

ALISON MILLS

CONSTITUTIONAL FAILURE IN THE  
SOLOMON ISLANDS -  
THE DIFFICULTIES OF REFORM

(LLM RESEARCH PAPER)

COMPARATIVE CONSTITUTIONAL LAW  
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**ABSTRACT**

The Solomon Islands has all the characteristics of a failed state. It is in a state of a collapse. In recent months the New Zealand and Australia governments have led a Regional Assistance Mission to the Solomon Islands, providing police and army personnel in an attempt to restore law and order to these once "happy isles." This paper submits that more complex and sophisticated solutions will be needed to bring long term stability to these islands. It discusses how, despite being extremely comprehensive, the Solomon Islands' constitution, imposed at independence, has failed to maintain peace, stability and security in these islands. It considers the fundamental conflicts between western constitutional democracy, international human rights and traditional culture and custom law. It proposes reform of the constitution to take into account the diversity of culture, leadership traditions, dispersed populations, and varied resource distribution of the Solomon Islands. However the writer acknowledges that constitutional reform alone may in fact not resolve the complex and difficult underlying issues faced by the Solomon Island and many other post-colonial states.

The text of this paper (excluding abstract, table of contents footnotes, bibliography and appendices) comprises approximately 15,090 words.



## I INTRODUCTION

All these small "islands nations" were independent entities long before the northern explorers found them. Their cultures differed from each other . . . The merging of these "islands nations" into one "Sovereign Authority" was by human design and said to be by necessity. Unfortunately it was the greatest error of the British administration in this region.<sup>1</sup>

The Solomon Islands are part of a chain that is now known as Melanesia that extends across the south-west pacific ocean, from New Guinea in the west to New Caledonia in the south and to Fiji in the east. It consists of six major islands: Choiseul, New Georgia, Santa Isabel, Guadalcanal, Malaita and San Cristobel ranging in length from 8 to 200 kilometres and in width from 15 to 50 kilometre. Dotted around these main islands and in the ocean at its remotest edges are more than 900 tiny atolls and islands of which roughly 350 are inhabited.<sup>2</sup> Many of the islands are mountainous, volcanic, clad in thick bush, subject to regular earthquakes and with little coastal plains. The modern Solomon Islands occupies an area of over 777,000 square kilometres of which 96% is sea. With an average temperature range from 20 - 33°C it has all the appearances of a tropical paradise. However in the past five years, it has made the headlines not as a holiday destination but because of the continual violence, political instability, corruption and ultimately a civil war that amounts to a complete break down of governance and the rule of law.

In recent months, the Regional Assistance Mission in the Solomon Islands, (RAMSI), led by Australia and New Zealand have sent police and

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<sup>1</sup> Solomon Mamaloni "The Road to Independence", in R. G Crocombe and Esau Tuza, (ed) *Independence Dependence and, interdependence The first ten years of Solomon Islands Independence* IPS, USP SICHE: Honiara, 1992.

<sup>2</sup> Quinton Clements, *Rebuilding Parliamentary Rule Post-Conflict*, United Nations Development Programme Legislative Needs Assessment, Mission Report, Solomon Islands, 2001, <<http://www.undp.org/fj/gold/docs/SOLOMON.pdf>> last accessed 25 September 2003.



army personnel to the Solomon Islands to help restore law and order.<sup>3</sup> This followed a formal request for assistance from the Solomon Island's Cabinet, conveyed by the governor-general Sir John Lapli, and backed up by a unanimous resolution from the Solomon Islands Parliament.<sup>4</sup>

However this paper submits that, despite the apparent initial success of RAMSI, with the surrender of weapons and capture of some rebel leaders,<sup>5</sup> there are more complex and difficult problems underlying the "law and order" problem in the Solomon Islands. In particular it considers whether the constitution imposed at independence has contributed to this situation and discusses its failure to bring security and stability to this nation. It suggests that the colonial-imposed constitution in fact contributed to the collapse of government. It contends that the Westminster style government, with its associated trappings, is an inappropriate and alien model of governance to impose on a nation who has a history, culture and tradition that is not only completely different to Britain, but which also has its own unique mix, and complex combination of histories and traditions.

The paper concludes that if New Zealand and Australia are serious about their desire for peaceful and stable neighbours in the Pacific, they will need to consider more long-term and more sophisticated solutions than troops and police. Although it proposes reform of the constitution to take into account, the diversity of culture, leadership traditions, dispersed populations, and varied distribution of resources in the Solomon Islands, this may in fact still not resolve the complex and difficult underlying issues it faces. Even if prior to embarking on such reform the current government regains control of public finances, addresses the problem of

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<sup>3</sup> Office of Hon Mark Burton, Media Release, New Zealand's Assistance to the Solomon Islands Government – Joint Statement  
<http://www.minpac.govt.nz/publications/media//govt/2003-07-15.php> last accessed 25 September 2003.

<sup>4</sup> Office of Hon Mark Burton, above.

<sup>5</sup> See for example the surrender of rebel leader Harold Keke on August 14 2003 and the apparently successful arms amnesty. Hon Phil Goff, Press release, 13 August 2003. <<http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17579>> last accessed 25 September 2003.



corruption, and prepares a carefully managed programme that prepares and trains the provinces for the complexities of Statehood, there is no guarantee of a satisfactory solution. Many post-colonial independent states face the problem of ethnic heterogeneity<sup>6</sup> and complex development needs. The Solomon Islands are not alone,<sup>7</sup> yet unfortunately there are few constitutional models that have successfully addressed these difficulties for them to follow. State federalism is certainly a starting point in search of a solution, but by no means guarantees success. Many commentators have observed that federal systems of government are inherently more fragile even without adding ethnicity and development needs into the mix.<sup>8</sup> It is noteworthy that "virtually every federal state of any standing has had sooner or later to face a concerted bid for secession by one of its component regions."<sup>9</sup> Nevertheless its main attraction lies in its potential to accommodate ethnic diversity and regional differences. It must, however, be acknowledged that the more radical outcome the Solomon Islands may face is secession or disintegration.

In order to fully understand the complexity of Solomon society and the context of the current breakdown of governance, the paper commences with a brief account of its current situation, then provides a historical overview of the Solomon Islands including the governance by Britain while under its protectorate. It then considers the varied traditional methods of governance and law. Although not an anthropological paper, considerable time will be spent considering these matters, as they are fundamental to the thesis of this paper. After analysis of the current constitution and its apparent failings, it considers options for reform for the future.

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<sup>6</sup> Alemante G. Slassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa* 28 Yale J.int'L.51, 52.

<sup>7</sup> See generally Slassie, above.

<sup>8</sup> See generally Robert Howse and Karen Knop, *Federalism, Secession and the Limits of Ethnic Accommodation: A Canadian Perspective*, (1993), 1 New Eur. L. Rev. 269; Lapido Adamolekun and John Kincaid, *The Federal Solution: Assessment and Prognosis for Nigeria and Africa*, (1991), 21 Publius 173.

<sup>9</sup> Greg Craven *Of Federalism, Secession, Canada and Quebec*, (1991) 14 Dalhousie L.J. 231, 243.



## II A FAILED STATE?

The Solomon Islands is or is threatening to be a failed state.<sup>10</sup> The characteristics of state failure include economic deterioration, dramatically falling living standards, declining governance, failing institutions, an incapacity to deliver services for citizens, misrule and corruption, law and order break down and loss of state control of armed forces.<sup>11</sup> All these characteristics are apparent in the Solomon Islands. It has a GDP of US \$530 (on a par with East Timor or the Congo)<sup>12</sup>, and has experienced a 20 percent contraction in its GDP since 1999.<sup>13</sup> Timber is its sole export,<sup>14</sup> and the population is growing at 3.5% per year,<sup>15</sup> among the fastest in the world and resulting in a marked demographic youth bulge.<sup>16</sup> Police use of intimidation against the government and the public and corruption in most areas of official life is rife.<sup>17</sup> Violence is almost endemic and there is little effective government.<sup>18</sup> This, combined with the ethnic conflict, weak state institutions, and a dysfunctional political system that has proved to be incapable of providing effective leadership, despite the capabilities of individuals, has left the country's viability as a functioning sovereign state seriously threatened.

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<sup>10</sup> Dr Elsin Wainwright, *Our Failing Neighbour: Australia And The Future of the Solomon Islands*, A Report prepared for the Australia Strategic Policy Institute, 2003 Directors Introduction. <<http://www.aspi.org.au/solomons/>>last accessed 19.08.2003.

<sup>11</sup>See generally for an example of state failure literature Robert I Rothberg *The New Nature of Nation State Failure*, [2002] Washington Quarterly Summer, 85 -96; Robert I Rothberg *Failed states in A World of Terror Foreign Affairs* (2002) 81 No 4, 127-140.

<sup>12</sup> Wainwright above, chapter 3, Understanding the Problem.

<sup>13</sup> Quinton Clements, *Rebuilding Parliamentary Rule Post-Conflict*, United Nations Development Programme Legislative Needs Assessment, Mission Report, Solomon Islands, 2001, 12. <<http://www.undp.org.fj/gold/docs/SOLOMON.pdf>> last accessed 25 September 2003.

<sup>14</sup> Dr Elsin Wainwright, *Our Failing Neighbour: Australia And The Future of the Solomon Islands*, A Report prepared for the Australia Strategic Policy Institute, 2003Chapter 3 Understanding the Problem, <<http://www.aspi.org.au/solomons/>>last accessed 19.08.2003.

<sup>15</sup>Quinton Clements, *Rebuilding Parliamentary Rule Post-Conflict*, United Nations Development Programme Legislative Needs Assessment, Mission Report, Solomon Islands, 2001, 11. <<http://www.undp.org.fj/gold/docs/SOLOMON.pdf>> last accessed 25 September 2003.

<sup>16</sup>Wainwright, above, chapter 3, Understanding the Problem.

<sup>17</sup> Wainwright, above, chapter 3, Understanding the Problem.

<sup>18</sup> Wainwright, above, chapter 3, Understanding the Problem.



## II HISTORY

### A Pre Araikwao<sup>19</sup> Contact Habitation

Prior to colonial control and the “discovery” of the Solomon Islands, Solomon Islanders did not see themselves as one people belonging to one country.<sup>20</sup> Owing to the diversity of cultures, and traditions that have developed locally and in relative isolation from each other, there is no single migration or early settlement legend for the whole of the Solomon Islands.<sup>21</sup> There are over 90 languages spoken and each linguistic area has its own story of how their first ancestors came to their area or island.<sup>22</sup> However science and archaeology, although still at an early stage,<sup>23</sup> show that habitation of the Solomon Islands is ancient.<sup>24</sup> Speakers of the Austronesian language family,<sup>25</sup> settled in the Solomon Islands sometime between 3000- 2000 BC and it is likely that modern speakers of non-Austronesian languages are descended from earlier inhabitants.<sup>26</sup>

Interestingly, the older pre-Austronesian languages are not confined to isolate remote communities living in the interior, nor does there appear to

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<sup>19</sup> Araikwao is the Kwara'ae term for “European” that is widely used in the Solomon Islands, Hugh Laracy (ed) *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years* Institute of Pacific, Studies of University of the South Pacific, 1989, preface XIV.

<sup>20</sup> Ruth Liloqula and Alice Aruhe'eta Pollard *Understanding Conflict in Solomon Islands: A Practical Means to Peace Making* –Discussion Paper 00/7, State, Society and Governance in Melanesia, The Australian National University, <[http://rspas.anu.edu.au/melnesia/PDF/understanding\\_conflict.pdf](http://rspas.anu.edu.au/melnesia/PDF/understanding_conflict.pdf) >last accessed 12 June 2003.

<sup>21</sup> Sam Alasia, “Population Movement”, in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific, 1989, 112.

<sup>22</sup> Alasia, above, 112.

<sup>23</sup> Alec Rukia “Digging” in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific, 1989, 1, 13.

<sup>24</sup> Rukia above, 10, discusses Lapita pottery that dates to around 1600 BC, and other archaeological discoveries in various regions of the Solomon Islands.

Fred Taika Appendix 1 Chronology in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific, 1989, 152.

<sup>25</sup> Speakers of the Austronesian language group can be found from southeast Asia to as far as Easter Island, New Zealand and Hawaii, Judith A. Bennett, *Wealth of the Solomons – A history of a Pacific Archipelago, 1899 –1978* University of Hawaii Press, Honolulu 1987, 6.

<sup>26</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press, Honolulu, 1987, 6-7.



be any correlation between physical appearance of different groups and languages spoken.<sup>27</sup> In some areas today peoples of similar cultures, live side by side along the Coast speaking languages that have completely different linguistic roots.<sup>28</sup>

### **B “Discovery” by Europeans**

The first European explorers of the archipelago were led by the Spaniard Alvaro de Mendaña. It was Mendaña who gave the archipelago its name.<sup>29</sup> He led a second voyage in 1595, which ended in the disappearance of both him and his ship, although some survivors appear to have settled in San Cristobel. As European navigators had yet to determine a method for fixing longitude it was a matter of chance before Europeans found the Solomons again – nearly two hundred years passed before Philip Carteret visited the in 1767.<sup>30</sup>

Following transient whalers in the early 1800’s, came labour ships looking for people to work on the plantations in Fiji, Queensland, Samoa and in the mines of New Caledonia. As early as 1860 men and women from all over the Solomons went as labourers to these regions.<sup>31</sup> Many were taken against their will, in the practice that became known as “blackbirding,” and between 1870 –1911 27,000 Solomon Islanders were recruited to work on these distant plantations.<sup>32</sup> It has been suggested that this labour trade has exerted the most profound influence on the society and life of the Solomon Islands as it not only introduced many of the

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Fred Taika, Appendix 1 Chronology, in Hugh Laracy (ed) *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific, 152.

<sup>27</sup> Bennett, above 6-7.

<sup>28</sup> Bennett above, 6-7.

<sup>29</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press, Honolulu, 1987, 19.

<sup>30</sup> Bennett, above, 20.

<sup>31</sup> Judith Bennett, *Roots of Conflict in Solomon Islands Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism Discussion*, Paper 2002/5 State, Society and Governance in Melanesia, The Australian National University <<http://rspas.anu.edu/melanesia/PDF/Bennet02.5.pdf>> last accessed 15 June 2003.

<sup>32</sup> Sam Alasia “Population Movement” in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific 1989, 116.



people to a desire for new things, but also introduced alternative ways of living and thinking.<sup>33</sup> Although some gained wealth through the trade in labour, many, up to thirty percent, became victims of introduced disease and other misfortune and failed to return home.<sup>34</sup> It also had the effect of weakening traditional authority, increasing the population movement from bush to coast, and the numerous violent acts between traders and islanders led the British Government to intervene, preparing the path for colonial rule.

### C *British Rule*

The Solomon Islands were declared a British Protectorate in 1893 although some northern areas remained as part of Germany territory until 1899.<sup>35</sup> The British were reluctant colonisers, as they did not wish to finance another colony, so the British government took the colony on the proviso that it would pay for its own administration.<sup>36</sup> The Resident Commissioner had to find a way to raise money and this was initially done through the establishment of plantations on alienated land. Although it might appear that the Solomons would have been a difficult society for colonial powers to “pacify,” the dispersed and isolated communities also precluded any large-scale resistance to British rule. What resistance there was, was met with brutal force and any violence against araikwao met with punitive action and massive overkill.<sup>37</sup> Despite this, colonial pacification was not entirely successful and many areas remained outside the control of the British administration.

<sup>33</sup> Alasia, above 115.

<sup>34</sup> Alasia, above 116.

<sup>35</sup> Sam Alasia, *Party Politics and Government in Solomon Islands* Discussion paper 97/7 State, Society and Governance in Melanesia, Australian National University. Alasia also notes that Bougainville, Choiseul, Santa Isabel, New Georgia, Shortland Islands and other smaller northern areas remained German territory until agreement was reached with the British government, < [http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html) > last accessed 22 September 2003.

