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# **THE CONSTITUTIONAL AND COURT FRAMEWORK**



# **1 The Constitutional Framework of Solomon Islands**

## **1.1 The *Constitution* of Solomon Islands**

The Solomon Islands *Constitution* was adopted on July 7, 1978. It was enacted as a schedule of the *Solomon Islands Independence Order 1978*.

The *Constitution* details the basic elements of the Solomon Islands system of government by defining:

- the roles, responsibilities and powers of the Executive, Parliament and the Judiciary;
- the organization and structure of the legal system;
- the requirements of citizenship and details related to finance, land and leadership;
- that governance will be based on democratic principles;
- that principles of equality, social justice, human dignity and communal solidarity will be upheld.

The constitution is based on and outlines the doctrine of the Separation of Powers.

### **The Doctrine of Separation of Powers**

There should be three distinct and separate branches of government:

1. The Executive: administrator and policy maker;
2. The Parliament (legislature): lawmaker;
3. The Judiciary: interpreter of the law.

Each branch of government checks the roles and functions of the other branches. This checking maintains the balance of power between the three branches and does not allow the executive to assume too much power.

In *Kenilorea v. Attorney General* [1984] SILR 179, the Court of Appeal ruled that Acts of Parliament may not alter the separation of powers of the three branches of government, and that any attempt by the legislature to usurp the powers and independence of the Judiciary was unconstitutional.

## **1.2 The Branches of Government in Solomon Islands**

### **The Executive**

#### Head of State:

The Head of State for Solomon Islands is the English Monarchy, represented by the Governor General.

The Governor General must be a person eligible to be a member of the Solomon Islands Parliament, and is appointed by the Queen on the advice of the Solomon Islands Parliament.

The office of the Governor General is for a five year term, unless removed by the Head of State in accordance with Parliament, for misbehaviour.

*Section 32 of the Constitution* provides that the Prime Minister is to keep the Governor General informed of the general conduct of the government.

The Governor General is required to act and exercise independent judgement with respect to:

- the appointment of a minister to act as Prime Minister if the Prime Minister or Deputy Prime Minister are ill or are absent from the country;
- the appointment of two members of the Committee on the Prerogative of Mercy;
- the removal of judges and acting judges in certain cases;
- the appointment of a member of the Judicial and Legal Services Commission;
- the removal of the Commissioner of Police;
- decisions on pensions for public officers, including constitutional officeholders.

#### Head of Government:

The Prime Minister:

- is elected by members of Parliament from among their number in accordance with the provisions of *Schedule 2 of the Constitution*;
- heads Cabinet;
- advises the Governor General regarding the appointment of other Ministers of Cabinet.

There shall also be a Deputy Prime Minister, who is chosen from among the members of Parliament. The Deputy Prime Minister acts when the Prime Minister is temporarily prevented from performing the functions of his or her office due to illness or absence.

#### Cabinet:

The number of ministers in Cabinet is currently fixed in law at 11.

Ministers are appointed from among members of Parliament. They are appointed by the Governor General, who acts on the advice of the Prime Minister.

Each minister is responsible for overseeing the administration of a government department and Cabinet is collectively responsible for decisions taken by the Cabinet or by individual Ministers.

**Secretary to Cabinet:**

The Secretary to Cabinet is responsible for arranging the business for the meetings of Cabinet and conveying the decisions of Cabinet to the appropriate person or authority.

He or she shall also have other functions as the Prime Minister directs.

**Attorney General**

The Attorney General:

- is the legal advisor to the Cabinet and the principal legal adviser to the Government;
- is appointed by the Judicial and Legal Service Commission, on the advice of the Prime Minister;
- must be able to practise in Solomon Islands as an advocate, barrister or solicitor;
- shall not be entitled to vote in Parliament or in any election for the office of the Prime Minister.

**The National Legislature (Parliament)**

Parliament:

- consists of a single chamber;
- is presided over by a Speaker, who is elected by Parliament from among its members;
- is dissolved every four years unless a majority vote of Parliament dissolves it earlier;
- conducts itself in accordance with its standing orders.

