

SE 103: "PRINCIPLES AND PROBLEMS
OF LAND TENURE"

"PROJECT PAPER"

Topic: "Settling of land Disputes
On North Pentecost Among
The Ahivo People: Vanuatu."

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INTRODUCTION

The purpose of this paper is to account for the causes of land disputes on North Pentecost in Vanuatu and outline the methods by which they are solved or settled. There is also an attempt to discuss why some of these disputes are maintained or why there has been no improvement in settling land disputes until recently.

Work contained in this paper exclusively concerns the land tenure systems on North Pentecost. Alike any society of the Pacific or the world, land is the most important resource to the North Pentecost people. Their day to day activities are centered around the use of land for gardening; hunting, gathering, fishing, construction [of houses and fences et.c.], for recreation purposes and for other social and religious activities.

As land tenure systems are not static but always changing; problems have emerged causing a lot of land disputes on North Pentecost. Important factors contributing to these disputes are due to population pressures, the societal technology and the social system [egalitarian] which causes anxious enthusiasts to obtain or grab more than their fair share of land.

For the completion of this paper, I had to rely entirely on the best of my knowledge. Relevant literature on this topic, especially for introductory purposes were also consulted. Where my knowledge was limited, fellow colleagues [North Pentecost students] on campus were consulted.

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PART ONE: "General Overview of Present Land Policies"

Vanuatu, the former condominium of the New Hebrides under the British and French Administrations proved to be the most complex and oppressive governmental system in the Pacific. This was due to its many dual systems which were both complicated and expensive to administer. The British and French Governments were present to protect the lives and secure the land claims of their respective citizens. In fact, we could say that a triple system of administration existed in Vanuatu, one for the French, the other for the British nationals and a third which governed the indigenous people. Under the joint naval commissions, well over half of the 11,880 square kilometres [Crocombe + Liu, 1982; p. 83] of the total land mass was under alienation.

As Vanuatu became an independent Republic on July 30th 1980, all alienated land was returned to customary owners as provided by Article 71 of the Vanuatu Constitution;

"All land in the Republic belongs to the indigenous custom owners and their descendants."

There are also restrictions to the acquisition of land by non indigenous or non ni-Vanuatu citizens. This is provided by Article 73;

"Only indigenous citizens of the Republic who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land."

The Constitution also provides that any entrenchment of any provision concerning land shall take effect after the Parliament has consulted the Malgatu Mauri [National Council of chiefs]. The Government also has the power to control any dealings in land that concerns the indigenous and non-indigenous citizens or non-citizens, especially in joint ventures. An example of this is the leasing of a Cocoa estate at Litzhitz Village on Malekula.

