

Chapter 8

LAND TENURE IN THE PACIFIC ISLANDS: CHANGING PATTERNS AND IMPLICATIONS FOR LAND ACQUISITION

This chapter consists of a paper prepared by R. Gerard Ward, Professor of Human Geography, Research School of Pacific and Asian Studies, Australian National University. It was the basis for his presentation at the Port Vila workshop. Topics taken up in the workshop discussion are highlighted in associated boxes.

Introduction

The role of this paper is to provide an overview of some basic common characteristics of land tenure in the Pacific islands; to examine how land tenure practices that are often referred to as “traditional” or “customary” systems of tenure, have changed in recent decades; and to point out some implications for those involved in designing resettlement programs. These changes mean that what actually happens on the ground in many Pacific island countries is not what “custom” or constitutions say should happen. Where tenure has been codified, actual practice often diverges from what the written law says is legal. As a result, issues about who “owns” land, who controls it, and how it might be transferred for the use of others are now complex matters of deep social and political concern. They are matters for which some government systems are ill prepared. They are also matters in which there may be considerable local variation in practice.

In most Pacific island countries there are now great risks in automatically assuming that governments can make decisions about the transfer of land to new users, without consideration of the interests of customary right holders and the practices they now use. Even if land to be used for resettlement is state land, and thus technically no longer under the control of the former indigenous group of right holders, people may feel they still have residual interests. Such a belief would be in full accord with older “custom”, and governments may find that centralized decision-making in such matters may no longer be politically acceptable. The recent closure of a school in the Republic of the Fiji Islands (Fiji Islands) by Fijian landowners is one example. A dispute over compensation for loss of land at the Monosavu dam is another. Yet in Fiji Islands these “landowners” legally do not own their land. In legal terms the Native Land Trust Board (NLTB) owns Native Land in Fiji Islands, though many Fiji islanders would be very surprised to learn this.

Common Features of Customary Tenure

Although there were, and still are, considerable variations in the detail of customary tenure in different places, some common features apply quite widely. Several of these features are especially important.

First, different people or institutions may hold overlapping rights over the same land. Some may have rights to gather firewood or hunt over land that others cultivate. People other than the landholders may have rights to travel over the land; or to take water from a spring. Some people may have residual rights if present occupiers were to leave the land. Such overlapping rights are normal in most developed and developing countries. Those who advocate the advantages of freehold or fee simple tenure, often overlook the underlying rights of the state, of government agencies, or of individuals, and make unjustified assumptions about the exclusiveness of freehold tenure. In fact even with such types of tenure as freehold, there is rarely absolute “ownership” in the sense of total control.

Secondly, members of one community may not all have equal rights to clear and cultivate any part of the land. Land in the Pacific islands is very rarely “common land”. An individual member of the group may not be able to plant any uncropped part of the group’s land because someone else may hold current, or residual, and relatively exclusive rights to occupy stemming from a previous period of cultivation of the particular piece. The right to continued use normally gives very secure tenure, or at least secure usufruct rights to the person or persons farming the particular plot.

Thirdly, it was usually possible for land to be transferred from one group or individual to another. Warfare was one mechanism but may no longer be acceptable. However, land could often be given (temporarily or permanently) as a reward for service, because of kinship ties, or to provide sustenance to refugees or in-migrants. Thus in most situations land could be transferred if the right holders considered it desirable to do so.

Fourthly, traditional or customary systems fitted the shifting cultivation practices of the dominant forms of agriculture. The land tenure systems allowed a farmer to control land for as long as he or she needed, and allowed land to pass into the control of others when the previous user no longer required it. This catered for the inevitable changes in size of families, clans or communities. Land tenure systems were generally pragmatic in operation, and flexible enough to adjust to changed requirements.

A generalized description, drawn largely from Fiji Islands, but with essential features common to other areas, may illustrate the patterns that commonly resulted.

