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Factional Competition, Legal Conflict and Emerging Organisational Stratification Around a Prospective Mine in Papua New Guinea[1]

Willem Church

Introduction

Anthropological research on large-scale extractive projects in Papua New Guinea (PNG) has long noted that the benefits and burdens of such projects are unequally distributed among local communities (for example, Filer 1990, 1997; Macintyre 2003; Bainton and Macintyre 2013; Jacka 2015; Banks 2019). In settings as culturally and ecologically diverse as Lihir Island (Bainton and Macintyre 2013) and Porgera Valley in the Highlands of New Guinea (Golub 2014; Jacka 2015), small sections of the local elites disproportionately benefit from contracts, employment and royalties associated with local extractive projects.

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These outcomes are familiar for extractive economies suffering from the so-called 'resource curse'.[2] Internationally, it is uncontroversial that high levels of dependency on the extraction of 'point' resources—spatially concentrated resources such as oil wells and mineral deposits—is robustly associated with a range of negative political, economic and social outcomes, including but not limited to relatively low rates of economic growth, fragile political institutions, civil conflict and socio-economic inequality (Gilberthorpe and Papyrakis 2015; Badeeb et al. 2017). Despite this empirical consensus, the precise mechanisms that drive both consistency and variance in these results continue to stimulate debate among academics and policy makers.

In PNG, the entanglement of landowner politics with extractive industries plays a significant part in driving these results. Although the state owns subsoil resources, some 97 per cent[3] of the land in PNG is customarily owned, and landowners gain royalties, preferential employment and contracts from mines (henceforth 'mining-related benefits' (MRBs)). Thus, anthropologists working on resource extraction have stressed for some time that finding 'landowners' and 'impacted communities' of prospective areas is inherently an exclusionary process (Filer 1990, 1997). By demarcating those who are, or are not, landowners and who will, and will not, be impacted, extraction companies and governments selectively dole out the benefits and burdens of resource extraction.

At the same time, even within such demarcated groups, specific individuals profit from extractive projects, while others gain little. It is not necessarily so-called landowners who profit, but those who succeed at being recognised as landowner representatives. Around the Porgera gold mine, Alex Golub explains that:

2 The notion of a 'resource curse' grew to prominence following Auty (1993) and Sachs and Warner's (1995) empirical research on the relationship between resource dependency and economic growth. Since these early studies, the scope and disciplines involved in research on the resource curse has expanded considerably (see Badeeb et al. 2017; and Gilberthorpe and Papyrakis 2015 for two recent reviews).

3 At the time of Independence in 1975, 97 per cent of land in PNG was customarily owned. However, there is some reason to question the continuity of this ownership as, by 2011, some 11 per cent of PNG's total land area, all customary land, was under lease–lease-back schemes to government or corporate groups through Special Agricultural Business Leases (SABLs) (see Filer 2011). In theory, in 2016, the O'Neill government 'cancelled' SABLs. However, it is unclear what actual steps the government has taken, as reports of illegal logging continue.

> The benefits of mining have not been distributed equally, and an elite of 'big men' has emerged in Porgera. It is composed of the people appointed to positions of power on the various boards of directors and those who receive lucrative contracts from the mine to provide security, janitorial, and other services. When people speak of 'landowners' it is really these people who they have in mind—large, well-fed men with reputations for prodigality who drive Toyota Land Cruisers with windows tinted to make them opaque. (Golub 2014: 11–12)

The anthropological work to date on social inequality near resource extraction in PNG can be usefully split between accounts of legal and social reconfigurations prior to and in anticipation of the arrival of extractive industries, on the one hand, and studies of the social consequences of novel inequalities once extraction begins, on the other. In the first instance, anthropologists have examined how preparation for extractive industries reconfigured identities and modes of collective action (Jorgensen 1997; Goldman 2007; Jorgensen 2007; Weiner and Glaskin 2007; Weiner 2013; Golub 2014), as well as the speculative, anticipatory character of pending extractive projects (Strathern 1991; Stürzenhofecker 1994; Filer 1997; Dwyer and Minnegal 1998; Minnegal and Dwyer 2017; Skrzypek 2020). These studies connect to a wider literature of millenarian social movements (Worsley 1957; Lawrence 1964; Lindstrom 1993; Jebens 2004; Bainton 2010: 109, 175) and, more recently, 'fast money' schemes (Cox 2018). In contrast, after extraction begins and money begins to flow, anthropologists have examined consequences of novel social inequality, whether changing economies of prestige (Bainton 2010), violent conflict (Filer 1990; Haley and May 2007; Jacka 2015), increasingly exclusionary social relations (Gilberthorpe 2007; Bainton 2009) or the lack of transparency in benefit distribution for both mining and oil extraction (Sagir 2001; Koyama 2004; 2005; Haley and May 2007; Filer 2012).

With the Wafi-Golpu project yet to begin, this chapter fits within the earlier literature and seeks to make one specific contribution. By and large, the flow between the former set of processes (social reconfiguration, anticipation) and the latter (novel social inequalities, violence and so on) tends to be depicted as having an obvious and straightforward source: the state and mine developer desire simple representation on the part of landowners, and therefore those representatives are able to gain a disproportionate share of MRBs. While entirely correct, this fact brackets the question of how, precisely, individuals *become* said representatives, and how this process, in itself, might shape the course of the inequalities

to come. Accordingly, this chapter attempts to situate one well-studied dimension of mining in PNG, anticipatory organising and legal registration, squarely within an account of one which has garnered less attention, the competitive relations between different social collectives attempting to gain preferential access to MRBs. In doing so, I hope to illustrate how these legal innovations and competitive engagements drive the creation of social collectives characterised by organisational stratification and bound by promises of clientelistic distributions of benefits.

I attempt to explicitly address this phenomenon by proposing one plausible process, 'stratifying factional competition', that prefigures socio-political relationships for future economic inequality long before extraction commences. Stratifying factional competition, in the case considered in this chapter, involves ongoing legal conflict over MRBs, whereby the increasing financial and social demands for legal disputes require broad, clientelistic coalition building,[4] well-placed contacts and the ability to navigate government bureaucracies. I argue that the skills required for these tasks are unequally distributed across the impacted population, resulting in a narrow elite capable of assembling the necessary coalition, driving the assembly of organisationally stratified, elite-centred factions.

These features first emerge and then are amplified as cases move up the courts, companies build relationships with leaders, the state mandates specific organisational forms for negotiation and communities become settled in the vicinity of the mine. As a consequence, unseating legal incumbents becomes more socially, economically and legally cumbersome. Organising leads to organisations, in which particularly well-educated, well-connected and politically savvy individuals form factions to undertake such competition. *Which* of these factions will ultimately be the beneficiaries of a mine is often the result of highly contingent historical events. My central argument is that the broader organisational demands of factional competition over MRBs robustly drive the emergence of certain *forms* of factions.

