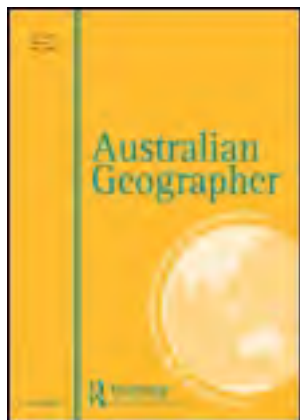


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### Access to Land and Livelihoods in Post-conflict Timor-Leste

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# *Access to Land and Livelihoods in Post-conflict Timor-Leste*

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**ABSTRACT** *East Timor gained formal independence in 2002. Its extended history of internal displacement through colonial territorialisation strategies and conflict has produced an array of contesting land claims, informal land use and occupation, and socio-political conflict. Correspondingly, the Timor-Leste (or East Timor) government has looked to formal land registration and titling to resolve historical and contemporary tensions over land. The proposed national land laws concentrate on land ownership, which overlooks the social relations at work to shape local land access and livelihoods. A case study of a rural village, Mulia, forcibly resettled during the Indonesian occupation, demonstrates how settlers negotiate access to customary land for livelihoods despite ongoing land conflicts with the customary landowners. Settlers have continually adapted to broader economic and political constraints to create diverse and multi-local livelihoods, and established a moral economy between themselves, landowners and the local spirit realm. This paper argues that formal land titles are unlikely to resolve the ambiguities and complexities of diverse forms of access to and ownership of land.*

**KEY WORDS** *Displacement; resettlement; access; land; livelihood; post-conflict; Timor-Leste (East Timor).*

## **Introduction**

Post-conflict land issues in Timor-Leste are highly complex. The urgency to resolve land and property disputes in post-conflict Timor-Leste has been prompted by ongoing outbreaks of communal violence after national independence (Gunter 2007; Harrington 2007; Scambary 2009). The Timor-Leste government has therefore sought land titling to address these matters. Formalisation of land rights is advocated primarily by neoliberal policy makers who take an economic view of land as ‘dead capital’ (see, for example, De Soto 2000). The mobilisation of ‘dead capital’ through land titles, so demarcating clear and legally enforceable rights, is posited to clarify competing interests in land, enable landholders to exercise greater control of land, and free up land for productive investment and collateral loan (De Soto 2000; Hughes 2004). In post-conflict settings, such as in the case of Timor-Leste, the need for clear and enforceable land rights is further justified on the

grounds that they will bring peace, reconciliation, post-war reconstruction, foreign investment, and sustainable livelihoods (Du Plessis 2003; Fitzpatrick 2002; Ita Nia Rai 2005; Unruh 2008).

A growing body of evidence from South Asia, Southeast Asia, Africa, and Latin America has shown, on the contrary, that formal land titles do not always guarantee security of tenure, protection from land grabs, poverty alleviation, and gender equity (Agarwal 2003; Manji 2006; Lund 2000; Hall *et al.* 2011). Taking a broader view, Hall *et al.* (2011, p. 27) contend that securing land rights for one group of people inevitably entails the exclusion of others. In post-colonial and post-conflict situations, access to land can be ambiguous given that there are usually coexisting and contesting politico-legal and socio-political institutions that can determine land rights, creating a plural legal context (Meitzner Yoder 2003; Unruh 2008; Sikor & Lund 2009). Further, the post-conflict/post-independence context is usually marked by rapid political, economic, and social changes, implying a kaleidoscope of informal land and property transactions more fluid than in the colonial past. Together, these circumstances question the central role reserved for legal solutions, and stress the need to examine the specific historical, political, institutional, and socio-cultural contexts to better understand how conflict might be managed, land access negotiated, and benefits distributed—in other words, to examine the underlying power relations at work.

Broadly, there are four competing categories of land claims in Timor-Leste: customary tenure, Portuguese titles, Indonesian titles, and Temporary Use Agreements (TUAs) distributed during the transitional period to independence between 1999 and 2002 (Fitzpatrick 2002). Moreover, the full typology of land and property transactions and arrangements is even more complicated, as these claims intersect and overlap with one another, and give rise to different outcomes. In the post-independence era, residues of conflict and colonial territoriality persist in forms of inter-generational violence and social tension manifested in land and property disputes. Conversely, land and property conflicts can also evolve into socio-political differences (Meitzner Yoder 2003; Gunter 2007; Harrington 2007; Scambray 2009). Within this wider context, the Timor-Leste government seeks to advance formal land titling to resolve colonial-inherited land disputes and social conflict.

The national focus on land ownership places emphasis on ownership over access, contestation over cooperation, and exclusion over inclusion. Land titles give undue attention to land, and ignore gender inequalities, remuneration of labour, appropriation of produce and the control of benefits reaped from land (Agarwal 2003; Li 1996; Meinzen-Dick & Mwangi 2009). Inevitably, the range of actors that seek to reap benefits from the land in question is overlooked, and the power relations that shape the ability to derive those benefits remain obscure (Ribot & Peluso 2003). To whom and to what should land policy pay attention? Whose voices are potentially marginalised in enforcing formal titles to land? In seeking to answer these questions, I examine the actual practices of land access and land control under customary land tenure. A focus on *access* rather than *ownership* opens up a space to investigate the situated fields of power that form under local historical contingencies and makes visible the diverse and informal nature of land tenure practices ensuing from internal displacement in rural Timor-Leste.

