East Timor: beyond independence

Edited by

Damien Kingsbury and Michael Leach

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Deborah Durnan works as a consultant in adult education and development, mainly with indigenous organisations. She recently completed her Master's thesis on popular education and peace-building in East Timor, at the University of New England, Armidale, Australia.

Aurélio Guterres is a lecturer at the National University of East Timor. He also works for the National Disaster Management Office, and a range of government and non-government organisations in East Timor.

John Hajek is an associate professor in the School of Languages at the University of Melbourne, where he has worked for many years on the languages of East Timor. He has co-authored a grammar of Tetum Dili and written extensively on linguistic issues relevant to East Timor.

Helen M Hill has completed a Master's thesis on Fretilin as a nationalist movement and did a PhD on non-formal education and development in Fiji, New Caledonia and Micronesia. Since 1991 she has been teaching in the field of international community development at Victoria University in Melbourne, Australia.

Damien Kingsbury is an associate professor in the School of International and Political Studies and is Director of the Masters in International and Community Development at Deakin University, Geelong, Australia. He remains a regular visitor to East Timor.

Michael Leach is a research fellow in the Institute for Citizenship and Globalisation at Deakin University, Melbourne, Australia, and has published a number of journal articles on East Timorese history and politics. In June 2005 he organised a national symposium that led to the establishment of the Australian East Timor Studies Network.

Andrew McWilliam is a Fellow in the Department of Anthropology at the Australian National University. His research interests include customary land and resource tenures in East Timor, and Fataluku ethnography.

Sara Niner is a post-doctoral fellow in the School of Political and Social Inquiry at Monash University, Melbourne, Australia. She was awarded her doctorate for Xanana Gusmão's biography at La Trobe University. She is a director of the Alola Foundation, which is committed to boosting the quality of life and living standards of East Timor's women and their families.

Marie Quinn works in the Education Faculty at the University of Melbourne, Australia, lecturing in literacy and language across primary and secondary education programs. Since 2001 she has travelled each year to East Timor to work in a variety of teacher professional programs and workshops, mainly within the Instituto Catolica para Formcao de Professores in Baucau.

Sandra Scheeringa completed her bachelor's degree in human geography in 2004 at the University of Amsterdam, specialising in political and cultural geography. She is currently studying for her research master's degree in international development studies at the University of Amsterdam, Netherlands.

Clive Schofield is
of Wollongong, Austr
maritime boundaries a

Kerry Taylor-Le
English to Speakers o
Languages and Lingui

Ann Wiggleswor
government organisat
development course a
at Victoria University,
Timor.

Clive Schofield is QEII Research Fellow at the Centre for Maritime Policy, University of Wollongong, Australia. He specialises in research on the delimitation of international maritime boundaries and related oceans policy.

Kerry Taylor-Leech teaches English, applied linguistics and TESOL (Teaching English to Speakers of Other Languages). She is also a doctoral student in the School of Languages and Linguistics at Griffith University, Queensland, Australia.

Ann Wigglesworth has 25 years of practical development experience in the non-government organisation sector, and is now lecturing in a postgraduate international development course at RMIT University, Melbourne, Australia. She is a PhD candidate at Victoria University, researching young people's participation in development in East Timor.

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Customary claims and the public interest: Fataluku resource entitlements in Lautem

Andrew McWilliam

Among the multiple challenges facing East Timor as a new sovereign nation is the need to establish systems of formal land administration and regulatory arrangements for the management of the country's natural resources. The long years of Portuguese colonialism and Indonesian rule have left a complex legacy of contested and partially overlapping systems of land regulation (Fitzpatrick 2002). For its part, the government of East Timor has prioritised the resolution of land tenure issues in urban areas, especially the capital, Dili, where political solutions to resolving property claims, uncertainties of title and illegal squatting in abandoned properties require urgent attention. Mediation services to provisionally resolve individual land disputes and claims have also been pursued by government staff in regional towns. The ratification of the so-called First Property Law 2003 establishes the procedural arrangements for recognising individual titles under varieties of leasehold and freehold regimes, and the government has formally endorsed a land administration unit (Office of Land and Property) to facilitate cadastral mapping and the development of land-titling procedures.

These developments will no doubt be welcomed by holders of land titles, who will be encouraged that some formal process of recognition is finally emerging. However, the current emphasis on legal regulation of land in East Timor remains focused on privatised titles and individuated tenure rights. For the majority of the rural population, where historically little or no formal registration and titling of lands occurred either during Portuguese or Indonesian times (Fitzpatrick 2002), prospects for formal recognition of their claims remains unclear. The resulting policy inertia over the status of much rural land has a variety of consequences. It creates continued legal ambiguity over the status of land transactions and contributes to the phenomena of 'waiting for law' (see Yoder 2003:20–2; Fitzpatrick & McWilliam 2005), where the absence of state validation impedes land development decisions, as well as the effective resolution of land conflicts and the implementation of efforts to conserve natural resources. At the same time, however, regulatory uncertainty allows for the persistence and renewed orientation to customary claims as a basis for land or resource entitlement. For most farming communities, customary claims remain the only viable and orderly system for managing community cropping and fallowed forest areas. The continuing vitality and significance of cultural attachments to place, despite years of colonial Portuguese and Indonesian government indifference or denial of their status, speaks to their contemporary value and legitimacy in local terms.

