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Plantations, Incorporated Land Groups and Emerging Inequalities Among the Wampar of Papua New Guinea

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Introduction

‘If you incorporate your clan as a land group and register your land, you will get a title to that land and become overnight millionaires on your own land!’ This enticing promise was made by Benny Allan, the Papua New Guinea Minister for Lands and Physical Planning, at a ceremony on 22 December 2016 when he handed over a land title to representatives of a local land group in a village in Morobe Province. The recipients are members of one of the first groups to have been recognised as an Incorporated Land Group (ILG) and granted a customary land title in the province following the state’s recently amended Land Groups Incorporation Act and Land Registration Act. Addressing the crowd gathered in front of the raised platform from where he spoke, he explained that with a customary land title, the landowners could go to the bank and get a loan. Or they could subdivide the area and sublease it to business companies, earning income from rental fees while retaining ownership of

the land. Before this legal change, according to the minister, customary land did not have any value. But now, once an ILG has a title to the land, its representatives can go to a registered valuer and have the property appraised, and it will have a value in the millions of kina.¹ Benny Allan then urged the landowners to make use of their land title. He pointed out that for 41 years, since Independence in 1975, customary landowners had just been ‘spectators’ on their land, but that he had come to empower them now, by handing over the land title to the local ILG.

Whether customary landowners will indeed become millionaires, however, along with the equally pressing question on how any accumulated wealth will be distributed among them, remains to be verified. In this chapter, I argue that changes to the land tenure system in Papua New Guinea (PNG) will, besides igniting conflicts, create new and deepen already existing inequalities based on control over land, access to education and information flows, as well as decision-making power within landowning groups.

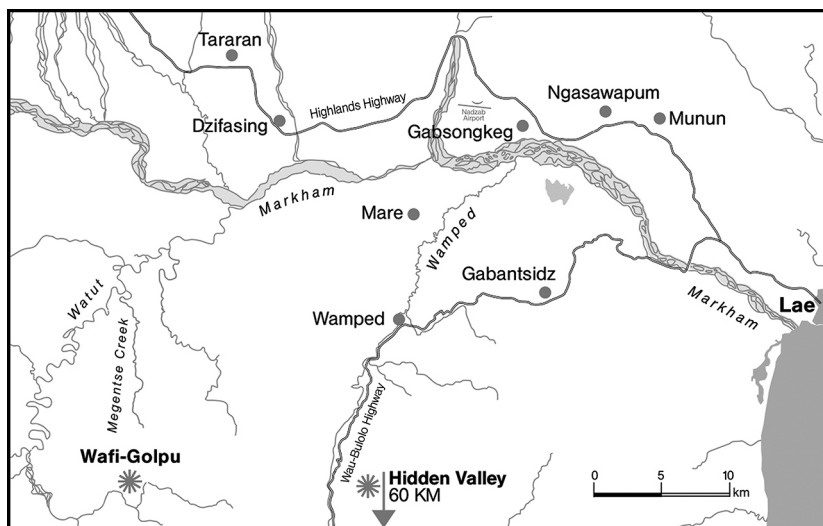


Figure 2.1 Map of Wampar villages in the Markham River Valley.

Source: H. Schnoor.

¹ One kina is about USD0.30.

My argument is based on recent developments in Dzifasing, a Wampar village in the Markham Valley near the city of Lae, in Morobe Province (see Figure 2.1). There, and in the neighbouring village of Tararan, the development of large-scale industrial tree plantations has generated widespread conflicts, centred around land, that accentuate social, economic and political inequalities within and between local groups. The data for this chapter is based on 12 months of fieldwork between April 2016 and January 2018, in which I observed and participated in interactions between the plantation companies, state representatives and the Wampar, conducted in-depth interviews with Wampar villagers, field officers of the plantation companies, and state officials, and conducted a sample household survey on economic activities and indicators of inequality.

I will first give an overview of the more recent changes in the state law on customary land ownership and then discuss how this law plays out with the entry of two plantation companies, PNG Biomass and New Britain Palm Oil Limited. I will then illustrate through several case studies how new social differentiation by way of ILG formation invites further conflicts, social divisions and inequalities. I will also show that changes in the state law have created a situation where leaders of landowning groups, who often do not have the necessary expertise, capital or political connection to undertake the costly and bureaucratic process to secure their land against rival claimants, eagerly cooperate with the plantation developers who promise to ensure them a title in exchange for a lease on at least a part of their land.

Land Tenure System in PNG

PNG has a dual system of land tenure, wherein traditional, unsurveyed and undocumented land holdings coexist with a modern system of registered and surveyed parcels of alienated and titled land. In the literature, it is often mentioned that 97 per cent of the total land area of PNG is still being held by customary landowners according to customary norms and that only 3 per cent of the land has been alienated by the government, mainly during the colonial administration, and held under freehold or leasehold titles. However, some of this alienated land has been ‘re-customised’ by the disappearance of public records and the redistribution of colonial plantation land after Independence. On the other hand, almost 11 per cent

of the total land area had been at least partially alienated through the granting of so-called Special Agricultural Business Leases (SABL) over customary land to private enterprises, mainly between 2008 and 2011 (Filer 2014).

The SABL is a lease–lease-back mechanism, whereby customary landowners can lease their land to the state, who then leases it back either to an ILG—a legal entity representing the customary landowners—a landowner company or even directly to a foreign company if there is consent from the landowners. For the duration of the lease, usually 99 years, all customary rights on the leased land are suspended. In several cases, a few self-declared landowner representatives colluded with local politicians and land department officials to abuse this system and enrich themselves by signing off on leases over vast tracts of land without proper procedures and consultation with the majority of the affected people living on the land. The area was then mostly subleased to foreign-owned logging companies. They often put in a proposal to establish an oil palm plantation or some other agroforestry project as a front to engage in logging (as trees would have to be cut down to plant oil palms), without having any true intentions to establish such a project. Local resistance against these widespread logging operations, coupled with national and international attention, has led to a commission of inquiry into all SABL in 2011, a moratorium on the granting of further SABL, and finally the cancellation of most of them in June 2014 (Filer 2012, 2017; Nelson et al. 2014; Gabriel et al. 2017).

