



THE FOUNDATION FOR
DEVELOPMENT COOPERATION

State powers and institutions in Solomon Islands' developing democracy

by

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Executive summary

This paper revisits the chain of events that led to the 5 June 2000 coup in Solomon Islands. The approach will be general but from a legal perspective.

Information and materials were first gathered from Solomon Islanders by interviews, contact with certain government Ministries, the media, Internet published articles and books. These materials were then discussed by using case study methods as analysis in order to give a picture about the on-going development and functioning of State powers and institutions in Solomon Islands.

The reason for undertaking this research on democracy is because of Solomon Islands search for the restoration of law, order and peace. For the last two years Solomon Islands has caught international attention not for its potential as a democratic country but for conflict in the South Pacific. Two militant groups were formed, the Isatabu Freedom Movement in 1999 and the Malaita Eagle Force in 2000 with troubles flaring in and around Honiara, capital of Solomon Islands.

For many it was an ethnic issue, for some it was a socio-economic problem, for others it was a matter of questionable politics. In totality, it is about democracy, or how the State and people relate with one another through the rule of law. In Solomon Islands the functioning of State powers, institutions and the exercise of State authority in some areas operate outside the rule of law.

The paper demonstrates much public confusion in how State powers and institutions function in Solomon Islands. Both the people and the State have followed unconventional problem solving approaches to maintain peace and harmony over the last ten years in Solomon Islands. This has promoted distrust among citizens thereby causing conflict. Conflict escalated to the extent where the development and functioning of State powers and institutions became threatened and undermined, as exemplified by the coup of 5 June 2000.

Citizens demanded compensation from the State for damages caused from militant activities or the actions of others. However, the process of compensation demand itself was implemented beyond the rule of law. This has resulted in discrepancies because citizens continued to undermine the development and functions of State powers and institutions. Subsequently, questionable leadership responses is prevalent, law and order have broken down in some areas, and justice is yet to be achieved despite the signing of the Townsville Peace Agreement in 2000 and the recent return of weapons by factions of the Police and the militants.

Many displaced people still have not received compensation for their lost properties. Those involved in the violation of human rights as well as threatening the existence of the State of Solomon Islands are yet to be held accountable. The final part of the paper shows that the coup is still not endorsed under the rule of law. On that premise, the paper calls for renewal of trust between citizens and effective functioning of State powers and institutions rather than a reliance on government handouts of compensation money for actions or offences not committed by the State.

This will involve a mammoth effort, particularly in educating people to understand the idea of democracy in Solomon Islands. It is the intention of the author to stimulate further discussion about the development and functioning of State powers, institutions and the exercise of State authority in Solomon Islands.

Introduction

In the waters around the harbour of Honiara, the capital of Solomon Islands, opportunity was provided to watch people casting out their lines for reef fish. One particular fisherman caught my attention. He was paddling with one oar on one side of his canoe and fishing on the other. Thus, every time he paddled forward he ended up moving in circles.

After reading through articles written by prominent commentators and people that have an interest in Solomon Islands, I soon recognised the moral of the fisherman plight. Some have created their own circles by discussing two years of social unrest in the Solomon Islands with an ethnic flavour and professional bias.

This paper is a critical analysis of the two years of crisis in the Solomon Islands. The primary focus is on the development and functions of State powers, institutions and the exercise of State authority in Solomon Islands. The paper begins by defining State powers and institutions and then focuses on six case studies with analysis provided for each, highlighting the personalities involved. Finally, the case of *Bartholomew Ulufa'alu v Attorney-General*¹ will be discussed.

State powers and institutions

Under the supreme law, the Constitution of Solomon Islands, State powers are threefold. They are the Legislature/ Parliament (law making), the Judiciary/ Courts (law interpretation) and the Executive/ Prime Minister + Ministers and Ministries (law implementing). Each of these has separate powers referred to as the separation of powers. They are assisted by State institutions such as the Public Service Commission, the Leadership Code Commission, the Police and Prison Service Commission, the Ombudsman, the Attorney-General's Office, the Solicitor-General and the Royal Solomon Islands Police to ensure the rule of law.

The separation of powers is crucial for the following reasons as highlighted by Montesquieu:² (1) to avoid concentration of power in the hand of one person (2) to protect individual freedom, (3) to maintain an efficient and effective administration, (4) to avoid corruption and (5) to maintain clear and fair decision-making. There are cases in Solomon Islands where these State powers do overlap, particularly, in relation to judicial administration.³ How citizens or people relate to the State is through the three main powers of government as supported by State institutions. The rule of law provides the boundaries that define this relationship.

The following formula has been devised to demonstrate this: $D = C + S = L + J + E$. The formula shows that neither citizen nor State can operate alone in a democratic country. In order for the on going development and functioning of State powers, institutions and the exercise of State authority to follow the principles of democracy the affairs of the State and citizens must be addressed within the rule of law.

¹ (9 November 2001) High Court of Solomon Islands, Civil Case No. 195 of 2000, Palmer ACJ.

² Herbert. J. Liebesny. 1981. *Foreign legal systems a comparative analysis*, pp.77/78; see also Vincent.J Lunabek. 1999.'The doctrine of separation of powers: Vanuatu experience', pp.8-44.

³ Herbert.J Liebesny, above, n 1.

Case studies

Case study 1 - 1988

The Guadalcanal Province petitions in 1988 offered an example to show how the Executive functioned.

The petitions were for a state government, return of alienated land and compensation claims. Unfortunately, these petitions were not considered seriously. Some commentators explained that such response by the Government were inevitable because the petitions were submitted inappropriately and lacked the backing of laws of Solomon Islands. Some further claimed that the petition for state government and return of alienated land were national issues. Therefore, every Solomon Islands citizen needed to pursue the national interests rather than Guadalcanal Province alone.⁴

By considering, which organs of the State should deal with the petitions submitted by the Guadalcanal Province it seemed that for some, the petitions found their way to the appropriate organ. The petitions for the return of alienated land and state government were submitted to the Executive for consideration. These petitions were national issues, which many Solomon Islands citizens wanted to be addressed.⁵ However, questions remained as to why Executive or Parliament did not constructively deal with these two issues.

As for compensation claims for people who were murdered by criminals, the High Court had already settled this claim and compensation were paid in the form of imprisonment. Therefore, it was outside the rule of law for any State power or institution to re-open the claim again.

Case study 2 - 1989

Another incident in 1989 illustrated how the Executive exercised its authority to deal with a defamation issue committed by a citizen.

In 1989, an unknown culprit wrote a defamatory statement at the main market that caused an insult to Malaitans. As a result, a violent demonstration involving more than a thousand Malaitans on the streets in Honiara erupted. This provincial group immediately demanded compensation.⁶

There was speculation that a Polynesian person from Rennell and Bellona was responsible. As a result, unhappy Malaitans pressured the suspected person's Provincial Government to pay compensation. There was no police investigation or a charge laid to establish whether a crime had been committed. Neither was there any civil suit for defamation.

