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LAND DISPUTES AND THE POLITICS OF ECONOMIC DEVELOPMENT IN SOLOMON ISLANDS: THE CASE STUDY OF BINA, WEST KWAIO, MALAITA

by

Fredrick Fa’abasua

A thesis submitted in fulfillment of the requirements for the degree of Master of Arts in Politics

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July 2014
DECLARATION OF AUTHENTICITY

Statement by the Author
I, Fredrick Fa'abasua, declare that this thesis is my own work and that, to the best of my knowledge, it contains no material previously published, or substantially overlapping with material submitted for the award of any other degree at any institution, except where due acknowledgement is made in the text.

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Abstract

This thesis examines the causes of ‘customary land disputes’ in the context of modern ‘economic’ development in Solomon Islands, and draws out the implications of such an understanding for re-thinking the established approaches to dispute resolution. It does so by examining the case study of the Bina harbour development project in Malaita. The research conducted was based on a qualitative approach and a semi-structured questionnaire was used to guide in-depth individual interviews and focus group discussions. A total of 32 participants mostly community leaders, chiefs and landowners around and in Bina village, and West Kwaio were involved.

Studying the history of the Bina land disputes and the harbour development in detail has demonstrated the complexity of the issue. The relationship of the land disputes with the Bina harbour development can be traced back to the historical influence in Bina, West Kwaio, namely the contacts with Europeans and the labour trade, Christianity, the cash economy and the government policies. This all led to many changes in customary land tenure practices and the rise of new leaders, which contributes to the land disputes that resulted in the lack of the Bina harbour development project.

The study reveals that the lack of understanding of changes in custom land practices led to the failure of individuals and government to deal with the issue. As a result, the land disputes became more complicated. The measures taken became contributing factors instead of the remedies for addressing the problem. The different development approaches used to address the issue also remain problematic. This was due to the lack of compatibility with the different approaches used to engage customary land for development. Hence, this study has identified some implications for dispute resolution for the Bina land disputes which may be relevant to Malaita and to Solomon Islands more broadly.
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Abbreviations

AO – Acquisition Officer
AusAID – Australian Agency for International Development
CLAC – Customary Land Appeals Court
CLUA – Clan Land Usage Agreement
DO – District Officer(s)
DoLS – Department of Lands and Survey
IDD – Industrial Development Division
MCLE – Ministry of Commerce, Labour and Employment
MEHRD – Ministry of Education and Human Resources Development
MPGIS – Ministry of Provincial Government and Institutional Strengthening
MOU – Memorandum of Understanding
NCRA – National Coalition for Rural Advancement
NCRP – National Coalition for Reconciliation and Peace
RK – Rafea and Kwaleunga
SIAC – Solomon Islands Alliance for Change
SINURA – Solomon Islands National Unity and Rural Advancement
SSEC – South Seas Evangelical Church
SSEM – South Seas Evangelical Mission
WWF – World Wildlife Fund
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Chapter 1: Introduction

The study examines the causes of ‘customary land disputes’ in the context of modern ‘economic’ development, by examining the case study of the Bina harbour development project in West Kwaio, Malaita, Solomon Islands. The chapter begins by establishing the significance of land disputes in obstructing development in Solomon Islands. This is followed by an introduction of the purpose in examining more deeply, the question of causes and the implications of them for constructing appropriate dispute resolution. Next is a section to introduce the Bina case study and why it is a very useful site for exploring these questions, before explaining the methodological approach. The final section is on the way ahead—the organisation of the thesis.

Land Disputes and Development

Customary land disputes are a growing problem in Solomon Islands, especially on Malaita where this study is focused. On-going land disputes have become a major obstacle to economic development, mainly in rural areas where the ownership of land is vested in the people through customary tenure. Several attempts were made in the past by governments and individuals to understand the causes of land disputes and to find solutions. Yet the evidence suggests that strategies adopted as solutions to the problem have proven futile. The general view that seems to be accepted widely was the group ownership of land is difficult to deal with when an economic development project is earmarked for a particular place. The unclear usage and ownership rights are seen as causing disputes when attempts were made to reform land towards an individual ownership which government and investors can deal with more easily. It was on this understanding that past governments resorted to land reforms through customary land alienation and registrations. But this exercise has been problematic since it started under the British Solomon Islands Protectorate administration and remains unresolved by current governments.

The problem of land disputes and lack of commercial development in rural Solomon Islands has been recognized by academia as ‘widespread and common’ (Foale &
Macintyre, 2000). Foale and Macintyre’s study in West Ngella in Central province noted that “disputes over primary rights appear to result in a breakdown in management practices, resulting in overfishing that led to severe depletion of stocks. An understanding of the common causes of the disputes is therefore of considerable importance to marine management, and development, in this region” (Foale & Macintyre, 2000, p. 30).

When discussing the logging industry in Solomon Islands Kabutaulaka (2005) asserted that “…land and boundaries disputes…are now common in Solomon Islands, and particularly in areas where there are large-scale resource developments such as logging, mining, and plantation development. There’s a need to take landowners and traditional land tenure systems seriously when planning national development programs” (Kabutaulaka, 2005, p. 94). Kabutaulaka mentioned the case of Pavuvu Island in the Russell Islands, which has been a subject of land dispute since 1905 and still remains unresolved. The island was alienated by the colonial government under the waste land regulations of the 1900s. The current generation, however, have challenged their older leaders who allowed the island to be alienated by the government – claiming the process was fraudulent and the transaction involved was absurd. Over the years they have demanded the government return the island but with no success. Instead the government continued to engage loggers to log the forest on the island. This resulted in violent protests by landowners to which the state responded with force.

Chevalier (2000) stated that the crisis on Guadalcanal that started in 1998 in Solomon Islands was related to land. Reflecting on the conflict Chevalier noted that “land and land ownership lie at the heart of the conflict in Solomon Islands…The crisis has provided an impetus for fairer returns to, and between controls of, land by indigenous landowners. In the future, the precedent set by Guadalcanal is likely to lead elsewhere to stricter control of land sales. This could constrain development and freedom of migration throughout the Solomons” (Chevalier, 2000, p. 7). Also, Bennett (1995) noted “on New Georgia, disputes regarding who held the timber rights and who should be trustees dragged on for years, delaying agreements for one of the biggest contiguous
areas of forest in the Solomons which the government had planned to allocate to Levers for logging” (Bennett, 1995, p. 256).

In Solomon Islands in some cases infrastructure was built on customary land through mutual arrangements. As time passed disputes emerged due to the new value and price placed on land. This has affected the operation of these developments. This was a test for these development projects and demonstrated the question of land identity and group ownership against commercial development. It highlights the importance of land in the cash economy regardless of the identity issue (Koczberski & Curry, 2004). People seek compensation from past developments as a condition to their continued use. In South Malaita the Parasi airport was closed on several occasions due to land disputes. This was similar to the case for the Gwaunaru’u airport, which services the Auki Township, Malaita, and the Munda newly built international airport in New Georgia, Western province, where landowners have threatened closure if their demands for more compensation are not met by the government (Kakai, 2011; Kakai, 2012 and Islands Business, 2013, March 11).

The problem of land disputes has also been recognized by the government of Solomon Islands. According to Joses Tuhanuku of the Solomon Islands Office of the Prime Minister, in an interview with Clement Paligaru of Radio Australia (on May 10, 2011), land disputes are one of the major obstacles to development in Solomon Islands. The interview focused on a new policy adopted by the National Coalition for Rural Advancement (NCRA) government policy which aimed to engage landowners and traditional leaders to free up their lands for development. Despite the creation of the policy there has been limited research to guide the engagement with the landowners. Furthermore, lack of consultation and active participation with the landowners was an obstacle to the implementation of this government policy.

In 2012 the government through the Ministry of Justice and Legal Affairs recognized the seriousness of resolving land disputes to ensure there is economic development. The ministry was tasked to come up with some guidelines on how best the issue can be
addressed. In the end, the guidelines mainly reviewed ways of dealing with customary land disputes (Ministry of Justice and Legal Affairs, 2012). But, focusing on the processes of adjudication in itself will not address the root causes of land disputes. Unless the issue of land disputes is understood, any legislative framework will rely on the courts, which risks repeating the problem instead of helping to resolve it. Court intervention, as I will later argue, is a factor exacerbating land disputes.

In 2013, a round-table meeting hosted by the Office of the Prime Minister to discuss how to address the development of water, agriculture and energy in Solomon Islands, ended up as talks on land disputes. Instead of discussing the agenda, it was reported by Osifelo in *Solomon Star* that land disputes and ownership dominated day one of the discussions: “Participants continued to raise the issue of land ownership that hinders development in the country instead of discussing the quality of water or how to improve it’ (Osifelo, 2013, November 07). One of the facilitators of the meeting stressed that “Solomon Islands cannot do private or public investment because of land ownership issue. It is about ownership, if we don’t own the process it will eat us” (p. 3).

In Malaita province, the Ministry of Provincial Government and Rural Development noted in 2001 that there was an “acute land dispute problem” emerging on Malaita (Rural Development Division, 2001, p. 17). This continues to affect economic development in the province, mainly in rural areas where many of the people live. This was in relation to the customary tenure where land is owned by tribe, clan and extended family. This issue was also noted by Futaiasi (2011) who asserted that customary land disputes are widespread in Malaita province and continue to affect socio-economic development on the island.

From this survey it is apparent that land disputes have been a major problem in Solomon Islands, especially in Malaita. To understand the issue, this study on ‘Land disputes and the politics of economic development in Solomon Islands’ is approached through a case study to demonstrate how changes to land tenure practices have
influenced the level of land disputes in rural Solomon Islands thereby decreasing or denying the chances for economic development to happen.

**Purpose of the Study**

The aim of this study is to examine the causes of ‘customary land disputes’ in the context of modern ‘economic’ development in Solomon Islands, and to draw out the implications of such an understanding for re-thinking the established approaches to dispute resolution. It does so by examining the case study of the Bina harbour development project in Malaita.

The case study of Bina land disputes and harbour development in Malaita province is a significant site for examining this question for a number of reasons. First, this has been a test case for the national government to target the development of customary land on Malaita, which to date has not been successfully resolved. Second, despite the dispute the government is determined to see the project implemented. If the project is successful the lessons learned can provide some basis for development in other locations in Malaita. Third, the project is a joint initiative between the national government and landowners which aims to provide employment and basic services to the people. It also provides insights into ways to handle other land disputes on Malaita, and Solomon Islands. Fourth, this is an important development for Solomon Islands because a large proportion of internal migration to Honiara and other provinces is from Malaita rather than from any other provinces. If major developments can happen in rural Malaita this would draw the province’s population back through employment and better services. Finally, the Bina case study is important as an illustration of the different government policies over time, and how the government and people continue to deal with the issue of customary land disputes and economic development. Furthermore, it also demonstrates the different levels of political interaction between the central government, the provincial government, the landowners and people.

This question of the causes and implication of land disputes entails examination of the following sub-questions:
(1) In what ways have traditional leadership and land tenure systems changed?
(2) How did those changes influence the current perceptions on land disputes?
(3) What impacts have the changes had on land disputes and development?

The search for answers to these research questions has had several major objectives. First has been to define traditional land tenure systems, land disputes and development in the contemporary Solomon Islands. The second has been to identify the changes that took place in the traditional leadership and land tenure systems, and the third, to explain in what ways the changes in general and according to the literature contributed to land disputes and development. Fourth is to study the Bina case study in West Kwaio, Malaita province, and to explain the changing traditional leadership and land tenure systems and its impacts on land disputes and economic development. Finally, to identify the different government policies that deal with disputes on customary land and development in Solomon Islands.

**Naming the issue**

The disputes about the Bina land are very complex. The land disputes that transpired in Bina are related to the different tribal lands, the Bina harbour and the two Islands within the harbour, namely Bina’iasi and Sului’niu/Aulanga. This is the area that is referred to as ‘Bina land’ when commenting on the land disputes. However, for the purpose of this thesis, the ‘Bina land disputes’ is taken to mean the Bina/Talifu tribal land dispute, the Bina harbour and the two islands disputes. This area was the prime site for stage one of the development project. With the naming of the issue, it is also important to note that government officials and commentators always use different names to mean the same area and issue and that also applies to the development project. For example, the different terms used are, Bina disputes, Bina harbour disputes, land disputes in Bina, the Bina harbour problem when referring to the ‘land disputes’. Bina harbour development, Bina harbour industrial development project and Bina harbour international seaport are also used to mean the ‘development project’. For this thesis the names used are the ‘Bina land disputes’ and the Bina ‘harbour development project’ (the project). The definition of the issue acknowledges the customary definition of ‘land’ that includes
both terrestrial and marine because until today the land and harbour areas under dispute are still under customary land tenure.

**Case study context**
Malaita province is made up of the small and big islands of Malaita and the atolls of Ontong Java and Lord Howe. The atolls were settled by the Polynesians while the big and small islands of Malaita are settled by Melanesians. The province has a total land area of 4,225 square kilometers and a total population of 137,596 (2009 census), the highest in Solomon Islands (Ministry of Finance, 2011, p.3). A small number (2.0 per cent) of Malaitans still practiced paganism or ancestral worship, while 96.8 per cent are Christians and 1.2 per cent other affiliations (Rural Development Division, 2001, p. 11). This shows the dominant influence that Christianity has on peoples’ lives. But despite the majority of Malaitans being Christians, they continue to remain loyal to traditional practices. This is seen in the practices of customary land tenure.

There are 10 language groups in Malaita province, one of which is the Kwaio language speakers. The case study site is located in this cultural setting. Geographically, Kwaio is located in central big Malaita. Under the modern political demarcation of Malaita province the Kwaio region is divided into East and West Kwaio constituencies. The current population of Kwaio is 18,377 with a total land area not clearly defined (Ministry of Finance, 2011, p. 7). The population distribution is 9,509 in East Kwaio and 8,868 in West Kwaio respectively. Kwaio comprises people who practise paganism or ancestral worship, mostly found in the interior, and Christians who reside around coastal areas. Regardless of such divisions, people who settled the Kwaio region see themselves as ‘one people’ who speak the same language and practise the same traditional land tenure system.

Keesing refers to the Kwaio people as ‘bush people’ who live in small hamlets. These are people whose social structure is set around an individual, and mainly it is the priest (Keesing, 1967, p. 84). The politics of the group is based on religion or cultural rituals. The *fata’abu* (high priest) seems to be the medium of how people learn to conduct
themselves (Keesing, 1970). Within the ‘corporate society’ are those individuals who hold power over a larger group. The status of such individuals can stand out clearly during traditional ceremonies and events such as feasting, marriage, and mortuary (Keesing, 1987).

The system of land ownership in Kwaio is proclaimed through first discovery and settlement of a new tract of land. Keesing stated that “the establishment of the fanua which is precipitated by shrines is all religious—there are strict rules which must be invoked” (Keesing, 1970, p. 760). This is the basis of kin members later tracing themselves to a common ancestor as a way of institutionalizing ownership. Despite Kwaio being a patrilineal society, over time the social structure can change within itself as people interact between the maternal and paternal lineages (Keesing, 1987). Also, the movements from the interior to coastal areas in the 1800s and throughout the early 1900s due to labour trade and plantation labour, colonial government influence, Christianity and westernization have contributed to the changes experienced with the Kwaio traditional practices (Keesing, 1978, p. 247). Similar changes due to internal migration were also confirmed by Guo (2011) in relation to a study of how the Langalanga people settled the lagoon in the western coast of the Island of big Malaita, adjacent to West Kwaio region.

Conflicts over customary land and development were apparent in Kwaio traditional societies and during the colonial era (Keesing, 1967). Keesing (1967) argued that: "Land disputes reflect in part a point of potential conflict in traditional land tenure, between rights derived from active use and long residence and rights deriving from agnatic status (when they have not been utilized). And should one seek to alienate or otherwise profit from the land at the expense of the other, conflicts may occur” (p. 94). However, Akin (1999) asserted that the lack of development in the Kwaio region is due to the peoples’ negative perception of the government. This was in relation to the British colonial government expeditions of 1909, 1911 and especially 1927 in East Kwaio. It followed the killing of colonial subjects by Kwaio men, which led to coordinated attacks by government forces that resulted in the pacification (suppression)
of the Kwaio people and the region to some extent (Keesing, 1967, 1978; Bennett, 1987; Akin, 2013).

The Bina harbour development project is located in West Kwaio. The proposed project is on customary land, which is currently contested between a number of tribal groups and individuals. Historically there are contesting claims over the settlement of the Bina land by a number of different language groups on Malaita, which included the Kwaio people hundreds of years ago. Settlement also coincided with the labour trade, Christianity and colonial administration period from the 1870s to the mid-1900s (Keesing, 1978; Bennett, 1987). Today those who claimed ownership of the land were from the different language groups in Malaita, especially the Kwaio, Kwara’ae, Langalanga and Are’are people. The parties to the dispute have contested the ownership of the land in Court. Since the project was initiated by the national governments in 1987 there has been little progress in resolving the issue.

Many different explanations have been offered in the past for why the Bina harbour development has not eventuated in Malaita and especially in West Kwaio. For example, the national and provincial governments argued that the main reason the Bina harbour development did not eventuate was due to the disputes surrounding the customary land ownership (Osifelo, 2010; Puia, 2012). On the other hand, landowners claimed that the land was not a problem. It is the government’s approach and the court system that is causing the problem. While the different arguments continue to be asserted, the issue remains unresolved because the root causes of the land disputes were not identified and dealt with. Understanding the root causes of the Bina land disputes is the fundamental question for this study to address.

The Bina harbour project is crucial to Malaita and Solomon Islands. However, the development project has not eventuated due to land disputes. The land disputes are seen to be related to customary tenure problems, the court system and government land alienation policies. But what are the root causes of the disputes and the lack of the Bina harbour development project that resulted? The argument of this thesis is that the loss of
custom land tenure practices and the lack of understanding of the changes to land tenure practices were causing the land disputes. This is why the history of the Bina land disputes and the harbour development are studied against the significance of the changes that took place in West Kwaio society during the period from when the first disputes were recorded to the current status. Through this approach, the causes of the Bina land disputes are understood in detail. This can help to address the problem that leads to the lack of development in Bina and other rural areas in Malaita.

**Research methodology**

The fieldwork in Solomon Islands was conducted from mid-November 2013 to the end of January 2014. When conducting field research, the researcher used a number of methods of data collection. First, the study required the collection of relevant government policies, ministerial statements, court records and journalistic commentary relevant to customary land disputes in Solomon Islands. In particular, the focus of documentary search was on the Bina land disputes and harbour development project in West Kwaio, Malaita province.

I consulted several departments and ministries. The specific ones are the Department of National Archives, the National Library, the National Parliament, the Bina harbour Development Office in Auki and the Ministry of Commerce, Labour and Employment (MCLE). A walk–in consultation approach was used when contacting these departments. Each walk–in consultation sought to verify what process was required for research to be done with each institution. With some, the documentation of research I produced was enough to go ahead with research while for others, despite my having the approval from the Ministry of Education and Human Resources Development (MEHRD), a formal request was necessary before I was allowed to carry out research.

Secondly, in-depth interviews were carried out with selected participants based on a semi-structured questionnaire that was used as a guide. The target groups selected for this method were the politicians, government administrators, the chairman and secretary of the West Kwaio Lafari House of Chiefs and heads of the four land owning groups.
Politicians that were interviewed included NPL, who is a national leader interviewed on 17 January 2014, and PMP the Malaita provincial leader interviewed on 22 November 2013. The government administrators included UST from the Ministry of Commerce, Labour and Employment (MCLE) interviewed on 4 December 2013, and the Bina Harbour Development Officer, BDO, whom I interviewed on 25 November 2013. Unfortunately the minister responsible for the MCLE was not available on several attempts I made to interview him, while the Member of Parliament representing the West Kwaio Constituency was sick at the time of this research. Also, the Provincial Secretary of Malaita Province was away in Honiara on the week I was in Auki and on annual leave during my second attempt to interview him in Auki.

There was some difficulty in locating the chairman of the Lafari House of Chiefs during the time I was at Bina area, thus I did not have the opportunity to interview him. With the heads of the four land owning groups, only one of the four heads who represented the Rafea/Kwaleunga tribes, chief RKT, was interviewed on 20 January 2014, but in Honiara instead. Two representing the Kwaleunga and Ailakwaii/Takwado tribes decided to be interviewed in groups while the chief/landowner representing the Baekwa’asi tribe was not available.

Thirdly, focus group discussions were used during the fieldwork. This was mainly done with the Lafari House of Chiefs, landowners, village/community leaders and youth representatives. In total there were four focus group discussions conducted from 25 to 29 November 2013, during the one–week stay at Bina area in West Kwaio. The first focus group, which consisted of six participants, was conducted on 26 November 2013, at Sinafoloa village, which lies south of Bina village and overlooking the Bina harbour. This group comprises three members of the Lafari House of Chiefs customary land dispute panel (the panel) each representing the different tribes, as well as three chiefs of the Kwaleunga tribe. The selection of participants was done in consultation with members of the panel.
The second focus group discussion was conducted on 27 November 2013 at Gwaidingale settlement (Bina hill) which is north of Bina village and also overlooking the Bina harbour. There were four participants: the chairman, two members of the Bina Harbour land dispute reconciliation committee and one youth representative. The identification of this group was decided after consultation with the chairman of ‘the panel’. The third focus group that was conducted on the same day was at Bina village, the precise location proposed for the staging phase of the development project. There were four participants comprising all current landowners of the Bina/Talifu land base on the current court decisions. The final focus group discussion was held at Ngarilasifono on 28 November 2013, the cultural meeting centre for the Lafari House of Chiefs. There were a total of 14 chiefs was present at the meeting.

All the participants interviewed in the four focus group discussions were male. In their capacity they are members of the Lafari house of chiefs, heads of the different tribal landowning groups, landowners, village chiefs, community leaders and youth representatives. The second and third discussion groups were made up of those who were residing at Bina and those who have recently moved from Bina to a new settlement site for the second group. However, their active participation in the Bina land disputes makes it very significant to have them interviewed. In the third focus group there was an old man who is the current principal landowner and title holder, but who was mentally ill at the time of the research. Despite his health status people still respect him because of the fact that he is one of the principal landowners.

For government participants the selection was predetermined prior to the fieldwork. For the Bina participants (chiefs, landowners, village/community leaders and youth representatives) the actual figure was decided when I was in the field. This was done in formal consultation with the chiefs and village/community leaders. In total, 32 participants participated in the interviews and the focus group discussions, comprising government officials, Lafari house of chiefs members, tribal landowners, village/community leaders, and youth representatives. The selection of this sample was
based on the fact that these different participants have vital information to provide to the study.

All interviews were conducted through a guided questionnaire and interviews were recorded using a multi-media player (MP3) recorder. This proved to be a reliable tool for this study. For documentary search with government ministries, relevant information was collected through hard copies and electronic soft copies by using a flash drive. At some government departments, I was given the opportunity and time to search personally for files and using a laptop to record all relevant information that can be found. This was done mainly at the Bina Harbour Development Office in Auki on the second week of fieldwork.