Land that was historically bought

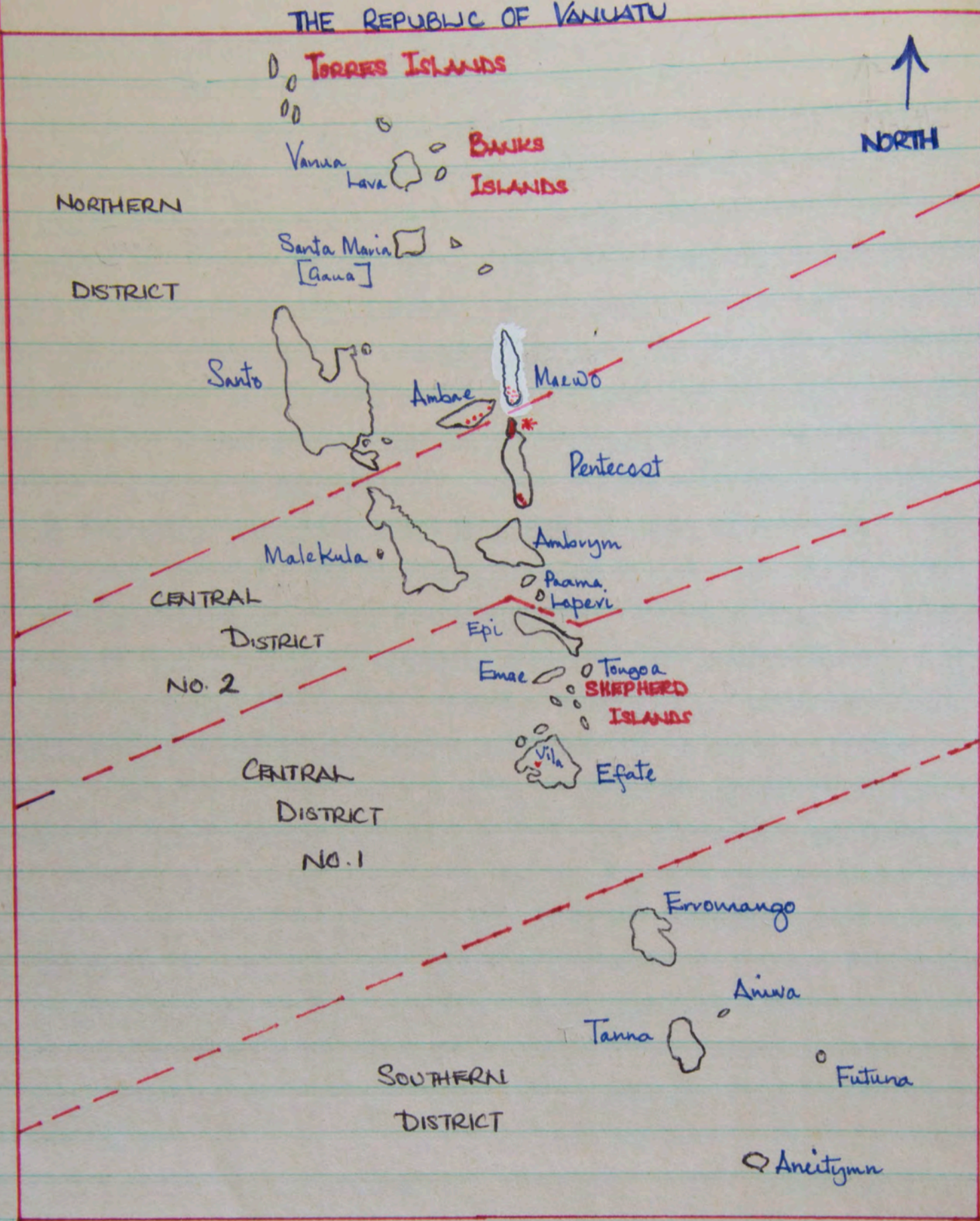
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by the French and British businessmen for large scale agriculture and foreign plantations has been returned to custom owners and have become unproductive. Some reasons contributing to the unproductivity is that the indigenous people are not prepared to operate these large plantations. It could mean that they do not have the know how or it is simply that they do not have the capital to run the plantations on large scales.

Other reasons could be that it is difficult to distinguish who the rightful owners are as there are a lot of claimants disputing the claim. Another reason could be that the owner is away and has not authorize others to act or operate the plantation on his behalf. An example of a foreign plantation which has become unproductive is the Honorore Coconut Plantation on South Pentecost. A very productive plantation managed by a Frenchman and later an American fifteen years ago today lies idle.

On North Pentecost, absentee landowners do not cause a lot of problems because in their absence; the maternal uncles and brothers manage the land [i.e. they have the right to control, distribute the cultivation, hunting and fishing rights to relatives] after consultation of the absentee land owner. So that if one is away and has a family; his or her family can use the gardens until he or she returns. If one is single, then it is on his or her maternal relatives [especially brothers, sisters, mother] who have this right. Unless the absentee landlord is not consulted then problems arise. In such a situation, the problem is resolved by the maternal uncle or the responsible pay compensation to the absentee landowner.

THE REPUBLIC OF VANUATU



Key

- * ● Ahivo District: North Pentecost
- ∴ Ahivo migration: Areas where some Ahivo lineages are traced to.

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PART TWO: "LAND TENURE SYSTEM ON NORTH PENTECOST"

Vanuatu consists of four major districts referred to as central districts numbers one and two; southern district and the northern district. There are subdivisions within the four districts under the establishments of local government which the constitution provisions provide for.