A lot has been written about these SABL and the resulting land grab. Still relatively little attention so far—except by Chand (2017) and Filer (2019)—has been devoted to changes to the Land Groups Incorporation Act and the Land Registration Act that were put in place in 2009 and came into effect in 2012. These changes allowed for a different mechanism for leasing customary land to plantation companies and other businesses. They established a system of Voluntary Customary Land Registration (VCLR), through which customary landowners could apply for a formal collective title to their land, and then lease it out to interested parties.

Before these changes, there were no official titles over customarily held land in PNG. The *Land (Tenure Conversion) Act of 1963* allowed for the transformation of customary (and therefore collectively owned) land into a freehold title that could be held by no more than six customary landowners, but only over smaller portions of land. Until 1979 only about 10,000 hectares have been transformed in this way (Filer 2014: 81).

The *Land Groups Incorporation Act of 1974*, on the other hand, allowed for the registration of landowning groups, establishing them as legal entities, but there was no legislation in place that would grant them a legal title to the land that they held according to their customary norms. The incorporation of land groups only gained traction after changes in the laws regulating the logging industry and the oil and gas industry came into effect, when ILGs became vehicles for disbursing the benefits owed to the local landowners (Weiner 2013; Filer 2014; Minnegal et al. 2015).

With rising pressure especially around cities for secure tenure arrangements, the lands minister at the time, Puka Temu, initiated a policy reform process in 2005 that would allow customary groups to register their land voluntarily, and then be able to lease out that land on their own. He campaigned on a platform of ‘turning poor landowners into rich landlords’ (Chand 2017: 414). Temu instructed the Director of the National Research Institute to investigate possible amendments to the existing laws regulating land tenure in PNG and created a National Land Development Taskforce that held several consultations with all stakeholders. The suggested changes then passed the parliament in 2009 as the *Land Groups Incorporation (Amendment) Act of 2009* and the *Land Registration (Amendment) Act of 2009*. Both laws took effect in March 2012 and outlined the VCLR process, by which customary landowning groups could register as ILGs and acquire a legal title over their customary land (Chand 2017; Filer 2019).

The VCLR process is an opt-in process, in that a landowning group needs to initiate the process out of their own volition. A landowning group must start the process of incorporation by drawing up a list of all its members, a list of all its landholdings and other rights to resources, indicate the boundaries of the land in question on a sketch map, and draw up a constitution and a governance structure in accordance with the Land Groups Incorporation Act. In drawing up the membership list, the group needs to attach a copy of the birth certificate for each of its members, a provision that was put in place to prevent ‘ghost names’.² For the people in Dzifasing, this in effect meant that they first had to apply for their birth certificates at the cost of 15 kina per adult. Only a few people were registered at birth with such a document or had to apply for it previously to get a passport. While I was in the field in 2017, the state

2 The term ‘ghost names’ refers to the practice of filling in forms with invented names of non-existing people to create the appearance of an actually existing customary group.

urged individuals over 18 years of age to apply for a national ID card at the same time, as the government had newly implemented a national ID system and wanted to increase the issuing of these ID cards.

The law also states that the group needs to hold a meeting in the area where the members reside and elect a management committee consisting of a chairperson, a vice-chairperson, a secretary, a treasurer and at least two female representatives. The minutes of this meeting, together with the constitution of the Incorporated Land Group, need to be submitted with the application. A general meeting needs to be held every year after that. A quorum in these meetings is reached when at least 60 per cent of all members are present, of which at least 10 per cent need to be of the other gender. Decisions are binding when 60 per cent of the members agree by vote, except in the case of a removal of a member of the management committee, where a majority of 70 per cent of the members present is required.

The sketch map of the land held by the land group needs to indicate the boundaries and any disputed areas along the borders with other neighbouring land groups. The leaders of the disputing adjacent land groups need to sign the map, indicating that they have acknowledged it. If they refuse to do so, the local Ward Councillor or Village Court Magistrate³ should sign instead. The sketch map, the membership list and all other forms then must be sent to the Department of Lands and Physical Planning, and the submitted information is then forwarded to the District Administrator for verification. After approval, an announcement of incorporation needs to be published in the *National Gazette* and one of the two daily newspapers. After a 30-day objection period, the certificate of incorporation is granted, and the ILG can now start the process to register their pieces of land.

To acquire a customary land title, the ILG will now have to engage a registered surveyor to survey the land, they will need to endorse this registration plan by the Provincial Lands Office, and then make an application to the Director of Customary Land Registration, who forwards a copy of the plan to the Regional Surveyor. A notice needs to be published again in the *National Gazette* and one of the daily newspapers, and an objection period of 90 days follows before the land title then is granted to the ILG. This land title means that the titled land is no

3 The Ward Councillor is the local representative on the lowest level of government, (local-level government, or LLG), while the Village Court Magistrate is an official on the lowest level of the PNG court system. PNG has three spheres of government: local, provincial and national, and all three spheres are involved in the process of granting an ILG and a land title.

longer governed by customary law but by state law, and the ILG can now lease out all or portions of the area to anyone and any business entity for a period of up to 99 years. The allodial title, and thus the ownership of the land, remains in perpetuity with the ILG and cannot be transferred.

Some commentators (Chand 2017) are cautiously optimistic about these changes. They point to the design and setup of institutions on all government levels that should prevent the fraudulent uses of ILGs and leases in the past, for example through the use of birth certificates, surveys from certified surveyors and steep punishments for the management committee in case they abuse their trust. Others remain sceptical and point to the lack of information regarding the process of registration, the lack of confidence by landowners in these institutions and the high degree of corruption in the Lands Department as potential downfalls. They ultimately consider Incorporated Land Groups as unsustainable to safeguard the interest of the landowners (Karigawa et al. 2016). Others are deeply concerned by the conceptual changes that take place once customary land ceases to be governed by customary law, as the connection between people and the land is severed:

the use of ILGs and long-term leases effects a deep, fundamental transformation in the nature of social connection to land and in the nature of power. Made into property, land becomes something to be considered independently of the social world. (Stead 2017a: 80)

Most Wampar I spoke to are less concerned (or not aware) about these more conceptual changes. Most of them struggle to access information, expertise and the capital necessary to start the process of incorporating ILGs and register their land, however. The arrival of plantation developers changed this, as they offered help and encouraged people to engage in the registration process as a prerequisite for the leasing of land to them.

