

## TIME AND TRANSITIONAL RELIEF IN NEGOTIATING PERMITS IN A PNG LOGGING CONCESSION, 1992–2012

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This paper is a case study of three permit renewals of the Wawoi Guavi logging concession in the Western Province of PNG. These permit renewals involved a specific conjunction of temporal practices that centered on the transitional provisions of PNG's Forestry Act (1991). The transitional arrangements provided a way to "save" permits that pre-existed the 1991 Act and gave logging companies exemptions from the full application of that Act. I argue that the continual operation of various transitional provisions over the last twenty years has been a major public policy failure. As this case study outlines, these provisions have facilitated the production of potential illegalities in the permit renewal process and have helped to restrict the rights and powers of the original resource owners.

FORESTRY POLITICS IN PNG USUALLY HAS BEEN DEFINED by stories of illegality, mismanagement, and dubious forms of resource acquisition. In contrast, this paper emphasizes that PNG's forestry sector is also defined by how time is institutionalized as a political resource in forms of regulation. If recent work in policy and resource appropriation often relies on spatial metaphors, such as multisited or nonlocal ethnography, commodity chains, and ideas of policy as the articulation of social processes spanning many locations, this article outlines a "politics of time" (Rutz 1992; Greenhouse 1996) centered on the role of rules about time—that is, rules that privilege certain courses of action over others.<sup>1</sup> Such rules refer "in particular, to timing (when something happens); sequence (in what order things happen); speed (how fast they happen) and duration (for how long

they happen)" (Goetz 2011, 3). They involve the capacity to control the allocation of time to actors and to control the scheduling of events. In this paper, the emphasis is on rules and practices related to the renewal of timber permits. Involved is an array of temporalities—the scheduling of reviews and renegotiations of permit conditions; highly specified time spans (e.g., the term of the permit, expiry dates), repetitive processes (permit renewals every ten years), sequence transformations (an expected sequence is inverted; e.g., a permit is renewed and then negotiations about conditions take place), and forms of time restriction (threats to close the operation via show cause notices and strikes; attempts to limit the application of transitional arrangements to the permit). These time-based practices are crucial forms of power that are also themselves objects of power relations.

I outline the importance of such practices in forestry regulation by looking at the way negotiations over permit renewals of the Wawoi Guavi concession have interacted with legal rules concerning a specific form of temporal ordering—transitional relief (Kaplow 1986).<sup>2</sup> The transitional relief found in the Forestry Act (1991) granted logging companies, who were engaging in activities that the 1991 Act repealed, an ability to keep on acting as though the new Act did not apply to them. The generosity of the permitted noncompliance was further enhanced by the fact that the ability to act in terms of now repealed laws was not clearly restricted to a specific period of time. It was left unspecified.

Given such a legal context, over the next twenty years, the relief provisions became a permanently available mode of action and decision, which remained in conflict with existing law, but was not illegal. The beneficiaries of such relief—the logging company and the state—ensured, through intense lobbying and often experimental innovation, that it was preserved and extended. The associated forms of timing, sequencing and other forms of temporal ordering came to define a forestry-specific temporal culture linked to the permit renewal process. In addition, during renewal processes, the amount of timber logged and left standing for future exploitation (Brack 2011; Keenan et al. 2011) also became an issue linked to the possibilities of permit renewal and the application of transitional arrangement. The result was the emergence of a set of temporally saturated practices linking transitional arrangements to other notions of temporality—such as estimates of “future stock” and ideas about “sustainable” logging practices. These conjunctions helped define how permit renewals for Wawoi Guavi (and other concessions) have taken place over the last thirty years.

The Wawoi Guavi case also indicates how the law, and associated policy decision-making concerning the concession’s future, were quite effectively used to limit resource owners’ capacity to negotiate new conditions regulating forest concessions such as Wawoi Guavi. The law helped maintain

exploitative relationships that might otherwise be more clearly problematic or even illegal. The paper also outlines how the transitional relief in the 1991 Act has profoundly limited the capacity to reform PNG's forestry sector. Such findings support the already existing body of work that presents transition relief as socially unproductive policy (Kaplow 1986).<sup>3</sup> PNG's Forestry Act of 1991 emerges as a contradictory site—although it was an attempt to reform PNG's forestry, it also contained legal mechanisms that have prevented reform.

Although highlighting how specific legal and temporal constructs helped to prevent customary landowners from implementing real meaningful historical change in their relationships with industrial logging, given the politics of forestry regulation in this part of PNG, outcomes for local resource owners may not have been that different if the 1991 Forestry Act was fully applied to the Wawoi Guavi concession (without any reliance on transitional provisions of that Act). The stories I tell here, about the conjunction of permit negotiations, transitional relief, other policies, and power, highlight permit renewal as a provisional political achievement. Such stories can never fully exclude the possibility of alternatives. Although I take repetitions of broadly similar regulative processes as indicating the institutionalization of forms of domination, I do so without assuming a simple reproduction of such corporate-state forms of ordering and accumulation. Instead, following Wright (2011, 30), policy making is presented as an emergent effect of elements (laws, actors, sub-judicial reviews, legal opinions, amendments, etc.) that are assembled and reassembled in each set of events concerning successive cases of permit renewal.

Finally, much of this paper relies on already existing empirical data available from court files, vigorous policy debates about permits (2003/2004 Review Team 2004a, b, c, d; Overseas Development Institute 2007) and histories of PNG's forestry policy (Filer and Sekhran 1998). Where it differs from such material is in the time scale of the coverage offered here and in a consequent emphasis on the construction of time as a political resource. This paper consists largely of a chronology of events associated with three permit renewals in 1992, 2002, and 2012. However, before moving into this detail, I provide some background to the Wawoi Guavi concession by reviewing its place in the region's politics of resource acquisition.

