

Women, State Law and Land in Peri-Urban Settlements on Guadalcanal, Solomon Islands

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From 1998–2003, Solomon Islands suffered from violent conflict popularly known as ‘the Tensions’, which resulted in many deaths, the internal displacement of tens of thousands more, and the destruction of the country’s narrow economic base. While the causes of the crisis are complex, they include social conflicts arising from the use of land which remain largely unaddressed today.¹

Land tenure in Solomon Islands is characterized by multiple, overlapping arenas, norms and institutions emanating from customary practice, the state, and Christianity. To date, very little of the research on land in Solomon Islands has been undertaken by women, or focused on women’s perspectives and experiences of land tenure.²

This paper provides a brief overview of the intersection of state and customary laws governing land in peri-urban settlements around Honiara, focusing on their impact upon landowners, particularly women landowners.³ It suggests that the intersection of customary and state legal systems allows a small number of individuals, predominantly men, to solidify their control over customary land. This has occurred to the detriment of many landowners, who have often found themselves excluded from both decision-making processes and the distribution of financial benefits from the use of land. This contributes to social conflict and undermines the legitimacy of land dealings, and as the Tensions demonstrate, can ultimately lead to violent conflict.

Country context and land tenure framework

Solomon Islands is a scattered archipelago of over 900 mountainous islands and low-lying coral atolls in the South Pacific Ocean. Approximately 50,000 people (or 10% of the total population) live in Honiara, the capital, which is located on the largest island, Guadalcanal.

More than 80 per cent of land in Solomon Islands is held in accordance with “current customary usage,”⁴ which is often referred to as ‘kastom’ in Solomon Islands pijin. The city of Honiara is built on alienated land, while most land outside the town boundary is customary land. Customary land tenure and social organization varies throughout Solomon Islands, and variations exist across the island of Guadalcanal. In general terms, however, land on Guadalcanal is vested in tribes whose lineage can be traced through the mother to the original woman settler. Other descendants and migrants are often described (in *pijin*) as “living under” the descendants of the first settlers. Today, descendants of those who first cleared the land are sometimes referred to as having ‘primary rights’, but this is not always an accurate description of historical or present practice. This research has, however, identified at least one instance in which a court’s determination as to the customary ownership of land appears to have been followed by the landholding group issuing eviction notices to other long-term occupants of that land. This suggests that there may be some cases in which interpretations of customary tenure emphasizing exclusivity of land rights have given rise to a hierarchy of rights in practice.

On Guadalcanal, as is the case elsewhere in Solomon Islands, a male child or brother is usually appointed to be the spokesperson for all land-related issues. When decisions are made on behalf of the entire landowning group, they are often

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¹ See, eg. Fitzpatrick, D. and Monson, R. (2009) ‘Balancing Rights and Norms: Property Programming in East Timor, the Solomon Islands and Bougainville’ *In* Leckie, S. (ed) *Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations*, Cambridge University Press, pp 103–135.

² A notable exception to this is Ruth Maetala’s work, in particular Maetala, R. (2008) ‘Matrilineal Land Tenure Systems in Solomon Islands: the cases of Guadalcanal, Makira and Isabel Provinces’ *In* Huffer, E (ed) *Land and women: the matrilineal factor: the cases of the Republic of Marshall Islands, Solomon Islands and Vanuatu*, Pacific Islands Forum Secretariat, pp 35–57.

³ It should be noted that the focus of this paper is on landowners rather than migrants, including men and women who have married into landowning groups.