<sup>36</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific Archipelago*, 1899 – 1978 University of Hawaii Press, Honolulu, 1987, 103.

<sup>37</sup> Bennett, above, 114.



## 1 *Land alienation*

For the colony to be self-supporting, land was the essential commodity to entice the development of plantations and investment. Land was obtained by the Colonial administration either by resumption under the "wasteland regulations" which permitted the resumption of land that the colonisers considered to be unused or uninhabited, by private freehold purchase, or later by Government purchase for lease.<sup>38</sup> Of the estimated 9,500,000 acres of land in the protectorate, over 463,425 acres, or about 5%, had been alienated by the end of World War I. Over half of this alienation was made under the WasteLand Regulations.<sup>39</sup>

Although this may not seem a great amount in absolute terms, it was very significant in terms of the accessible coastal land available for plantations. Land alienation did not occur without protest, which was often violent. However the colonial administration policy of development of araikwao owned plantations, meant that few complaints by Islanders were seriously investigated, and resistance was often put down violently.<sup>40</sup>

## 2 *The head tax and head men*

In 1921, a "head -tax" was introduced for adult males. This was introduced by the colonial administrators to force those who did not have any means of gaining cash to work on plantations thus ensuring that the plantations' owners had a ready and available work force.<sup>41</sup> The government began appointing local people to serve as village and district

<sup>38</sup> Solomons (Wasteland) Regulations 1900, replacing the earlier Regulation No. 4 1896. John Ipo "Land and Economy" in Hugh Laracy (ed) *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 121, 125-126.

Bennett above 149.

<sup>39</sup> Judith A. Bennett *Wealth of the Solomons - A history of a Pacific archipelago, 1899 - 1978* University of Hawaii Press Honolulu 1987, 148.

<sup>40</sup> John Ipo "Land and Economy" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 121, 127.



Headmen to assist in the collection of the tax (by keeping a village census) and in the enforcement of law and order (by reporting local events).<sup>42</sup> The Headmen were often appointed not according to traditional methods but because they were considered sympathetic to araikwao and the colonial administrators.<sup>43</sup> This created resentment and tension within communities as did the payment of taxes when the Islanders believed they got nothing in return from their Masters.<sup>44</sup>

### 3 *The division into districts*

The Resident Commissioner divided the Solomon Islands into four main administrative units or districts, namely Malaita, Central, Western and Eastern, and a District officer was responsible for each district. This remained the administrative system until 1942 and nothing further was done to enable the people of Solomon Islands to participate in the exercise of political power. The rift between the government and its subjects and their resentment was mostly vividly evidenced in the 1927 killing of the District Commissioner W.R. Bell, while collecting taxes in Malaita. The subsequent brutal and punitive retribution from the government resulting in the death of over 70 people, most of who were innocent including women and children further increased the animosity.<sup>45</sup>

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<sup>41</sup> SamAlasia "Politics" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 137, 140.

<sup>42</sup> Alasia above, 140.

<sup>43</sup> Alasia above, 141.

<sup>44</sup> Alasia above, 141.

<sup>45</sup> SamAlasia "Politics" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific. 1989, 137, 141.

See for a personal account of the killing and its consequences Jonathan Fifi'I, Roger M. Keesing, (ed) *From Pig-Theft to Parliament My Life between Two Worlds*, Solomon Islands College of Higher Education and the University of the South Pacific 1989.

See for an authoritative account of this event Roger M Keesing, and Peter Corris, *Lightning meets the West Wind: The Malaita Massacre*, Oxford University Press Melbourne 1980.



## D World War II and Its Aftermath

The sudden invasion of the Solomon Islands by the Japanese in 1942 and the evacuation of most Araiwaio left a legacy of distrust and doubt amongst Solomon Islanders towards their colonial rulers.<sup>46</sup> Fighting involving an estimated 30,000 Japanese and 50,000 American troops lasted over two years. The most enduring and tangible effect of the war was that it changed the relationship between European and Solomon Islander.<sup>47</sup> During the war both the allied troops and the Islanders depended on each other for survival and often for the first time their colonial masters saw the Islanders as capable human beings.<sup>48</sup> This provided the foundation for the subsequent questioning of colonial structures and rule.<sup>49</sup>

The arrival of Americans in such numbers gave the Islanders an opportunity to experience a different relationship with whitemen; to see black and white Americans working and living together as equals; and to reconsider their relationship with their colonial masters.<sup>50</sup>

Out of this disaffection various movements that challenged the colonial system emerged. The Maasina rule<sup>51</sup> began in the 'Are'are area of Malaita and although achieving few of its material aims, Maasina rule created for the first time an ideology and a unity in Malaita. The aim was to create a united front to negotiate with the British on local matters and arose

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<sup>46</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987, 285.

See for a full account of the war in the Solomon Islands J Millar *The War in the Pacific, Guadalcanal: the First Offensive*, Washington: Department of the Army 1949; John Zimmerman, *The Guadalcanal Campaign*, Marine Corps. Washington, DC:US 1949.

<sup>47</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press, Honolulu, 1987, 309.

<sup>48</sup> Bennett above, 291.

<sup>49</sup> Bennett, above, 309.

<sup>50</sup> Bennett, above, 292.

<sup>51</sup> "Maasina," is an 'Are'are word that refers to the relationship between siblings, probably "brotherhood" would be an accurate translation. It was used to imply the bringing together of all the people of Malaita as brothers united in a struggle.

See for a personal account of the establishment and ideas behind Masina Rule, Jonathan Fifi'I *From Pig-Theft to Parliament My Life between Two Worlds* Roger M. Keesing, (ed) Solomon Islands College of Higher Education and the University of the South Pacific 1989.



partially as a result of the realisation that the lack of cohesion and unity gave the British greater power of them. The Colonial administrators responded to defiance and lack of co-operation by supporters of the Maasina Rule organisation by imprisoning those who refused to pay the hated head tax.<sup>52</sup> In the West the emergence of the Eto's Christian Fellowship Church, where the Methodist Missions had for so long dominated, was as much a rejection of the colonial relationship as Massina rule had been in the East.<sup>53</sup>

#### **IV THE MELANESIAN WAY – CULTURAL DIFFERENCES AND TRADITIONAL GOVERNANCE.**

##### **A Salt Water/Bush People Divide**

Although there has never been single “Solomon Island” tradition or culture, generally the Melanesian Way was a life style, which could be described as communalistic, egalitarian, making its decisions by consensus and achieving its aims by co-operation.<sup>54</sup> It emerged in small communities, in a moneyless subsistence economy that lacked crops that could be stored for any significant periods.<sup>55</sup> Kinship was the cement of each society binding individuals to a group and forming the basis to claims to use land and maritime resources.<sup>56</sup>

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<sup>52</sup> SamAlasia “Politics” in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific. 1989, 137, 142.

See generally Fifi'I above.

<sup>53</sup> Leslie Fugui And Simeon Butu, “Religion” in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific. 1989, 73, 89.

Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press, Honolulu 1987, 285, 300-301, 310.

<sup>54</sup> Percy Chatterton in *Pacific Islands Monthly* July 1982, 53-54 cited in Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987, 1.

<sup>55</sup> Percy Chatterton in *Pacific Islands Monthly* July 1982, 53-54 cited in Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987, 1.

<sup>56</sup> Judith A. Bennett, *Roots of Conflict in Solomon Islands Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism*, Discussion Paper 2002/5 State, Society and Governance in Melanesia, The Australian National University. <<http://rspas.anu.edu/melanesia/PDF/Bennet02.5.pdf>> last accessed 15 June 2003.



However generalities end there. Not only are there linguistic differences, there are also both Melanesian and Polynesian peoples included within the modern boundaries of the Solomon Islands. Added to this is the cultural and traditional difference between those known as the "bush" people and those known as the "salt water" people.<sup>57</sup> "Salt water" people – those who reside in coastal settlements – are often described as articulate, cleverer, and wiser to the way of the outside world. They have expertise in fishing and the sea.<sup>58</sup> Bush people, – those who live in the thick bush interior – see salt water people as morally inferior and corrupted by outside influences. Bush people see themselves, as stronger, simpler, more honest and truer to the values of their society.<sup>59</sup> Even on the smaller Islands this conceptual dichotomy existed in pre contact time, and there was usually very restricted interaction and contact between the two societies.<sup>60</sup> However the "salt water-bush" people divide did not necessarily correspond with linguistic boundaries.<sup>61</sup>

Differences between the coastal and bush dwellers extended to cultivation, settlement patterns and other matters. Inland settlements were hamlets rather than villages consisting of about 10 people, usually a set of brothers or closely related men, their wives and their children.<sup>62</sup> Coastal settlements tended to be larger but seldom exceeded 100 inhabitants.<sup>63</sup>

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<sup>57</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago*, 1899 – 1978 University of Hawaii Press Honolulu 1987, 6-7.

Lawrence Foanaotoa "Social Change" in Hugh Laracy (ed) , *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 68, 69.

<sup>58</sup> Bennett, above, 6.

<sup>59</sup> Daniel Millar, *Settlement and Diversity in the Solomon Islanders* Man 15 (3) 451-466. Harold M Ross, Baegu: *Social and Ecological organisation in Malaita Solomon Islands*. Illinois Studies in Anthropology no. 8. Urbana: University of Illinois Press

<sup>60</sup> Lawrence Foanaotoa "Social Change" in Hugh Laracy (ed) , *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 68, 69.

<sup>61</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago*, 1899 – 1978 University of Hawaii Press Honolulu 1987, 6.

<sup>62</sup> John Ipo, "Land and Economy" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 121, 123.

Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago*, 1899 – 1978 University of Hawaii Press Honolulu 1987, 8.

<sup>63</sup> Ipo , above 123.

Bennett, above, 8.



Hamlets moved around according to fertility of soil, planting season and availability of land. Sea dwellers relied heavily on the sea and reefs, and have had access to traders, and foreigners from an earlier time. They often had extensive gardens. Bush people gardened on slopes, knew the bush intimately, were excellent horticulturists, and hunter-gatherers.<sup>64</sup>

Isolation and dispersed settlements was not only valued on account of the privacy it offered but also for security reasons. It also benefited the health of the Islanders both in pre-contact and post contact time, as it slowed the spread of illness and disease.<sup>65</sup>

### **B Land Holdings**

Land ownership was crucial in the traditional way of life. Despite the prevalence of subsistence production how cultivators held rights to the land varied from place to place and generalisations about the past processes for determining rights and interests may not be reliable.<sup>66</sup> Factors affecting land rights included the difference in land area, soil productivity, and differences in population destiny.<sup>67</sup> However there were many similarities in the way in which land was regarded. This includes community ownership, the spiritual and religious importance of land, the use of geographical features to identify boundaries, inheritance as the main method of land transfer, and methods of allocating house and garden sites.<sup>68</sup> Almost all systems were based on the principle that the primary cultivator, their heirs and assigns had the first claim to land.<sup>69</sup> Family groups and clans accumulated these rights. An individual might acquire the right to use some of a group's land but the group's approval gained

<sup>64</sup> Lawrence Foanaoto, "Social Change" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific. 1989, 68, 69.

<sup>65</sup> Judith A. Bennett *Wealth of the Solomons - A history of a Pacific archipelago, 1899 - 1978* University of Hawaii Press Honolulu 1987, 8.

<sup>66</sup> Bennett above 4.

<sup>67</sup> John Ipo, "Land and Economy" in Hugh Laracy (ed) , *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific. 1989 121, 122.

<sup>68</sup> John Ipo above 123.



through consensus mediated by the big man, or chief was essential. Land that was not used for cultivation but was in some way associated with a particular family or clan remained the group property with rights generally vested in descent group.<sup>70</sup> In some societies (such as in the Guadalcanal, Santa Isabel, Makira, Russell Islands and Nggela) children inherited land from their mothers side, while in other societies, (such as Choiesul, Malaita Rennell and Bellona and others) children inherited from their fathers side.<sup>71</sup>

### C *Political Organisation in the Solomon Islands*

Prior to Mendaña's "discovery" there was no Solomon Islands. There was no central authority controlling and governing the chain of islands, nor even a central authority that governed even the smallest of islands.<sup>72</sup> People owed (and still owe) their allegiance and loyalty to their clan, or tribal group, with land as the common bond motivating this allegiance.<sup>73</sup> Solomon Islanders still identify themselves more closely with their cultural or island group than with the nation and it is only when individual go outside the country that national identity becomes obvious and strong.<sup>74</sup> People lived in generally small and isolated communities and traditional governance and political organisation reflects this localised environment. In small hamlets, senior males would exert authority over and speak for the household while on matters concerning all hamlets of a

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<sup>69</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987, 4.

<sup>70</sup> Bennett above, 4.

<sup>71</sup> John Ipo "Land and Economy" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific. 1989, 121, 123.

<sup>72</sup> Joses Tuhanuku *Solomon islands – on the cross-road and in need of the wisdom of King Solomon*, Pacific Updates on Solomon Islands, Fiji and Vanuatu, Australia National University, Asia Pacific Press, 2000 <<http://peb.anu.edu.au>> last accessed 18 June 2003.

<sup>73</sup> Joses Tuhanuku above

<sup>74</sup> Gordon Leua Nanau, *Uniting The Fragments: Solomon Islands Constitutional Reforms*, Research Symposium on Development Research (South Pacific Futures) July 22- 34 2002: Brisbane Australia <<http://www.fdc.org.au/files/nanau-2.pdf>> last accessed 6 June 2003.



region, the most senior males, usually in the grandfather's generations would be deferred to.<sup>75</sup>

In some Melanesian societies an ambitious man might become a *mane Kaa*, *mwane kama*<sup>76</sup> or *mane sule* or "big-man" amongst a group of interrelated hamlets.<sup>77</sup> These men were mostly self-made men, but were often warriors, perceived as having access to powerful spiritual forces from their ancestors.<sup>78</sup> A Big-man could win followers not only from inside own clan but from outside as well and it is suggested that in pre-contact times he may have gained up to maybe 200 followers.<sup>79</sup>

A Big-man had to bring prestige to himself and his supporters by conspicuous demonstration of his wealth and above all his generosity.<sup>80</sup> Feast giving, dance entertainment, assistance with the financing of young men's bride payments and of funeral offerings, were all essential acts of a Big-Man. But all this was subservient to the social context. A big-man was considered wealthy in so far as he redistributed his wealth among his supporters and gave them a feeling of significance.<sup>81</sup>

In many areas, such as Kwara'ae or Kolombangara, there was a tradition of three main bases for authority represented by spiritual, political and warrior leaders.<sup>82</sup> The social structure being defined by a

<sup>75</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987 14.

<sup>76</sup> See Hogbin who discusses this system of leadership in depth in his study of the Kaoka Speakers of Guadalcanal, Ian Hogbin, *A Guadalcanal Society: The Kaoka Speakers*. New York, Holt Rinehart and Winstone, 1964. He translated the word *mwane kama* to mean "big man", *mwane* being man, and *kama* being big.

<sup>77</sup> Bennett above, 14.

<sup>78</sup> Judith A. Bennett, *Roots of Conflict in Solomon Islands Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism* Discussion Paper 2002/5 State, Society and Governance in Melanesia The Australian National University <<http://rspas.anu.edu/melanesia/PDF/Bennet02.5.pdf>> last accessed 15 June 2003.

<sup>79</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987, 14.

<sup>80</sup> Bennett above, 14-15.

<sup>81</sup> Bennett above, 14-15.

<sup>82</sup> SamAlasia "Politics" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific. 1989, 137, 138-139.



continuous interaction between the spiritual, secular and strategic authorities.<sup>83</sup> Leaders supervised their followers according to strict traditional codes of behaviour.

