National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Traditional Governance and Customs Facilitation Bill 2018 (No. 9 of 2018)

NP-Paper No. 33 of 2018
Presented on 22 Oct 2018
National Parliament Office
CHAIR’S FOREWORD

Hon. Matthew Cooper Wale, MP, Chairman

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the Traditional Governance and Customs Facilitation Bill 2018 for laying before Parliament.

Hon. Matthew Cooper Wale, MP
Chairman
Bills and Legislation Committee
22 Oct, 2018

Traditional Governance and Customs Facilitation Bill 2018
COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10th Parliament) are:

Hon. Matthew Cooper Wale, MP (Chairman)
Hon. Dr Derek Sikua, MP
Hon. Manasseh Maelanga, MP
Hon. Douglas Ete, MP
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COMMITTEE FUNCTIONS

The Committee is established under Standing Order71; an Order made pursuant to the Constitution1 and has the functions, together with the necessary powers to discharge such, to:

(a) examine such matters as may be referred to it by Parliament or the Government;
(b) review all draft legislation prepared for introduction into Parliament;
(c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
(d) monitor all motions adopted by Parliament which require legislative action;
(e) review current or proposed legislative measures to the extent it deems necessary;
(f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
(g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee’s deliberations.

1Section 62, Constitution of Solomon Islands 1978.
EXECUTIVE SUMMARY

The Bills and legislation Committee conducted its enquiry into the Traditional Governance and Customs Facilitation Bill 2018 from the 19 Sept to the 5 of Oct 2018.

Forty four witnesses appeared before the Committee. Almost all witnesses expressed the desire to have the Bill withdrawn and the policy issues further developed and taken back to the public in a broader and robust consultations process.

The Committee notes that the consultations methodology culminating in the Bill was shallow. The policy suffered from the lack of a thorough anthropological study of the customs and groups and units that exist under customary law and practice.

The Committee notes that the Judiciary, the Bar Association weren’t consulted. This is a serious deliberate omission.

As important but marginalised groups, the women and youth were not meaningfully consulted. Nor were the Churches consulted meaningfully.

The lack of rigorous study on the subject matters, has resulted in a superficial consultations process, driven by noble but shallow policy, which in turn, has resulted in a bill that is simplistic.

The Committee has spent much time deliberating on its recommendations to the House. The subject matter of this Bill is neither one to be trifled with, nor is it a candidate for experimentation. Custom is core to our tribal community and identity. Legislation dealing with custom must be informed by thorough research, informed policy, rigorous intellectual debate and engagement, and a robust wide and meaningful consultations. None of these exist to support this Bill.

The Committee applauds the government’s noble intention to give legal recognition to Chiefs, and our various customs. However, the Committee is of the considered view that this Bill has too many inadequacies to achieve that noble intention.

Consequently, The Committee begs the government to withdraw the Bill.

Further, the Committee prays that the government consider the recommendations in this report before revising the policy and processes to bring legislation to Parliament on this subject matter.
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1.0 INTRODUCTION

This Report presents the findings and recommendations by the Bills and Legislation Committee ("the Committee") after inquiring into the Traditional Governance and Customs Facilitation Bill 2018 ("the Bill") as required under the Standing Orders of the National Parliament of Solomon Islands ("the Standing Orders").

Relevant stakeholders\(^2\) were invited before the Committee to make presentations or provide submissions on the contents, policy matters, and intentions of the Bill.

The hearings into the Bill were held from the 19\(^{th}\) to 20\(^{th}\) and from the 25\(^{th}\) to the 26\(^{th}\) of Sept 2018. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendices 1 and 2.

Written submissions were also received from the public and some of the witnesses that appeared before the Committee. A list of Written Submissions can be found in Appendix 3.

\(^2\)See Appendix 1
2.0 BACKGROUND INFORMATION

Indigenous Solomon Islanders since time immemorial have always lived under their own systems of governance within their own customary jurisdictions. These systems in the early days facilitated the unification and collaboration between different groups existing within the country. Schedule 3 of the Constitution, the supreme law of the country features customary law fifth in the hierarchy of laws to be applied in the country and its application is limited to the customary jurisdiction of each of the different groups within the country.

When the DCC Government now SIDCC Government came to power in 2014 it formulated Policy 4.2.5.4 which stressed the urgency of considering legislating for Traditional Governance systems in general. This policy was the trigger for the creation of a new law embracing traditional leadership, the structures and the codification of worthy customary law. This proposals now captured in the Bill provides for the institutionalization, management, and regulation of traditional governance systems.

Essentially the bill provides for the establishment of the National Council of Chiefs, the Provincial Councils of Chiefs and the Houses of Chiefs and regulates the composition of each. It provides for the establishment of codification committees for each province, which are intended to advice on the codification of customary law to be effected by way of provincial ordinance.

According to the draftswoman, this bill establishes a framework for institutionalizing traditional governance structures. So the powers and functions of all of the bodies established by operation of the bill are quite broad and they allow for further powers and functions to be prescribed by other laws. The idea is that where dispute resolution frameworks are established in relation to land or forestry or mining or whatever it happens to be, those laws can feed off these institutions and refer to them and give them powers and functions.