“A community of several clans may claim an area of land as its territory. In places further from the settlement the boundaries may not be clearly defined. Within that territory, each group is acknowledged or, where the system is codified, recorded as the controllers or owners of particular areas. The whole is not the common property of the community for more intensive uses, despite the fact that, by custom, all residents may be free to gather forest products from most of the uncultivated parts of the territory. Although some limited rights may approach commonality within this forest or uncultivated land, individual trees or products may be recognized as the property of individuals and control of hunting and gathering may rest with particular people or sub-groups. Within the land of one clan, members may not all have equal rights to clear and cultivate any part. Specific individuals, extended or nuclear families may hold residual and relatively exclusive rights to occupy, which stem from the last period of cultivation of the particular piece. The land of a house site may be under the long term control of a particular nuclear or extended family. Specific resource sites, such as a spring or a source of clay, although within the boundaries of a clan’s land, may be controlled by specific members of that, or even another, clan, with relatively free access may be allowed to all, but under grace and favor” (Ward 1997:21-23).

This model does not fit all areas in the region. On atolls, the shape of territories is often in the form of slices right across a *motu* and the reef; on small circular islands, each clan or group may claim a pie-slice piece extending from the coast to a point where all converge in the center of the island. But within these territories the overlapping rights are likely to apply. One feature of these tenure systems, whether slice, or pie-slice or inland block, was that they usually gave each production unit access to a range of ecological sites so each could obtain the variety of produce they need for subsistence use. Another feature was flexibility.

Some Myths About Land in the Pacific

Before discussing the types of change which have occurred, I would like to reject some myths that are frequently voiced about customary tenure in development literature.

First, most land in the Pacific islands is not common property, in either the sense of open access to all people, or equal access to all members of the particular community that claims ownership. The same is usually true of reef and lagoon fishing grounds (Carrier 1987). Johannes and MacFarlane point to the contrast between Europe and European concepts in which marine resources were thought of as a common good, and the Pacific Islands where fishing grounds were explicitly the property of individuals or specific groups (1991:73). It is generally true in the Pacific islands that among groups that occupy an area, all the core members will have some rights to exploit the products of the area, to reside within it, and to occupy parts of it under some form of usufruct. But it would be unusual for all to have equal rights within the whole area. Most groups will also include residents who are not core members but have been given some more limited, conditional rights that fall far short of equality of access. Land and lagoons in the Pacific are definitely not common property.

Secondly, at the other extreme, absolute or individual ownership was rare, but it could occur in particular circumstances. For example, land that has been improved by the input of considerable labor, such as irrigated taro terraces or raised beds in swamps, may be viewed as something close to the private property of those who made the improvements.

Thirdly, planters were not insecure when farming land. Their usufruct was secure while their use continued, and generally for a period after use ended. This is like the security of a lease in some respects—it is not absolute but it is secure while the conditions are maintained.

Fourthly, land was not inalienable in the full sense of the word. Control could be, and was transferred in a variety of ways.

I note these points because inalienability, lack of security, and other features are often assumed to be constraints on development, and because they are often said to be features of supposedly unchangeable custom, when in fact the story is much more complex than that.

In fact, most Pacific island tenure systems met the basic requirements that any tenure system must meet, and did so very effectively. These included security of use in order to benefit from one's labor and other inputs; the ability to meet the needs of a variety of right holders; adaptability and flexibility to meet new conditions; and transferability between potential users. The problem now is, how does one keep these attributes as tenure systems change in the modern context. And I shall suggest that, in some cases, such as Fiji Islands, or Cook Islands, attempts to protect, codify and standardize customary tenure has resulted in the loss of some of these qualities.

Among these requirements, I have not mentioned the ability to use land as security for raising credit. Banks and other lenders may think it is a requirement because it fits their ideas and systems derived from developed country situations. But other systems exist for providing security for credit, and can be used without requiring the possibility of taking the land of defaulters.

