

**OMBUDSMAN COMMISSION
OF
PAPUA NEW GUINEA**

**INVESTIGATION INTO

A DECISION OF
THE NATIONAL FOREST BOARD

TO AWARD**

KAMULA DOSO

**TO WAWOI GUAVI TIMBER COMPANY
(A SUBSIDIARY OF RIMBUNAN HIJAU)**

**AS AN EXTENSION TO THE WAWOI GUAVI
TIMBER RESOURCE PERMIT**

**FINAL REPORT
JULY 2002**

The Ombudsman Commission dedicates this report to:

- All the resource owners of this country who are the rightful beneficiaries in the forest agreements between the state and foreign developers but who often end up getting less than the best.
- Public officials and leaders who are placed in positions of trust as custodians of our forests and other natural resources, whose decisions affect not only the present but also the future generations of this country.

EXECUTIVE SUMMARY

Overview

This is the final report of an investigation into the decision of the National Forest Board to award the Kamula Doso forest management area in the Western Province as an extension to the existing Wawoi Guavi timber rights permit.

The Wawoi Guavi timber rights permit has been held by the Rimbunan Hijau group of companies since 1992. The Board's decision gave Rimbunan Hijau access to Kamula Doso, an area almost double the size of the area of its existing permit. The decision aroused widespread concern as by treating Kamula Doso as an extension, the advertising requirements of the *Forestry Act* were bypassed.

This report focuses on the propriety of that decision, in particular the considerations taken into account by the National Forest Board when it made its decision.

Principal findings

- The forest management agreement entered into between the Kamula Doso landowners and the PNG Forest Authority was void because of non-compliance with the *Forestry Act*;
- the decision to award the forest management area as an extension was based on improper considerations;
- the conduct of certain members of the Board and consecutive Ministers for Forests was wrong;
- in reaching its decision the National Forest Board placed undue weight on the fact that the Rimbunan Hijau group of companies had built a veneer processing facility at Panakawa, Western Province;
- the National Forest Board was aware that Rimbunan Hijau had neither applied for nor had it been granted a licence under Section 91 of the *Forestry Act* 1991 to build or operate the mill;

- the general attitude of the Board when it reached the decision was to give the correct signals to investors for economic reasons.

Irregularities

There were many irregularities surrounding the National Forest Board decision of 4 February 1999:

- when the decision to award Kamula Doso as an extension to the Wawoi Guavi rights permit was made on 4 February 1999, the forest management agreement in place was defective and void;
- the National Forest Board was aware that Wawoi Guavi Timber Company was not complying with its contractual obligations under the Wawoi Guavi permit but went ahead to award the company the 700,000 hectares Kamula Doso forest management area as an extension;
- at the time of the decision, development options studies as well as the final project guidelines for the project which were necessary pre-requisites to an extension under Section 64(3) of the *Forestry Act* were not finalised;
- despite the recommendation of the Western Province Provincial Forest Management Committee to advertise the project as a stand-alone project the Board went ahead to award it as an extension to the Wawoi Guavi timber rights permit.

Wrong conduct

The conduct of the following public officials was wrong:

- the Managing Director, National Forest Service, Mr Thomas Nen;
- Director, Office of Environment and Conservation, member of the National Forest Board, Dr Wari Iamo;
- member of the National Forest Board, Mr Gabriel Samol;
- Minister for Forests, Mr Andrew Baing;
- a subsequent Minister for Forests, Dr Fabian Pok;
- Governor of Western Province, Mr Norbert Makmop.

Recommendations

- The National Forest Board make a formal decision to revoke its decision of 4 February 1999 to award Kamula Doso as an extension to the existing Wawoi Guavi timber rights permit and declare that earlier decision a nullity;
- the National Forest Board and the Department of Environment and Conservation ensure that the provisions of the *Environmental Planning Act Chapter 370* be complied with in the allocation and implementation of all forest development projects in the country;
- all provincial forest management committees ensure that their duties under the *Forestry Act 1991* are strictly and diligently complied with;
- the *Forestry Act 1991* be amended so that it expressly states that the Minister for Forests may only direct the Board on matters of policy and not on operational matters;
- the National Forest Board make clear policy guidelines on the size of forest management areas to be advertised as a stand-alone project or as an extension;
- the National Forest Board undertake annual reviews of all logging operations in the country to ensure full compliance with contractual obligations and to carefully screen future applications from defaulting companies;
- the future public re-employment of Thomas Nen must be carefully and critically viewed;
- the National Executive Council give written notice to Wari Iamo under Section 14(4) of the *Forestry Act*, advising that the NEC intends to terminate his appointment as a member of the National Forest Board on the ground of inefficiency;
- the National Executive Council give written notice to Gabriel Samol under Section 14(4) of the *Forestry Act*, advising that the NEC intends to terminate his appointment as a member of the National Forest Board on the ground of inefficiency;
- coordination between departments and other governmental bodies be markedly improved to ensure necessary compliance with all requirements relating to proposed forest projects;

- present projects and future proposals by the Rimbunan Hijau group of companies be carefully audited and monitored to ensure that all legislative requirements pertaining to forest industry activities are strictly complied with; and that all future proposals by that group of companies be critically screened before approval.

Conclusion

At the time of this report amendments have been made to the *Forestry Act* 1991 the effect of which is that a decision such as the one made on 4 February 1999 by the National Forest Board is now prevented.

The Ombudsman Commission, however, remains concerned that the Board seriously violated the *Forestry Act*.

Any future allocation of Kamula Doso must comply with the provisions of the *Forestry Act* as amended in 2000. The Act now requires all forest development projects to be advertised for tender. They can only be awarded as an extension where the area is so small on its own to sustain a stand-alone project. The Kamula Doso forest management area must now be allocated through advertisement.



CHRONOLOGY

1996

- May 21 Wawoi Guavi Timber Company writes to Managing Director of the National Forest Service saying they had been approached "by the forest resource owners to develop their land".
- Jul 11 Wawoi Tumu Holdings writes to Minister for Forests, Andrew Baing.
- Aug 12 Baing replies to Wawoi Tumu Holdings, stating Kamula Doso would not be logged until 1998 or 1999.
- Sep 6 Baing writes to Wawoi Tumu Holdings stating he has directed that the project be developed as an extension to commence that year.

1997

- Aug 21 First Rimbunan Hijau submission to Mr Konga for veneer processing in Kamusie, Western Province.
- Aug 29 Prime Minister Skate writes to Mr Konga requesting report on status of project, Minister to prepare Cabinet submission for consideration.
- Sep 1 Konga referred brief proposal to Department of Trade and Industry. Secretary Kalinoe directs preparation of draft National Executive Council submission based on the proposal.
- Sep 19 Department of Trade and Industry prepares brief on status of project proposal for Skate.
- Sept 23 National Executive Council submission finalised and cleared for final screening by Inter-departmental project screening committee.
- Sep 24 Committee meeting. Kalinoe advises that submission finalised and forwarded to National Executive Council Secretariat.
- Sep 25 National Executive Council Decision No. 41/97 approves project (veneer mill) in principle.

- Oct 15 Department of Trade and Industry receives letter from Rimbunan Hijau enclosing another list of equipment for the project.
- Oct 26 Trade and Industry writes to Office of the Legislative Counsel to clear second list.
- Nov 4 Wawoi Tumu Holdings writes to the new Minister for Forests, Fabian Pok.
- Nov 20 Managing Director Zurenuoc informs Wawoi Tumu Holdings that allocation of Kamula Doso would be done by the PNG Forest Authority in consultation with the Western provincial forest management committee and the landowners.
- Nov 28 Inter-departmental project screening committee met to consider the second submission.
- Dec11-12 Trip by inter-departmental delegation to veneer mill project site in Western Province.
- 1998**
- Early Jan Another National Executive Council submission rejected because it lacked detailed information.
- Feb Thomas Nen becomes Managing Director of National Forest Service.
- Feb 18 PNG Forest Authority approves the forest management agreement for Kamula Doso.
- Jan 18 Second visit to the mill site by technical officers of Department of Trade and Industry.
- Mar 16 Second submission on the veneer mill project finalised and submitted to the National Executive Council.
- Mar 21 Wawoi Tumu Holdings writes to Nen concerning Kamula Doso.
- April 7 National Executive Council Decision No 79/98 approving tax and other exemptions on Panakawa mill.
- Apr 16 Western Province provincial forest management committee meeting (2/98) Daru, Western Province.

Chronology

- Apr 24 Nen writes to Wawoi Tumu Holdings seeking its preference for allocation of Kamula Doso.
- May 4 Rimbunan Hijau assistant general manager writes to National Forest Service, advising that construction of mill is at advanced stage. Invites senior managers to visit the mill.
- May 18 Wawoi Tumu Holdings writes to Nen expressing preference for Wawoi Guavi Timber Company as developer of Kamula Doso.
- May 21 Nen writes to Secretary of Department of Trade and Industry regarding Rimbunan Hijau's draft project proposal for the Panakawa mill.
- May 22 Nen writes to Wawoi Tumu Holdings confirming preference of landowners for Wawoi Guavi Timber Company as developer of Kamula Doso.
- May 26 Nen writes to Wawoi Guavi Timber Company to submit application for an extension for Kamula Doso.
- May 30 Nen and three National Forest Service officers accept Rimbunan Hijau invitation and visit veneer mill plant site.
- Jun 11 Wawoi Guavi Timber Company writes to Chairman of National Forest Board requesting that Kamula Doso forest management area be allocated to it as an extension to Wawoi Guavi timber permit.
- Jul Guidelines for the preparation of a revised veneer mill proposal.
- Jul 14 Minister Pok writes to National Forest Board Chairman directing Board to consider allocating Kamula Doso as an extension to Wawoi Guavi Timber Company.
- Jul 27 National Forest Board meeting. Minister's letter discussed.
- Jul 30 Samol writes to Pok, in reply to the Minister's letter of 14 July saying development options study and project guidelines must first be complied with.
- Jul 30 General Counsel to the National Forest Service, Chris Marlow advises Director of the Service's Policy Secretariat on legal requirements relating to extensions.

- Aug 4 Cabinet reshuffle. Peter Arul becomes new Minister For Forests.
- Aug 26 Jaako Poyry consultants inspects mill site with Forest Minister, Managing Director of National Forest Service and representatives of Department of Trade and Industry.
- Sept 17 Nen's second letter to Department of Trade and Industry expressing concern about veneer project.
- Sept 21 Governor of Western Province, Norbert Makmop, writes to Prime Minister Skate about Kamula Doso.
- Sept 22 Arul writes to Acting Chairman of the National Forest Board Gabriel Samol requesting a brief on the situation regarding the Kamula Doso forest management area.
- Sept 23 Samol responds to Arul's letter.
- Oct 27 Makmop writes to Arul, stating Western Provincial Executive Council endorses Sime Darby Berhad for East Awini, Lake Murray and Kamula Doso forest management areas in Western Province.
- Oct Nen's business paper on Rimbunan Hijau plywood mill at Panakawa submitted for the National Forest Board meeting in October 1998.
- 1999**
- Jan 5 Anthropologist Michael Wood writes to Chairman of National Forest Board, Samol.
- Jan 8 Samol replies to Wood, questioning his involvement with Kamula Doso landowners.
- Jan 13 Nen writes to landowners Olaba Tau and Whisky Maitona, indicating disagreement between landowners in the choice of the developer.
- Jan 13 National Forest Service brief signed by Nen sent to Minister for Forests.
- 27 Jan Submission to the chairman and members of the Board by Dr Iamo.
- Feb 4 National Forest Board decision to award Kamula Doso forest management area as extension to the Wawoi Guavi timber permit.

Feb 5 Nen writes to Rimbunan Hijau urges company to apply for licences under the *Forestry Act* for the mill.

2000

May 18 National Executive Council Decision No 84/2000 - Moratorium on logging.

Dec 4 Clement Kote responds to preliminary report.

Dec 18 Samol responds to preliminary report.

Dec 18 Baing responds to preliminary report.

Dec 27 Nen responds to preliminary report.

2001

Jan 4 Marlow responds to preliminary report.

Jan 29 *Forestry Amendment Act* 2000 is certified.

Feb 2 Makmop responds to preliminary report.

Feb 15 Iamo responds to preliminary report.

Aug 10 Michael Maue respond to preliminary report.

Aug 27 Rimbunan Hijau responds to preliminary report.

2002

Feb 4 Wawoi Guavi timber permit extended for 10 years until 2012.



LIST OF ABBREVIATIONS

AAC	-	Annual Allowable Cut
DOS	-	Development Options Study
DTI	-	Department of Trade and Industry
FMA	-	Forest Management Agreement
ICRAF	-	Individual and Community Rights Advocacy Forum
ILG	-	Incorporated Land Group
MP	-	Member of Parliament
NEC	-	National Executive Council
NFB	-	National Forest Board
NFS	-	National Forest Service
OEC	-	Office of Environment and Conservation
PFMC	-	Provincial Forest Management Committee
PNG	-	Papua New Guinea
PNGFA	-	Papua New Guinea Forest Authority
RH	-	Rimbunan Hijau
TRP	-	Timber Resource Permit
WGTC	-	Wawoi Guavi Timber Company
WTH	-	Wawoi Tumu Holdings

TABLE OF CONTENTS

1.	JURISDICTION AND PURPOSE OF INVESTIGATION.....	1
1.1	INTRODUCTION	1
1.2	JURISDICTION OF THE OMBUDSMAN COMMISSION	1
1.3	PURPOSE OF THE INVESTIGATION.....	2
1.4	METHOD OF INQUIRY	2
1.5	INTERVIEWS CONDUCTED DURING THE INVESTIGATION	3
1.6	OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON LEGALITY OF ADMINISTRATIVE CONDUCT.....	4
1.7	DEFINING WRONG CONDUCT.....	4
1.8	THE PRELIMINARY REPORT.....	4
1.9	GENERAL OBSERVATIONS AND CRITICISMS.....	6
2.	EVENTS PRIOR TO THE BOARD DECISION	9
2.1	GENERAL.....	9
2.2	WAWOI GUAVI TIMBER RIGHTS PERMIT	10
2.3	THE PROVINCIAL FOREST MANAGEMENT PLAN	10
2.4	WAWOI GUAVI EXTENSION.....	12
2.5	LETTER FROM LANDOWNER COMPANY TO THE MINISTER FOR FORESTS.....	13
2.6	ANDREW BAING'S REPLY TO WAWOI TUMU HOLDINGS	14
2.7	WAWOI GUAVI EXTENSION RECEIVES MINISTERIAL BACKING	14
2.8	ANDREW BAING RECEIVES INFORMATION ABOUT RIMBUNAN HIJAU AND WAWOI GUAVI.....	17
2.9	NATIONAL EXECUTIVE COUNCIL APPROVAL FOR RIMBUNAN HIJAU PROCESSING FACILITY AT PANAKAWA	18
2.10	DEPARTMENT OF TRADE AND INDUSTRY'S ROLE	19
2.11	WAWOI TUMU HOLDINGS WRITES TO DR FABIAN POK	21
2.12	THE FOREST MANAGEMENT AGREEMENT IS EXECUTED.....	21
2.13	THOMAS NEN TAKES OVER AS MANAGING DIRECTOR OF THE NATIONAL FOREST SERVICE	22
2.14	VISIT TO RIMBUNAN HIJAU'S VENEER MILL SITE	23
2.15	LETTER FROM THOMAS NEN TO THE SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY	25
2.16	THOMAS NEN'S LETTER TO WAWOI TUMU HOLDINGS	26
2.17	KAMULA DOSO FOREST MANAGEMENT AREA AS WAWOI GUAVI EXTENSION	27
2.18	OFFICIAL REQUEST FROM WAWOI GUAVI TIMBER COMPANY FOR AN EXTENSION TO THEIR EXISTING PERMIT	28
2.19	DR POK WRITES TO THE CHAIRMAN OF THE BOARD	28
2.20	NATIONAL FOREST BOARD MEETING N° 49	29
2.21	THE MANAGING DIRECTOR'S BRIEF TO THE BOARD ON KAMULA DOSO FOREST MANAGEMENT AREA	29
2.22	THE MANAGING DIRECTOR'S BRIEF TO THE BOARD ON RIMBUNAN HIJAU'S ACTIVITIES IN PNG.....	30
2.23	REPLY SENT TO THE MINISTER ON 30 JULY 1998	31
2.24	MINUTE FROM NATIONAL FOREST SERVICE GENERAL COUNSEL TO DIRECTOR OF THE POLICY SECRETARIAT	31

2.25	REPORT ON VENEER PRODUCTION EQUIPMENT.....	33
2.26	GOVERNOR OF WESTERN PROVINCE WRITES TO THE PRIME MINISTER.....	35
2.27	PETER ARUL BECOMES MINISTER FOR FORESTS.....	36
2.28	GABRIEL SAMOL WRITES BACK TO THE MINISTER.....	37
2.29	BUSINESS PAPER ON RIMBUNAN HIJAU MILL.....	37
2.30	NORBERT MAKMOP TELLS THE MINISTER FOR FORESTS ANY COMPANY OTHER THAN SIME DARBY WILL BE OPPOSED.....	41
2.31	ANTHROPOLOGIST MICHAEL WOOD WRITES TO THE CHAIRMAN OF THE BOARD.....	41
2.32	THOMAS NEN WRITES TO LANDOWNERS.....	43
2.33	BRIEF TO THE MINISTER OF FORESTS FROM THE MANAGING DIRECTOR OF THE NATIONAL FOREST SERVICE.....	43
2.34	THE 80,000 HECTARES/CUBIC METRES POLICY.....	44
3.	BOARD DECISION AND AFTERMATH.....	47
3.1	GENERAL.....	47
3.2	THE BOARD MEMBERS.....	47
3.3	SUBMISSION TO THE BOARD BY DR WARI IAMO, DIRECTOR OF THE OFFICE OF ENVIRONMENT AND CONSERVATION.....	47
3.4	SUBMISSION TO THE NATIONAL FOREST BOARD BY MANAGING DIRECTOR THOMAS NEN.....	49
3.5	BOARD MEETING N° 54 OF 4 FEBRUARY 1999.....	51
3.6	IMPACT OF THE VENEER MILL ON THE BOARD'S THINKING.....	54
3.7	LETTER TO RIMBUNAN HIJAU ABOUT THE VENEER PROCESSING MILL AT PANAKAWA.....	55
3.8	LETTER FROM SIR WIWA KOROWI TO MINISTER FOR FORESTS PETER ARUL.....	57
3.9	DOUBTS ABOUT THE LEGITIMACY OF THE ORIGINAL KAMULA DOSO FOREST MANAGEMENT AGREEMENT.....	58
3.10	HAS THE BOARD'S DECISION OF 4 FEBRUARY 1999 BEEN IMPLEMENTED?.....	59
3.11	ADVICE FROM THE NATIONAL FOREST SERVICE GENERAL COUNSEL.....	61
3.12	THE MORATORIUM ON LOGGING.....	62
3.13	THE INDEPENDENT FORESTRY REVIEW.....	63
3.14	THE INDEPENDENT REVIEW TEAM.....	63
3.15	THE INDEPENDENT REVIEW TEAM REPORT ON KAMULA DOSO.....	63
3.16	AMENDMENT TO SECTION 64(3) OF THE FORESTRY ACT.....	65
3.17	RIMBUNAN HIJAU RESPONDS TO THE PRELIMINARY REPORT.....	65
3.18	RESPONSES TO CRITICISM ON THE NATIONAL FOREST BOARD DECISION TO AWARD KAMULA DOSO AS AN EXTENSION.....	66
3.19	RECENT DEVELOPMENTS ON KAMULA DOSO AND WAWOI GUAVI.....	70
3.20	MANAGING DIRECTOR'S POSITION.....	70
4.	RELEVANT LAWS.....	71
4.1	THE CONSTITUTION OF THE INDEPENDENT STATE OF PNG.....	71
4.2	FORESTRY ACT 1991.....	72
4.3	FORESTRY REGULATION 1998.....	80
4.4	ENVIRONMENTAL CONSIDERATIONS UNDER THE ENVIRONMENTAL PLANNING ACT 1978.....	81
4.5	FORESTRY (AMENDMENT) ACT 2000.....	82

5.	FINDINGS OF WRONG CONDUCT	84
5.1	STATUS OF FINDINGS.....	84
5.2	INDEX OF FINDINGS OF WRONG CONDUCT	85
5.3	FINDINGS	85
6.	RECOMMENDATIONS	102
6.1	LEGAL FRAMEWORK FOR MAKING RECOMMENDATIONS	102
6.2	RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS	103
6.3	RECIPIENTS OF RECOMMENDATIONS.....	103
6.4	RESPONSIBLE MINISTERS.....	103
6.5	DUTIES OF RECIPIENTS OF RECOMMENDATIONS	104
6.6	INDEX OF RECOMMENDATIONS.....	105
6.7	RECOMMENDATIONS.....	107
7.	CONCLUSION	119
7.1	DEFECT IN THE KAMULA DOSO FOREST MANAGEMENT AGREEMENT	119
7.2	GOOD LEADERSHIP AND GOOD GOVERNANCE.....	119
7.3	FIDUCIARY DUTY	120
7.4	SUMMING UP.....	120

1. JURISDICTION AND PURPOSE OF INVESTIGATION

[1.1] INTRODUCTION

This is the final report of an investigation by the Ombudsman Commission to establish whether or not there was any wrong conduct surrounding the decision of the National Forest Board to allocate the Kamula Doso forest management area to Wawoi Guavi Timber Company Ltd as an extension to the Wawoi Guavi timber rights permit.

This investigation was undertaken on the Commission's own initiative following the receipt of some relevant information from the non-government organisation Individual and Community Rights Advocacy Forum (ICRAF).

Unlike some Ombudsman institutions in other jurisdictions, the Ombudsman Commission of PNG has the constitutional power to initiate its own investigations. It does not have to wait until an official complaint is lodged.

The Ombudsman Commission issued notices under Section 17(1) of the *Organic Law on the Ombudsman Commission* to the Chairman of the National Forest Board and to the Managing Director of the National Forest Service on 10 June 1999, advising them of the Commission's decision to investigate this matter.

[1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

Sections 218(b) and (c) of the *Constitution* state that two of the purposes for establishing the Ombudsman Commission are:

- to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and
- to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219(1)(a)(ii) of the *Constitution* empowers the Ombudsman Commission to investigate on its own initiative or on complaint by a person affected any conduct on the part of any governmental body or an officer or employee of a governmental body in the exercise of a power or function vested in it, him or her by law in cases where

the conduct is or may be wrong taking into account amongst other things the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Schedule 1.2(1) defines “governmental body” as:

the National Government; or a provincial government; or an arm, department, agency or instrumentality of the National Government or a provincial government; a body set up by statute or administrative act for government or official purposes.

The PNG Forest Authority is a body set up by statute, namely the *Forestry Act* 1991. For the purpose of Section 218 of the *Constitution*, it is a governmental body. The Ombudsman Commission therefore has jurisdiction to inquire into the question of whether the Board of the Authority – the National Forest Board – made an improper decision in awarding the Kamula Doso forest area to Wawoi Guavi Timber Company Ltd as an extension to the Wawoi Guavi timber permit.

[1.3] PURPOSE OF THE INVESTIGATION

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

- to determine whether any of the conduct under investigation was *wrong*;
- to determine whether any laws or administrative practices were *defective*.

[1.4] METHOD OF INQUIRY

The Ombudsman Commission issued a notice on 10 June 1999 under Section 17(1) of the *Organic Law on the Ombudsman Commission* to the Chairman of the National Forest Board and to the Managing Director of the National Forest Service advising of its intention to investigate.

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 sources and used its powers under Section 18 of the *Organic Law on the Ombudsman Commission* to require people to produce documents and information.

Section 18(1) states:

Subject to the provisions of this Section and of Section 19, 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.

[1.5] INTERVIEWS CONDUCTED DURING THE INVESTIGATION

The following table lists the people who were called and gave evidence before the Commission:

TABLE 1.1

PEOPLE WHO GAVE EVIDENCE BEFORE THE COMMISSION

	NAME	STATUS
1	Mr Goodwill Amos	Divisional Manager of Resource Development, NFS
2	Mr Joseph Badi	Manager of Resource Acquisition, NFS
3	Mr Paul Barker	Adviser, Department of the Prime Minister and National Executive Council
4	Mr Brian Brunton	Director, ICRAF
5	Mr Yati Bun	Executive Director, Foundation for People and Community Development
6	Mr John Douglas	Deputy Director, Office of Environment and Conservation
7	Mr Martin Golman	Acting Director of NFS Policy Secretariat
8	Mr Dennis Hoivo	Landowner Liaison Officer, NFS
9	Dr Wari Iamo	Director, OEC
10	Mr Dambis Kaip	FMA Supervisor, NFS
11	Ms Annie Kajor	ICRAF
12	Mr Lawrence Kambogru	Landowner representative on NFB
13	Mr Dike Kari	General Manager, NFS
14	Mr Clement Kote	Finance and Treasury representative on the NFB
15	Mr Ivara Larivita	Provincial Forest Officer, Western Province
16	Mr Chris Marlow	General Counsel, NFS
17	Mr Peter McCrea	Economist, NFS
18	Mr Thomas Nen	Managing Director, NFS
19	Mr Issau Parr	FMA Officer, NFS
20	Ms Ursula Rakova	ICRAF
21	Mr Alan Ross	Board Secretary, NFS
22	Mr Tunou Sabuin	Area Manager Southern Region, NFS
23	Mr Gabriel Samol	Chairman, NFB and President Association of Foresters of PNG
24	Mr Andrew Tagamasau	Former Deputy Manager of Operations, NFS
25	Ms Ruth C Turia	Former Principal Policy Adviser, NFS
26	Mr Guao Zurenuoc	Former Managing Director, NFS

**[1.6] OMBUDSMAN COMMISSION NOT CONFINED TO
REPORTING ON LEGALITY OF ADMINISTRATIVE
CONDUCT**

When the Ombudsman Commission conducts an investigation and issues a report, it is not confined to reporting on whether or not there have been breaches of the law. The Commission's constitutional mandate is broader than this. It is authorised to report on what, in its opinion, is "wrong conduct", irrespective of whether that conduct has been in accordance with the law.

[1.7] DEFINING "WRONG CONDUCT"

The *Constitution* gives some guidance to the Commission when it is deciding whether conduct is "wrong".

Section 219(2) of the *Constitution* states:

Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is—

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
- (d) based wholly or partly on a mistake of law or of fact; or
- (e) conduct for which reasons should be given but were not,

whether or not the act was supposed to be done in the exercise of deliberate judgement within the meaning of Section 62 (decisions in "deliberate judgement").

The above list is not exhaustive. The phrase "and without otherwise limiting the generality of the expression" indicates that conduct which does not fit into any of the descriptions in paragraphs (a) to (e) may still be regarded as wrong. The Ombudsman Commission is entitled to regard conduct as wrong, even if the conduct does not appear in the list of descriptions given in Section 219(2) of the *Constitution*.

[1.8] THE PRELIMINARY REPORT

Whenever the Ombudsman Commission prepares a report of this nature it has a duty to observe procedural fairness.

This duty is imposed by Section 17(4) of the *Organic Law on the Ombudsman Commission*.

Section 17(4)(b) states:

Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that ...

- (b) the Commission shall not make any comment in its report that is adverse to or derogatory of any person without -
 - (i) providing him with reasonable opportunity of being heard; and
 - (ii) fairly setting out his defence in its report.
-

In order to discharge this duty of procedural fairness, the Ombudsman Commission distributed a preliminary report of the Kamula Doso investigation in November 2000.

A preliminary report allows persons who may be affected by the Commission's final report to respond to any adverse findings and correct any factual errors the Commission may have made.

The purpose of a preliminary report is to state the Ombudsman Commission's preliminary findings of fact and preliminary views on the matter under consideration and to seek comments and submissions from those affected.

All of the findings in the preliminary report were qualified. That is, they were made subject to submissions received in response to the preliminary report.