### **The Wawoi Guavi Concession on the Legal Frontier of the PNG State**

The Wawoi Guavi concession located in the poorly developed Western Province (see Fig.) has long been a key case study for concerns about the

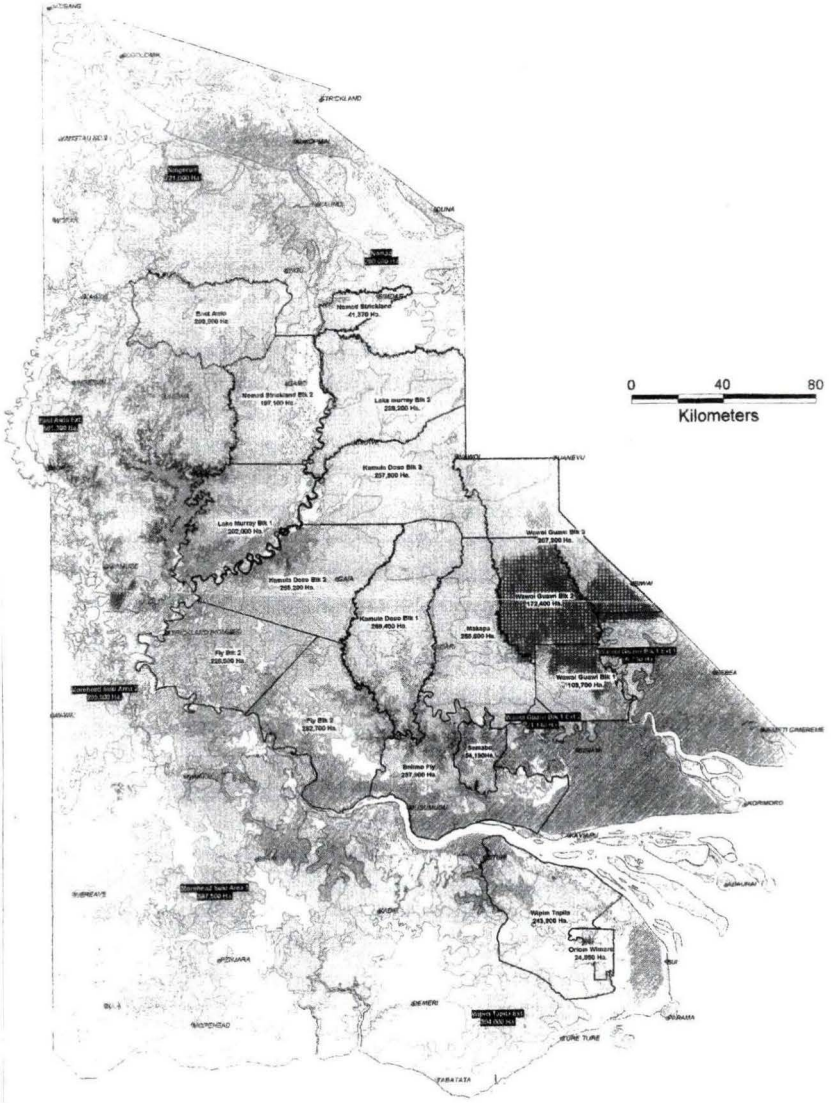


FIGURE. Proposed and operational logging concessions in the Western Province (with Wawoi Guavi highlighted).

legality of PNG's forestry sector. One reason for the salience of Wawoi Guavi in such representations of PNG's forestry sector was that Rimbunan Hijau, the owners of the concession, in conjunction with the state regulator, the PNG Forest Authority (PNGFA), actively embedded the Wawoi Guavi concession in potential illegalities. The most spectacular of these decisions involved Rimbunan Hijau, in the mid-1990s, attempting to acquire the vast Kamula Doso concession (some 789,000 ha) as a physical "extension" of the smaller Wawoi Guavi concession (see Fig.). This extension was granted in early 1999 but was subject to intense public scrutiny by the media and by PNG's Ombudsman Commission (2002, 2004). The resulting sense of scandal helped trigger a donor-sponsored review of how forestry concessions in PNG were conforming to the requirements of the 1991 Forestry Act. These reviews, supplemented by reports by NGOs, provided considerable evidence of mismanagement and illegality both in PNG's forestry sector generally and in the Wawoi Guavi concession (Greenpeace 2002, 2004; Australian Conservation Foundation 2006).

Rimbunan Hijau and its consultants, ITS Global (2006a, b) vigorously denied the concerns raised by these reviews. Reports generated by ITS highlighted apparent factual errors in the claims of critics like Greenpeace and argued the government was primarily responsible for breaches of legal rules. ITS emphasized how logging reduced local poverty and supplied useful infrastructure. The company also mobilized landowner support for its activities and, often successfully, tried to get plaintiffs to withdraw from legal cases concerning the Wawoi Guavi concession. Rimbunan Hijau also started to use libel law in various countries to prevent publication of claims concerning illegalities. Rimbunan Hijau also started portraying itself as committed to legal and sustainable forest management in PNG.

Many of the reviews and reports created for the benefit of the PNG state were critical of Rimbunan Hijau's operations. But they lacked any substantive power, because all of them, including reviews by the Ombudsman Commission, were sub-judicial (Tushnet 2002), not binding on government, and consequently were largely ignored. The courts seemingly provided the only way of creating enforceable findings. And to this end, the Environmental Law Centre launched legal action against Wawoi Guavi and the PNGFA in 2004 that questioned the legality of the initial transfer of forest resources and the legality of subsequent permits. EcoForestry Forum, in 2006, initiated a legal challenge to the Kamula Doso extension that, in 2010, resulted in an agreement among the parties that the initial forest management agreement (FMA)<sup>4</sup> between the state and Kamula Doso's forest owners was invalid. During the years it took PNG's legal system to reach this decision Kamula Doso (linked to Wawoi Guavi via the proposed

extension) was a place where property claims, and PNG's forestry law, emerged as liminal and unclear.<sup>5</sup>

### **Permit Renewals and Some Law about Transitions between Laws**

The Wawoi Guavi concession was further embedded in legal ambiguity attributable to the way the permit regulating the concession was created in the 1980s and extended in 1992, 2002, and 2012. These extensions relied significantly on Section 137 (and relevant amendments) of the 1991 Forestry Act. Section 137 saved permits that were already created under Acts existing prior to the 1991 Act. Part of Section 137 stated all:

Permits . . . timber rights purchase agreements granted under the Forestry Act (Chapter 216) (repealed); . . . that are valid and in force immediately before the coming into operation of this Act, shall continue, on that coming into operation, to have full force and effect for the term for which they were granted or entered into or until they sooner expire or are revoked according to law as if the Act under which they were granted or entered into had not been repealed.

