4 If compulsory acquisition is sought to benefit the people (eg. for the development of roads, clinics, schools etc.) then this is alright, but prior consultion with the land owner must be made. If compulsory acquisition is sought with the ultimate intention of transferring the land to Expatriate Companies, then compulsory acquisition must not be implement. Compulsory acquisition should not be forced upon the people or done without the prior approval of the land owners (1).

ANSWERS TO 2.

1 It is not a good thing to bring all lands under registration. Existing Customary lands should remain as customary land (31).

2 It is a good thing to bring some lands under registration only when such lands are being bought out off customary land. This should be on a voluntary basis (1).

ANSWERS TO 3.

1 Hilly and rugged areas of customary lands which are not so easy for development, should be left in reserve for future generations (24).

2 Hilly and rugged areas of customary lands which are not easy for development should be developed by the government (2) council (3) land owners (6).

ANSWERS TO 4.

1 People who have been living together as a result of christianity and who have been using land which they do not own, should have the right to use the land but not right of ownership of the land (18).

2 People who have been living together as a result of christianity should have the right to use land on which they are living; for subsistence cropping but not for cash cropping (4).

3 People who have been living together on land which they do not own, should not be given any rights whatsoever, to the land (3).

4 People who have been living together as a result of christianity on land which they do not own, should buy or lease this land, if they want to work on it (3).

5 People who have been brought together as a result of christianity and live on the land which they do not own should be given some rights to use the land only if they are related to the landowner (1).

6 People who have been brought together as a result of christianity and who have been working on land which they do not own should be given perpetual rights to the land (2).

7 Whether or not people who are living on land which they do not own, should have the right to use the land, depends entirely on the land owners (1).

ANSWERS TO 5.

1 It is a good thing that land should be purchased according to current customary usage but not by non-Solomon Islanders. Land purchased in this manner should be clearly marked out stating boundaries, acreage etc to avoid confusion and any future disputes (24).

2 People should do what they like with their lands (5).

ANSWERS TO 6

1 People who are land owners and who have been living away from their villages for a long time, should have full rights to their lands when they return home, and should still be absorbed in the society (31).

2 People who have been living away from their villages for a long time, should still be absorbed into the society but should have lesser rights to land (1).

ANSWER TO 7

There is still a need for subsistence cropping in the future. One cannot depend entirely on cash cropping for a living (32).

ANSWER TO 8

More lands should be given away to cash cropping but some lands should be held for subsistence cropping (32).

ANSWERS TO 9

1 Before government embarks on any new development in Mining Forestry, and cattle the government should explain to the people the advantages and disadvantages of such activities (1).

2 Mining, forestry and cattle activities should be left in the hands of the indigenous people (1).

3 The government should pass certain laws to control the activities of Mining, forestry and cattle, so that the indigenous people are not badly affected, or deprived of some of their main means of livelihood (29).

ANSWERS TO 10

1 It is still not difficult to obtain land either for cash or subsistence cropping (22).

2 It is still not difficult to obtain land for subsistence cropping but it is difficult to obtain land for cash cropping because the landowners are unwilling to allow their lands due to shortage of lands (6).

3 It is difficult to obtain land for cash or subsistence cropping because the land owners are unwilling to allow their land due to shortage of land (4).

ANSWERS TO 11

1 The system where land owners give permission for other people to use their lands, is not secure enough. Any transaction of lands within customary land, should be done before locals councils by means of signed Documentary agreement (16).

2 The system where land owners give permission to other people to use their lands is not secure enough. The land owners should lease their land. This is more secure (4).

3 The system where land owners give permission to other people to use their land is not secure enough. The land owners should sell the land (1).

4 The system where land owners give permission to other people to use their land is secure enough (11).

ANSWERS TO 12

1 Government should help Solomon Islanders to buy alienated lands from expatriate owners (28).

2 Expatriates should be permitted to continue expansion of development of their present holdings, but make them pay higher taxes (1).

3 Expatriate owners should be required to train Solomon Islanders and localise as soon as possible (2).

4 Alienated lands held by government and expatriates should be given back to original land owners (1).

ANSWERS TO 13

1 Poorly maintained alienated land held by expatriates should be purchased by government for Solomon Islanders to improve (26).

2 Poorly maintained alienated lands held by expatriates should be returned without payment, to original land owners to improve (5).

3 Poorly maintained alienated lands held by expatriates should be leased out to Solomon Islands to improve (1).

ANSWERS TO 14

1 Alienated land which is held by expatriates but which is not being developed, should be returned without purchase to original land owners (28).

2 Alienated land which is held by expatriates but which is not being developed should be returned by purchase to the local councils (3).

3 Alienated land which is held by expatriates but which is not being developed, should be returned by purchase to those who have no land or are very short of land (3).

4 Alienated land which is held by expatriates but which is not being developed should be returned by purchase to government (1).

ANSWERS TO 15

1 If the alienated undeveloped lands are returned to original land owners, they should make every effort to develop the lands (29).

2 If the alienated undeveloped lands are returned to the local councils, the local councils should use such lands for the general benefit of the indigenous people (3).

ANSWERS TO 16

1 Alienated lands held by government, should be given over to the original land owners (27).

2 Alienated lands held by government should be given over to the local councils (7).

3 Alienated lands held by the government should remain the property of the government (1).

4 Alienated lands held by the government should be returned to the local councils, who should lease out to the people, such lands (1).

NSWERS TO 17

1 Children born of Solomon Island/Expatriate marriages should be legally regarded as Solomon Islands in our laws (15).

2 If a Solomon Island man is married to an expatriate woman, their children should be regarded as Solomon Islanders in our laws (8).

3 If a Solomon Island woman is married to an expatriate man, their children should not be legally regarded as Solomon Islanders in our laws (6).

4 Children of Solomon Island/expatriate marriages should not be legally regarded as Solomon Islanders in our own laws (11).

5 Marriages between Solomon Islanders and expatriates should be discouraged. Chidren born to Solomon Island/expatriate marriages, previous to this exercise, should be legally regarded as Solomon Islanders in our own laws, but children born of Solomon Island/expatriate marriages in the future will not be legally regarded as Solomon Islanders in our own laws (1).

NSWERS TO 18

1 The waste land ordinance should be abolished. There is no such thing as "Waste Land" (32).

2 Waste lands still being held by government, or leased away to some expatriate companies, should be returned without payment to the land owners (28).

3 Waste lands still being held by the government or leased away to some expatriate companies, should be leased away to Solomon Islanders (2).

4 Waste lands still being held by government or leased away to expatriate companies should be returned to local councils, who should lease such lands to the indigenous people (1).

5 Waste lands still being held by the government should be kept by the government (1).

NSWERS TO 19

1 Landowners also own whatever mineral there is found in their lands (24).

2 Government and landowners should each have 50% ownership of minerals (8).

3 Minerals should be owned by local councils (1).

4 The Central Government should own all minerals (2).

NSWERS TO 20

1 Money received from mining should all be given to land owners (8).

2 Money received from mining should be shared between the landowners, local councils and government. The biggest shares should go to the landowners (16).

NSWERS TO 21

1 The land owners should do what they like with the money paid to them by way of royalty for timber or mining (8).

2 When money is paid to landowners by way of royalty for timber or mining, the government should help land owners to invest this money in some worthwhile business (24).

ANSWERS TO 22

1 It is a good thing to encourage registration on communal line registration under Trusteeship, because customary land is usually owned collectively and not individually (12).

2 Any form of registration should not be encouraged on customary land. All existing customary land should remain unregistered (19).

3 If land is bought away from customary land, that piece of land should be registered (1).

4 Registration of customary lands is contrary to our local customs. Government should recognise that customary land is secure in itself and should be a form of security for any intended loans for development (1).

ANSWERS TO 23

1 Our present Native Land Courts are unsatisfactory, because they are not observing customary implications in every respect, and in some notable cases, favouratism is apparent (30).

2 Our present Native Land Courts are satisfactory (1).

ANSWERS TO 24

Improvements are required in our present system thus:-

1 People should choose or elect court members, instead of having them nominated as they are now (31).

2 Court members should be increased (16).

3 Court members from other areas should be called in, provided that the customs of those called in, is the same as those where the court case is bei held (11).

4 A 'Jury' or 'Arbitration' should be brought in; in every Native Land Court (1).

5 Court Members should be nominated as they are now (1).

ANSWER TO 25

People should be encouraged to work out solutions to their own land problems at the local level (31).

ANSWERS TO 26

1 Land appeals on customary land should not go to High Court (30).

2 Land appeals on customary land should go to High Court provided that the person appealing is definitely sure of his ownership of the land (2).

ANSWERS TO 27

1 Professional lawyers should not be allowed in Native Land Court Cases, dealing with customary land (28).

2 Professional lawyers should be allowed in Native Land Court Cases dealing with customary land (5).

ANSWER TO 28

Criminal law should be brought in to settle the dispute (32).

ANSWER TO 29

A separate body should handle land matters at the local level (32).

ANSWERS TO 30

1 Court fees should be high; from $10.00 to $50.00 (25).

2 Court fees should be low (6).

3 Court fees should depend on the land price (1).

ANSWERS TO 31

1 Local councils should have some control over land as well (27).

2 Local councils should not have any control over land (5).

3 Potential areas within customary land areas should be controlled by local councils (1).

CONCLUSION:-

In conclusion, mention must be made on some unexpected short-comings during our tour. We were unable to hold any meeting at Tikopia, although we visited Tikopia; not so much of the fact that the whole customary set up there did not necessitate a meeting, but because we were quite unintentionally hindered by the chiefs.

We did not visit Anuta because of an emergency Medical case at Utupua and when we finally arrived at Kira Kira, we were minus one man in the group. However, at Wainoni Bay the Honourable B Kinika joined us out of his own initiative, and despite the fact that the Honourable L Fugui had to leave us unexpectedly, four days before the tour was due to end, we were able to complete the tour.

The tour was really a worthwhile exercise and although responses from the people did vary from village to village and from question to question with respect to local environment, we had the confidence of the people. The tour was difficult physically and phsycologically, and I would like to thank Hon D Thuguvoda, MLA for Central Guadalcanal, Hon Father L Fugui MLA for North East Malaita and Hon B Kinika, MLA East Makira, who through their efforts, did enable me to gather information from the people of Eastern District and Eastern Outer Islands, which I have presented before you in the foregoing pages.

(George Hiele)
SECRETARY

C/- Customs & Excise Branch
Ministry of Finance & Development

SPECIAL SELECT COMMITTEE ON LAND AND MINING

WESTERN DISTRICT TEAM: 27TH JANUARY-1ST MARCH 1975

Members: J. Fifi'i, M.L.A.
F. Mikolo, M.L.A.

Secretary: L.P. Maenu'u, Administrative Officer

Introduction

1. The tour was the result of various meetings the Select Committee had towards the end of 1974. It was decided at these meetings that if changes are needed in our present Land and Mining Laws the views of the rural population must be sought. The reason being that the rural person's life and ways of living is closely linked with land and whatever changes may come will weight heavily on him; he is expected to live and keep up with such changes.

2. About 34 villages were visited during the tour and participation have always been lifely. This figure of 34 villages safely represented roughly 10% coverage of the whole Western District, so that the materials collected are fairy representative.

Changes Needed

3. In all the villages visited the public opinion was that changes in our present land and mining laws are urgently needed. Such changes must aim at meeting the needs of the Solomon Island's society and to cater for customary and traditional practices to continue.

4. People have had their own ways and means in dealing with land but because of the operation of the present laws these have been mistreated. There is general feeling among the people that these traditional land transactions must be resurrected.

Customary Lands

5. It was repeated by stressed at the meetings with the people that in nearly every case government dealings in customary land has been a threat to traditional practices. In nearly every case the only easy way out was being taken into consideration and not enough efforts made to investigate the real back ground of land holdings before acquiring land.

6. It was also stated that even mining prospectings do not always take enough care in this case and sometimes approaches are made to the wrong person and at short notice.

7. As a result of these, numerous and bitter disputes arise between the people themselves and this is often enlarged by court hearings as to who are the rightful owners. Sometimes disagreement are between closely related persons but the operation of the present laws can make such disagreement very unpleasant.

8. In nearly all cases the existance of tribal chiefs have been over ridden by those who are money hungry, and by the governments hierchy itself.

9. In the past both government officials and members of expatriate companies prefer to deal with those people who could speak a little english and taking for granted that what those people say represent the peoples wishes. These people over look the fact that Melanesian societies do not exactly fit in with the hierchy pattern; rather everyone in the tribe should know about land dealings, or people who are not informed of such land dealing has a right to challenge whatever arrangements may have been made; according to customary practices generally.

10. It was generally suggested at these meetings therefore, that the reinstallation of tribal chiefs should be a matter of some importance. There should also be a committee or council of elders for each tribe. This committee or council of elders would work very closely with the chief as an advisory body. Only upon receipt of the council of elder's decision can the chief act accordingly.

11. Any acts by the chief alone without prior consultations with the council of elders, are invalid and can be challenged and cancelled if possible by the council of elders.

12. Similarly, any disputes arising within any tribal land and between only people of the same tribe must be sorted out by the chief of that tribe together with his committee or council of elders.