Taking land access as my focus, I draw on Ribot and Peluso's (2003, p. 153) definition of access as 'the ability to benefit from things'. Access is distinguishable

from property; the former is not necessarily limited to socially sanctioned or legalised rights, whilst the latter requires legitimisation from some form of authority—politico-legal or socio-political institutions (Sikor & Lund 2009). Property can therefore be one dimension of access (Ribot & Peluso 2003). Mechanisms of access may be gained through capital, labour, technology, and knowledge, while the conditions that enable access constantly change with the political and economic conditions (Ribot & Peluso 2003, p. 156). I consider in this paper how a group of displaced people have gained access to land in an Indonesian-established resettlement village under customary land tenure. My contention is that without a proper understanding of the social relations that eventuate in access, statutory land rights can perpetuate systemic inequality in power and resource control.

By focusing on how access to land and customary land tenure has changed in rural Timor-Leste due to a legacy of foreign occupation and conflict, this paper also contributes to recent scholarship on the changing nature of land access and land control (Hall *et al.* 2011; Peluso & Lund 2011). Conditions of access and control are changing and becoming more complex through the interactions of new actors and subjects, which have consequently shifted the situated fields of power. Regional comparisons can additionally be made with Southeast Asia, Melanesia and sub-Saharan Africa on the adaptability, responsiveness, and negotiability of customary tenure under the pressures of conflict, commercialisation of agriculture, natural resource extraction and globalisation (Lund 2000; Bainton 2009; Curry & Koczberski 2009; Koczberski *et al.* 2009; Cramb & Sujang 2011). These studies show how customary systems are constantly revising the meanings of property relations, simultaneously redefining social relations and images of ‘community’, to respond to broader political, economic and ecological conditions.

The first section foregrounds the historical context of displacement and dispossession to chart the broader structural changes that reshaped local access to land and continue to reshape them. In particular, Timor-Leste state’s current national development strategy appears to be replicating the colonial processes and practices that resulted in displacement and conflict. The second section focuses on a particular rural locality where a group of displaced people were forced to resettle during the Indonesian occupation to examine how they have negotiated access to land from the customary landowners despite ongoing inter-community conflicts. Here I focus on differentiating land access from land ownership to highlight the social relationships between settlers and landowners, and the power dynamics that shape access. The local conditions of access to land in Mulia must be understood within the broader context of the country’s legacy of displacement and dispossession. The third section examines the potential implications of the proposed Transitional Land Law for rural land, and the livelihoods that depend on customary land access. I argue that land titles alone will not resolve land conflicts, and that mediation and reparation must be taken into consideration.

### **Colonial displacement and dispossession**

Recent scholarship on post-conflict Timor-Leste has focused on the impacts of internal displacement, namely human rights violations, land disputes and social conflict, rather than seeking to understand the phenomenon itself (e.g. Fitzpatrick 2002; Unruh 2008). Most East Timorese have experienced forced displacement

during their lifetimes. As a consequence of an extended history of foreign incursions under Portuguese colonialism (sixteenth century to 1974), the brief Japanese occupation (1942–44), and the Indonesian occupation (1975–99), the overriding narrative of internal displacement in Timor-Leste is that it is a product of war, occupation and violence, and that, over time, displacement has recursively induced conflict. In particular, the violence and destruction of the 1999 post-referendum vote for national independence, together with the most recent social unrest in Dili in 2006, have drawn attention to conflict-induced displacement over development-induced displacement. This perception of conflict has, in turn, shaped government policy on land and how land relations are understood. I highlight the historical processes of state territorialisation and development interventions, to emphasise that they have produced as much displacement as conflict, and that conflict-induced displacement and development-induced displacement are not mutually exclusive but implicate one another (Muggah 2003).

The modern state seeks to exercise and consolidate its authority within its claimed geographical boundaries through various practices and processes that enable it to control the populace and natural resources; and these strategies can be termed ‘territoriality’ and ‘internal territorialisation’ (Vandergeest & Peluso 1995). ‘Territorialisation’ processes include the establishment of formal regulations on land boundaries, property rights, political administration, and population movement. State ‘development’ interventions can be included in the modern state’s portfolio of extending its spatial and administrative powers (Ferguson 1994; Vandergeest 2003). Individuals and other politico-legal institutions (e.g. customary authority figures) may also engage in their own practices of territorialisation to assert control over land and natural resources, which can come into conflict with state forms of territorialisation (Peluso 2005).

State territorial control and conflict occurred in tandem during Portuguese and Indonesian rule, resulting in internal displacement. The task of establishing state authority and control over people and land was carried out through the use of military violence to pacify the East Timorese and symbolic violence through redefining administrative boundaries and mapping legal frameworks onto land in order to remake territory. Along with state agricultural land concessions, a series of land titling programs distributed an estimated 2843 Portuguese titles and 44 091 Indonesian titles (Fitzpatrick 2002, p. 202). Most of these titles are in Dili and other urban centres. By the end of the Indonesian occupation, only 3 per cent of the total land area in Timor-Leste was held as ‘non-customary primary industry land’ pertaining to coffee plantations, timber plantations and transmigration (Nixon 2007, p. 103). The low percentage of state-acquired land suggests that colonial hegemony was incomplete.

