

Sr. Alamaia

LAND PROBLEM IN THE GILBERTS

Land shortage is the most pressing problem here in the Gilberts. With the increasing population there is a rapidly increasing number whose rights are so fragmented, so small, so restricted, so badly located or shared with so many others, that they gave no real benefits to their holders. This problem is the main and most widespread one here in the Gilberts.

As most lands are now, the coconut trees are not well planted. They are mostly self-sown and too close together. In order to plant new trees and space them out well the present ones need to be cut down and the new trees will then take a number of years to bear fruit. The Agricultural Department has been endeavouring to get as many people as possible to agree to re-plantation schemes; but, with the land so fragmented, it is difficult to get enough to agree to do so to make the scheme worthwhile.

I have been unable to find a particular land problem herein Abaiang, but there has been a land sale case here that went on for more than ten years. A woman by the name of Banou sold a piece of land for money to a man called Mereki. Mereki is from Onotoa and he married a woman from here. This took place in 1963. Before they could go to court the woman left for Tarawa and in the meantime Mereki began to worry as the woman was using his money but he still had not got legal land rights to the piece of land he was supposed to have.

In 1964 he brought the case to the Lands Court and the woman failed to turn up. So in 1966 she was summoned by the Lands Court still she did not come. The Lands Court then made over the land to Mereki as he and the woman had arranged.

Then just this year one of Banou's sons, named Bokatu made an appeal to the High Court in Tarawa about this same piece of land. He stated that he was

not asked about the sale and he was over 18 years of age at the time of the sale. This case is to go before the higher land court in Tarawa next month. I am sure he would get the land back but he would have to return the money for which the land was bought.

The reigning members of the monarchy of Abemama had sold most of their lands. Tekinaiti Tokatake the actual king, sold a few especially those on Kuria and Aranuka before he left for the Solomons in the early 1960s. His son, Bauro who stayed behind in Abemama, sold over half of their kingship lands, mostly to people who have moved into Abemama to live. They were sold for money, motor bike, radio and other things. Bauro must have done this without his father's knowledge because when Tekinaiti returned last year he was stunned at what his son had done. He tried to get the lands back, but since the matter had passed through the Lands Court, papers had been signed, payments for lands used up; and lands have been cultivated and replanted by the new owners, it was quite impossible to get them back. Besides the new owners of the land did not want the lands to be taken from them. They thought they should keep the lands as they had paid for them. Tekinaiti's younger brother had established himself in Kuria and is now in possession of rights to the monarchy lands there. Some of them have also been sold.

Land shortage will always be a problem in the Gilberts, especially today when medical facilities have improved a lot, decreasing infant mortality and death rate generally.

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S. Alaima

Write two pages on any one improvement which you feel could be successfully and advantageously introduced into your country.

The Gilbert Islands have been one of the very fortunate island groups where Britain introduced land registration with much attention paid to local custom and tradition and the feeling of the people. Even though land registration programmes were done wisely and every attempt made to arrive at an equitable and just survey to satisfy all parties in this country of small fragmented land plots, it did not achieve the goal of individual ownership and use of land.

The greatest land difficulty in the Gilberts is the scarcity and fragmentation of lands that their poor quality and productivity. As the people are individual farmers, sole ownership is the most desirable, and caretaking, the least desirable, because productivity is thought to decline progressively with all systems other than sole ownership.

The islands are small and the lands fragmented to the extent that the average land parcel is under one acre. Because of the low productive quality of the land and poor cultivation, cash income for each piece of land does not exceed \$5 per year. The cost of surveying these small units would be very high. Factors which result in the failure to achieve full potential output include the failure to replace old palms, complete lack of cultivation, irregular harvesting, and damage by rats.

Multiple ownership, excessive fragmentation and scattered land units under the same ownership reduce output considerably. The Gilbertese also draw almost all their subsistence from the land. In spite of all these drawbacks, copra production per acre per year is far above the average for atolls in the Pacific.

Most people do not acquire legal title to land until their parents die. By then, they can be approaching middle age or even past it and they have passed their most productive years. Sometimes, for many months after the death of the parents, there is no agreement as to who will succeed to rights in that land. The custom of the allocation being determined by the verbal will of the deceased made known when he is close to death gives a certain measure of protection to the aged, but the uncertainty inhibits replanting and husbandry by the younger generation, with the consequent reflection on output. An investigation could be made to assess the feasibility of providing legislation to permit young men at the age of 21 to claim a share of their parents' lands, but leaving the parents to retain enough land for their own use. This retained land could be passed on to whoever looked after them in their

old age.

As absentee landlords leave caretakers to look after their lands, and as the caretaker has no proprietary interest in the land, he will make little or no effort to improve it, as the benefit will accrue to someone else. If it could be made law that a person who has not resided on his land, or at least on the island for a whole year in five years, could retain only one piece of land, absentee landlords would be obliged to sell their unused land to those who were willing to work it, and they themselves would retain one piece to retire to when time for retirement came. Those with plenty of land could be encouraged to sell to those with insufficient lands. The "Neglected Lands Ordinance of 1959" would be effective if it was more rigorously enforced.

Because of the excessive fragmentation of land, attempts have been made to persuade landowners with uneconomic holdings to join with others on a co-operative basis to make a worthwhile agricultural development scheme possible, and to increase the food-bearing capabilities of these tiny land holdings. So far these attempts have been conspicuously lacking in success. The attitude seems to be, "What's mine is my own, and these co-operative ventures are all very well for someone else, but don't expect me to join." The time will come when landowners will have to get together to produce enough food for all.

On South Tarawa there has been a cadastral survey carried out to survey all land boundaries. This exercise has brought to light many of the difficulties of the present land tenure system. There have been found landowners who either genuinely do not know their boundaries or have no desire to have them settled once and for all. Many landowners are absentees and have left caretakers on the land. Many of these caretakers don't even pretend to know the boundaries. The divided lands present an apparently insuperable difficulty and here neither the surveyors nor the Lands Court could reach agreement with the landowners. Some of the old boundary stones are still in existence, and these were generally accepted as being correct; but, where the old boundary stones were missing, no agreement could be reached. A further difficulty, was, of course, trying to locate one of the many co-owners who might be expected to know something about the land and its boundaries. This may be a situation peculiar to South Tarawa, and not present to the same extent on outer islands, but there are indications that it exists. Certainly there has been more success in surveying land boundaries in

the outer islands where fragmentation has not reached the same proportion as in South Tarawa.

