

Long Essay

Settling Land disputes Again taking a particular locality. Examine the present official and unofficial ways of settling Land disputes. Consider alternative approaches to this problems and recommend improvements if you think that is feasible

First of all let us look at dispute. Dispute is an argument or quarrel one thinks that something is untrue. Land dispute is a dispute over land. In the past disputes over land did not arise as often as they are today. Dispute over land is likely to present everyday for example the North New Georgia Corporation which was first proposed in November 1978. There were numerous reasons that causes Land disputes. A dispute might be ^{started} ~~caused~~ by small arguments. It may be that after a bush fire or cows or pigs, dogs destroying crops or going across into another's land. My recommendations to this is that any animal trespassing into some people's ^{land} can be killed in the case of pigs by the land owners, in the case of a ^{bush} fire negotiation should be reached immediately in a form of paying some form of compensation. Greediness may cause disputes especially where a person has already been given some land and he still claims extra pieces of land from other places. My recommendations are that if it is a land owned by the clan then the chief or the head of the clan should assemble all his clan members and tell them who owns what land and where to ^{start} work, ~~and~~ where it ends and so on, if it is community land the chief should try to share all the block of community land to each family. It may be lack of proper negotiation. i.e. someone would then settle on a piece of land without consulting the ^{land} owners or he may allow another person to settle on some other's land without telling them. This should only ^{help} if the people concern cooperate and negotiate with land owners. If they wanted the land registered they should get survey out the land and ^{an} acquire ~~return~~ the land should be carried out, and claims ^{will be} invited to determine who the land owners could be. One major reason is money, that is connected with development. When a piece of land is not in use for some form of economic development

the owners would not raise a word concerning the use and control of that land. But when they spotted somebody started putting up cattle farm or other developments the people would then begin a case against that person, sometimes he might be the owners close relative (brother uncle) but because of money he didn't care about them. My recommendation to that is that the community should encourage individualistic land should be allocated to individual families ^{rather} ~~such~~ than the whole community. Before there were no cash crops besides, nuts and other trees therefore those who wanted should just ask the owners. but as cash crops ~~are~~ ^{are} introduced like coffee it is very hard for people to share. Sometimes it is the lack of clearness of each persons proper area or the uncertainty about land boundaries / spearlines, their fathers or grandfathers did not actually walk along the land spearlines therefore the parties were rather not certain of the exact location of the spearlines or trying to extend his boundaries. In this case it is quite a serious one therefore my recommendation to that is for the people to register their land by telling surveyors to survey out the land and record boundaries, all the province should recommend this idea to avoid disputes coming up on one case many times. Provinces should send out people from their province to survey boundaries and record them. To determine who the head of the line is another cause of disputes. It is undisputed that the land is owned by a certain clan but when somebody from the clan gets married they would go and live with their inlaws while still claiming their ownership rights in their clans land and sometimes when who are descendants through the female side claim ownership rights in land which is owned under patrilineal system. My recommendation to this is when one gets married he should be allowed to inherit from his ~~fathers~~ clans land and if the wife's clan agreed to give him land rights he should inherit there as well. The older one in the family should look after the land and the chief or headman should have the overall control.

There maybe groups who are involve in the disputes
Solomon Islanders maybe broadly divided into Melanesians
who inhabit the main Islands and Polynesians who
live on Islands isolated outlying Islands of Ontong
Java and Soto and there were the Saltwater people
who lived on the Sea Coast or on Artificial Islands
and the bush or mountain people who are inland
dwellers. People are a product of a serious of Migra-
tion going back over the Centuries. There are the
tribal groups, clans, lineages and moieties involve in
such a dispute. Areas which are disputed are forests
with economic trees, trees for logs, fertile Soil suitable
for agricultural purposes and Cash Cropping. Sometimes
when mineral is found over an Area and when it
is extracted or taken out for money.