In this context of delayed land policy development and law, this chapter explores some of the implications for broader land management within East Timor. In particular, it focuses on the relationship between customary property regimes, which persist to varying degrees among the diverse ethno-linguistic communities, and the constitutional responsibilities of the East Timor sovereign state to manage land and natural resources in the national interest and for the common good. Although by no means mutually exclusive categories,[1] the development of effective land and resource management, pursued in the interest of fair and good governance, requires a progressive articulation of the respective rights and interests of the parties concerned. It forms part of a broader and often contested process for legitimacy, where the particular interests and claims of emplaced customary communities compete with state government policy promulgated in the wider interests of the nation.

Particular interests and the common good: relativities of scale

In the analysis of regulatory frameworks for land management, it is helpful in the case of East Timor to distinguish between two levels of public purpose land. The distinction is one differentiated by scale: between limited area acquisitions on one hand and broader-based land management on the other. The greater scope of the latter has a correspondingly greater impact on customary jurisdictions and claim.

A limited area acquisition includes a whole range of land utilised for development services and public infrastructure. Schools, health clinics, administrative offices, road corridors and other service facilities, for example, all require land to be set aside for specific purposes. In the majority of cases, however, the present government will simply utilise or rehabilitate facilities developed during the Indonesian period. Under the present legal framework in East Timor, these facilities and the land they occupy have been transferred to the new national government, becoming its legal property under the first UNTAET Regulation 1/2000. Under this regulation, land formerly classified as state-controlled retains this status under the authority of the new government.[2]

Indonesian land law makes provision for the appropriation of land for public purposes on payment of fair compensation to affected landowners (known as *ganti rugi*), a provision retained within the new East Timorese constitution. While there are cases where this provision was ignored during the Indonesian period (based on the argument that that land was to be used for the public good (*kepentingan umum*) and its future benefit was sufficient compensation in itself (see Fitzpatrick 2002)), most contemporary communities accommodated these transfers for the clear and tangible benefits they offered. Public acceptance of these practices is likely to extend to new acquisitions by government for infrastructure development, especially given the poor state of public services and the evident level of demand by citizens. That said, the process of acquisition is not without its complications, especially in areas where customary patterns of land attachment remain tied to ancestral beliefs and sanctions against its disturbance or divestment. One example, replicated in varying degrees of application across East Timor, is the case of Fataluku-speaking communities in the far-eastern district of Lautem. Here, formal compensation for the appropriation of land is considered synonymous with its alienation from the collective common property of customary land-owning clans (*ratu*), a provision most are reluctant

to accept. As a strategy to overcome these proscriptions, but still obtain the public service benefits, Fataluku groups have often rejected compensation in favour of the provision of funds to enact appropriate sacrificial invocations as a way of placating any deleterious spiritual consequences arising from the development and to ensure project success. These accommodations tend to be easier to achieve where there are immediate and demonstrable benefits to the land-owning community.

Far more problematic is the question of allocating or appropriating land in the public interest where local claims and attachments are subsumed in favour of national development planning priorities, and where the attendant process of appropriation does not provide clear and direct benefits for local communities. Prime examples in this case include broad-scale land management planning for upland watershed protection, forestry and marine reserves, or land development proposals that transfer control and ownership of significant areas to the nation state or private enterprise investment. The extent of the state assertions of control in these cases typically creates direct challenge to emplaced local claims and land attachments.

The issues and tensions arising from state land acquisition have national application and as a matter of course require local negotiations that take into account the historical and cultural specificity of East Timorese society, in order to reach effective and workable solutions. But as an illustration of the emplaced complexity of customary claims and the challenge for government to implement effective broad-scale land resource development, I focus in the remainder of this chapter on one case study drawn from Lautem. Here, the proposed creation of a national park, the first in the new nation, is engaging questions around the status of Fataluku customary land claims and their prospective place in its ownership and management.

Conservation, displacement and the Konis Santana National Park

The district of Lautem contains one of the finest contiguous blocks of dense lowland tropical and monsoon forest on the island of Timor. Covering an area of some 300 square kilometres and incorporating the heavily forested Paichao mountain range (to 925 metres), the forest zone extends from the eastern extremity of East Timor (Jaco Island) in a narrow band (7–10 kilometres) westwards along the unpopulated southern coastal hinterland (McWilliam 2006). In 2002, with the formal achievement of independence from Indonesia, the East Timor government initiated a process to demarcate and legislate for the creation of a national park covering the area and including the adjacent freshwater lake of Ira lalaru, the largest in the country. Provisionally named the Konis Santana National Park, the planned conservation reserve honours the memory of a former Falintil guerrilla leader, who was originally from Lautem, who led the Timorese armed resistance between 1993 and 1998. The choice of the name in this case resonates with local aspirations for the recognition of Fataluku contributions to independence and speaks to the suffering and achievement of the nation as a whole.[3]

