do. There was the Corporate Secretary who could have looked into that matter. The reason for putting it as an urgent matter was that it was dragging on for years and not months. He would say there was no pressure by anybody to take a decision then and there.

This project had come up in 1988 March before the National Forest Plan. How could it be inconsistent with the plan which did not exist? He had no argument with the Commission when the Commission mentioned that if the plan did not exist then they could not bring that under Section 64(3). He agreed that Kikori ICAD and LAL ICAD did not fall under Section 64(3). He was sure that there were other extensions granted under the Forestry Act of 1991 prior to the granting of Turama Extension. He could try to give the names of such extensions. He agreed that still no National Forest Plan has been produced.

Their understanding was that once a resource is acquired that it was their responsibility to select a developer. They didn't believe that they had to involve the resource owners in that Selection.

He said that the National Forest Service had a particular developer in mind but until such time as the board actually agreed they acted as if they didn't have a developer. Under the Forestry Act the resource owners had no right to know the developer.

Although TP2-12 in 1988 the extension was sought for under the new Act. FMAs were done to allocate resource for Development. Then it should be in conformity with the National Forest Plan. The FMAs were not done specifically for allocating to the resources as extension to the existing project. This issue was raised by the resources owners and had been denied by the officers who attended to the FMAs.

4.8.2 Mr. Maurice Coughlan, project lawyer in giving evidence on oath said that:-

He did not tell the Board that all legal requirements were met that there was no problem at all to recommend the project. Only thing he knew was about the project agreement and so he could not give a legal certification of the paper as requested by the Corporate Solicitor. He did not have access to the Forest Management Agreements.

As regards conditions mentioned in Section 64(3) his view was that it was an extension to an existing project and it was also contiguous. It was adjoining an existing area and was neighbouring. Here the extension was by way of acquisition of provision of more resources to an existing project.

He didn't know why three separate Forest Managements were signed. The Board considered it as an extension without considering the number of Forest Management Agreements. He was not aware that FMAs were not ready on the day that the Board discussed the extension. He knew about it only a month later

The project guidelines that were taken to Kerema on 26 May 1995 to be signed by the Gulf Provincial Forest Management Committee were partly prepared by him. If the Board wanted to consider the Project as an extension then there was no necessity to obtain a project guideline to be approved from Kerema in terms of Section 63 of the Forest act. Such guidelines are required only when the project was advertised under Section 64.

He spoke to the State Solicitor as he just wanted to get some interpretation regarding National Forest Development Plan but no written opinion was obtained.

Turama was the only extension considered under the Forest Act of 1991.

Resource Development could not be considered without the National Forest Plan because it was the National Forest Plan that contains the National Forest Development Programme.

When it was mentioned at the Board Meeting that all requirements have been met the Board Members failed to realise that some fundamental mistake had taken place. He did not specifically say that all legal requirements were met, but he said that condition of Section 64(3) were met as there was no National Forest Development Program.

However in the case of the Marshall Lagoon project the Board did not want to proceed as there was no National Forest Plan.

His view of Section 54 was that physical development could not take place without a National Forest Plan.

He could not understand what was in the mind of the former Managing Director Ms. Jean Kekedo when she mentioned in the last paragraph of her letter dated 17 March 1995 to Turama Forest Industries Pty Ltd that it was not necessary for the company to respond to the advertisement.

4.8.3 Mr. Chris Marlow Corporate Secretary and Corporate Solicitor in giving evidence on oath said that:-

In Section 54 development implied the meaning that they could award a project but excluding physical development. His best view was that a resource could not be developed unless there was a National Forest Plan in place. That was his liberal and free interpretation.

His view of Section 64(3) was that those two conditions were conjunctive and it was compulsory that the National Forest Plan was in place before having a development scheme. According to Section 54 the National Forest Plan should be in place even in the case of extension to an existing project. In case of doubt he would have gone to the State Solicitor in order to obtain his opinion on those sections.

4.8.4 Mr. Soiat William Acting First Secretary Department of Personnel Management and Nominee representing the Secretary to that Department in giving evidence on oath said that:-

At the Board meeting held on 30 May 1995 the issue of granting an extension permit to Turama Forest Industries Pty Ltd was taken up as an urgent matter and the resolution was passed.

The relevant papers were not given to the members prior to the meeting but were given only at the meeting.

The chairperson, the General Manager and the project lawyer spoke on behalf of the motion. After views were expressed by various members that was a majority decision to grant approval. Independent verification of any matters mentioned by those three people was not possible at that time.

As mentioned by the Commission, the Board was not well informed as the documents were given only at the Board meeting. The members should have been given more time to read the Board paper. The chairperson gave the impression that it was an urgent matter. Since there was a provision in the Act to call for a meeting with two weeks notice such a delay would not have hindered the project in anyway.

The minimum condition stipulated in section 64(3) had not been properly looked into and the Board would have been misled on that matter. The decision was made on the limited information that was provided to the Board. If correct information in terms of legislative implication and minimum conditions were expressly made to the Board then the decision might have been otherwise. There was deficiency in the deliberation. The Board members should have been correctly briefed because members have to comply with the legal requirements.

According to the statement issued by the Honourable Andrew Baing MP, Minister for Forest the National Forest Plan was not done. That was the reason why Ms. Jean Kekedo was sacked. However, the Board had voted unanimously for her retention in office. Those matters appeared in the newspaper.

4.8.5 Mr. Caikovina Kula First Assistant Secretary Nature Conservation Division of the Department of Environment and Conservation and the Board nominee representing the Secretary to that Department in giving evidence on oath said that:-

At the Board meeting Mr. Keith Dolman explained the Forest Management Agreements showing the boundaries of the FMA. The time spent was very short. Prior notice was not given relating to that matter and hence he could not consult his Department on the stand that he should take. He therefore, made a submission on behalf of the Department after the meeting was over.

