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INTRODUCTION

SE 103

LAND TENURE

LECTURER - PROF RON CROCOMBE

MAJOR ASSIGNMENT - LONG ESSAY
- EFFECTS OF ECONOMIC DEVELOPMENT
ON 'ARE ARE LAND TENURE SYSTEM.

NAME - JOHN.M. HAUIRAE

REG/NO - 810222

INTRODUCTION

Land to our people, just like any other people of the world is of paramount importance, politically, economically and socially. For us it is the giver of life. Through it one gains political economic or social status. On it we grow our food, we build our houses. From it flows the rivers that gives life. Traditional legends have it that the first 'Ae' 'Ae' people came out from the soil. When we die we are buried back in the soil, thus we enter the spiritual world. Through the spirit of our ancestors we get assurance. They are our guidance against adversaries. When there is sickness we look to them for cure. When we clear the land for cropping we offer them sacrifices seeking their help. What I have been trying to introduce is that land in the 'Ae' 'Ae' context is not only confined to the economic sphere of production but also to the religious and political aspects of the 'Ae' 'Ae' society. Land, the giver and the taker of life.

When something holds such paramount importance society, some body must look after it. If it is scarce or difficult for every individual to have share, some forms of system or guidelines must be devised and accepted by the society.

Land is no different. It is getting scarce as the population is increasing. Because of that every body cannot be satisfied with their share.

In every societies there are set procedures to follow when dealing with the land. For example there are set guidelines which are accepted for transferring land rights from one person to

another. Whether within the tribe or between two tribes.

Societies are not static but dynamic. This has happened in 'Ane' Ane society even before the arrival of the colonial administration. The society has been subject to outside forces, for example from surrounding people. So when we speak of the traditional land tenure system we do not refer to a static concept but a concept that is changing according to the needs and requirements of the people. If there is a climatic or political change all aspects of the society change to fit the people. The important thing to remember is the degree of change. How does the change affect the society. If one looks at the 'Ane' Ane society before the establishment of the colonial administration and Christianity changes have taken place but at a very slow process. So when I speak of traditional land tenure I shall specifically refer to the period prior to self government, chronologically before the mid 1960s. This is done deliberately because before the 1960s most outlying areas were not affected although the government has already been established.

For the first part of the discussion I shall be speaking mainly on the traditional land tenure system in 'Ane' Ane. I will try and explain the hierarchy of rights, who holds rights to what. How are these rights transferred. These are the types of questions that I shall try and answer in the first part of the discussion.

In the next part of the discussion I shall deal with the foreign influences. The new economic

mode of production, the new political structure and the new social values that are being taught by christianity. I shall be giving examples from my area. For example when people from different tribes come to live together because of christianity how does it affect the tribe who holds right to that particular piece of land which the community is situated on. Again I shall try and explain what rights they have in a land that they have no rights to. Had it not been for christianity they wouldnt be living on their lands anyway. What is the current situation in an area where private ownership is encourage by the government. What is the stand of the tribe who holds right to that piece of land. These are some of the main types of questions that I shall be dealing with.

They must have some form of permission.

Finally I shall go on and pose out some the problems that have arisen. How they are being solved and why some of them are difficult to solve. In the light of the discussion I will attempt to make certain recommendations which I think would help ease some of the current problems faced.

