Australian National University

Development Policy Centre
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Two steps forward, two steps back: The mobilisation of customary land in Papua New Guinea

Colin Filer

Abstract

In May 2019, the Minister for Lands convened a National Land Summit in Port Moresby to review the implementation of the National Land Development Program over the course of the past decade. Much of the discussion at this meeting was concerned with the incorporation of customary land groups and the voluntary registration of their collective land titles under legislation that was passed by the National Parliament in 2009 but did not take effect until 2012. Participants in the summit thought that the implementation of this legislation had not proven to be an effective way of 'mobilising customary land for development'. This paper seeks to explain why the new legal and institutional regime has failed to live up to the expectations of the policymakers who were instrumental in its establishment. An initial examination of the rationale behind the legislation is followed by an examination of published evidence relating to its implementation in different parts of the country, including case studies of areas where the evidence serves to illuminate the motivations of the actors involved in the process of incorporation and registration. The paper concludes with some reflections on the lessons to be learnt from this experiment in policy reform.

Discussion Paper 86

December 2019

Series ISSN 2206-303X

Two steps forward, two steps back: the mobilisation of customary land in Papua New Guinea

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Filer, C. 2019. Two steps forward, two steps back: The mobilisation of customary land in Papua New Guinea. *Development Policy Centre Discussion Paper #86,* Crawford School of Public Policy, The Australian National University, Canberra.

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1 This paper is dedicated to the memory of my old friend Lawrence Kalinoe, former head of PNG's Constitutional and Law Reform Commission and then Secretary for Justice, who sadly passed away during the public consultations that led to the 2019 National Land Summit. I thank Jim Fingleton, Siobhan McDonnell and Jason Roberts for their comments on earlier drafts of this paper. Other individuals cited in the text have provided bits of information that have enabled me to get somewhat closer to the truth of what has gone on in particular parts of PNG. None of these commentators or informants are responsible for any factual errors that remain, let alone for my interpretation of the evidence.

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1. Introduction

In May 2019, a three-day National Land Summit held in Port Moresby identified 17 issues relating to the 'efficient utilisation of customary land for the benefit … of the customary landowners' and adopted a resolution on each one of them. Among these were resolutions calling for a review of the existing legal and institutional regime that regulates the processes of land group incorporation and voluntary customary land registration (GPNG 2019). The participants had evidently come to the conclusion that this was not proving to be an effective way of 'mobilising customary land for development'.

The current legal and institutional regime is the result of a policy process initiated by a previous national land summit held in 2005 (GPNG 2007; Yala 2010). Its central feature is a set of amendments to the *Land Groups Incorporation Act 1974* and the *Land Registration Act 1981* that were passed by the National Parliament in 2009 but did not come into effect until 2012. These amendments created an opportunity for incorporated land groups (ILGs) to register collective land titles once they had met new standards of transparency and accountability in the process of incorporation. Groups that had already been incorporated under the original legislation were given five years in which to reincorporate themselves under the amended legislation, whether or not they were seeking to register titles to their land, and were threatened with extinction if they failed to do so.

During the three years that elapsed between the passage and certification of the new legislation, the national government established a commission of inquiry into the grant of what the *Land Act* of 1996 calls 'special agricultural and business leases' (SABLs). This was part of a separate policy process (Filer 2017), but the topic under investigation was a peculiar institution that was created to compensate for the inability of incorporated land groups to register collective land titles under the old legal regime. Although the government put a stop to the grant of such leases when the inquiry was established in 2011, there remains a good deal of uncertainty about the legal status of the leases that

had already been granted (Filer and Numapo 2017). Furthermore, the perceived failure of the new legislation to produce the desired level of 'land mobilisation' has caused the participants in the latest land summit to call for a 'review [of] the relevance of the SABL process within the context of the land tenure reforms' (GPNG 2019).

This paper seeks to explain why the new legal and institutional regime has failed to live up to the expectations of the policymakers who were instrumental in its establishment. Section 2 asks why they thought that it would solve the problems inherent in the old regime and thus create new opportunities and incentives for the 'mobilisation' of customary land. Section 3 then examines the way in which their reasoning was reflected in the specific provisions of the amended legislation. Section 4 shows how notices published in the government's *National Gazette* since 2013 highlight the failure of the Department of Lands and Physical Planning to implement some of these provisions. Section 5 deals with some of the reasons why so many land groups that were incorporated under the old legal regime have not yet been reincorporated under the new one, and why the government has therefore extended the window of opportunity that was meant to close in 2017. Sections 6 to 9 deal with the relationship between the suspension of the SABL scheme in 2011 and the introduction of the new voluntary customary land registration scheme in 2012, with a number of case studies used to illustrate the complexity of this relationship. Sections 10 and 11 then use additional case study material to illustrate what is known about the motivations of people who have taken advantage of the opportunities offered by the new legal regime, and how these motivations might vary between rural and urban areas. The concluding section returns to the issues posed by the resolutions of the latest national land summit, specifically to the question of what explains the perceived failure of the policy experiment initiated by the legislation of 2009 and what, if anything, might now be done to produce a more successful version of this experiment.

2. Problems with the old regime

In a sense, the recent amendments made to the *Land Groups Incorporation Act* and *Land Registration Act* do not mark the beginning of a new policy regime but the completion of a national policy process that began with the recommendations of the Commission of Inquiry into Land Matters back in 1973 (GPNG 1973; Ward 1983). The original *Land*

Groups Incorporation Act of 1974 was one of several pieces of legislation that were meant to implement these recommendations, but it held a central place in the whole package because incorporated land groups were seen as a prime example of what is meant by the fifth goal of the National Constitution, which is 'to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organisation' (Fingleton 1982). In this case, the assumption was that all the indigenous citizens of the newly independent state were members of customary groups that were also 'land groups' because they were the collective owners of all customary land, and the custom of each group was what decided the allocation of use rights to the individual members (Power 2008). The Act did not use words like 'clan' or 'tribe' to describe these customary groups, nor did it make any assumption about the nature of the customary rules that they applied to the allocation of use rights. It simply required that each group should formulate a constitution before it could be granted legal recognition by the state. The Registrar of Incorporated Land Groups could require additional information, including a list of the group's members, but this was optional. He or she could also refuse to recognise a group that did not appear to qualify as a 'customary land-owning group', but had to provide reasons for such a decision.

A standard application form was attached to the Act. This could be filled in and signed by any number of people claiming to be members of the land group, and only had to specify the name of the group, the local-level government area in which its land was located, and the identity of the proposed 'dispute-settlement authority'. The latter could consist of a number of individuals, or the occupants of specific positions, who were empowered by the group's constitution to settle disputes between its members. The constitution also had to specify the qualifications for membership of the group itself and the body set up to manage its affairs. The Act outlined a process by which the registrar was obliged to advertise the existence of each application, circulate copies to interested parties for any comments or objections, and then advertise a subsequent decision to recognise the group in question. Once incorporated, a land group could apply to the registrar to change its constitution, and such applications were to be treated in the same way as applications for incorporation. A group could also be wound up or dissolved, either at its own request or on the basis of a recommendation to the registrar from a village court or district court, if there were problems in the management of its affairs.

Section 1 of the *Land Groups Incorporation Act* noted that the process of land group incorporation was not only meant to facilitate the more effective use of customary land and the resolution of disputes about its ownership, but also to create 'greater certainty of title'. The Act made no provision for land groups to register titles to their land because this additional step was understood to be one that would need a separate piece of legislation (Bredmeyer 1975). Although the commission of inquiry had recommended that such a law be drafted, this did not happen. The resulting hole in the legal framework was filled by a stopgap measure that has come to be known as the 'lease-leaseback scheme'. Under this scheme, incorporated land groups could lease their land to the state so that the state could create a registered title over it and then lease it back to the land groups themselves, or else to what are known in PNG as 'landowner companies', in which land groups should ideally be the shareholders. This scheme was originally devised in the late 1970s (Hulme 1983), and was later given formal recognition through a set of amendments made to the *Land Act* in 1996 (Filer 2011a).

The primary source of information about the actual incorporation of land groups under this legal regime consists of a long sequence of 'notices of lodgement of an application for recognition as an ILG' that were published in the *National Gazette* between 1992 and 2012. These application notices normally assigned a number to each of the land groups seeking recognition. The highest number known to have been allocated in this way is 17988. One might therefore suppose, as many people do, that a total of almost 18,000 land groups had applied for recognition by 2012. However, this appears to be an overestimate.

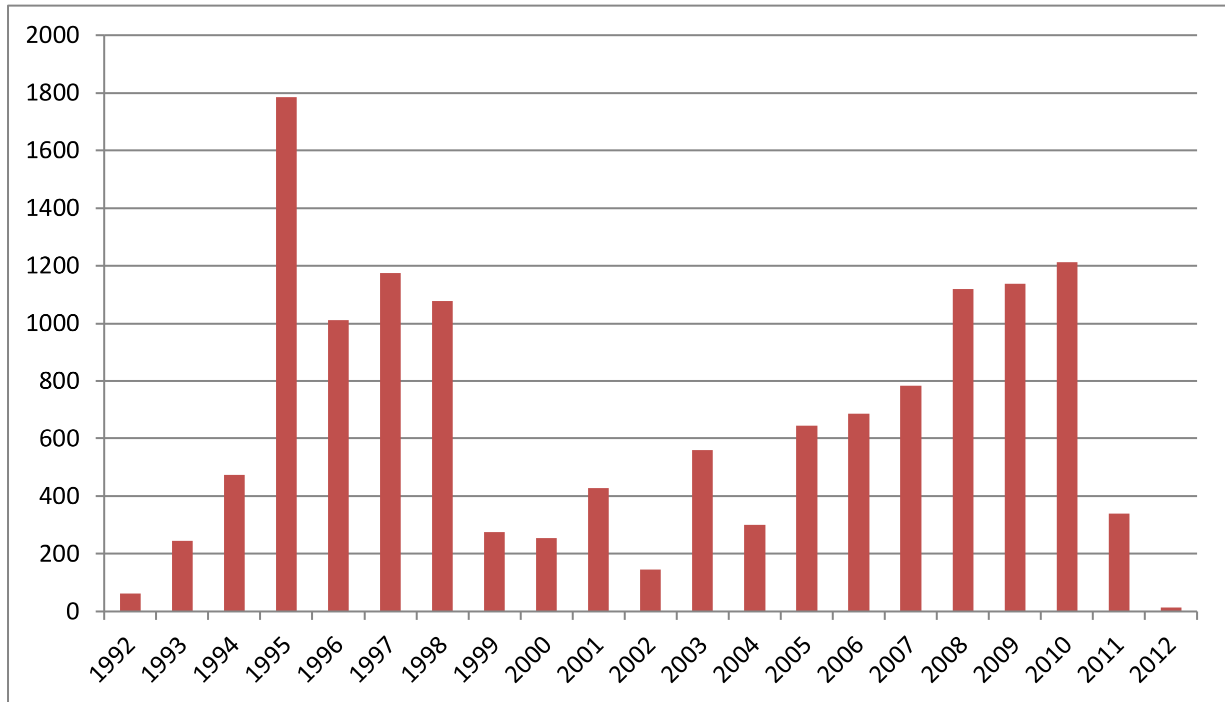
The first application notice was published in October 1992, shortly after the function of land group recognition was transferred from the Registrar of Companies to the Department of Lands and Physical Planning. In November 1993, the Registrar of Incorporated Land Groups published a notice in the *National Gazette* listing 140 land groups that had already been granted certificates of recognition, of which 80 had been recognised before the end of January 1993, and 17 before the end of 1991, without ever having their application notices gazetted. The numbers assigned to these 80 groups ranged from 6 to 223, which indicates that 143 numbers had already gone missing, in the sense of not being 'owned' by any recognised group. The one application notice published at the end of 1992 was followed by 13,576 unique application notices between 1993 and

2012.[2] This suggests that a lot more land group numbers went missing during that period, for reasons that are still unclear (Antonio et al. 2010). Although there are some cases, within that period, in which certificates of recognition have been issued to land groups whose applications for incorporation were not gazetted, the number appears to be much smaller than the number of numbers that were not assigned to any group. I am therefore inclined to think that the total number of applicants was more likely to be 15,000 than 18,000.

In 2011, the Registrar of Incorporated Land Groups implied that applications for incorporation were almost invariably successful before he was appointed to the position in 2010, mainly because they were only advertised in the *National Gazette*, and not in the national newspapers that have a much wider circulation (Rogakila 2011). It is not possible to verify this assertion from evidence contained in the gazette, because application notices were very rarely followed by notices of recognition until 2011, despite the requirements of the Act. Figure 1 shows that the number of applications that were gazetted reached a peak in the years between 1995 and 1998, and then peaked again in the years between 2008 and 2010. To explain this 'double hump', we need to consider the additional sources of evidence that lead to an explanation of the motives behind the applications. The motives are most easily discovered when several applications were listed in a single notice, or when multiple applications from the same area were gazetted on the same day, albeit in separate notices. This kind of 'clumping' betrays the presence of an organiser who is not a member of any of the groups being incorporated yet has a vested interest in the result.

[2] I have discounted a number of cases in which an application notice was accidentally gazetted twice within a month. However, I have come across some cases, one of which is mentioned towards the end of this paper, in which the same group seems to have had an application notice gazetted on more than one occasion at greater intervals of time. I have not been able to eliminate such instances of duplication from my dataset because I have only recorded the names of the land groups, as well as the number making applications from particular villages, in a few parts of the country that were selected for more intensive study.

Figure 1: Applications for land group incorporation under the old legal regime, 1992–2012



Source: Author's calculations based on notices published in the *PNG National Gazette*, 1992-2012

The first organisers to make an appearance in this space were employees of the American oil company Chevron, which was granted a licence to develop PNG's first oil export project in 1990. We now know from company records that they were behind the first application notice to be gazetted, in October 1992, even though that came from a single group. They went on to organise 193 applications in 1993, in clumps whose size varied from two to 70, and were eventually responsible for a total of 480 applications lodged between 1992 and 2003 (Goldman 2009: 3.37). The first round of applications came from the Kutubu oil field in Southern Highlands Province and the route of the oil export pipeline through Gulf Province. The last came from the villages containing the customary owners of the land on top of the Moran oil field (see Figure 2). Most of these 'Chevron groups' were incorporated before the new *Oil and Gas Act* was passed in 1998, after company managers had decided that land group incorporation was the best way to ensure an equitable distribution of the benefits to which customary landowners were entitled under the terms of the benefit-sharing agreements made between their representatives and agents of the state (Power 1996; Taylor and Whimp 1997; Weiner

1998). Indeed, Chevron staff played no small part in persuading the government to incorporate this preference into the *Oil and Gas Act* (Filer 2007).

Figure 2: Example of a clump of applications for incorporation (with four missing numbers)

Land Groups Incorporation Act

NOTICE OF LODGEMENT OF AN APPLICATIONS FOR RECOGNITION AS AN INCORPORATED LAND GROUPS

PURSUANT to Section 33 of the *Land Groups Incorporation Act* of 1974 notice is hereby given that I have received applications for Recognition of a customary groups of persons as incorporated land groups to be known by the name of:-

ILG Names	Village Names	ILG Numbers
Piali Yamowini	Paua # 2	9572
Toma Gondo	Homa	9576
Toma Beri	Homa	9577
ParuApa	Paua # 2	9578
Paru Gundali	Paua # 2	9579
Paua Puni	Paua	9580
Paua Wambu	Paua	9581
Paua Yamoali	Paua	9582
Wago Nawi	Paua	9583
Gambolo Ubalia	Homa	9585

The said groups claims the following qualifications for Recognition as an Incorporated Land Groups:-

(1) Its members regard themselves and are regarded by other members of the said clan as bound by the common customs and beliefs.

(2) The Clans owns customary land at Hulia Local-Level Government Area, Komo District, Southern Highlands Province.

Dated this 18th day of June, 2003.

T. PISAE,
A Delegate of the Registrar of Incorporated Land Groups

Source: *PNG National Gazette*, Number 86 of 2003

Most of the land group incorporation that took place in the second half of the 1990s had nothing to do with Chevron, but stemmed from a preference expressed in Section 57 of the *Forestry Act* of 1991. This treated the process of incorporation as a mechanism for securing the free, prior and informed consent of customary landowners to a forest management agreement (FMA) by which their timber harvesting rights would be transferred to the state before being allocated to a logging company (Filer 2007). The first clump of applications associated with this mechanism was a group of 45 from West New Britain Province in July 1994, but the first of these agreements to be signed was a set of three that covered the Turama Extension concession in Gulf Province, which is the biggest single logging concession in PNG. A total of 331 applications from this area were gazetted between October 1994 and June 1995, nearly all of them towards the end of this period and some after the agreements had been signed in May that year. Many of the clumps of applications associated with FMAs are easily identified because the notices in the *National Gazette* declare that the relevant clans own land in a designated 'timber area' or 'forest area', rather than assigning them to a local government area, as is the normal practice. According to a draft update of the National Forest Plan prepared in 2012 (GPNG 2012), around 5.8 million hectares of land had been covered by FMAs signed between 1995 and 2010, but most of the agreements were signed between 1995 and 1998.[3]

Officials in the new National Forest Service were trained in the practice of land group incorporation by consultants working on the Forest Management and Planning Project, which was funded by the World Bank between 1993 and 1998 as part of the wider program of forest policy reform (FMPP 1995). One of the consultants previously responsible for organising the Chevron groups produced a 'Village Guide to Land Group Incorporation' (Power 1995) that recommended the production of property lists, genealogies, and other forms of evidence that were not formally required by the legislation, but were meant to convince the registrar that the groups were genuine. Copies of this manual appear to have circulated beyond the boundaries of areas earmarked for

[3] For various reasons, some of the clumps of applications associated with designated 'timber areas' or 'forest areas' did not lead to FMAs, and even when they did, some of the agreements had been set aside by 2012, either because they had not been properly formulated or because of disputes amongst the landowners whose groups had been incorporated (Forest Trends 2006; Bird et al. 2007).

FMAs, and might have been responsible for some clumps of applications that were neither organised by Chevron staff nor facilitated by forestry officers.

The second peak in the number of applications, between 2008 and 2010, was due to a rapid increase in the size of the SABLs being granted to landowner companies or their 'development partners' under the terms of the lease-leaseback scheme. Public concern over the scale of this form of alienation is what led to the establishment of the commission of inquiry in 2011. The commission's mandate was to investigate 74 of the leases to find out whether they had been granted with 'prior consent and approval' by the customary landowners (Filer 2017). The commissioners found that such consent had been absent in most cases, which cast doubt on the authenticity of the land groups through which their consent had supposedly been secured. However, the policy process that led to the termination of the lease-leaseback scheme in 2013 had no effect on the policy process that led to the amendment of the *Land Groups Incorporation Act* and *Land Registration Act*, since the latter process had begun with a land summit convened in 2005 and ended when the amendments were drafted in 2008, before the lease-leaseback scheme became a major political issue (GPNG 2007, 2008; Yala 2010).

What initially sparked concern about the proliferation of 'bogus' land groups was the publication of a notice in the *National Gazette*, in April 1999, 'dissolving and cancelling' the registration of 25 of the Chevron groups that had been counted as owners of the land on top of the Kutubu oil field. It transpired that this was the work of the former governor of Southern Highlands Province, whose own power base was located in the vicinity of the oil field, and who was sponsoring the incorporation of another collection of land groups with a view to diverting part of the benefit stream into his own pocket or the pockets of his supporters. While Chevron staff managed to persuade the Lands Department to reinstate the registration of their 25 groups in 2001, the number of alternative land groups with claims to belong to the project area continued to proliferate. About 550 of these groups were incorporated between 1993 and 2010. By the end of this period, they had been joined by as many as 250 groups whose clumping betrayed an intention to claim landowner benefits from the gas fields that have now been added to the existing oil fields as components of PNG's first liquefied natural gas project. To the best of my knowledge, only eight of these 800 groups was sponsored or organised by the developers (Goldman 2007: 112), so the other organisers are most likely to have been local 'big men', possibly

acting in concert with officials from the Department of Petroleum and Energy (Koyama 2004; Weiner 2007).