The Arrival of the Plantations

In the Wampar village of Dzifasing, there are currently two companies actively competing to secure land for their planned plantations. They were attracted by the vast and flat expanse of the Markham Valley, covered mostly by savannah grasslands, interspersed with some old-growth forests, mostly along watercourses, and patches of secondary forest of huge rain trees that were introduced with cattle farming in the 1960s and 1970s (see Figure 2.2).



Figure 2.2 Landscape in the Markham Valley.

Source: T. Schwoerer.

Most of the grassland lies idle, as the Wampar only use smaller portions for cocoa and coconut orchards, and gardens where they plant their staples of banana, as well as various fruits and vegetables both for subsistence and for the market in Lae. There are a handful of tractors that are used for mechanised farming, mostly for planting peanuts and watermelons, but only on small patches of usually 1 hectare or less. Much larger parts of the grassland are still used for cattle farming, but both the large-scale collective ranch as well as smaller family-based ranches established in the 1960s, 1970s and 1980s have been run down and stock numbers have been in decline for a while. The mainstay of the local economy had long been the lucrative betelnut trade, and the Wampar were considered as one of the most renowned producers of this mildly narcotic product. When an unidentified pest destroyed most of the betel palm orchards in 2007, the people suddenly had to switch to other economic activities and livelihood strategies, and quite a few were ready to engage with the plantation developers that arrived just a few years later.



Figure 2.3 PNG Biomass eucalyptus plantations.

Source: T. Schwoerer.

The first to arrive was PNG Biomass, a subsidiary of Oil Search Ltd, the largest oil and gas exploration company incorporated in PNG. PNG Biomass plans to establish several eucalyptus plantations on 16,000 hectares of what their website calls ‘degraded and underutilised’ grassland in the Markham Valley, to supply renewable biomass energy for domestic power consumption. They planned to construct two 15-megawatt wood-fuelled power plants and then start supplying baseload electricity to the Ramu power grid by 2020 (PNG Biomass 2019), but these plans have been delayed, and the company experienced a massive setback in May 2021, when PNG Power cancelled the Power Purchase Agreement with PNG Biomass that it had signed in 2015 (Business Advantage PNG 2021). PNG Biomass has already begun to plant small trial plantations of different eucalyptus and acacia species in 2011, first on 1-hectare patches, later on 2, 5 and 10 hectares, to find out the best-performing species. While I was in the field in 2016 and 2017, they finished their feasibility studies and had started to ramp up the planting of eucalyptus trees. While they had about 350 hectares planted by July 2016, by the end of the year it was already 450 hectares, and by the end of 2017, it was around 2,000 hectares (see Figure 2.3). The trees will be harvested after four to seven years, after which they will re-sprout from the roots for another two to three cycles.

The other company is a relative newcomer to the area: Ramu Agri Industries Limited (RAIL), which in 2008 became a subsidiary of New Britain Palm Oil Limited (NBPOL), a long-standing producer of palm oil in PNG. NBPOL itself had been acquired in 2015 by Sime Darby Plantations, a Malaysian palm oil giant. Officers of RAIL were active during my fieldwork in 2016 and 2017 in contacting and convincing landowners to lease out their customary land to establish oil palm plantations on a total area of at least 5,000 to potentially 10,000 hectares. Ideally, they should be able to acquire at least 5,000 hectares to warrant the construction of a palm oil mill in the area, as trucking the fruit back to the already existing palm oil mill at their Ramu estate would be too expensive.

RAIL offered two different oil palm schemes for landowning groups. The first scheme is mini-estates (of at least 100 hectares or more) that are entirely managed by RAIL, where the landowners will receive a quarterly land rent and a 10 per cent royalty based on the farm-gate price of the harvested fruit, and where some of them could be employed as labourers if they wish. The second is a Village Oil Palm scheme, where landowners participate as out-growers, receive planting materials and fertiliser from the company on credit, and then manage the plantation, provide the labour and sell the oil palm fruit to the company. NBPOL is a signatory to the Roundtable on Sustainable Palm Oil and, according to its website, one of the largest producers of sustainable palm oil worldwide. Being beholden to international standards, NBPOL states that they are committed to gaining free, prior and informed consent from landowners, and that they will use the VCLR system for all new oil palm developments (New Britain Palm Oil Limited 2016; van den Ende and Arihafa 2019).

The two companies both used prominent local leaders as their entry points for their outreach activities to interest others in engaging with their respective plantation projects. This approach meant that the dissemination of information about these projects flowed mostly along already existing lines of kinship and political alliance. PNG Biomass, for example, first established contact through Kelly Jim, a former high school principal who had unsuccessfully run for parliamentary elections in 2007 and 2012. He spread the word about the opportunity to participate in planting trees for money among close kin, affines and political allies, recruiting an initial core group of influential men to commit some of their land to establish trial plantations.

These men first had to convince their brothers and cousins to agree to this venture (or at least to not undertake any measures to block it), as land among the Wampar is collectively held on the level of the extended family or lineage (*mpan* in Wampar). Due to demographic factors and different patterns of inheritance (some apical ancestors divided their land between their sons, others left their landholdings undivided), the size of these lineages varies significantly. Consent could thus be established through anything ranging from an informal discussion between two or three brothers to semi-formal meetings between two dozen or more influential men related in their patriline through a common great-great-grandfather. There are no institutionalised positions of leadership within a lineage. Still, there are usually a few prominent middle-aged men (with adult children) that act as spokespersons of the lineage in dealing with outsiders and other lineages, and a certain degree of respect is usually paid to the first-born son of a first-born son and to the eldest men of each generation.