One means of increasing the amount of land is reclamation from the sea where it is possible, as at Temaiku Bight between Bonriki and Bikenibeu on Tarawa. The Government built a causeway across and is building up the intervening area and reclaiming it from the sea. Much of the area is to be developed into ponds for fish farming both for the table and for live bait. Casuarina pine trees have been planted as a possible source of soft wood. Coconut trees are also being planted. This whole area is to increase the land area of Tarawa by one-quarter. Surely more of this could be done in other places.

R. G. Crocombe, in his "Observations on Land Tenure in Tarawa" has recommended that a full cadastral survey be conducted with a view to the consolidation of fragmented and elongated land-holdings on a sample island. Permanent absentees would need to be bought out, and those with surplus holdings should be encouraged to sell to those with insufficient. The value of the project would need constant assessment, and the results should be published. Costs, time and skills have to be recorded in detail as well as Gilbertese reaction to the project. Should a second island be incorporated in the project, the people need to work on a co-operative basis, each holding a share in the co-operative proportional to the area of his coconut lands as shown in the Lands Register. Again, costs, public reaction and subsequent effects on productivity would need careful documentation.

This seems to be a practical solution to the problem, but the chief difficulty will be to get the landowners themselves to see it as such. Judging by the difficulty experienced by the Agricultural Department in their efforts to encourage people to join together for replanting schemes, much thought would have to be given to how the landowners could be educated to see the benefits which would accrue from the new scheme.

CHANGES IN THE POLITICAL, ECONOMIC, TECHNOLOGICAL AND OTHER
FIELDS THAT HAVE BROUGHT THE TRADITIONAL TENURES TO THEIR
PRESENT STATE

"What is 'traditional tenure'?"

To our experience of the fathers and grandfathers, land tenure used nowadays is exactly or partly the same tenure system used in the pre-contact with European or Korean people. And of course, it is just not true. It is not true because, there are no longer any pre-contact tenure systems left in the Pacific, and what remains now to be their total experience in the colonial tenure. Traditional tenure is always associated with warfare, the system forcing people of the Pacific Islands to move at a limited area. The introduction of Central Government has abolished warfare thus making people move freely: not abolishing warfare only but also modifying the traditional tenure to what is now happen to be regarded as colonial tenure. In the last 5 or 6 generations, land shortage was impossible (compared to what is seen nowadays) because their population was often declined by warfare and by new-brought-in diseases. As Central Government is established and medical aid increased, land shortage is becoming and will be possible soon because warfare is abolished and new-brought-in diseases are cured resulting to many Kiribati (native of Kiribati) reach their old age i.e. ^{making} the density of population accelerate rapidly. This led to the fact that most young men and women (the siblings of the old-aged) acquired land rights by direct inheritance (the common mode of land transfer in Kiribati) when their olds are dead. When acquiring land rights, a young man is reaching his 30s, leaving him with very limited time to work the land. It is one of the social change of land tenure pattern in the country, but of course, there is great diversity of land tenure systems in Kiribati, and as in other Pacific Islands. And it is common throughout the Pacific that no land tenure systems exist all the time not without being modified. To this extent, all changes are understandably part of the Colonial era.

Technological changes:

It is evidenced that food preservation in Kiribati is a new technique. This is impossible in pre-contact. All surpluses had to be consumed fairly quickly i.e. leading to the giving away of large quantities of unsterable foods (which is a burden to the one who couldn't consume it all). Therefore, in accordance with customary law,

land is disposed of or transferred in various ways pre-contact. The following are some of the many commonly used methods used by pre-contact generations: -

1. Te sha ni kamomama (A gift for wet-nursing a child).
2. Tabetabe ni be-o-ur (A gift from a true parent to the adoptive parent of his).
3. Heu-ni-kubakuba (A gift by a man to his wife during marriage).
4. Bure-o-winkaraka (A gift by a woman to her husband during marriage).

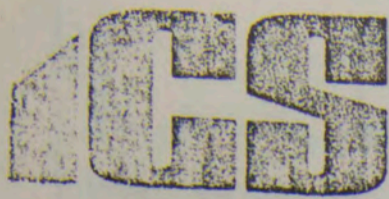
When outside people came in and settle (most of these ^{were} officials came to establish the administration in Kiribati), the eyes of the natives picked and adapted new ways of living because of the fact that what they were doing doesn't affect their ways of living, only slowly changing the traditional tenure. But this was not quickly noticed by the people. Not until the early 1960s that these changes are becoming noticeable and the people were aware of them. It is rather a belated awareness because many local or traditional methods which are often regarded under customary law as proper (as above) are hardly or rarely used nowadays. Despite their existence as codes in the Native Land Ordinances, they are proved to be of no use. This has been due to the tremendous changes going on in the country. The greatest indirect influence on the tenure is on transport and communications because they have enabled rapid transport of goods to markets and people can now maintain effective rights to lands at distances which have been impossible pre-contact. Even though they were also recently used, transport is limited by movements of ships but the pattern has been modified since introduction of airfields on every isolated island. Absentees have benefited from the latter. While away from his relatives for employment, he would be informed by announcement over a radio or notified by letter or telegram of any event relating to lands which are going to be distributed at death of his parent(s). When informed by announcement the announcement may read:

"To those who think they are beneficiaries after the deceased namely _____ Please, be informed that there will be a court hearing scheduled to be held on _____ at _____ to decide the distribution of the deceased estate. If you are unable to attend, send your argument (say) by letter or telegram or choose any capable representative to present your case. Failing to do so, the Court can proceed (make its decision) in your absence."

The latter is an invitation ^{not only} to those who ~~are~~ remain on the island but

are to those who are farther away from the islands. It is an advantage to absents to hear such an announcement because they would not stand a risk in losing what they should gain, therefore they have to be certain that they attend or send themselves before the court on that day. As already said that the Court can proceed in their absence, it means that what the Court decided will make disputes or disagreements in future; mostly by absents. If that is so, they are going to appeal against the decision claiming a share from the estate provided they are entitled ~~for~~ the judgement. When doing so it means that the very same case of distribution of the same deceased estate is to be tried once again making more expenses for court fees and sitting allowances. The system illustrates an advantage to absents on the one hand but making more expenses to those concerned on the other.

One other very widespread change since contact is the disappearance of water rights. It is due to the increased mobility and to more efficient fishing equipments, as well as to imported canned and frozen fish and meat which have made the sea much less important. But most of all is because when local government, following European precedents, have passed laws declaring lagoons, reefs and coastal waters public.



