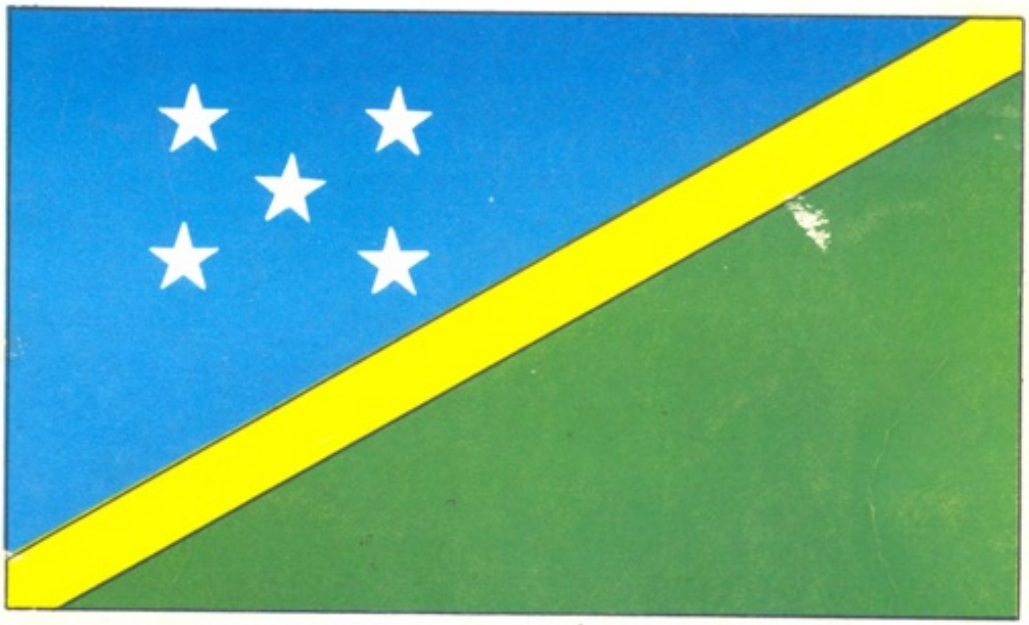
REPORT OF THE

OMBUDSMAN

FOR THE YEAR ENDED

30TH JUNE 1989



Presented to

THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Pursuant to Section 98(3) of The Constitution

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REPORT OF THE OMBUDSMAN

Mr. Speaker,

It is an honour and a pleasure, Sir, to present my Report for the year ended 30th June, 1989.

Isaac Qoloni, OBE
OMBUDSMAN

Presented to The National Parliament of Solomon Islands pursuant to Section 98(3) of the Constitution.

OMBUDSMAN'S INTRODUCTION

1. General

The period covered by this report sees a significant emphasis and concern by rural dwellers on the natural resources of their land and the environment generally.

More complaints are forthcoming from the ordinary men and women in many parts of the country expressing their concern on how the natural resources of the country, in particular "Forests" have been exploited. This report highlights this concern and related activities of government authorities on this matter. There are arguments for and against the exploitation of natural resources. To some, and in particular those from outside wishing to invest in the Island Nation argued that resources such as forest, fish, minerals etc. should be exploited for the benefit of the Nation and its people. Resources that are lying idle are not of any use to any body and should be exploited and developed so that employment opportunities are created and the Government collects its revenues to pay for the many services that it wishes to provide for its citizens.

The Government would appear to back up this view. However, according to custom, these resources, in particular, those on land, such as "Forests" and "Minerals" are not owned by the Government but the native tribes, who feel the way the forest resources etc. from their land are now exploited, is of very little benefit to them and for their children in future. It is felt by many that foreign companies and their local associates have done more damage to the natural environment, as understandably their main motive is to make as much money as possible within a giving period of time for themselves and shareholders of their companies.

The welfare of the village community is of secondary importance. There is definitely a conflict of attitudes and interest here, and there is also a cultural gap between those from outside who come with capital to exploit and those who own the resources. What should be done then to release these idle resources, so that they are developed for the benefit of those who own them and the nation? It is clear that resources owners wish to develop them for their own benefit, and many of them are beginning to be involved. What they are lacking at this point in time is capital and managerial skills perhaps, and technical know how.

In the Ombudsman's humble view, this is the key problem that the Government should address in order to release the natural resources of the land. Encourage and support the owners of the resources to develop them, provide necessary training, advice and capital, and if considered necessary short term technical management personnel of high calibre.

At present, the emphasis would appear to be a hang over of the colonial fever of bringing in outside companies to exploit the resources, which would appear to create so much conflict and friction amongst rural communities. To ovecome this problem and lessen the friction and ill feeling within the village rural communities, the solution would be to train up the resource owners to carry out their own developments. Training alone is not good enough, they also should be backed up with finance and short term technical and management personnel, until they stand on their own feet.

2. **Timber Industries.**

There is yet to be clear government policy on the development of timber industries throughout the islands. The present arrangements on how the forestry resources are exploited is far from satisfactory. Outside interests see opportunity of making money quickly, and with the money power behind them, they find it easy to get some of the prominent people on their side and make dealings that on many occasions are unacceptable to many of their own folks.

In view of the size of these islands, timber industries should not be developed in isolation from the land where the trees are cut. The tragedy at present, is that logging operatings by outside multinational companies only involved the extraction of logs and no more. The more trees are felled per day and exported, the more they are satisfied. But what about the rural dwellers! They are worse off - rivers being polluted, house building materials destroyed, logged land useless for gardening etc. There is no programme at all for tree replantings or other agriculture development programme on the logged out areas. What is to be done then to over come these problems? Phase out big logging operations and encourage land owners to use chainsaws and portable forest mills to clear their land. Sell their timber to a nation-wide market network and use the money received to develop the land by either replanting new trees or other suitable agriculture crops.

Firm Government policy on the development of this vitally important resource is necessary and action should be taken by the Ministry responsible without further delay.

3. **Tropical Rainforest Workshop - Indonesia**

It was a great priviledge for the Ombudsman to attend a Tropical Forest Workshop in Indonesia from March 28 to April 2, 1989. This conference was organised by Asian Alliance of Appropriate Technology Practioners (APPROTECH ASIA).

The Workshop was attended by most of the Asian Countries, and from the Pacific region, (Solomon Islands, Australia and West Papua). The logging out of the tropical forest by logging Companies was fully discussed at this conference and also the effects on those who derive their livelihood from the natural forest.

Since there are numerous complaints from the customary landowners in Solomon Islands against the issuing of licences by Government and the activities of foreign loggers, the Ombudsman welcomed the chance of attending the Conference, and meeting many people from Indonesia, Malaysia, Sarawak, India, Sri Lanka, Bangladesh, Thailand, Philippines, Irian Jaya, who face the same problems, and also people from New York, Switzerland and Australia.

4. **Leadership Code**

A new appointment has been made for the post of Secretary to the Leadership Code Commission. Also new members of the Commission have been appointed. It is expected that the Commission, with its new Secretary will keep an eye on the affairs of leaders. The Secretary went into task and sent out declaration forms to all leaders to complete declaring their business interests, and of their spouses,

for return to the Commission's Office by end of June, 1989.

5. Office Accommodation

There has been some reshuffle and changes of office accommodation since the new Government of the Alliance Party took over. This causes a period of unsettleness in the Service, as files, office equipment, desks, etc. has to be moved from one place to another. Fortunately, this change does not affect the Ombudsman's Office which is still at Kalala House, ground floor of the Foreign Affairs Ministry building.

In the opinion of the Ombudsman the shifting of officers and ministers from one office to another does not improve the efficiency of Government Administration. On the contrary it creates confusion to the general public and frustration amongst those who have to constantly shift files and desks. The moving of one ministry from one building to another en masse will not solve the problem. Clearly, the problem is that the Government does not have enough office space to accomodate its increased civil servants and employees during the past 10 years. What is needed now is to design, make sites available and build two or three decent Government office blocks, of three to four storey size. Government should now address itself on the plans to put up more office accommodations to alleviate the problems. Shuffling desks, files, and people around would not solve the problem of office accommodation.

OMBUDSMANS CASE HISTORIES AND COMMENTS

1. CONTROL AND MONITORING OF THE TIMBER INDUSTRY

(a) Ombudsman's Report to Parliament

The following is the text of the Ombudsman's report number 4/89 presented to Parliament in July. It reflects the results of a large number of investigations involving many authorities from all parts of the country and thousands of Solomon islands rural people:

CAN RURAL PEOPLE SAY "NO" TO FOREIGN LOGGING COMPANIES

Introduction

People always want money. They want and need money for children's education, modern housing, transport and the luxuries of life. For many people, all they have to sell are their trees, and logging companies will give quick, easy money for them. The royalites and taxes they pay contribute to our national economy but no one knows if we are getting a fair price. We have little idea what the long term effects of large scale logging will be on our rivers, our soils and our climate. Many people make the mistake of thinking they can sell their trees and their land will be conveniently cleared for agriculture development with a ready-made road network. Many do not stop and consider that these roads may fall apart as soon as the last log truck has gone, the soil is not so good and is soon washed away; streams and rivers flow sluggish and dirty and the clear pools for drinking and washing may have gone; the danger of flooding is increased, and useful trees and plants do not grow up again, while useless kinds, creepers and grassland may take over. Many lands in Solomon Islands are worthy very little once their forests have gone.

Many people who want logging will take a risk about all these effects, especially if they are already rich, have a job in town and do not live and depend on the land they are giving away in a 30 year Logging Agreement. They see it as "development". Other realise they cannot stop it happening, so they may as well take their share of the cash benefits.

Some uneducated people think that because it is "Government Policy" and because big men and Ministers want logging, then it must be good - and because the foreigners have a piece of paper from the Government there is nothing they can do to stop it. They think that is the law. The purpose of this report, based on a number of complaints from all parts of the country and investigations, is to show that under the present political and legal system it is practically impossible for rural people, especially uneducated, divided, rural communities to say "no" to Logging Companies - even if they want to.

Until now it seems that no government office has been prepared even to listen to people who want to say "no" to logging companies, but perhaps because of new Alliance Party Government's declared policy to stop foreign logging companies and turn to domestic processing of forest resources, the complaints and cries for help have been flowing into this office. There is not much this office can do, except to make Honourable Member aware. Strong National leaders have in the past

protected their constituencies (for instance in Guadalcanal) but the day that protection stops, and the official procedures start, a licence will be issued to one company or another and logging will go ahead, just as surely as if some new colonial power had given away custom lands. Where people have successfully resisted one company then they must then face another and another until eventually one of them gets in.

How The Companies Come in - Unofficial Negotiations First

The fate of a custom land or an entire administrative ward may well be decided in the Hotel Mendana Bar, where company representatives can entertain local leaders and persuade them of the many benefits which their operations can bring. May be a "Memorandum of Understanding" will be signed (a company operating - Guadalcanal) or a "Preliminary Agreement" (another company wishing to operate in Guadalcanal).

The representative may then be invited into the proposed logging area to do a quick survey (West Guadalcanal, West Kwaio, Star Harbour) which gives him a chance to show Custom Landowners what his company has to offer. If they are suitably impressed they may sign a "Negotiation fee Agreement" and if a member of the Area Council which will deal with the company's application and determine Landownership can be interested in the operations, - preferably a young man, ambitious to climb up from the bottom of the political ladder - this will help things along.

A well organised company will encourage a local leader to go round his area and obtain a "Landowners Petition"

> " saen long hia supos iu laekem developmen and putim nem bilong kastom lan bilong iu. Sapos iu no save ridi and raeti, iu mas putim maka bilong iu nomoa".

Such petitions have been seen in 3 areas of Guadalcanal alone. This useful petition can be circulated to leaders and influential members of government and finally to the hard pressed Commissioner of Forests as evidence that "people want this development... it is their land ... let them decide". The Commissioner may be harrassed by daily visits, demands and pressure until he puts his rubber stamp on "Form 1 - Consent to negotiate with Custom Landowners" - and the unstoppable machinery of government procedures has started.

Form I - No Consent to Negotiate

In Legal theory, we believe the Commissioner of Forests could say "no" - he might think that the resource was insufficient and the population needed it for their own local industries; the operation is not a genuine proposal and is not supported locally; or it lacks a firm financial backing, the profits will be filtered out of the country and Foreign Investment Division has not spotted this; or its practices in other areas are unacceptable; for instance its logging methods are too wasteful; it disregards his directions for suspension of its operations and the National Law generally; or it consistently fails to process 20% of its logs. There are many good reasons why he might like to refuse to let in a Logging Company - but in practice the only reason

which seems to work is if the area has already have given or promised to another powerful Company. We believe the Commissioner and his staff are under constant pressure from those who stand to gain from logging and they get no continued or consistent political support - numerous exceptions are made to every policy of control, such as the moratorium on new licences from 1983 to 86. We have had eight different Ministers of Natural Resources in the last nine years and documentary evidence shows how individual Minister's attitudes seem to suddenly change without any apparent justification.

If the Commissioner and his staff - or even Provincial Government try to hold out against a company's application, they risk being accused of "interfering" and "denying Landowners the right to do whatever they like with their Land".

Approval by the Province

The Commissioner of Forests sends "Form 1" Consent to negotiate to the Provincial Government concerned. Form I may languish for a while in Province files, especially if the Executive prefers a company of its own choosing, but it is not clear what power the province has at this stage, if any, to stop the application. It takes a dedicated and strong minded Premier to thoroughly investigate and taken an informed decision to resist an unwanted or unsuitable application to log. The pressures of national politicians from above and interested landowners from below are usually too much. In all but one case we have investigated, the Form I is simply passed down to the Appropriate Area Council without any advice on commercial, forestry, environmental or legal considerations whatsoever - and the Area Council may have no idea what it should do with the application. Most Provincial Governments simply do not have the expertise to give this advice, unless they rely on overseas volunteers.

Area Council - Approval of Form I

The next official stage is for the Provincial Government, and the Area Council to meet with the company and decide on the profit and management share it will have in the operation. Area councils have little to offer an experienced foreign company in the way of management skills and their financial expertise seldom goes as far as basic bookeeping.

As far as we know, their accounts (if any) are drawn up by a touring officer from provincial headquarters, and they seldom get as far as the Auditor General's office. Some Area Councils appear to receive substantial sums from Logging Companies either as "rates", "expenses" or just fixed payments for each ship load of logs. These payments are informal and it is not clear how the funds are spent. Agreements may be made to build a school or a clinic and sawn timber may at some stage be provided - but in general the "profit sharing stage" is omitted.

It is very hard to investigate the truth of allegations that an Area Council member or Provincial Member favours this or that Company because for instance: "the company gave him five drums of fuel", "it promised to build the paramount chief a house", "the company sold him its truck for only $800," or it provided beer for his election compaign" - but evidence exists of Negotiation fees, Employment

and Hotel stays in Honiara. It is a matter of public record that one Area Councillor has shares in the company for which he argued so persuasively in its Form I application meeting. Thus, if the Company had its supported and lawyers have done their "ground work" the Area Council and some key Landowners are already organised **before** Local Government officials and landowners even know of its application, and the remaining procedures can be a smooth running formality. In theory all of these negotiations are illegal.

In theory an Area Council could reject a logging application, for instance, on the grounds that it will not do enough for their area, and again in theory, that should be the end of the matter. In practice Area Councils may not even know the basic rate of royalties offered before they dodge the issue, and pass a motion to allow the company to negotiate directly with Landowners. Those area councillors with doubts about the operation tend to say "let the landowners decide" and pass the problem on. They do not realise that they have just given up the main chance they have to control what a company may do. In theory they can set some limits on the landowners' Logging Agreements at the Form 2 stage, but this has not been observed in practaice. Once Form I has been approved, and Form 2 completed, the Area Council has no legal powers of control and their place for help or recommendations that the Logging or business licence be suspended are useless.

If an Area Council did say 'no" or defer its decision, interested persons are likely to organise another meeting with a more select attendance and the motion will be passed, as has been observed recently in West Guadalcanal.

Area Council's determination of Landownership - Form 2

The next duty of the Area Council is to publicise and organise a meeting where they determine who owns what land. This determination is written down as "Form 2". Landowners are supposed to come and make representations to the Council. Most lawyers agree that this should be a public meeting at which the Council should act fairly and judicially. At this meeting the Area Council also has power to limit the extent to which timber rights may be granted but this has not been observed in practice as most area councils are unaware of this power.

Procedures broadly follow those well known from the Land and Titles Act for acquiring Custom Land and registering it for sale or lease. The Land and Titles Act is clear and specific and was consolidated and reprinted in 1981. However, land acquisition procedures were considered too slow and cumbersome for timber rights acquistion and the Forest and Timber Act attempts to provide short cuts.

Differences Between Land and Timber Rights acquisitions
Unclear Law.

The Forest and Timber Law is an untidy collection of inconsistent amendments, which are hard to find and hard to understand. Even senior government lawyers have had trouble keeping up with these amendments and disagree with their interpretation.

A comparison of the procedures shows how the short cuts to timber rights acquisition can be cut even shorter and the whole exercise begins to resemble compulsory purchase.

Some of the more serious differences and defects in the law for acquiring timber rights are as follows:

No trained Government Officer in charge

Under the Land and Titles Act, the Commissioner of Lands appoints a Land Acquisition Officer, who is supposed to have appropriate training, usually some experience, (we accept that this may not always be the case) and who does his best to act fairly and impartially. He does not have a personal interest in the outcome of Land acquisition procedures. It is most unlikely that anyone on the Area Council is so qualified, and the weight of Timber rights acquisition procedures may fall on the Area Administration Officer. He has no special training, has no copy of the Forest and Timber Act, and is unlikely to have proper instructions about procedures. In the past Area Councils and AAO's do not seem to have received advice even if they have written and asked for it. Forestry Officers **have** been present at meetings by invitation, but tend to just be observers. At other meetings they have been told their presence would be unwelcome.

Area Council likely to be biased

The "profit share" arrangement encouraged by the Forest and Timber Act, makes it highly likely that Area Councils are biased and some members have personal interests which affect their decisions about timber rights and their efforts to persuade their fellows. Accurate minutes of Area Council Meetings are very hard to obtain, even if they are made.

In one well documented case, a private lawyer organised lists of custom landowners and arranged meetings in advance. No doubt he was genuinely trying to do his best for all concerned, but how could he represent the interests of both the landowners **and** the Company especially if it is the Company that pays him?

No Records of Public Meetings and Notices

Land Acquisition Officers are obliged to keep records and to complete forms saying exactly when and where notices are posted, when and where the public meeting was held and what representations were made and by whom. The Area Council is just supposed to give "adequate and effective notice" to the public and "to persons who reside within such area and appear to have an interest in the land trees or timber in question", this leaves too much to chance. Some AAOs have thought that one notice, put up a bit late at the sub-station office and another at the Company's Office was adequate. How many landowners actually attended those meetings announced by SIBC Service Message one or two nights before? Does it matter if the Area Council makes its determination on timber rights and landownership under the influence of drink or in the Company's offices? or an "administrative action" in the AAOs office, using the names from that useful Landowners petition immediately after Form I was approved? All these things have happened and we think they **do** make a difference - but there are no official records available for Forestry Division to check when issuing a logging licence.

No Boundaries Recorded

For "long term development" where there is genuine investment in the land, such as schools and plantations, land boundaries as well as owners must be decided, defined and recorded.

This is expensive and takes a long time but, we recognised that there will only be trouble (and maybe damage) later on, if it is not done. Logging companies can move on quickly, leaving landowners arguing about where their spearline should have run and who should get the royalties for which trees.

By not requiring logging companies to do a proper boundary survey or even requiring them to roughly mark named custom lands on a plan, it is easy for a company to give Forestry Division the impression that much more land has been made subejct to agreements than is really the case. It is then almost impossible for **anyone** to check if a company is following its logging plan and operating where people have made proper agreements. Without a proper survey, it is also very hard for aggrieved Landowners to enforce their Logging agreements against the company. Note that all licences investigated have been issued for the whole administrative ward, regardless of custom ownership and specific agreements. A landowner who has not signed an agreement then has great difficulty in protecting his land. We understand that Forestry Division realises the problem and would like to change this practice. Let us hope it succeeds.

"Trustees"

Both Land and Timber acquisition procedures try to identify the Custom Landowners who must sign any agreement to dispose of their land or timber rights Trustees maybe accepted for land registration purposes, but only on certain conditions - usually a Statutory Declaration, recording their appointment at a public meeting held on or near the land in question. However, the "Trustees" who appear on Form 2s and Logging agreements and the mysterious Custom Land Associations, and who receive royalities are accepted by the companies and government authorities without any indication of how, when and why they were appointed and what their relationship is with the people they purport to represent. It is alleged that one major Company goes round with a local government official and gets whoever happens to be around in the village to sign or put his mark as trustee for his tribe's lands.

Public Meetings?

The Land and Titles Act clearly prescribes a public meeting for acquiring custom land, but as we have mentioned earlier some government officers think this is unnecessary for timber rights and there have been no public meetings for some application on Guadalcanal. Another Area Council, in Western Province, frightened of its responsibilities, decided not to hear respresentations from one side of land ownership dispute and said that the parties would just have to appeal and go to court.

Unfair Appeal Procedures

Landowners, unhappy with the Land Acquisition Officer's decision have three months from the date of the record or the determination to appeal to the Magistrate's

Court. The court fee has just gone up from $5 to $25 with charges of up to $200 for typing and security for costs.

Landowners who dispute the Area Council's determination first have to find out what it is (assuming they know it has been made at all) and then what to do about it, and then if they are lucky enough to get proper advice, gather up $100 and get it to the Customary Land Appeal Court (CLAC) all in just ONE MONTH. The time limit is very strictly enforced - the logging company or its supporters may be waiting at the Magistrate's Court to pick up a certificate of "no appeal" and rush it through the Provincial Government for the Ministry of Natural Resources to issue the Licence next day. (See Ombudsman's Annual Report of 1988) Nowhere in the Forest and Timber prescribed forms are Landowners told of their right to appeal to the CLAC, and government officials at all levels have been confused into thinking that the Local Courts (Amendment) Act 1985 diverted all custom land appeals to the Chiefs. The result is that Landowners complain to Forestry Division, (who have not recently been in the habit of passing them on to the CLAC) the Provincial Government and even the Ombudsman. By the time someone puts them on the right track, they are too late. The CLAC has no discretion to hear late appeals, even if there is evidence to suggest the Form 2 was backdated, put up late, put up in only one or two places and torn down from one, or was kept in the office and not displayed at all. The $100 fee is non-returnable, even if the appeal was out of time and rejected.

The purpose of these Forest and Timber Appeals Regulations was to prevent people wasting time with land disputes - and there is an added deterrent. "Security for Costs" which can be in the over of $1000, must also be paid before hearing the appeal, which takes the form of a public inquiry. The Logging Company is supposed to pay this in its anxiety to get its licence.

In practice this is by passed, the company never pays, the case is never heard but a Logging Licence is issued, sometimes with the disputed land excluded, sometimes not.

From the above comparison we conclude that the protection given to landowners by land acquisition procedures against wantoks, neighbours or immigrants from other islands, who may misappropriate and acquire their custom lands, is not extended to their timber rights, despite the likelihood that the trees and timber rights are probably the most valuable part of the land.

Compulsory Acquistion?

Many landowners, mistrusting everything to do with Government and Logging Companies, have felt the only safe course of action was to ignore all these notices and meetings. In one area landowners reported that an old man had been carried off for a few drinks in the Company truck, and another was visited at night by officials and persuaded to sign or mark his agreement to logging. In another recent case landowners discovered that a wantok's name had been put down on Form 2 - he was a member of their line but married outside his tribe and lived in another village. Another had been forced or bullied into signing his name. These two people had thus claimed and given away the timber rights to all the tribe's custom lands.

The Form 2 notice was backdated and posted late at the sub-station and just one other place away from their villages. Their CLAC appeal was too late. In this case, Forest and Timber Act procedures would have had the effect of compulsory acquisition without compensation and mainly for the benefit of the logging company.

Repeated Application by Different Companies - until one succeeds.

In this last case the people are a comparatively well organised group and they appear to be satisfied with the forestry Division's assurances that no licence will be issued to this company until they all agree. They would be safer with a High Court Injunction against the company and the issue of any logging licence.

If the first comapany fails to get in, another and another will be allowed to try until one of them succeeds.

Other groups are not so well organised. One well documented case in East Makira showed people successfully fighting off an application in 1982 by one foreign company and a local company which intended to sub contract to another foreign company. The "local company" has applied twice again since then. It now appears to have created a loophole in the law and was logging without having acquired timber rights at all.

[Post script. Forestry Division suspended this company's operations, it is now in receivership.]

Landowners Logging Agreement.

The whole idea of the Forest and Timber Act amendments was to "let the true Landowners decide on what to do with their resources" - but it became obvious to Forestry Division and others that this could be disastrous for the timber industry; the economy; the environment; the landowners; and last but not least, all the other people who live and depend on the land but who do not actually own it (they may have "secondary" custom rights, or informal leases etc.) Logging companies have made grossly unfair contracts with landowners who simply do not have the education, expertise commercial and technical knowledge, or the organisation to deal with experienced, multinational companies and everyone suffers. The companies, despite their promises, do not have responsibility for the community at heart. They are here simply to make as much profit as possible.

Forestry Division produced in 1985 the now notorious "Standard Logging Agreement" as a Form prescribed by the Minister under the Forest and Timber Regulations. For reasons which have not been investigated there were problems getting this gazetted and in force. Regulations were gazetted as Legal Notice 97 of 1985 without the Standard Logging Agreement which was then gazetted separately as Legal Notice 10 of 1986 and finally both together as Legal Notice 60 of 1987. A lot of trees were felled in that time.

Logging companies do their best to avoid using the Standard Logging Agreement which they regard as "uneconomical" or "interfering in their commercial relations" and villagers who do not understand its importance for them (and may never have

even seen a copy) are easily persuaded to allow amendments which makes it ineffective, or to do without it altogether. No government official will object if people improve on these terms - for instance a written promise to build a clinic can be added, but some of the amendments made, even when parties had access to private legal advice are not in the landowner's interests.

At least one Logging Company has tried to persuade the High Court to declare the Standard Logging Agreement *ultra vires* or beyond the powers allowed by the Forest and Timber Act, but even if this succeeded, the Standard Logging Agreement is a clear statement of the Commissioner of Forest's specifications for logging methods and post logging land use plans. A Company is legally required to follow these specifications if it wishes to be granted and to retain its Logging Licence.

We understand the Commissioner does his best to ensure that the Standard Logging Agreement is used and has rejected at least two agreements which did not comply. Whether he is then able to enforce their provisions and the policy they contain and monitor the actual operations is another matter. Apparently he does not have the staff and did not have the political support.

Issue of the Licence

Once the CLAC has certified there are no outstanding appeals, and a Logging Agreement has been signed by roughly the same people who were named on the Area Council's Form 2 determination, the other procedures, involving a Form 3 signed by the Provincial Premier (or Minister of Natural Resources) seem to be a mere formality and the Logging Licence is always issued. In theory, the Premier could say no, or the Commissioner could still refuse to issue the Licence - if he was not satisfied that the company had complied with Foreign Investment laws or its past and present performance shows that its agreement to comply with his directions on logging or processing is not genuine. In theory too, he should only issue the licence for the areas actually covered by agreements with the company (if he knew were they were) rather than a whole political ward or wards. In practice, we realise that the issue of Logging Licences is a political matter and directives are obeyed. The number of newly issued Licences is an indication of this.

After the Licence

Once the Licence is issued Government control effectively ends. People in areas within the licensed wards which have resisted logging or who have not been approached have no Government procedures to follow to ensure fair play. Agreements in any form may be made with anyone - or not bothered with at all or be "three line" documents signed or marked by illiterate people who do not understand their contents. The official attitude towards environmental damage is fatalistic and landowners are expected to deal with complaints about logging operations through the Law Courts. There are no standards to compare good operations against bad, and no independent expert witnesses who would be able to assess environmental damage rather than just the value of wasted logs. Forestry Division is hopelessly understaffed and its morale must be very low with the Government's publicly declared policy differing from the directives they received. Where the Commissioner has tried to stop even the most blatant and well documented illegal logging, his efforts appear to have been overruled. If he suspends

a licence he runs the risk of it being immediately re-instated on appeal, and then being injuncted in the High Court by company lawyers claiming huge losses of profits.