That all three permit renewals relied on various transitional arrangements, highlights an extraordinary persistence of the original Wawoi Guavi permit for over twenty years after the repeal of that permit's original authorizing legislation. Such persistence is a specific political accomplishment—transforming a globally common form of organizing a legal transition into a specific organization of temporality that prevented a full transition to the new legal order. Although transitional arrangements in other jurisdictions can define a limited period of time within which any discrepancies between two possibly inconsistent laws could be resolved, no such period was definitively specified in the Forestry Act. The Act indicated transitional relief for one term of the permit, but it did not explicitly rule out further extensions of this saved or grandfathered permit.

### **Saving the New 1992 Consolidated Permit**

Permit conditions have always been somewhat problematic features in the history of the Wawoi Guavi concession. Originally the Wawoi Guavi concession consisted of one block to which another was added in a manner that was found to be illegal (Barnett 1989a, b). Then in 1986, well prior to Rimbunan Hijau's involvement with Wawoi Guavi, Mr. Diro, then Minister of Forests, promised a third block (Block 3) to the operator, Straits (PNG),

without imposing any new infrastructure conditions on the operating company. This was done before there had been any purchase of the timber rights by the state (Barnett 1989, 19). It was not until June 26, 1989, that a timber rights purchase (TRP) agreement was actually signed between the state and various resource owners associated with Block 3. By this time, Rimbunan Hijau had acquired the concession, and on September 15, 1989, the Secretary of the Department of Forests granted a six-month timber license for Block 3, to Niugini Lumber, a subsidiary of Rimbunan Hijau. This history of Block 3, in addition to many other administrative difficulties (Wood 1996a), gave the Wawoi Guavi concession a certain notoriety in policy-making circles.

This notoriety was compounded when, in 1990, Niugini Lumber applied for the three Wawoi Guavi blocks to be consolidated into a single permit. This consolidated permit was granted by then Minister of Forests Jack Genia on April 10, 1992, just days before the new Forestry Act (1991) came into force and despite there being a moratorium on issuing new timber permits (Filer and Sekhran 1998:145–152). However, because this consolidated permit predated the 1991 law, it was subject to the transitional sections of the new Act that saved such permits pending them being brought into conformity with that Act. The transitional arrangements meant that Wawoi Guavi could continue to operate for a further ten years under the older, by then suspended, forestry act that authorized the initial contract between the state and the developer.

The Wawoi Guavi permit renewal was part of bundle of between ten and nineteen permits the government wished to renew prior to the 1991 Act being gazetted. This rush of permit renewals indicated a desire by the logging companies to capture the benefits of the transitional relief. They were relying on the transitional sections of the new Act to avoid the risk that it might require such concessions be put to competitive tender under an FMA signed by representatives of incorporated land groups (ILGs). The registration of the ILGs was a quite difficult and expensive process and had the potential to destabilize the company's strategy of using landowner companies and their executives as sources of political support. In addition, the new Act contained provision for a serious consideration of the region's development options prior to signing of an FMA, and an environmental impact statement had to be undertaken. The Act was intended to shift the forestry sector toward ensuring the continuous production of export logs and sawn timber via the rational planning of sustainable yield management with an emphasis on a long-term cutting cycle of forty years (National Forest Plan cited in Keenan et al 2011, 178). Unfortunately management technologies associated with sustainable logging were never stabilized into routine social relationships or agreed narratives about a sustainable future.

Indeed by extending its permit via the transitional arrangements Rimbunan Hijau largely defeated the purpose of the reform process. In addition, the substantive conditions of the saved consolidated permit were drafted in a way that meant Rimbunan Hijau was not really encumbered with specific obligations:

Section 4.5 The Permit Holder *shall assist in the provision of* sawn timber, machinery works and other construction materials for the establishment/ construction of the following facilities: 1) Church, 2) Community Hall, 3) Aid Post, 4) Classrooms, 5) Teachers' Houses, 6) Accommodation for Aid Post Personnel, 7) Improvement/ Upgrading of existing airstrip, 8) Sports playing fields including basketball court. . . . The following villages will be the beneficiaries of the above facilities under clause 4.5. 1 Kopalasi 2 Musula 3 Kasigi 4 Haivaro 5 Parieme 6 Diwame 7 Kubeai. (Wood 1996b; my emphasis).

Kinhill Kramer (1997) calculated actual expenditure on these infrastructure benefits involved only around K0.19 per cubic meter. Other financial benefits involved:

1. The standard royalty payment paid at the rate of K10 per cubic meter.
2. A reforestation levy of K0.50 per cubic meter payable to the PNG Forestry Authority (KPMG 1997, 1; National Forest Service 1998), but landowners did not receive any benefit from this levy.
3. A log export premium of K 1.00 per cubic meter paid to Wawoi Guavi Development (WGD) Pty Ltd, a landowner company (KPMG 1997, 1; National Forest Service 1998).
4. An additional log export premium of K0.75 per cubic meter payable to five landowner groups, which operated under WGD (KPMG 1997, 1; National Forest Service 1998).

These kind of arrangements generated complaints from landowners. As early as 1993, Kasua people living primarily at Weliyo and Musula with some support from Kamula landowners at Kasigi had formed their own representative landowner company—Kasua Development. They made it clear that they hoped to change the terms and conditions operating in the Block 3 area. They sought to increase the basic royalty for non-premium hardwoods from K3.20 to K20 per cubic meter and wanted a 50 percent share of the operator's profits. Also, they asked that the landowners see and



study a copy of the agreement between the operator and the landowners before they signed it. In December 1993, another group of Block 3 landowners associated with the Bua landowner company launched an injunction against Niugini Lumber preventing any further work in Block 3. Those launching the injunction argued that, although their members did sign the original contract with the state that sold their timber rights to the state, they did so believing that the document would bring "development" to the area without knowing it was a TRP agreement. They sought to have the TRP agreement and associated permit declared void. However, by May 12, 1994, the Bua group discontinued this action partly on the grounds that the court could find nothing to injunct because, at that time, no logging was occurring in Block 3 and partly because there was some dissension among the landowners over whether they should pursue the action.