In the more Polynesian societies of the Solomon Islands and in the Western Islands, hereditary played a greater role in leadership and a more chiefly system based on inheritance prevailed. In these areas, ability and performance had to set the seal on hereditary preference.<sup>84</sup> If a young man lacked these qualities, elders would support a more able uncle or brother. Some areas a combination of both these systems operated.

Despite the differences in leadership and governance, what is significant in terms of later developments is the importance placed on the qualities of the individual by all these leadership systems.<sup>85</sup> Traditionally what made a leader was not a party or an ideology but his ability to lead and the possession of the criterion needed to lead. The ideologies and policies he implemented belonged not to him or to a party but to the whole society because he knew their customs and culture.<sup>86</sup> There were never alternative parties, or ideologies, just alternative individuals. This focus on individuals as leaders has led to difficulties in implementing a Westminster type system of governance where stability derives from a party system where allegiances are owed to a party and an ideology rather than to a person or to clan.<sup>87</sup> Voting for your "wantok" (someone from

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Sam Alasia, *Party Politics and Government in Solomon Islands*, Discussion paper 97/7 State, Society and Governance in Melanesia., The Australian National University <[http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html)> last accessed 22 September 2003.

Judith A. Bennett, *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978*, University of Hawaii Press, Honolulu, 1987 15.

<sup>83</sup> Sam Alasia, *Party Politics and Government in Solomon Islands*, Discussion paper 97/7 State, Society and Governance in Melanesia, The Australian National University <[http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html)> last accessed 22 September 2003.

<sup>84</sup> Judith A. Bennett, *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978*, University of Hawaii Press, Honolulu 1987, 15.

<sup>85</sup> Sam Alasia, *Party Politics and Government in Solomon Islands*, Discussion paper 97/7 State, Society and Governance in Melanesia, The Australian National University <[http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html)> last accessed 22 September 2003.

<sup>86</sup> Sam Alasia above,

<sup>87</sup> Jennifer Corrin Care *Off the Peg or Made to Measure Is the Westminster system of government appropriate in Solomon Islands* ALJ vol 27 no.5 2002, 207, 208.

Sam Alasia above



your culture and language group) or your big man remains the dominant influence in elections rather than the abstract idea of a party.<sup>88</sup>

#### **D Population Movement**

In pre-contact times, free movement of people occurred within each island among people who had blood and land ties. Movement out side of such ties took place through arranged marriages, or as a direct result of intertribal or inter-island wars, when a child may have been taken as spoils or people given as part of a negotiated compensation or peace.<sup>89</sup> People in those circumstances were treated with respect and had equal rights to their host groups. Little interaction or travel occurred, the desire for trade or conquest did bring about some population shifts and internal migrations.<sup>90</sup> These were however exceptions to the normal pattern. As already discussed the labour trade was the first and probably most significant change to these traditional ways of interacting and its consequences were far reaching.

### **V THE MOVE TOWARDS INDEPENDENCE.**

#### **A The Ideology of De-colonisation**

One of the most significant consequences of World War II, and the international redistribution power that followed was the process of de-colonisation led by the United Nations. The Charter of the United Nations established, the principles that that guided (and continue to guide) the

<sup>88</sup> Jennifer Corrin Care *Off the Peg or Made to Measure Is the Westminster system of government appropriate in Solomon Islands* ALJ vol 27 no.5 2002, 207, 208.

<sup>89</sup> Ruth Liloqula and Alice Aruhe'eta Pollard *Understanding Conflict in Solomon Islands: A Practical Means to Peace Making* –Discussion Paper 00/7, State, Society and Governance in Melanesia, The Australian National University <[http://rspas.anu.edu.au/melnesia/PDF/understanding\\_conflict.pdf](http://rspas.anu.edu.au/melnesia/PDF/understanding_conflict.pdf) > last accessed 12 June 2003.

<sup>90</sup> Sam Alasia "Population Movement" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific, 1989, 112, 114.



United Nations de-colonisation efforts.<sup>91</sup> This requires colonising powers to recognise, as paramount, the interests of peoples, who have not yet attained a full measure of self-government.<sup>92</sup> Additionally there is an obligation on colonising powers to develop self-government, to take into account the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions.<sup>93</sup> Throughout most of their colonies, Britain responded to this growing international anticolonial feeling in the fifties and sixties by granting independence. Yet despite this trend, it gave limited consideration to the constitutional development in the Solomon Islands until the early seventies.<sup>94</sup>

### **B Movement in the Solomons**

Despite the failure of the Maasina Rule to achieve many of its aims it did force the Colonial Administrators to recognise the capacity of the Solomon Islanders for political developments. However from 1955 until independence in 1978 the British largely dictated the timetable of economic and political change.<sup>95</sup> In 1952 the first Malaitian Council was established and 1964 these councils had been established throughout the country and a start had also been made on giving the Islanders a formal voice at a national level. In 1960 minor constitutional developments occurred with the establishment of an Executive and Legislative Councils and the making of legislation in the form of ordinances by the High Commissioner, with the advice and consent of the Legislative Council.<sup>96</sup> Since members of the Council were either ex-officio or were nominated by the Commissioner the powers of the High Commissioner were scarcely

<sup>91</sup> The Charter of the United Nations, (26 June 1945) 59 Stat 1031; 145 UKFS 805; [1945] CAN TS no.7, (Articles 73 and 74).

<sup>92</sup> The Charter of the United Nations, above, Chapter XI, Articles 73.

<sup>93</sup> The Charter of the United Nations, above, Chapter XI, Articles 73( b).

<sup>94</sup> Judith A. Bennett, *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978*, University of Hawaii Press, Honolulu, 1987, 311.

<sup>95</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press Honolulu 1987, 343.

<sup>96</sup> Bennett, above 317.



diminished.<sup>97</sup> The first form of national election took place for the 1964-67 Legislative Council.<sup>98</sup>

By 1974 Britain had abandoned any slow evolutionary approach to independence, although the real impetus for this lay not with any ideology but rather its own economic and social troubles, including the fuel crisis and membership with European Economic Community.<sup>99</sup> From having been considered less than a decade prior as only a possible candidate for eventual self-government the Solomon Islands were now being prepared as quickly for independence as the appropriate legal and constitutional niceties would allow.<sup>100</sup>

## **VI INDEPENDENCE**

### **A Independent But Not United**

The Solomon Islands were granted independence in 1978. The timetable for independence was set by the British, and although there was considerable desire for independence the Solomon Islands were largely ill-prepared for it and dependant on external aid for about one third of its government finances.<sup>101</sup> Even in the years leading up to Independence a good number of people realised that uniting distinct island groups and calling them the Solomon Islands was not the solution.<sup>102</sup> The Western Province, for example, was threatening to “break away” from the nation even prior to Independence and boycotted the festivities to commemorate

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<sup>97</sup> Sam Alasia, “Politics” in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of the University of the South Pacific 1989, 137, 143.

<sup>98</sup> Bennett, above 318.

<sup>99</sup> Judith A. Bennett *Wealth of the Solomons – A history of a Pacific archipelago, 1899 – 1978* University of Hawaii Press, Honolulu 1987, 320.

<sup>100</sup> Bennett above, 320.

<sup>101</sup> Judith Bennett *Roots of Conflict in Solomon Islands Though Much is Taken Much Abides: Legacies of Tradition and Colonialism* Discussion Paper 2002/5 State, Society and Governance in Melanesia Australian National University <<http://rspas.anu.edu/melanesia/PDF/Bennet02.5.pdf>> last accessed 15 June 2003.

<sup>102</sup> Gordon Leua Nanau *Uniting The Fragments: Solomon Islands Constitutional Reforms Research Symposium on Development Research* (South Pacific Futures) July 22- 34



independence as its leaders were dissatisfied with the failure of the independence order to guarantee the devolution of powers to provinces.<sup>103</sup>

Another notable post independence development that supports the existence of “nations within a nation” theory was the series of demands made by the Guadalcanal province and its people to the national government, known as the Bona fide Demands of Guadalcanal People (1978).<sup>104</sup>

### **B Brief Outline of The Recent “Ethnic Conflict”**

There are many events that followed independence in 1978 but it was not until 1998 that the situation in the Solomon Islands came to the World’s attention. The ethnic tensions that erupted in the late the 1990’s lead to the establishment of various militias who control areas by force.<sup>105</sup> This escalated on Guadalcanal in December 1998, although tensions had ebbed and flowed for some years before that.<sup>106</sup>

The Solomon Islands Government, led by Prime Minister, Bart Ulufa’alu, and the Royal Solomon Islands Police (RSIP) faced serious challenges in dealing with growing tensions and by mid-1999 the Guadalcanal militants had taken control of the countryside around Honiara. The militants first called themselves the Guadalcanal Revolutionary Army (GRA) but later adopted the name the Isatabu Freedom Movement (IFM).<sup>107</sup> Up to 20,000 Malaitan settlers (many second-generation) fled into Honiara and were repatriated to Malaita by the Red Cross. Many have since returned and are concentrated within Honiara. Violence increased in mid-1999 with the emergence of a

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2002: Brisbane Australia <<http://www.fdc.org.au/files/nanau-2.pdf>> last accessed 6 June 2003, 9.

<sup>103</sup> Nanau above, 9.

<sup>104</sup> Nanau, above, 10.

<sup>105</sup> Dr Elsin Wainwright, *Our Failing Neighbour: Australia And The Future of the Solomon Islands*, A Report prepared for the Australia Strategic Policy Institute, 2003 Chapter 3, <<http://www.aspi.org.au/solomons/>> last accessed 19.08.2003.

<sup>106</sup> The Centre for Democratic Institutions Report of the Study Visit by the Delegation of the Solomon Islands Concerning the Adoption of a Federal System of Government, 2-9 May 2002, 2. <<http://www.cdi.anu.edu.au/>>last accessed 20 July 2003.

<sup>107</sup> The Centre for Democratic Institutions above, 2.



Malaitan militant group, the Malaita Eagle Force (MEF), which undertook armed action on Guadalcanal. A state of emergency was declared on Guadalcanal in June 1999.<sup>108</sup> The Commonwealth Special Envoy, Sitiveni Rabuka, brokered the Honiara Peace Accord, signed by members of the National and Provincial Governments and the Opposition, but the Accord failed to resolve the conflict. Despite several subsequent efforts to negotiate a cease-fire, the conflict continued throughout 1999. A Multinational Police Peace Monitoring group, sponsored by the Commonwealth with assistance from Australia and New Zealand, comprising police from Fiji and Vanuatu, arrived in Honiara in October 1999 however, violent incidents and harassment continued to escalate.<sup>109</sup>

On 5 June 2000, MEF militants, together with disaffected police officers ("the Joint Operations Force"), seized control of key installations in Honiara and took Prime Minister Ulufa'alu hostage, demanding his resignation.<sup>110</sup> On 13 June 2000, Ulufa'alu submitted his resignation. At a meeting of Parliament on 30 June 2000, following intimidation of MPs and action to prevent attendance by some MPs supporting Ulufa'alu, Manasseh Sogavare (who had been Finance Minister in the Ulufa'alu government) was elected Prime Minister and formed a new government. Elections 2001 saw the Sir Allan Kemakeza becoming Prime Minister. Rebellions and violence has however continued with the government being unable to re-gain control or restore stability or unity to the country. It is this inability that led to unanimous request from its Parliament for Australia and New Zealand assistance.<sup>111</sup>

<sup>108</sup> The Centre for Democratic Institutions above, 2.

<sup>109</sup> The Centre for Democratic Institutions above, 2.

<sup>110</sup> Joses Tuhonuku *Solomon islands – on the cross-road and in need of the wisdom of King Solomon*, Pacific Updates on Solomon Islands, Fiji and Vanuatu, Australia National University, Asia Pacific Press, 2000, 4. <<http://peb.anu.edu.au>> last accessed 18 June 2003.

The Centre for Democratic Institutions, *Report of the Study Visit by the Delegation of the Solomon Islands Concerning the Adoption of a Federal System of Government*, 2-9 May 2002.

<[http://www.cdi.anu.edu.au/solomon\\_islands/solomonisland\\_downloads/SolIslandsReportMay2002.pdf](http://www.cdi.anu.edu.au/solomon_islands/solomonisland_downloads/SolIslandsReportMay2002.pdf)> last accessed 20 July 2003.

<sup>111</sup> Office of Hon Mark Burton, Media Release, New Zealand's Assistance to the Solomon Islands Government –Joint Statement



## VII THE CONSTITUTION

### A Overview

At independence the Solomon Islands inherited the British unitary “Westminster” system of government. The notion of a “written” Westminster constitution is somewhat paradoxical as of course the original Westminster system in the United Kingdom has no formal written constitution. The Constitutional document is an extremely comprehensive and detailed document and is the supreme law.<sup>112</sup> It is over 75 pages long, has 14 chapters, 145 articles and three schedules. It traverses topics as diverse as the protection of fundamental rights and freedoms of the individual,<sup>113</sup> citizenship,<sup>114</sup> elections, the national legislature and parliamentary procedure,<sup>115</sup> the legal system,<sup>116</sup> land,<sup>117</sup> finance,<sup>118</sup> and the public services, including the appointment of teachers, police, and prison service members.<sup>119</sup>

The Preamble to the constitution confirms the separation of powers declaring that “all power in Solomon Islands belong to its people and is exercised on their behalf by the legislature, the executive and the judiciary established by this constitution”.<sup>120</sup> The first of these organs, the legislature, was established under chapter VI of the Constitution with a single chamber parliament consisting of a member from each constituency elected under a system of universal suffrage. The system of parliamentary democracy was presaged by the Preamble, which also pledges that

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<http://www.minpac.govt.nz/publications/media/govt/2003-07-15.php> last accessed 25 September 2003.

<sup>112</sup> The Constitution of Solomon Islands, chapter I (2), “*This constitution is the supreme law of Solomon Islands and if any other law is inconsistent with this constitution that other law shall to the extent of the inconsistency be void*”

<sup>113</sup> The Constitution of the Solomon Islands Chapter II

<sup>114</sup> The Constitution of the Solomon Islands Chapter III

<sup>115</sup> The Constitution of the Solomon Islands Chapter VI

<sup>116</sup> The Constitution of the Solomon Islands Chapter VII

<sup>117</sup> The Constitution of the Solomon Islands Chapter XI

<sup>118</sup> The Constitution of the Solomon Islands Chapter X

<sup>119</sup> The Constitution of the Solomon Islands Chapter XIII

<sup>120</sup> The Constitution of the Solomon Islands, Preamble, declaration (a).



“Government shall be based on democratic principles of universal suffrage”<sup>121</sup>

The Constitution provides that the executive authority of the people be vested in the Queen of England, as Head of State, acting through a Governor General. The Governor acts on the advice of Cabinet and is to be kept in informed of the general conduct of government by the Prime Minister. The Prime Minister is elected by Parliament and the constitution provides for a maximum of 11 Ministers although does allow this to be increased by parliament. The system of responsible government is specifically referred to in section 35 of the Constitution, which established the cabinet, which is “collectively responsible to Parliament”

Despite the intricate detail in the constitution, it has been unsuccessful in guaranteeing political or social stability in the Solomon and arguably has increased dissatisfaction as it failed to address the really difficult issues facing the Solomon Islands. The major provisions of the Constitution that reflect this failure are further discussed in this section, identifying the areas of conflict and tension that appear to have arisen.

## ***B Provincial Government And The Constitution***

### *1 The principle of decentralisation in the constitution*

Given the history of no central authority and the historical and cultural importance of provincial or local governance within traditional Solomon Society it seems extraordinary that considering the length and detail of the constitution little provision or thought went into this vital area of concern. The principle powers to govern the nation were retained by the Central Government, although some devolution of power was recognised as being essential in paragraph (e) of the preamble to the constitution which states,

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<sup>121</sup> The Constitution of the Solomon Islands, Preamble, pledge (a).



