

REPORT OF THE

# OMBUDSMAN

FOR THE YEAR ENDED  
30TH JUNE 1988.



Presented to

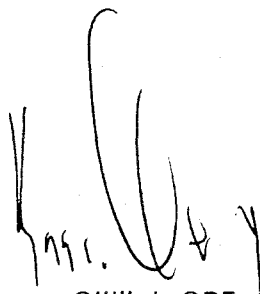
**THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS**

Pursuant to Section 98(3) of The Constitution

## REPORT OF THE OMBUDSMAN

Mr. Speaker,

It is an honour and a pleasure, Sir, to present my Report for the year ended 30th June, 1988.

A handwritten signature in black ink, appearing to read 'Isaac Qölöni', with a large, stylized flourish above the name.

Isaac Qölöni, OBE  
OMBUDSMAN

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

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## **II INTRODUCTION:**

### **1. GENERAL**

The General Public as well as those who are serving both the Central and Provincial Governments and Statutory Bodies have increasingly made use of the services provided by the Office Programme of tours to provinces make it possible for those who live in remote parts of the Country from Honiara to discuss and raise complaints on matters they felt Government Bodies and Personnel do not provide adequate and satisfactory answers to. But due to the scattered nature of the islands, and the high cost of interisland transport, it is not possible to visit many of the outlying islands.

The office of the Ombudsman is based in Honiara this makes it difficult and expensive for those who live in faraway places to have easy access. Touring by officers, therefore, is one of the important aspects, to make available the service to people who can not afford to get to Honiara.

Questions have been raised by people in the Provinces, for the establishment of branch offices at Provincial Headquarters, but this is not possible at this point in time and in the foreseeable future due to Financial Constraints and the lack of suitable manpower.

This in itself does not mean that those at Provincial Headquarters do not have anywhere to turn to with their problems. There is good working relationship between the Ombudsman's Honiara Office and the Social Welfare, and Public Solicitor's Offices at Provincial Headquarters these can assist, and if necessary, refer cases to the Ombudsman on their behalf.

### **2. ABOLITION OF THE OFFICE:**

The Constitutional Review Committee, which published its report recently recommended the abolition of the Ombudsmans Office together with those of the Public Solicitor's and the Leadership Code Commission. The reasons behind this recommendation are not clear.

Naturally such Constitutional Offices can be seen as obstructive by those in power, in particular when their decisions and authority are being questioned. But in a democratically elected Parliament, there must be a body to act as the watch dog of Government activities, and Government leaders, and this is the very reason behind the establishment of the Ombudsman's Office under the Solomon Islands Constitution. I would strongly recommend against abolition. The office is established for the purpose of looking after those who have fear in approaching the big Government bureaucracy of their own.

### **3. LEADERSHIP CODE COMMISSION**

The Secretary of this Commission has now been appointed but the Commission would appear not to have been very active.

The appointments of two of the four members have expired since early this year and no fresh appointments have been made. Secretary's Office is in the same building as the Prime Minister and his staff. This arrangement assists in easing out the office accommodation shortage problem, but at the same time lessens the independence of the Commission. The quicker suitable secure accommodation is found the better. This will improve the image of the Commission as an independent body, keeping an eye on the activities of leaders so as to avoid unfair dealing and corrupt practises.

#### 4. POWERS OF THE OMBUDSMAN:

Too much power is something which must be avoided, as there is a saying "power can be corrupt". But it is now experienced that the office does not have teeth to bite when it is necessary for it to do so. It can not prosecute in court those who have committed crime in particular leaders. May be there is no need for this, since there is another constitutional office, that of the Director of the Public Prosecutor which is responsible. Nevertheless there are times when it is necessary for the office, which is the watch dog of Government, to by-pass the normal channels.

One way of achieving this is to amalgamate the Leadership Code Commission and the Ombudsman, this has been suggested to the Prime Minister's Office together with a proposed draft amendment to the Leadership Code (Further) Provisions Act to make the change possible. It still requires follow up action. This arrangement is not new in the Pacific Region, the next door neighbour Country of Papua New Guinea uses the Ombudsman's Office to look after the affairs of its leaders. In view of the scarcity of manpower and financial resources in the Country it is considered necessary and appropriate to amalgamate the two Constitutional Offices.

## 1. SALES OF GOVERNMENT HOUSES TO PUBLIC SERVANTS

## a) A synopsis of the Report to Parliament of 31 March 1988.

One of the major pieces of work to come out of the Ombudsman's Office this year was the Report on the Sale of Government Houses, presented to the Prime Minister and Parliament on 31st March 1988.

Here is a synopsis of the 45 page report:

On Independence in 1978, Solomon Islands Government inherited from the Protectorate Government a large number of Government Houses both in Honiara and the Provincial Centres. These ranged from spacious 5 bedroom bungalows with gardens and servants' quarters to one-room "labour lines" intended for single working men. Even though most of the British staff had been replaced by Solomon Islanders there was still a need to house Government Officers, few of whom regarded Honiara as a permanent home and were likely to be posted elsewhere at any time. The need continues today, but since 1979, Government Houses have been sold off - invariably without proper tendering procedures, usually at undervalue and to public servants in Honiara who often have some kind of influence on the transaction. These sales - made under the guise of "easing the burden of repairs on Works Division" or "increasing house ownership among Solomon Islanders" have led to unfairness and corruption, a chronic housing shortage (since neither the Government nor other Authorities have managed to build enough new houses); large income and capital losses to the government; dissatisfaction from those who have not benefited and other problems. (see report on page 11 "Other problems Arising from Sale of Government Houses").

A "half price" sale of government houses was arranged in 1982. The houses were to be sold on mortgage by deduction from the officers salary. The unfair and arbitrary allocation of houses caused such resentment among those who were disappointed, that the sale was suspended. However those who were allocated a house in 1982 still to this day claim that they have a binding agreement for sale (which this office disputes). A subsequent Government tried in 1985 to re-allocate the houses more fairly and another Committee was appointed.

The 1985 Committee, despite the presence of a legal adviser, ignored the terms of reference and criteria for allocation which Cabinet had given it, in favour of specific directions from their Minister and their own personal, political and family preferences. Needless to say all the Committee members allocated themselves a house (a better one than they were entitled to under General Orders) as were most of the staff in Lands Division and the Senior Ministry Staff. More houses were given away than the Government intended and some that had already been "sold" in 1982 were given away a second time in 1985. The manner of allocation caused an outrage and a strike of public servants, but the incompetency and wilful ignorance of Land Law and procedures has only come to light gradually, after a period of time.



A number "winners" of Government houses managed to have title registered in their names without paying either the premium or any instalments towards the purchase price, and without making any kind of mortgage or charge to the government to ensure that they would do so. Many of these winners have still paid the government nothing except survey and land registry fees and a significant number of the Senior houses are now rented out profitably on the private market without having to account to the Government for the proceeds.

The then Acting Commissioner of Lands who, needless to say also 'won' himself a house to which he was not entitled and for which he has never paid, devised a scheme for evading Stamp Duty by quoting as artificially low "premium" as the consideration for the transfer. This was endorsed by the Acting Registrar of Titles - who also 'won' a house and has not paid for it.

In order to satisfy striking government officers the Government set up a Commission of Inquiry which reported in late 1985.

In its findings the Commission of inquiry said the sale should be suspended and that the entire work of the 1985 Allocating Committee should be done again by an independent body. It also recommended that the very doubtful legal aspects of the "sale" be referred to the Government Law Officers, and the Leadership Code Commission should be set up to consider the Minister's and the Committee's apparent misconduct in office.

Although legal proceedings have been contemplated for some time by the Attorney General's Chambers, no case has actually been lodged. The Director of Public Prosecutions who advised the Cabinet and the Committee whilst acting as Attorney General in 1985, and who also "won" his house is in no position to act in this matter. The history of the Leadership Code Commission is dealt with else where in this report.

In 1986 yet another Committee was set up and was affected by serious delays. A member of staff from this office was even asked to write the report without the benefit of having attended any of the Committee's proceedings or seeing any of its Papers. The Report, which could only identify those houses which appeared to have been properly allocated, was eventually written by a member of the Attorney General's Chambers, presumably under the same disability. By now it was 1987.

In June 1987 Cabinet gave the "winners" who had been properly allocated their houses the chance to pay for them in full - within 4 months. A number of junior houses and a few senior houses were properly sold as a result, but for most people it was simply too hard to raise the money, especially as the commercial banks were having to be very cautious about lending money for a house purchase, when they risked being unable to register a charge.

A great deal of confusion was caused at the end of the 4 months time limit. Could people pay for their house or not? The position is still unclear although most people accept the Attorney General's interpretation of Cabinet's decision - that no more sales or payments are allowed. However nothing else appears to have been done. The Government still needs houses for its officers and is obliged to rent them on the Private Market at considerable expense and in some cases, from other government employees or their families.

In December the Acting Commissioner of Lands resigned in order to go into his private business full-time and after he had finally relinquished his activities (see later in this report under irregular disposal of Government Land), this office was then able to go in and complete its enquiries. Needless to say a number of files and papers were missing and people were not available.

**b) Ombudsman's Recommendations**

A Special Report was sent to Parliament in March, 1988, on Sales of Government Houses, in 1982 and 1985. Several recommendations were made including the return of Houses to Government. This Report received very little attention from Parliament.

Since the tabling of this Report, discussions were conducted between this office and the Prime Minister's Office and the Secretary to Leadership Code Commission, but a firm decision is yet to be taken by Cabinet.

The Office of the Ombudsman recommends to the Prime Minister's Office for its consideration the following lines of action: -

- a) All Senior Government Houses to be withdrawn from sales; and
- b) Junior houses to be processed properly and sold at full market value to those who won them; and
- c) Institutional Houses (both Junior & Senior) are to be withdrawn from sales altogether; and
- d) Government to be prepared to reimburse any reasonable expenses incurred by officers on the houses to be returned, and in certain cases houses are to be bought back.

The above recommendation would apply to sales from 1982 onwards.

A firm policy decision by the Government is still awaited.

**c) OTHER PROBLEMS ARISING FROM THE 1982/5 SALES OF GOVERNMENT HOUSES.**

There have been many complaints from Government employees and others of unfair treatment and arbitrary decisions arising from the 1982/5 Sales of Government Houses - and the loss to the Government of its capital assets, the unpaid purchase prices and under paid Stamp Duties are obvious consequences.

Other consequences which are less obvious, but have nonetheless reached the Ombudsman's Office, include the failure of Government to maintain or upgrade government houses involved in the sale; unfair payment of Housing Allowances to officers who have 'won' houses in the sale but not paid for them; the shortage of houses for allocation to Government employees and the fact of the Government is having to rent on the open market private houses for its employees at great expense.

#### **i) Housing Allowances**

Under General Orders, the Government has no absolute duty to house its employees, Government Employees are merely eligible to be allocated a government quarter if one is available. If none is available then to comply with the Labour Act, an employee may claim "Housing Allowance" if he is not living in his own home. For government employees this is 10 - 20% of gross salary.

Arguments continue about whether it is fair for Government Employees who have "won" a house from the Government in 1982 or 1985 or who otherwise own a house built from public money should receive Housing Allowance in addition to the privilege of owning a house.

General Orders were amended in 1985 to read:  
GO.F.2601 (2).

"An officer who purchases a Government quarter is eligible for the above prescribed (housing) allowances as from 1st July 1985 or from the date on which the transfer of the title of the property is duly registered, whichever is the later".

The result of this - as pointed out by complainants and officers in the Provinces is that a Government Officer might:

1. have "won" a house in 1985, and have managed to get it registered in his name; but
2. have **not** paid any of the purchase price; and
3. have **not** paid rent to the Government (until the Auditor General recently investigated this).
4. have been in occupation of the house himself or received an open market rent from a tenant such as an expatriate Company; and either
5.
  - a) have left Government Service; or
  - b) claimed Housing Allowance; or
  - c) by virtue of his particular Government office occupied another Government Quarter, at Government rental rates which are heavily subsidised.

Again, there is no point in the Ombudsman making recommendations about this kind of case unless a decision is reached and put into effect by the Authorities concerned.

#### **ii Housing shortage and Rental by Government of Houses on the Open Market for its Employees.**

The chronic housing shortage in Honiara affects both public employees and people in the private sector and open market rents are high as a result.

As mentioned earlier, the Government has no general obligation to provide its employees with a quarter. However, for a few employees, such as overseas volunteers, and technical staff provided under foreign aid, the Government must provide a house in order to secure the employee's services. The same is probably true of Solomon Island officers who are specially recruited to senior appointments from outside Government service.

If there is no Government House available in the Housing Pool, then the Ministry of Public Service is obliged to ask Lands Divisions of the Ministry of Agriculture and Lands to find a house on the open market. The Government must then pay the open market rent to the private Landlord and place its employee in the house as a sub tenant.

The government cannot recover the full open market rent from the employee and in some cases the rent would be more than the employee's gross salary. The rental rates charged by the Government are fixed in General Orders according to the Level of the officer and the class of the house. Most private houses rented by Government in this way would be Class II or below, for which the maximum rent it may charge is \$1,668 per annum. This is acknowledged to be well below the open market value, for which a nominal figure is set at \$8,064 per annum. Income tax is charged on this difference between the nominal value and the rent actually paid which is called the rent subsidy.

However, when the Government rents a house for an employee on the open market at \$1,300 per month (\$15,600 per annum) the rent subsidy is no longer a nominal figure for tax purposes, but a real expense borne by the Government which exceeds the cost of keeping and maintaining a government quarter.

At July 1988 Government was renting 21 houses on the open market. This is still under investigation by the Ombudsman but on the information provided so far:

1. At least 3 of these houses cost the government more than \$1,100 per month.
2. A number seem to be sublet to ordinary established government employees rather than the special categories mentioned above.
3. At least two are sublet by the Government to an employee who is a member of the Landlord's family.
4. At least four houses are owned by other Government Officers.

### **iii Services to government quarters affected by the Sale**

Complaint numbers 152/1/88 and 398/6/88

Two separate complaints were made to the Ombudsman by government employees about the electricity supply to their government quarters.

In both cases, the quarters had been built as servants' quarters for the senior houses nearby. Until 1982/85 they had been included in the allocation of the senior house for use by the senior government employee's domestic staff.

Supplies of Electricity and Water had come through the meter of the senior house and charges were included in the bill for the senior house.

When Government houses were put up for sale in 1985, these servants quarters were not included with the senior houses and were retained in the General Housing Pool, for separate allocation to other government employees. Their electricity and water supplies, however, were not separated and continued to come through the senior house which had now been sold.

The complainant in case number 152/1/88 was an employee of the Water Unit of the Ministry of Transport, Works and Utilities, (MTWU) who had been allocated a former servants' quarter to rent from the General Pool, sometime after 1985. The Ministry of Public Service said it wished to retain the house in the General Pool and recommended to the MTWU (which is responsible for maintenance of government property) that separate water and electricity supplies be installed. Problems with the Water Supply appeared to have been solved, but MTWU had refused to pay for separate wiring and metering of the electricity - the supply having been cut off by the owner of the senior house to which the servant's quarter had originally been attached.

In case number 398/6/88 the complainant had "won" a former servant's quarter in 1982 when he had been on the Committee allocating such houses for sale. Like other "winners" he had paid only the fees and not the purchase price. The house was not registered in his name, but he believed he had a binding contract for sale from the Government. The house had, meanwhile been allocated from the General Pool to his wantok, a government employee who paid rent by deductions from his salary. The electricity was supplied through the wiring and meter of the senior house which had been sold and was now rented out to an expatriate. The complainant felt he was being over-charged by the expatriate for his share of the electricity bill.

In both cases MTWU refused to install or pay for new wiring and metering to these houses, despite requests from the Ministry of Public Service.

The reason given by MTWU was that it had no budget for alterations or improvements to government quarters such as these and the Ministry of Finance would not allow the installation of new wiring and metres to be paid for from the MTWU maintenance budget. If the Ministry of Public Service regarded the matter as important, it should press the Ministry of Finance to make a separate budget allocation for such things.

However the Ministry of Public Service regarded the matter as being within the existing budgets and range of duties of MTWU.

The questions underlying this argument are, however;

"Should public money be spent by MTWU on houses that have already been sold/won or will be sold in the near future?"; and

"Are houses which have been "won" in 1982-5, but not paid for, still government property or not?"

In the Ombudsman's opinion he cannot recommend any action on the supply of electricity or repairs and improvements to these houses until a clear decision is made on their ownership and future.

## 2. OTHER ACTIVITIES OF THE FORMER ACTING COMMISSIONER OF LANDS

### a) POSITION OF THE FORMER ACTING COMMISSIONER OF LANDS

The Acting Commissioner of Lands, who appears to have been responsible for many of the irregularities in the 1985 Sale of Government Houses, has also been involved in a number of other irregular (or at best inexplicable) disposals of Government Land.

He was apparently put into the position of Acting Commissioner of Lands by a former Minister of Lands in mid 1985 to deal with the Sale. Gazette Notice 306/85 of 2nd October 1985 announced that the Public Service Commission appointed him as Commissioner of Lands with effect from 9th July 1985 in place of his predecessor "whose appointment is hereby cancelled with effect from the same date".

The Public Service Commission is the only authority under the Constitution which can make such an appointment but its records show that it never made the appointment until mid 1987. In 1985 it merely considered the man's substantive promotion to level 7. (Commissioner of Lands was a Level 9 post). In both cases the appointment was made without the benefit of a staff report.

The Acting Commissioner of Lands' only comment to the Ombudsman has been to refer to his powers under the Land and Titles Act which say the Commissioner

"shall have power to hold and deal in interests in land for and on behalf of the Government and subject to any general or special directions from the Minister, to execute for and on behalf of the Government any instrument relating to an interest in land"...

The question of whether he was acting in good faith as a trustee of Government Land remains.

From 1986 to 1987 he continued to act as Commissioner of Lands while unsuccessful attempts were made to find a replacement from outside Lands Division. Eventually the Public Service Commission decided on 14th 1987 to give him accelerated promotion to level 9 as Commissioner of Lands. This decision seemed to be made on the grounds that he had been acting in the post for 19 months; that he had "instructed" the Ombudsman's Office and, presumably - because no-one else could be found.

(Note: Public Service Commission Regulations 36 - 38 say that an Acting Appointment will only be made pending a substantive promotion or where the post is temporary. It is almost automatically given on grounds of seniority and should not extend beyond six months unless the Commission is satisfied that the post cannot, or should not be filled substantively.)

The Acting Commissioner of Lands continued in office until late 1987 when he was offered a posting elsewhere and resigned from the Public Service with effect from 25th December 1987 so that he could devote his time to his land Agency business. However, despite the fact he was no longer a public servant he continued to act as Commissioner of Lands on the grounds that his appointment had not been formally **revoked** and gazetted.

The two transactions described here at (b) and (c) involving government land in his own Province were completed in early 1988, **after** his resignation from the Public Service. Other disposals of Government Land to businessmen in Honiara without going through the Land Tender Board were also made during this time, and are still under investigation.

**b) IRREGULAR DISPOSAL OF GOVERNMENT LAND BY COMMISSIONER OF LANDS**

**Complaint Number 305/4/88**

The Complainant represented one of four groups of people claiming to be the original owners of Buki Buki island in Western Province, which had been occupied by a family of planters since the last century and then taken over by a church.

Under current Solomon Islands Government Policy on such "alienated lands", Indigenous Solomon Islanders can buy the land back from the Government if:

- i) They have occupied the Land, - by Temporary Occupation Licence or Fixed Term Estate (FTE); and
- ii) They have developed the land in accordance with their Licence or FTE; and
- iii) They can prove they are the true original owners.

None of the four groups of applicants for the Island seemed to fit these conditions, since the Church had occupied the Land, the planters had developed it, and until 1982, no-one had decided which group were the original owners.

In 1979 the Church, under pressure from the various applicants and the Ministry of Agriculture and Lands, agreed to develop Buki Buki island further. It then agreed to surrender its title to the Island to the Commissioner of Lands on condition that the Commissioner of Lands granted a fixed term estate to an elderly non-indigenous Solomon Island Citizen who had lived on the island for some time, whom we shall call "Mr C. In 1982 a Fixed Term Estate for 30 years was granted to Mr. C.

Mr. C. then tried to sell his 30 years F.T.E. to a group of claimants which we shall call group B. There is no restriction in the Land and Titles Act on the disposal of Fixed Term Estates and it is difficult to explain why it took until April 1984 for the Commissioner of Lands to give his consent for the transfer from Mr. C. to group B and why then, consent was withdrawn and the matter was referred to the Western Provincial Assembly, and why group B was never able to buy the Fixed Term Estate.

Instead, the Fixed Term Estate was sold to a fourth Person, "T" whom the complainant alleged was acting for his Group, A, although no evidence of this has come to light, and it has been the subject of a dispute.

For some time the local Area Council had been unable to decide which of the four groups were the "true original owners". Eventually it decided on the complainants' group, A, who certainly wrote the longest and most frequent letters.

The Solomon Islands Government still held the reversion, or Perpetual Estate in Buki Buki Island, but on 7th November 1987, B applied to the Acting Commissioner of Lands for a transfer of the Perpetual Estate to him.

The perpetual estate was valued at \$20,000 and the Bank was prepared to mortgage it up to \$60,000, but apart from normal Land Registry fees, B paid the Government nothing.

The transfer was registered by an acting Registrar on 25th November 1987 - The Acting Commissioner of Lands, having endorsed the Transfer document:

"It is hereby declared that the Fixed Term Estate in this parcel is merged with the Perpetual Estate".

Since the Fixed Term Estate was already registered in T's name this was at best a gross mistake, or else a breach of the Law. The declaration was rejected, but the transfer was unfortunately allowed to be registered unchallenged.

This case appears to involve Maladministration and Action Contrary to Law by the Acting Commissioner of Lands, who is supposed to act as Trustee of Government Land for the nation. It is recommended that the matter be referred to the Government Law Officers; and that future disposals of Government Lands be referred to an unbiased body to decide which of the various claimants should have it.

#### **c) TRANSFER OF GOVERNMENT LAND TO WRONG TRUSTEES**

**Complaint Numbers 216/2/88 and 270/3/88**

##### **Introduction and Summary**

Two separate groups of people complained to the Ombudsman about the disposal by the Acting Commissioner of Lands of Bagga Island which was held by the government as alienated land.

Both groups claimed to be descendants of the original customary owners and wished to buy back the island from the Government.



Government records showed that the island had been bought from the Tutu tribe in 1925. One of the two groups of complainants seemed to be part of this tribe, whose chiefs had been claiming the island continuously for a number of years and had appointed these customary chiefs as Trustees. However there exists no open judicial-type process for deciding which group is most eligible for the return of alienated land and decisions such as this one tend to be made by the Minister of Agriculture and Lands - or as shall be seen, whoever is the Commissioner of Lands. In this case the Acting Commissioner (who had actual knowledge of the real trustees) transferred the island to a group of residents in Honiara who also said they had been appointed trustees of the same people, and were taking the island 'purely for administrative convenience' and would transfer it to the real Trustees within one month.