I start by briefly introducing the Wafi-Golpu prospect (see Figure 2.1, Chapter 2) and some of the key claimant populations, before summarising the process of MRB distribution in PNG. I then introduce the concept of stratifying factional competition, situating it within the broader literature

4 In this chapter, I use 'coalition' in a broad sense of individuals working together towards a given task. When I specifically refer to distinct social entities, such as landowner associations, working together, I use the term 'alliance'.

of factional competition and socio-political stratification. Having introduced the chapter's core model, the second half recounts the three key periods in the history of the Wafi-Golpu project. In the first section, I recount how the social and legal landscape of Wafi-Golpu was cut up in a series of formative court cases in the 1980s. These cases set the boundaries of both land and people while setting the stage with legal incumbents. In the second section, I narrate attempts in the late 1990s and 2000s to shake up this status quo through a dubiously acquired Special Agricultural Business Lease (SABL). Mounting or fending off this legal challenge drove the formation of multiple, competing factions headed by a local, male elite with the education, prestige and coalition-building ability to form such organisations. These challenges cumulated with the introduction of a Special Land Titles Commission (SLTC), designed to resolve land issues of Wafi-Golpu, as discussed in the third and final section. Collectively, I argue that each of these three periods constitute critical junctures in the history of the mine, with critical junctures understood in the conventional sense of 'relatively short periods of time during which there is a substantially heightened probability that agents' choices will affect the outcome of interest' (Capoccia and Kelemen 2007: 348; Pierson 2000; see Schorch and Pascht 2017 for a previous anthropological application of critical junctures to Oceania). These critical junctures, coupled with small initial differences between claimants, has contributed to faction formation, and has resulted in socio-political relations primed for clientelistic, mining-dependent, economic inequality.

This chapter has several limitations: First, the extent that stratifying factional competition, as outlined here, works in a similar fashion in other extractive sites in PNG remains to be established. Wafi-Golpu has a particularly long and tangled legal history, hence my emphasis on courts and legal conflict. However, my sense is that similar processes, even if not as litigious, are present elsewhere.

Second, while based on ethnographic research conducted between 2015 and 2016, the empirical section of the chapter is primarily historical and is based on archival research, legal documents and oral histories of the Wafi-Golpu area. Due to limitations of space and scope, my account is ethnographically light, recounting little of the 'inner workings' of factions, how factions sit within the everyday life they operate in and how factional competition relates to the hopes and dreams of those engaged in such struggles. Instead, this chapter confines itself to critical legal events, and their impact on faction formation and organisational stratification in the Wafi-Golpu area.

Finally, this chapter predominately focuses on the emerging factions among Wampar and Watut-speakers near the Wafi-Golpu project, as this was the central axis of cooperation-*cum*-antagonism that I was able to gather detailed oral and archival histories during my fieldwork in the region over 2016/17. Based on my more limited knowledge of the history of other claimants and interviews with their faction heads, I suspect that stratifying factional competition is just as present within other Wafi-Golpu populations. A more fine-grained history of other claimants may prove this suspicion false.

The Wafi-Golpu Prospect and Claimants

Like most mining projects, the Wafi-Golpu prospect has a history of sale and resale between multiple companies. Conzinc Rio Tinto of Australia Exploration Limited (CRA) discovered and delineated the Wafi gold mineralisation area during the late 1970s and early 1980s. Since this early period, the prospect passed between corporate hands before, from 2008, becoming a joint venture between Newcrest Mining, of Australia and Harmony Gold, of South Africa. At time of writing, the commercial project operates as Wafi-Golpu Joint Ventures (WGJV). The prospect is still technically under exploration, and WGJV submitted its application for a Special Mining Lease in late 2016. If production eventually begins, Wafi-Golpu will be a capital-intensive, relatively labour-sparse operation.[5] There will be no pit, as Wafi-Golpu will be an underground mine requiring kilometres of conveyor belt to transport ore out of the mountain. Exploration drilling is ongoing, but as of April 2018, WGJV estimates the Wafi-Golpu deposit has mineral reserves[6] of 5.5 million ounces of gold and 2.5 million tonnes of copper. The temporal and financial scale of operations will be immense—Wafi-Golpu will have a lifespan of over 25 years and have capital expenditure of some USD5.4 billion. Once built, Wafi-Golpu will be a long-lived, low-production mine—producing

5 According to current estimates, the area above the mine itself will sink into the earth, forming a lake on the mountain. Tailings—a mix of the various chemicals necessary to separate, for example, gold from ore—will be disposed into the Huon Gulf via a pipeline connecting the mine to the coast, in a method known as deep-sea tailings dispersal.

6 Mineral reserves are valuable and legally, economically and technically feasible to extract. Thus, mineral reserves are smaller than mineral resources. WGJV estimates that the Wafi-Golpu deposit has resources of 13 million ounces of gold and 4.4 million tonnes of copper.

an estimated 161,000 tonnes of copper and 266,000 ounces of gold per year—making it what I am told some South African miners call 'a dripping roast'.

Numerous groups claim partial or exclusive customary ownership of the land that will host the project. Understanding the historical formations of factions around Wafi is a task best left for a corkboard covered in names, dates, acronyms and a liberal application of red string linking them together. This complexity is partially a result of the fact that the Wafi-Golpu area sits on a mountain range near two rivers, and at a confluence of linguistic and administrative boundaries.

For purposes of this chapter, it will have to suffice to break the melee into four broad claimant populations:[7] (1) Central Watut–speakers to the west of the prospect, which notably includes the village of Babuaf, (2) Mumeng-speakers of the Bano dialect, including Hengambu, Yanta and Hahiv communities broadly to the south and east, (3) Wampar-speakers, to the more distant northeast, including the Sâb villages of Mare and Wamped,[8] and (4) Piu-speakers, to the immediate south of the Wafe River (see Figure 3.1 for general linguistic boundaries). These names refer to *populations* implicated by Wafi-Golpu, and are by no means political units. Rather, the factions that emerge over the course of this history are drawn from, but are not constituted by, these populations.

Each of the populations mentioned above has some plausible claim to the region where the mine will operate—either through historical occupation, contemporary usage or both. It will suffice to merely note that, like many large-scale projects in PNG, settlement in the region is largely a result of relatively recent migrations, resettlement by Christian missionaries, pacification and the presence of the Wafi-Golpu prospect itself (see Fischer 1963 for Watut history; Ballard 1993a for Yanta and Hengambu history; and Church 2019 for a brief history of pre-mining Wampar involvement in the area). The relatively recent provenance of all contemporary villages and the fact that Wafi-Golpu sits at the confluence of linguistic boundaries makes claims between the different parties particularly intractable. The proximate stake of these claims is recognition as customary landowners of the prospect, and with that recognition, invitation to the Development Forum.

7 Each of these names conceals numerous groupings within them, which I will bracket here for purposes of simplicity.

8 Individual names and place names follow Hans Fischer and Bettina Beer's *Wampar–English Dictionary* (2021) to ensure continuity with prior publications.

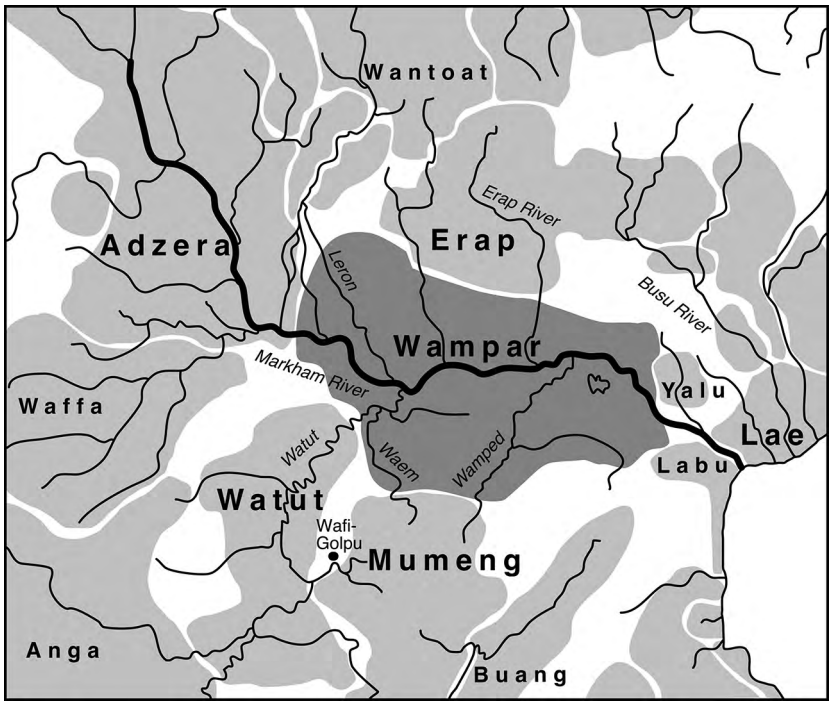

Figure 3.1 Approximate areas of the Wampar and adjacent language groups.
Source: Beer (2006: 108).

