

Chapter 9

Possession, Custom and Conflict around the Town of Ainaro

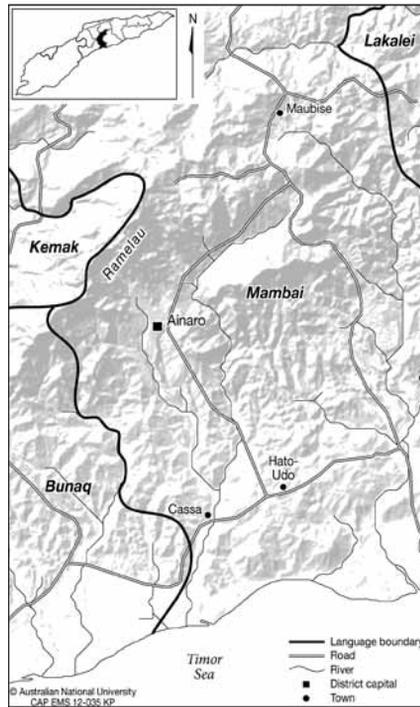
This chapter provides a case study from the rural town of Ainaro located in Ainaro sub-district 110 kilometres southwest of Dili. While previous chapters have focused on the relative resilience of customary communities in East Timor, and the capacity of customary frameworks to manage tensions over land arising from historical patterns of displacement and resettlement in rural areas, this chapter considers the impact of Portuguese and Indonesian era policies and practices on land tenures within a predominantly peri-urban setting. It highlights, in particular, the complexity of claims based on competing interpretations of possessory legitimacy and authority. This complexity is relevant to the potential application of the draft 2012 land law, including its rule of long-term possession, which we consider further in Chapter 11.

The chapter begins with some background to Ainaro sub-district. This is followed by an overview of customary relations and the nature of customary land tenures among the southern Mambae of Ainaro sub-district. The chapter then focuses on Ainaro town and its hinterland. It describes the impact of Portuguese policies aimed at extending territorial control and improving agricultural productivity as well as the destructive effects of displacement and resettlement during the Indonesian occupation on customary relationships with land. It illustrates the various categories of competing land claimants in contemporary East Timor, including current occupiers and Portuguese and Indonesian titleholders, as well as the role played by the state. Finally, it considers the way in which emerging issues of individuation, commodification and titling of rights have complicated these competing categories of claim.

Locating Ainaro

The rural town of Ainaro is located within the administrative boundaries of the village (*suku*) of Ainaro, which is situated in Ainaro sub-district, in the district of Ainaro (see Map 9.1).

Ainaro sub-district represents the south-eastern limits of a Mambae speaking territory that spans across the central highlands of Timor Leste from Dili into the districts of Ermera, Aileu, Same and Ainaro. The sub-district comprises seven villages. The vast majority of the population of the villages of Ainaro, Suro Kraik, Soro, and Manutasi speak a southern variant of Mambae (Hull 2003), while the people of Cassa and Mau-Nunu are predominantly Bunak-speakers. In some of the upland communities of Mau-Ulu village a dialect of Kemak is also spoken.



Map 9.1 The Mambai language group in Ainaro district

Source: ANU Cartography 2012

Table 9.1 Population figures for Ainaro sub-district

Village	Male	Female	Total
Ainaro	3,640	3,297	6,937
Suro-Kraik	580	508	1,088
Soro	931	930	1,861
Manutasi	902	802	1,704
Cassa	1,267	1,228	2,495
Mau-Ulo	246	224	470
Mau-Nuno	517	486	1,003
Total	8,083	7,575	15,558

Source: Census 2010

Throughout the sub-district households are engaged in the swidden cultivation of staple foodstuffs such as maize, cassava, sweet potatoes and beans. In the upland areas to the north of the sub-district, elevated terrain and relative humidity provide

optimal conditions for coffee cultivation, while to the south the flood plains of the Sarai and Mau Mali rivers are used for rice cultivation. Coconut production was a significant crop during the Portuguese colonial period.

In order to understand the complexity of current claims to land within Ainaro town and the political sensitivities related to access to land and natural resources within Ainaro sub-district, some historical background is required. Ainaro sub-district represents the heart of the former kingdom of Suro-Ainaro. According to local histories, customary authority within the kingdom of Suro-Ainaro was constructed on two complementary pillars. On the one hand, kinship relations and 'internal' affairs of the community relating to the moral and social order were known as the *nam meta ni* (affairs of the night). On the other hand, political jurisdictions and the management of 'external' relations with 'outsiders', such as the state, formed part of the everyday affairs of the world, the *nam ada ni* (affairs of the day) (Corte-Real 2000). Historically, issues relating to land and natural resources have engaged both these areas of customary authority. Access to land and natural resources was, and continues largely to be, embedded in kinship relations and inseparable from local understandings of what constitutes social and moral order. However, issues regarding the territorial boundaries of broader political jurisdictions involve more complex networks of exchange and alliance.

According to local historians, by the beginning of the twentieth century the kingdom of Suro-Ainaro was divided into four territories, corresponding to the present-day villages of Soro, Nunumogue, Mau-Ulo, Ainaro and Manutasi, each under the jurisdiction of paired ruling houses or *um dato*.¹ These four pairs of houses were described in kinship terms as *an-hine pat*, *an-mane pat* (four daughters, four sons) and fell under the overall jurisdiction of the *liurai* (king/noble) houses of *Pucoli-Sarin*, *Dar Ha'* and *Ai-Tua*, known collectively as *In nor Am* (mother and father), based in what is now the village of Suro Kraik (Corte-Real 2007). The villages of Cassa/Maununu and Hatu-Udo, which now form part of Ainaro sub-district, did not fall within the traditional jurisdiction of Suro-Ainaro. However, relations between these groups and Suro-Ainaro were expressed in terms of sibling kinship whereby Suro-Ainaro *Nai-Mane* (male kingdom) was 'brother' to Cassa and Hatu-Udo, both *Nai-Hine* (female kingdoms) (Corte-Real 2007).

On the surface, the language of kinship served to legitimize local political hierarchies and to establish conditions of reciprocity between the various political entities that made up the kingdom of Suro-Ainaro and its neighbours. However, the history of Ainaro sub-district, and the former kingdom of Suro-Ainaro, has been marked by ongoing power struggles and shifting alliances between various groups. In 1907, the Portuguese military post (*posto*) of Ainaro was established

1 The houses of Bissimau and Dacicoli ruled over a territory corresponding to the village of Soro, Lequiteti and Dadia over Nunumogue, Aloko and Mausuru over Mau-Ulo and the houses of Laubei and Mauteni governed the people of the present-day village of Ainaro and Manutasi (Corte-Real 2007).

on the site of present-day Ainaro town.² This event marked the establishment of a long-term alliance between the Mambae-speaking rulers of Suro-Ainaro and the Portuguese colonial authorities. In the context of the Wars of Pacification, the kingdom of Suro-Ainaro fought alongside the Portuguese against the ‘rebel’ kingdoms of Manufahi and their allies in the southern kingdom of Kamenasa (Pélissier 1996). And, later during the Second World War, the king of Suro-Ainaro, Dom Aleixo Corte-Real, was most famously captured and killed ‘in the defence of Portugal’ by the Japanese occupying forces. In reward for their loyalty to Portugal the rulers of Suro-Ainaro were able to extend their authority over a vast territory that included the *postos* of Maubisse, Hatu-Builico, Ainaro, Hata-Udo, Turisca, parts of Zumalai and briefly also incorporated Alas and Same (Sherlock 1983).

Undoubtedly, local rivalries and contested positions of authority pre-date the establishment of the Portuguese military post in 1907 (see Rawski 2002). However, these enmities were exacerbated by colonial interventions during the Portuguese colonial period and reinforced throughout the Indonesian occupation. For example, the Indonesian authorities took advantage of the lingering resentment felt by those forced to submit to the authority of the rulers of Suro-Ainaro. Some of the founding members of the pro-integration party APODETI and key members of the local pro-Indonesian local militia Mahidi were recruited amongst those who lost land and power as a consequence of fighting against the Portuguese during the Manufahi wars or allying themselves with the Japanese during the Second World War.³ Present-day episodes of communal violence and tensions over access to land and natural resources must be placed within this wider historical and political context.

Customary Relations and Claims to Land

Um nor Ap Hat nor Rae – House and hearth (fire), Rock and Land.
Ancient Mambae saying:

Without a home you won't belong, without a flame you cannot see and if there is no solid foundation you are nobody. Respect the land, because it gave you life and within that land should be your last resting place!⁴

² *Posto* denotes a Portuguese-era administrative centre.

³ Associação Popular Democrática Timorense (Timorese Popular Democratic Association), APODETI was founded on the 27th May 1974. The first Indonesian-era governor of East Timor, Arnaldo dos Reis Araujo, a founder member of APODETI was from Manutasi. Established in 1998, Mati Hidup dengan Indonesia (Life or Death with Indonesia), MAHIDI was based in Cassa.

⁴ Thanks to ACR for quotation.