State territorialisation strategies under both regimes were strongly influenced by global discourses of the time, including those relating to ‘Western civilisation’, ‘modernisation’, and ‘development’. For most of the Portuguese era, the colonialists only established indirect rule through reliance on allied indigenous chiefs and rulers (*liurai*) (Gunn 1999, p. 192). However, colonial displacement and dispossession go back to the late nineteenth century when the expansion of colonial military capabilities led to direct and violent encounters with the East Timorese. The rise of colonial capitalism made it necessary to reconfigure the administration of land and labour, allowing the state to exert greater control over territory. Colonial state plantations generated less revenue than smallholder production,

indicating that plantations were guided more by political rather than economic considerations, enabling colonial power to expand into the rural interior of the island. These introduced changes generated new forms of conflict and displacement related to taxation, dispossession, and contestation over political legitimacy, and local resistance that resulted in several major anti-colonial revolts. Inter-clan warfare was also a constant component of Timor-Leste's history (Gunn 1999). Arguably, local resistance was due to competing territorialities—between local and state-claimed territorialities. The anti-colonial revolts were met with a violent response by colonial authorities who sought to abolish indigenous kingdoms and chiefdoms and impose a secular local governance structure, new administrative boundaries, and enforced formal regulation of people and land.

After the Second World War the Portuguese administration attempted forced resettlement and sought to develop the agricultural sector in order to bring the East Timorese closer to 'civilised' life. Despite colonial pressure, most East Timorese remained scattered, making it difficult for agricultural extension programs. Commercialised wet rice cultivation was advanced for national development, and had a strong impact on local migration patterns as people moved to work on rice fields (Metzner 1977). With the rise of nationalist movements in the African colonies, and a poorly financed colonial administration, Portuguese territorialisation processes came to an abrupt end in 1974. However, the Portuguese-established local governance system was readily adopted by the Indonesian government during its rule, and remains the foundation of the current system.

In a similar fashion, state territorialisation of Timor-Leste flourished under the Indonesian authoritarian government. The pre-invasion population in Timor-Leste was estimated at 688 771 in 1974, and in the invasion years nearly 40 000 people fled over the border into West Timor and a further 4000 fled to Portugal and Australia. By December 1978, 373 000 East Timorese had been forcibly concentrated into an estimated 139–400 'strategic hamlets' (Taylor 1999, p. 90; CAVR 2006, p. 61). Outside these Indonesian-controlled areas were Timorese resistance frontiers. An estimated 102 800–183 000 East Timorese perished and a large proportion were subject to human rights violations from 1974 to 1999 (CAVR 2006, p. 44). After the violent annexation of the territory, some strategic camps were closed down, while other camps, such as the case study discussed below, were transformed into resettlement sites and provided with schools, clinics, markets and transportation. Enforced resettlement was justified to improve local livelihoods by bringing the population closer to new public amenities. A series of major state-driven projects, closely resembling Scott's (1998, p. 4) notion of 'high modernism', were undertaken in the name of bringing welfare to the populations, notably the opening of new roads and bridges to create economic corridors required for socio-economic prosperity. The regime built large-scale agricultural projects and implemented its landmark transmigration program to promote commercialised wet rice cultivation as the primary vehicle of economic development. Many East Timorese were displaced and dispossessed by the conversion of land for large-scale agricultural purposes.

The state ideology of *Pancasila* accompanied technical interventions for 'improvement' and permeated all spheres of local life to instil a sense of 'Indonesian' identity, culture (based on Javanese cultural norms), and attitudes for 'development' (cf. Guinness 1994). Overall, Indonesian territorialisation strategies brought new infrastructure, ideologies and values to the East Timorese.

The aftermath of the 1999 popular consultation vote for national independence, however, took a destructive turn, damaging almost 80 per cent of the physical infrastructure that the Indonesian government had invested in, and displacing over 250 000 East Timorese into West Timor, with the majority in Timor-Leste internally displaced.

To a large degree, state territorialisation practices underlie aspects of internal displacement in Timor-Leste. Violence was implicit and viewed as a necessary part of 'development' by the Portuguese and Indonesian regimes; hence displacement caused by development, territorialisation and conflict is overlaid and interconnected. Clearly, then, conflict-induced displacement and development-induced displacement are less discernible as two distinct phenomena than commonly conceived. This legacy of displacement presents contemporary challenges to the Timor-Leste government.

### *New state, old trajectory*

Taking displacement as a process rather than an event in a specific place and time, the lingering effects of colonial territorialisation took on a recursive dimension in producing displacement and conflict in the post-independence years. In particular, the imbrications of incomplete Portuguese and Indonesian territorialities over local forms of territorial claims and practices have produced multiple and overlapping claims to land and property, leading to fresh tensions and divisions. The 2006 social crisis in Dili marked the worst period of political instability, with nearly 150 000 urban residents internally displaced as generalised violence took on an 'ethnic' dimension. The violence was built on historical and more contemporary political, economic, social, and generational grievances (Kingsbury & Leach 2007).<sup>1</sup>

In contrast to the previous regimes, the Timor-Leste state is taking a less violent approach in establishing its authority. Its management of the internally displaced persons (IDPs) of the 2006 crisis is a case in point. The Timor-Leste state, together with international humanitarian assistance, expeditiously managed the 2006 wave of displacement. After three and a half years, all IDP camps were closed down, with residents either returning to their former places of residence or relocated to new sites. The Timor-Leste government implemented a recovery, resettlement and restitution package (*Hamutuk Hari'i Futuru*), which provided shelter and housing, social protection, economic assistance and security: a stark contrast to the management of displacement in Timor-Leste's past.

