

The Effect of Land policy on Foreign Direct Investments in the Solomon Islands

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1. Introduction

Land policy is a factor, which greatly affects the flow of foreign direct investment (FDI) in the South Pacific. Foreign direct investment occurs where an enterprise from one country (home) engages in economic activities in the economy of another country (host).^[1] Where land policy is transparent and security of tenure is guaranteed, FDI flows in at a higher rate. The opposite seems to hold true for countries where land policy is clouded and where there is uncertainty about the security of tenure.^[2] This general rule applies to the Solomon Islands just as it does to any other South Pacific Island country. The land tenure and policy in the Solomon Islands has hindered the flow of FDI to a great extent. This paper attempts to highlight some of the ways land tenure and policy are working against FDI. It then proceeds to briefly describe the land policy implemented in the Solomon Islands since the Protectorate was established in 1893 and highlight the obstacles these policies created to FDI and other economic developments. In the end, some reform suggestions are supplied with the aim of enhancing land policy and hence improving the climate for FDI.

2. Two major obstacles to FDI establishment

As regards land tenure and policy in the Solomon Islands, the foreign investor faces two major obstacles when attempting to establish an enterprise.^[3] These are (i) identifying the rightful people to deal with concerning land and (ii) security of title to land. These two problems are particularly true for customary land. Where the landowner is the Crown, the first problem of ascertaining the land owner may be eliminated, but the second problem still bedevils foreign investors with the same force.

(i) Difficulty of ascertaining land holding entity

To the foreign investor, the process of identifying landowners is fraught with difficulties. Even where landowners are identified, the task of finding the right person to deal with is still an onerous one. Most foreign investors are used to dealing with individuals as land holding entities and a central land department where most records are kept. When such foreign investors arrive in the Pacific, they discover (often to their detriment) first that the lands department has scant information about the land holding groups in the country. Second, they also find out that they have to take upon themselves the task of identifying the appropriate landowners and negotiate a commercial agreement. ^[4]

Most often, the foreign investor is told that land is communally owned. In Fiji for instance, land is held by the 'mataqali' or in the Solomon Islands by the 'tribe.' However, this is not simple, as it might seem. In the Solomon Islands, while land might be owned by tribes, it is also well known that families as well as individuals hold parcels of land. The Allan Commission established to record customary land during the 1960s testified to this fact. In particular they found the "line (descent group) as the primary unit of landholding in most parts of Solomon Islands, but found a progressive breakdown to individual tenure in

almost all coastal areas." [5] This fact only adds another level of difficulty of identifying land-holding groups. [6] In the process of identifying the landowners, the foreign investor might need to travel to the island where they intend to establish operation. [7] In a country like the Solomon Islands, where most of the natural resources is located on customary land, [8] trips to outer islands is not out of the ordinary. This further adds to difficulty and cost of establishment. A classical example of the difficulty in identifying landowners or the right landowners to deal with land is the case of the North New Georgia Timber Corporation (Western Province). The aim of setting up the corporation was "to promote the utilisation of the timber resources of North New Georgia for the public benefit." [9] Proposals for setting up the corporation was first launched in 1972, but for six years legal proceedings failed to establish the customary land owners and those who would be entitled to speak on behalf of the corporation. The corporation was finally set up in 1979. This delay meant operations of Levers Pacific Timber on New Georgia [10] had to be put off. [11]

(ii) Security of land title

The second problem has to do with the security of land title. Even where a representative is identified and a land transaction sealed, and title transferred, security of that land title cannot be guaranteed. First of all, since it was a customary transfer, secondary rights [12] and usufructory rights [13] would normally still apply. If the land was conveyed by the male line representative, the members from the female lineage would still claim secondary rights over the land notwithstanding the complete sale made by the representative from the male lineage. Additionally, members might still claim usufructory rights such as right to fetch water or fruits. This creates a fertile environment for disputes to grow.

