

A FEW CRITICAL PERSPECTIVES CONCERNING THE MANAGING OF THE KOKODA TRAIL TOURISM ACTIVITY: IS THERE A NEED FOR A PARADIGM SHIFT?

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INTRODUCTION

Trekking the Kokoda Trail constitutes the greatest tourism activity in a single location in Papua New Guinea. This potential however, though widely recognised and despite good efforts by both the Papua New Guinean government and overseas stakeholders and interested parties, is yet to be realised. This failure can be attributed to numerous factors but most of all, we argue, it is the outcome of a missing genuine and viable working arrangement and partnership of trust between the various stakeholders and the traditional (indigenous) custodians of the resource—its *traditional resource custodians* and *host communities*¹—, with due regard to their rights and the fundamental part that they play, and ought to play, in its development and management.

Following a general introduction to the Kokoda Trail and its significance, the second part of the paper describes the current legal and organisational structure, policies and business practices under which the resource and its associated tourism activity have been managed. The third part then brings into light some of the underlying challenges and issues with the current model and *modus operandi* of some actors, including issues of regulatory compliance by tour operators as foreign enterprises carrying on business in Papua New Guinea. This exploration reveals a prevailing top-down policymaking and implementation approach, within a paradigm that neglects the rights, roles, interests and responsibilities of the traditional resource custodians in the face of external business agendas and foreign and other interests. This is inherently and inevitably limited and explains the (so far) failure to realise the full potential of the Kokoda Trail as both a national tourism asset and a valuable economic resource of its host communities. In the fourth part we therefore discuss the need for a *paradigm shift* to a bottom-up policymaking and implementation approach, which among other things aligns much better to the fundamental policy directives of the constitutional National Goals and Directive Principles. The fifth part briefly presents a few reform proposals and their potential strengths and limitations.

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¹ We are using the terms ‘traditional host communities’ or ‘traditional resource custodians’, rather than the more frequently and legally used ‘customary landowners’, to differentiate between the modern Western notion of ownership and the traditional understanding, common among the tribes of Melanesia, that, rather than owning the resource for one’s individual benefits to the exclusion of others, a person is a *custodian* of it and is required to look after, sustain and maintain it for the communal or collective benefit, as well as for the benefits of future generations, and doing so in a way which is harmonious with nature and the larger environment.

Besides contributing to the understanding and management of the Kokoda Trail tourism activity, we hope that this discussion will also serve to inform, inspire and educate traditional resource custodians and stakeholders of other assets, across the tourism sector and beyond, in both Papua New Guinea and other countries, of how to better go about utilising such resources, harmonise the various interests involved, and the paramount importance of doing so in full consultation and in a genuine and viable working arrangement and partnership of trust with the traditional resource custodians and host communities.

The Kokoda Trail and Its Significance

The Kokoda Trail² is a footpath that runs about 130 kilometres through the jungle across the Owen Stanley Range, connecting Port Moresby and the south-western parts of the island of New Guinea, to Popondeta and the north-eastern parts of the island (see Figure 1).³ It passes through the traditional lands of the Koiari people in Central Province (south-west) and the Orokaiva people in Oro Province (north-east).

The Trail is most famously known for its role during World War II, when in 1942 it hosted a series of battles, the ‘Kokoda Campaign’, between the Japanese and Australian forces, the latter successfully blocking and then repelling and defeating the Japanese forces which aimed to expand their influence from the New Guinean (north-east) to the Papuan (south-west) side of the island. This was one of the events that signified the shift of power in the Pacific between the Japanese and Allied Forces. For Australians, it signifies overcoming the first direct war threat on Australia and the legacy of the Campaign, including those who fought and lost their lives in it, is continuously commemorated. It is also significant for the Japanese as well as locally, since a great number of the local indigenous people participated on both sides as soldiers, porters and otherwise, with their support to Australian soldiers and particularly their care for the wounded and sick, earning them the ‘eternal gratitude of the Australian soldiers, who called them “Fuzzy Wuzzy Angels.”’⁴

In the first decades after the War, tourism (or ‘war pilgrimage’) trekking activity was estimated to be less than 100 Australians a year. The 1990s saw a significant increase in tourism and in 2003, in order to preserve the legacy of the Trail and promote and manage its tourism activity, the Papua New Guinean government established the Kokoda Track Authority (KTA). In 2008, among other things as a backlash against the possibility of mining operations taking place in the southern section of the Trail, the Papua New Guinean and

² An ongoing debate exists with respect to whether the ‘proper’ name is ‘Kokoda Trail’ or ‘Kokoda Track’. We use ‘Kokoda Trail’ in order to enhance the understanding that, beyond its trekking-tourism function, the Trail serves as a local ‘highway’ for the host communities, as well as in recognition of the decision of the Papua New Guinean government to formalise the route under the name ‘Kokoda Trail’ (see, eg, *Papua New Guinea Gazette*, No 88, 12 October 1972, 1362). For a general discussion, see Karl James, ‘The Kokoda “Track” or “Trail”?’ (2009) *Australian War Memorial* <<https://www.awm.gov.au/articles/blog/the-kokoda-track-or-trail>>.

³ A brief description of what a 10-day trek on the Kokoda Trail looks like is found in Charlie Lynn, ‘A Kokoda Adventure’ *The National*, 30 April 2021 <<https://www.thenational.com.pg/a-kokoda-adventure/>>. Lynn has a rich Kokoda Trail experience of more than 30 years and 100 crossings. According to Lynn, the ‘96 km’ figure for the length of the Trail used in some official documents is wrong; modern GPS devices have more accurately measured the actual Trail’s distance (between Owers Corner and Kokoda) to be 130 km, which was verified by different trek leaders on numerous crossings (personal communication from Charlie Lynn to the authors, 2 March 2022).

⁴ ‘Fuzzy Wuzzy Angel’, *Kokoda Historical* <<https://kokodahistorical.com.au/history/fuzzy-wuzzy-angel>>.

Australian governments entered into a ‘Joint Understanding’ to protect the value of the Kokoda Trail, including seeking a World Heritage listing from UNESCO, as well as to improve the livelihood of the local communities. The Joint Understanding established the Kokoda Initiative (KI) to oversee and guide the implementation of this vision.

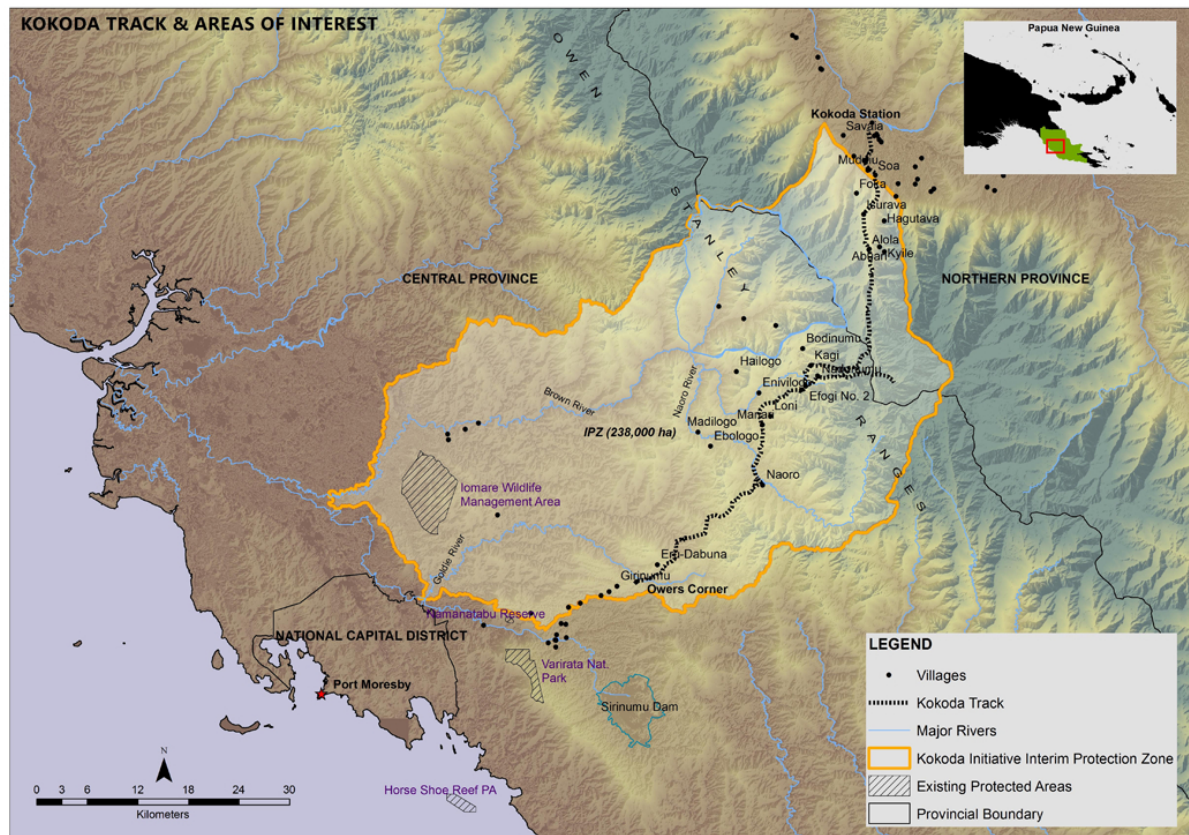


Figure 1: The Kokoda Trail⁵

It is estimated that an average of about 3,200 trekkers a year generates about K32 million.⁶ A reformed and properly managed Trail and tourism activity however, could lead to doubling these figures (7,000 trekkers and K70 million a year), which in turn would promote a further increase in tourism activities nationwide.⁷ It should be noted that two currently untapped markets are Japanese tourism and local tourism.