⁴ *Land and Titles Act* [Cap 113], section 2.



made through a consultative group comprised of the chiefs and elders. The idea of 'being able to talk' about land is an important one on Guadalcanal, and during the colonial period land deals were often between foreigners and men who had the ability to read, speak and write some English.⁵ The ability to 'speak' therefore depends partly on an individual's level of education and their skill in managing land relations within the landowning group as well as with outsiders. Women often have less access to education than do men so have been less likely to have been able to understand the state legal system and manage land transactions. Further, according to some Guadalcanal people, custom dictates that women '*no save tok*' (cannot/must not talk) about land, and that they must 'stand behind' men when it comes to speaking about and dealing with land in the public arena. This norm is often explained by reference to the role of men as warriors and protectors of women.⁶

This does not mean that women have never had a role in decision-making regarding land. In the past, women were consulted in land matters and their knowledge of genealogies was highly respected.⁷ Today, women often influence decisions regarding land through informal mechanisms such as conversations within the household. In the areas around Honiara there are also a small number of women leaders who are registered on land titles and have been parties to land disputes. However, it is also common for women to find out about a matter only after male leaders have reached a decision.⁸ If these decisions have been entrenched in signed agreements it may be difficult to challenge them, due to state legal norms and because many people are hesitant to challenge leaders in formal settings such as court hearings.

Customary land may be leased or sold in accordance with the procedures set out in the *Land and Titles Act* ('LTA'). In general terms this involves the Commissioner of Lands acquiring the land (through lease or purchase) after a public acquisition hearing. Registration of customary land is otherwise optional, and very little customary land has been registered. The procedures of the LTA provide that the names of no more than five 'duly appointed representatives' may be placed on the title. A limited review of land records suggests that it is generally male leaders who speak in land acquisition hearings, and that most titles are registered in the names of male leaders. Thus, while the state legal system is based on the expectation that all landowners will participate in land dealings, this may not be the case, at least in the public arenas established by the state. In addition, while the state legal system requires that the titleholders consult with other landowners before dealing in the land,⁹ they often fail to do so. The traditional role of tribal leaders, and the notion that '*women no save tok*', has therefore been translated in a manner that limits the role of women within the sphere of the state legal system.

Disputes about customary land in Solomon Islands must be submitted to the chiefs for adjudication before the matter can be referred to the Local Courts. Chiefs' hearings are often quite formal, and are presided over by male chiefs. Local Court hearings also adopt a relatively formal, Western-style procedure. Their decisions may be appealed to the Customary Land Appeal Court and final appeals may be made to the High Court on a question of state law or procedure (not customary law).

A review of court records for West Guadalcanal suggests that the witnesses and parties to a dispute are predominantly senior male leaders, and a very small number of women leaders. This is partly due to the idea that some individuals have greater authority to 'speak about' land than others, but it is compounded by the fact that the court system is based on Western legal principles and the adversarial system. This encourages clear-cut, win-or-lose judgments, and it is perhaps unsurprising that land disputes are regularly compared to warfare. This reinforces the idea that land disputes are dangerous and matters for male warriors, and has implications for the involvement of men and women in dispute resolution. For example, women and children are often advised to stay away from meetings regarding disputes, particularly if there are no police present.¹⁰ The fact that hearings at every level are likely to be determined by male chiefs, clerks or judges is likely to act as a further impediment to women's involvement.

Attempts at reconciling customary land tenure with the state legal system therefore appear to have eroded the role of women in relation to land. While research focusing on women's roles within land tenure systems is limited, it appears that in the past, women were able to exercise influence on decision-making through a range of social interactions.¹¹ Today, women often contribute to decisions 'behind the scenes', but the state legal system only records and recognizes those negotiations that occur inside public arenas such as land acquisition proceedings or court hearings. Many landowners, but particularly women, are unlikely to talk in these arenas because they lack the confidence, education, and customary authority to do so. As the right of women to 'talk' in these arenas is restricted,

⁵ Pers. comm. Dr. Gordon Nanau. See also Kabutaulaka, T.T. (2002) *Footprints in the Tasimauri Sea: a biography of Dominiko Alebua*, Institute of Pacific Studies, University of the South Pacific, Suva, Fiji, p 52.

⁶ Ruth Maetala has made similar observations in relation to the roles of men and women in decision-making on Isabel: Maetala, R. op cit, p 41.

