



THE PUBLIC SOLICITOR'S OFFICE
Landowners' Advocacy & Legal Support Unit (LALSU)

LANDOWNER PROCESS FOR RECORDING CUSTOMARY LAND OWNERSHIP

This process has been designed by the Landowners' Advocacy and Legal Support Unit (LALSU) of the Public Solicitor's Office (PSO). It provides an option for landowner groups wishing to record customary rights in their land. It is not a process that has been agreed to by the Solomon Islands Government or the Courts.

The process involves extensive community consultation leading to agreement on the boundaries of the tribal land between the landowner group and their neighbours. This agreement is given legal weight by being approved by the Council of Chiefs and recorded in the Local Court.

Individual tribal groups or language groups could use this process. By doing land recording at the level of a language group several tribal group areas could be recorded.

The process is time-consuming. It is likely to take over one year. It can only be completed if a group of landowners is prepared to commit a lot of their time and resources to manage the project. If the process is not followed correctly the resulting decision of the Local Court may be able to be successfully challenged if disputes arise.

RULES FOR SUCCESS

Two of the big risks with this process are that it may cause disputes and that it may produce a Local Court decision which many people disagree with. If this happens, people are unlikely to respect the decision and might successfully challenge the decision in court.

To reduce these risks there are some rules that should be followed. If these rules are followed the process has a good chance of being successful. The rules are:

- ① Make sure that everything is done in public; nothing should be done in the corner by a small group of people.
- ② Elders, adult men & women, young people & outsiders who live in the area or who have rights in the area should all be part of the process.
- ③ Make sure all the family groups in the community are represented and take part in the process.
- ④ Don't do this in a hurry. Take your time and spend as much time as you need on each "step" to make sure everyone understands and agrees with what you are doing.
- ⑤ Make sure everyone's stories, opinions and ideas are respected and considered for discussion.
- ⑥ If there are disagreements in a meeting, stop and discuss the disagreement. Reach an agreement before you move to the next step. If necessary have another meeting. Do this until agreement is reached.
- ⑦ Make sure this guide is read out loud at the first awareness meeting

STEP 1 NOTICE OF AWARENESS MEETING

Landowners who would like to record their customary land should start the process by holding an awareness meeting. The purpose of this meeting is to find out if the landowners in an area actually want to go through this process. This meeting can be organized by any person interested in their community going through the land recording process.

Every landowner, including people who live elsewhere **must be given notice of this meeting**. Notices should be put up in villages and in the regional centres. The meeting organizers should visit as many people as possible to tell them the meeting is happening and tell them it is important that they attend. Announcements should be made at church and other events where landowners are present.

The meeting organizers should also invite:

- Neighbouring tribal groups;
- All members of the Chiefs' Council;
- A lawyer from the Public Solicitor's Office and/or an officer from the Ministry of Lands;
- Church leaders from the area..

STEP 2 AWARENESS MEETING

The meeting organizers should explain why they have called the meeting and should describe the land recording process. Several copies of this document must be available so people can read it. People at the meeting should be encouraged to ask questions and share their experiences which are relevant to land recording, such as the timber rights process. Plenty of time must be taken for this part of the meeting so all people present understand what is involved in land recording. Accurate minutes and a record of who attended the meeting must be made.

Once the meeting has talked about the land recording process, it should decide on three things:

- 1) Does the landowner group and their neighbours want to go through the land recording process?

Suggested meeting resolution: - *That the attendees and those they represent [agree] or [do not agree] to go through the land recording process presented to the meeting as written in the Public Solicitor's Office paper "Landowner Process For Recording Customary Ownership".*

- 2) What are the boundaries of the **land recording area** (see notes below – page 3)?

Suggested meeting resolution: - *That the attendees and those they represent agree that the land recording area will be – [describe land recording area in words - a map should also be attached].*

- 3) Who the landowners want to be on the **land recording committee** (see notes below – page 3)?

People should be asked to nominate themselves or others to be on the committee. All nominees must have the time and ability to help with the process and must live in the land recording area. If there are more than 8 nominations, an election should be held. Once the meeting has decided who will be on the committee, a resolution should be passed, as follows:

That this meeting appoint the following people to be members of the land recording committee to manage and supervise the land recording process for the land recording area -- ...[names of committee members]

NOTES:

Land Recording Area

The description of the land recording area does not indicate who the landowners are or where the boundaries of the tribal land are. It indicates **only** where the recording area is.

Land Recording Committee

This is not a formal organization and does not have any legal power. The committee should be no less than six people and no more than eight and should include at least two women. The committee will manage the land recording process after the landowner meeting. Therefore all people who are appointed to the committee should be prepared to attend committee meetings, do the work required by the committee and be a part of the land recording process from its beginning until its end.

!!! IMPORTANT !!!

