

Key features of pre-European Land

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tenure in the Gilberts Gilbert Islands.

Most of the old people I interview are not quite certain with the real key features of pre-European land tenure in the Gilberts as far as their individual memory is concerned, but largely agree with some of the features suggested in the recommended readings for this topic. They are as follows: no centralised government, travelling was very limited, no metal tools and weapons, no written records, no independent arbitrator, and land rights was scattered.

No Gilbertese can argue the fact that in the Gilberts before the arrival of Europeans there was no central government. There was no single person who could make himself the government for the whole of the Gilberts. Most of the islands were not unified, and that they went on their own ~~way~~ different ways. Each island and family had its own way of settling land disputes, allocating land rights, and so forth. The exceptions were Abemama, Kuria, and Aranuka which were controlled by Abemama kings; Tarawa had its own chief and so with Abaiang, and one or two besides. Fights and small scale wars occurred from time to time when there was no other means of solving ^{disputes} over land rights and other things. The Gilberts then knew nothing about central government.

Travelling was controlled by several means, one of them was fighting and fear of being killed, so that travelling then was so limited. This was the case too because the means of travelling were only canoe and on foot. Travelling afar was difficult and the normal range was about three miles or so radius. So the tendency was to stay close to one's own land and territory. Travelling at far distances was not very much approved by societies because every member especially men must be there to defend their territory from any attack.

Due to the limitation of land available in the Gilberts, competition for land was great, so that each person and society wanted to have as many lands as possible, and as productive as it could be. For that reason small scale wars occurred occasionally but the amount of land and territory conquered together with people killed and taken were limited, as weapons were only spears, wooden swords, and few others. The products of land was small as the tools used were wood and stones and shells. Such tools could only do a very limited job in a long period.

Each person and family had to guard its own boundary that the next door family would not use its land and take anything from it. Stones, trees, and other things were used as markers so that each family

knew where its territory boundary was. There was no such thing as we know today as written records of such lands and boundaries. Memory was largely depended upon and to some extent the practice^{is} still today in the Gilberts. But as often the case is memory is not always accurate, yet that was how the territory boundaries, and disputes, and other problems related to land tenure were solved and preserved till the written records method was introduced.

Disputes and fights over land rights happened now and then. It was easy when it happened between ~~x~~ individuals ~~ix~~ or families in a village because elders could help in the case. But between village and village was very difficult to solve the matter because there was no independent arbitrator that could put things rightly in a just way. Since that independent arbitrator~~f~~ was not recognised problems related to land tenure in the pre-European period were not easy to solve.

Land in the Gilberts is not rich and it is very hard to get a good place for babai pit in most islands. In times of drought only limited places could still produce few coconuts. So due to these reasons land rights in the Gilberts was scattered, some here, some there, and some at other places so that they could still get some good babai and few nuts in times of disaster. Still today land rights is scattered here and there.

I understand that it is beyond the ability and memory of our old people today to collect the pre-European key features of land tenure in the Gilberts. So, what is said above are to me the high possibilities as far as I can understand.

Some factors that lead to change
of principle in land tenure
in the Gilberts

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Change always takes place in every society. There are good and bad changes which happen day after day in life, even places which are regarded as remote are as well affected by change. A society without change is a dead society because everything that lives must grow and move on. At this stage we shall be more concerned with change seen in land tenure of the Gilberts. This particular change is caused by contact with white man. We shall look at it technologically, economically, and politically.

The introduction of metal tools like knives, axes, spades, and big machines like bulldozer, crane, heavy truck, tractor, and means of transport like pushbike, motorcycle, vessels, and small planes; and methods of keeping records ~~bring~~ bring about a lot of major changes in land tenure exercised in the Gilberts before the arrival of whiteman.

Of course these metal tools are more effective ~~xx~~ when they are used on the land. They can do a big job in a lesser time so that with a bush knife and axe cut and clear a bush in a little time. With spades and other digging tools make b'ab'ai pit and digging for planting and other purposes easier. Change then can be seen in the attitude of the people working on the land that instead of relying heavily on other persons to help him do the big work which he could not do it by himself is to some extent discouraged because he can do that ~~with~~ now with the aid of the metal tools. The emphasis then is changed from corporative working to individual, and the reliance on the tools and the skills of using them. Local tools that were used for similar works before the metal tools were introduced are gradually dying as they are not frequently used, and quite a lot of them have been lost completely together with the skills that accompanied them. Big machines do tremendous jobs as clearing a place in pushing down trees, flattening and levelling it, and digging ponds, carrying tons of sand and stones and rocks in a short time. Without them Gilbertese with their own local tools would surely take them ages to complete. These big machines certainly upset the natural formation of land greatly which affects Gilbertese wholly. Their attitude to land and their environment is somehow changed even psychologically. Travelling is now quicker than it used to be there are vessels that ~~xxx~~ can take them across to ~~xx~~ another island, and just recently small planes are operating on several islands at present and it is hoped by the government that some time in future every island will have its own airstrip. Certainly the Gilberts is made too small a place now to Gilbertese. Powered boats,

pushbikes, motorcycles and motorcars can be individually afforded which enable Gilbertese to extend their travelling beyond their normal range. With the help of these travelling machines distant plot of lands could now be frequented and developed or claimed. The people now are more mobile. Another factor that has to be considered is the recording methods, books in particular that substitute memory. Around the books are the courts, magistrates, policemen, witnesses and others that deal with any matter related to land. Memory is very much discouraged so that books are becoming more and more important. But books do also make mistakes sometimes.

