

**SHARING AND EXPLORING PACIFIC APPROACHES TO
DIALOGUE: A COMPENDIUM OF CASE STUDIES
FROM PACIFIC ISLAND COUNTRIES**



DIALOGUE ON GOVERNANCE AND PEACE

CHOISEUL AND WESTERN PROVINCE, SOLOMON ISLANDS

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Title: Dialogue on Governance and Peace: Choiseul and Western Province, Solomon Islands

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DIALOGUE ON GOVERNANCE AND PEACE CHOISEUL AND WESTERN PROVINCE, SOLOMON ISLANDS

SUMMARY

Centrally governing the diverse kinship groupings that comprise the Solomon Islands, each with their own system of customary law, has historically posed a challenge. Solomon Islands people have also expressed longstanding concerns over the disenfranchisement of local and traditional leadership structures by central government rule. Focusing on Western and Choiseul Provinces, this case study explores ongoing dialogue efforts to empower traditional leaders to manage their own peace and reconciliation processes and create systems of local governance more closely aligned with customary law.

Dialogue on Governance and Peace, Choiseul and Western Province, Solomon Islands

1. CONTEXT

Prior to colonisation, inhabitants of the archipelago of nearly 1,000 islands that now make up Solomon Islands had long histories of self-governance based on systems of customary law. These complex systems ordered and managed social interaction, including all-important access to land and resources, through marriage, kinship, exchange relations, and warfare. Although Christianity became a very strong social force, and efforts by the colonial administration to assert control over local populations through forms of indirect and direct rule achieved some degree of success, the state remained a secondary force and, by the end of the colonial period had only limited impact on the governance of communities at the local level.

Since gaining independence from British colonial administration in 1978, the task of governing the diverse ethnic and linguistic groups of the Solomon Islands as a unified nation has presented challenges to successive Solomon Islands Government (SIG) administrations. While the concept of a centralized government was introduced by the British as early as 1893 with the establishment of a protectorate over the islands, the concept of a democratically elected and centralized SIG is relatively new and its formation was rushed; indeed, only around twenty years of trial and error led to the establishment of a post-Independence elected central government that came into office in 1980¹. This new entity, centrally administered from the capital Honiara, faced a daunting task. Although kinship-based and regional groupings had existing ways of relating with each other, developed through trade and exchange, they were also geographically dispersed with little sense of collective identity as a singular 'nation'.

Further complicating early efforts at centralized governance was the question of how, and to what extent, to incorporate pre-existing systems of customary law. The framers of the 1978 Independence Constitution made efforts to honour customary traditions, recognizing in its preamble “the wisdom and the worthy customs of our ancestors” and declaring to “promote the different cultural traditions within Solomon Islands”². The Constitution also sought to enshrine

1 Solomon Islands Constitutional Reform Project. 2003. Report of the Socio-economic Study of the Impacts of Decentralisation, p. 3.

2 Preamble, 1978 Constitution of the Solomon Islands.

customary law, albeit quite vaguely³, alongside the introduced 'modern' legal framework that continues to govern the country today. The resulting system of law and governance is thus best described as a loose amalgamation of different systems, including colonial mechanisms of English common law (meant to be preserved only as a temporary stopgap measure until a new indigenous system could be developed), introduced 'modern' legal structures borrowed from a number of foreign sources, post-Independence legislation created by the Solomon Islands Parliament, and a vague nod to customary law⁴. Today, determining how these different systems interplay continues to present challenges for a central SIG attempting to govern provinces farther from Honiara's immediate sphere of influence.

The foregoing complex and precarious governance arrangements were further fractured and compromised during the 'Tensions' from 1998-2003. During this time the state was even more absent from rural areas than in the previous years, leading local people to ask questions of their leaders, systems of governance, and each other. This case study takes up these issues, with particular attention to the place of dialogue in the interplay between issues of governance and questions of peace and order. The case focuses on dialogues, facilitated by the Ministry of National Unity and Peace (MNURP) and undertaken in Western and Choiseul Provinces – both geographically remote from Honiara – that grapple with governance challenges as viewed from the regional and local level. To some extent, the processes in the two provinces are linked with efforts to gain recognition for existing indigenous systems of governance that reflect traditional leadership structures and customary law frameworks. In other ways, the effort has been to find ways to connect these same systems with those of provincial and national level governance, and thereby respond to local aspirations and needs. A core component of these efforts in Western and Choiseul Provinces

has been to take greater responsibility for managing challenges around peace and order, including through peace and reconciliation programming, in the wake of the internal civil conflict known as the Tensions and the lingering effects from the spillover of conflict from neighbouring Bougainville in the 1990s.

3 The Constitution is unclear on exactly how customary law would be interpreted or in what circumstances it would take precedence. Section 75 (1) of the 1978 Constitution of Solomon Islands merely states that "Parliament shall make provision for the application of laws, including customary laws."

4 Corrin, Jennifer. 2001. "Customary Law in Conflict: the Status of Customary Law and Introduced Law in Post-Colonial Solomon Islands." *University of Queensland Law Journal* 21(2): 167–177.

2. PROBLEM

Competing systems of governance

One of the primary governance challenges that successive Solomon Islands governments have encountered since the lead-up to Independence is how to reconcile introduced legal frameworks with the multitude of customary law systems and traditional leadership structures that are indigenous to the modern nation's tribal groupings. One particular area where these differing systems continue to clash is land tenure and the related issue of resource rights. For centuries prior to Independence, land in the Solomon Islands has been administered by traditional owners in accordance with customary law. Under such a system – which varies across and even within provinces – ancestral land rights are generally viewed as shared communally by clans according to blood relationships rather than owned outright by individuals and administered in a manner that is more similar to trusteeship or custodianship⁵. However, the modern court system has been unable to mould these complex relationships between people, land and custom to fit into modern legal frameworks that focus on strict definitions of private 'ownership'⁶. As a result, some argue that the legal system's application of terms such as 'traditional owner', particularly as regards decision-making over resource development, may be inadvertently privileging certain individuals or groups with absolute authority over land use and supplanting customary norms of communal ownership and resource sharing, setting the stage for dispute⁷. As one participant in a 2009 Peace and Reconciliation Symposium held in Choiseul explained, "The question 'who owns land?' is foreign, and chiefs needs to put these matters in their right order according to culture and custom", underscoring the desire for a return to customary law as a basis for governance in many Solomon Islands communities⁸.

