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Landownership as Exclusion

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Introduction

Across the Pacific, as across much of the post-colonial world, various practices of land formalisation—particularly land titling—are posited as remedies to the exclusion of peoples and groups from land, as well as from the promises of ‘development’ and from participation in the globalising market place and in the political and social space of the nation-state. This is particularly so in the case of indigenous, poor, women, and other marginalised peoples. In Melanesia, land formalisation generally involves mechanisms for codifying or translating elements of customary land systems in order to make them commensurable with the forms and requirements of modern systems of governance and economic production and exchange. Invariably, this involves establishing relations of property ownership—making land into property and people into ‘landowners’ (including ‘customary landowners’).

Drawing on an ethnographic analysis of communities living in the vicinity of industrial tuna fishing and processing facilities in Madang Province, Papua New Guinea (PNG), this chapter explores and critiques some of the claims which are made by proponents of land formalisation in PNG. Far from securing people’s access to the promises of development, globalisation, and statehood, it argues, mechanisms of land formalisation for these communities have, in many cases, facilitated and exacerbated experiences of exclusion. The chapter considers two key ways in which

this has occurred: first, through the introduction and privileging of particular practices of boundary making associated with modernist and regulatory approaches to land organisation; and second, through the use of incorporated land groups and lease-leaseback schemes which claim to reconcile customary and modern land systems. The intention here is not to suggest that all forms of legislative response to issues of land organisation should be avoided. Indeed, as the Madang communities find themselves entangled with the structures of both globalising capital and the nation-state, forms of institutionalised response can become both necessary and desirable. The argument, simply, is that more critical acknowledgement be made of the ways in which mechanisms of land formalisation can, themselves, function to exclude.

Land Reform in Papua New Guinea

Land reform in PNG has long been a contested affair. The enshrining of customary land tenure in the country's Constitution upon Independence in 1975 reflected a broader political commitment to a vision of small-scale development embedded in Melanesian culture—the 'Melanesian Way'. This was, in many ways, a radical and far-reaching vision for the birth of a new nation-state (James et al. 2012). It also, however, reflected a continuation of colonial policy grounded in elements of paternalistic 'social protection' (Filer 2014). Indeed, as Colin Filer observes, the creation of the Papua New Guinean nation-state rested on something of a 'founding fiction' (Filer 2014: 82), which overstated the distinction between colonial and post-colonial land policies, and which instituted a national 'ideology of landownership' as a basis for the new state's self-imagining and social relations. The national ideology of landownership declares all indigenous citizens to be customary landowners, it denies the possibility of waste or vacant land, it identifies clans as the foundational social unit of the nation, and it establishes rent or resource compensation (paid to 'customary landowners' whose land or natural resources are subject to commercial exploitation) as a principal mode of income and the predominant means of accessing 'development'.

If the ideology of landownership remains a potent political force 40 years after Independence, however, a key change in the political landscape over that period has been the emergence of neoliberalism as a dominant political-economic ideology both on the global stage and within

key sections of the national stage. This has had significant—if often ambiguous—implications for the imaginings both of ‘development’ and of land policy. Globally, organisations such as the World Bank began arguing through the 1980s and early 1990s for the introduction of individual freehold land titles (see Deininger and Binswanger 1999). Drawing on the ideas of influential international economists such as Hernando de Soto (1989), the argument made was that such reform was a necessary precondition for economic growth, and hence ‘development’. In PNG, attempts by the state to introduce mechanisms for the registration of customary land in 1995 were abandoned amid popular opposition, which was sparked by rumours that the World Bank was demanding individualised registration of customary land as part of the conditionality for receiving its loans. In fact the contentious loan condition was rejected by the PNG Department of Finance, but suspicion of land registration, and of both the PNG state and international donor organisations as actors that stood to gain from such registration, remained powerful. And, indeed, the argument for land titling—and for an associated model of large-scale resource extractive ‘development’—increasingly took hold among much of the country’s political elite, including many individuals who two decades before, had been vocal advocates for the Melanesian Way. Throughout the early 2000s, a number of Australian policy advisers influential in shaping Australian foreign policy in regards to the Pacific also argued strongly for land titling and tenure conversion (Curtin 2003; Gosarevski et al. 2004a, 2004b; Hughes 2004).¹

In the absence of mechanisms for widespread land registration, two key legal instruments have been used in the post-Independence period to facilitate what is widely described in PNG as the ‘mobilisation’ of customary land ‘for development’. Principal among these are the *Land Groups Incorporation Act 1974* and the lease-leaseback scheme. In the first of these, legislation allows for the incorporation of landowning groups as legally recognised entities, able to contract with other entities, particularly corporations. In the lease-leaseback scheme, land is leased from customary owners by the state, which then leases it on to another entity, usually a corporate developer (see Chapters 6 and 7, this volume). In 2009, land reform legislation—the Land Groups Incorporation (Amendment) Act and the Land Registration (Customary Land) (Amendment) Act—was passed to entrench the use of land groups, particularly, and also to enable these groups to register titles to their land. The passing of this legislation

