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REDD+ and Forest Carbon Rights in Solomon Islands

BACKGROUND LEGAL ANALYSIS

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SPC Secretariat of the Pacific Community

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SPC Land Resources Division

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Executive summary

Who 'owns' the carbon in the forest? This is a question of great importance for all developing countries preparing to engage with REDD+, including Solomon Islands. Land in Solomon Islands is of central importance to the cultural and economic security of customary landowning communities. Consequently, the right to control forest carbon and the right to enjoy the economic benefits that may flow from this under REDD+ are also of critical importance to Solomon Islanders.

The natural resources of Solomon Islands belong to its people and government. The vast majority of land (86%) is held under customary tenure. Solomon Islands has no current laws on forest carbon rights. While it is clear that forest carbon on customary land is 'owned' by customary land 'owners', the individual, groups and clans in which that 'ownership' vests is not readily deducible from existing laws.

Under the current laws:

- Customary land is governed by customary laws, which differ from place to place and are not written down.
- Customary land and interests in customary land are inalienable, except to Solomon Islanders, and in other very limited circumstances. A contract or agreement that purports to transfer interests in customary land can be declared void.
- Those entitled to deal with customary land, as 'owners', and as holders of various interests in the land and its natural resources, are not readily identifiable.
- The boundaries of customary land are unclear as they are not surveyed and are often disputed.
- There is no suitable mechanism for customary land 'owner' groups to join together as a legally recognised entity (e.g. a Sellers Entity) to hold and manage forest carbon, and to distribute benefits in an open and transparent way.

Legislation is required to address these issues. Set out below is a summary of the steps which might be taken to define and allocate forest carbon rights in Solomon Islands:

Step 1: Define and allocate forest carbon rights in legislation (Section 6)

An amendment to the definition of 'land' in the *Land and Titles Act* to include 'forest carbon rights' would make it clear that forest carbon rights are held by the 'owners' of public land, perpetual estate, fixed term and leasehold interests.

The situation is more complex regarding customary land and further steps are necessary. The term 'forest carbon rights' should itself be defined as well. Step 1 is addressed in Section 6 of the Paper.

Step 2: Identify and record who 'owns' the forest carbon rights on customary land (Section 7)

On customary land in Solomon Islands, land 'ownership' and the customary right to control the forest resource on that land can be held by different groups. Simply legislating to declare that 'land' includes 'forest carbon rights' may therefore not clearly resolve the question of 'ownership'.

There are two options available here:

> **(a) Customary Land Records Act model:** Use the *Customary Land Records Act* to identify and record the 'owners' of forest carbon rights on customary land. This Act allows a customary land holding group which claims an interest in customary land to apply to the Land Record Office to record their 'primary rights' (in this case, their rights to the forest carbon), and includes the demarcation of the boundaries. Use of this option would require the Government to establish the infrastructure required for the *Customary Land Records Act* to operate, such as supporting regulations and a functioning Central Land Record Office; **or**
>
> **(b) Forest Resources and Timber Utilisation Act model:** Use the model of the *Forest Resources and Timber Utilisation Act* (ss 7 and 8) as noted, by which the Provincial Executive holds a meeting to identify which of the customary 'owners' is entitled to grant the 'timber rights', and extend it to forest carbon rights. This would mean that the 'owners' of forest carbon rights would be identified using the process set out in that Act. However, it should be noted that the *Forest Resources and Timber Utilisation Act* has generated a high level of community disquiet, and this may therefore not be a suitable option.

Step 3: Legislate to enable customary land 'owners' to enter into REDD+ contracts (Section 8)

Customary land 'owners' cannot presently enter into contracts to sell their emission reductions/removals to a Project Proponent (called a 'REDD+ contract') from their customary land because of the statutory restriction on disposing of customary land or disposing of *interests* in customary land (*Land and Titles Act*, ss 240 and 241(1)). A REDD+ contract could amount to an 'interest' in customary land because the effect is to limit how that land can be used (e.g. often for a period of 10 years or more). Therefore, for customary land

'owners' to undertake a REDD+ project which involves a contract to sell verified emission reduction and removals to a REDD+ developer, an amendment will be required to these sections of the *Land and Titles Act* exempting these REDD+ contracts.The only alternative would be to require customary land 'owners' to sell or lease their customary land. However, under current law leasing or granting a fixed term estate results in the permanent alienation of customary land.

Alternative Option: Allow third parties to hold/own forest carbon rights over customary land (Section 9)

In the same way that third parties (such as logging companies) are permitted to hold timber rights over customary land under the *Forest Resources and Timber Utilisation Act*, Solomon Islands needs to decide whether it wishes to permit third parties to hold the rights to forest carbon. To enable this to happen, the *Forest Resources and Timber Utilisation Act* could be amended to provide that 'timber rights' include 'forest carbon rights'. The person/company who holds the timber rights in an area would therefore be entitled to exercise their timber rights, forest carbon rights, or a combination of the two.

Conclusion

Having regard to the relative advantages and disadvantages of each of the options, it is suggested that the following mechanisms be considered to facilitate REDD+ projects on customary land in Solomon Islands:

1. Recording of forest carbon rights under the *Customary Land Records Act.*
2. Landowners enter into a REDD+ agreement with a project developer to sell their verified emission reductions and removals (an amendment to the *Land and Titles Act* is required to permit this).
3. Landowners consent to a conservation covenant of some description over the forest to be protected, with sufficient flexibility to manage the forest sustainably.

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Abbreviations

AFOLU	Agriculture, Forestry and Other Land Uses
A/R	Afforestation / Reforestation
CCBS	Climate, Community and Biodiversity Standard
CDM	Clean Development Mechanism of the Kyoto Protocol
COP	Conference of the Parties
ERPA	Emissions Reduction Purchase Agreement
FCPF	Forest Carbon Partnership Facility of the World Bank
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
ILO	International Labour Organisation
IPCC	Intergovernmental Panel on Climate Change
MRV	Measurement, Reporting and Verification
PICs	Pacific Island Countries
REDD+	REDD, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks (“+”)
UNDRIP	United Nations Declaration on Rights of Indigenous Peoples 2007
UNFCCC	United Nations Framework Convention on Climate Change 1992
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and forest Degradation

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Purpose of this Paper

The purpose of this Paper is to:

- Explain the relevance of forest carbon rights to a national REDD+ scheme in Solomon Islands
- Explore whether the 'ownership' of carbon rights can be deduced from the existing legal framework of the country, having regard to both statutory and customary law
- Identify some options for how Solomon Islands could clarify the 'ownership' and management of carbon rights in its emerging national REDD+ scheme.

The Paper does not purport to set out a comprehensive legal and policy framework for clarifying and allocating forest carbon rights in Solomon Islands. Rather, it seeks to establish the current legal position as to how carbon rights are likely to be treated under the existing legal framework, and to use this as a baseline to identify a range of options for law reform. Whether and how Solomon Islands decides to pursue law reform activities on carbon rights will then be a matter for further consultation and discussion as part of Solomon Islands's REDD+ readiness activities.

This Paper has been commissioned by the SPC / GIZ regional project "*Climate Protection through Forest Conservation in Pacific Island Countries*", funded by the International Climate Initiative of the German Federal Environment Ministry. It is part of a larger study on forest carbon rights in Melanesia. The other Country Papers (Fiji, Papua New Guinea and Vanuatu) can be accessed under "Country Reports", and the Synthesis Report entitled *REDD+ and Forest Carbon Rights in Melanesia*, can be accessed here.

1. Introduction

1.1 Country context

Solomon Islands is one of five Melanesian countries (along with Fiji, New Caledonia, Papua New Guinea and Vanuatu) located in the South Pacific Ocean (Map 1.1). It has a population of 511,000, of which 82% live in rural areas. It has a land area of 2,799,000 hectares, with forest cover of 2,213,000 hectares, being 79% of its land area, reporting an annual 0.2% rate of deforestation over the 2000-2010 period.[1] One of the main drivers of deforestation and forest degradation in Solomon Islands is planned deforestation due to commercial logging.

Map 1.1 Location of Solomon Islands in the Pacific (source: GIZ)

1.2 Overview of REDD+ readiness in Solomon Islands

Solomon Islands is a party to the United Nations Framework Convention on Climate Change (UNFCCC) and has ratified the Kyoto Protocol.[2]

The following donors and development partners are currently supporting REDD+ readiness activities in the Solomon Islands:

- The SPC/GIZ Regional Project '*Climate Protection through Forest Conservation in Pacific Island Countries*', funded by the International Climate Initiative of the German

[1] All country statistics are from Food and Agriculture Organisation of the United Nations, *State of the World's Forests* (FAO, 2011) 108, 117.

[2] Kyoto Protocol to the United Nations Framework Convention on Climate Change, opened for signature 11 December 1997, 37 ILM 22 (entered into force 16 February 2005) ('*Kyoto Protocol*').

Federal Environment Ministry. This Paper has been commissioned as part of this project.

- Solomon Islands has participated in the UN-REDD Programme since February 2010. In 2011, it signed an *Initial National Programme Document – Solomon Islands* which outlines the initial objectives of the UN-REDD National Programme in Solomon Islands. Other key development partners with UN-REDD are Japan International Cooperation Agency (JICA), the Global Environment Fund and The Nature Conservancy.
- Live and Learn Environmental Education, an Australian-based non-government organization, is also supporting the development of a REDD+ pilot project in Solomon Islands, funded by the European Union.

1.3 Proposed scale of REDD+ activities in Solomon Islands

With international support, Solomon Islands is developing a national REDD+ programme to prepare itself to receive performance-based payments for emission reductions/removals from a range of international REDD+ financing sources.[3]

As with the other Melanesian countries, Solomon Islands has opted for a national approach to REDD+, with national carbon accounting. However, given that it may take some years for the UNFCCC REDD+ mechanism to become functional, in the interim Solomon Islands will support the development of a project-based approach to REDD+ and will seek to integrate this into its national REDD+ framework at a later date.

1.4 Pacific Islands Regional Policy Framework for REDD+

Solomon Islands has participated in the development of the *Pacific Island Regional Policy Framework for REDD*+, which was formally endorsed by the Pacific Island Ministers for Agriculture and Forestry in September 2012.[4]

The Regional Framework calls on countries to develop their REDD+ policies, strategies, action plans, guidelines, and legislation to define forest carbon rights, forest carbon financing and benefit-sharing arrangements (see Box 1.1).[5]

[3] *Pacific Islands Regional Policy Framework for REDD*+ (SPC/GIZ, 2012) [5].
[4] The *Pacific Islands Regional Policy Framework for REDD*+ was prepared with support from the Secretariat of the Pacific Community and GIZ, and was adopted by the Heads of Agriculture and Forestry Services at its Fifth Regional Meeting in Nadi, Fiji, 24-27 September 2012.
[5] *Pacific Island Regional Policy Framework for REDD*+ (SPC/GIZ, 2012) 8, [4.3.2].

Box 1.1 Extracts from Pacific Island Regional Policy Framework for REDD+ regarding forest carbon rights

The Regional Framework contains the following guidance on forest carbon rights for Pacific Island countries, under the of Safeguards heading:

> 'Para. 4.6.3: REDD+ implementation can take place on government-owned land, freehold land, and/or customary land. Performance-based payments for REDD+ will be dependent upon clear delineation of land tenure, carbon tenure arrangements, as well as effective, equitable, and transparent benefit-sharing arrangements for REDD+ implementation activities.
>
> *4.63a Pacific Island countries and/or REDD+ project proponents will need to clarify land and forest carbon tenure arrangements as a key condition of REDD+ implementation.*
>
> *4.6.3b Pacific Island countries already possess laws and regulations guiding the production, distribution and sale of commodities (e.g. timber, minerals) derived from natural resources. These laws and regulations can be used as a starting point for the development of laws and regulations (including taxation) guiding the production, distribution and sale of carbon assets.*
>
> *4.6.3c Pacific Island countries should ensure effective, equitable and transparent distribution of benefits arising from REDD+ implementation. Benefit distribution and benefit sharing should address gender equality.'*

2. What are 'forest carbon rights'?

The phenomenon of climate change and the recognition by the international community that forests play an important role in reducing greenhouse gas emissions and increasing carbon removals has suddenly conferred value to the carbon in forests. This development has given rise to the following questions: Who 'owns' the carbon in the forests (and soils)? Who is entitled to the associated benefits (and risks and obligations) associated with those carbon rights?

There is currently no clear or commonly accepted definition of carbon rights under international law or the international UNFCCC policy framework for REDD+.[6] While the current UNFCCC framework for REDD+ makes no specific mention of carbon rights, it does

[6] REDD+ commentators use different definitions throughout the literature on REDD+. For a detailed discussion of the different types of carbon rights that can exist, see David Takacs, *Forest Carbon – Law and Property Rights* (Conservation International, 2009)13-17.

'request' State Parties to address land tenure issues when developing their national REDD+ strategies, and it does establish some other guiding principles that are relevant to the way that countries will develop their framework for carbon rights (e.g. safeguards).[7]

For the purposes of this Paper, the term 'forest carbon rights' refers to the right of an individual or group to exploit and enjoy the legal and/or economic benefits concerning:

- ***The carbon already stored (or sequestered) in forests and soil*** *(also called 'stored forest carbon')*: It is the act of 'avoiding' the emission of this carbon into the earth's atmosphere, e.g. by avoiding logging or other activities that degrade the forest, that entitles the holder of the carbon rights to receive benefits under REDD+; and
- ***Carbon sequestration****:* This is the carbon that will be sequestered (absorbed) by the trees and the soil in the future. Sequestration is the process by which trees absorb carbon through photosynthesis, thus 'removing' it from the atmosphere (also referred to as 'removals').

Explanation of terms

Forest carbon: the physical amount of carbon that is stored in forests and soil (the carbon sink), and the carbon that will be sequestered in them over time.

Forest carbon rights: the right of a person or group to the legal, commercial or other benefit (whether present or future) from exploiting the forest carbon.

Carbon sequestration: the process by which forests absorb carbon.

Carbon sink: the natural features (forest and soil) that hold and absorb carbon from the atmosphere.

For a person or group to demonstrate that they 'own' or have control over the forest carbon rights in a certain area of land, they must be able to show:

- That they 'own' or have legal control over the **land**
- That they 'own' or have legal control over the **forest resource,** to the exclusion of all other competing interests, such as forestry rights, mining rights, leasehold interests or competing usufructs (e.g. competing customary rights), or through having reached agreement with those who hold competing interests
- That they can **maintain their control** over the land and forest for the required period of time (e.g. 10 – 30 years, depending on the duration of the contractual or legal

[7] Conference of Parties, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention***,** COP Decision 1/CP.16, UNFCCC, 9th plen mtg, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011) [72].

obligation that is undertaken) in order to demonstrate that they can manage and protect the forest resource.