Economically the use of land vary a lot throughout the Gilberts. With the encouragement and backing of the agricultural sections especially most of the islands in the southern and central Gilberts are replanted with young coconut trees, but very little in the northern. Pandanus trees are not considered seriously but it is one of the most useful trees in the Gilberts. Coconut planting is largely encouraged because among other reasons is a cash crop. But at present due to the high demand of local food by those Gilbertese working on Tarawa other crops and several other things are also sold for cash like b'ab'ai, pawpaw, pumpkin, boiled toddy, salted fish, bahana, and so forth, but to a very limited scale. People work on the land but to a limited labour. Really they are after a cent which they will sell everything for it. Economically food from the store is far, far better than local ones. This has a great effect on the islanders that they rely heavily feed on store goods that they cannot get and grow in their own land. Tarawa south is taking the lead in this habit and followed by many outer islands. Some would even sell their lands for the sake of getting some cash or anything that they want economically from the store. There are many plots of land in outer ~~outer~~ islands that are left waisted because the owners stream to Tarawa in search of labour to get a cent.

With the coming of the British government to the Gilberts new things happened. Politically land is needed for a central government, a station for government people on outer islands, a land to establish a school or hospital. Politically those places are necessary for the effectiveness of a government. Small government stations on the outer islands are required there in order to strengthen the control of the central government throughout the Gilberts. Tarawa south especially, and Betio are used for government purposes so that most of the land there is leased from the holders. So government rents lands from people and pay so much to them annually. There are as well crown lands and free holding. Government pays cash to the owners on which they live on. Money can do a lot of things but is not a proper substitute to land. Those lands are never to be used by the holders and that brings also change in Gilbertese land tenure.

The Two Contrasting Colonial
Policies

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Different colonial powers have their own ways and approaches to land policies in places where they establish themselves. This paper is dealing mainly with the Pacific area. There are many colonial powers working in the Pacific which we cannot deal with them at this stage, but two of them can give us some idea of the problem faced in the Pacific regarding land policies. We shall take France and Britain as the two colonial powers using different and contrasting policies in their own colonies. Before we go on into the details of this particular topic we have to raise the following points in order to give us some general idea regarding land policies in the Pacific. The first thing is that islands or group of islands have their own traditional land policies before they were made colonies. Second, is that colonial powers would not use any traditional land policies but its own. Thirdly, that a colonial power is using its own ^{land policy} together with a traditional ^{one} ~~own~~ making a combination of the two to suit in well with their own way. Lastly, that a colonial power is using a land policies for its own interest and advantages.

France holds some parts of the Pacific which contains of New Caledonia, Wallis, Futuna, the Loyalty Islands and part of New Hebrides. In her policies, France is just using her land policies which the French government uses in France. In this way ~~the~~ traditional land policies ^{are} ~~is~~ not incorporated in the policies used. Of course this happens in New Caledonia, and in New Hebrides. French model is taken by the French powers on their colonies ~~is~~ in order to make their work easy. In order to influence this idea French settlers plus other immigrants are encouraged to get lands for ^{themselves} ~~their own~~ on those places. That move helps to make every thing French and thus advocate the French way is the only proper way. But transplanting one's own way and life is not always proper and fitting to a different people. Complications can result from that practice mostly to the indigenous people who are completely foreign to a land policy ~~is~~ introduced and that denies as well the rights of the people to their own land. They have little or no say because they do not know the French law and land policy. It is the French themselves that control the land in their French way so that the inhabitants of the islands have very little ~~involvement~~ involvement in land courts. In fact this leaves the islanders at the mercy of the French government. The French themselves on those islands are more safe and secure than the inhabitants because they know the French law very well, and in most cases they get better

hearing in the courts than those who are ignorant of the French law. Of course this assimilationist policy has its advantages and disadvantages as there is no perfect way. Thus the strength and weakness of this method can be seen more vividly when it is contrasted with another method.

Britain holds quite a number of groups in the Pacific one of which is the Gilberts. The method which Britain uses in its colonies in the Pacific is different from the one that she applied in Africa and New Zealand for she applies a protectionist land policy. With this method the British government protect and secure the land rights of her colonies. She also encourages the colonies to use their own land policies and that they have to participate as much as possible in the land court affairs. The British method is protecting the lands of her colonies so that the sale of land to settlers is ~~xxxxxxxx~~ discouraged. Traditional land policies are used by the British government with few changes to suit the colonial power well. The islanders are aware of the land policy operating in their group because it is largely traditional.

In fact the two colonial powers are different from each other in regards to the same problem they face as we have seen above, but in order to get a simple picture of the differences we shall contrast the two methods against each other. The major difference lies in the fact that French and British are not the same. With their land policies operating in the Pacific the British applies a protectionist land policy while the French an assimilationist land policy. With the assimilationist policy the stress lies with the French themselves, the settlers while the inhabitants are ~~not~~ regarded unimportant. The islanders are denied their land rights and are ignorant of the land policy used in their own islands. They have very little involvement in the land courts and their lands are sold to strangers. The assimilationist land policy is imposed on the indigenous people. In contrast to that the British gives special treatment to islanders themselves who own all the lands. The rights of the people to the land are protected and are encouraged to solve their land disputes and other related problems in their own way. The British colonial power uses what is there locally so that a traditional land policy is used and encouraged. Islanders are also encouraged to participate heavily in land courts and that their lands are protected from foreigners. Their land rights are also protected. This method is unlike the French because it is encouraged rather than imposed on the indigenous people. This ~~comparasion~~ comparasion looks at two different colonial land policies and each policy has its own advantages and ~~is~~ disadvantages.

Land Transfer by Inheritance

Land in the Gilberts, like other places in the Pacific where land is scarce, is very important for a number of factors like security, social status, and others. So for that reason each person has a high need for land, and has to secure his land rights so that no outsider takes them away unless for very special reasons. What happens then is that land rights are kept traditionally strictly within a family which is both nuclear and extended. ~~and~~ One of its common features is by heritage through which land rights is transferred. Land rights transfer by inheritance is a big issue in itself but I shall look at it mainly through parent-child land rights transference.