The Development Forum

In PNG, companies must acquire a Special Mining Lease (SML) in order to acquire legal permission to develop a large-scale mine. There are multiple stages to apply for an SML, which include submitting an environmental assessment report to the Conservation and Environmental Protection Agency, financial reporting to Treasury, as well as providing the state with the opportunity to buy 30 per cent equity in the project. Perhaps *the* most important stage for impacted communities is the so-called Development Forum.

The Development Forum is a formalised legal mechanism for determining a benefit-sharing agreement of a mine that emerged from the 1988/89 negotiations for the Porgera gold mine (Filer 2012; Golub 2014: 10–11). During this period, the PNG state was engaged in armed civil

conflict in Bougainville, sparked by grievances over benefit distribution and environmental damage prompted by the Panguna copper mine, arguably coupled with deeper micronationalist sentiment (see Filer 1990, 1992; Griffin 1990 for a flavour of the debates over the origins of the Bougainville Crisis, also Banks 2005). With these tensions hanging over meetings, the national government created the forum concept to secure support for the Porgera mine. The resulting agreement guaranteed landowners 20 per cent royalties and 5 per cent equity in the project, as well as an obligation for the mine developer to preferentially employ, train and provide business opportunities to local landowners, the affected area and the province, in that order of priority. The Porgera agreements crystalised the Development Forum as the key mechanism for benefit sharing, eventually being legislated into the *Mining Act 1992* (see Filer 2012: 149–51 for an account of the history of the Development Forum in PNG).

More broadly, the Development Forum is part of a tug of war between the national budget in Port Moresby and local interest groups (Filer 1997).[9] For example, in Lihir Gold mines, Lihirians not only gained a 15 per cent equity stake in Lihir Joint Venture, but also secured a 30 per cent transfer of royalties of the mine to local authorities for 'community projects' through the negotiation of the 'integrated benefits package' (Filer 2012: 151). To this end, the evolution of the Development Forum is part of a general pattern of financial resources and responsibility moving away from the national government and towards mining developers, provincial governments, local governments and landowner representatives. Internationally, the Development Forum has been lauded for fostering community participation in the mining sector (MMSD 2002: 211 quoted in Filer 2012: 147). Nevertheless, as the distributional results of other PNG mines illustrate, the extent that such 'participation' is evenly distributed among the local population is questionable.

Legally, the Development Forum includes 'the landholders of the land the subject of the application for the special mining lease and other tenements to which the applicant's proposals relate'.[10] In practice, these landholders are represented by a single landowner association and landowner company

9 These trends are part-and-parcel of the worldwide growth of a 'localist' paradigm that has seen resource revenues increasingly redistributed from central to sub-national and local governments, particularly to areas hosting point extractive projects (Arellano-Yanguas 2011: 618, 2017).

10 *Mining Act 1992*, Section 3.

that manages contracts, like catering, security, construction, employment and, in some cases, royalty distribution, 'on behalf of' landowner interests. Thus, the crux of the distributional political economy prior to the Development Forum is: (1) who are customary landowners and, (2) who ought to represent them. Who gets invited to the Development Forum, who heads said companies and who is excluded, is shaped by a series of interactions including litigation in courts, meeting with representatives from the mine developer, and local politicking between would-be landowner representatives. One particular sliver of these interactions concerns this chapter: confrontations between customary claimants at court. My contention is that these confrontations constitute part of a broader process of stratifying factional competition.[11]

Stratifying Factional Competition in Customary Land Litigation

Local-level competitive relations around extractive sites in PNG have been well documented and well discussed within the anthropological literature (Jorgensen 1997, 2007; Gilberthorpe 2007; Weiner 2013; Skrzypek 2020, especially its occasionally violent repercussions; Filer 1990; Ballard and Banks 2003; Banks 2005; Jacka 2015), even if questions of how to examine dissent within and between groups impacted by resource extraction has caused some consternation (see Kirsch 2018; Bainton and Owen 2019 for two contrary views). Given these empirical regularities, and to supplement what has been done so far, there is good reason to reconsider how the now antiqued topic—at least in social anthropology—of factionalism might help to better understand the processes that produce and constitute competition over MRBs.

Factions have not been the focus of anthropological research since the mid-1960s to mid-1970s, when anthropological interest in the topic flourished (Firth 1957; Nicholas 1965; Bailey 1969; Barnes 1969; Gulliver 1971; Kapferer 1976; Silverman and Salisbury 1977; Boissevain 1978). After this brief burst of activity, interest in factionalism declined, even if it continued in adjacent disciplines such as political science.

11 Throughout this chapter, I use factional competition and factionalism interchangeably.

While the study of conflict between similarly positioned groups largely faded from social anthropology's purview, social anthropology's sister discipline of archaeology began examining political competition as a means of explaining the emergence of institutionalised inequality (see in particular Brumfiel 1992; Roscoe 1993; Brumfiel and Fox 1994; Hayden 1995; Wiessner 2002; Chacon and Mendoza 2016). For these authors, competition between individuals vying for prestige and wealth becomes a possible driver of socio-political transformation (Wiessner 2002: 234). Such studies differ significantly in their understanding of what factions *are* compared to previous paradigms. The aforementioned anthropological and political science literature focuses on factions as, definitionally, an antagonistic, often maladaptive, subsection of some wider whole. By contrast, the body of research considered here analyses factions by what they *do* in a political environment—social entities, however constructed and constituted, that are engaged in political competition for authority or power over similar aims (see, for example, Brumfiel 1994: 4). Building on this definition, the archaeological literature examines how the classic markers of socio-political change, like the alliances between polities, political centralisation, expanding trade networks and population growth are potentially the consequences and constituent parts of factionalism as individuals attempt to gain the upper hand on their rivals (Brumfiel and Fox 1994: 205).

Drawing inspiration from such studies, this chapter is concerned with how factional competition might drive, within the involved parties, organisational stratification, understood as the extent that there are status differences within a faction, and that those status differences correspond to different degrees of power over the flows of resources within that organisation. As I hope to demonstrate, the extent factions are organisationally stratified near Wafi-Golpu has changed markedly over time. The sets of individuals working together in the 1980s were essentially egalitarian, with particularly vocal individuals able to sway decisions but little more. The landowner associations of the present not only have explicit hierarchies, in the form of a chairman and directors, but these hierarchies also have substantive impacts in decision making and, there is good reason to believe, will shape future benefit distribution. Before laying out my historical narrative, I want to accentuate two features of conflict over MRBs that plausibly aggravate such professionalisation of factions: (1) the social, economic and political requirements for political competition, (2) the progressive increase in the scale of those requirements.

The Costs of Competition

Previous anthropological work on mine-related conflicts has highlighted that politicking around extractive projects takes place at different scales in different spaces (Jorgensen 1997, 2007; Gilberthorpe 2007; Weiner 2013; Skrzypek 2020). This chapter focuses on one, the courtroom, where antagonistic factions seek legal recognition for their claims. However, it is worth situating legal antagonism within the context of coalition building in villages, where would-be leaders struggle for legitimacy and support, and the boardrooms and hotels that host 'consultations', where landowner representatives attempt to extract concessions from the mine developers and state (Golub 2014: 24). Critically, these spaces either require or favour certain resources for participation.