The Forces of Change

The changes we now find in customary systems have been driven by a variety of forces. They include:

- *a desire by governments to protect indigenous rights to land and prevent the worst excesses of loss of land through alienation.* This type of policy has meant that in many Pacific island states over 80 per cent of land remains in indigenous hands. This is a great success when compared with most of the former colonial world in general. But this process changed the very nature of customary tenure. So, in Fiji Islands and Cook Islands for example, owning groups were registered, their holdings surveyed and recorded, and lists kept of members of the owning group for each plot. Boundaries were fixed as at the date of survey; customary flexibility was lost and the size of holdings could no longer change as the size of group changed. Furthermore those who left the community were now kept on the recorded list of right holders, so the size of recognized owning groups could grow exponentially although many would no longer be practicing members.
- *the banning of alienation of land by governments, thus reducing flexibility still further.* The Fiji Islands colonial government did this in 1908, but note that from 1880 to 1908 it was possible for Fijians to register customary land as freehold in their own names, or to sell it to the government who could then allocate it as freehold or leasehold to others.
- *agronomic changes that have helped change tenure conditions.* When most crops were short term, and gardens were followed by long fallow, adjustment and transfer of control occurred quite easily and could be quite frequent. Thus boundaries were often transitory. But with the planting of permanent crops, single plots remained under the control of the same individual or family for very long periods, and the farmer frequently came to view not only the crop as personal property, but also the land. As the Chinese proverb says, "long tenancy becomes property" (Elvin 1970:107).
- *technological changes that have reinforced this tendency* as, for example, ploughing, drainage, and other improvements gave the land qualities created by the individual farmer, and thus giving that person a long-term and personal interest in the land.
- *reinforcement of the tendency towards permanency of usufruct in the hands of individuals because of economic changes.* The use of wage labor rather than mobilization of assistance through kinship links helped move some farming away from customary social structures with their close links to the tenure system. The disposal of produce through the market rather than through domestic consumption and kinship networks had parallel effects.
- *production for the market, and specialization in a narrow range of crops,* so that the benefit of a scatter of temporary plots using a variety of soil types gave way to the advantage of a single large permanent plot on the soils best suited to the particular cash crop or crops.

- *an increasing desire by farmers of long-term crops, and the holders of long-term usufruct, to pass their "property", both crops and now land, to their immediate descendants, rather than seeing them redistributed within a wider group after their death.* This wish has become more common as economic and social individualism have become more accepted as valid ways of life. The customary security of usufruct as long as use continued may be claimed to give validation under custom to such desires and new practices. In Samoa, the official version of customary land being controlled by the *matai* of each *aiga* is no longer followed in many places. Until recently this was generally not acknowledged officially; it was against custom so it was not acknowledged. But this is changing and now official publications do acknowledge the trend.
- *the growing tendency to use customary practices for non-customary purposes as land now has monetary value.* For example, by clearing forest a person could, under custom, obtain usufruct over the land cleared. By keeping it in continued use this may now in fact give permanent rights under custom. But land accumulation (for which formerly there was little incentive) may now be the motive for such clearing, and the maintenance of land under low intensity but continuing use, is the means of building large private holdings. In the words of the title of a paper on Samoa by Cluny Macpherson (1988), "*The Road to Power is a Chainsaw*".

Examples of Change

Examples from two Fijian villages illustrate some of these changes.¹ In 1959, the village of Saliadrau was remote, and mainly involved in subsistence cultivation. Its gardens were scattered, but more than half were not located on the land of the planter's own clan (*mataqali*). Nobody had a single large holding. In 1983, many fewer gardens were on another clan's land, and a couple of residents had taken out leases on part of their own clan's land to create long-term large farms.

In the case of Sote, a similar trend has occurred, but by 1983 had proceeded further in association with a higher level of commercialization than existed in Saliadrau. Customary land was being "privatized", in part through use of the leasehold system of the NLTB, but also by using customary practice to lock up a large block of land in individual hands by clearing a large area and maintaining it in use.