It is commonly assumed now that in most cases including land rights in the Gilberts children are proper, legal, and traditional successors of their parents. Children with unknown fathers are not considered here and so with adoption; but the real children. Real children are considered as rightful successors because they have a traditional claim on their parents to look after them and to provide them with the necessities of life one of which is land rights. So what parents own a child has a share and right to them. It looks strange if a real child does not get land rights from his parents. To some extent land transference by inheritance to children is regarded as parental obligation to their children.

In the Gilberts children inherit rights and other things from their fathers mostly but they can also get something from their mothers. As in many important things there are ways and rules to be followed and so with the passing over of land rights from parents to children.

There are several factors that determine the process and the final outcome of land rights transference which are interwoven with specific groups or ~~sides~~ sides. They are parents, child, and the people. This is important for our consideration because this is a dealing between people who have much or little or moderate influence on the mechanism used. One cannot think that it is mainly a parent-child business because the dealing is performed in a society according to its rules and methods specifically set for that particular practice which the members of the society concerned must approve and strengthen it when they recognise the dealings.

The process is always complicated as there are many difficulties and other things involved in the business of land rights transference. We shall see some of those as we proceed into the subject.

In fact there is a criteria on which land rights is transfered from parents to children which involwws several things. Parents, children and people have to recognise those things or qualities or rules otherwise nothing will come out. They have to agree on those things.

A child who is to inherit from his parents must be the real child of the person or to be more specific the father whom he is to get his land rights from. Children whose fathers are unknown would not get any land rights except through their mothers. Some people take this seriously especially when man and woman are not legally married to question a child born to him. So a child must be a real child of a father. But some men do not bother about this practice at all and just accept a child as his own child.

The sex and place of a child in a family is important because they help parents, a child himself, and the people in that society to determine what rights that particular child ought to get. There is less problem when parents have only one child, but there are difficulties when they have several. Other children in the family have to be consulted in this particular matter.

Even though parents are obliged to hand over their land rights to their children, they have their own decisions and rights to allocate who should get which, and can as well withhold all the rights if they want to from any child. Several factors need some considerations in order to clarify the situation.

A parental obligation to give land rights to their children must be encouraged and made active by a child's obligation to his parents. So children are competing in giving the best service and obligations to his or her parents. The performance of those children's obligations and duties. Fathers in most cases are taken as more important as far as land rights inheritance is concerned and he gets more hearing, honour, and obeyed by children. In their old age parents must be looked after quite well. If a child does not look after his or her father she or he will get no rights from him. One can take that one of the reasons why old people in the Gilberts are taken care^{of} so well. Of course all land rights must be recorded and finalised with the government to avoid any land disputes.

It seems that the transference of land rights is largely determined a child's behaviour and the standard of the performance of his or her obligations to parents. Moral questions as whether a child really loves his parents that he performs those obligations or not is not emphasised and plays no specific significance as long as one can make a good show. But the really question that I think we in the Gilberts must ask ourselves and consider it carefully is whether this child of mine can work on that land and develop it.

Land Tenure Course

Exercise No.7

Maunaa-Itaia

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The Main Changes in Relations between Foreign
Persons and Local Land-holders from the time
of first Contact to the Present day

Certainly change is an inevitable phenomenon as it is part of life. One can see many changes taking place in the Pacific today which have been there for many ages. We cannot deal with all aspects of change that are seen in the Pacific because that is beyond the scope this paper, but we shall focus our attention on the changes we notice in the relations between foreign persons and local land-holders. It looks convenient that we lay down first the first situations we know of the local land-holders and the foreigners created in the land dealings. Upon such dealings we shall trace the relations and the changes occur and are seen today.

The coming of the whiteman to the Pacific sparked off changes in the lives, cultures, concepts, and religions of the Pacific nations. The attitude of the Pacific islanders to their land was also affected. With this particular dealing two things are specifically important to our considerations they are land of local land-holder and money of a whiteman. An islander needs European money and a foreigner needs land, and so the two sides money and land to satisfy their own greed. Many things, good, bad, and fair are interwoven in the dealings which result in the creating of new things and changes.

One of the key features of Pacific view of land is to leave it to nature. So land is not disturbed to grow wild, bushes are not cleared and crops planted; this looks wasteful to whiteman. Land then to islanders in the first contact ^{did} ~~was~~ not very much ^{worried} ~~worried~~ them so that if a foreigner wanted some land he could have it in exchange of something that they wanted. Different peoples have different values so that in regards to land some needed it greatly as in the case of these who had very little land or no land at all in that particular place while the other people who had so much land valued highly other things like money-shells or European money or other things, and so exchanged or sold their land for what they wanted. Due to the low population in the Pacific caused by widespread of new diseases and wars, land were plenty and not very much needed then. In their dealings with foreigners land were not difficult to sell in order to get what they liked from foreigners. There were fair and ill dealings between the two sides, for sometimes Europeans were cheated and at other times islanders were cheated, in most cases local land-holders were cheated. Several acres of land ~~land~~ could be sold for an axe or few knives, or a bottle of liquor or a blanket or any European

stuff they wished to have. Another aspect of this dealing was the misunderstanding on the two sides but especially the Pacific islanders in allowing foreigners to use their lands. Sometimes they gave a piece of land to be used for some period at the end of which it would be returned which in fact was not the case. So they did not know exactly what was involved in that business. Their incapability to understand European language worsened their position. Those were then some of the things that happened in the early contact ~~between~~ between foreigners and islanders. That was the type of situation in which Pacific islanders were in.

