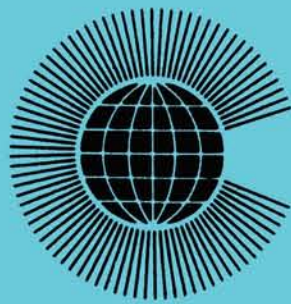


Decentralisation: Options and Issues

A Manual for Policy Makers



Commonwealth Secretariat

DECENTRALISATION: OPTIONS AND ISSUES

A MANUAL FOR POLICY-MAKERS

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MARLBOROUGH HOUSE · PALL MALL · LONDON SW1Y 5HX

March 1982

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Printed and published by
The Commonwealth Secretariat

May be purchased from
Commonwealth Secretariat Publications
Marlborough House
London SW1Y 5HX

ISBN 0 85092 213 5

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PREFACE

Acknowledgements and Sources

The working papers in this volume were originally prepared for the Special Committee on Provincial Government in Solomon Islands. They have been selected, edited and rearranged for publication by Diana Conyers. The introductory material was prepared by Diana Conyers and Edward P. Wolfers with Peter Larmour and Yash P. Ghai.

Staff and consultants to the Committee took collective responsibility for the original Background Papers from which the working papers have been drawn. Primary responsibility for drafting the original versions was as follows –

- Working Paper 1.3 (Provincial Sea Boundaries) – Yash P. Ghai;
- Working Paper 6.1 (Control of Land) – Peter Larmour and Edward P. Wolfers; and
- Working Papers 1.1 (Provincial Boundaries), 1.2 (The Status of the National Capital), 2.1-2.4 (Political Structure), 4.1-4.2 (Staffing Arrangements), 5.1-5.5 (Finance and Planning), 7.1 (Relations between Governments), 8.1 (Implementation and Review) and 9.1 (The Legal Framework) – Edward P. Wolfers with Peter Larmour.

Working Papers 3.1-3.4 as well as Appendices 3.1, 3.2 and 4.1 are products of a more complex process, in which Wolfers wrote an introductory paper (Background Paper No. 95, 'Enacting Legislation', which is not reprinted in this volume); Larmour surveyed the distribution of the powers, functions and staff of government in Solomon Islands, aided by a list of laws in force compiled by Philip Tegavotu, a law student at the University of Papua New Guinea whose services were made available by the Guadalcanal Provincial Government, and terms of reference for the survey of staff drawn up by Wolfers; Larmour then prepared a set of recommendations about how powers, functions and staff might be redistributed to give expression to the views emerging in the Special Committee, and reported them in documents prepared with Wolfers (Working Papers 3.1 and 3.2, and Appendices 3.1, 3.2 and 4.1); Ghai devised a system to give the Special Committee's decision legal effect; Wolfers with Ghai and Larmour prepared a general option-paper (Working Paper 3.3); and Ghai set out his unique solution (Working Paper 3.4(a)), which was subsequently amended by himself and Wolfers (in Working Paper 3.4(b)).

A key to the original sources of the working papers and appendices in this volume appears in Appendix B.

The contributors are grateful to the Ministry of Home Affairs, Solomon Islands, for permission to publish this volume, and to the Australian Development Assistance Bureau for its co-operation. We are also grateful to the Legal Research Institute, University of Warwick, and the Commonwealth Secretariat for arranging publication and distribution.

Thanks are also due to the Commonwealth Secretariat, for underwriting Ghai's consultancy; to the Australian Development Assistance Bureau for underwriting Wolfers'; and to the Politics Department, University of Warwick for granting Wolfers a Visiting Fellowship which helped to bring contributors together.

The final version of the manuscript was typed by Ms Miriam Armstrong. Earlier versions were typed by Ms's Robbie Kenna and Barbara Young. The map was drawn by the Lands Division, Honiara, and adapted by Ms Carla Bevers of the Art Section, Audio Visual Services Unit, Macquarie University. It is published by courtesy of the Institute of Pacific Studies, University of the South Pacific, Suva, Fiji.

The index was prepared by South Pacific Library Services.

The Macquarie University Research Grant and the School of History, Philosophy and Politics, Macquarie University, provided financial assistance for preparation of the manuscript.

Additional information about the circumstances in which the Special Committee on Provincial Government was set up, its work, and the follow-up until the time of publication may be found in Solomon Islands 1979b, 1979c and 1980; Ghai forthcoming; Herlihy forthcoming; Kausimae 1978; Larmour forthcoming a; Premdas and Larmour forthcoming; and Wolfers forthcoming.

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INTRODUCTION

The main components of this book are a series of working papers which were produced to assist the members of a committee charged with making recommendations on the decentralisation of government in Solomon Islands. The papers were prepared to provide a basis for discussion and decision by a Special Committee on Provincial Government, which was set up in December 1977 and presented its final Report to the Solomon Islands National Parliament in May 1979 (Solomon Islands 1979b). The papers were presented in response to a request by Committee members to have the relative advantages and disadvantages of alternative ways of dealing with important issues put before them, so that they would not make decisions without at least being aware of the available options. The contributors hope that the volume will be of value to people in other countries who are involved in, or are contemplating, some form of decentralisation programme. Although the working papers were prepared specifically for use in Solomon Islands, the basic issues which they address are those which would be faced by people in any country involved in decentralisation. The options canvassed provide a reasonably comprehensive guide to the alternatives which might usefully be considered by people in other countries. Some of the material may also be of value to people involved in decentralisation from subnational bodies, such as state governments in federal systems or provincial governments in unitary devolved systems, to more local levels of government.

DECENTRALISATION IN SOLOMON ISLANDS

Solomon Islands became independent on 7 July 1978 with a constitution which contains a commitment, made in the name of the people, to -

ensure the participation of our people in the governance of their affairs and provide within the framework of our national unity for the decentralisation of power (Solomon Islands 1978a: Preamble).

But, apart from two changes of name - from 'Local Council' to 'Provincial Assembly', and from the subordinate 'Area Committee' to 'Area Council' - the system of government below the national level was not changed by the advent of independence. The basic legislation establishing provincial governments remained the *Local Government Ordinance 1963* (Cap. 14), renamed an 'Act' at independence, as modified in both law and practice by the *Plan of Operations 1974-1977* (Solomon Islands 1973).

Before the *Plan of Operations*, local councils had been mainly island councils - twenty-one in all, until the five councils in the Western District agreed to amalgamate in 1972. Their main sources of revenue had been the basic rate (a head tax), licences and fees for services which councils raised themselves, and grants from the central government. The long list of functions which the *Ordinance* conferred on councils had been of little practical effect - because councillors did not know of all the functions, because they lacked adequate resources to employ them, or because national legislation, policies or standards prevented them from being used.

In 1973, following discussions between the British administration and the Special Select Committee on Constitutional Development set up by the Governing Council, an experienced academic was asked to review the system of local government administration. The adviser's report (Campbell 1973) formed the basis on which a group of senior public servants prepared a comprehensive plan for reform, the *Plan of Operations*. The *Plan* provided for -

- a reduction in the number of councils from seventeen to eight through amalgamation;

- the transfer to councils of operational control over staff and finance involved in certain fields of administration (district administration, agriculture, education and public works); and
- an increase in 'untied' grants of money from the national government to councils (Solomon Islands 1973).

By independence, the *Plan of Operations* had been put into effect. Solomon Islands had a system of government below the national level involving seven largely rural provincial governments and the Honiara Town Council with the functions specified in the *Plan*. The provinces were further divided into smaller units, each with its own largely coopted consultative body, which were renamed 'Area Councils'. The financial arrangements between the national government and the councils had been modified somewhat.

'Ambitious' though the *Plan of Operations* might have been (Solomon Islands 1976: 13; Campbell 1977: 238), it did not satisfy the aspirations of all Solomon Islanders for decentralisation. Thus, even as the *Plan* was being implemented, the Constitutional Committee which had been set up by the reconstituted Legislative Assembly expressed concern at what it described as a lack of 'true devolution' and the power of the executive to establish and dissolve councils. The Committee recommended some specific changes to the system, and the establishment of a Special Select Committee to review it (Solomon Islands 1976: 14).

The *Principles* which the Solomon Islands delegation took to the constitutional conference in London in September 1977 also recommended the establishment of a special committee. The recommendation was accepted by the British government, as was the proposal that local councils be renamed 'provincial governments' (Solomon Islands 1977: 15-15a; United Kingdom Parliament 1977: 12). Meanwhile, some politicians from the Western Province had moved from advocacy of a federal system of government for Solomon Islands to support for secession of their province from the rest of the country (Larmour forthcoming a).

Both the changes being considered by the national government and those demanded by Western politicians were influenced by events in neighbouring Papua New Guinea: the widespread discussion of proposals for a system of provincial government which took place before independence (Conyers 1976); secessionist activity in the North Solomons (formerly 'Bougainville') Province, which borders Solomon Islands' Western Province; and the establishment of interim provincial governments, including criticism of their conduct.

The Solomon Islands Special Committee on Provincial Government was set up in December 1977. It consisted of the presidents of all the eight councils; six backbench members of the National Parliament (including neither regular Government nor regular Opposition supporters); and two private citizens (precise details concerning the Committee's changing membership as well as information about staff and consultants are contained in Appendix A). Its chairman was the Honourable David Kausimae O.B.E., a member of the National Parliament with previous experience as a minister and the longest period of continuous parliamentary service.

The Committee's terms of reference were:

- (a) To review the boundaries of local council areas and advise as to whether these boundaries are satisfactory as provincial boundaries;
- (b) To consider the role of Provincial Assemblies in relation to National Government on the one hand and Area Councils on the other;

- (c) To consider and recommend on the degree of autonomy for Provincial Governments and in particular the powers of -
 - (i) enacting legislation
 - (ii) administration, and
 - (iii) finance;
- (d) To consider the role of public officers and their responsibility to and control by Provincial Government;
- (e) To consider and make recommendations on the role of chiefs and other traditional leaders both at -
 - (i) provincial level, and
 - (ii) area council level;
- (f) That the report by the Committee be submitted to the Parliament for consideration during the first sitting in 1979.

In their letters of appointment, Committee members were asked to bear certain 'guidelines' in mind:

- no recommendation should be made which increases substantially the cost of local government administration;
- no recommendation should be made the effect of which would bring Provincial Governments into conflict with National Government (Solomon Islands 1979b: 3-4).

The Special Committee began its work, as previous constitutional committees had done, by embarking on a nationwide tour to seek the people's views on the matters covered by its terms of reference. Only in the Western Province, where relations between the Western Council and the national government had become strained, did the Committee not hold public meetings for ordinary village people to put their views. Instead, it accepted an invitation from the Western Council to visit the provincial administrative headquarters at Gizo, where it held - rather tense - consultations with Council members and other leaders from the Western Province.

When the touring was almost complete, the Committee sought the assistance of 'independent consultants' to assist Committee members to clarify issues and to identify alternative approaches towards the issues with which it was dealing (*ibid.*: 7). Professor Yash Ghai, who had been constitutional adviser during the final stages of the transition to independence, was later asked to advise on a suitable system of law-making for the national and provincial governments under the decentralised system which was then emerging from the Committee's deliberations, and on other questions. The working-papers contained in this volume are a selection from a much larger number of papers prepared for the Committee by its staff, consultants, national government ministries, provincial governments, and other interested community groups and individuals (for a complete list of the almost 140 papers circulated to Committee members and deposited in the Ministry of Home Affairs, Honiara, see *ibid.*: i-vi).

As has already been suggested, the Special Committee on Provincial Government actively sought the views of official bodies, community groups and private persons interested in decentralisation - and held public meetings to receive both written and oral submissions. National government ministries were invited to make presentations. The Chairman visited Malaysia and Papua New Guinea to study two decentralised systems of government at first hand. Publications about other countries were made available by the staff and consultants (with funds provided by the Australian Development Assistance Bureau and the Commonwealth Secretariat).

Meetings of the National Parliament were timed to enable the parliamentarians on the Committee to attend to both commitments. Attendance at Committee meetings was accordingly high.

Submissions to the Committee were collated. When the Committee's recommendations began to take shape, a set of *Draft Recommendations* (Solomon Islands 1979a) was sent to national government ministries, provincial governments and interested and expert bodies for comment. The responses to the *Draft Recommendations* were then collated in a special volume, the 'Pink Book', in which each comment on a particular recommendation was reprinted under that recommendation. At its next meeting, in early 1979, the Committee worked its way through the 'Pink Book' considering each of its previous recommendations in light of the comments received.

Throughout the Committee's life, national government ministries, provincial governments and officials with relevant expertise provided members, consultants and staff with information on a wide variety of financial, administrative and other issues.

The final *Report*, which was presented to the Government and then the National Parliament in May 1979 was a consensus document. The only issue on which Committee members had found it impossible to reach consensus was the question of who should hold title to land in the national capital, Honiara, which question it referred to the National Parliament.

In October 1979, the Government published a *White Paper* setting out its views on the *Report* (Solomon Islands 1979c). A little more than one year later, a draft *Provincial Government Bill*, prepared by a group of senior public servants to give effect to the *White Paper*, was published by the government (Solomon Islands 1980).

The *Report* was reprinted in 1980 to give it wider circulation than it had previously had - and references to the *Report* in this volume come from the second printing.

WHY DECENTRALISE?

The words 'decentralisation of government' are often used to refer to the transfer of some of the powers or functions of government from the national level to regional or local levels. This volume is designed for use in countries where a commitment has already been made to decentralisation in one form or other. It is, therefore, more concerned with the advantages and disadvantages of alternative forms of decentralisation than with the desirability of decentralisation as such.

Political scientists have a variety of terms which they use to distinguish different types of decentralisation. For example, they compare deconcentration with devolution, and distinguish between unitary, federal and confederal systems of government (Conyers 1978; Wolfers 1978). Our experience, however, suggests that such terms can sometimes be more confusing than helpful. They give the impression that there are only a few alternative systems and that every country can easily be fitted into one category or another. In fact, there is an almost infinite variety of forms of decentralisation, and it is often difficult to fit a particular system into any one of the categories previously mentioned. For instance, even lawyers who were involved in drafting the legislation for Papua New Guinea's post-independence programme of decentralisation are uncertain whether the country 'officially' has a unitary or a federal system of government (Ghai 1978).

We prefer to look at the different types of decentralisation in terms of what they are intended to achieve. On this basis, it is possible to distinguish three main forms of decentralisation: political, administrative and geographical.

Political decentralisation involves the decentralisation of political power - that is, the power to pass laws or to make policy decisions - from the national government to existing or newly-created elected bodies at the regional or local level. The most common reason for political decentralisation is to allow wider popular participation in government decision-making. In many countries, an increase in popular participation is seen as an important end in itself - a democratic 'right', often associated with the process of achieving independence and political freedom. However, in many cases, it is also a way of achieving development that is more relevant to local needs and conditions, and of encouraging local commitment to development programmes. It may also play a part in helping to make government legitimate, especially in soon-to-be-independent or newly independent countries.

In some countries, the initiative to increase opportunities for popular participation in government decision-making may come from the national government, or from some other national level body; but, in others, the pressure may come from below, with regional or local groups demanding greater autonomy from the national government.

The national government may have ideological reasons for favouring decentralisation, or it may seek simply to increase its legitimacy. Subnational groups may want to ensure that certain matters become subject to local control, or that certain policies are changed. In Tanzania, for example, the process of decentralisation in 1972 was initiated almost entirely at the national level, while in Papua New Guinea pressure from subnational groups was a very important factor. In Solomon Islands, both national and local forces played a part in the government's decision to decentralise. And some demands for decentralisation seem to have been essentially demands to formalise previously informal arrangements (for example, demands to impose a legal requirement on the Central Planning Office in Solomon Islands to consult provincial governments about their development priorities, even though its officers believed that they were doing so already).

Administrative decentralisation is concerned primarily with the decentralisation of control within the public service, or other administrative framework. It involves giving more powers to regional or local civil servants to plan and implement government programmes subject to national policy. These powers may be given to local representatives of individual ministries or departments, to a single administrator with coordinating powers over other staff in a certain area, or to some form of coordinating committee. Administrative decentralisation is designed primarily to increase the efficiency and responsiveness of the administrative system by reducing delays, improving coordination and (as also in political decentralisation) making decisions more relevant to local needs. In countries with poor communications, a certain amount of administrative decentralisation may be almost inevitable.

Geographical decentralisation differs from the other two types of decentralisation in that it does not involve the decentralisation of decision-making powers. It consists only of the relocation of the headquarters of a ministry or department to a regional centre, or the posting of more staff from headquarters to the regions. Such programmes are usually designed either to reduce concentration of activity in the capital city and increase employment and/or other economic opportunities in the regions, or to bring government physically closer to the people, especially people in rural areas. However, although there is some value in distinguishing between the three different types of decentralisation and the purposes they are intended to achieve, they cannot, in practice, always be separated from each other. The process of decentralisation in which the Solomon Islands Special Committee on Provincial Government was involved has been primarily political, since the main aim has been to give political powers to provincial governing bodies. But the process also involves administrative decentralisation, and the geographical movement of more staff to the provinces. In countries with a one-party system of government, such as Tanzania and more recently Zambia, decentralisation tends to be primarily administrative, since the national government retains control over most policy matters. However, even there, it has a political component, in the sense that powers are usually decentralised to local committees or councils

which, although under the control of the national party, have some form of local representation, and popular participation is stated to be an important aim of such decentralisation programmes.

The material in this volume will be of most direct value to people in countries where political decentralisation is an important component of the overall programme of decentralisation, since many of the options are concerned with the structure and powers of elected political bodies at the local level. However, many parts should also be relevant to people in countries concerned only with administrative decentralisation, or with the primarily administrative decentralisation programmes common in one-party states. Some material is also relevant to geographical decentralisation (see especially Working Paper 4.2 and Appendix 4.1), a subject to which Solomon Islands politicians have given much attention but with which they have generally tried to deal through the budgetary and planning processes. The volume does not, however, say much about decentralisation of the courts and other constitutional offices such as the Director of Public Prosecutions, the Public Solicitor and the Ombudsman - because of the prior existence of a system of local courts in rural areas of Solomon Islands; a shortage of qualified personnel; and an apparent reluctance by Solomon Islands politicians to appear to be interfering with the separation of powers or the independence of constitutional office-holders. But the issues involved in dispersing the staff of those bodies and in vesting responsibility for certain functions and areas of discretion in dispersed staff are similar to those canvassed in the working papers in Chapters 3 and 4.

DECENTRALISATION TO WHAT? A NOTE ON TERMINOLOGY

Some confusion is caused by the use of many different terms to refer to the geographical areas to which powers are decentralised or, in the case of political decentralisation, to the elected governments in those areas. 'Regions', 'districts', 'provinces', 'states' and 'local governments' are some of the more commonly used terms. In some cases, political scientists have attempted - with somewhat limited success - to define some of these terms precisely. For example, technical criteria regarding the amount of legal power devolved or the legal form of devolution have often been used to try to distinguish between local governments and state governments. In other cases, common usage of the terms gives some indication of their meanings. Thus, in most countries a district is a subdivision of a region or province, rather than vice versa.

However, on the whole, there are no hard and fast rules which can be applied, and there is little point in trying to generalise across countries about use of many of the terms previously mentioned. For example, a provincial government in Solomon Islands has somewhat similar powers to a provincial government in neighbouring Papua New Guinea, but it covers a much smaller area; a provincial government in Canada not only covers an area far greater than that in Papua New Guinea or Solomon Islands, but also has much greater powers, being the equivalent of a 'state' government in other federal systems.

In this volume, the terms 'province' and 'provincial government' will be used, since they are the terms used in Solomon Islands. The Special Committee on Provincial Government was, after all, committed to giving 'provincial government' a specifically 'Solomon Islands meaning' (Solomon Islands 1979b: 10). But, it should be borne in mind that the equivalent terms in other countries may well be different. The question of the choice of terminology in any particular area is specifically discussed in Working Paper 1.1.

THE QUESTION OF SCALE

The question of the terminology applied to subnational units is related to that of scale. There is an enormous variation in the size of nations and in the size of the subnational units, whatever they are called, to which powers are decentralised.

Solomon Islands, with a population of about 200,000 at independence, is a very small country. The whole country is only the size of one of the larger provinces in Papua New Guinea; while Papua New Guinea itself, with about three million people, is still a small country by world standards. One may well then ask, firstly, whether decentralisation is necessary at all in a country as small as Solomon Islands and, secondly, whether the Solomon Islands experience can be of any relevance at all to much larger countries.

A comparison of the objectives and main components of decentralisation programmes in a number of countries of varying size suggests that the answer to both the foregoing questions is 'yes'. It seems that, whatever the size of a country, there will almost always be pressures for decentralisation for the same sorts of reasons - the desire to increase local participation, to improve access to government, and to make government more effective and responsive to local needs. Furthermore, in larger countries, the demand for decentralisation does not stop at decentralisation to the primary administrative level. At each level in the political or administrative hierarchy there is likely to be pressure for decentralisation to a lower level. Thus, in Tanzania, for example, the primary focus of the 1972 decentralisation programme was the region, but, subsequently, increasing emphasis has been placed on further decentralisation to district level and, within districts, to wards and villages (Maeda 1978). In Papua New Guinea, the Constitutional Planning Committee recommended that provincial governments should have final control over existing, lower-level local government bodies, but said that the former should 'respect and decentralise power' to the latter (Papua New Guinea 1974a: Part 1, 10/25). Even in Solomon Islands, it has been necessary to consider decentralisation below the provincial level, in this case to Area Councils (see Working Paper 2.4).

In spite of differences in scale, the main issues which have to be considered in any decentralisation programme are similar. This does not mean, of course, that scale is irrelevant or that there is one master plan for decentralisation which can be applied anywhere. Scale does have an effect, particularly in terms of the volume of resources, especially administrative staff and finance, with which one is dealing. Scale, therefore, affects the capacity of the political or administrative bodies to which power and/or functions are decentralised, and the feasibility of alternative administrative structures. Internal communications also affect decentralisation (as has been suggested, difficulties of communication between outlying islands and Honiara have tended to make at least some degree of administrative decentralisation in Solomon Islands almost inevitable).

Advocates of decentralisation often hope that if local authorities are given more powers or responsibilities, then they will automatically receive more staff and money. But decentralisation does not by itself generate additional resources. In practice, the decentralisation of powers may often necessitate the subsequent provision of extra resources, but additional resources do not necessarily follow, and decentralisation does not increase the total resources available to the nation (except to the extent that local authorities are given the power to generate their own revenue).

Sometimes, decentralisation leads to a reallocation of resources within, and less commonly between, subnational units. It may lead to substantial changes in government policy. It may also lead to replication at subnational level of the concentration of power and resources previously found in the national capital - in what the Special Committee referred to as 'mini-Honiaras'.

Thus, while the question of scale cannot be ignored, much of the Solomon Islands' experience seems to be relevant to much larger countries.

THE DECISION-MAKING PROCESS

The way in which the decision to decentralise is made and in which the details of the decentral-

ised system are worked out varies widely from country to country. In most cases, decisions are based on the recommendations of some form of advisory body, but the composition and terms of reference of such bodies vary enormously. In some countries, a parliamentary committee is appointed; in others there is a more broadly based committee, including national and local politicians, civil servants and representatives of other important interest groups; and in some cases, such as Tanzania, the main role is played by external consultants. Sometimes, the advisory body is given very detailed terms of reference, which already determine certain conditions regarding the degree and form of decentralisation; and sometimes it has few or no restrictions placed upon it.

There is also much variation in the mode of operation of advisory bodies. Particularly important variables include the quantity and quality of technical advice available to members.

Experience suggests that the composition of the advisory body and its mode of operation are quite likely to affect the entire process of decentralisation. Thus, a body which consists entirely of backbench politicians is less likely to be sympathetic to views put forward by the executive than one which includes ministers or senior public servants amongst its membership. A body which relies exclusively on outside consultants for information and feedback contributes little to preparing the public service to implement its recommendations - and runs the risk of confrontation with those public servants who fear a loss of power and/or changes in routine.

However, conditions differ from one country to another, so it is not possible to recommend an 'ideal' decision-making process. Among the considerations which should be taken into account in deciding on the process to be used are the amount of agreement (or disagreement) within the country about the nature of the decentralisation programme, the source of the initial demand for decentralisation - whether national or local - and the country's political structure, which determines where the main decision-making power is located. Also important are the technical skills available, the need to ensure that outside consultants transfer their skills to nationals, preferably those who are likely to be involved in implementation of the final programme, and the urgency attached to decentralisation. A brief comparison between the decentralisation programmes in Papua New Guinea and Solomon Islands will illustrate the effects of some of the factors mentioned.

In Papua New Guinea, attitudes towards decentralisation at the national level were mixed, some politicians advocating significant decentralisation, while other politicians and many senior civil servants were sceptical. There was, however, considerable support for decentralisation at the local level, particularly in one or two provinces, where significant pressure was put on the national government. The initial proposals for decentralisation were made by a committee, composed entirely of parliamentarians, which was responsible for making recommendations not only on decentralisation but also on all aspects of the constitution which would come into force at independence. However, the recommendations on decentralisation were subjected to a great deal of discussion and modification at the national level, and no provision for decentralisation was included in the initial version of the independence constitution. It was only after a prolonged period of debate and dialogue between national and local authorities that a system of provincial government was finally set up (Conyers 1976).

While the future of provincial government was still in doubt, the secession of North Solomons was declared, in protest at the national government's reluctance to introduce meaningful decentralisation. Agreement on administrative aspects of decentralisation was reached only with the assistance of external consultants, whose recommendations were not particularly radical but were accepted because they were well presented and regarded as 'neutral' by the various national and provincial bodies which had been unable to agree among themselves. The end result, therefore, was a rather complex system of decentralisation, not entirely consistent, and giving undue weight to the views of leaders from one province, North Solomons, and agreed upon only after a long period of debate and under considerable

political duress.

By way of comparison, the process of decentralisation seems to have proceeded more systematically and to have been less traumatic in Solomon Islands.

To begin with, there had already been a substantial measure of decentralisation in Solomon Islands before the final stages of the transfer of power began. The national government was, relatively speaking, neither as large nor as centralised as in Papua New Guinea. The decision not to specify the details of the system of provincial government in the independence constitution was discussed and accepted by most members of the National Parliament well before independence. And the decision was coupled with firm commitments to set up the Special Committee within a year of independence, and to ensure that the views of subnational bodies would be given an effective hearing by providing for the inclusion of Council members (Solomon Islands 1977: 15-16; United Kingdom Parliament 1977: 12).

The circumstances in which the Solomon Islands Special Committee on Provincial Government began its work were not, in some respects, dissimilar from those in which the Papua New Guinea Constitutional Planning Committee had begun. Both committees were faced with increasing demands for decentralisation, and even secession, shortly before independence. Both were, in practice, committees of backbenchers (in Papua New Guinea, the three Ministers rarely attended meetings, while in Solomon Islands, members who became Ministers resigned from the Committee - and one recently resigned Minister joined). Members of both committees asserted their independence of the Government, and developed a strong *esprit de corps*. Both claimed a special legitimacy for their recommendations after nationwide tours, and both had independent sources of advice. Eventually, both committees found that their recommendations received no more than qualified acceptance by the Government, and that implementation was delayed. Moreover, the decentralisation programme in Papua New Guinea was well-known to members of the Special Committee on Provincial Government in Solomon Islands, and two of the latter's consultants, Ghai and Wolfers, had worked with the former. Finally, both committees were concerned with decentralisation in countries composed predominantly of Melanesian societies with broadly similar social structures.