Another issue that undermines the security of title is the possibility of disputes. There are usually two types of disputes. Boundary disputes and disputes regarding the locus standi [14] of land representatives. There are other kinds of disputes involving substantive rights. [15]

In the Solomon Islands, as far as boundaries are concerned, only 13% of land is registered, the rest is regulated by custom. [16] The remaining 87% held under customary law is not surveyed, recorded or registered. The boundaries of those lands are only recorded by oral tradition and marked by natural features such as rivers, mountains, rocks, trees or shrines. Though customary owners may claim to know their boundaries well, in practice it is difficult to be certain about the boundaries because these landmarks often change as a result of natural elements. Examples of boundary disputes abound in the Solomon Islands – in and out of court. Brown interestingly notes that "a browse through both the Solomon Islands Law Reports and judgements available on USP's Web Site drives home the dominance of land as a central motif of litigation." [17] Perhaps it might be added that the majority of the land cases found on the USP Web Site concern boundaries.

For the sake of illustration, a few examples will be highlighted. In 1981, Levers Pacific Timber (a subsidiary of Levers Brothers UK) suffered huge losses when it had a violent confrontation with landowners at Enoghae in North New Georgia. A similar incident occurred in 1995 when the massive government-logging project on Pavuvu (Central Province) was brought to a standstill in 1996. [18] Similar disputes were tried in court. The case *Anjo v Allardyce Timber Company and Attorney General* [19] is a classic example of the complications that may arise in customary land transactions. In this case the Defendant Company (Allardyce Timber Company) was operating under a timber rights license granted by the Commissioner of Forests. Due to an inconsistency in the actual boundaries and those that appear in the license, the Defendant Company entered the plaintiff's (Anjo) land. The plaintiff successfully brought proceedings to stop the Defendant Company from further trespassing into the plaintiff's land. [20] This resulted in an injunction by the court, which interrupted the operation of the bona fide foreign developer.

The examples highlighted above are few examples of how land tenure and disputes can be a stumbling block for establishing and operating foreign enterprises in the Solomon Islands. The net effect of this whole land game is a reduction in the flow of FDI into the Solomon Islands.

3. Land policy and reform

Prior to colonisation, customary law regulated land tenure. In 1893 the Solomon Islands was declared a protectorate of the British. Since then, land policy was a blend of foreign concepts as well as local principles. The land policy since the protectorate is complex but can be categorised in four [21] phases. These are categorised as such depending on the dominant government ideology. The four phases will be outlined below and the reforms that have been attempted during these phases will also be highlighted. At the end, some suggestions for further reform will be made.

Phase one – Waste Land period (1893 – 1920s)

During this period, the dominant theme of land policy was alienation of native lands to establish foreign companies. This was necessary to finance the new protectorate. In addition to acquiring land for foreign companies, the colonial government was also converting land to its use. Such alienation was done by means of Kings' (or Queens') regulations. [22] The first land transaction was done pursuant to Kings Regulation No. 4. This transaction alienated large tracts of land to Pacific Islands Company Ltd for the development of coconut plantations. This parcel of land was later sold to Levers Solomons in 1908 when the Pacific Islands Company closed down and left the Solomons. [23] Similar Regulations now commonly known as 'waste land regulations' were enacted in 1900, 1901 and 1904. [24] These regulations further alienated land from the natives to the foreigners. In 1914, the Land Regulation stopped further purchase of native land by foreigners. In the same year the Phillips Commission was tasked to hear land claims which were alienated under the waste land regulations or transferred under the leases made under the various other regulations. [25] The first phase was characterised by dissatisfaction from customary land owners. This was because they either received little or no payment for their lands that were alienated. Land policy then was imposed by the colonial power in the pursuit of achieving economic reliance, which was pressed on to the economy by the British government.

Phase two – Redistribution period (1920s – 1940s)

During this period, land that was wrongfully acquired during the waste land period was returned to native owners after adjudicating. The adjudicating body was the Phillips Commission. [26] This Commission was set up in 1914 but started its work in 1919 due to the First World War. [27] Judge Phillips heard 55 claims against land alienation and returned large tracts of land either because there were defects in the original conveyances, wrong definition of boundaries or because the waste lands were found not vacant. [28] During this period, the colonial administration was sympathetic towards local sentiments because it was realising such dissatisfaction must be quelled if economic development was to proceed.