At this awareness meeting, if most of the people present do not support the recording process it should not continue. Without majority support from the people living in the recording area and their neighbours the project will be very difficult to complete and there is a big risk the outcome will not be fair and will not be accepted by the community. If there is not support, those community members wanting to do land recording should engage in more consultation with the community to try and convince people it is a good idea for land recording to happen.

STEP 3 HOLD THE FIRST LAND RECORDING COMMITTEE MEETING

The land recording committee appointed at the awareness meeting should hold its first meeting. This meeting should be open to everyone to watch although only committee members will speak at it. At the first committee meeting the committee needs to learn about the land recording process. The committee must understand the process before going to the next step in the land recording process. If necessary, the committee should ask the Public Solicitor's Office or Research and Policy Unit at the Ministry of Lands for help. If the committee is taking a long time to understand the process it should inform the community (such as by putting up notices and making announcements) what is happening.

Once the land recording committee understands the land recording process it will need to:

1. Write down a plan about how the land recording process will work. The plan will say when land recording meetings will take place and where they will take place. For some communities it might take several days and several meetings to complete the land recording meetings part of the process. The committee needs to decide how many meetings are required. The committee should make sure enough time and enough meetings are planned so that all landowners are able to attend at least one meeting. All landowners should have a chance to make a presentation to the land recording committee. The plan may also need to provide for a small budget to purchase materials for recording the information provided at the meetings. The committee will need to decide how that money can be raised.
2. Decide who will record all the information received at the land recording meetings. This must be done before the meetings. If proper recording is not done the land recording meetings are a waste of time.

STEP 4 NOTICE OF LAND RECORDING MEETINGS

When the land recording committee is ready to hold the land recording meetings the committee should give notice in all villages and on SIBC of when and where the land recording meetings will take place.

The notice should make clear that all persons with an interest in the land recording area are invited to attend the meetings. The notice should say that genealogies, boundary descriptions and landowner names will be recorded at the meeting.

The description of the land recording area (produced in the awareness meeting – Step 2) and any map also produced should be displayed with the notice and be available to any person who asks to look at it.

The land recording committee should give some paper to all people involved in the land recording process. People should be asked to write their name and genealogy on the paper. The paper should be given to the land recording committee at the land recording meetings.

STEP 5 LAND RECORDING MEETINGS

The land recording committee conducts the land recording meetings.

The meetings will probably need to run all day (and possibly for several days) so that each landowner can speak to the committee. Every person attending the land recording meeting should be asked to speak. It is very important the committee allows everyone to speak and keeps good control over the meeting. If people are not comfortable to speak and as a result do not, the information the committee receives will not be complete. It is also important that every person's name is recorded, what they say their interest in the land is, and their description of the boundaries of the tribal group's land. This will be common knowledge amongst tribal groups so the recording process for some people might be short. Those people with good knowledge of genealogies on the other hand may take several hours to go through the genealogy and history so that it can be recorded.

If the land recording committee does not accept a person is a landowner they should still record the persons details. The committee should tell the person they are not accepted as a landowner and they will have an opportunity to challenge this before the Chiefs.

The recording of information from these meetings must be done carefully. The information people give to the land recording committee should be written down. If people give documents to the committee it should be written down who gave the committee the document. The name of the person who provided the document should be written on the document itself. All documents should be kept in a safe place with the other records from the meetings.

Each person should be asked to sign an attendance list for the land recording meetings.

STEP 7 LAND RECORDING COMMITTEE PUTS TOGETHER RECORDS FROM THE LAND RECORDING MEETINGS

All the information obtained through the land recording meetings - especially the names of the landowners and their comments about the boundaries - should be put together. The land recording committee should make a list of all the people they consider to be landowners. They should make a separate list of people who appeared at the land recording meetings claiming to be landowners but who the land recording committee has decided are not landowners.

!!! REMEMBER !!!

The land recording committee does not have the power to decide who the true landowners are. The land recording committee has no legal power at all. Under the law only the Chiefs Council and Courts can decide who the landowners are. The purpose of the land recording committee is to help gather information from all people claiming to be landowners. The land recording committee should focus on making sure that everyone living or with interests in the area has their say in the land recording process.

STEP 8 LAND RECORDING COMMITTEE PRODUCES MAP

The land recording committee should produce a map based on the results of the recording. The map must be good quality and must clearly show the boundaries of the land as decided by the committee following the land recording meetings.

At this stage in the land recording process the land recording committee should have received information from all the people who have an interest in the land recording area. Based on that information the committee should have recorded:

- A list of landowners;
- Genealogies from landowners;
- A list of people who attended a land recording meeting but who the committee does not believe are landowners;
- A map showing the boundaries of the land.

STEP 9 SECOND AWARENESS MEETING

The committee must hold a second awareness meeting to inform the landowners and neighbours about the results of the land recording process. As with the first landowner meeting, every landowner, including landowners who live elsewhere, must be given notice of the meeting. The same process as for Step 1 should be followed to make sure everyone knows about the meeting.