There were, however, important differences too.

In Solomon Islands, neither Government nor Opposition were directly involved in the Committee. So a strong *esprit de corps* and a commitment to recommendations arrived at by consensus posed less of a threat to the internal unity of Government or Opposition. The council presidents (who quickly became known as provincial 'premiers') had practical experience of some of the difficulties and problems of decentralisation, and had developed working relationships with one another as well as the national government. The Committee, as a whole, was more willing to be briefed by, and to consider feedback from, national government officials. Committee members preferred to make their recommendations on the basis of options put before them, instead of questions, which had been the means preferred by members of the Constitutional Planning Committee. The consultants tended to deal with government departments and other official bodies through the Committee's staff, who were themselves public servants, rather than directly. Above all, the fulfilment of the *Plan of Operations* meant that further political decentralisation in Solomon Islands would not require as fundamental a reordering of government as in Papua New Guinea, and ministers of the national government in Solomon Islands seem not to have acquired as strongly a centralist - or nationalist? - perspective as some of their Papua New Guinean counterparts.

STRUCTURE OF THE VOLUME

This volume is divided into nine chapters, each dealing with a particular aspect of decentralis-

ation. Each chapter opens with a brief introduction, followed by relevant working papers used by the Solomon Islands Special Committee on Provincial Government. In most of the papers, a number of options is presented, together with a summary of their relative advantages and disadvantages. These papers provided a basis for decision-making by Committee members.

The working papers are presented more or less in their original form, with only minor editorial changes, and some re-arrangement. Specific references to Solomon Islands have been left in place where they suggest how local factors might affect decisions about decentralisation.

Most chapters deal with issues which are relevant in any country where decentralisation is under consideration or taking place. Factors peculiar to the Solomon Islands case are explained in the introductions to the various chapters.

The order of the chapters follows more or less that of the *Report* of the Solomon Islands Special Committee on Provincial Government. That order seems to be a fairly logical one, and even critics of the Committee's *Report* seem to have had little difficulty in following it. However, it should be noted that different aspects of decentralisation are interrelated; that early decisions tend to have implications for later decisions; and that any division is, as a result, almost inevitably arbitrary. Thus, the sequence in which readers of this volume might find it useful to employ the working papers by adapting them to local circumstances will depend on the relative salience in those circumstances of the various issues with which they deal.

The relative advantages/disadvantages of the various options will also need to be adjusted to suit local circumstances, including the attitudes towards decentralisation of members of the relevant advisory or decision-making body.

CHAPTER 1

PROVINCIAL BOUNDARIES

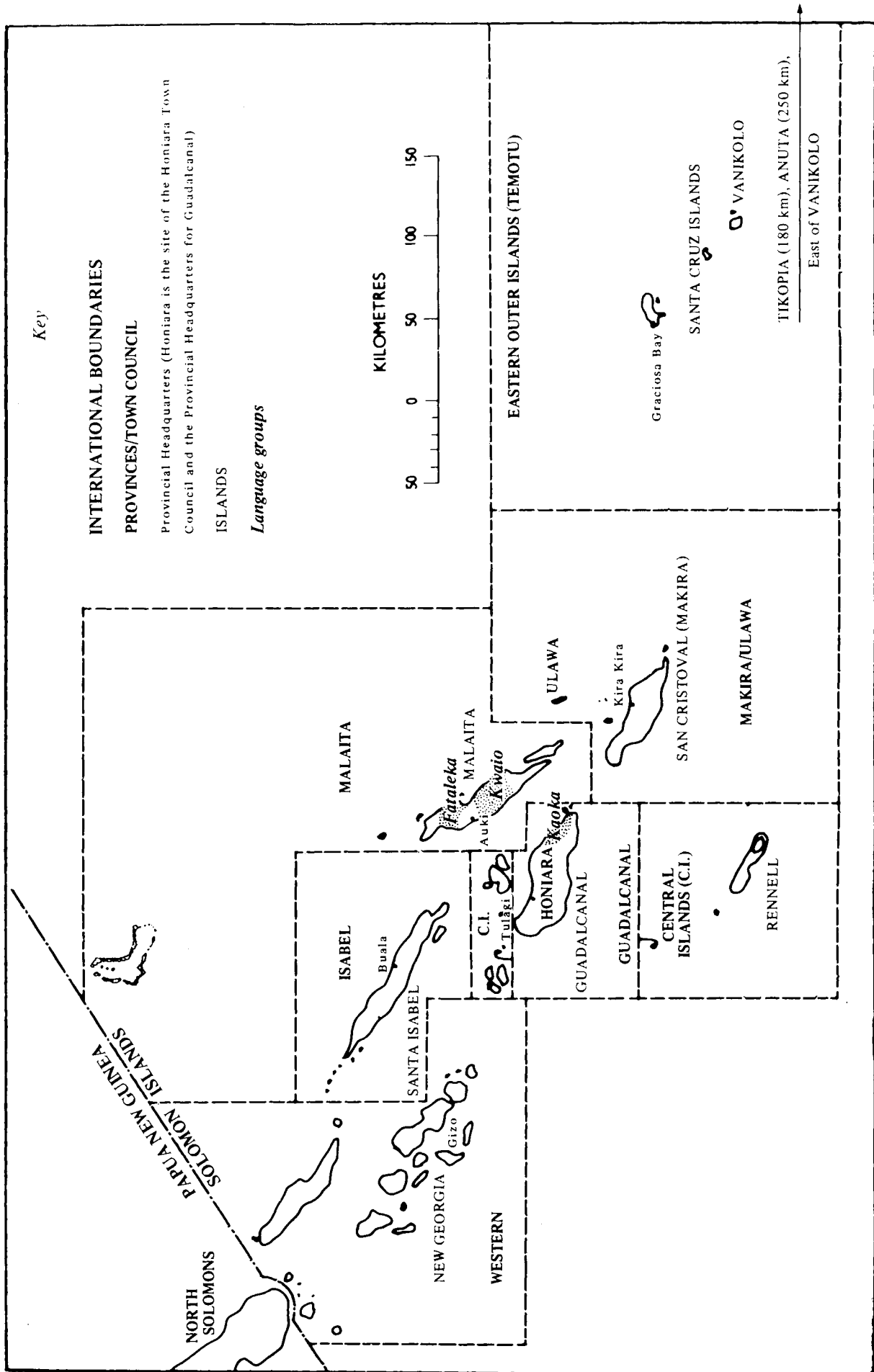
This chapter is concerned with the choice of areas to which powers are to be decentralised and the delimitation of the boundaries of these areas. It contains three working papers: the first deals with the general problems involved in defining provincial boundaries in Solomon Islands; the second considers the special case of the national capital, Honiara; and the third examines the question of sea boundaries.

In Solomon Islands, the basic administrative units to which powers are being decentralised are known as 'provinces'. The country is divided into seven rural provinces and an urban area, Honiara. The provinces vary in population from a little over 10,000 to approximately 60,000 (the population of Honiara is 15,000 - Solomon Islands 1978b:5). One province, Guadalcanal, is located on a single island (which it shares with Honiara), while others, such as the Western and Eastern Outer Islands ('Temotu') provinces, consist of many small and widely scattered islands. In two cases, Western and Malaita, the areas covered by the provinces are the same as those administered as 'districts' under colonial rule. In all cases, they coincide with the boundaries of local councils when implementation of the *Plan of Operations* was complete.

The first working paper examines the advantages and disadvantages of using the existing provinces as the basis for decentralisation, and considers whether any changes are needed in the present provincial boundaries. In most countries, there are considerable advantages to be gained by using existing administrative areas, particularly if they already have well-established headquarters and their existence is generally recognised by the people. In many cases, there will be a choice between two or more administrative levels (for example, where provinces are subdivided into districts, should decentralisation be to the provincial or the district level?), and it will be necessary to consider the advantages and disadvantages of each. Important factors to consider will be the economic and administrative viability of the areas, their acceptance by the people, and in some countries the possibility of endangering national unity by encouraging existing regional tensions. In Papua New Guinea, for example, the principal units of colonial administration, the 'districts', were chosen in preference to either the larger regions, which were sometimes used for administrative purposes, or the usually much smaller local government councils. Councils were generally too small to be viable units of government, and, at least in some areas, were not held in much respect by the people, while regions were too big to be meaningful to village people and could also become powerful enough to threaten national unity (Papua New Guinea 1974: Part 1, 10/2-4). The 'districts' were renamed 'provinces' to symbolise a break with the colonial past.

The status of the national capital, which is the subject of the second working paper, is likely to be an issue in any case of decentralisation. Normally, the size and importance of the capital city are such that it cannot be administered as just a part of the province in which it is located. Moreover, interests other than those of the people of a single province tend to be concerned with its government. Working Paper 1.2 discusses the main alternatives available, with particular reference to Honiara, which is located on the island of Guadalcanal. Similar questions to those raised in relation to the national capital, especially those which bear on the relationship between a town and a largely rural province, may arise in the case of other large urban areas. They are particularly likely to arise with towns which are already administered as separate units or have their own local government bodies.

It is important that the individual characteristics of urban areas are not ignored in a decentralisation programme, even if national priorities are directed towards rural rather than urban development. In Tanzania, for example, urban councils were abolished when decentralisation was introduced, but they have since been reintroduced because it was found that urban services were deteriorating.



PROVINCIAL BOUNDARIES AND ADMINISTRATIVE HEADQUARTERS, PLACES AND LANGUAGE GROUPS MENTIONED IN THE TEXT

The question of sea boundaries is particularly important in an island country like Solomon Islands, but it has to be considered in any country which has a coastline. The basic issue is whether provinces should have any powers over sea areas bordering their provinces, and if so, what sort of powers these should be and how far out to sea they should extend. The issue can become exceedingly complicated because it raises questions of access to maritime resources, including strategic resources such as oil and minerals, and 'mobile' resources like fish and crustaceans. It tends to become all the more contentious in countries where a 200-mile fisheries or economic zone has been declared, as in almost all of the South-West Pacific, especially where there are international disputes over national jurisdiction. The main issues involved and the alternatives available are outlined in Working Paper 1.3.

WORKING PAPER 1.1

PROVINCIAL BOUNDARIES

1. Members have received a summary of submissions and tour reports about people's attitudes on the subject of provincial boundaries. After looking at the summary, do members feel that the number or boundaries of existing provinces should be changed? For example:

- Are some provinces too big?
- Are some provinces too small?
- Should all provinces have about the same area and/or population?
- Should the boundaries of some provinces be changed because of difficulties or ease of communication within provinces?
- Should every island be part of a province?

2. The constitution says that there shall be a Constituency Boundaries Commission consisting of the following people:

- a Chairman and two other members chosen by the Judicial and Legal Services Commission (and appointed by the Governor-General);
- the Chief Surveyor; and
- the Head of the Statistical Services.

The Commission has the job of recommending to the National Parliament how many provinces there shall be and where their boundaries shall lie. The Commission must report to the National Parliament at least once every ten years, and Parliament has the power to decide whether the recommendations in the report shall be carried out (Solomon Islands 1978a: sections 53, 114).

Do Committee members agree that the Constituency Boundaries Commission should recommend the number and boundaries of provinces to the National Parliament? and that Parliament should decide the question?

3. If the system should be changed, then it is necessary to consider the following:

- (i) who should decide the number and boundaries of provinces?
- (ii) should a separate body prepare a report first?
- (iii) should provincial governments have a say in deciding the number and boundaries of provinces?
- (iv) should the constitution or a national law say how many provinces there shall be?
- (v) who should decide whether provinces may join together or be divided?
Should provincial governments be able to initiate or to carry out such changes on their own? Or should there be some national controls?
 - and, if so, of what kind?

Should the constitution or a national law provide for regular reviews of the number and boundaries of provinces? If so, who should carry out such a review? and how often?

Should the constitution or a national law set down rules for such reviews? Such rules might say -

- exactly how many provinces shall be allowed

or

- the greatest number of provinces allowed

and/or

- the smallest number of provinces allowed.

Or they might tell the people who carry out the review to pay attention to the population, area, or internal communications of each province or to the common interests of its various parts, or to some other factor, such as the boundaries of National Parliament constituencies.

4. Some provinces are named after an island or islands (Guadalcanal, Isabel, Makira/Ulawa, Malaita) or a place (Honiara), while others describe the part of the country they cover (Central islands, Eastern Outer Islands, Western).

Should the names of any provinces be changed? If so, which ones? Do Committee members want to decide what they should be called?

Should the names of particular provinces be set out in the constitution or a national law? Who should in future decide on the names of provinces? Who should have the power to change them?

- each Provincial Assembly for itself?
- the National Parliament?
- or some special body?

5. The powers and functions of provincial governments (for example, in relation to fisheries, internal migration) may be closely related to the numbers and boundaries of provinces. Committee members might find it useful to look at the questions asked above in light of decisions they will make about the powers and functions of provincial governments (see especially Chapter 3).

WORKING PAPER 1.2

THE STATUS OF THE NATIONAL CAPITAL

1. This paper considers alternative ways of dealing with the relationship between the national capital, Honiara, and its hinterland, which comes under the Guadalcanal Provincial Government.

Option (i): Honiara and Guadalcanal could both be provincial governments

Advantages

- same powers and functions (and so autonomy) for both

Disadvantages

- regional planning might be more difficult
- conflicts might not be resolved
unless both provincial governments negotiate
but what happens if they do not finally agree?

Option (ii): Two separate provincial governments under a higher authority, including representatives of both provincial governments

Advantages

- makes joint planning possible
- resolves conflicts

Disadvantages

- reduces the autonomy of both provincial governments
- might draw outsiders into conflicts

Option (iii): Guadalcanal a provincial government and Honiara a special case (for example, a national capital territory)

Advantages

- might preserve national interest in Honiara
- might preserve Guadalcanal autonomy outside Honiara boundary

Disadvantages

- conflicts not resolved
- regional planning might be difficult
- might limit the rights of Honiara people to have a say in government below national level

Option (iv): Honiara an Area Council of Guadalcanal Province (that is, a unit of government subordinate to the provincial government)

Advantages

- Guadalcanal would have same powers and functions over the whole island as other provincial governments
- might help solve some Guadalcanal problems
- might help regional planning
- no conflict between provincial governments with equal powers

Disadvantages

- might not look after national interest in Honiara
- might lead to resources leaving Honiara
- might give more outsiders a say in Guadalcanal government
- Honiara might lose autonomy

Option (v): Honiara an Area Council (perhaps called City/Town Council) of Guadalcanal with special safeguards such as certain grants to Guadalcanal tied for Honiara to spend, representation in the Provincial Assembly, internal devolution to Area Council level, and a requirement that neither Guadalcanal nor Honiara can do some things unless the other agrees

Advantages

- might help Guadalcanal to deal with problems on the boundary
- helps devolution within the province
- can lead to efficient coordination of services (therefore savings)

Disadvantages

- gives Honiara less autonomy than other provinces
- gives Guadalcanal less autonomy than other provinces
- conflicts between Honiara and Guadalcanal might still arise
- gives Honiara and Guadalcanal veto powers over one another (and so Guadalcanal is less powerful than other provincial governments).

2. Option (v) can be set up so that other cities or big projects, like mine sites, might be proclaimed in the same way as Honiara so that they can be separately governed within a provincial framework. If this is done, who should decide whether further cities or big projects should be proclaimed?

WORKING PAPER 1.3

PROVINCIAL SEA BOUNDARIES

1. Under existing legislation, the territorial waters of Solomon Islands extend to twelve miles from designated baselines. Each baseline is drawn up according to the principles governing archipelagic waters, so that the twelve miles will start to run, in many places, not from the low water mark but from points further away. In addition to the territorial waters, Solomon Islands has declared an economic zone which stretches for 200 miles from the baselines.

In relation to the territorial waters, the government of Solomon Islands has complete sovereignty and full law-making powers. In relation to the economic zone, the national government has more limited rights: it has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, including those in the seabed.

2. At present, all marine resources up to the outer end of the economic zone belong to the national government. Provincial governments do not as such have any seas as part of their areas..

Ascribing a sea, or some parts of the seas, to a state or province has various functions:

- (a) the jurisdiction, and therefore the laws, of the state or province extend to those parts of the sea (which, among other things, means that it is not so easy to evade the laws by doing particular activities from the sea just off the coast);
- (b) a state/province is better able to organise its defence and the land area is better protected if a state/province can regulate shipping within so many miles of its coastline;
- (c) it gives the state/province ownership of marine resources.

3. In deciding on the question of provincial sea boundaries, the Committee should bear in mind that:

- (a) some of the functions of ascribing territorial seas outlined in para. 2 can be achieved without actually allocating territorial seas to a province, for example, by providing that certain marine *resources* shall belong to a province;
- (b) some functions may best be discharged nationally (for example, defence, provision of navigational maps);
- (c) many questions of the use of the seas are now determined by international law, and would thus be the responsibility of the national government;
- (d) having provincial sea boundaries will make it more complex to administer fishing, navigational laws, etc.;
- (e) the capacity of provincial governments to undertake the administration of the seas must be considered.

4. There are two options available:

Option (i): To declare that a part of the national territorial seas belongs to the provinces (for example, three miles from the baseline)

Advantages

- increases resources of province
- ensures provincial laws are not easily evaded
- preserves traditional fishing rights

Disadvantages

- makes administration of sea complex
- makes it difficult for Solomon Islands government to negotiate treaties, etc. on sea questions
- imposes heavy administrative demands on provincial governments
- nature of some resources (for example, migratory fish) makes it more sensible to have national rather than provincial regulation

Option (ii): To leave the seas and their administration with the national government but to deal specifically with issues where provincial governments have an interest, for example, revenue from marine resources, ownership and control of traditional fishing areas and reefs, etc.

Advantages

- keeps the law and regulation of seas and marine resources simple
- minimises burden on provincial administrative capacity
- safeguards the essential interests of the provinces
- exploitation of marine resources requires sophisticated and expensive technology and complex international transactions for which the national government is better qualified.

Disadvantages

- may not be possible to anticipate all the essential interests of provinces which need specific regulation
- weakens bargaining position of provinces.

5. If Option (ii) is adopted, the following matters might be specifically regulated:

- (a) traditional fishing grounds and reefs should be vested in (or belong to) the province or the particular community which has exercised the traditional rights;
- (b) all waters above the low water mark (that is, towards the land) should be declared provincial internal waters to be subject to the usual provincial powers;

- (c) the jurisdiction of the province should extend to, say, three miles below the low water mark, so that its law would apply to houses built into the sea;
- (d) the Fisheries Department or other relevant authority should not give a licence to fish (on a commercial scale) within three miles of the coast of a province without the consent of the Provincial Assembly;
- (e) there should be a formula for the sharing of the revenue from the exploitation of the marine resources (at present ten per cent of export duties on fish are shared between the provinces on a roughly per capita basis; the formula can be entrenched in relation to fisheries, with possibly a higher percentage to go to the provinces);
- (f) this will still leave unresolved the question of other mineral resources; the Committee may wish to recommend the establishment of a revenue-sharing principle for these as well;
- (g) if it is desired to give provincial governments powers over provincial shipping (including disciplining of crews), this should be expressly provided for, so that there is no doubt that laws and regulations made by them will be valid, even though they affect conduct in seas more than three miles from the baseline.

CHAPTER 2

POLITICAL STRUCTURE

This chapter deals with the political structure of provincial governments. The first working paper examines the composition of the main political body, referred to here as the 'Provincial Assembly'. It is followed by a paper on the role and structure of the provincial executive or cabinet, including the procedures for selecting and removing the political head of the province, known in Solomon Islands as the 'president', and proposed to become the 'premier', except in the case of Honiara, which it is proposed should have a 'mayor'. The third paper discusses the more specific question of the role of traditional leaders in provincial governments, and the last paper considers the question of sub-provincial political units, known since independence as 'Area Councils' (Pacific Islands 1978: section 13(b)), but called 'local governments' by the Special Committee (Solomon Islands 1979b: 28-30).

Since this chapter is particularly concerned with the political aspects of decentralisation, it will be of only limited value in countries where it has already been decided that decentralisation should be primarily administrative in nature. However, it is likely to be relevant in countries where such a decision has not been firmly made. Some points are also likely to be useful in countries where powers either are, or are to be, decentralised to an integrated political and administrative body, which has some local involvement but is subject to national political control. In Zambia, for example, one of the contentious issues is whether chiefs should be represented on the new district councils, which include national and local government representatives and members of the national party.

In reading Working Paper 2.1 it is as well to bear in mind that it was written for use in a country where the constitution contains a commitment to political decentralisation ('participation of our people . . . and . . . decentralisation of power' - Solomon Islands 1978a: Preamble) and where it was, consequently, not appropriate to canvass the relative advantages and disadvantages of decentralisation in general, or of political as against administrative decentralisation in particular. The Working Paper was, moreover, written after the Special Committee on Provincial Government had decided not to change the number or boundaries of provinces established under the *Plan of Operations*. It is, therefore, concerned with outlining ways in which the composition of existing bodies might be changed when further powers are decentralised. It does not devote detailed attention to those problems which arise specifically when there is no existing body to which powers might be transferred (for example, how to consult the people of a province about which of a series of alternative arrangements they prefer, where flexibility is possible; whether to change the composition of an existing body at provincial level, say, by adding elected leaders, or to start afresh; etc.).

In like fashion, it is worth bearing in mind that Working Paper 2.2 was prepared for use in a country with a Westminster-style system of responsible ministerial government at the national level and a somewhat similar system at provincial level. It does not specifically canvass the relative advantages/disadvantages of an American-style separation of powers at provincial level, though the options presented in Working Papers 2.1 and 2.2 would have allowed Committee members to have recommended such a system or a form of executive presidency, had they so desired.

When it comes to Working Paper 2.3, it seems fair to say that the inclusion in this volume of a paper on 'chiefs' will probably surprise at least some students of the anthropology of Melanesia. The very idea of preparing such a paper was greeted with considerable scepticism by experienced anthropologists whose advice was sought before the original Background Paper was written.

However, the existence of chiefs has been recognised by a succession of influential bodies with

Solomon Islands members, and the question of giving them an official role in government has been a contentious issue in Solomon Islands politics (British Solomon Islands Protectorate 1972: 19-20; Solomon Islands 1973: 53-54, 1976: 5, and 1977: 16; United Kingdom Parliament 1977: 12). Chiefs are mentioned in the independence constitution (Solomon Islands 1978a: section 114 (2)) and in the terms of reference for the Special Committee on Provincial Government (see page 3 above). Many submissions received by the Committee dealt at length with the need to find a place for chiefs within the decentralised system of government.

In fact, some communities in pre-colonial Solomon Islands were ruled by chiefs - not only the small Polynesian outliers, Tikopia and Anuta, which have been described by Professor Raymond Firth (1954: 100 and 1960), but also some Melanesian communities (Goldie 1909: 24). In the case of Tikopia and Anuta, the British colonial authorities were so respectful of the chiefs that they did not bring their islands under the local council system, and District Officers did not land on them without the chiefs' permission (the future of the two islands under provincial government was an issue on which the Special Committee made specific recommendations - Solomon Islands 1979b: 14).

However, in many other communities, political leadership was exercised by 'big men'. Unlike chiefs, 'big men' did not accede to office. They built up personal followings on the basis of their abilities - at warfare, exchange or trade, hunting, fishing, gardening, sorcery, and other socially valued activities (Hogbin 1964: 62-71; Davenport 1964: 85-91).

In some communities, political leadership was open to competition, but eligibility for at least certain offices was restricted to members of a specified kin group (Chowning 1979: 70; Fox 1924; Russell 1950).

However, the term 'chief' has not always been employed with scholarly precision in Solomon Islands. It has been widely and loosely used to refer to local leaders of diverse types, including men of relatively little consequence, even locally, as well as 'big men' (Codrington 1891: 46). It has also been used to refer to a 'big man' who used his skills in alliance with a Christian mission to make himself the first 'paramount chief' of the various communities which live on the island of Isabel (White 1979: 128). During and after World War II, the term was used by Solomon Islanders to designate the members of the hierarchy of officials who organised and ran the *Ma'asina Ruru* movement which pressed the British administration for a greater say by Solomon Islanders in the government of the protectorate (Allan 1951: 93). It has often been used by Solomon Islanders to lend dignity to local leaders when describing them to foreigners who have expected to find 'chiefs', or who have been unable to understand how community affairs could be managed without chiefs. In some cases, 'chiefs' have been created and given limited functions to meet external demands for Solomon Islands communities to produce them (Codrington 1891: 46; Keesing 1968; cf. Knibbs 1929: 222-223). There are also Solomon Islanders who use chiefly and other titles to claim ascendancy over others for themselves or for kin or ethnic groups to which they belong. Some of the genealogical justifications which accompany such claims have millenarian overtones.

The Special Committee on Provincial Government tended to use the term 'chief' as a generic term for leaders of standing in local politics who had become important by customary or traditional means, rather than ballot box, or by such of those means as continue to provide avenues to leadership in a country where warfare has been outlawed, Christianity has become the majority religion, the economy is becoming increasingly monetized, and political leaders at both the national and provincial levels are elected on a universal, adult franchise.

Like previous constitutional bodies, the Special Committee dealt with 'chiefs' and other customary or traditional leaders at the same time. Working Paper 2.3 may, therefore, be useful in other

countries where the status and role of traditional local leaders is an issue in decentralisation.

Area Councils, which are dealt with in Working Paper 2.4, are the most local units of the introduced system of government in Solomon Islands, with only traditional political units 'below' them. Before independence, they were known by a variety of different names, including 'area' and 'subdistrict committees', while the Special Committee on Provincial Government recommended that they be called 'local governments' (Solomon Islands 1979b: 28-30).

Working Paper 2.4 is concerned with the composition of Area Councils, their relationship to provincial governments, and the powers and functions which they should be given. One of the most important questions with which it deals is the question of whether decisions about the existence, structure, powers, functions and resources of Area Councils should be made at the national level or left to individual provincial governments. Should provincial governments be trusted to decentralise beyond the provincial level? What should be done if they create provincial 'mini-Honiaras'? The issues canvassed will be relevant whenever consideration is being given to decentralisation to lower levels of government. It should, however, be remembered that the small size of Area Councils in Solomon Islands, combined with a relative lack of development in some areas, imposes limits on the kinds of structures which can be set up and on the resources at their disposal. The powers and functions of Area Councils in Solomon Islands are, almost inevitably, more limited than they need be in more populous, wealthier and more highly developed countries.

