Full Country Report on Dispute-Resolution Practices in Solomon Islands

1.0 Introduction

Understanding dispute resolution in the Solomon Islands requires a deep appreciation of its unique socio-cultural landscape, where state and customary governance systems operate in a complex relationship defined by not just co-existence, but also **competition, friction, hybridity, and manipulation**. As a geographically dispersed archipelago, identity for most Solomon Islanders is primarily attached to ancestral home islands and villages, resulting in minimal shared civic nationalism. This deep, relational connection to place and kin is powerfully illustrated by the Kwara'ae people's concept of `Ngwae ni fuli` ('person of place'), which contrasts sharply with Western legalistic notions of citizenship.

This report provides a comprehensive analysis of both customary and formal dispute-resolution practices. It is intended for an audience of legal and mediation practitioners unfamiliar with the region, aiming to bridge the gap between Western-centric models and the complex realities of Melanesian jurisprudence. The significance of this topic cannot be overstated. The formal state plays a comparatively weak role in the daily lives of most citizens, particularly outside the capital, Honiara. Consequently, customary (`kastom`) and church-based governance structures hold far greater sway. As one analysis notes, any approach to conflict resolution or governance reform that does not meaningfully engage with `kastom` is "destined to fail." This report will, therefore, examine the cultural and historical foundations of these practices before detailing the modern legal framework and analyzing the dynamic interplay between the two systems.

2.0 Cultural and Historical Foundations of Conflict Resolution

A strategic understanding of dispute resolution in the Solomon Islands must begin with its cultural and historical foundations. Contemporary practices are not recent innovations but are deeply rooted in Melanesian traditions of social obligation, relationality, and the paramount importance of community harmony. These traditions have been tested and transformed through the successive pressures of colonization, modernization, and, most notably, the period of intense civil conflict from 1998-2003 known as 'the Tensions'.

2.1 Major Cultural and Social Structures

- **Socio-Linguistic Diversity and Identity:** The nation is famously diverse, but social and political identity is overwhelmingly tied to specific ethnic and language groups on particular islands. The core conflict during "the Tensions" was a stark illustration of this, pitting people from Guadalcanal against settlers from the island of Malaita. This highlights how ethnic identity, rather than national identity, often defines the fault lines of major disputes.
- **The `Wantok` System:** The `wantok` system (from the Pijin for "one talk," referring to speakers of the same language) is a foundational pillar of social organization. It

functions as a powerful system of mutual support and obligation among kin and clan members. This deep sense of interconnectedness can serve as an informal accountability mechanism, deterring malpractice through the fear of social reprisal. However, it also has a countervailing effect, frequently manifesting as nepotism and favouritism that can undermine formal accountability and merit-based processes.

- **Indigenous Conceptions of Citizenship:** Western legalistic definitions of citizenship find little traction in many local worldviews. For the Kwara'ae people, the concept of `Ngwae ni fuli` ('person of place') defines a citizen not by legal status but by their relational web. This identity is founded on achieving `babato'o'anga` (stability), `aroaro'anga` (peace), and `tuafiku'anga` (unity) within the community and its connection to the physical, social, and spiritual environment. This relational understanding is central to how conflicts are perceived and resolved.

2.2 Traditional Dispute Resolution Mechanisms

There is a strong cultural disposition to handle disputes internally within the community and a corresponding reluctance to involve outside authorities or "wash dirty linen in public." The primary objective is not punitive justice but the restoration of social equilibrium.

- **Key Facilitators:** The principal third-party interveners are figures of inherent authority within the community, such as chiefs, village elders, and religious leaders. Their role is not one of neutral facilitation but of guiding the parties and the community toward a harmonious outcome.
- **Core Practices:** Peacemaking revolves around restorative practices. These include community meetings, reconciliation ceremonies, and the exchange of symbolic reparations and compensation. Traditionally, compensation involved items of high cultural value like pigs and bride-price; today, it frequently includes money. A central communicative practice is `tok stori`, a Melanesian form of negotiated group conversation and discursive communication that allows for collective storytelling and problem-solving.