Phase three – Land registration period (1940s – 1970s)

During this period, the catch words for land policy was land registration. The recommendations for land registration was made by the Allan's Commission which was set up in the late 1940s but did not report until 1957 due to the Second World War. Land registration was undertaken pursuant to the Land and Titles Ordinance (1959). In this period, land registration was sporadic covering scattered parcels of land over an indefinite time and unpredictable period. [29] Nine years later, in 1968, the Lands and Titles Ordinance was amended to provide for a systematic settlement (registration). Systematic registration occurs in a "methodical manner and in an orderly sequence, district by district, village by village, block by block,

parcel by parcel, throughout the territory concerned." [30] This system of land registration can be contrasted with the sporadic system where registration was done on scattered parcels over an unpredictable time span. Between 1965 and 1978, thirteen schemes were implemented. [31] The total area registered under the land settlement was 6,990 hectares or 0.25% of the total land area of Solomon Islands. Thirty two percent of the titles were held in joint ownership, 17% ownership in common and individuals held the remaining 50%. The systematic settlement scheme was dissatisfactory to the customary landowners and only helped to raise suspicion about the intention of the government for undertaking such a massive task.

A third major development regarding land policy occurred during this period. This involved the establishment of the Local Court and the Customary Land Appeal Court (CLAC). The Local Court was established under the Local Courts Act (1942), while the CLAC was established under the Land and Titles (Amendment) Act (1972). The establishment of these courts was important as they assume the role of adjudicating. This was formerly done by the Land Commissioner. [32] The Courts' role in keeping land records was important in land administration. During this period also, freehold titles to land held by non-Solomon Islanders were automatically converted into 75 years leases from the government, subject to the foreigner developing the land. [33] Land on the Guadalcanal plains where Solomon Islands Plantations Limited is situated is the result of such an arrangement. [34]

Phase four – land recording period (1980s – present)

During this period, the government has not actively pursued any land policy. The situations in the previous period are basically carried forward. It has caused some difficult experiences for both native landowners and foreigners but the government has not prioritised these issues. History has shown that such issues are very complex and difficult to tackle thus the government has adopted a 'hands off' policy. The only conspicuous move came about in 1994 with the enactment of the Custom Land Records Act (Cap 132). This legislation merely requires Landholding groups to voluntarily record their land boundaries. It has however failed to achieve what it aimed to achieve because the massive financial input it demands from landowners is a disincentive. The lack of manpower to operate the recording machinery is also another drawback.

4. Addressing land reform today

Since the protectorate, land policies had hindered major economic developments. Many potential foreign investment projects never got off the ground because the cost of acquiring land and establishing the investment has been too high (financially or otherwise). One observation that can be made from the policies implemented to date is the requirement by native people that certain valuable attributes of the customary land tenure be preserved. In today's world, economic development is an equally important aim to pursue. It is impossible to discard either goal. A compromise must therefore be devised. The following are some suggestions made in light of the history of dissatisfaction over land policy as well as the need to bring in FDI.

(i) Customary land must be returned to customary owners

Today, the government holds some customary land but still hasn't paid for them. It also holds land for which rent has not been paid. These were land that were converted into crown land from foreign investors in the 1970s. These lands must be purchased or alternatively, they must be returned to the customary owners. This includes all the freehold estates converted to perpetual estates and rented out by the government during the 1970s. [35] Where these lands had been leased to foreign companies, the government must first properly acquire the land and then lease it to foreign enterprises. Where the government is unable to do this, then the company must enter into arrangements with the local landowners

about the proper acquisition of the land. This situation has caused tremendous dissatisfaction to the local landowners since the days of the colonial administration and also caused insecurity for foreign developers. It is suggested these outstanding land issues must be settled in order to create a conducive environment for FDI or any development for that matter.