One of the most important aspects of the Kokoda Trail is the potential economic benefits that it can bring to its host communities who, in economic and modern terms, are hardly developed.⁸ They rightfully expect fair and proper benefits to arise from allowing and supporting the foreign trekkers to pass through the traditional lands under their care. Out of

⁵ Source: ‘Papua New Guinea’, *Australian Government: Department of Climate Change, Energy, the Environment and Water* <<https://www.dcccew.gov.au/parks-heritage/heritage/international-projects/papua-new-guinea>>.

⁶ Charlie Lynn, ‘Data Based Evaluation of the Kokoda Trekking Industry: 2003-2019’, *Kokoda Adventure* <<https://blog.kokodatreks.com/2022/03/04/data-based-evaluation-of-the-kokoda-trekking-industry-2003-2019/>> (based on official KTA data).

⁷ The busiest year, 2008, had 5,621 trekkers crossing the Trail (Lynn, above n 6).

⁸ Communities along the Trail are without road access, running water and electricity, and can only access the benefits of ‘modern life’ through a helicopter, or through walking or carrying goods along the Trail to and from Port Moresby or Popondeta. They currently rely on subsistence farming for sustenance, with the primary source of income being sale of fresh garden produce in Port Moresby.

the revenue generated however, only a relatively small amount goes to KTA and the traditional resource custodians, collected in the form of trek permit fees, guides and carriers wages, campsite fees and village purchases. Despite this tourism activity as well as millions of Australian aid money allocated under KI for the improvement of their lives, they have seen very little tangible development.

It is important to note that many of the dynamics, forces and players discussed in this paper with reference to the Kokoda Trail, are also found in many or most other situations in Papua New Guinea, where external players have an interest in resources that customarily (and legally) are under the stewardship of the traditional resource custodians. Grasping the nature of such dynamics, one can really start to appreciate the unique complexity and challenges, as well as opportunities, found within the social, political and economic reality in Papua New Guinea and the journey towards proper development, social harmony and prosperity. In our eyes, Kokoda Trail is a microcosm of this and the lessons, from both failures and successes, that are learnt there, are equally relevant to and could be used in other areas and sectors across the country.

THE CURRENT FRAMEWORK FOR THE MANAGEMENT OF THE KOKODA TRAIL TOURISM ACTIVITY

Preliminaries: The ‘Owner’ of the Trail

The legacy associated with Kokoda Trail belongs in a sense to all Papua New Guineans (as well as to the Australians and Japanese); it is a shared heritage of past, present and future generations. This, however, should be distinguished from the physical resource itself, which is ‘owned’, as it has always been, by the traditional communities that live in the area where it passes, its traditional resource custodians.⁹

Legally speaking, the land of and alongside the Trail is regarded as *customary land*, namely land that is owned or possessed by virtue of rights that arise from and are regulated by custom, and which has not been converted into freehold estate nor alienated by the State through compulsory acquisition or other means.¹⁰ From the lens of common law, such interests may be interpreted as equivalent to a freehold estate¹¹ or an allodium.¹² This means that customary landowners (custodians) hold exclusive rights over the use and enjoyment of their land, subject only to their own custom and to the statutory prohibition to sell, lease or in

⁹ This understanding is, at least in principle, shared by both the Papua New Guinean and Australian governments, as reflected in para 6 of the *Papua New Guinea-Australia Joint Declaration on the Preservation of the Kokoda Track Region 2015*: ‘We recognise that the communities living in the Kokoda Track region are custodians of a land that has spiritual connections for both Papua New Guineans and Australians.’

¹⁰ See generally Rudolph W James, *Law of Land Administration and Policies in Papua New Guinea* (Melanesia Law Publishers, 2011). See also *Land Act 1996* s 2.

¹¹ See, eg, *Geita Sebea v The Territory of Papua* (1941) 67 CLR 544.

¹² It appears that until the *Land Act 1962*, the ultimate title or allodium to land throughout (almost) the whole territory was vested in the Crown, including land subject to customary rights. The *Land Act 1962*, however, restricted the Crown’s ultimate title only to ‘land other than customary land’. The view that customary land is held as allodium is supported by statute. The *Land Registration Act 1981* Div III.6 (inserted in a 2009 amendment), dealing with registration of customary land, provides that a registered owner of such land is deemed to hold it in ‘absolute ownership’, defined as ‘a title which is not dependent upon any higher title’. Further, s 34O(3) provides that ‘[t]he transfer of allodial title in clan land is prohibited’.

any way dispose of such land and interests thereof ‘otherwise than to citizens in accordance with custom’.¹³

‘Customary land ownership’ (traditional resource custodianship) however, varies significantly in its nature from the common law estates. Typically in Melanesia, it is the community or the tribe which is the ultimate land custodian, with individuals and families being assigned portions (interests) for their use and livelihood. Under this arrangement, the holder of the particular interest is seen as *custodian* for both the community at large and for future generations. Given the nature of the Trail as a ‘main highway’ for numerous communities, it is arguable that, whilst the interest in each portion of the Trail is held and managed by the respective community living alongside it, the interest in the Trail in its totality is held collectively by all of these communities.

The Kokoda Track Authority

KTA¹⁴ is a Local-level Government Special Purposes Authority (LLG SPA) established under the *Local Level Government Administration Act 1997*.¹⁵ It was created in 2003 in order to assist the implementation of the functions of the Koiari Rural Local-level Government in Central Province and the Kokoda Rural Local-level Government in Oro Province¹⁶ and is specifically mandated to ‘focus on the significance of the Kokoda Track due to its part in

¹³ *Land Act 1996* s 132. It should be added that, despite the otherwise unrestricted customary ownership of the Trail and its surrounding, the *Constitution of the Independent State of Papua New Guinea 1975* (“the Constitution”) s 53(5)(f) enables Parliament to place restrictions on the use of any property which are ‘reasonably necessary for the preservation of the environment or of the national cultural inheritance.’ It appears that the 20-meters width area of and around the Trail has been declared a protected area (the ‘Kokoda Historical Track Reserve’), though its legal status is unclear due to lack of gazettal: see Fiona Leverington et al., ‘Assessment of Management Effectiveness for Papua New Guinea’s Protected Areas 2017’ (Final Report, SPREP, 2017) 165. Given the lack of gazettal, the extent to which such declaration affects or changes the rights of the traditional resource custodians in that area remains unclear.

¹⁴ Formally the ‘Kokoda Track Local-Level Government Special Purposes Authority’.

¹⁵ LLG SPAs are mainly designed to administer, stream and deliver benefits to local landowners (traditional resource custodians). They lack any power to affect or change interests in land or natural resources. It is correctly observed by Filer that ‘[t]he creation of an SPA in the conservation sector cannot serve to modify the ownership of land or other natural resources any more than the creation of an SPA in the mining sector can serve to change the nature of a Special Mining Lease’: see Colin Filer, ‘Horses for Courses: Special Purpose Authorities and Local-Level Governance in Papua New Guinea’ (Australian National University, Research School of Pacific and Asian Studies, 2004) <<https://dpa.bellschool.anu.edu.au/experts-publications/publications/1517/horses-courses-special-purpose-authorities-and-local-level>> 14. Their operation must be at arm’s length from the local-level government. An LLG SPA can also act as an agent of the national government in relation to any matter within its purposes. See generally: *Local-level Government Administration Act* Part VII (ss 42-51); Constitutional and Law Reform Commission, ‘A Review of the Implementation of the OLPG & LLG: A Six Provinces Survey’ (2009) 23. It should be noted that, as an LLG SPA, KTA is unique for three reasons. First, unlike other LLG SPAs, it is responsible for managing and promoting a resource associated with a significant national and international heritage, as well as the tourism activity it attracts. Secondly, unlike most LLG SPAs, which are used in relation to mining and petroleum projects where the resources belong to the State which leases the interests therein to developers, the Kokoda Trail legally belongs to its traditional resource custodians rather than to the State or to any external developer. Thirdly, it has a relatively small revenue source in comparison with other LLG SPAs.

¹⁶ *Proclamation: Establishment of the Kokoda Track Local-level Government Special Purposes Authority*, National Gazette No G151, 3 August 2006, 2.