⁷ Allan, C. H. (1957) *Customary land tenure in the British Solomon Islands Protectorate*, Honiara, Western Pacific High Commission, p 101; Maetala, R. op cit, p 54.

⁸ Maetala, R. op cit, p 54.

⁹ See for example the then Chief Justice Muria's comments in *Kasa v Biku* [2004] SBHC 62; HC-CC 126 of 1999 (14 January 2000).

¹⁰ J. D. Foukona has made a similar observation in relation to Malaita: pers comm. Joseph D. Foukona.

¹¹ See, eg. Maetala, R. op cit, particularly at pages 54 and 57.

their contribution often goes unrecognized by the state legal system.

Urbanization and the growth of settlements on customary land

Prior to World War II, the population of Honiara was sparse. However, development on this part of Guadalcanal increased during the war, when the United States forces developed an airfield and other infrastructure. At the end of the war, the capital of Solomon Islands was relocated to Honiara, and this further concentrated economic development in the area and drew migrants to Honiara and the surrounding region.¹² Urbanization gained momentum in the 1960s, and indigenous villages developed on the outskirts of Honiara, as Guadalcanal people relocated from more remote areas. Migrants from other islands settled on government land and by the 1980s, these settlements were beginning to spill over from town land onto customary land.¹³

As settlements grew, so too did competition for land and conflict surrounding access to land. People from Guadalcanal obtained access to land in peri-urban areas through a variety of mechanisms, as did migrants. Some Guadalcanal people settled on land after “purchasing” it according to custom from the customary landowners. In Kakabona, a peri-urban area to the west of Honiara, a large tract of land was purchased by a family in the 1930s, and was later divided up for different tribes and sub tribes.¹⁴ The ownership of this land today is relatively clear in the sense that the boundaries and ownership have been determined by courts and are generally accepted by other potential claimants. Transactions such as this one are rooted in customary practice and have historical precedents, but they also involve cash and are increasingly commercialized.

Given the relatively recent history of land dealings in some areas, such as the 1987 subdivision of land in Kakabona, it is too early to discern any trends in the inheritance of land undergoing urbanization. However, a review of land records suggests that when land acquisition hearings have been held for blocks, some of which have been subsequently registered, men are regularly listed as the representatives of the landowning group. In some instances these men have been succeeded by their sons as the duly appointed representatives of the landowning group. As the number of transactions increases, it is possible that more land will be held by families and handed down from father to son, rather than being held by a tribe and handed down the matrilineal line. There therefore appears to be a tendency for people to attempt to establish relatively exclusive title over land in peri-urban areas, which may then be passed down the male line, rather than through women.

Non-indigenous settlers often obtained access to land through informal arrangements with landowning communities. Some of these arrangements were based on customary principles of sharing and reciprocity. However, in other cases the legitimacy of transactions under customary law was questionable, because deals were struck by individuals in exchange for cash, without adequate consultation of other members of the group. There is oral evidence that women were involved in these transactions, but court records regarding disputed transactions indicate that the individuals involved were predominantly chiefs and male leaders. Even where members of the landowning group were consulted, controversy could arise because there was a lack of transparency and fairness in the distribution of revenue.

In other cases, non-indigenous settlers have accessed land through the framework of the state legal system, purchasing land that has been registered through the process set out in the LTA. As noted above, such land is registered in the name of a maximum of five representatives, who are usually male leaders; although in a small number of cases women are also registered as trustees of land. The purchase of registered land has not always guaranteed security of tenure: in at least one recorded case, a single parcel of land was sold to multiple purchasers.¹⁵ Furthermore, as was the case with informal arrangements, the ‘customary’ nature of many of these transactions was dubious, as deals were often struck by senior males who failed to consult the other landowners or distribute the proceeds of sale fairly.