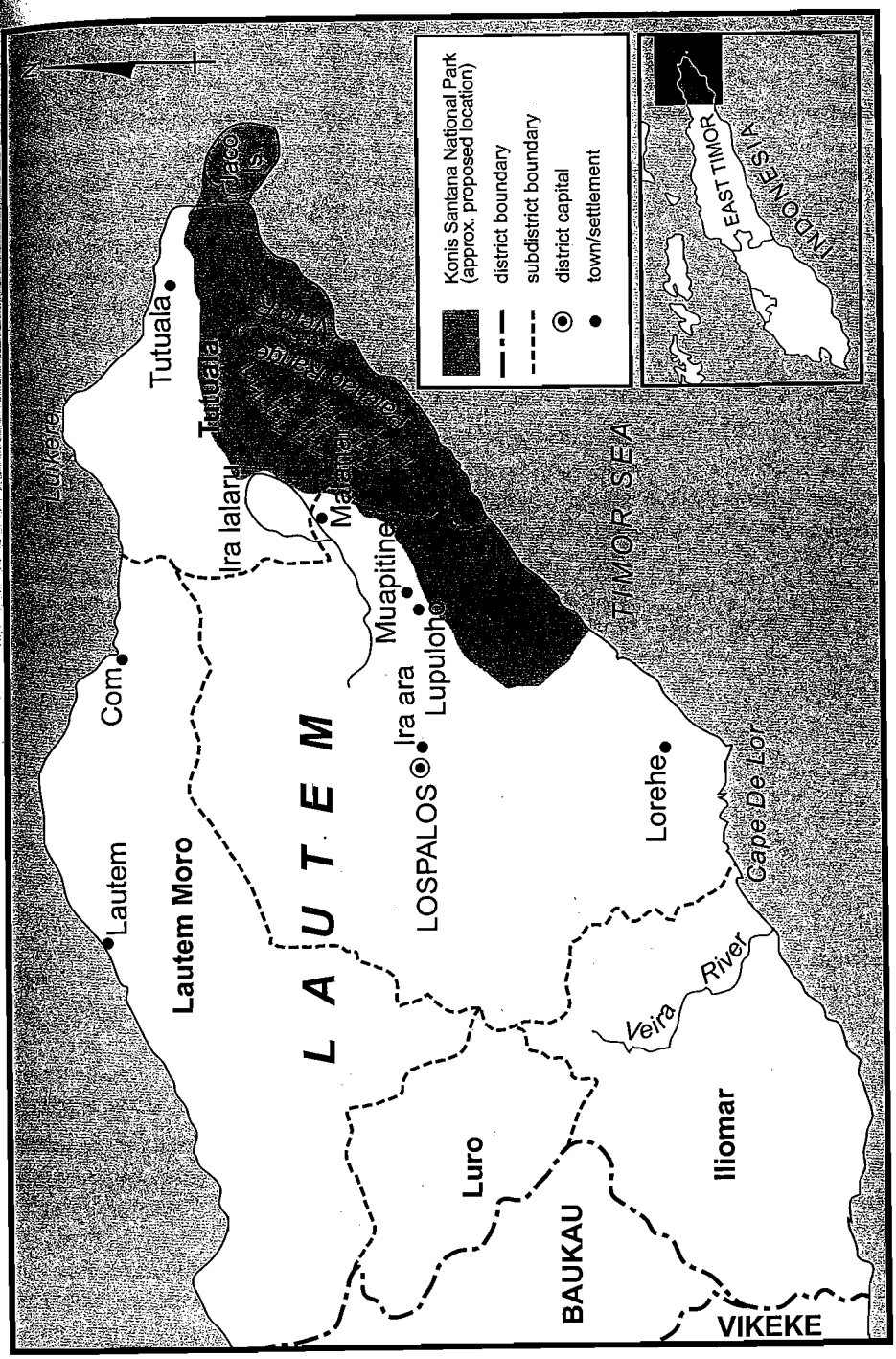
Promulgation of the park is designed to confirm and strengthen the interim legislation conferred during the period of UNTAET, which in 2001 declared portions of the region as one of the 15 so-called 'wild protected areas' (UNTAET Regulations 17/2001 & 19/2001; McWilliam 2003). To date, although some progress towards the creation of the

park has been made, including preliminary consultations with local communities and a tentative boundary demarcation, no date for its establishment has been finalised, nor has the drafting of the legislative framework that would define its organisation and operation been finalised.

Although the concept of a conservation reserve in this area of Lautem has become a priority of the government of East Timor, it is not a new one. The tentative origins of state-controlled reserves began in the early 20th century when the Portuguese colonial government quelled the last of numerous indigenous rebellions against its rule and established a permanent administrative presence in Lautem. From 1912 the first of a series of forestry policy regulations was issued to define the role of the state in managing a permanent national forestry estate (Cardoso 1933). However, it was not until 1924, with the establishment of the Colonial Forestry Service and the development of a silvicultural station on the western margins of the dense rainforest near the settlement of Lorehe, that anything resembling a forestry management plan was developed. The station was explicitly designed to assist in the regeneration and protection of the forest, but its early and practical importance as a timber production site is evident in the various estimates of available yield and value for construction and trade discussed by Cardoso (1933:23–4), a former director of the station.[4] Recognition of the need to conserve and manage the dwindling primary forest zones in Timor gradually emerged, especially in the post-war colonial period. Silva (1956:89), for example, called the protection of primary forest across Timor a matter of urgent necessity. Cinatti's studies and attempts to draw attention to the need for forestry management in 1950 were also a notable feature of the period, but like much development practice under Portuguese rule, state intervention and funding for a concerted strategy for resource conservation was limited and inadequate.

With the forced integration of East Timor into the Indonesian state in late 1975, the new administration also recognised the biodiversity and rich natural values of the forested eastern extremity of East Timor and designated a significant portion as a 'protected forest conservation reserve' (*Cagar alam*).[5] This classification officially curtailed extractive activities within the prescribed zone, but the development of an effective management regime was always constrained by the persistence of entrenched East Timorese armed resistance and regular Indonesian army patrols and operations through the forest in protracted and ultimately ineffective attempts to crush resistance. Nevertheless, the natural values of the area continued to be held in high regard. In 1982, for example, the Food and Agriculture Organization of the UN and UNDP proposed that the area, including Jaco Island, be designated as a wildlife sanctuary, while under the 1993 Biodiversity Action Plan the region was eventually recognised as one of the 40 most representative natural areas in (then) Indonesia (EPANZ 2004:21).