Some people emerge from the same line or Land Group
In all Societies the members of a line consists of
those persons who are in close kinship relationship
to one another who traces their genealogy back to
a common ancestor either by patrilineal, matrilineal
or bilateral descent and how they came about
to own the Land depending upon the custom
of our Society of which we are members and where we
cultivate an area or several areas of which has a
name (can be the name of the line) and boundaries
of different kinds where they used to sacrifice to
the Ghosts and propitiated the spirits of that piece
of Land. The lines and Land Groups lived inland and
exercise the right of occupation such as residence,
cultivate, hunt, fishing or gathering over rough area.
Several groups may occupy an area in common but
each line within each Land Group had its sacred
place where the spirit of ancestors live. This might be
some of the ways in which they can prove that they
own the Land and it also made it easier to
Identify acts of occupation than the areas
which the acts were carried out.

Today most of the people prefer to live on coasts
and that also causes dispute. Many bush
line ^{who} migrated for the coasts claim all Land

between their present habitations and the Coast while those who live in the Coast claim long funnels back to their former bliss. A very big competition has occurred between different migrating groups moving on conflicting to have access to the Coasts.

Disputes never develop or occur in preprotection times this is due to the fact that fear of Sorcerers or the Spirit of our dead fathers was believed to be in the land. If disputes occur in those times they were usually settled by compensation of war between the claiming groups. Chiefs usually do work of peace keeping, land, reefs, swamps and all resources and interests that are in them as the main field of dispute. In the Solomon Islands the main reasons for disputes are the Competition for Lands in the Coast, the geographical lie of the Country and the past and present changes of peoples Custom. Certain geographical factors are looked upon such as rough and thickly covered jungle, certain type of land are productive and brings a good cash in return. How far social change affects the tenure system, new ideas and needs developed. Human beings are a great land dispute quarrels within our family or tribe can bring rejection of co-operation, jealousies and the thirst for money. It could arise where is doubt and when boundaries cannot be distinguished when one of the tribes found that their sacred place was disturbed. When their genealogy is wrongly stated, when secondary interest in land is converted into primary interests, when primary interest is separated in land and economic trees, the break down of individual tenure when the interest in land is transferred (wrongly denied) the claiming of reefs when customary title is drafted and acquired these days as illegal, Religious Sections, the building of village land. the fact that the rights are given to adoptees, strangers absentees and women. The dispute of not wanting land to be alienated. The coming up of disputes that already have been settled due to the fact that records or decisions

in the past disputes have been lost. It may be that they refuse to accept arbitration or that Administration is converted to Interest to interest in groups which held land interest by Land authority and maybe because of Political pressure involving

There can be disputes with outsiders who intend to come to settle in a place or wish to develop the Land. There are several causes found in which an unauthorised settlement on Land belonging to Local owners Squatting has become a big problem in the Solomons (Honiara) and Local people are beginning to deal with unwanted squatters.

There are several ways of proving that parties own the Land. People live on the Land as their residential place, to cultivate, hunt, fish or gathering over geographical area never and so on. Certain groups might live on an area in common, each line within their group had its sacred place where the spirits of their ancestors were said to live. A very big competition has occurred between different migrating groups conflicting lines of access to Coast or their bush land. The title held by a line or Land group is that the original ancestor of the line ^{who} was the first to settle on the Land, took over the Land by discovering, got the Land by negotiating purchase, gift or other customary mode of transferring and were able to hold it or if not by force or arms. The ancestors of the line may have owned or use the area. The present owners may still continue to exercise such interest. The ancestors or members of the line called the spirits at certain named sacred places. Situated within the boundaries, that no one could intrude. That those who are not members of the line but members of the Land group got their secondary interest in the Land by some secondary relationship or recognised principal of transfer from members of line.

They took into consideration the year of settlement those who first settle, the names of places, usually the people are identified with their land by name. The number of fruit trees grown or gardens. The clan you belong to is another major determining factor and

Sacred places which is an important element in the proof of primary interest in Land. Where the dead were disposed, Certain trees or rocks, where the Spirit priest of the line performs or enforces the Spirits of dead ancestors. Boundaries are also a course of dispute they are usually straight lines, generally follow natural features such as streams, rivers, ridges, edges of hills, marked trees, lines of trees, rocky outcrops a stone buildwall or other forms.