WORKING PAPER 2.1

STRUCTURE OF PROVINCIAL ASSEMBLIES

NAME OF PROVINCIAL ASSEMBLY

1. Under the Solomon Islands Independence Order, Local Councils have been renamed 'Provincial Assemblies' (Pacific Islands 1978: section 13(b)). There are three options available for the future:

Option (i): The Committee could decide that the name 'Provincial Assembly' should be kept and applied to all provinces

Advantages

- name new but already becoming known
- name would be same all over country
- new name shows system different from old Council system
- short accurate name

Disadvantages

- name not chosen by provinces
- name not well known
- name like name used in other countries, so might lead to confusion

Option (ii): The Committee could decide that provinces should be able to choose from a list of names set out in a national law or the constitution

Advantages

- more flexible
- some guidelines

Disadvantages

- not same in all parts of country
- provinces cannot choose any name they like

Option (iii): The Committee could decide to leave the choice of name completely to provinces

Advantages

- provinces choose

Disadvantages

- names might not be same in different parts of country so may be confusion.

MEMBERSHIP OF PROVINCIAL ASSEMBLY

2. Under the Solomon Islands Independence Order, the membership of Provincial Assemblies is the same for the time being as for Local Councils (Pacific Islands 1978: section 13(b)). The following options are available for the future:

Option (i): The Committee could decide that there should be no more changes to the membership of Provincial Assemblies

Advantages

- present system known
- all members elected

Disadvantages

- no change
- no flexibility

Option (ii): The Committee could decide there should be changes set out in the constitution or another national law

Advantages

- not old system
- would depend on what changes were made

Disadvantages

- changes not made by provinces
- would depend on what changes made

Option (iii): The Committee could decide that provinces can make choices from a list of options set out in the constitution or a national law

Advantages

- choice made by provinces
- choice within a single national system
- some flexibility

Disadvantages

- provinces not all the same
- provinces do not make a free choice

Option (iv): The Committee could decide that provinces should decide for themselves

Advantages

- choices made by provinces
- flexibility

Disadvantages

- system not same in all parts of country
- might give too much say to members not directly elected by the people.

3. If the Committee decides there should be changes to the membership of Provincial Assemblies *or* that provinces should be able to make changes to the present membership of Provincial Assemblies, then there are a number of changes which might be considered:

Option (i): Members chosen by Area Councils

Advantages

- Area Councils directly represented at provincial level
- Area Councils might know better what is happening at provincial level
- might reduce conflict between provincial and area leaders

Disadvantages

- these members not directly elected
- might lead to conflict between area and provincial leaders

N.B. Should it be possible for a Provincial Assembly to consist entirely of members chosen by Area Councils?

Option (ii): Members of National Parliament become Provincial Assembly members

Advantages

- Provincial Assemblies can make views known directly to national politicians
- issues raised in National Parliament can be brought directly to provincial leaders
- might reduce conflict between provincial and national leaders

Disadvantages

- national and provincial leaders elected at different levels
- might confuse national and provincial issues
- might increase conflict between national and provincial leaders

Option (iii): Other important local leaders (for example, churchmen, leaders of commercial or trades union bodies) and/or public servants become Provincial Assembly members

Advantages

- important leaders included
- important interests involved

Disadvantages

- not elected by people
- might give some interests too much say.

4. If the Committee recommends any of the above changes, it could decide that members of Area Councils, members of the National Parliament and/or other important leaders should be:

(i) co-opted by Provincial Assemblies after each election

or

(ii) co-opted at regular intervals, say each year

or

(iii) be made members of Provincial Assemblies by right (that is, by national or provincial law).

5. The Committee could also recommend that these members:

(i) speak and vote

or

(ii) only speak

or

(iii) speak only when asked for advice

or

(iv) decision should be left to Provincial Assemblies.

6. The Committee could also decide whether these members should:

(i) be paid

or

(ii) receive sitting allowances and travelling expenses to help them attend meetings

or

(iii) receive nothing.

7. If there are members of Provincial Assemblies not directly elected by the people, the Committee could recommend either of the following:

Option (i): That there should be a limit on the number of them

Advantages

– keeps balance between elected and unelected

Disadvantages

- less flexible

Option (ii): That there should be no limit on the number of them

Advantages

- more flexible

Disadvantages

- might not be balance between elected and other members.

NATIONAL CONTROL OVER STRUCTURE, COMPOSITION AND PROCEDURES OF PROVINCIAL ASSEMBLIES

8. The Committee should consider how much control the national government should have over the structure, composition and procedures of Provincial Assemblies. There are three options:

Option (i): There could be a national law setting out:

- (i) the exact size of provincial assemblies
or
- (ii) maximum/minimum size of provincial assemblies
or
- (iii) area/population of electorates
and/or
- (iv) relationship between Area Councils, Provincial Assemblies and National Parliament constituency boundaries
and/or
- (v) a body to decide on Provincial Assembly electorates (the Constituency Boundaries Commission or another body?)
and/or
- (vi) qualifications of electors and members (for example, they could be the same as in national elections so same rolls used)
and/or
- (vii) timing of Provincial Assembly elections (for example, money could be saved, but confusion caused, if held simultaneously with National Parliament or Area Council elections)

and/or

- (viii) whether elections for Provincial Assemblies can be held before term is complete

and/or

- (ix) when Provincial Assemblies should meet (for example, how soon after elections, a minimum number of times per year, and/or when a certain number of members ask for meeting)

and/or

- (x) who should preside at meetings of Provincial Assemblies (for example, the head of the executive - as in some local government systems; a member chosen from among the elected members - as in most Westminster-system parliaments; or a person who is not necessarily an elected member chosen by the elected members - as in the Solomon Islands National Parliament)

and/or

- (xi) who should summon members of Provincial Assemblies to the first meeting after a general election and/or at other times (for example, a national government minister, the presiding officer or a senior public servant)

and/or

- (xii) the legislative procedures, privileges and immunities of Provincial Assemblies

Advantages

- might be greater certainty
- might save money

Disadvantages

- might not suit local conditions well
- might be less flexible

Option (ii): There could be national guidelines or options from which provinces choose

Advantages

- a national framework
- some flexibility

Disadvantages

- might not be completely what provinces want
- limits choice

Option (iii): It could be left to provinces to decide

Advantages

- flexibility
- free choice

Disadvantages

- no national framework
- might cost more.

SALARIES/ALLOWANCES FOR MEMBERS OF PROVINCIAL ASSEMBLIES

9. There are three options to be considered:

Option (i): Salaries/allowances could be set at national level

Advantages

- same in all parts of the country
- might limit costs

Disadvantages

- provinces do not decide
- less flexible

Option (ii): Salaries/allowances could be required to be within national limits

Advantages

- some flexibility
- might save money

Disadvantages

- provinces do not decide
- might not suit local conditions

Option (iii): Salaries/allowances could be set at provincial level

Advantages

- provinces decide how much money used
- flexibility for local conditions

Disadvantages

- might cost more
- might weaken financial standing of country as a whole
- might increase inequalities between provinces.

If option (iii) is chosen, the Committee might like to consider whether payments to members of Provincial Assemblies should be set by Provincial Assemblies themselves or by an independent body.

OTHER ISSUES

10. It has been suggested that a Governor should be appointed in each province to represent the head of state at provincial level. The Committee might like to consider the desirability of having such an office.

11. It has also been suggested that provincial governments should be represented in the National Parliament. The Committee might like to consider this suggestion.

12. The Committee might also like to consider whether the Provincial Assembly should be able to dissolve itself (for example, by a special majority)

Advantages

- flexibility in difficult times
- elected leaders decide

Disadvantages

- fixed terms more certain
- elected leaders should compromise.

WORKING PAPER 2.2

PROVINCIAL EXECUTIVES

1. It is necessary to decide how much control the national government should have over the structure and organisation of provincial executives, including:

- (a) size of provincial executives;
- (b) organisation of executives (for example, committee or portfolio system);
- (c) title of head of executive;
- (d) choosing head of executive;
- (e) removing head of executive.

There are three options available:

Option (i): There could be a national law setting out how provincial executives should be structured and organised

Advantages

- system the same in all parts of country
- might limit costs

Disadvantages

- provinces would not be free to choose
- might not suit some provinces

Option (ii): There could be a set of options in the constitution or in a national law from which provinces could choose

Advantages

- national framework
- some flexibility
- might limit costs

Disadvantages

- provinces do not have complete freedom of choice
- might not suit some provinces.

Option (iii): It could be left to provinces to decide how their executives are organised

Advantages

- provinces choose
- flexibility

Disadvantages

- no national framework

- no guidance for provincial governments
- might cost more.

2. If it is decided that the national government should have some control over the above issues, it is necessary to look at the alternatives available. These are discussed in the following paragraphs.

A. SIZE OF PROVINCIAL EXECUTIVES

3. It is possible to set the actual or maximum/minimum size of provincial executives

Advantages

- might limit costs

Disadvantages

- less flexible.

B. ORGANISATION OF PROVINCIAL EXECUTIVES

4. There are several alternative ways of organising provincial executives

Option (i): Executive committee

Advantages

- responsibility/power shared
- might help coordination/planning between departments

Disadvantages

- might be slow to make decisions
- lines to/from departments may not be clear.

Option (ii): Specialist committees

Advantages

- responsibility/power shared

Disadvantages

- might be slow to make decisions
- lines to/from departments may not be clear

Option (iii): Portfolio system (like ministers)

Advantages

- lines to/from departments clear
- might be easier to get decisions between meetings
- members may be more available between meetings

Disadvantages

- portfolio holders might act on their own, thus discouraging interdepartmental co-ordination

- portfolio holders might interfere in day-to-day running of departments
- portfolio holders might become an elite
- might cost more.

C. TITLE OF HEAD OF EXECUTIVE

5. There is no inherent advantage in any particular title. However, it should be remembered that there will be a tendency to make comparisons with other countries and this could cause some confusion. For example, in the South Pacific, the term 'premier' is likely to be associated with the premiers of Australian states.

D. CHOOSING HEAD OF EXECUTIVE

6. There are three main ways in which the head of the executive might be chosen:

Option (i): Elected by provincial executive

Advantages

- easy to organise

Disadvantages

- may not be acceptable to other members of Assembly or province as whole

Option (ii): Elected by Provincial Assembly

Advantages

- easy to organise
- acceptable to whole of Assembly

Disadvantages

- may not be acceptable to province as whole

Option (iii): Elected by whole population in special election (which might be held at same time as election for Assembly members)

Advantages

- more likely to be acceptable to province as whole

Disadvantages

- more complicated and expensive to organise
- people may be confused by two elections.

E. REMOVING HEAD OF EXECUTIVE

7. The term of office of the head of the executive may be any of the following:

Option (i): Full life of Provincial Assembly

Advantages

- continuity
- experience

Disadvantages

- could become too powerful
- hard to remove if not working well

Option (ii): Re-elected at fixed intervals (for example, annually)

Advantages

- easier to remove if not effective

Disadvantages

- lack of continuity/experience

Option (iii): Until removed by Provincial Assembly

Advantages

- stays in office while has support

Disadvantages

- uncertainty regarding future
- could be removed for trivial reasons.

8. If it is decided that the head of executive may be removed by the Provincial Assembly, it is necessary to consider the circumstances in which this can be done:

Option (i): May be removed without any specific reasons (for example, if voted out by a specific majority or following a special motion)

Advantages

- enforces political responsibility
- elected leaders decide
- allows for removal in unexpected (or unspecified) circumstances

Disadvantages

- can be removed for political reasons
- circumstances of removal not specified
- may make removal of law breaker or sick person too hard.

Option (ii): May be removed in certain specified circumstances, for example,

- ineligibility to vote
- bankruptcy
- mental incapacity
- physical inability
- guilty of serious crime
- sentenced to imprisonment
- holding of public and/or electoral office
- electoral malpractice
- absence or delay in work
- misconduct in office (kind of misconduct may be specified).

Advantages

- reasons for removal must be clear
- cannot be removed for purely political reasons

Disadvantages

- removal may be too hard where there is doubt
- may be uncertainty while removal procedure under way.

9. If Option (ii) in para. 8 is chosen, the Committee might like to decide how the removal should actually be put into effect:

Option (i): Removal automatic following decision of appropriate body (for example, court, doctor, special committee of the Assembly)

Advantages

- removal certain
- no political compromise

Disadvantages

- no room for other things to be considered
- elected leaders do not decide

Option (ii): Removal subject to a vote of the Assembly

Advantages

- elected leaders decide
- good leader can be warned and kept on

Disadvantages

- may lead to political compromise
- uncertainty.

10. The Committee might also like to consider whether the removal of the head of the executive should also lead to his removal from the Provincial Assembly:

Advantages

- wrongdoers should be removed completely
- those incapable of good leadership should be removed completely

Disadvantages

- head of executive not an ordinary member
- two issues should be considered separately.

11. If he is removed from the Assembly as well, it is necessary to consider whether other members of the Assembly should be removed for the same reasons.

12. The Committee may also like to consider the following related issues:
- (a) whether the rest of the provincial executive should be removed with the head;
 - (b) whether provision should be made for suspension (perhaps for a limited period or subject to periodic votes) before removal;
 - (c) whether there should be safeguards when mental incapacity or physical inability is alleged (for example, the opinions of two doctors);
 - (d) whether there should be provision for the head to be stood down while under investigation for certain offences.
13. It may also be necessary to consider what should happen in the following circumstances:
- (a) if the head of the executive interferes, without breaking the law, in the administration of a province;
 - (b) if the head of the executive and the rest of the Provincial Assembly cannot agree on the annual budget;
 - (c) if the head of the executive behaves in a manner which embarrasses or annoys the Assembly and affects its reputation.

WORKING PAPER 2.3

THE ROLE OF CHIEFS

1. The constitution says that the Special Committee shall consider the role of traditional chiefs (Solomon Islands 1978a: section 114(2)), and many submissions have been received on the subject. There are four main options available:

Option (i) : There could be a national law saying what part chiefs should play in provincial governments and/or Area Councils

Advantages

- certainty about the part that chiefs will play
- system would be the same wherever there are chiefs

Disadvantages

- does not allow provincial governments or Area Councils to decide
- does not take account of local conditions

Option (ii): There could be national guidelines, without the force of law, recommending what part chiefs should play

Advantages

- would make clear what is intended
- allows for local conditions

Disadvantages

- may not be put into effect.

Option (iii): Provincial governments could decide for themselves what part chiefs should play

Advantages

- takes account of local conditions

Disadvantages

- without a national law, provincial governments might not allow chiefs to play a part in Area Councils

Option (iv): Area Councils could decide for themselves what part chiefs should play

Advantages

- as for Option (ii) above

Disadvantages

- as for Option (ii) above.

2. If Option (i) or (ii) in para. 1 is chosen, the Committee could recommend one of three options:

Option (i): Chiefs should play a part at provincial level

Advantages

- brings in grassroots leaders
- shows respect for chiefs
- would mean that leaders who know custom take part

Disadvantages

- chiefs not elected
- chiefs might not be treated with due respect
- not all areas have chiefs
- too many chiefs
- chiefs usually concerned with more local matters

Option (ii): Chiefs should play a part in Area Councils

Advantages

- as for Option (i)
- close to level at which chiefs have led in past

Disadvantages

- as for Option (i), but not always the last point

Option (iii): Chiefs should not play a part in government at all

Advantages

- only elected leaders take part
- some kinds of change might be more easily approved

Disadvantages

- grassroots leaders not included in government
- shows no respect for local leaders
- knowledge about custom less readily available.

3. If the Committee decides that chiefs should play a part at provincial or Area Council levels, then there are further options to consider about what that part should be:

Option (i): Chiefs should be allowed to speak and vote

Advantages

- allows grassroots leaders to take full part in meetings
- shows respect for chiefs
- makes leaders who know custom more effective

Disadvantages

- not elected
- if overridden, not respected
- too many chiefs

Option (ii): Chiefs should be allowed only to speak

Advantages

- could give advice but not shamed if advice rejected

Disadvantages

- chiefs not fully effective

Option (iii): Chiefs could meet separately to give advice

Advantages

- avoids conflict between chiefs and elected leaders

Disadvantages

- chiefs not fully effective.

4. If the Committee believes that chiefs should play a part at the provincial or Area Council levels, it should consider -

- whether all chiefs or only paramount chiefs should be included; and
- how chiefs should be chosen -
 - by agreement at meetings of the people?
 - by co-option by Provincial Assemblies or Area Councils?
 - in some other way?

5. The Committee might like to consider suggestions which have been made that a role for chiefs should be found at the national level (for example, by holding conferences of chiefs).

WORKING PAPER 2.4

AREA COUNCILS

1. It is necessary to decide how much control the national government should have over the establishment of Area Councils or other sub-provincial bodies:

Option (i): There should be a national law which says that provincial governments must set up Area Councils

Advantages

- Committee could be sure that Area Councils will be set up
- might ensure devolution within provinces
- ensures grassroots participation in government
- there would be a national framework

Disadvantages

- means provincial governments/local communities would not decide
- framework might not suit some areas

Option (ii): There should be a national law which allows provincial governments to set up Area Councils - perhaps within certain guidelines

Advantages

- allows provincial governments to decide/consult local communities
- respects provincial autonomy
- more flexible

Disadvantages

- no certainty what would happen
- would allow provincial governments not to devolve further

Option (iii): It should be entirely up to provincial governments whether to set up Area Councils

Advantages

- respects provincial autonomy
- allows flexibility to suit local conditions

Disadvantages

- might be no further devolution from provincial governments
- decision made by provincial, not grassroots, leaders

Option (iv): Provincial governments must ask local communities whether they want Area Councils - and leave it to the people to decide how they should be set up

Advantages

- flexibility
- respects local opinion/autonomy

Disadvantages

- uncertainty about what would happen
- difficulties of consultation
- no national, and perhaps no provincial, framework.

2. If Option (iv) is selected, the Committee should consider how local communities might be consulted.

3. If Option (i) or (ii) is selected, the Committee could make recommendations about -

(a) the membership of Area Councils -

1. exact membership
2. maximum/minimum size
3. population/area covered
4. proportion of chiefs and other members
5. whether leaders other than chiefs should become members because of offices they hold, for example, National Parliamentarians, Provincial Assembly members, church leaders, public servants, etc.

Advantages

- could be certain about membership of Area Councils
- could be certain of how much say elected/non-elected members have
- could see Area Councils are not too big so that they do not meet for too long or cost too much in sitting allowances

Disadvantages

- less flexible
- might not allow important local leaders to be included

(b) qualifications for voters and members

Advantages

- means same rolls could be used in national, provincial and Area Council elections
- might be fairer

Disadvantages

- less flexible
- might not suit local conditions

(c) whether Area Council elections should be held at the same time as Provincial Assembly elections

Advantages

- might cost less

- might save time

Disadvantages

- provincial and Area Council issues/candidates might be confused
- less flexible

- (d) name and kind of executive - or perhaps a set of options from which Area Councils might choose

Advantages

- certainty or at least guidance

Disadvantages

- might take less account of local conditions

- (e) whether members additional to chiefs and elected members should speak and vote, speak by right, or be advisory

Advantages

- balance between chiefs, elected members and others clear

Disadvantages

- might be less flexible

- (f) sitting allowances

Advantages

- might control spending

Disadvantages

- decision not made by local leaders.

4. It is also necessary to consider the powers and functions of Area Councils:

- Option (i):** There could be a national law setting out the powers and functions of Area Councils, or at least their minimum powers and functions

Advantages

- ensures that at least some devolution occurs within provinces
- might give Area Councils a sense of purpose

Disadvantages

- less autonomy for provincial governments
- less flexible

- Option (ii):** There could be national guidelines

Advantages

- might encourage devolution within provinces

Disadvantages

- devolution within provinces less certain than in Option (i)

Option (iii): The powers and functions of Area Councils could be left to Provincial Assemblies to decide - perhaps in consultation with Area Councils

Advantages

- more flexible
- respects provincial autonomy

Disadvantages

- devolution within provinces less certain.

5. There are a number of options concerning relations between Area Councils, Provincial Assemblies and the National Parliament:

Option (i): There could be a national law saying members of the National Parliament and/or Provincial Assemblies could speak *or* speak and vote *or* just give advice when asked at area Council meetings

Advantages

- helps communication between leaders at different levels
- provides information about national/provincial policies for Area Councils
- provides information about grassroots for national/provincial leaders

Disadvantages

- might mean national or provincial leaders dominate Area Councils
- national/provincial leaders short of time
- might increase conflict between leaders at different levels

Option (ii): There could be national guidelines

Advantages

- more flexible
- respects provincial/Area Council autonomy

Disadvantages

- less certain

Option (iii): Provincial governments should decide

Advantages

- respects provincial autonomy

Disadvantages

- National Parliament/Area Councils do not decide

Option (iv): Area Councils could decide

Advantages

- flexible
- respects Area Council autonomy

Disadvantages

- less certain
- might be breakdown in communication between different levels

Option (v): Provision could be made by national/provincial governments for Area Councils to be represented on Provincial Assemblies

Advantages

- increases communication between different levels

Disadvantages

- Area Council representatives not directly elected to provincial level
- might increase conflict.

6. If Option (v) is selected, the Committee could decide how many Area Council representatives there should be on Provincial Assemblies; how they should be chosen; whether they should speak and vote/speak/be advisory only.

7. Similar decisions to those in para. 5 must be made regarding the collection of a basic rate or tax by Area Councils:

Option (i): The Committee could decide that there should be a national law requiring a (minimum?) basic rate to be collected

Advantages

- ensures local contributions to government revenue
- minimum could allow flexibility
- means Provincial Assemblies/Area Councils do not have to decide whether to collect basic rate

Disadvantages

- does not allow provincial governments and/or Area Councils to decide
- basic rate unpopular
- minimum might be a problem in some areas

Option (ii): There could be a national law requiring provincial governments to allow Area Councils to collect basic rate

Advantages

- guarantees right to Area Councils to collect basic rate

Disadvantages

- Area Councils might be unpopular if they decide to collect basic rate
- does not help principle that everyone who can should contribute to costs of government

Option (iii): Decisions about the basic rate could be left to provincial governments/Area Councils

Advantages

- gives provincial governments/Area Councils power
- flexibility

Disadvantages

- no certainty that all who can contribute to the costs of government
- might be difficult for provincial governments/Area Councils to decide about rate.

8. The Committee could also decide whether it wants to say who should collect the basic rate; which level of government should keep how much of it; and what controls there should be over how the money should be spent.

9. The Committee could also decide whether it wants to make recommendation about financial grants to Area Councils - perhaps so much grant from the national/provincial governments for so much basic rate collected.

10. The Committee could also make recommendations about relations between Area Councils and national/provincial government staff.

CHAPTER 3

POWERS AND FUNCTIONS

The distribution of powers and functions between the national and other levels of government tends to be the central issue in any programme of decentralisation. It also tends to be the most time-consuming and contentious, requiring detailed understanding and review of almost all that government does, and disturbing entrenched interests. It tends to be particularly complex in cases of political decentralisation because they generally involve transfers of control not only from one level of government to another but from appointed public servants to elected politicians.

The way in which the distribution of powers and functions is given legal effect helps to define the autonomy of subnational bodies, to shape the structure of relations between the various levels of government, and to determine the degree to which political decision-making becomes constrained by unnecessary legalism or involves unnecessary use of legal forms. Policy-makers who are contemplating or implementing a programme of political decentralisation cannot afford to limit themselves to making decisions about the distribution of powers and functions and leave the legal framework of decentralisation to legal technicians – at least not if they seriously want to see that the decentralised system works as closely as possible to plan.

The following brief account of the way in which the Special Committee on Provincial Government dealt with the division of powers and functions in Solomon Islands and with the problems involved in giving its recommendations legal effect is intended to help explain much of the material contained in Working Papers 3.1 to 3.4 and Appendices 3.1 and 3.2. It might also be useful in suggesting how similar issues in other countries might be approached, after suitable adaptation to local circumstances of the methods used in Solomon Islands.

Towards the end of the nationwide tour mentioned in the Introduction, members of the Special Committee met for some general discussions on the shortcomings of the inherited system of provincial government and on the possibilities for change. Their attitudes covered quite a wide spectrum – from hoping that changes in the distribution of powers and functions would provide opportunities to bring about particular changes (in education policy, the discipline of ships' crews, etc.) to believing that changes in the exact location of control over decision-making were worthwhile ends in themselves. As discussion turned to detailed consideration of the main activities of each national ministry, it became clear that members were sometimes less concerned with changing particular policies or the ways in which those policies were made than with ensuring that provincial governments were not only consulted by the national government on certain subjects, including the national development plan, but that they *had* to be. Members were, in short, also concerned with formalising, and imposing legal requirements on, previously informal arrangements for consultation between the national and provincial governments (see Chapter 7) as well as public servants performing national and provincial functions in the provinces (see Working Paper 4.1).

After rather lengthy, general discussions of the kinds described, during which members identified the potentially most controversial issues and developed a feeling for one another's views, the Special Committee turned its attention to framing specific recommendations on the distribution of powers and functions between the national government, provincial governments and Area Councils. In doing so, it paid particular attention to the situation of the national capital, Honiara, which members regarded as 'a special case' (Solomon Islands 1979b: 12) because of its unique role as a national centre, the concentration of financial and skilled manpower resources there, and the problems involved in managing relations between the urban area covered by the Town (proposed to become 'City') Council and its largely rural surrounds, which come under the Guadalcanal Provincial Government.

The Special Committee's consideration of the distribution of powers and functions was detailed and systematic – probably more so than its Papua New Guinea counterpart's. It was so because the Special Committee was able to devote more time to the subject; because it was able to draw on previous experience in Solomon Islands and elsewhere; and because it had access to fairly reliable lists of the existing powers, functions and manpower resources of both the national and provincial governments.

Table 1 in Working Paper 3.2 shows where public servants performing provincial functions were located. Table 2 shows the public servants performing national functions who were stationed in, or toured, the provinces. Appendix 3.2, which was originally prepared for the *Plan of Operations*, lists the functions of both the national and provincial governments. And Appendix 3.1, which was compiled especially for the Special Committee, lists the functions vested in provincial governments by the *Local Government Act* (Cap. 14) alongside the functions allocated to particular national ministries in October 1978.

Three further lists, which have not been reprinted in this volume, were made available to members to assist in their consideration of the distribution of law- and policy-making powers: a list of the legal and constitutional provisions regulating each national government function, including a list of statutory bodies and relevant legislation; a list of laws in force in Solomon Islands; and a list of headings in the *Penal Code*.

Detailed papers were also prepared suggesting how particularly contentious issues, including land, internal migration and control of domestic shipping, might be dealt with under existing law or by amending legislation (see Chapter 6 for examples).

The first and second working papers in the chapter were prepared on the basis that it is possible to distinguish between responsibility for carrying out certain tasks of government (that is, 'functions') and responsibility for determining which tasks to perform and how they should be carried out (that is, 'powers' – to make laws and policies). The distinction cannot be always clearly made – a great deal of administration involves the use of discretion, while some policy-making is tightly constrained and essentially routine – and many political scientists regard it as almost impossible to sustain (cf. King 1975: 175-182). It was not well made in the *Final Report* of the Constitutional Planning Committee in Papua New Guinea, in which a proposed division of powers and functions lists only 'functions' (Papua New Guinea 1974a: Part 2, S/3-S/28), although it has since shown up in the separate lists of 'law-making' and 'executive' powers drawn up during implementation (Papua New Guinea 1978: 16-20). But the distinction was consistent with what members of the Special Committee saw as both the principal achievement and the principal shortcoming of the *Plan of Operations*: that it had brought about decentralisation of functions rather than powers. Moreover, it seemed to work in practice: when the Committee's staff and consultants came to compare the recommended distribution of powers and functions, they found that the two lists were compatible.

