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Solomon Islands

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1.0 Historical Introduction

The long archipelago of some six large islands and scores of smaller islands, now known as the Solomon Islands, that stretches for about 1,400 kilometres from east of Papua New Guinea in a south-easterly direction towards Vanuatu, was inhabited about 3,000 years ago by peoples of Melanesian race. The first European discoverer was the Spanish explorer, Mendana, who set out from Peru in 1567 to discover the legendary islands containing the treasures of King Solomon which were believed to lie in the South Pacific Ocean. During 1568, Mendana explored many islands but no trace of gold or silver was reported. A second expedition in 1595 in an attempt to establish a settlement proved disastrous, as did a voyage of De Quiros in 1606, who was Mendana's chief pilot, and thereafter Spanish explorers seemed to lose interest in the South Pacific.

During the eighteenth century, the islands of the archipelago were visited by British and French explorers, of whom La Perouse and Bougainville are the most famous, but little attempt was made to settle in the islands, until the 1840's when an ill-fated Marist mission was attempted in San Cristobal, now called Makira. Several decades later, sea captains, seeking labour for the cane fields of Queensland and Fiji, started to make frequent visits to the islands in search of recruits. In 1886, Britain and Germany agreed to divide the South Pacific into a British and a German sphere of influence, and the southern Solomon Islands, i.e., Guadalcanal, Malaita, San Cristobal (Makira), the New Georgia group, and outlying islands, fell within the British sphere of influence. Largely in an attempt to control the evils of the labour trade, Britain placed those islands under its protection in 1893. In 1898, the more distant southern islands in the Santa Cruz group were added to the Protectorate, and in 1900, in exchange for Britain withdrawing from Samoa, Germany withdrew from the northern Solomon Islands, i.e., the islands of Choiseul and Isabel and smaller outlying islands, which were added to the British Solomon Islands Protectorate.

At the time that the British Solomon Islands Protectorate was established there were probably about 50 European traders settled in various parts of the islands, but in succeeding years their number increased, and also two powerful companies, Lever Bros. of England and Burns Phillip of Australia, acquired large landholdings in the country. When Japan entered World War II, the British administration and many Europeans were evacuated, and in 1942 the archipelago was overrun by Japanese forces moving south towards Australia and New Zealand. The allied forces, led by America, grouped in the island countries to the south and mounted a push northwards to try to repel the Japanese. Some very heavy fighting occurred on the land, the sea, and in the air of Solomon Islands before the Japanese forces were repulsed from the archipelago at the end of 1943. The years immediately after the end of World War II in 1945, saw disturbed social

and political conditions in the Protectorate, as various indigenous leaders started to rise up and challenge the British administration.

These indigenous movements were eventually suppressed, and the British administration asserted its control of the country, but in the 1960's the British Government made it clear that it intended to withdraw from its possessions in the Pacific, and so greater responsibility started to be transferred to indigenous people. In 1970 a new constitution was enacted to provide a governing council for the Protectorate with a majority of elected members. In 1974 a largely elective legislative council was established, and in 1976 the country, now called the Solomon Islands, became fully internally self-governing. In 1978, Solomon Islands became an independent country, but retained Queen Elizabeth as Head of State. The Queen is represented in Solomon Islands by a Governor-General, who is required to act in almost all respects in accordance with the advice of a Prime Minister elected by the 50 members of the Parliament, who are themselves elected by all citizens aged 18 years and over.

In late 1998, civil conflict broke out on Guadalcanal between inhabitants of that island and immigrants from other islands, especially Malaita, living on Guadalcanal. Rival armies were formed: the Isatabu Freedom Movement (IFM) of Guadalcanal in 1998 and the Malaita Eagle Force (MEF) in 1999, and large numbers of Malaitans were forced to return to their island. A general breakdown of law and order ensued for several years. Eventually, in April 2003, the government of Solomon Islands requested the intervention of a regional armed force headed by Australia, known as RAMSI, the Regional Assistance Mission for Solomon Islands. Order was restored in Solomon Islands. At the time of writing RAMSI is still in the Solomon Islands.

