

# Traditional Justice: Practitioners' Perspectives

WORKING PAPERS

Paper No. 1

Negotiating Land Tenure:  
Women, Men and the Transformation  
of Land Tenure in Solomon Islands

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The *Traditional Justice: Practitioners' Perspectives* online series is part of a broader research program featuring research activities in Namibia, Rwanda, Somalia, Tanzania, Mozambique, Papua New Guinea, Liberia and Uganda, aimed at expanding the knowledge base regarding the relationship between the operation of customary justice systems and the legal empowerment of poor and marginalized populations. Articles in the series discuss key aspects of traditional justice, such as for example the rise of customary law in justice sector reform, the effectiveness of hybrid justice systems, access to justice through community courts, customary law and land tenure, land rights and nature conservation, and the analysis of policy proposals for justice reforms based on traditional justice. Discussions are informed by case studies in a number of countries, including Liberia, Eritrea, the Solomon Islands, Indonesia and the Peruvian Amazon.

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# Negotiating Land Tenure: Women, Men and the Transformation of Land Tenure in Solomon Islands

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Rebecca Monson<sup>1</sup>

## INTRODUCTION

Land issues are currently high on the agenda of national governments and donor agencies throughout the South Pacific.<sup>2</sup> At the centre of debates about land in the Pacific lies an issue common to many post-colonial countries, namely, the interaction between customary and state legal systems. In most South Pacific nations, constitutional or statutory law expressly provides that land is governed by “custom” or “customary law”.

The roles of customary and state legal systems with respect to land tenure have been extremely contentious among women’s groups and feminist scholars in many parts of the world. Some writers argue that customary law discriminates against women and advocate the intervention of the state to secure their rights to land. Others see the use of state law as an attempt to open up customary systems to market forces, a process that has generally had adverse implications for women. There are also major disagreements over a range of conceptual and normative issues, including the nature of men’s and women’s interests under customary law, the ways in which customary and state legal systems actually operate, and the effect of economic, political and legal transformations on those systems.<sup>3</sup>

Compared to other geographic regions, the gendered aspects of land tenure, or natural resource management more broadly, have received only very limited attention in the South Pacific.<sup>4</sup> In the Melanesian<sup>5</sup> nation of Solomon Islands, very little of the research on land has been undertaken by women, or focused on differences in men’s and women’s perspectives

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<sup>2</sup> See for example Australian Agency for International Development (AusAID), *Making Land Work*, Volume 1 and 2 (2008).

<sup>3</sup> For a review of these debates see A Whitehead and D Tsikata, ‘Policy Discourses on Women’s Land Rights in Sub-Saharan Africa: the Implications of the Return to the Customary’ (2003) 3(1-2) *Journal of Agrarian Change* 67–112; S Razavi, ‘Liberalisation and the Debates on Women’s Access to Land’ (2007) 28(8) *Third World Quarterly* 1479–1500.

<sup>4</sup> Notable exceptions include: C Bolabola et al, *Land Rights of Pacific Women* (1986); R Monson, *Land Rights of Melanesian Women: Women’s Rights to Customary Land in Fiji and Vanuatu*, Honours Thesis, Monash University (2004); E Huffer (ed), *Land and Women: the Matrilineal Factor: the Cases of the Republic of Marshall Islands, Solomon Islands and Vanuatu* (2008); and G Nelson, *Review of the Gender Dimensions of Land-Based Conflict in the Pacific*, Consultancy Report commissioned by the Pacific Islands Forum Secretariat (2008).

<sup>5</sup> The South Pacific (or Oceania) is often understood as being composed of the subregions of Melanesia, Polynesia and Micronesia.

and experiences of land tenure.<sup>6</sup> There is, therefore, a general lack of accessible information on women's experiences of customary and state laws governing land, or on the ways in which women might be empowered within these systems.

This article examines the interaction of customary tenure systems with the state legal system in two sites in Solomon Islands, one rural and one peri-urban.<sup>7</sup> Part 1 provides a brief overview of land tenure in Solomon Islands, which is characterized by the overlapping arenas of the state, *kastom*,<sup>8</sup> and Christianity. Parts 2 and 3 examine land tenure arrangements in the two field sites, focusing in particular on transformations in customary systems occurring since colonization, and the impact of those transformations on women. The first case study focuses on the renegotiation of traditional leadership institutions on the rural Bareke Peninsula, in central Marovo Lagoon, through the arenas of the church and state. It shows how during the colonial era, missionaries and colonial administrators recognized some segments of the local polity and disregarded others, with implications that continue today. The second case study examines some of the ways in which *kastom* and the state legal system interact in Kakabona, a peri-urban area on the outskirts of the capital of Honiara, on north Guadalcanal. The state legal system requires that landholding groups be represented by a small number of individuals. In practice, this has concentrated control over lands in the hands of a small group of male leaders who have the customary authority to discuss land matters inside a public arena. The interaction of *kastom* and the state legal system has therefore enabled the transformation of customary "rights to speak" into effective ownership. The concluding section makes some general observations about the interaction of custom and the state, and the ways in which women may be empowered within these systems.

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<sup>6</sup> See, however, R Maetala, 'Matrilineal Land Tenure Systems in Solomon Islands: the cases of Guadalcanal, Makira and Isabel Provinces' in E Huffer (ed) *Land and Women: the Matrilineal Factor: the Cases of the Republic of Marshall Islands, Solomon Islands and Vanuatu* (2008) 35.

<sup>7</sup> Approximately seven months were spent in each field-site during 2008–2009. This fieldwork was supported by the Australian Federation University of Women Georgina Sweet Fellowship (2008) and a Fieldwork Funding Grant from the ANU College of Law. Some of the work on Kakabona has appeared in R Monson, 'Women, State Law and Land in Peri-Urban Settlements on Guadalcanal, Solomon Islands' (2010) 4(3) *World Bank Justice for the Poor Briefing Note*.

<sup>8</sup> "Tradition" or "custom" in Solomon Islands Pijin (as well as the Papua New Guinean Tok Pisin and Vanuatu Bislama).

# 1. Land tenure in Solomon Islands: *kastom*, church and state

Solomon Islands is a scattered archipelago of over 900 mountainous islands and low-lying coral atolls in the South Pacific Ocean. The population is extremely diverse, with some 500,000 people speaking about 90 indigenous languages. Around 10 percent of the country's population live in Honiara, the capital, which is located on the largest island, Guadalcanal. The majority of the population lives in small, highly dispersed settlements scattered across the country and is engaged in subsistence agriculture and fishing. Customary land is the dominant form of land tenure, with more than 80 percent of land held according to customs that vary from place to place. Landlessness is virtually unknown, but the recognition of rights to land by the state legal system and the distribution of financial benefits associated with these rights are a source of significant concern for many women and men.

## 1.1 State legal recognition of customary tenure

Under the *Constitution of Solomon Islands 1978*, only "Solomon Islanders" may hold a perpetual interest in land.<sup>9</sup> The manner of holding, occupying, using, enjoying and disposing of customary land is determined by "current customary usage" [LTA, s 239]. This is defined in a circular manner as the practice of Solomon Islanders relating to the matter in question, at the time when that question arises, regardless of whether that usage has existed from time immemorial or for any lesser period [LTA s 2(1)].<sup>10</sup> "Customary law" is also recognized as a general source of law, and the Constitution provides that the rules of customary law prevailing in an area of the Solomon Islands are applicable to that area, subject only to the Constitution and the statutes of Parliament.<sup>11</sup> These definitions acknowledge that Solomon Islands *kastom* is neither static nor "unimaginably ancient", but is dynamic and will continue to develop and form part of the legal system.

Only a very small percentage of customary land has been registered.<sup>12</sup> When there is registration, it usually occurs under the *Land and Titles Act 1996* [Cap 133]. This provides for group ownership of land by means of appointment of a maximum of five trustees, who are listed on a register.<sup>13</sup>

Disputes over customary land in Solomon Islands must be submitted to the local chiefs for adjudication before the matter can be referred to the courts.<sup>14</sup> Parties must file a certificate showing that this has occurred before seeking the judgment of a local court.<sup>15</sup> Local Courts are constituted "in accordance with the law or customs of Islanders of the area in which the court is to have jurisdiction", or alternatively, by the Chief Justice "if he shall think fit".<sup>16</sup> Decisions of the Local Courts may be appealed to the Customary Land Appeal Court (CLAC),

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<sup>9</sup> *Constitution of Solomon Islands 1978*, s.110. "Solomon Islanders" are persons born in Solomon Islands and who have two grandparents who were members of a group, tribe or line indigenous to Solomon Islands: *Constitution of Solomon Islands 1978*, s 113; *Land and Titles Act 1996* [Cap 113], s 2.