The Special Committee began detailed consideration of the distribution of powers and functions with Working Paper 3.2: identifying many 'functions' by reference to the tasks performed by holders of particular posts, it worked through the lists in Tables 1 and 2 analysing how efficiently the decentralisation of functions in the *Plan of Operations* had been carried out, and examining whether staff located in, or touring, the provinces performing national functions should have their functions transferred to provincial governments. It then turned to Appendices 3.1 and 3.2 to identify functions which had not shown up in Tables 1 and 2 (for example, functions which, though allocated to the national or provincial governments, were not actually being carried out by public servants).

In some respects, the Committee's consideration of the distribution of government functions proceeded as if it proposed to do no more than extend the range of functions covered by the *Plan of*

Operations. It did, however, pay attention to the possibility of increasing the efficiency and economy of government by providing for greater co-ordination of public servants performing national and provincial functions (the sanctions required to secure such co-ordination are discussed in Chapter 4).

Having worked its way through the various lists once, the Committee then went through the lists again, with the aid of Working Paper 3.1, deciding who should have the power to decide whether each function should be performed at all, and if so how: Area Councils, provincial governments or the national government – acting alone, or subject to guidelines set by a ‘higher’ level of government, or only after consultation with a ‘lower’ level. It also went through the other lists mentioned above, discussing whether additional powers embodied in Acts of Parliament, including the *Penal Code*, should be transferred to provincial governments. The recommendations that it made on the distribution of powers were consistent with a previous decision in which Committee members had declared that provincial governments should, in principle, have law-making powers, without specifying what they should be.

As members of the Special Committee worked through the lists described, they realised that many powers which had previously been vested in provincial governments had not been used – because provincial governments had not known that they had them; because they had lacked advice about alternative ways in which they might be used; because national policies, laws, regulations and/or technical standards had supervened; and/or because they had not had adequate resources to do anything with them. The Committee, therefore, recommended ‘a comprehensive law reform’ to ‘make space’ for provincial governments to use powers which were formally theirs (Solomon Islands 1979b: 37-38). The Committee also reviewed the powers and functions of statutory bodies, concluding that the Acts governing a number should be changed to take greater account of provincial governments’ views – by including representatives of provincial governments on their boards – and to transfer certain powers and functions to provincial governments (*ibid.*: 45-46).

Committee members realised that not all policy-decisions had been embodied in law (probably relatively fewer under British rule in Solomon Islands than under Australian rule in Papua New Guinea). They were concerned to ensure that decentralisation did not lead to a situation in which more than absolutely necessary were. They were, moreover, not committed to decentralisation to the exclusion of all else: they were, for example, concerned to protect provincial governments against attempts by the national government to ‘dump’ unwanted or unduly burdensome powers and functions on provincial governments when the latter also did not want them or lacked the resources to perform them properly.

The lists with which the Committee worked did not legally define the potential powers and functions of government in Solomon Islands. They showed where government staff were posted and what they did, not what they might potentially do. In fact, definitive lists of government powers and functions were unobtainable – probably, by definition – because, while the constitutional limits on government can be known from the constitution, the potential powers and functions of the government of an independent, unitary state are otherwise almost limitless – or, rather, limited by the government’s resources, public opinion, Government policy and technology rather than the law. But notwithstanding their many inadequacies, the lists were useful working tools for the Special Committee. Thus, the material which appears in Tables 1 and 2 of Working Paper 3.2 as well as Appendices 3.1 and 3.2 might suggest potential sources of relevant information, and also ways of organising that information for advisory bodies involved in decentralisation in other countries.

When the Special Committee came to consider how its recommendations on the distribution of power and functions should be given legal effect, it sought the assistance of Yash P. Ghai, whose task was not so much to outline options as to recommend solutions. His recommendations, which are contained in Working Paper 3.4, are both original and consistent with the Committee’s commitment

to a 'simple, modest and effective' system of provincial government (Kausimae 1978: 43; Solomon Islands 1979b: 10). They are designed to avoid imposing unnecessary legal constraints on political processes; to provide a certain autonomy for provincial governments while accommodating change; and to take account of the relative scarcity of trained lawyers in Solomon Islands (where there is only a handful of lawyers in government service, and none in private practice). They are also designed to provide a measure of certainty about the law – by guarding against the creation of legal vacuums when the decentralised system is introduced, and by recommending publication of both national and provincial laws in the *Solomon Islands Gazette*.

The main features of the scheme proposed by Ghai are outlined in Working Paper 3.4: a guarantee of a certain minimum of autonomy for provincial governments, embodied in a list of subjects on which provincial governments should have the final power to make laws and policies (List A); a stress on consultation and co-operation, embodied in a list of subjects on which the national government should have the final say but must first consult provincial governments (List B); and safeguards for shared national interests, embodied in the power of the National Parliament to override provincial legislation on List B subjects and in the reservation of residual powers exclusively to the national government. The paper also makes a number of suggestions about how the national government might 'make space' for provincial governments within the framework of existing national laws.

The third list which forms part of the scheme in Working Paper 3.4, a list of functions which might be vested in provincial governments (List C), is an extension, so to speak, of the arrangements set up under the *Plan of Operations*.

In order to ensure that members of the Special Committee were aware of the options available to them, Working Paper 3.3 was prepared and discussed before the scheme outlined in Working Paper 3.4 was finally accepted. The earlier paper raises issues which might fruitfully be considered in any scheme of political decentralisation. The scheme set forth in Working Paper 3.4 was accepted by the Special Committee but later modified by the Solomon Islands Government (Solomon Islands 1979c: 8-9, Appendices I-III, and 1980: sections 27-34, Schedules, 4-6, 8). It provides a model which policy-makers in other countries might like to test.

WORKING PAPER 3.1

LAW- AND POLICY-MAKING POWERS

1. The Committee has already decided that –
 - provincial governments must have law-making powers; and
 - there should be a national law saying that provincial governments must empower Area Councils to make bye-laws.
2. The Committee might now like to begin discussing the powers which provincial governments and Area Councils should be given. In doing so, members might like to begin by asking –
 - how effectively provincial governments have used their existing powers; and
 - what the reasons for any shortcomings might have been.
3. Under the *Plan of Operations* –
 - provincial governments were given responsibility for many government functions (see Appendix 3.2),
 - but staff performing these functions remain subject to the law- and policy-making powers of the national government.

The subjects over which provincial governments can make bye-laws are listed in the schedule to the *Local Government Act* (see Appendix 3.1).

Members might like to examine the subjects listed in the right-hand column of Appendix 3.1 to see whether provincial governments have made full use of the powers listed.

If there are cases in which provincial governments have not made full use of their powers, members might like to consider whether they have not done so because –

- they have not wanted to use certain powers;
- they have not known that they have had certain powers;
- they have lacked the staff and/or the money to use certain powers;
- they have not been able to use certain powers for legal reasons (that is, the existence of a national law has prevented them);
- certain powers were useless.

The Committee might then like to consider what needs to be done to give provincial governments effective law-making powers –

- should some national laws be amended or repealed to give provincial governments more space to use their existing powers?

- do provincial governments need help (money, skilled staff or legal assistance) to enable them to use their existing powers more effectively?
- should changes be made to any national laws to increase the powers of provincial governments?
- would some powers be more effectively used if they were handed back to the national government and it consulted provincial governments about how to use them, but did the legal and other work itself?
- should there be no change?

In considering the above questions, members might like to bear in mind the desirability of increasing the powers of provincial governments without excessive legalism. It is possible that provincial governments might be able to make more effective choices if they were given alternatives from which to choose than if all of the legal work is left to them. In Papua New Guinea, many provincial governments have simply copied legislation prepared for or by other provincial governments because they lacked skilled staff to provide them with options. Would it be better if alternative drafts were prepared at the centre instead, and staff released for drafting particularly important local laws? It should also be remembered that there is no need for policies to take the form of laws.

Members might also like to consider -

- whether provision should be made for certain powers to be guaranteed to provincial governments (and if so which powers);
- whether there should be national controls on some/all/no provincial legislation; and
- whether there should be a national law requiring devolution from provincial government to Area Council level; and if so what it should say.

WORKING PAPER 3.2

CONTROL OVER GOVERNMENT ACTIVITY IN THE PROVINCES

1. Under the *Plan of Operations*, the field staffs of a number of government departments were brought under the control of provincial governments.
2. Table 1 outlines what has already been done under the *Plan of Operations* to bring staff under the control of provincial governments and suggests additional staff which might be brought under provincial control in the same way.
3. When considering whether additional staff should be brought under the control of provincial governments, it should be remembered that staff under provincial control must often follow national policies and laws. Questions concerning the amount of control provincial governments should have over the laws and policies followed by their staff were raised in Working Paper 3.1.
4. The Committee should also consider whether provision should be made for provincial governments to move staff (other than technical and professional staff) under their control between departments. It might, for example, be possible to save money by amalgamating, and so rationalising administration and support services for, several departments. Money saved from doing away with existing posts which become unnecessary might be used for new posts to strengthen other parts of provincial governments.
5. There are some government activities which could be controlled by provincial governments but for which there is not enough staff available to do the work in some or all provinces. The Committee might like to consider whether the people who carry out such activities should be taken out of their present ministries and placed in the Ministry of Home Affairs – either permanently or until further staff are available.

TABLE 1

Achievements and Possible Extensions of the *Plan of Operations* in Bringing Staff under Control of Provincial Governments

Ministry of Youth and Cultural Affairs

Already Done	:	none (but planned)
Possible	:	Social Development (say 12 of 14) Library Service (say 2 of 4)

Ministry of Transport and Communication

Already Done	:	none (and none planned)
Possible	:	Marine Service Division (say 130 of 139) (as decided under shipping)

Office of Prime Minister

—

Ministry of Home Affairs

Already Done	:	Administration and Accounts (115)
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Ministry of Agriculture and Lands

Already Done	:	Agriculture Extension (82)
Possible	:	Further extension including Training Centres (say 24 of 27) Land Use Division (8) Land Administration (say 10 of 15)

Ministry of Education and Training

Already Done	:	Staff to Local Education Boards (29)
Possible	:	no more (according to Ministry)

Ministry of Health and Medical Services

Already Done	:	Medical, Nursing etc. Officers (214)
Possible	:	Malaria Eradication Programme (205)

Ministry of Trade, Industry and Labour

Already Done	:	none (but planned)
Possible	:	Trade Development (most of 13) Labour Division (most of 15) Cooperatives (say 42 of 45) Business Development (say 23 of 26)

Ministry of Works and Public Utilities

Already Done	:	Local Government engineer, works office etc. (35)
Possible	:	Engineering Branch; many to Honiara Town Council (say 40 of 45) Mechanical Branch (most of 22) depending on provincial decision about transport pools

Ministry of Finance

Possible	:	A few accountants
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Ministry of Natural Resources

Done	:	none, but fisheries extension to Makira next year, and offered to Malaita
Possible	:	Fisheries extension, excluding dealing with highly migratory species, covered by international agreements (say 8 of 15) Forestry extension, and some development (replanting) (say about 10 of 53)

Ministry of Law and Information

Done	:	none (and none planned)
Possible	:	Information Service (12 of 14).

6. Table 2 lists functions for which Committee members and/or the national government have at various times indicated that responsibility should remain with the national government. It is divided into two parts:

- (i) functions performed by staff located permanently in provinces;
- (ii) functions performed by staff who only tour provinces.

7. In considering whether staff performing these functions should remain under national control, it is also necessary to consider whether any or all national staff in provinces should be required to make some reports to the Premier (or meetings of the Premier and senior provincial staff) and/or required to consult and attend meetings, and, if so, what form such consultation should take and how it should be enforced.

TABLE 2

(i) Staff Serving National Functions Stationed Permanently in the Provinces

<i>Ministry of Youth and Cultural Affairs</i>	:	—
<i>Ministry of Transport and Communications</i>	:	Marine Dockyard (Tulagi) Radio Services Telephone Services
<i>Office of the Prime Minister</i>	:	Police Prisons Immigration
<i>Ministry of Home Affairs</i>	:	—
<i>Ministry of Agriculture and Lands</i>	:	Cattle Development Veterinary/Livestock Research Produce Inspection and Quarantine
<i>Ministry of Education and Training</i>	:	National Teaching Service
<i>Ministry of Health and Medical Services</i>	:	Malaria (if not handed over under Table 1)
<i>Ministry of Trade, Industry and Labour</i>	:	Trade/Cooperatives/Labour (if not handed over under Table 1)
<i>Ministry of Works and Public Utilities</i>	:	—
<i>Ministry of Finance</i>	:	Statistics Customs
<i>Ministry of Natural Resources</i>	:	Forestry Fisheries
<i>Ministry of Law and Information</i>	:	Information (if not handed over under Table 1) None

(ii) Staff Serving National Functions Who Only Tour Provinces

Note: includes cases where a touring officer might be based in another province

<i>Ministry of Youth and Cultural Affairs</i>	:	Libraries, Museums
<i>Ministry of Transport and Communication</i>	:	Telecommunications Aeronautical and Meteorological Services Training Services
<i>Office of Prime Minister</i>	:	Central Planning Office
<i>Ministry of Home Affairs</i>	:	—
<i>Ministry of Agriculture and Lands</i>	:	Physical Planning Survey
<i>Ministry of Education and Training</i>	:	Education Division
<i>Ministry of Health and Medical Services</i>	:	Professional and Technical (Doctors etc.)
<i>Ministry of Trade, Industry and Labour</i>	:	—
<i>Ministry of Works and Public Utilities</i>	:	—
<i>Ministry of Finance</i>	:	—
<i>Ministry of Natural Resources</i>	:	Geology
<i>Ministry of Law and Information</i>	:	Registrar General's Office.

8. The Committee has already agreed that Honiara should be the national capital but not a province. Members might therefore like to consider —

- whether all/some/no staff exercising the functions listed in Table 1 should come under the control of the Honiara Town Council; and
- whether the decisions made about Table 2 should apply in Honiara.

9. The details of how control over provincial staff can be exercised are discussed in Chapter 4.

WORKING PAPER 3.3

LEGAL CONTROL OVER POWERS AND FUNCTIONS

1. The Committee has made recommendations on how the power to make laws and policies as well as responsibility for the performance of government functions should be divided between the national government, provincial governments and sub-provincial authorities. The Committee might now like to consider how the law should vest control over their respective powers and functions in the various levels of government.

2. There are several ways in which the law might divide the powers and functions of government between the national and provincial governments:

Option (i) By defining in as much detail as possible exactly which powers and functions belong to each level of government

Advantages

- clarity
- comprehensiveness

Disadvantages

- list might be long, complex
- might be conflict over definitions
- hard to define total government powers and functions
- hard to define future needs and activities of government

N.B. It would still be necessary to say to which government new or undefined powers and functions should belong.

Option (ii): By defining the powers and functions of *either* the national government *or* provincial governments and leaving all undefined powers and functions to the other

Advantages

- simplicity
- defined powers and functions clear
- control over undefined powers and functions clear
- less long, complex than (i)
- less likely to lead to conflict over definitions than (i)
- control over new powers and functions clear

Disadvantages

- no comparison of defined and undefined powers and functions so division unclear
- changing circumstances might reduce importance of defined powers and functions

Option (iii): By defining the powers and functions which belong exclusively to either the national government or provincial governments *or* by defining both and leaving it open to both levels of government to try to exercise other powers and functions

Advantages

- exclusive powers and functions give autonomy
- undefined area allows flexibility

Disadvantages

- might be conflict in undefined area
- list of exclusive powers and functions might be too small
- could lead to inflexibility as circumstances change.

3. If Option 2(i) or 2(ii) were chosen, it would be necessary to decide to which government new or undefined powers and functions should belong:

Option (i): To the national government

Advantages

- concerned with national issues
- likely to have greatest financial resources
- could be decentralised after constitutional review or by amendment

Disadvantages

- not as close to local needs
- could weaken decentralisation

Option (ii): To provincial governments

Advantages

- helps decentralisation
- responds to local needs

Disadvantages

- not as concerned with national issues
- lack financial resources of national government
- could weaken national unity

Option (iii): To either, depending on the outcome of negotiations

Advantages

- flexibility

Disadvantages

- uncertainty
- might lead to conflict.

4. If Option 2(iii) were chosen, the powers and functions which both the national and provincial governments are allowed to use could *either* be defined in detail *or* be left undefined. The advantages and disadvantages of each are similar to those of Options 2(i) and 2(ii) above.

5. In either case, it would have to be made clear who should prevail if both the national and provincial governments tried to exercise the same power or to perform the same function in conflicting ways:

Option (i): The national government

Advantages

- maintain uniformity
- concerned with national issues
- consistent with national sovereignty

Disadvantages

- might reduce provincial autonomy
- might reduce flexibility/responsiveness to local circumstances

Option (ii): provincial governments

Advantages

- consistent with decentralisation
- help ensure flexibility/responsiveness to local circumstances

Disadvantages

- might weaken national government coordination and control too much
- might lead to too much variation between provinces.

6. There could be a legal requirement that whichever level of government prevails must consult the other before making laws and policies or assuming functions which are open to both. Alternatively, the matters on which consultation is required might be specially listed.

Consultation procedures might be closely defined to ensure that proposals are in writing, there is adequate time for proposals to be studied, comments considered, and the outcome made known. They might involve the Premiers' Conference and/or individual provincial governments - perhaps depending on the urgency of the proposals.

If Option 5(i) were chosen, it would be open to provincial governments to propose that national policies/laws be changed to 'make space' for the provinces. They might propose that certain national laws/policies provide no more than a framework within which Provincial Assemblies might still make their own laws/policies; that certain national laws/policies contain alternatives from which provincial

Assemblies might choose; that part or all of certain national laws/policies come into effect or cease to operate as Provincial Assemblies may decide.

If Option 5(ii) were chosen, provincial governments might also propose that the national government carry out none/part/all of a certain function until provincial governments are able to do so.

7. The division of powers and functions between the national government and provincial governments could be embodied in several different forms of legislation:

Option (i): The constitution (or a schedule to the constitution)

Advantages

- in supreme law
- hard to change

Disadvantages

- may become inflexible
- may make constitution too long

Option (ii): A national law

Advantages

- flexible - easier to change than constitution
- can be changed only by body representative of whole country

Disadvantages

- less protection for provinces
- no special safeguards as for constitutional amendments

Option (iii): Subordinate legislation (a bye-law, warrant etc. issued under a national law)

Advantages

- flexible for national government - and Parliament can still disallow

Disadvantages

- lacks status of national law, constitution
- for provinces - too easy for national government to change

Option (iv): Provincial constitutions made in accordance with Options (i) or (ii) or (iii) above

Advantages

- may allow differences between provinces to be shown
- division in provincial constitutions

Disadvantages

- may require too many amendments to show changes as powers/functions transferred
- repetitive of national arrangements and may make provincial constitutions too long.

8. If the division were enshrined in the constitution, the Committee would have to decide on the number of votes required for Parliament to change the decision.

If the division were enshrined in a national law, the law might be made more difficult to amend than other laws - by, say, requiring an absolute majority.

9. When provincial governments make laws/policies on matters over which they have exclusive control or share control with the national government, these laws/policies could take effect in a number of ways:

Option (i): As provincial governments decide

Advantages

- provincial autonomy
- quicker
- less complex

Disadvantages

- might be found illegal later
- no national perspective

Option (ii): Subject to approval at national level

Advantages

- second opinion
- national perspective
- might help avoid later conflict
- need not rule out negotiation

Disadvantages

- less provincial autonomy
- conflict - might be better solved through negotiation, mediation, arbitration, courts

Option (iii): Subject to disallowance at national level

Advantages

- second opinion
- national perspective

- comes into effect unless disallowed

Disadvantages

- less provincial autonomy
- might lead to conflict
- differences might be better solved in other ways.

10. If Option 9(ii) or (iii) were chosen, power to approve/disapprove/disallow could be given to

- (i) Governor-General (possibly, in accordance with the national Government's advice)

or

- (ii) Cabinet

or

- (iii) Minister of Home Affairs

or

- (iv) National Parliament.

Provision could be made so that law/policy comes into effect automatically unless disapproved/disallowed at national level within a specified period - so the national attitude must be made clear and provincial governments not blocked by delay.

11. Publication of provincial legislation could take place in a number of ways:

Option (i): By Provincial Governments

Advantages

- done on the spot
- each province's laws in one place

Disadvantages

- lack of resources
- hard for other provincial/national governments to know laws

Option (ii): By the national government (perhaps in a special supplement to the *Solomon Islands Gazette*)

Advantages

- all laws together - so laws more easily known
- might be cheaper

Disadvantages

- not done on the spot
- might be some delay/cost more.

12. There could also be legal provision for the national government and provincial governments to delegate powers/functions to each other -

- (a) with conditions attached if delegating government has final power
- (b) if recipient government agrees - to prevent loading their problems on each other.

13. There could also be requirements in the constitution/national law that certain powers/functions be given to sub-provincial authorities (perhaps by provincial constitutions).

Decisions must also be made on the mode of publication of sub-provincial authorities' bye-laws.

WORKING PAPER 3.4

LAW-MAKING POWERS AND EXECUTIVE POWERS

A. LAW-MAKING POWERS

1. It is possible to divide law-making powers between the national and provincial governments in a number of different ways. Working Paper 3.3 set out the various options in this regard. It is proposed in this paper to set out a possible scheme for adoption in Solomon Islands.

2. When considering the law-making powers of provincial governments, it is useful to bear in mind that provincial governments may have more extensive executive powers than legislative; that is, they may have executive power over subjects in relation to which the legislative power is with the national government. This situation opens up possibilities of wide-scale devolution in areas which, for various reasons (for example, need for uniform national standards), are reserved as national government legislative powers.

3. The constitution shall contain a list of subjects on which provincial legislation will prevail over national legislation (List A). This list would include the subjects which are of concern only to the provinces and do not have much significance from a national point of view, for example, local government, control over places where alcohol may be sold. The list should contain a minimum number of subjects of some importance for the provinces, to make possible a viable system of provincial government. At the same time, it should not contain topics where some degree of national regulation may be necessary; List A should not be extensive. Some possible subjects include customary law regarding chiefs, sale and distribution of alcoholic liquor, the control of licensing of public entertainments and of places of public entertainment, minor roads.

4. The subjects in List A could be classified *either* as exclusive provincial powers, in which case the national government could not legislate about them at all, *or* as final provincial powers, in which case national legislation could be passed if it were not inconsistent with existing provincial legislation.

5. In addition to subjects which are purely of provincial concern (List A) and subjects which are of purely national concern (for example, international relations, defence, currency), there are many subjects in which both the national and provincial governments have an interest. It is therefore important in relation to these subjects that no one government can make a law entirely on its own; and it is necessary to establish a system whereby there is consultation and cooperation between the provincial and national governments. The constitution shall contain a list of subjects (List B) where the primary power to make laws will lie with the national government, but it will not be able to make a law without giving provincial governments a chance to be consulted on the legislation. Thus, when the national government wants to make a law on a subject in List B, it will be required to circulate a draft of the proposed law with explanatory notes to provincial governments and give them, say, a month, to send comments back to the national government. The national government will not be bound by these comments but, in the normal course of events, will be expected to give the most serious consideration to these comments. Some suggestions for possible inclusion in the list are: agriculture, fisheries, interprovincial shipping.

6. As areas where the national and provincial governments have a common interest may change from time to time, it is useful to have a system whereby List B can be changed accordingly, without weakening the protection that provincial governments enjoy of having the right to be consulted on as many subjects as possible. It is therefore proposed that changes in List B (either to add to it or to delete from it) should only be made by a law in Parliament supported by an absolute majority, and the draft

bill for this must have been previously approved by all Provincial Assemblies.

7. It may sometimes be desirable for a Provincial Assembly to make its own laws on a subject in List B. When this is the case, a Provincial Assembly should give a month's notice of its intentions and send a copy of the proposed law to the national government. A Provincial Assembly will not be able to make laws on a topic if a national law already exists on it.

8. The Committee should recommend that, as far as possible, the national government, when making laws on List B subjects, should lay down only the general principles and leave the details, in so far as these are of provincial significance, to be filled by provincial legislation. This will mean that, on points of principle, there will be uniform laws throughout the nation, while at the same time implementation of the principles will be adapted to provincial circumstances. It will mean that, when the national government is drafting a law, it will have to give careful consideration to what matters are best determined at the national level and what at the provincial level.

9. As, at the beginning of the establishment of provincial government, a province may not have the resources for law-making required for the scheme outlined in para.8, the national legislation should at first cover both principles and details, but the law should indicate those sections of the law which a Provincial Assembly could amend itself, so as to adapt it to local circumstances; for example, even if national legislation prescribes the qualifying conditions for liquor licensing, the law would enable a Provincial Assembly to add to, or subtract from, these conditions. When a Provincial Assembly wishes to make such an amendment, it should give a month's notice of its intention to the national government.

10. While the constitution or some other legal instrument will set out the division of legislative powers between the national and provincial governments, it may sometimes be necessary or desirable for a government to make a law on a subject which has been assigned to another government. It would therefore be useful to allow one government (either provincial or national) to transfer its law-making power to another. Such a transfer can only be made with the consent of the Provincial Assembly or National Parliament, as the case may be.

11. The laws of a province will come into force on their publication in the *Solomon Islands Gazette*. The national government will not be able to disallow any provincial law on a List A subject; and on any other subject the national government will have to move a motion in Parliament to disallow a provincial law and it will have to have the support of at least an absolute majority of members to be effective.

12. Because different governments will be able to make laws independently, it will be necessary to have some mechanism to decide on the constitutionality of legislation, that is, whether the law is within the competence of a Provincial Assembly or the National Parliament; and to have rules to decide which is the valid law when a national and a provincial law on the same subject are inconsistent. The question of inconsistency is easier to resolve. Except on List A (where only provincial governments can legislate, and where provincial legislation will prevail), the national law will prevail over inconsistent provincial law.

13. This rule about inconsistency will permit only a limited scope for legislation by provincial governments, for, until now, the only effective law-making body has been the national legislature, and it has therefore already covered many areas, often in considerable detail, relating to matters of purely provincial concern. For future legislation, it is proposed that the national government confine itself to matters of principle and leave the details to provincial governments. With regard to existing legislation, the Committee might wish to recommend that a systematic review should be made of it to see

which parts or sections should be declared to be of primarily provincial concern and therefore open to repeal or amendment by a Provincial Assembly. Much work has already gone into identifying which powers and functions can be transferred to provincial governments; and this work should help a great deal in the review of legislation.

14. The question of determining constitutionality is more difficult, especially if it is desired to keep the courts out of the matter. The constitution gives the High Court the jurisdiction to determine whether a person's constitutional rights have been contravened; to determine this the Court would in most cases have to decide whether a law is constitutional. The Committee has already recommended that national and provincial governments should go to court only as a last resort (see Working Paper 7.1 for the relevant issues). It is possible to insist on the same principle when the dispute is about constitutionality of law or inconsistency between national and provincial law, so long as the ultimate right to go to court is preserved. It may be more difficult to qualify the right of an individual to go to court when his constitutional rights are at issue. In order to discourage unnecessary litigation, the Committee may wish to recommend that, without prejudice to the constitution, no individual may go to court to challenge the constitutionality of national or provincial legislation.

