

## Chapter Eight

# Local Custom and the Art of Land Group Boundary Maintenance in Papua New Guinea

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A variety of agencies engaged in the business of developing (or even conserving) the natural resources which are located on, in, or underneath the huge swathe of customary land in Papua New Guinea (PNG) must also deal with the absence of any systematic record of the social or territorial boundaries of the 'land groups' which are generally thought to be the collective owners of such land. The strategies which they adopt to make amends for this deficiency are shaped, not only by those national laws and policies which apply to the ownership of customary land, but also by those which regulate the distribution of compensation payments and community benefits to customary landowners within specific resource sectors. At the same time, the past experience and future prospect of such deals and dispensations has its own effect on the way that 'land groups', 'land boundaries', and 'group boundaries' are represented in the mental landscape of the actors who negotiate them, whether at the level of the village or the level of the state.

In this chapter, I propose to examine the interaction of law, policy and ideology in the social construction of 'land groups', 'land boundaries', and 'group boundaries' with reference to specific moments in the recent history of 'resource development' in PNG. Here we find a long debate about the significance of 'customary land law' which reveals the existence of at least two distinct forms of agrarian populism opposed to the resource-dependent form of capitalist development which has come to dominate the nation's formal economy. Here we also find that institutional mechanisms originally established to facilitate the growth of an indigenous peasant economy have since been applied to an entirely different business, which is the validation of 'landowner consent', the accountability of 'landowner companies', and the distribution of 'landowner benefits', first in the petroleum and forestry sectors, and much more recently (and only partially) in the mining and agricultural sectors, of this resource-dependent economy.

It was in the petroleum sector that I first encountered the concept of 'land group maintenance', when I was part of a formal policy process whose remit

was to rationalise the distribution of landowner benefits to an increasingly disorganised array of beneficiaries. I have added the word 'boundary' to the title of my chapter, because the relationship between land boundaries, group boundaries and benefit distribution was the fundamental point at issue in this process. The art or practice of land group boundary maintenance also counts as an example of the management, manipulation or negotiation of a thing called 'custom' in the name of another thing called 'development'. This, it might be said, is nothing but the art of the impossible, because there is no way of reconciling custom with development, either in theory or in practice. But I would argue that this opposition or antithesis is broken down and reconstructed in those practices of management and resistance which belong to real and specific social relations. It is not a gulf which exists *outside* of these relations, and which can therefore cause them to vanish in that world of wishful thinking where 'custom' is the light by which 'development' is shown to be a false god not worth worshipping.

### **Land, Groups, and Boundaries as Elements of 'Custom'**

When anthropologists reflect on the topic of customary land tenure in Melanesia, their reflections are often configured in terms of the triangular relationship between 'land', 'groups', and 'boundaries', or the tripartite relationship between landowning groups, land boundaries, and group boundaries. The sort of question which arises from this configuration is whether it makes more sense to say that land belongs to groups or groups belong to land. This question can be rephrased by asking whether land boundaries are more or less substantial, flexible, or porous than group boundaries. Should we say that the central feature of the customary 'system' of land (or resource) tenure is the division of the physical landscape into named parts, to which human beings are attached by various means, or through which they move by various routes? Or should we say that the central feature of the system is the division of the social landscape into named social groups, which exercise various kinds of rights over pieces of land or other physical resources? Some anthropologists may think of these as purely *ethnographic* questions about the variable nature of 'local custom', but they are also questions posed and partially resolved in the realm of public policy, where 'local custom' is incorporated into the regulation of a modern economy.

If anthropologists turn their attention to the *Land Groups Incorporation Act (LGIA)*, enacted by PNG's House of Assembly in 1974, they find that the Act is configured in terms of the triangular relationship between 'land', 'groups', and 'custom', in the sense that it provides an avenue for the legal recognition of customary land groups by means of their 'incorporation'. But the Act makes no mention of 'boundaries'. It makes no provision for the demarcation of land boundaries, and is as vague as any law could be about the nature of the 'custom' which determines the membership, and therefore the boundaries, of the land

groups which can be incorporated. In other words, the Act underlines the significance of the questions which anthropologists would normally want to ask about customary land tenure, but carefully refrains from giving any kind of answer.

While the *LGIA* has nothing to say about the demarcation of customary land boundaries or the registration of customary land titles, it does seem to assume that the process of legal 'incorporation' will help customary land groups to 'develop' their land. So if the Act fails to answer questions about customary land tenure, it does raise other questions about the triangular relationship between 'custom', 'law' and 'development'. These are also questions of interest to anthropologists. But when anthropologists try to interpret the significance of a law like this by finding answers to such questions, they often seem to arrive at a dead end, which is a portrait of 'custom' as a distinctly Melanesian way of reflecting on a generic process of modernisation, commercialisation or globalisation (Keesing and Tonkinson 1982; Errington and Gewertz 1995; Foster 1995). Speakers of the Neo-Melanesian language may talk about 'custom' (*kastom* or *kastam*) in ways that sound quite exotic to Western ears, but that does not prevent customary law from being part of a national discourse of development in which Western voices also participate — and these are not just the voices of ethnographers. The *LGIA* was one of a number of laws enacted around the time of Independence which purported to make a contribution to the fifth goal of the National Constitution, which was 'to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organisation' (see Fingleton, this volume). Many anthropologists would argue that any attempt to insert or transform Melanesian custom into state law is doomed to failure, precisely because the state itself is a European imposition on Melanesian custom, and not an indigenous form of political organisation. Some lawyers might agree with them, but lawyers are also adept at the art of making fine distinctions. Robert Cooter, for example, would agree that the State of PNG is not in a position to make effective use of national laws which aim to incorporate customary land groups or register customary land titles, but if local and district court magistrates make sensible judgements when customary land rights are disputed, then Melanesian custom will slowly turn into a Melanesian form of common law, in the same way that ancient English custom evolved into English common law (Cooter 1989).

The point at issue here is not the flexibility of custom, but the form of its relationship to law. My argument would be that Melanesian custom does not really *exist* in a form which would allow us to ask how it could or should be recognised in modern national law, because it was actually born out of the armpit of Australian colonial law. This is not to deny the possibility of reconstructing the form of social practice which preceded the colonial intrusion, but rather to assert that the *concept* of 'custom', as an object of contemporary thought and

practice, as a 'road' which is distinct from other roads, is something which only makes its appearance at the end of the colonial period, and which could only make its appearance when 'truly traditional' or pre-colonial forms of social practice had already been consigned to the far horizon of the late colonial imagination (Filer 1990, 2006a). In other words, custom needs here to be conceived as something which develops *out of* law, not something which develops *into* it. And this is simply one aspect of the wider form of 'development' through which colonial capitalism develops into something else — whatever that might be.

We can put this point about custom in another way, if we say that the 'vertical' relationship between landowners and developers has long since subsumed the 'horizontal' relationship between 'traditional' political communities, and then go on to observe that the internal constitution of the 'landowning community', which now reflects this vertical relationship, has likewise overwritten the 'traditional' networks of social reciprocity which once dissected and shaped these local political boundaries.<sup>1</sup> So custom is not the starting point for a journey along the road, or down the river, which is called 'development'. Custom is a diversion from that road, or an island situated in the middle of that river, a subordinate feature of a more general set of social relations. To go further down this road or river, we may think about the construction or negotiation of 'custom' as something which takes place within the *several* forms of 'development' which exist at the intersection of different branches of production (or economic sectors), social formations (which might be construed in either political or cultural terms), and stages or periods in the history of the global capitalist system.

As for customary land tenure, we need to recognise that 'land', 'groups', and 'boundaries' are things which were initially removed, abstracted or alienated from the traditional social landscape by the policy and practice of colonial administration (MacWilliam 1988). The shape of their triangular relationship then became part of the further removal, abstraction or alienation of custom from law in the subsequent process of 'national development'. Instead of thinking about the tripartite social construction of 'land groups', 'land boundaries', and 'group boundaries' as a recoverable form of 'custom', or as a sort of bridge between 'custom' and 'development', I propose to think of it as a pattern which exists *inside* that form of development which is commonly called 'resource development', and thus reflects that tripartite social relationship between Developers, Landowners and the State which I call 'resource compensation' (Filer 1997).

<sup>1</sup> The tradition of analysis which regards the superficial appearance of Melanesian social groups, and even Melanesian persons, as the icing on the cake of 'unbounded' social relationships (Wagner 1974) may neglect to consider the extent to which the inherent flexibility or adaptability of these social relationships has enabled them to take the forces of 'development' to their very core.

