

COURSE SE 103

UNIT 7: LOCAL LAND AND FOREIGN MONEY; A HISTORY OF
THE RELATIONS BETWEEN PACIFIC ISLANDS
LAND OWNERS AND FOREIGN INVESTORS.

Losolava Coconut Plantation

Gaua Banks.

Losolava coconut plantation is situated on the island of Gaua in the Banks. During the time of the white man's control, the plantation was owned by the well known French Company, C.F.N.H. Before independence this plantation was totally administered by the Company. In 1980, when the Government decided to have all the land held by the foreigners to return to the native people of Vanuatu, this particular plantation was returned to the Custom owners. The main differences here in regard with the uses of the land is that during the C.F.N.H's control over the land the native did not receive any lease or any forms of payments or rewards of using the land. Every Cattle raised and other agricultural products made was totally for the company. The control over the land involved the strong actions like cheating human with Guns from the plantation created bad atmosphere in the area. The village is just a short distance away from the plantation.

During the Company's control over the area, there were a lot of cattle and the plant was well managed. The Company had working Machines like trucks and tractor to help make the work much easier. Since it was managed ^{by C.F.N.H's Manager,} itself, there was a regular shipping by the C.F.N.H's trading boats to collect produce being made.

Since independence, the plantation went back to the owners of land right. The plantation is being managed by another person, who is not the owner of land right but has some skills in doing both, working in the plantation and doing accounting. At the moment being the manager, he employs people who have the land right and at every leasing date, he leases the land. The main changes in here is that at the moment there is no limitation on the boundary. People who claim custom land right there, are free to collect wild fruits and fish on the reef when they want to. The person who leases the land only has full right to collect dried coconuts and farm or raise cattle on the land. Though, it is being operated on the village scale of agriculture the end products have proved useful to those need employments on the village scale.

In comparison, with the good working tools which led to proper management of plantation, every trip the company made about 75 tons of copra. Today due to poor tools which leads to poor management, the products of the plantation has dropped considerably low.

Aquiring Right To Use The Land.

One of my old relatives is also one of the custom owners of land right on this plantation. According to him, C.F.N.H. bought that piece of land with an old style of axe and a *clay* pipe given to the head chief. Much of the taking away of land ^{the land owners} right was made by force and once the French men acted strongly to get the land, had no choice of preventing them, while on the business of having the land return to the real natives of Gaua, they forcefully by words ordered C.F.N.H. Company in accordance with the law, ^{to leave} the area with all its tools and houses pulled down. Cattle was also removed with fences. The area ^{was} left with coconut trees alone and the bushes grew tall until in 1981 when one of the Merelava people living on Gaua decided to clean the land. Today on the leasing scheme the Losalava plantation is being reoperated. The product of the re-establishment on the managerial level of the plantation is beginning to improve. As briefly mentioned above, at the ^{moment} most unemployed people go there to find temporary employment.

Analysing the main changes.

- a. Like other plantations, this *piece* of land was bought for a low price.
- b. The control over this plantation was always appearing in a force exercises where workers found no freedom as they were made to observe every time of work.
- c. The workers worked hard regardless of low salaries and poor qualities of food and accomondation.
- d. The whiteman had machines to help developed the land quickly and the area was much cleaner then.
- e. The plantation manager also traded. He had the shop and he serviced the people of Gaua, Merig and Merelava.
- f. The manager kept proper accounting of the operation.

The practices now.

- a. The Leasing procedure is being followed.
- b. People who claim Custom right in the land have right to evaluate the present Manager's deals with them on the land
- c. Owners of land right have right to collect wild fruits and fish on the reef.
- d. The plantation is now less productive due to poor working tools.
- e. The new manager has less money to improve the land.
- f. The plantation has also been damaged by the Cyclons where it lost hundreds of coconut trees.
- g. Transport limitation also slow down the speed of service.

By Comparing the two lists, the main changes in relations between foreign persons and local land holder from the time of first contact to the present day are being identified and the outcome could easily be evaluated. Through evaluation people now realize that their land was selfishly used before. Most income was not shared with the owners of land right. All the profits went into the foreigner's pockets. This, in Comparison of today's uses of land, the people owning the right for-see the need for the return of their land. During the Europeans's first contact, the value of the axe and the clay pipe meant something great to the people of the area. Through long slow developments, people eventually saw the differences and urged the white Frenchmen to leave as they were doing nothing to the people of the Losalava area.

8

CHARLES MAON

UNIT 9 COURSE S.E. 103 - PRINCIPLES AND PROBLEMS OF LAND TENURE.

SETTING DISPUTES AND DECIDING BOUNDARIES: LAND COURTS AND COMMISSIONS.

The Composition of Merelava Lands commissions or Land Courts.