Accompanying the preliminary report was a direction, pursuant to Section 21(1) of the *Organic Law on the Ombudsman Commission*, that all evidence, documents, papers and things referred to, including all findings and opinions, shall not be published without the consent in writing of the Commission. Breach of this direction is a criminal offence.

The table below lists all the people who were given a copy of the preliminary report. Recipients of the preliminary report were invited to respond, orally and/or in writing.

TABLE 1.2
RESPONSES TO THE PRELIMINARY REPORT

NAME	TITLE	STATUS OF RESPONSE
Hon Peter Arul MP	Member for Kandrian Gloucester Open	No response
Hon Andrew Baing MP	Member for Markham	Written response received 20.12.00
Mr Brian Brunton	Director, ICRAF	No response
Mr Yati Bun	Current member, NFB	No response
Mr Maurice Coughlan	Former NFS lawyer	Written response received 31.01.01
Mr Anthony Honey	Former member, NFB	No response
Dr Wari Iamo	Director, OEC	Written response received 15.01.01
Mr Joshua Kalinoc	Current member, NFB	No response
Mr Lawrence Kambogru	Former member, NFB	No response
Mr Clement Kote	Former member, NFB	Written response received 05.12.00
Mr James Lau	General Manager, Rimbunan Hijau group of companies	Correspondence through Warner Shand lawyers 17.12.00, 21.12.00, 27.12.00, 03.01.01, 05.01.01, 09.01.01, 31.01.01, 01.02.01, oral submission 13.06.01, written response 30.08.01
Mr Joseph Lelang	Current member, NFB	No response
Hon Norbert Makmop MP	Governor, Western Province	Written response received 13.02.01
Mr Chris Marlow	NFS General Counsel	Additional legal opinions received 04.01.01
Mr Maran Nataleo	Current member, NFB	No response
Mr Thomas Nen	Managing Director, NFS	Written response received 27.12.00
Hon Michael Ogio MP	Minister for Forests	No response
Mr Michael Paisparea	Current member, NFB	No response
Dr Fabian Pok MP	Member for North Waghi Open	No response
Mr Gabriel Samol	Chairman, NFB	Written response received 18.12.00
Mr Guao Zurenuoc	Secretary, Dept of Lands and Physical Planning	No response
Mr Michael Maue	Secretary, Department of Trade and Industry	Written response received 10.08.01

The Commission has carefully considered all submissions received in response to the preliminary report. Where necessary, findings, opinions and recommendations have been altered, amended or deleted accordingly.

[1.9] GENERAL OBSERVATIONS AND CRITICISMS

In responding to the preliminary report, some respondents expressed dissatisfaction with aspects of the report.

Rimbunan Hijau generally questioned the purpose of the investigation and the jurisdiction of the Ombudsman Commission in conducting the investigation.

The company stated in its response that :

Chapter 1 **Jurisdiction and Purpose**

... in the absence of fraud we would have thought that the inquiry of the Ombudsman into this area was unacceptable.

Chairman of the National Forest Board, Gabriel Samol, said that the Commission should have paid more attention to the fact that the investigation was launched following a complaint from ICRAF – an environmental non-government organisation.

Mr Samol said:

The role of international NGOs and their real agenda in PNG should have been of some interest to the Commission.

Mr Samol said the Commission should have sought the views of the landowners of the Kamula Doso area, particularly the 51 incorporated land group chairmen, in the process of the investigation.

Managing Director Thomas Nen expressed similar concerns in his response to the preliminary report:

Views of the landowners should have been sought at the project site/area. I wonder if the Ombudsman had time to visit the project site and interviewed the resource owners there.

The Commission notes these points. Owing to the practical difficulties of locating and interviewing 51 chairmen spread across a remote part of Western Province, the Ombudsman Commission opted not to seek the views of particular landowners. However, the Commission interviewed several people who have had extensive contact with landowners in the Kamula Doso area.

The Commission also interviewed the landowner representative on the National Forest Board, Lawrence Kambogru.

Not all respondents were critical of the preliminary report. Clement Kote, the Finance and Treasury representative on the Board at the time of the decision, said he found aspects of the report educational:

Before I proceed to providing views on a number of issues in your report let me congratulate you on the conciseness and thoroughness of your report. This has been partly educational on aspects of Rimbunan Hijau operations and has clearly revealed a blunder caused by the PNG Forest Authority through wrong advice given to the Board by the management.

Responses to particular issues can be found in the relevant sections of this report.



2. EVENTS PRIOR TO THE BOARD DECISION

[2.1] GENERAL

This chapter deals with the events leading up to the National Forest Board decision on 4 February 1999 to recommend that the Kamula Doso forest management area be an extension to the Wawoi Guavi timber rights permit.

Section 10(1) of the *Forestry Act* sets out the composition of the Board:

The Board shall consist of -

- (a) the Managing Director, ex officio; and
 - (b) the Departmental Heads, ex officio, of the Departments responsible for finance matters and environmental matters respectively or their nominees (who shall be of a level in the Public Service not less than that of Assistant Secretary) appointed by the National Executive Council; and
 - (c) the President of the Forest Industries Association, ex officio, or his nominee; and
 - (d) the President of the Association of Foresters of Papua New Guinea, ex officio, or his nominee; and
 - (e) a provincial administrator, to represent Provincial Governments, appointed by the National Executive Council from a list, submitted to the National Executive Council by the Minister, of two provincial administrators selected by the Minister responsible for provincial affairs in consultation with the Provincial Governors; and
 - (f) one member, to represent non governmental organizations, appointed by the National Executive Council from a list, submitted to the National Executive Council by the Minister, of at least two persons selected by a nationally recognized body, registered with the Department responsible for home affairs matters, representing non governmental organizations; and
 - (g) one member, to represent forest resource owners, appointed by the National Executive Council from a list of two persons selected in accordance with Subsection (2) and submitted to the National Executive Council by the Minister.
-

At the time of the decision to award Kamula Doso as an extension to the Wawoi Guavi timber permit the Board consisted of the following members:

Mr Thomas Nen	Managing Director of the National Forest Service
Dr Wari Iamo	Director, Office of Environment and Conservation
Mr Clement Kote	Representative of the Department of Finance and Treasury

Mr Anthony Honey	Representative of the Forest Industries Association
Mr Gabriel Samol	Chairman of the Board, President of the Association of Foresters
Mr Lawrence Kambogru	Forest resource owners' representative

There were no representatives of provincial governments or non-government organisations, as specified in Sections 10(1)(e) and 10(1)(f) of the *Forestry Act*, involved in the Board decision under investigation.

[2.2] WAWOI GUAVI TIMBER RIGHTS PERMIT

Wawoi Guavi Timber Company Ltd, a wholly owned subsidiary of Rimbunan Hijau (PNG) Ltd, was granted a ten-year timber permit (TRP1-7) for the consolidated Wawoi Guavi area on 10 April 1992. The Wawoi Guavi permit covers an area of 432,000 hectares.

Some of the key components of the timber permit are:

- maximum log harvest of 350,000 cubic metres (m³) per annum;
- construction of a sawmill in the first year with the minimum annual log input rising to 50,000m³ by 1997;
- construction of 4 main roads, 99 permanent bridges and 130 permanent culverts complying with Department of Works standards; and
- assistance with a number of (listed) infrastructure and village development projects.

Payment of a K0.50/m³ reforestation levy, a K1.00/m³ log export premium and an additional log export premium of K0.75/m³ was negotiated in November 1994.

The Wawoi Guavi timber permit expired in April 2002 and was extended on 4 February 2002 for another 10 years until 2012.

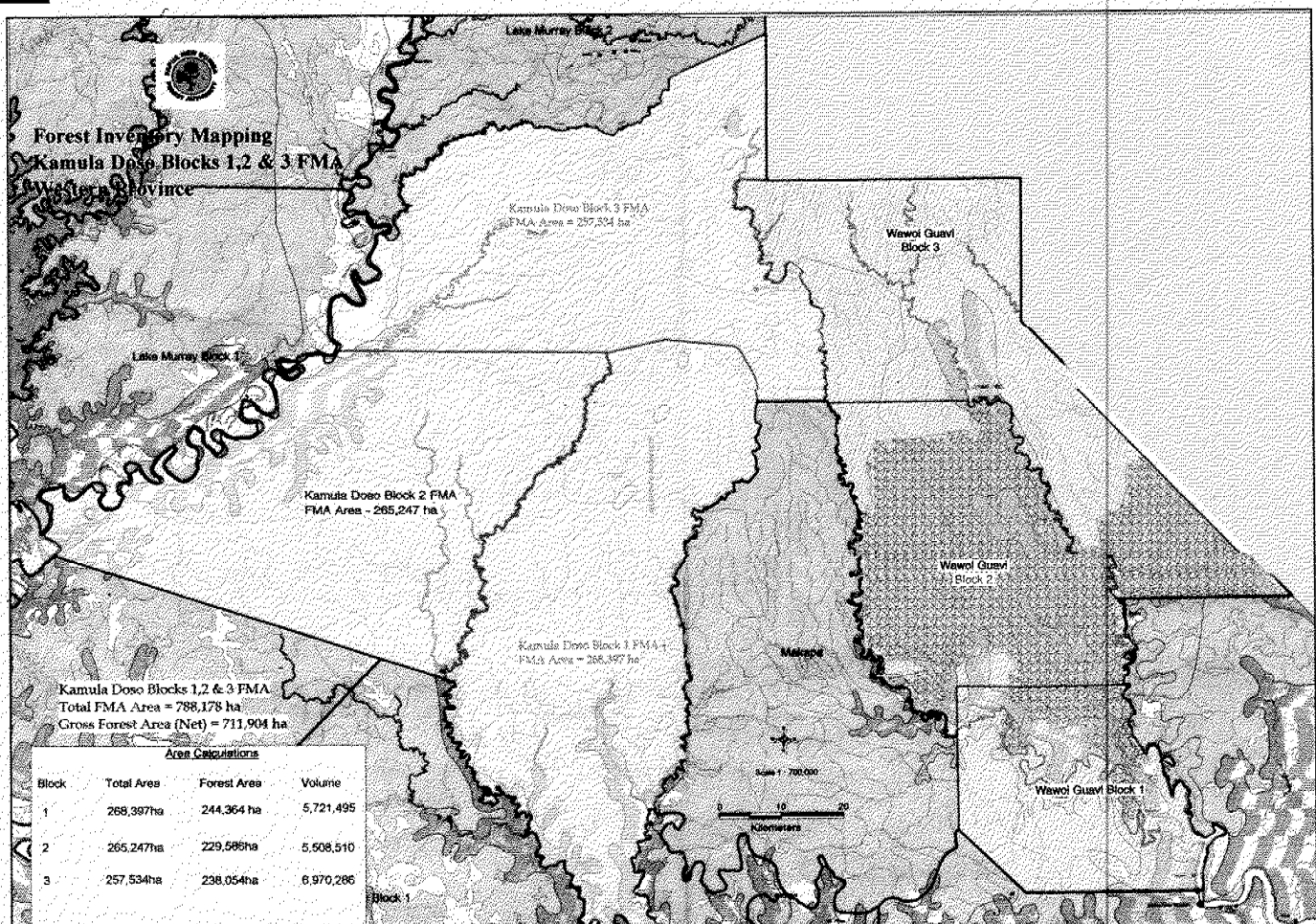
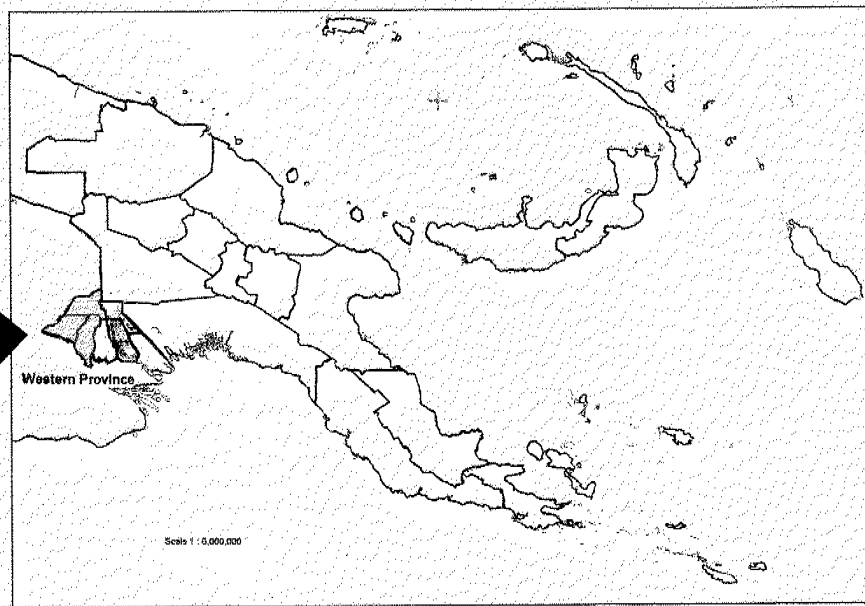
[2.3] THE PROVINCIAL FOREST MANAGEMENT PLAN

The Provincial Forest Management Plan prepared in 1995/96 identified a number of areas in Western Province for potential commercial forest development. One of the areas identified was an area covering 791,400 hectares, known as Kamula Doso.

The PNG Forest Authority maps further divide the area into three blocks:

Kamula Doso block 1 (268,413 hectares)
 Kamula Doso block 2 (265,380 hectares)
 Kamula Doso block 3 (257,606 hectares)

Map of PNG showing the Western Province and Kamula Doso Blocks 1,2 and 3 in Brown and Wawoi Guavi Blocks 1,2, and 3 in Green



The issuing of the provincial forest management plan of 1995/96 precipitated a number of what the National Forest Service described as “grandiose and unbelievable proposals” from various companies and groups. These “integrated forestry, mining, agriculture, fishing, tourism etc” plans proposed the logging of virtually all of the remaining forests in the Western Province.

Rimbunan Hijau was one of the companies that put a proposal to the National Forest Board. Their proposal, presented towards the end of 1995 envisaged the establishment of 2 plywood mills, 2 blackboard plants, 2 sawmills, over 3,000 kilometres of permanent roads, power and water supply for development centres, new airports, 2 new townships, numerous schools and medical centres.

In return Rimbunan Hijau requested exclusive logging access to more than 2 million hectares of virgin forest, additional to their existing Wawoi Guavi concession of around 432,000 hectares. They also requested further incentives for the company, such as tax concessions and import duties.

[2.4] WAWOI GUAVI EXTENSION

The Wawoi Guavi and Kamula Doso areas share a boundary of about 50 kilometres in Block 3. The bulk of the two areas is separated by another forest management area called Makapa. A timber rights permit for the Makapa forest area is being operated by another logging company.

On 21 May 1996 Wawoi Guavi Timber Company wrote to the Managing Director of the National Forest Service, saying that the company had been approached “by the forest resource owners to develop their land”. The company sought approval to have the 791,400 hectares of land known as Kamula Doso regarded as an extension to their Wawoi Guavi permit. The area of the proposed extension was close to double the size of the original permit.

An extension would give the company exclusive logging rights within the Kamula Doso area on the terms of the existing Wawoi Guavi timber permit, without requiring the project to be put to an open public tender.

The letter read as follows:

ATTN: WAWOI GUAVI EXTENSION

This is to inform that we had been approach by the forest resource owners to develop their land.

We would be most willing to assist the resource owners to bring development, provide employment, basic health services and etc. into their area, upon proper approval from all the relevant authorities.

Therefore, we would like to seek from your office the necessary approval to include the mentioned area as part of Wawoi Guavi extension.

Thank you.

Yours sincerely

Mr Francis Tiong
General Manager
Wawoi Guavi Timber Pty Ltd

[2.5] LETTER FROM LANDOWNER COMPANY TO THE MINISTER FOR FORESTS

On 11 July 1996 a private landowner company, Wawoi Tumu Holdings Ltd, wrote to the then Minister for Forests, Andrew Baing. The company said they represented the three major tribes of the area – Kalamo, Kamula and Doso – and indicated their willingness to sign over the logging rights for the development of their area. The letter stated that they would be “comfortable” if the area were allocated as an extension to the Wawoi Guavi Timber Company’s permit.

In evidence to the Commission, General Manager of the National Forest Service, Dike Kari, said that Wawoi Tumu Holdings was not the only landowner company making submissions to the Board about Kamula Doso. Another company, Tumu Timbers, wanted the project to be advertised, rather than allocated as an extension to the Rimbunan Hijau subsidiary:

We were getting letters from these two companies. One is saying speed up the process and give it to Rimbunan Hijau, the other is saying ... we want the project to be advertised.

Joseph Badi, the National Forest Service Manager of Resource Acquisition, said the Board had to be careful about accepting the views of landowner companies. He said he was “mindful of the fact that the *Forestry Act* does not speak of landowner companies”.

Mr Yati Bun, who became the representative of non-government organisations on the National Forest Board soon after the Board’s decision on Kamula Doso and gave evidence in that capacity, said that people claiming to represent landowners sometimes have another agenda:

It is a pity that sometimes we find people claiming to represent landowners are really not truly representing the landowners. They can be the front man for somebody with personal interest not truly representing the views of the people. It has been an on-going problem.

Dennis Hoivo, Landowner Liaison Officer for the National Forest Service, expressed similar concerns about landowner companies:

It is difficult to know whether a landowner company is representing the resource owners or not without examining the certificate of ILGs and other relevant documents. Under the new policy on FMA we tried to do away with the landowner companies. We went direct to the land groups themselves.

[2.6] **ANDREW BAING'S REPLY TO WAWOI TUMU HOLDINGS**

In his reply to Wawoi Tumu Holdings, dated 12 August 1996, Mr Baing said the following program was scheduled for implementation by the Forest Service:

-
- 1) Forest Resource Inventory will be undertaken in 1998.
 - 2) Forest Management Agreement (FMA) will be executed in 1999.
 - 3) Allocation of the resource will be effected after FMA.
-

[2.7] **WAWOI GUAVI EXTENSION RECEIVES MINISTERIAL BACKING**

On 6 September 1996 Mr Baing wrote to Wawoi Tumu Holdings advising that he had directed the Managing Director of the National Forest Service to immediately treat the request of the company as an extension to Wawoi Guavi, to develop the Fly Strickland Timber Area.

Mr Baing added that this direction amended the advice given in his previous letter of 12 August 1996 which stated that to comply with the National Forest Plan, the area would not start to be logged until 1998 or 1999.

That timetable had been amended in favour of a more immediate plan.

Mr Baing stated:

As this project is to be developed as an extension to Wawoi Guavi, I have further directed that commencement of this project must start this year (1996).

Mr Nen's response

In his response to the Ombudsman Commission's preliminary report, Managing Director Thomas Nen referred to the Minister's direction as justifying his own decision to liaise only with the one landowner company – Wawoi Tumu Holdings.

Mr Nen stated:

As early as 6 September 1996, the then Minister for Forests wrote to Wawoi Tumu Holdings advising that he had directed the Managing Director of National Forest Service then to immediately treat the request of the company as an extension to Wawoi Guavi to develop the Fly Strickland Timber Area. The Ombudsman must now understand that the Authority and the Minister from 1996 had recognised only one landowner company – Wawoi Tumu Holdings – as the truly representative landowner company.

The Ombudsman Commission accepts that this is the case. But the Commission remains unclear as to the basis for this decision to listen to the views of one landowner company only. It is clear that Wawoi Tumu Holdings were not the only landowner company in the area and other groups had opposing views about the preferred developer.

A Board paper presented to the Board by Mr Nen (Board paper N° B2, 4 February 1999) advised, “there are other landowner companies and pressure groups in that area (Kamula Doso)”.

Mr Baing’s response

In a nine-page response to the preliminary report, Mr Baing strongly refuted the suggestion that there was anything wrong with him giving directions to the Managing Director of the National Forest Service.

Mr Baing stated:

My direction was to a Board member who as Managing Director is obliged to take my request to the Board. The Managing Director of the National Forest Authority is the chief executive officer of the National Forest Service and the chief adviser to the Board.

There are no other reasonable practical ways to have my directions put before the Board except through the Managing Director of the National Forest Service. That is why Parliament made the Managing Director also an ex officio member of the Board. It is he who prepares and presents papers to the Board.

Section 148(2) of the *Constitution* states that all departments, sections, branches and functions of the Government must be the political responsibility of a Minister. However, subsection 3 states that subsection 2 does not confer on a Minister any power of direction or control.

The Ombudsman Commission has reported other cases in which Ministers have attempted to influence the decisions of Boards and other governmental bodies through the issuing of directions. The Commission addressed this issue in the *Poreporena Freeway Report* (1992) at page 529:

Ministers must refrain from directing Departmental heads to do things when they have no power to do so.

Ministers and members of the Minister's official and personal staff must also refrain from giving directions to other officers of the Department or government body for which the Minister has political responsibility. Officers of departments and governmental bodies should receive their instructions from their permanent head - not from the Minister or members of his official personal staff.

The interpretation of Section 148 of the *Constitution* was addressed in *Supreme Court Reference N° 1 of 1982; Re Bouraga* [1982] PNGRL 178. The then Chief Justice, Sir Buri Kidu, stated at pages 184-185:

This Constitutional Law, in my view, does four things:

- (a) it vests in the Prime Minister of PNG the power to determine what ministerial title a particular Minister is to have; and
- (b) what a Minister's responsibilities must be; and
- (c) of what departments, sections, branches and functions of government a Minister has political responsibility; and
- (d) that s. 148(2) does not confer on a Minister any power of direction or control.

It does not say that a Minister has no power of direction or control *whatsoever* over a department, section, branch and function of government of which he/she has political responsibility. It is my view that s. 148 merely says that the fact that it (i.e. s. 148) vests in a Minister the political responsibility over a department, section, branch, etc. in itself confers no powers of direction or control over those bodies. I cannot also see that s. 148 prohibits Parliament from making laws vesting in Ministers power of direction and control over matters for which they have political responsibility.

In responding to the preliminary report Mr Baing said Sir Buri Kidu's judgment supported his right, as Minister for Forests, to give directions to the Board:

The *Forestry Act* did exactly what Sir Buri Kidu said Parliament could do and Parliament made a special provision in the *Forestry Act* providing for the Minister for Forests to have specific powers of direction and control over the Board of the Forest Authority.

Mr Baing also stated:

What the Act specifically permitted me to do was to give directions to the Board, which in my opinion was related to the Board's functions for the purposes of achieving the objectives of the Authority. Specifically, I gave a direction for the Board to consider Kamula Doso as an extension of Wawol Guavi.

Mr Baing further stated:

I did not direct the Board on its decision making process or in respect to its own requirements under the Act to satisfy itself that an extension was in the circumstances appropriate.

Section 7(2) of the *Forestry Act* allows the Minister for Forests to give “any directions to the Forest Authority through the Board, in regard to the carrying out of the functions of the Authority as he considers necessary for the purpose of achieving the objectives of the Authority”.

However, the Ombudsman Commission still has serious reservations about the propriety of the Minister’s very specific direction on a technical matter that required very careful consideration.

At the time Mr Baing gave his direction, a forest management agreement for the Kamula Doso area had not yet been executed, there had been no development options study and there were no formal project guidelines in place for Kamula Doso.

Rimbunan Hijau’s response

In its response to the preliminary report Rimbunan Hijau supported Mr Baing’s actions saying:

Rimbunan Hijau would argue that the letters that Mr Andrew Baing has written are an indication of proper ministerial direction in the circumstances and that he has not acted ultra vires and that any suggestion that he has should be refuted. Mr Baing is not guilty of wrongful interferences with the task of the Forest Authority in the circumstances.

[2.8] ANDREW BAING RECEIVES INFORMATION ABOUT RIMBUNAN HIJAU AND WAWOI GUAVI

On 20 November 1996 a copy of the PNG Rainforest Campaign News was sent to the Minister for Forests, Andrew Baing.

The internet-based environmental news service posting, dated 11 October 1996 contained information about the Kamula Doso area under the headline UPDATE ON WAWOI GUAVI BLOCK 3 AND A HUGE ‘EXTENSION’.

The news service reported that Rimbunan Hijau was “in the advanced stages of getting an extension to their Wawoi Guavi timber permit of another 600,000 to 700,000 hectares”.

The report continued:

Since Rimbunan Hijau lost its bid to gain control of the Makapa TRP timber concession in May this year it has been busily trying to secure access to a vast area of timber that surrounds the Makapa concession. It is doing this by seeking an 'extension' to its existing Wawoi Guavi concession.

This 'extension' strategy seems to be a new way of circumventing the intentions of the *Forestry Act*, but it is at first glance, a legal process.

The report claimed that by seeking the extension Rimbunan Hijau showed that it was not interested in implementing sustained field management practices. Their goal appeared to be to secure as much of the remaining timber resources in the Western Province as possible, thereby preventing competitors from gaining access to the resource.

Under the heading 'Landowner Responses' the report claimed that Kasua landowners from Waeliyo and Musula villages and the Kamula at Wawoi Falls and Somokapa villages had recently moved to renegotiate the permit operating in Block 3 of the Wawoi Guavi concession:

These responses are based on Kamula's awareness that the conditions found in the Wawoi Guavi concession are deeply unsatisfactory.

In particular Kamula complain of the very low royalty rate paid by Rimbunan Hijau (although there was some expectation that this would be increased in October this year from K3.20 to K10 per cubic metre). The Kamula know that Rimbunan Hijau has failed to provide landowners with any real business developments so that many landowners whose land has already been logged now confront a situation where their only marketable asset has been sold at a very low price with no other equivalent source of funds likely to emerge in the short or long term future.

The Kamula are also aware that they themselves have not yet participated in any meaningful sense in the negotiations that may have already defined the permit conditions that will regulate the proposed extension.

[2.9] NATIONAL EXECUTIVE COUNCIL APPROVAL FOR RIMBUNAN HIJAU PROCESSING FACILITY AT PANAKAWA

As a result of the 1997 general election PNG had a new government, led by a new Prime Minister, Mr Bill Skate.

On 25 September 1997 the National Executive Council considered a proposal by Rimbunan Hijau for a timber processing facility to be built in Panakawa, Kamusie, Western Province.

NEC Decision N° NG 41/97 approved the project in principle and directed a State negotiating team to “negotiate for appropriate incentives”. This inter-departmental committee was to be chaired by the Secretary of the Department of Trade and Industry with representatives from the following departments and agencies:

- Department of Attorney General;
- Department of Environment and Conservation;
- Department of Lands;
- Department of Finance;
- Department of National Planning and Implementation;
- Department of Prime Minister and NEC;
- Department of Western Province;
- Internal Revenue Commission;
- PNG Forest Authority;
- Investment Promotion Authority.

The NEC directed the Department of Trade and Industry to coordinate negotiations for a project agreement on behalf of the State and submit it to the NEC for consideration.

The NEC decision also approved a “one-off duty exemption” for the company on all project machinery, equipment and materials for the construction period only and advised the Head of State to grant the duty exemption accordingly.

[2.10] DEPARTMENT OF TRADE AND INDUSTRY’S ROLE IN THE ESTABLISHMENT OF THE VENEER MILL

The Department of Trade and Industry was the principle government negotiator and facilitator in the establishment of the veneer processing plant by Rimbunan Hijau Timber Processing Ltd at Panakawa.

In response to the preliminary report, then Secretary for the Department Mr Michael Mauc stated that:

There were concerns right from the beginning when the Department was requested by the then Prime Minister Bill Skate to come up with a draft NEC submission on the establishment of the mill. The then Secretary Joshua Kalinoe, explained to the Inter-Departmental Project Screening Committee in a meeting on 24 September 1997 that the project submission was rushed through without giving any opportunity to line departments and agencies to comment on the project and its legal, environmental and other implications.

When interviewed by the Ombudsman Commission regarding the role of the Department of Trade and Industry in the facilitation of the project, former Secretary Mr Joshua Kalinoe said:

Normally Departments and Agencies would be given the opportunity to review and contribute to the finalization of National Executive Council submission, but on this occasion, we by-passed standard NEC screening process due to urgency and political directions.