2.1 Carbon pools

Forest carbon can be divided into five carbon pools (physical sub-sets of forest carbon).

The five carbon pools specified under the IPCC 2006 Guidelines are:[8]

- above-ground biomass (stems, branches and foliage, etc.)
- below-ground biomass (live roots more than 2mm diameter)
- dead wood
- litter
- organic soil carbon (including organic carbon in mineral soils. This includes live and dead roots of less than 2mm diameter. Each country can specify the depth to which it will measure soil organic carbon).

Forest carbon rights include the rights to the carbon found in these five pools.

2.2 Benefits, risks and obligations of carbon rights 'ownership'

Ownership of forest carbon rights carries with it both benefits, and risks and obligations.

It is beyond the scope of this Paper and the Country Papers to fully explore the links between 'ownership' of forest carbon rights and benefit-sharing in Solomon Islands, which will require its own policy analysis. However, in principle, the 'owner/s' of forest carbon rights will be entitled to:

- receive or control the carbon credits that are generated by a REDD+ project, where a project-based approach to REDD+ is taken; and
- a proportional share of the REDD+ revenues that are received by their national government, where a national approach to REDD+ is taken.

[8] The UNFCCC has requested that REDD+ countries estimate and report emissions and removals from five forest carbon pools when preparing their national greenhouse gas inventories. The UNFCCC has asked countries to use the most recent IPCC guidelines, as adopted or encouraged by the COP, as a basis for estimating anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks: Conference of Parties, *Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries*, COP Decision 4/CP.15, UNFCCC, 9th plen mtg, UN Doc FCCC/CP/2009/11/Add.1 (18-19 December 2009) [1(c)]. See Intergovernmental Panel on Climate Change, *2006 Guidelines for National Greenhouse Gas Inventories* (WMO/UNEP, 2006) vol 4, ch 1, table 1.1 <http://www.ipcc-nggip.iges.or.jp/public/2006gl/vol4.html>. The five carbon pools specified by the IPCC 2006 Guidelines also apply to mangroves.

It is briefly noted, however, that benefit sharing is a complex issue in Solomon Islands. There is no simple, accepted State law mechanism for landowner associations (see Section 7.3 below) or the disbursement of income from property. Under customary laws, benefits should be shared in accordance with the customary laws prevailing in the area in question.

Ownership of carbon rights also carries risks and obligations. Obligations arise from the need for the 'owner' of the carbon rights to ensure, through the giving of undertakings (promises) either to the government as the counter-party or to a REDD+ investor, that the forest will be managed in a certain manner to ensure that a certain number of carbon offsets will be delivered over a given period of time. The ERPA will determine who bears the loss for under-delivery or non-delivery of credits. In the customary law context of Melanesia, there are significant legal barriers which prevent customary land 'owners' from adopting these contractual obligations in forest carbon projects, because the effect of the obligations may often be to dispose of or affect customary interests in land, which is generally prohibited by law (see Section 8).

The 'owner' of carbon rights also bears some of the risks if the carbon stored in the forests is released into the atmosphere during the life of the project, which may be a minimum of 10 – 20 years. This is known as 'loss of permanence', or a 'reversal'. Loss of permanence might occur through intentional release (such as by legal or illegal logging), unintended release (as a result of negligence), or through natural causes (such as a cyclone, wildfire or insect attack). To insure against the possibility that the forest carbon might be released, voluntary carbon standards (e.g. the Verified Carbon Standard) require the project proponent or the central administrator to set aside a certain number of carbon credits from the project into a buffer account in order to manage these risks ('a reversal buffer').

2.3 Why define forest carbon rights?

Clarifying forest carbon rights is an important part of REDD+ readiness and should be done within the broader framework of developing a national regulatory framework for REDD+.

Due to the low level of land registration in Solomon Islands, and the fact that land and forest 'ownership' and rights can be held by different groups/clans, it is extremely difficult to clearly identify who 'owns' the forest carbon at present in Solomon Islands (see the legal analysis of this in Section 4 of this Paper). Without legislation, identifying the actual 'owner/s' can be a costly and time-consuming process, and may not result in the level of certainty that a Project Proponent or buyer of carbon credits requires in order to invest in and support a REDD+ project.

2.3.1 Forest carbon rights must be clear for carbon trading to occur

For REDD+ countries that wish to participate in the carbon market, as is foreshadowed in Solomon Islands, it is highly desirable that they develop a clear policy and legislative framework for identifying and regulating carbon rights. This is because buyers of carbon credits from forest carbon projects want to know exactly who 'owns' and controls the underlying resource that is being traded, namely, the carbon rights. Buyers want an assurance that the carbon has not already been sold to someone else, and that it will not be sold to someone else in the future once they have 'bought' it (known as 'double-counting').

In particular, the following things need to be clear:

- the 'owner/s' of the carbon,. e.g. an individual or a landowner tribe, clan or group; and
- the boundaries of the land that will form the project area.[9]

What's the difference between 'carbon rights' and 'carbon credits'?

'Carbon rights' refer to the right to the benefits from exploiting the carbon in a forest. The holder of the carbon rights has the right to the legal or economic benefit generated by carbon emission reductions and removals. It can be thought of as a type of property right in the land and forest.

'Carbon credits' are the financial instruments that are issued once it is verified that emission reductions and removals from a project (or country) have been achieved. For example, under the Verified Carbon Standard, Verified Emission Units (VCUs) are issued. Carbon credits are equal to one metric tonne of carbon dioxide equivalent and are issued with a unique serial number so they can be tracked through carbon registries.

In carbon markets, it is the carbon credits that are traded, not the underlying forest carbon property rights.

2.3.2 Relevance of carbon rights to REDD+ funding modalities

Note that it is not necessary for a country to clarify carbon rights for all elements of a national REDD+ programme, only those which involve project-based activities and market funding which are indicated by the arrows in bold (see **Figure 2.1**).

[9] For example, the VCS AFOLU Requirements require a project proponent to provide a map of the project area, the coordinates of the project area and boundary, the total size of the project area, and details as to its ownership: Verified Carbon Standard, *Agriculture, Forestry and Other Land Use (AFOLU) Requirements* (VCS, Version 3.3, 4 October 2012) <http://v-c-s.org/sites/v-c-s.org/files/AFOLU%20Requirements%20v3.3_0.pdf> [3.4.1].

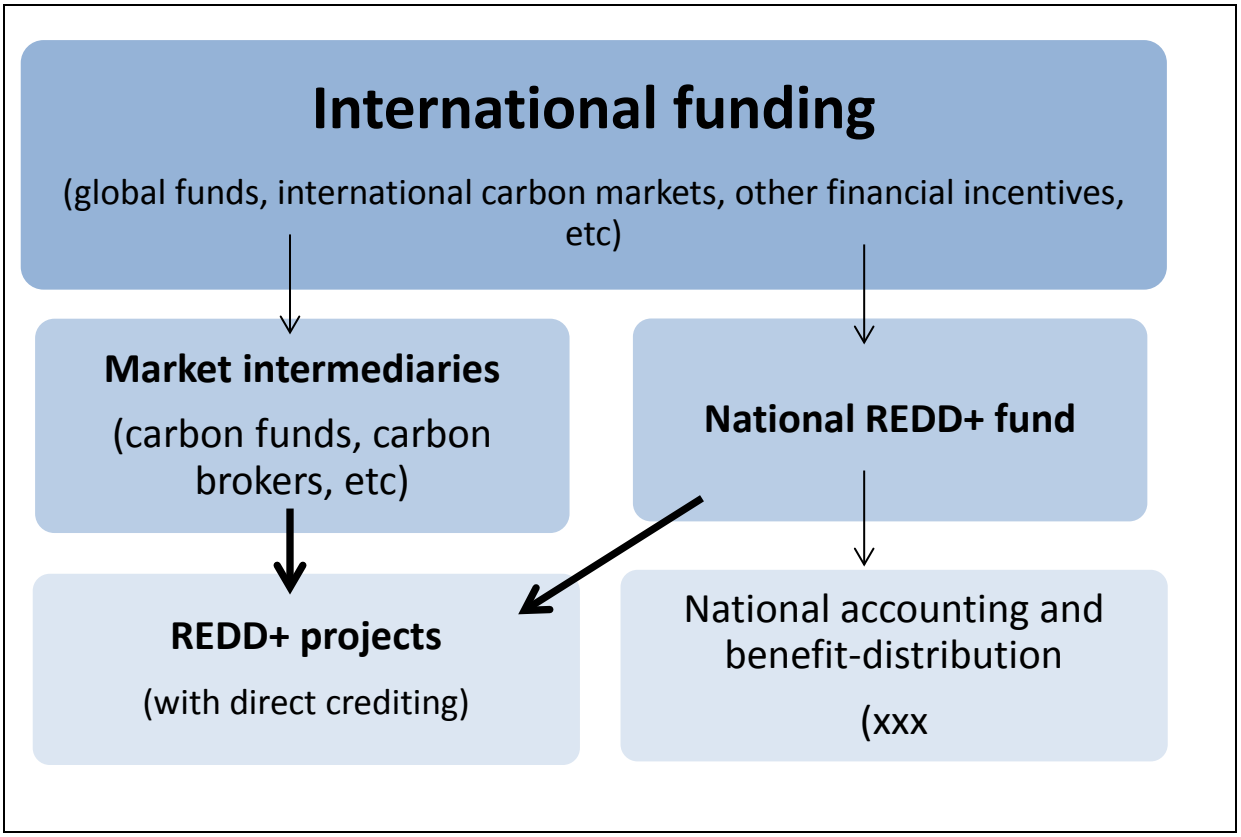

Figure 2.1 Elements of national REDD+ funding architecture for which forest carbon rights should be defined (indicated by arrows in bold)[10]

2.4 Approach and overarching principles

2.4.1 Decision-making framework

When designing a system to define and allocate forest carbon rights, countries need to make some key decisions, such as whether to nationalize carbon rights or base them on land and forest 'ownership', and whether to allow third parties (such as Project Proponents or logging companies) to hold or 'own' forest carbon rights. **Figure 2.2** below contains a decision tree illustrating this process.

[10] Adapted from Arild Vatn and Arild Angelsen, 'Options for a national REDD+ architecture' in Arild Angelson (ed) *Realising REDD+ - National Strategy and Policy Options* (CIFOR, 2009) 57, 64.

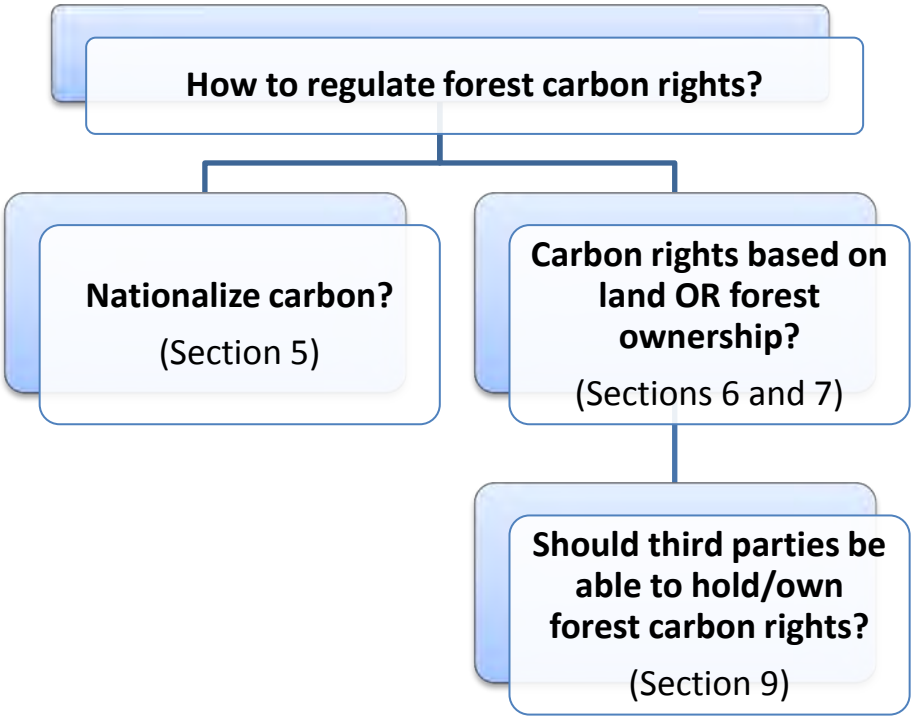

Figure 2.2 Decision-making tree for national carbon rights framework

2.4.2 Consistency with Solomon Islands' constitutional framework

The framework for forest carbon rights that is adopted should be consistent with Solomon Islands' constitutional framework and international legal obligations.[11]

The *Constitution* guarantees the right to protection from deprivation of 'property of any description' and of any 'interest or right over property of any description'.[12] This broad provision is likely to include carbon rights as a right attracting compensation. There is currently no Solomon Islands case law on this.

The *Constitution* also states that, in making provision for the application of laws (including customary laws), Parliament has a duty to 'have particular regard to the customs, values and

[11] This report has been prepared on the basis of the existing Constitution: *Constitution of Solomon Islands 1978* (UK) ('*Constitution*'). However, it should be noted that the *Constitution* is currently under review and a Federal Constitution has been drafted. The Bill bolsters protection of customary land, providing for social, spiritual, cultural and environmental impact studies before development is carried out and requiring free and informed consent of customary 'owners'. It also provides a right to a 'just and fair return' for use of resources and limits the government's right to acquire customary land. Further, the law of Solomon Islands is not easily accessible. Whilst some legislation and case law is available in hard copy or online, there is no comprehensive collection of the laws available. This Report is therefore subject to the proviso that, whilst every endeavour has been made to base it on the current law of Solomon Islands, including consultation with national collaborators, the author cannot be certain that all relevant primary material has been considered.

[12] *Constitution* s 8(1).

aspirations of the people of Solomon Islands'.[13] A similar phrase, 'provision for the application of customary laws', appearing in an earlier part of the *Constitution*,[14] has been interpreted widely as encompassing any legislation,[15] rather than laws designed specifically to govern *application* of laws.[16] Consequently, legislation, including legislation governing customary land, passed without reference to 'customs, values and aspirations of the people' might be open to challenge on the basis that it is unconstitutional. To date this argument does not appear to have been raised before the courts.

2.4.3 National Legislation or Provincial Ordinance?

The *Constitution* gives the national government the power to make legislation for 'the peace, order and good government of Solomon Islands.'[17] Clearly this provision is sufficiently broad to empower the national government to legislate on carbon rights. The provincial governments are also empowered to make laws within the province[18] in the form of ordinances.[19] This power is limited to specified matters 'or laws which are 'incidental to or consequential on' such matters.[20] These include some cultural and environmental matters. More specifically, provincial governments may codify and amend customary law about land and register customary rights.[21] Accordingly, reforms on carbon rights could be in the form of national legislation or provincial ordinances.

