INTRODUCTION

Kiribati Islands is made of three groups of islands namely the Pheenix Islands, Line Islands and the Kiribati Islands. It has a population of 58,600 (1980 estimate) with a land area of 690 sq.km.

Kiribati Islands itself has sixteen (16) atolls including Oceand Island with a population of 57,000 and a land area of 278.7 sq.km. The sixteen islands are scattered over the equator at a latitude of 3° north to 3° south and a longitude of 176° East.

The islands are mainly atolls made of coral reefs and limestone. Some atolls have lagoons while others are long strip of islands or round islands with white beaches around.

The main crops are coconut trees, breadfruit trees, pandanus trees and babai(swamp taro) on which I-Kiribati people live and had survived throughout the ages. The main source of proteins is nothing but fish from the reef, lagoon and the deep ocean sea. Domestic pigs and chicken are kept for special occassions only.

With the introduction of new foods shortly after World War II I-Kiribati gradually pick up rice and flour as their main diet alongside coconut and fish.

When talking of Land tenure, I would confine my essay to ~~speak of~~ the Kiribati group of which has two divisions the Northern chiefly Islands such as Makin and Butaritari and the Southern non-chiefly Islands such as Beru, Tabiteuea and Tamana. As I go along I will try to pick a

few similarlities and differences from the nearby group of islands known as the Marshalls since they are more similar to us as Micronesians as well.

Concerning land tenure, Kiribati system is patri-neal as well as matrineal. It is like most of Pacific islands who heirs inherit land and properties from the father's and it is like the Marshallese in that heirs acquire land and properties from the mother's.

To understand Land tenure system one has to understand first the Native customary laws as well as the Western land tenure system. It is combined into one systematic Land tenure system. All lands are registered and nearly all have been surveyed by the Land and Survey Department. Systems of registration are basically the same in that lands are registered under individuals, or joint ownership or clans.

Attitudes to Land.

I-Kiribati people look at land as more than just possessions and properties. They would look at it as a source of wealth by which they gain prestige and status, or they would look at it as the main source of subsistente living. They would also look at it as a means by which they can be identified with others as belonging to a certain kin-group.

To put it in a I-Kiribati concept - a man without land is unthinkable. A man without land is not a human being but rather an animal or something else. It is a phrase

used quite often as a joke and sometimes as an exclamation response to someone roaming around.

It is essential and very important that a person according to the Kiribati culture should have land and also that individuals, households and clans should even risk their lives safeguarding its boundaries and land itself.

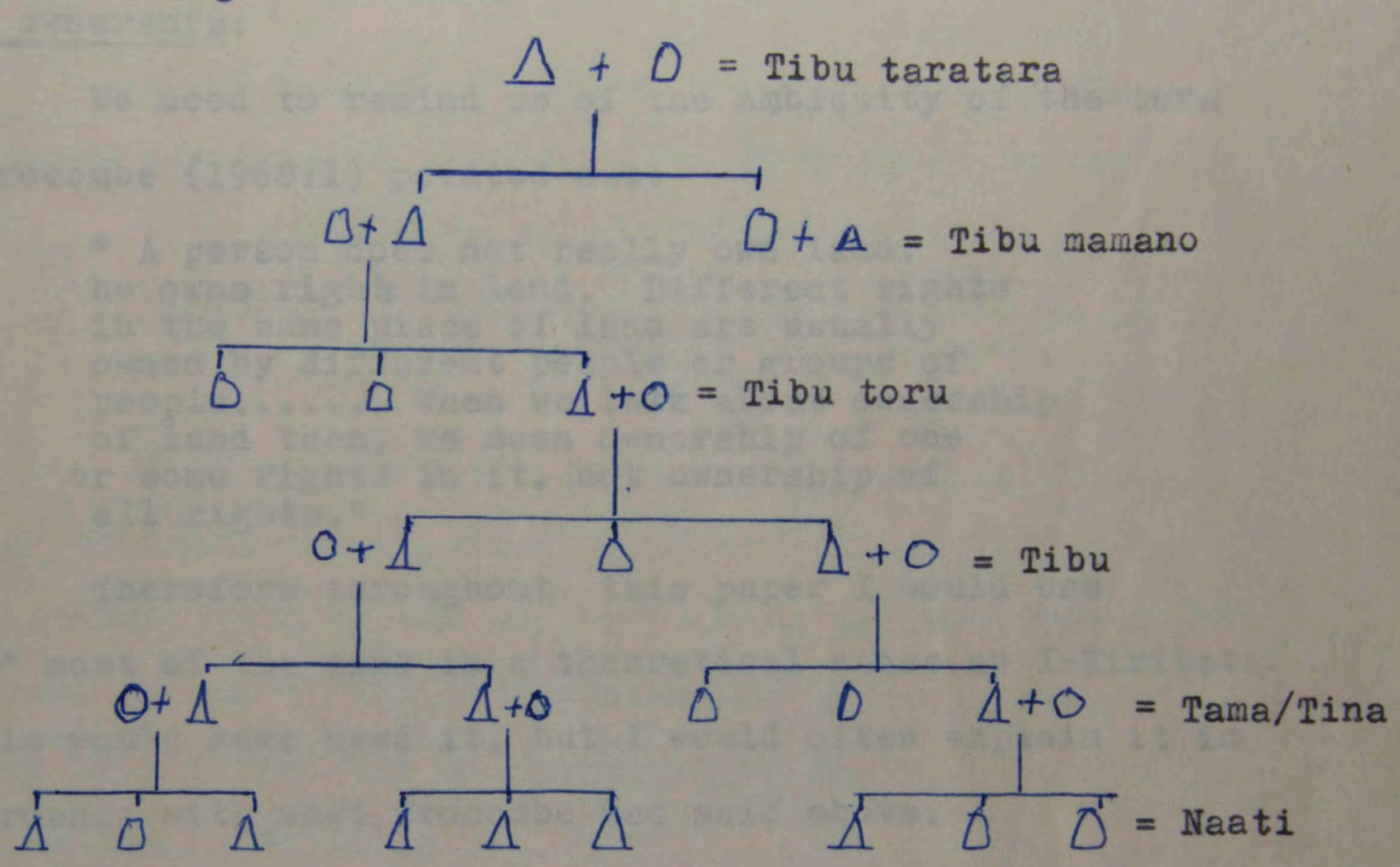
Primitive localities (Kainga).

