

FORESTRY AND CONSERVATION PROJECT

REVIEW TEAM

REPORT ON CONFIDENTIAL MATTERS

To: The Chief Secretary

As authorized by our contract the Review Team has elected to submit the following parts of our Report to you on a confidential basis.

GENERAL CONCLUSION

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

In this Report we identify some actions by persons which we consider to be wholly improper. It must be realized that the scope of our inquiry has been limited. Our findings are effectively based upon a review of the files that have been given to us. We have not been able to require the provision of information, or to question people who clearly should be asked to account for their actions. We have not been able to undertake the kind of inquiry that is called for into the companies who feature prominently in the apparent wrong doing. One is left with the impression that improper activity is in some way orchestrated or coordinated from a central source. Apart from the commendable efforts of certain officers within the PNGFA there is little evidence of effective controls being put in place to contain the clear abuses, or to remedy their effect.

Only a Commission of Inquiry could hope to unearth the entire picture and unravel the web of deceit.

CLARIFICATION OF OUR FINDINGS

To be fair to the persons who might otherwise be tarnished by our generally unfavourable findings, the Review Team concludes that it has found no indication of wrong doing relating to the three projects that have been reviewed emanating from the following –

- (a) the Office of the Minister;

- (b) the Board of the PNGFA (with the exception of the findings that are indicated in relation to the involvement of Dr Wari Iamo in the Bonua Magarida project);
- (c) the office of the General Manager of the PNGFA;
- (d) any previous General Manager of the PNGFA;
- (e) the officers of the PNGFA generally; or
- (f) any senior provincial official (with the apparent exception of Ruma Tau when he purported to issue TA 02-028001 in the Kiunga-Aiambak area in January 2001, and Okau Ogawe MPA when he signed TA 08 on 17 December 2001)

ACTIONS OF PERSONS WARRANTING FURTHER INQUIRY

A. Former Managing Director - Thomas Nen

It is true that in late 1999, whilst Managing Director, Thomas Nen took proper action to attempt to stop the logging operations on the Kiunga-Aiambak Road. For his troubles he was in fact convicted of contempt of court in a bizarre turn of events.

By January 2002 however his approach to this project and to its contractor had taken a dramatic turn. The following are extracts of the *Sequence of Events* in our project report on Kiunga-Aiambak indicating correspondence that appears on PNGFA files –

(Copies of each of these letters are attached)

18 January 2002 MD to Internal Revenue Commissioner
 This letter refers to TA 024 but encloses a copy of TA 08 dated the 17 December 2001. This purports to be a TA issued to Concord Pacific Limited for stages 2 and 3 of the Western Provincial Road Network (forming part of Trans Island Highway in the North and Middle Fly electorates, Western Province). The copy is incomplete and includes no schedules relating to allowable harvest and performance bond. It is signed by Okou Ogawe MPA.

Review Team's comments –

This clearly indicates that as early as January 2002 Thomas Nen had a copy of TA 08. Perhaps he provided it to Internal Revenue by mistake as his covering letter refers to the older TA 024. There is no evidence that this TA was processed properly or that it conforms to legal requirements, but it was in the custody of the Managing Director. One month after this, PNGFA officers acted to reject the application without knowing of the existence of the TA. It seems to only come to light when SGS

queried the issuing of log tags in early April. Records kept by the PNGFA indicated much later that the real TA 08 relates to an entirely different operation.

25 March 2002 MD (Thomas Nen) to Minister of Transport
Referring to stages 2 and 3 he writes –
“1. An application for Timber Authority... was received by the Board in respect of the above road project on 23 January 2002 together with appropriate forms.

5. The Western Province Forest Management Committee has approved and recommended to the National Forest Board for the issuance of the Timber Authority for Roading Clearance of Stages 2 and 3 of the Road Project. The Timber Authority No TA-08 was accordingly issued and signed by the Chairman...

6. On the basis of the foregoing, it is hereby advised that approval by the National Forest Board in respect to the Timber Authority No TA-08 is granted pursuant to section 89(6) of the Forestry Act (as amended).”

Reference is made to a requirement to lodge a performance bond of K50,000.