Grade.....
Tutor's Initials.....
Date.....

Name BAAROO NAMAI. Registration Class Letter and Number 8381974.
 Address LANDS & SURVEY, Box 7, BAIRIKI/TARANA.
 Title of Text LAND TENURE. Text No. _____ Ed. _____ Test No. 9.

NOTE: It is most important that you insert the Class Letters and Number

Lands Commission & Lands Court.

Lands Commission in Kiribati was established in 1922 under Native Lands Ordinance of that year and was given the task of the systematic recording of lands and landowners in every island, a process which went on until 1956. A.F. Grimble, who was Lands Commissioner at that time, started off with the Northern Kiribati i.e. Makin, Buaritari, Marakei, partly Abaiang and Tarawa. H.E. Maude, in the 1930s, was then appointed Lands Commissioner and worked in the Southern Kiribati and said to have went beyond Grimble and achieved more than his predecessors in the process. It was because he never adjudicated a single land dispute without the aid of an interpreter, despite his own fluency and superior knowledge of the Kiribatese language. (Lundsgaards 1974: 182). The process ceased operation in 1942-44 due to the interference of the Second World War and therefore nothing further was done in the way of land registration after the War, for a variety of reasons which need not now concern us, until 1948 when B.C. Cartland was appointed Chief Lands Commissioner. He then completed all remaining islands by sending Land Commissioners with local clerks to various islands such as Tamana, Arorae, Onotoa, Bero, Nikunau, Tabiteuea, Nonouli and Abaiang. People tend to think that these various Lands Commissions carried out their tasks in the few years after the last War, but in fact it took about 35 years or about 18 months per island, as the then Ellice Islands were included.

Local clerks, sent by B.C. Cartland, did the "land listings" only. "Land listing," (Te Koro-makoro) was done in this way: take the island of Nonouli for example; the people of the island were given a chance to get themselves ready to be at Nonmatang (the extreme northern 'estate', makoro or kainga), where the land listing ^{the} starting point of land listing. It really meant that Toanimatang Teraci and Natava Taniera (who were appointed local clerks at that time, and are dealing with Nonouli) sent a Notice or Circular to be read in every village regarding maybe two weeks prior the date of land listing, that those who have interests or feel they have

interests in the parcels on Neumabung estate must avail themselves for the process. The process doesn't list the names of lands only but also the name of ~~the~~ ^{the} owner of a right or interest in that land, which is usually along with quite a lot of other people. The clerks would ask, "What is the name of this estate?" "Neumabung!" responded the people. "Right then, and whose land is this?" asked the clerks. "It is my land!" answered the claimant. The clerks are going to write the name of the estate, a parcel number and the name of the owner in the form of entry which I will append later. If any dispute or disagreement regarding ownership, the clerks will enter such disputes in the register; such disputes are to be adjudicated by the old men of the island in the presence of the Lands Commissioner who is going to preside the court and give legal advice on every appropriate matter. The members of the Lands Commission are chosen as one or two from each village (depending on the size of the village) for their knowledge of the history of lands and families in their village, and they should be able to compile family trees to show just who and how many the co-owners are. In this case, the old men (members of the Lands Commission, 'Kaitra') made decisions on every case they adjudicated while the Lands Commissioner, 'Kamitia-n-Aba' is busying himself recording minutes. It is ^{practically} common that those who are defeated when making decisions i.e. those with less votes will say to the defeated party, "You know, that was not our decision. It was (member from village) who hotly insisted on this." This is a kind of criticism that is nowhere in the law allow, and it must be kept in mind that what the Commission gave as its decision or judgement is the Commission's decision not one-man's decision. The latter illustrates the tendency of favour in the hearts of some of the members when hearing and determining the disputes and claims. Every decision or judgements made by 'Unimane' was dully endorsed by the Lands Commissioner. These could be appealed against, should one party is not satisfied with the decision, and the Chief Lands ~~of~~ Commissioner, ^{Unimane} 'Kamitia-n-Aba' will adjudicate the appeal. His decision will be based on no study or knowledge of native custom, therefore he used the minute of the appealed case as a source for information and contrast it with what he is going to hear. It is true that European officials did their best in adjudicating native claims and disputes, but they coloured their decisions with European ideas of ethics and law, unlike native officials, he throws all vestiges of honesty away when dealing with land matters, let alone

the ordinary matters. Regulations imposed restrictions to appeals ^{made} against the Chief Lands Commissioner's decision and to entries made as a result of the Lands Commission.

Unfortunately, land boundaries were not settled and recorded at the same time, a fact which considerably detracts from the value of the work done by the Lands Commissioners. The Commissioners cannot be blamed for this as the Ordinance did not require them to do so.

It was during these Lands Commissions that the nature and problems of the land tenure system gradually came to light. Land in Kiribati is essentially ^{an} family land, so you cannot truthfully say that so-and-so is the landowner of a particular piece of land. With some exceptions, every land has more than one owner, or rather in every land more than one person has ownership rights, members of the family generally being co-owners. These co-owners do not have exclusive rights to any particular part of the land, but they have equal rights over all the land; they hold in what are known as 'undivided shares'. These ownership rights usually pass down through the family of the original landowner.

Now let us concentrate more on the registration system as this plays an important part in the tenure system. You often hear people say "My name is written on the land" — or — "I want my name written on the land." What they mean is that, they are or want to be approved as a holder of a particular land. On the contrary, we do not have land registration; we have registration, yes, but not land registration. People talk glibly about land registers, but you may take from me that there are no Land Registers as such. You may go to every isle in Kiribati, and you will not see a true Land Register. What you will see is something required by the Native Lands Ordinance called a Register of Native Lands but this is in fact a Register of Native Landowners, quite a different thing. True, lands appear in the Register, but it is the landholder who is registered but not the land. And the person whose name appears in the Register is not a landowner, but the owner of a right or interest in that land.

In these Registers, all lands on the island are, or should be, recorded under the name of one of the co-owners. At the top of the left hand page is written the name of a landholder, on the left hand side of the left hand page are listed the lands held by the person whose name appears at the top of the page. Also on the left hand page is a column for recording the encumbrances on the land. The encumbrance usually takes the form of intaim, "with brothers and sisters", MM, "received by the present owner from his/her

male ascendant, MA, "from his/her female ascendant", AA, "land of gift from se-and-se", MK, "with the issue of some relatives", and or some-thing like that. It is also in this column (Encumbrances Column) that the other co-owners will be found. The actual names of these co-owners are rarely, if ever, recorded in the Register, and it is impossible to discover from the Register who they all are, or how many co-owners there are in respect of any particular land.