Instead, compensation was demanded without going through the proper legal process to settle the issue. This resulted in the Executive paying SBD\$200, 000 compensation to the Malaita Province.⁷ Significantly, such a response by the Executive reflected a further eroding of the due process of law in Solomon Islands. Sadly, having opened the compensation floodgates the State had established precedent.

⁴ See Andrew.H Nori. 2001. '5th June 2000 in Perspective'. *SIBC*, December, <<http://www.sibconline.com.sb/Analysis%20archive.asp>> (last accessed 1 March, 2002).

⁵ See Constitutional Review Committee (CRC). 1987. *Constitutional Review*. CRC Report, vol. 1. CRC, Honiara.

⁶ See Tarcisius.Tara Kabutaulaka. 1999. 'The Guadalcanal Issue: A Frank Talk 1'. *Geocities*, 24th May, <<http://www.geocities.com/jannicolaas/23a0699.html>> (last accessed 28th February 2002).

⁷ Tarcisius.Tara Kabutaulaka, above, n 6.

Case study 3 - 1998

Case study 3 showed how the Executive used its power to address an allegation of rape committed by a citizen.

At Ruavatu Secondary School, two girls claimed to have been raped. No person was suspected, charged and convicted for rape. This meant that in law there was no crime committed. On the contrary, some people claimed that the allegation was legitimate and parents could sue the Guadalcanal Province for damages.⁸ However, there was no civil suit. The potential role of the judiciary in this case scenario was ignored.

Disgruntled Malaitan parents or guardians directly approached the Guadalcanal Province for compensation. The Guadalcanal Province refused to pay because in criminal law a rape case concerns two individuals. Even if parents or guardians of victims claimed that Guadalcanal Province was negligent, this is a matter for the court to determine. Why should the Province be held responsible for an allegation that was not proved either to be criminal nor civil in nature by a court of law?

However, the Executive overlooked the appropriate legal process that the claim for rape was supposed to follow. It proceeded to use revenue sharing grants due to the Guadalcanal Province to settle the compensation demand. This was contrary to how State powers and institutions should operate because a crime was never established neither was there any civil suit to legally justify the compensation claim.

Such an action by the Executive on behalf of the State demonstrated the undermining of State powers and institutions within a democracy. The rule of law about how State powers and institutions should operate were seemingly ignored. Interestingly, legal experts and other prominent Solomon Islanders did not offer critiques about whether this compensation payment by the Executive was legal.

Perhaps it was viewed as alternative dispute resolution. This is a genuine possibility because compensation is a customary practice. However, in Solomon Islands custom compensation is a method of reconciliation that concerns two persons or peoples. It involves exchange of food and other traditional valuables such as shell money for the restoration of peace and harmony whenever a wrong has been committed. Such an exchange would demonstrate genuine contrition rather than buying someone out of trouble.⁹ In Case study 3, involving tradition in cash, illustrated the trend of commercialising the traditional customs of compensation into an industry.

Case study 4 - 1998

The undermining of State powers and institutions in Case study 3 aroused suspicion amongst many Solomon Islanders, particularly people from Guadalcanal.

People in Guadalcanal Province were not happy with the way State powers were used to deal with issues highlighted in the earlier case studies. Consequently, Guadalcanal Province resubmitted its 1988 petitions and demanded rental of Honiara the capital of Solomon Islands on the island of Guadalcanal, Solomon Islands Plantation Limited shares because the Company owned 68% of the

⁸ Andrew.H Nori. 2001. '5th June 2000 in Perspective'. *SIBC*, December, <<http://www.sibconline.com.sb/Analysis%20archive.asp>> (last accessed 1st March, 2002).

⁹ *Regina v Asuana* [1990] SILR 201, 202 Ward CJ (HC).

shares and the Government 38%,¹⁰ internal migration and squatting on customary land to be addressed.

As with Case study 1, the Government's response was unfavourable. The explanation given by some people was that Guadalcanal Province had no legal capacity to pursue its demands because it did not represent the wish of the entire country. According to the national population results, some 60, 275 people out of a Solomon Islands population of 406, 598 populate Guadalcanal Province.¹¹ Others argued that the demands were not genuine; were reactions to what happened in Case study 3 and were above all founded in ethnic hatred.¹²

From observation, it seemed that the unfair and biased approach used by the Executive to deal with earlier demands such as in Case studies 2 and 3 became the catalyst for Guadalcanal Province resubmitting their self-determination demands in 1998. Perhaps, they wondered how Government could award compensation for demands in Case studies 2 and 3 without reference to legal principles, but then turn around and ignore their seemingly legitimate claims.

One way of describing social and cultural opinion in Guadalcanal Province was that Government had already confused the ways in which State powers and institutions operated to the extent that these gradually became less and less functional. People no longer have any faith in State powers and institutions to deal fairly with the demands submitted by Guadalcanal Province the very place in which the seat of Government, Honiara, resides.

This promoted a variety of conspiracy theories that led to the emergence of paramilitary activities. Some Guadalcanal people started using criminal ways to express their frustration about the confusing way the State exercised its powers and ways in which its institutions functioned. People from Guadalcanal started to cause damage to properties owned by people who were living on the outskirts of Honiara and forced them to leave.

Case study 5 - 5 June 2000

Case study 5 developed from the criminal uprising highlighted in case study 4. It illustrates how citizens started undermining State powers and institutions.

Many citizens, mostly Malaitans living outside of Honiara were displaced and their properties damaged. The sudden militant activities caused by some frustrated Guadalcanal people as a result of the inconsistent approach by the State to seemingly legitimate demands became a national issue. The situation became multi-faceted and a matter for all the State's powers and institutions to address.

For example, the Parliament was pressured by civil society to declare a state of emergency and to enact new laws that gave the police more authority to deal effectively with the law and order issues. The Executive was placed in a position to address the situation wisely and efficiently. The Courts were faced with the task of bringing those who resorted to criminal activities to justice.

Consequently, in 1999 the Executive formed a Task Force to deal with Guadalcanal demands as well as a Guadalcanal Peace Process Committee and a Government Negotiation Team. This

¹⁰ Tarcisius.Tara Kabutaulaka. 2001. 'Beyond Ethnicity: The Political Economy of the Guadalcanal Crisis in Solomon Island'. Working paper 01/1. ANU <<http://rspas.anu.au/melanesia>> (last accessed 15th November 2001).

¹¹ Solomon Islands Census Office. 1999. 'Solomon Islands 1999 Housing and Population Census'. <<http://www.nidi.nl/research/prj60001.pdf>> (last accessed 14th April 2002).