As well as seeking an injunction on operations in Block 3 landowners requested that the PNGFA issue a show-cause letter to close down the operation at Wawoi Guavi. In January 1995, foresters from the Southern Regional Office investigated the landowners' concerns. Although they confirmed many of landowners concerns, they found other landowners, from Block 1 and 2, did not support the closure of operations. In addition, sections of government did not endorse the show-cause option. Jean Kekedo, then Managing Director of the PNGFA, advised the acting Minister of Forests, Titus Philemon, on May 16, 1995, that the PNGFA should not authorize closure even though:

there are enough violations to Permit Conditions for the issuance of a show cause letter. I have asked for a show cause letter to be drafted for my signature. . . . Mr. Dolman had advised me that if I take the Show Cause Option I will end up having to suspend the project and the country . . . cannot afford suspending projects during this difficult financial situation the PNG Government faces. We still have to find a compromise (Wood 1996b).

Also, influencing the PNGFA's ability to initiate a major review of the permit were understandings of the terms of the permit. The 2003/2004 Review Team, during its investigations of the Wawoi Guavi concession, came across a file note that stated:

Attempts around 1998–2000 to review the W-G Timber Permit never got off the ground because RH refused to cooperate—a loophole had been placed into the TP which only required a 5 yearly review of the forest working plan but not the TP (2003/2004 Review Team 2004a, 2).

As a result, no major review of the permit conditions took place. There was no real attempt to ensure the permit's terms and conditions conformed to the 1991 Act. The existing permit and, to an ambiguously limited extent, the 1991 Forestry Act continued to be the only contractual regulators of the landowner's interests in the Wawoi Guavi concession. According to one set of reviewers, the landowners had no formally specified substantive rights in the Wawoi Guavi project beyond the permit:

[T]he Wawoi-Guavi landowners do not feature in any of the legal documents or formalities applying to the initial grant of the operating right for this project. This is an extremely disturbing situation. . . . In the absence of a proper project agreement the Timber Permit is the only operating document for the project. The landowners have openly expressed dissatisfaction of the performance of the Permit holder and called for the review of the timber permit. . . . There is no substantive aspect of this project that gives any recognition to the rights of the landowners. They are entirely at the mercy of Rimbunan Hijau, which holds all legal rights relating to the project and to the timber resource (Independent Forestry Review Team 2003:4–5).

The crucial element was the exclusion of landowners from any formal role in negotiations concerning permit renewal. The next parts of this essay show that this exclusion was reinforced by the use of transitional clauses to further preempt any real participation by landowners in reviewing the permit and renegotiating its terms and conditions. In 2002–04, and again in 2012, this involved transforming the usual sequence of events where negotiations would be followed by permit renewal to a sequence involving permit renewal followed by negotiations.

### **Renewing the TRP Permit in 2002**

On September 12, 2001, Rimbunan Hijau applied for a renewal without offering any new conditions favorable to the landowners. Indeed, it was not until May 2004—well after the landowners had lost any negotiating power because the permit had already been renewed—that certain new landowner benefits were incorporated into the permit. During the negotiations some landowners argued no extension of the permit should be allowed until “a more appropriate legal arrangement was finally negotiated” (Independent Forestry Review Team 2003, 5). These views were expressed in a briefing paper prepared for the Forestry Board when it was considering the Wawoi

Guavi permit extension. Also, the paper noted the landowners intended to shut down the operations should negotiations be unsatisfactorily concluded. Also included was recommendation from forestry officers that no more than a six-month extension be granted.

However, the Minutes of the Forestry Board held on January 30, 2002, show Mr. Nen, the Managing Director of the PNGFA, withdrew this paper and that it was never presented to the Board. On February 1, 2002, Mr. Nen signed an extension to the Wawoi Guavi permit. He exercised what he purported to be a delegated power to recommend the grant of the extension to the Minister on behalf of the board (Independent Forestry Review Team 2003, 17). Although claims by senior bureaucrats or the Minister to use a delegated power of the board have a long history (see Filer and Sekhran 1998, 161), there is little evidence of explicit delegation by the Board on the matter of the extension of the Wawoi Guavi permit. The absence of any explicit delegation was overcome by a series of administrative memos that asserted its existence. On February 1, 2002, a paper signed by the General Manager of the PNGFA, supported the exercise of the Managing Director's delegated power (Independent Forestry Review Team 2003, 18). In addition Mr. Nen drafted a Brief for the Minister of Forests explaining how he had exercised "a delegated power" on behalf of the board (Independent Forestry Review Team 2003, 18). On February 4, 2002, Forest Minister Ogio signed an extension of ten years to the Wawoi Guavi permit without any new conditions being added to the permit (Independent Forestry Review Team 2003, 18).

From Rimbunan Hijau's perspective, the process had been extremely efficient—they gained their permit renewal without making any concessions and had only formally applied for a renewal four and half months earlier (in September 2001). The extension came under criticism from the World Bank that found that "serious questions" had arisen about the processing of the application and that some steps were "irregular" and failed to follow due process. Mr. Nen was asked to explain his actions in claiming the delegated power, which had effectively excluded the board from any role in the process. The team reviewing existing forestry concessions questioned the legality of the procedure. They argued the policy "intention" motivating the Act was to ensure that "timber permits issued under the preceding Acts, if not brought into line with the 1991 Act would be allowed to continue to their date of expiry only" (2003/2004 Review Team 2004a, 6). Concessions subject to transitional procedures would be restructured to comply with the new Forestry Act prior to their permit's expiry date. If this did not happen, the permit should be left to expire without any extension of the term of the permit (2003/2004 Review Team 2004d, 2). Logging

should cease if there was failure to fully conform to the 1991 Act. It followed that:

there was no legal basis for the Managing Director to recommend, or the Minister to grant, the extension in February 2002. Consequently the current ongoing logging operations under TP 1-7 Wawoi Guavi also have no legal basis (2003/2004 Review Team 2004d, 6).

The reviewers, citing a government legal opinion, also argued that,

[i]f it had been intended that the authorities and permits under the old Act should be treated as “timber authorities” and “timber permits” under the new Act, the appropriate provision would have been a provision deeming authorities under the old Act to be “timber authorities” [and timber permits] under the new Act (2003/2004 Review Team 2004d, 1).

But countering these kinds of arguments, in July and November 2003, the Prime Minister’s office received legal opinions that confirmed the right to extend saved permits under the transitional provisions of the 1991 Forestry Act. These opinions argued any logging contract “written prior to the implementation of the Forestry Act 1991 would bind the PNG Forest Authority” (B. Brunton, memorandum of advice, regarding the Forestry Act ss78,132,143, unpubl., 2004, 10).