Solomon Islands achieved independence as a unitary state, but even at the time of independence there were demands that the country should be divided into a federation. These demands have become stronger in recent times, in order to secure fair distribution of financial resources and also to preserve the cultural identities of the different island social groupings. There have been ongoing proposals before the Parliament of Solomon Islands to establish a federation of nine states.

2.0 Kinds of Land Ownership

2.1 Introduction

When Britain proclaimed the Solomon Islands as a British protectorate in 1893, the islands were already inhabited by indigenous people of Melanesian race. From 1896 to 1914, the Solomon (Land) Regulation 1896 permitted Solomon Islanders, subject to the approval of the Resident Commissioner or High Commissioner of the Western Pacific, to sell their land to foreign individuals or companies, and grants of freehold were issued in respect of that land. Section 6 of the Solomons Land Regulation, 1914, however, prohibited further sales of land by islanders to non-islanders, except to the Protectorate Government, and this provision has been continued in subsequent legislation to the present day. This same provision also authorised the Protectorate Government to acquire native land compulsorily if it was required for public purposes, a power which has been continued by subsequent legislation.

In the 1950's following an extensive report upon land matters by a special commissioner, C.H. Allan, section 19 of the Land and Titles Regulation 1959 authorised the Solomon Islands Trust Board and the Commissioner of Lands to make grants of perpetual estates and fixed term estates out of public land which was vested in the Board or the Commissioner. Five years later, in 1964, the Solomon Islands Trust Board was abolished but the power of the Commissioner to make grants of perpetual estates and fixed term estates out of public land has continued to the present day.

In 1978, the Ordinances of the same section of the Solomon Islands, held by non-Solomonians, were no freehold estates. Accordingly, the countries of the South Pacific, ownership of land by individuals and ownership of land by individuals, although these non-customary rules of other island countries of the

2.2 Privately owned land

2.2.1 Land owned by private individuals

As mentioned earlier, the indigenous islanders to non-islanders, except in Solomon Islands, probably with customary rules of land

2.2.1.1 Primary rights

Under the custom of Solomon Islands, or lines, and within most of the land (patrilineal), but in Isabel the land is owned by individuals and interests are acquired by individuals.

Nowadays it is becoming more common for land to be owned by individual families as their own. Occasional grants of land to only one individual, but if the family has died away, legal questions arise as to who

In 1977, shortly before independence, section 6 of the Land and Titles (Amendment) Ordinance, 1977, provided that perpetual estates could only be owned by Solomon Islands persons and institutions and settlers from the Gilbert and Ellice Islands colony who had acquired a perpetual estate when the Ordinance came into force on 15 September 1977. The same section also provided that fixed term estates could only be held for 75 years by non-Solomon Islanders, and that all freehold estates, fixed term estates and leases for over 75 years held by non-Solomon Islanders were converted into fixed term estates of 75 years. Since there were no freehold estates held by Solomon Islanders, this meant that from 1977 there have been no freehold estates in Solomon Islands.

Accordingly, since Solomon Islands became independent in 1978, like many other island countries of the South Pacific, there are two main kinds of ownership of land in the country: ownership of land by private persons; and ownership of land by the Government. Also, as in many island countries of the South Pacific, there are two forms of private ownership of land: ownership of land by indigenous persons in accordance with customary rules of land tenure; and ownership of land by private persons in accordance with non-customary rules of ownership, although these non-customary rules in Solomon Islands provide for estates in land not found in other island countries of the South Pacific.

2.2 *Privately owned land*

2.2.1 Land owned by private persons in accordance with customary rules of land tenure

As mentioned earlier, the Solomons Land Regulation 1896 prohibited the sale of land owned by indigenous islanders to non-islanders without the approval of the Protectorate administration, and the Solomons Land Regulation 1914 completely prohibited the sale of customary land to non-islanders, except to the Protectorate Government. Consequently most of the land in Solomon Islands, probably about 90%, is still owned by indigenous islanders in accordance with customary rules of land tenure.

2.2.1.1 Primary rights

Under the custom of Solomon Islanders, most land is owned by groups of families, called tribes or lines, and within most landowning units, it is the adult males who are regarded as owning the land (patrilineal), but in some areas or islands such as Guadalcanal, Makira (Santa Ana) and Isabel the land is owned by the adult females of the tribe or line (matrilineal), and in some areas interests are acquired bilineally from both sides of the family.