Review Team’s comments –

There were many falsehoods in this advice to the Minister of Transport. These include –

- (a) **There is no evidence of the Board receiving anything on 23 January 2002. As indicated above Mr Nen already had a copy of the TA issued in December 2001 so why would he refer to it as if it were only applied for in January 2002?**
- (b) **The DM Resource Development of the PNGFA commented in February 2002 that the application was defective and sought legal advice about returning it. The reference by the Managing Director to appropriate forms is difficult to accept.**
- (c) **The Western Province PFMC never approved the application and never recommended to the Board that a TA be issued. The PFMC considered it only in December 2001 and referred it to the National Forest Service for evaluation.**
- (d) **The suggestion that the TA was “accordingly issued” after all necessary formalities is untrue. It was in fact signed on the 17 December 2001 before it had even come to the attention of the PNGFA and only three days after the PFMC resolved to refer it to the NFS.**

- (e) **The final suggestion of an entirely proper grant, and that it was done by the National Forest Board, is not correct in any respect.**

28 March 2002 MD (Thomas Nen) to Secretary Department of Works
 "I hereby approve that the Concord Pacific Limited company can proceed to acquire the "Lake Murray Block 2" under the Forestry Act (1993) as the area along the Stage 3 road alignment for harvesting of log volume requirement to meet road construction costs".

Review Team's comments –

This approval contradicts all legal requirements for the acquisition of timber rights. The team is not aware of any necessary action for the Lake Murray Block 2 area to be allocated to Concord in such a cavalier fashion. There can be no possible justification for a Managing Director to give a written commitment such as this.

4 April 2002 Licence PNGFA L-140/2002 Form 175
 Issued to Concord Pacific Ltd by MD Thomas Nen. It authorizes the licensee to engage in the "Transportation, sale, purchase, marketing, processing and grading of forest produce, including export of round logs and the construction of highway (road)" for 12 months.
 The performance bond is K10,000.

Review Team's comments –

This action deserves further inquiry. We are led to believe that the delegated power of the Managing Director to act in this way was withdrawn by the Board in the preceding month. The performance bond is laughable given the size and term of the operations, and there is no indication as to how such a paltry sum was arrived at. The overwhelming impression is that Mr Nen was peddling documentation and that Concord was the recipient of it all.

B. Managing Director David Nelson

The following are extracts of the *Sequence of Events* in our project report on Kiunga-Aiambak indicating correspondence that appears on PNGFA files –

(Copies of each of these letters are attached)

15 May 2002 A/MD (David Nelson) to Concord Pacific
 Acknowledges receipt of performance bond for PNGFA L-140/02. The bond is in the sum of K10,000 and is effective for 12 months. It relates to stage 1, 2 and 3 of the Western provincial road network.

Review Team's comments –

While some confusion may arise from the reference to the Licence rather than to TA 08, this letter would indicate that Mr Nelson was aware of Concord's purported right to log in stages 2 and 3. These are the areas to which TA 08 relates. Any subsequent suggestion by Mr Nelson that he was unaware of the existence of the TA should be considered in this light.

- 16 May 2002 Area Manager Southern to MD
Notes that request for police assistance for loading of logs from Aiambak-Kiunga project has been actioned and K15,000 has been committed for this. It notes that the police however have withdrawn their assistance.
- 17 May 2002 A/MD (David Nelson) to Police Commissioner
Assistance is sought to ensure the loading of logs under "TA 024". The logs are said to be "deemed to be legally harvested".

Review Team's comments –

These letters indicate an unhealthy readiness on the part of Mr Nelson to enlist the police in support of Concord. The decision to commit K15,000 to such a venture might be questioned.

- 28 May 2002 Minute Area Manager Southern to General Counsel
"3. Ironically a recent T.A. application carrying the same T.A. number, but different applicant and totally different area has been checked by the T.A. section of Resource Dev. Division, and has been referred to WPFMC for deliberation in its next meeting scheduled on the 5th June 2002 in Kiunga.
- I strongly believe that the Concord T.A. application was issued outside of legal procedure and therefore, further investigation should be conducted by the appropriate authorities to bring those involved to justice to prevent such practice in the future."
- 23 May 2002 Minute General Counsel to GM
"The Application for the T.A. for roadline clearing is for 841 km. The T.A. is illegal and a serious fraud has been committed... The law has changed. Clearance of forests for roadline clearance in excess of 12.5 km requires a special type of application under the new section 90 of the Forestry Act."

Review Team's comments –

The view of the NFS as to the illegality of TA 08 at this time is clear. Subsequent events reveal that Mr Nelson takes a different view from all others.

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Forest Industry representative advised that they are aware of TA 08 as log tags have been applied for. "The Chairman considered the new TA issued as illegal because the Board's powers delegated to the Managing Director has been withdrawn on the 14th March 2002".

"Resolved:

Directed the management to engage a law firm to act on behalf of the Authority on the Aiambak-Kiunga Timber Authority and the other illegal Timber Authority issued".

(At the subsequent Board Meeting No 86 the Minutes indicate that the Chairman raised the matter of the above resolution. The Minutes note that "Mr Nelson informed the Board that a separate paper is being presented on this project". The team was not given a copy of any such paper and cannot confirm its existence.)