However, this would be at the expense of uniformity at the national level, and although provincial ordinances must be gazetted, they are not always easy to locate. Given that Solomon Islands intends to take a national approach to REDD+, with national accounting and a national benefit-sharing scheme, it is recommended that national legislation be used to establish a framework for carbon rights. While the options put forward in this Paper therefore concentrate on national legislation, policy makers should bear in mind the possibility of introducing change through provincial ordinances in a form such as the *Moli Wards Chiefs Council Ordinance 2010*.

[13] *Constitution* s 75(2).
[14] *Constitution* s 15(5)(d).
[15] *Tanavalu v Tanavalu* (Unreported, High Court, Solomon Islands, Awich LJ, 12 January 1998), available via www.paclii.org at [1998] SBHC 4. See further Jennifer Corrin 'Negotiating the Constitutional Conundrum: Balancing Cultural Identity with Principles of Gender Equality in Post Colonial South Pacific Societies' (2006) *The Indigenous Law Journal* 51.
[16] See e.g. the *Custom Recognition Act 2000*, which makes provision for proving customary law before a court. It has not yet become law.
[17] *Constitution* s 59.
[18] *Provincial Government Act 1997*, s 31(2) ('*Provincial Government Act*').
[19] *Provincial Government Act* s 30(1).
[20] *Provincial Government Act* s 31(1).
[21] *Provincial Government Act* s 26(3) and sch 3.

2.4.4 Consistency with Solomon Islands international legal obligations

The Pacific Islands Regional Policy Framework for REDD+ establishes safeguards which provide that REDD+ implementation must be in line with international instruments to protect the rights of indigenous peoples.[22]

The main international instruments that are relevant to the development of a framework for forest carbon rights are:

- **The United Nations Framework Convention on Climate Change (1992)**,[23] under which the Cancun Agreements are established. The Agreements request that developing countries follow a number of safeguards when developing and implementing national REDD+ strategies, which include respect for the knowledge and rights of indigenous people, and specifically notes the importance of the United Nations Declaration on the Rights of Indigenous Peoples.[24]
- The **United Nations Declaration on the Rights of Indigenous Peoples (2007)**,[25] which acknowledges the right of indigenous peoples to 'own', use, develop and control lands and resources which they have traditionally 'owned' and the obligation of States to give legal recognition accordingly,[26] and which incorporates the right of landowners to give or withhold their free, prior and informed consent to legislation, administrative measures and projects that may affect their land, territories and other resources.[27]

In accordance with these international instruments, Solomon Islands should ensure that it protects the property rights of indigenous peoples and gives effect to the principle of free, prior and informed consent when designing its framework for forest carbon rights.

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[22] *Pacific Islands Regional Policy Framework for REDD+* (SPC/GIZ, 2012) [4.6.4].

[23] UN General Assembly, *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly,* UNGAOR, 48th session, 86th meeting, Agenda Item 99, Supp No 49, UN Doc A/RES/48/189 (20 January 1994) ('*UN Framework Convention on Climate Change*').

[24] Conference of Parties, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, COP Decision 1/CP.16, UNFCCC, 9th plen mtg, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011). The Cancun Agreements were made at COP 16 in 2010, and are set out in Dec. 1/CP.16. Paragraph 69 affirms that countries should promote and support the safeguards set out in Appendix I (para 2), when developing their national REDD+ strategies or action plans.

[25] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, UNGAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) ('*UN Declaration on the Rights of Indigenous Peoples*').

[26] *UN Declaration on the Rights of Indigenous Peoples* art 26.

[27] *UN Declaration on the Rights of Indigenous Peoples* [19], [32]. Of direct relevance to forest carbon rights is art 26.2 which provides: 'Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.'

2.4.5 Guiding principles for development of a carbon rights framework

In developing and analysing the options for creating a framework for forest carbon rights, the authors have been guided by the following principles:

- **Simplicity**: to develop a carbon rights framework that is easily understood by everyone, including customary land 'owners', and builds on existing legal mechanisms
- **Maintaining customary connection with the land**: to develop a system that maintains landowners' customary connection to the land as much as possible
- **Transparency**: to identify options that minimize the risk of forest carbon rights being affected by fraud and corruption
- **Effectiveness:** to ensure that carbon rights are held by those who control the forest resource, in order to incentivize those people to maintain the forest
- **Clarity:** to establish clear rules for all types of land tenure, without creating complicated exceptions for some types of land tenure.

3. Land tenure in Solomon Islands

In order to understand how a framework for forest carbon rights might be developed in Solomon Islands, it is first necessary to understand the system of land tenure.

The *Land and Titles Act*[28] consolidates the law on land tenure, acquisition and registration. It deals with both customary and alienated land. Some of the provisions, drafted to deal with the changes that were made to land tenure at independence, are spent or outdated.[29] There have been some attempts to update the Act (see Appendix 1), but to date these have not been successful.

Table 3.1 below summarizes the different types of land tenure that exist in Solomon Islands:

[28] [Cap 133] ('*Land and Titles Act*')

[29] For example, the Act provided for interests of over 75 years held by non-Solomon Islanders immediately prior to independence to be converted to interests of 75 years (ss 100 and 101). The Act is silent on the legal position when these fixed-term estates and leases expire. It is unclear whether these interests will roll over or whether compensation for improvements must be paid if they do not.

Category of land tenure	Sub-category	% of land area	Limitations on title
Customary land		86%	Cannot be alienated except to a Solomon Islander
Alienated land	Public land	14%	
	Perpetual estate		
	Fixed-term estate		75 years (99 years if the land is public land)
	Leasehold	Minor	75 years

Table 3.1: Land Tenure Categories in Solomon Islands

3.1 Customary land

The *Land and Titles Act*[30] preserves the system of customary land holding. About 86% of land is still held as customary land, governed by customary law.[31] The Act states that, 'The manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with the current customary usage applicable thereto, and all questions relating thereto shall be determined accordingly'.[32]

3.1.1 Customary land is not registered

Customary land is unregistered in Solomon Islands. It is therefore very difficult for outsiders to identify land boundaries for customary land or who 'owns' the land. There is currently no general legislation providing for the legal recognition or registration of landowning groups in Solomon Islands, apart from the *Customary Land Records Act*, which is not operating due to a lack of supporting regulations (see further Section 7.1).

3.1.2 Prevalence of land 'ownership' disputes

Disputes over 'ownership' of customary land are common in Solomon Islands. Compounding this problem is the fact that there are two separate regimes dealing with customary land appeals, one determining customary land 'ownership' under the *Local Court Act*[33] through the Local Courts, and the other under the *Forest Resources and Timber*

[30] *Land and Titles Act* s 239(1).
[31] *Land and Titles Act* s 239(1).
[32] *Land and Titles Act* s 239(1).
[33] [Cap 19] ('*Local Courts Act*').

Utilisation Act[34] which deals with the grant of timber rights (Customary Land Appeal Courts (CLAC)). The uncertainty created by the relationship between the two regimes is unsatisfactory.

- **Regime 1: Disputes over customary land 'ownership'**

Disputes over customary land 'ownership' must be referred initially to the traditional Chiefs.[35] A party who is dissatisfied with the Chiefs' decision may then lodge a claim with the Local Court. From there, appeal lies to the CLAC. Parties may then appeal to the High Court on a point of law (which does not include a point of customary law).[36] There is then a final appeal, to the Court of Appeal on a point of law, but only with leave.[37]

- **Regime 2: Disputes over the 'ownership' of timber rights**

The CLAC hears appeals from decisions of the Provincial Executive under the *Forest Resources and Timber Utilisation Act.*[38] A court case in 2007, *Majoria v Jino* (see Box 3.1) exposed the confusion that is caused by the two conflicting regimes. The effect of this decision means that a party who has established 'ownership' through Regime 1 can challenge a subsequent determination of timber rights made through Regime 2, which is precisely what the forestry legislation was intended to prevent.

In any event, both the Local Courts and the Customary Land Appeal Courts are mostly inoperative and there is a backlog of cases to be dealt with.

Box 3.1 Example of conflicting land 'ownership' dispute mechanism: *Majoria v Jino*

The uncertain relationship between the two regimes that deal with disputes regarding customary land was exposed in *Majoria v Jino,*[39] where it was pointed out that whilst it was clear that referral to the Chiefs was a prerequisite to lodging a claim with the Local Court, the status of any decision made by the Chiefs had not been specified.

In that case, after a decision regarding 'ownership' had been made by the Marovo Council of Chiefs under regime 1, the unsuccessful party applied to the CLAC for a determination of timber rights under regime 2. It was held by the High Court that, as the Chiefs' decision was made under regime 1, it was not binding on the Customary Land Appeal Court acting under regime 2. The Court of Appeal reversed this decision, stressing 'the important role assigned

[34] [Cap 40] ('*Forest Resources and Timber Utilisation Act*').
[35] *Local Courts Act* s 12.
[36] *Land and Titles Act* s 256(3).
[37] *Land and Titles Act* s 257(4).
[38] *Forest Resources and Timber Utilisation Act* s 10(1).
[39] (Unreported, Court of Appeal, Solomon Islands, Lord Slynn of Hadley P, Adams JA, Salmon JA, 1 November 2007), available via www.paclii.org at [2007] SBCA 20.

by the Parliament to the Chiefs and their decisions for the purpose of determining disputes of customary land'.[40] The appeal court concluded that a party who disagreed with a decision of the Chiefs, but who declined to take advantage of the legislative scheme for reconsidering that determination by invoking the jurisdiction of the local court must be considered to be bound by the decision.[41]

This decision means that a party who has established 'ownership' through regime 1 may challenge a subsequent determination of timber rights made through regime 2, which is precisely what the forestry legislation was intended to prevent.

3.1.3 Limitations on dealing in customary Land

Under the *Land and Titles Act* only Solomon Islanders can 'own' an interest in customary land. A contract or agreement that purports to transfer customary interests in customary land can be declared void (**Box 3.2**).[42] There is a real possibility that the contracts that underpin a forest carbon contact could be declared void under this provision.

Customary land cannot be transferred or leased to a non-Solomon Islander unless that person is married to a Solomon Islander or inherits the land and is entitled to an interest under customary law.[43] Apart from transactions permitted by customary usage between Solomon Islanders, the only dealings with customary land that are authorised are compulsory acquisitions for public purposes[44] or leases to the Commissioner of Lands or a Provincial Assembly.[45] It is not clear whether licences allowing non-islanders to use the land are permitted, but as 'no person other than a Solomon Islander may hold or enjoy any interest of whatsoever nature in, over or affecting customary land',[46] it would appear not. However, in practice, licences are often granted.

Transfers between Solomon Islanders are permitted and subject to such conditions as are imposed by customary law.[47] However, whilst it can be said that inheritance is the main

[40] *Marjoria v Jino* (Unreported, Court of Appeal, Solomon Islands, Lord Slynn of Hadley P, Adams JA and Salmon JA, 1 November 2007), available via www.paclii.org at [2007] SBCA 20. See also *Lauringi v Lagwaeano Sawmilling and Logging Limited* (Unreported, High Court, Solomon Islands, Awich J, 28 August 1997), available via www.paclii.org at [1997] SBHC 61.
[41] Ibid.
[42] *Land and Titles Act* s 241(1).
[43] *Land and Titles Act* s 240.
[44] *Land and Titles Act* s 71. For the meaning of 'public purpose' see *Talasasa v the Attorney-General* (Unreported, High Court, Solomon Islands, Chetwynd J, 25 May 2012), available via www.paclii.org at [2012] SBHC 85.
[45] *Land and Titles Act* s 60
[46] *Land and Titles Act* s 241(1).
[47] *Land and Titles Act* s 239(1).

method of land transfer,[48] it is hard to generalise about conditions which may be attached to transfers, as customary laws are so diverse.[49]

The only means of transferring an interest in customary land is to alienate it through sale or lease to the Commissioner of Lands.[50] It is then registered as a perpetual estate.

Box 3.2 Extracts from *Land and Titles Act* restricting dealings in customary land

Customary land

239. (1) The manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with the current customary usage applicable thereto, and all questions relating thereto shall be determined accordingly.

Dealings in customary land

240. Subject to the provisions of this Act, every transaction or disposition of or affecting interests in customary land shall be made or effected according to the current customary usage applicable in the land concerned.

Restrictions on disposition of customary land

241(1) Except to the extent to which the contrary is expressly provided in this Act, no person other than a Solomon Islander may hold or enjoy any interest of whatsoever nature in over or affecting customary land.

(2) …

(3) Every contract, agreement or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly, defeating, evading or preventing the operation of subsection (1), be utterly void and of no effect …'

3.2 Alienated land

The balance of land in the Solomon Islands is alienated land (14%), held either by the State or registered 'owners'. The *Land and Titles Act* creates a 'Torrens-type' system of registration, conferring indefeasible title on the registered 'owner', subject to any overriding

[48] J Ipo, 'Land and Economy' in H Laracy (ed) *Ples Blong Iumi: Solomon Islands, the Past Four Thousand Years* (Institute of Pacific Studies, University of the South Pacific, 1989) 121,122-123.
[49] Ibid 122.
[50] *Land and Titles Act* s 60.

interests such as rights of way or easements.[51] There is no freehold title in Solomon Islands: alienated land may be registered as either a perpetual estate, fixed-term estate or leasehold estate.

The paragraphs below describe the different categories of alienated land.

3.2.1 Perpetual estate

A perpetual estate is a registered interest in land which may only be held by a Solomon Islander,[52] the Commissioner of Lands, or by one of a limited list of persons, including a Solomon Islands registered company with at least 60% of its shares owned by Solomon Islanders.[53]

3.2.2 Fixed-Term estate

A fixed-term estate may be held by any person, but the term may not exceed 75 years,[54] except in the case of public land where a term of 99 years may be granted by the Commissioner.[55] Such estates are also subject to the conditions in the grant, which almost invariably include a condition that the land will not be sold, leased or mortgaged without the consent of the Commissioner or the 'owner' of the perpetual estate. Estates are also subject to conditions concerning maintenance of boundary marks; keeping open access roads; and non-removal of gravel, earth etc.[56]

3.2.3 Leasehold estate

A leasehold estate may be held by any person, but the term may not exceed 75 years. The grant of a lease to a person other than a Solomon Islander requires the prior written consent of the Commissioner.[57]

4. Who 'owns' the forest carbon rights under current laws?

4.1 Is 'ownership' an appropriate term?

It should be noted that the search for 'ownership' is based on assumptions regarding property that do not necessarily apply in Solomon Islands. Whilst the term 'ownership' is

[51] These are listed in *Land and Titles Act* s 114.
[52] Section 110 of the *Constitution* restricts the holding of a perpetual estate in land to Solomon Islanders.
[53] *Land and Titles Act* s 112(4).
[54] *Land and Titles Act* s 101.
[55] *Land and Titles Act* s 132(1)(b).
[56] *Land and Titles Act* s 133.
[57] *Land and Titles Act* s 143(2).

frequently employed, it is not well suited to the customary concept of land holding, which, under customary law, is often multi-layered and may permit different groups to hold different interests relating to management and use of customary land and its natural resources.