World War II and promote this legacy for present and future generations and promote tourism related activities.¹⁷

The 2003 proclamation provided that KTA was to be governed by a management committee consisting of ten specified members.¹⁸ The composition of the management committee was varied by a 2008 proclamation,¹⁹ to instead consist of nine members, namely: the secretaries of the Department of Provincial and Local Governments Affairs (DPLGA) and the Conservation and Environment Protection Authority (CEPA); the provincial administrators of Central Province and Oro Province; the Executive Officer of the Tourism Promotion Authority (TPA); two landowner representatives from the areas of the Kokoda Rural and the Koiari Rural local-level governments respectively, nominated by the Minister for Inter-Governmental Relations in consultation with the respective landowners, and; the Presidents of the Kokoda Rural and Koiari Rural local-level governments. Figure 2 (below) depicts KTA's composition in three groups, namely host communities representatives (four), national government representatives (three) and provincial governments representatives (two).

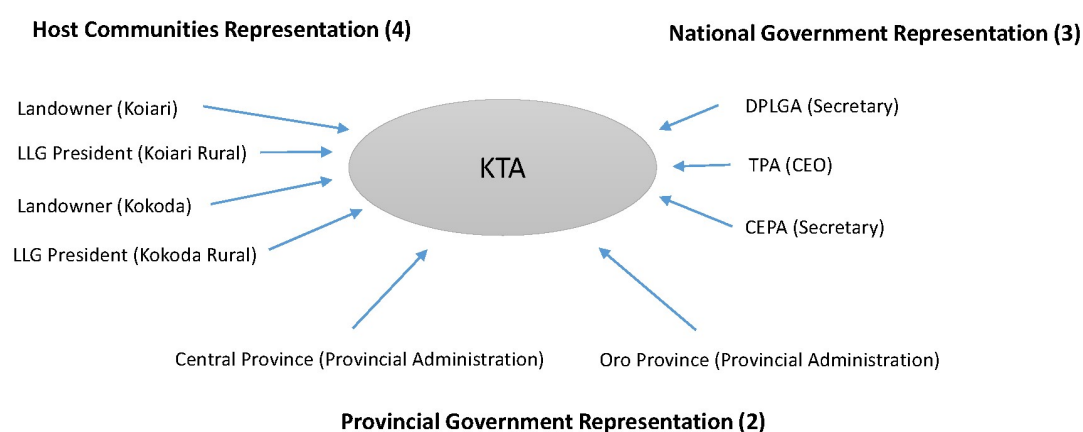


Figure 2: KTA's Composition

The constitution of KTA (the “*KTA Constitution*”) specifies its functions and powers.²⁰ Apart from preserving the legacy of the Kokoda Trail and promoting trekking and tourism related activities, KTA has the functions to:

1. consult with landowners and local-level governments on their needs and priorities in relation to the distribution of any benefits arising from tourism related activities;
2. set, collect and manage trekking fees and issue permits for tour operators and trekkers;
3. oversee and regulate the conduct of tour operators to ensure the sustainable management of the Trail and respect for local culture and way of life;
4. administer, facilitate, oversee, assist and coordinate the implementation of community development projects along the Trail;

¹⁷ Ibid, para (d).

¹⁸ Ibid, para (f).

¹⁹ *Proclamation: Variation of the Kokoda Track Local-level Government Special Purposes Authority*, 13 August 2008.

²⁰ ss 2-3. The authors have obtained a copy of the *KTA Constitution* which, to the best of our knowledge, is valid and up-to-date. For discussion purposes, it will be treated as such throughout this paper.

5. work in close cooperation and consultation with the Papua New Guinean and Australian governments for the implementation of the KI; and
6. any other functions authorised from time to time by the Koiari Rural or Kokoda Rural local-level governments.²¹

One of the most important roles of KTA is to issue Commercial Operations Licences (COLs) for tourism and adventure companies and trekking permits for individuals.²² By local-level laws of the Koiari Rural and Kokoda Rural local-level governments, all persons wishing to walk the Trail are required to first obtain such a permit.²³ KTA is to act as an agent of the two local-level governments and the communities they represent, for the collection of fees and the administration of the income for authorised expenditure on approved community development projects, based on a memorandum of understanding (MOU).²⁴ It should be noted that almost all trekkers use a commercial operator, which also serves as an agent between the trekker and KTA in terms of acquiring the trekking permit. The annual fee for a COL is K1,200 while trek permit fees are K350 per adult and K175 per student/child (as of March 2022). According to KTA, these fees are used to fund administrative expenses and staff salaries (50%), track maintenance (25%), and ward development funding through cash payments to local communities (25%).²⁵

Importantly, the COL provides a set of rules that the licensee tour operator must adhere to ('code of conduct') in relation to safety, insurance, compliance with the regulatory framework for carrying on business activities in the country, and environmental care.²⁶ The code of conduct also requires operators to have respect for their local staff (carriers, local guides, etc.) and adhere to minimum standards of pay, equipment, maximum carrying load, food and shelter and, if required, a return flight from the end of the Trail.

The Kokoda Initiative

The Kokoda Initiative (KI) is a shared effort by the Papua New Guinean and Australian governments with respect to the wider Kokoda Trail region. It has been carried out under two 'joint understandings' between the governments (2008-2010 and 2010-2015),²⁷ which in

²¹ The *KTA Constitution* further provides for the appointment of a non-voting member representing tourism operators to participate in discussions at management committee meetings (s 7). It also deals with internal governance matters such as election of chairperson and deputy chairperson, disclosure of interests by members, fees and allowances, meetings including quorums and decision-making processes, the appointment of a CEO, reporting, budget, and a code of conduct for members.

²² See: Kokoda Track Authority, *Commercial Operations License Conditions 2012* (2012) <<https://www.kokodatrackauthority.org/PicsHotel/KokodaTrack/Brochure/2012%20Licence%20Conditions.pdf>>.

²³ See: *Kokoda Track Trek Permit Law 2005* (Koiari Rural LLG); *Kokoda Track Trek Permit Law 2005* (Kokoda Rural LLG). These two laws are essentially identical and will together be referred to as the '*Kokoda Track Trek Permit Law 2005*'.

²⁴ *Kokoda Track Trek Permit Law 2005* ss 7(1), 10.

²⁵ Kokoda Track Authority, *What Are Kokoda Track Permit Fees Used For?* <<https://www.kokodatrackauthority.org/kokoda-track-authority/track-permit-fees-use>>.

²⁶ Kokoda Track Authority, above n 22.

²⁷ *Second Joint Understanding between Papua New Guinea and Australia on the Owen Stanley Ranges, Brown River Catchment and Kokoda Track Region 2010*.

2015 were extended indefinitely into the future.²⁸ It is a sustainable developmental plan with the goals to:

1. create a safe and well-managed Kokoda Trail and build up the national and international tourism potential of the Owen Stanley Ranges and Kokoda Trail region;
2. provide an enhanced quality of life for the host communities through improved service delivery, income generation opportunities and community development activities; and
3. the conservation of the Brown River catchment area including its biodiversity and its use for water and hydropower supply for Port Moresby.²⁹

One important aspect of KI is its Kokoda Initiative Development Program (KIDP), designed to enhance the quality of life for the local communities. It is funded by the Australian Department of Foreign Affairs and Trade's (DFAT) Australian Aid, through the Australian High Commission in Port Moresby.

To complete the picture, one must consider that KI's creation was partially due to an Australian backlash against the possibility of Chinese-led mining operations in the Kokoda Trail region, as part of what some view as a geopolitical struggle for control and influence in Papua New Guinea.³⁰ Unfortunately in these dynamics, the rights and interests of the traditional resource custodians often tend to be neglected and ignored.

Tour Operators

A 2012 report by Curtin Sustainable Tourism Centre of Curtin University mentioned about 40 tourism operators, 'with 80% of trekkers joining one of the top ten tour Australian based operators, and a "long tail" of smaller PNG based tour operators taking the remaining 20% of trekkers.'³¹ Eleven of these dominant Australian-based operators have formed the Kokoda Tour Operators Association (KTOA). A report analysing trekking data from the years 2016-

²⁸ *Papua New Guinea-Australia Joint Declaration on the Preservation of the Kokoda Track Region 2015*.

²⁹ As part of this initiative, the Brown River catchment area was set as an Interim Protection Zone (IPZ), which has required the identification of the various cultural, historic and natural values within it, with the view to create and implement a comprehensive sustainable development plan that balances these values. The IPZ was unsuccessfully nominated as a UNESCO World Heritage Site (see next Part). All of this has been carried out as a Global Environment Facility (GEF) project (Community-Based Forest and Coastal Conservation and Resource Management in PNG), externally funded and managed by the United Nations Development Fund (UNDF) working closely with CEPA. See generally: 'The Kokoda Initiative Second Joint Understanding: Mid-Term Review: Report' (2014) <<https://www.awe.gov.au/parks-heritage/heritage/publications/kokoda-initiative-second-joint-understanding-mid-term-review>>; 'PAS: Community-Based Forest and Coastal Conservation and Resource Management in PNG' *Global Environment Facility* <<https://www.thegef.org/projects-operations/projects/3954>>.