Indeed, disputes over which system would take primacy over resource rights – the central government's legal system or indigenous customary law – was arguably one of the driving factors behind a pre-Independence separatist movement initiated by the islands comprising modern-day Western Province and Choiseul in the late 1970s⁹.

5 Corrin, Jennifer. 2008. "Customary Land and the Language of the Common Law". *Common Law World Review* 37: 305–333, p. 316.

6 *Ibid*, 317.

7 *Ibid* 320.

8 Report on the Choiseul Peace and Reconciliation Symposium, 9–13 February 2009, p. 10.

9 Scales, Ian. 2007. "The Coup Nobody Noticed: The Solomon Islands Western State Movement in 2000". *Journal of Pacific History* 42(2): 187–209, p. 188.

Widespread perceptions that the central government was taking too much of the West's resources and giving little in return by way of development or wealth-sharing to people beyond the identified 'landowners' led to growing resentment towards Honiara and vocal calls for the West to form its own self-governing state. These separatist views were eventually assuaged by promises that a post-Independence government would be built on a system of federalism that ensured more devolved autonomy¹⁰. Nonetheless, they represent some of the first signs of a clear rift between centralized government and a movement towards self-rule based on customary law – a movement that would continue to be championed by Western Province and Choiseul.

Bougainville spillover and rising feelings of neglect

The eruption of civil conflict, both in neighbouring Bougainville in the early 1990s and internally in the latter part of the same decade, further tested the SIG's ability to govern from the capital; perhaps more importantly, they also tested the faith of the Solomon Islands people in its ability to do so. Spillover of the civil war in neighbouring Bougainville across the border into Western Province and Choiseul highlighted the SIG's seeming inability to secure the border – and the safety, property and livelihoods of its people – spurring feelings of neglect that once again provoked Western Province to call for greater autonomy¹¹. In the years since the resolution of the conflict in Bougainville, Western Province pressed for payment of reparations from the Papua New Guinea (PNG) government for loss of life and damage to property directly resulting from the spillover; however, when compensation was eventually paid, it went directly to the SIG. While some funds have been made available to the people of Western Province by the PNG government, these have been administered in the form of tertiary scholarships for Solomon Islands students to study in PNG – an arrangement that has not satisfied the people of Western Province. To date, Western Province continues to call for the SIG to release the remaining funds as a first step towards a broader reconciliation

as well as improving overall service delivery to the province. Accompanying these demands is a call for increased recognition, by provincial and national government, of the role that traditional leadership systems play in the frontline of maintaining law and order at the local level, including preventing, to a large extent, community members from becoming involved in conflict.

¹⁰ Ibid.

¹¹ Nanau, Gordon Leua. 2002. "Uniting the Fragments: Solomon Islands Constitutional Reforms". Development Bulletin 60: 17–20, p. 18.

The Tensions and renewed calls for autonomy

The internal civil conflict known as the Tensions that erupted in Guadalcanal in the 1990s and soon was felt in other parts of the archipelago was another key turning point that led not only the people of Western and Choiseul but also other provinces to place local and cultural identities over national identity¹². While the causes of the Tensions are often framed as being motivated primarily by ‘ethnic’ differences, the conflict would not have erupted without the presence of longstanding underlying issues. Among the drivers of the conflict was widespread discontent in the state’s ability to integrate traditional authority structures with central government systems, the state’s perceived inability deliver equitable distribution of benefits from economic development, and long-held frustrations about the state’s management of rights to land and resources. The Tensions rendered the government unable to provide for even the most basic state services, including security, again bolstering appeals for greater local control, not only over security and natural resource development, but also over settlement and migration policies, as well as strengthening desire to return to customary administration of native lands¹³. Western Province once again aired feelings of resentment towards Honiara for perceived failure on the part of the central government. In July 2000, Western Province joined with Choiseul to make its boldest move towards establishing autonomy to date – a proclamation made on national Independence Day calling for a Western State Government based on “indigenized democracy”, rule of law, and legislative authority over resource management¹⁴.

Constitutional reform, codifying customary law and the work of reconciliation

Three months later, the conflict officially ended with the signing of the Townsville Peace Agreement in 2000. Not surprisingly, given the widespread discontent with the state’s ability to recognize and preserve customary systems of self-governance, including the rising separatist sentiments expressed in Western Province and Choiseul, the Agreement calls for the SIG to begin a constitutional reform process that would lead to greater provincial autonomy¹⁵ – a process which is continuing to unfold today.

12 Ibid, 17.

13 Solomon Islands Constitutional Reform Project, 4.

14 Scales, 205.

15 Part 4, Section 1 of the Townsville Peace Agreement of 2000 stipulates that “The SIG shall establish a Constitutional Council to rewrite the Constitution, which will provide for more autonomy to provinces.”

Strongly tied to the ongoing discussions surrounding constitutional reform are efforts to increase the recognition of customary law and strengthen traditional systems of leadership – indigenous structures that many feel the 1978 Constitution supplanted with introduced concepts of law. As one participant in a Chief’s Workshop held in Gizo in 2010 stated, “The Constitution was created and handed to us by people who do not know much about Solomon Islands custom and culture; we did not create our own Constitution”¹⁶, underscoring the tension between the introduced legal framework of the Constitution and the traditional governance structures many feel it has overridden.

Constitutional reform consultation processes have highlighted these widespread sentiments, and the latest drafts of the proposed new constitution suggest that reforms could include:

- Three separate spheres of governance (federal, state and community);
- Reviving and empowering community leaders;
- Recognizing the role of chiefs and traditional leaders; and
- Empowering chiefs with decision-making authority over natural resource development.¹⁷

The official end to armed conflict also led to the establishment of a government institution, the Department of National Unity, Reconciliation and Peace (DNURP) within the Ministry of Provincial Government, National Reconciliation and Peace and Home Affairs, tasked with spearheading peace and reconciliation efforts from the SIG. Following the upgrading of the Department to the MNURP, a Peace and Reconciliation Office was established for Western and Choiseul Provinces. This office – which in time led to the establishment of one office for each province – was given the mandate to foster reconciliation through “improving and empowering existing village structures and institutions”¹⁸. While the MNURP has made progress in supporting reconciliation in a number of communities and provinces, some have questioned whether reconciliation at the community level can be effectively driven by the central government.