I-Kiribati of old lived in groups in different hamlets known as kainga simply for political and various reasons. The kainga would either be located close to the sea for fishing convenience or inland for agricultural purposes. The area of one kainga could be smaller or greater than 5000 sq,ft.. The sites of very old kaingas on Beru that I know of (though no longer inhabited), they ranged from half the soccer field to one soccer field.

The kainga can be broken in smaller units known as Mwenga (household). These households are mainly of a nuclear family consisting of parents and children. The grandparents could be either attached to any household or have a house on their own within the kainga.

There are disagreements on the number of people in a kainga by many I-Kiribati themselves. But the most common view is that there should be heirs of the great, great, great grandparents down to the parents and their children. The names given to such series of grandparents are tibu taratara (great,great, great grandfather) which means a grandfather who can do nothing but just looking upward while lying on his back. Tibu mamano (great,great grandfather) who can not walk but he could hold his

grandchildren in his bosom. Tibu toru (great grandfather) who can walk and stop his grandchildren from being naughty by tapping their foreheads or toru. Tibu (grandfather) who is very capable and sometimes still organises the welfare of the clan. These words for grandfathers are also applied to series of grandmothers.



After a tibu taratara another kainga would have been established and therefore regarded as utu n raroa (distant kin) whereby marriage could be proposed and arranged. This idea is quoted by Sir Arthur Grimble in his "Migration, myths and Legends" saying:

"E ewe te karoro"

which means that the fourth generation can re marry again. The 'fourth' here represents the four series of grand-parents (as some my informants said) but not the fourth generations as Western societies would have taken to mean.

However, there is neither a consensus on the above views nor the support from the common practice. Some would count heirs up to heirs of tibu toru as close kins while others would count up to heirs of the tibu taratara or even beyond as close kins.

Land ownership:

We need to remind us of the ambiquity of the term as Crocombe (1968:1) pointed out:-

> " A person does not really own land: he owns rights in land. Different rights in the same piece of land are usually owned by different people or groups of people..... When we talk about ownership of land then, we mean ownership of one or some rights in it, not ownership of all rights."

Therefore throughout this paper I would use "own" most of the time in a theoretical sense as I-Kiribati people would have used it, but I would often explain it in accordance with what Crocombe had said above.

Aba ni utu (Clans land).

Literally the word means that land belongs to the clan. According to many of my informants (including my own experiences) the word means many things. For example in Beru even though it belongs to a clan a member of that clan can have a right only to anyone piece of it, but it does not necessarily mean that he owns it. He could work and harvest the land under the permission of a grandfather because of his closeness to it but he could not claim other parts of it which belong to others. Land was owned in theory by grandparents as long as they lived. Great grand-parents etc even if they still alive, their approval were not sought in many cases. It was entirely within the

the hand of a capable grandfather.

In Makin, land belongs to all members of a clan. Every member has access and right to use the land. He could do whatever he likes provided that he abode to certain rules by a unimane (elder) who looked after the whole clan.

At the same time the whole clan had to perform whatever obligations they were entitled to do to the chief according to their status regarding the harvest of their land. In theory again, chiefs were owners of land.

There is a similar system in the Marshalls where in pre-contact days, paramount chiefs (iroij lablab or iroij elab) that is the senior ranking members of the senior lineage of the ruling clan was the acknowledged or titular 'owner' of all the land and all movable and fixed property in his realm (Tobin 1952).

Commoners would bring gifts of fine mats, fresh and preserved food and present them in a ceremonial pattern throughout the year if the chief was in residence on the island or upon the occasion of his visit to the atoll (Tobin 1952).

The question of ownership was not a problem until prior to World War II when the Japanese introduced the concept that the chiefs owned the land and the commoners owned the trees growing upon them. This is in fact a foreign concept of separate ownership title to land but it is held until today that the chief owns certain land rights and the commoners possessing other rights (Tobin 1952)

Heirs land.

Land-rights were inherited by heirs through the father and mother's line. Also land rights could be inherited by closest kins if a man or woman died without issue.

In Beru, male-heirs were often given the priority over the female-heirs. Also seniority, closeness to the land, how much work had you done to it were considered by the parents or the grandparents before the handing over of rights. The land would be divided and each would have a right to anyone piece of land. The parents would remain as the sole owner as long as he(she) lived.

On his death, the eldest son would be in charge of the whole clan supervising the welfare of the kainga. Not to confuse yourself this is the eldest son of the senior lineage of the clan. He would from time to time tell his brothers, sisters and cousins to either repair the clan's maneaba (meeting hall) or to contribute to one's wedding within the clan and many others.

Though he had the power of being the senior, he was not expected by members of the clan to please himself with anyone's piece of land.

In Tuvalu (used to be the Ellice Islands) there was a similar system known as the Vaevae where land was distributed amongst the heirs by the father.

