



Resource Management in Asia-Pacific

Working Paper No. :41

**Muddying the Waters of the Fly:
Underlying Issues or Stereotypes?**

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The correct citation for this publication is:

Author: Richard T. Jackson

Year of Publication: 2003

Title: Muddying the Waters of the Fly: Underlying Issues or Stereotypes?

Series: Resource Management in Asia-Pacific Working Paper No. 41

Publisher: Resource Management in Asia-Pacific Program

Research School of Pacific and Asian Studies

The Australian National University

Place of Publication: Canberra

ISSN – 1444-187X

Resource Management in Asia-Pacific

Working Papers

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Muddying the Waters of the Fly: Underlying Issues or Stereotypes?

This paper was originally written in 1998, as a contribution to a book which was to have been edited by Stuart Kirsch, but which failed to find a publisher. One of the other intended contributions to this volume has since been published in a learned journal (Hyndman 2001), and Stuart Kirsch himself has recently published a review of his own role (and that of other social scientists) in the saga of the Ok Tedi Min (Kirsch 2002). The present paper does not respond to the arguments put forward in either of these pieces, but the Resource Management in Asia-Pacific Program has offered to publish it as a Working Paper (with only minor revisions) in order to sustain an academic debate which has continued over the five years since RMAP published a monograph on the same subject (Banks and Ballard 1997).

Introduction

Were I Stuart Kirsch, I would be quietly proud of myself. For Stuart, having completed an outstanding piece of basic, traditional anthropological field work for academic purposes (Kirsch 1991), then translated his knowledge of Yonggom society into a successful campaign on behalf of the Yonggom in their fight to receive proper compensation for the damage done to their lands by the Ok Tedi mine (Kirsch 1989, 1996a, 1996b, 1997). He made a difference. Few people can claim to have ever done that.

I say this at the outset since I am sure that the remainder of this essay will be seen by many as an attempt to say the exact opposite. It is not. It is an attempt to show that the context in which the Ok Tedi litigation took place was complex; that the litigation itself hardly touched upon the realities of life in the lower Ok Tedi; that for the majority of people in the North Fly region the arrival of Ok Tedi Mining Limited (OTML) has been very advantageous; and that events which have occurred since the conclusion of the case strongly suggest that the case solved not a single problem but, rather, created several new ones and, in view of this, cannot at all be considered to be the triumph for activist law that some proclaim it to have been. No doubt this will be seen by some as an attempt to muddy the waters of what is otherwise a fine case study of basic moral issues.

If one relied on the greater part of reporting by the media on this case for an understanding of what those basic moral issues were, one might conclude that it involved a rapacious multinational corporation uncaringly making massive profits in a remote part of the world at the expense of its traditional inhabitants, who took the court action to protect the environment which had nurtured them over many centuries. Goodies and baddies could not be more clearly delineated. The outcome of the case, moreover, was almost unanimously portrayed as a great - if not entirely complete - victory for the villagers; a rare win for David over Goliath. The law could be just. The outcome made everyone feel good. I wish to challenge most of these simplified views. Most importantly, I wish to stress that the Ok Tedi case is very far from being finished.

One other contextual issue needs to be clearly presented at the outset. The present writer was one of the very few academics who chose not to side with the plaintiffs (the landowners) in the course of the case. I did this somewhat reluctantly, since even I felt that the plaintiffs did indeed have a case and deserved considerable compensation. I will expand my self-justification at a later stage in the essay, but it requires mention here so that the reader is aware of the context in which I write.

The traditional life of the Yonggom and the other lower Ok Tedi people

The Yonggom occupy the west bank of the lower Ok Tedi, below the small government station at Ningerum. Above Ningerum, the west bank is occupied by the Ningerum people. Most of the east

bank, above and below Ningerum, is occupied by the Awin. The Awin and Yonggom, although living very similar lives, have little to do with each other - most do not speak the other group's language and there is very little intermarriage. The legal action against BHP and OTML was led by Yonggom people, but many Awin were participants in the group action. In fact, the two communities most affected by downstream sedimentation from mining operations, in terms of the proportions of their land taken out of production, were both Awin - Bige and Kwiape.

The general attitudes of the Awin and Yonggom towards the project have differed. Whereas the Yonggom have been hostile to the mine, sometimes bitterly so, the Awin have taken a more relaxed view, even if they have been critical of many of its aspects. As will be seen later, there are good reasons for this which are by no means all restricted to the villagers' reactions to OTML activities, but which also reflect the internal mechanisms of the two groups. The first point I wish to make, then, is that the Yonggom have taken much greater prominence in Stuart Kirsch's work than have the Awin (not surprisingly, since he worked among the former), but that both are important in the area and that they have different attitudes, not only towards the activities of OTML, but to life in general.

The traditional life of the Yonggom before the coming of OTML is too readily portrayed as one of stability, internal tranquility, and harmony with their neighbours and the environment. Occasionally, in my view, Kirsch allows himself to paint a picture of a pre-lapsarian people (see Kirsch 2001). Occasionally, it is true, it was possible to sit in peace on a black palm verandah, shaded by plaited sago eaves, to listen to the call of birds of paradise in the nearby forest, to contemplate the muddy majesty of the Ok Tedi's swirling flow, and to feel that this was a good place to be. 'Was'? It still is. I did exactly this in Ieran village with Alex Maun's elder brother in May 1998, when the lower Ok Tedi had long been described as an ecological catastrophe zone. Yet, for most of the time, life for the Yonggom was hard, brief, highly unstable and dangerous - as can be pieced together even from Stuart Kirsch's own descriptions of it.