Rural people are on their own. Money from logging royalties tempts them and corupts and divides traditional communities. Their educated leaders may be singled out for special treatment - High Court injunctions or more pleasant favours. People are often too disorganised to start a court case, let alone win. I regret to report that those who have been most successful appear to have achieved it with some element of physical force or threat.

Do we want to give our people the right to say 'no' peacefully and lawfully? - or do we wish to leave them with only the methods learned from our neighbours in Bougainville?.

Parliament should make laws for the peace, order and good government of our people. It should also protect them from exploitation - what seems like a good deal of money to a rural villager may not be at all fair to him, his dependents and future generations. Many governments have recognised this problem even with educated populations who have easy communications and access to advice. They have made laws to protect people from seriously unfair dealings with big businesses. We should do the same.

We have been hearing too much - especially from lawyers - about the "Commercial Freedom" which companies and some people should have, and not enough about the basic human right to privacy, property and not being cheated. In 20 years' time we shall look back on the activities of these logging companies with the same horror with which we now regard the selling of valuable coastal land for shell money, and sticks of tobacco or the "recruiting" of labour for foreign owned plantations, but the end results will be far harder to put right, if not impossible.

"The choice is yours, Honourable Members."

What **is** the Government's policy on Logging and what **does** it want for its rural people and the future of all Solomon Islanders?

[This Report was first presented to Parliament pursuant to section 98(3) of the Constitution on 31st July 1989 and tabled on 7th August 1989]

(b) **Issue of Logging Licence - Results of Investigation for Report No. 2/89**

The following is shortened version of the Ombudsman's Report to the Commissioner of Forests, the Prime Minister and other Ministers and officers involved in the timber industry. It was presented in April 1989 and it was hoped that an official reply from Forestry Division would be available for inclusion in this Annual Report by the time it was printed.

The Ombudsman Act 1980 says that the Ombudsman should "notify the person who has made a complaint of the result of his investigation". When, as in this case, complaints have been made by and on behalf of a large number of people, this requirement could only practicably be followed by publication in the news media. It is hoped however that this report with its very limited circulation will go some way to fulfilling this requirement.

The Ombudsman is aware that the Company concerned in this case has taken custom landowners and local residents to court and has obtained a High Court injunction. It is also seeking damages of $500,000 and the land owners are making a counterclaim. He has carefully considered the effect of making this report on the case and decided that protracted investigation commmenced by the Company against private individuals, should not be allowed to interfere with the Ombudsman's investigation and reporting on government maladministration.

The report begins with the complaint made by the Oldman from the area. It is supported by his son and younger wantoks, who are angry at what the Oldman has done and how the Government let it happen. It is probably fairly typical of what is going on throughout Solomon Islands.

Abridged Text of Ombudsman's Report No. 2 of 1989:

Oldman's Story

"Mi sif or bikman blong laen blong mifala. "John" hemi bikman blong mifala, hemi save long disfala Kambani, mi faedem aot long Kambani. Long June 1982, John hemi mitim Branis Maneja long publik miting. Samfala pipol laekem Kambani for kam, samfala olketa no laekem. Pipol askem Kambani fo $50 (Solomon Aelan) for (Cubic mita long) timba bat Kambani talem "nomoa", so olketa kam daon long $15 an bihaen long $10. Bat Kambani talem $10 hem hae praes tumas, $5 fitim. Mifala askem, wanen nao dis kaen "Cubic mita" - hemi smol tri or bik tri? Man ia hem som no moa long han blong hem (mesamen blong cubic mita nao hemi olsem). Pipol stan strong long dis fala $10 bat John talem aot "No Kambani nao save payim hae praes olsem". Pipol likem kompensesin befoa Kambani go insaet long blok. Pipol i fraet long dis kaen we (logging Kambani) spoilem graon an wata.

John hemi man blong mifala - hem mas save tumas long dis kaen kompensesin. Pipol asked Kambani fo helpem mifala long timba for olketa sios an skul long vilij, Kambani talem "oraet". Kambani talem "Sapos mifala spoelem riva blong iu fala, bae mifala bildim wata saplae an wata tank fo iufala an sapos mifala spoelem tabu ples blong iufala, bae mi kompensetim iufala".

Evri smating pipol askem, Kambani talem, "oraet", bat Kambani stan strong long $5 fo cubic mita fo timba.

Long nara fala miting, Provins tu hem stopem for tekem kam kambani ia. John hem go andagraon long bik Lan ona nao hemi suitim olketa olo. Nomata sekson hemi no save, hem des toko nomoa, bat bihaeni hem takem olketa olo an suitim olketa long kaikai.

John hem stori long mifala ("sekeis fala lan ona).

> "Iu fala kam fo witnis mi for saen, mekem Kambani save doim logging insaet and land blong iu mi".

Hem kolem mifala long Kambani haos, antap long Honiara, hem kam takem mifala long trak. Hem givim mifala kaikai an dring, behaen hem tekem mifala long Palamen haos wea (Minista) hemi stap. (The olo's son thought he must mean Ministry of Natural Resources building). Branis Maneja hem talem aot evri gud samting Kambani save tekem kam long pipol solsem klinik, rod and elektrisiti. Mifala askem iet fo kompensesion an for $10 for timba, bat Kambani hem talem hemi peim $5 nomoa an bihaen 5 ia, bae muvum up long $7.

Mifala saenem nao dis fala pepa. Mi no save nao wanem disfala pepa ia, mifala saenem samting natin nomoa, no eni samting for ridim, stori olowe nomoa. Mi nao faestaem saenem nem blong mi. Bihaen (Minista) hem sedem leta go long Praem Minista.

Mifala saenem long Novemba, bifoa publik miting. Long disfala miting pipol raoa moa an samfala no laekem mifala fo saen. Olketa no hapi long hao John hemi go long saet long Kambani.

Dis taem, mifala no hapi bikos Kambani no peim aot $7 fo timba - Kambani peim aot $4.00, $3.50 or samting olsem, smol praes fo timba blong mifala an rod an riva hem no gud an electrik an clinik no kam. Kambani spoelem tabu ples blong mifala bat no laekem fo pei. Man long Provins hemi kam for lukim tabu ples bat hemi stap weitem Kambani an tekem saet long Kambani olowe nomoa. Komplein blong mifala hem olsem - wanem nao Provins an gavuman doim for helpem mifala? Nating nomoa?"

This may be a true story for simple villagers, exploited by a few of their leaders for the benefit of a multi national company, while government administration turned a blind eye, or it may be a pack of lies made up by a few greedy people who cannot stand by a valid commercial agreement and hate to see others making money from developing their natural resources.

Or the truth may line between the two - proud old men using the last of their traditional power to make a disastrously unequal commercial dealing with a foreign company, mistrusting government officials whose advice whould have been ignored, while the younger generation were still arguing about whether they wanted the company there at all, let alone on what terms.

We now continued with the results of our investigations:

Logging in Solomon Islands

Before Independence, the government of British Solomon Islands Protectorate directly controlled the activities of logging companies. Commercial logging was carried out by British or Foreign companies on alienated land either owned by the government, or taken on a long lease by the government from customary landowners. Landowners received the rental from the government lease but did not deal directly with the logging company which had to operate under the licence and control of the Conservator of Forests. Landowners could fell their own timber for their domestic use, or to supply a licenced sawmill, but felling or removing trees for sale had to be done under Licence from the Conservator of Forests.

The Timber Act of 1960 gave the government power to declare "Reserved Forests" and "Forest Areas" - which appeared to be like town planning areas where ownership was not taken by the government, but major tree felling or other development would be controlled by permits. The unfortunate results of Protectorate forest policy were that landowners continued to mistrust the intentions of Central Government as regards forestry especially on customary land.

In 1968 the Solomon Island members of the Select Committee on Forestry and the Legislative Council rejected outright any kind of government control over what customary landowners did with their trees and denied government any interference with customary land. As a result the whole idea of reserve "Forest Areas" was dropped from the Law in 1969 and the Forests and Timber Act concentrated on licensing commercial logging operations and providing controls on Government owned forests.

The other idea which seems to have been abandoned since 1968 is that of large scale re-afforestation. Plans for a National Forest have come to nothing, there are reafforestation projects at Arara, Kolombangara, Alu, Gizo and Viru Harbour, all in Western Province and Santa Cruz in Temotu. Active replanting is still carried out at only the first three of these Government plantations. 20 years afterwards the only replanting done on customary land is a small plot project organised under New Zealand Aid in Malaita.

No major changes were made to Forest Policy or Law until 1977, the year before Independence, when extra legal procedures were introduced, they were amended in 1984 and 1987.

These procedures are considered in details in the previous item of this Annual Report, so are not described again here.

Note on Customary Land Tenure

Asian and European businessmen should remember that the Solomon Islands traditional of Customary Landownership is not like their own. We have had no feudal, political or military overlord with absolute power over our people and their land.

Customary Land in the area involved in this report is held by a family line through the head of the line, or else by a land holding group within the line, through the head of the land group. The head of the line or land holding group is not the absolute owner and does not have the right to dispose of his people's land or timber without their consent. In addition to these "primary owners", there are a large number of people who do not actually own the land, but have "secondary" rights to make houses and live there, hunt, fish, use water and plant gardens. Although their traditional rights and livelihood are affected by logging, they have no say in timber negotiations.

Early Logging Proposals for the Complainants' Area

The first suggestion for large scale logging in the complainants' area was made in 1977 by their Member of Parliament. Two companies were invited to apply for timber rights and one company completed certain of the procedures. However there were serious complaints that these procedures were unfairly conducted and no logging licence was granted.

The next proposal for the area was in September 1981, from a partnership of an Australian plant hire company which would do the Logging and a locally owned company which had ambitious proposals for plantations, spice farms and other post logging development. This proposal was considered by the Commercial Officer in the Ministry Provincial Affairs, who warned people that the partnership did not seem to have the capacity and experience to do the logging and that it was very risky to allow in an expatriate logging company without a very carefully drawn up contract.

"John" described in the oldman's story who was already involved in the logging industry elsewhere in the Province was a director and shareholder of the local company. The other shareholders included a number of local landowners and the young son of the Minister of Natural Resources.

Foreign Company takes over Local Development Company

However in mid 1982, a foreign national, apparently from USA was given a directorship in this local company, and a foreign company was allotted 67 new shares. This gave the foreign company overall control of the local development company which was now far from being "local". Whether the National Investment Council or the Ministry of Provincial Affairs knew or approved this Foreign Investment is not known. The mysterious foreigner was in fact president of a very large Asian timber company and in December 1982 he was also appointed first director of the newly incorporated subsidiary Company in Solomon Islands. The new directorship and allotment of shares was the last act recorded in the existence of the local development company which appears to have done nothing since 1982 and was struck off the Register of Companies in late 1985. With this local company also went the ambitious postlogging plans for 1000 acres annually of spice farms and cocoa plantations, developed with the logging profits.

What a number of landowners in the oldman's area assumed, was that the post logging development proposed by the local company would be carried out by the new foreign owned Company instead. They have been disappointed. No post logging

development or replanting of trees has been done or proposed since 1982.

4. **Logging Proposal - No analysis by Foreign Development Division/National Investment Council.**

The parent company presented its Logging Proposal to the Provincial Government in mid 1982. It is evident, from this proposal that a number of aspects of the Company's proposed operation should have been questioned and either explained very carefully to the people or else modified. For instance, it is evident from the marketing proposal that timber exported is likely by used by associated companies overseas, and this means that the price paid in Solomon Islands may not be the true open market value of the timber. Government and Landowners would never know if they are getting the right price, taxes and royalties. We have already seen in the Ombudsman's last Annual Report that the recording of species, grade and volume of timber exported is left entirely to the logging companies themselves.

Forestry Division and Foreign Investment Division both expected the Provincial Government to make a decision on the Company's proposal **before** giving any advice on its technical or commercial implications. The Province was extremely unhappy about the fact that the proposal had never been studied in depth or considered at national level, had never received any technical or commercial advice; that there was no post logging development assistance or plans; that the profits would go entirely overseas and that this huge "deafforestation work" (as the company described it) would consume all commercial stocks of timber in less than twenty years. This is probably a conservative estimate.

There is no evidence that Foreign Investment Division ever analysed this proposal and Forestry Division's advice was only very general, describing the company's estimates of timber as "reasonably realistic" and suggesting that there should be Forestry Timber Control involvement to ensure good environmental and logging practices. There is no evidence of the landowners themselves seeing the Company's proposal, still less of it being explained to them, although the Provincial Secretary did attempt to explain its contents to Assistant Administration Officers in the area concerned.

In fact it was the Prime Minister who silenced these complaints, as he saw the usefulness of officials in Provincial and Central Government was in giving help to the Landowners to arrive at a reasonable agreement between themselves and the company. It is evident that officials in the Province and Forestry Division followed this Prime Ministerial directive and serious government opposition to the project declined. However it appears that the Company objected to the Province assisting landowners even with a draft agreement or their Member of Parliament being present to advise them at meetings.

Unfortunately we see in this report how the Prime Minister's aspiration for a "reasonable contract" for the Landowners was defeated.

Contemporary documents record how the project proposal was put to the Provincial Assembly in late June for consideration in principle. The project was received from the Company representative during the week of the Assembly meeting with a strong request that it be considered straight away and not deferred to EXCO (the Executive

Council Meeting) in August. It was not possible therefore to deal with the project proposal in detail, and the Assembly debated the matter briefly in terms of whether or not it agreed in principle to a Company logging operation being set up in the area.

A motion was pased agreeing in principle that the Company could establish a timber operation, but subject to Forestry Division and National Investment Council approving the project and subject to written agreement on the details of any project to be negotiated between the Company, Province, and landowners.

The Province asked for guidance from Forestry Division and the National Investment Council on the technical, economic and environmental aspects of the project and on the implications of the project in general. Apart from general advice from Forestry Division this guidance was never received and would have been too late.

The Provincial Government still had strong reservations about the proejct and officials realised once they put the application to the Area Council there were more or less committing themselves to the project as there would be:

> "strong inducements for local landowners and the Area Council to simply rubber stamp the application in the hope of getting roads and quick money."

None-the-less the legal procedures to enable the Company to acquire timber rights were commenced.

Provincial Government Advises Area Councils and tells them they must follow Forest and Timber Act Procedures.

Form I "Application for Consent to negotiate with landowners" had been submitted to and approved by Forestry Division. There is no evidence of any detailed technical analysis by Forest Division.

In September the Provincial Secretary advised its Assistant Administration Office (AAOs) in the area where the Company applied for timber rights on the procedures to be followed under the Forests and Timber Act.

He advised them that the Cental Government had approved the project and had told the Company that it could go ahead as soon as the Area Councils and Land - owners agreed. The Provincial Secretary went on to say that there had been no national negotiations or provincial negotiations on an overall agreement with the Company so he could not advise the Area Councils of what terms and conditions the company was offering. He did however send them the Company's proposal and attempted to explain it so it could be put to the Area Councils, pointing out that the Company did not propose any replanting programme and there was no government replanting programme yet for the Province. He said the Area Councils should consider the proposal carefully and decide on the conditions they wanted if agreements were made, bearing in mind the preservation of water supply areas, pollution of rivers, flooding which may occur where the forest cover is removed, the standard of roads, bridges, culverts, drains and so on.

He advised that people should get at least $8 per cubic metre or 12½% of overseas market value similar to the arrangements with another foreign owned company elsewhere in the country. He concluded that the Prime Minister and the Premier wanted the application dealt with as quickly as possible and the Province was under instructions not to raise queries or cause delays but assist the Councils to approve the project promptly.

Quite how much, if any of this advice reached local residents and landowners is unknown. However it must be noted that this is the only recorded attempt seen by this office of a provincial government even trying to advise AAOs, Area Councils and Landowners. It does not appear to be normal practice and has not been repeated even by this particular province. No advice whatsoever was given when this same Company decided to extend its operations within the Province in 1987.

Forest and Timber Act Procedures

Confusion

The Provincial Secretary's advice and the Form 2 Certificates of Customary Land Ownership were sent to the AAOs for the three Area Councils involved on 30th September 1982.

By 29th October the Provincial Minister for Forestry advised the Secretary to Prime Minister that:

> "There is now quite a lot of confusion and argument growing in some areas about what is proposed and what agreements are to be made. This is because nobody is clear about exactly what the Company is offering, what Government is agreeing to and what the deal will be for Landowners...it is clear that in order for Area Councils and Landowners to make decisions they need a draft agreement and set of detailed terms to consider".

He suggested again that the Province, Forestry Division and the Company should sit down together and negotiate an overall agreement which met their requirements and those of the Landowners. The Province, possibly with assistance from Forestry Division had produced a Standard Logging Agreement for Landowners and the Company to sign, described as "GPF1".

Two Areas Reject the Company

In November the Area Council for one part of the area met and, according to the Minutes of the Meeting:

> "recorded its disappointment on how both the Central Government and the Provincial Assembly tried to force the landowners and the Area Council to accept the Company" to operate in its area and it pased a resolution that the Company "be not allowed into its Wards until certain points were clarified and attended to", These points included recording customary land boundaries, advice to village people by lawyers, foresters and commercial officers who would represent and negotiate for the people for compensation and higher royalties.

People in the second Area Council also seem to have rejected the company, which would have been coming in as subcontractor to a locally owned Company, run by "John" and others.

Acceptance in the Oldman's area - Area Council Tries to Follow Procedures

This left the Area Council in the Oldman's still considering whether or not to have the company, and if so, on what terms.

The Area Council received the form 1 consent to negotiate at some stage but it was not put on the Public Notice Board until 12th November 1982 after a strongly worded memordandum from Provicial Secretary telling the Area Council of its duties under the Forest and Timber Act in particular that:

> "to comply with the law, notices in accordance with clause 5C(b) must be posted for 2 months before the Area Council meets to decide and complete Form 2...."

The Provincial Secretary attached a draft Form 2 notice for the Area council to follow and advised that Area Council should meet whenever they wished to discuss the application in general, but the final decision had to be made after this two month period at a public meeting held at the time and place published in the notice, after prople have had a chance to make representations and objections.

The AAO did eventually put up notices and arranged public meetings for January 1983 to make final decisions on land ownership and timber rights to be granted. However it is understood that these meetings never actually took place at the places and times arranged. The AAO also arranged preliminary meetings in December so the Company Manager, a forestry officer and a business adviser from the Province could give advice to the people before the "Form 2 meetings" in January.

The Company's Offer to the People

The Company put its terms to the people by letter on 6 December, copied to the Province and Forestry Division. There is no information about where it was posted or available in the area concerned.

Apart from an introductory paragraph and various salutations of good will, The Company offered the landowners the following "main points":

"1. Royalty will be paid at the rate of SI$5 per cubic metre for the period of 60 months from the start of operation, thereafter the royalty would be paid at the rate of 7% F.O.B price.

2. Royalty payment will be made within 5 days after shipment.

3. The Company will supply the landowners who want to build their own house with sawn timber and construction materials at a reasonable price. We (the Company) will prepare the technical drawing for 3 types of houses, and enable the landowners to choose one of the designs for their house. This is only an option, you (the landowners) can decide whether

you build your house or use your royalty for any other purposes.

4. The Company will not destroy Tabu places.

5. The Company will not destroy or pollute water catchment places. If drinking water is polluted by a logging operation, the Company will install a hand pump or pipewater system for the villages concerned.

6. The Company will compensate for the fruit trees (we) cut, in line with the rate of compensation decided from time to time by the Ministry of Agriculture and Lands.

7. We (The Company) are studying the feasibility of Agriculture and afforestation, but this takes time to come to a conclusion, but we (the Company) would like to advise you that we have keen interest in this area''.

This letter was sent to the Province, Forestry Division and Foreign Investment Division. It matches up to the 'official agreements' produced by the Company - but it is **not** what the Oldman said he had agreed to. He and his wantoks did not recognise this letter which may or may not have been available to him. He thought he would get roads, clinics ''development'' and an increase in royalties after 5 years (infact the F.O.B. formula produced a decrease in Royalties). He said these promises were ''story nomore'' but to him, it was the agreement.

Province Political Co-ordinating Committee still unhappy with Proposal

Meanwhile the Political Co-ordinating Committee of the Province met in December 1982 and voiced its severe misgivings about the manner in which the Company's proposal was handled. The Minute deserves to be quoted in full, but for brevity the following extracts are given:

> ''We are worried at the way the Company is being allowed to roam around the Province as it wishes persuading landowners to accept the Company's proposals. The government should be telling the Company how the timber resource is to be developed and setting conditions that the Company must obey if it wishes to operate here. It seems unlikely that we will get the best result for our people if we allow this Company to set its own terms and deal directly with village people. As a powerful commercial company it will naturally aim to get agreements that show most profit to itself - not to Solomon Islands. For example the Company is offering $5 fixed price per cubic metre for export logs but other companies pay a percentage of the world market price which results in Landowners getting as much as $12 per cubic metre. Why should the Company not pay on a similar basis for export logs?''

Eminent politicians and leaders also objected to the fact that the Company was totally foreign-owned and they spoke out strongly against the proposal saying that there was nothing in the proposal for local people except the royalties and reported that there was heavy pressure on the Area Councils to sign Form 2.

Timber Acquisition Procedures - In Practice

A government official recorded at the time how he:

> ".... also told the people about the proposed agreement GPF.1 which was submitted to the Minister of Lands, Energy and Natural Resources by the Province. After this meeting the Company put more influence on the landowners to make them protest against the proposed agreements submitted by the Province so a small group of landowners called into the Minister's office.
>
> It is understood that the Minister told the group that the Province was wrong in submitting the proposal and that it was right for the Company and landowners to sign the agreement (The Company's agreement)".

According to the official:

> "after they had seen the Minister, the Company called landowners to meet at various places to sign the agreement. They were no public notices or public announcements on radio about these meetings. I was not informed either. I later learnt on the evening of 9.2.83 that the people at (one) village and surrounding have signed the agreement. The Company's representatives arrived at the Substation on 9.2.83 about 7.30 in the evening. I strongly told them they were wrong in asking the people to sign the agreement at this stage and that they were not co-operating with the Province".

The official also expressed the view that:

> "The company is too rush for it's benefit and force the people to do what it thinks...
>
> The people have been brainwashed so that people could not think of better agreement or submission to the agreement...
>
> The Company is paying money or gift to important people to help them get through quickly as they wish.
>
> The Minister concerned shall be in a position to favour the Company than accepting submission to make good agreement for the benefit of the landowners".

It should also be remembered that the Minister of Lands, Energy and Natural Resources' young son was a shareholder in the original local development company which was taken over by this foreign logging company.

What is Wrong with the Landowners' Logging Agreements

From the tone, the bias and the spelling and grammar in the landowners' Logging Agreements with the Company, which appear in Forestry Division and Province files, they have been made by the Company without advice from Forestry Division, the Province or a lawyer or businessman to advise the landowners.

Province's Proposed Agreement Rejected by Company

The Province administration did produce a draft agreement "GPF.1" mentioned by the local government official. This contained terms about pollution, roads, reafforestation etc. which would, with hindsight have been very helpful to the landowners and was no doubt what the Honourable Prime Minister had in mind. However, the Company regarded this as impractical, uneconomical and - as their letter appealing to the Foreign Investment Division, says:

> "Undue interference in our Company's affairs by the Province".

The same argument was used by the Company against the people's Member of Parliament, when he tried to advise them on the terms of their contracts in 1983, and also in 1986 when Forestry Division suggested that the Company must use the new Standard Logging Agreement prescribed by Regulations under the Forests and Timber Act in 1986.

Note: The Forests and Timber Act was amended in 1984 giving the Provincial Governments power to negotiate profit sharing and other terms with logging companies, but this power is not much used.

Company's Agreement omits terms offered to landowners

Items 1,2,4,5 and 6 of the company's letter of offer to the landowners are included in their Logging Agreement, but they are in such vague and general terms as to be very hard to enforce.

However, the offer of house building timber is left out and nothing whatsoever is said about post logging development.

New Terms for Company's Benefit

The Agreement does contain a number of new terms, not mentioned in its offer which are so disadvantageous to the landowners that it is most unlikely that they would have agreed to them, if they understood their meaning. For instance:

> "The Agreement is to last 20 years and the timber rights will continue during that period unaltered as long as commercial logging operations remain economically feasible and the concessionaire (the Company) shall retain the sole right to make determination as to the economic feasibility for continued logging."

No lawyer or businessman would have signed a major commercial contract lasting 20 years with no kind of review clause as another example:

> "The Concessionaire may enter into subcontracts for the purpose of carrying out logging and associated timber operations in". (The clause is incomplete)

Landowners made their bargain with the Company and would not want a subcontractor to take over without their consent or fresh negotiations.

Forestry Division in an undated memorandum to the Minister, made the following comments on these Logging contracts:

"1. The rights by the landowners granted to the Concessionaire are not limited at all. Section 2(a) states, rights are not limited - limited to what? This gives the Concessionare to sole right to do anything they wish..

2. There is no provision for compensation of any saleable timber left felled but not removed.

3. There is no provision for compensation of damaged or destroyed fruit crops, building materials garden produce betel nut trees, pollution etc.

4. There is no provision for the construction and maintenance of roads and bridges.

5. Clause 1(b) and (3)(c) is not understood.

6. Clause 8 is totally out of the question as it rescinds everything that is written in the agreement. (Clause 8 says "Both the landowners and concessionaire agree that they shall hold each other harmless from any or all obligations arising out of this agreement").

7. Clause 9 is redundant as arbitration will only establish who is wrong. There is no provisions within the agreement that state any penalties for wrongful doings. Presumably logging will go ahead as abritration is being carried out. This agreement is by far the worst this section has ever seen and should be completely rewritten so as to safeguard the landowners. If this agreement goes ahead it will create more problems than ever.

8. (In manuscript) Should this agreement be approved Timber Control Section will deny all responsibilities of the future problems that will undoubtedly be incurred if a licence issued".

Landowners or "Trustees" did not Understand what they Signed

One of the problems faced by landowners who have complained to this office is that they had not even seen what is in these agreements, there are no copies at the Province or at the Substation and Forestry Division had refused to let them have copies. Forestry Division has simply referred them back to the Company.

The Oldman and his wantoks who told their story in this report do not recognise the text of the Agreement, or its contents, even when read or explained in pijin. The Agreement for his land is signed by two "trustees" who are recorded to the Form 2. It is a mystery how these trustees were appointed, and it is unlikely that they understood the agreement any better than the Oldman himself.

His Agreement is of one of the thirty three agreements which appear on the Forestry Division file as just a first page, (reciting the land, names and dates of Form 2 meetings) and last pages with lists of lands and land owners and their signatures.

These 'last pages' are in a different typeface from the first-pages to which they are attached and the rest of the agreement. This suggest that the last pages may have been written - and signed - at a different time from the text.

The people's Member of Parliament had his suspicions when he wrote to the Minister in April 1984, complaining about timber rights negotiations in his own constituency. He found out that:

> "...representatives have been negotiating for timber rights with the landowners and had gone so far as to survey the area and were trying to get proof of consent by landowners in the form of signed lists. This tactic were being done through the Local (Area) Council Chairman...."

He believed that this was happened in the company's original negotiations for timber rights in the Oldman's area. He was gravely concerned that his:

> "attempts to provide food for thought for negotiation, was regarded as "interfering in the affairs of the Company", by the General Manager".

There still remains the mystery of what exactly the Oldman signed. He thought it was a Logging Agreement but his name does not appear on the official Agreement for his land which is signed by two "Trustees" recorded on the Form 2 Certificates. Was it the appointment of Trustees that he signed? or the landowners list referred to by their Member of Parliament? Whatever it was the signatories do not seem to have understood its nature or its contents.

The Prime Minister's Aspiration for "Reasonable Agreements" defeated

The Prime Minister wanted these people to make 'reasonable agreements' - but the results have fallen far short of his aspirations, and the consequences, have been unfortunate, both for the landowners and the Company.

