

AN INTRODUCTION TO Edward Koiki Mabo

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EDWARD KOIKI MABO, A MERIAM man from the island of Mer (Murray Island) in the Torres Strait, was a key plaintiff in the *Mabo v Queensland (No 2)* 1992 (*Mabo*) case in the High Court of Australia. His name has become synonymous with this landmark legal decision; but who was the man behind the case?

EARLY LIFE

Edward Koiki Mabo was born on 29 June 1936, on the island of Mer in the Torres Strait. After his mother died he was adopted by his maternal aunt and uncle, Maiga and Benny Mabo, in accordance with Islander laws and custom.¹ From an early age, Koiki Mabo learnt about Meriam language (Meriam Mir), kinship and other cultural beliefs and practices.²

As a young adult in 1959, he moved to Townsville, Queensland and held a variety of jobs including working on pearling boats, cutting cane and as a railway fettler.³ He soon married Bonita Neehow, an Australian-born South Sea Islander, and they raised ten children together.⁴

Koiki Mabo was an activist in the 1967 referendum campaign and helped found the Townsville Aboriginal and Islander Health Service. He was the first secretary of the Aboriginal Advancement League in Townsville and was associated with the Townsville Trades and Labour Council.⁵

BLACK COMMUNITY SCHOOL

In 1973, Koiki Mabo, with support from parents and the Trades and Labour Council, opened the Black Community School in Townsville – one of the first in Australia. The school commenced with 10 students and two teachers who were disenchanted with the approach to education by Queensland's State Education system and worked for half pay. At its peak in the late 1970s the school had 45 students.⁶



Although the school was regarded with hostility within the non-Indigenous Townsville community and attacked by media and politicians for being 'racist' and 'apartheid in reverse', the school continued to become an important centre for the Torres Strait Islander community in Townsville. The school closed in 1985 due to a lack of funding or secure site.⁷

LEGAL RECOGNITION OF RIGHTS TO HIS LAND

The issue of land rights became a stronger focus for Koiki Mabo in 1974, while working on campus at James Cook University and meeting

historians Noel Loos and Henry Reynolds, who recalled:

...we were having lunch one day when Koiki was just speaking about his land back on Mer, or Murray Island. Henry and I realised that in his mind he thought he owned that land, so we sort of glanced at each other, and then had the difficult responsibility of telling him that he didn't own that land, and that it was Crown land. Koiki was surprised, shocked... he said and I remember him saying 'No way, it's not theirs, it's ours.'⁸

In 1981, Koiki Mabo gave his first speech at a land rights conference

at James Cook University explaining the Meriam system of land tenure, inheritance and kinship that Mabo and his community were part of on Mer.⁹ A lawyer in the audience noted the significance of his speech and suggested there should be a test case to claim land rights through the court system.

Perth based solicitor Greg McIntyre agreed to take the case representing Mabo and the Meriam people, and recruited barristers, the late Barbara Hocking, Ron Castan and Bryan Keon-Cohen.

In 1982, Koiki Mabo, along with fellow Mer Meriam Le - Reverend David Passi, Celuia Mapoo Salee, Sam Passi and James Rice launched a case in the High Court of Australia.¹⁰ With Koiki Mabo as the first named plaintiff, the case - *Mabo v Queensland (No 2) 1992* - became known as the 'Mabo Case'.¹

Koiki Mabo applied successfully for research grants to conduct research for the case from a range of places, including AIATSIS. He proposed to research traditional boundaries, in particular 'tribal area, clan land, individual or family land, sacred sites and restoration of shrines and zogos of each tribe and clan groups'.¹¹ He saw many possibilities for the research on Mer other than just the native title claim; for example, in his grant application, he noted that site recordings could be used to teach Torres Strait Islander youth and to collect materials for use in Torres Strait Islander schools and colleges.¹²

Koiki Mabo set an example for local Indigenous people asserting control over their own research interests. He stated in his AIATSIS grant application that it is important for Islanders to carry out their own research because they are of 'no academic interest to professional researchers' from the mainland.¹³

The *Mabo* case was long and difficult, and the legal counsel, Koiki Mabo and Mer community members had to fight for funding to ensure the continuation of the case the proceedings made history when Supreme Court judge, Justice Moynihan heard evidence on Mer on behalf of the High Court.