One of the functions of the PNG Forest Authority was to produce a National Forest Plan but no plan has been produced so far. They were told that the National Forest Plan was in the pipeline.

The Chairperson and the General Manager were pushing the matter regarding Turama Extension. Dr. Brunton asked why it was not advertised. He too supported that idea. But they were told that since it was an extension of an approved project there was no necessity to advertise. They were told by the Managing Director that NEC and the Minister for Forest were interested in that matter. Dr. Brunton abstained from voting and mentioned that he would give his reasons. However, when Dr. Brunton submitted his reasons, a copy of his reply was not given to him. They were told at the Board meeting that day that if the motion was not considered it would have to wait for the next meeting scheduled 2 months hence. But a meeting could have been summoned by giving 2 weeks notice. The Managing Director conveyed that there was a lot of political pressure from the Minister. She cried and shed tears a couple of times and said that the Minister was getting hard on her.

When the Chairperson introduced the agenda and mentioned that it was an urgent matter and the Minister was interested in getting the Board to recommend extension permit. Probably, it was Mr. Sinai Brown who asked the Project Lawyer whether it was in line with the legislation. The Project Lawyer replied that there was no problem for the Board to agree to the extension.

The whole discussion did not exceed 30 minutes. The chairperson openly said that there was pressure from the Minister.

4.8.6 Mr. Iamo Ila Secretary of the Department of Environment and Conservation in giving evidence on oath said that:-

He attended only a few Board meetings because of his commitments and therefore he was sending his nominee Mr. Gai Kula most of the time. Mr Kula explained what happened at the Board Meeting and he expressed his views to the Board Secretary that it was not done in the proper manner as stipulated in the Act and why Section 64 of the Act was not consulted before the resolution was made. He asked in his letter to the Board Secretary why the procedure was not followed but he did not get a reply.

According to the advice given by his nominee that Turama extension was not on the agenda and it was brought up at the last minute after all other agenda items were discussed. His nominee Mr Gai Kula was caught unaware as he did not know that this matter would be taken for discussion that day. His nominee mentioned to him not to allow that to go and so they should write in about some of the areas they have overlooked when they introduced that item at the Board meeting.

The developer must have the Forest Plan and the Environment Plan. The Environmental Plan has to be approved by the Honourable Minister for Environment and Conservation. As far as he knew he had not sighted any plan and the Honourable Minister has not taken any steps to approve any work to be done there.

4.8.7 Mr. John Painap former acting Secretary Department of Prime Minister and presently Secretary Department of Lands in giving evidence on oath said that:-

The letter dated 6th June 1995 was a letter sent to the former Managing Director National Forest Service in response to the letter received from the Director General NIO as he could not make a decision. What she was saying in her reply was that the permit had been awarded and according to her the issue has been resolved and decision had been made and whatever that was reported had no bearing.

In para 2 of his letter he wanted to know whether it was an extension of total area that had been approved. If it was a new extension it should be in compliance with the National Forest Development Programme.

His view in Section 64(3) has been that the two conditions stipulated in that section must be fulfilled to exempt from advertisement. If one of the conditions stipulated was not satisfied he believed that it should have been advertised.

He was not satisfied with the answers given by the former Managing Director in her reply. Some of the paragraphs in that letter were personal dealing not with the facts that were stated. It was a superficial reply. What was stated in the last paragraph was not related to his function.

4.8.8 Mr. Terry Warra Director Forest Research Institute in giving evidence on oath said that:-

The General Manager sought internal legal advice and decided to go under section 64(3). The submission was made to the Board a bit hastily without adequate notice.

The National Forest Plan was not there. After that project went through they realised that the National Forest Development Programme was not there. The General Manager was handling that project himself. It was the General Manager who was pushing the proposal. They decided that no further project be considered without the National Forest Plan.

In the case of Marshall Lagoon the TRP (Timber Rights Permit) expired. The Forest Management Agreements were done for that area and they went ahead and advertised. They then realised that the National Forest Plan was not there yet. They were not doing the correct thing and they decided to speed up the National Forest Plan and the Provincial Forest Plan. The project has not been allocated yet.

4.8.9 Mr. Kanawi Pouru acting General Manager Forest Authority in his evidence on oath said that:-

His reading and understanding of the Board's option was that the Act allows resources to be allocated. The way he looked at it was that there were 2 options. One was to advertise. The other was to allocate without advertisement.

If there was an operator on the ground and additional resources are acquired within the vicinity, then it was in the national interest that the operator was going to meet the national interest then the Board could exercise the option not to advertise and allocate the resource to the operator on the site.

They had a National Forest Policy and the National Forest Development Programme was a part of the policy and that was his answer to the question whether extension could be given under Section 64(3) of the Act.

4.8.10 Mr. Andrew Tagamasau Acting Divisional Manager Operations and former Regional Manager Southern Region in giving evidence on oath said that:-

He was the Regional Manager Southern Region from October 1993 till he was recently promoted as acting Divisional Manager Operations.

A certificate had to be given by the Gulf Provincial Committee before the FMAs were signed. FMAs were not submitted to the Gulf Provincial Forest Management Committee when it had its first meeting on 26 May 1996. The certificate referred to earlier had to be signed by the chairman of the committee. There is only a 'minute Secretary' to the Gulf Provincial Forest Management Committee.

But the General Manager instructed him to sign the certificate as secretary to the Gulf Provincial Forest Management Committee and so he signed it accordingly. This was done in Port Moresby after the meeting of 26 May 1996. It was the General Manager who was exerting pressure on him. Rimbunan Hijau was trying for this project and the General Manager felt that the company had adequate resources and so wanted the Turama Extension finalised early to cut out Rimbunan Hijau.

