Justice Delivered Locally
Solomon Islands

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This literature review is a product of the collaboration between the Australian Agency for International Development (AusAID) and the World Bank on the East Asia and Pacific-Justice for the Poor (EAP-J4P) Initiative.
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1. Introduction

This literature review is guided by three questions about justice delivery and dispute resolution at the community level in Solomon Islands:

1. What mechanisms have historically been in place to resolve disputes at the community level in Solomon Islands, and what information is available about how these have worked?

2. What mechanisms (formal and informal) are in place in Solomon Islands at the community level today for dealing with civil and criminal matters and customary land disputes, and what information is available about how these work?

3. What role have churches and nongovernmental organizations (NGOs) historically played in the delivery of justice services at the community level in Solomon Islands and what is known about their present role?

The survey also considers issues of local governance and the overlap between governance and justice institutions on the one hand, and these dispute-resolution mechanisms on the other.

The approach adopted here is necessarily historical, and the review is divided into three sections. The first covers the period from the first European contact in the sixteenth century until the Second World War (or more relevantly, the “Pacific War”). The second covers the period from the end of the war until independence in 1978. The final section covers what is in many ways the most complicated period, from independence to the present day. A breakdown in governance occurred during this period in Solomon Islands, which led to a regional intervention mission to restore political and economic stability. Solomon Islands are still recovering from this nationally disruptive episode, and as the review will show, we still have little detail about what is happening at the local level in terms of justice delivery.

Some significant themes emerge from the historical survey. There was a shift from an early colonial view that “customs” were something to be excluded from legal forums, to an attempt, in the twentieth century, to accommodate “customary law.” There was also a building resentment from Solomon Islanders to the imposition of Western systems of government, law, and justice, which resulted in a period of civil disobedience in some areas after the Second World War. During this episode, for example, local communities on the island of Malaita attempted to codify a system of customary law based on ancestral rules and taboos and to develop a hierarchical system of “chiefs” as an alternative to British rule (Laracy 1983). While the civil disobedience movement was suppressed in due course, the idea of a dichotomy between “traditional” law and leadership and government rule became institutionalized, and a preoccupation with how these two systems should be articulated has been a feature of governance and development-policy planning to the present, particularly in relation to justice delivery at the community level.
The review notes that since the intervention of the Regional Assistance Mission to Solomon Islands (RAMSI), government advisors have attempted to weigh the pros and cons of customary leadership and conflict resolution and debate its place in restructuring and rebuilding governance. At the same time, some evidence from research at the local level indicates that people are developing a pragmatic approach that utilizes contemporary indigenous leadership (which may or may not be “traditional”) and government agencies as circumstances demand. It is also clear that the church (of several denominations) has had a very long and significant influence on local affairs and its efficacy is more welcome among villagers than that of agencies locally perceived to represent the government. As noted in the conclusion, an inference is that a hybrid local court system with strong community input would serve contemporary and future needs.

1.1 Section One: First Contact to Pacific War

Solomon Islands are composed of six substantial islands and a number of tiny atolls in the region of the Pacific known as Melanesia. The islands are Choiseul, Guadalcanal, Malaita, New Georgia, San Christobel, and Santa Isabel. It is important to note from the beginning that this collective identification is historically European, and does not reflect the view that the inhabitants had of themselves or the people around them before European contact and colonization. Indeed, the inhabitants saw themselves as culturally diverse, and many of the groups now seen as part of a nation were unaware of each other’s existence for much of their history. Further, those who were acquainted regarded each other as “foreigners” and potential enemies.

Early documentation

The earliest literature on Solomon Islands comes from a Spanish expedition of 1568 that was both a voyage of exploration and conquest and a search for gold. The biblical reference to King Solomon’s gold was an inspiration for adventurers of the era, hence the designation “Solomon Islands.” The Spanish record of this expedition (Amherst and Thompson 1901) was ethnocentric and heavily influenced by the Christian values of the period, and thus the islanders were depicted as cannibilistic headhunters in need of conversion to Christianity. The Spaniards left after six months, without finding gold. Their impact on the local way of life appears to have been slight, but they left descriptions of the people that have proved valuable to historical scholars. They noted in particular the great diversity among social groups that were autonomous political entities¹ and in a state of continual hostility and warfare (Amherst and Thompson 1901).

However, there is nothing of use in these accounts so far as details of dispute settlement within small groups are concerned.

The next phase of documentation began in the early 1800s, as regular visits by whalers and traders began to intensify. Accounts by these European travellers are summarized in Bennett’s definitive history of Solomon Islands from 1800 to 1978 (Bennett 1987, 21–44). They contained little that is relevant to the focus of this review, except for their reinforcement of the Spanish

¹ There are more than 70 speech communities in Solomon Islands; these can be regarded as distinctive ethnic (or ethno-linguistic) groups, or small societies. This diversity is common in Melanesia. Papua New Guinea, for example, has more than 750 ethno-linguistic groups.
perception of cultural diversity, and their view of the speed with which the islanders adopted objects, material techniques, and variants of European languages from the visitors.

From the middle of the nineteenth century, a more detailed and reliable body of literature developed with the arrival of Christian missionaries representing the Anglican Melanesian Mission (MM), and later the Evangelical Queensland Kanaka Mission. The Solomon Island branch of the latter was renamed the South Sea Evangelical Mission (SSEM) in 1907. In an attempt to gain a clear understanding of islanders’ beliefs and behavior in the interests of conversion, a number of missionaries conducted research in whatever society they were posted to (for example, Fox 1924; Hopkins 1928; Ivens 1927; Penny 1887). From this came an appreciation of the linguistic diversity in Solomon Islands and the variety in social organization and leadership, and a rough sense of the causes and rationales of dispute and warfare. Nothing is said in these accounts to indicate that Solomon Islands’ societies had any indigenous form of courts, or moots. Rather, they were depicted as conducting blood feuds of varying intensity, for which a number of causes were noted, including sorcery, theft (for example, of canoes or pigs), adultery, abduction of women, curses, and killings (Ivens 1927, 259; Hopkins 1928, 169–173; Kuschel 1993). These feuds sometimes abated after compensation payments were agreed to between the groups involved.

**Anthropological research**

In the 1930s, social anthropologists using participant-observation techniques began to arrive in various parts of Solomon Islands. Their research, involving the comparative study of specific societies (for example Hocart 1931; Hogbin 1934, 1938, 1939), reinforced the implications of earlier observation that there was a great deal of variety in social organization throughout Solomon Islands, and that it would be unwise to attempt generalizations about the peoples of what had by then become a British Trust Territory. Hogbin, for example, catalogued five different types of organization on the northeast coast of Guadalcanal alone, finding both matrilineal and patrilineal descent systems and estimating that Guadalcanal had about 20 language dialects (Hogbin 1938).

In the anthropological literature of this period, we find more detailed accounts of traditional dispute resolution (or at least management) and an attempt to delineate customary law. Hogbin’s findings in parts of Guadalcanal and Malaita were that headmen (they were not “chiefs”—see below) traditionally had some authority with respect to feuds and wrongdoings, in that they could withhold village resources as a sanction. In the case of problems *between* groups, as well as blood-feuding and the use of specialist killers—for example the *ramo* of Malaita (Keesing and Corris 1980, 17–18)—there was sometimes a meeting of headmen and compensation was arranged. Sorcery was not only a significant cause of disputes but also a sanction *against* wrongdoing. Personal violence was also a way of responding to wrongdoing, and brawling was not uncommon (Hogbin 1934, 246–48). Seducers of young girls were killed, or at least obligated to pay compensation to the girls’ kin, and death was the punishment for adultery (Hogbin 1944, 259–60). An inference of these findings, again, is that “courts” or moots were not a traditional feature of these societies.
Hogbin (1944) also provided information on the effects of the administration of law (which was based on the legal code of England) through colonial district officers in the early 1900s. The district officer was assisted by police and some native officials—headmen, assistant headmen, and village constables. The previously mentioned differences in social organization, as well as different experiences of Christianity, are important here. Hogbin contrasted the disappearance of much traditional custom in coastal parts of Malaita by the 1930s (due to the effects of SSEM Christianity) with the retention of customs in inland Malaita (which was less affected by missions). In some areas there had been resentment toward the white man’s legal system and what local groups regarded as its transgression of their traditions (Hogbin 1944, 260). Keesing and Corris give the example of *ramo* assassins who administered justice in the eyes of Malaitans but who were sentenced to death as criminals by the colonial administration (1980, 30).

**Reforms to local-level governance**

Attempts by the administration to reform local-level governance after a period of paternalistic rule (Solomon Islands had been declared a Protectorate in 1893) and to give local people a greater say in the conduct of their affairs produced complicated results (Hogbin 1944; Bennett 1987, 280–81). The administration was attempting to accommodate “custom,” though it found this difficult to define and codify for legal purposes. There was by this time greater recognition by the administration of heads of small social groups, and local councils, “native tribunals,” and “native courts” were being trialled and set up (Bennett 1987, 281). Community elders chosen by local headmen were given authority to sit on these courts, which dealt with criminal, civil, and “customary” cases but not murder, rape, and incest (these went to district courts). Small fines and compensations could be locally imposed, but larger ones had to be approved by a district officer (Hogbin 1944, 261–62).