Moreover, exactly how traditional is 'traditional'? Traditional life for the Yonggom was not only not especially utopian, but was, I would argue, not all that traditional, in the sense that it had not been lived in that form for more than a generation or so. As Kirsch (1995) points out, until 50 years ago the Yonggom generally lived in 'scattered hamlets' mostly well away from the Ok Tedi. Early outside visitors to the region commented on how few people and settlements they came across. Austin, in his field reports from patrols of the 1920s, specifically remarked that the few gardens he observed were on the tops of bluffs and not on the flood-prone river flats. As Kirsch points out, and as is well documented in Administration reports, it was only in the 1950s and early 1960s that the Yonggom moved to their present nucleated villages along the river. This was principally as a result of the Australian colonial authorities' reaction to the Sukarno-led, Indonesian take-over of what had been Dutch New Guinea.¹ The Australians were nervous. Today, when most of the world seems to believe that Sukarno's daughter is the flame bearer of Indonesian democratic hopes, such nervousness may appear somewhat paranoid. Still, since at the time Sukarno supporters were openly proclaiming that they wanted an Indonesian New Guinea from 'Sorong to Samarai', thus incorporating all of the main island, my own view is that the nervousness was reasonable. The actions then taken, however, had great relevance for the events of the Yonggom-led court action against OTML three decades later. The Australians persuaded the scattered hamlet residents to come together in nucleated villages as far away from the border as possible, while remaining on Yonggom territory - which effectively meant on the bluffs which occasionally rise above the Ok Tedi's west bank. Many individuals on the western side of the virtually undemarcated international border of the time chose to move into Australian territory. The nucleated villages of the Yonggom are, then, a recent creation. They are certainly not traditional. Most of their inhabitants have only lived there since the 1960s. In this sense, whatever the damage done by OTML, it would be difficult to maintain that it destroyed an age-old way of life.

¹ This effectively happened in 1962-3 even if the 'Act of Free Choice' which formalised it did not occur until 1969.

Quite aside from this rather semantic point, the recency of nucleation has created very considerable tensions in the villages taking part in the court case. These tensions have come to the fore in the aftermath of the out-of-court settlement of the case. Nucleation meant that the great majority of Yonggom are not settled on their own land. The actual landowners put up with their presence most of the time, but every so often the underlying tensions created by the resettlement of the 1960s burst through.² In my view, it is exactly for this reason that individuals find it very difficult to exert leadership in the communities, as Kirsch (1989) has noted. Those who do not own land in the village stand little chance of getting full support from those who do, while would-be leaders who are 'true' landowners find their motives being questioned by those who are not. Political leadership remains a major problem for the Yonggom - and the post-settlement events in the area suggest that the court case did nothing to solve it.

However, it is not only the recency of 'traditional' life of the Yonggom that is of concern. It is clear, from Stuart Kirsch's own writings, that this life was difficult. He refers directly to 'constant fighting' (1989: 34) among the Yonggom; or again to the fact that '[u]ntil the end of World War II, each homestead was under relatively constant threat of attack' (ibid.:35). Even in more recent times, according to Kirsch, 'an emotional atmosphere of "fear and mistrust" ... pervades Yonggom society Most cases of serious illness or death are thought to be the result of sorcery' (ibid.: 36). It is not difficult from this to see how OTML has unknowingly taken over the role of Super Sorcerer. More to the point here, however, is the clear fact that the traditional life of Yonggom society did not give many of its members too much opportunity for the sort of harmonious interaction with nature that they are so easily portrayed as having enjoyed - most of the time they were occupied in keeping out of harm's way. When one supplements this with the knowledge of high death rates, especially among infants and parturating women, and of more or less universal and chronic morbidity, it is at least worth arguing that, whatever else OTML did, it did not destroy a previously idyllic, or even vaguely satisfactory, traditional life-style.

Early Yonggom reactions to OTML

In pre-OTML days (i.e. before 1979 or so), when Kiunga, the regional capital, had only one store - which regularly ran out of supplies - and the region had fewer than a dozen working outboard motors, there were few ways of earning any cash or of gaining prestige. As it happened, the bulk of the 'modern' world opportunities in the region at that time had fallen, by accident of the evolution of transport geography in the area, to the Yonggom of the lower Ok Tedi. In the then absence of any motorable roads, the main form of transport was riverine. Villages on the Fly and lower Ok Tedi were far more readily accessible to outside influences than any others. So, when the Unevangelised Fields Mission (later the Evangelical Church of Papua) arrived in the early 1950s, they selected Rumginae, in Awin territory, at the head of small craft navigation on the Ok Mart, as the site for their regional hospital, and Atkamba, a recently formed and rapidly growing Yonggom community in the lower Ok Tedi, as the centre of their spiritual endeavours. Atkamba had an airstrip, a good health centre, a school (at the time, the best in the region), and the prestigious presence of several white missionaries. With the Catholic Montfort Mission (from Quebec) in Kiunga, these three places were the go-ahead spots in the North Fly. Moreover, when the colonial authorities introduced rubber growing in the late 1950s, government officers charged with its cultivation deliberately chose to concentrate their efforts in the Yonggom areas because they were so much more accessible (Jackson 1977). So, while rubber was certainly no overnight success, the Yonggom were its main beneficiaries. Culturally and economically, in an area of very little development, the Yonggom were the Jones' whom everyone else envied and wished to emulate.