Nevertheless, contemporary approaches to territorialisation and 'development' reveal historical continuity. In 2009, the political impasse on attending to contesting land claims ended with the drafting of the Transitional Land Law (2009).<sup>2</sup> Specifically, the proposed articles on 'special adverse possession' and 'community land' are most relevant to situations of displacement and dispossession.<sup>3</sup> The special adverse possession principle enables claimants to obtain land and property title either through long-term and peaceful occupation of land (starting before 31 December 1998), or possession of title based on previous primary or secondary rights under the Portuguese or Indonesian times (Article 21). Compensation will be awarded by the state or successful claimants to unsuccessful claimants (Article 42). The legislation of 'community land' has significant ramifications for both customary landowners and displaced people in the rural districts. The Law defines customary land as 'land in areas where a local community organizes the use of the

land and other natural resources by means of norms of a social and cultural nature' (Article 23). Local communities are assumed to perform 'customary norms and practices' as established in Article 25 (1a–c): 'on community land, local communities participate in: the management of natural resources; the resolution of conflicts relating to the use of natural resources; the identification and definition of the boundaries of the lands they occupy'.

The recent national Strategic Development Plan (SDP) for 2011–30 could similarly generate conflict and displacement. Like previous political regimes, the current Timor-Leste government perceives a development 'gap' compared with its 'developed' neighbours, with the dominance of a subsistence economy, high rates of illiteracy and mortality, food insecurity and poverty. Thus development is taken to be 'self-evidently necessary' (Ferguson 1994, p. xiii). The government envisions opening up large agricultural fields, creating regional development corridors and redefining land into 'sustainable agriculture production zones' and 'forest conservation zones' (SDP 2011, pp. 107–16). The Plan also proposes the Millennium Development Goals Suco Program which seeks to build five houses per hamlet in every village across the country for 'vulnerable people' (SDP 2011, pp. 107–17). Who these vulnerable people are and how land will be acquired by the state to carry out such a project were not, however, laid out in the Plan. These inherently spatial state interventions can potentially directly or indirectly result in more displacement (cf. Vandergeest 2003). The post-conflict development agenda may even exacerbate the negative social consequences of previous government interventions. The national land titling program, which can be taken as another example of state territorialisation, poses potential risks of displacement and dispossession.

### **Methodology**

The historical and current processes of state territorialisation outlined above are discussed for Mulia, an Indonesian-established resettlement site on the north-eastern coast of Laga sub-district (Figure 1). The residents of Mulia were forcibly resettled by the national authorities during the Indonesian occupation. At the time of research, the population in Mulia was 1067, comprised of families originating from four highland villages: Waitame, Gurusa, Afasa, and Baagia. Families from Waitame made up the majority of Mulia's residents, and this group forms the focus of my analysis. It was difficult to estimate the exact population as villagers moved between Mulia and Waitame, while many of the younger generation resided in Dili following the expansion of education and employment opportunities after independence. Fieldwork from 2007–08 employed informal and semi-structured interviews, participatory observation and oral history to investigate the livelihood strategies that rural East Timorese draw on to respond to, and recover from, the immense material, affective, and social impacts of displacement.

### **Mulia: the 'honourable' Indonesian resettlement village**

Upon surrendering to the Indonesian forces in 1978, residents of the highland village of Waitame in Quelicai sub-district were forcibly resettled by the Indonesian military onto the north coast of Laga sub-district. When villagers first arrived at the site, the land was 'unoccupied' and covered with wildly overgrown grass, and they



were confined on the camp grounds with populations from Baucau, Baagia, Viqueque, and Los Palos sub-districts. They were forced to clear the land to construct shelters, and survived by scavenging for wild food. Camp residents were closely monitored by the Indonesian military and civilian defence (*hansip*) drawn from the camp population.

Following the pacification period, camp residents were given the choice of returning to their former residence or remaining at the site. Residents originating from the further sub-districts left, but the majority of the residents from Quelicai remained. In the 1980s, Indonesian New Order development transformed the camp into a newly furnished 'model' resettlement village. The camp was officially named Mulia (Indonesian term for 'honourable' or 'supreme'). A primary school, village hall, and church were built with community forced labour. Government housing was also constructed for migrant Indonesian workers, such as government functionaries. By the early 1990s, the shift in national focus from territorial security to economic development began to have significant impacts on local livelihoods. Mulia was connected to the electricity grid, public transport became available and access to markets was enabled. There was increased freedom of movement, and the newly opened road to Quelicai enabled families to move between their ancestral settlements and Mulia to make the most of available resources.

#### *Competing land claims*

Since the customary landowners of Mulia surrendered later than the settlers from Quelicai, their land was already occupied when they returned. In Portuguese times, most customary landowners resided in the present-day village of Tekinomata, even though a handful of families resided in Mulia, particularly those who raised buffaloes and goats and required large tracts of grazing land. Upon their return, customary landowners were dispossessed of their residential and grazing land. Nevertheless, a small number of customary landowners resided in the newly demarcated Mulia village, but were registered administratively in Tekinomata. Because of the dispossession of land from the landowners, the relationship between landowners and settlers has not improved significantly over three decades. Settlers stated that the Indonesian authorities had compensated the landowners for the expropriated land, and a ritual feast was held to appease the landowners' ancestors. But not all landowners acknowledged these processes. After independence, settlers found themselves no longer residing on 'state land' but instead on contested 'customary land'.

The ongoing land conflict between the residents of Mulia and the landowners of Tekinomata is well known at the national level (see, for example, Meitzner Yoder 2003, p. 11). The everyday tensions between settlers and landowners are interconnected with individual, family, and communal frustrations, such as the lack of economic opportunities, the limited amount of space for grazing livestock (which has resulted in livestock straying into and damaging food gardens) and the extraction of forest materials for firewood. Conflict between the two communities is not always directly concerned with land but is multi-layered, shaped not solely by the local social, cultural, economical, political, and ecological milieu but influenced by wider structural changes. A notable example occurred in the weeks following the 2007 parliamentary election. A youth from Tekinomata, disgruntled over the election results, stoned passing vehicles one evening. The youth injured a passenger

of a passing vehicle who was coincidentally from Mulia. Overnight, there were threats made by youths in Mulia to burn the properties and rice fields in Tekinomata. A brawl ensued the following morning in Tekinomata, which was met with police intervention and later resolved through a community-based reconciliation process, but tensions remained.