Despite the fact that facilitation of this project falls directly in line with the Department of Trade and Industry's endeavour to promote industrial development in least developed areas, the above explanation by Mr Kalinoe suggests that the department did not take into consideration views of other governmental bodies such as the PNG Forest Authority.

In his response to the preliminary report Mr Maue stated:

The Department of Trade and Industry have nothing to do with the role and responsibility of the PNGFA. It is under their purview to assess the project under the existing laws to make sound decisions in awarding or not new forest resources to existing permit holders or new bidders. We have strongly opposed the awarding of Kamula Doso to Rimbunan Hijau given their track record.

In its analysis of the feasibility report for the veneer mill submitted by Rimbunan Hijau, the Department of Trade and Industry was critical that Rimbunan Hijau included the Kamula Doso forest area which was not part of its Wawoi Guavi TRP area and in doing so artificially inflated production figures and financial projections for the mill.

The Department was also concerned that there was no log sales agreement between the two Rimbunan Hijau subsidiaries, i.e. Rimbunan Hijau Timber Processing Ltd which was constructing the mill and Wawoi Guavi Timber Company Ltd, which is the developer of the Wawoi Guavi TRP.

It would have been apparent at this stage that the unplanned importation of the veneer processing equipment was at least partly an attempt by Rimbunan Hijau to force the Government's hand to grant them additional forest resources in the form of the Kamula Doso extension. Despite these concerns the Department of Trade and Industry was directed to expedite the Rimbunan Hijau proposal.

In its response to the preliminary report, Rimbunan Hijau submitted that:

The veneer mill at Panakawa is a major investment consistent with downstream processing, fundamental to the forest policy of PNG. Not to give consideration to the need for a resource for that facility is anti-investment, anti-development and obstructive.

[2.11] WAWOI TUMU HOLDINGS WRITES TO DR FABIAN POK

On 4 November 1997 the landowner company Wawoi Tumu Holdings sent a letter to the new Minister for Forests, Dr Fabian Pok, which contained amongst other things the following:

We the resource owners realise that with our availability of forest resource, various benefits could be brought to our people here. Nevertheless the present would not have materialised, had we not requested for financial assistance to conduct ILG registration, (made) regular trips to Port Moresby and Daru with various state officers, (and with officers) from Wawoi Guavi Timber Company Pty Ltd who had demonstrated serious commitment based on our request.

We the customary resource owners of Kamula Doso forest management area unanimously decide to include our area as Wawoi Guavi Extension. We do not wish to witness our resource area to go into wrong hands and those who had not been sympathetic to our community needs.

On 20 November 1997 Guao Zurenuoc, then Managing Director of the National Forest Service, informed Wawoi Tumu Holdings that the allocation of the Kamula Doso area would be done by the National Forest Board in consultation with the Provincial Forest Development Committee and the landowners. The Managing Director stated in his letter "normal procedures would be followed".

[2.12] THE FOREST MANAGEMENT AGREEMENT IS EXECUTED

Section 55 of the *Forestry Act* permits forest industry activities on customary land only after a forest management agreement has been entered into between the customary owners and the National Forest Service.

The specifications for these agreements are detailed in Sections 56 to 60 of the *Forestry Act*. These sections are reproduced in Chapter 4 of this report.

At a National Forest Board meeting on 19 February 1998, the forest management agreement for the 791,400 hectares of Kamula Doso Blocks 1, 2 and 3 was approved by the Forest Authority.

In his response to the preliminary report Chairman of the Board, Gabriel Samol, said the Board executed the Kamula Doso FMA only after two other important steps had taken place:

- The Board executed the Forest Management Agreement for Kamula Doso in February 1998 following the recommendation to do so by the management of the National Forest Service indicating that all the requirements under the Act have been satisfactorily complied with.
- The Provincial Forest Management Committee of Western Province had issued a certificate in compliance with the requirements of Section 58(f) of the Act.

Rimbunan Hijau submitted that the size of the Kamula Doso forest management area does not equate the actual resource available in it and took offence at it being emphasised saying:

The size of the area is being emphasised for the wrong reason as if this meant there was a large resource whereas the timber that is millable is sparse in this area which is the reason why the area is large.

It further added:

The allowable cut at Kamula Doso is comparative to many other timber concessions in PNG.

[2.13] THOMAS NEN TAKES OVER AS MANAGING DIRECTOR OF THE NATIONAL FOREST SERVICE

In February 1998 Mr Thomas Nen became the Managing Director of the National Forest Service.

On 24 April 1998 Mr Nen sent a letter to Wawoi Tumu Holdings, seeking confirmation as to what the company's preference was for the allocation of the Kamula Doso area.

Mr Nen stated:

Re: Kamula Doso Forest Management Area (As Wawoi Guavi Extension)

I refer to your letter of 21 March 1998 regarding the above subject. Whilst acknowledging your concerns be informed or reminded that during PFMC meeting (2/98) at the PEC Chambers in Daru on Thursday 16 April 1998 and during discussions between Mr Tunou Sabuin (Area Manager, Southern) and Mr Goodwill Amos (Resource Management Division) your landowner delegation made up of Mr Olaba Tau (General Manager), Mr Kalma Toto and Mr Whisky Maitona (Public Liaison Officer) advised that we should disregard your letter of 21/3/98 and adhere to the timber resource allocation as stipulated in the *Forestry Act* (1991) as amended and allocate Kamula Doso Forest Management Area as a stand-alone project.

I wish to confirm that it is indeed the position of Wawoi Tumu Holdings Pty Ltd and bulk of the resource owners.

Your immediate confirmation is appreciated.

Yours faithfully.

Thomas Nen
Managing Director

[2.14] VISIT TO RIMBUNAN HIJAU'S VENEER MILL SITE

On 4 May 1998 Rimbunan Hijau's Assistant General Manager James Lau sent a letter to the Forest Authority.

Mr Lau said construction of Rimbunan Hijau's new veneer mill, located at Panakawa, near Kamusie in Western Province, had "progressed to an advanced stage". This site is within the existing Wawoi Guavi timber concession.

An invitation was extended to "senior managers" of the PNG Forest Authority to visit the mill site. Mr Lau made it clear that the visit would not be a drain on the Forest Authority's resources:

All transportation, accommodation and meals will be borne by Rimbuna Hijau.

In its response Rimbunan Hijau explained the offer made by Mr Lau:

Why Rimbunan Hijau offered this help was because at that location there are no lodging facilities available for any private person to use except with the Operations Area there and the intention to bring in the officers of the PNG Forest Authority was to give them a first hand view of the project and also as an educational tour.

Managing Director Thomas Nen and three of his officers accepted the invitation and visited the plant site on 30 May 1998.

In his response to the preliminary report, Mr Nen denied that all of the trip's costs were borne by the company:

I quite categorically deny the insinuation that all the cost for the trip reported in your report on page 11 was paid for by Rimbunan Hijau. This is dangerous and amounts to mis-reporting with intent to conclude in your report that my trip was made with the intention to allocate Kamula Doso as an extension because it was funded by Rimbunan Hijau. This is not so.

Mr Nen did not provide the Ombudsman Commission with any evidence to support his claim that Rimbunan Hijau did not pay for the trip.

In evidence to the Commission, Mr Nen explained why he went to Panakawa to see the mill:

I visited the area myself when I first became the Managing Director. I went there because of the controversy ... Some people were telling me that it's rundown, some second-hand plant from Malaysia they were bringing in and it's not going to work. So to prove it I had to go there as the Managing Director, so when I make a decision it's based on what I see and not what I hear.

In his response to the preliminary report, Mr Nen said:

The mill was built in a very isolated area of the country and very remote. It takes guts to invest in that kind of project and to do so the government must be in a position to assist the developer in whatever way is possible.

At the time of Mr Nen's visit to Panakawa the National Executive Council had made a general decision approving in principle the proposal to construct the mill, but Rimbunan Hijau had not sought or obtained any of the necessary approval from the National Forest Board to proceed with the project.

Chairman of the Board Gabriel Samol confirmed for the Ombudsman Commission that the Board did not authorise the Rimbunan Hijau mill:

The Board wanted to know who gave the right to the company to set up the veneer mill at Panakawa. The plant was not approved by the National Forest Board. It had nothing to do with (the Board). The Managing Director said that it was not with the sanction of the Forest Authority that the mill was set up.

In his response to the preliminary report Mr Samol said that by virtue of NEC Decision N° NG 41/97 the Department of Trade and Industry took control of the negotiations for the establishment of the mill.

Commerce and Industry's communication with the Forest Authority on the progress of negotiations was not strong. Mr Samol described the construction of the mill as a case of different agencies of government failing to implement a decision of the government in a coordinated manner.

[2.15] LETTER FROM THOMAS NEN TO THE SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY

On 21 May 1998 a letter and accompanying briefing paper was sent from the National Forest Service to Mr Michael Maue, Secretary of the Department of Trade and Industry, in relation to Rimbunan Hijau's draft project proposal for the veneer mill at Panakawa.

The letter was signed by Managing Director Thomas Nen.

The 5-page letter and accompanying 3-page attachment stated that Rimbunan Hijau had a very poor record in Western Province and that the Government should not allow itself to be rushed into approving the project. The introduction to the letter stated:

I am concerned about the manner and the process by which this particular proposal has been developed. I also question the viability of the project as proposed and the true commitment of Rimbunan Hijau to the processing project as described.

In my view, it is far too premature to be discussing a project proposal at this stage, especially one that has been prepared by the developers.

Among other things the letter made the following points about Rimbunan Hijau's performance so far at Wawoi Guavi and generally in domestic processing in PNG:

-
- Rimbunan Hijau have received an average price of K170/m³ for export logs, but less than K2/m³ has been paid in landowner payments. This means about one percent of the total value of the logs is being paid to landowners.
 - Rimbunan Hijau have constructed nil roads, bridges or culverts in the area, contrary to the requirements of their permit. The total value of the infrastructure provided (buildings and airstrips) amounted to K900,000. This equates to around K0.50/m³.
 - The infrastructure constructed by Rimbunan Hijau is of a very poor quality, with buildings made of untreated timber and airstrips of an unsatisfactory standard.
 - The Wawoi Guavi logging concession is the largest in PNG and should convey certain economies of scale – but the level of benefits provided per unit of production are the lowest in the country.
 - Rimbunan Hijau and the company's subsidiaries account for approximately one third of all log export shipments from PNG.
 - Despite Rimbunan Hijau's ongoing complaints about high levels of log export taxes, the company has to date, not established a single processing facility.
 - A number of sawmills have been established, but they have typically just been to comply with the minimum contractual requirements of timber permits and logging agreements. Sawmilling has almost totally been restricted to unprofitable milling of log export rejects for the domestic market - and sometimes this timber has been milled and left to rot at the project site. Rimbunan Hijau has requested the Forest Authority for release from their minimum contractual processing commitments.
-

The letter said that given Rimbunan Hijau's poor performance thus far at Wawoi Guavi, it was "extremely difficult to believe that they would deliver all that they promise in their latest project proposal and the associated draft proposal agreement".

The first of five recommendations stated that the Government should not allow itself to be rushed by Rimbunan Hijau into implementing the project.

[2.16] **THOMAS NEN'S LETTER TO WAWOI TUMU HOLDINGS**

On 22 May 1998 another document went out under the signature of Managing Director Thomas Nen. This letter to Wawoi Tumu Holdings gave a very different message from the paper that was sent the previous day to the Secretary for Trade and Industry.

In the letter dated 22 May 1998 and headed KAMULA DOSO forest management area (AS WAWOI GUAVI EXTENSION), Mr Nen wrote:

I refer to our meeting today (22/5/98) and your letter dated 18/5/98 in response to my letter of 24/4/98, regarding the above subject.

As per our discussions ... I now confirm that Wawoi Tumu Holdings Pty Ltd representing bulk of resource owners prefer the Kamula Doso area to be developed as an extension to the Wawoi Guavi Timber Project which is the essence of my letter dated 24.4.98.

For your information a letter will be written to Wawoi Guavi Timber Company Pty Ltd to submit an application to the Western Provincial Forest Management Committee for their consideration and recommendation to the Board of the Kamula Doso Area to be developed as an extension to Wawoi Guavi Timber Project.

In responding to the preliminary report Mr Nen said the two letters were on completely different subject matters and must be examined individually:

The letter to the Secretary for Trade and Industry (21 May 1998) was addressing the construction of the mill and other background of the Rimbunan Hijau Group of Companies. The one to the Landowners (22 May 1998) was to confirm that Wawoi Tumu Holdings rightfully represents the bulk of the resource owners from that area and that it was the choice of the resource owners who wanted Kamula Doso to be an extension. I definitely see no connections in those two letters which must be treated separately.

The Ombudsman Commission has carefully considered Mr Nen's response.

At the time the two letters were written:

- Wawoi Guavi Timber Company, a subsidiary of Rimbunan Hijau, was seeking to have the Kamula Doso forest management area awarded to it as an extension to the company's existing Wawoi Guavi permit;

- Wawoi Tumu Holdings, a private landowner company, had written letters to two different Ministers for Forests and to the Managing Director of the National Forest Service, declaring their support for Wawoi Guavi Timber Company's planned extension into Kamula Doso;
- the National Executive Council had given "in principle" approval for Rimbunan Hijau to construct a large timber processing facility at Panakawa, within the Wawoi Guavi timber rights purchase area;
- Managing Director Nen had accepted an invitation from Rimbunan Hijau to visit the mill at Panakawa later that month.

The Ombudsman Commission considers that there were, in fact, quite significant connections between Mr Nen's two letters of 21 and 22 May 1998. The fact that they both came from the same man raises a lot of doubt as to his position.

The Commission finds it extraordinary that Mr Nen would write a detailed letter seriously questioning Rimbunan Hijau's performance in the Western Province one day, and then the very next day write another letter paving the way for a 791,400 hectare extension to be granted to that company.

[2.17] **KAMULA DOSO FOREST MANAGEMENT AREA AS WAWOI GUAVI EXTENSION**

On 26 May 1998 Mr Nen followed through with what he had written to Wawoi Tumu Holdings when he sent a letter to the Manager of Wawoi Guavi Timber Company.

The letter contained the following:

Be informed that Wawoi Tumu Holdings Pty Ltd (Landowner Company) in the Kamula Doso FMA area have indicated to me that they prefer the Kamula Doso FMA area to be developed as an extension to the Wawoi Guavi Timber project and that Wawoi Guavi Timber Company be their developer. Letters of 21/3/98 and 18/5/98 from Wawoi Tumu Holding representatives confirmed the above arrangements.

If you concur with the above arrangements, you are requested to submit an application for extension of an approved operation under regulation 92(c) to the National Forest Board only after Development Options Study under Section 62 of the Act is completed and formal Project Guidelines under Section 63 of the Act have been issued to you to guide you write up your development proposal. Please note that a non-refundable fee of K2, 000.00 on the application to the Board and K1, 000.00 for the project guideline must be paid to the Forest Authority Finance Division prior to uplifting a project guideline.

[2.18] OFFICIAL REQUEST FROM WAWOI GUAVI TIMBER COMPANY FOR AN EXTENSION TO THEIR EXISTING PERMIT

On 11 June 1998 Wawoi Guavi Timber Company sent a written request to the Chairman of the National Forest Board asking that the Kamula Doso forest area be allocated to the company as an extension to their existing Wawoi Guavi permit.

The letter from A/General Manager James Lau, described the logging company as:

... a proven developer in the current Wawoi Guavi TRP area. It has been socially accepted by all the landowners because of its firm commitment to the grassroots people.

Mr Lau went on to emphasise that the original permit area, the extension area and the plywood mill were projects that relied on each other for success:

In spite of the current depressing downturn in the forest industry, Wawoi Guavi Timber Company has through its sister company Rimbunan Hijau Timber Processing Pty Limited ("RHTP") embarked on a large scale multi-million integrated processing zone in Panakawa and thus remain very committed to generating employment opportunities in the rural areas where development and basic infrastructure facilities had clearly been lacking from government funding.

It is planned that when the processing facilities at Panakawa (Plywood Mill) are commissioned, log inputs will be coming from both the TRP and Extension Area. Wawoi Guavi Timber Company would like to operate both the areas simultaneously so there would be guarantee in the continuity of log supply to the mill. When the resource is exhausted from the TRP area, log input will be dependent solely from the Extension Area. This will witness three (3) projects progressing simultaneously, i.e. the TRP, Extension Area and Plywood Mill, which are interdependent projects and which are based on renewable and sustainable resource areas.

[2.19] DR POK WRITES TO THE CHAIRMAN OF THE BOARD

In a letter dated 14 July 1998 the Minister for Forests Dr Fabian Pok wrote to the Chairman of the Board, Gabriel Samol, about the Kamula Doso allocation.

Dr Pok directed the Board to consider the allocation of the Kamula Doso area as an extension under Section 64(3) of the *Forestry Act* at the next Board meeting.

The previous Minister for Forests Andrew Baing had also directed the Board on the matter of an extension to the Wawoi Guavi timber permit.

Dr Pok suggested that the Board should not allow itself to be distracted by landowners from making a decision in favour of "an extension to an existing project":

Whilst I acknowledge the prescribed procedures for resource allocation, I am not prepared to see a repeat of the Josephstaal situation, where the Board and the PFMC were unable to discharge their responsibilities decisively amid numerous submissions and pressures from landowners, landowner companies and technical advisers.

Dr Pok wrote that it was his firm belief that allocation as an extension was “in the national interests”.

Dr Pok did not respond to the Ombudsman Commission’s preliminary report.

[2.20] NATIONAL FOREST BOARD MEETING N° 49

The above letter from the Minister for Forests was discussed by the Board at its meeting on 27 July 1998.

Item 6 of the Board meeting minutes states:

The Chairman referred the Board to a letter dated 14 July 1998 from the Minister for Forests in which the Minister directed the Board to consider at its next meeting the allocation of the Kamula Doso Timber Area Western Province as an extension to an existing operation pursuant to Section 64(3) of the *Forestry Act*.

Resolved

- 1 That the Board sends a letter of acknowledgement to the Minister for Forests; and
 - 2 Before the matter is considered further the Managing Director is directed to prepare for the Board by next Wednesday a brief on the Kamula Doso forest area, and additionally a brief on the forest industry activities in the country of Rimbunan Hijau (PNG) Pty Ltd.
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[2.21] THE MANAGING DIRECTOR’S BRIEF TO THE BOARD ON KAMULA DOSO FOREST MANAGEMENT AREA

In line with the Board’s request, a briefing paper on the Kamula Doso forest area was prepared and issued to the Board members under the name of Managing Director Thomas Nen.

The brief was dated 28 July 1998 and contained the following information:

General Information about Kamula Doso FMA

Gross Resource Area	:	791,200 ha
Net Operable Area	:	593,727 ha
Est. Standing Volume	:	11.3 million cubic metres

Land ownership	:	Vested with 52 Land Groups
FMA Execution Date	:	19 February 1998
Term of FMA	:	50 years

Minister's Reasons for Extension

The Minister's reasons for directing the allocation of the Kamula Doso as an extension is based on the experiences faced by the Board, the PFMC and he as Minister in recent times, regarding the allocation of the Josephstaal project and furthermore, in the national interests.

[2.22] THE MANAGING DIRECTOR'S BRIEF TO THE BOARD ON RIMBUNAN HIJAU'S ACTIVITIES IN PNG

Another briefing paper for the Board was issued under the Managing Director's name on 28 July 1998. The purpose of this paper was to provide members with information about the forest industry activities of Rimbunan Hijau within PNG and in particular in the Wawoi Guavi area.

The brief contained much of the same information that was included in the letter from Mr Nen to the Secretary of the Department of Trade and Industry on 21 May 1998.

As in that letter, serious reservations were expressed about the proposal and about the true commitment of Rimbunan Hijau to the processing project as described. The brief concluded under the heading "Views and considerations" with the following comments:

The Rimbunan Hijau Group, given their background in their homeland, appear to have the capability to deliver the forestry industry sector, especially in downstream processing. The question now is can they do the same in PNG?

Given Rimbunan Hijau's track record in PNG to date most forest industry followers would be highly sceptical that the Rimbunan Hijau Group would establish and operate a properly functioning veneer cum plywood mill – at least for any longer than it takes to convince the Government to grant them the forest resources.

In his response to the Ombudsman Commission's preliminary report, Chairman of the Board Gabriel Samol indicated that in his view the briefing papers supplied by the National Forest Service were not always balanced in their advice:

I believe the Board was of the opinion that the National Forest Service brief on the performance of Wawoi Guavi Timber permit conditions did not address the positive benefits of the project to date. The same National Forest Service continues to recommend to the Minister for Forests issuance of export permits for log export despite the so called anomalies.

[2.23] REPLY SENT TO THE MINISTER ON 30 JULY 1998

On 30 July 1998 Mr Samol wrote on behalf of the Board to the Minister for Forests, Dr Pok, in reply to the Minister's letter of 14 July.

Mr Samol informed the Minister that the Board was prevented by law from considering and allocating the Kamula Doso forest area as an extension of an existing project, pursuant to Section 64(3) of the *Forestry Act*, until the following had taken place:

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- 1 Development Option Studies under Section 62 of the Act were completed; and
 - 2 Draft project guidelines from the Provincial Forest Management Committee were reviewed by the Board and a set of final guidelines issued under Section 63 of the Act.
-

Mr Samol told the Minister that only once these matters have been completed would the Board be in a position to consider and determine allocation of the Kamula Doso Forest area.

[2.24] MINUTE FROM NATIONAL FOREST SERVICE GENERAL COUNSEL TO DIRECTOR OF THE POLICY SECRETARIAT

On 30 July 1998 General Counsel to the National Forest Service, Chris Marlow, sent the following minute to the Director of the NFS Policy Secretariat:

Re: Kamula Doso FMA

I am asked to advise on the relevant steps and procedures, which operate when there is a proposal not to advertise a project on the basis that it is to be an extension of an existing project pursuant to Section 64(3) of the *Forestry Act* ("the Act").

I have received the Managing Director's Brief to the Board dated 28 July 1998 and concur with his advice. I also enclose a step-by-step flow chart for the information of the Board. As the General Manager has correctly, in my view, stated, the only step which is different in an extension of an existing project situation is when the project is not publicly advertised.

Section 64(3) provides *inter alia* that the Board may consider proposals without advertisement for open tender providing:

- (1) the forest development project is an extension of an existing approved operation. That is to say, there is an existing approved permit in place, and
- (2) the forest development project is consistent with the National Forest Development Program.

"Extension" is not defined in the Act. It does not necessarily mean that the project area has to be adjacent to or contiguous with an existing permit area.

There are several factors which need to be determined such as whether the geographical, personal and business scope are of such a nature that the Board could reasonably conclude that the project area is an extension of an existing project operation. It is a question of fact.

The issue of the forest development project being consistent with the National Forest Development Program is also a question of fact to be determined by the Board.

I now turn to the procedural steps which are set out in the Regulations made under the Act.

Regulation 90(b) provides relevantly as follows:

- (b) Where the Board has determined under Section 64(3) of the Act to consider Expressions of Interest in a Forest Development Project Proposals without advertisement for open tender then such expressions of interest and project proposals shall be lodged together directly with the Managing Director and shall be in Form 92 of Schedule 1.

Regulation 92 provides relevantly as follows:

- (a) On the invitation of the Board or on its own accord, a registered forest industry participant who is the holder of a timber permit may make application to the Board in Form 89 of Schedule 1 to approve a forest development project as an extension of the timber permit holders existing approved operation.
- (b) Such application may only be made if development options study under Section 62 of the Act has been completed and formal Project Guidelines under Section 63 of the Act have been issued.
- (c) The fee payable on an application to the Board to approve a forest development project as an extension of an existing approved operation under this Regulation shall be as specified in Schedule 3.

Even if the Board is satisfied that any proposal falls within the criteria laid out in Section 64(3) it does not necessarily follow that the Board is therefore obliged to adopt that approach nor in my view could mandamus or other relief be sought against the Board should it decline to approve a project as an extension of an existing operation. The fact that there may well be support for an existing operator and/or that there have been financial or other commitments made in or to the new project area does not create for any operator a right, title or interest in the new area.

Even if the Board determined to invite an existing operator to lodge an expression of interest under Regulation 92(a), that step in itself also does not create any obligation on the Board to ultimately grant an exemption from advertising under Section 64(3) or create any implied right to any invitee.

SUMMARY

The Board may on its own volition invite any interested operators to make a project proposal or indicate to any operator that until an application is received under the Regulations, the Board will do nothing.

There are no other steps in my view that are presently open to the Board in the present case.

Chris G Marlow
General Counsel

Mr Marlow's advice was based on the law at the time. The law relating to extensions under Section 64(3) of the *Forestry Act* was subsequently changed by the *Forestry Amendment (2000) Act* which is discussed later on in this report.

Important points to note from Mr Marlow's minute are:

- the only step which is different between an extension and a new project is that with an extension the Board may consider proposals without advertising. The requirements under Section 64(1) of the *Forestry Act* for completion of development options study and project guidelines must still be complied with;
- the fact that an existing operator may have had financial or other commitments made to it does not create for the operator a "right, title or interest" in the new area;
- even if the Board invites an existing operator to lodge an expression of interest, this does not create any obligation to ultimately grant an exemption from advertising under Section 64(3).

In his response to the preliminary report Chairman Gabriel Samol said the Board was aware of the responsibilities still incumbent on the developer if the Board chose to grant an extension:

In exercising Section 64(3) of the Act, the Board was advised that Wawoi Guavi Timber Company Ltd would still required to submit development proposal based upon the guideline that is issued by the State and to negotiate terms and conditions of the project agreements.

The Board accepted that position.

[2.25] REPORT ON VENEER PRODUCTION EQUIPMENT

Following claims that Rimbunan Hijau had imported allegedly substandard second hand equipment for the veneer mill at Panakawa and Managing Director Thomas Nen's visit to the new mill, the National Forest Service engaged a consultant to inspect the equipment and give a valuation and capacity study.

The task was given to a New Zealand based firm, Jaako Groome Poyry Consulting. The consultants inspected the mill site on 26 August 1998 accompanied by the Minister for Forests, Managing Director Nen, other officers from the National Forest Service and representatives of the Department of Trade and Industry.

On 1 September 1998 the consultants produced their report on the mill equipment. It stated the veneer production equipment Rimbunan Hijau had imported was "old, well used and rusty" and had been overvalued by the company by an estimated K19 million.

Jaakko Poyry Consulting made the following observations:

Documentation

Rimbunan Hijau project proposals places a value of Kina 8.6 million in buildings, foundation and electric installation and kina 30.2 million on veneer processing and generating equipment.

Equipment and Buildings

Sixty to eighty 20ft and 40ft containers were scattered about the site, together with a further 60 – 80 individual packages – generally a variety of crated and partly covered processing equipment.

The only reconditioned equipment sighted was the boiler and associated system.

The equipment located outside the building was all old, well used and rusty, and it appeared that no attempt had been made to clean down, grease and prepare items prior to crating and shipping.

From the condition of the equipment and its type and packing, it has probably been recovered from two or three closed down plywood mills, close to the sea with salt water log ponds, purchased "as is", dismantled crudely and packed for shipping.

Indicative Valuation

Building – K5 to 6 million

Mechanical equipment – K8 to 10 million

Installation and refurbishment – K1 to 1.5 million

Additional equipment and stores – K1 to 2 million

Maximum estimated installed value with building – K20 million.

This compares with K39 million in the project proposal.

Production capacity

- The estimated production capacity is less than that set out in the project proposal and would impact negatively on the projected cash flows.
 - The log volume required for the plant is less than that set out in the project proposal impacting on the volume required to be harvested and the forest concession area required to support the mill.
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The Jaakko Poyry report was faxed to Thomas Nen on 1 September 1998.

