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LAND AND PEOPLE ON GAUA


LONG ESSAY

By

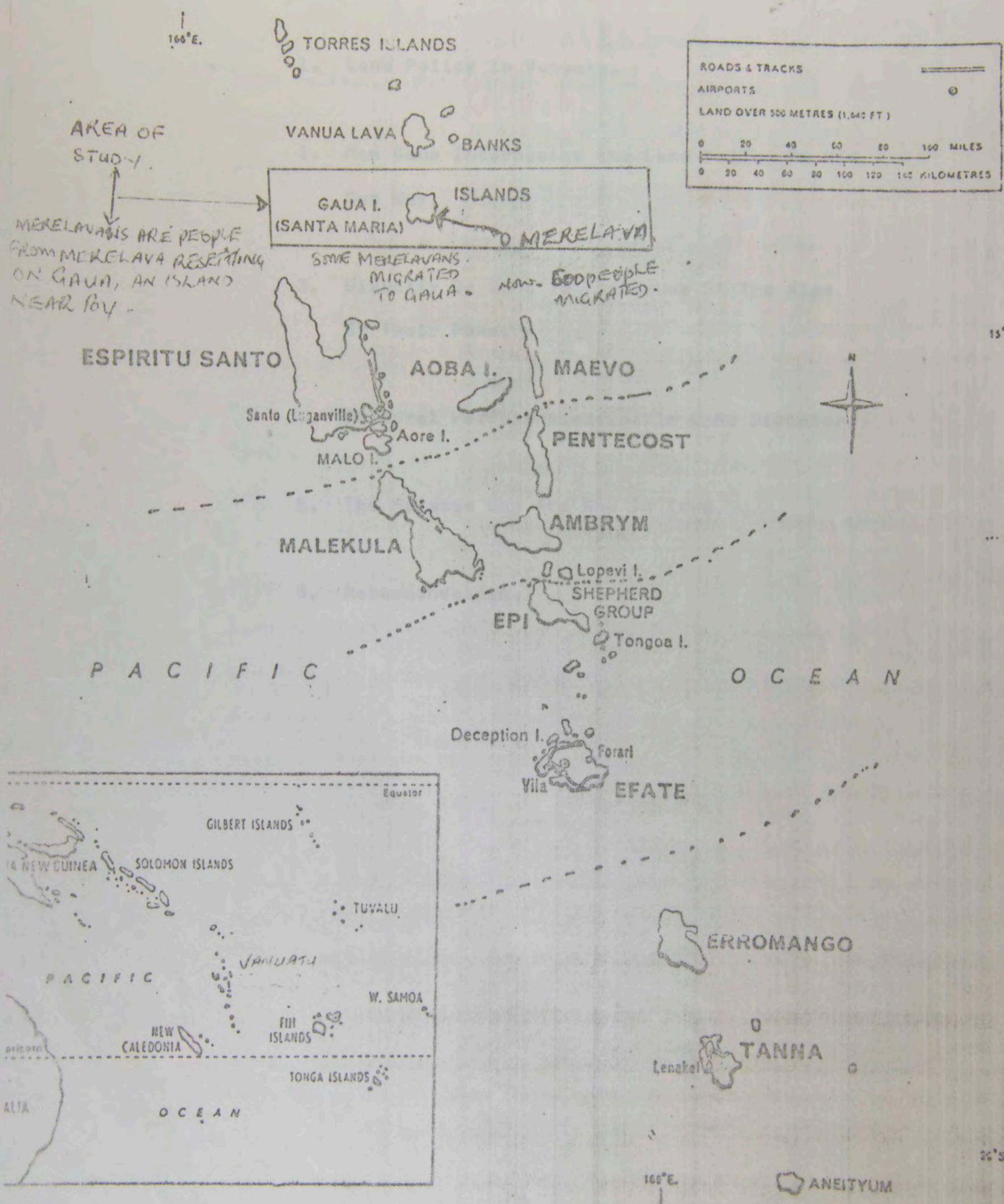
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VANUATU



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INTRODUCTION

In this paper I have briefly discussed the Land Policy in Vanuatu and then in the following pages I confined my writing to the land and people on Gaua.

