

# **Partners in crime**

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The political web that supports the  
illegal Kiunga Aiambak timber project

**Canberra Friends of PNG Association**  
May 2002

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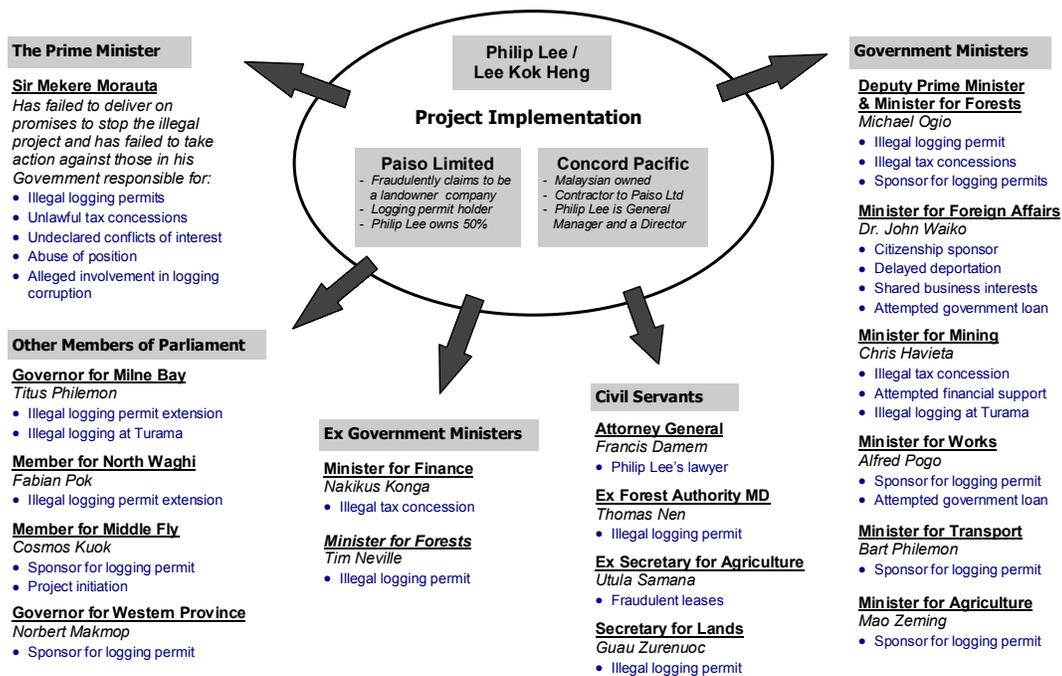
## Executive summary

The Kiunga Aiambak timber project has been operating since 1994. The project is widely known to be totally illegal and the PNG Forest Authority accepted this as early as 1995.<sup>1</sup> The illegality of the project was confirmed in the Independent Forestry Review (2001)<sup>2</sup> and has been publicly acknowledged by the Prime Minister.<sup>3</sup> Local landowners have been complaining since 1995, calling for an Ombudsman Inquiry and for the project to be shut down.<sup>4</sup>

However the project is still on going with more than US\$50 million worth of logs having been exported. Meanwhile the Government has lost out on potential tax revenues because of illegal tax exemptions given to the project and the local people have suffered a catalogue of negative social and environmental impacts.

So why has no effective action been taken to stop the project and prosecute some of those who have been involved? The map below may begin to give an answer to this question and should be seen in the context of the widespread allegations of political corruption and institutionalised mismanagement in the forest industry.

### The Political Web that Supports the Illegal Kiunga Aiambak Project



May 2002

The map shows some of the key people who have been involved in advocating, facilitating and protecting the illegal Kiunga Aiambak timber project. The map also shows how these key individuals are linked to the project and it graphically illustrates both the breadth and the depth of the political web that supports the project.

Perhaps the central figure to the whole illegal project is Philip Lee, a Malaysian born businessman who has built an extensive political support network that protects him and his illegal operations from any semblance of outside control.

Prominent Ministers, Members of Parliament and senior civil servants are all implicated in the web that ensures that the illegal Kiunga Aiambak project continues to deliver misery for local people and millions of dollars into the bank accounts of the fortunate few.

<sup>1</sup> See Appendix 1, Letters from the Acting Managing Director and Managing Director

<sup>2</sup> See Appendix 2, Audit conclusions and recommendations, Independent Forestry Review Team, October 2001

<sup>3</sup> See Appendix 3, Media statement by the Prime Minister, 14 May 2002

<sup>4</sup> See Appendix 4, Various landowner complaints

## Introduction

The Kiunga-Aiambak Road Project is a highly controversial and destructive logging operation located in previously intact rainforests in Papua New Guinea's remote Western Province.

It was originally presented as a 'development project' to further the region's economy, but it soon became clear that it was no such thing. In fact, it was nothing but a ploy for a Malaysian-owned logging company to gain access to valuable timber stocks legally owned by Papua New Guinea's indigenous forest-dwelling communities.

Initiated in 1995, the Kiunga-Aiambak project – which has destroyed thousands of hectares of pristine forest over the last seven years – appears to have been unlawful from the very beginning. In 1995, the then Forest Minister for Papua New Guinea, Tim Neville, issued a permit known as a Timber Authority to a company called Paiso Ltd, which professed to be a 'landowner company' representing the local landowners in the region.

The Timber Authority is a legal instrument that allows its holder to fell trees 40m on either side of a centre-line to clear a way for road construction: in theory it was a licence for Paiso Ltd to construct a road between the small township of Kiunga and the village of Aiambak.

In practice, however, the story was very different. Paiso Limited was not a company owned by or representing local landowners. In fact, just two people owned it: Malaysian-born Philip Lee, general manager and major shareholder of Concord Pacific, and a Papua New Guinean called David Kaya.

Moreover, Paiso itself had no intention of logging or of building a road. It was a company in name only, with a paid-up share capital of just 20 kina (US\$6). The company immediately subcontracted the 'construction work' to Concord Pacific,<sup>5</sup> despite the clear prohibition in the Forestry Act against transferring rights under a Timber Authority.