Intermarriage is another means by which migrants have gained access to land. If a migrant man marries a Guadalcanal woman, their children will have land through their mother’s tribe. The situation is more uncertain in the case of a migrant woman marrying a man from Guadalcanal. The couple will generally have access to land for housing and gardening during their lifetime, and the man may secure his children’s rights in the future through traditional transactions involving the exchange of goods and feasting.¹⁶ The continuation of rights to land created in this manner depends on the relevant feasts, ceremonies and transactions being remembered in oral histories and genealogies.¹⁷ However, a number of factors, including the involvement of people in the cash economy and formal education, and the use of English names, are contributing

¹² Bellam, M. E. P. (1970) ‘The Colonial City: Honiara, A Pacific Islands Case Study’ *Pacific Viewpoint*, pp 66–96.

¹³ Storey, D. (2003) ‘The peri-urban Pacific: from exclusive to inclusive cities’ *Asia Pacific Viewpoint*, 44(3), pp 259–279.

¹⁴ It is often unclear whether these transactions have been made on behalf of the tribe, on behalf of a family, or on a one-to-one basis.

¹⁵ *Bishop Tuhenua v Laugana* [2004] SBHC 89 (Unreported, High Court Solomon Islands, Civil Case 238 of 2003, Palmer CJ, 16 July 2004).

¹⁶ See also Maetala, R. op cit, p 45.

¹⁷ See also Maetala, R. op cit, p. 46.

to a loss of knowledge about history and *kastom*.¹⁸ Some women in peri-urban areas report that their obligations in both the subsistence and informal sector, as well as activities run by donors, non-government organizations and churches, limits their capacity to engage in the time-consuming task of learning about *kastom* and genealogies.¹⁹ As a result, some landowners may lack the knowledge or skills to recall the histories and genealogies that are essential for asserting their rights to land.

Distribution of royalties from logging licenses and water sources

Many peri-urban communities on Guadalcanal are also affected by logging, which has been focused on the north coast and central hills.²⁰ The decision-making processes and the distribution of financial benefits associated with logging are notoriously problematic in Solomon Islands, and these logging operations are no exception.²¹

Logging in Solomon Islands occurs under the *Forest Resources and Timber Utilisation Act [Cap 40]* ('FRTU Act'). Logging companies have found the procedures set out in this Act cumbersome, and have taken shortcuts by recruiting individuals from landowning groups or other Solomon Islanders to act as middlemen. They have also exploited the fact that landowning groups are fragmented, with individuals and sub-groups competing for control over logging benefits.²² A further widely-acknowledged problem arises from the distinction, made in the FRTU Act, between ownership of timber and ownership of land, which enables individuals who can claim timber rights to effectively turn this into land ownership.²³ A review of available logging documentation for Guadalcanal suggests that some women are involved in timber rights hearings and in some cases are named on certificates of customary ownership (Form II). However, women also regularly complain that logging activities are carried out without consulting the majority of landowners, and in some cases women have responded to this through blockades and protests.²⁴

Landowners, particularly women, also regularly report that logging has destroyed their gardens, polluted rivers and contributed to flooding, while only a small number of individuals—predominantly male leaders—benefit from timber royalty payments.²⁵ Many landowner need to be vigilant if they want to receive a share of royalty payments. Women often seek to secure access to financial benefits by passing news of a distribution via word-of-mouth, and then spending several hours or even days waiting outside the offices where payments are made. They report that it is necessary for them to be waiting outside when their male relatives

emerge with money, otherwise, "they will just drink it and eat it."²⁶

The distribution of benefits from other forms of resource use, such as the Kongulai Water Source, is similarly problematic. The Kongulai Catchment lies to the west of Honiara and provides most of the city's water. Land in this area has been registered in the name of a number of trustees, all of whom are male leaders. As is the case with logging, the role of traditional 'big men' or 'chiefs' has carried over into the cash economy, and these men play a significant role in negotiations and in the signing of agreements providing access to the Kongulai Catchment. The men that are listed as leaders on official documents and agreements are also those that receive royalties when they are distributed. Under both the state legal system and *kastom*, they are obliged to share these benefits with other members of the landowning group. However, there is a general lack of transparency and accountability as to how this occurs. As is the case with logging, landowners complain that they do not know when royalties are distributed or how much money they are entitled to. Some of the women interviewed state that when royalties are distributed by leaders, they are distributed to men, and used to purchase consumables such as beer or radios, rather than paying for essentials such as school fees.²⁷