Generally speaking, female heirs were given very and often poor quality land simply because they were expected to live with their husbands on his kainga.

Land as a dowry.

It was a common practice in the past that a father should donate a land as a dowry at his daughter's wedding ceremony. This practice did not mean that a daughter would loose other priviledges when land allocation was done. This land was counted as her extra land besides her share from her parents.

If she dies but has an adopted child normally the land would remain with the child. It was most favorable by the donor if the child is the closest kin to him. If she dies without issue the land would normally return to the donor.

Land equal distribution.

It was a common practice as well that couples who do not bear a child were expected to adopt either their brother's child or cousin's child. Normally this is a man's brother or cousin who lived also within the kainga. The basic reason was to make a fair distribution of land in the next generation. This custom was regarded with a lot of favour by the people.

Adoption out of the clan.

If a man wants to adopt his wife's niece or nephew, he had to talk it over with his parents and brothers and sisters. Often the behaviour and contributions of the wife concerned played an important part on the decision. If the wife concerned had been performing favourably within the clan in terms of looking after the old men and women very well or

looking after the children of the clan or actively contributing to the welfares of the clan such as making thatches for the houses and many others the proposal would often be accepted as a kind of reward to that barren wife.

Land alienation.

Besides the common practices of the heirs or closest kins also there were cases where land could be given to others outside the clan for many reasons. I would mention four common forms during the pre-contact days. They are the Bora, aba n natinati, aba n tibutibu, te Ni ni marai and te Nenebo.

a) Te Bora.

Literally it means 'tired'. It refers to a person who was normally a wife and not a biological heir who had been tired of nursing the old man. The land that alienated under this category is called te bora. It is also called aba ni kuakua (Nursery land)

Also under this category is another form known as aba n akoi (land of kindness). Kindness refers to an offer that a woman (younger man's wife) gives to an old man's favour such as to keep him company and share his bed. The land that was given is called te aba n akoi.

These two aba ni kuakua and aba n akoi were all categorised under te Bora. In most cases, these pieces of land were often good quality to show how much the old man had appreciated the nursery and company.

In many cases that I know of these lands were mainly acquired from uncles who are quite old who unfortunately had no heir to look after them. This old man is in fact staying within the clan but no longer active. He would normally have a special hut built for him and fed by his brother's wife and children, or his nephew's wife and children in most cases.

b) Aba n natinati/aba n tibutibu.

These are names given to a commonly practised form of inheritance whereby an adopted child gains lands through the adopter. In the first case this land is given to a child from outside the adopter's household and in the second case to an adopted grandchild.(Geddes 1983)

c) Te ni ni marai:

It means literally, 'the tree for young coconut'. It refers to the land that the biological parents of an adopted child gave to an adoptive parents at the time of the adoption. (Geddes 1983) This land was meant to help feeding the child while very young. It remained with the parents and later passed onto a child when the adoptive parents died.

d) Te Nenebo.

This is another common form of alienating land. Te nenebo is a land that was given as a ransom of the murderer to the clan whose member had been murdered. It is essential that it should be done quickly before the whole clan of the murdered would revenge in war. The giving of land in this case was regarded as more satisfying. The land given was supposed to be a good quality land.

Land Boundaries.

As usual, stones and trees are used as land marks. It was a practice in the past that either a stone was buried and the tip is shown or two coconut planted together on the boundary. Boundaries are well defined by those who regularly used the land. In cases where land were not regularly used the owner of the adjoining land would be called to give assistance.(Geddes 1983)

Acquiring more lands.

The bigger the kaing was, the more powerful it was in terms of war. War is used as a means of acquiring more land or regaining lands that had gone in the previous war. War would have been started by those who feel that their lands are getting scarce because of their population.

These wars could be a clan's or individual's war. These wars had to be known by other clans so that they could be prepared in time to defend their boundaries if they wish. I was once told by an old man how he owns such a big land. He said that his great ancestor Nan Taie (of Makin) went out and told the people that he would mark a new boundary of his land. Many people stood by their boundaries to defend but when Taie came they all hid themselves behind the bushes. Thereafter, land that he walked on became his.

Settling disputes.

Disputes over boundaries and over lands were often settled by the old men. If it is a dispute over a boundary it would be settled as above (see land boundaries). But if it is over land it would be settled in the maneaba (meeting house) where the elders would trace

back who would be supposed to have the right. These cases were rarely seen before as they are now. If the dispute was started from someone outside the clan a time of apology would be given. If the trespasser did not act the dispute would be resolved in war.

A reconciliation act had to be done through the unimane in a formal way. The offended clan would show how it has forgiven the trespasser by feeding the visiting unimane. Again this act of reconciliation is always appreciated by the people.

CHANGES THAT HAVE TAKEN PLACE.

Since 1892 when the Gilberts became part of the British empire under the name the 'Gilbert and Ellice Islands colony', ~~there were~~ changes have taken place in the Customary land tenure systems. The present land tenure system has its roots in the native custom and the Colonial law (Lundsgarde 1974). A lot of reductions in the number of conveyance principles followed by an introduction of land registration record and a government policy of encouraging codification of individual island land tenure customs (Lundsgarde 1974)

Aba n utu:

This clan's land was entirely in the hand of the Unimane (elder) or the chief. It could be enlarged or it could transferred or it could be individualised. But now it is fixed. Most of these lands are registered under a clan basis and some on a concurrent basis.