I briefly observed the effect of land going back to man place (custom owner of land right) as directed by the Constitution. In this case I discussed the relationship between Man Gaua and Man Merelava. Much of my view has been of the traditional concept of Land tenure system on Gaua. In conclusion I made a brief recommendation on land dealings on Gaua in which I urge the Gaua Land Council and the Council of Chiefs to create an Island Land Court System. The aim of this land court system should be to ensure that the people are aware of the economical benefits of land uses, to safeguard the investments made and to develop a high sense of fairness or natural justices which would bring stability on land on Gaua.

LAND POLICY IN VANUATU

The land policy in Vanuatu is being designed in accordance with the directives as laid down in the twelfth chapter of the Vanuatu Constitution, specifically Article 71 which states that all land in the Republic belongs to the indigenous custom owners and their descendants. When the Vanuaku Pati gained 62 per cent of the popular vote and came to power in the elections of November 1979, one of its first acts was to create a Ministry of Lands. In April 1980, the Ministry issued a communique which outlined the policy it would take towards the use of land by non-indigenous citizens after independence. The April Communique recognized the need for equitable transition measures in returning title to the custom owners, and it invited comments concerning policy implementation.

Below is the quotation of the statement made by the Minister of Lands, SETHY REGENVANU on 24th April 1980 on the Ministry of Lands Communique Land Policy :

PART 1

"Art.(1) The Government's land policy follows the Constitution, and the recommendations of an Advisory Committee, with representatives from each island group, appointed by the Council of Ministers. The Policy is designed to promote stability and consistency in land dealings after Independence. Land that once was alienated will be dealt with in the same way as land that has always been customary.

.../2

Art.(2) The Constitution provides that -

- land belongs to the custom owners; and
- the rules of custom shall form the basis of ownership and use; and
- only indigenous citizens may have perpetual ownership; and
- government consent is required for land dealings with people who are not

Art.(4) indigenous citizens; and

- urban land may be treated differently;

Art.(7) and the

- government may own land.

Art.(3) There will be three kinds of land -

- rural land;
- urban land; and
- public land.

Art.(4) The division between rural and urban land will not necessarily follow existing municipal boundaries. Some land inside existing municipal boundaries will become rural land. District centres and some areas of commercial, industrial and residential development outside existing municipal boundaries will become urban land.

Art.(5) Public land will include land needed for purposes like secondary schools, hospitals and airfields. It may also include land needed for certain development project of national importance.

Ownership of Land

Art.(6) Rural land will be owned according to custom.

Art.(7) Government will hold a perpetual lease of urban and public land. The custom owners of land that becomes urban or public shall have the right to -

- a continuing share of the revenue raised by the government from the use of that urban or public land; and
- the continuing ownership of certain areas of urban land which they may develop themselves, or lease directly to others for development; and
- continuing minority representation on statutory bodies, local authorities or corporations managing urban land; and
- compensation for crops or improvements lost when their land is needed for urban or public purposes; and
- the reservation and protection of important tambu places within that urban or public land.

Art.(8) When there is more than one group of custom owners of land that becomes urban or public, their share of the total revenue will be divided up by a formula agreed between them. When land becomes urban or public the occasion will be marked by appropriate customary feasts, which may include symbolic payments or gifts.

Use of Land

Art.(9) Companies and people who are not indigenous citizens may -

- lease rural land directly from its custom owners; and
- lease urban or public land from the government; and
- lease certain areas of urban land directly from its custom owners; and
- enter into joint venture agreements with the government and the custom owners to develop urban, rural or public land.

Art.(10) Indigenous citizens who are not the custom owners may lease land in the same way as non-citizens or non-indigenous citizens.

Art.(11) Indigenous citizens may also continue to use and deal in rural land according to the custom of the areas.

Leases

Art.(12) All leases of rural land will require

government consent. Before consenting the government will have to make sure that -

- the groups owning the land have heard about, discussed, understood and agreed to the lease; and
- the representatives chosen by the group to negotiate the lease have been authorised by the group to do so; and
- the lease is in the interests of the custom owners, local people, and the country.