13. All dealings in land must be through the chief and his committee or council of elders.

Alienated Lands

Freehold Lands

14. There is general agreement that all alienated freehold land should be return to the original customary land owners, whether presently full cultivated and maintained, poorly cultivated or vacant.

15. No payments should be incurred either by the Central Government or the original customary land owners themselves.

16. The arguements offered are:-

(a) The Melanesians who sold such land interpreted the transaction rather differently from the expatriate's idealogy. The Melanesian do not mean to sell his land, but releases it for the expatriate to use for an indefinite period; after the expatriate finally leaves the country they thought the land would return to them as according to customary practices. The money or goods receives from such land transaction is accepted as a token of friendship between the two parties.

(b) The payments made do not really rectify the value of the land especially considering the fact that it is not normal for a Melanesian to sell land. In this respect they have, therefore, accepted things such as bottles or axe handles, which the expatriates consider as payment for land.

(c) The Melanesian labourers have born a heavy load in developing such lands in order to put them into good production.

(d) The expatriate companies may have already reaped large sums of money since the time they first have occupied these lands.

17. All lands which were given away under the Waste Lands Ordinance must also be returned to the original customary land owners without any form of payments.

Public Lands

18. It was also generally agreed that all public lands must be returned to the original customary land owners.

19. Leases should then be made out to Government or Local Councils whichever is preferable on all urban lands as well as other rural lands being developed by Central Government. This would include all lands at present under forestry re-forestation. Other rural public lands not being developed to be returned to the original customary land owners for them to develope or deal with according to their customary and traditional practices.

20. Some Solomon Islanders are at present holding some fair sized public lands and are developing them. In the same way, such Solomon Islands would have to hold leases for their farms direct to the original customary land owners instead of to the Government.

Registration

21. Registration offers good security but the present system is highly unsatisfactory, so that the people would prefer to see it change or modified.

22. Only registration which included all the tribal lands and in the name of the tribe should be allowed to continue, but individual registration must be discouraged.

23. This tribal registration would then accommodate quite comfortably, customary and traditional practices. This means that external boundaries only of the tribal land may need be surveyed and possibly important areas inside the tribal land. Other things falling within this tribal land should be referred to the chief and his committee of council of elders of that tribe to sort out.

24. Some kind of simple recordings must also be done and entered in the register to avoid future confusions. Preferably this should only be done for permanent crops and other important transactions such as purchasing or transmissions. Rights for gardening should need no recording and may continue as under customary ways. Other things such as for collecting water or firewood also to continue as normal with no recordings needed.

25. Survey of these tribal lands need not be of a very high standard but accurate enough for registration purposes. Such surveys should be carried out by Lands Division of the Ministry of the Agriculture and Rural Economy and free of charge.

26. Boundary clearing should be done by the two tribes who have a common boundary and surveying to follow thereafter.

Land Disputes

27. It is generally felt that the present Native Land Courts are unsatisfactory. That Native Land court proceedings are alien and allow considerable injustice in so far as it decides on the weight of evidence and arguements offered by the two parties. In most cases occupation do not necessarily mean that the occupant owns land upon which he lives. His living there may have been one of mutual understanding or friendship but which unfortunately were not recorded. Such cases are common and the courts normally asked why no attempts were made in the past to get the occupiers out from the land.

28. It is not common practice to ask a person to leave the land if his occupation of that land does not interfere with customary practices of the area. However, this has become distorted as a result of outside influences and people saw that there is a chance for them to claim ownership of land through long undisturbed occupation. While the people view such claims as uncustomary and distasteful but the operation of laws do allow arguements of this nature to proceed.

29. There have been cases where real land owners lose their land because they have been unable to convience the court in presenting their evidence at the hearing. Their poor presentation of facts can be stem out from several things. There are people who are not use to speaking in the presence of a big audience such as in court cases; others are just not use to the idea of arguing especially if it is to be logical to convience the courts. Through such weaknesses and other similar ones land could easily be given over to those who do not own it by customary right.

30. Remarks have also been made that favourism and bribery also played a part in making land decisions in Native Land Courts.

It has, therefore, been suggested at these meetings that all land dealings should be the responsibility of the Local Chiefs and the elders. There should, essentially, be in every tribe a Chief and a Committee or Council of Elders. Members of the committee or council of elders to be drawn from within the same tribe or clan.

31. At the outburst of a land disagreement the chief and his council of elders should investigate and sort them out, strictly in accordance with customary and traditional practices.

32. Inter-tribal disagreements should be dealt with by both chiefs and their respective council of elders of the two tribes concern, in the presence of the District Constable of the area. Recordings must be made by the District Constable of the decision reached by the two tribes.

33. There should also be another body to be consisted of only local chiefs of the area to investigate and sort out inter-tribal land problems which could not effectively be decided by the two tribes in dispute. Those hearings to be done in the presence of the Sub-District Clerk of the area. Possibly this body could be called the Area Committee or the Council of Chiefs' Land Committee. This to be the supreme body for dealing with native land matters, and their decision must not be questioned further.

34. Appeals to High Court and the admittence of professional lawyers in native land matters must be discontinued; as this could easily overlook traditional values.

35. All decisions of the above committees must be recorded by either the Area Constable or the Sub-District Clerk in whose presence the matter was being investigated and sorted out.

Land Development

36. There have been strong feelings by the rural population of this area that the present trend of developments are highly dangerous and misleading and could easily land the rural people in unfortunate problems in the future.

37. There is indiscriminate land use in the rural areas, generally, and if this is allowed to continue as under the present system; there is likely to be little land left available for subsistence croping. It was mentioned that very often Government Officers who went around encouraging development among the rural people did so one sidedly. That is, they heavily, and in several cases, over-enphasized the monetory value of those developments but fail to mention the effects such developments would have on the people themselves; either conceously or unconceously.

38. Some areas have already encounter graveous effects from development. Viru Harbour is one particular classical example. The people here regretted what they have done and strongly requested that Central Government should not repeat the same thing in other parts of the country. It is almost clear from the present development activities that only few people may be able to get through satisfactorily but the major part of the population would be forced out and that real poverty may then germinate in the country. Even the few fortunate ones who would emerge as an outcome from these developments may only arrive at their destination after so many bad failures and mistakes. This is what is greatly feared in rural area; the emergant of few elites who probably would think more of themselves than of their country men or members of their own clans as under customary practices.

39. Mining, Forestry and Cattle Developments have been viewed as most distructive and dangerous to the rural persons lifelihood. These developments cover large areas of land, some of which a valuable lands for subsistance croping. Not only is land for gardening is being used for these developments, but they also bring with them pollution mainly of drinking water through the use of chemicals and the remain of cattle waste matter. Numerous minor benefits, but which are an important part of the rural persons way of life, are also being lost through these developments, such as rights of hunting, fishing, collecting wild fruits as well as the loss of medicinal plants.

40. The implication that land owners only own the surface of the land and not mineral found below the land is totally out of the rural people's concept of land ownership. It was mentioned that the surface soil derived from the rocks upon which it is laying and, therefore, they are one and not two different things. Because of this the land owners also own whatever is found underneath their land. Similarly land owners, own 100% royalty from any resources from their lands.

41. It was also stated at these meetings that before any large developments take place that a careful investigation must be carried out by an expert from the Central Government together with the chief and the committee or council of elders of the land in question, as to the effects such large development would have on the local people of the area. The chief and his council of elders will then decide in the lights of these investigation and government must take such decision seriously.

42. There was general agreement that enough land must be put aside for subsistance croping, preferably a larger portion but not to consist of all hilly lands alone. Some fertile, and accessible lands also must be included for subsistance croping lands.

43. This would, therefore, require rechannelling some of the aims of the present trend of development, to ensure better and effective land utilization. There have been cases when people were encouraged to plant crops on soils which are not suitable for them and the results were bad failures.

Sale of Transmission of Land to Non-Solomon Islanders

44. It was agreed that section 221(1) of the Land and Titles Ordinance should remain in force but that subsection 22(a) and (b) of the same section be deleted. The general feeling was that married to a Solomon Islander cannot qualify an expatriate to enjoy or purchase customary land. Almost in nearly all the meetings, the people prefer to see a law in force restriciting expatriate Solomon Island marriages; or where marriages of this nature occur, the couple must leave the country immediately after the marriage. Children who are born of such marriages in the future cannot be regarded as Solomon Islanders and cannot use customary land as a Solomon Islander. They can only be qualified for a Solomon Islander citizenship, if the children are of 3rd generation but of uninterupted successive marriages to Solomon Islanders by half casts.

Local Councils to hold certain Lands

45. Local Government bodies may hold land on lease basis for their R.H. Clinics, School or other minor things beneficial to the local community of the area. No outright purchasing of land by any Local Government bodies to be done in customary land.

46. All dealings in land by Local Government can only be implemented if an when the chief of the land and his council of elders have been fully consulted and have given their approval.

47. As Local Governments would eventually be controlling land matters in their respective areas, it has been suggested that leases should be arranged direct between the land owners and local governments, but not to central government as at present.

48. Under the present Solomon Islands Laws all cooperate bodies are non-Solomon Islanders and therefore cannot deal direct in customary land. Local Government bodies fall under this category but since these are becoming to be just other arms of the Central Government, it would avoid confusion and delays if they be regarded as only part of the Central Government and that conditions laid down for them to deal direct in customary land with the native customary owners.

Absentee Land Holders

49. This question was brought in to clear the situation should there be need for it at some later dates. It has often been inferred that people who left their lands to leave on another piece of land may loose their rights to that land to those who occupied it continuously, through absenteeism.

50. The people's reaction to this was that this is not customary and the practice must be, one introduced into the country by early colonists. However, there is need to layout guide lines relating to this, as it is likely that some of the people or children of people of "black birding" days who are now living in other Pacific Territories may wish to return to the Solomon some day. In this respect it is wise to be prepared for the day.

51. It has been decided that people who have been absent from the Solomons for long periods cannot claim full right to land when they or their children finally returned. They could still be accepted into their own clans or tribes but holding only less rights to land. After they have fully taken up the Solomon Islands way of life, particularly those of their own tribes, the chief and his council of elders may then accept them to hold full rights to land.

52. Absenteeism within the Solomons has also been considered but this was thought to be of a domestic nature and such people should be allowed to continue to hold full rights to land if and when they returned to their islands of origin.

(Leonard P. Maemu'u)
Secretary

THE TOUR REPORT

BY

THE SUB-COMMITTEE ON

THE LANDS AND MINES

MALAITA TEAM

Date: 17th March, 1975

CONTENT

INTRODUCTION

(a) Report by the Sub-Committee (Malaita team) on the Land and Mines.

(b) The team was made up of :-

Members: Mr. Waita Bon (MLA)
Mr. W.J. Page (MLA)

Secretary Mr. F. Waloilia (Senior Administrative Officer)

(c) The contents of this Report covers the general opinion and suggestions by the people of Malaita Island (population 62,000). Though Lord Howe and Sikaiana are within the Malaita District it was not possible to include them on the itenerary to pay them visits due to several good reasons.

(d) It is possible that the Secretary may overlook some other comments, but as the need to produce an interim report as soon as possible is pressing plus the Secretary being transferred to another District, it is considered that any other comment or suggestion that is missed here will be raised by the Members of this team as both are also Members of the main Committee.

(e) The team's itenerary of calls included Ulawa Island but unfortunately due to the rough seas which developed during the third week of the tour on the Eastern coast of South Malaita and Cape Zelo'o the calls for Tawaro, Olosu'u and Ulawa were cancelled and people were advised accordingly by service messages on the Solomon Islands Broadcasting Service. Re-arrangements were made and the second meeting to cover Small Malaita was held at Matangasi Court House, in the Maramasike Passage.

(f) This report does not include such features as detail population density, history, climate, vegetation and so on. It concerned mainly with the comments, suggestions and views expressed by the people's representatives.

(g) Incidently three small snags took place during the early part of the tour. Firstly Mr. Waita Ben (MLA) fell sick and was unable to join the team when it departed on 27th January, 1975 until 29th January, 1975. Unfortunately it was on the same date that he joined and the team was holding a meeting at Anbu Village that the second snag took place when a bushman was worked-up and felt so seriously against the individual registration of customary land that he came and stood before us and almost tear his eyes off and through them with his teeth at us. Thirdly and luckily Mr. W.J. Page (MLA) escaped being hospitalised as he was also nearly got sick.

(h) The representative speakers on the meetings included a number of local popular figures - see Appendix A.

(i) The average attendance figure at the meetings was 63 representatives.

(j) The tour was successfully completed on 19th February, 1975 and part of the team returned on 20th February and the Secretary on 21st February, 1975.

It is considered that it would not be out of line to record the team's appreciation and heart felt thanks due to the interpreters/speakers whose patience, understanding and assistance have brought the tour to a successful ending.

(Francis Walcilia)

Secretary
Malaita team

A. CUSTOMARY/REGISTERED LAND (Q2) (a) & (b)

1. It is clear from the many statements and comments made before the team that there is a psychological confusion existed in the minds of the people because of the lack of a clear define idological concept. Does the Government wants to gear the development of the country into a Capitalist State? or into a Socialist State which is by and large is nearer to our cultural backgrounds. Each of the above systems of course has its own advantages and disadvantages. It was very surprising to learn that the opinion around the island was uniform namely.