The World Bank called for renegotiations of the Wawoi Guavi permit and indicated that failure to achieve new conditions could result in a suspension of operations. However, the National Executive Council (NEC), PNG’s cabinet, ignored these demands, and on June 6, 2003, it directed the PNGFA to implement “the revised timber permit conditions as negotiated” (2003/2004 Review Team 2004c, 7) even though this new permit did not change the allowable cut nor did it significantly improve landowner benefits. In doing this, the NEC was prepared to disregard the conditions of a recent World Bank loan linked to a forest conservation project (FCP) worth some \$US17 million. By August 2003, the World Bank had listed the Wawoi Guavi case as a breach of this loan agreement because the government had failed to ensure the concessions compliance with the Forestry Act (2003/2004 Review Team 2004c, 9).

For a brief time, it appeared the World Bank application of pressure had some influence on the PNGFA. On August 1, 2003, Mr. Nelson, the Managing Director of PNGFA, “ordered the immediate suspension of

logging operations in Vailala and ordered that the permit for Wawoi Guavi . . . be suspended" (*The National* August 20, 2003). The next day, because of other matters, the Forest Minister dismissed Mr. Nelson from office. The new Forest Minister then asked the PNGFA "to review" the decision to suspend the permits for the Vailala and Wawoi Guavi concessions (*The National* August 18, 2003).

At the same time President of the Forest Industries Association, responded to the World Bank (and other reformers of PNG's forestry sector) by accusing them of acting "outside the law." He asked:

why have they ignored a National Executive Council directive, bypassed the legal authority entrenched by government in the National Forest Board, and chosen to force the now suspended managing director of the National Forest Service to issue these notices? . . . The World Bank is trying to bully this country and the timber industry by acting in a heavy handed and racist manner. . . . The World Bank is doing this because they are confident they are above the law in PNG (*The National*, August 18, 2003).

What the World Bank wanted was evidence that the Wawoi Guavi permit had been brought into compliance with the operation with the Forestry Act. As a way of indicating its displeasure at events concerning Wawoi Guavi, and other concessions, the World Bank then threatened to withdraw completely from PNG (*Post Courier* September 4, 2003) but then decided only to suspend the FCP worth some \$US17 million (*The National* September 1, 2003). Because the government did not support this project, its suspension was not a very effective tool for ensuring compliance on matters like the renegotiation of the Wawoi Guavi permit (Filer, Dubash, and Kalit 2000; Filer 2004). What was made clear during this time was the World Bank's limited ability to seriously influence PNG's forest policy and events concerning Wawoi Guavi.

Further attempts to influence negotiations over permit conditions were countered by Rimbunan Hijau's argument that the negotiations were already concluded (2003/2004 Review Team 2004c, 12). In January 2004, the World Bank again requested that the Wawoi Guavi timber project be suspended because of the lack of progress amending the Timber Permit (2003/2004 Review Team 2004c, 12). This had some support from sections of the government because a letter by the PNGFA to the Managing Director of Wawoi Guavi noted that "if we fail to reach agreement by 15 February 2004 then the Government will take steps to suspend the permit" (2003/2004 Review Team 2004c, 13). Rimbunan Hijau replied on February 5, arguing

that, at a meeting with the World Bank and the Chief Secretary, it had been agreed to allow more time to conclude negotiations. Moreover, the parties had agreed “to revisit certain conditions of the timber permit without waiving the legal right of the timber permit holder that the negotiations has been duly concluded” (2003/2004 Review Team 2004c, 13) These negotiations between Rimbunan Hijau and the PNGFA were completed on April 30, 2004, with landowners’ participation being confined to observer status.

In the review team’s opinion, the resulting agreement to Amend Timber Permit 1-7 represented the complete failure by the PNGFA to impose any new conditions on the company. The “agreed changes” did not require land group incorporation and the implementation of a development options study; there was to be no advertisement of the project for tender, and the changes to the allowable cut did not achieve “anything like sustainability” (Independent Forest Review Team 2004c, 8). They concluded, “at no time since the Minister granted an extension to the term of TP 1-7 Wawoi Guavi in February 2002 have the terms and conditions of TP 1-7 Wawoi Guavi been in compliance with the Forestry Act 1991” (2003/2004 Review Team 2004a, i).

Despite these findings the Review Team, like Jean Kekedo previously, also equivocated about moving to shut down the operation. The Review Team used arguments about the unsustainable exploitation of the timber resources to justify an economic argument against bringing the TRP-based permit into conformity with the law or significantly improving benefits flowing to resource owners. This view reflected a persisting conventional wisdom in forest policy circles that inventory estimates were unreliable with concessions that were intended to last thirty-five to forty years often only lasted ten to fifteen years (Keenan et al. 2011, 178). These ideas emerged in the Review Teams’ discussions about the 2002 renewal of the Wawoi Guavi permit. Taking a pragmatic view, these advisors argued “given the limited nature of the remaining forest resource it is questioned whether in the case of TP 1-7 Wawoi Guavi compliance with the Act is realistic, or indeed economically or socially desirable” (2003/2004 Review Team 2004a, i). They suggested resources would be fairly quickly exhausted:

Today, in 2003/4, after about 10 years of logging at the permitted unsustainable rate, it is generally impractical to consider restructuring any remaining projects set up under the legislation preceding the Forestry Act 1991 in order that they might better comply with the National Forest Policy 1991 and the Forestry Act 1991. Only remnant resources remain, and essentially the opportunity to restructure projects has passed. (2003/2004 Review Team 2004a, 2)

Despite this crisis narrative of overexploitation and limited remnant resources, the Wawoi Guavi concession went on to produce timber for the next ten years.