“we shall ensure the participation of our people in the governance of their affairs and provide within the framework of our national unity for the decentralisation of power”<sup>122</sup>

However, the chapter XII provisions, relating to provisional government and the implementation of this difficult and complex matter was left entirely to parliament who was to make a decision after receiving recommendations from a review committee. The Solomon Islands was to be divided into Honiara City and provinces, and Parliament was given the power to prescribe the number of provinces and the boundaries of Honiara City.<sup>123</sup> The Kausimae Committee on Provincial Government released its report in June 1979. This report was equivocal about the issue of regional autonomy and was careful not to mention the word “State”.<sup>124</sup> Pursuant to this section seven provinces were originally established<sup>125</sup> although this was later increased to 9.<sup>126</sup> Honiara City is governed by a Town Council and has a separate identity from the rest of Guadalcanal.<sup>127</sup> The 1981 Act limited the powers of the provincial governments to raise revenue by following the constitution provision whereby “no taxation shall be imposed or altered except by or under an Act of Parliament.”<sup>128</sup> The Act also failed to provide the provincial governments with the power to make laws affecting trade and commerce with countries outside of the Solomon Islands.

## 2 *Current arrangements*

The Provincial Governments are made up of ward representatives. For example the Guadalcanal province is split into 22 wards with an average

<sup>122</sup> The Constitution of the Solomon Islands, Preamble,(e).

<sup>123</sup> The Constitution of the Solomon Islands, 114 (1) and 2(b).

<sup>124</sup> Ian Scales, *Regional Politics in Solomon Islands*, Draft version for the SSGM Seminar September 2001 < <http://rspas.anu.edu.au/melanesia/seminar.htm> > last accessed 01.07.2003.

<sup>125</sup> Provincial Government Act 1981, s 3 read with sch 1.

<sup>126</sup> Choiseul Province was added by the Provincial Government Act (Amendment) Act 1991. Rennel and Bellona Province was added by the Provincial Government (Special Provisions) (Rennel and Bellona Province) Act 1992.

<sup>127</sup> Local Government Act 1981 s14.

<sup>128</sup> The Constitution of the Solomon Islands, 106.



population of about 2,700 people while in other provinces such as Rennell-Bellona and Western the population per ward is much less.<sup>129</sup> The ward representatives are supposed to be the link between the local level and the provinces. Prior to 1997 there was also a system of area councils, with one per each National Parliamentary Constituency with elected councillors who could make decisions on minor infrastructure projects and logging proposals. These were disbanded by central government in 1997 and ward members have been given control of a ward development fund and a members discretionary fund. Since members alone are able to decide on how to use these funds without any effective accountability money appear to have been mis-allocated in some basis and allegations of corruption have arisen.<sup>130</sup>

### 3 *Resources and population differences between provinces*

An important consideration is that the primary means of earning money from exports for the Solomon Islands come from the production of primary resources, yet those resources are not evenly distributed between the provinces.<sup>131</sup> Nor is there an even population distribution between the provinces and in particular in Malaita there is a significant mis-match between high population and poor export resources.<sup>132</sup> All provinces are currently feeling the effects of pressure on land tenure systems due to high population growth,<sup>133</sup> which has contributed to the current tensions and conflict.<sup>134</sup>

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<sup>129</sup> Ian Scales, Sinclair Dinnen and David Hegarty, *Governance at the Grassroots - Workshop on participation beyond the centre in the Solomon Islands*, Australia National University April 2003, <<http://rspas.anu.edu.au/melonesia/pdf/SI-Gov-at-grsrtsRep02.pdf>> last accessed 07.07.2003.

<sup>130</sup> Scales, Dinnen and Hegarty above.

<sup>131</sup> Ian Scales, *Regional Politics in Solomon Islands*, Draft version for the SSGM Seminar September 2001, appendix 1

<<http://www.rspas.anu.edu.au/melonesia/seminar.htm>> last accessed 01.07.2003

<sup>132</sup> Scales, above, appendix 2.

<sup>133</sup> Since 1970 the country has experienced a population growth of 254%. See Scales, above.

<sup>134</sup> Scales above.



#### 4 *Past reform proposals*

The question of regional autonomy has become the significant sub-text to the ongoing conflict in recent years, and is the focus of current reform proposals. As already discussed the desire for regional autonomy is not a new phenomenon. A review of the constitution ordered by the Mamaloni Government in 1987 dealt substantially with the issue of devolution of legislative and revenue raising powers of the provincial governments. The report was however not tabled in parliament and the issue was suppressed for nine years until 1996<sup>135</sup> when the Mamaloni government again revisited the issue of Provincial power in another review of governance of the Islands. However Mamaloni was voted out of office before being able to implement his proposed reforms. This was not necessarily a rejection of the Provincial government reforms his government had proposed but rather part of the on-going cycle of instability and change that has predominated politics in the Solomon Islands.

### **C *Recognition Of the Authority Of Traditional Chiefs Versus Democracy***

#### *1 Traditional chiefs and the constitution*

Related to provincial government is the recognition of the role and authority of traditional chiefs in these provinces. The constitution while “proud of the wisdom and the worthy customs of our ancestors”<sup>136</sup> left parliament to decide how to incorporate into the overall governance structure the role traditional chiefs and their governance methods. Clause 114(2(b) required parliament to “consider the role of traditional chief in the provinces,” however consideration of their role has not been easy. Not only are there differing forms of traditional governance, but the apparent undemocratic nature of traditional governance has led to conflict with other constitutional provisions. For example the constitution states that “our government shall be based on democratic principles of universal suffrage and the responsibility of executive authorities to elected

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<sup>135</sup> Scales, above.



assemblies".<sup>137</sup> The very word "chief" alone is fraught with difficulties in a society where the institution of a "chief" exists only in limited areas of the country while others areas the "big man" system and in still other areas variations of the two exist.<sup>138</sup>

## 2 Past proposals

It took nearly twenty years before Parliament considered the role of traditional chiefs and attempted to incorporate their traditional role by making them de facto members of the Area Assembly under the Provincial Government Act 1996. This act abolished the 1981 provincial governments and replaced them with 10 area assemblies within each province, which were constituted half by elected members and half by appointed chiefs and elders. A Provincial Council was to be created instead of the Provincial Assemblies and this was to be constituted by the Chairpersons of all the Area Assemblies of the province. It was therefore possible for the legislature of a province to consist exclusively or predominantly of non-elected members.<sup>139</sup> However this attempt to include traditional leaders in governance did not succeed, as the Guadalcanal Provincial Assembly challenged the legality of the legislation on the basis it was undemocratic and unconstitutional.<sup>140</sup> The High Court, at first instance, declared the statute void on the grounds that it was unconstitutional and contrary to the underlying principles of representative and responsible government due to the lack of provision for

<sup>136</sup> The Constitution of the Solomon Islands, Preamble.

<sup>137</sup> The Constitution of the Solomon Islands Preamble,(a).

<sup>138</sup> Ian Scales, Sinclair Dinnen and David Hegarty, *Governance at the Grassroots - Workshop on participation beyond the centre in the Solomon Islands*, Australia National University April 2003 <http://rspas.anu.edu.au/melanesia/pdf/SI-Gov-at-grsrtsRep02.pdf>. last accessed 07.07.2003.

<sup>139</sup> Jennifer Corrin Care *Democratic Fundamental in The Solomon Islands: Guadalcanal Provincial Assembly v The Speaker of National Parliament* (1997) 27(3) VULR 501, 503.

<sup>140</sup> *Guadalcanal Provincial Assembly v The Speaker of National Parliament and the Minister for Provincial Government*, unreported, High Court, Solomon Islands, cc 309/96, 26 February 1997.

*The Minister for Provincial Government v Guadalcanal Provincial Assembly*, unreported, Court of Appeal, Solomon Islands, CAC 3/97, 11 July 1997.



accountability to an elected assembly.<sup>141</sup> Palmer J held that these underlying principles were manifest throughout the constitution and reflected specifically in the Preamble. For example the opening words, includes reference to “sovereign and democratic State of the Solomon Islands” and in the Pledge and Agreement “our government shall be based on democratic principles of universal suffrage.”<sup>142</sup> Although this judgement was ultimately overruled on appeal,<sup>143</sup> on the grounds that the preamble of the Constitution did not fetter parliaments legislative power, the political pressure generated by the case was immense and parliament subsequently passed the Provincial Government Act 1997. This repealed the 1996 Act, substantially re-enacting the Provincial Government Act 1981 and returning the position to the status quo.<sup>144</sup>

The problem is exacerbated in the Solomon Islands by the differing traditional governing systems, (the “big men” system, the hereditary chief system and the various combinations of these),<sup>145</sup> and the conflict between the truly traditional systems and more recent colonial innovations. Traditional governance systems have also been diffused over the years by other institutions such as the Church, Provincial Governments and Area Councils as well as the earlier colonial “head man” system. This has led some traditional leaders to align themselves with the Church and new structures so as to retain or even strengthen their authority through involvement in all the social structures.<sup>146</sup>

Added to this is the reality that in some areas of the Solomons (for example in Guadalcanal and the Shortland Islands) the authority that

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<sup>141</sup> *Guadalcanal Provincial Assembly v The Speaker of National Parliament and the Minister for Provincial Government*, unreported, High Court, Solomon Islands, cc 309/96, 26 February 1997 Palmer J.

<sup>142</sup> The Constitution of the Solomon Islands, Pledge and Agreement, (a).

<sup>143</sup> *Minister for Provincial Government v Guadalcanal Provincial Assembly*, unreported, Court of Appeal, Solomon Islands, CAC 3/97, 11 July 1997

<sup>144</sup> Jennifer Corrin Care *Off the Peg or Made to Measure Is the Westminster system of government appropriate in Solomon Islands* (2002), 27 (5) ALJ 207, 209.

<sup>145</sup> See part IV C Political Organisation in the Solomon Islands.

<sup>146</sup> Ian Scales, Sinclair Dinnen and David Hegarty *Governance at the Grassroots - Workshop on participation beyond the centre in the Solomon Islands*, Australia National



chiefs may have held in the past has been rapidly weakened. The division between elder men and the young people, who dissatisfied with the actions of their chiefs, openly challenge their authority and resort to other modes of authority have severely undermined the traditional chiefs.<sup>147</sup>

Therefore although it can be technically argued that Parliament has “considered” the role of traditional chief as required by s 114 of the Constitution it has not successfully found a way to accommodate them. The importance of the chiefs was stressed at independence but the failure to find a way to incorporate them reflects the changing society of the Solomons, the conflict between the new and the old and the disadvantages of a judicial system that assesses democracy from a western cultural standard.<sup>148</sup>

Any reform of the existing constitutional arrangements will require more consideration of, and incorporation of the role traditional leaders. However, it is evident that their role will not go unchallenged and some form of compromise or balance will need to be carefully developed and managed. Enshrining undemocratic and traditional leadership patterns in constitutional arrangements carries with it the risk of stagnating cultural development and often is contrary to international agreements that Solomon Islands are party to. It denies the reality of a living tradition, a living culture. It has the potential to disenfranchise women and be unrepresentative of the community in general, meeting the needs of the elite who are able to use their positions with no room for dissent.

#### **D           *So What is Democracy?***

Colonial powers were often concerned, albeit in a paternalistic manner, with protecting and maintaining traditional practices especially those

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University    April    2003    <<http://rspas.anu.edu.au/melonesia/pdf/SI-Gov-at-grssrtsRep02.pdf>> last accessed 07.07.2003.

<sup>147</sup> Scales, Dinnen and Hegarty above.

<sup>148</sup> Jennifer Corrin Care *Democratic Fundamental in The Solomon Islands: Guadalcanal Provincial Assembly v The Speaker of National Parliament* (1997) 27(3) VULR 501, 505.



relating to the powers of the chief and the irony is that although eager to leave democratic institutions in place, colonial rule itself was far from democratic.<sup>149</sup> As discussed above, the British did little to establish a culture of democratic politics in the Solomon Islands prior to the independence from Britain.

### *1 Definitions of democracy*

The definition of democracy becomes more complex in the context of the Solomon Islands. Democracy, in the sense of responsible and representative government, is essentially a western concept and its meaning may differ once in a Pacific context.<sup>150</sup>

The International Institute for Democracy and Electoral Assistance (“**IDEA**”) broadens the assessment of democracy from constitutional and institutional arrangements and focuses on how democratic values and principles influence the way a political system operates in practice.<sup>151</sup> It is about the both the process and outcomes of government with the two key concerns being that of accountability and equality - popular control over public decision making and decisions makers, and equality between citizens in the exercise of that control. IDEA considers democracy as a matter of degree and asks “how much?”, and “how far?” rather than is this country democratic? It assesses democracy under four headings –

- 1 citizenship, law and rights;
- 2 representative and accountable government;
- 3 civil society and popular participation; and
- 4 democracy beyond the state.<sup>152</sup>

<sup>149</sup> Stephanie Lawson, *Tradition versus Democracy in the South Pacific, Fiji, Tonga and Samoa*, Cambridge University Press, Melbourne, 1996, 28.

<sup>150</sup> Jennifer Corrin Care *Democratic Fundamental in The Solomon Islands: Guadalcanal Provincial Assembly v The Speaker of National Parliament* VULR 27(3) Nov 1997:501, 511.

<sup>151</sup> Dr John Henderson *Pacific Island Democracy: Regional and International Dimensions* A report prepared for the Commonwealth Secretariat, RPICE (02) 3 <<[http://www.cdi.anu.edu.au/asia\\_pacific/asia\\_downloads/DemoInPac\\_Henderson.pdf](http://www.cdi.anu.edu.au/asia_pacific/asia_downloads/DemoInPac_Henderson.pdf)> last accessed 19 August 2003.

<sup>152</sup> Henderson above, 3-4.



Ron Crocombe,<sup>153</sup> suggests that Democracy is a political system in which

1. "Leaders are selected, by process appropriate to that context, by those whom the lead,
2. That the leadership is responsive to the wishes of the people led. That responsiveness should include appropriate systems of accountability for effective performance"<sup>154</sup>

This definition has the advantage of enabling an assessment to be made of both the traditional and modern state, and while acknowledging the importance of culture, it does call for an assessment of the accountability of traditional leaders for their actions. It recognises that there is a need to ensure that chiefly appeals to tradition and culture are not used to form a respectable veneer for authoritarian rule.<sup>155</sup> Under these definitions it is possible that recognition of traditional leadership may not automatically lead to an undemocratic result.

## 2 *A pacific democracy?*

It has already been mentioned that that the South Pacific islands tend to view democracy as culturally laden.<sup>156</sup> There has been a debate about whether South Pacific nations have a pre-existing democratic traditions that can provide a better basis for contemporary political institutions than those imported from the West.<sup>157</sup>

<sup>153</sup> Henderson, above.

<sup>154</sup> R. Crocombe et al. (eds), *Culture and Democracy in the South Pacific*. (DU28.3 .C968 1992) Ron Crocombe, *The South Pacific*, 5th edn. (HN931 .C78 1989), cited in Dr John Henderson *Pacific Island Democracy: Regional and International Dimensions* A report prepared for the Commonwealth Secretariat, RPICE (02) 3  
<<[http://www.cdi.anu.edu.au/asia\\_pacific/asia\\_downloads/DemoInPac\\_Henderson.pdf](http://www.cdi.anu.edu.au/asia_pacific/asia_downloads/DemoInPac_Henderson.pdf)> last accessed 19 August 2003.

<sup>155</sup> Henderson, above.