(i) that the concept of individualism in itself is contrary to the Melanesian cultures in regard to land;

(ii) that to convert line land into individual ownership by sysmatic registration is wrong and must be stopped until the Select Committee on Lands and Mines produce a new policy;

(iii) that though there are very minor exceptions the general rule is that all customary lands are under family, line, clan or tribal ownership;

(iv) that acquisition of customary lands from only one or two people without the approval of the line owners as was done in the past is null and void in native custom and must be rectified;

(v) that the need for a change on the customary land tenure systems are recognised but such changes must not be based on foreign concepts;

(vi) that if some sort of registration of customary lands are essential to bring about security for economic development then the present land law must be amended to allow for the recording of line, groups or clans before finally the registration and granting of Title to boards of trustees for the clans or lines.

(vii) that any such trusteeship boards to hold title on behalf of the lines or clans should be more than what is provided for under Part XV of the LTO. That alternatively a new section be created to accommodate this trusteeship boards.

(ix) that any whatever registration of customary land is adopted such registration must recognised the customary rights held by the people at large to collect water, hunt, collect building materials, firewood, canoe trees and so on;

(x) that since the customary land tenure appears to allow for a wider distribution of resources any restriction on this kind of land tenure should be fully considered from the view point of the security of the mass of the rural people, otherwise stop further registration of existing customary land.

(xi) that any national land policy should take into account the land tenure differences existing in the Solomons Society.

Quotation: (from a West Kwara'ae bushman)

"Your regista land ye solfis ye no gut, iu komu mokim rabis long custom land iu sahi".

B. LAND DISPUTES (Q.23):

1. There is a very wide feeling existing indicating that the present court system of only a three man bench of justices and the same court to hear criminal, civil as well as land disputes is inadequate, hence, it is one of the contributing factors of the present rural dissatisfaction with the Native Courts.

2. The High Court came into the same picture, they felt, because of what appears to them to be a policy of upholding the integrity of the Native Courts at all cost and not to disturb their finds unless a point of law has been ignored without ascertaining that the record is correct in every way and confirms with the physical customary evidence or that the Native Court has not bias in its finding are some of the causes of dissatisfaction. Secondly they believed and felt that the Honiara High Court is not a proper final court to deal with their land disputes.

3. It was generally felt that the present Native Court system may be alright for other cultures but this does not necessarily mean that it is also suited to the local situation and cultures.

4. These disputes are getting worse year after year and is creating a much wider social confusion as well as its own chain of effects, reactions and problems among the rural people and if nothing is going to be done about it, they believe the present judicial machinery is building our on mess or, to put it mildly, it is more likely to be a danger to the country's future stability.

5. People felt that a law and court system that is based more on the people's customary land tenure practices is more likely to minimise land disputes rather than rapidly multiplying them.

6. Malaita public opinion favoured:-

(a) that the legal power giving jurisdiction over customary land disputes to native courts and High Court be withdrawn from both courts;

(b) that separate land courts be created and established;

(c) that these courts be legally empowered to give arbitration as well as legal awards on land matters that come up before them for decision and settlement.

(d) that the courts of first instance will be the existing area committees (in Are Are and Small Mala - Araha committees) or alternatively sub-district customary land area committee courts be regislate for and established.

(e) that the next Court would be the District Customary Land Appeal Court;

(f) that decisions and judgement awards given in this DCLAC be final and cannot be questioned on any point of facts or law by any other body.

(g) that no foreigner be allowed to be a member of these courts;

(h) that the quorum quoted on Section 231A (5) of the LTO is still too narrow. People wanted a bigger quorum in both courts;

(i) that the DCLA court be composed of 12 members - one member each for each sub-district including one each for Lord Howe and Sikaiana.

(j) that members of these low courts be elected by the people to hold office for a term of 5 years and the member to the DCLAC be elected by the Land Court and that consideration should also be given to the jury court system.

(k) that it is very highly desirable and requested that legislation be provided for legal review power to be given to these Land Courts to rehear on application, the old land cases done by Deputy Commissioners as well as the present Native Courts. It is also these badly done cases which are also a source of many of the present troubles. The English law and concept barring the proper settlement of these cases must not be allowed to rule here.

(l) that the present native courts be retained to deal only in criminal and other civil issues leaving land disputes to be dealt with by the land courts consisting of low and DCLACs.

7. It is interesting to note that apart from the public opinion, these view points have strong support among councilors, other customary dignatories as well as Court officials who have attended the meetings.

Quotation (from a man at Ainola)

"Is the Native Court and High Court's jobs to settle land disputes or to do damage".

C. PURCHASE OF CUSTOMARY LAND BY NON-SOLOMON ISLANDERS AND ACQUISITION OF ANY INTEREST (Q5) IN CUSTOMARY LAND THROUGH MARRIAGE

1. Unfortunately the above were touched on twice only. At Gwaunatafu and Suluone but even so the general opinion at those two meetings were:-

(a) that non-Solomon Islanders must not be allowed to acquire any land interest on customary land; and

(b) Since it would be wrong to allow non-Solomon Islanders to acquire any land interest on customary land it follows that it is also wrong for them to acquire any land interest through marriage (section 221 (2) (a) and (b).

Miscellaneous

(i) The possibility existed that any marriage can be broken-off for various reasons.

(ii) If the marriages were and will be in good faith those who are and will be concerned should not worry. Their second or third off-spring will be able to acquire any land interest.

(iii) That is is almost true to say that a number of marriages, (if it can be called that) the result of which produced this class of people were neither legal nor customary and that some of them have been registered as Non Pacific natives.

D. CHILDREN BORN OF SOLOMON ISLANDER/EXPATRIATE MARRIAGES (Q 17)

1. On one occation only the attendants felt that the first generation of part Solomon Islanders be legally recognised, and on two occations no answers were given, otherwise the general opinion was that only the second generation from part Solomon Islanders be legally recognised in the definition of a Solomon Islander in our land law. Put it differently it would be the great grandy of the expatriate from a successive marriages to indigeneous Solomon Islanders before he/she can be legally regarded as a Solomon Islander.

2. The arguements in support of the above attitude were that some of the marriages that have taken place in the past and now were and are neither legal nor customary. A true customary marriage has its conditions as well as obligations which if properly observe may normally convey land use rights to the off-spring. A halfcaster more or less will opt to choose the other cultural way of life etc. rather than the indigeneous way of life. They even asked that the recognition of a halfcaster as a Solomon Islander be also conditional on his/her social life style and conducts.

3. As to the position of the Gilbertese who had immigrated to the Solomons in the early fifties the question has never been touch upon. The possibility is that if the question been ask and persuaded the chances are that the reactions would have been as on the last part of paragraph 1 above.

E. ALIENATED LAND - NOT BEING DEVELOPED (Q12-18)

1. In the first instance people generally felt that those dealings which now resulted in the alienation of very large tracts of the country's good arable land could not be considered proper. The disadvantages were on the side of the vendors or original land owners. Their ignorance of the value of the goods that were accepted as part of or the purchase price for the lands were the first favourable point in the long list of points that were in favour of the educated business trader/planter purchaser. People now felt that the time has arrived that such undevelope areas of all alienated land be given back to the original land owners free of any charge whatsoever.

F. LAND OBTAINED UNDER THE WASTE LAND REGULATIONS AS WELL AS THE CERTIFICATES OF OCCUPATION

1. It was felt and stated that the waste Land Regulations as well as the Certificates of Occupation were wrong, grossly unjust and above all they are contrary to the principle of natural justice.

2. There is no such thing as waste land. Customarily all tribal clan lands are normally divided into various parcels or blocks or areas. For instance, oven garden land can also be divided into further parcels for taro, yan and panna while other areas would be for pig fences, ceremonial or burial grounds while the remaining part of any customary land would be for hunting purposes as well as a reserve for building materials and so on.

3. So to excuse and say that these kind of land came into the hands of the Government by some unfortunate happenings in the past or accidents of history will never be acceptable until those wrongs are being put right. That is the customary concept of what amount to justice. In conclusion they wanted those lands to be reconveyed to its proper land holding groups or Government righted these wrongs. That section 58 of the LTO be repealed.

G. ALIENATED LAND - DEVELOPMENT AREAS

1. These areas too they felt should be available for repurchase. If this is possible then the original landowners must be given the first priority to pay it back. The second priority must be to the people of that district, example for Baunani it must either the original landowners or the Doria/Kwaio. Unless these people themselves fail to pay back these areas then the market can be opened to other groups.

2. The Loans Board should be ready with a policy to make loans available to landowners for this purpose and any such loan should be on a sliding scale formular such as the bigger the amount of the money loan and the longer the period of the loan the smaller would be the rate of interest and vice versa.

3. No value should be paid for the land itself but only for the improvements on it. Any purchase price must be assessed by a Government valuer to avoid speculative or unreasonable enhance prices. Because unreasonable enhance prices could mean further exploitation; therefore it should not be allowed.

H. COMPULSORY ACQUISITION OF LAND SECTION 70 DIVISION 2 OF LTO

1. This is one of the Sections in the present law which is interesting in itself from every point of view from right, left and centre.

2. People felt that unless this section (Division 2) is restricted to subjects related to Social Services, the section is a bad law. Example of this is section 78(1) of the Mining Ordinance and as once exercised for a commercial interest (MDC) which is more in a private interest than a public purpose. As it stands at present this particular section 70(1) is too general. They felt that if the section cannot be repeal then a definition be given to the term "public purpose".

3. In fact everywhere people was very concerned about the uses that the Government may and can do with this section if not legally restricted though it was explained that the power has been normally used mildly.

4. It was stated that the section is sound as regard to its use for schools, hospital sites oven for road development; but otherwise it is a bad law. Because it is a bad law any land acquired under this section must be on lease terms.

5. At H auhariі the Arahas felt that this section is unnecessary because any land required for a school or clinic can be easily obtained through proper negotiations. The main committee should give careful consideration to this section.

6. In conclution the very general feeling was that if the Government wants to retain this section then it must be only on the following:-

(i) that such acquisitions must be done only for purposes of providing a Social Service rather than to satisfy a commercial motive or interest;

(ii) that such acquisitions be done only after full consultation and approval by the local authorities;

(iii) that the land be acquired only on lease terms and not out-right acquisition as at present practices and finally;

(iv) that a definition be given to the term "public purpose".

I. MINING (Qs 19-21)

1. A very general strong feeling existed among the Malaitans that the English concept of all minerals are own or belonging to the Crown or in our case belonging to the State is an old English feudal concept and is wrong and unacceptable.

Two view points came out from the discussions firstly:-

(a) Any wealth acquired from the mineral sources (if any) of the country must be shared equally among the landowners, council (of the area) and Central Government and

(b) it must be shared equally among the landowners, area or araha committee, council and Central Government.

2. Unless the Central Government gears its legislation and mining policy to accommodate (a) or alternatively (b) above, it would be impossible to expect any cooperation from the Malaita people, unless of course, the government wants to relay on using force.

3. Again they felt that we must resist the temptation to get rich quickly because we as Solomon Islanders can only believe what they are telling us that this is good for you. At this stage we are not in any position to ascertain how beneficial is any big mining project to us. There should be no major mining operation or project be allowed at the present stage until well after independence. Mining or rather any mineral as such must be regarded as a reserve wealth if we are to engage on extensive mining now, they felt we can only get a side benefit. We should not let us change ourselves too quickly into a cash economy lot.

4. That it should be a condition that whatever kind of mineral will be extracted from the country it must also be processed in the country and not overseas.

J. PROFESSIONAL LAWYERS (Q 27 & 26)

1. No the general opinion was that all professional lawyers of every description must not play any part at all in the customary land disputes. That work will be properly the job for the Customary Land Courts and District Customary Land Appeal Courts.

2. The High Court they felt is also included here under this heading.

K. LOCAL COUNCILS (Q31)

1. Yes, local councils should be given some kind of power over alienated land only but not customary land.

L. RESETTLEMENT OF DISPLACE PEOPLE

1. It may be argued that this subject is one that is in the national interest because of planned major economical developments such as mining, large scale farming in wrong areas or because of over population in certain areas. However, the public opinion is in the opposite direction.

2. At the moment, people felt that as far as over population or population pressure is concerned, this existed only in the books, hence, there is no urgent need to worry or organise any large scale resettlement scheme.

3. The kind of resettlement that people generally preferred is the natural one whereby a man can marry a local girl of a given area and choose to live and raise a family on the girl's side or vice versa.

4. As to the resettling of people because they are being displace, as a result of mining or large scale, cattle ranching careful consideration should be given to the following factors:-

(a) any big scale organise resettlement scheme in itself has its own advantages and disadvantages;

(b) to move a large group of people from their indigeneous area into a new one against their will is morally wrong;

(c) cultural differences in the Solomon Islands way of life will cause unacceptable social problems and ;

(d) that above all public opinion must be taken into account.