2.3 Foundational Principles and Historical Context

These traditional mechanisms are underpinned by principles of collectivism, the primacy of kinship structures (`wantok`), and the ultimate goal of restoring social harmony. However, the period of modern conflict profoundly impacted these customs.

During 'the Tensions,' the traditional practice of compensation was distorted. It became increasingly commercialized as monetary demands replaced traditional forms of wealth and symbolic exchanges, transforming it from a mechanism for restoring social balance into a tool for extortion. As analyst Jon Fraenkel noted, demands for compensation, founded in appeals to `kastom`, were manipulated to extract money from the state and other actors. This led to a "frenzied and sometimes violent competition between claimants" and contributed directly to the "progressive criminalisation of the Solomon Islands state" following the Townsville Peace Agreement (TPA).

Amidst this conflict, women played a prominent and courageous role in informal peacemaking. In both the Solomon Islands and the conflict in Bougainville (PNG), women's and church groups were at the forefront of persuading predominantly male combatants to favour negotiation over violence. These courageous and low-profile interventions, which

included crossing dangerous militia lines to bring food and build trust, "played an important role in changing attitudes and creating openings for other peace making efforts," thereby creating the political space necessary for formal processes to take root. These deep-rooted traditional foundations provide the essential backdrop against which the modern, state-based legal system operates.

3.0 Contemporary Legal Framework and Formal Dispute-Resolution Systems

The formal legal system of the Solomon Islands is structured on a Westminster model, yet its practical application and relevance are profoundly influenced—and often superseded—by the `kastom` systems of governance and dispute resolution. The formal system is best characterized as being "paper strong but practice weak," with limited reach and awareness, particularly in rural areas where the majority of the population resides.

3.1 Constitutional and Legal Structure

The nation's governance is constitutionally based on the separation of powers among the Executive, the Parliament (legislature), and the Judiciary. This structure, however, co-exists with a legal framework that formally acknowledges the primacy of local custom. The hierarchy of laws established by the Constitution is particularly noteworthy. It formally recognizes customary law, placing it on a tier just below the Constitution itself and Acts of Parliament. Crucially, the High Court ruling in `Igolo v Ita` affirmed that this places customary law *above* the received English common law, principles of equity, and British statutes of general application that form the basis of the formal legal system.

3.2 Courts and Statutory Bodies

The formal court hierarchy follows a common law structure, comprising the **Court of Appeal** at its apex, followed by the **High Court** and the **Magistrates' Courts**. Critically, the system also includes specialized courts designed to engage with custom:

- **Local Courts:** Established under the **Local Courts Act (Ch 19)**, these courts have a specific mandate to handle proceedings of a civil nature, with exclusive jurisdiction over matters affecting or arising in connection with customary land.
- **Customary Land Appeal Courts:** These courts hear appeals on matters of customary land originating from the Local Courts.

Alongside the courts, a suite of formal accountability institutions exists, such as the **Office of the Auditor General (OAG)**. However, these bodies have historically been under-resourced and hampered by a lack of political will to follow up on their findings, limiting their practical impact. This lack of political will is often rooted in the same relational obligations of the `wantok` system that can undermine formal, merit-based processes.

3.3 State-Sanctioned Dispute Resolution

While formal Alternative Dispute Resolution (ADR) is not deeply embedded in legislation, it is present in specific contexts:

- In civil cases before the High Court, judges will encourage parties to pursue out-of-court settlements, but there is no legislative framework that compels mediation.
- The **Magistrates' Courts Act (s. 35)** contains a specific statutory provision for reconciliation in certain criminal cases. This allows magistrates to promote reconciliation and facilitate amicable settlements for offenses of a personal or private nature, such as common assault, provided they do not amount to a felony.
- In the post-conflict era, the state endorsed the creation of the **National Peace Council (NPC)**, a body explicitly mandated to conduct inter-communal mediation and reconciliation to heal the divisions caused by 'the Tensions'.