The degree of compliance with this system, however, varied in different areas according to whether local groups had been Christianized (and thus were no longer used to obeying traditional elders and headmen) or not (in which case they were more used to obeying headmen and therefore more compliant). Further, mission teachers objected to “heathen” elders having authority in the native courts, arguing that Christians should be tried by a Christian tribunal (Hogbin 1944, 267). Christian law systems of the time had become quite punitive: for example, the MM had instituted “church chiefs” who reported offenses such as adultery and “fornication,” resulting in excommunication—and some missionaries administered floggings as punishment (Whiteman 1983, 206–7).

In the literature of this period (just before the Pacific War), then, we find the first critical appraisals of the effects of the Christian missions on local affairs, partly manifest in reactions to the colonial administration’s attempts to set up local-level justice mechanisms. Hogbin records an insular response to “government law” among some Malaitan groups: a village headman was asked whether a visit by a government commissioner to the local court would be seen as “interference in local affairs”; the headman said it would not, since the court was a foreign institution (Hogbin 1944, 266).

Hogbin’s 1944 article is also important inasmuch as it appears to be one of the first documents to use the term “customary law,” which he attempted to distinguish from “criminal” and “civil” law
in the jurisdiction of the native courts.\(^2\) Thus he provided a quasi-catalogue of “customary law” among Malaitan groups, covering seduction, wives needing to obtain their husbands’ permission to go visiting, swearing, interfering with people’s sacred possessions, behavior toward the dead and cemeteries, menstruation and childbirth, taboos surrounding sexual intercourse, the sequestration of man-killers, and the seclusion of priests after ritual sacrifices (1944, 269–71).

Hogbin’s introduction of the phrase “customary law” exemplifies a development that has since been criticized by legal anthropologists, who nowadays argue that the conventional notion of “customary law” was generated by colonialism itself. There are some resonances between the Solomon Islands’ process and the case of some African territories where, as Chanock (1985) showed, the “customary law” that was codified during the colonial period was not a survival from the past but was a product of the colonial encounter. There, as in Solomon Islands, the combined effects of missionaries (who joined biblical law with English legal procedures and sometimes administered harsh punishments, including flogging), colonial courts, and the responses of indigenous peoples generated what became “customary law.”

With respect to Solomon Islands, Akin (1999, 48–49) writes of Malaitan dissatisfaction with the government’s adoption of the idea of “customary law” for application by government-appointed “headmen” during the 1940s. The colonial creation of “customary law” implied wrongly that “a timeless, enduring, and pre-European ‗native custom’ existed that could be isolated and authenticated for legal purposes” (Akin 1999, 49). Another important consequence of the creation of “customary law” is that it can become a retrospective rhetoric of postcolonial societies desiring to reassert traditional identities.

**Effects of Christianity**

More recent literature has revisited the period between the introduction of Christianity and the Pacific War, providing a critical overview of the various effects of Christianity on Solomon Islands’ societies.

By the late 1800s, some areas were significantly rejecting customary practices, especially if a local person had become a missionary. This, for example, created a crisis of leadership on Nggela (in what is now Central Province), as traditional “big man” authority was undermined. To address the problems being caused by overwhelming conversion, a “Native Parliament” was instituted on Nggela in 1888 (Whiteman 1983, 143). Whiteman (1983, 171–228) has documented the growing influence of Christian churches in the early twentieth century and an increasing paternalism during the period. The Nggela process was typical of the time, he maintains, when old authority was replaced by a new one: old morality based on village structure and maintained by custom, *tabu* (the body of taboos), and elders gave way to new authority taught by the church (1983, 226). There were now less drastic sanctions against offenders, with excommunication replacing the traditional death penalty. Local people learned the new concept of “falling into sin,” a kind of euphemism for adultery and fornication that had previously been punished by death.

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\(^2\) Hogbin was a prominent anthropologist and influential in the colonial administration of his day.
Whiteman suggests that for many Melanesian converts, Christianity was seen as an alternative form of tabu. White missionaries emphasized God as a reconciler, but as many Melanesians adopted an Old Testament view of God as a punisher, sickness, “natural” disasters, and misfortune were seen as punishment from God for individual sin. Traditional sorcery had been more powerful than Western ethics systems for enforcing moral behavior, and consequently the forbidding of sorcery by Christian authority “lifted a very powerful traditional sanction from such things as petty thievery, etc.” (Whiteman 1983, 226–27). Whiteman claims that the nature of many Melanesians’ conversion to Christianity had been “superficial” up to the prewar period, and as the initial enthusiasm of first generation Christians began to wane, much of village Christianity had become apathetic and routine-bound (1983, 228).

Hilliard (1974) has examined the relationship between church and “empire” in Solomon Islands up to the Pacific War. The Anglican Church was numerically dominant. The SSEM was closely associated with trading and plantation enterprises, while the Marists and Seventh-day Adventists (SDA) were “conspicuously apolitical, except in matters which affected them directly.” The MM saw itself as “the conscience of the protectorate,” pronouncing on controversial issues (Hilliard 1974, 102). The Methodists were “preoccupied with Western-style material progress” (Hilliard 1978, 194), pursuing “racial salvation” through economic development and self-help (1978, 225). The expansion of Christianity in the 1920s and 1930s was such that by 1942, over two-thirds of the population were either baptized or resident in a Christian village and the influence of missionaries “extended into all parts of Solomons life” (Hilliard 1974, 110). Hilliard notes the reaction of islanders to government attempts to impose law at a local level. There was a widespread feeling that government laws were alien to daily lives, a set of rules imposed on people from the outside, and villagers turned to missions for advice on whether they should obey the government commands. There was friction between the government and missions in this period and “by the 1930s the missions were no longer seen by the government as a useful means of social control but as threats to its legitimate prestige,” leading to an increasing lack of cooperation between government and the churches (1974, 111).

Interestingly in terms of dispute settlement, Christian intervention may have introduced the idea of mediation to some parts of Solomon Islands (Tippett 1967; cf. Scheffler 1965, 23). Tippett describes a blood feud on Choiseul in the early 1900s involving more than 140 known deaths, which was ended through mediation by an indigenous Methodist Christian teacher, although the process was frustrated to an extent by punitive government interventions (Tippett 1967, 190–96). The difference between the Christian mediatory approach and the government’s approach (punitive raids, death penalties for killers) proved beneficial for the Christian endeavor: “[t]he indigenous attitudes towards the indigenous Christian teacher were infinitely better than those towards the island police” (1967, 196).

Summary

The available literature suggests that in earlier times, disputes were not taken into court or “moot-like” meetings but were addressed variously by direct action (warfare, revenge attacks), the sanction of sorcery, headmen’s or big men’s interventions, and compensation payments. Clearly the interventions of missions, traders, and latterly government agencies had a variety of effects on traditional life and social organization, to the extent that it is unlikely that long-term “customs”
had remained unchanged among Solomon Islanders by the time of the Pacific War. Native courts, set up under the Native Courts Ordinance of 1942, were an innovation attempting to create a systematic, quasi-legal forum that had not previously existed in the diverse societies of Solomon Islands. In the process, a notion of “customary law,” as distinct from criminal and civil law, was introduced.

1.2 Section Two: Postwar Period to Independence

The turmoil experienced by Solomon Islanders during the Pacific War is not a focus of this review, but its wide-reaching consequences in relation to law and dispute resolution cannot be ignored. An understanding of the period of civil disobedience from the late 1940s into the 1950s is vital to a competent commentary on more recent times. The complex combination of government and missionary rule in the early twentieth century had not been popular, and during the late part of the Pacific War, after the British were driven out by the Japanese, Solomon Islanders found the occupying Americans more friendly and egalitarian (Bennett 1987, 292; Keesing 1978a; Laracy 1971). Their war experiences and a realization that land had been alienated during colonial rule contributed to widespread opposition to the resumption of British control following the war, and there were attempts to install indigenous forms of governance. This phenomenon has been the subject of a significant amount of literature.

Postwar local political movements

In particular, a variety of analyses of the movement known as Maasina Rule (or “Marching Rule”) has been offered (for example, Allan 1951; Belshaw 1948, 1950; Burt 1982; Keesing 1978a, 1982a; Laracy 1971, 1979, 1983). The most studied area in this regard was the island of Malaita, although similar movements (by the same or different names) occurred on Guadalcanal, Ulawa, Santa Isabel, and San Cristobal (see Bennett 1987, 297–301, Laracy 1983, 22–25, Davenport and Çoker 1967, 127–28), and their legacy can be found in enduring political attitudes in several other regions of Solomon Islands. On Guadalcanal in particular, the historical influence of these movements cannot be underestimated. For instance, Tara (1990, see also Allen 2007, 108–11) has traced the development of a group started in the 1950s on Guadalcanal that was influenced by Maasina Rule and known as the Moro Movement (after its founder, Pelise Moro). The Moro Movement is described by Tara as a sociopolitical pressure group (1990, 13), and while it declined in the 1980s, its values and goals remained influential among Guadalcanal activists involved in the unrest that led to the Guadalcanal uprising of the late 1990s (see Allen 2007, 111, 129–62, 187–200).