APPENDIX 'A'

List of Interpreters /speakers from Language into Pidgin or vice versa

1. Mr. B. Kaiata (U.P.N.G. Graduate)
2. Mr. Papu
3. Mr. Lafoa
4. Mr. Bu[illegible]alo (Court Member)
5. Mr. Foragwan (" ")
6. Mr. Tigita
7. Mr. San
8. Mr. W. Iki (C/Member)
9. Mr. G. Maelalo (ex-logass candidate)
10. Mr. Waimani
11. Mr. Suliasi
12. Mr. Iro
13. Mr. Anasia (Ex Police Cpl.)
14. Mr. Arafamae
15. Mr. J. Afia
16. Mr. Diou
17. Mr. Maonaibali (ex-Headman & Pra.)
18. Mr. L. Oloni (Court Member and ex-Logass candidate)
19. Mr. T. Toioli (ex-Logass candidate and pensioner)
20. Mr. H. Tomu (Council President and ex-Logass candidate)
21. Mr. N. Raisi
22. Mr. Walotofe
23. Mr. Ramodua
24. MLA Gauwano
25. Mr. Silas
26. Mr. J. Masikwai
27. Mr. Taoburi
28. Mr. F.S. Waloilia (Junior)
29. Mr. Waloka
30. Mr. Da[illegible]boa (ex-Court President)
31. Mr. J. Aru
32. Mr. A. Nonohimae (Paramount Alaha for Are Are, E & W, and ex-Masina Rule Leader)
33. Mr. S. Kwaifi'i
34. Mr. N. Kifo, (ex-Masina Rule Leader, ex-Logass candidate and twice Council President)

344. Mr. S. Ga'a (Headman)
35. Mr. Ru'uta
36. Mr. W. Maelaua (Pensioner)
37. Mr. S. Luluananae
38. Mr. M. Irobata
39. Mr. L. Mani
40. Mr. Ofai (ex-Govco. member)
41. Mr. M. Maeafuafu
42. Mr. Misitana (Court President ataloka (W)
43. Mr. Filiau
44. Mr. Aeua (Headman)
45. Mr. F. Lio
46. Mr. Tagonabara
47. Mr. M. Kalita
48. Mr. Sopo
49. Mr. Tomae
50. Mr. Lioloa, (Court President, Council Clerk)
51. Mr. Taluonoa (Headman)
52. Mr. M. Naona
53. Mr. S. Agionoa (Headman)
54. Mr. J. Ramodau
55. Mr. Alaikona
56. Mr. Maelionoa
57. Mr. Siuniolo
58. Mr. Manobosa (Headman)
59. Mr. P. Kosonu
60. Mr. Alabota
61. Mr. Olonaolana (ex-Headman)
62. Mr. Surukwana
63. Mr. Waloui

64. Mr. Mauga
65. Mr. Dala
66. Mr. Kolesi
67. Mr. S. Maile (ex-Masina Rule Leader)
68. Mr. O. Ganifuk (Council Member)
69. Mr. Bolo
70. Mr. Talafunu
71. Mr. J. Buga
72. Mr. Anisi Pana
73. Mr. L. Takisi
74. Mr. Hober Hedley (ex-Masina Rule Leader)
75. Mr. K. Koni
76. Mr. D. Lulifuia
77. Mr. Salana Ga'a (1st Malaita Council President now Headman)
78. Mr. J. Batoni
79. Mr. Manioli
80. Mr. Longa
81. Mr. Talafilu
82. Mr. A. Saru (ex-Govco. Member)
83. Mr. Sanu
84. Mr. A. Siosi
85. Mr. Bili (Council Member)
86. Mr. Banau
87. Mr. Suada
88. Mr. D. Ridley (Headman)
89. Mr. Buia
90. Mr. Fuaina
91. Mr. Riguala
92. Mr. T. Papapu
93. Mr. J. Papapu
94. Mr. Sasahe (Araha)
95. Mr. Paraola "
96. Mr. Irisi Tapa
97. Joseph Maeka (on behalf of his brother who is a hereditary Araha possibly from the paramount araha linage)
98. Mr. Jetele (Araha)
99. Sunaholho "
100. Birino "
101. Totea "
102. Boato "
103. Mr. Notia
104. Mr. Horihuga
105. Mr. Spareno
106. Mr. Sauino
107. Mr. P. Manano
108. Mr. A. Nonohinno (present Are Are Paramount Chief)
109. Mr. P. Aitai (2nd to Alex N.)
110. Mr. Tonasi
111. Mr. Kukumauri
112. Mr. Ngasihuau
113. Mr. Maetiasa (Sub-district Clerk, Council Member and Araha)
114. Mr. Siosi [illegible] (Araha)
115. Mr. MLA [illegible] Lii
116. Mr. Akoia (Chief)
117. Mr. Sam Torea (Council Member)
118. Mr. Dick Ieo (Council Member)
119. Mr. Folota

APPENDIX 'B'

BRIEF REPORT AND SUMMARY OF BUNAWARD AREA COMMITTEE INCLUDING LAND COMMITTEE

The Bunaward Area Committee was formed at the beginning of the year 1974. Its first meeting were held on 9th March, 1974, under the Chairmanship of Fr. P.K. Thompson, a former Council Member for Bunaward. Mr. W.Maolaua was elected Vice Chairman at the same time. The Committee consisted of Ten members.

At this first meeting, the Chairman explained to the members the purpose Area Committees. Its functions was to make plans for the future development in the Area. For examples:

1. Education
2. Medical
3. Roads
4. Cattle Projects
5. Social Welfare
6. Unity
7. Business or Stores
8. Lands in area.

After some considerations on the above mentioned problems, item 8 was the most important subject to be taken on account as first priority.

The land Negotiation Committee, were selected from the members of the Area Committee. Their main duties was to go back to their villages, and talk to the people about lands. It is important that people should know about their own lands, and to find out true land owners in this particular area. Any difficulties over any pieces of lands, this Lang Negotiation Committee are required to sit and listen to such arguement between such party.

The Chairman pointed out to members of the Bunaward Area Committee, that, as we are now come to a stage that we can do things ourselves, it now time for us to learn responsibilities in our own areas. Therefore we must try and clarify our Lands, for the future developments of own areas and for our country. It is very important that without Lands been settled, nothing could done, about our future Developments.

Land Affairs:-

There are still too many critism between land owners concerning land dispute case held in Civil cases either by Native Courts or District Courts nor by Chief Justice. The people were not quite satisfied about the judgements of Land cases, once one party is awarded to one party, either the plaintiff or defendant, it causes disunity between the people for many years.

For this reason, it was decided that people should look into their own lands openly, before the Land Negotiation Committees.

Land Settlement Bunaward Area Committee:-

The Bunaward Land Negotiation Committee, held its first Land Settlement on 7th September, 1974. The Disputed piece Land called "ANOKAOLE" and this was between AUNALEA AND AUNALEFO. For some years ago, both parties been argued about the above mentioned piece land and properties within but without success.

The case was brought before the Bunaward Land Negotiation Committee, and discussion was made openly under the control of the Committee, for almost 6 hours.

Having heard both parties evidence, the Spokesman for the Committee, asked them to show the boundary by drawing on the ground so that every one may see, and if the other party doesn't agree, then will one day be arranged for the Land member, to Survey the disputed area.

Mr. Aunaloa the Plaintiff, stood out in the open place, and show the piece of Land he drawing on the ground. While he was doing this, named all the names of places surrounded the area.

The Defendant Aunalofo, were ask to say anything concerning the draw. While looking at the draw, Aunalofo, did not say anything against it as he himself knew the spot very well.

He agreed and said, the separation of the this land was only done previously, but as far as he know, every properties in this piece of land has never been divided by our ancesters, and why should we separate ourselves, these days.

Final Decision:-

1. that a piece of Land of ANOKAOLE has never been separated before by the ancesters. They work Gardens eat Nali Nuts and etc, without claims. None of the party claims ownership of Land or Properties.

2. Both parties agreed that the Land could be develope by both parties in love and unity.

AGREEMENT:

Both parties agreed upon the Piece of Land at 'ANOKAOLE' on the Seventh Day of September, in the Year One thousand nine hundred and seventy-four.

No further business.

Case Closed.

27.1.75.

(Mr. W. Maelaua)
Chairman
Bunaward Area Committee

Time Meeting Open:	Time Meeting End	Date	Name of Village Meeting held	No. of persons Attended	Remarks
1100 hrs	1600 hrs = 5	27/1/75	Talakeli (Open classroom)	90	Bush and Saltwater family/Lineage representatives
1100 hrs	1500 hrs = 4	28/1/75	Raiofasu (Table House)	80	"
1100 hrs	1500 hrs = 5	29/1/75	Anbu (Table House)	150	"(including women observers)
1630 hrs	1930 hrs = 3	29/1/75	Auki (Court House)	30	A wide representation but excluding women
1000 hrs	1330 hrs = 3½	30/1/75	Ainola (Court House)	60	Chosen bush family Lineage representatives
1000 hrs	1330 hrs = 3½	31/1/75	Dala (South)	70	"
1000 hrs	1230 hrs = 2½	1/2/75	Gwaimatafu (Court House)	70	"
1430 hrs	1642 hrs = 2¼	1/2/75	Bita'ama (Open)	40	"
1000 hrs	1415 hrs = 4¼	2/2/75*	Sunday	-	
1100 hrs	1230 hrs = 1½	3/2/75	Malu'u (Cocoa Drier)	90	"
		4/2/75	Matakwalao (Market)	35	Chosen Tobaita, Baololoa and Sa'afa representatives of family Lineage Groups
1000 hrs	1300 hrs = 3	5/2/75	Takwa (Mission-Open)	60	Chosen bush/Saltwater representative
1000 hrs	1415 hrs = 4¼	6/2/75	Saluono (Market)	37	"
1145 hrs	1330 hrs = 1¾	7/2/75	Salufoloa (Court House)	25	"
0745 hrs	1015 hrs = 2½	8/2/75	Ngongosila (Table House)	60	Saltwater people of Kwai/ Ngongosila Islands
1130 hrs	1300 hrs = 1½	8/2/75	Fauanamu (Classroom)	6+12 students	Chosen bush representatives

Time Meeting Open:	Time Meeting End	Date	Name of Village Meeting held	No. of persons Attended	Remarks
1300 hrs	1500 hrs = 2	9/2/75	Sinalangu (Court House)	80	Arahas, including observers
1000 hrs	1215 hrs = 2¼	10/2/75	Manavai (Open)	100	"
		11/2/75	At Tarepaina		
0900 hrs	1230 hrs = 3½	12/2/75	Tarapaina (Meeting House) & to Small Malaita West Coast	150	(80+70 school students)
			Return from West Coast		
1140 hrs	1300 hrs = 2hrs 40 min	14/2/75	H euhorii (Meeting House	1	Paramount Chief
				2	Chief's second-in-command
				100	Arahe's and others
1030 hrs	1230 hrs = 2	15/2/75	Mateqesi (Court House)	20	Arahas plus 30 others
				30	
1000 hrs	1300 hrs = 3	16/2/75	(Sunday) Make to Ovoqusu	-	
1250 hrs	1500 hrs = 2hrs 10 min	17/2/75	Rarare, Su'u (Court House	1	Chief and 40 others
1000 hrs	1200 hrs = 2	18/2/75	Maca	41	
		19/2/75	Arabela	30	
		20/2/75	Auki/Honiara	-	
	67 hours 45 minutes		Total	1,510	

* 2/2/75 Sunday - Rest Malu'u

1400 hrs The Secretary went to post notices at various villages along the road and at the request of the Gou'ulu people a meeting was conducted for some 30 men of that area. The meeting of course was only covers what was to take place at Metkawiao on 4/2/75 and a general coverage of the subjects such as the Customary Land Tenure and the Conversion from that system to the present registration system etc.