According to the advisor for Traditional Governance at the PMO, dispute resolution between different factions in our society has largely been performed by traditional leaders. However, without the existence of regulation such as is provided for in this Bill, the traditional system of resolving disputes has no legal recognition. This bill gives recognition to traditional governance systems and connects these to the democratic systems.

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3 Peter Boyers, Oral Evidence, 19 Sept 2018
Members would be well served by reading and understanding the Bill to know the significance and effect of the proposals contained in it. Members are advised to refer to the final pages in the Bill containing the Bill's objects and the explanatory memorandum to understand the structure of the Bill, when read in light of the Table of Provisions page.

3.0 ISSUES DISCUSSED

3.1 Policy Issues

During the scrutiny of the Bill the Committee considered the following policy issues:

1. Consultation approach

The Ministry's submission to the Committee stated that consultations were organised for selected traditional leaders, church leaders, women leaders and youth leaders at identified venues in all provinces. The Ministry liaised with provincial governments to identify main traditional leaders and chiefs and having them present at the consultations. The consultation team used prepared questions based on the Model Drafting Instructions approved by Cabinet and the first draft of the Bill. The issues raised during the consultations are addressed in the final version of the Bill, now before the House.

According to the consultations report produced by the sponsoring ministry, a total of 1,213 people comprising of chiefs, traditional leaders, women leaders and youth leaders were consulted across all provinces. The Ministry believes that the people consulted represent key stakeholders. Most of the people consulted are chiefs and traditional leaders in their respective communities, according to the ministry.

There were no consultations with the Judiciary and the Bar Association.

Committee Comment:

The Committee is of the considered view that the methodology adopted for the consultations was flawed. This is a bill that touches on significantly important aspects of our traditional communities. It, therefore, must be based on a thorough-going and well considered understanding of tribal communities and customary law. Tragically, this is not the case. As a result, the consultations process was shallow, coupled with its limited scope and rushed timeframes, has begotten a rather simplistic bill. This is highly regrettable.

There is great need for the policy to be informed by robust cultural anthropology. There is a duty of care on the government, in dealing with a matter so inherently tied to our tribal communities and identities that proper study is commissioned to provide the basis for policy. This was not done. The
Committee is of the considered view that this is a necessary prerequisite, if the government attaches importance to avoiding piercing the veil of customary law callously.

The Committee also notes that women represent only around 10% of the total number of people who attended consultation workshops held by the ministry. Traditional governance in our villages is based on both patrilineal and matrilineal systems. However, it is well known that women have largely been marginalized under both systems. It is therefore very important that women are specifically, and perhaps even separately, consulted on the proposals in the bill. This important matter was not given any consideration in the methodology of the consultations process. This is highly regrettable. It has been said that this is a bill by men for men, with women as an afterthought. The Committee views this as a serious weakness in the consultations approach.

The Committee notes from the report that the consultations were rushed. The Committee is very concerned that in a matter as important as this is to our tribal communities, more time was not taken to canvass as many views as possible and understand more of the issues that ought to be covered in the policy. Given the nature of the subject matter, the Committee rejects the assertion that the limited scope of the consultations and the rushed timeframes are sufficient for the purposes of establishing a starting point – this bill being the starting point. There is no rational and compelling policy argument for a rushed and limited scope consultation process on a bill dealing with traditional governance.

The Committee is rather surprised that the Judiciary and the Bar Association were not consulted. It did not even occur to the ministry to undertake such consultations. There is a body of jurisprudence around the issues that are covered by the bill. The policy would have benefited from that jurisprudence if consultations were held with the Judiciary and the Bar Association. It is also obvious to the Committee that no coherent research was made into the case law on these issues. This is another highly regrettable omission, borne of a shallow process, resulting in a simplistic bill.

The SICA representative forcefully stated that churches play an equally important role in community and traditional governance throughout the country. However, the churches were not properly consulted, as a key stakeholder in community and traditional governance. And it is clear that the bill does not recognize the place and role of churches in our traditional communities.

**Recommendations**
The Committee recommends that:
1. The Bill be withdrawn.

And to contribute to the basis, scope and boundaries of policy and the issues to take to a wider consultations process:

2. Government commissions research into the cultural anthropology of the various traditional governance systems in our country.

3. Thorough research is made into the growing jurisprudence around customary law, customary rights, customary inheritance, tribes, sub-tribes, clans, and such other pertinent issues.

4. A special study is made into the place, role, and voice of youth and women in traditional governance systems in our country.

5. A similar study is conducted on the place, role and voice of the churches in community and traditional governance in our country.

6. A study is made into the experience gained so far in the administration of the Land Recording Act, the effectiveness (or otherwise) of the Local Courts (CLAC), timber rights determination process, and such other laws and mechanisms that interface with traditional governance, customary law and customary rights.

7. A study is made into jurisdictional issues such as powers, and the boundaries of such powers, that can be conferred at provincial government level and whether a framework traditional governance legislation could better fit as part of the provincial government law.

The Committee sees the above studies, as at a minimum, forming the necessary prerequisites to ensuring a robust policy and well thought-out legislation.

The Committee further recommends that:

8. The government table a white paper on the policy for debate in parliament prior to broad nation-wide consultations.

9. In the consultations process, women and youth are consulted specifically, on their own as special interest groups, in the absence of men.