Review Team's comments

The National Forest Board properly viewed the grant of TA 08 as illegal and made an appropriate decision to have the grant of it challenged. There is no evidence that Mr Nelson acted at all to implement this directive. Indeed his subsequent actions were in direct conflict with the Board's resolution. Mr Nelson may have deflected any follow up by the Board by suggesting that this matter would be dealt with in a separate Board Paper. The team has not sighted any such paper. No blame can be cast on the Board. All of it seems to fall squarely on Mr Nelson.

20 September 2002 MD (David Nelson) to Concord Pacific (unsigned)

"RE ADDITIONAL TERM OF TA-08

...I certify that the following conditions shall apply in respect to construction of the Stage 2-3 as part of Trans Island Highway under TA-08:-

1. That Concord Pacific Limited, is the Timber Authority (TA-08) Holder, shall be allowed and is granted priority right to harvest allowable volume of logs within FMA Operation three (3) kilometer of both sides of road line where the road runs

through FMA operations. This condition shall be read together within letter dated 25 March 2002 issued by NFA.

2. That Concord Pacific Limited, the TA-08 Holder, shall be allowed and is permitted to harvest logs, in area other than FMA operations areas, in extension of three (3) kilometer of both sides of road line only for purposes of recovering the allowable volume due to short supply of timber in areas within three (3) kilometer of road line being constructed.
3. That in the event that conditions 1&2 above are untenantable(sic), that Concord Pacific Limited, the TA-08 Holder, shall be allowed and is permitted to harvest logs from within "Lake Murray Block 2" to make up for the shortfall in the allowable volume under TA-08 consistent with the approval given by NFA in the letter dated 25 March 2002.

I certify that the above conditions are additional to the conditions stipulated under TA-08 and shall apply forthwith."

Review Team's comments –

The copy of this letter seen by the team is not signed by Mr Nelson. It is however copied to many people and its existence should not be difficult to ascertain with further inquiry.

Whether or not it was sent, the fact of its drafting, indicates an awareness by Mr Nelson of the existence of TA 08. And of course it goes much further than this. It indicates a clear determination to give to Concord all that it could ask for, including the right to operate in areas beyond the questionable TA. Contrary to the extraordinary latitude given by Mr Nelson to Concord, operations under a TA cannot take place in an FMA area.

2 January 2003

Minute A/DM Resource Development to A/Director Policy
 "In fact NFS has no records of TA No 08 being issued to Concord Pacific Ltd. According to the NFS TA Registry Ledger Book, TA No 08 has been allocated to Obo Forest Products, over the Kasa Clan area in the Western Province and has since been referred to the WPFMC on 26/3/02. The WPFMC has yet to deliberate on this TA. Furthermore this particular TA No 08 was allocated to TA arrangement TA-01 which relates to domestic processing, where the annual cut must not exceed 5,000 m3 and not the stated Roadline Clearance Authority."

Review Team's comments –

This clearly indicates that TA 08 was never part of the PNGFA's formal processes as it does not appear in the official records. What appears to the officers of the

PNGFA is clearly at odds with what the records in the custody of Mr Nelson would show.

C. Former Chairman Wari Iamo

The following is an extract from the *Sequence of Events* in our project report on Bonua Magarida indicating documentation that appears on PNGFA files –

24 July 2002

The following documents bear this date: -

(a) Application by Maisi Trust for Amendment of Timber Permit No. TP 3-29 West Gadaisu TRP.

(b) Form 129 Application for Amendment of Timber Permit.

Applicant – Maisi Trust (Reg No FI 01018)

Signed by Joseph Wong (Public Officer)

(c) Form 131 Board's Recommendation to Minister on Transfer Amendment Surrender of a Timber Permit (TP 3-29)

Applicant – Kisoi Development Corporation Ltd (Reg No FI 330)

Signed by Wari Iamo

(d) Form 131 Board's Recommendation to Minister on Transfer Amendment Surrender of a Timber Permit (TP 3-29)

Applicant – Maisi Trust Ltd (No reg no stated)

(e) Brief from Chairman Wari Iamo to Minister of Forests recommending the approval of the amendment and noting the Board's approval of it.

The Review Team has sighted no Board Minute or Resolution to confirm the suggestion that the Board had in fact approved the amendment of TP 3-29 as at 24 July 2002. In fact it was not until Meeting 86 in September 2002 that the Board made a questionable decision to endorse the amendment to the Timber Permit.

