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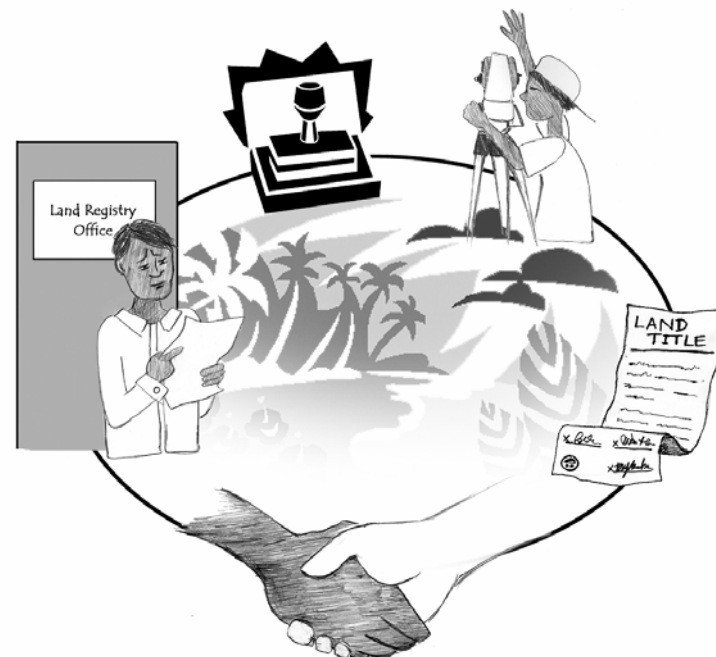


Micronesian Counselor

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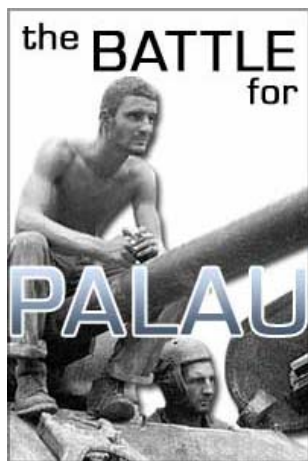
Issue 52

Do We Really Need Land Registration



in the Marshall?

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The Consultants Must Be Crazy

Whenever I ran into people I knew as I was scooting around Majuro working on this project, they would invariably ask me what brought me to the island. When I'd say that I was in the Marshalls as part of a team attempting to help the Marshall Islands Government establish a system for land registration, they'd lower their eyes and softly shake their heads as if they were offering me sympathy on the loss of a family member or a diagnosis of terminal cancer. "How unfortunate!" their body language would say. They seemed to suggest that they would sooner be assigned to guard duty at the US Embassy in Iraq than have my job. Usually they would just sigh as they murmured something like "Land is such a sensitive issue here in the Marshalls." Unspoken was the corollary: "You must either be insane or desperately broke to be messing around with land."

Land is indeed sensitive in the Marshalls, as it is throughout the Pacific. There is not much of it—only 70 square miles in the Marshalls—so it is highly valued. To have title to land once meant that a family could provide for all its basic needs: food, housing, transportation and medicine. But the supreme importance of land far transcends its value as a scarce resource. Land was the symbol of family unity and an identity marker for its individual members. The enormous importance accorded to land is

epitomized and explained by the island saying: "People come and go, but the land and the name of the land stays and never changes."

In the past, contention over land was the leading cause of war; the only other motive that ranked close was women. Although wars have gone out of fashion in the Marshalls, land rights are every bit as emotion-laden and hotly contested as ever. Not a few families today are divided by land disputes.

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Videos

Beyond the Spoken Word



Insuring the Legacy of Our Land

Once land rights were too important to be entrusted to a piece of paper. Now they're too important not to be. This documentary explains why, and what the Marshalls can do about registering land.

For the Love of Chuuk: Working Towards the Common Good

Beginning with the village dispensaries, this documentary probes the problem of governing Chuuk. If there are cultural explanations for them, there are also remedies.





Today, however, those loans are a distant memory. Capital for investment is available from commercial banks at commercial rates, or from investors with money to spend. To expand the economy and take a step or two closer to self-support, the Marshalls will have to take advantage of this investment.

Land will have to be used even more productively today than it was in the past if the nation hopes to pay its bills. Whether we like it or not, land rights will be increasingly subject to the rules set by the modern world.

For this reason, it also needs a system that will reassure investors of the protection that they will require if they are to use their money so as to promote the future growth of the Marshalls.

Protection of land is important today, as it always has been, but this can not be the sole concern of the Marshalls. Land will have to be used even more productively today than it was in the past if the nation hopes to pay its bills. Whether we like it or not, land rights will be increasingly subject to the rules set by the modern world.