16 MNURP. 2010. Report on the Chiefs’ Workshop for Central/West Region: ‘Empowerment through Leadership – The Chiefs’ Roles in the Peace Process’, 26–30 April 2010, p. 15.

17 MNURP. 2009. Report on the Marovo Lagoon Chiefs’ Workshop: ‘Empowerment through Leadership – The Chiefs’ Roles in the Peace Process’, 29 September–1 October 2009, p. 7.

18 MNURP. 2010. Report on the Chiefs’ Workshop for Central/West Region: ‘Empowerment in Leadership – the Chiefs’ Roles in the Peace Process. Gizo: Western Peace and Reconciliation Office, p. 5.

Instead, as this case study will show, dialogues held in Western Province and Choiseul indicate strong local feelings that traditional leaders – rather than the central government – should assume the responsibility for managing reconciliation within their own communities, and that resources and funding for such work would be best managed locally.

Other government departments also face challenges in delivering services to Solomon Islands widely dispersed, and often difficult to access, rural communities, suggesting there is a need to better engage with and support locally-derived mechanisms for meeting some needs. Access to justice services, for example, has been shown to be particularly deficient in rural areas. A 2010 capability assessment of the Royal Solomon Islands Police Force acknowledged that it does not currently have the capability to achieve even its minimum service standard – the ability to make contact with police within one day of a reportable incident occurring¹⁹. This, along with a court system facing similar capacity and funding issues has prompted some commentators to advocate for initiatives which link more strongly with local governance systems, empowering them to provide more of their own their own services at the local level. Work related to recent justice initiatives designed to link national and local governance systems to deliver justice services suggest that community perceptions of security are enhanced when local chiefs are re-empowered with their traditional roles in delivering justice and promoting reconciliation²⁰. However, it has also been noted that many chiefs often feel cut off from information about SIG legislation and programming because flow of information to them is lacking, hindering their ability to take on greater responsibilities²¹.

Overall, one of the overarching problems that continues to challenge the SIG's ability to govern its remote provinces is the lack of a government structures and processes that adequately bridge the gap between community and provincial governance²². This problem was exacerbated by the abolition of Area Councils – the local level of representative government – between 1996 and 1998.

19 Mekim Senis: Resourcing Change 2010-2013 (Honiara: Royal Solomon Islands Police Force 2010)

20 Dinnen, Sinclair and Nicole Haley. 2012. Evaluation of the Community Officer Project in Solomon Islands. Washington: The World Bank; Brigg, Morgan, Volker Boege, Jodie Curth-Bibb, and Anouk Ride. 2010.

"Solomon Islands Field Research Report, Working with Local Strengths to Institutionalise the Responsibility to Protect", Australian Centre for Peace and Conflict Studies and The Asia-Pacific Centre for the Responsibility to Protect, The University of Queensland (unpublished report).

21 Western Province Stakeholders and Chiefs' Meeting and Resolutions, p. 11

22 Western Province Stakeholders and Chiefs' Meeting Resolutions, p. 25.


Not surprisingly, given the context presented above, significant dialogues over the empowerment of traditional leaders in reconciliation work and greater self-governance based on customary law have been taking place in Western and Choiseul Provinces, underscoring the centrality of these provinces in conversations over locally-driven governance, peace and reconciliation. While cutting across a number of issues, these discussions revolve around a desire to: gain recognition for existing indigenous systems of governance; find ways to connect these systems with provincial and national level governance; and take greater local responsibility for managing challenges around peace and order. The following section of this case study explores some of the efforts taken to date to move towards these goals.

3. PROCESS

Opportunities for Solomon Islanders to engage in dialogue about the issues of peace and governance outside of Honiara in a way that connects with SIG policy and programs are rare. In recent years, however, activities undertaken by the MNURP in Western Province and Choiseul have given community leaders an opportunity to participate in information sharing and discussion, enabling them to reach agreement on important next steps for improving governance and prospects for peace and in their communities. Two Provincial Peace and Reconciliation Symposia and a series of workshops for chiefs in Western Province have been central to furthering local engagement on issues of peace and governance. These meetings, convened by MNURP, have complemented national discussions about constitutional reform, and have given rise to a strong desire to re-activate and strengthen local governance capacities, including through formalizing community governance structures, obtaining appropriate recognition in national and provincial legislation, and through the codification of customary law. Work underway by the indigenous NGO Luru Land Convention of Tribal Communities (LLCTC) provides examples of locally driven initiatives to reinvent and strengthen traditional governance mechanisms.

Sharing of up-to-date information from government, business and church leaders

The MNURP, recognizing that conflict can – and as the Tensions proved all too well – does arise out of failings in governance arrangements which regulate communities' relationship with the state, provided a number of opportunities to explore the link between governance and peace. Two symposia to mark the



opening of regional MNURP offices in Gizo (Western Province) in November 2008 and Taro (Choiseul Province) in February 2009 were platforms for the exchange of information about issues that impact on peace and governance at the provincial level. The symposia, opened by the respective Provincial Premiers, were run over a number of days and brought together national and provincial leaders, chiefs, church, women and youth leaders with the aim of sharing information and discussing issues relating to local level peacebuilding and reconciliation. In doing so, it was hoped that the symposia would provide an opportunity to translate national government peacebuilding and reconciliation policies and strategies to the socio-cultural context and situation of the people at the provincial level, and open up a way forward for future activities that could contribute to peace.

