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PROBLEMS OF LAND TENURE IN FRENCH POLYNESIA

In an article in the "Journal of Pacific History" published in 1966 : "Half a century of legal distortions ; the land tenure in French Polynesia from 1842 to 1892", M. PANOFF has shown that the authorities of the Protectorate had had a great amount of trouble in establishing the "French law as the single system of regulations in matters of land tenure". 80 years after the annexation of POMARE'S Kingdom (Pomare was the last king of Tahiti), French legislation does not seem to have taken effect throughout this field.

The purpose of the administration, at least during the end of the XIXe century and the beginning of the XXe century, has been essentially economic. It was mainly a question of encouraging and safe guarding real estate transactions for development of a colonisation by European land tenure. So it was necessary that all Tahitians have access to private ownership by providing them with titles which cannot be contested.

After several unsuccessfull attempts, by decree of the 24th August 1887, they obliged each individual to register the lands they occupied or which had been occupied by their ancestors. But the next generation, through lack of partitioning, most of the properties, according to the French legislation, were in point ownership. Most efforts aimed at getting the Tahitians to give up their way of not dividing up property, remained in vain, at least in the rural areas.

In 1971, in the absence of an exact inventory (which was never made and which is very difficult to make) one can give these highly approximate figures for Tahiti and Moorea :

- less than 20 per cent in the urban area of TAHITI,
- between 40 and 60 % on the western coast of TAHITI-NUI,
- between 50 and 80 % on the eastern coast of TAHITI-NUI and in the peninsula of TAIARAPU,
- 30 % in the island of MOOREA.

This state of joint ownership is often (but not always) accompanied by a very confused legal situation ; when this goes on for several generations, the existing property titles do not always make it possible to come to some sort of agreement, either as to the identification and land boundaries, or as to the identity of the co-owners. Furthermore, such titles, even inadequate, do not always exist. In PAPEARI, district located on the western coast of Tahiti, I counted 80 hectares of surveyed land (7 %) which are occupied by people who have

not got property titles or who are in possession of incomplete ones. So possession is, sometimes, based on the simple fact of occupation.

Both of these facts : the existence of joint ownership, the defective nature of, or even the lack of written land titles, prove that neither the spirit, nor the letter of french law are always respected. What are the reasons for this state of affairs ? What are its consequences ? Is it necessary, is it desirable to put it right ? Here are many answers to such questions. I will confine myself to what seems to me to be the main ones in accord with the fact that all inhabitants of French Polynesia do not refer to the same concepts. In the rural districts, a good number are going to observe a Tahitian point of view ; in the urban area the greater part have adopted european, western, norms of thinking.

I.- PROBLEMS OF LAND TENURE IN THE RURAL DISTRICTS.

Many Polynesians living in the rural districts of Tahiti and in the outlying archipelagoes do not split up their lands and remain (according to French law) under joint ownership, because they do not want to adhere to a concept of land ownership and land use which is not their own. Actually, in this matter, the uncodified customs of the Tahitians are completely incompatible with the provisions contained in the Civil Law (Civil Code).

- According to the Civil Law "ownership is the right to enjoy and to dispose of things in the most absolute way" provided that no one else's property is affected. This is the famous "right to use and abuse". This individualist and exclusive concept has two practical and closely complementary consequences.

1/-The right of ownership normally occurs within the framework of individual or private ownership.

2/-The "owned thing" cannot be split up, which means that the "ground property" is not distinguished from what is to be found above the soil : dwellings, plantations, etc.

Right there, it is easy to understand why the Civil Law advises the deceased's heirs not to remain under the joint ownership more than five years. According to French Law, except for certain provided cases, the rights of property of one individual cannot be limited by those of an another individual.

- On the other hand, as many other people with no written law, Tahitians make a distinction between the "collective appropriation" of land and the

rights of using land. In TAHITI, it belongs to the ancestor's issue who claimed, for the major part of them, between 1850 and 1860 and between 1880 and 1890. Members of family group agree not to sell the land. On the other hand, each nuclear family head (or more uncommonly each sibling's group) is holder, as his needs dictate and in agreement with the others members of his family group, of quite precise rights of use : right to build his home, right to plant and so on . There is nothing incompatible between the rights he exercices as an individual, rights which come into being on the land by a clearly defined way of occupying it and the fact that the land belongs to a particular communauty. The land belongs to the family group but the plantations belong to the ones who make them.