The certificate stated that the landowners were willing to sign the agreement but no evidence was produced to that effect. The only thing that was put to the committee was the explanation of the project.

The landowner groups were not represented at the Provincial Forest Management Committee meeting. The document that was signed by the Gulf Provincial Forest Management Committee was something that was drafted in the General Manager's Office and brought to Kerema for the committee members to sign. What was stated in that document was not factually correct. The statement made in paragraph 7 of the minutes that the Gulf

Provincial Forest Management Committee had been given the opportunity by all parties to negotiate the proposal was incorrect. In fact, there was no project proposal put forward before the Committee. The statement in the minutes of the committee advising the National Forest Board that the Proposal submitted by the Turama Forest Industries Pty Ltd had the full support of the Gulf Provincial Forest Management Committee was also incorrect as that minute was also prepared by the General Manager and brought to Kerema to be signed by the Committee members.

As regards the certificate under Section 58(f) he presumed that the FMA document was cleared by the Project Lawyer and so they merely wanted his signature. There was pressure from the General Manager who was co-ordinating all those things. The General Manager gave him a telephone call and told him that he had to sign the certificate. So he signed the certificate which was brought to his office at Port Moresby as secretary to the Committee although he was not the secretary. The correct procedure is that the certificate should have been signed by the Chairman Gulf Provincial Forest Management Committee before the FMAs were undertaken.

CHAPTER 5 - COMMENTS IN RESPONSE TO THE PRELIMINARY REPORT

5.1 Despatch of Preliminary Report.

Pursuant to Section 17(4) of the Organic Law on the Ombudsman Commission copies of the reports were sent to the following persons:-

Hon. Titus Philemon MP	Then Minister for Forests
Mr Guao Zurenuoc	Chairman, National Forest Authority and Managing Director, National Forest Service
Ms Jean Kekedo, OBE	Then Chairman, National Forest Authority and Managing Director, National Forest Service
Mr Keith Doleman	Then General Manager, National Forest Service
Mr Albert K Milala	Acting Chairman of the Gulf Provincial Forest Management Committee.
Mr Dike Kari	Divisional Manager Policy & Planning, National Forest Service
Mr Andrew Tagamasau	Divisional Manager Operations, National Forest Service
Mr Maurice Caughlan	Project Lawyer, National Forest Service
Ms Bibiana Kenatsi	National Forest Service

5.2 Response to the Preliminary Report

All persons to whom the Preliminary Reports were sent responded with their comments. Ms Jean Kekedo in addition to her written reply requested the Commission to grant her an opportunity to give oral evidence. The request was granted. Mr Maurice Caughlan was also granted further opportunity to give oral evidence in relation to certain adverse comments made against him by Ms Jean Kekedo OBE.

5.2.1 Hon. Titus Philemon MP

Hon. Titus Philemon MP mentioned that the matter raised in the letter sent by the Commission appeared to be of a technical nature and required no comments from him. His only remark was that his sole involvement was to sign the permit, which he did on the recommendation of the National Forest Board at that time.

5.2.2 Mr Guao Zurenuoc - Chairman & Managing Director National Forest Authority

Mr Zurenuoc mentioned that he was not the Managing Director of the Forest Services or Chairman of the Forest Authority at the time the matters raised in the report were made. As a result he would not properly comment on the matter of which he had no personal knowledge of and would not either agree or disagree with the Commission's preliminary findings. Any final recommendations made by the Commission, wherever possible, would be implemented.

5.2.3 Ms Jean Kekedo the then Chairman National Forest Authority & Managing Director of National Forest Service.

- (a) Ms Jean Kekedo mentioned that she trusted Mr Doleman's advice as he was appointed to lead the World Bank Team under NFCAP project prior to being appointed as General Manager and felt that if any body knew the rules he would. When Mr Doleman and Mr Caughlan said that the Turama Project could start, she was happy that the Government's policy on downstream processing could become a reality. She did not ask her staff to make the Turama Project a priority. The then General Manager and the Projects Lawyer said that they could start the project as it was not a new project but an extension. Her reply was that as long as it confirmed with the Act it was alright. The project lawyer mentioned that all legal areas had been sorted out and that he received advice from the State Solicitor to the effect that he was correct. Perhaps, the only mistake she made was trusting her lawyer. She should have asked for a written advice from the State Solicitor. Sometimes, heads of organisations have so much to do they must rely on their professional staff for advice and trust them enough not to mislead them. In this case she just did that.

- (b) **Preliminary Finding 5.2.1: - That the National Forest Plan has not been produced during the tenure of office of the former Chairperson Ms. Jean Kekedo OBE Managing Director:**

The Preliminary Findings was correct. The Hon Tim Neville advised that the National Forest Plan should be abolished by making an amendment to the Act.

- (c) **Preliminary Finding 5.2.2: - That the extension of TP2-12 appears to have been recommended to the Board without ensuring that the conditions stipulated under Section 64(3) of the Forestry Act were strictly complied with:**

She relied on her professional managers and the Divisional Managers. The advice given to her by the General Manager and the Project Lawyer was that Section 64(3) of the Forestry Act was applicable as the Project was an extension of an existing approved operation. The Project Lawyer and the General Manager assured her that everything was alright and that as there was no National Forest Development Program in place then it could not be said that the forest development project was inconsistent with the National Forest Development Program.

In giving oral evidence before the Commission she said that what annoyed her most was that Mr Caughlan was not speaking the truth. He told her that everything was in order and that he was confident that there was no legal problem. If Mr Caughlan insisted on the legal point then Mr Keith Doleman would have stopped further action on the project.