TRADITIONAL LAND TENURE SYSTEM

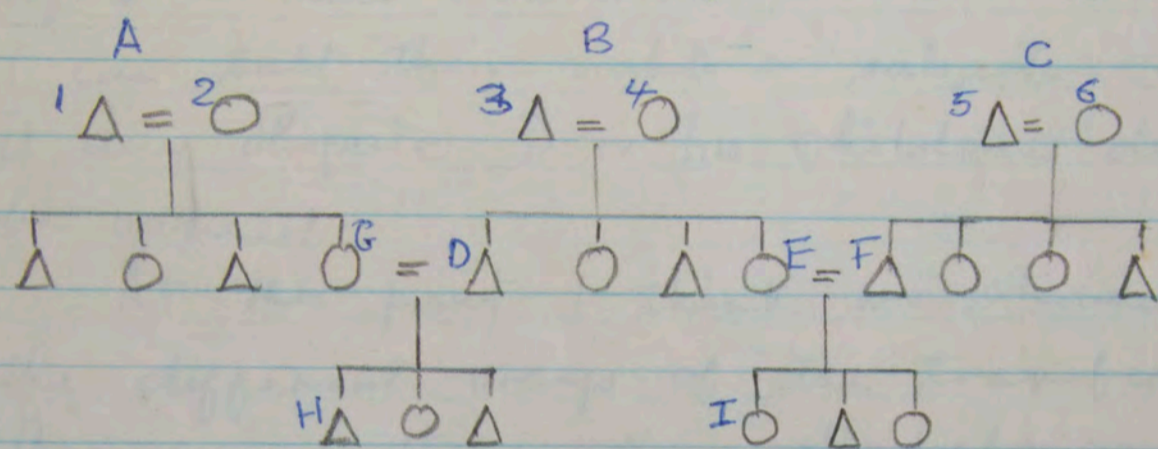
The land owning unit in 'Ae 'Ae society is the HUTAA (tribe) which is equivalent to the mataqali in Fiji or the ^{aiga (matai is the head of it)} Matai in Samoa. The average population of a Hutaa is 30 people ^(cf. 17 in Samoan aiga). What then is a hutaa? This is a subjective question, perhaps it is because of the complex nature. But there are certain main characteristics of the hutaa.

- I. They own the same piece of land. They have rights to their tribal land although these rights are unequal.
- II. Intermarriage within tribe is discouraged or strictly speaking, stopped, the real thing is quite different.
- III. They have one tribal leader, NA'ONIA'ARAA. He is a sort of administrator who looks after all the welfare of the tribe.
- IV. Each tribe has its own land expert administrator, ARAHAHUU. He administers the land tenure. He knows the major lands that are owned by the tribe.
- VI. Each tribe has its own central place of worship, TE'ETE'E. However, its family has its own place of worship.

These are some of the main characteristics of a tribe in 'Ae 'Ae society which are important when discussing land rights.

Let's look at the first characteristic. The land belongs to the tribe. Each individual person in the tribe regardless of sex has some right to the tribal land. In a sparsely populated society the power of the tribe in controlling and allocating land is very vague. With the increasing population

their power is becoming significant. However, this does not rule out their authority. As I have already said rights to land is not equal. In other words some have more right than others. In this diagram I try to explain the hierarchy



of rights. Lets say that A, B, C are three families in three different tribes. Lets say that family 3 and 4 belong to tribe B which we are concerned with. They have four children. D and E are married out of the tribe. D who is a boy marries "G" in tribe A. So G will leave her tribe and family and come over to D and will be accepted as a member of tribe B. On the other hand "E" has married to "F" and now belongs to tribe "C". This is where the hierarchy of rights begin. In as far as the rights to land in tribe "B" is concerned "H" has more rights to the land than "I" or "D" has more rights than "E". "E" nevertheless, has certain rights to land of her tribe. These rights include rights to access, water rights, right to settle and build houses ^{and} rights to garden. These rights can be regarded as domestic rights. When it comes to animal raising, for example raising pigs for sale or making a tree garden for sale "E" must get the permission from D.

So here we see one aspect of land rights. That is the further one moves away from the tribe through marriage the less one holds to that piece of land. The children of "E and F" still have the same rights as their mother to tribe "B's" land. However, I can call their rights as subjective. So if there is any dispute, D or his children's decisions will be upheld.

At this point I think we should look at the different ways of the transfer of rights. Because I think this will help us understand what I have been trying to put across.