One result of these debates over permit extensions was a 2005 amendment to the Forestry Act that deleted a part of section 137 (cited above) that allowed permits to persist if they were granted before the new Forestry Act came into force. The deleted words stated permits and timber rights purchase agreements could function “as if the Act under which they were granted or entered into had not been repealed.” The amendments stated that timber permits linked to TRPs could be extended subject to the developer being acceptable to the customary owners and having engaged in “satisfactory performance” of the logging operation. In addition to some other conditions, such as payment of performance bond, amendments to the permit conditions could also be made such as including a “timetable for the delivery of infrastructure and other community based developments” (Section 31 (b) (1B) 2005 Forest Amendment Act). A further section of the 2005 Amendment Act stated that all permits previously saved under the previous version of the Forestry Act “are deemed to be extended under this section” (Section 31 (b) (1F)). This was an attempt to fully legalize all extensions of saved permits, including the Wawoi Guavi permit. In a 2006 story run by the *Post-Courier*, Rimbunan Hijau indicated it thought the amendments had achieved precisely the required legality:

In August 2005, the Parliament made a legislative clarification to stop this media speculation on legality . . . [via] Section 31 which amends Section 137 of the Forestry Act 1991 and the relevant amendment Section 31 (b) (1F). Rimbunan Hijau said it could not understand why “all these learned writers” failed to highlight the above mentioned provision of the Act which puts to rest all this futile discourse on illegality (*Post Courier*, May 5, 2006).

Another result of the arguments over the 2002 permit renewal was that Rimbunan Hijau, in conjunction with sections of the state, had managed to defeat the intentions of the review, the World Bank, and supporting donors, such as Australia, on this issue. They had intensified their power at the expense of the World Bank, the Ombudsman Commission, donors, and NGOs who attempted to intervene in the 2002–04 permit renewal process. They were able to maintain the autonomy of their style of decision making. In effect, sections of the forest policy, elite of PNG, and Rimbunan Hijau, succeeded in rendering themselves less accountable to PNG citizens, legal institutions like the Ombudsman, and international institutions like the

World Bank. Reform, using sub-judicial review and the limited leverage of the World Bank and other donors, were demonstrable failures. There was no real power to replace one form of social organization—a forestry sector embedded in forms of legally questionable and mismanaged decision making—with another associated with “good governance,” transparency, and fully legal decision making.<sup>6</sup>

### Landowner Financial Benefits

And what was the effect of all this forest policy debate on the local landowners of the Wawoi Guavi concession? One indicator is to consider financial benefits to the landowners. Some relevant data are outlined in Table 1 that shows some of the aggregate financial outcomes of the Wawoi Guavi concession over thirteen years (1993 to 2005 inclusive).

In conjunction with roads, some company-run stores and health clinics and some provision of schoolrooms, the totals for wages, premiums, royalties, and infrastructure represent robust estimates of most of major “benefits” from logging in Wawoi Guavi. Looking first at wages the Mubami, who own most of the core area of the Wawoi Guavi concession, tend to receive comparatively little income from working in the concession simply because they do not work. From a survey undertaken in 2010, whereas around 20 percent of all immigrants at Kamusi worked, only 5 percent of the Mubami landowners did so. Mubami resource owners were highly dependent on royalties and premium payments as a source of money.

However, as result of the 2002–04 permit, and the earlier establishment of landowner companies funded by premiums, some landowners have benefited from gaining greater control over cash. The main improvement for the landowners in the 2002–04 permit was an increase in the premium royalty from K4 to K6 per cubic meter from exported logs cut anywhere in the concession over the a three-month period. This royalty was then split among six different landowner companies such that effectively each landowner company would receive K1 for every cubic meter of timber logged from anywhere in the concession. Premiums were effectively controlled by

TABLE 1. **Wawoi Guavi: Key Financial Benefits 1993–2005 in Millions of Kina (ITS Global 2006c, 40).**

	Salary and Taxes						
	National Wages	Expatriates Nationals	Premiums and Levies	Royalty	Export Duty	Infra-structure	Total
Total	46.19	18.26	17.1	33.91	147.3	2.95	265.8



the executive of the landowner company who were authorized to sign for any use of the accounts' monies. Those with signing authority tended to be the chairman and vice chairman of the landowner company. Withdrawals took the form of direct cash advances, purchase orders for goods and fuel from company stores in Kamusi, regular fixed deductions to pay off debts to moneylenders, and cash payments to supporters of the chairman. The chairman could also use premium monies to respond to ad hoc requests for funds such as helping with medical emergencies, school fees, costs of tertiary education, car repairs, and other expenses. The distribution of premium royalties throughout the concession area, although involving relatively small amounts of money, helped to deal with the company's political problem of how to maintain the landowner's political support during the project's entire life. Premium distributed through local landowner companies ensured that access to some minor cash benefits would regularly occur throughout the concession even in those areas recently logged, which could not otherwise expect any royalties, or well-maintained roads, for many years. In addition to premiums, during the period 2002–12 landowners were also paid royalties on logs at K10 per cubic meter up (but after 2010, some species of timber attracted K20 and K35 per cubic meter). These royalties were set nationally and, unlike premiums, were not negotiated during the permit renewal process. Quarterly royalties at Kamusi in 2010–12 sometimes amounted to just over K1 million.

Overall the figures indicate historically unprecedented monetary wealth for the Mubami and other landowners, whereas also indicating the state extracted more wealth from the region than was received by landowners as royalties and premiums. The table also reinforces Kinhill Kramer's (1997) earlier findings concerning the low level of expenditure on infrastructure developments within the Wawoi Guavi concession. Because the government has itself funded few specific development projects in the logging concession, the figures suggest that, overall, little "infrastructure" development occurred. This outcome was partly the result of the way permit conditions were negotiated.

### **2012 Unfinished Negotiations of the Permit and Some Repetitions**

Because the permit was due to expire in 2012, the landowners spent considerable energy in 2011, and early 2012, establishing a consensus on key points to be negotiated. By late January 2012, a review committee had been selected and a series of public meetings established the key concerns of landowners. In the 2012 negotiations on the permit's renewal, the landowner's primary concern was to ensure greater access to premium royalties

as a precondition to any renewal. This emphasis on premiums was partly attributable to the fact that standard royalties, set for all concessions by the PNGFA, were not the subject of these permit renewal negotiations. However, the emphasis on premiums also reflected a desire to have control over a continuous flow of funds as opposed to the spectacular boom and bust of royalty payments. Landowners decided to argue for an increase in the premium royalty from K6 per cubic meter to K30 per cubic meter. In addition, they wanted to increase the number of landowner companies from six to around thirty-two. By proliferating the number of landowner companies, and increasing the amount of premium paid, they wanted to ensure access to premium-derived cash was more equitably distributed than under the current arrangements, which favors the executive of only six landowner companies.