<sup>10</sup> *Land and Titles Act 1996* [Cap 113], s 239.

<sup>11</sup> *Ibid* ss 76, 144(1) and Schedule 3.

<sup>12</sup> In 2002, only 12 percent of land had been registered: Pacific Island Forum Secretariat *Session 3 Paper: Land Issues* (Paper prepared for the Forum Economic Ministers Meeting, Port Vila, Vanuatu, 2002).

<sup>13</sup> The *Customary Land Records Act 1994* [Cap 132] establishes an alternative system for recording interests in land, but this has not been widely used.

<sup>14</sup> *Local Courts Act 1996* [Cap 19], s 12(1)

<sup>15</sup> *Constitution of Solomon Islands 1978*, above n 9, s 257.

<sup>16</sup> *Local Courts Act 1996*, above n 14, s 3.

whose members are appointed by the Chief Justice. Both of these courts apply customary law. There is a right of further appeal to the High Court on a question of state law or procedure, but not customary law.<sup>17</sup> The Local Courts and CLAC lie at the heart of the intersection of *kastom* and the state legal system, yet sittings of these courts are often irregular due to a lack of financial resources.<sup>18</sup> Furthermore, with very few exceptions, the members sitting on these courts, and the parties before them, are chiefs and male elders. Women appear only occasionally as parties or witnesses, and even more rarely as members.

## 1.2 *Kastom* and customary tenure

In this article, the terms “custom” and “customary law” are used interchangeably, and are subsumed within the Solomon Islands Pijin term *kastom*, which is generally used to refer to local norms and practices.

*Kastom* varies throughout Solomon Islands, not only from island to island, but even between villages.<sup>19</sup> Any generalization must therefore be treated with immense caution. Nevertheless, some very general observations can be made.

As is the case elsewhere in Melanesia and throughout the South Pacific, land is not merely an economic asset for Solomon Islanders, but has spiritual, political and social significance. Land is vested in exogamous kin-based groups whose lineage may be traced to an original settler through the mother, the father, or both.<sup>20</sup> Autochthons are often said to have a stronger claim to participate in decision-making and dispute-resolution regarding land than do migrants, including those who have married into a land-owning group. Membership in a kin-based group is often cumulative, so an individual may be able to trace ancestral ties to many groups, provided he or she has the necessary knowledge.<sup>21</sup>

Kin groups tend to hold relatively large territories, within which there are smaller divisions associated with smaller sub-groupings. For example, land used for gardens is often associated with particular individuals or families, as are hamlets within a larger village. Historically, these territories and their subdivisions were defined less by boundaries and more by ‘focal points’ marked by rivers, rocks, trees and sacred sites.<sup>22</sup> Land is governed by the histories of the ancestors, preserved in these sites, as well as in genealogies, stories and the landscapes they belong to.<sup>23</sup> When used in relation to land, *kastom* often refers to these genealogies, stories and places, as well as the production and reproduction of the knowledge and practices that preserve them. Access to knowledge about certain aspects of *kastom* may be passed on in a controlled and deliberate manner. For example, information about genealogies may be given to particular people rather than readily available to everyone.

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<sup>17</sup> *Constitution of Solomon Islands* 1978, above n 9, s 257. See further *Buga v Ganifiri* [1982] SILR 119; *Teika v Maui* [1985/86] SILR 91.

<sup>18</sup> D Paterson ‘Some thoughts about customary land’ (2001) 5 *Journal of South Pacific Law* <<http://www.paclii.org/journals/fJSPL/vol05/7.shtml>> at 14 August 2010.

<sup>19</sup> J Corrin Care, ‘Customary Law in Conflict: Status of Customary Law and Introduced Law in Post-Colonial Solomon Islands’ (2001) 21(2) *University of Queensland Law Journal* 167.

<sup>20</sup> People on Isabel, Makira, Guadalcanal (with the exception of Marau) and Nggela follow matrilineal descent systems, while Malaita and most of the western islands (including Vangunu Island) are inhabited by ambilineal descent societies.

<sup>21</sup> See, for example, B Burt, ‘Land in Kwara’ae and Development in the Solomon Islands’ (1994) 64(4) *Oceania* 317; M W Scott, ‘Neither “New Melanesian History” nor “New Melanesian Ethnography”’: Recovering Emplaced Matrilineages in Southeast Solomon Islands’ (2007) 77(3) *Oceania* 337.

<sup>22</sup> I C Heath, *Land Policy in Solomon Islands* (1979).

<sup>23</sup> See also Burt, above n 21; E Hviding, *Guardians of Marovo Lagoon: Practice, Place and Politics in Maritime Melanesia* (1996); E Hviding, ‘Contested Rainforests, NGOs, and Projects of Desire in Solomon Islands’ (2003) 55(4) *International Social Science Journal* 539.



Solomon Islands *kastom* is often perceived to be contrary to women's rights.<sup>24</sup> In the few cases in which a conflict between *kastom* and the human rights provisions in the Constitution has arisen, the courts have tended to reinforce this view.<sup>25</sup> While Solomon Islands *kastom* can undoubtedly be mobilized in ways that are discriminatory towards women, attention also needs to be paid to ways in which many Solomon Islanders are working to promote a more inclusive *kastom* within their own communities. As Bronwen Douglas points out, "Melanesians, like people everywhere, exercise actual or potential agency", even if that agency is "circumscribed by gender, age, status, circumstance, and aptitude."<sup>26</sup>

### 1.3 Christianity and the churches

Christianity and the different churches play a significant role in circumscribing actual and potential agency and probably have a greater influence on people's lives than the state.<sup>27</sup> Growing numbers of missionaries began to arrive in Solomon Islands towards the end of the nineteenth century, and their activities gathered pace after the establishment of the British Solomon Islands Protectorate in 1893. Today, the vast majority of Solomon Islanders identify themselves as belonging to one of the Christian churches.<sup>28</sup> The churches have a strong influence on everyday life, not only through their respective doctrines, but also by promoting distinctive denominational identities.<sup>29</sup> In Solomon Islands, as in other parts of Melanesia, Christian theologies and church women's groups play an important role in women's training, leadership, and networking.<sup>30</sup>

The role of Christianity in influencing land tenure is also increasingly recognized.<sup>31</sup> Christian missionaries had a fundamental impact on landholding and settlement patterns when they encouraged converts to move from the hills down to the coast to live in much larger settlements surrounding the mission stations.<sup>32</sup> Today, variations in doctrines promote different attitudes towards both cash and natural resources. For example, the different doctrines of the three denominations in Marovo Lagoon promote different patterns in

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<sup>24</sup> See for example Brown and Corrin Care, 'More on Democratic Fundamentals in Solomon Islands: Minister for Provincial Government v Guadalcanal Provincial Assembly' (2001) 32(3) *Victoria University of Wellington Law Review* 653; J Corrin Care, 'Customary law and women's rights in Solomon Islands' (2000) 51 *Development Bulletin* 14.

<sup>25</sup> In each of *Remisio Pusi v James Leni and Others* [1997] HCSI 218/1995; *Minister for Provincial Government v Guadalcanal Provincial Assembly* [1997] SBCA 1; CA-CAC 003 of 1997 and *Tanavalu and Tanavalu v Tanavalu and Solomon Islands National Provident Fund* [1998] SBHC 4; HC-CC 185 of 1995, the court held *in obiter* that the human right at issue would not prevail over customary law.

<sup>26</sup> See for example B Douglas, 'Christian Custom and the Church as Structure in "Weak States" in Melanesia' (Paper presented at *Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion*, Canberra, September 2005, 2).

<sup>27</sup> T T Kabutaulaka, *Pacific Islander Stakeholder Participation in Development: Solomon Islands*, Pacific Islands Discussion Paper Series No. 8, report commissioned by World Bank (1998).

<sup>28</sup> *Ibid*; A Makim, 'State, Community Development and Melanesia: The North New Georgia Sustainable Social Forestry and Rural Development Project' State, Society and Governance in Melanesia Working Paper (2002).

<sup>29</sup> E Hviding, *Guardians of Marovo Lagoon: Practice, Place and Politics in Maritime Melanesia* (1996).

<sup>30</sup> B Douglas, 'Introduction: Hearing Melanesian Women' (2000) 51 *Development Bulletin* 39; D McDougall 'Fellowship and Citizenship as Models of National Community: United Church Women's Fellowship in Ranongga, Solomon Islands' (2003) 74(1/2) *Oceania*.

<sup>31</sup> See for example M W Scott, *The Severed Snake: Matrilineages, Making Place and a Melanesian Christianity in southeast Solomon Islands* (2007); D McDougall, *The Shifting Ground of Moral Community: Christianity, Property and Place in Ranongga (Solomon Islands)*, PhD Thesis, The University of Chicago (2004); C Bird, *Pepesa – The Household of Life: Theological Exploration of Land in the Context of Change in Solomon Islands*, PhD Thesis, Charles Sturt University (2008).

