

CHAPTER 6

SOME SPECIAL ISSUES

Decentralisation is not just a matter of changing the exact locations of control over powers, functions, staff and/or other resources of government. It is also likely to involve, or at least to lead to, changes of policy, changes in the conduct of government activities, changes of personnel, and/or changes in the management of transferred assets. But it does not always do so.

The issues which give rise to demands for decentralisation, apart from demands for decentralisation for its own sake, are likely to vary between countries, between parts of a single country, and between socio-economic and/or other groups. So are the issues which arise when a decentralisation programme is under consideration or under way.

In Solomon Islands, the Special Committee on Provincial Government devoted close attention to demands for a variety of changes, including changes in land policy, in control over the schedules of ships on domestic routes and the discipline of ships' crews, in planning procedures, and in the regulation of internal migration. It also held lengthy discussions on aid policy, education, the availability of loans to Solomon Islands entrepreneurs, the entry of foreign religious missions into new areas, as well as the activities of a statutory body charged with developing a cattle industry in the country (the Cattle Development Authority). A separate chapter of its *Report*, Chapter 7, consisted entirely of recommendations on the first four issues – land, shipping, planning and internal migration (Solomon Islands 1979b: 71-80). Despite an earlier promise to include a chapter suggesting how the opportunities provided by decentralisation might be used (Solomon Islands 1979a: iii), the Committee ultimately left the other issues to be dealt with by the national, provincial and/or local bodies in which it recommended that the relevant responsibilities should be vested.

Working Paper 6.1 is included in this volume as an example of a paper on a special issue of the kind described, control of land. The importance of planning as an issue in decentralisation has been discussed in the introduction to Chapter 5, while control of shipping, the main means of internal communication and trade in Solomon Islands, was dealt with in the recommendations made as a result of considering Working Papers 3.1 and 3.2.

In the case of 'internal migration', the Committee began by asking what people concerned with the issue thought was at stake. In a Background Paper prepared towards the end of the Committee's nation-wide tour (Number 60, which is not reprinted in this volume), the following questions were prepared for members' consideration:

What are the main problems in internal migration, and how can they be solved?

for example –

- the ignorance/disregard of local customs by outsiders?
- the presence of unemployed people from other areas?
- the presence of squatters from other areas?
- the presence of people from other areas taking over jobs from local people?
- the establishment of businesses by outsiders, who thereby limit local people's economic opportunities?
- the transfer of customary land to outsiders?

Can some or all of these problems be solved by giving provincial governments . . . or other bodies certain powers. If so, which powers and who should enforce them? Will these controls in fact solve the problems that have led to demands for control of internal migration.

In its *Report*, the Committee suggested that internal migration had become an issue as a result of a number of distinguishable problems, and that solutions to these problems on an individual basis were fairly readily to hand. Moreover, members were reluctant to raise a potentially divisive issue which had been settled in the course of constitution-making, when Solomon Islanders had been guaranteed the right to 'freedom of movement', into, within, and out of, the country subject to certain qualifications (Solomon Islands 1978a: section 14). Some of the solutions which the Committee recommended could be derived from recommendations in other chapters of the *Report*, namely –

- national and provincial laws must be enforced by the police ... ;
- the national penal code should be 'opened up' to allow provincial governments to set penalties appropriate to the customs of their area ... ;
- provincial governments should be able to take over responsibility for land administration (and so decide priorities, within existing laws and policies, for lands work) ...;
- provincial governments should have the power to regulate certain uses of land, and certain dealings in customary land between Solomon Islanders, subject to specified safeguards ...;
- provincial governments should be able to prevent natural resource and resettlement projects in their areas (... which might attract people looking for work)...;
- provincial governments should be able to take over responsibility for staff carrying out labour functions in the province (and so can make sure that local people are aware of jobs) ... ;
- all adults within a local government area are eligible, and may be required to pay a basic rate ... (Solomon Islands 1979b: 79-80).