A key method of sharing information amongst symposium participants was through presentations made on an extensive array of topics and delivered by a range of people – government officials, church leaders, representatives of non-government organizations, the business community, and by private individuals²³. Government officials provided information about current government policies and strategies relating to, for example, progress on border affairs, constitutional reform, disaster reconstruction and land reform initiatives. Private individuals made presentations on topics such as the relationship between conflict and natural resource management, the importance of institutional strengthening down to the community level, the current status of law and order in the country and the role of women in development. Prominent church leaders provided attendees with their views on the role of the church and current challenges facing Solomon Islands society. The Choiseul symposium included a detailed presentation by representatives of the LLCTC about the structure, mission and activities of the organisation. Similarly, a Shortland Islands leader shared with the Western Province workshop participants details about the structure of the Famo Council of Chiefs, explaining his community's intention to use the structure as a basis for a Community Government should constitutional changes institute this level of government. Through these presentations, participants were exposed to a variety of information that contributed to their understanding of, and engagement with, governance and peace. It also assisted participants to identify and clarify issues, leading to more informed and constructive discussions.

23 Report on the Choiseul Peace and Reconciliation Symposium, 9–13 February 2009, Report on the Western Province Peace and Reconciliation Symposium 18-20 November 2008.

Further information sharing – this time at a more targeted local level – took place during three Western Province workshops held in 2009 and 2010 titled “Empowerment in Leadership, the roles of chiefs in the peace process”. Again organized by the MNURP as part of the Western Province Reconciliation Office work programme, these training workshops for chiefs (mostly men), lasted a number of days and provided attendees with information about a range of topics relating to peace and governance, with a focus on issues that impact on chiefs and their role in community governance. The presenters, for example, included a local magistrate and legal officer who informed participants about how the legal system engages with traditional justice systems, and chiefs’ legislated role in resolving land disputes. Other presenters shared information about how the role of chiefs in community governance is defined under legislation. A key part of the workshops were presentations on various models of community governance structures during which some presenters shared how they had successfully registered their community governance structure under provincial legislation, enabling them to gain legal authority for implementing various community by-laws.

An essential part of the chiefs’ workshops was a session in which the chiefs, working in groups, began to document local customary laws in relation to issues such as adoption, appointment of chiefs, land ownership and acquisition, settlement of land disputes and the administration of compensation. This was an opportunity for chiefs from different areas to share and compare their traditions, bringing renewed enthusiasm for reviving this traditional knowledge as a tool for strengthening traditional structures and re-empowering chiefs to assume their customary roles. This process was accompanied by a presentation which challenged attendees to rejuvenate village governance capacities. As one presenter said, the chiefs needed to help with “re-establishing our system of bangara [local word for chief]; strengthening our weak bangara system; empowering our system of community governance; preparing for the establishment of the proposed grass root governance in the federal system and re-uniting broken relationships, mending and bonding communal relationship to foster peace and unity in families, communities and Western Province”²⁴.

The information-sharing conducted through these symposia and workshops built upon, and fed into, an ongoing national conversation about governance being conducted as part of the process to engage Solomon Islanders in the development of a new national constitution.

24 Report on the Chiefs’ Workshop for South West New Georgia, Rendova, North West New Georgia, Parara/Kohingo and Roviana Lagoon 16-19 November 2009, p 21.

This process, begun in 2000, has involved a number of rounds of community engagement at the village and provincial level, for example through discussions about decentralization held in over 150 villages in 2003, and through a series of Provincial Conventions in each province in which approximately 50 nominated men, women and young people met to discuss proposed constitutional reforms and agree on a provincial position. Provincial Conventions were carried out in Choiseul and Western Provinces in February and April 2012. The culmination of these discussions will be a National Convention in which components of the draft constitution will be finalised before being presented to Parliament.

In-depth discussions, identifying and clarifying issues

Information-sharing through presentations led symposium and workshop participants to engage in in-depth discussion about the issues presented. These discussions enabled participants to share their different perspectives on the range of topics presented and in doing so, to share their unique histories, stories, beliefs and opinions. The symposium and workshop environment provided a safe and constructive space in which to engage in discussions on these important issues.

A common theme throughout the symposium were discussions about the failures of the current government system, with attendees expressing their profound dissatisfaction with current political arrangements and the failure of government to engage with people at the community level. During the Gizo symposium, for example, a female participant described the current governance system as a “grand puppet-show” in which the rural people are the passive audience – “non-participating while the show goes on”²⁵. She described the actors in the puppet show as government, corporate/business and civil society.

Land and resource management was a much-discussed topic in both symposia, with attendees complaining that traditional conceptions of land custodianship were being inadequately translated into modern systems of land dispute management, resource use and development. Introduced systems of land management, it was argued, “bring grief and conflict amongst blood relatives or members of the same household”²⁶. In particular, attendees in the Choiseul meeting suggested that the legal aspect of land ‘ownership’ creates controversy with one participant stating “We don’t own the land, land owns us. Conflicts and problems arise when we begin to claim land ownership”²⁷.

25 Report on the Western Province Peace and Reconciliation Symposium 18-20 November 2008, p 18.

26 Report on the Western Province Peace and Reconciliation Symposium 18-20 November 2008

27 Report on the Choiseul Peace and Reconciliation Symposium, 9-13 February 2009

Current legislation, it was claimed, was being used as a process by ‘greedy relatives’ to hide the ownership of others. Some suggested that the formal court system was unable to satisfactorily solve land matters. Others recognized that there were also challenges to reverting to customary land dispute management, saying “The custom of Luru people regarding land ownership is perfectly alright, but people refuse to respect it and ensure that this knowledge is transferred to the young generation”²⁸.

Similarly, the chiefs’ workshops in Western Province provided attendees with opportunities to discuss current challenges within community governance systems. In the Munda workshop, for example, some participants discussed challenges that can arise when chiefs are responsible for resolving land disputes, with some suggesting that chiefs’ role can be compromised because they have vested personal interests in the dispute or have a lack of understanding of the relevant legislation and how it defines their role. Other attendees felt that cases should be heard by ‘true traditional’ chiefs, rather than church leaders, because of partiality in relation to church membership of the parties. Others still mentioned examples of chiefs who had agreed to hear cases in different localities where they did not have the requisite customary knowledge. One participant also suggested that “chiefs cannot be trusted because experiences tell that they are easily bribed”²⁹.

Reaching agreement on ways forward

The information-sharing and discussions undertaken during the symposia and workshops helped participants to develop ideas and options to respond to the issues that had been identified during the proceedings. These options were further developed in to a series of recommendations in the form of resolutions. The agreement to, and signing of these resolutions concluded the meetings, and provided participants and the government organisers with a concrete record of the outcomes of the discussions.