¹² Andrew.H Nori. 2001. '5th June 2000 in Perspective'. *SIBC*, December, <<http://www.sibconline.com.sb/Analysis%20archive.asp>> (last accessed 1st March, 2002).

resulted in the signing of memorandum of understanding between the Government and Guadalcanal Province on 13 June 1999.¹³

A payment of \$2.5 million into a Reconciliation Trust Account was the next step the Government took.¹⁴ Other matters such as the review of the Lands and Titles Act,¹⁵ squatting issues, state government and victims affected from what happened in Case study 4 were also addressed in the Honiara Peace Accord.

Furthermore, the Executive came up with seven peace agreements that had a Melanesian way of dispute resolution (Honiara's Cultural Centre Meeting 23 May 1999, Marau Communiqué 1999, the Panatina Agreement 18 June 1999, Aruligo Resolution 5 Dec. 1999, Buala Peace Conference 5 May 2000, Auki Commitment to Peace 12 May 2000 Pre-cessate-fire Guidelines 22 May 2000).¹⁶ These peace agreements were designed according to the Melanesian way of settling disputes and achieving peace.

It transpired that the militants breached these agreements despite the fact that customary means of dispute resolution had been used. Why were the peace agreements breached? Did the people not respect the customary means of dispute resolution? Was there an effective and efficient enforcement mechanism available to implement these agreements? The answer to all these questions appear to be no. One reason for this was that State powers and institutions had slowly become dysfunctional because of the mix up in the conventional approaches to dealing with demands. The Melanesian way of dispute resolution was not respected because it did not effectively address the causes underlying the criminal uprising.

The expectation was for State powers and institutions to address the issues surrounding the criminal uprising. Displaced people demanded that peace could only be achieved if the Government immediately met their compensation demands. A mind set was already established; "justice before peace" was the ultimate goal. For this reason, the exercise of State authority and the functioning of State institutions were slowly marginalised through inefficiency and ineffective administration, corruption and unfair decision-making.

Displaced people no longer had trust in State institutions and the ways in which agents of the State dealt with their demands. Consequently, displaced people, particularly Malaitans formed the Malaita Eagle Force (MEF) and assumed control of Government on 5 June 2000. Prime Minister Ulufa'alu voluntarily resigned and Sogavare was elected as the new Prime Minister.¹⁷

Despite the best efforts of the new Sogavare government the democratic functioning of State institutions and the exercise of State authority deteriorated further. The cessation of militant confrontation stopped after the signing of the Townsville Peace Agreement. This was followed by compensation payments to meet the demands of displaced people. However, in the process of reconciliation more injustices were perpetrated because of the way that most of the payments were done outside the rule of law.

¹³ Prime Minister Office. 2000. 'Beneath Guadalcanal'. <http://www.commerce.gov.sb/ministers/Beneath.Guadalcanal_3.htm> (last accessed 7th April 2002).

¹⁴ Prime Ministers Office, above, n 13.

¹⁵ Cap 32.

¹⁶ See John Roughan. 2000. 'Typed as I listen to SIBC'. *ANU*, 7th July, <<http://rspas.anu.edu.au/melanesia/solomonsarticles.htm>> (last accessed 12th March 2002).

¹⁷ Pacific Islands News Association <<http://www.pinanius.org>> (last accessed 10th March 2002).

Case study 6 - 24 January 2002

Case study 6 showed that the custom of compensation has become an acceptable practice with national leaders encouraging it.

After the general elections on 5 December 2001 and formation of the Kemakeza government, compensation demands continued. It was reported early 2002 that the Government Minister for Economic Reform and Structural Adjustment demanded compensation of \$5,000 from *Solomon Star* following an article and letter to the editor that was published about the Minister.¹⁸

The Minister claimed that the publication had lowered his reputation and was not true. According to law, the Court is supposed to deal with such a case. From the facts, the Minister could sue for defamation if he established his case and compensation would be paid. Unfortunately, the Minister ignored the established legal process of dealing with his claim and took his demand directly to the *Solomon Star* instead.

To this day, the exercise of State authority and the functioning of State institutions around legal issues such as compensation claims are still chaotic. The Kemakeza Government is faced now with serious legal challenges about safeguarding the democratic powers and institutions of the State of Solomon Islands.

Analysis of case studies

Response to demands

After looking through the six case studies it could be argued that there was inconsistency in terms of the democratic relationship the rule of law tried to uphold. In case study 1, the Executive responded unfavourably to the demands. In case study 2, the Executive paid compensation. In case study 3, the Executive again paid compensation. In case study 4, the Executive took the demands lightly and was slow to respond.

In case study 5, the Executive took a similar approach by opting for a 'peace before justice policy.' It did not instruct the Royal Solomon Islands Police Force to respond immediately and constructively to criminal activities that happened in case study 4. In case study 6 a Government Minister indulged in a similar demand for compensation as well. This time it was a compensation demand against the *Solomon Star*.

In each case study except in case study 6, the Executive on behalf of the State was the final authority that was responsible for paying people's compensation demands. This demonstrated that people did not follow the conventional way to deal with their compensation demands. In all five case studies, the Executive became the responsible party. Was this according to the conventional way stipulated by the rule of law? In case study six, a Minister of the State approached the *Solomon Star* to pay compensation. Why were people using inappropriate processes to claim compensation?

Was it conventional for the Executive to deal with all the compensation demands? What has happened to the State powers and institutions? Did the people know that there was a conventional way to follow whenever they needed to make a demand? Were the people aware that different

¹⁸ Pina Nius Online. 2002. 'MEDIA: Solomon newspaper threatened, PINA appeals to PM'. *Pina Nius*, 2nd February <<http://www.pacificislands.cc/pm22002/pinadefault.cfm?pinaid=3581>> (last accessed 4/2/02); see also ABC Radio Australia. 2002. 'Solomon Islands PM forced to face questions of ministers'. *ABC Radio Australia*, 2nd February, <http://www.abc.net.au/asiapacific/news/GoAsiaPacificBNP_471762.htm> (last accessed 4th February 2002).

claims were supposed to be dealt with by different State powers and institutions? It seemed that there was complete chaos over how the State powers and institutions function.

Maybe people were misled to think that the Executive was the only State power that lawfully had the capacity to deal with their demands. This line of thought was likely because it was the Executive that initially opened the floodgates. See case study 2 and 3 for example. The role of the Court was ignored and the Executive proceeded to make compensation payments. As a result, people developed the mentality that any compensation payment put forward was supposed to be dealt with by the State through the Executive.