Customary Relations

Among the southern-Mambae communities of Ainaro sub-district, rights to access land and natural resources are embedded in customary relations between lineage-based groups centred on sacred houses called *um lisa*.⁵ The term *um lisa* is used to describe both the physical structure of the sacred house and its members. In 2007, the village head of Ainaro town compiled a list of all the *um lisa* of Ainaro sub-district. A total of 251 *um lisa* were identified, 148 of which were from predominantly southern-Mambae-speaking areas. Many of the original sacred house structures were destroyed during the course of the Indonesian invasion and occupation, or fell into disrepair as a result of population displacement and resettlement. However, since independence there has been a clear trend towards rebuilding these houses. In 2007, of the 251 houses, 25 were in good condition, 5 were almost complete and 147 were in the planning stages of being rebuilt.⁶ The widespread rebuilding of sacred houses in Ainaro sub-district is consistent with the revival of custom since the end of the Indonesian occupation in other parts of East Timor.

Membership of an *um lisa* usually consists of agnatically related male kinsmen, their in-married spouses and children. However, there are exceptions. In some cases a person may be incorporated into a particular *um lisa* because they have been chosen by members of a community of related houses to perform a specific ritual or political role historically associated with that house. In other cases membership may be determined by the status of (generational) marriage prestations between *um lisa*. The exchange of gifts, known as *barlake* in Tetun, as part of marriage negotiations is still common practice in Ainaro sub-district. At different stages during the course of marriage negotiations, members of the husband's family (*hin-hat*) will provide the wife's family (*um-man*) with money, buffalo and gold discs and receive traditional cloth, pigs and rice in exchange. In some cases only upon completion of this bridal exchange will the wife and any children usually become full members of the husband's house.

An *um lisa* is typically divided into a number of 'branch' houses. These subsidiary houses represent individual sibling lineages stemming from a single common ancestral house also known as an *um tu*. Lineage houses are either referred to as elder (*kaka*) or younger (*ali*) houses based on their relative proximity to their common ancestral house. Overall moral and ritual authority for the members of houses constituting an *um lisa* usually lies in the oldest male kinsmen of the *um tu*. The most important of these are referred to as the *mai ta bali* (keeper of the house), whose role is to safeguard the sacred objects of the group; and the *gase'e ubu*

5 The word *um* means house and the word *lisa* can be translated as 'culture' or 'cult'; it is used to refer to the particular cultural practices to which members of an *um lisa* adhere. In some cases *lisa* has been translated as customary law but its application is much broader.

6 No data was available for the remaining houses.

(keeper of the words),⁷ whose role is to be the spokesperson for the *um lisa* group and also to pass judgement or arbitrate in traditional conflict resolution processes.

Membership of an *um lisa* entails a number of entitlements but also a set of obligations. These entitlements and obligations constitute a moral code broadly described as *lisa*. Obligations range from dietary restrictions to the use of family names or providing goods and services associated with ceremonial exchange. Entitlements include spiritual protection, the opportunity to draw on reciprocal obligations in time of need, and access to ancestral lands and specific natural resources. Adherence to one's *lisa* is essential to full participation in the social and ritual life of the broader community. Failure to do so may result in personal illness or loss and the imposition of a fine or sanctions by elders of the *um lisa* group. It is still commonly felt that until reparations, such as the payment of a fine or the performance of an appropriate ritual, are made an individual (and in some cases the immediate family) remains at risk of further misfortune and may be excluded from certain activities and rituals. This phenomenon of widespread belief in spiritualized sanctions for transgressions of custom is present in all our field sites.

Um lisa are exogamous and therefore must seek marriage with members of other groups. *Um lisa* related by marriage are classified as 'wife-givers' (*um-man*) and 'wife-takers' (*hin-hat*) in relation to one another. Traditionally, marriage alliances between houses were negotiated settlements involving the exchange of goods and services. Over time, preferential 'paths' of alliance have developed between certain *um lisa*, reinforcing bonds of interdependence aimed at maintaining lineage authority and collectivity. For example, throughout Ainaro sub-district it is still common practice for men to marry their mother's brother's daughters. For the southern Mambae, this form of cross-cousin marriage is called *kai ana, nai ana* and is believed to reproduce the 'ideal' relationship of their founding ancestors or in ritual language *do oe hati* ('to follow in the footsteps of the ancestors') (Corte-Real 2007).

Socially, wife-giver houses have a higher status than wife-taker houses on the basis that wife-giver groups are vital for the continuation of a wife-taker lineage. Although younger generations – many of whom have moved to larger towns or Dili in search of education or employment – are challenging these traditional marriage practices, for those who remain in more rural settings the pressure to conform is strong as family livelihoods are intimately bound to these enduring networks of alliance and exchange.

In the past, groups of *um lisa* were often ordered around various 'origin' settlements. Located on elevated ground called a *ria* or *lau*, most of these sites

7 Multiple terms, often mixed with Tetun vocabulary, are used. The keeper of the house or elder who sits in the house is sometimes described as *bei lulik* (sacred ancestor), or *tata bei* (grandfather ancestor) in reference to his position as oldest living descendant of the founder ancestor. The spokesperson or the keeper of the word is sometimes referred to as *tat gas*. Often the person holding this office has the power to arbitrate or resolve conflict *des* (or *Tes*) *ter* – traditional justice system.

are now abandoned in a physical sense, but still have cultural power as sources of collective identity and affiliation. According to local narratives, among a group of houses sharing an origin settlement there was usually a pair of houses whose ancestors were considered to be the founders of that community.⁸ Representing respectively female and male and referred to as *in nor am* (mother and father), these houses originally laid claim to overall ritual and political authority over the group. Narratives of origin and settlement link these houses to specific sites as hilltops, springs, rocks or caves. While these links serve to reinforce the emplaced nature of ritual authority and the privileged relationship between founder *um lisa* and the land, defining the distinct territories that fell under the jurisdiction of these houses is not an easy task. Territorial boundaries are notoriously fuzzy: they are shaped by histories of war and alliance, migration and displacement but also by the influence and imposition of administrative boundaries such as village and hamlet. As discussed in Chapter 11, the fuzziness of group boundaries in Ainaro sub-district is significant for the legal determination of community property and community protection zones under the draft land law of East Timor.

Local narratives describe how over time the founder houses gradually devolved political power to certain subsidiary or 'in-marrying' houses. Retreating into a purely ritual role, the elders of these founder houses are often described as those who 'sit and look after the house' or 'sit and look after the rock and tree'. Today their principal role is to manage the relationship between people, the land (which is the source of life) and the cosmos. In the process of devolving political power, the founder houses are said to have designated various roles and functions to the remaining houses. Historically, such distinctions were made manifest during communal rituals or ceremonies where members of each house performed specific functions, and ceremonial wine, food and betel nuts were distributed according to a prescribed order. Other ranks and titles were bestowed on various houses, as discrete communities of houses sharing an origin village were incorporated into broader networks of alliance and exchange that formed the basis of the 'kingdoms' that emerged during the slow course of the Portuguese colonization (Forman 1978). The intricate webs of ritual and political authority in Ainaro, as in other rural districts of East Timor, illustrate the mechanisms through which collective order was maintained in contexts of political change and population growth.

The collective identity of groups of *um lisa* sharing a settlement of origin was originally maintained through periodic participation in communal ceremonies and rituals. Although the vast majority of origin settlements have now been abandoned, a number of informants stated that house members do continue to reconvene at these sites to take part in specific communal rituals and in particular those related to the agricultural cycle. For example, houses from the hamlet of Nugufu assemble yearly

8 Narratives of origin vary greatly across Ainaro sub-district. While some trace their ancestors to the land itself, others relate to 'root' houses in the central highlands and recount narratives of arrival and settlement sometimes involving the displacement or alliance with original inhabitants.

at the sacred site of *Hat Mau Bis* to partake in a harvest ceremony of thanksgiving to the sun and the earth for their bounty. In Hatumera, related houses convene at the altar of the founder house of Mailako, or at the sacred tree of *Gou' Pu* to pray for a successful planting season. However, other informants suggested that there has been a marked decline in the level of participation in these ceremonies.

Some informants traced the decline in participation to the Portuguese era. One informant claimed that the Portuguese introduced a tax (or fine) on the slaughter of animals, which undermined the element of commensality central to many communal rituals and ceremonies. Another suggested that, with the introduction of Catholicism, local missionaries and new converts discouraged participation in what they perceived to be 'pagan' or idolatrous rituals. Most informants said that displacement and restrictions on movement and large gatherings during the Indonesian occupation reduced the possibilities for communal ceremonies. However, a minority suggested that, rather than experiencing a decline, certain customs remained strong during Indonesian times since many Indonesian soldiers and immigrants came from areas in Indonesia with a strong sense of *adat* or custom. In general, informants felt that during this time, rather than abandon certain rituals, people turned to their own *um lisa* and conducted smaller, family rituals. Others clarified that, whilst participation in *um lisa* level activities such as *lia mate* (mortuary rites) or *lia moris* (life-cycle rites) remained strong, fewer people were likely to partake in larger communal rituals, which represented a significant burden especially to poorer households.

According to community elders and ritual specialists interviewed for this study, reduced participation in communal ritual over time has meant that today few people fully understand the meanings and histories at the heart of ceremonies aimed at reinforcing the sense of community between *um lisa*, and interdependence with the land. One informant believed that individualism and the influence of outside cultures and trends brought about by globalization are undermining the sense of community. He feared that most young people think about themselves or their immediate family rather than the broader, more traditional community of *um lisa*. Changing attitudes and changing practices in relation to ritual also reflect changes in attitudes and practices regarding the relationship between people and the land. As people have moved or been displaced farther from their ancestral lands, many have also abandoned the cultural practices associated with the land that serve to reinforce these bonds of interdependence and collective action.