The resolutions resulting from the symposia included both specific requests to government, and more general recommendations. For example a resolution from the Western Province symposium contained the specific request that the practice of providing members of Parliament with a pool of funds to be used at their discretion within their ward be discontinued, and that such funds instead be directed through community leadership structures such as the Council of Chiefs.

²⁸ Report on the Choiseul Peace and Reconciliation Symposium, 9–13 February 2009

²⁹ Report on the Chiefs’ Workshop for South West New Georgia, Rendova, North West New Georgia, Parara/Kohingo and Roviana Lagoon 16-19 November 2009, p 16

More general resolutions included that “faith-based organizations and traditional leaders and community institutions (eg. Council of Chiefs) take a leading role in the peace and reconciliation process, with financial and logistical support from the national government³⁰” and that there be a “concerted efforts to integrate the status and role of women in the machinery of government and public institutions including Parliament, Provincial government and in community organizations”³¹.

The Western Province chiefs’ workshops also concluded with the signing of a set of resolutions, the preamble to which highlighted the chiefs’ primary role as the front line in managing conflict, and expressed discontent that their role had failed to be adequately incorporated in the formal legal and governance system. This was followed by resolutions on a range of issues impacting on peace and security in the communities. The majority of these resolutions related to acquiring sufficient recognition of the role of chiefs in government and legal processes, for example through implementing a federal system that incorporated community government, and through amendments to legislation, and to strengthening of village community governance structure and capacities. These resolutions sought to re-affirm the role of traditional leaders in village and tribal community governance through formal recognition by the Provincial Government through mechanisms such as a Provincial Ordinance giving chiefs powers to enforce customary law in their communities.

Some of the chiefs’ workshops made resolutions in response to recognition that weaknesses in traditional governance systems were not only created by lack of external support and recognition, but arose out of weaknesses in current structures, confusion about roles and responsibilities, and lack of communication. For example chiefs in the Morovo area made resolutions asking for assistance with re-defining and clarifying the role of the Morovo Council of Chiefs in relation to the Ward Council of Chiefs. Participants in this meeting also made a resolution requesting the compilation of a comprehensive set of Morovo customs to assist chiefs in applying customary laws in their communities³².

30 Resolution 7, Report on the Choiseul Peace and Reconciliation Symposium, 9–13 February 2009, p 29

31 Resolution 8, Report on the Western Province Peace and Reconciliation Symposium 18-20 November 2008, p 42

32 Report on the Morovo Lagoon Chiefs’ Workshop, 29 September – 1 October 2009

Lauru Land Conference of Tribal Communities – leading the way in the recording of customary law

While, the diverse communities that make up Western Province are at different stages of documenting their customary law, with many groups only just beginning the process, the relatively homogenous Choiseul has been leading the way through the efforts of the LLCTC, a key organization that is actively pursuing community-led governance arrangements for Choiseul communities. Formed in 1981, its mission is to unite chiefs, churches and citizens towards a common goal of an enduring, represented and respected Lauru³³ land, people and their culture³⁴. With the organisation's formation inspired by attendance by founding members at a World Council of Church conference, the LLCTC is founded on a set of biblical principles, reflected in its organizational diagrams in which 'spirit of wisdom, grace and truth', or 'father love, son wisdom and holy spirit power' take primary positions³⁵. One of the key activities being undertaken by LLCTC is facilitating the recording of customary law.

It was a resolution made during an AGM of the LLCTC that set in train a process for compiling a comprehensive set of Choiseul customary laws. During this meeting, 12 senior chiefs were identified to begin the process of documenting the laws and customs as they understood them. So began the detailed process of collecting and collating the usually oral customs and traditions in Choiseul. After some months of collecting and writing down relevant customs, a series of workshop of all Choiseul chiefs was held to provide chiefs with an opportunity to review the documented customary law, and if they disagreed, to put forward their arguments as to why it was incorrect. As one of the chiefs explained, this process was taken very seriously, with each disputed claim dealt with individually. In one example an old chief claimed to dispute a number of laws that had been documented, mostly relating to the genealogical basis for certain land boundaries. He was given an opportunity to explain why he believed the laws to be incorrect, and through a process of discussing with the other chiefs the details of each case, he came to agree that it was in fact he who had been mistaken. This process of ensuring there was wide agreement among the chiefs for each law was repeated in all three workshops until the chiefs were satisfied that an accurate book had been developed. The book, written in local language with a title translated as the "Lauru worthy custom book", was launched in 2011.

33 Lauru is the local language word for Choiseul

34 <http://www.lauruland.org/index.php/>

35 Report on the Choiseul Peace and Reconciliation Symposium, 9–13 February 2009 (Part B), p 8

Support for the work of the LLTC by participants in the Choiseul symposium was demonstrated through a set of resolutions requesting that the government support the LLCTC in its work, and also that the organisation be given formal powers that would enable it, in some instances, to replace government functions, for example the symposium resolved “that all land matters and conflicts be dealt with by and through the LLCTC and not the formal court system”. The Choiseul symposium participants also recommended that the government review legislation to grant LLCTC the power to be the sole authority to deal with land, forest and sea resources owned by tribal communities of Lauru³⁶.

4. CHALLENGES

Ensuring inclusive participation in decision making

While women are clearly recognized as playing important roles in Solomon Islands society, their roles in decision-making processes surrounding issues of customary law have traditionally been limited in many parts of the archipelago. This appears to be the case in the early activities relating to codification of customary law detailed in this case study. For example, women were only invited to the third LLCTC workshop for the development of the Choiseul book of customary law. As one of the chiefs explained, it would have gone against *kastom* for women to be involved in or even to hear some of the discussion by the chiefs because some of the language used and issues discussed are considered ‘*tabu*’ for women. He did argue, however, that women’s support for these activities was demonstrated through their willingness to provide food for the meetings without charge.

Nonetheless, as movements are made to return to customary law as a framework for local governance, balancing the need to preserve *kastom* with growing global norms advocating for women’s participation in governance will continue to be a challenge. One issue here may simply be a matter of understanding how women are traditionally involved in decision-making. Outsiders may not appreciate the less obvious forms of women’s’ participation. For example, women’s cooking may be a significant signal of support for the meeting held, and this support may be include informal consultation and in some cases vetting of decisions taken by men. Equally, the case for more direct participation also seems strong, and the MNURP has been a positive influence for the greater direct involvement of women, with women included to some degree in the more recent and wider symposia.