The Parliament:

- has the power to “make laws for the peace, order and good government of Solomon Islands”;
- introduces and passes Bills, which becomes law after the assent of the Governor General and publication in the Gazette;
- makes provisions for the application of laws, including customary law.

The Speaker of Parliament has been given the power to make rulings in answer to questions regarding the interpretation of provisions in the *Constitution*, and it has been held that this is not a usurpation of the Court’s power to interpret the *Constitution*.

### **The Judiciary**

The Judiciary is the third branch of government in Solomon Islands.

The Judiciary:

- is an independent body which is responsible for interpreting and applying Parliament's laws;
- creates and interprets case law;
- solves disputes of fact and law between individuals as well as between individuals and the State;
- comprises judges of the Court of Appeal, the High Court, the Magistrates' Court, the Local Courts and the Customary Land Appeal Court.

### **Provincial and Local Government**

#### **Provincial Government:**

The *Provincial Government Act 1981* set up seven provincial governments.

Provincial governments are made up of a Provincial Assembly, a Provincial Executive and staff.

Members of the Provincial Assembly are elected from electoral wards in the province. A Premier, who is elected by and from the Assembly, heads the provincial executive. The Premier then appoints other members of the Executive.

The Provincial Assembly may make provincial ordinances, but they require the assent of the responsible minister to have effect. The Minister must give assent unless he or she believes that the proposed provincial law is beyond the Provincial Assembly's powers, or conflicts with government policy for the whole country.

A number of functions of the national government can be transferred to provincial governments, as provided by the *Provincial Government Act*.

#### **Local Government:**

The *Local Government Act* provides for the establishment of Area Councils. Area Council representatives are elected by people living in the council area. For now, Area Councils have been suspended in Solomon Islands.

Area Council functions are:

- to promote health and welfare;
- maintain order and good government;
- prevent commission of offenses;
- keep birth and death records.

## 2 The Solomon Islands' Court System

### 2.1 General Characteristics of the Court System

Solomon Islands has five types of Courts:

- the Court of Appeal;
- the High Court;
- the Magistrates' Courts;
- the Local Courts; and
- the Customary Land Appeals Court.

The Court system is hierarchical:

- This hierarchy is essential to the Doctrine of Precedent (see Chapter 2 The Law, paragraph 1.5).
- The hierarchy provides an appeal system, which allows decisions to be checked by more senior Courts. This helps prevent inconsistency within the Courts and provides a check and balance system for the fair administration of justice.

### 2.2 Jurisdiction

Jurisdiction is the power and authority to hear or determine a particular matter. Courts may only act within their jurisdiction, as defined by law.

If a Court acts outside its jurisdiction, it is said to be acting *ultra vires* (outside the power), which makes the Court's decision invalid on that matter.

An example where a Court would be acting outside its jurisdiction would be if a Magistrate's Court attempted to hear and determine a case involving murder, which carries a sentence of life imprisonment. The Magistrates' Courts can only hear criminal cases which carry a maximum sentence of 14 years: *s27 Magistrates' Courts Act 1962*.

#### **Jurisdiction derived from statute**

Statutes define a Court's power and authority. For example, the power and authority given to the Magistrates' Courts is set out in *Part IV of the Magistrates' Courts Act 1962*.

#### **Inherent jurisdiction**

Inherent jurisdiction means that the Court can fill in any gaps left by a statute or by case law. This jurisdiction is generally reserved for the highest Courts in any given country. The Court of Appeal and the High Court have inherent jurisdiction.

### **Original jurisdiction**

This means that a Court is given power to hear certain kinds of cases in the first instance, for example:

- the High Court has been given the power to hear first any cases dealing with fundamental rights or any other constitutional question;
- the Magistrates' Courts have been given the power to hear first criminal cases where the maximum sentence is 14 years imprisonment or a fine of \$1000 and the power to hear civil cases where damage claimed is no more than \$2000;
- the Local Courts have been given the power to hear first criminal cases where the maximum sentence is six months imprisonment and the power to hear civil cases where damage claimed is no more than \$200.