(ii) Establishment of land trusts or agents

This is necessary because in the Solomon Islands land 80% of the land is still communally owned. Establishment of land trustees or agents might go some way towards alleviating the problem of identifying people to deal with land. The Native Land Trust Board in Fiji, established by the Native Land Trust Act, [36] performs this function on behalf of the native land holding tribes. Similar bodies were also set up in the New Hebrides. [37] There are a number of methods of doing this but the fundamental requirement is that the land representative must be clearly identified with a clear jurisdiction. In the Solomon Islands, a similar trust board was established in 1959 by section 9 of the Land and Titles Ordinance. This trust board was unsuccessful because its main purpose was to manage vacant land which according to customary law is non-existent. The Board soon disappeared into oblivion. Today however, the role of such trustees or agents must clearly be for the purpose of managing customary lands for the benefit of custom owners. Legislation must spell out how the benefits are to be distributed to benefit the landowners. This will avoid the problem faced in Fiji where landowners only receive a small percentage after administrative costs are deducted. Legislation must also clearly spell out the procedure for obtaining decisions. It is suggested that such decisions must only be reached through consensus. [39] Similar provisions which appear in the Forests Act (1998) or the Land and Titles Act could be modified to fit that purpose.

(iii) Voluntary registration

Land holding groups must be encouraged to take an active role in the registration of their customary land. It could also be made a condition of any foreign investment that land must be registered. This has already been provided for under the Customary Land Records Act (1994). The low success rate of the land recording program is because of the lack of incentive by both customary owners and administrators. The government can subsidise such registration to ensure that interested parties can register their land.

(iv) Establishment of a Lands Tribunal

This land tribunal will merge the land jurisdiction of the existing local court and the entire jurisdiction of the Customary Land Appeal Court (CLAC). It will be able to hear matters relating to customary law at first instance and also on appeal. However, like the Lands Tribunal set up for Vanuatu in 2000, custom areas which have similar customary law must be established. Knowledgeable people from these custom areas will sit to hear land cases relating to their custom areas. Such tribunal must be independent and impartial to gain the confidence of local landowners. It is hoped that such a land tribunal will take over the role of the highly ineffective Local Court and Customary Land Appeal Court. [39]

5. Conclusion

In the Pacific, land is one of the major resources. The land tenures are very complex and the policies implemented by governments often do not help reduce such complexities. This poses a great difficulty for FDI to flow into the country. In this modern era, there is no doubt, that economic development is an important pursuit of Pacific Island governments. In the Solomon Islands, the land tenure and policies enforced since the Protectorate period are unsatisfactory and hinder the flow of FDI. It is suggested that land reform in order to identify landowners, register land and create an efficient land adjudicating tribunal is necessary for creating a conducive environment for FDI.

ENDNOTES

[1] Kenwood A and Lougheed A (1990) *The Growth of the International Economy 1820 – 2000*. Routledge, London p 253

[2] See the following, though this list does not purport to be exhaustive. Report of the Workshop on Land Tenure and Rural Development for the Countries of the South Pacific (Tonga 1984), USP (1994), Crocombe R. *Customary Land Tenure and Sustainable Development: Complementarity or Conflict*, SPC and USP (1995), Lakau A, *Customary Land Tenure and Economic Development in Papua New Guinea in Land Issues in Crocombe and Meleisea, Land Issues in the Pacific (1994) pp 79 - 84*, Overton J, *Land Tenure and Cash Cropping in Fiji in Crocombe and Meleisea, Land Issues in the Pacific (1994) pp 117 – 132*, Hooper W, *Development Issues and Traditional Tenure in Tokelau in Crocombe and Meleisea, Land Issues in the Pacific (1994) 191 - 204*, Isala T, *Land Tenure and Development Dollars in Tuvalu in Crocombe and Meleisea, Land Issues in the Pacific (1994) 157 – 169*, Pierre J *Vanuatu: New Directions in Land Development Policies in Crocombe and Meleisea, Land Issues in the Pacific (1994) 89 - 94*, see also various articles in Acquaye, B and Crocombe, R. (eds) *Land Tenure and Rural Productivity in the Pacific Islands*, FAO, SPREP, IPS (1984), See also generally the following: Crocombe R, *Land Tenure in the Pacific*, USP, (1987) and Crocombe R, *Land Tenure in the Atolls*, IPS (1987).