Appendix C
Written Submissions

Fred Osifelo, MBE	14.11.74
Nathan Kera (for Saikile People)	22.11.74
Mondana Pedoro (For Rendova People)	18.1.75
Fred Osifelo, MBE	5.2.75
Geoffrey Boti (Kalikoqu Association)	27.2.75
Dr. G.Z. Zoleveke, MBE, MLA	24.7.75
Marino Todabara	5.10.74
George Nguni, MLA	23.12.74
Michael Maeafuafu	8.5.75
Central Planning Office	7.1.75
Ashley Wickham, MLA	16.6.75
Join Tutua	20.6.75
P. Siga and others (Kindu tribes)	25.6.75
James Wong (R.C. Symes Pty. Ltd.)	5.7.75
John W. Kere	6.7.75
Tony Hughes	29.7.75
Rev. D. Stuyvenberg (Diocese of Honiara)	14.11.75
John Sau (Bellona People)	15.1.76
Emilio Bulu (Guadalcanal Council)	23.1.76

Appendix D
Information Papers

	Title	Date	Source
1	Alienated Land in B.S.I.P. from its Origins to the Present Day	Feb.74	Dept. of Lands & Surveys
2	Land and the Alienated Land Problem	Feb.74	Natural Resources Committee
3	Classification of Different Types of Tenure in the Protectorate	n.d.	Dept. of Lands & Surveys
4	Observations on the Mining Law	14.3.74	Secretariat
5	Note on Beneficial Interests in Customary Land	9.9.71	Registrar of Titles
6	The Kolombangara Issues	29.4.74	Dept. of Lands & Surveys
7	Timber Profits Tracts	30.4.74	Commissioner of Lands
8	Land Registration	n.d.	L.P. Maenu'u
9	Glossary of Land Law Terms	n.d.	Dept. of Lands & Surveys
10	Problems of Land Administration	June 1975	Chief Forestry Officer
11	Land Administration to 1975	June 1975	Chief Forestry Officer
12	Problems of Land use	June 1975	Chief Forestry Officer
13	Block Development	20.6.75	Agriculture Division
14	Role of the Survey Division	20.6.75	Survey Section
15	The Land Registry	20.6.75	Land Registry
16	Land Registration	17.6.75	Land Registry
17	Land Administration	20.6.75	Lands Division
18	Land Administration: Mining	19.6.75	Chief Geologist
19	Land Allocation and Speculation	24.6.75	Lands Division
20	Mining Policy	15.7.75	Ministry of Trade, Industry and Labour
21	Valuation	1.8.75	Valuation Section

Appendix E
List of Committee meetings

[illegible]	26 February 1974
Second	18 March 1974
Third	31 May 1974
Fourth	18 October 1974
Fifth	13 November 1974
Sixth	14 November 1974
Seventh	15 November 1974
Eighth	9 December 1974 (a.m.)
Ninth	9 December 1974 (p.m.)
With Forestry Committee	13 April 1975
On tour	January-March 1975
Tenth	14 May 1975
Eleventh	15 May 1975
Twelfth	16 June 1975
Thirteenth	17 June 1975
Fourteenth	18 June 1975
Fifteenth	19 June 1975
Sixteenth	20 June 1975
Seventeenth	23 June 1975
Eighteenth	25 June 1975
Working Group	7 August 1975
Working Group	8 August 1975
Working Group	25 August 1975
Nineteenth	22 January 1976
Twentieth	8, 9 & 12 March 1976
Twenty-first	19 March 1976

MEMORANDUM

TO:

Your ref.

FROM:

Our ref. Date:

Subject

~~Ron~~

a quick one – will reply more fully to your IPS/2/18/3 (!) of 28/6

Herewith some ING stuff: my reports on Forestry & 'Implementing' & → Jim's policy review. I'll send more when it's fully sorted.

The rush is we are in the throes of a bill ending foreign owned freeholds by conversion to 75 yr leases from govt, that Minister wants to put to next week's Legislative Assembly. Jim F is over here as Minister's "Special Adviser on Land Policy" and now locked in drafting with AG.

cleared with him to pass on.

Appointment

Tel. No.

Name in Block Letters

Complete this form in manuscript unless there are special reasons for typing.

S.5

MEMORANDUM

TO:

FROM:

Your ref.

Our ref. Date:

Subject

Funds hard for Cash meeting but I've asked the Planning Office if they can get aid to send David T Acra & a SI survey assistant. Little chance for me to come through, particularly as I spent the last of this year's overseas visits vote on the IAEG trip. But I will be through Iowa probably early December.

Best wishes

Ken.

Appointment

Tel. No.

Name in Block Letters

Complete this form in manuscript unless there are special reasons for typing.

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DEPARTMENT OF NATURAL RESOURCES

MINUTE TO: THE SECRETARY

SUBJECT: REVIEW OF LAND POLICY DEVELOPMENTS

1. Now that the life of this first National Parliament is drawing to a close, it seems a good time to review the implementation of new policies introduced by the Somare Government, and to prepare for further policy formulation under the new Government to be sworn in mid-year.

2. Perhaps the greatest policy initiative of the Somare Government was the setting up of the Commission of Inquiry into Land Matters. The Report of this Commission, with its many detailed recommendations and explanatory narrative, has been the basis for the development of policy, and all the new land legislation draws its inspiration from it. Some important parts of the Report have not, however, yet been the subject of legislation, and in these areas there is a policy vacuum, to a greater or lesser extent.

3. I will look first at the policy initiatives and review their operation, as I understand them, very briefly and make suggestions for present and future action.

A. The Plantation Redistribution Scheme

A.1 So seriously did the Commission of Inquiry into Land Matters view the situation regarding plantations current at the time of its investigations that it produced an Interim Report only four months after its appointment, recommending urgent measures to defuse what it saw to be an explosive set of circumstances. While many sectors of Government and the public shared the Commission of Inquiry's anxiety, settlement of a policy for resolution of the problems proved to be extremely difficult, infused as it was at the time with the then unresolved question of what should happen to the property rights of expatriates, the overwhelmingly greatest class of plantation owners, (see further at paragraph 3.B.8 below.)

A.2 In breaking through the seemingly endless circularity of arguments on the many factors involved, the then Minister for Lands and Environment charted an almost solitary course in bringing down a package of legislation whose major policy components were -

(i) all plantation ownership (with few exceptions in the case of new highly capitalised industries such as tea and oil palm) should be brought under the

ownership and control of nationals;

(ii) all existing plantations (with the same exceptions) should be brought under a programme for "nationalising" their ownership and control;

(iii) in so nationalising plantations, preference was to be given to the former customary owners of the land where each plantation was situated;

(iv) identification of the former land owners and the manner of redistribution of the ownership of a plantation was to be determined largely by a representative body of all the claimants to the plantation;

(v) the basic units for redistribution were to be the customary land - owning groups;

(vi) "localisation" of ownership was to proceed by outright transfer in areas of acute land shortage, but otherwise should be by gradually increasing equity acquisition;

(vii) valuation should be assessed solely by reference to remaining income-earning capacity, and not by reference to any continuing market value;

(viii) new owners should be required to pay for plantations the commercial value of the asset to them, taking into consideration the realities of the new use to which they could reasonably be expected in their circumstances to put the plantation;

(ix) acquisition of ownership and equity should be substantially assisted by soft-terms Government loan finance;

(x) so far as possible, consistent with the above requirements, productivity from plantations should be maintained and, where possible, improved.

A.3 Finance for mounting the Scheme was to come partly from internal revenue, and partly from Australian aid, both grant and medium term loan, which was to be the subject of a special request to the Australian Government. After the initial injection of capital the funds within the Scheme were to be revolved, so as to be self-financing so far as possible. In the result, although the Australian Government refused to make a special allocation of funds for the Scheme, the Scheme was included as a

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head of aid within the general Grant-in-Aid.

A.4 The Scheme's policy was supported by four Acts, being -

(i) The Lands Acquisition Act 1974, which provided powers to the Government to acquire plantation land either by agreement or by compulsory acquisition, and which contained provisions for assessing compensation in the event of a compulsory acquisition. Compensation depended on the fixing of "factors", which was to be done by the High Commissioner in Council" (now, presumably, the Governor General on the advice of the National Executive Council) after receiving a report from the Valuer General. Any application of the property protections under the Human Rights Act 1972 was excluded.

(ii) The Land Redistribution Act 1974, which provided for the appointment in relation to a plantation acquired or to be acquired under the Scheme of a Distribution Authority made up of representatives of claiming groups, with powers to mediate and, if necessary, arbitrate - settlement of claims to the plantation for submission to the Minister for his determination. The Distribution Authority was also to specify the arrangements for repayment of the purchase price, and the Minister was required to take steps to vest the plantation in accordance with the redistribution, unless exceptional circumstances existed.

(iii) The Land Groups Act 1974, which provides a simple procedure for the incorporation of customary land-owning groups, so that they may own property as a group and manage it.

(iv) The Land Trespass Act 1974, which provides machinery for protecting properties intended for redistribution, if it appears likely that unauthorised occupation might take place which would threaten the functions of the Distribution Authority.

A.5 The Plantation Redistribution Scheme has been operating for a little over two years now, so a review of the original policy and an assessment of performance at this stage seems in order. A review was attempted during last year, both within our Department and in conjunction with a Cash Crop Industry Appraisal got underway by the Department of Labour, Commerce and Industry with representation from Government Departments and U.P.N.G. Our own review has not

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proceeded very far, largely because of staff limitations and work load, and the L.C. and I. appraisal seems to have fizzled out. From my own limited involvement I would, however, make the following observations on the workings of the scheme -

(i) the rate of progress in Government-sponsored acquisitions has been slow, and far slower than was originally intended, leading to substantial short-falls in Budget expenditure. But Government acquisitions under the Scheme do not reveal the full picture, and there is evidence to show that in the order of twice as many additional acquisitions have taken place in accordance with the guidelines of the Scheme by recourse to private finance, e.g. Development Bank loans, which might not have been possible had the climate created by the existence of the Government's Scheme not been present. In addition, substantial expenditure on acquisitions would not be wise while the processes for successful operation of the Scheme have not been satisfactorily settled,as the following comments suggest they have not. But a delay of this nature ought to be removed as soon as possible, if our budgetting is to be rational and credible. One final consideration is that the plantation problem was so dangerous three years ago that the rapid transfer of some land was essential as an act of good faith by the Government, and economic considerations perforce took a back seat. But this should also only be a temporary expedient, and I think that we can be confident now that the Government has retrieved the situation, and so expect the economic factors to play their full part under the Scheme.

(ii) the legislation designed to implement the Scheme has not been invoked as it was intended. In particular -

The Lands Acquisition Act 1974 - Although this Act has been in force for over 2 years, and many Notices to Treat have been served under the Act, factors have not been set for use in the event of a compulsory acquisition. This may be largely as a consequence of the fact that the only compulsory acquisition effected so far under the Act was one which did not require the setting of a factor (as the plantation in question had never been run at a profit), and so the fixing of factors has so far not been necessary. But

this, in my view, is not a satisfactory reason, because the Act was intended to introduce a special method for assessment of compensation for plantations and, in the absence of factors, presumably this method is not being used, and the Valuer General is valuing according to his normal practice. In addition, there does not seem to be any reason in principle why the Government should pay a higher value for an agreed purchase than it would be liable to pay for a compulsory acquisition. At present, we have no basis upon which to assess the reasonableness of our purchases in this light. If there is some good reason for not fixing factors at this stage, then a conscious decision ought to be made with all the facts having been considered. We are now proceeding on a default of policy rather than a decided policy.

The Land Redistribution Act 1974 - Until recently, no Distribution Authorities had been established to perform this sensitive but vitally important function. An intrinsic part of the original Scheme was for redistribution to be settled before or, at least, very soon after acquisition of a plantation by the State. This was regarded as necessary not only to ensure that the State did not find itself stuck with management of a plantation during disputes over redistribution (which might, incidentally, be more readily settled if the disputing groups knew that acquisition of the plantation depended on their successful settlement of disputes), but also so that the State's agreement for vesting the plantation in the new owners could be concluded on a proper workable basis - with the parties clear (land groups etc.), the distribution of land and, therefore, purchase price repayments clear, and all the obligations under the agreement clear and enforceable. Our present ability to enforce obligations is almost non-existent. Again, this is largely a consequence of the urgency of our beginnings, but clearly something which we must remedy so far as possible, particularly in the case of new acquisitions.

The Land Groups Act 1974 - To date, not a single Land Group incorporated, and yet this is essential to the enforcement of obligations and the ultimate vesting of title. It ought logically to occur immediately after completion of the redistribution process, and delay there is the probable reason for inaction here. Lack of personnel trained to assist in incorporation is still an immediate problem, however.

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There seems to be some further problem in relation to the ability of a Land Group to charge its assets for credit purposes, and some amendment to the Act may be necessary.

(iii) I must say, immediately, that I do not lay the blame for the above shortcomings at the door of the officers at present working in the Alienated Land Redistribution Branch, the branch charged with administering the Scheme. They feel the frustration of these problems most acutely, and indeed have expressed their concern about many of them already. Unfortunately that Branch got off to a poor start under the direction of personnel (no longer in the Department) who did not appear to have any idea of, or sympathy for, the concepts or dimensions of what the Scheme involved. I realise that it may be unfair to criticise persons who have no opportunity of defending themselves, but this basic failure of direction in the early stages must, I feel, be acknowledged for it is at the root of many of our present problems. I feel that responsibility goes further, to the general failure of the Government to accord to the Plantation Redistribution Scheme the importance, and therefore the priority in policy, funding and manpower allocation, which it deserves. In any other comparable country which has attempted a plantation reform of the order envisaged here, it has been given such a high priority as to rate among the top Government development programmes. In our country it is treated with suspicion, ridicule and even contempt. We are now getting ourselves in the position as a result of malfunctions in the Scheme where we may come to <u>deserve</u> such attitudes, although there is no reason at all to lose confidence that the policy of the Scheme, if administered as it was intended, is misconceived.

(iv) I should not leave this area without noting the introduction of recent measures, such as the formation of the Plantation Management Agency, which should correct some of the present faults. Such measures, however, only go to part of the problem.

A.6 <u>Suggestions</u>

I feel that the gravity of the problems outlined above requires a full-scale review of the operations of the Scheme, in order to re-establish and reset,

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where necessary, direction and procedures. As I have already mentioned, Government officers engaged in the day-to-day operation of the Scheme are already overloaded with work, and may indeed be too closely involved in the details to attempt an overall assessment. I therefore suggest that we consider engaging an outside consultant to review the operations of the Scheme. Such a consultant would need to be familiar with the economic, social and political circumstances of Papua New Guinea, sympathetic with the general aims of the Scheme, and familiar with the applicable legislation and the Governmental institutions involved. I feel that detailed terms of reference could readily be prepared, and should be wide enough to include such matters as -

* the role of Government finance in pursuing the aims of the Scheme, taking into account the availability of other finance (e.g. Development Bank, commercial banks),

* how Provincial Governments may best participate under the Scheme (Ifeel sure they will want some involvement),

* how consideration of world-wide economic conditions (e.g. commodity market projections) may be incorporated into planning within the Scheme,

as well as the more basic questions of procedures, manpower needs and training. I would appreciate the opportunity of discussing this suggestion further with you and the other officers involved.

