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Center for Environmental Law and Community Rights Inc

29th November 2001

Mr. James MacNeill
Chairman
The Inspection Panel
1818 # Street, NW
Washington D.C. 20433
United States

Dear Chairman MacNeill,

RE: INSPECTION PANEL CLAIM BY KIUNGA-AIAMBAK LANDOWNERS, WESTERN PROVINCE, PAPUA NEW GUINEA.

Please find attached the request by the landowners in the Kiunga-Aiambak logging project area, Western Province, Papua New Guinea.

The request to the Inspection Panel is based on IBRD Resolution No: 93-10 and IDA Resolution No: 96-6 as a local representative. This is because of the remoteness of the area and the fact that the claimants do not have proper means of support to bring the claim on their own. Moreover, the Center for Environmental Law and Community Rights Inc a national public interest law NGO has been working with the affected communities and as such has been requested by the landowners to bring the claim on their behalf.

Both us and other NGO's have contacted the World Bank on several occasions regarding the illegal logging on our clients land but the Bank has so far ignored our request to get the GOPNG to keep the moratorium on logging in new concession areas and to ensure that the Kiunga-Aiambak project is closed immediately. We have a lot of well documented materials, which goes to show that the PNG government has breached the terms of the Structural Adjustment Loan (SAL) and as a result has caused irreparable damage to our client's forests. We will be making additional materials available in the coming weeks. And we especially would like to have an open communication with the Inspection Panel and look forward to providing whatever supplemental material the Panel may need.

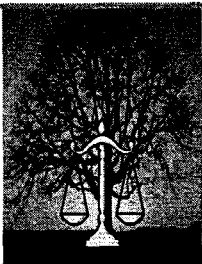
Due to well documented human rights abuses by Police Task Force members in the area and pursuant to the operating procedures of the Panel we are requesting that some of the enclosed materials be kept confidential by the Panel, including identifying anonymity of those who have given CELCOR the authority to represent them. We specifically request that the names of the landowners in this claim be kept secret.

Our agent in the United States of America is Ms. Dana Clark. Her contact address is phone/fax (510) 527 5246 and e-mail danaclark7@mindspring.com.

We look forward to cooperating with you in this request.

Yours faithfully,


DAMIEN ASE
Executive Director



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Center for Environmental Law and Community Rights Inc

29 November 2001

The Inspection Panel
1818 # Street, N.W
Washington D.C 20433
United States

Dear Panel Members,

**RE: AUTHORIZATION TO BRING INSPECTION PANEL CLAIM AN BEHALF
OF KIUNGA-AIAMBAK LANDOWNERS**

The Center for Environmental Law and Community Rights Inc. (CELCOR) is authorised by claimants to file an Inspection Panel claim on their behalf. Refer to Appendix 1 for the duly executed authority by the claimants.

Moreover, CELCOR has been providing legal assistance to the claimants since its establishment. The claimants believe that CELCOR is in a better position to file the claim on their behalf. CELCOR is also in regular contact with the claimants and are briefed regularly on this claim.

Thank you.


DAMIEN ASE
Executive Director

WORLD BANK INSPECTION PANEL

REQUEST FOR INSPECTION

**Filed by certain named customary
owners of forests in
Kiunga- Aiambak,
Western Province,
Papua New Guinea**

"Governance has been particularly poor in the area of forestry, with the side effect of promoting corrupt practices and undermining environmental sustainability in logging activities. The Government is committed to introducing a moratorium on all new forestry licenses, extensions and conversions, and to proceed with a review of all existing licenses, to ensure that proper procedures are followed, that logging practices are not carried out in an unsustainable way, and that landowners get their share of fair benefits from resource use. "

-- Sir Mekere Morauta, Prime Minister of Papua New Guinea

**CENTRE FOR ENVIRONMENTAL LAW AND COMMUNITY RIGHTS
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REQUEST FOR INSPECTION

TO: THE INSPECTION PANEL: 1818 H St., N.W., Washington, D.C. 20433,
U.S.A.

Executive Summary

"They should leave us with good projects, we have a church but they didn't give us a church, they said they would give us houses, church, markets, but nothing was done."

Baida Bamesa, Women's representative in Middle Fly.

"Now when I see my bush I cry. In the past we had sago, pigs, cassowary, big trees everywhere. We used traditional paint from the bush. Now Aiambak is very different, life is very difficult. I cry for my village."

Jerry lawe, Aiambak Villager.

"We became spectators on our own land. When the company came in they sort of disturbed village life, so many youths when to Aiambak to seek employment with the company and some even became spectators on the project because there was no space for employment."

Robert Polus, former employee of Paiso Landowner Company.

This claim comes from landowners who seek assistance of the Inspection Panel because they have lost their land and forests during the currency of a loan by the World Bank to the Papua New Guinea Government for forest governance.

Governance of Papua New Guinea's rainforest sharply deteriorated in 1998, when the government decided to liquidate large forest areas in order to balance its budget. Corruption undermined environmental sustainability, the law and procedures were not followed, logging practices were deficient and customary landowners were short-changed in the alienation of their timber resources.

In 1990 the World Bank and other donors began to support the State in its attempts to re-assert control over the logging industry. While new legislation and a series of donor-funded activities brought some change, real change was slow in coming and sometimes difficult to see. Certainly, governance was absent in 1994, when a Minister for Forests unlawfully allowed a logging company to begin a road-line clearance of the claimants land: the origins of the current claim.

A "road-line clearance" is an authorisation to clear tress along the alignment of a proposed road. The authorisation (the Timber Authority) usually allows the builder of a road to cut timber in a corridor, 40 metres either side of the road's centre-line. There have been a number of attempts to build roads in Papua New Guinea, using a corridor wider than 40 metres and funding the construction of the road from sale of the timber. The result is generally a sub-standard road that quickly deteriorates, and an uncontrolled logging project.

This is what we have in the case of the Kiunga-Aiambak road.

This submission will demonstrate the failure of the Papua new Guinea government and logging industry participants to fulfil or demonstrate good faith *on every single conditionality aimed at improving forest governance, imposed by the Bank on the Structural Adjustment Programme Loan (SAL).*

It will also refer to preliminary results from the current review into forest revenue and royalties, which show an industry that is uneconomic.

And this submission will deal with significant instances of social, cultural, ecological and economic harm.

The expropriation of the claimants' forests by the State and the logging company

has caused and will continue to cause, grave financial loss to the claimants. The net value of the logs taken from their land since 1995 can be calculated as US\$36 Million.

There is symmetry between this net loss to the Claimants of US\$36 Million and the Second Tranche outstanding to the State of US\$35 Million.

The Bank's disbursement of the second tranche without:

- ◆ maintaining the moratorium
- ◆ fully implementing the findings of the partial review, including the requirements seeking the remediation of illegal activities, and
- ◆ requiring a full review of the contractual provisions of the loan

constitutes

- ◆ a violation of the contractual provisions of the SAL by loaning to a borrower, who with bad faith, defaults to implement its own promises. There are very clear examples set out in the body of this claim indicating the development objectives of the governance loan have not been met and are unlikely to be met, if the disbursement of the second tranche is completed.
- ◆ a violation of Operational Directives 13.05 on supervision and monitoring because of poor judgement and imprudent lending to a borrower who promotes illegal practices.
- ◆ A violation of the Bank's forest policy OP 4.36 as the acts of the State show that it did not implement, follow, adhere to, or is in fact committed to, sustainable forest management, sustainable forestry, conservation-oriented forestry or good forestry practise.

The Inspection Panel should address the need that arise from this claim:

- ◆ The claimants need to have this illegal logging concession stopped,
- ◆ There needs to be a moratorium on new concessions in the forests of Papua New Guinea to allow a respite for reform,
- ◆ The landowners need to be compensated for their losses, and the institutional reform processes need to be put in place firmly.
- ◆ The second tranche of the SAL should not be paid until these matters are resolved.

1. The Claimants

The claimants are the persons named in **Appendix 1**, customary landowners of land and forests in the Kiunga District of the Western Province of Papua New Guinea ("the Claimants"). The individual claimants are requesting anonymity due to threats of reprisals and they have given authorisation to the Center of Environmental Law and Community Rights Inc (CELCOR) to represent them and file this claim on their behalf. These authorisations are attached as **Appendix 1**. The addresses and contact information for claimants are included in **Appendix 1**. The Claimants are living in the area between the township of Kiunga and the international border of Papua New Guinea and Indonesia located in the Western Province of Papua New Guinea, and shown in the map at **Appendix 2** (herein after referred to as ("the Claimants land").

2. The Loan

The International Bank for Reconstruction and Development (hereinafter the "Bank") has provided the Government of Papua New Guinea (the State) with a

\$90 million structural adjustment loan known as the "Governance Promotion Adjustment Loan." See the President's Report No. P-7374-PNG May 19,2000] (hereinafter "the loan"). The loan was approved in May 2000, and it was designed to be disbursed in three tranches the first tranche, a floating tranche, and a second tranche. The first tranche and the floating tranche have been disbursed and disbursement of the second tranche is believed to be imminent.

However, the conditions required for disbursement of the second tranche have not been met by the State.

The Structural Adjustment Loan (SAL): Deteriorating situation

The Claimants seek the assistance of the Inspection Panel because they have lost their land and forests to bad forest governance, during the currency of a loan by the Bank, specifically lent to the State for forest governance.

While the loan was made in May 2000, governance of Papua New Guinea' rainforests deteriorated sharply in 1998, when the Government decided to liquidate large forest areas in order to balance its budget. Corruption undermined environmental sustainability, the law and procedures were not followed, logging practices were deficient, and customary landowners were short-changed in the alienation of their timber resources (see Prime Ministers statement front page of this Claim).

The Loan: History of forests in Papua New Guinea (PNG)

Before Independence in 1975 logging was largely confined to plantation clearance, and saw milling by expatriate planters. The Australian administration brought in three large Japanese investors in the 60s and 70's. During the 1980s Malaysian logging companies established themselves throughout the country. By 1989, the logging industry was out of control. The extent of the crisis was described in the Report of a Commission of Inquiry by Mr. Justice T. E. Barnett.

In 1990 the Bank and other donors began to support the State in its attempts to re-assert control over the logging industry. New legislation was introduced in 1991, although it did not become effective until 1993, and subordinate regulations were not promulgated until 1998. A series of donor-funded activities under Bank guidance brought some institutional change, although, real change was slow in coming, and sometimes difficult to see. Certainly, governance was absent in 1994, when a Minister for Forests unlawfully allowed a logging company to begin a road-line clearance on the Claimants' land: the origins of the current claim.