They managed to convince the Registrar of Titles - on somewhat flimsy evidence by a third party - and the transfer was registered. Six months later they still hold title to the island - **without** the support of the original trustees; or the Chiefs; or apparently the people they are supposed to represent.

The present Commissioner of Lands has decided to treat this as an "internal problem" to be sorted out by the people and has given consent for a subdivision of the island into 34 parcels, the recipients of which are unknown.

For the Ombudsman's opinions and recommendations refer to the final paragraph of this case report on page 24.

### History

The island has an interesting and troubled history which is relevant to the investigation of these complaints.

According to a Vella La Vella woman and other sources,\* in about 1850 the original menfolk of Bagga Island were slaughtered by a party of 1,000 war canoes from Vaela on the neighbouring island of Vella La Vella. This was to avenge the murder of two men who were caught fishing by the Bagga people. The women and children of Bagga were carried off as slaves by the warriors of Vella La Vella and Marovo Lagoon. Other accounts suggest that survivors escaped to other islands. After that no one lived on the island for fear of these raiders, until the late nineteenth century when a white trader, and his Malaitan wife acquired the land. She and her child were murdered by a professional warrior or "Malaghai" from Vella in retaliation for the killing of his wife and child by the Protectorate Government in a punitive raid.

After the first world war, the Tutu Bava tribe claimed the island, and on investigation, the Resident Commissioner agreed that it was theirs. They then agreed to sell the whole island to the Government. The sale was in 1925, and they were paid 100 pounds sterling and retained the right to hunt wild pigs.

\*Statement by woman (Winnie Kadepade) of the Toutou Bava in 1968 - See also Judith Benett "Wealth of the Solomons" 1987.

The Trader was later granted a long lease of the Island from the Government, but the plantation was ruined by enemy action in World War II. The family hid from the Japanese in the highlands of Vella La Vella and lost all that they possessed. After the war the family could no longer afford to pay the rent and forfeited the lease in 1949. His widow was granted a series of short term leases of a small part of Bagga island until her death in 1972. A Japanese Logging Company was allowed in the mid 1960s but did not stay long and some timber remained. Meanwhile, the Toto Bava people, headed by their Chief (Chief "K") claimed that part of the island was still theirs but the claim was dismissed by the High Court of the Western Pacific in 1971 when the island was registered as government land. The records showed they had sold the **whole** island in 1925. However, these people continued to lay claim on the island, since their own land on Vella La Vella was poor and swampy.

The Protectorate Government, planned to hold on to Bagga, originally as a Forest Reserve and then in the 1970s as a place to resettle the people of West Rennell, whose gardens would be destroyed by the proposed Open Cast Bauxite mining on their island. Neither the Rennellese nor the Western Province were happy about those plans, which fortunately have been abandoned.

### **Return of Alienated Lands to Original Owners**

After Independence, Government Policy on alienated Land such as Bagga Island was to sell it back to indigenous Solomon Islands if they had been occupying the land, had developed it and could prove they were the true original Customary Owners.

There is no evidence to suggest that anyone had fulfilled the first two conditions and a number of groups claimed to be the descendants of the original customary owners.

By 1982 the Western Provincial Government had decided that Bagga Island should be subdivided for the people from Vella, Ranongga and particularly Simbo who were very short of land. However this was not put into effect either.

The principal claimants were: the Bava people from Vella La Vella under the well organised Leadership of their member of Parliament; and the Sisoro people from Ranongga who had carefully prepared plans for agricultural development of the island.

In 1985 the then Minister of Agriculture & Lands, directed the Acting Commissioner of Lands to declare Bagga Island as Customary Land. This would have enabled the various claimants to take the question of Customary Ownership to Court. However the Acting Commissioner of Lands questioned the Minister's decision on the grounds that Western Province, which had not yet been consulted, might have made other plans for the island. In addition, part of the island was still subject to a lease to a descendant of the trader, and Forestry Division was anxious not to lose two experimental plots or to prejudice a Logging Licence for the island held by a Lumber Company. As a result the declaration was not made.

Later that year the MP for Vella La Vella and Leader of the Bava people became for a short time the supervising Minister of Agriculture and Lands and "registered his disappointment regarding the substantive Minister's directive for declaring the above (island) Customary Land", but, to his credit, he made no direction as to its disposal while he remained as Supervising Minister.

The decision on Bagga Island appears to have been made by the new Minister for Agriculture and Lands and the MP. for Vella La Vella at a meeting in the Minister's Office on 8 July 1986. The decision was not to declare it Customary Land but to return it to the Trustees nominated by the Tutu Bava Tribe, who do appear from Land Registry records to have been regarded as owners in 1925, when they sold it to the government. The Acting Commissioner of Lands nonetheless referred the question back to Western Provincial Assembly and there were more delays. On 3rd March 1987 the Premier of Western Province confirmed to the MP for Vella La Vella that the Province had no objection to transferring the Perpetual Title in Bagga Island to the descendants of the original owners. On 6th March the Acting Commissioner of Lands, wrote saying he was "willing to transfer perpetual title on Bugga (sic) to selected trustees on behalf of the Bava tribes", on condition that mineral prospectors be allowed to come in and that the Government could still have the forestry experimental plots.

The Bava people had already selected 4 trustees: These trustees were three Chiefs (who were the people who had been making representations to Lands Division for a number of years) and a woman representative of the female line. A fifth Trustee ("Mr A") was added to their number, as minuted at a meeting on 1st March 1987.

These five people - referred to from now on as the "Vella Trustees" made a statutory Declaration that they would hold Bagga Island as joint owners and trustees, when the Perpetual Title had been transferred to them. Unfortunately, the Statutory Declaration, whilst stating that it complies with various provisions of the Lands and Titles Act did not say for whose benefit the Trustees would hold the island. However, from correspondence on file it is obvious that they intended to hold it for the Bava people in Vella La Vella.

On 5th April the Vella Trustee paid into Gizo Sub-Treasury the required premium of \$2,000 and \$25 Land registration fees and were issued with a General Treasury receipt. They sent the signed transfer document and receipt off to the Acting Commissioner who, according to the Registrar's records, must have executed it and submitted it for registration in June 1987.

#### **Attempts to transfer island to Vella Trustees.**

However, on 24th June, the Registrar of Lands and Titles refused to register the Transfer for a number of reasons concerning the covenants on the Transfer and the unclear wording of the Trustees' Statutory Declaration.

Meanwhile, a Caveat against dealings in the Title of Bagga Island was registered on behalf of the Sisoro people from Ranongga. Unfortunately for them, the claims were never substantiated - they did not prove their rights to the island - and the Caveat was "warned off" by the Acting Commissioner of Lands and removed by the Registrar on 14th October 1987.

According to the Member of Parliament for Vella La Vella, the Acting Commissioner of Lands then sent him the correct form of Transfer, with acceptable covenants or promises typed out which was signed by the Vella Trustees and sent through the Lands Officer Western to the Acting Commissioner of Land son 11th November 1987. A copy of the covering memo from the Lands Officer Western has been sighted, but there is no record of the transfer reaching the file at Lands Division. Since the 1970's the Ministry has kept no register of incoming mail except where it contains money.

In December 1987, the Vella Trustees signed a third tranfer document which was taken by hand of their MP to the Acting Commissioner of Lands on 25th January, but again there is no record of it in Lands Division.

#### **Transfer of Island to "Honiara Trustees"**

However, on 17th January 1988 a completely different set of people had appeared from Honiara, and by Statutory Declaration proclaimed themselves as Trustees of the Bava People from Vella La Vella, appointed at a meeting in Vella on 16th December. This has been denied by other parties and no minutes of this meeting have been produced. On 27th January another person ("X") wrote a long letter to the Acting Commissioner of Lands explaining: referring to the MP's letter of 25th January and explaining:

"The Honiara Bava (Trustees) are not interested to remain as trustees of Bava Island. We are only interested to ensure that the transfer is done without further delay".

"AFTER ONE MONTH FROM THE TRANSFER WE WILL INTERNALLY ARRANGE FOR VELLA BAVA 5 SELECTED TRUSTEES TO REPLACE THE HONIARA BAVA TRUSTEES" (his capital letters).

Despite the fact that the Vella people had been appointed Trustees the previous year, and there was no record of their consent or replacement by the Honiara people, the Acting Commissioner of Lands trasferred the perpetual estate in Bagga Island to the Honiara people on 27th January 1988.

The Registrar of Lands and Titles was obviously unhappy about the trusteeship and refused to register the Transfer because

"The Statutory Declaration must be made by the joint owners, and is not complete and does not serve the purpose of the Act.

I have pointed out to you from time to time that the Statutory Declaration must, at least, be made on the land or near the land as possibly can. I have doubted the validity of the certificate of publicity...." He also suggested that the correct form of transfer be used and the covenants be reworded.

Mr "X" then came forward again and on 5th February made a statutory declaration in support of the Honiara Trustee, as follows:

"That on 16th December 1987 a meeting was held at Kuava Village Vella La Vella.

A subsequent meeting held at Honiara on 26/1/88 it was agreed by members of the Bava Landholding group to transfer perpetual estate in parcel 079-006-4 into the name of 5 trustees who resident in Honiara. Upon the completion of the registration The title will transfer to 5 trustees who actual resident at Vella La Vella near the Land where I was given the mandate by the people. I near the Land where the majority of the beneficial owners have given me the mandate to follow this up for the purpose of registration.

I further declared that the statutory declaration by the joint owners were signed here in Honiara, was on according with the wishes of the Bava Landholding group and they have knowledge of this transaction."

For some reason, this satisfied the Registrar - as did the reworded Covenants on Title. Unfortunately for the Government, the re-wording had simply been to omit the Governments' rights over the Forestry Experimental plots. This transaction was immediately registered on 5th February. The Honiara Trustees still hold the Island and have not fulfilled their promise.

On 17th February and again on 16th June 1988 the "Working Committee" a group of 13 men, including two of the Honiara Trustees and Mr "X" who supported them with his statutory declaration, applied to the Acting Commissioner of Lands for subdivision of the Island.

The Working Committee does appear to have been appointed by the people and Trustees in Vella but none of the original Vella Trustees is a member and it is not at all clear how far their mandate extends. It is not clear which people or families would receive the 34 parcels of Land created by the subdivision nor whether the people in Vella realise what is going on.

On this basis and the fact that the Honiara Trustees showed no sign of fulfilling their promise to transfer title to the Vella Trustees, the Ombudsman became concerned, and the Registrar of Titles entered a Caveat preventing further dealings in the land except for a transfer to the Vella Trustees.

#### **Honiara Trustees still hold the island.**

It was not until 7th April that the Honiara Trustees were able to visit Vella La Vella and hold meeting. At this meeting they proposed that the Honiara Trustees transfer the land to either:

- (a) the original Vella Trustees; or
- (b) the original Vella Trustees but without Mr. "A" and with Mr. "Y" (one of the "Honiara Trustees") included instead.

The meeting apparently opted for the second alternative but the transfer was never made. Only two of the Vella Trustees (Chief "K" and the female representative) attended this meeting which included a number of women through whom the Honiara Trustees traced their connection with the Bava people. The other three trustees and other chiefs either did not attend or walked out before the decision was reached.

The new Commissioner of Lands gave his consent for the Honiara Trustees to transfer the island, but by 14th June 1988. "Paramout Chief "K":

"decided and officially declare that the current temporary trustees, namely (the Honiara Trustees) to hold the Title of Bava Island on my tribes behalf for an indefinite period....(they) will not now transfer the titles after one month as stipulated in their letter dated 27/1/88..."

Chief "K" was not the only Chief of the Bava people and on his own he could not legally act for the original Vella Trustees. From evidence seen by this office it appears that he is an older man who is easily influenced. By 20th July 1988 he apparently confessed that he had been under

"Duress and Undue influence" and then declared that The Honiara Trustees statutory declaration was now "null and void" and that his "letter of 14th June was now invalidated and that hence forth only the (original) Vella Trustees would be honoured."

The final result remains to be seen.

#### **Matters of concern to the Ombudsman**

This may turn out to be a "purely internal matter for the Bava people", but, in the Ombudsman's opinion the following aspects of this complicated case are of concern:

1. Twice, the document for transfer to the Vella La Vella Trustees went missing, inexplicably. This is not the only incident of important documents going missing on the way to the Commissioner. (complaint number 237/2/88 also from Western Province is another example).
2. The Acting Commissioner of Lands must have been well aware of the existence of the Vella La Vella Trustees, not just from the file records but because their member of Parliament had told him. Why then, did he accept the "Honiara Trustees" Statutory Declarations? **Anyone** could have posed as trustees and sworn a statutory declaration.
3. The Acting Commissioner of Lands resigned from the Public Service with effect from 25th December 1987, so he could no longer act as Commissioner of Lands when he transferred Bagga Island to the Honiara people on 5th February.
4. Why were The Acting Commissioner of Lands and the Honiara Trustees (whose connections with Vella through several generations of the female line seem rather remote) so anxious to execute the transfer and deal with the subdivision in such a hurry? (It has been suggested that a family connection between the mothers of The Acting Commissioner of Lands and Mr "Y" may be relevant), but neither have seen fit to put their case to the Ombudsman.
5. Why, if Mr "X" and the Honiara Trustees "have no interest in Bava Island" and are acting "purely for administrative Convenience" do they still retain the Island? "X" has given no satisfactory explanation of this fact.

6. The Attorney General was never asked to advise even though important points of law were involved - for instance regarding the two sets of Trustees.

**Ombudsman's Recommendations:**

1. All actions taken by the former Acting Commissioner of Lands, after his resignation from Office took effect on 25th December 1987 should be declared null and void. Provisions are made in the Lands and Title Act to protect innocent parties in such cases, and compensation may have to be paid. All actions taken by the Acting Commissioner during this time should be reviewed. Transactions which appear to be legal, regular and in accordance with government policy should then be ratified or repeated by the present Commissioner.
2. Transactions such as this transfer to the "Honiara Trustees", which appears to be irregular should be reconsidered, after receiving representations from the parties involved. In the Ombudsman's opinion the Island should be transferred to the original Vella La Vella Trustees as originally intended.
3. In the fresh transfer to the Vella Trustees, the covenant allowing Government access and rights to the two Forestry Experimental plots should be re-instated for the public benefit.
4. The Ministry of Agriculture and Lands, and most particularly, Lands Division, should return to the time honoured procedure of recording **all** incoming mail. If nothing else this would protect members of Lands Division from unjust allegations of losing or destroying documents which have never been delivered.
5. Decisions as to the true original owners of alienated land should be made according to the principles of natural justice, allowing all parties to submit their claims and evidence so that a fair decision can be made. If all parties cannot agree on a decision made by Customary Chiefs and Leaders, then the courts should be used. An amendment to the Lands and Titles Act appears to be necessary for this.
6. Lands Division and Government Departments should refer to the Attorney General for advice in all cases of doubt.
7. Public Officers such as the Commissioner of Lands should not be promoted without up-to-date, satisfactory Annual Confidential Reports.

### **3. THE TIMBER INDUSTRY - ISSUE OF TIMBER LICENCE**

#### **a) INTRODUCTION:**

The Ombudsman received complaints from landowners about the activities of foreign logging companies which indicate a very serious problem, socially, legally and economically.

He does not have jurisdiction to enquire directly into their activities - which is the duty of Forestry Division of the Ministry of Natural Resources. If Forestry Division discovers that the Forests and Timber Act and government policy is not being followed or if it is under pressure from above or outside to circumvent the law it should refer to the Attorney General and seek his advice. The High Court Case mentioned in item V of this report reveals that neither is done. Forestry Division was allowing a new foreign company to come in and operate in the "shell" of a defunct Company. Its logging licence was "non transferable" and it condoned new logging agreements with the landowners which did not comply with the provisions of the Forest and Timber Regulations. Local Landowners were being told that unless this arrangement was allowed, their debts from the defunct company would remain unpaid and that no commercial logging could take place in the concession area until the defunct company's concession expired in the next century - This would exclude local companies and co-operatives as well as foreign companies. Forestry Division was no-where to be seen or heard in this transaction.

The Ombudsman decided of his own motion to investigate the activities (or lack of them) of Forestry Division in the monitoring and control of the Timber Industry. This scope of this investigation was later extended to include other authorities involved in the Timber Industry and work is still not complete.

However, in order to make an interim report on the operation of one Company, referred to in this report as "K Ltd." was selected, following specific complaints about its activities, and its method of acquiring a logging licence in the face of local competition and opposition in the West Kwaio area of Malaita. (complaint numbers 173/1/88 and 334/4/88).

This area is particularly interesting in that it already has its own locally based timber industry, including Sawmilling and nearby shipbuilding. Its population is comparatively high and any foreign company which comes in, is competing for natural timber resources which are already depleted and are not being replanted.

#### **b) ISSUE OF LOGGING LICENCE TO "K LIMITED" FOR OPERATIONS IN MALAITA**

##### **The Company**

"K Ltd". was registered as a Company in Solomon Islands in December 1982.

It had several directions of Australian/Malay Origin including a "Mr. M".



It had a nominal capital of \$1,000,000 but at the date of the last annual return (for the year ended 30th June 1984) only \$600 was paid up and it had no other obvious assets when it came into Solomon Islands as a "foreign investor".

Despite requests for information, Foreign Investment Division of the (Prime Minister's Office) have never disclosed what investigations were made into the financial standing or previous operations carried on by the Company or its owners and directors.

K Ltd. applied to log in a number of Provinces in Solomon Islands as well as Malaita. In Western Province (Vangunu) it ran into problems by assuming the local Chiefs were absolute owners of the land in unauthorised negotiations with them, and withdrew its application. It's application for Makira was strongly resisted by the Provincial authorities and it's application for Isabel Province, under the auspices of Gympie and Company (not traced) came to nothing. It eventually started operations in Guadalcanal Province as subcontractor for a locally owned Company, (referred to in this report as "C Ltd") under a Management Agreement made on 25th February 1983. C Ltd. held the Logging Licence for West Guadalcanal, which K Ltd. effectively took over. No records of how Forestry Division dealt with this arrangement have been made available.

The Company structure of C Ltd. at this time should be considered. It was incorporated in 1980 with two Australian directors from another logging operation and three Solomon Islands directors: "X", "Y" and the "Hon Z. MP" who resigned as director on 11 December 1981, but reappeared as Secretary on 3 October 1983 and soon afterwards as a director again.

The original Shareholders were: "X" (47 ordinary shares) "Y" (1 share) and the Hon. Z (1 share) which he immediately transferred to a holding company referred to as "S Ltd" which held the remaining 50 shares.

"S Ltd", was also set up in 1980 of which the Hon Z was at all times, a director and also held 10 of the 150 issued shares. The other shares being by a number of Solomon Islanders including "X" and a Member of Parliament for Guadalcanal.

Mr. M of K Ltd. was appointed a director of C Ltd. on 25th April 1984 and there followed a fierce battle for control of the Company, through the High Court, between him and his supporters and the original Solomon Islands owner-directors which continues to this day. Owing to the confusion, no Company records have been filed for several years and it is not at all clear who were the current directors and shareholders after 1984.

The Hon Z was Minister of Natural Resources, and responsible for Forestry Division from September 1981 until his replacement on 5th April 1983.

## **The Law**

Perhaps at this stage the law relating to logging licences should be considered. The colonial Forest and Timber Ordinance had been amended in 1977 and again in 1984 in an attempt to give customary land owners the power to decide for themselves whether to allow Logging Companies on to their land and if so, on what terms. The procedures are cumbersome and perhaps it is unrealistic to expect landowners who may not have much education to deal with experienced foreign businessmen and not be unfairly exploited. However the procedures represented an attempt to ensure that Companies dealt fairly, and dealt with the true landowners and not any convenient person who presented himself as a 'Chief'.

The negotiations between K Ltd. and the West Kwaio Landowners took place in 1986 - **after** the 1984 amendment but, unfortunately **before** the Forests and Timber Regulations 1985 (which included the Standard Form of Logging Agreement for Customary Landowners) were properly Gazetted and in force.

Unfortunately the form of Logging **Licence** and the conditions attached to it has never been brought up to date since protectorate times. It is intended for companies operating on Government Land under the supervision of Forestry Division, and is totally inappropriate for Customary Land. A separate note on the Logging Licence is included at the end of this account.

### **Procedure for obtaining a Logging Licence:**

#### **(i) Consent to negotiate - Form 1.**

The first thing a foreign company should do is to ask Forestry Division for consent to negotiate with Customary Landowners. This serves to warn Forestry Division what is going on, so it can offer advice to the landowners if required and refuse consent to a company if appropriate. There is no obligation for Forestry Division to give this consent to a particular company. If the Forestry Division say "yes", the company then makes a formal application to negotiate with the landowners on "Form I" which is copied to the appropriate Area Council. There are no tendering procedures for Logging concessions.

#### **(ii) Public Meeting to decide who are the true landowners - Form II Certificate.**

The Area Council must then fix a public meeting to decide who are the real landowners and whether they want the foreign company to log, and if so on what terms.

The Area Council must give "adequate and effective" notice to the public of this meeting which must be at least 2 months after the Form 1 consent to negotiate has been received.

According to the law, the Area Council members "with particular knowledge of the Customary Land rights in the area affected by the application" must hear landowners representations and objections on questions of land ownership, and at the end of the meeting, they must complete a certificate "Form II" which says who are the real landowners, and whether they want the company to have the timber rights. This is a very important step, and unless it is well publicised and done fairly and honestly then people will be disadvantaged and disputes will arise.

**(iii) Public Notice of Area Council's decision - time for appeal**

This "Form II" certificate of ownership should then be given the same adequate and effective notice in the same area, so that any land owner who disagrees with the Area Council's decision can take it to the Customary Land Appeal Court (CLAC). People have one month in which to appeal to the CLAC before Forestry Division can issue a logging licence to the Company.

**(iv) Duties of Forestry Division before issue of Licence by Minister/Premier**

The Commissioner of Forests/Conservator is then supposed to "satisfy himself" that:

- i) one month has passed since the Form II certificate was issued by the Area Council;
- ii) No appeal has been lodged to the CLAC;
- iii) the Company has made an agreement with the landowners in the form prescribed in the Forests and Timber (Prescribed Forms Amendment) Regulations 1985, Legal Notices 97/85 and 60/87. - (The "Standard Logging Agreement" was brought in 1985, but not gazetted until 21st February 1986 as Legal Notice 10/86 and again as Legal Notice 60/87).