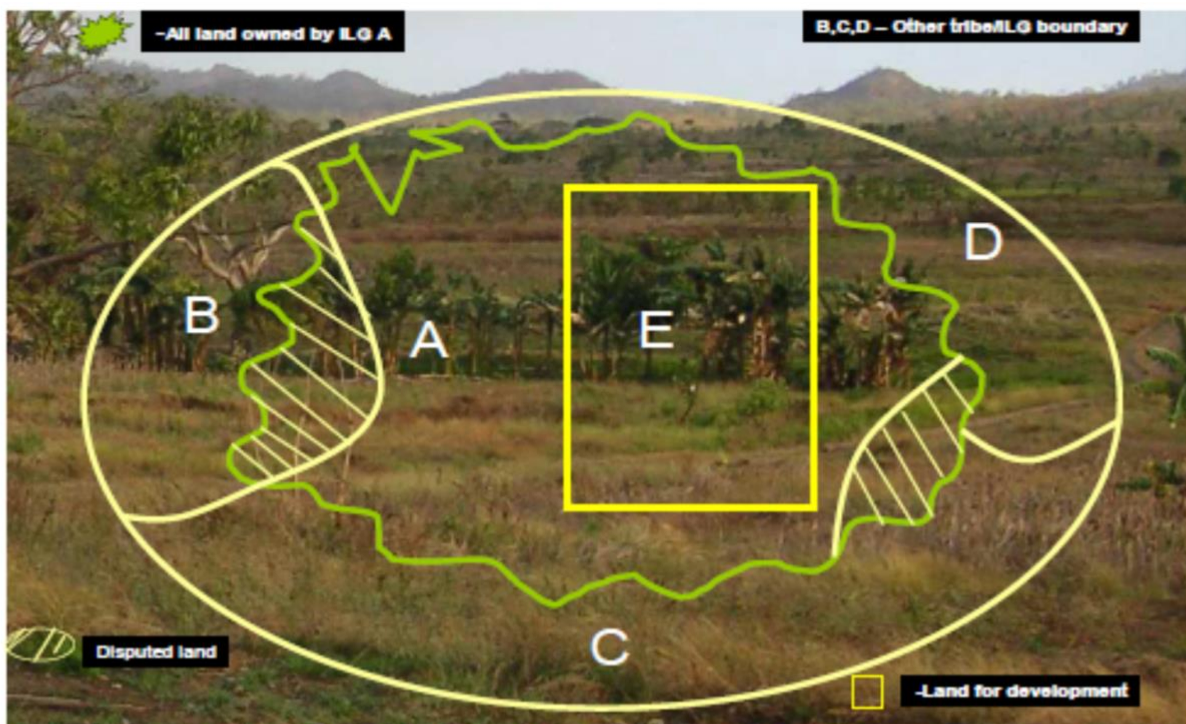
A second source of concern was an SABL over 50,000 hectares of land that was granted to the Piu land group in 2001. This area surrounded a prospective mining project in Morobe Province, and the beneficiaries, who had lodged their application for incorporation in 1995, were representatives of a single village who were seeking to exclude other villages from the prospective benefits (Filer 2011a: 274). This case was not investigated by the subsequent commission of inquiry, partly because the lease had been granted to a land group rather than a private company, but also because it had already been the subject of a protracted legal dispute between representatives of the different villages in the area. By the time of the land summit in 2005, the lease had already been revoked by the lands minister, his decision had been quashed by the National Court, but then upheld by the Supreme Court, officers of the Lands Department had been made to look rather stupid, and the whole contest had been aired at some length in the national newspapers (Anon. 2004, 2005a, 2005b; Krau 2005). Instead of taking this as a reason to question the utility of the lease-leaseback scheme, members of the National Land Development Taskforce took it as evidence of the need to amend the *Land Registration Act* so that land groups could get land titles in another way (GPNG 2007).

3. The new regime in theory

The primary aim of the new legislation is thus to ensure that each new land group is a genuine customary group, not some 'bogus' group created by 'paper landowners', before it can be granted recognition as a corporate body and then be granted the legal power to lease some or all of its land to its own members or to other corporate bodies. The thinking behind the legislation is reminiscent of that which informed the work of the Land Titles Commission in the 1960s, since it posits a landscape in which 'tribal territories' are divided between the sort of customary groups that old-fashioned anthropologists would call unilineal (patrilineal or matrilineal) descent groups, and that most Papua New Guineans simply call 'clans'. When the head of the Constitutional and Law Reform Commission was drafting the legislation in 2008, he represented this assumption in the

form of a diagram in which a tribal territory is divided between four clan territories, and one of the four clans 'mobilises' a rectangular portion of its own territory by registering a title over it (see Figure 3). If we imagine that a 'tribe' is roughly the same size as a local council ward, and each one is divided into four 'clans', then the average size of each clan estate — at least in rural areas — would be about 2,000 hectares.

Figure 3: Division of land group properties imagined by the Constitutional and Law Reform Commission



Source: GPNG 2008: 40

3.1 Steps in the land group incorporation process

The most significant innovation in the amended version of the *Land Groups Incorporation Act* is a far more detailed set of instructions about the 'prescribed material' to be provided to the Registrar of Incorporated Land Groups in an application for incorporation. The First Schedule of the Act says that the applicants must provide a 'true and complete' list of the group's members, accompanied by (a) evidence of their qualification to be members of the group, (b) evidence that they are not members of any other land group,

and (c) certified copies of their birth certificates.[4] They must also provide a list of the group's property, including a description of the land area over which the group claims customary rights. The Second Schedule says that this must specify the boundaries of the area in the form of a sketch map, and should include evidence of any boundary disputes with neighbouring groups (see Figure 3).

If the registrar is satisfied that the application complies with the provisions of the Act, Section 5 requires that a notice of lodgement of the application be published in the *National Gazette*. Copies of this notice must also be sent 'to the district administrator in whose area the land group or any of the property claimed on behalf of the land group is situated' and to the 'village court within whose jurisdiction members of the group reside'. They in turn are required to disseminate the notice 'in such manner they think most likely to ensure that it is widely known to person[s] having knowledge of or an interest in the affairs of the land group or its members'. The applicants should not receive a certificate of recognition until the registrar knows that this has been done.

The amended Act has not done much to clarify what should be done in the event of objections being made to the incorporation of a new land group. It makes no reference to the possible role of village courts or local land courts in dealing with such objections. Section 5 only deals with those objections that can be construed as 'internal disputes relating to the identity of the group's representatives, officers or membership'. In such cases, the registrar can either reject the application or do nothing until it appears that the dispute has been resolved.

The amended Act retains the provisions previously made for land groups to change their constitutions or to be wound up or dissolved, but it also contains new requirements for evidence that they are being properly managed. Section 14 requires each land group to hold a general meeting within three months of registration, and thereafter at intervals of one year, attended by at least 60 per cent of the group's members. It also requires the management committee to notify the registrar of any changes to its own composition and to provide a statement of the group's assets and liabilities at regular intervals. Section 28

[4] It is not clear how the registrar would know whether individuals were being listed as members of more than one group in the absence of a database capable of comparing the birth certificates of the members of different land groups. Even that would not be a reliable source of information if people can obtain more than one birth certificate under different names.

allows the registrar to seek additional information about the operation or membership of each registered land group, and grants any member of the public access to the information contained in a group's file.

3.2 Steps in the title registration process

The amended *Land Registration Act* states that the representatives of a recognised land group may apply to the Director of Customary Land Registration ('the director') to register their ownership of, or interest in, an area of customary land. There is no requirement that a land group apply to register all of the land over which it claims ownership, but nor is there any limit on the proportion of the group's land that can be subject to the process of registration.

The requirements of this process are mainly set out in Section 34 of the amended Act. This says that an application must be accompanied by a 'registration plan' that must include a description of the boundaries of the 'land or parcels of land' that are 'absolutely' owned by the applicants. The Act does not say what counts as a 'description' for this purpose, but it seems to consist of a combination of two documents that have long been part of the procedures for the acquisition of customary land by the state — a land investigation report and a survey plan. These need to be part of a registration plan in order to produce what Section 34K calls a 'good root of title'. The application for registration may also contain, 'where necessary', the names of people who are not members of the group but who still have 'derivative interests' in this area of land, 'including the boundaries of the parcels of such land and the nature of the interest'.

On receipt of the application, the director is required to verify the membership of the land group and the boundaries of the parcels of land described in the registration plan. This should entail a meeting with members of the group and a physical inspection of the boundaries to be undertaken in the company of the group's 'appointed representatives'. This requirement invokes the practice that has been known since colonial times as 'walking the boundaries'. Once this verification exercise has been completed, the director is required to produce a version of the registration plan that includes any consequential revisions or amendments. This is understood to be a further opportunity to include people who have 'derivative interests' in the area.

The director is then required to forward a copy of the registration plan to the Regional Surveyor and at the same time advertise the existence of the plan 'in such a manner he considers appropriate to bring it to the attention of all persons who may have an interest in the land or parcels of land' covered by the plan. The regional surveyor would normally be a suitably qualified officer of the Lands Department based in the province or region where the land is located. His or her job is to check whether the registration plan includes any land that is already subject to a title granted by the state, and if so, to produce an 'adjusted registration plan' that resolves this inconsistency. The advertisement is meant to be published in the *National Gazette* and the national newspapers, just like notices of applications for land group incorporation. In this case, the notice should inform people where the registration plan can be examined and how they can make an objection to it within a period of 'not more than 90 days'. People objecting to a plan are required to state whether they do so in a personal capacity or as the representative of a 'customary group'.

Objections are apparently to be dealt with at the discretion of the director. As in the case of the amended *Land Groups Incorporation Act*, the amended *Land Registration Act* makes no reference to the possible role of village courts, land mediators or local land courts in the settlement of disputes between the people making the application and the people objecting to it. Once the period allowed for objections has expired, and any objections received during that period have been dealt with, the director is required to prepare a 'final registration plan' that forms the basis of advice to the Registrar of Titles to issue a certificate of title to the land group. The legislation does not seem to require the director to publish a notice to the effect that this has been done.

Once a land group has been registered as an 'owner of clan land', it has the power to grant 'derivative rights and interests', typically in the form of leases, to itself, or to any of its members, or to any other entity. Leases to itself or its members do not seem to require government approval, but leases to other entities are treated as 'controlled dealings', which means that they need to be registered.

There is no legal mechanism by which the land in question can then be separated from its collective owner. The land ceases to be subject to 'customary law' except insofar as custom still applies to the transmission of rights to be members of the group holding the title (Chand 2017). In effect, this means that the group will already have alienated a

portion of its own land to itself, and will thus have become the customary owner of what is *no longer customary land*, even if it is still 'clan land'. At the same time, the customary group will also have alienated part of its own identity, because the 'clan' will have turned into something that looks and behaves like a miniature version of a private company.

4. New anomalies in the *National Gazette*

To assess the manner in which the new legislation has been implemented, I have compiled a spreadsheet based on information contained in the notices published in the *National Gazette* since the legislation came into effect in 2012. There are five main types of notice, each of which has a distinctive official title that I have abbreviated for the purpose of the present discussion (see Table 1).

Table 1: Standard notices gazetted under the new legal regime

FULL TITLE	ABBREVIATION
Notice of lodgement of an application for recognition as an ILG	Application notice
Notice of grant of certification of recognition	Recognition notice
Notice of invitation for objection under Section 34G	Survey notice
Notice of intention to accept land investigation report	Acceptance notice
Notice of registered survey plan	Land title notice

Application notices almost invariably identify the name of the proposed land group with that of the 'clan' to which its members are said to belong. They also name the village or villages where the group's members are resident and the local-level government (LLG) area, the district and the province in which they are located. The notices generally include a list of the vernacular names of the 'properties' or land assets claimed by the group, but the length of this list varies a lot from one notice to another.

Recognition notices assign a number to the group that is about to be recognised. These notices state that a group has 'complied with the traditional customs' of the village previously named in the application notice, and list the names of the individuals nominated as members of its management committee and dispute settlement authority. The management committee is normally said to comprise six individuals — a

chairperson, deputy chairperson, secretary, treasurer and two female representatives. The dispute settlement authority is commonly said to comprise three individuals, each of whom is assigned to a village that may or may not be the same as the village in which the group is based, and each of whom is also assigned a status such as 'village elder', 'land mediator' or 'village court magistrate'.

Survey notices provide the customary name and estimated area (in hectares) of the land portion or portions over which a land group is proposing to conduct a 'land investigation' and a 'survey'. These notices invite interested parties to lodge any objections to the group's existing 'sketch' of this territory within a period of 30 days, and state that copies of the sketch can be viewed in the offices of the (national) Director of Customary Land Registration, the Provincial Lands Advisor, or the Regional Surveyor. In some cases, the notices already assign a number to the proposed survey plan.

Acceptance notices purport to advise 'customary landowners' within the relevant LLG area that the Director of Customary Land Registration is in receipt of a land investigation report for the portion or portions of land claimed by a land group, and invite any 'aggrieved' landowners who share a 'common boundary' to register their approval or objection within a period of 30 days. These notices assign portion numbers as well as survey plan numbers to the land parcels that have been investigated.

Land title notices state that the Director of Customary Land Registration, in consultation with the Surveyor General, has accepted the land group's survey plan as the basis for registration of its 'customary land title' over the land parcels to which portion numbers have already been assigned in the acceptance notices.

Application notices and recognition notices have occasionally been amended because of changes in the list of land assets claimed by a land group or changes in the composition of its management committee or dispute settlement authority. In 2018, there were also four notices to advise that a land group had been 'wound up' because it was found to be

illegitimate, but only one of the four groups had previously been subject to a recognition notice as well as an application notice.[5]

Specific notices are sometimes repeated, presumably by accident, in different issues of the gazette, but such instances of duplication have been discounted in my calculation of the number of notices published between 2013 and 2018 (Table 2).

Table 2: Numbers of notices gazetted between 2013 and 2018

TYPE OF NOTICE	2013	2014	2015	2016	2017	2018	TOTAL
Application notices	36	84	116	229	420	126	1,011
Recognition notices	10	59	61	162	373	130	795
Survey notices	14	16	31	16	38	42	157
Acceptance notices	5	12	6	16	31	17	87
Land title notices	4	7	4	12	32	16	75

Source: Author's calculations based on notices published in the *PNG National Gazette*

Although the *Land Groups Incorporation Act* of 1974 required the registrar to publish recognition notices, this did not become standard practice until October 2011.[6] The timing of this innovation seems to be linked to the hearings of the Commission of Inquiry into SABLs, where Lands Department officials were admonished by the commissioners when they conceded that previous applications for incorporation had invariably been approved because no steps had been taken to verify their authenticity. A total of 51 recognition notices were gazetted between October 2011 and the end of February 2012, immediately before the new Act came into effect. Only two such notices were gazetted in the remaining ten months of 2012, and another four were gazetted in November 2013, but all six of the land groups covered by these notices were assigned numbers that belonged to the old series, so it seems that they were not being recognised under the terms of the new legislation. The first group to be recognised under the new legal regime

[5] Two groups were wound up in light of a local land court decision dating from 2011. A third was found to be party to a land dispute that was still subject to litigation. The fourth was found to have fabricated a connection between two different clans from two different villages.
[6] In 2018, Lands Minister Justin Tkatchenko said this was the main reason that groups incorporated under the old regime were 'non-genuine' (Anon. 2018a).

was the Auwi Hembi group in Hela Province, which was assigned the new series number 1 by means of a recognition notice published in March 2013. This group's application notice had been published in February that year. Nine other groups got recognition notices with numbers from the new series during the course of that year. All ten of these groups were among the 36 that had their application notices gazetted in 2013.

The strange thing is that 60 groups generated survey notices in 2012, and another 12 generated survey notices in 2013, without having been subject to recognition notices that assigned them a group number in the new series. The first of these was a set of survey notices published in May 2012. They came from 57 land groups in West Sepik Province, with a combined claim over more than 38,000 hectares of land, whose application notices had been gazetted in 2009, well before the new legislation came into effect. Their claims were subject to a set of acceptance notices published in September 2012, but no corresponding set of land title notices has ever been gazetted. One of the other three groups that were responsible for survey notices in 2012 laid claim to a single portion of more than 72,000 hectares of land in Western Province; another claimed seven different portions of land around the city of Lae, with a combined area of roughly 30 hectares; and the third claimed ownership of three portions in the national capital, Port Moresby, with a combined area of roughly 130 hectares. None of these claims has ever been subject to an acceptance notice, although the land group in Lae eventually got a recognition notice in June 2016, while the other two groups are still 'unofficial'. Of the 12 groups that were yet to be recognised when they generated survey notices in 2013, five subsequently got acceptance notices, and six subsequently got land title notices, although one of them did not get these notices until 2016, by which time it had been officially recognised.

There were two unofficial groups — groups without recognition notices — in West Sepik Province that received their acceptance and land title notices on the same day in 2013, another in Madang province that received both notices on the same day in 2014, and a fourth in Morobe Province that received both notices on the same day in 2015. There was also one unofficial group in the national capital that received its land title notice in 2014 without being the subject of any previous acceptance notice, let alone a recognition notice. Of the two groups that did get a recognition notice before generating a survey notice in 2013, one, in Western Province, was likewise able to get a land title notice

without getting a previous acceptance notice, while the other one, in the national capital, only got an acceptance notice without getting a land title notice.

It would therefore seem that some land groups were able to proceed some way along the path to registration of their land titles without ever being granted official recognition as groups incorporated in compliance with the amended version of the *Land Groups Incorporation Act*.

The 795 land groups that got official recognition notices between March 2013 and December 2018 were assigned numbers that ranged from 1 to 1177. There are three cases in which the same number was assigned to two different land groups in different parts of the country. It is not clear why some of the numbers in the sequence have not been assigned to any of the land groups that got recognition notices. There is evidence to indicate that the registrar has been granting some certificates of recognition without publishing the gazettal notices that correspond to them, but the Acting Secretary of the Lands Department announced that only 725 certificates had been issued by September 2018 (Anon. 2018b).[7] However, the gazettal notices indicate that this figure had already been reached in June of that year, so it seems that most of the missing numbers have not been allocated at all.

One might suppose that all of the 794 groups that had been recognised, and not officially 'wound up', by the end of 2018 would have had their application notices gazetted in advance of their recognition notices. But this is not the case. While the *National Gazette* tells us that 290 land groups had officially applied for recognition without being officially recognised by the end of 2018, it also tells us that 85 groups had been officially recognised without having their application notices gazetted beforehand.

The practice of publishing survey notices for groups that have not previously been subject to application or recognition notices has also persisted since 2013. Of the 47 survey notices gazetted in 2014 and 2015, 19 came from land groups that had not previously been subject to recognition notices issued in accordance with the new legislation, although three of them were subject to recognition notices *after* their survey notices had

[7] Lands Minister Justin Tkatchenko is reported to have said that 'about 2000-plus' land groups had been registered under the new legal regime before the end of 2018 (Anon. 2018a), but the acting secretary probably closer to the mark.

been gazetted. These acts of omission seem to have diminished since then. Of the 96 survey notices gazetted between 2016 and 2018, only two came from groups that had not previously got recognition notices, and both of these groups did have their applications gazetted under the new regime.

The practice of publishing acceptance notices for land portions that have not previously been subject to a survey notice has also persisted throughout this period. The first such case was recorded in September 2013, when a land group in East New Britain Province got an acceptance notice and a land title notice, both gazetted on the same day, for two land portions with a combined area of 12,000 hectares. Not only did this group lack survey notices for these two portions; it also lacked any prior recognition notice in the new series, but its application notice did finally get published in April 2016, two and a half years after its land title had apparently been registered. Another 22 of the 87 acceptance notices published since 2013 have lacked a previous survey notice, and eight of them have been awarded to groups that have not even received a recognition notice during that period.

The practice of publishing acceptance notices and land title notices for particular portions of land on the same day, in the same issue of the *National Gazette*, has also been commonplace. Sixty-nine of the 87 acceptance notices have thus been accompanied by an instantaneous or simultaneous land title notice, which seems to contravene the provision in the legislation, and in the wording of the acceptance notices themselves, that invites any ‘aggrieved’ landowners who share a ‘common boundary’ to register their approval or objection within 30 days of the notices being gazetted. Of the 18 acceptance notices that did not lead to the instantaneous grant of a land title, 16 had not resulted in any land title notice by the end of 2018. However, in the other two cases, the land title notice was gazetted *before* the acceptance notice, which is almost as strange as the case in which a land title notice was gazetted before an application notice.

Aside from the group in East New Britain, there are 12 other unofficial land groups whose land claims have been subject to acceptance notices, and ten of these groups have secured land title notices on the same day as their acceptance notices. There are only three groups that have got a land title notice without receiving an acceptance notice, but all three have at least been subject to recognition and survey notices. Yet one of these three groups,

which is based in Morobe Province, had its survey notice and its land title notice published on the same day in 2017, and that is even more peculiar than the 69 cases in which land title notices have been published at the same time as the acceptance notices to which they relate.

Survey notices, acceptance notices and land title notices all specify the area of land to which they apply, and in cases where the same portion of land has been subject to two or three of these different notices, the area is normally the same in each of them. There are four cases in which the area shrank between the survey notice and the land title notice, two of them with a very substantial reduction, and three in which it grew slightly larger. The most extreme case of shrinkage is in the size of two land parcels that were each said to cover 564.6 hectares in the survey notices produced by the Vaga land group from Kirakira Village in National Capital District in November 2014. When these two land portions were subject to acceptance and land title notices in April 2017, one had been confined to 4.79 hectares while the other had shrunk to a mere 0.74 hectares. In such cases, I have assumed that the most recent notice contains the most accurate measure.

A total of 185 land portions made an appearance in one or more of these three types of notice between 2013 and 2018, all but one of which was assigned an area. Four of these land portions were said to be in excess of 100,000 hectares, which seems to be far greater than the area that could possibly constitute the landed property of a single clan within a single village (see Figure 3). By far the largest is an area of 529,000 hectares, supposedly called Keram, that was assigned to the Pukpuk ('Crocodile') land group from Lamdo Village in Madang Province by means of acceptance and land title notices gazetted in 2015. No village of this name can be found in the 2000 national census, but if it really is located in the Arabaka LLG area, as proclaimed in the group's recognition notice, then the whole of that area, or one of equivalent size, would seem to have become the property of a single clan. However, the scale attached to a copy of the survey plan that I obtained from the Lands Department reveals that the area is in fact only 529 hectares, even though the surveyor has written '529,000.00' in the middle of it.