1. The first method is through warfare. There are stories told of how one tribe conquering another tribe and taking control of their victims land. This however is not practical nowadays.
11. The second is through inheritance. Tim Warrkas article on land in 'Aue Aue', an outcome of a research conducted in the Solomon Islands in 1978 said that 'Aue Aue' is a bilineal society. That is a child inherits wealth and land rights from both his father and mother, I feel refrain from agreeing with him. Strictly speaking I think 'Aue Aue' society is a patrilineal society. In my case I may have certain rights to my mother's land. However, I cannot go into the land and do whatever I want to do with it. I must get the consent of my uncle or my mother's tribe. My mother now belongs to my daddy's tribe and has every right to daddy's land.

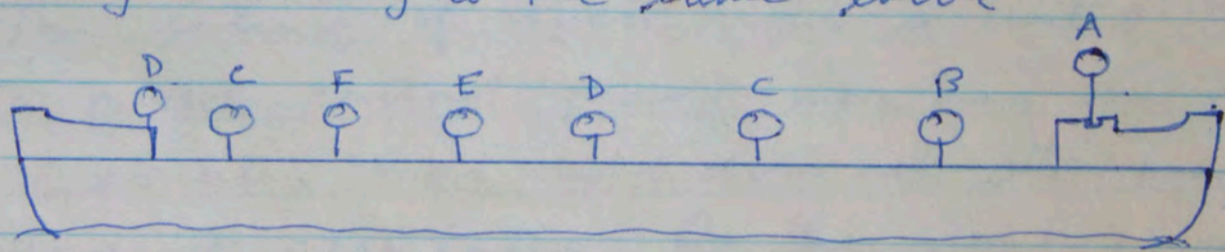
Patrilineal
society

What about adopted children? What rights do they have? Generally speaking they have the

same rights as the family or tribe which they are being adopted into. Their crystallisation of their rights in that family or tribe is dependant very much on their performance.

III. The third method is through sale. In 'Ave' 'Ave' land is sold for various purposes. One of the purposes that I can think of now is for a bush tribe to buy a piece of land near the sea coast. That would enable them to go down to the sea coast on fishing seasons. As far as rights are concerned they have all the rights to this piece of land which usually, is very small in size.

When talking about land rights they do not usually use the word *nutaa*, their usual word is *IROVA*. *Irova* in the 'Ave' 'Ave' language means canoe. *Irova*, in this sense is a concept that is used to explain the hierarchy of rights. Those who belong to the same *irova* are said to belong to belong to the same tribe.



According to the concept of *irova* "A" has more rights than B. He may occupy the position of *Arahaahu*, his closest relative, either one of his brothers or cousins may occupy the position of B. "A's" right is more of an administrative right. He sits at the top maybe because of his performance or personal wealth. Or he may be an elder brother, so although his right to land may be equal to B, his personal influence

and charisma has made him a more powerful figure. Also one of the basic determining factor to that high position is that if a person descends from the male line,

One of the reasons for the simplicity in the traditional land tenure, I think is because

- i) of the small population compared to the land area. So people are never forced into the situation where land is scarce.
- ii) of their subsistent agriculture. They produce merely for consumption.

Because of this slackness there is no rigid rule to control rights over land. There are certain things that everybody has the right to. For example planting a coconut. Anybody can plant one or two coconuts in anybody's land, either along the bush track that is more often used by the people. The owner of the land will not pull out the coconut nor will he claim it. The extent of such rights is limited. That is the person cannot plant more than one or two coconuts. That right does not allow him to make a coconut plantation. Or the right of access through somebody else's land does not guarantee any other rights.

FOREIGN INFLUENCES

CHRISTIANITY

I shall not go into any history or the historical developments, as they are not related to the topic. I shall only look at what the church has done in relation to land in Aotearoa.

1. The first thing of course is that it is a new religion, not only that it is a monotheistic religion. The people are being converted to a new set of values. Some of their practices are stopped. It transformed the whole society. Before they worship their ancestors, either in their *teite'e* or their own *taboo* areas. Now they worship in churches, in front of the altar or the pulpit. They are told that their gods are inferior and in the last days these gods with their worshippers would be cast into the lake of fire lest they turn away and accept the new God. So churches began to be built along the coastal areas where people became Christian.