In the courtroom, we have strong *prima facie* grounds for believing that involvement in courts requires, or is at least assisted by, educational, financial, social and political resources.[12] To engage in legal disputes, parties must navigate a range of bureaucratic requirements, such as registering claims and filing briefs. This necessitates literacy and is eased by previous experience with bureaucracies. Courts also place financial demands on participants, requiring legal fees for both courts and lawyers, in addition to the costs of travelling to the court itself. Even for those villages near the mine connected to roads, it can be a solid four-hour drive to Lae. Finally, the economic and logistical difficulties of attending court are not insignificant, especially from villages served only by poor roads or that lack them altogether.

In villages, the Wafi-Golpu prospect is part of a broader universe of future-oriented projects, ranging from proliferating Pentecostal churches to barely veiled Ponzi schemes (à la Cox 2018), all of which promise a better life. Centrally, a would-be faction leader needs to convince others to contribute to their particular cause, and that they are the person to lead. Different faction leaders are more or less successful in building the coalitions necessary for factional competition both by gathering a broad base of supporters and by convincing other prominent individuals to join them, rather than form their own faction. In this way, factions in the

12 Legal scholars have long debated the extent that litigation rewards better-off parties through the idea of 'party capability theory' (Galanter 1974; Wheeler et al. 1987; Songer and Sheehan 1992).

Wafi-Golpu region are not dissimilar to competing political candidates, except that instead of the funds and perquisites of the state, the prize is the expected future benefit from the mine.

Finally, state representatives and developer employees have their own ideas about who are legitimate representatives of local landowners. Members of Parliament (MPs) buy certain factions vehicles, enabling them to reach technically 'open' meetings near town otherwise very expensive to reach for the rural population, and official state policy involves winnowing representatives to a single landowner association. These encounters eventually cumulate in the Development Forum, discussed above.

The capacity to meet these different requirements are *not* evenly distributed within claimant populations, favouring certain kinds of people with certain kinds of attributes. All communities in PNG exhibit pre-existing differentiations based on age, gender, education, historical relation to land and experience with wage labour, and are steeped in histories of conflict and cooperation. Specific individuals are systematically favoured to navigate the requirements above: almost exclusively, they are men at the junction of multiple social networks, with experience in government bureaucracy and relatively higher levels of education. As Janet Bujra (1973: 137) argues about factions in general, these patterns are unsurprising: leaders of factions typically come from dominant sectors of society, precisely because they are the ones with resources—in the broadest sense—to recruit large followings and enter political contests.

Positive Feedback and the Escalating Requirements of Competition

Factional competition over MRBs does not occur in a single, decisive round of engagement. Legal conflict over prospect land has a four-decade history, let alone a much deeper history of pre-colonial tensions. In this fashion, there is not one sequence of coalition building, one court case and one consultation that divvies up MRBs. Rather, each 'round' shapes the political landscape of the next. Competition over MRBs is the result of multiple interactions, requiring factional leaders to repeatedly draw together their allies for collective action under increasingly demanding circumstances.

All the features of political conflict considered above become more acute as the mine grows nearer to construction and cases move up the hierarchy of PNG's courts. PNG has a Commonwealth-inspired hierarchy of courts (village, district, national and supreme, each acting as a higher court of appeal) that loosely map onto the levels of government (local, provincial and national). Further, due to widespread customary landownership, the country has a separate hierarchy of courts for dealing with land matters—local land courts, district land courts and provincial land courts—that are legally distinct from the conventional court hierarchy. In practice, the judges that serve on land courts are frequently the same as those that serve on conventional ones.

These nested hierarchies shape factional competition over time. As lower courts make their decisions, the social, economic and legal complications of unseating incumbents rise accordingly. Registering for the Supreme Court is more expensive than for a Local Land Court. As court hearings move further away from the disputed land, attendance requires more elaborate logistical skills and funds. Connections in different locations increase in importance—local contacts in Lae may suffice for the District Land Court, but as cases move to the Supreme Court, contacts and experience in the capital of Port Moresby become more decisive. Finally, court battles in PNG are not straightforward and rarely produce clear, unequivocal outcomes, which only adds to the advantages of detailed knowledge of how the legal system works: such knowledge is an expensive commodity.

Within this context, factional competition exhibits a degree of positive feedback, with early successes improving a faction's ability to conduct future competitions. Whether followers continue to support a particular leader, or the developer or government officials invite groups to stakeholder meetings, depends, in large part, on success in court. These small, public victories are important because as MRBs have not yet begun flowing from the mine, faction leaders face constant problems of credibility. Accordingly, they spend significant amounts of time signalling their moral character and the imminent delivery of MRBs. To this end, legal successes, plans and videos from the mining developer, and appearances of local news broadcasts provide valuable evidence to supporters, while also opening up more opportunities to solicit state agencies and the developers themselves. Escalating costs and feedback loops create a degree of political calcification in the form, although not necessarily the identities involved, in the progressively professionalised factions near the prospect. Given their lower entry costs, early organisation

and court successes are more straightforward than later ones. This is not to say upsets are impossible, as I will recount. Rather, such upsets become increasingly difficult as time passes.

Collectively, this ongoing work of opposition and social formation in the shadow of mineral development creates both new identities and organisations, forged by litigating, working and dreaming together. Factional competition demands sufficient unity for coordination for political conflict, and this cooperation contributes to factionalism itself by deepening divisions between those individuals and communities involved. This self-reinforcing loop begins to favour factions that are already recognised as customary landowners, more cohesively coordinated and better funded, and that have gained more credibility and support from the state and the mine developer. As cases advance and time passes, the organisations around Wafi-Golpu, those most centrally placed to control the distribution of benefits, become progressively more centralised, socially calcified and antagonistic as the costs of appeal rises. Consequently, factional competition exhibits 'path dependency', with earlier successes having significantly more downstream consequences than later ones (Arthur 1994; Pierson 2000).[13]

Collectively, these features mean that organisation around mining prospects canalise towards incorporated entities led by someone with a range of 'elite' characteristics—education, contacts and a run of good luck. Through the processes outlined above, the competitive process drives significant power into this person's hands in parallel with factions becoming increasingly legalised. By the time one such leader signs the eventual memorandum of agreement that divides up MRBs, those connected with that faction will likely live a life strikingly different from those who were not so fortunate. Neither elite characteristics nor incorporation, in themselves, explain any subsequent economic inequality; for that, one requires the massive wealth that comes with resource extraction. However, the form of the organisation that the wealth flows through is explicated by the fact that *to have access to those MRBs in the first place,* a specific form of organisation—

13 Critically, both the *categories* parties contest over and organise through and the *means* by which they do so also change over time. As has been noted by numerous observers of the extractive industry in PNG, the associations and incorporated groups near mining sites do not straightforwardly reflect local social affiliations (Jorgensen 2007; Weiner 2013). Accordingly, the constant articulation of local political processes and state policy—an articulation based on particular imaginaries of the local—constitutes a process itself. Due to limitations of space and scope, I will not break down this second kind of feedback loop (although see Skrzypek 2020). Here, it necessary to stress that early court cases play a disproportionate role in fixing the salient terms parties compete over later in the process.

patrimonial, elite-dominated and legalised—is systematically favoured by the processes considered above. Having laid out a picture of stratified factional competition, I turn to examining the process through the history of the Wafi-Golpu prospect.

Legal Competition in the Wafi-Golpu Area

The 1980s Cases

At the beginning of the 1980s, there were no rival landowner factions, no prospective mine and no legal incumbents. Precisely because subsequent legal judgements were made with little understanding of local geography and social affiliation, almost anyone living nearby or with some plausible historical connection to the region might have been declared an owner in some capacity. To this end, the historical possibilities of who would be recognised as customary landowners of the Wafi region was extraordinarily open, and the courts might have sliced up social affiliation and land in almost any number of ways.