Appeals to the Customary Land Appeal Court - Out of time or withdrawn

In the Ministry, Province and Court files, only three appeals against the Area Council's determination of land ownership and timber rights are recorded: The first appeal was "withdrawn" but continued to be a bitter dispute after the licence was issued. The second landowner mistakenly appealed to the Province, not the Court, and as a result was out of time; and the third appeal was from a Member of Parliament on behalf of his land holding group who asked Forestry Division to exclude their lands from the Logging licence. This was done, but without waiting for the Customary Land Appeal Court's decision on his case and without trying to identify these lands on a map. The Province sent a copy of this letter to the Customary Land Appeal Court, but by the time it arrived, it was too late and eventually was refused by the court. People were not advised of any rights to apply to the High Court.

Minister Issued Logging Licence

As shown earlier, Forestry Division was extremely unhappy with the Logging Agreements but the legal powers given by the Forest and Timber Act are limited. Provided the names on the Agreement roughly matched up to the form II Certificate - and the Agreement is more or less in the "Prescribed Form". Forestry Division felt there was not much more it could do, provided the correct procedures appeared to have been followed.

The 1983 Agreements were signed by "Trustees" appointed informally at some stage by landowners, and listed in the Form 2 Certificates. Whilst it is likely that people just signed a list of lands, landowners and trustees, which was later used as part of the written agreements which appear in Forestry Division, there was not much on the face of these Agreements, to which officials in Forestry Division felt they could object. The Agreements contained the scant requirements of what was then the "Prescribed Form" of Agreement except for one vital aspect. There is no map, plan or description whatsoever to show **where** the land is nor how far it extends. Who knows the boundaries and place of Ngalipoguru land or Tuhunaboso land or Suabarahata land which are the subject matter of some of these agreements, apart from a few of the people who live there? Certainly no-one in Forestry Division, the Province or the Prime Minister's Office would have any idea if these 33 agreements covered all or part or which part of the electoral wards on the map of the Province - yet the Licence was issued for the whole of these two electoral wards, with no indication whatsoever of where the Company could or could not enter.

Logging Licence Issued or all Land in two Wards, Despite Moratorium

In his handwritten scrawl of 18th March 1983, The Minister of Lands, Energy and Natural Resources directed the Chief Forestry Officer to issue the licence to the company saying:

> "It is only fair that we do issue with the licence since the landowners together with the Province agreed that logging operation should be carried out..."

The Company officials had been pestering the Permanent Secretary and members of Forestry Division to issue the licence even though an appeal had been made to the Customary Land Appeal Court and the Government's 'New Forest Policy' provided for a moratorium on the issue of new logging licences.

Despite the moratorium, and despite the objections for Provincial Government and despite the unfair logging contracts, the Company was issued with a logging licence on 5th April 1983.

The form of licence as recorded in the Ombudsman's Annual Report last year is an outdated document drafted in the 1960s for use on government land and is inappropriate for customary land.

After the licence was issued, Government supervision came to an end and the Company was free to conduct its relations with landowners just as it wished, without any real control.

Legal Procedures by Passed for Remaining Custom Land

Once the licence was issued, the Company began its logging operations. Money flowed and new people came to sign their names for the Company to log custom lands not already covered by approved agreements.

The former AAO who had worked conscientiously in 1982 and early 1983 and had some success in making the Company follow legal procedures was transferred to another post. Despite the precedent he set for following the Forests and Timber Act procedures, his successor began a "short cut" to these procedures which was in turn perfected by the next AAO. This method, as described by the AAO when he used it recently for another Company, was for leaders to go round and get those peole who wanted logging to sign a paper next to the name of their land. This paper could be used as a petition to lobby support for the Company - and as the basis of the form 2 notice (and even for the last page of the written Logging Contract, if one was made.) Those people who did not want logging or who were not approached (even though they might represent most of their land holding group), would not sign the list and might be represented by a "trustee" . But Public meetings, when held, appear to have been called at short notice, sometimes by radio service message one or two day's in advance. Such meetings apparently were more the occasion for a drinking party at Company expense, than a time to decide landowners, trustees and terms of agreement. Landowner's logging agreements after early 1983 also appear to be oral agreements or if written down, were short and on terms somewhat diferent to the 'Prescribed Form' of Agreement used before the licence was issued.

People Could Lose their Custom Land Rights

In this way, people who were not aware or did not understand what was going on - or who objected to the Company coming in could lose their custom land rights. People could discover, too late, that someone else had already signed away the timber rights for the whole of line's custom line, or that an unacceptable, unrecorded and unenforceable agreement had been made with just one or two members of the group which then might not be honoured. In other cases the company went into land where there was no agreement at all and in certain areas of the neighbouring electoral ward, where there was no licence either.

The result of this has been unrest, land disputes and disatisfaction with the company and the Government. For instance, according to Area Council records in 1988, 19 out of 50 Custom Lands in one Ward were subject to a dispute and for a further 20 Lands there was no operation for one reason or another.

The effect of Forestry Division issuing a licence for the whole for this political Area before **all** custom lands re subject to an agreement, or are clearly excluded from the licence, is that people's legal rights to appeal to the Customary Land Appeal Court are lost or worthless. The people feel that the Government has 'given away' their land and timber rights to the Company. in the long run, this has created more difficulties for the company, and others.

Local Officials Compromised by Company

The officials who arranged these meetings and assisted the company in the conduct of negotiations and settlement of disputes have placed themsleves in a conflict of interest between their public duty as impartial employees of the Government and helping the Company with its private business. It is a fine dividing line between "helping everyone settle their problems" and actually working for the Company. Some officials seem to have willingly put themselves on the wrong side of this line and have allowed their intergrity to be called into question.

Other junior provincial officials and politicians appear to have been bullied or persuaded to sign documents when full drunk. It is hard to blame these people. Their take home pay may be worth less than a couple of cartons of beer a fortnight and they are easy prey to people who may wish to compromise them by hospitality, food, drink, transport and other favours. Our tradition is one where we work to help each other and gifts and favours must be repaid. These junior officials are in an impossible position, especially when they receive little support or encouragement to stand strong against such things and suffer no penalty for accepting.

What is remarkable is that these government officials have managed to do their job at all. Files at Provincial headquarters and even Forestry Division are full of their complaints and calls for help, written on behalf of their people and landowners. Their calls are mostly in vain and the current situation in the area is the result. Their requests to Forestry Division for advice on the Forests and Timber Act Procedures are unanswered and apparently ignored.

Commissioner of Forests "Regards Procedures as Complete once Licence is Issued"

Once the Minister had issued the Licence back in 1983, there has been nothing to stop the Company going ahead - save suspending its licence. This has been proposed a number of times, and has for a short time or for a limited area with some effect. When the question of illegality was referred to the Attorney General in late 1988, the Commissioner of Forests commented on an informal memorandum:

> "Areas for which Licences have been granted by the Division can be regarded as having completed the formalities under the Act, otherwise there would not have been any Licences issued. On other areas, the Company must follow the Procedures. If it has already done so their operation must be suspended, please proceed".

Unfortunately it seems that everyone is too afraid of upsetting foreign "investors" and no action has been taken, nor will be apart from the valuation of wasted logs.

What are the Oldman and the People Complaining About?

1. List of Complaints

Let us examine a list of some of the complaints which reached government files. It is not the duty of this office to investigate complaints against Company - but it is the Ombudsman's function to inquire if the government is doing its job properly in investigating and rectifying the complaints, which come under the jurisdiction of Government.

The following complaints began in April 1984 and were made by the AAO, the Area Council and the Member of Parliament:

- Illegal procedures, Manager's aggressive attitude.
- Aggressive negogiations by company
- Royalties paid later than agreed.
- Poor logging practices (various)
- Water sources spoiled and not replaced.
- Logs left to rot at mill.
- Unauthorised alterations to Form 2 "leading to frauding". ("Company used correcting fluid to rub out names in Form 2 and insert any names suggested....")
- "Replacement" of trustees for sake of taking royalties.
- Culverts poorly made and uncovered.
- Balo bridge - unsafe.
- Tresspass by vehicles and machinery.
- Heavy machine damaged petrol shed.
- Rent unpaid for logging camp site.
- Unsafe cables endanger children and workers.
- No salary structure for workers, wages vary.
- No danger allowances.
- Complaints result in dismissal.
- No workmen's compensation for minor injuries (3 complaints).
- Land Disputes - Unfair procedures.
- Spoiled rivers and water supplies.
- Wasted logs not paid for (several complaints).
- Problems with Company officials and complaints.
- Royalties calculated using wrong formula.
- Wasted logs not paid for.
- No compensation for Sago/betel/ coconut trees.
- Landowners never receiving copies of Agreement.
- Road construction poor and unsafe.
- Bridges and culverts washed away.
- Sarimera Bridge damaged by log truck.
- Bulldozers using beach and substation as road.
- Campsite unhealthy, gravel pits breed malaria.
- No good sanitation or septic tanks at Camp.
- Sick leave not permitted.
- Fatal accident 23/5/84.
- Wrong calculation of Royalties.
- Wrong and Unfair procedures for Ward 12.

The list continues up to the present day but it appears that people became increasingly disilluioned with the ability or willingness of the Government to do anything about their complaints.

The following additional complaints were brought to the Ombudsman's office by various members of the public from mid 1987 onwards:

- Using reef stones, without permission, for jetty.
- Spoiled tambu site - government official compromised.
- Tambu sites not recorded properly.
- Workers still using plantation as toilet.
- Promises to build roads unfulfilled.
- Promise to build clinic uncompleted.
- Promise to build school not honoured.
- Logs incorrectly recorded on loading to steamer - no supervision by Customs Division or Forestry
- Low payment of royalties - no receipts or explanation.
- Refusal to allow Landowners their contract documents.
- Logging practices not monitored.
- Allegation that government gave Company the **right** to take gravel.
- Unlicenced trade stores.
- Short cuts on Form 2 and Contracts.
- Provincial Officers compromised by Company Hospitality.
- Landowners tricked/bullied to sign agreement for road.
- Wrong Landowner involved to sign agreement for road.

Most of these Complaints are outside the scope of this office, but those which were investigated, appear to be genuine complaints which are justified wholly or in part.

The following complaints were also brought up by the MP for the Area in late 1988:

- Logging operations where no agreement made;
- Refusal to compensate for damaged properties, gardens or crops.
- Low payments ($1.50 - $2.00) of Royalties.
- Falsifying records of timber extracted and exported.

He too called for an investigation. In the past, where the government authorities **have** investigated complaints, such as spoiled water, wasted logs and abuse of procedures, they have found these complaints genuine and justified. But for the most part, complaints have been left without investigation and peoples' discontent and mistrust has grown as a result. Some of these complaints could be dealt with by the government authorities - whose efforts are examined in the next section. However, the strict legal view has been that logging agreements are private arrangements made between the people and the Company in which no government office has the right or duty to be involved. The Landowners must sort things out for themselves. The Landowners have dug their own grave - "saed blong olketa".

In the Ombudsman's view, this is a most unsatisfactory state of affairs.

Peoples Remedy is to take the Company to Court

The people's remedy for all these broken promises is to take the Company to Court and sue for its broken promises. They should use the Public Solicitor, or use some of their royalties to pay for a private lawyer to help them. But no-one seems to have told them of their right to challenge the Form 2 or public land Notices by

appealing to the Customary Land Appeal Court. They have appealed everywhere else except the courts: the AAO; the Area Constable; the Province; Forestry Division; the Member of Parliament but for some reason never the Customary Land Appeal Court. Nowhere is the right mentioned in the documents used in the Forest and Timber Act Procedures - and the only reference seen in correspondence is to a "Customary Court" of Chiefs - which has no means of enforcing its judgements.

Nowhere are people advised of what other legal action they may take, such as a High Court Writ asking for Area Council's decisions to be quashed or an unjunction to stop the Company coming in or harrassing landowners.

But they do not have their Written Contracts

The Ombudsman's office advised dissatisfied Landowners to approach the Public Solicitors Office and one of its solicitors discussed the matter. He would consider acting for landowners in an action against the Company but needed a copy of the Contract they had signed, and the people who signed the Contract to come to him to make the complaint.

This is sound legal advice. Without a Contract it is one landowners' word against the Company and all its witnesses. Oral Contacts are almost impossible to enforce.

Without the persons who signed the Contract, how would the Court know that the people complaining are the true landowners and not some impersonators or jealous neighbours?

In fact these people had signed a Contract - or rather a "Trustee" had signed it for them - but they had never been given a copy of their own. The AAO and the Area Council had no copies. None could be traced at Province headquarters. Forestry Division had a copy but when politely requested by the AAO for a photocopy on 3rd June 1985, the reply on behalf of the Chief Forestry Office on 19 June 1985 was:

> "Forestry Division is not in a term to produce you a copy of this agreement but we suggested if you could approached the manager of the Company and tried and get a copy of it. This is because the Agreement is made between the people of that area and the Company. We hope that clarifies the matter"

The AAO and the Area Council had still not managed to extract a copy from anyone by mid 1988 and sent the Landowners concerned to the Ombudsman's Office. Apparently an officer in Forestry Division had said 'yes' they could have had the copy, but the file was with the Ombudsman. A letter was written seeking to clarify whether Forestry Division would permit the Ombudsman's Office to release the agreement, but no reply was received and Forestry Division still did not provide a copy even when the files were returned.

The Public Solicitor's requirements for contract documents and the people who signed them is quite correct and it could be a waste of public money and time for court action to be taken without these things. The Office is understaffed and relies on overseas volunteers. Straight forward defence of alleged criminals against the

police (who are the ones who have to do the investigating work) would certainly be much easier then helping these landowners with a tricky civil matter, which requires a great deal of background research and eleborate preparations if landowners and local residents are to have any hope of winning a court case upon Western judicial standards of evidence.

5. **The Landowners last Alternative**

The problem is this - if the Landowners feel their local government officals cannot or will not help them, the senior officials and their political leaders are on the side of the Company and the written law is only for people who can pay for it - what are they to do?

They must use more traditional words and ways. They would say "you leave our land now" "the company has broken too many promises" and "pay us compensation". If this happens we must understand the reason why, and recognise that these people must legal right to do this quite apart from their traditional and Constitutional rights.

This does not give them the legal right to hurt people, damage property or interfere with land where there is a valid lease which has been honoured, and does not give them the right to block adopted public roads (only one has been adopted in this area) but this can happen if people become frustrated with legal and peaceful methods. It is the Government's duty to protect foreign nationals and their property but unfortunately this puts our laws enforcement officers and judges in a very awkward position - if they go to protect property as the police and field force have done recently, it can appears as if they act on the side of the expatriate company. It could at worst, look as if they were a para-military force sent to "suppress the people". This can only lead to people, like the Oldman in our story, mistrusting government even more. We should never allow this kind of situation to develop in the first place - it leads unrest and mistrust among our people and will only discourage the kind of genuine foreign investor we need. If the Government exercised the power it already has, and investigated and dealt with Landowners' complaints fairly, then this situation would never have arisen.

The Oldman and His People Expect Government to Help

The Oldman and the people who have complained to the Ombudsman seem to think the Government is there to help them. They are right. The Government has a duty to make and enforce laws for the peace, order and good government of our country. It has power to regulate most aspects of our lives and as the country develops, this will increase.

We do not challenge the Provincial Government's power to refuse a business licence to a business which breaks the law or behaves badly - but trade is part of our custom. We do not resent the Law which prevents us from selling our land to foreigners for beads and sticks of tobacco - though regrettably this has happened too. We do not resent the law which allows our Government to expel foreigners who are undesirable or who break the law, nor the government's duty to bring people who steal to justice - even though we have traditional remedies for these social problems, we accept that they are not strong enough, especially against people who do not follow our customs and tradition.

Why do certain large foreign companies seem to escape these laws? Why do we expect village people to deal with multinational companies without assistance and control by government? This is not what people really want.

Powers and Duties of the Commissioner of Forests

The Commissioner of Forest Resources has the following duties under the Forests and Timber Act which would enable him if he had the political support to control logging companies. For instance he could refuse to approve and issue the Form I Consent to Negotiate. There is nothing in the law to say that the Commissioner must give consent or that he should simply "rubber stamp" companies' applications and hand them over to the Province. "Consent" implies a free will and a properly considered decision to say yes, or no, depending on his special knowledge and what is reasonable.

If the Area Council cannot reach an agreement with the Company on logging rights and profit sharing, then the Commissioner must reject the company's application.

When the Area Council has made its decision on customary land ownership and advertised the Form 2 Certificate, the Commissioner of Forest Resources must satisfy himself that:

a) at least one month has elapsed since such Form 2 Certificate was issued; and

b) no appeal has been lodged against the issuing of such Certificate or, if an appeal has been lodged, it has been finally disposed of; and

c) an agreement for the granting of timber rights referred to in such (Form 2) Certificate has been duly completed in the prescribed form and manner and that the parties to and the terms and provisions of such agreement accord with such certificate... and

d) that the Company has foreign investment approval; and

e) that the Company has agreed:

   (i) to comply with such logging methods and post logging land use plans; and

   (ii) to provide such logging plans specifying such infra-structure facilities; and

   (iii) to undertake such reafforestation plans; and

   (iv) to take such measures for the conservation of catchment areas of rivers and prevention of soil erosion and preservation of environment, Tambu places and sites of historical importance as may be specified by the Commissioner of Forest Resources.

This is a process of investigation, consideration and decision making. Only when he is satisfied with all this should he recommend that the Minister or the Provincial Premier can sign the order for him to issue the licence.

In this case, as in most others, the agreement granting timber rights was accepted without the map required by the Forests and Timber regulations, so apart from being outside the legal requirements the Commissioner does not know what geographical area is agreed and what is not agreed.

Logging methods and other matters are specified in the licence, forestry policy circulars and the Standard Logging Agreement. It is part of the Commissioner's job to see that they are followed. No doubt it is hard to tell in advance if a new company will do these things properly, but where a company has been operating in this country for several years, its performance must be monitored. If it is obvious from its past and present performance that it does not, for instance genuinely agree to preserve river catchment areas, then the Commissioner cannot truly be 'satisfied' that this part of the law will be followed. He should not issue new licences or extensions to such a company, and should consider suspending the existing licence.

In another section of the Act, the Commissioner (through his staff) is supposed to give advice to people on timber rights, but even requests by local government officials do not seem to have been taken up.

Finally the Act states that:

> "Where the Commissioner of Forest Resources is satisfied that the holder of a logging licence has contravened any of the provisions of the Forests and Timber Act or there has been a contravention of the terms or conditions of the logging licence he may by notice in writing cancel or suspend the licence..."

The Minister has the decision on appeal against a cancellation of a licence and inevitably he seems to give in to the Company's representations, but the first decision belongs to the Commissioner. The power is there, but it is little used.

What has Forestry Division done to Control the Company's Activities?

The "New Forest Policy" of 1983/4 was implemented mainly by circulars from the Ministry of Natural Resources addressed to all logging companies, requiring shipping returns, logging plans etc. None of these logging plans has been disclosed to the Ombudsman and grave doubts exist as to whether they are analysed by Forestry Division or checked on the ground apart from an order, very briefly suspending the Company's operations in January 1985 for not producing a logging plan. There is no evidence that these requirements and policies, such as selective logging of trees above 60cm diameter or prohibited species have been monitored or enforced.

After 1986 it seems that the only serious efforts at investigation of complaints and enforcement of the law were made by the Provincial Government with very little support from Forestry Division.

Can the Province Help?

The Provincial Government Act allowed only certain functions under the Forests and Timber Act relating to the approval of licences, to be devolved to the Provincial Executive, and the Province in this case has taken on these devolved functions.

None of these powers relates specifically to control and enforcement. In the opinion of this office, there is nothing to stop the Ministry of Natural Resources sending forestry enforcement officers on secondment to the Provinces as do other ministries.It might also be possible for certain functions to be delegated to officers directly employed by a province. The Ministry has never taken this approach and whilst the Forestry Division has been happy to use the reports of provincial officers it appears to have questioned their authority and given no practical support, such as transport.

However the Province can enforce the following laws and ordinances:

The River Waters Act

The Province has shown the way to other provinces by taking on the Minister's Functions under this Act with effect from 1st August 1984 and by declaring the whole Province and all its streams, rivers, swamps and other waterways as protected. However, its record of enforcement is another matter, considered elsewhere in this Annual Report.

Protection of Historic Places

Again the Province must also be congratulated for bringing in this law which tries to protect our culture and history, and requires Companies to survey and mark Tambu places **before** they start operations. In fact it is mostly used for the benefit of the Company, to limit the compensation paid for spoiling tambu places to $2000, and grave doubts have been expressed about the integrity of of the officers responsible for its enforcement. The Company in question has been allowed to extend its operations without fulfilling the requirements of their Ordinance, although a fairly meaningless list of Tambu site names in one small area is kept at Provincial headquarters.

Business and Hawkers Licensing Ordinance

Another Provincial Law provides for the licensing of business and hawkers within the Province; and sets licence fees and to provide penalties for non compliance. It clearly applies to all business, including expatriate logging companies and states that:

> "Business activities conducted in contravention of the relevant Acts Ordinances, Subsidiary Legislation and Lawful Court Order **shall** be grounds for revocation of the Licence..." and
>
> "If a licence is revoked under this section, the licence holder may no longer conduct his business... may not re-apply for a new licence until he has brought his business operations within the compliance of the applicable laws..."

If this law is to be applied, it should be applied fairly to all business large and small, expatriate and locally owned. Other provinces with similar laws have refused licences or revoked them where business practices are unacceptable or activities are illegal.

Apart from the laws mentioned above the Province tried to help control the Company by means of a Forestry Advisor. He was only a volunteer but he actively went out to the bush, investigated and reported. With the full support of the Premier and Provincial Secretary he made a number of valiant attempt to get the company to improve its performance on matters such as the safe transport of logs; proper roads and bridges; better logging practices; payment of compensation for wasted logs and particularly for improving spoiled water supplies. To some extent he succeeded - at last in bringing the people's genuine complaints to the notice of his supervisors and other officers, such as Public Health.

However, he was only one man and without the support of Forestry Division he was in an extremely vulnerable position. At the end of his contract his employing organisation decided that it was asking far too much of their forestry technician to do all the front-line "police" work. This was the responsibility of the Ministry of Natural Resources but the Ministry gave him no legal authority and practical support.

His successor did not do this work - he felt his job was to 'advise the people'. He left the country in 1987 before the expiry of his contract and he was not replaced. It is unlikely that any new volunteer in this job would receive the necessary political support from the Province, let alone practical support from Forestry Division.

Control by Other Government Offices

This has not been the subject of a separate investigation but the following actions have been noted:

(a) The Commissioner of Labour said that Company log trucks were unsafe and the logs should be secured with chains. It is not clear if any inspection was made under the Safety at Work Act, but the Company's reason for this practice were apparently accepted. Company have been observed laden log trucks at very high speeds on narrow dangerous roads.

[Note: a number of safety notices have now been put up in the area]

(b) The Public Health Officer seconded to the Province did visit the Company's place of operation and made a number of recommendations regarding spoiled water supplies - such as: the Company should not drive vehicles up rivers or cross without proper bridges nor should vehicles be washed or maintained so as to cause pollution by oil and grease, and trees should not be felled into the river. This protest and threats of prosecution under the River Waters Act finally culminated in the supply by the Company of three 300 gallon waters to one village and one 400 gallon tank to two other villages in 1988.

(c) The Town and Country Planning Officer, seconded to Guadalcanal Province had to serve an "Enforcement Notice" under the Town and Country Planning Act 1979 for various matters required in its 1983 Planning, permission, relating to roads; relocation of a school; landscaping and shade trees; nurse and clinic; sanitation, drainage and housing.

[Note: only since the presentation of this report to the Prime Minister has any progress been made on these aspects]

(d) Marine Division of the Ministry of Transport, Works and Utilities has successfully prosecuted the Company on two occassions for 5 breaches of Marine Safety and Registration Regulations.

From this it is clear that close monitoring, frequent inspection and very firm legal action must be taken against this Company before it respects the laws of this Country.

Why so little Official Action?

The Area Council met in November 1988 and after considering the large number of complaints about the company form landowners and residents, its minutes record:

> "The Council voted unanimously to have the Ministry of Natural Resources suspend the Company's Licence until all matters can be fully investigated..."

This request appears to have been ingnored, despite receiving some support from officials in the Provincial Government. One reason for the lack of official action could be the kindness and Company hospitality enjoyed by officers on tour to the area and even political leaders. Local official and Landowners complain bitterly how forestry officers and even leaders avoided the provincial rest house and go directly to eat, drink and stay the night with the Company - and sometimes even return home to Honiara without telling them what has been going on. A number of minor examples of "sweetners" are even recorded on official files.

On a national level, the Company's generosity is conspicuous - but when generous donations are made for sport or charity - we should remember who is really paying - the people and the nation of Solomon Islands.

(c) **Extension of Logging Licence into New Area - Results of Investigation for Report No. 3/89**

Introduction

This investigation followed on from that reported in the previous item. It involved the same Ministry, the same Province and the same Company which applied for an extension of its Forests and Timber licence for logging operations into the next electoral ward. The investigation and report to the Prime Minister and Commissioner of Forests were made particularly difficult owing to the reluctance of Forestry Division officials to explain their actions and to furnish information. Certain vital documents, which had been presumed missing after repeated requests and inspections were not produced to the Ombudsman until some time after he had reported to the Prime Minister.

The Ombudsman is well aware that official documents may not represent the true events which they purport to record but they are the best evidence available to him in this matter.

No official reply or explanation has been received from Forestry Division or the Provincial Government to date of writing this Report to Parliament although it is understood that some of the Company's operations have now been investigated and large numbers of wasted logs are being valued. Again, owing to the large number of people involved in the complaint who have a right to know the results, it has been decided to make a fairly full record of the investigation here.

Text of Report Negotiations

In 1987, the company wished to extend its logging operations into the adjoining Electoral Ward "Z" which was not included to its Logging licence issued under the Forests and Timber Act in 1983. In 1985, the then Minister for Natural Resources, whose constituency was in that area, had declared the negotiations and procedures attempt by the Company in 1982 and 1983 as null and void. From his particular knowledge of the situation, he believed they were unfair and did not follow the Forests and Timber Act. He directed that proposals to log this area must be presented a fresh for normal processing after the moratorium on new logging licences was lifted.

However, his directives was challenged by the Company and a Landowners Association from the bush area of Ward 2 and when the moratorium was lifted in 1987 the Company apparently continued its negotiations in Ward 2. The Commissioner of Forests, under a new Minister did insist that fresh "Form 1" - Consent to Negotiate with Custom Land Owners" was submitted and it was approved by a forest officer, presumably on the Commissioner's instructions on 8th May 1987.

Form 1 - Consent to Negotiate

There was no correspondence in either Forestry Division or Province files to indicate that this Form 1 had been passed through and negotiated by the Provincial Government as required by the Forests and Timber Act. This and the fact that

the Province submitted its own Form 1 to Forestry Division on 15th June 1987, asking for consent for a Chinese joint venture to negotiate for Timber rights in ward Z strongly suggest that the Provincial Government as a whole may have been excluded from these procedures and deprived of its right to negotiate improved terms even to say "no" to the Company. The Ministry's position was that only one Company should be allowed to negotiate at a time and that the 1982 Form 1 was still valid despite the moratorium, the previous Minister's directive and the unfairnesses.

Form 2 - Determination of timber Rights to be Granted and Land Ownership

A single Form 2 notice for Ward Z was produced to the Ombudsman. It is dated 20th May 1987 and proclaims that:

> "The (Area) Council and land owners of all loggable lands in (Ward Z) met on 4/5/87 to 7/5/87 at (five named) villages and considered the (Company's) proposal for logging operations and to determine customary land land owners as attached with the certificate of customary ownerships in this notice".

These "Form 2" meetings would have taken place **before** Form 1 consent to negotiate was granted and there is no indication of what notice, if any, was given to "persons who appeared to have an interest in the land or trees affected". There is no record of who attend these meetings or what was discussed. Indeed, according to Ministry Files, the Chiefs had asked the AAO to cancel these meetings until July.

However, a determination of Landowners and their "trustees" was made. At least some of the Area Council members were involved in this determination and the list of names and lands was said to have been put up on the public notice board at the substation and in the Company's office nearby.

This form 2 determination lists thirty five "head landowners" and twenty seven named custom lands which are nowhere identified by map, sketch or even major geographical features. The first eight of these custom lands were determined to be held by thirty "head landowners", who are represented by six trustees and form the "Land Association". The other nineteen lands were said to belong to another Land Holding Group and just five head landowners and four trustees were listed.