Nowadays it is becoming more common to hear of customary land being claimed to be owned by individual families who have carved out a part of the tribal land, which they regard as their own. Occasionally, there are to be found pieces of land or islands which are owned by only one individual, but this is very much the exception, and usually occurs when a tribe, or a family has died away, leaving only one surviving member. In some parts of the country, families have constructed artificial islands and stilt houses, especially in lagoons and sheltered coves, and questions arise as to who are the owners of these structures.

2.2.2.2 Perpetual and fixed term estates

Following recommendations contained in the report of the Special Lands Commission in 1954, the British administration decided to convert all unoccupied or waste land into public land, from which estates of land could be sold that would be more closely controlled by, and beneficial to, the Government than freehold estates. By the Land and Titles Regulation 1959, a statutory body, the Solomon Islands Land Trust Board, was established to acquire and hold vacant land in the country, and section 19 of the Regulation authorised the Board and the Commissioner of Lands to grant to any person perpetual estates and fixed term estates in any public land vested in the Board or the Commissioner. These estates, like freehold estates, could be freely transferred by the owner, both inter vivos and by will, but, unlike freehold estates, were subject to the payment of premiums and rentals payable to the Board or the Commissioner. They were also subject to such conditions regarding development as were prescribed by the Board or the Commissioner. Failure to comply with such conditions could result in forfeiture of the estate.

The operations of the Solomon Islands Trust Board were vehemently opposed by Solomon Islanders, who considered that there was no vacant or waste land in Solomon Islands, and in 1964 the Board was abolished by the Land and Titles (Amendment) Ordinance 1964. This reduced the pool of public land available for permanent and fixed term estates, but the Commissioner of Lands continued to be empowered to grant perpetual and fixed term estates out of public land. In 1967, fixed term estates were restricted to 99 years by section 122(1)(a) of the Land and Titles Ordinance 1967, and in 1977, shortly before independence, ownership of perpetual estates, was, by section 6 Land and Titles (Amendment) Ordinance, restricted to Solomon Islands persons and institutions and settlers from the Gilbert and Ellice Islands colony who had acquired a perpetual estate when the Ordinance came into force on 15 September 1977. The same section also provided that fixed term estates could only be held for 75 years by non-Solomon Islanders, and that all freehold estates, fixed term estates and leases for over 75 years held by non-Solomon Islanders were converted into fixed term estates of 75 years. Since there were no freehold estates held by Solomon Islanders this meant that from 1977 there were no longer freehold estates in Solomon Islands, and that, since 1977, the only estates held by private persons under non-customary rules of ownership are perpetual estates and fixed term estates. Exactly how much land in the Solomon Islands has been converted into perpetual estates and fixed term estates is not known at this stage, but it is believed that it may be about 5%.

2.3 Land owned by government

When Solomon Islands were acquired by Britain in 1893, it was acquired as a protectorate, not as a colony, so ownership of the land was not acquired by the Crown. Since 1896, Solomon Islanders have been authorised by legislation to sell their land to the Government of Solomon Islands, and since 1914, the Government has been empowered by legislation to acquire land compulsorily for public purposes. However, the powers of voluntary purchase and compulsory acquisition by Government have not been very much used.

When, in 1977, perpetual estates and freehold estates held by non-Solomon Islanders were converted by section 6 of the Land and Titles (Amendment) Ordinance 1977 to fixed term estates of 75 years, the section also provided that the perpetual estates of such fixed term estates were to be vested in the Government of Solomon Islands, thereby greatly increasing the amount of land ultimately owned by the Government.

At present, there seems to be no clear record of exactly how much land is owned by the Government of Solomon Islands, and estimates range from 13% to 3%, of the total land area of the country.

2.4 Registration of ownership of land

2.4.1 Customary land

Since 1959, the Land and Titles legislation has contained provisions which authorise customary land to be registered as land settlement schemes, upon application by a majority of custom owners. Although these provisions still remain in the legislation, active implementation of them was discontinued shortly after independence, and, in fact, only a very small amount of customary land has been registered in this way, about 6,900 hectares or 0.2% of the total land area of Solomon Islands.