Merelava land commission is still following its traditional system of organizing and dealing with matters relating to land disputes. Until now the commission due to its shallow understanding of the newly official Bill for the land Reference Act No 15 of 1982 continues with its traditional way ^{of} setting land disputes as mentioned above.

see
comments

No of people in the Commission.

There are 13 people in the commission. A chairman and a Vice chairman, a Secretary and 10 assessors, 2, representing *each* village. These people were selected on the criteria that they do understand some traditional knowledge on land and that they could better assess the differences on the land disputes when there are some. Formally they do not have any form of *land tenure system* knowledge of *Western*. Because of this, sometimes they experience difficulties in setting disputes between people who are more knowledgeable than them.

Working Procedure.

Land Courts are held in the Nagamal (tradition meeting house). Usually when there is land problem, the case is brought to the commissioners 2 weeks before the meeting date is decided for the hearing.

The idea for presenting the case 2 weeks before the actual hearing, is to

allow enough ^{before the actual judging is made} time, for the assessors to study the case. In the event where the assessors themselves are unsure of themselves, usually they consult other people in the village to get more directives and usually the old people in the villages are ^{the} ones involved. Coasting does not involve though assessors sometimes need food at lunch or for supper depending on how long the court last. The food is ~~pre~~ prepared by the winning side of the people involved in the disputes.

Causes Of The Disputes.

Most disputes arise because of misunderstanding. Traditional system of recording land boundaries and how land transfers were made by grand parents long ago, are kept by or in human memory. This sometimes can be misleading because of the fact that, sometimes 2 or 3 different people could claim in accordance with 2 or 3 different advice given by different people. Below is a case study of the same nature of problem (land dispute)

Oscar Wilson and Anna Parton are having land dispute over a piece of land named Adom. Oscar Wilson's father Wilson Ron bought the land right from the owner of the Custom land right ^{and this man} was Peter Vesão. While Peter Vesão was ^{nearing} death in his sickness, Anna's father ^{Anna's father} cared for Peter. At his ^{death} arranged for his funeral and fed people ^{who} gathered for his funeral. Before he actually breathed off his last, he made the will that Anna's father was to own the land right of Adom piece of land.

Accordingly at his death traditional feast ~~was~~ in which food was made in his respect, Anna ^{father} kills pigs and gave Customary money to Peter Velos' relatives (brothers and Sisters) as a sign of respect and paying for the land right

given. The relatives of the dead person, witnessed that, the custom ceremony was made in accordance with the traditional method, of acquiring land right and that Anna's father was to be the owner of land right in the new land right transfer.

Problem With The Land Transfer.

At the moment 2 different families are claiming the land right. Oscar Wilson, traditionally he is recalling what his father did to acquire the land right while on the other hand Anna is going the same. The person whom these land right were taken ^{from} is dead. Both Customary performances were verbally witnessed to be acceptable. Both of them have the rights and the dispute is in the middle. Anna reclaims her father's expenditures and other human social investment but Oscar would not respond to her request ^{too} as he believes he has the land right. Because of this situation the dispute over this land is still unsettled.

I think $\frac{1}{4}$ of the land disputes on Merelava is caused by the problems of this nature, others are caused by other factors, like limited knowledge of land transfers *etcetera*.