With so many co-owners of each piece of land, you will appreciate the difficulties likely to be encountered in negotiating for the leasing or occupation of native land. One of the many co-owners will say, "Oh yes, please come and occupy my land. I am not using it," while the other co-owners may well say, "No, you certainly cannot come and occupy that land". There is no one person with whom you can deal, unless all the co-owners agree that one of their number shall be authorised to speak for them all.

The position is further complicated in that the person whose name appears at the top of the Register page may well be dead. Who then do you negotiate with? You don't know who the co-owners are, and you obviously can't deal with a dead man. In theory, as soon as ~~the~~ such a person dies, the Lands Court should decide whose name is to appear in the Register in respect of which lands, and what encumbrances by way of co-owners are to be shown in the Register. Unfortunately this rarely happens in practice; it is a fact that lands are rarely distributed to living heirs by the Lands Court unless there is a financial inducement, such as the receipt of rent, or of compensation of trees destroyed. The various co-owners know their rights to the land and don't bother too much about the formalities. On the death of a landowner, his lands must be distributed by the Lands Court in accordance with the provisions of the Lands Code. Generally speaking the lands, or rather the undivided shares in lands, will pass to the sons and daughters, or to the nearest kin if there are no children. This sounds all very well in theory, but one or two practical questions arise. The Lands Code talks about "a landowner"; who is a landowner? Or is he ~~the~~ ^{the person,} whose name appears at the top of the Register page? Or is he one of the anonymous co-owners, lumped together under the description mt (ma tarina), or mm (ma manana), or mk (ma kanoan) in the column of the Register recording encumbrances? If he is one of the anonymous ones there is no way of recording the distribution of his share in the Register;

when his share is distributed by the Lands Court, 'Kubawi n Aba', the minsh should record the details, and the number of the Lands Court case should be recorded in the Register, though it rarely, if ever, is.

Dealings in native land are subject to the provisions of the Lands Code, which is the codified version of customary law. The Lands Code may vary in certain particulars from island to island, but generally speaking nobody may dispose of his interest in land without the agreement of his next of kin or co-owners. Practically, every land is subject to ownership interests of others, and that very few people have a sole ownership interest in land. What happens, then, to all the other ownership interests if one of the co-owners wants to dispose of his interest? The answer is quite simple, though not generally realised. If the next of kin agree to the disposal and the other co-owners either do not agree or not consulted (which is frequently the case), and the Lands Court approves the disposal, the land passes but remains subject to the other co-owners' interest. For example, X, the father of A and B, son and daughter, has his name at the top of a page in the Register, wants to dispose of his land. A and B agree because their father has plenty of other lands, but their aunts and uncles and their children, each of whom has an ^{ownership} interest in the land, know nothing about it. If the Lands Court approves the disposal, the new owner takes the land subject to the ownership of all 'A and B's' aunts and uncles, even though he may not know this is going to be the case. An encumbrance remains an encumbrance — it 'runs with the land' as we say — until it is removed by proper process, which in this case is by the agreement of all concerned.

For more details on Registrations, see Assignment no: 10 as it concerns more on the process.

When 'land-listing' on all remaining islands (excluding Banaba, Christmas Island, Phoenix and Line Islands) is complete, the Lands Court is set up. All difficulties and controversies regarding 'land-listing' and Registrations have been dealt with by the Lands Commission leading to all entries made in the Register, by the Lands Commission, unappealable. Such policy has made a great loss to absentee co-owners. For example, A and B are brothers whom they jointly own a particular piece of land, A has a daughter who is away as a result of being married with a man of a different island and B has a son who constantly lives on the island. By the time the Lands Commission arrives on the island, A and B are deceased, making an advantage for C, B's son, to claim as a owner of A and B's estate.

(Note that 'lands-listing' and 'registration' is the main task of the Lands Commission.) Consequently C, is written on the top page of the Register. When D, daughter of A, comes, she found to be omitted from the encumbrances in the Register and therefore she will go to the Lands Court and say, "A & C, has claimed to the Lands Commission to be the only owner of the land which was jointly owned by our fathers, resulting in my name not registered with him. Please take the necessary step in registering my name with C on the land." The magistrate does not waste much more time on the case, but concludes that "the Lands Court confirms the entry made by the Lands Commission that C is a legitimate owner (irrespective of D's claim)." And it is for the fact that C's name is registered by the Lands Commission.

The Lands Court is set up by, and its principal jurisdiction flows from Part III of Cap. 52 and Part VI of Cap. 52. Each Island Council appoints members to its Lands Court, subject to the approval of the Chief Lands Officer. All disputes which have land, or an interest in land as their basis (including native adoptions, bastardy etc.) come within the initial jurisdiction of the Lands Court. Members are paid what is known to be a 'sitting allowance' from Government's funds, and Lands Court's fees are to be paid to Government Revenue. The current rate used for members is as follows: — \$10.00 to the President and \$5.00 to members.

Appeals from decisions of Lands Courts are to be lodged within three weeks of the decision having been made, though there are provisions for extending the time in certain circumstances. Appeals to the Senior Magistrate and thence to the High Court, can only be considered if a point of law is involved.

WATER RIGHTS : SEA, LAGOONS, REEFS,
SWAMPS, LAKES, RIVERS

The ownership of the sea is increasingly appearing to be a source of competing interests among individual individuals or groups of people combined with a perfectly understood but unspoken sense of fairness. Islanders need access to a steady supply of fish. They also desire to maintain relatively stable and harmonious inter-island relations. The ownership of such areas as shallow reefs which contain high concentrations of desirable fish and are known to be bounded with precision and the identity of the owner is universally agreed upon. Clearly defined ownership and equitable allocation of these fishing grounds decreases the chance for conflict and at the same time provides all islanders with ~~easy~~ access to fish. In the deep seas where fishing is less productive and where the fish are more widely dispersed, the potential for competition and conflict is reduced. The matter of communal sharing of rights in these areas of the sea among the people of various islands.