Since 1994, the Customary Land Records Act 1994 has allowed for the primary rights to customary land to be recorded upon the application of a land owning group or individual. Upon registration, which is voluntary, the primary rights shall be free from all other interests and claims except those shown on the record. Although this legislation was enacted in 1994, hardly any customary land has been registered under that Act.

2.4.2 Perpetual and fixed term estates

Since their introduction in 1959, the Land and Titles legislation requires that perpetual estates and fixed term estates are registered, and registration renders the title of the registered proprietor for value indefeasible, except for overriding interests, and except for the power of the High Court to set aside registration on grounds of fraud or mistake - see later for more detail.

2.4.3 Public land

Public land in Solomon Islands is not required to be registered, which is one of the reasons why there is such uncertainty as to how much land is owned by the Government.

3.0 Land Transactions

The kinds of transactions that can be entered into with regard to land in the Solomon Islands depend on the type of ownership of the land in question.

3.1 Customary land

3.1.1 Transfer

Sections 239 and 240 of the current Land and Titles Act, Cap 133, make it clear that customary land may be held, occupied, used, enjoyed and disposed of in accordance with current customary usage. Although in the past, transfers of customary land between indigenous Solomon Islanders have occurred, especially as part of an exchange or as a reward or as a punishment, transfers of customary land are much less common now, except near urban centres. But near urban centres the exact nature of the transaction may become blurred. It is not uncommon for custom owners of land, especially near urban areas, to permit occupation of some or all of their customary land subject to express or implied conditions. Whether these permitted occupations are intended to be permanent transfers of the land, or just temporary licences to stay for a period, is often not clear. Indeed the extent to which this occurred on the island of Guadalcanal near Honiara after World War II, was one of the main causes of the five years of civil conflict, 1998-2003.

3.1.2 Lease

Section 5 of the Land Regulation 1914 authorised the resident Commissioner to grant leases of customary land to non-Solomon Islanders (often called "native leases") on behalf of the custom owners, but with the collapse of copra prices in the 1930's most of these leased lands were abandoned and the leases were forfeited. Since the enactment of the Land and Titles Ordinance 1959, there has been no provision in legislation to enable customary land to be leased, either by the custom owners directly, or by the Government on their behalf.

3.1.3 Mortgage/charge

There is no legislation that provides for customary land to be mortgaged or charged.

3.1.4 Acquisition by government

Part V of the current Land and Titles Act Cap 133 authorises the Minister of Lands to purchase or to compulsorily acquire customary land for public purposes and at the same time compensate the customary land owners.

3.2 *Perpetual and fixed term estates*

It is with regard to perpetual and fixed term estates that the legislation makes the most extensive provision for transactions.

3.2.1 Transfers

Since their establishment in 1959, the legislation, now the Land and Titles Act, Cap 133, has provided that perpetual estates and fixed term estates may be transferred by the owners, during their lifetime or by will, except that, as mentioned earlier, only Solomon Islanders, as defined by the Land and Titles Act, can acquire perpetual estates.

3.2.2 Leases

Section 143 of the current Land and Titles Act, Cap 133, provides that the holders of both perpetual estates and fixed term estates, other than the Commissioner of Lands, may lease such estates for any specified period, but if they are leased to a person who is not a Solomon Islander, as defined in the Act, the prior written consent of the Commissioner of Lands must be obtained.

3.2.3 Easements, profits and restrictive covenants

Part XV of the current Land and Titles Act, Cap 133, provides that easements and profits can be granted over perpetual and fixed term estates, and also over registered leases by the owners of those estates or leases, and Part XVI of the Act provides that easements, in the form of rights of way, may be created over public land by the Commissioner of Lands. Section 192 of the Act provides that restrictive covenants may be registered against the land of the person to be bound, but subsection (5) of that section clearly states that such registration does not give it any greater effect than it would have had without such registration.

3.2.4 Mortgages/ Charges

Since 1959, the Land and Titles legislation, now Part XII of the Land and Titles Act, Cap 133, has provided that perpetual estates and fixed term estates may serve as security for loans, but by way of charge, which must be registered, not by way of mortgage.

3.2.5 Acquisition by government

Part V of the current Land and Titles Act, Cap 133, authorises the Minister of Lands to purchase or to compulsorily acquire perpetual estates and fixed term estates land for public purposes subject to the payment of compensation.