All of this does not mean undoing the past, rejecting the land tenure and land recording systems that the Marshalls has relied on for so long. While no one is recommending that we have to dive into the deep end of the swimming pool, we should at least be willing to stick our toes in the shallow end.

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This article was written as part of a project funded by the Asian Development Bank to encourage the registration of land in the Marshalls. Other materials produced as part of this same project are a video, "Beyond the Spoken Word," in English and Marshallese versions, as well as two radio programs in Marshallese. This project began a year and a half ago. For more information on the video, see the MicSem list of videos.



Land in the Marshalls is, if anything, even more sensitive since it touches the authority of traditional chiefs. One or the other of the paramount chiefs, or *iroij*, possesses certain rights over each land parcel that are held in tandem with the rights of the *alab*, or land manager, and the *drijerbal*, or people living on the land. Even after a century of colonial rule and nearly twenty years of independence, the age-old land ownership system in the Marshalls remains intact. In other islands chiefs may have lost their ancient residual rights to land, but in the Marshalls the *iroij* retain their stake in the land and so continue to be what other Micronesian societies claim that their chiefs once were—"the voice of the land."

Why, then, would anyone of sound mind come to Majuro to announce that he was helping to lead the charge for a land registration system? And even if they were thick-skinned enough to undertake such work, what could they realistically hope to accomplish? In an oral society, everyone is fully aware what land interests they have, who is the *iroij* and *alab* on their land, and what the boundaries are. What does a land registration system have to offer the Marshalls?

What's Wrong with the Present System?

The land registration system that is being proposed for the Marshalls would organize the recording of

land parcels in the Marshalls and would offer a certificate of land ownership for any who wished to obtain one. The present legislation passed by the Nitijela would provide this service for any who wanted to take advantage of it. The legislation does not oblige anyone to register his land holdings. Registration is offered on an entirely voluntary basis. Marshallese are free to own land and use it in any way they wish, even execute formal leases of their land, without recourse to this new system.

Often the land grant of a church, for instance, has been concluded with verbal understanding and a handshake.



Marshallese have been doing this for years, of course. Often the land grant to a church, for instance, has been concluded with a verbal understanding and a handshake. This has worked out well enough in many cases, but sometimes, years after the death of the parties who have worked out the agreement and long after the church has been built, a successor of the original landowner may be resentful that land was granted for little or no cost. Feeling cheated by the original gift of land that should have been his or hers, the landowner seeks to overturn the initial agreement and reclaim the land. This may be occasioned by the opportunity to offer the land to an investor with a good sum of money to spend on the lease. What recourse does the pastor have in such situations?

Anyone with any sense would pack his bags withdraw his money, and fly off to invest in one of the small Carribean resort islands.

The same problem can arise for the government when it has leased land for a school, a dispensary or some other public facility. The original landowner may have granted title to the land for government use to serve the public in some fashion, but how is the government to insure that the landowner will continue to honor the original commitment in years to come?

If an informal land arrangement presents a problem for the church and government, imagine the horror that such a loose system would induce in a businessman who can not claim the same noble purpose. In leasing land, he is acting neither for God nor for country, but only to make an honest (we hope) dollar or two. Imagine an outside investor who thinks he sees an opportunity to open a resort hotel on an island that will provide a profit for him, jobs for the community, and tourists that might bring money into the local economy. As soon as he arrives and identifies the ideal site for his hotel, he begins chasing after the land owner. He soon finds that there is not one but three signatures that he must have on his lease form—*irojj*, *alab*, and senior *drijerbal*—so he continues the chase until



Maybe so, but the new system offers greater protection over land claims than we have now. Besides, any additional cost might be repaid by more investor dollars.

Time for a Change?

There was a time when everything important, family history and land rights included, was passed on through word of mouth. This served well when communities were small and made up of people whose roots went back centuries. Today, however, our communities are larger, much more heterogeneous, and bound to the conventions of modern law. These modern societies are bound together by the written word, whether recorded on paper or in cyber-space. Isn't it time to establish a system that will record and safeguard the land rights of those who feel the need for it? Others can record their landholdings as they have in the past until the day comes that they too wish to avail themselves of such a system.

Such a system is bound to come. Those who own land and those who wish to procure land for business purposes will demand that it be implemented—if not immediately, then five or ten years from now. They will demand it for their own protection.

Isn't it time to establish a system that will record and safeguard the land rights of those who feel the need for it ?

Such a system will be an essential first step in attracting needed investment capital to the Marshalls. "Micronesia for Micronesians" was a slogan that could be applied as much to early Trust Territory policies discouraging outside investment as to the political sentiments that were sweeping the islands by the late 1960s.

Micronesia may not have needed capital at that time since low-interest, risk-free government loans were generally available during those years.



True, the flexibility is at risk of being curtailed to some extent, but this is the price of investor confidence. Investors need to know what they're getting into and they want protection against the vagaries of a cultural system that they can't even understand, much less control. If you want the money investors bring, you must offer them some assurance that their leased land won't be lost when chiefly power changes hands.