### **Concurrent jurisdiction**

Concurrent Jurisdiction means that several Courts have the power to hear a particular kind of case.

The High Court and the Magistrates' Courts have concurrent jurisdiction on certain civil and criminal cases: *s34 Magistrates' Courts Act 1962*.

### **Territorial jurisdiction**

Territorial jurisdiction refers to a Court's power to hear cases for a particular district or tract of land.

*Section 4(1) Magistrates' Courts Act 1962* gives the Principal Magistrate's Court the power to hear cases throughout Solomon Islands, including over territorial waters.

However, *s8* gives the Chief Justice the power to assign a Magistrate a particular district(s) in which to operate and the Magistrate may not, without special notification, exercise jurisdiction outside of that district(s).

### **Appellate jurisdiction**

This is the right of a Court to hear appeals from a lower Court. The Court of Appeal, the High Court, the Magistrates' Courts and the Customary Land Appellate Court all have some type of appellate jurisdiction.

### **Criminal jurisdiction**

A crime is the commission of an act that is forbidden by statute or the omission of an act that is required by statute.

The *Penal Code 1963* sets out those acts that are crimes in Solomon Islands.



There are different categories of crime, and the category of crime determines which Court has jurisdiction to hear and determine the matter.

Criminal prosecutions are generally brought by the State, as represented by the Director of Public Prosecutions, against a person(s) who is alleged to have committed an offence.

### **Civil jurisdiction**

This covers disputes between individuals, and between individuals and the State, that are not criminal matters.

### **Jurisdiction derived from custom**

This is jurisdiction arising from the customs, traditions and values of the people of Solomon Islands.

This jurisdiction has been reaffirmed in *Schedule 3* to the *Constitution* and in *ss16 and 18 Local Courts Act 1942*.

The Local Courts have jurisdiction derived from custom.

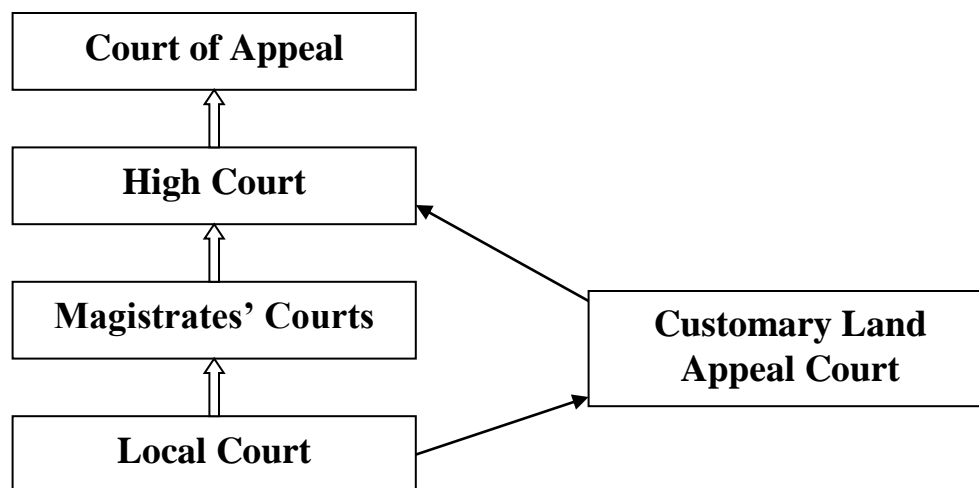
### **Supervisory jurisdiction**

Supervisory Jurisdiction refers to the supervisory role that a higher Court has over subordinate Courts to ensure that justice is properly administered.

According to *s84* of the *Constitution*, the High Court has jurisdiction to supervise any civil or criminal proceedings before any subordinate Court.