10. The Judiciary, the Bar Association and the churches are consulted as key stakeholders.

2. Interface with existing laws

There a number of laws that deal with land, water, sea, and natural resources such as forestry, minerals, energy, fisheries, etc. These matters necessarily affect customary rights and law, and where they do, there is a determination process with appropriate jurisdiction. It is important to understand
the effects of these laws on customary rights and law to see clearly what role traditional governance could play to remedy any existing weaknesses in current laws and practices. No effort was made by the ministry to demonstrate to the Committee that these laws and their interface with the Bill have been properly considered. Assumptions were asserted, but no evidence of a proper analysis was provided to the Committee. This is regrettable.

The Bill clearly expects the various levels of chiefs bodies to participate in disputes resolution. However, there has been no work done to demonstrate how this role would complement, supplement, or potentially usurp/undermine the role of the Judiciary. Much is assumed in the Bill on this important matter. However, assumptions cannot be basis for robust policy or good law.

Further, it would be useful for the policy to benefit from the proposals on traditional governance contained in the draft federal constitution to see what amendments ought to be considered on existing legislations.

3.2 Contents Issues

The Committee notes the following concerns:

Part 1 Preliminary Matters

Title of Bill – the Committee suggests that the bill be called “Traditional Governance Facilitation and Customs Recognition Bill 2018”. Such a change would more accurately reflect the policy intentions contained in the bill. Further, the bill obviously cannot be indifferent to bad custom that ought to be left to the scrap heap of history.

Clause 3: Definitions –
“Customary rights” ought to be defined in the bill.
“Group” - definition ought to include sub-tribes, and the word “sub-tribe” should be defined. There is established jurisprudence in our jurisdiction on sub-tribes. The current structure of the bill totally excludes such groups. Whether this is deliberate policy is unclear, and the Ministry seemed uninformed on the matter.
“Tribe” and “clan” should be defined. The Committee inquired into whether a definition of these two foundational words are necessary to clarify the requirements for registration in the scheme. But the Under Secretary in Ministry responded – “tribe tribe neo, clan clan nao”. The Committee is concerned that such an important policy matter is handled with such callousness and ignorance. It
is important that the policy is clear on what is meant by these words and the bill should reflect that. Again, it is clear that this matter had not been thought through thoroughly. These two words represent the foundational building blocks for the scheme of the bill and ought to be given the greatest clarity possible.

"Tribal chief" – definition should be amended in the second line by replacing the word “clan’s” with the word “tribe’s”.

The Advisor stated that - the power over land rights is vested in the tribal chiefs on behalf of their respective tribes.

The Legal Draftsperson emphasized that the Bill does not establish rights accorded to traditional leaders and tribal chiefs, rather the structure of traditional governance.

The Committee notes that the bill vests custodianship powers over a clan’s/tribe’s customary interests in the traditional leader or tribal chief, as the case may be. The Committee makes two observations on this matter: firstly, what is meant by customary interests? Is it different from customary rights? Secondly, these definitions read in light of clause 18 betray the lack of custodianship requirements imposed on the leader/chief. What is meant by the word “custodianship” and how is it protected in clause 18 or elsewhere?

Part 2 Administrative Matters

Clause 8: Secretariat of the Chiefs –

This clause empowers the Secretariat to register groups, representatives and Houses of Chiefs. The Committee is very concerned that such a power is given to public servants to exercise where they clearly have no competence in customary matters and law. Clause 8(2)(a) read with Clause 10(1)(e) presents an example of the lack of competence in customary law on the part of the Secretariat to determine the veracity of applications that will obviously contain claims to land boundaries and customary rights. How is the Secretariat supposed to determine if the land boundaries and customary rights claimed by a certain applicant group are right? What competence is required for such a determination? What will be the process for such a determination? Will such a process be open for other groups with competing claims to contest? In what forum will such a contest be heard and determined? Is the determination by a public servant under the Secretariat to register a matter final and conclusive proof of the fact? If there are competing claims, how will such registration be amended, rectified or otherwise voided?
Although clause 8(2)(b) empowers the Secretariat to maintain the customary rights register, the requirements imposed by clause 10(1) are merely administrative, apart from Clause 10(1)(e). The register is clearly not of customary rights. In that the term “Customary rights” is not defined, it is not clear what the term means.

Clause 10(1)(e) clearly anticipates registration of land/sea boundaries and customary rights within such boundaries. What customary rights are envisaged here? Although this clause anticipates group rights, these inadvertently often include individual rights. What about competing individual rights or usufructuary rights? The right to build a house, make a garden, fish at a reef, harvest trees or other resources, etc., are often accorded to and held by individual members of tribes/clans. Would such individual rights be recorded in the register? What is the legal effect of such registration? This is an important area of policy. The Committee is very concerned that, again, this matter has not been thought through thoroughly.

Clause 10(2) – this clause is clearly prejudicial to the rights of groups that opt not to be registered. A certified extract under this clause presented as evidence in a court will undoubtedly be given greater weight against the oral evidence of an unregistered group. In such an instance, the group that opts to remain unregistered will have their rights prejudiced by the fact. This is a serious flaw in this bill. It is either that all groups are required to register or if the current optional scheme is retained, that protections are given to the rights of groups that opt to remain unregistered. This is even more important in that the process for registration will be managed and determined wholly by public servants under the Secretariat that do not possess the relevant competence in customary law. Law must not give the option and then turn around and prejudice the rights of those who exercised the option. It is bad law making.