Similar processes are happening on customary land in other countries. Examples include cattle grazing in the PNG highlands, Fiji Islands, and Samoa. It is not a new process. In Samoa, examples of large individual holdings for cocoa on customary land were recorded in the mid-1950s (Ward 1962). In Vanuatu, Rodman has shown that in the Longana area of Ambae, "five percent of the landholders control 31 percent of the district's plantation land and earn incomes four times as large as other Longanans" (1987:159-61). This situation arose early this century when major changes occurred in the nature of customary holdings in response to reduction of warfare and the adoption of copra production as a road to power and as a role for big men. Such men established relatively large and permanent holdings, in contrast to the smaller and less permanent holdings of previous times. Elsewhere the process may be less clearly developed but shows signs of emerging, as in the Solomon Islands where Larmour (1984:8) suggests that "trustees" named on behalf of their owning group may "in time appropriate rights of ownership to themselves". That has certainly happened in PNG.

¹ Maps showing these changes in detail are published in Ward, 1995.

This process of increasing the size of holdings is not simply a matter of personal aggrandizement. It may reflect the fact that a family engaged in modern and economically viable commercial farming requires a larger area of land directly in use than does an equivalent family engaged solely in subsistence farming. The effect of such a process may be to change a relatively egalitarian system within which all have access to land for subsistence, into one in which some people benefit greatly by locking up a large area in the hands of one family. This may leave others without access to sufficient land for commercial farming, or even for an adequate subsistence holding. When population increase is taken into account, land is becoming, or will become, increasingly scarce. This trend, creating anxiety, lies behind many of the examples of tension over land to be found in the region today.

Coping with Settlers and Resettlement

There are other situations in which traditional mechanisms have been used to meet new needs, or modern variants of old needs. One that is directly relevant to the resettlement issue is how traditional landowners deal with demands for land by in-migrants. Almost all societies had mechanisms for allocating land to newcomers, whether refugees, marriage partners, or allies. Such allocations were usually premised on the newcomer becoming a practising member of the community. The historical records provides many examples of such arrangements dating back well into last century. Tongans sailed to Viti Levu, not to mention to the nearer Lau group of the Fiji Islands. Wallisian castaways drifted to Tokelau and Rotumans to Samoa. Indentured Solomon Island laborers taken to Samoa stayed on. Even further back in time, Polynesians came from the east to the "Polynesian outlier" islands within Melanesia, such as Emai in Vanuatu, or Tikopia in Solomon Islands. Resettlement is not new. Customary land tenure provided for these groups. The modern population situation is one of more extensive internal migration in most countries, yet much of this is still accommodated by settlement on customary land.

In rural areas, land may be sought by, and granted to would-be farmers from other places. Frequently, but not always, kinship or long-standing ties may be invoked with the request. A variety of pragmatic arrangements are made between settler and landholder and may now involve regular or irregular cash payments, regular or irregular contributions in kind, or involvement in community affairs. The agreement on the landholder side may be made by an individual land controller, or by the wider group of landholders. Formal recording of agreements would be extremely rare. Nevertheless, settlement based on such customary arrangements can be very long lasting. For example, the Saweni-Serea road, constructed in eastern Viti Levu in the late 1950s, attracted settlers from the Lau group, who were allowed use of land by landowners. They and their descendants remain there today. Continued use has given security of usufruct. Comparable cases can be found in many countries.

Urban areas provide parallel cases. In many Pacific island towns, early indigenous in-migrants obtained residential sites on customary land and made arrangements with local landholders by activating some kinship or trading links. Such arrangements have tended to endure, though often under considerable pressure as the original settlers provided a beach-head allowing their kin to follow. Custom made it difficult for the landholders to protest too much given the original customary agreement. Settlements of this type are commonly called "squatter settlements", but strictly this is inaccurate as the original settlement was sanctioned by the landholder, or holders, and permissive occupancy has continued. On the other hand, where people have occupied state land, or freehold land without permission, categorization as squatters is more appropriate. In some cases so-called rural-urban migration of this type has affected areas well beyond formal town boundaries. Samoa is a case in point

where the capital, Apia, is the main focus for internal migration yet its share of the national population has scarcely changed for 30 years. It is the rural areas up to 20 kilometers to the east and west of the town that have absorbed disproportionate numbers of in-migrants who have been able to gain living sites through customary ties. Similar resettlement has occurred around other employment nodes such as mines, tourist centers, or military establishments.

