

# RIMBUNAN HIJAU ABUSES COURT SYSTEM TO DENY LANDOWNERS JUSTICE

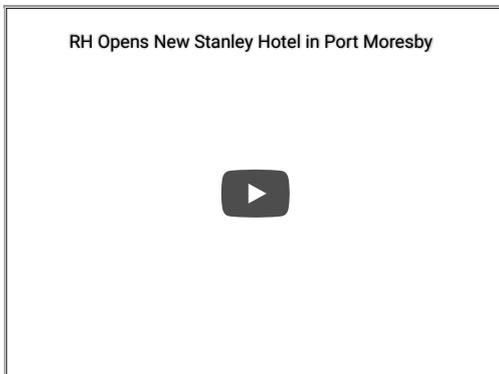
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In today's Court Report we add another chapter to a list of abuses that authorities say have been perpetrated by the notorious Malaysian owned logging company Rimbunan Hijau.

The name Rimbunan Hijau (RH) is Malay for 'ever green', it is the largest logging company in Papua New Guinea. RH has been operating here since 1986.

Over the years RH has been variously censured by the courts, Commissions of Inquiry and the Ombudsman Commission for illegal logging, trespass, and human rights abuses.

The company is also now under investigation by the tax authorities after it was revealed RH perpetually reports losing money on its logging operations while continually expanding with seemingly a limitless amount of cash to invest in other sectors of the economy.



**Video:** Then PM, Peter O'Neill, toasts RH at the opening of its 5-star Stanley Hotel.

While Rimbunan Hijau can boast about its real estate and retail empire – its hotel, shopping mall, apartment blocks, and supermarket, its airline, travel company, national newspaper, printing and shipping businesses etc – the company and its lawyers are not adverse to employing a few dirty tricks, as a recent Supreme Court decision lays bare.

From 1989-1996, according to the court, Rimbunan Hijau illegally occupied an area of land outside Port Moresby and used it as a log pond to export more than K60 million worth of timber from its nearby logging operation.

In 1998 local people sued the company for trespass and environmental damage. After many legal delays they were awarded over K5 million in compensation. Unfortunately in the intervening 13 years the original plaintiff and some of his clansman had already passed away. But RH didn't stop fighting the claim.

The company mounted two successive Supreme Court appeals, which had the effect of further delaying payment of any restitution. RH lost both appeals.

In total, *30 years have now elapsed* between the original trespass and the latest court decision.

As well as rejecting RH's latest appeal, the Supreme Court has been scathing of the company and its legal tactics. The Supreme Court argues these improper tactics have not only denied the landowners justice but have unnecessarily wasted precious court time and resources.

Below we take you through the whole sordid history and reveal the courts eviscerating judgements on one of Papua New Guinea's largest corporations.

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## DAMAGES FOR PERSISTENT TRESPASS

In September 2011 the National Court ordered Rimbunan Hijau to pay over K5 million in damages and interest to a group of customary landowners from Abau in Central Province.

The court found that RH had illegally (and in breach of the Land Act) occupied the clan's land for eight years, using it as a log pond and port for its nearby Bouna Magarida logging operations.

RH had illegally set up a giant crane and used heavy machinery to load tug boats, barges and pontoons that carried logs out to waiting ships. This caused destruction along the foreshore and 'serious and substantial' 'long term' damage to the land, seabed and marine and other aquatic life. RH also created an access road through the plaintiff's land.

As a result the customary landowners were deprived of access to 'a vital source of life' where they could 'make gardens, hunt, plant and grow fruit trees, cut timber for making houses and canoes, creeks and rivers to fish and draw water and seas to fish and so on'.

Although RH had been paying K500 a month in rental fees for its use of the land, an amount the court found was 'absurdly small and inadequate', its agreement was with the wrong clan. The logging company, the court observed, had shown a 'reckless disregard of the interests and rights of the true landowner'.

The illegal occupation of the land began in 1989 and continued until 1996, when the logging operations ceased. During that period, the court found, the value of the logs exported via the illegally occupied land would have exceeded K60 million in value.