B. <u>The Constitution</u>

B.1 The Department participated in Constitutional Planning Committee meetings and drafting meetings in preparation of the Constitution. The main area of Departmental involvement was in relation to the provisions on property rights.

B.2 The main constitutional provision on property rights is Section 53 - 'Protection from Unjust Deprivation of Property'. That section is found in Part III - "Basic Principles of Government", under Division 3 - "Basic Rights" , under Subdivision C - 'Qualified Rights" , under the further subheading "Special Rights of Citizens". All "Qualified Rights" are subject to the general qualification set out in section 38, which allows them to be regulated or restricted to the extent that it is necessary for giving effect to the public interest in a number of specified matters of overall national importance. Such regulation or restriction may only be effected by a law legislated for in accordance with the requirements specified in that section.

B.3 The basic position is that, subject to specific exceptions, the property of a citizen may only be

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compulsorily acquired if the property is required for a public purpose declared by Act of Parliament. In the event of such compulsory acquisition of the property of a citizen, just compensation must be made on just terms. The exceptions under Section 54 to this protection in the case of citizens are laws "reasonably justifiable in a democratic society that has a proper regard for human rights" which provide -

(a) for recognition of the claimed title of the State to land the subject of a genuine dispute at Independence Day where that land is required for a declared public purpose;

(b) for the settlement by extra-judicial means of disputes over customary land that appear to be incapable of settlement by judicial means; and

(c) for the prohibition or regulation of the holding of certain interests in land by non-citizens.

B.4 Non-citizens do not gain the benefit of the foregoing constitutional protection, but nevertheless are protected to the extent that compulsory acquisition of their property may only be effected in accordance with an Act of Parliament - Section 53(7).

B.5 The protection under Section 53 is not immediately available to naturalised citizens, for Section 68(4) provides that during the five years after Independence Day only automatic citizens shall have the rights conferred by Section 53. During that five year period, however, the rights of citizens other than automatic citizens in respect of property shall not be less than those accorded by law to non-citizens. Section 68 also allows for an Act of Parliament made in the period of ten years after Independence Day to confer a benefit, right or privilege on automatic citizens, for the purpose of giving them an advantage or assistance (presumably over natural - ised citizens.)

B.6 The exceptions to the basic property rights protection which are set out in paragraph B.3 above were designed to allow for the implementation of recommendations of the Commission of Inquiry into Land Matters, and these are dealt with more fully below under the headings 3.D. National Land Bill, 3.C Settlement of Disputes over Customary land, and 5.A. Conversion of Freeholds to Leases or Other Interests.

B.7 Section 56 of the Constitution provides that only citizens may acquire freehold land, and that for the purposes of this restriction an Act of Parliament may define the forms of ownership that are

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to be regarded as freehold, and the corporations that are to be regarded as citizens. That definitive legislation has been enacted in the form of the Land (Ownership of Freeholds) Act 1976. That Act includes a part which allows that, for the purposes of a particular dealing in land which is prohibited as a consequence of Section 56, the freehold title may be surrendered in exchange for the grant of a Government lease, thereby allowing the dealing to proceed in the form of a dealing in leasehold. Where this procedure is adopted, it has the direct result of converting the freehold into a Government lease, although upon minimal conditions. That lease is also subject to the application of further terms and conditions under the Land Act 1962, or under any general law which alters the terms and conditions of existing Government leases or a class thereof. Such a general law will be commented or further under the heading 5.A. Conversion of Freeholds to Leases or other Interests.

B.8 By far the most contentious aspect of these constitutional provisions was the effect that they had on the property rights of foreigners, in particular plantation owners, who were at the time considering the question of applying for citizenship, (see comments at paragraph 3.A. 1 above.) Obviously the questions of property rights and citizenship were closely related, and if some remedial action was intended to deal with the existing imbalance in economic benefits, then some restriction on the rights of the existing class of property owners and businessmen and a corresponding increase in the benefits and privileges of the hitherto largely excluded nationals was to be expected. The C.P.C's approach was to put citizens in an advantageous position by confining important constitutional safeguards and privileges (particularly in relation to property rights) to them, and then suspend acquisition of the benefits of those protections by foreigners by attaching the condition of eight years' residence after Independence Day ("C Day") as a requirement for naturalisation. The Government regarded this as unduly harsh and, after for a while looking like they were not going to impose any restrictions on the rights of naturalised citizens vis-a-vis automatic citizens, at the last moment they supported (although not all of them - the P.P.P. members walked out of the Constituent Assembly and the then Chief Minister and Deputy Chief Minister were absent for the critical vote) a motion by the then Minister for Lands which has the effect set out in paragraph 3.B.5 above of suspending the property rights protection to naturalised citizens for five years. So while foreigners could acquire citizenship immediately after Independence Day, they did not gain the benefits of property rights protection for a further five years.

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B.9 Regardless of the merits or demerits of this approach (some naturalised citizens now calling themselves "second class citizens"), the effect of this result so far as property rights are concerned is substantially the same as would have been the result under the C.P.C. approach. There is no doubt in my mind, however, that this sort of qualification was absolutely essential to the success of any measures for redressing the great imbalance in economic benefits between foreigners and nationals which existed at the time of Independence. From my own experience the most important consideration exercising the minds of foreigners who were considering applying for citizenship was whether their existing material position, i.e. their property rights, would be safeguarded. Had that safeguard been afforded, then any test of commitment to the National Goal of Equality and Participation would have been meaningless.

B.10 In the result, two years after Independence, the predictions of "gross injustice" and "destruction of investment confidence" said at the time to be the necessary consequence of such positive discrimination have proven to be totally unfounded. It must be remembered, however, that the restriction on the property rights protection of naturalised citizens only applies for five years from Independence Day (i.e. until 16th September, 1980) and this should be borne in mind in application of the Plantation Redistribution Scheme during the life of the next Government.

C. <u>Settlement of Disputes over Customary Land</u>

C.1 With the previous machinery for the settlement of disputes over customary land - the Land Titles Commission established under the <u>Land Titles Commission Act</u> 1963 - almost inoperative as a result of retirement of Commissioners, and in any case badly discredited (see Chapter 8 of the Report of the Commission of Inquiry into Land Matters), and the number and gravity of land disputes increasing, this was an obvious area for policy action. In 1975 the House of Assembly enacted the <u>Land Disputes Settlement Act</u> 1975 which introduced a new judicial process for dispute settlement having three tiers from mediation through to arbitration with a final limited access to an appeal tribunal. The Act follows the recommendations of the Commission of Inquiry in close detail. Not only decision-reaching under the Act but also the administration of the Act is highly decentralised. I am at present awaiting the 1976 report of the Land Courts Secretariat which should give an up-to-date account

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of the implementation of the Act, but I understand that it is operational to a greater or lesser extent in every Province, as the needs require. Indications so far are that the Act has been well received, and its successful contribution to land peace in some areas is most impressive. It was recently described by the Chief Justice, Sir Sydney Frost, as one of the three most important laws passed by the present Parliament. It should play an increasingly important part in economic and social development, and the bodies created by the Act will probably take on additional functions under new measures for the registration of title to customary land (see below under heading 5.B.)

C.2 As it has now been in operation for almost two years, and in view of the probability that the role of Land Mediators and Land Court will be expanded under registration provisions, it seems an opportune time to review the Act's operation. Perhaps this should be done in association with the Department of Justice, the Land Courts Secretariat, the Magisterial Services Commission and the Department of Provincial Affairs. I therefore suggest that consideration be given to commencing a review of the present and possible future operations of the bodies created by the Land Disputes Settlement Act 1975, and of the workings of that Act itself with a view to effecting any desirable amendments.

D. National Land Bill

D.1 The need for legislation to clarify the State's title to Government land which is under dispute has long been recognised, and was the subject of a detailed Cabinet decision in 1975 directing that a Bill be drafted for this purpose. As already noted (paragraph 3.B.3 above), the Constitution qualifies the property right protection afforded by Section 53 by providing in Section 54 for a law to be valid which is reasonably justifiable in a democratic society that has a proper regard for human rights and that provides -

(a) for the recognition of the claimed title of Papua New Guinea to land where -

(i) there is a genuine dispute as to whether the land was acquired validly or at all from the customary owners before Independence Day; and

(ii) if the land were acquired compulsorily the acquisition would comply with Section 53(1) (protection from unjust deprivation of property)".

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D.2 Priority was given for the drafting of this Bill late in 1976, but it was not proceeded with, presumably because the political leaders feel that the effects of the Bill could be misconstrued, and used to create damaging publicity against the Government. It is certainly a risky Bill to attempt to bring in before the elections, and one which would come much better early in a Government's career. The first draft of the Bill is, however, almost complete, and work can proceed on finalising a draft for submission to the new N.E.C. later this year. In that the Bill will be based on a decision of the present N.E.C., it will probably be necessary to resubmit the whole matter to the new N.E.C. for its approval. I doubt that this will cause problems, as I think any Government would feel the need for legislation of this nature.

D.3 The proposed Bill may only be validly invoked where present Government land is required for a declared public purpose. The intention is to register the State's indefeasible title to such land, so as to put that title beyond dispute. Detailed provisions for compensation for proven rights extinguished as a consequence of that registration will be contained in the Bill. Preparatory to the proposed Act coming into force an inventory of Government land should be completed in as full detail as possible, showing all parcels of Government land (as defined in the Land Act 1962) throughout the country, arranged in some order which allows ready access to information on any particular parcel, the position with regard to the State's title to each parcel, the present occupant of each parcel and the legal basis for that occupation. A project along these lines has been underway for some time, but I gather that information has not been forthcoming from a number of Government Departments. I therefore suggest that an early meeting be arranged of those organs of the Department which would be involved in completing such an inventory to examine the scope of the undertaking and settle procedures for carrying it out. It may be necessary for a top-level directive to be sent to all Departments to assist in completing the inventory. I think that the necessity of such up-to-date information for the purposes of efficient land administration ought to be obvious to all.

E. Training in Land Administration

E.1 Considerable progress has been made in the last two years in the area of training and staff development. The Land Administration Certificate course at the Administrative College is being run twice yearly, providing a basic understanding of the role of land administration, and the two-year Diploma in Land Administration at U.P.N.G. has completed its first

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year of operation. This course has been specifically designed to meet the urgent and increasing need for specialised land administrators, and its commencement was long overdue. Recruitment of students to the course was bungled again this year, and mistakes made last year were repeated despite early cautions. Hopefully recruitment for next year's intake will proceed satisfactorily. We met the same problems in getting access to experienced officers in the Department of Provincial Affairs as last year.
Accordingly, I <u>suggest</u> -

(i) a review of recruitment to the Diploma course with a view to establishing a procedure for processing applicants; and

(ii) consideration be given to discussions with the P.S.C., the National Planning Office and the Department of Provincial Affairs on transfer of D.P.A. personnel experienced in land administration to our Department.

E.2 About two years ago Mr. Norm Angus was engaged to report on methods and procedures in the Department. He submitted a preliminary report, but his untimely death meant that his full study was not completed. A methods review is underway in the Department. Is any use being made of Mr. Angus' preliminary report?

4. These, then, are the major policy initiatives which the Policy and Research Branch has been responsible for developing and implementing over the last three years. In addition the Branch is participating with the Office of Environment and Conservation in preparing legislation to implement their Environment policy. We were also responsible for preparing the <u>Land Settlement Schemes (Prevention of Disruption) Act</u> 1976, which was introduced as a Private Member's Bill. Consideration ought to be given to selecting settlement schemes to which the application of that Act might be desirable. Certain consultation is required under the Act as a preliminary to its application to any particular settlement scheme.

5. Turning to the areas where policy formulation is still required, these will be matters which will have to be referred to the new Minister for Natural Resources and N.E.C. for decision. But this does not mean that work cannot proceed in the meantime, and I think that it is still safe to rely generally on the Report of the Commission of Inquiry into Land Matters.

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A. Conversion of Freeholds to Leases or Other Interests

A.1 The present Government has adopted, and on a number of occasions publicly announced, a policy of converting all existing non-citizens' freeholds to leases. As remarked above at paragraph 3.B.7, the Constitution prohibits any further acquisitions of freeholds by non-citizens after Independence Day, and the Land (Ownership of Freeholds) Act 1976 defines the scope of this prohibition, and provides machinery for the voluntary conversion of freeholds to Government leases. There has been no unfavourable public reaction to this proposal of compulsory conversion, and presumably a new Government will be equally committed to such a policy.