The revelation of this order-of-magnitude problem casts doubt on the real size of three other land parcels that were assigned to three land groups in Western Province by means of acceptance notices gazetted on the same day in 2014. These were said to cover

186,600, 180,300 and 106,900 hectares respectively. Although the three land groups had received their recognition notices in 2013, there were no survey notices announcing their intention to conduct land investigations, and the acceptance notices were not accompanied by land title notices. The acceptance notices were also unlike others of their kind because they did not assign portion numbers or survey plan numbers to the three land parcels, but only made reference to the existence of 'sketch plans' that should have been produced in advance of any land investigation. I have not tried to obtain copies of these mysterious documents from the Lands Department, so I do not know if they exhibit an order-of-magnitude problem in their own right, but it looks as if procedural irregularities might explain the failure or refusal of the Director of Customary Land Registration to register the three titles.

Even if these three cases are ignored, and the portion called Keram is reduced to its correct size, there is still a wide range of variation in the size of the land portions specified in the different notices (see Table 3). One or more of the 12 portions covering more than 10,000 hectares might still turn out, on closer inspection, to be 10, 100 or 1,000 times smaller than they appear in their gazettal notices, but it should be noted that all of them are in rural areas, half of them were said to cover less than 20,000 hectares, and the largest to be subject to a land title notice by the end of 2018, in West New Britain Province, covered less than 40,000 hectares.

Table 3: Size of 182 land portions over which land groups have been seeking to register titles between 2013 and 2018

Portion size (ha)	Total portions	Area claimed (ha)	Area titled (ha)
Less than 1	9	3	2
1 – 10	31	124	56
10 – 100	29	1,264	517
100 – 1,000	43	19,316	7,781
1,000 – 10,000	57	176,130	101,055
10,000 – 100,000	12	292,008	123,611
TOTAL	**181**	**488,845**	**233,022**

Source: Author's calculations based on notices published in the *PNG National Gazette*

5. An elastic deadline and the shape of novelty

Section 36 of the amended *Land Groups Incorporation Act* stated that all existing land groups had to make applications for reincorporation within five years of the Act coming into effect, otherwise they would 'cease to exist'. By the time this deadline expired at the end of February 2017, 540 application notices and 316 recognition notices had been gazetted in accordance with the terms of the new legislation, so it appeared that thousands of land groups were on the brink of extinction. However, the registrar suggested that the National Executive Council might save them from this fate by extending the deadline (Tarawa 2017a), and Lands Minister Justin Tkatchenko made the same promise later that year, explaining that 'the extension was to avoid causing issues with big industries including oil palm, mining and petroleum to ensure they got the process right' (Tarawa 2017b). Section 36 was accordingly amended in November 2018, giving land groups incorporated under the old regime another five years to rid themselves of what the minister called their 'questionable (shadow) legal status' (Kama 2018).

This invites us to consider the reasons for the difference in the spatial and temporal distribution of the applications made under the two legal regimes, and hence the difference between the motivations of the applicants or their corporate sponsors. Since we already know a good deal about the links between the older groups and a range of large-scale resource development projects in rural areas, the question is whether the notices published in the *National Gazette* since 2013 reveal a similar pattern or one that is quite different, and if it is quite different, why that should be so. Answers to this question can only be partial, since none of these notices provides any explicit rationale for the act of incorporation or the pursuit of a registered land title.

There has never been any systematic process of land group incorporation in the mining sector, so there has never been a need for mining companies or the relevant government agencies to 'get the process right'. Compensation and royalty payments due to the customary owners of land covered by exploration or development licences in this sector have been made to 'agents' appointed under Section 9 of the *Land Act*. Although these individuals may be recognised as 'clan leaders', the *Mining Act* of 1992 says nothing about the formal incorporation of their customary groups. Less than 50 of the applications

gazetted under the old regime, and less than 20 of those gazetted under the new one, appear to have come from people claiming customary rights over these mining concessions. Far from encouraging such applications, company managers and government regulators have been inclined to view them as a threat to compensation or benefit-sharing agreements that have already been negotiated. The antics of the Piu land group in Morobe Province are a case in point (see Section 2).

The situation is quite different in the petroleum sector, because the *Oil and Gas Act* expresses a clear preference for land groups, or their executives, to be the recipients of what the Act calls the 'royalty benefit' and 'equity benefit' that project area landowners are entitled to receive from the development of oil and gas projects. However, the Act does not say who should be responsible for organising their incorporation. It only says that project proponents or developers are responsible for the conduct of 'social mapping and landowner identification studies' that should help the minister to decide which groups ought to be incorporated. The situation has been complicated by development of the PNG LNG Project since 2010, because this project involves a combination of 'brownfield' licence areas, from which oil was already being exported, and 'greenfield' licence areas, which are new additions to the project. The project's operator, ExxonMobil, has never taken responsibility for the incorporation of land groups in any of these areas. Its joint venture partner, Oil Search Ltd, has belatedly taken some responsibility for reincorporating the Chevron groups in the brownfield licence areas because it purchased Chevron's stake in the oil export business in 2003, and thus inherited the files relating to the previous incorporation of the 480 'Chevron groups' (John Brooksbank, personal communication, February 2019). The Department of Petroleum and Energy has taken responsibility for the process of incorporation in the greenfield licence areas, but its officers have struggled to convert the findings of social mapping and landowner identification studies into decisions that are acceptable to a majority of local landowners (Filer 2019). The Huli-speaking landowners in Hela Province, whose greenfield licence areas contain most of the gas that is now being exported, have been especially recalcitrant because they (or their representatives) object to the provision in the new legislation that prohibits them from being members of more than one land group (Goldman 2007).

By the end of 2018, only two of the original Chevron groups had attempted to reincorporate themselves. One came from the route of the oil export pipeline, and failed

to achieve a recognition notice. The other came from the Gobe licence area, and did manage to achieve a recognition notice. This group, which goes by the name of Wolotou, has been caught up in a protracted legal battle to establish its right to a proportion of the landowner benefits derived from this area, which probably explains why its leaders want to reaffirm its legal status. No applications for reincorporation had come from the Kutubu licence area, which is by far the biggest of the brownfield licence areas. The only greenfield licence area to show any significant level of activity was the 'buffer zone' surrounding the processing plant, just outside the national capital. Although the plant itself was built on land that had been purchased from its 'native' owners back in 1906, four nearby villages were granted some entitlement to landowner benefits. Nine land groups from these villages had application notices gazetted between 2015 and 2018, of which four got recognition notices, and one other group from this area got a recognition notice without any prior application notice. This last group, called Araua, was the only one out of the ten to have produced a survey notice, gazetted in 2018, in which it laid claim to 54,900 hectares of land, which is more than ten times bigger than the portion of alienated land that contains the plant site. No acceptance or land title notices have followed this claim, so it is possible that the neighbours lodged an objection to it.

The third industry mentioned in the minister's pronouncement has developed its own way of producing benefit-sharing agreements with local landowners, with very little in the way of state intervention or legal obligation. Between 1997 and 2002, the company operating a major oil palm scheme in Milne Bay Province organised the incorporation of 33 land groups. New Britain Palm Oil Ltd, which took control of the Milne Bay scheme in 2010, had already been doing something very similar around the Hoskins scheme, in West New Britain Province, between 1998 and 2009. In both cases, the aim of the exercise was to extend the boundaries of the nucleus estates that were initially established on land alienated during the colonial period by persuading local landowners to allocate some of their customary land to 'mini-estates' that would be managed by the palm oil companies. This was achieved by means of the lease-leaseback scheme. Having arranged the process of incorporation, consultants engaged by the palm oil companies then arranged for the land groups to lease their land to the state on condition that it then be leased back to these same groups and then subleased to the companies, normally for a period of 40 years (Oliver 2001; Filer 2012a).

A number of financial and institutional considerations would explain the reluctance of company managers to revisit this process. The original process was time-consuming and not entirely uncontentious; the legal status of SABLs was thrown into doubt by the commission of inquiry; the validity of the leases and subleases would be called into question if existing groups had to be divided into smaller groups in order to comply with the new legislation; and company managers found it difficult to get relevant advice from the Lands Department. The recommendations of the latest national land summit seem to have justified their reluctance. Six of the land groups in West New Britain that were probably incorporated with company support have since applied for reincorporation under the new regime, but it is not clear how much company support has been provided for their reincorporation.

One industry that was not mentioned in the ministerial announcement was the logging industry. That might seem rather strange, since roughly one-third of the land groups incorporated under the old legal regime were incorporated for the purpose of negotiating FMAs, those agreements last for 50 years, and most of them have formed the basis for the grant of a logging concession that is still operational. However, the *Forestry Act* was designed to deny logging companies any role in the process of land group incorporation, since that process is meant to precede the grant of a concession, and the companies now have nothing to lose if local land groups cease to exist. Staff of the National Forest Service, who were actively involved in the process between 1995 and 2010, have not been directed to revisit and reincorporate as many as 3,000 groups whose chairmen are currently in receipt of timber royalties from large-scale logging concessions. Nor would they now have the capacity and resources to undertake such a task. Knowing this to be the case, they advised the land group chairmen to make their own arrangements and asked the logging companies to help them do so (Ruth Turia and Andrew Aopo, personal communications, October 2019).

West Sepik is the only province where these communications had any obvious effect. Between March 2017 and June 2018, 157 land groups from three LLG areas in Vanimo-Green District, close to the Indonesian border, were listed in clumps of application notices published in nine different issues of the *National Gazette*. It turns out that these groups contained the customary owners of a selective logging concession called Amanab Blocks 1–4 and Imonda Consolidated, which covers more than 250,00 hectares of forested land

and is held by Amanab Forest Products Ltd.[8] Logging company staff are known to have facilitated the engagement of provincial forestry and lands officers in the process of reincorporation. The odd thing is that the names of the new groups associated with this concession bear almost no relationship to the names of the groups whose representatives had previously signed up to the three FMAs on which it is based. The only explanation for this discrepancy that I have been able to obtain from people involved in the latest process of incorporation is that the first process created a large number of 'bogus' groups (Jim Silu and Jack Desse, personal communications, October 2019). It is also conceivable that land groups or 'clans' in this part of the country have very unstable identities, so the current groups may turn out to be no more durable than their predecessors.

It is not clear why land group chairmen and logging company managers in other FMA areas have failed to act on the advice provided by officers of the National Forest Service, but the action taken in this part of West Sepik Province largely explains why this one province accounts for almost one quarter of all the applications gazetted under the new regime (see Table 4 and Figure 4). At the same time, the failure to reincorporate groups formerly registered with the assistance of Chevron staff or forestry officers in other parts of the country also serves to explain much of the change in the distribution of land groups between provinces under the two legal regimes, especially the marked decline in the proportion of groups incorporated in Gulf and Southern Highlands provinces.

The disparities are even greater at the district level. More than 80 per cent of the newly incorporated groups in West Sepik Province are based in Vanimo-Green District, while two of the other three districts in this province account for less than 4 per cent. In Kikori District, one of two districts in Gulf Province, more than 1,600 land groups were incorporated between 1993 and 2012, but only 11 applied for incorporation between 2013 and 2018, and six of these were new groups staking claims over land that might be required for PNG's second gas project. If all the customary landowners of Kikori District had joined one and only one land group under the old regime, which is rather unlikely, then 2000 census data suggest that each one would have contained only 24 members — men, women and children. Indeed, an anthropologist working in that part of the country

[8] This company is a subsidiary of the Malaysian conglomerate WTK Realty, which has been based in Vanimo for more than 40 years and has operated a number of other logging concessions in West Sepik Province.

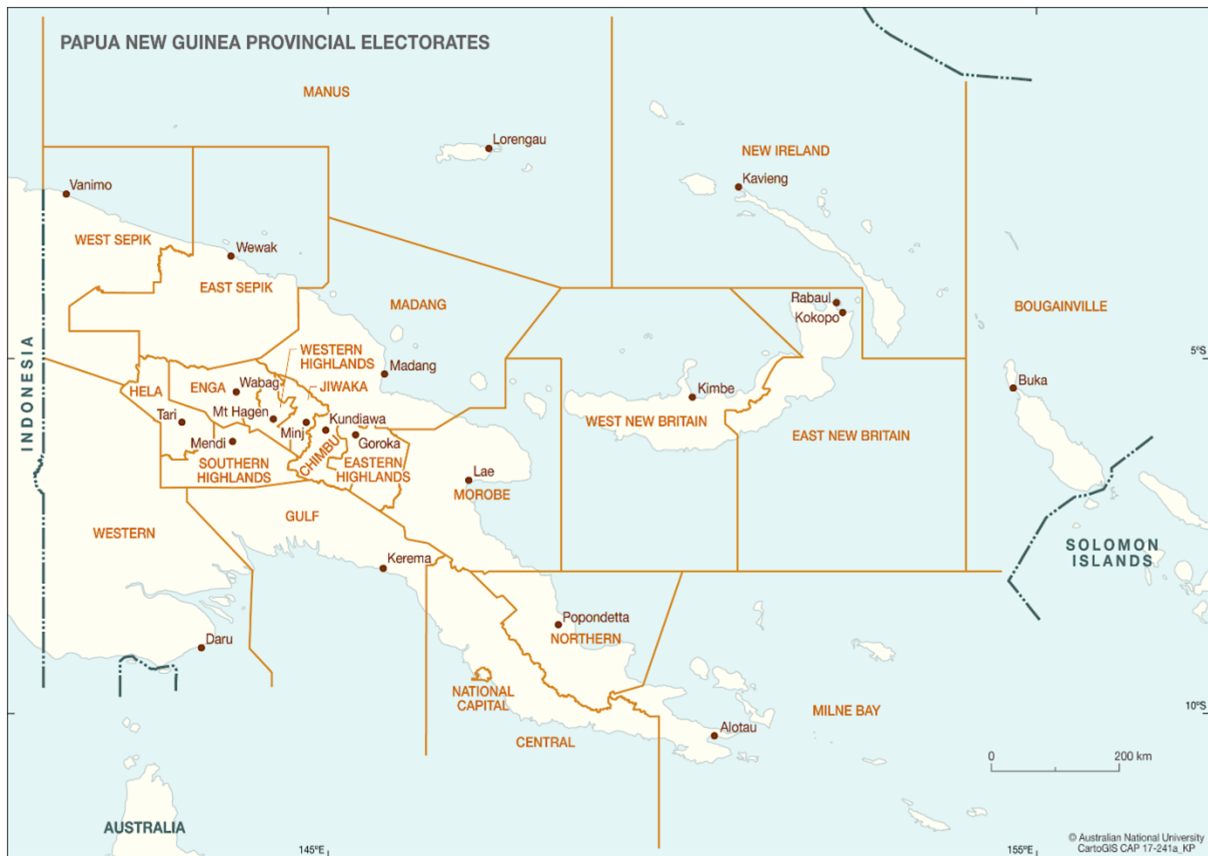
has recorded what seems like a local obsession with the process of incorporation that may have been initiated by the activities of Chevron staff and forestry officers, but then seems to have gained a momentum of its own as local people came to believe that incorporation was a necessary condition of 'development' (Bell 2009). Reincorporation under the new regime does not seem so attractive.

Table 4: Spatial distribution (per cent) of application notices under the old and new legal regimes

Region	Old regime (1993–2012)	New regime (2013–2018)
Western Province	7.5	3.3
Gulf Province	13.6	2.9
Central Province	6.1	7.7
National Capital District	0.5	5.6
Milne Bay Province	1.7	1.6
Oro Province	4.2	2.5
Southern Highlands Province	9.4	1.4
Hela Province	5.7	3.6
Enga Province	1.0	0.5
Western Highlands Province	0.6	1.8
Jiwaka Province	0.1	0.2
Chimbu Province	0.1	0.4
Eastern Highlands Province	1.1	2.7
Morobe Province	4.8	5.6
Madang Province	8.2	5.1
East Sepik Province	6.9	5.4
West Sepik Province	13.6	23.8
Manus Province	0.1	0.3
New Ireland Province	3.3	5.2
East New Britain Province	6.0	10.5
West New Britain Province	5.5	8.7
Bougainville Autonomous Region	0.1	1.1

Source: Author's calculations based on notices published in the *PNG National Gazette*

Figure 4: Provinces of Papua New Guinea, 2013



Source: Australian National University

At the other end of the spectrum, there were 21 districts — almost one quarter of all the districts outside the national capital — in which the number of groups incorporated under the old regime was less than ten, and four districts in which there were none at all. None of the districts with such very low levels of incorporation contained a major resource project, logging concession or oil palm scheme. And since none of them has so far acquired such a thing, it is not surprising that rates of land group incorporation have remained very low under the new regime as well. There have only been 40 land groups from all 21 districts with an application or recognition notice gazetted since 2013, and the number of districts without a single notice has now risen to six. What still needs to be explained is the continuing popularity of land group incorporation in some parts of the country, aside from Vanimo-Green District, and its growing popularity in others, especially National Capital District (see Table 4).

6. The end of the lease-leaseback scheme

As we have seen, one of the industries that the lands minister accused of dragging its feet in the process of reincorporation was one that had previously arranged the incorporation of land groups for the purpose of engaging them in the lease-leaseback scheme, and not just for the purpose of consenting to the grant of a development licence or the negotiation of a benefit-sharing agreement. That was the palm oil industry. But established palm oil producers accounted for a very small proportion of the SABLs issued under this scheme, and were only implicated in one of the SABLs investigated by the commission of inquiry in 2011. So what has become of all the other land groups that got mixed up in this scheme in one way or another? In order to deal with this question, we first need to appreciate the variation in the size of the leases that ended up in the hands of land groups or other entities before the national government suspended the scheme.

Notices published in the *National Gazette* indicate that 981 SABLs were issued by the Lands Department after amendments to the *Land Act* created a legal obligation to publish them (see Table 5). The majority of these leases were apparently issued to individuals or families, while most of the rest were either issued to private companies or to land groups. The Act does not actually require that the 'head lease' (to the state) be granted by a land group; it only requires the consent of the customary owners. Many of the SABLs issued to individuals or families may therefore have been based on nothing more than the 'verification of ownership and consent of landowner' forms routinely used in the Lands Department, which only require the signatures of clan members and the counter-signatures of village court magistrates or land mediators. However, SABLs issued to land groups were normally, and understandably, based on head leases granted by these same groups, and the commission of inquiry found that this type of head lease was also the foundation for most of the SABLs granted to private companies. The commission of inquiry did not elicit the names of all the land groups that had supposedly agreed to the 74 SABLs that it investigated, but it did investigate all of the SABLs issued to private companies that covered areas of more than 10,000 hectares. In most of these cases, it is possible to identify a clump of land group application notices in the *National Gazette* that is clearly connected to the subsequent grant of an SABL in the same approximate location, and we can therefore check to see if the land groups incorporated for this purpose have

since been reincorporated under the new legal regime. The commission did not investigate any of the SABLs issued to land groups, but since we already know the names of the groups to which they were issued, it is easy to see whether these groups have taken steps to reassert their corporate identity.

Table 5: Special agricultural and business leases gazetted between 1997 and 2012

Scale of lease (hectares)	Leases to companies	Leases to land groups	Leases to others	Area covered by all leases
More than 100,000	15	0	0	4,325,350
10,000 – 100,000	31	11	0	1,192,666
1,000 – 10,000	14	16	0	114,497
100 – 1,000	10	25	3	11,910
10 – 100	15	16	23	1,766
1 – 10	10	20	85	392
Less than 1	13	165	129	78
Area not specified	59	39	282	
TOTAL	**167**	**292**	**522**	**> 5,646,659**

Source: Author's calculations based on notices published in the *PNG National Gazette*

In all these cases, the possible motivations for reincorporation have been complicated by the national government's response to the findings of the commission of inquiry. In June 2014, the National Executive Council resolved to implement the recommendations made by two of the commissioners, John Numapo and Nicholas Mirou, that most of the 49 SABLs discussed in their final reports should be revoked or reviewed. There were no recommendations from the third commissioner, Alois JerewaI, because he failed to produce a final report, so the 25 leases on which he held hearings in Gulf, East New Britain and West New Britain provinces survived by default. This omission was dealt with by means of an additional resolution to establish a ministerial committee to make recommendations on what should be done with these 25 leases and some or all of the other SABLs that had not even been investigated by the commission (Filer and Numapo 2017: 265–7).

It is not clear whether the revocation of SABLs, either by the judicial or executive arms of the state, entails the automatic cancellation of the head leases on which they are based, and therefore whether the customary owners of the land in question are then free to pursue the registration of their collective land titles under the new legal regime. At the same time, the resolutions of the National Executive Council have been subject to a number of legal challenges, while the ministerial committee seems to have been overwhelmed by the scale of its mandate, so no further decisions have been made about the validity of more than 900 SABLs that have not yet been revoked by the courts.