Customary Claims to Land

Um lisa members claim rights to portions of a common landed inheritance. Typically, *um lisa* land comprises land farmed and settled by a named pair of founder ancestors and any land subsequently acquired by their descendants. Although *um lisa* elders stated that it is the responsibility of each generation to safeguard the integrity of the legacy of their ancestors, a number acknowledged that today the ancestral lands of various *um lisa* are not 'common property' as

such, and that individual members of subsidiary houses often have heritable rights to specific parcels of land passed on from father to son. Despite this process of fragmentation into individually held parcels of land, a residual notion of what constitutes 'communal' or 'ancestral' land remains insofar as *um lisa* elders continue to be called upon to resolve land disputes between house members and/or members of other houses and, in some cases, may be consulted with regard to transactions of land considered to form part of the ancestral legacy.

Across Ainaro sub-district, informants described how any disputes, including land disputes, between *um lisa* members had to be managed within customary *um lisa* social hierarchies. More difficult or complex disputes also involve reference to village government authority. The starting point for any conflict resolution is the headman (*mone tu*) of a particular branch or *um lisa* lineage, who is able to *tesu lia* (Tetun: 'cut the words' or arbitrate). If the dispute is not resolved at this level then it should be brought to the attention of the elders of the *um lisa* (usually male heads of household and the *gase'e ubu* (Tetun: *lia nain*, spokesperson/keeper of the word). If no resolution is found within the *um lisa* then a dispute might be taken to the hamlet head. In these cases, it is common for the hamlet head to reconvene with the *um lisa* elders to try to find a solution. Where the hamlet head is unable to resolve the problem then the dispute will be taken to the village head who often calls on the village *lia nain* (village elder member of village council). If the dispute involves people from two or more *um lisa* then representatives from both groups are involved in mediation and arbitration. Many informants stated that it was problematic for members of *um lisa* related by kin or marriage to take their disputes or problems to the village head or to the local sub-district authorities. They suggested that this would then require a process of 'reconciliation' between the houses to restore the balance of reciprocal relations. All informants stated that in the case of any dispute involving violence such cases had to be referred directly to the police.

Access to Land through Marriage Agreements

One of the most common ways of gaining access to another *um lisa*'s land was (and continues to be) through marriage. Historically, the granting of access to land and natural resources for in-marrying males was used as a means of establishing a political alliance with another *um lisa* group, in particular where the in-marrying group posed an external threat to a founder house or group of houses. It also seems to have been a means of securing labour required for the slashing, clearing and burning of new swidden fields.

Generally, rights to land conferred through marriage do not involve the transferral of outright 'ownership' to in-marrying males and their associated *um lisa* but do grant extensive rights to control access to this land and harvest produce. In some limited cases where long-established reciprocal relations through marriage exist between *um lisa*, members of the in-marrying *um lisa* are considered to have authority over all matters concerning the management of land granted by their wife-givers. However, where the sale of land is contemplated, issues of the overall

authority of the original wife-giver *um lisa* over the land come into play. In some cases, the children of in-marrying males also have rights to inherit this land from their grandfather through the female line. However, these claims appear to be weak as informants stated that it was often the case that male relatives on the mother's side (and sometimes even the father's side) contest these claims. They also clarified that, in some cases, members of one *um lisa* might negotiate access to another *um lisa*'s land, regardless of whether there was a history of marriage alliance between the two groups. In these cases usufruct rights might be granted in exchange for some offering or part of the harvest (Tetun: *rai te'en*).

*Contested Interpretations of Possession:
The Commodification of Customary Land*

Rights to land embedded in these customary relations have been progressively challenged by the policies and practices of successive colonial powers, which has led to the differentiation and commodification of land. Differing notions of possessory entitlements among informants reflect their own particular experiences of colonial policies and practices and highlight the difficulty of reconciling claims to land based on multiple sources of authority and legitimacy. For example, informants asserting ancestral rights to land argue that the founder ancestors allocated all land to the constituent houses of Ainaro and therefore that no land remains 'unclaimed' or 'abandoned'. They back up their claims with reference to ancestral histories of settlement and particular geographical markers or features.⁹ Echoing ancestral histories of first possession, individuals and groups recruited into work groups during the Portuguese colonial era, and responsible for 'opening' up previously unfarmed tracts of land, argue that this previously unclaimed land was rightfully theirs. In some cases narratives of historically negotiated access to land with local land-holding groups serve to back up these claims. Informants who were forcibly displaced and relocated to Ainaro town during the Indonesian occupation emphasize the strength of long-term occupancy and use of land, and in some cases refer (incorrectly) to Indonesian land law regarding an alleged right to claim ownership of land after a five-year occupancy period.¹⁰

9 It is difficult to judge whether such insistence on the pre-allocated nature of all land is a reaction to the fear of future loss of land or a reaction to historical acts of dispossession. For example, under Portuguese colonial law of 1901 all land proved not to be held by Portuguese title was deemed to belong to the state. A map of Portuguese Timor was produced dividing land held by loyal *liurai* and land 'without a master'. The latter was vested in the Portuguese state and therefore could be the subject of land title. Later, in 1910 the governor of Timor issued a decree enabling him to make grants of up to 2,500 hectares of 'unoccupied' land – to establish native tenure the occupier had to have built or cultivated at least half the area.

10 As with other civil law systems, Indonesian law allows for a right of prescription after 20 years occupation: see further Fitzpatrick 1997.

The following case study from Ainaro town aims to examine the development of these differing notions of possessory entitlements. It describes the impact of colonial policies and practices on forms of land tenure embedded in customary relations and illustrates the various categories of competing land claimants in contemporary East Timor, including current occupiers and Portuguese and Indonesian titleholders, as well as the role played by the state. This urban/peri-urban example includes a more prominent role for the state, under its various guises in East Timor, particularly as the infrastructure needs of urban development have led to land acquisition under legal powers of eminent domain. As in Lautem, but more notably because of its urban context, increased demand for land in Ainaro has promoted individualization of property claims, while also promoting chronic uncertainty and conflict where overlapping claims have interacted with multiple reference points for property legitimacy and authority. The case study also highlights the way in which some claims to alienable ownership under the draft 2012 land law of East Timor, on the basis of long-term possession, will be inconsistent with long-standing customary limits to entitlement based on histories of in-marriage, in-migration and forced resettlement.

Case Study: Ainaro Town

The rural town of Ainaro is the administrative capital of Ainaro district and Ainaro sub-district. It is located within the administrative boundaries of the village (*suku*) of Ainaro. The village of Ainaro is composed of seven hamlets. Of these Hatumera, Lugatu and Teliga are considered to be ‘mountain’ (*foho*) or rural hamlets, while Ainaro, Sabago, Builco and Nugufu constitute the bulk of Ainaro town.¹¹

Ainaro town was almost completely destroyed in 1999 by pro-autonomy militia and elements of the Indonesian military. Practically all public buildings including the district hospital were destroyed; the Catholic mission school, Canossian residence and almost 80 per cent of all private dwellings were also burnt and looted. Many of the inhabitants of Ainaro town fled or were forcibly displaced to West Timor; others sought shelter in the surrounding hills and mountains. While the majority of East Timorese former residents of Ainaro have now returned, or resettled in the capital Dili, some remain in West Timor or elsewhere in Indonesia and many non-East Timorese former residents, including Indonesian civil servants and business people, have not returned and are not expected to return.

Although the rehabilitation and reconstruction of basic infrastructure in Ainaro town has been slow, a number of public services now are available. There are two public primary schools, a public pre-secondary and secondary school, an out-patient health clinic, a hospital, and a police station. In 2007, the town water

11 To clarify the various administrative units known as ‘Ainaro’: Ainaro hamlet falls within Ainaro village, which is situated in Ainaro sub-district, in the district of Ainaro.

supply and electricity were also rehabilitated. The town market and abattoir is in the process of being refurbished and housing for the local police is also being built. The district and sub-district administration continue to occupy buildings rehabilitated during the UN Transitional Administration.

While a number of local residents are employed as public servants, the majority are engaged in various forms of subsistence farming. Households farm a variety of crops including maize, beans, potatoes and root crops in swidden gardens on land surrounding Ainaro town. Permanent and seasonal fruits and other market vegetables are often grown in house plots or uncultivated areas of land in and around Ainaro town. A number of households have access to rice fields to the south of the town, near the neighbouring village of Cassa, or to the east near Manutasi. Many households also cultivate coffee in small plantations in upland areas. It is common for households to keep pigs and chickens; only a limited number graze cattle in upland pastures.

There are two markets in Ainaro town. The first is located close to the old town centre and was originally built during the Portuguese period. The second, larger market is temporarily located in the 'new' town close to the Indonesian-era district administrator's office, which is currently being rebuilt. Saturday is the main market day in Ainaro and people travel from surrounding villages, sub-districts and districts to buy and sell their produce. There are also a number of shops in town selling a wide variety of manufactured goods. Many of these shops are owned and run by Chinese-Indonesian or Chinese-Timorese.