However, over the course of four cases (see Table 3.1), this space of possibility narrowed significantly and, with it, the odds declined that anybody other than those enshrined in court cases would be recognised as customary landowners. More significantly, the 1980s laid out the names the parties would organise under. Even if appeal overturned earlier decisions, these social divisions would come to shape the Wafi-Golpu region in the years to come.

Table 3.1 Key 1980s court cases pertaining to the Wafi-Golpu area.

Date	Case	Result
6 November 1981	*Babwaf v Engabu.* Local Land Court	'Babwaf clan' awarded ownership of 'Megentse'.
14 May 1982	*Engabu v Babwaf.* District Land Court	1981 decision upheld.
22 March 1984	*Yanta v Engambu, Twangala, Bupu, Omalai, Piu and Perakles*	'Engabu clan' awarded 80 per cent ownership of the land of 'Wafi River Prospect', 'Yanta' awarded 20 per cent.
7 May 1985	*Yanta Clan v Hengabu Clan*	'Hengabu clan' and 'Yanta clan' each awarded 50 per cent ownership of the Wafi River Prospect.

Sources: GPNG (1981, 1982, 1985, 1994).

1981 and 1982

The first pair of cases, the so-called *Megentse* cases, began following a series of fights between men from Babuaf village (to the immediate west of the Wafi prospect, just east of the Watut River) and Hengambu settlers moving into the contemporary sites of Bavaga and Zindaga (near the Waem River). The exact area of Megentse is unclear and has never been demarcated; however, it roughly corresponds to the flat land to the east of the Watut River, going from the Wafe River—a small creek immediately to the south of the prospect (see Figure 2.1, Chapter 2) up until the Waem River (to the immediate north of the prospect).

It is important to stress that, at this initial stage, the land disputes were not about prospective mining. Only in 1977 did Conzinc Rio Tinto of Australia (CRA) Exploration Limited identify the Wafi River to the south of Babuaf as a possible prospect location, while from 1979 to 1981 CRA undertook a series of follow-up studies on Golpu mountain's southern slopes (Ballard 1993a: 32). The *Megentse* cases were not a result of this activity, but were rather prompted by perceived encroachments on land. Had no subsequent mineral exploration taken place, the court cases would likely have been another common, yet largely unremarkable, dispute over customary landownership in the region. It was the subsequent prospect of large-scale extraction that, *ex-post,* gave the cases the importance they have today.

Before turning to the cases, it is necessary to pause and consider the actors who were involved in court, as questions of affiliation became increasingly convoluted following the 1980s cases. Officially, the first pair of cases were between 'Babwaf' [Babuaf] and 'Engabu' [Hengambu] 'clans'. However, neither of these names refer to clans in any sense, nor landholding groups. It is more accurate to see these as the names provided by Australian Patrol Officers (*kiap)* to census units—a different history that will need to be recounted elsewhere.[14] At the time, Babuaf referred to a single, Central Watut–speaking village, while Hengambu referred to a cluster of several settlements that speak the Bano dialect of the Mumeng language.

However, the individuals involved in the case go beyond the occupants of these areas. When the dispute reached the Local Land Court, complainants from Babuaf promptly recruited Wampar-speakers from

14 See Ballard (1993a) for a history of Hengambu and Yanta, Ballard (1993b) for a history of Babuaf and Piu, and Fischer (1963) for general Watut history.

Mare and Wamped (see Figure 2.1, Chapter 2) to help testify on their behalf. The men from Babuaf had connections with Wampar-speakers due to their shared history of evangelism; Babuaf was one of the many villages resettled by Wampar evangelists who brought Christianity into the area in the 1930s (Fischer 1963: 235, 2013; also Church 2019). Building on this history, the men from Babuaf enlisted Wampar to assist them in court, the latter relatively well educated due to the Wampar village of Gabsongkeg hosting a mission station since 1911 (Fischer 1992). Wampar elected three people to speak on their behalf[15]—all men, all educated by the Lutheran church and all fluent speakers of Tok Pisin, the lingua franca of PNG.

The Hengambu side involved one particularly knowledgeable man from Hengambu with previous experience as a government official,[16] as well as witnesses from various other Bano-speaking villages. As mentioned above, neither the four witnesses for Babuaf, nor those for Hengambu, constituted anything like 'clans' or landowner associations. Rather they are better understood as 'action-sets', 'ad-hoc unit[s] for collective action', ephemeral and gathered for the specific purpose of testimony in court (Gulliver 1971: 18). To the extent that the parties constituted conflicting social entities over authority and power over a certain strip of land, they were factions in the understanding of this chapter, albeit fleeting ones.

At the court itself, the three Wampar witnesses recounted the late nineteenth-century Wampar history of migration from the disputed area, claiming it as their land by right of ancestral occupation. The Wampar witnesses also generously include Watut-speakers at various points of their story, claiming to have co-resided in historical villages in the region and speaking one local language (GPNG 1981). The sole Babuaf witness finished his testimony with: 'Because of this, Wampar and Babwaf know that the land belongs to Wampar and Babwaf.'[17] Hengambu witnesses, in turn, recounted occasional fights with Wampar up at the river Waem but argued that the land was mostly vacant when they arrived, with Watut-speakers confined to the west of the Watut River (GPNG 1981).

15 Peats Go, Intu Ninits and Gau Monz (see Church 2019 for Peats Go's biography). The research project this chapter is part of observes a mixed naming strategy, using pseudonyms where possible for living individuals and real names for historical ones. For living individuals that are prolific public figures, we use their real names.

16 Kitumbing Nganiatuk, who also was Chris Ballard's key informant for his account of Hengambu history in his social mapping study of the Wafi-Golpu area (Ballard 1993a).

17 Esera Kwako (GPNG 1981).

The Local Land Court awarded the case to 'Babwaf clan' owing to the lack of Hengambu witnesses. Hengambu representatives promptly appealed to the Provincial Land Court, which upheld the earlier decision.

From today's vantage point, confusions of geography and affiliation muddle both the testimonies as well as the summary of the decision itself—part of a broader trend in the Wafi cases—and the historic merging of the Watut and Wampar-speaking parties has driven significant confusion in subsequent cases. Wampar testimonies were likely critical for the court victory, given their substantial testimony and linguistic proficiency. However, whatever these advantages, Wampar were not inscribed as one of the parties of the case, a fact that would haunt them in years to come. Regardless, these first legal exchanges entered Hengambu and Babuaf into the jurisprudential annuals of PNG, while the cases would further entangle Babuaf and Wampar in the years to come. More fundamentally, the 1982 case resulted in two new legal categories with ambiguous membership criteria, Hengambu and Babuaf clans, with the latter as customary landowners of Megentse.

1984 and 1985

As the *Megentse* case was contested in the courts, the Wafi prospect owners approached Yanta peoples in the village of Venembeli to assist with the nascent prospecting. Yanta, like Hengambu, are Bano dialect Mumeng-speakers, and like both Hengambu and Babuaf, the name 'Yanta' has its origin in *kiap* census groupings (Ballard 1993a). By the time CRA began their search for gold, Yanta were conveniently positioned immediately south of the prospect.