Pentecost lies in Central District Number [] and its local government was established last year, 1983. The project area [North Pentecost] covers five districts; Shivo, Aute, Aligu, Huvilau and Halkasal. The region comprises people who speak the same language and share the same customs and traditions. The most dominant religious group is the Anglican Church compared to two (2) Catholic Missions. The main source of income is copra, cocoa and recently cava has become popular due to high demands in Santo and Vila.

The social and political system is that of egalitarianism which indicates that one becomes prosperous and gains political prestige and becomes a leader by his own hardwork. Land transfer on North Pentecost is that of matrilineal heritage but there are cases where the children can also inherit land or property from their paternal parent. This has led to disputes after the father dies in the past. With the present policies which allow for the registration of land rights, the father can register those pieces of land he wants transferred to his children. The Constitution guarantees such a right only if the right procedures have been approached.

However, in this paper I am going to concentrate entirely on one region of the North Pentecost. It is the Shivo District which comprises my village, Lamalanga and of course a district which I am most familiar with in concern to its land disputes settlements. Shivo District spreads over the

most narrow part of the Pentecost Island and stretches right to the most northern point of the island. Ahivo comprises almost thirty per cent [30%] of the whole Pentecost population, thus it is densely populated. This is due to the fact that young people marry in their teenage age and also because the total land mass of Ahivo is small. However, people are reluctant to move out except for a few resettlement locations on South Maewo, a neighbouring island and in the Aligu and Kalkasae Districts. Others who have acquired jobs in either Vila or Santo only return for the Christmas Season while others never return. Those who do not return contribute some factors accounting for why there are land disputes to be discussed later in this paper.

Ahivo people like any other society of the Pacific or Vanuatu depend on horticulture, hunting, fishing and gathering. Land was and remains the most important resource to Ahivo people and all Ni-Vanuatu people. This could be accounted for by the fact that, with the emergence of political parties in Vanuatu, most platforms were centered around the return of land to indigenous customary owners. This was due to the fact that under the Condominium Colonial governments [Britain and France] there had been a lot of land alienation, especially on the coastal plains of some large Vanuatu islands, [Santo, Malekula, Efate etc.] In the colonial period, the dominant problems concerned land between the white and black people. As Jimmy Stevens [founder of Nagriamel Party] stated; "land is a mother to 'black pekinini' [child]," [Plant; 1977; p. 35].

If we consider the Nagriamel Party, the President, Jimmy Mali Stevens stated in the 1977 Pacific Island Monthly that;

"Nagriamel is based on respect for tribal customs and personal freedoms; and the belief that freedom of enterprise is the best method of developing a country. Because we have little wealth and natural resources we feel it would be necessary

to attract investments into our islands in order to create new jobs for our people and progress for our children. As long as the land rights of the native people are acknowledged we need have no fear, nor jealousy, toward those who would come here to do business." [Plant, 1977, p. 40].

The people of Ahivo are depended on yam, taro, Kumala [sweet potato], banana, breadfruit and other vegetables and tree crops. The food storage methods used on North Pentecost are the drying of breadfruit, nuts, fish and the storing of breadfruit in the sea to become pudding like. Popular domesticated animals are pigs, dogs, cats and chickens. Pigs are the most important valued animals on North Pentecost because one achieves social status by the number of pigs he has. Pigs are valued for pig killing ceremonies whereby one receives a new or higher rank depending on the value of the pig's tusks and the number available. Pigs are also used during marriage as the bride price. Since the early 1960's, people are now herding cattle and goats to a very small extent.

Subsistence agriculture is the basis of the people's livelihood on North Pentecost or of the Ahivo people. People can move around freely on North Pentecost without fear of sorcery and warfare and periodical shifts are practised in times of cultivation or the harvesting of goods or crops or for the making of copra. For example, if an Ahivo family due to social ties [eg. through marriage] has garden rights in the Aute District, the family can shift there to plant or make a garden. They can return and regularly visit it to tender it but when it comes to harvesting, the family can move there during the harvesting season to harvest the crops.