36 Report on the Choiseul Peace and Reconciliation Symposium, 9–13 February 2009 pp. 29-31

Young people have also traditionally been excluded from participation in discussions and decision making about governance and peace. Although some youth representatives were included in symposium discussions, young people (particularly young women) are excluded in many *kastom* decision-making processes, and were not represented in the chiefs workshops described above. Given the acknowledgement of challenges associated with a growing generational divide, finding ways to meaningfully engage young people in decisions about future community governance is vital. Again, though, the MNURP is having a positive influence here too, with a recent youth peacebuilding symposium (July 2012) discussing the Luru custom law book in one of their sessions.

Agreeing on the interpretation and application of customary laws

Determining how to translate customary law into a 'modern' system of local governance and rule of law continues to present a challenge to codification efforts to date. One specific issue that has emerged is that of interpretation. Codification of customary law requires transcribing what has historically been an oral tradition into writing, and questions can emerge over the proper phrasing required to capture a law's original meaning. Further complicating this are issues of translation itself. For instance, one participant in a Chiefs' Workshop noted that a number of foreign terms in use today – including such terms as primary rights and secondary rights, exclusive rights, winner and loser, landowner and even 'chief' itself – have replaced customary terms, and disputes over their exact meaning can cause confusion among chiefs. A related challenge is that writing down traditionally oral *kastom* introduces an element of rigidity not previously present in customary systems which have adapted and changed as circumstances require. Developing a clear system of laws that are appropriately flexible and can be interpreted and applied fairly by all chiefs will likely continue to present challenges in the ongoing dialogues over codification.

Difficulty in delineating between state and customary jurisdiction

Difficulties remain over determining which level of government should deal with which problems. While overtures towards preserving customary law are made in the Constitution and in Acts of Parliament, there is a lot of confusion about responsibilities delegated to chiefs, and their roles and jurisdiction remain ambiguous. Even when the state has clear responsibilities, for example in relation to the provision of services, lack of capacity of state systems (eg. police and courts) means that even if the state has the authority to act, it may lack the capacity to do so, further eroding peoples' confidence in the

systems of centralised governance. These are significant challenges for the whole country, and more discussions need to take place, through dialogue processes such as those described above at all levels in order to grapple with the on-going challenges of governance.

Resolving inconsistency between customary and state law

A related challenge will be to ensure that community-driven customary laws do not contain aspects that are incompatible or inconsistent with state laws, and vice versa. For instance, some methods of punishment called for under customary law – such as killing out of retribution – are obviously inconsistent with a state judicial system emphasising due process under a court of law. Processes to date have paid particular attention to resolving these issues; for instance, in the preparation of the Luru book of customary law, such punishments are taken out and it is specified that such transgressions would go through the modern courts system. Similarly, a draft Western Province Ordinance (discussed below) specifies that where there is inconsistency, national or provincial legislation will prevail. In some instances it may be appropriate for both systems to be involved in managing an offense in order to meet the needs of the community to reconcile with the offender, and for the state to legally impose due punishment. How these two systems can best be integrated without creating unjust or unworkable outcomes is central to discussions about governance³⁷.

Dealing with ‘modern’ problems under customary law

While many communities maintain a strong desire to assume responsibility for their own problems and form their own solutions, concerns have been raised that customary law may not be able to deal with more contemporary problems, such as disputes over resource extraction rights, and substance abuse³⁸. In some cases, while there may not be a specific customary law that addresses the relevant issue, it has been possible to identify other existing *kastom* laws under which they may be able to be dealt. To describe the principle, a Choiseul chief gave the example of new problem of ‘peeping tom’ offenses. While there is no customary law specifically forbidding this offence, some chiefs have interpreted this as akin to abuse of women or abuse of a female family member and as such, these cases are dealt with under existing customary laws addressing the wider issue. Dating is another modern concept that was not

37 Western Province Stakeholders and Chiefs’ Meeting Resolutions, p. 17.

38 Dinnen, Sinclair and Nicole Haley. 2012. Evaluation of the Community Officer Project in Solomon Islands. Washington, DC: The World Bank, p. vi.

previously allowed under Choiseul *kastom*; however, a way of dealing with this has been developed that requires the consent of the girl and her family and is thus able to be reconciled with *kastom*. In other cases where the offence may be completely outside the bounds of *kastom*, it has been suggested that these be directed to the criminal justice system.

Managing diversity of cultures (and customary law systems)

Codification of customary law and creating distinct systems of local governance will likely be more difficult in societies that are characterized by a wide range of cultures (for example, Western Province) than in more homogenous societies (such as Choiseul Province). A range of cultures also brings with it a number of systems of customary law, potentially complicating the efforts to create cohesive systems of local governance. Problems may arise when an act considered an offense in one community is not recognized as such in another, and questions of fairness may emerge where one community's punishment differs markedly from another for the same transgression. In these cases, codifying customary law may emphasize difference, possibly hindering the work of inter-communal reconciliation and setting the stage for new conflicts to emerge.

Questions over the relevance and authority of traditional chiefs

Customary law systems place a great deal of vested power in a few individuals; namely, traditional chiefs. This raises the question of how these individuals are selected for such an important role. Customary processes for identifying chiefs differs throughout the country, with some chiefly systems being based on merit, and others on birth lineage. Further complicating matters is that colonial practices of indirect rule sometimes involved nominating chiefs or 'headmen', in some areas eroding traditional practices of chief selection. As a result, it is not always clear who are the rightful chiefs in an area, and this can result in disputes over who rightly can claim the role. A related issue is that of representation – as traditional chiefs are not the elected representatives that characterize a 'modern' democratic system of governance, some may feel that chiefs do not represent their interests or that there are limited avenues for redress against unfair decisions by chiefs, leading them to feel disenfranchised by a customary system of governance. Others, particularly young people, who may have been educated in different places or systems, may feel that the chiefs and local *kastom* are less relevant to their lives; they will thus require active participation in any processes to ensure that they feel connected to the systems of governance that will emerge from them.