In Makin once lands were registered on a clan's basis they would never be divided again. In the official land register one would see names of hundreds of people

attached to one particular of land. The wording of the record would be something like this: Tenene ma Kanoana which means Tenene and heirs. Also you see hundreds of names following Tenene's name. These are new entries. No matter how far back once your genealogy could be traced back you would be entitled to have the right in all Tenene's lands.

As it was in the past these lands even though they belonged to a clan they could be either divided into smaller units for the sake of planting them. The flexibility of the system made the lands productive.

Now a new system has been found that is allocating the land in time. I was once on Makin last year, and was told that I am entitled to the clan's land, I was surprised to see that most of the lands have been replanted. They are very old tree and members would not care at all.

The allocation of land in time depended very much on the elders' decision. Most allocated time that I know of is a year in order that they pay land tax which is annually before the next group could be able to take their turn.

In the case of Tamana land of this kind are broken into smaller units and were registered under a concurrent or joint title. One would find names joined together like ' Tem Bauro ma tarina' means Bauro and his brothers. The combination ma tarina/ma manena together with siblings of same/opposite sex is also possible (Lundsgaarde 1974)

Land of biological heirs only.

There are changes that have occurred in the Land ordinances in most of the islands. Some islands have used a system whereby only biological heirs may inherit lands and some are more flexible by including some special cases (Geddes 1983).

In Tamana, land is only inherited by biological heirs only from the fathers and the mother's land. The allocation of land would depend on the seniority and sex of which male heirs taking precedence over female heirs. The adopted children would be excluded except the bastard child.

A bastard child is entitled to receive title to one parcel of land from his father's estate. In Tabiteuea a bastard child gets one land and one babai pit from his most probable father (Geddes 1983)

Tabiteuea is like Beru in that lands are individually inherited and in line with the Lands ordinances, only biological heirs may inherit lands, except in a few special cases.(Geddes 1983)

The land is shared in one of two ways:

(1) The deceased may allocate lands to individuals and write down his wishes prior to his death, or allotment of lands may be commonly decided by discussions between heirs or by consideration of land use patterns which are well established prior to the death of the land-owner.

(2) Where the landowner dies intestate the lands

the lands must be shared amongst the heirs by the male heirs of the deceased. The degrees of relationship taken into account when dividing lands in this way are

a) Children of the landowner
b) Grandchildren of the landowner
c) Eldest brother of the landowner, or in his death or absence, succeeding brothers in order of age
d) Sisters of the landowner irrespective of age.
e) Children of the eldest brother, or in their absence, children of other brothers in order of the brother's ages.
f) Children of sisters irrespective of sisters' ages.
g) Grandchildren of the eldest brother, or grandchildren of other brothers in order of brothers' ages.
h) Grandchildren of sisters irrespective of ages
i) Where no kin exist or are alive within these categories lands are divided amongst the deceased's father's siblings in the same order as has been given above for the deceased (Cowell, 1945, F17/1/10 Appendix)

In each case in heritance is confined to the eategory of kin closest to the deceased and no other relatives have any claim to the land (Geddes 1983)

Out of these two arrangements of allocating lands it is considered by most people that the first is the more satisfactory way. If there are disagreements by heirs on the basis of the father's written wishes

they can always appeal to the Lands Court.

Land alienation.

It is very clear that the colony law prohibits sale or alienation of native land to non-Gilbertese (Lundsgaard 1974). Also many non-biological forms of inheritance have been opposed by British law as being either contrary to the spirit of the legal code or difficult to incorporate in that code (Geddes 1983) Yet still exist some of the non-biological forms and still exist were still accepted in some Island courts.

a) Te Bora: This form is still accepted though in many forms e.g. Aba n Akoi, Aba ni kuakua.

b) Aba n natinati/tibutibu.

This form is no longer accepted in Tamana. But it is still accepted in Tabiteuea and other islands.

c) Te Ni ni marai.

This form is no longer existed in many islands. But it is still found in Tabiteuea though with a new version that is the land donated is registered under the adopted child's name. One must notice that this form had been discouraged through the Lands court. (Geddes 1983))

d) Te Nenebo. This form is hardly heard of nowadays.

e) Aba n nati n tam'a.

This is a new form included in the Lands ordinance. The bastard child is included among the real heirs to also have the right to inherit land from his most probable father.

Means of acquiring more land.

Instead of warfare people are beginning to put emphasis on other means for their security and future. Already, some have lived on their jobs for many ~~ages~~years. Some are still looking for jobs either in Tarawa or Nauru. Some have built their own businesses with the idea that they will help them in the future with their children. Some are spending hours fishing and later selling them in order to get money. Some families are putting emphasis on education and therefore encourage their children in any way possible to take education more seriously.

Interestingly, those who are still demanding land beside what they have now even practised Black Magic as a means of getting more land. It is beginning to be common now in the Northern Kiribati that people who have this art (so they called it) once they have quarrel with them over land they would kill them off by casting spell on them. How much of this is true, most I-Kiribati people believe it.

Similarly, the Marshallese used Black Magic known as ekabel to kill off the older members of the lineages, particularly in the case of the chiefly lineages (Tobin 1952)

Conclusion.

The declining of the old Customary Land tenure system resulted in the giving birth of a New and more systematic form. One would argue in favour of the Old Customary Land tenure while another would argue in favour of the new. But one should see how the old and the new had enriched and contributed to each other. It has taken years and years for the two to sacrifice for the sake of Kiribati and its people. The combination of the two systems has made sad people to be happy again; the oppressed to liberty. As a bastard child exclaimed outside the Lands Court ' Thanks God - the new system is kind and just.' Disputes are solved, Happiness is seated on its throne because everyone to live and rest.