11. The subsequent effect is emergence of large Christian communities on the coastal areas. People of the hill tribes were converted and were then brought down to these Christian communities. As a result, I guess more than fifty-five percent of the Aotearoa population live in the coastal areas and more than fifty-percent of the Aotearoa total land area is not populated or cultivated.

These are certain important issues that have arisen out of this influence. It is understandable that only a small number of people own rights to the land which the Christians

communities are located. One wonders what rights 'do they have in a land that they have ^{no} rights to. Do they have the right to plant, build and settle only and no other rights. Obviously when they become christians and thus settle in their new home they are given what I call 'domestic rights'. In my case the tribe who has the rights allows their new settlers these domestic rights, and even rights to plant coconuts for both domestic and commercial purposes. They are given the rights to erect pig-pen, plant small cash crops like chillies. These rights are given on mutual understanding and the christian principle of love. As far as I see it, it is temporary and cannot last. I shall give more to this aspect later on.

How does the tribe feel when a lot of their land is been used in such a manner. Don't they have the feeling that one day all their tribal land would be completely used up and there won't be any for their children. On the other hand all the other tribal lands are not been used. And one can come to my area in 'the' 'the' and see how land around the communities are intensively utilised while after a half a days walk one would find oneself in completely virgin forest.

The christian principle of "love thy neighbour" I believe is a main reason behind the land owners remaining silent. I have never seen anybody in my village coming up to my father asking for permission to do something on the land. In my village, virtually all rights are given to

the people of the village. In a situation such as this future disputes I think would be inevitable. The population is increasing and unless a new system is introduced we would not be surprised if something undesirable happens.

THE ECONOMIC SYSTEM.

Although the western economic system (capitalist economic system) was adopted into the country with the administrative system earlier in the century, there was not any significant change in the 'Ane society at all. The copra industry was and is still highly concentrated in the Central and the Western Provinces. A substantial number of 'Ane 'Ane men went to these areas in ~~for~~ cash wages.

Nevertheless the new economic system developed well with the colonial administration. So as the administration moved out to the outlying areas and providing better health and transportation facilities, it also tried to get the rural people into the cash economy, so that they can participate in the overall development of the country. So that was the whole process. A lot of pilot projects were carried out in copra, cattle, cocoa, small businesses and a few more. Because of the capital oriented nature of this new economic system the government set up financial institutions to help the people. The Loans Board was set up for this purpose. Now it is called the Solomon Islands Development Bank.

'Ane 'Ane, especially the area I come from is one of the areas that lags behind the others. Except the people who are living in towns, all the people in my village are subsistence farmers. They have been given the rights to plant, build, fish, hunt and rights to use the water. However, they cannot remain subsistent for all their lives. With the influence of the cash economy, people are

trying to survive in the system. There is an awareness among the people that they cannot remain on the land for ever. Population is increasing as well as the need for land. So consequently people are trying various ways. A lot of the young men and women are going to places like Honiara to seek employment. Parents make sure that their children attend school. The few people at home who have ~~coconut~~ plantations begin to produce copra. People are looking at possibilities of producing cocoa, cattle farming, logging and small retail stores. These economic undertakings are not indigenous and I believe the land tenure system, as it is at the moment cannot accommodate such individualistic and capital oriented business. And usually it is motivated by profit making.

In the context of the 'Aae Aae society, where land is owned by the tribe, or I should say the rights are controlled by the tribes how do they tackle such problems, especially where there are also other people living in the community who belong to different tribes. In my village, as I have already said these people who come from other tribes because of Christianity are given domestic rights. However, with the influence of modern economic developments, are those rights enough? What about if one family wants to make a small retail store in the village. Does that family give the right. How does the tribe administer this issue with regards to allocation of rights. One cannot remain in a village and remain a subsistence farmer for the rest of his life. Either they are given more rights or they move out

to their respective tribal lands.

In my village the land owners have seen these problems and they have tried to create a system.