1 For critiques of their position, see Fingleton (2005) and Allen (2008).

reflects, in part, a broader policy shift away from straightforward tenure conversion (from customary tenure to a private property regime), towards hybrid systems that seek to find a ‘middle way’ between customary land tenure and modern, Western legal frameworks (Deininger and Binswanger 1999; World Bank 2003; AusAID 2008). In part, as well, it reflects what is arguably a growing acceptance of a mainstream developmentalist paradigm in PNG, which takes cash income, formal sector economy, and business-led development as its key criteria of value. It is notable that, notwithstanding opposition from some non-governmental organisations, and the recent anger over the revelation of the ‘land grab’ facilitated by long-term special agricultural and business leases (Filer 2011; Winn 2012; also Chapters 6 and 7, this volume), the 2009 legislative amendments encountered substantially less popular opposition than did previous attempts at land reform.

In their analysis of land exclusion in Southeast Asia, Derek Hall, Philip Hirsch and Tania Murray Li (2011) identify regulation—including mechanisms for land formalisation and titling—as one of four key forces propelling processes of exclusion from access to land, along with the market, the use or threat of force, and legitimation. This is in spite of the fact, they observe, that proponents of land formalisation efforts most frequently describe them not in terms of exclusion, but *inclusion*. Hall, Hirsch and Li’s four ‘powers of exclusion’ do not operate in isolation, but are mutually affecting and mutually enforcing. Particularly relevant for this discussion is the intertwining of legislation and legitimation, which is the force that ‘establishes the moral basis for exclusive claims, and indeed for entrenching regulation, the market and force as politically and socially acceptable bases for exclusion’ (Hall et al. 2011: 5). On Madang’s north coast, we shall see that the use of both land groups and land leases has been central to the dynamics of the tuna industry, and to the relationships between local communities, the PNG state, and corporate and non-corporate outside actors. In the development of the tuna industry, as well as of the mission-operated plantation industry that preceded it in the late nineteenth and early twentieth centuries, regulation has been a basis for exclusion of (some) people and communities from key sections of land. Across this history, such regulation has been closely bound up with both normative and ideological discourses of legitimation. At the same time, local negotiations and strategic engagements with both legislation and legitimation have given rise to forms of ‘intimate exclusion’ (Hall et al. 2011: 145) within which some people are excluded from land, not simply by state or corporate actors, but also because of the actions of neighbours and relatives.

Across PNG, arguments for land formalisation invoke normative and ideologically laden ideas of development, citizenship, and progress. Literature produced by the National Land Development Taskforce, for example, features repeated references to ‘mobilising’, ‘freeing up’, or ‘making available’ customary land ‘for development’ (GoPNG 2007), while elsewhere the aim of the Taskforce is stated as being to ‘make land more productive’ (Fairhead et al. 2009: 1). With the ‘security’ of rights, titles and codified ownership claims, proponents of land formalisation insist, people can use their land as collateral for loans, engage in transactions with resource developers and others, and in so doing can access ‘development’ and its many promises. The Australian aid agency AusAID—influential in guiding land policy in PNG as well as elsewhere in the Asia-Pacific region—likewise talked about land formalisation ‘making land work’ (AusAID 2008). Such legitimating discourses assume a model of development predicated on the extension of capitalist production and exchange and, within this context, they assume very particular ideas of what it means for land, and people, to ‘work’ (Stead 2014). In the context of state-building processes, they form part of the project of making citizens, and incorporating people and places within the political space of the nation-state (Scott 1998; Lund 2011). Simultaneously, people and places are incorporated within the economic space of globalising capital. Papua New Guinean civil society organisations, and some landowners and communities, have critiqued these legitimations for land registration and codification, arguing that they ignore the ways in which land already ‘works’ within communities, and the ways in which ‘security of tenure’ is provided not by land titles but by customary systems of governance, kinship and oral tradition (Anon. 2008). In turn, they offer their own legitimations, for local small-scale models of ‘development’, for the efficacy of customary tenures, and so for other visions of statehood and nationhood.

Tuna Fishing in Madang

On most afternoons, the informal fish market near the Madang harbour, easy walking distance from the main Madang market, is brimming with colours, sounds and smells. Small reef fish—brightly coloured and variously shaped—are sold fresh or else cooked up on skewers or wrapped in banana leaves and ready to eat. These fish come in close to the shore and can be caught in shallow waters from boats, or even with lines thrown

into the water from on land. It is women, usually, who fish for these small catch, both to feed their own families and to market for cash to supplement a predominantly subsistence livelihood. Among the larger fish on sale are tuna—skipjack, yellow-fin and big-eye—which can be caught out in deeper waters with nets or with lines cast, usually by men, from small outboard motor boats or even wooden canoes. Increasingly, though, the tuna being caught in the waters off the coast of Madang are not being eaten, or sold, by Papua New Guineans, but are caught by large industrial tuna fishing vessels that fly the flags of various countries—Taiwan, Japan, Korea, the United States and the Philippines. Instead of lines and small nets, these use purse seines, huge round nets up to 2,000 metres in diameter, which are dropped from the boats and then drawn together (pursed) so that they enclose whole schools of fish. For the most part, these vessels pay licence fees to the PNG state for the right to fish in PNG waters, and they take their catches—and most of the profits associated with them—to third countries where the fish are processed and exported for sale. Recent efforts to develop the onshore tuna processing industry represent attempts by the PNG state to move from this so-called ‘first-generation strategy’ to a ‘second-generation’ one, whereby tuna will be processed onshore and exported—ideally to the lucrative European Union market. This is an attempt, in other words, to move up the global tuna commodity chain, one that will ‘bring development’ in the forms of increased gross domestic product, employment, and cash income (Havice and Reed 2012; Stead 2014).

