



Submission No 27

**Inquiry into Australia's aid program and its impact on human rights and
security in the Pacific**

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Joint Standing Committee on Foreign Affairs and Trade

Inquiry into Australian Aid in the Pacific

Securing rights under customary land and sea tenure: a prerequisite for sustainable social and economic development in Melanesia

Submission to the Human Rights Sub-Committee
by Graham Baines

Summary

Customary land tenure has long been treated by development assistance agencies solely as an impediment to economic progress. **Pacific 2020** spells out a more realistic and sensitive approach, though it still falls short of full recognition of the wider social and economic values of Melanesian tenure systems. Insensitive interventions could trigger land disputes on a scale that could lead to the instability that Australian aid is expected to pre-empt. AusAID needs to translate the direction indicated by **Pacific 2020** into practical actions that protect Melanesian land rights while seeking to help Melanesians to adapt their tenure systems to modern needs. To do this it will be necessary first to support Melanesian governments in gaining a better understanding of the detailed functioning of tenure systems as a basis for ‘stabilising’ these in a way that protects the basic human right of Melanesians to their land and sea areas — before venturing to introduce innovative ways to make some of that land or sea available for development.

Melanesia, with a Solomons focus

Though its focus is the Solomon Islands, this submission on Australia’s approach to interventions in customary land tenure in the Pacific can be read as relevant to all Melanesian countries. Four 2006 papers issued by AusAID: **Solomon Islands Country Strategy 2006-2007**, **Australian Aid: Promoting Growth and Stability**, **Pacific 2020: Challenges and Opportunities for Growth**, and the **Pacific 2020 Background Paper: Land**, were examined to ascertain the Australian approach to this topic. The Solomon Islands Country Strategy is weak, uninformed, and hesitant in regard to customary land tenure. If the approach outlined in **Pacific 2020** is to become the basis for the next Solomon Islands Country Strategy and for similar initiatives elsewhere in Melanesia then there is no need here to labour the shortcomings of the current Country Strategy.

Building on Pacific 2020 principles

If it is to be built on principles spelled out in **Pacific 2020**, the next Solomon Islands Country Strategy will shed the term ‘Land Mobilisation’, used in its predecessor. The vigorous pursuit of ‘land mobilisation’ by the World Bank in PNG led to public resentment and a dangerous social and political situation. The idea of land mobilisation, implying a forcing type of reform that favours individual entrepreneurs over others, is inconsistent with AusAID’s claim (**Solomon Islands Country Strategy 2006-2007**) that ‘Australia will seek to embed ‘do no harm’ principles across its program to minimise any negative impacts of its assistance.’

The idea that ‘all new activity designs and/or activities funded by AusAID will be underpinned by a ‘do no harm’ framework’ is excellent. Yet, to be truly effective the ‘do no harm’ criteria must be applied at the concept phase; not only after an activity, project or programme has been decided and advertised.

My many years of experience working with Melanesians in Fiji, PNG and the Solomon Islands at national, provincial and community levels in the context of natural resource exploitation and management lead me to support the **Pacific 2020** statement that: ‘Without change, current land tenure systems will become increasingly unworkable and irrelevant.’ The White Paper, **Australian Aid: Promoting Growth and Stability** makes this point, and adds a sensible caution: ‘The issue of land tenure in the Pacific, although controversial, cannot be avoided if sustained growth is to be achieved. However, any changes to land tenure will have to come from within the Pacific, and such changes will take considerable time.’ Such caution is necessary. Any undermining of customary land tenure systems through uninformed interventions risks social disruption, dispute and dispossession, with a real prospect of triggering social and political instability.

In formulating AusAID support policy in this area care needs to be taken to ensure the widest possible Melanesian stakeholder involvement. Some among their number are only too eager to impose a ‘solution’ rather than to work patiently with their rural kin to achieve an equitable outcome.

Access to resources is a basic right

Bearing in mind the strong economic development pressures applied by donors and by some Melanesian leaders, it remains to be seen whether the reformed direction expressed in **Pacific 2020** will be translated into practical interventions that focus first on securing the currently threatened basic right of each and every member of a customary landholder group to continue to have access to land and sea resources for subsistence purposes. A fundamental point of this submission is that there is a need to ‘stabilise’ the tenure systems and to ensure subsistence reserves of land and/or sea are set aside — before determining what is available for economic development.

Continued access to land and sea resources through the traditional rights that are a Melanesian’s birthright is a fundamental prerequisite for peace and prosperity. Secure access provides the basic resources for survival. The troubled recent years of conflict in the Solomon Islands, during which the formal government ceased to function and service delivery failed, was not accompanied by starvation. There was no call to donor agencies to rush food aid to the country. This was not necessary. A fundamental safety net was already in place; a system of food security based on customary land tenure. Traditional rights of access to natural resources made it possible to survive and, though there were food shortages, even refugees returning home from the conflict zone were provided for.

Improper allocation of customary land brings trouble

Disputes over land under customary tenure are widespread. Yet these are rarely over rights of access for subsistence. Mostly it is commercial potential or the prospect of some other personal reward that leads individuals to claim against their kin. The absence of written records of access rights, coupled with the manipulation of customary allocation procedures means that rights of access for subsistence are not secure. These

rights are also open to differing ‘readings’ because the principles on which they are based have always been flexible in interpretation. This has been a strong point of customary tenure administration in the past as it has made the system adaptable to changes in the context in which they operate. However, it has now become a major weakness as new interpretations inconsistent with ‘custom’ are introduced by individuals seeking to manipulate for personal gain.