It was brought to the attention of the Board by Mr Nen in a 8-page business paper on the Rimbunan Hijau plywood mill at Panakawa, during the Board meeting in October 1998. A copy of the consultant's report was attached to the business paper for the attention of board members.

[2.26] GOVERNOR OF WESTERN PROVINCE WRITES TO THE PRIME MINISTER

On 21 September 1998 the Governor of Western Province, Norbert Makmop, wrote to then Prime Minister Bill Skate about the Kamula Doso project. Mr Makmop said that he had just learned about a "secret deal in which the project would be granted to Rimbunan Hijau as an extension to their existing operation in the province".

The Governor himself favoured a rival proposal that would see the Sime Darby Group of Malaysia given the rights to the forest to "develop palm oil agricultural plantations and related processing".

Mr Makmop forwarded a copy of the letter to Thomas Nen. The letter stated:

My Dear Prime Minister

I am honoured to write to you as a humble and loyal member of your government to bring to your attention a serious matter concerning a development proposal for the Western Province.

Sir, in September last year 1997, I brought to your notice a proposal by the Sime Darby Group of Malaysia to develop palm oil agricultural plantations and related processing in the timber project called "Kamula Doso" in Western Province. Sime Darby's proposal involves the establishment of the following activities:

- a. oil palm growing including an initial 16,000 hectares of oil plantations together with two (2) palm oil mills;
- b. integrated downstream forest industries including plywood mills, block board plant and prefabricated housing plant; and
- c. the protection of Lake Murray and its catchment area and its development as a centre for Eco-tourism.

The proposed overall development will also include the building of infrastructure such as roads, wharf and port facilities, schools, hospitals, airstrips and a new township.

In its meeting N° 2/97 on 10 September last year, the Western Province Provincial Executive Council approved and endorsed Sime Darby's proposal and recommended that the PNGFA approve Sime Darby as the developer for the Kamula Doso timber project.

Despite the strong support given by my Provincial Government for Sime Darby's proposal, I have just learned that the National Forest Board is about to consider awarding the Kamula Doso project to the Rimbunan Hijau company in a secret deal in which the project would be granted to Rimbunan Hijau as an extension to their existing operation in the province. Under this deal, the Minister for Forest will be required to give his approval to completely by-pass the normal procedures of publicly advertising the project and the calling for open tenders.

Prime Minister, both the Western Province Government and the Provincial Forest Management Committee have rejected the granting of the project to Rimbunan Hijau as an extension. The project is potentially the most important and significant development for the province and its people.

We must therefore look for the best development proposal and the only way we can do this is to allow the project to be publicly advertised and tendered. Proposals for the

development of large scale agriculture and downstream processing such as the one from Sime Darby must be encouraged in the process so that the people and the country can receive maximum benefits.

Therefore, as your loyal and strong supporter, I request your urgent support, Prime Minister, to ensure that the National Forest Minister do not grant the Kamula Doso project to Rimbunan Hijau and that the project must go to the public tender. As the National Forest Board is scheduled to meet on 29th September, the matter is very urgent.

Thank you very much for your kind consideration and support.

Yours sincerely,

Hon. Norbert Makmop, MP
Governor & Member for Western Province

In his response to the preliminary report Mr Makmop made the following comments:

My Provincial Executive Council made a decision in favour of Darby Berhad. By way of in-depth consideration of the proposals Rimbunan Hijau operations were shrouded in questions and to grant the Timber Rights Permit area as an extension was certainly not in the interests of PNG, landowners nor the Fly Provincial Government.

As Chief Executive Officer of my province, that is political head, I needed to write to Government Heads to intervene. This is my duty to do for the people's sake.

[2.27] PETER ARUL BECOMES MINISTER FOR FORESTS

On 14 August 1998 the Member for Kandrian-Gloucester, Peter Arul, became the new Minister for Forests.

On 22 September 1998 Mr Arul sent the following letter to the Acting Chairman of the National Forest Board requesting a brief on the Kamula Doso:

I write in reference to the former Minister, Honourable Dr. Fabian Pok's letter to you in regards to the allocation of Kamula Doso Timber Area as an extension to an existing project pursuant to section 64(3) of the Act.

I am advised that a letter was written to the Board to consider the allocation of the Kamula Doso Timber but no decisive decision has been reached to develop the Timber Area. Numerous queries and complaints have been received from interested developers, landowners, pressure groups and landowner companies as to what is happening to the project.

I therefore request for a thorough brief on the Kamula Doso Forest Management Area so that further Ministerial Directives can be given to the Board to quickly expedite the timber project.

Yours sincerely,

Hon. Peter Arul, MP
Minister for Forests

[2.28] GABRIEL SAMOL WRITES BACK TO THE MINISTER

On 23 September 1998 Gabriel Samol, at that point Deputy Chairman of the Board, sent the following letter to the Minister for Forests Peter Arul:

Kamula Doso Forest Management Area, Western Province.

I have received your letter of 22 September 1998 with respect to the above cited forest area. I have asked the Managing Director of National Forest Service to prepare a brief on the Kamula Doso area as requested by you.

In the meantime, I attach, please a copy of a letter dated 30 July 1998 to the then Minister for Forests, Hon. Fabian Pok MP, which is related to this matter.

Yours sincerely,

Gabriel P Samol
Deputy Chairman

[2.29] BUSINESS PAPER ON RIMBUNAN HIJAU MILL

A business paper on Rimbunan Hijau's plywood mill at Panakawa was submitted to members of the Board for the National Forest Board meeting held in October 1998. The eight-page paper was signed by Managing Director Thomas Nen under the words "endorsed for presentation to the Board".

The bulk of the report was information that appeared in the Managing Director's letter to the Secretary for Trade and Industry on 21 May 1998 and the briefing papers prepared for the Board dated 28 July 1998. As with the earlier documents, this report was highly critical of Rimbunan Hijau performance in Wawoi Guavi and more generally in the area of domestic processing throughout PNG.

Mr Nen stated:

VIABILITY AND COSTS OF DOMESTIC PROCESSING IN PNG

The draft findings of the recent Domestic Processing Study indicate that even with modern and efficient processing mills, the existing cost structures in PNG would make it very difficult for domestic processors to compete with major international competitors – although they note that there are some niche opportunities.

The consultant's findings show that, at this stage at least, the cost of subsidies to attract domestic processing investors to PNG would far outweigh the benefits to PNG, including employment generation.

Similarly, the domestic processing venture proposed by Rimbunan Hijau Timber Processing Pty Ltd at Wawoi Guavi, would not be a viable option without the assistance of excessive subsidies and incentives by the Government.

Rimbunan Hijau's own feasibility report states that even if they were granted by the State a guarantee of 10 years exemption from any tax on log input, product export or company income, plus exemption of import duties on plant and equipment, they forecast a negative Net Present Value for the project of about K4 million.

BACKGROUND AND INTENTIONS OF RIMBUNAN HIJAU PROCESSING PROPOSALS IN WESTERN PROVINCE

The Gulf and Western Provinces represent by far the largest areas of untapped commercial forest resources remaining in PNG. Most of the other major areas already allocated will be largely exhausted within the next 5 – 10 years.

The Provincial Forest Management Plan for Western Province prepared in 1995/96 identified a number of large potential areas for future commercial forest development. It should be noted that these were areas for which there are commercial forest potential, but which would be subject to the acquisition of the Forest Management Rights from the customary resource owners, according to the requirements of the Forestry Act.

The identification of the potential forest areas precipitated a number of grandiose and obviously bogus proposals for "integrated forestry, mining, agriculture, fishing, tourism, etc" proposals by a number of companies, all of which emphasised the initial development of virtually all of the remaining forest resources of Western Province.

Rimbunan Hijau presented a very brief but glossy brochure around the end of 1995 which promised 2 plywood mills, 2 blackboard plants, 2 sawmills, over 3000 km of permanent roads, power and water supply for development centres, new airports, 2 new townships, numerous schools and medical centres etc, 10,000 hectares of agricultural crops, eco-tourism, fishing industry, 5300 jobs, etc.

In return, Rimbunan Hijau requested forestry rights to over 2 million hectares of virgin forest, in addition to the already existing Wawoi Guavi concession. They also requested excessive incentives.

Neither the Rimbunan Hijau nor the other "integrated proposals" were treated seriously by the NFS as, not only were they clearly loaded with undeliverable promises, but no rights to forest resources can be granted without following the strict acquisition and allocation procedures specified in the *Forestry Act*.

Rimbunan Hijau presented a further letter to the Prime Minister in March 1997 which still sought rights of similar areas as the earlier proposal but with slight amendments to the benefits proposed – including three development sites, each with a "modern sawmill, a possible veneer plant, etc.

This letter was presented to the Forest Processing Working Committee for consideration and it was on the basis of this that the Committee agreed that nothing should be done until at least the findings of the Consultancy study are released.

Although it was unstated at the time, it was clear that the unplanned importation of the veneer processing equipment was at least partly an attempt by Rimbunan Hijau to force the Government's hand to obtain additional forest resources – especially since the Wawoi Guavi timber permit has only 4 years to run and about 10 years of resource supply remaining.

The inter-Departmental Committee rejected a very brief and superficial project proposal submitted by Rimbunan Hijau Timber Processing Pty Ltd in late 1997 and they were presented with Guidelines for the preparation of a revised proposal. This was presented in July 1998.

The revised proposal also only addresses the key issues in a superficial manner. However, it contains some key points, including:

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- Total capital cost of K70 million based on veneer mill cost of K50 million, plywood mill extension of K20 million and sawmill of K5 million.
 - Annual log input volume of 177,390m³ by 5th year (of Wawoi Guavi allowable log harvest of 350,000 per annum)
 - The 800,000 hectare Kamula Doso forest management area was explicitly included as a forest resource for the project and specified as the Wawoi Guavi TRP Extension Area.

Given the major concerns regarding the true intentions of Rimbunan Hijau with this project and because there is no significant processing expertise available in PNG, the NFS commissioned a veneer/plywood processing specialist, Mr Len Wilson of Groome Poyry Ltd, to conduct an initial appraisal of the veneer plant. A field inspection was conducted at short notice by the consultant along with representatives of the Forest Authority, Dept. of Trade and Industry, and the Minister for Forests on 26 and 27 August 1998. The consultant's report of this visit is attached.

Although the Allocated consultant time for the initial appraisal was very short, the visit did reveal a number of disturbing factors. The most significant of these are:

- Most of the equipment is very old and in poor condition. Apart from three generators, which are semi-portable, there was virtually no new equipment and none of the used equipment had been seriously reconditioned as claimed in the proposal.
- The market value of the plant, estimated at around K20 million, is only about half that specified in the proposal by Rimbunan Hijau (K39 million).
- The estimated production capacity of the plant is less than half that set out in the project proposal.

Further information and work would be required before a more authoritative evaluation of the project can be made, however these initial findings tend to bear out the earlier concerns of the Forest Authority. Despite this, the consultant did point out that, with certain improvements and with the right commitment, a viable project could quite possibly be achieved.

The National Forest Service are contracting the consultant to conduct a detailed evaluation of Rimbunan Hijau Timber Processing proposal and this is expected to be delivered before 9th October 1998.

The Deputy Prime Minister and Minister for Trade and Industry have instructed the Inter-Departmental Committee to complete a signed project agreement with Rimbunan Hijau Timber Processing as a matter of urgency.

A draft project agreement has been prepared, with the main points of note to the PNG Forest Authority being that:

- The processing project agreement grants no rights with respect to any extensions to Timber Permits, either in time or geographically;
- Any Timber Permit extensions that may be granted to the permit holder must be strictly in accordance with the *Forestry Act and Regulations*;
- Rimbunan Hijau Timber Processing must apply for an operating licence for the processing facility.

The National Forest Service view is that in the meantime, there is nothing to stop Rimbunan Hijau proceeding with the establishment of their processing plant. The Wawoi Guavi concession still has 4 years to run and if, subject to satisfactory performance, an extension to that Timber Permit were granted, there would be sufficient resource

Chapter 2

Events prior to the Board Decision

available to allow them to operate the mill for at least another 8–10 years. If during that time Rimbunan Hijau Timber Processing prove their commitment to, and the worth of, their processing project, then the Forest Authority could use every endeavour to ensure that sufficient resource were made available to them to sustain the operation.

It is the view of the National Forest Service that there is neither need nor justification for granting the Kamula Doso forest management area to Rimbunan Hijau as an extension to the Wawoi Guavi concession at this stage. In fact, holding back the granting of additional resource would serve to protect PNG's best interests by ensuring that the processing project was operating properly and viably, as a precondition to the granting of any additional timber resource.

This would be a welcome change from the recent history in the forestry sector whereby many logging companies, including Rimbunan Hijau, have been granted forest concessions on the basis of establishing timber processing facilities, but which have never eventuated. The classic case was Kapuluk in West New Britain Province where Nam Yang Timbers constructed a complete woodchip mill but which was never commissioned and the company continued to export logs. There are numerous cases where companies have partially met their contractual requirements by establishing sawmills, but then proceeded, at best, to only saw log export rejects. We need to learn from these past mistakes and to ensure that they are not repeated.

In summary, this briefing paper raised a number of important matters relating to the plywood mill at Panakawa for the Board to consider:

- Rimbunan Hijau's own feasibility report stated that even if the State guaranteed a ten year exemption from taxes on log input, product export and company income, plus exemption from import duties on the equipment for the plant, the company would still expect a negative net present value for the project of about K4 million;
- the unplanned importation of the veneer processing equipment was at least partly an attempt by Rimbunan Hijau to force the Government's hand to grant them additional forest resources;
- Rimbunan Hijau Timber Processing submitted a "very brief and superficial" proposal in late 1997 which was rejected by the inter departmental committee set up to implement National Executive Council Decision N° NG 41/97. The company presented guidelines for the preparation of a revised proposal in July 1998;
- the National Forest Service engaged a consultant to conduct an initial appraisal of the plant and equipment at Panakawa. The consultant's report found that most of the equipment was "very old and in poor condition", the market value of the plant was only about half that specified in the proposal by the company and the production capacity was less than half that estimated in the proposal. A copy of the consultant's report was attached to the briefing paper.

- the Deputy Prime Minister and Minister for Trade and Industry instructed the inter-departmental committee to complete a signed project agreement with Rimbunan Hijau as a matter of urgency;
- the project agreement would not grant any extension rights to existing timber permits; either extensions of time or extensions of area;
- Rimbunan Hijau Timber Processing must apply for an operating licence from the National Forest Board for the processing facility.

**[2.30] NOBERT MAKMOP TELLS THE MINISTER FOR FORESTS
ANY COMPANY OTHER THAN SIME DARBY WILL BE
OPPOSED**

On 27 October 1998 the Governor of Western Province, Norbert Makmop, wrote to the Minister for Forests, Peter Arul, stating that the Provincial Executive Council had approved and endorsed the conceptual proposal submitted by Sime Darby Berhad for the East Awin, Lake Murray and Kamula Doso forest areas in Western Province.

He said that a Board decision to allocate Kamula Doso to any company other than Sime Darby "will be strongly opposed and rejected by us".

Mr Makmop said he was fully aware that certain people were attempting to "unduly influence our political leaders and individual landowners by questionable means to support other developers". The project under consideration was "too important for us to sell out to such unscrupulous people for short term personal gain".

He urged the Minister to intervene in the matter by exercising his authority to ensure all the above mentioned areas are advertised for tender or, he added, "alternatively grant all the areas to Sime Darby by way of extension to East Awin FMA".

**[2.31] ANTHROPOLOGIST MICHAEL WOOD WRITES TO THE
CHAIRMAN OF THE BOARD**

On 5 January 1999 a lecturer from the Department of Anthropology and Archaeology from James Cook University in Queensland, Michael Wood, wrote to Chairman of the Board Gabriel Samol.

Mr Wood said he was writing on behalf of the majority of the incorporated land groups representatives and landowners of the Kamula Doso area in response to the "persistent rumours" that the entire Kamula Doso concession would be offered as an extension to the Wawoi Guavi timber permit.

Mr Wood said the landowners on whose behalf he was writing would prefer to see the Kamula Doso project subjected to normal tendering procedures. He enclosed with his submission a list of 44 names and signatures, representing "84% of the 52 ILGs that are, on the information available to me, recognised as having interests in the area of land covered by the Kamula Doso forest management agreement".

The letter said the landowners were concerned that they were not adequately informed of any details concerning an extension. If an extension was granted they would lose all negotiating power as ownership of resources would effectively be transferred to the logging company that was granted the extension.

Mr Wood said that landowners were concerned that if Rimbunan Hijau were to gain the extension, "the landowners would be subject to the kind of practices, terms and conditions that the company has implemented in reference to the Wawoi Guavi concession".

There was also a request that "interested" members of the Board not play a part in the decision making process:

When considering this submission any member of the Board who has interests in or dealings with Rimbunan Hijau (or any of its subsidiaries or subcontractors) should exclude themselves from considering this matter.

The Chairman sent a one-page reply to Mr Wood on 8 January 1999. Mr Samol did not address the issues raised in Mr Wood's letter, but questioned his involvement with the Kamula Doso landowners.

I would be pleased if you would advise me further of your interest and involvement in the Kamula Doso area and in addition on whose authority, behalf or request you collected signatures of Kamula Doso landowners and ILG representatives and forwarded them to the National Forest Board.

In his response to the preliminary report, Mr Samol defended his brusque reply to Mr Wood, saying it was "appropriate at that time":

I was mindful of foreign elements creating confusion and problems for the established institutions of government.

[2.32] THOMAS NEN WRITES TO LANDOWNERS

A letter from Thomas Nen to Olaba Tau and landowners Whisky Maitona of Kamula Doso Blocks 1 and 2 indicates that the Managing Director was aware that there were others in the area who did not support Blocks 1 and 2 in their choice of a developer.

In the letter, dated 13 January 1999 Mr Nen stated that he had received a visit from Peter Dapmun of Kamula Doso Block 3, who aired a grievance about the manner in which the project was proceeding:

Mr Dapmun has stated that the landowners from Block 3 after signing the forest management agreement have not been involved in other procedural matters. Likewise he has claimed that the landowners from Blocks 1 & 2 intend to engage a developer without their consent and if that happens, he on behalf of other landowners have requested for omission of Block 3 from the FMA.

The Ombudsman Commission understands that the Mr Peter Dabmun (or Dapmun) referred to in this letter is an executive member of a landowner company, Tumu Timbers Ltd, from Kamula Doso Block 3. Tumu Timbers was opposed to Rimbunan Hijau being awarded the Kamula Doso forest management area.

In his response to the preliminary report Managing Director Thomas Nen dismissed the views of Mr Dabmun, describing him as a "middleman" who is not directly a Kamula Doso landowner:

Your Ombudsman must be informed that a Mr Peter Dapmun is not a landowner but appointed himself to represent the people from the Block 3 area of Kamula Doso.

Mr Dapmun is from Morobe Province and is married to a woman from Western Province. My office has never entertained such person.

**[2.33] BRIEF TO THE MINISTER FOR FORESTS FROM THE
MANAGING DIRECTOR OF THE NATIONAL FOREST
SERVICE**

On 13 January 1999 a National Forest Service brief on Kamula Doso, signed by Managing Director Nen, was sent to the Minister for Forests.

The brief stated:

KAMULA DOSO FMA PROJECT

FACTS AND CONSIDERATIONS

1.1 Background Information

Project Location	Balimo District, WP
Size of Timber Area (Gross Area)	791,000ha
Net Operable Area	593,725ha
Estimated Resource Volume (Net Sawlog volume)	11,274,44m ³
AAC (over 35 years)	322,000m ³

1.2 Current Status

Development Option Studies and Draft Project Guidelines have been accepted and endorsed by Fly River Provincial Forest Management Committee in their last meeting in Kiunga. The final Project Guidelines will eventually be produced in the weeks ahead.

The Fly River Provincial Forest Management Committee also desires the procedural matters as stipulated within the Forestry (Amendment) Act to be strictly adhered to. In so doing the project will be treated as a stand-alone project. In accordance with s.64 the project has to be advertised calling for potential developers to submit the Development Proposal.

1.3 National Forest Service Views

That the Annual Allowable Cut of 322,000m³ is greater than the Forest Board benchmark of 80,000m³ for stand-alone timber projects. The National Forest Service recommends that the Kamula Doso forest management area be advertised for potential developers including Rimbunan Hijau (PNG) Pty Ltd and General Lumber Niugini Pty Ltd to submit their development proposals for our evaluation and consideration.

RECOMMENDATION

The Kamula Doso timber project is recommended to be developed as a stand-alone project hence the project has to be advertised immediately.

[2.34] THE 80,000 HECTARES/CUBIC METRES POLICY

Three people gave evidence to the Commission to the effect that it was a policy of the National Forest Service that forest areas over 80,000 hectares should be allocated by general newspaper advertisement, in accordance with Section 64(1) of the *Forestry Act*.

Guao Zurenuoc was Managing Director of the National Forest Service up to February 1998. In evidence to the Ombudsman Commission Mr Zurenuoc said it was his understanding that any area of forested land greater than 80,000 hectares must be treated as a stand-alone project and any thing less than 80,000 hectares should be treated as an extension.

According to Mr Zurenuoc, in 1996 the Board advertised a number of projects of less than 80,000 hectares. Most developers were not interested in putting in the required money and infrastructure to develop a small project.

He said the Board made the policy decision after eight or ten projects, each less than 80,000 hectares, were turned down by developers:

They looked at the costs and other factors and came back to the Board saying that they were not prepared to develop the area as stand alone projects.

Mr Zurenuoc added that Kamula Doso was a very different matter:

Kamula Doso could not have been considered for extension, as it is a very big area.

Lawrence Kambogru was the landowner representative on the National Forest Board at the time the Kamula Doso issue was taken up for consideration. He was the only Board member to oppose the extension at the Board meeting on 4 February 1999.

Mr Kambogru said it was the policy of the Board to advertise any areas over 80,000 hectares. He said that was the normal practice of the Board and any proposed exception to that practice would have to be fully justified:

If there were to be a variation, the National Forest Board would have to come up with a very good reason in support of the variation.

Tunou Sabuin was Area Manager for the PNG Forest Authority Southern Region and was actively involved in the provincial forest management committees. In his evidence to the Ombudsman Commission Mr Sabuin said that when the Western Province Provincial Forest Management Committee deliberated on the Kamula Doso area, they recommended that the project be advertised as an open tender. He said the size of the land in question had a considerable bearing on the Committee's decision:

The main reason for the project to be considered as a stand-alone was that it was above 85,000 hectares and because of the fact that the Provincial Forest Management Committee recommended to the Board for open tender. If an area is below 85,000 hectares it cannot become a stand-alone project.

Others who gave evidence to the Commission said the benchmark for whether or not a project area should be put to open tender or could be granted as an extension was based on the estimated annual allowable cut of the area.

Allan Ross, the National Forest Service Board Secretary, said it was not a policy but rather a "general agreement" that areas with an annual allowable cut greater than "about 80,000 cubic metres" should be advertised openly. Mr Ross added that there is "a bit of flexibility" about the figure.

Chairman of the Board, Gabriel Samol, confirmed that the Board did discuss sustainability issues, but denies there was ever an "80,000 hectares" policy:

I am able to confirm that the Board did discuss the problems of unsustainable projects given the 1996 experiences. I am however unable to recall the Board adopting a definite policy on 80,000 hectares. I believe the Board had so much difficulty given the practical problem of agreeing on what constitutes a project that is environmentally sound, socially acceptable and commercially viable. The discussions were about certain volume of harvest (80,000 m³) rather than ... 80,000 hectares.

In responding to the preliminary report former National Forest Service lawyer Maurice Coughlan said the 80,000 hectare policy had nothing to do with extensions:

It was approved as a policy the only projects over 80,000 hectares were deemed sustainable and therefore capable of sustainable development. This was done to alleviate the hopelessly unsustainable projects being churned out by acquisition in Forest Management Areas such as Semabo, Mukus Tolo, etc. It bears no reference to the question of extension as opposed to a stand alone project and still no legal guidance or definition exists as to the nature of an "extension" under the Forestry Act.

Managing Director Thomas Nen also denied there was a specific policy on the matter:

There is no stated policy that areas of more than 80,000 hectares should be allocated by advertisement. This issue was brought time and again during many Board meetings but still no decision was made to define the area specifically.

The Ombudsman Commission has carefully considered all these responses. The Commission accepts that there appears not to have been a written policy that areas greater than 80,000 hectares should be allocated by general newspaper advertisement rather than granted as extensions to existing projects.

However, it is equally clear that the question of the size of extensions was discussed at Board level and that there was a general understanding that very large areas – or areas with a very large annual allowable cut should be put to public tender.



3. BOARD DECISION AND AFTERMATH

[3.1] GENERAL

This chapter deals with National Forest Board meeting N° 54 on 4 February 1999 and the events since the Board's decision to recommend Kamula Doso forest management area as an extension to the Wawoi Guavi timber permit.

[3.2] THE BOARD MEMBERS

The Board members present for the Board meeting N° 54 on 4 February 1999 were:

Mr Thomas Nen	Managing Director of the National Forest Service
Dr Wari Iamo	Director, Office of Environment and Conservation
Mr Clement Kote	Representative of the Department of Finance and Treasury
Mr Anthony Honey	Representative of the Forest Industries Association
Mr Gabriel Samol	Chairman of the Board, President of the Association of Foresters
Mr Lawrence Kambogru	Forest resource owners' representative

[3.3] SUBMISSION TO THE BOARD BY DR WARI IAMO, DIRECTOR OF THE OFFICE OF ENVIRONMENT AND CONSERVATION

Dr Wari Iamo made a submission to the Chairman and Members of the Board regarding the Kamula Doso forest area. The submission was dated 27 January 1999 but was not presented to the Board members until the day of the Board meeting, 4 February 1999.

In the business paper Dr Iamo argued strongly in favour of an extension to Wawoi Guavi's existing operation. He said the advice given by the National Forest Service was contrary to the wishes of the landowners and the Western Province Provincial Executive Council.

His paper included the following:

Decision of the Fly River PPMC

The Provincial Forest Management Committee has recommended to the Board to seek expressions of interest from Registered Forest Industry participants for rights to develop the forest resources in Kamula Doso forest management area. The Fly River Provincial Executive Council requested for the project to be treated as an extension to East Awin forest management area, in a letter dated 27 October 1998 to Hon. Peter Arul MP Minister for Forest by Hon Norbert Makmop MP, Governor of Western Province.

Decision of the Landowners

It is strongly described by the majority of the landowners of Kamula Doso timber project area that this project should be treated as an extension to Wawoi Guavi Timber Project and the forest management area shall be awarded to the developer Wawoi Guavi Timber Pty Ltd.

The contradictory policy advice by National Forest Service to treat the Kamula Doso project as stand-alone.

The National Forest Service advises that the Kamula Doso Project should be treated as a stand-alone project. The National Forest Service gives the following grounds as justifications for a stand-alone timber project which are as follows:

- (a) the project has a very high Annual Allowable Cut of 322,000 cubic metres which is higher than the 80,000 cubic metres benchmark set by the Board; and
- (b) that the procedural matters have been put in place in accordance with the *Forestry Act 1993* [sic], hence, Section 62 and Section 63, and
- (c) that National Forest Service has noted that several potential developers have expressed interest in developing Kamula Doso, amongst them include Wawoi Guavi Timber Pty Ltd and General Lumber PNG Pty Ltd.

This advice is contrary to what has been recommended both by the landowners and Fly River Provincial Executive Council: That Kamula Doso Timber Project shall be treated as an extension of one of the existing forest management areas or timber permit.

MY OWN VIEWS AS THE MEMBER OF THE BOARD

I strongly believe that in the national interest that this Board should take into account the project guidelines and the Development Option Study and, moreover, the wishes of the landowners to endorse Kamula Doso forest management area as an extension of the Wawoi Guavi TRP area.

In his response to the preliminary report Dr Iamo defended the arguments in his submission to the Board. He said that when landowners sign a forest management agreement they give "the right to manage these resources" to the Forest Authority.