Such way of thinking seemed to have stemmed from the village where in cases of compensation demand those that have the power, particularly leaders, elders or chiefs would deal with such matters. In Honiara, the capital of Solomon Islands such power structure was absent. Hence, people saw State power as the appropriate body to deal with their demands. As result a mindset was developed therefore, *'it was one thing to accept the democratic formula but quite another to abide by the norms and practices'* as expressed by Tuiatua Tamasese.¹⁹

In addition, the win and lose situation that was experienced when a demand was submitted to the Court might be another reason why citizens ignored it and approached the Executive instead. Court hearing could be a lengthy process as well so people's demands might not be addressed immediately unlike submissions made to the Executive or private individual as experienced in case 2, 3 and 6. Alternatively, it might be argued that many people did not understand how State powers and institutions operated within the rule of law. That was why they always directly submitted their demands to the Executive.

This raises the issue of whether the functions of the State powers and institutions were appropriate for Solomon Islands circumstances. There might not be a fine line of understanding developed between how the legislature + executive + judiciary operate and assisted by other institutions because the concept of separation of powers is foreign. As a result, it did not really matter how people channelled their demands to the State for consideration. Another reason why people in all case studies might appear reluctant to bring their demands to the appropriate State powers such as the Court might be due to high legal fees in civil suits.

Or may be people in all 5 case studies had no idea whatsoever about whether there was a conventional way prescribed by law for dealing with demands. Perhaps there was knowledge vacuum about how the State powers and institutions should operate. Whatever the case, those who were familiar with how State powers and institutions function should have tried to educate the people about the conventional way that they should submit their demands. It is detrimental to ignore how the State powers and institutions operate because a State and an individual depend on them in order to maintain a democratic relationship based on harmony and order.

Unconventional approach

According to the formula $D = C + S = L + J + E$, there is a standard procedure prescribed by law for order and harmony. The differences that citizens have are always refined through State powers and institutions in order to maintain a democratic relationship. That meant, citizens only arrive at a democratic relationship if they legitimately channelled their claims to the appropriate State powers and institutions.

From the six case studies, no one of them followed the legal process as demonstrated by the formula. People devised their own unconventional way to submit their demands for compensation. Even those who had good negotiators to deal with their claims were making demands in an unprincipled fashion. Practically, the unconventional approach was present in all the six case

¹⁹ As cited in Ron Crocombe. 2001. *The South Pacific*, p 467.

studies. Take for example the submissions made by the Displaced People's Committee for immediate consideration by the Solomon Islands Government through the office of the Prime Minister.²⁰ A representative of the Committee held meetings with the Prime Minister, Ulufa'alu and the Guadalcanal Provincial Government so that compensation claims and a report on Malaitans missing on Guadalcanal must be addressed. Apparently, this influenced the gradual collapse of the Ulufa'alu government.

The Prime Minister should have redirected the matter appropriately to the Attorney-General for advice.²¹ This was because there are legal issues surrounding the submission of the Displaced Peoples Committee. For instance, if the submissions concerned truth and justice the Commission of Inquiry Act,²² Death and Fire Act,²³ or Penal Code²⁴ would be considered. Thus, a Court or Commission of Inquiry would appear to be the appropriate State power and institution to hear the matter. Ironically, the Displaced People's Committee made submissions straight to the State and the Guadalcanal Provincial Government. Did the Committee not follow an unconventional way themselves? Or was it just a clever way of submitting the demands?

It makes one wonder what has caused the unconventional approach to be like a 'domino theory'. Somebody started it and everyone else was following the practice. Why were people not following the standard procedure as prescribed by law for dealing with their problems or demands? Why were people taking unprincipled ways even though they had legitimate claims? Was it because they could not stand the legal process? Was it because that was the customary practice? Was it because the rule of law was under siege?

These questions were raised because in all six case studies disgruntled citizens used their Provinces to put pressure on State powers and institutions, resort to violent demonstrations, used arms resistance, indulge in criminal activities or stage a coup. These were not the conventional approach of dealing with people's differences. Rather, they were unprincipled ways of pursuing their demands. In whatever situation, citizens were supposed to follow the appropriate way prescribed by law to voice their frustrations or claims.

It was only through the appropriate State powers and institutions that a person could be in a better position to uphold the true notion of democracy without a guilty conscience. The establishment of State powers and institutions were not to be ignored or undermined. Their purpose was to uphold the true notion of democracy, which reflected the safeguarding of fundamental rights under the Constitution. Thus, every citizen has the right to pursue an issue that affected his or her life but it must be done conventionally. No person is above the law and the law is what made Solomon Islands a democratic country.

As a common law principle, the State is immune from all liability. That meant a citizen cannot sue the State.²⁵ However, it was developed in later cases that a State should be held responsible for actions of its employees if it is commercial in nature or in tort.²⁶ This indicated that for any claims that were outside the scope of the State's duty, the State should not be held responsible. Alternatively, the State could pay compensation only if it contravened the fundamental rights and freedoms of individuals.²⁷ Nonetheless, there is a democratic rule to follow and this does not allow for an unconventional approach.

²⁰ See Andrew.H Nori. 2001. '5th June 2000 in Perspective'. *SIBC*, December, <<http://www.sibconline.com.sb/Analysis%20archive.asp>> (last accessed 1st March, 2002).

²¹ Constitution of Solomon Islands, s 42 (1).

²² Cap 5.

²³ Cap 9.

²⁴ Cap 26.

²⁵ See generally Crown Proceedings Act 1947 (Statute of general application).

²⁶ *Trendtex Trading Corporation Ltd v Central Bank of Nigeria* [1977] 2 WLR 356.

²⁷ Constitution of Solomon Islands, s 17.

Compensation demands

Compensation was a significant issue in all six case studies. People demanded the State to pay compensation for lost properties, employment benefits, and lives lost in the crisis, harassment and many other things. Money was the ingredient behind all these demands. People felt that monetary compensation was the price for justice and peace. Therefore, when the Sogavare Government came into power they started paying out money to meet the demands of people affected in the two years crisis in order to fulfil the expectation for justice before peace.

However, there were figures that showed that the extent to which the Government has paid compensation was uncontrollable. The table below is an illustration.