The persistence of conflict between the two communities is based on several lines of division. First, the settlers had no prior kin and marital relations with the landowners, which greatly limited settlers' ability to assert and negotiate customary land rights to occupy the site. Under Timorese customary tenure systems, access and control of land is reliant on membership of a lineage group or 'house' (*uma kain*), gender, marriage, and social status within customary socio-political domains (Fitzpatrick 2002). 'House' members hold varying degrees of property rights and are able to access family-inherited land and may also enjoy use rights over general areas of land belonging to the group for cultivation. Accordingly, one might expect little adherence to the commands of customary authority in the areas of resettlement, where newly arrived displaced people/settlers have no prior socio-political links to customary landowners (Fitzpatrick 2002). However, inter-group alliances may also translate into land access. Following historical settlement in a particular territory, a local 'order of precedence' may be established on a temporal and spatial basis to differentiate social status, authority and seniority (Fox 1996). The founder-settlers or senior-most origin group usually has authority over land access. Non-kin settlers may be incorporated into the existing local 'order of precedence' through marriage or establishing an alliance with the origin groups. In the absence of a legal land framework, the 'first possession' principle has minimised conflict in rural areas due to its potential to maintain social order but, at the same time, the emerging multiple public authorities have competed for authority, consequently undermining the legitimacy of customary institutions, creating potential for conflict (Fitzpatrick & Barnes 2010, p. 234). Despite three decades of residence in Mulia, there was little inter-marriage between settlers and landowners, and settlers were not incorporated into the local order of precedence.

Second, there are historical political differences between the two communities. Since most of the landowners supported the independence cause, they mistrusted the settlers, some of whom were former members of Timorese militia that supported integration with Indonesia. The landowners described the settlers as occupants (*okupados*), instead of refugees (*refujiados*) or displaced people (*ema dislokado*), which aimed to emphasise that the settlers were not 'victims of war' who were residing on the land out of desperate and dangerous circumstances. Landowners insisted that the settlers had their own land in Quelicai and that they should leave, since the root causes of displacement had now ceased. Third, the landowners were concerned that their own children would not have sufficient land for shelter and livelihood in the future.

Due to the lack of secure customary tenure rights, settlers turned to the Timor-Leste state to legitimise their land claims on the basis that they were 'victims of war' and coerced by the Indonesian government to resettle, they had occupied the land for nearly 30 years, and they had made significant socio-economic improvements to the land. However, their claim has not been given state recognition. First, the newly introduced formal legal mechanisms for land ownership are limited in applicability to urban and peri-urban areas. Second, attempting to gain formal land rights through the state has been complicated by the contradictory positions held by

several sub-district-level government officials who are also customary landowners or members of landowning lineages. These officials have influenced administrative decisions, and in 2003 all administrative responsibilities concerning Mulia were transferred from Laga to Quelicai sub-district. Mulia was reduced to its current status of 'provisional village' (*suku provisório*), and the village name reverted to the customary name of Waiaka. These procedures might have potential political significance for future land claims in Mulia.

Contestation over land ownership does not only occur between settlers and landowners; there are also competing land claims amongst the customary landowning groups. Mulia is customarily claimed by two lineage groups: Oma Racolo asserted their claim over the site based on mythic-genealogical links, whereas Oma Tameda established their claim based on historical (and ongoing) land use for grazing livestock. According to oral traditions, nearly three generations ago Oma Racolo had given land access to Oma Tameda to raise their livestock. However, it was not clear what degree of customary land rights was negotiated between the groups. The lineage of Oma Tameda is in turn affiliated to the senior lineage of Oma Ina Wai, the ruling political group in colonial times, and whose members currently hold government positions—Oma Ina Wai was thus influential in government decision making, but had no customary claims over Mulia. Contestations over land claims are thus multi-dimensional and layered, and land claims are asserted in a variety of narratives—historical association based on oral history, historical and current land use, and long-term occupation.

#### *Livelihood strategies*

A major concern for settlers in Mulia has been the shortage of cultivation land. Mulia is crowded with housing with little arable land. Families had small garden plots (*kintal*) (less than 25 m<sup>2</sup>) surrounding their dwellings compared with the average Timorese household with just less than 1 ha of farmland. Previously in Quelicai, families commonly held a *kintal* in addition to fruit trees, and one or two bigger plots of garden, measuring up to 2 ha, further away from dwellings. Because Mulia is located between Tekinomata and Sesal—the customary landholding groups—there was little possibility for physical expansion (see Figure 1). To overcome land shortages most families worked as sharecroppers in the rice fields of the customary landowners. This enduring land access–labour exchange first began under the Indonesian occupation. The authorities recognised that there was little suitable land for cultivation in the resettlement site and authorised landowners to allocate land parcels for settlers who worked in collective farming groups.