15. A law made by a Provincial Assembly will apply only in its province, but effect will be given to it wherever a dispute may arise.

B. EXCLUSIVE OR FINAL PROVINCIAL POWERS

16. It was mentioned in para. 4 above that the subjects in List A could be either exclusive or final provincial powers. If they were *exclusive* powers of provincial governments, then the national government could not make laws about the subjects listed. If they were *final* powers of provincial governments, then the national government could make laws about the subjects listed. But the national laws would take effect only so far as they were not inconsistent with provincial laws: provincial laws would take priority. Provision could be made for Provincial Assemblies to block a national law on a List A subject in its entirety - and without replacement. List A would then be rather like List B: both provincial governments and the national government could make laws, but in List A provincial laws would prevail.

17. If List A consisted of *final* powers, then it would be possible to prevent provincial governments from being pre-empted by national laws and to reduce unnecessary provincial law-making in response to national initiatives by requiring the national government to consult provincial governments before legislating on List A. Existing laws on List A subjects would remain in force until Provincial Assemblies changed them.

18. The main advantages and disadvantages of the two options are as follows:

Option (i): Exclusive powers

Advantages

- national government left out
- inconsistent laws less likely - so fewer court cases

Disadvantages

- uniformity possible only if provincial governments agree among themselves

- gaps might develop because provincial governments cannot decide what to do (transitional provisions could stop some gaps by keeping present laws till provincial governments make their own)

Option (ii): Final powers

Advantages

- national government could take initiative to fill gaps and get uniformity - but provincial governments could still make laws
- provincial governments would have to decide whether to accept or reject national laws - could not defer or ignore issues raised
- would reduce drafting where no need/desire for different provincial laws
- provision for transition from present national laws unnecessary

Disadvantages

- possible inconsistency between national and provincial laws - so legal argument
- national government might force provincial governments to decide about issues they would rather defer or ignore
- might reduce provincial government initiative.

C. PROVINCIAL EXECUTIVE POWERS

19. The guaranteed legislative powers of provincial governments in this scheme are not extensive; and it is unlikely that, at least at first, there will be much scope for provincial governments to legislate on List B subjects. At this stage, more important for a provincial government than legislative power is executive power because it may, in the short run, lack resources for law-making. Moreover, many executive decisions and much policy can be made without a law; and law often has flexibility as to its implementation, so that executive discretion is crucial. If provincial governments had executive powers only in areas where they legislated, their powers of oversight would indeed be small. It is proposed that a provincial government's executive powers should be more extensive than its legislative powers. In many areas, whoever may make policy, it is more sensible and rational to vest executive authority in provincial governments. Vesting increasing executive authority in provincial governments should also help ensure that there is further decentralisation of public servants, for it is through them that much of the administration will take place.

20. It is proposed that the constitution or some other instrument will contain a list of subjects executive responsibility in respect of which is vested primarily in the provinces (List C). In order to retain some flexibility in this matter, it would be unwise to make the list exclusive to provincial governments. The law should make it clear that the presumption is that executive responsibility in the case of List C subjects rests with provincial governments, so that, unless an Act of Parliament vests them expressly in the national government, they should be deemed to be vested in provincial governments. As a general rule, the national government would be expected to justify instances when it proposed to vest executive power for a List C subject in the national government. Some subjects for possible inclusion are agriculture, education, health.

APPENDIX 3.1

FUNCTIONS OF NATIONAL GOVERNMENT MINISTRIES AND COUNCILS/PROVINCIAL GOVERNMENTS

Functions of National Government Ministries, October 1978

Functions of Provincial Governments under the *Local Government Act (Cap.14)*

Office of Prime Minister

Coordination of Ministers

Immigration

Police

Prisons

Public Service

Foreign Affairs

Ministry of Home Affairs

Births, Deaths and Marriages Registration

Citizenship

Elections

Liquor Licensing

Local Government

Public Holidays

1. Planning, control and promotion of development:
 - (a) to make, finance and implement plans for provision of social, administrative and economic services
 - (b) to organise and promote the devolution of responsibility for services and development to committees and community organisations.
26. Administration and legal:
 - (a) to provide management, accounting and executive services for the proper, orderly, economic and accountable discharge of the functions of the Council;
 - (b) to promote the fuller understanding and participation of the public in operation of local and central government;
 - (c) to provide services for the registration of births, marriages and deaths.

Ministry of Education and Training

Education	Primary Secondary Tertiary
Training	Professional Technical General Local Overseas

21. Education:
- (a) to provide education services, boards, committees, schools and institutions in accordance with the *Education Ordinance*, and also scholarships and bursaries.

Ministry of Works and Public Utilities

Bomb Disposal
Electricity
Housing Policy
Government Constructions
Public Works
Roads and Bridges
Water Supply

17. Electricity supplies:
- (a) to plan, construct and maintain electricity supplies in rural areas.
18. Waste disposal and cleansing:
- (a) to operate waste disposal and cleansing services in urban areas;
 - (b) to plan, construct and maintain waste disposal facilities;
 - (c) to promote suitable waste disposal and cleansing arrangements for rural areas.
19. Construction and engineering:
- (a) to plan, construct and maintain such buildings and other works as may be required for the discharge of the functions of the Council;
 - (b) to execute works for the Government as an agent;
 - (c) to contract for the execution of works;
 - (d) to employ such staff, operate such equipment, and purchase and stock such materials as may be necessary for the proper and economic execution of those functions.
20. Housing:
- (a) to plan, construct and maintain houses for Council staff;

Ministry of Works and Public Utilities (continued)

20. Housing (continued)
 - (b) to encourage and promote the construction of houses and home ownership;
 - (c) to promote the production and supply of materials and technical assistance for the building of houses;
 - (d) to act as agent for the British Solomon Islands Housing Authority.
16. Water Supplies:
 - (a) to encourage and assist the provision of clean water supplies in rural areas;
 - (b) to plan, construct and maintain water supplies in urban areas;
 - (c) to establish, maintain and control public wells, springs, drinking containers and bathing places and pools.
11. Roads and road transport:
 - (a) to plan, construct, maintain and control roads, bridges and associated facilities and works;

Ministry of Transport and Communications

Airfields
Civil Aviation
Marine
Maritime Convention and Law
Meteorology
Motor Traffic
Ports
Posts and Telecommunications
Shipping Policy

11. (b) to license and control motor and other vehicles, traffic and services;
 - (c) to promote and operate freight and passenger services;
 - (d) to promote road safety.
12. Ports and Wharves:
 - (a) to plan, construct, operate and maintain wharves, port and harbour facilities.
13. Shipping:
 - (a) to operate shipping and ferry services;

Ministry of Transport and Communications (continued)

13. Shipping (continued)
 - (b) to license the operation of coastal and lagoon services;
 - (c) to provide and maintain navigational aids.
14. Air Transport:
 - (a) to construct and maintain licensed aerodromes;
 - (b) to provide services and act as agents at licensed aerodromes;
15. Posts and telecommunications:
 - (a) to operate postal, wireless and telegraphic agencies,

Ministry of Agriculture and Lands

Agriculture
Animal Husbandry and Veterinarians
Land Use Policy
Lands
Resettlement
Rural Credit
Surveys

5. Agriculture:
 - (a) to provide extension services for the promotion of agriculture and livestock husbandry for cash and subsistence;
 - (b) to promote the control of plant and animal diseases;
 - (c) to promote land conservation.
4. Land:
 - (a) to manage, develop and deal in land held by the Council;
 - (b) to manage such areas of land owned by the Government as the Government may direct, on behalf of the Government and subject to such conditions as the Government may impose;
 - (c) to make, revise and implement plans to promote and control the design, construction, alteration and removal of buildings;
 - (c) to provide for the demolition of dangerous buildings and for the recovery of any expenses incurred in connection therewith.

Ministry of Health and Medical Services

Hospitals and Clinics
Medical Services
Public Health

22. Health:
- (a) to safeguard and promote public health including the prevention of and the dealing with any outbreak or the prevalence of any disease;
 - (b) to provide health and medical service
 - (c) to operate clinics, aid posts, dressing stations and health centres;
 - (d) to operate hospitals and referral centres;
 - (e) to establish, maintain and control cemeteries or burial grounds.

Ministry of Youth and Cultural Affairs

Archives and Libraries
Arts and Crafts
Ecclesiastical Affairs
Film Censorship
Measurement (?metrication)
Museums
Scientific and General Research
Social Development and Welfare
Sports
Tourism
Youth

2. Custom, tradition and social change:
- (a) to define and regulate such customs as are not contrary to law and which the Council considers should be so recognised;
 - (b) to devise and implement ways of according respect and positions of influence to traditional leaders;
 - (c) to plan and implement schemes for the preservation and development of traditional skills and knowledge, and to foster those among young persons and others.
23. Cultural affairs:
- (a) to promote cultural activities;
 - (b) to provide reference and lending libraries;
 - (c) to provide museums and public monuments and identify and preserve antique artifacts and sites of historical and cultural interest;
 - (d) to promote the orderly pursuit of sociological and other research.

Ministry of Youth and Cultural Affairs (continued)

9. Tourism:
 - (a) to provide facilities and services for tourists;
 - (b) to promote the orderly and controlled development of tourism.

24. Social development:
 - (a) to promote and assist the development of women's clubs and the fuller involvement of women in social development;
 - (b) to provide welfare, probation and prison after-care services;
 - (c) to promote and co-ordinate the development of sports and other voluntary organisations;
 - (d) to provide and maintain community centres, sports and recreational facilities;
 - (e) to provide relief and assistance to children, young persons, the aged, destitute and infirm.

Ministry of Natural Resources

Environment and Conservation
Fisheries
Forestry
Geology
Mining

6. Fisheries:
 - (a) to provide extension services for the improvement of fish production and marketing;
 - (b) to protect and conserve local fisheries.

7. Forestry:
 - (a) to provide extension services to promote local timber production;
 - (b) to conserve forest for protection of the environment, water catchment, firewood and building materials;
 - (c) to undertake timber production and processing alone or in association with others.

Ministry of Trade, Industry and Labour

Apprenticeships
Business Advisory
Commerce
Cooperatives
Copra Board
External Marketing and Negotiations
Import and Export Licensing
Industry
Internal Marketing
Labour
Manufacturing
Overseas Shipping
Trade and Trade Development
Trade Unions
Weights and Measures
Workmen's Compensation

10. Trade and marketing:
 - (a) to provide storage and transport services;
 - (b) to licence trades, businesses and other occupations;
 - (c) to provide and regulate market facilities;
 - (d) to generally plan and promote the development of trade and marketing alone and in collaboration with other Councils and the Government.
8. Manufacturing:
 - (a) to promote development of manufacturing particularly by Islanders processing local materials.
3. Employment:
 - (a) to provide employment guidance and placement services;
 - (b) to provide advisory and conciliation services to employers and employees.

Ministry of Finance

Accounts
Agents and Agencies
Banking
Exchange Control
Boards of Survey
Central Tender Board
Companies
Credits and Investment
Customs and Excise
Financial Planning
Estimates and Supplementing Provision
Printing and Publications
Solomon Islands National Provident Fund
Statistics
Stock Verification, Stores, Supplies
Taxation
Write Off

Ministry of Law and Information

Information and Broadcasting

Legal

Registrar General

(Attorney General)

(Judicial)

(Office of Parliament)

25. Information:

(a) to provide information services.

APPENDIX 3.2

FUNCTIONS OF THE NATIONAL GOVERNMENT AND COUNCILS/PROVINCIAL GOVERNMENTS SET OUT IN THE *PLAN OF OPERATIONS*

National Planning and Financing

- 3.5 Central The making, financing and implementation of national plans, including land use plans, framed to provide for local government participation in planning and implementation.
- Local Making of local development plans and the detailed co-ordination and implementation of the national plan at local level.

Manpower Resources

3.6 *Planning and Training*

- Central Assessing national manpower requirements, establishment of standards and training programmes.
- Local District or island level training schemes, following national standards.

3.7 *Labour Administration*

- Central Policy and legislation, standards and inspection. Arbitration and advisory services.
- Local Agency for central government on request. Employment agency services.

Natural Resources

3.8 *Land*

- Central Operation of the registered tenure system; valuation and conveyancing services; management of government-owned land; promotion of urban physical planning; mapping and land survey, comprehensive land planning services.
- Local Management of designated areas of government-owned land as agent of the government; participation in physical planning and land use planning; ownership and management of land.

3.9 *Agriculture*

- Central National planning, co-ordination, research and specialist services, staff training and assistance to farmer training; management of institutions or projects at national or inter-district level. Provision of capital and recurrent finance to or through local government and provision of staff on secondment.
- Local Extension services, demonstration and farmer training; administration of subsidy schemes and co-ordination with other rural development agencies.

3.10 *Fisheries*

Central Promotion and control of national fishing industry; fisheries protection; technical advice to subsistence and market fishermen, through local government.

Local Extension services; market services at district or island level; fish farming or other production at local level; subsistence fisheries protection.

3.11 *Forestry*

Central Protection of forests, policy and legislation; promotion and control of timber industry; research services; acquisition and management of land for the forest estate; technical services to small-scale operations and local government.

Local Advice to central government on promotion and control of industry; local conservation for water catchment, firewood and building materials.

3.12 *Minerals and Mining*

Central Ownership, control and production of the mineral resources; planning and supervising commercial exploitation; safe-guarding national and local interests in mineral development.

Local Advice to central government on local implications of mineral development; participation in financing and provision of services.

Commerce and industry

3.13 *Manufacturing*

Central Promotion of a wide range of manufacturing industries.

Local Advice to central government on local markets and resources; use of extension services where possible to promote manufactures; purchasing policy to encourage local production.

3.14 *Tourism*

Central Planning, promotion and control of tourist industry; participation in benefits of major investments; provision of limited infrastructure, where justified by benefits.

Local Advice to central government and Tourist Authority on local conditions and control; participation in planning and share of benefits of industry at district or island level; provision of tourist facilities, operation of resthouses in accordance with overall plan.

3.15 *Trade and Marketing*

Central Provision or promotion of the storage, transport and financial infrastructure for marketing. Promotion of local and regional trade specialisation and the localisation of employment and control of firms.

Local Participation in providing storage and transport network. Licensing of traders. Direct operation of trading and marketing in exceptional cases. Provision and operation of local markets; policing of weights and measures legislation.

3.16 *Government credits and investment*

Central Provision of loan finance for local enterprise and the management of government and parastatal investment. Raising loans, bond issues, local capital financing.

Local Advice and guidance to central government on local investment conditions; provision of extension services as managing agents of central loan agency; local agent for central government capital raising; savings bank operations.

Economic Services

3.17 *Roads*

Central Specialist design and high level supervisory services; operation of a heavy plant lease scheme; national transport planning and allocation of capital and recurrent finance in aid of local government.

Local Planning construction and maintenance of all roads and associated bridges, drainage and works; participation in capital and recurrent costs. Operation of road transport, including passenger and freight services. Licensing of vehicles and services.

3.18 *Shipping*

Central Licensing and inspection of vessels and crews; training standards and institutions. Licensing of inter-island services. Operation of a government fleet as defined from time to time. Provision and maintenance of navigational aids. Development of overseas and major ports.

Local Agents for central government in fleet management as requested; operation of own vessels, licensing of coastal services; maintenance of navigational aids as agent for central government. Development of local harbours and wharves.

3.19 *Air Transport*

Central Licensing, control and inspection of aircraft, services and airfields. At international aerodromes, construction, maintenance, fire and rescue services, landing fees. All navigational aids. Capital and recurrent aid to local government.

Local Construction, maintenance and services at internal service aerodromes and at international aerodromes as agent for central government.

3.20 *Postal services and telecommunications*

Central External and internal communications, including postal and wireless services; radio services for marine and aircraft operations; associated technical services.

Local Postal and telegraphic agencies and teleradio stations.

Public Utilities

- Central National electricity planning supply and inspection by Electricity Authority; subsidies for amenity electricity supplies; water supply design and technical services to local government. Capital and recurrent aid to local government.
- Local Rural electrification by arrangement with British Solomon Islands Electricity Authority. Construction, maintenance and management of water supplies in rural and specified urban areas.

3.22 *Construction and engineering*

- Central Professional engineering and architectural design, quantity and supervision services; direct management of major national projects, or joint central-local projects. Operation of plant and vehicles pool for short or long leases. Capital and recurrent aid to local government and provision of staff on secondment.
- Local Execution or supervision of normal construction programme, using central government's high-level services as required. Collaboration with central government on joint projects, or national projects located in council areas.

Social Services

3.23 *Education*

- Central National policy and syllabuses standards, national institutions and teacher training; technical and professional training; capital and recurrent aid to local government and provision of staff on secondment.
- Local Direct management of primary schools and rural vocational training. Further functions subject to the current review of educational policy.

3.24 *Health*

- Central National policy, legislation, standards, staff training and registration. Principal referral and teaching hospitals; specialist services. Central procurement of supplies. Major campaigns and centre recording and reporting machinery. Co-ordination of measures against major health threats. Capital and recurrent aid to local government and provision of staff on secondment.
- Local Provision of all rural health services and hospitals. Public Health and preventive measures. Collaboration with central government in campaigns and epidemiological measures.

3.25 *Other Social Services*

- Central Capital and recurrent aid to local government and provision of staff on secondment. National library and museum planning and operation where necessary. National institutions.

Local Other social services at district and island level. Aid to voluntary organisations. Operation of local libraries, museums, young people's hostels.

3.26 *Housing*

Central National policy and legislation; implementation through Housing Authority and as largest employer.

Local Byelaws, site development and management to fit housing needs; as employer, conformity with national policy.

Administrative Services

3.27 *General Administration*

Central Establish and train an administrative cadre sufficient for central government needs and for secondment to managerial posts in local government. Provide specialist training for all levels of local government and provision of seconded staff. As local government becomes more firmly established, central government representation at island or district level is principally responsible for liaison, co-ordination and local application of national policies.

Local Provision of normal management services using seconded and direct-employment staff. Assume the primary role in effective day-to-day government at the island or district level.

3.28 *Treasury*

Central Accounting services for central government including machinery for aid to local government. Assistance in training and procedures for local government.

Local Accounting services for local government and agency functions for central government when balance of field activities makes this desirable.

3.29 *Audit*

Central Provision of a local government audit service, supervision and sanctions where necessary; audit answerable to central government legislature.

Local Self-audit procedures in the accounting system and regular submissions to outside audit.

3.30 *Customs and Excise*

Central All functions.

Local Agency in remote areas on request.

3.31 *Direct Tax*

Central Policy, legislation, implementation of national schemes.

Local Taxation by basic rate and other rates under *Local Government Ordinance*. In due course, review with central government the relationship between central and local government taxation.

3.52 *Law and Order*

Central Prevention and containment of crime and maintenance of internal security. Provision of uniformed and plain clothes police on national basis and operation of a national prison service and prisons. Provision of professional legal department, available to central and local government. Operation of an independent judiciary and an integrated courts system with adequate protection for customary rights.

Local (not applicable in Honiara). Maintenance of law and order in accordance with the *Local Government Ordinance*. Financial and staffing support for native courts including reporting and enforcement staff. Receive fines and fees of such courts. Financial and other support for customary land appeal court.

3.33 *Information and Broadcasting*

Central National coverage by printed papers and radio. Assistance to local government with campaigns or displays.

Local District or island newsletters. Local entertainment and education. Reporting of events to central government news service and participation in features.

Source: Solomon Islands 1973:20-27.

CHAPTER 4

STAFFING ARRANGEMENTS

One of the issues considered in Chapter 3 was decentralisation of control over government staff. A decision to decentralise such control raises issues which are discussed in greater detail in this chapter.

The first Working Paper opens with a brief discussion of one possible way of strengthening the policy-making capacity of provincial executives: allowing them to employ advisers other than public servants. But most of the paper is concerned with the kinds of sanctions and organisation which might give provincial governments greater control over staff performing provincial functions, and facilitate co-ordination between such staff and public servants performing national functions. It also deals with some of the problems and advantages of allowing provincial governments to employ certain staff directly.

Table 1 in Working Paper 3.2 showed how staff performing provincial functions were distributed between the national capital and the provinces. Table 2 in the same paper indicated which staff performing national functions were located in, or toured, the provinces (neither table showed how many staff were actually stationed in rural areas or how evenly they were distributed there). Working Papers 4.1 and 4.2 discuss options which might be available to help bring staff performing provincial functions under more effective control by provincial governments. It also deals with the problems of recruiting staff to work in the provinces and of encouraging them to remain there, whether they carry out national or provincial functions or, as in some cases, a combination of both.

Despite the sequence of the relevant chapters in this volume and the *Report*, the Special Committee dealt with the issues involved in dispersing staff (that is, with geographical decentralisation) before deciding on the distribution of functions and powers. Committee members (as well as staff and consultants) found it easier to deal first with staff, then functions (that is, with decisions about which staff should be brought under the control of provincial governments), and lastly with powers (that is, with deciding who should make policies and laws about particular functions). They then checked back to see that recommendations they had made about the distribution of powers, functions and staff formed a coherent system.

The recommendations contained in Appendix 4.1 were prepared by the Secretary to the Special Committee on Provincial Government, working with terms of reference which required him –

To make a preliminary survey to identify further posts in central government [that is, posts additional to those already dispersed to the provinces] that could become responsible to, and/or re-located within provinces, or pooled between a group of provinces; and in particular to identify –

- posts which might be national in scope, but whose work happens to take place in one or a few provinces;
- posts which might be provincial in scope, but are centrally located because not enough staff are available for each province;
- groups of posts, whose work might be reallocated within the group so that the posts can be divided up between provinces;
- posts whose work takes place in Honiara, but might become responsible to the Honiara Town Council rather than central government.

The Committee paid little attention to a further possible form of geographical decentralisation, distribution of national government departmental headquarters throughout the country, because of the probable costs involved, as well as the likely consequential loss of inter-departmental co-ordination.

The recommendations made to the Committee by the Secretary provide no more than a first approximation to the kind of geographical decentralisation which Committee members had in mind. But they were precisely framed, so that they might have a better chance of being taken seriously by the national government than the kinds of general injunctions to re-organise, reduce and disperse national government staff contained in the *Final Report* of the Constitutional Planning Committee in Papua New Guinea (Papua New Guinea 1974a: Part 1, 10/20, 10/48).

The prime objective of the kind of geographical decentralisation recommended in Appendix 4.1 is to improve the size and quality of government staff in the provinces, both staff performing national functions as well as staff performing provincial functions. Geographical dispersal of staff performing provincial functions makes an obvious contribution to the capacity of provincial governments to carry out their functions and to use their powers, provided that it is carried out with due regard for equity between provinces. Geographical dispersal of staff performing national functions improves both the quality and accessibility of government services, subject to the same condition. The latter process increases the likelihood that staff carrying out such services will acquire relevant local knowledge and be responsive to local needs and aspirations.

However, geographical dispersal of staff can also lead to conflict between staff performing national and provincial functions, or exacerbate such conflict where conflict already exists. It is, therefore, important to ensure that the activities of dispersed staff are co-ordinated.

Co-ordination is likely to increase the efficiency, economy and effectiveness with which government services are provided, thereby generating resources which can themselves become additional sources of power to the authorities in the provinces and assisting decentralisation. But, despite the overtones of co-operation and collegiality implicit in use of the term 'co-ordination', it is as well to remember that co-ordination involves the use of power:

Telling another person to co-ordinate . . . does not tell him what to do . . . Everyone wants co-ordination – on his own terms (Pressman and Wildavsky 1973: 134)

– hence the emphasis on reporting and discipline in Working Papers 3.2 and 4.1.

Much of the material in this chapter can be used to raise issues or to provide models in countries where there are programmes of either political or administrative decentralisation. The material on moving staff out of the national capital might be equally relevant in countries where neither political nor administrative decentralisation is at issue, only geographical dispersal of government services and staff. But the working papers and Appendix were written for use in Solomon Islands, where there had already been a fair amount of administrative decentralisation. Because of the way in which the Special Committee chose to build on existing institutions, they do not deal directly with a number of basic issues to which we now turn.

As has already been suggested, decentralisation of control over staff may take place without political decentralisation: but it is vital to effective political decentralisation. Such decentralisation of control has two basic components. The first component is the actual transfer of control over staff from ministerial or departmental headquarters to some body at provincial level, whether the body is an elected provincial assembly – as in Solomon Islands and Papua New Guinea, a semi-political body under national political control – as, for example, in Tanzania and Zambia, or a purely administrative body – such as a committee of civil servants or even an individual senior civil servant. The second, and

inter-related, component is the achievement of closer co-ordination between the various government departments or agencies operating at provincial level. The two components are integrally related to the kinds of issues which have to be considered when determining how to organise staff at provincial level. The most important of these issues are the following:

1. WHICH STAFF SHOULD BE INCLUDED IN THE DECENTRALISATION PROGRAMME?

It may not be feasible to decentralise control over all staff physically located in the provinces. This is particularly likely to be so when powers are being decentralised to semi-autonomous local political bodies, since the national government will normally wish to retain control over staff performing functions which are to be retained under its control. However, it may also be the case if there are administrative or technical reasons (such as the need for close specialist supervision of provincial staff) for retaining national control over certain specified staff. In either case, a detailed analysis of the operation of government agencies at provincial level is needed in order to determine which staff should be kept under national control.

A related question concerns the need and/or desirability of retaining a senior national government representative in each province, such as the Government Agents (formerly District Commissioners) who were kept on for a time in Solomon Islands while the *Plan of Operations* was being implemented.

2. WHAT SORTS OF CONTROLS SHOULD BE DECENTRALISED?

It is very easy to say that control over staff should be decentralised, but it is much more difficult to determine exactly what sorts of controls should be decentralised. The most important forms of control which should be considered are control over staff movements (including establishments, procedures for appointment and promotion, and transfers), the power to give policy directions to staff, the power to direct staff to administer or implement national policies, and control over disciplinary matters.

3. HOW SHOULD THESE CONTROLS BE ADMINISTERED AT PROVINCIAL LEVEL?

Having determined what sort of controls will be decentralised, it is then necessary to consider how these controls should be administered at provincial level. For example, what role should the provincial political body (if such exists) play? Should there be a senior civil servant in the province with overall co-ordinating powers over all decentralised staff and, if so, what should be his status, background and precise role? Should there be committees of senior civil servants and, if so, what powers should they have? And what changes in routine government procedures are needed to formalise these controls?

4. WHAT RELATIONS SHOULD PROVINCIAL STAFF HAVE WITH HEADQUARTERS MINISTRIES?

It will be necessary to consider what sort of relations provincial staff should have with the headquarters of ministries or departments to which they were formerly responsible, particularly with regard to national policy issues, technical or professional matters, and training. It will also be important to ensure that the responsibilities of individual provincial staff are clearly defined and that they are not placed in the awkward position of not knowing to whom they are responsible — national or provincial authorities. The last issue is particularly important when control is decentralised to semi-autonomous political bodies, since it seems unlikely that policies made by the national and provincial governments will always coincide.