But change is always taking place as time goes by and there are several changes ~~that~~ are noticeable in the land dealings between foreigners and islanders which we shall look at them now.

Land in the Pacific today is very important because there is very little land available for the increasing population, and the tendency is to secure every piece of land one can hold on. This means that islanders are more resistant in selling away their lands. Foreigners today find it very very difficult to buy land ~~from~~ from local land-holders. It appears as well that some of their early land dealings are unfair as there are a lot of misdealings in them, for some of the land were sold at very little price. Maybe that happened because islanders then did not know much of that business and therefore looked fair dealings to them; the islanders have learned their mistakes and are very cautious to repeat it again. So no more unfair dealings is allowed by Pacific people. Education help the islanders a lot and are getting very good prices for their lands. The high value of land nowadays help islanders to work harder on them rather than leaving it to nature. More and more acres are fruitfully used by islanders. Some of the lands that were taken from them in the early contact are encouraged to be returned to them. Foreigners can only get land by lease for a number of years agreed and most of governments are backing up this practice. A more recent change that can be seen in the Pacific in regards to land dealings is a joint venture whereby land-holders get a certain percentage from every dollar a firm or a an industry gets. Another change that we see is that land-holders insist on becoming shareholders in the business or firm that uses their land. But still they have to bear always in their minds whether they really get ~~the~~ fair share in the business. They can also before allowing a foreigger to use their land to agree with the conditions they want to put down so that they can actually control or put on a foreigner some restrictions and limits. In that way a foreign investment cannot just do what does it want to do things in its own way and at the same time get good money from it too.

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Land Tenure Course

Exercise No.8

Maunaa Itaiia

Abaiang Marketing Cooperative : Te Ikaraoi

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About two years back a new section in the Cooperative-Federation in the Gilberts was formed and is called Local Products. This section is marketing to residents of Tarawa South local products like salted fish, cooked toddy, oil, b'ab'ai, local string, thatches, and so on. Of course only people outside South Tarawa can produce those stuffs. But due to great distance of most islands from Tarawa, only few places that can efficiently supply local products needed in Tarawa that become the supplying islands. Places with airstrip on are included. The main ^{island} suppliers are the ~~xxx~~ neighbouring islands: Marakei, Abaiang, and Maiana.

As far as my informants on Abaiang are concerned, the individual producer on the island visited is told through the radio to get the items required ready before the 'Ikaraoi' calls in. A manager on that island is asked to see that the items needed are met. Proper arrangements between the Local Products and the sellers were not made when this marketing business started. The prices of each item was not set by the sellers who are members of a marketing cooperative on their island. The Local Products set the prices! 'Te Ikaraoi' buys quantities of local products from the people.

'Te Ikaraoi' makes frequent calls on the two nearest islands, Maiana and Abaiang. Marakei is visited at long intervals. Maiana island was actively in the supplying marketing for about a year, after which she withdrew completely and stopped selling her products to 'Ikaraoi'. The main reason ~~for~~ for holding back her market was that she did not get a good price for the items sold. 'Te Ikaraoi' bought the items at very low prices, the prices that she set. So in this case the Local Products through 'Ikaraoi' is playing seller's role at both ends: one in getting or buying local goods from the marketing cooperatives, the other in selling the same local products to customers on Tarawa. Abaiang then is left as the only major marketing cooperative.

The Local Products never checked on its method that it applied to Maiana and still is to Abaiang. The Abaiang marketing cooperative welcomed the new situation ~~as~~ occurred as a big opportunity to get all the money the 'Ikaraoi' is going to spend on local products.

The demands for foreign goods on Abaiang is great so that in order to get them one has to get some cents. I think that a household daily food consumption is 75% foreign. This shows that foreign goods have more value than the local ones because of their scarcity for one reason. The major cash crop in the Gilberts is coconuts so other introduced cash crops are very welcomed. In this case Abaiang seems to be the luckiest island in the Gilberts. Due to the high value of money in Abaiang, every islander strives hard to get it and will sell anything in order to get money. What then can be locally produced from the island which is demanded from the Local Products for the need of Gilbertese working on Tarawa is sold in large quantity at the price determined by the Local Products.

Abaiang marketing cooperative supplied the 'Ikaraoi' for about two years, but then they start to realise that most of their babai pits are now empty and other items are getting smaller as well for a little ^{money} ~~money~~. One good size babai takes five to six years to cultivate and is bought for 20 cents a pound. In the Gilberts babai is valuable and must be sold at a dollar per pound. ~~xx xxxx~~. Abaiang people are beginning to understand now that there is something wrong with the Local Products dealing with the Abaiang cooperative market. Within two years or so the Local Products has made a big profit on the Abaiang marketing cooperative. But this time the Abaiang people demand a fair dealing and ~~wish~~ they will set their prices.

The people of Abaiang are now determining ~~ng~~ to get what they want. They do not want to be cheated this time. Each villager agrees to withhold any local product in his ~~and~~ hand ~~xx~~ from 'Ikaraoi'. This is put into effect from 25th of September 1977. For certain the Local Products will have a bad time as it seems likely that it is going to lose Abaiang its major supplier. ^{But if} ~~if~~ it wants to continue it has to agree with the prices and conditions laid down by the Abaiang marketing cooperative (and probably Maiana and Marakei). It will be too bad for the Local Products if it does not come into terms with these marketing cooperatives. So the success and failure of the Local Products on one side and the Abaiang ~~marketing~~ marketing cooperative on the other is something that we have to see in future.

Reference;

Crocombe, R. 'Two Blades of Grass' Land Tenure Course Guide

Land Tenure Course

Exercise No. 9

Maunaa Itaia

Main difficulties facing court, or in its
structure or functioning. How they could
be improved.