A "road-line clearance" is an authorisation to clear trees along the alignment of a proposed road. The authorisation (the Timber Authority) usually allows the builder of a road to cut timber in a corridor 40 metres either side of the road's centre-line. Following these rules, it would not be economically feasible to fund the construction of the road from the sale of the logs. There have been a number of unlawful attempts to build roads in Papua New Guinea, using a corridor wider than 40 metres, and funding the construction of the road from the sale of the timber. The result is generally a sub-standard road that quickly deteriorates, and an uncontrolled logging project.

At the heart of the forest problem in Papua New Guinea are improper relationships between logging companies, the electoral system, politicians, political parties, and officials. Papua New Guinea's first past the post electoral system is very risky for intending candidates. Large numbers of candidates stand for elections. Electoral success depends upon candidates spending large amounts of money campaigning, and on gift giving. Logging companies finance this. Then, the companies expect to be looked after by the successful Member of Parliament. This informal system dominates politics and official decision-making in Papua New Guinea, and affects the highest echelons of government. See **Appendix 3, statement by Transparency International (PNG) Inc**

All these elements are present in the Claimant's case. However, the Inspection Panel jurisdiction may not grant the parties immunity from civil suit in Papua New Guinea, and Papua New Guinea has out-dated defamation laws that prevent us

speaking with precision, at times in this claim.

In **Appendix 4**, we show copies of a memorandum from Paiso Limited (the so-called landowner company in the Kiunga-Aiambak road and logging project) to a middleman noting the payment of an inducement of K260, 000 in order to obtain a tax exemption on the export of logs. Annexed also is a copy of a National Gazette notice, signed by a Minister granting the exemption. The Minister later announced his resignation from Parliament citing the need to spend more time with his family as the main reason for his resignation.

The Loan: Presidents Report

The Presidents Report to the Executive Directors does not tell the full story; it does not describe either the nature, or the extent of these political relationships. The important all-embracing political influence of the logging industry is not described. The Presidents Report, P-7374-PNG at p18 para 75 does say:

The system has been exploited in the past by firms, which have essentially expropriated forest resources through fraudulent deals with local individuals who have misrepresented the wishes and intentions of clan groups. Rectifying this situation is a challenge.

The officers who wrote the report were in possession of many submissions by NGOs detailing the failure of forest reform and its impact on customary landowners, land-theft, police harassment, landowners deprived of constitutional rights, their rights to the protection of the law, and the flagrant abuse of due process and unlawful practices. Further, the Report does not fully describe the likely impact of proposed logging, and how the fate of the forest biosphere in Papua New Guinea hangs in the balance. The Report said at para 76, p. 18

Significant losses of forested areas, in an exploitative and uncontrolled fashion, will have major consequences for downstream agriculture and other activities and there have been some localized examples of this already.

That sentence did not describe the likely consequences of the lack of control and the exploitation on fragile societies already struggling for some cohesion in transition, on fragile environments, and on the biodiversity icons of this treasure-house of creation and life, and the economic impact of the exploitation, expropriation and fraud on the private property of the customary land and forest owners such as the Claimants. Here there were significant risks. It is unlikely that the Executive Directors appreciated these risks.

The Loan: Bank put on appropriate SAL conditionality

Nevertheless the thrust of the Bank's policy matrix was appropriate, in as far as it went. It was driven in the right direction.

The Bank acted quite properly when it imposed forest conditions in the SAL. Why was forest conditionality proper? Because the forests were in crisis, the loan was to improve "governance", and governance had been particularly poor in the area of forestry (see Prime Minister's statement on the cover of this claim), hence the crisis, hence the appropriateness of the conditions.

The conditions imposed to improve forestry management on the SAL were:

- to reinstate the forestry log tax regime; and satisfactorily implement reforms on the forestry revenue and royalty to landowners regime.
- to fund an independent inspection of log exports, pre-shipment.
- a moratorium on all new timber concessions, pending a complete review of all existing concessions (but implemented as a review of new/proposed concessions).

- new laws on forest clearances for roads and agricultural schemes.
- new laws restraining powers of delegation.
- new laws insisting on a better balance on the Board of the Papua New Guinea Forest Authority.
- new laws on transparency and non-commercial disclosure by the Forestry Board.

The Loan: The State's bad faith

Log Revenues

The State did reinstate the forestry log tax regime, and a review is being carried out into forestry revenue and royalty. But that review is already under pressure. The consultants have been told to fastract an interim report to enable the State to decrease the tax burden on the loggers in the November 2001 budget. Preliminary results from the review show :

- a sharp decline in log prices;
- a need to increase landowner royalties significantly;
- a need to adjust the log tax,
- but most importantly, for the purposes of this submission: an industry whose sales revenue is less than its out-goings, an industry that is uneconomic.

The uneconomic nature of the logging industry has been apparent for some time. Logging could only be justified in very narrow profit-and-loss terms, from the point of view of an export logger. In terms of real economy, externalities were never taken into account. However, now prices are low, the industry is uneconomic, even in a narrow profit-and-loss sense. Good faith requires a government to look at the real, full, or true economic impact upon its economy of an activity. To ignore the true economic impact, for the sake of narrow sectoral interests is irrational, and in our submission points towards ineffectiveness, and the unhealthy relationships that exist between the State and the logging industry.

In our submission, the preliminary data of the revenue review provides an important economic justification for maintaining the moratorium on new concessions. If an industry is uneconomic, then it does not make sense to expand the industry.

The Bank is obliged properly to supervise loans and under OP 4.36 (Forestry Policies), not to loan for an activity that is irrational, or to loan for forestry purposes that cannot be managed on a sustainable basis. The uneconomic character of the logging industry means that the industry is not sustainable. The Banks OP4.36 says:

"(e) Sustainable management of natural forests means controlled utilization of the resource to produce wood and non-wood benefits into perpetuity, with the basic objectives of long-term maintenance of forest cover and appropriate reservation of areas for biodiversity protection and other ecological purposes. "

The preliminary findings of the Revenue Review showing an industry whose outgoings exceed its income, do not comply with this definition of sustainability. To seek to keep the industry going, without a respite for purposes of investigation and restructuring is to manage the industry poorly.

Funding an Independent Inspection of Log Exports

Although funds have been provided for the Swiss firm Social de General Surveillance (SGS) to monitor log exports and the work is being done, the funds

are not part of the Papua New Guinea Forest Authority's formal budget. The funds have been donated through the European Union. The PNG Forest Authority has opposed the employment of SGS, and tried to give this work to a local contractor.

A moratorium on all new timber concessions, pending a complete review of all existing concessions

The issue we wish to raise here is the lack of good faith of the State in honouring this condition. The thrust of our submission here, is that as soon as the second

tranche is paid, the State will slip back into its old ways: business as usual.

As will be seen from the text of our submissions the State broke both the letter and the spirit of the condition with the following logging concessions:

- Pondo TRP,
- Tuwapu,
- Collingwood Bay,
- Kamula Doso FMAs,
- Amanab Blocks 1 to 4 FMAs,
- Semabo FMA,
- Kula Dagi
- Bakada
- and on the Claimants land within the Kiunga - Aiambak Road.

We draw attention to the schemes or arrangements by which logging concessions fall into the hands of companies because of omissions by State lawyers. Due process is allowed to fall by the wayside, and then companies assert their rights through the law of contract, quasi-contract, and the use of *ex parte* orders and declarations, by the courts. All of this, whether it be misfeasance or nonfeasance, points toward a situation where the Bank should draw the conclusion that as soon as the second tranche of the loan is paid out, the State will slip back into its old ways. Business as usual. The State and logging companies connived at circumventing the moratorium. Bank officials knew of these developments. As was reported by the Review Team, the Vailala Blocks 2 & 3 Forest Management Agreement area had no legal basis. But the logging company, with the tacit consent of the Forest Authority and the State managed to obtain a declaration from the courts that a timber permit existed. A similar situation occurred in the Makapa concession. Un-opposed by the Forest Authority or State, the logging company obtained a court order that regularized an otherwise irregular concession.

The behaviour of the State prior to the loan, and during the currency of the loan shows a lack of good faith. The State was working against the conditions of the loan. The purpose of the loan was to promote governance. But, during the currency of the loan, there is poor and ineffectual governance; the antithesis of the conditions of the loan agreement.

Under these circumstances, the release of the second tranche of the loan constitutes not only acts of bad faith, but a violation of the loan agreement. The Bank responsibilities under OD 13.05 to supervise the loan have been breached. For full submission on this point, see **Appendix 5**.

New laws on forest clearances for roads and agricultural schemes

This is part of the substance of the Claimants case and we make detailed submissions later in this Claim. The issue we wish to raise here is the lack of good faith of the State in honouring this condition. The required legislation has been put in place. But the Minister for Forests ignores it. There is evidence from the Review Team reports that the Minister for Forests gave approval for a major road-line clearance during the currency of the moratorium. The Review Team said:

"Whilst in general policies, laws and proper procedures are being observed, there were four notable exceptions. These are:

- *The apparent illegal issuance and extension of the so-called Aiambak-Kiunga Timber Authority by a succession of Ministers since about 1995. Although the PNG Forest Authority has made attempts to close down this project, it has been constrained by a court order which bizarrely prevents the Authority from exercising its powers under the Forestry Act Related to the above, the approval in December 2000 by the Minister for Forests, of forest clearing for a 635 km "Trans Island Highway". This is outside the Minister's authority. It was revoked by the Minister after receiving advice from the Board.*
- *The issuance of a permission to "set up base camp and construct advance roading" in the Pondo TRP area in 2001 by the PNG Forest Authority Managing Director in the absence of a Timber Permit or a Timber Authority.*
- *The issuance of a permission to harvest logs in the Tuwapu area in 2001 by the PNG Forest Authority Managing Director despite advice from the National Forest Service.*

The latter three are in direct breach of the Government's current moratorium on the issuance of logging permits. In the case of Pondo, the Managing Director later revoked his permission, and his action was duly noted by the Board. In the interim some 8,500 m³ of logs with a value of Kina 1.4 million were exported¹. In the case of Tuwapu the Board correctly directed the Managing Director (Board meeting 73 of 22 August 2001) to withdraw the permission given. A legal direction to cease operations was issued on 20 September. In the interim an estimated 13,000² m³ of logs were exported. At current log export prices³ this represents revenue to the log exporter of some K 2.6 million. These are not minor amounts."(emphasis added)

In our submission the failure of the State during the currency of the moratorium to stop the logging on the Kiunga -Aiambak is a clear demonstration of its lack of good faith.