One way of dealing with this is to employ non-technical rather than legal terms and to investigate three basic questions: (a) who holds an interest in land; (b) what is the content of that interest; and (c) what is the subject matter of the interest?[58] This approach avoids the assumption that ownership is a universal concept and allows for the fact that Solomon Islanders may have different interests (or rights) in land with varying content and subject matter. For this reason, the term 'ownership' has been placed in inverted commas in this Paper.

4.2 Who 'owns' the forest carbon in natural forests?

Conclusion:

'Ownership' of forest carbon in customary land, planted trees, soil carbon, and mangroves, is held by customary land 'owners', but it is unclear to outsiders who these people might be as it is determined according to customary law, which differs from place to place. In addition, rights of 'ownership', management, and use of forest resources in one area may be held by different tribes or clans.

The legal reasons for this conclusion are set out below.

4.2.1 Forests on customary land

There is currently no express statement on carbon 'ownership' in the written law. As the *Land and Titles Act* provides that 'holding' and 'use' are governed by customary laws,[59] where forest is on customary land it will be 'owned' in accordance with customary law. The *Constitution* gives formal recognition to customary law, which 'shall have effect as part of the law of Solomon Islands' provided that it is not inconsistent with the *Constitution* or an Act of Parliament.[60] Customary law is defined as 'the rules of customary law prevailing in an area of Solomon Islands'.[61] This recognises that customary laws differ from place to place within Solomon Islands.

[58] Anthony Allott, 'Towards a Definition of Absolute Ownership' (1961) 5 *Journal of African Law* 99.
[59] *Land and Titles Act* s 239(1).
[60] *Constitution* s 75(1) and sch 3, para 3(3).
[61] *Constitution* s 144(1). The details regarding application of customary law are left to be provided by Parliament: see *Customs Recognition Act* 2000, not yet in force.

However, in Solomon Islands, difficulties often arise in identifying the correct customary 'owner' of forest under customary law. To combat the difficulties in determining customary rights of land 'ownership' and the use of forest resources, the *Forest Resources and Timber Utilisation Act* was passed. The framework for the grant of forestry rights has serious implications for forest carbon rights over customary land as it has resulted in a situation where the land 'owners' may not be the same people as the 'owners' of the timber rights. The carbon rights may belong to either of these groups of 'owners': See Box 4.1.

Box 4.1 'Owners' of timber rights under forestry legislation may differ from customary land 'owners'

The rights to timber use and extraction in Solomon Islands are governed by the *Forest Resources and Timber Utilisation Act*. In the case of all land, the *Forest Resources and Timber Utilisation Act* prohibits felling trees or removing timber from any land without a license.[62] This is subject to some minor exceptions, such as firewood or un-milled timber.[63]

The Act provides that a person wishing to acquire timber rights on customary land must obtain the Commissioner of Land's consent to negotiate with, amongst others 'the owners of such customary land'.[64] This is done according to the following process:

- A meeting is held with stakeholders including 'the customary land 'owners'' to discuss and determine the application. [65]
- The application must be rejected if 'no agreement is reached between the applicant and the customary land 'owners''.[66]

The purpose of the process is to identify the named representatives of the 'the customary land 'owners''. Once these people have been identified, that process sets in stone a list of those entitled to grant timber rights. However, in practice those identified as 'landowners' may not be the true customary land 'owners' but may only be those who have the right to grant timber rights and, because of the multiple level of customary interests that may exist in customary land (multiple usufructs), they may not be the same people as those with more pervasive interests in the land.

This has set up a serious dilemma between customary land 'owners' and those who assert the customary right to control the forest resource, as the *Forest Resources and Timber*

[62] *Forest Resources and Timber Utilisation Act* s 4(1).
[63] *Forest Resources and Timber Utilisation Act* s 4(1)(a).
[64] *Forest Resources and Timber Utilisation Act* s 7(1).
[65] *Forest Resources and Timber Utilisation Act* s 8(1) and (3).
[66] *Forest Resources and Timber Utilisation Act* s 9(1).

Utilisation Act may permit those with a restricted interest in land to dispose of the most valuable fruit of the land.

In *Tovua v Meki*[67] Ward CJ said:

> *The procedure identifies persons to represent the group as a whole. Once the procedure has been followed, the people named by the area council are the only people entitled to sign an agreement to transfer those rights and that are clearly, as the parties to the agreement, the people to whom the royalties should be paid. … I have no way of knowing, on the evidence before me, whether the persons identified by the Area Council [now Provincial Executive] as entitled to grant timber rights have that entitlement because they are landowners or because they have some secondary rights and neither can I question their decision on that.*

In addition to the difficulties described above in resolving competing claims under customary law to land 'ownership' and control of the forest resource on that land, there are also problems in identifying who are the legitimate representatives of the customary land 'owners' with the customary authority to represent the tribe or clan.

In decision-making on 'ownership' and use, the community is generally represented by the customary chiefs. However, given the changes in customary society and practices, difficulties have arisen in identifying exactly who the chiefs are.

In *Lauringi v Lagwaeano Sawmilling and Logging Limited,*[68] for example, the plaintiffs had been determined to be the customary land 'owners' by the Marodo Council of Chiefs and this decision had been confirmed by the Malaita Local Court. However, the defendants refused to accept the decision of the Local Court and challenged the jurisdiction of the Marodo Council of Chiefs on the basis that the members did not meet the definition of Chiefs in the area where the land was situated. An interim injunction was granted by the High Court to restrain the defendants from continuing a logging operation on the land while the matter went on appeal to the Customary Land Appeal Court. There is no record of how the matter was decided.[69]

[67] [1988/89] SILR 74, 76.
[68] (Unreported, High Court, Solomon Islands, Lungolo-Awich J, 28 August 1997) available via www.paclii.org at [1997] SBHC 61.
[69] (Unreported, High Court, Solomon Islands, Lungolo-Awich J, 22 February 2000), available via www.paclii.org at [2000] SBHC 6.

4.2.2 Forests on alienated land

The position in relation to forest carbon on alienated land appears to be that, where no fixed-term estate or lease has been granted, the forest carbon is 'owned' by the registered estate holder. However, if a fixed-term estate has been granted, the position is less clear.

In the following two instances, the Minister may make declarations conserving public land.

- **State Forests**

The Minister may declare public land (land registered in the name of the Commissioner) to be a state forest.[70] Use of a state forest for any of the broad list of purposes listed in the Act, including felling timber, requires a permit from the Commissioner of Forest Resources.[71] No interest or licence in a state forest may be granted without the prior written consent of the Commissioner of Forest Resources.[72] This restriction must be noted on the land register, providing notice to third parties that they must not interfere with the forest.

- **Forest Reserves**

The Minister may declare a forest to be a forest reserve but only to protect the forest or other vegetation in any rainfall catchment area for the limited purpose of conserving water resources. The notice declaring a forest reserve must specify rights which may be exercised in the forest reserve.[73] In the case of a forest reserve the rights to use the forest are determined by the Minister's declaration.[74]

4.3 Who 'owns' the forest carbon in planted trees?

4.3.1 Customary land

Rights relating to trees planted on customary land are determined by customary laws. As stated above, this differs from place to place and without empirical evidence, the position cannot be stated with any certainty. However, as a general rule, it would appear that those who plant trees are the most likely to have the rights to use them.

4.3.2 Alienated land

As a general rule, the registered estate holder will 'own' trees planted on land, as registration carries with it 'all implied and express rights and privileges belonging or appurtenant' to that

[70] *Forest Resources and Timber Utilisation Act* s 20.
[71] *Forest Resources and Timber Utilisation Act* ss 22, 23.
[72] *Forest Resources and Timber Utilisation Act* s 21.
[73] *Forest Resources and Timber Utilisation Act* s 24.
[74] *Forest Resources and Timber Utilisation Act* s 24.

estate.[75] Further, a fixed-term estate holder is specifically entitled to use and enjoy both the land and its produce, for the period of the fixed-term.[76]

In the absence of an express term in the lease transferring to the lessee 'ownership' of trees planted by him or her, the position of a lease-holder is not so clear. There is no specific implied right to the produce of the land, but the implied right for the lessee to be allowed to 'peaceably hold and enjoy the leased premises'[77] during the term of the lease could be taken to include such a right. However, registered title is subject to certain overriding interests. These include 'profits' subsisting at the time of first registration[78] and the rights of a person in actual occupation of the land or in receipt of 'profits'.[79] This is particularly pertinent, as 'a profit' means a right to go onto someone else's land to take something from it, specifically including 'soil or the products of the soil'.[80]

Accordingly, in the case of trees planted at the time of first registration, if customary land 'owners' or another third party can establish a right to trees existing at that time, they will 'own' the trees, as opposed to the estate holder.

4.4 Who 'owns' the carbon in the soil?

The *Constitution* does not state specifically who 'owns' the soil, but, by implication from the declaration that all natural resources are vested in the people and the government of Solomon Islands,[81] it would appear that the soil is 'owned' by the people and the government of Solomon Islands.

4.4.1 Customary land

As with forest carbon, it is unclear as to who currently 'owns' the soil carbon as, in the case of customary land, the question is governed by customary laws. There does not appear to be any limit on the depth of soil 'owned' by the customary landholder.

4.4.2 Alienated land

In the case of alienated land, the common law applies, which provides that land includes subsoil.[82] However, the extent of the control which a landowner may exercise over subsoil is

[75] *Land and Titles Act* s 109.
[76] *Land and Titles Act*s s 113(1).
[77] *Land and Titles Act* s 147(b).
[78] *Land and Titles Act* s114(a).
[79] *Land and Titles Act* s114(g).
[80] *Land and Titles Act* s 2(1).
[81] *Constitution* preamble.
[82] LexisNexis, *Halsbury's Laws of Australia,* vol 22 (at 25 September 2008) 355 Real Property, '1 Introduction' [355-20]. This is based on the maxim *cujus est solum, ejus est usque ad coelom ed ad*

uncertain; at the least, a landowner has the right to use the soil to the extent necessary for the ordinary use and enjoyment of the land.[83] This view is supported by the *Land and Titles Act*, which only excludes from the definition of land (which is capable of being held) minerals and 'any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working'.[84]

The position in relation to who 'owns' the soil carbon on alienated land appears to be that, where no fixed-term estate or lease has been granted, and in the absence of a pre-existing profit or occupier entitled to profits, at the time of first registration the soil carbon is 'owned' by the registered estate holder. However, if a fixed-term estate or lease has been granted, the position is less clear.

4.4.3 Reservation of mineral 'ownership' to the Crown

The *Mines and Minerals Act*[85] vests all minerals 'in or under all lands' in 'the people and the Government of Solomon Islands'.[86] This has been held by the High Court to mean that minerals, including gold, vest in the Crown.[87] The use of phrase 'all lands' makes it clear that mineral deposits 'in or under' customary land are included. However, this is not accepted by customary communities, which regard such deposits as part of the customary land.

'Minerals (including oils and gases)' are excluded from the definition of land in the *Land and Titles Act*.[88]

4.5 Who 'owns' the carbon in the mangroves?

Significant amounts of carbon are stored and sequestered in coastal ecosystems of tidal marshes, mangroves and seagrass meadows. This is often referred to as 'Blue Carbon'.[89] Under some REDD+ mechanisms, mangroves can be the subject of forest carbon projects (Box 4.3). Mangrove forests in Solomon Islands are estimated to cover approximately

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infernos, meaning that ownership of land extends below that land to the middle of the earth: *Re Lehrer and Real Property Act 1900* [1960] NSWR 570.

[83] *Di Napoli v New Beach Apartments* [2004] NSWSC 52.

[84] *Land and Titles Act* s 2.

[85] [Cap 42] ('*Mines and Minerals Act*').

[86] *Mines and Minerals Act* s 2.

[87] *Knight v Attorney General* (Unreported, High Court, Solomon Islands, Palmer CJ, 6 May 2005).

[88] *Land and Titles Act* s 2(1).

[89] For a discussion of the emerging international policy frameworks for Blue Carbon, see: Dorothée Herr, Emily Pidgeon, and Dan Laffoley, *Blue Carbon Policy Framework: Based on the discussion of the International Blue Carbon Policy Working Group* (International Union for Conservation of Nature & Conservational International, 2012)

49,805 hectares.[90] It is therefore important to determine who 'owns' the carbon in tidal marshes, mangroves and seagrass meadows.

Conclusion: In Solomon Islands, 'ownership' of the foreshore below high watermark is uncertain. Accordingly, the 'ownership' of carbon in mangroves is also uncertain. Because of the uncertainties in this area, the issue is the subject of a Solomon Islands Law Reform Commission Report, which is awaiting release.

The legal reasons for this conclusion are set out below.

The *Land and Titles Act* [91] states that, 'The manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with the current customary usage applicable thereto, and all questions relating thereto shall be determined accordingly'.[92] However the legislation does not expressly state the position regarding land below high water mark and the case law on this is conflicting.[93]

At one time the High Court regarded the issue as governed by the common law, and these areas were regarded as belonging to the Crown.[94] However, according to the latest High Court decision, reefs and foreshore may be under customary management if it can be proved that this was the case prior to 1 January 1969. [95] This means that if customary 'owners' have undisputed evidence that they 'owned' the mangrove area before that date they should be able to establish a legal right to 'ownership'. Because of the uncertainties in this area have the issue is the subject of a Solomon Islands Law Reform Commission Report, which is awaiting release.[96]

[90] This figure is based on FRIS data from the 1994 National Forest Inventory. The current figure, therefore, is likely to be lower.
[91] *Land and Titles Act* s 239(1).
[92] *Land and Titles Act* s 239(1).
[93] Compare *Allardyce v Laore* [1990] SILR 174 with *Waleilia v Totorea* (Unreported, Magistrates Court (Auki), Solomon Islands, 1992).
[94] *Allardyce v Laore* [1990] SILR 174.
[95] *Combined Fera Group and Others v Attorney General* (Unreported, High Court, Solomon Islands, Palmer J, 19 November 1997), available via www.paclii.org at [1997] SBHC 55.
[96] See further Jennifer Corrin, 'Customary land in Solomon Islands: A victim of legal pluralism' in Anthony Angelo and Yves-Louis Sage (eds), *Droit Foncier Et Gouvernance Judiciaire Dans Le Pacifique: Land Law and Governance in the South Pacific* (Revue Jurique polynesienne, 2011) 361, 231-232; Jennifer Corrin, 'Ownership of foreshore, reefs and seabed in Solomon Islands' 5 *newSPLAsh* 18.