The problem posed for governments is how can they incorporate such customary arrangements into the codified component of land law? Of course a prior question must be asked—is it necessary to do so at all? Why not just leave customary pragmatism to sort it out? The answer to this is likely to vary from place to place; from circumstance to circumstance. It is much more likely to be necessary to intervene in urban contexts where issues of roading, sanitation, water and power services, and health conditions require government involvement and investment. It may be unnecessary elsewhere. On the other hand, there are examples where the original landholders, or some of them at least, would like to end longstanding agreements, but custom does not provide easy ways of doing so. All this suggests that it might be unwise to impose some overall, centralized (and necessarily simplified) codification. This issue may become crucial in resettlement proposals.

Box 8.1

Proposals for Land Registration

The intention of the Government of Solomon Islands to proceed with full registration of customary land was raised in the ensuing discussion. It was pointed out that, in a large Pacific country like Solomon Islands, this would prove costly and would almost certainly result in making the landownership and land use pattern more rigid. It also was not clear how such registration would ensure that adjustments to meet the needs of future generations would be met.

Although 80 per cent or more of land in most island countries remains under customary tenure, the remainder, generally state land or freehold land, is important as the site of much of the formal resettlement in recent decades. Although such land officially has no underlying level of ownership or interest by indigenous groups, in fact it is no longer wise for governments to make this assumption. Events in Samoa, Papua New Guinea, Fiji Islands, and New Zealand demonstrate that, in the minds of many indigenous groups, a common belief exists that, although land may have been sold in the 19th century, or that the state (the Crown) has asserted that land was once waste and vacant and claimed it as state land, a certain level of rights remained with the former occupiers. Such a concept of residual interest is perfectly in accord with old custom. Whether it is in accord with current custom as revealed by the practice of more privatized types of occupation of customary land found today, may be debatable.

On a political level it may be hard for governments to deny such underlying interests. In some cases governments have tacitly acknowledged such claims. In the Fiji Islands some State Land has been returned to the category of Native Land. New Zealand has addressed such issues through the Waitangi Tribunal. The most obvious case is Vanuatu, where all alienated land has been returned to *kastom* ownership under the independence constitution. Such moves do open other questions. For example, in the case of Vanuatu where we know there were late 19th and early 20th century changes in customary ownership, one might ask whether the *kastom* owners to be recognized are those claiming control at the date of

independence; or when the land was sold; or at the time of first contact; or at some other date of local significance. Each could give a different set of owners. Such questions are likely to arise in other countries and interests in the same land may be claimed by different groups. This suggests that future allocations of state land (or freehold land) to people who are not from the local area may well set the scene for disputes in later years. This has been shown in PNG in relation to the oil palm settlements in New Britain where calls for repatriation of settlers from the Sepik or other areas have been made. In the Gazelle Peninsula similar calls demonstrate similar underlying feelings. One lesson is that government-sponsored agreements for resettlement, even on state land, may not be accepted as permanent.

Another lesson is that land, and being a customary landholder, is socially and politically very important. It may be a key aspect of ethnic or national identity. Therefore policies that totally separate people from their land are liable to bring serious objections. It is necessary to design systems that allow the holders to retain an underlying interest and symbolic attachment to land, even if others use it. So forms of leasehold are far more likely to be acceptable than freehold or alienation.

In other situations, where some forms of land transactions in relation to customary land have been brought under the written law, rather similar claims and protests have arisen. The case of the Fiji Islands is especially important here. The operations of the Fiji Islands' NLTB are often quoted as a good model which others might follow. It therefore warrants closer examination because in fact the model, which is the official and legal system, is no longer the only route landholders use to transfer land to others.

The Fiji Islands and the Native Land Trust Board²

Through the 1920s and 1930s demand for land by Fiji Islands Indians and others increased. Lease arrangements were rather haphazard and unsatisfactory. Largely through the initiative and leadership of Ratu Sir Lala Sukuna, the NLTB was established in 1940 to make land available for non-Fijians, to control leases and collect and distribute the rent. Some land was to be reserved for Fijian use only and the first task was to define such areas.