Yet the battle ~~has~~ is not over. As population grows day by day, the lands are getting smaller and smaller. As the system of individualizing land is accepted more and more, ~~the~~ sooner the land will be exhausted. There must be a preparation for all these. A system that will slow down the consumption of land or the system that will slow down the population growth.

The Government of Kiribati should not only spend time inventing a new system but should also find alternatives. Is it Christmas Island ? Is it the Phoenix Islands ? Is it family planning ? Is it Tamana Land tenure system ? Is it Makin land tenure system ? So far Land tenure system has done its part for these years.

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SE103.

MAJOR ESSAY.

TOPIC; MINERAL RIGHTS

NAME. KAAKE. TEKE.

I.D. NO: 8605874.

LECTURER; R. G. CROCOMBE.

CONTENT

INTRODUCTION!

Whenever a mineral is discovered, obviously one would expect that it has to be change into other form and only then that it would be useful. In other words these minerals which exist eitheir on land, under-land or at sea-beds, needs to be mine or processed into another form to become not only useful but valuable. In the South Pacific area, these minerals are usually (but not always) valuable and and concentrated in small areas. Generally, all minerals of every type and description belongs to a Government or Crown whether it exist on a private land, leasehold, freehold or any other type of land. In most of all these societies the government itself as well as the people cannot mine, extract or exploit these minerals and processed them in their utility and demanded forms. Of course these minerals require very large technological equipment and large nomber of specialist people to exploit them. In all South Pacific societies with the exception of Australia and New Zealand, all minerals works whether it is mining, prospecting or anything elese are usually carried out by large foreign companies or Organisations. These companies and Organisation usually has the technology, Capital and Asset to mine these minerals.

The purpose then of this paper is to look at the various right of those involve in minerals Questions like who owns a minerals?, who to benefit from minerals? and so forth are what this paper is about. It is proven that everywhere where minerals exist, there is always dispotes between the Government, Companies, and Landowners. the three main bodies that involve in the minerals processing and so forth on some of the questrons mentioned earlier. The paper starts off with defining the world minerals and then goes on to verify these rights and try to answere these questrions. Note that the topic is based on the Fiji, Papua New Guinea and Ocean Island societies.

WHY MINERALS ARE IMPORTANT:

Minerals in their natural form will not mean anything but merely substances that exist under-ground thousand or million of years ago, however it is when these minerals are taken and change into other form that only then they become important and meaningful. Since the knowle-dge that minerals could be used in many ways, Minerals has become very important and valuable. Apart from that minerals has become an issue in every place of it existence. It has become a problem in some places while in other places it is seen as a magic formular that will make them affluence societies. In the South Pacific area as mentioned earlier, these "magic formula" or "issue" are usually confined in small area and in these small countries mineral have become important not only economically, but also socially. In the economic scope, these minerals are important in the sense that they are worth a fortune. To these Pacific countries which are fortunate to have these, these minerals probably mean more money for them. These substances are very highly demanded and if sold in their market they would probably cost thousand or million dollars. With the income obtain from the sales these societies are able to assist their cost of their economy. although as we all know that most of the South Pacific countries heavily dependent on foreign-aids.

In the social sphere, minerals has indir-ectly helped in the improvement of living standard. Generally, the existence of minerals would in any societies has an impact on the income per capita of the particular society. Usually those people has high income per capita and this usually has positive implication on the individual social relation. Thus it nows become clear that minerals does not simply refer to those substances which exist under-ground, or things which are used in the Agricultural industry but mean more to these.

DOES ANYBODY REALLY OWNS MINERAL?

This is very a important question that needs to be answered clearly and accurately as the questions serves as the foundation of disputes and arguments over minerals right, not only in the South Pacific area but all over the world. This question also need to be discussed in detail and in an understanding point of view as usually people when answering this question tend to do it from their point of new or rather based their answers from their value. However when we look at the question in a more realistic and educational view we could answer the question from the different point of view of the party that usually involved in the minerals issue. Of course these are once again the Landowners, Companies and lastly the Government The Landowners usually claim that since the land is theirs the minerals belong to them. The Companies often claim that since they spend $ on and are the ones that really take these minerals and change them in what could say their "meaningful" form, it should belong to them while the Government always claim policy and Constitutionally that since they represent the people and look at their welfare they should own the minerals. However when one sit down and really answer the question one would find out that nobody really own the minerals whether it is the Landowners, the Companies or the Government but rather one own right to minerals. People are usually misleaded by the two terms 'Ownership" and "Rights".

CONCEPT OF OWNERSHIP AND RIGHTS!

Any person can owns. cars, houses, boats and many other things but this is true only when that person acquire those things at his own expense. For example he may buy his own car, house or boat from his own saving. If that is the case then that persons own and has sole right to those things. but the situation would be different if he acquire those things either on a hire purchases or loan basis. Although he may from time to time says he own them he cannot declare it. until he met all the expenses or cost he incur to those goods. between the period of purchases and the time he beat his cost, the person only owns

right to those things. The bank for example may take the houses, boats at any time the person cannot met the expenses. Likewise a Car-dealer company can confiscate that car unless the person pays it. This is the illustration of the concept of ownership in real practice and for land which minerals always exist on or under, nobody really owns a Land but rather has ~~or~~ own rights to Land. For example an Electrician may own right to the circuit meter in one house and at the same house a water meter recorder also own right to the respected meter. So when we talk about ownership of land we usually refer or mean the ownership of one or some rights in it and not the ownership of all rights. For minerals this concept proves the argument that nobody really owns minerals but one owns right to it.