Interviews and focus group discussions were done in the Solomon Islands Pijin, the Kwara’ae language and Kwaio language. The Solomon Islands Pijin is a lingua franca that is widely spoken by Solomon Islanders, besides English being the formal language. All government interviews and focus group discussion 2 were conducted in the Solomon Islands Pijin. Focus group discussion 3 was done in Kwara’ae language (my mother tongue) while focus groups discussions 1 and 4 were in both Kwaio and Pijin. With Kwaio language, a research assistant, Chief Frank Baegeni, helped me to understand the context of discussions. Although I asked the questions in Pijin, there was a lot of code switching when people responded. This is where the research assistant was very helpful in clarifying things. My research assistant was the chairman of Lafari House of Chiefs land disputes panel, ‘the panel’, and the one I resided with during my time in West Kwaio. The chairman was also the most respected chief due to his in-depth knowledge of the West Kwaio custom in relation to land tenure. This was an advantage for this research.

After each interview and focus group discussion information was then transcribed into one standard language, English. During the process of transcribing raw data I tried as much as possible to retain the actual and intended meaning of what participants said when responding to questions. Following the standardisation of all information into
English, the second level of coding involved placing them according to the different themes and sub-themes. The selected themes were predetermined but were later reworked to capture all of the participants’ responses. These standardised findings were further analyzed and presented in the discussions under the relevant sections of this thesis.

Immediately when I arrived in Solomon Islands the first thing I did was to get a letter of approval to do research in the country from the Ministry of Education and Human Resources Development (MEHRD) in Honiara. Unfortunately, the letter was not ready until three weeks into research fieldwork. This was because the minister who was supposed to sign the letter was away overseas. Despite that, I was given verbal assurance by MEHRD to go ahead with field research and when difficulties arose to liaise with them. Given this assurance, I proceeded ahead spending a week in Honiara from 13 to 19 November 2013 consulting with relevant government departments and the Malaita provincial government. Overall, the research work with government departments took four weeks, while one further week was spent in Auki, another one week around Bina and another week on travelling.

Contacts with departments in Honiara were done through walk-in interviews followed by scheduled appointments. For the authorities in Auki contact was made through the Ministry of Provincial Government and Institutional Strengthening (MPGIS) which has the jurisdiction over all provinces in Solomon Islands. For the Bina authorities, contacts were made through the Auki authorities and individuals I met on the streets in Auki. In Auki, there are designated parking locations for public transport servicing each of the roads on Malaita. Bina is situated along the south road and this where I obtained contacts of people to interview. The Bina area also has mobile network coverage and so I used mobile phone to contact people. This also proved successful.

Finally, as part of the procedure for conducting interviews and focus group discussions, a brief introduction was made to explain the purpose of the interviews, focus group discussions and why it was important to have participants’ views on the Bina land
disputes and harbour development issue. Relevant documentation was also disclosed to participants to verify the research project. In all cases, verbal consent was enough to show approval. The length of time spent to interview participants varied but it was generally around one hour. With the focus group discussions the length of time varied from one hour to three hours. The difference in timing depended on the groups involved and the ideas discussed when contributing to questions raised. Codes were used in the place of names of participants to protect the identity and to maintain confidentiality.

**Organisation of the Thesis (Structure)**

The thesis comprises six chapters as follows:

**Chapter 1**–is where I establish the significance of land disputes in obstructing development in Solomon Islands; introduce the purpose to examine more deeply the question of causes and the implications of them for constructing appropriate dispute resolution; introduce the Bina case study and why it is a very useful site for exploring these questions; explain the methodological approach; and lastly, the way ahead—the organisation of the thesis.

**Chapter 2**–is where I examine what other studies have said about the general question before in relation to the causes of land disputes and approaches to dispute resolution. It is also where I introduce what I will take from this in setting up my inquiry into Bina land disputes and harbour development.

**Chapter 3**–introduces the Bina case study. It sets out the nature of the Bina Harbour Development project, the history of the land disputes around the Bina harbour project, and the significance of the proposed development for Malaita (and therefore the importance of finding appropriate approaches to dispute resolution).

**Chapter 4**–examines the causes of the Bina land disputes.

**Chapter 5**–examines the implications of this deeper understanding of the causes of the Bina land disputes for appropriate dispute resolution if the economic development of Bina and Malaita is to proceed.
Chapter 6—sums up the conclusions and findings.
Chapter 2: Land Disputes and Development: Conceptual Approaches

This chapter discusses the conceptual framework for this study of ‘land disputes and politics of economic development in Solomon Islands’. The first section defines customary land disputes. The second section surveys the causes of land disputes in Solomon Islands. This focuses on the changes attributed to the new economic system and labour trade, Christianity and the colonial government policies. This includes the questions of how and why customary land alienation and the use of formal court system contribute to land disputes and lack of economic development. The third section focuses on the land as an identity, while the fourth surveys the three development approaches to understand the relationship between land disputes and economic development namely the traditionalist, modernist and midway views. The chapter ends by posing the gap in the literature that this study aims to contribute towards in understanding customary land disputes and economic development in Solomon Islands.

Defining customary land dispute

Customary land disputes are a complex and highly contested issue in Solomon Islands given the different customary tenures in practice. This is reflected in the different definitions that commentators give to what customary land is. Hvidings in a study titled ‘Contextual flexibility: Present status and future of customary marine tenure in Solomon Islands’ described customary as “closely tied to the concept of kastom as selective representations of the past, invoked not least for contemporary political ends” (Hviding, 1998, p. 254). The use of kastom is a corrupted Solomon Islands Pijin language version of the standard word custom (Akin, 2013). Bennett defined customary land as “any land owned, used or occupied by a person or community in accordance with customary native usage” (Bennett, 1995, p. 249).

In another definition of customary land, Paterson (2009) stated, that most customary land is owned jointly; that persons other than the owners may have subsidiary or secondary rights, less than rights of ownership, in customary land; and that the rights of persons in customary land are derived from and determined by rules of custom of the
area in which the land is located and which are expounded by chiefs and elders but which are normally not written down or officially recorded” (Paterson, 2009, para. 5).

Two aspects that stand out from the provided definitions are people and the land. It is the practices that people observed when using land that constituted their custom. In Melanesia the concept of ‘land’ covers both the terrestrial (the land, forest, rivers and living things on land), and the sea and marine resources (to include coastal reefs and the sea adjacent to land based on some traditional principles and practices). Burt, an anthropologist who studied Kwara’ae land tenure in Malaita, asserted that to understand their concept of land:

we have to go beyond the Western idea of land as an area of ground, and remember that the usefulness of their land depended on the forest ecosystem as a whole. It is the forest which gives the land its fertility, allowing people to make their temporary gardens of root crops and vegetables in forest clearings, to plant nut and fruit trees, and so to feed themselves and their pigs (Burt, 2010, p. 1).

For Melanesians land is also about their identity. Chris Ballard argues that “land is the basis for their membership and nationality for most Melanesians” (Ballard, 1997, p. 48). Ballard also noted that the calculus power of land is in the issue of identity, which is still prominent for Melanesians.

As enacted by the law in Solomon Islands customary land means “any land not being registered land, other than land registered as customary land, or land in respect of which any person becomes or is entitled to be registered as the owner of an estate…lawfully owned, used or occupied by a person or community in accordance with current customary usage, and shall include any land deemed to be customary land” (Land and Titles Act, Cap 133). Significant to these different definitions is the people’s identification with the land, which is very important to Solomon Islanders (see below section on identity). Thus, when the unwritten rules and principles that govern the
practices of land were breached, it gave rise to disputes. Because such disputes are over land, they came to be called land disputes.

A study conducted in 2010 by Loode, Nolan, Brown and Clements on *Conflict Management Processes for Land Related-conflicts* stated that “disputes arise when two or more people or groups who perceive their needs, interests or goals to be incompatible, communicate their view to the other person or group” (p. 14). On the other hand, AusAID (2008) in a study titled *Reconciling Customary Land and Development in the Pacific* stated that land disputes are “a disagreement over land rights and boundaries clauses. A land dispute occurs when specific individual or collective interests relating to land are in conflict” (AusAID, 2008, p. 139). Land disputes often arise out of disagreements over land usage and ownership rights. Such disagreements can develop into major open conflicts when they are not addressed at their early stages. An example of this was the conflict in Guadalcanal from 1998 to 2003, which is related to land (Chevalier, 2000; Bennett, 2002; Wilson, 2010).

There are different types of land disputes that can happen over customary land. Loode and others (2010) noted that land disputes can be located “between customary owners, between customary owners and the government, or between customary owners and foreign or local investors” (p. 19). In another study, when discussing *Customary Land Ownership, Recording and Registrations in the To’abaita Region of Solomon Islands: A Family Tree Approach*, Saeni (2008) has identified four types of land disputes. Disputes can first be intra-tribal – amongst members of the same tribe or members of a traditional community due to corruptive practices. Second are inter-tribal disputes – a common but complex type of dispute between different tribes or clans who claim the same piece of land. Third are boundary disputes – these are over boundaries of land blocks. For various reasons some people may “illegally” want to extend or relocate their boundaries. This can be complicated because natural features that used to mark boundaries may have been destroyed. Finally, there are disputes that occur between the state and land owners as a result of urban growth, expiry of lease or inappropriate possession of land from customary land owners.
These different types of land dispute are important for the thesis because they allow for the Bina land disputes to be categorized. In general the Bina case is unique but complex as it involves the first three types of land disputes Saeni (2008) outlined as intra-tribal, intertribal and boundary disputes. Also, it was a dispute between customary owners as noted by Loode and others (2010) above. This demonstrates the significance of the Bina case study.

**Causes of customary land disputes**

The causes of land disputes in Solomon Islands do vary from one particular case to another. Bennett (1987) claimed that population pressure is causing land disputes in Solomon Islands. She also noted that the improper alienation of customary land from its native owners has caused land disputes. This was in relation to the colonial administration’s Waste Land Regulation of 1904 that is based on the view of waste land as ‘land which is not owned, cultivated or occupied by any native or non-native’. In the process of land alienation by the colonial administration, there was no effort to find out if the land was ‘owned’ and, “in doing so left a legacy of land troubles for future generations” (Bennett, 1987, p. 131–132).

In contrast to the view that group ownership rights are a source for disputes, others argue that it was the lack of understanding of the way customary land tenure operates in Melanesian societies that causes disputes. Anderson and Lee argued that:

> It should not be surprising, then, that many Australians [sic] understand so little about Melanesian customary land. They do not understand how land title not written down in a government register can be ‘secure’. They do not understand how people can own land without being able to sell it. And they may not appreciate that families using their own customary lands, in combined subsistence-cash crop operations, can often generate more value than those with paid jobs (Anderson & Lee, 2010, p. 2).
Ballard (1997) has highlighted that in Papua New Guinea the operation of large mining and development had produced land disputes and on-going economic-social conflicts due to lack of understanding of the customary land tenure. Ballard suggested what is appropriate is for a slower, negotiated and more organic process of transformation (Ballard, 1997). In reference to the work of Cooter (1991, cited in Ballard, 1997) on customary land tenure, Ballard argued that “the present form of legislative protection of customary ownership, inhibiting direct transactions over land, is inappropriate because limitations on customary land transactions should come from customary law itself, not from Parliament. Sales and leases of customary land should be enforceable in the land court to the extent that they conform to customary law, neither more nor less” (Ballard, 1997, p. 58).

In addition to the above factors, this study suggests that land disputes result from the lack of understanding of the way historical changes affected land practices seen today. In other words, they can arise from a loss of custom. These changes were caused by a number of outside factors introduced into Solomon Islands. They are Christianity, the new economic system and labour trade and the colonial government policies. For example, McDougall (2005) when discussing land disputes in Ranongga, western Solomons, noted a long standing dispute between the different tribes and communities that lived on the land that World Wildlife Fund (WWF) has engaged in conserving. The loss of custom practices relating to land began with Christianity and the cash economy. The land disputes actually ended in court but villagers were reluctant to enforce the court’s decision due to the relationship that disputants had with each other in custom. All this was about to change following the engagement of WWF when it pushed to clarify who were the true owners of the land. This led to more arguments. It reached a stage where it almost destroyed the social fabric of the communities. The communities were only spared due to the ethnic tension in Solomon Islands that started in 1998, which forced WWF to discontinue its engagement with the development.

In Arosi of Makira in Solomon Islands, Scott (2007) discusses how introduced political changes had affected the land practices. When the colonial government policies of
Waste Land Regulations were enforced in the early 1900s it gave rise to the fear that people in Arosi would soon lose their land to outsiders (planters, missionaries and the colonial government). This forced them to occupy vacant land in coastal areas, which led to the creation of new gardens and erecting new settlements. Over time when the anticipated threat did not occur, people started to dispute the ownership of the land. Scott claimed that some of the disputes relating to customary land in Arosi were silent for many years. They only surfaced when people started to fear the loss of authority over their land, especially the fear that those now occupying the land will claim it. This has led to “uncustomary” land practices, but which are seen as a means to reassert authority over the land. The disputes resulted in the stealing of old shrine artifacts to build new shrines that were later used in court to claim land. Disputes also increased when the court intervened.

The following changes/historical influences have been most significant in affecting custom.

i. The new economic system and labour trade

Many of the changes to customary land were a result of the introduced new economic system that started during the labour trade period. This altered the value of customary land. The new value placed on customary land by the new economy became a reason for contest over land over the ensuing years. In Solomon Islands the new economic system that was first introduced during the native contacts with the European traders later had a lot of influence on people’s lives. Bennett (1987) provided a comprehensive discussion on this in Wealth of the Solomons. In this monograph, Bennett argued that the new economic system was first introduced by the traders. Trading then was mostly in items but less in cash. It was not until the period of indentured labour recruiting for overseas plantations in Queensland, Fiji, Samoa and New Caledonia, and later to plantations in Solomon Islands, that cash became the dominant commodity for trade.

The increasing importance in the value of cash in the plantation economy resulted in the selling of a birthright – the land. In one instance, Bennett noted that “with cash
becoming important for the new religious activities as well as secular concerns, Ngatu [a chief and big-man] had good reason to sell 800 acres at Seghe to the government in 1913” (Bennett, 1987, p. 116). Similar cases were noted by Bennett for other locations in Solomon Islands where customary land was sold as a commodity by certain individuals without the knowledge and approval of members of the clan that own the land (see pp. 116−120). In West Malaita, the selling of land was riddled with misunderstandings on both sides (This was the area known today as West Kwaio). The selling of land was done by labour returnees in most instances. The latter developed into protracted land disputes over the years (see pp. 145−146).

In West Ngella, Foale and Macintyre (2000) argued that “it is the commodification of resources that comes with the new form of economic exploitation that exerts pressure to treat tenure systems as fixed and enduring, when in fact they are clearly adapted to political volatility and fluctuations in lineage size and strength which have historically driven changes in control over and access to resources” (Foale & Macintyre, 2000, p. 42). Foale and Macintyre also claimed that the influence of the cash economy has led to uncustomary claims being practised in West Ngella. Some people with intentions to claim ownership of land for cash benefits performed traditional feasting−giving practices. However, when people used the court to claim the land without the true land tenure practices of the native West Ngella people, the court found such practices were not done according to the West Ngella customary land tenure protocols. Also, cash has become the driving force in the poaching of marine resources by the different groups. This demonstrates the influence of cash and the impacts it had on the value of land that resulted in disputes.

In Papua New Guinea’s provinces of West New Britain and Oro, Curry and Koczberski (2009) stated that the demand for the use of resources, which includes land, has increased due to people’s rising material aspirations such that cash becomes ever more important for meeting everyday needs: "as customary land tenure is modified, people’s views and attitudes to land are changing such that land is increasingly being viewed by some clan members as a commodity that can be leased to oil palm milling companies,
or informally ‘sold’ or ‘rented’ to people outside the land-holding group" (Curry & Koczberski, 2009, p. 32). The commodification of land has developed into land disputes between the older and younger generations of the land owning groups and between the migrants who buy land and the local land owners (Curry & Koczberski, 2009). In Vanuatu, Burlo (1989) noted a similar case where land has become a politically volatile issue when it comes to tourism development. The alienation of customary land due to the cash economy has fuelled to land disputes. This led to an on-going contest over customary land between traditional owners and developers, the former basing it on custom principles and traditional values while the latter argued for cash benefits and profits.

ii. Christianity

Christian missionaries have been an influential factor of change in Solomon Islands. Today more than 95 per cent of Solomon Islanders are Christians. This shows how influential Christianity was in changing the religious beliefs and practices of the people from paganism to Christianity. In Isabel the influence of Christianity through the Melanesian Mission led to the establishment of the ‘church chiefs’ or ‘mission headman’ (Hilliard, 1974, p. 112). This affected land tenure practices as people look up to the new church leaders rather than traditional leaders. White observed that “the traditional mode of leadership has diminished greatly in importance and has been supplanted largely by government and mission statutes in island-wide political institutions. The most sociopolitical changes have followed from pacification and conversion to Christianity through the Anglican Melanesian Mission” (White, 1980, p. 354). White went on to say that “during the years of conversion on Santa Isabel, both catechists and priests acted as key figures for resettlement of larger villages along the coasts, and in the transmission of new religious beliefs and rituals that were regarded as a source of considerable new mana” (ibid.). This led to loss of custom that later caused confusion about the ownership of land in coastal areas and ended in disputes.

In Malaita, the Anglican Melanesian Mission was first established at Port Adam in 1890. This was in the early years of the labour returnees from Queensland as noted by
The Mission also set foot at Sa’a in South Malaita and Fiu in West Malaita (Kwara’a). Catholics were in Maramasike, Rohinari and Burma at Bina in West Kwaio from 1910 to 1913. The South Sea Evangelical Mission (SSEM) that has its roots in the Queensland cane fields was established at Bina in 1904 and was the most influential in the 1900s. As Keesing (1978) stated, the fundamentalist religious group argued that:

ancestors were "devil devils", and music, dancing, and other elements of "heathen" custom associated with mortuary feasting and other rites were banned with puritanical iconoclasm that made S.S.E.M. villages gloomy and lifeless. By the early years of the century, then, there were a number of enclaves along the Malaita coast where those who had opted for change had clustered. These represented a stream of influence counter to, and challenging, those who remained committed to old ways (Keesing, 1978, p. 250).

Christianity also encouraged internal migration from interior to coastal areas. In West Kwaio’s coastal villages “almost every Malaitan interviewed in this area had been born in a bush village and had migrated to the coast because of conversion to Christianity” (Bennett, 1987, p. 185). Keesing (1967) further noted that the establishment of new settlements was supported by missionaries and the government. During this period conflicts between pagans and Christians were ‘frequent’ over the years. This even affected the development of health services in East Kwaio as pagans objected to the building of a clinic because they claimed this would infringe certain taboos (Keesing, 1967).

In Kwara’ae, Maenuu argued that Christianity was a major factor of change. He argued that: “Our land tenure was disrupted for the first time when Christianity was introduced” (Maenuu, 1981, p. 25). The encouraging of bigger communities led to different people from different tribes and clans staying on land owned by one tribe causing disputes. The different denominations also fragmented the Fui’nwae (tribe), the result being that traditional knowledge was eroded or disappeared when children born in
Christian villages were not educated about genealogies (Maenuu, 1981). The settlement of larger villages in coastal areas and new practices elsewhere in Solomon Islands distorted the customary land practices especially where competitions developed over access to land for plantations to earn cash (Bennett, 1987). This was encouraged by Christian missions for people to give cash as offering to the work of the church.

Guo (2011) highlighted that for the Langalanga people the recent change to Christianity in the 1970s shows a major change to traditional practices and rituals, which are links to custom and traditions (see p. 229 for example). This was demonstrated in the case of Seagrass Island where the ownership of the island was contested between individuals of the same clan who aligned themselves to two different Christian churches. The dispute was over an extended member of the family proposing to build a church on one side of the island while another opposed it because he belonged to another Christian church. The dispute was taken to the court to be resolved but the court decision made no difference to the rights of both parties to use the island. Instead the court and the law were used to serve personal interests, which were seen as not proper in custom.

There are similar changes caused by Christianity, leading to land disputes, recorded in other parts of Melanesia as well. For example, in Longana in Vanuatu, Rodman argued, “Divergent mission policies have contributed to discrepant rates of cultural change within Longana” (Rodman, 1977, p. 527). Rodman discussed how two different Christian church practices have shaped the Aoba people’s perceptions—that is the Anglican Melanesian mission and the Church of Christ. Based on the two Christian beliefs, the Aobans aligned to the Anglican Melanesian Mission have adopted the “middlemen” concept as part of the traditional practices, using the titles and authority vested in them by the colonial administration to further increase their power and authority. This saw them earning ranks through ways that are uncustomary but due to popular support such practices were accepted in the society. As it turns out, “change in the structure of legal authority in Longana resulted in change in the process of dispute settlement” (Rodman, 1977, p. 532). While the Melanesian mission decided to incorporate government, ‘tradition’ and the church, together when dealing with
disputes, the Church of Christ decided to rely on the church as the only means to resolve disputes.

iii. Government policies
In Solomon Islands, the colonization process that led to the changes in customary land practices were executed through use of force, to coerce the native population into submitting to the government rule – a process of pacification (see Bennett, 1987, pp. 103–120). This policy was followed by land alienation by planters and missionaries that was supported by the government. The alienation of land was mostly done without any consultation with the native landowners. This policy was based on “A general belief among Europeans that the Melanesians were destined to die out provided a comforting rationale for the administrators as they permitted the alienation of thousands of acres of Solomons land” (Bennett, 1987, p. 125). The implementation of this policy led to the emergence of disputes. In response the court was established to mitigate disputes but has not been successful. Land alienation and the role of the court system are discussed in the following sections.

a. Customary land alienation
The period from 1900 to 1930 was when the alienation of customary land came into effect in Solomon Islands (Bennett, 1987). During this period more than 10 per cent of lands were alienated by both planters and missionaries with support from the colonial government through the Waste Land Regulations of 1900s. Bennett claimed the policy resulted in the alienation of most coastal arable land in the western and central Solomons. The policy benefited the planters, missionaries, and the colonial government, but not the native islanders, who lost their land. Under the Waste Land Regulation, customary lands in the western and central Solomons were alienated without the knowledge and consent of the native landowners. The landowners later knew this only when planters and their labourers arrived to clear land for plantation estates. This became the source of resentment for Solomon Islanders that resulted in land disputes that have remained until today.
Foukona (2007) when discussing the legal administration of land in Solomon Islands highlighted the Waste Land Regulation as the basis of land disputes when customary lands were taken without the consent of traditional landowners. When the government realized this, a land commission was established to look into the matter. This led to amendments to the Waste Land Regulations, where customary lands can only be acquired by the government and no outsider is to purchase land directly from the landowners. However, “from the 1920s to 1941 the question relating to customary land created problems for district officers who were mainly European settlers or traders” (Foukona, 2007, p. 68).