Some compensation figures

Name	Amount	Pay detail	D/ Paid	Payment
Property claims				
F. Diau	\$190, 000	Chq. No. 42192/42550	Mar.01	Committee, MNURP
L. Mamuligeli	\$150, 000	Chq. No. 41886	Mar. 01	Committee, MNURP
D. Dausabea	\$120, 000	Chq. No. 40281	Feb.01	Committee, MNURP
F. Orodani	\$50, 000	Chq. No. 39668	Jan. 01	Committee, MNURP
J. Daurara	\$31, 800	Chq. No. 41155	Feb.01	Committee. MNURP
Injury claims				
R. Marahare	\$150, 000	Chq. No. 39706	Jan.01	Committee, MNURP
B.G. Saenamua	\$130, 000	Chq. No. 41938	Mar.01	Committee, MNURP
Morris Joe	\$50, 000	Chq. No. 40265	Jan.01	Committee, MNURP
Paul Kukiti	\$20, 000	Chq. No. 41789	Mar.01	Committee, MNURP
David Rosalio	\$10, 000	Chq. No. 41874	Mar.01	Committee, MNURP
Eric Vagorau	\$3, 000	Chq. No. 42672	May.01	Committee, MNURP
Danger claims				
Hon.M. Garo	\$43, 200	Chq. No. 42466	May.01	Committee, MNURP
Hon. D. Oeta	\$50, 000	Chq. No. 39670	Jan.01	Committee, MNURP
Mala. Assembly	\$231, 000	Chq. No. 38991	Jan.01	Committee, MNURP
Vehicle claims				
L. Holosivi	\$120, 000	Chq. No. 41799	Mar.01	Committee, MNURP
F. Maesala	\$75, 000	Chq. No. 40262	Jan.01	Committee, MNURP
M. Peter	\$70, 000	Chq. No. 40250	Jan.01	Committee, MNURP
J. Wale	\$50, 000	Chq. No. 39654	Jan.01	Committee, MNURP
A. Teho	\$41, 600	Chq. No. 41832/42447	Mar.01	Committee, MNURP
Professional claims				
Bridge Lawyers	\$515, 720	Chq. No. 38194 x 3/ 37711	Sep/Nov.00	Committee, MNURP
Attorney-General	\$200, 000	voucher no. 275974	Feb.01	Committee, MNURP
Crystal Lawyers	\$140, 000	Chq. No. 39298/37505	Nov/Dec.00	Committee, MNURP
J. Tebolo	\$125, 000	Chq. No. 407550/39669	J/Feb.01	Committee, MNURP
Solicitor-General	\$100, 000	voucher no. 275975	Jan.01	Committee, MNURP

Boat claims for MEF use					
Maofafia Co.	Ship	\$126, 2500	Chq. No. 40249	Jan.01	Committee, MNURP
Olifasia Co.	Ship	\$65, 000	Chq. No. 39929/39961	Jan.01	Committee, MNURP
Redly Gilbert		\$50, 000	Chq. No. 39931	Jan.01	Committee, MNURP
Reimbursement/Rev. loss/ business loss claims					
Hon. Kemakeza	A	\$79, 000	Chq. No. 38625	Dec.00	Committee, MNURP
Adea John		\$48, 000	Chq. No. 40279	Mar.01	Committee, MNURP
P. Universal		\$20, 000	Chq. No. 42692	Mar.01	Committee, MNURP
Theft and damage claims					
M.M Construction		\$133, 850	Chq. No. 42081/39660	Jan/Apr.01	Committee, MNURP
K. Construction		\$4, 300	Chq. No.41830	Mar.01	Committee, MNURP
Harassment claims					
J. Maesala		\$71, 000	Chq. No. 41897	Mar.01	Committee, MNURP
F. N.& Family		\$20, 000	Chq. No. 42525	May.01	Committee, MNURP
R. Baokosu		\$2, 000	Chq. No.42696	Mar.01.	Committee, MNURP

Source Ministry of National Unity, Reconciliation and Peace (2001).

The above sample figures revealed 10% only of the report received. However, for analysis purposes they are useful. Generally, the figures showed an inconsistency in compensation claims. It could be asked after looking through the compensation figures: (1) was justice before peace achieved? (2) Did the dollar buy justice? (3) What is justice? These questions are important to consider.

It was obvious that the misunderstanding policy of the Ulufalu'u government of 'peace before justice' and the displaced people's demand for 'justice before peace' was one of the main underlying catalyst that gave the impetus for the 5th June coup. Hence, when the militants signed the Townsville Peace Agreement there was provision for the Government to find overseas assistance to meet the compensation demands of the people. Thus, the Sogavare Government after securing funds from overseas embarked on compensation payments because that was thought to be the avenue for restoring justice.

However, the figures showed that the dollar was not the means to attain justice. Most of the claims were lodged outside of the appropriate legal process. This was evident from the figures because the entire claim was lodged through a Committee established by the Ministry of National Unity, Reconciliation and Peace. Through this process compensation demands were assessed and later the funds were dispensed.

Regrettably, this was an unconventional approach. The Courts and other appropriate State institutions according to a lawful process could have exclusively dealt with most of the claims in the above table. The claims related to areas of law such as the Commission of Inquiry Act,²⁸ Death and Fire Inquiries Act²⁹ or the Workman's Compensation Act.³⁰ Claims for things such as injuries, harassment, and damage to property or loss of earnings are common law claims.³¹ They are claims that the courts over a certain period have developed legal principles to address so that justice can be arrived at.

²⁸ Cap 5.

²⁹ Cap 9.

³⁰ Cap 77.

³¹ See Jennifer.Corrin Care. 1996. 'Rationality or Intuition? The assessment of the quantum of damages for personal injuries in Solomon Islands'. *NZACL Yearbook*, vol. 2, p.237-258.

Unfortunately, legal professionals did not immediately take the necessary steps to advise their clients or even the Government that the payment of compensation claims was not channelled through the appropriate State powers and institutions. Ironically, it was after millions of dollars was paid as compensation money that the Sogavare government was criticised. It was contended that the Townsville Peace Agreement was not about truth and justice but for the cessation of war. Therefore, the compensation payments made by the Sogavare government were outside of the peace agreement.³²

Despite such explanation, the truth of the matter was that the State used an unconventional approach to address the whole situation given that peace and justice was very closely linked. It was not ideal to try to put one before the other or vice versa. This was because peace was not about shooting and killing each other or giving out of money. Rather, it should be an open acknowledgement and addressing of injustices through the relevant State powers and institutions.

It was apparent that how State powers and institutions function was mixed. As a result, ineffective and inefficient administration, corruption and inconsistent decision-making were unavoidable. Hence, proper evaluation and damage assessments were not possible. As a result, there were inconsistencies in claims because some of them were excessive and false. Since both the people and the State ignored the conventional approach to dealing with most claims compensation payment was done uncontrollably. For example, Harold Keke (IFM leader) was paid a substantial amount of compensation money for the return of a Solair plane, despite the fact that he blew it up.

Some individuals managed to receive compensation money from the State much earlier than others because of the unconventional approach. Consequently, today there are thousands of displaced people still waiting for compensation payments. Why is this happening after millions of dollars has already been paid as compensation? Obviously, had the proper State powers and institutions been used to deal with the compensation claims there would be more State control over how the millions of dollars were paid. Today, the system of democracy is not functioning efficiently and effectively, corruption has become part of the system and decision is not made wisely.³³

This explained why compensation claims were excessive, inconsistent and unfair. Millions of dollars have already been paid out to people but justice seems still far from reach. This makes one wonder whether it was right for compensation to be paid during a time of uncertainty or unsettled conflict. Should the government suspend compensation payments even if a precedent has already been set? Would that be fair and just for those who still have not received compensation?

Extortion

Making claims or charges unreasonably or excessively was a common practice that happened when the Sogavare Government started paying compensation. This was because there was an unconventional approach followed, thus, there was tendency for making false claims and people did not want to compromise their standards.