Currently, there is one tuna canning facility operating in Madang. This is run by the Philippines company RD Tuna Canners Ltd (RD Tuna) on a piece of land titled Siar Portion 1004, just north of the boundary of Madang town. RD Tuna also operates a wharfing facility, the Vidar Wharf, approximately twenty kilometres further along the north coast highway. The Vidar Wharf, like the cannery, is located on land previously alienated in the period of German administration, when Lutheran and Catholic missionaries alike arrived in the late nineteenth century and began establishing coconut plantations as a lucrative side business to the saving of souls. The area surrounding the Vidar Wharf—216 hectares in total—now stands to be developed as the Pacific Marine Industrial Zone (recently renamed the Madang Industrial Park, but still widely referred to as the PMIZ), a ‘special economic zone’ that is forecast to house up to 10 new canning facilities, with additional wharfing and berthing facilities as well. Initial funding for the PMIZ was reported to

have been secured in 2011 in the form of a 74 million kina concessional loan from China (Anon. 2011), but construction has stalled amid disputes with landowners, legal challenges, political wrangling, and allegations of corruption and mismanagement. Recently, though, more Chinese money has been secured, and construction is once again set to commence.

Among the communities negotiating the presence and extension of the tuna industry are the Kananam, whose customary land includes the site of the present Vidar Wharf, and Rempi, whose people also claim part of the land that is now being developed as the PMIZ. Both are largely subsistence communities, with some supplementary cash income gained through copra production, as well as through the roadside sale of fish in Kananam, and *buai* (betel nut) in Rempi. In both communities, as well, much of what is claimed as customary land is in fact alienated freehold. The 216 hectares of the PMIZ site is part of a larger 880-hectare block previously alienated by the Catholic Church during the colonial period, and used for coconut plantations (the Vidar plantation) and for housing the Alexishafen mission station. In Rempi, leaders of the Bomase clan tell stories about how their ancestors were tricked by missionaries into selling their land in exchange for a pot full of trinkets and quantities of salt, signing their names on papers they could not read and did not understand. In the 1990s the land was returned by the Catholic Church, not to its original owners, but to the state. It was subsequently sold by the corporate arm of the Madang Provincial Government to RD Tuna, which then proceeded to build the Vidar Wharf. RD Tuna subsequently sold back to the national government that section of the former plantation which has now been demarcated as a special economic zone. The making of customary claims on formally alienated land speaks to a ‘double movement’ of property rights in PNG which has, in the post-Independence period, involved both the ‘partial alienation of customary land’ and the ‘partial customisation of alienated land’ (Filer 2014: 82, 89). It is a double movement that blurs the oft-made distinction between customary and freehold land in the country.

Twenty kilometres down the road, at the site of the existing RD Tuna cannery, the Siar and Nobnob communities claim customary ownership of land from which they are, in practice and in legal fact, excluded. Here as well, the access to land enjoyed by global corporate actors today is made possible by prior acts of alienation during periods of colonisation and missionisation. In this case, 540 hectares of land was alienated to form the Siar coconut plantation in the late 1800s, which was administered

through the period of German colonialism in close collaboration with Lutheran missionaries (Sinclair 2006: 48). Siar Portion 1004—the 6.5-hectare block on which the cannery stands—forms part of this larger plantation area. As with Rempi and Kananam, the original claiming and titling of this land provided a basis for the land subsequently being claimed by the state, before then being leased to RD Tuna in the mid-1990s as part of a package—along with a ten-year tax holiday, and cheap fishing licences—to incentivise it to establish the cannery.

Both at the PMIZ site and at the RD Tuna cannery, then, large sections of the land, which local communities claim as their customary inheritance, have been subject to the various titling and codification practices advocated by proponents of land formalisation. In differing ways, each community has at times contested the ‘mobilisation’ of their land for the development of the tuna industry, as they have previously contested its mobilisation by missionaries, plantation bosses, and colonial officials. They have done this both by challenging the ownership claims of outsiders, and by asserting their own claims for recognition as ‘customary landowners’. As an oppositional self-referent (Keesing 1989; Kirsch 2006), one that employs a modernist terminology to assert a claim in the face of modernist, and modernising outsiders, ‘customary landowner’ is one that has been learned through harsh experience. In recent years, the primary way in which this claim has been leveraged has been through the constitution of incorporated land groups as legally recognised bodies capable of entering into contractual relationships, lodging and contesting judicial claims, and claiming compensation and ‘spin-off benefits’ from developers. In other words, the Rempi, Kananam, Nobnob and Siar communities have each sought, or else been compelled, to *become landowners* in a way that is ‘legible’ (Scott 1998) to the sites and agents of the state and globalising capital. Doing so involves not simply a translation, but a transformation of the nature of connection to land.