<sup>32</sup> Brookfield and Hart, *Melanesia: a Geographical Interpretation of an Island World* (1971).

material production and cash reliance. The majority of the population in Marovo belongs to the Seventh-Day Adventist Church, which is characterized by a more individualistic approach to both salvation and economic activity, and prohibits consumption of betelnut, alcohol, shellfish, crustaceans and pigs. By contrast, there is a greater emphasis on cooperative economic activity in villages belonging to the United Church. The Christian Fellowship Church, an indigenous church, has a significant emphasis on communalism and cooperative work.<sup>33</sup> These three denominations have also all been involved in various sustainable forestry initiatives.<sup>34</sup>

Christianity and *kastom* are sometimes juxtaposed by Solomon Islanders, but they are also regularly interwoven to produce new “ethno-theologies”,<sup>35</sup> which may have an impact on land tenure. In Marovo Lagoon, Christian concepts, metaphors and symbols are regularly mobilized in making claims to land before chiefs and courts, and church pastors may also be involved in resolving land disputes. Christianity is not mobilized in court disputes in the same manner on north Guadalcanal, but as the case study will show, it nevertheless plays a significant role in land matters. Christianity therefore overlaps and interweaves with both *kastom* and the state, and land tenure is characterized by multiple, overlapping arenas, norms and institutions emanating from the state, *kastom* and Christianity, as they vary from place to place.

## 2. Case 1: The strategic simplification of authority on the Bareke Peninsula

The Bareke Peninsula is a large peninsula on north-east Vangunu Island, in central Marovo Lagoon.<sup>36</sup> Most land in this area is customary land, although some of the islands surrounding the peninsula are registered. The Bareke Peninsula is the most densely populated part of the island, and there is a notable absence of inland settlement. However, this was not always the case. In pre-colonial times, there was a strong distinction between people living in the hills of Vangunu, and those on the small islands dotting the lagoon, referred to as “bush” and “coastal” people, respectively.<sup>37</sup> This old settlement pattern gradually disappeared at the turn of the century as Methodist and Seventh Day Adventist missionaries encouraged their converts to move down to the coastal areas to live in much larger settlements. While aspects of the bush-coastal distinction began to break down during the 20<sup>th</sup> century, it remains an important distinction in terms of language, social organization, territorial holdings and ecological orientation. Most villages on the Bareke Peninsula are populated by bush people who are United Church adherents, whereas most villages on the surrounding

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<sup>33</sup> Hviding, above n 29. See also K Fa’anunu, *Christian Fellowship Church Reforestation: A Change in Customary Land Tenure in the Solomon Islands?* Unpublished Report.

<sup>34</sup> Ibid; Bird, above n 31; Kabutaulaka, above n 27.

<sup>35</sup> Strathern and Stewart, ‘Series Editors’ Preface’ in M W Scott, *The Severed Snake: Matrilineages, Making Place and a Melanesian Christianity in Southeast Solomon Islands* (2007).

<sup>36</sup> Land and marine tenure systems in Marovo have been the subject of extensive and detailed analysis by social anthropologist Edvard Hviding: see, in particular E Hviding, *Guardians*, above n 29; E Hviding, ‘Indigenous Essentialism? “Simplifying” Customary Land Ownership in New Georgia, Solomon Islands’ (1993) 149(4) *Bijdragen tot de taal – land – en volkenkunde* 802; Hviding and Bayliss-Smith, *Islands of Rainforest: Agroforestry, Logging and Eco-tourism in Solomon Islands* (2000); Hviding, *Contested rainforests*, above n 23; E Hviding, ‘Disentangling the *Butubutu* of New Georgia: Cognatic Kinship in Thought and Action’ in Hoëm and Roalkvam (eds), *Oceanic Socialities and Cultural Forms Ethnographies of Experience* (2002) 71; and E Hviding, ‘Contextual Flexibility: Present Status and Future of Customary Marine Tenure in Solomon Islands’ (1998) *Ocean and Coastal Management* 40, 253–269.

<sup>37</sup> E Hviding, above n 29. The terms “coastal” or “coastal” people are often used to refer to the maritime-oriented segments of a regional population. “Coastal-bush” or “coastal-inland” dichotomies, as well as associated fish-for-taro barter, also existed in Melanesia.

islands are populated by coastal people and Seventh Day Adventists. As noted above, the theologies of these churches promote different patterns of subsistence production and consumption as well as cash reliance.<sup>38</sup> The language of the bush people is Bareke, while that of the coastal people is Marovo. This article adopts Bareke terminology and focuses on the land tenure regimes of the bush people.

For the Bareke people, the landscape is divided into named and marked *pepesa* (territories) that belong to particular *kokolo*, which comprise a number of families that claim descent, through both men and women, from the first settler of the land. Since the 1990s, many of these *kokolo* have entered into logging agreements with transnational logging companies; and discussions about logging provide a sharp reminder that the *kokolo* may never be considered a homogenous group. Many Bareke women and men are angry about the extent to which control over decision-making processes and royalties are concentrated in the hands of a small number of men, to the exclusion of most other members of the landowning group. They argue that these practices are at odds with *kastom*, in particular the emphasis on sharing, group control over land, and matrifocal values. For instance, at a meeting with a group of Bareke women from a small village, one elderly woman angrily remarked:

Every good thing that was practised before, has gone. Lots of people have come inside, and jealousy and hatred have changed every good thing! The love of money has changed every good thing. Love of money, hatred, jealousy have come inside! You white men have spoiled every good thing!<sup>39</sup>

While statements like this could be interpreted as an appeal to a more secure past that never existed, an understanding of the transformation of key socio-political institutions since the colonial period suggests that such complaints cannot be so easily dismissed.

## 2.1 *Bangara, siama and vuluvulu*: pre-colonial sociopolitical institutions

The concept of *vuluvulu* was introduced to the author in one of her first “lessons” on Bareke *kastom*, by a man in his late 30s, who is very knowledgeable in *kastom*:

The number three is very important in Bareke culture. In the past, we had three important people: the *vuluvulu*; the chief or *bangara*; and the warrior or priest, who was called the *siama*. The role of the *bangara* was to talk about land, to fight, and to perform witchcraft. These are the chief’s responsibilities. The *vuluvulu* was/is a woman. The *bangara* must consult with the *vuluvulu* - the chief must consult the woman. The chief is a spokesperson, and there are two senior people to help him, one man and one woman. My grandmother taught me about this. The *siama* were Bareke warriors. They did lots of things. They performed the priestly activities.

This description of bush leadership highlights the role of the matrifocal *vuluvulu* in the bush polity. The term *vuluvulu* has multiple meanings and exists in both Bareke and Marovo languages. One meaning refers to the people who constitute the blood core of a *kokolo*, with an emphasis on matrilineal descent or cumulative matrilineal filiation.<sup>40</sup> Bird explains that the term symbolizes the intertwining of relationships within the *kokolo*. The term derives from *vulu*, a pandanus-type shrub: “...a *vulu* standing by itself is easy to uproot, but if it grows as a whole – which by very nature should be the case – it is extremely difficult to be

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<sup>38</sup> Ibid.

<sup>39</sup> Translated from Solomon Islands Pijin.

<sup>40</sup> Ibid; E Hviding, ‘Disentangling the *Butubutu* of New Georgia: Cognatic Kinship in Thought and Action’ in Hoëm and Roalkvam (eds), *Oceanic Socialities and Cultural Forms Ethnographies of Experience* (2002) 71.

uprooted.”<sup>41</sup> The term *vuluvulu* is also used to refer to particular women of high standing. In this sense, the term is often translated as meaning “the oldest female”, “the first-born girl”, “a princess”, and “a queen”. It also has many other meanings, as one respondent explained, “Lots of words go back to *vuluvulu*, almost everything relates to *vuluvulu*.”