³⁰ See for example, Eric Tlozek, 'Australia Uneasy over Chinese Influence in PNG amid Increasing Infrastructure Investment' *ABC News*, 12 February 2017 <<https://www.abc.net.au/news/2017-02-12/australia-uneasy-over-chinese-investment-and-influence-in-png/8263384>>; PNG Business News, 'Australia Supports Electrification for PNG' *PNG Business News*, 4 May 2021 <<https://www.pngbusinessnews.com/articles/2021/5/australia-supports-electrification-for-png>>.

³¹ J Carlsen, 'The Economic Significance of the Trekking on the Kokoda Track, PNG in 2011' (2012) 4 <https://www.kokodatrackauthority.org/PicsHotel/KokodaTrack/Brochure/Kokoda_initiative/Final_Copy_The_Economic_Significance_of_Trekking_on_the_Kokoda_Track.pdf>.

18 shows that, during these years, the eleven KTOA members accounted for about 61% of trekkers, with the long tail of 38 other operators accounting for the rest.³²

The State and Governmental Agencies

Governmental bodies constitute another category of stakeholders. The most relevant ones within the national government are TPA, the National Cultural Commission (NCC) and the National Museum and Art Gallery (NMAG), all three under the Ministry of Tourism, Arts and Culture. Other important bodies are the Investment Promotion Authority (IPA) and CEPA. The most important decentralised governmental bodies are the Central and Oro provincial governments, and the Koiari Rural and Kokoda Rural local-level governments.

Other Interested Parties

Other interested parties include the churches dominant in the region (the Seventh Day Adventist Church and the Anglican Church) and NGOs such as Network Kokoda and Kokoda Track Foundation (an Australian NGO). Finally, a few Australian governmental bodies, whose involvement takes place primarily through KI, constitute a special class of foreign interested parties, most notably the International Heritage section of the Department of Agriculture, Water and the Environment (DAWE), the Australian Aid program administered by DFAT, and the Department of Veterans' Affairs (DVA).

Conclusion: The Key Interests/Benefits and the Key Stakeholders and their Roles

It is now time to summarise all of the above in the following table (Table 1), which connects the Trail's key interests/benefits with its key stakeholders. The nature of each connection (or, in the case of the State/government, the agency responsible) is given in its associate rectangle, with grey rectangles representing the most important connections. The table and the connections it depicts are far from conclusive and are given as suggestions and for reference purposes only.

³² Charlie Lynn, 'Brief on Illegal Australian Trek Operators on the Kokoda Trail'.

Interest/Benefit	Traditional Resource Custodians	Tour Operators	KTA	State/Government
Land & Customary	Main interest	-----	-----	-----
Commercial	Main interest	Main interest	Collects fees	Normal taxation of businesses
Tourism Regulation	-----	-----	Issues COLs and trekking permits	IPA, IRC, ICA
Tourism Promotion	Play a part	Play a part	Play a part	TPA, KI
Facilities & Track Maintenance	Play a part	-----	Main responsibility	KI
Economic Development	Main interest	Play a part	Play a part	PGs & LLGs, KI
Environmental	Play a part	-----	Play a part	CEPA, KI
National Heritage	Play a part	Derive benefits	Play a part	NCC, NMAG, KI

INDEX:

CEPA – Conservation and Environmental Protection Authority
COLs – Commercial Operator Licences
ICA – Immigration and Citizenship Authority
IPA – Investment Promotion Authority
IRC – Internal Revenue Commission
KI – Kokoda Initiative

KTA – Kokoda Track Authority
LLG – Local-level Government
TPA – Tourism Promotion Authority
NCC – National Cultural Commission
NMAG – National Museum and Art Gallery
PG – Provincial Government

Table 1: Kokoda Trail’s Key Interests/Benefits and Key Stakeholders and their Roles

CHALLENGES AND ISSUES WITH THE CURRENT MODEL AND MANAGEMENT OF THE KOKODA TRAIL TOURISM ACTIVITY

The Unrealised Potential of the Kokoda Track Authority

In principle, KTA is key to the success of the Trail. It is uniquely positioned as an interface between multiple stakeholders; it brings together the host communities, the provincial and local-level governments, tour operators, governmental departments, and the Papua New Guinea-Australia inter-governmental KI. It is *the* platform for harmonisation of interests and interaction between these stakeholders, in order to ensure optimal Trail operation and find creative solutions when issues arise.

However, KTA has in many ways been completely dysfunctional. Ongoing administrative and management issues included non-appointment of management committee members, failure of management committee to regularly meet, corruption, failure to produce annual and financial reports as required by law, lack of regular management systems and protocols, and failure to issue meeting minutes and newsletters.³³ There has also been little improvement to campsites and other trekking facilities, which are currently way below the standards of the international tourism market. The channelling of benefits to the host communities has also

³³ Felicity Ogilvie, “‘Corruption Rife’ in Kokoda Track Authority” *NBC News*, 12 May 2009 <<https://www.abc.net.au/news/2009-05-12/corruption-rife-in-kokoda-track-authority/1680620>>; Charlie Lynn, ‘The Kokoda Trail: Chronology of Mismanagement: 2009-2019’ *Adventure Kokoda*, 11 July 2021 <<https://blog.kokodatreks.com/2021/07/11/the-kokoda-trail-chronology-of-mismanagement-2009-2019/>>; Charlie Lynn, ‘Shameless Hijack of Kokoda Trek Permit Fees!’ *Adventure Kokoda*, 23 June 2019; Charlie Lynn, ‘KTA Strategic Plan: 2012-2015. Fail’ *Adventure Kokoda*, 9 March 2020 <<https://blog.kokodatreks.com/2020/03/09/kta-strategic-plan-2012-2015-fail/>>.

fallen below expectations.³⁴ Administratively, KTA had for a while been placed under CEPA, which fits well KI's environmentalist focus, but which may have caused neglect of the original KTA purpose and equally important role of promotion and management of tourism activity.

Whilst at the time of this writing (August 2023) KTA does have a CEO (who has occupied the position in an acting capacity since May 2019), its management committee ('board') has been practically inoperative since around 2018, without any meetings taking place, notwithstanding a 2019 decision of the National Executive Council (NEC) to renew the committee and call for new nominations for the two landowner representatives.³⁵

The Kokoda Initiative and Its Shortcomings

The aspirational Kokoda Initiative (KI) has so far had very limited success. While the Trail area was protected during the KI period, the nomination as a World Heritage Site has so far been unsuccessful for failing to meet the international criteria.³⁶ Kokoda Trail tourism activity, which was on the rise before the creation of KI reaching a peak level in 2008, has shown more than 40% decline ever since.³⁷ Progress related to the identification of the various natural, historic and cultural values within the Interim Protection Zone (IPZ) and the development of new legislation protecting this area has been very slow. Finally, the Kokoda Initiative Development Program (KIDP) performed in a less than satisfactory manner, without proper coordination with similar development programs and with little tangible benefits to the local communities.³⁸

A mid-term review on KI issued in 2014, concluded that the reason for this unsatisfactory performance was due to the complicated and complex organisational environment in which KI operates, coupled with the lack of understanding, participation and support from relevant stakeholders. Pointing out the relatively high proportions of funds allocated to KI planning, coordination and management activities, the reviewers observed that: 'There may have been more coordination and planning activities than necessary at the higher levels of management contrasting to inadequate inputs to coordination and management at community and local government levels.'³⁹ As an example, the two provincial governments were excluded from the 'planning of new infrastructure (schools, health, transport) for which the provincial

³⁴ 'The Kokoda Initiative Second Joint Understanding: Mid-Term Review: Report', above n 29, v. It should be noted that during the first KTA years (2003-2008), which saw a five-fold increase in trekkers, KTA had performed much better, which some attributed to its well experienced, capable and committed CEO who maintained regular interactions and good relationships with the traditional resource custodians and host communities.

³⁵ National Executive Council, 'Review of the Kokoda Track Authority and New Way Forward' Decision No 123/2019 (27 May 2019). In June 2023 an interim management committee was sworn in, however in a somewhat unusual manner and without the CEO of TPA and the Kokoda landowner representative. It remains to be seen whether or how will this committee and its members perform their duties.

³⁶ See Eryk Bagshaw, 'Kokoda is struggling to survive and under threat, warns veteran' *The Sunday Morning Herald*, 21 August 2022 <<https://www.smh.com.au/world/asia/kokoda-is-struggling-to-survive-and-under-threat-warns-veteran-20200820-p55nkq.html>>, referring to a 2015 report by former global advisor to UNESCO Peter Hitchcock.

³⁷ Lynn, 'Data Based Evaluation of the Kokoda Trekking Industry: 2003-2019', above n 6.

³⁸ See generally, 'The Kokoda Initiative Second Joint Understanding: Mid-Term Review: Report', above n 29.

³⁹ Ibid vi.

governments would be responsible for ongoing operations and maintenance.⁴⁰ One of the main lessons highlighted by the report was that:

Planning and coordination issues at community and local government level are just as important as higher level coordination activities, are more time-consuming and resource intensive but are an essential element of sustainability. Resources are needed to ensure these community-level planning issues include all community members.⁴¹

Regulatory Compliance by Tour Operators as Foreign Enterprises Carrying on Business in Papua New Guinea

A full picture of the Kokoda Trail tourism activity must take into account the fact that most trekkers come with an Australian-based tour operator.⁴² It is important to see that these companies and the way they operate are respectful to the host communities and compliant with the regulatory framework of foreign business activity in Papua New Guinea, established by the *Investment Promotion Act 1992* and the *Companies Act 1997*.