## Compensation and Incorporation in the Realm of Heavy Industry

The trouble with the concept of 'resource development' is that it sounds like a specific form of the general concept of 'development'. But 'development' is just a fairly recent name for what Adam Smith called 'the wealth of nations', which is nowadays measured by a pile of social and economic indicators. We do not have to deconstruct this general concept in order to recognise that 'resource development' is a very different kind of thing. It is a type of *industrial process* which involves the transformation of natural resources into commodities. And the relative preponderance of this type of industrial process within a country's national economy is, if anything, inversely correlated with that country's general level of 'development'. Hence the so-called 'resource curse' or condition of 'resource dependency' which may be seen as an affliction rather than a contribution to national welfare (Auty 1993; Ross 1999; Sachs and Warner 2001; Bannon and Collier 2003). But the concept of 'resource dependency' also has its drawbacks, because it seems to condemn the 'developing countries' which suffer this affliction to a state of backwardness from which they cannot escape, and draws attention away from the struggles which occur between 'resource developers' and other 'stakeholders' in the relations of production which surround this peculiar type of industrial process (Ascher 2005; Banks 2005; Filer 2006b). And that is why I propose to use the term 'resource compensation', which better serves to highlight the tension between dependency and autonomy which is embedded in the heart of these relations of production.

Where Marx formerly discovered the relationship of wage-labour (or employment) buried within the pile of money and commodities which formed the superficial pattern of the capitalist world, I would argue that this relationship of compensation is the partly hidden 'secret' of the much smaller pile of money and commodities which is currently found on customary land in PNG, *insofar* as this pile of money and commodities emerges from the jaws of what I should now like to describe as the Melanesian version of 'heavy industry'. This creature has four legs, or four component branches of production — the oil (and gas) industry, the mining industry, the timber (or logging) industry, and the oil palm industry.<sup>2</sup> The resources transacted through the relationship of compensation are thus rights to extract oil, gas and minerals contained in the ground, the timber contained in the trees which grow on top of it, and the nutrients contained in the soil itself. All four types of heavy industry entail large-scale investment in plant and machinery, but their 'heaviness' can also be ascribed to the problem of managing relationships with customary owners of the land on which these

<sup>2</sup> A case could be made for inclusion of the sugar industry, the rubber industry, and even parts of the fishing industry within the same economic complex, but I exclude these from consideration here in order to simplify the broad outline of my argument.

investments are made. And that is why the agencies responsible for managing these relationships in all four branches of production have been obliged to think about the merits of land group incorporation as a management strategy.

The products of heavy industry, as thus defined, have accounted for 80–90 per cent of PNG's annual export earnings over the past decade. While this fact alone provides us with an indication of its significance to the national economy, and more especially to the revenues of the national government, my definition clearly flies in the face of the orthodox argument that agriculture is the real backbone of the national economy because of the vast numbers of people who make a living from it and the sheer volume of land which is devoted to it. But I would argue that the oil palm industry is distinguished from other branches of agricultural production by virtue of its scale, its 'modernity', and the peculiar nature of its relations of production, which cause it to resemble the three terrestrial branches of extractive industry rather more than it resembles the colonial plantation economy (which already lies in ruins) and those forms of export crop production (notably coffee and cocoa) which are dominated by a smallholding 'peasantry'.<sup>3</sup>

Of course, the four legs of this new-fangled beast all have their own peculiar characteristics. But before I touch on these peculiarities, I shall try to establish the general shape of the beast itself, and thus show how Landowners come to be 'incorporated' into it.

As Landowners and Developers enter into their mutual relationship, the State does two things (apart from any role which it may play as a joint venture partner). First, it takes certain rights away from the Landowners, by mutual agreement, not by compulsion, and it hands on these rights to the Developers. This enables the Developers to begin the process of development. Then the State takes a share of the proceeds away from the Developers, by means of taxation, and hands a smaller portion of the proceeds back to the Landowners, in the form of 'benefits' which compensate the Landowners for the previous diminution of their rights.<sup>4</sup> At the same time, the Developers also 'compensate' the Landowners directly, by providing them with a mixture of 'compensation' payments for damage done to their resources and additional 'benefits' which are intended to maintain the relationship in good working order. The Landowners themselves may not recognise the distinction between 'compensation' and 'benefits', nor even the distinction between the benefits which come from the Developers and those which come from the State. The whole package simply represents their share of

<sup>3</sup> Palm oil has accounted for something between one quarter and one third of annual agricultural export earnings over the last decade.

<sup>4</sup> The balance of the 'resource rent' is redistributed between different parts of the State, and sooner or later finds its way back into private pockets, by fair means or foul, but this aspect of the relationship does not concern me here.

the income, or their part of the relationship, which comes from the development of 'their' resources.<sup>5</sup>

The Developers equate the 'development' of natural resources with the consumption or extraction of those resources, and thus see 'landowner compensation' in the same light as 'community relations' — as a cost which has to be incurred in order to achieve this form of 'development' (Filer et al. 2000: 3). The Landowners, for their part, equate the 'development' of *their* resources with their own social, political and economic advancement to a level at which they can truly imagine themselves to be the equals of the Developers, so that 'compensation' becomes what one Lihir landowner famously described as 'the state of equilibrium reached when [the] forces of destruction and impact must [be] equal to the forces of compensation ... [so that] the Landowners are forever happy and accept the losses and impact they will suffer' (Filer 1997: 160).<sup>6</sup>

But an 'Integrated Benefits Package' which is intended to achieve this equation of 'compensation' and 'development' also has to be distributed amongst the Landowners who receive it. This is not just a problem for the Landowners to solve by themselves. It is also a problem for which the State and the Developers are obliged to offer their own solutions. That is because their understanding and experience of the process of development on customary land has led them to conclude that they must also do something to manage the 'internal' relationships of the landowning 'community' which has been brought into existence by this process, and even the 'external' relationships between this local community and those other 'landowners' who live around the edges of it.

Where the State attempts to manage these additional relationships, its efforts could be seen as an extension of its efforts to manage the relationship between Developers and Landowners. But there is a further element of complexity here, which arises from the State's diminishing capacity to manage anything at all, and which raises the question of whether there really are three parties to this relationship, or only two. It is often the Developers who have to manage the relationship between the State and the Landowners, as well as their own relationship with the State, even to the extent of 'facilitating' the process by which the State acquires the rights which it later passes on to the Developers themselves. And where the State is unable to manage the relationships within and between local communities in the vicinity of the development, the Developers

<sup>5</sup> The laws of PNG declare that subsurface mineral resources are the property of the State, but the State has been forced to deal with Landowners in a manner that seems to deny this claim (Filer 2005).

<sup>6</sup> Once the definition of 'compensation' is expanded to include or subsume the relationship of employment, where Developers employ Landowners within the context of their mutual relationship, then we can say that compensation is truly a relation of *production*, in the Marxist sense, because it combines specific forms of property and work under the same umbrella.

may have to extend their own efforts to manage these relationships to the point of compensating for the State's failure to do so.<sup>7</sup>

Nor are the Landowners themselves purely passive recipients of all this 'management' (or mismanagement). While some Landowners try to manage (or mismanage) the 'compensation package' which is meant for all Landowners, some Landowners also try to counter the management strategies of both the State and the Developers with management strategies of their own, which might better be described as political strategies intended to enlarge their control over the total distribution of wealth, status and power within the development relationship. Indeed, all three parties have a tendency to *interfere* with whatever management strategies or political strategies are adopted by the other two, thus enveloping the relationship in a kind of mutual frustration which tends to defeat the 'rationality' of management itself. And so life goes on.

Now this relationship, with all its complexities, can be construed as a sort of bargain, or a sort of game, which is the way that economists are inclined to see it (McGavin 1994). However, it is not my purpose here to elaborate on the general form of the negotiation which takes place between the agents of each party, but rather to pinpoint the role which is played by the practice of 'land group incorporation' as a method of managing land, groups, boundaries, or benefits.

We can think of 'incorporation', in a general sense, as one of the transformations which are inherent in the social impact of resource development or the social relationship of resource compensation. I am not suggesting that incorporation, in this general sense, is necessarily something which the State or the Developers impose upon the Landowners as a condition of their mutual relationship. Landowners have ways of organising themselves, most obviously through the formation of landowner companies and landowner associations, and many other ways of being organised by politicians who claim to represent their interests. But *land group* incorporation, considered as a specific and variable feature of this relationship within the realm of heavy industry, *has been* promoted by the State and the Developers for reasons which we now need to consider in greater depth.

## The Brave New World of Customary Land Law

More than half a century has passed since Paul Hasluck, in his capacity as the Australian government minister responsible for the Territory of Papua and New Guinea, decided that its economic development would necessitate 'a change in

<sup>7</sup> Power (2000[1]: 86–7) has given voice to their frustration at this prospect: 'The Government just sits back and expects the developer to make things happen. The landowners expect everything to be done for them because the developer is on their land. The developer is reluctant to take over what they [sic] see as the role of the Government ... What is needed is a shift in the way the developer and the Government do business. It requires the taking on of a new mental model where development is part of the package that is traded for resource commodities.'

the basic native concepts of rights to use, occupy or cultivate land' (Hasluck 1976: 126).<sup>8</sup> A legal framework for the registration of 'native' land or 'customary' land had already been introduced in 1952, and the *Land Tenure (Conversion) Act* of 1963 provided a further opportunity for members of landowning communities to secure individual title by mutual agreement with their fellow members. But these measures did not have the effect of 'liberating' large areas of customary land from the constraints of custom, even if that was their intention (Simpson 1971: 7). Instead, many of the traditional owners of land which had been alienated for agricultural purposes during the early colonial period were agitating for its resumption, and their cause was espoused by the more vocal 'native' members of the House of Assembly during the 1960s. One of the first landmarks in the transition to Independence was the establishment, in 1972, of a Commission of Inquiry into Land Matters (CILM) whose membership was entirely indigenous, even though the support staff were all expatriates (Fingleton 1981; Ward 1983). The CILM's reassertion of the primacy of customary title was confirmed by several provisions of the National Constitution, by the *LGIA* of 1974, which was intended to facilitate the resumption of alienated land, and by the *Land Disputes Settlement Act* of 1975, which established a system of Local and District Land Courts to resolve disputes over customary title (see Fingleton, this volume).