The modernisation of customary land through alienation was part of the government’s endeavour to see customary land developed. This was evident through the government policies and laws that were enacted during the years after independence, the main one being the Land and Titles Act, Cap 133. These policies reflected what Anderson, T. (2012) described as part of modernisation of customary land. While the acts of Parliament have recognised the need to reform customary law, the constitution on the other hand upholds the customary ownership right of the people. The law itself then becomes the cause for disputes as people who fear losing land resort to the courts to maintain their right over land. Also the definition of ‘land’ under the Land and Titles Act, Cap 133, was not compatible with the definition of land in custom. As noted above by Burt (2010) land is more than a piece of ground for the Kwara’ae people. Ballard (1997) highlighted that the importance of land to Melanesians is an identity that covers both terrestrial and marine. However, the Land and Titles Act, Cap 133, definition of land in Solomon Islands does not cover the sea. This has become a point of contest when customary land was decided in court giving the ownership of the sea adjacent to the land to the state.

b. Formal court system

When land disputes were first formally recognised in Solomon Islands, this led to the first and rather ineffectual land commissioner Gilchrist Alexander. In 1921 Judge F.B. Phillips was appointed as commissioner, who focused mostly on land disputes in the
western Solomons that arises from the enforcement of the ‘Waste Land’ Legislation (Bennett, 1987, p. 195). The work of Commissioner Philip resulted in some of the alienated lands being returned to the traditional and customary owners. The focus of the land commissioner on the western Solomons meant the problem remained elsewhere in Solomon Islands. Since then all land disputes were dealt with only by the District Officers, who were British. Tiffany (1983) argued that the expatriate justices lacked the custom knowledge and relied much on common law to give decisions to disputes. Also, “District Officers on Malaita consistently employed primogeniture and patrilineal descent in assessing land inheritance while discounting cognatic principles as a basis for claiming land rights. Indeed, much of the post-war increase in land litigation on Malaita may be attributed to previous decisions by District Officers favouring agnates in land cases” (Tiffany, 1983, p. 280). Decisions given on this basis by the DO’s court were later seen as contributing to land disputes as group land was given to individual ownership (Tiffany, 1983).

In 1942 the Native Courts Ordinance was created. According to Foukona (2007), “This was an attempt by the protectorate administrators to involve Solomon Islanders in the settling of disputes by relying on local knowledge as far as possible in reaching a decision” (p. 69). In 1945 the Native Courts Regulation was established which eventually led to the New Native Administration Regulation. This resulted in the creation of “nascent courts” around Malaita; one of them was in Bina (Akin, 2013, p. 156). Regardless of the existence of such establishments, the problem of land disputes remained unabated in Malaita and throughout Solomon Islands. The colonial government then established another Lands Commission called the ‘Sir Allan’s land commission’ to investigate the increasing number of complaints and disputes arising from both the alienated land and customary land (Allan, 1957). By this time, the alienation of customary land had already happened in West Kwaio at Buma, and from Bau’nani to Su’u (Bennett, 1987).

In 1972 the Customary Land Appeals Court (CLAC) was created to deal with appeals from the Native Courts (Foukona, 2007, p. 69). Foukona noted that the CLAC relied
more on customary law to determine land disputes. This remains a point of debate as customary law was not codified. This question was alluded to by Care (2002) in discussing whether custom can be part of the legal system or not. Yet, by Independence all European ownership of customary lands was abolished and only Solomon Islanders could have the right to own land according to customary practices (Foukona, 2007). The Native Courts also changed to the Local Court with further amendments of the Local Court Act in 1985 (now Local Courts Act, Cap 19). Although there was a change in name of the Native Court to the Local Court its responsibilities remained the same, with the exception of the recognition that was given to the traditional leaders and chiefs by the Local Courts Act, Cap 19, as part of the dispute resolution process.

Regardless of the different levels of court and the numerous decisions handed down in the past, the courts have failed to address the root causes of land disputes. In most instances past decisions by the DO remained a subject of contest due to the lack of customary knowledge and the fact that people who could not communicate well in court, in the broken English language, often lost. The court has contributed to the change in practices relating to land (Tiffany, 1983). This continues to be seen as a cause of land disputes as decisions given by the courts to individuals only deny members of the tribe or clan the right to group land. It was due to the failure by the formal court to deal with land disputes that Foukona (2007) called for the return of alienated land to its rightful owners if land disputes in Solomon Islands were to be resolved. Foukona also suggested that a robust legal system should be considered for dealing with customary land disputes.

Paterson (2009) attributes the failure of the courts in Solomon Islands to a number of factors, including lack of funding and administration support to ensure the court remains in operation. The court has also lacked the required and qualified human resources to hear cases that were pending for years, some for over a twenty years. Third, are the conflicting principles that exist between the two different tenures—the modern state land tenure and customary land tenures—when dealing with customary land disputes (Care, 2002; Tiffany, 1983). The court is embracing the capitalist mode of
clear cut individual property ownership whereas in custom, land is communally owned by a group – through the tribes and clans. But, when decisions on customary land have been given by the court to individuals, it becomes a cause for resentment. This developed into on-going appeals that only increased the level of disputes, as seen in recent years.

While the changes highlighted above have contributed to customary land disputes, there are changes that actually helped people to defend their rights to land against outside forces, mainly foreign companies. This was the case in Marovo in New Georgia. Hviding (1993) noted that Marovo people were able to understand the changes and take action to protect their land from the possible ramifications that allowing land to be mined by foreign companies would bring. In a way, the Marovo people have learnt to deal with the changes through what Hvidings called ‘indigenous essentialism’ to achieve their goals. However, this does not stop disputes between members of the butubutu (tribe) as there are those who support the mining development while the rest have objected to it on the basis of environmental damages and the likely social impacts, as seen in the case of Bougainville, Papua New Guinea. It was the dispute that forced the butubutu to initiate new ways of dealing with land and development, which can be seen as uncustomary. This seems to be quite significant.

The identity issue
An important concept in Melanesia and Solomon Islands is land identity. In fact, there are commentators and scholars who have prioritized land identity in Melanesia. One of the widely used descriptions of land identity in Melanesia was coined by Dove, Miriung and Togolo (1974).

Land is our life. Land is our physical life-food and sustenance. Land is our social life; it is marriage; it is status; it is security; it is politics, in fact it is our only world…We have little or no experience of social survival detached from the land (cited in AusAID, 2008, p. 3).
Ballard stressed that in PNG “land is both the prize in the process of resource development and the means of access to the contest between communities, who insist on their birth right and prior occupation, and the state, which asserts its sovereign and constitutional rights to certain elements of the land” (Ballard, 1997, p. 48). Ballard further stated that “the ownership of land is thus enmeshed in a web of other forms of relationship. Land cannot be ‘just’ land. In short, land cannot, under the present conditions of social life in rural Melanesia, be conceived of as commodity….it only becomes such when defined as such by a new cultural system intent on creating a new kind of economics (Ballard, 1997, p. 52).

In Vanuatu, land is important for ni-Vanuatuans’ social identity, which is a prominent part of local politics (Burlo, 1989). In Kwara‘ae, Malaita, Burt stated that “land represents their whole natural resource base, the foundation of their material and cultural existence…Land tenure entails values basic to the tribal social and economic system of earlier generations which are still invoked, if not always honoured, in the rapidly changing society of the present” (Burt, 1994, p. 317). It is this close relationship to land by the people that makes it special when it comes to development of the land. However, given the impact of change on customary land tenure practices, the appropriate question to ask is, how static is the land identity in Solomon Islands? From the discussion above, the issue of identity is fast losing its status and importance amongst the people.

As Bennett (1987) described, in Solomon Islands during the colonial administration, people who owned land sold it for cash money and other modern benefits. Many of the changes in land practices seen today do not reflect the values of land identity. This is why these changes have to be understood in order to deal with the root causes of the increasing land disputes in customary land. These changes can be understood in a number of ways.
i. Custom is evolving

As Ward argued, “It is also necessary to recognize that ‘customary tenure’ changes over time, and at differing rates in different places, as custom itself changes in some uncertain relationship with technological, economic, social and political change” (Ward, 1997, p. 20). Thus historical change is paramount to an understanding of the land issue. Ward further argues that, the argument that customary land tenure is not changing gave a wrong view of what is happening to the different tenures in the Pacific. If we remain static and accept land tenure as rigid then the approach taken by governments and individuals to deal with land disputes will always be a failure. This would result in low or lack of economic development as demonstrated by Moore (2007), when discussing the Misappropriation of Malaitan Labour where the lack of understanding changes and use of Malaitan labour in the past developments has not benefited Malaita itself. It is on this basis that this study will demonstrate the significance of historical changes in land tenure practices and the impacts of land disputes on economic development.

ii. Understanding the past

To gauge the changes in land practices seen today it is important to establish historical changes through past anthropological studies. Burman (1981) has demonstrated this when comparing Hocart (1908) and Rivers (1908) studies of practices in Simbo to what he was able to observe during his study in 1978. Within a time span of seventy years, Burman has noted many changes taking place in Simbo. These were caused mainly by outside influences-Christianity, the contact with Europeans and traders, the new economy and government. Such changes were not unique to Solomon Islands but observed in other societies in the Pacific. For example, Parke (2000) noted similar changes in relation to the changing nature of customary authorities in Rotuma. The changes to customary land practices were caused by the contacts with Europeans, missionaries and the government.

At the same time, when looking at changes based on past anthropological studies some degree of caution is required. As Ward argued, “many of the current problems attributed to customary tenure stem from European misinterpretations of the tenure forms which
existed in the late nineteenth and early twentieth centuries” (Ward, 1997, p. 25). Akin (2013) acknowledged this view when discussing colonialism and the root of Malaitan kastom. In the past, anthropologists and historians who studied the Maasina rule movement branded it as a cargo cult without analyzing the historical documents in detail. They only presented what was stated by the colonial administrators without analyzing the information and other facts available. This led to some misguided assertions and claims. Akin was able to demonstrate that Maasina rule is not a cargo cult but a political movement that developed out of people’s frustration with the colonial government policies.

Finally, before outside anthropologists came to study the different societies in Solomon Islands in the nineteenth century, many changes had already taken place due to the contacts with Europeans since 1568 (Bennett, 1987). Practices in relation to customary land are changing elsewhere in the Pacific islands. These changes include a tendency for people to privatise, or individualise, control of holdings within the realm of customary land; for current practice to diverge from what is stated to be custom; and for practice to diverge from the law where tenure has been codified (Ward, 1997, p. 19).

**How land development should be approached**
The development of customary land started during the colonial administration has been affected by land disputes. Even the alienated lands thought to be free of disputes also continue to experience disputes (Foukona, 2007). The situation in Solomon Islands remains a challenge. The policy of alienation of customary land first introduced by the colonial administration was difficult as landowners did not allow their land to be alienated. The policy is based on the view that when land is secured there should be fewer disputes. This should allow for economic development to take place, which would then boost economic growth. However, this was not the case in Solomon Islands. Fingleton and others (2006) argued that much of the lands alienated in Solomon Islands have remained in low productivity. A similar view was also noted in Papua New Guinea by Anderson, T. (2012), who argued, that land modernization as seen in Papua New Guinea and in Melanesia has not given any benefit to the landowners. Instead, it served
the interest of those who are already well-off, including the outsiders. For the landowners this resulted in loss of land.

With the difficulty of alienating customary land, there were some measures taken by the government and individuals in the past. For the government, the difficulties saw a shift in land policies from alienation to land registration to land recording. Today, when the government is involved, people are suspicious because of its record in the past on land alienation which led to the permanent loss of land. In terms of measures taken to deal with customary land there were approaches noted by Fingleton and others (2006) for Solomon Islands in the past. They were the Laru Land Conference, the customary land recording in Auluta Basin, the Christian Fellowship Church in North New Georgia and the Guadalcanal Plain smallholder growers. With the Auluta Basin customary land recording, Fingleton (2008) stated that the landowners did not allow their land to be registered for the fear of losing it to the state. For the Guadalcanal Plain, Allen (2012) argued that the approach taken was successful. This is in relation to what he described as the ‘informal formalization of customary land’, where the customary tenure is maintained when development engaged the land. This had benefited women and youths, who are often being marginalized when it comes to major developments seen previously. This was based on trustees, who are appointed by the tribe or clan to act on their behalf when developing the land.

In the Guadalcanal Plain ‘informal formalization arrangement’ was tailored according to the Papua New Guinea’s Clan Land Usage Agreement (CLUA). Allen (2012) argued that this remains susceptible to future disputes and conflicts despite the current successes. This is because of the matrilineal system of land tenure practiced on Guadalcanal, where land is passed down from mothers to daughters. This could see the repeat of disputes faced by the Papua New Guinea’s Clan Land Usage Agreement (CLUA) where although it was successful, it later became the subject of land disputes between the landowners and outsiders when land is sold or rented out to outsiders. Given this development paralysis and disputes surrounding the use of customary land, the main issue that needs to be understood is ‘land disputes’. It is on this view that the
thesis proceeded by examining the different assumptions of the development of land disputes in the next section.

The three development approaches
This thesis proceeds on the assumption that better management of land can lead to economic development if the root causes of land disputes are understood and addressed. One way of understanding the paralysis of customary land disputes and economic development is to draw from relevant studies in Solomon Islands and elsewhere in the Melanesian region. A survey of literature on the subject has established three development views, which I refer to as the traditionalist view, the modernist view and midway view – a post-development approach. AusAID (2008) recognized such a division of views in relation to customary land as minimalist, privatization and midway approaches.

a. The traditionalist view
The traditionalist view is captured in Foukona’s argument that, “It is necessary that all alienated lands be returned to their original owners so that such owners can use and develop their land to improve their socioeconomic standing in society” (Foukona, 2007, p. 72). This call signifies support for traditional land ownership. Anderson and Lee (2010) also supported the traditionalist view when they argued against Australian foreign policy that promotes reform in favour of the modernisation of customary land in Melanesia.

In reference to the work of the Sydney-based Centre for Independent Studies (CIS) and especially a paper authored by Helen Hughes in 2004 called The Pacific is viable and claiming to be providing a road map for growth and development in the Pacific, Anderson and Lee claimed that “such views perpetuate the misinformation and demand a response which includes the Melanesian voices” (Anderson & Lee, 2010, p. 1). They viewed this paper as an attack on customary land tenure by asserting that “the communal ownership of land is the primary reason for deprivation in rural Pacific communities” (p. 3).
In Solomon Islands, where more than 80 per cent of the people live on customary land in rural areas and have continued to adhere to custom practices, land remains central to their livelihood. Turnbull noted that these are the people that state institutions have had little effect on since independence (Turnbull, 2002). Yet, these are the very people that have power over customary land in Solomon Islands. In fact, the reliance on customary land had proved vital when state institutions have failed during the crisis that started in 1998 (Bennett, 2002). In a study by Fingleton, Care and Lunnay that looks at the land sector in Solomon Islands, the authors concluded that “the formal recognition of customary land rights is necessary for future economic development and the provision of infrastructure to provide essential public services” (Fingleton, Care & Lunnay, 2006, p. 19). These commentators argue for the importance of maintaining customary land tenure in the modern society.

When dealing with customary land disputes it is important to strengthen customary institutions that deal with the issue. Futaiasi (2011) argues that the proliferation of land disputes that impacted greatly on socio-economic development in Malaita is due to the lack of recognition for and strengthening of traditional institutions. He asserted that it is important that such customary institutions like traditional leaders and the house of chiefs are strengthened.

b. The modernist view
Those supporting the modernist view argue that the customary land tenure practised in many of the Pacific Islands societies is a major obstacle to economic development. As we have seen, Hughes argued that “The communal ownership of land is the primary reason for deprivation in rural Pacific communities” (Hughes, 2004, p. 4). This position highlights the difficulties faced when dealing with the many ownership and usage rights. Because of this, the modernist argues that customary land tenure should be reformed. Customary land needs to be alienated from its traditional owners, it is argued, and registered under the state land tenure system. In Solomon Islands, customary land alienation was started by the colonial administration. This resulted in much land being alienated during the colonial period that remains under the modern state land tenure.
Although disputes have remained over such lands, the past and present Solomon Islands governments have been reluctant to return them to their traditional owners (Bennett, 1987, p. 103).

When discussing Australia’s on-going support to land reform in Solomon Islands Fingleton and others noted that “Australia’s support to the lands sector to date was based on the assumption that improving systems and processes will enable the more efficient and effective administration of land” (Fingleton et al., 2006, p. 1). AusAID (2008) supported this view by asserting that land in the Pacific is very complex to deal with because of group ownership. Land reforms were necessary, it argued, if economic developments were to flourish in rural communities (Chand & Duncan, 2013). The fact that everyone has equal rights to land means that disputes are likely to occur when reforms are proposed in favour of one or few individuals. The modernist view is that when land is in the hands of the state the tendency for disputes to occur can be limited as the state has total control of land, and will develop as it sees fit.

However, Anderson, T. (2012) argued that the continuous call for customary land reform in support of economic growth in Melanesia is doing the opposite. Instead of helping to improve the lives of rural Melanesians it actual increases poverty. In fact, much of the land alienation in Papua New Guinea only supports the capitalist world, the multinational corporations and their countries of origin. These are the very people and institutions that continue to push behind governments in Melanesia for land reforms. Regardless of this, the on-going government support through the different government policies towards customary land reforms is promoting the modernist view in Solomon Islands. An example is the on-going call to strengthen the formal land administration unit in Solomon Islands as highlighted by Larden and Sullivan (2008).

c. The midway view – a post development approach

The difficulty faced in reforms of customary land in Solomon Islands is attributed to people’s resistance against the permanent alienation of customary land. In a number of Melanesian countries the national constitution has recognized the customary ownership
since independence. In Solomon Islands this presents a difficulty for the proposed land reforms. On the other hand, the lack of economic development is putting pressure on government to cater for the needs of a growing population. On this basis, Fingleton stated that “customary land ownership is something that cannot be isolated from the people – land is what they identify themselves with. Thus, it can be destructive if no consideration is given to land. A reform must help that form of group ownership but at the same time encourage individuals to develop land” (Fingleton, 2008, p. 27). This is what I refer to as the ‘midway view’.

Turnbull (2002), when discussing the impact of state institutions in Solomon Islands, refers to such arrangements as a ‘blended model’; while Allen (2012) called this midway approach the ‘hybrid’ when discussing the informal arrangement on Guadalcanal. Furthermore, Fingleton and others (2006) see this as a ‘middle road’ approach. Allen (2012) argued that maintaining customary land ownership while engaging in commercial development has worked in the case of Papua New Guinea smallholder oil palm growers and on Guadalcanal. The smallholder oil palm growers have appreciated the “informal formalization” arrangements. Unlike the trustee arrangement, where most times only the trustees benefited, the smallholder informal arrangement saw women and young people earning the benefits of development. This was done without the need to alienate customary land. Although there are foreseeable conflicts that may arise in the future, if managed properly at the current level these can be avoided in the future (Allen, 2012).

The midway approach shows that finding a compromise between the customary land tenure systems and facilitating economic development is a possibility. This is important as land and development in Melanesia is a sensitive subject, where continuous calls for registration will not solve the problem of land disputes. Currently this is the trend that land reform is focusing on in Melanesia, where reform should be taken by the local government and not to be pushed by outsiders as was the case in the past.
Challenges

The challenges that emerge from the above discussion on the problems of land disputes are what this thesis addresses. Land disputes have remained problematic in Solomon Islands and Malaita. A study by Goddard (2010) argued that the lack of understanding of the problem in Solomon Islands is due to the limited information that is available. This has resulted in the lack of mechanisms to deal with land disputes. This has been an obstacle to development and raises the need for more studies and research that add to the existing knowledge of information. Being well informed on the issue can help to establish a rationale to address land disputes and the lack of economic development in rural Solomon Islands.

The contesting arguments made by the three development approaches discussed above form the basis of rethinking land disputes and lack of development in Malaita and Solomon Islands. The challenge is to provide deeper understanding on the issue. The literature describes why and how the process of land alienation in Solomon Islands is a cause for land disputes. Historical change means laws in place are outdated or irrelevant to deal with the issue. In Solomon Islands commentators like Foukona (2007) focus on the legal administration of alienated lands, while Saeni (2008) focuses on the recording of land and family genealogies, and other studies only focus on the immediate causes of land disputes. Futaiasi (2011), for example, has highlighted the acute problem of customary land disputes in Malaita province, which remain as an obstacle to economic development. This demonstrates the challenges and need to look at custom changes to understand the root causes of customary land disputes. This thesis takes a deeper historical view of the causes as its contribution to the debate.

On the question of lack of economic development due to land disputes, the line of thinking now is around the preservation of customary land tenure but strengthening it to adapt to modern changes (Fingleton, 2008). As Maenuu (1981) argued, the Kwara’ae people can develop by themselves without help from the government to improve their standard of living. Gegeo and Gegeo (2001) also claimed that Kwara’ae people can organize at the village level to be involved in commercial activities without having to
see land alienated first before development can take place. Allen (2012) further supported this view in the case of Guadalcanal, where the informal arrangement in commercial development is working in favour of the landowners without having to alienate the land. This was seen as possible way on how land can be developed in Solomon Islands and to reduce the tendency for land disputes. Despite this argument it is apparent that land disputes are increasing on customary land, which continues to affect economic development in rural Solomon Islands.

At the same time it is imperative to note that “in the contemporary climate of increased rural entrepreneurship, rights to land, sea and resources are increasingly subject to dispute. This is particularly the case if an individual member of a community wishes to monopolize a section of communally held land or reef, or a particular resource for personal commercial purpose” (Hviding, 1998, p. 260). Ward has demonstrated the argument of change mainly referring to the cases of Tonga, Fiji and Cook Islands, where custom was constructed during the colonial past (mainly by the government). Despite that, Ward was not able to demonstrate how factors like Christianity, the cash economy and others have contributed to the changes which eventually led to land disputes. This is the gap that this thesis attempt to fill by examining how factors have changed custom and how this in turn has led to land disputes.

Understanding the custom changes in relation to land disputes will help to initiate “appropriate mediation and resolution mechanisms at different levels to prevent large-scale conflicts re-emerging; developing more appropriate systems of compensation and leasing; and better informing people of their land rights” are important (Wilson, 2010: 8). While Naitoro (2002) asserted that ‘restorative justice’ is important to establishing and maintaining social harmony in societies, this can only translate into a workable solution when the issue is understood in full. Likewise, Loode and others (2010) have discussed the different approaches that need to be considered as the starting point to addressing the issue. Therefore, it is the goal of this thesis to demonstrate how the influences of historical changes to customary land tenure practices are important to
understanding customary land disputes and the lack of economic development in Solomon Islands, particularly in Bina, West Kwaio.
Chapter 3: Mapping the Bina land disputes and development

The Bina case study is significant for discussing land disputes and the politics of economic development in Solomon Islands, and in particular Malaita province. The chapter begins by stating the general overview of Malaita in terms of political establishment, land and population distribution and the geography of Bina in Malaita, Solomon Islands. This is followed by a section that discusses the history of the Bina land disputes. The third section focuses on historical developments in Bina and the related harbour development project. The fourth section looks at the historical perspectives, which included courts, land acquisition and others, before a section that discusses the reasons for the lack of development in Bina. The fifth section highlights the government policies from 1994 to 2013 while the final section is on Malaita’s development challenges in relation to the case study.

Context and geography

Overview

In 1982 following the passage of the Provincial Government Act 1981, Malaita became one of the first provinces to be established in Solomon Islands. Prior to that, in the 1920s, under the British colonial administration Malaita had been divided into 33 wards (Futatasi, 2011). Malaita’s first council was established in 1941 (Akin, 2013, p. 128). Today Bina is located in ward 23 in West Kwaio under the current political demarcation of the province. However, this arrangement has not gone well with others who argue for Bina to be part of the Kwara’ae region, or even part of the Langalanga lagoon region.