New laws insisting on a better balance on the Board of the Papua New Guinea Forest Authority

The intent of these reforms was to remove from the Board the Forest Industries Association (FIA) representatives, because they had come to dominate the Board. The FIA representatives were replaced by a member of the PNG Chamber of Commerce. A woman's representative was also provided for in the new legislation.

- A woman has not yet been appointed to the board.
- Further, at the meeting held on Saturday 13th of October 2001, the Chair of the Board allowed a representative of the FIA to be present in a Board meeting.

These matters show a lack of good faith on the part of the State.

New laws on transparency and non-commercial disclosure by the Forest Authority Board.

It was a condition of the loan that the State pass a law that would give transparency to all alienations of forestland. The State has not passed a law to require public notification (press advertisements and public meetings) to the intention of the Forest Authority to establish a Forest Management Agreement.

Although other necessary amendments to the Act were made, the Forest Authority does not as a matter of practice follow the new law on transparency and non commercial disclosure.

- During the currency of the moratorium, the landowners in the Josephstaal FMA through their lawyers, requested from the Forest Authority, a copy of the contract and maps which were said to alienate the timber rights from their land. This document is called the "Forest Management Agreement" (FMA). The landowners did not know who had signed the FMA on their behalf.
- The Forest Authority refused to hand over a copy of the FMA or the maps.
- The landowners made a Constitutional application for freedom of information, to the courts.
- The Forest Authority consented to the order. But gave illegible copies.
- Only when threatened with contempt, did the Forest Authority give over the FMA and maps.

This is a further example of the lack of good faith on the part of the State.

2nd Tranche should not be paid until full review and Kiunga-Aiambak stopped

In our submission on this preliminary point which raises itself as we attempt to sketch the scene on behalf of the Claimants, the State has not acted in good faith during the currency of loan and prudence demands the inference that it may not be trusted, at least until it can demonstrate its bona fide in such a way as to dissipate the distrust that must be seen to have accumulated.

3. World Bank Policies and Procedures

3.1 OD 13.05

We understand that the Bank has the following policy(ies) and/or procedures:

3.1 The Bank's Supervision and Monitoring Policy, Operational Directive 13.05. "Project supervision is one of the Bank's most important activities. Its main purposes are (a) to ensure that the borrower implements the project with due diligence to achieve the agreed development objectives and in conformity with the loan agreement".

This is a case where the Claimants respectfully seek to implement the safeguards, checks and balances that Bank management has prudently put in place in order to help the Bank to carry out its formal mandate.

In so doing, the Claimants seek to help the World Bank implement its own well-

founded policy prescriptions, that have been eroded through errors of judgment, poor practice and inconsistent implementation.

The loan agreement for the 1999 \$90 million Governance Promotion Adjustment Loan (GPAL) says that the,

"proposed loan would support the Government's ongoing efforts to redress past policy and governance shortcomings in a sustainable manner. Hence the loan includes components to improve. ...forestry management. ...A pervading theme is to strengthen governance in public institutions through enhanced transparency and accountability.

The Claimants allege that the disbursement of the second tranche of the SAL without the maintenance of the moratorium and full review of logging concessions would constitute a violation of the contractual provisions of the structural adjustment loan, and a violation of the Bank's obligation to supervise and monitor its projects pursuant to the Bank's Supervision and Monitoring policy, Operational Directive 13.05. The very first paragraph of that policy says that,

"Project supervision is one of the Bank's most important activities. Its main purposes are (a) to ensure that the borrower implements the project with due diligence to achieve the agreed development objectives AND IN CONFORMITY WITH THE LOAN AGREEMENT;" (emphasis added)

The loan agreement's Matrix of Policy Actions says under "Actions Taken/Outcomes Achieved" that there was a "moratorium declared on all new Forest Management Agreements (FMA), timber permits and geographic extensions to timber permits."

A column entitled "second tranche", contains conditions that must be met before second tranche disbursement. That column includes,

"Complete independent review of all FMAs, timber permits and geographic extensions to timber permits. "

An explanation of the shifting position of the State and the Bank over the Loan condition requiring a full review of existing concessions

The condition requiring a moratorium on new logging concessions first appeared in a draft Policy Matrix of early October 1999. The draft Policy Matrix was linked to the internal Bank report titled, *Papua New Guinea: Improving Governance and Performance*, unpublished dated October 1999. This report is not available to the Claimants. This condition was always linked to the need for a review of existing projects. That was confirmed between Bank officials and NGO representatives in early November 1999, orally and in writing. See our submissions under the "time-line" below and also **Appendix 6**. It cannot be argued that there was an unfortunate communication error over this matter. This is so because the Prime Minister made it very clear in his budget speech that the moratorium was linked to a review of existing concessions. There was no unfortunate "communication error".

The condition requiring a full review of existing concessions, in the policy matrix, made sense because there was no real dispute (between the Bank, the State and NGO's) that the management of Papua New Guinea's forests was in crisis,

hence the forest conditionality placed in the SAL. To proceed to plan and allocate to logging companies more of the untouched ancient forests, without a respite long enough to get the existing forest concessions under control, would bring about irreparable harm to society, the forest ecosystems generally. Hence, it makes sense to extend the moratorium over the period of a review of existing concessions.

The history of Papua New Guinea's forests was one of poor governance and corruption. There was a need for a moratorium on new concessions while a review of all concessions took place. It was necessary to ensure that forests were properly managed and benefits are shared fairly. These matters were discussed by NGOs in detail with Bank officials and were included in the conditions of the loan.

However on the Bank's web site "Papua New Guinea and Forests, Frequently Asked Questions (FAQs)" there is a more limited statement of the scope of the review and moratorium, supporting a review only of pending/proposed forest concessions:

*"Reference to the moratorium and the need for a review of applications for timber harvest, is made in the GPAL. A lack of clarity in the language in the documentation has resulted in unintended ambiguity. Wording in the loan agreement and the matrix of policy conditions could be read to mean that the review would cover all forest operations in PNG – including currently operating logging concessions. However the Letter of Development Policy, as signed by the Government, is clear that the objective was to focus the review only on pending applications, and this was certainly the intent of the both the Government and the Bank from the beginning in this area".
(emphasis added)*

See **Appendix 7** for a detailed submission on FAQ's.

This self-serving interpretation is directly contradicted by the language of the matrix included in the President's Report on the Governance Adjustment Loan, the Policy Matrix sent to the State in November 1999, and the words of the Prime Minister, set out above and on the cover of this claim.

The web site also says:

"A review of all current logging concessions in the field would be a major task, and could not be achieved within the time frame of a structural adjustment operation. However, it can – and would – be done under the auspices of the proposed Forestry and Conservation Project (FCP). This is reflected in the Project Appraisal Document for the FCP and will be specified in the Loan Agreement for this project"

In our submission, the last sentence here is quite misleading.

The statement that a review of current concessions could not be achieved within the SAL time frame is incorrect. We submit that it would have been possible to review some of the most critical existing concessions in the time frame allotted to the Review Team. The Review Team managed to review 32 new concessions over the same period of time.

A Time-line

We set out below in our submission, our version of how events unfolded:

- NGO concerns with World Bank forest policy in Papua New Guinea were raised with Bank representative Mr Pirouz Hamidian-Rad in 1997. Mr Hamidian-Rad refused to accept the need for a moratorium on the allocation of new logging concessions, and at that point NGOs broke off relationships with the Bank and began preparing an Inspection Panel Claim.
- On about the 11 or 12th of November 1998, NGO's met with Mr. Douglas. The Individual and Community Rights Advocacy Forum Inc. (ICRAF) had prepared a letter of demand, leading to an Inspection Panel Claim. But at the meeting Mr. Douglas said the Bank was prepared to support a moratorium on new logging concessions and a review of existing concessions. These matters are described in Colin Filer's book "The Thin Green Line" pp68-70. See **Appendix 8**.
- On the 2nd of November 1999, Greenpeace representative Brian Brunton met with Mr. J Douglas. Mr. Douglas confirmed that the Bank would request the State to include a moratorium in the SAL and the FCP loan. And that "the Bank would support/propose a review of all existing projects during the duration of the moratorium." See **Appendix 6** (email messages from Brunton confirming the conversation and Mr. Douglas reply not disputing that the Bank would support/propose a review of all existing projects during the duration of the moratorium").
- In the first or second week of November 1999, the National Executive Council approved the terms of the SAL, to include a moratorium and a review of existing concessions (the Claimants have no documentation on this meeting because it was kept confidential. Our sources were oral, but confirmed by the Prime Minister's budget speech, see front page of the claim.
- In the time between the Prime Minister's speech in November 1999 and May 2000, when the National Executive Council (NEC) approved the terms of the loan, officials in the Prime Minister's Department came under political pressure to roll-back the commitment to a moratorium and full review of all existing concessions, and substituted it with a limited review on new concessions. In particular, the Forest Authority, made a submission to the NEC that, amongst other things, successfully sought to change the review from a review of existing projects, to a review of new projects. See **Appendix 9**.
- Politicians and loggers did not want a full review of existing concessions because they did not want any independent investigation into malpractices. Papua New Guinean officials were also uncomfortable with a full review of existing concessions because it would require a lengthy process of about five years, and reveal their short-coming too.
- Politicians, and hence officials, were under pressure from their patron-logging companies to remove the moratorium and give as concessions to logging companies the remaining areas of accessible untouched forest.
- A detailed history of the process by which the World Bank came to agree to a moratorium in Papua New Guinea is given in Filer et al *The Thin*

Green Line: World Bank Leverage and Forest Policy reform in Papua New Guinea (Appendix 8).