7. Leaseholders lost and found

One might suppose that land groups holding SABLs in their own right would have the strongest incentive to reincorporate themselves, since the termination of their legal identity would remove their capacity to engage in any legal land transactions. Although the *National Gazette* tells us that 292 SABLs were issued to land groups after the *Land Act* was amended to incorporate the lease-leaseback scheme in 1996, only 122 land groups were in receipt of them because some land groups got more than one lease. Only 24 (or 20 per cent) of these groups have attempted to reincorporate themselves under the new legal regime, and they would account for less than 5 per cent of the land groups that have been the subject of application or recognition notices since 2013.

7.1 Leaseholding land groups in rural areas

Of the six groups associated with the Hoskins oil palm scheme in West New Britain Province, five have got recognition notices, although one of them seems to have split up in the process, and only one of its component parts has been recognised. The SABLs issued to these six groups covered a combined area of approximately 12,000 hectares. Only one of them, the Maleu group, has so far made an effort to register a collective land title. In 1999, this group received an SABL covering 778 hectares, but this had been reduced to 644 hectares in the acceptance notice published in 2018, and that was not accompanied by a simultaneous land title notice. Another group from West New Britain, by the name of Lokang, which appears to be based in the Rottock Bay logging concession, did much better. In 2008, this group received two SABLs with a combined area of 132 hectares, but in 2016, it got an acceptance notice and a land title notice, both

published on the same day, for an area of no less than 39,797 hectares. Nothing more is known about this group's activities or motivations.[9]

More is known about the three groups from East New Britain Province, which are associated with a new generation of oil palm schemes. Two of them, Simbali and Tomoip, are associated with the Illi-Wawas Integrated Rural Development Project in Pomio District. In 2007, this became the first of PNG's 'agro-forestry' projects to be granted a 'forest clearing authority' (FCA) by the National Forest Board, thus enabling the developer, Malaysian company Tzen Niugini Ltd, to fund the establishment of an oil palm scheme from the revenues generated by clearing the native forest and exporting some of the logs (Tammisto 2016; Gabriel et al. 2017; Hambloch 2018). The two land groups are both named after the language or dialect spoken by the people living in one part of the project area. The Simbali group received an SABL covering 24,810 hectares in 2008, and proceeded to issue a sublease to Tzen Niugini, thus providing a form of retrospective consent for their land to be logged (Hambloch 2018: 17). The Tomoip group received two SABLs over a combined area of 9,472 hectares in 2011. This area does not seem to have been covered by an FCA, either before or since, although it was certainly part of the larger scheme. Both groups applied for reincorporation in 2017, but only the Simbali group got a recognition notice. Neither group has taken steps to register a title under the new regime.

The Kairak land group seems to have bestowed its own name, which is also the name of a language, on the Kairak Oil Palm Development Project in the Inland Baining LLG area in Gazelle District. The group's 'development partner', East New Britain Palm Oil Ltd, has the same directors as Tzen Niugini, and the two companies have made no attempt to hide their close relationship (Apina 2012). Although the developer began planting oil palm in 2012, it has not been granted an FCA and has not exported any logs, so this does not appear to qualify as an agro-forestry project. The Kairak group first applied for incorporation in 2010, under the terms of the original *Land Groups Incorporation Act*, but some of its executives had previously registered a landowner company called Kairak Investment Ltd back in 1989. The group received two SABLs, with a combined area of

[9] The Rottock Bay Consolidated FMA covers a gross area of more than 136,000 hectares. The Lokang group may have been reincorporated in order to receive and distribute timber royalties from part of this concession, but it would not be necessary to register a collective land title for this purpose.

34,536 hectares, in 2011, and initially dedicated one of the two portions, with an area of 10,980 hectares, to the oil palm scheme. In 2016, representatives of three other land groups in the same area, along with the LLG president and a couple of other clan leaders, persuaded the National Court to revoke the SABLs on the grounds that the Kairak 'clan' was not the sole owner of the two portions and some of the other customary landowners had not been consulted about the leasing arrangement (PNGNC 2016). Shortly afterwards, the Kairak group applied for reincorporation, and it received a recognition notice some months later, but its leaders have not attempted to register a collective land title. The court order does not seem to have made any difference to the development of the oil palm scheme, which received a public endorsement from both national and provincial government representatives in 2017 (Yafoi 2017).

There are also three groups from Morobe Province that received SABLs and have since sought reincorporation under the new legal regime. One of these is the Piu land group, whose chairman, Martin Tapei, has never accepted the national government's refusal to recognise his status as the 'principal landowner' of the Wafi-Golpu mining prospect. He submitted an application for reincorporation in 2017 and received a recognition notice the following year. In 2018, the Wafi-Golpu Joint Venture submitted a development proposal to the national government, which prompted the mining minister to initiate the negotiation of a benefit-sharing agreement under the terms of the *Mining Act*. Mr Tapei was not one of the local landowner representatives invited to participate in this process, since the mining companies and the Mineral Resources Authority have never accepted the legitimacy of his claims over the prospect. While he and his supporters protested through the pages of the national newspapers in the first few months of 2019, as negotiations were still proceeding, there was no sign that government ministers or officials were going to change their minds.

Like the Piu land group, the Katumani Dandow group is based in the Mumeng LLG area and claims to own a considerable part of it. In 2005, this group secured an SABL that covered 22,000 hectares and lasted for 50 years, but in 2010 a second notice in the *National Gazette* extended the period of the lease to the maximum of 99 years. The group is reported to have subleased the land to PNG Forest Products Ltd, which manages the country's largest timber plantation (on state-owned land), so that the company could build a hydro-electric power station (Nalu 2013). The group applied for reincorporation

in 2016 and got its recognition notice in 2017. However, a man was subsequently arrested and charged with 'one count each of false pretence and forgery' for conspiring with provincial lands officers to misappropriate the group's certificate and then pretending to be its chairman (Kalebe 2017). It is not known whether he was convicted of this offence or whether he was able to obtain a share of the rent payable for the sublease.

7.2 Leaseholding land groups in urban and peri-urban areas

The Orognaron group is one of the few land groups to have exchanged its SABL for a collective land title. The SABL covered 860 hectares and was issued in 2009, while the land title covered 862 hectares and was issued in 2016. The same group had a survey notice covering an additional 196 hectares, also published in 2016, but this was not followed by acceptance or land title notices. The land covered by the lease and the title is apparently located in the vicinity of Nadzab Airport, and the group's leaders have been hoping to sublease it to the developers of an airport township that is featured in the Morobe Provincial Government's development plan for the corridor linking the airport to the city of Lae (Anon. 2016a). It was later reported that 200 hectares of the group's land had been earmarked for the construction of an 'industrial park' near the airport (Anon. 2018c).

This is not the only land group with an interest in urban development plans. The Modewa Silabe group in Milne Bay Province got three SABLs, with a combined area of less than 20 hectares, in 2008, and then exchanged one of these leases for 59 much smaller leases, with a combined area of just over 5 hectares, in 2010. The explanation for this behaviour is that the group's leaders were attempting to create a new housing estate on the outskirts of the provincial capital, Alotau, so they thought it would be a good idea to subdivide the land into small plots on which the houses could be built. Unfortunately, they forgot to make provision for the additional infrastructure, such as road access, that would be required for such a development (Brian Aldrich, personal communication, August 2013). The group successfully applied for reincorporation in 2017, but there is nothing in the *National Gazette* to indicate that it has made any further progress with its plans.

There are five land groups in the national capital that obtained SABLs over one or more portions of their customary land and have since applied to be reincorporated under the new legal regime, but only three of them have got a recognition notice. Two of these three, Uhadi Iarogaha and Uraranu, have also got survey notices published in the *National Gazette*, but they do not relate to the land portions already covered by the SABLs, nor have they been followed by acceptance or land title notices, nor is there any other documentary evidence relating to the purpose for which the groups have sought to establish their land claims.

More is known about the Vaga land group, which got an SABL over 9.44 hectares in 2010, and seems to have subleased this land to the government for the expansion of an existing sewerage treatment plant in 2014 (Anon. 2014a). By the time this deal was made public, the group had already had its application and recognition notices published (on the same day), and had also submitted the two survey notices in which it claimed ownership of two land portions that were each said to cover 564.6 hectares. The same customary name, Varahe, was assigned to both portions, which suggests that they were contiguous, and since the name of the portion covered by the SABL was given as Ogoniva Varahe, one might suppose that the lease covered one relatively small part of a much larger area of customary land. However, this assumption was challenged when the group got eight acceptance and land title notices that were all published on the same day in 2017. Two of these notices related to the Varahe portions but, as previously noted, their combined area had now been reduced to a mere 5.53 hectares, which is smaller than the area covered by the SABL. In contrast, the other six land title notices, which had not been preceded by any survey notices, covered a combined area of more than 188 hectares, so the total extent of the group's registered territory was now about 194 hectares.

To make more sense of this sequence of notices, we need to bear in mind that the Vaga land group represents one of three 'clans' based in Kirakira Village, in the heart of the national capital, whose leaders supposedly agreed to allocate 400 hectares of their customary land to a new housing scheme known as the Taurama Valley Pilot Project, which was sponsored by the national government's Office of Urbanisation. In 2010, the head of this agency lamented that the area in question was turning into a 'haphazard informal settlement' because the customary owners were informally selling parts of it to migrants from other parts of the country before government officials could formalise an

agreement with the three land groups and get the land properly surveyed and subdivided (Elapa 2010). In a recent letter to one of the national newspapers, he concluded that 'a serious attempt to register the whole of the land under the new Voluntary Customary Land Registration system' had failed because 'land ownership and control is vested in families within the clan or tribal boundaries, not the divided and uncohesive clans and tribes which have been falsely thought to have the power' (Kep 2018). The leaders of the Vaga group may therefore have been seeking to sustain their collective power by participating in the system that is said to have failed, although it is hard to tell whether the registration of their group titles has had the desired effect.

8. Roselaw and Tubumaga

To judge by the names of the recipients and the size of the leases advertised in the *National Gazette*, as many as 50 of the 167 SABLs issued to private companies after 1996 could have been in urban or peri-urban areas, but we know nothing about the land groups that might have consented to most of these leases because they were not investigated by the commission of inquiry, nor have they been subject to any other form of publicity. Only three of the 74 leases that were investigated were in urban or peri-urban areas, that is to say, within or close to the boundaries of the national capital or an urban LLG area. The first one was issued in 2005 to a company called Roselaw Ltd, which was based in the national capital. The other two were issued in 2010 to a pair of related landowner companies, Konekaru Holdings Ltd and Veadi Holdings Ltd, that were looking to participate in construction of the PNG LNG Project processing plant in Central Province. The commission recommended that all three leases be revoked because the customary owners of the land had not been properly consulted (Numapo 2013: 51–68, 158–74).

Only two of the nine clans or land groups that supposedly consented to the leases around the plant site have since applied for reincorporation, and neither has since taken steps to register a collective land title. But the Tubumaga land group that supposedly consented to the Roselaw lease managed to obtain an acceptance notice in 2015, despite the lack of a previous survey notice, and without any subsequent land title notice, over an area that included the land previously covered by the SABL.[10] This was evidently part of a strategy

[10] The Tubumaga group is reported to have received its title over the whole peninsula in September 2015 (Anon. 2015a), but I have not been able to find the corresponding notice in the *National Gazette*.

to pursue the previous plan to sublease the land in question for the development of what has been called a 'multi-purpose marine facility' (Numapo 2013: 56).

The land in question is a peninsula, sometimes known as Idumava Point, which lies opposite the island and village of Tatana, where the Tubumaga group is domiciled, at the entrance to Port Moresby's Fairfax Harbour (see Figure 5). The SABL issued to Roselaw was said to have covered a portion of land whose customary name was Iduvaivai, with an area of 25.11 hectares. The acceptance notice published in 2015 applied the same name to an area of 42.64 hectares. The former Iduvaivai, on the eastern side of the peninsula, had now come to be known as Iduvaivai No. 2, while Iduvaivai No. 1 had come to account for another 15 hectares on the western side. Commissioner Numapo thought the name was spurious in any case, and had simply been invented to conceal the existence of a longstanding dispute about the identity of the customary owners (Numapo 2013: 53).

Figure 5: Google Earth image of Port Moresby's Fairfax Harbour and surrounding areas, December 2018

Source: Google Earth, with amendments by Australian National University cartographers

Roselaw Ltd got its name from Rose Haraka and Andrew Law, who were its two directors when the company was first registered in 2004. Rose, who was the sole shareholder, was also a member of the Tubumaga land group, and when that group was reincorporated in 2014, she was listed as its secretary. It was she who announced that their certificate of recognition, following the 'surrender' of the SABL, meant that the group could now arrange for its 'development partner' to build a wharf on their land (Anon. 2014b). The commission of inquiry discovered that Mr Law was not a member of the group, but was a Malaysian citizen who was married to Ms Haraka while also being employed by Rimbunan Hijau, PNG's biggest logging and property development company, as a 'marine operations manager' (Numapo 2013: 61). It also transpired that his employer had some sort of stake in the group's 'development partner', Dynasty Estates Ltd.

In 2013, before the Tubumaga group was reincorporated, Dynasty Estates applied to the PNG Land Board for a business lease over the area covered by the original SABL on the presumption that it was now state land and no longer customary land. At the same time, the company applied for an 'underwater lease' covering 27.5 hectares, immediately to the east of the peninsula. The application was opposed by Curtain Brothers, the proprietors of a major industrial facility on Motukea Island, as this company was already planning to make part of the island available to the national government for a new international shipping terminal to replace the one adjacent to Port Moresby's central business district. Construction of a 'multi-purpose marine facility' on Idumava Point would partially obstruct the sea lanes leading to Motukea Island.

Although Dynasty Estates withdrew its application for this pair of leases, the leaders of the Tubumaga group assumed that their acquisition of a title over the whole peninsula gave them the power to pursue the same plan. So in 2015 the group attempted to issue a 99-year 'customary lease' over an area that included part of the peninsula and part of the area below the high water mark to its own business arm, Tubumaga (Tatana) Holdings Ltd, and that entity then issued a sublease to Roselaw in 2016 (Brian Aldrich, personal communication, May 2017). Like other recent attempts to establish formal property rights over parts of the seabed, this one was apparently based on Section 3 of the amended *Land Registration Act*, which says that 'land' includes 'land below low-water mark and within jurisdiction', as well as 'land covered with water'. However, nothing more has been heard of this particular scheme.

9. Recycled agro-forestry projects

There are only three other cases investigated by the commission of inquiry in which the land groups that supposedly consented to the grant of an SABL to a private company or joint venture have since appeared to consent to a process of reincorporation or registration of their land titles under the new legal regime. All are cases in which a landowner company had plans to develop an oil palm scheme in partnership with a foreign logging company, but in two of these cases the plans were aborted, which suggests that the process of reincorporation was motivated by the hope of doing a new deal with a new partner, and a similar motivation may have been at work in the third case as well.

9.1 Vailala Oil Palm Project

In 2003, an SABL covering 11,800 hectares of land in Gulf Province was issued to Vailala Oil Palm Ltd. This was the first SABL to cover an area of more than 10,000 hectares aside from the one issued to the Piu land group in 2001. The executives of nine land groups based in Mairava (or Maerava) Village signed up to this arrangement. None of these groups has since sought reincorporation under the new legal regime, so it might appear that this case does not qualify for consideration as a case of recycling. However, the customary name assigned to the area covered by the SABL, Aromaupori, is also the customary name of an area of exactly the same size in a set of survey, acceptance and land title notices that were gazetted in 2017 on behalf of the Pairi land group, also based in Mairava Village. If the Pairi group is not a 'bogus' group, it was most likely incorporated in 2016 as a sort of 'umbrella' group, with a membership drawn from some or all of the groups that had supposedly consented to the original SABL.

The land groups involved in the original SABL were among a much larger collection of land groups that had been incorporated in 1995, with the support of forestry officials, for the purpose of consenting to an FMA. The agreement covered a forest area known as Vailala Blocks 2 & 3, and formed the basis of a selective logging concession granted to a subsidiary of Rimbunan Hijau, Frontier Holdings Ltd, which is still logging it. Witnesses who appeared before the commission of inquiry said that the directors of Vailala Oil Palm Ltd, including the 'principal landowner' from Mairava Village, issued a sublease to another subsidiary of Rimbunan Hijau, Sovereign Hill (PNG) Ltd, in 2008. However, a

provincial lands officer testified that the original SABL had already been cancelled by 2008 because there had never been a proper land investigation.

By the time that this problem had been remedied and a new SABL had been issued in 2011, Rimbunan Hijau seems to have lost whatever interest it might have had in developing an oil palm scheme in the area, so it did not produce any of the documents that would have been required for the grant of an FCA by the National Forest Board. However, in 2013, the 'principal landowner', Leo Opa, was involved in the registration of two new companies, Pairi Resources Development Ltd and Pairi Plantation Ltd. The second of these companies has a Malaysian director with a well-established interest in agro-forestry projects, so land now owned by the Pairi land group may yet become the site of another one.[11]

9.2 Aitape West Integrated Agriculture Project

In 2006, an SABL covering 47,626 hectares of land in West Sepik Province was issued to a pair of companies, One-Uni Development Corporation Ltd and Vanimo Jaya Ltd. A provincial lands officer told the commission of inquiry that this arrangement was based on a process of consultation with 102 land groups in the West Aitape LLG area. There were indeed 102 groups from nine villages in this area that applied for incorporation between 2009 and 2010, but that was some time after the SABL had been issued. The inquiry failed to discover an explanation for this anomaly.

Between 1999 and 2004, 70 land groups from 13 villages in the same LLG area had been incorporated, with the support of forestry officers, for the purpose of signing up to an FMA in 2005. This one covered Wes Romei Tadji, one of three forest areas that were absorbed into the Aitape Lumi Consolidated logging concession because of a requirement in the National Forestry Development Guidelines (GPNG 1993) that selective logging concessions should contain at least 100,000 hectares of 'commercially manageable forest' that can sustain an annual harvest of 70,000 cubic metres of timber over a 35–40 year period if the logs are going to be exported. However, by the time this concession was granted to Samas Ltd in 2008, the National Forest Board seems to have approved the

[11] Miri Setai, a former head of the Department of Agriculture and Livestock, which is one of the national government agencies that approves the development of agro-forestry projects, has been involved in this scheme from the outset.

removal of the area covered by the SABL because the directors of the local landowner company, One-Uni Development Corporation, preferred to enter into a partnership with another logging company, Vanimo Jaya Ltd, to implement the Aitape West Integrated Agriculture Project. An FCA was granted to Vanimo Jaya in April that year, but unlike the selective logging concession granted to Samas, which lasted for 35 years, the forest conversion concession only lasted for ten, so it expired in 2018. In any case, Vanimo Jaya only logged the area for a period of five years, between 2009 and 2013.

Although the commission of inquiry noted that the agro-forestry project was 'operational' in 2011, in the sense that 200,000 oil palm seedlings had been planted, it also found that some of the local landowners wanted to 'get a separate title or "sub-title" over their part of the land' (Numapo 2013: 98). It also found that One-Uni Development Corporation was 'functionally defunct', and recommended that criminal charges should be brought against its chairman for selling the SABL to Vanimo Jaya for a ridiculously small sum of money (Numapo 2013: 91–2). Given that these findings were not made public until 2013, it was not immediately clear how they relate to the gazettal of 57 survey notices from local land groups in 2012. As previously noted, these groups had applied for incorporation in 2009 and were now claiming ownership over separate portions of land with a combined area of more than 38,000 hectares, which was presumably part of the area covered by the SABL that had been 'sold' to a logging company that was about to disappear. According to the survey notices, the groups in question were all based in just one of the nine villages whose residents had supposedly consented to the lease. However, an advertorial published in one of the national newspapers in July 2014 provided a clue to their motivation (Pewa 2014). This was a complaint, written on behalf of the 'Moile landowners', that the Acting Registrar of Titles had failed to include the West Aitape SABL in a previous advertorial listing the leases now to be revoked in accordance with the resolution of the National Executive Council. For it was indeed one of eight SABLs that were somewhat mysteriously exempted from this resolution by the time it was made public, most likely because an FCA had already been granted by the National Forest Board (Filer and Numapo 2017: 267).

According to witnesses who appeared before the commission of inquiry, the author of the Moile advertorial was the chairman of a landowner company called Moile Resource Owners Ltd that had been registered in 2010 and whose directors were already agitating

for the lease to be cancelled in 2011. They were said to represent the inland or 'One' villages, as opposed to the coastal or 'Uni' villages, that had supposedly been represented by the One-Uni Development Corporation, and they were disgruntled because the oil palm had all been planted in the coastal zone. The records held by the Investment Promotion Authority show that the entities holding shares in this company include the 57 land groups that had their survey notices published in 2012, and also assign these land groups to five inland villages, not the one coastal village to which they were assigned in the survey notices. The advertorial stated that land groups from five villages — though not exactly the same five villages — were going to register their land titles under the new legal regime so that they could 'enter into individual Land Lease Agreements with the Developers which can even be our own Joint Venture Partners'. But the 57 groups have not been reincorporated. Instead, the hitherto unheard-of Moile land group from 'Onele' Village was incorporated in 2016. Since there is no record of a village called Onele in the 2000 national census, we might infer that the new land group, like the Pairi land group in Gulf Province, is a sort of super-group or umbrella group that is meant to absorb the 57 groups previously associated with the inland ('One') zone. However, unlike the Pairi group, this one is apparently meant to function as the landholding subsidiary of a landowner company.