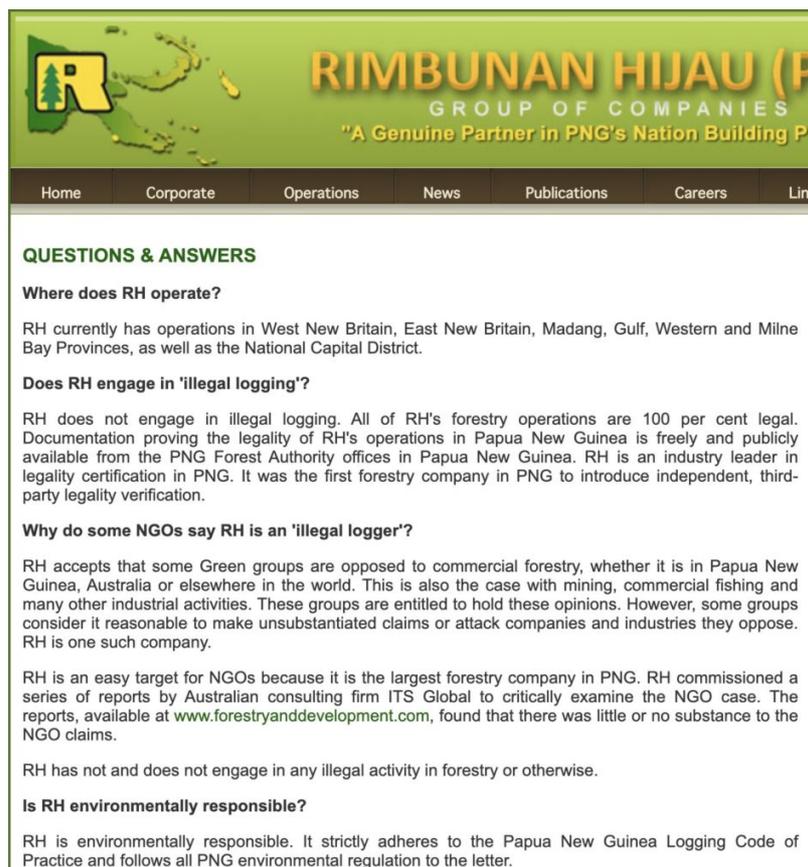
The plaintiff in the case, Ibi Enei, commenced his legal action on behalf of his Oga Clan in 1998.

Enei said he had repeatedly asked RH to pay and compensate him for use of the land, or to vacate it, but the logging company refused those requests and simply continued its commercial operations.

By the time the National Court gave its decision in 2011, both Mr Enei and some of his clansmen had already died while fighting their case for compensation. This is a fact that RH would later try and rely on to overturn the court's decision.

The court awarded K4 million in general damages and K150,000 in exemplary damages for the logging company's 'reckless disregard of the rights and interests of the plaintiff'. With special damages of K5,000 and interest, the total award was K5,195,340.

That was far from the end of the matter. RH promptly appealed the decision to the Supreme Court.



**QUESTIONS & ANSWERS**

**Where does RH operate?**

RH currently has operations in West New Britain, East New Britain, Madang, Gulf, Western and Milne Bay Provinces, as well as the National Capital District.

**Does RH engage in 'illegal logging'?**

RH does not engage in illegal logging. All of RH's forestry operations are 100 per cent legal. Documentation proving the legality of RH's operations in Papua New Guinea is freely and publicly available from the PNG Forest Authority offices in Papua New Guinea. RH is an industry leader in legality certification in PNG. It was the first forestry company in PNG to introduce independent, third-party legality verification.

**Why do some NGOs say RH is an 'illegal logger'?**

RH accepts that some Green groups are opposed to commercial forestry, whether it is in Papua New Guinea, Australia or elsewhere in the world. This is also the case with mining, commercial fishing and many other industrial activities. These groups are entitled to hold these opinions. However, some groups consider it reasonable to make unsubstantiated claims or attack companies and industries they oppose. RH is one such company.

RH is an easy target for NGOs because it is the largest forestry company in PNG. RH commissioned a series of reports by Australian consulting firm ITS Global to critically examine the NGO case. The reports, available at [www.forestryanddevelopment.com](http://www.forestryanddevelopment.com), found that there was little or no substance to the NGO claims.

RH has not and does not engage in any illegal activity in forestry or otherwise.

**Is RH environmentally responsible?**

RH is environmentally responsible. It strictly adheres to the Papua New Guinea Logging Code of Practice and follows all PNG environmental regulation to the letter.

**Image:** RH rejects the Courts description of its operations and blames NGOs for negative characterisations of the company in PNG.

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## SUPREME COURT DISMISSES APPEAL

By the time the plaintiffs were awarded K5 million in 2011 it was already 22 years since Rimbunan Hijau had originally occupied their land, and 15 years since their illegal operations had ceased.

RH were not content to allow justice to prevail. Instead they appealed to the Supreme Court, raising 36 different reasons why the trial judge was wrong.

It took a further six years, until 2017, before the Supreme Court dismissed the appeal.

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By now a further K1 in interest had accrued to the original damages , increasing the total payable to K6.2 million.

The Appeal court was dismissive of the merits of the appeal.

It found that 10 of the 36 grounds of appeal could be immediately dismissed as they were issues that had not been raised by the logging company in the original trial. These breached the well established legal rule that to allow new issues to be raised on appeal would be a breach of justice and impede the rights of the plaintiff.

On appeal RH argued the clan was not a legally registered entity, and the original plaintiff had been Mr Ibi Enei as a member and leader of the clan. RH tried to claim that since Mr Ibi Enei was now dead the court could not award damages to the remaining members of his clan.

As well as finding RH had failed to raise this issue at the original trial and was therefore precluded from raising it now, the court were at pains to also stress the claim was without merit in any event.