The lagoon area and sea near the shore ^{to the} are the exclusive right property of the island or atoll. ^{It} Micronesians understand this principle as to their own island and respect it as to others. Islands also maintain exclusive rights in all known submerged reef areas. Each island and atoll has such a submerged reef area ^{area} growing out from the side the sea mount which forms its base. These some of this are very close to the shore others extend out 30 miles or more. In addition all over ^{the} Micronesia there are submerged reefs capping mountains just below the surface of the surface of the ocean. These reefs are all excellent reef when he has to go first to the land ^{can't} to register his name as fish trap proprietor

ownership right. Or sometimes an intruding fisherman might take all fish to the camp of his own island to be commingled with caught by others and a portion returned to the intruder.

There is another dimension to Micronesian ideas of ownership of the sea. Viewed from the perspective of an islander intruding into the sea dominated by another island of residence of the intruder and the closer the proximity of the island of the intruder and the closer his cultural affinity to the dominant cultural group of the area, the greater are his rights in the sea.

In the Gilbert Islands there is no ownership in the sea areas of the sea, lagoons, reefs and fishing grounds have been traditionally opened to all citizens of Kiribati and other people who are resident in Kiribati. Under such condition all fishermen are free to go out fishing in any place that suit them and to catch all they can for food. The people on South Tarawa are now used to go out fishing near the island of Maiana because it is an excellent place to catch plenty of tuna. Also the Government fish vessels are often fish near and around the sea island of Maiana.

The people of Maiana will never complain about this knowing that the sea water within the Republic can be used by every body of Kiribati. If any ship visits an island and stay there for a few days unloading cargoes, the crew can go out fishing in shallow waters either during the day or at night and cannot ^{be sure} be taken to court for such reasons.

In case of the reefs in Kiribati there are certain circumstances in relating to ownership. As I have said already that the reefs is not owned by particular person or group of people as the same as the other sea areas. But if any person wishes to construct fish trap on any of the reef then he has to go first to the Land Court to register his name as fish trap proprietor.

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ship visits an island and stay there for a few
days unloading cargoes, the crew can go out fish
in shallow waters either during the day or at
night and cannot ^{for sure} be taken to go court for such
~~reasons~~ reason.

In case of the reefs in Kiribati there ^{are} certain
circumstances in relating to ownership. As I have
said already that ~~the~~ ^{the} reefs is not owned by
particular person or group of people as the same as
the other ~~one~~ sea areas. But if any person
wishes to construct fish trap on any of the
~~an~~ ~~existent~~

fishing grounds. Each is named and exclusively owned by particular family, clan, municipality, island group or atoll. Ownership rights in these reefs are apparently quite well respected and little poaching by Micronesians is believed to occur. Ownership might best be described in terms of the zones of rights with the criteria for defining the boundaries of the zones differing among the cultural groups. The island or atoll maintains an exclusive right in the zone immediately around it which includes the lagoon and nearby offshore area. In other zones the island or atoll has dominant rights, but these rights are not exclusive. The outer boundary of this zone is less well defined than is that of the zone in which the island maintains exclusive rights. In some islands the degree of rights within the non-exclusive zone seems to gradually fade, as one moves outward toward the next island, until at some point the right of the next island becomes primary.

In the Marshall Islands the dominant rights in the zone reefs were fairly shared with other Marshallese because of the homogeneity of the culture. The other non-exclusive zone consists of all of the sea area within the Marshall Islands beyond the exclusive zones of each island or atoll, and is the common property of all Marshallese.

In the non-exclusive zone, harvest permit is usually permitted (as is incidental fishing). But the fish caught clearly are the property of the nearest island (and are, in effect, a gift to the visiting islanders who take them). Various practices exist which affirm the superior rights of the nearest island. For example if Micronesians come fishing for tuna within the sea considered owned by another island, they may catch excess fish to take them to the island in recognition of that island's

reef then he has to go first to the land
can't to resist his name as fish trap propriety

if fish trap is located. Without registering his name
in the Lands Court then everybody can take
any fish which is caught in the fish trap
and no punishment be given since the Lands
Court has not been recognized as it is foreseen
of that person.

As regard with ~~registered~~ seabed and foreshore
the ownership vests in the Republic of Kiribati. But
the Minister may by notice (and after consulting
with those landowners who may be directly affected
thereby) designate the foreshore of an island
or islet or any part thereof that means
any part of it so designated as a foreshore.
Having designated the foreshore no person shall
remove from the foreshore sand, gravel, reef
mud, corals, rock or other like substances
without first obtained from the Chief Lands
Officer a licence for that purpose. A licence
required may be issued subject to such conditions
as the Chief Lands Officer thinks fit. Any person
contravenes shall be liable to a fine of \$250.00
Lakes and Rivers are not applicable because
we do not have such things in the Gilbert Is.
We have swamps but very small in size. In
the past there are particular persons people who
are title holders of these swamps but later all
these swamps have now be transferred to the
Council of the island where the swamps are
situated.

ref then he has to go first to the Council
Court to register his name as fish trap proprietor