5. RESULTS AND IMPACTS

The aspirations behind local level dialogue about peace and governance are large ones, and it will likely be a long time before many of the desired results are achieved. One of the key results of these dialogue processes, however, is a peaceful engagement with issues that are crucial to the establishment and maintenance of societal order. As Solomon Islands grapples with the challenge of developing governance arrangements to best serve its diverse populations, any process that enables people – particularly those outside of the capital – to be informed about, and be provided with opportunities to share and discuss their ideas, and to have those ideas fed back to Government, is a significant achievement. The reports of the symposia capture a detailed range of views, and the concluding resolutions provide a platform for further dialogue, advocacy, and work. In the case of the Western Province chiefs’ workshops, a compilation of the resolutions made formed part of a submission to Cabinet on progress relating to reconciliation and compensation in Western Province. While government is yet to respond, these processes of enabling citizens to gain information and distil their ideas in ways that can be communicated to decision-makers are important steps towards achieving concrete outcomes and central to peacefully managing peoples’ concerns and aspirations.

Some of the resolutions made during the dialogue process have resulted in quite specific effects. In response to resolutions made during the Western Province chiefs’ workshops, a ‘Western Province Village Community Governance Ordinance’ has been drafted. It seeks provincial government recognition of a two-tiered local level government structure made up of ‘village community government’ committees and ‘Ward Council of Chiefs’. The Ordinance would give these community government structures the power to make and enforce bylaws in their communities, prioritise funding for ward level development initiatives and advocate for these initiatives in provincial government development plans³⁹. The Ordinance sets out a range of detailed requirements for these bodies including identifying what matters they would have responsibility for, specifying that decision making would be through consensus and specifying how the different layers of government would work together. At the time of writing the Ordinance is undergoing further drafting before being put before the Provincial Assembly.

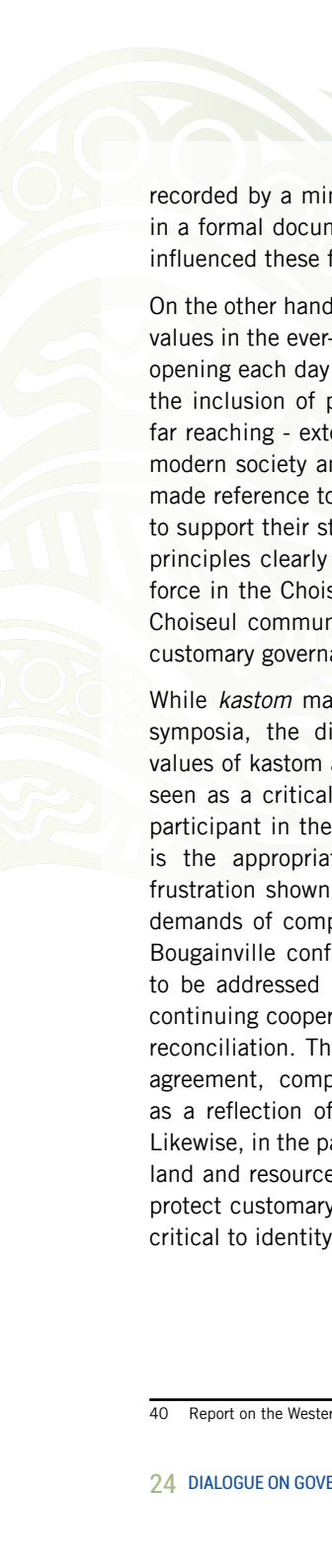
39 The research for this case study has been unable to examine the relationship of the proposed Ordinance with existing legislation so is unable to comment on the extent to which this would bring about a change in existing governance structures.

The work of the LLCTC towards developing a comprehensive record of customary law has also resulted in a tangible outcome with work of the 12 chiefs and the three workshops culminating in the drafting of a book in local Choiseul language, the “Lauru Worthy Custom Book” in 2011. While this task has been made easier by Choiseul’s relatively homogenous customs, the book and the process of documenting these customary laws have attracted much interest from other provinces seeking to achieve similar outcomes. One of the specific purposes of the book was to provide a broadly accepted schedule of acceptable amounts to be paid, either by way of compensation for offenses, or for bride price. The intention was to arrest the pattern in recent years which has seen the gradual shift in emphasis from compensation as symbolic exchange (as most people accept is intended under *kastom*) to a means for financial gain. This has been seen in rising bride prices and inflated claims for compensation. While the impact is yet to be seen, it is hoped that the Choiseul book will provide communities with a guide to keep these payments within appropriate limits, thereby preserving their symbolic significance in *kastom*.

6. TECHNIQUES AND VALUES

The processes that are contributing to local level dialogue on peace and governance draw on a range of values and techniques introduced via modern systems of democratic governance and western-style policy making, and from Christian teachings, while at the same time reflecting underlying customary norms. This fusion of influences is a demonstration of Solomon Islands society continuing to adopt and adapt to changing societal circumstances and new influences. While sometimes creating confusion and uncertainty, this hybridity mirrors the multi-layered aspects of governance that Solomon Islanders are grappling with.

In many respects, the dialogue that took place during the MNURP symposia were constructed around techniques brought via modern systems of (introduced) central government. Funded and organised by a government ministry, it was opened by Provincial Premiers, and included government representatives. Similarly, it followed a process very much reflective of modern western format – participants were nominated to participate based on their formal roles and were broadly representative of civil society, men, women and youth, in line with contemporary expectations of inclusivity. Participants were issued with nametags and papers at the beginning of the symposia and presentations were made using PowerPoint in a lecture/audience format with proceedings being



recorded by a minute-taker. Concluding meetings with a series of resolutions in a formal document is also a reflection of introduced processes that clearly influenced these forums.

On the other hand, the meetings included aspects that reflect Solomon Islands values in the ever-present allusion to Christian teachings through, for example, opening each day with morning devotion, and closing with prayer, and through the inclusion of prominent Church representatives whose contributions were far reaching - extended to questioning some fundamental assumptions about modern society and its direction. Similarly, presenters and participants often made reference to God and the bible in their presentations and in discussions to support their statements. The inspiration and guidance drawn from biblical principles clearly provide a foundation for the work of the LLCTC – a strong force in the Choiseul symposium - which simultaneously seeks to strengthen Choiseul communities, both in their faith and in their adherence to revived customary governance mechanisms.