During their 1984 explorations, CRA damaged some local gardens. The question of who ought to receive compensation spawned a series of litigations between Yanta, Hengambu and occupants of other nearby villages.[18] While the litigation started as a compensation dispute, after a series of decisions, on appeal Judge Geoffrey Charles Lapthorne awarded the Hengambu and Yanta clans 50 per cent ownership of the 'Wafi River Prospect' area (GPNG 1985). Like *Megentse*, the peculiar circumstances of the decision shaped the resulting legal landscape. Most importantly for the considerations at hand, the case only vaguely attempted to resolve apparent discrepancies with the earlier *Megentse* cases, explaining that the

18 Twangala, Bupu, Omalai, Piu and Parakles.

50/50 decision 'should not be construed so as to diminish any rights or claims the Bobop[19] [sic] people may have to the land' the decision rules on (GPNG 1985). It is difficult to know whether this is the case, as the Megentse land was never clearly defined in the 1981 and 1982 decisions.

The two sets of court cases—*Megentse* and *50/50*—set a confused and arguably contradictory precedent. Babuaf was the winning party in one, but was absent in the other. Hengambu was a party in both cases, losing one and winning another. Yanta was a winning party in one case, but was absent in another. Wampar-speakers testified in one to their historical occupation of the land but was not an official party in either case. A range of other villages were the losers of the 1984 and 1985 decisions, while other Central Watut–speaking villages go largely unmentioned in both decisions.

Regardless—or perhaps precisely because of these discrepancies—the 1980s formed a critical juncture in the history of the Wafi-Golpu region, whose consequences no number of appeals could overturn. Prior to the 1980s, it was broadly open whom the state would eventually recognise as customary landowners of the area. However, by the end of the 1980s, possibilities had narrowed significantly. Not only because of who won, but *how* the sociality of the region happened to be cut up. Some 20 years later, the 1980s are relitigated both literally and rhetorically as *the* turning point in which the subsequent legal positioning of claimants were solidified. By the end of the 1980s, the Wafi area was gifted with three new legal categories—Babuaf, Hengambu and Yanta, each with unclear membership criteria—that had become the legally recognised owners of land related to the Wafi prospect, albeit in various contradictory capacities. Those best able to speak to these categories entered the second phase as legal and physical incumbents.

Assembling Organisations

The 1980s created new legal categories, customary landowners and, with the increasing prospect of future mining, made those categories economically valuable and politically potent. They also changed the costs of competition. Having made their decisions, challenging the winners of the 1980s via Local Land Courts was no longer viable. While the *50/50*

19 Likely meaning Babuaf.

decision might have been loose with the rules of precedent, a repeat of such an event was unlikely to occur again. Instead, groups with real or imagined claims to Wafi-Golpu land that were excluded from the earlier decisions would need to organise in more systematic and innovative ways. Likewise, incumbents would need to organise to meet these threats.

To this end, the 2000s saw two main skirmishes between the different Wafi claimants, both characterised by unconventional, yet legalistic, approaches (Table 3.2). The first was an attempt by individuals from Piu, one of the smaller claimants on the losing end of the 1980s cases, to surreptitiously claim a SABL over the entire Wafi-Golpu area. The second, the SLTC over Wafi-Golpu, fundamentally changed the politics and alliances of Wafi-Golpu region.

Table 3.2 Legal events pertaining to the Piu SABL.

Date	Event
26 July 2001	Delegate of the Minister of Land grants Piu Land Group Inc. a SABL of the whole Wafi area.
2003	National Court reinstates Piu Land Group Inc. SABL over Wafi area.
2005	Supreme Court strikes down Piu Land Group Inc. SABL.

Source: GPNG (2005).

The following two sections recount these two periods, tracking the increasing solidification of a range of factions through repeated preparation for, and attendance of, court. Compared to the short-lived action sets of the 1980s, where prominent locals temporarily worked together to testify in court cases, the factions of the following two sections become more deliberately organised social collectives, specifically and explicitly organised for the collective action of litigating over the future gains of Wafi-Golpu. Critically, the increasing financial and logistic needs of litigation fed the need for broad coalition building and pushed power into the hands of leaders of local factions so that they could make court filings, fly to Moresby, incorporate companies and do the everyday work of litigation.

1997–2005: Land Leases and New Leaders

On 26 July 2001, a delegate of the Minister of Land surreptitiously granted Piu Land Group Inc., a corporation claiming to represent the Piu people, a SABL of the whole Wafi area.[20] A SABL is a legal mechanism for

20 See GPNG (2005) for a summary of events leading up to the Piu SABL.

a 'lease–lease-back' scheme, realised through the *Land Act 1996*. Legally, the Minister of Lands leases customary land from its customary owners, in order to in turn lease the land to 'a) to a person or persons; or b) to a land group, business group or other incorporated body, to whom the customary landowners have agreed that such a lease should be granted'[21] (see Filer 2011 for summary of the role of SABLs in the politics of land in PNG; and Schwoerer, this volume).

In the eyes of the beneficiaries of the 1980s cases, this was a blatant challenge to their ownership of the area, especially considering Piu was one of the parties explicitly listed on the losing side of the 1985 *50/50* decision. A flurry of complaints led to the Lands Department revoking the licence—only to have it reinstated by the National Court without the presence of any of the complainants (GPNG 2003). Appeals then pushed the case up to the Supreme Court (GPNG 2005). In order to get a clearer sense of how individuals came to lead the factions that worked to challenge the SABL, I focus on two key leaders, Thomas Nen and Bill Itamar, and how they worked together in a Babuaf–Wampar alliance to overturn the SABL.

Bill Itamar represented Wampar interests in the alliance. In 2016/17 when I met him, Bill often wore crisp, collared shirts and a driving cap typical of Morobe. He was a frequent sight on the pothole-filled Wau–Bulolo highway riding shotgun in his bright yellow PMV (public motor vehicle) going to or from the city of Lae. Bill stabilised and began formalising the political alliance between Babuaf and Wampar in the 1990s after initial uncertainty in the wake of the *50/50* decisions. According to a witness from the time,[22] when the *50/50* decision was handed down, there was disagreement between those involved in the *Megentse* cases over the appropriate course of action. Some Wampar wanted to appeal the *50/50* decision, but those in Babuaf were less certain. One of the original Wampar witnesses attempted to appeal the case himself but was rebuffed because the *Megentse* cases were awarded to Babuaf. Consequently, talk emerged among Wampar leaders about breaking off the alliance entirely.

21 *Land Act 1996*, Section 102.

22 Yaeng Ngawai, from conversation in Mare, 2 October 2017. All direct quotes from informants in this chapter were spoken in Tok Pisin, and translated by the author. At the time of the original *Megentse* court decisions, Ngawai was undertaking mission work in Bwana, but after returning to Mare, he began helping Go Nowa, one of the original Wampar witnesses for the *Megentse* case, with the fallout of the 1980s decisions.

As one witness complained 'they [Babuaf] got the credit but did nothing. The court would recognise that and make them number two'.[23] These plans came to a halt when Bill Itamar intervened.

Neither of Bill's parents were early prominent political figures, and nor were they particularly well-off. After his mother died when he was a child, Bill was raised by his mother's sister, who paid for Bill's school fees using money from the then-booming betelnut trade.[24] Bill did well in school, so Lae Technical College sponsored him to study clerical and business studies between 1972 and 1973. He spent some time going to and from Enga province and the capital of Port Moresby, working and studying, in addition to marrying a woman from Mare in 1978. After graduating in 1980, Bill travelled to the Eastern Highlands, beginning work as a business development officer for the provincial government before reaching high levels of public administration as provincial financial adviser in 1989 and provincial planner in the early 1990s. While working for the government in Goroka, he had a life-changing encounter with the Pentecostal Christian Life Church (CLC).

Bill recounts his life before CLC as full of indiscretion.[25] He chewed betelnut, drank all the time and frequented clubs while in Port Moresby. He also played basketball semi-professionally and was selected to go to the Pacific Games. However, during his stay in the Eastern Highlands, Bill met Pastor John Kemp who converted Bill and his wife to born-again Christianity. So, while Bill studied public finances and accounting in Goroka, he also deepened his faith.