The Moile group has not taken any further steps to register a land title. Instead, since 2017, there have been three more clumps of application notices, followed by recognition notices, from five villages in this area, including two of the villages mentioned in the Moile advertorial. Twenty-eight out of the 30 land groups involved in these notices then had their survey notices published together on the same day in 2018. The combined area of their land claims was 35,892 hectares — almost as big as the combined area of the claims lodged by the groups owning shares in Moile Resource Owners Ltd. Within a month of these claims being gazetted, the National Forest Board issued a new FCA over an area of 17,672 hectares to Eco Palm Ltd, which turns out to be a subsidiary of Vanimo Jaya, for what was now called the Aitape West Agro-Forestry Project. Meanwhile, Emo Holdings Ltd, a subsidiary of another Malaysian company, had lodged a separate application for a new FCA over an area of 32,800 hectares for the Moile Resource Owners Integrated

Agro-Forestry Project. This application was awaiting further input from the provincial government's forest management committee at the end of 2018.[12]

9.3 Urasirk Rural Development Project

In 2011, an SABL covering 112,400 hectares of land in Madang Province was issued to a landowner company called Urasir Resources Ltd, which had been registered in 2010. The commission of inquiry found that the head lease had been signed by the chairmen of 52 land groups from a number of villages in the Josephstaal LLG area in December 2010, the same month that their applications for incorporation were first gazetted. The area covered by the lease is a forest area formerly known as Middle Ramu Block 2, which occupies the southern half of the LLG area.

Forestry officers supported a process of land group incorporation in the LLG area between 1995 and 1997. The application notices published in the *National Gazette* indicate that 69 of these groups contained the customary owners of the Middle Ramu forest area, while 89 contained the owners of the Josephstaal forest area, and 191 could have been related to either of them. The Josephstaal forest area, which extends beyond the northern boundary of the LLG area, became the subject of an FMA in 1997, but no logging concession has since been granted. By 2001, the PNG Forest Authority seems to have abandoned plans for an FMA to cover Middle Ramu Block 2 for reasons that are not entirely clear, but may have been related to provincial government plans for an oil palm project that would have required the clearance of the forest (PNGFRT 2001: 1).

As soon as the 99-year lease was issued to Urasir Resources Ltd, the latter issued a 66-year sublease to Continental Venture Ltd to implement the Urasirk Rural Development

[12] In September 2008, a second SABL covering an area of 30,300 hectares was issued to a land group called Pi Brire - Pi Ore for what was described on the survey plan as an extension to the agro-forestry project. I have not been able to find this group's application notice in the *National Gazette*, and its name does not appear in any of the lists already mentioned, but the survey plan shows Brire and Piore as the names of two rivers that form the eastern and northern boundaries of the area covered by the lease, and so it seems reasonable to assume that *pi* is the word for 'river' in the local language. This lease was not investigated by the commission of inquiry because it was granted to a land group rather than a landowner company, but the chairman or managing director of the One-Uni Development Corporation has told me that he was responsible for organising it (Ignas Aro, personal communication, October 2019). The existence of this second SABL may help to explain why the combined area covered by the second and third FCAs is greater than the area covered by the first one.

Project. This was meant to involve the replacement of 94,400 hectares of native forest by 75,520 hectares of oil palm and 18,580 hectares of rubber trees (Mirou 2013: 891). Although the foreign 'development partner' managed to produce an agricultural development plan and an environmental impact statement, it did not get to make an application for an FCA before the SABL was revoked in 2014.

The area formerly covered by the SABL appears to be the source of three clumps of notices published in the *National Gazette* since the lease was cancelled. There were 18 land groups that had application notices published on the same day in 2015, but only two of them got recognition notices in 2016. There were another 20 groups that had application notices published on the same day in 2016, and all of them got recognition notices later that year, while another 27 groups got recognition notices on the same day in 2016 without having had their application notices published beforehand. None of these groups have taken any steps towards registration of their land claims.

At the time when Urasir Resources was first registered, it had ten individual shareholders from six villages in the area. By 2015, they had been replaced by 54 land groups from 18 different villages. The odd thing is that only three of these new shareholders had names that resembled those of the 65 groups, from much the same set of villages, that had application or recognition notices gazetted between 2015 and 2016. There is no obvious explanation for this discrepancy, nor any evidence known to me that reveals the current plans of the land group executives or the landowner company directors. We only know that the former MP for Middle Ramu District, who was the agriculture minister between 2012 and 2017, supported the proposal announced by the trade and industry minister in August 2014 to turn the whole of the Ramu Valley into PNG's second 'special economic zone', and to allocate 100,000 hectares of this zone to the establishment of fruit plantations (Kenneth 2014).

10. Unprecedented rural clumps

Some of the clumps of application or recognition notices published under the new legal regime do not relate to agro-forestry projects that were investigated by the commission of inquiry, and that is simply because they have not been based on the prior grant of SABLs. The National Executive Council's decision to implement the recommendations of

the commission of inquiry in 2014 included an order for the National Forest Board to stop granting FCAs over areas already covered by SABLs (Filer and Numapo 2017: 266). However, the National Court had previously ruled that the National Executive Council did not have the power to make such an order (PNGNC 2013). Furthermore, in 2015 the National Court ruled that it would not be fair to cancel one of the SABLs in East Sepik Province because the developer of an agro-forestry project had already made a substantial investment on the basis of an FCA granted over the area covered by the lease (PNGNC 2015).[13] In any case, the board had begun granting FCAs over forest areas that were not already covered by SABLs in 2009, and there is nothing in the relevant section of the *Forestry Act* that prevents it from doing so. While the board has not granted an FCA over an area already covered by an SABL since 2014, there has been no subsequent reduction in the number or size of the FCAs awarded each year since then.

Sections 90A–D of the *Forestry Act* do not require that land groups be incorporated before an FCA is granted. It only requires a verification of the identity of the customary owners of the land and evidence of their consent to the development. Such evidence may be provided in the proponent's development plan, which has to be endorsed by the Department of Agriculture and Livestock, or by means of a 'public hearing', which has to be conducted in the local area, or by the relevant provincial forest management committee, which has to be consulted before the FCA is granted. The question then is whether we have evidence that land groups have actually been incorporated or reincorporated for this purpose in areas where FCAs have been granted, or might yet be granted, in the absence of SABLs.

10.1 Torokina Oil Palm Development Project

In 2013, application notices were gazetted on behalf of eight land groups from the Torokina LLG area in the Autonomous Region of Bougainville. No applications from this area, and only 17 from all the rest of Bougainville, had been made under the old legal regime. One of the eight groups from Torokina received a recognition notice in 2013 and six others in 2014. At the beginning of 2015, it was reported that two groups had already

[13] Whoever made the decision to exempt SABLs accompanied by FCAs from the National Executive Council's resolution probably failed to notice that this was one of the leases that should have been exempted.

received their certificates, and the other six would be handed over in a public ceremony involving representatives of the national Lands Department, the Autonomous Bougainville Government (ABG), and a company called Hakau Investments Ltd (HIL). The ceremony would be followed by clearance of the first 25 hectares of land dedicated to a new oil palm scheme, while HIL's managing director, Fabian Chow, would take land group representatives on an excursion to West New Britain to inspect a new palm oil mill that he had just opened in that province (Hakalits 2015).

Unlike the ethnic Chinese Malaysian families that control most of PNG's logging industry, the Chow family established itself in Rabaul in the early colonial period, and the family patriarch, Sir Henry, made his fortune from the production of biscuits. In 2011, the ABG asked HIL, a member of the Lae Biscuit Group of Companies, to establish the feasibility of the Torokina Oil Palm Development Project. The company's initial plan was to secure landowner consent to the grant of an SABL (HIL 2011: 34), but when the national government established the commission of inquiry and suspended the operation of the lease-leaseback scheme, the plan had to be modified. The Torokina project therefore sits on the cusp between the old and new legal regimes. The new plan was for land groups to be incorporated and then to register their land titles on the understanding that they would collectively agree to grant 99-year subleases to a joint venture company in which the developer would hold 80 per cent of the shares, while the ABG and the land groups would hold 20 per cent between them (HIL 2014: 32–6). The formation of a separate landowner company was not an explicit part of the plan.

In order to execute this plan, company employees, who were clearly not social scientists, produced a 329-page 'clan land incorporation and registration report' (HIL 2012). This was essentially a collection of two types of document relating to each of the eight clans that were said to be the customary owners of the land required for the oil palm scheme. First, there were completed copies of all the forms and attachments that were thought to be required by the registrar before the land groups could be incorporated. Then there were eight 'village clan land inventory records' that were said to be the result of an exercise in 'social mapping'. The only maps contained in the report were sketch maps of the land claimed by each of the eight groups, which might have been intended to support their survey notices, but which could not possibly be joined together to make a single map of the whole area because of numerous inconsistencies between them.

The application notices gazetted in 2013 assigned each of these clans to a different village in the LLG area. In a subsequent 'final report', HIL anticipated that they would collectively contribute 41,000 hectares of their land to the project, and that one clan would account for almost half of this area, while two would only need to contribute very small amounts of land to a proposed port facility (HIL 2014: 10). In its earlier 'rapid rural appraisal' report (HIL 2011), the company calculated that the LLG area contained either 72,420 hectares or 60,000 hectares of land, while the final report reduced it to 41,000 hectares, the same as the area that the eight clans would be contributing, but said that only 50–75 per cent of this area would actually be required for a viable project (HIL 2014: 41–2). Regardless of this geographical uncertainty, the most peculiar thing is that the eight clans were assigned to seven different villages in their application notices, but none of these seven villages appears in a list of 40 rural villages counted as part of the LLG area by ABG officials in a 2010 census.

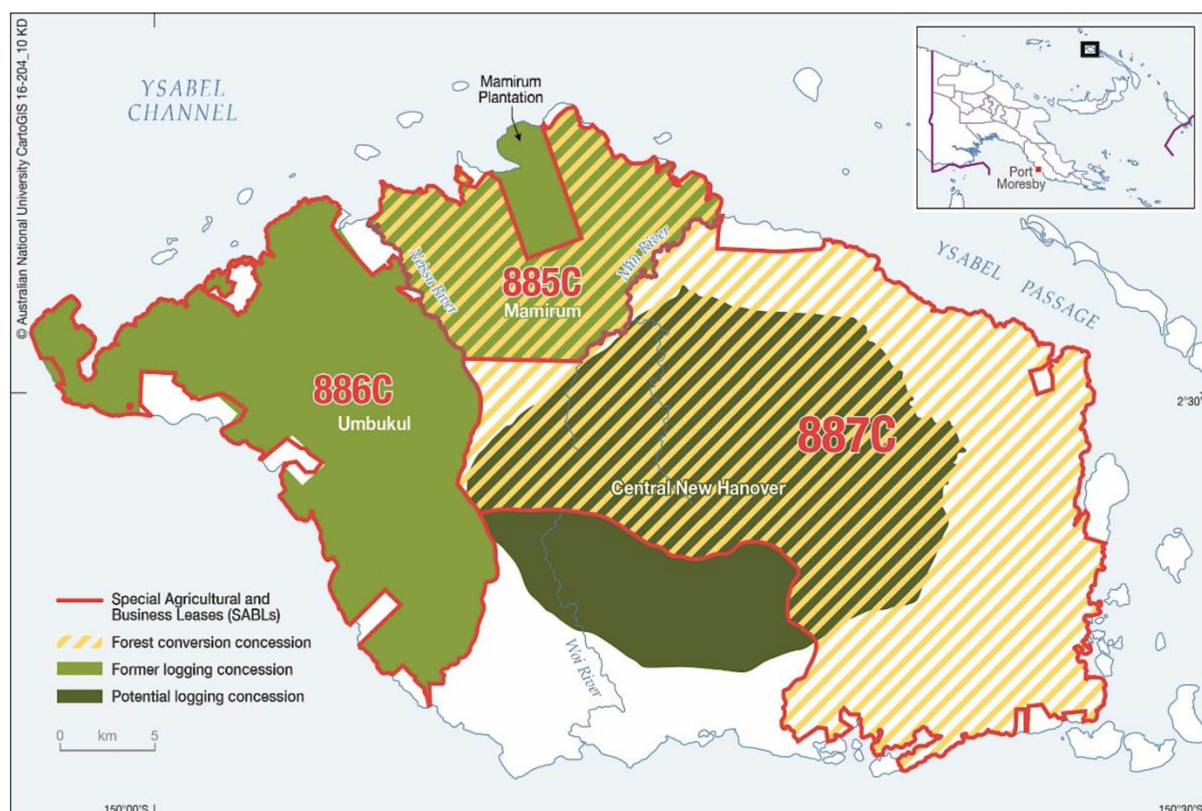
A resolution of this conundrum might or might not have been achieved if local residents had been given a chance to object to the survey notices produced by each of the eight clans. However, HIL has made no further progress with its plan to sponsor the registration of group titles. Indeed, little more was heard of the oil palm project until 2019, when a local 'chief' demanded to know why no seedlings had been planted, despite all the money spent on planning and feasibility studies (Masiu 2019).

10.2 The Lavongai leases

On the same day in 2007, three SABLs covering 75 per cent of the island of Lavongai (otherwise known as New Hanover) in New Ireland Province were issued to three different companies — Tabut Development Ltd, Umbukul Ltd and Central New Hanover Ltd. The areas leased to the first two companies (Portions 885C and 886C) had been subject to some logging activity in the 1980s and 1990s (see Figure 6), but this was based on agreements signed before the new *Forestry Act* came into effect in 1992, so no part of the island had been covered by an FMA that would have required a process of land group incorporation. There were two clumps of application notices from Lavongai gazetted in 2006, the first of which contained 25 land groups, while the second only contained four. Only 13 of these 29 notices assigned the land groups to villages, and these were all villages located within the boundaries of the Mamirum and Umbukul leases. There was another

clump of 23 applications from the 'Lavongai village area' that were gazetted in 2011, four years after the three SABLs had been issued and three months before the commission of inquiry began its hearings in Kavieng, the provincial capital.

Figure 6: Special agricultural and business leases on the island of Lavongai



Source: Australian National University

The hearings failed to reveal the number or names of the land groups associated with each of the leases, partly because the relevant files could not be found in the Lands Department in Port Moresby. But it was found that the registration of the three landowner companies in 2007, and the process of land group incorporation that preceded it, had been organised by agents of the one company, Tutuman Development Ltd, to which all three areas were initially subleased (Mirou 2013: 329). This company had been established by a former provincial premier, Pedi Anis, in partnership with a Malaysian couple who had been engaged in logging the Umbukul area between 1993 and 2000, when the logging operation came to an end (Filer 2011b). In 2009, Tutuman applied for a pair of FCAs for the Tabut-Mamirum Integrated Agriculture Project and the Central New Hanover Integrated Agro-Forestry Project. Only the second proposal led to the grant of an FCA, and log exports from the Central New Hanover lease have been ongoing since

2011, while the other two leases have been subdivided into blocks that could be logged under licences supposedly reserved for small-scale operations. Since 2012, logging activities in all three areas have been undertaken by Joinland Ltd, whose two Malaysian owners took control of the Tutuman company in 2014. The Central New Hanover lease, like the West Aitape one, was somehow exempted from the National Executive Council's resolution to implement the recommendations of the commission of inquiry (Filer and Numapo 2017: 267).

The 23 land groups incorporated in 2011 were most likely associated with the Central New Hanover lease. Their incorporation might either be explained as a belated attempt to engineer the appearance of landowner consent to the lease itself before it could be investigated by the commission of inquiry, or else as a retrospective attempt to secure the appearance of landowner participation in the agro-forestry project after the developers had secured their FCA. However, when shares in the landowner company, Central New Hanover Ltd, were redistributed between 27 land groups in 2011, only six or seven of the new shareholders were among those listed in the application notice, which suggests that the rest might not even have been registered as land groups.

Only one collection of land groups from Lavongai has been incorporated under the new legal regime. There were 31 application and recognition notices gazetted in 2016, and their clumping indicated the presence of a single organiser, but they only include four or five of the 29 groups that were incorporated in 2006, and none of the groups that were incorporated in 2011, nor any of those listed as shareholders of Central New Hanover Ltd. The notices indicate that these 31 groups are scattered around 19 villages in the northern part of the Lovongai (sic) LLG area, which suggests that their members claim portions of land in areas that could be covered by the Mamirum or Central New Hanover leases. In the year following their incorporation, the Central New Hanover agro-forestry project was reportedly the subject of an agreement made between representatives of the Department of Agriculture and Livestock, the New Ireland Provincial Government, Joinland Ltd and a new 'landowner company' called New Hanover Industries Ltd (Gare 2017). But the 31 land groups were not shareholders in this new corporate entity. It had instead been registered by Pedi Anis in 2015, the year after he sold his interest in Tutuman to Joinland.

The incorporation of these 31 land groups would remain something of a mystery if the process had not been witnessed by an American anthropologist, Jason Roberts. He reports that the process was initiated in 2014 by customary owners of the Mamirum lease area who thought they would have to register their land rights to have any chance of defeating attempts by Pedi Anis and his associates to revive or recycle their Tabut-Mamirum agro-forestry project (Roberts 2019: 212–3). When provincial lands officers told them that there was no government money available to pay for the cost of registration, they registered a new landowner company, Atukulai Ltd, whose directors entered into an agreement with a new development partner, Nagaplex (PNG) Ltd, whereby the latter would organise and fund the process of incorporation and registration on condition that the landowners would support their application for an FCA (ibid.: 226–35).[14] The Nagaplex project proposal proved to be remarkably similar to the one that Joinland was already implementing in the neighbouring Central New Hanover area (ibid.: 262–66).

Nagaplex was not exactly a newcomer to Lavongai, but was incorporated at the same time, and by the same people, as two other companies, Palma Hacienda Ltd and Growmax (PNG) Ltd, that were contracted to implement Tutuman's plans back in 2007.[15] Pedi Anis subsequently claimed that the relationship broke down in 2010 because Growmax had started illegally logging the Central New Hanover area before the FCA had been granted at the end of that year, and its directors had then been 'resourcing a minority group of … landowners to destabilise the majority' by making public allegations that Tutuman had sold their land from under their feet (Eroro 2011; Filer 2011b: 1). There followed a legal dispute between the two companies about the ownership of some logging equipment that dragged on until 2015, when Tutuman lost its case in the Supreme Court (PNGSC 2015).

The people engaged by Nagaplex to organise the incorporation of the 31 land groups and the production of their survey plans in 2015 appear to have strayed into the Central New Hanover area to recruit some of the dissident landowners who had opposed Tutuman in

[14] Nagaplex personnel may even have organised the registration of the landowner company (Jason Roberts, personal communication, August 2019).

[15] It may be a coincidence that two of the directors of these companies, Huo Mee Hii and Kiong Mee Hii, have the same surname as the Malaysian family whose members were involved in the establishment of Tutuman.

2011 (Roberts 2019: 254–5). This provoked a reaction from the Tutuman camp, whose members argued that the Mamirum SABL had not really been revoked, so the land still belonged to Tabut and Tutuman. To reinforce their argument, they arranged for a squadron of police to be conveyed to the Mamirum area in Joinland pickup trucks to make a few arrests and threatened further legal action to block the Nagaplex agro-forestry project (ibid.: 258–62). This did not prevent members of the Nagaplex camp from organising the 'public hearing' that is required as a precondition for the grant of an FCA (ibid.: 262–6), nor did it put a halt to the process of land group incorporation. However, no survey notices have since been produced on behalf of the 31 land groups, and no new application for an FCA had been made by the end of 2018, either by Nagaplex or Tutuman. This is a stalemate that might or might not be broken in 2020, when the Central New Hanover FCA is due to expire and some logging equipment may need a new home.

10.3 Lak Kandas Oil Palm Project

The Konoagil LLG area, at the bottom or southern end of New Ireland Province, was the source of six application notices in 2015, seven in 2016 and four in 2017. Ten of the application notices were followed by recognition notices, but none was followed by a survey notice. All but one of the land groups that applied for recognition is clearly associated with the development of the Lak Kandas Oil Palm Project. This project is being implemented in two different parts of the LLG area. The Lak component, on the east coast, covers an area of just over 15,000 hectares, while the Kandas component, on the west coast, covers an area of just over 28,000 hectares. In 2015, the National Forest Board issued an FCA covering a combined area of 43,520 hectares to Millionplus Corporation, and log exports started in the following year.

The Konoagil LLG area accounted for 22 of the applications lodged under the old legal regime, but none of them had anything to do with this agro-forestry project, which seems to have been conceived in 2013 or 2014. There was a clump of 15 applications from the Kandas area that were gazetted in 1995, and they were most likely associated with the designation of this area as a potential logging concession in the National Forest Plan, but no further steps were taken to negotiate an FMA with the local landowners. The Lak area was subject to a logging operation in the 1990s, but like the Umbukul area on Lavongai,

this was undertaken on the basis of a timber rights purchase agreement dating from 1989, so did not presuppose a process of land group incorporation.