- (d) **Preliminary Finding 5.2.3: - That Ms Jean Kekedo OBE Managing Director has not been taking a consistent stand on the interpretation of section 64 of the Act:**

She adopted a consistent stand. Initially the then Minister for Forests wanted to amend the Act and replace it with many new provisions such as abandoning of a National Forest Plan. The former Minister Neville then gave an undertaking to Turama Forest Industries Pty Ltd. After that with a change in Government the TSA concept was abandoned by the National Executive Council. She was then persuaded by the General Manager and the Project Lawyer that an avenue existed to get the project off the ground because it was in extension of an existing approved project. She had been consistent in her approach to given circumstances. It had been the circumstances and not her consistency of approach which had changed.

- (e) **Preliminary Finding 5.2.4: - That nothing relating to National Forest Plan was mentioned in PNG Forest Authority Annual Reports of 1993 and 1994:**

The 1993 Report clearly stated that the Board only met for the first time in February 1993. The 1994 Report highlights include reviews to projects which was a part of the development of a National Forest Plan.

- (f) **Preliminary Finding 5.2.14: - That Ms. Jean Kekedo OBE Managing Director appears to have made an improper suggestion in her letter dated 17th March 1995 to Turama Forest Industries Pty Ltd that it was not necessary for them to respond to the advertisement:**

Turama had already carried out feasibility studies which were given to the Authority. Had the project been advertised Turama's Proposal would still have been evaluated with others. She did not accept that her suggestion was improper. Her General Manager and the Project Lawyer both advised her that Turama Forest Industries Pty Ltd need not lodge a further proposal if advertising was carried out.

- (g) **Preliminary Finding 5.2.15: - That the reason given to the Board for presenting the Turama Extension issue as an urgent one for consideration at the Board Meeting of 30 May 1996 was not convincing.**

The members with the exception of Mr Brunton were quite happy to deal with the Board Paper even after Mr Brunton said he wanted time to read all attachments. The paper was prepared by the General Manager and the Project Lawyer who both stated very positively to the Board that all legal and other steps had been taken. She did not see why, when the country was going through a severe economic crisis any delays in the project should be allowed.

- (h) **Preliminary Finding 5.2.16:- That Ms. Jean Kekedo OBE Managing Director appears to have acted in an unprofessional manner when she failed to circulate the reply of Mr. Brunton to the Members of the Board or to table it at the next Board Meeting.**

The letters were prepared by the Corporate Secretary and given to her to sign. She specifically recalled requesting that Mr Brunton's reply be attached and sent with the reply. In giving oral evidence before the Commission Ms. Kekedo stated that she gave specific instructions to her assistant Ms. Bibiana to attach Brunton's reply to the letters that were sent out.

- (i) **Preliminary Finding 5.2.18: - That the statement that the FMA Project relating to Turama Kikori Baimuru area is contiguous as stated in Ms. Jean Kekedo OBE Managing Director's letter dated 13.6.95 to the Minister appears to be incorrect.**

The letter was prepared by her General Manager and she was assured that it was in order for her to sign. She accepted the advice of her professional officer.

- (j) **Preliminary Finding 5.2.19: - That Ms Jean Kekedo OBE Managing Director appears to have failed to take into consideration the National Goals and Directive principles number four on natural resources and environment.**

She did not accept that finding. She acted in good faith on the advice given by the General Manager and the Project Lawyer.

- (k) **Preliminary Finding 5.2.22: - That Ms Jean Kekedo OBE former Managing Director, National Forest Service appears to have been wrong in her interpretation of Section 64(3) when she stated to certain landowner companies that when the resource area is an extension of an existing approved operation or project the Board may consider proposals without advertisement for open tender.**

Her letters to landowners were prepared by the General Manager. She must respect and accept his professional advice. For her as administrator, to reject papers or documents prepared by her professionals who were experts in fields which she was not expert would have placed her in a position of going against professional advice. That could amount to professional misconduct or negligence.

- (i) **Preliminary Finding 5.2.23: - That Ms Jean Kekedo OBE Managing Director appears to have made an improper suggestion to the Ombudsman Commission in her letter dated 2 October 1995.**

That finding was wrong - This interpretation by the Ombudsman Commission was unfair and unreasonable. She never suggested and certainly would not ever suggest that an investigation could not or should not take place. What she said was that a courtesy at the least should have been shown before summons were issued.

5.2.4 Mr. Keith Doleman the then General Manager, National Forest Service.

- (a) **Re evidence given on 20.3.96.**

The Project was the first to be developed under the new Forest Act and by the new National Forest Service Authority. It was also the first significant resource opened for development in three years. Few could doubt their reality then of being in the front line of one of the most controversial and difficult resource management positions in Papua New Guinea. The pressure from the resource owners, local and central Government, provincial and national politicians, local and international NGO's and others were varied unrelenting and intense. The National Forest Service then led by Jean Kekedo tried very hard to walk the middle line through a largely uncharted Forest Act, which as it turned out was in several instances quite unworkable.

The reason they supported the project was simply that they felt it was very necessary to demonstrate that the new Forest Act and its proteges, the Forest Authority, was workable and could provide a sense of balance, propriety and satisfaction to most stakeholders. That project stood out for its positive opportunities and it provides the highest level of benefits to these source owners. It is firmly structured on a sustainable cut basis. He absolutely repudiated the suggestions in many parts of the report to the effect that they (or he) deliberately misled the Commission. If these were mistakes then those were made unknowingly and certainly not with a shadow of ill intent.

As regards Section 4.8.1 of the Preliminary Report the quibbling over timing of the report is highly misleading. The reality again was that this project had spanned years and not months. While one could have a special meeting in two weeks there are limits as to how many of those were acceptable to a Board and they had had several by then. More to the point is that the Board had addressed to Turama issue several times. Here and in several other sections the Commission laments on the lack of a Forest Plan. Jean Kekedo herself and others tried very hard to appease that requirement of the act, but they were beaten at the post. It was simply not possible to prepare that plan with any sincerity or value because in PNG the State did not own the resource.