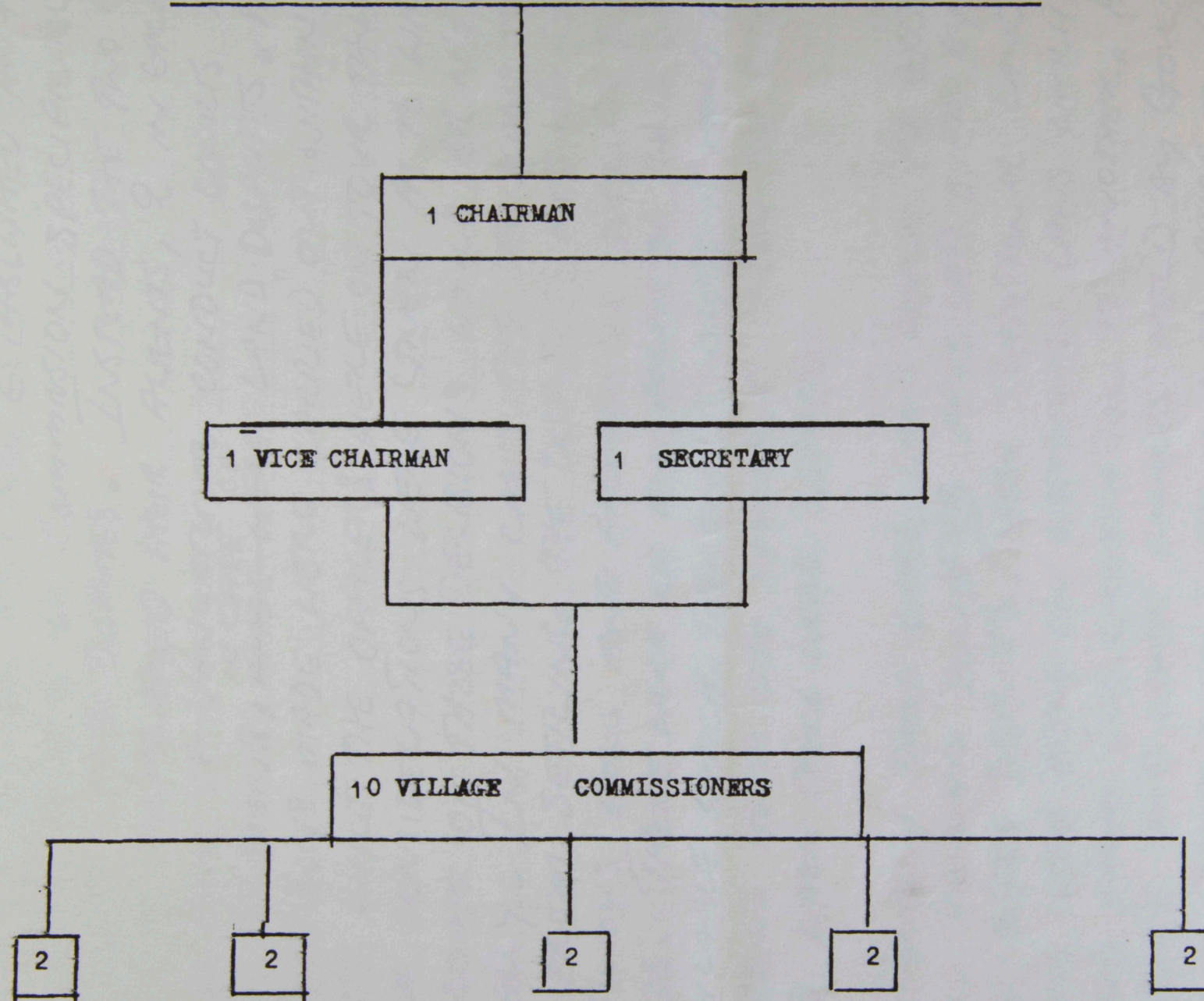
Main Difficulties Facing The Function Of The Court.

The main difficulties facing the court is the fact that the commissioners do not have the clear view on the roles they are playing. Most of them, do not know much about the formal ways of dealing with the land. Most of the times their judgement goes off the point because their

understanding on the Vanuatu Constitution is very limited and that, this does not match with ~~the~~ what they want to do. Some members operate on what I term ^{as} "One tok - system" (favaerisims). Sometimes they go one sided when ~~judging~~ judging the disputes. Many people when feel unsatisfied reffer their cases to the District Magistrate in Sante.

To improve from these poor stages it would be good that the whole ^{Commission should} structure of this be desolved and restructured on some special ^{critieria} that would make the Commission function well. Secondly these people should be given kind of training that would enlight them in their work. Finally the traditional land law and the Government land law should be intergrate in order to create a land system of dealing with land disputes in the islands and I hope by doing this, the mevelava land Commissioners would be able to evaluate their own method of dealing with land disputes and may be at some points adjust to fit with what they would discover as very beneficial to the people.

THE COMPOSITION OF MERELAVA LAND COMMISSION OR LAND COURTS



PROPOSED LAND COURT FOR VANUATU

WHILST STILL UNDER BRITISH AND FRENCH RULE, THE COLONIAL POWERS HAVE NOT ESTABLISHED ANY FORM OF LAND COURTS OR COMMISSION SPECIFICALLY TO DEAL WITH LAND DISPUTES. INSTEAD THE TWO ADMINISTRATIONS EMPOWERED THEIR AGENTS, 2 IN EACH OF THE 4 DISTRICTS OF VANUATU TO CONDUCT COURTS AND MAKE DECISIONS ^{IN CASE OF} ~~MADE~~ LAND DISPUTES. MOST OF THE DECISIONS MADE WERE CARRIED OUT WITHIN LIMITED TIMES WHILE THE OFFICIALS WERE ON TOUR THUS NOT MUCH CONSIDERATIONS WERE GIVEN AS TO WHAT THE OUTCOME OF THOSE DECISIONS WOULD BRING PRACTICALLY. IN MANY CASES THE DECISIONS MADE WERE FAR FROM SETTLING THE DISPUTES, RESULTING IN CONTINUOUS ROWS AND FIGHTINGS OVER THE DISPUTED LANDS. THERE WERE NO ANY FORM OF LAND LAWS AVAILABLE WHICH THEREFORE MADE IT HARD TO MAKE DECISIONS AS TO WHO SHOULD BE GIVEN THE RIGHTS TO LAND WHEN THERE WERE DISPUTES.