The size and composition of Ainaro town has changed considerably over time. Today, Ainaro village has a population of 6,937 people, the majority of whom live in Ainaro town (Census 2010). This accounts for approximately 45 per cent of the total sub-district population. The population of Ainaro town rose rapidly in the aftermath of the Indonesian invasion as communities were displaced from remote areas and resettled closer to military installations and administrative centres such as Ainaro town. Since independence, the rate of return to remote areas has been relatively slow with larger numbers of people continuing to migrate from rural areas to urban areas. While a small proportion of the current population includes persons displaced from Dili in the aftermath of the political violence in 2006, the most common reasons for moving to urban areas since independence are access to education and employment opportunities (Census 2010).

Demographic changes have led to changing attitudes and practices associated with access to land and natural resources. Since the Portuguese first established a permanent presence in Ainaro town, customary beliefs and practices relating to the land and land use have come under stress. Over time, Ainaro town residents have developed a more commodified view of land leading to the differentiation of land into smaller household-based holdings. The principles of land access based on *um lisa* ancestral attachments and relations between *um lisa* groups have been challenged by notions of rights to land based on long-term occupancy as well as Portuguese and Indonesian land law. Since independence, multiple and competing claims to land in and around Ainaro town have emerged between individuals, and

between individuals and the state. Claims are based on ancestral attachments, long-term occupancy and local understandings of entitlements carried over from Portuguese and Indonesian land law.

*The Portuguese Period:
Compulsory Labour and Land Differentiation*

According to local informants, prior to the arrival of the Portuguese, there were few settlements on the plain of Orluli between the Mau Mali and Sarai Rivers where the town of Ainaro is now located. Most of the land was uncultivated or swamp land and bamboo forest. In 1907, on the recommendation of the rulers of Suro-Ainaro, the Portuguese established a military post close to the bamboo forests near the Mau Mali river (Corte-Real 2007). Later in the 1930s, the Catholic Church founded a large church and established a mission school in the town. For most of the Portuguese period, Ainaro Vila (Portuguese: town) consisted of a few dusty streets, inhabited mainly by colonial troops, civil servants, Chinese traders and local East Timorese notables, *assimilado* families mainly from the *liurai*, or ruling families of Sur-Ainaro.¹²

The land on which the Portuguese established the *posto* of Ainaro was considered to form part of the territories under the jurisdiction of *Laubei* and *Mauteni*, the ruling *um lisa* of the hamlet of Ainaro-Sabago Leophat.¹³ Within the social hierarchy of customary governance, described above, the *dato* (rulers) of *Laubei* and *Mauteni* were politically subordinate to the rulers of Suro-Ainaro based in Suro-Kraik. The arrival of the Portuguese marked the rise in importance of the noble houses of Suro-Ainaro. And, as Ainaro town grew, members of these families moved to the plain of Orluli occupying land for residential and agricultural use.

At the time of the arrival of the Portuguese, the majority of the population of Ainaro-Sabago Leophat was engaged in shifting cultivation and lived in dispersed highland settlements. The current head of Ainaro hamlet claimed that the majority of the *um lisa* of Ainaro-Sabago Leophat were originally located in the mountains near Ai Mer Lau and Foho Lema and later they settled closer to the current location of Ainaro town at a hill called Sabago Lau.¹⁴ Settlements were generally composed

12 *Assimilado* was a Portuguese colonial category of citizen that existed until the 1960s. It referred to individuals considered by the colonial authorities to have met certain formal standards indicating that they had successfully absorbed (assimilated) the Portuguese language and culture. Informants stated that restrictions were placed on who could enter the town and that for the most part non-Portuguese or non-assimilados were not permitted to enter except on market days or for the head tax count.

13 Today Ainaro and Sabago are considered to be two separate hamlets.

14 In 2007, the village head of Ainaro identified a total of nine *um lisa tu* (principal *um lisa*) in the hamlets of Ainaro and Sabago. Of these many are considered to have their 'roots' in areas such as Atsabe in Ermera or other locations close to Mount Ramelau. Sabago Lau was abandoned after the Japanese occupation during the Second World War.

of four or five related households, located close to the fields they were cultivating. Although a group of related households, usually brothers or first cousins from the same *um lisa* and their spouses and children, might live at the same location for a number of years these settlements were not considered permanent. *Um lisa* members who might live apart for most of the year would reconvene at their *um tu* for important rituals during the course of the agricultural year.

Many informants argued that prior to the arrival of the Portuguese there was no impediment to farming. That is to say that the nature of shifting cultivation was such that groups of related households cooperatively farmed as much land as they had the strength and resources to manage. Plots were seldom contiguous and could be dispersed over vast areas. Originally, people simply abandoned land that no longer yielded good harvests and moved on to more fertile land. Later, people began to leave permanent markers, by laying rocks or planting certain species of tree, on land that they let fallow as ‘proof’ of a prior occupancy. Many informants also stressed the fact that their ‘ancestors’ did not understand the economic value of the land but rather that land formed part of the cycle of life and the reciprocal relations that existed between the living and the hidden world of the ancestors. The process of ‘opening’ previously unused land by clearing, burning and cultivating involved various stages of ritual and prayer to ‘ask permission’ or attenuate the anger of the spirits who might inhabit the land or guard its resources. The memory of these acts and the precise location of farmed land was then transmitted from one generation to the next thus forming part a legacy of specific *um lisa* lineage lands. This account of the development of customary authority and possessory rule complexity, as resource management moved beyond simple acts of possession of abundant land, is consistent with our theoretical account of rule complexity and second party property enforcement mechanisms in Chapter 3.

The establishment of the Portuguese *posto* in 1907 signalled the beginning of gradual changes in the relationship between people and the land as the population of the kingdom of Suro-Ainaro (including the people of Ainaro-Sabago Leophat) became incorporated into the colonial state. Initially, the Portuguese authorities and the Catholic Church appear to have, at least nominally, acknowledged the authority of the customary rulers. According to local histories, the Portuguese consulted the *liurai* of Suro-Ainaro, *Na’i Kau* and *Na’i Koso*, as to where they should establish their military post. Later in the 1930s, when the Catholic missionaries based in Ainaro town sought land on which to build a larger church and expand the mission, they consulted with the local *chefe povasaun* who called the elders of Ainaro-Sabago Leophat together to discuss which land, and how much, could be given to the Church.¹⁵ However, after the Second World War, the colonial authorities began

15 The history of the granting of Ainaro Church land was written up in 2003 by the current hamlet head of Sabago in response to a dispute over Church land. The document was viewed by the author and discussed with the parish priest.

to exercise more control over the territory, affecting the way in which communities gained access to land and changing settlement patterns and farming practices.¹⁶

As part of a general drive to make the colony more productive, or at least self-sufficient, the Portuguese authorities enacted a number of ‘development’ policies during the post-war period (Clarence-Smith 1992). In Ainaro sub-district, in general, ‘slash and burn’ practices associated with shifting cultivation and burning out of season were severely punished and large areas of land were terraced and used for rice cultivation. It was during this period that informants recalled that ‘origin’ villages, such as Sabago Lau, were abandoned as the Portuguese authorities encouraged (or ordered) people to live in larger, more accessible settlements. This policy appears to have been aimed at facilitating the collection of head tax and organizing labour. All members of the community were expected to farm a quantity of rice land. The hamlet head of Ainaro called this ‘bitter work’ (Tetun: *servisu moruk*). Access to land was not determined by *um lisa* membership or agreements between *um lisa* with ancestral attachments to the land. Under Portuguese colonial law any land that was unused or uncultivated was deemed to belong to the state (Fitzpatrick 2002: 35–40).

The colonial authorities identified suitable arable land and the village and hamlet heads were expected to organize labour to work on these fields. Today, the signs of terracing are still visible, in particular to the west of the Sarai River in the hamlets of Hatumera and Nugufu. Local residents stated that this land was exposed to seasonal high winds that made farming difficult and often destroyed crops. Later these fields were abandoned when the Indonesian authorities diverted the water from the river used for irrigation towards the town supply. Another area of rice fields is located south of Ainaro town, on the flood plains near the confluence of the Mau Mali and Sarai Rivers, on land bordering with the neighbouring village of Cassa. Informants from Ainaro village and the hamlets of Ainaro, Sabago and Bullico, in particular, claimed that their families farmed this land for generations. However, they also acknowledged that this is not their ancestral land but that their ‘ancestors’ or ‘grandfathers’ originally negotiated access with local groups – either through *um lisa* marriage relations or as part of an agreement between local ruling houses. Informants from Cassa, on the other hand, suggested that the Portuguese colonial authorities had encouraged people from Ainaro to ‘occupy’ this land in retaliation for the alliance of the ruler of Cassa with the Manufahi rebels during the Wars of Pacification and later with the Japanese during the Second World

16 The people of Ainaro sub-district experienced considerable social upheaval and displacement during the Second World War. Japanese and later Australian troops occupied Ainaro town. Some local leaders resentful of Portuguese favouritism towards the Mambau rulers from Suru Kraik chose to ally themselves with the Japanese. Later these leaders, including the *chefe povasaun* of Sabago, were declared traitors – some were imprisoned, exiled to Atauro or dispossessed.

War.¹⁷ Competing histories of land use and political affiliation have thus led to overlapping customary and individual claims to land, in particular, in the southern plains in areas such as Diru Kede, Fau Lata and Fatu Naru.