In a later stage, PNG Biomass also conducted public meetings to attract more landowners, and in the end was able to sign notices of interest with representatives of about 40 different families in Dzifasing and neighbouring Tararan, while others remained sceptical observers. Even some of those who signed the notice of interest were reluctant to be among the first to plant the trees, not knowing what will happen once they do so, nor how much they will actually earn from it. Lack of clear information was often brought up as a major problem in discussions among the people interested in eucalyptus plantations. They wanted clarity regarding the amount of money that they will eventually be paid for the trees, about the potential risks associated with the establishment of these plantations and about the mechanisms through which they will receive money.

One factor for this perceived lack of information was that PNG Biomass had soon organised a core group of 'directors' and 'forum leaders' from among all the lineages that had already agreed to plant eucalyptus. PNG Biomass subsequently focused their dissemination of information through these core leaders. Those leaders then acted as middle-men and controlled the flow of information. Complaints about a lack of clarity were thus not just coming from those who had not yet entered any agreements with the company, but also from those who did and who were not among the key leaders. There was a sense of being left out for many, which they attributed both to the company and their fellow villagers who had become the 'directors' and 'forum leaders'. This situation led to a swirling mass of rumours and expectations, misunderstandings and confusions.

Some villagers thought that the trees were theirs and not owned by the company and that they could do with them as they please. Others received information from the core group of leaders that in addition to the yearly land rent (the amount of which was often not even clear to them when they started planting), they would also eventually be paid per log at harvest time. The prices I heard ranged from a few kina to 50 kina to 500 kina, to even 5,000 kina per log (which would indeed quickly make one a millionaire). With this extreme range of estimates, it was thus no wonder that there were disappointments voiced from those who received their first yearly rental payment of 200–400 kina per hectare, and as it became clear that the harvest was still years away. Prices for the annual rental fee were also lowered over the years, as was the money that was given to the landowners to organise workers in the eucalyptus plantations, such as during the planting of the trees and the cutting of grass. These cuts further fuelled mistrust of the company.

Some of those that remained sceptical or were disappointed by the eucalyptus plantation project were later attracted to the oil palm scheme, which was introduced by the local Member of Parliament (MP), Ross Seymour. Ross is a prominent businessman who grew up in Dzifasing as the son of an Australian father and a Wampar mother. After he won his seat in 2012, he started to look for a company to help landowners turn a profit off their vast land, and at the same time to ‘fill up the landscape’ to reduce the possibility of settlements of migrants that might be attracted once the prospective Wafi-Golpu gold and copper mine nearby gets underway (see Church, this volume). He directed his public relations officer to contact landowners, and most people interested in oil palm were therefore connected to Ross through ties of kinship and political alliance.

Existing political animosities between the two prominent local leaders and their followers were replicated between the group of supporters of the two plantation companies. Similarly, where ownership or boundary disputes over land already existed, it was almost a rule that one side would support the planting of eucalyptus and the other side oil palm, creating a patchwork of different land use scenarios. Often enough, these different scenarios overlapped, as can be seen in Figure 2.4.

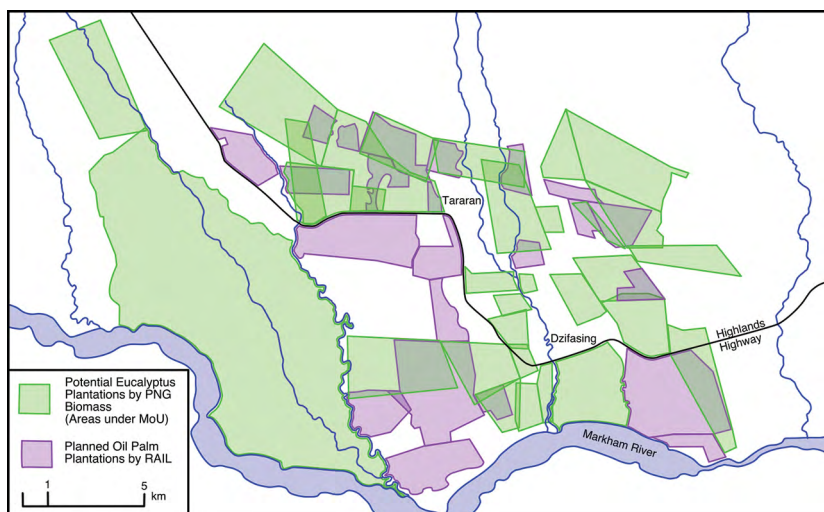


Figure 2.4 Map of prospective plantations.

Source: T. Schwoerer, based on map data in Erias Group (2017) and Ramu Agri Industries Limited (2018).

Both sides emphasised the potential risk of the other project. Planting oil palm was suspected to decrease soil fertility, to create a tangle of roots in which nothing else could be planted and to attract snakes. At the same time, the planting of eucalyptus was deemed a risky venture, because as long as the company did not build a power plant, there was no market for the trees. Most Wampar also worried about the use of herbicides, and the effect this will have on groundwater quality. Under attack from the other side, the group of proponents for a project became even more welded together. The landowner meetings of both groups were veritable echo chambers, in which they regularly confirmed to each other that they were on the right track, attempting to shore up support for their project, discussing positive prospects of their endeavour and the adverse effects of the opposite project.

As both companies needed a large enough area to warrant the establishment of plantations, it became imperative for the core supporters to keep everyone together, and not lose any members to the opposite project. These attempts were most evident in the eucalyptus project, as there had already been expressed dissatisfactions and discords among the growers due to unmet expectations after more than five years. In these instances, prominent leaders often tried to smooth over disagreements to keep their allegiance to the company. Landowners in both projects also regularly maintained a fiction that their ownership and the boundaries

of their land are undisputed, even if there were actual contestations, and they all supported each other's claims in this regard, in order not to alarm the company. This posturing was clearly to present an orderly situation that would also be favourable to the companies. There were also some narratives circulating among the growers that they should be careful in bringing up their disagreements to the company, and not to be too confrontational and demanding, lest the latter abort the whole project, pack up and leave.