By the mid-1980s, new legal battles arose. In 1985, the Queensland Government passed the *Queensland Coast Island Declaratory Act 1985* in attempt to negate High Court claims. The Act stated that when the Torres Strait Islands were annexed by the Queensland Government under the *Queensland Coast Island Act 1879*, the title to the islands was transferred to the state government and not subject to other claims.¹⁴ However, in 1988 the High Court decided that the *Queensland Coast Island Declaratory Act 1985* was inconsistent with the *Commonwealth Racial Discrimination Act 1975* (Cth) and the *Mabo* proceedings continued.¹⁵

Ten years after the case was lodged, on the 3 June 1992, the High Court of Australia decided in favour of Eddie Koiki Mabo and his fellow plaintiffs. The Meriam people are entitled as against the whole world, to possession, occupation, use and enjoyment of the lands of the Murray Islands.¹⁶

Unfortunately, Koiki Mabo did not live to see the *Mabo* judgment; he tragically passed away from cancer aged 56 years old on 21 January 1992.¹⁷ Sam Passi also passed away during the hearing on 1 October 1990, aged 78 years old.¹⁸

The High Court inserted the legal doctrine of native title into Australian law. In recognising the traditional rights of the Meriam people to their country in the Torres Strait Islands, the Court also held that native title existed for all Indigenous peoples in Australia who continue to hold rights the rights in their lands under their own laws and customs. Those rights survived the invasion of the British, assertion of British sovereignty and establishment of the colonies from 1788 to be recognised to be recognised and protected by Australian law.¹⁹

¹ Noel Loos, 'Mabo, Edward Koiki (Eddie) (1936–1992)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, published online 2016, <<http://adb.anu.edu.au/biography/mabo-edward-koiki-eddie-16122/text28064>>.

² Loos, Noel and Mabo, Eddie. 1996. *Edward Koiki Mabo: His life and struggle for land rights*. Queensland: University of Queensland Press, p. 5.

³ Ibid, p. 9.

⁴ Bonita Mabo, 'It's time, says Bonita Mabo', Sydney Morning Herald,

published 1 August 2004, <<http://www.smh.com.au/articles/2004/08/01/1091298558059.html?from=storylhs>> and Kennedy, Duncan. Eddie Mabo, the man who changed Australia, BBC News, Sydney, published online 6 June 2012, <<http://www.bbc.com/news/magazine-18291022>>.

⁵ Loos and Mabo, 1996, p.10.

⁶ Trevor Graham, 'A brief history of the black community school', *Mabo: the native title revolution*, published online – no date, <<http://www.mabonativetitle.com/info/historyOfBCS.htm>>.

⁷ Ibid.

⁸ Thomas Rickard (2 November 2008). "We Are No Longer Shadows". First Australians. Australia. 13:45 minutes in. SBS. <<http://www.sbs.com.au/ondemand/video/11723331504/first-australians-we-are-no-longer-shadows>>.

⁹ Trevor Graham, 'Eddie Mabo's address to 1981 Land Rights Conference', published online – no date, <<http://mabonativetitle.com/info/doc4.htm>>.

¹⁰ AIATSIS. 1994. *The Little Red Yellow Black Book*. Canberra: Aboriginal Studies Press, p. 116.

¹¹ Mabo, Edward, Research grant application to AIATSIS, 11 November 1984, closed AIATSIS TRIM file, p. 20.

¹² Mabo, 11 November 1984, p. 20.

¹³ Ibid, p. 20.

¹⁴ ABC, Mabo – a timeline, published online 3 June 2012, <<http://www.abc.net.au/news/2012-06-03/mabo-a-timeline/4047186>>.

¹⁵ SBS Staff, Timeline: native title in Australia, SBS News, published online 3 June 2012, <<http://www.sbs.com.au/news/article/2012/06/03/timeline-native-title-australia>>.

¹⁶ The two *Mabo* cases include *Mabo v Queensland* (1988) HCA 69 (*Mabo No 1*) and *Mabo v Queensland (No 2)* (1992) HCA 23.

¹⁷ Noel Loos, 'Mabo, Edward Koiki (Eddie) (1936–1992)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, published online 2016, <<http://adb.anu.edu.au/biography/mabo-edward-koiki-eddie-16122/text28064>>.

¹⁸ Nonie Sharp, 'Passi, Sam (1912–1990)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, published online, n.d, <<http://ia.anu.edu.au/biography/passi-sam-15022/text26218>>.

¹⁹ Native Title Research Unit, Overturning the doctrine of Terra nullius: The *Mabo* case, Canberra: AIATSIS Research Publications, published online no date, <<http://aiatsis.gov.au/sites/default/files/docs/research-and-guides/native-title-research/overturning-doctrine-terra%20nullius-the-mabo-case.pdf>>.