Box 4.2 Mangroves and opportunities under REDD+

Although it is possible for countries to include mangrove specific activities in their national REDD+ strategies, it is not yet clear whether the emerging UNFCCC framework for REDD+ will include such activities.[97]

In the meantime, it is possible to generate carbon credits from projects to restore and conserve wetlands and mangroves under the following mechanisms and standards:

- **CDM Afforestation/Reforestation projects**, for which the Executive Board has approved a large-scale[98] and small-scale[99] methodology concerning mangroves
- **Verified Carbon Standard** (VCS), which recently recognised Wetlands Restoration and Conservation as an eligible project category (October 2012), covering areas including mangroves, salt marsh and seagrass meadows.[100]

5. Could the State take 'ownership' of forest carbon rights?

Conclusion: The State cannot take 'ownership' of forest carbon rights unless compensation is paid. The legal reasons for this are set out below.

An alternative to forest carbon being 'owned' by landowners is for the State to assume 'ownership' of forest carbon rights. Under this option, the rights (and liabilities) in forest carbon would be reserved exclusively for use by the State, in a similar way in which the rights to mineral resources and crude oil is reserved to the State. [101] This is sometimes described as the 'nationalisation' of forest carbon rights.

Given that carbon is a natural resource, the statement in the preamble of the *Constitution* that 'the natural resources of our country are vested in the people and the government of Solomon Islands' suggests that 'ownership' of forest carbon may vest in the Crown on behalf of the people of Solomon Islands. The difficulty with this proposition is that, under the

[97] For a discussion on the potential for this, see Dorothée Herr, Emily Pidgeon, and Dan Laffoley, *Blue Carbon Policy Framework: Based on the discussion of the International Blue Carbon Policy Working Group* (International Union for Conservation of Nature & Conservational International, 2012) 13 – 14.
[98] See the methodology: Afforestation and reforestation of degraded mangrove habitats, AR-AM0014, Ver. 01.0.0.
[99] See the methodology: Simplified baseline and monitoring methodology for small scale CDM afforestation and reforestation project activities implemented on wetlands, AR-AMS0003, Ver. 02.0.0. Small-scale projects are defined as removing less than 16,000 tonnes of CO2/year and are developed or implemented by low income communities.
[100] Verified Carbon Standard, *Agriculture, Forestry and Other Land Use (AFOLU) Requirements* (VCS, Version 3, 2012) <http://v-c-s.org/sites/v-c-s.org/files/AFOLU%20Requirements%20v3.3_0.pdf> 23 – 30.
[101] *Mines and Minerals Act* s 2(1).

common law, the preamble cannot create a right, but is only available as a guide to interpretation.[102] The preamble has been interpreted broadly by the Court of Appeal. For example, in *Maetia v Reginam*,[103] natural resources were held to include birds.

Given the conclusion in Section 4 above that customary land 'owners' appear to hold the property rights in forest carbon under customary law, a legislative act by the Government to reserve all forest carbon rights to the State is likely to encounter the following difficulties:

- The *Constitution* guarantees the right to protection from deprivation of 'property of any description' and of any 'interest or right over property of any description'.[104] This broad provision is likely to include carbon rights as a right attracting compensation. There is currently no Solomon Islands case law on this. Such compensation, could, however, be paid under the terms of a national REDD+ benefit-sharing plan, assuming that the provisions of the scheme effect fair and equitable payments.
- While the Constitution allows for compulsory acquisition of land, this power may only be exercised in the public interest and subject to the following conditions:-

  (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, *town or country planning* or the *development or utilisation of any property in such a manner as to promote the public benefit*; and

  (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property.[105]

  Where any land is compulsorily acquired, any rights in the land are converted into claims for compensation. Given the sensitivity of land acquisitions, the power to compulsorily acquire land is seldom used. For this reason, use of this option is not pursued further in this paper.

- 'Nationalisation' of carbon rights would probably be contrary to the Safeguards set out in the Pacific Islands Regional Framework for REDD+.

[102] *Minister for Provincial Government v Guadalcanal Provincial Assembly* (Unreported, Court of Appeal, Solomon Islands, Kapi, P, Williams Goldsborough JJA, 11 July 1997), available via www.paclii.org at [1997] SBCA 1.
[103] (Unreported, Court of Appeal, Solomon Islands, Los JA, 21 October 1994), available via www.paclii.org at [1994] SBCA 4.
[104] *Constitution* s 8(1).
[105] *Constitution* s 8(2).

5.1 'Deeming' State 'ownership' of carbon rights

Must the State 'deem' 'ownership' of forest carbon rights in order to participate in any emerging UNFCCC carbon trading mechanism for REDD+? No. It is not necessary for a State to 'deem' itself 'owner' of carbon rights on behalf of the domestic 'owners' of those rights in order for the State to participate in intergovernmental or other international carbon finance transactions that require a national level counter party, such as Solomon Islands Government.

By way of comparison, all carbon units created under the Kyoto Protocol are created by an act of international law, namely the ratification of the treaty. All credits are therefore 'owned' and held by governments under international law between the countries that ratified the treaty, with the carbon credits (Certified Emission Reductions) that are generated, being 'owned', held and traded by the State Parties. No 'deeming' of 'ownership' is required for this to occur. However the Kyoto Protocol clearly envisages that States may transfer their rights (credits) down to the sub-national actors who carry out CDM projects. This is done by the State Party authorizing, through its Designated National Authority, the private entities to hold, 'own' and trade the Certified Emission Reductions generated by the project.[106] However, it should be noted that it is not yet clear whether UNFCCC will adopt the same approach in its emerging REDD+ regime.

6. Proposal: Allocate carbon rights based on land 'ownership'

6.1 What should the definition cover?

The first step in developing a legal framework for carbon rights is to define by legislation exactly what is being 'owned'.

The statutory definition should be comprehensive and should address both:

- stored forest carbon: whose emission will be avoided); and
- carbon sequestration rights: the carbon that will be sequestered (absorbed) by carbon sinks (forests and soil) in the future.

[106] *Kyoto Protocol* art 12(9). For a discussion on this point, see Leo Peskett and Gernot Brodnig, *Carbon Rights in REDD+ - Expoloring the Implications for Poor and Vulnerable People* (World Bank, 2009) 7. See also Charlotte Streck and Matthew Wemaere, 'Chapter 3: Legal Ownership and Nature of Kyoto Units and EU Allowances' in David Freestone and Charlotte Streck (eds) *Legal Aspects of Implementing the Kyoto Protocol Mechanisms* (Oxford University Press, 2005)..

6.1.1 Carbon pools

The definition of forest carbon rights should also address who 'owns' the carbon contained in the five carbon pools:[107]

Where voluntary REDD+ projects are concerned, the particular methodology to be used will usually specify which of these five carbon pools the Project Proponent must include and measure as part of its REDD+ project.[108]

It is therefore suggested that the legislative definition of 'forest carbon rights' includes each of the five carbon pools so that the position as to who 'owns' the carbon in each of these carbon pools is clear.

6.1.2 Consistency across Melanesian countries

Melanesian countries should consider whether it is possible to have a consistent definition of forest carbon rights across PICs in order to facilitate a regional approach to REDD+ and the management of forest carbon rights, including bundling, under the Pacific Islands Regional Policy Framework for REDD+.

6.2 Amend the definition of 'land' to include 'forest carbon rights'

Linking forest carbon rights to land 'ownership' has the following advantages:

- Simplicity, as land 'owners' will 'own' the carbon
- Land 'owners' would retain control of their land and the carbon.

To make it clear that land includes forest carbon rights, the *Land and Titles Act* (section 2) could be amended to:

- insert a definition of 'forest carbon rights' (see Box 6.1 below); and
- alter the current definition of land by inserting the underlined words in the existing definition:

> 'land' includes land covered by water, all things growing on land and buildings and other things permanently fixed to land, <u>and forest carbon rights,</u> but does not include any minerals (including oils and gases) or any substances in or under

[107] As discussed above in Section 2, the IPCC has identified five carbon pools that constitute forest carbon under the forest land use category. Under the UNFCCC framework, countries should measure and report against each of these carbon pools when reporting on the greenhouse gas emissions from their Agriculture, Forestry and Other Land Use (AFOLU) sector.

[108] For example, this is a requirement under the VCS: Verified Carbon Standard, *Agriculture, Forestry and Other Land Use (AFOLU) Requirements* (VCS, Version 3, 2012) <http://v-c-s.org/sites/v-c-s.org/files/AFOLU%20Requirements%20v3.3_0.pdf> [4.3.1].

land which are of a kind ordinarily worked for removal by underground or surface working.

The existing definition of customary land need not be amended as it incorporates the definition of land referred to above.

Box 6.1 Proposed definition of 'forest carbon rights'

'Carbon sequestration' means the process by which land, trees or forest absorb carbon dioxide from the atmosphere.

'Forest carbon rights' in relation to land means the exclusive legal right to obtain the benefit (whether present or future) associated with the stored forest carbon and any carbon sequestered in the future, by any existing or future tree or forest on the land, and includes the carbon contained in:

- above-ground biomass
- below-ground biomass
- dead wood
- litter, and
- soil organic matter.

'Land' includes forest carbon rights.

'Soil organic matter' means the organic matter found in soil to a depth of [insert number] metres.

Inserting a definition of 'forest carbon rights' into the *Land and Titles Act* would create a consistent definition that could apply across all categories of alienated land. However, the situation is more complex with customary land, where 'ownership' and/or control of land and forests can be held by different groups or clans.

This statutory definition could also be referred to for consistency in different land transaction instruments, such as in REDD+ contracts and leases.

7. Identifying and recording the 'owners' of forest carbon rights

Section 4.2 described the difficulties of identifying who 'owns' the carbon in the forests under the existing legal framework for customary land because the land and forest can be 'owned' by different groups under customary law. One way of overcoming this problem is by using

the Customary Land Records Act to identify and record which customary group 'owns' the forest carbon rights in a particular land area.

7.1 Recording 'ownership' of forest carbon rights under Customary Land Records Act

The *Customary Land Records Act*[109] could provide a useful mechanism for recording the 'ownership' of forest carbon rights in customary land. The was enacted in 1994 to provide a mechanism for recording customary land boundaries and the names of land-holding groups and their representatives for the purposes of any dealing with recorded land. The Act provided for the establishment of an office of National Recorder, a Central Land Record Office and provincial Land Record Offices. In the late 1990s an office was established, some appointments made and some initial awareness-raising carried out.

However the Act is currently inoperative as the delegated legislation required to give effect to the Act has not yet been made.[110] In order for it to become operative, regulations are required to provide the standard forms referred to in the Act and the machinery for the administration of the Act needs to be put in place. The Central Land Record Office was burnt down during the tensions in about 2000, and never re-established.

Table 7.1 sets out the advantages and disadvantages of recording 'ownership' of forest carbon rights under the *Customary Land Records Act*.

Table 7.1 Advantages and disadvantages of recording 'ownership' of forest carbon rights under *Customary Land Records Act*

Advantages	Disadvantages
The process of recording customary 'ownership' of forest carbon rights does not result in land registration or a registration of property interests, but only in 'recording'. Land will therefore remain in customary tenure.	There is some uncertainty regarding 'ownership' as recording does not create an indefeasible or formal title on any individual or group
The process identifies the leaders with authority to deal with the land	A 'record' is not transferable to non-Solomon Islanders, as it is still customary land and therefore subject to the bars on dealings referred to above

[109] [Cap 132] ('*Customary Land Records Act*').
[110] *Customary Land Records Act* s 21.

Advantages	Disadvantages
The process delineates agreed boundaries and tribal links	A 'record' seems unlikely to be accepted by a lender as security
The Act gives an option for the representatives identified under the recording process to apply for the recorded land to be registered	

7.2 Adopt the model under the Forest Act to identify forest carbon rights 'owners'

An alternative option would be to follow a procedure similar to that provided for the identification of timber rights in Solomon Islands. In other words, to enact a process for the identification of the members of the customary community entitled to represent the community as a whole as 'owners' of carbon rights. This would require legislative amendment. Form 4 of the Standard Logging Agreement could serve as a model for this purpose.

One problem that would have to be dealt with would be the conflict between these statutory rights and existing timber rights granted under the *Forest Resources and Timber Utilisation Act*. If existing arrangements under that legislation are to be respected, this should be specifically provided for in the amending Act.

7.3 Incorporating landowner bodies to hold forest carbon rights

Where there are multiple groups of landowners with customary land tenure, forest contracting structures often require landowners to form a collective 'Sellers Entity' which can enter into a contract with the buyer of the emission reductions/removals. There are a number of other options for association, such as establishing charitable trust, none of which are entirely satisfactory. These options are set out in Annexure 2.

Box 7.1 North New Georgia Timber Corporation Act 1979

There is also the model provided by the *North New Georgia Timber Corporation Act 1979,* which was enacted to bypass a specific problem in North New Georgia. Disagreements as to 'ownership' of customary land and representation of the *butubutu* (the traditional kinship groups) in logging negotiations with Levers Pacific Timbers, had resulted in protracted litigation in the High Court, involving nearly 2000 claimants. The Act divided part of North

New Georgia in accordance with customary boundaries and transferred timber rights, but not land 'ownership', to the Corporation. The Corporation's Board of Directors, consisting of representatives chosen by tribal leaders, was empowered to grant logging concessions and receive and distribute the resulting royalties.

Whilst the Act allowed the timber licence to be granted to Levers, it did not resolve the underlying disputes. Divisions still existed as to who were the appropriate tribal leaders to choose directors and how the timber royalties should be divided up. In 1982 this resulted in the local Solomon Islanders setting fire to the logging camp and causing damage estimated at one million dollars. For this reason, this type of legislation does not seem to offer a practical option.

8. How to overcome the restrictions on customary land?

Customary land 'owners' may not be legally able to enter into forest carbon contracts with REDD+ Project Proponents or buyers (unless the transferee is a Solomon Islander), as these contracts may be declared void under the *Land and Titles Act*. This is because s 241 provides that only Solomon Islanders can hold or enjoy interests 'in over or affecting' customary land, and that any contract or agreement affecting interests in customary land will be void and of no effect. Further, ss 239 and 240 of the *Land and Titles Act* require customary land to be held and all dealings to be made in accordance with current customary usage. **Forest carbon contracts not in accordance with customary usage would contravene the Act.**

The options identified for releasing the customary land from its restrictions are:

1. Amending the *Land and Titles Act* to permit REDD+ projects on customary land by allowing landowners to sell the carbon emission reductions and/or removals from their customary land; or
2. Alienating the customary land by sale to the Commissioner or leasing to the Commissioner or provincial government.