The second institution of leadership named in the above quote is that of the *bangara*, which is often translated in Pijin as *jif* (chief). The *bangara* had many roles, including: holding the important ancestral valuables and keeping genealogical information; regulating land use; amassing and redistributing wealth through the organization of feasts; organizing warfare; and providing a link to the divine “other”.<sup>42</sup> The role was based on both male primogeniture and ability. A man who demonstrated exceptional fighting skills or extraordinary leadership skills, or who built up and distributed wealth, might become a *bangara*. Equally, if a young man lacked these qualities, the current chiefs and elders of the family would bypass him and support a more capable uncle, brother or cousin.<sup>43</sup>

During fieldwork, Bareke people often explained that, “the *vuluvulu* and *bangara* cannot be separated, they belong together”, and Hviding has observed that while cumulative matrilineage predominates in the formation of the *vuluvulu*, political leadership is determined by cumulative patrilineage.<sup>44</sup> The *vuluvulu* and *bangara* appear to be one of the many examples of the ways in which bush and coastal people of Marovo Lagoon “make sides” or dualistic divisions in which both halves are complementary.<sup>45</sup>

The third role mentioned — the *siam* — was tied to pre-Christian religious beliefs and pre-colonial warfare, and could be described as both a leader in warfare and a priest. Warfare and conflict occupied a dominant position in the cultural organization of pre-colonial Marovo and throughout the western Solomon Islands.<sup>46</sup> Both the bush and coastal people engaged in headhunting, slavery and cannibalism, which were closely linked to ritual cycles and ceremonial occasions.<sup>47</sup> The *siam* occupied a critical role in pre-colonial warfare and was responsible for conducting divination rituals to “see” the likely outcome of an intended raiding or headhunting expedition.<sup>48</sup> The position was rarely inherited, but was usually chosen from among those of matrilineal descent or could include also a great warrior from elsewhere.

The institutionalized positions of *vuluvulu*, *bangara* and *siam*, together with the *pepesa*, formed the foundation of the *kokolo*. Liligeto writes of the coastal people that, “without these important elements, the [*kokolo*] could not exist.”<sup>49</sup> Bareke genealogies are characterized by both male and female links, and the *kokolo* appears to have been personified by both male and female leaders, chosen through both male and female

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<sup>41</sup> Bird, above n 31.

<sup>42</sup> Ibid; Hviding, above n 29.

<sup>43</sup> Interviews, see also Bird, above n 31. See further B T Somerville, ‘Ethnographical Notes in New Georgia, Solomon Islands’, (1897) 26, *The Journal of the Anthropological Institute of Great Britain and Islands* 357; J A Bennett, *Wealth of the Solomons: a History of a Pacific Archipelago, 1800–1978* (1987).

<sup>44</sup> Hviding, above n 40.

<sup>45</sup> Ibid; Hviding, above n 29.

<sup>46</sup> Hviding, above n 29; D Miller, ‘An Organizational Approach to Exchange Media: an Example from the Western Solomons’ (1978) 11 *Mankind* 288.

<sup>47</sup> See Bird, above n 31; W G Liligeto, *Babata, our Land, Our Tribe, Our People: A Historical Account and Cultural Materials of Butubutu Babata, Marovo* (2006); J F Goldie ‘The People of New Georgia, their Manners and Customs and Religious Beliefs’ (1909) 22 *Proceedings of the Royal Geographical Society* 23; Hviding, above n 29; Somerville, above n 43. See also A M Hocart, ‘Warfare in Eddystone in Solomon Islands’ (1931) 61 *The Journal of the Anthropological Institute of Great Britain and Ireland* 301.

<sup>48</sup> Bird, above n 31.

<sup>49</sup> Liligeto, above n 49, 50.



primogeniture.<sup>50</sup> This suggests a degree of exchange and complementarity between gendered domains of social organization and authority. There were similar exchanges and a degree of complementarity between the people of the bush and the people of the sea, who were integrated into networks of warfare, alliance and exchange with each other and with people of other islands. These constructs of complementarity were fluid and flexible,<sup>51</sup> and with the establishment of trading with Europeans, the BSIP and missionization, some people were better equipped than others to negotiate a new complementarity that would be more to their interests.

## 2.2 Trade, colonization and missionization: selective recognition of sociopolitical institutions

The coastal people on the islands around the Bareke Peninsula were increasingly involved in trading as the 19th century progressed, which must have led to a number of significant changes in local social organization and tenure systems. Bush people lived in less accessible areas and were probably not involved in trading to the extent that the coastal people were, but they would nevertheless have been affected by these changes.

Coastal groups had access to the resources that traders desired and in return received iron goods, including axes. These were useful not only for gardening and building canoes, but also for warfare.<sup>52</sup> Leaders of the coastal groups that controlled these resources went to great lengths to monopolize trade with Europeans,<sup>53</sup> an agenda that would have fitted neatly with the desire of the traders to identify and deal with a fixed, presumably male, leader. This enabled the control over trade to be concentrated in the hands of a few men. As McKinnon observes, “[t]he big man role was created out of indigenous culture and ambition, but trade with Europeans made this possible.”<sup>54</sup>

Trading not only altered the scale of leadership, but also led to the development of a new relationship between the people and the natural resources that sustained them. Bennett notes that old products were now directed to commercial ends, while previously unused products were gathered and sold.<sup>55</sup> As resources acquired a commercial value, they were commodified, and individuals within a *kokolo* sought to control access to products that had previously been protected for the benefit of the group. These trends gathered pace as the Protectorate era commenced.

When the British established the BSIP in 1893, one of the first tasks for the administration was to pacify the infamous headhunters of Marovo Lagoon.<sup>56</sup> Pacification meant the loss of power by *siama* and *bangara*, as the Government enforced laws against the acquisition of firearms and suppressed practices related to headhunting. In doing so, the Government destroyed the link between the *bangara*'s organization of productive activities and ceremonial activities, and undermined the basis of their power.<sup>57</sup> It also weakened the role

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<sup>50</sup> See Hviding, 'Indigenous Essentialism? "Simplifying" Customary Land Ownership in New Georgia, Solomon Islands' (1993) 149(4) *Bijdragen tot de taal – land – en volkenkunde* 802.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid; J McKinnon, 'Tomahawks, turtles and traders: a reconstruction in the circular causation of warfare in the New Georgia Group' (1975) 45 *Oceania* 215.

<sup>53</sup> A Cheyne, *Trading Voyages of Andrew Cheyne, 1841-44* (1971); McKinnon, above n 52.

<sup>54</sup> McKinnon, above n 52, 296.

<sup>55</sup> Bennett, above n 43.

<sup>56</sup> Ibid; Hviding, above n 29.

<sup>57</sup> See Bennett, above n 43. Hviding, above n 29; Hocart, writing about Simbo, refers to a chief who said, "No one is mighty now, they are all alike, they all have money, they cannot go head-hunting, they all 'stop nothing'": A M Hocart, 'Cult of the Dead on Eddystone' (1922) *Journal of the Royal Anthropological Institute* 52, 71-112, 259-305.

of the *siamas*, tied to warfare and associated religious beliefs. The Christian missions had a similar effect, by discouraging, apparently successfully, the continuation of traditional feasting, dancing and ceremonial activities.<sup>58</sup>

While undermining many of the traditional avenues to spiritual and material authority, the missions and the BSIP, in particular its conceptions of land tenure, also provided new arenas in which to negotiate the terms of production, authority and obligation. The opportunities that the missions offered were predominantly available to men, in particular aspiring or existing *bangaras*, who often became leaders within the church. For example, Ishmael Ngatu, a young man from a chiefly line, introduced Methodism to the Bareke Peninsula in 1912. The Methodist Mission (which later became the United Church) also used the term *bangara* to translate “lord”, thereby incorporating the institution of *bangara* into the liturgies and songs of the church.<sup>59</sup> The concept of the *siamas* and *vuluvulu* were not translated into these new institutions and practices in this manner. Given the view of headhunting and other ritual practices taken by the missionaries and the BSIP, it is likely that the role of the *siamas* was even actively undermined. Indeed, today the role appears to have been consigned to history.<sup>60</sup>

The newly created infrastructure of the BSIP, in particular its conceptions of land, also provided new ways for the *bangaras* to retain their authority by obtaining and distributing wealth. A number of the *bangaras* of central Marovo Lagoon were able to persuade district officers to construct fixed cement markers in strategic locations, which then enabled the boundaries of the *pepesa* to be surveyed and registered.<sup>61</sup> At the same time, the different entitlements of people within the *kokolo* were changing. Bareke people often stress that historically the *bangaras* did not “own” land but “looked after” it.<sup>62</sup> The aim of the registration of boundaries was to strengthen the capacity to “look after” the land in negotiations with white planters, traders and administrators. In many instances, the foreigners’ perceptions of property and authority enabled male leaders to claim rights wholesale. Ishmael Ngatu, for example, not only held a new position of leadership within the Methodist Mission, but was also able to use his chiefly status to sell land to the government.<sup>63</sup> The state legal system therefore facilitated a strategic simplification of the tenure system, by enabling the *bangaras* to consolidate their control over the land in the eyes of the state and in practice.