A.2 What is more difficult is to devise a procedure for the conversion which is reasonable taking into account not only the interests of the present freeholder, but also the availability of funds and manpower for the undertaking given the other more pressing demands for these resources. The nature of the terms and conditions relating to period of the new lease, rental and improvement covenants is also a sensitive area where evenhandedness with the present proprietors will be critical to the tranquillity of the conversion. While the conversion is important to the State in terms of sovereignty over its natural resources, land administration, land use planning and collection of revenue, I feel that it is essential that, in endeavouring to do justice to the present proprietor, we do not create machinery which over-taxes our limited resources of expertise such as judicial officers and Departmental personnel, including valuers and surveyors, in effecting this objective. The demands on these people in other development priorities will be increasingly heavy, and their diversion to the conversion exercise to any great degree cannot be justified in our present circumstances.

A.3 I am not sure to what extent we have the capacity in our own Department, the Department of Justice and the Office of the Legislative Counsel to undertake this consideration of the technical procedures involved, and to recommend machinery for the conversion taking into account the considerations I mention in the previous paragraph. I therefore suggest an early meeting with the Department of Justice and the First Legislative Counsel to consider our approach. If we feel we lack informationon the attitudes and interests of the property owners, then some involvement of the private sector in our deliberations may be warranted.

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A.4 As mentioned earlier, Section 54 of the Constitution specifically excludes the property right protection from applying to any law "reasonably justifiable in a democratic society that has a proper regard for human rights" which provides for the prohibition or regulation of the holding of certain interests in land by non-citizens.

A.5 So far as freeholds in the hands of citizens are concerned, naturalised citizens do not get the benefit of the property right protection until September, 1980, so their freeholds can be converted before then without risk of constitutional challenge. The position is different for automatic citizens. The conversion of such a person's freehold to a lease by compulsory process would, I feel sure, be regarded as the deprivation of property, and so would attract the constitutional protection.

A.6 The Commission of Inquiry into Land Matters was opposed to freeholds in principle, being concerned about the exclusion of the public interest in and public control over such titles. They felt that in the case of automatic citizens, their freeholds should be converted either to group titles or conditional freeholds, or in certain circumstances to Government leases (see Recommendation 23). I think that there would be considerable merit in doing away completely with the "freehold" title, as has been done in a number of other former colonies. The full description of freehold land is "land held from the Queen in the tenure of free and common socage for an estate in fee simple", and as such its ancient origins in feudal England of the medieval period are apparent. Such a title in forward-looking Papua New Guinea is not only an anachronism (as indeed it is today in England), but is also awkwardly inappropriate. There seems to be no reason why it should not be replaced by the simple term "ownership", being either absolute or conditional.

A.7 The thorny question of converting automatic citizens' freeholds to some new interest should best be left until the nature of these new interests emerges in conjunction with the policy on registration of title to customary land (see below under heading 5.B.)

A.8 In the meantime I <u>suggest</u> that we compile as complete a list as possible of all the freeholds in the country with some sort of a breakup into State and private, citizen and non-citizen, to give us an idea of the dimensions of the problem.

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B. Registration of Title to Customary Land

B.1 This will probably be the most critical area of policy planning. The Commission of Inquiry devoted seventeen recommendations, some in considerable detail, to such matters as the need for registration of title, the kinds of title which should be registered, and controls over dealings in registered land. The whole question of the role of registration of title is at present being subjected to concentrated examination by the Policy and Research Branch. Field research was recently carried out by four senior officers of the Department under the supervision of Dr. Alan Ward, and the material collected is at present being analysed. Rather than dip into the subject at this stage while views are still only half-formed and tentative, I seek merely to refer to the paramount importance of policy development in this area over the next few months, so that this may be borne in mind in consideration of policy and research priorities.

B.2 What I suggest as a measure to focus the attention of the incoming Government and Parliament on the issues involved in registration of title to customary land is that my Branch work up a White Paper for consideration by the Department and selected other governmental bodies (e.g. the Registrar of Titles), with a view to submitting it to the new Minister for Natural Resources for his consideration, and for ultimate tabling in Parliament early in the new Government's term. By such a device we may be able to gain general support for a Bill introduced at the end of this year.

C. Surveys etc.

Some research has been put into the question of the most suitable type of boundary or land parcel identification, in particular for the purpose of registration of title. This will be taken up as part of the policy formulation on land registration, so no further comments are ventured at this stage.

D. Succession

D.1 Development of rules for inheritance of interests in land, both customary and non-customary, is an integral part of our land law reform, and the Policy and Research Branch is represented in a Working Committee on Succession which has been set up by the Chairman of the Law Reform Commission. The present law is most unsatisfactory, and legislative reform must either accompany or follow very closely upon the proposed measures for land tenure reform. Again, this will be incorporated in policy formulation on land registration.

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E. Land Valuation and Land Costs

E.1 The Commission of Inquiry into Land Matters devoted a chapter to "Valuation and Compensation". Their recommendations may represent a substantial departure from the present principles of valuation. They were taken up in part in the compensation provisions under the Lands Acquisition Act 1974, and may now be being employed in pracitce for compensation for acquisitions of land for roads. They certainly do not seem to have been adopted in the assessment of compensation by the Government body which acquired land for the telecommunications cable in the Taurama area. Consistency in this area is obviously essential, and I suggest that the Valuer General be asked to advise us on his present methods of valuation, and give his views on implementing the recommendations of the Commission of Inquiry into Land Matters.

E.2 A related area is land costs, by which is meant the rents, fees, premiums, taxes, rates and charges made by National, Provincial and Local Government on land. Development of a coherent policy in this area is becoming increasingly urgent, not only in terms of recovering so far as possible the Department's costs in servicing the public's land needs, but also in the light of new revenue arrangements being made with Provincial and Local Governments, including City and Town Councils. I suggest that urgent consideration be given to setting up a Departmental Committee to collect all relevant facts and considerations on land costs, and formulate a policy for submission to the new Minister and N.E.C.

F. Reform of the Land Act 1962

F.1 New policies and attitudes to land use have rendered parts of this Act inappropriate. Indeed the whole philosophy and scope of the Act may need change as a consequence of -

* political and administrative decentralisation;

* land tenure reforms;

* new controls over land dealings;

* new attitudes to land use, reflected in different categorisation of leases and new principles for valuation and compensation.

F.2 The present provisions of the Act are already coming under strain, and the Policy and Research Branch is maintaining a file on comments and suggested amendments to the Act. I suggest that these efforts be consolidated and stepped up with a view to the wholesale

../18

legislative reform of the Land Act 1962. An up-to-date reprint of the Act is at present being prepared by my Branch in conjunction with the Legislative Counsel's Office. I propose to distribute this widely to Government officers who are involved in administering the Act and representative bodies of land users for suggestions for reform. This exercise should be co-ordinated by an experienced Lands Officer, ideally working in my Branch.

G. Policy and Research Branch

G.1 I think that the above review shows the importance of the work facing this Branch over the coming year. As presently set up, I feel that the Branch would be quite incapable of undertaking this work in any acceptable manner. The Branch, upon its original establishment in 1974, suffered from the same problems as the Alienated Land Redistribution Branch, referred to at 3.A.5(iii) above, and for much the same reasons. The duty statements for the various positions are inappropriate to the point of being irrelevant, and consequently recruitment may not be properly conducted.

G.2 In view of the immediacy of our problem, I therefore request an urgent establishment review of the Policy and Research Branch. On the basis of this, personnel may be recruited with a view to their aptitude for work that is in front of us, and thus may be relied upon to meet our requirements. In the absence of such persons at this late stage, I have no alternative but to suggest the engagement of consultants (as in paragraphs 3.A.6 and 5.A.3 above) Without a considerable improvement in the quantity and quality of this Branch, we cannot be expected to keep pace with the rapid development in events, nor to perform our policy planning function satisfactorily. There is a serious risk at this stage that, in a number of crucial policy areas, events will overtake us.

J.S. FINGLETON,
Assistant Secretary
(Policy and Research)

22nd February, 1977
JSF:kn

FOR 1/1
cc. NAP 1/1

REPORT

Forestry Legislation & Policy in PNG

Comments in Relation to Land Policy in the Solomons

The paper is about the connexion between Forestry Legislation, Policy and Land. It is based on a discussion with Mr Andrew Yauieb, First Assistant Director (Operations) at the Office of Forests in Port Moresby on 25 May 1977. I'm very grateful to him for giving his time to explain PNG's current forestry policy, and for the back ground papers and copies of legislation he provided. He is not of course responsible for the views expressed in the paper, nor any errors of fact or interpretation.

The paper is divided into 3 parts. Part 1 summarises PNG's Forestry legislation and policies on replanting, royalties and log exports. This part is a response to a request by MNR in Honiara for information about PNG's policy and legislation. Part 2 compares what has happened in PNG with changes proposed in the Solomons' forestry policy and its relation to land. Part 3 summarises the conclusions.

PNG's office of Forestry comes under the Department of Primary Industry (which includes Agriculture) and its Lands Division under the Ministry of Natural Resources. 1 kina is worth $1.16, and 1 toea = 1.16c.

(Peter Larmour)
Lands Division, M.A.L

6.7.77

Part 1 PNG's Forestry Legislation & Policy

Forestry Act (Amalgamted) 1973

1. This allows government to purchase timber rights from their customary owners. Timber rights are defined in s(4) and include the right to build roads & take the gravel needed to do so. The timber right is independent of the land, and the Act refers throughout to 'native owners of timber', not land.

2. Government then issues licences or permits over the areas where it has purchased timber rights, or over government land (including government land leased to someone else - again timber is treated independently of land).

3. Permits (s.15)

   Permits last up to 10 or, over 'special areas', up to 25 years (with rights of review after 10 years, and every 5 thereafter). Among other things it requires a logging plan, and controls against erosion, water pollution and fire. The permit holder must allow customary owners to hunt, take building materials, and garden in the area (unless this "hinders" his operations). His employees are not allowed to hunt or garden. He must make the best use of the timber, and pay royalty on sellable trees he does not cut. In selling timber/must give priority to government and local building industry, and get approval if he wants to export more than 50% over 3 months. He must have bank guarantees against his early royalties, and post a bond to ensure he builds any promised sawmill. Changes in shareholding must be approved.

4. Reafforestation (s.15B)

   If the holder of a permit over a timber rights purchase area is declared to be a major forest enterprise, then government and the former owners of the timber must make unspecified but "mutually satisfactory arrangements" for reafforestation of the whole or part of the timber purchase area. Note this does not apply to government land, and does not apply to the permit holder, Nor does it apply to landowners as such. It only rather weakly commits government and the former timber right owners.

5. The Forestry Department say that reafforestation will be done by the permit holders - companies not government. Terms at Gogol are currently being negotiated. The "mutually satisfactory arrangements" with the former timber owners are likely to be a lease of the land for about 50t per ha plus 3-5% of the stumpage. So on reafforestation land & timber have come together again. PNG do not envisage reafforestation, beyond enrichment of depleted forest on customary land

6. Timber Rights Purchase Prices and Royalties

   PNG purchases timber rights for a mixture of lump sums (a percentage of the estimated value of the timber) and annual payments (a percentage of the royalty government gets from its permits, see para3). More recent agreements emphasise royalties, but the mix has varied, for example -

   (a) Gogol

   The rights were bought for a lump sum of 25% of the estimated value of the timber. But this was supplemented, after cabinet decision in 1971, by 25% of govt's royalty.

   (b) Open Bay

   The rights were bought for 25% of govt's royalty, but govt. pre-paid 10% of estimated value. Owners will only get the royalty after the 10% is paid off.

(c) Central New Ireland

No prepayment. Rights purchased for 25% of govt. royalty, paid until the sum of royalty payments equals 25% of the value of the timber.

7. In future PNG intends that 25% of royalties will go to former timber owners, and 75% to the Provincial Government. They have employed an Australian Consultant (Carson) to advise on their royalty system. Presumably it remains open to central government to increase its take outside the royalty system by taxes or duties.

8. Government's royalty is currently calculated according to a system described in the Director of the Forestry Department's memo. of 7/11/73.. Briefly this aims to standardise royalty rates by fixing a 'basic royalty rate', expressed in toea per 100 super feet. This is increased or decreased for each particular permit holder by a system of premiums (for valuable trees) and allowances.

9. The allowances expressed in toea a re related to 6 factors

1.	total resource volume	(less timber, more allowance)
2.	access to markets	(poorer access, more allowance)
3.	climate	(poorer climate, more allowance)
4.	stand quality	(poorer quality, more allowance)
5.	havlage distance	(further distance, more allowance)
6.	topograph & soils	(more difficult, more allowance)

10. The royalty rate is reviewed automatically each year in relation to a consumer price index, and factors revised every three years.

11. Timber rights purchases are necessarily limited in time. Once the exploitable timber growing on the land at the time of the purchase is cut, the right is finished. Reafforestation would be done by leasing the land itself (see para. 4).

12. As PNG moves from lump sum purchases to prepayments and continuing payments for timber rights, there are greater opportunities for dispute over original ownership of the rights purchased, and hence the allocation of annual payments.. For example one dispute near Port Moresby was said to have been going for 3 years, meanwhile the royalties went into a trust fund.

13. For Timber Rights purchases ownership of timber rights is established by provincial field staff, with disputes being heard by Local Land Courts (presumably under the Land Disputes and Settlement Act 1975, for which 'land' includes 'things growing on land'. As this happened at the Provincial level I didn't find out exactly how it worked, except that royalties were paid to agents of clans. In Local Forest Areas ownership is decided by the Authority, independently of other legislation.