All of these "head landowners" are said to come from just thirteen different villages and not all of them in Ward Z. A glance at the ordinance survey map shows more than seventy five named settlements in Ward Z and whilst it is appreciated that the map is eleven years old, and villages may be abandoned, move and change name it is hard to believe that people from just 13 villages fairly represented all the people in this Area.

Logging Agreements

However, when this Land Association made a logging agreement with the Company on 7th November 1987 only three of its trustees (an Area Council member, a private lawyer and an eminent politician), the secretary and another person signed it. No trustee or land owner from the other Land Holding Group recorded on Form 2 has signed this or the subsequent agreement.

The Agreement itself was superficially based on the Standard Logging Agreement prescribed by Regulations under the Forests and Timber Act. Apart from failing to identify the subject matter of the agreement - it purported to dispose of timber rights for the whole of Ward Z - it has substantial deviations from the Standard Logging Agreement in most of its 38 clauses and several of its schedules. As a result it gave very few rights to the landowners and having lost its "teeth would have been almost impossible to enforce its provisions in a court of law. The persons worst affected by these changes would be those living in the area who might not benefit from the royalties but would suffer the effects of uncontrolled logging. Even the royalty rate of $7 (Solomon Islands) per cubic metre of timber regardless of species, and even less for "sawmill quality" is a reduction in real cash terms from the $5 (US) which the Company was prepared to offer back in 1982.

To this credit, the Commissioner of Forests rejected this agreement and required another to be made "in the proper form". The Ombudsman has only recently been furnished with a copy of this revised Agreement dated 8th January 1988 which is signed by five of the six Land Association Trustees. Although it is nearer the "proper form" of the basic text of the Standard Logging Agreement, there are still amendments to ten of its clauses which benefit the Company and only one amendment which would also benefit Company employees. No schedules and no completion certificate are attached. Moreover, this agreement still purports to cover the whole of Ward Z despite the fact that no-one has signed for the other Land Holding Group determined on Form 2, and the Company itself wrote to Forestry Division saying that two further agreements were needed to cover Ward Z. Even the Area Council does not know the land which this Land Association covers, nor the criteria for membership and various allegations are made about who is able to use the royalties which are outside the scope of this investigation. Yet another agreement has been briefly inspected by Ombudsman's staff and appears to confuse the issue further. For the above reasons the Ombudsman considered the Logging Agreement for Ward Z to be unsatisfactory and failed to comply with the Forests and Timber Act.

[Note: it is understood that Forestry Division is attempting to rectify this].

Form 3 - Final Approval by the Province

A photocopied 'drafted' Form 3 - Certificate approving Timber Rights Negotiation dated 25th January 1988 was recently produced to the Ombudsman by Forestry Division. Unfortunately its signature is illegible and it is not clear who in the Province signed it. It appears Forestry Division simply sent it to the Province on 8th January 1988 recommending that it be signed and returned, without making any other comments.

No Appeals - Wrong Advice to People

There is no evidence of the Commissioner checking with the Customary Land Appeal Court to see if there were any outstanding appeals against the Form 2 determination of Customary Land Ownership. In fact there were no appeals, probably because Forestry Division staff had been advising people through the AAO that since the Local Courts Amendments Act 1985, people had no right to go to the Customary Land Appeal Court and could only turn to their traditional chiefs. Chiefs may

be the best people to settle land disputes in normal circumstances but not if there is an efficient international logging operation urgently wishing to go into the area in question.

"Extension" of Existing Logging Licence into Unspecified Areas

By letting of 16th February 1988 to the Company, the Commssioner of Forests announced that he had:

> "...pleasure in confirming approval of licence for these areas and that your licence of 5th April '83 is now extended to cover those lands with whom you have made agreement in Ward Z...."

The road map attached to the Land Association's Logging agreement gives no indication whatsoever of the land it covers, neither does this short letter from the Commissioner of Forests. No-one, neither the Commissioner, his officers nor the Area Councils has been able to identify the lands involved in the Agreement or the Licence, except that it is the "bush area of Ward Z". The Company could use this vague and loosely worded letter from the Commissioner to go anywhere in Ward Z regardless of ownership or agreement.

Forestry Division Satisfied with Logging Methods.

Apparently the Commissioner did not feel the need to see logging plans in advance and check that the Company intended to log only in the areas agreed with the Land Association, wherever these might be; nor whether the Company intended to comply with the logging methods and conservation requirements and so on, specified in the licence, the Standard Logging Agreement and Forestry Division Circulars. Had he chosen to do his he may have found it hard to be satisfied. Apart from the numerous complaints listed in the previous item of this report, only three months earlier one of his forestry officers had sent a memorandum to him listing extensive damage to rivers, watercourses and drinking water sources caused by "bad logging practices" which were causing "a lot of problems to the villages down the river".

Forestry Division still takes a fatalistic approach to all environmental damage caused by logging companies which is perhaps due to a lack of any better standards for comparison in Solomon Islands and lack of support and capacity to do anything about it. No official action was taken against the Company after this officer's report, and when the Land Association complained bitterly about spoiled rivers and watercourses and breaches of the Standard Logging Agreement in May 1988, the official advice was simply:

> "You have your constitutional rights to pursue legal action..."

This of course is much easier said than done, and the chances of legal action succeeding without well organised expert evidence are extremely small.

Forestry officers say their Division was under tremendous pressure from certain Landowners as well as the Company to issue this logging licence for Ward Z and their lack of enthusiasm for investigating complaints is perhaps understandable. However they might not, as a result, be ideal expert witnesses if the Land Association did bring a Court Case.

After the Licence - Negotiations for Other Areas

Meanwhile the Company was negotiating in the other areas of Ward Z, especially those near the coast which would give it access to the "bush areas" of the Land Association. A confusing selection of 'Public Land Notices' which bear no relation to Form 2, and various Form 2 notices with conflicting dates are found on Government files. Quite how far these documents record events which actually took place is very difficult to ascertain.

For instance, another much amended Standard Logging "Agreement" was dated 5th September 1988 and made, purportedly by "Nangali Landowners". Of the nine shaky signatures photocopied from another document onto the last page of the "Agreement", none of them is written by a Landowner or even a "trustee" named on the variously dated Form 2 determinations. One signature is by a "trustee" from a "Supplementary Form 2" of December 1987, a second signature is by another "trustee" and a third is by the only Landowner named on a "Further Supplementary Form 2" from February 1988. The other six signatures are unidentified and the Area Council confirms there is no such Association as the "Nangali Landowners" and these people had no right to sign. The "Nangali Area" for which the agreement is made is not marked on a map, plan or even given its custom name.

The number of serious deviations from the Standard Logging Agreement are for the Company's benefit. In September 1988 the Minister of Natural Resources himself challenged the "Nangali Agreement" and through the Commissioner, demanded Form I, II and III and the appropriate maps from the Company. It is surprising that these documents were not available to the Minister from Ministry Files. In October the Company wrote to Forestry Division apparently enclosing these documents but they were still not on the files when inspected by the Ombudsman in May 1989. Doubts are still entertained as to their authenticity and the validity of the "Licence" for Ward 12. Despite the irregularity of the Nangali Agreement, Forestry Division of the Ministry of Natural Resources has never officially rejected it nor has the Company suffered any official reprimand or sanction. This disguises the fact that the people of the Nangali Area had said "No" firmly to the Company which was obliged to find alternative road access to the "bush area".

Logging Access Road - Compulsory Purchase Proposed

In mid 1988 the bush area of the Land Association in Ward Z was surrounded by lands whose owners and peoples did not want the Company. The obvious place for a road in Ward Z is running along the coast where land is relatively flat, most people live there and grow their copra and market produce. A logging company would then build roads up the main river beds or along the banks, logging as it went. A road had been started along the coastal route, but it was not maintained and was almost impassable. People felt that if the Company was not even prepared to maintain this coast road, then they did not want it build more roads, spoiling their rivers and paying a low price for their trees which they could cut and mill for themselves with a chainsaw at a much greater profit.

The Company then tried to go from its original licenced area, across the main river, up a tributory and over the watershed to the Ward Z Bush area. This particular area of Ward Z had probably been logged even before the licence was extended to Ward Z. An agreement dated 17 September 1987 and addressed to the company's production manager states:

> "We would like to confirm to the company that even our block of lands were placed partly from the Ward (Z) by the administrative line on the map, but according to our custom this whole block are belong to Ward X and Y (The Area licenced in 1983) We the undersigned landowners agree and ask the company to go ahead and operate in our blocks.
>
> Thanks for your co-operation.
>
> Yours faithfully,
>
> | | | |
> |---|---|---|
> | (typed name, part signature) | (typed name and thumb print) | (typed name signature) |
> | Kikogana Land | Balechopoporo Land | Kol habusi Land" |

> An attached map reveals this to be inside Ward Z and an area known to most as "Batoro Land". This map is the only way this agreement confirms with the prescribed form of the Forests and Timber Act and Regulations.

This Agreement was received without criticism or comment by Forestry Division.

The Landowner of Batoro Land was strongly disputed and the Area Council was unable to decide which people were the rightful owners. There was no Form 2 or proper logging contract for this Area - merely three public land notices posted at the Substation and the Company's Office one of which was defaced and all were allegedly removed after a short time by angry landowners who disagreed with what they said. When road building and logging operations started again in Batoro Land, destroying the Batoro stream, a number of Landowners protested to the Commissioner of Forests. The Commissioner wrote on 11th November 1988 ordering the Company to suspend operations on this area. Road building stopped but logging operations were continuing even until May 1989 when the Ombudsman inspected the Area. It is not clear what action, if any Forestry Division has taken to enforce the Commissioner's suspension of illegal logging operations even in this small area, nor whether this particular area has been inspected.

The Company, through Government officials who do not appear to have checked the law, then tried to use the Roads Act to build its logging road. This is an old law which gives Government the right to compulsorily purchase a pre-existing road and adopt it for the public benefit. Use of this law to enable a private commercial logging company to build its access road to the bush against the Landowners wishes would be contrary to the National Constitution, but this fact appears to have been overlooked.

In the end of the Company found a single elderly landowner who was prepared to make an agreement for one thousand dollars allowing the Company to build its road up another small river also in Batoro land and gain access to the Ward Z bush area.

This agreement, dated 15th December 1988, refers to a logging agreement of 3rd October 1987 which has not reached official files and allows the Company to build its road "not withstanding the objection" by another land owner through whom the signatory traced his right to the land. In the agreement, the signatory:

> "hereby covenants with the Company that he shall indemnify and keep the Company indemnified from all claims, demands, actions, costs and liability whatsoever in respect of any adverse customary rights affected by the construction and maintenance of the said road....(or roads of such size and quality as the company at its absolute discretion shall determine)" and so on.

A thumbprint on each page records the old man's agreement to this complicated legal jargon. The copy of his Statutory Declaration held by this office, which records his somewhat indirect claim to the land, is unsworn. Perhaps since this agreement purports to be only for road building, it has not been challenged by Forestry Division despite a number of written complaints from Landowners.

However any inspection of this remarkable and extremely dangerous road which runs alongside and across the Kolokanji stream (about the size of White River) and carves through the watershed to the next major river and the "bush area" shows clearly that extensive logging operations have taken place on either side, and a great deal of damage done to soil and watercourses. Further up the Kolokanji stream is used as a road and for log skidding.

Forestry Division is understood to have now inspected the road and the area and apparently regard the damage as justifiable and acceptable although no official response has been made.

(d) **Avoidance of Timber Rights Acquisition Procedures. Illegal Logging on Custom Land.**

This investigation shows how a government licence for a sawmill had been unlawfully amended so that it purported to give a Local Limited Company timber rights over custom land, without the consent of the landowners and without following legal procedures. The Local Company then entered a joint venture with a foreign partner and assigned its "rights" under the sawmill licence. This would be against the Forests and Timber Act and provisions in the National Constitution for protection of private property and privacy. For at least 3 months the Joint Venture Corporation carried out logging operations on custom land without having any licence to log and without fair and proper agreements with customary landholding groups. After repeated objections from the Provincial Government and Landowners. Forestry Division of the Ministry of Natural Resources ordered the suspension of the operation.

As a result, the Foreign Partner has lost a great deal of money and the Joint Venture Corporation went into receivership, owing money to its employees, the business community and landowners. However this investigation shows that Forestry Division does not deserve the blame, with the exception of one Officer who, in conflict with his official duties, had been involved with the Local Company since its beginning and then became a Director and Shareholder of the Joint Venture Corporation.

Premature approval from Foreign Investment Division of the Prime Minister's Office for the export of round logs without reference to first legally acquiring timber rights and a logging licence, and conflicting opinions on the property protection provisions of the National Constitution have also confused the issue, but these efforts of other government officers appear to have been attempted to help the Joint Venture Corporation out of its financial and legal difficulties and to set up a viable sawmill as soon as possible. If the result of these efforts has been confusion it has been mainly to the detriment of the Land owners.

The Local Company

In 1982 a professional government officer put a proposal to Forestry Division for a small sawmill in his home area. It would, he said, be owned by the local customary land owners, receive technical assistance from a particular Senior Forestry Officer acting as a consultant and, in addition to processing and exporting landowners' timber, it would develop agriculture and refforestation. All he needed was a quarter of a million dollars. However an aid donor was never found and the Development Bank did not advance a loan. The project also lacked the support of the Provincial Government, the Area Council and many Customary Landowners. The Province and others expressed the view that the Local Company had neither the money nor the technical skills to operate the sawmill or undertake the proposed development. They feared that the directors would simply become "middlemen" under a sub contracting arrangement with a foreign logging company, which would then extend its operations, uncontrolled, into other areas.

The Local Sawmill Association was incorporated as a private limited company in 1983. Its only members and directors were the professional government officer and a lady secretary. Its Articles of Association (internal rules) contained no

restrictions on who could be members and directors. They did not say, for instance, that only customary landowners recognised by the Local Court or Chiefs could be members. A number of other local directors were appointed in late 1987, and extra local shareholders in early 1989, but the basis on which they are selected and the real the extent of their rights and real powers in the joint Venture Corporation are unclear.

In January 1984, the Local Company was given its first sawmilling licence under the 1970 Timber (Levy and Mill Licensing) Regulations. The Licence was in standard form, plainly declaring that "...The Licensee is not authorised to fell trees" and contained a number of conditions. It was signed on behalf of the Government by the same Senior Forestry Officer who was the Local Company's Consultant or Technical adviser.

The mill began work in mid 1985 and Milling Returns indicate that it produced just under 21.4m³ of timber that year, but nothing at all in the first months of 1986 owing to "lack of chainsaws" and very little, if anything, from then onwards. Official files show no evidence of requests for, or offers of technical assistance to help the company out of its difficulties. Small sawmills are notoriously unreliable and spare parts can be hard to find. The Local Company also suffered from poor shipping services which affected the supply of spare parts and the marketing of the timber products. (Shipping was a devolved function in this Province).

The member-directors do not appear on any official records as being land owners themselves, so without local support they may also have had difficulties with timber supplies. Perhaps another reason for the Local Company's failure to operate was that the Managing Director's main energies, apart from his full time professional emplyment with government, perhaps were not directed towards establishing a genuine local sawmilling operation, but to finding a foreign partner who would take over completely.

He tried unsuccessfully to form "joint ventures" with a succession of different foreign logging companies operating in Solomon Islands, but, with only a non-transferable mill licence, no timber rights, no logging licence and little support from land owners, the Local Company had little to offer. However the Local Company was finally successful in 1987, and found a new Foreign Partner from Australia. This Foreign Partner was perhaps unfamiliar with our laws, our customary land tenure, and the commercial risks involved, and appears not to have taken legal advice before making its investment.

All through the official files and correspondence the Chief Forestry Officer Commissioner of Forests has made it clear that the Milling Licence did not authorise the Local Company to fell trees itself. He repeatedly insisted that the Local Company must apply for the timber rights in the normal way under the Forests and Timber Act if it wanted to go in for full scale logging. For instance his letter of 17 October 1985 records a discussion to this effect with the Managing Director and the Provincial Secretary. The Senior Forestry Officer who was the Local Company's Consultant and now a director, and who also became a director shareholder of the Joint Venture Corporation was well aware of this view, but documents show that he disagreed with the Chief Forestry Officer (Commissioner of Forests) and argued against him, on the ground that a company composed of custom land owners

could log their custom lands. He said a precedent had already been set for this in Western Province.

He also incidentally argued that the Local Company which, he said: "will maintain the identity as a 100% Locally owned and would operate in that respect...." should be able to export round logs. This was at a time when the Company was negotiating for a 40% joint venture with the Japanese Chairman of a Foreign logging Company operating on the same island, and had previously been negotiating with another foreign company.

Subsequent Mill Licences.

The Local Company's Mill Licence was renewed on 9th April 1985, signed by a junior forestry official and renewed again on 12th February 1986, signed by another junior forestry official, despite clause 9 of the Mill Licence, which says that the Licencee:

> "shall not cease production of milled timber for any period in excess of three months without the prior written approval of the Conservator".

In both these licences the word "not" has been crossed out of the heading "where the licence is not authorised to fell trees". On the first licence it is crossed out in blue biro and on the second in pencil. The next Licence of 5th March 1987 however, has not been "amended", but the next Licence, issued on 27th Janury 1988, has again been altered, this time in Tippex fluid. It is not clear when these "amendments" were done, but forestry officers say that the first amendment was made by the Senior Forestry Officer/Company consultant and subsequent alterations were done following his example.

It is submitted that these alterations were unlawful in that they apparently authorised a Company to fell trees on land which it did not own, without following the important procedures for acquiring timber rights laid down in the Forests and Timber Act which try and give some protection to customary landowners. In this case the government would appear to be authorising logging on sutomary land regardless of the rights of the land owners, whoever they might be. No one disputes the right of a custom landowner to fell his own trees - although there are reasons, such as flooding and protection of water catchments for this to be controlled, but the Local Company is not a customary landowner. It is a separate legal entity of a definitely non-customary nature. Its Articles of Association allow any one to be a member and many landowners and holders of secondary rights over land appear not to be represented.

Increase of Licensed Sawmill Quota

In its first three sawmill licences the Local Company was allowed to mill up to 1,000 cubic metres of timber a year. Official mill returns indicate that the most sawn timber the Company produced was 21.4 cubic metres in October 1985. Even if it kept up this rate of milling it would not have approached its quota and in fact most of the time the mill appears to have been idle.

The Senior Forestry Officer/Company Consultant argued successfully for this quota to be increased to 12,000m³ in its 1987 Licence when the Local Company was trying to go into partnership with another Australian Company. This increased quota appears to be inconsistent with its needs and with the concept of a Solomon Island owned Company operated by and on behalf of local custom landowners.

Joint Venture Agreement - Unlawful Transfer of Licence

Under a schedule of its joint venture agreement with the Foreign Partner, the Local Company says its "hereby assigns sole milling rights to the company under the terms of the licence.." In the view of this office, this amounts to a transfer of the Licence to a foreign company and is contrary to paragraph 7 of the prescribed form of Mill Licence. The effect of transferring this particular amended mill licence appears to transfer timber rights on custom land to a foreign company. Legally this is incorrect, and Forestry Division is aware of it, but someone, such as a foreign investor who is unfamiliar with the law could be misled.

Unlaw Extension of Mill Licence for 7 years

By late 1988 the Joint Venture Corporation was constructing a full sized sawmill under the terms of its Mill Licence and Foreign Investment approval. It was not expected to be operational untill 1990, but Forestry Division believe it would be one of the best mills in the country. However in order to encourage the overseas investor to provide money for this mill, the Joint Venture Corporation tried to persuade Forestry Division to issue it with a Saw Mill Licence for seven years, rather than the normal one year, and paid seven years licence fees ($700) in advance. The money was properly receipted, but whether this seven year licence was actually issued is unclear. No copy has been produced from Forestry Division files. However such a licence would, in the view of this Office, be invalid, as the maximum duration permitted by the Timber Regulations in only three years. Another Licence was issued in 1989 running to the end of the year for which $150 was paid.

According to one forestry officer, the reason for accepting the $700 (which does not appear to have been returned) was because:

> "Forestry was asked (by the Joint Venture Corporation) to provide only a comforted or guaranteed assurance by way of such payment so that from the point of view of the leasors for the project the guaranteed period would convince their interest to put more funds into such project..."

The money seems to have been accepted on the basis that in the past:

> "the renewal procedures is little more than a nominal payment formality that indirectly keeps Forestry Department advised as to the activity of the respective timber concession. In the past, non payment of the licence has been the only reason for its cancellation and this has only ever been as an incidental result of an operation's completion or termination...."

Use of the words "timber concession" in October 1988 when neither the Joint Venture nor the Local Company had any legal timber concession is particularly unfortunate. The lack of control and monitoring is also evident.

Forestry officials now accept that:

> "nevertheless such licence is subject to one year renewal procedure despite of such seven hundred dollars payment; and it is also subject to any suspension or cancellation should the company seriously have committed an offence or has contravened any of the terms or conditions of the licence..."

It is believed that this arrangement and the acceptance of money was done by forestry officials was a genuine attempt to help the Joint Venture establish its sawmill, but it could put the government in unfortunate position in the future with the Joint Venture, the Foreign partner, its Leasors, Financiers and "rescuers" not to mention custom land owners. So too, was the unprecedented permission by Foreign Investment Division and Forestry Division (albeit reluctantly) to allow the Joint Venture Corporation to export two shipments totalling 7,000m³ of round logs in 1989 to help its cash flow problems - despite the fact that it had a licence only for sawmilling.

Failure to Acquire Timber Rights

The reason why the Local Company and its Joint Venture Corporation have been obliged to try and create 'loopholes' in the Mill Licensing law appears to be their difficulty in obtaining timber rights in the area concerned. This is not for want of trying, nor as some might suggest, the fault of "bureaucratic red tape" and interference by Forestry Division.

It appears that the Province, the Area Council and many of the Landowners and Local residents simply do not want logging in this area. Cynically one might suggest that this has been due to shortage of money to sweeten the appropriate people. However, it could be that land owners and their people just want to say "no".

The Local Company's first Form 1 Application for permission to negotiate for timber rights was made with the help of its Senior Forestry Officer/Consultant who produced a map, showing a small concession area of approximately 200 hectares. It was approved by Forestry Division on 29 January 1982 and despite the Provincial Government's objections (it preferred an Asian Company currently operating under a subcontract in West Guadalcanal), Form 1 passed to the Area Council which met in early 1983. The Senior Forestry Officer/Company Consultant, whilst on Annual Leave from Forestry Division attended the meeting at which the Area Council made its Form 2 determination of Custom land ownership and timber rights. This Form 2 determination was disputed, both in the way it was produced and its content and gave rise to successful appeals to the Customary Land Appeal Court. Having been advised of their legal rights people appear to have decided not to grant a timber concession to either the Local Company or its Asian competitor.

Advice recorded by a government legal offcer, on tour in the Local Company's area at that time records:

> "I am aware that a lot of Landowners in (The Province) are under the mistaken impression that once the logging companies have obtained a licence to negotiate to log trees, then the land owners must let them onto their land. That is not

the case. A logging company can only come onto your land if it has an agreement **with you** to do so... No one can force you to make an agreement with the Logging Company. You do not need to sign anything...."

The next timber rights application was in 1984 and for a somewhat different and larger concession area of about 400 hectares. The Minister of Natural Resources had visited the province on a "crusade" to persuade customary land owners of the need for reafforestation. He heard mainly complaints about the Foreign Logging Companies operating in the area and, perhaps thinking that a locally owned Company would be preferable, he directed that the Province and Area council "reconsider" the Local Company's Form I application and allow procedures under the Forest and Timber Act to go ahead. The Minister may have been the cause of the Local Company being issued with its first sawmilling licence, but there is no evidence to suggest that he directed that a Logging Licence be issued without following the legal procedures.

Again, it appears that the Area Council and Landowners rejected the Local Company, which was negotiating for a joint venture with various foreign owned logging companies at that time.

Conflict of Interests - Senior Forestry Officer

For the next four years the Local Company did not make further efforts to acquire timber rights. Officials records show that the Commissioner of Forests still insisted that this was necessary if the Local Company or any Joint Venture wanted to carry out logging, and the Senior Forestry Officer/Consultant continued to argue against him. When the present Foreign Partner appeared in 1987 Local Landowners began to complain to Forestry Division that the joint ventured had, without their consent, been making surveys of their custom land and had even included it in the plan of operations.

The Company Consultant, in his capacity as Senior Forestry Officer answered those complaints on behalf of the government in a biased and patronising manner, giving incomplete advice about the Forestry and Timber Act procedures and omitting any reference to their legal rights to object to the Area Council or Local Court or to appeal to the Customary Land Appeal Court.

In the view of this office, he allowed his private interests in the Joint Venture and Local Company to override his duties as a Senior Forestry Officer. He should not have been dealing with these letters on behalf of the Government.

Shortly after writing these letters, he resigned from the Public Service and became an official director of the Local Company and Director and Shareholder of the Joint Venture Corporation.

Recent Attempts to Acquire Timber Rights - Enlarged Concession Area.

The next two applications for Timber Rights were made in 1988 and 1989.

The Form I Application approved by Forestry Division in March 1988 was for a still different concession area, of about 360 hectares, containing five adjacent

areas marked A to E on a map and included part of the Local Company's sawmilling area.

The next Form I was approved in January 1989. This was for a much larger area of approximately 3,000 hectares marked in areas I to V and comprising the entire eastern end of the Island Province.

A map made by the Joint Venture in November 1988 suggests that eventually, it intended to survey and apply for the timber concession for the whole Province despite the presence of at least two other major foreign logging companies.

The progress of this last Form I through the Province and the Area Council is not clear. Some correspondence suggested that a Form 2 determination has already been made. It is sad to note that the various Landowners who have already complained to Forestry Division about the Company's activities have again not been advised of their legal rights to appeal to the Customary Land Court, or to simply refuse to grant Timber Rights.

Illegal Logging

In March 1989 official complaints were made that the Joint Venture Corporation had started a full scale logging operation in the Local Company's sawmilling area. Although Forest and Timber Act procedures were under way, no timber rights and been acquired and no logging licence issued.

The Provincial Government advised the Joint Venture, in writing, copied to various offices:

> "to stop operation immediately.....it must be understood that companies operating without a valid Licence are actually breaking the Law".

Unfortunately Foreign Investment Division had given approval for the export two shipment of round logs before the end of the year, to aid the Joint Venture's cash flow.

In the view of this office, this approval was premature and should have been expressly made subject to acquiring timber rights first. This export permit and the "amended" licence undoubtedly confused the issue and some officials in Forestry Division were prepared to accept that the Joint Venture genuinely believed it already had a right to fell trees and export logs from cutom land. It is not the function of this office to investigate the Company's *bona fides,* however, in the opinion of this office, the Forest and Timber Act makes it quite clear that even joint ventures must follow the procedures to acquire timber rights before logging Customary Land. The former Senior Forestry Officer, now Director and Shareholder in the Venture was well aware of this, and the Commissioner of Forests' directions in this case.

A logging road was built, trees felled and logs stacked for export at the Joint Venture Corporation's base. The Joint Venture, was soon made aware of the fact that it must first obtain the timber rights - although a number of local people undoubtedly were keen to see it start operations. To overcome this difficulty, logging equipment and workers were leased out to local people to log the land which they claimed

as theirs. The logs would be pulled and transported by the Company, and those of the right quality would be bought by the Joint Venture at a fixed price. It is understood that this arrangement was unprofitable for all concerned.

In the opinion of this office, the arrangement still did not overcome the legal or practical objections. The ownership of land and timber rights had still not been settled, and even if an individual land owner wanted logging this may not be the case for the rest of his people and those with secondary rights over the land. From a legal point of view, Section 5A of the Forest and Timber Act defines "timber rights" to include most aspects of a commercial logging operation and not just the right to fell trees. The Joint Venture would still have to acquire timber rights to build logging roads and extract logs, and so on.

As a final argument for its logging operation, the Local Company, unfortunately encouraged by certain government officers, put forward the argument that it was the "landowners Constitutional right to do whatever they liked with their Custom Land". Such a right is not featured in Solomon Islands National Constitution and in those countries where this idea is prevalent such as United States of America, it is subject to the proviso that activities on private land must not interfere with the rights and activities of other landowners or local residents and must not conflict with the National Laws.