RIGHTS OF LANDOWNERS

When we try to answeres what is the right of the landowners, How far is their right extend, what is their basis of their claim and many other, it is essential to look back at the structure and nature of their land tenure system which they emplay. In this way we would be able to understand and has a deep insight values to theses questions. Most of the tradiontal tenure system in the Pacific are fairly clear about rights to the surface of the soil. In Fiji the Mataqali owns the land but every member of that mataqali know specifically their rights to the land. This is almost significance with the Palaoan New-Guinean and Banaban system except for the slight differences in the system itself. The tenure system is clear on the peoples right to the soil and as far down as it is used for plantmig. However rights to below those level is often not provided or recognised as people in those period never knew the possible exist-ence of substance like minerals which are very useful and worthy. These people certainly recognised that nobody else had a better right than they did. With minerals this is the same, nobody have a better right or ownership other than themselves. This is their assumption and value that they live with. Thus it

~~ete~~. clear that the land tenure system is the basis of their claim. However it must be also noted that the system is not clear and do not provide on the rights of individuals below the planting levels. Minerals are usually exist hundreds or even thousand feet under-soil. The question then is Does these minerals also belong to the landowners? As mentioned earlier the system does not clarify their rights so disputes often arises between the landowners and the Companies which did the mining. There is a clash of ~~d~~ two different values and interpretation.

RIGHTS OF COMPANIES/~~ORGA~~NISATIONS:

The rights of the companies should also be noted as they are also in our concern. Basically when one talk of companies. it is usually mean people or organisation which posess the assets, capital and technology to extract these minerals and are actually doing the process. Their rights to the minerals is very important and need to be observed of the extend it reached. Their claim to the minerals always has effect on the landowners and the society as a whole. It affects both aspect life of the people that is their social and economic life. For example if a companies claim full right or control to the minerals (which hardly happened) consider the effect it will has to the society. Of course the people would not be able to benefit from the minerals which is explored from their own land and if the society depends only on minerals for their source of revenue. the result of the companies claim would eventually lead to low standard of living, poor economy of the society and many other advarse effect.

Therefore it is not essential for companies to have full rights to minerals. However their rights should be based or directed only to the benefits of the minerals. and what is meant here is the revenue that usually obtained from the minerals. Since they spend ~~some~~ much capital, technology and asset to obtain these minerals their return from the mineral revenue should be of priority but that fact that they

volunteer to mine the minerals should also be considered. Any companies would not mine a minerals if the process would be a loss but will willingly to mine if they see a profit it. Thus in this sense, we say that the companies did the mining on their will. And as mentioned earlier when deciding the rights of the companies, this idea should also be considered.

RIGHTS OF THE GOVERNMENTS

The main porpose of the existence of any Government is to look after its people. That is to protect them, cater for them, feed them and look after their welfare. In order to folfill this task the Government has to have means or resources which are required to operate and fulfil them. These resources are usually Capital and assets, for example funds equipment and many other. One way to obtains funds to operate their system is utilize whatever resources they posses to generate money out of it. Of coarse minerals is one of the resources that exist under land Because of its very high value and importance Government tend to claim all the rights or one could say foll right or controls to minerals. in every aspect. The vay basic reason for this is that they has a task to look after their people. In any societies where minerals exist whether the prospect of it is for short or long term one, the Government always claims foll right to it.

Problems then always arises between them and landowners, including companies because of their different values, and aims they differently believe. The landowners value and belief is that the minerals is always theirs since they own land, the companies always claim most of the minerals in terms of their technology and the Goverments says that they should have foll control and rights over minerals. One has to agree that the government should hold rights to minerals but not a full rights to it but since they do not mine, process them they should not claim full right to it.

OTHER MINERALS CLAIMANTS

Apart from the three major bodies or groops that are discussed above regarding the claims to minerals, there are some minor claimants of minerals which are to some extend less significance bot are worth mentioning. These claimants are mostly individuals or small-groops but their claims to ~~the~~ minerals could be very huge. For example Mortgagees, Absentee rightholders, persons who inherit land and probaly many others.

Minerals discussed earlier are minerals that are mainly found on native land areas where landowners are involved but if minerals are found on land where they are freehold lands, leasehold any any other type of land apart from the native or Crown land ~~this~~ would be a different picture. The types of rights system would be very different from that of the native and Crown land areas. If the land is under mortgage there would ~~be~~ also a right for the mortgagee, If a person inherit land from one. familyes land allthough he is not a member of the family, by law he also a right to the minerals if it exist there. The absentees rightholders would also has right to minerals bot these rights are limited and the system and structured of these system are different in different countries. For example in Fiji the absentee rightholders consent should be approved first before the processing of minerals that exist on the land. In other words they should be informed first even though they are not present on the particular kind. In Ocean Island (BANABA), the system is a bit different allthough they are similar in many respect. because the land tenure system is based on kinship system. person taking care of the absentee rightholders to some extend can authorise the processing of minerals ~~on~~ on their behalf. This would be discussed in detail in the respected heading of the essay.

MINERALS FOOND UNDER-SEABEDS

In most of the South Pacific countries, traditional land tenore is structured towards matters, problems, or issue concerning land. For example, the passing of land from one generation to another, the inheritance of land the absentees rightholders and many other issues regarding land. However traditional land tenore does not clearly defined or show any system or ways of acquiring water rights that is whether water is owned by clans, or by families and so forth. This is particolary because of the way the traditional people see water or value water as less important or second to land. What is meant here is that local peoples does not see water as very valuable (refering to deep sea) as much more usuable than land itself. This statement could be backed by the fact that in those periods traditional people could not live on water or seas ~~but~~ could not plant on it. Thus they tend to fate it behind land. This does not mean that water is completely not important to them at all. Water is where they also obtain their needs from but usually they collect them within seashore. The ownership of rights to these rivers reefs and beaches is restricted to specific groups and this could be recognised in legislation. thus the traditional Pacific fishing rights developed as specific ownership of reefs and inshore waters. To them the deeper and more open water are the homes of more mobile pelgic species.

