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Subject: SE 103

Topic: EXISTING CUSTOMARY LANDS
TENURE SYSTEM IN VANUATU

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Vanuatu is a country so small but the islands are culturally fragmented. The ideas people have towards land differ from island to island. Therefore there are many different land tenure systems but unfortunately detail understanding ~~many~~ is still lacking. Nevertheless, there are many areas where Ni-Vanuatians share common feeling about land.

This paper will deal with some of the general feeling of land people feel towards land, it will also try to define the main rights in various customary tenure and how land disputes are settled.

How Ni-Vanuatians FEEL TOWARDS LAND?

Land is the core of Ni-Vanuatian social system. It is one of the things that control and the use of land that ^{one} could see in social prestige and political power. Land to a Ni-Vanuatian is as dear to him as his own offspring. He does not merely look at land as a commodity to be exploited but rather own to it.

Because indigenous people do not look at land for political or economic meanings, it is obvious that land is inalienable. Therefore, "to sell land for material gain alone is to deprive ones own family and people of their security, pride and identity". [Robert Lane, in "Land in the Pacific" edited by Ron Coombe p. 249] A specific example of this as pointed out by Robert Lane is Raga. Raga is a district of Pentecost. Its land is best understood in the context of its social structure. Every indigenous people in Raga is given a name & belongs to a named exogenous matrilineal kin group reputedly descended from a founder ancestor unambiguously associated with a place or an event and a place of origin. We shall deal with Raga's conceptions of land holding later when we are going to discuss the form of rights and land transfer. [Ibid 249]

Ni-Vanuatians may use land for economic production but not as critically as his counterparts the Frenchman and Englishmen. He uses and distributes land to satisfy his immediate needs in relation to his subsistence economy. And in order to succeed he has to learn to use the soil as well as to follow the social and political rules connected to it. The ties of tenure and kinship and the deep close relationships to the land are phenomena that no European legislation

has even managed to cope with [Brook Soper P. 6]

INDIVIDUAL RIGHTS.

Vanuatu as in many Pacific Islands, land rights were traditionally held by groups. Land was inalienable because individual rights exist only at a certain group level. It is also obvious that one group does not hold all rights to a particular piece of land. The principle as pointed out by Soper that "each piece of land was a center of focus with groups radiating out from it with varying degrees of connection to it." [Page 250 Robert Lane by Ron Coombes]

The right of an individual within a land holding group would vary at different levels. For instance, Mr Soper pointed out that an individual may have rights to four or five pieces of land in his community and elsewhere, but the extent of his rights would differ from one piece of land to another. The position of the person would also determine his right to land. Besides, the location of the land and the group's connection with that piece of land is just important as the later [B. Soper 7]. In addition, Ragan's conception of land as clearly pointed out by Lane, that it is not proper of land in terms of ownership because land is rather one component in a total system in which people are another component. Therefore, parcels of land are related to each other in the same way as people are.

TRADITIONAL LAND TENURE

Land in Vanuatu is mostly held ~~by~~ under powerful groups. The group could simply be divided into three categories. There is the tribe, Clans, Lineage (family individuals). Tribes were traditionally the largest. This group still exist in some islands of Vanuatu, like Malakula, Santo, and Tanna. The average population of these tribes ranges from 50 to 300 inhabitants. On other larger island tribal grouping has died out due to decrease in population. Islands like Epi, Uvate and Erromango, although large the tribal grouping has long been out of existence due to movement of ~~land~~ land alienation. The word tribe is very well defined by Rivers. He says (1910 p. 15) "the word tribe I mean a group of a single kind, always - Melanesian settled in a definite locality".

which speak a common language and is capable of uniting for common action as in warfare." In Tanna it is not surprising to see groups of villages often five to six or united with a common ties. This could be dialectal or highly geographical determination.