In the custom of most areas of Solomon Islands, an individual's "right" to do whatever he wants on Custom land is strictly subject to the agreement of all the rest of his people.

Unfair Logging Agreements

The only Logging Agreement which has been produced to this office is in manuscript dated 15th May, 1989 and reads as follows:

> "I (name) and his clan to do hereby give full consent and authority to (The Joint Venture Corporation) to construct roading to my land, (two names) to feli trees for milling of timbers as per attached map.
>
> signed. (name printed) (mark) Right Thumb
> Witness I (illegible signature)
> Witness 2 (illegible signature)
> Carbon Copies: Provincial Secretary, Area Council
> President, Provincial Premier, Joint
> Venture General Manager".

A road was constructed on one land and trees extracted for export or round logs. The other land is unidentified and no plan was sent to Forestry Division. The Corporation had no logging licence and had not completed the procedures to get one. This Agreement is not in the prescribed form of Standard Logging Agreement. It is not known whether the person who made his mark represents all or any of the true Land owners (His "ownership" is subject to a dispute by someone who did not wish to grant timber rights) It does not even name the price which the man would receive for the trees and the road and gives him no rights against the Corporation.

Complaints were made to the Province and Forestry Division. One complaint alleged that a single member of a family of 200 people had signed a logging agreement against the wishes of the other two hundred members of the family.

Another complaint, later in May alleged that the Joint Venture Corporation ignored notices and destroyed road blocks on disputed custom land and continued to say:

> "There are no ways to stop the (Joint Venture) or tell them to respect our lands except to fight them or destroy their properties. We need your government's help.."

Operations Suspended

Perhaps it was complaints of this nature which the government took seriously and on 19th June 1989 the Commissioner of Forests ordered the Joint Venture to suspend its operations indefinitely. An officer was sent down to the area, who investigated and made a detailed written report on 10th July. It might have been better if another officer who was not already familiar with the Joint Venture officials and sympathetic to their problems had made the report. None the less this decisive action is a change from the attitude "let the landowners look after themselves" and is to be welcomed and commended. In this case, were procedures were incomplete; no Logging Licence issued; Corporation officials already aware of Forestry Division's stand, and civil disturbance was a distinct possibility; a detailed investigation **before** suspending operations (as the Joint Venture wanted) would have been inappropriate and unfair on the people and landowners. Perhaps it should be borne in mind that this Province has no Public Solicitor and the logging area was far away from the Provincial Headquarters and the Magistrate's Office. Without actual proof of customary land ownership objectors would face difficulties in obtaining a High Court Injunction.

Joint Venture - Is it a Reality?

The Foreign Partner received Foreign Investment approval in February 1988 on the basis that it was coming a Joint Venture Corporation with the Local Company in which the Foreign Partner contributed 70% of the capital and the Local Company 30%. This arrangement is not bourne out by the shareholdings, which remain to date of writing this report as one ordinary one dollar share held by an Australian Businessman and another to the former Senior Forestry Officer who is also described as a "businessman". It is understood that Foreign Investment Division at that time did not make an investigation of such details; nor the foreign investor's financial history; or, in this case whether the Local Company had a valid logging licence, nor the content of the Joint Venture Agreement. This was not done by Forestry Division either, and it is accepted that this division does not have the expert staff for this.

The Joint Venture Agreement (JVA) gives no date when this 70/30 investment will be made; has no proposals for post logging development; contains a profit distribution formular which is unclear how it will work in practice; gives the Foreign Partner (sole) management and control of all assets and most aspects management including personnel recruitment and seems to anticipate a buy-out by another Foreign Company.

Some government office should be responsible for checking these arrangements if the Government's policy of Joint Ventures with Foreign Companies is to work. It should try to ensure Solomon Islanders have genuine participation in management, training and development of the timber industry, rather than passively accepting miserably low "royalties" for round log exports from a highly profitable foreign owned Company.

The danger at present, is that Joint Ventures will be set up and perhaps receive special government help and encouragement in getting a logging or sawmiling licence, but once in operation they will simply be yet another foreign logging company exploiting our decreasing natural resources with one or two "middlemen" enjoying some of the perks and profits.

(e) **Issue of Timber Licence (Malaita) - Further Report to Parliament**

Forestry Division has not formally replied to Item 3 in the Ombudsman's last Annual Report, although a Senior Forestry Officer did some and explain in general terms the pressures and harassment suffered by forestry officers from Company officials and interested landowners and politicians at all levels.

However, the Company made a submission to the Ombudsman in November 1988. The Company's letter does not raise any new issues and contains a number of inaccuracies which need not be considered here. Copies of the exhibits produced by the Company had been inspected by the Ombudsman or his staff before making the original report, with the reception of a letter dated 18th March 1987 from the Company to a Ward 33 Landowner who wished to appeal against the Company's operations. This letter deserves comment.

It says:

> "....at the last meeting at Auki with tribal leaders and the Area Council, it was unanimously agreed that the Company was welcomed to operate in Ward 33. However we are fully aware of your intention of Lodging an appeal.... I would suggest you pay the fee of $1,200 to the Customary Land Appeal Court..."

The Company did not say what significance it attached to this meeting being held at Auki, but it could not satisfy the requirements of the statutory meeting under the Forests and Timber Act section 5c(1)a. Further, the Forest and Timber Appeals Regulations state that it is the Timber Operator, not the appellant who must deposit this sum required for the costs of the appeal. The issue of a Certificate of No Appeal by the Malaita Magistates' Clerk, before the appeal period had completely expired, to the President of the other Area Council, induced the Commissioner of Forests to issue the Company with its logging licence the very next day. No doubt the Commissioner was under considerable pressure to issue the licence, but the Ombudsman sees it as the Commissioner's duty under section 5E(b) of the Act, to satisfy himself that no appeals had been made, not the business of an interested party. In fact an appeal against the other Area Council's decision (which legally should never have covered this Ward) was lodged later in the same afternoon that the Certificate was given. The Appeal was within the legal time limits, but once the Company had its licence, it had no incentive to pay the sum required by the Customary Land Appeal Court, so the appeal has never been heard.

In recent complaints brought to the Ombudsman the following allegations have been made against the Company:

> that it has trespassed on 8 different lands not covered by any logging agreement;
>
> according to Landowners of 17 different Custom Lands, it has wasted Logs, caused serious surface damage and destruction of traditional building materials;
>
> it has damaged and polluted five different rivers on which the people of this populated area depend for drinking and washing;
>
> and uses logging methods and labour practices which encourage waste and unnecessary destruction of forests, soil and rivers.

The Company in turn has faced difficulties from opposing groups of landowners; landowners who have failed to honour logging agreements by asking for more money and compensation after operations have moved to another area and so on; and also a landowners committee, which it regards as illegal and refuses to recognise. In August, this committee tried to stop or "suspend" the Company's operations, so the Company threatened High Court action and withheld royalties on account of Damages for the stoppage.

A forestry officer has recently inspected logging operations in this area, and noted some breaches of logging agreements and some waste, but nothing serious enough to warrant suspension of the Logging Licence. However the Landowners complaints made to the Minister of Natural Resources in June 1989 had not reached Forestry Division files in time for this tour of inspection.

The Company's sawmilling operations have been inspected a number of times in an attempt to enforce the Government policy that each logging company must mill 20% of its licensed quota of logs inside Solomon Islands. The policy was introduced in 1985 and is in line with present government policy. The aim was for local processing of timber to be increased annually to 50% and finally 100%. It is understood that the national average is about 4% although some Companies are better than others. One reason why this Company cannot even approach the figure of 20% is that it simply does not have the sawmilling capacity to do so and with the landowner problems, it may have little incentive for further investment. Another reason is its excessively high licenced quota of 50,000m³ of timber per year. The Chief Forestry Officer was persuaded, apparently under political pressure, to grant this unrealistic quota in 1986 against the advice of his technical staff and the United Nations Development Advisory Team (UNDAT).

Forestry Division has been trying for some time to negotiate with the Company to reduce its licensed quota to a realistic level and or install a better sawmill. After correspondence, discussions and a warning, the Commissioner of Forests ordered that the Company's operations be suspended with effect from 4th September 1989. However, owing to a misunderstanding the Company has been allowed to continue operations and export logs, pending the installation of a new sawmill.

The UNDAT report estimated that in 1982 there were 250,000m³ of exploitable timber left in this area and 65,000m³ in the adjoining area, which with careful planning would enable up to 10,000m³ to be exported for the next 25 years. The Company's declared log exports in round figures are as follows: 16,000m³ for 1987, 20,000m³ for 1988 and 8,700 for the first half of 1989. These records are based on the Company's own declarations and no independent check is practicable.

Even on these declared figures the resource in this populated area is being used at double the recommended rate. This is without taking into account damaged and wasted logs left in the bush which Forestry Division does not have the money or the manpower to investigate. The Company declares the total value of these log exports as SI$6,583,025. The Government receives 17% of this as Export Duty/Timber levy but no one has tried to put a figure on the social and environmental costs to government and the rural in aspects such as alternative water supplies; soil erosion and decreased fertility; shortage of traditional building, medicinal and food plants and the added risk of malaria and other insect bourne

diseases arising from damaged natural drainage.

To date of writing this report no spot checks have been carried out by Customs officers on log export ships in this inaccessible area.

2. GOVERNMENT AND MONEY

(a) Administrative Weakness in Administration of Agency Contract

Staff of a Statutory Authority complained they were being unfairly treated, dismissed and replaced by staff recruited by a particular Agency. There were two shareholder-directors of the Agency. One was a businessman who later become a Member of Parliament and finally was appointed to the Ministry responsible for administering the complainants' contracts of employment and the recruitment contract between the Agency and the Government. The other shareholder-director was a Government Officer who had been Permanent Secretary of another Ministry, responsible for the Statutory Authority when the Agency's overseas associate made contracts with that Ministry and the Statutory Authority. He was also acting Chairman of the Board of Directors of the Statutory Authority at the time the recruitment contract was originally awarded to his Agency, as part of the government's localisation policy. Unlike other more junior government officers who originally had an interest in the Agency, this Senior Government Officer did not give up his shareholding or directorship. He continues in office despite General Orders and, incidentally, against the recommendation of then Minister for Public Service.

The amount of the Agency's fees and other charges and the basis upon which they are calculated have never been formally questioned by the Ministry responsible. Officials believed they had no legal rights to question the Agency's bills under the terms of the contract. However, when the contract was renewed for a further three years, no attempt was made to improve the Government's position. Since the other director-shareholder of the Company became responsible for the Ministry concerned, officials said they would have found it hard to challenge the Agency's bills. Since these bills were paid directly from a special aid fund, they have never been under control of the Ministry of Finance.

The Agency's contract was renewed in 1986 after a favourable report by the Acting Auditor General. Officials at the Ministry had been concerned by a number of small mistakes in the Agency's records. The Acting Auditor General resigned from the Public Service shortly after making this report and set up in private business next door to the Agency and with a very similar name. His report on the Agency was discredited and the Agency's accounting practices were severely criticised by a Commission of Inquiry into the application of another aid fund in which the Agency and its associates were involved. However the Senior Government Officer has publicly threatened to take the Government to Court over the findings of this Commission of Inquiry, at which he gave evidence.

No conclusions would be drawn about the justification of the original complaints in this investigation. The Statutory Authority put forward a number of reasons for wishing to change its staff, but the director-shareholders of the Agency, with their conflicting public duties, have placed themselves in a position where their actions could be called into question.

Administrative weakness at the highest level in government has prevented the enforcement of General Orders and the proper control and monitoring of the Agency's contract and its charges. This weakness at the top has inevitably affected

officers at all levels in administration. It is also unfortunate that this effort at localisation has mainly benefited leaders and the unofficial economy, rather than developing an independent private business.

In April this year, the Ombudsman made a Report to the Officers concerned and to the Prime Minister, who has referred the matter to the Leadership Code Commission.

(b) **No Receipt Issued - Cheque kept in Desk Drawer**

This small investigation shows how things could go wrong even in a well managed project where everyone is honestly trying to do their best. It is included in this report as an illustration of how far away some bodies have departed from the sensible financial procedures, designed to protect public money and the officers who handle it, contained in "Financial Instructions".

The complainant's family lived in Malaita and their house had been damaged in cyclone Namu in May 1986. The family wished to take advantage of an offer of building materials and roofing iron made available by aid donors through the Rural Housing Rehabilitation Project (RHRP) under the Ministry of Home Affairs and Provincial Government.

The method of payment devised for this project was for each family to give $50 for the materials to a government officer when he toured their area and he would issue them with a receipt. This procedure was aimed to ensure that the right people in the areas actually affected were the ones who received the materials.

In this case, the complaint was a government officer posted to another Province. Instead of waiting for the officer to tour his family's area, he sent the Malaita RHRP co-ordinator a cheque for the $50 in November 1987. This was received and carefully kept in a desk drawer but not receipted or paid into the bank. In June 1988 the complainant became concerned that his money had gone missing and complained to the co-ordinator and to the Ombudsman. The cheque was eventually receipted and credited to the RHRP in late July 1988, when government officers were due to tour the complainant's family area. The project staff gave a full explanation to the complainant.

Financial Instructions at Paragraph 0831(1) say:

> "Every Revenue Collector must give the payer a receipt on an official form at the time of payment".

Financial Instructions may be old, and for some reason, many government offices do not have a copy and are unaware of their contents, but this kind of rule is sensible to protect public and government money, and innocent public servants who may be unjustly blamed if money appears to go missing.

In this case it would have been better to put the cheque on bank deposit, in accordance with Paragraph 0831(2) of Financial Instructions or return it immediately to the sender with instructions for him to give it to his family.

Note: "Financial Instructions" is still available, from the Government Printing Office, price $6.00.

As an aside on the RHRP, the Ombudsman has received several complaints and is aware that these building materials have in some cases not been used as aid donors had intended. The recent investigation by the Ministry of Home Affairs was welcomed.

3. GOVERNMENT TEACHERS'' PAY RISE AND PAY CUT

Were teachers' complaints to the Ombudsman justified?

Introduction

The National Teachers' strike in June 1988 about their ''pay cut'' received enormous publicity even outside Solomon islands. The Ombudsman was inclined to exercise his discretion not to investigate a matter which had received undue publicity, but a large number of teachers both individually and as whole schools complained to him about matters arising from this ''pay cut''.

The following account is a summary of his preliminary findings. The Ombudsman hopes it will help everyone understand what happened in this complicated dispute. Diagrams at the end of the report give a visual interpretation of the terms ''diagonal conversion'' and ''straight conversion'' to Public Service pay scales. (They are for general reference only and the figures are only approximate).

SINTA'S Ambition - Straight Conversion to Public Service Pay Scales

Ever since Solomon Islands National Teachers' Association (SINTA) was formed in 1985 and recognised as the Teachers Trade Union, it has been trying to win better pay and conditions and an improved scheme of service for its members. Its aim has been for teachers to have the same pay and conditions as Public Officers with a straight conversion of teachers' pay to public service pay scale, so that a Level 3 Teacher who might be a school leaver, with some training and experience would have some pay and conditions as a Level 3 Public Officer - such as a clerk in a ministry or a junior police constable with similar qualifications. However, this would be an extremely expensive exercise and successive governments have decided that the national economy cannot bear it.

Proposed Diagonal Conversion to Public Service Pay Structure.

In 1986 Cabinet decided in principle that teachers' conditions of service should be improved and agreed a ''diagonal conversion'' to public service pay scales. That is, a teacher at the mid point of Level 5 on the Teachers' scale would **not** be paid the same as a Level 5 Public Servant, (which would be ''straight conversion'' involving a pay rise of almost 30%) but on the nearest equivalent in cash terms, which would be some point on Level 4 on the Public Service scale. The extra cost of this diagonal conversion was also approved by Cabinet.

Diagonal Conversion unfair and Rejected by SINTA and TDP

The ''diagonal conversion'' involved many irregularities and was unacceptable to the teachers. For instance, it erroded pay differentials at the lowest levels, and while some teachers would have received comparatively large pay rises, others would have had very little. It would no doubt, have produced a great number of complaints to the Ombudsman in its implementation. It was therefore referred to the Trade Dispute Panel (TDP) and on 22 August 1986 the Panel agreed with the teachers, and held that diagonal conversion was unfair and the money should be spread as an 8% pay rise increase to all teachers. This was agreed by MET and SINTA and

the idea of conversion to public service pay scales was apparently dropped for the time being.

The Panel also set out a timetable for the Ministry of Education (MET) and SINTA to agree the new scheme of service.

New Scheme of Service Proposed - Extra money for Teachers.

The timetable for drawing up the new scheme of service was not followed. SINTA said this was MET's fault and MET said it was a Cabinet matter. However, by mid 1987 the scheme of service had been agreed by MET and SINTA an a costing booklet was produced showing, at "Annex F" the "Proposed Scheme"

For comparison, a straight conversion to Public Service pay scales was also included. It is misleadingly called "diagonal conversion" but it is a different and much more expensive scheme from the "diagonal conversion" rejected as unfair by the teachers and the Trade Dispute Panel in 1986. It is almost a straight conversion to the 1987 Public Service Pay Scale and apart from changing pay differentials between types of teachers, it gave all teachers pay rises of between 23% and 41%.

Its cost was set out in "Annex G" of the costing booklet and with housing allowances amounted to over $13,600,000 dollars which was almost five million dollars a year more than the "Proposed Scheme" and almost double what the government was paying teachers at that time.

On 14th September 1987, the Ministry of Education presented Cabinet with a paper asking it simply to "agree that the Proposed Scheme of Service be adopted" and to "authorise the level of expenditure for implementation of the Proposed Scheme of Service". The paper itself did not say what was the Proposed Scheme of Service (this was in a separate booklet) nor did it say what was the level of expenditure to be authorised. This figure was contained in the confusing "costings booklet" which also prominently included the irrelevant figures relating the straight conversion to public service pay scales.

The Cabinet paper was approved and all that remained was to decide was when the Proposed Scheme of Service should be implemented.

Official Radio Broadcast - A Mistake

Unfortunately, the situation was confused by a radio announcement on 22nd September 1987, saying that the new teachers' scheme of service could cost about thirteen million dollars. It is easy to see how this mistake occurred - it appears the wrong figure was used from the costing booklet where figures for the Proposed Scheme are mixed up with irrelevant figures for the straight conversion to public service pay scales. It was, however, a grave error on the part of whoever prepared the statement which was never retracted publicly, apparently to save embarrassment.

Most people involved in the issue realised this was a mistake, including the General Secretary of SINTA and who stated in the SINTA newsletter that the actual amount the Government had to spend was much less than the thirteen million dollars mentioned in the radio broadcast.

"Proposed Scheme" Unchallenged by SINTA or MET - Implementation Date Set.

The Panel adjourned to receive written confirmation of what Cabinet had approved - and a senior officer in MET wrote on 1st October 1987 confirming that the proposed Scheme of service "Annex F" - ($2M extra) was what Cabinet had approved and **not** "Annex G" the straight conversion to Public Service pay scales (total cost over $13M). The letter was copied to SINTA. The Trade Disputes Panel record of 7th October 1987 states:

> "...Letter dated 1/10/87 read out
> Cost details read and explained...."

No one challenged the fact that it was Annex F that was agreed by Cabinet. That Cabinet had approved "Annex F" the (only) "Proposed Scheme" is recorded again in November without disagreement from either party. Finally the Panel concluded that it:

> "adopts the Scheme of Service as agreed by Cabinet as its award in this case with effect from 1st October 1987."

The Trade Dispute Panel reconvened on 23 September 1987 to hear the question of when the "Proposed Scheme" should be implemented. At the hearing, both MET and the General Secretary of SINTA agreed that the scheme adopted by Cabinet was the "Proposed Scheme" costing two million dollars extra and **not** a straight conversion to Public Service pay scales costing over thirteen million dollars.

However on 3 February 1988, Teaching Service Section of MET, at the request of Deputy Secretary to Cabinet, came and asked the Chairman of the Trade Disputes Panel to explain the "confusion" over the new pay structure. The Ministry of Finance was about to implement the proposed scheme "Annex G", straight conversion Public Service scales costing $13M was the right structure.

Wrong Pay Structure Implemented

The Chairman of the Trade Disputes Panel explained to MET, and to the General Secretary of SINTA that it was the "Proposed Scheme", "Annex F" which should be implemented and not "Annex G".

Once the Trade Disputes Panel had confirmed to Teaching Service Section of MET that the "Proposed Scheme Annex F" was the correct pay scale, there should have been no further problems. Nonetheless the straight conversion to public service scale "Annex G" was still put on to the Treasury computer. Officers at MET have not been able to explain how this happened but it appears to have arisen after a meeting between officials of SINTA and officers at the very highest level of government administration. Teachers were paid on the "Annex G" scale from May until December 1988 and most of them received "arrears" at this level backdated from October 1987.

The Ministries of Finance and Education tried to rectify this "administrative error" (if this is what it was) and put the teachers pay back to a lower level at the end of May.

Teachers became very alarmed at the prospect of the Ministry of Finance recovering these large sums of money which many of them had spent already and, afraid that their next pay packets would be empty, they went on strike. It was eventually conceded that the overpayments should not be taken back from teachers, because "If the Government makes a mistake it must stand by it". This is contrary to normal practice under General Orders.

Memorandum of Understanding Complicates the Issue

Ideally, Cabinet could have clarified the position, but even at this stage, either SINTA or the Government could have referred to the High Court for enforcement proceedings, or appealed against the Trade Disputes Panel's decision. However, neither was done, and the Panel was not even asked to clarify its findings on what was the correct pay scale until it was too late. Instead, the Permanent Secretary of the Ministry of Education and the General Secretary of SINTA made a "Memorandum of Understanding" on 6th June 1988, agreeing amongst other concessions, that teachers should again be paid at the Public Service "Annex G" scales with effect from mid June.

This confused the issue legally and made it very hard for the Trade Disputes Panel to do anything or have its findings enforced in the High Court. It is also not clear what advice the Permanent Secretary received before making this agreement, nor whether he had authority to commit the Government to this multi-million dollar mistake for which no funds had been allocated in the budget.

Teachers gradually came back to their schools, much to the relief of working parents in Honiara and the provincial centres. There were conflicting information from SINTA and the Ministry of Education about how many rural teachers actually went on strike. A number interviewed by this office said they had carried on working through out 1988 and never went on strike.

Fresh Cabinet Decision

The matter was belatedly referred back to Cabinet on 16th November 1988 and Cabinet directed that with effect from 1st January 1989, teachers pay should go "down" to the Proposed Scheme levels of "Annex F". Teachers were informed of this in a circular.

The present Government again proposed a diagonal conversion of teachers pay scales to those in the public service. This is of course a logical step, and it is to be hoped that scheme can be carefully worked out in a way which eleminates the unfairnesses in the 1986 attempt at diagonal conversion to which teachers objected. It is also hoped that this Report goes some way to prevent any further misunderstandings or confusion with a straight level for level conversion to Public Service pay scales which the Government cannot afford.

[Note: This report was presented to the Prime Minister. Minister of Education and Human Resources Development officers concerned in early August 1989. Owing to the large number of teachers who complained and parents affected by the dispute arising from this matter. The Ombudsman decided to print this report in full.]

Staight Conversion to Public Service Pay Scales

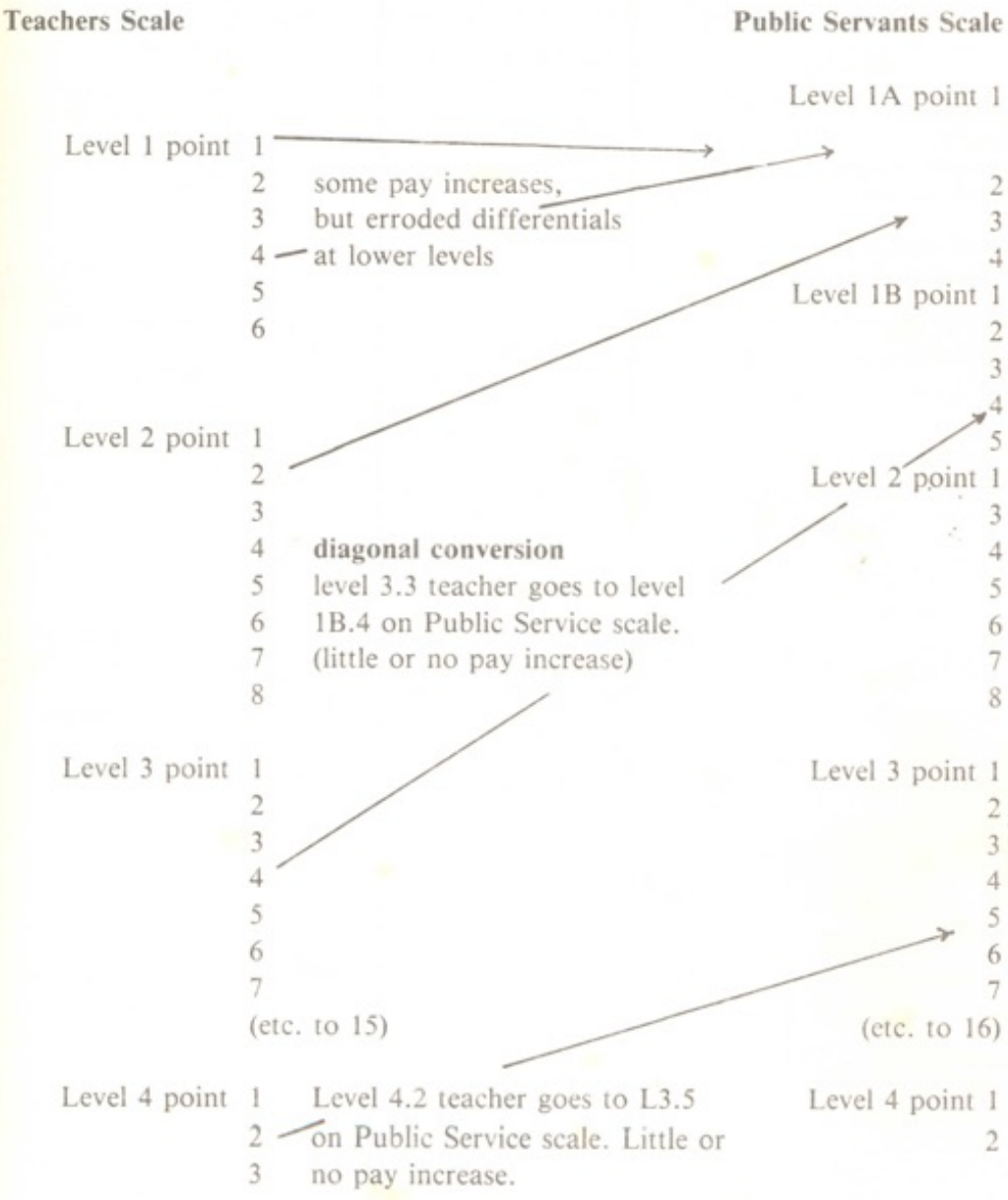
"Annex G"

Teachers Scale		Public Servants Scale
Level 1	up to 40% pay increase →	Level 1A
Level 2		Level 1B
Level 3	c.30% pay increase →	Level 2
Level 4		Level 3
Level 5		Level 4
Level 6		Level 5
Level 7		Level 6
Level 8	c.25% pay increase →	Level 7
Level 9		Level 8
		Level 9
		etc.

example: Level 3 point 1 teacher goes to Level 3 point 1 Public Service scale and gets a pay increase of approximately 30%.

[Note: Approximate figures for general guidance only]

Diagonal Conversion



[Note: The examples given are purely illustrations of the general principle of Diagonal Conversion and the figures are approximate.]