The introduction of government headmen in 1914 consolidated the role of the *bangaras* even further. Ishmael Ngatu was appointed District Headman for Marovo, and due to his success in negotiating all three arenas of church, state and *kastom*, he became known as the chief over a large area, from Nggatokae to Ramata.<sup>64</sup> The Protectorate’s ambitions of indirect rule made it convenient to perceive *kastom* as collapsing political authority and customary tenure

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<sup>58</sup> Bird, above n 31. The arrival of Christian missionaries in Marovo appears to have been associated with a rapid decline of old rituals and ceremonial activities. This may have been due to the authority and reputation of Ishmael Ngatu, who participated in the last headhunting raid in 1908, after which he converted to Methodism and established the first mission in Marovo in 1914.

<sup>59</sup> The Methodist Mission produced a number of books of hymns, catechisms, prayers and liturgies in the Roviana language, some of which continue to be used today by the United Church of Solomon Islands.

<sup>60</sup> As far as the author is aware, there are no recognized *siamas* on the Bareke Peninsula or Marovo Lagoon today. Hviding and Bayliss-Smith assert that the role has completely disappeared: Hviding and Bayliss-Smith, above n 36.

<sup>61</sup> Ibid.

<sup>62</sup> See, for example, the language used by the *bangaras* Sagende before the Phillips Commission: *Report of the Lands Commission: Native Claim No. 26 Respecting Land at Telina Island, Marovo Lagoon, Claimed by the Australasian Conference Association Ltd*, 18 June 1924.

<sup>63</sup> Bennett, above n 43.

<sup>64</sup> Evidence given by Sagende to the Phillips Commission: *Report of the Lands Commission: Native Claim No. 26 Respecting Land at Telina Island, Marovo Lagoon, claimed by the Australasian Conference Association Ltd*, 18 June 1924. Gatukai is the island at the southernmost point of Marovo Lagoon, and Ramata is in the far north.

into one figure, the *bangara*.<sup>65</sup> It also strengthened the power of the *bangara* in a context where the customary polity was being renegotiated and traditional leaders were struggling to secure their continued relevance.

None of this is to suggest that other members of the *kokolo* were unable to participate in the ongoing renegotiation of land tenure. Women on the Bareke Peninsula undoubtedly contributed to the process of adaptation, contestation and recognition of claims to land in a variety of ways. There are, for example, some women who were recognized as experts on *kastom*.<sup>66</sup> There are also rare examples of women playing a significant role in the negotiation of land transactions and appearing in court hearings.<sup>67</sup> However, the records of Lands Commissions and courts, like the liturgies of the churches, make no reference to the role of *vuluvulu* despite regularly referring to the role of the *bangara*.<sup>68</sup> The failure of the state legal system to accord any recognition to the role of *vuluvulu* contributed to the marginalization of the connection between women and the land, at least within the arena of the state. This had implications for the role of women, which continue today.

### 2.3 *Bangara* and entrepreneurs: logging and authority today

Logging has become a major issue on the Bareke Peninsula since the 1990s, and occurs at intersection of the state and customary legal systems. The *Forest Resources and Timber Utilisation Act 1978* [Cap 40] ('FRTU Act')<sup>69</sup> provides that any person who is interested in logging customary land must apply to the Commissioner of Forests Resources for consent to negotiate with the relevant government authorities and the owners of the land. The Provincial Government then holds a timber rights hearing, at which it determines a range of issues, including whether the people who propose to grant the timber rights represent all those who are entitled to grant such rights and how any profits will be shared. This information is recorded in a certificate of customary ownership, known as "Form Two". The individuals listed in Form Two are those entitled to negotiate with the logging company. There is a right of appeal to the Customary Land Appeal Court, the decision of which is final and conclusive, subject only to the original jurisdiction of the High Court.<sup>70</sup>

In practice, negotiations between logging companies and landowners have often been underway for a long time before the issue of a Form Two. While forested land is usually subject to multiple and overlapping rights, logging companies have focused their efforts on negotiating with individuals that are influential within the landowning group, and proponents of logging. These individuals are nearly always men, some of whom are *bangara* and other male leaders, and some of whom are younger, entrepreneurial individuals with a relatively

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<sup>65</sup> Christian Lund makes this point in relation to Ghana: C Lund, *Local Politics and the Dynamics of Property in Africa* (2008).

<sup>66</sup> For example, Lilitgeto writes of Talivuru, who was a recognized source of his (coastal) tribe's history and knowledge: W G Lilitgeto, *Babata, Our Land, Our Tribe, Our People: a Historical Account and Cultural Materials of Butubutu Babata, Marovo*, Institute of Pacific Studies, the University of the South Pacific (2006).

<sup>67</sup> For example, Francis Niutali, who married the well-known white trader Norman Wheatley and facilitated his purchase of land. Niutali was the only woman to appear before the 1923 Phillips Land Commission: Carter G Miriam Achi is also remembered as a "strong woman who fought about land": *Patson Dioni v Miriam Achi*, Marovo Local Court 7/85.

<sup>68</sup> See, for example, *Majoria v Jino* [2003] SBHC 29; HC-CC 261 of 2002 (8 April 2003), in which P J Brown discusses in some detail Ngatu's role and the legal status of the records he produced.

<sup>69</sup> See also Bennett, above n 43; J Bennett, *Pacific Forest: a History of Resource Control and Contest in Solomon Islands c.1800–1997* (2000); M Wairiu, 'History of the Forestry Industry in Solomon Islands' (2007) 42(2) *Journal of Pacific History* 233; T T Kabutaulaka 'Rumble in the Jungle: Land, Culture and (un)sustainable logging in Solomon Islands' in A Hooper (ed), *Culture and sustainable development in the Pacific* (2000), 88; T T Kabutaulaka, *Paths in the Jungle: Landowners, Deforestation and Forest Degradation in Solomon Islands* (n.d.) World Rainforest Movement <<http://www.wrm.org.uy/deforestation/Oceania/Solomon.html>> at 15 August 2010.

<sup>70</sup> *Forestry Resource and Timber Utilisation Act 1978* [Cap 40], Part III.

high level of formal education.<sup>71</sup> These younger men are often of influential descent, but have also become powerful through their understanding of the logging licence procedures and their ability to persuade elderly, sometimes illiterate *bangara* to promote logging.

Proponents of logging are widely believed by other landowners to receive financial and other forms of support from the logging companies when appearing in timber rights hearings and court appeals. Many landowners also believe that companies are able to influence the outcome of timber rights hearings and court appeals through the provision of funding to the members of the fora that determine their claims. For example, while the High Court has emphasized the government's obligation to provide the funds necessary for the Customary Land Appeal Court to operate, it has also reluctantly allowed the parties in some matters to share the costs of having their case dealt with.<sup>72</sup> This contributes to the perception that companies are able to influence the outcome of hearings.

According to principles of the state legal system and *kastom*, the representatives listed in Form Two are obliged to share royalties with other members of the landowning group. However, it is widely acknowledged that there is a general lack of transparency and accountability as to how this occurs. Landowners regularly complain that they do not know when royalties are distributed or how much money they are entitled to.<sup>73</sup> Furthermore, licence negotiations and royalty distributions often occur in urban centers that are located hundreds of kilometres away from the villages in which landowners live, thus involving expensive and time-consuming travel. This makes it extremely difficult for landowners to access information and hold signatories accountable. Thus, as was the case with traders, missionaries and the BSIP administrators, logging companies wish to identify and engage with individuals rather than the entire *kokolo*, and this is facilitated by the requirements of the state legal system. This enables a small number of individuals to carve out a "big man" status and strengthen their power base within their tribe by obtaining and distributing logging revenue.<sup>74</sup>

While many men are marginalized by these processes, women as a social group are particularly likely to be excluded. When the author asked women how their *kokolo* made decisions about logging, a typical response was to laugh sarcastically, or to declare with either anger or resignation: "I don't know, they don't tell us anything". Women probably have a greater role in negotiations than these quotes suggest; for example, they often exert significant influence through informal conversations within the household. However, forestry records and court records support their perceptions of exclusion from highly public fora of decision-making. In the logging files reviewed, each file for Marovo Lagoon had a Form II which listed between one and 15 names of men as those "lawfully able and entitled to grant timber rights". Of the dozens of court records reviewed, none listed women as parties or witnesses in timber rights hearings or court appeals. Some women report that they have attempted to attend hearings and have waited on the beach for hours for this purpose, only to be told when a canoe arrives that "there's only room for men, there's no room for any women". Women's names are absent from the official documents and agreements produced by the state legal system. This confirms and constructs women's role in decision-making as

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<sup>71</sup> Author's own observations, and also those of Hviding and Bayliss-Smith, above n 36. There are also similarities with the practices regarding mining: Hviding, above n 50.

<sup>72</sup> See, for example, *Clerk to Western Customary Land Appeal Court v Attorney-General* [2003] SBHC 106; HC-CC 070 of 2003 (6 June 2003).