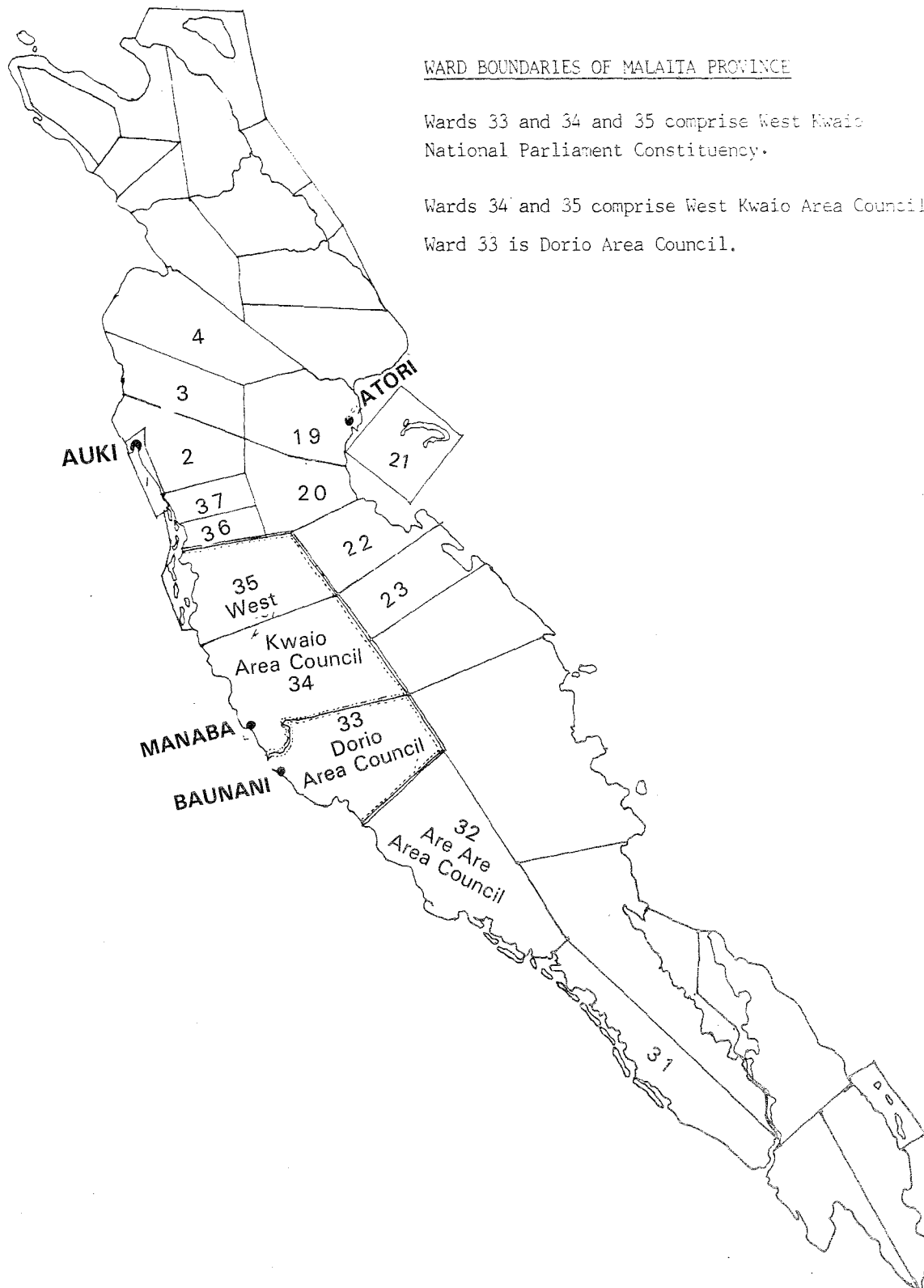
He can then recommend the Minister, or since devolution\*, the Provincial Premier, whether or not to consent to the logging. Note that by section 54 of the Forest & Timber Act the Forestry Division is also supposed to advise people on timber rights and presumably, what sort of price and other terms they should expect to get from the Timber Companies.

With this procedure in mind, the issue of this particular logging licence to K. Ltd for West Kwaio/Dorio can be examined.

\* See Note on the Provinces on page 97.

**"K Ltd." - First Application for Logging - Malaita**

In April 1983 K Ltd. applied direct to Malaita Province for consent to log in a large area of Central Malaita, without going through Forestry Division of the Ministry of Natural Resources. (K's first Application was to Log Wards: 2, 3, 4, 19, 20, 22, 23, 36 & 37.)



The proposal was only 1 ½ pages, mentioning a royalty to landowners of just \$5 per cubic metre (regardless of the value of the tree species); and included vague development plans for plantations, crops, roads and village improvements.

Malaita Province was obviously worried about the Company's methods, and in particular, its avoidance of the Forestry Division of MNR. (The Province had been wrongly advised by the Ministry for Malaita Affairs that MNR need not be consulted). The Malaita Provincial Authorities had to insist that proper consent from MNR be obtained first, and that a survey of the areas be done without negotiations or promises with the landowners meanwhile.

On 1 May 83, Forestry Division, MNR, gave K Ltd. permission to survey Malaita to see what timber was there, despite the fact that a United Nations Development Advisory Team (UNDAT) had surveyed and reported on the timber resources of Malaita in 1982.

The UNDAT Team reported that:

"West Kwaio (Dorio) between Kwaleunga and Su'u has about 10,000 hectares of forest containing an estimated 250,000 cubic metres of exploitable timber. With careful planning to harvest logs prior to agricultural development up to 10,000 cubic metres logs could be harvested each for 25 years. (Until a new timber resource can be grown from plantations").

However, K Ltd. went to Malaita and wrote back to MNR saying

"No official survey was done, but a quick walk through in the area was carried out by us".

On the basis of this "quick walk through" K. Ltd. disagreed with the UNDAT report and claimed that up to 10 times more timber was actually available.

In a new proposal for logging, this time to Forestry Division, K. Ltd. asked to log 70 - 100,000 cubic metres of timber **per year** from the West Kwaio and Dorio areas of Malaita (wards 33 and 34. This proposal as attached to:

- i) a misleading map which omitted to show the Dorio ward 33/34 boundary;
- ii) A proposal for planting with an introduced tree, *Leucaena salvador* of doubtful value;
- iii) Proposal for a 10 year cocoa project, bringing in a new company from Papua New Guinea.

Both Forestry Division and Malaita Province had serious reservations about the proposal, particularly the volume of timber to be extracted and the attitude and methods employed by the company to get what it wanted. K Ltd. tactics were described as:

"not very helpful as they seemed to be bulldozing every thing and everyone."

It appears that Forestry Division and Foreign Investment Division were under constant pressure from personal visits by K. Ltd, political leaders and interested parties. One should note that Foreign Investment Division (FID) had not approved K. Ltd. proposed operations in Malaita.

K. Ltd. complained bitterly that it had:

"spent well over \$100,000 in this country with nothing to show for it but perpetual frustrations."

It is not at all clear on what or whom this \$100,000 was spent. The money does not seem to have been spent on logging equipment, since most of this appears to have been bought on bill of sale in 1984.

Permanent Secretaries of Natural Resources and Economic Planning joined forces and supported their own personnel and enforced the moratorium on new logging licences which took effect from 19 April 1983.

The Chief Forestry Officer concluded. "I am not at this stage convinced that Log export is the best form of development for that area..... We wish to see that any logs harvested should be processed in the area to encourage diversification of the Timber Industry and to promote the secondary spin offs".

K. Ltd. promptly turned its attention to West Guadalcanal and logged as subcontractor to "C. Ltd".

Sometime in 1985 the logging licence moratorium in Malaita was lifted "due to political pressure" and K. Ltd. renewed its efforts in West Kwaio.

#### **Second Application to Log East Kwaio - 1985 - also rejected**

In 1985, the Provincial Assembly Member for "N", East Kwaio said he visited K Ltd.'s operations in Guadalcanal and was favourably impressed. On this basis he decided to bring the Company into East Kwaio.

In fact K. Ltd.'s. operations in West Guadalcanal - quite apart from the litigation with the owners of C. Ltd. - were not all they should be. Being within easy reach of the Ministry of Natural Resources and the Guadalcanal Provincial Authorities the logging activities were monitored and with great difficulty, controlled to some extent. In early 1984 Forestry Officers reported that the Company's felling techniques were poor; timber was wasted; young trees were taken; and serious damage to the soil was caused by road making and felling at excessively high and steep sites; water sources and the Kesau, Aruligo and Popo rivers were damaged (and only put right after Guadalcanal Province used its powers under the River Waters Act); and Local Landowners withdrew their consent for its operations. After these objections, and objections even from the local directors of C. Ltd Forestry Division ordered that its operations be suspended. However, shortly afterwards, the then Prime Minister directed that they must be allowed to continue.

Perhaps word of these problems had reached the East Kwaio, where people had already had the unsatisfactory experience of other logging operations and demanded certain conditions including a slightly higher price for timber. In any case, in mid 1985, K Ltd's proposed operations in Malaita were again rejected by the Provincial Assembly.

#### **Third Application - for West Kwaio - successful**

In August 1985 there was a change of Government in Malaita Province and a new Premier. Apparently the new Premier was "treated well" by K Ltd. which entertained him frequently and it is alleged financed car hire and foreign travel for him and others.

After a meeting at the Auki Lodge, between the member of Parliament for West Kwaio and the President of the West Kwaio Area Council and others at the Auki Lodge, K Ltd. decided to turn its attention to the West Kwaio area. This appears to have received approval of the Malaita Provincial Assembly - or at least the new Premier, sometime in mid 1985.

### **New Forest Policy 1985**

Back in 1983, the Provincial Secretary of Malaita had advised:

"With the volume K Limited has applied to extract logs in West Kwaio every year, existing milling operations in Bina & Buma will be affected to face difficulties in obtaining logs for their operations within the next 5 to 10 years time. With this in view this Province has been considering K's application to undertake logging operations in West Kwaio with a certain amount of reservations".

In September 1985 Forestry Division repeated this warning to Malaita Province; saying:

It does not seem justifiable for another Company to operate in the area considering the limited resource the area carries".

It also pointed out that:

"K Ltd. does not have any authority to negotiate for timber rights in the area as per the requirements of Forest and Timber Act" and further that:

"The moratorium is still in force for which no **new** licence is to be granted".

This was part of the new Forest Policy adopted by the new Minister of Natural Resources in an effort to control the Logging Industry and the rapid loss of the Country's timber resources;

Another aspect of the new Forest Policy was to insist that Companies fulfilled the requirement of their Logging Licence and milled - 50% (formerly 20%) of their annual quota of logs. On 29th September Forestry Division ordered K Ltd. to fulfil this quota, or else cease operations. Mr. M appeared to ignore this threat - on the basis that the Licence was issued to the C Ltd. and K Ltd. was only a subcontractor.

### **Unauthorised Negotiations with Landowners**

Throughout late 1985 a number of meeting took place between West Kwaio Chiefs, Landowners and Political leaders and of representatives of K Ltd. The first meeting recorded in Malaita Province files was in early November 1985 at a School. However this was described as a "second phase" meeting. The "first phase" had evidently been a large pig feast in the bush with Local Chiefs, paid for by K Ltd. at which Landowners were informed of the benefits that the Logging Company could bring them - such as a new house for the Paramount Chief, new roads and money.

By the meeting in November at the School, the local people were apparently frustrated and wanted the Company in quickly with no interference from the Government - at least according to their member of Parliament.

A "Working Committee" was set up to "consider the cause" and included names which later appeared on the Form II Certificates of Land ownership. Minutes record that the "meeting close with a feast prepared by the Paramount Chiefs with their people was eaten....." (Apparently it was paid for by K Ltd.).

On 15th November "new working party" was set up, comprising of the National M.P. for West Kwaio the Provincial Assembly Member for Sie Sie Ward, the Chairman of the West Kwaio Area Council and two officers from Malaita Province.

#### **Moratorium on Logging Licences lifted (for Malaita only)**

On 9th December 1985, at the direction of the new Premier Malaita Province formally asked the Ministry of Natural Resources to "initially carry out timber rights negotiations in West Kwaio and other wards".

Following the Minister's precise direction, Forestry Division replied on 6th January:

"There is only one procedure to be followed and that is the one set out under the Forests and Timbers Act which requires the consent of the Commissioner of Forest Resources to open negotiations. Without this consent there can be no negotiations and .... this has not been and will not be given so long as the moratorium on the issue of new logging licences is in force.

For this reason the matter should not be pursued further, nor should the Company be encouraged to hope that at the present time it will be authorised to extend its operations to Malaita Province .... and

The existing resource is not sufficient to accommodate another logging operation".

However, the new Premier, by 17th February 1986 "could see no reason why the Ministry should delay granting permission to K Ltd. for timber rights negotiations;; and that "The Moratorium has now been lifted for Malaita Province and so therefore I see no point of excuse by the Ministry".

It is not recorded now the Minister's decision and the New Forestry Policy was over-ridden. It is said that the Moratorium was lifted due to "political pressure from a backbench M.P." who made many delegations to the Prime Minister.

On 26th February 1986, the Chief Forestry Officer again reminded K Ltd. of the requirements of the Forest and Timber Act and rejected the Company's direct application for consent to negotiate with the Landowners, and

"Categorically stated that at no times has there been any consent given by the conservator to negotiate for timber rights as required by the Act".

He added that:

"we are somewhat concerned with your existing commitments and operations in C Limited, licenced area and it is our advice that you should give priority to fulfilling these obligation before venturing further".



K Ltd. simply ignored this letter and submitted its logging proposals for Malaita to Forestry Division on 21st March 1986. They had already been "approved" by the new Premier.

The Chief Forestry Officer replied on 10th April, and was concerned that:

- "a) The proposal itself is generally very brief, lacking in detailed inputs.
- b) The resource quoted is excessive and we have reservations on the figures supplied.
- c) There does seem to be no real post logging developments proposed to the benefit of the landowners concerned.
- d) Commitment to local training, environmental controls and other developments are somewhat vague.
- e) Areas applied for are generally acceptable except for wards which have yet to be sorted out with the Liquidator/Registrar of Companies areas in Wards 32, 34 and 35 where timber rights applications have already been entertained for Maasina, Buma and Bina Sawmills ...."

On 30th April, Malaita Province made a detailed report about the requirements of these saw-mills including the fact that Buma sawmill was also trying to get the concession for ward 34. However, after a "delegation" led by Mr M, the Chief Forestry Officer conceded that K Limited could include wards 32, 34 and 35 in their plans.

Meanwhile, other members of Forestry Division were chasing K Limited to fulfil its sawmilling quota for the West Guadalcanal Operation, to provide details of the logs it had exported and details its 1986 logging plan, and the Controller of Customs was demanding payment of all outstanding arrears of export duty due to the Government.

#### **Formalities of the Forests and Timber Act.**

The Chief Forestry Officer seems to have finally given his consent to negotiate on 8th May 1986 - at least this is the date stamped by Ministry of Natural Resources on a "Form I" presumably provided by K Ltd on a personal visit. He was under pressure from repeated delegations by MPs and the Area Council President - all on behalf of the Company - and it seems that he finally had to give in. The consent applied to electoral wards 19, 20, 31, 32 and 34 shown on the map of Malaita.

At this time the Company was aiming at Wards 33 and 34 which Comprise the National Parliament Constituency of West Kwaio. However it is the Area Council which is responsible for the notices, meetings and decisions on Customary Land ownership under the Forest and Timber Act., and the following table shows that two Area Councils should have been involved, The Dorio (Ward 33) and the West Kwaio (Wards 34 and 35).

Area Council	Provincial Government Ward
Dorio Area Council	33 Kware Kwareo) ) ) West Kwaio ) National ) Parliament ) Constituency )
West Kwaio Area Council	(34 Sie Sie ) (
(Created 18 September 1985 from Kwaio Area Council	(35 Waneagu )

The Dorio Area Council was ignored in these early negotiations all of which were held outside its area. There had been discussions of abolishing the Dorio Area Council on account of its small size, but these were neither put into effect nor Gazetted. The West Kwaio Area Council, which was involved in these negotiations, was created in January 1985 when the Malaita Provincial Assembly split up the original Kwaio Area Council into East & West.

The President of West Kwaio Area Council referred to as "A" had owned and managed the "R" Joinery Ltd. set up in Auki in 1982, but by late 1983 it was in financial difficulties, and appeared to have trouble with its timber supplies. In 1984 closed for business and it is now the subject of Court Action by a Bank.

The President, "A" was there at all the "unofficial" negotiations in 1984 where he was said to "talk strong" in favour of K Ltd coming into West Kwaio and was a member of all the "working parties". In fact his association with K Ltd. was, and is, so strong that most people assume he is employed by the Company. Reliable sources have described him as:

"K's "personnel Manager"

"K's" Community Liaison Officer since mid 1987".

"anyone knows he works for K Ltd., he has an office up there at Manaba Camp..... and they gave him a motor cycle"

Certainly the impression given by his correspondence, whether in the capacity of landowner or President of the Area Council gives the impression that he is on the side of the company.

Needless to say K Ltd. denies any connection, and Mr "A" has declined to comment.

Mr A is however the person who signed all the Form II Certificates of Customary Land Ownership on behalf of the West Kwaio Area Council.

According to the Forest and Timber Act, these Form II Certificates should have been produced at a public meeting in the Area Council's area, held, after effective and adequate notice, particularly to local residents and those who appear to have an interest in the land or trees. The meeting must be held between two and three months after the Area Council received the Form I Consent to Negotiate from Forestry Division, through the Provincial Authorities.

The earliest Mr A, on behalf of the West Kwaio Area Council could have received Form I consent was 8th May 1986.

The first 24 Form II Certificates which appear in Forestry Division records are strange documents, pieced together in various different inks and handwritings and most bear two different dates - 8th May 1986 and 5th June 1986. Some are for Customary Lands apparently in Ward 34 (West Kwaio Area Council) some are marked as being Ward 33 (Dorio Area Council) others are unmarked and may be for other Wards. The land is described only by its customary name, with no reference to features identifiable on map. The Council members with "special knowledge of customary land ownership in the area" are five men all from Ward 34 and all of these certificates are signed by Chairman of the West Kwaio Area Council, ("A"). The Forms appear to have been brought by hand to Forestry Division sometime in June 1986.

Forestry Division wrote to Malaita Province as follows:

"We have received the Form IIs which are the applications for timber rights by K Ltd. Sir, it is obvious that the (Forests and Timber) Act hasn't been followed as only 1 month has lapsed between submission to Malaita Province (and) return to Commissioner of Forest Resources.

Therefore the whole thing had to be re-done and maps of the area applied for should also be included. Please adhere to the Act and you won't go astray".

This direction was never followed, although in late June 1986, the Legal Adviser to Malaita Province produced a very clear summary of the procedures to be followed under the Forest and Timber Act and attended what was supposed to be the preliminary public meeting at Baunani - This was the first meeting recorded in Ward 33 - on 18th June 1986.

However, by this stage they were already discussing the details of K. Ltd's contract with the landowners. This appears to broadly follow the terms of the new Standard Logging Agreement, prescribed by the Forests and Timber (Prescribed Form)(Amendment) Regulations 1985 which were Gazetted on 21st February 1986.

The following is an extract from the Legal Adviser's minutes:

"President of West Kwaio Area Council explained that this meeting is to discuss the proposed agreement submitted by K Ltd. and to arrive at the landowners stand on the terms and conditions of the proposal.

(1st Landowner) - Everyone must be informed and come to the meeting because everyone is affected. Some members of the delegation appointed at the last meeting were never told and did not go to Honiara to meet with the Commissioner.

(President West Kwaio Area Council) - That was due to lack of transport and urgency so those who were available went. We must move.

(1st Landowner) - So that we just a political delegation. The landowners were not represented.

(President West Kwaio Area Council) - The politicians press for the people.

(Second Landowner) - The politicians are on the side of the people so lets get ahead with the meeting today.

(President West Kwaio Area Council) - This is not the final agreement.

(Chairman, Chief "L") - Right, so if some parts don't fit we take them out and if other parts fit, we put them in".

The Legal Adviser explained Page 1 of the agreement and advised that just listing the representatives is not enough. There must be another page signed by the Landowners authorising the representatives to sign on their behalf. The minutes continue:

“(1st Landowner) - The Company must distribute enough copies for everyone.

(3rd Landowner) - Without copies, we cannot prepare. The Landowners cannot be forced by the Company, the Province and the Council. It is the Landowners who hold the timber rights.

(President West Kwaio Area Council) - The people choose the Council, the Council works for the people.

(3rd Landowner) - Still we are only being told as the last minute.

(Paramount Chief "F") - The first operations can go ahead on my land while the others hang on. He will fix it for everyone who comes later".

The meeting then discussed how often the \$6 per cubic metre royalty should be reviewed and how long the Company should allowed to operate. 40 years was proposed, the Chairman wanted only 2 years and in the end no fixed time period was decided. Various other points were agreed, such as the Company having to replace spoiled water supplies and not having to pay for gravel. It was finally agreed that the President of the West Kwaio Area Council, the Province Legal Adviser and Planning Officer should come back another day to explain the rest of the agreement.

The Chairman of the meeting concluded that:

“this very important agreement affects all of us and will even affect our children so we must take time to think hard about it. We must not be hurried. Every Landowner must understand every section”.

What is clear from these minutes of 18th June is that Form II Certificates of Land ownership were at no time discussed or completed. The Malaita Province planning officer who also attended this meeting confirmed that Form IIs were not done then.

It is thought that Mr A completed them either in an informal session, or on his own at his house, so as not to cause delay. The Legal Adviser had been sent down to explain legal procedures to Mr A who allegedly:

"thought this was no good, because people might change their mind. So he said Legal Adviser better not come to the next meeting".

This was an unpopular decision according to a letter dated 30th June apparently dictated and signed by Paramount Chief "F", complaining that the Legal Adviser and the Planning Officer did not turn up to meetings and a delegation was going to Auki about the agreement. (Chief "F" is described as a Pagan Chief, in his sixties but "still strong").

The Planning Officer did attend the final meeting sometime in early July - but when he tried to open up the meeting, this same Chief told him:

"don't talk too long we all want to sign Mr M's agreement. If you don't allow us, the Company will go away".

The Planning Office gave up, announcing that "I try to protect your rights .... I try to make things better for you, but it is your land and your people. Just don't come down to Auki complaining" (when things go wrong).

This officer confirmed that the Form II Certificates of Landownership were not published but were sent to Honiara to save time. He did however withdraw about 5 Form IIs which he recognised as being for Ward 33 (Dorio). These had not been exhibited and the people had not been notified.

As an aside to the main thread of this argument is a comment from this last meeting minuted by the Planning Officer;

"(Chief "C") - Where does the money come from which was used for all the parties we've been having?".

On 14th July 1986 a Timber Agreement with K Ltd was signed by representatives of certain landowners. Again it is an odd document, and, needless to say does not contain all the terms of the "Standard Logging Agreement" (LN10/86) designed to protect landowners and the Timber Industry. Page 1 recites the names of 10 landowners purportedly representing Wards 33 and 34, but of these 8 come from Ward 34, one from the border of ward 34 and 33 and only one from Ward 33. The remainder of the agreement is on slightly different paper and the final page signed by 9 of the 10 landowners recites that they sign "on behalf of Wards 34, 33, 32 and 31". The witnesses to this agreement are "A" and the new Premier of Malaita Province.

It is not clear if this agreement was actually used by the Company and the people since another, substantially different agreement with "L Association" appears later in 1986-7.

### **Forestry Division under pressure to issue Timber Licence**

Throughout July, it seems that Forestry Division were "visited every day by the Area Council Representative and the Malaita Province Premier and certain landowners".