The new oil palm scheme was the brainchild of Walter Schnaubelt, a local businessman and martial artist, who made it part of his successful campaign to be elected as the new MP for Namatanai District in 2017. He was described as the 'spearhead' in a public forum held to discuss the scheme in the township of Namatanai in 2014 (Anon. 2014c). This forum was understood to be a 'public hearing', but it was also stated that Konoagil Landowners Association Ltd, representing 47 local land groups, would seek to obtain an SABL, and would end up with a 30 per cent stake in the project. This assertion was at odds with the moratorium already imposed on the lease-leaseback scheme, and the Investment Promotion Authority has no record of a company by that name.

In April 2015, Mr Schnaubelt is reported to have taken 19 local land group chairmen to meet with members of the New Ireland Provincial Forest Management Committee in order to secure its support for the FCA (Kenneth 2015). The FCA was issued in October that year, before any of the new land groups associated with the project had received a recognition notice, and before most of them had even applied for incorporation. It would therefore seem that the National Forest Board did not regard their existence as relevant evidence of landowner consent or participation. Indeed, it is not clear why they have been incorporated at all, since they are not listed as shareholders in either of the two 'landowner companies' associated with the project, one of which is owned by the other one, nor do they seem to be represented in either of the two 'landowner associations' that are among the three owners of the two companies (PNGexposed 2017).

In April 2016, when the project was officially launched by Treasury Minister Patrick Pruaitch and Forests Minister Douglas Tomuriesa, Mr Schnaubelt announced that the land groups had already been 'processed' but the process had not yet been completed (Nalu 2016). Dissenting landowners, led by the LLG president, then complained to the forests minister that the land group incorporation process had been 'done in haste and without the involvement of the landowners' (Kenneth 2016). Some commentators have argued that the whole project is 'illegal' because of the absence of genuine landowner consent to what appears to be a partnership between corporate bodies controlled by Mr Schnaubelt and his associates and the Malaysian company that is logging the area,

Millionplus Corporation (PNGexposed 2016, 2017).[16] But Mr Schnaubelt argued that the project was entirely consistent with the national government's 'public-private partnership policy', and it was up to the provincial government, not the private developers, to secure local landowner support since the provincial government had endorsed the FCA (Anon. 2016b).

10.4 Idam Siawi Agro-Forestry Project

A clump of 41 application notices gazetted on the same day in February 2017 might easily have been confused with the clumps of application notices from adjacent areas of West Sepik Province that were sponsored by Amanab Forest Products Ltd over the course of the following year (see Section 5). That is because 33 of the 41 applications in this clump came from the Green River LLG area, which was also the source of 56 of the 157 applications that had been organised by this logging company. However, in February 2018 it was reported that representatives of 45 land groups had signed a development agreement for the Idam Siawi Agro-Forestry Project during a ceremony conducted at Green River government station (Tarawa 2018). The other parties to this agreement were said to be a local landowner company called Tangoy Holdings Ltd and their foreign development partner, Vivafounder Investment Holdings Ltd. The relevant company record reveals that the 45 land groups holding shares in Tangoy Holdings include the 35 groups from Green River LLG area that got their recognition notices on the same day in April 2017 and the nine groups from the Namea and Yapsie LLG areas that got their recognition notices on the same day in August that year. These 44 groups included the 41 that had their application notices gazetted in February.

Vivafounder Investment Holdings (PNG) Ltd was registered in 2015. It is a wholly owned subsidiary of Shenzen Vivafounder Investment Holdings Ltd, which is based in Shenzhen's 'Hongkong Cooperation Zone' but not registered in PNG. In 2016, it entered into a joint venture with Tangoy Holdings, and the new entity was registered as Tangoy Vivafounder Holdings Ltd. This company has four directors from mainland China and three directors representing the landowner company. It seems that the joint venture produced an agricultural development plan and an environmental impact statement for

[16] Millionplus Corporation is owned and controlled by the same two Malaysians who own and control Joinland, the developer of the Central New Hanover rubber project.

the agro-forestry project in 2017 and that the National Forest Board consequently granted an FCA at some point in 2019.

More recent newspaper articles have raised a number of questions about the authenticity, scale and substance of this project. The first one declared that the FCA covered an area of 'at least 789,000 hectares', but also reported that five MPs from East and West Sepik provinces, including the two provincial governors, had agreed to put a stop to it 'because landowners were not consulted and never gave consent' (Nanau 2019a). The second one was based on a press release from one of the directors of Tangoy Holdings, declaring that the project had the full support of the Sandaun (West Sepik) Provincial Government and that Vanimo-Green MP Belden Namah had spent K500,000 out of his district slush fund to pay for the process of land group incorporation (Nanau 2019b). The third one was based on a press release from the governor of West Sepik Province, Tony Wouwou, who said that the 'first phase' of the project covered an area of 188,000 hectares, and that Vivafounder Investment Holdings had done a much better job of securing landowner consent than other companies operating in his province, noting that the deal had been 'unanimously endorsed' by local landowners at a public hearing conducted in one of the Green River villages in October 2016. He went on to deny that he or the other MPs mentioned in the first article, including Mr Namah, had resolved to put a stop to what he called 'a potential billion kina investment project' (Anon. 2019).

The most obvious puzzle concerns the size of the area covered by the FCA. If it is indeed 789,000 hectares, as reported in two of the latest newspaper articles (Nanau 2019a, 2019b), this would make it more than three times the size of any other FCA so far granted by the National Forest Board. However, Mr Wouwou's press release, most likely based on documents presented to his provincial forest management committee, suggests that someone might have mistaken a '1' for a '7', thus making the area four times bigger than it really is. The Idam Siawi forest area looked as if it covered an area of less than 200,000 hectares when it made its first appearance as a 'potential area for future development' in the 1996 National Forest Plan (GPNG 1996), although its size was not specified in that document. There it was shown as an area covering most of the southern part of the Green River LLG area at the southern end of Vanimo-Green District and some adjacent parts of the Yapsie LLG area in Telefomin District.

By 2009, this forest area had disappeared from the Forest Authority's list of potential logging concessions, but then it reappeared in a new (draft) version of the National Forest Plan, this time with a gross area of 781,501 hectares but without a map to show how its boundaries had been enlarged (GPNG 2012: 43). The reason for this enlargement would have been that the area designated in 1996 would not have contained enough 'merchantable timber' to qualify for an FMA under the terms of the National Forestry Development Guidelines (GPNG 1993). In the new scheme of things, a budget of K240,000 was allocated to the process of resource acquisition — in other words, to the production of an FMA — and this included K50,000 for the process of land group incorporation. But it is hard to regard this undertaking as anything more than a fantasy. Officers of the National Forest Service have not been able to come up with a new FMA since 2010, when they negotiated the agreement that enabled the Imonda forest area to be added to the concession now held by Amanab Forest Products.

The question of scale might be resolved if the Conservation and Environment Protection Authority would allow public access to the environmental impact statement that was apparently produced in 2017 (TVH 2017). Unfortunately, the relevant officials have been reluctant to do so, even though Section 55 of the *Environment Act* of 2000 says that they should 'be made available for public review'. The few people who have gained access to this document include the consultants who produced another environmental impact statement for a large-scale mining project that may yet be developed in a location close to the border between the two Sepik provinces. Furthermore, the proponents of this mining project have followed what is now standard practice in PNG's extractive industry sector by uploading the latest version of their own environmental impact assessment to their own corporate website (CSA 2018), thereby undermining the regulator's efforts to avoid the transparency required by its own legislation.

The mining company's environmental impact statement says that 'phase one of block one' of the Idam Siawi project will clear an area of forest similar to that shown in the 1996 National Forest Plan and replace it with 'oil palm, paddy rice, sago, cassava, spices and vegetables, and stock including cattle, poultry and pigs' (CSA 2018: 10.7). Although this forest area straddles the northern section of the new road that the mining company is proposing to build from Hotmin village to Green River government station, which includes a very expensive bridge across the Sepik River, the agro-foresters are not

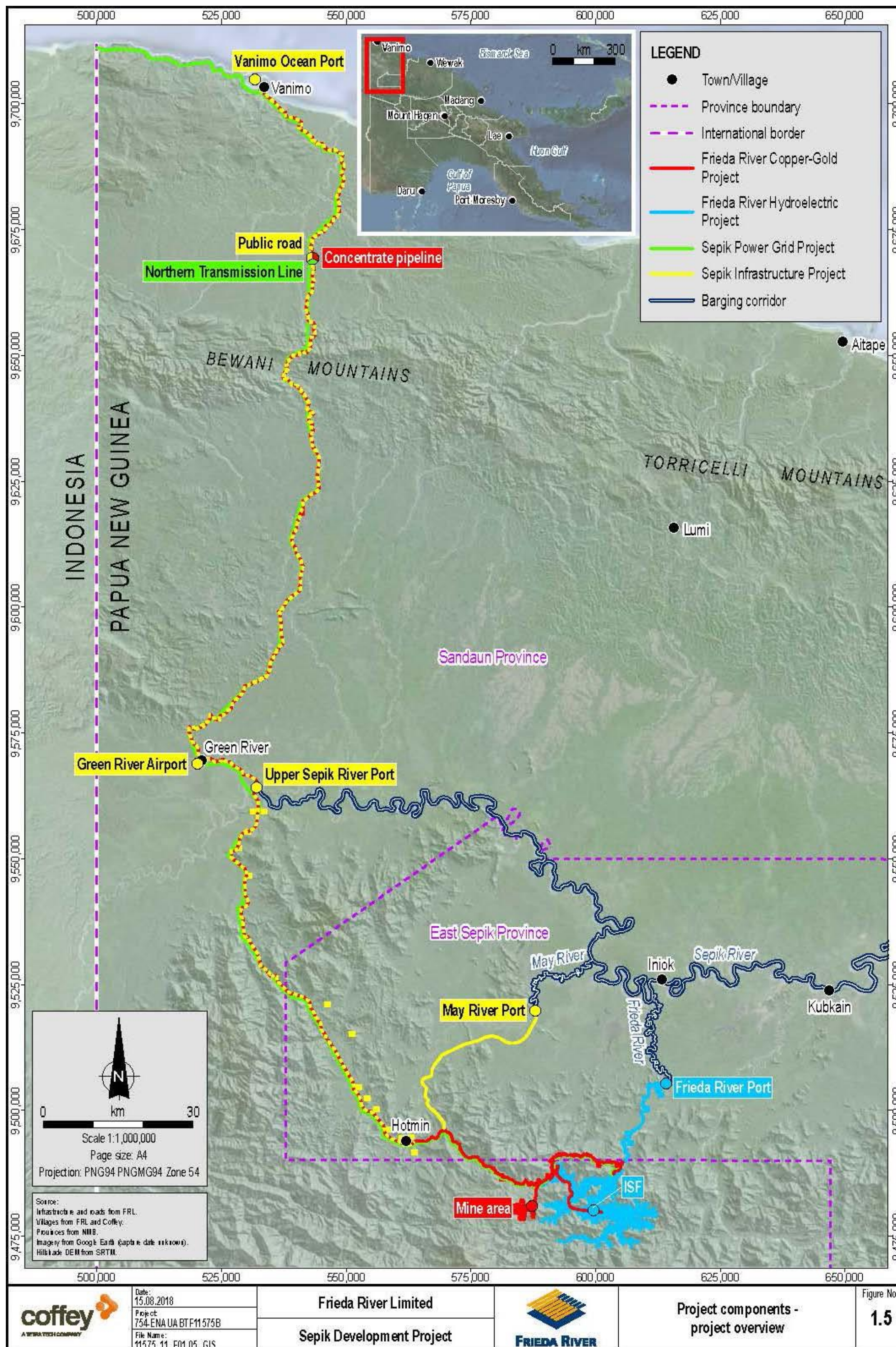
expected to make use of this new economic infrastructure. Instead, they are reportedly planning to build '430 km of new roads and tracks' on their own account (ibid.: 10.10) and then presumably find another way to move their logs across the Sepik before trucking them along the road already built by Amanab Forest Products in order to reach the port of Vanimo (see Figure 7). Since the mining company, Frieda River Ltd, is a wholly owned subsidiary of a Chinese state-owned enterprise, Guandong Rising Assets Management, and has been so since 2015, one might anticipate some form of collaboration with the Chinese companies investing in the agro-forestry project, but there is as yet no evidence of this.

While the mining company's environmental consultants say that the agro-foresters have not been looking to clear much more than 141,000 hectares in the first phase of their project, they also say that the long-term plan extends to 780,000 hectares (CSA 2018: 10.7). If that is the case, then the ultimate target would seem to be aligned with the boundaries of the FMA that will never be signed. These boundaries are shown in Appendix 9 of the mining company's environmental impact statement (Lechner et al. 2018: 15), and seem to have been derived from a 2016 version of the West Sepik (or Sandaun) provincial forest plan. The further expansion of the agro-forestry project would therefore have to be based on a number of new FCAs covering substantial areas of forest in Yapsie, Telefomin and Oksapmin LLG areas.

The spokesman for Tangoy Holdings claims that his company has been designed to represent all the customary owners of these additional forest areas because the name 'Tangoy' is an acronym derived from the initial letters in the names of five LLG areas, including Telefomin and Oksapmin, as well as Green River, Namea and Yapsie (Nanau 2019b). However, there is not one single land group from either the Telefomin or Oksapmin LLG areas that currently holds shares in this company, and there are only two from the Yapsie LLG area.[17]

[17] It is not even clear why seven groups from a single village in the Namea LLG area hold shares in this company, since the whole of that LLG area is located to the north of the Sepik River, and the western half of it is already covered by another FCA.

Figure 7: Proposed road link between Frieda River mine and Vanimo



Source: CSA 2018, Figure 1.5

From existing reports, it seems quite clear that the main source of political support for the first phase of the Idam Siawi project has come from Belden Namah. Mr Namah has been the MP for Vanimo-Green District since 2007. was the forests minister during his first three years in the national parliament, ushered in the changes to the *Forestry Act* that made it much easier for the National Forest Board to grant forest conversion concessions, and then took advantage of these changes to sponsor several agro-forestry projects in his own electorate. But if there is to be any southward expansion of the Idam Siawi project, it can only take place in the Telefomin electorate whose current MP, Solan Mirisim, happens to be the current forests minister. Mr Mirisim is not known have made any public statement about the way that this expansion might be organised, or even if he thinks it is a good idea. However, Tangoy Holdings, as currently constituted, could not possibly be a legitimate vehicle for the organisation of landowner consent to such an expansion. If it is going to take place at all, then we would have to anticipate a further process of land group incorporation, either followed by the addition of new shareholders to the landowner company that already exists or else by the formation of new landowner companies to represent Mr Mirisim's constituents.

11. The growth of urban bias

If it were not for the very large number of applications from West Sepik Province, the new legal regime would appear to be one in which land groups based in urban and peri-urban areas have a greater incentive or opportunity to register their existence, and even more of an incentive to register their land titles. The proportion of applications from urban and peri-urban areas has risen from less than 5 per cent under the old regime to more than 10 per cent under the new one. The national capital alone has accounted for more than 5 per cent of the applications lodged under the new regime (see Table 4). About one third of the 157 survey notices gazetted since 2013 have clearly come from urban and peri-urban areas, and if we discount the 28 notices from the West Aitape LLG area that were gazetted in 2018, the proportion rises to 40 per cent. Groups based in such areas also account for 40 per cent of the 75 land title notices gazetted since 2013.

Applications from groups based in urban and peri-urban areas have rarely been clumped together in ways that point to the presence of an organiser who is not a member — or at least pretending to be a member — of one of the groups that are being incorporated. If

there is now more of an incentive or opportunity for the customary owners of land in urban or peri-urban areas to get their own groups organised, then one might suppose that their leaders would by now have organised the reincorporation of all the groups that were first incorporated under the old regime. However, as previously noted in the case of groups holding SABLs in their own right, this kind of replication appears to be quite limited. In the national capital alone, only 23 of the 110 land groups that applied for incorporation under the old regime have since attempted to reincorporate themselves with the same name, so they account for less than 40 per cent of the 63 groups that have been subject to application and/or recognition notices since 2013. In the absence of any additional information, it is hard to tell whether this is due to the fact that people have decided to change the names of their groups, or whether new groups have been created from different sections or fractions of older groups, or whether there has been some change in the reasons why the indigenous Motu-Koitabu people of Port Moresby would want to get themselves organised in this way.

As we have seen, there are only three cases in which the Commission of Inquiry into SABLs cast new light on the question of motivation in urban and peri-urban areas. More light has been cast by the content of articles, letters and advertorials published in the national newspapers, because residents of these areas have better access to journalists than those living in rural villages. This is especially the case when the same newspapers publish survey notices that invite their readers to object to a group's land claims and when those claims are quite substantial. The question is whether the motivations of groups that participated in the lease-leaseback scheme before the new legislation came into effect in 2012, like the Vaga and Tubumaga groups in the national capital, are typical of all the groups in urban and peri-urban areas whose leaders have decided to engage with the new legal regime.

11.1 Land groups under a peri-urban local-level government

The Ahi LLG area in Morobe Province is officially 'rural', but actually surrounds the Lae urban LLG area. The two areas are described in the 2000 national census as two different parts of the city of Lae, and are together represented by a single MP in the National Parliament. The whole of the urban LLG area, but only part of the Ahi area, consists of land that was alienated during the colonial period. The Ahi people who claim descent

from the customary owners of the land that was alienated are mostly affiliated with one or other of the four 'villages' in the Ahi LLG area. These villages accounted for approximately 5 per cent of a resident population of more than 50,000 in 2011, and just over 2 per cent of the population of Lae District as a whole. Nevertheless, most of the MPs who have been elected to represent that district have been Ahi community leaders, even if they have not been resident in one of the four Ahi villages.

Twelve land groups from the Ahi LLG area were incorporated under the old legal regime. Four of them had their application notices gazetted on the same day in 2007. Seven groups have been incorporated under the new regime, of which five appear to have been incorporated under the old one, although two of them were formerly incorporated as a single group and two of them have changed the spelling of their names.[18] Most of the groups incorporated under the old regime, and all of those incorporated under the new one, have been associated with one of three locations — Butibam, Kamkumung or Yanga. Butibam and Yanga are two of the four Ahi 'villages', while Kamkumung is counted in the 2000 census as one of many 'settlements' in the area, albeit one that seems to contain a significant number of customary landowners who prefer to call it a village.[19]

Only three of the newly incorporated groups have managed to produce a survey notice. The Busulum group from Butibam had already been responsible for a survey notice covering seven different land portions, with a combined area of just over 28 hectares, that was gazetted in 2012, before the new legal regime came into effect and before the group was reincorporated in 2016. The same group then produced another survey notice covering two land portions, distinct from the portions named in the previous notice, with a combined area of less than 1 hectare, but this did not lead to an acceptance or land title notice. The Uapu group from Kamkumung was more successful. This group was also reincorporated in 2016, produced a survey notice in 2017, and got its acceptance and land title notices for an area of more than 100 hectares on the same day in 2018. This appears to be a block of land dedicated to the construction of a new residential and commercial suburb, rather like the blocks belonging to some of the leaseholding land

[18] The names of clans or land groups are often spelt differently in different documents, including newspaper articles. To avoid confusion, I have adopted the spelling contained in the most recent gazettal notice.
[19] A sixth Ahi village, Yalu, is located in the Wampar LLG area, to the west of the city.

groups discussed in Section 7 (Bailey 2016). The Apo Malac Wampom group from Butibam produced a survey notice covering a single land parcel of less than 2 hectares in 2017 but, like the Busulum claim, this has not led to an acceptance or land title notice.

As early as 2005, it was noted that the Ahi villagers had adopted their own 'land mobilisation policy' in response to the 'uncontrolled occupation of their customary lands by people migrating to Lae from other areas', and were already planning to register land group titles so that they could reassert some level of control (Fingleton 2005). By 2008, some of them had established a body called the Ahi Land Mobilisation Committee (Korugl 2009), and the Ahiwapac land group from Kamkumung, which is one of the seven now incorporated under the new legal regime, had apparently leased some of its land to the Lae Waterboard for the construction of staff housing (Rai 2007).

However, the process of mobilisation was disrupted by a sequence of legal disputes that were not simply concerned with the question of who had the right to engage in such transactions, but also with the exercise of customary rights over land that may or may not have been alienated during the colonial period. The National Court referred this second matter to the Land Titles Commission in 2006 (Korugl 2009), which amounted to a guarantee that it would not be settled any time soon. In the meantime, there was an increase in the number of groups claiming to be customary owners of alienated land in different parts of the city, and hence demanding a right to benefit from its redevelopment (Korugl 2008). Some of the people making these claims and demands were not recognised as members of the Ahi ethnic group, and that in turn seems to have provoked a dispute among the 14 'major clans' supposedly represented by the Ahi Association. One faction, which included leaders of the Busulum group from Butibam, demanded an end to further dealings between the other faction and a number of different companies and government agencies while the Land Titles Commission had yet to make a ruling (Banige 2009; Korugl 2009). The trouble with this approach was that some of the development projects subject to such negotiations were already well advanced in their preparation or implementation, and the developers did not have time to wait for a ruling that might not be made for months or years to come.