The inequitable distribution of financial benefits is related to inequality in decision-making, which is a common feature of resource-dependent industries such as logging and mining. Male leaders often assume control of negotiations with government authorities or investors, and government and company representatives often fail to ensure that women are adequately consulted and included in decision-making.²⁸ However, initial research also suggests that some landown-

¹⁸ I am indebted to Joseph D. Foukona for pointing out that the use of English namesakes it difficult to preserve genealogies, and also makes it more difficult to link people with land, clans and genealogies.

¹⁹ Pers comm. Paula Arahuri.

²⁰ Wairiu, M. (2007) 'History of the Forestry Industry in Solomon Islands' *Journal of Pacific History*, 42(2), pp 233–246 at p 237.

²¹ See ie. Gray, D (ed) (2009) *Solomon Islands Diagnostic Trade Integration Study: 2009 Report*, Ministry of Foreign Affairs and External Trade, Honiara, Solomon Islands, particularly, pp 218–222.

²² Wairiu, M. op cit, p 238.

²³ See ie. *Fugui v Solmac Construction Company Ltd* [1982] SBHC 8; [1982] SILR 100 (11 October 1982)

²⁴ For example, in mid-2008, women from the Kakau Valimauvo sub-tribe blockaded the road to a logging camp on Mount Austin in protest against the use of their land without their consent.

²⁵ See also Wairiu, op cit, p. 239. Similar observations have been made elsewhere in Solomon Islands: Scheyvens, R. and Lagisa, L. (1998) 'Women, disempowerment and resistance: an analysis of logging and mining activities in the Pacific' *Singapore Journal of Tropical Geography* 19(1), pp 51–80.

²⁶ See also Gray, D (ed) (2009) *Solomon Islands Diagnostic Trade Integration Study: 2009 Report*, Ministry of Foreign Affairs and External Trade, Honiara, Solomon Islands, particularly, pp 218–222.

²⁷ See also Scheyvens, R. and Lagisa, L. op cit.

²⁸ See also Fletcher, L, Hickie S, and Webb A (2009) *Risky Business*, Jubilee Australia, pp 23–30.

ing groups may have more transparent and inclusive methods of decision-making, dispute-resolution and distributing financial benefits than others. Further research is required to determine whether this is the case, and if so, why.

Landowners who argue for an increased role for women in land matters often draw on *kastom* and Christianity, rather than the state legal system, particularly the human rights enshrined in the Constitution or international law. For example, one woman believed that the role of women has expanded since the Tensions, and she explained that:

*God made Adam and Eve and it is a Christian principle that women should be included in decision-making regarding land. It is a sin to not include women. When we sin, there will be consequences... and now we've seen what those consequences are.*²⁹

It is also noticeable that the strategies employed by some women's groups during the Tensions, such as the Honiara-based 'Women for Peace', tended to draw on *kastom* and Christianity, rather than the state legal system, in affirming women's roles in dispute resolution and peace-building. In Solomon Islands and elsewhere in Melanesia, Christian theologies and church women's groups play an important role in women's training, leadership, and networking between villages and across provincial and national borders.³⁰ There is a need for further research regarding the strategies employed by women in affirming their role within land tenure systems by drawing on both *kastom* and Christianity.³¹

Recommendations and Conclusions

While it is common for Guadalcanal people to assert that "women are the real landowners of land on Guadalcanal", land records and court records generally record the names of a small number of male leaders thus solidifying their formal control over land. The state legal system tends to recognize the small number of individuals that have customary authority to speak about land inside a public arena, therefore turning the customary 'right to speak' into effective ownership.