Bill periodically returned to Mare throughout the 1980s and early 1990s, a changed man. At the time, the Lutheran Church had a spiritual monopoly in the region, and when Bill started a CLC church, the Lutheran orthodoxy resisted. According to witnesses from both sides of the schism, Lutheran followers arrived at Bill's house brandishing machetes, spears, axes and burning coconuts, forcing Bill to move his house to the very edge of the village. Nevertheless, over many years, Lutherans gradually came to accept CLC.

23 Interview in Mare, 2 October 2017.

24 Wampar grew betelnut as a major source of income until 2007, when an unknown pest wiped out their crop.

25 Interview with Bill Itamar, 4 October 2017, Mare.

Bill's rising religious fortunes coincided with his political ascendance. Although his 1992 run for the Huon Gulf electorate was unsuccessful, by 1997 and again in 2002 he was elected councillor of Mare. In 1997, at the peak of Bill's political rise, Mare voted on who ought to continue the legacy of the *Megentse* decision, and who ought to lead Wampar on Wafi-Golpu-related matters. Unlike others, Bill thought that Wampar should still work with Babuaf, and the assembled village voted for Bill to lead.

Bill initially worked with Peter Ngawas, another Watut man, under the name 'Babwaf'. Then around 2001, Babuaf elected Bill's future rival, Thomas Nen. In 2016, Thomas sported a goatee and frequently wore fedoras when going to and from court, having represented Babuaf since his election. Thomas comes from Dzemep, a southern Watut village, not Babuaf itself—a point of occasional contention given that he represents himself as a 'landowner' from the 'Babwaf tribe' in legal documents. Like Bill, he is highly educated, having studied development economics in the United Kingdom, as well as 'regional studies' in China during the 1980s.[26]

After returning to PNG with a Chinese wife around 1989, Thomas rose to become managing director of the PNG Forestry Authority in 1998 (GPNG 2002). While at the Forestry Authority, he became embroiled in a series of logging scandals in Western Province. According to Brain Brunton, a lawyer-consultant for Greenpeace, during his time as director Thomas travelled back and forth to China connecting Chinese timber companies interested in PNG hardwoods (1998a, 1998b). Subsequent investigations resulted in an Ombudsman Commission report that concluded that Thomas had acted incorrectly and that 'the future public re-employment of Thomas Nen must be carefully and critically reviewed' (GPNG 2002: 6). Thomas was subsequently removed from his position at the Forestry Authority in March 2002 (Canberra Friends of PNG 2002). Barely breaking his stride, three months later in June 2002 Thomas ran for election as MP of Huon Gulf, coming only 448 votes short of the lead candidate (Development Policy Centre 2020).

This unlikely pair—Thomas with his Chinese and Moresby connections and Bill with his spiritual coalition and provincial government experience—worked together against Piu's SABL. For the next few years, while Thomas filed affidavits at the Supreme Court, Bill solicited Judge Steven Awagasi, the original magistrate for the *Megentse* case, to support

26 Interview with Thomas Nen, 29 November 2016, Lae.

their cause (Awagasi 2004). Together, prominent men from both Mare and Babuaf signed a letter petitioning the Minister of Lands to withdraw the SABL (Nen 2004). The struggle was not inexpensive—Bill and his broader alliance gave 5,000 kina for the Supreme Court fees (Itamar 2009a). Finally, on 29 August 2005, their labours were rewarded, and the Supreme Court revoked the SABL licence (GPNG 2005).

Formal Registration

At the end of the first half of the 2000s, distinct factions had formed around the Wafi-Golpu area, forged through repeated, antagonistic interactions in litigation. Over the course of a final round of litigation over the 'SLTC', created to resolve customary disputes over Wafi-Golpu, these groupings calcified and, by the end, each faction was represented by distinct legal entities.[27] By the time I arrived in the field in 2016, all of the claimants from each of the linguistic populations touched on in this chapter had one or more registered landowner associations (LOAs), each with complementary landowner businesses, all headed by members like Bill and Thomas. Each of these LOAs operated under a similar logic: each had an outspoken chairman,[28] who undertook the majority of the visible labour of political competition, an associated group of 'directors' more active in the association, supported by a broad range of 'members' who occasionally attended large celebrations and feasts, voted and paid membership fees.

The pervasiveness of LOAs in the Wafi-Golpu area is a function of two features. First, they are the result of state and developer demands for clear representatives of landowners, in a suitable social form, to negotiate with. As the head of the mine owner's community affairs department explained succinctly:

> The idea is that you start early, do awareness, and narrow and narrow and narrow down how many people will be there [at the Development Forum] until there are just the leaders to speak for everyone, and the government feels it is representative enough.

27 Court cases were by no means the only reason for the formation of LOAs; before the 2000 cases, Hengambu and Yanta had all begun organising into LOAs in anticipation of mining benefits. The Hengambu Landowner Association was founded in 2000, while the Yanta Landowner Association was founded in approximately 1998. However, the legal conflicts over the 2000s saw these forms of association become standard for almost every claimant group in the region.

28 The chairmen of LOAs were exclusively male.

> To make sure the biggest landowners are there. If not, every Tom, Dick and Harry will show up and nothing will get done. You know how PNG is.[29]

The ease in which the company and state representatives discuss 'representative landowners' belies the reality that LOAs, or the various other legal entities that operate around mining projects in PNG, are not reflections of local social affiliations, but are specific responses to the demands from the company and the state for more tractable social units to negotiate with. As Jorgensen stresses, the creation of such formalised, corporate entities are:

> an exercise in the creation of legal fictions fulfilling the state's need to delineate landowners for the purposes of concluding mining agreements, and a solution hinges upon formulated identities in a way that satisfies the state's interests in legibility by *making clans that the state can 'find'*. (Jorgensen 2007: 66, emphasis in original)

These formalised entities also have the dual function of acting as having emerged from the legal back-and-forth recounted so far, as the primary units of factional competition around Wafi-Golpu.

Table 3.3 Legal events pertaining to the Wafi-Golpu SLTC.

Date	Event
24 September 2008	Minister of Justice founds the SLTC over customary ownership of Wafi Prospect Land.
19 January 2011	Acting Governor-General revokes the SLTC commissioners, disbanding the commission.
6 November 2011	National Court rules disbanding of the SLTC a breach of natural justice, and demands reinstatement of the commission.
October 2018	Supreme Court strikes down National Court ruling, upholding the disbanding of SLTC.

Source: GPNG (2011, 2018).

2008–2018: Special Land Titles Commission

PNG's legacy of colonial land laws, coupled with the pervasiveness of customary ownership, has left the country with a unique land dispute process. Prior to 1975, the Land Titles Commission (LTC) held exclusive jurisdiction over all customary land disputes. Since the passage of the

29 Interview with David Masani, 24 November 2016, Gabsongkeg.

Land Disputes Act 1975, a separate hierarchy of courts—local land courts, district land courts and provincial land courts—have adjudicated land matters,[30] leaving the LTC as a vestigial quasi-judicial tribunal that acts as a special arbitrator when the head of state explicitly invokes the commission.[31] Doing so transfers the jurisdiction of a disputed area of land from the lands courts to the LTC. Such a transfer occurred on 24 September 2008 in response to pressure from parties, including Bill and Thomas, that were dissatisfied with the *50/50* decision. The result was the formation of the SLTC to resolve the customary land disputes over Wafi-Golpu once and for all.[32]

The SLTC began at a particularly tense moment for the Babuaf–Wampar alliance. For a brief moment following the disbanding of the Piu SABL, it seemed that the union would hold. In 2005, at a large meeting attended by people from the villages of Babuaf and Mare, the two groups agreed that the Kutut Development Corporation and the Saab Development Corporation would work together under the name 'Babwaf' (Itamar et al. 2005). However, differences between Thomas and Bill began to break the Wampar and Babuaf alliance apart, with Thomas pushing to separate from Wampar, arguing that Bill, and Wampar more broadly, had no claim to the earlier *Megentse* decisions. A year after the unifying meeting, Thomas and Bill agreed to split the organisation in two, with Thomas leading the Wale Babwaf Landowner Association focusing on the Watut, and Bill leading Wampar with the Babwaf Saab Landowner Association (Itamar 2009b).