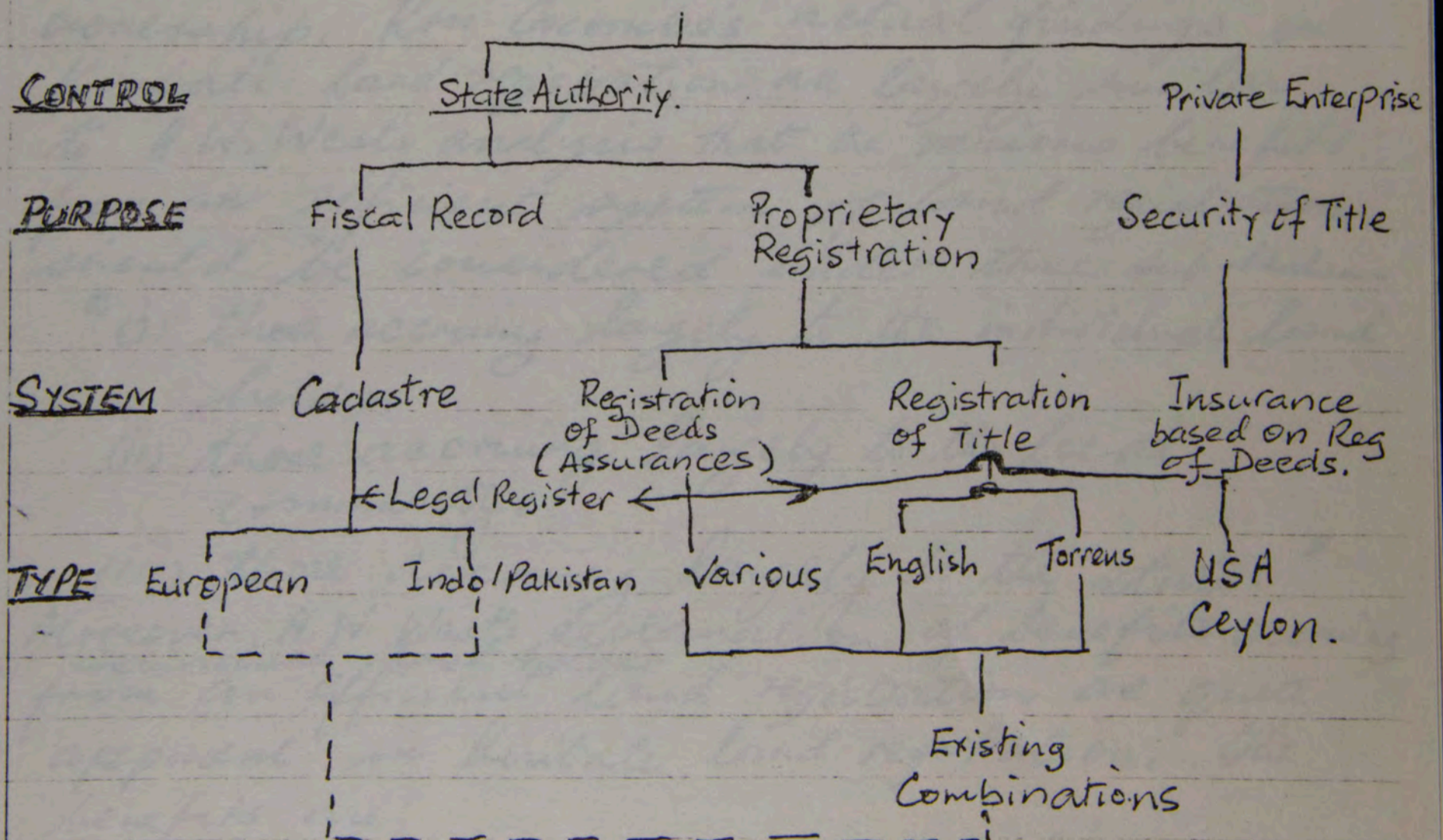
SE. 103. LAND TENURE. ASSIGNMENT 10.

TOPIC: The effectiveness of the registration system in Kiribati.

In this paper I will appraise the effectiveness of the registration system and land records in Kiribati. The land registration system in Kiribati is simple and effective and this quality has been noted by scholars like Professor R. Crocombe and could be supported by other academics such as H.W. West. (Cambridge University, England)

The following diagram from the work of H.W. West is used to clarify the effectiveness of the registration system in Kiribati at a comprehensive level of analysis.

A CLASSIFICATION OF SYSTEMS OF LAND RECORD.



Land record in Kiribati is a state or departmental concern whose ultimate aim is to CONTROL all lands and the PURPOSE is dual - to

help regulating fiscal policy and to secure property and ^{to} security of title to land. The SYSTEM used is that of the registration of titles with an increasing use of surveying. The TYPE is the TORRENS (more than ENGLISH;) usually coconut trees are marked and big stones at important points are planted as boundaries or boundary guides which are used now and again by surveyors.

In his observations of land tenure on Tarawa R. Crocombe notes that on record land owners can appear as individuals or as a group; in other words land registration cares for individual and communal lands. As land is quite scarce in Kiribati government has succeeded in establishing its headquarters on all the islands through a leasing system. Of course in Kiribati there is ^{more} emphasis on individual ownership than on communal ownership. Ron Crocombe's actual findings on Kiribati land registration are largely similar to H.W. West's analysis that the various benefits from an efficient system of land registration should be considered under three sub-heads—

(i) those accruing largely to the individual land holder,

(ii) those accruing largely to the local community,

(iii) those accruing largely to the state.

Moreover H.W. West's explanation of benefits accruing to an individual land holder from an efficient land registration are quite apparent in Kiribati land registration. The benefits are;

(a) Greater confidence and sense of security

(b) Dealings in land may be completed expeditiously

reliably and cheaply.

(c) Less possibility of loss, fraud or mistake.

(d) Better administration of Credit schemes.

(e) Reduction in the litigation over land rights

(f) Defects in title may be finally cured.

In similar ways the clan or extended families are benefited from communal properties which are registered in the names of all concerned.

Government in Kiribati since colonial days gains much from land registration because for every landowner there is a land tax. Soon before independence land in urban Tarawa came under the control of Tarawa urban council. Landowners still own their lands but they are subject to government planning projects etc. etc. Government can utilize land but must pay the land owner a lease rate. When businesses want to use land they apply to the (land department) government that gives them a sub-lease and the land owner still gets his lease rate.

In conclusion the existing land registration system is dynamic and conducive to economic progress for the individual, extended families or local community and for the state. I seem to envisage as if the system would, in the long run, be more advantageous to government than to individuals as sooner or later the landowners would find it difficult to divide the lands as they would get too small per person. Overcrowdedness would surely call for commercialisation of land as the cash economy would inevitably be a mode of life. As it stands the land registration in Kiribati serves its purpose and its efficiency can be observed through the work of H.W. West

which is an independent & theoretical analysis of
land registration in the process of development.

READINGS.

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West
7/10.

Se. Alaima

RESETTLEMENT OF GILBERTESE IN THE PHOENIX AND SOLOMON ISLANDS

The equator divides the 16 islands in the Gilberts into two groups; the islands from Abemama to Makin form the Northern Gilberts while the islands from Nonouti to Arorae make up the Southern Gilberts. Politically there are three divisions, the Northern, Central and Southern Districts, each under a District Officer. The Northern Gilberts receive more rain and coconuts and babai are more plentiful than in the Southern Gilberts. The islands in the South are subject to drought and since the babai plant needs mud and plenty of water, it is scarce in the South. At the time of drought unless the people have stored a lot coconuts in their houses, they have nothing to eat their fish with and they lose their only drink, the toddy.