This sustained recognition of the importance of the region for conservation highlights something of its perceived rich biodiversity;[6] but it does not follow that the area is a pristine block of natural heritage values and primary forest. Ironically much of the forested area is composed of a highly enculturated mosaic of aged and long-fallow secondary re-growth of former swidden gardens and settlement sites. Its existence as a contemporary canopy forest is, to a significant degree, the result of the reluctant disengagement of local Fataluku farming communities in response to external pressures applied by successive colonial governments, especially in the form of re-settlement policies and restrictive security arrangements (McWilliam 2006).


Konis Santana National Park
(approx. proposed location)
district boundary
subdistrict boundary
district capital
town/settlement
INDONESIA
EAST TIMOR
TIMOR SEA
Jaco
Tutuala
Lore
Ira lalaru
Matarei
Muapitine
Lupuloho
Ira ara
LOSPALOS
Com
Lautem
Lautem Moro
LAUTEM
Lorehe
Cape De Lor
Veira River
Luro
Iliomar
BAUKAU
VIKEKE

State-orchestrated programs to re-settle forest-dwelling Fataluku began in earnest following the re-establishment of the Portuguese colonial government at the end of the Second World War. At that time, much of the population of eastern Lautem remained dispersed in the forests and food gardens, living in small household clusters known as *otu*. The process of drawing the dispersed rural population into concentrated settlements on or adjacent to the main road links was justified under the familiar state pretexts of improved public services and maintaining security. In this way the forested regions of the northern and southern coastal hinterlands of eastern Lautem were gradually depopulated; a process that was completed during the Indonesian interregnum when internal security concerns and tight surveillance severely restricted Fataluku access to their former garden and hunting areas in ancestral territories. Contemporary settlements like Loequeiro, Sere-opu, Vero, Iyoro, Muapitine, Veter, Lupoloho and Ira ara, among others now located as roadside settlements in Lautem, all have their cultural and historical roots in the emptied forested hinterlands.

Since 1999 the withdrawal of the Indonesian government and, with it, the restrictions on congregation and movement, have resulted in significant opportunities for Fataluku forest communities to revitalise and renew their economic and cultural ties to customary lands. Most of these links are currently maintained from a distance, as communities consider the prospects and possibilities of re-establishing their settlements in homeland areas. The proposal to develop the southern Lautem forested zone as a national park thus coincides with a more generalised revival of interest in former areas of economic practice and opportunity. Although the proposal for a conservation park need not exclude these interests, it calls into question the status and authority of customary claims and the extent to which the commonly held ancestral property of local groups will be accommodated within the legislative framework of the park. Preliminary work by forestry officials to identify and map the diverse range of claims and affiliations to the designated park area has been initiated, but a fuller understanding of Fataluku land tenure claims and the implications for future park management remains to be undertaken. At the same time the continuing uncertainty over the formal demarcation of a park has seen little vocal resistance or opposition among the various customary claimants, but the issue is a politically sensitive one and critical to the future of sustainable management of the conservation zone and the livelihoods of many impoverished Fataluku communities residing on the margins of the forest and drawing on its resources for economic sustenance.

Obligation, exchange and entitlement in Fataluku society

A starting point for appreciating Fataluku customary attachments and claims to land in Lautem,[7] and more specifically to the conservation zone, is to recognise that they are embedded within dynamic relationships of social obligation and reciprocity. These relationships provide access to a diverse range of resources that may be deployed and managed to support the material conditions of social life. Claims to resources are therefore simultaneously assertions and statements about particular kinds of emplaced social relationships. The idiom of reciprocity encompasses the living world of agnates and familial allies, as well as the less immediate but no less significant realm of ancestors and the spirit world that animates and influences events in the natural environment.

Fataluku households engage in a wide variety of exchange relationships in everyday social life, but within this diversity two related but complementary networks of exchange are accorded high priority. The first of these networks is located in the relationships between the agnatic members of what I will term an 'origin group', known generically as a *ratu*. All Fataluku individuals are affiliated to one or another of these enduring social groups that are constituted around paternal lines of origin. Fataluku women relinquish membership to their natal *ratu* upon marriage and enter that of their husbands, raising their children within the marital house. There are dozens of residentially dispersed *ratu* across Lautem, each maintaining their own narrative histories and founding myths, ancestral regalia and inherited knowledge, as well as landed property and ritual practices. Protecting, nurturing and expanding the collective resources of the *ratu* is a key motivation in social life.[8]

A second pattern of priority exchange relationships derives from the complex social alliances that intersect and evolve between different exogamous *ratu* origin groups. In the present discussion the most significant of these group relationships are affinal alliances, created through marriage exchange, that provide the reproductive basis of *ratu* groups over time.[9] Agnatic and affinal relationships engage different claims and entitlements to resources including fallowed re-growth forests utilised for extensive systems of swidden agriculture.

The particular pattern of *ratu* land ownership and the relative size of their respective territories derives from the mythic origins of settlement and the inherited entitlements from ancestral spatial practices. Further adjustments and modifications reflecting complex and mobile histories of inter-group warfare and shifting political alliances have also informed boundary-making processes over time. Today the limits of these ancestral common property lands are more or less fixed, their meandering edges are marked variously by sacrificial alter posts (*ete uru ha'a*), ridge lines or prominent marker stones, as well as by crumbling stone walls of fallowed garden sites, creek lines and other topographic traces. The knowledge of boundaries (*kai kai ho varuku*) is retained as part of the heritage of the *ratu* agnatic community, especially the senior male affiliates of the group. One consequence of this pattern of settlement history is that there is no surplus or 'free' land where customary attachment does not apply, even though the demographic decline of some groups associated with particular tracts of forested land has left this question unresolved and subject to cautious and often contested succession in a number of areas. Wrongfully assuming or appropriating the rights of the landed property of other *ratu*, however, is a risky activity that may result in spiritual sanctions manifest as misfortune or illness for the households of those who make the attempt.