Historically, sharecropping arrangements in Tekinomata operated largely amongst members of kin and marital networks. It was also commonplace for the local ruler (*liurai*) to force slaves and commoners to contribute labour in his rice fields. Sharecropping has benefited richer landowning families in Tekinomata, particularly descendants of noble lineages, who owned between two and six parcels (*ulun*) of paddy field. During the occupation, and at present, these landowning families tended to be wage earners due to their privileged upbringing, or raised large herds of cattle that needed constant attention. Consequently, landowners and their children did not devote the time and effort to bring all of their rice fields into production, needing the settlers to meet this labour shortfall through sharecropping. Not surprisingly, the social tension between the two communities

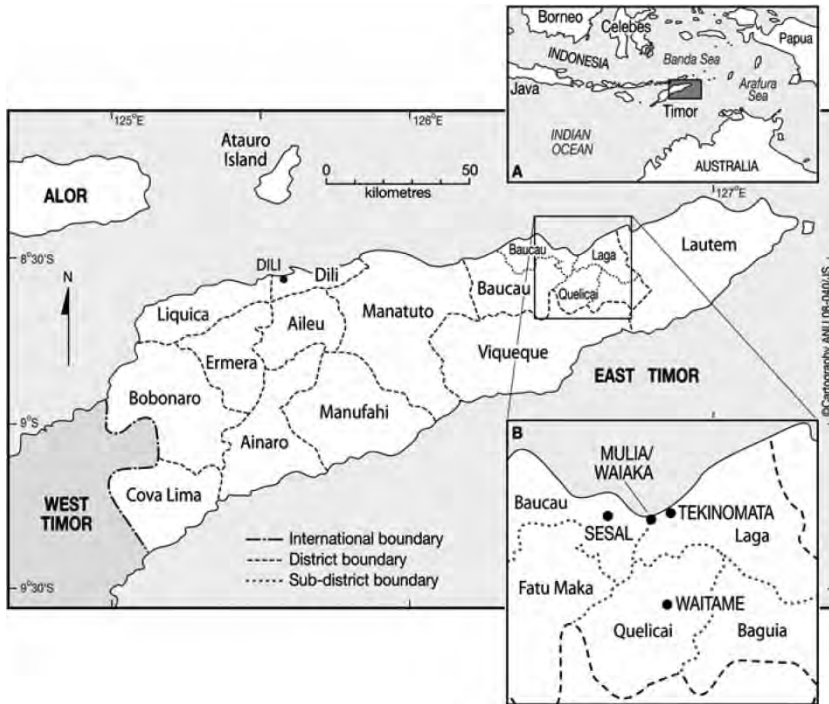


FIGURE 1. Locality map of Timor-Leste and the research.

has seen some settlers denied work as sharecroppers. Many sought work in the neighbouring village of Sesal, where there was less resentment towards them than in Tekinomata, and fields had better irrigation and higher yields.

To overcome the lack of agricultural land, settlers diversified their livelihood strategies to include non-farm activities. Each household typically engaged in a range of agricultural activities including livestock-rearing and fishing. Two roadside food stalls were popular rest stops for passing commuters. Some men sold palm wine by collecting sap from the abundant coastal palm trees. Several women acquired micro-finance to open small kiosks which sold everyday provisions. In the absence of state enforcement of law over natural resources, some settlers quarried rock from the hills behind the settlement or from the Wai'mua riverbed during the dry season. Rocks were broken into small pieces and sold according to size, with smaller rocks commanding higher prices (prices ranged from US\$4.50 to \$15/m<sup>3</sup>). Sales were dependent on occasional construction trucks passing through the village and buying rocks and sand for urban centres. Two timber trading companies in Mulia, established since Indonesian times, imported timber from Indonesian sellers from the neighbouring islands of Alor, Wetar and Sulawesi.

Lack of secured access to land in Mulia has prompted settlers to return to their original village of Waitame to reclaim and re-cultivate family-inherited agricultural land and fruit groves. The interior highland and north coast are in different agro-ecological zones, enabling settlers to migrate seasonally to cultivate large vegetable gardens. Due to the lack of a large permanent population, settlers could acquire customary use rights from the lineage and wider kin group to open up additional garden plots on fallow land. Settlers then migrated back to Mulia during the

rice-growing season either to work as sharecroppers or assist relatives in the rice fields by contributing in-kind labour. Thus, there was an economic trade-off between productive food gardens in Waitame and the high-yielding rice fields of Tekinomata and Sesal. Reluctant to move away from the 'modern' government amenities available in Mulia, settlers chose pragmatically both to move between the two sites and make return journeys associated with the socio-cultural significance of ancestral land.

*Access to rice fields: sharecropping*

The wet rice cultivation season on the north coast is from March to August. From land preparation to harvesting, wet rice cultivation involves the labour of numerous actors. The harvest circulates within the larger community in the form of food and as a ceremonial exchange item. Landowners grow a local rice variety (*fos timor*), believed to taste sweeter than Indonesian and other imported varieties (*fos mutin*). The local variety was highly prized and seldom sold unless there was monetary need. The local variety sells at about double the price of imported varieties, but most families did not travel to larger markets to sell rice due to relatively high rice-milling and transport costs. Household income from rice was normally spent on everyday small goods such as soap, cooking oil, salt, kerosene, sugar and clothing. Larger expenditures such as marriage and mortuary payments and children's school fees were met through monthly wages or sales of livestock.

Two sharecropping arrangements were practised in Tekinomata. Under both arrangements, the landowner provided land access to the paddy field and seeds reserved from the previous harvest for cultivation. Sharecroppers were known simply as 'labourers' (*ema serbisu*) (cf. Metzner 1977, p. 192). In the first arrangement, sharecroppers (mostly working as family units) provided the labour to prepare the paddy for planting, by constructing and maintaining the terraces and irrigation channels. For larger paddy fields, a second type of arrangement engaged sharecroppers who owned buffaloes, or had access to a tractor. In both cases, sharecroppers were responsible for monitoring the crop, weeding, and harvesting. Landowners might contribute labour in each stage of the cultivation. More likely, they would contribute cooked food in exchange for the sharecroppers' labour. Once the rice is harvested, it is threshed and cleaned. During these stages, more people, typically young men, would contribute labour, their labour being remunerated with in-kind payments of a proportion of unhusked rice or the provision of meals. The harvested rice would be divided equally between the landowner and sharecroppers.