The court found that throughout all the legal proceedings dating back to 1998, it was clear the claim against RH was being made for and on behalf of the Moga clan.

Initially, it was Ibi Enei who was making the claim for himself and his Moga Clan as a member and leader of the Clan. Following Ibi Enei's death his administrator, Ina Enei substituted him and continued to pursue the proceedings in the National Court, secured the Judgment and now opposes this appeal. If there was a problem with that, RH had the duty to properly raise the relevant issues with Moga's lawyers and in the proceedings in the National Court.

The Supreme Court also declared that RH's argument over the Moga clan not being incorporated was 'mischievous' and 'hypocritical'. Not only was there no law requiring a clan to be incorporated before it could sue or be sued through the courts, RH itself had been dealing with an unincorporated rival clan. The Supreme Court, observed RH had failed in its own duty to have the correct landowning clan identified, and incorporated, before entering and occupying its land.

The Supreme Court was similarly dismissive of RH's claims that the Moga clan had failed to establish it was the rightful landowning group, and was in possession of the land before RH entered.



The court pointed out that at trial RH had admitted the Moga clan were the rightful landowners, and that it had failed to get their consent for its activities. The Court also found the duty and obligation had been on RH to find out who the true and correct owners were and obtain their free and informed consent, which the company had failed to do.

RH's conduct was disrespectful and in total disregard of the Moga's ownership rights and interests.

The court described this as another example of the wider problem of 'large scale fraud committed against the true and correct landowners by the so called developers with the support of the State and in collaboration with persons claiming to be owners when they are not'.

The Supreme Court endorsed the view that such companies should correctly be described as 'fraudsters and thieves'.

Perhaps reflecting this assessment, the Supreme Court also not only dismissed RH's grounds of appeal against the size of the assessment of damages, it also stated that if the Moga clan had cross appealed and claimed that the damages assessment was too low, the Court would have agreed and imposed a new assessment of 'about K20 million' and additionally would have increased the size of the exemplary damages award.

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## SLIP RULE ABUSED

You might expect that the Supreme Court's emphatic dismissal of Rimbunan Hijau's appeal should have been the end of the matter.

It was after all now 28 years since Rimbunan Hijau had illegally entered the Moga clan's land and set up its operations. It was also 21 years since RH had logged out the Bonua Magarida forest and moved on to new pastures.

It was 19 years since Ibi Enei commenced legal proceedings on behalf of his people and it was six years since the National Court had awarded damages of over K5 million.

But, although the Supreme Court is the highest court in the land, Rimbunan Hijau wasn't about to give up its attempts to frustrate justice.

Instead the company issued a new application to the Supreme Court, using a procedural artifice called the 'slip rule'.

The slip rule exists to provide a way for a 'clear and manifest' mistake, an error of fact or law 'on a critical issue' that was not the applicants fault, to be corrected.

It is not though meant to be used to question the legal reasoning behind a courts decision or a 'rehashing of arguments already raised'. Yet that is exactly what RH and its expensive team of lawyers, led by Australian Ian Molloy, tried to do.

The Supreme Court, led by no less than Chief Justice Salika and Deputy Chief Justice Kandakasi was eviscerating in its condemnation.

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RH originally argued there were five 'slips' made by the Supreme Court in its decision upholding the award of damages. Only four of these were argued in court, the other RH abandoned at the start of the hearing.

Only one of the four remaining slips related to a mistake of fact or law the other three instead questioned the reasoning and judgement of the court.

The one alleged mistake of law, that exemplary damages could not be awarded to a deceased person, related to just a tiny proportion of the total damages award and was nonetheless rejected emphatically by the Court. It found the original plaintiff was not suing in his own name but on behalf of his whole clan. 'Unless there was a genocide or such an adverse eventuality which wipes out a clan, they live on', declared the Supreme Court.

The Supreme Court similarly found no merit in any of the other grounds for the appeal rejected them all, stating 'the application clearly had no merit'.

The Supreme Court admonished the logging company for wasting the courts time 'which could have been better utilised to hear and dispose of other matters'.

No doubt, the Court's time has been unnecessarily taken up and costs unnecessarily forced upon the Respondent and the Court. RH's application has also kept the Respondent out of the fruits of the judgment in their favour.

The Court warned that in future it would penalise appellants who abuse the legal system by making 'unnecessary and baseless applications' under the slip rule by making onerous cost orders against them.

But, RH, through the apparent abuse of process, had successfully delayed justice. The Supreme Court did not hear the slip rule application until June 2019 and only just delivered a verdict in October. The Moga clan had been kept waiting for another two years.

It is now 30 years since Rimbunan Hijau entered Mogi clan land and began its illegal occupation. It is 22 years since it left the land, having exported logs harvested from the adjacent Bonua Magarida TRP worth more than K60 million.

Yet it is only now that this giant of the corporate world might finally be forced to pay compensation for its trespass on customary land and environmental damage.