At the time when the CILM was making its deliberations, it was calculated that three per cent of PNG's land area had been alienated, while 97 per cent remained under customary tenure. For the last 25 years, these figures have been repeated with such frequency, and circulated so widely, that they now count as 'common knowledge'. If true, this would seem to indicate that the CILM was at least successful in defending customary land from any further acts of alienation, and might even be taken to indicate that the whole system of land tenure has been set in some kind of post-colonial concrete. By 1989, however, the 600,000 hectares of alienated land which could still be found in the records of the Lands Department was more like 1.3 per cent of the total surface area (Larmour 1991; Turtle 1991), which would suggest that a substantial proportion of land formerly alienated to the colonial plantation economy had already reverted to customary ownership or control. And this estimate was made before the plantations on Bougainville were effectively 'resumed' in the wake of the 1989 rebellion.

But the legal instruments established on the recommendations of the CILM seem to have been no more effective in facilitating this process of resumption than the legal instruments of the late colonial administration had been in facilitating the creation of a class of small freeholders. Fifteen years after the passage of the *Land Tenure (Conversion) Act*, less than 10,000 hectares of land

<sup>8</sup> Hasluck announced his new land policy in 1960, but this statement was based on the report of a working party which he had established four years previously (Morawetz 1967: 3).

had been subject to legal tenure conversion (Cooter 1989). Fifteen years after the passage of the *LGIA*, only eight land groups had been incorporated under the Act (Whimp 1995). In both cases, the *demand* for conversion or incorporation was much greater than the capacity of relevant government agencies to meet it. One might therefore speculate that the net 'loss' of alienated land was as much a function of the loss of record-keeping capacity in the Lands Department as it was a function of a more substantial social process.

This is not the only respect in which the noble goals of the CILM were subverted by the force of bureaucratic inertia. The *LGIA* placed particular emphasis on the constitution of customary groups, rather than the ownership of customary land, because the CILM had recommended a separate piece of legislation for the demarcation and registration of customary land (Taylor and Whimp 1997; Fingleton, this volume). This was intended to supplant the legal mandate of the Land Titles Commission, whose own attempts to demarcate and register customary titles during the late colonial period had not met with great success (Morawetz 1967; Hide 1973; Jessep 1980). The same recommendation was repeated, 10 years later, by a national government Task Force on Customary Land Issues, and the buck was then passed to the Land Mobilisation Programme, whose achievements included the counting of those 600,000 hectares of alienated land. But the only piece of legislation which ever reached the statute books was in the 'pilot province' of East Sepik, where the provincial government enacted a *Customary Land Registration Act* in 1987 (Fingleton 1991, this volume; Power 1991).

In retrospect, it is worth noting that much of the academic and public debate on the subject of customary land tenure during the first 15 years of national independence, from 1975 to 1990, was constructed around the assumption that agriculture was indeed the backbone of the national economy. A substantial part of the debate therefore concentrated on the ancient question of whether customary tenure was or was not an obstacle to the development of capitalist agriculture, and sought to assess the motives and capacities of those groups or classes — rich peasants and poor peasants, largeholders and smallholders, indigenous and foreign members of the bourgeoisie, or simply 'capital' and 'households' — who were trying to push the boundary between customary and alienated land in one direction or another (Hulme 1983; Donaldson and Good 1988; MacWilliam 1988). Even those commentators who eschewed the language of class struggle were primarily concerned with the question of what the State could or should do, by means of policy or legislation, to meet the material needs and aspirations of landowners whose main economic activity was farming or gardening (Cooter 1989; Ward 1991).

While the territorial expansion of small-scale commercial agriculture has almost certainly been one of the main forces behind the apparent resumption of

alienated land, this has not made any impact on the territorial expansion of the four branches of heavy industry. Their occupation of customary land does not entail the liquidation of customary title, but depends on various forms of partial and temporary 'alienation' which are allowed by the laws pertaining to each sector. The mining companies get Exploration and Mining Leases, the oil companies get Petroleum Prospecting and Development Licences, the logging companies get Timber Permits, and the oil palm companies have come to rely on the so-called the 'lease-leaseback' clause in the *Land Act* which was originally meant to facilitate the establishment of 20-hectare coffee blocks in the central highlands (McKillop 1991). Once we escape the blinkers imposed by the technicalities of land law, we can see that the social dynamics of the 'customary' landscape are not determined by the capacity of customary landowners to resist or roll back the process of alienation, but rather by their capacity to enter into, and benefit from, the social relations of compensation which reflect and condition the process of resource development.

If the CILM did not intend the *LGIA* to function as a surrogate for the demarcation and registration of customary land titles, its members also failed to imagine the use which the State and the Developers would eventually make of this law in their efforts to manage 'community relations' in the sphere of heavy industry (Sinaka Goava, personal communication, September 1998). While their report did envisage the possibility that Incorporated Land Groups (ILGs) might serve as a vehicle for landowner participation in the development of forestry projects, it expressed grave reservations about the degree of freedom which was apparently granted to landowners by the *Forestry (Private Dealings) Act* of 1971. This law allowed customary landowners to bypass the provisions of the *Forestry Act* by selling timber rights to a landowner company under the terms of a Dealings Agreement, which only required the assent of the Forests Minister, and allowed the landowner company to enter into a Logging and Marketing Agreement with a logging contractor, who was then able to extract and sell the logs with minimal government supervision.

To the best of my knowledge, no land groups were ever incorporated for this purpose.<sup>9</sup> In 1989, a Commission of Inquiry into Aspects of the Forest Industry (the Barnett Inquiry) found that the *Forestry (Private Dealings) Act* had simply enabled logging companies to cheat local landowners of the benefits promised in the Logging and Marketing Agreements, and recommended that the law should be repealed (Barnett 1992). And so it was, with the passage of a new *Forestry Act* in 1991. The closure of this 'loophole' is significant because it underlines one of the main points of convergence in the social relations of

<sup>9</sup> Only eight land groups were incorporated in the eight years following the passage of the *LGIA* (Taylor and Whimp 1997: 77), and most of these were formed to take advantage of the Plantation Redistribution Scheme (Ward 1991: 184).

resource development on customary land, which is not so much the conflict of interest between Developers and Landowners, but the manner in which a steadily disintegrating State continues to interpose itself as a sort of 'middle-man' in the legal form of their relationship. The forest industry was thus restored to its 'rightful place' as one of the four branches of heavy industry which are firmly attached to the trunk of resource compensation.

The new *Forestry Act* also gave a new lease of life to the *LGIA*. However, the forest industry was not the first branch of heavy industry to accomplish this feat, and the process of land group incorporation does not have the same history or significance in each of the four branches. The common point of departure was the criticism levelled, by some individuals associated with some branches of industry, against the provision of the *Land Act* which allowed (and still allows) the Land Titles Commission or a Local Land Court to appoint 'agents' to act on behalf of undefined and unincorporated groups of customary landowners. Once appointed, these agents had (and still have) the power to transfer all manner of rights to the State, and to 'accept any rent, purchase money, compensation or other moneys [sic] or things, and distribute that money or those things to the persons entitled', whoever they might be. The law has assumed that these agents should be 'customary leaders' of some sort, but has never sought to specify the customs which create or regulate their leadership, nor even the type of customary group which they should be taken to represent (Taylor and Whimp 1997). The advocates of land group incorporation regard the process of incorporation as a way of saving custom from abuse by self-appointed leaders whose pursuit of 'rent, purchase money, compensation or other moneys' has no customary sanction. But how has this argument actually made its way through the four branches of heavy industry, why has it made more progress in some branches than in others, and what have been the practical effects of its partial success?

## **Land Group Incorporation in the Petroleum and Forestry Sectors, 1990–95**

1989 was a good year for anyone who had a ready-made solution to the problem of managing the social relations of resource compensation — not just because of the Barnett Inquiry, but also because of the Bougainville rebellion. While Barnett (1989: 368) found that landowners were 'gaining a maximum of dislocation and alienation in exchange for minimum benefit from the harvesting of their timber', Francis Ona and the other members of the new Panguna Landowners Association had come to a very similar conclusion with respect to the harvesting of copper from their land. What I wrote about the 'titleholders' whom the Land Titles Commission had appointed as agents of the Panguna landowners could just as well have been written about the 'clan agents' who had been responsible for signing Timber Rights Purchase Agreements with the

Department of Forests, or Dealings Agreements with the directors of 'their' landowner companies:

Although the titleholders constitute a relatively small minority within the landowning community, there is no outside interest in the question of whether and how they will use these monies for the benefit and satisfaction of their respective family groups. It has evidently been assumed that 'customary' norms of distribution and consumption will apply to this new form of wealth, and this will raise no special problems for the company or for the government. But the complaints of the new PLA have shown that this assumption is false. The titleholders stand accused of keeping all the money to themselves, not even giving any to their closest relatives. If this is true, it might be taken as a sign of selfishness or greed, but I suggest that it may also be a sign of something else — the simple absence of a custom which prescribes the proper way to redistribute rent (Filer 1990: 90).