Forestry Division checked on the Magistrate at Auki to see if an appeal had been lodged against the Area Council's decision. Of course, if the Dorio people knew nothing of the Logging agreement, or thought that it did not apply to them, and since the West Kwaio Area Council's decision was not publicised in their area, then it is not surprising they were slow to react.

On 30 July 1986, a number of landowners in Ward 34 and one in 33 withdrew consent to log, and Malaita Province forwarded this advice to Forestry Division. On 5 August 1986, the Provincial Member for Ward 33 wrote to Forestry Division saying that no public notices or public meetings had been held in ward 33 and the Form II Certificates of Land ownership had not been published. Forestry said they would not issue the licence until the matter had been sorted out.

The Minister said that a licence should **not** be issued to K Ltd. and action should be taken against K's Managing Director, Mr M. for breaking the law.

Mr. "A" wrote, demanding that a licence be issued by 12th August. This date, seems to have been the last day for which appeals to the Customary land Appeal Court against the Area Council's Form II certificates could be made, assuming these certificates and all the other legal requirements had been properly followed, (which they had not). At 2.30 pm., on 12th August 1986 at the personal request of A, the Magistrate's clerk sent a telegramme to Forestry Division saying that no appeal to the Court had been lodged.

### **Ward 33 Landowners Appeal**

However at 3.30 pm on the same day Landowners from Ward 33 came and lodged their appeal to the Court. The Clerk, apparently not knowing what to do with it, put the appeal in his desk drawer, and the next day, another clerk wrote to Forestry Division that "no appeal lodged until the closing date 12 August 1986". This ambiguous letter was carried by "A" to Honiara and the very next day, 14th August 1986, the Premier of Malaita Province signed the Consent to issue a licence. The Chief Forestry Officer signed the Logging licence to log Wards 34 and 33, despite the illegalities in the procedures. According to the Chief Forestry Officer's letter to the Provincial Assembly Member for Dorio, written the next day:

"We are advised by the Hon. (MP. for West Kwaio) and Hon. President West Kwaio Area Council that your concerns have been settled by yourselves, refers/conversation Hon. MP and Hon. "A" on 13.8.86".

The Chief Forestry Officer did not check, and even if that particular member was somehow satisfied, it did not change the fact that the law had been broken and landowners prejudiced.

## **The Logging Licence**

The timber licence is another interesting document. It was evidently prepared in advance and contained important provisions that a bond of \$50,000 be given by the ANZ bank for money the Company might owe the Government for Timber Levy etc, and a guarantee that a timber mill be set up before logging started and that the terms of the Standard Logging Agreement be adhered to as if they were law.

It matters not whether the Forestry Timber Regulations and the Standard Logging Agreement in Legal Notice 10/86 or indeed its reprinted counterpart LN60/87 have legal force or not, the fact is, that K Ltd. agreed in this logging licence to abide by them.

What must have been very demoralising for Forestry Division as a whole is that the quota of logs they allowed per year, of 16,500 cubic metres (and this is twice the volume which Malaita Province had thought could be spared in 1983) had been crossed out and replaced with an increased quota of 50,000 cubic metres in the final licence. Forestry Officers immediately advised that with this rate of logging, the resource would last only 4 years. The Licence to K Ltd. was for 25 years, till 2001. Their contract with the Landowners was 40 years (despite what was said at the meeting on June 18th). The Chief Forestry Officer said he allowed this on the basis of the second survey done by the Company itself. Although Forestry Officers found this survey "unbelievable" no one from Forestry Division appears to have gone and checked it.

After the Licence was issued, it is not clear what was happening in Malaita. The Magistrate, concerned that his office had made a mistake about the appeal which could seriously prejudice the rights of Dorio Landowners, and possibly that there was an abuse of his court's procedures, told Forestry Division that the appeal against K Ltd. was in time and valid. Unfortunately the then Minister of Natural Resources did not seem to support this view and again it was unfortunate, that when the Registrar of the High Court wrote explaining the situation and confirming that the appeal was in time, he only sent the letter to the Magistrate and Chairman of the West Kwaio Area Council and not to Malaita Province, Forestry Division or the Attorney General.

The Company, who already had their Logging licence, have chosen to ignore the appeal and have refused to pay the costs of a court hearing, which is a normal requirement for appeals arising out of timber applications, recognising the fact that the dispute would probably never have arisen if the company was not there.

### **K. Ltd - Logging Activities.**

On 1 June 1987 Forestry Division (under political pressure) gave the go-ahead for K Ltd to 'pull its first Log' from West Kwaio and a big party was given, attended by many of the Country's political leaders.

The long delay between the official start of operations and the issue of the Licence in August 1986 appears to have been entirely K's fault in:

- 1) Not having first obtained Foreign Investment approval for operations in Malaita; and

- 2) Avoiding the requirement of **first** installing a sawmill before starting other operations (Forestry Division had experienced great difficulties with the sawmilling requirements of K's operations as subcontractor to C. Ltd. in West Guadalcanal); and
- 3) trying to avoid providing the \$50,000 (fifty thousand dollars) bank guarantee required as security for money payable to SIG under the terms of its licence. (The company won this one, see page 40).
- 4) Not providing Malaita Province and Forestry Division with clear logging, road and reforestation plans for approval.
- 5) Objections from Landowners in Ward 33 to the Company Logging there at all.

Even before this consent was given, Malaita Province and the Chairman of the "L/Association" urgently begged Forestry Division to provide a Forestry Officer to monitor the activities of K Ltd, since the Landowners did not have the expertise to do it themselves. Mr A (that is, the President of the Area Council), even applied for a job as Forestry Officer himself and was firmly rejected by Forestry Division. (He had no training and very serious conflicts of interest in his involvement with the Area Council and the Company itself). Regrettably Forestry Division was unable to provide anyone to assist the West Kwaio people. Note that only one Forestry Officer is posted to Malaita, and he does not deal with timber control.

However, on 28th July 1987, a party including the Forestry Enforcement Officer other members of forestry division and a representative of BDDP Suva (British Aid) and other Europeans attempted to visit sawmills and Co-operatives at Buma and Bina. The visit had been announced before-hand by radio service message, but when the party passed over the Maoa River, (near Manaba) the public road was blocked by a large log, placed directly across the road, apparently put there by K Ltd that morning. When asked to remove the obstruction an expatriate employee of K Ltd. with threats and insults obliged the party to return to Auki. Neither the person concerned, nor the Company was prosecuted. The Company replied with apologies and a weak excuses.

Forestry Division has told this office that a Timber Control Officer has visited K's operations in 1988, but unfortunately neither the officer concerned nor his tour report has been made available to this office.

**To summarise;** K. Ltd. obtained a Licence for an excessive quota of logs for export, from an area which already needed them for its own timber industry nearby, without following the law. In particular, the Area Council for half the area, Ward 33, was never involved and its people not consulted until too late. The Form II certificates are at best highly irregular, at worst they may be forgeries. The agreement or agreements with the landowners are suspicious and omit important provisions which benefit landowners and government; and the licence was issued hurriedly, under great outside pressure and allows an excessively high annual quota of logs. The legal remedy to the aggrieved landowners of Ward 33 was denied them and their rights under section 8 of the National Constitution infringed. The Activities of the President of the West Kwaio Area Council are particularly suspect.

Ma'asina and Buma Sawmills have now closed for business.



**Specific Irregularities in the issue of K. Ltd's Licence under the Forests and Timber Act.**

Section 5B - The Company had Negotiations with Landowners without consent from Forestry Division, in the face of express disapproval from the Minister of Natural Resources and the Logging Moratorium.

Section 5C - If West Kwaio Area Council gave any notice to Landowners in Wards 33 and 34 it was ineffective and inadequate.

- The first public meeting was held only 8 days after consent to negotiate (Form I) was given to the Area Council. It should have been 2 to 3 months.
- The Dorio Council was never involved at all, yet its Area (Ward 33) was included in the Licence.

Section 5C (5)

- The West Kwaio Area Council decided questions of Customary Land Ownership outside of its area.
- The Form II Certificates of Customary Land Ownership were not done at a public meeting and may even have been done by one man.
- Nor were the Form II Certificates advertised or displayed in Public.

Section 5 (1a)

- The Contract between K Ltd. and Customary Landowners of 14 July 1986 omitted important provisions of the Standard Logging agreement relating to quantities of timber exported and details of sales.

Section 5D - The Licence was issued when an Appeal to the Customary Land Appeal Court was outstanding and the licence was not revoked once this was discovered.

Section 5E - Forestry Division (Conservator/Commissioner of Forest Resources) did not satisfy itself that the procedures under the Act were followed and at no stage seemed to recommend that the Premier of Malaita Province approve the Agreement with K Ltd. (Not that Premier would have paid much attention).

Section 5F - Stamp duty does not appear to have been paid on the Agreement.

(b) **STANDARD LOGGING LICENCE - OUT OF DATE AND INAPPROPRIATE.**

While investigating the negotiation and issue of K Ltd's. timber licence it became evident that the terms of the licence were not enforced and were out of date and inappropriate.

The Standard Logging Licence was drawn up some time before Independence and was devised for logging on Government land under supervision by Forestry Division.

Rather than re-print its entire length, much of which applies only to Government land (and is actually misleading until this is realised). Some of the more important terms are examined.

**Clause 1 - Protected Trees -**

This applies only to Government land unless written into the Landowners' Contract with the Company.

**Clause 2 - Boundary Disputes to be referred to Surveyor General -**

This can only apply to Government land, since Boundary disputes on Customary Land would be referred to the Local Court and the Customary Land Appeal Court.

**Clause 3 - Expiry of licence -**

(August 2001) This is inappropriate where the company is simply Logging 25 years is justifiable only where substantial replanting, management and re-cutting of trees is to be done by the company.

**Clause 4 - Stumpage payments** applies to Government land only.

**Clause 5 - Timber levies - "The Licensee shall pay to the Government all timber levies as may be payable ..."**

The Timber Levy Order 1970 under the Forests and Timber Act applies a Levy of up to 10 cents per cubic foot. This now seems to be treated as part of the export duty levied on Timber under the Customs and Excise Act, and is paid into the consolidated fund as general revenue. It is not particularly directed towards reafforestation programmes as was intended.

Customs duty is currently 17½ % - 20% *ad valorem* on timber exports.

Most timber is exported simply as round logs and the volume is calculated according to the formula known as the Brereton scale, and some Forestry Officers have been specially trained as Log Scalers and Graders.

However Forestry division no longer makes spot checks on log ships and no reports have been produced by Forestry Division of it checking at log ponds or wharves. The single junior customs officer who is put on board log ships while loading is not trained to use the Brereton scale nor in identifying tree species even if he had the determination and vigilance to try and check what was being loaded. The work is regarded as "too dangerous" by Customs Officers.

Logs may be exported from Solomon Islands simply as "mixed reds" or "mixed whites" which could include the most valuable species. Their value for "ad valorem" duty calculations could only be an estimate.

In practice the Government and landowners are obliged to rely entirely on what the company tells them about the volume of timber cut and exported and its value.

Where logging companies sell to an associated company outside Solomon Islands (rather than an independent company or broker) there is no guarantee that the price received by the company in Solomon Islands reflects the true value of the timber. The associated company makes a profit overseas and the Solomon Islands company appears to make none. Many Solomon Islands timber trees are endemic species found only in Solomon Islands, they are good timber, but it is hard to compare prices with more well known species from other parts of the world. So far no-one has been able to provide Customs Division, Forestry Division or this office with a list of open market values for the various kinds of timber exported from Solomon Islands.

We just have to accept what the Company says, and the paltry Royalties paid to the landowners are hard to challenge.

Clause 7 - **Payment of Conservator's monthly Accounts** - Since Timber levies now form Part of Export duties, collected by Customs division of Ministry of Finance, this clause now appears to be redundant.

Clause 8 - **Except with prior written permission of the Conservator, the licence shall not in any Calendar year fell more than the quota stipulated within the licence."**

As far as this Office is aware, the only records provided by the Company to the Government are the Log shipment Tally sheets, and the Customs declarations which relate to Timber exported and not to timber felled. These are most closely guarded documents and have not been disclosed even to this office. Where timber is felled and wasted (for instance poor felling techniques result in trees breaking up on hitting the ground, or where logs are simply abandoned in the bush or at log ponds) - it is unaccounted for. Neither the landowners nor the government are paid, and unless someone checks on the Company's operations, no-one knows how much is wasted.

Immediately the Company started operations in West Kwaio, the Landowners realised this would be a problem and begged Forestry Division for an officer to help them control the Company's operations. None other than "Mr A", the President of the West Kwaio Area Council applied for the job, but the Forestry Division simply replied that they were short staffed and could not provide any one. No advice was given either. There was, and still is only one Forestry officer, in-charge of reafforestation (This presumably relates to a small pilot project funded by New Zealand Aid), but there is no officer for timber utilisation, or control.

When a team from the Ministry of Natural Resources and Ministry of Agriculture attempted to visit K Ltd's. operations on 23rd July 1987, their road was blocked and they were threatened by one of the K Ltd's expatriate workers. Forestry Division complained and a weak apology was given by the Company but no action was taken by the Government Law Officers and when interviewed in May 1988 the police in Auki claimed to know nothing about it.

A Forestry officer who is said to have inspected the operations in 1988 has never been available for interview and his reports are withheld by the Forestry Division.

Clause 6 - **Bank Guarantee for moneys owned to SIG.**

**"The Licensee shall lodge with the Government a guarantee by the ANZ Bank Ltd in the sum of (\$50,000) for payment to the Government for sums due under the terms of this licence".**

The Licence clearly states that the Company must lodge a guarantee from the ANZ bank for \$50,000 to secure payment of stumpage, timber levy etc. to the Government.

Forestry Division tried to insist on this important guarantee - in May 1986 the company (along with others) owned money for outstanding customs duties and was set a time limit to pay. In August 1986 the company assured Forestry Division that its commercial bank would provide the guarantee.

However neither ANZ Bank nor NBSI was prepared to do this - no doubt for sound commercial reasons - and Forestry Division were obliged to accept (under pressure from certain landowners and politicians) a guarantee dated 1st. June, 1987 from the Hongkong and Shanghai Bank - for one month only. This of course was useless as security for future debts, but one it had been accepted and K Ltd given the go ahead to log Forestry Division was in a difficult position.

The Hong Kong bank did not renew the guarantee and Forestry Division were left to rely on a "guarantee" from "B Ltd." B Ltd is or was a small family company. According to the last annual return filed with the Registrar of Companies covering the period up to 17 September 1985, it had a share capital of just \$25,000 and faced court proceedings in 1984 for not filing income tax returns. It is an exempt private company and does not have to file accounts, but its assets are probably limited to couple of elderly vehicles and a portable sawmill.

Clearly B Ltd is in no position to guarantee anyone \$50,000 and Forestry Division should not have accepted it's guarantee, especially in view of its close connection with the sawmilling side of the company's operations.

- Clause 8      (i) **"Volume of regular logs per annum to be felled (16,500m<sup>3</sup> crossed out) 50,000m<sup>3</sup> (inserted and initialled by Chief Forestry Officer)".**

The reason for the change in figures has never been disclosed.

From the previous paragraphs it can be seen that neither Forestry Division, Customs Division nor the landowners themselves (unskilled in the Brereton method of scaling and grading logs) have any hope of checking on this quota - which is far too much for the resources available.

- (ii) **"Annual Quota can be carried forward"** - the above comment applies.

- (iii) **"Super Small Logs (30 cm radius and not less than 6m long) will not be included in the quota provided that the company make every endeavour to find markets where possible."**

Super small logs represent young trees which should be reserved for future timber and maintaining ground cover, to enable some kind of forest regeneration and to prevent soil erosion. The fact that they are being felled indicates either clear-felling or careless logging techniques which should not be used except where the land is to be immediately re-planted (which it is not). This provision of the licence, has been contradicted by a Forestry Division Circular in 1986 and by "special condition number 5" appended to this licence, which says that selective logging methods, avoiding small trees, should be used.

However, without supervision and enforcement this will be ineffective.

- (iv) **"Utilisation, marketing and exporting timber will be determined by the Conservator and subject to amendment from time to time in accordance with changes in Forestry Policy."**

This, in theory allows Forestry Division to control the volume of timber exported as round logs or sawn locally.

**"Maximum permitted volume of round log exports**

(13,200m<sup>3</sup> per annum crossed out and) 40,000m<sup>3</sup> (inserted and initialled by Chief Forestry Officer.)"

**Maximum permitted volume of Sawn Timber/Veneer as can be produced from (3,300m<sup>3</sup> per annum - crossed out and) 10,000m<sup>3</sup> (inserted, initiated by C.F.O.)"**

Again, the adherence to these quotas depends on strict control by Forestry Division, which for inaccessible areas of the Provinces, is seldom available.

Note that the quota of timber sawn locally does not have to be sold locally. When the timber market is good, most of this goes overseas resulting in acute timber shortages on the domestic market, affecting house building schemes which then rely on imported products.

- Clause 9 - **"The Licensee shall work to a programme of exploitation of timber which has the prior approval in writing of the conservator -"**

(there then follow fairly detailed directions about felling, log extraction and grading techniques).

Forestry Division does insist on Companies providing a Logging Plan every year showing where it will be working and the roads, log ponds and other features, but again it is not clear what checks are made to ensure that the plan is followed nor what happens if the company deviates from its plan.

Correspondence on file at Malaita Province and Complaints made to Forestry Division indicate that K. Ltd crossed rivers and entered areas where it was not supposed to log without any investigation or intervention from Forestry Division or the Police.

- Clause 11 (9) **"The Licensee shall ensure that his working practices are safe and shall comply with such directions (if any) as may from time to time be given by the Commissioner of Labour for the prevention of accidents and securing safe working conditions for employees."**

On 5th December 1987 a Malaitan employee of K. Ltd. died as a result of head injuries caused by a falling tree. He was not wearing a safety helmet which would have saved his life. In the death inquiry (Ref 33/88 MC/32) the Principal Magistrate recommended:

**"The Logging industry in general and K. Ltd. in particular and the Commissioner of Labour should take urgent action as necessary to ensure strict compliance with safety standards. That no such system exists even after a fatality reveals an appalling complacency that makes it predictable that such tragedies will occur again...."**

Neither the Company itself (apart from Witnesses) nor the Commissioner of labour nor the Attorney General were represented at the Inquiry.

No further action had been taken by May, 1988.

- Clause 12 - **"The Licensee shall keep records of work carried out and of timber felled, Sawn, used sold or exported and of the value...."**

It is possible that such records are kept, but none have been sighted by this Office and their accuracy cannot be assessed.

- Clause 13 - **"The Licensee is required by the Conservator to erect and maintain a sawmill of such minimum capacity as may be required by the Conservator...."**

According to the Timber Control Officer who visited K Ltd's operation in West Kwaio it now has two portable mills - but only after considerable pressure from the Forestry Division.

One is the old broken down mill from "B. Ltd.", which was K's Guarantor under Clause 6 of the licence, which was moved from K Ltd's operations in West Guadalcanal. The other portable mill is working but does not appear to be fulfilling K's quota of sawn timber. The Forestry Officer hinted at legal action.

- Clause 14 - Relates only to building on Government land.

- Clause 15 - **Protected trees** - Canoe trees, ebony and trees used by people for food and building materials are protected, **but on Government land only.**

No protection or reservation of trees is provided for Customary land, and in Practice, trees used for traditional dug-out canoes are exported in large numbers as round logs. One should bear in mind that the people who live in and depend on the forest for traditional materials may not be the true **land owners** and in the case of K's licence in West Kwaio and Dorio they probably had very little to do with the proceedings at all.

**Clause 16 - The rights, and obligations conferred upon the Licensee - shall not be transferred or assigned to any other person without the prior written permission of the Conservator."**

There are a number of ways of avoiding this provision, such as the subcontract arrangement used by K Ltd. under "C. Ltd." in West Guadalcanal; or by Company reconstruction as performed in Makira. The first did not appear to have the written consent of Forestry Division (it was allowed to continue at the express direction of the Prime Minister after a direct approach by the Company) and the second appeared to be done without even the knowledge of the Chief Forestry Officer. Both could be controlled or prevented by re-drafting of this clause.

People, particularly those in rural areas do not appreciate the idea of a Limited Company with its own corporate identity, whether it is a Logging Company or holiday resort. They object to the way that a Limited Company can completely change its ownership and management but retain its contractual benefits. They may be prepared to make an agreement with a particular person or group that they know and trust, but object to this agreement being handed on to a completely different person or group under cover of a company takeover, re-organisation or change of management.

It is hard to justify to rural people the reality that the logging licence may be held by a company that has no money to pay its debts or personal injury compensation while another company is carrying on logging operations and making money, and bulldozers and other plant are held by yet another company and cannot be touched.

Neither the Logging Licence from the Government nor the Logging Agreements actually used by companies with customary land owners provide for these problems.

**Clause 17 - "In the event of suspension or cancellation of this licence.... (it) shall not absolve the licensee from the discharge of any duties or liabilities..."**

The same comments which apply to Clause 16 apply here too.

In addition, a company whose licence is suspended or cancelled will be in or soon have, financial difficulties and be unable to meet its liabilities unless a proper guarantee is provided.

In practice, K Ltd's licence, for its operations in Malaita has never been suspended. When the licence for its operations in West Guadalcanal was suspended on several occasions, the Company tended to ignore it, except on the particular day that a Forestry Officer made an inspection. In any event, direct political intervention seems to have ensured that Forestry Division was over-ridden and the licence quickly re-instated.

**Clause 18 - "Surrender of licence by the Licensee on six month's notice."**

In practice a logging licence is too valuable for any company to willingly surrender it. The licence is passed on or subcontracted.

**"The Licensee should study the Forest and Timber Ordinance 1969. Section 28 of the Ordinance empowers the Conservator to cancel or suspend this licence for contravention.**

**Section 29 of the Ordinance makes it clear that this licence does not and cannot convey any right to enter on non-Government land or to cut, fell and take away timber or construct roads or other works in or on these areas without Timber rights agreements with the owners."**

- This is an illustration of the age and unsuitability of the current form of Logging licence.

**FOOTNOTES** (These are specially typed conditions added by Forestry Division in an effort to up-date the standard licence).

**Special Condition "1.**

**Provisions of the Standard Logging Agreement as Gazetted under Legal Notice 10 of 1986 has the force of law and are enforceable".**

It has already been shown that the Company tried to use a completely different agreement with the L. Association (which Forestry Division made the company cancel) and that amendments to Clauses 31-34 in the "Official Agreement" of 14th July 1987 were permitted, which made monitoring of the commercial output impossible.

A number of complaints appear in Malaita Province files about breaches of the Standard Logging Agreement.

On 12th August, 1987, Malaita Province wrote to the Director of Public Prosecutions, saying that K. Ltd. was violating paragraphs 4, 5, 10, 11, 12, 13, 14, 16, 20, 21, 22, 23, and 35 of the Standard Logging Agreement and also section 4 (i), (d) of the Forests and Timber Act and was "patently violating the terms and conditions of its licence." The D.P.P's assistance was requested but none was given.

This Office has been unable to obtain any evidence of Forestry Division investigating these complaints.