3.3 Government land

Whilst Part V of the current Land and Titles Act, Cap 133, authorises the Minister of Lands to purchase or to compulsorily acquire customary land for public purposes, neither that Part, nor any other Part of the Act makes any provision for the transfer or leasing of Government land. Section 143(1) of the current Land and Titles Act, Cap 133, provides that periodic leases of public land may be granted by the Commissioner of Lands, but not fixed term leases, and section 248 of that Act authorises the Commissioner of Lands to grant licences to occupy public land for periods of up to 3 years.

3.4 Registration of land dealings

Transfers of perpetual estate and fixed term estates are required by the Land and Titles Act to be registered, as are leases for over two years of perpetual or fixed term estates, and easements, profits, and charges over such estates.

As mentioned earlier, registration provides the registered proprietor with an indefeasible title subject to some exceptions influenced by English common law introduced into the country. First, registration is subject to overriding interests, such as rights of way, easements and profits existing at the time of first registration of the interest; natural rights of light, air, water and support; rights of persons in actual occupation, unless inquiry did not disclose those rights; rights of tenants in possession under a lease for less than two years. Secondly, a person who has acquired a registered interest not for valuable consideration, i.e., as a gift, holds that interest subject to any unregistered interests binding on the transferor, and subject also to the law relating to bankruptcy and the winding up of companies. Thirdly, the register of registered interests in land may be rectified by order of the High Court if it is satisfied that the registration has been obtained, made or omitted by reason of fraud or mistake.

Persons who claim an unregistered interest in registered land may register an instrument called a caveat, which prohibits the registration of any instrument affecting that land, until court proceedings are taken to determine the validity of the claim which has given rise to the caveat.

4.0 Land Use

4.1 Urban areas

In the capital, Honiara (population, 60,000 approx), which is situated on the island of Guadalcanal, the land is used predominantly for government and commercial offices, private homes, stores, hotels and small-scale industry. In the eight other small towns which serve as

provincial capitals, land is used for government offices, private homes, stores, hotels and small-scale settlements of people, and public land, with or without

4.2 Rural areas

In the rural areas, where there are areas of plantations, and also areas which have not been re-forested for farming and villages.

4.3 General land use regulation

The Town and Country Planning Board be established in the capital. The board of this body must be established, subject to certain conditions, over, or on the ground and subject to this planning scheme is required to establish material considerations, and

The enforcement of provisions which do not comply with the boundaries of, the capital

5.0 Resolution of Land Disputes

The method of resolution of disputes in dispute is customary law

5.1 Customary land

Since 1942, the Local Courts Act to determine disputes a first referred to chiefs a the dispute has been referred to the Appeal Court, with appeal legislation has, since then, as neither local courts nor courts and customary law

On the island of Guadalcanal, tensions in 1998 -2003 the ownership of all land a decision in 2010. However, the inefficiency and corruption the controversies about

provincial capitals, land is used predominantly for stores, small scale industry, government offices, private homes, hotels and guest houses. Within and around the urban areas there are settlements of people coming from other parts of the country and living on customary and public land, with or without the permission of the owners.

4.2 Rural areas

In the rural areas, where approximately 85% of the population live, there are some extensive areas of plantations, and also of unsustainable commercial logging and mining, many of which have not been re-forested or re-habilitated, but the bulk of the land is used for subsistence farming and villages.

4.3 General land use regulation

The Town and Country Planning Act, Cap 154, requires that a town and country planning board be established in the capital, Honiara, and in each of the nine provinces. The permission of this body must be obtained for any development. The term "development" is defined as meaning, subject to certain specified exceptions, any building, mining or other operations, in, over, or on the ground and also any material change of use of any building or land. The Board is also required to establish a planning scheme for all planning areas within its jurisdiction, and this planning scheme is required to be taken into consideration by the Board, along with other material considerations, when considering whether or not to grant permission for development.

The enforcement of planning requirements is, in practice, not very strong, and settlements which do not comply with town planning requirements have grown up within, and on the boundaries of, the capital, Honiara and the larger provincial towns such as Auki, Gizo and Maki

5.0 Resolution of Land Disputes

The method of resolution of disputes relating to land depends upon whether the land which is in dispute is customary land or non-customary land.