Now let us look at a particular locality. The example I am going to write about is the North New Georgia Timber Corporation dispute, It was set up in 1949 by Solomon Island Parliamentary Act to promote the utilisation of the timber Resources of North New Georgia for all the public to benefit. The Act gave about 40,000 ha of Customary Land to the Corporation. The members were those who reside in the area, their nominated tribal leaders who are responsible to see that the conditions are kept and that the profits are distributed among the members and to encourage timber replanting and to create development fund out of its profits for projects in the area.

New Georgia is one of the larger island in the Western Province it harbours the Roviana and the Marovo Lagoon. The people living in this area are members of in this Corporation. The area concerned is in the North of New Georgia people involved are of different churches and cultures.

The cause of this dispute is economic development. Nearly all the Land at North New Georgia are related to dispute over the future royalty from timber on the Land. It is only when people wanted to develop the Land and Land owners wanted to be trustees for their Lands that disputes arises.

Apart from the two strips along the Coast is Customary Land. The boundaries follow water Sheds and rivers. Land rights there relate to membership and of a Lineage group and Chiefs are responsible for looking after them. Genealogies and Sacred places are different aspects as well. Not only the nature

of Customary Land tenure is important but that it can be determined by Government Policy. Politicians and officials can find out themselves what the Customary System is really like and how it works. They also have the power to give their Decrees in Laws. The North New Georgia Timber Corporation not only recognises the existence of Tribal leaders but increases their powers compared to ordinary members of Land owning groups the Churches and the Government as a whole. Tribal Leaders nominate members of the Corporation board of directors and receive and distribute profits of this Corporation to ~~the~~ members. Members who live in these areas are defined as having the right according to Custom to receive share. When timber is being cut the profit from it are received by Tribal leaders for each areas for giving out to members in their respective areas. During the negotiation Government side proposed that the timber Corporation be distributed by the board of continuously and equally among ~~members~~ ^{members} of a tribe, during negotiation some of the tribe ^{which were} dropped out have their own Lawyers. So the draft bill was drawn up and gone through meeting and passed in Parliament in May included provision for tribal leaders coming between the board and its members. The boards that negotiated the felling license would be made up of representative from each of the different areas. All sides negotiated and assumed that the Corporation would be dealing with Levers Pacific Timbers (LPT) though no company officials are present Levers Pacific timbers is part of the United African Company itself a division of Unilever. It has done logging on Kolombangara. It has contributed to the National and Provincial Cash economy and was to continue after 1982 when it expected to reach the limit of exploitable trees on Kolombangara therefore it needs access to another Island. In 1978 they began logging along a Strip of Government Land around Barova

on North New Georgia.

Although proposed in September the Corporation is a result of negotiations begun with Customary Land owners in 1972 for six years. Legal Proceedings had failed to determine who the Customary Land owners really were. The Act that was established creates disputes about ownership into disputes about board membership Corporation policy and those who are entitled to royalties once timber is cut. In the protectorate's 1978 Annual report it was agreed that Government should give priority to negotiation for timber leases rather than long term lease of land as Land owners are reluctant to release land for long term periods.

An acquisition officer was appointed to make an agreement with the apparent Customary Land owners and to hold public meetings to hear claims. Appeals were made by other groups against his determinations were heard by the Magistrate Court with further appeals on point of Law and procedure to high Court, then lessors become registered owner of the perpetual Estate and make a registered lease to Government.

Problem arose with registering the Land with group ownership. In 1972 the act was then amended to allow for the registration of group titles by the mechanism of Joint Owners as Trustees for the group but to do so they have to sign Statutory declaration at public meetings and the signing, sorting out ownership and boundaries takes place in a public meeting.

There were ten claims heard and four were upheld and two were dismissed, three were resolved by compromise and one was disallowed. The case was heard and reheard.

They were to appoint a panel so as to proceed Land Developments according to the chief Justice. The people were confused and unhappy about registration of Land for timber projects. They did not like the idea that Government was trying to register Customary Land when all it wanted to buy were the trees on the Land and in order for Government to register the Land they

first had to take the land itself and give it back to Land owners and this causes disputes that the decision of the acquisition officer then was not followed.