***"Generally this project is seen as a thinly disguised method employed by a logging company to gain access to logs for export.***

***At no time since the purported issuance of the Timber Authority has any aspect of due process been observed"***

*Independent Forestry Review Team*

It soon became clear that the proposed 'road project' was simply a pretext for a much larger logging operation. Within a few months, Concord Pacific obtained permission from Minister for Forests Titus Philemon (and later from his successor Fabian Pok) for an unlawful and unlimited extension of the project until "successful completion".

The actual construction of the 'road' began at Aiambak in May 1995. By March 2001, around 179km of forest had been cleared northwards towards Kiunga. But there is not – and never has been – a functional highway. The 'road' is nothing but a bulldozer track through the forest. It has no permanent bridges, hopelessly inadequate drainage and no surfacing – only a network of temporary logging roads pushing deeper into the forest on either side. Already the Aiambak end of the road is impassable, with another 60km to go before reaching Kiunga.

Moreover, and as is typical in Papua New Guinea's forestry sector, no prior informed consent from the rightful landowners of the resources was obtained for the project, and minimal royalties or benefits have been provided to them.

Astonishingly, Concord Pacific has somehow managed to secure a far-reaching court injunction, which is restraining the Papua New Guinea Forest Authority (PNGFA) from closing the illicit project down. It also prohibits the PNGFA from seizing logs or delaying export permits, even though the timber is being illegally extracted. To date, the government has made no attempt to overturn the injunction or even to challenge the substantive issues of the case.

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<sup>5</sup> See Appendix 5, Copy of the contract agreement

## The core of the scam

The scam that is the illegal Kiunga Aiambak logging project has a very simple core structure:

- ◆ a company to apply for the logging permit under the guise of building a road
- ◆ a second company to do the logging as a contractor to the first company
- ◆ an illegal logging permit given by a 'tame' Minister
- ◆ illegal 'extensions' to the permit so that it can run without limit of time,
- ◆ a series of illegal tax exemptions given by other 'tame' Ministers, and
- ◆ political friends to protect the operation from being shut down.

## Paiso Limited

Paiso Limited is the company that applied for and obtained the logging permit.

Paiso claims to be a 'landowner company', that is a company that is owned and controlled by the local landowners in the area that it operates.<sup>6</sup> In fact Paiso is owned by only two people, David Kaya, a Papua New Guinean (50%) and Philip Lee, a Malaysian 50%.<sup>7</sup>

## Concord Pacific

Concord Pacific is the contractor engaged by Paiso to do the logging. Concord Pacific is a Malaysian owned company registered in PNG. The registered shareholders are Yaw Teck Seng (60%), Foh Choi Yong (39%) and Pay Chin Lee (1%).

All the shareholders are listed in the records of the Registrar of Companies as being resident in Port Moresby.<sup>8</sup> This is not true for at least one of the three - Yaw Teck Seng is a Chinese-Malaysian timber tycoon who is the founder and Chair of the multinational Samling Corporation, he lives in Malaysia.

***"Concord Pacific  
has one of the  
worst records of  
any logging  
company in PNG"***

*Acting Managing Director  
PNG Forest Authority*

## Philip Lee

Philip Lee owns half the shares in Paiso Limited and is the General Manager of Concord Pacific.<sup>9</sup> Philip Lee, using the name Lee Kok Heng, is also a Director of Concord Pacific.<sup>10</sup>

Philip Lee is a somewhat controversial figure in PNG. In August 2001 he was arrested and later deported for being in possession of three PNG passports and a Malaysian passport and a Thai passport. The Malaysian passport was in the name of Khoo Wui Ting, the Thai passport was in the name of Chaliel Plaibua.<sup>11</sup>

In the early to mid 1990's Lee was involved in a logging project at Ioma in Oro Province. This project was curtailed when the local landowners revolted, burned the logging machinery and physically expelling the logging company from the area.<sup>12</sup>

Philip Lee was at the same time also involved in logging at Turama in Gulf Province (1991-1996) as a contractor to Turama Forest Industries.<sup>13</sup> This is a very controversial project where the landowners are seeking to have the logging permit revoked and there are serious allegations of corruption and bribery against two senior politicians.<sup>14</sup>

<sup>6</sup> See Appendix 6, Affidavit sworn by David Kaya, and Appendix 9 below

<sup>7</sup> See Appendix 7, Company Search result for Paiso Limited

<sup>8</sup> See Appendix 8, Company search result for Concord Pacific

<sup>9</sup> See Appendix 9, Affidavit sworn by Philip Lee

<sup>10</sup> See Appendix 10, Who is Philip Lee

<sup>11</sup> The National, 6<sup>th</sup> August 2001, front page

<sup>12</sup> The National, 8<sup>th</sup> February 2002, front page

<sup>13</sup> See Appendix 11, Letter from Concord Pacific

<sup>14</sup> See Appendix 12, Letter from landowners

Lee's next logging project was at Mussau in New Ireland Province (1994-1997).<sup>15</sup> The logging project there ended in disaster with an incomplete, sub standard road and unpaid royalties.<sup>16</sup>

### **Illegal Logging Permits**

In April 1994, Paiso Limited was granted a Timber Authority for one year to harvest up to 5000 cubic metres of logs.<sup>17</sup>

In August 1994 Minister for Forests Tim Neville varied this Timber Authority. This variation allowed logging of a 2km wide corridor for 5 years with a maximum harvest of 210,00 cubic metres each year and approved Concord Pacific as the contractor for the project.<sup>18</sup> This variation of the Timber Authority was totally illegal under the Forestry Act<sup>19</sup>

By a contract dated 24<sup>th</sup> October 1994, Paiso engaged Concord Pacific as a contractor to carry out the actual logging and log export under the Timber Authority. This was also totally illegal as under the Forestry Act the rights under a Timber Authority are non-transferrable.<sup>20</sup>

In May 1995 Minister for Forests Titus Philemon illegally extended the Timber Authority.<sup>21</sup>

In September 1997 the Timber Authority was again illegally extended, this time by Minister for Forests Fabian Pok.<sup>22</sup> On this occasion, the Minister's action in purporting to extend the Timber Authority was put into effect by the Managing Director of the Forest Authority, Guau Zurenuoc. Despite the illegality of the Minister's action, the Managing Director 'granted and approved' the extension.<sup>23</sup>

In December 2001, Concord Pacific was given a further Timber Authority to extend the 'road' by a further 831 kilometres.<sup>24</sup> This Timber Authority is also totally illegal as none of the proper procedures under the Forestry Act have been followed.