The question then of who should own rights to minerals that are found under-seabeds If the tradition land tenure does not specify the rights to the deep sea in which these minerals often exist then surely the landowners cannot claim ryhts to its and does not own them also. In Papua New Guinea and Fiji there is little evidence of the development of customary roles relating to rights to take minerals from rivers or the sea, although rights do appear in customary law concerning extraction from land areas. There is evedence that in any case of this type the government of the country usually claim rights to these minerals. thus the question of rights to these minerals often rested in the hands of the Government and the companies which extract the minerals.

LIMITS OF RIGHTS TO SEABED MINERALS!

Just like in the case of minerals found on or under land, there is a limit of the rights to seabeds minerals that is whether they exist on or under. According to the Law of the sea Convention each Coastal States or in other words the Governments of the country in which minerals are found has special rights to its and are also limited One country cannot have rights to all seabad minerals but are limited to a zone only of two hundred nautical miles. That is any minerals that are found within the 200 nautical mile of a country, the Government has sovereign rights to explore, exploit, conserve and manage them. It should be also noted that within this 200 mile zone, the rights of other states or Governments should be recognised in terms of navigations, overflight and other internationally lawful uses of the sea but then these states should comply or work according to the rules and regulation of the coastal state. Most Pacific countries are bound by these Convention except for few of them.

It should also be noted that the 200 mile zone which a coastal states entitle is measured or established not anyhow but is done in a systematic and recognised legally by the signatories of the convention. From the law joint line along the coastal did the 200 mile commence and extend to its limit. This is done around the whole island or country. Thus every minerals found within this area, the Government has sovereign rights to them. Included in this 200 mile zone is the territorial area which is treated the same as land. This is the first twelve nautical mile from the baseline of the 200 mile zone.

BANABANS AND THEIR RIGHTS TO THE PHOSPHATE!.

Ocean Island (Banaba) is an island of coral and phosphate which has been administered from Tarawa since 1900 that is eight years after the British claim to protect the Gilbert and Ellices Island. Ocean Island was incoporated into the Gilbert and Ellice Island colony in 1916. Ocean Island was well known in the South Pacific and to some extend in the world for its phosphate deposit, a form of mineral that exist within most of whole island. This mineral was mined by the British Phosphate Comany a company jointly owned by Britain Australia and New-Zealand until 1979 when the company withdrew from the indostry and ceases mining. As the as is not concern with Banaban affairs. it will only discussed the Banaban rights concerning the minerals and explain how the Banaban are regarded as the Absentees rightholders to minerals.

A Banaban rights to the minerals is based on the land rights. that is if one own land in Banaba then stiaght away the person also has rights to the minerals * but since the rights is mainly in the benefit of minerals usually this benefit is in monetary form. thus from the money which is receved from the minerals every Banaban is entitle to an amount of the money. that is the money is distributed in equal amount to each person but then those who own land receives that sum and another sum of money which is based on their land amount. The first is called "TE ROO" and the second is called TE BONETI (BONOS) That every Banaban who does not own land receive only TE ROO and every Banaban who own land receive TE ROO including TE BONETI. The mining of the phosphate is about to commence again and from sources gathered the rights to the benefit of minerals will be a new system that is the Government (Rabi Council of Leaders) will manage the fund for public purpose.

BANABANS; AS ABSENTEES RIGHTHOLDERS!

In 1945 the Banaban people were moved to Rabi an island in Fiji and since then the people had been staying there and grew up there. Few people have returned to Ocean Island but this is only a small portion of the population. While the main porpose of these few portion to stay on the island is for the administration or caretaker of the islands, most of those people returned to it just because the island is their heritage.

Althoogh the island is under the Kiribati colony, Ocean Island has been administered by the Rabi Council of leaders a government body of the Rabi people. except for public sectors like the Hospital, policemens and so forth which the Kiribati government provided. With regards to the fact that most landowners are settled on Rabi, landowners since they still see Ocean Islands as their home they still maintain their rights to land. thus it is in these sense that they are regarded as absentees rightholders. The question then is that for how long is these long-absent landowners claim to the phosphate on Ocean Island These people claim all or at least maximum possible while the Kiribati government claim that since most of the people are now gone, those remaining in Kiribati need it more urgently. This is specially important as the mining is about to commence again in a very short period. Should the Banabans be returned to Ocean Island in order to gain their rights to the phosphate? or should the phosphate now belong to the Kiribati government? or Is it okay for the Banabans to stay on Rabi while their rights to the phosphate still maintained? This is somethy which had to be considered seriously.

CONCLUSION!

The rights to the minerals has always been based on different basis. The landowners have always based their claim from their land tenure system point of view, the companies from their technology point of view while the Government from their political side. However there is a need to critise some of these systems especially the landowners rights to claim. This is to say that the land tenure system in terms of the minerals is structured only for the benefits only of the landowners concerned. If one take into consideration the situation which the South Pacific societies go through example, the high integration with the world system, the rise of population, the problem of landlessness, and many other major issues, ~~the~~ South Pacific currently facing, one need to say that the Pacific Societies need to solve this problem. Benefits from minerals are one way which can reduces these problems if the benefits is used for public purposes. However if the benfit of the resource is restricted only to a few handful of people as the land tenure assert then of course the problems would still high. but if there is a systems that benefits the people as a whole then it is likely that the problem could in one sense reduced. The government should acquire control of minerals in the sense that the benefits is of public purpose but at the same time the rights of the companies which exploit the minerals should be considered.