**Special Condition "2.**

**No Logging operations to be carried out on areas where withdrawals have been made, no agreement has been signed and in areas in dispute. It is the responsibility of the Company to determine such areas and boundaries."**

Again, complaints have been received of the Company going outside its area, but if an investigation has been made, this office has not been made aware of its results, despite several requests.



**Special condition "3.**

**An adequate mill... must be established first before the actual logging starts."**

The date when the "B Ltd." portable mill was removed from West Guadalcanal and actually started working in Malaita is not clear, neither is the date when logging activities commenced.

**Special condition "4.**

**All Royalties, export duties and other monies due owing must be settled first before the next shipment is due."** (This has not been investigated).

**Special condition "5.**

**Selective Felling of 60cm DBH and an approved post logging development to follow eg fuel wood plantation as appropriate."**

This provision depends on enforcement by Forestry Division and the landowners. It is not unknown for foreign Companies to run into difficulties and cease operations before fulfilling post logging commitments.

**Special condition "6.**

**Any relevant legal regulations that are enforceable from time to time are also applicable."**

The suggestion that the National laws should also apply to a foreign logging company is indeed relevant.

**To summarise,** where Forestry Division has tried to enforce the terms of the Licence, the company has tried its best to evade them - and to a large extent has succeeded. Some conditions appear never to have been checked. The Forestry Division clearly suffered from lack of manpower, and low morale in this respect - and a great deal of political pressure to grant the licence and allow logging to start before the legal requirements had been fulfilled. After its recommendations against the issue of the licence were over-ridden, a certain reluctance to help sort out the problems afterwards is hardly surprising.

(c) **LANDOWNERS' LOGGING AGREEMENTS**

**CAN THE LANDOWNERS ENFORCE PROMISES BY THE COMPANY? -  
CAN THE GOVERNMENT HELP THEM?**

In August 1987, Forestry Division wrote to K. Ltd:

"It is now becoming a great concern amongst some landowning groups in West Kwaio that your company has been operating under two different agreements.

The first agreement following the standard logging Agreement made on 14th July 1986 was replaced by another agreement made on 23 February 1987 which somehow have involved the "L. Association."

Forestry Division would like the company as a matter of urgency to clarify the two agreements as soon as possible."

Forestry Division, thought that K. Ltd was trying to use two logging agreement each partially signed. The Association agreement may simply have been a belated attempt by some landowners to get better terms than the original July 1986 agreement, but it certainly caused confusion.

Of the Ten people whose names appear on the "Official Agreement" (only nine of them actually signed), four of them also signed the L. Association Agreement. Other signatories to the Association Agreement include the Member of Parliament for West Kwaio and a single member of the Dorio Area Council.

Note also that in the Form II certificates of customary ownership giving the names of 10 landowners of 25 different customary lands, only six of these 250 names appear on either the original logging agreement or the Lafa Association. At any rate, it is confusing as to what people and what lands are covered in the two agreements.

**Important Provisions of the standard logging agreement missed out**

After the first page, The "Official" Logging Agreement of 14th July 1986 almost follows the Standard Logging Agreement which, the company agreed to use under the terms of its licence.

However, clauses 31 - 34 dealing with royalties and monthly statements, sales and methods of payment omit important provisions requiring the logging company to: disclose production and sales figures; give details of F.O.B. prices of logs; give log species and grades; and to give landowners receipts for their royalties showing for what timber they are being paid.

These particular terms are **not** negotiable, and missing them out means simply that the landowners have no idea what timber is taken, and whether they are being paid correctly. This is obviously convenient for the company. Royalty is a flat \$6 per cubic metre of timber, regardless of the value of species. However, the terms offered to the Company by the L. Association on 17th December, 1986 bear no relation whatsoever to the Standard Logging Agreement. In some ways it is more practical proposal, demanding higher royalties, and immediate direct benefits of schools, buildings and roads to the people. These are things they can see, rather than protection of their land for the future and/or the people who depend on it (these people may not be the actual landowners who receive the royalties) but it shows a sad trust in the goodwill of the company - having no provision for enforcement or termination if promises are broken, and no method of checking that the company is paying them correctly. The pathetic request for royalties of

"Large - \$12.00 per cubic metre  
Medium- \$11.00 " " "  
Small - \$9.00 " " " "

Shows even most clearly that the Association had no idea of how timber is measured (large cubic metres?) nor what makes some of it more valuable than other. (Note that quality hardwood probably/fetched over \$100 - US per cubic metre) but no figures have been available).

Note also that the figure of SI\$80 per m<sup>3</sup> as average price for Solomon Islands logs given in Forestry Division annual report for 1986 was based on figures provided by the Logging companies themselves.

In any case, it appears that by mid 1987 the Association had been beaten down to accept the same royalty of \$6.00 per cubic metre. On 14 September under pressure from Forestry Division, K. Ltd. announced that "we now have consent to cancel the agreement with L. Association as it conflicts with the Standard Logging Agreement signed on 14th July, 1986".

The end result of these different agreements is that no-one really knows what has been agreed and what promises can be enforced. It would be very difficult for even the Public Solicitor or any experienced lawyer to help these people in a dispute with the company, who are expecting to have roads and houses built in return for their timber.

It is also very difficult for Forestry Division to enforce the terms of the Logging Licence if the local leaders think they can do better by going outside the terms of the Standard Logging Agreement and then their people get 'caught out' later on.

#### 4. THE LEADERSHIP CODE - STILL NOT IN OPERATION

The Ombudsman had referred the 1985 Committee for the Sale of Government Houses, the Acting Commissioner of Lands and the Acting Registrar of Titles to the Leadership Code Commission. The Ombudsman also advises people with complaints against public officers and leaders to go to the Leadership Code Commission, where appropriate, (such as complaints: 238/5/87; 328/7/87; 83/10/87; 160/1/88; and 391/6/88). However the Commission is still not functioning.

The Leadership Code is an anti-corruption law set up in the National Constitution in 1978. It provides for standards of conduct among National Leaders; for the avoidance of conflicts of private and public interests and it provides for the criminal offences of Misconduct in Office.

The Constitution does not prescribe who should administer the Leadership Code and it has always been the view of this office that this could be done by the Ombudsman.

In 1979, the Leadership Code (Further Provisions) Act was passed, creating the Leadership Code Commission. The Act also: provided for disclosure of Leaders' business and financial interests; specified offences of Misconduct in Office; and set out enforcement procedures and penalties which could be imposed by the Commission. The Commission was also given power to refer cases to the Director of Public Prosecutions for criminal prosecution. However, no Commissioners were appointed for 6 years.

Unfortunately, the existence of the Code and the possibility of the Commission seems to have inhibited the police and the Government Law Officers from taking prosecutions under the Leadership Code or even under overlapping sections of the Penal Code, such as: Official Corruption (s.85); Public Officers Receiving property to show favour (s.87). Abuse of Office (s.90); and Corrupt Practices (s.367).

In early 1986, the first 3 Commission members were appointed. They met three times but were faced with practical problems of no office, no staff and no administrative backup. In July 1986, the Chairman had to resign from the Commission in order to take up his office as Ombudsman and fresh appointments were not made until early 1987.

The Leadership Code (Further Provisions) Act 1979 was amended with effect from April 1987, giving the Commission a Secretary with his own powers of investigation. The Secretary was appointed in late 1987. Even this does not seem to have brought the Commission into action. The Secretary believed that he was answerable directly to Secretary to Cabinet and the Prime Minister, rather than his independent Commission Members and his administrative and office accommodation arrangements made it hard for him to be confidential and independent of all leaders. He now has his own typist and filing system so these problems are somewhat alleviated.

The appointment of the two 1987 Commissioners from distant Provinces, whilst a good idea in theory, means that in practice, it is very hard for the Commission to meet.

The Secretary sought and received advice from this office and practices and procedures were suggested to him. Unfortunately it came to light that the 1979 Act is defective in that it omits to prescribe an oath for Commission members to swear as required by section 4(2) of the same Act. The original three members overcame this difficulty by swearing the Oath of Allegiance and an adapted oath of secrecy taken from the Official Oaths Act 1978. The Official Oaths Act also says that oaths may be sworn before the Governor General or the Chief Justice and that:

“failure of a person to take and subscribe an oath..... before entering upon the functions of this office does not render invalid any function exercised or performed by him in the purported exercise of his office.....”

None the less it is understood that the members and Chairman of the Leadership Code Commission were advised, when summoned for their first meeting in February 1987, that it would be illegal for them to do any business unless they had taken their oath, and this could not be arranged in the time available. By mid March the two Commission Members from the Provinces had gone home, still without having been sworn in.

At the date of writing, the two original Commissioners' appointments have expired and the Commission is now left with just two members, who, have still not been sworn in and have never been able to do any business.

There have also been a number of legal arguments recently about how the Commission should conduct its investigations, what evidence it can receive and at what stage it can refer to the Director of Public Prosecutions and whether he can give the Commission advice at any stage.

Meanwhile, the Secretary to the Leadership Code Commission may well be diligently investigating complaints brought to him and reporting the results to some authority, but the Commission's decision making and judicial-type functions have not, and cannot be delegated to him or anyone else, so, he cannot decide whether a conflict of interest is acceptable or misconduct in office has taken place; he cannot direct that ill gotten gains be disposed of, or (according to some authorities) that cases be referred to the Director of Public Prosecutions.

5. **REVIEW OF THE CONSTITUTION - OMBUDSMAN'S OFFICE AND OTHER "CHECKS & BALANCES".**

a). **INTRODUCTION:**

The Original Constitution of Solomon Islands was made in 1974 while the Country was still a Protectorate. The next year a National Constitution Committee was set up by the Legislative Assembly and chaired by Sir Fred Osifelo, it took written and oral submissions, divided into Sub-Committees and extensively toured the whole of Solomon Islands.

In April 1976 it reported back to the Legislative Assembly, and in September 1977 at the Constitutional Conference in London, two thirds of the Legislative Assembly and few advisers went through the Chapters of the 1974 Constitution to determine the principles to be embodied as a new Constitution for an Independent Solomon Islands. In 1978 the "Solomon Islands Act 1978" was passed under British Law, with the 1978 Constitution of Solomon Islands as subsidiary legislation. The fact that it is still printed as part of English legislation unfortunately disguises the reality that it is the Solomon Islands supreme Law made effectively by the Solomon Islands Legislative Assembly of the day.

The present Government decided it was timely to review the situation and, ideally to have a New Constitution by the 10th Anniversary of Independence on 7th July 1988, which reflected the current views and aspirations of the people of Solomon Islands.

An all party Constitutional Review Committee (which will be shortened to "CRC" in this report) was set up in early 1987 to review the 1978 Constitution chapter by chapter and submit its findings to the Government by 31st July 1987.

As with the 1975 Committee, the CRC took oral and written submissions both in Honiara, the Provincial Centres and the rural areas.

This office made the following written submission on 24th March 1987:

b) **OMBUDSMAN'S SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMITTEE.**

"The first question to be asked is anything wrong with the present Constitution that requires a major review? In my humble view the answer is that there is no need for a major review of the present Constitution. There may from time to time be minor amendments that are necessary, but it is considered quite unnecessary to carry out a major review. It must be kept at the back of our minds that even Britain who colonized most parts of the World does not even have a written Constitution, but it grew out of convention over many hundreds of years. It is also important to have at the back of our minds, that no matter how neat and perfect a constitution or written rules we produce, if our people and leaders do not respect and implement it, it is worth nothing.

What I would like to say here, is that we should attune our minds and energies as leaders on matters that will uplift our people, such as social services and economic developments etc., in rural areas. I am afraid that what is happening now is that we shut up our top people at Kalala House arguing matters that are irrelevant to the majority of our people.

After saying the above, I would like briefly to comment on certain matters:-

(a) Basic Human Rights: Chapter II should general be left alone as it was written with the United Nations Universal Declaration on Human Rights etc. in mind, but section 11(3) should not allow religious teachers the freedom to come and work without getting permits in the normal way. Also there should be a proviso allowing the Government to screen new "religions" which may be phoney or immoral or racist.

(b) Guidelines set down by Amnesty International should be kept in mind:

- Right to legal representation; and
- Right to fair trial; and
- Right to humane treatment by Police & Prisons; and
- One Law for everyone - Politicians included.

(c) Constitutional Offices, such as Judges, the Ombudsman, Law Officers, and members of Commissions should not become political appointees trying to "keep on the right side" of who ever is in power, but in order to stop unsuitable or incompetent Constitutional Officers being "stuck" in a job for life, the term of the office should be at least 5 years in order to survive constitutional crisis and changes of government.

I would be more than happy to discuss these matters with the Committee verbally." (The Ombudsman was not invited to meet the Committee).

In the light of this submission, the Ombudsman was concerned to see what changes were proposed, particularly in the context of checks and balances on the arbitrary use of power by Government Leaders and Officials, and human rights generally. (There is no other government agency dealing with human rights in Solomon Islands unless one considers the Public Solicitor's office in the Ministry of Police and Justice).

#### **c) REPORT OF THE CONSTITUTIONAL REVIEW COMMITTEE -**

The CRC finally reported in early 1988 - which considering their enormous task was not unreasonable. Its recommendations propose a choice of two quite different new Constitutions, which are commented on separately here.

**The second alternative proposes:**

“that Solomon Islands becomes a Unitary Republic whose Head of State shall be an indigenous Ceremonial President; that the Legislature be bicameral; with an elected House of Representatives as the Lower House and a Senate as the Upper House comprising persons appointed by the President, the Prime Minister; the Leader of the Opposition and Provinces.

Provision would be made for Customary ownership of mineral rights and compulsory acquisition ownership of land by government or others would be prohibited.

There would be greater devolution of power to the Provinces and a more important role for traditional leaders”.

Of interest to the Ombudsman among the detailed proposals were that:

**The Ombudsman be given more power;** including the administration of the Leadership Code. This is what the office has been seeking for some time and appears to be what people want according to the evidence published by the CRC) and that:

**The Public Solicitors Office be abolished.** Complaints against the Government could be handled more effectively by the Ombudsman, but people who had no resources to pay for private lawyers would be left helpless in defending their personal rights in the criminal courts and most importantly in civil matters, for instance against foreign Companies and other persons who were better off.

**The First Proposal** made by the CRC was much more radical and idealistic.

There would be an Executive President with power to appoint public officers, the Prime Minister and Ministers and vested power to safeguard the position of indigenous Solomon Islanders. and

“The Solomon Islands would become a Federal Republic in which:

- (a) there would be a democratic union of states having equal status under a Federal Constitution;
- (b) a limited number of states would be enshrined in the (Federal) Constitution; and
- (c) The Federal Constitution would empower each state to draw up its own Constitution, and have its own Legal System, Public Service, Consolidated fund (etc)”.

Despite this large increase in the Machinery of state or micro-states and the greater power of Federal and State Leaders, this Constitution proposes the removal of all existing checks and balances on the misuse of power by the Executive and Administration without proposing any alternatives.



d) **CHECKS AND BALANCES TO BE ABOLISHED BY FIRST PROPOSED NEW CONSTITUTION.**

- : **The Director of Public Prosecutions and the Public Solicitor's Office** to be abolished and their "functions be taken over by private lawyers practice and States Courts".
- : **The Ombudsman** "is not necessary in the proposed Constitution and therefore...is deleted".
- : **Separate Commissions** for appointment of Public Officers, Judges & Legal Officers; Police & Prison Officers - would be abolished and only one Federal Service Commission would remain. States could decide for themselves.
- : **Members of Parliament** would have to serve a 12 months prison sentence before being disqualified ( at present it is 6 months), the Attorney General, Speaker and Deputy Speaker would have to be elected MPs.

Needless to say, this office is unhappy about these proposals to remove legal checks and balances on the misuse of official power. Traditional checks and balances cannot replace them either.

Accordingly the CRC's proposals and Evidence were analysed and compared to opinions expressed by people to the Ombudsman, to see how far these proposals reflected the needs, aspirations and wishes of Solomon Islands people.

e) **LIMITATIONS OF THE CONSTITUTIONAL REVIEW COMMITTEE.**

The CRC's report is quite frank in facing up to its limitations as to its membership, areas visited and problems with advance preparation.

**Membership**

The CRC admits that it is composed mainly of Politicians. Of the Chairman and 8 other members, 6 are currently national MPs, one is a former MP and now a businessman, one is a Church Leader and the other a professional woman in the Public Service. It is not always clear who wrote the tour reports and other papers - neither the professional woman nor the Church leader put their names to a report - and at large public meetings where many different views are expressed, the interpretation of the report writer is significant.

**Areas Unvisited**

The CRC planned to visit all areas of the Country and 14 visits were carried out. The CRC admits that further 6 visits were either not made or not reported. Whether people's views from these areas were considered is unclear.

Some areas were well covered: Malaita, parts of Guadalcanal, & Western Province, Isabel and Ulawa, but complaints were received by the Ombudsman's Office that the CRC did not visit some areas, for instance Savo Island (CF 253/2/88) and Wagina (188/2/88). Members of the Rennell, Bellona Community appeared to have confused the CRC's visit with that of the Provincial Government Review Committee.

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On analysis of the CRC's evidence it appeared that apart from Tikopia and Anuta, none of the outlying Polynesian Communities' views were reported - that is: Rennell, Bellona, Reefs and Duff Islands and Malaita Outer Islands; nor the important ethnic population centres of Wagina, Gizo and Shortlands. Large parts of Makira and Guadalcanal received no visit, nor did the large islands of Rendova and Tetepari in Western Province. Vella La Vella and Kolombangara had one meeting only, which was poorly attended.

### **Advance Preparation and Discussion Time**

The CRC was expected to do its work in a very short time considering the difficulties of advance communication and briefing rural communities in what the present Constitution says. The impression gained from the CRC's report and touring done by the Ombudsman's Office, is that this is a major problem of education. (for instance Complaint No: 255/2/88).

Another difficulty is the unpredictability of weather and transport, which cannot always be arranged to allow visitors to arrive at a particular place at a prearranged date and time, with the result that meetings may be poorly attended.

The Ombudsman's Office is well aware of these problems which face all touring officers. However, for a matter of great national importance such as the review of the Constitution time should be allowed so these problems can be overcome.

One of the complaints reaching this Office about the CRC was that, apart from inadequate explanation of the existing Constitution, little time was allowed for discussion from Guadalcanal among people and their traditional leaders once the CRC arrived (Complaint No. 345/5/88). Had more time been allowed, some communities would probably have come up with more considered views which reflected a consensus rather than individuals' conflicting views. However from the CRC's evidence it appears that some areas, such as Tikopia and Anuta were very well served in this respect.

### **Biased Questionnaire**

Had the "working questionnaire", used by the CRC (See the 'background papers' volume of the CRC's Report) been phrased without bias, answers would probably have been different and better reflect the people's views on the subject, if any. For instance, a question as:

"Should a naturalised citizen of Solomon Islands be deported if he commits an offence or behaves in a manner offensive to the Solomon Islands Community".

Without explanation of the wider issues involved is bound to provoke answers such as:

"There must be a system of citizen classification in accordance with the indigenous country of origin, with indigenous Solomon Islanders as first class citizens, the rest as non Solomon Islanders. (The reason given being Fiji's recent Military Coup)" and other move extreme submissions which we would rather not repeat.

Even a straight forward question such as:

"Is the right of freedom of movement still applicable and relevant in Solomon Islands today?".

When asked without considering the consequences and alternatives, provided answers such as:

“Freedom of movement should be severely curtailed and a proper system of control set up by Provincial Authorities. Only people with genuine reasons should be allowed to move about within the Country”.

People must be unaware of the unpopularity of such laws in other Countries. (eg. South African ‘pass laws’).

Finally what is one to assume when people do not reply to the question? Are they happy with the existing constitution?

**f) ANALYSIS OF PUBLISHED VIEWS OF CHECKS AND BALANCES ON OFFICIAL POWER**

The questions regarding the bodies involved in monitoring and control of the use of official power were particularly biased: - however the published responses are interesting:

**The Public Solicitor**

**Question** “What are your views on the post of the Public Solicitor (who provides legal services to people breaking the criminal laws of Solomon Islands)”.

**Answers** Only one person expressed the clear view that this office should be abolished. One community wanted to revoke the entire Constitution, and another community said

“it should be provided in the Constitution that anyone accused of murder should **not** be defended by the Public Solicitor’s Office”.

All other submissions were favour of the Office continuing or passed over this question.

**Comment:** People who express their views to the Ombudsman, especially those from rural areas, are very unhappy at the proposal to abolish the Public Solicitors’ Office, and the idea that they should be expected to pay for private lawyers. One community considered the alternative (and rejected it) of a Legal Aid scheme where private lawyers would be subsidised by Government to give free help to poor people. These people said that private lawyers would still favour their “paying clients” and realised that the administration of such a scheme might be unfair and cost the government as much as the Public Solicitor’s Office.

The Public Solicitor's Office does other work apart from defending "guilty" police suspects. It is the only office where rural people, living in a non-cash economy can go for advice on their legal rights, duties and commitments - For instance advice on contracts with foreign logging Companies and the problems which follow.

When public solicitor's branch offices close temporarily, such as in Gizo, Makira and recently Auki due to staff shortages, people complain: (for instance complaint number 436/6/88).

### **Leadership Code Commission**

**Question** "Should leaders of our country be subject to a separate set of rules or laws in the performance of their public duties and responsibilities, - and if they break any such laws and rules, how should they be punished?"

**Answers** A small number of the written submissions wanted the Leadership Code abolished and a few others seemed to imply this.

Where people in the provinces made submissions that the Leadership Code should be changed, they said it should be strengthened and enforced, some added that if this was not done, it may as well be abolished - which is a fair comment.

**Comment** The impression gained at this office is that most people resent leaders who are able to take advantage of their positions free from traditional restraints and duties and apparently also without redress from the "written law".

### **The Ombudsman's Office**

**Question** "How important and relevant is the post of Ombudsman - and in the Light of performance so far, is there a need for the post to be given further powers".

**Answers** Six individual submissions advocated the unconditional abolition of the Ombudsman's Office, apart from the community that wanted to scrap the entire Constitution and the good people of one island who thought that the office was "only for the benefit of public servants".

Only two of these submissions suggested alternatives to the Ombudsman, namely the Public Solicitor and a human rights watch dog body.

A number of other submissions, particularly from Isabel and parts of Western Province felt that the Ombudsman's Office had "no teeth" and that it should be "given more power" or be combined with the Leadership Code Commission.

**Comment** If this is what people want, it is also what the Ombudsman has been trying to achieve for some time.

Other submissions said that unless the office was given more power it should not be retained. This is, regrettably a fair comment, but it is hoped that when the Ombudsman's touring programme allows a visit to these areas, they will become aware of what he can do at present.

## 6. NATIONAL PROVIDENT FUND ACT

### a) UNFAIR ON OLDER CONTRIBUTORS?

Complaint number 335/5/88 and others

The National Provident Fund was created as a Statutory Authority in 1976. Its purpose was to replace pensions with a lump sum paid to an employee when he had finished his working life at 40 or 50 years of age.