Of course, the Bougainville rebellion showed that the stakes were much higher, and the consequences could be far more serious, in the mining sector than in the forestry sector. But it also added some serious weight to the argument that dysfunctional 'clan agents' were only one part of a larger problem, that landowner organisations of all sorts were suffering from a serious lack of democracy, transparency and accountability, that their directors or managers were ripping off the ordinary members, shareholders or beneficiaries, and that the State had better do something about it.

It is therefore somewhat ironic that the first application of the *LGIA* to the problem of managing the social relations of resource compensation was neither made in the mining sector nor made by the State. It began in April 1990, when Chevron Niugini Limited (CNGL) appointed Tony Power as its Business Development Manager, or perhaps in May 1990, when the company formally lodged its application for the Kutubu Petroleum Development Licence and Pipeline Licence, and began to prepare the ground for project construction.<sup>10</sup> Power was able to persuade the Developer, and then able to persuade the State, that the royalty and equity benefits due to the customary owners of both licence areas should only be paid to ILGs, and that these groups should be the sole shareholders of the landowner companies which were due to receive the benefits of CNGL's Business Development Program. In the five years following his appointment, he masterminded the incorporation of more than 400 land groups in the project impact area.

Power had become an advocate of land group incorporation during his previous incarnation as a senior bureaucrat in the Department of East Sepik

<sup>10</sup> The licences were granted at the end of 1990, and the oil began to flow in mid-1992.

Province,<sup>11</sup> where he had played a key role in promoting the *Provincial Land Act* and the *Customary Land Registration Act* which were passed in 1987 (Power 1991; Fingleton, this volume). Having departed the ranks of the bureaucracy in 1988, he initially entered the petroleum sector as a consultant to Oil Search and Ampolex, which were both partners in the Kutubu Joint Venture. It was from this vantage point that he began, in his own words, to 'fight bloody hard' to make ILGs into an essential feature of the Kutubu project landscape (Tony Power, personal communication, September 2000). By November 1989, he was able to announce the first signs of his impending victory, and this was done at a forest policy seminar held at the Forest Research Institute (Power and Waiko 1990: 46). That meeting was part of the policy reform process engendered by the findings of the Barnett Inquiry, and Power believes that his own intervention in this process was partly responsible for that part of the 1991 National Forest Policy which requires, as a precondition of any future Forest Management Agreement between local resource owners and the State, that

Tenure over the resource must be made certain by: title to the affected resource being vested in a Land Group or Groups under the Land Groups Incorporation Act, or title to the resource being registered under a customary land registration law; or where the above two options are impractical — at least 75% of customary resource owners in each clan owning timber affected by the agreement must give their written assent to the Agreement (PNGMoF 1991: 17).

The process of 'resource acquisition' prescribed in Sections 54–60 of the 1991 *Forestry Act* reiterated this requirement.

This meant that the function of land group incorporation in the forestry sector was quite different to the function which it performed in the development of the Kutubu oil project. In one case, a Developer was persuaded to incorporate Landowners as part of a strategy designed to promote the values of equity, transparency and accountability in the distribution of project benefits, and the Developer then had to persuade the State to set its own seal of approval on this strategy, at a time when the *LGIA* did not rate a mention in any of the laws and policies which regulated the petroleum sector. In the other case, the State was persuaded to incorporate Landowners as part of a policy and a law which were intended to produce a certain level of 'informed consent' to the State's acquisition of the right to harvest their timber resources, and to protect Landowners from Developers who had proven adept at manipulating the appearance of such consent to their own advantage.

<sup>11</sup> He was appointed as Provincial Planner in 1982, and later became the First Assistant Secretary for Economic Services.

When the new *Forestry Act* was finally gazetted and implemented in 1992, officers of the newly designated National Forest Service were thus confronted with a task which was already taxing the patience and resources of a multinational oil company, and were expected to perform this task in many different parts of the country. If this were not daunting enough, the 1993 National Forestry Development Guidelines indicated that the process of land group incorporation should be preceded or accompanied by a Landowner Awareness Programme which would provide landowners with the information required for them to make their own assessment of 'the likely costs and benefits, impacts and responsibilities associated with a forest development project' and enable them to 'truly participate in the project formulation process and ensure that it is sensitive to their needs and concerns' (PNGMoF 1993: 4). But help was at hand, in the shape of a Forest Management and Planning Project organised by the World Bank as part of the National Forestry and Conservation Action Programme. This project included a 'Landowner Involvement Component' which was meant to strengthen the capacity of the National Forest Service to practice the arts of land group incorporation and landowner awareness (PNGFMPP 1995). In a fitting tribute to his own experience at Kutubu, Tony Power was one of several consultants engaged to implement this project component. His manual of procedure, entitled 'Village Guide to Land Group Incorporation', was printed and circulated in March 1995 (Power 1995).

In the three years which had then elapsed since the function of land group registration was transferred from the Registrar of Companies to the Department of Lands and Physical Planning, 700 land groups had already been registered, and another 500 applications were awaiting the department's attention (Whimp 1995: 71). These figures suggest that officers of the National Forest Service had already completed the fieldwork and paperwork required to register more land groups than had so far been registered through the efforts of their counterparts in CNGL. On the other hand, none of the Forest Management Agreements which resulted from this process had formed the basis of a new timber concession. The first Timber Permit issued under the new *Forestry Act* was granted in June 1995, as an 'extension' of the permit already held by Turama Forest Industries in Gulf Province. And it seems that the logging company played a fairly active role in the process of land group incorporation which laid the ground for the Turama Forest Management Agreement (Hartmut Holzknrecht, personal communication, March 1997). At any rate, some local NGOs referred the decision of the National Forest Board to the Ombudsman Commission, which eventually found (in August 1997) that there had indeed been some breach of the procedures laid down in the *Forestry Act*.

This dispute served to confirm the fear previously expressed by the Forest Industries Association, that the long drawn out process of land group incorporation had another, 'latent' function, beside the function of protecting

the property rights of innocent landowners. This other function was to implement one of the key recommendations of the Barnett Inquiry, which was to 'slow down' the whole process of resource acquisition and allocation in the forestry sector while new forms and standards of regulation were applied to existing concessions. The very small volume of timber resources which has since been allocated through the production of Forest Management Agreements and the distribution of new Timber Permits would seem to support this interpretation (IFRT 2001, 2004). But this means that hundreds of land groups which have been incorporated through the bureaucratic efforts of the National Forest Service have yet to complete their passage into the social relations of resource compensation in the logging industry, even if they wish to do so. That is because most logging operations are still governed by agreements signed under the previous legislation, and most of the payments or benefits which they yield for local landowners are still distributed to the clan agents and landowner company directors who signed these agreements.

### **Land Groups in the Oil and Gas Act, 1998**

The question of how to regulate the distribution of project benefits, and the question of how local landowners should be organised and represented in the process of distribution, became a major issue for the local petroleum industry in 1997. There were several reasons for this. Firstly, the Chan government had changed the rules of this game in 1995 and 1996, by proposing to grant local landowners 100 per cent of the royalties which the State would henceforth collect from the developers of new projects in both the mining and petroleum sectors, together with a 'free' two per cent share of project equity whose cost would be shared by the other joint venture partners in proportion to their own stakes in the project. At the same time, the 1995 *Organic Law on Provincial Governments and Local-Level Governments* created an entirely new set of financial relationships between the three tiers of the State, but took not the slightest account of the relationships already embodied in the development agreements for mining and petroleum projects. And to make matters even more confusing, the new Organic Law required all resource developers to pay a new kind of tax, to be known as 'development levies', to the provincial and local-level governments hosting their operations, but did not specify the manner in which this liability was to be calculated (Filer and Imbun 2004).

These innovations caused more concern in the petroleum sector than in the mining sector, because the agreements covering development of the Lihir gold mine had already been concluded, and there were no other major mining projects whose development conditions were still subject to active negotiation. In the petroleum sector, by contrast, the stakeholders were still negotiating the division of the spoils from the Gobe project, whose flow of oil was in the process of being added to that of the Kutubu project. The Draft Memorandum of Agreement

between the State and Gobe Project Area Landowners, produced in January 1997, was a model of the muddle which now afflicted the social relations of resource compensation in this sector. And to make matters worse, three years of legal disputation had still failed to determine who actually counted as a Gobe Project Area Landowner in the first place.