With lack of clear information and unable to get verifications through the company officers, most villagers thus evaluated whatever information they could get along the lines of kinship and political alliance, trusting their kin more than others. Decisions were often taken based on very little concrete information, and always involved a high degree of trust. And while the engagement with the companies had an economic motive, people also have a view of their relationship with the company as deeply social, governed by rules of care, trust and reciprocity. At important events, for example, company representatives were given gifts in the form of net bags or other traditional implements (see Figure 2.5). This was done in an attempt to establish deeper reciprocal ties, and company representatives were subsequently asked for contributions to funeral costs if a member of one of the landowning families had died.



Figure 2.5 Presentation of gifts to representatives of PNG Biomass.

Source: T. Schwoerer.

Motives for engaging the plantation companies are partly economical, as people hope to gain what they perceive as a secure income, even to strike it rich. At the same time, they also see this as a pathway to securing their property claims while staying in control. Thus, some landowners mentioned that they wanted to defend their land from those who do not recognise their rightful ownership. They wanted to receive a secure title to the land. Aside from land disputes with other Wampar lineages, the other commonly raised problem is the increasing settlements of migrants from different areas of PNG. In the current context, one of the best ways for the Wampar to secure land claims and prevent settlements is to sign a contract with the companies that would transform their land into plantations, thus precluding other uses. It was, therefore, no surprise that some of the landowners most eager to engage with the plantation developers were those with the more contentious claims to the land in question (most clear in Figure 2.4, where multiple claims overlap).

With the changes in the land law, it would theoretically be possible to form an ILG and register the area under a formal title through the VCLR mechanism without having to be tied to any of the companies. However, not everyone has sufficient financial resources and the right social networks to facilitate access to the necessary information and key offices that could help navigate the system. Under such constraints, people saw the two companies as the best possible solution.

NBPOL, right from the beginning, has offered help in this regard and has pushed local lineages to get together and form ILGs. The company actively assisted the interested lineages in the bureaucratic procedures, paid for the costs of getting birth certificates and ID cards, and started to survey the parcels of land intended for oil palm plantations. PNG Biomass also publicly stated that they would use ILGs, but only became actively involved in the process of registering ILGs much later into their operations. They focused first on the registration of a landowner business group under the *Business Groups Incorporation Act of 1974*, which would take less time and resources to register than an ILG.

A landowners' business group, as it is composed of landowners as shareholders and directors, can operate on customary land without restrictions, in contrast to a company, which would need a secure title to work on customary land. The business group will in the future oversee

the plantation and supply the wood for the power plant operated by PNG Biomass. For the eucalyptus plantations that they had started to establish in 2011, PNG Biomass so far had relied on Clan Land Usage Agreements (CLUA) to gain legal access to customary land.

CLUAs have previously been used by oil palm companies to establish out-grower schemes with traditional landowners, or people who had 'purchased' usage rights to land from the landowners (Koczberski et al. 2013). A CLUA is a contract between the landowners and the company over customary land that is usually not registered or surveyed, without any involvement of the state, and it is, therefore, no real guarantee for the company that the land indeed belongs to the landowners in question, or that the boundaries are accurate. In the case of PNG Biomass, this has then, in turn, led to several disputes over the ownership of the pieces of land on which trees had already been planted, and complaints by members of other lineages that the company had overstepped the boundaries and planted trees on the wrong piece of land.

On several occasions in 2016, the people already growing trees for PNG Biomass called out the company officials for not helping them with registering Incorporated Land Groups and acquiring a formal land title, as NBPOL was doing. By mid-2017, the company had changed its strategy and had started to help lineages interested in eucalyptus plantations to draw up membership lists and fill out the application forms. However, by this time, the VCLR endeavour of PNG Biomass lagged considerably behind the competing effort of NBPOL.

The VCLR System and Property Relations

Implementing the VCLR system among the Wampar was not that straightforward, however. The RAIL officials soon hit a first stumbling block in insisting that ILGs would need to be incorporated on the level of the clan. For many Wampar lineages, this constitutes a problem, as the landholding unit among the Wampar, as mentioned earlier, is not the clan-like formation referred to locally as the *sagaseg*, but the extended family or lineage, or *mpan*. This prominence of the *mpan* goes against the national 'ideology of landownership' in PNG (Filer 2006, 2014: 82), a belief system widely held among state officials and the national elite that

ownership of customary land rests exclusively in overarching unilineal descent groups, so either matrilineal or patrilineal clans belonging to one particular village.

The *Land Groups Incorporation (Amendment) Act of 2009* is actually worded to take account of the possibility that different units and not just the clan could be the customary landholding unit. The act defines 'customary landowners' as 'a clan, lineage, family, extended family or other group of persons who hold, or are recognized under custom as holding, rights and interests in customary land, and includes a land group incorporated under the Land Groups Incorporation Act'. But in the rest of the legal text, and an accompanying training manual (GPNG 2012), this use and meaning are inconsistent: in some parts, it is again clearly stated that a customary group can be anything, like a family, extended family, clan or tribe, at other times all these different units are glossed under the name clan. The template forms to be filled out to register an ILG are the most unambiguous indication of this 'landownership' mentality, as they all had the lines '_____ clan of _____ village' as the default option. Company representatives, as well as district and provincial land officers I spoke to, appeared to be unaware of the more open definition of what could constitute a customary landowner in the opinion of the law, as all of them automatically assumed and insisted that ILGs need to be registered on the level of the clan.

Registering as a clan is a significant problem for some *sagaseg* in Dzifasing, as there are deep lines of conflict running through them along lineage lines. Many land conflicts occur between different lineages within the same *sagaseg*. Under the old *Land Group Incorporation Act of 1974*, several *mpan* in Dzifasing had incorporated themselves on the level of the lineage, and not on the level of the *sagaseg*. When the RAIL officials were confronted with this situation, they asked each lineage to draw up a list of its members and a family tree and elect their own executives. They said that they then would collate all the files within one *sagaseg* and arrange a meeting of all executives from all the different lineages of the same *sagaseg* to select the executives for the ILG on the 'clan level'. The majority of lineages not involved in oil palm refused to do so, however, as they did not trust the company or their fellow *sagaseg* members. This refusal then led to the situation that lineages not involved in the oil palm scheme were not automatically included in the ILG to be drawn up in the name of the whole *sagaseg*.