The land distribution in Malaita is 90 per cent to customary land tenure, 5 per cent to the provincial government that is held by the ‘land commissioner’, 3 per cent to Christian mission churches, and 2 per cent to private individuals (Malaita Province Development plan 2010–2013, p.14). A similar picture is replicated at the national level where 87 per cent of the land in Solomon Islands remains under customary ownership, 8 per cent to the state, while another 5 per cent is privately owned. Bina is on customary land that is owned by the different traditional landowners. In Malaita, Bina is part of the
central region where 36.3 per cent of Malaita’s population is located (Malaita Province Development plan 2010–2013, p. 14).

Bina land and harbour

Bina is approximately 22 kilometers south of Auki, the capital township of Malaita province. Bina is also situated at the southernmost end of the Langalanga lagoon that runs from Auki to Bina. The proposed area for the commercial development is 532.50 hectares, which includes the harbour sea area and the two islands of Bina’iasi and Sului’niu/Aulanga (Barile, 1999; Department of Development Planning, May 1999; Murray North, 1999). Map 1 locates Bina on Malaita in Solomon Islands, and map 2 is a sketch map showing the area that is the subject of disputes and harbour development.

Map1: Location of Bina in Malaita, Solomon Islands

Source: Extracted map of Solomon Islands from Google maps, 25 April 2014.
History of land disputes in Bina

Definition
The Bina land and harbour area is under customary ownership. As noted by the various definitions provided in chapter 2, any land disputes that arise from customary land are deemed as customary land disputes (Bennett, 1995; Hviding, 1998; Paterson, 2009). Hence, the Bina disputes are a customary land dispute. It is a dispute over the land ownership rights and land use rights. What is contested is who should be the recognized owners to decide on how the Bina land is used. The disputes are contests over land by people of the different language groupings on Malaita – those from Kwaio, Kwara’ae, Langalanga, Are’are and Suava Bay in the northern part of Malaita. Regardless of this on-going contest, the decision to study the land disputes in Bina under the Kwaio land tenure system is based on the linguistic and political boundary demarcation in Malaita (Futaiasi, 2011). For this reason the land disputes are only discussed in relation to the traditional Kwaio land tenure system.
History

The land disputes in Bina constitute a number of disputes on different tribal lands. These are the Bina/Talifu tribal land, Bonale tribal land, Ailakwaii tribal land, Subea tribal land, the sea harbour and the two islands of Bina’iasi and Sului’niu/Aulanga. In Solomon Islands, the word ‘tribe’ is widely used and understood than clan. A tribe refers to a clan and sub-clans where members can trace their membership to a common ancestor. A tribe is also represented by a common bird like eagle, hawk; reptile like crocodile or animal like shark as its totem or symbol. Historically, the land disputes in Bina were first registered by the Native Court in 1959 as a dispute between members of one single tribe over the Bina/Talifu tribal land (Oru, 2009, May 11). According to records retrieved as well as claims noted during interviews, the dispute started between members of the Kwaleunga tribe. It was then that those members decided to take the matter to the Native Court. The Native Court judges in the 1940s and 1950s on Malaita were British. They are commonly referred to as the District Officers (DOs) who worked under the Malaita District Resident Commissioner, being the political and administrative structure established by the British colonial government. The Native Court then can be seen as the DO’s court, as there was no involvement of the local people and local knowledge in the determination of land disputes (Foukona, 2007; Bennett, 1987).

After the first dispute was decided in the Native Court in 1959, as time passed different individuals started to show interest and laid claims to the Bina/Talifu land. Individuals of the Rafea tribe and those of a tribe from Langalanga joined the dispute in the 1970s and 1980s. By the 1990s the Bina/Talifu land dispute had spread to other tribal lands that were mentioned above. The proliferation was seen as having more to do with the use of the court to adjudicate the disputes and the involvement of the government when interest was shown to develop the land and the harbour. From that time, the disputes over the land had moved from the contest over the different use rights and focused more on the question of land ownership rights.
The Bina land Disputes

The land disputes that is now referred to as the ‘Bina land disputes’ are related more to the Bina harbour development project (see relevant section below). Although the land disputes have a long history since the 1950s, the increase since 1994 was due to the development project. It was the role of the government through the acquisition process that gave rise to the proliferation of the disputes that started then. On the other hand, the use of the court has not resolved the matter but only seen that appeals after appeals have been made over time. Overall, the growth in the disputes since 1994 was not seen in isolation from the earlier disputes as they are all related to the same land (Bina/Talifu land) but with an increase in the number of disputants. Thus the disputes that happened during the colonial administration are still part of what is seen today.

In sum, there are two trends that can be established from the evolution of the Bina land disputes. First, over the years the land disputes have grown in size with an increase in the area of land under dispute. Second, the number of individuals, tribes and institutions that participated also increased. Given these two factors, the land disputes in Bina are not just a simple land dispute but a dispute that evolved and became more complicated over time. By comparison to the types of disputes that can happen on customary land, the Bina land disputes comprise the intra-tribal dispute as it started between members of the Kwaleunga tribe itself; an inter-tribal dispute when other tribes were involved in the contest over the Bina/Talifu land; and a boundary land dispute when other tribes that shared common boundaries with the Bina/Talifu land were also involved, including the argument over the Bina harbour between custom and the state law. It is a dispute that reflects the different types of disputes that can happen on customary land as noted by Saeni (2008) and Loode and others (2010). The reason as to why many non-Kwaio groups have settled the land was related to the history of Bina as discussed below.

History of development in Bina

The Bina land has undergone development since the British Solomon Islands Protectorate was established. In the 1890s the Catholic mission was first established at Buma (Bennett, 1987). Buma is located at the southernmost tip of the Bina harbour. In
1904, the South Sea Evangelical Mission (SSEM) was also established at Bina (Some Bina natives who resided in Honiara, in a letter to the Permanent Secretary of MCLE, 19 November 2007). This led to the growth of a settlement now called the Bina village. During the years, the importance of the plantation economy also led to the planting of coconut groves at Bina which are still visible on the land today. Around the 1940s and 1950s, during the rise of the Ma’asina Rule movement in Malaita, a road was constructed from Hauhui in West Are’are to Bina and further down to Aoke (now renamed Auki) (Lafari house of chiefs, in a group discussion with the author, 28 November 2013). Bina village also became one of the central locations where people from the interior migrated to during the Ma’asina rule period.

In the 1960s individual families in Bina decided to establish cattle farming on the land. These cattle farms are still visible on the land. The cattle farms were part of the colonial government’s agriculture policy that encouraged people to raise cattle for beef (Harohau, 1995). By the 1970s and 1980s there was a logging and sawmilling company operating at Bina. The company was named RK Sawmilling Company. RK simply stands for Rafea and Kwaleunga tribes. The decision to have the name was from a court case between members of the two tribes in the 1970s. Then in 1987 the government of Solomon Islands proposed to develop Bina into an industrial economic zone and international sea port for Malaita province and Solomon Islands (what is referred to as ‘Bina harbour development project’). The proposal was based on a survey that was conducted on Bina harbour by the British Admiralty from 1956 to 1965 (Harohau, 1995). Based on this survey, the harbour was later used for the safe anchorage of the British royal visit during their tour to Malaita in the 1970s (Chief RKT, in an interview with the author, 26 November 2013).

Apart from what appeared in the government plans in 1987, little was known about the Bina land disputes and harbour development until 1993 when the ruling government decided to seek parliament’s approval for the proposed Bina harbour development. Subsequently, the proposal received support from the national parliament and it became one of the first major economic development projects to be listed for Malaita province.
Following the parliament’s approval, work on the customary land acquisition started in 1994 where an acquisition officer was appointed and land claims hearings were conducted. In the years that followed, an office was also established in Auki called the Bina Harbour Development project coordination Office. The office was part of the Ministry of Commerce, Labour and Employment, the national government’s implementing ministry. Throughout the 1990s and 2000s several committees were created at the community and national government level and many meetings held. By the time the land issue and proposed development gained the attention of the local media, the number of individuals and tribes contesting ownership of the Bina lands had reached forty. At the same time, the government’s development plan remained dormant due to the land disputes.

Bina harbour development project (‘the project’)  
The Bina harbour development project involves establishing an infrastructure ‘avenue’ for economic development in Malaita province which will provide for commercial and industrial undertakings. It is planned that the establishment at Bina harbour will host basic infrastructure components such as an international sea port, industrial estate, public utilities (power, water and so on), banking services, telecommunication, post services, sewage system, roads, and a duty free facility. The project is one of the major development projects the Malaita provincial government is prioritizing in its development strategic plan. This is a major project in terms of operation and cost implications and will take some years to be fully realized, requiring active participation from international and national development partners (Harohau, 1995; Murray North, 1999).

The anticipated direct beneficiaries of the project will be investors, both local and foreign, entrepreneurs, the general public in the Bina area, and Malaita province more generally. The economic impact is anticipated to be enormous, as it will help drive the national economy and improve social livelihoods in the country. Under the Solomon Islands National Unity and Rural Advancement (SINURA), this project is proposed to address Policy Goal No. 14, which the Ministry of Commerce, Labour and Employment
is entrusted to implement. One of the strategic approaches is to meet the government’s “expected outcome” 14.1–14.9 and in particular 14.11, that stated “Bina seaport will be in operation” (Office of the Prime Minister & Cabinet, 2008, p.40). It extends to the national government’s broader aspirations of rural development and decentralization. The Bina harbour development project is also envisaged as meeting the government’s medium term plans for a free-trade zone where low production costs and tax concessions are attractive to investors.

The objectives of the project are to open new economic frontiers for social and economic development, by providing an ‘avenue’ for new and expanded industries and commercial activities; by attracting local and foreign investment; by providing employment opportunities to restrain inter-island migration and by encouraging export and import substitution industries. It is attempting to focus economic development in Malaita province to better serve the rural areas where the mass of the population and resource owners are located (Barile, 1999; Department of Commerce and Industrial Development, 2010, April 20).

**Historical perspectives**

The history of the Bina land disputes and development is linked to the colonial history of Solomon Islands, in particular Malaita. The Kwaio region of Malaita was one of the places where resistance to government influences was strong because people did not want to lose their traditional practices, let alone their land. Around the Bina area the Kwaio resistance was seen in the killing of a British recruiting subject in 1909 and that of an SSEM missionary in 1911. This resulted in government reprisals through coordinated attacks on a number of villages around Bina (Bennett, 1987). Also, the establishment of churches in and around Bina had a major impact on the lives of the people. This was in fact supported by the colonial government, which often protects missionaries when disputes arise between the natives and missionaries. The influences of Christianity also led to the establishment of new settlements and bigger communities which was evident in the Bina village itself. These had directly connected to the
changes experienced to the West Kwaio land tenure practices, which later contributed to the Bina land disputes.

Furthermore, during this period, customary land alienation for the plantation economy spread to Malaita. Previously, this was not possible until the government was able to put Malaitan warriors under its control. The Malayta Plantation Company that was related to the SSEM followed its converts to Malaita and was able to establish coconut plantations in West Kwaio. This eventually led to the alienation of customary land along the coast from Baunani to Su’u harbour. Through the Malayta Plantation Company, SSEM followers and others were encouraged to work in plantations and engaged in economic activities for cash (Bennett, 1987; Akin, 2013). It was around the period of the plantation era when cash had become a dominant commodity that land disputes started to emerge around Bina. This is evident from the records and with the discussions noted above.

When the national government showed interest in developing the site, disputes increased to new levels that had never been seen before. At present the land disputes at Bina are more to do with the acquisition process invoked by the government and the involvement of the courts. As part of the government development policy, the legal process required that when the determination of the customary land was facilitated, any disputes in relation to the land had first to be resolved by the custom house of chiefs before going to the courts (Land and Titles Act, Cap 133, and the Local Courts, Cap 19). In Bina, when the acquisition process was invoked, people who disputed the ownership of the Bina/Talifu land, the harbour and the two islands were not able to do that. Instead, as it turns out, the court was used as the only means to resolve the disputes. However, the use of the court is a reflection of the past history of the colonial government’s influence through the court as discussed below.

a. The courts
The Bina land dispute has had a long legal history. In fact, since the dispute started the court was the only avenue used for dealing with it. The first record of court cases
relating to the Bina land was in the matter of the Court Case number 3/59 of 26 August 1959 (Industrial Development Division, file reference: IDD/04/4/1 Vol. 01, IDD04). The second was Court Case number 14/68 of 3 December 1968. From records retrieved there were other land disagreements noted in 1970, 1971, 1973 and 1977 but they were not deliberated on by the courts. By then, in Solomon Islands, the Native Court was already established. In 1979 another case, Court Case number 27/79 of 11 July 1979 was against Ilo’ilo who lost to Ramolelea, who claimed to be from Kwaleunga tribe. As noted in government correspondence attached to this case, this led to a Langalanga person becoming part of the Kwaleunga tribe. The explanation given was due to language barrier a Langalanga person was asked to spoke on behalf of the true landowners. But, when the court delivered its decision, the name of that person (the spokesman) was included as member of the Kwaleunga tribe. This later becomes an issue in the on-going disputes.

In 1995 as a result of the acquisition process to register the Bina/Talifu land and other tribal lands around Bina, the matter was again brought to court–this time it was the Magistrate’s Court of Malaita in Auki. The reason why the Magistrate’s Court was used instead of the Local Court was because the claimants decided to question the legality of the acquisition process rather than questioning the ownership rights. The Magistrate’s Court then ruled that the acquisition process should continue while land owners formed an interim trust board to work with the government task force on the development project. The presiding Magistrate further ruled that any member of the interim board who was an appellant but had lost in the customary house of chief’s court would lose membership of the trust board (Magistrate’s Court decision, 24th Day of April 1995).

With the failure of the different appellants to settle their disagreements in the custom house of chiefs in the given time, the Principal Magistrate of Malaita on 30 April 1996 ruled that “the Respondent’s (acquisition officer) determination of the sea area of Bina harbour is null and void.” The reason was the definition of the customary land did not include the sea in law. “I am satisfied that areas permanently and naturally covered by sea are not land covered with water in the definition in the Act” (p.4 of the judgment).
The court further ruled that “The only conclusion I reach from these appeals is to find the whole acquisition proceedings invalid and I do so and further I allow the appeals.” This was not taken lightly by the people as land in Kwaio (being a Melanesian society) does cover both the terrestrial and marine area to include the sea adjacent to the land [see Ballard, 1997; Burt, 1994, 2010 for Melanesian definition of land].

In 1997 the landowners who were unhappy with the decision of the Magistrate’s Court of Malaita in quashing the 1995 acquisition and grant of Bina/Talifu land ownership to the said Renaldo Walesua and Alpheus Samosia, petitioned the Premier of Malaita province to act. The petition called on the Premier to revoke the Magistrate’s Court of Malaita’s decision and to re-instate David Totorea’s acquisition report (the first AO). In the petition the land owners noted the following:

that the Bina/Talifu land is NOT negotiable for any outright purchase at any cost, this particular section be repealed. The petition is submitted on a communal basis with individuals and land owning groups who maintain their rights of claim though, lost to the bias court system in the country at one time or another. Failure to which will result in a mass protest by all land owning groups around Bina Harbour area to cease the development project (Industrial Development Division, File reference: IDD/04/4/1, vol. 02, IDD04).

By 2000 the court had issued certificates of no disputes and appeals to other tribal lands that are part of the Bina land disputes. These are the Bonale tribal land where on 17 May 2000 a certificate of no appeal was issued by the Magistrate’s Court of Malaita in reference to the said land. Another is the Subea tribal land where on 1 May 2000 the Magistrate’s Court of Malaita also issued a certificate of no appeal. Note here that the Bonale land and Subea land are not part of the Bina/Talifu land. In fact these tribal lands are part of the Bina land disputes that I have alluded to earlier. Because these are part of Bina land disputes this is worth mentioning. But with the Bina/Talifu land and Ailakwaii tribal lands there were on-going appeals from different tribes and individual claimants. Furthermore, by year 2000 the project was further hampered by the crisis that
affected Solomon Islands and especially the national government’s capability to continue dealing with the land disputes surrounding the development proposed. The crisis also impacted on the disputes as those who returned took side with the different parties. In addition, the on-going court appeals pertinent to the Ailakwaii and Bina/Talifu tribal lands were seen as impediments to the project.

By 2009, the failure of the nine appellants of the Bina/Talifu tribal land acquisition to work together towards resolving their differences as per a memorandum of understanding that was signed in 2006, led to a new court case. In its decision of 8 May 2009 the Magistrate’s Court awarded the ownership of Bina/Talifu land to two persons (Alpheus Samosia and Renaldo Walesua) while Elisha Tolo’au was granted secondary rights. Again, this was not accepted by the rest of the tribal members and other landowners as the decision would mean they are landless or do not have any rights to the land unless granted by the two. It was this ruling that sparked further court challenges that continue until today. At the time of this study there is a case before the High Court of Solomon Islands that was lodged as the result of that ruling, with a court decision pending.

b. Land acquisition
During the process of land acquisition there were two Acquisition Officers (AO) appointed by the central government for the task. The first AO was appointed in 1993 and began working in 1994. A number of hearings and reports were produced by this AO. In 1995/6 the reports and decisions made by the AO led to a court case initiated by some disgruntled landowners, or to be specific ‘claimants’. The court ruled that the AO’s conduct of the acquisition process on the Bina/Talifu land and other tribal lands around Bina was null and void (see above). The central government saw this as a drawback. Consequently, the AO was terminated from his role. In 1998 he was replaced by a new AO who immediately re-commenced the acquisition process. Yet, like the first AO, his reports of the acquisition proceedings were also challenged in court. This saw a series of court cases that have continued until the present (see above).
c. Others

During the course of the disputes, there are certain groups and individuals that have either supported or questioned the role of the government in this issue. Those included the landowners themselves, non-government organizations, other disgruntled government employees and certain government agencies.

In 2000, the first AO (Mr. David Totorea) who was terminated in 1998 and replaced by the second AO (Mr. David Gina) noted that, “I sympathise the whole process again, that even after the Land Acquisition process has been re-initiated through Mr. David Gina [the second AO] there are some more appeals that are lodged to the Magistrate’s court” (David Gina, in a communication to the Permanent Secretary of MCLE, 24 May 2000).

In 2004 one civil society group, the Malaita Ma’asina Forum, questioned whether the government of Prime Minister Allan Kemakeza was still serious about implementing the Bina harbour development project (Malaita Maasina Forum Secretary, in a letter addressed to the Prime Minister of Solomon Islands, 30 September 2004). In response, writing under his hand, the then Prime Minister of Solomon Islands assured landowners that his:

government is seriously embarking on the Auluta Palm Oil and Bina Harbour projects. On the other hand, it is equally important that the people of Malaita must play their part in ensuring that land and other related issues are amicably addressed to allow the smooth implementation of the projects for the benefit of Malaita people and the country as a whole (Ref: 11th March 2005, Re: Auluta Palm Oil and Bina Harbour projects in Industrial Development Division, File reference: IDD/04/4/1, vol. 02, IDD04).

Also, in 2004 the Secretary of Bina/Talifu Customary Land Trustees that was set up in 1995/6 based on the court decisions (but had yet to be finalized), wrote to the Premier of Malaita province and expressed the landowners’ disappointment at the delay to update them on what steps the government had taken in addressing the Bina harbour development project. “I would therefore, request a prompt reply rather than keeping us
in oblivion and blaming our trustees for land-disputes. The resuscitation of our confidence in your good offices lies solely on this one project” (Secretary of Bina/Talifu Customary Land Trustees, in a letter to Premier of Malaita province, 28 August 2004). Furthermore, in a meeting held on 9 September 2004, the Bina/Talifu Trust Board members resolved that “all concerned including the appellants resolve amongst themselves and prove to the government that the feared land disputes are nothing more than just a household difference of opinion” (Secretary of Bina/Talifu Trust Board, in a resolution passed by the board’s meeting, 9 September 2004).

In April 2006 a report was produced by the Department of Commerce, Industries and Employment (within the Ministry of Commerce, Labour and Employment) to update the Solomon Islands Government on the progress of the Bina land issue and the development project (Department of Commerce, Industries and Employment, 28 April 2006). The report briefly highlighted the work done so far. This particular report included copies of other previous reports such as the Murray North Prefeasibility report, the Malaita province report that supported the Murray North recommendations, the acquisition reports, which only concentrated on three tribal land as others were found completed (Bonale tribal land and Subea tribal land), while one remains problematic (Dau’u tribal land). In response to that report, in October 2007 the government through its responsible offices facilitated a Memorandum of Understanding (MOU) that was signed between the ten appellants of the Bina/Talifu tribal land and witnessed by the Premier of Malaita Province (then Mr. Richard Na’amo Irosaea) and the Malaita province minister for commerce and industries (Mr. Ben Foukona). In the MOU the landowners agreed to allow the implementation work on the development project to continue while they resolved their land differences through the responsible authorities: the house of chiefs and the Magistrate’s Court (MOU Resolution, 23 October 2007).

In another development relating to the project, in 2007 a letter was addressed to the Permanent Secretary of the Ministry of Commerce, Labour and Employment and signed by some Bina natives who resided in Honiara that raised the historical importance of the site to the South Sea Evangelical Church (SSEC) followers, previously SSEM. It was
requested that the government should take into account the importance of the Bina site for SSEC followers as this is where the labour returnees from Queensland erected the first church in 1904 (some Bina natives in Honiara, in a letter to Permanent Secretary of MCLE, 19 November 2007).

Furthermore, in 2008 the coordinator of the Bina harbour project reported on the government’s implementation of the project to the Premier of Malaita province (the then Honourable Richard Irosaea). Some of the issues raised relating to the land issue were:

- Bina/Talifu tribal landownership uncertainties (10 years without resolving the land issue)
- Binai’asi and Sului’niu Islands – the difference and conflict of ownership that exist
- Harbour sea areas as the two islands – which the magistrate court in 2006 ruled was not part of customary land although people contested that (Coordinator of Bina development, in a communication to Premier of Malaita province, 4 March 2008).

Finally, from the 1990s to the time of this study the government used the media very often to update people on the progress and initiatives taken to address the Bina land disputes and development project. At the same time there are individuals using the media to voice their frustration about the way government deals with the issue. Others have used the media to tarnish certain landowners’ claims on the Bina/Talifu land and the development project in general. (See Solomon Star newspaper for the following publications: Rikimae, 2007; Government Communication Unit, 2007; Aruafu, 2012; Arufaegwao, 2013; Lofana, 2014).

**Reasons for the lack of development**
The lack of progress with the Bina harbour development (the project) is attributed to a number of factors. These include land disputes, the legal processes (acquisition process,
the law and court), Kwaio’s perception of the government and people’s general view on the government. These have all contributed negatively towards the Bina harbour development project.