This has operated to the detriment of many landowners, particularly women, who often lack the formal education or customary authority required to speak in public arenas. While there is a need for further research, it appears that the informality of customary systems in the past provided all landowners with a variety of means to influence decision-making and even resist the decisions of those with recognized rights to 'speak about' land. However, land formalization has narrowed the scope for participation in decision-making, con-

centrating formal control over land in the hands of a small number of people. While these individuals are obliged under both state law and custom to represent the interests of all landowners, they have often failed to do so. The exclusion of a significant proportion of landowners from land transactions undermines the legitimacy of those dealings, contributes to land disputes, and can even lead to violent conflict. The development of mechanisms for ensuring transparency and accountability in relation to land dealings is therefore essential for sustained peace and security.

Gender sensitive land programming therefore needs to pay attention to the state legal frameworks and their implementation, particularly the differential impacts on members of landowning groups. This could include:

- donors, governments and academic institutions encouraging and supporting further analysis of state legal frameworks and practice, particularly as they relate to the sale and leasing of land; natural resource extraction such as logging and mining; and the distribution of financial benefits such as royalties from water use or logging;
- the private sector and/or public authorities providing advance notice to all landowners of pending royalty payments. This might involve a notification system similar to that are required by law to occur prior to land acquisition hearings or timber rights hearings;
- the private sector, government ministries and state-owned enterprises considering consulting men and women separately. A recent research project regarding the Kongulai water source found that women wanted to be consulted separately on issues regarding the water source, and to be included in decision-making.³² Government ministries and state-owned enterprises, such as the Solomon Islands Water Authority, should therefore consider consulting men and women separately. The private sector, particularly companies engaged in resource-related industries such as oil palm, logging and mining also have

²⁹ Confidential interview, peri-urban village near Honiara, July 2008.

³⁰ Douglas, B (2000) 'Introduction: Hearing Melanesian Women' *Development Bulletin* 51, pp 39–42, p 33.

³¹ For example, lessons might be learned from organizations such as Petztorme in PNG, which was formed by the *Katolik Mamas* (Catholic Mothers) and the United Church Women's Fellowship in order to assist women to respond to the social impacts of mining in Lihir: Membup, J and Macintyre, M (2000) 'Petztorme: a women's organisation in the context of a PNG mining project' *Development Bulletin* 51, pp 55–57.

³² Powell B, Chan T, Hoverman S, and Ross H (2007) *Updated Report on Initial Consultations for Kongulai Catchment, Guadalcanal Province, Solomon Islands*, available at: http://www.watercentre.org/projects/attachments/awrf/workshop_report.pdf.

a role to play in ensuring that women are adequately consulted and included in decision-making. This might include supporting local women's groups and encouraging the representation of women in the negotiations with companies; and

- donors, the Solomon Islands Government and non-government organizations considering providing programs aimed at increasing legal literacy, so that landowners, titleholders and leaders are aware of their legal rights and obligations with respect to issues such as the management of land transactions and the distribution of financial benefits. In this regard, lessons might be drawn from the Landowners Advocacy and Legal Support Unit located within the Public Solicitor's Office.

Despite the above suggestions, the role and effectiveness of the state and the private sector should not be overestimated. This research suggests that the state legal system may be exacerbating pre-existing inequalities arising from (for example) *kastom* and access to education. It also indicates that women may be more likely to draw on infor-

mal systems based in *kastom* and Christianity in affirming their roles in relation to land, dispute-resolution, and the distribution of financial benefits. There is therefore a need for further research into the operation of local norms and practices, which arguably play a more significant role in determining women's rights to land. This requires, at the very least:

- adequate financial support for sustained research into land tenure arrangements by local and international researchers; and
- the wider dissemination of research findings through active partnerships between donors, government, non-governmental organizations and academic institutions.

Finally, gender-sensitive land research and programming needs to pay attention to the different perspectives of both women landowners and settlers, as well as the range of local women's groups that are working to increase women's participation in decision-making at all levels of Solomon Islands' societies.

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