Dr Iamo said:

Once the matter comes to the Board it is then the Board's responsibility to make a collective decision with full knowledge that it has acquired the right to manage and assign timber rights. The Board is obliged to take note of the technical advice from the National Forest Service. Equally, and just as important, the Board is entitled to reject National Forest Service advice.

Dr Iamo says this was not the first time the Board had rejected the advice of the Forest Service's technical officers:

There have been numerous occasions when the Board has rejected National Forest Service advice, and rightly so.

The Board's Finance and Treasury representative Clement Kote said in his response to the preliminary report that, in hindsight, he now thinks Dr Iamo's statement that "the majority of landowners" were in favour of extension was wrong.

Mr Kote stated:

It appears the statement by Dr Wari Iamo that landowners were in favour of the project being treated as an extension to Wawoi Guavi's existing permit was wrong and made without supporting evidence ... it appears as though both members (Iamo and Nen) had met landowners in both Port Moresby and at the project site who fully supported the project.

[3.4] SUBMISSION TO THE NATIONAL FOREST BOARD BY MANAGING DIRECTOR THOMAS NEN

Managing Director Nen also presented a paper to the Board (Board paper N° B2). This paper recommended that Kamula Doso be advertised by open tender.

Mr Nen stated:

BACKGROUND

The Kamula Doso forest management area (the Project Area) covers a gross area of 791,200 hectares. It was acquired by way of a forest management agreement on 19 February 1998.

The Western Province Forest Management Committee has deliberated the future of the Project Area and has issued to the Board the draft Project Guidelines for the Board's considerations at this meeting.

MINISTERIAL DIRECTIVES

The Board received two separate directives from the Office of the Minister regarding the allocation of the Project area.

The Hon. Fabian Pok, MP (then Minister for Forest) in his letter to the Board dated 14 July 1998, directed the Board to consider the allocation of the Project area as an extension to an existing project (section 64(3) of the Act).

In a separate letter dated 22 September 1998 the current Minister the Hon Peter Arul, as a follow up to the letter from Minister Pok, wanted to know what actions has been taken re the allocation of the Project Area and a brief to the Project Area. The Board has responded to both Ministers.

REPORT AND RECOMMENDATION OF WESTERN PROVINCE PROVINCIAL FOREST MANAGEMENT COMMITTEE.

The Western Province Provincial Forest Management Committee in its meeting on 3 December 1998 resolved and recommended to the Board a draft Project guidelines pursuant to Section 63(2) of the Act.

By virtue of the draft project guidelines the Province Provincial Forest Management Committee recommended that the Project Area is to be advertised pursuant to Section 64(1) of the Act.

DRAFT PROJECT GUIDELINES

The draft project guidelines are being issued pursuant to Section 63 of the Act by the Western Province Provincial Forest Management Committee.

The Board is advised that the Draft Guidelines (as it stands as per Board paper) purport the project area to be advertised. If the decision is in favour of an extension, the guidelines must be altered to reflect this change.

VIEW OF THE FLY PROVINCIAL GOVERNMENT

The Provincial Government in its decision No. 5 of 10 September 1998 resolved that "the Provincial Forest Management Committee, Forest Authority and other relevant bodies and committee to endorse Sime Darby Berhad as the developer of the forest areas nominated in their proposal."

VIEWS OF THE LANDOWNERS

A letter dated 14 December 1998 from Wawoi Tumu Holdings Limited (a landowner company) was sent to the Minister for Forests. In the letter, the landowners through their representatives advised the Minister that their preferred choice of a developer for the Project Area is Wawoi Guavi Timber Company.

Furthermore, the Landowners through Wawoi Tumu Holdings Limited met with the Managing Director on 22 May 1998. At this meeting the landowners registered their preferences for the projects developer. Following this meeting, the Managing Director conveyed the wishes of the landowners to Wawoi Guavi Timber Company Pty Ltd in a letter dated 26 May 1998.

The Board is advised to note that Wawoi Guavi Timber Company Pty Ltd is a subsidiary of the Rimbunan Hijau Group and is the current permit holder to the Wawoi Guavi Timber Concession and that there are other landowner companies and pressure groups in that area.

OTHER INVESTMENT INTERESTS IN KAMULA DOSO

The Board is advised that other investor interests have been registered for the area. Those that are known to the Board and the National Forest Service are:

(a) Wawoi Guavi Timber Company Pty Ltd Pty Ltd.

This company is presently the timber permit holder to Wawoi Guavi timber project in Western Province. It is a subsidiary of Rimbunan Hijau Group in PNG.

The Board is advised that the company has the edge over other interested parties should the project be advertised since it already has the in-country experience and the integrated processing plant now on site under construction.

It is up to the company to put in a convincing proposal.

(b) A Proposal by Wika Pty Ltd

A development proposal said to be in the vicinity of K200m was submitted to the Managing Director National Forest Service. The proposal is an integrated concept that would encompass forestry, agriculture, and social and infrastructure development.

The principle of Wika Pty Ltd is the former Governor-General, Sir Wiwa Korowi, Kt, GCMC. His interest is believed to be backed up by certain offshore investors.

(c) Sime Darby

A proposal by the intending investor was submitted to the Western Provincial Government.

The Provincial Government is in support of this interest. The Sime Darby proposal is understood to be similar to the proposal by Wika Pty Ltd for an integrated development project, covering the Project Area and adjoining areas such as East Awin and Lake Murray.

The Board is advised that the company's proposal has been submitted to the Western Provincial Government and the Provincial Government supports this.

OPTIONS FOR THE PROJECT AREA ALLOCATION

Section 64 of the *Forestry Act* 1999 (as amended) (the Act) provides two options to allocations of forest resources.

OPTION ONE

This Option is to allocate a forest management area as a stand-alone Project.

OPTION TWO

This option is to allocate the Forest Management Area as an extension to an approved existing operation.

VIEWS OF THE NATIONAL FOREST SERVICE

The Board is advised that the Project Area has the resource capacity to sustain either a stand-alone operation or as an extension to an existing operation.

Due to this resource capacity and the number of potential interests shown for that area, it is advisable that the project area is advertised by open tender. The open tender option provides an opportunity for both on-shore and off-shore investors to submit proposals.

Consistent with other Forest Service papers to the Board, the Managing Director's submission argued strongly that Kamula Doso should be advertised by open tender.

[3.5] BOARD MEETING N° 54 OF 4 FEBRUARY 1999

The question of the Kamula Doso area was deliberated on at this meeting. The minutes of the meeting record the positions adopted by the various Board members.

Discussion at the meeting

Chairman **Gabriel Samol** said that the Board was being asked to note the current status of the Kamula Doso project including the development option study and the draft project guidelines. He referred the Board to Dr Iamo's submission and to the recommendation from the Managing Director (in Board paper N° B2) that the Kamula Doso area be treated as a stand-alone project and that the area be advertised for development in accordance with Sections 64(1) and (2) of the *Forestry Act*. Mr Samol said that in coming to a decision the Board must consider the national interest and take into account that its decision would determine investments that will last for a number of years.

The Chairman reminded the Board members of an earlier submission advising it of the construction of a large processing facility by the parent company of Wawoi Guavi, the company seeking the extension. He added that it was important to give the correct signal to investors. Given the current situation and the time required to "kick start" a new project, Mr Samol indicated that he would support the recommendation for an extension.

Dr Wari Iamo, Director of the Office of Environment and Conservation, said that he had visited the area in question and the plywood mill at Panakawa, which is within the Wawoi Guavi concession. He said the processing facility was a K40 million development "of world standard built in the middle of nowhere". He concluded by saying that he believed the Board should proceed with granting the Kamula Doso area to the Rimbunan Hijau subsidiary as an extension to their existing permit. He favoured this option as it would cut costs and mean not having to wait months for the advertising and selection of a developer.

In evidence to the Ombudsman Commission Dr Iamo said the main factor influencing his decision was the need to send a positive message to logging companies:

I think the most influencing factor was the current state of the economy. Because we need to attract the investors, that's number one. And this downstream processing development that was taking place in Panakawa and Wawoi Guavi, I thought that by awarding that (extension) shows the signal to the developers that we are serious about development in the country.

Anthony Honey, the Board member representing the Forest Industries Association of PNG, said that extensions have been applied in past situations. An extension would fast track the project, as required by the Government. He said he supported an extension being applied in this case. He said the veneer mill was an indication of the company's long-term commitment. Mr Honey then handed around photographs of the Rimbunan Hijau veneer plant at Panakawa.

National Forest Service lawyer, **Maurice Coughlan**, on being invited to the meeting, advised that whether the project area was advertised for development or granted as an extension of an existing operation was up to the discretion of the Board. He said it was a decision that was not subject to appeal.

Clement Kote, the Department of Finance and Treasury representative stated in evidence to the Commission that he had initially objected to Kamula Doso being treated as an extension. He thought it should be a stand-alone project. However, he was eventually persuaded by the advice given by NFS lawyer Mr Coughlan that there was nothing wrong with treating Kamula Doso as an extension to Wawoi Guavi.

Lawrence Kambogru, the Board member representing the forest resource owners, was the only one to speak against the proposed extension to Wawoi Guavi. He said that resource owners had not been given the opportunity to consider all the alternatives. He said the project area had sufficient resources to justify development as a stand-alone project. He expressed concern that if an extension was put through and advertising procedures were not followed, problems could arise. He cited the Hawain area in his province, East Sepik, as an example. Mr Kambogru said he believed an open tender procedure would benefit resource owners.

The minutes of the meeting state that Managing Director **Thomas Nen** “spoke to the paper” (Board paper N° B2). The only other reference to Mr Nen in the Board’s deliberations on Kamula Doso is the following:

Mr Nen said that the first priority was to listen to what the landowners have to say on a proposed project.

Decision

The minutes record the Board making the following resolutions:

Resolved

- (i) That the Board notes the development options study (DOS) of the Kamula Doso Forest Management Area, as attached to the paper; and
 - (ii) Acknowledges the draft guidelines submitted to it from the Western PFMC; and
 - (iii) Directs the Managing Director to review the said draft project guidelines after which he issues final guidelines (including guidelines for environmental monitoring and waste management) for the project in accordance with Section 63(2) of the *Forestry Act*; and with Mr Kambogru dissenting,
 - (iv) Agrees that the Kamula Doso Forest Management Area be an extension of the existing Wawoi Guavi operation (timber permit No. 1-7) and
 - (v) Directs the Managing Director to proceed to act on the Board's decision in accordance with Section 64(3) of the *Forestry Act*.
-

Although Managing Director Thomas Nen had consistently presented the Board with briefings and papers recommending that the Kamula Doso project be advertised, when it came to the vote, he supported an extension.

In explaining the Board's decision to the Ombudsman Commission, Chairman Gabriel Samol said that the other Board members (who were not full time with the Forest Authority) relied on the Managing Director to give them sound advice:

The management of the Board is through the National Forest Service. When you have got the Managing Director who comes in and overrides his own submission, what do you expect? He is the chief adviser to the Board. He is the executive officer. When you have got the Managing Director coming up and saying no he doesn't agree with his own submission.

What he said in his submission was not what he was saying to the Board in discussion.

I said 'Tom, what are you saying? You are going for the extension now?' He said yes. He sits next to me and under the Act he is the chief adviser. This is not the first time – there have been a couple of submissions he has brought to us and then speaks against them. I said 'Thomas, you'd better get your management right.

Most of us only come here and make our decision based on what you guys give us. We read one thing, you tell us one thing. What do you expect us to do?'

[3.6] **IMPACT OF THE VENEER MILL ON THE BOARD'S DECISION**

Mr Samol, in his evidence to the Ombudsman Commission, said the existence of the mill and a perception that Rimbunan Hijau was working closely with the Government were major factors influencing the Board's decision in favour of an extension:

Two major factors the Board finally looked at. One was the fact that the investment was already in the ground in one of our most remote areas. The other was that there was already in place, two months before, an inter-departmental committee that was looking at the incentives and so forth for the Government to enter into an agreement with Rimbunan Hijau.

I don't know what the other Board members thinking would be, but mine would be that those two would be the key factors.

Peter McCrea, an economist for the National Forest Service, told the Commission the veneer mill was itself a veneer put up by Rimbunan Hijau in an attempt to gain the rights to log more forests.

He stated:

I have not been directly involved in the Kamula Doso thing at all, but I was involved quite a bit with the proposal for the Rimbunan Hijau processing mill at Panakawa. The whole thing with Rimbunan Hijau was that the mill was only a front to try and get additional resource.

They did not follow any procedures at all in initiating that. What they did was they gave 24 hours notice that a shipment of processing equipment had been diverted from Africa to here and they wanted import duty fixed to bring it in.

We recommended that it be rejected, but Commerce and Industry allowed it to come in and then they proceeded. They dumped the equipment over at Panakawa and just started building and constructing the mill. They had not put in any project proposal and there were no environmental concepts. There were no concepts given at all.

By bringing the equipment in it puts the pressure on the Government and it makes it very easy for people like politicians to say 'these guys are really serious – they've got the equipment here' and everything else.

Lawrence Kambogru, the only Board member who opposed the extension when it came to the vote, said the mill should not have been considered by the Board at all in making the decision on Kamula Doso:

They (the company) were kind of like urging the Forest Board to make a decision, saying 'we are going to put up the plant, we already have K40-50 million worth of equipment sitting out there, you have to give us this resource.'

But their Wawoi Guavi permit was given on the understanding that it was not anything to do with Kamula Doso. The sawmill and all the other stuff there was not part of the Kamula Doso deal.

Kamula Doso was a separate project and in that sense I felt that this one should be treated as a stand-alone project and should be advertised in the newspapers for other interested companies to apply.

[3.7] **LETTER TO RIMBUNAN HIJAU ABOUT THE VENEER PROCESSING PROJECT AT PANAKAWA**

On 5 February 1999 the day after the Board approved the extension, Thomas Nen wrote to Rimbunan Hijau, 'urging' the company to apply for the necessary licences for the veneer mill that was set up in early 1998. Mr Nen had first visited the site nine months before.

The letter reads as follows:

Attention: Mr James Lau

Dear Sir,

RE: VENEER PROCESSING PROJECT, PANAKAWA, WESTERN PROVINCE

I wish to congratulate your company on setting up the processing mill at Panakawa in Western Province. It is a tremendous effort on your part in promoting the concept of downstream processing.

Whilst I commend the steps your company has taken in establishing such a facility, I also note that your company has not as yet made the appropriate application(s) under Forestry Regulations for the various licences in respect of the various activities pertinent to the mill and including the building complex.

In this respect, I would urge your company to make the necessary application(s). I am giving your company one (1) month from the date of this letter to make the necessary application, failing which other appropriate action may be taken under the *Forestry Act* against your company for non-compliance.

I trust this will not be necessary and look forward to hearing from you.

Yours faithfully,

Thomas Nen
Managing Director

Rimbunan Hijau responded to the preliminary report saying:

As to the references to the plant and to the veneer mill not been approved or get sanctioned by the National Forests Authority prior to its construction, Rimbunan Hijau would say that the mill was actually built after the National Executive Council had given its approval and on that basis the mill was constructed.

However, as a forest industry participant Rimbunan Hijau appears to have been guilty under Sections 122(1) and 122(2) of the *Forestry Act* of the offence of engaging in forest industry activities without a licence. According to this section a licence is necessary before any forest industry activity commences. This section is fully reproduced in Chapter 4 of this report.

In the opinion of the Ombudsman Commission, Rimbunan Hijau had a duty to comply with the legal requirements under the relevant legislation regardless of the fact that the National Executive Council had made a decision in principle for the construction of the mill.

Likewise, the National Executive Council should have ensured that the proper procedures were followed before an approval was granted for the construction of the mill.

[3.8]

LETTER FROM SIR WIWA KOROWI TO MINISTER FOR FORESTS PETER ARUL

On 16 February 1999 former Governor-General Sir Wiwa Korowi wrote to the Minister for Forests, Mr Arul. Sir Wiwa's letter was on the letterhead of his company Paradise Natural Resources Ltd.

Sir Wiwa told the Minister that Paradise Natural Resources had put forward proposals for two major timber projects in the Western Province – Makapa and Kamula Doso. He said the company had the support of two Western Province MPs and local landowners, but had not been kept informed as to the progress of its application:

What is your Ministry doing about my company's application?

On the subject of Kamula Doso, Sir Wiwa, apparently unaware that an extension had already been granted by the Board a fortnight earlier, said the area must be put to public tender.

He restated his company's interest in the project:

KAMULA DOSO TIMBER PROJECT

This Project is 792,000ha and it has a capacity to [be a] stand alone project. It must come out through the Public Tender Process and we are prepared to put up our submission.

I am told that Rimbunan Hijau is doing everything they can to get it as their Extension to their present logging operations of Wawoi Guavi River TRP area.

Minister, Rimbunan Hijau has about 10-15 years still left from logging from their current one and it is more than sufficient to their requirements.

Kamula Doso must come out for Public Tender. It will be a mistake if you allow Rimbunan Hijau to have Kamula Doso as an extension to Wawoi Guavi timber permit.

I look forward to hear from you shortly.

Yours faithfully

SIR WIWA KOROWI, GCMG, KStJ

cc: Prime Minister
cc: Managing Director, Forest Authority

**[3.9] DOUBTS ABOUT THE LEGITIMACY OF THE ORIGINAL
KAMULA DOSO FOREST MANAGEMENT AGREEMENT**

In giving evidence to the Ombudsman Commission, a number of people cast doubts upon the legality of the Kamula Doso forest management agreement, approved by the Board on 19 February 1998. This is the agreement required by Section 55 of the *Forestry Act* that must be effected before any forest industry activities on customary land are permitted.

Prior to the signing of the agreement, the Act requires that landowners must be registered as incorporated land groups (ILGs).

Mr Joseph Badi, the National Forest Service Manager of Resource Acquisition, explained the process to the Ombudsman Commission:

We go out to the field, to the project area, conduct village meetings, a bit of awareness to tell them all the concept and process and also the overall timber project development that will come about later in the area. We have forms for them to fill out to incorporate the land groups and we give out the forms to the land groups and then we assist them to fill them up.

Incorporated Land Groups (ILG) is really the formalisation of the clans in the timber area so that they can enter into a formal agreement with the State.

After the filling out of the forms, we get the forms to the office, we go through the forms, put them in order and give them to the Lands Department for gazettal. Then the ILGs are gazetted with a two-month grace period.

After the grace period of two months if there is no objection then we go ahead and formalise the ILGs to get them certified. Once the ILGs have been certificated, the (group) is recognised under the Land Groups Incorporation Act as an ILG.

Subsequently we get them to go out and execute the forest management agreement now that they have been formally recognised as ILGs.

The certificates of recognition of Incorporated Land Groups, issued under the *Land Group Incorporation Act* state that:

Any deed or document that is required to be executed by the land group shall be signed by two (2) members of the committee, one of whom shall be the Chairman and such execution shall be binding on the group.

Mr Badi conceded that when the forest management agreement was signed in the case of Kamula Doso there were some irregularities:

There was this confusion in regard to signing of the Forest Management Agreement. Initially the Chairman signs on behalf (of the Group). But during the course of the signing there were cases where some chairmen were not around.

Asked if this meant that at the time the Kamula Doso forest management agreement was signed by the landowners, when ILG chairmen could not be located, other people were allowed to sign the documents, Mr Badi replied:

Yes, that is correct.

When the Ombudsman Commission scrutinised the forest management agreement documents it found that in many cases only one person from each land group had signed the agreement. In most of the cases the chairman of the ILG had not signed the agreement. This is a mandatory condition of the acquisition process.

The National Forest Service's General Counsel, Chris Marlow, also identified irregularities in the Kamula Doso forest management agreement.

He told the Commission:

When I examined the documentation – primarily because there was a complaint – I checked the documentation and it was abundantly clear on the face of the record that there was no acquisition of the area under a forest management agreement. My advice then was that you start again and acquire the resource correctly and in accordance with the law. So to that extent everything has been academic. There has been no acquisition. It is void *ab initio*. They have not acquired according to the law, so they must now go out there and, in accordance with the Incorporated Land Groups, correctly and properly acquire the resource in each of the landowner groups.

[3.10] HAS THE BOARD'S DECISION OF 4 FEBRUARY 1999 BEEN IMPLEMENTED?

The Board's decision to grant the extension has not yet been implemented.

A concern raised by the non-government organisation ICRAF that the necessary requirements for Incorporated Land Groups in the Kamula Doso area had not been fulfilled has been one factor that has apparently contributed to a reconsideration of the issue.

Brian Brunton, the Director of ICRAF stated:

The forest management agreement has not been explained to the resource owners properly. The ILG has a procedure which allows the group as a whole to make a decision. The National Forest Service should have taken the agreement back to each of the groups and the agreement should have been gone through with the members of the group sitting there and point by point explained all the issues. Then the group as a whole should have made a decision as to whether or not they wanted the forest management agreement. But that never happened.

So there were splits in the groups. The interested parties have been selecting various big men and telling them to sign on behalf of the group without proper consultation

with the members of the group.

An incorporated land group is not a traditional body. It is a creature of modern law that allows customary groups to enter into transactions. That has to be carefully explained and the people have to understand. It cannot be done in a day or two.

The constitution (of ILGs) states that any deed or document that is required to be executed by the Land Group should be signed by two members of the committee, one of whom shall be the chairman. If it has not been followed and if a person who is not the chairman has signed or only one person has signed then the document is not binding on the group.

Copies of the ILG documents have not been given to the Land Groups. These have been kept by the Forest Authority. The forest management agreement has not been seen by the people who signed it. Generally they sign bits of paper that are then clipped back together into the Agreement.

Most people in Kamula Doso area do not speak Pidgin. If any (of the three National languages) they speak Motu. Very few people speak English. Awareness campaigns are not conducted in the language they understand. Here you have 800,000 hectares of property which was to be transferred into the hands of the Government and the value for that would run into billions of kina. The people did not know that. They did not know how to read the contract because the contract was in English.

Apart from that it was an unfair contract. It was a one-sided contract, an unfair contract that no lawyer would advise their clients to sign. They had to sign a contract first for a sum of money that was not even defined in the contract. There was no definition. The consideration was not spelt out. It was for a royalty "which shall be determined by the Minister". There was no set price.

The royalty and the Project Development levy have no direct bearing to the export value of the log. It is completely disproportionate. The logs are sold in US dollars and the royalty (is) being paid in kina. There is no guarantee of anything for the landowners in the FMA. The Forest Authority refuse to include infrastructure clauses in the FMA.

The landowners could not say, for example, that they are willing to sign the FMA but they want the developer to put in a road which they (would) like to be incorporated in the contract. The Forest Authority would say it was something they had to negotiate with the contractor and that it would be in the project agreement. The Project Agreement is a contract which is not with the landowners but between the Forest Authority and the contractor.

When the Ombudsman Commission asked Managing Director Thomas Nen what was happening with the implementation of the Board's decision, he replied:

Nothing much. We have put everything on hold because of the Incorporated Land Groups. We have to verify those ILG chairmen.

The Ombudsman Commission understands that no logging is yet taking place within the Kamula Doso area.

Chapter 3

Board Decision and Aftermath

**[3.11] ADVICE FROM THE NATIONAL FOREST SERVICE
GENERAL COUNSEL**

On 10 April 2000 the National Forest Service General Counsel, Chris Marlow, advised the Director of the Policy Secretariat of defects in the original forest management agreement for Kamula Doso. He concluded that the first agreement approved by the National Forest Service on 19 February 1998 was a nullity for several reasons and therefore the Board had no power to grant the extension.

Mr Marlow stated:

The report by the National Forest Service staff revealed numerous errors in the process leading up to, and the execution of, the original forest management agreement.

It is critical that each forest management agreement is signed for and on behalf of each ILG groups only after the specific provisions contained in ILG constitution have been complied with and the FMA has been interpreted in full to the each respective ILG group. Each ILG group must then be left to conduct their own meetings in accordance with their respective constitutions and for them to reach their own decisions.

In summary when the Board signed the original forest management agreement, it signed a document in which there was no evidence provided evidencing that any of the parties acted with the authority of their own respective ILG's. When the evidence disclosed the ultra vires acts of incorrect ILG signatories to the forest management agreement it rendered the Agreement a nullity. It was *void ab initio*.

It follows a priori that any extension by the Board under Section 64(3) was also a nullity and void ab initio.

A new forest management agreement is now been signed pursuant to and in accordance with the proper authority as set out in each respective ILG constitution although this time it has been signed by 51 ILG groups who are within the FMA boundary. The forest management agreement now also contains variations which were not in the original but void FMA and is, in essence, a totally different document.

The Provincial Forest Management Committee must now meet again in accordance with the manner and method as prescribed in the Act and issue a new certificate but only if it is satisfied as to the issues of authenticity of tenure and the willingness of the customary landowners to enter into the forest management agreement. When that has been completed the matter may then come before the Board for its perusal and if satisfied with it, the Board may then execute the forest management agreement and thereafter submit it to the Minister for Forests for his approval. When this point has been reached there then legally exists a forest development project as that expression is defined in the Act.

The Act then provides that in respect to resource allocation a forest development project shall be carried out only after advertisement and in accordance with the procedures set out in this Act.

What is clear is that a forest development project as defined in Section 1 of the Act only comes into existence at the point when the forest management agreement has been executed by all parties and endorsed by the Minister.

The minutes of the Board meeting on 4 February 1999 disclosed that there was a development options study and draft project guidelines submitted with the Board paper relating to the Kamula Doso forest management area.

The final project guidelines which would include provisions for waste monitoring and waste management were yet to be issued. This is an essential requirement under Section 64(3) of the *Forestry Act*. Therefore the decision to award the Kamula Doso forest management area as an extension to the Wawoi Guavi timber permit was ultra vires ie beyond power.

Mr Marlow stated:

In respect to the draft project guidelines the Board resolved that it acknowledges the draft submitted by the Western Provincial Forest Management Committee and it directed the Managing Director to review the draft project guidelines and issue final project guidelines (including guidelines for environmental monitoring and waste management) for the project in accordance with Section 63(2) of the *Forestry Act*.

The resolution clearly provided that there were certain project guidelines that the Board required the Managing Director to prepare prior to the Managing Director issuing final project guidelines. The Board required the Guidelines to include matters relating to environmental monitoring and waste management.

In other words, the final project guidelines had not been issued before the Board made its decision under Section 64(3) of the Act to award Kamula Doso as an extension. The issue of final project guidelines was critical as such final project guidelines incorporating the environmental and waste management issues are matters which would need to be considered by any proponent in the preparation of the respective project proposals.

Section 64 of the Act is clear in that only after completion of the development options study and the issuing of the final project guidelines in Section 63 of the Act is the Board empowered to advertise the project or to consider adopting the extension process under Section 64(3) of the Act.

In my view the Board acted ultra vires in that it had no power to make a decision that Kamula Doso forest management area be an extension of an existing operation until the final project guidelines were issued.

[3.12] THE MORATORIUM ON LOGGING

By National Executive Council decision 84/2000 of 18 May 2000 the National Government imposed a moratorium on the further processing of new forestry projects. The decision ordered a review of all "in process" forestry projects by an independent team to evaluate compliance with the requirements of the *Forestry Act* and supporting regulations, legislations, plans, procedures and guidelines.

This was an initiative by the government to ensure that all timber permits, extensions and timber authorities are being processed correctly and that there is satisfactory compliance with the relevant laws.

[3.13] THE INDEPENDENT FORESTRY REVIEW

In March 2000 the National Government ordered an independent review of all current forestry projects when it imposed the moratorium on logging. The purpose of the review is to evaluate compliance with the requirements of the *Forestry Act* 1991 and supporting regulations, legislations, plans, procedures and guidelines.