## **2.3 The Structure of the Solomon Islands Court System**

Figure 1: Structure of Solomon Islands Court System



## **2.4 A Brief Description of the Courts**

### **The Court of Appeal**

The *Court of Appeal Act 1982* sets out the grounds for, and manner of, appeal to the Court of Appeal. The *Court of Appeal Rules 1983* sets out appeal procedure.

According to the *Court of Appeal Act 1982*, the Court of Appeal may hear appeals in both civil and criminal matters.

#### Civil jurisdiction:

The Court has jurisdiction to **automatically** hear civil appeals:

- from any decision where the High Court is the Court of first instance, including decisions made in chambers;
- from any decision of the High Court under the provisions of the *Islanders' Divorce Act*;
- in cases where the High Court has exercised its appellate jurisdiction, if it is not prohibited by statute and if the appeal is on a question of law only.

The Court has jurisdiction to hear civil appeals from the High Court **with leave** where:

- an order was made by consent or is related to costs only;
- the order or judgement is interlocutory, except in certain cases.

The Court may **not** hear an appeal in cases where:

- a decision of the High Court is to be the final, as provided by statute;
- an order has been given for unconditional leave to defend an action;
- an order has been given allowing an extension of time in which to appeal.

The Court may also answer questions of law that have been referred by the High Court in the course of a trial.

**Criminal jurisdiction:**

A person convicted of a criminal offence before the High Court may appeal to the Court of Appeal:

- as of right, against a conviction on any grounds where there is a question of law alone;
- if granted leave by the Court of Appeal on a question of fact alone or a question of mixed law and fact, or on any other ground which the Court deems sufficient for an appeal.

The Director of Public Prosecutions may appeal to the Court of Appeal in cases where:

- a person is tried before the High Court in the first instance and acquitted and where there is a question of law only;
- the Director of Public Prosecutions has the opinion that the sentence imposed by the High Court is manifestly inadequate.

Any party may appeal to the Court of Appeal in criminal cases which originated in a Magistrate's Court and then were appealed to the High Court, if they involve a question of law only. This type of appeal does not apply to severity of sentence.

**The High Court**

The High Court has unlimited original civil and criminal jurisdiction. It also has original jurisdiction in cases with constitutional questions.

The High Court may also hear appeals from all civil judgements, orders and decisions of any Magistrate's Court except where:

- it is made by consent;
- it is ex parte;
- it relates to costs only.

In these cases, special leave from the Magistrate's Court or the High Court is required.

The High Court hears appeals from the Customary Land Appeal Court on questions of law, other than customary law, or where there is an alleged failure to comply with a procedural requirement by the Customary Land Appeal Court. The decision of the High Court in these appeals is final.

The High Court has criminal appellate jurisdiction, as defined in Part IX of the *Criminal Procedure Code*. In these cases the appeals lie as of right or by way of case stated.

### **Magistrates' Courts**

The *Magistrates' Courts Act 1962* confers upon the Magistrates' Courts criminal and civil jurisdiction. The Chief Justice can also extend the jurisdiction of the Court in particular cases.

The Magistrates' Courts consist of a Principal Magistrate's Court and First and Second Class Magistrates' Courts.

The Principal Magistrate's Court exercises wider jurisdiction in terms of geographical area and in amount of damage or compensation in civil cases and penalty in criminal cases.

#### **Civil jurisdiction:**

The Magistrates' Courts have civil jurisdiction:

- in personal suits arising in tort and contract where the value does not exceed \$2000 for First Class Magistrates and \$6000 for the Principal Magistrate;
- in suits between landlord and tenant where the annual rent does not exceed \$500 for First Class Magistrates, and where annual rent does not exceed \$2000 for the Principal Magistrate;
- to make guardianship and custody orders;
- to grant injunctions and orders for detention;
- to make a committal order for up to 6 weeks against a person who fails to pay or comply with a Court order for payment upon judgment.

The civil jurisdiction of a Second Class Magistrate is limited to cases involving a maximum of \$200.