The biggest of these was the Lae Port Tidal Basin Project, initially funded by a loan from the Asian Development Bank. This involved a substantial upgrade of the port facilities

located between the city boundary and the mouth of the Markham River. In 2008, the implementation of this project was threatened by leaders of the Busulum group and those of another Butibam group, called Wapic Guhu, which was the first Ahi land group to be subsequently reincorporated under the new regime. Their complaint was that the national government had not shown the 'respect' that was due to them as the result of a Supreme Court decision to recognise their groups as the customary owners of the port site back in 1971 (Anon. 2008a). But a representative of the people then living on the land that would be required for the port's expansion, who seem to have originated from villages belonging to the Labu ethnic group in the Wampar LLG area, promptly denied that the Ahi people had any right to be consulted about the project's resettlement program since they would not be affected by it (Anon. 2008b). Some years later, this particular dispute was said to have been resolved by means of a benefit-sharing agreement between representatives of the three Labu villages and all six Butibam clans, whereby the Busulum clan was recognised as the original owner of the land in question (Anon. 2018d). This followed a previous agreement between representatives of the Busulum and Wapic Guhu groups and relevant national government agencies that acknowledged the secondary interests of the other four Butibam clans (Nebas 2011).

Newspaper articles have consistently recorded the existence of the same six clans in Butibam Village (Korugl 2009; Anon. 2018d, 2018e), and the village is now said to have its own 'council of chiefs' containing the six clan leaders (Anon. 2018e).[20] The identities and provenance of the other 'major clans' represented by the Ahi Association or the Land Mobilisation Committee have not been so clearly specified, but the recognition of 14 clans as the customary owners of 11,933 acres (or 4,829 hectares) of alienated land in what is now Lae District is said to date back to a colonial Supreme Court ruling made in 1966 (Kapin 2016). Yet some of these 14 clans do not seem to have applied for incorporation as land groups either under the old legal regime or the new one, and only five of the groups that have been reincorporated since 2013, including three of the six Butibam clans, can be identified as part of the larger collection covered by the Supreme Court ruling.

[20] These may be the six groups that are said to have been incorporated by 1990 with support from the UNDP-funded Urban Settlement Planning Project (Fingleton 2007: 29). However, their names are not on the list of previously recognised land groups that was gazetted in November 1993.

The reincorporation of the Busulum and Wapic Guhu groups might be explained by their prominence in negotiations over the redevelopment of the port. But if the leaders of other groups have been reluctant to pursue the process of incorporation, even under the old legal regime, that might be explained by the risk of internal disputes about who should occupy which roles in the management committees that have to be established as part of the process. When the Wapic Guhu group received its recognition notice in 2014, a local councillor claimed that this was a 'bogus' group established by local 'fraudsters', in league with corrupt lands officers, who were making claims on land that belonged to some of the other Ahi clans, and that their actions had led to disputes between families within their own group (Nebas 2014). This claim echoed previous arguments about who had the right to represent this group in negotiations over the redevelopment of the port (Rai 2009, 2011; Anon. 2011).

It is not even clear why land groups would bother to get themselves incorporated or reincorporated under the new legal regime if the main concern of their members was with the distribution of benefits from the redevelopment of land that had already been alienated, especially if they had already agreed to recognise one person as their 'chief' for the purpose of negotiating a benefit-sharing agreement. In any case, local clan leaders have not been the only — or even the principal — actors in such negotiations. Ahi community leaders established a network of landowner companies for this purpose, and have preferred to nominate themselves as shareholders and directors of these companies on the understanding that they function as trustees for the rest of the community. In 2015, it was reported that one of the Ahi companies, Ahi Holdings Ltd, had formed a joint venture with its Labu community counterpart, Labu Holdings Ltd, to secure what was described as a 'stranglehold' on stevedoring operations at the new port (Anon. 2015b). The joint venture has not been registered as a separate company, so it may have fallen victim to the ongoing dispute about which ethnic group contains the customary landowners (Kivia 2014; Avediba 2015). Nevertheless, profits from the stevedoring business enabled another Ahi company, Ahi Investment Ltd, to distribute a dividend of K1.7 million to members of the Ahi community in 2018 (Kapin 2018).

These Ahi companies are located at the peak of a nested hierarchy of landowner companies. Butibam Village has its own company, Butibam Progress Ltd, whose sole shareholder is the Butibum Progress Association, and whose six directors represent the

six village clans or their chiefs. This company has a contract with the Lae urban council to manage the city's recreational spaces (Baunke 2017). The Busulum clan also has its own company, Busulum Holdings Ltd, whose managing director argued that it should get special privileges in the stevedoring contract because of the clan's status as the customary owner of the port site (Kivia 2015). Yet that does not seem to be the reason why the Busulum land group was reincorporated in 2016, since the land group is not the owner of the company. Like the Ahi group of companies, its shareholders and directors are individual community leaders.[21]

If the new cluster of Ahi land groups has not been motivated by people's desire to participate in this network of landowner companies, can it be explained by their desire to register new titles over customary land? As we have seen, there is only one group that has actually secured a registered title, and it is not clear what sort of development has taken place on the land covered by it. What is noticeably lacking is a process comparable to the one already documented in Port Moresby's Taurama Valley, where the primary aim was to stop informal sales of customary land to migrants or foreigners. But if the registration of group titles is not seen as a solution to this problem in the Ahi LLG area, this does not mean that there is no problem to be solved.

In 2012, two ladies from Butibam Village complained to police that one of their relatives had fraudulently sold two blocks of their customary land to a Malaysian businessman, and even got the six clan chiefs to endorse their complaint (Kivia 2012). In 2013, the provincial governor, the sitting MP and a former MP told fellow leaders of the Ahi community that it was 'time to control the uncontrolled sale of Ahi land and turning their land into squatter settlements' (Philemon 2013). Later that year, the chair of the Land Mobilisation Committee, from Kamkumung Village, was threatening to evict the 2,000 residents of a settlement on his own clan's customary land after a fight between two groups of highlanders (Anon. 2013). More recently, when a Butibam villager was allegedly killed by a group of squatters, it was a senior police commander who called on the Ahi people to stop selling their land to outsiders (Anon. 2018f). In these

[21] One of its directors, Sir Nagora Bogan, former head of PNG's Internal Revenue Commission, is also a director of Ahi Holdings Ltd.

circumstances, it seems rather odd that only one of the 14 Ahi clans has managed to secure a single land title since the new legal regime came into effect.

11.2 Land groups under the Poreporena–Napa Napa Development Plan

The Poreporena–Napa Napa Local Development Plan (PNLDP) was initially drafted in 2012 and finally approved by the National Capital District's Physical Planning Board in 2014. Its main focus is the construction of new buildings and facilities along the route of the road that encircles Fairfax Harbour, connecting Hanuabada Village, which lies to the north of Port Moresby's central business district, to the Napa Napa oil refinery, on the opposite side of the entrance to the harbour (see Figure 5). Among other things, it proposes the development of two new suburbs — Konebada Junction, at the northwestern corner of the harbour, and Napa Napa, between Roku Village and the southern reaches of the harbour.

Once it has passed Motukea Island, the road corridor becomes the boundary between National Capital District and Central Province, so most (though not all) of the development is meant to take place on the coastal side of the road. There are substantial areas of customary land on both sides of the road, especially after it turns south at the western end of Fairfax Harbour. We should therefore expect that implementation of the PNLDP would be accompanied by concerted attempts to 'mobilise' this land under the new legal regime that came into effect when the plan was being drafted.

The customary landowners of National Capital District assign themselves to one or other of a dozen Motu-Koitabu 'villages' that jointly account for 6 or 7 per cent of the resident population. Hanuabada (meaning 'Great Village' in the Motu language) is actually a cluster of settlements with their own distinctive names,[22] with a combined population of more than 7,000 in 2011. However, most of the customary land required for implementation of the PNLDP belongs to the residents of three smaller villages — Tatana, Baruni and Roku — that had a combined population of less than 7,000 in 2011.

It is not possible to calculate the precise number of land groups from these three villages that were incorporated under the old legal regime since groups with the same name, or

[22] They are sometimes known collectively as the 'Poreporena villages', but most city residents apply the name Hanuabada to the whole lot.

very similar names, have been incorporated at different times.[23] There were certainly no more than 30 of them. There are 26 or 27 groups that have been the subject of application or recognition notices under the new regime. About half of these appear to be old groups that were reincorporating themselves, while the other half appear to be new groups, or possibly old groups with new names. Only seven groups have produced survey notices since 2013, but four of them had not received an acceptance or land title notice by the end of 2018, and one of them had not even been the subject of an application notice under the new regime. From a reading of the *National Gazette*, it would appear that three groups from Baruni Village had managed to secure titles over a combined area of more than 100 hectares by that time, but no titles had been officially awarded to groups from the other two villages.

As previously noted, the Tubumaga group from Tatana Village secured an acceptance notice for its claim to ownership of Idumava Point without a prior survey notice or a subsequent title notice. This group was originally incorporated in 2003 and then reincorporated in 2014, when its recognition notice was gazetted less than ten days after its application notice. The speed of this transaction prompted leaders of the Tanomotu clan from Roku Village to complain that it had denied them the opportunity to object to the application on the basis of their own claims to be the customary owners of the LNG plant site and part of Motukea Island (Anon. 2014d). The first of these claims was somewhat misleading, because the branch of the Tanomotu clan whose members were recognised as customary owners of the plant site buffer zone was the one based in Kouderika Village, on the other side of the plant site itself. Neither claim had any obvious connection to disputes about the ownership of Idumava Point; the Roku branch of the Tanomotu clan has not been reincorporated under the new legal regime; and its leaders have otherwise taken no part in a separate argument about which groups have customary rights to Motukea Island. The Tubumaga group, despite the speed of its own reincorporation, has not been party to that argument either.

[23] I do not know whether the Laurina group from Tatana, which was incorporated in 1996, is the same as the Laurina Iduhu group from the same village, which was incorporated in 2001, given that the Motu word *iduhu* is commonly translated as ‘clan’.

Unlike the scheme hatched by Rose Haraka and her associates, the new international shipping terminal on Motukea Island is an integral component of the PNLDP.[24] By the time that this facility was opened in 2018, its operator, International Container Terminal Services Ltd, had signed a benefit-sharing agreement with representatives of another set of land groups from Tatana and Baruni villages whose ancestors were deemed to have sold the island to the colonial administration in 1899.[25] This was the result of a sequence of negotiations and disputes that began when Curtain Brothers sold its lease over a portion of the island to the Independent Public Business Corporation (now Kumul Consolidated Holdings) and PNG Ports Corporation in 2015. It therefore resembles the settlement of customary group claims to benefit from implementation of the Lae Port Tidal Basin Project, which also took place on land alienated during the colonial period. Indeed, the chairman of the Kaevaga land group from Baruni Village made explicit reference to the similarity when he staked a claim to ownership of all the adjacent customary land (Anon. 2015c).

As if to reinforce the comparison, the representatives of three groups from Tatana Village then said they were descended from the customary owners of the island itself, as demonstrated in the original purchase documents, so the Kaevaga chairman was speaking out of turn (Anon. 2015d, 2015e; Wille 2015). Such questions of ancient history were displaced by the formation of a new company called Motukea United Ltd, which was registered in 2016 as a joint venture between the new port's operators and two landowner associations representing all the residents of Tatana and Baruni villages. It is not clear whether this initiative created new business opportunities for local landowner companies,[26] but it does not seem to have removed the incentive for local land groups to register titles to customary land beyond the boundaries of the new port facility.

In 2018, the 'chairman' of the Kaevaga group's dispute settlement authority, Nou Nou, complained that the port's operators were making use of the group's customary land

[24] The PNLDP envisages the construction of a new housing estate on Idumava Point, but there is as yet no sign of this plan being implemented (see Figure 5).
[25] At that time the island was barely 7 hectares in size. Most of the current island, which covers more than 100 hectares, has been created by a process of land reclamation over the past four decades.
[26] Three Tatana clans were reported to have established a separate landowner company called Motukea Landowner Holdings Ltd to negotiate the distribution of spin-off benefits from development of the port (Anon. 2016c), but no such entity has been registered with the Investment Promotion Authority.

without providing the business and employment opportunities that had been promised in return (Anon. 2018g). The land portion number mentioned in his complaint — 3646 — does not correspond to either of the numbers attached to the two small portions of customary land, both called Sasiva, that were the subject of survey notices gazetted in 2015 and 2017. However, documents obtained from the Lands Department show that the group had indeed managed to secure a title to Portion 3646C, which is also called Sasiva, back in 2016. This is an area of 171 hectares immediately to the north of Motukea Island. It is not clear whether the port's operators have so far made any use of this land, although the part to the north of the main road is earmarked for 'general industrial use' in the PNLDP, while the part between the main road and Motukea Island is bisected by a new causeway connecting the island to the mainland.

In October 2016, the chairman of the Kaevaga group itself, Haraka Borema, signed an affidavit stating that his group had agreed to sell part of this 'Sasiva land' to Simbu businessman Jacob Kaupa and his company, Pacific Corporate Security Ltd. This document was submitted to the Land Titles Commission as evidence that the land in question, now designated as Portion 3647, was no longer customary land. This is an area of some 44 hectares, located to the south of the main road and east of the new causeway. Once established as its new owner, Mr Kaupa would be able to sell the land to the state in exchange for a 99-year lease, which would make sense because state leases are now widely regarded as the only 'bankable' form of land title (Brian Aldrich, personal communication, October 2019). However, leaders of the Kaevaga group were able to thwart Mr Kaupa's plans by securing their collective title to Portion 3646C, which includes Portion 3647, two months after the latter had supposedly been sold. In any case, most of the 'Sasiva land' to the south of the main road consists of mangroves, and the whole of it is earmarked for 'environmental protection' in the PNLDP, so it is not clear whether any of its putative owners are in a position to make much of a profit out of its development.

Meanwhile, another piece of 'Sasiva land', immediately to the west of Portion 3646C, was somehow acquired by Larry Andagali, the managing director of Trans Wonderland Ltd, one of the major subcontractors engaged in development of the PNG LNG Project. It is not clear who might have sold this land to Mr Andagali, nor is it clear who had any right to do so, since two or three of the clans based in Baruni Village have been disputing its

ownership for many years, and that is why no one group has tried to register a title over it.[27] Mr Andagali appears to have followed the same legal path as Kaupa in his efforts to secure a legal title for himself or his company, and has apparently been more successful. Nevertheless, his deployment of earthmoving equipment to the area has since resulted in the issue of a stop-work notice by Motu Koita Assembly chairman Dadi Toka Jr, who claims that Mr Andagali has failed to secure the necessary approvals. This action has been applauded by Mr Nou, now described as a 'Sasiva landowner', on the grounds that people like himself should have a 'fair share' of the equity in such developments (Nao 2019).

The redevelopment of Motukea Island itself included plans to relocate the Defence Department's naval wharf and base to an adjacent area of customary land known as Arutu. This move was welcomed by the chairman of the 'Arutu ILG' at what was described as a 'ground breaking ceremony' in 2015 (Anon. 2015f). There were in fact two land groups that received their certificates of recognition on that occasion. One was based in Tatana and had already been incorporated under the old legal regime, while the other was based in Baruni and was now being recognised for the first time. However, these two local branches of the Arutu clan were clearly acting in concert, since both had their application notices gazetted on the same day in 2014, their recognition and survey notices on the same two days in 2015, and their acceptance and land title notices on the same day in 2016. Furthermore, each group ended up with a title over just under 79 hectares of land.[28] The combined area of 158 hectares is located to the north of the main road and northwest of Motukea Island, and it contains a gravel pit from which Curtain Brothers extracted some of the material used to enlarge the island itself (see Figure 5).[29] Indeed, it was staff of Curtain Brothers who conducted the surveys that led to the grant of the two land titles (Justin McGann, personal communication, October 2019). However, once the titles had been granted, a dispute took place between the

[27] Curtain Brothers had plans to make use of this land more than ten years ago, and initially made an agreement with leaders of the Tanomotu clan who claimed to be the customary owners. However, these plans were aborted when members of other groups pursued their own claims through the local land court (Justin McGann, personal communication, October 2019).
[28] The Defence Department thought that it was going to acquire three portions rather than two, covering a total of 226 hectares (Griffin 2017: 33–4). The third portion would have consisted of land below the high water mark on which the wharf would have been constructed.
[29] The extraction of gravel from customary land requires an agreement to pay royalties to the customary owners. Arutu clan members are said to have received royalties worth about K10 million since extraction started (Justin McGann, personal communication, October 2019).

leaders of the two title-holding groups, which effectively put an end to their negotiations with the Defence Department.

The three Tatana groups whose leaders made historical claims to ownership of the new Motukea port site also tried to register titles to areas of customary land beyond its boundaries, although none had got further than the production of a survey notice by the end of 2018. The Nenehi Dubu group produced notices covering three separate portions, with a combined area of almost 25 hectares, between 2013 and 2015; the Idibana Tatana group produced one notice covering just over 60 hectares in 2016; and the Nenehi Laurina group produced one notice covering 9 hectares in 2018. At least one of these claims was related to a new proposal to move the naval wharf and base to the southern side of Fairfax Harbour.

In 2018, representatives of several land groups from Tatana Village, this time including the Tubumaga group, but not the Arutu group, were disputing the question of who owned how much of the 240 hectares of customary land that would be required for this purpose (Kenneth 2018; Nao 2018a). One of the matters raised in this dispute was the 'Iduvaivai decision' supposedly made by a local land court in 1993, and then supposedly confirmed by the National Court in 2008 and the Supreme Court in 2011, so the land in question seems to be located to the west and south of Idumava Point. The chairman of the Nenehi Laurina group said that this land was divided into four parts, one of which was called Geugeu, but none of which was called Iduvaivai, and the ownership of each part was still being debated in yet another local land court hearing (Nao 2018b). Geugeu is the name of the 60-hectare portion subject to the survey notice produced by the Idibana Tatana group in 2016, and since the survey itself was also undertaken by staff of Curtain Brothers, it has been possible to establish that the name refers to the peninsula immediately to the west of Idumava Point and north of the road to the refinery (Justin McGann, personal communication, October 2019). However, none of the other three land names invoked by the Nenehi Laurina chairman corresponds to the name of a land portion nominated in a local land group's survey notice, and there is no evidence to suggest that negotiations with the Defence Department have made any further progress on this front.

11.3 Ohobidudare transformations

By far the largest block of customary land to have been 'mobilised' in accordance with the PNLDP is an area of 585 hectares that goes by the name of Ohobidudare. This was the subject of an SABL issued to a land group of the same name in 2010. The associated survey plan shows that the land area covered by this lease stretches west and north from Roku Village, where the land group is based, between the south coast of the mainland and the southwestern shores of Fairfax Harbour. It therefore traverses the road that constitutes the boundary between Central Province and National Capital District (see Figure 5). The complexity of the transactions to which this land has been subject since 2010 exemplifies the failure of the new legal and institutional regime to fill the legal holes created by suspension of the lease-leaseback scheme. The history of these transactions also illustrates the level of confusion that now surrounds the legal relationship between customary landowners, urban property developers and state regulators.

In June 2018, the chairman of the Kuriu land group, Inogo Gabe, who was also described as the 'principal landowner' of Ohobidudare, featured in a ceremony conducted by Lands Minister Justin Tkatchenko to commemorate the grant of leases over several different portions of the land formerly covered by the SABL (Anon. 2018h; Poriambep 2018). According to one report, the landowners had agreed to lease their land to the state for a period of 99 years and would somehow receive land titles and rental payments in return (Poriambep 2018), but according to a second report, they had signed a lease agreement with Avenell Engineering Systems Ltd while having their land 'converted to state lease for private development purpose' (Anon. 2018h). From these stories alone it was hard to tell whether the land group had secured titles to different land portions and then leased them to the developers, had sold their land to the state so that the state could issue its own leases to the developers, or else leased their land to the state so that the state could issue subleases to the developers.[30] In any case, Mr Gabe's own right to engage in any of these transactions was promptly challenged by other claimants to membership of the Kuriu clan who published an advertorial declaring that he was not the 'principal landowner', was not even a 'legitimate owner of the land', so they would refer the whole

[30] The second and third of these options are available under Sections 10(2) and 10(4) of the *Land Act 1996*, but customary landowners have rarely been inclined to make use of these provisions.

matter to the newly established Fraud and Audit Section of the Lands Department (Kep 2018).

It does seem rather odd that Mr Gabe himself would claim to be the chairman of one land group, Kuriu, while also being the 'principal owner' of a large swathe of customary land that apparently belongs to another land group, Ohobidudare. And whatever it was that he did, or had a right to do, with the land also known as Ohobidudare, another puzzle arises from the fact that Avenell had already started to develop part of this land area some six years before the arrangement received the public blessing of the minister. Construction of a 72-hectare port facility began in 2012, and this has since been followed by construction of other commercial and residential facilities in what the company calls the 'Ravuvu Business Park', which is part of what the PNLDP called the 'Napa Napa Town Centre'. By the end of 2018, satellite imagery shows that the land cleared for these facilities was roughly 20 per cent of the area covered by the original SABL (see Figure 5). It is hard to imagine that all this would have happened in the absence of some form of legal transaction.