Other suggested remedies made specifically to deal with problems arising from 'internal migration' could be tried under existing law, namely –

- provincial and local governments should help people who have come from other places to form their own associations. The Associations should help deal with troublemakers from places their members come from, and help members learn and respect local customs;
- Associations should look after the welfare of their members, but not encourage them to set themselves apart. They should include local people as members, and to act as advisers;
- more use should be made by the Courts and in the penal code of repatriation against people who break national or provincial laws;

- provincial and local governments should be kept informed about the movement of people in and out of their areas (*ibid.*: 80).

When it came to control of land, the Committee revealed the very strong interest in the subject which seems to pervade politics in Solomon Islands, and, indeed, other Pacific islands countries. In Solomon Islands, almost all land and reefs are claimed by groups of people, disputes over land are common, and the acquisition of land by the government for development is a complex and sensitive process. In fact, many Solomon Islanders continue to believe that the portion of land – about 18 per cent of the land area – held by the government and expatriates has been wrongly acquired (Larmour 1979; Wolfers 1971: 9-11). Working Paper 6.1 outlines the issues with which the Special Committee was concerned.

The policies and practices which people in other countries hope to change through decentralisation are likely to differ from those in Solomon Islands. So are the issues over which there are the greatest differences between supporters and opponents of decentralisation. Language, religion and/or education are particularly likely to be sensitive issues in some countries. But, whatever the particular issues, the relative advantages and disadvantages of alternative courses of action are likely to vary according to local circumstances, and any option-papers that policy-makers might request will have to vary too, in order to take account of those circumstances.

WORKING PAPER 6.1

CONTROL OF LAND

A. THE PRESENT SITUATION

1. If any government (provincial or national) wants to control land in its area, it can do so in any of five ways:

- (i) own or lease land itself, and then develop it itself;
- (ii) own or lease land itself, and then lease it to other people to develop;
- (iii) make laws about how any land can be owned or leased;
- (iv) make laws about how any land should be developed (no matter who owns or leases it);
- (v) use licences, taxes or subsidies to change the way people own, lease or develop land.

2. Below are examples of each way of controlling land, and figures showing in each case how much land is now controlled in this way by national and provincial governments in Solomon Islands. The next part of the paper then sets out advantages and disadvantages of provincial governments controlling land in each way:

- (i) Own or lease land itself, and then develop it itself

for example,

Provincial government: buys land for an airfield, and runs the airfield itself.

National government: leases land for a cattle holding ground, and develops the holding ground itself.

Provincial governments control much less than 1% of all land in this way, mostly for provincial headquarters, airfields and clinics.

National government controls about 2% of all land in this way, mostly for forestry replanting, cattle holding grounds and towns.

- (ii) Own or lease land itself, and then lease it to other people to develop

for example,

Provincial government: owns land which it leases to a co-operative for a bakery.

National government: leases land for a rice project, and then leases the land to a private company to develop.

Provincial governments control only a few blocks of land in this way.

National government controls about 6% of all land in this way, mostly for timber cutting, leases to non-Solomon Islanders, mining, leases to Solomon Islanders in resettlement schemes, and leases of house sites in towns.

(iii) Make laws about how any land can be owned or leased

for example,

Provincial government: no examples.

National government: passed the *Land and Titles Amendment Bill* in 1977 which changed freeholds owned by non-Solomon Islanders into 75-year leases.

Provincial governments control no land in this way.

National government controls about 17% of all its land in this way. This is the land that is registered, and the ways it can be owned or leased are written down in the *Land and Titles Ordinance*. But there are no laws about the way the 83% of land which is under customary tenure can be owned or leased (except that only Solomon Islanders can own or lease it: how they do so is left to custom).

(iv) Make laws about how any land can be developed, no matter who owns or leases it

for example,

Provincial government: no examples.

National government: the *Town Planning Ordinance* says that houses cannot be built in an industrial area, whoever owns the land.

Provincial governments control no land in this way.

National government controls only a small percentage of land in this way, through the *Town Planning Ordinance* (which covers only Honiara), through the *National Parks Ordinance* (only one national park has been declared); and through an amendment to the *Land and Titles Ordinance* that prevents registered owners of agricultural land dividing it up for sale for house sites.

(v) Use licences, taxes and subsidies to change the way people own, lease or develop land

for example,

Provincial governments: use agricultural subsidies to encourage people to use certain land for cash crops, or business licences to prevent people using certain land for a store.