This is their policy. The land on which the village is located which includes the residential houses, the church and a cooperative store will not be controlled by the tribe or any other group. This piece of land shall be under the control of the church committee which comprises men from the different tribes. Permission to do anything on this land will have to be sought from the church committee. This land however, is not registered under the church committee, it is done through agreement amongst the village leaders. This I regard as a potential problem for future generation.

Further more the tribe has made a further restriction. Beside the cooperative shop, no other shop will be allowed to be established by any other person or group. The cooperative shop which is collectively owned is the only one allowed. From experience, few people have tried to operate small retail shops but they were stopped by the village committee. This rule applies to all the people regardless of tribal origin. This rule covers businesses such as bakery; furniture making and any businesses of such nature. This has two main implications.

First is that, either the land owners (tribe) are jealous that some "outsiders" may come and make a lot of money on that land which which they hold traditional rights to.

The second implication is that they do not want too many shops in the village which will result in too much competition. In such situation land dispute is inevitable. I think such control is good in that, it can be a sensitive area, and I think that is the best thing that they can do.

What about the land outside the residential area? Well, the traditional holders have agreed it will be used by any people, or group for any other purposes. That is people are allowed to take materials from the bush for houses, they are given the rights to make coconut plantation, or plant cash crops such as cocoa, turmeric or chilli. These rights are given only for this particular IRORA (tribal land) only.

The above examples are drawn from my village only. I am not saying that, that is the best system because other villages have their own system of dealing with a multi-tribal community. In such a community, however, the traditional holders must be cautious and must be impartial in their dealings with land, because land can be a very emotional issue when it comes to disputes. If two parties do not agree on a certain issue, the arbitrator must be cautious and impartial.

However, the people can not just live in such society. As we are adopting this western economic system more and more, new ideas have to be thought out. People want investment for bigger profits. They want better education and health services provided. They want a higher standard of living. A few of them are going to town to seek employment and find better schools

for their children. Those in the village will be needing money for many things. Because they do not usually have the money, they demand government help for developing their land. Thus the demand for land will increase. Those who cannot tolerate the strict rules of the village will either disobey the regulation or move to their tribal lands. The problem is that most of these lands are beyond the reach of communication, so it is often very difficult. This however, will be solved as communication will improve.

LARGE SCALE ECONOMIC DEVELOPMENTS, MAYBE DANGEROUS TO TRADITIONAL LAND TENURE SYSTEM.

The new economic system has brought with it new promises. It has opened up new horizons that we have never seen or encountered before. It promises profit, material wealth. At a village level the accumulation of wealth can create prestige. People want iron-roofed houses, or an outboard motor engines despite the high cost of fuel.

Because of this rather over-painted picture rushed into "developments" without understanding the relating factors, especially those that are related to the land, this is worsened by the lack of capital which forced them into a critical position of a successful development. This section shall be devoted to a case that occurred in my area which I think is a reflection of how the rural people being "hypnotized" by these material gains, rushed into businesses without assessing their land tenure system of its compatibility with the new economic system.

In 1975 a local company made an agreement with some people a home to carry out logging in one of the tribal lands. But the agreement was made in a rather improper manner. One of the members of tribe, who according to the "canoe analogy" sat some where in the middle went over to Honiava and made himself a sole representative of the tribe. Another bad factor about this man was that he accepted certain "gifts" which to the tribe was not acceptable or fair. For example he was given a wrist watch, on one occasion. For a start the rest of the

people began to feel jealous. Nevertheless work got started. Trees were been cut down and pulled to the mill to be sawn. Everything was going well as more people came to buy timbers. Problem began to emerged as the self-appointed spokesman began to do things his own way. He began to acquire timbers for his own house without paying. Somehow he got money and bought corrugated metal sheets for his house. He wanted to do things his own way and very rarely did he seek the consent of the tribe. People within the tribe began to get dissatisfied. After some time the Avahakuru made his decision to shut of the whole operation because of 'resentments' of the people.