The terms of reference of the review were:

-
- Ascertain whether all legally required procedures for the acquisition of timber rights and resource allocation as provided for under sections 4 and 5 of the Act were correctly complied with and where they were not, provide details of the nature and causes of the non-compliance.
 - Ascertain whether all project agreements, timber permits, timber authorities, or any other legally binding agreements are strictly in accordance with all legal requirements and in the spirit of the current Act and Policy, and supporting regulations and requirements, including other applicable legislation. Details are to be provided where there is non-compliance.
 - Determine whether the project areas or proposed project areas are appropriate for management purposes.
 - Determine whether the annual allowable cut proposed for timber permits and extensions are within the limits of a sustainable yield based on current forest management principles.
 - Where specific operators are, in practice, being preselected to develop new project areas, notably, with timber permit extension, undertake due diligence of the performance of that company in complying with the legal and supporting requirements in the Timber Permit area currently being operated.
-

[3.14] THE INDEPENDENT REVIEW TEAM

With the assistance of the World Bank, five people were selected to undertake the review:

Mr Ben Everts (team leader)	forestry and forest policy specialist
Mr Kanawi Pouru	forestry specialist
Mr Graham Powell	legal specialist
Mr Tony Power	landowner specialist
Mr Rukis Romaso	landowner specialist

[3.15] THE INDEPENDENT REVIEW TEAM REPORT ON KAMULA DOSO

In March 2000 the independent review team reported on the Kamula Doso forest management area:

Landowner Awareness	Completed
FMA:	Presented to the Board after an earlier one was declared invalid.
DOS	Not yet
Project Guidelines	Not yet. An earlier one was declared invalid, new set to be prepared after a new FMA and DOS are completed
Project Agreement	Not yet
Environmental Plan	Not yet
Timber Permit	Not yet

The team stated:

There is real concern about the decision of the National Forest Board made at its Meeting No. 54 to approve this project as an extension. These concerns are –

- The decision was directly contrary to the advice given by the National Forest Service that the project should be advertised. This advice had been consistently stated as the view of the National Forest Service and had always been supported by convincing argument.
- There were clearly sufficient resources for the project to be a stand-alone one.
- The views of some landowners and of the Provincial Government did not favour an extension.
- None of the forms provided by the Regulations concerning the application for an extension, or its approval, have been sighted.
- There seem to be an unsettling determination on the part of one or two Board members, and a number of National Forest Service officers, to see the project proceed as an extension.
- The National Forest Board has exposed itself to claims of impropriety by departing from the usual and transparent process of public tender.

As the project now stands there is still no valid forest management agreement and so technically there is no "Forest Development project" under the Act. Once the forest management agreement is properly executed then it will be possible for the National Forest Board to "clear the air" by –

- Re-affirming the Development Option Study if its contents are considered to be appropriate;
- Re-visiting the Project Guidelines after the PFMC has consulted with the resource owners and the Provincial Government; and
- Formally revoking the decision to approve the project as an extension and arranging for its advertisement.

The decision of the National Forest Board on 4 February 1999 was considered to be defective in that the forest management agreement was not properly executed. The team concluded that almost all requirements of the *Forestry Act* relating to resource acquisition had not been complied with.

[3.16] AMENDMENTS TO SECTION 64(3) OF THE FORESTRY ACT

In January 2000 the National Parliament passed the *Forestry (Amendment) Act* 2000. This significantly amended Section 64(3) of the *Forestry Act* 1991. The National Forest Board can now only regard a forest development project as an extension of an existing approved timber permit operation if the following criteria are met:

- it must be contiguous to any existing timber permit operations and the holders of these timber permits have in the opinion of the Board a satisfactory performance record in the forestry industry and have complied with their contractual obligations under all timber permits held by them at any one time and such persons are acceptable to the landowners in the forest development project area; and
- there must be development option studies carried out under Section 62; and
- there must be final project guidelines issued by the Board under Section 63; and
- the project is consistent with the National Forest Development Program; and
- the project is, in the opinion of the Board, so small on its own that it is unable to operate as a commercially sustainable forest development project.

Where all these requirements are met and the Board decides that the project is an extension, the Board shall invite the timber permit holder concerned to submit a project proposal.

Where such a timber permit holder has at any time already been granted an extension then the National Executive Council must endorse any decision of the National Forest Board to invite project proposals from the timber permit holder concerned.

The effect of this amendment is that a decision such as the one made in the Kamula Doso forest area is now prevented. However, the amendment has not defined an extension in terms of the size of the project area.

[3.17] RIMBUNAN HIJAU RESPONDS TO THE PRELIMINARY REPORT

In its response to the preliminary report Rimbunan Hijau questioned the jurisdiction and motive of the Ombudsman Commission investigation and argued that there was nothing untoward about the National Forest Board decision to award Kamula Doso as an extension to the Wawoi Guavi timber rights permit.

Rimbunan Hijau criticised the Ombudsman Commission on its preliminary finding that the National Forest Board was wrong in considering the construction of the mill as a major consideration for the awarding of the extension to Wawoi Guavi Timber Company.

The company argued that the concept of downstream processing was a major policy of the National Government and for the National Forest Board not to give consideration to the availability of additional resources is “anti-investment, anti-development and obstructive”.

Rimbunan Hijau also questioned the purpose of the Ombudsman Commission findings in the Kamula Doso matter saying it is now a *fait accompli* (a thing that is already done and not reversible):

The findings of the Ombudsman Commission is in any event *fait accompli* since the recent amendments to the Forestry Act denied any form of extension which is above 80,000 hectares, which according to the National Forest Development Program has to be made by way of tender.

[3.18] **RESPONSES TO CRITICISM ON THE NATIONAL FOREST BOARD DECISION TO AWARD KAMULA DOSO AS AN EXTENSION**

Chairman of the Board, **Gabriel Samol**, said the Ombudsman Commission’s preliminary report did not give sufficient consideration to the fact that the Board has the legal authority to make decisions. He supported the extension option for Kamula Doso because it was within the Board’s power to do so and because of the “need to be seen to support the Government decision of 25 September 1997” (National Executive Council Decision N° NG 41/97).

Mr Samol said the Board’s decisions are only as good as the advice given to it by the National Forest Service through the Managing Director.

The Board has to rely on the advice given to it by the management of the National Forest Service and in particular the Managing Director.

The Ombudsman Commission does not consider this to be a strong excuse.

National Forest Service technical officers consistently supplied the Board with detailed briefing papers and sound advice, through Managing Director Nen's submissions to the Board. That the Board chose to ignore the advice cannot be laid on the doorstep of the National Forest Service officers.

Maurice Coughlan said that when he was called at short notice to make a brief submission on Section 64(3) of the *Forestry Act* he had no prior knowledge of Kamula Doso or the forest management agreement. Mr Coughlan said his "almost clinical role of perhaps five minutes" was undertaken with no knowledge of the specific details of the project.

In my careful and complete submission there was no reference to the project facts (as I had never been briefed on them) and Mr Clement Kote's comment as to its persuasive value in his mind is nonsense. I submitted the Board exercise its discretion if satisfied on the preconditions in the section and stressed the necessary definition of discretionary power.

In the opinion of the Ombudsman Commission Mr Coughlan was wrong to stress the discretionary power of the Board when he had not addressed the issue of compliance with the mandatory prerequisites of an extension under the Act. He should have been aware that final project guidelines were yet to be issued and failed to advise that an extension should not be granted until this was done.

Clement Kote says he was the Board member who requested the legal opinion on whether it was proper to have Kamula Doso awarded as an extension from the National Forest Service lawyer before voting on the matter. Mr Kote denied that he was in full possession of the facts at the time he voted in favour of an extension:

I am not too sure if the Board knew about the recommendation of the Provincial Forest Management Committee.

Mr Kote also stated:

I would like to categorically deny that I received a copy of the consultant's report which stated that the equipment the company imported was second hand and over-valued by an estimated K19 million. I am sure that any knowledge of this fact by the Board would have resulted differently to the decision made.

The Ombudsman Commission has carefully considered Mr Kote's response. However, it is hard to believe that Board members were unaware of the Western Province provincial forest management committee's recommendation that the project area be advertised.

The committee's recommendation was recorded in both the submissions put to the Board on Kamula Doso on 4 February 1999 through Dr Wari Iamo's submission and the Managing Director's Board paper N° B2.

Similarly, it is hard to believe that a Board member could honestly claim he had no knowledge of the consultant's report on the equipment imported by Rimbunan Hijau for the veneer mill at Panakawa. An 8-page business paper on the veneer mill was submitted to the Board in October 1998 with a copy of the consultant's report attached.

In his response to the preliminary report **Wari Iamo** said he takes his role as a Board member very seriously:

If I fail to read and research a matter properly and vote without the benefit of all reports and information then I cannot rely on the protection afforded to me under Section 133 of the Act; I would be negligent.

The Board has the benefit of all information before it plus Board members' own research and information material. It had the benefit of the project lawyer (Maurice Coughlan) and had the benefit of the knowledge that the Government of the day's policy was to bring project on as quickly as possible.

There are always lobby groups but at the end of the day it is a matter for the Board to determine under the Act in its discretion.

In my opinion, the information before the Board at the hour of taking the decision was adequately sufficient to indicate obviously and manifestly that the majority of landowners were in favour of an extension.

The Commission does not accept that the information available to the Board on 4 February 1999 indicated "obviously and manifestly that the majority of landowners were in favour of an extension".

The information available to the Board indicated quite the contrary. The Managing Director's submission (Board paper N° B2), when reporting the preference of landowner company Wawoi Tumu Holdings, stated that "there are other landowner companies and pressure groups in that area".

Thomas Nen, in his response to the preliminary report, commented on the competing interests that vie for his attention as Managing Director of the National Forest Service:

As the Managing Director of the National Forest Service I treat all forestry projects as controversial. The reason being that any decision made cannot satisfy everyone – be it the developer, the politicians, the landowners, the NFA Board members, the PFMC members, the greenies etc. It should be noted that most of my decisions are made for the interest of the landowners and based on sound investment decisions for national interests.

The Managing Director defended his right to vote against his own recommendation:

I never go to any Board meetings with closed mind. This is not what any Board member is supposed to do. The debate must be based on facts and decisions made must be consistent with current government policy and within the legislative framework. Once a lively and well-informed discussion takes place one is bound to change his or her positions from the beginning. That is normal practice of any boardroom meetings.

Mr Nen was critical of the Commission's preliminary report, saying it did not devote enough attention to the reasons he gave for changing his mind.

The decision to change my initial position was based on many factors which I highlighted during my interview with your officers. Most of them were not stated in that report. They were:

- 1 Government policy at that time and even this government (Sir Mekere Morauta's) to support downstream processing.
- 2 The financial situation of the country at that time. It was so depressed.
- 3 The mill was built in a very isolated area of the country and very remote. It takes guts to invest in that kind of project and to do so the government must also be in a position to assist the developer in whatever way is possible.
- 4 There was no guarantee that other developers would establish a downstream processing plant there. The Board was advised through the National Forest Service submission that the company (Rimbunan Hijau) has the edge over other interested parties should the project be advertised since it already has the in-country experience and the integrated processing plant now on site under construction.
- 5 There were two options given in the submission for the project area allocation. Option one for stand-alone and option two for an extension to an approved existing operation. The National Forest Service view was to treat the project as a stand-alone. I, as the member of the Board, after much thought on the consequences of those options made available, opted for option two.

The Ombudsman Commission has carefully considered Mr Nen's response and the reasons he offered for his decision to vote against his own recommendation. The Commission understands that Mr Nen has a difficult job and that there are many demands placed on him.

However, he seriously erred as the Managing Director of the National Forest Service when he agreed to award Kamula Doso to Rimbunan Hijau based on its establishing the veneer mill at Panakawa, as he was fully aware that the *Forestry Act* had not been complied with by Rimbunan Hijau.

He failed to ensure that the development options study and the final project guidelines were issued by the Board to allow the interested parties to submit a project proposal in accordance with the provisions of the *Forestry Act* and the *Forestry Regulation* before the decision to award Kamula Doso as an extension of Wawoi Guavi was made.

[3.19] RECENT DEVELOPMENTS ON KAMULA DOSO AND WAWOI GUAVI

As at June 2002 the National Forest Service was still in the process of rectifying the defects that have been detected in the forest management agreement executed by the National Forest Board on 18 February 1998. A new forest management agreement is in the process of being drafted. Once this is done then Kamula Doso becomes a forest development project for the purposes of the *Forestry Act* and thereafter it can be considered for allocation.

It appears to be tacitly accepted that the decision of the National Forest Board to award Kamula Doso as an extension to Wawoi Guavi TRP is void.

On 4 February 2002, the Wawoi Guavi timber permit was extended for another 10 years until 2012.

[3.20] MANAGING DIRECTOR'S POSITION

Thomas Nen's term as Managing Director of the National Forest Service expired on 8 April 2002 and the revocation of his appointment was advertised in *National Gazette* No 58 of 2002.

His successor David Nelson was appointed on 12 April 2002 for a term of three years.



4. RELEVANT LAWS

[4.1] THE CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

Five National Goals and Directive Principles are proclaimed in the preamble to the *Constitution*. The preamble directs all persons and bodies, corporate and unincorporated, to be guided by these declared Directives in pursuing and achieving our aims.

Directive N° 4 relates to natural resources and the environment. A fiduciary duty is imposed on those who are responsible for decision making on our natural resources and environment.

A fiduciary duty arises in a relationship between two parties where one (the trustee) is bound to exercise rights and powers for the benefit of the other (the beneficiary).

The fourth National Goal states:

4. Natural resources and environment

We declare our fourth goal to be for PNG'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.
-

All those who have decision making powers and interests in the acquisition and use of natural resources ought to consider themselves as custodians of these resources. There is a duty to ensure that wise use is made of these resources with the benefit of the future generations in mind. Conservation of the environment as well as these resources are important obligations that must be observed.

Section 25 of the *Constitution* provides for the implementation of the National Goals and Directive Principles:

-
- (1) Except to the extent provided in Subsections (3) and (4), the National Goals and Directive Principles are non-justiciable.
 - (2) Nevertheless, it is the duty of all governmental bodies to apply and give effect to them as far as lies within their respective powers.
 - (3) Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised or enforced, without failing to give effect to the intention of the Parliament or to this *Constitution*, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied or exercised, and shall be enforced, in that way.
 - (4) Subsection (1) does not apply to the jurisdiction of the Ombudsman Commission or of any other body prescribed for the purposes of Division III.2 (leadership code), which shall take the National Goals and Directive Principles fully into account in all cases as appropriate.
-

Section 25(4) obliges the Ombudsman Commission to take the National Goals and Directive Principles fully into account in all cases as appropriate.

In its investigations into the alleged wrong conduct of public bodies and public officials the Ombudsman Commission has a duty under Section 219(1) and (2) to take into account amongst other things the National Goals and Directive Principles.

Section 148 of the *Constitution* is concerned with the functions and responsibilities of Ministers:

-
- (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 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.
-

[4.2] FORESTRY ACT 1991

The *Forestry Act* contains many provisions relevant to this investigation. The long title describes the Act as:

Being an Act to provide for and to give effect to the National Goals and the Directive Principles and in particular to—

- (a) manage, develop and protect the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for the succeeding generations; and
- (b) maximise Papua New Guinean participation in the wise use and development of the forest resources as a renewable asset; and
- (c) utilize the Nation's forest resources to achieve economic growth, employment creation and industrial and increased "down stream" processing of the forest resources; and
- (d) encourage scientific study and research into forest resources so as to contribute towards a sound ecological balance, consistent with the National developmental objectives; and
- (e) repeal various Acts and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

Other relevant provisions are set out below:

SECTION 2 - INTERPRETATION

In this Act, unless the contrary intention appears -

"at stump", in relation to timber, means at the place where the timber is felled or otherwise severed from the ground, before it is moved, conveyed or transported;

"Authority" means the PNG 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;

"forest industry participant" means any person engaging in, or intending to engage in, forest industry activities (otherwise than as an employee of a forest industry participant or in the capacity of a common carrier) where the timber or rattan harvested, processed, bought, sold or arranged or procured to be sold or purchased by that person in a calendar year exceeds -

- (a) 500m³ in volume; or
- (b) in the case of sandalwood timber or rattan - K20,000.00 in market value;

"Forest Management Agreement" means a Forest Management Agreement entered into in accordance with Division III.4;

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 PNG 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 Executive 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) subject to the Customs Act, Customs Tariff Act and Exports (Control and Valuation) Act, to control and regulate the export of forest produce; and
 - (g) 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
 - (h) to undertake the evaluation and registration of persons desiring to participate in any aspect of the forestry industry; and
 - (i) to act as agent for the State, as required, in relation to any international agreement relating to forestry matters; and
 - (j) 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 purpose of achieving the objectives of the Authority.
-

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 10 - MEMBERSHIP OF THE BOARD

(1) The Board shall consist of -

- (a) the Managing Director, ex officio; and
- (b) the Departmental Heads, ex officio, of the Departments responsible for finance matters and environmental matters respectively or their nominees (who shall be of a level in the Public Service not less than that of Assistant Secretary) appointed by the National Executive Council; and
- (c) the President of the Forest Industries Association, ex officio, or his nominee; and
- (d) the President of the Association of Foresters of PNG, ex officio, or his nominee; and
- (e) a provincial administrator, to represent Provincial Governments, appointed by the National Executive Council from a list, submitted to the National Executive Council by the Minister, of two provincial administrators selected by the Minister responsible for provincial affairs in consultation with the Provincial Governors; and
- (g) one member, to represent non governmental organizations, appointed by the National Executive Council from a list, submitted to the National Executive Council by the Minister, of at least two persons selected by a nationally recognized body, registered with the Department responsible for home affairs matters, representing non governmental organizations; and
- (h) one member, to represent forest resource owners, appointed by the National Executive Council from a list of two persons selected in accordance with Subsection (2) and submitted to the National Executive Council by the Minister.

SECTION 30 - FUNCTIONS OF A PROVINCIAL FOREST MANAGEMENT COMMITTEE

(1) The functions of a provincial forest management committee are -

- (a) to provide a forum for consultation and co-ordination on forest management between national and provincial governments, forest resource owners and special interest groups; and
 - (b) to undertake continuous consultation with the provincial Minister responsible for forestry matters on matters relating to acquisition and allocation of forest resources; and
 - (c) to assist the provincial government in preparing forest plans and forest development programmes consistent with national and provincial programmes; and
 - (d) to make recommendations to the Board on -
 - (i) the preparation and terms of forest management agreements; and
 - (ii) the selection of operators and the preparation of timber permits; and
-

- (iii) the enforcement of timber permit conditions and of this Act; and
 - (e) to make recommendations to the provincial Minister on -
 - (i) the issue of timber authorities; and
 - (ii) the extension, renewal, transfer, amendment or surrender of timber authorities; and
 - (f) to supervise extension services with respect to business management, agro forestry, silviculture, reforestation, environmental protection, processing and marketing; and
 - (g) to oversee the receipt and distribution of government levies and charges and other benefits due to landowners; and
 - (h) to assist in the early identification and resolution of land-owning disputes affecting forest resources; and
 - (i) to carry out such other functions as it is required to carry out by this Act or any other law.
- (2) A Provincial Forest Management Committee may, by notice in writing, delegate to the National Forest Service any of its functions under Subsection (1).

SECTION 46 - CUSTOMARY RESOURCE OWNERSHIP

The rights of the customary owners of a forest resource shall be fully recognised and respected in all transactions affecting the resources.

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

- (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 authorized 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 AGREEMENTS

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 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
 - (ii) 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 61 - FOREST DEVELOPMENT PROJECT

Subject to Sections 64(3) and 87(4) a forest development project shall be carried out only after advertisement and in accordance with the procedure set out in this part.

SECTION 62 - DEVELOPMENT OPTIONS STUDY BY THE BOARD

- (1) Subject to Subsection (2), before advertising a tender for a forest development project, the Board shall arrange for a development options study to be carried out over the proposed project area.
 - (2) A development options study under Subsection (1) is not necessary—
 - (a) where the proposed annual allowable cut of a forest development project shall not exceed 5000m³; or
 - (b) for the harvesting of forest plantations; or
-

-
- (c) for logging within an area designated as a salvage forest in the National Forest Plan.
- (3) A development options study under Subsection (1) shall—
- (a) be carried out by the National Forest Service or as contracted out by the Board; and
 - (b) carried out in accordance with directions given by the appropriate Provincial Forest Management Committee; and
 - (c) provide an inventory of the forest resources in the proposed project area; and
 - (d) identify feasible options for development of the area and investigate—
 - (i) means of landowner participation in such development; and
 - (ii) possible environmental and social impacts of such development; and
 - (iii) in respect of any forest products to be harvested from the area — the feasibility of local processing and marketing prospects generally.
- (4) The Board shall make available to the Minister and the Provincial Forest Management Committee true copies of the feasibility study.

SECTION 63 - PROJECT GUIDELINES

- (1) After completion of a development options study under Section 62, the Provincial Forest Management Committee shall, in consultation with the owners of the forest resource the subject of the forest development project and the Provincial Government concerned, prepare draft guidelines on the manner in which the project is to be developed.
 - (1) The Provincial Forest Management Committee shall submit draft guidelines under Subsection (1) to the Board, which shall review them and issue final guidelines for the project.
 - (2) The final guidelines under Subsection (2) shall be the guidelines for enabling intending parties to submit project proposals and shall be utilized for the purposes of—
 - (a) evaluating applications for; and
 - (b) setting conditions in,
 timber permits relating to the project.
-

Provincial forest management committees make recommendations to the National Forest Board in the selection of operators and the preparation of timber permits. They play an important role in resource allocation, as described in Section 62(3)(b) and Section 63 of the Act. It is on the direction of a provincial forest management committee that development options study and final project guidelines are undertaken by the National Forest Board.

Section 30 spells out the functions of provincial forest management committees:

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 PNG; and
 - (b) may be made outside PNG; 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 64(3) was significantly amended by Section 6 of the *Forestry (Amendment) Act 2000*. The amendment has been reproduced in paragraph [4.5] at the end of this chapter.

SECTION 77 - APPLICATION FOR A TIMBER PERMIT

A person who is invited to do so under Section 73(1) or 75(1) may make application for a timber permit.

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 fee; and
 - (ii) the prescribed particulars; and
 - (iii) an environmental plan which has been approved under the *Environmental Planning Act* (Chapter 370)

SECTION 91 - ISSUE OF A LICENCE

- (1) The Board may, on the application of a registered forest industry participant, issue to that registered forest industry participant, a licence to engage in forest industry activities other than those carried out, or proposed to be carried out, under a timber permit or a timber authority held by the forest industry participant.
-

-
- (2) A licence shall -
- (a) be in the prescribed form; and
 - (b) include as a condition compliance with the terms and conditions of any timber permit or timber authority or permit to which the activities authorised by the licence are related and; and
 - (c) specify the activity or activities in respect of which the licence is granted and; and
 - (d) require a performance bond in accordance with Section 98 for an amount specified in the licence; and
 - (e) include such other conditions in accordance with the National Forest Policy as are applicable.

SECTION 122 - OFFENCES

- (1) A forest industry participant and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in forest industry activities except under and in accordance with a timber permit, timber authority or licence, held by the forest industry participant, is guilty of an offence.
 - (2) A person who -
 - (i) unlawfully occupies land for the purpose of carrying out forest industry operations is guilty of an offence.
-

[4.3] FORESTRY REGULATION 1998

An application under this regulation to the Board by an holder of a permit to approve a forest development project as an extension to an existing approved operation may only be made if development options study and final project guidelines have been issued pursuant to the *Forestry Act*.

REGULATION 90(B) - EXPRESSION OF INTEREST IN A FOREST DEVELOPMENT PROJECT AND PROJECT PROPOSAL

- (b) Where the Board has determined under section 64(3) of the Act to consider expressions of interest in a Forest Development Project and Project Proposals without advertisement for open tender then such expressions of interest and project proposals shall be lodged together directly with the Managing Director and shall be in Form 92 of Schedule 1.

REGULATION 92 - APPLICATION BY THE HOLDER OF A TIMBER PERMIT TO THE BOARD TO APPROVE A FOREST DEVELOPMENT PROJECT AS AN EXTENSION OF AN EXISTING APPROVED OPERATION

- (a) On the invitation of the Board or on its own accord, a registered forest industry participant who is the holder of a timber permit may make application to the Board in Form 89 of Schedule 1 to approve a forest development project as an extension of the timber permit holders existing approved operation.
 - (b) Such application may only be made if Development Option Study under Section 62 of the Act has been completed and formal Project Guidelines under Section 63 of the Act have been issued.
-

[4.4] ENVIRONMENTAL CONSIDERATIONS UNDER THE ENVIRONMENTAL PLANNING ACT 1978

The *Forestry Act* makes it a requirement for an environmental plan to be submitted by an applicant when applying for a timber permit. This is to ensure that all environmental requirements are met before a timber permit is issued to a developer.

Section 77(2)(iii) of the *Forestry Act* states that an application for a timber permit under Subsection 1 of the Act shall be accompanied by an environmental plan which has been approved under the *Environmental Planning Act 1978*.

The Act is expressed to be an Act relating to the development of the environment having regard to uniform systems of environmental management in accordance with the fourth of the National Goals and Directive Principles, and to give effect to those Goals and Principles under Section 25 of the *Constitution* and for related purposes. The Act is administered by the Office of Environment and Conservation.

The relevant provisions relating to this investigations are:

SECTION 4 – SUBMISSION OF ENVIRONMENTAL PLAN

(2) An environmental plan required under Subsection (1) shall –

(a) recognise and be responsive to the National Goals and Directive Principles of the Constitution as the basis for planning; and

(b) be formulated –

(i) in response to any development goals, strategies or plans consistent with the National Goals and Directive principles issued by the officer in charge of the Department or office responsible for national planning matters or the provincial administrator of the province affected.

(ii) in response to any guidelines, directions or plans on the protection, conservation and management of the environment consistent with the National Goals and Directive principles issued by the Minister or Provincial Administrator of the province affected.

The environmental plan guidelines included requirements among others:

- a full feasibility study (technical and economic);
- five year forest working plans;
- detailed maps of roads and snig tracks, landing sizes and locations;
- design details of water crossings;
- a final land-use plan;
- a summary of alternate/possible non-timber uses of the forest area;
- an evaluation of benefits and liabilities;

- a full description of the socio-economic environment, clan and tribal history, social issues and problems;
- social demographics; and
- a description of forest resource harvesting alternatives.

[4.5] FORESTRY (AMENDMENT) ACT 2000

ADVERTISEMENT OF PROJECT (AMENDMENT OF SECTION 64)

Section 64 of the principal act is amended by repealing subsection (3) and replacing it with the following:

- (3) Where a forest development project –
- (a) is contiguous to any existing timber permit operations and the holders of timber permits of the existing timber permit operations have, in the opinion of the Board, a record of satisfactory performance in the forestry industry and have complied with their contractual obligations under all timber permits held by them at any time and such persons are acceptable to the landowners in the forest development project area; and
 - (b) is the subject of development option studies carried out under Section 62; and
 - (c) is the subject of final project guidelines issued by the Board under Section 63; and
 - (d) is consistent with the National Forest Development Program; and
 - (e) is, in the opinion of the Board, so small on its own that it is unable to operate as a commercially sustainable forest development project,
- the Board may determine that the forest development project shall be an extension of one of the existing approved timber permit operations.
- (4) If, in the event that the Board determines under Subsection (3) that the forest development project shall be an extension of an existing approved operation, then, subject to Subsections (5) and (6), all timber permit holders whose timber operations are contiguous to the forest development project shall be invited by the Board to make project proposals in respect to the forest development project.
- (5) If any timber permit holder referred to in Subsection (4), has at any time already been granted an extension into a forest development project area, such timber permit holder shall not, except with the endorsement of the NEC, be eligible to be invited by the Board to make application for a project proposal under Subsection (4).
- (6) Any extension granted shall be made only on the basis that –
- (a) the forest resources within the forest development project shall be used primarily to sustain an existing processing facility; and
 - (b) the existing timber permit area and the forest development project area shall be consolidated under the one timber permit and the consolidated timber permit area shall be managed and harvested on a sustainable harvest yield basis.
- (7) Subdivision 3.5.B shall apply to a forest development project as if it has otherwise been advertised."