An obligatory harvest ritual preceded rice distribution. This ritual, which involved an animal sacrifice, was necessary to appease the ancestors and land spirits in order to restore the field's fertility for the next season. Depending on the landowners, sharecroppers were sometimes obliged to purchase a goat or chicken or contribute a proportion of money for the purchase. The ritual is typically led by the landowner or a ritual expert with historical knowledge of the rice field and well-versed in ritual speech. Despite insistence by both landowners and sharecroppers of their mutual social exclusion, sharecroppers were clearly involved in upholding the moral economy between landowners and the localised spirit realm. By contributing to the purchase of a sacrificial animal, sharecroppers legitimised the landowners' claims over the rice fields. To maintain access to the rice fields, sharecroppers

followed certain circumscribed practices, notably being entangled in sustaining this larger moral economy that encompassed the relationships between customary landowners, ancestors and land spirits. Although settlers dismissed customary land claims over Mulia, their participation in sharecropping and the enactment of harvest rituals at the behest of landowners can be seen as vesting customary institutions with authority (cf. Sikor & Lund 2009).

Sharecroppers gained and maintained access to rice paddies in various ways. Competing claims amongst customary landowners advantaged settlers. While rights of access were denied by certain members of the landowning lineages, others readily tapped into settlers' labour for their private interests. Landowners who provided land access stressed that individuals who put in ample labour would get their due reward. Hence, sharecroppers tended to work diligently in order to ensure that the crop did not fail. Access to technology, such as buffaloes and mechanical tractors to plough the paddy, gave another channel of access to settlers. Although landowners might retain control over access to land, and dictate the rules pertaining to labour and resource inputs, however, they could not assert absolute control over production nor gain the ability to derive benefits from land without the labour of the settlers. Sharecropping is thus an enduring mode of livelihood for landowners and settlers alike. The conditions of access, and corresponding power dynamics, between the two groups will nevertheless continue to evolve with the future introduction of formal land laws, market penetration and broader political and economic transformation.

The different social and power relations shaping *access* and *ownership* to customary land are clearly discernible, and both are important in distinct ways in securing shelter and livelihood in Mulia. Relationships between hosts and settlers, limited here to economic cooperation through sharecropping, have meant that tensions still persist over land claims in Mulia. Both landowners and sharecroppers believe that these economic ties have not translated into enduring social ties. If members of either group were faced with social or financial difficulties, they did not seek support from the other, and nor did they engage in shared socio-cultural activities beyond the rice fields. Instead, they relied on their own families and extended kin networks as their socio-economic safety net. Notwithstanding the persisting social divide between the two communities, a 'common ground' existed through sharecropping arrangements, suggesting that customary tenure principles are negotiable and transformative in relation to changes in the political, economic and social milieu.

### **Implications for rural land access under statutory law**

At present, the proposed Transitional Land Law will be applicable only in the urban and peri-urban areas. Nevertheless, the national Strategic Development Plan (2011, p. 112) states that 'an on-request title service will be provided for farmers willing to pay for the service' to facilitate 'progressive farmers' undertaking agricultural development. The Plan highlights a real possibility that land titles may extend to rural districts in the foreseeable future, with formal law having potential impacts on rural populations affected by displacement.

The case of Mulia demonstrates how competing claims to land at the local level are asserted through both actual possession and symbolic actions (cf. Li 1996; Peluso 2005). Unruh (2008, p. 104) contends that national land reform and land

policies only succeed by taking account of local land relations that have ‘local legitimacy’ and ‘pervasiveness’. However, the legal system of clarifying land ownership through ‘special adverse possession’ limits individual claims to either the possession of a previous legal title or long-term physical use and/or occupation of land, both of which dismiss land claims based on origin myths and historical precedence. In addition, there are a multitude of non-title-based claims in rural districts where land is held mainly under customary tenure—which implies that legal solutions alone will be unlikely to clarify competing land claims (Meitzner Yoder 2003), hence there is little evidence of demand for land titling (International Crisis Group 2010). In Mulia, settlers are likely to receive formal land titles under conditions of ‘special adverse possession’ based on their long-term occupation of land under socio-political duress. Conversely, this legal precept will not work in favour of customary landowners whose claims to land are based on ‘origin group authority’ rather than continued occupation or use. The undermining of customary authority over land by formal law has the potential to foster fresh conflict between settlers and landowners, which could potentially impact livelihoods on both sides. Considering the persisting tensions between Mulia and Tekinomata, land titles could have the adverse effect of landowners denying settlers access to the rice fields. Since Mulia does not have sufficient arable land, negotiating land access through customary landowners is crucial to support settlers’ livelihoods. Furthermore, a number of landowners historically and presently use some land area on Mulia as grazing ground during the dry season, and therefore it is unclear how such land use will be legally demarcated and enforced in practice.