Rough Comparison of Teachers and Public Officers' Salary Scales

	Teacher Level	Approx basic *Salary in 1986	Police & Public Officer Level	
		$1,000		
Untrained primary teachers	1		1A	)
Probation/part-trained	2	$2,000		) Manual workers
Certificated teachers	3		1B	)
Experienced certificated Deputy Head primary	4	$3,000	3	Clerks, typists, asst. nurses etc. qualified mechanics, seamen.
		$4,000		field assts. etc. police constables.
Head - primary Diplomates & met. cert. holders.	5		4	Senior clerks & typists Registered Nurses, senior qualified mechanics, bosun, police sergeants.
		$5,000		
Graduates Diplomates further study.	6	$6,000		Asst. admin. officers, asst. nursing officers etc., foremen, senior
Provincial Secondary H.O.D.			5	police sergeants.
		$7,000		
National Secondary H.O.D.				Police Inspectors
Dep. Head provincial secondary.	7	$8,000	6	Admin. officers, personal asst., nursing officer, geologist physio-therapist etc.
Head, provincial secondary.	8			
Dep. Head National secondary.		$9,000	7	Senior admin. officer etc. prof. qualified graduates, lawyers, doctors, police superintendent.
		$10,000		
Head National secondary.	9			
		$11,000	8	Principal admin. officer tc.
		$13,000	9	Chief admin. officer etc.
		$15,000	10	Chief admin. officer Under Secretary

* Figures are approximate, based on 1986 levels. They are intended only as a general guide to the different pay scales.

4. PRISONS, POLICE AND JUSTICE

(a) Checks and Balances on the Prison System.

The Ombudsman has a duty under the National Constitution to inquire into the conduct of members of the Prison Service, to assist in the improvement of practices and procedures and to eliminate unfair decisions. His specific powers of entry, inspection and taking oral or other evidence which are provided in the Ombudsman Act 1980 also apply to prisons and there is a special provision for prisoners to write and complain directly to the Ombudsman without censorship by the Prison Authorities.

The Prison Act 1972 provides for Visiting Justices to inspect all parts of a prison, interview prisoners and inspect prison food and records to see if the Prison Regulations are being followed. They should not be confused with ordinary people who visit the prison on a voluntary basis as an act of charity, nor with the present British "Visting Committees" which can actually hear disciplinary offences and so on, but they are the principal, official 'check and balance' on the prison system, providing a protection for prisoners against harshness or brutality in the system. In Solomon Islands, High Court Judges (at present, only the Chief Justice) and the Magistrates are Visiting Justices of Prisons by virtue of their offices. The Governor General, presumably acting on the advice of Cabinet or the Minister of Police and Justice may appoint other "fit and proper persons" to be Visiting Justices.

Unfortunately no appointments have been made for some years and the last lay Visiting Justices (who were not part of the Courts System) known to have been active were in Auki.

During the 1980s, security and discipline in the prison system seriously declined, prison buildings were allowed to decay and staff morale and discipline were very low. Some inmates were allowed in and out of prison to visit friends and families, as well as working, sport and fishing parties and incidental burglaries and other crimes. Less favoured inmates were ill treated and lived in fear of violence if they complained.

In 1985 there was a mutiny of prison warders and a mass walkout by prisoners. Finally the prison controller and two or his warders were convicted and imprisoned for assult occasioning actual bodily harm on a prisoner. They were dismissed and a new prison "regime" was started.

Old buildings were restored and new buildings planned (The building programme has suffered from shortage of funds and land and unwillingness of Provincial Governments to accept the risks of a high security prison). Prison Warders became a proper Disciplined Service, security was vastly improved and prisoners treated fairly and firmly.

The Ombudsman believed that it was time for the system checks and balances to be set up and made to work. Prisoners should be able to complain to an independent person even if they did not at that time have much to complain about, or their complaints are found to be unjustified. Someone independent of the prison authority

should be able to check exactly what is going on and be in a position to report problems and have them rectified. This could and should prevent any repetition of the events of 1985. It would also have the benefit of dispelling unjustified remours about prison conditions and add to public awareness and confidence in the system. It would also be humane to let segregated prisoners talk to someone.

In August 1987 the Omudsman wrote to the Controller of Prisons asking when Visiting Justices would be appointed, recommending that a social worker and at least one person from outside government be appointed. The Minister replied on 7th September 1987 saying that first of all a proper organisation and structure within the prison must be established, staff recruitment training completed and a balanced regime created. Therefore no Visiting Justices could be appointed before 1988.

Unfortunately, shortly after this letter, Central Prison erupted with serious rioting and mass break outs. It is accepted that this was not so much the result of prison conditions but more of a power struggle led by long term prisoners whose unreasonable privileges under the previous controlled had, quite rightly been stopped. According to the prison authorities "a very strict regime" was then introduced with certain prisoners being detained in cramped conditions in police cells while a high security, segregation unit was built. Staff morale had to be built up again and they were for the first time given guns (as far as is known, the only minor casualty has been to another prison warder). Since they could not be trusted with tools, prisoners could no longer be used as a workforce and the building and upgrading of Central Prison was held back.

Now, almost two years later the Ombudsman has again raised the question of appointing Visiting Justices together with queries arising from the Ombudsman's inspection of the Central Prison concerning the length of time spent by segregated prisoners in solitary confinement, the attendance of the Medical Officer and whether inmates are allowed to write to the Ombudsman.

The Ministry of Police and Justice has replied and given an account of some of the problems faced by the Prison in the past two years and the improvements being made. According to the Ministry, the following units have been completed or are now nearing completion: Administration Unit, Quarter Master's Unit, Reception Unit; Introduction Unit; Medical Unit; Main Unit and Segregation Unit. The next phase which is about to start will include three new compounds; improved inner and perimeter security; Long Term Unit; Female Unit; Staff Rest and Standby Unit; Gate Lodge; Office of the Controller and will involve demolition of the last of the 1948 Compounds and conversion to an Industrial Area. But, according to the Ministry: "Until the bulk of these tasks are completed, staffed and running properly, the Visiting Magistrates (Justices) will not be appointed".

The Ombudsman appreciates the work and progress made so far but finds it hard to accept this reason. Visiting Justices could be escorted in their inspections and an officer or cell could be made available for private interviews with prisoners, if required. This has been done in the past and is done now by the Ombudsman and the Magistrates.

None-the-less the Ombudsman is pleased to note that religious services have been started again and prisoners are now allowed to receive and write (censored) letters

to their families. The Ombudsman also hopes that when the new facilities are open, long term Prisoners will also be allowed visits from their families again, to improve their chances of fitting into the community as normal law abiding citizens when they are released. It is also that some practices, which are much against Solomon Islands Custom will no longer be necessary.

(ii) **Prisoners Complaints**

The Ombudsman had received no written complaints from serving prisoners since 1986. This is maybe because they have nothing to complain about, or do not see any point in complaining, or for other reasons. However oral complaints have been made by prisoners on this inspection and by their families and released prisoners. Many of these concerned court appeals, sentences and dates for being released. It is not clear whether the Governor General exercises his power under Prison Regulation 114 concerning remission of prisoners' sentences for good behaviour, or whether this is exercised solely by the Controller with no appeal from his decision.

(iii) **United Nations' Standard Minimum Rules for the Treatment of Prisoners.**

As a member of the United Nations Solomon Islands is expected to Implement the UN Standard Minimum Rules for the Treatment of Prisoners and take them into account in framing its national laws. The current Prison Act and Regulations in Solomon Islands were drawn up after a Committee on the Treatment of Offenders in 1966 and passed by Parliament in 1972, and they do follow the UN Minimum standards as far as has been practicable.

The UN is now asking member states to take part in a survey define short comings in the implementation of these Minimum Standards for a Committee or Crime Prevention and Control in 1990. The results of the survey might, according to the UN, assist in assessing existing needs and possibilities for technical co-operation in their field.

The Ombudsman proposes to take part in the assessment with other government authorities concerned.

(iv) **Prison Warders Complaints**

The Ombudsman receives a number of complaints from prison warders about their dismissal from the Prison Service. In all cases former warders admit that their dismissal followed the procedures required by the Prison Act and Regulations and they are aware of their right to appeal to the Police and Prison Service Commission under section 123 of the National Constitution. The reasons given for dismissal also appear to be adequate and their complaints are regarded as "not justified".

(b) **Delay in Prosecution and Withholding of Pension**

In many Ombudsman's cases, although the person who complains is genuinely aggrieved, investigations reveal that the prison or authority concerned has not acted unfairly or arbitrarily, but quite reasonably in all the circumstances. Sometimes, other authorities must then be investigated and sometimes they too, are found to have done the best they can - but in the course of all this, unfortunate practices and procedures which should be improved are brought to light.

In this case, a former Government Officer said that the Ministry of Public Service (MPS) was unfairly withholding his pension - this is quite a common complaint which usually needs careful investigation.

The complainant had worked in the field for one of the larger Government Ministries (MNR) and was a promising officer. Unfortunately when drunk, he had crashed a government vehicle and suffered fairly serious head injuries. Since his passengers were comparatively unharmed and the incident was on a private road he was neither prosecuted nor disciplined. There were then a number of cash losses and accounting irregularities in the Ministry's operations in that area, which were reported to the police locally. Serious action was not taken until another large loss was noticed and reported to the District Police Commander.

The Resident Auditor came and investigated. On the basis of the Auditor's report the complainant was suspended from duty on half pay in accordance with General Orders. Public Service Commission Regulations provide that if an officer has been or is to be charged with any criminal offence, no decision on any question of misconduct can be taken pending the conclusion of legal proceedings and any consequent appeal. Unfortunately, it took two and a half years before the police completed their inquiries and the Director of Public Prosecutions decided not to prosecute.

The complainant was never actually charged so his rights under Section 10 of the Constitution were probably not infringed, he was justiably aggrieved at his long suspension and he decided to resign from the Public Service. After his resignation had been accepted, he realised that his pension rights might be prejudiced and he would not received his "Frozen" Pension until he was forty five years old. Generously, the Ministry of Public Service allowed him to withdraw his resignation. He then attempted to **retire** from the Public Service for reasons of medical incapacity, since he still suffered from the long term effects of his government vehicle crash. Retirement on this ground would make him eligible for his pension benefits and National Provident Fund contributions immediately.

There were some delays in the Minstries of Public Service and Health in organising a Medical Board to assess his fitness for work. In all the circumstances, this delay was not considered unreasonable. The police were still actively investigating his case and they said a prosecution was likely. If found guilty, he would at least be required to pay back the missing money out of his Frozen Pension. At worst, he might go to prison and forfeit his Frozen Pension altogether. (We do not think that people have an absolute legal right to a Government Pension, even if "Frozen" when the officer converted to the National Provident Fund. The Public Service Commission always has the discretion to advise the Governor General yes or no).

Thus officials in the Ministry of Public Service were in an uncomfortable position - the complainant could not be dismissed nor re-instated nor should his Pension be authorised until the police had finished their investigation.

Judging from the Police investigation diaries over the two and half years of the case, hundreds of hours of police time were put into the case. They seemed to have very little assistance from any other government authority in providing documentary evidence or witnesses and provincial police stations gave their assignments low priority. With due respect to the numerous police officers who worked hard on the case, they seemed to have had little guidance or continuity in the investigation which appeared to lack direction and confidence, and there were delays of several weeks, even months when no action was recorded at all as the files were passed from one station or one officer to another. Officers interviewed said they were overworked and they just did not have the training to cope with fraud, embezzlement and forgery investigations. Some felt unequal to dealing with the highly educated characters involved.

By the time the Director of Public Prosecutions was finally sent the files (in circumstances we shall not dwell upon here) - and it has not been the practice to ask him to advise at an early stage - the evidence was stale, the witnesses dispersed through the country, and no-one in the Ministry seemed to care very much that a few thousand dollars had gone missing three years earlier. By this time the police case had also been weakened by the discovery of a new cash loss at the Ministry, suggesting that they might have been looking to the wrong suspect. However, Financial procedures and control at the Ministry had been so slack that several people could have had their hands in the cashbox at the same time. In the end, the complainant was never charged, the case was dropped and he received his pension in full.

Although the Ministry of Public Service was not at fault in withholding the complainant's pension, it was disturbing to discover that throughout the period investigated, officers who were already under some suspicion, were put back into positions where they had easy access to large sums of cash - or promoted into a position for which they were unfitted for other reasons. There is some doubt as to whether the Public Service Commission was aware of doubts expressed by the Ministry when such promotions or posting were made. The person who should have been a great deal more helpful to the police and who must bear at least some of the responsibility for the slackness with money in the complainant's Ministry was afterwards sent abroad for training and then promoted.

To finish on a more optimistic note, one reason why the complainant's Ministry has not been named, is that this could have happened in any of the large Ministries. This has been recognised and a training scheme was started for accountant officers to be posted into the various Ministries so that unaccounted losses of cash, and all the nasty suspicions that go with them should be less frequent.

The police, too, had an Adviser who was training and improving practice within the Criminal Investigation Division so the force can be more efficient and effective. It is hoped they will also get more support from within government when necessary for their investigations. Government money is public money raised from the general public and officials should make sure that it is not wasted or misappropriated.

[Post script: The complainant has subsequently been charged, but the case withdrawn on grounds of the delay in bringing it to court].

5. HEALTH AND SAFETY

Dangerous Chemicals - Can Labour Division Cope?

Use of Arsenic to Kill Trees

People in Shortland Islands complained to an Ombudsman's Touring Officer about Forestry Division of the Ministry of Natural Resources using a dangerous chemical - Arsenic pentoxide - to kill unwanted trees. People were unhappy about the dangers of using the poisoned trees for firewood and feared that their water supplies were polluted and wild birds and animals were dying out. The Ombudsman decided to conduct an investigation into the use of dangerous chemicals by the Government and control and monitoring of their use in the private commercial sector. These are some preliminary findings.

Arsenic occurs naturally in some types of soil, certain volcanic springs and also in shellfish - which are often the cause of outbreaks of Arsenic poisoning in other parts of the world. Medical authorities say it is hard to test accurately for low levels of Arsenic in the body. It can also be hard to tell the difference between a person who has "Acute" Arsenic poisoning which can be treated and most of the chemical will pass out of the body, and "Chronic" poisoning, caused by long exposure to the chemical, when the person could die.

All forms of Arsenic are poisonous and many countries have now stopped using it to kill insect pests and plants. Most of those countries which still use Arsenic choose the safer organic Arsenic compounds and not inorganic compounds, such as Arsenic pentoxide. Forestry Division has been using Arsenic pentoxide for over 20 years in various places about the country. In Solomon Islands, the import, sale, transport and use of dangerous chemicals is controlled by the Pharmacy and Poisons Board under its powers given by the 1964 Pharmacy and Poisons Act.

The Board, which is chaired by an Under Secretary in the Ministry of Health and Medical Services he has made special rules for the safe transport, labelling and use of Arsenic compounds in agriculture and forestry. Since 1965 the Medical Officer in Charge of Gizo hospital is, by reason of his office an Inspector under the Pharmacy and Poisons Act. In addition to his other duties running the Health and Medical Services in Western Province, he is supposed to check that these detailed rules are followed. The other Inspector is the present Principal Pharmacist at the Ministry of Health and Medical Services.

Forestry Division is aware of these Legal Rules and also has its own "house rules" for the use of Arsenic pentoxide for killing trees . Observance of these rules appears to be voluntary since Arsenic for this particular use has been regarded in the past as outside the definition of "pesticide" and so escapes the legal requirement for registration under the Pesticide Regulations of the Safety at Work Act. This is a legal technicality which the Pharmacy and Poisons Board and the Registrar of Pesticide (Ministry of Agriculture and Lands) are anxious to rectify.

Responsibility for obeying the Arsenic Rules and Forestry Division's in-house rules appears then, to be with the "Poison Gang's" Supervisor. Whether he has the disciplinary control over his gang to ensure, for instance, that they wear full length

overalls and wash them daily and put barrier cream on all exposed skin, is questionable. Workmen are often ready to take the easy way even if it puts their own health at risk. The Chief Medical Officer, Gizo does carry out medical checks on these workers and no serious adverse effects have been recorded.

Major commercial users of Arsenic or killing trees have now turned to other chemicals, such as Gramoxone (Paraquat). It is also very poisonous but does not need such eleborate safety procedures and frequent medical checks. However it is more expensive to buy. Forestry Division agrees that cleaning forestry plots and plantations by chainsaw is practicable and it "is introducing this method because of concern about and difficulty in obtaining arsenic". No date was given for this change, which is understood to be in about two years time. Chainsaws, too, have their dangers. Even if used carefully and without accidents, after years of use, chainsaw operators are likely to suffer damage to the blood vessels and nerves in their hands.

Danger to the Public

Only small quantities of Arsenic are needed to kill a tree by the "girdling" method - about 2kg per Hectare-according to Forestry Division. The main dangers arise from accidents and washing or emptying drums into rivers and the soil. Empty drums are supposed to be buried in a hole at least one metre deep.

Aware of these concerns, the Ministry of Natural Resources arranged for the Queenslands Government Chemical Laboratory to analyse six samples of water taken from the Palakola and Pia River on 28th June 1984. It is not known whether this sampling was done before or after a poisoning exercise, but the test showed no sign of pollution by Arsenic. As far as we are aware, no tests have been carried out on soil (Arsenic compounds may take a long time to wash out) and it would be hard to prove that wild life was dying because of arsenic without scientific tests. Killing of trees and destruction of the forest canopy always means fewer birds, animals and small plants.

However it is possible that burning trees killed by Arsenic poisoning in a confined space - such as a kitchen - could produce poisonous smoke. It is not known whether the amount of Arsenic needed to kill a tree is enough to produce this effect, but at least people in Shortlands were aware of the danger. However it is a shame if these trees killed by forestry cannot be put to some use. Again, chainsaw felling would avoid this problem.

Fish and shellfish from Arsenic polluted waters may also be poisonous to eat.

Timber Treatment - Poisonous Smoke from Offcuts

During this investigation, the Ombudsman became aware of another Chemical - "Koppers Formula 7" which also contains Arsenic pentoxide. It is extremely poisonous but is the cheapest and said to be the best way of protecting sawn timber from rotting and being eaten by white ants. Other chemicals, such as "Cuprinol" or even Creosote are fairly effective but also somewhat dangerous. However, treatment greatly increases the life of sawn timber. Not only sawmill workers are vulnerable to these chemicals, unsuspecting members of the public who might use

the offcuts of timber treated with Arsenic for firewood are also at risk from breathing the poisonous smoke in an enclosed space. Treated timber is said to be a more green-yellow colour than normal untreated timber.

The import, sale and use in Solomon Islands of these timber treatment chemicals in governed by the Pharmacy and Poisons Act and because insects and fungus are 'pests'' of sawn timber they and their suppliers and users must also be registered under the Pesticides Regulations of the Safety at Work Act 1982.

Koppers Formula 7 was first registered in 1983 in the name of a timber Company near Honiara, which it is understood to have followed the conditions attached to the Registration of the chemical by the Pesticides Registration Advisory Committee. For instance, when the Ministry of Transport Works and Utilities - which insists on using treated timber - ordered a consignment, it was treated, recorded and sent to the Ministry without leaving any offcuts lying around for people to pick up. Koppers Formula 7 was registered again in 1986 so that it would be more widely used. However one of the 10 conditions imposed by the Committee was that all timber treatment operators must be registered both with the Forestry Division and Labour Division. The Committee has also recently drawn up in-house rules for the chemical treatment of timber, which require a proper treatment plant and washing and drainage facilities.

At present there are no operators registered for the use of Koppers Formula 7, and the question of whether the product has, none-the-less been used in still under investigation. Judging from ciruculars issued Forestry Division to all sawmilling companies in the country in 1984 its use then may have been widespread. So far the only applicant for registration as an operator is a large timber company operating on Guadalcanal.

The Company is said to be concerned at the expense of complying with these in-house rules and certainly this could be a problem for small locally owned businesses, but it is hoped that this foreign owned company takes a responsible attitude. However Labour Division, now under the new Ministry of Commerce and Primary Industries has been cut down to just two staff to cover the whole country. The Division has asked for 17 new inspectors to be appointed next year to check that Health and Safety Act and other laws are followed by the 5,000 or so employers registered in the country. There is also a need for public education.

As our agriculture, forestry and processing of our own products and resources develop, more and more chemicals will be used. We must not be afraid to use them, but people must use them properly and with respect, as they can be very dangerous. Some of these chemicals have been banned in other countries because they are too harmful, but Solomon Islands, like other developing countries still buys them because the alternatives are much more expensive. We, then must be especially careful.

[Post script: the timber company is now a Registered User if Koppers No. 7 and Labour Division has recently inspected operations at Alu, Shortland Islands.]

6. CANOE HIRE - THE CASE FOR A STANDARD RATE FOR GOVERNMENT HIRE

The Ombudsman receives a number of complaints each year from people who have hired their canoes and outboard motors for Government use, but have then problems with getting paid.

These complaints are likely to arise where a government officer is faced with hiring transport for his duties at whatever price the owner asks - which may be unreasonably high - and then his Ministry does not wish to pay. Legally a contract has been made which the Government should honour, but it is sad to see excessively high charges being asked for medical or other emergency use. The problem could be overcome by making a set of standard rates which Government would pay for canoes and motors by the day, or by the mile.

One of these cases was slightly different - The owner of an outboard motor hired it to a government body and asked the rate of $25-00 per day. For a long hiring of 28 days he reduced it to $12.50 per day, which is perhaps reasonable in view of the short life expectancy of a hired engine. Nine months later the owners had not been paid. He complained to the Ombudsman who took up the case with the Officer concerned.

The Officer replied:

> "....I am to confirm that payment has already been made to the complaint, therefore your case file to close respectively..."

Experience has shown that this kind of instruction must be regarded with caution. The Ombudsman's practice now is not to "close the file" until the complainant has the money in his hand. In this case he has given only half the amount agreed - and it took a further seven months and certain correspondence before he was paid the balance.

The Officer concerned had informed the Ombudsman that:

> "....Secretary to Cabinet is the Accounting Officer.... therefore all correspondence must be addressed to the Secretary to Cabinet. I could only be called by Secretary to Cabinet to explain the issue if they so wish. This is not obligatory on Cabinet..."

This is an incorrect and unfortunate lay-man's misinterpretation of the Ombudsman's statutory power to put about by a Senior Officer, but happily one which is seldom encountered.

7. COMPLAINTS FROM PUBLIC SERVANTS

Appeals From The Public Service Commission

The complainant was dismissed from the Public Service for making an improper representation direct to the Prime Minister, contrary to General Orders, rather than through the proper channels of his Ministry.

The letter was comparatively reasonable in tone and content, asking the Prime Minister to lift his ban on the government refuelling and maintaining a fleet of vehicles provided by Japanese Aid. This ban was the result of widespread misuse of these vehicles, not only by Ministry staff at all levels, but also other officers and political leaders, and all at the expense of the government.

The complainant argued that his ban stopped all proper work in his Division, and the people who had misused the vehicles should be disciplined instead. The reason he gave to the Public Service Commission and the Ombudsman for writing direct to the Prime Minister rather than through the "proper channels" of the Ministry of Health, was that the Senior officials themselves would be involved and would suppress his request.

The same argument could also be applied to justify the departure from normal procedure under General Orders and Public Service Regulations which says that disciplinary procedures and should be carried out by Responsible officials in the officer's own Ministry. In this case Secretary to Cabinet referred it direct to the Secretary for Public Service.

Apart from this, correct disciplinary procedures were followed. The complainant made written representations to the Public Service Commission and the Secretariat to the the Commission assured this office that such representations were passed to the Commission, rather than just summarised in a recommendation. The complainant, on being informed of his dismissal on 14 days' notice appealed back to the Public Service Commission and appeared before the Commission in person, with the assistance of his SIPEU (Trade Union) representative, but was unsuccessful.

He then appealed to the Ombudsman, and also the former Prime Minister who referred him again to the Ombudsman, suggesting that the dismissal might be politically motivated. The Ombudsman's investigation into what seemed like a very harsh penalty for an act of misconduct which usually attracts a much lesser punishment, revealed that a former act of misconduct had been taken into account - in 1984, the complainant had been convicted and fined for assaulting a senior member of staff as a result of a professional argument about the performance to his duties and accountability - the complainant was referred to the Public Service Commission on a disciplinary charge.

The Public Service Office originally recommended that the complainant be dismissed or demoted, but eventually the Commission took into the account the fact that the complainant had already suffered a $75 fine and gave him a severe reprimand instead. Quite what influence a letter written in 1985 supporting the complainant by the then Prime Minister to the Public Service Commission had on this decision

is now difficult to assess. Officials at the Ministry of Public Service admitted that this kind of thing made it "hard for them".

It is also not clear whether the complainant was informed that his previous behaviour was taken into account until he appealed in person to the Commission, however, he was also silent about it himself when interviewed by Ombudsman's staff.

Considering all the facts, the Ombudsman decided that although the Public Service Commission's decision was harsh, it was not grossly unreasonable, the rules of natural justice had been followed as far as possible, and any departure from disciplinary procedure was justifiable. If there had been political or 'wantok' interference, it had probably worked more to the complainant's advantage than disadvantage. The Ombudsman saw no reason to interfere with the decision of the Public Service Commission.

The complainant was then advised that if he still felt very agrieved, he could refer his case to the Trade Disputes Panel, which did from time to time hear complainants of unfair dismissal from public servants.

The Panel, although unhappy about the possibility of political interference found that it did not have jurisdiction to consider the complainant's case, since only a Court of Law could challenge a properly made decision of the Public Service Commission made in accordance with its powers under the National Constitution.

The complainant appealed to the High Court, which agreed that the Trade Dispute Panel was not strictly a Court of Law and so did not have power to interfere with decisions of the Public Service Commission. However there remained the Constitutional right under s.138 which allowed a Court of Law to consider whether the Commission had been acting improperly.

In this appeal, there was no point of law raised nor a suggestion that the Commission had acted improperly, so the complainant's appeal failed and his dismissal stands.

This important decision for Public Officers strengthens the Public Service Commission which must have the power and authority to dismiss, discipline and demote officers if the Public Service is to be effective and honest. The decision also emphasised the need for members of the Public Service Commission and the other Service Commissions to have a good, efficient, secretary or administrator to brief them fully and fairly since there is no effective appeal from a properly made decision if it appears to follow procedures and rules of natural justice. (The "appeal back" to the Commission is not, according to established principles of a natural justice, a proper appeal - since it is simply referring the decision back to the same people who have already made up their minds on the original hearing). It would also be a good practice if the Secretary/Administrator took Legal Advice from the Attorney General's Chambers **before** submitting an important disciplinary case to the Commission.

No other disciplinary procedures have been taken against public officers for the misuse of these or other government vehicles.

8. GOVERNMENT RETIREMENT BENEFITS

(a) No Absolute Right to a Government Pension

Each year a number of former government officers complain to the Omudsman that their Government pension has been unfairly withheld. Usually the cause is simply administrative delay. The forms have been sent back for re-calculation by the employing Ministry or the Office in the Treasury is on leave or is overworked. Occasionally the with-holding is deliberate.

The Pension Act Cap. 110 says at section 6:

> "(1) No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance; nor shall anything in this Act affect the right of the Crown to dismiss any officer at any time and without compensation.
>
> (2) Where it is established to the satisfication of the Governor General that an officer has been guilty of negligence, irregularity or misconduct the pension gratuity or other allowance may be reduced or altogether withheld."

As if the words in the Pensions Act were not clear enough, law cases based on similar legislation confirm that public servants' pensions cannot be enforced by Law.

The Pensions Act must now be read subject to the Unfair Dismissal Act 1982 and sections 116 to 136 of the National Constitution, and in particular section 132, which makes it clear that the Governor General must exercise this power over public servants upon the advice of the Public Service Commission. For policemen and prison warders he acts on the advice of the Police and Prisons Service Commission and for lawyers, the advice of the Judicial and Legal Service Commission.

Circulars and Notices from the Public Service Office relating to "freezing" officers pension rights when they converted to the National Provident Fund scheme cannot change the Law. If an Officer has been guilty of negligence or misconduct, or owes the government money, the Commission still has discretion to withhold all or part of his frozen pension or gratuity.

(b) **Long Service Benefit**

No more late claims, please!

After Independence, the Government wanted to help labourers and workers who did not qualify for a retirement pension, by making employers pay them Long Service Benefit according to the number of years worked before National Provident Fund was introduced in 1976.

