

## **PNG FORESTRY REVIEW TEAM**

### **AUDITING FORESTRY PROJECTS CURRENTLY "IN PROCESS" FOR COMPLIANCE WITH THE REQUIREMENTS OF THE POLICY, THE FORESTRY ACT AND OTHER REGULATIONS AND GUIDELINES**

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**To:** Government of Papua New Guinea  
C/- The Interagency Forestry Review Committee  
Office of the Chief Secretary to Government

**From:** Review Team

**Date:** 5 March 2001

**Re:** **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 31**

### **AIAMBAK-KIUNGA ROAD TIMBER AUTHORITY (WESTERN PROVINCE)**

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#### **AUDIT CONCLUSIONS:**

##### **RESOURCE ISSUES:**

This project is in breach of the National Forest Policy 1991 and the current provisions of the Forestry Act 1991 (as amended) in that the logging taking place either side of the road corridor is not regulated through either a proper Forest Management Agreement or a proper Timber Authority. The project cannot be considered to be a forestry project in any proper forest management sense. The project is also in breach of the Act in that logging appears to have moved into the East Awin Forest Management Agreement area without due allocation process being observed.

##### **LEGAL ISSUES:**

At no time since the purported issuance of the Timber Authority in April 1994 has any aspect of due process been observed. This has arisen from matters beyond the direct control of the PNGFA.

##### **LANDOWNER ISSUES:**

There has been no landowner mobilisation for this project. The holder of the Timber Authority claims to be a landowner company but is a foreign company (50% foreign owned). The logging contractor Concord Pacific Ltd continues to pay less royalty than K10 per cubic meter despite a letter from PNGFA directing the company to pay the

legally mandated rate of K10 per m<sup>3</sup> from the beginning of logging. Landowners complain of harassment (including from 'Police') and threats with firearms.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That Court action should be taken forthwith to review the Orders permitting the logging operations since November 1999.
- That any application to extend the scope and term of this Timber Authority be soundly rejected.
- That any further application for road line clearing should be properly considered under the Forestry Act 1991 in light of the Amendments made to the Act in 2000 and certified in January 2001.

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**Note:** The individual project reports summarise the findings of the Review Team regarding material compliance issues, and present project specific recommendations for the consideration of the Interagency Forestry Review Committee. Separate reports produced at the end of the review process set out in more detail the audit procedures applied, and comments and recommendations regarding existing policies, legal requirements and project development processes.

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## **REVIEW REPORT**

### **SUMMARY PROJECT DETAILS:**

Project type:	Timber Authority – Forest clearing for road development.
Processing stage:	Has been operating for some 5 years. PNGFA have tried to shut it down but are constrained by a Court Injunction. The operators have applied to the National Executive Council for an extension of the scope and the term of the Timber Authority.
Gross area:	Not applicable
Gross loggable area:	Not applicable
Potential sustainable timber yield:	Not applicable

### **A. FORESTRY AND PLANNING ASPECTS**

The clearing of forested land for roading development does not require the application of the same sectoral planning and control measures as are required for long term sustainable forestry projects under the National Forest Policy 1991, the Forestry Act 1999 and the National Forestry Guidelines 1993. The key issues for road line clearing Timber Authorities are:

- To ensure that the proposed roading development is consistent with the National or Provincial transport plans; that the funds for road construction are available and have been committed; and that responsibility for road maintenance is clearly defined and accepted;
- To ensure that clearing the road line of forest is undertaken in a progressive manner in accordance with the road construction programme, thus protecting as much of the forest as is possible against the potential non-performance of the roading contractor; and
- That the road line clearing and road construction is undertaken in an environmentally responsible manner.

In this case the Timber Authority was allegedly issued in April 1994 before detailed procedures and requirements for Timber Authorities were developed. These requirements were developed during 1995, and recognised that the timber revenue from

a road line clearing operation would not meet the cost of road construction unless logging of a much wider corridor was allowed. A maximum road line clearance of 40 m was imposed and supported by a National Executive Council decision (113/96). To be compliant with the Act, any logging outside of this 40 m road line must be under either a Forest Management Agreement, or a Timber Harvesting Timber Authority.

The Timber Authority procedures and requirements developed by the PNGFA also required observance of environmental standards which for roading construction were set out in the PNG Logging Code of practice 1996.

The Aiambak-Kiunga Road TA does not meet the current requirements of the Act in two key aspects:

- It allows logging outside of the 40 m wide road line without a Forest Management Agreement or a Timber Harvesting Timber Authority. The original Timber Authority document provides that “harvesting [may take place on] both sides of the proposed road alignment”. The Logging and Marketing Agreement between the TA holder (Paiso Company Pty Ltd) and the logger (Concord Pacific Pty Ltd) is more specific in that it provides for logging a forest corridor up to 2 km in width, and the harvesting of 4,200 m<sup>3</sup> of logs for every kilometre of road constructed (or a total of 1.0 million m<sup>3</sup> of logs for the 246 km long road).
- It does not require full observance of the environmental standards for roading set out in the PNG Logging Code of Practice 1996. The TA document provides for some rudimentary observance of environmental concerns by requiring the holder to “avoid” certain specified impacts. However these obligations are not clearly passed on to the logger in the Logging and Marketing Agreement.

The roading standard specified in the Logging and Marketing Agreement is a “dry weather 4x4” road. A road of this type in this wet part of PNG is unlikely to be usable for any significant periods, or to last long without significant expenditure on road maintenance. It is difficult to see the demand which would justify this type of road. Generally this project is seen as a thinly disguised method employed by a logging company to gain access to logs for export.