Under the draft Gobe agreement, landowner benefits were to be distributed between local 'clans' in proportion to the amount of land which they owned within the boundaries of the Petroleum Development Licence (PDL), and then subdivided between a number of ILGs in each 'clan' in proportion to the number of members which they contained (Taylor and Whimp 1997: 81). This principle of distribution was at variance with the one adopted in the Kutubu project agreements, where the benefits were distributed equally between all the land groups which owned any amount of land within the boundaries of the PDL, or any section of the route taken by the export pipeline.<sup>12</sup> But by 1997, the Kutubu principle had already given rise to a predictable problem: the original land groups were splitting into smaller land groups, and some 'spurious' land groups were being manufactured in the process.<sup>13</sup> Hence the call for CNGL to invest more time and money in the art of 'land group maintenance' (see Weiner 1998, this volume; Goldman, this volume).

The final, and perhaps the most important, reason for rethinking and reconstructing the social relations of compensation in the petroleum industry was the existence of two proposals to develop the reserves of natural gas which had been found in association with the oil now flowing down the export pipeline. Both proposals would entail a very substantial amount of fresh capital investment, and both would yield a new 'benefit stream' of unprecedented size (CIE/NCDS 1997; Simpson et al. 1998). The addition of a gas industry to the existing oil industry demanded a new policy framework and a major overhaul of the 1977 *Petroleum Act*. If nothing were done to regulate the flow of benefits, the benefits might never flow at all, because one or both projects might drown in 'political risk'.

The 'interrelationships, roles, responsibilities and authorities of sectoral participants in relation to issues affecting the involvement of landowners in petroleum projects' were scrutinised in some detail by a pair of lawyers engaged under a Technical Assistance grant from the Asian Development Bank (Taylor

<sup>12</sup> The benefits were initially divided between language groups, in accordance with the proportion of the PDL area, or the length of the pipeline route, which was thought to lie within the territory of each group, and were then divided equally between the land groups within each language group. This arrangement was apparently the one preferred by landowner representatives in the development negotiations.

<sup>13</sup> This problem arose because the *LGIA* does not require land groups to have mutually exclusive membership lists, and the Registrar of Titles can only refuse to register a land group if it can be shown to be a 'non-customary' group (Taylor and Whimp 1997: 117-8).

and Whimp 1997). Their recommendations were subject to discussion by a number of 'sectoral participants' at a two-day seminar held in January 1998. The main target of their recommendations was the State's manner of dealing with landowners, though it was recognised that any major change to one side of the triangular relationship would necessarily have some impact on the other two. The State's position, or the State's quandary, was rather nicely expressed in the title of the seminar presentation by an official of the Department of National Planning and Implementation: 'Packaging MOA [Memorandum of Agreement] Projects as a Subsidiary or Small Public Investment Programme: A View to Impose and Instill Discipline and Development Consciousness in the Utilisation of Benefits Derived from Natural Resources for Equitable Distribution as Benefits to Landowners' (Lovuru 1998).

The outcome of this seminar was the establishment of an Action Team whose membership was drawn from those private companies and government agencies which had some stake in reformulating the 'benefit regime' in the petroleum sector. The main body of the Action Team held at least 15 meetings between March and June 1998, at which its members talked at length about the problem of establishing principles that would serve to rationalise the distribution of part of the national government's share of petroleum revenues between provincial governments, local-level governments, and local landowners in each project impact area. The fruit of these reflections was a set of drafting instructions for something to be called the *Petroleum (Project Benefits) Act*. Some members of the Action Team joined a smaller talking shop, which came to be known as the 'ILG Breakout Group', and which reflected on the riddles posed by the State's lack of capacity to make effective use of the *LGIA* as a vehicle for landowner organisation and benefit distribution. The conclusions of this smaller body were discussed at another two-day seminar held in September 1998.

Following one of the recommendations previously made by Taylor and Whimp (1997: 109), the Action Team suggested that the design of better models for distributing landowner benefits within a landowning 'community' should henceforth be based on 'social mapping studies' funded by developers as a condition of their prospecting licences. In my own capacity as a member of the Action Team, I drafted a document on this subject which proposed that:

- one of the aims of a 'preliminary' social mapping study would be to 'establish the basic principles of customary resource ownership and group formation in the licence area, with specific reference to the feasibility of incorporating local land groups under the Land Groups Incorporation Act' (Filer 1998b: 1); and
- one of the aims of a 'full-scale' social mapping study would be to 'recommend the principles and procedures to be adopted in the process of incorporating local land groups', or else present an argument against land group

incorporation, and 'recommend the most appropriate, and least contentious, alternative forms of representation or methods of distribution, which would be consistent with both: (a) local custom and practice; and (b) the principles established by government policy and national legislation' (ibid: 3).

Despite his unrepentant enthusiasm for the practice of land group incorporation, Tony Power was unable to persuade all other members of the Action Team that this practice should now be granted the force of legal necessity. Within the industry itself, there was a split between CNGL, in its capacity as operator of the Kutubu and Gobe projects, and British Petroleum (BP), in its capacity as operator of the Hides gas project, which had been developed as a source of power for the Porgera gold mine. The BP line was spelt out by one of the company's consultants, George Clapp, who argued that the Huli landowners of the Hides project were recalcitrant traditionalists who preferred to see their leaders divide up large amounts of cash by means of public ceremony, rather than be forced to reflect in private on

the sad fact that in a PNG context where one has cheques put into accounts and signatories to those accounts, there will be fraud. By far the best method to ensure that some compensation monies trickle down to the grass roots level is to pay in cash and use the agent system. In that way the money is there for immediate division according to custom, the people know when it is going to be paid out and, although the leaders as agents may be entitled to keep some back, at least the larger proportion is divided out according to custom (Clapp 1998: 6).

In this respect, the Hides project simply followed the example set at Porgera, where the Ipili 'clan agents' were also accustomed to dealing with public scrutiny of periodic flows of cash. The Huli people were also seen to resemble the Ipili people in possessing a form of social organisation in which individuals could and did claim membership of more than one 'clan' (Burton 1991; Allen 1995; Golub, this volume), thus confounding the principle of mutual exclusion which had informed the original process of land group incorporation in the Kutubu project impact area.

Tony Power and other members of the ILG Breakout Group thought that the problem of multiple membership could be solved by means of a legal distinction between the 'controllers' and the 'beneficiaries' of each land group, so that individuals could have 'interests' in more than one land group without being members of more than one 'controlling group'. They also proposed a number of other amendments to the *LGIA* that were meant to discourage the registration of 'spurious groups', limit the opportunities for misappropriation of group funds, enable each group to lease parts of its estate to individual members or outsiders for business purposes, and strengthen the mechanism for resolving disputes within and between groups. But even if the Lands Department could be

persuaded to persuade its minister to push this raft of amendments through Parliament, a very large question mark would still be left hanging over the State's capacity to supervise, support or 'maintain' an ever-expanding number of land groups.

In the event, no *Petroleum (Project Benefits) Bill* was ever presented to Parliament. Instead, some of the recommendations of the Action Team found their way into the *Oil and Gas Act* that was approved by Parliament in November 1998, while others were treated as matters of policy or regulation, and some were simply laid aside (Filer and Imbun 2004). This is not the place for a detailed discussion of what the new law had to say about the determination and distribution of landowner benefits, the conduct of social mapping studies, or their relationship to the 'landowner identification studies' that are also now required as preconditions for the issue of development licences in the petroleum sector. Suffice to say that the law follows the recommendations of the Action Team to the extent of saying that monetary benefits allocated by the State to project area landowners will normally be paid to ILGs 'unless otherwise agreed between the State and the grantees of the benefit or prescribed by law'. Under Section 169, social mapping and landowner identification studies are two of the bodies of evidence which are expected to guide the Minister in deciding which land groups, or which other 'persons or entities', are to receive these benefits on behalf of the landowners. Section 176 follows another recommendation of the Action Team by saying that these landowner benefits shall be divided between 'incorporated land groups or other representatives ... in proportion to the number of project area landowners each represents'. In this respect, the law exhibits a preference for what I have called the 'Gobe model' rather than the 'Kutubu model', because it says that benefits should be distributed between land groups in proportion to the size of their membership, rather than the area of land which each group holds within a licence area.

But the irony of this preference is revealed in the addition of a new section (169A) in the *Oil and Gas (Amendment) Act* of 2001, which expressly relates to the distribution of benefits from 'existing petroleum projects' as well as from new ones. As in the original Section 169, there is a recognition that the identity of the landowners or their representatives may still be undecided or disputed, in which case the Minister is entitled to 'make a determination' in light of

... any agreements by persons who are or claim to be project area landowners, the decisions of courts of Papua New Guinea as to ownership of land or rights in relation to land in the vicinity of the petroleum project in question, the results of social mapping and landowner identification studies carried out in accordance with this Act, and submissions from affected Local-level Governments or affected Provincial Governments of

the petroleum project in question or from any other person claiming an interest or to be affected by the decision of the Minister.