5.1 Customary land

Since 1942, the Local Courts Act, now Cap 19, has provided that a local court has jurisdiction to determine disputes about customary land, but, since 1995, only if the dispute has been first referred to chiefs and it is certified that no decision wholly acceptable to the parties to the dispute has been reached. Appeals from a local court may be heard by a Customary Land Appeal Court, with appeal to the High Court on matters of law, only, but not of custom. This legislation has, since the civil disturbances of 1998 - 2003, been in most places a dead letter, as neither local courts nor customary land appeal courts have been operating. More generally, attempts are being made to establish some alternative structures to replace the defunct local courts and customary land appeal courts.

On the island of Guadalcanal, because disputed land claims played such a part in the civil tensions in 1998 -2003, a Commission of Inquiry was established in 2009 to try to determine the ownership of all disputed areas of land on that island, and was expected to present its decision in 2010. However, in 2010 the Commission was disbanded amidst charges of nepotism, inefficiency and corruption, and it is unclear what the outcome of its activities will be or how the controversies about ownership of customary land on Guadalcanal will be resolved.

5.2 Perpetual and fixed term estates

Disputes about ownership or obligations of owners of perpetual or fixed term estates, and also about leases, are determined by the ordinary courts, i.e., the High Court and Court of Appeal.

5.3 Public land

Disputes about what land is public land, and about the acquisition and alienation of public land, are determined by the ordinary courts, i.e., the High Court and Court of Appeal.

6.0 Current Land Issues

There are several very important issues relating to land in Solomon Islands remaining to be resolved:

6.1 Disputed ownership of land on Guadalcanal island

As mentioned, disputes about land rights were one of the main causes of the civil conflict at the turn of the century. This is such a large and complicated issue that a three person Commission of Inquiry was set up in 2009 to try to resolve this issue, but this was disbanded in 2010, and it is unclear what will be the outcome of this inquiry and how the disputed claims to ownership of land on Guadalcanal will be resolved.

6.2 Disputed land ownership in other parts of the country

The machinery established in earlier times for determining disputed ownership of customary land, i.e., local courts, and customary land appeal courts, has basically broken down since the collapse of central government at the time of the civil tensions at the beginning of this century.

6.3 Leasing of customary land

At present there is no clear process by which customary land owners can lease their land, unless they convert it into a perpetual estate. Similarly there appears to be no way that they can raise mortgage finance or loans secured against their land in order to develop the land or to use the land as security for entrepreneurial enterprises.

6.4 Poor management of government land

Government land in Solomon Islands has been largely overlooked and neglected in recent times, and serious allegations of inefficiencies and incompetence in the administration of Government land have been made, as well as unlawful and corrupt land dealings. Exactly how much land is owned by the Government is not known, nor what is its potential for generation of income for Government. A full audit of Government land is something that seems to be called for urgently.

6.5 Claiming back of public land

Some land compulsorily acquired by Government for public purposes is claimed by the original owners, either because the Government has not paid the appropriate compensation for the land, or because the land is not being used for the public purpose for which it was acquired.

6.6 Restricted registration

Section 195(1) of the Land Act requires that land is registered by co-owner in order to meet the requirement, although this requirement, although it may give rise to serious misunderstandings between their descendants, and is often avoided by the limited number of transactions.

6.7 Conflicts between rights

Conflicts between primary and secondary rights and benefits arising from extractive industries of the logging industry in Solomon Islands. In Solomon Islands, proposals to recommence mining.

6.6 Restricted registration of names of co-owners

Section 195(1) of the current Land and Titles Act, Cap 133, provides that where an instrument is registered by co-owners, only the five first named will be shown on the register. This requirement, although justifiable on grounds of convenience of the staff at the land registry can give rise to serious misunderstanding, genuine or deliberate, on the part of the co-owners, and their descendants, and several serious disputes have occurred which have been contributed to by the limited number of names of co-owners appearing in the register.

6.7 Conflicts between rights holders

Conflicts between primary and secondary rights holders and the inequitable distribution of benefits arising from extractive industries and land exploitation have been a regular feature of the logging industry in Solomon Islands and similar problems look likely to continue with proposals to recommence mining in Solomon Islands.