However, in March 2002, the Managing Director of the Forest Authority, Thomas Nen, issued a letter that purports to grant the approval of the National Forest Board for the new Timber Authority.<sup>25</sup>

### **Illegal Tax Exemptions**

The Kiunga Aiambak logging project has been the fortunate beneficiary of a series of log export duty exemptions. These have been granted by a number of Ministers including Nakikus Konga, Chris Havieta and Michael Ogio.

These tax exemptions have curiously been granted without the knowledge of the Department of Treasury or the Internal Revenue Commission.<sup>26</sup>

Each of the tax exemptions have been declared illegal either by the State Solicitor or the Internal Revenue Commission<sup>27</sup> and on three occasions the Prime Minister has intervened to revoke the exemptions.

On at least one occasion, the granting of the tax exemption was followed by the payment of a substantial 'arrangement fee' by Paiso Limited to a consultant. This was later followed by an Ombudsman investigation that was halted when the Minister involved, Nakikus Konga, resigned from Parliament.

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<sup>15</sup> See Appendix 11 above

<sup>16</sup> Landowner complaints to NGO lawyers

<sup>17</sup> See Appendix 13, Timber Authority

<sup>18</sup> See Appendix 14, Letter from the Minister

<sup>19</sup> Forestry Act 1993 as amended, Sections 87-90

<sup>20</sup> Forestry Act, Section 87

<sup>21</sup> See Appendix 15, Two letters from the Minister

<sup>22</sup> See Appendix 16, Letter from the Minister

<sup>23</sup> See Appendix 17, Letter from the Managing Director

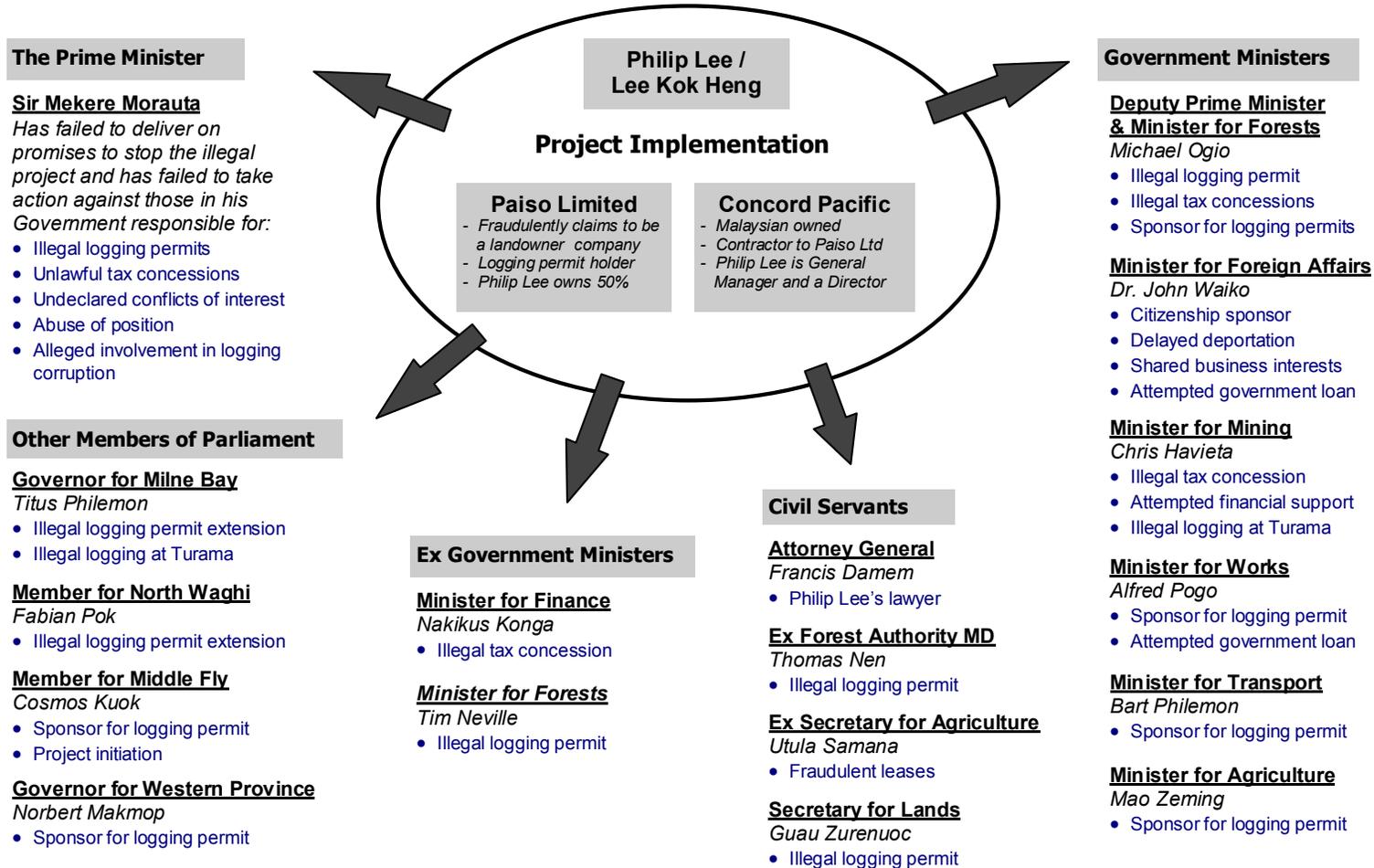
<sup>24</sup> See Appendix 18, Timber Authority 08

<sup>25</sup> See Appendix 19, Letter from the Managing Director

<sup>26</sup> See Appendix 20, Letter from Department of Treasury

<sup>27</sup> See Appendix 21, Letters from the State Solicitor and Acting Chief Secretary

## The Political Web that Supports the Illegal Kiunga Aiambak Project



## **The fine detail**

### **Deputy Prime Minister and Minister for Forests, Michael Ogio**

*Michael Ogio has given strong and persistent support to the illegal Kiunga-Aiambak timber project. He has favoured the companies involved with generous and illegal tax concessions. He has advocated for the extension of the project and he has granted an illegal logging permit for that purpose.*

#### **Illegal tax concessions:**

The Deputy Prime Minister has granted illegal tax concessions to Concord Pacific on at least three occasions.