² As it happens, on the east side of the Ok Tedi, nucleation of previously scattered Awin settlement also occurred in the 1960s. In their case, it was rather more voluntarily undertaken in an attempt by the people themselves to attract government help in establishing rubber plantations. Whatever the reason, however, it has had, in the 1990s, very similar repercussions among the Awin villages.

Then along came mining. At first, the lower Ok Tedi (and Awin) village of Kokonda was the base for mining exploration, and right up until 1979 there was a good chance that any lowland base for the mine's operations would be within or very adjacent to Yonggom land. However, Kiunga was ultimately chosen as the base. The Kiunga-Tabubil mine highway was built following the rough track which the Awin had built in a desperate attempt to lay their hands on rubber seedlings, and thus transformed the transport geography of the region. Suddenly, river transport became marginalised and road access was the principle determining factor of economic potential. The Yonggom had no road access - they were on the wrong side of an unbridged Ok Tedi. The Jones' had been bypassed and were to be surpassed by the *nouveaux riches* of Kiunga and the Min hillbillies. Worse still, as the mine went ahead, the mission station and airstrip fell into disuse. Atkamba's once unique position was lost. This loss of relative status in the region, it seems to me, should not be overlooked in assessing Yonggom attitudes towards OTML.

How did the Yonggom react to the new circumstances? In the mid-1970s, the little town of Kiunga was distinguished from many others in PNG by the fact that many of the villagers in its region had built themselves 'town houses' which they would occupy on their occasional, but often quite lengthy, stays in the town. Once the mining construction got underway in 1982, hundreds of people moved much more permanently to town. This was partly because of clauses in the Ok Tedi Agreement which guaranteed preferential treatment for people from Kiunga District (including Yonggom people) in employment or in the granting of contracts with the project. Some nearby Awin villages, like Griengas, moved wholesale. From other villages it was those with the best education who moved. When David King surveyed the residents of Kiunga in 1983 he found that close to two hundred Yonggom had moved to Kiunga (King 1983). That this flow has continued is evidenced by the fact that OTML paid compensation, in 1998, to over 2,600 Yonggom, yet in the same year only 1,570 persons were normally resident in the Yonggom villages of the lower Ok Tedi.

One reaction of the Yonggom was, therefore, to adjust to the region's new economic geography by migrating to where the opportunities were. And note that this occurred first in the early 1980s, well before any damage at all had been caused to the physical environment. Exactly contrary to what was stated in the documentation for the court case, OTML did not only *not* destroy a traditional way of life, but it created far more new opportunities, both economic and social, for the region - even if the Jones' of the North Fly had to migrate to take advantage of them. However, the movement of many Yonggom to Kiunga also meant that those left in the villages were, in general, the less well educated, who found that, while the level of services available to them stagnated (or declined in Atkamba's case), others in their region were making progress. Such a situation was hardly likely to incline those still living in the lower Ok Tedi villages towards a positive view of life.

Environmental or economic concern?

Stuart Kirsch is at some pains throughout his work to show that the concerns of the Yonggom in the court case were fundamentally environmental rather than economic. He gets rather cross, at times, with other academic commentators such as David King or Glenn Banks who suppose those concerns to be fundamentally economic (see King 1997; Banks 2002). In some ways, such a dispute is fruitless for the simple reason that, in subsistence or semi-subsistence communities of the sort that certainly existed in the North Fly prior to OTML's arrival, making a living can only be done from and within the natural environment of one's territory as modified by one's ancestors' previous use of it. Economic issues in such a society *are* environmental issues and vice versa. It is virtually impossible to disentangle which is which, or to extract cultural and value systems from the 'natural' system in which they have evolved. When one does attempt to do so, by taking individual actions out of context, one can adduce evidence either way. An environmental approach will emphasise the moving insights of old ladies (women and the old certainly gain least economically from the mine) who have watched their life's work of drudgery and occasional innovation in their gardens wiped out by sedimentation and who feel that money - even if given - would be a very poor substitute. An economically inclined investigator will note and report anecdotes of Awin and Yonggom saying (as the majority, a year after the case's settlement, did) that they would much prefer OTML to give them cash instead of 'wasting' it on attempts to dredge the river and finding ways of reducing further environmental damage, conveniently forgetting that (a) during the court case they insisted

on OTML looking for such ways, and (b) then everyone further down the river would jump on OTML. Both sets of observations are worth knowing about, but they are taken out of context and, as such, provide a misleading picture of the overall situation which people find themselves in.

However, there are some other factors worth noting in this argument. Kirsch (1997: 129) argues that the damage caused by OTML 'prevents people from capitalising on their natural resources in order to participate in the local cash economy'. In the action taken against OTML, it was alleged by the plaintiffs, among other things, that mining had deprived them of their means of production. It is here that I most strongly disagree with Kirsch's and the plaintiffs' views. In all other areas, I am willing to concede that those views are at the very least tenable, even if I do not agree with them. On occasions I would even concede that they are right. But in this instance, I would argue that they are wrong (and in passing, I would argue that Kirsch's view of 'natural resources' is untenable).