<sup>156</sup> A Davidson *European Democracy and the Pacific Way* (paper presented to the conference of the Pacific Islands Political Studies Association Rarotonga, Cook Islands) (1993) 5, cited in S Lawson *Tradition versus Democracy in the South Pacific*, Cambridge University Press, Melbourne 1996, 27.

<sup>157</sup> Jennifer Corrin Care *Democratic Fundamental in The Solomon Islands: Guadalcanal Provincial Assembly v The Speaker of National Parliament* VULR 27(3) Nov 1997:501, 511.



Suggestions by some,<sup>158</sup> that democracy is in fact an indigenous notion and has always existed in the Pacific but in a different form can be contrasted, probably more persuasively, with the idea that democracy is alien. The argument that democracy is indigenous is based on claims that consultation, consensus, and agreement with all concerned by way of public forum is a long established pattern amongst Pacific communities.<sup>159</sup> This does however create a system where dissenters are readily identifiable, and where dissent can not be expressed without fear of recrimination.<sup>160</sup> It is also doubtful that traditionally there was the wide spread consultation that is alluded to, while the idea that decisions were always made by or of consensus can be quite misleading.<sup>161</sup> In many South Pacific cultures chiefs could issue rules or orders without dissent while in other apparently consensus decision-making processes, decisions were not reached in a free and frank environment and the views of participants often carried different weight.<sup>162</sup> Arguments for the rejection of democracy as it is alien and from outside of the South Pacific and therefore not appropriate, (the "foreign flower" debate,)<sup>163</sup> can be countered by noting the hypocrisy of such an argument.<sup>164</sup> The traditional elite have accepted many of the trappings of "western ways"; many of the institutions and political frameworks that now represent traditional elite are in fact neo-traditional or colonial and incorporate non-traditional

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<sup>158</sup> Michael Goldsmith *The Great Pacific Democracy Debate*, paper presented to the conference of the Pacific Islands Political Studies Association Rarotonga Cook Islands, 1993,

<sup>159</sup> Assela Ravuvu, *Introductory Remarks To A Session Of The Colloquy on Democracy and Economic Development in the Asia-Pacific Region - The Role of Parliamentary Institutions*, Strasbourg Conference on Parliamentary Democracy, Parliament House, Canberra, 22 -23 October 1992, published as Colloquy Report (Strasbourg Secretariat Council of Europe 1992, 59, cited in Stephanie Lawson *Tradition versus Democracy in the South Pacific, Fiji, Tonga and Samoa* Cambridge University Press Melbourne 1996, 170.

<sup>160</sup> Stephanie Lawson *Tradition versus Democracy in the South Pacific, Fiji, Tonga and Samoa* Cambridge University Press Melbourne 1996, 169.

<sup>161</sup> Lawson above, 167.

<sup>162</sup> Lawson above 166, 167.

<sup>163</sup> Peter Lamour *A Foreign Flower? Democracy in the South Pacific*, Pacific Studies 17, (1) March 1992, 45.

<sup>164</sup> Stephanie Lawson *Tradition versus Democracy in the South Pacific, Fiji, Tonga and Samoa* Cambridge University Press, Melbourne, 1996, 170.



ideas; Christian religious practices have been almost wholeheartedly accepted.<sup>165</sup>

Lawson<sup>166</sup> suggests that indigenous elite has used the ideology of the "Pacific Way," and by analogy the "Melanesian Way," as an instrument of social and political control. She notes that despite much rhetoric against colonialism from the South Pacific elite these same elite not only often led a life style that mimics their former colonisers but also exploit their own people to do so. It is frequently the privileged that can afford to tell the poor to preserve their traditions, while they merely talk about traditional culture and can be selective as to which traits they wish to practice and which practices they want the poor to observe.<sup>167</sup>

### *E Conflict Between Customary Law And Fundamental Rights*

#### *1 Constitutional provisions*

The emphasis on respect for traditional norms and practices also raises the question of the role of customary law in the Solomon Islands. There is the potential for customary law to conflict with international human rights agreements and treaties as well as statutory imposed "government law" and the Fundamental Rights protected in chapter II of the Constitution. These rights include the protection of the right to life,<sup>168</sup> the protection of the right to personal liberty,<sup>169</sup> protection from slavery and forced labour,<sup>170</sup> inhuman treatment,<sup>171</sup> freedom of expression,<sup>172</sup> conscience,

<sup>165</sup> Lawson above 170.

<sup>166</sup> Lawson above, 4.

<sup>167</sup> Epeli Hau'ofa, *The New South Pacific Society: Integration and Independence* in Antony Hooper, Steve Britton, Ron Crocombe Judith Huntsman And Cluny Macpherson (Eds) *Class and Culture in the South Pacific*, Auckland and Suva Centre for Pacific Studies of the University of Auckland and Institute of Pacific Studies of the University of the South Pacific, 1987, 9- 12 cited in Stephanie Lawson *Tradition versus Democracy in the South Pacific , Fiji, Tonga and Samoa* Cambridge University Press Melbourne, 1996, 5.

<sup>168</sup> The Constitution 1978 section 4.

<sup>169</sup> The Constitution of the Solomon Islands, 1978, s 5.

<sup>170</sup> The Constitution of the Solomon Islands, 1978 s 6.

<sup>171</sup> The Constitution of the Solomon Islands, 1978 s 7.

<sup>172</sup> The Constitution of the Solomon Islands, 1978 s 11.



privacy of the home and other property,<sup>173</sup> and other human right norms. Like most human right norms the focus is on the rules and individual rights and less value is placed on personal responsibilities or community rights and interests.<sup>174</sup>

The constitution also provides for customary law, in a number of sections. Section 75 (1) states: "Parliament shall make provision for the application of laws including customary laws"<sup>175</sup>

Additionally Parliament will have a "particular regard to the customs and values of the people of the Solomon Islands."<sup>176</sup> Prior to the Solomon Island Parliament making new law the constitution provides for customary law to be ranked above common law,<sup>177</sup> but statute law, whether introduced (that is from the United Kingdom,) or local is superior to it.<sup>178</sup> Originally this was interpreted as only referring to local statutes,<sup>179</sup> however recently this was overruled in *Y Sato v Honiara Town Council*<sup>180</sup> and is now interpreted as referring to statutes from the United Kingdom adopted at Independence under the Constitution. Under the Constitution, personal law was insulated from the non-discrimination code set out in s15<sup>181</sup>

## 2 The nature of customary law

Customary law by its very nature is indigenous, and is fragmented on a geographical basis so can differ from village to village, island to island.<sup>182</sup>

<sup>173</sup> The Constitution of the Solomon Islands, 1978 s 9.

<sup>174</sup> Laita Tamata *Application of Human rights Conventions in the Pacific Islands Courts* JPLS (14) working paper 4 2000.

<sup>175</sup> The Constitution of the Solomon Islands, 1978 s 75 (1).

<sup>176</sup> The Constitution of the Solomon Islands, 1978 s 75 (2).

<sup>177</sup> The Constitution of the Solomon Islands, 1978 s76 and schedule 2 (1) (c).

<sup>178</sup> The Constitution of the Solomon Islands, 1978 s 76 and schedule 3 para 3(2),

<sup>179</sup> *K v KT and KU* [1985/6] SILR 49.

<sup>180</sup> unreported, Court of Appeal Solomon Islands, 1999

<sup>181</sup> The Constitution of the Solomon Islands s15(c)

<sup>182</sup> Jennifer Corrin Care *Conflict Between Customary Law and Human Rights in The South Pacific* a paper presented to the 12<sup>th</sup> Commonwealth Law Conference at Kuala Lumpur September 1999 <<http://www.mlj.com.my/articles/JenniferCorrin-Care.htm>> last accessed 22 September 2002.



As it is binding only on those who accept it as the law applicable to them,<sup>183</sup> the difficulty in enforcing it on immigrants to an area is self-evident. It is basically conservative and patriarchal,<sup>184</sup> emphasising status, duties and community values based on male domination with customary tribunals being presided over by males.<sup>185</sup> Even in the parts of the Solomon Islands where title to land is matrilineal, men usually settle the land disputes.<sup>186</sup>

The arrival of colonialism did not alter this and in fact enhanced the its patriarchal nature.<sup>187</sup> British policy of indirect rule entrenched and institutionalised the patriarchy as it only operated through male agencies, such as the headmen.

While traditional dispute resolution processes have been incorporated and encouraged in the Solomon Islands<sup>188</sup> it has been suggested that this may have the effect of denying participants of other constitutional rights available in the Courts.<sup>189</sup> Many advocate that customary law needs to be protected from modern norms, and maintain that matters such as family law are resistant to sudden change.<sup>190</sup> They contend that customary law is not equipped to compete against the monolithic strength of introduced law and needs protection. There are however major problems with a distinct system of customary law administration as it can lead to an "official" version of customary law that fossilises rules and practices thus

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<sup>183</sup> Corrin Care above.

<sup>184</sup> See for example submissions by the Fiji Women's Rights Movements and the Crisis Centre, Report of the Commission of Inquiry on the Courts, 1984, Fiji, 172.

<sup>185</sup> Kenneth Brown and Jennifer Corrin Care *Conflict in Melanesia – Customary Law and the Rights of Melanesian Women* (1998) 24 (3 & 4) Commonwealth Law Bulletin.

<sup>186</sup> See for example *Maerua v Kahanatarau* [1983] SILR 95.

<sup>187</sup> Kenneth Brown *Customary Law in the Pacific: An Endangered Species* (1999) 13 JSPL 2.

<sup>188</sup> See the Local Courts Act Cap 19 (Solomon Islands) s2.

<sup>189</sup> Jennifer Corrin Care *Conflict Between Customary Law and Human Rights in The South Pacific* a paper presented to the 12<sup>th</sup> Commonwealth Law Conference at Kuala Lumpur September 1999 < <http://www.mlj.com.my/articles/JenniferCorrin-Care.htm>> last accessed 22 September 2002.

<sup>190</sup> Kenneth Brown *Customary Law in the Pacific: An Endangered Species* (1999) 13 JSPL 2.



developing the characteristics of common-law with its focus on rules and precedents.<sup>191</sup>

### 3 Case law examples of the conflict

The conflict between customary law and the constitutional fundamental rights can be seen in case law that has arisen in the Solomon Islands and other Pacific Island states.

The case of *R v Loumia and others*,<sup>192</sup> is an example where the conflict arose. The defendant was accused of the murder of members of a rival tribal group, but argued that it was manslaughter on the basis of provocation and that any reasonable Kwaio pagan villager living a traditional life would have responded according to the dictates of custom. It was also argued that the defendant came within s 204 of the Penal Code (Cap26). This reduces the offence of murder to manslaughter if, the offender "acted in the belief in good faith and on reasonable grounds that he was under a legal duty to cause the death or do the act that he did". Evidence was adduced to the court that showed that revenging a death of a near relative by death was lawful under the defendant's custom and as custom law does form part of the law of the Solomon Islands it was argued that "legal duty" should also include customary legal duty. The Courts, not surprisingly, rejected this. They held that the fundamental rights contained in the Bill of Rights Chapter of the Constitution operated in both private and public fields and therefore the customary right to kill in retaliation was inconsistent with s 4 of the Constitution that protects the right to life.

In another example of *Sukutaona v Houanihou*,<sup>193</sup> the High Court overturned an earlier magistrates decision to grant custody to the Father based on custom law, and held that "whilst custom was part of the law of

<sup>191</sup> Brown above.

<sup>192</sup> [1984] SILR 51.

<sup>193</sup> Civil Appeal Case No 7 of 1981, 9<sup>th</sup> December 1981.



the Solomon Islands the interest of the child remained the paramount interest.” This decision does appear somewhat inconsistent with the s 15 (5)(c) of the Constitution that insulated personal law from constitutional rights but does appear to be inline with the provisions of the Convention on the Rights of the Child<sup>194</sup> which the Solomon Islands is a signatory.

The issue of customary law and discrimination is an area fraught with even more difficulty and less certainty. Customary law is often based on hierarchy and discriminates in the sense that power is bestowed on a select few.<sup>195</sup> The Court of Appeal decision in *The Minister for Provincial Government v Guadalcanal Provincial Assembly*,<sup>196</sup> acknowledged that the proposal to increase the roles of traditional leaders in Provincial government would effectively deny women of equal opportunity. However it stated,<sup>197</sup> that s114 (2)(b) of the Constitution had mandated “parliament to consider the roles of traditional chiefs” and traditional chief were males, so therefore discrimination had been accepted in the Constitution. Their Lordships however failed to consider the power conferred by s 114 in the context of the right to protection from discrimination contained in s 15 of the Constitution.<sup>198</sup>

A further example of the difficulties arising from customary law is the customary practice in the Solomon Islands of demanding “pay back.” This has lead to massive compensation demands being placed on the Government which often is seen as endorsing lawlessness or making payments that seem to amount to extortion.<sup>199</sup> This compensation

<sup>194</sup> United Nations Convention on the Rights of the Child, Article 3, Best of Interest of the Child Principle., (2 September 1990) 1577 UNTS 44.

<sup>195</sup> Laitia Tamata, *Application of Human Rights Convention in the Pacific Islands Courts* (2000) 4 JSPL working paper 4.

<sup>196</sup> *Minister for Provincial Government v Guadalcanal Provincial Assembly*, unreported, Court of Appeal, Solomon Islands, CAC 3/97, 11 July 1997

<sup>197</sup> *Minister for Provincial Government v Guadalcanal Provincial Assembly*, unreported, Court of Appeal, Solomon Islands, CAC 3/97, 11 July 1997 per Goldsborough JA,

<sup>198</sup> Kenneth Brown, Jennifer Corrin Care *More on Democratic Fundamentals in Solomon Islands: Minster for Provincial Government v Guadalcanal Provincial Assembly* (2001) 32 (3), VULR, 653, 665-668.

<sup>199</sup> Jennifer Corrin Care *Off the Peg or Made to Measure Is the Westminster system of government appropriate in Solomon Islands* (2002) 27 (5) ALJ 207, 210.



mentality is a serious obstacle to restoration of law and order and economic recovery.

Customary law represents a powerful code of values and beliefs that control the traditional existence of those living in customary groups and is unlikely to be discarded lightly.<sup>200</sup> It is also apparent that the values it encapsulates are often diametrically opposed to international human rights norms, such as those included in Chapter II of the Solomon Islands Constitution. However customary law has the capacity to adapt and in reality will continue to be the primary legal force for many. The difficult question is whether it should form part of the formal legal system or not. Some advocate the cocooning of customary law as it can not compete with the monolithic strength of introduced law while others suggest that this will lead to customary law becoming an antique legal oddity.<sup>201</sup> In the colonial era custom law was kept separate on the premise that it was a subordinate, inferior legal system, and the establishment of a distinct customary law had the effect of relegating custom below the common law.<sup>202</sup> It also leads to the promulgation of an Official version of customary law that encourages the stagnation of customary rules and practices. It may then develop the characteristics of the dominant legal system with emphasis on rules and precedents. The Maori Land Court system in New Zealand offers an example of this where early Land Court decisions made rulings on traditional *take* or rights to land setting precedents that didn't necessarily reflect the complex and overlapping layers of rights and interest in land and resources. The codification of custom often entrenches a conservative regime reflecting only the view of those who have been consulted.

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<sup>200</sup> M Chanock, *Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform* (1989) 3 *International Journal of Law and the Family* 72 cited in Kenneth Brown, *Customary Law in the Pacific: An Endangered Species* (1999) 13, JPLS 2.

<sup>201</sup> Kenneth Brown, *Customary Law in the Pacific: An Endangered Species* (1999) 13, JPLS 2.