Exclusion 1: Making Landowners/ Boundary Creation

Practices of land formalisation are exercises in boundary making, and this is a key way in which they function to exclude. Incorporated land groups make landowners, in effect, by drawing boundaries around them. They provide a mechanism for determining who is and is not a recognised

right-holder, and for grouping them together to form a singular entity with which courts, companies, and state agencies can easily transact. Land groups and other processes of formalisation similarly draw boundaries around land, recording clear and fixed parcels of land that can be identified and known independently of the site of the land itself and of the memories, bodies and social relations of those who claim connection to it. Of course, the making of boundaries is not a uniquely modernist preoccupation, but rather a deeply human practice of marking difference, including the difference between inside and outside. Exclusion, similarly, is not a uniquely modern phenomenon, but a fundamental part of how land is accessed and organised in all times and places (Hall et al. 2011). The types of boundaries that are drawn, however, and the ways in which they are made, maintained, and adjudicated, are not uniform. What is significant about the extension of modern, formalised systems of land titling and codification is not that they introduce boundaries, but rather that they introduce and privilege particular types of boundaries, and in doing so, particular types of exclusion. The social implications of this are far-reaching.

In Rempì, the power of boundary making as an exclusionary force is narrated in the stories through which members of the Bomase clan recount the trauma of their ancestors' dispossession. In the words of the leader of the clan, an old man named Peter Gau Sabum:

The mission marked out huge areas of land and put borders around it to indicate the boundaries. When they finished, they gave presents to the people ... The missions then wrote our ancestors names and told them to sign. Our ancestors did not know how to write so they just hold the pen and did some marks on the agreement paper and the mission said, that mark is enough to say that you agree to the sale of the land. That's how the mission took this land (Peter Gau Sabum, personal communication May 2010).

Bomase ancestors, the old man stressed, did not know they were selling their land. The missionaries did not explain, and they could not read the contracts they were asked to sign in return for what they believed to be 'presents'. More fundamentally, though, how *could* they know that they were selling their land? The type of exclusion that the missionaries orchestrated was, in an important sense, inconceivable within a customary understanding of land and people as mutually constitutive (Stead 2012). The types of boundaries that have customarily separated clan groups or tribes have, indeed, functioned as exclusionary mechanisms—this is

what boundaries do—but they have been embedded in the histories and ongoing social relations of the people and land that they both separate and join together. Recorded and narrated through oral history, customary boundaries have qualities of flux. The oral and relational practices through which they are maintained and contested take place on the land to which they relate. They are, as many have pointed out in the context of the Pacific and elsewhere, ‘fuzzy’ (Rivers 1999; Wainwright and Bryan 2009), pertaining to multiple levels and forms of claims, relating to land itself as well as the resources found within it.

The boundaries marked out by the mission were not fuzzy. The old Bomase leader tells how, after they were marked out and the performance of a sale enacted, the mission poured concrete to mark where the boundaries now stood. ‘So the mission lived on one side,’ the old man said, ‘and we lived on the other side’. The types of boundaries that the mission made were not recorded and maintained in oral tradition or through the ongoing lived practices of exchange—although the mission and clan did indeed become embroiled in one another’s lives—but rather on maps and in titles. The mission’s ownership of the land became something that existed in the abstract; the land itself became something that could be bought, sold or otherwise transacted. It became something from which people could be both analytically and physically separated, a fact of which the Rempi people and their Kananam neighbours were made painfully aware when the land passed back, not into their hands, but into the hands of the government, and then of the company. As initial, albeit stunted, phases of the PMIZ construction have commenced, fences have been constructed around the perimeter of the special economic zone. Tall, metal, the opposite of fuzzy, the fences are glaringly conspicuous against the grasses, coconut palms and trees which surround them. In 2010, the sons and nephews of Peter Gau Sabum took me walking along the perimeter, pointing through the bars of the fence as they told stories about the land on the other side.

As the Bomase walked the boundaries of the PMIZ, the stories they told were not simply about the loss of gardens and land to build houses, but about the histories and movements of their ancestors, about recognition, and about the humiliation at being made, as one informant described it, into ‘beggars on their own land’. It is a stark reminder that questions of access to, or exclusion from, land have significance that go beyond resource access and the possibilities for livelihood. Connection to land speaks to culture and spirituality, to identity, belonging, knowledge, and

to structures of governance and authority; in other words, to social life in its fullest sense. Hall, Hirsch and Li (2011) suggest that *access* to land is the opposite of exclusion, but it might also be thought of as *belonging* (Trudeau 2006: 423). Practices of boundary making create and transform relations of belonging, as well as of access and exclusion. Boundaries define what belongs, as well as what does not, with far-reaching social implications.