3.4 Key Legislation Interacting with Custom

Several key statutes explicitly recognize and defer to customary law, demonstrating the state's formal accommodation of `kastom` in matters of family and property:

- *Islanders' Marriage Act (Ch 171):* This Act explicitly recognizes customary marriage as legally valid in the Solomon Islands.
- *Islanders' Divorce Act (Ch 170):* This legislation stipulates that unregistered customary marriages are to be dissolved, annulled, or separated according to the specific custom of the Islanders involved.
- *Wills, Probate and Administration Act (Ch 33):* This Act is explicit in its limitations, stating that its provisions do *not* apply to customary land or to any other matter that is regulated by customary usage.

This parallel existence of a formal legal structure and a body of law that actively defers to custom sets the stage for a complex and often challenging interaction between the two systems.

4.0 The Relationship Between Customary Practices and the Modern Legal System

The interaction between `kastom` and the state legal system in the Solomon Islands is not a simple overlap but a dynamic and often fraught relationship. It is characterized by formal recognition, practical competition, hybrid innovation, and significant points of friction where the values of the two systems clash.

4.1 Formal Recognition and Parallel Operation

As established, customary law is formally recognized in the Constitution and various statutes as a primary source of law. In practice, this creates a pluralistic legal environment where citizens often choose which system to engage with. When the dictates of state governance clash with `kastom` or Church-based teachings, many Solomon Islanders will default to the latter. This preference is particularly evident in dispute resolution, where citizens often favour "symbolic reparations that repair relationships to engaging in judicial proceedings." This results in a reality where customary processes operate in parallel to, and often with greater legitimacy than, the formal state system.

4.2 Hybrid Approaches and Integration

Efforts have been made to bridge the divide by creating hybrid models that integrate elements of both systems. A prime example is the post-conflict **National Peace Council (NPC)**. This body blended Western mediation concepts, such as "shuttle mediation," with traditional `kastom` frameworks. NPC peace monitors would facilitate negotiations between conflicting communities and then integrate the outcomes into culturally resonant reconciliation ceremonies, relying heavily on the authority and participation of local chiefs to legitimize the process.

The state itself has also attempted to co-opt `kastom` mechanisms. Under the **Townsville Peace Agreement (TPA)**, the government used compensation—a cornerstone of traditional peacemaking—as a key instrument of redress for grievances arising from the conflict.

4.3 Frictions and Limitations

Despite these attempts at integration, significant tensions and limitations persist where the two systems intersect.

- **Conflict with Human Rights:** Customary norms sometimes conflict with the fundamental human rights guaranteed in the Constitution. In such cases, the formal courts have shown a willingness to prioritize constitutional principles. For example, in child custody disputes, courts have upheld the "welfare of the children" principle, granting custody to the mother, even when this directly contradicted the customary law of the parties, which vested custody rights with the father. A particularly acute area of concern is the use of customary reconciliation for domestic violence, which can result in an "absence of a meaningful sanction" for the perpetrator and place immense pressure on victims to reconcile rather than seek legal protection.
- **Inconsistent Judicial Application:** The application of customary law by the formal judiciary is often inconsistent, depending more on the individual judge's understanding and disposition than on established legal certainty. While some cases, such as `Pusi v Leni`, have seen the courts strongly recognize and uphold customary law, the overall pattern remains unpredictable.
- **Manipulation of `Kastom`:** As seen during 'the Tensions,' customary practices can be "instrumentalised for criminal or political purposes." The traditional concept of compensation was distorted into a tool for extortion and political patronage, contributing to a "frenzied and sometimes violent competition between claimants." This manipulation was not merely a symptom of the conflict but part of its engine, serving as a key driver of disorder and contributing to the criminalization of the state apparatus in the post-TPA period.
- **Gender Inequality:** Customary justice systems are often male-dominated forums. This structure is exclusionary, as analysis shows that "women as a social group are particularly likely to be" marginalized from participating in dispute resolution processes and decision-making. This is especially problematic in disputes concerning land tenure, where women's rights and interests are frequently overlooked in negotiations conducted by and for male leaders.