Further, if clause 10(1)(e) is referring to land boundaries, there will obviously be need for geological surveys to be done. The requirements and process for such surveys ought to be in the bill. Natural justice requires that there be an opportunity and process for contesting these. Further, the bill ought to provide for a process for rectification of rights in the register.

Clause 9: Registration requirements –
This clause empowers the Minister to make regulations for the procedures and requirements for registration of a group, representative or House of Chiefs. The Committee is extremely concerned on this matter.
Registration is at the core of the scheme of this bill. Registration of groups involves land boundaries and customary rights, and should include individual rights that have been awarded by the groups. It is not right that the requirements for registration are not in this bill. These are important to be approved by Parliament where members are accorded the opportunity to debate the policy and legal implications of any proposals. It is bad law-making to give this power to one man, the Minister. The requirements for registration, the prescription of procedures and defining the functions and powers of the chiefs under this Bill are arguably issues that affect and give meaning to the purpose and objects of this bill, and therefore ought to be included in the bill itself.

This situation is made worse by the fact that Parliament is deprived of reviewing the regulations proposed under this bill. Parliament is being asked to grant wide powers on matters central to this bill, as a blank cheque, to one person. Members are advised to view this with the greatest caution.

The Committee is concerned that perhaps it is because of the rushed timeframe imposed on the consultation on, and the drafting of this bill, that too much is left to be remedied by regulations. On this particular matter, given its centrality to the scheme of the bill, this power must be removed from the Minister.

Further Recommendations, that:

11. The term “Customary rights” be defined in the bill and to clarify whether it includes “customary interests”.

12. Individual rights within a group are given recognition and protection.

13. The definition of “Group” be expanded to include sub-tribe.

14. The words “tribe” “sub-tribe” and “clan” are clearly defined in the bill.

15. Clause 10(1)(e) to clearly state land boundaries, if this is what is meant. That requirements for geological surveys are included in the bill, and a process for contesting these also included.

16. The process for rectification of rights in the customary rights register be provided in the bill.

17. Sole authority for the maintenance of the customary rights register ought to be vested in one person, and not given generally to the Secretariat. There must be clear responsibility and accountability for the register.

18. The requirements for the registration of a group, representative or House of Chiefs be included in the bill, and not be left to regulations.

Part 3  Traditional Governance Structure
The Committee notes that most of what this bill proposes to establish is not in any way traditional in the Solomon Islands context. Both the proposed National Council of Chiefs and the Provincial Councils of Chiefs are entirely new, and perhaps foreign, constructs. Even the existing (largely) voluntary Houses of Chiefs are a modern construct in Solomon Islands.

Division 1 National Council of Chiefs (NCC)

Clause 13: Powers and functions -

This clause outlines the powers and functions of the National Council of Chiefs. Under sub clause (1) (b) the NCC has the function to assist in the resolution of disputes between different language groups. What is its jurisdictional relationship with the courts? What types of disputes are intended to be dealt with under this clause? The bill ought to make that clear and distinguish it from the role of the courts. This matter must not be left to assumptions. This clause suffers from the lack of consultations with the Judiciary.

Under this clause, the NCC can only deal with disputes between language groups. What about disputes within a language group? Is it the policy intention to limit this function in this way?

The Committee is of the view that, subject to further clarification of the dispute resolution function and its relationship to the courts, such a function would be more effectively discharged by provincial Councils of Chiefs.

Further Recommendations:

19. That the bill clarify what disputes are covered under clause 13(1)(b), and which ones are excluded.

20. That the bill clarify the jurisdictional relationship/boundaries for the exercise of powers under clause 13(1)(b) between the NCC and the courts, and whether there is a right of appeal and to what body.

21. That the bill clarify whether disputes within language groups are excluded from the role of the NCC.

22. That the powers under Clause 13(1)(b) be given to Provincial Councils of Chiefs instead.

Clause 13(2)(b) gives the NCC powers “Necessary for the performance of its functions.” This power is also given to the Provincial Councils of Chiefs and the Houses of Chiefs. We already have experience with lower courts fundraising from applicant logging companies whose timbers rights
determination process is being heard. Government funding is always going to be a challenge for the Houses and Councils of Chiefs, just as it is for the lower courts. In such a situation, the bodies would be well within their legal powers to raise their own funds as it is necessary for the performance of their functions under this clause. This is dangerous indeed, as it is likely to undermine the bodies and compromise their impartiality. Worse, it may undermine the community’s trust in such bodies. This power must be removed. The Committee makes the observation that this matter seems to be the result of the shallowness of the consultation methodology and rushed timeframe imposed on the drafting.

Likewise, Clause 13(1)(e) gives the Minister power to prescribe additional functions for the NCC. This is similar to Clause 15(1)(g) for Provincial Councils of Chiefs, and Clause 20(1)(h) for Houses of Chiefs. The Committee is very concerned that one person, the Minister, is given the power to prescribe additional functions. It is important, as it is good law making, that only Parliament can prescribe additional functions, by way of legislation through its normal process. The regulation making powers of a Minister should be confined to matters of an administrative/procedural effect. Again, the Committee makes the observation that this matter seems to betray the shallowness of the consultations methodology and the rushed timeframe imposed on the drafting of the bill.