National government: uses grant to encourage cattle development in some areas, but not outside cattle zones.

Both provincial and national governments control all land in Solomon Islands in this way, but the controls are rather weak.

3. It should be noted that the percentages used above are approximate, and could be misleading because:

(a) *not all the land that is owned is used, or usable*

All customary land is now assumed to be owned by someone, usually a group, but only a small percentage of all land is being used at any time, and only 30% is reckoned to be usable. Of alienated land (owned by non-Solomon Islanders until 1977), only about one-third was ever used, and about two-thirds are reckoned to be usable.

(b) *there are big differences between provinces*

for example,

- only 35% of the land on Isabel is customary land, but 90% of the land is owned by Solomon Islanders (because much of the land on Isabel was registered in the early 1970s so its owners could sell the timber on it);
- 98% of Malaita is customary land;
- 85% of Western Province is customary land. Of the rest –
 - 12% is still owned by Solomon Islanders,
 - 3% is owned by some Gilbertese settlers,
 - 85% is owned by government (three-quarters for forestry);
- 78% of Central Islands Province is customary land, and almost all the rest is owned by government, either on lease to Levers, or for mining on Rennell.

(c) *the amount of land owned by government is changing rapidly*

- it increased by 35% at the end of 1977, when non-Solomon Islander freeholds were converted into leases of land from government;
- it is going down steadily as –
 - descendants of original owners are helped to buy back plantations;
 - unused government land is declared to be customary land again.

(d) *increasingly, new big investment projects are taking place on what is now customary land, and it will depend on land owners whether or not they go ahead*

B. THE OPTIONS

4. This part of the paper looks at the advantages and disadvantages of provincial governments controlling land in each of the five ways:

Option (i): Provincial government owns or leases land itself and develops it itself

Advantages

- provincial government has full control over what happens on the land because it is doing it itself

Disadvantages

- provincial government may not be able to develop the land itself (lacks skills, capital, staff)
- provincial government controls only the land it happens to own or lease, and not the rest
- provincial government has to pay purchase price or rent
- if it leases the land, the landowners may want to restrict what the government can do, by writing conditions into the lease
- may be political opposition to provincial government developing land itself (for example, unfair competition with private business)
- if the land was bought in the colonial period, there may be political pressure from descendants of original owners wanting it back
- landowners may not want to sell or lease

Option (ii): Provincial government owns or leases land itself, and then leases it to other people to develop

Advantages

- allows provincial government some control over activities it cannot do itself (for example, by writing development conditions into the lease it gives)
- provincial government can control who gets the lease (though some kinds of discrimination between applicants – for example, people from different provinces – may be unconstitutional)
- provincial government gets income from rents (though rents cannot be so high that they discourage applicants for leases)
- provincial government can throw off developers if they are not following the conditions of the lease

Disadvantages

- once the lease is signed, provincial government cannot interfere with the developer unless he breaks the conditions of his lease (for example, developer may do something unexpected)
- even if user breaks conditions, it may be hard to get him off the land, or find someone else to take his place (developers are often the best judges of what can or cannot be done with land)
- rent payments are not very large (national government collects only \$150,000 a year throughout Solomon Islands)
- provincial government still controls only land it happens to own or lease
- pressure from original owners

Option (iii): Provincial government makes laws about how any land can be used (no matter who owns it)

Advantages

- laws could cover all land (registered and customary), or any land the provincial government wants to control
- avoids any direct interference with ownership, which people feel strongly about
- deals directly with use, hence development

Disadvantages

- needs outside lawyers
- needs to be part of a general plan
- centralises decisions in the provincial capital
- may involve compensation if the value of underdeveloped land is suddenly decreased (for example, by saying the timber on it should not be cut), or existing development affected
- may be politically difficult if it restricts owners' rights to do what they like with their land
- hard to predict the effects of any law
- may be hard to enforce, hence easy to avoid
- hard to adjust as it goes along
- laws made by one Provincial Assembly could cause problems for other provinces

Option (v): Provincial government uses licences, taxes or subsidies to change way people own, lease or develop land

Advantages

- covers all land, or any land in which the provincial government is interested
- avoids direct interference with ownership, about which people feel strongly
- can be very flexible and adjusted as it goes along
- deals directly with development
- does not need lawyers

Disadvantages

- cash incentives and penalties may not, in fact, affect what people decide to do
- needs to be part of a plan
- centralises decisions in the capital
- may be politically difficult to take money away from people (but easier not to give it)
- expensive
- may be unconstitutional if licence, tax or subsidy is designed to discriminate between people, not just land use
- decisions made by one provincial government could cause problems for other provinces.