- Certainly Mr. Douglas, a Bank official key to negotiating the forest component of the loan, wavered over the need for a full review of existing concessions.
- As early as November 1998, Mr. Douglas gave verbal undertakings to Port Moresby NGOs that he was willing to support the call for a moratorium on the development of new logging projects, while a review of existing concessions took place.
- Later (see **Appendix 6**), when confronted with the minutes of that meeting he changed his mind on his verbal commitment, although at the time the Bank's commitment to extend the moratorium until all current permits and extensions had been subjected to review, had been included in a draft Policy Matrix. Mr. Douglas in a newspaper interview in the *Papua New Guinea Independent*, 11 November 1999, highlighted the need for a moratorium on new timber concessions, and a review of "all existing logging operations and a far greater level of transparency in the deliberations of the National Forest Board". The NEC (cabinet) in November 1999 and the Prime Minister's budget speech, confirmed a review of existing concessions.
- Mr. Douglas and other officials believed that industrial-scale-logging should proceed in Papua New Guinea. See Report No. PID6506 May 29, 2001 paragraph 4.
- In May 2000, Mr. Douglas reached an agreement with Mr. Paul Barker an official in the Papua New Guinea' Prime Minister's Department. Mr. Barker, who was responding to the political pressure, negotiated a short-term moratorium with the Bank. This shortened moratorium was to be maintained while 30 or so new projects were vetted for compliance and legality under a modified review.
- The Bank officials backtracked to a weaker position, a short-term moratorium pending a compliance review on selected new projects. This position did not comply with the matrix of loan conditionality and it endangered the forests of Papua New Guinea generally and the Claimants forest in particular.
- The "modified review" was no longer a review of all existing concessions. It was a process arising from the political pressure of logging interests and threatened the Claimants' forests. Perhaps from the view of logging interests in Papua New Guinea, a limited review was preferable because it could be quickly implemented, paid for by donors (the Government of Australia), and then ignored, while the new forest estate was prepared for allocation.
- An additional strategy of Papua New Guinean officials, (with the knowledge of Bank officials - who were advised by NGOs of these developments), was to continue to prepare and process the allocation of new concessions during the time when the moratorium was supposed to be in place. Thus, the Forest Authority proceeded to take steps to have a number of concessions readied for allocation to particular logging companies during the currency of the moratorium. The government sought to expedite the allocations of new concessions up to, but just

short of approval, with the objective of formalizing the new contractual arrangements as soon as the moratorium was lifted. This in itself constituted a violation of the moratorium and it is evidence of bad faith on the part of the government.

- Further, the State, in good faith, did not address the need for a substantial hiatus in new logging, to allow a complete over-haul of forest and conservation policy and implementation in Papua New Guinea. This was necessary for the effectiveness of both the loan, and a proposed loan, called the "Forest and Conservation Project" (FCP) .

Consistent with the Policy Matrix, PNG National Executive Council (NEC) decision No NG 99/99 (a cabinet decision) ordered a moratorium on all current proposals (Forest Management Agreements (FMA's), Timber Permits (TP's), Timber Authorities, (TA's) pending a review of existing concessions. The Cabinet decision was made in November 1999. The Claimants do not have a copy of the NEC decision. It is a confidential document and was not made available to us. But we are reasonably sure what was decided in the decision because of a speech the Prime Minister made in Parliament, and because of references in other NEC documents, which did fall into our hands. The Prime Minister of Papua New Guinea in his budget speech November 1999 described his government's policy thus:

"Governance has been particularly poor in the area of forestry, with the side effect of promoting corrupt practices and undermining environmental sustainability in logging activities. The Government is committed to introducing a moratorium on all new forestry licenses, extensions and conversions, and to proceed with a review of all existing licenses, to ensure that proper procedures are followed, that logging practices are not carried out in an unreasonable way, and that landowners get their fair share of benefits from resource use."

In essence the loan was to promote governance, and for the purposes of this Claim, in particular, forest governance. The Claimants submit that Bank officials behaved in an imprudent and irresponsible manner lending large sums of money to a government that is corrupt and irresponsible. Senior Government Ministers on several occasions gave tax exemptions to the logging company logging on the Claimant's land. Although corruption in Papua New Guinea is known to be "systemic and systematic", to quote Sir Mekere Morauta, the Prime Minister of Papua New Guinea, the imprudence and irresponsibility refers to irresponsible acts that directly affect the Claimants and their land. Detailed submissions on imprudence and irresponsibility are at **Appendix 10**.

3.2 OP 4.36

In addition, Bank decisions in Papua New Guinea forest matters are regulated by the Bank's 1993 forest policy known as Operational Policy 4.36 (OP 4.36).

In our submission the failure to secure the moratorium on new logging concessions, pending a review of existing concessions, was a breach of OP 4.36, because it failed to implement the policy objectives of OP 4.36. The loan allowed logging operations to proceed (the new concessions) where there was in fact no sustainable forest management.

OP 4.36 bans the Bank from financing commercial logging operations or the purchase of logging equipment for use in tropical moist primary forest. O P 4.36, para. 1(a), "Where a country has made a commitment to undertake "conservation-orientated" forestry, the Bank may finance improvements in

planning, monitoring and field control of logging operations”.

OP 4.36 promotes good forestry practice and sustainable forestry and limits World Bank forest sector lending by requiring environmental and social assessments, avoiding loans for logging in areas of high ecological value, requiring safeguards for forest dwellers rights.

In primary forest where logging is ongoing, but where a government has made a commitment to sustainable management, the Bank may finance improvements in the planning, monitoring, and field control of forestry operations to maximize the capability of responsible agencies to carry out the sustainable management of forest resources.

Detailed submissions on breaches of OP 4.36 are at **Appendix 11**.

4. The Bank has violated or threatens to violate its own policies and procedures in this way:

The Bank's disbursement of the second tranche without:

- maintaining the moratorium
 - fully implementing the findings of the partial review, including the requirements seeking the remediation of illegal activities; and
 - requiring a full review of the contractual provisions of the loan,
- constitute*
- a violation of the contractual provisions of the loan by loaning to a borrower, who, with bad faith, defaults to implement its own promises. The loan, amongst other things was to give the State support for on-going efforts to redress past policy and governance shortcomings in a sustainable manner, with components to improve forestry management. There are very clear examples set out in the body of this Claim above, that affect the Claimants land, and other examples referred to in evidence, showing the failures of the forest sector generally, indicating the development objectives of the governance loan have not been met, and are unlikely to be met, if the disbursement of the second tranche is completed.
 - a violation of Operational Directive 13.05 on supervision and monitoring because of poor judgement and imprudent lending to a borrower who promotes illegal practices .
 - a violation of the Banks forest policy OP 4.36. The acts of the State show that it did not implement follow, adhere to, or is in fact committed to, sustainable forest management, sustainable forestry, conservation-orientated forestry, or good forestry practice.

5 Harm: The damage to the Claimants

Harm: Governance

5.1 The Review Team report on the Kiunga -Aiambak Road said:

“ 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."

Governance, then directly affects rights of the Claimants (and all Papua New Guineans') to protection of the law in a broad sense. The unlawful and uncontrolled activities of logging companies de-stabilises governance. In this case the logging company is able to effect political, judicial, and administrative checks and balances, to the end that it can log with impunity, along the Kiunga-Aiambak Road, and the feeder road known as the "Barramundi Highway". Thus, the administration of a country is undone. When loggers can get their way, without "due process" being observed over a seven year period, in such a way that their actions are beyond the control of the regulating authority, then the core of governance in a nation is put at risk.

- The recent report by the Review Team put in place as a result of the loan, describes the illegal nature of the Kiunga Aiambak concession imposed on the claimants land. The Review Team also concluded that the Kiunga Aiambak concession is in violation of the World Bank's loan conditionality requiring a moratorium on all new concessions. A copy of the Review Team report on the Kiunga Aiambak concession is attached as **Appendix 12**. The report hints at relationship between politicians and logging companies. The Claimants do not want to be more specific, at this stage, because the civil laws of Papua New Guinea which limit freedom of speech. Officials in the PNG Forest Authority apparently lacked authority, or resolve, to intervene and protect the Claimants' rights.

Harm: A Kind of Genocide

The claimants fear an impending destruction of their culture. The evidence of this harm will be given by the Claimants to the Inspection Panel in the form of direct testimony on a video tape **Exhibit 1**. The testimonies describe:

1. The empty promises the logging company made to the landowners to get their consent for the logging project to be developed on their land.
2. The destruction that has being caused to the forest, wildlife and culture of the people as a result of logging.
3. The impact of logging on social life of the people.

5.4 Papua New Guinea is the most culturally diverse place on earth. One fifth of the world's languages are found there, with over 800 languages spoken. The forest is held under customary land tenure by many indigenous tribes. The culture and the forest are under threat. The Claimants are the lawful owners of a forest of global significance. Their forest is part of the lungs of the Earth. It has a major role in global climate, yet the State and Bank officials appear to tolerate its liquidation.

5.5 Because the area is lightly populated, about one person per square kilometre, logging is not the most effective, appropriate, or economic form of development for the Claimants. The demographics of the area are not accidental. They arise as the result of thousands of years of interaction between the land, forests and the Claimants' ancestors. They were and are, hunter-gatherers, moving through the forests, living from the forests. This is a delicate and complicated process of human activity and biodiversity; an ancient balance, that is easily upset. But there was never any attempt to involve the Claimants in any discussions about the development options open to them. Although rich in culture and resources, in the modern markets the Claimants are the poorest of the poor. Their livelihoods, food security, depends upon the forests remaining intact. This is their wealth. They are isolated, uncared for by the State, the Bank, and easy prey for logging companies. The Kiunga Aiambak road, the centre of this Claim, drives through the heart of this ancient forest, and has little justification, other than an excuse to

supply the logging company with raw logs. The road is of such a low standard that it becomes impassable in the wet season. The jobs offered by the logging company are unskilled, and temporary. The Claimants have no virtual experience in the modern economy. That economy does not present itself to them as a level playing field. They are disadvantaged, weak competitors, at risk from a form of quasi-social genocide now familiar to many indigenous peoples.

5.6 In the *Constitution of Papua New Guinea*, the National Goals and Directive Principles place a duty on the State to use wisely and preserve the natural resources and the nation's environment, for the use of future generations. There is simply no way that the logging operations on the Kiunga- Aiambak Road conform to this mandate. The same Goals and Directive Principles place a duty on officials to protect Papua New Guinea's culture. If the forests die, there is no food, the plant life, birds, animals at the basis of the diet wither away, water becomes contaminated, building material for shelter, canoes-transport, slowly become harder to find, and the physical rationality, the foundation of culture, begins to disappear. Relations between groups, as has happened already, begin to fracture. The young who can no longer make a living traditionally, migrate to the cities, there to join the desperate cycle of urban poverty and crime. As the young move, the old are left in rural poverty, the oral traditions begin to wither. Then the languages die. When your language dies you are no longer a people: by definition. It is not legally genocide, but nevertheless, a kind of genocide.