This long list of different kinds of evidence is itself evidence of the ongoing problems created by the policy and practice of land group incorporation in the oil and gas sector. And anyone reading the national newspapers in PNG will know that these problems remain especially acute in the relationship between the State and the people who claim to represent the Gobe project land groups.<sup>14</sup>

## **The Beast's Two Back Legs**

There is little doubt that newspaper stories about the contested distribution of very large amounts of money to ILGs in the petroleum sector has encouraged a popular belief that land group incorporation is a way for customary landowners to gain access to the social relations of resource compensation, even when the prospect of actual resource development may be quite remote. For example, a crowd of more than 25,000 people is said to have assembled in one Eastern Highlands village to witness the presentation of a certificate of incorporation to a local landowner association whose members thought they had discovered oil in a lake and 'were currently working on formalities to enable them to sign a memorandum of agreement with a possible developer to carry out a feasibility study and exploration in the area' (*Post Courier*, 27 January 2005). According to Fingleton (2004: 101), there were more than 10,000 ILGs registered with the Department of Lands by March 2004, which is an awful lot more than the 700 which had been registered by March 1995. It is hardly possible to attribute the whole of this increase to the diligence of people employed to implement government policies, whether in the forestry and petroleum sectors or any other sector of the national economy. What we do know is that land group incorporation has been deliberately used to promote the expansion of the oil palm industry, but has found little or no favour with the administrators of the mining industry. This should lead us to ask whether the use of land group incorporation as a policy instrument is encouraged or constrained by structural factors specific to each branch of production, or whether its adoption has more to do with contingent historical factors. These contingencies might include the history of decisions and disputes in specific parts of the country, or the influence wielded by individual decision makers in specific policy domains at certain points in time, but they might also extend to the growth of a nationwide 'cult of incorporation' that is not part of any formal policy process.

The mining sector is especially notable for the recent appearance of land groups whose spokesmen seem to be staking dubious claims to projects which

<sup>14</sup> See, for example: *Post-Courier* 8, 22 and 26 January 2004, 23 August 2004, 15 October 2004, 17 and 20 December 2004, 10 January 2005; *The National* 1 and 2 March 2004, 24 August 2004, 17 and 20 December 2004, 12 January 2006.

have not yet been developed, as if the act of incorporation were somehow meant to gain them additional leverage in the process of negotiation with the State and the developers.<sup>15</sup> However, government officials and company managers responsible for the administration of the mining sector have not followed the example of their counterparts in the petroleum sector by advocating the incorporation of land groups as vehicles for landowner representation or benefit distribution. This is not just because the first group have learnt a salutary lesson from the troubles encountered by the second group (see Weiner 1998, this volume; Sagir 2001; Lea 2002a, 2000b; Koyama 2004), even if that explains the sense of caution currently displayed by the Department of Mining (PNGDoM 2003: 28). Back in 1990, when CNGL was adopting the policy and practice of land group incorporation, the mining mandarins could hardly have foreseen the dysfunctional outcomes. Yet they already knew that one of the factors behind the outbreak of the Bougainville rebellion, which they had also failed to predict, was the dysfunctional outcome of the 'clan agent system' as a method of connecting the Panguna landowners to the other parties in the resource compensation relationship (Filer 1990).<sup>16</sup> So why did they persist with this model when an alternative was being actively promoted in both the forestry and petroleum sectors?

One answer would be that the rest of the mining industry was still engaging former *kiaps* (colonial district officers) to manage the corporate relationship with customary landowners, and these individuals saw no good reason to change their own customary practice. The practice of 'land investigation', through which clan agents and clan boundaries were identified, was still part of the land acquisition process prescribed under the *Land Act* (Filer et al. 2000: 32–3) and the dispute settlement process prescribed under the *Land Disputes Settlement Act* (Filer 2005: 913). Rather than blame the clan agent system itself for the outbreak of the Bougainville rebellion, the old *kiaps* were more inclined to blame the premature localisation of Bougainville Copper Limited's Village Relations Office or the unique history of local resistance to colonial rule. Discounting Bougainville as a 'special case' (Griffin 1990), they could maintain that theirs was still the best way to deal with customary land and landowners in other parts of the country. They were also dealing with landowners in the petroleum sector, where George Clapp's arguments in favour of the clan agent system were typical of their position. CNGL's preference for Tony Power's arguments might therefore have been a contingent effect of that company's Texan corporate culture, which had little in common with the values of Australian colonial paternalism, and

<sup>15</sup> See, for example: *The National* 21 May 2004, 14 and 22 September 2004, 26 August 2005; *Post-Courier* 6, 26 and 28 October 2004, 3 November 2004, 5, 6 and 20 April 2005.

<sup>16</sup> The author can vouch for this fact because he was then in regular communication with senior officials in what was then the Department of Minerals and Energy.

CNGL's ability to influence the national policy process was simply a function of its dominant role in the development of the Kutubu project.

However, the influence of old *kiaps* was only one of the factors which kept land groups out of the mining sector in the decade following the Bougainville rebellion. As a result of the mineral exploration boom in the preceding decade, the people responsible for managing 'community affairs' had already established relationships with customary landowners in many different parts of the country — not only in places where new mines had been or would soon be developed, but also in places where no development has yet occurred. In 1990 there was no clean sheet on which to inscribe an unfamiliar process of land group incorporation. But if this was partly a matter of timing, it was also a question of scale. The areas of customary land which had to be 'acquired' for development of the Kutubu project were much larger than those required for development of any mining project, so the Kutubu Joint Venture could not imagine for a moment that it was dealing with a single 'landowning community' with its own unique set of customs and a small number of customary leaders with whom personal 'community relations' could be cultivated through the process of mineral exploration. The differential intensity of the social relations of resource compensation is itself a significant structural difference between the two branches of production.

If that is one reason why the mining companies preferred to trust old *kiaps* to deal with customary landowners, it does not mean that policy makers in Port Moresby saw no reason to change their own approach to the problem of landowner representation. Even before the outbreak of the Bougainville rebellion, they had to deal with an unprecedented set of demands from the Porgera landowners, and those included a demand for greater representation in the development process. The policy response to this demand was the institution of the 'development forum', which would henceforth grant formal negotiating rights to representatives of the customary owners or 'holders' of land required for the development of a major mining project (West 1992). But the policy makers were careful to avoid making any statement about the way that this representation ought to be achieved. The *Mining Act* of 1992 leaves that to the discretion of the Minister. The project coordinators in his department were well aware of the extent of variation in the capacity of landowners in different parts of the country to organise or be organised in any particular way. So, when the closure of the Panguna copper mine bore witness to the deficiencies of the clan agent system on Bougainville, they were not inclined to advocate another model of landowner organisation and inscribe it in the national policy framework. Instead, they began to advocate the practice of social mapping by anthropologists as a way of getting beyond or beneath the simplified representations of local social organisation espoused by the old *kiaps* (Filer 1999).

Needless to say, the anthropologists played their part by revealing the diversity and complexity of the relationship between customary group boundaries and land boundaries in areas of interest to the mining sector.<sup>17</sup> It is therefore somewhat ironic that the need for social mapping studies found legal recognition in the *Oil and Gas Act* of 1998, without ever being enshrined in the mining sector's formal policy framework. Although CNGI conducted one early experiment with social mapping in its own licence area (Ernst 1993), this initially failed to dent the company's enthusiasm for land group incorporation or promote its appreciation of social anthropology. It was the steady accumulation of disputes about land boundaries and group boundaries in the petroleum sector which eventually caused a change of heart, and that was because of the intervention of lawyers providing donor-funded 'technical assistance' to the national government (Taylor and Whimp 1997). It just so happened that these lawyers were familiar with the policy innovations of the mining sector, and government officials from that sector were also involved in framing the relevant provisions of the *Oil and Gas Act*. However, the official lack of enthusiasm for land group incorporation as a model solution to the problem of landowner representation in the mining sector was matched by an appreciation of the need for flexibility in regulating the social relations of resource compensation (Filer et al. 2000; PNGDoM 2003). The results of social mapping studies in this sector had only served to confirm this prejudice, and that is one of the reasons why social mapping studies themselves have not so far been subject to regulation under the *Mining Act*.

While the mining industry has hesitated to follow the model of land group incorporation adopted by the oil and gas industry, the oil palm industry has shown more enthusiasm for the model adopted in the forestry sector without any comparable pressure from government regulators. The reason for this may be found in the relative permanence of large-scale agricultural estates and the relative scarcity of land available for their expansion.

By the year 2000, the five main oil palm schemes occupied more than 110,000 hectares of land in four different provinces (Koczberski et al. 2001). More than half of this land was alienated during the colonial period and then dedicated to the development of nucleus estates and 'land settlement schemes' for smallholders transplanted from other parts of the country.<sup>18</sup> For three decades the industry was able to expand by bringing an increasing proportion of this alienated land into cultivation, raising the productivity of the parts that were already under

<sup>17</sup> Most of this work remains unpublished because landowners and developers have normally been wary of potential abuse by competing claimants to ownership of specific licence areas. One exception which serves to illustrate the methodology is Young's (1993) study of an area on Normanby Island in Milne Bay Province.

<sup>18</sup> The resettlement schemes are associated with the Hoskins and Bialla projects in West New Britain and the Higaturu project in Oro Province.

cultivation, and offering incentives for customary landowners to plant 'village oil palm' on their own land. By 1997, however, it was evident that this process of expansion could not continue indefinitely without a mechanism for raising the intensity of production on customary land (Oliver 2000).