Some commentators have treated movements like Maasina Rule and Moro as “cargo cults” (for example, Allan 1951), but most scholars regarded Maasina Rule in particular as a politico-religious movement focused on community reorganization, communal work, a hierarchical organization of “chiefs,” and questions of how to negotiate with the colonial government. A more recent Solomon Island scholar, the late John Naitoro, has even suggested that the Maasina Rule

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movement was fundamentally a response to unfair land acquisition by the colonial government and traders and that the relationship between people and land was a basic principle for Maasina Rule leaders (Naitoro 2000, 5–6).

The two most important aspects of the Maasina Rule movement for the purposes of this review are its introduction of a uniform system of “chiefs” and its attempt to codify “kastom.” In combination these amount to what literature of the early 1980s referred to (perhaps misleadingly) as the “invention of tradition” (see Keesing and Tonkinson 1982; Hobsbawn and Ranger 1983). The literature examined the political and social use of so-called “traditions” that were actually recent constructions or manipulations of collective memory. The “invention of tradition” notion has since been analytically modified in relation to Pacific societies (for example, Otto and Pedersen 2005; Turner 1997), attempting to dispel the connotations of “invention” (which implies deliberate fabrication) in favor of more nuanced understandings of how traditions affect, and are conceived by, contemporary peoples. Current references to “chiefs” are commonly used by scholars as an example of the “invention” of tradition (see, for example, White and Lindstrom 1997).

**Chiefs and kastom**

“Chief” is a problematic category in the Pacific, compounded by modern popular usage, as terms like “chief” and even “paramount chief” have become commonplace in societies where scholars would argue no chiefs ever existed. An attempt to provide a typology of leadership in Pacific societies was made by Sahlins (1963). His model contrasted “chiefs” (hereditary leaders with immutable status) in Polynesian societies with “big men” (nonhereditary leaders by achievement rather than ascription) in Melanesia. Sahlin’s model has since been shown to oversimplify a complex situation mostly with respect to Melanesian societies, where both ascribed and achieved leadership can be found in the form of quasi-chiefs, headmen, big men, and “great-men” (see, for example, Godelier and Strathern 1991; Feil 1987; White and Lindstrom 1997). There is limited evidence of any full-fledged chiefdoms (that is, territories that were politically governed by a chief with some form of executive organization) in Solomon Islands in former times. 4 Small societies were variously led by village headmen and big men, and from the late 1800s, also by church-appointed or government-appointed headmen. As Keesing has pointed out, the political project of Maasina Rule in the late 1940s created a universal notion of “chiefs” among societies of which many did not even have headmen (Keesing 1982a, cf. 1997, 251). Importantly, these “chiefs” officiated in courts set up under Maasina Rule, where they applied “customary law” to parochial disputes (Laracy 1983).

The involvement of Maasina “chiefs” in courts needs to be understood in tandem with the other aspect introduced above, the attempt to codify kastom. This major project was connected to political demands in the late 1940s for the recognition of customary law rather than colonial law

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4 According to Watson-Gegeo and Gegeo (1990, 166), there was a “paramount chiefdom system” among the Kwara’ae of Malaita that broke down two centuries ago. No precise details of the system can be found by the author of this review. Hviding and Bayliss-Smith describe traditional hereditary leaders among the Morovo of New Georgia, using cautionary quotation marks when referring to them as “chiefs” (2000, 39–40). Schneider (1998) describes leaders of the Kazukuru of New Georgia in former times as chiefs.
(Keesing 1982a, 360). While kastom at first sight seems merely a pidgin for “custom,” scholarly literature on the Maasina Rule period shows this to be an oversimplification.

In the first instance, kastom meant a set of rules imposed by ancestors, as distinct from everyday customary behavior (Keesing 1982a; Burt 1982). Keesing (1982a) has since elaborated on this meaning usefully. The attempt to codify kastom was based on historical contrasts between native and government ideas about the severity of offenses and how they should be dealt with. For example, colonial law had treated adulterers relatively lightly and hanged as murderers people who killed adulterers, whereas traditionally, many societies viewed adultery as a fundamental and major offense against morality and regarded the killing of adulterers as legitimate. Also, offenses that Malaitans had regarded, for example, as calling for compensation in shell valuables were treated as criminal cases by colonial law (Keesing 1982a, 360). The codification of kastom was intended to obligate the postwar administration to accept it as legitimate and to accede to local courts presided over by experts on kastom (Keesing 1982a, 360).

Kastom (that is, ancestral rules in living memory) meant different things for different groups according to their experience of, and reaction to, Christianity and colonial rule (Keesing 1982a, 1982b). This made the matter of codification more complicated. During this period, local people’s views of Christian missions were affected in relation to their views about the compatibility of the kastom now being codified with the cultural effects of missionization. Some societies saw mission influence as destructive of kastom, others saw kastom as compatible with Christianity (Keesing 1982a, 370–71). Hilliard (1969), for example, discusses the case of the SSEM, which enjoyed early success in its mission, but had the weakness of many of its policies exposed by the aftermath of the Pacific War. The ostracism of its missionaries during Maasina Rule “showed that their inculcation of a spirit of independence into the native church, when unaccompanied by a corresponding sense of personal identification, was capable of destroying virtually the entire mission edifice” (1969, 64). Whiteman (1983, 268) similarly saw SSEM paternalism and inflexibility toward local culture as responsible for the ostracism of its missionaries by Maasina Rule followers, in contrast to the MM, whose form of Christianity was seen as compatible with kastom.

Maasina Rule was repressed by the early 1950s, but part of its legacy has been a preoccupation with kastom (redolent with invocations of “customary law”) in Solomon Islands generally, as well as a popular discourse on “chiefs” who are seen as the representatives of tradition. Commentators have emphasized the unstable nature of kastom concepts, whose meanings are constantly changing (Akin 1999, 38; Keesing 1982a; Burt 1982). Keesing argued that the flexibility of the idea of kastom has allowed it to be used in different ways “to justify anticolonial and antichristian conservatism or to rationalize partial abandonment of ancestral ways” (Keesing 1982a, 371). And while kastom may represent “an edited as well as idealized and mythicized version of the past,” it can be used to legitimize customary law in opposition to colonial (or neocolonial) law (1982a, 370). The flexibility of the notion of kastom is perhaps reflected in conflicting reports about native courts’ adherence to kastom in the 1970s. For example, a government select committee that toured Solomon Islands in 1976 reported a universal failure of native courts to follow kastom (Solomon Islands, Ministry of Agriculture 1976, 12), while a legal specialist, after examining the substance of court records in 1977, found evidence that kastom was indeed followed (Tiffany 1978, 34).
Local governance, law, and kastom

There was a slow rebuilding of Solomon Islands’ economy after the war and the subsequent social unrest, and (a lesson of the Maasina Rule movement) a recognition that administrative structures had to be more inclusive of local representatives. Toward this end there were training courses for headmen, council members, and clerks (Bennett 1987, 305). Local councils and native courts, with government-appointed headmen and “chiefs” officiating, became widespread. Some scholars (for example, Bennett 1987, 309) have portrayed the Maasina Rule and similar movements as achieving few of their aims, inasmuch as “customary law” was already being codified by the prewar government and native courts and councils were already being set up. Others (for example, Keesing 1982a; Keesing and Tonkinson 1982; Laracy 1983) have emphasized their contribution to senses of ethnic identity, tradition, and kastom in subsequent decades.

In the 1960s administrative structures involving “area committees” of local leaders and chiefs and 18 elected “local councils” representing rural areas5 throughout the islands (Premdas 1982, 243) were built up. There was a Central Legislative Council and an Executive Council (replacing the previous “Advisory Council”) with an increasing Melanesian membership. Overall the pace of the colonial administration’s development of economic and political institutions was accelerating toward inevitable independence for Solomon Islands. At the local level, native courts were institutionalized, dealing with minor criminal, civil, and “customary” cases (as they had just before the Pacific War), as well as land cases. Talasasa described a hierarchy of dispute-settlement forums as they were at 1970 as beginning with community-level discussions; the next stage, in the event of the failure of the “discussions,” was the native court (Talasasa 1970, 11).

Talasasa’s discussion displays a tendency still visible in more recent literature (see below) to deemphasize violent responses to wrongdoing in “traditional” times and imply that conciliatory processes were locally favored, thus reinforcing a sense of continuity between tradition and contemporary practice. “Discussion to settle social disputes still prevails—only the form and method used have been modified during the course of time” (Talasasa 1970, 12).