Division 2 Provisional Councils of Chiefs
Clause 14: Establishment and composition –

The Provisional Councils of Chiefs will comprise of 2 representatives of each House of Chiefs in the province.

The Committee is concerned that, in terms of representation, some language groups with very large geographical spreads and populations will be under-represented because of the requirement to have only two members from each House of Chiefs. The example of Kwara’ae as a language group illustrates this issue. East, West, Central Kwara’ae have large populations and occupy a large part of the Central Malaita region. Under this proposal, all of Kwara’ae can only have one House of Chief (as it is based on language groups) and can only have 2 representatives in the Provincial Council of Chiefs. This compared to Gula’ala which comprise the two small islands of Kwai and Ngongosila, which together have a small population but their own distinct language, and would be entitled to a House of Chief of their own and 2 representatives in the Provincial Council of Chiefs. There is an inherent unfairness in such representation. This matter was not given the due consideration it deserves in the consultations.
The Committee also notes the lack of basic criteria for selecting members of the Provincial Councils of Chiefs in the Bill.

Further Recommendations:

23. That Clauses 13(1)(e), 15(1)(g), 20(1)(h) and 32(2)(a) be removed.
24. That Clauses 13(2)(b), 15(2)(b), and 20(2)(b) be removed.
25. That further work is carried out to assess whether representation on the Provincial Councils of Chiefs ought to reflect population sizes as well as language groups.

Division 3 Registered groups and representatives

Clause 16: As noted earlier, the Committee is concerned that sub-tribes seem to have been omitted from this scheme. Whether this is a deliberate policy choice isn’t clear. Further, there does not seem to be any policy under this clause (read with clause 10) to recognize legitimate individual rights within tribes or clans. This may be prejudicial to the rights of individuals within a tribe. Again, it appears the consultation process did not explore this important issue.

Further, this clause makes it optional for groups to register with the Secretariat. By the mere fact of registration being optional, two categories of groups are introduced – registered and unregistered. The customary and legal implications of creating this artificial delineation have not been properly explored, due to the shallow methodology of the consultation process. The Committee was not furnished with evidence to demonstrate both the benefits of making registration optional or conversely any disadvantages. This matter must first be carefully thought-out and then taken back to the people in a much wider consultation process.

And as noted earlier, it is bad policy to give the power to register groups to the Secretariat. The Secretariat will be filled by public servants and cannot be expected to have the competence in custom to make the determinations required under clauses 16 and 17. The bill ought to be amended in these two clauses to exclude the Secretariat from making these determinations.

Clause 17: Registration of representatives. The Committee notes two issues with this Clause that require further work and consultation. Firstly, there is no policy benefit from making it optional for registered groups to register their two representatives with the Secretariat. Secondly, a Chief that appeared before the Committee stated that Clause 17(1) will have the prejudicial effect of reducing
the status of the Chief and equating it with the other registered representative. The Committee agrees that this matter was not carefully considered. In such contexts, this Clause may compel tribes/clans to opt not to register. And this, as was noted earlier, can be prejudicial to their interests.

Clause 18: Powers and functions of registered tribal chiefs and traditional leaders –
The powers and functions of a registered tribal chief or traditional leader are listed under this clause.

In that the facilitation scheme of the bill is to merely establish the three levels of representation/participation of Chiefs, clause 18 is a deviation from this scheme. In giving powers to individual tribal chiefs/traditional leaders, Clause 18 runs the risk of excluding other traditional/customary powers currently exercised by the chiefs. The bill would benefit from some anthropological study into this matter.

Further, clause 18(2) merely requires a tribal chief/traditional leader to consult his/her group in exercising powers under clause 18. This appears weak and lends both the chief/leader and the tribe/clan vulnerable to being compromised. Again, here the policy would benefit from anthropology to offer guidance on whether a chief/leader ought to be bound by the decisions of his/her tribe/clan or whether it should be left to the chief/leader to merely weigh the input from their groups but be solely vested with the power to make the final decision, in exercising powers under clause 18. The consultation methodology did not explore this matter in any depth regrettably.

If this clause is not improved, the Committee urges the government to consider removing it from the bill entirely.

Clause 23: Executive officers –
The clause lists the executive officers of the established bodies. These include a chairperson, a vice chairperson, a secretary and a treasurer. When queried on the position of the treasurer the PS explained that the position is there to assist the chiefs since the Ministry will not pay remuneration but support them with logistics and sitting allowances and there will be instances when the chiefs will need to fundraise for operation costs. The Committee notes that the bill does not provide for any remuneration of Chiefs. Any allowances to be paid will be an administrative decision that has no basis in this bill.

The Committee is of the considered view that this is a poor policy choice. Firstly, government needs to be deliberate about the funding of the bodies, if it is committed to giving them legal/formal
recognition. Secondly, allowing these bodies to fundraise for their operations lends them vulnerable to compromise, as was noted earlier. Therefore, it is better that government fully funds their operations, and these bodies have no need of a treasurer, and thus, this clause needs to be amended to reflect that.