Under the scheme, a foreign enterprise (essentially being an enterprise that is 50% or more owned by non-citizens)⁴³ must register as such and obtain a certificate from the Investment Promotion Authority ('Section 25 Certificate')⁴⁴ in order to carry on business⁴⁵ in the country. Some business activities however, are reserved for national enterprises ('reserved activities').⁴⁶ 'Hospitality' is such a reserved activity, which includes: (a) tourist related activities (village guest houses, management of village cultural arts and shows and tourist guides), and; (b) travel agencies and wholesale tour operators/agents.⁴⁷ Under the scheme, the Certificate shall not be granted to a foreign enterprise wishing to engage in a reserved activity.⁴⁸

The legislation creates various offences and penalties for failure to comply with these requirements.⁴⁹ The 2001 case of *Investment Promotion Authority v Niugini Scrap Corporation Pty Ltd*⁵⁰ provides a good example. The defendant company was incorporated in

⁴⁰ Ibid 10.

⁴¹ Ibid 27.

⁴² The 2012 Curtin University study for example, found that about 80% of trekkers came under one of the top ten Australian based tour operators, with only less than 20% coming under Papua New Guinean tour operators (Carlsen, above n 31). Similarly, a study by Lynn with respect to the years 2016-18 demonstrates that, for those years, more than two thirds of trekkers came with Australian based companies, while only less than one third came with Papua New Guinean ones (Lynn, 'Data Based Evaluation of the Kokoda Trekking Industry: 2003-2019', above n 6).

⁴³ *Investment Promotion Act 1992* s 3.

⁴⁴ Ibid, ss 3, 25.

⁴⁵ The term 'carrying on business' is defined under both the *Investment Promotion Act 1992* s 3 and the *Companies Act 1997* s 382. It includes dealing with property and having agents, employees or offices in the country.

⁴⁶ *Investment Promotion Act 1992* s 3. 'National enterprises' are enterprises more than 50% of which are owned directly or indirectly by citizens.

⁴⁷ *Investment Promotion Regulation 1992* s 3A.

⁴⁸ Ibid, ss 25, 27(4).

⁴⁹ See for example the *Companies Act 1997* ss 383(3), 413(2), 414(2) and the *Investment Promotion Act 1992* s 41(1), (3).

⁵⁰ *Investment Promotion Authority v Niugini Scrap Corporation Pty Ltd* [2001] PGNC 114; N2104.

Papua New Guinea and had a majority shareholder from Australia. A complaint was made to the Registrar of Companies in relation to it being a foreign enterprise carrying on business in the country without the required Certificate. The company responded by applying to IPA for the Certificate, which was refused on the ground that the company was engaged in an activity reserved for citizens (recycling scrap metal). When the company continued operation, IPA charged and prosecuted it under the Act. The company admitted guilty to the charges and a K70,000 penalty for the company and another K70,000 penalty for its secretary were imposed. In the course of the judgment Kandakasi J remarked:

Parliament intended, as is the case in other countries that, all foreigners wishing to carry on business in Papua New Guinea must first apply for and obtain a certificated [sic] under the *IPA Act* from the IPA. At the same time, Parliament considered it appropriate that a number of specified business activities in the country should only be available for citizens. This was to ensure that foreigners did not come at will and carried on whatever business they wished and thereby take away business activities from the citizens of the country or run in direct competition with the citizens. ... If foreigners choose not to meet those requirements and conduct business illegally and in defiance of those requirements they must be dealt with severely to demonstrate the importance of the requirements and to deter would be offenders.⁵¹

In addition to all of the above requirements and as discussed above, Kokoda Trail tour operators must also obtain a Commercial Operations Licence (COL) from KTA and comply with all of its conditions, including its code of conduct.

It is quite clear that many of the activities of the Australian-based tour operators do come under the statutory definition of ‘carrying on business in the country’.⁵² For example, they maintain agents and employees in the country (e.g. tour guides and carriers) and procure or enter into arrangements, agreements and contracts with citizens and with KTA. Furthermore, many of the business activities they carry are reserved activities for citizens, for example tourist related activities and wholesale tour operations and agents.⁵³

An investigation into the compliance of the Kokoda Trail’s tour operators with the regulatory requirements, reveals a very alarming situation. It is instructive to first look at members of the Australian Kokoda Tour Operators Association (KTOA). Without going too much into the specifics, a simple search on the IPA website revealed that, out of the nine operating KTOA members, two are overseas companies and six are local companies with more than 50% shareholding by Australian citizens (five 100% and one 70% Australian owned), all eight therefore are foreign enterprises. None of these companies, however, are registered as a foreign enterprise, which contravenes the Section 25 Certificate requirement.⁵⁴ Only one out of the nine is compliant, being a local company 100% owned by a Papua New Guinean citizen. This information becomes even more crucial considering that, in the years 2016-18

⁵¹ [2001] N2104, 6-7.

⁵² See the *Investment Promotion Act 1992* s 3 and the *Companies Act 1997* s 382.

⁵³ *Investment Promotion Regulation 1992* s 3A.

⁵⁴ The list of KTOA members was obtained from <<https://www.ktoa.com.au/our-members/>>. The information reported was obtained by a search of each of those entities on the IPA website (<<https://www.ipa.gov.pg/>>), conducted on 12 February 2022.

for example, KTOA member companies accounted for about 61% of the total number of trekkers.⁵⁵

With regard to the main non-KTOA tour operators (eight in total), two are not registered at all (one Australian and one local), one is an overseas company and another is a local company 100% owned by an Australian citizen, yet both not registered as a foreign enterprise. The other four are Papua New Guinean companies, three of which are owned by Papua New Guinean citizens and the other one is owned by an Australian and registered as a foreign enterprise. There are about 30 other small tour operators, many of which are non-compliant as well, for example foreign enterprises operating without a Section 25 Certificate, or unregistered Papua New Guinean companies.

So, in the sphere of the 17 main tour operators, out of the 12 companies which are either Australian or 50% or more owned by Australian citizens, only one company operates with a foreign enterprise certificate, the other 11 are in breach of the legislative requirement.

Needless to say, all of the above has taxation and oversight implications and, perhaps most importantly, results in unlawfully taking business opportunities away from the traditional resource custodians and other citizens.

The Position of the Host Communities

Two incidents illustrate who has the final say (perhaps rightfully so) over who can walk along the Kokoda Trail, both involving host communities blocking the Trail as a result of being neglected and deprived of their rightful share of benefits. In 2009, the traditional resource custodians of Kovelov Village at the end of the Trail blocked the pass of trekkers, as a consequence of their dissatisfaction with the management committee of KTA which allegedly withheld money that was due to them.⁵⁶ In 2018 the Trail was totally shutdown by the host communities, a few months after a controversy erupted concerning the death of a local porter, who collapsed while working for an Australian tour operator and allegedly had been carrying an overweight pack, in breach of the Commercial Operations Licence's (COP) code of conduct, which was never fully investigated despite numerous requests. Besides this controversy, in shutting the Trail the host communities complained of being 'economically suppressed, oppressed and exploited' for 10 years under the Australia-Papua New Guinea KI, and called for a review of KI in direct consultation with them.⁵⁷

More recently (April 2023), another 'drama' took place with the unusual cancellation of the COL of one of the most successful (and regulatory compliant) tour operators (Adventure Kokoda), following what appears to have been a dispute between the company and KTA over the state of the Trail's campsites and facilities (under KTA's responsibilities) and the withholding of trekking permit fees by the company.⁵⁸ The 350 or so local Adventure

⁵⁵ Lynn, 'Brief on Illegal Australian Trek Operators on the Kokoda Trail', above n 32.

⁵⁶ 'Kokoda Trail Shut Down' *The Sunday Morning Herald*, 9 May 2009 <<https://www.smh.com.au/world/kokoda-trail-shut-down-20090508-axzb.html>>.

⁵⁷ 'Landowners Shut Kokoda Track' *PNG Report*, 7 February 2018 <<https://www.pngreport.com/community/news/1311493/landowners-shut-kokoda-track>>.

⁵⁸ Tim Swanston and Theckla Gunga, 'Major route into the Kokoda track appears to have been blockaded amid tour operator feud' *ABC News*, 1 May 2023 <<https://www.abc.net.au/news/2023-05-01/major-route-into-the-kokoda-track-appears-to-have-been-blockaded/102285692>>.

Kokoda employees, who overnight lost their source of income, blocked the Trail in protest. Legal proceedings were instituted by Adventure Kokoda and in June 2023 the National Court granted leave to apply for judicial review of the decision to cancel the license.⁵⁹

These incidents demonstrate two things. First, the traditional resource custodians have long been feeling neglected, ignored and deprived of their equitable and rightful share of the benefits that arise from the tourism activity that passes through their land. Second, for a successful, sustainable and safe management of the Trail, the positions and rights of the host communities must be well respected and taken into consideration within any law, policy or initiative dealing with the Trail.