Q: In applying for a certificate of ownership, a person may be inviting others to contest his or her claim, especially when there are already hard feelings about ownership of the land. Why not simply wait until feelings have abated and so avoid conflict?

There are already open disputes over some pieces of land. Postponing settlement of these cases probably won't help since people have a long memory for land grievances. Besides, since the system is voluntary, the land owner can always reserve the judgment as to when would be the best time to come forward and register the land.

Q: This system will give the government too much authority over land.

The government is the institution that registers the land, but it does so in collaboration with the Traditional Rights Authority, which has been set up precisely to address customary matters. In the end, some institution will have to resolve disputes between claimants. The government does this right now anyway through the court system, so nothing much has changed.

Q: Isn't this harder and more costly than the present system? There are costs for surveying the land and filing the application for registration, and there is a long wait before the certification is issued.



he obtains their agreement. Having obtained their consent, he then looks for documentation—in vain, it turns out—on the parcel of land he is leasing.

There's nothing filed in the court house on the piece of land he wants to lease, no map of the land parcel at the Land Office. So he trundles off to the Land Office to request that a land survey be done, fills out the registration form, pays his fee at Finance Office, and waits. When the survey is finished, he's off again—this time to a lawyer to have the lease agreement drawn up, to the Land Office to file the agreement, and then to the court to register the transaction. This isn't exactly one-stop shopping for the investor, is it?

But even this may not be the end of the trail for the potential businessman. Should someone challenge his lease a year or two later on the grounds that the wrong person signed as representative of the *drijerbal*, he is stuck.

The government cannot uphold the lease if he has negotiated with the wrong party. He has run around on a merry chase to different parties and a myriad of offices, at the end of which he thinks he has the lease worked out. But a year later he is told that he has the wrong signature.

Is this any way to encourage people with money to invest in the islands? Anyone with any sense would pack his bags, withdraw his money, and fly off to invest in one of the small Caribbean resort islands. Even a strip of sand on the Black Sea would look good by comparison to what he has had to endure in the Marshalls.

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Why Worry About Investors?

You may feel that this concern for businessmen and investors has been overdone. The reaction to an argument like the one I've made here might be to dismiss such investors and their money if they're so bothered by the procedures for leasing land. Why design a land registration system to meet their needs when they may not even be citizens? The simple answer is that if the Marshalls wishes to develop a productive economy to replace the US aid that it has been receiving all these years, the country must attract the investment capital to build the resort hotels required for a tourist industry, the factories and canneries to establish a sound fishing industry, the other businesses necessary to provide jobs for the people of the Marshall Islands and generate tax revenue for the government. In this age of globalization, when investment capital is able to move quickly from one country to the next, the Marshalls must have something to offer those who have the start-up money to contribute to economic development.

A formal land registration system is not just a scheme to attract foreign investors. More and more, local businessmen are voicing their own desire for a system that is much more organized than the present one.

They, too, would like to have a certificate clearly delineating their own interests in a piece of land. What local businessman would be prepared to buy the Outrigger Hotel, for instance, without the assurance that the seller actually possessed rights to the land on which the hotel was built?

Investment dollars might come from many sources foreigners looking for a promising new country in which to invest, local residents who are willing to move into business,

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A Bad Moon Rising?

Land is such a touchy topic among islanders that even a change in the way land parcels are recorded can raise evil specters in people. They might easily echo the words of the Credence Clearwater song, "I see a bad moon rising." What are these fears and how can they be addressed?

Q: We've gotten along with our tradition system just fine so far. Why not just work with this?

But have we really gotten along so well? Land disputes are becoming more common, as we are reminded in the news papers. One public school has been forced to close recently because of a dispute with the government. Meanwhile, businesses have multiplied and are still becoming more numerous, as future investors require stronger assurances of title on the land they lease.

Q: This will lead to the loss of land through alienation.

Only if we want it to. The biggest loss of land in the Marshalls to foreign interests occurred about a hundred years ago, during German times. Outsiders acquired total fee simple ownership of certain parcels at that time. Since then there has been little loss of land. The aim of the program is to secure land for leases, not to encourage outright sale of land.

Q: This program is just the first step in the loss of traditional chiefly rights to the land.

The registration process recognizes the rights of the iroij. It's not aimed at undermining their rights in favor of fee simple ownership, only at registering these rights.

Q: What about succession? The program tries to nail down the heirs, and in so doing it ties down the traditional chiefs, depriving them of the flexibility that they would have had in the traditional Marshallese system.