It is clear to the Committee that the government assumes that it cannot afford to fully fund the operations of these bodies. The government is forced to make this assumption because of the lack of any detailed cost analysis of the scheme. This matter may determine the effectiveness of these bodies and ought to be given much more deliberate consideration. The Committee urges the government to take the time necessary to study this important matter to inform its decision making on it. Further, the Committee urges the government to fully fund these bodies.

Division 5 Procedural Matters

Clause 25: Oath of office -
This clause states that a registered representative must take an oath or affirmation in a prescribed form. In that this is a bill to recognize custom, the Committee urges the government to consider whether it would be more meaningful if such oaths are taken in the custom of the representative.

Part 5 Miscellaneous Matters

Clause 32(2) (a): As was noted earlier, the Committee is very concerned that one person, the Minister, is given wide powers to prescribe additional functions to the bodies. Clause 32(2)(a) should be deleted. Any additional functions that will be required at a later date ought to be brought to Parliament for enactment. Custom is core to our tribal community, and any functions that will likely have an effect on its registration, exercise and so forth ought to be widely debated and inquired into.

It is bad law to give wide powers to the Minister on a matter as important as this.

Further Recommendations, that:

26. Registration is compulsory for all groups
27. Registration is compulsory for all representatives
28. Careful consideration is given to equating the two representatives of a group in a House of Chiefs.
29. The power to determine applications for registration are removed from the Secretariat and given to a body with the appropriate competence in custom.
30. Clause 23(1) (d) be removed, and that the bodies are prohibited from self-fundraising.
31. Clause 18 be removed from the bill.
32. Detailed anthropology is pursued to inform policy on how group decision making is reflected and implemented by group leaders.

33. The government conduct a detailed cost analysis of the scheme of the bill, with a view to fully funding it. The results of this analysis should be included in the white paper to be tabled in parliament for deliberation.

34. Oaths ought to reflect the particular custom of the person swearing the oath.

END OF REPORT
# 4.0 APPENDICES

## 1.1 Appendix 1: Witnesses

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Name</th>
<th>Position &amp; Organisation</th>
</tr>
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<tbody>
<tr>
<td>Wed 19 Sept 2018</td>
<td>10:21am – 5:21pm</td>
<td>Justus Denni</td>
<td>PS MNURP</td>
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<td>Peter Mae</td>
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<td>SCC AG Chambers</td>
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<td>Thurs 20 Sept 2018</td>
<td>10:16am – 10:55am</td>
<td>Peter Aorounisaka</td>
<td>Deputy Premier Guadalcanal PA</td>
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<td></td>
<td>Charles Keku</td>
<td>Paramount Chief Tandai House of Chiefs</td>
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<tr>
<td></td>
<td>10:59am – 11:15am</td>
<td>Methodius Iopara</td>
<td>Youth Dev officer MWYCFA</td>
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<tr>
<td></td>
<td>1:16pm – 2:07pm</td>
<td>Emma Garo</td>
<td>Chief Magistrate Magistrate Court</td>
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<td>Ricky Iomea</td>
<td>Deputy Chief Magistrate Magistrate Ct</td>
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<td>Gravis Suiara</td>
<td>Deputy Registrar Magistrates M Ct</td>
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<td>S. M. Belakame</td>
<td>Deputy Registrar High Court of Sol Is</td>
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<td>2:27pm – 4:15pm</td>
<td>Wilfred Luiramo</td>
<td>Interim Chair FSII</td>
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<td>Mavis Getea</td>
<td>Wosuga CBO MUCNG</td>
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<td>Edith Dagi</td>
<td>President Temotu Council of Women</td>
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<td>Ruth Liloqula</td>
<td>CEO Transparency Sol Is (TSI)</td>
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<td>Tony Hughes</td>
<td>Commissioner TSI</td>
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<td>Joy Abia</td>
<td>Legal Officer TSI</td>
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<td>Baddy W. No’amasahu</td>
<td>General Secretary SIIPHRAA</td>
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<tr>
<td>Tues 25 Sept 2018</td>
<td>10:10am – 11:56am</td>
<td>Faukon Rex</td>
<td>Judge High Court of Sol Is</td>
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<td>Moody Alex</td>
<td>Associate High Court of Sol Is</td>
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<td></td>
<td>11:59am – 3:04pm</td>
<td>Silverio Lepe</td>
<td>President Sol Is Bar Association</td>
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<td>Alice Willy</td>
<td>Vice-President Sol Is Bar Association</td>
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<td>Holmes Saeve</td>
<td>General Secretary SICA</td>
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<td></td>
<td>3:20pm – 3:41pm</td>
<td>Frank Paulsen</td>
<td>Chairman Law Reform Commission</td>
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<tr>
<td>Wed 26 Sept 2018</td>
<td>10:00am – 11:38am</td>
<td>Sir Nathaniel Waena</td>
<td>Former Governor General</td>
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<td>Hon, Peter Ramohia</td>
<td>Premier Malaita Province</td>
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<td></td>
<td></td>
<td>Willy Hiare</td>
<td>Lawyer HM Law</td>
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<td></td>
<td>Watson Puiahi</td>
<td>Manager ISSI Consultant</td>
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1.2 Appendix 2: Minutes of Proceedings

NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILL AND LEGISLATION COMMITTEE

Minutes of Proceeding
Committee Hearing into the Traditional Governance and Customs Facilitation Bill 2018


1. Members Present

Hon. Matthew Wale, MP (Chairman)
Hon. Manasseh Maelanga, MP
Hon. Alfred Ghiro, MP
Hon. Christopher Laore, MP

Secretariat and Support Services
Wilson Anii
Gregory Finea
Philemon Loe
Teresa N & Marlon K

2. Chairman call meeting to order

3. Welcome and Opening Remarks

The Chairman made opening remarks by acknowledging and welcoming the PS of the Ministry of National Unity Reconciliation and Peace, his advisor and his officers and the Legal Drafts lady and her assistant. The witnesses were reminded of the Parliamentary Privileges, recordings of the proceeding. Members of the Committee were introduced. He then invites the PS to deliver his presentation. The PS introduces himself and members of his team and commenced his presentation.