Tribal land were traditionally obtained through warfare and robbery. This means that during warfare the defeated tribe is pushed further and the conquering tribe extended further. The Malakian ~~for~~ particularly that coastal people were pushed out by inland tribes. Most of these people migrated to Malo the neighbouring island. They then bought land from the natives. I personally know of some of these people living in "Amabelau" on Malo. [B. Sopa P. 7 f. Observation]

Today, these land (tribal) are known as "dark bush" and are used for hunting by tribesmen and are nearly subject to disputes. However, today due to increase in population and increase in value of land it is tribal land is becoming a center of friction. As pointed out by B. Sopa that Lumbukuti and Kati, two villages of Songon are still quarrelling about this land due to high population density. [B. Sopa Ibid p. 7]

CLANS:

The second largest holding group is the clan. This land holding group is widely known in the group. For instance M. Allen identified this with Raga people a Pentecost [M. Allen 246] He pointed out that people of Raga reputedly descended from a founding ancestor miraculously with a plant or an animal. It was also noted in the Southern island of the group, Tanna, that people have their preconceived ideas about their ancestors. Humphrey clearly illustrated this by a story told to him by Karkava a resident native. He said that a group of people who believed that they descended from banana would not eat banana even though they grow them. They use their banana in exchange for some grubs or yam which is not taboo for them. There are other villages in White Sands, Tanna, who would not eat breadfruit because it is taboo to them. [Humphrey P. 15] Lands held by clans are normally ~~held~~

highly productive lands. One could still find clan lands on Tanna, Pentecost, Malekula and Aoba. These lands are most disputed because of their high productivity and access to the village. These disputes so often evolve around the disagreement between boundaries rather than deciding the true ownership [ibid p. 5]. And since land is becoming a valuable resource today disputes I think are more common since most crops planted in clams are coconuts, coffee and cocoa.

SUBLINEAGE, FAMILIES AND INDIVIDUALS:

The third category of grouping generally in the island includes sublineage, families and individuals. The land held by this groups are small ~~plots~~. The group hold right to gardens, fruit trees and buildings. Besides this is where individual right is prominent since it is within village reach and input of individual labour is highly concentrated here. However, the right of individual is very flexible in terms of land usage. For instance, in South East Ambegum, Tonkinson noted the person who controls the use of land is the head lineage. Each year the lineage head of every village choose a suitable site for village garden. The village garden could be in any individually owned land. Then the community clear the bush, fence it and plant it. This plot is then restricted from any villagers even the person who own the land to go there alone. The procedure continues when after harvesting and the produce exhausted primary right return to the ~~own~~ lineage member to whom it belonged. [R. Tonkinson p. 9] Therefore land traditionally was not a ~~private~~ commodity that could be measured in wealth. Land was not own in European sense of word because owning land traditionally means the right over existing trees and the land belongs to the patrilineage or matrilineage but not individual. And as pointed out by J. Cernia, "Under the customary laws there is no such thing as individual ownership of land." [J. Cernia p. 478] Since people in South East Ambegum practiced slash and burn agriculture, it is obvious that an individual's right to land which are allowed to fallow over periods of years greatly

* by own I mean own right to trees etc.

diminished over the years. In addition, certain areas of patrilineage land are given to non-patrilineage members to use under special circumstances.

FORMS OF RIGHT:

With cultural diversities in mind about Vanuatu, one would conclude the diverse forms of rights from one island to another. But as most Pacific islands who share aspects in common, the most generally accepted forms of rights are: (I) Original settlement on the land by the ancestors of the group

(II) Conquest or other customary means of transfer

(III) Immemorable occupation or ownership by ancestors of the group although not necessarily continuous.

(IV) Continuous occupation by the present members of the landowning group.

(V) Recognition by other groups of the nature of right held over the area. [B. Soper 3]

HOW LAND IS TRANSFERRED:

In most islands of Vanuatu land is transferred patrilineally and matrilineally in other parts. In some islands to the North of Vanuatu for example Pentecost and Efate both inheritance systems existed. In Rapa, Pentecost this existed and in the south land is handed down patrilineally.