5. WHAT SHOULD BE THE FORMAL STATUS OF PROVINCIAL ADMINISTRATIONS?

Even after detailed arrangements have been made for the organisation of government staff at

provincial level, a further question still remains: what sort of administrative structure is the structure at provincial level? The question is, in some respects, less important than the question of how the system actually functions, but it warrants some discussion. It does so because it deals with the capacity of national bureaucracies, including the employers (Public Services Commissions, etc.), to cope with decentralisation of control over staff – specifically with the problems whether, and if so how, the bodies or offices exercising such control fit in with, or relate to, the national public service.

There appear to be four main options:

- Option (i):** *Provincial civil services:* This is the most extreme form of decentralisation, in which each provincial administration operates as a separate civil service, as in a federal system of government. It is only feasible in cases where the provincial administrations are sufficiently large and well developed to function autonomously. It is unlikely to receive encouragement in countries where there is strong support for national unity, and for mobility within a larger public service.
- Option (ii):** *Provincial ministries or departments:* A less drastic but still fairly radical step is the creation of provincial ministries or departments. In this case, the change in channels of communication from a vertical (or sectoral) basis to a horizontal (or area) basis is recognised by forming a ministry or department for each province. The provincial ministry/department includes all those staff who have been decentralised, and is headed by a senior civil servant who has the status and powers of a permanent secretary. The former sectoral ministries are thus reduced in size, consisting only of headquarters staff and any staff in the provinces who remain under national control. This system has been adopted in Papua New Guinea, and there have been moves towards it in Zambia.
- Option (iii):** *Creation of one omnibus ministry or department:* An alternative to the creation of provincial ministries or departments is to transfer all decentralised staff into one central ministry. Such an arrangement has the advantage of breaking the control of individual sectoral ministries over their field staffs, while at the same time retaining overall national control over provincial administrations. However, it is probably only feasible in a small country where the total number of staff is not too large to constitute a single ministry.
- Option (iv):** *No formal structural change:* The last alternative is to make no formal structural changes, but merely to change procedures. In other words, staff performing provincial functions continue to belong formally to sectoral ministries/departments within a single public service structure, but the actual control of staffs by their headquarters is significantly reduced. Such an approach, which has been adopted, for example, in Tanzania, allows greater national control over provincial administrations than the system in option (ii), at least in theory, but it can also cause some confusion because, although national ministries/departments continue to exist officially, they do not really operate like ministries, because the headquarters have relatively little control over their field staffs.

In Solomon Islands, administrative staff employed by the central government and performing provincial functions under the *Plan of Operations* were transferred to the Ministry of Home Affairs, where they were divided up among the provinces and placed under the control of Council Clerks ('Pro-

vincial Secretaries'). Provincial governments were able to employ staff directly – mainly in clerical and labouring occupations – up to the equivalent of Level 4 in the eleven-level Public Service hierarchy (more senior staff had to be employed by the Public Service Commission). But the Malaita Council/Provincial Government, for one, preferred to put certain jobs, such as grass-cutting and house-painting, which might have been performed by directly employed staff to tender – and drew up simplified tender- and contract- forms to assist local entrepreneurs in applying.

The Special Committee on Provincial Government was concerned with identifying whether there were further staff and functions which should be brought 'under' provincial governments, whether additional controls should be decentralised to the principal administrative officers of provincial governments ('Council Clerks'/'Provincial Secretaries'), and what sorts of controls Provincial Assemblies and political executives should have over policy.

It also gave careful consideration to existing arrangements for direct employment of provincial government staffs. Policy-makers in countries where there has been less administrative decentralisation than in Solomon Islands, or where fundamental reforms are being considered, should use the following working papers and Appendix in conjunction with the preceding questions.

In countries with larger provinces or greater resources than Solomon Islands, policy-makers might usefully pay greater attention to staffing arrangements at sub-provincial (or 'Area Council') level.

WORKING PAPER 4.1

CONTROLLING STAFF

1. There have been complaints that at present provincial government staff do not always work effectively for their political leaders. This paper looks at relevant problems and considers ways in which they might be solved.

2. One problem seems to be the way the principal administrative officers of Councils (the 'Clerks') work for the political heads of Councils (the 'Presidents'). There are two main ways in which the problem might be approached:

Option (i): The political leaders of provincial governments could be allowed to have their own advisers

Advantages

- the advisers would be trusted
- they would be loyal
- they could be sacked if they were not satisfactory
- they might have special skills

Disadvantages

- there might be favouritism in appointments
- the advisers might conflict with senior public servants
- only senior public servants can have disciplinary powers over other public servants
- they might not be as experienced as senior public servants

Option (ii): Provincial governments could be allowed to choose their senior staff from a list of eligible public servants

Advantages

- they would be experienced
- they would be able to exercise disciplinary powers

Disadvantages

- they would still be loyal to the national public service
- they might not be good at giving political advice or at preparing options
- they might still lack needed skills in accounting, law, economics or administration

BUT

- they could be trained
- they could be made to prepare options for provincial leaders by, say, being removed if the provincial government asks.

3. Another problem seems to be conflict between Presidents, Clerks and the national government's representatives in the provinces (the 'Government Agents'). This might be solved by removing Government Agents from the provinces:

Advantages

- there are already no full time Government Agents in some provinces
- less conflict

Disadvantages

- public servants carrying out national functions might not work together
- staffs of individual ministries might conflict with Presidents and/or Clerks.

4. Another problem seems to be making sure that seconded staff do what political leaders want. Members have suggested that Provincial Secretaries/Clerks should be given certain disciplinary powers over provincial staffs:

Advantages

- staff would have to do what they were told by a person working closely with political leaders
- staff would not answer directly to ministries

Disadvantages

- staff might feel cut off from their ministries where people understand what they do
- there might be resentment
- control by a Provincial Secretary/Clerk is not the same as control by a politician.

5. Provincial Secretaries/Clerks might be given certain powers over staff performing national functions:

Advantages

- provincial and national staffs might work together

Disadvantages

- divided loyalty for staff performing national functions
- interference in the work of staff carrying out national functions.

6. Control over transfers of public servants between provinces:

Option (i): By contract

Advantages

- provincial government and public servants would know how long an officer was available
- local knowledge
- less cost in moving staff
- less disruption to staff/family life

Disadvantages

- might make promotion difficult
- might mean unsatisfactory staff have to be kept on
- provinces and ministries short of good staff could not get them easily
- staff might not move as often as they like

Option (ii): By allowing people to be promoted on the job

Advantages

- would keep staff on the job

Disadvantages

- might cost more in salaries
- might need to be limited so staff effectively used

Option (iii): By allowing provincial governments to hire their own staffs

Advantages

- might get who they want
- might be able to offer them better pay, conditions and promotion

Disadvantages

- might lead to favouritism
- might not be able to get good staff for certain places and jobs
- might restrict promotion opportunities for staff.

7. Direct employment of staff by provincial governments:

Advantages

- staff would have the skills wanted
- staff would be loyal
- pay etc. might be dealt with locally

Disadvantages

- staff might be hard to get for some places and with some skills
- promotion and transfer to other places might be limited
- favouritism possible
- dismissal might be easier.

8. Pay and conditions of staff hired directly by provincial governments:

Option (i): Could be set by national guidelines

Advantages

- similar system in all provinces so less competition and expense

Disadvantages

- less easy for provincial governments to compete for staff they want
- less control over money by provincial governments

Option (ii): Could be left to provincial governments:

Advantages

- provincial governments can get the staff they want
- might save money with staff who want to come
- difficulties could be settled at provincial level

Disadvantages

- provincial governments might compete for staff
- might cost some more
- some provinces might not get sufficient/appropriate staff
- might make transfers between provinces harder for staff.

9. If members think that provincial governments should be able to hire staff directly, they will have to decide whether there should be restrictions on the numbers, levels and skills which could be hired. Expatriate staff would have to be hired or at least cleared by the national government.

10. The Committee might like to consider the reactions of public servants and/or the public service union to an increase in direct employment of staff by provincial governments and the future of public servants who might be displaced.

11. Some provincial governments do not directly employ people to do some jobs. They contract some jobs out. The Committee might like to consider the advantages and disadvantages of this, and make recommendations on its use in the future:

Advantages

- economy and efficiency
- puts money into local communities
- shares available work around

Disadvantages

- there may be little continuity in employment of contractors or in maintenance
- speed rather than overall efficiency in getting the job done.

WORKING PAPER 4.2

MOVING STAFF FROM THE NATIONAL CAPITAL TO THE PROVINCES

1. There is a feeling that too many senior and skilled public servants are in the national capital, Honiara. The Committee considered several ways of dealing with this problem:

Option (i): The Committee could recommend which staff should be posted to the provinces

Advantages

- more certain what will be recommended

Disadvantages

- time
- expertise
- recommendations might not be acted on, anyway

Option (ii) The Committee could recommend a thorough review of the public service by a special body with specific terms of reference

Advantages

- could specify the kinds of people or the body
- experts could be included on body or be advisers
- might be more thorough

Disadvantages

- less certain about political direction

Option (iii): The Committee could also recommend similar reviews in future – perhaps at specified intervals

Advantages

- as for (ii)
- also makes decentralisation of staff an ongoing process

Disadvantages

- as for (ii)

Option (iv): The Committee could recommend guidelines for establishment of new public service positions

Advantages

- could be combined with (i), (ii) or (iii), above
- ministries would have to explain why staff posted to Honiara

Disadvantages

- reasons can often be found, even when doubtful
- could be time-consuming for government
- jobs at different levels (administrative and national policy-making) must be done in Honiara to keep capital running
- some jobs (for example, Foreign Affairs) cannot be done anywhere else.

2. The Committee eventually decided to obtain further information about which positions could be moved out of Honiara and requested its Secretary to carry out a survey. The results of this investigation are given in Appendix 4.1.

3. Some public servants cannot be sent to work full-time in provinces because –

- supporting staff/facilities are needed;
- staff is short;
- certain skills are not effectively used full-time in one province (for example, certain technical specialists).

This problem can be dealt with in several ways:

Option (i): Such staff could be shared by two or more provinces who consult where and when they should work

Advantages

- under control of provinces who use them

Disadvantages

- consultation can be expensive and/or time-consuming
- could lead to conflict between provinces
- different provinces might share the services of different personnel (for example, forestry officers in Western and Eastern Outer Islands; officers dealing with plantation purchases in Guadalcanal, Isabel and Western)

Option (ii): Such staff could be placed in a special pool under the control of all provinces:

Advantages

- consultation might be more regular/cheaper

Disadvantages

- provinces not directly affected might become involved/might find some consultations irrelevant

Option (iii): Such staff could be placed in a special ministry (for example, Home Affairs)

Advantages

- under department concerned with provinces

Disadvantages

- the special ministry might grow too large
- specialist staff might be cut off from professional colleagues and supporting staff/facilities

Option (iv): Such staff could be left in present ministries

Advantages

- system need not change, though consultation could be strengthened

Disadvantages

- ditto.

4. Public servants can be made available to work in remote or difficult areas in a number of ways:

Option (i): They can be ordered to go there

Advantages

- costs no more

Disadvantages

- they might be unhappy and resign

Option (ii): They can be offered special allowances or rapid promotions

Advantages

- more attractive to staff concerned

Disadvantages

- cost more
- unfair to people with town jobs

Option (iii): They can be required to work in provinces/rural areas before they can be promoted

Advantages

- costs no more

Disadvantages

- does not apply to people with town jobs
- staff might be unhappy or refuse promotion.

5. The Committee also considered alternative ways of preventing the growth of 'mini-Honiaras' at provincial centres:

Option (i): This could be left to provincial governments to control

Advantages

- preserves provincial autonomy

Disadvantages

- might not work
- if it does not work, might affect whole country or whole provinces, including ability to get aid

Option (ii): There could be national guidelines, which might be enforced through financial grants

Advantages

- control over provinces which develop provincial centres

Disadvantages

- weakens provincial autonomy.

6. In considering moving staff to provinces, it is also necessary to bear the following in mind –

- will it cost more?
- how quickly can it be done (for example, houses, etc. have to be made available)?
- how will public servants feel?

7. It is also necessary to consider:

- whether there are national government posts in Honiara which might be abolished and the money saved used to create new posts in the provinces;
- whether there should be special procedures to control the creation of additional new posts in Honiara.

APPENDIX 4.1

REVIEW OF STAFF WHO COULD BE MOVED OUT OF THE NATIONAL CAPITAL

1. Working Paper 4.2 mentioned a proposal that public service posts should be identified which might be moved from the national capital, Honiara, to the provinces. This paper reports the results of a study undertaken on the Committee's behalf to identify such posts.

2. The following list is only preliminary:

- it deals only with posts at or above Level 5;
- it does not distinguish between posts which come under the control of provincial governments and those which might remain under national government control; and
- it does deal with posts which are under the control of national government ministries in Honiara and might come under the Honiara Town Council.

Ministry	Section	Staff Position
Ministry of Youth and Cultural Affairs	—	
Ministry of Transport and Communications	—	
Office of the Prime Minister	Central Planning Office	Only 6 staff, but possibilities of one or two, or any extra being assigned to provinces, maybe for short periods, or fairly continuous touring.
Ministry of Home Affairs	—	
Ministry of Agriculture and Lands	Extension	Possibilities of reorganising the 6 posts above Level 5, to release one or two senior staff to larger provinces
	Land	Possibility of reorganisation of lands administration section (15) staff to base officers in 5 or 6 provinces.
Ministry of Education and Training	Teacher Training	Slight possibility of finding a few advisory teachers from teacher training to be based in one or two provinces.
Ministry of Health and Medical Services	Central Hospital	Possibility of relocation of very few medical staff out of central hospital and into provincial hospitals. But existing medical and health structure not well-established, vacancies very high, and best equipment in Honiara – depends very much on level of services to be provided.

Ministry	Section	Staff Position
Ministry of Works and Public Utilities	Engineering Branch (includes design, building, electrical, water supply, roads, and bridges)	Strong possibility of reorganisation to relocate some of 7 qualified engineers and other engineering staff to provinces. Depends on sorting out how much of central government work is really in Honiara, and reallocation of the rest; and on decision about future of provincial transport pools (Mechanical Branch).
Ministry of Finance	—	Possibility of relocation of some accountants from Treasury, depending on Committee's decisions about decentralisation of accounting (see Working Paper 5.5).
Ministry of Natural Resources	—	
Ministry of Law and Information	—	
Public Service Office	—	Possibility of relocation of a few posts for personnel management in bigger provinces.
Police	—	(investigation pending).

CHAPTER 5

FINANCE AND PLANNING

The financial aspects of decentralisation are as important as the distribution of powers and functions. The arrangements made for raising, managing and spending money are central to the entire process. Unless appropriate financial arrangements can be made, there is little point in giving provincial governments law- or policy-making powers, significant functions or even control over staff – and little prospect that the decentralised system of government can begin to meet the expectations that led to the decision to decentralise.

Working Papers 5.1 to 5.4 provide detailed analyses of alternative sources of revenue which might be available to provincial governments and Area Councils. They allow for careful distinctions to be drawn between the power to determine whether certain taxes or charges should be imposed; deciding what the rates should be; collecting the money; and allocating expenditure. It is possible, for example, for Area Councils to have the power to decide whether to collect basic rate (a head tax); for the national government to set a maximum rate; for provincial government staff to collect the money; and for Area Councils to decide how it should be spent (perhaps calling on provincial governments or the national government for assistance when it comes to procuring supplies and obtaining the assistance of skilled staff). It is also possible for the various elements outlined to be combined in other ways.

On the one hand, there is no point in making the financial arrangements for provincial governments unnecessarily complex. But, on the other hand, there is value in making the distinctions suggested where they happen to be useful.

The working papers on possible sources of revenue were prepared with the assistance of briefing-papers and other advice provided by officers of the Ministries of Finance and Home Affairs. Useful suggestions as to possible revenue sources which had not been tried in Solomon Islands and on other aspects of local/provincial government finance were also gleaned from studies of other countries, including Papua New Guinea 1974c and Marshall 1969.

As has been previously suggested, decisions about the distribution of powers, functions and staff need to take account of likely sources of revenue for provincial governments. So do decisions about political structure. And decisions about likely revenue sources need to take account of the others, so that the recurrent costs of the decentralised system can be met, and development can still take place.

The likely recurrent costs of provincial governments include the costs of transferred functions, including staff and physical plant, as well as the salaries and/or allowances of Provincial Assembly and executive members, and holders of any other newly created offices, such as political secretaries. In Solomon Islands, the Ministries of Finance and Home Affairs provided detailed estimates of those costs. They also prepared detailed breakdowns of the sums which might be raised in individual provinces by way of customs and excise duties, taxes, licence fees and other charges (in some cases, the actual or potential return from contentious government charges was surprisingly low, their purpose being not so much to produce revenue as to enforce certain standards, for example, through motor vehicle driving licences, or to establish the principle that users of certain government services, such as hospitals, should contribute towards their costs).

In a relatively small economy as heavily dependent on foreign aid as the economy of Solomon Islands, the government's domestic and foreign policies are closely interrelated. Provincial governments rely on grants from the national government for most of their expenditures, and capital funds, in part-

icular, come mainly from foreign aid. The national government, in turn, relies on provincial governments to maintain a reputation with aid donors as a responsible recipient of their funds.

Like other national governments, the Solomon Islands government insists that foreign aid is handled through direct national-government-to-national-government relations. It tries to ensure that national sovereignty is not weakened and national priorities are not undermined by direct dealing between subnational bodies and foreign governments. For their part, the governments of most donor countries prefer to deal with the national government of Solomon Islands and to hold it responsible for the way in which aid funds are spent.

However, strict financial control and accountability to foreign aid donors by the national government do not sit easily with decentralisation. Provincial governments need to be able to exercise discretion in allocating and managing funds if the entire programme of decentralisation is not to founder – particularly in determining priorities for development, but also in moving funds between projects and programmes as circumstances change. But if funds are tightly ‘tied’ to projects which only the national government can propose and for which aid donors insist the national government must be formally responsible, then provincial governments cannot easily exercise the discretion that they need.

There is a number of at least partial solutions to the dilemma outlined, including a proposal by the Solomon Islands Ministry of Finance to try to persuade aid donors to put ‘untied’ money into certain development funds (Solomon Islands 1979b: 47), and a mechanism set up in Papua New Guinea which allows provincial governments to propose projects for inclusion in a national list of priority projects which are put up to aid donors or funded by the national government itself – the National Public Expenditure Plan (Papua New Guinea 1976). Ultimately, it may be possible to persuade aid donors to ‘untie’ increasing proportions of their aid because of the financial probity and political responsibility of the recipient government. But, whatever the eventual outcome, the link between decentralisation and aid policy seems clear. So, too, does the link between decentralisation and foreign investment, especially when national and provincial priorities for development come into conflict. The Special Committee on Provincial Government, therefore, met at length to exchange ideas before independence with officials who were about to assume responsibility for the conduct of the country’s foreign affairs.

In its *Report*, the Special Committee made some general recommendations about aid policy and administration (Solomon Islands 1979b: 51). It also said that the national government should –

- keep . . . [provincial governments] informed of aid donors’ policies;
- encourage aid donors to visit projects in rural areas and have discussions with provincial governments;
- consult . . . [provincial governments] fully . . . before proposing aid projects which might affect them ... ,

and specifically that the national government should –

- let provincial governments set the priorities for aid projects in their areas;
- inform them of any comments or appraisals;
- explain if they are altered or rejected; and

- not use money given for a project in a province for other purposes (*ibid.*: 51).

When it came to foreign investment, the Committee seemed to recognise that the national government should have the final power to determine policy, but recommended that it should consult provincial governments about national forestry, mining and fisheries projects, and that provincial governments should have the power to prevent such projects, re-settlement schemes or other natural resource projects in their areas. It also recommended that the agreement of traditional owners of land or fishing rights in areas affected by such projects should be secured before the projects are allowed to go ahead (*ibid.*: 36-37, 74).

In Papua New Guinea, most foreign aid takes the form of ‘untied’ general budgetary assistance. In Solomon Islands, most foreign aid is ‘tied’ to projects. As a result, the links between the government’s decentralisation programme and aid policy are much clearer in the latter country. So is the degree to which the effectiveness of the decentralisation programme might become hostage to foreign governments – at least until Solomon Islands becomes economically more self-reliant, or the country’s relations with aid donors are changed.

An important issue which tends to arise when consideration is being given to sources of revenue for provincial governments and to the distribution of revenue between them is the relative weight which should be given to –

- reducing inequalities between provinces;
- maintaining the existing level of services; and
- ‘rewarding’ those provinces which contribute most towards the national revenue.

The Special Committee on Provincial Government tried to take the three criteria listed – as well as others – into account in its discussion of financial arrangements for provincial governments.

Debate on the proposed formula for allocating grants of national government funds to provincial governments was particularly trenchant, with strong opposition being expressed, even by members from the most populous provinces, to the idea of allocating money according to size of population, and strong pleas from other members for compensation to be paid to provinces undergoing ‘over-development’. But, when it came time to finalise its recommendations, the Committee declined to assign relative weights to the various criteria it wanted to have included in the formula, and even to define how some of them – for example, ‘lack of development’, ‘disturbance and stress caused by development’ – might be made operational (*ibid.*: 49-50).

When considering the expenditure side of the financial arrangements, the most important factor is how much control the national government wishes to have over the way in which provincial governments spend their money. There are three basic alternatives. The most extreme form of financial decentralisation is to allocate funds to provincial governments on an unconditional basis, so that provincial governments have complete control over the way in which they spend their money, without having to refer anything to the national government. A less radical move is to allow provincial governments to prepare their own budgets but to require them to submit their budgets to the national government for approval. The third alternative, which cannot really be called decentralisation at all, is to retain all financial control in the hands of sectoral ministries at the national level. There are, of course, various compromises which might be made between these three basic alternatives: it is possible, for example, to decentralise control over capital expenditure but not over recurrent expenditure, or to decentralise

control over some parts of recurrent expenditure but not others.

Working Paper 5.5 deals with aspects of control over expenditure, including accounting, audit and budgetary control – matters which can have crucial consequences for the continued operation of particular provincial governments (or the need to suspend or dissolve them – see Working Paper 7.1), and for the national government's ability to attract foreign aid, let alone to persuade aid donors to 'untie' it.

Under the *Plan of Operations*, provincial governments were given power to prepare their own budgets, though public servants continued to be paid from Honiara. Council/provincial government estimates had to be submitted to the Minister for Home Affairs for his approval. When the Special Committee discussed budgetary procedure, it recommended that provincial governments should be given 'the final power' to approve their own estimates of revenue and expenditure. Because of the issue's critical importance to the entire structure of national-provincial government relations, it was discussed not only in the context of the present chapter but, later, in the context of Working Paper 7.1.

Control over financial expenditure is very closely related to planning, since in most countries a major tool of development planning is the budget. It is, therefore, important to ensure that the national government retains financial control over activities which it wishes to plan at the national level. Equally important is the need to ensure that, if significant financial powers are decentralised, provincial governments have the capacity to plan and budget effectively. Thus, even though the working papers in this chapter do not devote a great deal of attention directly to planning, the two subjects should be considered together.

'Planning can mean many things', as the Special Committee recognised,

from the scheduling of ships to writing up requests for foreign aid (Solomon Islands 1979b: 77).

It seems almost inevitable that national ministries/departments, statutory bodies and subnational levels of government should, to some extent, become involved in planning – with selecting objectives and identifying possible means to achieve them (Leys 1969: 260) – each on its own account and, where there is a central planning body, as in Solomon Islands, as part of the process of preparing a comprehensive economic, or even wider, national plan. In a Background Paper prepared for the Special Committee on Provincial Government (Number 33, which is not reprinted in this volume), the Central Planning Office in Solomon Islands described its functions as –

- (a) drafting of national development plans, under the direction of the Council of Ministers
- (b) monitoring and review of national development plans.
- (c) project planning, identification, preparation, appraisal and monitoring in collaboration with Ministries and Local Councils.
- (e) manpower planning at national level.
- (f) provision of background information, special studies and research related to these fields.

Planning tends to be particularly important in developing countries as a means of obtaining foreign aid. But aid donors are often critical of administrative and political decentralisation, especially the latter. They tend to see both types of decentralisation as being unduly expensive in scarce, skilled manpower, and the latter, in particular, as adding unnecessary complications to the preparation, monitoring and implementation of plans (they tend to welcome geographical decentralisation as 'rural development' – Asian Development Bank 1979: 138-140, 381, 383).

Participation in the preparation of a national plan by provincial governments can be critical to their ability to meet popular needs and demands. And the successful operation of the decentralised system can be crucial to the unity of the nation-state. The involvement of elected members of provincial assemblies in preparation of a national plan may help to legitimate the plan. It may help to appease critics of the *status quo* by showing them that desired changes have been scheduled. And it may have an important educative effect on both those critics as well as opponents of planning by demonstrating that large-scale projects or major policy-shifts can often come about only if resources are marshalled – by planning – over time. Thus, the relationship between planning and decentralisation can be both delicate and complicated, deserving of rather closer examination than it has generally received.

The complex involvement in planning of diverse types of government at all levels made it difficult for the Special Committee to fit 'planning' neatly into the A, B and C Lists discussed in Chapter 3. It finally included 'preparation of provincial plans' in Lists A and C (provincial final powers and functions, respectively) and 'planning' in List B (national final powers requiring consultation with provincial governments), and devoted part of a chapter dealing with substantive issues – land, shipping, planning and internal migration – to the relationship between the national and provincial governments in the preparation of national plans (Solomon Islands 1979b: Chapter 7). In that chapter, the Committee recognised the central role that the national government plays in the preparation of a national plan, but recommended that the procedures for consulting provincial governments should be changed, or at least formalised, by requiring the national government to consult provincial governments, and in particular to –

- ask provincial governments about their ideas for the general objectives . . . before they are drawn up;
- circulate a list of general objectives to provincial governments for comment, before they are finalised;
- ask provincial governments to propose projects for inclusion . . . before the list is drawn up; and
- circulate a list of projects to provincial governments for comments, before the list is finalised (*ibid.*: 78).

It remains to be seen whether the formal procedures for consultation recommended by the Special Committee will lead to changes from the kinds of priorities included in the *National Development Plan 1975-1979* (Solomon Islands 1975), or whether they will serve to legitimate existing policies.

Finally, it should be observed, that the problems of devising means for subnational governments to become involved in the preparation of national plans and of dealing with conflict between national and provincial plans are likely to be less acute in countries with a national ideology or greater internal unity than Papua New Guinea or Solomon Islands displayed shortly before, at, and for some time after, independence. The problem of obtaining adequate, skilled staff to prepare provincial plans or proposals for inclusion in national plans seems to be widespread among developing countries: it may

be met by asking donors to simplify, or at least standardise, the documentation they require; by re-organising work done by the national government and posting planners to individual provinces, or allowing them to be shared among groups of provinces (Solomon Islands 1979b: 67); and, ultimately, by training and recruiting more staff with appropriate skills.