The incidence and scale of manipulation has increased greatly since the mid 1980s in the context of a largely uncontrolled logging industry. Over two decades AusAID made commendable efforts to support those Solomon Islanders who sought order and control in this industry so as to maximise benefits to the country and to minimise environmental and social harm; notably, harm to members of landholding groups whose rights were being overridden. Sadly, the effectiveness of this support was largely negated by politicians and public officials linked with the loggers.

The uncertainty about, and the manipulation of, customary tenure in Guadalcanal was a key factor in the origin of the troubles that beset the country for several years. Non-Guadalcanalese were allocated customary land in Guadalcanal by individuals who ‘flexibly’ interpreted land allocation principles in ways never envisaged by ‘custom’. The failure of the national government to recognise the implications of this malpractice meant no corrective action was taken. The rest is history — a turbulent and bloody history.

Pacific 2020’s ‘Incremental Approach’

The **Pacific 2020 Background Paper: Land**, suggests a ‘middle ground’ option for customary tenure support interventions. *‘Land tenure reform need not seek to abolish customary tenures, but to build on them and encourage their adaptation to emerging needs and demands.’* It then ventures that *‘customary groups can be protected, while individuals are given the security they need for investment in land development.’*

This leads to an ambitious, but realistic, policy aim *‘to establish land rights that achieve a balance between encouraging economic growth and protecting the social fabric of Pacific communities.’* What is envisaged is a system for the administration of customary land that protects land ownership at the group level and land use at the individual level, and strengthens land rights, facilitates land dealings, and settles disputes effectively. It is pointing in the right direction – but will it be implemented in the spirit intended?

Some of the social empathy of the **Pacific 2020 background paper: Land** is missing from the **Pacific 2020** report itself. It is imperative that this background paper be used to inform the formulation of AusAID projects and programmes. The fact that the DFAT submission to this Inquiry makes no reference to customary land tenure and to the shift envisaged by **Pacific 2020** is disconcerting. Does this omission imply that the fundamental significance of this reform is yet to be fully appreciated by those charged with translating policy into programmes and projects?

If the human rights and food security of rural Melanesians are to be maintained with the support of Australian aid then a clearer, firmer and unambiguous policy statement on the value of customary tenure systems needs to be spelled out. Otherwise, ill-advised efforts biased towards privatization might still emerge from AusAID interventions, resulting in progress for a few but poverty for many.

The absence of stabilised tenure systems, with clearly written principles and rules through which land group members' rights are protected, is a major impediment to progressing Pacific 2020 policy. This must be addressed so as to provide a solid base for adaptations to accommodate economic development.

The difficulty is in the detail

To achieve the socially responsible and economically effective land administrative system envisaged means to record what has hitherto been regarded as 'un-recordable'. Before a tenure system can be 'stabilised' it must first be known and understood. Though there are shared features throughout Melanesia there are numerous tenure variants. Extending a suggestion made in the **Pacific 2020 Background Paper: Land**, this difficulty could be addressed by dealing only with tenure systems in areas with significant development potential. Still, there are formidable obstacles, and AusAID project and programme designers will require more information about these. This is likely to require a preparatory research element to any project/programme design that involves land or sea areas under customary tenure.

Establishing the principles/rules by which customary rights are acquired and invoked is difficult. The answers are not 'there for the asking'. Among landholders themselves there is confusion and uncertainty about how they inherited, and maintain, their rights to access certain land and sea areas. An investigation initiated in 2003 in the Solomon Islands Province of Santa Isabel¹ illustrates some of the difficulties. Though there was local agreement on some points, there was a range of different ideas on others. Factors that frustrated this effort to clarify and understand include:

- In the past, knowledge about land was not public. Only a few selected individuals were entrusted with this knowledge. They made decisions on who could use what land. Their authority to do this was not questioned, and their allocations were accepted;
- Today, the integrity of land allocation decisions by some 'land leaders' is questioned, while the status of the wiser leaders has been weakened and in some cases usurped;
- Some critical elements of traditional land histories have been lost as formal education has displaced that previously provided by 'custom' experts;
- Some people who know a little about customary land and sea tenure do not realize that their understanding is limited. When they speak in meetings or give evidence in land dispute hearings they create confusion;
- What is called 'custom' is always changing, so nowadays it is hard to determine what is old custom, what is ideas introduced from elsewhere and, from all this, what best fits today's situation; and
- Nobody, no matter how well informed in 'custom', was able to give a clear statement on tenure principles and rules. Allocation of land and sea is done according to case precedents and it seems that only by close examination of these can principles and rules be discerned.

¹ More detail on this exercise can be viewed at <http://pidp.eastwestcenter.org/pidp/its/baines2.htm>.

Customary tenure in relation to the Inquiry's focus

Firming up the **Pacific 2020** approach along the lines suggested above, and presenting customary land and sea tenure as central to social and economic development and to security will strengthen Australia's chances of success in **supporting peace-building and community development** in Melanesia. Investigation of the details of tenure systems will, by implication, involve examination of poorly understood traditional governance and its support needs and in this way will contribute to achievement of the objective of **good governance**. Tenure system principles and rules, once given formal sanction by the appropriate Melanesian institutions, will provide firm guidance for the resolution of land disputes. Bearing in mind the extent to which decisions in some local land courts are corrupted by money and by favouritism this would be an **anti-corruption** measure of great significance.