Without OTML, there were few ways in which anyone could make money (or go to high school or have hospital treatment) in the North Fly. The mine's presence created the potential for economic activity. It is not 'naturally' present in the form of 'natural resources' anywhere. So-called 'natural resources' are in fact only definable in terms of a human need unless one wishes to argue teleologically - as many do nowadays. One patrol officer, in a report to his superiors, had gloomily concluded in the 1960s that 'until muddy water becomes a resource we must be relegated [sic] to the fact that there are no prospects for economic development in the region' - and in one sense, muddy waters did become an economic resource for the plaintiffs. Before OTML, there was virtually no cash economy in the area, with rubber and damar gum collection being the only minor exceptions. The 'natural resources' of the area, despite the untold efforts of women in particular, did not do much of a job in sustaining a healthy, happy, and culturally vibrant subsistence society. The leading plaintiffs, Alex Maun and Rex Dagi, far from having their livelihoods destroyed by OTML, were in fact doing quite well financially as contractors in works funded, in one way or another, by OTML. Quite aside from inadvertently empowering a previously and miserably marginalised people and, however reluctantly, bringing international fame to some of the plaintiffs, OTML had created the cash economy of the North Fly, as well as its infrastructure and educational facilities.

The problems for the Yonggom, in this respect, were two-fold: first that OTML activities did not increase the potential for the Yonggom to participate in the new economy using their own land; and second that OTML did do damage to that land and thus to its potential for subsistence production. While OTML's presence could be taken advantage of through migration by those who had skills and labour to sell, those who remained in the villages were disadvantaged by their distance from markets by comparison with others in the region. Well before any sedimentation occurred, it was evident that the Yonggom on the west bank of the Ok Tedi would have difficulty in participating in the new economy. But then their position was made all the more unbearable by sedimentation and die-back.

But there was yet another factor undermining the Yonggom position - migration from Irian Jaya. It seems very likely that all the Yonggom have moved eastwards over the past few hundred years. It is known, for example, that the villagers of Kawok moved from what was Dutch New Guinea in 1944 to roughly their present location. No one refers to them as 'border crossers' or 'refugees'; they are 'traditional landowners'. Those who moved across the border in the early 1960s at the time of village nucleation may not be 'true' landowners in the villages in which they live, but nor does anyone question their status as PNG citizens. However, a group that moved across the border in 1974 to Ambaga village are still regarded by the rest of that village as 'border crossers'. In 1984, as a consequence of major disturbances in Irian Jaya, many thousands of people moved into PNG - especially into the lower Ok Tedi area. This created both a very delicate political situation between the governments of Indonesia and PNG and very severe pressure on the limited resources and infrastructure of the receiving area. The PNG government declined to provide additional social infrastructure for the region. Instead, it insisted that only those refugees who moved well away from the border - where they would be viewed as threats to Indonesia - would be provided with such facilities. Eventually, the majority did move to an area between Kiunga and the Strickland

River, but many hundreds still remain among the Yonggom of the lower Ok Tedi where they still compose a substantial proportion of the population. Furthermore, in the six or seven years it took to persuade the majority to move, their Yonggom hosts had to put up with having to share their land and schools and aidposts, which were in any case inadequate. Despite this, one cannot simply ignore the difficulties which faced the PNG government. To consider the problem only at the local level is to take a very partial view of reality.

At that local level, however, the Yonggom had quite enough frustrations and problems to deal with well before the effects of increased sedimentation began to appear in 1987 or thereabouts. For some educated Yonggom people with more than the average amount of initiative and a willingness to migrate, OTML's presence had created new economic opportunities. But for many others, OTML's arrival coincided with a declining importance in missionary and associated activities, and with the arrival of thousands of refugees, as well as providing little if any improvement in local social and economic facilities, and then producing thousands of tonnes of mud and silt. Not all of these problems were OTML's fault, but at least one certainly was - and, as it happened, that was the one thing which the Yonggom, with a little help from their friends, could do something about. In short, I do not buy into the argument over whether the fundamentals of this case were concerned with a desire to protect the environment or a desire to gain cash. I see the case arising out of a whole series of frustrations in the lower Ok Tedi community which were concerned with life in general.

There is one last point to make in this area. The court case ended in a settlement whose main feature was a series of cash payments. Although many of those who supported the plaintiffs in the case believe that it also provided guarantees of environmental protection, it has yet to be seen whether this will turn out to be the case, whilst there is no doubt that the cash has been, is being, and will continue to be handed over. My own personal view is that there must remain some doubt as to whether it will prove possible - other than by closing down the mining operation - to prevent further sedimentation since the dredging trials have yet to show conclusive results. So, whatever the motives of the plaintiffs in bringing the case, the outcome is certainly about money - and, in the time since the settlement was reached, that is what most of the arguments have been about.

A rapacious multinational?

It is entirely understandable that, when villagers like Alex Maun and Rex Dagi (even if one later finds out that they were rapidly on the way to becoming middle class, urban-based building contractors) take on multinational corporations and their own government, the public's sympathy, jogged along by media reporters, is unlikely to line up alongside Goliath. The images projected by the media over the Ok Tedi affair were of a rapacious foreign, big company making large profits from the patrimony of a poor nation whilst the landowners of the area received virtually nothing from the operations and, worse still, were having their own livelihoods destroyed in the process. Such an impression is virtually unavoidable. But it is not an accurate one in the Ok Tedi case - and to say that is not to portray OTML in a particularly flattering light. To point to the fact, as I am about to do, that in general local landowners have done quite well out of the Ok Tedi project, whilst private shareholders have done very badly, is to give OTML a very backhanded compliment, since, presumably, shareholders are not in the business of throwing away their cash.