Land rights in the Ahivo District or on North Pentecost are those for residential, cultivation, sacred and ceremonial purposes; access rights,

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transfer rights, control rights and acquisition purposes. Hunting, gathering and water rights is restricted to where one has the right to land. One cannot just wander off into any bush or forest to gather or hunt unless that area is far from any settlement. People have a mutual understanding of not trespassing onto another person's land because this will lead to a dispute. The only area that anybody can have access to is the sea for fishing and collecting sea foods or for obtaining sea water for salt. No matter how further inland one is to the sea one has the right to use any coastal villages for access to the sea.

Matrilinal heritage is the transfer method of land rights on North Pentecost. This means that the children inherit the land and other properties from their mothers lineage compared to the inheriting of rights from the father which is popular in Vanuatu. As mentioned earlier, today, children can inherit from their fathers. These rights will only be legitimate by the availability of official documents as proof that the father has registered such a piece of land to be for his children. This concerns especially the residential land where the children have been growing up. With cases where the father has not registered such land or property, it happens that on his death, his paternal uncles and nephews claim that land back. This can lead and has led to disputes unless there is a chief or an elderly man to prove or witness the event by which the father had transferred this right. Most fathers at the time of their deaths [before they die] would call together his children, paternal uncles, nephews, sisters, nieces and cousins and make such a claim for his children to avoid disputes after his death. The presence of the

two parties can guarantee the security of the right as to deny it would be an insult to the dead man, especially if his matrilineal relatives deny his children this land.

However, matrilineal heritage on North Pentecost does not mean that women have the right possessed by women. Women have the rights transferred through them, by the mother but it is the sons who possess and control these rights. For example, in the case of my family, though I have an elder sister, my second brother is the most important. He has acquired some rights from my eldest uncle before his death and should acquire every right to land and property to be controlled by him on the death of my second maternal uncle. From my brother, the rights will be transferred to my eldest sister's eldest son which will be passed down to my eldest sister's daughter's son. This could be understood better by looking at the diagram on the next page.

In the case of my family like many others, the transfer seems to go through the most popular and prestigious sons. For example, my mother [the last born of her family] has an elder sister who has a son older than my elder brother but it is my brother who has acquired all the rights. Some reasons for this maybe that my aunty [mother's elder sister] is dead or that it is because my Cousin brother is away in Santo. This could not be appropriate because my elder brother also has spent most of his time away from home. I think the main reasons are that, first my family is a more popular family than that of my cousins. This is due to my father's social status and due to my elder brother's position as a priest and a political leader. Another reason could be that the members of my family have

My Extended Family: An Analysis of Land Transfer.



KEY

Δ, \bigcirc - Black - Bule Tribe

Δ, \bigcirc - Blue - Tabi Tribe

\blacktriangle - Controller of Land Rights and possible future Controller.

\blacktriangle - Present Controller [Brother]

\bigcirc - Outsider marrying into the N. Pentecost Society and becomes a N. Pentecost woman. [sister-in-law - Walter's wife].

\bigcirc - Woman marrying outside North Pentecost but still maintains her rights. Her children also have the right to land in N. Pentecost. [sister]. As outside women are adopted outside men are also adopted, eg. [brother in-law into the Bule Tribe].

\blacktriangle

- Outsider adopted into the Bule Tribe [brother in-law - Sister's husband].

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had western education thus have acquired some reasonable jobs in town so that we are most valued by our maternal relatives. This is because although we rarely spend more than two months of our life time on North Pentecost we are still of importance or more important than the cousins who spend most of their life time on Pentecost.

Land is adequately transferred through the mother because of the existence of the two distinct tribes on North Pentecost, the 'Bule' [my father's tribe] and 'Tabi' [my maternal tribe]. So that it means that even if a North Pentecost girl marries to another island within Vanuatu or overseas, her children can still inherit land on Pentecost.

In the case of outside women marrying North Pentecost men, the women or wives have to become a North Pentecost woman. What happens is that the women are adopted into a tribe and treated as a genuine member of that particular tribe with all the rights a born North Pentecost woman has.