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The following points are, I think, the main difficulties one can observe facing court and its functions in regards to settling disputes over land rights: expatriates in the court, difficult laws, and perverted justice.

In order to get a better and satisfactory decision from a court one has to get a person who knows the laws so well who has undertaken good training in that particular field. Also a person who has no special feelings with any person in that society and among those who stand in front of a court. In most cases non-locals ~~xx~~ who are expatriates are suitably the ones who can handle this particular case. So judges or commissioners or magistrates are Europeans who are invited or given that post with authority to make final decisions on any case. Of course this has some advantages and disadvantages as well. Every body is interested in the outcome of any sitting and moreover to see that justice is carried out. There are a number of ways by which both good and crooked decisions are made, but we shall only consider some of the weaknesses. One is that since that an expatriate is not local he is not able to know the traditions and the language of the people which will help him to resolve a better decision. His training some ~~xxx~~ how are far from the life and case that he tries to handle at that time. If he relies heavily on his interpreter he is in great danger of being twisted and therefore doing the wish of his interpreter. Another disadvantage is that he is expensive and he is hard to pay for the work that sometimes he does not do well and satisfactorily.

In order to overcome some of the problems created by non-local judges or magistrates or any key court figure; we have to let locals get involved largely in court matters and decisions or even get locals with good training and education in court business. In that way we have someone with us who not only knows the laws but the tradition as well. We do not ~~xxx~~ have to pay him too high as well. But this still does not mean that justice cannot be corrupted. Even though he is a local he is vulnerable to taking sides and commit other mistakes too. But I think that we are to some extent able to get rid of some of the repeated mistakes in court that we have experienced for a long time.

Another big problem in court is laws. In some places laws are not written in the language of the people but in English or French or whatever a language not understandable to the islanders. In fact this has a great disadvantage to the locals themselves who do not know it and therefore are deprived by using the laws to their advantages. Only the few who are educated who can be beneficial from that. The non-locals who are either English or French or otherwise have the laws on their side. In this way the court is only helping few people contrary to the fact that the laws are for all people. It is too bad sometimes when those laws are written in difficult English or French for even the educated of lower standard could not understand it. For the good of the local people and for the efficiency of the court laws must be written into the language of the local people. It must not only be a matter of translation but it must as well be made clear and simple.

One of the frequent problems of courts is twisted justice. It is very vital for the interest of the public and the government that justice and fairness is observed and carried out to everyone because that is the main goal of courts. Justice could be easily twisted so that other people would suffer from it; and there are various ways of making such possible. One is that since that we are all human we can be easily biased and support one side which we are related to. This is most difficult when who know someone involved in the court affairs when they have some kind of disputes. Another thing that I think is worth consideration is the smartness of some people or one side when a person is strong or very good in his talk as he presents his case eloquently even though he is a wrong person could make himself win the case. At some other times but this is very rare bribery is used to persuade magistrates and those who who the authority to give final decisions on cases heard in court.

There is no easy way to get rid of these difficulties which courts are facing. But that does not mean that there is no way out. One way is that several people will form a deciding body rather than a single person in order to overcome siding in court, but again this does not mean that that body could not be persuaded to take sides. Highly trained locals must fill responsible positions in courts so that they could encounter an eloquent person and secure justice for the public and the government. It is very helpful as well to allocate a good pay to responsible posts in courts so that they could not be easily attracted by money and therefore accept bribery.

Crocombe, R. Improving Land Tenure (S.P.C. Handbook No.3 pages 26-38)

Land Tenure Course

Exercise No.10

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Land Registration

Land rights inheritance registration

Because every person or rather most Gilbertese want land for himself, a system must be operated by the people themselves in their tradition or a government in order to sort out each person with his or her landrights. With such a system complications, disputes, and fights can be avoided in most cases. Land registration proves itself to be very helpful and effective at this particular problem. But it is not right to think of land registration as dealing with only one aspect of land tenure. The task of this paper is to deal with one aspect of land registration which is inheritance of land rights. In looking at this particular problem one has to bear in mind that in the Gilberts tradition and law registration are two main trends which have to agree or registration is not valid. So when some ^{person} ~~is~~ is going to hand over his land rights to another he has to make certain that he consult both tradition and government, and so with the one who is going to inherit those rights to get the approval and support of the government and tradition.

In the Gilberts it is very common ~~that~~ for landholders to hand over their rights to their successors either their children or to those people who are adopted in their family. There are, however, other forms of inheritance which we have no time to consider them in this short paper. We are more concerned with the passing on of one's land rights to his real children or to his adopted children. The usual procedure is that a landholder makes a will or an agreement with his successor to passing on his land rights to him, after which they go to the registrar of the lands court for the signing of the agreement. This looks simple on the surface but underneath one can find ~~it~~ a lot of complications and confusions because it involves so many things as well as people. So this means that the act must operate on the traditional basis and principles; a failure in doing so means encountering a lot of problems and difficulties of unending disputes and quarrels.

Tradition then plays a very important role in the transference of any land right. So before a law registration is made one has to make sure that he consult tradition first. This means that the chief land holder and his successor must by tradition call upon members of his family and those who are related to him to seek their advise and approval of what he is going to do. Any person who disagrees and objects the move has to say so at this stage, because the majority or the most influential members, if not every kinsmen, has to approval the act.

So brothers, sisters, cousins, and the rest must be asked to say or give their contences~~xxx~~ or disapprovals. Some cases take little time while others take longer period. This shows that tradition in this regards ~~xxxx~~ is very strong and it seems that there is no easy way of escaping from it. Priciples and steps in handling transference of land rights in tradition must be observed well or else ~~xxx~~ a case would fail.