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S. Alamina

U.S.P. CENTRE,
P.O. Box 275,
Bikenibeu,
Tarawa,
Gilbert Islands.

THE MAIN CHANGES IN RELATIONS BETWEEN FOREIGN PERSONS AND LOCAL LANDHOLDERS FROM THE TIME OF FIRST CONTACT TO THE PRESENT DAY

The basic problem here was that Pacific Islanders had the land and foreigners and the money and islanders wanted the money and things that money could buy and foreigners wanted the land. The first peoples to settle on each particular Pacific Island automatically acquired rights to the lands there and once land rights were acquired by settlement, they were transferred mainly by inheritance, but also in many cases by negotiation or by warfare. The sale of land was quite rare in most of the Pacific. Even though it did happen in parts of northern Melanesia, even there sale was not the most common or most usual form of land transfer.

When the first Europeans arrived in the Pacific in the early stages of European contact they did not intend to live permanently, though they needed the protection of the community they moved into. They were found seeking the friendship of a local chief who would allow them to use land. Their security depended on such association with chiefs and supporting them, thus maintaining their goodwill so that their rights would be protected. Very often they married wives from that place and the wives' families would supply land for the use of the husbands and the children would eventually acquire land rights through the wives. This was a customary kind of arrangement.

As the Pacific Islands became more known to Europeans, more and more settlers arrived and this time they wanted larger areas of land and wanted them permanently for commercial exploitation particularly the plantation owners. Most of those who remained on the islands needed land for their houses or businesses or plantations. They bought land with goods which were generally scarce in the

islands at that time, money, steel tools, alcoholic liquors, cotton cloth and so on. During this time many of the island people had a relative surplus of land, due to the decline in population during the second part of the last century as a result of introduced disease, migration and war. Internal warfare became deadly with the introduction of muskets.

There were some fraudulent deals on all sides, but most deals were agreeable to all parties at the time. The Europeans thought that by paying the agreed price, whatever it was, they would have total rights over the land. The Pacific Islanders, on the other hand, were not used to selling land, especially in eastern Pacific, and thus the concept of absolute sale was unusual. There was a great deal of misunderstanding. Some accounts of the land sales are looked upon as being unscrupulous, unfair and so on. The best example was in the case of the New Hebrideans where there was a great deal of cheating, misunderstanding and also a great deal of exaggeration by European buyers. For instance, some Europeans went to New Hebrideans asking to buy one square mile or so many miles of land. The Nebrideans at that time did not have any perception as to what constituted one square mile. They signed papers saying that they were selling a 100 miles, sometimes more than the size of their land. Also some Pacific islanders old land that did not belong to them and took the money for them. There was a case in Samoa where the Samoans sold to Europeans three times more than thd whole total of Samoa.

Other Pacific Islanders receiving money from Europeans for land assumed that it was for a particular period or assumed that was a gift from the European for the use of that land for such time as they stayed on the island or for such time as they were on good terms with the people of that place and did not assume that there would be a permanent alienation. There were also cases

when people were well aware that they were parting with the land permanently.

There were, moreover, situations in the Pacific where Islanders were very insistant in giving land or selling land to Europeans at low prices. A certain community in one of the isolated highland areas of New Guinea insisted and pleaded for the Europeans to go to their village. They noticed the roads, shops, plentiful of traded goods in areas where Europeans were in other parts of New Guinea. They even offered them land to attract them to come. They were actually after the goods and the things they thought the Europeans would bring with them. After a generation when this did not materialise the relationship became bitter.

When various Colonial Powers took over the different island groups towards the last half of the last century, one of the problems they were faced with was the widespread opposition to the sale of land. The Colonial Governments in almost all cases greatly restricted further sales of land to foreigners. In some cases alienation was totally prohibited. The main exceptions were those islands in which such a large number of foreign settlers had come that they had obtained political dominance over the local people, and were thus able to ensure that large quantities of land continued to be transferred from indigenous hands to foreign people. This of course appliedmost in New Caledonia, New Zealand and Hawaii.

Colonial Governments then introduced land leases with a rental per year. This looked good but because of the depreciation in the value of money and the rapid increase in population this century that by the 1950s the local people had become unhappy with leases. Moreover, the people who owned the land and got the rental often spent it quickly and sometimes not very wisely.

On the other hand, there is a considerable need for large scale capital for certain kinds of industries that will provide employment and income. These industries need land, and new types of relationship are being sought which will allow foreign capital to come in to provide employment opportunities for Pacific Islanders who would otherwise be unemployed or underemployed. The Pacific Island governments are wanting to make a reasonable compromise between getting capital in for certain kinds of enterprises, and not only preserving local rights to land, but also ensuring that local landowners and local governments get a substantial and continuing share of the benefits.

The rising population, the dissatisfaction with leases, and the increasing local political power led to the situation since World War 11 of a widespread transfer of land from foreign owners back to indigenous people through the majority of the Pacific Islands. Also with the independence of governments during the last 5 or 10 years there is a shift from lease with a rental per year to the Joint Venture. This new standard type of formula is proving to be a great improvement on the old leasehold system. This new venture allows the landowner 3% of all the income and this depends on how profitable the enterprise is. Again this looks good now but it may be a different story by the end of the century.