MATRILINEAL LAND TRANSFER

In the case of Rapa, men are born in their fathers' village (where they are not genealogically members of the local line) as a result they have to move to their mothers' brothers where they are genealogically members [R. Lane 1.218]. Unless they move they have only primary right or use right to their fathers' land. It does not matter, however, the moment to move or at what age, at puberty, marriage, later or never depends on local custom.

LAND TRANSFER PATRILINEALLY.

This I think is the most commonly accepted form of transfer in the group. In my island (Tanna) this is accepted right throughout. The rights to land on the neighbouring islands of Aniwa, Aniwa

and *Roomanga* are predominantly patrilineal. Land is passed from father to son. This is done at the very last days of the father. Before a father dies, he divides his possessions amongst his sons. The sons then exercise individual rights to coconut, trees, fruit trees and gardens. If the man has no heirs and is married, the right to his land is automatically reverted to the living brother. The brother could marry the widow to retain that right but otherwise, the widow has to return to her people without any malice. I have already experienced one incident as such. In this case the man has married and they had had two kids. The man went fishing one morning and was attacked and eaten by a shark. After mourning days were over the brother of the deceased married that widow. This not only happens in my island it also occurred in *Umbyoum* as pointed out by *Tankinson* [P. 39]. However, I think *Novanuatians* adapt themselves to this system fairly well because they are part of the system. For instance, in most *Vanuatu* islands, the son and daughters of a man call or refer to the brothers of their father as classificatory fathers and mother's sisters, mothers. The husband call his wife's sisters potential wives and the brothers of the husband would refer to their brother's wife and his wife's sisters as potential wives. A special term is used to distinguish this relationship in some island. For example in *Malakula* classificatory brothers call each other *tuam* and *tesu* according to their relative age [Deason P. 75]. But I must verify the fact that these are not used in a loose terms since they only signify the close relationship between families. This leads on to the fact that marriages were traditionally arranged, and so avoid any in-cousinship to close relatives. These relationships are used. I believed it would be terribly if shameful if a son marries to his mother's sister. [Personal perspective] Traditionally and is still the case today, as pointed out by *Tankinson* that if a widow with a son married ~~off~~ and when to later live in her ^{new} husband's estate, the son of the later could return to his father's land calling the father and all his brothers the father does not lose any business in actual viewing property, paternity and maternity" [Deason P. 34].

and lay claim to the land when he becomes an adult. [Ibid p. 37] During the course of his absence, the senior responsible member in the community hold right or responsibility to such land. The absent owner normally request for absolute right to his land through a formal ceremony or gift as present.

In the patrilineal societies women are often not forgotten when tracing genealogy. For instance, my father could trace our genealogy back to only seven generations. He still remembers every male grand, grandparents when reviewing our genealogy. When I asked him if he remembered the grandmothers, ^{as well,} he said, he could only remember up to four generations. Thus, one only remembers what he thinks will be of benefit to him [Professor Ron Crocombe, Lecturer 1983] This does not necessarily mean the child could not have access to his mother's land. It must be made clear that traditional land tenure is very flexible and depending on long lasting relationship [B. Soper 8] Thus a child may be given special right to use land in his mother's father and brother's estate as pointed out by H. Trease [H. V. Trease p. 13]

TRANSFER BY GIFT:

Traditionally land were also transferred by gift. On Malo and northern Malekula where social organization are parallel, a child is given special right to land other than his local "line". This is normally done by the father of the child. On Malo the father of the child performs a ceremony called "redi". During this ceremony special gifts are presented to the wife's father and or brothers for varying rights to land being granted to his son or daughter [H. V. Trease 13.] On Lelapa and the Shepherd islands land are transferred five days after the death of a kinship. The ownership of land is transferred after the presentation of gifts such as, yams, pigs, mats and so forth. This mechanism of transfer is known as NASAUDONKA. [J. Kaloroa Reading p. 2:6]

It is also obvious that if a son went to fish and the first fish he caught for the first time must be cooked and its head must

be eaten by the boys (uncle or grand father or a close relative). After sometimes the relatives who had eaten the fish head would show the mother of the child a piece of land from which the boy will have absolute right to it. [Ibid 207]

However, this does not apply to hunting grounds. Besides, gifts in the form of garden produce and mats and fish are scarcely seen these days since people prefer other forms of prestigious goods. Land also is not easily transferred these days in return for gifts since land is becoming scarce and valuable (economically), thus motivated people to planting more cash crops such as coconut, coffee and cocoa.