Some areas of land closer to Ainaro Vila were appropriated for 'communal gardens' (Tetun: *to'os komunal*). The local population was expected to contribute time and labour to cultivate this land. It was common for this work to be done on a rotational basis by work groups from each *povasaun* under the leadership of their *chefe povasaun*. Persons unable to afford the head tax might be expected to contribute up to four months' labour. Unlike the produce from larger rice fields, the harvest from these gardens did not benefit the community but was given to local troops, members of the colonial administration and in some cases local *liurai* and village heads.¹⁸ Today, some of these former communal gardens are the subject of multiple claims by the state, customary groups, former hamlet heads and individuals who took part in the work groups. These claims include competing references to sources of property legitimacy, including state grant, possession and input of labour, and agreement with customary authority.

One unresolved case involves an area of land called Gur Ulu in the neighbourhood of Mau Lore. This case illustrates the contestation of possessory entitlements in the context of state land acquisition. Prior to the Indonesian invasion this land had formed part of a communal garden and during the Indonesian occupation a police station and barracks were built on the site. In 2003, a complaint was made to the local district, sub-district administration and the district Directorate of Land and Property regarding plans to build a new police barracks on the site. The claimant argued that the land had belonged to his grandfather, a former *chefe povasaun*, and had been passed on to his son who farmed the land immediately prior to the Indonesian invasion. The claimant argued that his grandfather had gained entitlement to this land (Portuguese: *aforado*) by building a fence around the perimeter. The current hamlet head of Sabago intervened in the case by stating that the land in question fell under the jurisdiction of the *um lisa* of Ainaro-Sabago Leophat. However, he also recognized that this land had been appropriated by the state during Portuguese times and therefore, according to the law, continued to be state land. In 2006, a case was taken to court but was rejected by the judge, who stated that the claimant had no argument and that the land belonged to the state. However, supporters of the claimant continue to sabotage any attempts to redevelop the land. At the time of the fieldwork, the land where the shell of the

17 See Pélissier 1991. Raimea, Ria and Leo Lelo were declared 'domain land' following the defeat of the Manufahi rebels. Later this land was destined to be transformed into plantation land called 'Republica'.

18 One local informant claimed that a 1958 'requerimento' stated that all men over 18 had to do compulsory work. As an ordenanza or auxiliar one was then exempt from the head tax. Anecdotal evidence suggests that the obligation of labour on these communal fields created considerable resentment.

former police station and barracks now stands was being used by local residents to farm maize and other vegetables.

The Portuguese drive for increased productivity also had a significant impact on farming practices. Although farming of swidden gardens on a rotational basis continued to be dominant practice, more and more land was being used for perennial crops. From the 1930s onwards the intensification of rice farming and the introduction of cash crops such as coffee and coconut facilitated the visible differentiation of land parcels. In the rice fields, ditches, walls and irrigation channels between plots all served to demarcate areas of land being farmed by individual families (or allocated to individual heads of household by the village head). Rice fields are usually considered to be the individual legacy of those responsible for having first cleared the land and built the irrigation channels to feed the rice fields.

Coffee was first introduced to Ainaro sub-district during the inter-war years when seedlings were brought from the large plantations in Fatubesi (Ermera district) and distributed to the population through village and hamlet heads. Informants described how areas of land traditionally used as swidden gardens were gradually transformed into coffee plantations. Individuals would stake claim to previously uncultivated or abandoned land that was part of their *um lisa* ancestral legacy by planting coffee shade trees such as *casurina* surrounded by a perimeter hedge. Then, once the shade trees were tall enough, they would plant coffee seedlings. A number of informants stated that during the Portuguese period coffee production remained relatively low. It was not until the Indonesian period that seedlings became more widely available and people began to feel the economic benefits of coffee cultivation directly.¹⁹

Claims to land, in particular to land in Ainaro town, made by former (or relatives of former) village and hamlet heads and other local potentates dating from the Portuguese period are not uncommon.²⁰ Clarence-Smith (1992) has suggested that, at least until the 1920s, some village heads and prominent local authorities had the right to corvée labour to cultivate their specially demarcated land or to tend their animals.²¹ However, in the case of Ainaro, it appears that few claimants ever officially obtained Portuguese title to this land. For example, recently there was a dispute over the ownership of an area of land called Rusgoa located close to the village office (*sede suku*) of Ainaro. A Church group seeking land on which to build its premises negotiated the purchase of a plot of land in

19 Previously, coffee trade was monopolized and prices were fixed by the SAPT, Sociedade Agricola Patria e Trabalho.

20 Informants claimed that the customary rulers of the former kingdom of Suru-Ainaro were allocated plots of land in and around Ainaro Vila by the colonial authorities in recognition of their 'loyalty'. However, a number of claims to land are also based on histories of negotiated access to land through marriage or some other form of agreement.

21 Clarence-Smith argues that Governor Duarte put an end to local chiefs' rights to land allocation in the 1920s but confirmed this land as their private property.

Rusgoa from two persons claiming to be the rightful owners. Once the transaction had been made, the hamlet head of Sabago intervened to contest the sale arguing that the land belonged to members of the *um lisa* of Ainaro-Sabago Leophat. The dispute was taken to the sub-district administration, the Directorate of Land and Property and the village head of Ainaro to be resolved. According to the village head of Ainaro, the sale of the land had not necessarily been made in bad faith. He claimed that the land had been used during the Portuguese period as a communal garden but that once the soil had been exhausted it had been 'given' to the father of one of the persons claiming ownership because he was 'close' to the Portuguese colonial authorities.

Informants from the Directorate of Land and Property were only able to identify three Portuguese land-title owners in the whole sub-district of Ainaro. Two were members of ruling families of Suro Kraik and Cassa; one was a former civil servant from Cabo Verde. In general, it was felt that only those close to the colonial authorities, business people or foreigners (Portuguese nationals) were able to obtain title for land. Colonial law was such that in order to obtain an *alvara indigena* (a Portuguese title of customary land ownership) the occupier had to prove that at least half the land had been cultivated or lived on. The nature of swidden agriculture and customary notions of ancestral claims to land and natural resources did not fit this production-based model of rights (Fitzpatrick 2002). Many of those who did obtain title often did so by fencing off an area of land to pasture livestock. Exclusionary policies, lack of resources and a lack of access to information all contributed to the low number of titles issued during the Portuguese period. Based on informants' responses, it is unlikely that the majority of the population of Ainaro were aware of the details of Portuguese property law.

Although most people continued to perceive land to be abundant and land allocation and transfers were largely managed within customary frameworks embedded in *um lisa* relations, Portuguese colonial politics and policies effectively began to undermine these processes. In some cases the colonial authorities used land allocation as a means of rewarding their political allies or punishing their foes. Work groups were directed to occupy and farm areas of land that fell within the customary jurisdiction of other groups, those bypassing customary mechanisms for gaining access to land involving negotiations and alliances between *um lisa* groups. Changing farming techniques and the introduction of cash crops led to the differentiation of land into individual or family holdings that were no longer considered to form part of a broader *um lisa* communal property. During the late Portuguese period, communal ancestral attachments to land bound to particular histories of arrival and settlement began to be gradually superseded by individual claims to differentiated plots of land based on labour and occupancy. The impact of changing attitudes and practices towards land became increasingly apparent with the introduction of an explicitly commodified view of land during the Indonesian occupation.

The Indonesian Period: Displacement, Resettlement and Relocation

Claims to land based on changing attitudes and practices towards the land introduced during the late Portuguese colonial period were further complicated during the Indonesian invasion and occupation. Customary tenures were challenged by patterns of mass displacement followed by restrictions on movement and resettlement programmes that led to new forms of land occupancy and use. Furthermore, the appropriation of land by the state for the development of local infrastructure and the introduction of Indonesian land law severely undermined the capacity of customary structures to retain authority over the land.

At the time of the Indonesian invasion in late 1975, the population of Ainaro district had already experienced considerable displacement. Bitter fighting between supporters of the the opposed political parties, UDT and Fretilin, during the country's brief internal armed conflict had forced many people to flee their homes. News of the invasion led to further displacement. Some families from Ainaro with friends and relations in Dili were able to escape the region entirely. Within Ainaro district, most people initially fled to the mountains. However, by the time Indonesian troops reached the area in February 1976, many had already returned to their own settlements. During the course of 1976 and 1977, the security situation deteriorated once again as a result of continued attacks on Indonesian troops by the armed resistance. Indonesian reprisals targeted the civilian population, prompting more displacement as people sought refuge in numbers closer to the population centres such as Ainaro town or fled to the mountains to join the resistance.

Between 1977 and 1979, resistance strongholds, or *bases de apoio* as they were called, began to fall and the civilian population started to 'surrender' from the mountains. Ainaro town became a 'transit' or 'concentration' centre for displaced persons from Ainaro and surrounding districts and sub-districts. Other significant sites were Fatuk Maria in Manutasi, Cassa, Suru Kraik and Soro. Conditions in these concentration centres were extremely difficult. In Ainaro town, informants described how people built makeshift shelters on any available land around the old town centre. Food was scarce and people were not permitted to go far to plant crops or tend to their gardens.