Regulation of customary land under the ‘community land’ terms of the draft Land Law does not take into consideration the long-term impacts of displacement and dispossession. The definition of East Timorese ‘local community’ in Article 24 relies heavily on an archetypical conception of rural village life, where genealogically linked groups share a common place of residence and identity, and engage in localised subsistence modes of production. As a long-term impact of displacement, communities may no longer be situated in a single locale, as in Mulia where residents situate themselves between the resettlement site and ancestral land to stake land claims in both sites. The physical use or occupation of customary land at the ancestral settlement may not, however, be a viable option for other displaced communities. Inter-generational effects of displacement may become important. The younger generation of the displaced, those born and raised in the resettlement sites, may have less sense of belonging to the ancestral land, as in Mulia, where youths expressed ambivalent ties to the ‘old land’.

The legal articulation of ‘customary norms and practices’ in the Land Law similarly shows a lack of consideration for the impacts of displacement and dispossession. The definition of ‘customary norms and practices’ is generalised and assumes that ‘East Timorese customs’ have remained static despite the evident changes made in local realms under foreign incursions, state formation, market penetration, and, in recent years, foreign aid and development. Such a view ignores the inter-generational impacts of displacement; ‘traditional’ knowledge and resource management practices may have been lost as a result of protracted displacement. The codification of ‘customary norms’ risks cementing inherent societal inequalities, such as the marginalisation of women in patriarchal communities.

Considering the complex overlaps between ongoing social conflict and historical land and property disputes, the best way towards effective land management

might be a holistic approach through restitution, mediation, and reparation. Any proposed land restitution program will unlikely resolve all land and property disputes in Timor-Leste since the issue is not so much technical in nature, but rather how the country will succeed in transcending the legacy of colonialism and conflict in the long term such that peace, development and reconciliation may be achieved (Du Plessis 2003). Nevertheless, the national symbolic recognition of victims of historical injustices as 'heroes' of national resistance has not been matched by justice in terms of prosecution of war criminals. The government has not followed the recommendations of Timor-Leste's two truth commissions, but has chosen to develop strategic diplomatic relations with Indonesia through reconciliation, thereby forsaking victims' reparation. Overall, the limited understanding of the lived experiences of displacement is a cause of concern for the formulation of legal measures that seek to protect rights, and may do more harm.

### Conclusion

This paper has focused on the legacy of state territorialisation in causing displacement and dispossession, which challenges the overriding narrative of internal displacement in Timor-Leste as a product of conflict. The creation of land titles can be taken as a form of territorialisation that seeks to extend the state's spatial power, and in turn could change local access to land. Drawing on the case study of Mulia, an Indonesian-era resettlement village situated on customarily claimed land, the national focus on clarifying land ownership offers but one dimension to understanding the complex unfolding of displacement 'on the ground'. Although at the community level tensions persist over competing claims to land ownership, settlers have gained access to land for livelihoods by forging economic links at the household level with customary landowners lacking labour to work their rice fields. Land ownership and land access are thus distinct concerns for both settlers and landowners. There were no competing land claims over the rice fields; rather, settlers maintained their access by meeting the prescribed conditions set by landowners.

Analysis of land access is a useful lens to identify and understand the diversity of land tenure and use arrangements in post-conflict settings. It provides a window on the changing conditions tied to land access by drawing attention to why certain individuals and groups are excluded or included (Ribot & Peluso 2003). Conditions of land access do not function according to property relations alone, but are entangled with local historical contingencies, cultural prescriptions, and broader changes in the political and economic context (Ribot & Peluso 2003, p. 157). In Mulia's case, access to land for livelihoods is greatly dependent on labour and capital investment to maintain long-term access. Settlers have shown resilience and innovation to carve out multi-local livelihoods to overcome their plight of displacement and insecure land access. Their insecurity over land access is hindered by the contradictory role of some customary landowners who also hold government positions. Settlers gained access to land through sharecropping primarily as a result of a labour scarcity experienced by landowners, which in turn has been the result of historical circumstances and the current rapid socio-economic transformation that is creating more education and employment in the town centres. Hence, despite control of access to large tracts of rice fields,



landowners could not derive benefits from their resource without the labour contribution of settlers.

As a result of socio-political grievances which recursively overlay, combine and transform to create or renew conflict, legal land titles alone are unlikely to resolve the historical tensions over land, such as those between Mulia and Tekinomata. As I have discussed above, land tensions are underscored by socio-political differences. It is beyond the scope of this paper to discuss these interrelated issues. However, displacement and dispossession are not only products of historical conflict; they are also a direct result of a long history of unfinished land titling and development undertakings that have been a source of tension in the past, inform contemporary struggles and may become the basis of future conflicts.

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## NOTES

- [1] The 2006 social crisis began within the national military with a group of disaffected officers known as ‘the petitioners’. Violence later erupted between elements of the national military and national police, which caused a breakdown in law and order that was eventually met with international intervention. ‘Regional’ and colonial-era ‘ethnic’ identities were politically manipulated, causing entrenched historical divisions to resurface and overlap with more contemporary grievances.
- [2] The draft Land Law is intended to apply for an interim period to resolve contesting land ownership. In March 2012, the then President of Timor-Leste Jose Ramos Horta rejected three land laws on the grounds that they will not benefit all Timorese citizens. The three laws of concern were the Expropriation Law, the Special Regime Law and the Financial Property Fund Law. These laws will be revised and debated again in the National Parliament before promulgation by the President.
- [3] The draft Transitional Land Law must be read in relation to the rights enshrined in the Constitution of the Democratic Republic of Timor-Leste. Section 54 of the Constitution stipulates that only East Timorese citizens have the right to private ownership of land. The Constitution lays out additional principles that safeguard land rights, gender equality and citizenship rights. A land claims registration program (*Ita Nia Rai*) is carried out simultaneously to the introduction of the Land Law.

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