In 1997 Minister Nakikus Konga granted Concord Pacific an exemption from paying the full rate of log export tax.<sup>28</sup> In 1999 the Prime Minister revoked that tax concession.<sup>29</sup>

But in February 2000 Michael Ogio, as Acting Prime Minister and Acting Minister for Treasury and Finance, signed a Corrigendum to the Prime Ministers Notice of Revocation.<sup>30</sup> This corrigendum stated that the Prime Minister's Notice of Revocation did not apply to the Aiambak Kiunga Timber Authority.

In issuing this corrigendum Ogio acted without the knowledge of the Internal Revenue Commission or the Treasury Department.<sup>31</sup>

After considerable negative publicity, Ogio was forced to publicly retract his corrigendum. The Minister "I was ill-advised on this issue".<sup>32</sup> The Prime Minister then reversed his deputy's corrigendum.<sup>33</sup>

However, in December 2000 and while the Prime Minister was out of the country, Ogio signed another Notice granting a full exemption from export duty on all logs harvested under the Aiambak Kiunga project (and establishing the Aiambak Kiunga Main Road and Feeder Roads Trust Account under a trust Instrument).

Unfortunately for Ogio his Notice was legally defective, but undeterred in January 2001 he issued another Notice that revoked the December 2000 Notice and granted a new full exemption from export duty.<sup>34</sup>

But even now Ogio was acting unlawfully as the November 2000 budget had removed the power of the Minister to exempt from export duty<sup>35</sup> and in January 2001 the Prime Minister had given his powers as Minister for Treasury to the Minister for Corporatization.<sup>36</sup>

#### **Illegal logging permit:**

In December 2000, Ogio granted an illegal Timber Authority for Stage 3 of the Aiambak Kiunga project.<sup>37</sup> This was illegal as the Minister has no power to grant a Timber Authority and no proper application or allocation procedures had been followed. A later letter from the National Forest Board to the Minister confirms this.<sup>38</sup>

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<sup>28</sup> See under Nakikus Konga below

<sup>29</sup> See Appendix 22, Copy of the Gazettal

<sup>30</sup> See Appendix 23, Copy of the Gazettal

<sup>31</sup> See Appendix 24, Letter from the Secretary Department of Treasury to SGS

<sup>32</sup> The National, March 22<sup>nd</sup> 2000

<sup>33</sup> See Appendix 25, Copy of Notice

<sup>34</sup> See Appendix 26, Copy of Gazettal

<sup>35</sup> See Appendix 27, Letter from Commissioner General Internal Revenue Commission

<sup>36</sup> See Appendix 28, Copy of Gazettal

<sup>37</sup> See Appendix 29, Letter from the Minister

<sup>38</sup> See Appendix 30, Copy of the letter

### **Sponsorship for logging permit:**

In May 2000 Ogio, together with the Ministers for Transport, Works and Agriculture, made a submission to the National Executive Council for the extension of the Kiunga Aiambak Timber Authority held by Paiso Limited.<sup>39</sup> The proposed extension was for 15 years to allow for a further 875 kilometres of road to be built. The submission also included a 75% exemption from log export duties.

The submission ignored the view of the Forest Authority that the existing Timber Authority was totally illegal. The proposed extension to the Timber Authority was also totally contrary to the provisions of the Forestry Amendment Act 2000. The submission was heavily criticised by a number of Government Departments.<sup>40</sup>

### **Ogio's Track Record**

As well as his record of illegal logging permits and unlawful tax concessions in respect of the Kiunga-Aiambak project, Deputy Prime Minister Michael Ogio also has an appalling track record on other issues:

**Wawoi Guavi:** In February 2002 the Minister granted an illegal 10-year extension to the logging permit for the giant Wawoi Guavi logging concession. He was acting contrary to the advice of forestry officers and did not consult with the National Forest Board

**Josephstaal:** The Minister has on three occasions unlawfully directed the National Forest Board to illegally grant the Josephstaal logging concession to a company called ASB Timbers.

**ASB Timbers:** The Minister has made at least four attempts to grant illegal timber permits to ASB Timbers. ASB is a shelf company with no assets and no forestry or other trading experience.

**The appointment of a new MD:** The Minister has been incompetent in the appointment of a new Managing Director of the Forest Authority. Between February and April 2002, the Minister made at least five appointments to the post. Three appointments were unlawful for a failure to follow proper procedures and the two lawful appointments that he made he soon revoked.

**Breach of policy:** The Minister has consistently breached Government Policy such as the Moratorium on New Logging Permits, the Implementation of the Review Team Recommendations, the Forestry Action Plan and the Forestry and Conservation Project

**Unlawful interference:** The Minister has unlawfully directed State legal officers to settle a litigation case for K20 million and also thereby breached Government policy on not settling legal cases out of court

**Breach of protocol and State security:** While Acting Prime Minister in the absence of Sir Mekere Morauta overseas, the Minister travelled across the border into Indonesia with a logging company boss. The Minister did not inform either his own Government officials or the Indonesian authorities about the trip.

<sup>39</sup> See Appendix 31, Submission to NEC

<sup>40</sup> See further below under Ministers Pogo, Philemon and Zeming

## **Minister for Foreign Affairs, Dr John Waiko**

*Dr John Waiko is a long time business associate and friend of Philip Lee. The pair were involved in a controversial logging project in the early 1990's and since then the Minister has sponsored Lee's application for citizenship, protected him from deportation and tried to arrange a one billion dollar loan to the Government through him.*

### **Business associations:**

In the early to mid 1990's Philip Lee and John Waiko were both involved in a logging project at Ioma in Oro Province. Waiko was a shareholder and Director of Binadere Holdings. Philip Lee was a shareholder and Director of Green Mountain.<sup>41</sup> Binadere Holdings held a timber permit and engaged Green Mountain as the logging contractor.