The high Court had introduced Local Courts into the dispute, the Forestry Policy review Committee now followed with another body, the Area Committee were set up under the Local Government Act. A new start was made the new trustees were appointed and any dispute about the ownership of trees can be discussed by Area Committee. In mid 1978 three different legal approaches to the grant of Timber rights had been tried, two collapsed and the third was slow and still potentially working. The Corporation's board members were chosen in August and the board held its first meeting in Munda in September 1979. Negotiation between Levers Pacific Timbers and the board about granting of a felling license began in Honiara. Uptil now disputes still go ahead, other clans are not satisfied. Fighting broke out in 1982 where all the Levers Pacific Timbers properties, or Machine that were in Enogae were burnt and people were warned to abandoned houses. Houses were burnt as well. That proves that still the dispute was not solved in any way or another. There are two ways of settling Land dispute by the official or the Unofficial method. I am going to consider first of all the present Unofficial ways of settling disputes. It can be settle by direct talking. The disputant may feel their way towards a settlement through bilateral negotiation, they may try to resolve the matter with the help of neutral Mediator or may give their quarrel to an umpire for decision. Bilateral negotiation is a least complex form of settlement process. Here the disputant approached each other without intervention of third parties to come to an agreement by appealing to their own interest. The other form is the Umpires, this is more concerned with rules, while Mediating is dealing with interest the judges activity is related to the level of norms rather than the level of interest, it involves an assessment of what

has happened already where as mediation is more concerned with the future, it is getting the parties towards a settlement but still without power to resolve the matter by decision.

The chief, village elders ^{and leaders} are concerned in the process of settling land disputes. Sometimes ordinary village men who know more about the land disputed were needed to assist the presence of the public also affects the settlement of the disputes.

The evidence they obtain on how they decide the case and clarity of their decision, the chiefs listen to the evidence of both parties while one party is giving evidence, any of the chiefs may intervene to query that party about any evidence one party is giving which is not consistent. Sometimes land ^{claimants} ~~documents~~ could not recall the true story connected with land dispute. Claimants could invent their own stories. Local court formed by representatives in the villages is also a form of settling disputes. Traditional leaders who mediate disputes were respected in their own communities.

The official way of settling land dispute will now be considered. The first ^{local} step is the local court. In my area there is one ^{local} court that is the Roviana Local Court. This is composed of the President and his ^{and} assistants which were chosen by the Roviana Area Council. The Principal Magistrate usually recommends suitable candidates and Chief Justice who makes the final selection. They remain in their villages and only hear cases when the president tours in the area. The case hearing began with ^{disputants making their} claims and stating complaints then produced evidence after which they were cross-examined by the defendants and after being cross-examined their witnesses were called and cross-examined. After this the cases were closed and the defendants now state their evidence and rebut any evidence given by the plaintiffs which which they see incorrect. The court would then be adjourned for 15 minutes and would resume again to hand down its decision to the parties.

The second step is the Customary Land appeal Court. It is composed of justices and a magistrate who is

the Court clerk, one of the justices is the Court president. Unlike the local court the CLAC decision were very clear. This I think is because the CLAC clerks are usually Europeans and therefore their standard of English is good. Official Courts decision is that these Courts do not take into account Land Usage when making their decisions. They base their decision mainly on the Land ownership, if the Courts find that one of the parties is the owner of the Land and that the other party has property on the Land e.g. Coconut plantations or cattle project they will award ownership of the Land to the party who is proved to be the Landowner while the other party still retains his property. One thing we must always remember is that our Local Courts don't define rights and ownership, only those who have better claim and eloquent and their claims are reasonable can be considered. In the Solomons there are only three levels of Courts, Local Court, Customary Land appeal Court and the High Court. It only goes as far as the high Court but if you happen to lose a case you can ^{again} appeal to the Local Court and ended in the high Court. You cannot bring new evidence but can only argue on legal point.

I have suggested an idea which is to start surveying and recording ~~all~~ boundaries in all provinces so that the Court can be effectively carried out from Province level up a land panel. The standard of case reporting should be improved, the clarity ~~of~~ of the reasons for the Court findings should be improved. The justice should try and explain reasons for their findings in a way which is understandable to the parties but we must bear in mind the question "of what kind of resources, How many men, judges, Surveyors and so on. In order to come up to a more effective and successful settlement of Land dispute, a system should be formed where the Chiefs and Courts could have a ^{joint} say in determining and settling of disputes.