**Land disputes**
Land disputes are seen as the main factor that causes the process of development to be prolonged in the Bina. As Fingleton stated in relation to the Aluta Basin oil development project in Malaita and other developments in the Pacific Islands, “land disputes… also have a negative impact on the economy and land development. They are a fact in life and especially where major change is taking place in society” (Fingleton, 2008, p.22). The impacts of the Bina land disputes on the project were highlighted during the fieldwork by participants. BDO noted, “The problem of development in most of the provinces and especially on Malaita is related to land…development has stopped because of land disputes” (BDO, in an interview with the author, 25 November 2013). PC the paramount chief of the Lafari house of chiefs also claimed that “land dispute is affecting development in West Kwaio”, while MA-B stated that “land dispute is the cause of lack of development”. Bennett (1995) has argued in the case of New Georgia, the “disputes regarding who held the timber rights and who should be trustees dragged on for years, delaying agreements for one of the biggest contiguous areas of forest in the Solomons which the government had planned to allocate to Levers for logging” (Bennett, 1995, p. 256). The implementation of Bina harbour development project has stalled. Hence, Moore (2007) was right to assert that the Bina harbour development was stalled due to land disputes.

**The legal process and the government**
The processes of land acquisition have also resulted in the failure of the ‘project’. That is because the land disputes prolonged the process. Similarly, the court’s interventions in the disputes have not been successful but merely delayed the implementation of the ‘project’ as discussed above. The involvement of the court is part of the legal process provided for by the Land and Titles Act, Cap 133. Although the intention of the government in passing this legislation was to provide for the smooth and proper
acquisition of customary land, in the Bina land acquisition this has not happened. Participants continue to see the process as part of the cause of both the land disputes and lack of Bina harbour development. Thus, the legal approach used to secure land for development has been a difficulty and a factor in the project’s failure.

Besides the legal process the government was also seen as obstructing the Bina harbour development. There has been politics involved in this project where officials were appointed due to political interests rather than skills or merit. There is also lack of proper coordination and consultation between the different government levels and the people. The Malaita provincial government claimed that often they were by-passed as the national government decided only to deal directly with the people. This has left the people in a state of confusion when it comes to whom to believe. At the national political level there is also lack of political will to deal seriously with the issue and the ‘project’. All these factors have either delayed or adversely affected the implementation of the project.

**Kwaio’s perception of government as ‘enemy’**

Past grievances following the 1927 incident in East Kwaio at Sinalagu, which led to the government punitive action, saw the destruction of this region (Bennett, 1987; Akin, 2013). The repercussions of this incident for the Kwaio people are that they have remained suspicious and hostile towards the government. Although the punitive action targeted only East Kwaio, the effect it had on the Kwaio generally was widespread due to the custom relationship of descent lineages in Kwaio. Today Kwaio people have continued to claim compensation for what had happened (Akin, 1999). This was based on the Kwaio traditional notion of the ‘payback’ system, under which unless compensation is paid for the ‘wrong’ people feel government had caused them, there will be no peace and government will be seen as an enemy. This is regardless of the fact that the action was inflicted on East Kwaio by the colonial government; people still see the current government as part of the British system of government. As PMP alluded during interview:
The issue relating to the 1927 massacre has contributed to their conception of the government whether it is the national or provincial governments; the Kwaio people see the government as enemy instead of a friend. This is one of the underlying factors as to why there is lack of economic development in Kwaio generally (PMP, in an interview with the author, 22 November 2013).

**People’s changing mindset**

The people themselves have contributed to the lack of the Bina harbour development. UST, the government participant who is well versed with the implementation of major government development projects in Solomon Islands, alluded to this during the interview, that it was all about changing the mindset of the people. Practices seen in Solomon Islands today are linked to this (UST, in an interview with the author, 4 December 2013). People have developed a negative perception of the government’s support towards these developments by thinking that cash benefits can be earned even without any development taking place on the land. UST asserted that:

> People think the government owes them a lot. Thus the contributions given to any development belongs to them. They also view government as having a lot of money. There were also quite a number of unreasonable claims and people were actually using these projects as ‘fundraising’ [making claims in expectation that government will pay them some sort of compensation] (UST, in an interview with the author, 4 December 2013).

The development of such expectation towards the government is not new. Akin (2013) when discussing the causes of the Maasina rule movement in Malaita in the 1940s stated that people paid taxes to the colonial government in ‘expectation’ of the government providing development in schools, health services and other services. When the expectations were not fulfilled, they revolted. The Bina harbour development was actually seen as a money raising activity. People felt that the government has used the ‘project’ for its own benefit. Cash money was used in the past purposely to get the support of the people towards the project, which instead led to a changing mentality.
Government policies 1994 to 2013

In Solomon Islands the period from 1994 to 2013 has seen nine governments in power. This period was important for the Bina harbour development project and government efforts to address the land disputes. First, in terms of the different governments that took power, some were short lived while others managed to stay in power for two to three years. The governments that ruled for longer terms were the Solomon Islands Alliance for Change (SIAC) led by late Bartholomew Ulufa’alu (1997 to 2000); the National Coalition for Reconciliation and Peace (NCRP) led by Allan Kemakeza (2001 to 2004); the Solomon Islands National Unity and Rural Advancement (SINURA) led by Dr Derek Sikua (2007 to 2010); and the National Coalition for Rural Advancement (NCRA) led by Danny Philip (2010 to 2011) and Gordon Darcy Lilo (incumbent). The reason for mentioning these different governments is to highlight some of their policies in relation to the Bina land disputes and harbour development project.

But first, Allen (2012) briefly noted that under the British Solomon Islands Protectorate administration the first government land policy was nothing but land alienation. Recognition of customary land ownership only came after the Allan’s commission report in 1957 (Allan, 1957). By independence, the recognition of customary land tenure was enacted in the national constitution. This saw a shift in government policies from alienation to land registration. However, technically it was only the name that changed as land could still be alienated as provided for under the Land and Titles Act, Cap 133, if needed for development. Despite that, this law also recognized the customary land tenure where people owned the land in custom.

By 1994 the Customary Land Records Act, Cap 132, was enacted by Parliament. This law provides for a system of trustees that was introduced as part of the government reform agenda to encourage customary land registrations. This was when the Bina development project was initiated by the government. Despite the passing of the Customary Land Records Act, the law remains dormant as there was no implementing regulation to cater for its application. This mean the Bina ‘land acquisition’ that was invoked will only lead to land alienation and the commissioner of lands will be the
owner and not the ‘trustees’ appointed by the people. Nevertheless, the process that started in 1994 was not able to be completed due mainly to the land disputes. In 2000 the government through the Parliament passed the Customs Recognition Act of 2000. The law further recognizes the importance of custom and provided for its application in court as part of addressing land disputes.

In 2011 the National Coalition for Rural Advancement (NCRA) established a Land Reform Commission to look at ways to address customary land for development. The NCRA also adopted the policy of inviting landowners to come forward and freely offer their land for development (see Radio Australia, 2011, May 10). However, since the chairman of this commission, the late Andrew Nori, (died in 2012) the government is yet to find a suitable person to chair the commission (NPL, in an interview with the author, 17 January 2014). In 2012 the government continued to find ways to deal with the problem of land disputes so that developments take place. The Ministry of Justice and Legal Affairs was tasked to work on legislation for the setting up of a tribal land dispute resolution panel. At the same time, the Customary Land Records Act was supposed to encourage landowners to register land under the trustees’ arrangement, where at least five trustees appointed will represent the land owning tribes or clans that owned the land. The trustees should act as custodians of the land on behalf of their people when registering the land. But this was not possible due to the limitation of law as stated above.

One area that helps government policies and commitments to be realized is in the budgetary support. With the Bina harbour development project, I have provided some budget figures below to show the trend in government support towards this ‘project’ (see table 1). Unfortunately, there are years where figures could not be retrieved as information was not available. Despite that, the figures provided should show a general picture of the government’s commitment through the activities that money was spent on.
**Table 1:** Budget estimates versus budget expenditures (in Solomon Islands dollars-SBD).

“Estimates” are amounts allocated by the government and approved by Parliament for the project in the year’s fiscal budget, while “Actuals” are the money spent by the implementing ministry and departments based on the approved budget.

The figures provided in the table below are the total amount of money allocated for the Bina harbour development project that comes under the Ministry of Commerce, Labour and Employment’s overall budget for each of the years listed. The money was used for implementing the development project and for dealing with the land issue.

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimates (SBD)</th>
<th>Actual (SBD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994–1999</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>2000</td>
<td>50,000.00</td>
<td>50,000.00</td>
</tr>
<tr>
<td>2001</td>
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<td>80,000.00</td>
</tr>
<tr>
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<td>Not available</td>
</tr>
<tr>
<td>2007</td>
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</tr>
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</tr>
<tr>
<td>2014</td>
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</tr>
</tbody>
</table>

**Source:** extracted from the Solomon Islands government yearly budgets, Parliament Hansard reports and Media releases.

The trend of funding allocation was inconsistent throughout the years. From 2007 to 2013 the budgeted figures were bigger than the amount used on the work done in the Bina harbour development project. The years 2008 and 2012 saw the biggest increase to 5 million compared to the rest. 2011 was the lowest while in 2014 the ‘project’ received no allocation in the national budget. Based on this information and compared to the
work done, the ‘land settlement’ process was run from 1994 to 1999. Apart from the acquisition process in 1998, the Murray North Company was contracted to conduct a prefeasibility study on the site, especially the Bina harbor and the surrounding environment, and the work that needs to be done in preparation for the implementation of the project. Around 2005 and 2006 one of the activities where funds were spent involved consultations, meetings and travels which resulted in the signing of an MOU between the different claimants to the Bina/Talifu land, the Bina harbour and the two islands that was witnessed by the government (see above).

In 2010 an investigative study was done by a technical team from the government, which came up with some recommendations for the project. Besides these major activities much of the funds were committed to the running and operation of the office in Auki, establishing different government committees, consultation and meetings as part of the preparatory work on the project. Interestingly though, it was during this time that money was also used quite extensively by the government as a way to lure in landowners to support the project but instead created more disputes that only ended in court. From one of the discussions I had with some people around Bina apart from the scheduled interviews and focus group discussions in early 2014, it was revealed that 2012 was the last time government has paid some of the landowners. Whether this is true or not only an audit report and an investigation can prove.

However, government officials interviewed have provided some explanation on the budget allocation. NPL noted during interview that funds allocated for the Bina harbour development project were actually diverted to other spending within the Ministry of Commerce, Labour and Employment. The reason to keep the budget was to maintain the government’s commitment towards the project. UST also highlighted that the funding for the Bina harbour development project remains a challenge. This budget allocation over the years is what the landowners and those residing at the communities continue to base their arguments on, arguing that already a large amount of money is budgeted for the ‘project’ but nothing is happening on the ground. This becomes one of the factors that stirred the negative sentiments among the people on the government’s
implementation of this project. The lack of (correct) information disseminated to the people in the community has contributed to such negative assertions. This also demonstrates the cash mentality that is taking its toll on how people continue to see government’s involvement in land and economic development in Bina and Malaita.

**Malaita’s development challenges**

The first and foremost problem is the current and ongoing issue with the land, as noted by UST (UST, in an email to the author, 8 September 2013). The ongoing dispute has become a legal matter. The legal argument has remained a profound issue for more than a decade since the government first indicated its interest in developing the land. The issue started when the government invoked the acquisition process to acquire the land from landowners as part of the legal requirement to secure land for development. This was part of government policy. The government was of the view that customary land is complicated to deal with, thus the only approach is to secure land under the state land tenure system by way of customary land alienation. It was through the process of ‘land acquisition’ those claimants responded by taking their disagreement over the land ownership to court, which the court has not resolved until today.

From the preliminary studies conducted in the past, the Bina harbour development project has always lacked economic viability. One such study was done in 2010 by a taskforce appointed by the government that received funding support from AusAID. A document was produced by the taskforce called *Aide Memoire for the Bina Harbour Industrial Development–Investigative Study* (Department of Commerce and Industrial Development, 2010). The study established that facts surrounding the project are often misconceived. The report recommended that the project be viable if it was done in stages, with the initial stage being the domestic port with minimal shore based infrastructure and only the wharf to be constructed to accommodate international ships. The study also recommended that ‘no further action is undertaken until all land title and sea access issues are satisfactorily resolved’ (Department of Commerce and Industrial Development, 2010, p. 6). Apart from this study, one of the issues raised by UST was the insufficient budget support from the government over the years, which has
constrained the ability of the responsible ministry (MCLE) to carry out more technical studies needed on the Bina harbour development project (UST, in an email to the author, 8 September 2013).

Furthermore, the implementation of the Bina harbour development project was envisaged to deal with Malaita’s development challenges. The key ones the ‘project’ aims to deal with are the high unemployment, providing economic opportunities in rural areas, decentralization of basic services and dealing with the rural to urban population drift. However, the lack of implementation of the ‘project’ means that these development challenges will not be addressed. The already high unemployment will only increase while the lack of infrastructure and provision of basic services is fuelling poverty in the province. With an increasing population (the highest in the country) the pressure exerted on the limited opportunities will further add to the economic difficulties the province is currently facing. Thus for the government’s decentralization policy this is a failure. The continuous migration from the rural to urban areas, especially to Honiara will put more pressure on the government’s limited resources. In Honiara when the expectations of the people are not met by government in terms of provision of basic services, it will certainly give rise to disagreement and other social problems. The recent riot in Honiara is an indication of this problem and the failure of government to deal with Malaita’s development challenges (Solomon Star, 18 May 2014).

Conclusion
The Bina land disputes are a customary land dispute. The land disputes have a long history dating back to the British colonial government administration of Solomon Islands. Also, the history of the development in Bina started with the labour trade and early Christianization period in West Kwaio, Malaita. From the above discussions the history of Bina land disputes and development are related. Thus the different changes that occurred since the colonial government era, labour trade and coconut plantations, and contacts with missionaries’ had influenced people’s perceptions of the value of land, and the engagement of the government to develop the land in more recent times.
This saw the unprecedented increase of the Bina land disputes that was noted since 1994. This in turn had affected the implementation of the Bina harbour development project.

Although chiefs are the legitimate body to deal with customary land disputes in Solomon Islands, and especially in West Kwaio, this was not the case in the Bina land disputes. It is the court that was used to settle the land disputes, but in fact it really did not. The lack of recognition of a custom institution like the Lafari house of chiefs was due to the change of perception attributed to changes in the Kwaio society. The Bina land disputes have now spanned a period of 55 years. Likewise, the interest to develop Bina and the harbour has exceeded 58 years. This is a long history for a land dispute that is related to economic development. The complexity of the Bina land disputes can be understood through looking at the historical events in Bina. When understanding the Bina land disputes one can acknowledge the impact that it has on economic development. Thus the general lessons learnt can be applied to other land disputes related to development in other regions on Malaita and even more broadly in Solomon Islands.
Chapter 4: Exploring the causes of Bina land disputes

Mr Speaker, I can see your point on aid donors unable to help. I want to make the assurance that the five landowning groups are quite ready to give their land after determination on who are real owners of the Bina Harbour. Now that does not give any excuse for government to go ahead with the acquisition process. Why has the acquisition process taken so long as from that time until today? (Honourable John Garo, speaking in Parliament, 2004)

Mr Speaker, simple, and that is dispute! It is clear, very clear. It is delayed because of dispute. If there is no dispute there will be no delay because the acquisition process will take its course and land will be registered and the project will take off the ground (Honourable Usa, speaking in Parliament, 2004).

Customary land disputes are a major problem in Solomon Islands, especially in Malaita province. It remains as one of the key causes to the lack of socio-economic development seen in the province. This chapter starts by discussing the views and perceptions of participants on the causes of the Bina land disputes and connecting it with the literature. Following that, the next section discusses two examples of changes in the West Kwaio land tenure practices to demonstrate the loss of custom and its impacts on land disputes. The final section highlights the different levels of customary disputes resolution by reflection on the Bina land disputes. This was in the failure to use traditional leaders and the house of chiefs to deal with the land disputes, before the conclusion is made.

Views and perceptions
Chapter 3 of the thesis demonstrated the complexity of the Bina land disputes. Given such complexity, this section will provide the explanation of the actual causes of the disputes based on participants’ responses. The complexity of the Bina land disputes is seen in the number of causes identified by participants.

a) Loss of customary land tenure practices
The first asserted claim is the loss of customary land tenure practices in the West Kwaio society. This loss, it is argued, was due mainly to outside influences, which resulted in
the erosion of traditional land practices. This view was held by government officials and community participants, who included chiefs, landowners and tribal leaders. As alluded to by PMP who was the Malaita province leader:

The causes of customary land disputes are due to the lack of understanding of custom relating to land tenure. This was due to outside influence which cause one to forget his/her own customs, especially custom on land tenure. A lot of changes that took place included the loss of important knowledge relating to custom land tenure. Today land is a capital in terms of development. This was due to the new economic system; whilst in custom land is our heritage and identity (PMP, in an interview with the author, 22 November 2013).

It was argued that when people forget about their important customary land practices, this will lead to confusion and contest over land ownership and use rights. UST, a government official, also noted “in the case of Malaita this has led to the loss of important traditional knowledge relating to customary land tenure. As a result, nowadays land is a capital for development in the new economic system whilst in custom land is supposed to be our identity” (UST, in an interview with the author, 4 December 2013). Furthermore, at the community level loss of important customary land practices was claimed. CA-JG who is a chief stated:

Dispute arises because people forget about their custom and prefer to settle it through law, while the churches prefer to use Christian belief principles (love). Now it is difficult, and with the lack of custom it affects the way we settle land disputes. The settlement of land disputes through the five principal pigs is no longer understood. Instead people used other foreign ways to settle disputes which are not in line with customary land tenure (CA-JG, in a group discussion with the author, 27 November 2013).

This supports Maenuu’s (1981) argument that land disputes in Kwara’ae were due to the loss of important customary land tenure practices. It also reflects McDougall’s
(2005) claim that the dispute that occurred in Ranongga was because of the confusion between the ownership rights because of the historical changes that resulted in loss of customary land practices. These changes were caused by Christianity and are similar to what happened in Bina, West Kwaio.

b) Impact of the modern cash economy
The new economy is recognized as one of the major factors of change in the case of Bina. This was confirmed by the Malaita province leader, PMP, who said during the interview that “the changes experienced today are due to the introduced economic system which put a new value on land” (PMP, in an interview with the author, 22 November 2013). The evidence of the modern economy as a factor of change is obvious today. For instance, in Solomon Islands, Bennett (1987) pointed out that cash has led to the selling of customary land in most areas where land was alienated. This was witnessed in West Kwaio itself following the establishment of Malayta Plantation Company, where the lands from Baunani to Su’u were alienated from the traditional landowners. The introduction of the plantation economy led to the alienation of customary land throughout Solomon Islands. For those at Bina, this has greatly affected their way of life since people around Bina harbour started to participate in the labour and plantation economy and nowadays in the logging industry. Thus, the new cash economy was seen as a reason for the increasing land alienation. This led to the contest between traditional landowners who wish to retain land for its customary and cultural importance and those who wish to see the land developed.

Furthermore YLR, a youth representative, argued that in Bina it is the business interest that causes the different groups and individuals to contest the ownership of the land. YLR stated:

In the case of Bina it is the business interest that creates friction between the people. The government is aware of that and when it decided to send in the acquisition officer, everyone else who already had the business interest started to
dispute amongst them (YLR, in a group discussion with the author, 27 November 2013).

Similarly BDO, a government official, asserted that the changes to customary land practices in West Kwaio which affected Bina land disputes were caused by the plantation economy that involved cash money. BDO claimed that:

In West Kwaio a lot of changes ha(s) taken place mainly through the coconut plantations during the colonial government and logging activities in more recent times. What had caused a lot of land disputes is modern cash money. Due to the cash economy money becomes an important thing to purchase items considered to be of importance to the society. The concept of royalty payments to chiefs and tribal leaders makes people to think that holding the ownership position is a receipt to earning more money. They disregard whoever the traditional and tribal owners are and proclaim themselves as the owners. It was later when people realized that disputes emerged (BDO, in an interview with the author, 25 November 2013).

This supports Curry and Kozsberski (2009) who argued that the causes of land disputes are due to the changing value of customary land by the modern economy which involved cash money. As in Papua New Guinea, where the development of the oil palm industry was part of government policy that supported the cash economy, the development of coconut plantations in West Kwaio was also part of the colonial government’s policy to boost the plantation economy. This saw the alienation of land that supported the cash economy which has a lot of influence on people’s mindset in modern West Kwaio (Bennett, 1987). This was exactly what has happened in Bina that led to the land disputes as noted above from the participants’ responses. This also confirms the assertion made by Foale and Macintyre (2000) in relation to the land disputes in West Ngella that they are caused by cash money, which led to the poaching of marine resources while the disputes are on-going.
c) Contested leadership

Some people, though, consider that the Bina land dispute was because of the contest for leadership. This view was widely held by the different participants both at the community and government levels. For instance, RKT, who is a chief, noted that “the root of the disputes is about leadership and money” (RKT, in an interview with the author, 20 January 2014). Also, BLO1, one of the Bina/Talifu landowners, claimed that “it was a dispute by people for leadership. Everyone wants to be the leader. In that way it is believed they can have a bigger share of the benefits from the development” (BLO1, in a group discussion with the author, 27 November 2013). Furthermore, LHCC, a member of the Lafari house of chiefs, noted in general during the group discussion that:

Some of the land disputes cases show a struggle for leadership on the notion that being a leader one has an upper hand in decision making and having access to most resources, especially in terms of land royalties (LHCC, in a group discussion with the author, 28 November 2013).

The leadership factor was also raised during an interview with one of the national leaders of Solomon Islands, NPL. NPL explained that it is about the division of tribes into different clans that resulted in different members beginning to contest the overall leadership position. NPL stated, “But the land never talks; it’s the people who disputed the land”. The political leader further explained that there are arguments over the male lines holding the leadership role and not those who are born female to a tribe, as was the case in contemporary Kwaio. This was what people failed to understand. “In custom, it was the akalo, ancestral spirit, who chooses a leader; it can be from a male or female line” (NPL, in an interview with the author, 17 January 2014). Thus, Keesing (1968) was correct to say that although Kwaio society was widely perceived as a patrilineal society and ‘agnatic’, the system of land ownership and leadership practices also recognised the female lineage. Disputes arise only where there is loss of or confusion of such custom land practices. Similarly, disputes arise when people knew it but decided not to follow because of the changes which affected their mindset.
d) Money

‘Cash money’ is regarded as very important in the modern economic system now practised in Solomon Islands. This has led people to disregard their traditional practices that are tied to land. Several participants that were interviewed in the different focus groups have noted that the use of money is the cause of the Bina land disputes. One of the participants argued that “money is the great poison in land disputes”. Chief HCK-FB also stated that “money is the main factor of change which continues to have a major influence on people’s mindset”. Another, CA-JG, also said that “when it comes to a person who is educated in custom people will be afraid to commit fraud”. Chief CA-JG referred to fraud as the culmination of plans to steal other people’s land for the sake of cash money. HCK-FB summed this up in his own words, that money:

is the greatest killer; all chiefs including the court are corrupted by money. In custom it’s not about paying people to meet and settle disputes or issues. As long as we meet each other whether along the road we can share in betel nut conversation and begin to know each other. Through that we know who owns what land and how we are related. Today money is the big poison (HCK-FB, in a group discussion with the author, 26 November 2013).