In describing the authority and relationship of the *ratu* to its ancestral lands, use is made of the honorific title *mua ho cawaru* (land and lord). The title refers to the status of a *ratu* group over the land in question, one that confirms and honours their precedence or mythic 'first settler' status in the area and their emplaced ritual ties of intimate association. In Fataluku ritual speech this relationship is expressed by the phrase:

Mua cao vele ocawa Land head skin lord
Horo cao vele ocawa Gravel head skin lord.[10]

The reference speaks to the Fataluku conceptual distinction between the 'body' of the earth and its covering 'skin' (*vele*). People may cultivate the skin of the land for food

crops or to hunt game, but only the 'lord of the land', the *mua ho cawaru*, asserts a pre-eminent authority over the whole of the land in question.[11] This is an enduring relationship reaffirmed through ritual practice, and means that in one general sense all land across Lautem is held as a form of common property by the collective members of these discrete agnatic groups who share 'one blood, one serum' (*vehe ukani, ahi ukani*). Their territory is said to form part of the 'sacred land and the sacred garden' (*mua tei ho pala tei*)[12] of the *ratu*; a phrase that links contemporary members to the origin settlements of their ancestors, autochthonous spirit forces and the long history of cultivation and food production that has provided life and sustenance to the *ratu* over generations.

These ideas surrounding the collective property of the *ratu* continue to inform decisions about activities on the land, but in practice most of the common property of the group is internally divided among the constituent lineages or 'sibling' lines (*noko kaka*) of the origin kin group. These internal distinctions reflect the historical development and expansion of the group and its division into elder (*kaka*) and younger (*noko*) sibling lineages, which lay claim to different portions of the common landed inheritance. Here, use rights to land will depend on the strength of the agnatic relationships involved, while overall ritual authority for the territory remains the responsibility of the *ratu* leadership, typically one of the oldest men of the *ratu* and referred to in ritual language as the 'master of the chant, master of the words' (*nololonocawa*: *lukulukunocawa*).[13]

The history of Fataluku land relations over time and the complex consequences of shifting political alliances and marriage exchange over generations have given rise to a range of arrangements for affiliated groups to gain access to *ratu* lands. Use rights to cultivate the 'skin' of the *ratu* land are dependent on the particular histories of association articulated through negotiation. Affiliated households to the land-owning *ratu* may be referred to as *i na maunu* ('those who come later') or *olo co maunu* ('birds coming from afar'). This category includes allied clans with long-standing relationships of marriage exchange, and newcomers with shallow histories of engagement. In the highly metaphoric language of Fataluku relation, the botanical trope of the tree describes the respective entitlements between permanent *ratu* land owners and settler cultivators in the following terms:

i cipi i mana i'ahani	I own the flowers and fruit
po'o i ara ho i pata	You own the trunk and branch.

Marriage allies and politically aligned resident households of land-owning *ratu* enter into permanent reciprocal relationships that typically confer lasting entitlements to cultivate land and draw sustenance from its bounty.[14] These relationships and entitlements are mutually and morally self-affirming, protected from arbitrary removal or denial by spiritual sanctions and customary ethics.

Mythic geographies and ancestral itineraries

One of the unsettling consequences of the historical dislocation of Fataluku communities from the conservation zone is the continuing separation from the lands over which they hold cultural sovereignty: the contemporary reality is that they now cultivate and reside on the land of others. The duration of residential separation (at least a generation) and the

political necessity to be accommodated by other groups has enabled these households to secure cultivation entitlements and access to local resources, but their status remains a dependent one on resident land-owning *ratu*.[15]

The significance of displacement is not simply a distancing from food gardens and economic resources, the 'archive of past habitation and sociality' (Fairhead & Leach 1996:113), but rather a lived separation from sites of spirit agency and moral authority. As note earlier, all Fataluku claims to land and its constituent resources are located in the mythic histories of founding ancestors. Fataluku locate their origins in the maritime journeys of their forebears who settled the coast of Lautem and left mythologised inscriptions of their settlement histories across the forested landscape. These signs of the ancestors are variably expressed in the landscape, but include carved sacrificial alter posts (*ia mari tuliya*, ancestral footprints) located around the coastal fringe, limestone outcrops symbolising the stone boats of origin (*loiasu matar*), and carved alter posts and naturalistic figurines (known generically as *ete uru ha'a* or *sikua*), as well as former hill-top settlements (*lata paru* or *lata irinu*) enclosing massive stone graves (*calu lutur)*. All provide sites for periodic ritual performances and communication with ancestors who are fed (*fanê*) with blood sacrifices and enjoined in commensality to ensure blessings and protection for their living descendants. They form part of a collective complex of spirit agency that animates the forested landscape, and are referred to generically as *tei* (sacred, taboo, prohibition), a concept that combines moral authority and familiarity with elements of dangerous uncertainty and retribution (see Pannell & O'Connor 2004). Founding *ratu* groups who hold the status of *mua ho cawaru* are similarly spiritually affiliated with the territory they claim through their binding relationship, their consubstantiation, with emplaced autochthonous spirits (*tei*) of the land. Custodial authority over the power of these *tei* constitutes another strand of entitlement and claim over defined tracts of forested land. It is in this more engaged and lived expression of attachment to place that the contemporary landscape of the conservation zone might be said to reflect a fully differentiated mosaic of common property claims and nested interests.