<sup>202</sup> Brown, above,



The answer appears to lie in incorporating the need to balance individual rights with group rights, and personal obligation with the group obligations that are essential to traditional Melanesian society. Emphasis should be placed on the collective human rights and collective obligations and duties rather than simply on the individual. An interesting example of this being done is found in the Pohnpei State Constitution with regards to family obligations.<sup>203</sup> While recognising the responsibility and authority of parents over their children, it balances this by also acknowledging the duties and rights of children to respect and good family relations. This attempt to balance the traditional authority of parents with the now internationally recognised rights of the child is an example of how these difficulties could be addressed.

#### *F The Party System*

Political parties have in recent years been perceived as an integral part of the Westminster system of Democracy. Parties representing different opinions, policies and ideologies are considered necessary to represent the varied interest groups and are important in ensuring stable government within the Westminster system.<sup>204</sup> The absence of strong political parties have had a profound impact on the process of governance in the Solomon Islands and it is apparent that the concept of party politics has not translated well into Solomon Island's society.<sup>205</sup> During colonial rule, Solomon Islanders perceived the government to be represented by an individual, usually the District Commissioner, rather than a political party, reflecting also the traditional political system where power and authority were vested in individuals.<sup>206</sup> Whilst there has been some recognition of

<sup>203</sup> Pohnpei State Constitution S 3.

<sup>204</sup> Sam Alasia *Party Politics and Government in Solomon Islands* Discussion paper 97/7 State, Society and Governance in Melanesia Australian National University Melbourne, 1, <[http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html)> last accessed 22 September 2003.

<sup>205</sup> Sam Alasia *Party Politics and Government in Solomon Islands* Discussion paper 97/7 State, Society and Governance in Melanesia Australian National University Melbourne, <[http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html)> last accessed 22 September 2003.

<sup>206</sup> Alasia, above 2.

Jennifer Corrin Care *Off the Peg or Made to Measure Is the Westminster system of government appropriate in Solomon Islands* (2002) 27(5), ALJ, 207.



party politics in the commercial centres, the system of voting for a *wantok* remains prevalent.<sup>207</sup> People vote for candidates according to performance and achievement not parties or policies, with performance being measured on how successful the intending candidate has worked for the people he represents, who are also his kinfolk.<sup>208</sup> Voting is in accordance with tribal allegiance rather than parties, and with the exception of the two seats in Honiara, a candidate has never won a seat representing a different group of people.<sup>209</sup>

Despite this political parties did emerge briefly prior to independence in the 1960's, but were largely unsuccessful due to the lack of understanding of the role of parties both within parliament and amongst voters, and a general lack of support for the colonial controlled Legislative Council.<sup>210</sup> Although political parties have emerged since Independence they have often have disintegrated as quickly as they have formed, and many candidates have preferred to stand as independents. The "wantok," or "big- man" form of politics, where success and re-election is measured by his ability to provide for his immediate area and his own people has led to a high turn over of Members of Parliament with more than half managing to serve only one term in office.<sup>211</sup> Having won an election the Big- man must compete with other big-men within parliament for a share of government expenditure, often resulting a failure to recognise the

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<sup>207</sup> Sam Alasia, "Politics" in Hugh Laracy, (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Year,s* Institute of Pacific Studies of University of the South Pacific 1989, 137, 137-139.

Jennifer Corrin Care *Off the Peg or Made to Measure Is the Westminster system of government appropriate in Solomon Islands.* (2002) 27(5), ALJ, 207.

<sup>208</sup> Sam Alasia "Politics" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years* Institute of Pacific Studies of University of the South Pacific 1989, 137, 139, 151.

<sup>209</sup> Alasia above, 137.

<sup>210</sup> Sam Alasia Party *Politics and Government in Solomon Islands Discussion paper 97/7* State, Society and Governance in Melanesia, The Australian National University, <[http://rspas.anu.edu.au/melanesia/alasia97\\_7.html](http://rspas.anu.edu.au/melanesia/alasia97_7.html)> last accessed 22 September 2003.

<sup>211</sup> Sam Alasia "Politics" in Hugh Laracy, (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years* Institute of Pacific Studies of University of the South Pacific 1989, 137, 151.



broader national interest, and bringing instability to the national government.<sup>212</sup>

The elections in December 2001 reflect this continuing problem. The final post-poll tally was Sir Allan Kemakeza's People's Alliance Party (PAP), 16 seats, Ulufa'alu's Solomon Islands Alliance for Change Coalition, 13 seats, Sogavare's People's Progressive Party 2 seats, the Solomon Islands Labour Party 1 seat, while "Independents" won 18 seats.<sup>213</sup> The marked predominance of Independents reflect the importance of *wantok* rather than party and the resulting unstable coalitions that need to be formed in order to establish a government.

Finding a solution to this tension is inherently difficult. For parties to be successful and stable there needs to be a sense of National identity and a recognition by voters of an overriding national interest rather than a tribal or local interest only. Continual change in government, has resulted in nearly non-existent policy development, instability and combined with corruption, poor economic performance and security problems has lead to a popular disenchantment with centralised government and the political process.<sup>214</sup> Federalism is not necessarily going to create a more stable government therefore, alternatives such as "government by committee" are options worthy of further consideration.

### **G Constitutional Right to Freedom of Movement**

Prior to the arrival of European, travel and movement between communities and different islands was limited and strictly controlled

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<sup>212</sup> SamAlasia "Politics" in Hugh Laracy (ed), *Ples Blong Iumui Solomon Islands, The Past Four Thousand Years*, Institute of Pacific Studies of University of the South Pacific 1989, 137, 151.

<sup>213</sup> The Centre for Democratic Institutions *Report of the Study Visit by the Delegation of the Solomon Islands Concerning the Adoption of a Federal System of Government*, 2-9 May 2002, <[http://www.cdi.anu.edu.au/solomon\\_islands/solomonisland\\_downloads/SollIslandsReportMay2002.pdf](http://www.cdi.anu.edu.au/solomon_islands/solomonisland_downloads/SollIslandsReportMay2002.pdf)> last accessed 20 July 2003.

<sup>214</sup> Dr Elsinia Wainwright, *Our Failing Neighbour: Australia And The Future of the Solomon Islands*, A Report prepared for the Australia Strategic Policy Institute, 2003 Chapter 3 <<http://www.aspi.org.au/solomons/>> last accessed 19.08.2003.



according to traditional custom.<sup>215</sup> With the exception of the occasional battle, a subsequent peace marriage, or sporadic trade, most people lived and married within their own cultural and linguistic group. The centralisation of social services, and economic development that began before independence with mission stations placed in central accessible coastal locations resulted in the internal migration of people from their place of origin to land belonging to other communities.<sup>216</sup> After independence major economic and social development focused in Honiara, Gizo, Auki, Lata and few other smaller government stations. The concentration of economic activities and social services resulted in the mass movement of population to these locations and in particular to Honiara.<sup>217</sup>

The Constitution enshrined as one of the "Fundamental Rights and Freedoms of the Individual" protected in Chapter II, the "...the right to move freely throughout the Solomon Islands [and]. . . reside in any part".<sup>218</sup> After independence the movement of people increased dramatically as a direct result of this new constitutional right.<sup>219</sup> It has been suggested that concerns about migration and population movement relates more to the imposition of another islands customs and a failure of the newcomers to observe and respect the original inhabitants customs and traditions than the issue of land and migration itself.<sup>220</sup> Liloquila and Pollard suggest that islands such as the Chioseul, which already have four differing linguistic and cultural groups co-existing, provide an example of how movement between the groups can be managed. This is done through

<sup>215</sup> See Part III D "Population Movement".

<sup>216</sup> Ruth Liloquila and Alice Aruhe'eta Pollard *Understanding Conflict in Solomon Islands: A practical Means to Peacemaking* –Discussion Paper 00/7, State, Society and Governance in Melanesia, The Australian National University <[http://rspas.anu.edu.au/melnesia/PDF/understanding\\_conflict.pdf](http://rspas.anu.edu.au/melnesia/PDF/understanding_conflict.pdf)> last accessed 12 June 2003.

<sup>217</sup> Liloquila Aruhe'eta Pollard above.

<sup>218</sup> The Constitution of the Solomon Island chapter II s 14(1).

<sup>219</sup> Ruth Liloquila and Alice Aruhe'eta Pollard *Understanding Conflict in Solomon Islands: A practical Means to Peacemaking* –Discussion Paper 00/7, State, Society and Governance in Melanesia The Australian National University <[http://rspas.anu.edu.au/melnesia/PDF/understanding\\_conflict.pdf](http://rspas.anu.edu.au/melnesia/PDF/understanding_conflict.pdf)> last accessed 12 June 2003.

<sup>220</sup> Liloquila and Aruhe'eta Pollard above.



respect, through the accepted norm that a migrating group or person should adopt the customs and traditions of the village in which they settle and should not impose their traditions customs on the others.<sup>221</sup> Others, however, believe land and resource pressure and inequitable distribution of economic development and services are the fundamental underlying causes for the tensions and ethnic conflict that have erupted in the last five years.<sup>222</sup> They suggest the right to freedom of movement and the resultant migration has merely enflamed these significant underlying issues.<sup>223</sup>

Control of internal migration and settlement has been identified in most provinces as a key requirement for a secure future and there appears to be widespread support for provinces (or states) to be given power in this area.<sup>224</sup> Recent proposals for reform have struggled to find a solution that addresses these concerns, without denying people their fundamental right to free movement within their country. The reform proposal suggested by the State Government Task Force (SGTF 2001) includes a retention of the freedom of movement, but requires an intending settler from a different state to comply both with restrictions imposed under the Federal and State laws as well as the traditional norms and practices of locals within the state.<sup>225</sup>

Whether this will be successful in addressing the conflict between traditional habitation patterns and the individual right to freedom is debatable. Migrants have now become established in many regions of the Solomon Islands resulting in intermarriages and many inter-island

<sup>221</sup> Liloqula and Aruhe'eta Pollard above.

<sup>222</sup> Judith Bennett *Roots Of Conflict In Solomon Islands Though Much Is Taken , Much Abides: Legacies Of Tradition And Colonialism* Discussion paper 2002/5 State, Society and Governance in Melanesia, The Australian National University, <<http://rspas.anu.edu.au/melanesia/PDF/bennet02.5.pdf> > last accessed 8 August 2003.

<sup>223</sup> Bennett above.

<sup>224</sup> Henry H Kellam, Project Co-ordinator Constitutional Reform Project, Constitutional Reform Project Consultation Section Summaries 02/2003 <<http://www.peoplefirst.net.sb/cr> > last accessed 12<sup>th</sup> August 2003.

<sup>225</sup> State Government Taskforce 2001 *Background Information on the Proposed State/Federal Government Systems for Solomon Islands* 2002 <[http://www.cdi.anu.edu.au/solomon\\_islands/Solomon\\_Is\\_Federalism.may02.htm](http://www.cdi.anu.edu.au/solomon_islands/Solomon_Is_Federalism.may02.htm) > last accessed 12<sup>th</sup> August 2003.



children.<sup>226</sup> Concern has been raised that measures to control migration would create further tensions and worsen national fragmentation and disunity and any legislation that is contrary to recognised international human rights could effect the Solomon's international relationships.<sup>227</sup> The real solution may well lay in ensuring equitable development and distribution of wealth and opportunity to all areas of the Solomons. Many communities in the Solomons have expressed the need to ensure that economic activity and services involve and reach rural populations.<sup>228</sup> Migration in a country that traditionally values community belonging and spiritual and social association with land does not occur without cause.

## VIII THE WAY FORWARD—POSSIBLE SOLUTIONS

### A *Complex Problems Require Complex Solutions*

The problems posed by the current situation in the Solomon Islands are not ones that can be easily resolved. Not only are there legal and constitutional problems, there are, as already discussed, major problems, such as corruption both within the police and within government, ethnic violence and economic collapse. Proposals to reform the constitution have been on and off the political agenda since its inception.<sup>229</sup> However most proposals have not progressed far partly reflecting the problems of unstable and ever-changing governments. This paper has focused on the

<sup>226</sup> Henry H Kellam, Project Co-ordinator Constitutional Reform Project, Constitutional Reform Project Consultation Section Summaries 02/2003 <<http://www.peoplefirst.net.sb/cr>> last accessed 12<sup>th</sup> August 2003.

<sup>227</sup> Kellam, above.

<sup>228</sup> PFnet Pirupiru News *Economic Activities/Services must involve or reach the Rural Populace*, (28 February 2003)

<[http://www.peoplefirst.net.sb/NEWS/cr\\_News.asp?IDnews=2484](http://www.peoplefirst.net.sb/NEWS/cr_News.asp?IDnews=2484)> last accessed 25 September 2004.

PFnet News/SIBC *Russell Islanders call for own State*, (7 March 2003).

< [http://www.peoplefirst.net.sb/NEWS/cr\\_News.asp?IDnews=2510](http://www.peoplefirst.net.sb/NEWS/cr_News.asp?IDnews=2510)> last accessed 25 September 2003.

Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) < <http://www.peoplefirst.net.sb/cr> >. Last accessed 19.08.2003.

<sup>229</sup> State Government Taskforce 2001, *Background information on the Proposed State/Federal Government for Solomon Islands 2002*. <[http://www.cdi.anu.edu.au/solomon\\_islands/solomonisland\\_downloads/SIs%20StateGovtReport.pdf](http://www.cdi.anu.edu.au/solomon_islands/solomonisland_downloads/SIs%20StateGovtReport.pdf)> last accessed 12 September 2003.



contribution of the constitution to “failed state” scenario that the Solomon Islands faces. The solutions it proposes are, therefore, also focused on constitutional options, yet it is acknowledged that alone this will be insufficient to make the difference needed. An integrated approach that involves education, sustainable economic development, restoration of law and order as well as constitutional reform is needed and will require ongoing and long-term support by those with an interest in creating a stable and peaceful Solomon Island nation.

### **B The Demand For Federalism**

The Solomon Islanders, themselves, have made it clear that they desire more provincial or local autonomy.<sup>230</sup> This desire was reflected in the 1978 constitution when it stated that it would “provide within the framework of our national unity for the decentralisation of power.”<sup>231</sup> During the Townsville Peace Agreement negotiations the need for further provincial control was discussed and the resulting agreement embodied a clause committing the Government to rewriting the Constitution in a way as to give more power to the provinces.<sup>232</sup> At the Buala Premiers Conference in November 2000 provincial autonomy again dominated the discussion with the Buala Communiqué calling for constitutional amendments so as to implement a “home grown” “state government system” with each province becoming a state with its own constitution and legislature.<sup>233</sup> The Western Province Assembly also passed a motion calling for the Western Province to attain statehood under a federal system by 2005.<sup>234</sup> The Chosieul Province joined the Western Province by

<sup>230</sup> Henry H Kellam, Project Co-ordinator Constitutional Reform Project, Constitutional Reform Project Consultation Section Summaries 02/2003

<<http://www.peoplefirst.net.sb/cr>> last accessed 12<sup>th</sup> August 2003.

<sup>231</sup> The Constitution of the Solomon Islands 1978 Agreement and Pledge, (e).

<sup>232</sup> Townsville Peace Agreement, part 4 Clause I (b).

<sup>233</sup> State Government Taskforce 2001 *Background Information on the Proposed State/Federal Government Systems for Solomon Islands* 2002

<[http://www.cdi.anu.edu.au/solomon\\_islands/Solomon\\_Is\\_Federalism.may02.htm](http://www.cdi.anu.edu.au/solomon_islands/Solomon_Is_Federalism.may02.htm)> last accessed 12<sup>th</sup> August 2003.