14. <u>The Forestry (Private Dealings) Act 1971</u>

This short Ordinance was introduced as a private members bill by the Hon. Julius Chan, Finance Minister in the Somare government. Though intended to be 'read as one' with the Forestry Act, it caused officials some alarm.

15. It allows customary owners of timber to sell it "to any person" if they apply to the Minister to declare it within a Local Forest Area. In doing so the Minister must have regard to

"(a) the interests of the owners by native custom of the timber on any area of land (including the interests of those owners in having their land cleared and thereby enabling agricultural development to take place),

(b) the national interests of PNG and

(c) the prospects for economic exploitation of that timber."

16. Note that paragraph (a) assumes that the owners o f timber are. the owners of the land in a way that the Forestry Act does not.

17. The Minister shall assent to sales of Timber in a Local Forest Area unless the agreement is inequitable or the purchaser wants to buy less than areasonable proportion of it, or cannot convert a reasonable proportion of it into sawn timber. Appeals against the Minister's decision go to the Supreme Court.

18. Section 10 which deals with 'Ascertainment of Owners' is a little circular, and relies a lot on the Minister. Ownership of the timber is decided by an 'Authority' declared as such by the Minister. The Authority must carry out "such investigations as it deems necessary" to find the owners and can appoint agents to sign documents for them, and accept money on their behalf. It must certify that 'to the best of its knowledge and belief' the people claiming the rights do have them. Happily, under s.10(3) neither the Authority nor the Minister are liable to civil proceedings if the certificate is untrue or the investigations into ownership were not properly carried out.

19. Finally the Authority's Certificate has no effect outside the workings of the Act. So it couldn't be used as evidence of ownership in a land case unrelated to timber, eventhough para. 9(2) a implies the owners of the timber rights also own the land.

20. The mimimum price allowed within Local Forest Areas is 10t per 100 s.ft.

21. Forest Industries Council Ordinance 1973

This establishes a statutory body to promote the development of forest industries in PNG. It registers and exacts a levy from 'major forest products operators', and requires returns from operationson privately owned land. It has 10 members chosen by government from names submitted by the PNG Forest Industries Association (a private sector organisation) and 4 others, one of whom must be a 'major forest products operator'.

22. Log Export Policy

PNG has a policy forbidding the export of logs but there are still a number of exceptions where logs can be exported

(a) to clear land for urgent agricultural use;

(b) to improve cash flows early in a project;

(c) that are worth more than their sawn timber equivalent;

(d) that are not considered processable in PNG;

(e) for experimental or test marketing.

23. If logs are to be exported they should

(a) be a mix of all species as they are cut;

(b) sold at more than minimum guideline prices;

(c) not be conifers;

(d) not be cut from Local Forest Areas (see para. 15 above).

Part 2: Comments in Relation to Land Policy in the Solomons

1. Separating Land from Timber

PNG's 1973 Forestry Act avoids mentioning landowners, referring only to timber rights. But land & timber and timber come together in reafforestation where government is committed to 'mutually satisfactory arrangements with the former timber owners to lease their land for replanting.

2. PNG's Forestry (Private Dealings) Act 1971 similarly refers to 'owners by native custom of the timber', but immediately under mines this by reference to "those owners ..... having their land cleared". Inspite of this it continues with a self supporting structure of ad hoc authorities, recognised by the Minister certifying rights to grant the rights that are the subject of the agreement (independently of civil procedures and land legislation).

3. PNG's Private Dealings Act is rather like our Forest & Timber Amendment Bill which follows directly from the recommendation in paragraph 5 of the Report of the Forestry Policy Review Committee in 1975. This said that

> agreements should not involve registration of customary land but should deal only in timber rights, and in the rights needed to allow working and extraction of timber.

4. But as in PNG the distinction between land and timber is hard to sustain. The Report suggests a Certificate of Customary Ownership and the Bill recognises that customary land owners are likely to be the people who own the timber. The Area Committee, for example, must notify people who "appear to have an interest in the land, trees and timber in question" though it only decides on who has the right to grant timber rights. Nevertheless appeals go from the Area Committee to the Customary Land Appeals Court. Nevertheless the Bill makes up for this by circumventing the local court which otherwise would have jurisdiction over customary land.

5. Note here that our Select Committee on Lands and Mining says in its second sentence "Solomon Islanders in owning lands also own the forests" (para. 1.1 p.2).

6. The Area Committee in our Bill corresponds to PNG's Authority. At least however, the Area Committee is established under separate legislation (the Local Government Ordinance) and has some independent existence. Both our Bill and PNG's Ordinance only manage a partial separation of land and timber. And both put a heavy responsibility on the Minister. In our Bill the Minister's certificate is 'conclusive evidence' of facts relevant to entitlement to grant rights (to trees), but its not clear after the agreement is signed, where this evidence should be heard. Section 5.1 prevents disputes about the agreement between Solomon Islanders being heard in the High Court or the Magistrate's Court. So where do people turn to in probably inevitable disputes about entitlement to royalties. Might the Minister have to appear in a Local Court (in PNG he is at least protected by s.10(3) - see Part 1 para. 17 above).

7. Payment for Land

The BSIP government's policy at Allardyce, Viru and Vangunu in the early 60s, and Santa Cruz in 1972 was to buy customary land out right.

In the Shortlands it leased land for timber cutting. In the early 70s on Isabel and New Georgia it chose to try and negotiate timber rights by registering the land so the customary owners could grant registered timber profits. On Isabel the land was registered but the timber destroyed by cyclone in 1972. On New Georgia land registration was abandoned in 1975 after four years of bitter disputes about ownership.

8. Now it is less easy to get aid money for land costs, and aid donors are said to want to see benefits spread more widely than to landowners. Another external influence comes from private timber companies who are now more closely involved in preliminary negotiations with landowners, and so better placed to impress on them the companies' problems with early cash flows and preference for pushing payments for timber into the future. Landowners are now drawn into discussions of the financing of the project and, in spite of companies protestations that the project is marginal, what it can afford to pay them.

9. At the same time there may come pressure from landowners who sold their land in the 1960s to supplement these purchase prices, now felt to be inadequate, with royalty payments, rather in the way PNG did at Gogol in 1971. Para. 8C11 of the 1976 Report of the Special Select Committee on Lands & Mining hinted at this. Certainly there is already pressure for royalties on Kolombangara, where government paid nothing at all for land taken under the old wasteland regulations. There government is already drawing landowners into arguments about cash flows to try and persuade them accept deferral of payments.

10. <u>Benefit Sharing vs Royalty</u>

Questions of the amount and timing of payments for timber are different from the questions involved in 'participation', 'benefit sharing' and 'joint ventures'. For example, successive timber rights purchases in PNG have involved different mixes of pre payments, deposits and royalties (see Part 1 para. 6). But the differences between the agreements have only been about when the trees should be paid for, and are only an out come of particular compromises between landowners' time preferences and the financial arrangements in each project. Landowners only participate to the extent that during negotiations government reveals some of the financial arrangements in order to try and modify the landowners' time preferences.

11. But in proposed benefit sharing or joint ventures arrangements, the landowners are supposed to get something out of the project itself, not just their trees. The issues here come up most clearly in replanting, where the separation of land and timber described in paras. 1-6 has greater customary relevance: in custom, owning land did not necessarily imply owning trees that someone else had planted on it.

12. For example, para. 10 of our Forestry Policy Review Committee envisaged two kinds of scheme:

(i) "joint ventures between the people and Government for large scale planting of Forest crops on suitable areas of customary land."

(ii) "participation in planting schemes on government land for the people who originally owned the land."

In the first case, the people own the land but government acquires rights to the replanted trees by 'joint ventures' with the owners. Equally, in the second case, by 'participating' in planting on government land, the people who have lost their rights to the land can regain rights to the timber on it.

13. In both cases there is an implication that "the people" will do some of the replanting work, and throughout the Committee's report there is a conscious effort to try and transcend questions of land ownership by

concentrating on projects, relating what people get out of them to what they put into them.

14. This approach can run pretty quickly into trouble over question of wages and rents. Wages are a major element in the costs of the present programme to replant Kolombangara, and the expectation of wage increases is to some extent determining the speed at which it is being done. Migrant labourers are not felt to have any rights to the trees they plant - they are, after all, getting paid. And you can't offer labourers a royalty when the timber is cut unless they have some other way of making a living while they are working on planting, and while they waiting for the trees to grow. At a mimimum they need land and time to garden it.

15. Similarly the landowners who will participate in the schemes the Committee envisages will need to be sustained while they are planting, and while they are waiting for the trees to grow. To do this they will need to reserve some of their land and time from the schemes. And they will need to evaluate the replanting project against other opportunities to use their land and time.

16. The presence of the project will itself increase alternative opportunities, and landowners may well feel that they can get more out of servicing the project as contractors and sellers of market produce than they could out of working for it. A likely outcome is that they will pay, and probably under pay, someone else to do the replanting work for them. It is usually easier to exploit relatives, and so we are likely to see a further growth of landlord - tenant relations on land that is supposed to be owned equally by a line or clan.

17. Related, but more directly relevant is the question of rents. PNG realistically expects to have to pay rents of 50t per hectare per annum to replant on customary land, in addition promising a 3-5% royalty when the trees are grown and cut. Our joint venture and participation schemes don't appear to envisage rent payments: on customary land the land still 'belongs' to the landowners, on government land to government. Paying rents would increase the total cost of the project as the money to pay them would have to be borrowed.

18. Rent payments could presumably be treated in two ways:

(i) as a cost to the project, taken out before the benefits are assessed and shared, or

(ii) as a benefit in itself.

in the first case landowners get rent plus benefit and in the second just benefit. The draft benefit sharing paper produced by Finance, Foreign, Trade and the CPO follows the second course.

19. For example landowners east of the Balesuna river lease their land to Solomon Islands Plantations Limited (SIPL) for a mixture of rent and shares in the company. For each hectare of land leased they get either $5 per annum, or the dividend from 65 $1 shares. In June 1977 SIPL declared their first dividend of 10c each share, equivalent to $6.50 per hectare for that year. The landowners have 6% of the issued capital of SIPL.

20. <u>Land as Wealth</u>

Land is a form of capital, and rent can be treated on the interest landowners get for loaning their land to a project. Benefit sharing (for example by dividends from shares), is related to the project itself.

rather than the value of land or the timber on it. People sharing the benefits of a project also share the risks. At SIPL landowners cover their risks by leasing half their land for rent, and half for shares. The trade off between the two is expressed in terms of interest rates: $1 rent is equivalent to 13 shares, a yield of about 8% per annum.

21. Rental payments are also a form of .unearned income for landowners. Whether customary landowners can claim that their rights to large areas of unused forest are equivalent to 'freehold' - and so should be registered as perpetual estate - has been a political question ever since the Protectorate government made its first wasteland declarations in 1904. Since then in our land legislation there has been a steady retreat from the idea of overriding government interests, and a steady growth of the idea that customary rights are equivalent to freeholds owned by lines, tribes or clans.

22. Behind these legal changes are more general ideological arguments: should people who have more wealth than they can use get an income from letting other people use that wealth? And how should 'risk' be assessed and rewarded?

23. While or until these ideological arguments are resolved, we can at least be consistent. We accept that timber companies must pay interest on the capital they borrow for their projects. These interest payments are form of unearned income for the original owners of that capital; the equivalent to rental payments for unused land. We also accept that timber companies must pay dividends to their shareholders as a reward for the 'risk' then have taken in committing their capital to the project.

24. If government accepts these arguments from foreign investors, it is difficult for it to reject them from local landowners, particularly if companies are how more directly involved in preliminary negotiations with landowners.

25. Cutting existing timber causes no problem if we accept that customary landowners have the equivalent of freehold rights over land they have never used or only used in ways, like hunting and gathering, that can coexist with timber project? (even if the law avoids connecting land and timber). But on replanting projects land can be treated as either loan or risk capital (as with the SIPL Balesuna leases).

26. If we accept that government or a private investor must pay interest on the capital he has borrowed, then we should also accept that the landowner has the right to demand a rent for the land he has loaned. And if we accept that the private investor has the right to reward the shareholders who have risked their capital on the project, then we should also accept that landowners have the right to be rewarded for committing their land to a risky project.

27. <u>Purchases & Annual Payments</u>

Outright purchases of land or timber have the advantage of being, in theory, once and for all (the practice, of course may be different as with most early purchases of freehold in the Solomons, and as with timber rights at Gogol in PNG - see Part 1 para. 6(a)). Establishing 'true' ownership, and settling disputes about it is costly. Directly, it diverts everyone except the lawyers involved from more productive work. Indirectly, at least in the Solomons, the social costs of forcing people to disentangle, specify and justify their relationships to each other and land are high but may be worth it. The continuing turmoil over timber rights on New Georgia, including the so called 'civil war' when fighting broke out at Kolombaghea in 1974, would be an example.

28. The more payments for land or timber are spread through time as royalties or benefits, the more opportunities are presented to raise again questions of entitlement, or 'original ownership'. And if raised, these questions