The native courts had complete jurisdiction over matters relating to customary land, with appeals to their decisions going directly to the High Court of the Western Pacific. There were more than 50 of these courts in operation by 1970, presided over by local headmen and “chiefs” (Talasasa 1970, 14–15). The place of the courts in the structure of district administration has been summarized by Tara (2002, 52–54). The (usually white) district officer was assisted by a “district headman,” who, among other duties, was president of the native court in his subdistrict. He was not supposed to “meddle in religious affairs” (2002, 52) but was to keep order with the aid of subordinates, including an “assistant district headman,” who was similar to a village constable. Both the assistant district headman and the constable were members of the native court, which

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5 One, though, was urban: the Honiara Town Council. These councils covered all islands except for the remote Tikopia and Anuta islands. Premdas describes them as successfully developing schools and medical clinics, but being hampered by Western procedures in decision making, relatively infrequent meetings, and some degree of irregularity in financial matters, leading to their decline in the 1970s (Premdas 1982, 243–44).
also had a native clerk. The court was required to meet at least once a month, and decorum
similar to that of a magistrate’s court was enforced (Tara 2002, 53–54).

Notably, Talasasa argued that there were very few land disputes in “olden times” and he linked
noted that local people often refused to accept native court judgments on land disputes and
repeatedly appealed cases. He said the courts were often indecisive and were not backed up when
they were: “At this stage ... the courts need considerably more support of their decisions if they
are to become the effective legal bodies on the local scene” (Scheffler 1971, 289). He advocated
more customary authority for the courts.

The influence of Christianity

The literature of the time shows that the influence of Christianity on local ideas about dispute
settlement had been complex. In the 1960s Tippett described Solomon Islands’ Christianity as
hard to define and analyze, due to the variety of denominations historically involved and the
geographical diversity of influence among the missions (Tippett 1967, 346). His overall
assessment at the time was that mission paternalism had created a sense of dependency among
islanders and acted against their active indigenization of Christianity (1967, 347). Other authors,
however, have emphasized the church’s contributions, particularly in the field of education (for
example, Laracy 1976, 144–57). In the 1960s and 1970s, the Christian church was increasingly
integrated into everyday life. By 1970, 90 percent of Solomon Islanders were affiliated with a
Christian denomination, and there was significant indigenization of a number of denominations:
the SSEM became the South Sea Evangelical Church (SSEC), the Methodists amalgamated into
the United Church (UC), the Adventists localized a number of senior offices, and the MM
became the Church of Melanesia (CM) (Bennett 1987, 336–37).

The complex influence of Christianity is visible in literature from anthropological studies of small
communities between the 1950s and independence (for example, Keesing 1982a, 1982b;
Scheffler 1965). It can also be seen in quasi-autobiographies of Solomon Islanders who were
active in their communities during the period (Keesing 1978b; Kwa’iloa and Burt 1997; Fifi’i
1989). The latter were sometimes church-authorized leaders at the same time that they were
engaged in secular life, a situation often involving conflict. Their recollections are sometimes
self-contradictory, indicating both locally held Christian convictions and retaliatory attitudes to
local wrongdoings and frictions. This raises questions about the degree to which the
indigenization of Christianity in the Solomon Islands actually correlates with the internalization
of its particular religious message. What is clear from this body of literature, however, is that at
village level, islanders are more amenable to church authority than to central government
authority. Nevertheless, as Scheffler’s anthropological study on Choiseul indicated, secular
approaches to conflict and dispute were still influential, with vengeance attacks prevalent and
settlement negotiations (usually an agreement over compensation payments) being a matter of
pragmatic and expedient intervention by leaders, rather than mediatory or moot procedures
(Scheffler 1965, 216–26).
Summary
Following the Pacific War, antigovernment sentiment manifested in civil unrest. A preoccupation with kastom (implying ancestral rules) and the authority of local headmen, represented as “chiefs,” were two aspects of an attempt by Maasina Rule and similar movements to reassert the traditional identities of the diverse societies of the Solomon Islands. While both positive and negative attitudes were expressed toward Christian missions during this period, the long-term influence of Christianity had come to permeate social life and to affect conceptions of tradition and traditional dispute settling. Following the suppression of Maasina Rule, villagers showed more amenability to church authority than to government authority. Native courts were institutionalized, presided over by local headmen (“chiefs”) who were often church officials, but villagers also still pursued secular and sometimes violent responses to perceived wrongdoing.

1.3 Section Three: Independence (1978) to the Present
The period from independence (1978) involved a gradual political and economic breakdown that accelerated in the 1990s. Regional discontents resulted in militant groups such as the Isatabu Freedom Movement (IFM) of Guadalcanal and the Malaita Eagle Force (MEF) in conflict with each other and with the government. There was a political takeover in 2000, which some people polemically referred to as a “coup.” As Moore puts it (2004, 20), between 2000 and 2003, “the Solomon Islands suffered a complete breakdown of its national political and economic system, arguably changing the nature of society forever....” After failure by two prime ministers to restore the situation, Australia led a regional intervention force known as the Regional Assistance Mission to Solomon Islands (RAMSI). In this section of the review, we examine literature from independence until the RAMSI intervention, and literature since RAMSI.

Pre-RAMSI literature: local courts and custom
Upon independence in 1978, “customary law” was constitutionally recognized as part of the legal system and native courts became local courts, with little change in their jurisdiction. In fact, the process can be seen simply as a renaming (see Corrin Care 1999, 99). In 1988 there were 42 local courts across Solomon Islands, hearing approximately 1,800 cases annually (Takoa and Freeman 1988, 74). Commentators emphasized that local courts should not be regarded as “customary”; as Corrin Care wrote, “these courts are only ‘customary’ in the sense that they administer customary law. Their constitution and their procedure are tainted by western concepts” (1999, 99). A prominent political figure, Andrew Nori, stated more polemically that these courts were “foreign creatures dressed in local costumes” (Akin 1999, 52).

At the same time, “traditional courts” continued to be held “unhampered by legislative rules and procedures” (Corrin Care 1999, 99). Burt describes “kastom courts” being held among the Kwara’ae of Malaita from 1978 with the approval of the local government area council (1982, 394). Daly reported in 1980 that codification of inheritance laws was still being pursued by custom chiefs, and noted “a distinct tendency to revert to custom procedures pure and simple without regard to the Local Courts” (Daly 1980, 26). The incorporation of custom procedures and rules into the legal system still remained a problem in Malaita (1980, 27).
In 1999 the Kwaio of central Malaita were still resistant to what they saw as government institutions, including local courts (Akin 1999, 51) and the Malaitans in general had been infrequent users of local courts since the time of independence (1999, 52). Meanwhile, local courts had been dramatically affected by the disappearance of area councils (local governments, which oversaw the courts) in 1996–97 during an attempt to restructure the government at the provincial level (Cox and Morrison 2004; Moore 2004, 156–57), although a voluntary hand-over of powers some years before had already seen most responsibility for the courts shift from area councils to the national judiciary (Premdas and Steeves 1985, 101). The political turmoil beginning in 1998, when government services diminished drastically, further affected the functioning of the local courts. In 1999, at the commencement of the civil conflict, it was reported that there were 33 “established” (that is, warranted) local courts (Corrin Care 1999, 102).

Local courts and land issues

The legacy of the Maasina Rule creation of “chiefs” and its preoccupation with kastom (see above) was clearly visible in local-level justice arenas. Local chiefs in Are’are (south Malaita) published a book of their “customary law” in 1981 (cited in Allardice 1984, 283), while at the same time, commentators noted that custom was changing under the pressure of modernization and urbanization (Allardice 1984, 284).

At independence the status of chiefs was recognized by constitutional provisions specifying advisory roles for chiefs in government and in 1985, the Local Courts Act was amended to expand the powers of chiefs to hear land disputes (White 1997, 230–31). Some literature indicates problems arising from the concept of “chiefs.” For example, local courts can hear customary land disputes but cannot adjudicate questions of whether land is customary or not, and in theory, can only hear cases after a “traditional” process—an attempt by “chiefs” to deal with the case—has proved inconclusive. Other literature reported some criticism of bias in local courts when hearing land matters during the 1970s, but after investigation, a Special Select Committee on Lands and Mining (1976) recommended they be retained.

Some case studies by Tiffany (1979) indicated that the kinds of decisions handed down by land courts reflected widely held values and did not undermine customary group ownership. Land disputes were becoming a dominant part of the work of local courts (Corrin Care 1999; Takoa and Freeman 1988) as a result of the gradual but intensifying turn to the commercialization of local land. For example, Burt (1982) discusses the conflict-generating difficulty of reconciling traditional, shifting land-use patterns based on subsistence needs with commercial use requiring capital investment, which ties up large areas of land for long periods (1982, 389). Scheffler and Larmour (1987) speculated on the future of customary tenure in the face of commercialization and alienation; it could become more marginalized, or it could be “more exclusive, absolute,

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6 The area councils had become run down and inefficient and disappeared in political maneuvering when a new Provincial Government Act of 1966 proposed to replace them with “area committees.” The Act was repealed under political pressure (see, for example, Corrin Care 2005, 163–64), leaving the councils in administrative limbo. They were finally abandoned through legislation in 1998.