It was not until 1982–83, that the Indonesian military authorities began to allow the civilian population to return to their places of origin. Although the majority of those who had been displaced to Ainaro town were able to return to their village of origin, they were seldom permitted to return to pre-invasion settlements but were 'resettled' along main roads or clustered around village offices (*sede suku/kantor desa*). A number of communities were not permitted to return to their village of origin but were relocated to neighbouring villages. For example, the populations of Mau-Nunu and Mau-Ulo were relocated to Cassa and Ainaro town respectively. Their village territory, located to the west of the Sarai River, was classified as an area of continued armed insurgency and was strictly out of bounds for most of the Indonesian period. Although access to agricultural land in these areas was later

eased, remote settlements in the highlands between Ainaro, Bobonaro and Ermera remained off limits until the mid 1990s.

The size and population of Ainaro town expanded considerably during the Indonesian occupation. Today, the town has spread beyond the ancestral lands of the *um lisa* of Ainaro-Sabago Leophat to include territory under the jurisdiction of Nugufu and Builico. Many people from the more remote localities of Ainaro village, such as Hatumera, Lugatu and Teliga, were directed to resettle closer to Ainaro town on the Orluli plain. And the people of Builico were resettled on land in Ai Melilo and Seu Lau. The population of the neighbouring village of Mau-Ulo was relocated 'en masse' to two 'new' settlements on the road from Ainaro town to Cassa. Later, as the Indonesian authorities extended their control over the territory and developed local infrastructure, Ainaro town also grew to accommodate 'new settlers' including Indonesian and East Timorese civil servants, military and police personnel, traders and business people.

In general, return to places of origin or relocation to 'new' settlements was organized by the Indonesian military in collaboration with newly designated *kepala desa* and *kepala kampung* (formerly, village head and hamlet head). Recollections of the process of return or resettlement vary. Most informants claimed that they were directed to move to 'new' settlements with their village head and hamlet head. In some cases the land on which they were resettled fell under the overall jurisdiction of their own hamlet (*povasaun/kampung*) and they were still able to access their ancestral lands for cultivation or settlement. Others were directed to resettle on land to which *um lisa* from a different hamlet or village laid claim. In many cases, owing to restrictions on movement imposed by the Indonesian authorities, people were unable to access land they had farmed during the Portuguese period as part of hamlet and village work groups.

A number of informants described how the local authorities allocated each household a plot of land on which to build their house and farm a small garden. However, some stated that the process was less organized and that they negotiated access to land directly through *um lisa* relations, and others claimed that they eventually purchased land from local land 'owners' or the Church. For example, one informant described how, during the Indonesian occupation, he had built his house on land belonging to the *um lisa* of Um Cab Lia Nai. At the time he said he wanted to build his house on his own *um lisa* (Hatilo-Baboe) land but the Indonesians directed people to build their houses near the main roads. He gave the people of Um Cab Lia Nai traditional cloth and some money in exchange for the land and, to make sure the community was aware of the transaction, he invited his neighbours and representatives from the *um lisa* of Sabago hamlet to take part or witness the building of his house.

In general, 'new' settlements in and around Ainaro town were located on land that was previously 'unused', 'abandoned', or had been used for rice cultivation and communal gardens. Those obliged to resettle on land that was not their own stated that, at the time, they did not seek permission (nor did their community leaders) from the customary *um lisa* landowners. Many argued that the social and

political situation was such that people settled and farmed wherever they could in order to survive. Others suggested that because the land was previously unused or unclaimed there was no one to ask. In some cases, informants justified their claims to land based on long-term occupancy by stressing that, at the time, nobody approached them to make their prior claims known. Today, informants who claim that their ancestral lands were occupied argue that under the circumstances there was little they could do to stop the military or civilian authorities from relocating people on to their land. In cases where access to land was negotiated through *um lisa* relations – based on kinship or marriage – the original land-owning groups claim that this was done on the understanding that access was granted on a temporary basis. These patterns of conflict-caused displacement, and its effect on claims to land, reflect the experience in other parts of rural East Timor.

*The Indonesian Period:
Resettlement from Neighbouring Villages to Ainaro Town*

Despite these challenges, the resettlement of people from hamlets under the jurisdiction of Ainaro village was not as problematic as the relocation of ‘outsiders’ from neighbouring villages such as Mau-Ulu to Ainaro town. The people of Mau-Ulu held in ‘transit’ centres in Ainaro town and Cassa were not permitted to return to their village lands but were relocated to an area of uncultivated land along the main road out of Ainaro town towards Builico and Cassa. According to local informants from Mau-Ulu, the Indonesian authorities initially allocated plots and distributed building materials to approximately 30 households. Once the first group had begun to establish themselves on this land, more followed and the ‘new’ villages of Mau-Ulu I and Mau-Ulu II were established.

In the mid 1990s, the security situation improved and the Indonesian authorities allowed some access to land in Mau-Ulu village. However, settlement west of the Sarai River continued to be restricted to an area surrounding the village offices in Uko Rema. Despite increased access to their own ancestral lands during the 1990s most of the residents of Mau-Ulu I and Mau-Ulu II have lived in their ‘new’ villages for over 30 years. During this time they have built their homes, planted trees and gardens and raised their children on this land. Despite living within the boundaries of Ainaro village, in Ainaro town, the population of Mau-Ulu has remained under the jurisdiction of their own village head and hamlet heads, and retains social distinctions based on customary *um lisa* social hierarchies.

Since independence few families from Mau-Ulu have chosen to return permanently to their pre-invasion settlements. There is little incentive to return to areas where there are few public services, poor access roads and little, if any, development. Some of those who have returned more permanently claim that they did not want to remain in Mau Ulu I and II where they had to either buy food or ask permission to farm other people’s land. One upland community in Dagamesa has rebuilt the local primary school to encourage people to return. However, a common choice among people from Mau-Ulu now seems to be to re-establish temporary

dwellings on ancestral lands while maintaining a residence in the ‘new’ settlements of Mau-Ulu I and Mau-Ulu II in order for their children to attend secondary school, to access health services or because they have jobs in the local administration.

Today, there is increasing pressure on the residents of Mau-Ulu I and II to either return to their original village lands or submit to the local authority of the village head of Ainaro. The call to submit to local authority is directly linked to claims that the people of Mau-Ulu are occupying the ancestral lands of groups from Sabago and Builico without consent. Some individuals and groups from Ainaro argue that people from Mau-Ulu should return to their own village lands and pay compensation to the customary landowners for lost rents during the period of the Indonesian occupation. The people from Mau-Ulu, on the other hand, state that they will not return to their village lands unless they receive compensation for the investments they have made in the land – fruit trees and houses – and would be forced to leave behind. Others from Mau-Ulu argue (incorrectly) that, according to Indonesian land and property law, the land is lawfully theirs as they have occupied the land for more than five consecutive years.

The village head of Ainaro stated that the current situation has created a lot of resentment among certain groups within Ainaro and Mau-Ulu villages, which has occasionally flared up into violent episodes. He felt that what is required is some form of administrative clarification whereby residents of Mau-Ulu with evidence of ownership or legal documentation (including land titles but not only) should be allowed to retain their land and property, while others, who he believes have been occupying land and property illegally since 1999, should be resettled to their own village lands. The village head of Mau-Ulu also deferred to the state to clarify the status of Mau-Ulu residents in Ainaro but was more guarded in his response, suggesting that people would be more willing to return to their own ancestral lands if there were better roads and services. There will be significant tensions and perhaps conflict if the state’s response takes the form of the draft 2012 land law, namely to grant alienable ownership rights on the basis of possession since 31 December 1998. We discuss this prospect further in Chapter 11.

State Intervention and the Development of a Local Land Market

In the 1980s and 1990s, the Indonesian military and civilian authorities undertook large-scale building and infrastructure projects in Ainaro town. Military barracks, the district and sub-district (*kabupaten* and *kecamatan*) administrative offices, schools, a hospital, electricity and water works, public housing for civil servants and teachers, and the town’s roads were all built during this period. The development of Ainaro town as a regional administrative centre also attracted a considerable number of ‘new’ settlers, mainly Indonesian and East Timorese civil servants, health workers, military and police personnel as well as traders and business people. Although some civil servants, including the military, police and teachers, were provided with public housing, others had to rent, buy or lease land and property locally.

Staff from the Directorate of Land and Property (DTP) argued that, in the late 1980s, the introduction of an (albeit limited) system of monetary compensation for land acquired by the state for public development and the demand for land from ‘new’ settlers had a major impact on local understanding of the value of land, particularly in terms of the individuation of rights to parcels of land. Individuals started to claim ownership to parcels of land that had previously formed part of the legacy of a whole *um lisa* group. In some cases this led to conflict between family members over land that had been cultivated and abandoned by earlier generations. In other cases, land that had been made freely available for long-term use to *um lisa* relations (whether wife-givers or wife-takers) was reclaimed by the ‘original’ owners. In a number of cases that have come to light post-independence, land abandoned by those who fled the area or the country in 1975–76 was occupied by others and sometimes sold or ‘leased’ to third parties. While those holding land under long-term ‘leases’ may fall within the category of ‘mere occupier’, under the draft 2012 land law, other claimants will rely on possession since 31 December 1998 in order to support claims to alienable ownership.

Compensation and the Status of State Land

DTP staff claimed that most of the land appropriated by the Indonesian authorities for the development of public infrastructure in Ainaro was either uncultivated land or land that had been used as ‘communal gardens’ during the Portuguese period. This land, they argued, was Portuguese state land that subsequently became Indonesian state land. However, they also acknowledged that some land occupied by the Indonesian authorities had been previously cultivated or used by private individuals or the Church.