Thus, one of the landowners of the Bina/Talifu land, BLO2, expressed the opinion that settling the dispute is not a problem it was the agenda behind that affected the land disputes. That agenda is money that is part of the new economy. BLO2 continues that “people see the benefit of money more than helping to settle the land disputes and to ensure development happens” (BLO2, in a group discussion with the author, 27 November 2013).

Bennett (1987) noted that in Solomon Islands, the desire for money led to the selling of customary land. This later became a source for land disputes when sale of land benefits only one or two people instead of the group that owns the land. Bennett stated that in West Kwaio “the selling of land was riddled with misunderstandings on both sides” (Bennett, 1987, p. 120). This led to protracted disputes over the years. Although this has
not happened in Bina, the influences of money on people’s mindset and way of living have greatly affected their perceptions, which contributed to the disputes.

e) Formal recording of genealogies

The fifth cause of Bina land disputes according to the participants is the errors and challenges in recording tribal genealogies. As noted by UST, the government official, during interview:

One of the common things relating to land on Malaita is that family trees [genealogies] were not done properly, which distorted the ownership. When people are not included as members of the tribes that owned the land this can gave rise to disputes (UST, in an interview with the author, 4 December 2013).

Chief RKT also stated that “genealogies can be created and falsified by anybody” with the purpose of “stealing of other people’s land by people who are not part of a tribe that owns the land. This can be done by those who know the law and by using the court to win the land” (RKT, in an interview with the author, 20 January 2014). This can lead to conflicts when people who are the true leaders of the tribe that owns the land know that somebody is falsifying their genealogy for personal reasons. This was what CA-JG labelled as ‘fraud’ involving plans to steal other people’s land.

In Solomon Islands, the formal recording of the tribal and clan genealogies with land was encouraged by law (Land and Titles Act, Cap 133, and the Customary Land Records Act, Cap, 132). It was part of the government land reform policies. The law requires that in registering customary land the genealogy of the tribe that owns the land will have to be made available. However, during personal discussions with other Malaitans I heard other claims that there were customary lands that were registered in the past without genealogies being provided. The reason for this is open for debate. But in the instance where somebody’s name was not included in a tribal genealogy during registration, there are two explanations that can be given.
First, the art of oral reciting of genealogies was lost when somebody who held this died without passing it to a member of the tribe. This is part of the loss in custom practices due to the influences of the modern formal education system. Second, is because someone’s name is not included, so as to deny him or her the monetary benefits that can be derived from developing the land. Although this practice was perceived as uncustomary, it is now viewed as a contributing factor to the increasing number of land disputes that was evident in Bina. Further to that, Saeni (2008) has highlighted that the recording of genealogies is often difficult due to time and lack of financial resources. Also, it can reignite old disputes, as experienced in the case of To’abaita in North Malaita.

f) Land acquisition, court and law
There are those who argue that the cause of the Bina land disputes was the government acquisition process, the law and the court system. Before the acquisition processes, there is convincing evidence which demonstrates that the Bina land disputes have a long history in court, since it was first recorded in court in 1959 (refer to details in Chapter 3). Participants have highlighted that it actually allows for false claims and individual ownership of customary land. As chief RKT had said, “it is only the government who created the problem of land disputes through its own undertakings through the acquisition process”. The chief argued that “government officials who are tasked to implement the project are not honest. They do not consult the right people and are careless about seeing the project materializing” (RKT, in an interview with the author, 20 January 2014). Even more convincing is when such arguments come from a national leader like NPL. NPL noted that government often appointed people who do not have the necessary skills to ensure that the right tasks are done (NPL, in an interview with the author, 17 January 2014). As a result of this, on the 30th day of April 1996, the Principal Magistrate of Malaita ruled that “the Respondent’s (acquisition officer) determination of the sea area of Bina harbour is null and void” (Industrial Development Division, file reference: IDD/04/4/1. Vol. (01). IDD04 – International Seaport and Infrastructure Development, 4-Malaita Province, 1-Bina harbour).
At the community level, participants continue to state that the acquisition process allows for too many claimants, including those who do not have any entitlement to the land. Yet because of the process there was nothing to stop them from putting forward their claims. This is something which is totally in contradiction to the West Kwaio customary land tenure. As chief RKT continues, “In custom there is no such thing as 40 tribes owning one plot of land. This is not possible. What happens is there are only one or two tribes that branches out with members claiming ownership of the land” (RKT, in an interview with the author, 20 January 2014). A similar argument was also noted by Chief CK–EB, who stated “in custom any piece of land can only be owned by one tribe and not six or more as seen in the case of Bina” (CK-EB, in a group discussion with the author, 26 November 2013).

Furthermore, the acquisition process has created fear in the minds of the “true landowners” that if nothing is done they could lose their land. As a result they have taken all necessary actions to protect their land from being registered under the name of one or only a few individuals. BHRCC, a community participant, claimed that, “The land owners feared losing their land and do not want the land to be registered only under a few people, as in custom everybody has the right to own land” (BHRCC, in a group discussion with the author, 27 November 2013). In line with this, the members of the Lafari house of chiefs emphasized that the lack of recognition of the house of chiefs is a contributing factor to the increasing cases of land disputes in West Kwaio. There has been more recognition given to the court than chiefs. The chiefs claimed that the customary ways of settling land disputes and adopted by the house of chiefs were not in line with the court approach, although the chiefs were not used. This is where the court has contributed to land disputes in customary land matters. Yet, people failed to understand that the court only encourages the individual ownership of land that supports the capitalist economy. As PC noted:

The lack of recognition of the powers of chiefs and the more use of court system had overridden the chiefs’ authorities in villages at the community level. Also the principle of individual ownership use by the court is not in line with custom
in decision making where decisions are on tribal ownership of land (PC, in a group discussion with the author, 28 November 2013).

Apart from the ‘land acquisition’ process being provided for under the law, the argument that the courts are now seen as the causes of land disputes is well founded. In Paterson (2009) it was noted that the difficulties the courts in Solomon Islands continue to occur, and are an impediment to the issue instead of being an independent arbitrator. This was exactly what had happened in the Bina land disputes. For example, an appeal case number 19/2000 registered in 2000 with the Malaita Magistrate’s Court took more than 9 years before a decision was delivered by the Magistrate on 8 May 2009 (George, 2009, May 11). Similarly, court decisions often do not make any difference to some land rights cases. This was noted in Guo (2011) in the case of Seagrass Island, where after the court decision there was no difference to the ownership and use rights of the island between the two related brothers. In the Bina land disputes this was also a profound issue where the 1959, 1995, 1996 and 2009 court decisions have made no difference to the ownership rights of the Bina/Talifu land (George, 2007, October 25; Oru, 2009, May 11).

g) Lotu - Christianity
Participants at the provincial and community level noted quite clearly that Lotu (Christianity) is a factor of change which impacted on the disputes. They have made specific reference to the Catholic mission and SSEM (now called South Sea Evangelical Church (SSEC) to the changes seen in and around Bina. Christianity has resulted in the loss of traditional practices in relation to land. This is when traditional land practices were associated with pagan practices and no longer accepted by Christian doctrines. Christianity was also seen as encouraging government policies that are related to the cash economy. This was noted through people’s participation in the West Kwaio coconut plantation that was operated by the Malayta Plantation Company and owned by the SSEM leaders from Queensland who followed their converts to the island (see Chapter 3 for details).
In the case of Bina, chief RKT puts it, “The Bina Community is just a recently formed settlement through Christianity, government influence, cash economy, health, black-birding and so on. Christianity has encouraged people to establish big communities in order to help the government to function” (RKT, in an interview with the author, 20 January 2014). The impact of Christianity as the factor of change was witnessed in Bina and West Kwaio as noted by participants as stated. This was also confirmed by Keesing (1978) where in Malaita, Christianity was the major factor of change which led to internal migration from the interior to coastal areas and the establishment of new villages. In East Kwaio Keesing (1968) also noted that the change experienced during the early stages of Christianity has created differences in the socio-economic practices between Christians and pagans in relation to customary land which led to disputes between pagans and Christians.

Apart from Kwaio, the trend of internal migration caused by Christianity was confirmed by White (1980) when discussing the Anglican mission in Isabel, who noted that “the traditional mode of leadership has diminished greatly in importance and has been supplanted largely by government and mission status in island-wide political institutions” (White, 1980, p. 354). White went on to say that “during the years of conversion on Santa Isabel, both catechists and priests acted as key figures for resettlement of larger villages along the coasts, and in the transmission of new religious beliefs and rituals that were regarded as a source of considerable new mana” (ibid.). Bennett (1987) also noted similar changes throughout Solomon Islands which led to the establishment of new villages and the alteration of the traditional structure.

**h) European contacts and the labour trade**

Much of the change to customary land tenure practices in Malaita was influenced by contacts with early Europeans and the people’s involvement in the labour trade. Although the contacts with Europeans for Malaita did not happen until later compared to the rest of Solomon Islands, the influences of this contact and the changes seen in Malaita were substantial (Bennett, 1987). This was mainly in the effect of iron tools and other traded items. The labour trade which started in the 1870s and continued until 1904
had immense consequences on the lives of Malaitans, which included West Kwaio people. Bina harbour itself was one of the places in Malaita where labour recruiters anchored to lure Malaitans into their ships before they were taken to plantations in Fiji, Queensland, Samoa and New Caledonia (Bennett, 1987; Akin, 2013). This was also confirmed during interviews by chief RKT, who noted that the Bina village was a recent establishment as a result of ‘black-birding’ and labour trade.

Also, it was the involvement of the West Kwaio people in the labour trade that led to the establishment of the SSEM at Bina. It was the local labour returnees, returning from Queensland that established the Bina village. In a way, the Christianization of the people at Bina was a product of the labour trade. This resulted in the changes in traditional leadership and land tenure practices. Although, Keesing (1967) argued that during the colonial period the hinterland of Kwaio remained intact, in the coastal areas a lot of changes occurred. Today the Bina village itself as observed during the fieldwork was a point of contest because of the different descent groups that occupied the village. Currently the village is predominantly settled by people of Kwara’ae origin instead of those from Kwaio. Even the two principal landowners were of Bina/Talifu land are from Kwara’ae and Langalanga origins. All these were consequences of the labour trade. Today even the political demarcation of West Kwaio where Bina village was located remains a subject of contest (Futaiaisi, 2011).

i) Government approaches

Government policies and development approaches seen through land alienation and reforms are also considered factors of disputes in the case of Bina. PMP argued that, “Customary land is not a problem. It’s the national government’s approach that is wrong as it involved money at the first stage” (PMP, in an interview with the author, 22 November 2013). Part of the changes to the value of land and people’s mindset were caused by government policies, which saw the commodification of customary land. UST noted that people look at government projects as bringing more money. This was due to past government practices that see money being used as good-will payments during the negotiation processes. This has really changed the people’s mindset.
Besides this, there was a general view held by community participants including the house of chiefs that most decisions are made by government officials with less or no consultation at all with the people. The lack of proper consultation with the people has created a negative perception of the government which led to lack of support to government programmes. For example, LDCM noted that, “In West Kwaio people own the land. People have the right to decide on what will happen on land. When people are not consulted and instead decisions are only done in offices in Honiara and Auki, people were left out in dark. This always led to land disputes that affect developments” (LDCM, in a group discussion with the author, 28 November 2013).

During the colonial administration the policies of the government caused Malaitan resentment from 1900 to 1952 (Akin, 2013). During this period a number of important events occurred as a result of the government’s repressive policies. Akin noted that the colonial administration was of the view that Malaitans were dying out, thus there was no need to involve them in government and development. This saw policies that excluded the people from participating in decisions that affected their lives. At the same time, government continued to enforce its laws that benefited itself rather than Malaitans. The repressive policies have developed into the Malaitans negative perceptions of the government. The 1927 killing of the District Officer (DO), Mr William Bell and his party at Sinalagu in East Kwaio and the Maasina rule movement were two events where Malaitans had displayed their resentment against the government (Akin, 2013).

The 1927 incident led to a response from the government which saw the killings, arrest and imprisonment of those involved and many other Kwaio people. It saw the arrest of those who massacre Mr. Bell and his delegation and the destruction of homes, food gardens and desecration of ancestral shrines in the East Kwaio region. Until today, people of Kwaio regard this as an unjust act by the government. Their demands for compensation for destruction incurred through the loss of lives, the desecration of sacred shrines and the destruction of properties, including food gardens, have yet to be compensated by the government (Akin, 1999). This led the Kwaio people to perceive
the government as the enemy, right up until the current day. PMP confirmed this during discussions, asserting that he himself, being the leader of Malaita province, remains fearful of visiting East Kwaio region as a government leader.

According to Akin (2013), the Maasina rule movement actually caught the colonial government by surprise and they were unprepared to deal with it. The movement developed into resistance against payment of head tax and establishment of big coastal settlements. Although its leaders were arrested and imprisoned the movement had demonstrated Malaitan cooperation at the regional level, something the government had not anticipated. The government use of force, which aimed at weakening the movement, instead strengthened the Malaitan resistance to the government. It was then that the government was forced to reconsider its policy of rule by force. By 1952 leaders of the movement were released from prison and most of them were encouraged by the government to form the first council in Malaita to work closely with the government. The effects of Maasina rule in Bina actually contributed to the expansion of the village. Bina was one of the new settlements used by the people to demonstrate Malaitan organization at a political level. Even the building of the road from Hauhui in West Are’are through Bina and to Auki, the capital of Malaita province, is a product of the Maasina rule movement. Today, the government has upgraded the road which has now become one of the economic routes for transport owners in Malaita.

**Examples of changes in land tenure practices in Bina, West Kwaio**

In West Kwaio there are two concepts that can be used to demonstrate the changes that occur to customary land practices. First is the practice of land transfer through women, compensation and fo’a. The second is that of Tofokwae’na, seeking the rights to use land. These practices are very important in the traditional West Kwaio land tenure but are no longer practised these days. These changes signify the loss in custom which contributed to the Bina land disputes.
i) Transfer of customary land in West Kwaio

In traditional West Kwaio society land transfer is practised as part of the customary land tenure. But there are only two ways by which land can be transferred. The first is that tribal land can be given to an important woman of the tribe. Often it is when the woman is in need of land for gardening purposes. When a woman who is married to another tribe asks for land from her own tribe, this is treated very seriously. In response, the tribe will give her land instead of only giving her permission to make gardens on the land. Although Kwaio is a patrilineal society women are often treated with very high respect. Such a form of transferring land to women signifies the importance of women in the West Kwaio society. When it comes to the ownership of land given to a woman, the land will only belong to her immediate family, which is the husband and children. For this reason, the husband’s tribe will not have any right to make any decision on that land. It will be those who are born from the woman and her children, who again will form a sub-clan and have the rights to own and use the land. But, nowadays such practices and recognition of women through giving of land are no longer practised. This is due to the impacts of Christianity, the new economy, and westernisation, which shows the changing practices of customary land tenure in West Kwaio.

Secondly, land in West Kwaio can only be given in compensation payment and fo’oa or bounty. Land given in compensation happens when the tribe does not have enough traditional wealth to pay compensation for the life of a person from a different tribe that was killed by a member of the tribe. Land given as fo’oa or bounty is for someone, normally a warrior who avenged on behalf of the tribe by killing the killer. Normally the killer is another warrior who kills someone from the tribe that placed the fo’oa. In this case land can be offered as payment for the prize. However, the fo’oa practice was banned when Christianity was introduced. The act of killing, too, was banned by law as part of the European introduced concepts, which have changed such practices today.

These two forms of land transfer practices were confirmed by the chief CA-JG, LHCC and other chiefs who are present during the interview. As CA-JG summarizes:
In custom [West Kwaio] it is ‘tabu’ to sell land. Land can only be given to a female member of the tribe. Two, land can be given as a form of payment for the life of a person being killed or for a fo’oa (CA-JG, in a group discussion with the author, 27 November 2013).

Apart from these two methods of land transfer, in West Kwaio land is so important that in the traditional society it cannot be sold. As noted above, only women are given land. This shows the importance of women and the respect given to them, which are equivalent to the value of land. Rarely, one will find that customary land was given to men. Men are considered as part of an existing tribe that owned the land. Thus when practices of selling land emerge, these are considered as foreign and are linked to the new economy. Selling of customary land is not a customary land practice. It is a contemporary practice associated more with the importance of cash money in the modern economy. Although customary shell money is used, the practice of buying and selling land is not part of the West Kwaio traditional customary land tenure, as stated by the chiefs during the discussion (Focus Group Discussion 2, 27 November 2013).

ii) Tofokwae’na

*Tofokwae’na* is a practice through which land can be allowed for a person from a different tribe for gardening purposes. This can only be done provided the person who wishes to make the garden first gives the leader of the land owning group a coconut. The leader will in turn perform a ceremony of breaking the coconut and requests the permission and agreement of the *Su’asia*. *Su’asia* in West Kwaio was the spirit of the ancestor(s) who first discovered and settled the land. The *Su’asia* is considered the principal owner of the land and when using the land his spirit’s approval is gained through sacrifice. It was the belief in West Kwaio that if this was not done the ancestral spirit will bring a curse and misfortune to the tribe and the land. After the ceremony of breaking the coconut is done the person who requested to use the land for gardening will then go ahead to make his/her garden. However, as part of the *tofokwae’na* the process is incomplete until a thanksgiving ceremony is performed. The thanksgiving ceremony will commence when the garden is ready for harvest, as a sign of *Waluda*. 
The owner will bring the first harvest and give it to the same leader of the land owning group who performed the breaking of coconut ceremony in the first place. A thanksgiving is made to the Su’asia for his permission; agreement and blessing (Waluda) to the gardener. This is a very important practice as it signifies who owns the land and who belongs to the tribe that owns the land. It also recognizes the outsider who was allowed to use land although he/she is not a member of the land owning tribe.

As LDCC explains:

The performance of breaking coconut and first harvest is given to ‘Suasia’, who is the principal landowner. Suasia was the first discoverer and one who first settled the land before his generation multiplies across the land (LDCC, in a group discussion with the author, 26 November 2013).

At times the thanksgiving ceremony can involve payment of baniau’u or tafuli’ae, custom shell money that is given by the gardener as part of his appreciation for the use of the land. This will not be asked for by the landowner but something done out of heart by the gardener. This at times will also be followed by a Mao’oma. Mao’oma is a general feasting that signifies Waluda and is shared by members of the tribe who owns the land. It can be hosted by anyone who has the wealth in custom as well. Because it is a general feasting anyone including people from other tribes can also participate in the Mao’oma.

The changes that occurred in the West Kwaio land tenure have resulted in the lack of understanding of the tofogwae’na practices. As a result people make claims over land that they do not own in custom. When somebody was allowed to use the land for gardening purposes for a longer period, over time as the information of the tofokwae’na practice is lost, people start to claim that they own the land. This happened when people heard stories that their grandfathers may have offered a baniau’u or tafuli’ae and hosted a mao’oma when using the land. This led to claims that the land was bought by their great grandfather from another tribe with baniau’u or tafuli’ae. This is not right in West
Kwaio custom land tenure, as asserted to above by CA-JG that “in custom it is tabu to sell land” (CA-JG, in a group discussion with the author, 26 November 2013). Also, nowadays the practice of tofokwae’na is no longer kept because people have converted to Christianity and decided that such a practice that is part of traditional customs belongs to the devil and is not accepted anymore. This is where most confusion arises as people no longer understand their custom practices that are connected to the land. Besides Christianity, the cash economy has also contributed to changing land tenure practices and the value of land. People think that by having the wealth in cash money they can buy land and own it individually.

As the two concepts have demonstrated, customary land tenure practices in West Kwaio have changed. This is posing a real challenge for the West Kwaio society at present especially on how to deal with customary land disputes as seen in the Bina land disputes. In fact, the changes seen raises more questions than answers to the system of customary land practices. Whether what is seen in practice in the contemporary West Kwaio society can still be termed as customary, given that a lot of changes have already affected or influenced the land tenure practices, is open to debate.

**Levels of customary land dispute resolution**

In Malaita the institutions that are responsible for dealing with customary land disputes are first, tribal leaders, traditional leaders and the customary house of chiefs. The second level is the courts. In general, tribal and traditional leaders were seen as the first stages for dealing with customary land disputes. At this stage, normally decisions made are geared towards resolving the dispute and ensuring that social harmony is maintained within the community. In a situation where the tribal and traditional leaders have failed to resolve the matter, it is then taken to the house of chiefs. The house of chiefs is widely accepted as a customary institution despite the debates over its customary status. The house of chiefs is made up of chiefs from the area where the dispute is from. The house of chiefs was given legal recognition to settle land disputes under the Local Courts Act, Cap 19. Again the decisions of chiefs are not to create win-lose situation but most times are geared towards maintaining social relationships.
Failure to use traditional leaders and chiefs

In the Bina land disputes these first two avenues were not followed, an indication of change which occurred in West Kwaio societies. This was confirmed during interviews with participants, mainly those at the community level. BHRCM commented that “in fact they [people, government authorities] said that [the Bina land disputes] would be given to the chiefs to deal with but since then nothing has happened to this day” (BHRCM, in an group discussion with the author, 27 November 2013). Another, YRL, suggested that “government should not use the legal acquisition processes or even if used, the chiefs should be seen as the rightful authority that should decide on the rightful owners of the land” (YRL, in a group discussion with the author, 27 November 2013). A member of the Lafari house of chiefs, LHCS further noted that “the lack of recognition and powers for the chiefs” was evident in the case of Bina land disputes (LHCS, in a group conversation with the author, 28 November 2013). Another participant, BvYL, noted that the matter should be referred to the tribe itself, and not the house of chiefs. He claimed that:

The Lafari House of chiefs is not itself part of custom but the beginning of the court process. I would like to see issues relating to land to be handled by the tribe [Kwaleunga] themselves rather than the Lafari house of chiefs (BvYL, in a group discussion with the author, 27 November 2013).

The fact that the house of chiefs was not given the opportunity to deliberate on the land disputes can be best explained by those who have decided to take the dispute to court in the first place. But, the absence of tribal leaders, traditional leaders and house of chiefs to address the Bina land disputes have led to calls for recognition by authorities for these institutions. Instead of accepting the status quo the roles of custom and traditional institutions should be strengthened. PMP stated, “The role of chiefs and traditional leaders should be strengthened. How? The government needs to change the legislation so as to hand back more power to chiefs and traditional leaders” (PMP, in an interview with the author, 22 November 2013). There is a belief that only the chiefs have the power to make a final and lasting decision to the on-going land disputes. This was noted
by MA-B that “in Kwaio when decisions are made in custom they are final and people respect them. We cannot go around it again” (MA-B, in a group discussion with the author, 26 November 2013). Yet this remains open for debate.

In Chapter 3 the history of the courts in the Bina land disputes was outlined in detail. The cases that were first heard by the courts were under the Native Courts. It followed after independence in the 1980s when cases were heard by the Local Court. By the mid–1990s and throughout 2000s it was the Magistrate Court in Auki that dealt with the disputes. The Magistrate Court was part of the legal acquisition process that was required under the Land and Titles Act, Cap 133. Interestingly, when the appeal against the acquisition process was made in court, the Magistrate ruled that matters of dispute pertinent to ownership of customary land have to be decided on by the house of chiefs. Despite the magistrate’s ruling the people do not want to take the matter to the house of chiefs. The failure then saw the magistrate proceed with its decision.