8.1 Amending the *Land and Titles Act*

The *Land and Titles Act* could be amended to permit customary land 'owners' to enter into forest carbon contracts over their customary land by inserting a new s 241 (4) in the following terms:

> *Nothing in this part shall be taken to invalidate the creation or transfer of carbon emission reductions and removals associated with the forest carbon rights in that land from approved forest carbon projects.*

8.2 Alienating the land

The other option would be to alienate the land.

There are two ways of doing this under existing law:[111]

- Selling to the Commissioner of Lands
- Leasing to the Commissioner of Lands or a provincial government

The first method is not a desirable option, as the effect is to permanently deprive the customary community of their customary interest in the land.

In the case of a lease, after the acquisition process specified in the Act has been followed, the land is registered as perpetual estate in the name of the identified land 'owners'. If the lease exceeds two years, the Commissioner of Lands or the provincial government must be registered as lessee.[112] Once the land registered as perpetual estate is registered as perpetual estate it is no longer customary and is free from the restrictions on alienation. A shorter lease does not have to be registered and would leave the perpetual estate 'owners' free to enter into a lease or contract directly with a REDD+ project proponent.

8.2.1 Permitting a REDD+ project under a lease

As stated above, there is no specific or implied right to the produce of the land in leases. Although the implied right for the lessee to be allowed to 'peaceably hold and enjoy the leased premises'[113] during the term of the lease could be taken to include such a right, this appears unlikely. One reason for this is that the rights of the lessee are subject to pre-existing rights to produce of the land, which as 'profits' (which are defined to include the rights to soil or products of the soil)[114] constitute overriding interests.[115] Whilst the definition of profits is broad, it does not appear broad enough to include carbon rights. However, the fact that profits do not pass to a lessee make it even more unlikely that carbon rights would do so. It seems more likely that these would remain with the superior estate holder.

[111] *Land and Titles Act* s 60.
[112] *Land and Titles Act* s 146.
[113] *Land and Titles Act* s 147(b).
[114] *Land and Titles Act* s 2.
[115] *Land and Titles Act* s 114.

The standard form of lease[116] does not make any provisions in relation to forest carbon rights. The Second Schedule containing the form of the lease is to be completed by the parties, so specific provision regarding 'ownership' of carbon rights could be included in any lease by agreement.

The table below sets out the advantages and disadvantages of alienating customary land in order to facilitate REDD+ projects.

Advantages of Alienating	**Disadvantages of Alienating**
Certainty, as the registered 'owners' of the perpetual estate have an indefeasible title	The land is alienated
The land and carbon rights are freely transferable	The registered 'owners' may dispose of the land

9. Should third parties be able to 'own' forest carbon rights?

If Solomon Islands wishes to allow third parties such as logging companies and project proponents to hold or 'own' forest carbon rights, this is likely to require legislative change.

The discussion in this Section is based on an important distinction between the *transfer or sale of forest carbon rights*, and the *transfer and sale of the verified carbon emission reductions/removals* that are generated by a REDD+ project. This important distinction is explained in Box 9.1 below.

Box 9.1 What is the difference between selling forest carbon rights and selling the emission reductions and/or removals?

If a landowner sells or transfers their **forest carbon rights**, they are, in effect, selling part of their property rights, or part of their natural resources. The person who buys the forest carbon rights is buying the right to exploit that resource. The buyer may or may not choose to develop that resource (e.g. by undertaking a REDD+ project).

This is different to a landowner keeping the forest carbon rights, but **selling the carbon emission reductions and/or removals** that they generate by exercising their forest carbon rights. In a typical REDD+ project, it is the verified carbon emission reductions and/or removals that are sold to a Project Proponent (or carbon broker) as part of carbon trading, not the underlying resource, the forest carbon, which remains with the landowner.

[116] Form 9, Legal Notice 122/1968, issued under *Land and Titles (General) Regulation* s 3(1).

9.1 Customary land

There are two means by which forest carbon rights could be transferred to a third party:

- By amending the legislative restriction on dealing in customary land to allow customary land 'owners' to transfer or sell their forest carbon rights; or
- By amending the Forest Resources and Timber Utilisation Act to allow forest carbon rights to be held by logging companies along with timber rights

Each of these options is discussed below.

9.1.1 Releasing land from restriction prohibiting sale of interests in customary land

Under the current law, forest carbon rights in customary land constitute an interest 'affecting customary land' and therefore can only be transferred to a Solomon Islander according to customary law.[117] Due to this statutory provision, which prohibits non-Solomon Islanders from holding interests in customary land, legislative amendments would be required if the State wishes to enable customary land 'owners' to transfer or sell their forest carbon rights to third parties, such as to Project Proponents or carbon brokers.

In particular, an amendment would be required to create an exemption from s 241 of the *Land and Titles Act* to allow carbon rights to be transferred to a non-Solomon Islander. This could be achieved by adding a sub-section to s 241(1) of the *Land Titles Act* in the following terms:

> *Provided that nothing in this section shall be taken to prohibit the transfer or holding of a forest carbon right by any person whether or not they are a Solomon Islander.*

If transfer of forest carbon rights to third parties were permitted, it would also be necessary to create a mechanism by which the new 'owner' of the forest carbon rights could register their interest on the title of the land, which will be difficult because customary land is not registered in Solomon Islands and there is no title to register the interest against.

9.1.2 Amend Forest Act to allow a third party to purchase carbon rights along with timber rights

In the same way that third parties (such as logging companies) can hold timber rights over customary land, as permitted under the *Forest Resources and Timber Utilisation Act*, Solomon Islands needs to decide whether it wishes to permit third parties to hold the rights to forest carbon. To enable this to happen, the *Forest Resources and Timber Utilisation Act*

[117] *Land and Titles Act* s 241.

could be amended to provide that 'timber rights' include 'forest carbon rights'. The person/company who holds the timber rights in an area would therefore be entitled to exercise their timber rights, forest carbon rights, or a combination of the two.

9.2 Alienated land

To enable third parties to hold the forest carbon rights over alienated land will require the creation of a separate and transferable property forest carbon property right. This is the approach taken in Australia under which all States and Territories have introduced legislation allowing carbon rights to be sold or transferred as a separate property right. The major advantage of this option is that REDD project developers may prefer the certainty of holding a separate property right to the forest carbon.

It is much easier to create a separate property right to forest carbon where alienated land is concerned because alienated land does not have the same restrictions on title, and the new interest can be registered over the title.

Legislation could be introduced which identifies forest carbon as a separate property right, either as a statutory right, or by declaring forest carbon rights to be an easement or a *profit a prendre* under Part XV of the *Land and Titles Act* . Either option would need to be supported by the landowner granting the holder of the forest carbon rights a covenant to enable the holder of the forest carbon rights to manage and conserve the forest resource.[118]

If carbon rights are to be created as a separate property right and traded, there will also need to be a system which enables the 'owner' of the carbon rights to be clearly identified. This is necessary in order to minimise the risk of fraud and to avoid the carbon being sold to multiple buyers.

9.2.1 Recording carbon rights on land title

It may be possible to record 'ownership' of carbon rights on the Register of Titles under the current law.[119] In addition, the *Land and Titles Act* allows for a caveat to be entered on the register by any person entitled to an interest in registered land.[120] The caveat prevents the registration of any dealing affecting the interest, including a change of 'ownership'.[121] This process has a parallel in the recording of mining leases on the land register, pursuant to s 39(1) of the *Mines and Mineral Act*.

[118] *Land and Titles Act* pt XVII.
[119] *Land and Titles Act* s 116.
[120] *Land and Titles Act* s 220.
[121] *Land and Titles Act* s 21.

It should also be noted that a fully functioning land registry is essential for this option to be effective. The capacity of the current land registration system should therefore be reviewed before any decisions are made. In 2006, there was a 12-month backlog of documents awaiting processing in the Registry. Best practice is a process taking 1 to 2 days.

9.3 Advantages and disadvantages of creating a separate property right to carbon

Advantages	**Disadvantages**
Certainty for carbon investors where such rights are registered on a land title	Unnecessarily complicated and is likely to be difficult for customary land 'owners' to understand
	Culturally inappropriate as it does not fit well with the communities' approach to land
	Separation of carbon rights from land 'ownership' creates opportunities for bribery, fraud and corruption to 'register' the transfer of forest carbon rights
	The discontent and flood of litigation caused by the separation of timber rights from land rights under the *Forest Resources and Timber Utilisation Act* should serve as a warning against this option

10. Resolving competing claims to forest resources

Where a landowner seeks to exercise their forest carbon property rights, e.g. by participating in a REDD+ project, they may be unable to do so if another person (a third party) holds a pre-existing right to use the same land or forest resource, such as a timber permit, mining licence or lease. This Section considers how these competing interests could be reconciled.

The general principle in Solomon Islands is that permits and licences remain valid during the currency of their term, provided that they have been duly issued, unless grounds for suspension of revocation, such as breach of the conditions of the licence exist. Section 8 of the *Constitution,* which provides for freedom from deprivation of property, covers 'property of any description' and would appear broad enough to cover permits and licences. However the

Constitution also provides that if the property is acquired as a consequence of a breach of law this is not unjust deprivation.[122]

10.1 Timber rights agreements and timber licences

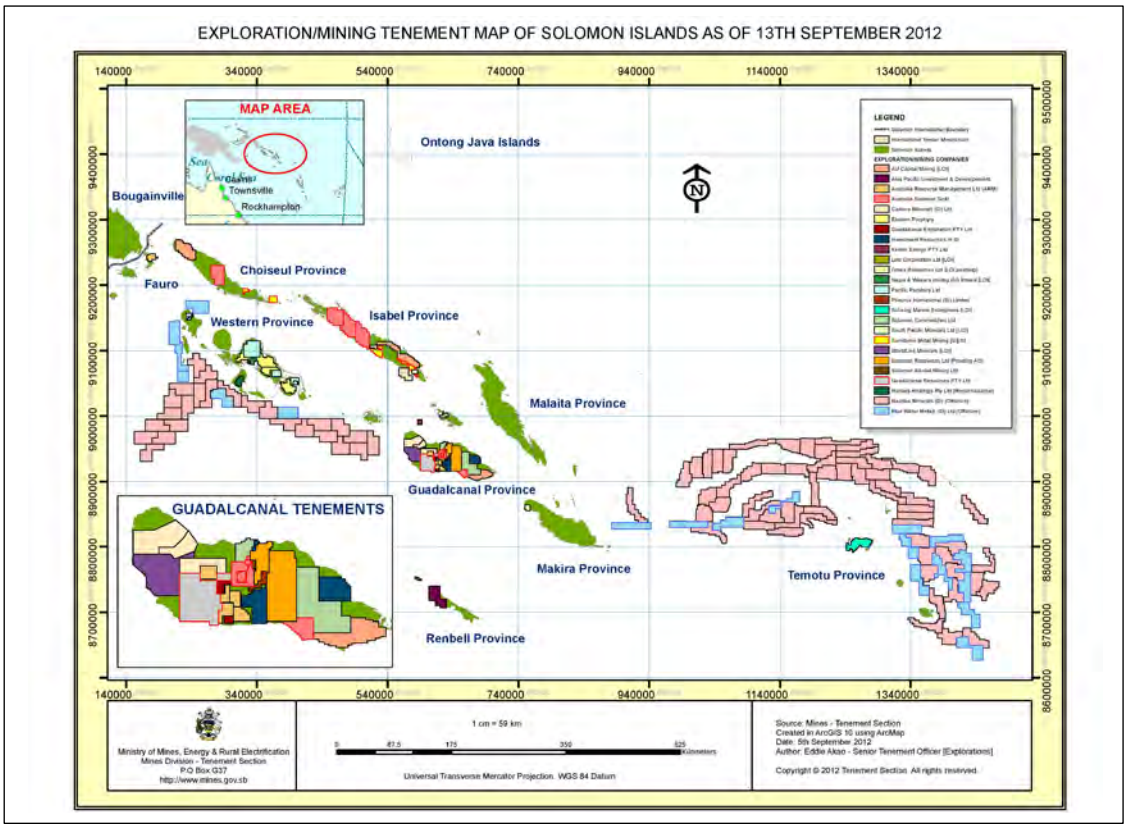
In Solomon Islands, the main driver of deforestation and forest degradation is planned deforestation, driven primarily by commercial logging, sometimes coupled with the prospect of converting logged land to agricultural use, such as for oil palm. Large areas of the forest resource in Solomon Islands are already under logging concession (see Annexure 3). When designing its national legal framework for carbon rights, Solomon Islands should therefore consider whether it is appropriate to allocate carbon rights to logging companies to create an incentive to reduce deforestation. Such an approach could be implemented by allowing particular categories of timber licences to be converted to REDD+ licences, under specified conditions.

Timber rights agreements and timber licences cannot be cancelled unilaterally. Where the Commissioner of Forest Resources is satisfied that the holder of a timber licence has contravened the Act or is in breach of a licence term, he may give written notice suspending or cancelling the licence. The licence holder must first be given an opportunity to be heard.[123] The implication of this is that where a customary landowner wishes to exercise their forest carbon rights and there is an existing timber rights agreement or timber licence in place, the landowner will need to negotiate with the holder of the logging concession or timber licence to surrender their interest, presumably in return for an agreed share of the REDD+ revenues.

10.2 Mining laws

Large areas of land in Solomon Islands are subject to a reconnaissance permit, prospecting licence or mining lease (Map 10.2).

[122] *Constitution* s 8(2)(a)(ii).
[123] *Forest Resources and Timber Utilisation Act* s 39.



Map 10.2 Existing Exploration/Mining Tenements

(source: Ministry of Mines, Energy and Rural Electrification, Mines Division - Tenement Section)

There is no express provision in the *Mines and Minerals Act* for compensation to be paid on cancellation of a Mining Licence. This is not surprising as cancellation is predicated on fault on the part of the holder. Section 8 of the *Constitution,* which provides for freedom from deprivation of property, covers 'property of any description' and would appear broad enough to cover a mining licence. However, as mentioned above, if the property is acquired from a property holder as a consequence of his or her breach of the law, this is not unjust deprivation.[124]

The *Mines and Minerals Act* establishes a Minerals Board[125] which regulates mining licences, permits and leases.[126] There is a three stage procedure for carrying out a mining operation in Solomon Islands:

1. Obtaining a reconnaissance permit;
2. Obtaining a Prospecting licence; and then
3. Obtaining a Mining Lease.

[124] *Constitution* s 8(2)(a)(2).
[125] *Mines and Minerals Act* s 10.
[126] *Mines and Mineral Act* pts III (permits), IV (licences), V (leases).