Long Service Benefit or "L S B" was first brought in by the Minister for Trade, Industry and Labour as the Labour (Redundancy Payment and Long Service Benefit) Rules 1979. These Rules tried to impose this obligation to pay LSB on employers with retrospective effect. However this could only be done by express words in an Act of Parliament, so these rules were probably outside the Minister's powers and beyond what he was authorised to do under section 120(v) of the Labour Act. There were problems with enforcing these Rules and they were suspended. The duty to pay LSB was properly made by Parliament as Part III of the Employment Act 1981, which came into effect for government employees on 1st January 1982.

The Employment Act required employers to pay their workers 2 weeks' wages at 1976 levels, for every year worked for that employed before 1976. The only exceptions were people for whom their employers had already made separate arrangements for retirement benefits, such as Government employees who had held pensionable officer for 5 or more years. The Employment Act stated clearly that unless a payment had already been agreed or an employee had made a written claim on or before 31st December 1982, he was not entitled to LSB.

A number of teachers and government workers complained to the Ombudsman that they did not get this money. Some people said they had never received the claim form from their responsible officer, others said they had filled in claims forms or written a letter before 31st December 1982 but had been "missed off the list". No very satisfactory explanations have been given by the various Ministries concerned, but most of these claims had been settled one way or another by mid 1984.

However, a few of these LSB claims have dragged on, even into 1989. A number of people who have never been entitled to LSB but who are still trying to get it are seen, advised and sent away by the Ombudsman's Office every year - but the three claims the Ombudsman is still pursuing appear to be genuine examples of people deprived of their legal rights through no fault of their own. As such the Ombudsman's staff have made it a point of honour to continue helping these people, no matter how long it takes and how frustrating it is.

Long Standing Cases

One such case was reported in last year's Annual Report and three other LSB cases remain open on the Ombudsman's record. In one case the money has finally been sent to the sub-treasury and waits collection by the claimant, and in another the under calculation appears to have been a mistake, which the complainant has been trying to put right since 1983. In the last case, the claimant had been a non-

established worker in Public Works Division since 1968. He said he has written applying for LSB in 1981. He had seen his name on two lists at his Ministry indicating that he was entitled, but when he checked the list in the Treasury Division of Ministry of Finance, his name was not on it. The accountant in his Ministry wrote querying this omission and in March 1983 the claimant sought the assistance of the Ombudsman. At the Ombudsman's recommendation, the claimant's Ministry made another computation and submitted it to the Ministry of Finance. The Ombudsman assumed that his recommendation would be followed and payment would be made in the normal way, so he closed the file. In February 1988 the claimant wrote back saying that he never had received this money. After some correspondence, a copy of this claim was again submitted to the Treasury and reply is awaited. The claimants personnel records appear to have been mislaid. Greater care is now taken to ensure that people to indeed receive the money that is due to them.

[Post script - he has now been paid]

Wantok Business?

Another case, involved two field workers from an outstation who had also been "missed off list". An elaborate procedure involving statutory declarations by them and their former responsible officer was followed, and eventually it was agreed they should be paid. However it was their Ministry which appeared to be responsible for the delay. It appeared that a wantok in the administration had hoped to arrange matters so these men could claim redundancy pay in addition to their LSB and it was these internal machinations that were delaying their claim. Staff in the personnel section greatly hindered this investigation by producing a remarkable number of polite but effective excuses for not producing the claimants' personnel records for inspection. In a case of greater merit the Ombudsman would have used his statutory powers to order the officer concerned to appear and produce the files.

Teachers LSB

A number of teachers complained to the Ombudsman in 1982, 1983 and 1984 that their LSB claims had gone astray, but more recently it has been reported that claims and calculations for a number of former government teachers are gathering dust in Treasury Division because no-one in government knows where and how to contact these teachers and tell them to claim thier LSB. The Ombudsman's view was that Solomon Islands National Teachers' Association, with its network of representatives in all the provinces would be the best organisation to trace these former teachers and inform them of their rights, and the matter was politely referred back to SINTA after preliminary inquiries.

No More LSB Claims Please!

Finally the Ombudsman would like to remind the public that the time limit for LSB claims expired more than six years ago. Even he must draw the line against these complainants at some stage and he will not now be investigating any further claims relating to LSB.

9. PROVINCIAL GOVERNMENT

Reluctance to Enforce Devolved Powers

Provincial Governments complain that they do not have enough power to raise income and help their people.

Investigations have shown how one province has devolved powers from Central Government and has then been reluctant to use them. As a result, its people suffered and complained to the Ombudsman.

The River Waters Act was passed in 1964. It is designed to stop commercial organisations spoiling waterways upon which people depend for drinking, washing and gardening. It provides penalties for making bridges, culterts, diversions of rivers without special permission, and penalties for blocking and polluting rivers and damaging their banks.

It is a very useful and important law which should relieve rural people of the need for complicated and lengthy court battles for damages in "Nuisance" or more traditional but possibly less peaceful methods of demanding compensation.

With effect from mid 1984, one province, by its First Devolution order devolved the powers of enforcement to the Provincial Government which were originally held by the Minister of Natural Resources. Later in 1984 it took the praiseworthy step of making the River Waters Act to apply to all rivers and watercourses in the Province and appointed its Volunteer Forestry Advisor as River Water Inspector under section 3 of the Act.

The Forestry Advisor and the Health Inspector responded to local residents who complained that a foreign owned company operating as a logging subcontractors had damaged and polluted the rivers in their area.

They visited the area and formally ordered the Company to clean up the rivers and repair and replant the river banks. A prosecution was threatened and eventually the Company did as it was told. In so far as this kind of damage ever can be put right, it was a success story on which the provincial administration should be commended.

However in 1985 complaints began to come in from the people in another area of the Province about the destructive activities of another overseas logging company on water sources and rivers in their area. These complaints continued without any intervention by the Province and in early 1988 similar complaints began to come again from other areas, which were strongly supported by Area Councillors and members of the National Parliament. It appeared that the Province had some kind of joint venture/aid relationship with the overseas provincial government which was backing one of the logging companies.

This time the Province did nothing. The Health Inspector visited and confirmed that water supplies were damaged and polluted, but as the Province had not formally appointed him as a River Water Inspector, he lacked the power to make Orders under the Act and his reports were ignored.

Residents then complained to the Ombudsman. His office made an inspection and a report confirming that the pollution was genuine. In one area the pollution originated from a crude earth and log bridge built by the logging company in breach of the prescribed standard logging agreement. The river was cloudy and sluggish and red mud flowed into the sea, espcially after rain.

In another area a major river had been worked extensively for gravel had been forded many times and crude bridges and culverts built along its tributaries. Another stream had been destroyed by road construction and log skidding. It was, incidentally an area of disputed ownership where no proper logging agreement had been made and the Commissioner of Forests' order that logging operations by suspended was ignored or overruled. Another small river (about the size of White River) had been forded and culverted by the road following its banks and upstream had been bull-dozed and was being used as a skidding area and a main road for extracting logs. A number of other streams had been damaged where they flowed into the next major river where the company was operating.

These findings were reported to the Province in April 1988, but for several months no official reply was made.

It appears that the Province believed it had no duty to apoint an inspector and felt that the Ministry of Natural Resources should still do the work, despite the fact that the Province had now removed the power from the Ministry by its devolution order.

These are not, in the Ombudsman's opinion, good reasons nor the real explanation of why the Province failed to enforce these laws - which are to protect rural dwellers and their environment, and he presented the Provincial Executive with a draft report and recommendations. The Ombudsman is pleased to note that the Provincial Executive has now appointed its Health Inspector as a River Water Inspector, and this office has taken to the job in hand. However, this does not seem entirely satisfactory.

The money which the Province could raise annually by collection of Business Licence fees from these two logging companies alone would be enough to pay for a Forestry Officer as a direct employee and leave some money towards the use of a four wheel drive vehicle. Surely this would be preferable to expecting the Health Inspector or an overseas volunteer to do this police work. However, it seems that until very recently, these fees were not regularly collected.

Most Provinces, although they have devolved the powers under the River Waters Act, so that the Ministry of Natural Resources cannot apply them, have not made the necessary legal declaration as to which areas if any, the Act should cover. The effect is that no-one can enforce the Act in most provinces. Pollution of water affects everyone, but profits from these logging companies are for the selected few. For some reason the control Provincial governments over these companies is minimal - even though they already have the legal power.

10. STATUTORY AUTHORITIES

(a) National Provident Fund and Statutory Authorities Generally

In the last twelve months only thirty-three complaints have been received about Statutory Authorities. Nineteen of these were from contributions to the National Provident Fund (NPF). Some were having difficulty withdrawing their contributions; others thought their contributions record was incorrect, and the fault appeared to lie with the fund rather than the employer; and one tried but failed to become registered at all.

Defects and unfairness in the National Provident Fund (Amendment) Act 1988 were considered in the Ombudsman's last Annual Report. The Fund is aware of these legal difficulties and it is hoped there is support from Parliament to amend and rectify the law.

A more detailed investigation into staff terms and conditions of employment is in progress at present. A number of people hold the view that NPF contributions are just another form of taxation, so that staff of the Authority should not receive from these "public" funds much better salaries and fringe benefits than comparable officers in the public service.

Five new complaints were received against the Solomon Islands Housing Authority (SIHA). Two of these were minor staff matters and three arose from the belated Sale of Houses in Naha Valley considered in the Ombudsman's last Annual Report. One of these cases is considered in some detail in the next section.

Minor staff complaints have been received about the Livestock Development Authority (LDA), and Development Bank of Solomon Islands (DBSI). A more serious staff complaint is still open about Solomon Islands College of Higher Education (SICHE) and a student has also complained about being expelled, which was refered back through the College appeals procedures. The Electricity Authority (SIEA) appeared to have twice attempted prosecution for the same electricity bill which had been paid and certain customary landowners complained that someone had sold their gravel to the Ports Authority (SIPA) for the new Noro port. Finally a prominent customary leader complained that certain incorrect persons had been appointed to the North New Georgia Timber Corporation, which was going ahead with a new foreign Logging Company against the wishes of local customary residents.

(b) Solomon Islands Housing Authority

Late exercise of Option to Purchase House.

Item 8(a) in the Ombudsman's last Annual Report concluded that a number of Housing Authority tenants simply could not afford to exercise their option to buy the house which they had been renting, even on the favourable loan arrangements offered by SIHA.

The standard SIHA tenancy agreement makes it quite clear that a tenant has a limited time (usually one month) to exercise his option to buy the house, and if

the tenant does not exercise the option, SIHA may determine the tenancy.

The Agreement goes on to say that:

> "the Authority may re-enter and immediately terminate the Tenancy... if the rent shall be unpaid more than fourteen (14) days after becoming due whether legally demanded or not."

In this case, the tenant had signed a standard agreement in 1986 and was given the option to buy his house in Janaury 1988. Unfortunately, when assessed by the Loans Officer, he would have been unable to make the loan repayments to SIHA unless he paid a very sizeable deposit. The tenant having no money, sought assistance from his employer who generously agreed to lend the large amount needed for the deposit and in May 1988 gave the tenant a cheque for this amount payable to SIHA. SIHA refused the employer's cheque on the ground that it was effectively making a sale to the employer, a commercial company, and this was against its policy of home ownership. The employer's loan was so large that the tenant could not possibly have repaid it, and sooner or later the company would be in a position to take over or sell the property.

After this refusal, no action was taken by either SIHA or the tenant until the Authority decided that from financial necessity it had to sell at current market value all those houses which tenants had not bought for themsleves. The tenant was invited to tender for the house but again, due to low wages, he was unable to raise the money to make the outright purchase. Finally on March 1989 SIHA gave tenants, including the complainant, an eviction notice, telling them they must leave their houses in one month's time. This notice to quit was repeated in June 1989.

This finally drove the tenant into finding enough money to pay almost half the original correct purchase price as a deposit. His wages had gone up and he could now service a SIHA loan for the balance.

Unfortunately, by this time the date for tenders had expired and the Board of Management of SIHA had already allocated the house to another buyer.

However, in the face of legal complications and after representations from the Ombudsman's Office, (the original purchase price quoted to the tenant had been $3,600 in excess and the policy of not allowing second loan was not a legal requirement of the option to purchase, and so on...) The Authority decided, after all, to allow the tenant to exercise his option and buy the house with a SIHA loan, albeit fifteen months late.

It is hard to say that the Authority acted unfairly in this case, since it appeared that the tenant had paid no rent since October 1987 and the Authority could, legally, have evicted him and taken back the house at any time since then.

11. MISCELLANEOUS

(a) Compensation for Damaged Coconuts

Sand and gravel were extracted from a beach near Auki for use in a Rural Services Project. The damage, when assessed by the Field Assistant (Auki) was described as "exceedingly bad". Compensation for damage to 36 of bearing and non-bearing coconut trees was assessed on the government standard rates, at nearly $300. A year later, the owner of the coconut trees complained to the Ombudsman that in fact 60 trees were damaged and he had still not received any compensation.

It appeared that the Landowners had been paid for the sand and gravel extracted, but is often the case with custom land, it was another person, the complainant, who had planted and who owned the coconuts, and who should have received compensation. There was no payment voucher on the official file and it was hard to tell what payments had been made and whether they were proper.

Meetings were arranged in attempt to settle dispute but the landowners who had the money would not negotiate. In the end, the Rural Services Project did pay compensation to the complainant, but for only 36 trees and by this time he was old and sick and another six months passed before his son was able to collect the money for him.

(b) Moonlighting from Works Division

The Ombudsman receives frequent complaints from Government Officers in Honiara and the provinces that their government quarters are not maintained properly.

Building Maintenance and Electrical Sections of the Ministry of Transport, Works and Utilities had an establishment in Honiara of 54 posts in 1988 which was increased to 86 posts in 1989. IN 1988 there were 24 established officers posted to the provinces and in 1989 the figure was increased to 33. These figures exclude non-established workers and those employed directly by the provincial governments.

However, for ordinary government officers and policemen, especially those in the provinces, it is still very hard to get even essential work done, such as fixing a leaking roof.

One of the reasons behind the sales of government quarters in 1982 and 1985 which continue to this day was to ease the burden of maintenance on Works Division. A small investigation revealed one of the underlying problems. Certain officers from Works Division were "moonlighting" - that is - doing private work during official hours and in their own time. The activities of one supervisor were reported to the Ministry. He was suspended on full pay but disciplinary proceedings were never completed, and he returned to work to continue his official and unofficial duties as before.

The investigation also raised some other more important questions which will be the subject of a detailed report later in the year.

(c) **Examples of Routine Work of Ombudsman's Staff**

Help With Delayed Pension payment

After a month in Honiara trying to arrange for his monthly pension to be paid in lump sum payment, Mr. 'A' could not do so. He reported the matter to this office and assistance was given. Without two weeks of reporting the mater, he came back to say that he had now received his pension in lump sum. Words of thanks were offered and the case was closed and marked "satisfactory".

No Registration with the National Provident Fund

Mr. 'B' is an employee who since June, 1987 had been trying to get registered with National Provident Fund. Despite repetition in completing the necessary forms, he was still unable to receive his NPF membership card. This case had been dragging on and on until it was reported to this office by his Employer on 9th September 1988. The office took over the case with the authority, and it took us about two months before the case was finally setttled. Complainant was informed of his NPF membership card number and sent the card by Registered Mail. With no word received from him since, we assumed the result was satisfactory and closed the case.

No Allowance Due

Mr. 'C' is an employee of a Province Education Board. He complained to this office of non payment of Acting Allowance while acting as Headmaster of a newly opened school. Mr. "C" is an untrained teacher with only standard one education and besides the school is only a sub-branch of another school. With these factors he was told that his complainant does not warrant any form of allowance as the general management of the said school falls within the Headmaster of the main school. With this explanation, the complainant retired happily, and the case closed and marked "not justified".

Increment of Salary Must be Approved

The complainant a Mr. "D", is an employee of Western Provincial Assembly. On the 15th 1987 he received a letter of promotion backdated to 16th July, 1984. Arrears of wages since promotion was paid, however, Mr, 'D' felt that from the date of his promotion up to 1987 he should have received three salary increments. His effort to settle his claim with the Assembly was not successful and as a result, he referred his complainant to this office. On investigating the case, it was confirmed by the Assembly that under Local Government Staff Instructions, the increment has to be approved by the Executive and therefore one cannot claim as his right. With the explanation, Mr 'D' was informed that the Assembly have acted reasonably and that his claim is considered invalid to pursue and the case as closed.

Assistance With Claims

On behalf of the people of North Kolombangara, Mr. 'E' wrote to this office seeking assistance on the present Government Crop Compensation Rates in order to formulate his peoples' claim. A copy of Government Crop Compensation Rates was sent to him as as requested and the case closed.

Failure to Pay Overtime Allowance

The complainant, Mr. 'F' is a seconded officer to a Province who during the 10th Anniversary Celebrations had done overtime but settlement of his claim for Overtime Allowance was in his view was unnecessarily delayed. On receiving the complaint the Authority was contacted and finally confirmed that payment of Overtime Allowance had been raised. The complainant was informed of the news and no word received from him. Case closed and marked "satisfactory".

No Jurisdiction to Challenge Magistrate's Decision

Mr 'G' complained that his claim for travelling expenses to attend a court case (criminal) was refused by the court. On hearing the complainant's story, the Principal Magistrate was contacted. He said that the complainant had been informed of the decision that he was not entitled during the court hearing. As this was a court decision Mr 'G' was advised to seek legal assistance from Public Solicitor if he wanted to challenge decision. Case closed and marked "no jurisdiction".

Termination of Employment

Mr. 'H' was an employee of a government Ministry, and posted to a rural area. His employment was terminated on grounds that he failed to resume duty after being given several warnings of being overdue his approval annual leave. On reporting the matter to this office, his Ministry was contacted for an explanation. In response the Ministry produced facts in support of its decision in terminating Mr. 'H' employment but when complainant was contacted to produce his evidence, he could not do so. He was given a month period to produce requested documents but did not turn up. In the absence of these document, this office could ot pursue complainant, therefore dropped case, regarding the complaint as probably unjustified.

IV. LEGAL NOTES

1. Ombudsman's Powers

1988 and 1989 have been years when the Ombudsman has undertaken investigations in greater detail and depth than before. Some of those investigations concern unfair treatment and government inefficiency which has adversely affected thousands of rural people and their natural resources.

The Ombudsman is now using his full legal powers under the Ombudsman Act - he has ordered people to come and give evidence on oath, made inspections and insisted on the production of documents and files. Already this year he has made three reports to the Prime Minister and one Report to Parliament in addition to this Annual Report.

Needless to say, the more important the investigation, the more people affected, and the higher the status of officers under investigation the more pressures the Ombudsman has to face in order to carry out his duties. Some authorities have been very reluctant to provide information and appear to be unaware of the Ombudsman's powers and duties. Since it is often very hard to obtain copies of Solomon Islands laws, the relevant parts of Part IX of the National Constitution and the Ombudsman Act 1980 are quoted here. We hope this will assist and remind all concerned.

Extracts from Part IX National Constitution of Solomon Islands

Functions of Ombudsman.

97. (1) The functions of the Ombudsman shall be to:-

(a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or abuse thereof;

(b) assist in the improvement of the practices and procedures of public bodies; and

(c) ensure the elimination of arbitrary and unfair decisions.

(2) Parliament may confer additional functions on the Ombudsman.

(3) This section applies to members of the public service, the Police Force, the Prisons Service, the government of Honiara City, provincial governments, and such other offices, commissions, corporate bodies or public agencies as may be prescribed by Parliament:

Provided that it shall not apply to the Governor-General or his personal staff or to the Director of Public Prosecutions or any person acting in accordance with his instructions.

(4) Nothing in this section or in any Act of Parliament enacted for the purposes of this Chapter shall confer on the Ombudsman any power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions.

Discharge of functions of Ombudsman.

Further provisions.

Conduct of investigations.

Disclosure of information.

Discharge of functions of Ombudsman.

98. (1) In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Solomon Islands.

(3) The Ombudsman shall make an annual report and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law.

Further provisions.

99. Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of this Chapter.

Extracts from The Ombudsman (Further Provisions) Act 1980 - No. 1 of 1980

Conduct of investigations.

10. (1) Subject to the provisions of this Act, the Ombudsman may obtain information from such persons and in such manner and make such inquiries as he thinks fit and may determine whether any person may be represented by a legal representative or otherwise in an investigation.

(2) Every investigation shall be conducted in private and subject to the provisions of section 8 and this section, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(3) It shall not be necessary for the Ombudsman to hold a hearing during the course of an investigation nor shall any person be entitled as of right to be heard by him:

Provided that if any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any person, officer or authority, he shall afford such person, officer or authority an opportunity to be heard; and no comment that is adverse to any person, officer or authority shall be contained in a report to Parliament, to a Minister or to a department or authority unless such person, officer or authority has been given an opportunity to he heard.

Disclosure of information.

11. (1) For the purposes of an investigation under this Act, the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents or things relevant to the investigation to furnish any such information or produce any such document or thing.

(2) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Solomon Islands or any rule or law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any Committee thereof; and of for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(4) The Attorney-General may give notice to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified.

Attendance of witnesses.

12. (1) Subject to the provisions of this Act, the Ombudsman may by order require any person who in his opinion is able to furnish information or produce any document, paper or thing relevant to an investigation to attend before him at a time and place specified in such order and be examined on oath or produce such document, paper or thing.

(2) Where the Ombudsman orders any person to be examined on oath, he may administer such oath.

(3) An order made under this section shall be served on the person to whom it is directed by a member of the staff of the Ombudsman or by a police officer in the manner prescribed for the service of a summons on a witness in civil proceedings before a court of law.

(4) If a person to whom an order under this section is directed does not attend at the time and place mentioned therein the Ombudsman may, upon being satisfied that the order was duly served or that the person to whom the order was directed wilfully avoided service, issue a warrant to apprehend such person and to bring such person before him at a time and place specified therein. Every warrant issued this section shall be executed by a police officer.

(5) Where a person is arrested in pursuance of a warrant issued under this section and is not brought before the Ombudsman within twenty-four hours of his arrest or is earlier released by order of the Ombudsman on his undertaking to attend at a time and place specified therein, such person shall forthwith be taken before a

Magistrate who shall -

(a) if such person enters into a suitable recognizance for his appearance before the Ombudsman, release him from custody; or

(b) order such person to be detained in custody until such time as he can be brought before the Ombudsman.

(6) When any person is required by the Ombudsman to attend before him for the purposes of this section, such person shall be entitled to the same fees, allowances and expenses as he were a witness before a court of law and for the purposes of this subsection, the Ombudsman shall have the powers of a court to fix or disallow the amount of any such fee, allowance or expenses.

(7) For the avoidance of doubt it is hereby declared that this section shall apply whether or not the person or witness concerned is a person in respect of whose conduct the Ombudsman has jurisdiction to inquire.

Privilege of witnesses.

13. (1) Subject to section 11(2) every person required to give any information or ordered to attend to give evidence or to produce any document, paper or thing before the Ombudsman shall be entitled in respect of such information evidence, document, paper or thing to the same rights and privileges as a witness in any court of law.

(2) An answer given by a person to a question put by the Ombudsman or a statement made by a person to the Ombudsman shall not be admissable in evidence against him in any civil or criminal proceedings except in the case of criminal proceedings for an offence against this Act or for perjury, subornation of perjury or defeating or obstructing the course of justice, and no evidence in respect of proceedings at a hearing before the Ombudsman shall be given against any person other than in further proceedings before the Ombudsman.

(3) When a person gives evidence or produces any document, paper or thing at a hearing before the Ombudsman in pursuance of this act the proceedings shall be deemed to be judicial proceedings for the purposes of a prosecution for perjury, subornation of perjury or defeating or obstructing course of justice.

(4) The Ombudsman may hear and obtain information whether or not the same be evidence within the meaning of the law for the time being regulating the admissability of evidence in courts of law.

Powers of entry.

14. (1) For the purposes of this Act the Ombudsman or any person specifically authorised by him may at any time enter upon any premises occupied by any person, department or authority in respect of which he may carry out an investigation and inspect the premises and thereon make such inquiries as he think fit.

(2) Before entering upon any premises pursuant to the above subsection, the Ombudsman shall give at least 24 hours notice to the appropriate person, department or authority.

Investigation not to affect departmental action.

15. The conduct of an investigation by the Ombudsman shall not affect any action taken by the department or authority concerned or any power or duty of that department or authority to take further action in respect of any matter which is the subject of the investigation.

Offences.

20. (1) Any person who, otherwise than in the course of his duty, directly or indirectly, by himself or by any other person, in any manner whatsoever including giving undue publicity to his complaint wilfully influences or attempts to influence the decision of the Ombudsman with regard to any complaint made to him or to any investigation made by him, shall be gulity of an offence.

(2) Subject to the provisions of this Act, any peson who is requested by the Ombudsman or by any member of the staff of the Ombudsman acting in the exercise of his duties, to furnish any information or to produce any document, paper or thing and who wilfully fails to furnish such information or to produce such document, paper or thing, shall be guilty of an offence.

(3) Any person who, in connection with any matter which lies within the jurisdiction of Ombudsman, wilfully gives him any information which is false or misleading by reason of the falsity of, or the ommission of, a material particular, shall be guilty of an offence.

(4) Any person guilty of an offence under the provisions of this section shall be liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(5) No prosecution for an offence against this section shall be instituted except with the consent of the Dirctor of Public Prosecutions.

Ombudsman may determine not to investigate complaint where undue publicity given.

21. The Ombudsman may determine not to make an investigation in the case of any complaint where the complainant or any person acting in his behalf (whether or not the complainant has authorised or consented to his doing so) has given undue publicity to the complaint, on the ground that such undue publicity may prejudice the impartial investigation of the complaint.

2. The Ombudsman Act 1980

Neither the present Ombudsman nor his predecessor has been entirely happy with the Ombudsman Act 1980. While it is extremely helpful in giving effect to the Ombudsman's investigating and reporting functions, it does not assist in the improvement of practices or elimination of unfair decisions.

Some of the earlier sections even appear to conflict with and try to limit his Constitutional jurisdiction. A good example of this section is 8(1):

> "Any complaint or invitation made to the Ombudsman shall be in writing and shall be submitted direct to the Ombudsman".

This unfortunate provision discriminates against uneducated people who cannot write or who have difficulty in expressing themselves in writing. They are the people most in need of assistance. According to government satistics nearly 40 percent of the population has had no formal education at all and a further 23 percent has had only basic Primary education and would have difficulty in expressing themselves in written English or Pijin. The Ombudsman's practice is to put all oral complaints into writing in the presence of the person complaining and this then forms part of the investigation record.

3. Human Rights - Compulsory Acquisition of Property

One aspect which the Ombudsman Act does clarify is the Ombudsman's position as a watchdog of human rights - Section 7(2) of the Act provides that the Ombudsman should not investigate complaints where the person aggrieved could appeal to a tribunal or apply to a court of law, unless there are particular circumstances which make this unreasonable, but it goes on to say:

> "(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of the Constitution has been contravened".

Chapter II of the Constitution provides legal protection for the fundamental rights and freedoms of the invidual, such as protection from deprivation of property, and privacy of home and property and freedom of assembly and association.

All of these human rights are threatened by aggressive timber rights acquisitions by logging companies, most of them foreign owned. The effect of issuing a government logging licence on customary land where procedures have not been followed properly may be little better than compulsory acquistion. Compensation in the form of log royalties may be inadequate and may well go to the wrong people. Most of the benefit is for the logging company and a few well placed Solomon Islanders. In one investigation, the results of which are reported in item 1(c) of this report, government officials considered using the powers of compulsory purchase under the Road Act (Cap. 16) to enable a logging company to gain access and incidental timber rights to an area where land owners and residents had refused it permission. The benefits of this road would go mainly to the company and a few land owners in another area. The use of this law for this purpose is considered improper and contrary to sections 8 and 9 of the Constitution.

The North New Georgia Timber Corporation Act in its present amended form also appears to contravene to section 8 of the Constitution, although the benefits of this particular compulsory acquisition of timber rights, originally for a British logging company, are more widely distributed. However a complaint has been received, that some of the Corporation's present directors do not now represent the views of the people who actually live in the area and who do not want a new foreign company to come in and log. The foreign company was issued with a Logging Licence by the Minister of Natural Resources in June 1989.

Having investigated the operations of a number of logging companies, the lack of control, wasteful operations and comparatively small revenue derived from a rapidly declining resource, it is hard to say that they do promote the public benefit.