European contact here in the Gilberts had the same impact as it had in most places in the Pacific, a decline in population owing mainly to the introduction of disease to which the people had no opportunity to build up immunity. By the 1920s the islanders had, for the most part, survived the dislocation caused by their early contacts with European civilization and were well on the way to racial regeneration. The islands are just coral atolls and when the first detailed census of the Gilberts was taken in 1931 the figures showed that the 7 islands in the Southern Gilberts were the most thickly populated areas of the colony. In the early days before the Europeans came the Gilbertese had been relying on the population checks of infanticide, warfare, compulsory emigration and abortion to prevent their natural prolificity outrunning their food resources. The position became serious because with the establishment of central government, the government had successfully prohibited all the controls with the exception of abortion, which is discouraged without being able to prevent, and also the effects of the Medical Department in reducing the infant mortality rate had resulted in a larger

percentage increase of the population than previously. Furthermore, owing to a variety of fortunate circumstances, the shock of European contact in the Gilberts had passed off with less effect than in other places. Investigation in the villages showed a hitherto unsuspected degree of poverty among certain families, resulting in minute subdivisions of inherited land and continual litigation on land matters.

Some steps had to be taken to improve these situations and a scheme for emigration to the Phoenix Islands was decided upon. These islands were chosen because they are close by and also for the similarities of the climate to that of the Gilberts. Volunteer emigrants were taken from families with the most people.

These emigration expeditions began in 1938 and by 1940 when further settlement was finally suspended owing to the war, a total of 729 colonists had been transported to the Phoenix. It was explained to them before leaving that their interests in land would go to their relations at home and that on arriving at their new home the men were to get two pieces of land each and the women one. Each child was granted two pieces of unplanted bush land, 25 fathoms square, on condition that the parents cleared and planted the lands within five years of their taking possession.

Things were going smoothly for the settlers on three islands in the Phoenix, Nukumaroro, Urona and Manra, when towards the end of the 1950s a drought struck the islands and the water which is not as good as they were used to in their home islands became more brackish than ever and could not be drunk. They asked the government to bring them home. Because the government could not return them to their home islands because the islands were quite crowded, they were brought to Tarawa to await transportation to the Solomons. Both the Gilberts

and the Solomons were under British rule. The Solomon government agreed to the Gilbertese coming to live on one of their islands called Wagina.

During their short stay in Tarawa, some of their children went home down south and some got married and stayed behind. Then trouble started as these children had no land. They appealed to the Land Court and the Land Court threw back the appeal to the relatives who stayed behind. It is up to them to provide their relations with lands. The majority were given lands by their relations.

When those waiting on Tarawa finally left for the Solomons they were joined by others from Tarawa, Abaiang, Marakei.. They were given the island of Wagina, uninhabited and the Solomonese themselves did not go there because they were frightened of being cursed by the ghosts. They believed the island to be haunted. The Gilbertese people found life hard there as they called to do constant gardening, something they were not used to. They worked hard and have survived. Their children have done well in school and have obtained good jobs. In a place called Red River, outside Honiara, the Gilbertese have established themselves there, building up shops and running businesses.

The Solomons now have seen how successful the Gilbertese have been, and there has been no curse from the ghosts for the occupying of the island of Wagina and they want the island back. Besides the Gilbertese are increasing in number and their children seem to be doing better than their own children and a few have got in and are holding important jobs. In other words it is developing into another "Fijian versus Indians".situation. The Solomonese do not seem to want the Gilbertese on their islands as there has been rumours to say that they want the Gilbertese send back to the Gilberts. Just lately the government has decreed that only Gilbertese who have lived there for a long time will be allowed to remain and they will have to seek Solomonese citizenship. What the outcome will be remains to be seen. Already a few have been sent back as they haven't been there long.

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ABSENTEE LANDHOLDERS IN ABAIANG

Urbanisation has crept into the Gilberts as it has in many parts of the world. People are moving from rural areas to live in town. Here in the Gilberts about a third of the whole of the population live in South Tarawa. About half of these people went there to look for jobs that would bring in money. Others are there for their children to obtain higher education.

Before the Gilbert Islands became a British colony, the people on each island lived on their lands in their families or clans. With the establishing of central government, villages were formed to help keep order, and to stop warfare over lands. In the 1860s many Gilbertese people were kidnapped in "blackbirding", and others went to work in the trades of those times in Fiji and Tahiti. Many of these never came back. In the early 1900s phosphate was discovered on Ocean Island and Nauru and recruitment for several years of contract to mine this mineral has continued up to the present days. As a result of this mining phosphate, some Abaiang men and women married Banabans and now have been in Rambi for more than 20 years.

After the Second World War, with more ships, people began to move about more quickly and freely and of the $\frac{1}{2}$ of the whole of the population living out of Abaiang, some of them are living within the Gilberts, on the other islands as a result of inter-island marriages. Others have been working in Tarawa for over 10 and even 20 years. Like others they have gone to find work that would bring in money, some hold government jobs while still others have gone in to live with their children or relations that are working on Tarawa.

There has been an increase and improvement in education in the islands. Both the Churches and the Government set up schools, but as things were in those

days, not all villages had schools. When people came to realize the importance of education there was a flocking to the villages that had schools. Today with more schools to cater for the many children on the islands the people have moved back either to their own lands as in the old days or back to their villages. But there is a firm belief that the best schools and best teachers are on Tarawa, so many remain there.

During the last 16 years a group of twenty men went to the Solomons with the Phoenix evacuation. Their families followed later on. Only a few of these have written to renounce their rights to land and have agreed that their shares be given to their relatives. The rest of them still retain their rights to lands and their shares are being looked after by their families. Usually when people leave home to travel somewhere they leave their lands to the care of their friends and relations. This caring for land involves the paying of the annual taxes. Some of these caretakers look after the land as if it is their very own. They collect food and pay its tax but they also clean and cultivate the land. Others eat the fruit from the land but do not clean nor cultivate it. Sometimes such caretaker appears before the court when the landholder returns to find his land taxes have not been paid. The caretaker is made to pay them and he is also fined at the same time. It is also discouraging on the part of the caretaker to work the land since he knows that once the landholder turns up he loses the land though he and his family can draw something out for the every day livelihood.

Just a couple of years ago a woman turned up looking for her mother's share of land. She came all the way from Rambi to look up her mother's family and land. After a short stay she left for Fiji again.