As regards Section 5.2.8 and 5.2.10 he was at a loss to understand the suggestion in the report that he pressurised, bullied or coerced Mr Tagamasau to sign the PFMC certificate. That was absolute fabrication. He certainly did put pressure on Tagamasau as secretary to the PFMC Committee to get the committee to sit and deliberate on that issue. He understood that the Chairman signed the certificate on the advice and support of the committee. He would not have accepted the certificate as valid if he had known that Tagamasau signed it.

As regards Section 5.2.17 he genuinely believed that it was not the first extension. A great many projects were extended, at least in time limits, and he thought that there were new areas added in some cases. However, if he was wrong then so be it. He strongly refuted the suggestion that he deliberately misled the Board.

5.2.5 Mr Albert Milala acting Chairman of the Gulf Provincial Forest Management Committee.

As regard the preliminary finding 5.2.9 of the Preliminary Report, he had been implied to have acted negligently during the course of his duties as chairman of the Gulf Provincial Forestry Management Committee. He strongly refuted that allegation of negligence.

Section 28(3) of the Forestry Act to the very best of his knowledge was never abused during his course of duties as acting chairman of PFMC. It was a general knowledge and backed up by all documents that the project had all blessings of both the resource owners and the company responsible. Further to that it was equally the prerogative of the said company in ensuring that certain Resource Owners were present for that meeting. All necessary preparations for the first ever PFMC meeting were all organised by Forest Authorities in Port Moresby. All deliberations were entertained from documents made available to his committee by the Forest Authority. He concluded that he was never manipulated nor bribed in the course of his duties.

CHAPTER 6 - FINDINGS

The Ombudsman Commission makes the following Findings:-

6.1 That there is a loophole in the Forest Act.

The Forestry Act states in sections 65 to 73 how a developer is to be selected only when a project is advertised in terms of section 64(1). In terms of section 64(3) proposals may be considered without resorting to open tender, when conditions stipulated in 64(3)(a) and 64(3)(b) are satisfied but the Act does not state how a developer is thereafter to be selected for the issue of a timber permit.

6.2 That the National Forest Plan should be in place before any Forest Development work is undertaken.

Section 54 states:-

"Forest Resources shall only be developed in accordance with the National Forest Plan."

The words 'shall' and 'only' are the significant words in this section. The question to be dealt with here is whether this section is mandatory or directory. If it is mandatory the strict compliance is necessary, failure to comply invalidates everything that follows. To determine the issue it is essential to examine the inter related sections and determine the consequences that are to follow if the condition stated in Section 54 are not fulfilled. The relevant sections are Sections 6, 7, 47 & 143.

In terms of Section 6 one of the objectives of the Authority being the Management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations section 7 which deals with the function of the authority states that one of the functions of the authority is to prepare and review the National Forest Plan and recommend it to the National Executive Council for approval. This leads to the inference that the objective to conservation and renew the Nation's forest resources and environment as stated in Section 6, is to be achieved by having a National Forest

Plan. Section 47 states inter alia, the ingredients that are to be found in the National Forest Plan one of which being the National Forest Development Programme which is a condition mentioned in Section 64(3) if allocation is to be made without advertisement.

Section 147 permits the Board to extend saved permits etc..

It states: -

"The Board may until;

- (a) **The National Forest Plan has been drawn up under Section 47, or**
- (b) **31st December 1993,**

whichever shall happens first, notwithstanding the provisions of this act:-

- (c) **Extend in terms of any permit a licence saved by Section 137, or**
- (d) **grant a timber authority,**

for a period not exceeding one year in a form approved by the Board."

According to this section if the Authority has not prepared the National Forest Plan by 31st December then the authority has no power to grant a timber authority. The Sections 87 to 90 deal with the matters relating to Timber Authority. The timber authority relates to project area when the annual harvest does not exceed 5000 cubic metres.

Matters relating to timber permits are dealt with in sections 73 to 86 but these relate to project developments when projects are advertised in terms of Section 64(1). As mentioned earlier no development work shall take place without the National Forest Plan.

Summarising what has been dealt within the earlier paragraphs it follows that if a National Forest Plan is not in place then;

- (a) objective stated in sec 6 1) cannot be achieved; and
- (b) The Authority would have failed to carry out its function mentioned in section 7(1)(b); and
- (c) The authority has no power to issue timber authority after December 1993; and
- (d) The authority has no power to undertake any Forest Development by issuing Timber Permit after advertising the project; and

- (c) The authority has no power to consider any extension of a project under section 64(3) as the Forest Development Programme is an item that is to be found in the National Forest Plan.

Thus as far as the Forest Development work is concerned the authority comes to a virtual stand still without the National Forest Plan. The inter related sections earlier discussed lead to the conclusion that it is mandatory to have the National Forest Plan in place.

6.3 That the Project paper submitted to the Board by the National Forest Service failed to give an impartial account of all relevant facts for the Board to reach an unbiased decision.

It has been mentioned in the Board paper on Turama that the matter has come to the Board on several previous occasions and that the Board Members were fully aware of the issues. On examining the Board Papers it was found that only on two previous occasions that the matter regarding Turama area came before the Board. The first instance was in 1994 to issue a letter of consolation to Turama Forest Industries (Pty) Ltd as the Concept relating to Timber Supply Area (TSA) was abandoned when the change of Government took place in September 1994. The second occasion on which the Turama Area came before the Board was to authorise the Forest Management Agreements (FMA) to be undertaken in that area. It is to be noted that the first time that Turama Area matter was brought before the Board to consider the issuance of a Timber Permit was on 30th May 1995.