In the end, even the modest endeavour to bring all lineages interested in oil palm under the roof of an ILG foundered in the case of the largest *sagaseg*. Lineage leaders within this *sagaseg* insisted that they wanted to create two ILGs along the lines of the two founding ancestors. The RAIL officials, in the end, accommodated this preference. They began processing an application for two ILGs by amending the registration form, changing ‘clan’ to ‘sub-clan’, and named the two ILGs after the *sagaseg* name, followed by the respective eponymous ancestor.

Another difficulty arose due to RAIL and PNG Biomass officials insisting that any person can only be a member of one ILG. Again, the actual law is not conclusive in this regard, as an unamended (and therefore still valid) portion of the *Land Groups Incorporation Act of 1974* includes a provision that ‘recognition shall not be refused to a group simply because (a) the members are part only of a customary group or are members of another incorporated land group,’ a provision that at least indicates the possibility of a person being a member in several ILGs. This clashes with Schedule 1 of the amended *Land Groups Incorporation (Amendment) Act 2009*, which prescribes that the material to be submitted for an application includes a ‘qualification of the group seeking recognition as an incorporated land group stating they are not members of another incorporated land group’. The training manual prepared by the Constitutional and Law Reform Commission is more decisive in this regard and categorically states: ‘Multiple membership to ILGs is prohibited, just as a Papua New Guinean belongs to only one clan, tribe or such other land owning social unit’ (GPNG 2012: 22). The second part of the statement is of course completely at odds with the actual customary norms of land tenure in many PNG societies, especially in areas with cognatic kinship structures.

Even among the nominally patrilinear Wampar, this provision was challenging to implement, as women are variously seen as enjoying rights both in their natal *sagaseg* and the *sagaseg* of their husband. Women generally retain usage rights to the land of their natal *mpan* even after marriage, and many feared they would now miss out in the distribution of benefits if they are forced to be limited to one group. One lineage leader told me that he had a big argument with his sisters when he had to explain to them that he could not put them on the membership list of his ILG, as they should be listed under the ILG of their respective husbands. Another lineage leader went the opposite direction and respected the wish of his wife and two first-born sons to be registered as members of her brother’s ILG, who was from a small *mpan* with large landholdings. At the

same time, he listed himself and his third-born son under the ILG of his own rather sizeable *mpan* with only small areas of land. He commented, somewhat bemused, that he now had to break up his family over this whole business.

When PNG Biomass started to assist their group of landowners towards ILG formation, they then duplicated the whole process, as they also registered only those *mpan* interested in planting eucalyptus trees under each *sagaseg* name. This procedure resulted in a duplication of ILGs per *sagaseg* name due to both companies simultaneously registering their respective groups of landowners. RAIL officers told me that they had attempted to reach out to the managers of PNG Biomass, in order to combine their attempts to register the ‘clans’ into one ILG but that they did not receive any response. Officials in the district administration were also aware of this duplication of applications, and they told me that they wouldn’t be able to accept a registration of several ILGs for the same clan and would insist that people sit together and iron out their differences.

Both companies went ahead with sending in their application forms, however. When I left the field in early 2018, there were complaints that both sides attempted to block the other’s attempts at registering. As RAIL had the support of the MP with the district administration within his domain, the assumption is that RAIL-facilitated applications will likely pass this stage. At the same time, this hurdle might be difficult for the ILG applications associated with PNG Biomass. Even if the PNG Biomass landowners’ ILG applications are sent directly to the national Department of Lands and Physical Planning, they will ultimately also need the approval from the District Administrator. On the other side, some of the prominent individuals engaged in eucalyptus plantations banked on their excellent connections within the Lands Department and predicted that the oil palm-related ILGs would be blocked there.

The process has apparently turned into a race of who can get their ILG approved first. If only one ILG is granted per *sagaseg* name *qua* clan, this might have serious consequences for those *mpan* not included in the successful ILG application. It remains unclear how the disfavoured *mpan* could have an ILG of their own, except maybe by giving themselves another name. Even if there is a possibility for those *mpan* to join the approved ILG later, which means individual members and the corresponding pieces of land would have to be added in the list, they might not be able to pursue their original development plans.

They also would not necessarily have the same (or in fact any) leadership positions within the ILG as they would have if they acquired their own ILG. Joining an already existing ILG is thus not a very attractive proposition for the joining *mpan*, as it could lead to a potential loss of their prior autonomy and power. Once an ILG is registered, the leadership positions on the management committee of the ILG are already filled with members of the *mpan* that initially applied for the ILG. As executives can only be removed by a 70 per cent vote of all ILG members, this means that influential people from the newly entering *mpan* might find it hard to gain similar status. The only way to access these leadership positions is for them to rally enough support to be elected when the seats expire after two years. This outlook of distributing power positions, however, is not particularly rosy, especially if considering the example of another local business. Dzifasing has a large cooperative cattle ranch with a SABL that might still be valid, which was established in the late 1970s after several *mpan* made their land available to develop the ranch and to become shareholders and directors. The current board of directors has now been in power for almost 10 years, as they have postponed continuously the holding of an annual general meeting of all the shareholders where they could be voted out of office.

In terms of property listing for an ILG, I noticed two strategies that people so far used in drawing them up: the first is to only include the unequivocally undisputed land as the property of the *mpan* that will be included in the ILG to minimise the danger that the registration will be objected to. The second strategy is to list all the land properties associated with the same *sagaseg*, including those belonging to the *mpan* that are not involved in forming this particular ILG. The second strategy is to secure the land of the whole *sagaseg* against claims by *mpan* from a different *sagaseg*.

Both cases would make it harder for people that are not included in an ILG to defend their claims in land disputes against other *mpan* that are included in an ILG, as their land is either not included in an ILG, or then covered by an existing ILG of which they are not members. Furthermore, listing property names can itself be a contentious issue, as there is sometimes a dispute whether a name refers to the actual land, a forest, a creek or an old garden and settlement site. This corresponds with different types of resource rights—for example, ownership right over trees, fishing rights in the case of creeks or the usufruct rights to old garden

sites. The ‘ownership’ of these place names is not necessarily disputed, but instead the dispute centres around the question to which category of resource these names belong. The listing of names of properties on a legal form thus cannot be reduced to static types of property that are removed from social life.