Abaiang was one of the islands besides Duteritari and Abemama that had

a king ruling before central government came into existence. The king owned the land and distributed it out to the people to work on. The monarchy has ceased to function for a couple of decades but it is still the king's numerous families that own most of the lands on Abaiang. Their servants of the old days are the ones with very little land. There is a middle class with not very much and not very little land, just enough. Also about half of the people here hold land rights in Tarawa and some Tarawa people have lands here on Abaiang. Some of these people are either on Tarawa in search of money earned jobs or they are on Abaiang but they just would not bother to work their lands now that they can buy foods from the store and obtain money easily by selling fish, making thatch and so on, they can't any need to work so hard. Land fragmentation presents another problem. Some live too far away from their lands that it is too much trouble to take a trip so often except to collect food.

About a third of the whole area is not worked. Some babai pits have nothing in them and pandanus trees have begun to grow in them. The coconut trees that are there now are old and new ones need to be planted. Some of these absentee landholders on Tarawa turn up every now and then to collect food thus making the caretaker some sort of servant.

Those who work their lands most are those with not much and because they need coconuts for food as well, very little is left for copra. The Federation has a boat that visits Abaiang and Maiana to collect a supply of local food, pigs, babai, chickens, salt fish, coconuts, pawpaws, etc., for its market on Betio. This provides the people with a bit of money to buy food from the store but the food does not always come, sometimes when it does come it is finished in a week. Abaiang is constantly short of cargo from Tarawa. When the people complain, Tarawa sends back words to say that Abaiang is not producing enough copra to pay for the things

it needs, flour, rice, sugar, tobacco, etc.

There is a law here that says if a person has been away from his home island for 10 years, he would be deprived of his land rights and these would go to his next of kin. In conversation with the Magistrate of the Land Court on Abaiang, I learned that it was hard for them to remove absentee interests in land without word from the landowners even though she or he has been away for 20 years. Some children of these absentee landholders, like that woman from Rambi, might just turn up one day demanding his mother's or father's share of lands. They all agreed that it is harder to deal with such a problem or to restore rights to land after removal. I think it is for this same reason that most absentee landholders from Abaiang retain their rights to land after so many years of being away from their home island.

There are many problems caused by the absence of landholders. Large areas of land are left untended - coconuts are left to rot or sprout where they fall, thus causing an over density of trees. There are other factors to be considered too. Absence of young men of marriageable age working overseas has created an imbalance of females to males on the islands. It is difficult to see how this can be rectified.

The people go to work overseas or to live in Tarawa because of the job opportunities and also because of the increased facilities - electricity, entertainments, better education that are available there. If similar facilities were created and maintained on the outer islands, if a realistic scheme of decentralization could be introduced, light industries encouraged on outer islands, many absentee landholders might return and look after their lands.

AND HOW

Improvement on land productivity

Land productivity in copra, toddy, pandanus fruits, b'ab'ai, and the rest that can be grown in the Gilberts is very low if we look at the number of lands and trees ^{which are} unproductive or little produce. Abaiang is one of the many islands in the Gilberts with many ~~wasted~~ ^{with} wasted lands and unfruitful or little products. It seems that the situation is not improving but getting worse. There are various factors contributing to this problem like the high rate of inflow to Tarawa from outer islands, the rapid increase of the population, the attitude of Gilbertese today to land, and many others. So with the oncoming independence the Gilberts badly needs radical and major reform on its land upon which she will heavily rely, so this danger must be stopped and cured now. After that, means of developing the country must be pooled together and effectively used in order to bring about the fruits of the land to feed its people and to run the country. However, to carry this task out problems and all the obstacles must be removed first. So it is most appropriate to allocate and identify those obstacles with their main causes.

One big problem that we can see in the Gilberts is that there are plenty plots of land left idle. Most of those plots have nothing on them but shrubs. The owners of those lands are either on Tarawa or on some other places where they spend several months or years on, or sometimes they are not going anywhere but just do not want to work on their lands. A related problem to this is working on land without proper implements and skills ^{which makes it} hard and too difficult for an ordinary villager ^{to undertake.} Another problem is the rapid population growth of this small place which encourages many co-owners of a piece of land which in turn makes them unwilling to plant or develop the land by any means otherwise others will get ~~a~~ ^{lots of} benefits from his work. And we must not forget at this point ~~that~~ ^{that there are} another aspect of this problem ~~is~~ many useless trees and bushes on the lands, ^{either} whether they are old or ~~not~~ bearing little fruits or ^{they are} just useless. Those are then some of the major problems and obstacles that need be examined, studied, and tackled immediately. In doing so the country could avoid some of the drastic dangers that are approaching. In fact they need be discussed in details but due to the limitation of this paper it is now sufficient ^{just} to mention ^{some of} them in order to give us some ideas and indication of what is involved. Certainly we have to spend more time on the means of tackling and improving the situation.

Islands Immigrants on other islands

Non-Abemamans on the island of

Abemama

Abemama island is one of the well known islands in the Gilberts in the early periods of discovery in the Pacific, especially for its kings like Binoka, Baiteke and others. Also it is because of its contact with European world and the neighbouring Pacific countries. In the Gilberts, Abemama still maintains its position as one of the centers, maybe next after Tarawa. Abemama too is one of the three centers outside Tarawa with a district officer, a district doctor, and the Gilbert Islands Protestant Church ~~minister~~ district minister, who are responsible for the central Gilberts. The other two are Butaritari for the northern Gilberts, and Tabateuea north for the south. So for being a center for many years in the past and is still today, Gilbertese who are non-Abemamans go there for various reasons, a lot of them have managed to find settlements there. And they have stayed there for many years. The island is big and has a good climate so that droughts is very rare. Coconut trees grow well there and so with 'b'ab'ai' and for that reason it becomes so attractive to non-Abemamans particularly Gilbertese from the south. Abemama is known in the Gilbert islands as the top copra producer. Fish is as well plentiful in its sea and lagoon. So, many non-Abemamans go there and find some places where they can settle.

In order to stay or settle on the island of Abemama one has to get first some piece of land where he can build his house and feed on as well. There are people who get lands on Abemama from the Abemama inhabitants but that only makes a small percentage as most of the land or the island of Abemama is owned by the king of Abemama. At present the king is Tem Bauro Tokataake who sells lands to those who want to buy land. He accepts money, radio, motorbikes, and other things that he wants to have for land. The people get government's approval for the purchase of lands from the king.

A new people is then emerging on Abemama along side the Abemamans, and they are still coming in and increasing themselves rapidly. According to some informations there are more non-Abemamans than the Abemamans on Abemama. Consequences from this instant maybe seen in the followings: competition, identity struggle, fear of being dominated, and limited rights. We shall look at each one in turn.