Art.(13) Once government has consented to a lease of

rural land, the security of the lease will be guaranteed by the government. Any later disputes about the custom ownership of the land, representation of groups, or distribution of rent will not affect the security of the lease.

Art.(14) The length of leases will depend on what the

land is to be used for. Leases of rural land will normally last thirty years, and leases of urban or public land will normally last fifty years. But leases up to seventy-five years may be made for big investment projects that take a long time to pay off.

Art.(15) Leases may be bought, sold or subleased and may be mortgaged or inherited.

Art.(16) Conditions may be written into leases

- requiring the user to -
- use the land for particular purposes; and/or
 - develop the land within a particular time or in stages; and/or
 - pay rent ^{or} other benefits to the owners of the land; and/or
 - consult with, or get the agreement of, the owners before making a sublease or transferring the lease to someone else.

Joint Ventures

Art.(17) The form and terms of joint venture agreements will be worked out with the custom owners and the government.

Mining and the Environment

Art.(18) New policies on prospecting, mining and conservation of the environment will be announced as and when they are developed. These policies will deal with the ownership of minerals, reefs and the seabed.

Transitional measures

Art.(19) The Council of Ministers has approved this outline of land policy for after Independence. A number of transitional measures and several new institutions under the Ministry of Lands will be required to implement the policy. There will need to be consultation with the National Council of Chiefs and other interested individual, groups and professions.

Art.(20) Over the next few months the Ministry of Lands will be organising a series of communiques, meetings and discussion groups to explain the outlines of the policy, and consider how it will be implemented. Meanwhile the Ministry welcomes written comments and suggestions, but is not yet in a position to discuss how the policy will apply to particular individuals or pieces of land."

In implementing the Vanuatu land policy one has to observe in every way that in whatever he or she is doing is in line with whatever has been laid down as directives by the Ministry of Lands. It is interesting to examine what is meant by

- rural land
- urban land
- public land.

Rural lands

To my own understanding of the term "rural" refers to all land existing outside the Port Vila and the Luganville Municipalities. This includes some of the land which had been held by the foreigners in the pre-independence period. Below is the quotation of the Communique which differentiates rural and urban -

" The division between rural and urban land will not necessarily follow existing municipal boundaries. Some land inside existing municipal boundaries will become rural land. District centres and some areas of commercial, industrial and residential development outside existing municipal boundaries will become urban land."

I think the wordings in this quotation as stated by the Minister is quite wrong. I take the above statement to mean that sometimes depending on so much on the needs of the people, some parts of the rural land could be declared urban land while on the other hand some parts of the urban could be declared rural. Rural land is owned by custom rules.

The functions of the Rural land office

The role of the rural land office is to see that all rural land laws are well carried by the rural land users. In order to implement these laws the department of lands has two offices, one in Vila and the other one in Luganville. Officers working in these

offices sometimes go out to other islands to offer help to those who are in needs. They act as agents to the Ministry of land to help settle land disputes and arrange for other purposes i.e. pre-ject leases etc etc..

Urban land

In Vila, this covers all the land existing in the Municipality of Vila. Likewise in Luganville this means all parts of the town of Luganville on the island of Espiritu Santo within the municipal boundary. Corporate ^{bodies} formed under Section 19 of the Land Reform Regulation of 1980. Below is the quotation of the functions and powers of the corporate bodies -

PART 1 - FUNCTIONS

"A corporate body formed under this Regulation may -

- (a) manage land, plantations or residential properties;
- (b) act as an agent for the Government or any other body or person;
- (c) carry on business as an investment manager;
- (d) manage any kind of business enterprise;
- (e) engage in any business relating to land including its development, industrial or commercial purposes;
- (f) undertake the business of builders or civil engineers;
- (g) process any crops grown on land including copra, cacao and rice.