However, if the varied boundary-making practices evident at the PMIZ speak to very different ways of being in the world—different forms and expressions of belonging—it is not the case that the introduction of modernist systems of land titling and ownership represents a definitive shift from one way of relating to land to another. The boundary between the customary and the modern, as it were, is far from clear-cut. Rather, the differing articulations of exclusion, access, and belonging are ‘entangled’ in shifting and dynamic configurations (Stead 2013). Entanglement offers its own possibilities for creative expressions of agency and negotiation, but it can also be destabilising in ways that themselves function to exclude local communities both from land and from power. The development of the PMIZ is bringing to a head the complexities of such entanglement for the Bomase and their neighbours. For the Nobnob and Siar communities, this process began more than a decade ago with the establishment of the RD Tuna cannery.

Exclusion 2: Land Groups and Land Claims/ Codifying Custom

The RD Tuna cannery stands in the middle of a complex of claims made by local people identifying themselves as ‘landowners’. These claims are made, first, against the company. Second, to the extent that both the national and provincial governments are involved in RD Tuna’s operations (having originally invited the company to establish a factory as part of its development strategy, and themselves party to negotiations and agreements with both the company and local communities), these claims are also often made against the state. Third, to the extent that many of them are in competition with one another, they are also claims made by groups within the Nobnob and Siar communities against other groups within those same communities. The primary vehicle for asserting these claims has been the codification of various ‘landowning’ groups

and clans, including a 'landowner company', within legal negotiations, documentation, and contractual agreements entered into with the state and RD Tuna. These are the types of 'middle-way' mechanisms that are so often upheld as means of inclusion with market, state and nation. Yet the codification of custom is never simply a process of translation (Gewertz and Errington 1991; Keesing 1992), and codifications of customary land systems can have far-reaching effects (Weiner and Glaskin 2007; Chesters 2009). Unpacking just some of the experiences of the Nobnob and Siar communities reveals the complex ways these land reform mechanisms have also functioned to exclude.

In field research conducted in 2010—in the villages of Matupi, Baitabag and Nobnob, all within the larger Nobnob area—a total of eight distinct Nobnob clan groups were identified. These were: Ditipa, Gidigdi and Abdah (these three clans together forming the Mamagtub tribe), Inad, Sasagas (with three distinct subclans identified by respondents), Dadolkud, Hibutpa, and Badalon (this latter grouping being sometimes identified as a clan and other times as a subclan, with allegations also made that it is an altogether fictitious or invented clan—a point to which we shall return). It should be noted, however, that the exact nature and relation of different social groupings within Nobnob is contested. There are claims from some community members that some of the groups presenting themselves as clans are in fact not original landowners but descendants of labourers brought to work on the colonial plantations. Indeed, usage and manipulation of terms such as 'clan', 'subclan' and 'tribe' have been widely incorporated into the strategies and narratives of many different claimants across the area, with accounts of the structuring of social groups in relation to one another varying over time as alliances and imperatives shift. Added to this is the erosive impact that the intertwined histories of corporate, church and colonial presence have had on local customary knowledge (Sullivan et al. 2003), which further complicates the task of presenting an authoritative picture of social organisation in the area, if, indeed, such a thing were ever possible.

The arrival of RD Tuna in Madang marked the beginning of the series of protracted legal and extra-legal conflicts within the community, related particularly to who was to enjoy recognition as the landowners of Portion 1004 by the state and the company, and the distribution of benefits (primarily, contracts to run 'spin-off businesses'—cleaning, security, transport, etc.) from the project. In July 1995, prior to the commencement of the cannery's operations, a 'deed of concern' was reportedly signed

between RD Tuna and a man named Bantam Dabid, signing as representative of the ‘Badalon clan’. Three months later, a statement was signed by representatives of the Sasagas, Hikutpa (identified here as ‘Hikutpa No. 2’) and Ditipa (identified as ‘Didipa Kunta’) clans,² calling for the withdrawal of the deed of concern on the basis that Badalon were not in fact the landowners of Portion 1004. The following year, the Madang Development Corporation issued RD Tuna with its lease, and construction on the project began. Another year later, a memorandum of agreement was signed between the State of PNG, Madang Provincial Government, RD Tuna, and representatives of the identified landowners. Here, the three clans identified in the letter of protest—Ditipa Kunta, Sasagas, and Hikutpa No. 2—are included, and the representatives signing for them are the same men who signed the letter two years prior. A fourth man, Salib Pasagai, is also a signatory, signing as the representative of ‘Badalon *subclan*’ (emphasis added).

Dan Jorgensen, writing about land claim processes in the area surrounding the Nena/Frieda mining project in PNG’s West Sepik Province, describes those processes in terms of ‘clan-making’ and ‘clan-finding’. Telefolmin claimants in the area around the mine site, he writes, fashioned their claims in the language of clans and subclans, despite this being contrary to the actual nature of their social organisation: the Telefolmin do not have clan-based societies. Explaining the fiction, Jorgensen argues that ‘the state’s commitment to customary tenure is framed in terms of the state’s own ideas of what customary tenure looks like’ (2007: 66), which is to say a model of clans and subclans. The state looks for clans, and accordingly the Telefolmin ‘create’ clans that the state can find. A similar, if less dramatic, manipulation of the language of clans and subclans is evident in the claims surrounding Siar Portion 1004. While the Nobnob and Siar communities, like other communities in the Madang area, do have a clan-based system of social organisation, the language and processes of land group incorporation are creating new opportunities for this system to be manipulated.