The application for a Mining Lease must include an environmental assessment. The *Environment Act* requires a mineral sector developer to obtain a Development Consent from the Director of the Environment and Conservation Division before it is allowed to carry out a 'prescribed development'.[127]The *Environment Act* states that the developer must submit a development application to the Director of the Environment and Conservation Division, together with either a public environmental report or an environmental impact statement.

A Mining Lease must be registered on the Lands Register[128]and may not exceed twenty five years, with a renewal of ten years. A Mining Lease may only be transferred, assigned, mortgaged, dealt with or disposed of with the approval of the Board.

The only agreement that the customary chiefs may enter into is the grant of surface access rights, which give permission to third parties to enter onto customary land to access minerals from the surface.[129]

The Minister may suspend or cancel a permit, licence or mining lease on the advice of the Board if the holder contravenes the Act; commits a material breach of the permit, licence or mining lease; or becomes insolvent.[130] The holder must first be asked to show cause why holder's rights should not be suspended or cancelled.[131] There is an appeal against the Minister's decision to the High Court.[132]

10.3 Other relevant laws

There are already in existence provincial ordinances which might form an option for dealing with carbon rights. Some provinces have already passed ordinances which provide for areas to be set aside for conservation purposes.

These include the following:

- *Choiseul Province Resource Management Ordinance 1997*
- *Guadalcanal Province Wildlife Management Area Ordinance 1990*
- *Isabel Province Conservation Areas Ordinance 1993*
- *Temotu Province Environmental Protection Ordinance 1994*
- *Western Province Resource Management Ordinance 1994.*

[127] *Environment Act 1998* s 19(1)(b) ('*Environment Act*')..
[128] *Mines and Minerals Act* s 39(1).
[129] *Mines and Minerals Act* s 21.
[130] *Mines and Minerals Act* s 71(1).
[131] *Mines and Minerals Act* s 71(2).
[132] *Mines and Minerals Act* s 71(3).

These ordinances have not been examined in detail, but some of them, e.g. the *Western Province Resource Management Ordinance*, provide a model for identifying customary land boundaries and 'owners', which might be useful for identifying the holders of carbon rights.

Additionally, Guadalcanal Provincial Assembly has enacted the *Moli Wards Chiefs Council Ordinance 2010*. This Ordinance recognises the hereditary chiefs in the Ward and establishes the Moli Ward Chiefs Council. Most relevantly, the Ordinance provides for sustainable harvesting of land resources.[133] It also obliges the Council to encourage a reforestation campaign.[134] The Ordinance requires non-citizens to obtain development approval from the Council[135] and provides a dispute resolution procedure for land disputes.[136]

11. Options for recording 'ownership' and/or use of carbon rights

If carbon rights are attached to land, then the existing system of registration may be utilised to register 'ownership' of carbon rights. In the case of customary land, this would involve devising a scheme to include such land on the Land Registry. If carbon rights are separated from the land, then some other means of registration must be devised. In any event, if forest carbon rights are to be created and carbon credits traded, there will need to be a means of systematically recording who has exercised their carbon rights, and where, in order to avoid forest carbon being sold twice (double counting): see **Box 11.1** on the VCS and double counting.

Box 11.1 VCS and double counting of emission reductions and removals

The Verified Carbon Standard has rules on Double Counting. In non-Annex B countries (developing countries) double counting can occur as double selling. 'Double selling' occurs when a single greenhouse gas emission reduction or removal is sold to multiple buyers.[137] For example, a carbon credit might be sold twice, or a singular emission reduction might be certified under two different REDD+ programmes (e.g. a national programme and a voluntary project) and sold under each.

National REDD+ programmes can address this risk through oversight procedures, e.g. clear regulatory structures to register REDD+ projects.

[133] *Moli Wards Chiefs Council Ordinance 2010* s 15.
[134] *Moli Wards Chiefs Council Ordinance 2010* s 18.
[135] *Moli Wards Chiefs Council Ordinance 2010* s 17.
[136] *Moli Wards Chiefs Council Ordinance 2010* s 19.
[137] See Verified Carbon Standard, *Program Definitions* (VCS, Version 3, 2012) < http://v-c-s.org/sites/v-c-.org/files/Program%20Definitions%2C%20v3.4.pdf> 5, definition of Double Counting, and Verified Carbon Standard, *Double Counting: Clarification of Rules* (VCS, Policy Brief,1 February 2012)..

REDD+ projects must also be registered on a database which tracks all forest carbon emission reduction programmes, including national measures and REDD+ projects. In addition, an approval process is required to ensure that proposals for REDD+ projects are properly vetted prior to their commencement.

12. Land conservation mechanisms

Given that REDD+ projects will involve land 'owners' undertaking long term obligations to conserve their forest, consideration should be given to whether there are any options available to them which would give some legal protection to conserve the forest resources.

Five options have been identified:

- Establishment of protected area
- Declaration of conservation areas
- Declaration of sanctuary
- Declaration of state forest.
- Declaration of forest reserve

12.1 Protected Areas Act

The *Protected Area Act 2010*[138] empowers the Minister, on the recommendation of the Director of the Environment and Conservation Division, to declare any area as a protected area of biological significance if it:

> *(a) possesses significant genetic, cultural, geological or biological resources;*
>
> *(b) constitutes the habitat of species of wild fauna and flora of unique national or international importance;*
>
> *(c) merits protection under the Convention Concerning the Protection of World Cultural and Natural Heritage; or*
>
> *(d) requires special measures to be taken to conserve biological diversity*[139]*.*

Before making any recommendations to the Minister, the Director must carry out a consultation process with all stakeholders.[140] However, the Act does not set out a detailed regime for the identification of those stakeholders. The Act provides for the establishment of a register of protected areas.[141] It also provides for the establishment of management committees consisting of 'owners' of the protected areas, public officers, provincial

[138] *Protected Area Act.* The Act came into force in May 2012.
[139] Section 10(1).
[140] *Protected Area Act* s 10(2).
[141] *Protected Area Act* s 11(1).

government officers and any other persons to manage one or more protected areas.[142] This Act might form a model for benefit sharing.

12.2 Declaration of conservation areas

As mentioned above, some provinces have already passed ordinances which provide for areas to be set aside for conservation purposes. However, this is a complex process and the delineation of land boundaries is a contentious matter.

12.3 Declaration of a Sanctuary

The Minister may, by regulation, declare any land, including customary land, as a 'sanctuary for the purpose of conservation of flora and fauna, and prohibiting felling of any tree or removal of any timber from such sanctuary'.[143] The land must be compulsorily acquired under the *Land and Titles Act*, as specifically amended by the *Forest Resources and Timber Utilisation Act* to apply in this situation. [144]

12.4 Declaration of state forest

The Minister may declare public land, that is, land in which the Government holds a freehold or leasehold interest, to be a state forest.[145] Use of a state forest for any of the broad list of purposes listed in the Act, including felling timber, requires a permit from the Commissioner of Forest Resources.[146] No interest or licence in a state forest may be granted without the prior written consent of the Commissioner of Forest Resources.[147]

12.5 Declaration of forest reserve

As discussed above, in any rainfall catchment area the Minister may declare a forest to be a forest reserve, but only to protect the forest or other vegetation for the limited purpose of conserving water resources. The notice declaring a forest reserve must specify rights which may be exercised in the forest reserve.[148]

13. Conclusion

Having regard to the relative advantages and disadvantages of each of the options, it is suggested that the following mechanism be considered to facilitate REDD+ projects on customary land in Solomon Islands:

[142] *Protected Area Act* s 12.
[143] *Forest Resources and Timber Utilisation Act,* s 44(1)(s).
[144] *Forest Resources and Timber Utilisation Act,* sch 2.
[145] *Forest Resources and Timber Utilisation Act,* s 20.
[146] *Forest Resources and Timber Utilisation Act* ss 22-23.
[147] *Forest Resources and Timber Utilisation Act* s 21.
[148] *Forest Resources and Timber Utilisation Act* s 24.

1. Recording of forest carbon rights under the *Customary Land Records Act.*
2. Landowners enter into a REDD+ agreement with a project developer to sell their verified emission reductions and removals (an amendment to the *Land and Titles Act* is required to permit this).
3. Landowners consent to a conservation covenant of some description over the forest to be protected, with sufficient flexibility to manage the forest sustainably.

ANNEXURE 1: Legislation on land tenure

PROPOSED AMENDMENTS AND ADDITIONS TO LEGISLATION RELATING TO LAND TENURE		
Proposed Enactment	**Status**	**Purpose**
Land and Titles (Amendment) Bill 2005	Endorsed by Cabinet under previous government to be put before Parliament.	Provides for customary land disputes to be resolved through traditional systems
Land and Titles (Amendment) Bill 2006	Yet to be placed before Parliament (*Supersedes Land and Titles (Amendment) Bill 2003*)	Provides for a Land Board to take over responsibilities of Commissioner of Lands and for periodical revision of land rents.

RELATED LEGISLATION ON LAND		
Name	**Status**	**Purpose**
Forest Resources and Timber Utilisation Act	Came into force 1 October 1970	Area Council (now Provincial Executives) to determine the timber rights 'owners' and willingness to negotiate for the disposal of their timber rights.
Forests Act 1999	Passed by Parliament but not brought into force.	Landowners agreement to log to precede agreement with loggers; introduces National Forestry and Provincial Forestry policies and plans.
Forests Bill 2012	To go before Parliament in June 2013 (Supersedes Forests Bill 2004, and other earlier versions)	Introduces 'Determination of Potential Forest Uses' and 'Statement of Customary Ownership' as prerequisites to 'Forest Access Agreements', National and Provincial Forest Policies and Code of Practice. Aims to introduce a methodical approach to resource management.
Mines and Minerals Act	Came into force on 1 March 1996. Amended by *Mines and Minerals (Amendment) Act 1996*. Repeals the *Mining Act* [Cap 91].	Regulates mining licences permits and leases; establishes Minerals Board

ANNEXURE 2: Options for incorporating customary landowner bodies

Where there are multiple groups of landowners with customary land tenure, forest contracting structures often require landowners to form a collective "Sellers Entity" which can enter into a contract with the buyer of the emission reductions/removals. This Annexure identifies the existing legal structures that customary land 'owners' could use to form a Sellers Entity in Solomon Islands.[149]

Recorded Customary Land Groups

The *Customary Land Records Act* was enacted in 1994 to provide a mechanism for recording customary land boundaries and the names of land-holding groups and their representatives for the purposes of any dealing with recorded land. This is covered in Section 7.1 and is not repeated here.

As the *Customary Land Records Act* is not in operation, there is currently no general legislation providing for the legal recognition or registration of landowning groups in Solomon Islands. However, there are a number of other options for association, which are set out below.

Community Companies

The *Companies Act 2009* ('*Companies Act*') introduced a new type of association called a community company. It is in essence a private company, but the members must have something in common, such as coming from the same area, and the object of setting up the community company must be to promote the community interest. 'Community interest' means anything that benefits the community, including preserving the environment.[150]

Advantages	**Disadvantages**
Can enter into contracts and 'own' property	Cannot pay money (distributions or dividends) to shareholders
Can sue and be sued in its 'own' name	Establishment of a community company is as expensive as the establishment of a normal company
Has a wide variety of ways to raise capital	Community Company structures are

[149] A more innovative option would be to make provision for the registration of group titles in customary land. This option would require review of existing research on this topic in Solomon Islands and the region, to identify the feasibility of amending the law to introduce a new scheme for registration of group titles in customary lands. This is outside the boundaries of this Paper.

[150] *Companies Act* s 166.

Advantages	Disadvantages
	regulated by the *Companies Act* and subject to onerous reporting requirements
Has perpetual existence, independent of its members and shareholders	Limited to 50 members
Assets of a community company may only be disposed of in the ordinary course of business; or for full consideration and with the approval of 75% of all registered shareholders.	
Offers limited liability	
Control lies with the community company's board	

Companies

This is the most complex and formal option, as it requires incorporation under the *Companies Act*. A company is a separate legal entity in which there are directors and shareholders. The directors control the company and may utilise the company structure as a vehicle for tax planning and shielding personal assets.

Advantages	Disadvantages
Can enter into contracts and 'own' property	Company structures are highly regulated and subject to many rules
Can sue and be sued in its 'own' name	*Companies Act* controls company formation
Has a wide variety of ways to raise capital	Establishment of a company is more expensive than most other forms of business structure
Perpetual existence, independent of its members and shareholders	
A company offers limited liability	
Control lies with the company's board	

Members Association

This is the least formal option, and is governed by common law. It allows a group of people to join together for a particular purpose, ranging from social to business, and is usually intended to be a continuing organization. It can be formal, with a constitution or rules and membership requirements, or it can be a collection of people without structure.

Advantages	**Disadvantages**
Simple and flexible organization structure	No continuity of existence
No government regulation	Unlimited liability of members (particularly committee members)
Simple to establish	No legal recognition of the association as an entity separate from its members
Administration costs low	Capital raising is limited

Charitable Trusts

An option lying somewhere between these extremes to is to set up a trust. Essentially, a trust means holding property for the benefit of another. If the trust qualifies as charitable under the *Charitable Trusts Act*,[151]it can be registered. However, charitable purposes listed in the Act are limited and would not appear to include conservation purposes. However, these purposes have been liberally applied by the Registrar in the past and the Minister may add to the list of purposes.[152]

Advantages	**Disadvantages**
The register confers some certainty. A trustee has power to deal with the Trust assets	Must be for charitable purposes and qualification depends on the discretion of the Registrar.
Subject to very little government regulation	Complex business structure that requires on-going legal and accounting expertise
Fewer formalities than a company	Expensive to establish
It is quite easy to wind up a trust	Does not have continuity of existence
Offers some tax advantages	

[151] [Cap 55] ('*Charitable Trusts Act*').
[152] *Charitable Trusts Act* s 2.

Cooperative Societies

The *Cooperative Societies Act* provides for the establishment of a society established to promote, 'the **economic interests** of its members in accordance with co-operative principles'.[153]

Advantages	Disadvantages
Simple and flexible organization structure	Must be formed to promote economic interests of members
Legal recognition of the association as an entity separate from its members no government regulation	Uncertainly arising from the fact that this structure has not been used previously for this purpose
Simple formalities to establish	
Administration costs low	

Registration as Joint 'Owners'

The *Land and Titles Act* permits registration of a number of individuals as co-owners.[154] Where more than one Solomon Islander is involved, the application for registration must be accompanied by a statutory declaration by each joint owner showing the beneficial interests that they represent. Any transfer of the interest requires a statutory declaration that all beneficial 'owners' have been consulted and that a majority are in favour.