This project was curtailed when the local landowners revolted, burned the logging machinery and physically expelled the logging company from the area.<sup>42</sup>

### **Citizenship sponsorship:**

John Waiko has been named as the sponsor of Philip Lee's application for PNG citizenship.<sup>43</sup>

### **Protection from deportation:**

John Waiko has effectively protected his friend and business associate, Philip Lee, from deportation for immigration offences.

In 2001 Philip Lee was found in possession of three PNG passports and a Malaysian passport and a Thai passport. This constituted a serious contravention of a number of immigration rules and Lee was deported.

Lee was subsequently allowed to return to PNG under a court order to contest his deportation but that case was later dismissed. However, Minister Waiko chose to ignore the advice of the Solicitor General and his Department Secretary and he delayed the enforcement of the deportation by setting up an internal 'review' of the case.<sup>44</sup>

The Minister's failure to follow legal advice and his clear conflict of interest in dealing with the matter of Lee's deportation is now the subject of an Ombudsman inquiry.<sup>45</sup>

### **Government loan:**

In March 2001 John Waiko, in his position then of Minister for Education, tried to arrange a US\$ 1 billion loan to the Government to bankroll education projects.<sup>46</sup> The loan negotiations were conducted through the PNG agent of a Danish Finance Company, one Philip Lee.<sup>47</sup>

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<sup>41</sup> See Appendix 32, Company search result for Green Mountain

<sup>42</sup> The National, 8<sup>th</sup> February 2002, front page

<sup>43</sup> The Post Courier, 8<sup>th</sup> February 2002, front page

<sup>44</sup> The Post Courier, 5<sup>th</sup> February 2002, front page

<sup>45</sup> The National, 25<sup>th</sup> February 2002, page 2

<sup>46</sup> The Post Courier, 15<sup>th</sup> March 2001, front page

<sup>47</sup> See Appendix 33, Letter from the Minister and reply from Philip Lee

## Minister for Mining, Chris Haiveta

*Chris Haiveta has favoured the illegal Kiunga-Aiambak project with an unlawful tax concession and an attempt to provide direct government finance for the project. He also has strong links with Philip Lee through the controversial Turama forest project.*

### Tax exemption:

In 1997, Chris Haiveta as Minister for Finance and Deputy Prime Minister overruled the advice of the Internal Revenue Commission that a reduction in export duty given to the Kiunga-Aiambak project should not be implemented and instead Haiveta instructed that Treasury and IRC give immediate effect to the reduction.<sup>48</sup>

Much later, in August 1999 the State Solicitor advised that the reduction had indeed been defective<sup>49</sup> and the Prime Minister, Sir Mekere Morauta, signed a Notice revoking the tax concession.

***Between 1997 and 2000,  
Concord Pacific gained and  
the PNG Government lost  
K6,375,000 from illegal tax  
exemptions granted by  
Government Ministers***

*Official PNG Forest Authority data  
(See Appendix 55)*

### Government financial support:

Chris Haiveta has also intervened in the Kiunga Aiambak project by instructing, as Deputy Prime Minister, that the Department of Treasury refund to Concord Pacific all the costs of the road construction.<sup>50</sup> It is not known whether this instruction was ever effected.

### Illegal logging at Turama:

Philip Lee was involved in logging at Turama in Gulf Province from 1991-1996 as a contractor to Turama Forest Industries.<sup>51</sup>

Chris Havieta was also involved in this project at that time as In 1994 as Deputy Prime Minister he intervened to ensure that Turama Forest Industries was granted access to new resource areas as 'extensions' to existing permits. These extensions were in breach of the Forestry Act and were given with no proper procedures being followed.<sup>52</sup>

The Turama project is very controversial and the landowners are seeking to have the logging permit revoked for illegal logging outside the permit boundaries, failure to pay full royalties and premiums, and failure to provide promised infrastructure development and downstream processing facilities.<sup>53</sup>

The landowners also allege that Chris Havieta and Ridler Kamave (Governor of Gulf Province) are on the payroll of Turama Forest Industries.<sup>54</sup>

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<sup>48</sup> See Appendix 34, Letter from the Minister

<sup>49</sup> See Appendix 21 above

<sup>50</sup> See Appendix 34 above

<sup>51</sup> See Appendix 11 above

<sup>52</sup> See Appendix 35, Letter from the Minister

<sup>53</sup> See Appendix 36, Letter from landowners

<sup>54</sup> See Appendix 36 above

## **Ministers for Works, Transport and Agriculture: Alfred Pogo, Bart Philemon and Mao Zeming**

*Ministers Pogo, Philemon and Zeming have all demonstrated the strength of their allegiance in favour of the illegal Kiunga-Aiambak project by ignoring professional advice to the contrary and sponsoring submissions for the projects extension.*

*In May 2002, Mao Zeming was referred by the Ombudsman Commission to the Public Prosecutor for prosecution under the Leadership Code on charges of misuse of public funds.<sup>55</sup>*

### **Sponsorship for extension:**

In May 2000 Pogo, Philemon, Zeming and Ogio made a submission to the National Executive Council for the extension of the Kiunga Aiambak Timber Authority held by Paiso Limited.<sup>56</sup>

This submission was made directly counter to the advice of the Minister's own Department Heads who concluded that the extension 'should not be granted'.<sup>57</sup>

The proposed extension was for 15 years to allow for a further 875 kilometres of road to be built. The submission also included a 75% exemption from log export duties. The proposed extension would have made the project PNG's largest logging operation.

