

The Collingwood Bay Logging Case

The elements of this complex case were summarised by Anne Kajir in an interview with Drusilla Modjeska in Port Moresby on 28 August 2007.

In Book 2 of *The Mountain*, the character Bili, an environmental lawyer, represents the customary landowners of Collingwood Bay against the logging lease that has been taken over their forests.

It is not the place of a novel to explicate complex matters of law, at least not a novel of this sort, and in any case I am not equipped to do so. From a literary point of view, the role of this case in *The Mountain* is as a focus for the post-colonial complexities of 'ground' tradition and development, and as a point of tension between the characters.

However, Bili's fictional case is based on an important and hard-fought case, and I offer the following notes and references to those who would like to discover more about a dispute that began in 1999, when an attempt was made to log the forests of Collingwood Bay, Oro Province, Papua New Guinea. 350,000 hectares was at risk, an area of primary forest and bio-diversity.

The matter in dispute had to do with false registration of the land rather than with logging itself. The Maisin-Wanigela people of Collingwood Bay, who own 200,000+ hectares of forest, had long rejected the use of their land for large-scale agro-forestry development. Yet in 1999 they discovered that a small number of their people living in town had, without consultation, corruptly registered their land as an Incorporated Land Group (Keroro Development Corporation Ltd). Once registered, KDC claimed a lease over 350,000 hectares of land, including the land under Maisin and Wanigela customary ownership.

Under PNG law, customary land cannot be bought or sold. If agro-development is to take place, the land must be registered with the full consent of all traditional owners and stakeholders. It is then leased through the State to an agro-forestry company. The land registration system, designed by the Constitution to protect customary land ownership, has proved easy to circumvent. In this case the land was leased for fifty years to the Malaysian company Deegold (PNG) Ltd. An injunction against Deegold in June 1999 prevented any logging on Collingwood Bay land pending the outcome of legal proceedings.

After three years in dispute, the matter finally came to trial at the National Court of Papua New Guinea in May 2002. *Ben Ifoki & Ors v The State, Registrar of Land Titles, Keroro Development Corporation Ltd, & Deegold (PNG) Ltd [1999], OS 313 of 1999 & OS 556 of 1999*. The court found for the plaintiffs, 34 elders from the land owning clans. The leases were ordered to be cancelled and the land registration reversed.

John Wesley Vaso, an Maisin elder and a plaintiff in the case, spoke to me in September 2007 about the case, its impact on Maisin and his thoughts on oil palm, development and customary resources. A thoughtful man, who has worked across PNG and travelled widely, he had returned to Uiaku, his home village in Maisin, Collingwood Bay, before the logging threat became apparent. As a kotúfu elder, he played a prominent role in the subsequent struggle against the alienation of Maisin land and forests. I spoke to him at Tufi, Oro Province, in September 2007.

Read the edited interview with John Wesley Vaso.

I recommend it to anyone interested in logging, oil palm, and the dilemmas of development.

The elements of the case were summarised by Anne Kajir when I spoke to her in Port Moresby on 28 August 2007. At that time she was the Director of the Environmental Law Centre, which was acting for the landowners. The following is an extract from that interview.

Anne Kajir:

What happened there was that an agro-forestry project was proposed for Collingwood Bay. Under PNG law, where the forests are to be transferred from the landowners to the state, it has to be done through a proper agreement, and because customary land cannot be bought or sold, the system allows it to be leased to the state. The leasing arrangement begins with the incorporation of land groups, so that means all the customary landowners of the area, depending on which clan they belong to, must formally incorporate the land group, because title to land lies within a clan, not just one member.

The Incorporated Land Group (ILG) can then enter into a contract with the Government for a state lease. When the lease is signed, that's when the rights of the forest resources pass on to the state. The whole process has to be done with proper consultation with the landowners, so the landowners have got to be made aware of how the lease agreement is going to work – what are the advantages, what are the disadvantages of any project, especially forestry. What happened here was that instead of that formal process of consulting the landowners and incorporating land groups, certain landowners - so-called “middlemen” - went ahead and incorporated certain land groups, and transferred, then sold, the land owners' rights over their trees through the incorporation of these land groups to the land owner company, Keroro Development Corporation Ltd (KDC).

KDC then entered into a lease-lease back agreement that would allow Deegold (PNG) to log and plant oil palm. Deegold was transferred the rights of the land owners and entered into an agreement with the state to go into forestry, to go and log, and then clear the place and then do agro-forestry.