While *kastom* may not have been so obviously present in the format of the symposia, the discussions themselves very much brought the underlying values of *kastom* and tradition to the fore. Culture and *kastom* was very much seen as a critical element in overcoming challenges discussed. One female participant in the Western Province symposium stated that “People’s culture is the appropriate legislation for resolving these problems”⁴⁰. Similarly, frustration shown by participants at the failure of government to respond to demands of compensation for damage suffered during of Spillover from the Bougainville conflict was seen by many as a threshold issue which needed to be addressed in order to restore relationships and pave the way for any continuing cooperation with the government in relation to pursuing peace and reconciliation. This prioritising of addressing an outstanding conflict through agreement, compensation and restoration of relationships could be seen as a reflection of Solomon Islands traditional conflict resolution processes. Likewise, in the passionate discussions about the management of the country’s land and resources participants strongly expressed their desire to honour and protect customary understandings of land, recognising that it continues to be critical to identity and survival in Solomon Islands.

40 Report on the Western Province Peace and Reconciliation Symposium 18-20 November 2008, P 4

The Chiefs' workshops in Western Province were perhaps more reflective of customary norms than the symposia in that the participants were invited based on their traditional leadership roles, rather than as broad community representatives. At the same time, some women and young people participated, although not in decision-making roles. While these workshops also included elements of western meeting processes – through formal presentations and organized 'group work', there were opportunities, by virtue of the exclusive representation, for participants to engage in frank discussions about the strengths and weaknesses of traditional governance systems and processes. It could be argued that such candid dialogue could not have taken place if the workshops had been more inclusive. Indeed, during workshops conducted by the LLCTC as part of the process of codifying customary law, one of the chiefs explained that this was considered necessary in order for chiefs to feel free to discuss all matters and using all types of language freely, and without fear of overstepping taboos in relation to what women could or couldn't witness.

Of all the processes described, the LLCTC process of codifying customary law was probably the most strongly influenced by *kastom*, which was not only the basis for the decisions themselves, but was also reflected in the process for reaching agreement. In a continuation of the example of the old man who disputed a number of laws relating to land, it was further explained that in order to avoid bringing shame on his family after being shown to be incorrect, he paid a voluntary amount of compensation to the chiefs that he had challenged. In doing so, he was able to repair relationships in an effort to ensure his interests would continue to be looked after by the community.

7. LESSONS LEARNED, OUTSTANDING ISSUES AND QUESTIONS

Kastom can be an important contributor to peace – Even though concerns, questions and challenges have been raised, the years since the Tensions have demonstrated that *kastom* continues to play an important role in maintaining social fabric and preserving relationships – both of which are of paramount importance in Solomon Islands society. For example, during the Tensions, chiefs in some communities were able to use their traditional authority to successfully restrain people from becoming involved in the conflict. The post-conflict period has also shown that *kastom* plays an important role in peacebuilding by providing a system through which conflict can be managed as it arises – relying on local resources – and thus preventing the build-up of tension that leads to conflict. As such, traditional leaders and community members alike have recognized the need to re-empower *kastom* systems, and look for ways of maintaining their relevance in the future. As this case study has illustrated, *kastom* has also proved to be a unifying force, bringing together a number of leaders from diverse communities through the many forums and Chiefs’ Workshops that have taken place. These dialogues demonstrate that despite its grounding in the past, customary law systems could prove to be a useful bridge to a shared future as well.

Development of good governance mechanism benefit from citizen participation – The experience of the Solomon Islands constitution indicates that in order to develop systems of governance that incorporate, and indeed make best use of local level governance capabilities, broad sectors of the community should be involved in the process. The dialogue processes described in this case study, along with constitutional reform consultation underway have begun the work towards this end. While it will likely be a long process, and one that may involve further rounds of trial and error, there is increasing recognition of the importance of constructively engaging with local level capacities to deal with a range of issues, and that by empowering traditional leaders and supporting them with the capacity to manage their own affairs, the state is better able to focus its resources on improving service delivery and other concerns. The dialogues supported and facilitated by the MNURP perhaps reflect this broad need by providing the setting for an engagement among a diverse range of local actors and maintaining a ‘light touch’ throughout the process.

How to reconcile ‘modern’ norms of inclusive governance with customary law? - Recognizing the growing global norm for full participation of women, youth and other populations often side-lined from political processes, there has been clear external pressure (e.g. from the MNURP) to ensure that local governance structures based on customary law are designed with inclusivity in mind. In some communities, changes have already taken place with women being invited to participate more directly in decision-making forums. Determining how this can be done in ways that do not undermine traditional processes will continue to be a question in the ongoing dialogues over local governance and customary law in the Solomon Islands. How can women use the traditional roles and powers bestowed upon them through *kastom* to gain access to these processes? How can the potential for entrenching negative aspects of customary law – such as discrimination against women – be avoided? Are there avenues of participation that are more appropriate for the Solomon Islands context?

How will *kastom* be integrated with state laws and processes? - Given the challenges faced by both customary and state systems, questions remain over how to divide responsibility between the state and local customary government levels of leadership. What measures will be taken to protect offenders from double jeopardy? Conversely, how can ‘forum shopping’ be prevented, so that offenders do not choose to be dealt with in the system that will provide a more favourable outcome? What accountability mechanisms will be put into place to prevent manipulation of *kastom* for self-interest, particularly given that so much power is invested in few individuals (chiefs)?

Will *kastom* continue to be relevant? – While *kastom* has clearly proven to be able to bring communities together – arguably in ways the State has been unable to achieve to date – will it remain relevant over the long term? Rapid processes of societal change have brought an array of new forms of offenses and disputes as well as opportunities that are not easily dealt with by existing customary systems. Despite its proven ability to adapt and change over previous centuries, it remains to be seen how well a system of laws and a local governance system based on *kastom* can maintain its relevance in the face of a changing society and external pressures particularly given that concerns are already being expressed over the youth’s disconnection from *kastom*.