The submission ignored the views of the Forest Authority that the existing Timber Authority was totally illegal and that the proposed extension was also totally contrary to the provisions of the Forestry Act.<sup>58</sup>

The submission was heavily criticised by a number of Government Departments:

"The Ministers who signed this submission have been **extremely poorly advised, or otherwise**. Not only is the proposal **blatantly in breach** of the Timber Authority Regulations and the recent NEC Decision No 84/2000 on Forest protection Policy, but it is also **clearly a bogus** means to obtain forest resources at a ridiculously low cost"<sup>59</sup>

"In general the submission seems to be concerned mainly with logging, with a **massive Government give-away** being requested to fund the developers logging road"<sup>60</sup>

### **Government loan:**

Minister Alfred Pogo has also been involved with Philip Lee in negotiations for Government loans. In March 2001 Pogo was in correspondence with Lee over a proposed US\$2 billion loan to the Government to bankroll a transport infrastructure development programme.<sup>61</sup> This was at the same time that Lee was also negotiating a similar arrangement with Minister Waiko for education programmes.

### **Lobbying activities:**

Minister Bart Philemon has also been an active lobbyist on behalf of Philip Lee and the illegal Kiunga-Aiambak project. Philemon has intervened with his fellow Ministers to try and stop the project being disrupted by the Forest Authority<sup>62</sup> and he has tried to get the extension of the project expedited.<sup>63</sup>

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<sup>55</sup> The National, May 9<sup>th</sup> 2002, front page

<sup>56</sup> See Appendix 31, Submission to NEC

<sup>57</sup> See Appendix 37, Brief from the Department Secretaries

<sup>58</sup> See Appendix 38, Letters from the PNGFA Managing Director

<sup>59</sup> See Appendix 39, Minute to the Chief Secretary

<sup>60</sup> See Appendix 40, Letter from the Commissioner General

<sup>61</sup> Post Courier, March 26<sup>th</sup> 2002, page 3

<sup>62</sup> See Appendix 41 for evidence of the lobbying work undertaken by the Minister

<sup>63</sup> See Appendix 42, Letters from the Minister and the Ministers Advisor

## **Ex Ministers Tim Neville and Nakikus Konga**

*Ex Ministers Tim Neville and Nakikus Konga played a pivotal role in the establishment on the illegal Kiunga-Aiambak timber project. It was Neville who provided the first illegal extension to the timber permit and Konga who provided the first illegal tax concession.*

*In May 2002, Nakikus Konga was given a five-year prison sentence suspended for 3-years in respect of an unrelated misappropriation charge.<sup>64</sup>*

### **Illegal extension to an illegal logging permit:**

In April 1994, Paiso Limited was granted a Timber Authority for one year to harvest up to 5000 cubic metres of logs.<sup>65</sup> In August 1994 Minister for Forests Tim Neville extended this Timber Authority.

This extension allowed logging of a 2km wide corridor for 5 years with a maximum harvest of 210,00 cubic metres each year and approved Concord Pacific as the contractor for the project.<sup>66</sup>

This variation of the Timber Authority was totally illegal under the Forestry Act<sup>67</sup> as

- The Minister has no power to grant or vary a Timber Authority
- There is no legal mechanism for the variation or extension of a Timber Authority
- The original Timber Authority was itself illegal
- Rights under a Timber Authority cannot be assigned to a contractor
- There was no recommendation from the Provincial Forest Management Committee or consent from the National Forest Board
- Regulations and guidelines prohibit a Timber Authority of more than one year in duration
- Regulations and guidelines prohibit a logging corridor of more than 100 metres in width
- There was no application in the prescribed form
- There was no performance bond required

### **Illegal tax concession:**

In May 1997, Nakikus Konga as Acting Minister for Finance signed a Notice of Reduction in Export Duty of 50% on all logs harvested under the Aiambak Kiunga Timber Authority.<sup>68</sup> The reduction was backdated to January 1<sup>st</sup>.

Konga acted without the knowledge of the Internal Revenue Commission or the Treasury Department.<sup>69</sup> In the opinion of the State Solicitor, the Notice of Reduction was unlawful as the Minister did not have the power to grant a reduction in duty and as the Notice did not specify whom the exemption was being granted to.<sup>70</sup>

By a letter dated 15<sup>th</sup> May 1997 Paiso Limited, the Aiambak Kiunga TA holder, agreed to pay K260,000 to a Mr David Cora as a consultation fee upon receiving the exemption permit or certificate. In 2000 a copy of this letter was given to the Ombudsman who immediately initiated an investigation under the leadership code. A few weeks later Konga resigned from Parliament.

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<sup>64</sup> The National, May 27<sup>th</sup> 2002, page 4

<sup>65</sup> See Appendix 13 above

<sup>66</sup> See Appendix 14 above

<sup>67</sup> Forestry Act 1993 as amended, Sections 87-90

<sup>68</sup> See Appendix 43, Copy of Notice and Gazetteal

<sup>69</sup> See Appendix 20 above

<sup>70</sup> See Appendix 21 above

## **Ex Ministers Titus Philemon and Fabian Pok**

*Titus Philemon (current Governor for Milne Bay) and Fabian Pok (the Member of Parliament for North Waghi) are both ex Ministers for Forests. While a Minister, both granted illegal extensions to the Kiunga-Aiambak timber permit. On both occasions they were acting against the advice of their Department.*

*Fabian Pok is currently under investigation by the police and the Ombudsman Commission in relation to unconnected allegations that he defrauded the State of about K2 million.<sup>71</sup>*

### **Illegal extensions to an illegal logging permit:**

In May 1995 the illegal variation to the Timber Authority granted to Paiso Limited that had been granted by Minister Neville, was endorsed and reaffirmed by Minister for Forests Titus Philemon.<sup>72</sup>

Later, in September 1997 the Timber Authority was again illegally extended, this time by Minister for Forests Fabian Pok.<sup>73</sup> This extension purported to allow the project to continue until "successful completion".

These extensions were both totally illegal under the Forestry Act as

- The Minister has no power to grant or extend a Timber Authority
- There is no legal mechanism for the extension of a Timber Authority
- There was no recommendation from the Provincial Forest Management Committee or consent from the National Forest Board
- Regulations and guidelines prohibit a Timber Authority of more than one year in duration
- Regulations and guidelines prohibit a logging corridor of more than 100 metres in width
- There was no application in the prescribed form
- There was no performance bond required

In addition, the extension granted by Pok was also illegal as it was not specific as to time as is required by the Forestry Act.