Such observations fit—to a degree—with the argument that custom is elicited by the state and modernity. James Weiner and Katie Glaskin, in this vein, have argued that ‘the customary is a product of the expansion of

2 Throughout the written documentation, as well as in people’s recountings of the land claim disputes, a variety of different spellings occur (for example, ‘Didipa’ and ‘Ditipa’), as well as slight variations in naming.

state and capital formations, rather than foreign or external to it' (2007: 2; see also Weiner 2006). To a degree they are incorrect, but it is also possible to distinguish between customary forms of sociality, on the one hand, and custom—or *kastom*—as a modernist *idea* of what that sociality entails, on the other. In doing so, we recognise that land groups do not only elicit custom, they draw together customary and modern ways of being in complex ways. However unwittingly, the argument that custom is elicited by the modern accords a problematic ontological priority to the latter. Customary forms of connection to land are indeed transformed through processes of land group incorporation, but this is not to say that land groups are solely modernist phenomena. Indeed, it is their entangled character, not simply their modern-ness, that makes them so destabilising of the social and political landscape.

The manipulation of clan identities is evident in Nobnob and Siar, particularly in allegations that the 'Badalon clan'—on whose behalf Bantam Dabid signed the 1995 deed of concern with RD Tuna—is not a clan at all, but rather a group made up of the descendants of plantation workers brought to the area during the late nineteenth and early twentieth centuries. After many generations living at Siar, complicated by the realities of extensive intermarriages, there are no customary 'homes' to which the plantation workers' descendants can return. Their connection to the Siar land is not customary, in the sense that it is not land to which they claim an ancestral connection, but they have nonetheless been drawn into customary forms of community social relations (including social relations of conflict) through their residence on that land. In seeking a share of the benefits that they hoped the RD Tuna cannery would bring, the plantation descendants fashioned themselves in the form that would best support their claims. As the 'Badalon clan', they were able to present themselves as a legitimate, and 'legible' (Scott 1998), entity, securing both a modern legal and 'customary' basis from which to assert themselves in negotiations.

In objecting to the deed of concern signed by Bantam Dabid, the representatives of the Sasagas, Hikutpa and Ditipa clans rejected the Badalons' claim to be rightful owners of Siar Portion 1004. Nevertheless, the Badalon group was included as a signatory in the 1996 memorandum of agreement with the company and the state, suggesting some reconciliation between the groups. The reasons again point to the manipulation of clan identities and the legal process of negotiation. Unpacking the different narratives surrounding the signing of the memorandum of agreement,

a picture emerges of shifting alliances between clans and social groups, playing out within the new legal-political domain of land groups and benefit-sharing agreements. Within this domain, the two contesting claims for ownership of Portion 1004 came from Badalon and from the Sasagas clan (the latter supported by Hikutpa and Ditipa).

There is, however, another claim made outside of this domain. The Dadolkud clan, another of the eight primary clan groups identified in the Nobnob area, also claims customary connection to the land on which the cannery has now been built. Nongoi, the head of the Dadolkud clan, repeats the assertion made by others, that the Badalon 'clan' are in fact descendants of settlers from the plantation days. All of the eight clans, Nongoi and his supporters insist, '*know*' that Dadolkud is the rightful landowning clan. Nonetheless, Dadolkud has been completely excluded from all of the legal negotiations related to RD Tuna's operations. In this context, the shifting alliances of the Badalon appear in a different light. Their own claim to be customary landowners of the cannery site is widely disputed, with no support from any other clans. In contrast, the leaders of the Sasagas clan—particularly Kumai Musas Mumum and his son John Musas—were able to mobilise support from the Hikutpa and Ditipa clans, and in doing so defeat the Badalons' own claims. Subsequently bringing the Badalons into their alliance, the Sasagas clan was able to further bolster the support for their own claim, and entrench the exclusion of the only other primary claimant, the Dadolkuds. Relegating the Badalon to the status of a 'subclan' rather than a 'clan,' the representatives of Sasagas, Hikutpa and Ditipa were able to further manipulate the language and relations of clans to give legal effect to the Badalons' junior position within their alliance, and within their negotiations with RD Tuna and the PNG state.

The alliance, however, was not long-lasting. Centrally positioned within it, the Sasagas leaders were able to establish the Daghan landowner company, which became the legal entity contracted by RD Tuna to run the 'spin-off businesses' that were to be the main source of income for the Nobnob and Siar communities. If the national ideology of landownership locates the clan as the paramount building block of national society, it similarly locates the landowner company as the core unit of the national economy. In Nobnob and Siar, the business activities of the Daghan landowner company—providing security and cleaning services, running a transportation service and canteen for factory workers—were operational for a short time, but collapsed in 2000 amid conflicts within

the Nobnob communities and between the landowner company and RD Tuna. Having positioned themselves as the major powerbrokers within Nobnob, the leaders of the Sasagas clan were subsequently accused by the other clans of monopolising the landowner company and the benefits derived from it. More specifically, John Musas was accused of running the company so as to directly benefit his family and members of the particular subclan *within* Sasagas of which he is a part, the Damon subclan. Allegations of financial mismanagement were made, and another land group, presenting itself as the ‘Sasagas No. 2 clan’ was formed. In September 2010, a violent attack on the Musas family was made by other residents of the Siar area, including members of the Hibutpa and Ditipa clans. Amid the confusion and conflict, RD Tuna chose to terminate their agreement with the Daghan landowner company, giving as reasons the mismanagement of the money paid to the company, and the fact that it was solely, they alleged, benefiting John Musas and his kin.