In its life since operations commenced in 1983 up to the end of 1997, the Ok Tedi mine produced 1.7m ounces of gold bullion (production of which ceased in late 1988) and 5.1m tonnes of copper concentrate. The latter contained 1.7m tonnes of copper and 4.3m ounces of gold. Silver, contained in both the gold bullion and copper concentrate, totalled 9m ounces. More pertinently, Table 1 shows some basic financial data:

Table 1. Basic Financial Parameters of the Ok Tedi Project (all figures in million kina)

	Capital expenditure	Gross sales	Net profit	Dividends
to end of 1988	1248	1029	95	Nil
1989-1993	176	2576	297	278
1994-1997	97	2952	427	426
Totals	1521	6557	819	704

At first sight, these numbers suggest a reasonably profitable operation, since net profit is 56% of capital expenditure overall, and one that was becoming increasingly profitable since net profits as a proportion of gross sales increased from 9% in 1988 to 12% in 1989-93 and to over 14% for the period 1994-97. Such a conclusion is wrong - for two reasons. First, the overwhelming bulk of capital expenditure was upfront in the early 1980s and so, in discounted cost-benefit terms, is effectively much greater than it seems, whereas profits, coming much later, are much smaller than they appear to be. Second, all figures are in current kina. Since the kina was worth US\$1.50 or so in the mid-1980s but had devalued to US\$0.60 by the end of 1997 (it was worth only US\$0.45 in mid-1998), the capital costs are really worth much more than they appear to be and the profits are much lower. If one allows for these two factors, using a discount rate of 10%, the real rate of average annual return to shareholders over the life of the mine sinks perilously close to zero.

The bulk of the payments made by OTML to local landowners have not been tied to the project's profits: royalties are levied as a proportion (which has increased over the project's life) of production value, and most other payments have had to be negotiated independently of profits. For the people, if not the shareholders, this is fortunate since the project has barely been profitable. The owners of the land from which the ores are extracted and upon which the bulk of the mine facilities is built are a branch of the Min people. Until the lower Ok Tedi people who took action against OTML, the Min had easily been the main recipients of cash and other benefits from the project (see Table 2). Smaller benefits have gone to some of the Ningerum people, who are owners of land on which a tailings dam was to have been, but never was, built. Minor benefits have also flowed to roadside Awin people, and these are understated in Table 2 because it excludes contractor payments. The out-of-court settlement will give lower Ok Tedi people close to K100m over the rest of the mine's life. These payments had only just begun by the end of 1997 and so barely make an appearance in Table 2. However, as a consequence of the settlement, the lower Ok Tedi people will end up as major cash recipients from the project.

There is a small fly in this particular ointment. Whoever negotiated the precise terms of the settlement in Cairns on behalf of the villagers showed a terrible lack of economic foresight. All cash figures negotiated - except the payment of the plaintiffs' legal representatives - were denominated in PNG kina. Even in the two years since the settlement was reached, the value of the kina against the US dollar fell from around 90c to below 50c.

Table 2. Local recipients of OTML payments (to end 1997; all figures in million kina)¹

	Min	Ningerum	Awin	Yonggom	Ok/Fly ²	Unknown
Royalty	14.7	-	-	-	-	-
Leases	8.0	0.6	0.3	-	-	-
Lamin Trust	2.7	-	-	-	-	-
OFRDT ³	-	-	-	-	24.0	-
Gravel	0.1	0.4	0.4	-	-	-
R8SA ⁴	-	-	-	-	24.3	-
LOTA ⁵	-	-	3.5	6.0	-	-
Other	5.6					4.5
TOTAL	31.1	1.0	4.2	6.0	48.3	4.5

¹excluding educational expenditure, infrastructure, business development assistance, contracts awarded and wages.

² all people along the Ok Tedi and Fly, including Min, Ningerum, Awin and Yonggom

³ Ok Tedi Fly River Development Trust

⁴ Revised Eighth Supplementary Agreement

⁵ Lower Ok Tedi Agreement

The payments in Table 2 total K95m. Two points emerge. First, the sums awarded to the lower Ok Tedi are equal to the total payments shown in Table 2, which covers a period of 13 years: muddy water has turned out to be worth as much as the gold and copper on Mt. Fubilan. Secondly, at the start of the project it was estimated that by 1997 local landowners would receive around K80-90m. Unlike the shareholders, the landowners had received what was forecast - perhaps a little more.

There are two other major beneficiaries of cash from the project. These are the PNG government and the Fly River Provincial Government of Western Province. The former had received K640m by the end of 1997, nearly two-thirds of which came from taxes and duties levied on the project itself, on the wages of project personnel, and on the project's equipment purchases. The Fly River Provincial Government received 95% of all royalties until 1990, when its share fell to 70%, with the balance going to mine landowners. The FRPG's share of royalties amounted to K53m by the end of 1997. But, in addition, the national government made special supplementary grants to the FRPG which were worth almost K100m by the end of 1997 (and these should be deducted from the government share mentioned above). The FRPG has the responsibility to provide most basic services for its people, including the Yonggom and others in the mining zone. By comparison with other provincial authorities in PNG, it has been very well provided for - it had the highest per capita funds in the country for most of the 1980s, and this was solely thanks to the presence of OTML. For most of the life of the Ok Tedi project, the most important positions in the FRPG (the roles of Premier and Finance Minister) have been dominated by two people - one a Min and the other a Yonggom. The FRPG under their leadership has done almost nothing for the Min and Yonggom people - they have apparently decided to leave everything to the company and the missions. The lack of services among the Yonggom, and others in the province, has to be laid squarely at the feet of the FRPG, which has lacked neither the finances nor the political support to fulfil its responsibilities. And the fact that this body has had a Yonggom in charge of most of its operations for much of the time has been conveniently overlooked throughout the Ok Tedi affair, for the simple reason that it is so much easier to attack a foreign multinational than to look into an indigenous society's own weaknesses. In my opinion the situation is even more reprehensible - as will be seen very shortly.