The changes that have been effected by the amendment are explained in paragraph [3.16].

The most significant change as far as this investigation is concerned is that any project that is proposed for an extension must be so small on its own that it is unable to operate as a commercially sustainable forest development project. A decision such as the one made in the Kamula Doso forest management area is now prevented.



5. FINDINGS OF WRONG CONDUCT AND DEFECTIVE LAW

[5.1] STATUS OF FINDINGS

As we stated in Chapter 1, the purpose of this investigation was:

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

In this chapter we summarise our principal findings of wrong conduct and defective administrative practice.

The Ombudsman Commission is allowed to form opinions on these matters by Section 22(1) of the *Organic Law on the Ombudsman Commission*, which states:

The succeeding provisions of this Section apply in every case where the Commission, after making an investigation under this Law, is of the opinion that:

- (a) the conduct, the subject of the investigation was wrong; or
 - (b) the law or administrative practice, the subject of the investigation or any other law or administrative practice is defective; or,
 - (c) the practice, the subject of the investigation is discriminatory within the meaning of any law prohibiting such practices.
-

As we pointed out in Chapter 1, the *Constitution* confers a wide range of powers on the Ombudsman Commission in determining whether conduct is “wrong”.

Some of our opinions have been formed in relation to individuals who no longer hold public office. The Ombudsman Commission is of the view that public policy and public good require we should still make these findings.

We do not make findings of wrong conduct on the part of private individuals and organisations. Where appropriate, however, we have stated our opinions of the actions of private individuals and organisations in previous chapters of this report.

In this chapter, each opinion is set out as follows:

- the finding (i.e. the opinion) is stated;
- the main reasons for forming that opinion is stated;
- a reference is given to the paragraphs where facts and reasons relevant to the opinion is set out in detail.

An index of findings (i.e. each opinion on wrong conduct) is set out below.

[5.2] INDEX OF FINDINGS OF WRONG CONDUCT

Finding Number	Name
1	National Forest Board
2	National Forest Board
3	National Forest Board
4	Thomas Nen
5	Thomas Nen
6	Wari Iamo
7	Wari Iamo
8	Gabriel Samol
9	Andrew Baing
10	Fabian Pok
11	Norbert Makmop
12	Department of Trade and Industry

[5.3] FINDINGS

Finding N° 1

In the opinion of the Ombudsman Commission the conduct of the National Forest Board in awarding the Kamula Doso forest management area as an extension to the Wawoi Guavi timber rights permit breached the *Forestry Act* 1991 and the *Land Groups Incorporation Act* 1974 and was therefore wrong.

Reasons

- There were irregularities surrounding the Kamula Doso forest management agreement approved by the PNG Forest Authority on 19 February 1998. Under the *Land Groups Incorporation Act* 1974, an agreement with an incorporated land group is to be signed by two members of the group one of whom must be the chairman. This mandatory requirement was not complied with therefore the agreement was defective from the beginning.

- As a result of this defect in the acquisition process, the decision of the Board on 4 February 1999 to award Kamula Doso as an extension was also void. In effect there was no forest management agreement and therefore there could be no lawful extension.
- A development options study and final project guidelines for each project must be issued before any decision can be made either to advertise the project as a stand-alone project or to award it as an extension under Section 64(3) of the Act. This was not done.
- During the Board meeting on 4 February 1999 the Board acknowledged the draft project guidelines for the project submitted by the Western Province Forest Management Committee and “directed the Managing Director to review the draft and issue final project guidelines to include provision for environmental monitoring and waste management in accordance with Section 63(2) of the *Forestry Act*”. But the decision to award the extension was made at the same meeting and Section 63(2) was never complied with.
- Under Section 90 of the *Forestry Regulation* 1998 an application by the holder of a timber permit to the Board to approve a forest development project as an extension of an existing approved operation can only be made after a development options study and the final project guidelines have been issued by the Board. But the Board awarded the extension to Wawoi Guavi Timber Company without project proposals being submitted by that company or any other interested proponent.
- According to Board paper N° B2, dated 27 January 1999 and submitted by the Managing Director for Board meeting N° 54, the Western Province Provincial Forest Management Committee recommended that the Kamula Doso forest management area be advertised for tender. However the Board failed to give this adequate consideration and also failed to provide valid reasons for not accepting that recommendation.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [3.4] [3.5] [3.9] [3.10] [3.11] and [3.15].

Finding N° 2

In the opinion of the Ombudsman Commission the conduct of the National Forest Board in giving paramount consideration to the Rimbunan Hijau processing facility at Panakawa in its decision to award Kamula Doso as an extension to the Wawoi Guavi timber rights permit was wrong.

Reasons

- Examination of the Board meeting minutes of 4 February 1999, supplementary documents and the evidence given by several Board members revealed that the setting up of the veneer mill at Panakawa had a major influence on the Board's decision to recommend the Kamula Doso forest management area as an extension to the Wawoi Guavi timber permit.
- The veneer mill at Panakawa is owned by Rimbunan Hijau Timber Processing Ltd, a member of the Rimbunan Hijau group and a sister company to Wawoi Guavi Timber Company. The proposal for the veneer mill submitted in 1997 was not in detail and unrealistic because it included projections based on the inclusion of the Kamula Doso forest management area which both itself and Wawoi Guavi Timber Company had no logging rights to.
- The Board did not give consideration to a consultant's report commissioned by the National Forest Service that stated that the equipment Rimbunan Hijau imported for the construction of the mill was second hand and overvalued by the company by an estimated K19 million.
- Rimbunan Hijau Timber Processing does not have any logging rights in the Wawoi Guavi timber rights permit area nor does it have any log sales agreement with Wawoi Guavi Timber Company for the purchase of logs from Wawoi Guavi. Such an agreement is required because the two companies are separate entities and therefore the State has to be provided with important information on the volume of log sales for downstream processing and the financial outlay in log purchase and processing.
- The approval for Rimbunan Hijau to set up the mill in the first place was not a decision of the National Forest Board thus it is not incumbent on the Board to make sure the company has access to sufficient resources to sustainably operate the mill.

- When making its decision the Board should have given greater consideration to the fourth of the National Goals in the *Constitution* and the necessary compliance with the provisions of the *Forestry Act* than to Rimbunan Hijau resource needs.
- Provincial forest management committees play an important part in the process of forest resource development, acting as consultation and coordination bodies between the National Government and Provincial Governments, forest resource owners and special interest groups. Under Section 30 of the *Forestry Act* the forest management committee is to make recommendations to the National Forest Board in the selection of operators and the preparation of timber permits. It also plays an important role in resource allocation, under Sections 62(3)(b) and 63 of the *Forestry Act*. It is on the direction of a provincial forest management committee that development options studies and final project guidelines are undertaken by the National Forest Service.
- According to Board paper N° B2, dated 27 January 1999 submitted by the Managing Director for Board meeting N° 54, the Western Province Provincial Forest Management Committee recommended that the Kamula Doso forest management area be advertised for tender.
- This recommendation was brushed aside by Chairman of the Board Gabriel Samol, who placed greater importance on giving "the correct signal to investors". Another Board member, Dr Iamo, in his submission mentioned the forest management committee recommendation in one paragraph, but directly contradicted its view with his own recommendation.
- Construction and operation of a mill for the purposes of buying unprocessed timber for down-stream processing is a forest industry activity and any person involved in such activities is a forest industry participant within the meaning of the *Forestry Act*. By constructing the veneer mill at Panakawa within the Wawoi Guavi concession without obtaining approval from the Board, Rimbunan Hijau Timber Processing Ltd and Wawoi Guavi Timber Company breached Section 122(1) and Section 122(2)(j) of the *Forestry Act*.
- The members of the National Forest Board had been made aware of various potential developers who had expressed interest in developing Kamula Doso as a stand-alone. The resource capacity of the Kamula Doso forest management area was sufficient to sustain a stand-alone project which would be most beneficial to the resource owners. However, these considerations were outweighed by the Board's misplaced desire to give a positive signal to investors.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.23] [2.25][2.33] [2.34] [3.4] and [3.5].

Finding N° 3

In the opinion of the Ombudsman Commission the conduct of the National Forest Board in failing to formulate a clear policy on extensions was wrong.

Reasons

- The National Forest Board had a general understanding that forest areas over 80,000 hectares should be allocated by general newspaper advertisement in accordance with Section 64(1) of the *Forestry Act*.
- But during the course of this investigation it was revealed that there was no documented policy that forest areas of more than 80,000 hectares are to be allocated by newspaper advertisement or as a stand-alone project.
- There was disagreement amongst those who gave evidence to the Ombudsman Commission about the 80,000 hectare policy. Some said that there was such a policy. Others said it is not a policy but a general understanding. Others said that it was a practice that was based on the sustainability of the project and thus related to the annual allowable cut but had no bearing on the size of the area.
- The size of the Kamula Doso forest management area is 791,000 hectares which is almost twice the size of the Wawoi Guavi timber rights permit area and nearly 10 times more than the 80,000 hectares which is usually marked for advertisement according to this standard practice.
- It would appear that in allocating the Kamula Doso forest area as an extension, the Board disregarded its own practice and precedents.
- The Board was aware of the discretion it had when dealing with extensions. It knew of the need for the formulation of a clear policy to ensure transparency and accountability in the awarding of extensions. But it never established a clear policy.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.34] [3.3] and [3.5].

Finding N° 4

In the opinion of the Ombudsman Commission the conduct of Thomas Nen, the Managing Director of the National Forest Service, in rejecting the advice of his technical officers and maintaining that resource owners supported an extension of the Wawoi Guavi timber rights permit on the basis of one landowner company's views was wrong.

Reasons

- In the months leading up to the National Forest Board's decision on 4 February 1999 Mr Nen presented several detailed papers urging the Board not to rush in and award an extension to Wawoi Guavi on the basis of superficial reasons or pressure from Rimbunan Hijau.

For example:

- Mr Nen's letter to the Secretary of the Department of Trade and Industry (21.5.98);
 - Mr Nen's brief for the Board on Kamula Doso forest area (28.7.98);
 - Mr Nen's brief for the Board on Rimbunan Hijau's activities in the country (28.7.98);
 - Mr Nen's submission to the Board on the plywood mill at Panakawa (30.9.98); and
 - Mr Nen's submission for Board meeting N° 54 (27.1.99).
- Despite that, the minutes of the meeting of 4 February 1999 show that the only Board member who objected to the project being granted as an extension was landowner representative Lawrence Kambogru.
 - Did Mr Nen completely change his mind on the merits of granting an extension to the Rimbunan Hijau subsidiary? Or did he simply disregard the advice of the technical advisers at the National Forest Service because he had already made up his mind to support an extension?

- From the evidence of Mr Nen and others it is obvious that the Managing Director, without due consideration of the issues, rejected the advice given by the technical staff of the National Forest Service.
- In his evidence before the Commission, Mr Nen said that one of the reasons for supporting the extension to the Wawoi Guavi timber rights permit was that the landowners were in favour of it. However, he failed to produce evidence to show that the resource owners, as represented by the relevant incorporated land groups, supported the extension.
- Mr Nen made the assumption that the submissions he received from a single landowner company, Wawoi Tumu Holdings, were representative of the wishes of the majority of resource owners from the area. This was a seriously defective assumption.
- The *Forestry Act* only speaks about “resource owners” and “incorporated land groups” in the sections of the Act relating to resource acquisition. There is no reference to seeking the views of landowner companies. Mr Nen, therefore, wrongly entertained the views of a company that really had no say in the matter.
- By his letter of 13 January 1999 to Olaba Tau and Whisky Maitona of Kamula Doso Blocks 1 and 2, it is apparent that Mr Nen was fully aware that resource owners at Block 3 did not support Blocks 1 and 2 in their choice of a developer.
- The Managing Director did not produce any evidence to show that he tried to obtain the views of other resource owners, either directly from them or through the committee members of their land groups.
- Mr Nen’s conduct was confusing and contradictory and gave the impression that he either did not know or did not care what official documents he signed.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.32] [2.33] [2.15] [2.16] [2.17] [2.29] [3.4] [3.5] [3.7] and [3.9].

Finding N° 5

In the opinion of the Ombudsman Commission the conduct of Thomas Nen, the Managing Director of the National Forest Service, in not taking steps to ensure that Rimbunan Hijau set up the veneer mill at Panakawa properly and in accordance with the *Forestry Act* was wrong.

Reasons

- When Rimbunan Hijau Timber Processing Ltd constructed the veneer mill at Panakawa in the Wawoi Guavi timber rights permit area, it did so without obtaining prior approval from the National Forest Board. The mill was set up in early 1998.
- Section 91 of the *Forestry Act* provides for the issuance of licences to forest industry participants to engage in forest industry activities other than those carried out under a timber permit or a timber authority. The purchase of logs for downstream processing is a forest industry activity and required such a licence.
- The company breached Section 122(1) and Section 122(2)(j) of the *Forestry Act* by engaging in a forest industry activity for which it did not have approval.
- As Managing Director of the National Forest Service, Mr Nen must have been aware that the mill had been constructed without authority.
- There is no evidence before the Ombudsman Commission to show that Mr Nen raised this issue with Rimbunan Hijau when he was taken on a tour of the new mill in May 1998.
- On 5 February 1999 the day after the Board made its decision to award Kamula Doso as an extension to the existing Wawoi Guavi timber permit, Mr Nen wrote to Rimbunan Hijau about the unauthorised mill construction. In his letter, Mr Nen congratulated the company for setting up the mill saying, "It is a tremendous effort on your part in promoting the concept of downstream processing".
- After commending Rimbunan Hijau for constructing the mill, he then urged the company to make the necessary applications to comply with the Act.

- Mr Nen's failure to take legal action against Rimbunan Hijau for its non-compliance with the *Forestry Act* condoned the company's illegal action and demeaned his position and diminished respect for his position as the Managing Director of the National Forest Service and as member of the National Forest Board.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.9] [2.10] [2.14] [2.15] [2.22][2.25] [3.5] and [3.6].

Finding N° 6

In the opinion of the Ombudsman Commission the conduct of Wari Iamo, member of the National Forest Board, in making a statement that landowners were in favour of the project being treated as an extension to Wawoi Guavi's existing permit without supporting evidence was wrong.

Reasons

- In his business paper to the Board, dated 27 January 1999 Dr Iamo said that it was "strongly desired by the majority of the landowners of the Kamula Doso timber project area that this project should be treated as an extension of the Wawoi Guavi timber permit and the project area shall be awarded to the developer Wawoi Guavi Timber Pty Ltd".
- A number of the people who gave evidence to the Ombudsman Commission warned of the dangers of mistaking the views of some landowner companies for the views of the majority of landowners. Like Managing Director Nen, Dr Iamo's statement about the support of landowners was based entirely on the views of one landowner company, Wawoi Tumu Holdings.
- Dr Iamo was prepared to disregard the advice of the technical staff of the National Forest Service and the recommendation of the Western Province Provincial Forest Management Committee in favour of the views of one private landowner company.

- In his evidence before the Ombudsman Commission Mr Iamo admitted that he was not aware of any landowners making personal representation but formed his opinion on what was presented to the Board.
- The statement by Dr Iamo that it was the wish of landowners that Kamula Doso be given as an extension of the Wawoi Guavi timber permit was irresponsible, highly questionable and made without supporting evidence.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [3.3] and [3.5].

Finding N° 7

In the opinion of the Ombudsman Commission the conduct of Wari Iamo, the Director of the Office of Environment and Conservation and member of the National Forest Board, in not satisfying himself or the Board that environmental concerns had been addressed before recommending Kamula Doso as an extension to the Wawoi Guavi timber rights permit was wrong.

Reasons

- In his submission to the Board, dated 27 January 1999, Dr Iamo referred to Rimbunan Hijau's investment in the "multi-million kina" mill as reason enough for the Board to award the Kamula Doso area as an extension to Wawoi Guavi Timber Company.
- Dr Iamo recommended that Kamula Doso be awarded as an extension to Wawoi Guavi Timber Company without giving consideration to the fact that the area is large enough to support a stand-alone project and as such should be the subject of an environmental plan.
- Dr Iamo's position on the Board was by virtue of his position as the head of the Office of Environment and Conservation pursuant to Section 10(1)(b) of the *Forestry Act*. This office was responsible for the administration of the *Environmental Planning Act* which provides for the crucial requirement of environmental plan in any application for a timber permit.

- Dr Iamo did not at any stage of the decision making process and in his submission to the Board, give proper consideration to environmental matters. He proved to be more interested in matters other than that for which he was on the Board.
- There is no evidence to show that the Office of Environment and Conservation was asked to provide any advice to either Dr Iamo or the National Forest Board through Dr Iamo on the environmental, conservation and planning aspect of the Kamula Doso project.
- Dr Iamo acted in a way directly opposite to what would reasonably be expected of a person holding his position. His conduct was baffling and negligent.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.1] [3.3] and [3.5].

Finding N° 8

In the opinion of the Ombudsman Commission, the conduct of Gabriel Samol, member of the National Forest Board, in voting in favour of the Kamula Doso extension with the knowledge that final project guidelines were not issued by the Board was wrong.

Reasons

- In his letter to the Minister for Forests Dr Fabian Pok dated 30 July 1998 Mr Samol, then the Chairman of the National Forest Board, informed the Minister that the Board was prevented by law from allocating the Kamula Doso forest management area as an extension of an existing project, until a development options study and draft project guidelines were reviewed and a set of final project guidelines had been issued by the Board.
- These were mandatory requirements under the *Forestry Act* and the *Forestry Regulation* and had to be complied with whether the project was a stand-alone or an extension.

- During the Board meeting Mr Samol reminded the board members of the Rimbunan Hijau processing facility at Panakawa and added that it was important to give the correct signals to investors. He did not raise any issue about the fact that final project guidelines had not been issued.
- He acted contrary to his own advice to the Minister when he voted in favour of the Kamula Doso extension.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.16] [2.17] [2.19] [2.20] [2.23] [2.24] and [3.5].

Finding N° 9

In the opinion of the Ombudsman Commission the conduct of Andrew Baing, the then Minister for Forests, in giving directions to the National Forest Board on specific matters before the Board was contrary to law and wrong.

Reasons

- In his letter of 6 September 1996 to Wawoi Tumu Holdings, Mr Baing said he had directed the Managing Director of the National Forest Service to immediately treat the company's request as an extension to Wawoi Guavi Timber Company's timber permit.
- Section 148(2) of the *Constitution* states that all departments, sections, branches and functions of the government must be the political responsibility of a Minister. However, Subsection 3 states that Subsection 2 does not confer on a Minister any power of direction or control.
- Section 148 of the *Constitution* was addressed in *Supreme Court Reference N° 1 of 1982; Re Bouraga* [1982] PNGRL 178. The then Chief Justice, Sir Buri Kidu stated at pages 184-185:

This Constitutional Law, in my view, does four things:

- (a) it vests in the Prime Minister of PNG the power to determine what ministerial title a particular Minister is to have; and
- (b) what a Minister's responsibilities must be; and
- (c) of what departments, sections, branches and functions of government a Minister has political responsibility; and
- (d) that s. 148(2) does not confer on a Minister any power of direction or control.

It does not say that a Minister has no power of direction or control *whatsoever* over a department, section, branch and function of government of which he/she has political responsibility. It is my view that s. 148 merely says that the fact that it (i.e. s. 148) vests in a Minister the political responsibility over a department, section, branch, etc. in itself confers no powers of direction or control over those bodies. I cannot also see that s. 148 prohibits Parliament from making laws vesting in Ministers power of direction and control over matters for which they have political responsibility.

- The Ombudsman Commission has reported other cases in which Ministers have attempted to influence the decisions of Boards and other governmental bodies through the issuing of directions. The Commission addressed this problem in the recommendations of the Ombudsman Commission's Poreporena Freeway Report (page 529):

Ministers must refrain from directing Departmental heads to do things when they have no power to do so.

Ministers and members of the Minister's official personal staff must also refrain from giving directions to other officers of the Department or government body for which the Minister has political responsibility. Officers of departments and governmental bodies should receive their instructions from their permanent head - not from the Minister or members of his official personal staff.

- Section 7(2) of the *Forestry Act* allows the Minister for Forests to give "any directions to the Forest Authority, through the Board, in regard to the carrying out of the functions of the Authority as he considers necessary for the purpose of achieving the objectives of the Authority".
- This appears, however, to be a grant of power only allowing the Minister to direct the Board on questions of policy. It does not allow the Minister to arbitrarily direct the Board on specific matters before it. Nor is the Minister empowered to direct the Board to breach its statutory obligations.
- Mr Baing meddled in the affairs of the Forest Authority. His directions were arbitrary and irresponsible.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.5] [2.6] and [2.7].

Finding N° 10

In the opinion of the Ombudsman Commission the conduct of Fabian Pok, the then Minister for Forests, in giving directions to the National Forest Board on specific matters before the Board was contrary to law and wrong.

Reasons

- From Dr Pok's letter of 14 July 1998 and the minutes of Board meeting N° 54 of 4 February 1999, it was evident that he had directed the Board to make a particular decision on the Kamula Doso issue.
- As well as giving directions to the Board Dr Pok advised the Board to disregard existing procedures to speed up the allocation of the Kamula Doso forest management area.
- As discussed under the findings concerning Mr Andrew Baing, the power of the Minister for Forests to give directions to the Board is limited to policy matters necessary for attaining the objectives of the Board. By giving such a specific direction Dr Pok defeated the purpose of having a National Forest Board.
- Mr Pok meddled in the affairs of the Forest Authority. His directions were arbitrary and irresponsible.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.19 and [2.23].

Finding N° 11

In the opinion of the Ombudsman Commission the conduct of Norbert Makmop, the Governor of Western Province, in encouraging the Minister for Forests and the Prime Minister to apply undue pressure on the National Forest Board to make an arbitrary decision in favour of a Malaysian logging company, Sime Darby Berhad, was wrong.

Reasons

- The Governor of Western Province, Norbert Makmop, wrote to then Prime Minister Bill Skate on 24 September 1998, requesting Mr Skate's urgent support to ensure Kamula Doso was not awarded as an extension to the Rimbunan Hijau subsidiary company.
- Mr Makmop was backing a rival proposal for the Kamula Doso forest area by another Malaysian logging company, Sime Darby Berhad.
- Mr Makmop wrote to then Minister for Forests Peter Arul on 27 October 1998 stating that the Western Province Provincial Executive Council had approved and endorsed the conceptual proposal submitted by Sime Darby. He said that a Board decision to allocate Kamula Doso to any company other than Sime Darby "will be strongly opposed and rejected by us".
- He urged the Minister to intervene in the matter by exercising his authority to ensure all the above-mentioned areas are advertised for tender or, he added, "alternatively grant all the areas to Sime Darby by way of an extension to East Awin FMA".
- In the opinion of the Ombudsman Commission, Mr Makmop's motivation for seeking ministerial and prime ministerial intervention was not a desire to see a fair, transparent and well-considered decision made, but rather the desire for an arbitrary decision to be made in favour of Sime Darby.
- Mr Makmop meddled in the affairs of the Forest Authority. His requests were improper and irresponsible.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.26] and [2.30].

Finding N° 12

In the opinion of the Ombudsman Commission the conduct of the Department of Trade and Industry in not consulting other departments and governmental bodies when preparing a National Executive Council submission on the construction of the veneer mill by Rimbunan Hijau at Panakawa was wrong.

Reasons

- Rimbunan Hijau's proposal for the construction of the veneer mill in Panakawa was first submitted to the then Minister for Trade and Industry, Mr Nakikus Konga, on 21 August 1997.
- On 27 August 1997 Prime Minister Bill Skate wrote to Minister Konga asking to be informed of the status of the project and at the same time urging him to prepare a cabinet submission for consideration.
- On 1 September Mr Konga referred a brief proposal to the Secretary of the Department of Trade and Industry Joshua Kalinoe who directed that a draft National Executive Council submission be prepared on the basis of the document submitted by Mr Konga.
- The submission was finalised and cleared for final screening by the inter-departmental project screening committee on 23 September 1997.
- During the inter-departmental committee meeting on 24 September most members expressed concern that the National Executive Council submission was being rushed. The Chairman, Mr Joshua Kalinoe, explained that the standard NEC screening process was by-passed due to the urgency of the matter and political directions.
- Departments and agencies having an interest in the project and its implications were not given the opportunity to review and to contribute to the submission.

- On 25 September 1997 the National Executive Council approved the proposal for the construction of the veneer mill in principle and also approved tax incentives for the project.
- The Department, in particular its head, Mr Kalinoe, allowed its standard decision making processes to be bypassed for the sake of political expediency and consequently the National Executive Council made a poor decision without the benefit of necessary information.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.9] [2.10] and [2.15].



6. RECOMMENDATIONS

[6.1] LEGAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1 the general purpose of this investigation was to determine whether any of the conduct under investigation was wrong and to determine whether any laws or administrative practices were defective.

The Ombudsman Commission is expressly authorised to form an opinion on such matters by Section 22(1) of the *Organic Law on the Ombudsman Commission*.

If, after conducting its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective it is authorised to make specific recommendations. Such recommendations are made under Section 22(2) of the *Organic Law on the Ombudsman Commission*.

Section 22(2) states:

If in any case to which this Section applies the Commission is of the opinion that any service, body, person or other appropriate authority should –

- (a) consider the matter further; or
- (b) take certain specific action; or
- (c) modify or cancel any administrative act; or
- (d) alter any regulation or ruling; or
- (e) explain more fully any administrative act; or
- (f) do any other thing,

the Commission shall report it's opinion and the reasons for it's opinion, to the Minister responsible for the relevant service, body or person and to the permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

In this chapter we make a number of recommendations based on the findings of wrong conduct and defective administration referred to earlier.

Each recommendation is set out as follows:

- the recommendation is stated;
- the recipients (i.e. the person to whom the recommendations are directed) are identified;

- the main reasons for making the recommendations are stated.

[6.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

We recommend that some individuals have their continuing public employment carefully reviewed. The Ombudsman Commission is of the opinion that holders of public offices must continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

[6.3] RECIPIENTS OF RECOMMENDATIONS

When we make recommendations we are obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to report our recommendations to both the Minister and, if appropriate, the permanent or statutory head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[6.4] RESPONSIBLE MINISTERS

Section 148 of the *Constitution* provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Ministers set out in the table below.

TABLE: 6.1

**MINISTERS RESPONSIBLE FOR FOLLOWING UP
IMPLEMENTATION OF RECOMMENDATIONS**

Service, bodies or persons being asked to do things	Responsible Minister
Chief Secretary to Government	Prime Minister, Hon Sir Mekere Morauta Kt MP
National Executive Council	
Secretary, Department of Environment and Conservation	Minister for Environment and Conservation Hon Herowa Agiwa MP
Managing Director, National Forest Service	Deputy Prime Minister and Minister for Forests Hon Michael Ogie CBE MP
National Forest Service	
National Forest Board	
Provincial Forest Management Committees	
Secretary, Department of Trade and Industry	Minister for Trade and Industry Hon Tukape Masani MP
Secretary, Department of Lands and Physical Planning	Minister for Lands and Physical Planning Hon Charlie Benjamin MP
Attorney General	Minister for Justice Hon Puri Ruing MP

[6.5] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinion on things to be done are expressed in the form of “recommendations” does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the *Organic Law on the Ombudsman Commission* to notify the Ombudsman Commission in writing within 30 days after the days of the service of the report of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

If the Commission so requests, the responsible Minister, Permanent Head or statutory head as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.

Accordingly, there is a *duty* placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the *Constitution* and the *Organic Law on the Ombudsman Commission*.

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the *Constitution*.

