Chapter Five

Customary Land Tenure and Communal Holdings

At this point we proceed to consider the possible application of de Soto’s recommendations within the social, economic and political realities of developing states. Recognizing that one of the serious challenges that face Pacific nations in the twenty first century is that of sustainable development, in subsequent chapters we consider the frequently mooted proposal to replace the diverse customary systems of land and property in the South Pacific with more formalized Western systems of private ownership. In this chapter we discuss the meaning of customary land tenure and communal holdings. Although it is readily assumed that customary land tenure means communal rights rather than individual private exclusive rights, this is a matter that is far from clear, even though in the third chapter we assumed for simplicity sake that the distinction is fairly clear. Nevertheless, it is demonstrative that customary systems include important aspects of both community rights and exclusive individual private rights. Therefore, it is important to distinguish the contexts in which inclusive communal rights apply and those in which exclusive individual rights apply.

One notes that many Pacific Island nations, in the decades since independence, have generally failed to experience hoped for gains in material welfare and economic development. A fairly recent United Nations Human Development Report named four Pacific Island countries in which living standards fell in the decade between 1990 and 2001.¹ The countries mentioned were the Solomon Islands, Vanuatu, the Marshall Islands and the Federated States of Micronesia. A 2003 UN report rated Papua New Guinea, undoubtedly the island nation richest in natural resources, as number 132 out of 173 countries according to its ‘Human Development Indicator’.² This rating was even lower than that of the Solomon Islands where in July 2003, deteriorating conditions of security and order resulted in Australia committing 2000 troops to restore stability.

Although some believe that South Pacific nations enjoy ‘subsistence affluence’, others argue that this picture is not consistent with the realities of high population growth, rapidly monetising economies, rural-urban migration, the trading of

¹ PNG Post Courier (July 11, 2003), 11.
² Mike Manning, “Mid year review of the economy,” PNG Post Courier (July 18, 2003), 11.
future consumption for present consumption and the problem of land degradation. Current population growth rates suggest that reasonably high sustainable subsistence levels are not possible with increasing population density. From these observations, one researcher concludes that the days of ‘subsistence affluence’ (if any) are past for most Pacific Island nations; and the feasible economic option for these nations is to grow on the basis of trade and specialization in areas of their comparative advantage. The link between population density and declining living standards can be broken via trade and productivity growth. But this growth can only be realized through the mobilization of land and the promotion of land based investments such as agriculture and infrastructure development.

Concerns such as these have led to a growing interest in issues involving customary land tenure that include the mobilization, and economic development of lands subject to traditional systems of tenure. This means that the vast areas of land currently under customary and communal tenure need to be organized in such a way as to encourage efficient use and enhance the inflow of technology and capital.

In the Pacific Island nations the status of, and relationship between customary and alienated land differs considerably. The following survey is indicative. In some: notably Papua New Guinea, the Solomon Islands and Western Samoa, dual systems of customary and alienated land (freehold) persist after independence (although in PNG 97% remains under customary control). This contrasts with Fiji, which attempted to freeze and register customary land tenure principles in the nineteenth century, although the state proceeded to arrogate to itself certain powers to effect arrangements, which could not be met within the customary system, such as the authority to regularize leases. In Vanuatu, the former Anglo-French Condominium, the independent government overthrew the colonial system of land tenure altogether without calling into question “pre-eminence of the state

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4 Ibid.