[3] Not all the FDI that entered the Solomon Islands are land based but a very high percentage involve some land transactions. Where there is a joint venture with a local partner who already has title to land, this problem might be reduced. However, this does not mean that the enterprise is now land-problem free. Issues concerning land might still be encountered when the business wants to expand or where the business of the joint venture involves extraction of raw material from land.

[4] An example of this occurred in 1999. At the beginning of 1999, a Malaitan Company, Lagwaeano Logging and Sawmilling Company entered into an agreement with an Asian Log Buying Company – Herea Dae Company to fell and purchase round logs. Although the timber rights gave the Lagwaeano Company rights gave the Lagwaeano Company the right to sell logs, there was still grave dispute over the ownership of the land. Mr. Tadjodine, Herea Dae’s representative in Honiara had to spend a lot of time and money to fly between Auki and Honiara to try and settle the internal land disputes. This is just another example of the difficulty foreign investors face when trying to identify owners and then entering into a commercial agreement. The operation was called to a halt by the end of 1999.

[5] See Lamour P, *Solomon Islands: Customary Land Registration Policy in Acquaye and Crocombe (1984) Land Tenure and Rural Productivity in the Pacific Islands*, USP at 71. Allan was of the opinion that these breakdown into individual tenure should be encouraged because it allows for the introduction of cash cropping especially permanent tree crops.

[6] This was the case even for Solomon Islanders who were involved in the Land Settlement Scheme in the 1970s. Sometimes where the legitimate person is identified, his involvement might be restricted because of language barriers or the lack of understanding the government policies.

[7] In the Solomon Islands this is almost always the case. Logging companies for instance must travel to the forest rich parts of the Solomon Islands. Often the headquarters are located in Honiara, Auki or one of the Provincial capitals but the operations normally take place outside the urban areas. Up till now, such operations have taken place on the Island of New Georgia (Western), Malaita, Guadalcanal, Kolombangarra, and Choiseul.

[8] In the Solomon Islands, customary land comprises 83% of the total land area. See Ben W (ed) (1979) *Land in Solomon Islands*, USP, Suva, see table on p 249

[9] See Lamour P, *The North New Georgia Timber Corporation in Lamour, Crocombe and Taungenga*

(eds) (1981) *Land, People and Government: Public Lands Policy in the South Pacific*, USP, p 136

[10] This is a subsidiary of Unilevers, a British multinational corporation heavily involved in the Solomon Islands colonial economy.

[11] See Lamour P, *The North New Georgia Timber Corporation* in Lamour, Crocombe and Taungenga (eds) (1981) *Land, People and Government: Public Lands Policy in the South Pacific*, USP, p 136

[12] Secondary rights mean the rights of a person who is a secondary land right holder. A secondary land right holder is a person who would not be directly entitled to inherit rights from the land but still has rights to use the land. Secondary rights include the right to cultivate, take water, pick fruits and on some occasions, even live on the land.

[13] Usufructuary rights are lesser rights and they include the basic rights of picking fruits or wild vegetables, coconuts, water and right of way.

[14] In the customary law sense.

[15] For example the claim of a secondary right holder to enter and pick fruits on land.

[16] See Lamour P, *Solomon Islands: Customary Land Registration Policy* in Acquaye and Crocombe (eds) (1984) *Land Tenure and Rural Productivity in the Pacific Islands*, USP, p 68. The 13% registered land includes both government land and customary land.

[17] Brown K, *The Language of Land: Look Before you Leap*, *Journal of South Pacific Law*, Article 2 of Volume 4, 2000, http://www.vanuatu.usp.ac.fj/journal_splaw/Articles/Brown2.htm

[18] These two incidents was cited by Kabutaulaka T (2000) *Beyond Ethnicity: The Political Economy of the Guadalcanal Crisis in Solomon Islands*, State, Society and Governance, ANU. Canberra. Australia.