A concrete illustration of these emplaced connections to land within the proposed conservation park is the small hamlet (*aldeia*) of Lupuloho, currently located on the main road to the village of Muapitine, 14 kilometres east of the district capital Los Palos. A century ago the hamlet population lived in scattered house clusters around the stone-walled hill fort (*latu paru*) of Pehe, in the hills overlooking the south coast near the Aramoco River. In 1908, following the final war of pacification by the Portuguese in Lautem, the population was moved to the coast into a more concentrated settlement and connected to Lorehe by road. Here they lived and farmed the land until 1975, when the Indonesian army forcibly relocated the group to Los Palos, eventually permitting the people to move to their present site where they cultivate food crops locally on the land of others.

Contemporary members of Lupuloho are ambivalent about the proposed conservation park that will incorporate their ancestral settlement area inside its boundaries. While supporting the development objectives of the state in principle, many aspire to resettle their lands, re-open former food garden sites and rehabilitate existing tree crop groves. For the time being they maintain regular connection by hunting and foraging in the forests, conducting ritual sacrifices and prayers at the graves and commemorative sites

of their ancestors (*lata paru, ia mari tuliya, ete uru ha'a*), and congregating annually for the *meci* (sea worm) harvest on the beachfront of their former settlement. These practices and obligatory ritual performances constitute a continuing expression of attachment and moral claim among the four principal land owning *ratu* of Lupuloho, Pui Rili, Aca cao, Paraluki and Naja. They form an integral part of the landed identity, sovereign authority and spiritual wellbeing of the Lupuloho community and for these reasons the idea of the state appropriating ownership and management authority is viewed with apprehension.

Customary tenures, conservation and park management

If the socially embedded entitlements and political negotiated nature of Fataluku claims to land resources provide a sense of the historicised and privileged character of customary land tenures in the proposed national park, the extent to which the government of East Timor is willing to accommodate or integrate these claims remains an open question.

As noted earlier, progress on the development of the park has been delayed by a range of logistical, political and financial constraints, and there is as yet no definitive organisational and regulatory plan for its establishment. Nevertheless, a sense of the preferred direction that this constitutive process might take can be evinced in a draft letter of agreement (2002) presented to the heads of the three villages (*suco*) holding administrative jurisdiction. In this document the conservation park is designated with a Category 5 status under the International Union of Conservation for Nature and Natural Resources. This status permits multiple use conservation with space for limited local extractive activities. The letter envisages a National Management Commission, which would direct local work groups and assert the right to determine and recognise specific categories of local customary claim. The latter point included 'customary land' (*tanah adat* in the Indonesian version of the letter), tree crops (*plantação*) and cultural sites of significance (*tei*, *lata pàru* and *calu lutur teino*). Restrictions on hunting fauna within the park boundaries are also outlined, seeking to limit the seasonal opportunities for hunting and the species that may be taken.

The tenor of this document indicates that the preferred regulatory direction for park management is one that subsumes customary claims and attachments within an overarching ownership regime. Arguably this is consistent with the constitution that invests ownership of resources in the state.[16] It also provides a relatively simple and clearly defined framework of regulatory and jurisdictional authority, simultaneously consistent with conceptions of a representative model of government and an attractive alternative to the perceived nature of customary land tenures and their overly busy, nested complexity. The approach might also be interpreted as a preferred option for the present Fretilin-dominated government that historically has viewed customary land tenures as feudalist enclaves of privilege and inherited rights necessarily in need of land reform.

There are, however, practical and principled difficulties with this formalist approach, not least because the national government at present has little or no financial capacity to establish effective policing and management regimes for the future park. Ineffectual management opens the possibility of increased illegal resource extraction through collusion and corruption between state officials and private interests. The process of legally

marginalising or substantially diminishing local customary entitlements also perpetuates a lengthy history of alienation and dispossession, and may give rise to a disaffected population of local communities with intimate knowledge of the conservation zone and the economic imperative to plunder its resources. These and related policy challenges point to the need for more innovative and collaborative regulatory arrangements than those that appear to be on offer. Resident Fataluku communities represent a potential threat to, and a self-interested protective force for, conservation of the area. The path chosen will depend very much on the capacity of government to inform and engage local communities in the development of innovative regulatory frameworks for management. These are frameworks that need to combine authorised entitlements with conservationist responsibilities. As a preliminary step in this direction a more informed and systematic understanding of local customary claims and practices within the planned conservation zone is required.

Managing the commons and the common good

In a recent collection of papers exploring a comparable set of issues in the field of Southeast Asian rights discourse, Zerner (2003:2) has highlighted what he calls the 'drama of translation'. By this phrase he invokes the inherent complexities of rendering the shifting and dynamically constituted customary attachments to place into legally valid forms that still maintain their integrity and sensibility. Historically these processes of translation have often led to customary claims giving way to state-sanctioned systems of regulatory control: the validity of their 'distinctive logics, metaphors and modalities' (Zerner 2003:17) denied or defined away. Authors such as Li (1999) and Tsing (1993) have explored these processes in terms of the politics of marginalisation. They can also be read as examples of what Scott (1998) has referred to as 'simplifications'; bureaucratic processes that transform and reduce the disorderly patterns of customary attachment to the uniform grid of administrative maps. Throughout the region there is no shortage of examples that would seem to verify the tendency among nation states to redefine and appropriate the lands of marginalised minority communities in the interests of economic development and the national interest.