7 Local Courts Act 1969 s12(1). The conditions regarding chiefs were introduced via the Local Court (Amendment) Act 1985.
unconditional and resistant to wider obligations,” or it could become “more traditionalised, honoured, invariant, but not a matter of day-to-day practice” (Scheffler and Larmour 1987, 320).

Given the vexed nature and historical depth of customary land issues in Melanesia generally, it should not be surprising that so many cases proved unresolvable by “chiefs” and were referred to the local courts. Palmer estimates that approximately 98 percent of disputes in the past failed to result in chiefs reaching a mediated outcome (Palmer 2005, 8). Takoa and Freeman (1988) write that “in all but a few areas there is no general agreement as to who the chiefs are” (1988, 75). Corrin Care (1999) echoes this and cites a case where defendants in a land case had challenged the jurisdiction of a “Council of Chiefs” (that is, a group of chiefs, see above) on the basis that the members did not meet a local definition of chiefs (1999, 110). Schneider describes contestations on New Georgia between “chiefs” and “landowners” arising from modifications to traditional cultural concepts in the engagement with commercial logging enterprises (Schneider 1998).

Despite these anomalies, the symbolic force of the notion of chiefs remained strong. With respect to Malaita, Keesing wrote “[t]here is a direct line, in the political thinking of Malaita cultural conservatives, between Maasina Rule as a defense of embattled ancestral custom and local sovereignty and the paramount chiefs of the postcolonial epoque, symbolically mobilized in defense of tradition against the engulfing forces of Westernization and modernity” (Keesing 1997, 260).

Christianity, kastom, and conflict

Akin, also referring to Malaita, wrote that concepts of “kastom chiefs” and “kastom law” were important, though unstable, and “their meanings have continually changed with the shifting character of the Solomons government and its relationship to Solomon Islanders” (Akin 1999, 38). The Kwaio people whom Akin had studied continued to be divided between a group who remained pagan and another that was Christianized, creating differing attitudes toward dealing with conflict—for example, SDA Christians were taught to forgo compensation in favor of forgiveness and reconciliation, while pagans demanded compensation (1999, 52–53). Akin’s research indicated ongoing conflict between “government law” and “kastom law.” Similarly, an example of the practical difficulty arising from attempting to constitutionally recognize custom, particularly when customary behavior involves killing, is indicated in a case described by Brown (1986). Here a murder case involving a man of a pagan “Kwoio” [sic] group was referred to the Solomon Islands’ Court of Appeal, after the High Court found the man guilty. The man’s extenuating claim that it was a customary duty among the pagan group to kill in revenge was not accepted (Brown 1986, 135–37).

While some “pagan” enclaves may have regarded violent revenge as legitimated by kastom, there is evidence from general literature as well as literature on specific regional areas that in many parts of Solomon Islands, the influence of Christianity had created a contemporary understanding that peaceful negotiation was a customary way of settling disputes, contrasted with the adversarial procedure derived from government law (including “common law”). Takoa and Freeman (1988, 75) suggest that this was a common view with regard to customary land cases. Watson-Gegeo and Gegeo (1990), who did research among long-Christianized Kwara’ae on
Malaita, describe informal dispute-settling (or “disentangling”—see Watson-Gegeo and White (1990)) meetings conducted with decorum (1990, 168–69).

The picture created here seems far removed from former times, when “killing was central to the maintenance of the existing order” (Bennett 1987, 122; Burt 1982, 379–80). As Keesing says, kastom can be an edited, idealized, mythicized version of the past: “The Kwaio who today demand customary jurisdiction in criminal cases on grounds that payment of compensation restores social harmony, conveniently forget the decades of bitter feud that divided kin groups” (Keesing 1982a, 370). Here the complex aftermath of the Maasina Rule imperative to codify kastom is discernable. Of the Kwara’ae, Burt (1982) comments: “Kastom ... consists not of the values of the pre-colonial society so much as of the Kwara’ae adaptation of these values to the changing times ... Kastom represents the values by which they would like to live...” (1982, 381, emphasis added). Hviding shows how contemporary kastom in the Marovo area of New Georgia is presented by local people as oppositional to Western ways, when in fact it reveals the complex influence of interaction with foreign traders, Christianity, and colonial bureaucracy over a long period of time (Hviding 1993).

Women’s groups and other NGOs

Discussion in the literature about the relationship between state law and kastom was changing during this period. Questions about the continuity, or lack of it, between customs of the distant past and current values represented as kastom were sidelined, as political instability increased in the 1990s and violence became increasingly prevalent, in both urban and rural areas. Different issues now emerged. Matters of gender, hardly addressed in previous literature, were raised in two linked regards. One was the potential value of women in peacemaking, arguing that their cultural roles as caregivers and purveyors of Christian values made them particularly qualified, and the other was gender and domestic violence, sometimes within the context of human rights.

With respect to women’s roles, Liloqula and Pollard (2000) saw the upheavals of the 1990s as partly due to the constitutional (1978) recognition of variant customs and to “ethnic tension.” “No thought was given to planning for the reinforcement of community values when groups of different origins come together due to internal migration” (2000, 6). The recently formed “Women For Peace” group in Honiara was presented in this discussion as a useful agent for peace, stressing the role of women in culture and Christianity (2000, 10–14; Pollard 2000). A similar argument for the positive agency of women was made by Boseto (2000).

Also, “coalface” literature from women involved in women’s support groups, which were usually church-connected and concerned about protecting and empowering women (for example, Barnes 2000; Billy 2000; Ramosaea 2000), linked women’s agency to the problem of gender and domestic violence. Billy, for example, pointed out (2000, 173) that domestic violence had only recently been recognized as a problem in Solomon Islands (a National Council of Women was established in 1980). She also drew attention to the negative responses of the police and other state agencies that did not want to acknowledge the problem and gave lenient sentences to offenders, implying that existing legal channels were not adequate (2000, 174–76). These commentaries cut across the kastom/law dichotomy, implying that both the law and “customary” attitudes were inappropriate in contemporary Solomon Islands society, and that women’s rights
needed to be addressed. An inference invited by this recent wave of literature is that previous concerns about the relationship between state law and kastom (manifest in discussions about local courts and chiefs) were becoming redundant in the face of recent social change.

Ramosaea’s brief description of the recently established Solomon Islands Family Support Centre focused particularly on contemporary domestic violence (Ramosaea 2000), drawing the problem more directly into the context of women’s rights. This is a manifestation of a growing discourse on human rights—and women’s rights in particular—in the Pacific Islands region in recent years that has treated “custom” and “traditional attitudes” as problems with respect to the status and treatment of women (for example, Farran 2009, 162–94). Women’s groups were part of a significant rise in the number of NGOs in Solomon Islands in the 1990s, where church organizations had previously dominated in nongovernmental projects.

According to Moore (2004, 30–32), 95 percent of Solomon Islanders identified themselves as Christians in the 1990s (a few were Baha’i and Muslims) and churches were active in rural and vocational training, running hospitals, and community projects. Moore categorized NGOs of the period into three groups. The first group included church-based community groups, the Red Cross, Scout and Guide movements, trade unions, and traditionally based organizations tied to central government control. The second group, from the 1970s and 1980s, consisted of groups pursuing community-development projects, often beyond the influence of politicians and public servants. A third group of NGOs, dating from the 1980s, included international groups such as Greenpeace and the World Wildlife Federation, as well as indigenous organizations like the Solomon Islands Development Trust (SIDT) (Moore 2004, 33–34).

**The postcolonial Westminster system, tradition, and dispute resolution**

Literature attempting to explain “what went wrong” in the postindependence Solomon Islands criticized the inadequately modified political structures left by the British, as well as anachronistic traditional attitudes. Larmour (2001) blamed in part an unmodified and locally inappropriate Westminster system. Bennett (2002) argued that Solomon Islands’ politicians had “done no more than tinker” with the political structures because these had “given such men a degree of personal power in the disposal of resources” (Bennett 2002, 1). At the same time, she questioned traditional ways of dealing with conflict: “This talion law made for a sort of rough justice, but it did not foster security because the innocent and the weak, especially women, were often victims taken or offered to satisfy constant ‘payback’” (2002, 5). Turnbull (2002) argued that structural changes were needed and that traditional practices were impeding development: “practices based on the power relationships and means of social control practised in traditional societies pervade the state today” (2002, 200).

A feature of this type of literature is that bureaucracies and other areas of governance are seen to be hampered by traditional ideas about status and obligations to kin. Turnbull calls this the “personalization” of power (Turnbull 2002, 194), and argues that the checks and balances that once made such systems efficient in small-scale societies are no longer present in the modernized state (2002, 195). She also draws attention to the inefficiency of the police in terms of law and order. Seeing the Solomon Islands state as “a blend of traditional behaviour and Western liberal
structures,” Turnbull regarded local NGOs, including church and women’s groups, as important agents in improving the lot of ordinary Solomon Islanders (2002, 199–200).