Due to public pressure, the Government established a Committee to deal with all the demands. Four columns were formulated to assess these demands: - column 1- Name; Column 2 - Claim; Column 3 - Assessment; and Column 4 - Reassessment. Despite such assessment formulae, compensation payment continued to be excessive and uncontrollable. There was no effective and

³² A Nori. 2001. '5th June 2000 in Perspective'. *SIBC*, December, <<http://www.sibconline.com.sb/Analysis%20archive.asp>> (last accessed 1st March, 2002).

³³ See generally Peter Larmour. 1997. *Corruption and Governance in the South Pacific*. Discussion paper 97/5. ANU <<http://rspas.anu.edu.au/melanesia/Larmour.html>> (last accessed 14th April 2002).

efficient State power or institution to oversee how funds should be paid. Those in power or some that had guns often interfered with the process of payment.

Consequently, overcharging or extortion either for compensation claims or fees was uncontrollable. Those that were manipulative appeared to be making use of the entire situation compared to others that were waiting patiently for the Government to meet their demands. Take for example claims for danger allowances by Provincial Members or the scandal involving Kemakeza and Kii in the Sogavare government as reported by the press.³⁴ These were good examples to explain that due to the mix up of the function of State powers and institutions corruption became common.³⁵ Instead, for some national leaders to uphold the democratic principle of “*to lead is to serve*” they applied the principle “*to lead is to gain*”.

Others claimed that it was in their professional capacity as well as for security reasons that they were paid huge amounts of money. For example, payments made to the Attorney-General and Solicitor-General. These two are public officials, thus, it is their duty to advise the Government. However, they were paid quite a substantial amount of money for duties done within their capacity as public servants. Thus, the Public Service Commission should have addressed this issue. Unfortunately, this was not the case because State powers and institutions have become mixed.

Some people were even charging excessive rates for whatever roles they played either as advisers, negotiators or peacemakers. This is an ethical issue. Take for example, a senior private law practitioner, a principal partner in Bridge Lawyers, was charging SBD \$900 (USD 180) per hour for his legal fees.³⁶ If Solomon Islands were economically healthy, this fee scale could not be challenged. However, consider this lawyer's fee scale in the context of the crisis. Was it reasonable?

Apparently, some professionals and national leaders seemed to ignore the principle of good ethics: ‘*The end does not justify the means*’. The end, which is the restoration of justice and peace in Solomon Islands, was very praiseworthy but the means that some professional people followed was not justified. The coup was a means to obtain justice. However, a coup was an illegal means to an end. The senior private law practitioner, a principal partner in Bridge Lawyers in the example given went along with the coup and obtained SBD\$900 an hour, justifying it as money received for the professional advices he gave to his clients who were one of the militant groups. Significantly, from the facts it appeared that there was no mercy for the State of Solomon Islands during the two years crisis. Some citizens (including lawyers, public officers, police officers, politicians and militants) took advantage of the situation by either making extraordinary compensation claims or charging excessive fees for whatever role they played in the two years crisis. It appeared that during the past two years when Solomon Islands were in crisis some individuals were so inflexible to compromise their standards.

Apparently, the issue of accessibility was the main determining factor of how some citizen was able to get a larger share of the pool of money given by donors compared to others. Take for example, Kemakeza (Minister) and Kii (Permanent Secretary) in the Sogavare government. These two were leaders in the Ministry of National Unity, Reconciliation and Peace. This Ministry was responsible for dealing with the compensation demands by establishing a compensation committee. The two leaders had the final say over any compensation assessments made by the committee. Therefore, as leaders they had a better access to the pool of compensation money compared to others. As a

³⁴ Robert.Keith Reid. 2002. ‘Solomons Kemakeza Govt under the spotlight; Australia, New Zealand issue blunt warnings’. *Islands Business Magazine*, February, p.18.

³⁵ See John Roughan. 2001. ‘Country's Coup Cost’. *ANU*, 10th June, <<http://rspas.anu.edu.au/melanesia/solomonarticles.htm>> (last accessed 12th March 2002).

³⁶ See Andrew.H Nori. 2001. ‘5th June 2000 in Perspective’. *SIBC*, December, <<http://www.sibconline.com.sb/Analysis%20archive.asp>> (last accessed 1st March, 2002).

result, press reports revealed that they served themselves first. Kemakeza took SBD \$ 850, 000 and Kii SBD \$ 750, 000. Later, they were sacked.³⁷

It was noticed that people closer to the pool of money donated by overseas donors to meet compensation demands had a larger share of it or were able to get their demands met first. However, they had their own justifications by using all sorts of explanations or rate calculations. The Kemakeza and Kii scandal or the fees charged by some of the professional people were some out of the many examples. Such approach could be a breach of the Leadership Code³⁸ for those who are leaders or Professional Conduct Rule³⁹ for those who are members of the legal profession.

Unfortunately, the statutory checks and balances sometimes referred to, as watchdogs that were appointed by government to hold leaders accountable for their actions appeared not to function effectively and efficiently. They seemed to be watching only and never biting.⁴⁰ As a result, most of these State institutions such as the Ombudsman or Public Service Commission lose enthusiasm over time. As they get familiar with those they are watching, engagement in constant confrontation becomes minimal because they find it easier to be reasonable, to accommodate and to cooperate.⁴¹ This has created a situation for State powers to gradually become mixed and dysfunctional. There was no effective check and balance mechanism to enable judicial review of the actions of State powers and institutions. Thus, patterns of unethical leadership became common.

Law and order

The Guadalcanal militants seemed to be blamed for the start of break down in law and order. However, it was apparent that this was on the outskirts of Honiara only. Before the 5 June 2000 coup, the functions of State powers and institutions were not in complete chaos. There were no signs of massive criminal activities such as vehicle theft, burglary, or murder cases in Honiara, in Malaita or in the Western Province. One reason for this was that the Royal Solomon Islands Police force was still operating within the rule of law.

The 5 June 2000 coup was justified, as a means to protect citizens living in Honiara, the capital of Solomon Islands, and to press the State to immediately address compensation demands. The striking analogy here was that after the coup criminal activities in Honiara was alarming and even in other Provinces including Western Province. It could be argued that the coup was a catalyst for the uncontrollable increase in criminal activities in Honiara and other areas as well.

One reason for this was that like the IFM the Joint MEF/ Paramilitary group was not lawfully established since there was no legislative enactment. Therefore, when they took over Honiara other legitimate police posts in other Provinces were cut off, thus, induced the increase of criminal activities. It was apparent that maintaining discipline by either IFM or Joint MEF/ Paramilitary was not possible.