<sup>73</sup> See also Wairiu, above n 69. Similar observations have been made elsewhere in Solomon Islands: R Scheyvens and L Lagisa, 'Women, Disempowerment and Resistance: an Analysis of Logging and Mining Activities in the Pacific' (1998) 19(1) *Singapore Journal of Tropical Geography* 51.

<sup>74</sup> See also Bennett, above n 43; Bennett, above n 69; Wairiu, above n 69; Bird, above n 31.



marginal, at least within the arena of the state; while simultaneously reinforcing the dominance of a small number of men in decision-making for the entire landowning group.

The predominance of male leaders within formal decision-making fora and the absence of women are often explained by reference to *kastom*. In particular, Bareke people often refer to the idea that only *bangara* or other elders can be responsible for formalizing decisions, and they are inevitably men. This view of *kastom* is also contested, however. During a meeting with a large group of Bareke women, one senior woman explained angrily:

...When it comes to logging, we're *victims*, the men *dominate* us, we're *oppressed!* [...] This is because traditionally, women could not talk. It was a sign of *respect*. The *men* must talk about everything. So today, women are not allowed to talk. If a woman talks, the axe will come! (*The woman then sat down and the other women laughed*).

This elderly woman was simultaneously describing and contesting a common statement of *kastom*, which has become entrenched by the state legal system and in the practices of logging companies. Her passionate outburst was received with enthusiastic laughter from most, if not all, women in the meeting. This serves as a reminder that communities are not merely "bound" by *kastom*, but also produce it. For example, while many Bareke men and women explain the absence of women from decision-making by reference to the idea that "women cannot talk", they also criticize these practices and contrast them with the concept of *vuluvulu*.

The concept of *vuluvulu* is an extremely complicated one linguistically and conceptually. In *Pijin*, it may be used to refer to an individual woman, a group of women, or the "blood core" of the tribe. This may indicate problems of translation across languages and cultures, particularly as the author speaks Solomon Islands *Pijin* but does not speak any local languages. However, several Bareke people have also suggested that the concept of *vuluvulu* is changing or is not as well understood as it once was.

Whatever the explanation for the lack of clarity, it is clear that the concept of *vuluvulu* has not been incorporated into, and reified by, the arenas of the church and state to the extent that the concept of the *bangara* has been. The fact that Bareke people can clearly and succinctly explain the role of *bangara* in *Pijin*, but are unable to do so for the role of *vuluvulu* may not tell us anything about their historical roles. It does, however, tell us something about the ways in which some segments of the customary bush polity, and not others, are being reified through the state legal system.

The concentration of control over logging in the hands of a small number of male leaders and entrepreneurs, and the exclusion of most women therefore needs to be understood as not merely the product of current practices or a flawed legislative framework, but as emerging from history. Missionaries and colonial administrators may not have intended to "rewrite" *kastom*, but by empowering a certain segment of the bush polity and disregarding others, political authority and control over land have become concentrated in the hands of the *bangara*. Bareke people themselves, particularly customary leaders, have often had an interest in this "essentialization" of *kastom*.<sup>75</sup> The strategic simplification of *kastom*

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<sup>75</sup> See also Edvard Hviding regarding the simplification of genealogies in negotiations with a mining company: Hviding, above n 50.

continues today, with logging companies and the courts treating the *bangara* as the most legitimate representatives of the population as well as the *kastoms* regarding land.<sup>76</sup>

### 3. Case 2: Consolidation of control over land in peri-urban Kakabona

In this case study, Kakabona refers to a series of peri-urban villages strung out along the coastline and the Tandai Highway as it runs west from Honiara, between White River and Poha River. Historically, land in this area was divided into large territories, each associated with one of a number of matrilineal totemic tribes. Prior to colonisation, the population lived in small, isolated hamlets in the interior, and the coastline was generally unpopulated since it was regularly visited by headhunting parties from the western Solomons and neighbouring Savo Island.<sup>77</sup>

Today, however, Kakabona is densely populated. The bulk of the population is located relatively close to the coastline, in the narrow strip of flat land between the beach and the foothills, which rise almost immediately from the sea and are covered in grassland. On the eastern side, close to the town boundary, numerous parcels of land have been registered under the *Land and Titles Act*. These parcels are registered in the names of a small number of male leaders who are representatives of the landowning tribe. Land around the Kongulai water source, which provides most of Honiara's water supply, has been registered in a similar manner. Most of the land further west is divided into large blocks associated with particular tribes. Within these blocks there may be smaller parcels that have been registered by, or are associated with, particular families.

In Kakabona, as on the Bareke Peninsula, a male is usually appointed as the spokesperson for the family and kin group on all land-related issues. These spokespersons are often described, in *Pijin*, as having the "ability to talk". The idea of being "able to talk" about land is important across 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.<sup>78</sup> The "ability to talk" about land depends partly on an individual's level of education and skill in managing land relationships within the landowning group, as well as with outsiders. Since women often have less access to education than do men, they are less likely to possess the skills necessary to negotiate the state legal system and manage land transactions. Further, according to some Guadalcanal people, custom dictates that "*women no save tok*" (women should not/cannot talk) about land. People in Kakabona often explain that women must "stand behind" the men when it comes to speaking about land 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.<sup>79</sup> Today, these concepts are being translated into the state legal system in a manner that turns the customary "right to speak" about land into effective control over land.

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<sup>76</sup> Cf, in relation to Ghana: Lund, above n 65.

<sup>77</sup> M A Bathgate, *Matriliney and Coconut Palms* (1993).

<sup>78</sup> Dr. Gordon Nanau (personal communication). See also T T Kabutaulaka, *Footprints in the Tasimauri sea: a biography of Domeniko Alebua* (2002).

<sup>79</sup> Ruth Maetala has made similar observations in relation to the roles of men and women in decision-making on Isabel: Maetala, above n 6, 41.

### 3.1 *Hu nao save tok?*<sup>80</sup> Urbanization and the development of Kakabona

Prior to World War II, the population of Honiara and its surrounding areas 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 from Tulagi in the Nggela group to Honiara, which further concentrated economic development in the area and drew migrants to Honiara and the surrounding region.<sup>81</sup> Urbanization gathered pace in the 1960s, and indigenous villages on the outskirts of Honiara grew as Guadalcanal people relocated from more remote areas. Migrants from other islands settled on government land under Temporary Occupation Licences, but by the 1980s, these settlements were beginning to spill over from town land onto customary land.<sup>82</sup>

Today, much of the land on the western side of Kakabona is claimed by one particular tribe, who traces its claim to those who originally settled and cleared the land. There have been a series of transactions through which some of the land has been divided up and acquired by other landholding groups.<sup>83</sup> Land transactions such as these often involve cash and are increasingly commercialized, but they are also rooted in customary practice and have historical precedents. Most involve feasting or *tsupu* — the ceremonial exchange of gifts, particularly food. The maintenance of claims to land depends on these feasts and ceremonies being remembered through oral histories and *tutungu* (genealogies).<sup>84</sup>

During the 1980s and 1990s, a number of disputes concerning land in west Kakabona came before the chiefs and courts. These disputes were often triggered by attempts to register blocks under the *Land and Titles Act*, and usually concerned the boundaries and “ownership” of the land.<sup>85</sup> Historically, land tenure on Guadalcanal was characterised by a complex web of nested and overlapping interests in land, with particular tribes living in close proximity to one another and intermarrying. However the requirements of the *Land and Titles Act* meant that land acquisition officers, chiefs and courts are now required to identify which of these groups “own” the land. Other groups are often described as “living under” the “owners”. In some cases, the land was later registered under the *Land and Titles Act* and in the name of a maximum of five “duly authorized representatives” of the landholding group, who are joint owners on a statutory trust.<sup>86</sup> These representatives are, with few exceptions, the individuals that appeared before land acquisition officers, chiefs and courts on behalf of the successful tribe; in the vast majority of cases, they are male leaders. Thus, the individuals who have the authority to speak about land within the arenas established by the state are able to consolidate that authority through registration.

It is a principle of both *kastom* and the state legal system that the trustees of land consult with the other landowners before dealing in the land.<sup>87</sup> There is evidence, however, that

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<sup>80</sup> Solomon Islands Pijin for “Who can / may talk?”

<sup>81</sup> M Bellam, ‘The Colonial City: Honiara, A Pacific Islands Case Study’ (1970) *Pacific Viewpoint* 66.

<sup>82</sup> D Storey, ‘The Peri-Urban Pacific: from Exclusive to Inclusive Cities’ (2003) 44(3) *Asia Pacific Viewpoint* 259.