Following RD Tuna’s termination of the memorandum of agreement, Musas Mumum (as representative of the Sasagas clan) and his son John Musas (as representative of the landowner company) initiated legal action against RD Tuna, the PNG state and the Madang Provincial Government for their breach of the agreement, as well as against the Hibutpa No. 2, Ditipa Kunta and Badalon clans. The case ultimately fell apart because lawyers could not be organised, and because of internal tensions within Sasagas. The result, then, is that John Musas and his father are now relatively marginalised. When RD Tuna began talks in 2009 to build housing for its employees on a piece of land adjacent to the cannery site—Portion 1005—Musas and the Damon subclan were excluded from the negotiations, with RD Tuna talking instead to representatives of the Ditipa, Inad and Hibutpa clans, as well as the new splinter ‘Sasagas No. 2’ grouping. Back in Nobnob, the now isolated John Musas began reaching out to Nongoi, the leader of the Dadolkud clan whose own exclusion Musas was responsible for engineering more than a decade ago. Meanwhile, as the internal lines of alliance and division continue to shift and re-form, none of the ‘spin-off benefits’ forecast for the Nobnob communities have eventuated (Sullivan et al. 2003; Stead 2014). RD Tuna’s operations continue.

Shifting the Sites and Centres of Power

What does the conflict in Nobnob reveal about the politics of becoming landowners? Where does power sit within this contested landscape, and with whom? To an extent, the manipulation of identities, histories and representations within the land group system—including the alleged ‘invention’ of the Badalon clan—is itself consistent with the exercise of power within customary sociality. The narration of custom in oral traditions, as the French anthropologist Jean Pouillon describes it, is never fixed or exact, but rather ‘a structural ensemble which tolerates, and even favours, a form of creativity’ (quoted in Rouland 2001: 15). Annette Weiner, similarly, has pointed to the central role of memory and oral communication in the political domain of customary community, including the manipulation of details of land tenure and the deployment of ‘fictively arranged’ genealogies (Weiner 1976: 42). The fluidity of land claims in Nobnob, and the accommodation of tension and argumentation within everyday relations, resonates too with the accounts of other scholars describing customary land systems, including in PNG (Sillitoe 1999), Samoa (Olson 1997), and Africa (Berry 2002; van Leeuwen 2010). To this extent, then, and remembering Hall, Hirsch and Li’s (2011) proposal that exclusion and access be seen as conjoined conditions, the entanglement of custom and modernity with the land group system can be seen to offer new opportunities for creative agency, and hence for claiming access to land.

A normative valorising of ‘negotiability’, however, is to be cautioned against. Pauline Peters, writing about customary land tenure in Africa, argues that, in place of such an uncritical privileging, more emphasis needs to be placed by researchers on who benefits and who loses from instances of ‘negotiability’ in access to land (Peters 2004: 270). Her argument connects strongly with Hall, Hirsch and Li’s (2011) critique of the impulse to see exclusion from land as innately negative, and their proposal to inquire, instead, into its effects and consequences. Peters (2004: 270) calls for a shift towards an approach ‘that is able to identify those situations and processes (including commodification, structural adjustment, market liberalization and globalization) that limit or end negotiation and flexibility for certain social groups or categories’. It is by doing so that we illuminate the new exclusionary potentials—and implications—inherent within land groups and practices of land formalisation.

The introduction of practices of land formalisation brings into being a whole new system and structure of knowing and governing land. Abstracted from the intimate and particular relations of belonging—defined through new practices of boundary making—land is stripped of its own agentic capacity and potential, and customary communities' autonomy over their own land similarly diminishes. As the adjudication of land claims shifts to the administrative and judicial processes of the state, the governance of land shifts from the site of land itself, which is the grounding of customary power and authority, to the sites of land titles commissions, courtrooms, and government offices. So too is knowledge disembedded from the land to which it pertains, recorded in titles and registration documents rather than in the embodied, situated memories and stories of people who are connected to land. Through these abstracted structures of law, regulation and administration—structures of boundary maintenance—particular human agents are invested with power in relation to land: lawyers, bureaucrats, policy makers, judges, cartographers. Collectively, these agents, institutions and structures form the foundations of a modernist cartography of power in relation to land, and it is these that are privileged over customary agents, institutions, and structures as the authoritative basis for adjudicating, recognising, or rejecting claims of access. In this way, landownership can function to exclude those whose customary claims to access and use land, or whose practices of access and use, fall outside the structures of governance and organisation to which 'ownership' gives rise.