On the 30th day of April 1996, the Principal Magistrate of Malaita on the failure of the different appellants to settle their disagreements in the custom house of chiefs in the given time ruled that “the Respondent’s (acquisition officer) determination of the sea area of Bina harbour is null and void (George, 2007).

This is a clear disregard by the people for both the customary house of chiefs and the Magistrate Court’s decisions. It was then that the court ruled by upholding its early decisions. Instead the disgruntled claimants further pursued their appeals in the Magistrate’s Court and onto the High Court, which until the time of this study had yet to give its decision. Here, it is very important to note how the people who disputed the land did not allow the matter to be heard by the house of chiefs. But as PC in the Lafari house of chiefs summed up, “the change has affected how we think and do things, ‘umi pipol too karange’ meaning ‘we the people are fools ourselves” due to the changes that occur (PC, in a group discussion with the author, 28 November 2013). Today the Bina land disputes have remained a legal matter.
Conclusion
The complexity of the Bina land disputes is seen from the different reasons tendered as causations by participants. These included the loss of custom relating to West Kwaio land tenure, the impacts of the new economy, contested leadership, money, challenges of formal recording of genealogies, the use of acquisition processes, courts and law, Christianity, contact with Europeans and labour trade and government development approaches. Given these factors, the loss of custom due to historical influences is one that contributes to the land disputes. The relevance of this argument was demonstrated in the tofokwae’na practices, which clearly show how custom land practices in Kwaio are changing as a result of external influences. The external influences as noted in the Bina land disputes constitute what was noted above as the contacts with early Europeans and traders, the modern economy that involves cash money and Christianity. These are all viewed as historical influences that cause loss to the Kwaio custom practices. This loss of custom knowledge has provided an environment for the different arguments to be initiated over the ownership of land. This was evident in Bina when different claims were submitted on the basis of the different interest: those that claim to have owned the land through custom, Christianity and government court.

The government is also another factor in the Bina land disputes. Government influences are mainly through the different laws enacted to administer land disputes that include the use of court. The over reliance on the court to decide on customary owned land has led to the ignorance or lack of adherence to the authority of traditional leaders and custom institutions, such as the house of chiefs, when dealing with disputes. Also the court decisions are geared towards individual ownership of land. This was contrary to the customary land ownership. This mismatch between the court’s interpretations of land ownership against the customary tenure is a factor that contributes to the Bina land disputes where in Kwaio tenure, ownership of customary land is vested with a tribe. Furthermore, the government policy of acquiring customary land for economic development has been a cause for disputes. Although, the acquisition process does allow for a fair hearing to determine ownership of customary land, the administration of this process is deemed as allowing for more uncustomary practices to happen. That is
because when the process is invoked through public hearings it fails to effectively determine whether a claim to customary land is submitted on behalf of a tribe or that of an individual. In the case of Bina, more individual claims were submitted that resulted in the proliferation of the disputes.
Chapter 5: Implications for dispute resolution

Understanding customary land disputes and their impact on economic development is important for disputes resolution. This requires that any mechanisms for dispute resolution must be formulated on the basis of a detailed and deeper understanding of the land dispute problem itself. In an instance where a remedy put in place that is not well informed on the issue, whatever the measure, it is bound to fail. Thus understanding how Bina land disputes impacted on the Bina harbour development project is important. This can help in establishing specific and relevant solutions to deal with the problem of stalled development, at least for Bina, but more generally it can also be applied to similar cases of land disputes affecting economic development elsewhere in Malaita and Solomon Islands.

This chapter begins by discussing the three development schools of thought, namely the modernist, traditionalist and the midway views in relation to the Bina land disputes and the harbour development project. The second section discusses the question of ‘how land should be seen in contemporary Solomon Islands’. This section highlights the limitations of the three development views when dealing with the issue of land disputes, followed by stating the importance of the view taken in this study. The third section discusses the implications for dispute resolution. The points covered under this section are the government approaches, the court system, the Lafari house of chiefs and the people. The final section reflects on some possibilities for the development of customary land.

The three development approaches and the Bina case study
The current discussion of customary land disputes is categorised under three development arguments as outlined in chapter 2. In this section, the three development schools of thought are discussed against the Bina land disputes and harbour development project to give a clear view of what approach was actually used by the government, stakeholders and individuals when dealing with the problem at different times.
a. Alienation, registration and land reforms
In the modernist view, the argument presented was that customary land needs to be secured under the state land tenure before development can happen. This requires the alienation of customary land from tribes and clans, and for land to be transferred to the state, who then leases the land to individuals or developers to develop. This was based on the notion of property rights which is practised through individual and private ownership that supports economic development. It is part of the capitalist system and economy. Anderson refers to this process as the ‘modernization of customary land’ (Anderson, T., 2012, p. 87). The basis for the modernist argument was that in customary land tenure the group ownership is very difficult to deal with as there are no clear ownership rights. The different rights held by the different individuals within a group are too complicated to understand and deal with. This is causing difficulties for economic development when attempts were made to try and develop customary land.

In the Bina case study, the interest to develop the land comes from both the government and individual landowners. As demonstrated in chapter 3, the history of development in Bina was started by the people themselves, who developed the land based on the new knowledge they have acquired from their experiences in the plantation economy. This saw a new value placed on land. The engagement in planting of coconut groves, the cattle projects and later logging and sawmilling have brought significant changes to the land and in the mindset of the people. Through the SSEM’s plantation company, followers and others were encouraged to participate in the cash economy. This saw the nurturing of the modernization ideology over time by the people through these historical engagements. This is part of the modernization approach to land that was initiated by the people themselves. It actually led to the transformation of the land and was attributed to Christianity, involvement in the labour trade and plantation economy.

On the other hand, the government’s involvement was through policies put in place that aimed to secure customary land as outlined in chapter 3. Although this did not affect the Bina lands and harbour in the early stages during the period of colonial government, by the time the Solomon Islands government had indicated its interest to develop the Bina
harbour and the surrounding lands for the project, this was realized. The approach by
the government became evident in 1994 to 1999 when the process of land acquisition
was invoked to secure the land. This process was based on the government policy that
customary land needs to be secured before development. However, during this period it
was not clear if the land is to be registered under the trustees established by the land
owners or the state when acquired. This is regardless of the Customary Land Records
Act, Cap 132, enacted by Parliament in 1994, under which there was no implementing
regulation to allow for this particular law to be enforced (see Fingleton, 2008). This
means if the Bina lands were to be acquired the only relevant law was the Land and
Titles Act, Cap 133. The process required by the Land and Titles Act then will lead to
the land to be registered under the commissioner of lands (the state). The only
possibility that can happen is for the state to lease the land back to the landowners
through their established ‘land trustees’, which has not been the case due to the land
disputes (see chapter 4).

Clearly the government approach was based on the modernist view on customary land.
As seen in the case of Bina land disputes and harbour development, the acquisition
process invoked to secure the land was disputed by the people. Although people did
want to see the development project on their land, what they fear is the government’s
process which could lead to loss of land. Loss of land for the people would mean the
rights that each of them have to use the land will be limited or totally denied. This is
something the people are fearful of and will not comprehend if it happens. This was
evident in their responses against the permanent alienation of land during the interviews
and focus group discussions conducted at the different communities in West Kwaio.

Furthermore the modernists argue that, in order for economic development to take place
land reforms are necessary. People must be willing to allow their land to be registered
under some form of formal arrangements under the state land tenure system as a way to
secure land for development. The modernists believe this “would benefit the natives by
bringing: greater security of title, a strong boost of formal economies, improvement in
agricultural productivity, access to rural credit, and benefits for subordinate groups (in
particular women) which had been excluded in traditional systems” (Anderson, 2012, p. 87). AusAID (2008) also noted the benefits that customary owners would get given land reforms can include a reduction in the number of disputes. But, the truth in whether the landowners will get such benefits when customary land is reformed has not been the case. In Papua New Guinea, Anderson (2012) showed that the landowners did not get the alluded benefits. Instead such policy on land reforms benefited only the investors. In Solomon Islands, too, the production from alienated lands remains low (Fingleton et al., 2006), and land disputes continue to be recorded (Foukona, 2007).

Despite such difficulties, especially those encountered in the Bina land disputes and the Bina harbour development project, the modernist approaches to customary land have remained prominent amongst governments, donor organizations and individuals. Calls continue to be made for the reform of customary land as the only way that would see economic development in rural areas in Solomon Islands. For the government, this was noted in the approaches that it took when dealing with the current problems, which saw no drastic measure taken to deal with the problem apart from the on-going Custom Land Reform Commission and the proposed Tribal Land Dispute Resolution Panel. The current custom land reform commission can be seen as part of the Customary Land Records Act as its central focus is on recording custom of how to deal with land disputes. The tribal land disputes panel is geared towards empowerment of chiefs. However, more consultations are required for this legislation otherwise there will be a high tendency for it to duplicate the functions of the court, especially the role of the Local Court. Nevertheless, the continuous call for reform continues to be seen as in line with the modernist view.

b. Better understanding of customary tenure and strengthening

The traditionalist approach is rooted in the customary land tenure and traditional practices. Land was seen as an integral part of people’s lives. Land is an identity for Melanesians (Ballard, 1997) and for Solomon Islanders (Burt, 2010). The sense of identity connotes land as inalienable. It is not permitted to alienate customary land from the people who owned it and then allocate it to few individuals or the state. This was in
contrast to group ownership where everyone has the right to use the land. Hence, when
the government pushed to alienate customary land from the people, this caused
resentment and resistance by the people. Disputes will increase when the government
targets customary land for development. For the government, targeting customary land
means alienation but for the people, that is impossible. Because of this, it is very
difficult for the government and outside investors to come in and deal with customary
land just as they wish. Proper consultation must include landowners to secure their
consent and approval before land can be engaged for economic development, but on the
basis that the land will not be alienated.

People’s resistance to allowing the government to acquire the land for the Bina harbour
development project was based on the traditionalist view. It was the traditional value of
land and the connection that people have with it that resulted in their unwillingness to
allow the land to be registered. However, given the changes that occurred to customary
land practices in Bina and West Kwaio there is a question over whether the practices
seen today can still be seen as traditional. Of course, as I argued, they are no longer
traditional, due to the changes in Christianity, labour, mobility and education. This was
evident in the disputes when arguments for and against were based on loss of custom,
the cash economy, contested leadership and money, formal recording of genealogy, the
land ‘acquisition process’, the court and laws, lotu, contacts with Europeans and labour
trade and government development approaches. Apart from the contested leadership,
which is a traditional feature of the Melanesian society, the other factors are from
outside influences and not part of the traditional West Kwaio customs.

Also, the failure to use tribal leaders and traditional institutions, including the Lafari
house of chiefs, when dealing with the disputes is a clear indication of the extent of the
loss of custom. The history of the Bina land disputes discussed in chapter 3 has clearly
demonstrated when the disagreement over the Bina/Talifu land, between members of
the Kwaleunga tribe, was taken to the court in the first place. When the court decided by
allocating the land to one of the parties to the dispute, this became the basis for more
disputes. The loss of custom continued, as noted in chapter 4, where customary land
practices in West Kwaio are fast eroding, given the outside influences and changes to custom itself. The traditional practices of land transfer and recognition of women as important member of the tribe has disappeared. The *Tofokwaen'a* practice too was no longer observed. Given these changes in custom, the traditional notion of custom has been challenged, as seen in practice today.

While Anderson and Lee (2010) and others called for more understanding of the Melanesian land tenure system instead of asking for more reforms that will only see the permanent alienation of land from the people, the people themselves who claim to own the land in custom have to prove how well they have understood their customary land practices. Given the influences of cash economy, Christianity, contacts with Europeans and the labour trade and the government’s on-going push for land reforms, the question of identity over land in Solomon Islands is now threatened. However, the fact that people still continue to rely on land for their livelihood based on the customary notion and practices of subsistence agriculture and the communal system cannot be disputed, despite the changes seen in custom practices. This shows the continuity in maintaining the relationship between land and the people, and the continuous dependence on resources the land holds for peoples’ social, economic, health, cultural and political survival. This is more convincing when the state through its institutions that were supposed to provide for the basic services to most of the people, who continue to live in rural areas throughout Solomon Islands, has been unable to do so. Instead, people depended much on the traditional and customary land for their livelihood since when their first ancestors settled the land (see Turnbull, 2002; Bennett, 2002). Therefore, regardless of the changes seen to customary land practices, land will continue to remain at the heart of the people where they will always resent any move to register the land, as seen in the case of Bina land disputes.

In view of the traditionalist argument, Fingleton and others stated that, “the formal recognition of customary land rights is necessary for future economic development and the provision of infrastructure to provide essential public services” (Fingleton et al., 2006, p.19). This is something that the government or whoever is involved in the Bina
harbour development project has to bear in mind. The resistance seen against the registration of the Bina/Talifu land and the court’s interpretation of the Bina harbour maritime area as not part of customary land has clearly demonstrated the contrast between the traditionalist and modernist views. Furthermore, with the on-going support for customary land tenure by traditionalist thinkers like Maenuu (1981), Gegeo and Gegeo (2001) and Anderson (2012)—who called for more understanding of the customary land tenure and how people can develop land without the need to register—poses a need for more understanding of the problem of customary land disputes and economic development.

c. Striking a balance between the modernist and traditionalist approaches

Given the striking contrast between the modernist and traditionalist views, there are commentators and academics who argue for some form of compromise between the two schools of thought. For the modernist approach that is supported by the government and donors, the difficulties faced in alienating, registering and reforming of customary land are obvious. On the other hand, there is a pressing need for the government to see that development opportunities and basic services are provided to the growing population in rural areas. Yet customary land cannot be easily registered or reformed without the consent of the people who own it. Finding a compromise between the two views is what I call the ‘midway view’, which then becomes the third development approach to customary land disputes and development. Fingleton and others (2006) refer to this as the ‘middle road’ approach, while Allen (2012) called it the ‘hybrid’ model. The midway approach was based on the fact that in Solomon Islands land is owned by the people and protected by law. Likewise, economic development is needed to support the needs of the growing population in rural areas where the bulk of the population lives. In realizing this view, Fingleton stated that:

Customary land ownership is something that cannot be isolated from the people – land is what they identify themselves with. Thus, it can be destructive if lack of consideration is given to land. A reform must help that form of group
ownership but at the same time encourage individuals to develop land (Fingleton, 2008, p. 27).

Similar sentiments were also raised by Wilson (2010), Chevalier (2000) and others who argued that given the past conflicts in Melanesia and Solomon Islands, land remains a volatile issue that must be addressed with sensitivity. When the Bina harbour development was started, the efforts of government in the 1990s were backed by the neo-liberalist views that call for more privatization and other reform policies which are seen as modernist. In the early 2000s there was a shift in World perceptions and views. This is because of the difficulties faced by land reform, especially in this part of the World, due to on-going resistance from the people and the fact that state laws continue to recognize custom ownership of land.

The recognition of this dilemma over customary land for economic development led Kabutaulaka (2005) to state that because conflict often arises from the development of customary land, the customary land tenure requires more consideration and attention. This has been a challenge for Solomon Islands, although the government has recognized the need for this by working on a piece of legislation to establish the ‘tribal lands disputes resolution panel’ in line with this view (Ministry of Justice and Legal Affairs, 2012). At the same time, while there is a shift in thinking about customary land today, in Solomon Islands this was not reflected in the approaches taken to deal with the problem. In Bina, the lack of the implementing regulation for the Customary Land Records Act, Cap 132, was seen as a setback (Fingleton, 2008). With the proposed ‘Tribal Land Dispute Resolution Panel’, although this is a move towards empowerment of traditional leaders (mainly the chiefs), there is still a long way to go. On the other hand, initiatives taken by individuals to try and work out a solution between the traditional and the modern approaches towards finding a compromise, a ‘midway’ approach, is on-going (see below).

Furthermore, Allen (2012) refers to the midway view when discussing the case of Papua New Guinea’s Clan Land Usage Agreement (CLUA) model of the smallholders’ oil
palm growers that was used on Guadalcanal Plain. This was referred to as the ‘informal formalization’ of customary land for commercial development. It opposed the view on land alienation, registration or privatization as the only way for economic development in Solomon Islands. Likewise, Allen (2012) argued that the trustee arrangement that was encouraged by the government has not benefited women and young people but only those who are trustees who share the benefits amongst themselves. But for the smallholder growers, through the ‘informal arrangement’, women and young people in Guadalcanal have benefited a lot from this arrangement. The success of this approach in Guadalcanal can be a possibility for the Bina harbour development, which remains locked in these on-going land disputes.

**Desirability of land alienation?**

In Solomon Islands the question of land alienation should be seen as a thing of the past. The history of land alienation shows that it has done little to cater for the development needs of the people. Instead, the land alienation policy implemented during the colonial administration served the interest of the traders, planters, missionaries to some extent and the government (Fingleton et al., 2006). Although transaction was made in some cases, the items and money involved were not adequate to reflect the true value of the land. Likewise, most transactions benefited only a few individuals who were involved in selling of the group land, mostly the labour returnees from Queensland who saw the value of cash in the land (Bennett, 1987). The policy gives rise instead to on-going resentment against developers and the government. It becomes a cause of land disputes. Although some alienated lands were returned to their traditional landowners in the 1960s and 1970s much of the land that was alienated was transferred under government title prior to independence. Such land remains the subject of disputes over the years until today. Thus, the only way to deal with the disputes is to return the land to its traditional owners, as argued by Foukona (2007).

Alienation of customary land was aimed at securing land for economic development and to boost economic growth. This should lead to improved infrastructure and basic services provided closer to where the bulk of the population is located. However, this is
not the case in Solomon Islands. As Fingleton and others (2006) noted much of the alienated land in Solomon Islands has achieved only low productivity. That is because of lack of investment from investors and the on-going disputes pertinent to such lands as a result of their alienation. Anderson, T. (2012) also noted similar views that in Papua New Guinea, the alienation of customary land benefited only the investors, multinational corporations and wealthy businesses. These multinational corporations and businesses are owned by wealthy individuals in rich countries, the ones pushing behind their governments to influence the land reform agenda in Papua New Guinea and elsewhere in Melanesia. For the landowners, this resulted in the loss of land. When the loss of land was realised, protracted disputes developed because for the traditional landowners, the transaction only means allowing somebody to use the land though it will be reclaimed when it is needed (Bennett, 1987). But for the developers, the transaction means permanent alienation and having protected rights over the land under law. Thus, the alienation policy did not address land disputes and the needed economic development. Rather, did the opposite by fuelling more land disputes and benefiting only the minority, often the wealthy class and so called ‘elites’.

In Malaita such difficulties can be seen in the process of land acquisition in the case of Bina harbour development project. The process to see the land register under the proposed trusteeship arrangement has not eventuated. However, the laws that remain in force where the acquisition process was followed can only lead to transfer of land ownership to the state. Frankly, this is not different from the result that any form of land alienation may produce. It was this unclear process and the politics involved in the Bina land disputes and harbour development that created the fear in people’s minds. Based on past government records and the history of land alienation in Solomon Islands, people in Bina and West Kwaio have remained doubtful of the government although they would like to see the development implemented. People continue to see the government negatively by arguing that the land disputes and development project are only used to serve the government’s interest rather than dealing with the problem and to implement the project. On the other hand, the failure of government to address the problem is also related to the changes to custom, which continues to influence people’s
perception today, especially on how they view the value of land. From participants’ responses, it is clear that some did realize the changes whereas a good number of them too have not understood these changes. This gave rise to the contest that develops between the people themselves due to the factors identified as the causes of land disputes in Bina discussed in chapter 4.

Given these facts, the focus today should be on understanding the changes in customary land tenure practices. It is undeniable, though, that customary land tenure practices are not static: custom itself is constructed and changes over the years. People should not see the customs as static but as processes that change as people interact with other outside forces. At the same time, there should be an alternative way of dealing with customary land for development other than alienation. That is because despite the changes seen to custom, people have remained embedded with the land. This must not be underestimated as failure to understand and acknowledge this bond will only led into protracted land disputes that can developed into open conflicts.

The dynamics of customary land tenure need to be understood in terms of modern economic development. Thus, the continuous practices under outdated laws as well as focusing on strengthening the institutions that administered only 13 per cent of the land, almost all leased out or taken up by Honiara and other urban centres, will not help to realise where the development capability of the country lies. The biggest obstacle to development seen today is customary land disputes. It is on this basis that the issue of ‘customary land disputes’ needs to be first understood in detail before mechanisms can be put in place as remedies. Furthermore, the changes that have impacted on customary land practices over the years have contributed to the proliferation of land disputes where economic development is targeted or proposed. It is here that the ‘historical change’ approach adopted by this study is important to understanding the complexity surrounding customary land disputes and economic development.

Efforts taken in the past by the government to try and deal with customary land for development were much on what is seen as a legalistic approach where laws were
enacted to administer land, and for the courts to adjudicate cases of land disputes. This was highlighted in Chapter 3 under the sections on government policies and the role of the courts. However, Fingleton and others (2006) also noted that, apart from the legal approach adopted by the government, there were some measures introduced by the people and supported by the government to address land disputes and the development of customary land. In Solomon Islands, these are the Laru Land Conference, the customary land recording in Auluta Basin; the Christian Fellowship Church in North New Georgia based on church affiliation and Guadalcanal Plain smallholder oil palm growers. For the Auluta Basin, although the exercise was done around the mid-2000s, there was a clear resistance by the people not to allow the land to be registered under the state unless it was done under the tribal trustees. Another challenge is that economic development is yet to happen on the land. Nevertheless, the focus of these exercises was on strengthening customary land tenure and empowering the people to engage in the development of their land (also refer to above discussion on Guadalcanal Plain smallholders oil palm growers by Allen, 2012).

Finally, the failure of the Bina harbour development is not a problem alone for the government itself. The problem of lack of development is attributed to the different factors which include the changing custom practices by the people of Kwaio, the lack of proper coordination between the Malaita provincial government and the Solomon Islands government and the failure by the court to end to the dispute. As discussed in chapter 3 for the different parties involved in the Bina land disputes and on the factors that impacted negatively on the project, the challenge is for everyone who is involved, that is the governments–both the national and provincial–the people, chiefs, landowners, tribal leaders and even stakeholders. This was highlighted by a good number of participants, that the issue can only be addresses by all. Most important of all is to engage the people who stand to benefit and landowners to be part of the process in identifying and addressing the problem. It is only through people having a sense of ownership over the development project, and not seeing the government in a negative way, that any collective actions to deal with the problem of land disputes and no development can last.
Implications for dispute resolution
The ‘historical change’ approach taken to look at the Bina land disputes and harbour development project in West Kwaio has provided some implications for the different actors involved in this case. These implications are important for Malaita province, and to some extent Solomon Islands, in the effort to understand customary land disputes when dealing with economic development on customary land.

i. Government approaches
Given the development paralysis surrounding the issue of land in West Kwaio, Malaita and Solomon Islands, this thesis has acknowledged the midway view of looking at the issue. This thesis has taken a step back to question what in fact is causing the proliferation of customary land disputes related to economic development in rural Solomon Islands. This is based on the fact that government efforts to address the issue to date have proven futile.