This complex interplay necessitates a direct comparison with the Western mediation models familiar to many international practitioners to highlight the profound differences in process and philosophy.

5.0 Comparative Analysis: Customary/Local Practices vs. Australian and Western Mediation

For legal and mediation practitioners trained in Australian and Western contexts, a comparative analysis is essential. The following comparison deconstructs the core assumptions of mainstream mediation by examining how its foundational principles are understood, adapted, or rejected within the Melanesian cultural framework of the Solomon Islands. This reveals both deep philosophical divergences and areas of potential alignment.

Category	Analysis of Solomon Islands Practices vs. Western Mediation Standards
Core Values	**Philosophical Divide:** Solomon Islands practices are grounded in **collective values** aimed at restoring community harmony, repairing relationships, and upholding kinship obligations (`wantok`). The focus is on the well-being of the group. This contrasts sharply with Western mediation's emphasis on **individual autonomy**, self-determination, and the satisfaction of individual needs and interests.
Role of Third Parties	**Nature of the Intervener:** The third party in `kastom` processes is an **authority figure** (a chief, elder, or religious leader) whose power is inherent and directive, not necessarily impartial. Their role is to guide the community toward a harmonious outcome that aligns with established norms. This is fundamentally different from the accredited Western mediator, whose role is defined by strict **neutrality and impartiality**, acting as a process facilitator with no advisory or decision-making authority.
Process Design	**Structure and Formality:** `Kastom` processes are described as less rigid and more organic, with legal rules often "stated in the form of argument." The process is **communal and public**, often involving rituals like compensation ceremonies to mark the restoration of peace. This differs from the often-structured, confidential, and stage-based models of Western mediation (e.g., opening statements, private caucuses, negotiation, agreement writing).
Key Concepts (Confidentiality, Neutrality, Voluntariness)	**Deconstruction of Terminology:** Western concepts translate differently and often do not apply. **Confidentiality:** Disputes are fundamentally community affairs, not private matters. The process is public to ensure community witness, validation, and enforcement of the outcome. **Neutrality:** As noted, elders and chiefs are respected authorities whose legitimacy comes from their status and wisdom, not from being neutral outsiders. **Voluntariness:** While participation may not be legally compelled, the social and community pressure to engage in reconciliation for the sake of group harmony is immense and often non-negotiable.
Communication Styles	**Communicative Approaches:** Local processes favour indirect, narrative, and collective communication styles. A key example is `tok stori`, described as "a discursive group communication, a negotiated conversation." This contrasts with the direct, linear, and often dyadic communication focused on articulating individual interests that is encouraged in many Western models.

Outcome Formation	**Nature of the Resolution:** Outcomes in `kastom` are focused on **restorative acts** that restore the social fabric. This includes consensus-building, public apologies, authority-based decisions, and the exchange of compensation (both symbolic and material). This differs significantly from the typical Western outcome of a privately negotiated, future-focused, written, and legally binding settlement agreement between individuals.

This theoretical comparison highlights the need for a fundamental shift in mindset for any practitioner seeking to work effectively within this context.

6.0 Implications for Mediators Working with People from Solomon Islands

Translating the preceding analysis into actionable guidance is crucial for any practitioner engaging with Solomon Islands communities. Effective cross-cultural practice is not about applying a rigid checklist but about developing a flexible, humble, and culturally-informed approach that respects local norms while upholding core professional ethics.