This was rather an unexpected thing to do. Everybody was surprised, especially officials of the 'Ave' Ave Masina Development Company. After a few weeks workers failed to turn up for work. Amidst confusion and resentment the whole operation came to a stop and the company pulled off. Attempts to recover the operation failed because people within the tribe lost all their hope. The Avahakuru been an old and uneducated man, in the modern sense, said that it was difficult to succeed in business because of too much ambitions and pride.

"It will be a long time before we let such business on our lands again" he said.

There are two possible factors that one can attribute to the failure of the Saw Mill. The first, I think is the misconception that rural people have about the nature of that

Kind of economic development. The spokesman with his own selfish mind wanted to do things his own way.

The next thing is the supreme authority of the Aachaku when it comes to critical situation as this case. It is true that all of them have the right to work the land, to be employed in the company, or even to make arrangements as in the case of the spokesman. However the right of the Aachaku, who descends from the male line, to say something overrules the opinion of the others.

When I was at home I often wondered why the company pulled out so easily without pursuing the case further. Why did not they investigate and try to solve the problem? People have their own opinions on this. I also have my own opinion which I will try and discuss. The Company has just leaved that the land is not enough. That is logging, if confined to one IRORA (tribal land) only will not last a long time therefore in the long term interest it is not economically viable. It would have been much better if three or four tribes signed the agreement so that a large area of land can be utilised.

Are there any alternatives for economic development? Will the existing tenure system which is based on the traditional method accommodate large projects? Should development be based on tribes, that is each tribe should think out what is best for their land and develop it. The other alternative is for each individual to

to try and do something for himself or herself. Or lastly should development be carried out on family bases.

I for one think that the best alternative is that economic development of any nature should be carried out on tribal bases. I favour this only for the present time. Maybe it is going to be different. My first argument for this, is that land is owned by the tribe. So it is a very difficult task to try and divide the land between the various families within the tribe. There is no set criteria for the allocation of land amongst the tribe. How much should each family or individual be allocated with. Or who should do the allocation. These are very important questions that one must answer. If individuals are allowed to have it their own way land dispute is inevitable. I believe that at this stage, development should be carried out on tribal level.

The next is the lack of capital in the rural areas. A lot of people are trying to develop their land, but with the lack of capital to start with, they always find it difficult to succeed. On the other hand those families or individuals who have the money are the only ones who will succeed. Because of this, they will exploit the land for their own benefits. The other unfortunate groups will remain poor although, they too have the same right to the land. This will create a very good climate for land dispute. That is why most land disputes that are happening today are within the same tribe. It is a dispute between the "haves" and the "have nots" in this new economic context.

This new economic system represents profit; individualism, wealth accumulation and so forth. This is, I think a rather an unfortunate turn, because it is against the nature of the 'Ae 'Ae society, where material things like land, wealth, and even children are collectively owned although we respect the hierarchy of rights when the situation allows. That is why I think that for the interest of the mass of the 'Ae 'Ae people, the land should be registered under the tribe. Within each tribe there should be a committee that shall be responsible for the land. This has been the usual practice in the past, but I think it should be formalised and documented.

Big projects such as logging, cattle or a trade store should be owned and controlled by the tribe. However smaller projects such as copra, chillies or turmeric can be owned by individual families. The rights to use the land for such purposes should be given. Why I said that these projects are small is because they are easily managed and they do not require large capital to start and to maintain it.

Land is an emotional subject to discuss especially when it involves dispute. The main factor is that there will no winners, dispute always take place between people of the same tribe. Dispute arises because of jealousy, hatred and frustration. Land administrators must be aware of this. That when we encourage economic development, the most important factor is the land and the tribe who holds the rights. The rights of each individual must be respected.

They deserve something from the land. So if the cattle farm, retail store or a bakery is started by an individual for individual means then the others would be deprived. Land administrators should make sure that the new system, if there is a need to make a few changes, the land tenure system must be relevant.

The capitalist economic system with its individualistic nature must be modified to help the less fortunate people. There are certain rights that must be given while holding on to others.

No sources quoted as
only one referred to.

General & discussion description
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