At the meeting the land recording committee should explain what has happened in the land recording process so far and what will happen if the meeting agrees to continue with the process. The land recording committee should explain the map to the meeting and have enough copies so that everyone can look at the map themselves. The list of landowners should be read out. The list of people who attended land recording but who the committee does not believe are landowners should also be read out. The committee should then explain it does not have the power to decide who the true landowners are. It should also explain that the people who the committee does not believe are landowners can ask the Chiefs' Council to decide whether they are landowners. .

Once the meeting has talked about the land recording process and the results of the land recording process have been presented, the meeting should decide on two things:

- 1) Does the landowner group want to continue with the land recording process?

Suggested meeting resolution: - *That the meeting [agrees] or [does not agree] to continue with the land recording process presented to the meeting as written in the Public Solicitor's Office paper "Landowner process for recording customary ownership".*

- 2) Does the group agree to the land recording committee using the map presented to the meeting to try and reach a formal agreement with neighbouring tribes on the location of the boundaries?

Suggested meeting resolution: - *That the meeting agrees that the map presented to the meeting should be used by the land recording committee to consult with neighbouring tribes to reach agreement on the location of the tribal land boundaries.*

!!! IMPORTANT !!!

At the second awareness meeting, if the majority of people do not support the land recording process it should not continue.

STEP 9 FORMAL NEIGHBOUR CONSULTATION - NOTICE

As neighbours should have been invited to all the awareness and land recording meetings they will be aware of the land recording process.

The map produced after recording (Step 8) should be sent to all neighbouring groups. This should be accompanied by a formal invitation to a meeting to try and reach a formal agreement on the boundaries. The meeting should be held in public. Where there is more than one neighbouring group, this part of the process should happen with each neighbouring group.

STEP 10 NEIGHBOUR CONSULTATION – MEETING(S)

At the meeting(s) with the neighbouring groups the boundaries should be discussed and then everyone present should walk the boundaries. If everyone agrees, during the walk markings could be made to show the location of the boundary. After the boundaries have been walked everyone should discuss the boundaries to try and reach agreement. If an agreement is made it must be recorded. This can be done by signing a memorandum of understanding (MoU) which says the groups agree on the boundaries. A copy of the map should be attached to the MoU. The representatives of the neighbouring groups and the land recording committee should also sign the map with the agreed boundaries. Ideally an independent person will witness this process and sign the map as well. It is very important that this map is good quality. If necessary a new map should be prepared to ensure it is clear which boundary has been agreed.

More than one meeting might be necessary to get a good clear agreement on the boundaries.

!!! IMPORTANT !!!

If the boundaries cannot be agreed the location will have to be determined separately by the Chiefs.

STEP 11 APPLICATION TO THE CHIEFS

A copy of the agreed map and list of landowners should be sent to the Chiefs asking for a Chief's hearing to be held to confirm the boundaries and the list of persons recorded as landowners. The land recording committee should assist the Chiefs to organize the meeting.

STEP 12 NOTICE OF CHIEFS HEARING

At least four weeks before the Chiefs hearing, notice should be placed in every village. A public notice should be broadcast on SIBC. The notice should explain that anyone who wishes to challenge the boundaries or names of landowners should attend the Chief's Hearing to present their case. The agreed map should be posted with the notice.

STEP 13 CHIEFS' HEARING

The Chief's hearing is held and the decision on the boundaries and list of landowners recorded.

STEP 14 NOTICE OF DECISION

The decision of the Chiefs' should be posted in all villages. The notice should advise that anyone can appeal this decision within three (3) months to the Local Court. The notice should include the date that an appeal to the Local Court must be filed by.

STEP 15 LOCAL COURT

Three months after the Chiefs' decision was posted, if it has not been successfully challenged, an application can be made to the Local Court to record the decision under the Local Courts Act.

STEP 16 NOTICE OF LOCAL COURT DECISION

If the Local Court records the Chiefs decision a copy of the Local Court decision should be posted in all villages. An announcement should also be made on SIBC.

STEP 17 RECORD KEEPING

All records of the Local Court decision and the land recording process should be neatly put together. The records should be stored in a way that they will not be damaged. Copies of the Local Court and Chiefs' decisions and final map should be sent to the Province, the Research and Policy Unit at the Ministry of Lands and to any landowner who would like a copy.

For further information and assistance contact:

Landowners' Advocacy and Legal Support Unit of the Public Solicitor's Office:

HONIARA OFFICE: P. O. Box 553, HONIARA. Tel: (677) 22348/28406/28404/28405; Fax: (677) 28409

GIZO OFFICE: P.O. Box 84, Gizo, Western Province, Tel: (677) 60682

<http://www.pso.gov.sb/index.php/lalsu>

Research and Policy Unit (LRPU) at the Ministry of Lands:

HONIARA OFFICE: P. O. Box G38, HONIARA. Tel: (677) 22002/ 21511/ 21512