V. ADMINISTRATIVE NOTES

1. Staff

The Authorised staff remain much the same as previous years:

Ombudsman	Super Scale 1
Principal/Legal Adviser	Level 7/8
Senior Investigation Officer	Level 7
Personal Secretary	Level 5
Cleaner/Gardener/Orderly	Level 1B.

Staff share the administrative duties of this small office and are grateful for the advice and administrative assistance received from National Parliament Office.

Section 116(6) of the National Constitution provides that before making any appointment to any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

2. Staff Training

There are no government courses or training schemes suitable for Ombudsman's Staff. We have had to devise our own practices and procedures following the Ombudsman Act 1980 and the Ombudsman's directions and policies. With a small office there is a serious danger of continuity and expertise being lost when staff change, and it is difficult to know how to avoid this.

However, in the longer term, the Ombudsman's Office is able to offer University Law students (one at a time) a temporary attachement on a small allowance, so they can have an idea of the office's work, practices and problems.

3. Office Equipment

The Ombudsman's Office still has the use of a stencil machine and we are again grateful to our neighbours in National Parliament Office for this. Photocopying, essential for accuracy of information and avoiding unnecessary retention of files continues to be a problem. The Ombudsman has already produced four reports

in 1989 in addition to this Annual Report. One of these was a major effort of sixty two pages, and just to fulfil the Ombudsman's statutory duties a number of copies had to be made. We were fortunate to have the services, briefly, of an extremely competent Secretary who produced this report on a word processor with good and fast results. Unfortunately, she was transferred to another office and now it is hard to go back to a manual typewriter, stencils and an inky stencil machine after a taste of modern technology. Our Personal Secretary is anxious to learn word processing, but so far neither a course nor a machine for her to use have been identified, although several offices have been approached.

We do have an electric typewriter but its ribbon cassettes at $20.57 each, lasting less than one week if our Secretary is busy, they take up a very significant portion of our budget for office expenses.

Contrary to the impression given by a recent government circular, neither the Ombudsman nor his staff have access to a government vehicle, and their own private vehicles are used when necessary for investigations, meetings and touring.

4. **Office Accommodation**

The Ombudsman's Office survived the first re-organisation of government Ministries, but while this report was being prepared we have been asked to move to another location, some distance away from most other government offices, out of the commercial centre, and a way from our administrative and financial support in the National Parliament Office and the government Law offices. As well as obvious inconveniences such as mail collection and delivery, access to Libraries registries and government bodies under investigation this proposed location would have been harder for the public to find and visit.

5. **OMBUDSMAN'S TOURS AND TALKS.**

11th - 22nd February 1989	Temotu Province including Santa Cruz (Lata and Nanggu) Reef Islands (Manuopo) Duff Islands, Utupua, Vanikoro (Pamua and Emua).
2nd -12th April 1989	Western Province - Gizo, Mono, Shortlands, Gaomae, Harapa, Kamaliae, Korovou, Maliae, Bauro, Samanago, Toumua, Kariki.
20th June	Binu - North Guadalcanal.
22nd June	Malatoha - Cental Guadalcanal.
17th July	Talk to Administrative Training Centre course participants.

A number of other visits which were not part of the regular touring programme, but for specific investigations have also been made. Tours of Malaita, Isabel, Makira and Central Islands Provinces are proposed for the remainder of 1989.

VI. FINANCIAL NOTES

The Ombudsman's Office Estimate of expenditure for the year ended 31st December 1988 was $104,169. This was an increase on 1987 to account for various contractual obligations, but we are pleased to report that we only spent $74,852 of this estimate. The total saving of $29,316 was made from all heads of expenditure, but particularly those over which we have some control, such as office expenses, telephone, transport and allowances.

The increase of expenditure of $4,584 in 1988 over 1987 was entirely due to salaries, wages, National Provident Fund and housing allowances. These continue to increase in 1989 so we are making increased efforts to economise to other areas.

For 1989 we have abandoned our petrol oil and lubricant vote and almost halved on Telephone and Telegram vote. However, the massive cut, from $3,000 to $1,000 in our printing vote was done, unilaterally by the Ministry of Finance. We are hoping it is a mistake that can be put right. Although most of our reports are done within the office, this Annual Report (which is a requirement of the National Constitution) and publicity cards for people in rural areas, need to be durable and of high quality and should be printed.

We are acutely aware of the Government's need to spend less, and welcome its efforts to achieve this aim, but trust that the Ombudsman will be able to continue his work and make people aware of what he can do.

VII. OMBUDSMAN'S OFFICE STATISTICS
For the year 1 July 1988 - 30 June 1989

The Ombudsman and his staff have worked harder than ever before, this year. Fewer cases have been received so far owing to postponement of tours to Malaita, Isabel, Central Islands and Makira Provinces until the second half of 1989. The backlog of unfinished cases from previous years is gradually being reduced, and a greater emphasis is now placed on detailed investigations of serious complaints affecting a number of people, rather than individual personnel problems from government employees.

TABLE 1

OMBUDSMAN'S CASES IN 1988 - 89 COMPARED WITH PREVIOUS YEARS

July - June	New Cases received	Total cases handled	Cases completed	Unfinished cases carried forward
1981 - 83	89	89	62	17
1982 - 83	179	196	144	52
1983-84	329	381	313	68
1984-85	323	391	314	77
1985-86	327	404	317	87
1986-87	325	412	267	145
1987-88	433	578	478	100
1988-89	423	523	457	66

Manner of Disposal of cases - Table II Explanatory Notes on Categories used in Tables II to VII.

"NO JURISDICTION - "bodies outside Ombudsman's Jurisdiction".

A number of complaints made to the Ombudsman are outside his jurisdication under section 97 of the Constitution and the Ombudsman (Further Provisions) Act 1980. For instance, he cannot investigate non-government bodies or companies in which the Government has even a 100% shareholding unless they are incorpoated by Statute. He cannot investigate public or private registered companies associations or individuals. These are the "bodies outside jurisdiction" in the last line of Tables III and IV.

"NO JURISDICTION UNDER THE ACT". The Ombudsman Act purports to restrict the Ombudsman's Constitutional jurisdiction to enquire into certain types of action by Government officials, such as decisions made by Ministers in their own deliberate judgement if certified as such by the Prime Minister, and non administrative functions, such as Doctors professional decisions on referral of patients.

In other cases the Ombudsman Act gives him discretion whether or not to take up cases which are otherwise outside his jurisdiction according to the Act, for instance; if the complaint is more than one year old; where the complainant has a right of appeal to a tribunal or a legal remedy through the courts but in the circumstances, it is not reasonable to expect him to use this right; or where complaints are, in the Ombudsman's opinion frivolous or vexatious; or if there has been an unreasonable delay in bringing them to him.

Figures in Column 3 of table IV represent these cases which the Ombudsman has not taken up, Column 4 of Table II, includes both "Bodies outside jurisdiction" and "No jurisdiction under the Act".

However, no one is sent away from the Ombudsman's Office without being heard, advised and if required referred to someone else who can help them such as their Member of Parliament or the Public Solicitor.

"REFERRED" Cases in Column 5 of Table II and Column 4 of Table IV may be theoretically inside the Ombudsman's jurisdiction, but can be better handled elsewhere. The complainant is heard, advised and referred by letter, telephone call or personal visit to the appropriate authority. Most of such referrals are of fairly minor personnel matters, which perhaps through communication breakdown, have come to this office prematurely. The complainant is advised to refer back to the Ombudsman if, after a reasonable time, his complaint is not considered.

"NOT JUSTIFIED" Figures in column 3 of Table II and Column 5 of Table IV represent cases which, after investigation, the Ombudsman considers are not real cases of unfair treatment or maladministration. The Complainant is informed and his case file is closed. For instance a person may be confused about the terms of his employment or his legal rights under the National Provident Fund Act and believes that he is being unfairly treated when this is not so.

"JUSTIFIED" In Table II and IV, figures represent cases where the Ombudsman, after investigation, considers that the person who complained has been unfairly treated or has been the victim of maladministration. "Justified" complaints range from delays in promised allowances for workers to very serious matters worthy of criminal investigation. For an analysis of whether justified cases are rectified, refer to Table V.

TABLE II

Manner of Disposal of Cases handled by the Ombudsman

July-June	Justified	Not justified	No jurisdiction	Referred	Unfinished	Other	Total Handled
1981-2	14	30	1	7	17	20	89
1982-3	60	37	17	28	52	2	196
1983-4	117	69	10	37	68	80	381
1984-5	164	106	16	22	77	6	391
1985-6	136	56	11	37	87	77	404
1986-7	112	66	22	67	145	-	412
1987-8	162	140	71	105	100	-	578
1988-9	124	147	64	122	66	-	523

Table II shows that the Ombudsman and his staff are trying to concentrate on thorough treatment of fewer, more important complaints. The larger number of "referred" cases reflects the Ombudsman's determination not to become prematurely involved in matters where the complainant should have taken his grievance to the authority concerned or used other existing channels for its redress, rather than going straight to the Ombudsman. The Ombudsman would rather assist in the improvement of these existing procedures than supplant or undermine them, so he advises complainants of what is the right procedure and who is the right person to help and follow up this advice with a letter of referral or companies the complainant and then makes sure that his grievance is considered and dealt with. Making the public aware of how they can legally help themselves is seen an important aspect of the day to day work of the office.

TABLE III

Analysis of New Complainants made to the Ombudsman in 1988/89.

Authority	1987 - 8	1988 - 9
MPJ	47	67
MET	63	44
MHMS	24	31
MNR	13	27
Temotu	4	25
MPS/PSO)	30	24
MOF)	32	24
MTWU	29	22
MAL	24	21
NPF	13	19
Guadalcanal	23	17
Western)	17	12
MHAPG)	11	12
MPC	13	11
Isabel	2	6
SIHA)	4	5
Central)	7	5
HTC	1	4
MIL	6	3
Malaita)	9	2
LDA)	2	2
SICHE)	9	2
Others	19	8
Bodies Outside Jurisdiction.	31	30
TOTAL	433	423

Table III compares complaints made in the last twelve months with those made in 1987/88.

MET - Ministry of Education and Training has been recently converted to the Ministry of Education and Human Resources Development by the new Government. In addition to the usual complaints about wrong pay levels and lost cheques, the Ombudsman received a number of complaints last year from individual teachers, groups of teachers, head teachers on behalf of all staff and on so. These arose from the teacher's payrise and paycut which is dealt with in detail elsewhere. If each individual teacher had made a separate complaint, this figure would have been even higher. There were also a number of complaints by parents about children being expelled from school, which are very hard for the Ombudsman to investigate and also about children who appeared to have been promised a place at Secondary School which was then not available.

MPJ - Ministry of Police and Justice has produced more complaints this year. However, this Ministry represents several authorities: Police, Prisons, Courts, and Local Courts in addition to functions of the Ministry itself. Complaints about the Police are mostly brought by Police Officers about their employment, but there are also a few complaints about the way Policemen have handled - or failed to handle - complaints from the public. MPJ also includes the Prison Service, and

Prison Warders complain when they are dismissed. Complaints also arise from the "Justice" arm of MPJ, and again Local Court Justices complain about dismissal, redundancy and low pay as the Local Courts are gradually centralised and run down. Other complaints arise about alleged maladministration by court staff and failure to enforce court judgements. The Ombudsman also received a number of complaints about people who do not like or do not understand a court's decision. These are outside the Ombudsman's jurisidiction and people are referred to the Public Solicitors or a private lawyer.

MNR - Ministry of Natural Resources. Most complaints about this Ministry come from the more educated people in rural areas who believe that the government and in particular Forestry Division should control and monitor the timber industry, and take more precautions to ensure that timber acquisition on customary land is done fairly. It is believed that a large number of uneducated rural people simply do not know who will listen to their complaints. Other people are worried that mining companies will also not be controlled by government.

KEY TO ABBREVIATIONS AND AUTHORITIES

L.D.A.	-	Livestock Development Authority - a (Statutory Authority) responsible for promoting the livestock and meat industry.
M.A.L.	-	Ministry of Agriculture and Lands - includes Commissioner of Lands and Rural Services Project.
M.E.T.	-	Ministry of Education and Training - responsible for Government teachers and schools and co-ordination of overseas training. Recently changed to the Ministry of Education and Human Resources Development.
M.O.F	-	Ministry of Finance - During most of the year covered by this report, this included the Treasury (responsible for paying pensions etc.), Customs Division and Income Tax. The last two functions have lately been transferred to the new Ministry of Housing and Government Services.
M.H.M.S.	-	Ministry of Health and Medical Services - responsible for doctors, nurses and health workers in Government hospitals and clinics and their accommodation. Responsibility for many of these functions had been devolved to provincial authorities, but was recentralised last year. These functions have recently been re-devolved to the Provinces by the new Government.
M.H.A.P.G.	-	Ministry of Home Affairs and Provincial Government. This has been a co-ordinating Ministry for central government officers seconded to the provinces, and has also held responsibility for a number of miscellaneous functions such as the National Disaster Council and the Rural Housing Rehabilitation Project through which cyclone Namu and other disaster relief funds have been channelled. Its functions have recently been divided between the New Ministries of Home Affairs and Provincial Government.
M.I.L	-	Ministry of Immigration and Labour, Residence permits and Work Permits were issued by this Ministry which housed the Commissioner of Labour, responsible for administering the various employment Acts and the Health and Safety at Work Act. All these functions have been recently transferred to the new Ministry of Commerce and Primary Industries. The Trade Disputes Panel, although effectively part of the courts system was under the Ministry of Immigration and Labour. At the time of writing this report, the position of this tribunal was unclear.
M.N.R.	-	The Ministry of Natural Resources includes Geology, Fisheries and Forestry Division, and paradoxically a small section for Environmental Conservation.
M.P.C	-	Ministry of Posts and Communications - responsible for the Post Office, and since the formation of the Telekom joint venture, only the administrative and policy side of Telecommunications.
M.P.S.	-	The Ministry of Public Service has now become the Public Service Division (PSO) of the Prime Minister's Office and is responsible for administration of government officers and workers contracts. During most of the time of this report it was also responsible for housing government officers.
M.P.J	-	The Ministry of Police and Justice. The Royal Solomon Islands Police and the Prison Service are under the same roof as Bomb Disposal; the Public Solicitor; the Judiciary, including the Customary Land Appeal Courts and the Registrar General responsible for Land, Companies and other Registers is also part of this Ministry.
M.T.W.U.	-	The Ministry of Transport, Works and Utilities remains responsible for Roads, Bridges, repairs to government quarters, government vehicles and stores, the water supply and includes Marine Division responsible for government ships, marine safety and licensing.

N.P.F	-	The Solomon Islands National Provident Fund, a Statutory Authority set up to provide retirement gratuities from contributions made by employers and employees .
P.S.C	-	The Public Service Commission - an independent tribunal under section 115 of the National Constitution which considers Public Officers appointment, dismissal, pensions and discipline.
P.M.O.	-	The Office of the Prime Minister, has recently taken on a number of new functions including the Public Service.
P.P.S.C.	-	The Police and Prison Service Commission an independent commission under section 119 of the National Constitution to control appointments, discipline, dismissal and pensions of members of the police and prison service.
Province	-	One of the Provincial Governments set up by the Provincial Government Act 1981, including Central Islands, Guadalcanal, Honiara Town Council, Santa Isabel, Makira/Ulawa, Malaita, Temotu and Western Provinces. Area Councils (involved in timber acquistion procedures) are under Province Government authority.
S.I.C.H.E.	-	Solomon Islands College of High Education - a Statutory Authority formed from two government colleges of tertiary education, and largely funded by the Government.
S.I.E.A	-	Solomon Islands Electricity Authority - a Statutory body responsible for electricity supply and power generation.
S.I.G	-	Solomon Islands Government - central government generally.
T.S.C.	-	Teaching service Commission, another independent Commission set up under section 116A of the National Constitution to control the Teaching Profession.

TABLE IV

Analysis of Cases Handled in 1988 - 9.

Authority Complained of	Total Handled	No jurisdiction and cases declined under Ombudsman's Act.	Cases Referred	Cases Investigated		Unfinished
				Not Justified	Justified	
MPJ	75	12	20	19	19	5
MET	68	-	19	18	26	5
MHMS	38	2	9	13	6	8
MRN	33	-	4	4	11	14
Guadalcanal	28	-	7	7	7	7
MPS/PSO	27	-	7	10	4	6
MAL	26	1	7	7	9	2
MTW&U	26	1	13	6	4	2
MOF	25	3	6	10	4	2
Temotu	25	1	10	9	3	2
NPF	22	-	6	9	6	1
Western	18	2	5	5	4	2
MHAPG	17	-	4	2	7	4
MPC	13	-	2	7	4	-
Isabel	7	1	3	-	1	2
SIHA	6	-	2	2	2	-
MIL	6	-	4	1	1	1
Central	5	1	3	-	1	-
HTC	4	-	-	3	-	-
Malaita	3	-	-	2	1	-
LDA	3	-	1	2	-	-
SICHE	3	-	1	-	1	-
Others	14	1	2	7	2	1
Bodies Outside Jurisdiction	31	31	-	-	-	1
TOTALS	523	56	135	143	123	66

TABLE V

Analysis of Justified complaints handled in 1988 - have they been satisfactorily settled?

Authority	Justified	Result	
		Satifactory or partly so.	Unsatisfactory
MET	26	24	2
MPJ	19	14	5
MNR	11	1	10
MAL	9	3	6
MHAPG	7	7	-
Guadalcanal	7	2	5
MHMS	6	3	3
NPF	6	1	5
MPS/PSO	4	3	1
MTW&U	4	1	3
MOF	4	1	3
MPC	4	4	-
Western	4	2	2
Temotu	3	3	-

Are Justified Complaints put Right? - Table V.

Table V shows cases, where in the Ombudsman's opinion the complaint was genuine and justified and has been settled satisfactorily or not, as the case may be. The decision is necessarily subjective and all the circumstances of the individual case are taken into account. For instance a complainant may eventually have got what he was after - such as a pension or a threatened prosecution dropped - but the cause of undue delays may remain, or the behaviour of the authority concerned was so unco-operative that the result must still be described as unsatisfactory.

Another example is where legislation is, in the Ombudsman's opinion unfair or defective, such as the National Provident Fund Act, 50 that even though an Authority may be acting within the law, the result is still unfair on members of the public.

Other cases, have been marked "satisfactory" even though the complainant has not got what he wants. Perhaps he has been denied an allowance, laid off work, or demands the improvement of a Government service. However, if the Authority responsible has dealt with the complaint fairly and reasonably within the limits of its resources, the Ombudsman takes this into consideration.

TABLE VI

Where in Solomon Islands do Complaints arise.

Area	New Complaints 1986 - 7	New Complaints 1987 - 8	New Complaints 1988 - 9
Honiara	123	143	119
Western	68	90	109
Temotu	31	30	76
Guadalcanal	18	57	46
Malaita	58	50	32
Isabel	11	14	16
Central Islands	4	37	15
Makira	12	12	10
TOTAL	325	433	423

A Reflection of the Office's Touring Programme

So far in 1988 - 89 the Ombudsman and his staff have made extensive tours of Temotu Province and the far west of Western Province and this is reflected in the figures. There are plans for Malaita, and Isabel and the other provinces for later in 1989.

It is hoped that the decline in fairly trivial personnel complaints arising from Public Servants in Honiara will continued.

The disproportionately large number of complaints from Temotu came when Ombudsman's staff toured this province in February. Many complaints are unjustified and those which had some justification have now received attention, so this figure should not been seen as any criticism of the Province's administration.

Note on the Provinces for Overseas readers

The Provincial Government Act 1981 and the Second Constitutional Amendment, set up a system of Provincial Governments, each with its own administration headed by the Provincial Secretary and governed by locally elected Provincial Assemblies, headed by the Premier.

Certain functions were "devolved" to the provinces to control and administer, other functions, were retained by the Ministries of Central Government which seconded their own officers to the provinces and paid them. Provinces receive most of their income in the form of a grant from Central Government, from which they paid their own direct employees. Difficulties have arisen in deciding how far this grant should pay for incidental requirements of seconded staff - such as housing repairs - and for non-devolved functions. These seconded staff working in the provinces may be caught between the Provincial and Central Government in such disputes. Honiara is a particular problem.

The present 8 Provinces of Solomon Islands are shown on the adjacent map and new Provinces have been proposed for Lauru (Choiseul Island) at present part of Western Province and Munggava/Munggiki (Rennell & Bellona) islands, at present part of Central Islands Province.

However, other proposals arising out of the Provincial Government Review and the Constitutional Review include the abolition of Provincial Governments and replacing them with Congress or else a "freedom" of independent micro-states.

For further information on Solomon Islands, consult the Solomon Islands Statistical Year Book $7.00 SI. or "Provinces of Solomon Islands" $2.50 SI. available from "Government Information Services" Box 718 - Honiara, Solomon Islands.

Complaints
partly justifi
definition of

Complaint Number	
87/86	
239/87	
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173/88	
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284	
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425	

TABLE VII

Complaints handed in 1988/89 which after investigation appeared to be justified or partly justified [for abbreviations please refer to key by Table III, and for our definition of "satisfactory' refer to Table V].

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
87/86	M.P.S.	Withholding Frozen Pension	Yes
239/87	M.P.J	Salary Deductions	Partly
242	S.I.H.A.	Sale of Houses - Delay	Yes
249	MPJ/NPF	Lost NPF Contributions	No
276	MPJ (Police)	Frozen Pension/Delay	No
283	MAL	Long Service Benefit	No
16	MAL	Long Service Benefit	No
35	MET	Teacher Underpaid	Yes
60	NPF	Withdrawal over 50 Years	No
67	MET	Teachers Unfairly Demoted	No
69	Guadalcanal	Land Registration	Partly
70	MET	Teacher's Lost Pay Cheque	Partly
77	Guadalcanal	Spoiled Water Supplies	No
85	MHMS/Guadalcanal	Nurse's Furniture	No
86	MHMS/Guadalcanal	Clinic Maintenance	Yes
87	MHMS/Guadalcanal	Substation Water Supply	No
98	MNR	No Supervision of Logging Company	No
136	Malaita	Suspension of Teacher	Yes
173/88	MNR	Issue of Logging Licence	No
219	Western	Plantation Workers' Redundancy	Partly
230	MET	Teacher's Lost Pay Cheque	Yes
237	MAL	Transfer of Land	Partly
270	MAL	Transfer of Land	No
284	PMO	Canoe Hire	Yes
295	MHAPG	Acting Appointment	Yes
301	MPJ (Police)	NPF Registration	Yes
310	MET	Teachers Underpaid	Yes
316	MNR	Government Control of Mining	Yes
334	Area Council/ MNR	Forest and Timber Procedures	No
339	Area Council/ MNR	Logging Agreements	No
341	Guadalcanal	River Waters Act - No Enforcement	No
352	Guadalcanal	Spoiled Tambu Place	No
354	MNR	Failure to Check Logs	No
360	MET	Underpayment of Teacher	Yes
364	MET	Teacher Underpaid	Yes
365	MAL	Refund of Fees	Yes
371	MHAPG	Acting Appointment	Yes
377	MET	Teacher Underpaid	Yes
382	MET	Teacher's Arrears of Pay	Yes
383	MET	Teacher Unpaid	Yes
384	MET	Teacher Unpaid	Yes
391	SICHE	Assault and Threats	Partly
394	MPJ (Police)	Increment of Salary	Yes
397	MPS/PMO	Sale of Government Houses	Partly
398	MTWU	Installation of Electricity.	No
413	MPS	Housing Allowance	Yes
418	MHAPG	Charge Allowance	Yes
422	Marine	Compensation for Cargo	No
425	MPC	Overtime	Yes

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
426	MPC	Suspension from Duty	Yes
429	Western/MHMS	Clinic Repairs	Yes
431	MPJ	Local Court Duties	Yes
2	MHAPG	Rural Housing Reconstruction Project	Yes
3	MET	Teacher Unpaid	Yes
4	MET	Teacher Unpaid	Yes
5	MET	Teacher Unpaid	Yes
6	MET	Teacher Unpaid	Yes
7	MET	Teacher Unpaid	Yes
8	MET	Teacher Unpaid	Yes
9	MET	Various Teachers Unpaid	Yes
11	MAL	Transfers of Government Land	No
13	MET	Teachers Paid at Wrong Level	Yes
16	NPF	NPF Amendment Act	No
17	NPF	NPF Amendment Act	No
18	NPF	NPF Amendment Act	No
21	MAL	Transfer of Government Land	No
23	MET	Students Compassionate Leave Passage	Yes
38	MET	Headmistress Underpaid	Yes
40	Police	Police Failure to Prosecute.	No
43	MOF/MPC	Missing Pension Cheques	Yes
44	MPJ	Charge Allowance	No
54	Guadalcanal	No Promotion	No
55	Temotu	Teacher Demoted	Yes
60	NPF	NPF Registration	Yes
63	MPC	Poor Staff Quarter	Partly
64	SIHA	Staff Salary Increment	Partly
75	MPJ (Police) MPS	Frozen Pension	Yes
79	MNR	Failure to Control Logging	No
93	MPJ (Police)/MPS	Unpaid Pension	No
107	MPC	Suspension from Duty	Yes
113	MPJ (Prisons)	No Housing Allowance	No
121	MPJ	Local Court Administration	Yes
133	MAL	Compensation for Coconuts	Yes
142/89	MET	Selection for Secondary School.	Yes
144	Western	Condition of Quarter	No
147	Temotu	Teacher Underpaid	Yes
149	Isabel/MHMS	Condition of Quarter	Yes
163	MTWU	No Repairs to Quarter	No
166	MPJ (Police)	Dismissal of Officer	Yes
168	Trade Dispute Panel	No Reply to Submission	Yes
185	MHAPG	Acting Appointment	Yes
199	MNR	Long Service Benefit	No
201	Temotu	Lay Off Work	Yes.
210	Temotu	Non Payment for Land	Not Yet.
215	MPJ (Police)	Housing Allowance	Yes
219	MPJ (Police)	Unpaid Work	Yes
220	MHMS	No Promotion	Partly
225	SIEA	Unfair Prosecution	Yes
223	MNR	Failure to Investigate Complaints.	Not Yet.
231	Guadalcanal	Failure to Enforce River Waters Act.	No
232	Guadalcanal/Area Council	Unfair Forest and Timber Procedures	No

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
237	MPJ (Police)/ Local Court	Non Execution of Judgement	Yes
248	MMHAPG	Charge Allowance	Yes
250	MNR	No Action to Control Logging	No
252	Isabel	Minimum Wage	Yes
257	Western (Area Council)	Unfair Forest and Timber Procedures	No
261	MNR	Refusal to Suspend Logging Licence.	No
267	Central	PMPs Allowance Suspended	Yes
269	HTC	Charge Allowance	Yes
273	MHAPG	Salary Deductions	Yes
274	MPJ	Canoe Hire	Yes
276	MPJ (Police)	Annual Leave	Yes
298	MHMS	Registered Nurse's Duties	Yes
308	MET	Schools Starting Late	Yes
329	Guadalcanal	Non Enforcement River Waters Act.	Not Yet
332	Guadalcanal	Arrears of Pay	Yes
334	MPJ (Police)	Charge Allowance	Yes
340	MTWU	No Tendering Procedures	Yes
342	MET	Selection for Provincial Secondary School.	Yes
377	MAL	Touring Allowance	Yes
396	MET	Teacher Unpaid	Yes
419/89 and 12/83	MOF	Long Service Benefit	No
420/89 and 170/83	MOF	Long Service Benefit	No
421/89 and 235/85	MOF	Unpaid Wages	No

Table IX

Ombudsman's Reports 1988-9

Report to Prime Minister No. 1 - Award and Monitoring of ASAS Agency to SPDAL - April 1989.
Report to Prime Minister No. 2 - Control and Monitoring of Timber Industry II - April 1989.
Report to Prime Minister No. 3 - Timber Industry III Extension of Logging Licence - May 1989.
Report to Prime Minister No. 4 - Can Rural People say 'No' to Foreign Logging Companies - July 1989.
8th Annual Report to Parliament - For Yeard Ended 30th June 1989.

Finally, special thanks to the present staff of the Government Printery for their expertise and assistance in producing this report.