DTP staff described three distinct periods in the development and implementation of Indonesian land administration in Timor Leste. During the first ‘emergency’ period, between 1976 and 1981, the Indonesian military were in complete control. Land was appropriated in order to establish strategic military posts and develop basic communications infrastructure. Land was simply occupied and used – no compensation was paid and there was no attempt to identify local landowners. During the second ‘consolidation’ period, between 1982 and 1989, the Indonesian authorities began establishing a civilian administration, including the equivalent to the Directorate for Land and Property (Indonesian: *Badan Pertanahan Nasional*, commonly referred to in Timor Leste as *Agraria*). Authorities continued to appropriate land ‘by force’ (or by fear of threat of force). However, in some cases a nominal level of compensation was given to those who could prove previous long-term occupancy or ownership. During this period, the authorities also went about informing the public about the role and function of the land administration and Indonesian land law and some people were also issued certificates and titles for their land and property. During the third ‘stabilization’ period, between 1990 and 1999, there were many more East Timorese civil servants working in the land administration. The administration began to apply

compensation rates, based on Indonesian national standards for land appropriated by the state for public works.

Many informants from Ainaro felt that land acquired by the state for public development was taken without due process or adequate compensation. Some also suggested that East Timorese close to the Indonesian authorities took advantage of the system to acquire land privately and disenfranchise or punish their political rivals. However, others stated that within the constraints of the system some compensation could and was obtained. In some cases people were successful in asserting their claims to landownership, and in one case at least were able to stop further loss of their land. In 1982, the Indonesian authorities built a primary school on land located in Kareta Fatin. Family X claimed that their paternal grandfather had farmed this land prior to 1946. However, at the time the Indonesians appropriated the land they were living in Dili. In 1994, when they heard that the authorities planned to build another school on the same premises, they approached the village head of Ainaro to complain about the arbitrary occupation of their land. At the time, the village head authorized the family to seek redress with the state and with a private individual who had also occupied part of the land. Although the private individual refused to cooperate, arguing that he had obtained title for the land, the local district administrator (*bupati*) halted the construction of any further school buildings on the land.

The Issue of Land Titles during the Indonesian Period

During the Indonesian occupation, the authorities implemented a number of national ‘projects’ aimed at issuing certificates or titles for land and property. Under Indonesian land law, three types of land title could be obtained: permanent ownership rights (*Hak Milik*); temporary usufruct rights (*Hak Pakai*), usually renewable after a period of 5 years; or long-term building rights (*Hak Guna Bangunan*), usually renewable after 25 years.

Local perceptions of these projects and the titling process in general were that they were affected by corruption. Informants either felt that individuals took advantage of the system to obtain official title to land that they had occupied following the Indonesian invasion, or that those involved in the titling ‘projects’ benefited from grafting funds from the state. However, according to DTP staff in Ainaro, few land parcels or properties surveyed in the course of these projects were ever actually issued any form of documentation, as many people were not able to pay the administration fees involved or were unwilling to pay taxes on land and property. DTP staff also stated that many of those who did obtain title were Indonesian citizens who left in 1999 and have not returned (see also de Sousa 2005, Elderton 2002).²² Under

22 This assessment was also made by former head of the Directorate of Land and Property (De Sousa 2005). Figures suggest that the majority of titles issued were for land or property either in Dili, where half the population were non-East Timorese in the 1990s, or transmigration areas in Covalima, Bobonaro and Liquisa (Elderton 2002).

the draft 2012 land law, land subject to ownership titles held by foreign citizens, including Indonesian citizens, falls within the private domain of the state (art. 8).

The Development of a Land Market

Despite the fact that few certificates or titles to land and property were actually issued during the Indonesian occupation, a land market appears to have flourished in Ainaro during this period. In particular the demand came from Indonesian and East Timorese civil servants posted to Ainaro town. As with the formal land titling system, questions of corruption and illegitimacy surround many of the transactions that occurred during this period.

Under Indonesian law, land and property transactions had to be prepared and witnessed by a public notary (PPAT). Given that few people had titles for their land or property, the verification process appears to have relied heavily on a system of 'self-certification' or the presentation of 'declaration letters' (*Surat Keterangan Pernyataan Hak Tanah*) containing a description of the land or property to be transacted and confirmation of the identity of the 'owner' by local authorities, usually the village head (*kepala desa*) or the sub-district administrator (*camat*).

DTP staff felt that this system was open to abuse and that often declaration letters were signed in the knowledge that the person claiming ownership was not the real owner, or signed in good faith but without local knowledge or confirmation from third parties. In Ainaro, DTP staff felt that only Indonesian citizens and East Timorese who had access to information ever registered land transactions, or sought to obtain a declaration letter. Furthermore, they suggested that most land sales were to, or between, Indonesian citizens and 'outsiders', as local people tended to negotiate access to land through more informal agreements or traditional *um lisa* structures.

Today, a number of people who are known to have sold their land to Indonesians during the occupation are claiming that they never sold the land outright. They claim they either 'leased' or 'rented' the land to the Indonesian occupants, or that they permitted the occupant to build a house or other structure on their land but never transferred ownership of the land itself. In some cases they claim that the Indonesian occupant built a house on the land 'in lieu' of rent and consequently that the house and land still belong to the original owner. The verification of claims is hampered by the fact that where documentation might have existed to prove or disprove claims most of this was lost during the course of the post-referendum violence in 1999.

The relocation of communities to Ainaro town, the appropriation of land for public development and the influx of 'new' settlers during the Indonesian occupation all contributed to undermine customary claims and processes for access to land. Although some groups were displaced or relocated within or close to their ancestral lands, often their ability to maintain authority and entitlements to land was curtailed by fear or the lack of means or influence to seek redress.

In the context of military occupation it is inevitable that questions of abuse of power and illegitimacy surround the implementation of policies and practices relating to land, property and natural resources. The development and application of a system of land administration during this period was at best incomplete, at worst corrupt and inequitable. Even where transactions were conducted in good faith, the contested legitimacy of state institutions has left the holders of rights open to competing claims based on historical acts of dispossession.

The Post-independence Environment

Between 4 and 23 September 1999, Mahidi pro-Indonesia militia based in Manutasi and Cassa attacked villages throughout Ainaro sub-district, burning and looting houses and public buildings. It is estimated that some 13,000 persons from Ainaro district were forcibly displaced to West Timor during this period by pro-Indonesia militia with the logistical support of the Indonesian military and police (CAVR 2005). Those who escaped forcible displacement to West Timor fled to the mountains towards the districts of Bobonaro and Ermera. Ainaro town was among the most affected areas by the wave of militia violence that followed the announcement of the UN-sponsored ballot results in which the East Timorese people voted overwhelmingly in favour of independence. Almost all public buildings in Ainaro were burnt down and looted as the militia and Indonesian military and police left the territory. It is estimated that in Ainaro town almost 80 per cent of private dwellings were also burnt and looted.

Those who fled to the mountains began to return to Ainaro as early as late September. Most returned to find their houses destroyed and many recall having sought temporary shelter in any buildings that still had walls and perhaps roofing. Most informants acknowledged that during this period both public buildings and private houses were occupied. However, once material and humanitarian assistance was made available most returned to their own dwellings, or at least the site of their former dwellings. Despite this narrative of orderly return to land and property the illegal occupation of property in and around Ainaro town, including state, private and Church property, continues to be an issue.

Some of the occupations that took place during this period were politically motivated or the result of long-standing historical rivalries. The Ainaro district police commissioner stated that this was particularly the case with disputes concerning productive land and in particular coffee plantations. He suggested that the main difficulty in resolving these disputes lay in the fact that many involved political rivalries dating back to the period of political party formation (1974–75) or earlier. What emerges is a cyclical history of possession and dispossession where competing notions of legitimacy come into play. Individuals and groups forced to flee at the time of the Indonesian occupation claim that their land was occupied by their political rivals. And those who farmed the land during this period claim that they were the victims of earlier acts of dispossession following the Second

World War. In some cases no prior claims to landownership exist but land has been occupied by those seeking redress or revenge for past injustices or, in some cases, by those who simply feel a sense of entitlement to land that they perceive to be just reward for having fought on the winning side.

The following example concerns conflict over a coffee plantation that is intertwined with allegations of collaboration with the Indonesian occupiers. It illustrates the way in which claims to possession can move beyond questions of physical occupation to notions of underlying social legitimacy. It also illustrates a relatively innovative dispute-management approach involving election of a hamlet head from the neighbouring hamlet.

Tensions over Coffee Plantations in Manutasi

Since 2000, there have been sporadic violent clashes over coffee plantations between people from the hamlets of Hatumedaudo and Raebuitudo in the village of Manutasi. The hamlet of Hatumedaudo became a Mahidi militia stronghold during 1998 and 1999. Many former residents of this hamlet have not returned to Timor Leste since the mass forced displacement of the population in September 1999. Local informants believe this is because many members of the community joined the militia or were related to former militia members. The hamlet of Raebuitudo, on the other hand, is historically linked to the pro-independence movement.

According to local informants, in 2000 a group of former pro-independence supporters from Raebuitudo began occupying and harvesting coffee plantations belonging to people from Hatumedaudo, who had been involved with pro-autonomy groups or the Mahidi militia, as ‘payback’ for the violence and terror they inflicted on the population in 1999. The occupation led to violent confrontation between those who had occupied the land and family members of the plantation owners.