WORKING PAPER 5.1

SOURCES OF REVENUE

1. There are several different sources from which provincial governments might obtain revenue. They are described below.

A. FOREIGN AID

2. Foreign aid is likely to be an important source of revenue for provincial governments, both for recurrent expenditure and capital projects.

3. However, there is no national government which does not seek to regulate relations between aid donors and subnational bodies – and many national governments are constitutionally required to do so. Such regulation makes co-ordinated planning possible; it may save money and allow larger proposals which help several provinces to be put forward; and it may help protect the integrity and sovereignty of the nation. Moreover most aid donors prefer to deal with a single national government rather than a number of subnational bodies.

4. It is, therefore, necessary to consider:

- (i) whether provincial governments should be able to arrange to have their proposals included in the list of projects/programmes put up to aid donors – and if so, how;
- (ii) whether the national government should have to consult with, or seek the consent of, provincial governments before putting certain kinds of projects/programmes up to aid donors – and if so, how;
- (iii) whether the national government should make recommendations concerning the kinds of activities for which aid should be sought (for example, activities which foster rural development, equalisation of development, distribution of money-earning opportunities, etc.) – and if so, what they should be; and
- (iv) whether the national government should make recommendations concerning the kinds of aid policies which would be most useful in making provincial governments effective (for example, an aid policy which tried to ‘untie’ aid as to procurement, to move away from project aid, etc.) – and if so, what they should be.

5. It is important to consider the implications which decisions made in relation to the first two points, in particular, have for economic planning.

B. GRANTS FROM THE NATIONAL GOVERNMENT

6. Grants may be either *tied* (to varying degrees) or *untied*.

7. Members might like to bear in mind that grants may be tied because –

- (i) they relate to functions which are national responsibilities for which there are national policies;

- (ii) they consist of money from aid which is tied; *or*
- (iii) they consist of money which has been lent on certain conditions.

8. As long as the national government has revenue sources of its own (whether foreign aid, loans, taxes, fees, licences or investments), it can give tied or untied grants to provinces on its own accord, and independently of whatever arrangements are made for the distribution of funds to which provincial governments are by law entitled.

C. CONTROL OF CERTAIN TAXES

9. Provincial governments may be entitled –

- (i) to a certain percentage of specified taxes;
- (ii) to set certain taxes (perhaps within national limits) which are collected by the national government;
- (iii) to set and collect their own taxes;
- (iv) to set and have Area Councils collect certain taxes.

D. GRANTS BY AREA COUNCILS

10. Area Councils may give grants to provincial governments, depending on the distribution of revenue-raising powers.

E. LOANS

11. Loans may be:

- (i) made directly from the national government; *or*
- (ii) made from others through the national government; *or*
- (iii) made (perhaps subject to certain conditions) from banks and other lending bodies; *or*
- (iv) raised (perhaps subject to certain conditions) by public subscription.

F. FEES AND LICENCES

12. Provincial governments may be allowed to:

- (i) collect fees for services provided;
- (ii) issue licences to conduct certain activities.

G. INVESTMENTS

13. Investments may be:

- (i) directly owned by provincial governments; *or*
- (ii) joint ventures involving foreign investors and/or local businessmen; *or*
- (iii) joint ventures involving some form of direct public ownership.

WORKING PAPER 5.2

DISTRIBUTION OF MAJOR REVENUE AND REVENUE SOURCES

1. In considering the following options, it should be noted that it is not necessary to choose only one. Various combinations of the options are possible. Some combinations may make the total system of distributing revenue to provincial governments more flexible, while others may make it more complicated to administer and to understand.

A NATIONAL GOVERNMENT REVENUES

2. National government revenues (foreign aid, taxes, fees, charges, loan funds, etc.) might be distributed to provincial governments in a number of different ways:

Option (i): As grants from the national budget made in accordance with the constitution (which provides that only Ministers can introduce bills which deal with money into Parliaments, and that the government can raise taxes and spend money only if the National Parliament approves (Solomon Islands 1978a: section 60))

Advantages

- political responsibility for allocations clear
- allocations must be approved by Parliament which contains representatives from all over the country
- national priorities are followed
- may ensure fair distribution within provinces if grants are tied

Disadvantages

- no guarantees for provincial governments (may make planning by them hard)
- weakens provincial autonomy and responsibility
- majority may ignore some provinces' needs/priorities
- may preserve/increase inequalities between provinces

N.B. Provision could be made for grants to be distributed only after –

- negotiations between the national and provincial governments;
- recommendations by a special body made up of national and provincial government nominees (politicians and others) and/or independent experts.

Option (ii): According to a formula (which might take into account such things as area, population, where money raised, maintenance of services, compensation for certain disadvantages, equalisation, national welfare, etc. – see para. 5 below)

Advantages

- provincial governments sure of allocations (so can plan)
- not subject to political bargaining

- original agreement cannot be broken (unless there is provision for review)

Disadvantages

- allocations not made by elected leaders
- not flexible
- may be distorted over time – for example, if minerals found in one area or forests destroyed in another

Option (iii): By allocation from a special fund (perhaps consisting of the proceeds of specified taxes) set aside for provincial governments

Advantages

- total allocation to provinces predictable
- clear division between national and provincial funds

Disadvantages

- no guarantees for individual provincial governments (so planning hard)
- not as much autonomy for individual provincial governments.

3. If grants are allocated from a special fund, this could be done in several ways:

Option (i): After negotiations between provincial (and the national?) governments

Advantages

- allows provincial governments to be involved in allocating money between provinces
- allows provincial governments to see each other's problems

Disadvantages

- majority may ignore some provinces/needs/priorities
- may lead to/increase tensions between provinces

Option (ii): By an independent body (which might be given terms of reference including some of the things outlined in para. 2, Option (ii) above)

Advantages

- may reduce political tensions
- likely to stick to terms of reference and so think of such things as equalising development instead of political bargaining

Disadvantages

- some taxes not efficiently collected at provincial level
- competition between provincial governments may advantage investors

Option (iii): According to a formula

Advantages and Disadvantages

- see para. 2, Option (ii) above.

B. PROVINCIAL TAXING POWERS

Provincial governments might be given control over certain tax revenues in the following ways:

Option (i): By being given a certain percentage (perhaps all) of certain taxes

Advantages

- division between national and provincial governments clear
- allocations fairly predictable (so can plan)
- provincial governments do not use resources on collection

Disadvantages

- may favour well-endowed provinces over poorer
- changes in export prices, successful discovery of new minerals or forest disaster may distort distribution between provinces
- provincial governments do not decide whether to set taxes or how much they should be (so cannot use them to encourage new investment/development), do not collect money directly

Option (ii): By having the power to set certain taxes (perhaps within national limits)

Advantages

- provincial governments receive money without using resources on collection
- provincial governments can decide whether to have certain taxes and if so whether to set them to encourage new investment/development

Disadvantages

- may lead to competition between provincial governments - to advantage of investors?
- provincial governments do not directly control money

Option (iii): By having the power to set certain taxes (perhaps within national limits) and to collect them

Advantages

- provincial governments control money
- provincial governments can predict incomes
- provincial governments can use taxes to encourage/discourage certain kinds of investment/development

Disadvantages

- some taxes not efficiently collected at provincial level
- competition between provincial governments may advantage investors.

5. If a formula is used for the distribution of funds or guidelines are set for a special body set up to distribute them, then one or more of the following might be taken into account –

- (a) population or population density;
- (b) area;
- (c) where money raised;
- (d) cost of maintaining existing services;
- (e) compensation for –
 - remoteness,
 - lack of development,
 - disturbance to area,
 - loss of land,
 - depletion of resources,
 - environmental damage;
- (f) equalisation of development;
- (g) national welfare.

6. If the Committee believes that there should be grants to provincial governments from a special fund consisting of the proceeds of specified taxes *and/or* that provincial governments should be given control over certain taxes, then it will be necessary to decide:

- (i) which taxes should go into the special pool;
- (ii) which taxes should be under provincial government control in respect of –
 - money raised; and/or
 - level of taxation set; and/or
 - collection;
- (iii) whether certain taxes might be set and/or collected by Area Councils and the money raised be given to provincial governments.

The next paper (Working Paper 5.3) lists some common forms of taxation and considers the advantages and disadvantages of giving provincial governments some control over each.

WORKING PAPER 5.3

ALTERNATIVE FORMS OF TAXATION

1. The major forms of taxation in use in Solomon Islands are as follows:

(i) IMPORT DUTIES

Advantages

- taxes consumers/users of imports
- can be restricted to luxury items
- may help local industry

Disadvantages

- collected at point of entry into country, not province – so hard to assign on provincial basis
- requires skilled, watchful staff
- inequitable if levied on widely used or necessary goods

(ii) EXPORT DUTIES

Advantages

- can be used to help regulate production
- taxes those who gain directly from exports/production
- easier to collect from rural producers than income tax (because harder to hide, no deductions)

Disadvantages

- collected at point of leaving country, not province – so hard to assign on provincial basis
- requires skilled, watchful staff
- inequitable with regard to large and small producers of exports
- may discourage production for export

(iii) INCOME, COMPANY, SPECIAL PROFIT, WITHHOLDING TAXES

Advantages

- tax profits, not effort
- high earners pay more

Disadvantages

- require skilled, watchful collectors
- hard to assign some incomes to particular provinces
- hard to levy on rural producers

- applies only to cash incomes, not other kinds of income (shell-money, fish or food exchange, etc.)

(iv) EXCISE DUTIES

Advantages

- tax production
- collected at factory-gate
- easier to collect than sales tax, but may have similar effect

Disadvantages

- require skilled, watchful collectors
- may be inequitable as tax each item of widely used/necessary goods equally
- may discourage production/consumption
- if levied by provinces would benefit provinces with factories more than others
- hard to divide among provinces on basis of consumption

(v) BASIC RATE (A HEAD TAX)

Advantages

- simple to calculate
- relatively simple to collect
- usually already decentralised

Disadvantages

- discriminates against poorer people
- unpopular with people
- easiest to collect at lowest level (for example, Area Councils)

(vi) LAND RATES

Advantages

- may encourage productive use
- may take more from owners of best sites
- could be applied to all registered land

Disadvantages

- requires skilled staff
- taxes ownership, not income
- hard to levy outside towns

(vii) ROYALTIES ON RESOURCE DEVELOPMENT

Advantages

- usually compensate owners
- tax production/use of hard/impossible to replace resources

Disadvantages

- benefits people/areas with resources
- requires skilled, watchful people to collect.

N.B. Special trust funds may be set up to provide for the future in provinces which earn income from non-renewable natural resources.

2. There are many other forms of taxation which could be introduced in Solomon Islands and given to provincial governments. These taxes may already be in use in other countries. They include:

(i) VALUE ADDED TAX (V.A.T.)

Advantages

- taxes each transaction (not just production/import/export/sales/income)

Disadvantages

- requires skilled, watchful staff to administer
- hard to administer in rural areas
- hard to assign revenue on provincial basis
- may inhibit commerce
- may be passed on to consumer

(ii) SALES TAX (may be levied on only some items)

Advantages

- taxes consumer
- easier to administer than V.A.T.

Disadvantages

- requires skilled, watchful staff
- often easier to collect as excise at factory-gates
- hard to collect in rural areas
- affects town dwellers more than villagers
- discriminates against poor in case of widely used/necessary goods

(iii) PRODUCE TAXES

Advantages

- affects those who earn money from production
- can be applied to rural products

Disadvantages

- requires skilled, watchful staff, especially in rural areas
- may inhibit production
- inequitable with regard to large and small producers

(iv) LAND TAXES – ON LAND IN USE

Advantages

- affect land users
- affect large landholders more than small

Disadvantages

- may inhibit production
- tax land use, not income/profit
- require skilled staff

(v) LAND TAXES – ON LAND NOT IN USE

Advantages

- may encourage productive land use
- may encourage redistribution to landless/hardworking

Disadvantages

- may be unfair on people with poor land
- may interfere with owners' rights
- require skilled staff
- fall most heavily on people with no/low incomes

(vi) PAYROLL TAX

Advantages

- easy to collect from employers
- same percentage on all pays

Disadvantages

- may lead to less employment
- discriminates against low wage earners

— affects only wage-earners, not other income-earners

(vii) OTHER TAXES, including —

- entertainment taxes
- petrol/other energy taxes
- house taxes
- tree (for example, productive palm or other) taxes
- animal taxes, etc.

WORKING PAPER 5.4

OTHER SOURCES OF REVENUE

1. This paper considers four other sources of revenue: loans, fees, licences and business activities.

A. LOANS

2. Should provincial governments be allowed to borrow money?

Advantages

- can set up projects too large for annual budget or with which national government will/can not help
- useful for projects which will earn money to help repayments

Disadvantages

- may become indebted and use public's money for repayments
- helps lenders from public revenues.

3. If provincial governments are allowed to borrow money, they could do so in a number of ways:

Option (i): Through or from the national government

Advantages

- terms may be better because of national guarantee
- check debt on major public loans

Disadvantages

- limits provincial autonomy
- richer provinces may be able to negotiate better deals

Option (ii): In conjunction with other provincial governments

Advantages

- terms may be better because provincial governments borrow together
- check debt on total provincial loans

Disadvantages

- national government guarantee may still be necessary
- national government approval necessary for international transfers
- national government may get better terms

Option (iii): On their own

Advantages

- ensures provincial autonomy
- each provincial government can try for best deal

Disadvantages

- may still need national guarantee
- failure by one provincial government to meet repayments may affect others
- provincial governments may lack expertise to get best deal

Option (iv): From a special loan fund into which provincial governments might (be compelled to?) place their surpluses and which might be subsidised by the national government

Advantages

- provincial governments' surpluses put to use
- provincial governments help each other
- terms might be better than from banks

Disadvantages

- fund might not be large enough
- careful provincial governments might end up having to help less careful
- might take business from banks.

4. If Option (ii), (iii) or (iv) in para. 3 is chosen, the Committee might like to consider whether there should be restrictions on –

- (i) the purposes for which loans can be raised (for example, revenue-producing activities); and/or
- (ii) the length of time over which loans can be repaid; and/or
- (iii) the terms (interest rates, etc.) on which loans can be made; and/or
- (iv) the bodies from which loans can be sought (the people, by subscription, banks within the country, a special loan fund, etc.)

5. The Committee might like to consider whether it wants to recommend what the restrictions should be *or* whether they should be set by the national government *or* whether they should be set after negotiation between the national and provincial governments (perhaps after a meeting of Premiers or other provincial government representatives).

B. FEES, CHARGES FOR SERVICES PROVIDED

1. Provincial governments might be given the power to –
 - set and receive, or

- receive (subject to national guidelines),

fees and charges for –

- hire of equipment;
- use of buildings;
- services such as electricity, water, garbage collection, septic disposal;
- medical/hospital services;
- educational services;
- courts;
- registration of births, deaths, marriages, other legal transactions;
- airfield/wharf maintenance;
- shipping/other transportation/vehicle hire;
- extension services

Advantages

- user pays
- services produce revenue to assist maintenance

Disadvantages

- might discourage use
- poor and needy might be denied services if fees/charges too high.

C. LICENCES

7. Provincial governments might be given the power –

- to receive revenue from certain licences;
- to set and receive certain licence fees;
- to set, receive and collect certain licence fees;
- to decide whether certain activities should be licensed at all;
- to determine the conditions and/or numbers of certain licences.

8. Some licences are issued to ensure that certain minimum standards of public safety (for example, drivers' licences), security (for example, gun licences) or health (for example, medical practitioners' licences) are kept, or to help keep economic order by regulating competition (for example, certain business licences). Other licences seem to be designed mainly to raise revenue (for example, store licences).

9. The Committee might like to examine whether provincial governments should be given control over some or all of the following licences, and if so what kind of control –

- arms;
- business;
- professional;
- motor vehicle driving/registration;

- store;
- mobile traders’;
- other.

10. The Committee might also like to consider –

- whether certain licence fees should be offset against income tax;
- whether there should be national controls to ensure that licence fees imposed by provincial governments do not prevent collection of national taxes.

D. BUSINESS ACTIVITIES

11. The Committee might like to consider whether provincial governments should have the power to become involved in business:

Advantages

- benefits go to provincial governments, not individuals
- better able to collect capital than individuals

Disadvantages

- might restrict business opportunities for others
- losses affect more people.

12. If they do have the power to engage in business, provincial governments could do so in a number of ways:

Option (i): Operate business directly

Advantages

- no new institutions
- little disruption to administration
- can move staff around
- nature of business clear

Disadvantages

- business and government might become confused
- business losses might affect whole provincial government
- duties/responsibilities of staff might be less clear
- business and government priorities might conflict

Option (ii): Set up and control their own companies

Advantages

- profits and losses might be clearer
- business and government activities less confused

- business losses do not affect government so directly

Disadvantages

- new institution
- perhaps more staff
- senior staff and directors/politicians might conflict

Option (iii): Put money into joint ventures with local businessmen or overseas firms

Advantages

- allows local equity when foreign capital/skills needed
- business criteria likely to come first
- provincial government can be more detached when taxing, etc.

Disadvantages

- not all benefits go to provincial governments
- business may come before welfare/service criteria
- less control by provincial government

Option (iv): Become involved in business through a statutory body which holds equity in businesses on behalf of the state (for example, the Government Shareholding Agency)

Advantages

- benefits from national government advice/help
- together, the provinces, can have larger say in nation-wide businesses
- can still benefit from business without business criteria coming first

Disadvantages

- provincial government less autonomous
- control shared with national/other provincial governments
- might be less business-like.

13. The Committee might also like to consider whether –

- there should be national government controls over provincial government business activities –
 - to protect against losses;
 - to prevent corruption;
 - to regulate competition/encourage co-operation between provincial governments' business activities;
 - to safeguard the total 'mix' of public/private enterprise in part or whole of the national economy
- provincial governments should be able/encouraged/required to make provision for individuals or groups to purchase shares in wholly-owned companies and/or joint ventures.

WORKING PAPER 5.5

ACCOUNTING, AUDIT AND BUDGETARY CONTROL

A. ACCOUNTING

1. Provincial government accounts could be kept in two ways:

Option (i): Provincial governments keep their own accounts

Advantages

- money accounted for on spot
- problems spotted more easily

Disadvantages

- manpower may be less skilled
- covering up errors/corruption easier

Option (ii): National government keeps all/part of provincial accounts

Advantages

- manpower likely to be more skilled
- economies of scale

Disadvantages

- less autonomy
- 'red tape', delay
- problems not spotted as easily.

2. Similar alternatives exist in relation to the accounts of Area Councils, which could be kept by the Councils themselves or by provincial governments. The advantages and disadvantages are the same as for the options in para. 1 above.

3. Members might like to also consider:

- whether accounting procedures should be simplified;
- whether to recommend that the same system of accounting be used at national and provincial levels, in order to make training/transfers of staff easier.

B. AUDIT

4. At present, provincial government accounts in Solomon Islands are subject to audit by the Auditor-General (Solomon Islands 1978a: section 108(3)). The Committee may like to –

- consider whether they should recommend that this be changed;

- wish to make recommendations concerning the availability of auditing staff and/or the nature of government audits in Solomon Islands.

C. BUDGETARY CONTROL

5. The Committee might also like to consider:

- (a) whether it should recommend procedures to be followed by provincial governments in approving their budgets;
- (b) what should happen if a provincial government's budget is not passed before the financial year begins or is not passed at all –
 - should the Premier/provincial executive lose office?
 - should there be provision for some expenditures to continue for at least a limited period (as in the national constitution - *ibid.*: 103-104)?
 - should the national government take over/dissolve the Provincial Assembly?

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.

CHAPTER 7

RELATIONS BETWEEN GOVERNMENTS

When decentralisation involves the establishment of political bodies at provincial level with powers, functions, staff and other resources of their own, then decisions made about the ways in which relations between the national and provincial governments should be conducted are likely to be crucial to the operation of the entire decentralised system.

Working Paper 3.4 proposed a system of distributing law- and policy-making powers which would involve considerable consultation between the national and provincial governments. In its *Report*, the Special Committee on Provincial Government expanded on the constitutional requirement that consultations must include 'a genuine opportunity to present . . . views before the decision or action . . . is taken' (Solomon Islands: 1978a: section 140(1)), recommending that –

- a detailed request should be made in writing;
- there should be adequate time for a reply to be made, sent and received;
- although a reply should not be required, a reply received should be carefully considered;
- the result should be made known to the office-holder or body consulted, also in writing; and
- there should be a way of cutting short or not having consultation if the matter is urgent and it is in the national interest.

When collective bodies such as Provincial Assemblies or executives are consulted –

- they should be allowed until after their next regular meeting to make and send a reply; and
- there should be a formal motion outlining their views (Solomon Islands 1979b: 82-83).

The Committee also recommended that the national and provincial governments should circulate copies of draft bills, including private members' bills, to one another (*ibid.* : 83).

Working Paper 4.1 also dealt with aspects of relations between governments, specifically co-ordination between staff performing national and provincial functions. Again, the Special Committee's *Report* suggested what such staff should do:

Keeping governments informed

National government staff who make decisions or perform functions of direct concern to provincial governments should keep provincial governments fully informed of their activities and plans. Provincial governments should keep the national government and other provincial governments fully informed of activities and plans which have implications for them (*ibid.*: 43).

The *Report* also paid separate attention to consultations between provincial governments and the police (*ibid.*: 61).

The general thrust of the preceding recommendations, as well as others (cf. *ibid.*: 13), was

to look for means of encouraging co-operation between the national and provincial governments. But what should happen when co-operation becomes strained or breaks down?

Working Paper 7.1 canvasses relevant options, including withdrawal by the national government of powers, functions and/or financial resources of provincial governments, and suspension of provincial governments, including the circumstances in which, and the procedures through which, suspension might be attempted. It also canvasses more general questions regarding the ways in which differences between the national and provincial governments – and also differences between provincial governments – should be handled, including a possible formal requirement that regular meetings between representatives of the national and provincial governments should continue to take place (cf. *ibid.*: 61-62 for periodic meetings of Clerks/Provincial Secretaries arranged by the Ministry of Home Affairs).

The existence of a functioning system of local government on which the Committee proposed to build meant that the main focus of the Working Paper is on possible changes to the pattern of relations between governments which had prevailed under the *Local Government Act* (Cap. 14) and the *Plan of Operations*. Specifically, the Working Paper suggests that there are alternative ways of resolving disputes between the national and provincial governments additional to negotiation and direction, the two methods usually used in the past in Solomon Islands, and to judicial decision, the method which is characteristic of federal systems. The options outlined for resolving disputes short of withdrawal of powers, functions, etc. or suspension of provincial governments – namely, negotiation, conciliation, arbitration, judicial decision and direction – may be regarded as alternatives to one another or, in varying combinations, as possible steps in a single system. The first three, in particular, are consistent with the Special Committee's commitment to avoid the imposition of unnecessary legal restraints on political processes and the use of unnecessary legal forms.

The use of conciliation and/or arbitration to settle industrial disputes is familiar in both Papua New Guinea and Solomon Islands. Both means of disputes settlement are provided for in the *Convention on the Settlement of Investment Disputes* prepared under the auspices of the World Bank (United Nations 1968). But, when the same means were recommended for use in settling disputes between the national and provincial governments and between provincial governments, the governments of the two countries mentioned responded with marked lack of enthusiasm (Papua New Guinea 1974b: 37; Solomon Islands 1979c: 9). In neither country has the government tried to legislate for the use of mediation or arbitration in inter-governmental disputes (Papua New Guinea 1977: sections 75-99; Solomon Islands 1980: sections 32, 33, 44, 45), though such legislation has been promised in Papua New Guinea.

A further problem which seems likely to arise in any system involving political decentralisation is that of conflicts not so much between governments as between national and provincial politicians from the same province over their respective roles and statuses. The Special Committee on Provincial Government discussed the problem at some length, but confined itself to recommending that regular meetings should be held between the two – a practice which was already being followed in some provinces (Solomon Islands 1979b: 40). Conflict over status at least seems quite likely to occur both where political parties are weak, as in Solomon Islands, and where they are stronger, as in certain provinces of Papua New Guinea. Further material relevant to this problem is contained in Working Paper 2.1.

WORKING PAPER 7.1

RELATIONS BETWEEN GOVERNMENTS

1. This paper is concerned with relations between the national government and provincial governments. In particular, it is concerned with co-operation between governments and what might happen if co-operation breaks down.

2. Under the constitution, provincial governments are subject to a number of national controls:

- the constitution itself, including the procedures for amending the constitution;

and, in particular:

- the provisions dealing with fundamental rights and freedoms;
- the Leadership Code;
- the Ombudsman;
- the Auditor-General; and
- the provisions dealing specifically with provincial government (Solomon Islands 1978a: *passim*).

3. The Committee has also discussed, and made recommendations (sometimes only in principle) on the placing and/or removal of other constitutional, legislative, financial and policy controls over the activities of provincial governments. But the Committee has not discussed, or made recommendations on a number of controls which the *Local Government Act* places on provincial governments.

4. Under the *Local Government Act* (Cap. 14), provincial governments may:

- make bye-laws, and
- approve their own estimates,

subject to ministerial approval.

Provincial governments which do not carry out their functions properly may:

- be directed to do so; or
- have their functions transferred to another body.

In various circumstances they may be:

- suspended; or
- dissolved.

5. The Committee might like to consider whether the existing arrangements under the *Local Government Act*:

- are adequate; or
- should be changed.

If they should be changed, should it be made –

- easier/harder for the national government to withdraw powers/functions/money or to take over property from provincial governments?
- easier/harder for the national government to suspend/dissolve provincial governments?

6. If differences between the national and provincial governments do occur, they may be dealt with in several ways.

Option (i): Direct negotiation/consultation by the governments involved – perhaps according to specified procedures requiring adequate notice, an exchange of views, etc.

Advantages

- both sides deal directly
- both sides define issues as they see them
- compromise may be easier
- political leaders in control

Disadvantages

- may increase tension
- may not lead to compromise
- special skills may be necessary
- may lead to stalemate

Option (ii): Mediation/conciliation (that is, reference to another body – a skilled negotiator or a mutually acceptable leader chosen by the two governments or by a third party, or the Premiers' Conference – which acts as intermediary but does not decide the issue)

Advantages

- compromise still possible
- decision cannot be imposed
- intermediary may have special skills
- may reduce tension

Disadvantages

- may not lead to compromise
- may lead to stalemate

- may not be able to agree on intermediary or even who should appoint him
- delay may add to tension

Option (iii): Arbitration (that is, reference to another body – not necessarily a court – for decision)

Advantages

- must produce decision
- arbitrator may have special skills

Disadvantages

- decision may be unacceptable to one or both sides – and lead to appeal?
- political leaders lack control over outcome

Option (iv): Judicial decision

Advantages

- judges neutral
- law applied
- outcome likely to be clear and precedents binding

Disadvantages

- may involve judges in political disputes
- decision may be legalistic – and perhaps based on foreign precedents
- compromise less likely

Option (v): Direction (except where there is doubt about which government has a certain power)

Advantages

- outcome clear
- less likely to be political
- compromise may be quickly made

Disadvantages

- may not deal with real grievances
- may not be compromise
- may be unenforceable.