Ideally, the forum in which the grievances of the traditional resource custodians should be heard and addressed, is KTA's managing committee, of which four out of its nine members are from the host communities. However, as mentioned, the committee has been practically inoperative for several years. The remoteness and limited financial means of the resource custodians make it extremely challenging to use legal means or run a media campaign to attempt to remedy such grievances (this also requires a greater level of coordination and unified efforts). One can therefore appreciate why, in most such situations, they simply resort to the form of action that is easy and lies immediately within their powers—blocking the Trail until a positive change occurs.

In terms of their internal relationships, while the borders between the villages are clearly settled, the host communities and their members sometimes find themselves on different sides of the isle when it comes to supporting different proposals or courses of action.⁶⁰ Furthermore, the remoteness of the villages results in the lack of good and proper information reaching their members, a situation that could be misused by ill-intending bureaucrats and political leaders, leading to more fragmentation and confusion. This is further complicated by the fact that there are several Port Moresby-based landowners, who are usually more influential than village-based landowners and may use such influence for personal gain, at the expense of those living in the villages.⁶¹ This results in a challenging landscape for any official trying to implement 'magical solutions' to the Trail's tourism activity.

TOP-DOWN AND BOTTOM-UP POLICYMAKING AND IMPLEMENTATION APPROACHES, THE MANDATE OF THE NATIONAL GOALS AND DIRECTIVE PRINCIPLES, AND THE NEED FOR A PARADIGM SHIFT

The exploration in this paper highlights the crucial role that the traditional resource custodians ought to play in the planning and management of the Kokoda tourism activity, and that the failure to properly involve them in the negotiations, planning and implementation stages has led to the shortcomings in realising its full potential. This has been underpinned by a clear top-down approach to policymaking and implementation: policies and goals have been

⁵⁹ *Adventure Kokoda PNG Ltd v Simon Kilepa*, OS (JR) No. 43 of 2023, court order of 8 June 2023 and court order of 15 June 2023. The company's application for an interim injunction to restore its license is currently before the Court.

⁶⁰ Conversation with Kila Sibolo, Koiari and Biage leader and chairperson of the Kokoda Trail Tourism Development Association (11 August 2023).

⁶¹ Personal communication from Charlie Lynn to the authors, 10 August 2023.

articulated at the highest governmental level (i.e. KI), creating a hierarchy for implementation in which, at the bottom, are the traditional resource custodians.⁶² The traditional resource custodians were ‘kept out of the loop’ by being maintained in a position of simple employees, bystanders and receivers of some aid money (i.e. ‘beggars’), although this too was impeded by corruption, neglect and lack of coordination and consultation. At the same time, foreign enterprises operating in a non-compliant manner, have been profiting at the expense of the traditional resource custodians, genuine local companies and the Papua New Guinean nation at large.

Moving towards a successful, sustainable and viable Kokoda Trail tourism activity requires a *paradigm shift* that is fully inclusive of the host communities and puts them, both conceptually and practically, at the forefront of the planning, negotiation and implementation processes. Fundamentally, any new policy and framework, regardless of how good it may look on paper, will have to ‘go through’—i.e. be recognised, supported and actualised by—the host communities. It is about working in partnership, which often times requires going slowly rather than fast, working in consultation and agreement rather than based on one’s caprices and agendas (even well-intended ones), and focusing on foundation-building rather than short-term benefits.

This approach is fully consistent with the fundamental policy directives of the constitutional National Goals and Directive Principles (NGDPs).⁶³ The first National Goal, ‘Integral human development’, calls for ‘everyone to be involved in our endeavours to achieve integral human development of the whole person for every person and to seek fulfilment through his or her contribution to the common good’, as well as for ‘development to take place primarily through the use of Papua New Guinean forms of social and political organization’. The second National Goal, ‘Equality and participation’, calls for ‘every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community’, and therefore for ‘the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity.’ The third National Goal, ‘National sovereignty and self-reliance’, requires the political leaders to be committed to and base their planning on the NGDPs, without compromise to foreign agendas and interests. The fourth National Goal, ‘Natural resources and the environment’, requires wise use of the resources ‘in the interests of our development and in trust for future generations’ and the ‘conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities.’ Finally, the fifth National Goal, ‘Papua New Guinean ways’, calls for:

- (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of

⁶² A general introduction to top-down versus bottom-up approaches to policy and implementation can be found in J Girdwood, ‘Top-down and Bottom-up Approaches within Implementation’ *Political Pipeline: Surfing Political Science*, 21 February 2013 <<https://politicalpipeline.wordpress.com/2013/02/21/top-down-and-bottom-up-approaches-within-implementation/>>.

⁶³ *Constitution*, Preamble.

- participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and
- (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and
 - (3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and
 - (4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality.⁶⁴

The founders of the nation warned the generations to come of the potential unhealthy imbalances, inequalities and inequitableness associated with a government and business activity that neglects the true interests and wellbeing of the people. They explained that, when it comes to healthy and sustainable development, government and businesses must work hand in hand with the village communities in mutual respect and partnership, continuously supporting, checking upon and correcting each other to achieve a thriving and happy society that carries itself sustainably and responsibly into a better future.⁶⁵ While the first National Goal of ‘Integral human development’ is the ultimate destination and purpose of the whole enterprise of the State and its related activities, the last National Goal of ‘Papua New Guinean ways’ provides the *formula* for achieving it.

It should also be noted that the NGDPs are more than just policy directives. Although being non-justiciable, s 25 of the *Constitution* provides that it is nonetheless ‘the duty of all governmental bodies to apply and give effect to them [the NGDPs] as far as lies within their respective powers’, and that:

Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied or exercised, and shall be enforced, in that way.⁶⁶

Furthermore, the Ombudsman Commission is mandated to fully take the NGDPs into account in relation to the enforcement of the Leadership Code.⁶⁷

All of this is to be understood as giving a very strong directive, in certain circumstances indirectly legally justiciable,⁶⁸ to the relevant governmental officials, to give paramount

⁶⁴ Ibid.

⁶⁵ See generally, Constitutional Planning Committee, ‘Constitutional Planning Committee Report 1974’ (1974) <<http://www.paclii.org/pg/CPCReport/TAB.htm>>.

⁶⁶ *Constitution* s 25(3).

⁶⁷ Ibid, sub-s (4).

⁶⁸ Vergil Narokobi, *The Implementation of Papua New Guinea’s National Goals and Directive Principles and Basic Social Obligations* (Victoria University of Wellington, 2016) <<http://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/5030/thesis.pdf?sequence=1>>.

consideration to the interests of the traditional resource custodians, their active participation and their empowerment. The officials have a duty to ensure that every decision and undertaking is informed by and consisted with the NGDPs, many of which embody a bottom-up approach to development and policymaking and implementation. The mandate of the NGDPs also requires the wise balancing of the social and environmental interest involved, which can only be achieved by the full inclusion of the traditional resource custodians and host communities, as active partners.

A FEW REFORM PROPOSALS AND THEIR POTENTIAL STRENGTHS AND LIMITATIONS

All of the preceding discussion, we hope, has put us now in the position to consider a few reform proposals and assess their potential strengths and limitations.

The Kokoda Track Management Authority Bill 2021

A policy decision by the National Executive Council (NEC) has called to replace KTA with a proposed ‘Kokoda Track Management Authority’ (KTMA) to manage the Kokoda Trail as a ‘Special Tourism Region’, under new legislation.⁶⁹ The result was the creation of the *Kokoda Track Management Authority Bill 2021* (“*KTMA Bill*”).⁷⁰

The *KTMA Bill* is an extensive legislation with a primarily environmental orientation,⁷¹ designed to protect the natural resources and values and sustainably develop the potential of an envisioned ‘Kokoda Track Protected Area’ which, if established, would more likely cover the same area as the current Interim Protected Zone (IPZ). While the extensive environmental concern is commendable the Bill, with respect, fails to address most of the issues identified in this paper, particularly when it comes to creating a viable working arrangement and partnership of trust between the host communities and the stakeholders.

For example, a proposed provision of the first draft restricted the traditional resource custodians from serving as members of the KTMA board.⁷² To add unto that, another proposed provision required traditional resource communities to ‘abide by any reasonable advice, whether legal, technical, financial, or administrative given to them by the Authority in respect of the Kokoda Track and the Kokoda Track Protected Area, and not unreasonably reject such advice from the Authority.’⁷³

A source who prefers to remain anonymous, told the authors how initially bureaucrats within CEPA tried to push to table the Bill in Parliament, without disclosing it to the public and without any consultation with the host communities. The Bill was only accidentally discovered, with its exposure leading to agitations among host communities and demand for explanation

⁶⁹ National Executive Council, ‘Review of the Kokoda Track Authority and New Way Forward’, Decision No 123/2019 (27 May 2019).

⁷⁰ *Kokoda Track Management Authority Bill 2021*, Zero Draft (February 2022).