According to Corrin Care (2002), attempts had been made to harmonize state and customary law but not with great success, and Solomon Islanders showed little hesitation in resorting to traditional dispute resolution, including claims for compensation and physical violence (Corrin Care 2002, 209–10). She argued that “[t]he compensation mentality is a serious obstacle to restoration of law and order and progress to economic recovery” and that “it is too late to go back to customary societies” (2002, 211). Schoeffel (Schoeffel and Turner 2003) also distrusted “‘traditional authority’ which often conflicts with the modern legal kind of authority which is needed to promote the idea of public good and give priority to local-level service delivery” (2003, 5). Like Turnbull, Schoeffel saw traditional authority as based on personal power, compared negatively to legal authority and the ideal of modern bureaucracy (2003, 5). With respect to land, traditional systems were also subject to negative evaluation by some legalists. Nonggorr (1993) pointed out that customary rules relating to land use and transfer were closely associated with religious beliefs, which he said was detrimental to attempts to adopt tenure and registration policies considered to lead to economic development (Nonggorr 1993, 288).

In the late 1990s also, ideas of alternative dispute resolution (ADR)—promoted as resonant with putative “traditional” ways of solving disputes through negotiation—were introduced into discussions about conflict resolution in Solomon Islands. Corrin Care (1999) was critical of ADR: “The irony of referring to [ADR] as ‘alternative’ in former colonies and protectorates, where the Western system is in fact the introduced alternative to traditional methods of dispute resolution which include many of the merits claimed for ADR, is striking” (1999, 113). However, in roughly 2000, the concept of “restorative justice” was introduced to the Pacific Islands, reinforcing ADR discourse and extending its parameters beyond minor disputes in local communities. It could now be applied to major conflicts in the region, such as the long-running conflict on Papua New Guinea’s Bougainville Island that had been triggered by a local revolt against a copper mine in the 1980s. The discourse of “restorative justice” distinctly emphasized “healing” and the restoration of “social harmony” in preference to punitive responses to crime (see, for example, Braithwaite 2003).

Restorative justice began to be promoted as a counter to the violence and disintegration being experienced in Solomon Islands, although the concept was being used loosely, compared to the cautious way academics such as Braithwaite approached it (for example, Braithwaite 1999). Naitoro (2000) characterized it as “about reparation or restoring fairness to a victim of crime,” and saw it as varying among “kinship groups” in Solomon Islands, emphasizing that social context was important. Finally, during the height of political conflict and on the eve of the RAMSI intervention, Arkwright (2003) commented on escalating demands for compensation beyond traditional levels, writing “[t]raditional concepts and symbols of reconciliation are quite inadequate when faced with demands for huge sums of money in a society that has only recently become conscious of material goods and possessions” (2003, 187). He recommended Christianity as a “restorative” resource: “[c]ustomary negotiations have their rules and accepted ways but they need the moral backing of the church to ensure a balance” (2003, 191).
Post-RAMSI literature: general policy-oriented material

The RAMSI intervention of 2003 was a “bloodless operation” and deemed a success by everyone (for example, Moore 2004). Weapons were surrendered by local militia groups and law and order was restored, as was the formal justice system. Ongoing monitoring ensured a reasonably calm atmosphere, and business confidence was also restored (Moore 2004, 212–13). Moore’s prognosis for the redressing of grievances was representative of the view of most commentators in the immediate aftermath: “What is needed is a large-scale program of restorative or transformative justice, in which all involved in injustice are given an opportunity to join discussions about the consequences of the aberrant actions and how the situation can be put right” (2004, 217).

Since the RAMSI intervention, a wide range of literature has been brought to bear on problems of “failing” or “weak” states in the Pacific Islands, involving issues such as rebuilding, achieving political stability, human rights, law and order, and conflict resolution. In terms of the focus of this review, a great deal of the “post-RAMSI” literature is relatively uninformative about what is actually happening at village level with regard to conflict resolution in Solomon Islands. Some of it offers generalizations about what could be called a “pan-Melanesian” regional level, and some deals with overall governance in Solomon Islands specifically. The latter body of literature addresses in fairly abstract terms the problems of integrating local and national structures of governance, and while it refers to issues of leadership and conflict resolution, it contains little detail on, for instance, whether local courts are actually still operating, or whether “customary” alternatives are being used, and with what success.

Reviewing the body of what I have called “pan-Melanesian” literature, we find that it broadly covers current concerns about political stability, human rights, the rule of law, and state and local governance. By the time of the RAMSI intervention, incompatibilities between diverse “customary” or “traditional” responses to perceived wrongdoing and state legal approaches had become part of standard discussion among development—and aid—related commentaries (for example, Dinnen 2000, 2003). This is reflected in references to customary leadership and conflict management that take a variety of positions, sometimes simply acknowledging the problems of understanding local systems of leadership and their strengths and weaknesses (for example, McLeod 2008) but giving little detail in fact. A typical view is that of Powles (2005, 414), which acknowledges the importance of traditional leaders who are increasingly engaged in mediation and efforts at restorative justice (which Powles considers to fit well with customary processes), but emphasizes the need for attention to human rights issues and possible abuses of power.

An International Red Cross publication (ICRC 2009) reviews customary warfare practices in the Pacific Islands, looking for possible similarities with contemporary principles of humanitarian law, with the aim of encouraging the understanding and acceptance of international humanitarian law in Pacific societies. It concludes that rules regulating behavior in conflict exist, and have traditionally existed, in Pacific societies, but acknowledges the problems of correlating customary warfare practices with international rules of war. A general discussion of fragile, weak, dysfunctional, or failing states in the Pacific is offered by Nelson (2006), who notes that in general, the church has always been more important than the government in service provision for local groups (2006, 17). He warns that while the welding together of customary and introduced
government may be desirable, customary systems are failing in contemporary times and need “repair” (Nelson 2000, 18).

A general survey by the New Zealand Law Commission (NZLC 2006) discusses the relationship between “custom” and human rights in Pacific societies. It acknowledges the complexity of synthesizing custom and court systems, and covers now-familiar themes such as the changing nature of custom, its integration with Christianity, and its patriarchal nature (in relation to women’s rights). It also discusses the problem of taking customary remedies (which it says are often harsher than formal legal remedies) into court procedures (NZLC 2006, 180–81).

In a paper discussing “institutional strengthening” and “capacity building,” Morgan (2005) discusses the importance of civil society organizations (CSOs), which include churches and other NGOs that lobby and advocate on specific issues but often do not manage to penetrate top-level decision making circles (2005, 12). He suggests that women are impeded in attempts to be involved in governance, and that resistance to their participation is often couched in terms of “tradition, Christian principles and gendered assumptions about leadership” (2005, 11). Storey (2005), discussing urban governance, stresses the need for inclusive local governance strategies, but has no detailed information on what local mechanisms are currently operating in societies like Solomon Islands.

A Background Paper to the forthcoming World Development Report 2011: ‘Violence and Development’ (World Bank, forthcoming) provides an overview of contemporary experiences with conflict in Melanesia. It discusses “community-led solutions and movements toward hybridity,” which transcend former conventional dichotomies between tradition and modernity. It suggests that the idea of hybrid community-level courts offers “the prospect of socially attuned and sustainable solutions that combine elements of introduced Western models and local traditions”. It also proposes that conflict should not be seen as “solvable” by planners; rather, conflict is inherent in social change and interventions are unwise to separate security responses to conflict from wider efforts to support “political, economic or social institutions that are capable of containing ongoing disputes”.

Most of these publications can be labeled as “position” or “policy-oriented” papers that provide a review of the general political and economic climate for the eyes of strategic regional planners. They contain no specific information on what is currently happening at village level in Pacific Island societies, and reflect the preoccupations of contemporary trends in policy development rather than the social realities on the ground at local levels.

**The rule of law and the negotiation of kastom**

Turning to the body of literature addressing the problems of integrating local and national structures of governance in Solomon Islands, we also find a variety of views on the nature and place of customary or traditional leadership and conflict management. A discussion paper by Hegarty et al. (2004) recommends the encouragement of civil society—voluntary associations such as churches, NGOs, community-based organizations, trade unions, women’s groups, and professional associations (2004, 9). It states that the police force needs restructuring and overhauling and that the capacity of the police and courts to effect prosecutions should be
strengthened (2004, 10). It also asks whether there should be a new hybrid court at local levels working through *kastom* and using restorative justice techniques consistent with the rule of law and respect for human rights (Hegarty et al. 2004, 10).