Credible information is vital for the government to address customary land disputes. This was not available. Goddard’s review of literature on the subject of land disputes for the World Bank country office has noted this limitation (2010). This has affected the policies and mechanisms that government put in place to address the issue. The question is how can this be made available? It is here that this thesis can contribute to the dilemma. Past government approaches of dealing with customary land and related disputes, as noted above, focused on the modernisation of customary land (Anderson, 2012). In Solomon Islands this was seen through the policies of land alienation, registration and with on-going land reforms. It is believed that reforming customary land would mean reducing occurrences of land disputes, which then would see economic development flourishing in rural areas. Recently, the idea has emerged of establishing a customary lands tribunal that would help to look into the issue and if possible address it. But as Futaiasi (2011) claimed when discussing customary land disputes in Malaita, more consultation is still required before a bill can be taken to parliament.
The implementation of the past government land policies does not provide evidence of the argument of modernity. Instead what is obvious is the increasing number of land disputes, adversely affecting economic development. Looking at the current proposed ‘tribunal’ for dealing with customary land disputes the guidelines clearly show that it does not target the root causes of the land disputes. Instead, it was seen as another court process because it only deals with how effectively land disputes are addressed rather than first looking at what actually causes land disputes. In contrast, if this is another court−like forum, then what is the problem with the court to date? One of the reasons why the courts have failed to deal with land disputes in Solomon Islands, including the Bina land disputes, is the lack of resources and administration support (Tiffany, 1983; Paterson, 2009). Given the lack of support for the court, if this new approach is taken, then how well will the office be resourced and administered when that is the same problem the court is still facing, which also led to its failure to address land disputes.

Government land reforms since 1997, which received support mainly from AusAID, focused on strengthening of the Department of Lands and Survey (DoLS). This assistance continued until 2008. While this targeted the improvement of land administration, little has been done to prepare the country for the future priority area of development that is in customary land. Customary land was left to the people who owned it in custom. The recent customary land reform unit established in 2011 was actually tasked to deal with the issue of recording traditional laws for dealing with land disputes (Radio Australia, 2011, May 11). However, the death of Andrew Nori, the local consultant who was hired by the government to assist with this very important task, was a setback for this unit and the government. The onus is on the government to find a suitable person to continue on with the work. There must be a political will to move this exercise forward, but the fact was at the time of this research no one had yet been recruited. This draws questions on how serious the government is to ensure that this exercise is done. As part of the exercise, it is important for the unit’s role also to be extended to study the history of customary land disputes in Solomon Islands as part of the core function. This would be a long term goal and not just targeting a specific objective.
ii. **Question of courts**

There is a fundamental question that remains over using the court to address customary land disputes in Solomon Islands. This lies in understanding the ‘historical changes’ to custom and the question of legitimacy of decisions given by Native Court in Malaita province since its establishment in 1942 (Akin, 2013). The history of the court in Malaita, as elsewhere in Solomon Islands, revealed that decisions were made by the District Officers (DO), who were British. The DOs knew very little about custom and often relied on the government appointed village headmen for information to decide on land dispute cases (Akin, 2013; Bennett, 1987). But how credible was the advice of the ‘village headmen’ when advising the DOs? In most cases the village headmen saw their new position of authority as a way to settle old scores (Bennett, 1987). Similarly, Rodman (1989) also highlighted this in the case of the Aobans in Vanuatu, where leaders used their new position to stamp their authority for their own interest. Furthermore, village headmen that were appointed are not chiefs or leaders of the tribes. They are those whom the colonial government saw as their supporters (Akin, 2013).

Another issue in relation to the Native Court decision was the language barrier. A common trend highlighted by Tiffany (1983) is that those who speak some form of understandable broken English ended up winning court cases relating to land disputes. When assessing these two points (DO’s decision based on the advice of village headmen and Language barrier) with the court decisions in the Bina land disputes, the question hangs over the legitimacy of the past Native Court decisions. This was noted during an interview with chief RKT, who claimed that the person who is one of the current title holders of the Bina/Talifu land was only a translator in one of the earlier court cases but when the court decided, his name appeared as one of the principal landowners (RKT, in an interview with the author, 20 January 2014). When the current courts continue to uphold such past decisions, which are seen to be given in ‘error’, this sets the precedent for land disputes to increase in Bina.

In line with this, customary land is owned by a group, normally the tribe or clan. When the court was used to decide on a case of customary land disputes, it actually awarded
the land to one or two individuals. This was exactly what happened in the Bina land disputes. This becomes a source for disputes when tribal members feel that they are landless and have no right to land. The repercussions are even greater when those to whom the court has awarded the decision started to exert their power and authority over such land to serve their own interests rather than the group’s interest. The decisions of the court are biased towards the individual property ownership theory, which supports the capitalist economy. This was contrary to the customary land tenure systems that cater for the subsistence economy, the basis of the Solomon Islands communal system.

Finally, the definition of ‘land’ is another point of contest in the Bina land disputes and harbour development. Under the Land and Titles Act, Cap 133, the definition of land does not cover the harbour whereas in custom the harbour is seen as part of the land (Ballard, 1997; Burt, 1994, 2010). This was also a source of contest as seen in the Bina case. This contrast between the court practices, laws and the customary land tenure must be understood as they have contributed to the Bina land disputes.

iii. The Lafari house of chiefs
The Lafari house of chiefs is a significant customary institution. In fact it has gained status and popularity throughout central Malaita in dealing with customary land disputes. Even the police in Auki, the Capital of Malaita province, have supported the role played by the Lafari house of chiefs in the past land dispute settlements. This was despite the argument that the house of chiefs was not part of custom and customary law is not codified (see Care, 2002). But what is revealing is that the Lafari house of chiefs has not dealt with the disputes. Regardless of the fact that the house of chiefs is renowned in central Malaita, it was not given the opportunity to deal with the land disputes. Its absence from the resolution process was viewed as part of the changes now happening in West Kwaio societies, and elsewhere in Solomon Islands, where traditional institutions are now challenged.

The role of chiefs as traditional leaders is now eroding due to outside influences. As Burman (1981) noted in the case of Simbo, after people opted to become Christians,
pastors and catechists were recognized as new leaders. In the Bina land disputes, the failure to use the Lafari house of chiefs to deal with the issue is attributed to the fear that some members of the house are also parties in the disputes. This could have been one reason that swayed others from accepting the case to be dealt with by the house of chiefs. This is a question of how independent the house of chiefs will be, whether they stand to make the decision according to custom or be compromised if given the opportunity. At this stage, this remains to be tested and not until the house of chiefs is given the opportunity to do so would it be fair to make such arguments. But as this important question was noted by NPL, today even members of the communities appointed to the title of chiefs have no status in the community. There is also an overduplication of this title where anyone can be called a chief on the basis that he is part of the group that owns the land (NPL, in an interview with the author, 17 January 2014). One reason for this is because the title is not part of the traditional society and so people have failed to understand its importance.

Nevertheless, given the records of the courts against that of the Lafari house of chiefs, the chiefs are in a best possible position to rule on this issue. This was recognised by AusAID (2008):

> Local customary institutions must be involved because they have the knowledge of both custom and the causes and effects of the disputes. They are also more accessible, can resolve issues faster and are less expensive than government institutions. State institutions must become involved in handling disputes that cannot be resolved by local customary institutions, especially disputes involving outsiders (AusAID, 2008, p. 53).

Also we have seen that the formal court has dealt with the issue for fifty-five years but is still unable to resolve the matter. This only signifies the weakness in the court system and the law when dealing with customary land disputes. Hence, where possible the government should look at empowering traditional institutions like the house of chiefs to deal with cases of land disputes that continue to affect economic development in
customary land. Although the Lands Courts Act, Cap 19, catered for their role, it should start looking at making that role mandatory. In the quest to find a lasting solution to this on-going land disputes problem that affects economic development in rural Malaita, the chiefs in Malaita have met in June 2014 in Auki and come up with some resolutions. One of such is the need to establish a series of court-like mechanisms that include traditional leaders, the tribal courts and the Court of Appeal for customary land disputes. But clearly this signifies the influence of court on the mindset of the people as well as a system of contemporary customary land practices in West Kwaio.

iv. The people and individuals
Given the fact that most of the land in Malaita and Solomon islands is owned by the people or disputed by many owners, the onus is on them to first recognize and understand the changes that continue to affect custom land tenure practices. This is because many of the changes that have taken place have affected individual perceptions and mindsets, especially in custom relating to land tenure. The changes highlighted by this thesis were caused by outside influences. In the case of Bina and West Kwaio these factors were highlighted in chapter 2 and 4 of this thesis. This led to the loss of customary land practices and the confusion over land tenure and ownership. People have failed to understand how the changes actually affected the way they perceived land today. There is a tendency for the social fabric of the West Kwaio society seen in the unity of the clan and families to be destroyed as a result of the changes. These changes have played a major role in the proliferation of customary land disputes as evident in the Bina land disputes. Some of the changes are inevitable and are good for the existence of the societies, for instance, the banning of the practice of fo’oa killings for the price of land. This was supported by Hviding (1998a) in the experiences of the Marovo people when discussing ‘indigenous essentialism’ where understanding the changes has helped people actually to protect their interests over land. But there are changes in land use rights and ownership rights that result in confusion and protracted land disputes. An example is the practice of the tofokwaε’na in West Kwaio in relation to the Bina land disputes.
The significances of individual approaches seen through the reconciliation between members of the Kwaleunga tribe on 18 December 2013 at Bina village can be seen as a milestone. People have now realized the division that the courts and other changes have inflicted on them. This is what Naitoro (2000) noted when discussing the conflict in Guadalcanal: that only ‘restorative justice’ can work, where people need to know their existence as part of the society. Naitoro argued that the use of the legal system is repressive and is not doing any good to restore people to living the normal life in communities. If such recognition can be extended to understanding how the changes to custom have contributed to the growth in customary land disputes then the issue can be understood and better dealt with. This has to happen at the individual level before transcending onto other levels of the West Kwaio societies. In fact, this was recognized by the participants after these years of trying to address the problem. In order to get the development project up and running a bottom–up approach is required instead of the top–down approach.

The fundamental question for the people then is how they can gain the knowledge of and understanding of these changes. It is where the knowledge of elders and the information on custom relating to land tenure are important. I believe that in the modern state, people should make attempts to work with their elders and traditional leaders to record custom and also educate people on that. The issue of land identity will be meaningless if the true value and practices of customary land tenure are lost. It is from these revelations in the Bina land disputes and lack of Bina harbour development that the use of the ‘historical changes’ approach is crucial to the new efforts in understanding and dealing with customary land disputes in Bina of West Kwaio, Malaita and Solomon Islands.

**Some possibilities for development**

The view established in this thesis is that alienation of customary land for economic development is not the answer. That is because of the protracted disputes over the years, which continue to exist until today in the case of Bina land disputes. Land registration on the other hand also faces the same problem as people remain sceptical of
government’s involvement due to its past history in the development of customary land. In addition, the current laws in Solomon Islands for dealing with customary land for economic development are not clear about the issue of land registration under custom owners. This continues to pose the challenge that remains to be addressed.

Land recording, which will lead to registration, is an alternative the Solomon Islands government is currently pursuing. This was evident in the established ‘Customary Lands Reform Unit’. It is geared towards an approach that could secure customary land for economic development. However, it is important to note that registered land itself is not a guarantee as customary lands that were alienated and now become registered land remain a subject of disputes. This continued to impact negatively on development. For example, in Malaita this was noted by UST during the interview. UST referred to the case of Suava Bay in the northern region of Malaita, where the land was registered and thought to be secured and ready for development. But when the government indicated its willingness to assist the people to develop the land, disputes emerged (UST, in an interview with the author, 4 December 2013).

This clearly demonstrated a problem, and that was also highlighted in the Bina case study, which is the lack of proper consultation and engagement with the true and genuine landowners. Customary land is owned by a group, thus wider consultation is very important if the land is to be developed. When consultation is done only with a few who are not the true landowners, it is highly likely for disputes to occur. Here, a possible remedy lies in partnership, proper consultation and engagement with the people as widely as possible. This view has worked in Malaita when engaging customary land for development in the past. For instance, during an interview, PMP, who is the leader of Malaita province, noted that this arrangement was adopted with the Auki jetty and market projects which are built on customary land. Through proper consultation and participation of landowners we have seen the successful implementation of these two projects that now serve the people of Malaita. Another recent undertaking is the West Kwaio national cattle project, which is on customary land. This was also successful
through the proper involvement, engagement and participation of landowners (PMP, in an interview with the author, 22 November 2013).

Hence, the problem with development of customary land is actually with the propensity for land disputation by the people. As discussed above under the implications, what needs to be understood are the changes that affected the mindset of the people. Apart from the changes if right avenues are provided for the people to be involved in development as mentioned in the cases above there is a possibility in developing customary land. This should set some benchmark for the Bina harbour development to be approached as the lack of consultation and participation in the Bina harbour development has been identified as one of the key issues. This approach may be appropriate for Malaita, as well as Solomon Islands more broadly.

Conclusion
Understanding the Bina land disputes and the impacts they have on the Bina harbour development project is important for dispute resolution. Land disputes have been a problem for development in Malaita and Solomon Islands in general. This was rife in customary land and is growing. The current understanding of land disputes and development in Malaita and other parts of Solomon Islands is reflected through the three development schools of thought. These are the modernist, traditionalist and midway approaches. The modernist and traditionalist views are set in contrast to each other, while the midway view is trying to assert a compromise between the two. The limitations of the different schools of thought were demonstrated in the Bina case study.

The ‘historical change’ approach is important when looking at the issue. The different role that government and others play during the course of addressing the problem is understood better through this approach. For the chiefs and traditional leaders it is about the future challenges brought by the changes. This also includes the people. Given the complexity of the issue the implications discussed should be inclusive and look at a bottom-up approach instead of the adversarial top-down approach. For Malaita and Solomon Islands, understanding the issue will provide for a better mechanism when
dealing with the problem of land disputes and no economic development. These were noted in four areas, namely the government, the courts, traditional institutions and the Lafari house of chiefs and the people.
Chapter 6: Conclusion

Summary of findings
This study looks at customary land disputes and economic development in Solomon Islands. It uses the ‘historical change’ approach to explain why land disputes are an increasing problem on customary land, one that continues to have negative effects on economic development in rural areas. It argues that the changes to customary land tenure practices were caused by historical factors such as contacts with Europeans and the labour trade, Christianity, a new economic system and colonial government. The case study of Bina land disputes and the Bina harbour development project in West Kwaio, Malaita, was used to demonstrate this argument. The study found that the changes to customary land practices in West Kwaio caused by these factors have distorted people’s understanding of the different customary land tenure practices that exist in West Kwaio. The lack of understanding of the changes to custom has contributed to the increased number of cases of land disputes on customary land. This is an obstacle to economic development, as demonstrated in the case study.

Using the ‘historical change’ approach when examining the Bina land disputes has demonstrated the complexity of the problem. It shows that individuals, traditional leaders and the government approaches to deal with the problem were not successful due to the lack of understanding of the changes to custom practices. For the government, the use of the courts has not addressed the problem. Similarly, the process of acquiring land for economic development was not compatible with customary systems of land tenure despite the changes. This was demonstrated by the Bina case study where the court approach and the acquisition process only contributed to the increasing land disputes. For the people, the lack of understanding and appreciating the changes to customary land practices has created more confusion and the rise of uncustomary practices. This was seen in the way people continue to use traditional custom to argue over the different land use and ownership rights. The role of tribal leaders and chiefs is also declining as demonstrated in the Bina land disputes. This was part of the changes that influenced the way people perceived the authority of traditional
leaders and the land today from the past. These changes to custom practices led to the eroding or loss of land practices. It becomes a recipe for more disputes, as demonstrated in this study.

In Bina, some of the evidence of changes noted was seen in internal migration from the hinterland to coastal areas, establishment of new settlement and the engagement in economic activities on an individual basis rather than at the level of the community or group. This led to the rise of new leaders and the changing practices to land. Today, the value of land is seen more as a commodity instead of an identity. The thesis also highlighted the shift in mindset on the dispute resolution methods, where people rely entirely on the court system to deal with customary land disputes instead of the traditional leaders, especially the Lafari house of chiefs in the case of Bina land disputes. These changes were seen to have great impacts on the land disputes which resulted in the lack of implementation of ‘the project’.

Given such findings, the changes about the traditional leadership and land tenure system in Bina, West Kwaio, are significant in dealing with the land disputes. The thesis also noted the three development approaches to dealing with the problem: the traditionalist, modernist and midway (hybrid), which demonstrates the current views on the problem and what needs to be done to address it. The different development views discussed, however, only revealed the contest that remains in either attacking or supporting the customary land tenure and the modern state land tenure. The thesis also showed the limitations of the three development schools of thought in understanding and dealing with customary land disputes. It is on this basis that ‘historical changes’ approach was seen important to bridge the gap, by showing how complex the Bina land disputes are. It presented the bigger picture of the need for understanding land disputes in Malaita and Solomon Islands if the issue is to be addressed and economic development to happen in rural areas.
Implications for research

The multiple historical factors that have contributed to the Bina land disputes and the lack of Bina harbour development have raised the need for more studies to be conducted in other cases of land disputes in Malaita and Solomon Islands. This requires a holistic approach when looking at the different customary land tenure systems that exist in Solomon Islands, especially the matrilineal and patrilineal divide as well as societies that practiced the big-man system and the chiefly hierarchy in relation to the issue. The Bina case study showed an argument that needs to be investigated thoroughly to understand the problem in depth before mechanisms can be put in place to deal with it. This should be done on the basis of looking at the changes that happened over the years and have impacted on land disputes. The only way to do this is through research so that this problem can be addressed. It is therefore imperative that further study needs to consider the following.

i. Any future study should consider doing a ‘comprehensive analysis’ to look at land disputes and all other players and actors who are part of the changes to custom practices. This would mean the study should not be limited to traditional leaders, landowners, chiefs and government; it should also include the views of other stakeholders like the church leaders, the farmers, plantation owners, stores/canteen owners and other entrepreneurship leaders. This would mean an increase in sample size and an extended duration of the study.

ii. Any future study should also consider a ‘comparative study’ to look at the land disputes that continue to affect the major economic development projects in Malaita provinces. This may include the Suava Bay industrial project; the Waisis oil palm project; and the Kadabina, Faumamanu and Liuwe Economic Growth Centres projects.

iii. Any ‘comparative study’ should also look at land disputes that affect economic development in patrilineal and matrilineal societies at the different
provincial levels. This should include cases from a society that adopts the big-man style of leadership (Melanesian) and one that practises the chiefly hierarchy system of leadership (Polynesian), that exist in Solomon Islands.

iv. There should also be a longitudinal study to observe the impacts of changes on people’s everyday lives which continue to affect land practices today in comparison to what past anthropological studies have observed for such societies in the past. This can be done together or in parallel to the other studies recommended above depending on availability of resources.

**Implications for practice**

This thesis on land disputes and politics of economic development, and based on ‘the Bina case study’, has produced some important implications for practice. These are as follows:

**i.** Before any further attempts are made to resolve customary land disputes, the factors of changes and the details pertinent to any disputes needs to be researched. There needs to be a good connection established between all those who are involved in every stage of the engagement.

**ii.** In dealing with any land disputes the custom ‘land disputes settlement’ process is important to follow. This should see the engagement of tribal leaders, traditional leaders and the house of chiefs. Although a lot of changes were seen in custom practices, only these institutions are in a appropriate position to articulate such changes through the decisions that can be reached. More educational awareness should form the basis of understanding this issue at all levels in society.

**iii.** There is a need for the creation of new and specific legislation to address the issue of land disputes. Such legislation should consider the past decisions given by the Native Court on customary land disputes that remain the subject
of dispute today and to focus more on negotiation and reconciliation. This should lead to correcting the decisions that were done in ‘error’ in the past on the issues, so that the people can allow land for development. For example, this should reconsider the definition of ‘land’ in the Land and Titles Act, Cap 133, against the land identity issue given that much of the land in Solomon Islands remains under customary ownership.

iv. Any new government policy towards reforming customary land must involve the people—landowners, clans, claimants and land developers—through proper and meaningful consultations. It should also include more academic research on customary land disputes and economic development in Solomon Islands. The government needs to treat this as priority because customary land holds the future for development in Solomon Islands.

v. The ‘land settlement’ process and the use of the courts can increase the level of disputes as seen in the Bina case study. Authorities must find a way out and that way out needs to take into account the ‘change paradigm’ noted in this study. This has to be done through a gradual process and the focus should be more on researching the issue and advising the government on steps to be taken in addressing the problem.

Concluding comments

The development of customary land in Solomon Islands, especially in West Kwaio, remains a problem. The issue as demonstrated through the discussion on Bina land disputes and harbour development is a case in point where changes have affected the level of disputes. Bina is a unique case but one that continues to show the complex nature of customary land disputes in Malaita and Solomon Islands. Bina also demonstrates that the legal approach taken has not helped in resolving the matter but rather has increased the level of disagreement. Furthermore, the Bina case study shows that land dispute is not the only factor in the lack of economic development. In fact government authorities, the processes and peoples’ changing perceptions have all
contributed to the lack of development of the ‘project’. Given the changing nature of customary land tenure the ‘historical change’ approach to understanding land disputes is paramount to an in-depth understanding of the issue in Bina, West Kwaio, and elsewhere in Solomon Islands.

Efforts to understanding land disputes need to focus more on customary land tenure than alienated land. There needs to be a shift in thinking, from blaming the customary land tenure of ‘group ownership’ to understanding how land practices relating to group ownership through tribes and clans have changed over the years. Understanding these changes would help us to see what mechanism needs to be used to strengthen customary land tenure but at the same time engage in economic development. Hence, it is time the issue is understood from inside out to show how complex the issue is. Addressing the issue is significant and crucial for the progress, prosperity and peace in West Kwaio, Malaita and Solomon Islands. A well informed public on the issue will help create an appropriate remedy to avoid history from repeating itself as seen in the past conflicts in Guadalcanal, and the failure of government decentralization efforts towards rural advancement.
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Appendices

Appendix 1: Coding table

The following titles and codes were used for my participants. In the thesis discussion, the codes were used instead of the titles. The codes were created to conceal the identity of participants, which is part of the confidentiality requirement for this study. For example, with CA-JG as seen below would mean the Chief of Ailakwaii (CA) by the name of John Garo (JG). For others, the abbreviation of their title was used. For example, PMP to mean the Premier of Malaita Province.

<table>
<thead>
<tr>
<th>Titles</th>
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<tr>
<td><strong>Individual in-depth interviews</strong></td>
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<tr>
<td>1 Premier of Malaita Province</td>
<td>PMP</td>
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<tr>
<td>2 Bina Harbour Development Project Officer</td>
<td>BDO</td>
</tr>
<tr>
<td>3 Under Secretary Technical – Ministry of Commerce</td>
<td>UST</td>
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<tr>
<td>4 Deputy Prime Minister</td>
<td>NPL</td>
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<td>5 Landowner Kwaleunga/Ra’fea tribe</td>
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<td>7 Chief of Ailakwaii tribe</td>
<td>CA - JG</td>
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<td>8 Chief of Kwaleunga tribe</td>
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<td>9 Member of Ailakwaii tribe</td>
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<td>10 Village leader</td>
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<td>12 Bina Harbour Reconciliation Committee - Member</td>
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