5.7 The logging companies make their links with men. Women are never asked what they want. This is a society where womens' role in life is defined and subservient. Nevertheless a video tape was made which shows women, men and youth from the area talking about logging and the road. The video tape is **Exhibit 1**. The following is a summary of the main points put forward by women in their oral testimonies:

- The integrity of the forest (bush) is important for the collection of housing material- particularly temporary houses used by women for giving birth
- Logging makes it harder for getting sago (the local staple) for food; the mud is now much deeper; the sago palms are shorter.
- Stocks of sago and fish are decreasing
- The company spoilt the bush
- Animals (protein) are now far away- before they were close
- The company gave the women nothing
- There was no consultation with women
- Women face hard problems. Logging did not benefit us with anything good
- We are happy about the road; it lets us get to Kiunga; but we have to beg rides on company trucks; it is not maintained properly
- They should have given us a church
- They said they would give us houses, a church, a market; but nothing was done
- Government services are not coming through
- Nobody cares about this place, we are a forgotten people here and the government has not given us any services
- The BHP-Billiton/ Ok Tedi Mining Ltd mine has contributed to the pollution
- Health problems in the area are caused by the mining pollution of mine

at Ok Tedi, the Placer mine at Porgera, and the logging by Concorde Pacific

- People come to the Boboa Health Centre, Lake Murray with lots of gastric pain, it affects the chest, burning, blood in the feses, typhoid, skin irritations; its from eating the sago and drinking the water
- They (the loggers) put chemicals at the road-side

5.8 The forests of Papua New Guinea are crucial to the well being of the people. The forests provide the people with food, water, building materials, medicine and are closely integrated into the everyday way of life. They are a resource and a life-support mechanism. The forests are also owned by the people. They are the private property of customary clans or extended families. So the rights to all the necessities to life that the forests provide are also the property of the customary owners. The arrangement by which foreign logging companies, through the State, accessed the forests and appropriated logs has been deteriorating over the years. The current situation is that the industry is bankrupt. The costs of logging exceed the f.o.b. prices. In 1998 the then government made a determined effort to access most of the available and accessible un-logged forests. There was widespread resistance to that move. The source of that resistance was that people realised that the deals being offered them by the loggers and the State were "bad deals". At one level, the financial returns were very poor. But they also realised that they were being misled, and that there were attempts to induce them to enter into unfair agreements (see the Report of the Review Team Landowner Specialists **Appendix 13**). The people were worried about their future. They understood that they had a responsibility to their children, and future generations. They understood that their ancestors had largely left the forests to them intact, and that they had a responsibility to pass the forest resources on to the future generations without any undue waste. They were worried and concerned that the State was unable to keep its promises, unable to manage its own affairs, that some State representatives and officials were dishonest, manipulative and even corrupt. The people feared all these things. Bank officials were also aware of this deteriorating situation. That is the reason why they put the forest conditions on the loan. Both landowners and Bank officials were concerned about poor governance. The conditions on the loan were there to prevent things getting worse. But then the State and the Bank officials did not follow the conditions; things will certainly deteriorate further if the second tranche is released without the Bank ensuring that meaningful reform has taken place.

5.9 The social degradation that accompanies industrial logging is not a figment of the Claimants' imagination. It is supported by scientists who work in Papua New Guinea. It was documented recently in research carried out by Brunios in the Wawoi Guavi TRP not far from the claimants' land and in the Sandaun Province in research done on behalf of the European Union by Schmid. See **Appendix 14**. Schmid said:

"Industrial resources extraction not only threatens the natural richness of these areas of globally highest biodiversity but also deeply affects the local populations. The social consequences of the "frontier effect" are numerous and detrimental: alcohol abuse, gambling, prostitution. The influx of cash as well as of migrant workers irreversibly destroys the social fabric of the communities and subjects local people to forced and rapid social and cultural change and reorientation.. Change of diet from fresh produce to commercial food causes

serious health problems while introduced diseases (such as malaria in Guyana) further severely affected local peoples health. The pollution of fresh water resources by logging and mining operations represents another serious health hazard".

5.10 **Community forestry:** It is unfortunate that methods of forest utilisation that assist people to control their own development, such as community forestry are not well supported by the Bank, the State, or the PNG Forest Authority. Community forestry has been carried out almost exclusively by the private sector, mainly NGOs and CBOs. Most of the work of the Forestry Authority is in promoting large-scale export logging concessions. Community forestry is an economic link between the landowners, forest owners and their forests that allows them to control their own forests. Community forestry conforms with Bank policy, see OP 4.36:

The Bank's lending operations in the forest sector are conditional on government commitment to undertake sustainable management and conservation-oriented forestry. Such a commitment (which may be reflected in specific conditionalities; see Good Practices 4.36 for examples) requires a client country to

(i) adopt policies and a legal and institutional framework to:

- (a) ensure conservation and sustainable management of existing forests, and*
- (b) promote active participation of local people and the private sector in the long-term sustainable management of natural forests (see paras. 19-20 of OD 4.01, Environmental Assessment);*

(ii) adopt a comprehensive and environmentally sound forestry conservation and development plan that clearly defines the roles and rights of the government, the private sector, and local people (including forest dwellers) (see OD 4.20, Indigenous Peoples; "(emphasis added)

5.11 The Claimants have never been assisted by the State to participate in community forestry. With larger-scale activities, such as the activities on the Claimants land, the State is in breach of these policies because there is no legal and institutional framework in Papua New Guinea to promote the active participation of local people in the long-term sustainable management of existing forests concessions over 5000ha all timber rights are surrendered to the Forest Authority through a standard Forest Management Agreement. No negotiation on the terms of the FMA is tolerated. There is no legal relationship between the local people and the developer. They have no privity of contract with the developer. The parties to a project agreement or timber permit are the Forest Authority and the logging company. So, the local people cannot sue if there is a breach of the concession agreement, because although the timber resource is based on their land, they no longer own the timber rights and they are not parties to the operating contracts. If there were any legally binding contracts between the Forest Authority and the logging company operating on the Kiunga Aiambak road, then the Claimants or other landowners are not parties to them.

Harm: The Degradation of Forests

5.12 There are real threats facing landowners in Papua New Guinea who have forest concessions imposed on their lands. But in this case, the people affected and their forests, have wider significance. New Guinea's vast *Paradise Forest* is part the world's third intact largest tropical forest. This forest stretches across the international border between Indonesia/West Papua and Papua New Guinea. It runs through Papua New Guinea and West Papua from the

south coast, over the central mountains, and down to the north coast. The Claimants forests were, until recently, completely unspoilt. The icon for this forest is of course the Bird of Paradise (32 species of these stunningly beautiful creatures are endemic to Papua New Guinea), which is also the national symbol of Papua New Guinea. But the forests bursts with biodiversity. The vast forests that run along the western border between Indonesia's province of Irian Jaya and Papua New Guinea, comprise the heart of PNG's remaining ancient forest landscape (about 5 million ha.), containing 5-7 % of the earth's biodiversity. The Claimants forests are in the heart of this area.

5.13 Forest management is so poor as to cause actual harm to the forests. The Bank made the loan knowing that the State had no effective ability to protect the forests of the claimants through the implementation of management policies or practices on fragile forests, 10% conservation set-asides, rotation cycles. There is no "National Forest Plan" This was a risk for the Bank.

- On the one hand it sought to improve the governance of forests through the loan.
- But on the other hand, by not insisting on proper adherence to the conditionality,
- not ensuring that the moratorium stayed in place until the recommendations of the partial review were fully implemented, and
- a full review of existing concessions completed,

it ran the risk of harming landowners and in particular the Claimants'.

5.14 These issues are well known amongst forest policy-makers but were recently revisited on the State and the Bank by the Review Team. Devastation to intact mixed species of tropical forests can be profound. Bank forest experts should be aware of this because it has been demonstrated in the literature see Bowles, et al, "Logging and Tropical Conservation" *Science* volume 280, 19 June 1998,p1899, see **Appendix 15**. Closely associated with the degradation of the forest, the degradation of the culture we have referred to above. As Schmid notes at **Appendix 14**, the immediate impacts of selective logging may not be visible. High grading sees the removal of select trees only and the lower value softwoods are left in place. The appearance is that an intact forest is still there. The under-growth and vines quickly re-establish themselves. In reality a profound change has taken place, although there may be little or no perception of the change. The Claimants fears of this global phenomenon may have a basis in Papua New Guinea. Here, the fears are well established, and have been documented.

5.15 **Rotation cycles.** The PNG Forest Authority bases all its forest management on a 35-year forestry cycle or rotation period. There is no scientific evidence to support the proposition that mixed species tropical rainforest will regenerate within a period of 35 years after they have been logged. The evidence is to the contrary. High value tropical hardwood species invariably take longer than 35 years to regenerate. The Review Team has recommended that the Forest Research Institute be asked to advise the State on the issue of rotation period. But that is not enough. There needs to be a breathing space long

enough for all stakeholders to view and discuss the data. That would take time. Certainly no new concessions should be allocated until the rotation period is scientifically established, to the satisfaction of stakeholders. This issue is linked to Bank policy in OP 4.36. The definition of "sustainable management" in the Bank's Policy is:

"(e) Sustainable management of natural forests means controlled utilization of the resource to produce wood and non wood benefits into perpetuity, with the basic objectives of long-term maintenance of forest cover and appropriate reservation of areas for biodiversity protection and other ecological purposes."

If the resource is to be used in perpetuity, then the rotation period must reflect the life cycle of the slow-growing species. It must be scientifically based, and not an arbitrary figure such as 35 or 40 years.

5.16 **"Sustainable" management of natural forests.** The policy mandate in OP 4.36 of sustainable management of natural forests, is problematic in Papua New Guinea's mixed-species forests. The evidence points to industrial scale sustainable forestry not being either economically or ecologically feasible. One reason for industrial-scale forestry not being feasible, is that the cost of putting back the forest into its original form is very high. True sustainable forest management in mixed species tropical forests has a very high cost of management to make it work. This is so for example, with the Mil Madeiras experiment in Amazonas, and other Brazilian examples that are Forest Stewardship Council certified. The claimants assert that there are no examples in the world where industrial logging in a mixed-species tropical forest has been shown to be ecologically or commercially sustainable. Papua New Guinea forests and their owners are being used for experimental purposes, at great risk and without scientific or economic justification.