PART 2 - POWERS

A corporate body formed under this Regulation shall have power for the purpose of carrying out its functions to -

- (a) hold, buy and sell real or personal property including houses for employees of the corporate body;
- (b) lease land to or from any person;
- (c) sue and be sued in its corporate name;
- (d) promote or finance any undertaking;
- (e) subject to such specific or general conditions as the Minister may make borrow money by the issue of Debentures or in any other manner including overdraft;
- (f) lend money and guarantee loans;
- (g) establish or participate in any pension schemes for the benefit of its employees and their dependents;
- (h) carry out programmes of research;
- (i) charge fees;
- (j) employ any persons, firms or bodies;
- (k) enter into agreements, leases conveyances or transfer of land on behalf of the Government or any custom owners and a recital in any such agreement, lease, conveyance or transfer that the corporation is acting on behalf of the Government or custom owners as the case may be shall be sufficient to indemnify any other party to such agreement, lease conveyance or transfer;

- (l) invest funds not immediately required for the purposes of its functions in bank deposits and such other investments as may be authorised by the Minister;
- (m) such other powers as may be incidental to the above mentioned powers or necessary to enable the corporate body to carry out its functions. "

State land

This includes all land declared by the Government to use for public uses. Schools, hospitals, Government centres etc etc are situated on public land. These areas of land or perhaps most of the land were once held by the previous governments (French and British). In future the Vanuatu Government may buy land from the owners of custom land right and declare public for public uses. At the moment the Government is doing it for establishing island Government Councils in the islands.

However in the above paragraphs I have briefly highlighted some of the facts relating to land policy in the Republic of Vanuatu. This land policy to many of our people living and working in both rural and in urban land have very little understanding to interpret it. Below I have confined my writing to the village level and in this case I am looking at Gaua an island in the Banks in the North of Vanuatu. In the following chapter, I have discussed how man Gaua interprets the land policy in his own way.

Man Gaua Interprets The Land Policy In His Own Way

Man Gaua interprets the land policy in his own way and the way I see this, as being directed by his own personality and attitudes towards land. The land policy states that all land belongs to the custom owners of land rights. In this context, the land policy allows for Man Gaua to interpret the system in the traditional concept. In the traditional concept of land tenure there has never been any existing system as a land lease hold system. There is always been a defined system for using i.e. selling, buying and using land.

The confusion today is caused by the fact that the two different concepts (Western and traditional) have never been well defined to give directives to the land sellers and buyers. In the traditional concept everybody respects the selling and buying of land with custom money and such ceremonies are made with the traditional system of exchanging of gifts for the land. Custom arrangements for marking boundaries and transferring land rights are highly recognised by Custom. The basic rules of Custom decide the position of each person within the family in regards to land. Again this is a complete structure if one was to view it from the traditional concept of land tenure on Gaua.

The opposing factor would be the reality of the implementation of rules based on the Western concept of land tenure. In this context I mean to say that in the Western concept, everything agreed upon must ^{be} certified by the white piece of paper, (Certificate) whereas in the the traditional concept, pig killing may justify the needs or brings justices. The two concepts (Western and Traditional) must somehow agree or else there will always be land

disputes on Gaua. In respect of this, Man Gaua in his compacity as being limited regarding the National Land Policy, interprets in his own way what he thinks is right. Also in this situation much of the land dealings depends on his personal relationships with the land needers in his immediate environment and attitudes towards land. He is not really in the position of observing either the National Laws on Land or the traditional laws on Land. He can either go on a traditional concept or on the Western concept. This really depends on his own personality and attitudes towards land and people in needs of land.

The product of this, is very discouraging to many Merelavans resettling on Gaua though everybody bought land in customary system. ⊕The fact that all land should be returned to the custom owners of land rights was only referring to the Alienated land which was held by the French and British cocenut planters. ⊗Man Gaus interprets this to mean that all land whether developed or undeveloped or bought or unbaught must return to him as a Gaua born persen.

The understanding that most people have, is that the Alienated land should return to the custom owners of land rights because in the beginning the white planters did not go through the proper channels of acquiring land rights in the the traditional system. The lands were taken in the form of stealing. Perhaps in revenge of this attitude practised by the early settlers that directed the Constitution developers on land made the pattern of land policy to be in the way it is today.