Reserved land is for the use of Fijians only and was supposed to guarantee sufficient land to support the owning units in the future. As the definition of reserves was completed in each district by the Native Lands Commission, the Native Land that was surplus to these requirements, and thus not in reserve, could be leased to non-Fijians and Fijians. To this end, Section 4(i) of the NLTB Act stated that the "control of all Native Land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the Fijian owners". It became illegal to lease Native Land except through NLTB.

In the Fiji Islands, the colonial government had established a Native Land Commission in 1880 which surveyed holdings, and recorded the owners. This very complex task was simplified by registering ownership at the level of *mataqali*, or clan. This was a great simplification of reality and ignored great regional variety. It ignored the initial recommendations of the Council of Chiefs in the 1870s that favored a more individualized approach. But it became the basis for the present traditional land tenure system.

The delimiting of reserves proceeded over three decades after 1940, with attention being given first to those areas where pressure for land was greatest. When the process was complete 36.6 per cent of Native Land was reserved.

² Parts of the following paragraphs are drawn from Ward, 1995.

The level of rents for NLTB leases are related to the purpose of the lease but should not exceed 6 per cent of the unimproved value of the land (Brobbly, unpub. [1984-5]:8-9) and thus are not closely related to market valuations. The divergence between the rents paid for NLTB leases and those set by the market for leases of freehold land has become marked in recent years. Dissatisfaction among Fijians with the returns they receive from NLTB leases is one motive for people to rent their land outside the legally approved system.

Of the total rent received by NLTB for a lease, it may retain up to 25 per cent for administrative costs. A lower percentage could be levied but 25 per cent is the norm. The three chiefs of the upper levels of the social hierarchy receive 22.5 per cent of the total rent between them, and the remaining members of the *mataqali* share the remaining 52.5 per cent.

As a person may hold more than one of the three chiefly positions, some individuals in areas where much of the *mataqali* land is leased may accumulate considerable wealth. Traditionally a share of the produce from land would recognize the service and obligations a chief would be expected to render to the members of his group and would often be redistributed to followers. But where the economy and social activities of the community are no longer based primarily on reciprocity, there may be little contribution to the wider group from the 22.5 per cent of the total rent received by the three leaders. Cash receipts in recognition of obligations have often become personal and unconditional income as the obligations are no longer felt or met. This has sustained and reinforced "the political role of the chiefs". Spate put the matter sharply in commenting that the possibilities of riotous living for the rank-and-file seem limited". In contrast the unearned income "for the head of the *vanua*, whose normal needs are met within the village and whose house can be built by personal service (*lala*) due to him, is a distinct disincentive. This is the real problem: the chiefs, the natural leaders of society, have often in sober truth been debauched by easy money, while most people receive "a pittance scarcely worth saving" (Spate 1959:17). The general point is that codification has changed custom.

For perhaps 30 years the NLTB system seemed to work well. Land not in use by Fijians was made available for use by others, most of whom are Fiji Islands Indians. But in recent years there has been increasing dissatisfaction with aspects of the system and the NLTB's management of it. Increasingly people have ignored the law and made arrangements that bypass NLTB.

Box 8.2

The Issue of Sugarcane Leases in the Republic of Fiji Islands

In the discussion that followed the presentation, reference was made to the current problem in Fiji Islands of expiring 30-year sugar growers leases. The Government felt obliged to ease the distress of those involved by allocating them new home or farm sites as compensation for the fact that NLTB has been pressured by some traditional owners not to renew the leases. The attraction of leasing out at much higher rentals by private treaty has been an important consideration. Some growers have been able to negotiate acceptable lease arrangement direct with traditional owners.

Whereas it can be argued that *vakavanua* ("traditional" or "in the way of the land") arrangements are customary and possibly in accord with the ordinances when made between Fijians, such arrangements between Fijian landowners and non-Fijians are not legal. But they have become increasingly common.