5.17 **Selective logging.** Another reason why the sustainable management of natural forests is problematic in Papua New Guinea, is that selective logging, on an industrial scale, tends to kill-off the high value slow-growing hardwoods. The Bank policy in OP 4.36 :

"The Bank's lending operations in the forest sector are conditional on government commitment to undertake sustainable management and conservation-oriented forestry",

is not followed in that the selective logging destroys between 53 to 79 % of the high value trees. It therefore cannot be called "conservation-orientated Forestry", see paras 5.23-24 supra.

5.18 The standard logging method of operation used by the PNG Forest Authority is to employ a technique known as "selective logging". This technique was used on the Claimants land without their consent, along the alignment of the Kiunga Aiambak road, and will be used along the alignment of the Baramundi Highway.

5.19 The term "selective logging" is a euphemism for "high-grading". With

"high-grading" the logger removes the high-valued tropical hardwood species, which are generally slower growing. The effect of this is to give living space to the faster growing, but commercially less valuable, softwood species. The ecological balance of the forest is disrupted and a systematic degradation takes place into secondary growth.

5.20 Logging companies, with the PNG Forest Authority, turning a blind eye or in connivance, then carry out a second cut, even though a second cut would not be in accordance with the law. The implementation of the Logging Code of Conduct is poor. Forest management is poor. There has never been a prosecution of a logging company for violation of the Logging Code of Conduct. A second cut would not conform to environmental standards. Environmental Impact Statements are routinely signed-off by Ministers for Conservation and Environment without regard to standards. The Office of Environment and Conservation has closed its section for monitoring forests. There has never been a prosecution of a logging company for infringement of environmental regulations. Following the second-cut, the forest is so degraded, the logging company then recommends to the State, generally through the Department of Primary Industry, the clearance of all trees, and the planting of oil palm. The logging company, the Department of Primary Industry, the PNG Forest Authority, the Office of Conservation and Environment, the Department of Lands and the Provincial Government then work together to set up an "oil palm scheme". Agricultural clearances are not "selective logging. They are clear-fell operations. They are therefore profitable for loggers, who can fell all the trees.

5.21 **Collingwood Bay Case: 38000 ha "stolen"**. A specific example of this attempt at a clear-fell operation, occurred in 1999, at Collingwood Bay. There, State entities working together, unlawfully alienated 38,000 ha of customary land and placed it under indefeasible title. The customary landowners obtained interim injunctions stopping actual logging, but the matter is still before the court. And the title over the land is still in existence, although disputed.

5.22 In 1999, the State permitted the alleged fraudulent acquisition of 38,000ha of forests for an illegal oil palm project at Collingwood Bay, in the Oro Province of Papua New Guinea. This illegal acquisition undermined attempts by local communities to protect their forests and pursue alternative sustainable development paths. The Maisin people were able to establish amongst themselves local control over their lands and their forests. Their leadership was a combination of traditional leaders, and educated people who had either returned from work in the modern sector, or kept close links with home, while still at work in government or commerce. The leadership, working through a complex system of local consultation arrived at a practice of forest conservation. No cutting the forest, not even with portable sawmills. As an alternative, they developed links with NGOs to market traditional bark-cloth – known as tapa-cloth, When the landowners learnt about the leases, they successfully sued for interim orders preventing any trespass. The action is still before the courts. Landowners sought and obtained interim injunctions to stop logging in 1999. The loggers through their lawyers brought a series of interlocutory applications, culminating in

Forest Authority, although defendants in this action, have done nothing to defend the rights of the landowners in that case. The landowners' lawyers gave a full brief on the case to Bank officials.

5.23 **"70% of stems left mortally wounded"** Mr. T R Vigus, a respected forester and conservationist in Papua New Guinea, undertook research in the 1980s and 1990's, which empirically shows the high loss of commercial trees after selective logging has been through a forest. The data was obtained from plots within commercial timber concessions in Papua New Guinea, and show between a 53% to 79% loss of commercial trees after selective logging. See **Appendix 16**.

5.24 Vigus work is cited and supported by other scientists. C. K Schmid says:

"In selective logging those big mature trees which are anyway not used by local people are removed by the loggers and paid for. This process is often unprofessionally carried out by poorly skilled personnel operating heavy equipment.

"In research plots in West New Britain it was shown that more than 70% of the stems were left mortally wounded (Cameron and Vigus 1993), not to mention collateral damage to other forest organisms and trees. Within the Wawoi Guavi Timber Concession in the Southern Highlands, Brunios concluded that an average of 119 trees were damaged in every 10,000 square metres of selectively logged forest (Brunios 1999b, 9), or, that for every selectively felled tree, 45 others were mortally wounded." (Brunios 1999b, 31).

5.25 In our submission, the State does not have the ability to manage and conserve the rainforests in the country. The Bank's own documents show that:

The forestry sector experienced a number of reversals with respect to important initiatives that had been introduced in 1995-97. These events raised the spectre of deterioration in sector governance that had the potential to lead to unsustainable logging .See Presidents Report to the Executive Directors, Report No. P-7374 -PNG p3 para 12.

5.26 There had been previous, and failed, Bank attempts to bring "governance" to the forestry sector. The Bank's President's Report failed to adequately capture the degree of risk in the sector. One Bank document (see **Appendix 17**) describes the risks in very general terms, insufficiently so, in our submission to be of use to decision-makers:

"The risks to attaining the objectives of the loan stem from a number of factors: political opposition could compromise the reform program; sustaining the wide ranging reform effort may be constrained by weaknesses in implementation capacity; PNGs vulnerability to commodity price fluctuations and natural disasters could undermine gains from improved policy; and high crime rates could weaken the supply response from on-going reforms."

5.27 The situation, was, in fact, far worse than a mere potentiality to lead to unsustainable logging. As Vigus's work shows, namely 70% of the residual forest may die. Independent commentators (Filer et al) recorded Bank officials as being of the opinion that:

"The PNGFA was still seen to have a "limited ability to actually enforce sustainability guidelines", while DEC was "highly constrained" in its capacity to establish conservation areas or carry out its other core functions".

5.28 **We make two observations about this statement:**

First, we are forced to rely on statements made in documents not in our possession, but referred to in a semi-official publication. The Claimants are faced with a major problem that there is no discovery process in this claim. Filer et al, working in a State-funded research institute had access to original State and Bank documents. We do not have that privilege. The Bank document cited by Filer et al, would have been categorised as "confidential". Indeed most Bank documents to do with SAL, before the formal press announcements, are so categorised. The Claimants would not have had access to it in the normal course of business. See Filer et al id 52, citing World Bank PNG Forestry and Conservation Project: Project Concept Document unpub. 1997, 5

Second, again, the remarks were understatement. The statements are nevertheless cogent. They are assessments by Bank officials. They go to the issue of whether or not a country is willing or able to implement forest conservation and sustainable forest management, which is a precondition of lending by the Bank. The Bank's OP4.36 says:

1. *Bank involvement in the forestry sector aims to reduce deforestation, enhance the environmental contribution of forested areas, promote afforestation, reduce poverty, and encourage economic development. In pursuit of these objectives, the Bank applies the following policies:*
 - (b) *The Bank does not finance commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest. In borrowing countries where logging is being done in such forests, the Bank seeks the government's commitment to move toward sustainable management of those forests, as described in para. 1(d) below, and to retain as much effective forest cover as possible. Where the government has made this commitment, the Bank may finance improvements in the planning, monitoring, and field control of forestry operations to maximize the capability of responsible agencies to carry out the sustainable management of the resource.*

Empirical research carried out by Dr. P Erskine, on behalf of the Individual and Community Rights Advocacy Forum Inc. in 1998, showed that the real threats to the integrity of the forest still existed despite the Implementation in 1996 by the PNG Forest Authority of the *Logging Code of Conduct*. The Logging Code of Conduct contains forest management and conservation standards to be applied during selective logging operations. Dr. Erskine's research showed that in the two most important concessions in Papua New Guinea, the Code was breached in many ways. In the Wawoi Guavi Timber Rights Purchase area (TRP) (see **Appendix 18** operated by the Rimbunan Hijau group and the Vanimo TRP (see **Appendix 19** operated by WTK group, there were numerous breaches of the *Logging Code of Conduct*. Copies of these reports were passed to the PNG Forest Authority. The Wawoi Guavi concession is close to the claimants land. Dr. Erskine's work is included in the Claimants submissions for the following reasons:

operated by WTK group (see **Appendix 19**), there were numerous breaches of the *Logging Code of Conduct*. Copies of these reports were passed to the PNG Forest Authority. The Wawoi Guavi concession is close to the claimants land. Dr. Erskine's work is included in the Claimants submissions for the following reasons:

- To our knowledge, it is the only recent, competent and informed assessment conducted by a scientist into the impact of logging and compliance of logging with the Logging Code of Conduct in the public domain.
- It is relevant because it shows the likely impact of logging in the Claimants' forests. These reports give rise to the basis of the Claimants' apprehension that if a similar competent research was carried out in their forests, it would reveal similar results and conclusions. It is this apprehension that makes so important the failure of the Bank to secure a commitment to ensuring the moratorium stays in place while there is a full review of the impact of logging in existing concessions.
- In the case of the Dr. Erskine's work in Wawoi Guavi, that forest is in the same province as the Claimants land, is near to the Claimants land.
- In the case of Dr. Erskine's work at Vanimo, his report shows, similar poor practices to those described in Wawoi Guavi. The report is important because it shows that poor forest management, and non existent environmental controls are wide-spread in Papua New Guinea.
- Further the work of Dr. Erskine on the lack of forest management in Vanimo, complements the work of Dr. Schmid at **Appendix 14** who examines the social impact of logging.

5.31 These independent assessments of the ability of the PNG Forest Authority to enforce the Logging Code of Conduct, are important. They reflect empirically the physical impact of logging in the largest concessions. They show that objectively the State cannot protect the private property of land owners once the State passes the timber rights to a logging company.

Harm: Economic Loss

5.31 The claimants' forest assets have been irreversibly damaged by the decision to allow logging on their lands, the omission during the currency of the loan to remedy the illegal logging, in violation of the laws of Papua New Guinea, and also a violation of the conditions of the Bank's loan. These illegal activities have caused and will continue to cause, and is still continuing to cause economic, environmental and social damage to the landowners.