6.1 Cultural Sensitivities and Risk Factors

Mediators must be acutely aware of the following sensitivities and risks to avoid causing harm and ensure their interventions are not counterproductive:

- **Primacy of `Kastom` and `Wantok`:** These systems are not peripheral; they are central to identity, social order, and obligation. Any intervention that ignores or dismisses their importance is destined to be irrelevant and ineffective.
- **Distrust of Outside Authorities:** There is a general reluctance to involve outsiders in community disputes. A mediator must invest significant time in building trust, demonstrating respect, and seeking the validation of local leaders (chiefs, religious figures) before attempting any intervention.
- **Potential for Gender Exclusion:** Be aware that customary dispute resolution forums are often male-dominated. A mediator must be proactive and creative in finding ways to create safe and appropriate spaces for women to participate meaningfully without causing social backlash or undermining the process.
- **The "Compensation" Complex:** The traditional practice of compensation has been distorted and can be instrumentalized for extortion. A mediator must navigate discussions around compensation with extreme care, ensuring that any exchanges are genuinely restorative and consensual, rather than punitive, exploitative, or a source of further conflict.
- **Fluidity and Contestation of `Kastom`:** `Kastom` is not a static or universally agreed-upon set of rules. It is actively interpreted, contested, and can be "instrumentalised for criminal or political purposes." A mediator must understand they are not entering a realm of pure tradition, but a contested space where different actors may promote different versions of `kastom` to serve their own interests.

6.2 Guidance for Culturally Safe and Effective Practice

Based on the analysis, the following strategic recommendations can guide practitioners toward more effective and culturally appropriate engagement:

1. **Embrace a Hybrid Model:** Do not attempt to impose a pure Western mediation model. Instead, seek to integrate useful process tools (such as private caucuses or shuttle mediation, as successfully used by the National Peace Council) within a culturally familiar `kastom` framework that prioritizes community meetings, `tok stori`, and public reconciliation ceremonies.
2. **Engage Local Leadership:** It is essential to work *with and through* local chiefs, elders, and church leaders. Their validation, participation, and authority are critical for the legitimacy, acceptance, and long-term durability of any negotiated outcome. The mediator's role is often to support these leaders, not to supplant them.
3. **Incorporate Narrative and Indirect Communication:** Adapt your communication style. Move away from direct, interest-based questioning and embrace methods that align with local practices like `tok stori`. This involves facilitating collective storytelling and allowing for indirect communication to surface underlying issues and build consensus.
4. **Reframe "Success":** Success in this context should not be measured solely by a signed settlement agreement. A successful outcome is one that is perceived by the community as having restored relationships, involved a public acknowledgment of harm, and included the performance of restorative acts (like compensation) that satisfy the community's sense of social harmony.

7.0 Conclusion

This report has journeyed from the deep-rooted cultural foundations of `kastom` in the Solomon Islands to the complexities of its interaction with the modern state, concluding with the practical implications for dispute resolution practitioners from outside the culture. This exploration reveals a legal and social landscape where two powerful systems of justice operate in tandem, often in tension with one another.

7.1 Summary of Key Insights

The most critical findings of this report highlight a series of dualities and dynamics that define the Solomon Islands justice landscape:

- **Duality of Justice Systems:** Customary law holds practical supremacy over a state system that is "paper strong but practice weak," despite the latter's constitutional status.
- **Ambivalence of Social Structures:** The `wantok` system functions as both a vital social safety net and a potential source of nepotism that undermines formal accountability.
- **Potential for Hybridity:** The post-conflict period demonstrated the effectiveness of hybrid dispute resolution models that thoughtfully blend local and external concepts, as seen with the National Peace Council.
- **Persistent Friction with Human Rights:** There remains significant friction between customary norms and universal human rights standards, particularly concerning gender equality and the handling of offenses like domestic violence.

- **The Challenge of Manipulation:** The manipulation of `kastom` practices like compensation for criminal and political ends remains a significant challenge to both traditional and state-based justice.

7.2 Future Outlook and Emerging Issues

The future trajectory of dispute resolution in the Solomon Islands will continue to be shaped by these dynamics. The ongoing challenges of weak state legitimacy, the need for institutional reform, and the complex, long-term process of building a shared national identity that respects the diversity of local `kastom` will define the environment for years to come. Navigating this path will require continued innovation in governance and a deep commitment to dialogue between state and customary authorities.