Contributions are paid partly by the employer and partly by the employee and, after the first year these contributions start earning interest at rates comparable with a commercial bank passbook account. (reference File OMB 8/7/2). There is also a small "death benefit" payable when a contributor dies.

A number of complaints came to this office from people who had tried to withdraw their NPF contributions early because they wanted the money to build a house, start a business or buy a car. (Presumably they are confident that their families will look after them in their old age). There was a temptation for people to overstate their age or medical unfitness for work in order to get their NPF money before the age of 40 or 50. The situation was improved when the NPF Amendment Act of 1982 allowed contributors to pledge up to  $\frac{2}{3}$  of their contributions as a guarantee for a bank loan.

Some complaints came from older people who had reached the age of 40, and withdrawn their contributions. They then continued work or took another job and more contributions were paid.

The National Provident Fund Act says that if a person withdraws his contributions at age 40 to 49 he must wait 10 years before withdrawing any subsequent contributions. This means that a man who withdraws at age 49 must wait until he is 59 before withdrawing a second time. However a man who made his first withdrawal at age 50, is allowed to withdraw a second time at age 55.

Complainant number 335/5/88 who had first withdrawn at age 47 felt it was unfair that he should have to wait until he was 57 for a second withdrawal. Other people made similar complaints. This would require a small amendment to the NPF Act.

The NPF Act was amended again this year and the Amendment which came into effect on 6th June 1988, allows, by section 2(e) an employee to withdraw his contribution if he has:

"..... Ceased employment for reasons other than resignation".

There is no restriction on his age or the number of times he can do this.

On the basis of this amendment, the Complainant and others were advised that they could now go and get their NPF money. Unfortunately for a number of people, The National Provident Fund has tried to restrict withdrawals to people who have been made redundant through no wish or action of their own. This was apparently the original idea behind the 1988 amendment.

The administration of the Act 1988 Amendment to the NPF Act has brought a number of fresh complaints to the Ombudsman which are now being investigated.

**b) N.P.F. CONTRIBUTIONS FORGOTTEN BY MINISTRY**

Complaint Number 265/5/87

The Complainant contacted one of the Ombudsman's staff on tour in a provincial outstation.

He had worked for 12 months with a Government Commission collecting information in his area. Employee's National Provident Fund (NPF) Contributions had been deducted from his fortnightly pay, but when he had received his NPF statement nothing had been credited to his NPF account.

Investigation of the Government department responsible for paying the complainant, showed that the complainant and a number of other temporary workers had never been registered with the Fund. Although their contributions had been paid in, they were held in a suspense account and were not earning interest. Their personal records at the Government Department had been lost but enquiries through people who knew them at the Commission were made, and through this office each worker was eventually contacted and helped to register with NPF.

Had the Ombudsman's Office not able to help these people they might never have known what had happened until it was too late to rectify the situation.

## 7. SOLOMON ISLANDS COLLEGE OF HIGHER EDUCATION

### a) GENERAL

Again, a number of complaints have been made to the Ombudsman by staff at the Solomon Islands College of Higher Education SICHE., two of which are reported in detail.

SICHE is a Statutory Authority created in 1984 from the Solomon Islands Teachers' College (SITC) and other government institutions. Staff from SITC had been under the control of the Ministry of Education, and staff appointments, discipline and dismissal were made by the Public Service Commission.

In 1982, the National Constitution was amended to create the Teaching Service Commission, which is now supposed to make appointments and remove and exercise control over teachers, including those in tertiary education.

In practice, however, the Teaching Service Commission has never functioned properly except for a brief period last year, see item on teachers problems in this report. It receives little support from the Ministry of Education and its decisions have been taken by the Public Service Commission or administratively by officers in the Ministry.

When the College of Higher Education Act was passed in 1984, creating SICHE, academic staff were given the choice to stay under Public Service/Teaching Service Commission (seconded to SICHE) or to be direct employees of SICHE.

A number of teachers, particularly those recruited by the Ministry of Public Service under the OSAS aid scheme chose to remain with the Public Service, as do their successors. Two Bills have been introduced to Parliament to amend the Constitution and remove SICHE teachers from the jurisdiction of the Teaching Service Commission, but neither has been passed.

The College Authorities appear to find the situation inconvenient and incompatible with the independent status of SICHE and in practice there is an unhappy conflict between the Director's practical control of staff through the College "Statutes" and Council, and the Public Service and Teaching Commission's theoretical, and legal powers of control.

SICHE internal "Statutes" give the Director almost complete control over staff discipline, which arguably is necessary for the proper running of the College and an improvement on the situation when all SITC's Staff were subject to cumbersome Public Service procedures. SICHE Staff are "deemed to have committed a breach of discipline" if they break College Statutes rules etc. and may be dismissed by the Director. The member of staff has 14 days to appeal to College Council, but if it is "not possible for Council to meet within 28 days..... the Executive Committee of Council shall be convened to deal with the matter"

Of the two cases reported here, the first shows the conflict between the College disciplinary procedures and the Teaching Service Commission, the second case casts doubt on the reality of an appeal from the Director's decision - even a decision which, in the opinion of the Ombudsman was unfair.



Another case is still being considered by the Ombudsman.

SICHE is the only major Institute of Tertiary Education in Solomon Islands on which the nation depends for its future supply of teachers, accountants, nurses, engineers and technicians. Its land and buildings and other property came from the government and it is still mostly funded by a Central Government Grant, with comparatively small contributions from overseas aid donors and internally generated revenue.

**b) SOLOMON ISLANDS COLLEGE OF HIGHER EDUCATION (SICHE) AGAINST THE NATIONAL CONSTITUTION**

Complaint Number 28/8/87

The College of Higher Education Act 1984 as amended in 1987 conflicts with the Constitution of Solomon Islands.

Section 116B of the Constitution says that

"Power to make appointments (of teachers in primary secondary schools and institutes of tertiary education)... and to remove and to exercise control over persons holding or acting in such offices is vested in the Teaching Service Commission"

This power has never been delegated to the Solomon Islands College of Higher Education under s116B(2).

The College of Higher Education Act 1984 says that appointments, discipline and dismissal can be done by the College authorities, but it is an established principle of Constitutional Law in Solomon Islands and elsewhere that in these circumstances, the Constitution prevails as it is the Supreme Law. Unsuccessful attempts have been made to pass an amendment repealing s116B. Last time the required notice for a Bill to amend the Constitution had not been given. Perhaps in view of the amount by which Solomon Islands Government still subsidises SICHE by way of an annual grant it is not unreasonable that some control is retained. (Based on figures for 1985 - 1987 the Solomon Islands Government grant has been about 80% of SICHE total income. Last year it amounted to \$2,828,600). However, the Director and the College Council refuse to accept this and continue to ignore the Teaching Service Commission, which as we have been earlier mentioned is also neglected by the Ministry of Education and Training.

This Lecturer was unfortunate and faced disciplinary action by both the College Staff - disciplinary Committee - which "advised him to cease" (his activities) and, one month later again by the Teaching Service Commission, which suspended him for two months.

He complained to the Ombudsman. Certainly a person should not be "tried twice for the same offence" but in view of the fact that he had suffered no adverse consequences from the College inquiry; and the College was not the correct body to have the final say in the matter anyway, it was decided not to interfere with the decision of the Teaching Service Commission or undermine its authority any further.

**c) UNFAIR TREATMENT OF COLLEGE STAFF MEMBER**

Complaint Number 139/12/87

The complainant, an administrator at SICHE was allocated a SICHE staff house in 1984. Notwithstanding his then position as Secretary of the Staff Housing Allocation Committee, he was entitled to the house according to the points system used by the Committee and he had paid the correct rent and observed the other terms of his occupancy.

In December 1987, a new Australian aid-sponsored lecturer arrived at the College, he had evidently been promised that a good standard house would be ready for him on arrival in Solomon Islands. Unfortunately the house proposed for him was not finished or furnished properly and was generally of a lower standard than he was prepared to accept under his contract.

Afraid that the new Lecturer might go home in disgust, the College Director and the Registrar ordered the complainant to give up his house "immediately" in exchange for the unfinished house. He was told this on the Monday and asking for time to consider the situation the complainant made a written appeal to College Council. It should be noted that the complainant's wife was just about to have a baby at the time. The Chairman of the Council considered the appeal and wrote on the Wednesday:

"The urgency of the situation has unable me to call the meeting of Council to hear your appeal. I have therefore taken it upon myself to decide your case. I hold the Director's decision is reasonable on the following grounds."

The main ground was the importance of the work which the new lecturer was to perform but also that:

"The College will lose its reputation from the Aid Agency" and  
"The officer responsible for housing (presumably he meant Estate Manager responsible for getting the new house finished and furnished) is not doing his work and needs to be investigated and reprimand if possible".

The quorum of College Council is half the number of currently appointed Council members, plus one (see section 12(3) of the College of Higher Education Act 1984). Unfortunately the Chairman, despite requests has not commented on the circumstances surrounding this appeal. The complainant received the rejection of his appeal on Thursday, with another letter from the Registrar - giving him a mere 4 days' notice to quit. That afternoon he complained to the Ombudsman.

It was pointed out to the Registrar (the Director being away) that the notice to quit was not made according to the College Statutes nor by the correct Committee, and apart from being unreasonable in the context of the complainant's contract of employment, it was illegal under the Land and Titles Act.

The Registrar relented and allowed the complainant one month's notice - back dated to the original oral notification and stated that the complainant was "happy to move" The complainant denied ever speaking to the Registrar at all.

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The Registrar relented and allowed the complainant one month's notice - back dated to the original oral notification and stated that the complainant was "happy to move" The complainant denied ever speaking to the Registrar at all.

In January, when he took his annual leave, the complainant did move house and his wife had her baby. Meanwhile the Australian lecturer had been found suitable alternative housing with the result that the complainant's house was left vacant for some time. The complainant and his young family faced a number of problems in the new house which was still neither properly finished nor furnished nor accessible by car.

After his return from leave the Director wrote to inform the complainant that:

"at a meeting with the Registrar and the Estate Manager, it has been decided that the College are no longer afford to have you at the post of (Administrator).

Your performance has become so poor that the College has not only gained a very bad reputation but has lost the confidence of a lot of staff"

The complainant was demoted to a junior acting position on the other college campus.

College disciplinary procedures effectively give complete power to the Director with right of appeal to the College Council, so the complainant and the College were advised of his rights as a citizen not to be unfairly dismissed. He was briefly re-instated but at this point the Ombudsman's Office lost contact with him. It is not known whether he resigned or was finally dismissed. Perhaps the difference is academic.

Ombudsman's Opinion: This was a Justified complaint and the action by the Statutory Authority was unfair and contrary to law).The result was not satisfactory.

Note It appears that the Complainant is one of a number of College staff both citizens and non-citizens who have suffered similar treatment, but whose cases have not been fully investigated. Non-citizens have effectively no rights under the Unfair Dismissal Act.

## **8. SOLOMON ISLANDS HOUSING AUTHORITY**

### **a) HOUSING SCHEME DELAYS**

Complaint number 242/5/87

It has been successive Governments' policy to try and improve the housing shortage and to encourage home ownership among Solomon Islanders in Honiara.

This Housing Scheme was financed by a Loan to the Government from Commonwealth Development Corporation (CDC) based in Fiji and an estate of about 300 houses was completed on Government Land near Honiara in 1983. The plan was for the Government to Transfer its Title in the Land to the Solomon Islands Housing Authority (SIHA) a Statutory Authority, which would administer sales to the public. People would be able to buy the houses from SIHA on mortgage which would be paid from their salaries.

Unfortunately the administration of the scheme was excessively delayed and by 1987, the tenants of these houses, who were paying rent had been unable to exercise their option to buy their houses because the Land was still held by the Government and had not been transferred to SIHA.

Case number (242/5/87 "unfair termination of Tenancy") reported below reflects the kind of problem which arose.

The Tenants' Association complained to the Ombudsman about the excessive delay and the high prices being asked for the scheme houses which had not been finished properly, had not been maintained and were more expensive than similar houses erected by SIHA outside of the scheme which were of better design and construction.

On investigation it transpired that the original loan agreement between the Government and CDC could not be found, but eventually the Ombudsman managed to trace a copy in the Ministry of Finance. The Attorney General was then able to draw up the agreement and transfer document between the Commissioner of Lands and Solomon Islands Housing Authority.

An agreement was finally signed between the Government and SIHA in December 1987 and subdivision and transfer for the individual tenants went ahead.

Arguments about the price of these houses continue. It is a sad fact that even if sold at the original 1983 valuation, a number of tenants simply do not have a high enough income to buy them.

### **b) UNFAIR TERMINATION OF TENANCY**

Case number 283/6/87

The complainant was a marine engineer who, from August 1984 rented a house in Honiara from SIHA (Solomon Islands Housing Authority). He lived in the house with his wife, his children, his niece and her family, sharing expenses. The house was part of an aid scheme whereby tenants would buy their houses on mortgage as soon as SIHA was able to complete the transfer of the land from Solomon Islands Government and other formalities. Unfortunately this has taken several years and the delay has been the subject of a separate Ombudsman's investigation reported above.

In September 1986, the complainant was made redundant from Marine Division MTWU, but he was lucky enough to find other employment as a seagoing engineer with a private company in November. He had taken his wife and children back to their home island for a holiday, where they remained until after Christmas.

The new job kept him away from Honiara for long periods of time - for instance he spent Christmas on ship in Temotu Province - but when possible, he stayed with his niece in his house in Honiara. He continued to pay the rent although it was somewhat in arrears.

In April 1987, SIHA "re-allocated" the house, without any notice, to a completely different family, on the grounds that the complainant's redundancy the previous year was "an act of Bankruptcy" (which it is not); and that he was in breach of the Tenancy Agreement by sharing possession with his relatives. In fact the Tenancy Agreement only said:

"The Tenant shall not assign, charge, underlet or part with possession of the premises or any part thereof."

The Ombudsman considered that the complainant had been unfairly treated in that:

- as a seagoing engineer he would inevitably spent much time away from home;
- it is the custom for families in Honiara to share a house where accommodation is desperately short and this does not amount to "parting with possessions";
- The complainant had received no warning or written notice;
- Had there not been unreasonable delays in administration of the housing scheme, the complainant and others would have been able to purchase their house and thus avoid problems with the tenancy and, or sell it if their job required a move.

SIHA agreed to put the complainant on the top of the list for a new house, when one was available. Unfortunately, due to the shortage of seasoned sawn timber in Solomon Islands (local timber is mostly exported as round logs) SIHA has been unable to continue its house building programme.

In conclusion: This was a justified complaint, but the result was only partly satisfactory.

## 9. PRISONER'S RIGHT OF COMMUNICATION WITH THE OMBUDSMAN

Complaint Number 262/5/87

The complainant was a public employee who had recently been convicted of a criminal offence and was serving a prison sentence.

He complained, through the Social Welfare Assistant, that he wished to exercise his right of appeal against dismissal from the public service but had been unable to do so owing to lack of facilities in the prison. He had twice presented draft letters of appeal to the local police who had said they would arrange for them to be typed and sent to the Ministry of Public Service, but had not done so.

This office advised the complainant that his appeal against dismissal would almost certainly fail, given the nature of his offence, but agreed, as did the Ministry of Public Service, that he should exercise his right of appeal if he wished.

The Ministry was prepared to accept a handwritten appeal and blank paper and a stamped envelope addressed to the Ombudsman were provided.

Section 8 (2) of the Ombudsman (Further Provisions) Act 1980 provides that:

“Notwithstanding the provisions of any written law, any complaint made to the Ombudsman by any person who is in legal custody.... shall be forwarded unopened to the Ombudsman by the person in charge of the place where the complainant is detained....”.

So it was with interest that this line of communication was tested. The complainant never replied or made this appeal, despite a reminder through the officer in charge of the prison. It is still not clear what happened, but on consultation with the Social Welfare Assistant this particular case did not appear to be a matter of serious concern, since the complainant was released from prison within the year and immediately found a job with a private company.

In the past prisoners have had excessive contact with the outside world both through their relatives and their own direct activities. Prison security is thankfully, (for most of the population) being tightened up, but this office is anxious that a proper channel of communication be retained for justified complaints from inmates.



## 10. TEACHERS PROBLEMS

### a) Failure of Teaching Service Section to deal with teachers complaints.

Last year, to "assist in the improvement of practices and procedures of public bodies" the Ombudsman recommended that all teachers' administration be brought under the roof of the Ministry of Education and Training rather than split between that Ministry and the Ministry of Home Affairs and Provincial Government. The Ombudsman also recommended that the Teaching Service Commission be brought into operation to deal with teachers' appointments, discipline, dismissals and complaints and that staff and administrative support be provided.

These recommendations were put into effect and for a time the number of complaints from teachers declined and they were dealt with fairly efficiently by the Secretary of the Teaching Service Commission. Unfortunately in late 1987, the Secretary was transferred to other duties in the Ministry. On investigation this appeared to be because he was specially qualified to do the other job and **not** as the Solomon Islands National Teachers Association alleged, for misconduct or failing to help teachers.

No satisfactory replacement has been found. For some months the post was vacant and other officers were directed to perform the Secretary's duties on top of their own. The result has been that teachers' queries and complaints have not been dealt with for some time. Not only are their letters unanswered but on inspection of the Ministry's files, correspondence seems to have been mislaid, misfiled or actually removed from the files. At the end of April the Ombudsman detailed 25 different Complaints from teachers which had come to his office as a result of neglect by the Teaching Service and asked for the Ministry's proposals. No reply was received from the Ministry either in general terms or dealing with individual Complaints.

A month was allowed for the Ministry to deal with some of those complaints, then, with great difficulty a member of the Ombudsman's staff managed to find, one of the Teaching Service Section officers and arrange for inspection of teachers files at the Ministry. Of 25 files requested, only 15 were brought up (3 had gone missing completely) and only one had been dealt with satisfactorily. Of the other 14 files seen, many seemed to have recent correspondence missing, including letters from the Ombudsman. No references seemed to have been made to the Teaching Service Commission. No explanation was offered for this. Still nothing was done and a number of new complaints came into the Ombudsman's Office, including large groups of teachers referred by their Provincial Education Officers.

In July the Ombudsman invited the Permanent Secretary of the Ministry of Education and Training and his senior staff, including those from the Teaching Service Section to discuss with him and the Chairman of the Teaching Service Commission, all teachers' problems and to give their proposals for improving the situation. At this meeting the following points were discussed:

### **Teachers salary cheques lost in delivery**

10 separate complaints were registered with the Ombudsman from teachers whose pay cheques had gone missing and had not been replaced. (See report on complaint number 11/5/86). Officers from the Ministry blamed seconded staff in the Provinces for poor security and distribution procedures and the Treasury Division of Ministry of Finance for failing to stop and replace lost cheques promptly.

Plans were being made to pay salaries directly into teachers bank accounts to avoid these problems.

### **Under paid Teachers**

**16 separate teachers complaints of under payment were registered with the Ombudsman** - These did **not** relate to the 1987/8 teachers' payrise which has been the subject of a separate investigation. Ministry salary clerks were said to be doing overtime to deal with straightforward cases of under-payment. However the Ombudsman pointed out that teachers often questioned whether they were on the correct salary point and this required a decisions from a senior officer, not just a clerk. It was assumed that the head of Teaching Services Section would make these decisions, and recommended that he did so.

### **Teachers letters unanswered**

In 1986 the Ombudsman had sent a circular to all schools in Solomon Islands advising teachers to refer all their complaints to the Teaching Service Section of the Ministry of Education and Training. Unfortunately according to teachers who had recently complained to the Ombudsman, their letters were not answered and their complaints not explained or rectified. Many teachers then complained to their trade union, SINTA.

No proposals were made to improve this situation which was seen as a purely administrative problem. Unfortunately the Chief Administration Officer was not present and has never commented.

## **b) TEACHING SERVICE COMMISSION**

A further 7 complaints referred to the Ombudsman involved serious disciplinary cases, demotion and dismissal of teachers which had been dealt with administratively at Provincial level without any reference to the Teaching Service Commission.

No proposals were made to implement the Ombudsman's recommendations to provide this Commission with the staff and administrative support that it required.

The Ombudsman's opinion is that the Ministry of Education and Training is failing to administer the teaching service in Solomon Islands and failing to deal with teachers genuine complaints and problems and recommends that the administration staffing and procedures of the Ministry be re-organised.

c) **TEACHER'S LOST PAY CHEQUE**

Complaint Number 11/5/86

In September 1986, a primary school teacher from Western Province complained that he had never received his salary for April that year.

Investigation showed that his April pay cheque had been sent to his bank cheque account as usual. He had just closed this account, so after several week's delay, the bank credited it to his passbook account instead. By this time, however his May pay cheque had arrived and had already been credited to his passbook. By coincidence both April and May pay cheques were for exactly the same amount of money (which is unusual as tax and other deductions tend to vary month by month). The bank teller, without apparently any reference to the Government or the Teacher, decided that these cheques must be duplicates and that the May salary had been paid twice. He then debited the later of the two cheques and apparently returned it to the Government.

This cheque has never been traced, mainly because the Ministry of Home Affairs and Provincial Government, which at that time paid teachers working in the provinces, did not bother to record the numbers on teachers' pay cheques against the payroll. A number of teachers pay cheques go missing each year, and the Ministry of Finance was reluctant to replace it. The Ministry of Education and Training, to whom the teacher had complained, having referred the matter to the Ministry of Finance, evidently felt that its duty was done, especially as the Ombudsman was now involved. At one time in 1987, this office was under the impression that the teacher had indeed received his money.

Finally in June 1988, the Teacher came to Honiara and, with his bank passbooks, and with the help of a very competent salary clerk at the Ministry of Education and Training, who had formerly been with the Ministry of Home Affairs and Provincial Government, this office managed to prove that he had not been paid and he finally got his money.

Regretably this case is typical of a number of complaints received by this office, from other teachers whose pay cheques have been lost (such as cases 228/3/86, 264/3/88 and 336/5/88) and who appear to have been ignored by their Ministry.

## 11 OTHER COMPLAINTS FROM PUBLIC SERVANTS

### a) Analysis of Complaints by Public employees.

A large proportion of all complaints made to the Ombudsman are made by Public Servants about the terms and conditions of their employment. They feel they are being unfairly treated by the Government. This was considered in detail in the last Annual Report.

These complaints **should** be dealt with by the person's responsible officer, Permanent Secretary, or the Ministry of Public Service, and whenever possible, the Ombudsman refers complaints back to these authorities after a preliminary investigation. However even this takes up a great deal of time which could be used on more serious matters or on behalf of people who are not in such a good position to help themselves and voice their complaints.

Table VIII is an analysis of Public Servants complaints to the Ombudsman in 1987 - 88, most of which and about pay and the various allowances available under General Orders.