<sup>234</sup> “Western Provincial Assembly: Budget Session [2000/2001]” Proceedings of the Western Province Assembly Meeting, 25 March –3 April 2000 147pp.



deciding to use the National Independence Day, July 7<sup>th</sup> the 26 June, National to declare their intention to form a joint state government.<sup>235</sup>

The government responded to these demands by establishing, with the support of the United Nations Development Project, (UNDP) a State Government Task Force 2001 (SGTF 2001) to revisit and redefine the Report and Recommendations of the earlier 1987 Constitutional Review Committee report that had recommended a “home-grown” constitution.<sup>236</sup> The STGF 2001 was a 6 man committee who were appointed by the Sogavare government and it was to report back to the Cabinet by 31 May 2001 on the most suitable home-grown Government System to be introduced in the Solomon Islands. Change of Government in late 2001 meant there was a need to resubmit the report to the new cabinet.

These calls for federalism and greater political autonomy must also be seen in light of calls made recently by the Australian Government, for greater pacific unity and pacific collaboration.<sup>237</sup> The Australian government has already suggested that some of the Pacific Islands nations are too small, and that unity is the way forward, promoting for example, the concept for example of a common currency, common labour market and regional policing.<sup>238</sup> Australia may be unwilling to support further decentralisation of government.

The call for federalism also reflects a dissatisfaction and a sense of alienation from the present system. The lack of “ownership” and participation in the decision making process can be addressed by other means. There are ways of making democracy more participatory such as

<sup>235</sup> Solomon Star 28 June 2000; SIBC news 26 June 2003.

<sup>236</sup> State Government Taskforce 2001 *Background Information on the Proposed State/Federal Government Systems for Solomon Islands 2002* <[http://www.cdi.anu.edu.au/solomon\\_islands/Solomon\\_Is\\_Federalism.may02.htm](http://www.cdi.anu.edu.au/solomon_islands/Solomon_Is_Federalism.may02.htm)> last accessed 12<sup>th</sup> August 2003.

<sup>237</sup> Senate Foreign Affairs, Defence and Trade Committee, *A Pacific Engaged: Australia's Relations with Papua New Guinea and the Island states of the South-West Pacific* Reported Tabled in Parliament, (Canberra) 12 August 2003. <[www.aph.gov.au/Senate/committee/fadt\\_ctte/png/report/index.htm](http://www.aph.gov.au/Senate/committee/fadt_ctte/png/report/index.htm)> last accessed 15 September 2003.

<sup>238</sup> Senate Foreign Affairs, Defence and Trade Committee, above.



in Kiribati where national legislation must be considered on the outer islands before it is finally voted on, or having Parliamentary committees that tour the country, holding village meetings. If the demand for federalism and greater autonomy is partially driven by a desire for more participation and control,<sup>239</sup> then methods such as these needs to be considered and adopted.

### **C            *The SGTF 2001 Solution - A Federal Republic***

The key recommendation of the SGTF 2001 report was the adoption of a new federal republic, to be called "Sovereign Democratic Federal Republic of Solomon Islands," headed by a President who must be an indigenous Solomon Islander. The President would be elected by members of the Federal Parliament and the Congress of Governors who would be made up of Governors of States and Traditional leaders or elders appointed by the President. The President as head of state would have only ceremonial powers and not absolute powers.

Between 9-12 states would make up the Solomon Islands with the existing 9 provinces automatically becoming states and assuming the political status and recognition as fully fledged States in their own right. The STFG 2001 propose that this be done over a time frame ranging from 5 years for wealthier and bigger states to ten years for the smaller and more dependant states before they assume full responsibility for their own affairs.

#### *1            Political structure*

It is proposed that there be a three tiered government system: Federal Government; State Government, and local Governments with distinctive and separate operational powers prescribed under their respective

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<sup>239</sup> Peter Lamour *Custom and Democracy in the Pacific Islands* A report prepared for the Commonwealth Secretariat RPIC (02)4



Constitutions.<sup>240</sup> At both State and Federal level there would be two bodies, -one elected and one made up of appointed traditional leaders. Each State will have its own constitution with the right to legislate on matters within their jurisdiction, and will elect their own Governors whose function will be to sign the state laws passed by the State parliaments. Federal Parliament will only legislate on matters of national interest and the President will sign these into law. The Federal Parliament and the Congress of Governors would elect the President. The Congress of Governors would embody the Governors of all states and traditional leaders and elder statement and women appointed by the president on the advice of respective state governors.

At the Provincial level there would also be two bodies, a State legislature and another body called the State Council of Chiefs. These two bodies would elect the State Governor who becomes the chair of the State Council of Chiefs. Membership of the State Council of Chiefs includes local governments chairpersons and leaders and chiefs appointed by the State Governor. The report recommend that there be between 9 and 12 States and that there would be a period of transition during which the states would assume full responsibility for their own affairs.

There are number of criticisms of this proposed political structure, not the least being the potential for out of control costs and a huge bureaucracy. It creates a complex system that for many may be incomprehensible to many. It creates a three tiered system of governance, with two of these tiers having two bodies, as well between 9 to 12 heads

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<[http://www.cdi.anu.edu.au/asia\\_pacific/asia\\_downloads/DemoInPac\\_Larmour.pdf](http://www.cdi.anu.edu.au/asia_pacific/asia_downloads/DemoInPac_Larmour.pdf)> last accessed 25 September 2003.

<sup>240</sup> State Government Taskforce 2001above; Ian Scales, *Regional Politics in Solomon Islands*, Draft version for the SSGM Seminar September 2001  
<<http://rspas.anu.edu.au/melonesia/seminar.htm>> last accessed 01.07.2003;  
Gordon Leua Nanau, *Uniting The Fragments: Solomon Islands Constitutional Reforms*, Research Symposium on Development Research (South Pacific Futures) July 22- 34 2002: Brisbane Australia <<http://www.fdc.org.au/files/nanau-2.pdf>> last accessed 6 June 2003.



of states. The populations of some of these states are extremely small,<sup>241</sup> and the expectation that all “provinces” become states with three tiers of government irrespective of population or resources is unrealistic. Inadequate capacities at sub-national levels to handle additional powers effectively and the scarcity of both national and state financial resources are major concerns.<sup>242</sup> The considerable variation of resource and population distribution in the Solomons means that creating a fair and transparent system for the sharing of resources difficult. Without addressing the existing corruption and other governance problems there is a very real probability that corruption will simply increase.<sup>243</sup> Corruption is often a result of having a poorly paid civil service and the imposition the obligations of statehood on these very small populations, without the necessary capacity and skills for performing these duties, has the potential for disastrous results.

## 2 *Relationship between the federation and the states*

The aim would be to decentralise financial powers to the state, with the expectation that states would eventually become self-reliant. Taxes raised within a state would remain in the state.<sup>244</sup> It is also proposed that the states would run their own educational and health services, although curriculum development and tertiary education would remain with the federal government.<sup>245</sup> States would also have their own police force, with a federal government retaining a small force as well.

<sup>241</sup> Provinces range in population from 2,000 (Rennell-Bellona) to more than 1,200,000 (Malaita) see Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) <<http://www.peoplefirst.net.sb/cr>>. Last accessed 19.08.2003.

<sup>242</sup> Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) <<http://www.peoplefirst.net.sb/cr>>. Last accessed 19.08.2003.

<sup>243</sup> Constitutional Reform Project Consultation Section Summaries, above.

<sup>244</sup> State Government Taskforce 2001 *Background Information on the Proposed State/Federal Government Systems for Solomon Islands 2002* <[http://www.cdi.anu.edu.au/solomon\\_islands/Solomon\\_Is\\_Federalism.may02.htm](http://www.cdi.anu.edu.au/solomon_islands/Solomon_Is_Federalism.may02.htm)> last accessed 12<sup>th</sup> August 2003.

<sup>245</sup> See for a general outline of the proposed system, the State Government Taskforce 2001 *Background Information on the Proposed State/Federal Government Systems for Solomon Islands 2002* <[http://www.cdi.anu.edu.au/solomon\\_islands/Solomon\\_Is\\_Federalism.may02.htm](http://www.cdi.anu.edu.au/solomon_islands/Solomon_Is_Federalism.may02.htm)> last accessed 12th August 2003.



Again the key question that arises is that of cost. Health and education services, are expensive and complex to run, there is often considerable reliance on overseas aid, the youthful population of the Solomon Islands means that the demand for these services will grow at an alarming rate.<sup>246</sup> Although local "ownership" of health and education is important, national standards, controls, protocols and co-ordination would appear essential. It is contended that it would be more appropriate to concentrate on restoring and strengthening existing structures, before devolving such tasks.

Concern has also been expressed,<sup>247</sup> that State police could potentially be more parochial, more easily misused by political leaders and more likely to be perceived as allowing customary "obligations" to interfere with their duties.<sup>248</sup> A national well-trained multi-ethnic force would remove the possibility of confusing differing standards and practices between states and has the potential to enhance the sense of nationhood. Again strengthen and reforming the existing force may be necessary before any decentralisation occurs. The involvement of RAMSI and the Australian initiative to support a Pacific Police training school based in Fiji,<sup>249</sup> may also help with this issue.

### 3 *The role of parties*

The report also recommends abolishing the right to stand as an independent Member of Parliament and legislating to limit the number of

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<sup>246</sup>See Otter, who states that the current rate of population growth means that more than one class of children is added to the population every day. Mark Otter, *Development planning for a divided society in a weak state The case of Solomon Islands*, 2002, School of Political Science and International Studies, University of Queensland, 6.  
<<http://www.fdc.org.au/files/otter.pdf>> last accessed 25 September 2003

<sup>247</sup>Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) <<http://www.peoplefirst.net.sb/cr>>. Last accessed 19.08.2003

<sup>248</sup>Constitutional Reform Project Consultation Section Summaries, above.

<sup>249</sup>Senate Foreign Affairs, Defence and Trade Committee, *A Pacific Engaged: Australia's Relations with Papua New Guinea and the Island states of the South-West Pacific* Reported Tabled in Parliament, (Canberra) 12 August 2003.  
<[http://www.aph.gov.au/Senate/committee/fact\\_ctte/png/report/index.htm](http://www.aph.gov.au/Senate/committee/fact_ctte/png/report/index.htm)> last accessed 15 September 2003.



parties that may contest an election.<sup>250</sup> It suggests that this is necessary to give stability and to develop a culture of party politics. It also recommends “party hopping” legislation that would stop members from crossing the floor after the being elected under a party name.

It seems ironic that when attempting to create a “home grown” constitution such a measure is being promoted when all the evidence suggests that the party system appears not to meet the cultural and social structures within the Solomon Islands. There are other alternatives such as “Government by Committee” that has been proposed in other Pacific nations that may address the problem of parties. Parties, do not grow out of nowhere, and if a party system is inherently contrary to the “Melanesian way” as has been suggested, then it would seem appropriate to look for alternatives. In-depth discussion of the concept of “Government by Committee” is beyond the scope of the paper, but is worthy of further consideration rather than imposing apparently draconian provisions about party numbers and party hopping within a Constitution which are bound to fail.

#### 4 *Enhanced role of traditional chiefs*

The report proposes an enhanced role for traditional chiefs at the State parliament level so that they are involved in the legislative process.<sup>251</sup> The majority of the chiefs are resource owners and the report suggests that involving them in the decision making process will be beneficial and will lead to these resources being used for economic development. The report envisages that the chiefs will be appointed in the traditional way applicable to the State, or elected to the Council of Chiefs. In addition a number of seats should be reserved in the State Parliament for Chiefs,

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<sup>250</sup> State Government Taskforce 2001 *Background Information on the Proposed State/Federal Government Systems for Solomon Islands 2002*  
 <[http://www.cdi.anu.edu.au/solomon\\_islands/Solomon\\_Is\\_Federalism.may02.htm](http://www.cdi.anu.edu.au/solomon_islands/Solomon_Is_Federalism.may02.htm)> last accessed 12<sup>th</sup> August 2003.

<sup>251</sup> State Government Taskforce 2001 above.



with this number being legally legitimised by a provision enshrined in the State Constitution.

There are some fundamental problems with the proposal as they stand. They fail to address the reality of the Solomon Islands youthful population and the role of women in society. It is unusual for women to be recognised as traditional leaders,<sup>252</sup> despite the fact that over half of all Solomon Islanders inherit their land rights through women. Given the key role women play in food security, agriculture development and subsistence living,<sup>253</sup> it is important that a meaningful way is found to incorporate them and improve their participation in governance.

As can be seen in the Guadalcanal Case,<sup>254</sup> there are many who no longer accept the role of traditional leaders. One only needs to look at the difficulties faced in Tonga, and Samoa, where traditional leaders have or had constitutionally enshrined and defined roles, to see that challenges to this and dissatisfaction with the lack of democracy is not far below the surface.<sup>255</sup>

In addition, putting traditional leaders in a non-traditional forum has the potential to undermine rather than enhance their authority.<sup>256</sup> If they have an advisory only capacity, refusing to follow their advice, is insulting and diminishes their authority while, if given decision making authority in an adversarial setting, disagreement between the chiefs may also diminishes their authority.<sup>257</sup> Enshrining their position in the Constitution in this way also fails to take into account variations in local conditions, and the fact that traditionally the authority of chief was very

<sup>252</sup> Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) < <http://www.peoplefirst.net.sb/cr> >. Last accessed 19.08.2003

<sup>253</sup> Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) < <http://www.peoplefirst.net.sb/cr> >. Last accessed 19.08.2003

<sup>254</sup> See Part VII C 2 Past Proposals; Part VII E 3, Case law examples of the conflict.

<sup>255</sup> See generally Stephanie Lawson, *Tradition versus Democracy in the South Pacific, Fiji, Tonga and Samoa*, Cambridge University Press, Melbourne, 1996.

<sup>256</sup> Edward Wolfers, Diana, Conyers, Peter Lamour, and Yashi Ghai, *Decentralisation: Options and Issues A Manual for Policy Makers*. Commonwealth Secretariat, Marlborough House, London. 1982, 38.

<sup>257</sup> Wolfers, and others above 38.



localised.<sup>258</sup> Their authority operated at a grassroots level, and interests were predominately local rather than state or federal.

While acknowledging that there are ranges of traditional leadership systems in the Solomon Islands, I contend that the Big Man system may actually be not as incompatible with democracy as the Polynesian chiefly system is. Big Man status comes from performance, skill and providing for followers, and is not pre-designed or inherited. Creating an appointed Council of Chiefs is, in many ways, counter to this system. A Big Man, may need different skills and attributes to be elected to parliament than what was traditionally required, but this reflects the reality that society now needs leaders with different skills and the capacity of cultural practices to change in order to survive.

Possible solutions to the this issue may be found in the various approaches adopted by the Federated States of Micronesia, both at a federal level and state level that are discussed below.

#### ***D The Federated States Of Micronesia -A Possible model?***

##### *1 The Solomon-FSM comparison*

It has been suggested that The Federated States of Micronesia (FSM) Constitution is a model that the Solomon Islands could look to for guidance, as it is the only federal system operating in a Pacific Island State. There are however some major differences between FSM and the Solomons that render the reliance on this model less helpful, not the least being that FSM has a Compact Of Free Association with a powerful and wealthy nation the United States of America.<sup>259</sup> The FSM public sector

<sup>258</sup> Wolfers, and others above 39.

<sup>259</sup> Under the terms of the Compact of Free Association, the U.S. provided FSM with around \$2 billion in grants and services from 1986 to 2001. The Compact's financial terms are being re-negotiated for an extension period. In 2001 the U.S. provided more than \$84 million in Compact grants--an amount equivalent to over one-third of FSM's GDP--plus more than \$20 million through other federal programs. Total official development assistance from all sources was more than \$100 million in 2001, with



plays a central role in the economy as the administrator of the compact money. This Compact of Free Association guarantees FSM citizens access to education and employment as well as residency in the USA. FSM also has a smaller and probably less diverse population than the Solomon Islands<sup>260</sup> with approximately 9 different indigenous languages as compared to the Solomons' 90-120. However the degree of USA support for FSM and the current transition FSM is making from near total dependence on an ex-colonial power also offers guidance to countries like Australia and New Zealand when contemplating involvement in the affairs of the Pacific neighbours.