In the actual fact Man Gaua having less knowledge of how to manage the land in the Western concept, does all things in relation to land in his own way that he thinks, is correct. Sometimes he goes in favour of the traditional concept of land tenure while

at other times he goes against and favours the Western concept though he may not fully understands it. In between the two, he goes often for the one that would be more productive to him though he may be misleading. In what way would he be misleading? Misleading in a way that he does not make constructive decisions. Investments by investors are not secured. How are they to be secured? Investments can only be safe guarded in the land tenure system that ensures that needed investments are secured. Systematically I should recommend for conclusion that Man Gaua should be educated to interpret the land policy in both contexts, the traditional concept and the Western concepts of land tenure system.

Disunity on Gaua is the Cause of the Nipe of their Pena

Before independence all land selling and buying on Gaua was practised in accordance with the traditional concept of Gaua land tenure system. There was much respect between the two parties who had come into agreement with the traditional system of selling, buying and performing their traditional ceremony marking the event. There was less differences and Man Gaua and Man Merelava worked well together to agriculturally develop the land.

Change In The Environment Atmosphere

All of a sudden Man Gaua's attitudes towards land changed. From then he began to develop some selfish ideas which were so aggressive that as a result some Merelava people living on Gaua, experienced

Land
 some/disputes. *Gaua people are being motivated by the signing of
 the land laws in the Vanuatu Constitution which says all land
 should return to the real custom owners of land rights. In this
 respect I describe the act of signing that law as a very discrimina-
 ting factor which was and is and will not be necessary in the future.

⊗ Land rights owning fact is the most basic thing on Earth that
 man should have, but the introduction of this discriminating law
 not only discourages the National developments on land but also
 establishes hatreds between blacks and blacks or blacks and
 whites. ⊗ I take this to mean that the people who signed this
 particular land law did not realise ^{that} in the end their act of
 signing this particular land law would sacrifice the lives of many
 hundreds of Ni-Vanuatus, and in reality there are a lot of
 practices on Gaua which could be said to be the result of the
 signing of the land law by the people who did not think twice
 before putting the nips of their pens on the paper to sign. *They
 did not realise that in the end product would mean that black
 man would be discriminating black man. *Specifically speaking,
 today on Gaua though traditional ceremonies settle land
 disputes arising between Man Gaua and Man Merelava, deeply in
 his heart ^{Man Gaua} /hates Man Merelava because this particular land law
 allows him to think the way he wants. In a public complain the
 people of Gaua say the disunity on Gaua is the cause of the nips
 of their pens. The white men whom the land law signer hated
 when he was signing the land law had his substitute home and when
 this land law was introduced, he went through the other door and
 resettled in another friendly environment or atmosphere while

leaving Man Gaua in a complete confusion stage. The land law signer deserved it and today as I termed, disunity on Gaua is the cause of the Nips of their pens.

Cultural Performances Settle Land Disputes

Traditionally, like in the Solomon Islands, land on Gaua belongs to the people and not to institution like government, churches, companies or council. A person's right to use land comes from his membership of a line, tribe or clan that is descended from the first people to settle the land. Exactly like what is being mentioned by Honourable Dr Gideon Zolevek, M.P. Minister of Health and Medical Services of the Solomon Islands that the right to use land is the entitlement of the members of the same tribe. He also said that members of different lines, clans and tribes had no rights over other tribal land except through special arrangements such as compensation, marriage, warfare or gifts. He went on to say that the uses of land include cultivation, hunting, building houses, burying, worshipping of forefathers, making of sacrifices, foretelling, collection of medicines, growing nali nuts and sago palms, knowledge of valuable trees and knowledge about natural phenomena such as caves, rivers, rocks, harbours, reefs, and fish as sources of spiritual benefit. In fact Gaua custom an island in the region of Banks islands is very very similar to those in the Solomon islands. Traditionally there are custom stories about land and custom about the two areas which to a large extent very very similar. So the traditional concept of land tenure on Gaua is well defined by the story

mentioned above about the Solomon islands. The reason for including the above story about the land and the uses of land in the Solomon is to help me explain fully in written words about what actually happens on Gaua regarding land and its uses.