5. If provincial governments want to control land in accordance with Option (i) or (ii) in para. 4 above –

- (a) they could buy or lease it themselves; and/or
- (b) the national government could transfer land it now owns in each province to provincial governments.

6. In the case of (b) in para. 5 above, the national government could transfer

- (i) all the land it now owns, including land already leased to other people (in which case the lease would stay, but the land would come back to the provincial government when the lease finishes);

or

- (ii) only the land that is not already leased to other people (in which case the national government would continue to be the landlord for existing leases, but any new leases would be obtained from the provincial government).

7. Options (i) and (ii) in para. 6 above could both take place simply by signing a form, with no change in the existing law. The law also allows the Commissioner of Lands to delegate any or all of the powers he has over government land, or in the *Land and Titles Ordinance*, to the clerk of the province.

8. Both of the options in para. 6 above, have most of the same advantages and disadvantages for provincial governments as Options (i) and (ii) in para. 4 above, but there are some particular ones:

Option (i): National government transfers all the land, including land already leased to other people, to provincial governments

Advantages

- gives provincial governments an immediate increase in the amount of land they own, and immediate control over land not already covered by existing leases
- gives provincial governments eventual control over land covered by leases, when these leases run out
- provincial governments get rents from existing leases
- provincial governments get the right to make sure the conditions of existing leases are being carried out (but will need staff to do so)

Disadvantages

- over a third of existing government land is already leased out, and most of the rest was bought for timber cutting and should be replanted with timber
- provincial governments would be under strong political pressure to return the land to ‘original owners’ – if they decided to do so, they would have to decide who they were (disappointing some claimants), and would lose control of the land if they returned it
- there would be a delay in transferring land owned by non-Solomon Islanders until 1977, as the terms and conditions of their 75-year leases are still being negotiated

- the transfer would increase inequality between provinces: Western and Guadalcanal Provinces would get most of what had been a ‘national’ asset, and Malaita and Makira/Ulawa would get least
- some land now owned by government was acquired on condition that it would be returned to its owners (for example, Rennell)
- could cause uncertainty, and hence less investment, by people with leases (for example, on resettlement schemes as well as plantations) if they thought provincial governments would not renew leases when they were finished
- provinces would still not control all ‘alienated land’, as some land is leased directly from land owners to companies
- provincial governments would still only control land they or the national government had happened to own before, which may not be the land they most need to control now
- transfer of national government land would be once and for all, not a long term policy
- provincial governments would have to manage and administer the land they would own (though transfer of Lands Division staff would help)

Option (ii): National government transfers land that it owns and that is not already leased to somebody else to provincial governments

Advantages

- immediate increase in land owned by most provincial governments, and full control over it
- provincial governments have to administer only leases they decide to make
- provincial governments can set terms of new leases

Disadvantages

- provincial governments still control only two-thirds of local land that national government happened to own (and most of that needs replanting with timber)
- political pressure from original owners.

8. When considering the possibility of giving provincial governments certain powers over how land (including customary land) can be used, the following types of powers might be included:

- setting of safety/health standards for buildings of permanent materials;
- control over use of land for cattle, pigs, horses, other livestock;
- control over activities which block/pollute water supply;
- control over activities which cause erosion/permanent damage to environment;
- control over use of sprays/poisons;
- control over plants which affect crops, livestock, waterways, other aspects of environment;
- control over placing of fences;
- control over placing of pit latrines/septic tanks;
- control over burning off;
- control over hunting of rare/sacred/valued local species of birds;
- control over house building by people not from traditional land-owning group (even if group approves);
- restriction of access to sacred/valued archaeological sites;

- control over timber-felling for household/industrial use;
- control over prospecting activities;
- control over sales of customary land between Solomon Islanders;
- any other controls over use of subsistence reserves for money-earning activities.