Despite the differences mentioned above between the two countries, it still provides a model worth serious consideration. FSM is an independent, sovereign nation made up of the four states of Chuuk, Kosrae, Pohnpei, and Yap. These states are themselves composed of a group of approximately 607 small islands in the Western Pacific lying just above the equator about 2,500 miles southwest of Hawaii. It faces similar problems to the Solomon Islands in terms of dispersed and isolated islands with the associated transportation and communication difficulties, historically separate and independent populations, as well as economic and development issues that many small island developing states face.

## 2 *The choice to "break away"?*

The FSM was formerly a part of the Trust Territory of the Pacific Islands (TTPI), but formed its own constitutional government on May 10, 1979. Other neighbouring island entities were also members of the TTPI, formulated their own constitutional governments and became the Republic of the Marshall Islands (RMI) and the Republic of Palau (ROP). The Northern Mariana Islands opted to become a commonwealth of the United States and became the Commonwealth of the Northern Mariana Islands

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nearly 90% of that total coming from the U.S. <<http://www.fsmgov.org>> last accessed 25 September 2003.



(CNMI). This is a rare example where former colonial boundaries were allowed to be altered, and is also an indication that despite diminutive size, distinct groups within the Pacific do wish to retain their distinct and independent identities.

Although likely to be considered politically untenable, allowing for the provinces to decide whether they wish to remain part of the Solomon Island nation is an option worthy of consideration. The Western and Chosiuel provinces for example, have been the most determined and persistent proponents of independence and even prior to 1978 were promoting the concept of a separate nation state. Any decision by the Western Provinces to move away from the Solomon Islands nation, may have serious repercussions elsewhere, especially in Bougainville, and would need to be carefully managed. The implications of such a decision is beyond the scope of this paper, but may need to be given serious consideration if the demands made by the Western Province that may be such as to create too fragile a constitutional arrangement for the remaining provinces.

### 3 *The FSM constitution*

The FSM Constitution provides a presidential system of government with three separate branches of government at the national level - Executive, Legislative, and Judicial. The President is elected from Congress, and then resigns from congress. With the advice and consent of Congress, he appoints ambassadors; all judges of the Supreme Court and other courts prescribed by statute; the principal officers of executive departments in the national government; and such other officers as may be provided for by statute.<sup>261</sup>

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<sup>260</sup> The population of FSM is about 107,000, predominately Melanesian, <<http://www.fsmgov.org/info/people.html>> last accessed 25 September 2003.

<sup>261</sup> The Federated State of Micronesia Constitution, Article X <<http://www.fsmlaw.org/fsm/constitution/article10.htm>> Last accessed 25 September 2003.



The constitution contains a Declaration of Rights similar to the U.S. Bill of Rights, specifying basic standards of human and individual rights. It also contains provisions recognising and protecting traditional rights. The Congress or Federal Parliament has powers that includes: - raising and distribution of taxes; national defence; regulation of banking and interstate commerce; regulation of the exploitation of FSM's natural resources; defining of national crimes and penalties; and an obligation to promote education and health by setting minimum standards, co-ordinating state activities relating to foreign assistance, providing training and assistance to the states and providing support for post-secondary educational programs and projects.<sup>262</sup> Both the States and the Congress have the power to appropriate public funds, and establish systems of social security and public welfare.<sup>263</sup>

This does provide a division of powers and functions between federal and state governments that appear to be working well in the FSM. It should be however noted that the national and state-level governments employ over one-half of the country's workers and provide services accounting for more than 40% of GDP, suggesting that it is essentially a cumbersome uneconomic system, that is maintainable only through the support of the USA. The Solomon solution needs to be realistic about the costs associated with the division of functions between too many small states. In particular the provision of education and other services, which demand a skilled labour force and expensive resources, may be better provided by a larger State system. Consideration also needs to be given to the impact federalisation will have on donor countries and organisations on which the Solomon Islands rely significantly. There does not appear to be a consensus in relation to the division of powers, with some areas demanding near complete autonomy

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<sup>262</sup> The Federated State of Micronesia Constitution, IX s 2  
<<http://fsmlaw.org/fsm/constitution/article7.htm>>last accessed 15.08.2003.

<sup>263</sup> The Federated State of Micronesia Constitution, IX s 3  
<<http://fsmlaw.org/fsm/constitution/article7.htm>>last accessed 15.08.2003.



while others less certain.<sup>264</sup> A new Solomon Islands Constitution may need to offer flexible solutions to meet these different demands. Differing transitionally periods may also need to be negotiated so as to allow new States adequate time in which to gain the capacity to fulfil their roles.

I would also suggest that the presidential executive model that operates in FSM, where executive appointments are made by the President as described, is not an option that would be supported by many in the Solomons. Although it does lessen the importance of parties, as “responsible cabinet” ceases to be an essential concept, it has the disadvantage of being open to allegations of cronyism (or in the case of the Solomons - “wantokism”). As corruption and the influence of the wantok and the obligations of the “big man” has been a major concern in the past in the Solomons, such a proposal would be unlikely to succeed.

#### 4 *State Governments*

There is an obligation that state constitutions be democratic<sup>265</sup> and while there is provision for three levels of governance in the FSM, (federal, state and local), state governments are not required to establish local bodies if they did not exist at the time Constitution was written.<sup>266</sup> This provides for the smaller states to have only a two-tiered system if that is desired. This would be a good option for the Solomon Islands. Some of the proposed states have very small populations and the requirement of a three tiered system is excessive given the population base. Reform options should permit this flexibility so that smaller States whose population or social environment does not warrant three tiers can chose to do so.

<sup>264</sup> Constitutional Reform Project Consultation Section Summaries (UNDP SOI/02/003) <<http://www.peoplefirst.net.sb/cr>>. Last accessed 19.08.2003.

<sup>265</sup> The Federated State of Micronesia Constitution, VII s 2 <<http://fsmlaw.org./fsm/constitution/article7.htm>>last accessed 15.08.2003.

<sup>266</sup> The Federated State of Micronesia Constitution, VII s 1 <<http://fsmlaw.org./fsm/constitution/article7.htm>>last accessed 15.08.2003.



5 *Conflict between customary law and human rights*

At a national level the FSM Constitution addresses these issues with Article IV, the Declaration of Human Rights and Article V, Traditional Rights.<sup>267</sup> Article V, section 2 provides that tradition may be protected by statute, and if this is challenged as violating the human rights of article IV, the protection of tradition shall be considered a compelling social purpose warranting such governmental action.

Each state has also chosen to deal with this conflict in differing ways. The State of Chuuk follow similar wording to national constitution,<sup>268</sup> while the State of Kosrae *Article II* constitution entitled "The Community and the Individual" states,

"Except when a tradition protected by statute provides to the contrary:

- (a) No law may deny or impair freedom of expression, peaceable assembly, association, or petition.
- (b) A person may not be deprived of life, liberty, or property without due process of law, or be denied the equal protection of the laws."<sup>269</sup>

It also provides that the State Government shall protect the State's traditions as may be required by the public interest.<sup>270</sup>

The State of Pohnpei gives greater recognition to tradition and custom, providing that the Constitution upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei. Statutes may be enacted to uphold customs or traditions and if such a statute is challenged as violating the rights guaranteed by the Constitution, it shall be upheld upon proof of the existence and regular practice of the custom or tradition.

<sup>267</sup> The Federated State of Micronesia Constitution, <<http://fsmlaw.org./fsm/constitution/article5.htm>> last accessed 15.08.2003.

<sup>268</sup> Constitution of the State of Chuuk, article 4 , <<http://fsmlaw.org./chuuk/index.htm> > last accessed 15.08.2003.

<sup>269</sup> Constitution of the State of Kosrae, article II

<sup>270</sup> Constitution of the State of Kosrae, article II section



The Yap State Constitution gives due recognition to traditions and customs in providing a system of law, and nothing in the Constitution shall be construed to limit or invalidate any recognised tradition or custom.<sup>271</sup>

The variations permitted under the different state constitutions are important. It permits states to accommodate customary law as is appropriate to their society and their development. By not entrenching customary law it permits development and change. Allowing for statute to overrule custom allows for Parliament and the population at large to influence what is retained and what is challenged. Conversely the constitution also allows for custom to be a compelling consideration in determining the conflict between individual rights and freedom contained within article IV and the retention of custom. This appears to be an appropriate way of addressing such matters and is a system that may work well in the Solomon Islands context. There is a large degree of variation in development and lifestyle on the Solomon Islands- from Honiara, with its relative strong western influence to areas where there is little, if any, "western" influence. Reform of the Constitution in relation to customary law needs to allow for modification and change, yet also reflect the reality of the impact of custom on people's life. This is a difficult balance to strike. Allowing for local variation and for the legislature to pass statutes that may be contrary to custom, while also allowing for custom to be a compelling consideration in addressing the potential conflict between individual human rights and custom, provides a solution that neither entrenches and stagnates custom, nor ignores its power and presence.

#### 6 *The Role of Traditional Leaders.*

The FSM constitution also offers a model for incorporating the role of traditional leaders. Unlike the proposed Solomon model, which enshrines their role and establishes a dual body system at each level of government,

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<sup>271</sup> Yap State Constitution article III s2



the FSM is more flexible and again provides for local variation. At a national level the role of traditional leaders are acknowledged, and states the Constitution states

Nothing in this Constitution takes away a role or function of a traditional leader as recognised by custom and tradition, or prevents a traditional leader from being recognised, honoured, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.<sup>272</sup>

It also permits the Congress to establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders.<sup>273</sup> Constitutions of States that have traditional leaders may provide for an active, functional role for them but this is neither obligatory nor is the role defined.<sup>274</sup> A state may also allow one of its seats to be set aside for a traditional leader who shall be chosen as provided by statute for a two-year term, in lieu of one representative elected on the basis of population.<sup>275</sup>

The four states have again responded to this in various ways with only one state actually establishing a constitutionally recognised forum for traditional leaders.<sup>276</sup> Others have provided for funding of annual chief conferences,<sup>277</sup> while others grant no formal status.

Again a system that permits this degree of flexibility offers a solution for the Solomon Islands. It has the advantage of allowing for different

<sup>272</sup> The Federated State of Micronesia Constitution, article V s1  
<<http://fsmlaw.org/fsm/constitution/article5.htm>>last accessed 15.08.2003.

<sup>273</sup> The Federated State of Micronesia Constitution, article V s3  
<<http://fsmlaw.org/fsm/constitution/article5.htm>>last accessed 15.08.2003.

<sup>274</sup> The Federated State of Micronesia Constitution, article V s3  
<<http://fsmlaw.org/fsm/constitution/article5.htm>>last accessed 15.08.2003.

<sup>275</sup> The Federated State of Micronesia Constitution, article IX s 11  
<<http://fsmlaw.org/fsm/constitution/article9.htm>>last accessed 15.08.2003.

<sup>276</sup> Constitution of Yap, article III s1 states "*There shall be a Council of Pilung and Council of Tamol which shall perform functions which concern tradition and custom.*"

<sup>277</sup> Constitution of the State of Chuuk article IV s 3,  
<<http://fsmlaw.org/chuuk/index.htm>> last accessed 15.08.2003.



systems of traditional leadership and does not create an artificial chiefly institution. The proposed structure suggested by STFG 2001, creates both an elected body and a traditional leader body at state and federal levels.<sup>278</sup> This does not take account of local variation and needs. In some of the smaller proposed states, this creates another expensive body to support. Allowing for these small states to choose their own system for recognising traditional leaders and the degree of their involvement in governance permits difference and takes account of needs and situation of each State. As noted above, the Big-man system is not entirely incompatible with democracy, and there is nothing to prevent traditional leaders from standing for election. This option also provides for a combination of both traditional and elected representatives in State legislature as long as it meets the requirement of being a democratic constitution.

## *IX CONCLUSION*

Although this model offers many advantages in that it allows for variation according to tradition, size and economic development, it must be considered in the context of having received substantial USA support and, perhaps most importantly, that the communities involved have made an active decision to remain a nation.<sup>279</sup> Arguably importing such a system would be yet again imposing an alien or foreign system on the Solomon Islands that may provide little improvement to the existing structures.

Although the proposed federal structure may offer a solution to demands for greater provincial autonomy it may not go far in resolving some of the other issues facing the Solomon Islands and may potentially make things worse. Systemic corruption will not disappear but may simply increase with further bureaucracy unless rooted out prior to decentralisation. Many post-colonial independent states face the problem

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<sup>278</sup> See Part VII C 1 Political Structure.

<sup>279</sup> See Part VIII, C,2 The Choice to Break Away.



of ethnic heterogeneity<sup>280</sup> yet unfortunately there are few constitutional models that have successfully addressed these difficulties for the Solomon Islands to follow. State federalism is certainly a starting point in search of a solution, but by no means guarantees success as federal systems of government are considered by many to be inherently more fragile even without adding ethnicity and development needs into the mix.<sup>281</sup> Recognising the rights of self-government for regions may in fact increase the likelihood of secessionist demands as federalism can enhance the perception of separateness, and diminish any sense of nationhood.<sup>282</sup> Meeting secessionist demands may be the radical solution that the situation requires, however this will be perceived by most as the option of last resort.

If federalism becomes the chosen path, transition to a federal system of governance needs to be undertaken in a controlled and careful fashion. In particular there are certain matters that need to be adequately addressed prior to any further decentralisation. This includes stabilisation of the economy, stabilisation of existing health services, control of law and order, reduction and control of corruption and a sense of security and stability in the country. Attempting to make major constitutional changes at a time of such disarray is bound to fail.

These are predominately matters that the Solomon Islands government will not be able to do alone. If New Zealand and Australia are serious about wanting peaceful, stable, and democratic pacific neighbours, they will need to be prepared for long-term involvement. This will be inherently fraught with difficulties, as accusations of neo-colonialism will be quick to come. Australia and New Zealand need to listen to the Solomon Islands and consider what assistance they are asking for, rather than dictating to

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<sup>280</sup> Alemante G. Slassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa* 28 Yale J.int'L.51, 52.

<sup>281</sup> See generally Robert Howse and Karen Knop, *Federalism, Secession and the Limits of Ethnic Accommodation: A Canadian Perspective*, (1993), 1 New Eur. L. Rev. 269; Lapido Adamolekun and John Kincaid, *The Federal Solution: Assessment and Prognosis for Nigeria and Africa*, (1991), 21 Publius 173.



the Solomons what we think they need. This involvement will be costly, and may not be politically easy or popular domestically especially if it includes allowing greater access to our labour markets, to our education and health systems and increasing development aid. However the other option is to have a failed state as a neighbour with all the risks and security challenges that accompanies it.

If stability can be regained, then meeting the demands for federalism can begin. It would be appropriate for such a structure to allow for variations and flexibility to reflect the different traditions, cultures and economic development of the various provinces. Any system needs to be realistic about the costs involved and strictly limit the number of bureaucrats and officials. Good governance practices, which include transparency and accountability, need to be implemented. Other measures to improve popular participation and ownership of the political process, such as sending proposed legislation to outlying areas for discussion and mobile government committees, should also be considered to facilitate greater public participation in the governance process.

The Solomon Islands is in a state of failure and it faces many difficulties. However with the right support and development they have the potential to make the transition to becoming a functioning nation again, and creating a "Nation out of nations". They have the opportunity, although there is no guarantee of success, to find a Melanesian form of democratic governance that meets the needs of their dispersed, isolated, and varied peoples, that provides a path forward while at the same time acknowledges and respects who they are and their past.

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<sup>282</sup> Alemante G. Slassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa* 28 Yale J.int'L.51, 58.



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