5.32 The Claimants do not know the full extent of the value of damage to their forests. Nevertheless, they have suffered very large losses and are continuing to suffer those losses. The State and Forest Authority do not publish statistics of log exports on a concession-by-concession basis. Such statistics are only released from time-to-time and are published province-by-province. In a province like the Western Province, where there is more than one logging concession, it is not possible for landowners, or members of the public to know how much was exported from a particular logging concession. The Claimants have had to gather material for a valuation of their losses from a number of sources, informally.

the concession, timber that belonged to the claimants, in the year ending March 2001. If this figure was extrapolated over the life of the illegal concession, at an average price of US\$70 per cubic metre the commercial value of the logs would have been US\$ 11,238,920. This sum grossly underestimates the value of log exports from the concession, because over the life of this concession log prices have been much higher, although in the period since March 2001, they have slipped further and log prices are now at an all time low. Exports have been on-going since 1995.

5.34 Another set of figures we have obtained are:

Exports by Concord Pacific Ltd 1999-2001 (part)

	1999	2000	2001 (Jan-Sept)
No of Ships	21	25	19
Volume (m3)	77,030.454	151,458.843	107,208.619
%age of total volume	3.9%	7.6%	9.4%
Value (kina)	15,902,285.440	29,355,692.190	20,001,706.580
%age of total value	4.1%	7.6%	9.7%

We are still attempting to obtain the export figure on behalf of the claimants for the years 1995 to 1998. At present the value of the kina against the US dollar is at an all time low of US\$.2735 to the Kina: source PNG Banking Corporation, as published in the PNG Post Courier 9 November 2001, page 37.

5.35 The expropriation of the claimants forests by the State and the logging company, have caused and will continue to cause grave financial loss to the claimants. Commercial value of logs removed from their land and the land belonging to other customary landowners, maybe calculated thus: the concession holder exported at least 160,556 cubic metres of logs from the concession, timber that legally belonged to the claimants, in the year ending March 2001.

We can attempt an estimate of the loss from the f.o.b value of logs. Obviously, in reality, if the actual inputs were known, the real loss would be different, but this calculation gives a reasonable idea of the gross amount of money foregone by the Claimants:

Exports have been on-going since 1995, say 6 years x 150,000 cubic metres of logs per year x US\$ 90 per cubic metre (average estimate for f.o.b log prices)
= US\$ 81,000,000

If we wanted to look at the loss to the Claimants in terms of the net value of logs, with the cost of production subtracted from the gross value, the calculation would be (using a cost of production figure of \$US 50 per cubic metre):

\$US81 million – (6 years x 150,000 cu mtrs x US\$50) = US\$ 81million – US\$ 45 million = **US\$ 36 million.**

There is a symmetry between this net loss to the Claimants of US\$ 36 million, and the Second Tranche outstanding to the State of US\$ 35 million.

5.36 Other losses include:

- damage to the land, here the Claimants are entitled to be compensated to the value of the cost of repairs to the land to re-instate the land in the condition it was before logging
- damage to the environment including loss of species; the quantum of

these damages is yet to be ascertained. The principle is that where damages are general, and not special or readily quantifiable by market values etc, then assessors have to do the best they can with the materials available. It will depend upon a scientific assessment of the impact of logging on the environment and species. Such a qualification will be difficult because no base-line was done before the illegal logging commence. Nevertheless these damages are recognised at law, and in principle, the calculation would proceed on the basis of such factual and scientific material as was available at the time of assessment. They would include damage for the proven absence of riverine creatures, birds, mammals, and flora, irrespective of whether or not the species had an economic use. In addition, where the species had an economic or social use, then the damage would need to be assessed on the loss of the value of that use.

- damages for adverse social impacts may include the value of extra work needed to carry water, find food, collect building materials; a developer in a remote area should exercise a duty of care in respect of the impact of introduced exotic diseases, particularly venereal diseases and AIDS. Both are known to follow "highways" into remote areas, particularly if a developer can be shown to have neglected to provide for employee codes of conduct, the banning of drugs and alcohol, and non-fraternisation policies, as can be seen in the practices of other socially responsible industries.
- damages for trespass per se. The Claimants are entitled to a sum irrespective of compensation for putting them, and the land, back to where it/ they were before logging. This sum is for the trespass, in the nature of punitive damage.

The Claimants' rights and interests are damaged because Bank officials have not ensured the loan conditions promoted good governance in their forests, and have been implemented by Bank officials in such a way as to permit the State to cause damage and harm to our clients. The actions and omissions of the officials in violation of Bank policy have caused, and are likely to continue to cause, the claimants to suffer harm.

6. We believe the action/omission is the responsibility of the Bank.

The issues of:

- the Kiunga -Aiambak Road, and
- the absence of sustainable forest management practices in Papua New Guinea

are well known to World Bank staff and management including Klaus Rohland, Andrew Bond, Ian Johnson, and Jamil Kassum.

The Bank officials are aware

- that the State is politically compromised over the Kiunga -Aiambak Road,
- that the TA holder in the Kiunga- Aiambak concession was allowed to continue logging in violation of the loan conditionality,
- that the logging poses great risk to the claimants rights and interests, and

- that it is in complete violation of the purpose of the governance loan, thereby also subverting the goals of the World Bank's investments in PNG. This is especially true in light of the fact that the Review Team, constituted under the auspices of World Bank conditionality, specifically recommended that the illegalities be cured.
- the Bank had insisted upon conditions to the loan that required the State to enact legislation to close the loop-holes in respect of road-line clearances
- the Review Team, constituted under the auspices of World Bank conditionality, specifically recommended that the illegalities be cured.
- Under these circumstances, it would constitute a failure to supervise the loan to disburse the second tranche to the State.
- Globally, primary forests are in crisis. It should be clear to any right-thinking person that now is not the time to expand the logging industry. Now is the time to pull-up, stop expanding, reflect, reform and re-structure, before it is too late.
- Bank officials were cavalier in developing their forest policy and practices.
- Bank officials under-estimated the political risks in Papua New Guinea arising from forest conditionality and made mistakes.
- The experience in Indonesia, where the Government of Indonesia has committed to a moratorium on new logging concessions should have been noted.
- The second tranche should not be released until the Kiunga -Aiambak concession is cancelled, and any company that was found to be in violation of the law has its Forest Industry Participant Status revoked, pursuant to the *Forestry Act*.
- The State should also be required to compensate the claimants, at the very least, for the lost economic value of the illegally logged timber. We submit, on the basis of the calculations at paragraph 5.35 above, that the net value of the damage to the Claimants is a sum similar to the value of the Second Tranche.
- Bank officials have the power to withhold the second tranche of the loan and thereby induce they could induce the State to stop the illegal activity on the claimants land and simultaneously uphold the integrity of the loan conditionality.
- Bank officials and the State are aware of the issues pertaining to the Kiunga- Aiambak road-line project, the World Bank Review Team Report outlines the issues and recommendations which are in line with the above points. See **Appendix 12**.

7. We have made an effort to complain to Bank staff.

The NGOs and landowners have continually campaigned with Bank officials since 1997 for a moratorium on new concessions to allow a breathing space that would permit action being taken to end illegal logging.

In this respect the issue of the Kiunga -Aiambak road was fundamental in the Bank proposing conditions on the loan that required the State to pass

amendments to the *Forestry Act* to close the loopholes on road-line clearances. During the period November 1998 to November 1999, NGOs met with Bank officials formally and informally on many occasions, because at that time there was a spirit of cooperation following the statements by Mr. Douglas that the bank supported the moratorium and review of existing concessions. Detailed records were not kept. It follows that the knowledge about the illegality of the Kiunga Aiambak road would have been current with Bank officials in the period up to November 1999, when the conditions of the loan were finally settled. NGOs did not know that the conditions of the loan were being interpreted to mean a review of new concessions only, until about June 2000.

After June 2000, in particular, CELCOR and WWF in a joint submission to the Bank's Review Team made a detailed report on the specific issues arising from the illegality of logging along the Kiunga- Aiambak road see **Appendix 20**.

Many of the wider issues being brought to the attention of the Panel are common knowledge amongst those who follow forest issues in Papua New Guinea. These issues are of the kind that should be known to Bank staff persons working with forest issues in Papua New Guinea, acting with due diligence, reasonable care and prudence.

We enclose a copy of the Iko Forestry Nius for August 2001, the quarterly newsletter of the Eco-Forestry Forum (EFF). See **Appendix 21**. This publication, widely distributed, covers a variety of relevant matters. In particular, you will see from pages 18-19 how NGOs have been pressing for a variety of specific reforms since November 2000. We also make available the full report of the Eco-Forestry Forum (EFF). See **Appendix 22**. This pressure coincided with the investigations of the Review Team and was therefore material available to Bank officials. This is because, although formally working for the State, the Review Team was selected under a Terms of Reference originally drafted by Bank officials, in accordance with the SAL conditions. The reform agenda of NGOs and community based organisations was set out very clearly in the Eko-Forestri Nius, see **Appendix 21**:

In November 2000 NGOs presented to Government their analysis of the state of forest management in PNG. This analysis identified six priority actions for reform:

- *Full implementation of the recommendations of the review of proposed concessions*
- *A review of all existing forest operations*
- *A new and effective method of monitoring and enforcement*
- *An effective and independent system to ensure socially appropriate and economically and environmentally sustainable forest management*
- *A new national planning process*
- *A change in the focus of the Forest*

he current Moratorium on the issue of any new timber permits or TA's must be extended to allow the operating space for the findings of the Review Team to be properly analysed and for the recommendations that have been made to be implemented.