- Any information on this piece of land should be gathered and submitted. Such information would include all recorded documents on file in government offices, as well as any other papers related to the land that may be in the owner's possession. This should include documents on any leases or easements that may have been granted. Any affidavits on the history of the land parcel that the owner wishes to make can also be submitted.
- These papers, together with the reference to the survey map, are then submitted to the Land Registration Office for certification.
- Before the certificate can be granted, notice must be issued to the public, by radio and in writing, that the applicants intend to register their land parcel. Anyone with any objections to this claim must step forward within 90 days and explain in writing the grounds for his objection. In this event, the purported land owner has the choice of withdrawing his application, settling privately with the objecting party, or continuing the process despite the objection. If he or she decides to continue and the other party does not withdraw his objection, a hearing will be held under the auspices of the Land Authority within a month's time. The Board of the Land Authority will then make a decision based on the evidence presented. The decision may be appealed to the High Court.
- If the applicants are unchallenged or have successfully defended their rights to the land, a certificate of registration issued to the owners. A copy is dated and filed at the Land Registration Office. Their title to the land is formally registered and recognized by the government.

This certificate may be updated as any changes occur. The document may be modified to reflect the succession of a new *iroij* or *alab*, for instance. Any lease made on the parcel of land could also be added to the file to keep it current.



or even expatriate Marshallese who have returned from the US to look for investment opportunities in their own islands.

Whoever they are and wherever they come from, their capital is needed to start up the businesses that will, in turn, create jobs for people in the islands. The hope is that not everyone who seeks employment in the future will have to leave for Hawaii or California or Arkansas. In addition, the tax money that such businesses generate will enable the RMI Government to improve the schools, hospital and other public services it offers its people.

If the Marshalls wants to march toward modernization, people here may have to move in the direction of certifying land rights. As sacred as land is to island people and as scarce as it is on a coral atoll, land represents the most important resource in the Marshalls and one that must be used to propel Marshallese toward economic development.

Something For the Landowners, Too

At present there are no certificates of land ownership—or deeds—being issued in the Marshalls. In the old days, when everything was passed on by word of mouth, a certificate of ownership may not have been required. Communities were small back then and everyone knew who had legitimate claim to what land. There was little doubt where the property boundaries lay.

Today, however, atolls like Majuro and Kwajalein teem with thousands of residents, many of them arrivals from other atolls or places outside the Marshalls altogether. Political authority in the islands, once held by chiefs and heads of extended families, is now shared with a modern government that is expected to oversee the future of the nation state that the Republic of the Marshall Islands has become. In today's world, handshakes no longer carry the weight they once did.



Written agreements have become the indispensable way of doing business since information is stored on paper and in digital form rather than merely in the heads of those who made them. At one time, land rights may have been too important to be entrusted to a piece of paper; but now they're too important not to be.

The land registration program would offer land owners who might wish it an actual certificate of ownership that will stand up in court. The certificate would recognize their limited rights to a piece of land of all parties with a stake in the land: the *iroij*, the *alab* and representative of the *drijerbal*. Far from excluding those with traditional land rights, the system would formally recognize the interest of these parties on the certificate of ownership that was issued. In the end, their rights would be protected not just by the force of custom but by weight of law under the government.

At one time, land rights may have been too important to be entrusted to a piece of paper; but now they're too important not to be.

Why would these people want such a certificate of ownership? Perhaps because they want to lease their land, or part of it, to someone with a business plan. Perhaps to reach an agreement with the government on allowing it to use the land for a school or dispensary or other public facility. Perhaps just to formalize their claim to a piece of land before they leave for Arkansas or Hawaii. Certainly to meet the demands that the modern world is making on people everywhere as we move into the 21st Century.

Building A Land File

Besides providing certificates of ownership for those who wanted to register their land parcels, the government's new thrust is intended to organize and expand the land records for the Marshalls.



Back in 1957, an attempt was made to survey land holdings on Majuro and the resulting papers describing the land and indicating who was believed to hold what rights in each parcel were filed with the court. This partial survey, which never resulted in certificates of ownership, was the only known attempt to take stock of the land ownership picture in the Marshalls.

There are, however, many land documents filed in the courthouse. Some are statements as to who holds land rights to certain parcels of land, some are historical documents attesting to the exchange of land in the past, still others are records of leases granted.

The government program would seek to organize the admittedly incomplete records that are now tucked away in the courthouse and the Office of Lands and Surveys files. These documents would also be computerized to permit simple searches by the location of the land parcel, by the names of those with land rights, by filing date, by company leasing the land, etc. This would offer the advantage of providing a single system that would link the land documents in the courthouse and the survey maps in the Lands Office, thus bridging the divide between government offices and collating all documents in one usable file system. This in itself would vastly improve the land record system.

How the New System Would Work

The process of registering a piece of land involves several steps. Any one of the three parties with rights in a parcel of land can initiate the process, but this person must get the approval of the other two parties before he can proceed with the registration.

- The land owner would go to the Land Registration Office to obtain a form and make formal application for registration.