Preparation for the 2012 review process also heightened awareness of how few of the 2002 permit conditions had been fulfilled. As with the earlier permit, sections of the 2002 permit were written in such a way as to be difficult to enforce. Clause 7.4 stated “in the event that the Permit Holder fails to construct or complete a road within the period specified above the Permit Holder shall be given an opportunity to explain the reasons for the delay in writing and shall be given a further reasonable extension of time to complete provided the extension does not exceed the permit period” (PNG Forest Authority and Wawoi Guavi Timber Corporation 2004, 6). Despite their experience of poor road construction and maintenance during the period 2002–11, in one of their 2012 position papers, the landowners enthusiastically specified, in great detail, which roads would be sealed and would require bridges and culverts constructed in iron.

Other permit conditions remained unfulfilled. During the 2002–12 period the Kamusi health center was supposed to be supplied high-quality housing, a stand-by generator, a patient trolley, and an ambulance. However, landowners argued that none of these had been delivered, and there was failure to complete a program of classroom construction in a number of villages within the TRP area.

Landowners were also interested in securing control over monies linked to other benefits associated with the Wawoi Guavi concession. In a letter (May 8, 2012) from Wawoi Guavi landowners to the operations manager of the Wawoi Guavi concession, they asked that the “Infrastructure [levy], Reforestation Levy, Log Export Development Levy, Tax rebate levy to be reviewed and backdated to the date of commencement of the logging operations in TPI-7 area.” Landowners also noted the lack of expenditure of monies derived from these levies even though funds were apparently in trust fund accounts established by the PNGFA. They wanted greater access to these levies.

By March 2012, it became apparent that these and other permit-related issues would not be negotiated by the time the permit expired in late April 2012. On April 27—three days before the permit was to expire—Rimbunan Hijau wrote to the PNGFA requesting a grace period to continue operation pending the renewal of the permit. The next day, the acting managing director of the PNGFA responded “I have considered your request as genuine and thereby grant an indefinite grace period for your operation to continue until such time TPI-7 is extended” (Letter to Rimbunan Hijau April 28, 2012).

The part of Section 137 of the Forestry Act (1991) that discusses grace periods was the result of a 1993 amendment to that Act. The amendment was passed during a time when the forestry industry believed it would be subject to decisions by the Forestry Board to amend any forest concession’s permit such that it fully conformed to the new Act. There were concerns that there would be no right to appeal such decisions (Filer and Sekhran 1998:201–02). The amendment stated:

In order to achieve the intention of this Act that . . . permits . . . saved by this section are able to be adapted to conform to the provisions of this Act, the Board may grant in respect of any . . . permit . . . a grace period during which—(a) the provisions of this Act shall not apply; and (b) the provisions of the repealed Act under which the . . . permit . . . was granted or the agreement or timber purchase agreement was entered into shall apply.

That the grace period only applies to permits subject to transitional arrangements and reflects the generosity of these provisions. Also, as indicated in Mr. Amos’s letter, after the grace period expired, the Wawoi Guavi permit could be treated, yet again, as an “extension” of its original derivation from a TRP. The resulting permit would still not be brought into full conformity to the existing Forestry Act.

In granting the grace period, the acting managing director in 2012 may have been relying on notion of delegated power to act on behalf of the Forestry Board (similar to that asserted by Mr. Nen in the 2002–04 permit negotiations). The Act specifies that only the Forestry Board could grant such a grace period. Although the acting managing director’s letter does not explicitly address this issue, because he responded within twenty-four hours of receiving the request, it seems likely the Board did not have time to consider the matter.

The granting of the indefinite grace period angered landowners. There was talk among landowners and workers that the grace period would last

until 2018 or 2016 when the timber resources of the concession would be exhausted. In this view, the permit would not be significantly renegotiated, and unintentionally repeating the rhetoric of the Independent Reviewers in 2004, there were suggestions so little timber was left that the landowners had virtually no resources left to pay for new terms and conditions including full conformity to the 1991 Act.

### **Landowner Optimism in the Promise of Review**

The result was a weakening of the landowner's power. According to one landowner, the process was a like a form of dispossession where the landowner's agency was reduced from active participation to mere spectatorship. The self-evident unfairness of the PNGFA issuing the grace period during negotiations was illegal and corrupt:

[W]hen the developer asked for the grace period without hesitations it was very quickly given to the company . If he [the managing director] has done that, our concern was they should have consulted us too. There is not even fairness in there. If you can be fair [to the logging company] . . . you must also be fair to us. There is corruption going on. Fishy dealings like that. You seem to be one sided only. I am like a spectator in my own land while both of you are playing football. That should not be on. . . . If you have granted that grace period what have you done to our timber permit conditions? That is not fair. You are [only] giving them grace period. What about the ten years we have come? What have you implemented for us? . . . You are granting them permission illegally from our own perspective (Terence Senewa, Interview, May 2012)

On May 8, 2012, the landowners responded through their lawyer by threatening to "stop all logging operations in TP 1-7 area as of Friday 11 of May 2012." Their lawyer argued that because the permit had expired, all logging was illegal and should cease. Also, he asserted that the managing director did not have the power to grant a grace period but did not directly refer to the section of the Act where that power is allocated to the board.

On this day, the company responded by a counter strike of its own. It shut down all company stores and the medical center; it stood down all workers and began discussions with migrant workers about sending them back to their provinces. This shocked many of the landowners and other residents at Kamusi. By Monday, the medical center had reopened, and the store started operating on restricted hours. It soon emerged that what the

landowners demanded was not a cessation of all operations. Rather they wanted to only prevent the felling of trees. They were not interested in shutting down the entire operation at this point in the negotiations.

The intention of the strike was to force the parties (the state and the company) to negotiate a new permit agreement with them, and many landowners remained committed to a negotiated settlement despite the fact that they had been stripped of any significant bargaining power. This commitment was sometimes based on the idea evident in Terrence Senewa's account (outlined both above and below). In his view, the landowners' case was self-evident to anyone who understood the documented facts and had compassion for the landowners. Also evident in his discussion is a limited somewhat messianic hope for justice through the obvious capacities of the landowners' lawyer and his documents:

It looks like we are going to have a review. Still have a review. The developer is already telling us they are in a position to have a review. So many things have been mentioned in the public forum that we had I think that the state and the developer are aware that there is a mistake. There are so many things that are not done properly they already realize. . . . I hope this review is going to be . . . tougher than the other previous review. Our lawyer <sup>7</sup> too was invited to be present. He was there yesterday later in the day they rang him and invited him to the meeting [in Port Moresby]. Out come you are going to see it today in the document [sent by the lawyer to clients at Kamusi]. So we were a bit impressed (interview Terrence Senewa, May 2012).