Tradition and government land transference registration ought to work together in order to get a successful and satisfactory aggeement within a family or group. In the Gilberts the government cannot go ahead with its registration of ~~land~~ rights transference with^{out} consulting first tradition, nor traditional agreement be recognised without the government's approval.

When a certain case is brought up to a land registrar whereby inheritance rights are to be recorded by law, the matter is then refered first to tradition and members involved are to be called upon. When that complicated business is cleared the actual handing over of rights between landholder and the inheritant takes place including the signing of the agreement. Within the signing of the agreement other government members or officials of land court must be present as legal witnesses.

At other times several cases are conducted in a small scale whereby only a landholder and his inheritant and ~~xx~~ a land registrar or a member of land court are present but in most cases it is not very successful, and is also regarded as done ~~xxxxxxx~~ secretly by the public. That creates some problems in land registration and uneasiness especially within a group involved. So in order to avoid such problems, and to observe justice, it is far better to abide in rules and principles laid down in tradition and land registration policy.

Referance:

Land Tanure Course Guide, 'Land registration and land records: their role in development.'

Group discussion.

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Exercise No.11

Absentee Landholders

Maunaa Itaia

Why do absentees want to retain these rights?

Absentee landholdership is realised now in the Gilberts as one of the acute problems the country is now facing. The number of land holders moving out of their own islands is increasing and it seems that the number will still rise in future. There are various reasons why a landholder moves out which we cannot deal with them in this short paper, but the going away from one's own land means an increase of land unused. Of course there are Gilbertese in places like the Solomons and in a few other countries but that only make a small percentage of Gilbertese landholder absenteeism. There are more people from outer islands who are now in urban Tarawa as employers, or just go there to stay with their relatives, some are just trying to get jobs there which is very difficult now. But people do not only go to Tarawa but to other islands as well, and that only comprise a little percentage. So the main ~~trend~~ trend go to Tarawa and today there are more outerislanders on Tarawa than the Tarawa people are. More and more lands are left behind as the stream is still strong to the centre of capital. At one stage the government was introducing a law by which people from outer islands who were on Tarawa or Ocean island holding no job were checked ~~and~~ by policemen and sent back to their home islands. It is far better for them and for the nation to go back and work on their lands. Also the government considered some time back that a piece of land left uncared and laid idle would be by law taken by the government ~~and~~ which would sell it to anyone who could productively use it. But in spite of that the people still did and do now what they like leaving their lands behind and the government failed in its effort. So what has been said above are just few examples which show that landholder absenteeism is a real problem the Gilberts face now.

A serious problem caused by absentee landholders to the nation in terms of support and productivity is that lands are left and unused. This means that many pieces of land now, and the number is increasing, are producing very little. Additionally the situation is made worse by the fact that even though many stay at their home islands they do not work hard on their lands, but that is besides the point. We have to look at the problem specifically resulted from the landholder absenteeism.

It is known throughout the Gilberts that once a landholder leaves his island or place where he, by birth, belong never suggest to anyone who stays behind to make the best use of his lands. So caretakers have no rights recognised by tradition and government to plant or make any use of the land entrusted to him by the absentee landholders. Nothing of this sort can happen without a reason or reasons and we shall look

at them now.

The first reason why absentee landholders in the Gilberts want to retain their landrights is that, like everybody, they are human beings or creatures with greed. Man and animal is never be satisfied with what he has and the strong tendency is to get more and more things for himself without thinking much about some of them whether they are of any use to ~~the~~ him or not. So he keeps everything he can hold on. That is very natural so that it becomes a strong habit which looks good and proper for every person to behave in that way. Due to the fact that almost everyone is doing that others are doing it too when their turns come. Next is that when a landholder goes away he knows for certain that one day he shall come back, and so to make himself well secure in times of crisis in future when he decides to return or when he is compeled to go home, make him to hang on his landrights fast. He wants to see when he comes back that he has a rightful land to build and feed on; so why he has to relinquish or abolish his rights? Another reason is that tradition does not allow it because land is treasured in the Gilberts so that when one gives away his landrights is regarded as by tradition as unfaithful to his family and kinsmen. And because of this practise an absentee landholder is not allowing anyone to use his land to its best use. Land is so important for various reasons one of which for one's own social status and prâstige for a person with many lands and possessions is highly regarded by his society. Absentee landholders know that and so retain their rights tightly. The last reason that I can think about is that each person strongly feels by nature that he ought to identify himself with a certain place which is one of the strong characteristics of territoriality. So an absentee landholder greatly need to be identified to his own place of birth first, and then other places where he abides at the time. With those reasons in the mind of an absentee landholder he retains all his landrights when he is at home or at any other place. But that creates many problems ~~and~~ which must be tackled. Again not all solutions are right answers so some of them can be of some use.

One way of discouraging the increase of absentee landholders^{'s} to put a two or three year absence from one's land after which his legal and traditional rights ~~are~~ are terminated, and his land is given to another person who can develop it well. Another, the people must be given some educational talks on the value of land, and encouraged to produce as much as possible from their lands. It can be very helpful if the government gives support to the public and especially those who really work well on their lands. Education has to be as well geared to local life so that when ~~these~~ school leavers finish school will find themselves in tune with the daily life in their home islands.

prob. common

Main Land Rights in the Gilberts

Land is very important to a Gilbertese. It provides him with the essentials of life, food and shelter. On his piece of land, a Gilbertese man grows his food and builds his house. It is the only thing that he can pass onto his children, as their home and the place to grow food. Custom has established that land will pass both to male and to female kin, and to their kin.