NGO's and lawyers acting on behalf of the landowners, met with Bank officials, P. Hamadarian-Rad, Jim Douglas, Dan Weis, Silas Talati, Andrew Bond, Klaus Rohland on many occasions. Frankly, they did not keep a close notation of these meetings, but they were numerous. They included:

9 August 1997	ICRAF, PNG Trust and Greenpeace meet with Perouz Hamadarian-Rad and are told there will be no moratorium
10 November 1998	meeting Douglas and PNG NGOs letter ICRAF to Douglas in preparation for Inspection Panel Claim.
13 November 1998	Douglas letter in response goes astray, wrong address
11 January 1999	Douglas fax sends letter of 13 November 1998. See Appendix 23.
19 August 1999	meeting Greenpeace Rohland
13 October 1999	Greenpeace email to Klaus Rohland . Appendix 24.
21 October 1999	Douglas email responds to Greenpeace. Appendix 25.
2 November 1999	Greenpeace email to Douglas and Douglas response.
26 June 2000	Greenpeace email to Rohland and Douglas
7 July 2000	Rohland letter responds to numerous emails from Greenpeace .See Appendix 26.
4 July 2000	Rohland email to Greenpeace
31 July 2000	Greenpeace email to Rohland
15 August 2000	Greenpeace hold discussions with Klaus Rohland in Sydney.
6 September 2000	Rohland letter to Greenpeace re 15 th August meeting. See Appendix 27.
13 September 2000	letter from Environmental Law Centre to Dan Weisse. See Appendix 28.
29 September 2000	email from Environmental Law Centre to Dan Weisse. Appendix 29.
29 September 2000	email from Greenpeace to Dan Weisse
30 October 2000	letter from PNG Eco-Forestry Forum to Ian Johnson. Appendix 30.
1 November 2000	letter from the Environmental Law Centre to Ian Johnson see Appendix 31.
1 February 2001	submission by WWF and CECLOR to the Review Team on the Kiunga Aiambak Road, see Appendix 20
5 February 2001	letter from Greenpeace to Rohland
30 October 2001	final letter of CELCOR on Kiunga Aiambak to Rohland, see Appendix 32.

Landowners and NGOs have warned World Bank officials on many occasions.

In 2000, concerned persons from all over the world sent thousands of messages to Klaus Rohland, the Country Director for Papua New Guinea, and to Ian Johnson warning them not to go ahead with paying out the second tranche of the loan, unless it was clear that the forests were sustainably managed, and a review of all existing concessions carried out.

Specifically, at Port Moresby, in November 2000, NGOs acting on behalf of landowners described in detail these issues with Jamil Kassum, at a meeting held in the Banks office.

Lawyers acting on behalf of the landowners gave a brief to the Bank's Review Team in December 2000.

The Review Team report at **Appendix 12** has been in the in the possession of the State and Bank officials since September 2001. Yet they have failed to act in defence of the Claimants rights. The Claimants' waited a month to see if the State or the Bank would begin to act on the recommendations of the Review Team. Nothing was done. In particular, the recommendation "That court proceedings must be brought to a conclusion" was left unattended. The Claimants then wrote a formal letter of demand to Mr. Rohland on 1st of November 2001.

The Claimants are under pressure because they have been told that if the Bank pays out the second tranche before the Claimants' concerns are addressed, that they may lose their opportunity to approach the Inspection Panel, because Bank lawyers will argue that "the project is complete".

There is an alternative view that the loan is only complete, when it is repaid, twenty years hence.

To hold the view that a loan is complete after loan funds are disbursed is artificial, goes against commercial practice and common sense. At law and in common commercial practice, loans are complete when they are repaid.

Whatever the legal effect of these views, the Claimants are hard-pressed to invoke the assistance of the Panel because there is a view that once the second tranche is paid out they have no recourse to the Panel.

Customary landowners and non government organizations have continually and repeated called on Bank officials to ensure a moratorium on new forest concessions is imposed, as part of the conditions of any loan, while a review of all concessions takes place. This is necessary to ensure that forests are properly managed, benefits shared fairly and irreparable damage does not take place to the Claimants' forests.

8. We believe that the Bank's response to our concerns has been unsatisfactory

Because the Bank officials will not give binding undertakings, that address the main concern that the loan is being disbursed while damage to the claimants land is on-going in violation of the purposes and conditions of the loan. The damage to the forests and lands of others in Papua New Guinea can be reasonably anticipated.

Bank officials maintain that they cannot do anything about the failure of the State to take action in the courts to stop the illegal logging. Our answer to that is the State's omission constitutes:

- gross negligence to protect its own citizens; the road has been built on private land without agreement. The State has a responsibility to protect

landowners, and enforce its laws, in relation to the unlawful alienation of land.

- bad faith; the failure of the Forest Authority to press for the removal of interim orders made against it in 1999, goes beyond gross negligence. Forest Authority officials were frightened of political retribution if they pushed too hard in the courts, because they knew their own Minister was supporting the unlawful logging operation by granting tax exemptions to that company. There was simply no political will to stop the unlawful operations because officials were frightened of political action being taken against them
- a breach of the basic purpose of the loan which is to achieve good governance in forest management by enacting and implementing specific legislation to control road-line logging operations. Bank officials should withhold the loan until the out-come of the court processes have been finalised.

Recent Developments Regarding These Issues

The State has announced that the moratorium will be lifted as of 30th November 2001.

There is no National Forest Plan, no proper forest inventories, and no informed consent over the alienation of timber rights from traditional landowners and very little ability to manage forests or the environment. All these matters have been confirmed by the Review Team. In these circumstances, it is irresponsible to proceed to allocate more forests to the loggers.

Bank officials say they have reached agreement with the State that the recommendations of the Review Team will be enforced through the Forest and Conservation Project. Similarly, Bank officials say that no new project will go forward without an independent review. We have not seen the text of that agreement, and are not prepared to accept those assurances, for two reasons. First, the State has a bad record of honouring its agreements in forestry and the Bank has a poor record in enforcing them. That is what this claim is really about. Secondly, the State is proceeding to allocate concessions without independent review.

Receipt of correspondence from the Bank has informed us that the lifting of the Moratorium will go ahead and for us to raise our concerns with through the Government and or the Papua New Guinea Forest Authority. The Bank did not have any standing to intervene in a matter that came under Papua New Guinea's jurisdiction. **See Appendix 33.**

In light of the reasonable lack of trust explained above, vague assurances are unsatisfactory. The claimants call on the World Bank to withhold disbursement of the tranche of the SAL and require the Government to maintain the moratorium until:

1. The Kiunga Aiambak road is cancelled and any company that was found to be in violation of the law has its Forest Industry Participant status revoked pursuant to the Forestry Act.
2. A full review of existing logging concessions is completed and it's recommendations implemented.
3. The findings and the recommendations of the World Bank Review Team's Report on pending logging concessions must be fully implemented and there must be ongoing independent review of any Timber Permit applications.

9. In addition we have taken the following steps to resolve our problem:

In 1998, an NGO called the Individual and Community Rights Advocacy Forum made a formal complaint to the PNG Ombudsman Commission. About the unlawful nature of logging on the Kiunga Aiambak Road. There was evidence of an inducement being paid for an exemption to the export log tax. A notice appeared in the National Gazette of the log tax\ exemption. The Ombudsman Commission began its formal investigation. The minister resigned his ministry and seat in Parliament citing his need to spend more time with his family. The Ombudsman Commission took the view that the matter was better handled by the police, and stopped its investigation. The police never pursued the case.

In 2000, a law suit instituted by land owners other than the Claimants, led by Paul Singi, engaged private lawyers, and sought orders from the National Court to stop logging on the Kiunga Aiambak road. The Forest Authority and the State were amongst the defendants in that action. The logging companies successfully obtained an order to strike out the landowners' action, on the basis of procedural error. Costs were awarded against the landowner plaintiffs in an amount of K19,462.75. See **Appendix 34**. The Claimants have been informed by the lawyers for Mr. Singi, that the lawyers representing the logging companies were assisted out-of-court by a very senior government lawyer.

On the 4th of September 2001 a policeman, who is a native to the area, filed a formal complaint with the Ombudsman Commission and called for an investigation into allegations of unlawful and improper police activities associated with the logging project. See **Appendix 35**.

In 2001, the Claimants' and their lawyers have received anonymous threats, and are currently seeking ways of bring their complaints to court without exposing themselves to violence. Attempts are being made to engage a large firm of lawyers to take on the case.

We authorise you to make the text of this Request public, but we as you to keep the names and addresses of the landowners a secret, because we fear they will be attacked or intimidated, either by those who support the logging company, or by the police.

Appendices and exhibits

We enclose with this claim the following material:

Appendices

- 1 names and addresses of Claimants, and their lawyers
- 2 map of the Claimants' land
- 3 Statement by Transparency International (PNG) Inc on corruption in the logging industry
- 4 Copy of memorandum of inducement and National Gazette notice on log tax exemption
- 5 Breaches of Moratorium on new concessions.
- 6 Email messages from Brunton (Greenpeace) to Douglas (Bank) confirming conversations of 2 November 1999, and the reply by Douglas
- 7 Frequently asked questions:PNG and the Forests
- 8 Filer C et al The Thin Green Line, World Bank Leverage and Forest Policy Reform in PNG NRI/ANU, NRI Monograph 37, Port Moresby, June 2000
- 9 NEC endorsement of Forestry Recommendations

- 10 Detailed submission on imprudence and irresponsibility
- 11 Detailed submission on Breaches of OP 4.36
- 12 Review Team Report on Kiunga Aiambak
- 13 Review Team Landowners Specialists –Board Discussion, Executive Summary and Recommendations
- 14 Report Impact of Selective Logging on Culture and Society by Schmid
- 15 Bowles et al, "Logging and Tropical Conservation
- 16 Vigus, extracts report on empirical research selective logging.
- 17 Loan Program and Summary
- 18 P .Erskines report on Wawoi Guavi
- 19 P.Erskines report on Vanimo
- 20 Joint submission by CELCOR and WWF.
- 21 Iko-Forestri Nius Special Edition.
- 22 Eco Forestry Forum Report
- 23 Douglas' fax ,re sending letter of 13 November 1998.
- 24 Greenpeace e mail to Klaus Rholand
- 25 Douglas' e mail response to Greenpeace
- 26 Rholand's response to numerous e mails from Greenpeace
- 27 Rholand's letter to Greenpeace re 15th August meeting
- 28 Letter from ELC to Dan Weisse
- 29 E mail from ELC to Dan Weisse
- 30 Letter from PNG EFF TO Ian Johnson
- 31 Letter from Environment Law Center to Ian Johnson
- 32 CELCOR to Klaus Rohland dated 1 November, 2001.
- 33 Klaus Rholand's letter to CELCOR dated 28 November 2001.
- 34 Order for Costs.Action brought by Mr Paul Singi .
- 35 Letter from Mr Sep Galeva to Ombudsmen Commission calling for Investigation into Police Brutality at Kiunga Aiambak.

Exhibits

1. Video showing testimonies by Kiunga-Aiambak landowners.
2. SBS documentary on logging in Papua New Guinea
3. Photographs of the Kiunga-Aiambak road project

Note: Exhibits 1 and 2 will be sent separately once copies are made.

DATE : November 29, 2001

SIGNATURE :



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