7. It is possible for differences between governments to go through any combination or all of the processes listed in the order listed. But claims by individuals or bodies other than governments that their political or legal rights had been infringed can probably be pursued only through Provincial Assemblies and/or the National Parliament and/or the courts and/or the Ombudsman. How effective are legal aid services and/or the Ombudsman likely to be in protecting private individuals' and non-official bodies' fundamental rights and freedoms against negotiated/conciliated/arbitrated agreements which appear to infringe them?

8. The Committee might also like to consider whether the national government should have the power to:

- (a) withdraw any/some/all of the powers and functions of provincial governments
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body?
- (b) take control of money and/or property of provincial governments
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body?
- (c) suspend provincial governments
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body, or the holding of a provincial election?
- (d) dissolve provincial governments and hold fresh elections
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body?

9. The specified circumstances in para. 8 above might include some/all of the following:

- natural disasters (how defined?);
- states of emergency declared in accordance with the constitution;
- bankruptcy/persistent overspending of available/budgeted funds;
- corruption;
- financial mismanagement;
- administrative breakdown, including failure to maintain essential services;
- obstruction/frustration of lawful/reasonable national government policies/directives;
- unlawful use of power;
- breach of the Leadership Code;
- arbitrary/unfair decisions or abuse of power as defined by the Ombudsman;
- other considerations.

10. It is also necessary to consider whether the grounds for dissolution/suspension of provincial governments should be justiciable.

11. The Committee might also like to consider who should administer a provincial government following its suspension/involuntary dissolution, for example –

- (a) in cases of dissolution, the outgoing provincial government?

(b) someone or some body appointed by the national government (for example, the Ministry of Home Affairs)?

(c) someone else?

12. The Committee might also like to consider whether provincial governments should have the power:

(a) to dissolve themselves –

– subject to national laws defining the circumstances/ majority needed/procedures to be followed, etc.?

– if they so decide?

– if they make their own rules for doing so?

(b) to refuse to accept/hand back to the national government any/some/all powers/functions –

– subject to national laws defining the circumstances/procedures to be followed?

– subject to negotiation with, and agreement of, the national government?

13. The Committee could also consider whether there should be a regular Premiers' Conference to allow national and provincial governments to consult on matters of common interest/concern, and if so –

(a) how often it should meet?

(b) who should attend?

(c) what its terms of reference should be?

CHAPTER 8

IMPLEMENTATION

Previous chapters of this volume have outlined issues and options which policy-makers might consider when deciding what kind of decentralised system of government they would prefer to see set up. They have, with some exceptions – most notably, Working Paper 3.4 – not been concerned directly with the process of setting the system up. Working Paper 8.1 is concerned with aspects of this process, and with possible future reviews of the decentralised system. Its subject-matter is closely related to that of Chapter 9, which deals with legal implementation and, by implication, with the ease with which recommendations arising from future reviews might be put into effect.

Implementation ought not to be ‘divorced from policy’, as Pressman and Wildavsky have observed:

There is no point in having good ideas if they cannot be carried out (Pressman and Wildavsky 1973: 143).

But there is also little point in putting even the best ideas into effect if those who are responsible for the ideas either make no effort themselves, or do not arrange for others, to keep a check on what actually happens – to see, initially, how the programme of decentralisation is going, and, later, how the decentralised system actually works. Not only must the programme be capable of implementation but provision should be made for implementation. And sensitive implementation involves review, and possible amendment, of the programme as circumstances change.

Among the issues which are directly relevant to implementation are the questions whether the decentralisation programme should be introduced in some provinces before others, whether some elements in the programme should be put into effect before others, when significant events – such as Provincial Assembly elections – should be held, and how the process of implementation should be co-ordinated and monitored at the national level. Another issue concerns the degree to which the initiative for introducing particular changes or preparing provincial constitutions should be with individual provincial governments, or the national government.

In countries where the Government seems indifferent or hostile to the recommended programme of decentralisation, there is likely to be strong support for the appointment of a special body to oversee the process of implementation – perhaps a body like the committee of parliamentarians recommended by the Constitutional Planning Committee in Papua New Guinea:

experienced . . . , broadly representative of opinion in the House, and committed to the realisation of the recommendations ... (Papua New Guinea 1974: Part 1, 10/48).

But, then, the Government might try not to appoint the special body, as happened in the particular case.

By way of comparison, the Special Committee on Provincial Government seemed less concerned at the likely policies of the Solomon Islands Government, and more accepting of the possibility that its recommendations might be amended than the Constitutional Planning Committee in Papua New Guinea. It recommended the establishment of a group of public servants from relevant ministries and other people, among them politicians, to draw up a four-year plan for implementation of its *Report*

including any amendments,

and to oversee its execution (Solomon Islands 1979b: 90). The Committee recognised that individual functions and physical assets might be prepared for transfer at different times. But, because of a widespread feeling that the *Plan of Operations* had made some councils 'guinea pigs' for others, the Committee insisted that

a particular function or kind of physical asset . . . [must be] ready for transfer to all provincial governments at the same time (*ibid.*: 92).

Recognising that individual provincial governments might have difficulty in devising constitutions of their own, the Committee recommended that at least three model constitutions be prepared for provincial governments to choose from.

The Special Committee recognised that a comprehensive programme of decentralisation might encounter unexpected problems. Its members were committed to flexibility. They, therefore, gave careful consideration to the desirability of recommending a transitional period during which it might be easier to change aspects of the decentralised system than it might be later. They also examined the need for subsequent review both of specific parts of the decentralised system and of the system as a whole. On the one hand, they found themselves with -

- a constitutional provision which already provided for provincial boundaries to be reviewed by the Constituency Boundaries Commission (Solomon Islands 1978a: section 114(1)); and
- a proposal, already under consideration by the Government, to establish a special body to determine the salaries and allowances of members of the National Parliament;

while, on the other hand, they favoured –

- the appointment of a special committee, representative of carefully specified interests, to review the formula for untied grants from the national to provincial governments (Solomon Islands 1979b: 50);
- further reviews of public service posts which might be removed from Honiara (*ibid.*: 67); and
- the establishment of a special committee to review the entire decentralised system after five years (*ibid.*: 95).

The Committee recommended that the proposed body to look into national parliamentarians' salaries and allowances have its terms of reference extended to Provincial Assemblies (*ibid.*: 28). Although it did not specify that the body undertaking the general review should tour the country to consult the public directly – perhaps assuming that, like its predecessors, this body would surely do so too – the Special Committee on Provincial Government outlined its composition in general terms and specified to whom it should report, namely the National Parliament and the Premiers' Conference. While stating that the other specialised reviews should take place at regular intervals, the Special Committee left the question of whether there should be further comprehensive reviews to the body conducting the first review to consider.

Perhaps less fearful of centralising tendencies in the Government, and/or less fervently committed to decentralisation than the Papua New Guinea Constitutional Planning Committee had been, the Special Committee on Provincial Government left the appointment of individual members of the body conducting the comprehensive review to a national government Minister, the Minister of Home Affairs.

WORKING PAPER 8.1

IMPLEMENTATION AND REVIEW

1. Some aspects of the process of implementation and review have already been considered in earlier papers, including:

- whether provincial boundaries should be reviewed after a certain period of time (see Working Paper 1.1);
- whether the salaries and allowances of members of provincial executives and Assemblies should be set and periodically reviewed by an independent body (see Working Paper 2.1);
- whether the public service should be further reviewed to identify posts which might be removed from Honiara (see Working Paper 4.2); and
- whether the financial formula used for allocating national government grants to provincial governments should be reviewed periodically (see Working Paper 5.2).

Other issues are considered in this paper.

2. If provincial boundaries are to be reviewed, the review could be conducted in two ways:

Option (i): By the Constituency Boundaries Commission or some other special body

Advantages

- special body best
- all boundaries should be looked at together

Disadvantages

- not appointed by provincial governments
- should be part of general review
- provincial governments should be more autonomous

Option (ii): As part of a general review of provincial government

Advantages

- looks at provincial government as a whole
- might save money
- less uncertainty than with separate reviews

Disadvantages

- boundaries a special problem
- specialist skills necessary

- uncertainty if too much reviewed at once.

3. The Committee might like to consider whether:

- (i) it wishes to recommend that a plan for the introduction of one or all provincial governments in stages should be prepared

Advantages

- better not to do everything at once
- clear what should happen
- easier to spot changes and get explanation
- powers/functions built up gradually

Disadvantages

- might be politically necessary to act at once
- hard to predict future
- might be inflexible
- staffs/politicians should be encouraged to see provincial government as a whole;

- (ii) and, if so, whether it wishes to recommend how long it should take

Advantages

- recommendations should be clear
- Committee knows how much time people want
- planning easier
- might give national government greater urgency

Disadvantages

- Committee might not know administrative/legal problems
- better to see how things go
- might be inflexible
- should be national government's job;

- (iii) and what the main objectives/priorities should be

Advantages

- more flexible than timetable
- Committee knows what is most important
- planning easier
- priorities clear

Disadvantages

- less certain than timetable
- Committee might not know administrative/legal problems

- might be inflexible
- should be national government's job.

4. The Committee may also want to make recommendations about the timing of the next provincial government elections to provide safeguards against provincial governments seeking to extend their terms of office.

5. The Committee might also like to consider alternative ways of supervising the introduction of provincial governments:

Option (i): Supervision by the national government (through the Ministry of Home Affairs)

Advantages

- national government has relevant experience/expertise
- national government's job
- Parliament/provincial politicians can still check

Disadvantages

- national government not directly answerable to provincial governments
- national government might be centralist
- hard for provincial governments to do anything

Option (ii): Supervision by a Parliamentary Committee

Advantages

- would probably include non-Government members
- independent of executive
- members answerable to people
- members live in provinces
- direct access to Parliament

Disadvantages

- might be less expert than national government
- might be hard to influence national government
- should be national government's job
- national government might understand problems better
- might be too political

Option (iii): Supervision by periodic meetings of Premiers (and the national government?)

Advantages

- all parties affected involved
- national and provincial governments can exchange views
- widest experience

Disadvantages

- no direct access to Parliament
- could be too political
- should be national government's job

Option (iv): Some combination of the above

Option (v): A separate body for each province (chosen by provincial and/or national government).

6. If there is to be a review of the salaries and allowances paid to members of Provincial Assemblies and executives, the review could be conducted in several ways:

Option (i): By a special body

Advantages

- special skills necessary
- raises special issues
- should be removed from politics

Disadvantages

- uncertainty if too many separate reviews
- provincial government should be reviewed as a whole (especially financial matters)
- politicians should be answerable for decisions about pay

Option (ii): As part of some other wage-fixing procedure (such as the procedure for fixing wages for members of the National Parliament or public servants)

Advantages

- looked at with other wages
- special skills employed
- should be independent of politics

Disadvantages

- raises special issues
- may bring other bodies into politics
- politicians should be answerable for decisions about pay

Option (iii): As part of a general review of provincial government

Advantages

- same as for Option (ii) in para. 2 (above)
- may space pay-rises

Disadvantages

- same as for Option (ii) in para. 2 (above)
- may be too long between pay-rises.

7. If there is to be a general review of the provincial government system, who should decide when it should take place?

Option (i): The Committee

Advantages

- Committee knows issues/people's views
- Committee certain what will happen

Disadvantages

- future uncertain
- national/provincial governments should have greater autonomy

Option (ii): The national government

Advantages

- responsible for implementing Committee's report so knows what is happening
- answerable to Parliament and people

Disadvantages

- uncertainty when/if review will be
- might be too centralist

Option (iii): Parliament

Advantages

- can hold national government accountable
- answerable to people

Disadvantages

- uncertainty
- might be too centralist

Option (iv): provincial governments (perhaps at a Premiers' Conference -- at which national government is represented?)

Advantages

- know their own problems
- gives greater autonomy

Disadvantages

- national government's views might be ignored
- might not be able to agree.

8. The Committee might also consider:

- (a) whether the review should be repeated, and if so, how often; and
- (b) the terms of reference for the review.

CHAPTER 9

THE LEGAL FRAMEWORK

Chapters 1 to 7 were concerned with issues involved in designing decentralised systems of government. This chapter is concerned with the issues involved in deciding whether aspects of a particular system should be enshrined in law, and if so, which aspects and in what sorts of law. The Working Paper which forms the bulk of the chapter consists of two main parts: section A, which outlines the relative advantages/disadvantages of embodying aspects of a decentralised system in different kinds of law – the constitution, ordinary legislation, a regulation – or in announcements of Government policy; and sections B to H, which contain recommendations prepared as the deliberations of the Special Committee on Provincial Government were drawing to a close, when members' likely attitudes were becoming clear and they asked for a detailed set of proposals consistent with those attitudes to be put before them for consideration.

It may seem surprising, at first sight, to deal with the legal framework after implementation. But the sequence in this volume is as deliberate as that in the Special Committee's work: it is intended to ensure that the legal arrangements made for the decentralised system should, as far as possible, be instruments of policy rather than the reverse. Such arrangements should not be made to fit into pre-conceived notions of what a 'federal', 'unitary' or other system of government is or should be, but should be tailored to the kind of decentralised system that policy-makers find appropriate to local circumstances.

The sequence also has other advantages: it recognises that it is only when the main features of the decentralised system have become clear that it is possible to determine how much legal protection or autonomy should be given to subnational units of government and how much flexibility should be allowed. It also makes it easier for the advisory body to consider imposing legal requirements on other aspects of the implementation process discussed in Chapter 8.

The main considerations which should be borne in mind when working through section A of Working Paper 9.1 are the need for flexibility in the decentralised system and the likely strength of opposition to the establishment and effective operation of the system. If the system is to be flexible, with room for experimentation and modification as circumstances change, then no more than the basic elements should be embodied in law, and the relevant law should take the form of ordinary legislation rather than constitutional legislation, which is generally more difficult to amend. However, if there is likely to be strong opposition to the decentralisation programme, it may be necessary to embody more of the system in law, to ensure both that the system is implemented and that subnational units of government are given certain guarantees, at least for as long as the law is obeyed.

In Solomon Islands, the Special Committee on Provincial Government recommended a system that might be described as a 'unitary devolved system' with certain general principles embodied in the national constitution, and other important matters in a special Provincial Government Act. The proposed Act was intended to facilitate public access to the relevant legislation by bringing it together in a single place, but to do so without sacrificing the need for some parts of the system to be more deeply entrenched than others. Thus, some sections of the Act would be subject to amendment like ordinary legislation, while others would require adherence to the procedures followed in amending the national constitution and the support of an absolute majority of members of the National Parliament (Solomon Islands 1979b: 98-99). However, the Solomon Islands Government has opposed entrenchment of the decentralised system in either the national constitution or legislation which is more difficult to amend than ordinary laws (Solomon Islands 1979c: 4-5). It has tried to preserve flexibility

for itself by preparing a bill which gives greater powers to the national government, and especially the Minister of Home Affairs, than the Special Committee recommended (Solomon Islands 1980). It seems to have encountered remarkably little opposition to its proposals from proponents of decentralisation.

In Papua New Guinea, by way of comparison, leaders from the North Solomons Province, where secession had been proclaimed shortly before independence, insisted in subsequent negotiations that full details of the provincial government system should be enshrined in constitutional legislation, including the constitution itself, and an organic law (Papua New Guinea 1977) which is as difficult to bring into force and to amend (Papua New Guinea 1975: section 17). They were determined to do what they could to prevent the national government from going back on their agreement at a later date.

It remains to be seen whether the legal arrangements proposed by the Special Committee on Provincial Government or those embodied in the *Provincial Government Bill* (Solomon Islands 1980) will meet the demands which gave rise to the original decision to embark on a decentralisation programme in Solomon Islands. But, whatever the eventual fate of either set of proposals, the issues addressed in Working Paper 9.1 are likely to have to be addressed by policy-makers contemplating, or involved in, decentralisation programmes in other countries, especially those involving political decentralisation.

WORKING PAPER 9.1

LEGAL ARRANGEMENTS FOR PROVINCIAL GOVERNMENT

1. This paper considers how the provincial government system may be embodied in legislation. Section **A** covers the general principles, while the subsequent sections (**B-H**) make some tentative suggestions about how specific aspects of the system might be treated.

A. GENERAL PRINCIPLES

2. There are various ways in which the recommendations on provincial government might be put into effect. For example:

- as a result of decisions or public announcements made by particular office-holders (for example, the Public Service Commission, Ministers or the Cabinet);
- by regulation;
- by Act of Parliament;
- by changing the national constitution.

3. It might also be decided that certain matters should be left to provincial constitutions or laws. Provincial autonomy in relation to such matters would therefore depend, at least in legal terms, on:

- whether the national government/Parliament had the power to disallow/override provincial constitutions/laws; and
- how the power to make/change provincial constitutions/laws was given to provincial governments (for example, by decision, announcement, regulation, Act of Parliament or national constitution), and therefore how the power might be reduced or withdrawn.

4. In looking at the legal arrangements which might be made for the establishment and operation of provincial governments, it is necessary to consider:

- the advantages and disadvantages of embodying recommendations in law;
- which kind of law, if any, they should be embodied in – a regulation, an Act of Parliament or the constitution.

5. In making these decisions, it should be remembered that:

- policies need not take the form of laws (although they must be lawfully made);
- some recommendations (for example, that Provincial Secretaries should use their powers more often/more effectively) could be put into law, but are more like policy guidelines or advice – putting them into a law would achieve very little;
- laws which are not, or cannot, be enforced may weaken public respect for the entire legal and provincial government systems;

- a decision that a particular recommendation should be embodied in the constitution would require the support of two-thirds of the members of the National Parliament to be included (Solomon Islands 1978a: section 61(3)).

6. Embodying a particular recommendation in law would have the following advantages and disadvantages:

Advantages

- consideration by specified body
- formality – so taken seriously
- publicity
- harder to change – so greater certainty
- may be more precisely/clearly drafted

Disadvantages

- might be delay for formal consideration
- might be unnecessary formalism
- legalism
- might bring lawyers/courts into policy disputes
- harder to change – so less flexibility
- might be hard to enforce.

7. These decisions may be made in two ways:

Option (i): The Committee could go through its recommendations one by one and discuss how, if at all, they should be embodied in law

Advantages

- clarity
- firmness

Disadvantages

- lack of time
- problem of seeing recommendations fit
- inflexibility in drafting

Option (ii): Members could make recommendations in principle about the kinds of things to be embodied in regulations/Acts/the constitution, and leave the details to the draftsmen

Advantages

- intention clear
- principles firm
- easier to keep principles if parts of Committee's report not accepted/changed

Disadvantages

- details might not be clear

- recommendations might be less firm
- allows flexibility to draftsmen
- report should be seen as a whole, and all details provided for.

8. One way of making the legal arrangements for the establishment and operation of provincial governments would be to amend the national constitution to provide the basic legal framework for provincial government and to set out the main principles of the system, and to include much of the detail in a special Provincial Government Act.

There would be several advantages in having such an Act, in particular:

- the constitution would not be cluttered with matters of detail; and
- most of the information about the legal arrangements for provincial government would be together in a single place.

Moreover, the national constitution could be amended to safeguard provincial autonomy by providing that part/all of the Act would come into effect/be amended only if an absolute majority of members of the National Parliament agreed to a bill moved and dealt with in the same way as bills to alter the constitution. Such an Act would be easier to change than the constitution, but harder than ordinary Acts.

9. Under the scheme proposed in para. 8, the national constitution would provide for:

- (a) the establishment of a system of provincial government in accordance with the objectives set;
- (b) Parliament to make laws for such a system, and to have the power to prescribe that all or part of these laws should take effect or be altered only if –
 - the Speaker has been given at least four weeks notice before the first reading;
 - a bill is clearly expressed to be a bill for an Act made under this provision; and
 - it is supported at the final voting on two separate readings in the National Parliament by the votes of an absolute majority of the members (cf. Solomon Islands 1978a: section 61).

Acts (or parts of Acts) which meet the last three conditions will, for convenience, be referred to below as ‘entrenched’ Acts (or parts of Acts).

B. BOUNDARIES

10. The existing references to boundaries in the constitution might remain much as they are, although:

- (a) a provision might be added requiring the Constituency Boundaries Commission to consult Provincial Assemblies;

- (b) a requirement could be added that there be a review every five years; and
- (c) a proviso would have to be added to allow Parliament to make other provisions in an Act containing 'entrenched' (that is, hard-to-change) provisions – and the rest of the Committee's recommendations could be embodied in such provisions.

C. POLITICAL LEADERSHIP AND STRUCTURE

11. The national constitution should provide for elected Provincial Assemblies, shared executive power and the establishment of Area Councils. These details should not be left to provincial laws or constitutions or to 'entrenched' national legislation. The national constitution should probably also set out the broad principles on which provincial constitutions are to be made, notably who can make them and what they should provide for. But the models from which Provincial Assemblies must choose before making their own constitutions should be in schedules to the 'entrenched' Act.

D. POWERS AND FUNCTIONS

12. The national constitution should probably say that provincial governments should be responsible for performing designated government functions – but List C (executive functions) would not, under the proposed scheme, be 'entrenched'. The constitution should set out the principles of Lists A and B, as follows:

- (a) there must be certain final –not exclusive – powers for provincial governments; and
- (b) there must be other subjects on which they can make laws and policies, subject to disallowance and/or supervening national laws.

Lists A and B themselves should, when refined, become 'entrenched' schedules to the 'entrenched' Act.

13. The constitution might also say that:

- (a) Provincial Assemblies should have the final say over whether/when to accept new or transferred functions;
- (b) there should be a comprehensive law reform to 'make space' for provincial legislation; and
- (c) the 'entrenched' law should set out the procedures for delegating powers and functions, with the proviso that the recipient must agree before a transfer can take place.

14. There could also be a general injunction that provincial governments should be consulted about policies and activities that affect them directly, with the details spelt out in the ordinary laws dealing with such subjects as immigration, planning, foreign relations, etc.

E. STAFF

15. The constitution should probably say that:

- (a) a designated senior civil servant chosen by each provincial government according to procedures specified in an 'entrenched' law should have control over all staff perform-

ing provincial government functions and the power to coordinate all government staff in the province – the details to be spelt out in an ‘entrenched’ law; and

- (b) provincial governments should have the power to employ their own staff directly up to a level specified in an ‘entrenched’ law.

16. The disciplinary powers of Provincial Secretaries could be dealt with by regulation/delegation, and the recommendations on moving staff out of the national capital should be regarded as policy guidelines or advice.

F. FINANCE

17. The national constitution might well say that provincial governments:

- (a) should receive untied grants according to a formula (which would be revised every four years) and that they must get at least enough to pay for transferred functions;
- (b) should have revenue-raising powers of their own;
- (c) should be able to raise loans from institutions within the country;
- (d) should be able to undertake business ventures as specified;
- (e) must give Area Councils the power to raise basic rate; and
- (f) should be consulted (according to defined procedures) on all aspects of planning and development in their areas.

But most of the rest of the Committee’s recommendations on finance should go in the ‘entrenched’ law.

G. RELATIONS BETWEEN GOVERNMENTS

18. The constitution could establish the Premiers’ Conference, provide that it meet at least once each year to allow the national and provincial governments to consult on matters of common interest/concern, and give it the power to regulate its own affairs.

19. The constitution could provide that governments should try to resolve their differences by:

- negotiation; then
- mediation; then
- arbitration; and then
- by legal action, but only over points of law.

The details could be set out in an ‘entrenched’ law, as could the definition of ‘consultation’.

20. The circumstances in which provincial governments can be suspended should probably be spelt out in the constitution; but the details could be left to an ‘entrenched’ law.

H. IMPLEMENTATION AND REVIEW

21. The constitution could provide for a specific transition period – or it could allow Parliament to provide for such a period in an ‘entrenched’ law. The latter would be a more flexible approach. The constitution should probably require ‘the responsible Minister’ to present an annual report to the National Parliament on implementation of the provincial government system.

22. The constitution should probably specifically require the general review of the provincial government system after five years. There might be value in adding a qualification that membership of the review body should be set out in an ‘entrenched’ law – or that members of the body should be chosen in consultation with provincial governments/the Premiers’ Conference.

APPENDIX A

MEMBERS, STAFF AND CONSULTANTS OF THE SPECIAL COMMITTEE ON PROVINCIAL GOVERNMENT

Original Membership

Members of the National Parliament

Mr David Kausimae, O.B.E. (Chairman)
Dr Francis Kikolo²
Mr Moffat Bonunga
Mr John Saunana²
Mr Waeta Ben²
Mr Andrew Kukuti

Council Presidents

Mr Jerry Buare (Western)
Mr Mathias Ramoni (Makira/Ulawa)
Mr Albert Rere (Guadalcanal)
Mr Ataban Tonezepo (Central Islands)
Mr John Wilikai (Honiara)

Mr Billy Gedi (Isabel)
Mr Benedict Maesua (Malaita)
Mr Henry Salapuka (Eastern Outer Islands)

Members of the Public

Mr Jack Campbell, M.B.E.
Mr Abia Tegheta

Final Membership

Members of the National Parliament¹

Mr David Kausimae, O.B.E.
Mr Francis Billy Hilly³
Mr Philip Kapini
Mr John Melanoli
Mr Lawry Wickham
Mr Ben Tumulima

Provincial Assembly/City Council Presidents

Mr Jerry Buare
Mr Mathias Ramoni
Mr Albert Rere
Mr Ataban Tonezepo
Mr John Wilikai

Members of Provincial Assemblies⁴

Mr Billy Gedi
Mr Benedict Maesua
Mr Henry Salapuka

Members of the Public

Mr Jack Campbell, M.B.E.
Mr Abia Tegheta
Mr Cullwick Vahia

1 Mr Colin Gauwane was also a member for a period, until he became a Minister.

2 Resigned upon becoming a Minister.

3 Joined the Committee after resigning as a Minister.

4 Following the loss of presidency in annual Provincial Assembly elections.

Staff

Mr Peter Larmour (Secretary)
Mr Silas Chekana (Assistant Secretary)
Miss Elma Boso (Typist)

Consultants

Professor Yash P. Ghai
Ms J. Herlihy
Associate Professor Edward P. Wolfers

APPENDIX B

KEY TO SOURCES OF WORKING PAPERS AND APPENDICES

Number of Paper in this Volume		Number of Original Paper prepared for the Special Committee on Provincial Government	
Working Paper	1.1	Background Paper	76
	1.2		90
	1.3		136
	2.1		92
	2.2		92 (part) + 113
	2.3		88
	2.4		91
	3.1		122C
	3.2		122B
	3.3		133
	3.4		134 + 138
Appendix	3.1		122E
Appendix	3.2		122F
	4.1		85
	4.2		86
Appendix	4.1		122A
	5.1)	
	5.2)	120
	5.3)	
	5.4)	
	5.5		120 + 131 (part)
	6.1		102 + 121
	7.1		131
	8.1		130
	9.1		140

Note: A complete list of papers prepared for the Special Committee on Provincial Government, including titles and numbers, appears in Solomon Islands 1979b: i-vi.

A complete set of these papers has been deposited with the Ministry of Home Affairs, Honiara.

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Printed and published by
The Commonwealth Secretariat

May be purchased from
Commonwealth Secretariat Publications
Marlborough House
London SW1Y 5HX

ISBN 0 85092 213 5