A provincial government information paper of the same year acknowledges the weakness of official government representation at the local level, where informal systems of governance, including “traditional authority systems and churches operate in tension with each other and often with the state” (Cox and Morrison 2004, 8). It notes that traditional leaders or “chiefs” are widely seen as a credible source of village governance, but their integration into the formal political system has never been successfully completed. Also churches, which are influential and authoritative at the village level, are often not acknowledged by the legal system (2004, 9). It argues that the “underlying cultural values” of Solomon Islanders are governed by rules needing translation into new settings, and that in some cases, traditional ideas of compensation have been twisted into extortion, a distortion of *kastom* (which the authors refer to as “indigenous culture”) (2004, 10). However, local systems do not feature in the information paper’s suggestions about the way forward, which emphasizes RAMSI interactions with central and provincial governments.

In contrast with that focus is a Pacific Islands Eminent Persons report (PIFEPG 2005) that identifies land alienation as a partial cause of the political conflict. The report recommends that the role of chiefs in mediation, reconciliation, and consultation regarding land, good governance, and justice be recognized in the Constitution. It further moots the possibility of establishing a “Great Council of Chiefs” (2005, 21), and recommends the ongoing provincial presence of the RAMSI-provided “Participating Police Force” (2005, 14). It also recommends government funding for recording genealogies in relation to customary land ownership (2005, 26).

Support for traditional systems is also expressed in an Oxfam report of the following year (Maclellan 2006), which states that there is fading grassroots support for RAMSI, and that there has been a loss of traditional structures, such as chiefs. It suggests that there needs to be more involvement of ordinary Solomon Islanders, and that there is an important role for “customary authority” at the village level. While aid donors talk of collaboration with NGOs such as churches, “these programs have often failed to define the place of customary authorities and indigenous structures” (Maclellan 2006, 23).

An unpublished paper on legal pluralism and human rights (Menzies 2007) proposes a focus on decentralized interventions, the privileging of local participation, and the utilization of customary mechanisms, including the church. The paper cautions, however, that these mechanisms would need to be monitored for compliance with the Constitution, including human rights provisions (2007, 1). It sees the mixture of formal law and *kastom* at village level as problematic, and “usually met with confusion and hybridised implementation ... Hybridisation is the source of conflict and can lead to seemingly hypocritical action” (2007, 5). The paper advocates *kastom*, the church, and appropriate village-level legal resources, but adds that local traditional mechanisms need to operate “in the comforting shadow of effective state-based law” (2007, 16).

A concern for the rule of law is also expressed in a discussion of state-building by Tara (2008), who nevertheless feels the importance of traditional systems of governance needs to be
recognized (2008, 113) and cites a draft federal constitutional provision for “chiefs (or community leaders)” to participate in decision-making processes (2008, 113). Interestingly, Tara mentions an incident on the island of Choiseul, where community leaders had recently imposed whipping for community rulebreakers and were told to report to representatives of the Ministry of Police and Justice [sic] (2008, 112). A different perspective is offered in a discussion of “reconciliation,” which the author describes as “a fundamental part of the Solomon Islands” (Goodenough 2006). He argues that the breakdown of law and order before the RAMSI intervention was accompanied by a collapse of the process of reconciliation, and RAMSI succeeded where “traditional reconciliation” could not. Further, the reconciliation process can sometimes be corrupted from its “traditional” form into extortive compensation demands for personal gain. Goodenough concludes that reconciliation should only be used as an adjunct to the formal court process.

An environmental education organization’s discussion of conflict over natural resource management (Zukuli and Clothier 2008) suggested that on the island of Choiseul, local customary laws were becoming ineffective and leaders were now looking to formal laws to be instituted. It advocated the use of traditional leadership roles and the inclusion of women and teachers in community consultation on environmental issues, and the use of formal laws and environment acts to support customary laws.

The above body of literature is marked by its variations on the general theme of how to structure state and “customary” or “traditional” governance and conflict resolution in rebuilding Solomon Islands after the political breakdown. Its references to custom, tradition, and local leadership are often imprecise compared with earlier literature that sought to clarify local uses of the terms. This is possibly because of its focus on national processes of rebuilding rather than on the minutiae of local situations (despite the occasional use of local examples). It is also reflective of the postintervention situation in Solomon Islands, where much effort has been expended on restoring and maintaining political and economic order in general, while precise information on what is happening at village level is still not available.

Understanding nonstate agency

While these commentaries and proposals could be subject to criticism for their imprecise references to tradition, local leadership, and other concepts that are important to understanding local interactions of formal and informal governance, their acknowledgement of this area is pertinent. As White (2007, 2) reiterates, regardless of whether contemporary “customs” and customary leadership are really “traditional” or not, local communities value them, and to ignore them is to overlook some of the basic causes of disconnection between governmental institutions and local realities.

Timmer (2008) draws attention once again to the flexible and changing nature of kastom and also Christianity: “Analysts, policymakers, government and aid officials operating in Solomon Islands need to avoid depictions of kastom and Christianity as stable and conservative forces or, alternatively, as important for nation building. Kastom and Christianity are inherently dynamic world-views and, moreover, have come under considerable stress in recent times” (2008, 196). With ethnographic examples from Malaita, Timmer shows that people’s interpretation of kastom
is framed contingently in relation to Christian teachings and reflections on recent developments in the area (2008, 205). He reinforces the observations of other researchers on local communities that people are still skeptical about a Westminster system of centralized government (2008, 207). In a similar vein, Allen shows the continuity between themes of socioeconomic inequality and antigovernment sentiment formerly manifest in the post-Second World War movements like Maasina Rule and Moro (see above), and the expressed concerns of militants involved in the more recent conflict (Allen 2007).

In the aftermath of RAMSI, consideration has been given to the role of the police (both local and RAMSI-provided). In former times, police were regarded by villagers as an intrusive government agency; however, their peace-restoring intervention during the recent turmoil was generally welcomed (Moore 2004).

It has been acknowledged (Goldsmith and Dinnen 2007) that “police building” has been a relatively neglected dimension of nation- and state-building exercises in Pacific Islands societies. Moreover, it is difficult in cases like that of Solomon Islands to separate the “technical” aspects of police building and rebuilding the rule of law, from local perceptions of unacceptable external political interference (Goldsmith and Dinnen 2007, 1105). A “degree of reflexivity and humility” has been urged in this respect, along with a flexible methodology, including “the ability to defer to local knowledge and methods in developing appropriate measures” (2007, 1106). More recently there has been some trialling of community policing in some parts of Solomon Islands. A report on the exercise (Norris 2009) notes that before independence, there used to be “community officers” involved in local-level policing, but village officers are missing from current structures (2009, 3). The report moots some ideas on the reintroduction of a similar role for the community officer. An attachment to this report encourages the engagement of churches, given their efficacy in achieving social harmony, and similarly the involvement of women’s groups with respect to domestic violence, sexual abuse, and women’s rights (Brigg and Curth 2009).

Given that traditional leaders and churches effectively became the primary means of local governance when local government structures dissolved during the Solomon Islands breakdown (White 2007, 4), an interesting post-RAMSI commentary is offered by a Kwara’ae community activist and former police officer, Michael Kwa’io1oa (Kwa’io1oa and Burt 2007). He claims that the conciliatory role of clan leaders as chiefs has been overlooked, forcing Malaitans into militancy, which has been politically manipulated (2007), has faith in local traditions and the need to involve chiefs in the government of Solomon Islands. He blames capitalist economic development and individualistic values for corruption in the political elite since independence (2007, 114). Kwa’io1oa calls for a “lower House of Chiefs to assist the central government, providing for the recognition of traditional principles and for traditional law to be used in courts at all levels for the benefit of everyone in the country” (2007, 126). On the other hand, White (2007, 9) asks how government efforts to strengthen the role of chiefs in governance would change people’s views of traditional leadership, and whether it will create a new kind of chief (2007, 9).

The relationship between customary and formal law thus continues to permeate literature in the post-RAMSI period. Corrin Care and Zorn (2005) revisit the lack of identification with the central government by Solomon Islanders in the past. They note that while “customary law” was
once left alone to play its part in local affairs, at independence it was elevated to a source of law in the formal, introduced system with little thought to resolving the conflicts that this intersection would inevitably produce (2005, 145). The inference from their discussion is that the integration of customary law and formal law needs rethinking. Monson (2010) adds a gender perspective, discussing the impact on women of state and customary laws governing land. She cites the case of matrilineal societies in Guadalcanal, where women are landowners but male names are recorded on land and court records. Combined with customary male ideas about who has speaking rights, this is detrimental to women landowners, and requires analytic examination (Monson 2010, 5). Monson suggests that women might be more likely to draw on systems based in kastom and Christianity in affirming their roles in relation to land (2010, 6).