Customary forms of relating to land, though, are not expunged. In Nobnob, the dynamic and relational process of claims and counter-claims continues. Yet as much as this negotiability persists, the danger here is that it is against the modernist, definitive statements of 'fact' that these claims are measured and assessed. Indeed, the final termination of the benefit-sharing agreement in Nobnob speaks profoundly to this possibility. As much as the Nobnob and Siar communities were able to engage with the legal system in such a way that allowed some continuation of customary practices of disputation and communication, ultimately it was the company, against which all of those communities were positioned, which acted unilaterally and, to date, definitively in simply terminating the agreement.

On the site of the old Siar plantation, our attention is also drawn to the implications of landownership for power relations *within* communities, as well as between communities and external actors. That is to say, we see

practices of ‘intimate exclusion’ (Hall et al. 2011: 145) directed by local Papua New Guineans at neighbours and kin, as well as processes of exclusion attributable to the regulatory or legitimating forces of state or corporate actors. What we see, in these local and intimate relations of landownership, is that power often goes to those able to translate across ontological difference. That is, power goes to those who are best able to position themselves within, and across, both modernist and customary systems of land use and governance. Peters (2004: 279) comments on the theme of negotiability, that ‘not everyone is able to be an interlocutor, and many lose in such negotiations and “conversations”’. Her comments are made particularly in the context of negotiability within customary land systems, but the point is perhaps all the more salient in the context of negotiations, or translations, across different systems of boundary making and boundary maintenance. Similarly, Benjaminsen and Lund (2002) point to the ways in which those who most often benefit from land formalisation titles are those, often elites, who are most able to work across the spaces of both tradition and the formal institutions of the state.

In the disputes between the Nobnob claimants, the representative of the Damon subclan within the Sasagas clan, John Musas, emerges as someone who was able to gain and assert power within the intertwined communities through his negotiation of both customary and modern forms of land systems. Through customary practices of negotiation between different clans, he secured support for the Sasagas claim over the land on which the RD Tuna cannery was built. Through his familiarity with the mechanisms of courts and administrative processes, he was able to assert this claim within a modernist framework as well, establishing a landowner company to enter into a contract with RD Tuna and the state, while also demoting the rival Badalon claim through the letter of challenge and through the subsequent designation of Badalon as a ‘subclan’. In contrast, Nongoi, the leader of the Dadolkud clan, has been unable to translate his customary claims within a modernist legal context, and the effect of this has been the clan’s exclusion. Of course, whatever power John Musas was able to garner through his negotiation of the customary and the modern needs to be set within the context of his ultimate failure to hold on to it. The cancelling of the Daghan landowner company’s contract highlights the fact that possibilities for agency by local communities are made within the context of structures of power that can be weighted against them.

Conclusion: Dilemmas of Ownership

In each of the Madang communities negotiating the development of the PMIZ—Nobnob, Siar, Rempi and Kananam—contemporary experiences of exclusion cannot be understood outside of the context of prior acts of colonial alienation some 100 years ago. In the claiming of land for plantations at the turn of the twentieth century, land itself became a commodity—something that could be parcelled, sold, leased, ‘developed’—and it is as a commodity that it is now being ‘mobilised’ for use in the burgeoning tuna industry. The alienation enacted by the missionaries and colonial administrators instigated particular practices of boundary making that drew lines around parcels of land and so separated them, analytically and categorically, from the emplaced, contingent relationships of those who claim belonging to them. Land and people became ontologically separable, and this process of abstraction was the first act of regulatory exclusion. At the same time, however, colonial attempts at alienation were never complete. The introduction of modern relations of property and landownership does not expunge customary ones, and even in places where land formally exists as freehold property, dynamic forms of customary practice continue. Processes of land formalisation, meanwhile, have themselves given rise to ideas and identities of ‘customary landownership’, which are wielded in ongoing relations through which exclusion is practised, contested, legitimated or decried. Dramatically different forms of connection to land exist, but these are entangled in dynamic configurations.

Exclusion from land is not, as Hall, Hirsch and Li (2011) point out, an innately negative phenomenon. Relations of exclusion and inclusion are inherent to all systems of land use and organisation. As these relations take different forms, however, we need to also take account of the consequences of the entanglement of these differing forms. These are far-reaching, not only for issues of access to resources and livelihood opportunities, but also for issues of identity, culture, and belonging. Attention needs to be paid, too, to the legitimating discourses through which some forms of exclusion/access are privileged, and others devalued.

In PNG, the ‘mobilisation’ of land is heralded as a mechanism for securing access to the promises of ‘development’, by which is meant a contingently modernist vision of formal sector employment, cash income, and participation in capitalist systems of production

and exchange. Drawn into modernist cartographies of power through which land use is governed and adjudicated, these communities who live on and around the Siar and Vidar plantations have indeed been drawn into the social and political space of the nation-state, and through their negotiations with state and corporate actors they find themselves embroiled in the relations of capital and the global market. These ‘inclusions’, however, have only been made in the most marginal and unequal of ways. The entanglement of custom and modernity has offered some space for creative negotiation and for the deployment of ‘customary landowner’ identities as a basis for making claims against both state and company, but ultimately the promises of land mobilisation remain elusive.

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