**TABLE VIII**

Analysis of complaints by Public employees arising out of their employment by Solomon Islands Government (Includes Public Service, Teachers and Provincial Employees)

Nature of Complaints	Number of Complaints handled 1987/88	Percentage of all complaints handled
Charge and Acting Allowance/Promotion	56	16 %
Other Allowances - Housing, Dirty, Overtime Special duty, Touring etc.	36	
Pensions, gratuities Long Service Benefit Redundancy pay	52	
Dismissal, Discipline Retirement Resignation	59	
Other Pay problems lost salary cheques etc.	79	13%
Other Government employment Complaints e.g Quarters, PAYE	54	9%
Total of Government Employment Complaints	336	57%

(Note: Total of all complaints handled by the Ombudsman in 1987/88 is 578)

b) **UNFAIR PROMOTION EXERCISE**

Complaint number 162/1/88

Most complaints made to this office by public servants about their own promotion, or lack of it, are referred back to their Ministry and the Ministry of Public Service. Promotions involve professional decisions on facts which are seldom all available and are outside the scope of this office.

Many public servants refuse to accept the idea of promotion on merit or ability rather than mere length of time served, or the fact that there may be no higher post available.

However, where a promotion exercise appears to have been unfair, biased or badly administered then this office may investigate.

Normally, for promotion to be considered, the Ministry of Public Service must have the candidates' Annual Confidential Reports (ACRs) available for consideration by a panel. Every year, each public servant should complete his part of the ACR and give it to his Responsible Officer for an assessment. It is then commented on and countersigned by the next two senior officers and submitted through the Ministry concerned to the Public Service. In fact for the last few years ACRs in certain ministries have been omitted altogether.

In this case the Ministry of Transport Works and Utilities decided to have a promotion exercise in the complainant's "section". A number of workers were to be promoted from Level 3 to Level 4 on the public service pay scale. Only those selected for this promotion by the Responsible Officer were asked to complete ACR's. The complainant who had regarded his work, attendance record and length of service as better than most, was not asked for his ACR. Knowing that he should submit one anyway, and assuming this omission to be a mistake he completed the form, but it appears to have got no further than this responsible officer.

He was disappointed not to see his name on the list of promotions approved by the Public Service Commission and upset that 5 of the 10 men promoted came from the same area of one island. This was the home area of their responsible officer and also the Chief Administration Officer (MTWU) who was ultimately responsible for the exercise.

The Responsible Officer was not available for comment, but the next senior officer who countersigned the ACRs confirmed that the complainant (who came from the same island as himself) was a good worker, but had only a small family. One of the 5 men from the other area, however had a very large family and many problems paying their school fees, finding food and getting them to school (hence his poor attendance) and for reasons of **Welfare** he had been promoted instead.

The Chief Administrative Officer (MTWU) claimed to know nothing about it did not have the relevant file and referred this office back to the same officer but revealed that the complainant's

"ACR was not processed for promotion because there was some contradicting reports by (the Responsible Officer) and the Countersigning Officer. Because of that the report was never sent to the Ministry of Public Service with the others".

When questioned further, he revealed that out of 57 men employed in that section, 32 came from the same Province as 5 men promoted, - that is, the same Province as the Responsible Officer, and the CAO. This in itself is not particularly surprising as more than half of the population of Solomon Islands originates from the main island of that Province, but the CAO could not or would not provide the revealing details of the particular area from whence they came. He said the information was kept at the Ministry of Public Service. The Ministry of Public Service said the information was kept by him at MTWU. However, the complainant was specially put in for promotion which he was granted.

Having made the point and not wishing to create further tension among workers in the Ministry - a number of less justifiable complaints from other sections having been made meanwhile- it was decided to pursue this matter no further.

#### **c) CAREER STRUCTURE OF SPECIALIST STAFF**

Case number 250/5/87 and others

This case involved a Social Worker, employed under the Ministry of Health and Medical Services (MHMS) and illustrates the difficulties and frustrations experienced by specialist staff generally in the Public Service.

The officer was employed in MHMS and worked in a major provincial centre, where his job involved investigating and writing social welfare reports for criminal and domestic cases in the Magistrates' court and also follow up work on families, young offenders and those serving probationary sentences in all parts of the Province. His work load was increasing and he had difficulty doing the follow-up work if it required touring away from his office.

In 1984 he had reached the "efficiency bar" - that is, he was on the top point of his salary scale and had no immediate prospect being promoted or receiving any further pay rise. He felt the work of his office was neglected by those at headquarters in Honiara. One particular problem was that no-one would complete or countersign his Annual Confidential Reports, (ACRs) so that his work load and performance could be monitored and his promotion, further training or transfer could be considered by his Ministry (MHMS).

The Magistrate, who saw the complainant's work for court purposes was finally persuaded to fill in one part of his ACRs, but no-one felt they were in a position to complete and Countersign them. No-one seemed to be responsible for him. A representative of Malaita Provincial Government was eventually persuaded to sign one report at the suggestion of MHMS, but refused to sign later reports because the Province did not have supervisory control over such workers and said that unless the Ministry of Health and Medical Services took an interest in him and fulfilled its responsibilities the problem would continue.

Fortunately, MHMS decided to re-organise the complainant's division and a senior officer has been designated as his responsible officer and up-to-date ACRs have now been made. Good intentions have also been expressed about further training and promotion on merit and the creation of "probation service" in which the complainant might be included.

Other complaints, have been received by the Ombudsman, such as from a Health Educator, (81/10/87). The Leprosy field worker, (90/10/86), (reported in last years Annual Report, who has, finally resigned); an Assistant Community nurse (88/10/87) and a Health Inspector (212/2/86). All these people are specialists working in the provinces who feel that they are missing out on the career structure and opportunities available to Nurses in the "mainstream" of hospital medicine. This may be a fact they just have to accept given the size and resources of the Solomon Islands' health service.

**d) MARINE DIVISION - REDUNDANCIES AND PROMOTIONS.**

Complaints 188/2/87 and others.

Last year the Ombudsman reported on officers' complaints arising from the Marine Division redundancy exercise in 1986.

The exercise was not well handled and a number of experienced men who should have been retained to work in the division and train younger staff were lost.

In May 1988, the official redundancy list, approved by the Public Service Commission was finally disclosed. It revealed that 14 of the 129 men approved by the Commission for redundancy were still on Marine Division payroll. They had not, it appears received redundancy payments, but two of them complained to the Ombudsman that they had been unfairly ignored for promotion.

They were then promoted with no objection from the Ministry of Public Service and with full knowledge of the Chief Administrative Officer responsible for the redundancy exercise at the Ministry of Transport, Work and Utilities. Neither the Officers nor the Ministries concerned ever revealed to this Office or Marine Division that these men had been on the redundancy list. Perhaps they did not know.

Complaint number 23/8/86

Another member of Marine Division who complained to the Ombudsman about his lack of Promotion was at Level 3 in the Public Service Salary Scale in 1986/87. He had been acting against a vacant level 5 post for some time and had made persistent efforts to be given that post substantively. This Office referred him to the Ministry of Public Service.

Marine Division was not happy about recommending his promotion even to Level 4 until he had passed in Trade Test, since his level of skill appeared to be low.

Unfortunately the person responsible for examining the trade test was away on leave at that time, but rather than await his return and the result of the test, the complainant was immediately promoted to Level 5. It was not until the official promotion list was published that Marine Division discovered what had happened, and tried to have the apparent mistake rectified. The Ministry of Public Service informed them that: "given the Circumstances, it has been decided that (the complainant's) appointment be allowed to stand". He will of course be on probation for the first year.



12. **PROVINCIAL AUTHORITY - BROKEN PROMISES AND NO CORRESPONDENCE**

Complaint Numbers 8/7/86; 59/9/87 and others

In 1985 Malaita Province promised a number of its employees allowances of one kind or another which it then did not have the money to pay. One complainant (case number 8/7/86) was a manual worker who had been orally promised "dirty allowance" back dated several years.

Another was a L3 clerical worker who had a letter from the Provincial Secretary agreeing to pay him a 100% Acting Allowance to L5. (Case number 59/2/87). These and a number of complaints of dismissal and laying off work without pay - which the Province did to save money at that time - were brought to the attention of the new Malaita Provincial administration in 1986 and 1987. When a member of the Ombudsman's staff visited the Province last year, it was found that some of these people were eventually paid, but a number were not, including the complainants mentioned here.

Malaita Province had failed to give any explanation or answer any correspondence whatsoever.

These were comparatively small complaints and it is thought that the Provincial authorities had considered them and they did not amount to serious cases of unfair treatment in all the circumstances. However, the lack of co-operation of this authority and others which will not answer letters, are not on the telephone, and are at a safe distance from the Ombudsman's Office is of some concern.

#### IV. LEGAL NOTES

1. **How can the Ombudsman ensure the Elimination of Arbitrary and unfair decisions?**

Section 97(1) (c) of the Constitution of Solomon Islands imposes on the Ombudsman a duty to:

“ensure the elimination of arbitrary and unfair decisions”

The Ombudsman (Further Provisions) Act 1980, is supposed, by s.99 of the Constitution to:

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

However it gives him no powers to achieve this except to:

“report (his) opinion and his reasons, therefor to the officer, to the department or authority concerned and may make such recommendations as he thinks fit and shall also send a copy of his report and recommendations to the Prime Minister and any Minister concerned”.

The Ombudsman may also:

“request such office to notify him within a specified time of the steps, (if any) that it is proposed to take to give effect to the recommendations of the Ombudsman”.

If nothing is done the Ombudsman may:

“make such further report on the matter as he thinks fit to Parliament”.

This produces results only when the persons concerned are **willing** to assist **and** when the decision can easily be eliminated. A glance at the number of cases with unsatisfactory results in Tables V and VII confirms this. Ombudsman's reports and recommendations are usually made to Parliament in his Annual Report but in practice, little if any attention is paid to them. The same was true of the Special Report on the Sale of Government Houses presented to Parliament on 31st March 1988.

Referrals to the Leadership Code Commission have produced no effect either, and the Commission receives no assistance from the Director of Public Prosecution Office. It is only the Public Solicitors' Office which is prepared to take up complaints referred by the Ombudsman after a preliminary investigation. Problems of non disclosure and secrecy required by s.13(2) of the Ombudsman Act and the Ombudsman's Oath of Secrecy then arise.

In practice therefore, the powers specified by the Ombudsman's Act are totally inadequate in ensuring that maladministration and unfair decisions are eliminated.

The Solomon Islands Constitution is the Supreme Law and according to principles of Constitutional Law established in cases such as *Fugui - v - Solmac Construction Company Limited* (1982 SILR 100) where an ordinary Act of Parliament is inconsistent with the Constitution, or purports to restrict rights given by the Constitution, the Constitution prevails.

It was believed therefore, that the Ombudsman's Constitutional duty to "ensure the elimination of unfair decisions" should not be encumbered by restrictive provisions in the Ombudsman Act. In cases where recommendations and reports had been ignored, or perhaps, because of the urgency or other peculiarity of the case, were bound to fail, the Ombudsman should have access to the High Court.

This interpretation was put to the test in September 1987 in High Court Civil case 239 of 1987.

**High Court Civil Case No. 239 of 1987**  
**The Ombudsman -v- The Attorney General and Others**

The Ombudsman had received complaints from people in Makira about insolvent foreign Logging Companies which, for instance, owed money on personal injury claims (CF65/9/86) or illegal logging and wasted logs. (Complaint number 105/11/86).

As these matters were outside his jurisdiction such people could only be heard, advised and referred to the Public Solicitor, but the complaints of a few articulate people able to travel to Honiara indicated a serious problem in Makira and a failure to monitor the activities of such companies by Forestry Division, of Ministry of Natural Resources and a disregard of the Forests and Timber Legislation.

The Ombudsman became aware of Civil Case 159 of 1987. This was application under the Companies Act for the High Court's sanction of a Scheme of Arrangement for the "reconstruction" of one of these insolvent logging companies by a Malaysian owned company. The purpose was to utilise the "Non Transferable" logging licence in Makira, which was not to expire until 2002.

The insolvent company, if only by failing to operate, was in breach of its logging licence, which had been suspended, but not forfeited. The Customary Landowners and the High Court were told that unless the new Company came in and took over the insolvent Company,

"not another tree could be commercially logged until 2002".

This assumes of course that Forestry Division would not forfeit the Licence so the concession would be open again. Faced with this ultimatum, the landowners who were owed money, and whose land had already been logged, naturally felt they had little choice but to accept the scheme, however they insisted on completely re-negotiating the terms of their own logging contracts. As far as the Customary land owners were concerned the old company was finished and if a new company came in, they wanted a completely fresh deal.

Examining the parties and the terms involved in the Landowners agreement with the insolvent company and those proposed by the scheme of arrangement, this did seem to be what was happening. Although the Landowners would not know the meaning of "rescinding the Contract with the insolvent company for fundamental breach" this is what they had done. A completely new agreement was being proposed to them and this should now be on the terms of the Standard Logging Agreement required by the Forests and Timber (Amendment) Regulations 1985 which after many mysterious set backs was finally Gazetted in full on 26 June 1987 as Legal Notice 60/87.

The Forests and Timber Act provides that the Area Council, an elected local government body, must arrange the meetings in which Landowners decide whether they want a logging company to come in, and if so, on what terms.

The Area Council concerned was said to

"benefit immensely from the scheme"

"for every 1000m<sup>3</sup> of timber exported it would receive a fee of \$200".

Payments of this kind are not contemplated by the Forests and Timbers Act but are widespread - and are significant in a rural non-cash economy. No doubt some money reaches the community but in practice Area Councils do not keep proper accounts and they are impossible to audit.

The original Scheme made no reference to the Forest and Timber (Prescribed Forms)(Amendment) Regulations. Lip-service was paid to them in the final proposed scheme, but vital provisions relating to monitoring and enforcement were specifically excluded.

Forestry Division seemed to be unconcerned, or at least inactive about: the possibility of cancelling the defunct company's Logging Licence; monitoring its activities; enforcing the Forest and Timber Act; and the effective transfer of a non-transferrable logging Licence; and the evasion or avoidance of the only piece of legislation under the Forests and Timber Act which was designed to protect the people, their land and future timber industry.

Forestry Division of the Ministry of Natural Resources had not even seen fit to instruct or seek advice from the Attorney General.

Time was now short and although the Attorney General expressed interest in the case he was not willing to step in at such a late stage without instructions from Forestry Division. He did however indicate his consent to being joined as a plaintiff in the action if the Ombudsman brought him into the action in the first place as a co-defendant.

The Ombudsman, therefore applied to the High Court to become a party to Civil Case 159 of 1987 in order to draw the Court's attention to the breach of the Forests and Timber Regulations and to join the Attorney General by Consent. This was to ensure that Forestry Division's failure to administer the Forests and Timber Act, which would prejudice thousand of Solomon Islanders, might be rectified. If the Ombudsman's jurisdiction and powers under the Constitution were to be tested, this case - even though not ideal - seemed a worthwhile time to do so. The results were, in some ways disappointing, but not particularly surprising. The Attorney General did not challenge the Ombudsman's *locus standi*, but Counsel for the Scheme Manager, having immediately before the case said that he would not do so, did challenge the Ombudsman's right to appear in court at all, chiefly by reference to the Ombudsman's Act and Ombudsman in other countries.

His Honour the Chief Justice deferred judgment on the question until after the substantive matter of the Scheme of arrangement had been considered, and kindly allowed the Ombudsman's Legal Adviser to remain as *amicus curiae* or a friend of the court. However the Ombudsman's argument that the scheme was a new contract to which the Forest and Timber Regulations 1985 should apply was not accepted.

In fact the deal offered under the scheme was, in the end, better than most offered in Solomon Islands and it is under the supervision of the High Court.

On the question of Jurisdiction, the Chief Justice held that the Ombudsman had no *locus standi* - the following is an extract from his judgment handed down on 12th October 1987:

".....What are the Ombudsman's powers? they are set out in section 16 (of the Ombudsman Act 1980).....

No where is the Ombudsman given the power to represent the public or the crown in a legal action. Indeed as I have already said, to do so would usurp the function of the Attorney General. Where the Ombudsman feels during an investigation that some public right has been or is likely to be infringed he should report the matter to the Attorney General. Whether the Attorney General then proceeds is entirely a matter for him and the court will not and cannot inquire into the exercise of that discretion....."

## 2. **Assistance in the improvement of practices and procedures of public bodies**

The second duty imposed on the Ombudsman by section 97 of the Constitution is

"to assist in the improvement of practices and procedures of public bodies"

It goes hand in hand with ensuring the elimination of arbitrary and unfair decisions. Cases such as 200/86 and 252/86 in Table VII may end with a satisfactory result for the individual who complained, but unless the underlying practice and procedures are improved, the problem recurs.

The Ombudsman, being a former Permanent Secretary and Secretary to Cabinet is well placed to advise and initiate improvements. Assistance can be given on the legal side, too. This may take the form of advice, such as on how to improve tenancy agreements for Solomon Islands Housing Association houses (Case 283/86); collecting and consolidating current subsidiary legislation where many amendments have been made, such as the Water Supply regulations (OMB 6/1/3) or assisting with drafting subsidiary legislation, such as the Credit Unions By-Laws (OMB/1/2). The latter can only be done when time permits the importance of communication with the Attorney General's Chambers is appreciated.

**3. Follow up on last year's Legal Notes**

**a) Government Shareholding Agency Companies**

People still come to the Ombudsman hoping he can deal with their complaints about these companies and the answer is still "no". Even those companies which are 100% owned by Solomon Islands Government are outside his jurisdiction until Parliament prescribes otherwise.

As with other complaints which are outside the Ombudsman's jurisdiction, these people are heard, advised and if appropriate referred by letter to the manager of the company or someone who can act for them.

**b) Committee on the Prerogative of Mercy**

Last year, complaints were received about this Committee not functioning. We were pleased to note the appointment on 29th July 1987 of new members. However, with increased regret that we learned of the sad death of one member, Dr. John Wesley Kere later that year. We can only hope that the new Governor General, His Excellency Sir George Lepping MBE will make another appointment before long.

**c) Private Logging Companies**

Complaints about mainly foreign logging companies continue to arise. The Ombudsman is currently investigating the monitoring and control of these companies and their activities by various government Authorities.

## VI ADMINISTRATIVE NOTES

### 1. STAFF

The Authorised Staff of the office have changed slightly -

Ombudsman	-	SS1
Principal Investigation Officer/Legal Advisor	-	L7/8
Senior Investigation Officer	-	L7
Personal Secretary	-	L5 (formerly L6)
Cleaner Gardener	-	L1B

A L1B gardener at the Ombudsman's official Residence is proposed for 1989

Administrative duties in such a small office do not warrant the appointment of an administrator, even part-time. In practice these duties are shared among the Ombudsman and his staff and this seems to work well. We are indebted to the Accounts Officer of National Parliament Office and her assistants, whose vigilance over our touring expenses and timely warnings that we may overspend our budget are appreciated, if not always welcome at the time. We are also grateful to other Members of National Parliament Office for their assistance.

### 2. OFFICE EQUIPMENT

The Ombudsman's office has borrowed the old stencil machine from the National Parliament Office which has proved invaluable for the Ombudsman's lengthy report to Parliament on the Sale of Government Houses in March. It is hoped this arrangement will continue and we shall no longer be competing for a machine while Parliament is in session.

Photocopying continues to be a problem. We have a special need for a machine, or at least access to a nearby machine by our own staff. Some confidential and important information furnished to the Ombudsman cannot practicably be transcribed by hand. Hand transcription takes time and leads to omissions and inaccuracies (as well as fatigue) If another member of staff has to use the information or when the Ombudsman needs to make an assessment and report on a case investigated by one of his staff - hand transcripts are unsuitable, even if typed up. At present if we wish to make a photocopy, someone has to go with their copy paper and beg a neighbouring office for the use of their machine. Most offices, if they allow this at all, insist on copying being done by their **own** staff and impose other restrictions and inconveniences in the name of preserving the machine or their own office security. For sensitive information an officer has to drive with paper and documents to one friendly Government office which at the moment does not impose such restrictions.

Either way, the time wasted, the inconvenience and breach of secrecy risks are such as to frustrate and discourage a thorough investigation and the furnishing of important information to the Ombudsman. The Ombudsman has applied for a photocopier for the office, but needless to say the cost is prohibitive.

### 3. SECURITY

The Ombudsman has tried to tighten up office security and, unlike some government offices, filing cabinets and doors are locked when unattended and casual visitors supervised closely. A redundant safe has also been acquired from the Prime Minister's Office.

#### 4. ACCOMMODATION

Thanks to the 10th Anniversary of Independence Celebrations the Ombudsman's office has been repaired and repainted and we are happy to still be there. The Ombudsman has finally been allocated a government quarter as an official residence in line with other holders of Constitutional Posts and government positions. It is hoped this quarter will be "tied" to the office for future Ombudsmen.

#### 5. TOURING AND TALKS

Staff absences have made it difficult to complete a full touring programme of all provinces in the last 12 months, especially with the 33% increase in new complaints brought to the Ombudsman this year demanding more time be spent in the office in Honiara.

However it is only by touring that people outside Honiara and outside the government service itself will realise that the Ombudsman can help them too. We try to use sea transport where practicable to save touring expenses, but for remote areas, this would take so long that air service must be used, if available.

##### **Ombudsman's Office Tours and Talks 1987/88**

24 September 1987	-	Lambi, West Guadalcanal
28 September	-	Malatoha, Central Guadalcanal
30 September	-	Mbinu, North Guadalcanal
23 - 30 September	-	Wagina, Western Province Kia, Isabel Province
7 - 8 October	-	Marau, East Guadalcanal
6 - 7 October	-	West Rennell, Central Province
8 October	-	East Rennell
9 - 10 October	-	Bellona
27 November	-	Talk to Public Servants at Admin Training Centre
3 December	-	Talk to Public Servants at Admin Training Centre
8 - 10 February 1988	-	Yandina, Central Province
17 - 18 February	-	Munda, Western Province
19 February	-	Gizo, Western Province
29th February	-	Savo Island, Central Province
22 March	-	Talk to Public Servants, Admin. Training Centre
6 May	-	Aola, North Guadalcanal
14, 17 June	-	Binu & Auki, Malaita

Tours to Avu Avu, South Guadalcanal; Makira and Choiseul were arranged but regrettably had to be cancelled owing to illness; transport problems and bad weather respectively.



## 6. RADIO SERVICE MESSAGES

Solomon Islands Broadcasting Corporation has, owing to excessive delays in being paid, refused to accept Solomon Islands Government "Local Purchase Orders" to pay for radio service messages broadcast by government. Service Messages are essential to the Ombudsman if he is touring areas outside Honiara and wishes to tell rural people exactly when he will arrive.

The alternatives to payment by "LPO" are not entirely satisfactory. Either the officer requiring the service message has to pay for it himself and then wait weeks or months to reclaim the money; or a "Standing Cash Imprest" has to be arranged, creating extra work for treasury and accounting officers and the problem of what to do with the cash until it is needed. We now have a safe but other offices do not.

## VI FINANCIAL NOTES:

The Ombudsman's Office estimate for the year ended 31st December 1987 was \$68,340 and the actual expenditure was \$70,268. The overspend of \$1,923 was on normal Government pay rises and contractual salary obligations which could have been foreseen.

The overspend was offset by savings in all other heads of expenditure including savings in officers' 'allowances' and overtime. Charge and Acting allowances are not normally paid to Ombudsman's professional staff.