In most islands custom decrees that some will have greater shares than daughters, but in Makin and Butaritari, all the children receive equal shares. *Do they really? How do they cut one bobai pit among 6 children, or 15 let or small patch*

Before the coming of Colonial rule, there were intra-island and inter-islands wars and land was acquired by settlement and by conquest, individually or collectively. The strong overcame the weak and asserted title to the land; some years later the weak became strong again and overcame their former conquerors and took their land back again. Kings and Chiefs would grab the lands of their subjects and give them to their friends in return for past or future favours and services. As a result of this sort of thing many pieces of land in South Tabiteuea belong to North Tabiteueans, many pieces of land in South Tarawa are held by people from North Tarawa and vice versa.

With the coming of the flag in 1892 all these civil wars were prohibited and land grabbing by the strong from the weak was also prohibited. This was rather bad luck on the people of South Tabiteuea as they never had the opportunity of getting their lands back again. But for the rest of the people it was a good thing as they no longer had to live in fear of having their land taken from them by force.

As gaining land by conquest or by straightforward grabbing is no longer allowed, today, rights and interests in land are acquired by inheritance. Somewhere in the ancestry of every Gilbertese you find what is called a land-

owner, and his land will have been passed to his kin from generation to generation. Rights to land is also a measure of status and part of a man's identity.

The ideal Gilbertese family of the past was two surviving children because this ensured division of lands would be adequate. On the other hand a man prefers to have a number of children because they will look after him when he is old. He also must have lands which he could leave to his children because he knows that they will look after him to get the lands. He should not, however, make his will known except on his deathbed for then those children who are not left lands or feel they have been left too little or few lands will not look after him in his old age. With increasing family size some men are already finding it difficult to alienate land to give as a dowry or to leave enough land to their sons to avoid being shamed.

In the case of a couple who have no children, when they die leaving no heir, the husband's land goes back to his family, maybe to his brother or his sister. If these have died too, then to their children. The wife's dowry goes back to her family. The Land Court has the power to distribute land rights in the case of children who did not look after their parents in their old age. The father might have been looked after by a relative or a friend and in his will he left all his lands to the man who nursed him. After his death the real children complained to the Land Court and the Land Court might give them two pieces of land but always leaving the first, best and most productive of the lot to the man who cared for the father. Sometimes they are refused land rights.

When there are absentees from home islands, the landowner would ask a relative or a friend to look after his land while he is away working on Tarawa, Ocean Island, Nauru or other places. The caretaker has the right to use the absentee's lands while he remains away. He also pays taxes for the lands. If

the caretaker does not look after the land well, the Land Court has the power to take the land and with the owner's permission give it to someone else to look after.

Customs, tradition and attitudes to life have gradually changed over the years. In days gone by it was as shameful to sell land as it was to buy land. It was shameful to sell because it indicated that the seller needed something and had to sell a piece of land to get it; it was shameful to buy because it revealed the fact that the buyer had not got any land. Nowadays there is more and more buying and selling of land, and it is no longer considered shameful. It is quite common now to find that a piece of land is sold for a motor cycle, or a transistor radio, for a supply of imported goods from a store or even cash. With the increasing awareness of money economy the old values are changing and land becomes a marketable commodity just like a sack of flour or a case of beer. So more and more people are acquiring land by purchase and thus dispersing family lands.

The government or the Island Council on each island makes laws about lands. If a man doesn't clean his land he is fined, or a man may have all the rights or some of the rights to a piece of land and can use and do anything on this piece of land to a certain extent. But he can't or has not the right to stop the public road crossing the land. He also has to get government permission to put up a certain type of building on his piece of land. This happens a lot in South Tarawa.

There are two types of leases, native and non-natives. In South Tarawa the government has leased all that area from landowners. It has bought the area where the Bonriki airstrip is built. It also holds leases in every island for a school or government station. Also both the Protestant and Catholic

Mission hold land leases on every island for a mission station or a school. Government employees on South Tarawa have the right to a house and the area around it, and they have to pay rent. The only other non-natives who can buy land now are the Government, Island Councils, Registered Co-operatives and the National Loans Board. So far the government is the only body that has bought land.

House plots are granted to others by right holders to lands, but ownership of the house plot does not pass. What does pass is the right to occupy part of the land for the purpose of building a house for a family to live in. The Land Court says that right holders to lands may not refuse to allow another to live on part of his land, provided that the other person pays rent, or exchanges part of his land for the house plot, or allows the landowner to use his land or fish pond or he can buy the plot. Although the Land Court provides for rent, etc. to be paid, it seems that this very rarely happens; it also seems that these house plots arrangements are not often brought before the Land Court for approval and this leads to many disputes.

Rights of direct use exist by which everyone and anyone can collect wild products like green and dead leaves for weaving and thatching from all over the island. When travelling or working in the bush, green coconuts can be dropped down for drink but not to take home. Crabs can be collected from all over the place. One, though, has to obtain permission from right holders to lands to cut down trees, collect gravel, stones or sand for construction.

As land is of such importance in the life of the Gilbertese, it is only to be expected that the rights concerning it be clearly defined. These rights of ownership, use, distribution, acquisition and transfer form the basis of much of the social system. Choice of a marriage partner may depend on it; a man's

social status is bound up with it; it forms a kind of social security for old age; the scarcity of land with the rapidly increasing population forms one of the basic reasons for population control. The rights sanctioned by ancient custom, and those which have evolved to meet the changing times are of tremendous importance in Gilbert Islands society.

Excellent 10/10.

Sr. Alauino

LAND TRANSFER - BY SALE

Sale is a ready means of transferring land rights from those who have surplus to those who do not have enough, and from those who do not use their lands fully to those who will make them more productive. Before it was considered shameful to sell or to buy land because it indicated that the seller needed something and had to sell land to get it. It was also shameful to buy because it revealed the fact that the buyer had not got any land. Today there is more and more buying and selling of lands, and it is no longer considered shameful. So more and more people are acquiring land by purchase, and traditional family lands are becoming dispersed, and with an increasing population more and more people will have ownership interests in the same piece of land.