TRANSFER THROUGH FRIENDSHIP:

Kinship system is often noted to be the most important in traditional tenure systems and it is the basis on which most current rights are established. However, one must understand that traditional tenure is flexible, subsequently land could be transferred when friendly ties exist. As Trease pointed out, "Friendship ties between two individuals may become so strong that kinship like rights and obligations are recognized and continued into succeeding generations." [Ibid 11]

For instance, words "Joco" and "Marasai" are used in Malo to distinguish those who are actually related by blood and those who are not. The word "joco" means a group of people related to an individual by blood and marriage and "Marasai" refers to strangers. [Ibid 11-12] This is very important as the closer one is the more right he has to his "joco's" land. However, being a joco does not necessarily imply that unlimited right is granted, specified rights are preserved for close relatives. Although "Marasai" is referred to as a stranger or not related by blood or marriage, it would not be unusual for a "marasai" to gain temporary access to land if close friendship ties or feelings of mutual obligation had been established. [Ibid 12] Trease also noted several cases where friendship has led to the use of the term "joco" between two individuals who were actually "marasai". This

relationship & was then accepted by the succeeding generation and reinforced by the adoption of children from respective families. Here we are talking about friendship that existed before the coming of European and Christianity [R. Tonkinson p. 121] It was also pointed out by Tonkinson that people who moved from neighbouring villages, such as Nonunai and Pakuats were often given ~~small~~ small pieces of land by friends on Maat, so that they would have gardens, lands and coconuts. (Ibid 49) Friendship therefore is a medium whereby land was transferred.

LAND TRANSFERRED BY SALE:

Land transferred by sale took place mostly in the northern islands such as Pentecost, Malo, Malekula and Ambrym. Traditionally these lands were bought by pigs, mats, yams and kava. Such land belonged to a deceased or ~~and~~ individual who had excess land. On South East of Ambrym the buying of a deceased land is obviously inevitable and this was done (bought) by any community member who has the resources. Tonkinson noted that during the funeral anyone who had command over resources could compensate the mourners. Thus buying the deceased land and resources and could deprive the widow and the children of their land [Tonkinson p. 49] Today money is substituting pigs, mats and kava in the buying of land. However, people in pre contact times did sell land especially in the north of Vanuatu. This was done because ~~then~~ people had a relative surplus of land [R. Crocombe 1970 p. 59-64] On Malo, there are plots of land which are called "Tanovooli". This term literally means "land which has been bought", and this includes land rights which were purchased traditionally with pigs [H. V. Trease p. 25] The process of using pigs is parallel to the use of money today, that paying off the rights of the original owner. The buying of land in pre contact times does not only confined to people living on that island, but rather, any favourable migrant could be sole land. For * Nonunai + Pakuat are two villages in South East Ambrym

instance, Trease noted this by a ~~an~~ old man who was believed to be 100 years over. This man told of Malekulans who migrated to Malo and bought land many generations ago. This is mainly due to the traditional links existing between Malo and the Northern coast of Malekula. Hence this verifies that some aspects of culture may be held in common. [Ibid p. 15] In addition, strong land claims could be made through default or debt payment.