According to Section 7(1)(e) it is the function of the authority to select operators which in terms of Section 9 is carried out by the National Forest Board. In order for the National Forest Board to carry out its functions and objectives effectively all relevant matters relating to a particular subject should be placed before the Board. In the case of Turama Forest area the paper prepared by the Project Lawyer and endorsed by the General Manager and Managing Director had the following defects:-

- (a) That the recommendation of Turama Forest Industries Pty Ltd as the Developer to be considered under section 64(3) of the Act without giving full facts was improper.

In terms of Section 64(3) of the Act if a project is an extension to an existing operation then the project could be considered without an advertisement. Examination of relevant files maintained in the National Forest Service revealed that there were other operators who were equally qualified and had expressed interest in developing Turama, Kikori, Baimuru areas. One of them was Copera Investment which has staked its claim for the area stating that the area was covered in the existing contract. The former Managing Director took the view that such a claim was invalid in terms of the new Act as no FMAs were done for the areas claimed. Since it was the Board that has to make the

selection these matters too ought to have been brought to the notice of the Board for the Board to deliberate and arrive at a proper decision. On the contrary, Turama Forest Industries Pty Ltd has been recommended to the Board as the appropriate developer.

- (b) That the forest development project is an extension of an existing operation is not true.

Turama Forest Industries Pty Ltd was awarded permit No. TP2-12 in 1988. The current project was considered as an extension of TP2-12. The word extension is not defined in the act. The Managing Director has used the word "contiguous" in place of "extension" in various correspondence. Meaning of contiguous as given in Longman Dictionary is -

"touching, next (to), having common boarder: eg. England is the only country contiguous to/with Wales."

Extension means:

"The art of extending or condition of being extended".

The forest project is an extension of an approved operation may mean that the existing boundary of the approved operation is extended so as to enclose the new forest project area with new boundaries. In this case examination of the map of the area reveals that the three areas for which Forest Management Agreements were done are separate areas having no common border with the existing area covered by timber permit TP2-12.

The project lawyer has not elaborated on this concept in his project paper. In his further reply to section 17(4) report he mentioned that in the Turama contract they were dealing with the notional extension of an existing approved operation. The boundary was dependent upon the area to which extension was designate namely the three FMA's. He believed that the stand taken by the Commission was unduly restrictive. He made reference to Placer Holdings Pty Ltd PNG (1982) PNGLR16, 18 but did not elaborate on this case as to its relevance to section 64(3) of the Forest Act. The case cited referred to an extension of time and not to an extension of area and so is irrelevant to this case. A restrictive meaning has to be applied to the word 'extension' to prevent any abuse by the National Forest Service as well as the National Forest Authority. Normally, there will be some operator who will be

operating in an area and if liberal interpretation is taken any such operator can stake his claim for any area in terms of Section 64(3) even though the new area may not have a common border with the existing area. That would nullify the general method of selection by advertisement as stated in Section 64(1) of the Act.

We wish to cite the following from the Judgement of Lord Denning in *General Electric Co Ltd V Price Commission* (1975) 1 CR 1 at 12 which was quoted by Amet J in *Re Gegeyo V Minister of Lands & Physical Planning* (1987) PNGLR 331 at 335.

"Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter. But nevertheless, the courts will, if called upon, act in a supervisory capacity. They will see that the decision making body acts fairly. The courts will ensure that the body acts in accordance with the law.... If the decision-making body is influenced by considerations which ought not to influence it, or fails to take into account matters which it ought to take into account, the court will interfere. If the decision making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable that a reasonable person would not have come to it - then again the courts will interfere.... And, of course, if the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision will be set aside. In exercising these powers, the courts will take into account any reasons which the body may give for its decisions. If it gives no reasons - in a case when it may reasonably be expected to do so, the courts may infer that it had no good reason for reaching its conclusion, and act accordingly."

The Commission finds that the National Forest Authority has been relying only on an in house interpretation of Section 64(3) and had not made any attempt to obtain a written opinion on this section from the State Solicitor or from a reputed Legal Firm. The reasons given for considering the project under section 64(3) do not appear to be convincing at all. A reason must be based upon some logic, some rational premise, some objective reality, some honest basis and it cannot be entirely subjective. The persons who were mainly responsible for this lapse appeared to the former Managing Director Ms. Jean Kekedo the former General Manager Mr. Keith Dolman and the Project Lawyer Mr. Maurice Coughlan.

6.4 That Ms Jean Kekedo OBE the former Managing Director has not been taking a consistent stand on the interpretation of section 64 of the Act.

The fact that Ms Jean Kekedo OBE the former Managing Director has not been taking the consistent stand on the interpretation of section 64 of the Act is seen from the following:-

- (a) On 3rd January 1995 she sent a letter to Coeheae Landowner company outlining the procedures for Timber Permit wherein she said:-

"The Gulf Provincial Government to recognise the potential of the Upper Purari timber area and have it listed in it's Provincial Forest Plan as required under Section 54 of the Forestry (Amended) Act 1991.

The National Forest Board shall then advertise the resource area to seek expressions of interest from registered forest industry participants as required under Section 64 of the Forestry (Amended) Act 1991. However, where the resource area is an extension of an existing approved operation or project the Board may consider proposals without advertisement for open tender." (Para 2.10)

- (b) On 18th February 1995 she mentioned in her letter to Turama Forest Industries Pty Ltd that a project agreement would be drafted in consultation with TFI and landowners and that would form the basis for negotiating TFI's procurement of the said FMAs (Para 2.11)
- (c) On 17th March 1995 she informed the Turama Forest Industries Pty Ltd that notwithstanding any commitments made by the former Minister for Forests through TSA process this office has been obliged to go through formal allocation process by virtue of being deluged by alternative claims on that resource. Their strategy would be to advertise the proposal according to agreed guidelines. They hoped to lodge that advertisement by Friday 24th March 1995 and to allow one month for response. Only registered Forest Industry participants need apply. (Para 2.12)

- (d) On 15th April 95 Ms Jean Kekedo informed Andrew Posai Minister for Forests thus:-

"...You will appreciate that whilst the TSA concept has been abandoned, certain and in this instance, significant, commitments were made by the previous government with respect to allocation of resource in the vicinity now described by the three FMAs. On the basis of this development both East Kikori and TFI have an historical claim on these forests. Hekiko is to my knowledge a new player and is without any earlier government implication as regards commitments to future resource. The point of reminding you of these is to firmly establish the reality of a substantial cost claim against the State should we get it wrong. In the case of TFI, who were invited to undertake a very expensive feasibility study we may expect this claim to be measured in the 10's of millions, hence our caution.