However such women are expected to maintain good relationships with the relatives of the family she was adopted in. This is to ensure that the future generations would not discriminate against her children. Another example of this is my brother, Walter's wife who is a Polynesian Solomon Islander who is now a Pentecost woman with the same land rights any woman on North Pentecost has. My sister, Hanson displays an example of a woman marrying to another island but still has land rights on North Pentecost as she is married to an Efate man.

The fact that all my clan's land rights have and will be transferred or be inherited by my brother, Walter, does not

mean that my cousin brothers have no power over land. They, my cousin sisters, my sisters and brother and I have the right to advice Walter [the controller] on how to distribute, transfer, control and on how the land be used. For example, should it become a commercial piece of land or maintain that particular piece of land on a subsistence level.

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PART THREE : "REASONS UNDERLYING LAND DISPUTES"

As mentioned earlier, Shiro District has the most highest population density on North Pentecost. It is due to the fact that young people are marrying at an early age. The result of this is that land has become inadequate or the amount of land per person is decreasing. Insufficient land is not due to the population pressures alone but also to the fact some cultivation, hunting and gathering lands for subsistence living have become commercialized. I do not mean large-scale commercialized agriculture or plantation [with the use of machines and manpower] but referring to individual land units which have become heavily planted with coconuts or cocoa.

However, though land is becoming inadequate, it does not mean that some of the Shiro people have no access to land. This is because belonging to a village within the district means that you are entitled to farm, hunt and gather goods from the village land and from your land. Due to social ties, one can have land rights in his or her village, another village of the same district or several villages; and in several other districts on North Pentecost. Land rights often stretch as far as South Pentecost, the neighbouring islands of Aoba and South Macuwo. The further the land rights stretch, the more difficult they become to trace the right boundaries, thus it leads on to clashes or disputes. Disputes also arise because some people have deliberately taken control and are using land which they know does not belong to them. This is because some ambitious people have grabbed land not belonging to them to use it for cash cropping. Such people succeed

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in using land not belonging to them by falsely stating that they are related to the great man who last owned that piece of land. Or they incorrectly trace their lineage and associate it with a piece of land which does not belong to them.

Disputes arise because there are no permanent recording methods of recording which land belongs to which clan. The people therefore depend on the memories of the oldest men and women or chiefs who are expected to know all about which land belonging to which group of people.

Sometimes old men and women and chiefs deliberately interpret the land right by favouring the party which one is closely related to or which he or she has interest agreements with. An example is the case of "Surai versus Leo". Surai is the rightful claimant of a kamoru piece of land. Surai and his brothers have continued to make their living by selling the copra obtained from the coconut plantation planted by Surai's uncles. However, in 1978, Leo [a distant relative of Surai] claimed that he was the rightful owner. He began using the plantation for his own ends and destroyed all the property [apart from the coconut trees] that Surai had constructed or planted. Surai and Leo began disputing the piece of land and thus consulted the chief for evidence on who was right. Since the chief had had a row with Surai's brother because Liliu [the chief] had killed Surai's brother's pig, the chief of their village [Surai + his brother] denied Surai's right. Leo continued using the land and the dispute persisted until it came to the time [five years later] when Surai threatened that he would kill Leo if he does not stop using his land.

This attracted all the chiefs from the Ahiro District to settle the dispute. Nobody except my father knew who the rightful owner was. He [my father] in the meeting had to trace back the many generations of the past, naming the graves, the streams and trees and rocks that the owner was connected to. It all narrowed down to Surai being the rightful owner. Iliu [the chief] admitted that he deliberately made the false claim on Leo's side because Surai was his rival. The dispute was settled by Leo paying compensation and fines for his false claim, the destruction of Surai's properties and the making of Surai's copra to fill his pockets. Iliu also had to pay fine for his false claim and hostile attitude to Surai and his brother and for misusing his power as a chief.

It is difficult to rely on the use of memory to determine who the rightful owners of land are. This is due to the fact that through history only the prestigious, powerful and magic like men and women are remembered. Also that events such as wars and who won them could be remembered if it affected the mass population. So that today, the memory of the 'old man' or 'old woman' is that of the successful people of the past not those lower down in the hierarchy.