7.3 Final Statement on Importance for Practitioners

For legal and mediation practitioners in Australia and the West, the Solomon Islands case study offers a compelling and vital lesson. It demonstrates that effective and ethical cross-cultural dispute resolution requires more than the simple exportation of established models. It demands that practitioners move beyond the role of expert and instead embrace the position of humble, culturally-literate facilitators. The goal is not to impose a process, but to co-create one, grounded in local realities, validated by local leadership, and aimed at achieving a resolution that is meaningful and durable for the community it is intended to serve.

8.0 Full Citations

Abt Associates. (2020). *Solomon Islands justice and governance programs, evaluation: Final report*.

Allen, M., & Dinnen, S. (2010). The north down under: Antinomies of conflict and intervention in Solomon Islands. *Conflict, Security & Development*, *10*(3), 299–327.

Brigg, M. (2014). *Solomon Island National Peace Council: Inter-communal mediation*. The University of Queensland.

Chalmers, D. R. C., & Paliwala, A. H. (1984). *Introduction to the law in Papua New Guinea*. Law Book Publishers.

Corrin Care, J. (2002). 'Off the peg' or 'made to measure': Is the Westminster system of government appropriate in Solomon Islands? *Alternative Law Journal*, *27*(5), 207–211.

Fitoo, B. (2020). Towards a wantok-centred framework for developing citizenship education in Solomon Island schools. *The Journal of Social Studies Education in the Asia-Pacific*, *1*(1), 21–42.

Forsyth, M. (2009). *A bird that flies with two wings – Kastom and state justice systems in Vanuatu*. ANU E Press.

Fraenkel, J. (2004). *The Manipulation of custom: From uprising to intervention in the Solomon Islands*. Victoria University Press.

Howley, P. (2002). *Breaking spears and mending hearts: Peacemakers and restorative justice in Bougainville*. Zed Books and Federation Press.

Howley, P. (n.d.). *The Melanesian way of mediation and restorative justice*. Divine Word University.

Kabutaulaka, T. (2008). Westminster meets Solomons in the Honiara riots. In S. Dinnen & S. Firth (Eds.), *Politics and state building in Solomon Islands* (pp. 96-118). ANU E Press and Asia Pacific Press.

Kanaira, P. (n.d.). *An analysis of the recognition of customary law and common law and equity in the legal system of Solomon Islands*.

La Trobe University, Centre for Human Security and Social Change. (n.d.). *Accountability ecosystems political economy analysis: Solomon Islands country study*. La Trobe University.

Lunabek, V. (2003). Restorative programs in the formal justice system of Vanuatu. In S. Dinnen (Ed.), *A kind of mending: Restorative justice in the Pacific Islands*. Pandanus Books.

Monson, R. (2011). Negotiating land tenure: Women, men and the transformation of land tenure in Solomon Islands. In S. Golub (Ed.), *Customary justice: Perspectives on legal empowerment* (pp. 169–185). International Development Law Organization.

Moore, C. W. (1991). *The mediation process: Practical strategies for resolving conflict*. Jossey-Bass.

Solomon Islands Government. (n.d.). *Islanders' Divorce Act [Cap 170]*.

Solomon Islands Government. (n.d.). *Islanders' Marriage Act [Cap 171]*.

Solomon Islands Government. (n.d.). *Local Courts Act [Cap 19]*.

Solomon Islands Government. (n.d.). *Magistrates' Courts Act [Cap 3]*.

Solomon Islands Government. (n.d.). *Wills, Probate and Administration Act [Cap 33]*.

Solomon Islands Truth and Reconciliation Commission. (2012). *Final report, Volume II*.

Tagicakibau, E. G. (2004). *A survey to determine the feasibility of a Pacific conflict transformation network*. Pacific Concerns Resource Centre.

UNIFEM. (2005). *Monitoring peace and conflict in the Solomon Islands. Gendered early warning report no. 1*.