⁷¹ It was originally sponsored by CEPA officers and consultants.

⁷² See *KTMA Bill* s 18(3): ‘The persons so nominated [to the KTMA Board] shall not be persons who have any grandparents from, or be persons who are indigenous to, or who are resident in, the areas of the Koiari Rural Local Level Government, or the Kokoda Rural Local-level Government.’

⁷³ *Ibid*, s 42.

from the relevant bureaucrats and agencies. Lynn, who strongly criticized the Bill and the process in which it was created, noted:

The KTMA Bill, which smacks of colonialism, will result in PNG becoming the only country in the world to manage its most popular tourism destination as an environmental resource. This will be for the benefit of foreign aid-funded officials and consultants rather than as a tourism enterprise for the economic benefit of villagers along the trail.⁷⁴

At the time of writing (August 2023), pressure by the leaders of the host communities requiring that the process starts anew, this time with their proper involvement, has brought a halt to the drafting and enactment process.

In our eyes, without starting to constructively work with the traditional resource custodians, a new Act of Parliament creating a new statutory authority would have very little effect. It is instructive to remember that in Papua New Guinea, as in many other developing countries, trying to solve existing problems with new legislation and creating new bureaucratic mechanisms typically fails, as root issues remain untouched. Such new policies may have worked in other (developed) countries and look good on paper, however simply importing them *without creating the conditions for their success and implementation* is likely to fail, possibly even make things worse. This phenomenon is explored and explained by Andrews, Pritchett and Woolcock, who have significant experience working with policies in developing countries.⁷⁵ Consider for example the following passage in the context of the discussion so far and the new reform proposal:

While perhaps little is known with certainty about how to build state capability [for policy implementation], destroying it seems easy. Requiring organizations and institutions to perform tasks before they are actually capable of doing so can create too much pressure on the organization and its agents and lead to collapse even of what small capability might have been built. When such processes are consistently repeated ... the very possibility and legitimacy of reform and capability building is compromised.

The often twinned forces of isomorphic mimicry [i.e. ‘copy-pasting’ policies that worked elsewhere without having the local conditions for their success] and premature load bearing can leave countries stuck in capability traps in spite of well-meaning conscious efforts ... Importing ‘best practices’ and placing unrealistic expectations ... leads to paper-mache bridges to nowhere.⁷⁶

These types of *isomorphic mimicry* and *premature load bearing*, coupled with the failure to consult and work with the host communities, is what has so far led to KI’s very limited success. These are likely to be perpetuated with the new proposed KTMA reform, which may look good on paper by mimicking ‘best environmental practices’ from elsewhere, but fails to

⁷⁴ Charlie Lynn, ‘Kokoda Trail fails when bureaucracy prevails’ *PNG Attitude*, June 2022 <<https://www.pngattitude.com/2022/06/kokoda-tourism-fails-when-bureaucracy-prevails.html>>.

⁷⁵ Matt Andrews, Lant Pritchett and Michael Woolcock, *Building State Capability: Evidence, Analysis, Action* (Oxford University Press, 2017).

⁷⁶ Ibid 54.

address root issues and build what Andrews, Pritchett and Woolcock call *capability for policy implementation*.

Again, in relation to the Kokoda Trail (and such similar resources), the keys to success are *simplification* and *active participation* and involvement by relevant stakeholders, in particular the host communities, which often take place on bush/street level, rather than in high governmental offices.

Working with and Building upon What Already Is: Harmonising the Mandates of KTA, TPA and CEPA alongside Greater Host Communities' Participation, and Collaboration with IPA to Ensure Regulatory Compliance by Tour Operators

It could well be the case (and Andrews, Pritchett and Woolcock would surely agree), that the challenge with the Kokoda Trail lies less with the existing policies and framework and more with implementation capabilities. A good way forward would therefore be to build upon and improve those mechanisms and institutions which are already in place, including the (even small) capabilities they have.

In relation to KTA for example, a possible way forward would be to empower and strengthen it to better perform its role in providing a platform where representatives of the host communities, provincial and local-level governments, tour operators, governmental departments (i.e. TPA and CEPA), and the Papua New Guinea-Australia inter-governmental KI can interact, negotiate, plan and solve problems. This requires financial independence and a strong managing committee with a strong commitment of its members. A good starting point could also be to increase the number of host communities' representation: this would bring more legitimacy to KTA in the eyes of the host communities, create enthusiasm and would promote their cooperation and active participation in maintaining and managing the Trail, as well as ensure that they get the benefits they deserve. The KTA board could also be expanded to include a representative of the tour operators. In terms of management, it is without a doubt that KTA requires a professional manager (CEO) with commercial qualifications and a success record in dealing with traditional communities in Papua New Guinea, along with expert staff with high capabilities in administration, accounting, marketing, database management and ranger operations.

Another positive step would be to administratively place KTA under TPA (tourism orientation). This would better orientate KTA with its originally intended purpose and is likely to lead to an increase in tourism activity. In relation to the valid environmental concerns, CEPA (operating under the *Environment Act 2000* and its Protected Areas policies⁷⁷) should operate side by side and in collaboration with both TPA and KTA in looking after their shared interest of a viable and sustainable Kokoda Trail tourism activity (an activity which in its very nature is already sustainable and unharmed to the environment). Finally, both KTA and TPA should strongly cooperate with IPA, IRC and ICA to ensure that

⁷⁷ Independent State of Papua New Guinea, *Papua New Guinea Policy on Protected Areas* (Conservation & Environment Protection Authority, 2014); Independent State of Papua New Guinea, *Protected Areas Policy Implementation Plan 2018-2028* (Conservation & Environment Protection Authority, 2017).

tour operators and particularly those who are foreign enterprises, are fully compliant under the regulatory framework.⁷⁸

Efforts should also be made to ensure that the two local-level governments (Koiari Rural and Kokoda Rural) are functional, with the wards' representatives (councillors) meeting regularly to discuss and resolve matters relating to the Trail and the trekkers.⁷⁹ KTA, which is legally mandated to act as their agent in collecting the trekking permit fees, must return this money to the host communities by financing projects run by the local-level governments (grants could also be made by the respective provincial governments, the national government, KI and NGOs).

In other words, it may well be the case that all of the relevant frameworks and institutions are already in place and have been, at least on a very basic level, operating for more than a decade. The challenge—a positive one—lies in upholding their integrity, making them fully functional and successful and harmonising their different mandates. It is useful in this respect to think about all the stakeholders as being part of a system—call it the 'Kokoda Trail Tourism Activity System'—and be reminded of one of the most important insights from the field of Systems Thinking, namely that it is how the different parts of the system *interact* with one another, rather than how each part performs on its own, which makes the system function and thrive.⁸⁰

Using the Abel Reverse Spiral Model for Kokoda

The 'Abel Reverse Spiral Model' (ARSM) has also been considered to be used for the Kokoda Trail tourism activity. It is based on a bottom-up community-centred approach for creating and managing equitable and sustainable tourism and other activities.⁸¹ It is a 'home grown' model developed by Andrew Abel and implemented by several surf tourism host communities (and one involving a hiking and kayaking adventure) throughout Papua New Guinea. It is called by this name based on its principle that influence must 'spiral up' from host communities, rather than 'spiral down' from external stakeholders such as business and government agencies (see Figure 3 below). The model revolves around the four key pillars of (1) 'negotiation', (2) 'planning', (3) 'implementation' and (4) 'management', all of which take place by the host communities, possibly with the help of a facilitator. As an example,

⁷⁸ A good step in that direction is the creation in early 2022 of a high level technical group, made by representatives of different governmental agencies (IPA, TPA, IRC and ICA), to investigate these companies and their compliance with company, investment, taxation and immigration laws (conversation with Andrew C. Abel, CSM, ML, deputy chairperson, PNG TPA board, 11 August 2023).

⁷⁹ The potential of local institutions has been explored by the authors in: Shahar Shalom Yadin, Kylene Koroka and Julianne Kaman, 'Enhancing Governance, Rule of Law, Peace and Development in Papua New Guinea through Local Institutions: The (Unrealised) Potential of the Local-Level Government and the Village Court' (2023) <<https://osf.io/6p4dv/>>.

⁸⁰ Russell Ackoff for example famously said that: 'The performance of a system doesn't depend on how the parts perform taken separately, it depends on how they perform together – how they interact, not on how they act, taken separately. Therefore, when you improve the performance of a part of a system taken separately, you can destroy the system.' See John Hunter, 'Ackoff on Systems Thinking and Management' *The W. Edwards Deming Institute*, 2019 <<https://deming.org/ackoff-on-systems-thinking-and-management/>>.

⁸¹ See generally, Andrew C Abel and Daniel O'Brien, 'Negotiating Communities: Sustainable Cultural Surf Tourism' in *Sustainable Stoke: Transitions to Sustainability in the Surfing World* (University of Plymouth, 2015) 154.

each surfing region, with the support and facilitation of the Surfing Association of Papua New Guinea (SAPNG), developed its own Surf Management Plan (SMP) and administers it through an alliance of community leaders, locally owned surf tourism operations and surfing clubs. The host communities control the quota of tourist-surfers per week, provide their transport, accommodation and food, collect surfing royalties into a community trust account, and decide how to use this money to benefit their respective communities.