As a result, some members of these groups took advantage of the situation. They started stealing vehicles, harassing citizens and indulging in other criminal activities. There was no disciplined and effective police force to curb these criminal activities. As a result, the State powers and institutions were handicapped to deal effectively and efficiently with the whole situation. The High Court ruling in *Bartholomew Ulufa'alu v Attorney-General* reaffirms the rise in criminal activities by observing

³⁷ Robert Keith Reid. 2002. 'Solomons Kemakeza Govt Under The Spotlight: Australia, New Zealand issue blunt warnings', p.18.

³⁸ Solomon Islands Constitution, Chapter VIII.

³⁹ Subsidiary Legislation, Legal Practitioners Act (Cap 16).

⁴⁰ See generally Solomon Islands Constitution, s 97 and the Ombudsman (Further Provisions) (Cap 88).

⁴¹ RMA Chongwe. 1999. 'Judicial Review of Executive Action: Government under the law', pp. 103/104.

“... [There was] widespread looting, stealing, harassment and intimidation of innocent citizens in the Capital, with the absence of an effective police force ...”⁴²

Some of these criminal activities were still prevalent even after the signing of the Townsville Peace Agreement. The number of stolen vehicles still driven around in Honiara and Malaita, the increasing rate of robbery⁴³ and recent murder cases⁴⁴ confirm this claim. Unfortunately, the Royal Solomon Islands Police Force was not an effective Force to enforce the law and maintain order by arresting the culprits who breached the law and provide security. There were many complexities surrounding the function of the current Force.

Many of the members were involved in the two years crisis. Hence, their loyalty to the Queen and the people of Solomon Islands to maintain law and order was in question. The issue of whether the Police Force were covered under the Amnesty Act 2000 should be raised. This was because as members of the Royal Solomon Islands Police Force who made an oath to uphold the law they must be held accountable if they carried out their duties outside the rule of law. The Police and Prison Service Commission had the role to look into the matter but it seemed this could be done only if the rule of law was not under siege.

It seemed State powers and institutions were not functioning appropriately to resolve the law and order problem in Solomon Islands. There was no Royal Solomon Islands Police Force as it used to be before to assist State powers and institutions, so that democracy could completely be upheld. The campaign for the return of guns was progressing positively. However, some ex-militant groups and criminal elements continued to hold onto the guns and used them whenever they wanted to advance their own interests. Thus, citizens have fear and insecurity even to this day.

The restoring of democracy does not only depend on the electing of a new government, enacting the Amnesty Act or participating in the Townsville Peace Agreement. The fundamental thing that provides the framework for citizen + State to maintain a democratic relationship is the rule of law and order. If law and order is not yet accomplished successfully how can it be possible for the relationship between the citizen + State to be maintained democratically?

Who is involved?

During the two years crisis there were many theories that people developed to try and explain who were the conspirers, catalysts, or the master minds behind the militant activities. This contentious issue needs to be carefully discussed in order to try not to implicate or defame anyone. From media reports, written articles and speeches given by individuals during the two years crisis they can help in discussing the issue of 'who is involved'.

Over the last two years there were individuals who have been vocal either through their writings or press releases about the crisis. Thus, it is interesting to focus on some of these characters such as Tarcisius Tara Kabutaulaka, John Roughan and Andrew Nori. The focus is on these three individuals because (1) they are public figures, (2) experienced in their professions, (3) prominent Solomon Islanders and (4) known locally and globally from their writings or statements made in the press.

⁴² (9 November 2001) High Court of Solomon Islands, Civil Case No. 195 of 2000, Palmer ACJ.

⁴³ See for example Pina Nius Online. 2002. 'Solomon Islands: Armed gang rob ship in Honiara'. *Pina Nius*, 5th March, <<http://www.pacificislands.cc/pm22002/pinadefault.cfm?pinaid=3840>> (last accessed 6th March 2002).

⁴⁴ See Michael. Field. 2002. 'Solomon Islands Slipping into Anarchy', p.25.

Tarcisius Tara Kabutaulaka is from Guadalcanal. He stays abroad but is still close to Solomon Islands. Therefore, he has the opportunities to contribute to Solomon Islands affairs. This was mainly through doing consultation work, publishing articles and presenting conference papers. People inferred most of these inputs by Tabutaulaka to be IFM oriented because of a certain degree of bias. However, it was natural for him to be inclined to have some element of bias in his input because of his background as a Guadalcanal person.

John Roughan as a naturalised Solomon Islander could be seen as representing the civil society. Many of his articles written about the crisis appear to demonstrate the tone of civil society. There was no indication that he was trying to advance the interest of any of the militant groups. He was never publicly referred to as a spokesperson or adviser for any of the militant groups involved in the crisis. Most of his writings were plain and clear-cut. They focused on issues and questions about the two years crisis in Solomon Islands.

Andrew Nori a senior private legal practitioner, and senior partner in the Bridge Lawyer firm expressly revealed that he was a spokesperson, mediator and legal adviser for the Joint MEF/Paramilitary group. This meant that Nori: (1) acted on instructions; (2) was the bargaining power; and (3) a lawyer. In other words, Nori was supposed to (1) speak when instructed (2) be neutral and have a clear conscience for a fair bargain (3) act on instructions, maintain a lawyer client confidentiality, privilege, and give advice in accordance with law.

The three prominent Solomon Islanders have various roles to play in the conflict but the issue of their degree of involvement is the subject of debate. This issue is something for appropriate State powers and institutions to determine according to law. However, for purposes of analysis it seems that out of the three people I have focused on, Nori's association with the militants during the two years crisis is the most interesting. His input to the crisis seemed tremendous in terms of how closely and openly he interacted with the militants compared either to Tarcisius Tara Kabutaulaka or John Roughan.

From media reports as well as press statements made by Nori there are contradictions between what he claimed to be and what he actually practiced. If one looks at the SIBC media archive, they seem to show that the extent of Nori's involvement with MEF/ Paramilitary could be questioned. Take for example the coup. Nori claimed that he only knew of the coup on 3 pm, 4 June 2000. This was contradictory because from the People First Network Board he stated *'had it not been for his involvement the coup would have happened much earlier'*.⁴⁵

Another striking analogy here was that after a long argument with the Joint MEF/ Paramilitary group on 4 June, Nori came live on SIBC the next day, 5 of June. He declared a joint Paramilitary and MEF takeover of the government by acting as the spokesperson. However, as the mouth piece for the MEF/Paramilitary was the declaration lawful? Under what authority did Nori have the right to do this? Is this the fair way of bargaining with the State? Was the way the coup was carried out, based on Nori's legal advice?

If so, was it in accordance with the law? It was impossible to reconcile facts that establish that Nori had a long argument with the Joint MEF/ Paramilitary group a few hours before the coup and then afterwards he declared a military takeover with the titles he claimed to have. Nori as a senior practising lawyer must have worked out how he would declare a Joint MEF/ Paramilitary group takeover but whether that was within the rule of law was questionable.