There was very little money in the islands in the early days until after the Second World War. During the period of traders, coconut oil was sold for muskets, rum, tobacco and other traded articles. Also in those days war was still the major factor in acquiring lands so some traders acquired lands in exchange for muskets which the local people needed for their conflicts and disputes over lands. Again it was different on each island as some islands had chiefly systems, Butaritari, Abaiang and Abemama and the rest didn't. When the law came with the establishment of central government, land alienation to foreigners was stopped. Because land selling and buying was allowed among Gilbertese themselves, traders who married Gilbertese women were able to buy lands under their wives' names.

After the Second World War things began to change. Quite a bit of money came into the islands, Tarawa in particular, when the Americans took over from the Japanese after the Japanese defeat at the Battle of Tarawa. Contact with new technology, troops, the introduced new ideas and material, gift giving,

higher wage scales had quite an impact on Gilbertese island societies. According to island standard there was a lot of money on Tarawa after the American troops had left when the war was over but there was nothing to buy in the stores. The people then had to fall back on their lands and some of them acquired lands by sale for money. When cargo ships began to call again, there was quite an increase in quantity and variety in imported goods. Recruiting for phosphate mining in Ocean Island and Nauru was taken up again. Returning home the people are usually loaded with foodstuff as well as things like motor bike, radio and so on. Education too improved a great deal after the war. Parents with few lands save up their money from their working children to buy lands.

With increasing awareness of the money economy the old values, custom, tradition and attitudes to life have gradually changed over the years. People with lots of lands are not working their lands and most of them go to Tarawa to get work that bring in money. People with very few lands work away on the little they've got and encourage their children to work well in school. If they have any children with jobs that earn money the money is usually saved up to buy more lands. Workers who have been to Ocean or Nauru or those with private businesses either on Tarawa or on the outer islands acquire lands in exchange for a motor cycle, transistor radio, a supply of imported foods, etc.

All these selling and buying of lands for money, and any other goods are not talked about as such in a Land Court. Today it is forbidden to sell lands but land can go and come as a gift. If a man has a lot of lands and wants a motor bike, he talks to the owner of the bike first. Then they both agree to exchange they go to court and the landowner tells the Land Court that he wants Mr. bike owner to have this or that piece of his land as a gift because he has

Not so:
Can sell if
approved by
court

Yes interesting
that this
is so
common
the thought
it is the
land

given him a motor bike or because he has helped him with this or that and so on. The Land Court has the power to say yes or no depending on whether the landowner has enough to leave to his own children. If the landowner hasn't enough then the Land Court says no or they can cut one piece of land into two halves. One half goes to the owner of the motor bike. This puts restrictions on land selling, and only those who have plenty of lands can sell without much trouble. Like all land transfer, lands return to the original owner or to the family when or if the buyer does not have any children. Land sale then sort of evens out land rights among right holders.

2/6

COLONIAL LAND POLICIES

Contrasting British Policy with French Policy in the Pacific

When Colonial Powers took over the different island groups in the Pacific each tended to assume that whatever it did back in the home country was better for the Colony or in most cases for the colonists. They had different goals for their colonies and again these were differed in the extent to what they wanted to use their colonies for, either for foreign settlement as against development by indigenous people.

Before Britain took over the Gilberts it had already gone through many wars and conflicts with Africans and with Maoris in New Zealand because of mishandling of local lands. After New Zealand Britain followed a strongly protectionist land policy in Fiji, the Solomons, the Gilberts and Tuvalu. Here Britain did all it could to protect the lands of the islanders.

In the Gilberts there was very little attraction for outsiders anyway. The islands were small, heavily populated and not fertile. In 1892 the Gilberts became a British Protectorate and since 1917 it has been illegal for non-natives to buy native lands. Here land is held by customs, and the land tenure is thus a customary tenure. Custom has established that interests in land are held by individuals for their lifetime, and custom has established that on death the interest in land will be held by the kin of the former holder. Custom has established that land will pass both to male and to female kin, and to their kin. In most islands custom decrees that sons will have greater shares than daughters, but in some islands, for example, Makin and Butaritari, all the children receive equal shares.

The old customary tenure has been formalised to a certain extent by a form of registration, the result of the work of the Lands Commissions in the past, especially, Grimble who was made Lands Commissioner in 1922 with the task of the

systematic recording of lands and landowners in every island, a process which went on until 1956. It has been formalised to a lesser extent by the introduction of Lands Courts in 1930, one of whose main tasks is to ensure that land is held and passed on in accordance with custom, whether this custom has been condified in the Lands Code or not.

As the Gilberts is getting towards Independence, there is a Lands Court on each island. The members of the Land Court are chosen 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.

The French largest colony in the Pacific is New Caledonia, the next largest French Polynesia (the colony centred on Tahiti) and then Wallis and Futuna, the Royalty Islands, and the New Hebrides which is a Condominium, jointly administered by France and Britain. In New Caledonia and the New Hebrides in particular, large areas of land were purchased or acquired by one means or another from Melanesian owners and settled by immigrant Frenchmen and others. Unlike Britain in Fiji, the Solomons, the Gilberts and Tuvalu the key of the French policy has always been of introducing French law and French practice as much as possible and assimilating the indigenous tenures to the French model. It was a very assimilation policy and assumed that the French system was the best system and that the best they could do in any situation was to make everything French. It's a very common assumption among Colonial Powers, and any group that gets into power rather naturally assumes that its way is the best way. I suppose Britain had gained the advantage from her experience with her former colonies in India, North America, Africa, Australia and finally New Zealand.

The advantages of the French policy is obvious. It is a known system