In 2007, both Bill and Thomas unsuccessfully ran for election as MP for Huon Gulf. With the appointment of the SLTC, these divisions broke into a full-scale legal conflict. The SLTC reshaped the politics of the whole Wafi area. Whatever temporary unity Bill's alliance had managed to contain within the Wampar region broke. Among Wampar-speakers, six different parties registered, five from the village of Mare. The other claimants from the area around Wafi were no less divided and the SLTC had 31 different claimants in total, each alleging exclusive ownership of the Wafi-Golpu project area.

30 In theory, this means that PNG has a separate hierarchy of courts for dealing with land matters, distinct from the conventional Commonwealth court hierarchy. In practice, the judges that serve in the land courts are frequently the same as those that serve in the conventional ones.

31 *Land Disputes Settlements Act 1975*, Section 4.

32 See GPNG (2011) for a summary of events that led to the dismissal of the SLTC.

As beneficiaries of the *50/50* decision, LOAs representing Hengambu and Yanta were consistently hostile to the SLTC as a potential threat to their position. Since its inception, Hengambu and Yanta leaders threatened to physically shut down the Wafi-Golpu prospect if the government did not end the SLTC. By mid-April 2010, as the SLTC prepared to demarcate boundaries between landowners, these threats rose in intensity to the point where the Minister for Mines flew by helicopter to the Wafi exploration camp to meet with the complainants. A little under a year later, the Acting Governor-General revoked the SLTC commissioners and disbanded the commission. The excluded parties' hope for inclusion into the project had a brief opening when the National Court ruled the ending of the SLTC was a breach of natural justice, which the state promptly appealed to the Supreme Court (GPNC 2011).

Since the SLTC was disbanded, Bill and his allies have been consumed by their quest to reinstate the commission and, more broadly, for the government and the mine owners to recognise their claim as customary landowners. In June 2018, in a coalition of the ousted and the ignored, Bill, former leaders from the Yanta and Hengambu LOAs, representatives from the wider Watut area, allied members of other Wampar villages and representatives from villages along the proposed Wafi-Golpu slurry pipeline joined forces and formed the Wafi-Golpu Landowner Mine Association and registered Wafi-Golpu Holdings Limited. This umbrella landowner association and landowner company claimed to represent all the landowners of Wafi-Golpu, a 'new association that covers everybody, from the pit down to the wharf' (EMTV Online 2018).

However, on 11 July 2018, the Development Forum began with no invitation forthcoming for this umbrella association. Any remaining hopes were dashed in October 2018 when the Supreme Court handed down its decision, quashing the earlier reinstatement of the SLTC, arguing that the commission had no grounds for ruling on already decided cases from the 1980s (GPNG 2018). As such, at the time of writing, Wafi-Golpu sits in an ambiguous legal status quo. Now the Mineral Resource Authority, working with the mine owners, are attempting to convince the three winning claimants (Babuaf, Hengambu and Yanta) to form one unified LOA, with an associated landowner company, to sign the memorandum of agreement at the Development Forum. Whoever heads the resulting LOA will wield significant power over how MRBs are distributed locally.

Conclusion

> Now, here, you see, it takes all the running you can do, to keep in the same place.
>
> —the Red Queen to Alice, in Lewis Carroll's *Through the Looking-Glass* (Carroll 1871)

The legal history recounted here may seem Sisyphean. With the dust settled and Wafi-Golpu entering the final steps of the licensing process, the legal result at the time of writing in 2022 is the same as that of the 1980s. The state has still not mapped the boundaries of the Megentse region, the contradictory precedent between the 1980s cases remains unresolved and the mine developer and state agencies continue to split the difference of the 1980s court cases and work equally with representatives of Babuaf, Hengambu and Yanta. Scholars familiar with the patterns of resource brokerage in PNG will likely find the figures of Bill Itamar and Thomas Nen familiar; the clientelistic relations they (hope) to foster mirror the forms of brokerage discussed by Monica Minnegal and Peter D. Dwyer (Chapter 4, this volume).

However, an impression of stasis misses the social consequences of the last 40 years of struggle—the work required to 'keep in the same place', as the Red Queen said to Alice. In the 1980s, court participants were temporary action sets gathered together to provide specific testimony in court. For these early cases, knowing Tok Pisin was sufficient to confer significant advantages. However, merely to *maintain* the results of the early 1980s, significant work had to be undertaken: fending off SABLs, litigation in Moresby, assembling pan-village coalitions, and formal registration of LOAs. By the end of the 2010s, the Wafi-Golpu area became characterised by stratified factions, topped by well-connected and educated older men, linked to their followers in networks of promised clientelism, specifically designed for factional competition. These factions are connected to a range of legal entities, including LOAs and landowner companies, perfectly set up for lopsided distribution of MRBs.

By tracing this process, I argued that legal competition over MRBs constitutes a form of stratifying factional competition due to three key features:

1. Legal action has substantial social, economic and political requirements, limiting the range of individuals who have the capacity to draw together the necessary coalitions to participate in such competitions.
2. These requirements progressively escalate while driving positive feedback loops that solidify existing advantages.
3. Legal decisions and state expectations drive a dynamic process whereby factions increasingly represent themselves in the form of legalised associations whose very names and affiliations are shaped by earlier events.

Owing to these features, I argued that legal competition for MRBs drives organisational stratification among involved factions.[33]

Government and developer representatives frequently blame LOAs and their leaders for the adverse distributional outcomes of mining benefits. In *The National,* one of PNG's national newspapers, Sean Ngansia, the executive manager of the Development Coordination Division in the Mineral Resources Authority, complained:

> We don't necessarily manage royalties on landowners' behalf … [royalties] is usually given directly to the landowners through their landowner associations. The issue now is really about how these monies are managed. You will find that in Hidden Valley and all the other mines, the landowner association leaders are not managing their royalties well. There's a lot of misuse and mismanagement. These leaders also do not report to their people and that's where the problem is. (Ngansia 2018)

There is indeed woefully inadequate transparency about mining benefits distribution, a point that observers of the PNG extraction industries have repeatedly made (Sagir 2001; Koyama 2004; Haley and May 2007; Filer 2012). However, these debates can involve a sleight-of-hand, signalled by the above quote's complaints of 'misuse and mismanagement'. Developer and government complaints about a lack of coordination and leadership

33 My emphasis on increasing political rigidity should not be read as immunity to change. Bill Itamar displaced earlier Wampar leaders in the 1990s, and representatives from Piu managed to secure a SABL in 2001 despite their disadvantageous position. However, such flexibility was limited, and becomes increasingly so as time goes on. Critically, the ability to undertake such upsets (or defend from them) was not equally distributed, favouring male leaders with educational, financial and social resources. Pulling together a wide range of interests favoured precisely those individuals with the resources to make credible commitments to their followers and peers.

among impacted communities misinterpret what that coordination and leadership are *for*. Rather than seeing contested landowner representation as a case of failed coordination, it is more accurate to see factions as the result of *successful* coordination for a specific, winner-takes-almost-all competition not of the participants' own making.

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