However the aim of this subheading is to explain that following the above story, all land selling, buying and dispute is dealt with in the traditional concept. When the Merelava people resettled on Gaua, they bought land following the methods of selling and buying land on Gaua. They exchanged gifts when performing ceremonies of recognition and acceptance. These ceremonies were done individually, that^{is} between the land seller and the land buyer of right but usually with the consents of the Gaua land council and the council of chiefs. At the moment there is less land disputes between the Gaua community and Merelava community and by now Man Merelava has got a true land right on Gaua. Below is the quotation of the Ceremony of Recognition:

" * On Friday 10 September 1982 at Kaska Bay on the island of Gaua within the Banks, an important custom ceremony took place in which exchange of custom gifts were made between chiefs and Community of Merelava on the one hand, and the chiefs and population of Gaua on the other hand. Jimmy Roy (who at the time was General Secretary for the Island Council of Chiefs of Gaua) was the spokesman for the Merelava chiefs and Community, and Barnabas Harris (who at the time was the custom Information Officer) was the spokesman for the Gaua chiefs and the population.

The gift presented by the Merelava Community included a female pig and a string of traditional money with certain leaves symbolising peace and respect. The Gaua chiefs on their part, made a presentation of a male pig together with the same leaves (of peace and respect).

The significance of the ceremony was the recognition and the acceptance by the Gaua chiefs and population of the Merelava Community which had for the last thirty (30) years or so been living on this particular part of the island of Gaua. Both Roy Jimmy and Barnabas made speeches to this effect. Both stressed the importance of respecting customs and living together in peace and unity and the need to work together for the good development of the island of Gaua.

I as the Minister of Land and Natural Resources for the Government of Vanuatu was present to this ceremony to witness the event. Accompanying me at the time of ceremony was John Star, Lands Officer and John Morrison Willie, the Agriculture Extension Officer.

I was satisfied that everything was done in a manner appropriate ^{to} the customs of the two communities involved.

I made a speech emphasising the importance of mutual respect, peace and unity for the people of Gaua.

The occasion ended with a pig kaikai together. The actual number of the Merelava Community involved in this deal was 514 people.

I approve that the Ceremony was valid in custom of the area and should be accorded the highest honour and respect by the people of Banks and the Government of the Republic of Vanuatu. "

Following the approval of this Ceremony by the Minister of Land and Natural Resources, Man Merelava and other people concerned now firmly believed that cultural performances land disputes on Gaua is now properly settled.

The Message Was and Now Is True

Since the first New Hebridean, nobody knew exactly who it was, some may saw Jimmy Stevens while others say Rev. W.H. Lini, the present head of the Vanuaku pati and the present head of the Vanuatu Government spoke out that "everybody should return home and farm on their land". To many people this message meant nothing. To others, they left the tastes of the Western Influences and went back home. This means most people who were living and working in the towns of Luganville and Vila and also where in the New Hebrides returned home with the aim to make farms on their land. Some people even left New Caledonia during 1971, 1972, 1973, and 1974. At that time the political leaders in the New Hebrides were becoming politically minded especially the Vanuaku pati which was then known as the National pati. Among the people responding to this message were the people of Merelava who intentionally moved to Gaua and resettled there. Their resettlement was encouraged by the French and British Administrations and was also welcomed by chiefs and other important community leaders on Gaua.

While the talk was going on for political independence, there were also thoughts going on, on how to achieve the economical independence. Political pressures on these subjects urged the people that they should now be clearing dark bushes and set out coconut plantations and other cash crops. By the end of 1971 there were 300 Merelave people living and working on Gaua has risen to 500.

⊗ Before making farms they arranged with owners of custom land rights and brought out custom land rights through custom rules. After buying the land rights from the custom owners the people set out cash crops and food crops.

Cash Crops

- Coconut Plantations

This is the main cash crop in Vanuatu. Most families were and are now engaging with the clearing out of dark bushes and putting into the ground young trees. Surprisingly, some families are now approaching 3000 to 4000 heads of coconut plants.