Much of the tobacco produced in the Nadi and Sigatoka areas in the 1980s was grown by Indians on Native Land under agreements negotiated directly with landowners (Eaton 1988:23-4). The practical authority of individuals or units at below *mataqali* (or clan) level in land tenure matters is indicated by the fact that “in some thousands of *vakavanua* arrangements of which [Eaton] has experience, none was negotiated on a *mataqali* basis and none came to grief due to *mataqali* interference” (Eaton 1988:23-4). In other words, *mataqali* members recognized the rights of individuals among them to allocate to others the use of specific areas within the *mataqali* lands. This recognition was in accord with pre-codification custom but not the current codified system of customary tenure. Thus this permissive occupancy is illegal, but both landowners and growers see it to be in their own interests to follow this course. For the landowners, much higher rents may be obtained, and Eaton records an Indian tobacco grower paying F\$350 per hectare—10 times the amount paid for a similar area under his sugarcane lease from NLTB (1988:28). In addition, the Fijian owners lose the use of a smaller area of their land for a shorter time than if a normal 30-year NLTB lease were involved. The advantages for the Indian or Fijian growers lie both in the speedier arrangements, which are possible in private deals compared with negotiations for an NLTB lease, and in gaining access to better quality land. Most of the uncommitted alluvial land that is suitable for tobacco is reserve land that cannot be leased legally to non-Fijians, and any new NLTB leases are likely to be on poorer, unsuitable, land. Furthermore, for a crop for which the grower has a guaranteed market for only one season, the short term of these arrangements may not be a constraint, although no doubt the growers would prefer the security of a longer term.

Of a total of 690 farmers who grew tobacco in the Sabeto area near Nadi in the years 1980-1985, 72 per cent did so on land that they held *vakavanua*, and over one-third of these *vakavanua* arrangements were made with Indian growers (Eaton 1988:28). Such arrangements are common in other areas and for other types of farming, including sugarcane and grazing in western Viti Levu and ginger, rice, and vegetable growing in eastern Viti Levu (Overton 1989).

Box 8.3

Security of Tenure and Development Finance

The problems of inadequate security of tenure impeding mortgage finance from banks secured by land was also dealt with in discussion. Lending banks are unwilling to lend where their only recourse in the case of default is to take over the management of the assets for the remainder of the leasehold period. It was suggested that other principles of development banking needed to be employed in which the enterprise itself, rather than the land, was accepted as security.

Another *vakavanua* arrangement that bypasses the leasing system is that of sharecropping, whereby Fijian landowners allow someone else to carry out one or more of the farming operations in return for an agreed share of the output rather than a rental payment for the land. In the Raki Raki area of northern Viti Levu a significant proportion of the cane farms which supply cane under contracts issued to Fijians are operated by Indian farmers on a sharecropping basis (personal communication, S. Prasad 12 November 1993). The practice has also been reported on cane farms elsewhere; on Chinese-managed and Fijian-owned ginger farms; and on rice farms in the lower Rewa Valley. Like other *vakavanua* arrangements, sharecropping is widespread, but its legal status is unclear as the wording of each

particular agreement would determine whether or not it represented dealing in Native Land itself or merely in the proceeds from the land. The former would contravene the Native Land Trust Act 1940; the latter would not (Fa 1989:105-6).

So bypassing the legal constraints is common.

Urban Areas

As mentioned above, *vakavanua* arrangements also occur in urban areas and in other non-agricultural contexts. I have described elsewhere another case in the Fiji Islands (Ward 1995:241).