Although there have been several proposals to establish new oil palm estates on customary land by clear-felling forests initially allocated to a logging company under the *Forestry Act* of 1992, these have met with disconcerted opposition from the World Bank, the PNG Forest Authority, environmental NGOs, and even customary landowners themselves. That is because they all had good reason to believe that the proponents were using the prospect of long-term agricultural development as a pretext for extracting the native timber resources as quickly as possible (Filer 1998a: 187–97). Nevertheless, the World Bank and the national government have continued to advocate an expansion and intensification of production in areas where nucleus estates have already been established (PNGDNPRD 2004). The mechanism which has been adopted in order to achieve this goal has been a combination of land group incorporation with the rather peculiar arrangement known as 'lease-leaseback' under Division 4 of the *Land Act*.

This arrangement was originally devised in 1978 as a way for customary landowners to secure bank loans and modern managerial expertise for the development of 20-hectare coffee estates in the central highlands without losing their customary title to the land (McKillop 1991). By amendments to the *Land Act*, the Minister was allowed to 'lease customary land [from its customary owners] for the purpose of granting a special agricultural and business lease of the land' to a 'person or persons' or 'to a land group, business group or other incorporated body, to whom the customary owners have agreed that such a lease should be granted'. In effect, this is a way of getting around the legal prohibition against non-citizens dealing in land which has not been registered under the *Land Registration Act*, for when the State leases land back to a person or body approved by the customary owners, the lease is registered under this Act. This has so far proved to be the only way of mobilising customary land for large-scale agricultural development without actually alienating it.

Although land group incorporation is not an essential feature of this process, it has come to be recognised as the best way to limit transaction costs when mobilising fairly large areas of customary land (Jones and McGavin 2000). Even so, the incorporation and registration of land groups is only one of 16 different steps which the oil palm industry had to take in order to access customary land through the lease-leaseback arrangement, and it was necessary to engage a former Land Titles Commissioner as a consultant in order to make sure that all these

steps were taken in the right and proper order (Oliver 2000, 2001).<sup>19</sup> The first 'mini-estate' to be created in this way covered 6,000 hectares of land west of the Kulu River in West New Britain Province. Once Special Agricultural Leases had been issued to four land groups representing the customary owners of this area, each land group issued a 40-year sub-lease to New Britain Palm Oil Ltd.<sup>20</sup> In return, each land group received an annual rental payment of K50 per hectare, a monthly royalty payment equivalent to 10 per cent of the farm gate price of harvested fruit, and 10 shares in the oil palm company for each hectare covered under the lease (Oliver 2000: 24).<sup>21</sup>

By the end of 2000, the mini-estates covered roughly 11,000 hectares of customary land, and thus accounted for roughly 10 per cent of the total area planted to oil palm (Koczberski et al. 2001: 6; Oliver 2001: 69). The area devoted to mini-estates in four of the country's five oil palm schemes seems to have doubled by the end of 2004, and another 4600 hectares had been developed under a similar arrangement, known as Community Oil Palm Development, in the vicinity of the fifth scheme (Bourke 2005). Since the other spatial components of the industry have been relatively static, it is therefore likely that industrial production on customary land now accounts for as much as 25 per cent of the total area planted to oil palm. On the other hand, the existing schemes are now encountering physical and demographic constraints to further expansion along these lines (Michael Bourke, personal communication, April 2006). Although Ramu Sugar Ltd (in Morobe Province) has now joined the ranks of the oil palm industry, and has also taken advantage of the lease-leaseback arrangement to expand its operations, there is as yet no evidence that this arrangement could be successfully applied to the development of an entirely new agro-industrial enterprise in an area where there is no alienated land on which to locate its central processing plant.

## **Conclusion: African Models in the Neo-Melanesian Mindscape**

In March 2006, the Secretary for Lands and Physical Planning was reported to have said that 'incorporated land groups were not owners of the land but were people legally recognised as a group' (*Post-Courier*, 10 March 2006). This provoked one member of the public to write a letter complaining that

The Secretary is fundamentally incorrect to insinuate that the ILGs are not landowners but are a legal group. His very own department subjects

<sup>19</sup> Norm Oliver's role in facilitating this process for the oil palm industry was similar to the role previously played by Tony Power in the petroleum sector.

<sup>20</sup> The period of the lease was based on the assumption that oil palm has a 20-year life cycle. At the end of the 40-year period, the landowners would have the option of renewing all the lease arrangements, granting sub-leases to another oil palm company, or allowing all the leases to lapse.

<sup>21</sup> The shareholding was later increased to 50 shares per hectare (Oliver 2001: 67).

clans to prove their ownership of the land the ILGs are incorporated over because clans own the land, not individuals ... Most lives are here at the rural areas so the ILGs are well positioned for empowerment and resourcing now than ever before (*Post-Courier*, 10 March 2006).

It seems that the Secretary was making a distinction between the process of land group incorporation and the process of registering titles to customary land, or between the legal mechanisms for establishing land boundaries and land *group* boundaries, in order to show that 'some of the land legislation needed to change' if these two things were to be combined. His respondent, on the other hand, was articulating an 'ideology of landownership' which both reflects and distorts the social relations of resource compensation (Filer 1997, 2006a). This ideology asserts that 'clans' and 'land groups' are essentially the same thing, and their incorporation only serves to confirm the fact that these 'customary landowning groups' are the basic building blocks of Melanesian society. But when the author of this letter says that the State 'subjects' these groups, he exposes an interesting fault line in this ideology, for it is not clear whether he means to say that the State itself has been responsible for the creation and empowerment of these collective subjects, or whether he means to say that they are traditional subjects which have been subordinated to the power of the State and now need to reassert their relative autonomy.

One of the 'Ground Rules' which the Petroleum Policy Action Team adopted at the behest of the jolly Chevroid who acted as its facilitator was for its members to 'have fun'. And one of the main sources of amusement was the recurrent banter between myself and Tony Power on the question of whether land groups, or groups of landowners, should or should not be described as 'clans' in any statement of national policy. At one of our many meetings, I laid two trump cards on the table, which were photocopies of two pages in a special issue of the journal *Anthropological Forum*. One was taken from an article by Dan Jorgensen, and contained a passage in which he described the type of evidence which his Telefol informants had prepared for his consumption, once they knew that he was coming to evaluate their claims to ownership of land in the vicinity of a proposed copper mine close to the Sepik River.

Most of this came in the form of oral accounts of personal genealogies and land use histories, with detailed listings of the marks they or their ancestors had left on the ground around the proposed mine site. This testimony was backed up with the aid of locally recognised collateral evidence in the form of ancestral relics, war trophies, and the texts of commemorative songs that provide a crucial medium of Telefol oral history. Some came with typescript statements or computer-generated census lists that made an excellent approximation of official village registers. Others, who were familiar with government notions of

landholding, began talking of traditional cognatic descent categories (*tenu miiit*) as 'clans', complete with patrilineal descent (Jorgensen 1997: 611).

The other page was taken from an article by Philip Guddemi, and included a rather similar observation about the 'invention of clanship' in another community whose members were reflecting on the same prospect.

The presence of a 'Sepik Ideology' of patriliney is a present-day political reality to which Sawiyanoo make reference as they contemplate the possibility of land compensation. Certainly, the official East Sepik government stance is quite clear: Solomon Hopkis, the Assistant Secretary for Lands for the East Sepik Province, is on record in a Working Paper on the Frieda Mine issue as saying that: 'We commonly practice Patriarch lineage thus very rear maternal [sic] lineage otherwise not at all' (Guddemi 1997: 641).

Guddemi went on to interpret the word 'rear' as one which corresponds to the Sawiyanoo vernacular term for 'following behind', rather than the English word 'rare', which is perhaps what Mr Hopkis had in mind. But Guddemi's allusion to the existence of a 'pan-Sepik' ideology of patrilineal inheritance (if not patriarchal authority) made no mention of the role which my fellow teamster had played in the development of this ideology through his efforts to secure the registration of customary land in East Sepik Province. So I scribbled 'Influence of Tony Power!' in the margin of the photocopy before I passed it over to my target, and by this means was able to banish the word 'clan' from his vocabulary for the next couple of meetings.

But no amount of ethnographic evidence seems likely to affect the way in which this word is used by Papua New Guineans whose thoughts lie well beyond the proven influence of Tony Power. While the Action Team was actively debating the question of landowner organisation, one member of the national intelligentsia published a newspaper article whose title boldly declared that 'The Clan Sits at the Heart of PNG Politics' (Anere 1998). Oddly enough, the evidence deployed in support of this statement comprised the votes cast in the Namatanai Open Electorate in the national election of 1992 — an electorate in which there were only two candidates, and both accumulated substantial numbers of votes in each of the 12 census divisions into which it was divided. Nowhere could the footprint of the 'clan' be seen on this particular trail of numbers. At a seminar held shortly afterwards, I drew this fact to the attention of the author, and reiterated my own argument that 'clans' have only come to be seen as the homogeneous building blocks of national society because they '*have actually become* groups of landowners claiming compensation from development of their resources' (Filer 1997: 168). But the other members of the national intelligentsia who were present at this meeting seemed to be unanimous in their endorsement

of the view that 'clans' in all parts of the country are fundamentally alike, have always been the sole collective owners of all natural and cultural resources, and naturally vote as one in national elections. No doubt many national members of the Action Team thought likewise, which might help to explain why Tony Power soon reverted to the argument that 'clans' are not only synonymous with 'land groups', but are also 'very independent of each other, even within one tribal (ethnic, language) group' (Power 2000[1]: 7).