However, on the matter of project benefits, it seems reasonably clear that shareholders have done poorly and that landowners have done at least as well as was originally forecast. Unfortunately, the FRPG, which has also done well out of the project, has not shown any capability of using its revenues for the benefit of its constituents.

Underlying moral issues

Stuart Kirsch (1997:133-4) notes that '[l]egal battles temporarily erase the middle ground bringing the underlying moral issues into sharper focus...'. Such a sentiment, from a non-lawyer, must bring blushes of pride to the legal profession, especially those of its practitioners who, in the rush of everyday business, had momentarily forgotten how morally focussed their work really is. Actually, war has exactly the same effect doesn't it? Everybody is either a goodie or a baddie and if you don't support your side fully then you're a traitor. But then it's said of war that its first casualty is truth. Could it possibly be that this is also the first casualty of a legal battle? Could it be that it is precisely in the complexity and muddle of the middle ground that the truth is always to be found?

It is certainly true that this particular legal battle did erase any middle ground and forced individuals to choose sides. Very few outside BHP chose to side with OTML. Since I was one of them, I had a lot of explaining to do to myself, at least. For after all, I would agree that, despite the qualifications (quibbles?) which I have already put forward here, the lower Ok Tedi people had a strong case for compensation. More than that, I was already firmly of the opinion that OTML must have been aware of the very strong possibility, from around 1987 onwards, that once their operations grew to a size well in excess of anything originally planned,³ this would lead to sediment deposition well to the south of Ningerum - the point at which, under the original mining plan, sedimentation would cease. It was personal as much as rational reasons that got me on BHP's side.

I actually don't think it was financial reasons. Why? Because the fees for expert opinion being offered by the plaintiffs' lawyers were at least as lucrative as those been offered by the defendants'. Nor were longer term prospects of monetary gain a factor, since it was obvious to me that support for the plaintiffs would open up considerable career opportunities. There is hardly a mine I have visited anywhere in the world where litigation by downstream inhabitants would not be an improved possibility once the Ok Tedi case went forward. Moreover, I knew from experience that if one is publicly on the side of a big company you actually *lose* marketability in that company's eyes (let alone credibility in everyone else's). If you're already on side, why should such a company take pains to court you; it will pay more attention to those who attack it, in order to accommodate them, and most to those who oppose the company - but in a reasonable way. If one wanted to make short and long term financial advantage of the Ok Tedi affair for oneself - and be on the side of the angels - then it would make sense to get involved on the side of the plaintiffs but keep contacts with BHP.

My conversations with myself continued.... Well, OK, so if you're not really selling your soul, why? Firstly, unlike Kirsch, I did not believe that the circumstances in the Ok Tedi area were comparable with those on Bougainville and thus there was no realistic possibility of the sort of armed conflict that had wracked that province. For one thing, the actual mine owners were not dissatisfied with the results of mining and did not participate in the law case. For another, there was nothing in the North Fly of the long history of secessionist sentiment that was so important on Bougainville. So for me 'war-war' was not a likely event and, therefore, the argument that 'law-law' was the sensible alternative (and the lawyers for the plaintiffs made much of the comparison with Bougainville in the press after the settlement) was one of self-delusion and self-justification - putting 'law-law' as a middle way between 'jaw-jaw' and 'war-war' was false logic especially since the court case would create enmities almost as great as any generated by armed conflict.

Second, I was strongly of the opinion that any case, if there was to be one, should be heard within the jurisdiction on several grounds - one of which was that whoever came up with the order to

³ Such an expansion plan was very strongly supported by the PNG government, which had closed down OTML when it looked as if the private shareholders - after losing US\$500 million on more in the first four years of operations - might want to pull out and not proceed with the copper mining phase.

implement a legal solution should at least be in the same country as the locale of implementation. Another reason was my sense of history. The Ok Tedi deposit was located first in 1969 by Kennecott geologists. Kennecott continued exploration until 1974. Negotiations between them and the PNG government broke down over two issues: what was a reasonable rate of return on Kennecott's investment and, more significantly here, who would arbitrate in the event of a dispute between the company and the government. Kennecott wanted international arbitration; the fledgling Somare-led government wanted any such issue to be decided within the judicial system of PNG. The overwhelming bulk of informed opinion (and that was heavily influenced by young, semi-radical, enthusiastic expatriate lawyers) was that the latter point could not, under any circumstances, be conceded. It was not and Kennecott withdrew. The PNG government took over the prospect and sought more understanding partners - it took BHP on board. Now, twenty years on, the same types of individuals who had so strenuously opposed offshore arbitration in Kennecott days were proclaiming it as a world-beating way of the defending the rights of the oppressed. Even such an arch-conservative as myself could understand that circumstances had changed and that, in this case, the people were the plaintiffs against both the company and the government. However, it seemed to me to be interesting that what had been an 'underlying moral issue' in 1974 had been turned on its head to retain its ethical fundamentalism in a mere two decades: perhaps underlying moral issues were subject to a sort of ethical plate tectonics. Moreover, whilst I - like almost everyone else - was aware of the extent of incompetence and corruption in many aspects of government in PNG, I would yield to no-one in the belief that PNG has an excellent reputation for democracy. In many ways, PNG is more democratic than the systems operating in Australia, the US and Europe insofar as the voter in a partyless state has far more influence on his/her parliamentary representatives than does a party whip. So undemocratic is the two-and-a-half party system that unelected lobby groups, whether pro- or anti-industry, have garnered immense power. How could a case which was against the government of PNG (as well as BHP) *not* be seen as external interference in the affairs of a democratically elected and democratically acting government which had to balance the interests of the country as a whole - not just those of the lower Ok Tedi people?