LAND TRANSFERRED THROUGH WARFARE:

One could find few cases of land claim through warfare in Vanuatu. Most land transferred through warfare are vulnerable and are most often disputed. This land were taken by force so to speak and people would return to their place of origin if condition become favourable, thus causing disputes and claim is insecure. But there are islands such as Malo, it is noted that land was transferred through warfare. This land are called in Malo, "Tanoiate" which simply means "land for the killed" [H.V. Trease 23] This categories of land goes back to the days of tribal warfare. This land does not mean lands which were conquered and taken by the tribe. However, it is the land for the killed, which implies reward or compensation. For instance, land rights were designated to a family or clan to compensate another for causing the death of one of its members. The fact that land was paid as compensation for the ^{death} was noted by Trease, reinforces or gives further evidence of the link between land and the cult of the death, and it seems as though an individual have been conceived as being one with his land and his dead kinsmen. [Ibid 28]. Unless a "tanoiate" is paid Malo men will pursue the endless circles of war and revenge. Thus, Malo men of pre-contact times were satisfied to transfer something which was appropriate and accepted as of equal importance, and thus end the potentially endless circle of war.

Obviously, as I have stated earlier, land under this category is most disputed, and hence, today this system of tenure is just irrelevant. But, Tanoiate parallel to inheritance, because the land belongs to the descendant of the oldest resident in that area.

PERMISSIVE RIGHT OR LEASING RIGHT.

Normally, traditional tenure system allows flexibility so that an individual can claim use rights over lands which are not put to use. Since any individual is a member of the group and related to land and people, it is obvious that they are responsible to lay claim on land. It is very important to note that such claim is only effective if it is activated and allowed. Activation is put out by land involves and indirect request for permission to use land. Direct request are also made direct to the head of the clan. In the patrilineal society such as that of Raja, the resident head of the family (male) must participate in the decision making. Although all men participate in such decisions, the elders of the village have the greatest say and those who are furthest from the genealogy relation to such land have the least or no say at all. However have also verified that the hamlet council does have overall authority over land, but it merely and normally give permission to use. (Ibid) upon request, if there is no objection than the claimant use or rights to that land would be held for a period - normally, until harvest, for a season or continuous usage (allowing to fallow) and in some cases compensation are made. This will also depend on the relationship of the claimant and the original right owner. It is by virtue that land is control and if by any means hatred evolved, pressure could be exerted on the claimant to abandon his claim. Under such situation, matters will either be settled by the claimant accepting to abandon his claim or elders would settle it. However, if the claimant persists in objecting to the abandon his claim he could pursue further since there is no formal mechanism for abandoning rights.

The claimant permissive right as stated earlier... would last for a period. For example, a man go could ask for land and through active maintenance of both land and mutual agreement with the owner, pass (claimant) his rights to succeeding generation. This is the most, I think, disputed land. I know of a plot of land in my area which is the center of endless dispute. This land was "land" to one member of a tribe who seek refuge with our ancestors. (period of fire-arms into

Land was given to this refugee to make gardens. They stayed for a couple of years and planted ^{crops and} coconut as well. They had to return when peace was restored in their tribe. But since they did not compensate for using the land and ~~they~~ the fact that they own trees, succeeding generations think they own land as well. This kind of land is called "Kakel". This designated occupancy rather than claim. [Personal knowledge from Village elders. This could be question because oral history is biased sometimes] But as Professor Crocombe pointed out, the more work an individual exerted on to an area, the more claim one could exercise [Lecter] So to safeguard this, some islands of the group have ways to remind claimant that they are not actual owners. For instance, in Tonga and the Shepherd islands, the claimant has to pay "Nasautonga" to the land holding group or ~~but~~ in particular to the primary owner. The Nasautonga payment comprises of fruits and productions of the claimant's garden. This will continue into succeeding generations as a symbol of rent and more importantly, it served as a reminder to the claimant's generation that the land in use did not belong to them. [B. Spe p. 9] [Tonkinson p. 39]

Traditionally, land could be given to anybody who request ~~for~~ use rights; who ~~to~~ by permission gain indefinite use right. The right to use such land remain just that, regardless of exploitation of land. But lineage members when granting use rights intend expected the user to plant short life crops which had to be replanted each year after harvest. [Tonkinson p. 39] Compensation to land use is vital and in some cases the primary owners could choose some garden produce of the secondary owner by hanging leaves of some kind on it. [Ibid]