I must reiterate that our staff have in no respect made any decisions on allocation and the signing of FMAs was firmly undertaken on the basis of assignation of rights to the State and not to any given developer. I must defend this position as regards your accusation that our staff have behaved improperly. To the contrary it would have been wrong and illegal for our staff to have then engaged in discussions/negotiations on a developer. This responsibility is firmly assigned to the PFMC:" (Para 2.17)

- (e) In her letter dated 3rd May 1995 she informed Hekiko Landowners thus:-

"The purpose of signing the Forest Management Agreement (FMA) in the area is not for any particular company (including your intended developer) but rather to advertise and to select the best developer that can offer the best for the landowners rather than just any one that appears first at the "front door". This is the Authority's position as required under the Forestry Act.

The Authority is not recommending Turama Forest Industries (TFI) as the sole developer of the resource. But rather to advertise the resource as mentioned above and select the best company. TFI may be one of the contenders for the development of that resource." (Para 2.19)

6.5 That the Divisional Manager Policy and Planning Mr. Dike Kari failed to perform his duties with due diligence and care when he permitted his officers to execute Forest Management Agreements before the Land Groups were properly incorporated.

In terms of Section 57 of the Forestry Act where it is proposed to enter into a Forest Management Agreement over customary land, the title of the customary owners to that land shall be vested in a land group or groups incorporated under the Land Groups Incorporation Act. To ensure that the Groups are legally recognised the Policy and Planning Division ought to have ensured that the certificates of recognition were issued by the Registrar of Titles before the teams were sent to the relevant areas to get the Forest Management Agreements signed. However, the agreements were signed without ensuring that the legal requirements were satisfied.

Mr Dike Kari failed to perform his duties with due diligence and care when he permitted the FMAs to be signed in February/March 1995 before the Land Groups were incorporated.

6.6 That the Forest Management Agreement did not contain a proper certificate from the Provincial Forest Management Committee as stipulated under Section 58(f).

Section 58(f) of the Forestry Act stipulates that a Forest Management Agreement shall contain a certificate from the Provincial Forest Management Committee to the effect that it is satisfied as to -

- (i) the authenticity of the tenure of the customary land alleged by the persons or land group or groups claiming to be customary owners; and
- (ii) the willingness of those customary owners to enter into the agreement.

The Gulf Provincial Forest Management Committee had its inaugural meeting on 26th May 1995 at which the committee passed a resolution recommending Turama Forest Industries Pty Ltd as developer for Turama, Kikori, Baimuru areas. According to the evidence given by Mr Andrew Tagamasau, a member of the committee, the issue relating to the certificate was not taken up for discussion.

The senior officials of the National Forest Service should have been aware that the certificate from the PFMC was a requirement that has to be fulfilled in terms of the Act.

6.7 That the Chairman of the Gulf Provincial Forest Management Committee failed to observe the condition stated in section 28(3) of the Forestry Act.

In terms of section 28(3) where a PFMC is deliberating in respect of a particular forest resource, the owners of that resource shall be represented at the meeting of the Provincial Forest Management Committee by two of their number selected by them who shall be entitled to take part in the deliberation but shall not be entitled to vote. This requirement was not observed by the Provincial Forest Management Committee.

The explanation of Mr Albert K. Milala Chairman of the PFMC that it was equally the prerogative of the said company in ensuring that certain resource owners were present for that meeting is unacceptable to the Commission. It was the duty of the Gulf Provincial Forest Committee to have ensured that this condition was satisfied.

- 6.8 That the Former General Manager acted in an improper manner when he allegedly directed the Manager Southern Region of the National Forest Service Mr. Andrew Tagamasau to sign the relevant FMA certificate as Secretary to the Committee.

The certificate under Section 58(f) has to be given by the Gulf Provincial Committee before the FMAs were signed. The issue relating to the certificate was not taken up at the inaugural meeting of Gulf Provincial Forest Management Committee. However, the General Manager in order to give the impression that the legal requirements have been met had directed Mr. Tagamasau in an improper manner to sign the certificate as secretary to the committee whereas the certificate had to be signed by the Chairman. Mr Tagamasau Manager Southern Region admitted on oath that he was never appointed as the Secretary to Gulf Provincial Forest Management Committee. There was no secretary to the GPFMC but only a 'minute secretary' who is the Forest Manager, Gulf Province. Evidence has been led to show that General Manager was interested in the project and he was personally directing most of the matters relating to Timber Permit for Turama Forest Industries Pty Ltd. Mr. Tagamasau mentioned that he signed the Certificate as secretary to the Gulf Provincial Forest Management Committee as there was pressure from the former General Manager.

- 6.9 That Mr. Andrew Tagamasau former Manager Southern Region of the National Forest Service acted in an improper and irregular manner when he signed the certificate under Section 58(f) as the 'Secretary' of the Gulf Provincial Management Committee.

Mr. Andrew Tagamasau was not the secretary to the Gulf Provincial Forest Management Committee and he admitted in oath that he was not elected as the secretary to the Committee and that the matter was not discussed at the Committee meeting. By signing the certificate Mr Tagamasau acted in a improper and irregular manner.