Some land boundary markers on North Pentecost are ancestral graves [like Surai's case], large trees [especially banyan trees], rocks signifying a belief concerning that piece of land; rivers or the sea and the changing patterns of the land relief.

The memory of an old man or woman can displace land to other clans which are not the true claimant. An example of this is the case of "Boga versus Iliu" [the chief]. Boga's

great, great grandparents are from Malekula who were drifted ashore on a coastal village of Avatubwe. Boga's generation traces back to only six generations. As Avatubwe was not a village then but a fishing resort for Iliu's great, great grand maternal uncle; Boga's great, great grandfather claimed the coastal area.

Being the chief, Iliu's ancestors allowed Boga's ancestors to use the land but became grabbing more and more land as time went pass. When Iliu became chief, he constructed a fencing system around the coconut plantation planted by his late uncles but which were shared with the Boga lineage. Boga became upset and begun disputing the land and sought the memory of an eighty-five year old man who died very shortly after.

The advice received was that the land was Boga's but since Iliu's ancestors were chiefs wanted to grab that land. Boga was never told he was not from Pentecost by his ancestors and Iliu's ancestors and Iliu have always covered this up because they did not want to hurt them. However, Boga became too ambitious and in 1982, he collected a gang of his male relatives and they destroyed the fences belong to Iliu, killed Iliu's cattle and burnt his home.

It was reported to the governmental headquarters on Malekula and the police arrived and collected Boga and his gang away to Santo for a court case. They were left in jail for three months in Santo and returned for the court hearing on North Pentecost. Prior to the western court hearing; traditional court was held whereby proved to be the rightful

owner by the majority of the people and chiefs who were present in the traditional court. Boga's history and uncovered and when he realized that he was a foreigner he deeply regretted having behaved as such in the first place. Boga paid compensation to Iliu for the lost and destruction of his property. Boga promised that he would never stir up any more disputes or land disputes. In the western court case at the end of 1982; Iliu was still victorious while Boga did admit that he was wrong and paid fine again to Boga.

Disputes also arise over land taken over by missionaries and declared mission stations of the Anglican Church. An example is the Kamalanga [my village] Anglican Mission which previously housed mission workers. Today, the mission has been moved to another village closer to the community centre of Ahivo. As a result, two parties are disputing the area. The present owners of the land and the villagers who want the mission station to continue to remain the property of the Church. Though the land has been registered as a mission station, those whose ancestors have sold the land to the church have moved onto the station. The Kamalanga villagers have given up debating the issue but the effect of this is that, the village church station has become very unattractive. Villagers are reluctant to attend services and prayer meetings and refuse to clean the church or clear the church boundary. This is because those who have moved in have not contributed anything towards the maintaining and clearing of the boundary. This has created disunity among the villagers and within the church. This is because

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the owners of the piece of land want the church to rent their land. But since the Shivo Mission Station has been moved to another centre, they claim that the Hamalanga Village Council pays rent for the land if it is to be for the village use.

Such a case also applies to areas which contain the school, hospital and the community centre. Though such areas have been public areas of the past and do not require rents, money or cash today motivates owners to demand the compensation for such pieces of land.

Disputes also emerge due to the construction of roads, airstrip or water supply system which cuts through many individual lands. This is one reason why North Pentecost does not have an airstrip although one has been constructed but not of use. It was constructed in 1967 and ever since, the people are still disputing that piece of land. The dispute is between Hamalanga and Haone Villages [on the coast] and the Aroibwaratu Villagers which have the airstrip stretching along side the village. As the Public Works branch operating on North Pentecost claimed that the field needed extension, it meant the removal of some homes of the village. Villagers have protested against this while the Hamalanga/Haone owners are determined to see the change take place for easy transport to other islands. Well, the dispute has never been resolved to this present day and a new location further inland has been located. The dispute even at the time, 1979 went as far as the coastal people banning the Aroibwaratu people from any access to the coast whether to fish, catch a boat to another island or even visit relatives.