A person for countless reasons, such as land shortage could ask permission for use land - his mother's or wife's father's village. Permissive right of this type were normally granted. If for instance, a woman always have conflict with the husband's kin ~~for~~ over fruit or land, the woman could get permission from her brother or father to allocate herself a land which

she could have access to the resources. [Tonkinson p. 39]

LAND TRANSFERRED THROUGH MARRIAGE:

Land Marriage is a medium whereby land was traditionally transferred. This took place between islands which have close cultural links, islands such as Hoba, Malekula, Pentecost, Ambrym and Malo. Terease noted that young men from neighbouring islands of Vao and Hekin who made pilgrimage to Hoba as part of their initiation to sex [Terease 14] Today Malo still exchange women with Hoba although not concentrated as Malekula and Ambrym villages have been established, this providing or is a means for obtaining wives. However obtaining land through marriage is rare and accounts showed that land under this category is mainly an internal exercise. "A village is usually on friendly terms with more distant non-contiguous villages, with whom disputes over land or stray pigs were less likely to arise. Like-wise, contiguous villages were commonly linked by inter-marriage." [Ibid 18]

Land transferred through marriage on Malo is called "boetama". This term simply means "father's pig" [Terease p. 19] This right includes all land entitled to the child because of his mother's bride price. The bride price was paid to the mother's family by the father of the child during marriage. This includes all land inherited by his father during marriage. H. Terease noted that 50% of land rights on Malo were boetama and this includes any land which the father could pass to the child [H. Terease p. 20]

Upon marriage the woman gradually loses her inherited rights which her father bought as boetama. In other words, the inheritance is paid off through bride price. Besides, the wife as in most Pacific cultures is expected to move to her husband's land. Thus her rights through marriage is transferred from her father's property to her husband's estate. This does not necessarily mean that the woman is absolutely prohibited from her father's land. She could obtain permission from her father or brother or father to use a plot of land. This is often the case when faced with land shortage, objections from lineage members and use of appropriate land (i.e. swamps for tabo trees etc).

LAND TRANSFERRED THROUGH ADOPTION.

Adoption is a common custom now and has always been. This resulted when a father does not have any child of his own to be heir. When this becomes the case, a childless father may ask an agnate to give him a boy. Normally the parents of the child do not object to the matter since it would be settled with ceremonies. However, if his agnate rejects his offer the man would approach his "taha niel" (the term means brother in law + classificatory brother in law in Tannaese). The adopted child then inherits from his adopted father and becomes one of the tribe. He would then use the hamlet stock name or title for his child [M. Allen p. 340 + Humphreys 134]. The adopted may in future send one of his sons back to his original village to compensate for the loss they have suffered.

Traditionally, particularly on Tanna, in the event of a declaration of war, the adopted is expected to fight on the side of his adopted parents, even if controversy were being conducted against his own parents' tribes. This won't affect him because most adoptions were done when the child is very young to remember. [Humphreys 34]

Adoption is also possible where a hamlet is extinct. Normally, when hamlets become extinct, the title are held in trust by responsible senior members in neighbouring hamlet. This land could be utilized under persons we visit, until the title is properly allocated or until the title holder is matured enough to run their own affairs. The knowledge of the titles held in trust to the extinct hamlet could have been given by the last surviving member of the hamlet. [Ibid 361] My hamlet was struck by an I guess an epidemic but my ancestors it was the cause of recession. Anyway, as they were decreasing in number, some sinas ~~was~~ went to one hamlet in the neighbouring tribe and passed information concerning claims to land. Today there is a particular person in that hamlet who must be present in all land disputes, as far as our hamlet is concerned. That he is that person who could have been a trustee of our land title if we had become extinct. [Personal Observations]