<sup>83</sup> 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. Details of some of these transactions can be found in *Kurilau and Usa v Tada and Ors* CMC-LA 1 of 1988 (CD/CLAC/6/88) (7 September 1988), and *Tada v Usa* [1996] SBHC 7; HC-CC 207 of 1994 (12 February 1996).

<sup>84</sup> See also Maetala, above n 6.

<sup>85</sup> The language of the *Land and Titles Act 1996* [Cap 133] refers to “ownership”: see *Land and Titles Act 1996* [Cap 133] Part V.

<sup>86</sup> *Land and Titles Act 1996* [Cap 133] s 195(1).

<sup>87</sup> 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).

trustees have often failed to fulfil this obligation. Land in Kakabona has often been sold to migrants from other areas, as well as to local landowners who wish to establish new hamlets or gardens. Many of these sales have been made by trustees, although other members of landowning groups have also sold land. These transactions are often illegitimate in the eyes of many landowners, because deals are often struck by individuals in exchange for cash, without adequate consultation of other members of the landholding group and without distributing the proceeds of sale.<sup>88</sup> As a result, land transactions are often highly controversial and a significant source of conflict.

While women are rarely listed as land trustees and are largely absent from records of public hearings, they nevertheless play a role in determining access to and control over land. There is much that occurs beyond the purview of the state. Women influence land transactions and court disputes through informal conversations, particularly with their husbands, brothers and uncles.<sup>89</sup> Many of the women consulted in Kakabona believed that they were more likely to be consulted in land matters if they had extensive knowledge of *kastom*. For example, Ruth Maetala reports of a recent instance in which a woman's knowledge of *kastom* and genealogy appeared to be influential in preventing the sale of land:

A businessman in Honiara tried to buy the Kongulae<sup>90</sup> water source. He used his mother, who is from Guadalcanal, to pay each of the landowners US\$50,000 to transfer to him their rights to the water source – which supplies water to the Honiara township. Payments were made to all the men who, for the transaction, were deemed principal landowners but when a particular woman's uncle's turn came, he turned to his niece for a decision. This was her response:

"If you sell my land right, you have sold my great, great grandmother, my great grandmother, my grandmother, my mother and me to this businessman. If you respect my ancestors who are your ancestors also, then you will not sell my right to Kongulae water source."

This woman's words were influential in the final decision: the Kongulae water source was not sold to the businessman.<sup>91</sup>

This woman appears to have successfully drawn on *kastom*, in particular her knowledge of *tutungu* and the idea of land being passed through women, in order to persuade her uncle not to sell the land. Information about certain aspects of *kastom* appears to be more closely guarded in Kakabona than on the Bareke Peninsula, and some information may only be handed down to men.<sup>92</sup> Nevertheless, there are also many aspects of *kastom* that may be learned by women. In 2009, the author, together with the Landowners Advocacy and Legal Support Unit in the Public Solicitors Office, held a participatory legal literacy workshop on natural resource management in Kakabona.<sup>93</sup> During the workshop, women openly discussed the fact that they are not as knowledgeable of *tutungu* (genealogy) as their mothers and grandmothers were. They traced this to a number of factors, including

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<sup>88</sup> Confidential interviews with various individuals in Kakabona, 2008 and 2009.

<sup>89</sup> See Maetala, above n 6.

<sup>90</sup> Kongulae is also spelled Kongulai. Many of the names of places in Solomon Islands have a number of accepted spellings.

<sup>91</sup> See Maetala, above n 6 (citing a personal interview).

<sup>92</sup> According to many informants in Kakabona, this information has traditionally been taught to boys by their maternal uncles.

<sup>93</sup> See further R Monson, 'Identity and Ethics, or, Trying to Avoid being a Patronising White Lawyer' (2009) 1 *Ex Plus Ultra* 87. The views expressed here are those of the author, and do not represent those of any other individuals or organisations involved in the workshop.



involvement both in the subsistence and cash economies, as well as in activities run by donors, non-government organizations and churches. These activities limit the ability of many women to engage in the time-consuming task of learning about *kastom*.<sup>94</sup> The women acknowledged that this contributes to the likelihood that it will be men, rather than women, who speak in public fora, as it is often men who have the knowledge of *kastom* necessary to make a case in court hearings. One of the outcomes of these discussions at the workshop was a resolution by the women to take active steps to learn more about *tutungu*.

However, even if women have extensive knowledge of *tutungu* and other aspects of *kastom*, their participation in land matters may be constrained by the consolidation of the customary role of male leaders within the realm of the state legal system. Many women report that they find out about the details of a land transaction or dispute only after male leaders have reached a decision.<sup>95</sup> If such decisions have been entrenched in signed agreements or in court decisions, it may be difficult to challenge them due to state legal norms and to many people's hesitation to challenge leaders in formal settings such as court appeals. All of this contributes to a trend whereby the notion "*women no save tok*" limits the role of women within the sphere of the state legal system and similarly, the traditional role of tribal elders is transformed in a manner that strengthens their formal control over land.

### 3.2 Distribution of financial benefits from natural resources

Many of the residents of Kakabona are members of landowning groups that are involved in logging, and their experiences of the decision-making processes and the distribution of financial benefits are similar to those of the people on the Bareke Peninsula.<sup>96</sup> The distribution of benefits from other resource uses is similarly problematic. The Kongulai catchment, more commonly known as the "Kongulai water source", is a case in point.

The Kongulai water source lies to the west of Honiara and provides about 70 percent of the city's water supply.<sup>97</sup> Land in this area has been divided into parcels and registered in the names of trustees, all of whom appear to be members of a relatively small group of male leaders. As with logging on the Bareke Peninsula, the role of traditional "big men" or chiefs has carried over into the cash economy, which is important for negotiations and in the signing of agreements providing access to the Kongulai water source. The men who are listed as leaders on official documents and agreements are also those who 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, as is the case with logging, there is a general lack of transparency and accountability as to how this occurs. Landowners complain that they do not know when royalties are distributed or how much money they are entitled to. Most women need to be vigilant if they want to receive a share of royalties associated with either logging or the Kongulai water source. News that a payment will be made is often passed by word of mouth. As a result, women may travel into Honiara and spend several days sitting outside the office buildings where payments are

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<sup>94</sup> Personal communication with Paula Arahuri 10 March 2010.

<sup>95</sup> Cf. Maetala, above n 6.

<sup>96</sup> See also D Gay (ed), *Solomon Islands Diagnostic Trade Integration Study, 2009 Report* Ministry of Foreign Affairs and Trade (2009); and Wairiu, above n 69.

<sup>97</sup> J A Tuhaika, 'State-owned Enterprises and the Principal-Agent Problems: a Case Study of Solomon Islands Water Authority' (2007) 22(2) *Pacific Economic Bulletin* 131, 132.

made. They report that it is necessary for them to be there when their male relatives emerge with money; otherwise, “they will just drink it and eat it.”<sup>98</sup>

The inequitable distribution of financial benefits is related to inequality in decision-making. Male leaders have been registered as the trustees and therefore assume control of negotiations with Solomon Islands Water Authority, and women do not appear to be adequately consulted in decision-making or informed of royalty distributions.<sup>99</sup> This is a common feature of resource-dependent industries in Solomon Islands.<sup>100</sup> Initial research by the author also suggests, however, that some landowning groups may have more transparent and inclusive methods of decision-making, dispute-resolution and the distribution of financial benefits than others. Further research is required to determine whether this is the case, and if so, why.

### 3.3 *Hao nao olketa meri save tok*:<sup>101</sup> the mobilization of *kastom* and Christianity

From 1998 to 2003, Solomon Islands suffered from a violent conflict that is now known as “the Tensions”, which resulted in hundreds of deaths, the displacement of thousands of people, and the destruction of the country’s narrow economic base. The primary protagonists were militant groups formed by the indigenous inhabitants of Guadalcanal and those who originally came from the neighbouring island of Malaita. While the causes of the conflict are immensely complex,<sup>102</sup> they include social conflicts arising from the use of land, which remain largely unaddressed today.

The beginning of the Tensions are usually traced to late 1998, when the Guadalcanal people petitioned the Government calling for the return of land “stolen from the people” and demanding compensation for the use of Honiara as the national capital. A Guadalcanal militia group then embarked upon a deliberate campaign of harassment and evicted thousands of settlers from Guadalcanal to their islands of origin. This campaign was directed primarily at Malaitan settlers on the Guadalcanal Plains and in the vicinity of Honiara. A Malaitan militant group emerged in response, and Honiara fell under its control, while Guadalcanal militants controlled areas outside the town boundary.<sup>103</sup> The fighting therefore was concentrated in peri-urban areas around the town boundary. Residents of these areas fled as their homes were burnt and looted, their vehicles seized, and their physical safety threatened.