Advantages	Disadvantages
Certainty for those dealing with registered 'owners'	Necessitates alienation
Requires 'beneficial' interests to be identified	Limited to five individuals
Provides for consultation	No legal recognition of the group as an entity separate from the registered individuals
	Statutory declaration is not sufficient to guard against fraud
	Capital raising is limited

Registration as Timber Rights 'Owners'

[153] [Cap 164] s 4.
[154] *Land and Titles Act* s 195.

As discussed above, the *Forest Resources and Timber Utilisation Act* sets up a process for determination of the persons entitled to grant timber rights to third parties and for the negotiation and finalisation of a timber rights agreement.

Advantages	**Disadvantages**
Certainty for those dealing with registered timber rights 'owners'	Designed to allow the land to be logged
Requires 'beneficial' interests to be identified	Divorces land 'ownership' from the right to negotiate and dispose of timber
Provides for consultation	No provision for division of proceeds other than through common law trust mechanism which is unsuitable for customary land

ANNEXURE 3: Statistics on logging concessions in Solomon Islands

Table A Estimates of remaining merchantable forest area

Province	Remaining merchantable forest area (hectares)		No. of timber licences
	2010	2011	
Guadalcanal	26,681	26,681	23
Choiseul	98,477	98,415	14
Western	49,544	46,235	53
Malaita	52,372	60,339	35
Makira	14,628	14,408	20
Isabel	70,556	61,684	35
Central	7,003	7,003	4
Temotu	30,380	30,380	1
Rennel	49,963	35,672	3
Total	**399,604**	**380,817**	**188**

Source: Adapted from Ministry of Forestry & Research Licencing Section data, 2011

REFERENCES

Articles, books, reports

Adler, Daniel, Nicholas Menzies, Ali Tuhanuku and Caroline Sage, 'The East Asia Pacific Justice for the Poor Program in Solomon Islands' (Discussion Note, East Asia and Pacific-Justice for the Poor, World Bank, February 2009)

Allott, Anthony, 'Towards a Definition of Absoluteership' (1961) 5 *Journal of African Law* 99.

Beeson, Adam, 'New Solomon Islands Protected area legislation' *5 newSPLAsh* 16

Ben, W (ed), *Land in Solomon Islands* (Institute of Pacific Studies, University of the South Pacific and the Ministry of Agriculture and Lands Solomon Islands, 1979)

Brown, Kenneth, 'The Language of Land: Look Before you Leap' (2000) 4 *Journal of South Pacific Law* < http://www.paclii.org/journals/fJSPL/vol04/2.shtml>

Corrin, 'Protection Des Ressources Naturelles Aux Îles Salomon' in Carine David and Nadège Meyer (ed), *L'intégration De La Coutume Dans L'élaboration De La Norme Environnementale* (Bruylant, Paris 2012) 455-478

Corrin, Jennifer and Don Paterson, *Introduction to South Pacific Law* (Palgrave MacMillan, 3rd ed, 2011) ch 10

Corrin, Jennifer and Jean Zorn, 'Legislating for the Application of Customary Law in Solomon Islands' (2005) 34 *Common Law World Review* 144

Corrin, Jennifer, 'Abrogation of the Rights of Customary Land Owners by the Forest Resources and Timber Utilisation Act' (1992) 8 *QUT Law Journal* 131

Corrin, Jennifer 'Negotiating the Constitutional Conundrum: Balancing Cultural Identity with Principles of Gender Equality in Post Colonial South Pacific Societies' (2006) *The Indigenous Law Journal* 51

Corrin, Jennifer, 'Customary Law and the Language of the Common Law' (2008) 37 *Common Law World Review* 305

Corrin, Jennifer, 'Customary land in Solomon Islands: A victim of legal pluralism' in Anthony Angelo and Yves-Louis Sage (eds), *Droit Foncier et Gouvernance Judiciaire Dans Le Pacifique: Land Law and Governance in the South Pacific* (Revue Jurique Polynesienne, 2011) 361

Corrin, Jennifer, 'Ownership of foreshore, reefs and seabed in Solomon Islands' 5 *newSPLAsh* 18

Dinnen, Sinclair and Nicole Haley, 'Evaluation of the Community Officer Project in Solomon Islands' (Research Report, East Asia and Pacific-Justice for the Poor, World Bank, May 2012)

Evans, Daniel, 'Tensions at the Gold Ridge mine, Guadalcanal, Solomon Islands' (2010) 25 *Pacific Economic Bulletin* 121

Evans, Daniel, Michael Goddard and Don Paterson, 'The Hybrid Courts of Melanesia: A Comparative Analysis of Village Courts of Papua New Guinea, Island Courts of Vanuatu and Local Courts of Solomon Islands' (Working Paper 13/2011, Justice Reform Practice Group, World Bank, 2011)

Food and Agriculture Organisation of the United Nations, *State of the World's Forests* (FAO, 2011)Goddard, Michael, 'Justice Delivered Locally: Solomon Islands' (Literature Review, East Asia and Pacific-Justice for the Poor, World Bank, August 2010)

Herr, Dorothée, Emily Pidgeon, and Dan Laffoley, *Blue Carbon Policy Framework: Based on the discussion of the International Blue Carbon Policy Working Group* (International Union for Conservation of Nature & Conservational International, 2012)

Holzknecht HA, 'Land, People and Governance: Conflicts and Resolutions in the South Pacific' (2002) 60 *Development Bulletin* 8

Ipo, J, 'Land and Economy' in H Laracy (ed) *Ples Blong Iumi: Solomon Islands, the Past Four Thousand Years* (Institute of Pacific Studies, University of the South Pacific, (1989) 121

Kabui, Frank, 'Crown ownership of foreshores and seabed in Solomon Islands' (1997) 21 *Journal of Pacific Studies* 123

McDonald, Jan, 'Marine Resource Management & Conservation in Solomon Islands: Roles, Responsibilities & Opportunities' (Report, Solomon Islands International Waters Project, Secretariat of the Pacific Regional Environment Programme, 2006)

McDonnell, Siobhan and Joe Foukona, 'Land Law and REDD+ implication in the Solomon Islands' (Briefing Paper)

Paterson, Don, 'Some Thoughts about Customary Land' (Working Paper No 5, Journal of South Pacific Law, 2001)

Peskett, Leo and Gernot Brodnig, *Carbon Rights in REDD+ - Expoloring the Implications for Poor and Vulnerable People* (World Bank, 2009) 7.

Porter, Doug, Sinclair Dinnen and Caroline Sage, 'Conflict in Melanesia: Themes and Lessons' (Input Paper for 2011 World Development Report, World Bank, 2010)

Solomon Islands Law Reform Commission, 'The Land Below High Water Mark and Low Water Mark' (Consultation Paper, 2009)

Streck, Charlotte and Matthew Wemaere, 'Chapter 3: Legal Ownership and Nature of Kyoto Units and EU Allowances' in David Freestone and Charlotte Streck (eds) *Legal Aspects of Implementing the Kyoto Protocol Mechanisms* (Oxford University Press, 2005).

Takacs, David, *Forest Carbon – Law and Property Rights* (Conservation International, 2009)Vatn, Arild and Arild Angelsen, 'Options for a national REDD+ architecture' in Arild Angelson (ed) *Realising REDD+ - National Strategy and Policy Options* (CIFOR, 2009) 57

Wairiu, Morgan and Gordan Nanau, 'Logging and Conflict in Birao Ward of Guadalcanal, Solomon Islands' (IKI Working Paper 1, Islands Knowledge & Research Program, 2011)

Warren-Rhodes, Kimberley, 'Understanding the Carbon Markets: Lessons for Solomon Islands Communities' (2011) Warren-Rhodes, Kimberley et al, 'Mangrove ecosystem services and the potential for carbon revnue programmes in Solomon Islands' (2011) 38 *Environmental Conservation* 485

Williams, Shaun, 'Public Land Governance in Solomon Islands', Briefing Note 6(1), East Asia and Pacific-Justice for the Poor, World Bank, February 2011

Cases

Allardyce v Laore [1990] SILR 174

Combined Fera Group v The Attorney General [1997] SBHC 55 (19 November 1997)

Di Napoli v New Beach Apartments [2004] NSWSC 52

Kasa v Biku and the Commissioner of Lands (Unreported, High Court, Solomon Islands, Muria CJ, 14 January 2000), available via www.paclii.org at [2000] SBHC 62

Knight v Attorney General (Unreported, High Court, Solomon Islands, Palmer CJ, 6 May 2005).

Laugana v Attorney General [2011] SBHC 76 (22 August 2011)

Lauringi v Lagwaeano Sawmilling and Logging Limited (Unreported, High Court, Solomon Islands, Lungolo-Awich J, 28 August 1997), available via www.paclii.org at [1997] SBHC 61

Maerua v Kahanatarau [1983] SILR 95

Maetia v Reginam (Unreported, Court of Appeal, Solomon Islands, Los JA, 21 October 1994), available via www.paclii.org at [1994] SBCA 4

Majoria v Jino (Unreported, Court of Appeal, Solomon Islands, Lord Slynn of Hadley P, Adams JA, Salmon JA, 1 November 2007), available via www.paclii.org at [2007] SBCA 20

Minister for Provincial Government v Guadalcanal Provincial Assembly (Unreported, Court of Appeal, Solomon Islands, Kapi, P, Williams Goldsborough JJA, 11 July 1997), available via www.paclii.org at [1997] SBCA 1

Re Lehrer and Real Property Act 1900 [1960] NSWR 570

Tafisi v Attorney-General (Unreported, Magistrates Court, Maina J, 2 July 2009)

Talasasa v the Attorney-General, (Unreported, High Court, Solomon Islands, Chetwynd, J, 25th May 2012), available via www.paclii.org at [2012] SBHC 85.

Tanavalu v Tanavalu (Unreported, High Court, Solomon Islands, Awich LJ, 12 January 1998), available via www.paclii.org at [1998] SBHC 4

Tovua v Meki [1988/89] SILR 74

Uma v Registrar of Titles [1983] SILR 265

Waleilia v Totorea (Unreported, Magistrates Court (Auki), Solomon Islands, 1992)

Legislation

Primary

Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)

Charitable Trusts Act [Cap 55]

Companies Act [Cap 175]

Companies Act 2009

Constitution of Solomon Islands 1978 (UK)

Cooperative Societies Act [Cap 164]

Custom Recognition Act 2000

Customary Land Records Act [Cap 132]

Fisheries Act [Cap 38]

Forest Resources and Timber Utilisation Act [Cap 40]

Interpretation and General Provisions Act [Cap 85]

Land and Titles Act [Cap 133]

Mines and Minerals Act [Cap 42]

North New Georgia Timber Corporation Act [Cap 43]

Petroleum (Exploration) Act [Cap 44]

Protected Areas Act 2010

Delegated legislation

Land and Titles Regulation 1959

Mines and Minerals Regulations 1996

Protected Areas Regulations 2012

International treaties

Kyoto Protocol to the United Nations Framework Convention on Climate Change, opened for signature 11 December 1997, 37 ILM 22 (entered into force 16 February 2005)

UN General Assembly, United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, UNGAOR, 48th session, 86th meeting, Agenda Item 99, Supp No 49, UN Doc A/RES/48/189 (20 January 1994)

United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, UNGAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007)

Other

CGIAR Research Program on Aquatic Agricultural Systems, *Mangrove Ecosystem Services and Payments for Blue Carbon in Solomon Islands – Policy Brief* (March 2012) WorldFish Center

Corrin, Jennifer, 'Land, Law and the 'Pacific Way: Samoa and Solomon Islands' (Paper presented at 7th European Society of Oceanists Conference, Verona, 10-12 July 2008)

Conference of Parties, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention***,** COP Decision 1/CP.16, UNFCCC, 9th plen mtg, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011)

Conference of Parties, *Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries***,**

COP Decision 4/CP.15, UNFCCC, 9th plen mtg, UN Doc FCCC/CP/2009/11/Add.1 (18-19 December 2009)

Intergovernmental Panel on Climate Change, *2006 Guidelines for National Greenhouse Gas Inventories* (WMO/UNEP, 2006) Vol 4, Ch 1, Table 1.1

Ministry of Culture, Tourism and Aviation, *Solomon Islands: Initial National Communications under the UN Framework Convention on Climate Change* (Ministry of Culture, Tourism and Aviation).

Ministry of Environment, Conservation & Meteorology, *National Adaptation Programmes of Action* (Ministry of Environment, Conservation & Meteorology, 2008)

Ministry of Environment, Climate Change, Disaster Management and Meteorology, *National Climate Change Policy: 2012-2017* (Ministry of Environment, Climate Change, Disaster Management and Meteorology, 2012).

National Capacity Self-Assessment Project Solomon Islands: Environment and Conservation Division, *United Nations Convention Framework on Climate Change: Thematic Assessment Report* (UNDP/Solomon Islands Government).

Secretariat of the Pacific Community and Deutsche Gessellschaft für Internationale Zusammenarberit (GIZ) GmbH, *Coping with Climate Change in the Pacific Island Region (CCCPIR) Main Report* (April 2010) SPC Land Resources Division

Secretariat of the Pacific Community and Deutsche Gessellschaft für Internationale Zusammenarberit (GIZ) GmbH, *Project Brief*: *Coping with Climate Change in the Pacific Island Region* (Secretariat of the Pacific Community, 2011)

Secretariat of the Pacific Regional Environment Programme, *Solomon Islands – Report of In-Country Consultations* (09 June 2009) PACC Pacific Adaptation to Climate Change

United Nations Development Programme, *Solomon Islands Project Document* (UNDP, 2010)

UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, UNGAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007)

UN-REDD Programme, *Initial National Programme Document – Solomon Islands* UN Doc UNREDD/PB5/2010/8 (4-5 November 2010)

Verified Carbon Standard, *Agriculture, Forestry and Other Land Use (AFOLU) Requirements* (VCS, Version 3, 2012)

Verified Carbon Standard, *Double Counting: Clarification of Rules* (VCS, Policy Brief,1 February 2012)

Verified Carbon Standard, *Program Definitions* (VCS, Version 3, 2012)

Verified Carbon Standard, *REDD Methodology Modules* (VCS, Version 1.2, 2012)

Verified Carbon Standard, *VCS Standard* (VCS, Version 3, 2011)

World Bank, *Reducing the Risk of Disasters and Climate Variability in the Pacific Islands: Solomon Islands Country Assessment* (World Bank)