As ongoing negotiations continue between the people involved in either the RAIL or PNG Biomass projects, there are some *mpan* who are so far not engaged in either of these projects. Some are reluctant to join an agreement with any company, some want to continue to use their land for cattle, and some have land that was either not identified as a preferred site by the companies (as it is located on the other side of the Markham River, for example) or had been alienated during the colonial period. While these groups are left out of the company projects, it is also more than likely that they will be left behind in the current race for ILG registration and land titling, considering the costs it entails. The fees for applying for birth certificates for all members and publishing notices in the *National Gazette* and a newspaper, and especially the charges to engage a surveyor, are far beyond their means. Without any help and income from the plantation projects, they might thus not be able to secure their land through a formal title.

Surging Tensions and Divisions

With the entry of these large-scale projects, property disputes have surfaced in numbers and varieties of forms beyond the scale of what was known before. The Wampar had always been among the most litigious people in all of Morobe Province when it comes to land disputes, according to some government officials. Some of these land disputes go back generations and had already been brought to the attention of colonial patrol officers. Still, the level of conflicts in 2016 and 2017 was astonishing even for the people themselves. When RAIL officials started a survey of the boundaries with GPS, additional conflicts erupted on the fly, as it was sometimes only during these surveys that neighbouring landowners realised that they did not agree on the exact location of the physical boundaries between their respective parcels of land (see Figure 2.6).



Figure 2.6 Boundary survey for oil palm plantations using GPS equipment.

Source: T. Schwoerer.

These disagreements are not that surprising, as boundaries are not obviously evident on the ground and there are not a lot of occasions where discrepancies in the location of the boundaries become public. In 2017, village leaders thus initiated weekly village meetings in which to discuss these land conflicts in an attempt to mediate. Only a handful of disputes over boundaries or ownership could be solved in these meetings, however. The majority had to be forwarded to mediation by District Land Mediators or then sent directly to the Local (District) Land Court for arbitration. The Local Land Court, however, was already sitting on a massive backlog of existing land disputes and was utterly underfunded. The level of conflict thus has the potential to entrench already existing inequalities, as knowledge about the court system varies widely between the groups, and it disadvantages groups with no connections and less money for legal fees. As Stead (2017b: 375) noted: ‘power often goes to those able to translate across ontological difference ... those who are best able to position themselves within, and across, both modernist and customary systems of land use and governance’.

These problems with the VCLR process and the tendencies towards entrenching inequalities can also be illustrated in the case of the *sagaseg* that already has a head start and has acquired both an ILG and a title to

one piece of customary land in 2016 without the direct help of either of the companies. Several leaders of this group are highly educated, and some even held government positions, and thus had an advantage in terms of information, social networks and resources. They had been present when the then deputy secretary of the Constitutional and Law Reform Commission had visited the local-level government offices and explained the changes in the Land Groups Incorporation Act and the Land Registration Act in 2012. They had befriended him, and a few leaders then made several trips to Port Moresby to have their application submitted in person and to establish good relations with key people in the Department of Lands and Physical Planning. Due to these efforts, other people in Dzifasing constantly referred to the granting of the certificate of incorporation and the customary land title for this *sagaseg* as a 'backdoor deal', fabricated in the corridors of the Lands Department in Port Moresby, and allegedly rushed along with hefty bribes, and they refused to believe in its legality. Nevertheless, it soon became apparent that it was an advantage to have a formal title to land when PNG Biomass started negotiations to use part of this land as the location for their power plant.

There are already tensions growing within this ILG, however, and also with members of other *mpan* within the same *sagaseg* who were not included in the ILG. Within their closest kin network, there were several complaints about the distribution of income from land rent from the eucalyptus project, and about access to cash income from wages from the company. The younger generation especially was at times quite critical of their elders and in one instance, a young man chopped down some eucalyptus trees to show his displeasure at being left out.

In these negotiations, the more vocal and assertive family members have a better chance of being considered, while those who stay in the background tend to be ignored. The lone elder from the first-born branch of this *mpan* is known to be a quiet type and prefers to avoid confrontations with his cousins from subsequent branches who are more competitive and outspoken. There had been some disagreements between him and his cousins before. Still, when the cousins unilaterally decided to transform a particular piece of lineage land into a eucalyptus plantation, his eldest son found a way to get noticed. As he did not dare to appear disrespectful to his classificatory fathers by directly confronting them, he instead went to the village police station to lodge a complaint that his father's family was not consulted in these decisions and did not receive their share of the land rent that was promised them. The police summoned some of the ILG

leaders, and the complainants eventually received a share of the land rent, with the caveat that they should not go to the police again and no longer interfere in land matters. The sons thus remained sceptical about whether they will continue to receive their share. This case clearly shows that men (and women) who are not forceful in pressing their claims might easily be overlooked, relegated to the second row, and might lose out in the distribution of the material benefits from these plantation developments.

Another issue concerning this already existing ILG were disputes surrounding its membership. While this ILG encompasses several *mpan* of the same *sagaseg* from three villages, there were still some *mpan* that were left out, or only a few token members were listed. One of the ILG executives explained this with the fact that it costs money to have people registered, as they all needed to get a birth certificate, and that he wanted to get the application submitted as quickly as possible. He assured the other members of the *sagaseg* that they would still be added later once they get their birth certificates. Adding new members is always possible at each annual general meeting, as is, according to their interpretation of the law, the updating of the property list.

The ILG executive remained adamant that he would not include members from a specific *mpan*, however, that he considered to be not really from the same *sagaseg*, as they allegedly are the descendants of a man from a different *sagaseg* that his ancestors had taken under their wing. A leader of this specific *mpan* explained that he would not even think of joining the existing ILG, as he mistrusts the current ILG executives and suspects that they would just embezzle the money paid to the ILG for land leases. He had decided to form his own ILG with the help of RAIL as he had chosen to plant oil palm. He was joined in this endeavour by another *mpan* of the same *sagaseg* consisting only of one older man and his sons. That older man had been listed on the existing ILG together with his properties, while the sons were left out. The sons now feared that with the new laws they would lose the ownership over their lineage land to the ILG executives, as they are not part of that ILG, and they thus decided to form their own ILG and plant oil palm on their land.