While there were many and complex underlying drivers of the conflict, the centrality of land issues is underscored by the Guadalcanal militants’ slogan, “Land is Our Mother, Land is Our Life, Land is Our Future”. The land-related drivers of the Tensions included social conflicts arising from the expansion of migrant settlements onto customary land; the destructive impacts of development; and the inequitable distribution of revenue from activities such as

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<sup>98</sup> Similar observations have been made in relation to the distribution of logging royalties: see D Gay (ed), *Solomon Islands Diagnostic Trade Integration Study*, Ministry of Foreign Affairs and External Trade (2009); Scheyvens and Lagisa, above n 73.

<sup>99</sup> B Powell et al, *Updated Report on Initial Consultations for Kongulai Catchment, Guadalcanal Province, Solomon Islands* (2007) <[http://www.watercentre.org/resources/publications/reports/Powell et al -2007- \\_Initial Consultations for Kongulai Catchment - Solomon Is..pdf](http://www.watercentre.org/resources/publications/reports/Powell%20et%20al%20-%202007-%20Initial%20Consultations%20for%20Kongulai%20Catchment%20-%20Solomon%20Is..pdf)> at 10 June 2010.

<sup>100</sup> See also Fletcher, Hickie and Webb, *Risky Business*, Jubilee Australia (2009).

<sup>101</sup> Solomon Islands Pijin for “how women can / may talk”.

<sup>102</sup> See in particular M Allen, *Greed and Grievance in the Conflict in Solomon Islands, 1998–2003*, PhD Thesis, Australian National University (2007).

<sup>103</sup> See Fitzpatrick and Monson, ‘Balancing Rights and Norms; Property Programming in East Timor, the Solomon Islands, and Bougainville’ in S Leckie, *Housing, Land and Property Rights in Post-Conflict United Nations and Other Peace Operations* (2009), 103.

logging and mining.<sup>104</sup> Land dealings underlying development and migrant settlement were called into question due to the exclusion of most landowners from decision-making and the distribution of financial benefits. A common argument was that many land dealings were illegitimate because they had been undertaken without consulting women, who are the “real landowners” in Guadalcanal’s matrilineal systems. Many Guadalcanal youth felt that they had been dispossessed of their rightful inheritance, and while much of their anger was directed at settlers, there is also anecdotal evidence of reprisals against senior Guadalcanal men who had been involved in land dealings.<sup>105</sup>

When violence escalated in mid-2000, the volunteer Women for Peace Group was formed with the aim of enabling women to contribute to the peace process. Their activities and strategies drew on customary practice, cultural values (particularly the idea of “women as mothers”), and principles drawn from Christianity. For example, in some cultures in Solomon Islands, women may intervene in conflict both physically and verbally, and Women for Peace members drew on this approach to physically stand between warring parties. Women also visited the camps of militants, where women and militants (predominantly young men) shared food, prayed together, and discussed issues such as the consequences of the violence for women and children. Women for Peace also held fora, conferences and meetings with police officers, parliamentarians and foreign diplomatic missions. Prayers and Bible readings were always an important part of these meetings.<sup>106</sup> It is noteworthy that the strategies adopted by Women for Peace in affirming women’s roles in dispute resolution and peace-building drew on *kastom* and Christianity, rather than the state legal system or international human rights standards.

In the years since the Tensions, similar strategies appear to have been adopted by Guadalcanal landowners seeking to expand the role of women in land matters. For example, one Guadalcanal woman believed that the role of women has expanded since the Tensions, because many people have realized that it is a “sin” to exclude them from land matters:

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.

## 4. Strengthening women’s land rights

The case studies demonstrate that land tenure in Solomon Islands is characterized by a highly complex and dynamic interplay of *kastom*, Christianity, and state laws and institutions that varies from place to place. While this institutional and normative plurality provides ample scope for the renegotiation of tenure, the case studies clearly show that some people are better equipped than others to influence the direction of those renegotiations.<sup>107</sup>

The dynamism of customary tenure means that contemporary practice needs to be understood in its historical context. The Bareke Peninsula case study reveals the usefulness

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<sup>104</sup> See for example, Wairiu, above n 69; Liloqula and Pollard, *Understanding Conflict in Solomon Islands: A Practical Means to Peacemaking* State, Society and Governance in Melanesia Discussion Paper 00/7 (2000); Fitzpatrick and Monson, above n 103.

<sup>105</sup> Confidential interviews in Honiara and surrounding areas, 2008 and 2009.

<sup>106</sup> See for example Liloqula and Pollard, above n 104.

<sup>107</sup> See also P E Peters, ‘Inequality and Social Conflict Over Land in Africa’ (2004) 4(3) *Journal of Agrarian Change* 269.

of such an approach. Logging is controversial among the people of the Bareke Peninsula, with both men and women contrasting current practices with the matrifocal concept of *vuluvulu*. A historical perspective suggests that this cannot be easily dismissed as a romanticisation of *kastom*. It is not surprising that the role of *bangara* can be explained with ease, having been reified through the state legal system and the missions. The difficulty that Bareke people have in explaining the concept of *vuluvulu* suggests that the concept has not been reified through the state legal system to the same extent. Contemporary practice must therefore be understood not merely as the product of a flawed legislative framework, but also as embedded in history.

Recognizing that customary tenure is dynamic and negotiable requires moving beyond simplistic assessments of *kastom* as discriminatory towards women and that their interests would be better served by the intervention of the state. The records produced by the state legal system generally record the names of a small number of male leaders, thus solidifying their formal control over land. However this practice is often contested by the commonly-heard statement that “women are the real owners of land on Guadalcanal.”

Interpretations of *kastom* in Kakabona today suggest that some people have greater authority than others to “talk about” land. While there is a need for further research, it is possible 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 the recognized authority to “speak about” land. However, urbanization and increased competition for land has led to elite attempts to capture the value of land, which are facilitated by greater resort to the state legal system. This has narrowed the scope for participation in decision-making, concentrating formal control over land in the hands of a small number of people.

Neither *kastom* nor the state legal system provide adequate mechanisms for ensuring transparency and accountability in relation to land matters. On the Bareke Peninsula and in Kakabona, both men and women regularly complain of a general lack of knowledge about land dealings and the distribution of financial benefits such as royalties. There is a need for increased attention to issues of access to information. For example, in both fieldsites, transparency and accountability in the distribution of royalties might be improved if they were highly public and advance notice were given to all landowners pending royalty payments.

Formal rights to land and the distribution of cash benefits associated with them are obviously just one part of the much larger picture of access to land and other natural resources. In the context of Solomon Islands, however, where landlessness is relatively unknown, it is the issue of formal rights to land that is of most concern to women. It is in the intersection of *kastom* with the state that many landowners find themselves losing out, and a small number of people are able to strengthen their role within land tenure systems.

While attention must be paid to the intersection of *kastom* with the state, the case of Kakabona demonstrates that women may be more likely to draw on informal systems based in *kastom* and Christianity in affirming their roles in relation to land, dispute resolution and the distribution of financial benefits. In the context of Solomon Islands, where land reform is on the agenda of the national government and donors, there is an urgent 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.

Furthermore, while it is now axiomatic to state that participatory methodologies are critical to the empowerment of women, issues of methodology have not received a great deal of attention in research into customary systems.<sup>108</sup> The participatory workshop held in Kakabona enabled all of the workshop participants (the author included) to pursue the shared goal of empowering Solomon Islander women through the provision of information about the state legal system. At the same time, the author learned a great deal about the operation of *kastom* and Christianity, and the local women participants identified the active pursuit of knowledge about *tutungu* as critical to their empowerment within *kastom*.<sup>109</sup>

Finally, it must be noted that the case studies have tended to focus on the experiences of the “average” woman, with less attention paid to other cross-cutting axes of difference such as age, marital status, and status as an autochthon or migrant. This is partly because those with the most vulnerable rights to land, such as migrant women, are also those who have the least authority to speak publicly about land matters. This was often noticeable in meetings, during which migrant women were quiet, and in a small number of instances even left the meeting. It is likely that these women felt unable to express their views on land matters within public meetings. This again highlights the importance of long-term, ethnographic research methodologies that provide scope for the inclusion of a greater range of voices and experiences, and pay increased attention to the operation of customary systems of tenure on the ground.

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<sup>108</sup> Susan Hirsch has observed that, while legal anthropologists have paid a great deal of attention to gender relations, there has been very little engagement with the debates over feminist method that have shaped the study of gender in other disciplines: S F Hirsch, ‘Feminist Participatory Research on Legal Consciousness’ in Starr and Goodale (eds), *Practising Ethnography in Law: New Dialogues, Enduring Methods* (2002), 13.

<sup>109</sup> See also Monson, above n 93.