#### **RECOMMENDATIONS REGARDING FORESTRY ASPECTS:**

1. That any application to extend the scope and term of this Timber Authority be soundly rejected.
2. That any further application for road line clearing be subjected to the requirement of the Act as amended.

## **B . LEGAL COMPLIANCE**

### **SUMMARY OF LEGAL COMPLIANCE:**

Since Minister Neville purported to approve TA No 24 in April 1994 no procedural step under the Forestry Act 1991 has been duly observed. In giving his approval the Minister

exceeded his powers. Under the Act Ministers have no procedural role to play in relation to Timber Authorities.

TA No 24 was signed by the Regional Forestry Inspector “as a delegate of the Board”. Under the Act it was the Provincial Forest Minister at that time who was empowered to grant a Timber Authority. However the Act prescribes a lengthy procedure to be followed before such a grant can be made. That procedure was completely overlooked in relation to this project.

The subsequent decisions by Acting Minister Philemon and Minister Pok to grant extensions to TA No 24 are also not supported by provisions of the Act. The Act states that Timber Authorities are to be valid for the stated period and makes no mention of any power to extend them. It seems that a new application must be made when a Timber Authority expires. In any event there is no provision made at all for any power to be exercised by the National Minister for Forests.

Logging operations are proceeding on the basis of a far-reaching Court Order made on 26 November 1999. This Order permits the operations to continue under TA No 24 and restrains the PNGFA from seizing logs or delaying export permits.

The current Managing Director and PNGFA staff have demonstrated a clear determination to see that some controls are exercised over this remarkable project. Their attempts to apply the provisions of the Act have been thwarted at every stage. The serious ramifications of the project affecting the rights of landowners and the good governance of this country cannot be attributed to the current staff of the PNGFA in any way.

NEC Submission 73/2000 (9 May 2000) seeks, inter alia, the approval of the NEC for a 15 year extension to TA No 24. The Submission suggests that there are no legislative implications. This is incorrect and NEC should be aware that the Submission effectively invites Cabinet to breach the statutory procedures that are prescribed in the Forestry Act.

#### **RECOMMENDATIONS REGARDING LEGAL ASPECTS:**

1. That the court proceedings must be brought to a conclusion. The substantive issues must be finally determined. It should be noted that the Attorney General has previously acted in a private capacity for the logging operator (Concorde Pacific Ltd) in relation to these proceedings.

## **C. LANDOWNER ISSUES**

<b>RESOURCE ACQUISITION</b>	
<b>1. Landowner Awareness</b>	
<p><b>The Review Team was looking for evidence of an awareness package containing information explaining the purpose, benefits and otherwise to be expected from the project. This could include general conditions that could be used for all prospective projects.</b></p>	<p>The TA for this “project” was originally issued by the Forest Minister in 1994. Normally a TA would affect only one small group of possibly one or two land groups. This TA has gone on for some years beyond the confines of any forestry legislation or policy.</p> <p>The TA holder, Paiso Company Limited, fraudulently represented itself as a landowner company. It is owned equally by one landowner and an expatriate.</p> <p>It has taken years of operation of Paiso/Concord Pacific before the landowners have come to realise the extent of the damage and deprivation that they have suffered. The landowners only became mobilised because of the advent of the East Awin FMA adjacent to the Aiambak-Kiunga “project”.</p> <p>In the meeting held at Kiunga on the 14<sup>th</sup> of February in the presence of two members of the review team, the Aiambak landowners denied having been sufficiently consulted during the discussion phase of the project, nor were they represented in the PFMC meeting when the decision was made to proceed with the project.</p>
<b>2. Landowner Mobilisation</b>	
<p><b>Landowners are required to be mobilised by means of the Land Groups Incorporation Act. The Review Team was looking to find evidence of full participation by landowners in the ILG process particularly with regard to:</b></p>	<p>There is no requirement for ILGs for a TA however there is a requirement to identify the landowners and identify agents and pay royalties and other charges. The fact that the TA became a rolling TA extending over 130 km meant that a large number of landowners should have been identified and formally involved.</p>

<ul style="list-style-type: none"> <li>• <b>Recognition that the resources are owned by individual land groups and not collectives of land groups</b></li> <li>• <b>The formation of representative bodies for project consultations and negotiations.</b></li> </ul>	<p>Complaints by landowners indicate a very unsatisfactory situation. One landowner stated that Paise undertook to register ILGs but the documentation was not completed or not handed over to the landowners. One group of the Eiva landowners finally undertook their own registration. The matter is confused with royalty payments being made to different people with the same ILG number. (This could be a clerical error)</p>
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Some additional notes are presented in Appendix 1.

**CONCLUSIONS REGARDING LANDOWNER ASPECTS:**

- That this so called project has been a disaster from day one.

**RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:**

1. If at all legally possible this project should be shut down and assets seized to reimburse landowners for loss of their standing crop

## **APPENDIX 1 : NOTES ON LANDOWNER ISSUES**

- 14 Feb 00      Technical Services and Inventory investigated the Aiambak Road and confirmed allegations made by landowners that Concorde Pacific Ltd was 8.6 km into the East Awin FMA area.
- 12 Mar 00      Landowners say that Paiseo Ltd is a family company and must be knocked out of the area altogether. The fact is that Paiseo Ltd. is owned 50% each by two individuals, one landowner from nowhere near the road and one foreigner, Mr Philip K S Lee, who represent themselves and not the landowners.
- Feb 2001      One Aiambak landowner leader with pending court cases against Concord Pacific Ltd has sought to have Mr Philip K S Lee deported.