[19] *Anjo v Allardyce Timber Company and Attorney General*, Civil Case No. 34 of 1996, High Court of Solomon Islands.

[20] See also the following Solomon Islands cases which discuss the complications that arise regarding customary land ownership, transfer and development on land. *Hyndai Timber Co. & Others v Attorney General and Others* HC: cc 79 of 1979, *John Sina & others v Allardyce Lumber Co. Ltd and others* HC: cc 327 of 1994 Unreported Judgement, *Jack Alongolia v Patrick Maekira with two other cases*, HC: Land Appeal Case No. 1, 2 and 3 of 1991, Unreported Judgements, *Igolo v Ita* [1983] SILR 56, *Lilo v Ghomo* HC: ac 14 of 1981.

[21] Lamour, P makes a similar classification of the colonial period into three categories: the early, middle and the late colonial periods. His focus was however on the economy as it affects land policy as opposed to land policy as it affects the society, including the economy. See Lamour P, *Solomon Islands: Customary Land Registration Policy* in Acquaye and Crocombe (eds) *Land Tenure and Rural Productivity in the Pacific Islands*, USP, p 91.

[22] Ruthven D, *Land Legislation from the Protectorate to Independence* in Ben W (1979) *Land in Solomon Islands*, IPS, p 239.

[23] See Benneth (1989) p and Lamour P, *Solomon Islands: Customary Land Registration Policy* in Acquaye and Crocombe (eds) (1984) *Land Tenure and Rural Productivity in the Pacific Islands*, USP, p

69.

[24] See Ruthven, Land Legislation from the Protectorate to Independence in Ben W (1979) Land in Solomon Islands, IPS, p 242

[25] See Ruthven, Land Legislation from the Protectorate to Independence in Ben W (1979) Land in Solomon Islands, IPS, at p 245

[26] The Commission was named after the Commissioner, Judge Phillips. His predecessor however, was Commissioner Captain Alexander who dealt with 20 claims before he departed in 1920. See Ruthven D, Land Legislation from the Protectorate to Independence in Ben W (ed) (1979) Land in the Solomons, USP, at p 245

[27] Ruthven D, Land Legislation from the Protectorate to Independence in Ben (ed) (1979) Land in the Solomons, USP, at p 245

[28] See Ruthven D, Land Legislation from the Protectorate to Independence in Ben W (1979) Land in Solomon Islands, IPS, p 245

[29] See Lamour P, Solomon Islands, Customary Land Registration Policy in Acquaye and Crocombe (eds) (1984) Land Tenure and Rural Productivity in the Pacific Islands, USP, at 81.

[30] See Lamour P, Solomon Islands, Customary Land Registration Policy in Acquaye and Crocombe (eds) (1984) Land Tenure and Rural Productivity in the Pacific Islands, USP, at 81.

[31] See Lamour P, Solomon Islands, Customary Land Registration Policy in Acquaye and Crocombe (eds) (1984) Land Tenure and Rural Productivity in the Pacific Islands, USP, at 74

[32] See Ruthven D, Land Legislation from the Protectorate to Independence in Ben (ed) (1979) Land in the Solomons, USP, at p 245

[33] This was done pursuant to the Land and Titles Ordinance in 1977.

[34] See Scheffler and Lamour, Solomon Islands: evolving a new custom in Crocombe R (1987) Land Issues in the Pacific, USP p 317

[35] See discussion on Phase Two above.

[36] Cap 134, Laws of Fiji

[37] Paterson D, Current Issues Relating to Customary Land – National and Personal Heritage or Heriditas Damnosa? (Unpublished)

[38] Consensus is the traditional method of reaching decisions in most Solomon Islands societies. It is suggested that if this traditional principle is used in reaching decisions, a lot of unnecessary dissatisfactions will be avoided.

[39] See Pickering S, A Proposal to Establish a Land Tribunal in Vanuatu, Journal of South Pacific Law, Working Paper No. 4 of Volume 1, 1997, USP Law School Web Site <http://www.vanuatu.usp.ac.fj>