Therefore, the two concepts are completely divorced the one from the other. According to the Civil Law "joint ownership is the legal state of affairs of persons who own rights on a some place without there being any material division of their parts making it possible to distinguish them". This very abstract definition is completely foreign to the Tahitian concept of collective appropriation which expresses a concrete picture of the world.

Is it necessary, is it desirable to amend the Tahitian system of land tenure in the rural districts of French Polynesia ?

During the whole of the XXe century, administration has asserted the lack of private property has hindered economic progress. By thinking so, it has confused the tahitian system of "collective appropriation" with the french concept of joint ownership.

- Joint ownership finders economic progress, because according to the Civil Law, there is not any difference between right of ownership and right of use. One co-owner's initiative may be contested by an another co-owner. A co-owner may always to call for having a share in the crop of a plantation (for instance, taro, banana) which has not been planted and cultivated by him.

- In the tahitian system of collective appropriation, such a problem does not exist. In a same land, one may found coconut plantation harvested in turn by several nuclear family heads (these coconuts have been planted by their father's or grand-father's) and some plantations (taro, banana for instance) cultivated by either of right-holders. A right-holder can go on cultivating his plantation during as long as he wants, but if he forsakes it, the plot can be used by some one else.

In my opinion this system does not hinder economic progress. What it does hinder is the poor functionning of the agricultural system for several decades and the present socio-economic transformations which are responsible of the collapse of the agricultural production. In my opinion, Tahitian system of land tenure must be protected : it is fitted to the rural people's way of living. Tahitians' mobility is very important : the group families are scattered in the whole of FRENCH POLYNESIA. Because of collective appropriation, the residents can use the vacant lands. It is all the more necessary because the properties are very small (less than 2 ha for most of them). Besides one cannot cultivate a long time, for agronomic reasons, the plantations growing under the coconuts which occupied the greater part of the ground. Moreover, a migrant who comes back at home for certain, finds again a plot for living and planting.

II.- PROBLEMS OF LAND TENURE IN THE URBAN AREA.

In some districts near Papeete where agriculture disappeared, the problems are different. With development of urbanisation, administration needs land to build schools, dispensaries and so on ... but expropriations are often very difficult to carry out. Besides, many people want to have access to private ownership in order to (for example) build houses intended for rent, but they cannot do so.

In France, as a Papeete lawyer has written..."ownership of real estate property is the exception ; there was no trouble in putting an end to it. It is possible to divide the property up without any fear of commiting mistakes against one of the co-owners, nor about the composition of real estate". Real estate transactions are carried out in complete safety. This is also the case in FRENCH POLYNESIA when the property has been subject to recent written deeds which provide fully adequate guaranties ; but as soon as one has to have recourse to old deeds (claims, sales, wills, civil court records...) in order to identify or define the boundaries of a land or to set up a list of co-owners, and the share reverting to each one of them, it is very hard to see exactly what is going on.

At the Papeete lands bureau (literally : mortgage keepers) it is possible to consult many "deeds under private seal" undertaken before 1940 in which all or part of the following data may be missing : origin of ownership, name, location, exact boundaries of the property, size of the part sold, identity of the parties in the transactions, and so on. At the present time, such

<---------- facts no longer exist as it is obligatory to have real estate deed transactions overseen by a lawyer ; this was not the case at the beginning of the century.

It is quite obvious that the administration of those times, entrusted with the consciencious application of French laws, did not do its job. It may be objected that to do so was extraordinarily difficult. In the beginning, there was no lands survey office ; general surveying of the lands could only be carried out as slowly ; even at the present time, certain islands have not yet been surveyed. Keeping registry records was exceptionally hard as Polynesians change their names several times during their lifetimes. Those are only explanations, not excuses. The inherent difficulties in the local environment do indeed require a very strict application of laws and regulations. Even now, many persons suffer the consequences of this lack of rigour. Actually yet, it is often impossible to find all the right-holders and to have a thorough knowledge of the lands on which they have rights. For putting this state of affairs right, it is necessary to make a new survey and to give titles of property to all the ones who occupy and keep up land for a long time.

- For instance, ten years when the right holders are unknown.
- For instance, thirty years where the right-holders are known but take no further interest in the land during this time.

In order to avoid new legal distortions, the land survey service might register all the changes concerning the state of the lands : wills, transactions and so on...

To sum up, problems of land tenure in FRENCH POLYNESIA are difficult to solve because all the inhabitants of the Territory do not refer to the same concepts of ownership. Administration refuses to admit this reality. The uncomfortable land tenure situation will keep on just as long as this confusion has not been dispelled.