Despite existing bonds of kinship and marriage between the *um lisa* of the groups involved, local informants stated that when the clashes got violent and ‘blood was spilt’ the elders were not ‘brave’ enough to deal with the matter ‘internally’ within the sphere of *um lisa* relations so the matter was taken to the police. As is common with many cases involving conflict over land or property, the police dealt primarily with the issue of assault while the underlying dispute over the coffee plantations was left in the hands of the local community.

This dispute over access to coffee plantations continues to be the subject of internal community negotiations. One of the ways in which the community Manutasi village has chosen to negotiate the sensitive political rivalries behind the dispute is by electing a hamlet head of Hatumedaudo from one of the senior *um lisa* of the neighbouring hamlet of Bahatilau. The hamlet head of Hatumedaudo explains this anomaly, suggesting that he was chosen as hamlet head because so few people from Hatumedaudo had returned from West Timor and that as the *gas’ ubun* (spokesperson) of one of the three main *um lisa* of the village of Manutasi, which was also traditionally one of the *dato* or ‘ruling’ houses of Hatumedaudo, he can legitimately perform this task. It appears that through this arrangement the

different house-based groups of Manutasi have been able to keep the peace within their village. The arrangement provides a further example of accommodation of customary authority and village government mechanisms, through the election of a customary elder as hamlet head, and the potential for this approach to play an influential conflict-management role. We discuss local approaches to land dispute management further in the following chapter.

Dealing with Land Claims at the Local Level

Local authorities, including the village head of Ainaro, the sub-district administrator, district administrator and DTP staff all suggested that within Ainaro village and Ainaro town there was ongoing tension between individuals and groups claiming ancestral or customary rights to land, those who had been resettled or relocated during the Indonesian occupation, and former residents of Ainaro who had fled abroad in 1975, been displaced to neighbouring villages, sub-districts or districts, or had moved to Dili for education and/or work during the Indonesian occupation.

Senior DTP staff in Ainaro felt that the resurgence of claims to ancestral land had been harnessed by 'modern' claims to individualized rights to land. One staff member stated that, given the increased value and commodification of land during the Indonesian period, today many children and grandchildren of an older generation involved in shifting cultivation were making claims to land that had long been abandoned by their direct family or even *um lisa* members. While in the past this land would have formed part of the *um lisa* legacy and would have been available to any members of the *um lisa* who wished to farm it (unless it was being used by someone else), today individuals and families argue that it is their own property inherited directly from their father or grandfather.

Some of the population, which had been resettled or relocated within or to Ainaro village and Ainaro town during the Indonesian occupation, have chosen to return to their pre-1975 villages of origin or pre-invasion settlements. However, for many there is little incentive to return to areas where there are no services and poor roads. As with the case of people from Mau-Ulo described above, many families have established dual residence in Ainaro town and areas of origin. Individuals, families and groups who were displaced at the time of the Indonesian invasion and later resettled or relocated in Ainaro village or Ainaro town seldom had the opportunity to ascertain whether the land they had occupied was previously used or farmed. During the Indonesian occupation only a limited number of people were able to obtain legal title to land and property. Today, many of those who have chosen to remain in Ainaro village or Ainaro town base their claims to land and property on long-term occupancy and use.

Former residents of Ainaro, or family members of those who were forced to flee or left Ainaro during the course of the Indonesian invasion and occupation, are making claims to land that they were forced to leave or abandon. These claimants include individuals or families with ancestral ties to the land or rights to land gained

through customary agreements and relations, as well as former local authorities, *liurai* and village heads. According to local DTP staff, not all these claims to land are well founded. They believe that a number of claimants sold their land prior to leaving Ainaro or during the Indonesian occupation. Returning individuals and family members often have little physical proof of ownership such as legal titles or transaction documents and rely on the testimonies of local authorities and in some cases former civil servants or functionaries from the Portuguese and Indonesian period.

At a national level, the promulgation of Law 1/2003 on the Juridical Regime of Real Estate established a process for registering private claims to land. However, the vast majority of claims to private rights lodged through this process are from foreign nationals (72 per cent). It is possible that the low number of East Timorese national claims lodged (26 per cent) reflects the general undisputed nature of claims to land and property but also the limitations of the land claims and disputes registration process (de Sousa 2005).²³ According to DTP staff in Ainaro only 59 claims were lodged for land and property in Ainaro district. According to their mandate DTP is also able to provide mediation services to individuals and groups involved in land disputes. Between 2000 and 2006, a total of 36 cases were presented to the local DTP for Ainaro district. Of these only six cases were successfully resolved. One case was referred to the courts and 27 remained 'pending'. According to the Ainaro DTP mediation officer, DTP has not been formally approached to provide mediation for the majority of 'pending' cases. We discuss mediation by the Land and Property Directorate further in the following chapter.

Given the reality of ongoing transactions and recent cases of disputed land sales or leases to outsiders (see example above on Rusgoa), in the absence of government initiatives or the availability or presence of local notaries, the current village head of Ainaro has tried to put into place a system for documenting transactions. Although he is aware that the vast majority of transactions go unrecorded and he believes that most are probably undertaken in good faith, the village head suggested that some system of verification and registration is required to ensure that there are no instances involving the 're-sale' of land or the sale of disputed land, or land belonging to someone else. According to the village head, if anybody approaches him to issue documents or declarations regarding the sale of land he will not sign anything until he has verified the veracity of claims – by visiting the land or property in question and seeking advice from neighbours and local elders. Any documents regarding land and property ownership are signed by the village head, hamlet head and at least two witnesses (usually persons with adjoining plots or neighbours). Copies of the documents are given to the interested parties but not necessarily (or seldom) to the DTP or the sub-district administration.

In the case of Ainaro village, and in particular Ainaro town, it is clear that in the absence of national legislation or institutions capable of dealing with private land and property claims and transactions, and in the face of the considerable challenges

23 This process was mainly Dili based with little impact in rural areas. See de Sousa (2005) for more information on the breakdown of claims.

faced by under-resourced decentralized institutions such as DTP, local communities continue to rely on 'customary' structures or innovative local initiatives in order to manage land conflict and provide some sense of tenure security.

Conclusion

Ainaro district reflects the complexity of competing constructions of possession and possessory authority found across the districts of East Timor. While the majority of the population continue to turn to customary structures in the first instance as a means of managing land and natural resource relations, the influence of customary authority has been increasingly challenged by the intrusion of other forms of authority and legitimacy, including in particular the state. Portuguese and Indonesian era policies and practices have transformed the relationship between people and land in Ainaro. Processes of individuation, commodification and titling of rights to land enacted during the Portuguese colonial period and the Indonesian occupation have given rise to various categories of competing land claimant. In the context of historical acts of dispossession and displacement, these possessory claims became entangled with competing sources of authority and legitimacy and contributed to chronic land conflict, as periodic regime change revived disputes based on narratives of grievance and histories of past cultivation and occupation. The case of Ainaro town, in particular, highlights the complex nature of current land claims in peri-urban and urban areas of East Timor. This intricate web of competing possessory claims, and contested interpretations of possessory entitlement, is far removed from Demsetzian predictions of evolving property rights, under the influence of rising resource values, and illustrates the challenges of developing secure and certain property rights in independent East Timor.

References

- CAVR 2005. *Chega! Report of the Commission for Reception, Truth and Reconciliation of Timor Leste*. Dili: CAVR.
- Census 2010. *Census of Population and Housing*. Dili: Direcção Nacional de Estatística and United National Population Fund.
- Clarence-Smith, W.G. 1992. Planters and Small Holders in Portuguese Timor in the Nineteenth and Twentieth Centuries. *Indonesia Circle*, 57: 15–30.
- Corte-Real, B. 2007. *Em Comemoracao do Centenario da Vila de Suro-Ainaro*. Ainaro.
- Corte-Real, B. 2000. Social Order and Linguistic Symmetry: The Case of Mambai, Suru-Ainaro. *Studies in Languages and Cultures of East Timor*, 31–56, 31–57.
- de Sousa, P. 2005. East Timor, Land Management: A Long Way To Go, But We Have Started. Paper to Expert Group Meeting on Secure Land Tenure: New Legal Frameworks and Tools in Asia & Pacific, 8–9 December 2005.

- Elderton, C. 2002. East Timor: Land Issues and Independence. Paper to Transforming Land Conflict, 10–12 April 2002.
- Fitzpatrick, D. 2002. *Land Claims in East Timor*. Canberra: Asia Pacific Press.
- Forman, S. 1978. East Timor: Exchange and Political Hierarchy at the Time of the European Discoveries, in K. Hutterer (ed.), *Economic Exchange and Social Interaction in Southeast Asia: Perspectives from Prehistory, History, and Ethnography*. Ann Arbor, MI: University of Michigan, p. 318.
- Hull, G. 2003. *Southern Mambai*. East Timor Language Profiles No. 5. Dili: Instituto Nacional de Linguística, Universidade Nacional Timor Lorosa'e.
- Pélissier, R. 1996. *Timor en guerre: le crocodile et les Portugais, 1847–1913*. Orgeval.
- Rawski, F. 2002. Truth-Seeking and Local Histories in East Timor. *Asia-Pacific Journal on Human Rights and the Law*, 1: 77–96.

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