6.10 That Keith Dolman former General Manager misled the Ombudsman Commission when he mentioned on oath that there were other extensions earlier approved under the Forestry Act 1991.

In giving evidence on oath Keith Dolman mentioned that he was sure that there were other extensions granted under the Forestry Act 1991 prior to the Turama Extension. He agreed to give the names of such extensions (para 4.8.1) but without giving that information he left Papua New Guinea after resigning his post (para 2.41).

The information given by Keith Dolman is in contradiction of what was stated in the Board paper which reads as follows:-

"D. Legal implication

This is the first permit to be forwarded for consideration since implementation of the new Act three years ago. It will be a landmark as the first permit under 1991 legislation and forestry guideline."
(para 2.23)

Mr Maurice Coughlan, project lawyer in giving evidence on Oath said that as far as he knew that was the only project considered as an extension to an existing project. (Para 4.6.2)

Thus Mr Keith Dolman appears to have given misleading information to the Ombudsman Commission when giving evidence under oath.

6.11 That Mr Maurice Coughlan the Project Lawyer failed to act with due care and diligence when he expressed his legal opinion on the extension of TP2-12 under section 64(3).

The Project lawyer said that he was asked to prepare the Board submission by the General Manager after he returned from Kerema after attending the Gulf Provincial Forest Management Committee meeting. He was requested to prepare the paper on Turama extension only on 29th May 1995. The Project Lawyer mentioned that most of the material mentioned in the paper was prepared by the General Manager himself before he proceeded to Kerema and the material was in the computer. He merely added to that material certain paragraphs on legal issues. He came to know that the project was to be considered as an extension under Section 64(3) only on that day.

The Ombudsman Commission finds that the Project Lawyer could not have fully considered the legal aspects of the issue thoroughly on the same day and expressed his opinion. The project lawyer did not obtain any written opinion on the relevant sections from the State Solicitor. The paper did not contain adequate details to enable the Board members to properly consider the issues and to come to a decision as regards the legal implications. The paper merely said that it was the first permit to be forwarded for consideration since implementation of the Act three years ago. That was not what was expected under that heading. Those remarks had nothing to do with the legal implications and was merely a very general and shallow statement. It was mentioned that as Turama Forest Industries Pty Ltd has an existing permit their operation is clearly an extension of an "existing approved operation". This statement is not as "clear" as stated to be. In the circumstance we find that the Board was not been fully appraised and only bare minimum details have been disclosed to the Board to arrive at a decision.

Chris Marlow Corporate Secretary wanted Maurice Coughlan to give the certificate to the effect that all legal requirements to recommend the issue of timber permit has been met. But Maurice Coughlan was not prepared to do so.

Thus Mr Maurice Coughlan, the Project Lawyer, has acted in a negligent manner in discharging his official duties.

6.12 That the Timber Permit issued in terms of Section 73 by the Honourable Minister for Forests is without any legal basis.

- (a) The power granted to the Minister in terms of section 72(1) to issue a timber permit to a developer on the recommendation of the Board apply only to project proposals received in terms of section 66 of the Act in response to an advertisement under section 64. As sections 67 to 72 do not apply to proposals considered under section 64(3) the issue of timber permit in terms of section 72(1) of the Act by the Honourable Minister for Forests is without any legal basis.

CHAPTER 7 - OPINION

The Ombudsman Commission is of the opinion that:-

- (a) The timber permit No. TP2-12A issued by the then acting Minister for Forest Honourable Titus Philemon to Turama Forest Industries Pty Ltd was improper and has no legal backing.
- (b) The officials of the National Forest Service had from the very inception of the whole exercise already made up their minds in favour of Turama Forest Industries Pty Ltd and were merely going through the procedures to give an impression that the requirements of the Forestry Act were complied with. When they finally decided to select Turama Forest Industries Pty Ltd in terms of Section 64(3) of the Act they hurriedly submitted the Policy Paper to the National Forest Board on 30th May 1995.
- (c) There are reasons to believe that there was political interference which led the National Forest Board to make a hasty recommendation to the then acting Minister for Forest Honourable Titus Philemon to the issue of the Permit to Turama Forest Industries Pty Ltd.

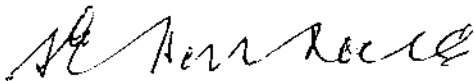
CHAPTER 8 - RECOMMENDATION

- 8.0 The Commission after considering the comments received in response to the Preliminary Report and the available facts makes the following recommendations.
- 8.1 (i) That action be taken by the National Forest Authority to produce a National Forest Plan. No new projects be undertaken until the plan is in place.
- (ii) Suitable amendment be brought to the Forest Act to accommodate the issue of Timber Permit when operator is selected in terms of Section 64(3) of the Act.
- 8.2 Appropriate disciplinary action be taken against the Project Lawyer Mr. Maurice Caughlan for his failure to provide proper legal advice to the National Forest Board on matters that lead to the issue of Timber Permit No.2-12A to Turama Forest Industries (Pty) Ltd.
- 8.3 That proper procedures be formulated to ensure that the Project Lawyer is held responsible to ensure that all legal requirements under various provisions of the Act are complied with before he makes his recommendations to the Managing Director and the National Forest Authority.
- 8.4 That Administrative Instructions be issued to ensure that Divisional Heads comply with relevant provisions of the Act in carrying out their duties and be held responsible for failure to observe them.

CHAPTER 9 - CONCLUSION

In accordance with Section 22(3) of the Organic Law on the Ombusman Commission, we request the Managing Director and Chairman of the National Forest Authority to notify this Commission within three (3) weeks of the receipt of this report as to the steps he proposes to take to give effect to the above recommendations.

Dated the 14TH day of August 1997



SIMON G. PENTANU
CHIEF OMBUDSMAN



JOE N. WAUCLA
OMBUDSMAN



NINCHIB TETANG
OMBUDSMAN