Fortunately the documents fell off the back of a truck, so to speak, and we got hold of them. And while it was going through the process of negotiation with the state, the landowners got involved through the Provincial Forest Management Committee, which is the provincial body responsible for forestry issues.

The Provincial Forest Authority has the responsibility of ensuring that landowner concerns are taken into account, whether there's proper formation of Incorporated Land Groups, and whether there are environmental issues that should be taken into account. So the Provincial Forest Management Committee is responsible for that. The Provincial Forest Management Committee said that proper landowner consultation had to be done and did not even consent to the next process where the land group certificates were to be certified by the Department of Lands - which is a separate process again. So all these things did not take place. The Provincial Forest Management Committee is supposed to make a recommendation to the Lands Department, the Register of Customary Lands, to certify the incorporation of the ILGs before the Provincial Forest Management Committee puts it before the National Forest Board for approval.

It's a complicated issue. The laws specify that you must do those things. All of that wasn't done, basically.

I was involved in the initial injunction that was taken out, basically stopping the Government – the Forest Authority and the State as well as the two companies involved – Keroro Development Corporation and Deegold (PNG) - from entering the land while the matter was properly dealt with at trial. We managed to get the first injunction in place, which was pretty good because what we heard was that the logging equipment, the barges were ready to sail into Collingwood Bay the day before we got instructions, or basically the day before we got the injunction.

As soon as the case was filed in the National Court, we had to go back and deal with the customary land issues, and that's dealt with by the Land Court, which is a separate process from the National Court. Because the Land Court only deals with customary land - the lawyers and whoever else are not involved – that's where mediation takes place. That process had to take place before us going to the National Court. So we ran two separate things at the same time. And they both turned out good.

While the landowners were sorting out the land mediation through the formal Land Court, the case was in the National Court for trespass.

I changed jobs and went over to another environmental group. The case was taken on by another lawyer, Almah Tararia, who took it to trial, and won. The court basically said that there was fraud involved and that the land was wrongfully transferred from the landowners to the landowner company and eventually to the State. So the court ordered that the land be returned back to the landowners – and also granted an order that there be no other development in the area unless the proper consent in writing is obtained from the landowners. So that basically means that if anybody goes onto the land now, then they're obviously in breach of that court order and they should be held in contempt.

FURTHER LINKS ABOUT LOGGING IN PNG:

Almah Tararia and Lisa Ogle, both of whom were involved in the Collingwood Bay case, have written about the legal issues involved in land registration and the changes that were legislated in 2007, both to protect the landowners – 85% of PNG’s population is dependent on land tenure for water, food as shelter as well as traditional culture – and to regulate development.

‘Incorporated Land groups and the registration of customary lands: Recent developments in PNG’

In Defence of Melanesian Customary Land, Aidwatch publications, May, pp 21-5. Almah Tararia and Lisa Ogle’s article.

‘The Political construction of a Land Grab in Papua New Guinea’

Australian National University, Pacific Discussion Paper, September 2011

Why green grabs don’t work in Papua New Guinea

Journal of Peasant Studies, 39:12. Colin Filer.

‘The New Land Grab in Papua New Guinea: A Case Study from New Ireland Province,’ State, Society and Governance in Melanesia’

Discussion paper, Australian National University, 201/12.

Also by Colin Filer, is this case study of land grabs in New Ireland Province of PNG.

‘Logging, violence and pleasure: neoliberalism, civil society and corporate government in West New Britain’.

Another case study gives a sobering account of logging in West New Britain, its effects on community and land, the tactics use in a struggle between development and tradition. Andrew Lattas.

State of the forests of Papua New Guinea

University of Papua New Guinea Remote Sensing Centre, 2008.

A summary of research on the state of the forests, see Phil Shearman with Jane Bryan, Julian Ash, Peter Hunnam, Brendan Mackey, Barbara Lokes.

“ Despite the more stringent provisions contained in the new laws, the success of the reforms for both ILGs and land registration will both depend in large part on the same factors, namely, the ability and commitment of the government to administer and enforce the new laws. Landowners are already reluctant to engage in land registration of their customary land under the existing system and are likely to remain so until the state can demonstrate that it has improved its system of land administration. ”

Almah Tararia and Lisa Ogle

“ Between the beginning of July 2003 and the end of April 2011, around 5 million hectares of customary land (11% of PNG’s total land area) passed into the hands of national and foreign corporate entities through a legal mechanism known as the ‘lease-leaseback scheme’.

This is twice the amount of land which one international study found to have been ‘grabbed’ by corporate interests across five different African countries over a comparable period of time. ”

Colin Filer, Social anthropologist with many years research experience of forestry in PNG.