Local courts and land

McDougall, an anthropologist with fieldwork experience in the Western Province, has recently observed that in many cases, chiefs have also been local court justices, following the same procedures in both chief’s and local court hearings, thus casting doubt on the usefulness of distinguishing between traditional and local court procedures (McDougall 2008a). Further, McDougall and Kere (2010) find that local processes of dispute management are robust and diverse and that Solomon Islanders are willing to utilize different principles as the situation calls for it. They are capable of compromising with people of different traditions, and Christian principles of reconciliation are shared by the 98 percent of islanders who now identify as Christians (2010, 199–200). In contemporary times “both Christian and customary forms of reconciliation involve so-called restorative justice….Yet the pragmatism and pluralism of local actors also leaves room for retributive justice. Solomon Islanders see the punishment meted out through Western law as complementary, not antithetical, to local processes aimed at restoring good relations” (McDougall and Kere 2010, 181). McDougall and Kere think that recognizing local processes and providing the resources and forums for local people to expand on their existing capacities for mediating across differences may be the most valuable way of pursuing “encompassing and sustainable post-conflict reconciliation” (2010, 182).

Elsewhere with respect to land, McDougall (2005) points out the complexity of landholding among local groups and the dangers of trying to codify systems of individual and group rights. From research in a local community, she argues that this legalistic approach does not recognize the locally held traditional and Christian moral imperatives to welcome people onto land, rather than to assert exclusive possession (2005, 86–92). McDougall suggests there is much to be learned from contemporary strategies of women’s and church groups in achieving peaceful resolutions (2005, 104).

The influence of Christianity and church organizations emerges frequently in this contemporary literature based on local research. But it shows the relationship of churches to state governance to be complex, and warns against assumptions about their utilization by either state or nonstate development agents. McDougall (2008b) suggests that external agencies should not try to use churches to bypass the state, but should work with churches in ways that bolster the legitimacy and effectiveness of both church and state (2008b, 2). She warns that churches have their own diverse structures, agendas, and relationships and cannot be easily harnessed for secular agendas (2008b, 15). They are “the only modern bureaucratic organizations in the Solomons today that
have deep and broad roots in rural areas” (2008, 16) and a government has to find ways of engaging with them. Similarly Joseph and Browne Beu (2008) note that churches command much more respect than does the government, and that church support has been helpful in maintaining the legitimacy and popularity of RAMSI locally (2008, 8). Joseph and Browne Beu emphasize that churches do not see themselves as an “alternative government,” and need to be properly understood in relation to governance (2008, 10).

Meanwhile, information on practical developments for the system of local courts remains scant in the literature. Funding for local courts was extended to the training of a limited number of local court presidents over 2006–07 (Winter and Schofield 2007), and in 2007, RAMSI indicated that the rejuvenation of the local court system was being investigated (RAMSI 2007, 20). Appeals from local courts in relation to land disputes have in the past gone to customary land appeal courts (Land and Titles Act 1969 s 256(1)) with further appeals (on matters of law, not custom) possibly to the High Court. Recently moves have been made to modify and simplify the legal processes involved in land disputes, including a proposal that local courts will cease to have jurisdiction in customary land disputes, which would be dealt with by “tribal land dispute resolution panels” with a limited right of appeal to the High Court.8

Summary

At independence there was constitutional recognition of “chiefs” and “customary law,” despite previous literature (above) suggesting these were questionable concepts. Local people were still trying to codify kastom as a “traditional” phenomenon, although there is much evidence that Christianity had changed customary practice in most areas. By the 1990s commentators were beginning to represent “custom” and “tradition” as impediments in a developing country. There was a rise in NGO involvement at the local level. Among these NGOs, women’s groups in particular regarded male attitudes—whether in “traditional” contexts or in modern institutes such as the police and government courts—as being inadequate with respect to women’s status and rights. Local courts were in decline, partly as a result of the political crisis, and local communities were turning to informal dispute-resolution procedures that were treated as “customary.” The concept of “restorative justice” was being mooted as a resource in the effort to resolve conflict at several levels.

After the RAMSI intervention, little detail was available on justice delivery at the local level, though there was still discussion about the relationship between “customary” or “traditional” leadership and conflict resolution and state systems and how they should be integrated. Researchers on local communities, while saying little about local courts per se, suggested that contemporary “customary” (informal) resources were active and effective. The efficacy of churches at the local level is evident in this body of literature, compared to the ambiguous presence of state agencies.

8 In 2008 a Tribal Land Disputes Resolution Panels Bill was being referred to public consultation. At the time of writing it is unclear whether the bill will be introduced.
1.4 Conclusion

The first question guiding this review asked what mechanisms have historically been in place to resolve disputes at the community level in Solomon Islands and what information is available about how these have worked. We have found that until the arrival of missions and colonial government agencies, disputes were addressed variously by direct action such as warfare and revenge attacks, the sanction of sorcery, headmen’s or big men’s interventions, and compensation payments. They do not appear to have been taken to forums that we could equate with Western courts of any level.

Colonial authorities introduced formal law in the late nineteenth century, administered through colonial district officers, assisted by police and some native officials—headmen, assistant headmen, and village constables. Later they tried to give local people more say and to accommodate “custom.” In the decade before the Pacific War, local councils, native tribunals, and native courts were trialled and set up to deal with criminal, civil, and “customary” cases, including land disputes. Missions had imposed their own local tribunals, and there was some contention over whether Christians should be dealt with in the secular courts. Meanwhile, customary ways of dealing with conflict and dispute continued, and the concept “customary law” gained currency.

After the Pacific War there was a period of civil disobedience during which Solomon Islanders attempted to establish “chiefs” as agents of local governance, and to codify what they regarded as ancestral rules of conduct—kastom—as an alternative to government law. Following this native courts were institutionalized, presided over by local headmen (chiefs). These appear to have worked competently, but villagers also still pursued secular and sometimes violent responses to perceived wrongdoing.

At independence (1978), chiefs and “customary law” were recognized constitutionally. Native courts were renamed local courts but were more or less the same as previously. Customary courts (that is, unlegislated courts) continued to be held. It seemed that many Solomon Islanders preferred not to use the local courts, regarding them as a government institution and therefore not reflective of local custom, even though “customary law” was supposed to be recognized by the government legal system. By the 1990s, the local courts were starting to fall into disuse, as government services broke down generally in political unrest. It appears that informal courts and local traditional leaders took on the role of justice delivery at the community level during this period, and have continued to do so into the period of the RAMSI intervention.

The second question guiding this review asked what mechanisms (formal and informal) are in place in Solomon Islands at the community level today for dealing with civil and criminal matters and customary land disputes, and what information is available about how these work. Reflecting on the turmoil requiring the RAMSI intervention and the continuing preoccupation with restoring Solomon Islands’ political and economic equilibrium, little information is actually available. Literature directly related to governance at the national level speaks in abstract terms of customary or traditional leadership in relation to state systems, but gives no hard data from the local community level. The evidence from some academic researchers working at the local level
suggests that customary systems continue to dominate, but local people combine these with more formal mechanisms as the occasion demands.

The final question asked what role churches and NGOs have historically played in the delivery of justice services at the community level in Solomon Islands and what is known about their present role. We find the role and effects of churches (formerly missions) to have been historically very significant at the local level.

Missions have undoubtedly altered “custom” and local leadership over a long period of time. “Custom” and “tradition” in Solomon Islands cannot be taken to be historically unchanging, and should not be assumed to be completely distinguishable from Western systems of thought or behavior, as they might once have been. Missions installed local leaders and affected the role and function of headmen. They also introduced systems of both punishment and reconciliation that were absorbed into local conflict-management strategies and have become part of what Solomon Islanders think of as “traditional” processes. Despite some negative reactions to missions during the civil unrest after the Pacific War, the church has been a respected and integral agency at the community level, and local people are more amenable to it than to government agencies. In very recent times, women’s organizations have developed some influence in the community as workers in the pursuit of peace, conflict resolution, and what is now being called “restorative justice,” in addition to pursuing issues of women’s rights and security.

As the Solomon Islands’ government and its advisors have been attempting to rebuild workable structures of governance and service delivery at the national and local levels in the aftermath of the RAMSI intervention, there are some noticeable parallels in the policy-oriented literature with the situation of the 1950s, after the Pacific War and Maasina Rule. This is particularly so in relation to discussions of the place of “traditional” or “customary” leadership and conflict resolution in the structure of governance. A dichotomous attitude is visible in many commentaries, as if “customary” processes still represent a traditional past and can be examined separately from formal state processes and judged as to their worth, relevance, and utility.

Yet research from the community level suggests that villagers have integrated local and state resources strategically according to their needs and circumstances during a period of administrative instability, with the successful involvement of the church. Clearly, local communities have adapted to significant changes and are combining the most efficacious elements of indigenous and introduced regulatory systems with reasonable efficiency. Rather than pursuing models that view the relationship of custom and law as a problem to be solved, a lead could be taken from the pragmatic approach of local communities. A hybrid court system at the local level, supported by existing (and clearly workable) church resources and the newly emergent local women’s organizations, presents itself as a potentially valuable alternative to previous attempts to maintain legal and customary forums as alternative justice-delivery resources.

Acknowledgements
The author would like to thank Daniel Adler, Daniel Evans, Tony Krone, Debra McDougall, Shaun Williams, and Michael Woolcock for comments on an earlier draft of this review.
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