4. Committee hearing into the Traditional Governance and Customs Facilitation Bill 2018

The Hearing proper commenced and the following witnesses were admitted.

Hearing 1 Witnesses

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Department</th>
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<tbody>
<tr>
<td>Justus Denni</td>
<td>PS</td>
<td>MNURP</td>
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<td>Peter Mae</td>
<td>US CT</td>
<td>MNURP</td>
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<td>Chris Tabea</td>
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<tr>
<td>Reuben Lihi</td>
<td>Dir</td>
<td>MNURP</td>
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</tbody>
</table>
Peter Boyers    TG Advisor MNURP
Catriona Steele Legal Draftsperson AG Chambers
Florence Ramoni SCC AG Chambers

The Committee questioned the witnesses on their presentation and on the contents of the Bill. The witnesses answered, made clarification and commented on issues raised. The Chairman thanked the witnesses for their attendance and conclude the proceeding.

5. Adjournment

The Committee adjourned hearing at 5:21pm


1. Members Present

Hon. Matthew Wale, MP, Chairman
Hon. Christopher Laoe, MP
Hon. Alfred Ghiro, MP

Secretariat
Wilson Anii, Committee Secretary
Gregory Finea, Committee Secretary
Anthea Fafale, Hansard
Mr Philemon Loe, Media

2. Chair call meeting to order

3. Welcome and Opening Remarks

The Chairman made opening remarks. Welcomed the witness and informed the witness of Parliamentary Privileges employed in this inquiry and the recording of the proceeding. The Chair introduced the Members of the Committee and invite the witness to make their opening presentation.

4. Committee hearing into the Traditional Governance and Customs Facilitation Bill 2018

The Hearing proper commenced and the following witness were admitted:

**Hearing 2 Witnesses**

Peter Aoraunisaka Deputy Premier Guadalcanal PA
Charles Keku Paramount Chief Tandai House of Chiefs

The Committee then go through the general principles of the Bill with the witness. The witness also answered and made clarification on issues raised.

Members of the Committee then question and seek clarification from the witnesses on their presentations and on the clauses of the Bill.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill. Evidence concluded at 10:55am, Hearing suspended

The Hearing resumed at 10:59am and the following witness was admitted:

**Hearing 3 Witness**

Methodius Iopara Youth Dev officer MWYCFA

Traditional Governance and Customs Facilitation Bill 2018
The Chairman made opening remarks and invite the witness to introduce himself and made his presentation.
Members of the Committee then question and seek clarification from the witness on his presentation and on the clauses of the Bill.
Evidence concluded and the Chair thanked the witness for his attendance and presentation on the Bill. Evidence concluded at 11:15am, Hearing suspended for lunch break.

The Hearing resumed at 1:16pm and the following witnesses were admitted.

**Hearing 4 Witnesses**

Emma Garo  Chief Magistrate  Magistrate Court
Ricky Iomea  Deputy Chief Magistrate Magistrate Ct
Gravis Suirara  Deputy Registrar Magistrates  M Ct
S. M. Belakame  Deputy Registrar High Court of Sol Is

The Chairman made opening remarks and invite the witnesses to introduce themselves and made their presentations.
Members of the Committee then question and seek clarification from the witnesses on their presentation and on the clauses of the Bill.
Evidence concluded and the Chair thanked the witnesses for their attendance and presentation on the Bill. Evidence concluded at 2:07pm, Hearing suspended.

The Hearing resumed at 2:27pm and the following witnesses were admitted.

**Hearing 5 Witnesses**

Wilfred Luiramo  Interim Chair  FSII
Mavis Getea  Wosuga CBO  MUCNG
Relinta Manaka  Project Support Officer  ESSI
Inia Berry  Chairman  DSE
Matha Rurai  President  Malaita Council of Women
Casper J. Fa’asala  Women in Leadership Officer Sol Is NCW
Selwyn Aharo  Makira Conservation Network
Makili Lawrence  Activist  DSE
Edith Dagi  President  Temotu Council of Women
Ruth Liloquula  CEO  Transparency Sol Is (TSI)
Tony Hughes  Commissioner  TSI
Joy Abia  Legal Officer  TSI
Baddy W. No’amasahu  General Secretary  SIIPHRAA

The Chairman made opening remarks and invite the witnesses to introduce themselves and made their presentations.
Members of the Committee then question and seek clarification from the witnesses on their presentation and on the clauses of the Bill.
Evidence concluded and the Chair thanked the witnesses for their attendance and presentation on the Bill.