To me a further important point was that, even if one accepted that the PNG system was undemocratic, then that still did not justify drawing the conclusion implied in the taking of the case offshore, which was that the country's judiciary was meretricious and a mere tool of government. Every country is not another Nigeria - but many outside commentators are quick to conclude otherwise. On the evidence available, the exact reverse was the case for PNG. Just as the case in Victoria was starting, the PNG courts had forced the then Prime Minister, Paias Wingti, to resign by their decision on a constitutional matter (and what's more Wingti ungrudgingly accepted the decision). The insult to a judiciary of integrity implied in this action was a real one.

Fourthly, I found the manner in which an attempt was made to recruit me to the plaintiffs' side disturbing. It was a Mr. Dair Gabara who, on a visit to Townsville, ostensibly to talk to a medical team at James Cook University (whose work in his province was, at base, funded by OTML), approached me to work with the plaintiffs. I mentioned earlier what I regard as the wholly reprehensible lack of effort on the part of the FRPG over the years to put to any good use the substantial revenues they received from the Ok Tedi project. OTML's efforts to provide basic services for villagers may at times have been inadequate, but they were quantum leaps ahead of anything that the FRPG (in which Yonggom leadership was prominent) had done. The national government itself had grown weary of this incompetence and mismanagement and had dismissed the Provincial Government, bringing in an Administrator - the same Mr. Gabara who was charged with the job of trying to sort out the mess. During his period of guardianship, Mr. Gabara did something which few of the politicians he had replaced had ever bothered to do - he visited almost every part of the province, especially all the villages along the Fly River. This was not, unfortunately, in any attempt to use the millions of kina accruing to the FRPG for the building of houses for teachers, supplying aid posts with basic medicines, or bringing the most basic services to Western Province people. Mr. Gabara's long patrols were to gather signatures on a petition against the activities of the one operation in his area of responsibility that generated any revenue - OTML. Armed with the results of his peripatetic rural visitations, Mr. Gabara then resigned his post and

reverted to his original occupation as a lawyer, joining up with the plaintiffs' legal representatives in Melbourne, Slater and Gordon. Maybe there's a basic moral value lurking there somewhere but I can't quite spot it.

Perhaps most important to me was the fact that I considered it likely that OTML might cease operations altogether if the case against it were successful - indeed many of those lobbying in the media against OTML called for its closure and for a return to the idyllic, naturally harmonic conditions that existed prior to its arrival - given the project's level of profitability (low), the size of the compensation demands (K2-4 billion were reported), and the long term prospects for copper prices. My personal experience of the region prior to 1979 told me, perhaps wrongly, that sudden closure would be an unmitigated disaster - there were no closure plans in place, no readily available alternative sources of income, no prospects of maintaining what social infrastructure OTML's presence had brought about, and every prospect of a reversion to the miserable conditions of pre-Ok Tedi days.

I have personally been involved in two legal matters of any consequence in my life. In neither case had what I considered to be the truth of the matters under jurisdiction even been vaguely approached. Law had made life for all participants in the cases more miserable. My limited experience told me that cases like that in the lower Ok Tedi could not possibly be solved if the same failure of the law to get anywhere near the truth were to be repeated, because the plaintiffs and defendants would have to go on living as neighbours. In my view, the Ok Tedi court case got nowhere near the truth. Despite all the press articles which appeared (most favoured the plaintiffs), the TV commentaries and press conferences (many quite amusing), nothing like the true, crammed-full-of-the-middle-ground, complex picture which was the lower Ok Tedi case ever smelt the courts. The media was remarkable in its misrepresentation of both sides - visual images were wrenched so far out of context as to be downright lies, sound bites were biting but not sound, statements by interested parties were passed off as coming from unnamed, apparently ordinary villagers, and hordes of simple factual errors littered reportage. Many of my (then) fellow academics lapped up this farago as the cream of quintessential truth. And when a decision was eventually reached, as I had expected, it left everything to be sorted out on a day-to-day basis by the company and landowners. The courts had done their job - like the most irresponsible of consultants they cost a lot, gave opinions of little relevance to what happened on the ground, and didn't hang around to help clean up the ensuing mayhem.