TRADITIONALLY THERE WERE LAND COURTS IN EXISTENCE WITHIN VANUATU SOCIETIES PRESIDED OVER BY CHIEFS, WHICH SETTLE DISPUTES. THESE TRADITIONAL LAND COURT SYSTEMS WERE BASED ON CUSTOMARY LAWS WHICH WERE HANDED FROM ONE GENERATION TO ANOTHER. A LOT OF LAND AND OTHER COURTS HELD BY GOVERNMENT AGENTS THROUGHOUT THE ISLANDS PRIOR TO INDEPENDENCE WERE CLOSELY LINKED WITH THE SYSTEMS USED BY THE TRADITIONAL COURTS, SOMETIMES REFERRED TO AS 'UNOFFICIAL COURTS'. PEOPLE WITH DISPUTED LANDS WERE ENCOURAGED TO TAKE THEIR CASES

TO THESE TRADITIONAL COURTS MERELY BECAUSE OFFICIAL COURTS WERE SLOW AND SOMETIMES COSTLY. UNFORTUNATELY THE TRADITIONAL COURTS WERE NOT RECOGNISED BY THE 2 ADMINISTRATIVE POWERS HENCE THEIR ACHIEVEMENTS WERE VERY LIMITED.

IT IS HARD TO SAY AT THIS STAGE WHETHER THE NUMBER OF LAND DISPUTES ARE INCREASING OR DECREASING, AND BY HOW MANY PERCENT SINCE LAND COURTS ARE YET TO BE ESTABLISHED IN VANUATU. I CAN ONLY PREDICT THAT THE NUMBER OF DISPUTES WOULD BE INCREASING DUE TO THE CHANGES CREATED BY THE CONSTITUTION IN ALLOWING LAND TO BE RETURNED TO CUSTOMARY OWNERS AT INDEPENDENCE. SOME DISPUTES PREVIOUSLY SETTLED BY GOVERNMENT (COLONIAL) AGENTS PRIOR TO INDEPENDENCE HAVE AGAIN ERUPTED AS A RESULT OF THE CHANGES MADE AND ARE THEREFORE REQUIRED TO BE PROPERLY DEALT WITH BY THE PROPOSED LAND COURTS.

OBVIOUSLY WITH THE ESTABLISHMENT OF THE LAND COURTS, THERE ARE GOING TO BE EXPENSES TO BE MET BY THE GOVERNMENT, HOW MUCH THAT WOULD BE WILL DEPEND ON THE NUMBER OF COURTS TO BE ESTABLISHED, THE STAFF TO BE EMPLOYED AND THE NUMBER OF SITTINGS THEY WOULD HAVE TO STAGE IN A YEAR.

BEFORE THE COURTS ARE OFFICIALLY SET UP, CONSIDERATION SHOULD BE TAKEN TO INCLUDE CERTAIN CUSTOMARY LAWS AND PRACTICES IN THE SYSTEM.

IT WOULD BE ADVISABLE TO HAVE AT LEAST ONE PERSON PER COURT AS JUSTICES WHO HAS HAD A GOOD KNOWLEDGE ON CUSTOMARY LAND MATTERS AND HOW CUSTOMARY LAWS AND WERE APPLIED IN THE PAST IN EACH OF THE PARTICULAR AREAS WHERE THE COURTS ARE TO BE ESTABLISHED.

THE OTHER JUSTICES SHOULD ACQUIRE LEGAL TRAINING AND SOME KNOWLEDGE OF CUSTOMARY LAWS AND PRACTICES RELATING TO LAND MATTERS. DECISIONS MADE SHOULD BE BASED ON CUSTOMARY PRACTICES, TOGETHER WITH THE PROVISIONS REQUIRED IN THE LAND LAWS. FINES IMPOSED MAY BE PAID IN CASH BUT WHERE THIS IS NOT POSSIBLE, OTHER MEANS USED IN CUSTOMARY COURTS MAY BE USED INSTEAD.

THE LAND COURTS SHOULD BE GIVEN A TRIAL PERIOD OF NOT MORE THAN 5 YEARS DURING WHICH TIME EVALUATION ON THEIR SUCCESS WILL BE DETERMINED. AFTER THE 5 YEAR TRIAL PERIOD, SHOULD THERE BE ANY CHANGES REQUIRED, WILL BE DONE IN ACCORDANCE WITH THE RESULTS OF THE EVALUATIONS MADE. IN THIS WAY WE WOULD BE CERTAIN THAT THE COURT SYSTEM IS IDEAL FOR VANUATU AND NOT ANY SYSTEMS BEING ADOPTED FROM OUTSIDE WHICH MAY NOT BE SUITED TO US.