The ARSM has been in use since around 1990 and has proven very successful, for both tourists and host communities, in all places where it has been applied.⁸²

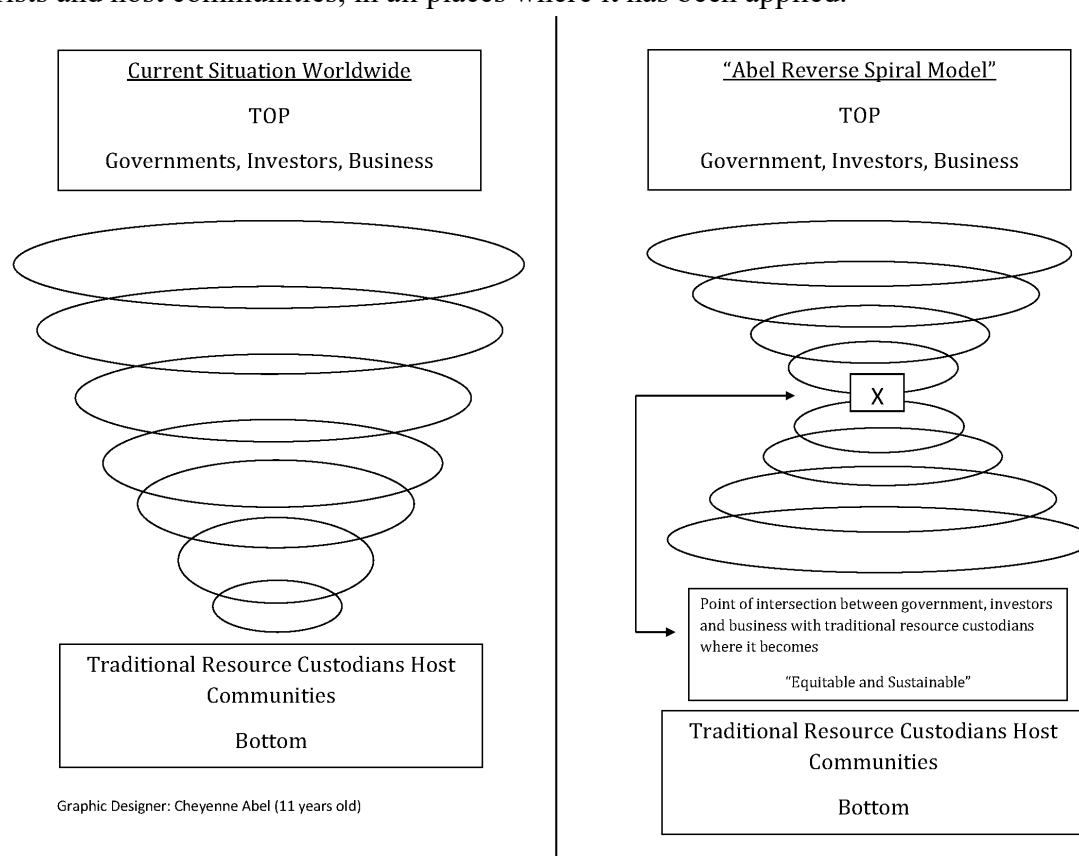


Figure 3: The Abel Reverse Spiral Model⁸³

The key to Abel’s approach is to ‘interface and work directly in partnership with the traditional resource custodians’, who are recognised as the ‘gatekeepers and custodians of “their” respective niche tourism attractions.’⁸⁴ This is greatly motivated by Abel’s observation that, since Papua New Guinea’s political independence:

[T]raditional resource custodians across the niche tourism spectrum, including but not limited to Kokoda Trail, have been circumvented and alienated in many areas around Papua New Guinea in the four key pillars mentioned above [i.e. negotiation, planning, implementation and management]. This has resulted in the net outcome of the host

⁸² It has been implemented by host communities with respect to surfing destinations in Vanimo (Sandaun Province), Tupira (Madang Province), Kavieng (New Ireland Province) and Central Bougainville, as well as one non-surfing adventure in Milne Bay Province, with negotiations underway to implement it with respect to surfing destinations in Finschhafen (Morobe Province) and in Manus Province.

⁸³ Courtesy of Andrew C. Abel, CSM, ML, President & Co-Founder, SAPNG Inc.

⁸⁴ Loop Sports, *Surf Management Plan Signed* (10 August 2021) Loop PNG <<https://www.looppng.com/sport/surf-management-plan-signed-103167>>.

communities being relegated as mere beggars and bystanders on ‘their’ own traditional land. ... [I]f tourism in PNG ... is to thrive then it is of paramount importance that political and bureaucratic leaders note that adopting a western style approach of developing tourism from the top down will never work. The key to SAPNG’s [Surfing Association of Papua New Guinea] success 32 years on is based on developing tourism from the bottom up ... ⁸⁵

The ARSM is attractive for three reasons. First, it is based on a bottom-up approach, pinned by the traditional resource custodians being fully involved and taking ownership of the negotiation, planning, implementation and management stages of the project (the four key pillars), leading to a tourism activity which is both sustainable and equitable in terms of its benefits. It is simple, ‘down-to-earth’ and embraces the positive challenge of building relationship and *working with* traditional host communities, in the long term leading to their empowerment (rather than creating an imbalanced situation of reliance on aid money and support). Secondly, in doing so the ARSM is fully consistent with the fundamental policy mandates of the constitutional NGDPs. Finally, as already noted, the ARSM has been in use since around 1990 and has proven very successful, for both tourists and host communities, in all places where it has been applied.

This Model and approach are also consistent with a recent study led by members of the Commission on Environmental, Economic and Social Policy of the International Union for Conservation of Nature (IUCN), which looked at 169 cases worldwide and found that conservation efforts in which the indigenous people play a central role have been strikingly more successful than those created and controlled externally:

We find a stark contrast between the outcomes produced by externally controlled conservation, and those produced by locally controlled efforts. Crucially, most studies presenting positive outcomes for both well-being and conservation come from cases where Indigenous peoples and local communities play a central role, such as when they have substantial influence over decision making or when local institutions regulating tenure form a recognized part of governance. In contrast, when interventions are controlled by external organizations and involve strategies to change local practices and supersede customary institutions, they tend to result in relatively ineffective conservation at the same time as producing negative social outcomes. Our findings suggest that equitable conservation, which empowers and supports the environmental stewardship of Indigenous peoples and local communities represents the primary pathway to effective long-term conservation of biodiversity, particularly when upheld in wider law and policy.⁸⁶

It should be noted that the ARSM has so far only been implemented on a relatively smaller scale than the Kokoda Trail, hence great care would be required if it is to be implemented there. Creating a proper negotiation and planning process for various communities along a 100-kilometre trail without any road access is very demanding and perhaps an expensive exercise, which would more likely require governmental assistance (which can come from

⁸⁵ Ibid.

⁸⁶ Neil M Dawson et al, ‘The Role of Indigenous Peoples and Local Communities in Effective and Equitable Conservation’ 26(3) *Ecology and Society* <<https://www.ecologyandsociety.org/vol26/iss3/art19/>>.

the national government, the provincial governments, KI or a combination thereof). The model however is commonsensical, easy to grasp and already benefiting communities throughout the country. It has the great advantage of cutting off government and bureaucracy (and hence corruption which prevails at that level), with the benefits being reticulated directly to the hands of the custodians. There is a high likelihood that the host communities will embrace it, which will open the way to finally having the potential of the Kokoda Trail realised, both as a tourism/adventure destination and in terms of its benefits to the indigenous custodians and their prosperity.

CONCLUSION

The Kokoda Trail is more than just a tourism adventure track, it is the traditional ‘community highway’ of the Koiari and the Orokaiva people, who are its traditional resource custodians and host communities. Beyond that, it is a national heritage site that stands for a historical legacy that is shared by the Papua New Guinean, Australian and Japanese people. It also constitutes the greatest tourism activity in a single location in Papua New Guinea, with the potential of boosting its overall tourism market and serving as a valuable economic asset for its host communities, who are in want of basic development.

The so far failure to realise this potential is due to a missing genuine and viable working arrangement and partnership of trust between the various stakeholders and the host communities. This requires a paradigm shift integrating a bottom-up approach where the rights, roles, interests and responsibilities of the traditional resource custodians are duly recognised and the host communities placed at the forefront of the planning and implementation processes. Such approach is fully consistent with the vision of the founders of the nation and the fundamental policy directives of the constitutional NGDPs. The Abel Reverse Spiral Model (ARSM), a home-grown model with a track record of success, is well suited for that purpose and could be the missing catalyser for such change to occur.

Our sincere hope is that the insights presented in this paper will serve to inform, inspire and educate policymakers, stakeholders and traditional resource custodians of similar tourism assets as well as in other sectors, in Papua New Guinea and beyond, on how to better go about the utilisation of such resources and the paramount importance of doing so in full consultation and in a genuine and viable working arrangement and partnership of trust with their traditional host communities and custodians.