[6.6] INDEX OF RECOMMENDATIONS

Number	Summary
1	The National Forest Board makes a formal decision to revoke its decision of 4 February 1999 to award Kamula Doso as an extension to the existing Wawoi Guavi timber rights permit and to declare that that decision is a nullity.
2	The National Forest Board and the Department of Environment and Conservation ensure that the provisions of the <i>Environmental Planning Act Chapter 370</i> be complied with in the allocation and implementation of all forest development project in the country.
3	All provincial forest management committees ensure that their duties under the <i>Forestry Act 1991</i> are strictly and diligently complied with.
4	The <i>Forestry Act 1991</i> be amended so that it expressly states that the Minister for Forests may only directs the Board on matters of policy and not on operational matters.
5	The National Forest Board make clear policy guidelines on the size of forest management area to be advertised as a stand-alone project or as an extension.

6	The National Forest Board undertake annual reviews of all logging operations in the country to ensure full compliance with contractual obligations and to carefully screen future applications from defaulting companies.
7	The future public re-employment of Thomas Nen must be carefully and critically viewed.
8	That the National Executive Council notify Wari Iamo of its intention to terminate his appointment to the National Forest Board.
9	That the National Executive Council notify Gabriel Samol of its intention to terminate his appointment to the National Forest Board.
10	Coordination between departments be observed to ensure necessary compliance with all requirements relating to proposed forest projects.
11	Present projects and future proposals by the Rimbunan Hijau group of companies be carefully audited and monitored to ensure that all legislative requirements pertaining to forest industry activities are strictly complied with; and that all future proposals by that group of companies be critically screened before approval.

[6.7] RECOMMENDATIONS

Recommendation N° 1

That the National Forest Board makes a formal decision to revoke its decision of 4 February 1999 to award Kamula Doso as an extension to the existing Wawoi Guavi timber rights permit and to declare that that decision is a nullity and to deal with all future project proposals relating to Kamula Doso strictly in accordance with the *Forestry Act*.

Recipients

- The members of the National Forest Board.
- Minister for Forests.

Reasons

- The forest management agreement for Kamula Doso was signed by persons who had no authority to do so under the constitutions of the incorporated land groups established under the *Land Groups Incorporation Act*. Thus there was no valid agreement.
- In the absence of a valid forest management agreement between the customary landowners and the PNG Forest Authority, the National Forest Board had no right to assign logging rights to traditional forest resources either as an extension to or under a timber permit to a developer.
- It is a mandatory requirement of the *Forestry Act* 1991 that a forest management agreement must be in place before a forest development project can be set up. Since there was no proper agreement the decision to award Kamula Doso as an extension to Wawoi Guavi Timber Company is *void ab initio*, i.e. void from the beginning.
- In order for the project to eventuate a new forest management agreement must be entered into between the incorporated land groups and the PNG Forest Authority. This process is soon to be completed.

- A formal decision should be made declaring the decision of 4 February 1999 as a nullity before a further decision is made to assign the Kamula Doso forest area to a developer.

Recommendation N° 2

That the National Forest Board and the Department of Environment and Conservation ensure that the provisions of the *Environmental Planning Act 1978* are complied with in the allocation and implementation of all forest development projects in the country.

Recipients

- Members of the National Forest Board.
- Secretary, Department of Environment and Conservation.
- Minister for Forests.
- Minister for Environment and Conservation.

Reasons

- The *Environmental Planning Act 1978* is concerned with the development of the environment having regard to uniform systems of environmental management in accordance with the fourth National Goal. That is for our natural resources and environment to be conserved and used for the collective benefit of us all and to be replenished for the benefit of future generations.
- The Act provides for the submission of detailed environmental and social impact assessments, which are intended to protect the environment as well as the interests of the landowners who are in most cases subsistence gardeners who depend on the land for their livelihood.
- The requirements of the Act stem from the fourth National Goal and therefore require strict compliance.

- Section 77 of the *Forestry Act* makes it mandatory for an environmental plan to be submitted together with an application for a timber permit.

Recommendation N° 3

That all provincial forest management committees ensure that their duties under the *Forestry Act* 1991 are fully understood and are strictly and diligently complied with.

Recipients

- The members of Provincial Forest Management Committees.
- The Managing Director, National Forest Service.
- The Chairman, National Forest Board.
- Minister for Forests.

Reasons

- Provincial forest management committees are required by the *Forestry Act* to evaluate proposals from project proponents and give their recommendations to the National Forest Board.
- Section 70 of the Act empowers these committees to actually negotiate the project agreements with project proponents and to submit a final draft of the project agreement to the Board.
- Each committee is required under Section 58(f) of the Act to satisfy itself as to the authenticity of the tenure of the customary landowners claiming ownership of the land.
- The committees are entrusted with the task of ensuring that there is landowner consultation before a forest management agreement is approved. They are responsible for ensuring that landowner interests are catered for in the initial awareness campaign and in the incorporation of land groups. They are expected to and take a leading role in the formulation of the development options study as well as the project guidelines for the project proponent.

- In the case of Kamula Doso, there was no proper consultation between the Western Province Provincial Forest Management Committee and the landowners, and this resulted in the forest management agreement being signed by persons who were not authorised to do so.
- The recommendation of each committee must be considered and where a recommendation is rejected, valid reasons must be given.

Recommendation N° 4

That Section 7(2) of the *Forestry Act* 1991 be amended so that it expressly states that the Minister for Forests may only direct the Board on matters of policy and not on operational matters.

Recipients

- Members of the National Forest Board.
- Minister for Forests.
- Minister for Justice.
- Attorney General.

Reasons

- Section 7(2) of the *Forestry Act* confers on the Minister the power to give to the PNG Forest Authority, through the Board, any direction in regard to the carrying out of the functions of the Authority.
- In the course of this investigation it was evident that this provision was misused by consecutive Ministers to give directions to the National Forest Board on the awarding of Kamula Doso as an extension to the Rimbunan Hijau group of companies.
- Such ministerial directives should not be allowed in operational matters.
- As presently drafted, Section 7(2) provides an avenue for abuse. Any ministerial directive should be limited to matters of policy.

Recommendation N° 5

That the National Forest Board make clear policy guidelines on the size of a forest management area to be advertised as a stand-alone project or as an extension and publish those guidelines in the *National Gazette*.

Recipients

- Members of the National Forest Board.
- Minister for Forests.

Reasons

- During the course of this investigation many of the officials interviewed, including members of the National Forest Service and the National Forest Board, were unsure of the exact meaning of an “extension” under the *Forestry Act*.
- Several were of the view that a Board policy existed that any area above 80,000 hectares was to be treated as a stand-alone project and not an extension. Others said there was no such policy except that for sustainability purposes an area with the potential to harvest more than 80,000 cubic metres is to be treated as a stand-alone project.
- It is necessary to state exactly the gross loggable area that should be treated as a stand-alone project (and therefore not an extension) taking into account factors such as the commercial viability and the social and environmental impact of such a project.
- The 2000 amendment to the *Forestry Act* prohibits a project from being awarded as an extension unless it is so small on its own that it is unable to support a commercially viable project. However it is important that there be a clear and identifiable policy to put that amendment into practical effect.

Recommendation N° 6

That the National Forest Board undertake annual reviews of logging operations in the country to ensure that all developers comply with their obligations under each forest management agreement and that the Board rejects future applications from those who have failed to meet their statutory, contractual or fiduciary obligations.

Recipients

- Members of the National Forest Board.
- Minister for Forests.

Reasons

- In his letter of 21 May 1998 to the Secretary for Trade and Industry, the Managing Director of the National Forest Service, Thomas Nen, was clearly aware that Wawoi Guavi Timber Company was not complying with its obligations under the timber permit issued to it for the Wawoi Guavi forest management area.
- The decision to award the much bigger Kamula Doso area as an extension to the same company was contradictory and irrational given that non-compliance.
- The recent nationwide review carried out by the independent review team has suggested that non-compliance with the due process of the law is widespread in the forest industry.
- The fourth of the National Goals under the *Constitution* calls for wise use of our forest resources with emphasis on conservation and replenishment in the interests of our development for future generations.
- It also calls for special consideration to be given to biodiversity issues. These are very important issues that can only be properly addressed if annual reviews are undertaken and non-compliance is dealt with forcefully.
- Our forestry laws must be strictly enforced.

- The National Forest Board has a fiduciary duty to customary resource owners to ensure that resource owners benefit fairly from the use of their resources and that these resources are wisely and sustainably used with the interests of future generations of Papua New Guineans in mind.

Recommendation N° 7

The future public re-employment of Thomas Nen be carefully and critically viewed.

Recipients

- Chief Secretary to Government.
- Prime Minister.

Reasons

- The conduct of Thomas Nen as the Managing Director of the National Forest Service and as a member of the National Forest Board at the time the decision to award Kamula Doso as an extension to the Wawoi Guavi timber permit area was made was clearly wrong.
- He failed to live up to the standard demanded and expected of him.
- Mr Nen was repeatedly indecisive and contradictory in his handling of the Kamula Doso matter, which was evident in him acting contrary to his own advice to the Board.
- Mr Nen no longer holds the office of Managing Director of the National Forest Service and it is essential that his on-going public employment or re-employment be carefully and critically reviewed.

Recommendation N° 8

That the National Executive Council give written notice to Wari Iamo under Section 14(4) of the *Forestry Act*, advising that the National Executive Council intends to terminate his appointment as a member of the National Forest Board on the ground of inefficiency; and that the National Executive Council after receiving Mr Iamo's reply, give due consideration to terminating his appointment.

Recipients

- National Executive Council.
- Prime Minister.

Reasons

- The conduct of Wari Iamo as a member of the National Forest Board at the time the decision to award Kamula Doso as an extension to the Wawoi Guavi timber rights purchase area was made, was wrong.
- As representative of the Office of Environment and Conservation on the Board, he failed to give any proper advice and consideration to environmental concerns.
- He failed to live up to the standard demanded of him as the chief conservator and the head of the body responsible for environmental matters.
- In the opinion of the Ombudsman Commission, Mr Iamo should not continue to hold an office he has shown himself unable to adequately perform.

Recommendation N° 9

That the National Executive Council give written notice to Gabriel Samol under Section 14(4) of the *Forestry Act*, advising that the National Executive Council intends to terminate his appointment as a member of the National Forest Board on the ground of inefficiency; and that the National Executive Council after receiving Mr Samol's reply, give due consideration to terminating his appointment.

Recipients

- Minister for Forests.
- Chairman, National Executive Council.

Reasons

- The conduct of Mr Samol as a member of the National Forest Board at the time the decision to award Kamula Doso as an extension to the Wawoi Guavi timber rights purchase area was made, was wrong.
- Mr Samol who had been a career forester was fully aware that mandatory requirements of the *Forestry Act* had not been complied with but did not provide any dissenting views to the decision made by the Board on 4 February 1999.
- He failed to live up to the standard demanded of him as the Acting Chairman of the Board.
- In the opinion of the Ombudsman Commission, Mr Samol should not continue to hold an office he has shown himself unable to adequately perform.

Recommendation N° 10

That coordination between departments and other governmental bodies be markedly improved to ensure necessary compliance with all requirements relating to proposed forest development projects.

Recipients

- Chief Secretary to Government.
- Prime Minister.

Reasons

- The National Executive Council submission for the construction of the veneer mill at Panakawa was compiled by the Department of Trade and Industry and rushed through the National Executive Council without proper consultation with other relevant departments and bodies like the Department of Forest and the PNG Forest Authority.
- Provisions of the *Forestry Act* relating to licences were ignored and subsequently breaches of the Act occurred as a result of lack of consultation and coordination.
- It was revealed during this investigation that there had been some reservations raised with the Department of Trade and Industry by the National Forest Service on the performance of the Rimbunan Hijau subsidiary, Wawoi Guavi Timber Company, before the approval was granted for the establishment of the mill at Panakawa.
- Those reservations were not taken seriously by the Department of Trade and Industry.
- Approval was not granted at the time the equipment for the mill was brought into the country. Proper legal and technical advice, feasibility studies and consultation between the government departments and bodies did not take place as required. Standard screening procedures were by-passed.
- Coordination and consultation minimises the risk of having to proceed with a project that is technically and legally defective.

- The construction of the mill at Panakawa was a case where a number of governmental bodies simply failed to let each other know what was happening.

Recommendation N° 11

That all forest development projects being undertaken by the Rimbunan Hijau group of companies be carefully audited and monitored to ensure that all legislative and administrative requirements are strictly complied with; and that all future project proposals by that group of companies be critically screened before approval.

Recipients

- Members of the National Forest Board.
- Secretary Department of Trade and Industry.
- Managing Director, National Forest Service.
- Minister for Forests.
- Minister for Trade and Industry.
- Minister for Environment and Conservation.

Reasons

- The construction of the veneer mill at Panakawa was one of the major considerations in the decision to award Kamula Doso as an extension to the Wawoi Guavi TRP. The fact that the mill was constructed without proper screening and approval from the National Forest Board was overlooked.
- Wawoi Guavi Timber Company and Rimbunan Hijau Timber Processing are two subsidiaries of Rimbunan Hijau. Both companies do not have any logging rights in the Kamula Doso forest area. Rimbunan Hijau Timber Processing did not have any log sales agreement with Wawoi Guavi Timber Company or with any other logging company for the purchase of logs for its veneer mill.

- Rimbunan Hijau Timber Processing in setting up the veneer mill was a forest industry participant within the meaning of the *Forestry Act* and as such was required to obtain a licence under the Act before it could set up the veneer mill and start buying logs to process. At the time the mill was constructed the company had not obtained any licence from the National Forest Board.
- The National Forest Board failed to ensure that Rimbunan Hijau Timber Processing complied with the *Forestry Act* when it set up the mill.
- In view of the conduct of the Rimbunan Hijau group of companies that has been revealed by this investigation, it is timely and necessary for the National Forest Board and the Managing Director of the National Forest Service to have a particularly close look at how the Rimbunan Hijau Group conducts its business in Papua New Guinea.



7. CONCLUSION

[7.1] DEFECT IN THE KAMULA DOSO FOREST MANAGEMENT AGREEMENT

The decision of the National Forest Board to award the Kamula Doso forest management area as an extension to the Wawoi Guavi timber rights permit was defective for three main reasons.

First it was based on a forest management agreement that was void. Secondly, it breached the provisions of the *Forestry Act* relating to extensions. Finally, it was based upon improper considerations.

Findings of wrong conduct have been made concerning the actions of public officials and leaders in this matter.

[7.2] GOOD LEADERSHIP AND GOOD GOVERNANCE

Good and desirable governance of any institution, private or public, as well as of a nation is dependent upon good leadership and sound management. Good leaders understand their roles and responsibilities and perform their duties within the ambit of the law that governs their conduct. The same applies to private companies involved in an industry that is regulated by law for the public good.

Public officials who are empowered by law to make decisions that will affect the lives of individuals must ensure that they carry out their duties in good faith and in compliance with the laws. They must be good role models. Professional negligence by public officials must be dealt with seriously.

The following are some characteristics of good governance necessary to eliminate bad administrative practices:

- honesty
- diligence
- consistency
- competency

- compliance with established laws and procedures
- standing up to political interference

People in responsible positions in government are leaders and therefore must exercise due diligence, honesty and consistency in the work they are entrusted with. Inconsistency in decision making creates doubts in the mind of the public that the decision maker has been influenced by outside sources.

Experience has shown too that political interference and frequent changes in senior positions results in ad-hoc, inconsistent and incompetent decision making. Blanket approvals by the National Executive Council without giving consideration to proper screening processes are dangerous and must be discouraged. There is little point in having the *Forestry Act* if those who are entrusted with the responsibility for administering it turn a blind-eye to flagrant breaches of the law.

[7.3] FIDUCIARY DUTY

The fourth of Papua New Guinea's National Goals imposes a fiduciary duty on those responsible for the management of our natural resources and the environment to use these resources for the collective benefit of us all, particularly the customary owners. Our natural resources must be replenished for the benefit of future generations.

A fiduciary is a custodian, *waspapa* or a *naria tauna*. A fiduciary does not have exclusive rights to use and dispose. A fiduciary is a trustee who is responsible for and who must act in the best interest of the beneficiary. This is a primary constitutional obligation that must be taken much more seriously by the members of the National Forest Board and other public officials who are placed in fiduciary positions.

The Board must take special care to protect the rights of resource owners especially those in remote areas who are illiterate. These people must understand the nature of the agreements they enter into and must be allowed to seek independent advice before they make decisions. Their position must not be undermined and disregarded.

[7.4] SUMMING UP

This is the second Ombudsman Commission report into the issue of the awarding of an extension to an existing forest management project.

The first report was the *Investigation into the issuing of a permit to Turama Forest Industries* in the Gulf province which was finalised in 1995. It is sad to note that not a lot seems to have been learned by the National Forest Board after the final report on *Turama* was made public.

The provisions of the Forestry Act relating to extensions have been amended in a way that should prevent a decision such as the one in the Kamula Doso case from recurring. But that is no reason to be complacent. There is still much to be learned from the serious flaws in the Kamula Doso decision-making process.

We ask the leaders to whom we have directed our recommendations to carefully and conscientiously consider our recommendations, and implement them without delay.



I GENO
CHIEF OMBUDSMAN



R HITOLO
OMBUDSMAN



P MASI
OMBUDSMAN

PORT MORESBY
19 JULY 2002

INDEX

A

Agiwa, Herowa	104
Amos, Goodwill	3, 22
Arul, Peter	6, 36-37, 41, 48-49, 57, 99
Association of Foresters of PNG	3, 75
Attorney General	110, 114

B

Badi, Joseph	3, 13, 58
Baing, Andrew	6, 13-14, 17, 28, 85, 96, 98
Barker, Paul	3
Benjamin, Charlie	104
Brunton, Brian	3, 6, 59
Bun, Yati	3, 6, 13
Business Paper	34, 37, 47, 68, 93

C

Cabinet	100
Constitution	1-2, 4, 15-16, 60-61, 71-72, 81, 84, 88, 96, 103, 105, 112
Coughlan, Maurice	6, 46, 53

D

Dapmun, Peter	43
Daru	21-22
Department of Anthropology and Archaeology	41
Department of Attorney General	19
Department of Environment and Conservation	19, 104, 105, 108
Department of Finance	9, 19, 47, 53
Department of National Planning and Implementation	19
Department of the Prime Minister & NEC	19
Department of Trade & Industry	6, 19-20, 24-25, 30, 33, 85, 90, 100, 104, 116, 117
Department of Western Province	19
Department of Works	10
Department of Lands & Physical Planning	104
Deputy Prime Minister	39, 41, 104
Development Options Study	17, 27, 32-33, 53, 61-62, 70, 77-80, 86, 95, 109
Domestic Processing Study	37
Doso	13
Douglas, John	3

E

East Awin FMA	41, 99
<i>Environmental Planning Act</i>	79, 81, 94, 105, 108
Everts, Ben	63
Extension	1-2, 9, 12-18, 20-23, 26-33, 35-36, 39-42, 44-55, 57, 59, 61-70, 76, 79-80, 82-83 85, 87, 89-96, 99, 105, 107, 110-115, 117, 119-121

F

Final Project Guidelines	44, 62, 65, 67, 70, 78, 80, 82, 86, 88, 95-96
Fly Provincial Government	36, 50
Fly River Provincial Executive Council	48
Fly Strickland Timber Area	14-15
Forest Industries Association	9-10, 47, 52, 75
Forest Management Agreement	14, 17, 21-22, 42-43, 48-49, 58-61, 64, 67, 70, 73-77, 85-86 107, 109-110, 112, 119
Forest Management Rights	38
Forest Processing Working Committee	38
Forest Resource Inventory	14
<i>Forestry Act</i>	2, 9-10, 13, 16-18, 21-22, 28-29, 31-33, 38-39, 44, 46, 51-53, 56, 58 62-67, 70, 72, 80, 81, 85-86, 88-95, 97, 105-107, 109-111, 114-116, 118-121
<i>Forestry Amendment (2000) Act</i>	32
<i>Forestry Regulation</i>	56, 70, 80, 86, 95
Foundation for People and Community Development	3

G

Golman, Martin	3
Groome Jaako Poyry Ltd	39

H

Hoivo, Dennis	3, 14
Honey, Anthony	6, 10, 47, 52

I

Iamo, Dr Wari	3, 6, 9, 47-49, 52, 68, 85, 93-94, 106, 114
Individual and Community Rights Advocacy Forum (ICRAF)	1, 3, 6, 7, 59
Internal Revenue Commission	19
Incorporated Land Group (ILG)	7, 14, 21, 42, 58-61, 85

J

James Cook University	41
-----------------------------	----

K

Kaip, Dambis	3
Kajir, Annie	3
Kalamo	13

Kalinoe, Joshua	6, 19-20, 100
Kambogru, Lawfence	3, 6-7, 10, 45, 47, 53, 55, 90
Kamula Doso	1-2, 5, 7, 9-10, 12-13, 15-17, 20-23, 26-31, 35-37, 39-45, 47-55, 57-63, 65-68 70, 83, 85-96, 98-99, 105, 107-108, 110, 112-115, 117, 119, 121
Kamula Doso FMA	21, 27, 29, 31, 44
Kamula Doso Forest Management Area	1, 9, 21-22, 26-27, 29, 36-37, 39-40, 43-44, 47-49 53, 61-63, 83, 85-89, 95, 98, 119
Kamula Doso Timber Area	29, 36
Kamusie	18, 23
Kapuluk	40
Kari, Dike	3, 13
Kasua	18
Kidu, Sir Buri	16, 96
Konga, Nakikus	100
Korowi, Sir Wiwa	51, 57
Kote, Clement	3, 6-7, 9, 47, 49, 53, 67

L

Lake Murray	35, 41, 51
<i>Land Groups Incorporation Act</i>	58, 76, 85, 107
Larivita, Ivara	3
Lau, James	6, 23, 28, 56
Lelang, Joseph	6
Log Sales Agreement	20, 87, 117

M

Maitona, Whisky	22, 43, 91
Makapa	11-12, 18, 57
Makapa TRP	11, 18
Makmop, Norbert	6, 35-36, 41, 48, 85, 99
Malaysia	24, 35, 99
Markham	6
Marlow, Chris	3, 6, 31, 59, 61
Managing Director	1-3, 6-7, 9, 12, 14-15, 21-27, 29-33, 37, 43-44, 46-47, 49-54, 56-57 60, 62, 66-70, 74-75, 79-80, 86, 88, 90-93, 96, 104, 109, 112-113, 117-118
Masani, Tukape	104
Mauc, Michael	6, 19, 25
McCrea, Peter	3, 54
Minister for Environment and Conservation	104, 108, 117
Minister for Forests	6, 13, 15-17, 21, 28-31, 33, 36-37, 39, 41, 43, 50, 57, 61, 95-99 104-105, 107, 115, 117
Minister for Justice	104, 110
Minister for Lands and Physical Planning	104
Minister for Trade and Industry	39, 41, 100, 104, 117
Morauta, Sir Mekere	69, 104
Moratorium	62-63

N

Nataleo, Maran	6
----------------------	---

National Forest Plan	14, 74, 78
National Forest Board	1-2, 7, 9, 12-13, 21, 24, 27-29, 35-37, 41-42, 45, 47, 49, 64-66, 70, 75 78, 85, 87-90, 92-96, 98-99, 104-115, 117-120
National Forest Development Program	31-32, 65-66, 79, 82
National Forest Policy	80
National Forest Service	1-2, 9, 12-15, 21-22, 25, 27, 30, 31, 33, 37, 40, 43-44, 46-51, 53-54, 58-59 61, 64, 66-67, 69-70, 74, 76, 78, 87-88, 90-93, 96, 104, 109, 111-113, 116-117
Nelson, David	70
NFS Policy Secretariat	3, 31
National Goals and Directive Principles	2, 71-72, 81
National Executive Council	3, 9, 18, 20, 24, 27, 40, 56, 62, 65-66, 74-75, 100-101, 104 106, 114-116, 120
Nen, Thomas	3, 6-7, 9, 14, 22-23, 25-26, 29, 33-35, 37, 43, 46-47, 49, 53-56, 60 69-70, 85, 90, 92, 106, 112-113
New Zealand	33
North Waghi Open	6

O

Office of Environment & Conservation	3, 9, 47, 52, 81, 94-95, 114
Ogio, Hon Michael MP	6, 104
<i>Organic Law on Ombudsman Commission</i>	1-2, 5, 84, 102-105

P

Paisparca, Michael	6
Panakawa	18-19, 21, 23-25, 27-28, 33-34, 37, 40, 52, 55-56, 68, 70, 87-88, 90, 92 96, 100, 116-117
PNG National Forest Authority	2, 8, 10, 19-20, 23, 39, 45, 73, 85, 107, 110, 116
Parr, Issau	3
Paradise Natural Resources	57
Provincial Forest Management Committee	22, 26, 31, 35, 44-45, 48, 56, 61-62, 67-68, 75-76 78, 86, 88, 93, 104-105, 109-110
PNG Rainforest Campaign	17
Pok, Dr. Fabian	6, 21, 28, 36-37, 49, 95, 98
Poreporena Freeway Report	15, 97
Pouru, Kanawi	63
Powell, Graham	63
Power, Tony	63
Prime Minister	3, 16, 18-19, 35-36, 38-39, 41, 57, 72, 97, 99-100, 103-104, 113-114
Provincial Executive Council	35-36, 41, 47-48, 99
Provincial Forest Management Plan	10, 12, 38

R

Rakova, Ursula	3
Reforestration levy	10
Rimbunan Hijau	6-8, 10, 12-13, 17-20, 22-30, 33-44, 50, 52, 54-57, 65-66, 68-70 87-88, 90, 92-94, 96, 99-100, 106, 110, 116-118
Rimbunan Hijau Timber Processing Ltd	19-20, 87-88, 92
Rimbunan Hijau (PNG) Ltd	10
Rimbunan Hijau Group of Companies	26, 106, 110, 117-118

Ruing, Puri	104
Romaso, Rukis	63
Ross, Allan	46
S	
Sabuin, Tunou	3, 22, 45
Samol, Gabriel	3, 6-7, 10, 21, 24, 28, 30, 33, 37, 41, 46-47, 52, 54, 66, 85, 88, 95, 106, 115
Sime Darby	35-36, 41, 50-51, 99
Skate, Bill	18-19, 35, 99, 100
Somokapa	18
T	
Tagamasau, Andrew	3
Tau, Olaba	22, 43, 91
Timber Permit	2, 10, 12, 17, 25, 28, 30, 32, 38-39, 41, 47-48, 50, 53, 57, 62-65, 70, 74-82 86-88, 92-94, 96, 107, 109, 112-113
Timber Rights Purchase (TRP)	10-11, 18, 20, 27-28, 38, 48, 57, 70, 114-115, 117
Tiong, Francis	13
Toto, Kalma	22
Tumu Timbers	13, 43
Turama Forest Industries	120
Turia, Ruth C	3
V	
Veneer Processing	19-20, 34, 38, 40, 55-56
W	
Wacliyo	18
Warner Shand Lawyers	6
Wawoi Falls	18
Wawoi Guavi	1-2, 9-18, 20-23, 25-28, 30, 33, 37-42, 47-50, 52-53, 55, 57, 62, 65-66, 70 85-91, 92-94, 96, 105, 107, 112-117, 119
Wawoi Guavi Extension	12-14, 21-22, 26-27
Wawoi Guavi Timber Company	1-2, 10, 12-13, 20-21, 26-28, 33, 50, 66, 86-88, 94, 96, 107, 112 116-117
Wawoi Guavi Timber Project	26-27, 48, 50
Wawoi Tumu Holdings	13-15, 21-22, 26-27, 50, 68, 91, 93, 96
West New Britain Province	40
Western Province	3, 6-7, 10-12, 18-19, 22-23, 25, 27, 29, 35-38, 41, 43, 45, 47-50, 56-57 68, 86, 88, 93, 99, 110
Western Province Provincial Executive Council	35, 47, 99
Wika Pty Ltd	51
Wilson, Len	39
Wood, Michael	41
Z	
Zurenuoc, Guao	3, 6, 21, 44