- Cococa Plantations

Many families too engage with the growing of cococa plants. Some of the people here reduce the growing of coconut trees to 1000 so as they could also grow cococa plants.

- Kava Planting

Almost everybody has his own kava garden so the people only sell kava between themselves in the community but very recently kava price in Vanuatu has attracted many more people to grow more kava for cash. As well as these there are other cash crops (plants) which had been introduced by the Agriculture Services, like ~~CARRP~~ and coffee but they have not gone into planting these yet.

Today, many families on Gaua feel they have been doing the right thing. They saw the message was and now is true that man should return home and develop his land. The Agricultural extension services which collect information for agricultural developments in the fields certifies that economically Gaua's produce will be greatly increased in the future. The general outlook in the field shows hundreds of cattle grazing in the fields and the many coconut plantations with hundreds of fruits hanging on the trees shows the good future. The only thing which is needed and it is yet to be established is a land law which safeguarded their investments. Hence below is the recommendation I have on land and how the Gaua land court is to be formed in respect of the development made by the people on the island on Gaua, when they were and are now implementing the message which was said to be urging everybody, to be going back home in order to develop their respect lands.

RECOMMENDATION

The Gaua Land Council and the Council of Chiefs should retain their present status as uniting bodies to unite the people living on Gaua under customary concept of leadership. In relation to land, their powers should be of a generating custom wisdom to bring about and develop what is meant by acquiring land right through custom rules.

The selling and the buying of land right should be performed in accordance with the traditional system of dealings with land. After the traditional transfer had been made, the land right is then processed for official registration in the Land Record Office. This step has been recommended for future investment security because investments involved money and time. To enable such administrative function, a sub land record office should be established in the Gaua Local Council Office where its immediate duty is to prepare transfer of land right and land disputes documents for land Court and to inform the main Land Record Office in Luganville, Santo, of any matters relating to land.

The Gaua Land Council with the help of the Council the Council of Chiefs should establish a land Court System for Gaua as simple as possible. They should define a system of dealing with aspects of land matters. Such defined rules should take into account that, the present day of using land involve objects, is finance, time, technology etc etc... to get the land shaped in the required end productivity. Hence as suggested earlier, the Gaua Land Commission should somewhere in its dealing with land provides provisions for land sellers and buyers on Gaua to secure their land dealings by having matters recorded in the National Lands Record Office. While recommending I do not mean to encourage mixed custom (Western and Traditional) but if only custom was to be recognised as a way of life then in this context it should be clear that the traditional concept

has been integrated with the Western concept to form a firm new secured land tenure for the people of Gaua.

At the moment there is a lot of land disputes because people would not make up their minds whether or not they are selling or buying or using the land. In this situation land has become their rubber stamps for hatreds. Having identified these problems, an urgent need is hereby needed to define some rules with the consent of the Gaua Land Council and the Council of Chiefs to help with the land dealings. Following the defined rules, each land councillor and each chief should be educated to apply these Gaua land laws properly. They should be warned of not going one sided as some always do when there is land dispute. The land laws that they will produce should be based on the philosophy that land is for development and custom is for promotion. The land council should feel that it is the immediate agent of the Ministers of Land and Agriculture and it should always seek legal advice from the Ministries concerned in order to bring its functions up to date with the National development in regards with land uses.

Land Disputes and Land Courts

* Under the Constitution all land has reverted to the custom owners of the land rights and because the Western meaning of ownership is different from the Gaua concept; so the land Courts must contain justices or arbitrators who understand the

customary land rights in the particular area or locality in which the dispute arises. In this case I am focussing on Gaua where the land courts could require a higher hearing or a court which cannot be dealt with by the Gaua Island Court. The problem here is that sometimes the island court does not develop a higher sense of fairness or natural justices and as a result a good decision could not be reached. In conclusion, because of the present sense of insecurity about land rights which must be resolved, hence I strongly recommend that the system be made with the objective reliable courts to make the long term decisions which are required to ensure stability.

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