On the contrary, what would happen if the

if the adopted father has sons of his own? This normally does not cause any problem since the adopted son and real son have equal rights to their father's possessions. On Tanna, from my own personal observation, sometimes the adopted son have more rights than the real son. This could depend on what title each was given and also responsibility in attending to the elders. For instance, I have an Uncle who was adopted by an old man in the Village. This man also has a child of his own. This Uncle's first born is a son and he was given the highest title to land claim to land in that hamlet. Although this Uncle was adopted he I think has more rights to land than through my ~~uncle's~~ ~~title~~ ~~than~~ the ~~real~~ son of the adopted. [Personal observation subject to error.] However these are circumstances where tensions sometimes build up and they get worse if the adopted father dies. If the quarrel continues and the adopted son's title is insecure, he could be sent home. He could retain his name but it would not function as a title. Thus he would lose all the associate rights having to obtain land [Humphreys p. 338-340]

Adoption as earlier stated still exists and both Male and female are being adopted. However, females don't have equal rights to land as males. For instance, Trease noted that female adoption on males serves as investment. A father with several sons would adopt a girl to decrease expense in bride price. [H. V. Trease p. 16] This is (adoption) is done as in the southern islands of the group, at birth - giving her his name at birth and cutting the umbilical cord, and by presenting gifts to the real parents... (traditionally a tusked pig and yams but today money and yams) [ibid Page 5] The amount received by the father through bride price verifies the amount the father put in the upbringing of the child. Thus as Trease puts it, "adopting a girl can be a good financial investment or simply a way of strengthening links with distant kin." [H. Trease 17]

However, the adoption of the male is of great importance for the distribution of land and by custom, the adopted son is entitled to inherit absolute rights in the

adopted father's land. But on the other hand he could also place himself in a precarious position since his primary rights to his real father's land were bought off so to speak [Ibid 45] If this case evolves, as already stated, the adopted would return and his brothers would only be willing to provide for his well-being - i.e. grant him garden site and access to their father's land. He could have some access but his rights are the least and limited.

In addition to various ways of land transfer, we shall now generally look at the distribution of land rights and how disputes are settled:

Inheritance of Land rights

I shall discuss this with regard to patrilineal society. When a man dies it is logical that son has to acquire all his possessions and permanent rights right to land. Unless, otherwise advice before his death, the eldest son have the right to grant permissive rights and other negotiations related to land. However, difficulties always arise in the case where polygamy is practiced. One case was noted in Malo where a man had three wives each had one son. The father then ~~had~~ granted all his sons primary right to their father's "baetama" and some land he purchased. However, the third wife was supposed to marry the man's youngest brother who died. And because the older brother had helped to pay the bride price he was entitled to take the woman to be wife. Incidentally, the third woman had two sons and they automatically inherit land which would have brought into the marriage. However, the man's sons by his two previous wife wives have no rights whatsoever to this land [Trease p.29-30]

In many societies, when a man approaches old age, it is common to let his wishes known. That is how he would like to see land being distributed after his death. In some cases a father would distributed land rights amongst his sons rather than giving paramount right to his eldest son. This will minimize conflict and to probably maximize content amongst

the brothers.

Male right holders:

It has already been pointed out that in every patrilineal society a male is a primary right-holder. He has every right to his father's land - to make gardens, to collect fruits and hunt animals. When right to land is designated for one specific individual, anyone else even blood brother must obtain permission ^{body} ~~right~~ to plant a garden or cut copra on the allocated land.

Fruit trees right are very carefully distributed so that everybody has access to it. The regulation of access to fruit trees could either be designated by the father or by brothers under mutual agreement. This is sometimes done by the eldest brother who has the superior role - control of the family land.

Females right to land.

Female right to land is being limited and temporary. The girls if unmarried will continue to use his father's land as a primary owner. She could plant a garden of her own and have access to every fruit trees in the father's land. This may not be the case in ~~all~~ every island because on Malo, she could not plant a garden of her own or be allocated a plantation. However she is expected to help in her father's and brother's works - gardening and in the maintenance of plantation.

The moment a woman marries she gains direct right to use her husband's land, thus increases her right. But she could return to her father's land if the husband dies without an heir. This has already been dealt with.

LAW OF RIGHT OF ILLEGITIMATE CHILDREN.