From notices published in the *National Gazette* we discover that the Ohobidudare land group applied for incorporation in 2001, while the Kuriu group was the subject of three different application notices gazetted under the old legal regime — in 2002, 2007 and 2009. The repetition of these notices might signal the existence of disputes about the membership or leadership of the Kuriu group, or even the presence of two or three groups in Roku Village that happen to have adopted the same name. A group with this name was reincorporated in 2015, but the Ohobidudare group has not been the subject of an application or recognition notice since the new legal regime came into effect. Nevertheless, like the Busulum group in Lae District, it did manage to produce two survey notices covering three land portions, still bearing the group's name, with a combined area of just over 130 hectares, back in 2012. As previously noted, this took place at a time when the new legal regime was still at an experimental stage, and when survey notices did not lead to acceptance or land title notices.

According to one of my informants, Ohobidudare and Kuriu are alternative names for the *same land group*, Kuriu being the group's real name, while Ohobidudare is the name of its territory (Brian Aldrich, personal communication, October 2019). That would help

explain Mr Gabe's claim to represent both entities, although it does not explain why the group sought to register its existence on no less than four separate occasions between 2001 and 2009. Nor does it explain how the land in question came to be subdivided and partially developed between 2012 and 2018 despite local challenges to Mr Gabe's authority.[31]

To the best of my knowledge, the property development story began in 2011, when Mr Gabe and his associates tried to obtain a number of new SABLs over relatively small portions of land within the area covered by the original SABL and then to 'sell' these blocks to an Avenell subsidiary. This plan quickly came unstuck when the lease-leaseback scheme was suspended, and would in any case have violated the provision of the *Land Act* which says that the holders of SABLs can only sublease the land, not sell it. That is why the group's leaders decided to explore the option of securing registered group titles under the new legal regime, this time with a view to issuing leases to the developers. However, it then became apparent that such leases would not be 'bankable', and that was when the landowners and developers came to agree that the best available option would be for the landowners to sell their land to the state so that the developers could obtain the state leases that are now regarded as the only secure form of title over what was formerly customary land. I am not privy to the details of the actual agreement, but it is based on the establishment of several corporate bodies that have been registered with the Investment Promotion Authority.

Ohobidudare Property Development Ltd was registered in 2010 as a joint venture between Avenell, one of its subsidiary companies and the Ohobidudare land group. Between 2013 and 2017 its board of directors included two Avenell representatives, Inogo Gabe and Pius Pundi. Mr Pundi is reported to have married a woman from Roku Village who is presumably a member of the same clan as Mr Gabe (RNZ 2014). The two Avenell directors left the board in 2017, and this company does not seem to be party to the latest contractual arrangements. Ohobiduduare (sic) Holdings Ltd was registered in 2011. This is clearly a landowner company, with Mr Gabe, Mr Pundi, Mrs Pundi and Rei

[31] By one account, a local land court magistrate supported one such challenge in 2014 when he ruled that Ohobiduduare (sic) was the name of a gravel pit within the area covered by the SABL, and this was the only part of the area to which Gabe held customary rights, while the rest was owned by other members of the Kuriu clan (Samar 2014).

Gomara as its four shareholders. In 2015 it entered into a joint venture with an Avenell subsidiary and another property development company called APAC Investments PNG Ltd. Since the joint venture was registered as OPD Ltd, it appears to be the successor to the aforementioned Ohobidudare Property Development Ltd. It still has two Avenell representatives on its board of directors, along with Mr Gabe and Mr Pundi. Finally, in 2017, Mr Gabe registered an entity called Kuriu Ohobiduduare Foundation Ltd, in which he is the sole shareholder, while the board of directors contains the four shareholders in Ohobiduduare Holdings Ltd.

It may reasonably be inferred that the joint venture company OPD is the entity that will end up with one or more state leases over the area covered by the original SABL that was issued to the Ohobidudare land group, while the foundation has been established to invest or distribute the benefits that the local landowners are due to receive from the alienation of their land. It seems that the state leases have yet to be gazetted because officials in the Lands Department have been dragging their feet or sitting on their hands (Brian Aldrich, personal communication, October 2019). However, the contractual arrangements between the landowners and the developers have been sufficiently robust to allow for the development that has taken place on the part of the original SABL that is located in National Capital District and is therefore covered by the PNLDP.

12. Discussion and conclusion

The most recent of the national government's medium-term (five-year) development plans aims to raise the proportion of 'bankable land' in the 'formal market' from less than 5 per cent in 2016 to 20 per cent in 2022 (GPNG 2018: 25–6). It is not clear how the Department of National Planning arrived at its estimate of how much land was 'bankable' in 2016, but it presumably consists of a combination of land that was alienated during the colonial period and the area covered by SABLs that had not already been revoked by judicial or executive orders. By the end of 2016, the total area covered by land titles issued to land groups under the new legal regime was just over 100,000 hectares, about 0.2 per cent of PNG's total land area, so that was not a significant part of the equation. If government officials still believe that the voluntary registration of land group titles is the means by which their medium-term target will be met, then they are clearly deluding themselves. The area covered by registered group titles has been growing at an average

of less than 40,000 hectares a year since 2013 (see Table 3), and less than 60,000 hectares were added to this area in 2018.

In any case, the 'bankability' of land titles granted to customary groups has turned out to be another illusion because the banks have refused to accept them as security for loans to the groups that hold them, despite entreaties from the lands minister (Vari 2018). This is hardly surprising, since the banks would not be able to acquire the titles in the event of a default, but could only attempt to recoup the money through some leasing arrangement that might not be acceptable to members of the land group. In the absence of any sort of government guarantee, the only alternative has been for the land group representatives to enter into a joint venture with their 'development partners' in which the latter assume responsibility for financing the enterprise, and the land group members are left to bemoan the fact that they are 'spectators on their own land'. This barely differs from the sort of arrangements that were made under the terms of the lease-leaseback scheme. Participants in the latest land summit saw this as a problem that will have to be solved if the registration of group titles is to serve the purpose of empowering local landowners, but they do not seem to have thought of a solution.

This is one of several problems that were identified by the National Land Development Taskforce, established in the wake of the previous land summit in 2005, as problems that could not be resolved by legislation alone (GPNG 2007: 114). Defenders of the legislation that was passed in 2009 would say that its perceived failure to bring about the 'mobilisation' of large areas of customary land is not the result of its design but of the government's failure to implement most of the other recommendations made by the taskforce (Lawrence Kalinoe, personal communication, July 2013). Recognition of the need to pursue a range of additional reforms to the institutions responsible for land administration and the settlement of land disputes prompted the design of a National Land Development Program whose first phase was to be implemented over a five-year period from 2011 to 2015 (GPNG 2010). This was to be implemented by representatives of several different government agencies, including the Lands Department, who were to take advice from private sector and civil society representatives, including the president of the PNG Bankers' Association. However, the adverse findings of the Commission of Inquiry into SABLs seem to have reduced the willingness of Lands Department officials to collaborate in such a wide-ranging program of institutional reform.

Commissioner Mirou actually recommended that administration of the process of voluntary customary land registration should be taken away from the Lands Department and vested in a separate statutory body (Mirou 2013: 23). In its own response to the commission's findings, the National Executive Council resolved to transfer administration of the land group incorporation process back to the Investment Promotion Authority, formerly the Registrar of Companies, from which it had been removed in 1992. Two years later, in 2016, it resolved to establish a Customary Land Authority by 2019 but then rescinded its decision in the face of bureaucratic resistance (Duncan 2018: 5). One provincial governor was still canvassing this option in 2018 (Elapa 2018), but in the meantime, the process of institutional reform had largely ground to a halt (Duncan 2018). That is why the lands minister was persuaded to convene another land summit where the option was canvassed once again.

The anomalies and inconsistencies that are evident in the notices published in the *National Gazette* do suggest that Lands Department officials have struggled to abide by the letter of the new legislation. It is difficult to say whether this counts as evidence of corruption, incompetence, political interference, a lack of resources, or a combination of all these things. Successive lands ministers have made public vows to improve the department's performance, but the repetition of such promises suggests that they are not easily kept. If the laws have not been followed, one has to wonder if the stated aim of eliminating 'bogus' land groups has been achieved in practice, and if it has not, one must also wonder if groups of 'paper landowners' have managed to get their hands on titles to land that is not really theirs. It is reassuring to know that departmental officials were able to block the incorporation of four bogus groups over the course of six years, and also to whittle down the size of some land claims before titles were awarded. Nevertheless, there are still grounds to suspect the authenticity of some of the 64 groups that had been the subject of land title notices by the end of 2018. For example, one title was awarded to a land group called Iduhu Iduhu in one of the Motuan villages in Central Province, and 'Clan Clan' is surely a rather odd name for an authentic clan. That title only covered 2.3 hectares, but we have seen that a title over almost 12,000 hectares has been awarded to the Pairi group in Gulf Province, and a title over almost 40,000 hectares to the mysterious Lokang group in West New Britain — a record that remained unbroken until

the Kofega group in Central Province was awarded a title over more than 43,000 hectares in March 2019.

It seems surprising, in retrospect, that the architects of the new legislation did not impose some legal limit on the size of the land portions that groups could claim as their exclusive property, given the ideal model of customary land tenure that they adopted (see Figure 2). Of course, one would expect the size of customary group territories to vary with population density, and groups in thinly populated areas may well have reasonable claims over very large areas. However, the Chevron experience has shown that large groups, or groups purporting to own large areas of land, may have very little in the way of internal solidarity, and what they do have may be lost when their land becomes the site of a major development project (Weiner 1998, 2007). The evidence indicates that this is as much — if not more — of a problem in urban and peri-urban areas as it is in remote rural areas where villagers are confronted with resource development projects. And if land titles are awarded to groups that proceed to disintegrate, or were never integrated in the first place, the legal indefeasibility of the titles entails a risk that some people will lose their customary land rights altogether.

Whatever procedural irregularities might be discovered in the operation of the new legal regime, a further process of legal and institutional reform needs to take account of the different reasons why some people have been taking some steps towards the acquisition of group titles, many people have only got as far as the registration of their group identities, and an even larger number who went through the incorporation process under the old legal regime have not bothered or been led to get their old groups reincorporated. The evidence presented in this paper shows that there are several different answers to these questions, yet there is not enough evidence to weigh their relative significance.

The complexity of the new legal regime must be part of the reason why people have not taken full advantage of its provisions. The cost of producing all the evidence required by the new incorporation process is already substantial, especially for poor rural villagers, and the cost of producing the additional evidence required for the registration of land titles is even greater. Some politicians and government agencies have tried to provide financial or logistical support, as well as public exhortations, for their constituents or clients to gather such evidence, but such efforts are not well documented and seem to be

grossly inadequate. This could be one of the factors that drives people into the arms of private 'development partners' whose main aim is to make a profit from their own access to customary land (Roberts 2019). However, some developers do not need to bear this cost to get the sort of access that they want. Mining companies can obtain exploration and development licences by securing the consent of landowner representatives or 'agents' recognised under the terms of the *Land Act*, and the developers of agro-forestry projects have found that they can get FCAs in much the same way.

In some respects, the political pressure to 'mobilise' customary land by means of the new legal regime has only served to divert attention from a question that is not answered by the new legislation, but was posed again by the 2019 land summit. That is the question of how to secure the most equitable benefit-sharing agreements between customary landowners and the people wanting to use their land — whether it be private companies, government agencies, or migrant families from other parts of the country. In the extractive industry sectors, this question is partly answered by the legal requirement for such agreements to be produced by 'development forums' held before development licences are granted (Filer 2008). In the forestry sector, it is partly answered by the legal requirement for FMAs to precede the grant of selective logging concessions. In these sectors, it is recognised that the institutions have not exactly solved the problem (Bird et al. 2007; Filer 2008, 2012b, 2019). But in other sectors, including the agricultural sector, the institutions have an even more tenuous existence (Jones and McGavin 2000; Oliver 2001). It is not clear how the amendments now made to the *Land Registration Act* will lead land group managers to negotiate better agreements with developers or investors simply because they have registered land titles.

Aside from the legal requirements of the *Forestry Act* and the *Oil and Gas Act*, there is no inherent need for land groups to be incorporated, or for group titles to be registered, in order for landowner representatives to negotiate benefit-sharing agreements. This point is most clearly revealed when the agreements cover areas of land that were alienated during the colonial period, or the few cases in which the national government has since exercised its power of compulsory acquisition (Manning and Hughes 2008). The case of the Lae Port Tidal Basin Project shows that a process of land group incorporation may be quite irrelevant to such negotiations if the customary landowners already have other types of representative institution. Even when the land in question is still customary land,

the experience of the extractive industry sectors would not lead us to conclude that land groups need to be incorporated before local landowner companies can benefit from contracts with external investors.

However, 'landowner companies' are strange beasts that come in many shapes and sizes. The *Companies Act* of 1997 does not recognise them as a distinctive type of company, so there is no legal requirement for them to have land groups as their shareholders, despite the fact that some of them do so, and despite the existence of longstanding recommendations for such a requirement to be introduced as a mechanism of accountability (Whimp 1995; Power 1995). One of the main findings of a previous commission of inquiry into corruption in the forestry sector was that landowner company directors engaged in 'private dealings' with foreign logging companies were most unlikely to serve the interests of the customary landowners whom they claimed to represent (Barnett 1992). That is why the *Forestry Act* of 1991 sought to exclude them from the negotiation of FMAs. But the Commission of Inquiry into SABLs found that they had regained their capacity to betray these interests through the negotiation of bad agreements with the developers of so-called agro-forestry projects (Mirou 2013; Numapo 2013). The evidence presented in this paper suggests that they have sustained this capacity in the negotiation of FCAs that are not based on SABLs, regardless of whether a process of land group incorporation has been used as evidence of landowner consent to the agreements being negotiated.

Given the wildly ambitious target expressed in the government's medium-term development plan, this leads us back to a pair of questions about the mobilisation of customary land in rural areas for what PNG's political leaders like to call 'impact projects', 'economic corridors', or 'special economic zones'. The first is a question that was posed by the 2019 land summit, which is what should now be done with the sections of the *Land Act* that allow for the grant of SABLs. The second is a question that was *not* posed by the land summit, which is what should now be done with the sections of the *Forestry Act* that allow for the grant of FCAs.

In his report to the Prime Minister and National Executive Council, Chief Commissioner John Numapo was in two minds about the retention of the lease-leaseback scheme. Having initially said that it should be abolished, at least in its current form (Numapo

2013: 4), he then went on to say that it should be retained (ibid.: 255). In explanation of this discrepancy, he later wrote that it should 'continue for large-scale, high-impact, intensive land-based development' (Filer and Numapo 2017: 264), apparently because he could already see that the voluntary registration of land group titles would not serve to mobilise areas of sufficient size to meet the government's objectives. The National Executive Council was less equivocal in its response to his original report. In 2014, it resolved to repeal the relevant sections of the *Land Act* because the amendments made to the *Land Registration Act* had made them redundant. But the relevant public servants managed to restore the state of uncertainty by failing to produce the required amendments to the *Land Act*, even though the Lands Department has followed the executive order to suspend the operation of the whole scheme.

The situation now is that roughly half of the area covered by SABLs in 2011 is still covered by leases that have not been revoked, but only a small fraction of the land groups that agreed to these leases have been reincorporated under the new legal regime. The rest of the area covered by SABLs in 2011 could technically still count as 'public land' because the head leases have not been revoked, but an even smaller fraction of the land groups that supposedly issued the head leases to the state have been reincorporated under the new legal regime. The government seems to have no plan, let alone the institutional capacity, to rectify this situation, either by helping the land groups to reincorporate themselves or creating new sticks or carrots that would place this obligation on the private sector. In these circumstances, any attempt to 'unsuspend' the lease-leaseback scheme, with or without amendments to the relevant sections of the *Land Act*, would almost certainly be met with concerted opposition from elements of the 'land grab policy network' that persuaded the government to establish the commission of inquiry (Filer 2017).

In theory, the government could avoid the cumbersome circularity of the lease-leaseback scheme by making provision for land management agreements, rather like FMAs, in which land groups agree to lease their land to a government agency on condition that this agency itself then assumes responsibility for subleasing the land to a private investor or another government agency. Indeed, Section 10 of the *Land Act* already allows for this kind of arrangement. However, the experience of forest policy reform in the 1990s should serve as a reminder that such innovations are unlikely to achieve significant results

unless they have the backing of foreign aid agencies or international financial institutions such as the World Bank, and then they may not be sustainable (Filer 2000). Furthermore, the failure of attempts at land policy reform in the 1990s should serve as a reminder that foreign intervention in this policy space is also likely to be thwarted by political opposition (Lakau 1997; Levantis and Yala 2008).

The question not posed by the 2019 land summit is one to which there may be an easier answer. By the end of 2018, about 600,000 hectares of customary land had been covered by FCAs that were still valid and had been granted by the National Forest Board without the prior grant of SABLs by the Lands Department. This was almost as big as the area in which currently valid FCAs had been granted after the grant of SABLs that had not since been revoked, and it will soon get bigger. This is because the suspension of the lease-leaseback scheme has done nothing to diminish the ability of the agro-foresters to persuade relevant government agencies to authorise their proposals. It is not clear whether the National Planning Department regards these forest conversion concessions as 'bankable land', but it is clear that FCAs, unlike SABLs, can be legally granted directly to foreign investors. As we have seen, the appearance of landowner consent to this particular way of 'mobilising' customary land can be manufactured in several different ways, some of which do not require a process of land group incorporation, so it is not entirely clear why some proponents support this process and others do not.[32] The *Forestry Act* could be amended to make this process mandatory, but this should be accompanied by other measures that would force the public disclosure of the development proposals authorised by the grant of FCAs and ensure that these are not granted in the absence of a reasonable benefit-sharing agreement.

Political enthusiasm for 'impact projects' in rural areas has been partly motivated by a desire to slow down the process of urbanisation and hence to limit the incidence of social conflict arising from the informal sale of customary land in urban and peri-urban areas. It is this second phenomenon that has been the primary concern of many of the advocates of land policy reform, including those who were active participants in the latest land

[32] There may be a growing incentive for the project proponents to cut corners because political support for the implementation of 'impact projects' in the agricultural sector has been accompanied by continual threats to impose a moratorium on the export of raw logs, which would not be good for the agro-forestry business model unless the holders of FCAs are given a special exemption.

summit (Chand and Yala 2008, 2012). These transactions are problematic for several reasons. Not only do they pose the risk of conflict between members of the same customary group; they also risk a wider conflict between groups of sellers and groups of buyers who may have very different ideas about what constitutes an informal 'sale' as opposed to an informal 'lease' (Koczberski et al. 2009; Numbasa and Koczberski 2012). In some circumstances, the buyers or tenants cannot be sure that what they have purchased or rented is in fact customary land, and if it is, whether it has not already been informally sold or leased to someone else (Chand and Yala 2008; Rooney 2017). In the absence of legal contracts, the buyers or tenants are unable to secure bank loans for building purposes, but they also have an incentive to invest in the bribery of government officials in order to obtain the land titles to which they are not entitled.

The net result of all this uncertainty has been a simultaneous rise in the number of court cases relating to such matters, in the cost of accommodation in urban areas, and in the size of 'haphazard informal settlements', as well as the volume of calls for urban land groups to register their collective land titles. If this helps to explain why groups based in urban and peri-urban areas account for a growing proportion of the land title notices published in the *National Gazette*, it does not explain why the number of notices is still relatively small. If the notices are a true reflection of what the Lands Department has been doing, its officials might not have been capable of doing enough to meet the demand for registration. Alternatively, national politicians and local community leaders might not have been able to persuade their fellow citizens that this constitutes the best solution to the problem of urban land shortage or housing affordability.

Participants in the 2019 land summit were so concerned by the size of this problem that they recommended a review of the possible 'relevance' of the *Land (Tenure Conversion) Act* of 1963, which enables customary groups to transform their land into a collection of registered freehold titles and distribute these among their individual members. This piece of legislation is administered by the Land Titles Commission, not the Lands Department, but the National Land Development Taskforce observed that the commission had already lost what little capacity it once had to process applications for conversion and recommended that the Act be repealed (GPNG 2007: 14, 94).

The question posed by the apparent contradiction between these two recommendations is not just a question of bureaucratic capacity. It is also a question about the relationship between the registration of collective land rights and the maintenance of customary social institutions. People who bemoan the inability of urban land group managers to prevent their members from alienating their birthright to outsiders are inclined to regard this as evidence of the breakdown of customary forms of social solidarity — a process that has naturally gone further in urban than in rural areas. But if the transformation of 'clans' into miniature landowning corporations is itself inconsistent with customary ways of making decisions about land use, even in rural areas, then the circle that cannot be squared is the incompatibility of customary social institutions with the operation of a capitalist economy that includes a land market.

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