Anthropologists may find it somewhat ironic that they should now be cast in the role of opposing a 'nationalist' ideology that seems to recapitulate the outmoded version of their own discipline which formerly informed the colonial vision of 'native society'. That vision was based on the practical need to establish representations of the native population that would place its component parts in the spatial hierarchy of colonial administration and subject them to the most effective forms of social control (Brown 1963; Strathern 1966; Wolfers 1975). That is why they adopted the 'African model' of segmentary social organisation in which the principle of unilineal descent gave rise to a set of 'tribes' divided into 'clans' and subdivided into 'lineages' whose members were literally lined up in front of the *kiap* when he came to conduct a census. Melanesian ethnography began to recoil from this African model in the early 1960s (Barnes 1962; Wagner 1974; Lawrence 1984), and most practitioners have since abandoned the concept of 'social structure' as a figment of the modernist imagination. But Australian government officials were not content with the application of one African model to the business of aligning customary group boundaries with those of a modern state. After 1960, they also tried to apply the 'Kenyan model' to the registration and privatisation of 'communally owned land' in order to realise Hasluck's vision of an indigenous peasant society (NGRU 1971; Quinn 1981). Indigenous politicians objected to the legal instruments of this 'agricultural revolution' (Ward 1972) because they would 'grant a small number of named members of the [customary] group the power to deal with the land as if they were the absolute owners' (Ward 1981: 250). In other words, they would have used the 'clan agent system' as the basis for a wholesale transformation of landed property relations.

Like the Constitutional Planning Committee, the Commission of Inquiry into Land Matters was attempting to nationalise the body of colonial law by turning 'native custom' into 'customary law' and making this the 'underlying law' that would inform the new laws of the Independent State. If the colonial regime had divided the native population into 'clans' and 'tribes' for the purpose of ruling over them, the new national body of land law was careful to avoid the use of either of these words for reasons that most anthropologists would readily endorse. If a customary 'land group' were to be granted legal status through the process of 'incorporation', local custom would still need to determine the name, shape

and size of the group in question. So how is it that the 'clan' has since been reinstated as the heart and soul of the independent nation?

One answer would be that there is no other word in the English language that could be adopted as shorthand for a 'customary social group', and the use of this word does not necessarily mean that the speaker subscribes to any particular model of social organisation or would deny the diversity or flexibility of the Melanesian social groups to which the label is applied. If Tok Pisin speakers now use the word *klan*, instead of the word *lain*, to talk about these customary groups, this might simply show that they have moved beyond the restricted vocabulary of the colonial social order. The creolisation of Neo-Melanesian political discourse might encourage English-speaking social scientists to think that they are hearing the construction of an ideology when a new noun, like *klan* or *kastom*, appears to turn a set of social relations into an object. However, it is not single words but whole conversations which have this ideological effect, and then only because of the way they reveal and conceal what people are talking about. And in the present case, the point at issue is not the way that people vote in national elections, but the way that people get involved in the social relations of resource compensation (Filer 1997; Holzknicht 1997; Ernst 1999; Hirsch 2001).

If 'clans' have become subjects or objects in an ideology of landownership, it might still be argued that this is an ideology articulated by the dominant class or party in these social relations of production. In that case, the 'Neo-Melanesian' mindscape might turn out to be a neo-colonial vision articulated by members of an indigenous political and bureaucratic elite who represent the constitution of their own society when dealing with bodies like the World Bank or a multinational oil company. Their enthusiasm for land group incorporation might then be seen as a betrayal of the values articulated by the CILM, either because it merely replicates the colonial project of subordinating customary social groups to modern political and corporate structures, or worse still, because it has become a backdoor route to the registration and privatisation of customary land.

There is no doubt that some members of the national elite, including the Secretary for Lands, would like to strengthen or streamline the connection between land group incorporation and the registration of customary land. Furthermore, as we have seen, this connection has already been established in the oil palm sector. But this does not mean that land group incorporation and the ideology of landownership are both aspects of a neo-colonial conspiracy to subordinate Landowners to the State or the Developers.

First, we must recall that the CILM and its legal advisers were never opposed to the registration of customary land, but were only concerned to ensure that this was not done in a way that would lead to the dispossession of customary owners and the creation of a landless proletariat (Fingleton 1981, this volume; Ward 1981). Second, land group incorporation finds absolutely no favour with

those expatriate commentators who have recently begun to reiterate the demand for individual, transferable land titles as an essential condition of PNG's economic development (Lea 2002a, 2000b; Gosarevski et al. 2004a, 2004b). Third, the white advocates of land group incorporation, who might be said to represent the 'progressive' strand of agrarian populism, no longer have their hands on the central levers of public or corporate policy in PNG. Fourth, there are many national managers of 'community affairs', especially those working in the forestry and petroleum sectors, who have many practical reasons to wish that they did *not* have to practice the art of land group maintenance (Koyama 2004). And finally, the 'reactionary' strand of agrarian populism, which opposes land group incorporation on ideological grounds, is in fact articulated by members of the national intelligentsia (Lakau 1997), while the demand for incorporation now seems to be coming from people who represent 'the Landowners' in the social relations of resource compensation.

These are all good reasons to deny that the ideology of landownership is merely recapitulating the 'native narratives' of the colonial regime. Colonial administrators were content to treat 'tribes' and 'clans' as the *superficial form* of the relationship between the State and 'native society'. They did not seek to lift the 'corporate veil' by modernising, legalising or harmonising the *internal constitution* of these 'customary groups' (Taylor and Whimp 1997: 74), but only tried to establish the social and political responsibilities of the individuals who were appointed or elected as their leaders. The 'clan agent system' implied the existence of 'clans' without granting them any kind of legal status or demanding that they act in any particular way (ibid: 102). While anthropologists were busily discovering the diversity of 'local custom', colonial administrators lost interest in this subject as their project changed from 'pacification' to 'development'. Although they were responsible for initiating several large-scale resource development projects in the final decade of their rule, they barely began to think of ways to 'customise' the social relations of resource compensation.

If nowadays we find a cult of incorporation amongst the Landowners themselves, this suggests that the ideology of landownership is not the property of any one party to the social relations of resource compensation, but is a form of the relationship itself. This new African model asserts the novel, newly rediscovered power of 'custom' and 'customary groups' *against* the powers of the State and the Developers, but because it retains a segmentary structure, it represents a customary shadow of the State that could either be a source of compliance or resistance in the process of resource development. Landowners anticipate their relationship with Developers before the Developers arrive on their land, both in their imagination and in their social practice. They generally want 'development' to happen, and they prepare themselves for it. If the Developers do arrive, they also come with expectations about the Landowners, which are derived from their understanding of national and local custom, national

and provincial laws and policies, their own corporate policies and practices, and those of other companies with which they are associated. That is the broad 'mental landscape' within which actual relationships are forged, and that is the reason why the relationship of resource compensation reaches beyond the local context of specific 'development projects'.

The State and the Developers might think they are incorporating land groups as part of a corporate strategy to control the wayward behaviour of clan agents, landowner company directors, or other leaders of the 'resource development cult' (Filer 1998a: 284), but these same land groups may then turn out to be weapons of political intrigue in the hands of these same leaders (Lea 2002a; Gosarevski et al. 2004b). If 'the incorporated land group represents an attempt to deal with the reality of capitalist relations of production through what the legislators have conceived to be the traditional form of property' (Lea 2002a: 83), it may also be one of the main reasons why '[t]he state is like a landlord which cannot get the tenants out of its house' (Taylor and Whimp 1997: 127). At one moment, the process of incorporation is represented as a way of subordinating custom to capitalist relations of production; at the next moment, it becomes the vehicle by which those relations are customised, tribalised, or even demonised.

These are all partial truths or double movements that bespeak the presence of an ideology. What this ideology reveals is a desire to standardise the social organisation of customary landowners as a condition or consequence of their dealing with the social relations of resource compensation. What it conceals is the fact that this desire is nowhere near to being realised.

Much of the debate about land group incorporation seems to assume that land groups are indeed all much alike, just as 'clans' are all much alike, and this view seems to be shared by the most radical proponents and opponents of any kind of land reform. What I have tried to demonstrate in this chapter is that people have been incorporating land groups for different purposes and with different outcomes in different branches of extractive industry. But that is only half the story. For if the ideology of landownership also conceals a real variety of 'local customs in relation to land', we should also expect to find that Landowners in different parts of the country are not all equally willing or able to sustain the incorporation of 'land groups' for any particular purpose, whatever the policies or strategies adopted by the State or the Developers. And that is the point at which the art of land group maintenance invites the need for social mapping studies to debunk the ideology.

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