The Ombudsman's Office estimate for 1988 has been increased to \$103,269 of which considerably less than half was spent by 30th June. Most of this increase was in the salaries and allowances estimate, kindly provided by Treasury Division.

Wages have also been increased to allow for an extra non-established gardener and office and travel/transport estimates have been put up in line with inflation.

VII **OMBUDSMAN'S OFFICE STATISTICS -**  
**For the year 1 July 1987 - 30 June 1988**

**More work for the Ombudsman this year**

33% more cases were received this year compared to last year. Many cases received last year came in the final 3 months and had to be carried forward for completion this year. The result was a 40% increase in the number of cases handled and a consequent increase in the work done.

TABLE I

OMBUDSMAN'S CASES IN 1987 - 88 compared with previous years (corrected figures)

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

**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 jurisdiction 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 incorporated 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 Ombudsman Act"** The Ombudsman Act restricts his Constitutional jurisdiction to enquire into certain types of action by Government officials, such as decisions made by Ministers deliberate judgment 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 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, 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.

All of these categories are included in "no Jurisdiction" in column 4 of Table II.

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 are, 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 Tables 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 manual 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 (corrected figures)**

July-June	(Sustained) Justified	(Not sustained Not justified	No jurisdiction	Referred	Carried forward/ 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

**Major Changes in 1987/88**

Table III is included primarily for reference with last years figures

Reasons for some of the important changes appear to be:

MET (Ministry of Education and Training) - Many new complaints arose from the recent Teachers' pay rise and its administration, but most reflect the growing inability of MET to pay them correctly and answer their letters.

MPS (Ministry OF Public Service) more complaints by Public employees about their employment have been traced back to MPS as the cause.

Western, Central and Guadalcanal Provincial Governments - The number of cases against those authorities reflects on the Ombudsman's Office touring programme.

**TABLE III**

**Analysis of New Complaints made to the Ombudsman in 1987/88**

Authority	1986-7	1987-8
MET	32	63
MPJ	42	47
MOF	35	32
MPS	11	30
MTWU	21	29
MHMS	20	24
MAL	15	24
GUADALCANAL	0	23
WESTERN	12	17
NPF	9	13
MPC	15	13
MNR	8	13
MHAPG	16	11
MALAITA	14	9
SICHE	7	9
CENTRAL	1	7
PMO/CRC	2	6
MIL	6	6
MAKIRA	3	5
TEMOTU	10	4
SIHA	4	4
LDA	2	2
MTCI	1	2
ISABEL	2	2
OTHERS	15	7
Bodies outside Jurisdiction	22	31
<b>TOTAL</b>	<b>325</b>	<b>433</b>

**KEY TO ABBREVIATIONS**

- CRC - Constitutional Review Committee
- an all party Parliamentary Committee set up to tour all of Solomon Islands and canvass people's views on how the National Constitution should be changed.
- LDA - Livestock Development Authority (Statutory Authority)
- MAL - Ministry of Agriculture and Lands.
- MEP - Ministry of Economic Planning.
- MET - Ministry of Education and Training.
- MOF - "Finance" - Ministry of Finance.
- MHMS - Ministry of Health and Medical Services.
- MHAPG - Ministry of Home Affairs and Provincial Government.
- MIL - Ministry of Immigration and Labour
- MNR - Ministry of Natural Resources.
- MPJ - Ministry of Police and Justice, (includes Police and Field Forces, Prison Service and Judiciary).
- MPC - Ministry of Posts and Communications.
- MTCI - Ministry of Trade, Commerce and Industry.
- MTWU - Ministry of Transport, Works and Utilities (includes Marine Division and the Water Unit).
- NPF - Solomon Islands National Provident Fund (Statutory Authority).
- NPO - National Parliament Office.
- PMO - Office of the Prime Minister.
- Province - One of the Provincial Government set up by the Provincial Government Act 1981.
- SICHE - Solomon Islands College of Higher Education (Statutory Authority).
- SIG - Solomon Islands Government - Central Government Generally.

## **Analysis of cases handled by the Ombudsman in 1987/88**

### **MPS - Ministry of Public Service**

A number of complaints by Public Servants about their employment are directly attributable to actions or omissions by this Ministry, however, arguably, all such complaints should come to, and be dealt with by that Ministry and should never reach the stage where people feel they should come to this office.

### **MTWU - Ministry of Transport, Works and Utilities**

Again, many of these complaints are from lower paid workers, both in the Provinces and the Headquarters in Honiara and often relate to allowances and promotion. Many are not justified, but cases mentioned in this report reflect maladministration and probably bias in middle and senior management.

### **MAL - Ministry of Agriculture and Lands**

Although this Ministry has its share of complaints from workers about their conditions of employment, this year, some very serious complaints have been investigated against the former Acting Commissioner of Lands, who comes under this Ministry. To date, no action has been taken to rectify these complaints.

### **MHMS - Ministry of Health and Medical Services**

This includes complaints from nurses and health workers throughout the country about their accommodations and other terms of employment. It is hoped that their position will improve now Central Government has decided to take back control of medical services from the Provincial Governments. Other complaints about Doctors' professional decisions are beyond the scope of this office, but are not seen as a serious problem.

TABLE IV

## Analysis of Cases Handled in 1987-8

Authority complained of	cases handled	No jurisdiction (includes with- drawn complaints)	Cases referred	Cases investigated		Unfinished
				Not justified	Justified	
MET	78	3	11	14	24	26
MPJ	63	9	11	23	13	7
MOF	49	4	9	18	17	1
MPS	39	-	6	15	13	5
MTWU	41	3	4	14	17	3
MHMS	35	4	12	4	9	6
MAL	34	1	12	8	9	4
Guadalcanal	26	1	3	5	5	12
Western	24	2	6	6	5	5
NPF	21	1	2	5	10	3
MPC	19	2	3	7	5	2
MNR	16	-	6	1	2	7
MHAPG	13	1	4	2	2	4
Malaita	15	1	2	4	6	2
SICHE	11	-	3	-	7	1
PMO/CRC	7	-	-	1	5	1
Central	5	1	2	1	1	-
MIL	8	1	-	2	2	3
Makira	6	-	2	-	-	4
Temotu	6	-	2	1	2	1
SIHA	4	-	-	2	1	1
LDA	4	-	1	-	2	1
Audit	2	-	-	2	0	-
Isabel	5	1	-	1	3	-
MTCI	5	-	3	1	0	1
Others	8	2	1	3	2	-
Bodies outside juris- diction	34	-	-	-	-	-
TOTAL	578	37	105	140	162	100

### Are justified complaints rectified?

Some Ministries, such as Ministry of Finance (Treasury Division), and the National Provident Fund, are very cooperative and rectify complaints as far as they can and within a reasonable time. These complaints are marked "Satisfactory Result" and included in column 4 of Table V.

However in some cases, an individual's complaint may be settled to his personal satisfaction, but the underlying problem remains and there may be adverse repercussions to others. In such cases the Ombudsman can only mark the result as "partly satisfactory".

Unfortunately, in a number of cases the result is totally unsatisfactory, and in the absence of any powers of enforcement, the case must eventually be abandoned and marked "not satisfactory". For instance some Authorities such as Malaita Province simply fail to reply to correspondence, although individual officers have been very helpful when a personal visit has been made.

A very few authorities, if they can be persuaded to communicate, provide information which is contradictory and unreliable. The Solomon Islands College of Higher Education (SICHE) remains the problem that it was last year. Most of the people who actually complained to the Ombudsman are expatriate staff funded by overseas aid, who have been obliged to leave their jobs in circumstances where, had they been citizens of Solomon Islands, they would have had cases for Unfair Dismissal before the Trade Disputes Panel. Two cases involving other staff are described earlier in this report.

TABLE V

Analysis of Justified complaints dealt with 1987-8  
- have they been satisfactorily settled -

Authority	Justified Cases	Result		
		Satisfactory	Partly Satisfactory	Not Satisfactory
MET	24	18	-	6
MOF )	17	16	1	-
MTWU )	17	12	2	3
MPJ )	13	9	1	3
MPS )	13	9	-	4
NPF	10	9	-	1
MHMS )	9	6	1	2
MAL )	9	6	-	3
SICHE	7	-	-	7
Malaita	6	-	1	5
Guadalcanal	5	5	-	-
Western	5	3	-	2
MPC	5	4	1	-
PMO/CRC	5	1	-	4
Isabel	3	1	-	2
Others	14	10	2	2
Total	162	109	9	44



### Touring the Provinces and substations is important

This year the office has concentrated on touring Guadalcanal, Central Islands Province and Western Province, and this is reflected by the increased number of complaints from these Provinces. Due to staff shortages the Ombudsman's office has not been able to visit Makira and Temotu Provinces and made only brief visits to Isabel and Malaita, which have not shared the General Increase in complaints.

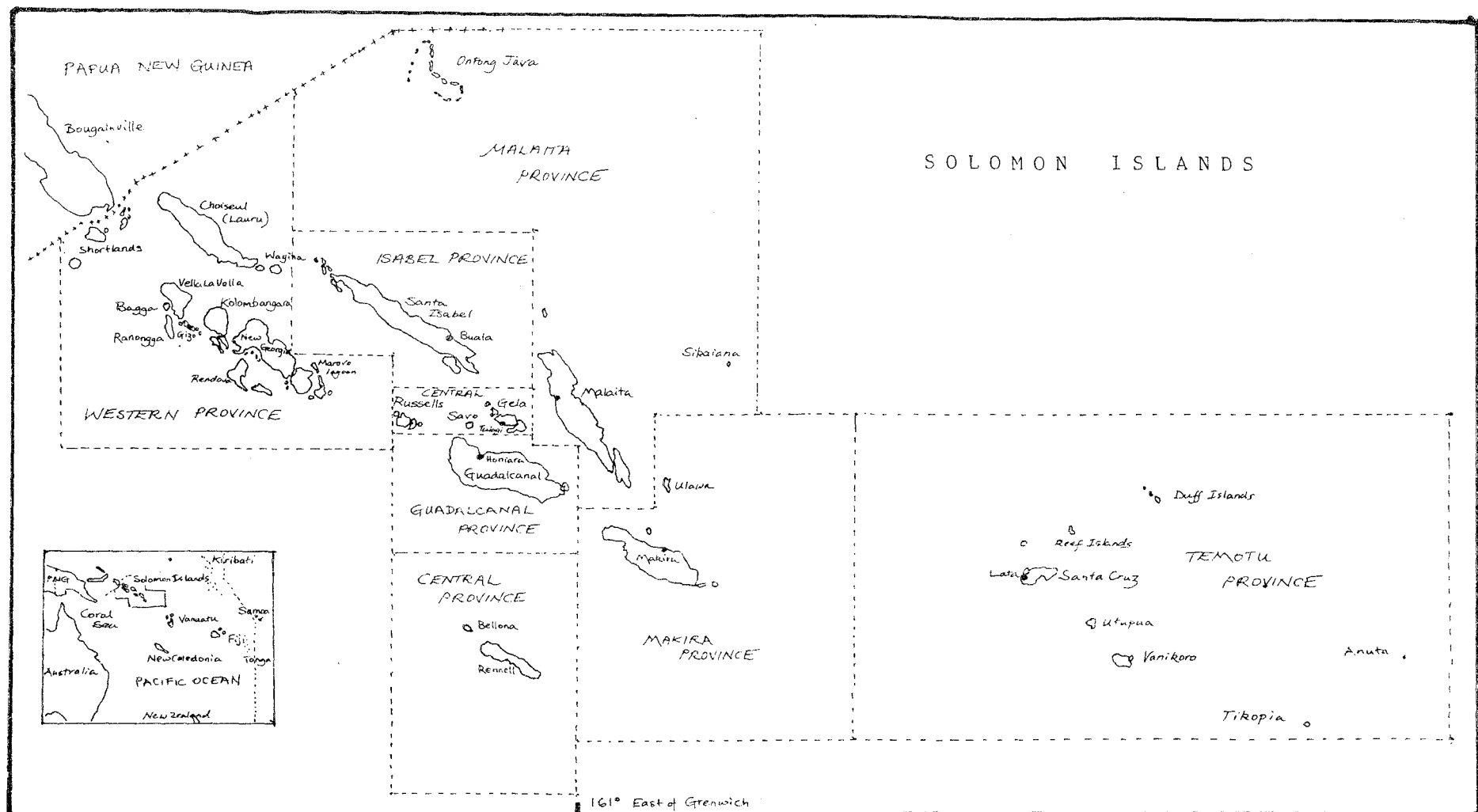
Whereas public servants, having the time and resources of a government office at their disposal, write complaints to the Ombudsman with ease, village people are not in the same position and are often unaware of what the Ombudsman do for them.

**TABLE VI**

Where in Solomon Islands do Complaints Arise

Area	New Complaints 1985-6	New Complaints 1986-7	New Complaints 1987-8
Honiara	115	123	143
Western Province	74	68	90
Guadalcanal	9	18	57
Malaita	57	58	50
Central Islands	8	4	37
Temotu	35	31	30
Santa Isabel	14	11	14
Makira	15	12	12
	<u>327</u>	<u>325</u>	<u>433</u>

MAP SHOWING PROVINCES OF SOLOMON ISLANDS



### **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 pay 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. Housing is a particular problem.

The present 8 Provinces of Solomon Islands are shown on the adjacent map and new Provinces have been proposed for Luru (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 "federation" 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.

TABLE VII

Complaints completed in 1987-8 which appear to be justified  
(note this includes new complaints made in 1987/8 but omits those  
completed while this report was being written)

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
1985-6			
159/85	MET	Teacher underpaid	yes
170	MTW&U	Workman not paid	yes
183/86	MTW&U	Workman's Charge Allowance	yes
201	MPJ (Police)	Delay in submission of Police Report	yes
228	MET	Teacher's lost pay cheque	No - R
253	MTW&U	Delay in paying Acting Allowance	yes
266	MHA&PG	Replacement of lost pay cheques	yes
283	MAL	Late payment Long Service Benefit	No
1986-7			
8/86	Malaita	Non payment of Dirty Allowance	No
9	MET	Teacher under paid	yes
34	Western	Poor Condition of Government Quarters	No
37	MPS	Change of Permanent Secretaries' Terms of employment	partly
43	MH&MS	Allegations of misconduct	yes
44	MPJ	Refund of court fee	yes
66	MH&MS	Social Worker not assessed for promotion	yes
68	MPJ	Local Court Justice - no retirement benefit	partly
90	MH&MS	Leprosy Field worker - incorrect salary	No
98	MAL	Retirement request confused	yes
110	Guadalcanal	Teacher's salary incorrect	yes
111	MPJ (Police)	Policeman's charge allowance	yes
115	L.D.A.	Unfair competition with private businesses	partly
117	MPC	Tender specification & committee biased	partly*1

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
118/86	PMO	Information officer - premature retirement	yes
129/87	MET	Schoolmaster's demotion unconstitutional	No
137	MET	Headmaster's demotion unconstitutional	No
141	MPJ	Court Clerk denied housing Allowance	yes
145/87	MH&MS	Neglect of Health Inspectorate (Makira)	No
147	MOF	Pensioners - no increase for 4 years	yes * 2
155	MPS	Abolition of Senior Meteorology post	No
178	MPS	Retired Policeman - withholding pension	yes
181	MAL	Field Officer, lost pay cheque	yes
189	MPC	Postal Officer unpaid disturbance Allowance	yes
190	MOF	Doctor's pension eligibility	yes
194	MPJ	Policeman's Charge Allowance	yes
195	MPC	Loss of officer's personal records	yes
199	MPC	Excessive rent for government quarter	yes
200	MTWU	Unfair promotion exercise	partly * 1
202	SICHE	Harassment and dismissal of nurse	No
206	MTWU	Compensation for defective house purchased from Govt.	No
207	MTWU	Compensation for defective house purchased from Govt.	No
209	MPJ	Prison Warder's Housing Allowance	No
211	MET	Replacement of teacher's returned paycheque	yes
212	MET	Teacher's salary incorrect	yes
219	MPC	Delay in computing retirement gratuity	yes
216	MIL	Immigration clearance - overtime allowance	yes
221	MPC	Postal officer overtime allowance	yes
225	Temotu	Typist overlooked for promotion	yes
246	Malaita	Worker's redundancy pay	No
247	Malaita	Irregular sale of Province vehicles	No
248	Malaita	Area Constable's pay cut and laid off work	No
251	MHMS	Release of rehabilitated mental patient	yes
252	Malaita	Non repair of Govt. quarter	partly * 1
254	LDA	Non payment for casual work	yes
256	MAL	Conditions of employment rural labourers	yes
257	MAL	Conditions of Employment rural labourers	yes
260	MAL	Conditions of employment rural labourers	yes

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
262	MPJ	Prisoners right to appeal against dismissal	No - R
264	MPJ	Non repair of Police quarters, Malaita	No
265	MOF	Non registration of employees for NPF	yes
266	MET	Officer too long in Acting Appointment	yes
274	NPF	Delay in withdrawal NPF contributions	yes
275	NPF	Delay in withdrawal NPF contributions	yes
277	NPF	Delay in withdrawal NPF contributions	yes
279	MTWU	Non payment of leave passages	yes
283	SIHA	Unfair termination of tenancy	partly R <sub>1</sub>
285	MHMS	Doctor - withdrawal of Contract	partly * <sub>1</sub>
287	MOF	Delay in pension payment - expenses incurred	partly
295	MOF	Payment of Customs duties in remote area	yes
309	MPJ	Non payment of private contractor	yes
315	MNR	Redundancy payment	yes
317	MPJ	Court Clerk's arrears of Acting Allowance	yes
323	Western	Provincial Assembly Member's Terminal grant	No * <sub>3</sub>
324	MHMS	Health Clearance Officer - Overtime Allowance	yes
1987/88			
7/87	NPF	No interest paid on contributions	No
9	Guadalcanal	Refusal to enrol children in school	yes
19	NPF	Incorrect NPF number - loss of contributions	yes
20	MHMS	Overseas outfit allowance	yes
23	SIEA	Excessive electricity bill	yes
26	MOF	Acting Allowances for Treasury Officers	yes
28	SICHE	College Lecturer disciplined twice for same offence	No- R
33	NPF	Delay in withdrawal of contributions	yes
34	MET	Teacher dismissed by wrong authority	yes
40	Malaita	Provincial Assembly Speaker's allowance	No * <sub>3</sub>
41	Guadalcanal	Teachers' travel expenses on transfer	yes
44/87	NPF	Delay in withdrawal of contributions	yes
45	MOF	Officer's use of special imprest for touring expenses	yes * <sub>2</sub>
48	SICHE	Harassment & dismissal of lecturer	No
55	SICHE	Defamation of Character, unfair treatment of Lecturer	No
60	NPF	Non withdrawal of contributions	yes * <sub>2</sub>
65	MNR	Forestry Workers Scheme of Service not followed	partly
68	MET	Teacher's request for special leave overlooked	yes

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
72	SICHE	Harassment and unfair treatment of Lecturer	No
75	SIPA	Unfair computation of Retirement gratuity	yes
99	MTWU	Promotion delayed unreasonably	yes
105	MOF (Revenue)	Delay in tax assessment & withholding gratuity	yes
106	MPS	Policeman disadvantaged by retirement scheme	No
107	MPS	Policeman disadvantaged by retirement scheme	No
112	MOF	Non commutation of Pension	yes * 2
113	Isabel	Unconstitutional transfer of Govt. Officer	No
114	MET	Refusal of Govt. Scholarship to privately educated student	yes
116	MAL	Workers Acting Allowance	yes
125	MET	Teacher's lost paycheque	yes
129	SICHE	Unfair Treatment of Lecturer	No
135	Isabel	Area Constables' retirement/ Redundancy exercise	No
139	SICHE	Harassment, eviction and unfair treatment of Administrator	No - R
145/87	MOF	Delay in payment of increased pension	yes
148/88	MET	Student's eligibility for scholarship	yes
149	MET	Student's eligibility for scholarship	yes
150	Isabel	Unconstitutional treatment of teachers	yes
152	MTWU	Installation of electricity to government quarter	No - R
155	MOF	Delay in paying pension	yes
156	MTWU	Unfair selection for redundancy	yes
157	MTWU	Unfair selection for redundancy	yes
162	MTWU	Workers promotion exercise unfair	yes - R
168	MPJ	Local Court Justice delay in paying allowances	
171	MET	No result from school public examination	yes
175	MOF	Late payment of Long Service Benefit	yes
176	MPS	Allocation of quarter	yes
177	MPS	Allocation of Servants' quarter	yes
178/88	Guadalcanal	Worker's Promotion promised but not given	yes
180	MET	No place for secondary school student	yes * 1
188	CRC	Failure to visit Wagina/ Gilbertese communities	No
194	MPS	Policeman disciplined by wrong Commission	yes
197	MOF	Unfair distribution of foreign aid	yes
198	MPJ (Police)	Policeman's travelling time inadequate	yes
215	MOF	Refund of Sea Freight charges	yes
216	MAL (Commissioner)	Irregular disposal of government land	No - R
229	NPF	No NPF Statements for workers	yes
231	Western	Non payment court witnesses expenses.	yes

Complaint Number	Authority Complained of	Details of Complaint	Satisfactory Result
244	MPJ	Non payment overtime allowances	yes
253	CRC	No visit to Savo Island	No
256	MTWU	No shipping services to Savo Island	yes
257	Central	Poor design & repair of nurse's quarter	No
264	MET	Replacement of teacher's destroyed pay cheque	yes - R
265	MPS	Computation of Frozen Pension	yes
269	MTWU	Payment for refrigerator	yes
272	Western	Class of government quarter	yes
275	MPS	Pension eligibility	No
283	MET	Underpayment of NPF	yes
284	CRC	Underpayment for outboard motor hire	No
289	MET	Teacher's salary deductions unfair	yes
290	MET	Dismissal/Discipline by wrong authority	No
291	MET	Dismissal/Discipline by wrong authority	No
292	MET	Dismissal/Discipline by wrong authority	No
305	MAL (Commissioner)	Irregular disposal of government land	No
307	MOF	Commutation of Pension of ump sum	yes * 2
312	MOF (revenue)	Overtaxation	yes
315	MOF (revenue)	Overtaxation PAYE	yes
335	NPF	No statements or withdrawal of contributions	yes * 2
345	CRC	Visit too short and people unprepared (Guadalcanal)	No
351	Guadalcanal	Transport difficulties	yes
361	MHMS	Underpayment of NPF Contributions	yes
362/88	MPS	Unfair forfeiture of a Annual leave	yes
380	MET	Teacher paid late	
381	MET	Teacher paid late	
385	MIL	Citizenship of adopted child	
395	MPS	Contract expiry date	yes
402	MTWU (Water Unit)	Disconnection of water	yes
410	MTWU	Worker's promotion and Acting Allowance	yes
414	Temotu	Charge Allowance payment	yes
417	MHAPG	Salary increment date incorrect	yes

Footnotes: partly justified

\* 1 Although the individual's complaint was rectified, the underlying problem remains.

\* 2 Satisfactory result obtained after change in Law/Regulations/General Orders

No \* 3 No Authority would take a decision one way or the other

R See individual Case Report in text.