#### **Criminal jurisdiction:**

All classes of Magistrates have jurisdiction to hear and determine criminal matters summarily.

The Principal Magistrate's Court has criminal jurisdiction in relation to:

- offences where the maximum punishment is 14 years imprisonment or a fine, or both;
- offences which the law has expressly stated that they are to be heard in the Principal Magistrate's Court.

The Principal Magistrate may only impose a term of imprisonment of 5 years or a fine of \$1000, or both.

First and Second Class Magistrates may summarily try any offence that carries a maximum punishment of one year imprisonment or a fine of \$200, or both.

First and Second Class Magistrates may also have jurisdiction to hear other offences if:

- expressly provided for by law; or
- the Chief Justice confers jurisdiction upon them by virtue of *s26 Magistrates' Courts Act*.

Other jurisdiction:

A Magistrate's Court has jurisdiction to hear appeals from decisions of the Local Courts operating within its area.

The Magistrate's Court has the power to make an order or pass sentence as the Local Court would have, or they can refer the matter back to the Local Court from which the appeal came or to any Local Court, to be reheard.

Sentences imposed by Local Courts must be confirmed by the Magistrate's Court, if those sentences exceed two months imprisonment. The Magistrate's Court may also reduce, remit or increase any sentence given by the Local Court.

The Magistrate's Court may also revise proceedings of the Local Court if an application has been made and such an action is warranted.

The Magistrate's Court may not hear actions where title to land or ownership of land is in dispute, unless the parties consent. See *s19(6) MCA*.

### **Local Courts**

The Local Courts have jurisdiction over the geographic area for which they are established. The Local Court is to be constituted in accordance with the law or customs of Islanders from that geographic area.

The Local Court has civil and criminal jurisdiction over matters in which all the parties are resident islanders within the area where the Court has been given jurisdiction.

Before the Local Court can exercise its jurisdiction with respect to customary land disputes, it must be satisfied that:

- the dispute has first been referred to the chiefs;
- all traditional means of resolving the dispute have been exhausted;
- no decision that is accepted by both parties has been made by the Chief. If the decision of the Chiefs has been accepted by both parties, the Court is to adopt that decision within three months.

The Local Court has exclusive jurisdiction to deal with all proceedings of a civil nature in connection with customary land unless:

- the matters are expressly excluded by the *Land and Titles Act*; or
- there is a question whether the land is actually customary land.

The Local Court may also deal with a civil matter referred to it by the High Court or by the Customary Land Appeal Court under the *Land and Titles Act*. These decisions may be subject to appeal to the Customary Land Appeal Court.

The criminal jurisdiction of the Local Courts is only for certain offences, as specified in law. The sentence imposed cannot be for a term exceeding six months or a fine exceeding \$200.

Punishments given according to customary law may not be repugnant to natural justice and humanity. Fines given shall not be excessive, but in proportion to the nature and circumstances of the offence.

### **Customary Land Appeal Court**

This is a separate appeal Court established specifically to deal with:

- customary land appeals from the Local Court; and
- decisions of area councils under the *Forest and Timber Utilisation Act 1970*.

In making its decisions, the Court applies customary law relating to land matters.

Its decisions are subject to appeal to the High Court, but only on points of law other than customary law or on points of procedure.

## **2.5 Traditional Dispute Resolution**

The sitting of the traditional chiefs is not a Court, but it does have an impact upon the jurisdiction and processes of the Local Courts.

Prior to the Local Courts making any decision related to customary land, they must have evidence that the parties referred the matter to the traditional Chiefs and that all traditional, lawful means of dispute resolution were exhausted.

If there is evidence that both parties consented to decision of the Chiefs, then the Local Court adopts the decision as a means of enforcing it. This evidence is given by way of the *Accepted Settlement Form*.

If the parties do not consent to the decision of Chiefs, then they must give a written statement as to why the decision is not acceptable and the reasons for not accepting the decision. This evidence is given on the *Unaccepted Settlement Form*. The matter then goes to the Local Court.