The plan of these two *mpan* to establish their common ILG is already facing legal and bureaucratic hurdles, however. When a first application was rejected because they were told that it is not possible to register two ILGs under the same *sagaseg* name, they decided to attempt instead to register under a name that is different from their *sagaseg*. In the case of the second *mpan*, the land that the sons wanted to use for planting oil palm

is already listed in the existing ILG. Thus, it is not clear whether their application will be successful, or whether they would first have to ask the executives of the existing ILG to release this property.

In the case of this existing ILG, not only its membership and the distribution of benefits within it has created inequalities, but also the granting of the title over a particular piece of customary land. The boundaries of this specific piece of land are disputed by members of a *mpan* of a different *sagaseg* that own the neighbouring property. One of the leaders of the disputing *mpan* complained that no survey or delineation of the boundary between the two adjoining pieces of land had ever taken place and that the customary land title granted to the ILG also covered parts of his property. He had sent an objection letter both to the granting of the ILG and the granting of the land title during the mandatory objection period, but the Lands Department apparently did not consider his objection.

It appears that the legal requirement that the sketch map accompanying the ILG registration should show any disputed boundaries had not been adhered to, nor the statutory obligation that the Director of Customary Land Registration should verify the survey of land for VCLR in the field. A District Lands Officer confirmed that according to the law the District Administrator would indeed need to approve the property list of each ILG. How this procedure was skipped was a topic filled with conjectures pointing to the politics of the PNG bureaucracy and of winning political offices by presenting oneself as a champion of customary landowners by delivering the first VCLR land titles in Morobe Province before the election.

Such irregularities and skipping of steps in the legal requirements to register customary land are apparently commonplace. Filer (2019: 15–22) has documented, for example, that between 2013 and 2018, 69 of the 87 official notices stating that the Director of Customary Land Registration has received a land investigation report and invites objections within a 30-day period, were published in the *National Gazette* on the same date as the official notices that the director had accepted the survey and will issue a land title over the same portion of land, thus making a mockery of the 30-day objection period.

When members of the disputing *mpan* attempted to delineate the boundaries during a survey of their land intended for an oil palm plantation in 2017, tensions erupted with members of the existing ILG.

The ILG executives insisted that as they already have a legal title to the land showing exactly where the boundaries are between their adjacent land pieces, the claims of the disputing *mpan* must be false. The company thus could lease only the undisputed portion. This conflict left the disputing party with a smaller area of land to lease, plus it would be an uphill battle for them to reclaim what is already titled by the ILG.

If there had been no title, chances for a possibly more even dispute in front of the land mediator or the land courts could exist, as the disputing *mpan* also could rally support through their social networks, including their ties with the MP. As the disputing *mpan* is already involved in two other court battles at the Local Land Court—one in which they claim ownership over a piece of land on which another *mpan* had already planted eucalyptus trees, and another in which their possession of a piece of land where they wanted to plant oil palm had been challenged by two other *mpan* at the same time—they could not afford the costs for another court case. While the outcome of land court matters in PNG is difficult to predict, it becomes clear that the VCLR process in this process has already led to inequalities. The first ILG to successfully gain a title over a piece of land enjoys an advantage, as their opponents first need to raise enough money for legal fees to challenge these titles.

Conclusion

In PNG, property relations are increasingly defined by a land tenure system that tends to simplify a complex set of social relationships expressed in land and resource use rights under the guise of a policy to protect the interests of local populations, culturally broadly referred to as ‘customary landowners’ and closely linked to the notion of a unilineal ‘clan’. This process, however, creates unintended and unimagined repercussions in the lives of the very same social groups the law is meant to serve. Foremost among these effects are the surging of conflicts and the accentuating of both old and new forms of social, economic and political inequalities. The framers of the new land acts operated under the assumption that once land groups are registered, and customary land is titled, there will be cohesive agreements on how the land will be used or leased, and that this will prevent any further disputes over boundaries and ownership of pieces of land. But as I have shown, the implementation of this law, and especially the insistence that ILGs must be incorporated on the level of

the 'clan', has stirred up conflicts and competitions that tend to divide more than unify. Even within the already existing ILG, conflicts are ripe about the distribution of the benefits, and people jockey for positions of power and influence.

Among the Wampar in the Markham Valley, the arrival of large-scale plantation projects has created new opportunities to gain wealth. In negotiating this new social terrain of engaging with the companies and the state law, members of Wampar landowning groups draw upon their respective bonds of kinship and political alliance. The unequal access to information and the question of its accuracy and reliability has direct consequences on how people consider options and reach decisions at critical nodes of interaction with the companies, however. And with two plantation companies vying for customary land, and existing lines of conflict over land and politics, this created competing groups that functioned as echo chambers, confirming and strengthening each other in the resolve to continue their engagement with the respective companies.

In a sense, then, the VCLR mechanism is also a way for international capital to access customary land in PNG. With a prevalence of land disputes as among the Wampar, the ability to register an ILG and gain a secure title to land creates a competition between representatives of local landowning groups to outpace each other in a race to be the first to register their ILG and title their land. As the knowledge and costs for doing so exceed the ability and means of most groups, cooperation and collaboration with the plantation companies become necessary. The companies took on parts of the responsibility as it serves their interest, and ILG registration became another platform in their competition to win over as many landowning groups to commit their land to their respective projects. As the companies competed with each other, this led to the duplication of ILGs within a clan, which was contrary to the widely circulating notion among government officials that only one ILG could be approved per clan. This form of land registration, in which only parts of a clan are represented in an ILG, threatens to exclude social groups with competing claims. This will invariably create novel inequalities, as the first ILG to successfully incorporate and achieve a title to land tends to set precedents and could dispossess others from land and political power. The VCLR mechanism and the large-scale plantation projects of the companies are thus connected in a process that creates not only a further social differentiation of local groups but also, more critically, clear winners and losers.

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