### **Illegal logging at Turama:**

Philip Lee was involved in logging at Turama in Gulf Province from 1991-1996 as a contractor to Turama Forest Industries.<sup>74</sup>

Titus Philemon was the Forest Minister that granted the permit for the Turama logging project. This was investigated by the Ombudsman Commission who found that the timber permit issued by Philemon was "improper and had no legal backing". The Ombudsman also concluded "there are reasons to believe that there may have been political interference".<sup>75</sup>

The Turama project is very controversial and the landowners are seeking to have the logging permit revoked for illegal logging outside the permit boundaries, failure to pay full royalties and premiums, and failure to provide promised infrastructure development and downstream processing facilities.<sup>76</sup>

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<sup>71</sup> The National, February 25<sup>th</sup> 2002, page 3

<sup>72</sup> See Appendix 15 above

<sup>73</sup> See Appendix 16 above

<sup>74</sup> See Appendix 11 above

<sup>75</sup> Ombudsman report to Parliament 1995-1998

<sup>76</sup> See Appendix 36 above

## **Member for Middle Fly, Cosmos Kuok**

*Cosmos Kuok is the Member of Parliament for the Kiunga-Aiambak area and he has been a staunch supporter and facilitator of the project. Kuok was raised in the family of Paiso co-owner, David Kaya.<sup>77</sup>*

### **Legislation:**

In 1994 Kuok introduced legislation that was passed by Parliament endorsing a road network for Western Province and road links into the adjoining Provinces of Gulf and Southern Highlands. This legislation is often quoted as an endorsement of and justification for the Kiunga-Aiambak project.

### **Lobbying:**

Kuok has persistently lobbied in favour of the illegal Kiunga-Aiambak project and its extension.<sup>78</sup> He has been equally persistent in his failure to acknowledge or counter the allegations of illegality, corruption and fraud that surround the project.

***"Landowner Company, Paiso Limited, and Concord Pacific Limited are the companies that saw the needs of my electorate and since have done a tremendous job in constructing a road network"***

*Kuok letter to the Minister for Transport, August 1999*

## **Governor for Western Province, Norbert Makmop**

*Norbert Makmop has been another staunch supporter of the illegal Kiunga-Aiambak timber project. Like Kuok, he has persistently lobbied in favour of the project and its extension and he has ignored the claims of illegality.*

*In May 2002, Makmop was jailed for 18-months with hard labour in respect of an unrelated charge of misusing of public funds.<sup>79</sup>*

### **Lobbying:**

Makmop has persistently lobbied in favour of the illegal Kiunga-Aiambak project and its extension.<sup>80</sup> He has been equally persistent in his failure to acknowledge or counter the allegations of illegality, corruption and fraud that surround the project.

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<sup>77</sup> See Appendix 44, Independent Review Team Field Report

<sup>78</sup> See Appendix 45 for examples of this lobbying work

<sup>79</sup> The National, May 16<sup>th</sup> 2002, front page

<sup>80</sup> See Appendix 46 for examples of this lobbying work

## **Attorney General, Francis Damem**

*It is said that it pays to have friends in high places and if you want protection from illegal activities and allegations of corruption and fraud, where better to have a friend than at the head of the Government's own Attorney General's Department?*

### **Legal representation:**

Francis Damem has acted as the lawyer for Philip Lee and Concord Pacific and Paiseo limited in several legal actions relating to the Kiunga Aiambak project.

In 1999, when the Forest Authority threatened to take action against the Kiunga-Aiambak timber project, it was Francis Damem who went to court on behalf of Concord Pacific and Paiseo to get an injunction against the Forest Authority.<sup>81</sup>

In 2000, when landowners from Kiunga-Aiambak sought a court order that the timber project was illegal, it was Francis Damem who went to Court to defend Concord Pacific and Paiseo.<sup>82</sup>

In May 2002, despite the express instructions of the Prime Minister, Francis Damem failed to attend a Court hearing on behalf of the State to overturn the injunction against the Forest Authority. As a result the hearing was adjourned indefinitely.<sup>83</sup>

### **Friends in high places:**

Two of PNG's national newspapers (The National and The Independent) claim to have been threatened by Philip Lee over news stories about his business activities.

In February 2002, The National ran this story:

"In mid-2001, a newspaper publisher and two senior reporters were called by Mr Lee to his home-cum-office in East Boroko, where he threatened to sue the newspaper if it continued to publish reports about his business activities in PNG. During the meeting, Mr Lee allegedly told the publisher to be careful as he could influence the appointment of certain persons to very senior positions in the public service".<sup>84</sup>

Although not stated in the report, it is understood that during this meeting Lee referred specifically to Francis Damem and Utula Samana (*see below*) as two of his 'friends in high places' who he could rely on for support.

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<sup>81</sup> See Appendix 9 above and Appendix 47, Copy of Court Order and Letter from Francis Damem

<sup>82</sup> See Appendix 48, Copy of Court Documents filed on behalf of the Defendants and signed by Francis Damem

<sup>83</sup> See Appendix 49, Media release from PNG Forest Watch

<sup>84</sup> The National, February 22<sup>nd</sup> 2002, front page

## **Ex Forest Authority Managing Director, Thomas Nen**

*In March 2002, Thomas Nen endorsed the issuing of a new and illegal Timber Authority to Concord Pacific, allowing them to harvest as much timber as necessary along a further 831 kilometre corridor through the forests of Western Province.*

### **Illegal logging permit:**

In December 2001, the Provincial Forest Minister in Western Province signed a new Timber Authority for Concord Pacific.<sup>85</sup> This logging permits gives permission for the logging of a new 831-kilometre corridor through the forests of Western Province.

This Timber Authority is totally illegal as it was granted with any attempt to follow either the general rules for Timber Authority applications in the 1993 Forestry Act or the specific requirements for road-line clearances contained in the Forestry Amendment Act 2000. The Timber Authority is also illegal as it is not based on the informed consent of the local forest resource owners.