I have gathered almost nothing on this topic. However I use the article provided by Howard Von Trease on Malo and perhaps give some examples from my own area [Henakel, Tanna]. I must note that this example may be ^{be} inadequate (and) subject to limited information.

Howard V. Trease made it very plain, that

question the right of illegitimate child was very complex to deal with since people were not open to discuss such matters to strangers. However, Tresser noted that in Malo legitimacy of birth is determined by the time of conception. [Tresser p. 46]. The child will be brand an illegitimate if it was conceived before marriage takes place. This would be of minor importance if the child was a girl.

According to Malo custom, an illegitimate unfortunately is not entitled to his father's land. He will only acquire land by gaining permission from his brothers. But there is no contradiction to customs if the father plans to give absolute right to the illegitimate son. [Ibid]

On the contrary, Tanna, by custom, an illegitimate son is entitled to inherit his father's land. Whether the son was conceived before marriage or to a married woman does not limit his right. The moment the child is born, it is normal that the parents of the man would try an adopted it and give him a title where by he could obtain land from. This title as far as I see it is as secured as anybody else's title. I have seen a man who is an illegitimate person having equal say as any of his half brothers with matters regarding to land. In other cases, the parents of the woman adopted and he upbring him at the same time giving him titles to obtain land. This situation ~~from~~ although existed, I think is the same as adoption. That is his right is insecure and is subject to dispute. Hence his right depends on the long lasting mutual agreement of the people in the community in which he derives his livelihood. [All on Tanna are personal perspective without research].

DISPUTES AND How They are Settled.

Fighting in pre colonial times was generally the result of disputes of land and women. Disputes over land was particularly over boundaries and straying animals such as pigs. These disputes could be internal, that between hamlets, individuals, for example brothers, or inter tribal. The most disputed lands were land that were close to the village. This is due to the fact that

the more concentrate an individual effort in an area, the more absolute his right will be. Thus: the enemies to threaten his right would be his own kind. T. C. Welty, pointed this out with regard to the behaviour of a Robin towards his territory. He stated that "A Robin's worst enemy - his greatest competitor - is not a hawk or a cat. It is another Robin which seeks from the environment exactly those kinds of food, those nesting sites, and that kind of a mate that all Robins seek". [T. C. Welty 13] Therefore a village will always be in good terms with a more distant village and vice versa with the adjacent village. However, tribal disputes - it would be rare to find no land disputes evolving between tribes. From my remote trips but it land disputes is inevitable with contiguous tribes.

Land dispute between individuals is mainly due to the distribution of rights and staying animals. As already mentioned above about the distribution of rights before a father dies. The father under certain criteria would distribute land which he deems fit for his sons. But in the case where everything is left to the eldest son, though disputes is endless depending on his personality. Disputes will evolve if the superior brother tries to lend, transfer or grant permission to outsiders. Dispute however, is endless in traditional tenure system. It is endless because there is no security and the boundaries of the individual plot are very irregular and intricate, there is never any question in the mind of the owner just where the line of demarcation lies. [Humphreys P. 62]

However, disputes are often settled by Chief or big man as in any Pacific societies. The Chief has the final say although in some cases he does not necessarily have to force. However people respected him and believe that he has some kind of super-natural power. On Samoa this person is called "IAVIMKO". He accumulated wealth and power through the use of sorcery. Thus he has the right to distribute land and settle disputes. Besides, no fighting could be carried out without his consent. [M. Allen P 340]

Conclusion:

This paper has tried to ~~go~~ portray some picture of traditional land tenure in Vanuatu - how it is transferred and so forth. Although ~~the~~ land could be claimed freely or by clan and even individual rights attached to it, it's very important to better consider it as Professor Crocombe puts it - "rights ~~to~~ is always to some extent conditional, and occupation is often necessary condition". [Crocombe P.43] This paper, however, does not try to assess what tenure system is best, patrilineal matrilineal or bilateral but ~~what~~ it tries to show that what matters most in any tenure is "determining where one gets one's right, and which rights one gets in one's status in respect to the particular right-holding ~~group~~ individual." [Ibid].

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