5. **Adjournment**

The Committee adjourned hearing at 4:15pm

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**Day 3 / Tues 25 Sept, 2018, CR II, Parliament House @ 10:10am.**

1. **Members Present**

   Hon. Matthew, MP, Chairman
   Hon. Alfred Ghiro, MP
   Hon. Douglas Ete, MP
   Hon. Christopher Laore, MP

2. **Secretariat**

   Wilson Anii, Committee Secretary
   Lawrence Scott, Media
   Theresa Nori, Hansard

3. **Chairman call meeting to order**

4. **Welcome and Opening Remarks**

The Chairman made opening remarks. Welcomed the witnesses and told the witnesses of the Parliamentary Privilege employed in this inquiry and the recording of the proceeding. The Chair introduced the Members of the Committee and invite the witnesses to make opening presentation.

4. **Committee hearing into the Traditional Governance and Customs Facilitation Bill 2018**

The Hearing proper commenced and the following witnesses were admitted:

**Hearing 6 Witnesses**

- Faukona Rex, Judge — High Court of Sol Is
- Moody Alex, Associate — High Court of Sol Is

Members of the Committee then question the witnesses on their presentations.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill. Evidence concluded at 11:56am. Hearing suspended.

Hearing resumed at 11:59am and the following witnesses were admitted;

**Hearing 7 Witnesses**

- Silverio Lepe, President — Sol Is Bar Association
- Alice Willy, Vice-President — Sol Is Bar Association
- Holmes Saevé, General Secretary — SICA

The Chairman made opening remarks and invites the witnesses to introduce themselves and make their presentations.

Members of the Committee then question the witnesses on their presentations.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill. Evidence concluded at 3:04pm. Hearing suspended.

Hearing resumed at 3:20pm and the following witness was admitted;

**Hearing 8 Witness**

Frank Paulsen, Chairman — Law Reform Commission
The Chairman made opening remarks and invites the witness to introduce himself and make his presentation.
Members of the Committee then question the witness on his presentation.
Evidence concluded and the Chair thanked the witness for his attendance and contribution on the Bill.

5. **Adjournment**

The Committee adjourned hearing at 3:41pm

**Day 4 /Wed 26 Sept, 2018, CR II, Parliament House @ 10:00am.**

1. **Members Present**

   Hon. Matthew Wale, MP, Chairman
   Hon. Manasseh Maelanga, MP
   Hon. Dr Derek Sikua, MP
   Hon. Christopher Laore, MP

2. **Secretariat**

   Wilson Anii, Committee Secretary
   Gregory Finea, Committee Secretary
   Anthea Fafale, Hansard
   Mr Philemon Loe, Media

3. **Chair call meeting to order**

4. **Welcome and Opening Remarks**

   The Chairman made opening remarks. Welcomed the witnesses and informed the witnesses of Parliamentary Privileges employed in this inquiry and the recording of the proceeding. The Chair introduced the Members of the Committee and invite the witnesses to make their opening presentation.

5. **Committee hearing into the Traditional Governance and Customs Facilitation Bill 2018**

   The Hearing proper commenced and the following witnesses were admitted:

   **Hearing 9 Witnesses**
   Sir Nathaniel Waena       Former Governor General
   Hon, Peter Ramohia       Premier       Malaita Province
   Willy Hiuare            Lawyer        HM Law
   Watson Puiahi           Manager      ISSI- Consultant

   Members of the Committee then question and seek clarification from the witnesses on their presentations and on the clauses of the Bill.
   Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill.

5. **Adjournment**

   The Committee adjourned hearing at 11:38am

   Hearing Concluded.
## 1.3 Appendix 3: Submissions

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<tr>
<th>No.</th>
<th>Title</th>
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<tr>
<td>1</td>
<td>The Traditional Governance and Customs Facilitation Bill 2018 (TGCF Bill 2018)</td>
<td>Andrew Radclyffe</td>
<td>10/9/18</td>
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<td>2</td>
<td>Submission: Western Province Chiefs and Traditional Leaders Strongly Support and Welcome TGCF Bill 2018.</td>
<td>Wilson Liligeto – Deputy Director Western Peace and Reconciliation Office</td>
<td>13/9/18</td>
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<td>Laru Padevatovato (House of Chiefs) Submission to TGCF Bill 2018</td>
<td>William Kutini &amp; James Alepio – President &amp; Vice, Laru Padevatovato</td>
<td>14/9/18</td>
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<td>4</td>
<td>Assorted email discussions by Solomon Island academics</td>
<td>Supplied by Dr. Philip Tagini</td>
<td>14/9/18</td>
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<td>Transparency Solomon Islands Submission on the TGCF Bill 2018</td>
<td>Ruth Liloqula – CEO TSI</td>
<td>17/9/18</td>
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<td>Re: TGCF Bill 2018 in Parliament</td>
<td>Rev. Mark Graham – President Lauru Land Conference of Tribal Community (LLCTC)</td>
<td>17/9/18</td>
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<td>Call for Submissions: TGCF Bill 2018</td>
<td>Stephen Kipusia Siapu – Chairman- Solomon Islands Student Federation Trust Board</td>
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<td>TGCF Bill 2018 commentaries</td>
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<td>Additional Notes on TSI Submission on the TGCF Bill 2018</td>
<td>Ruth Liloqula – CEO TSI</td>
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