Culture heroes

As the court proceedings drew to a close, Stuart Kirsch (1996b:5) expressed the 'hope that one day Rex Dagi, Alex Maun and other Yonggom leaders will be renowned as globe-trotting culture heroes who successfully brought ecological reason to the Ok Tedi River'. And later he commented that Rex and Alex represent 'a new generation of political leaders who were able to transcend the traditional [Yonggom] limits on power' (1997:126) and who 'have taken the lead in the formation of a global alliance of landowners, ecological activists, anthropologists and lawyers' (1996a:14). Quite aside from not wanting to wish on anybody that they spend the bulk of their life in international hotels and seminar rooms, it seems to me unlikely, at least for the time being, that Kirsch's hope for Rex and Alex will be fulfilled. It also seems to me that, during the case, the Yonggom were as much the led as the leaders. Why am I sceptical?

For one thing, as prophets of a new ecological era (if indeed that is what they were), Rex and Alex were poorly recognised in their own country. Immediately after the settlement of the case they both stood for seats in the PNG parliament, Alex for the local North Fly seat and Rex for the Western Province seat. The latter was won by Norbert Makmop, former Premier of Western Province, whose administration had been suspended by the national government for incompetence and mismanagement, and who had recently served a prison term. The former seat was won comfortably by Kala Swokin who, despite the fact that his name means 'no good' in his native Aekyom (Awin) language, is a veteran of PNG politics. Rex and Alex were also-rans.

But not receiving local political acclaim was not the least of Alex's worries. After the election, he found that international recognition was little protection against local threats. He was now managing the Lower Ok Tedi Investment Corporation (LOTIC), which was supervising the expenditure of part of the compensation payments made by OTML from an office in Kiunga. His life was threatened on more than one occasion by fellow Yonggom who, they claimed, had contributed to the court case expenditures on the understanding that their monies would be returned manifold. Everybody said the case was won, so where was the money, they asked. In the villages of the north Yonggom, these feelings were particularly strong - Alex, some said quite wrongly, had been bribed by OTML and was on the company's side.

Stuart Kirsch was going back to visit the Yonggom. So was Dr. Brian Brunton, a lawyer in the case but now chair of Greenpeace in PNG and a member of the LOTIC board. But very few other members of the 'global alliance' had been back. Alex, like the personnel of both OTML and the PNG government, the other Yonggom, the Awin, the Ningerum and the Min was living in the region and living with the day-to-day consequences of the court action. They all had the common interest of trying to live together in reasonable harmony now that the international brigades had decamped. OTML, government officials and Alex were hardly friends, but they lived in the same area and were now the only people trying to implement a solution to the problem.

Alex Maun and Rex Dagi met with considerable success in the court case for two reasons in my view. An important, but lesser, one was that Alex had considerable personal shrewdness and a wonderful ability to quickly adjust in cross-cultural situations. I don't know whose idea it was (I hope it was his own), but the occasion where he dumped a large and very dead fish on the BHP directors' table at a shareholders' meeting was a rather good example of his understanding that the case was being fought out as much in the media as in the courts (and in the media BHP was thrashed). The more important reason was that the Yonggom became part of an international team, whose individual components had very mixed motives, at exactly the right moment. They did not so much transcend local politics as they were elevated above them on a Jacob's Ladder lowered by the crusading charioteers of the world-wide anti-mining activists, lawyers who were pioneering class action suits in Australia, the lounge lizards - expatriate and national - who can always smell out money-making opportunities in PNG, and groups who genuinely wanted to assist the Yonggom. The fact that there were relatively few of the last group is evidenced, in my eyes, by the fact that, once the court case was over, the responsibility for doing anything in the North Fly reverted largely to the company. As in the environmental monitoring area, so too in the ongoing matter of socioeconomic development, almost all the company's critics have gone elsewhere - presumably to criticise someone else. If these organisations had stayed on and actually done something, I might have a little more respect for them. It looks to me, therefore, as if Alex and Rex were, in some ways, used by many of their 'allies'.

Conclusion

Despite my cynicism, the out-of-court settlement did bring a reasonably satisfactory conclusion to this part of the Ok Tedi saga. The lower Ok Tedi people deserved compensation and they got it - although they might well have obtained it without recourse to the courts. The timing of the settlement happened to come during the one period when OTML was making a profit, so it did not cripple the project. But it did not solve the problem. The Ok Tedi river has sediment in it because it is extraordinarily difficult to mine in such a mountainous, wet, seismic area and store tailings safely. But if OTML did not mine, then the North Fly would be - almost certainly - without secondary schools, hospitals and at least a slim chance for personal intellectual and economic advancement, as it was before the company's arrival. The river system is undergoing serious change, but the settlement meant that OTML did agree to examine ways of mitigating that change for the sake of areas further downstream. Given the speed of environmental change which occurs naturally in the region, I am not convinced that the changes brought about by the mine are long-term or negative, nor have the changes deprived the Yonggom of the bulk of their land resources. If those from whose tongues the glib accusation of 'ecological catastrophe' drips so easily had hung around long enough to do anything like the serious scientific examination of environmental change that OTML's own biologists have done, I might be more inclined to believe them, but as it is, even this

claim cannot be accepted. Instead, I am pushed to the conclusion that many of those involved in the lower Ok Tedi affair preferred stereotyping to any concern for the truth.

Stuart Kirsch, and some others, do not fall into that category by a very long way. Kirsch has exhibited commitment to the Yonggom people over the long-term - he still visits the area others have long since forgotten about. He will play an important role in improving the long-term lives of the area's people, and he has already played a role bigger than any other single individual in bringing their concerns to light. I may strongly disagree with many of his conclusions but I respect him - if that's any consolation to him.

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