The politics of representation and translation, however, remain a dynamic field of social and political action. Rights discourse, as Zerner (2003:19) notes, especially those couched in the language and forms recognised by the state, become salient at the situational 'edges' where conflict and competition over places charged with memories and meanings are most intense. In these contexts the cultural politics of identity and customary attachments can work in the other direction, as they are translated into the language of rights or evidence of claim and strategically deployed in the support of local interests. The rise of the 'community-based natural resource management' movement is an example of one approach that seeks to formalise customary interests and practices in relation to resource areas, without attempting to reduce them to a set of rules or laws amenable to state codification (Persoon 2003).

Changing perceptions and understandings about the comparative merits of customary tenures also provides support for more sympathetic translations of the performative modalities of custom into the jural modalities of legal rights. In the World Bank's 2003 land policy report, a more favourable view of customary tenures is presented, recognising

that in terms of economic development, it is tenure security that generates investment, not necessarily individualised or formalised property rights. Moreover, tenure security may be provided more effectively in certain circumstances and at a lower cost by customary rather than centralised state institutions (World Bank 2003a:23, 44). In these circumstances the question becomes not one of defining the formal 'rights' of customary tenures per se, but of identifying and authorising the local institutions and mechanisms that can achieve orderly and effective management practices. This might be seen as a conducive and productive engagement between what Acciaioli (2005:39) has recently termed 'representative institutions of modernity and customary institutions of indigeneity'.

In East Timor the relationship of local and regional communities to their forest resources has a complex history of changing discourses and practices that pre-date colonial and nation state-sanctioned attempts to regulate and authorise their utilisation. Under Indonesian and Portuguese colonial regimes the tendency for forest management has been to assert and increase the managerial and proprietary authority of the state (often justified in terms of the national interest) and at the same time to decrease and de-legitimate the agency and customary claims of local communities. Like much of the wider area of Southeast Asia and tropical forestry generally, the results of state intervention and political control have not led to improved forest management or the maintenance of existing forest reserves. On the contrary, the evidence points to a marked increase in the rates of deforestation and degradation of forest reserves enacted through a combination of unsustainable logging by economic elites, weak forest policing and legislation, and chronic conflict with local communities and indigenous forest residents.

If East Timor is to follow a different path from its recent history and the experience of its regional neighbours, new types of management arrangements for the reproduction of forested lands need to be explored and pursued. Dove (2003:118) has highlighted the success of India's Joint Forest Management Program as one of a handful of instances in the past half-century where a reforestation program has achieved any meaningful measure of success. Key to the program are legal agreements between a local community and the government's forestry department, where it is agreed that if a community helps protect a proximate tract of forest the department will share with it the resources and income from that forest. Dove also notes that where these agreements have been implemented effectively, the cessation of misuse that is brought about by conflicts between the community and the state over what uses are to be permitted itself suffices to restore the resource.

Just what forms of joint management might be developed in East Timor over the management of its remaining forest resources is a question that needs to be progressively embraced and developed. It appears that an accommodation to existing customary claims and practices within a broader national management framework should recognise the common good or national interest as one defined by heterogeneity, one that authorises jurisdictional space for the special claims of customarily emplaced communities (imagined, contingent, negotiated and vulnerable though they might be) and the enduring material and immaterial, spiritual and natural values that comprise the commons they hold (Gudeman 2001:86).

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1 Indeed, the new constitution states that custom will be recognised and integrated into the national legal order (Section 2, Article 4).

2 The demarcation and extent of 'state'-owned lands, however, remains uncertain in East Timor, as the legal status of much former Indonesian-declared 'state land' (*tanah negara*) is disputed.

3 The eastern region of East Timor and particularly the forested portions of Lautem were referred to by the Fretilin resistance as a region of 'continuous war' (*funu sei nafatin*), and in fact active armed resistance to the Indonesian military continued throughout the Indonesian occupation.

4 In his 1933 article, Cardoso considers possible available yield from the forested zone—based on a calculation of 30,000 cubic metres from a sample of 8,000 mature trees. He also estimates that there were some three million trees available for timber production, especially the highly sought-after ironwood (*Maranthese corymbosa Instia Abuja*) and Rosewood (*Pterocarpus indicus*) (see also Cardoso 1937). Timber for construction in Dili was shipped from the south coast during this period.

5 An area of 25,163 hectares was officially classified under this and the related category of protection—*kawasan suaka alam* (Kantor Statistik 1993).

6 A perception, it should be noted, that is founded largely on anecdotal evidence rather than systematic scientific investigation. Recent environmental surveys, however, have confirmed the biological significance of the area. The discovery of an entirely new species of fish, *Craterocephalus* sp, in the Ira Siquiri River that drains the lake is an example of its environmental prospects (EPANZ 2004:20).

7 The ethno-linguistic Fataluku community numbers around 35,000 residents and forms the majority population in Lautem.

8 Within *ratu* groups there are three status classes or castes, known as *ratu*, *paca* and *akanu*, that reflect a common eastern Indonesian distinction between high born (*ratu*), ordinary citizenry (*paca*) and a slave category (*akanu*). These distinctions are still significant influences on social life but are not addressed here.

9 *Ratu* also maintain political alliances with other clans as a result of shared mythic origins or mutual assistance in times of past warfare.