Other landowners mixed such hopes for an effective review with a more pessimistic sense of how negotiations might actually proceed. Tom Kay, chairman of Kasua Landowner Company, speaking at the public forum on permit negotiations noted:

If we stop the company and the company says I am going I am packing up. When the company does this what will happen? . . . Review must take place this month. You advise the Manager [of the PNG Forest Authority] you must fast track [the permit review] . . . before next month [from transcript of the meeting].

When I left the area in mid-May, it was not clear whether the landowners would be in position to ensure the review would result in a radically new permit agreement. Compounding the landowners' difficulties, a court case

testing the overall legality of the Wawoi Guavi concession, and the use of transitional arrangements, was dismissed in June 2012, because the lawyers acting for the plaintiffs were not registered. By July 2013, no new permit agreement had been negotiated with operations continuing under the indefinite grace period.

### Conclusion

This paper has shown how the state and a logging company organized time in reference to permit renewal. This organization relied on a quite specific legal culture defined by the temporal possibilities contained in transitional arrangements. Each application of these possibilities to the three specific permit renewals considered above was both intensely political and full of time saturated arguments. Time emerged as crucial resource available to interested parties (Rutz 1927, 7; Goetz 2011, 13). Formal legal rules concerning transitional arrangements and grace periods were linked to permit negotiations in ways that helped configure qualities of time into distributions of power there by highlighting Munn's point that "control over time is not just a strategy of interaction, it is also a medium of hierarchic power and governance" (1992, 109).

The law, in failing to explicitly specify the duration of transitional relief, facilitated a situation in Wawoi Guavi where transition or legal change never clearly occurred. Instead regulation moved away from a notion of a limited transitional period toward a mode of governance effectively involving a permanent state of non-transition. By continually taking the parties back to an imaginary state prior to the 1991 Act, the transitional arrangements operated to efface all the history concerning the social relations of production, distribution, and consumption that actually defined much of the permit contract during its periods of operation. This effacing alienation of the concession's real history and its replacement by the abstract continuity of a pre-1991 legal fiction purified the permit into an apolitical document positioned outside or beyond its real history. Although, in practice, the effects of recent history of the concession and the history of PNG's broader forestry sector are never fully effaced in the permit conditions, the key tendency of the transitional arrangements is to, wherever feasible, detemporalize recent history by placing new conditions within a broader political field crucially defined by the permanency of pre-1991 conditions.

This detemporalization—an achievement of repetitious corporate and state policy decisions made over more than twenty years—may not be unique to the Wawoi Guavi case. In 2011, around a third of all PNG's forestry concessions (by area) were still regulated by timber rights permits

derived from the legislation repealed by the 1991 Act (PNGFA 2012, 10). This suggests that the Wawoi Guavi case is part of a wider failure of public policy to reform the forestry sector.

The Wawoi Guavi case study is not just about the failure of transition policy but also the production of possible illegalities that threaten the legitimacy of the resulting decisions. Yet to be tested in court, the result is not a dualistic contrast between the law and its absence, or the clearly distinguishable presence of both the legal and nonlegal. Rather, what emerged were legal ambiguities as policy and political responses from within the law were articulated into more problematic, potentially illicit, outcomes. As a result, the legal and illegal were merged and co-productive (Comaroff and Comaroff 2006; Roitman 2006). PNG's forestry sector is often presented as though decisions and the resulting logs and timber could be understood as either legal or illegal (Curtin 2006; Australian Government 2007). However, in this case study, routine administration and regulation of permits and timber production did not proceed on the basis of this kind of clarity. Instead, this paper has highlighted how corporations and state officials successfully exploit the capacity of law to provide a means of escaping full regulative control provided by the law.

Although judicial clarification may benefit the landowners, it is unlikely any such legal case would be especially prompt, or would it necessarily address all matters associated with transitional processes and permit negotiations that are of concern to the landowners. To repeat a point made in 2004 by the 2003/2004 Review Team (2004d, 1 Attachment 3), it may be worth further exploring to determine how the remaining transitional sections of the Forestry Act could be reviewed and redrafted. In the interim, the landowners are still left waiting at some distance from the long promised possibilities of legal and policy reform. They are no closer to effective permit renewal negotiations than they were prior to 1992.

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## NOTES

1. Following Munn (1992) and others, talk of time necessarily involves talk of space. In this paper, I downplay the spatial in an attempt to highlight, following Dalsgaard (2013, 34), that analysis of the PNG state, and state policies, also demands attention to temporality.

2. In the United States and other jurisdictions, transitional relief is also known as “grandfathering.”

3. Kaplow (1986, 522) argues that government compensation for changes in law creates possible rents and a culture where the risks of legal change can be ignored. Relying on Coase’s influential arguments about polluting firms and markets for environmental services, she thinks government intervention is less efficient than a market-based response (Kaplow 1986, 531, fn 53; but see Masur and Nash 2010).

4. An FMA is a contract that allows the state to sell the forest owner’s timber to a developer either by tender, selective tender, or extension. The earlier legislation repealed by the Forestry Act 1991 involved a Timber Rights Purchase (TRP), which involved far fewer procedural rules and less concern with trying to represent landowners and address their interests. The differences, if any, between concessions and permits based on FMAs and those based on “saved” TRPs, have yet to be fully analyzed.

5. The status of the Kamula Doso was made even more complex during the period 2008–10 when it was not just a forestry concession subject to a FMA but also a carbon scheme and a forest clearance–road building scheme involving leasing arrangements (Filer and Wood 2012).

6. On the other hand, the reformers may have failed simply to fully appreciate that the 2002 timber permit contained the following clause: “6.1 Compliance with the Law: The Permit Holder shall comply with all relevant laws of Papua New Guinea and in particular the laws regulating the protection of the environment, the PNG Logging Code of Practice, the Forestry Act 1991 and all rules and regulations and by laws under the Forestry Act or any other law relating to forestry matters.”

7. Messianic hope is a common theme in local histories recorded at Kamusi.

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