Despite the totally illegal nature of this new logging permit, on March 25<sup>th</sup> 2002, the Managing Director of the Forest Authority, Thomas Nen, wrote a letter to the Minister for Transport, Alfred Pogo, advising that the new timber Authority had been approved by the National Forest Board.<sup>86</sup>

National Forest Board minutes for 2001 and 2002 seem to show that in fact the National Forest Board was totally unaware of the application for the Timber Authority and that Mr Nen was not being honest when he said in his letter that the Board had granted its approval.

In a further twist, it would seem that at the time that he wrote this letter, the Managing Director was unlawfully occupying his position at the Forest Authority as his contract of employment had expired on February 18<sup>th</sup>. Thomas Nen was finally removed from the Forest Authority at the end of March 2002.

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<sup>85</sup> See Appendix 18 above

<sup>86</sup> See Appendix 19 above

## **Ex Secretary for Agriculture, Utula Samana**

*Utula Samana is closely associated with Philip Lee and the illegal Kiunga-Aiambak timber project. He has facilitated fraudulent agricultural leases and staunchly supported a rubber project backed by Kaya and Lee in Western Province*

**East Awin rubber project:** This is another project developed by Philip Lee, this time through his company Philip Lee Investments Limited.<sup>87</sup> Despite clear evidence that the 'East Awin rubber project' is just another scam cooked up by Philip Lee and David Kaya through a K2 company,<sup>88</sup> Utula Samana has doggedly supported the project,<sup>89</sup> which has also been heavily backed by the Speaker of Parliament and Deputy Governor General, Bernard Narakobi.<sup>90</sup>

**Illegal agricultural leases:** Philip Lee has been able to obtain fraudulent agricultural leases over land at Collingwood Bay in Oro Province through his association with Guau Zurenuoc and Utula Samana in the Departments of Lands and Agriculture.<sup>91</sup>

## **Secretary for Lands, Guau Zurenuoc**

*Guau Zurenuoc has been able to assist Philip Lee both in his previous capacity as Managing Director of the Forest Authority and his current capacity as Secretary for Lands. In both positions he has shown a willingness to be involved in illegality and fraud.*

### **Illegal extension of an illegal timber permit:**

In September 1997 the Managing Director of the Forest Authority, Guau Zurenuoc, put the Minister's illegal extension of the timber permit granted to Paise Limited into effect.<sup>92</sup> Zurenuoc acted to support his Minister despite clear evidence that he was fully aware that the Kiunga-Aiambak project was illegal and that the Minister did not have the power to extend the permit, and that there were serious environmental problems with the project.<sup>93</sup>

The action of the Managing Director was totally illegal under the Forestry Act as

- The Minister had no power to grant or extend a Timber Authority
- There was no legal mechanism for the variation or extension of a Timber Authority
- The extension was not specific as to time
- There was no recommendation from the Provincial Forest Management Committee or consent from the National Forest Board
- Regulations and guidelines prohibit a Timber Authority of more than one year in duration
- Regulations and guidelines prohibit a logging corridor of more than 100 metres in width
- There was no application in the prescribed form
- There was no performance bond required

### **Illegal land leases:**

Philip Lee has been able to obtain fraudulent agricultural leases over land at Collingwood Bay in Oro Province through his association with Guau Zurenuoc and Utula Samana in the Departments of Lands and Agriculture.<sup>94</sup>

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<sup>87</sup> See Appendix 50, Letter from Philip Lee

<sup>88</sup> See Appendix 39 above and Appendix 51, Copy of company search record

<sup>89</sup> See for example Appendix 52, Letter from Samana (3/5/99)

<sup>90</sup> See Appendix 50 above

<sup>91</sup> See Appendix 53, Letter from Keroro

<sup>92</sup> See Appendix 15 above

<sup>93</sup> See Appendix 54, Letters from Zurenuoc

<sup>94</sup> See Appendix 53 above

## **Prime Minister, Sir Mekere Morauta**

***The Prime Minister cannot be directly linked to any of the companies or individuals involved in the illegal Kiunga-Aiambak timber project, but he is ultimately responsible for the failure of the Government to control the illegal logging. Despite a number of personal commitments and Government policy decisions on Kiunga Aiambak, no effective action has been taken.***

In May 2002, the Prime Minister issued a statement in which he said that the Kiunga Aiambak project 'should never have occurred'. He said that his Government accepted the findings of the Independent Forestry Review in 2001 that 'the project failed to comply with legal requirements' and 'the Timber Authority and its extensions should never have been granted'.<sup>95</sup>

The Prime Minister said that the Attorney General had been instructed to go to Court on the following Friday to challenge the Kiunga Aiambak logging project. In fact, as we have already seen above, the Attorney General ignored this instruction and the court case was adjourned indefinitely.

In November 2001, the Government, through the National Executive Council, endorsed a Forestry Action Plan that contained a number of reform measures. The Plan included a commitment to implement the audit recommendations of the Independent Forestry Review and to 'deal promptly and effectively with legal actions'. The audit recommendation made by the Forestry Review for Kiunga Aiambak was that 'court action should be taken forthwith'.

Despite these commitments and recommendations, the Prime Minister has overseen a situation where for the past 6 months effectively nothing has been done to implement any of these measures.

The Government has also signed a Project Agreement with the World Bank for a Forestry and Conservation Project. That Project includes as a general covenant, a commitment by the Government to implement its own Forestry Action Plan. By not taking any effective legal steps to halt the illegal Kiunga Aiambak project, the Government is in breach of its agreement with the World Bank.

The Prime Minister is also ultimately responsible for the fact that none of his Minister's or senior civil servants have been dismissed or otherwise investigated for their illegal actions in supporting the Kiunga Aiambak project. In particular the Prime Minister has shown a great deal of tolerance for his Deputy Prime Minister and Minister for Forests, Michael Ogio.

The Prime Minister has admitted that he has difficulty controlling Mr Ogio, but has offered the rather limp excuse that "I can't do everything" and said 'that he expects the Forest Authority to correct abnormalities pursued by Mr Ogio'.<sup>96</sup>

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<sup>95</sup> See Appendix 3 above

<sup>96</sup> Post Courier, May 24<sup>th</sup> 2002, page 2