10 The word *horo* in Fataluku refers to the coralline rubble that litters the ground in many areas and is used to construct sturdy food garden fences, the remnants of which are distinctive markers of former swidden fields.

11 Another version of this idea is an alternate and rather more oblique phrase, *iti sorara: iti lauratu*, which was translated for me as 'within the sacred earth: within the sacred wealth of the *ratu*'.

12 The term *tei* or *teinu* may be glossed as sacred or taboo and has a similar sense as the Tetum word *lulik*.

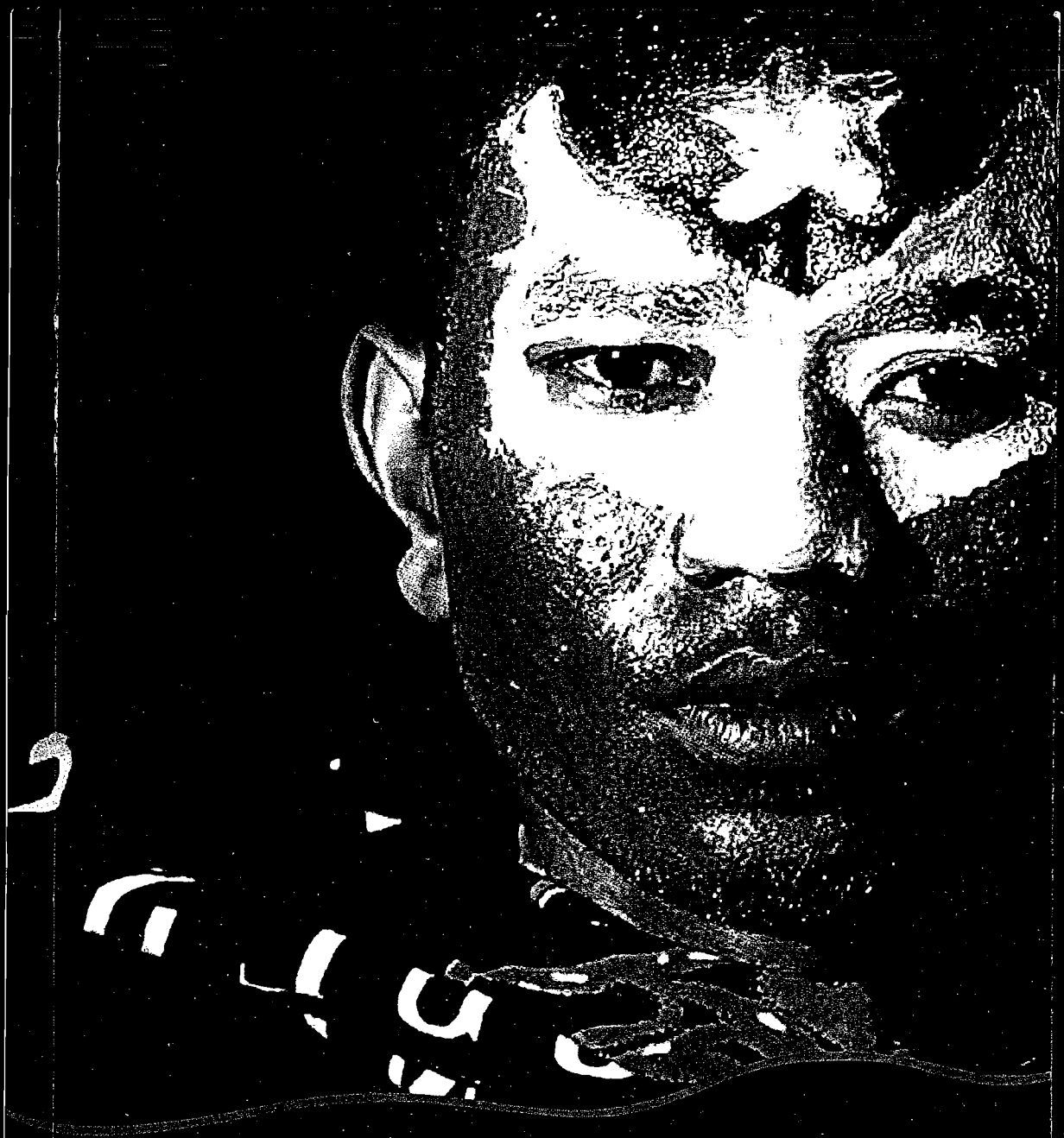
13 Also known as the *laficaru* (ritual lord) or *o'o mimireke* (red mouth), a term possibly alluding to the betel-stained mouths of the leading orators and ritual specialists.

14 Fataluku also recognise various forms of land ownership transfers between marrying groups, historically used as a strategy by some *ratu* to attract in-marrying settlers and strengthen the settlement group. The phrase *leo amire, poke amire* alludes to offering a wooden 'pillow' to rest the head of the recipient and providing for the recipient's wellbeing. These entitlements are only lost if the recipient and the recipient's descendants expressly relinquish their claims to the land in question through abandonment or the demographic demise of the lineage.

15 Displaced land-holding *ratu* of the conservation forests are numerous and yet to be fully mapped. They include those of Renu, Keveresi, Marapaki, Zenlai, Pai 'ir, Pai Chao, Pai uru,

Serelau, Aca Chao, Masepan, Pui Rili, Paraluki, Mainoh, Tana and Latu Loho, to name some of the prominent groups.

16 Section 139: Part 1. The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone which are essential to the economy—shall be owned by the state and shall be used in a fair and equitable manner in accordance with national interests.



EAST TIMOR
BEYOND INDEPENDENCE

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