⁴⁵ Andrew.H Nori. 2002. 'I was worse than you sasi'. *People First Net*, 17th January, <http://www.peoplefirst.net.sb/message_board/outline_forum_replies_detail.asp?IDCorr> (last accessed 22nd January 2002).

Furthermore, Nori in a press release before the coup stated that he was not going to associate himself with criminals.⁴⁶ Again, this was contradictory because being a spokesperson or legal advisor for the Joint MEF/ Paramilitary group showed that Nori was associating with an unlawful society/ group.⁴⁷ The Joint MEF/ Paramilitary group was not an established institution by law unlike the Royal Solomon Islands Police Force.⁴⁸

From these fact scenarios it seemed that Nori contradicted what he claimed to be and what he was publicly seen to have practised. It appeared his involvement was very influential despite the fact that he publicly denied any allegiance to an unlawful society. By associating himself with Joint MEF/ Paramilitary operations, it could be argued that Nori was part of an unlawful society. Take for example, the television release in June 2000 of Nori seen in the jungle with the MEF militants. What was he doing in the jungle with an unlawful group?

Based on these documentations, media reports, Nori's press statements, and SIBC news reports it could be presumed that Nori was part of an unlawful society. Therefore, the issue of whether he breached the Professional Conduct Rule⁴⁹ or Penal Code could be raised. Critics might ask why Nori was not prohibited from practising?

In fact, at one stage, Nori and Leslie Kwaiga were refused practising certificates because of their association with an unlawful society. However, after an application to the Court by Nori and Kwaiga this was reinstated. Their reinstatement to the bar was due to a technical defect in processing the proceedings to dis-bar them. Proceedings should have been done first by the Bar Association before the Registrar could take further actions to suspend their practising certificates.

However, the bottom line is who is involved? There were leaders, police officers, as well as Malaitans and Guadalcanals who were either directly or indirectly involved in the two years crisis. Kabutaulaka was publicly known as a spokesperson for the IFM during the TPA. Throughout the crisis, he was very vocal but there was no substantial evidence to show how closely he was involved with an unlawful society. On the other, John Roughan's position in the crisis seems neutral. For Nori, it was a tug of war. He publicly claimed he was not involved with an unlawful society but acted only as a spokesperson, mediator and legal advisor.

The issue of who is involved is a task for appropriate State powers and institutions to determine. It is important that those who are involved either as perpetrators, conspirers or catalysts during the two years crisis in Solomon Islands to be held accountable. While the Amnesty Act 2000 provided immunity for those who were involved in the two years crisis, particularly militants, those that were responsible for threatening State powers and institutions as well as violating human rights should be held responsible.

With the limited formal, educational background that most of the militant group members had it appeared most of them acted on instructions. Therefore, they should not be entirely blamed for the deteriorating law and order problems in Solomon Islands. The leaders or those who masterminded the militant appraisals should be held responsible. This is an issue, which appropriate State powers and institutions will have to determine. Justice could only be achieved depending on how effective and efficient State powers and institutions function in resolving the unconventional approaches, unlawful killings, torture and abductions witnessed during the past years.⁵⁰

⁴⁶ Solomon Islands Broadcasting Corporation <http://www.commerce.gov.sb/Others/sibc_news_june2000.htm#> (last accessed 25th January 2002).

⁴⁷ See Penal Code, s 66 (2) (Cap 26).

⁴⁸ Police Act (Cap 110).

⁴⁹ See generally Legal Practitioner Act, Subsidiary Legislation, s 4 (Cap 16).

⁵⁰ See generally Amnesty International 'Solomon Islands: A Forgotten Conflict' (Amnesty International, 7th September 2000) <<http://www.amnesty.org>> (last accessed 7th April 2002); John Roughan 'Murder –

The final say – the court

In the final analysis, it should be mentioned that according to the High Court ruling (Civil Case No. 195 of 2000) the coup is still not legally justified. There was nothing said in the case that explains whether the coup was legitimate or lawful. The trial had nothing to do with the truth. The High Court trial devoted its hearing mainly to substantive law and procedure (technicalities).

The High Court ruling in *Bartholomew Ulufa'alu v Attorney-General*⁵¹ had nothing to do with the coup. That case concerned the validity of the election of the Prime Minister, Manaseh Sogavare. The High Court in that case was not asked to address the legitimacy of the coup. It held a long discussion about the coup but most of what it dealt with were preliminary issues on 'non-justiciability', 'locus standi' etc in order to strike out Ulufa'alu's application for redress. There was no legal endorsement for the coup. It was not one of the issues in that case.

On that premise, it could still be argued that the coup has yet to be legally endorsed by a court of law, an organ of the State. Only those that were involved in the two years crisis could be in a better position to reveal to the public the truth about why the crisis/ coup happened, who was responsible, what happened etc. The *Bartholomew Ulufa'alu v Attorney-General* case is on appeal thus, there is not much to say about it at this stage. However, after the two years of crisis in Solomon Islands one thing was definite: the functions of State powers and institutions have become mixed.

Conclusion

The two-year crisis will remain an important landmark in Solomon Islands history. Where did Solomon Islanders go wrong as they tried to maintain the democratic relationship between the State and citizens? The quest for peace continues but justice can be achieved only if State powers and institutions function effectively and efficiently within the rule of law to deal with the problems faced by citizens and uphold the true notion of democracy.⁵² It is important for citizens not try to shift the blame for what they cause through their own weaknesses. Solomon Islanders must admit that they once failed in the process of developing democracy in Solomon Islands.

There should be a process of trying to renew the trust between citizens and the ensuring of an effective function of State powers and institutions. There is no time to waste by blaming others for the gradual mixing up of the functions of State powers and institutions as well as continuing to rely on government handouts in the form of compensation for actions that the State should not be held responsible. Instead, every Solomon Islander should try to help one another to understand the true idea of democracy and help in the process of rebuilding Solomon Islands to where everyone were once proud of "THE HAPPY ISLES!" In addition, the case of compensation payments, any excessive payments should be returned to help those who have missed out. Only then, can Solomon Islands begin to move ahead as a democratic nation⁵³ instead of in circles like that fisherman in the waters around the harbour of Honiara.

execution shatters the Establishment' (ANU, 13th July 2000)
<<http://rspas.anu.edu.au/melanesia/solomonsarticles.htm#1>>
(last accessed 12th March 2002).

⁵¹ (9th November 2001) High Court of Solomon Islands, Civil Case No. 195 of 2000, Palmer ACJ.

⁵² See generally Frank Short CBE. 2002. 'The Truth Is Critical To Lasting Peace and Reconciliation In Solomon Islands'. *Pacific Islands Report*, 1st April, <<http://pidp.eastwestcenter.org/pireport/2002/April/04-02->> (last accessed 14th April 2002).

⁵³ Constitution of Solomon Islands, s 1 (1).

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