Review Team's comments –

It is highly suspicious that all these documents appeared simultaneously and that they all bear the same date. In particular we note: -

- (a) The application for the amendment of the Timber Permit has the same date as Dr Iamo's brief to the Minister. That Brief suggests that the Board has previously approved the application but how could this be if the application was made on the same day as the Brief was written? (The Board did not consider this matter until September 2002 when it made an ill-advised decision to confirm the amendment to the Timber Permit);**
- (b) It was well understood that the application for amendment to the Timber Permit was inappropriate and that all formalities for the project to be approved by the Board as an extension were required to be followed. Notwithstanding that the PNGFA had come to this conclusion, after consultation with the Authority's lawyers, and had clearly resolved to require all formalities relating to extensions to be observed, Dr Iamo has facilitated an improper departure from this process;**
- (c) By proceeding to approve the amendment to the Timber Permit all the new requirements and conditions imposed by the 2000 amendments to the *Forestry Act* have been circumvented;**

D. Okou Ogawe MPA (Western Province)

The Provincial Minister purported to issue TA 08 on 17 December 2002. This is only three days after the PFMC resolved to refer the application to the PNGFA for evaluation and requested a report on the stage 1 operations. The issue of TA 08 was unlawful and in breach of the Act. This is deserving of further inquiry but it might be noted that the Provincial Minister has the power under section 90 (1) to cancel TA 08.

SETTLEMENT OF PROCEEDINGS RELATING TO KIUNGA-AIAMBAK

The following matters should be noted –

- The decision to retain Jerewai Lawyers appears to have been made by Mr Nelson without reference to anybody else. (Minute from General Counsel 6 November 2002)
- The use of Jerewai Lawyers is problematic as it seems that in August 2002 Jerewai Lawyers in fact took proceedings on behalf of Mr Nelson. The Board and the State were both named as defendants. This raises an ethical question as Jerewai has accepted instructions to act for the Board even though he had previously acted against it.
- The decision to transfer the case from Gadens was made by the Board on 17 October 2002. (Board Minutes Meeting No 86)

- Jerewai Lawyers were in fact instructed by Mr Nelson on the 13 September 2002. A letter from Jerewai Lawyers on 9 October 2002 notes that “negotiations are under-way in accordance with your instructions... I will convey to you the content of the Plaintiff’s settlement proposal.” This is before the Board has made any decision to this effect. (Letter from Mr Nelson 13 September 2002 and letter from Jerewai Lawyers 9 October 2002)
- Mr Nelson expressed a clear intention to acknowledge the validity of TA 024 eventhough it had always been the view of the PNGFA, the NFS and the Independent Review Team that the TA was a complete abuse of the system. (Letter to Jerewai Lawyers 25 September 2002)
- Matters proceeded very expeditiously and by 22 October settlement was arranged, pending the Board’s approval. (Letter from Jerewai Lawyers 22 October 2002)
- Yagi Lawyers is well advised about the Board’s activities and in particular its scheduled meeting for 25 October 2002. (Letter from Yagi Lawyers 21 October 2002).
- Certain landowners were in the process of applying to become parties to this action. If the case has been finally settled then they have been deprived of their right to attempt to join the proceedings and state their case. (Letter from Celcor 20 May 2002)
- The team has been told that in early December 2002 the Board gave its approval in principle to the settlement but directed that independent legal opinion be sought. The Deed was signed on 12 December 2002 well in advance of the required advice having been given.
- On 16 December 2002 Mr Nelson sought to have a PNGFA cheque raised in the sum of K150,000 to pay Concord’s costs as provided in the Deed of Settlement. (Minute to Director-Finance 16 December 2002)
- The case was effectively halted on 19 December 2002 by the filing, with the court’s leave, of a Notice of Discontinuance. (Letter from Yagi Lawyers 19 December 2002)

Review Team’s comments –

The Team has read the letters written by the Chief Secretary to the Attorney General on 11 November 2002 and to Mr Nelson on 18 December 2002. The team agrees with all observations made in them and would endorse the direction to pursue the case, have the injunctions lifted and determine the validity of TA 024. At this time however we note that –

- (a) One day after your letter of 18 December 2002 the National Court seems to have accepted the discontinuance of the case. We ask whether Mr Nelson has brought this fact to your attention?
- (b) The Deed of Settlement bears the signature of State Solicitor Zachary Gelu on behalf of the State.

Accordingly if further action is to be taken it would seem to necessitate asking the Court to set aside the Notice of Discontinuance and render the Deed of Settlement ineffective. This would be a difficult task indeed but maybe not impossible in the circumstances. Action taken in concert with Celcor representing the landowners who had sought to become parties to this case would be advisable as they have some right to claim a circumvention of their rights.

Again the actions of Mr Nelson must be questioned, and in this regard we highlight the following –

- (a) Mr Nelson acted well in advance of any Board approval to retain Jerewai Lawyers.
- (b) Mr Nelson departed from the long and strongly held view of the PNGFA that the grant and extension of TA 024 was illegal.
- (c) Mr Nelson was clearly instrumental in arriving at a settlement that cannot be seen to serve the interests of the PNGFA or the State.
- (d) Mr Nelson may not have shared his information with the Board or yourself as readily as might be expected of a true servant of the State.