“A long-established, semi-urban settlement on the highway between Nadi and Lautoka has the appearance of an established suburb, is named on topographic maps, but is located on reserve land which has been rented to the Indian residents. Those members of the mataqali who had veimada-type rights [derived from earlier cultivation] to the particular segment of mataqali land gave permissive occupancy. If the occupation of the land were to be legalised, the land would first have to be de-reserved, and then formal NLTB leases issued. To de-reserve land is within the power of the NLC but might not be politically acceptable. When the case was considered informally some years ago within the NLTB, it was clear that those owners who had given permission did not want any such change to occur. If it did occur, their income would be reduced for the reasons noted above, and because of the ceiling of 6 per cent of the unimproved value placed on rents charged by the NLTB. On their side, the Indian residents were not anxious to have any change in the status quo. They saw a risk that members of the mataqali who did not receive a share of the rents (because the land was not in their veimada area) and were opposed to the settlement, might object and prevent leases being issued. While the arrangement masqueraded under a facade of veimada ‘custom’, however distorted by use for non-customary purposes, it had some customary validity. Those who did not share the rents, or who disapproved for other reasons, were therefore constrained in the extent of public opposition, which it would be socially unacceptable for them to voice. The NLTB was in a very difficult position and the idea of intervening to try and make the situation legal was quietly dropped” (personal communication, J. Kamikamica, 12 November, 1993).

Comparable situations can be found in other countries. In Tonga, where the current traditional system is in fact a late 19th century design of King Tupou I, the sale of land is not legal. Nevertheless, sale of plots is commonplace, particularly in the Nuku'alofa region, or where high value crops such as vanilla or squash are grown (James 1995:188-190). The exact nature of these “sales” varies but there is no doubt they are extra-legal at the least. In PNG, unofficial sales of customary land have been reported in the highlands. Landholders collect cash rents from migrant settlers. But details are scarce about these markets, sales, and leases, which is not surprising given their dubious legality.

What these cases tell us is that new means of transferring land are often in use, replacing the mechanisms of older custom. It is notable that many of these extra-legal sales or leases are negotiated by individuals. This suggests quite widespread acceptance of the

idea that individuals, rather than broader groups, have the power to control and even dispose of customary land. This seems to match the trend towards a degree of privatization of customary land that I have described earlier. Such cases also illustrate the long-term risks of assuming that the official versions of customary tenure are what people actually apply and accept. Thus if one were to enter an area seeking to obtain land for a resettlement project, it would be wise to examine the local practices in considerable detail, and negotiate on the basis of (usually unrecorded) current practice rather than broader versions of custom, however official or traditional. Yet the dilemma is that at present it would be illegal to do this in several countries.

Some Conclusions and Suggestions

In many parts of the region what is often done in terms of everyday practice in land management and in land tenure is not what custom says should happen. In part this is because most descriptions of customary land tenure are very generalized and do not take into account the great local variations that have always existed. But it is also because some customs have been extended and modified pragmatically to deal with new situations. This is particularly true where a subsistence economy has been replaced by a monetary economy.

Privatization in the form of individual long-term occupation of areas has become quite common.

Governments have in the past tried to protect indigenous interests by codifying land tenure systems and surveying and registering landholdings. But this has often led to inflexibility. As a consequence mechanisms for transfer of land control (which is not necessarily the same as ownership) have not kept up with new needs.

Protection of customary rights to land, though in modified forms, remains necessary, for economic, social, and emotional reasons. But equally the systems need to be allowed to change as people want them to change; and people do want them to change judging from what they actually do. So registration and survey is probably not a good universal strategy. It would be better to provide for the possibility and allow it to happen as people want it. This will take place at different rates in different places according to local needs and conditions.

In transferring land and the rights to use it, leasing land is a more appropriate method than permanent alienation into freehold. For one thing it allows the spiritual aspects of the traditional ties to the land to be maintained. But leases need to have economic rental payments. They need to have the actual land controllers actively engaged in the negotiations (not just some centralized government agency). They need to have provisions for regular rental reviews, and provisions for re-negotiation and renewal. So there is a role for government to set conditions that protect both lessors and lessees, but not to take over the whole system.

Finally, when formal projects arise that involve resettlement, be it for people displaced by a project, or to rationalize informal urban settlements, or to provide land for rural migrants, careful investigations need to be made to understand what actual tenure practice is right now, and to act on this basis, rather than to assume that what was reported 20, 30 or 100 years ago, is what people actually do. If planners do not make this careful examination of current practice, and take account of actual conditions, trouble will be stored up for the future.

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