Other factors which cause disputes among the Shivo people are over-fencing of land for cattle raising. It occurs from the fact that there are no distinct boundary markers dividing one piece of land owned by a different individual from another. In some situations, such actions are deliberately done, especially if the owner of the fence has more social status. Such ambitious people take advantage of the low status people thinking that they would not retaliate. The many cases that I know of have had the retaliation from the concerned whose land was encroached onto.

For instance, the case of "Bogiri versus Gari". Bogiri, a well of businessman had his cattle fence stretching onto Gari's land without Gari's consultation. Gari asked Bogiri to remove but it was a failure. Bogiri claimed that he also had the right to that land [Gari's land]. In 1979, two years after, Gari became very angry as Bogiri would not even compensate his land. Gari went ahead and cut down all Bogiri's fences except those that stretches on his land and all the cattle was scattered.

Another problem that led on from the scattering of the cattle was the overgrazing of Bogiri's cattle on other peoples' land and damaging their property and enlarging the dispute. This dispute was settled by the custom chievers that were available at the time and place of the meeting. After hearing stories from both sides; Bogiri had to pay fine to Gari for grabbing Gari's land. Gari also had to pay fine to Bogiri for cutting down his fences and Bogiri had to pay compensation to anyone whom his cattle caused nuisance to their property.

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"SUMMARY"

Vanuatu rural societies like any rural society of the world are subsistence societies. Therefore land is the most important resource to Ni-Vanuatu people. Individuals value their rights to land and value the land resources as parts of their lives. So that when these rights are disrupted, disputes emerge.

The Aivvo people of North Pentecost have land disputes because individuals [especially men - controllers of land rights though inheritance is matrilineal] grab land which does not belong to them. Such problems can arise due to the misinterpretations of the 'old man'. So that today, the use of memory seems not to be the most effective method of recording land titles and rights.

Despite the high population pressure among the Aivvo people, anxious males grab more than their fair share because money or cash motivates them to despise their fellow men. An example would be the case of "Bogivi versus Gari". Bogivi and many others want their land used on commercial basis. The most common activities for income earning among Aivvo people is the producing of copra from the coconut plantation and the selling of the cattle that graze under the coconut trees.

When problems arise it is the village or district chiefs that make the final decisions after hearing from disputed parties, the 'old man' and the appropriate people with some knowledge about that particular piece of land. If we consider the Vanuatu Constitution, it provides for village and island courts to exercise jurisdiction over customary and other matters in Article 50, [Vanuatu Constitution, 1979].

The best method of settling land disputes on North Pentecost is by referring to the basic customary objects that exists on that land. The 'old man' traces the lineage by referring to the ancestral graves, rocks, pools and beliefs in association with who is the legible owner and the boundary markers. Consider the case of "Suvai versus Leo".

We can say that there is a highly political court system at both the village or island levels and at the national level. At the national level, a dispute over alienated land shall be settled in court by the chief Justice and his colleagues. In the time of dispute, the alienated land is held by the Government on behalf of the customary owners. Article 76 of the Vanuatu Constitution provides for this right and power of the Government. However, it is difficult to settle land disputes in custom because there are too many customs, languages and cultures. Therefore, the settling of land disputes in custom is only effective at the village, district or island levels.

In conclusion, I think that land disputes on North Pentecost among the Shivo people would be limited if the already prosperous males stop grabbing the innocent's land to enrich themselves. Or that it would come to some limitations if the Local Government place some restriction on the activities of the prestigious and wealthy who are the main rivals among the Shivo people. Also that, with the existence of only one or two old men today who can relate the lineage of the clans on North Pentecost, the local Government members of North Pentecost should take up the responsibility of recording these land rights from the old men before they die with them. This would make work load easier for the island court in settling disputes as the recordings could be used as official. This would serve that purpose that nothing is legitimate or lawful unless written document are available as a source of witness. I believe that if all land titles, rights and all clans, tribes, lineages and families become officially recorded; the Shivo people would be reluctant to dispute land rights unless such disputes concerns alienated land. In such a situation, the island court and the Supreme Court are responsible to settle the dispute.

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