

RECONCILING CUSTOMARY
OWNERSHIP AND DEVELOPMENT



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Recording land rights and boundaries
in Auluta Basin, Solomon Islands

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A snapshot

Recording land rights and boundaries in Auluta Basin, Solomon Islands

In 2003 work began on trialling processes for recognising and subsequently recording customary land custodians, their system of land tenure and the boundaries of their land in Auluta Basin in East Malaita, Solomon Islands. The Ministry of Agriculture wanted to make customary land available for an oil palm plantation, and this pilot project represented the first step towards registering and acquiring the land for development. As a result of the open and participatory approach adopted, fears about land registration were dispelled and it was possible to demonstrate the role of registration in making customary land available for commercial use.

Many lessons about recording and/or registering customary land emerged, including:

- » the importance of customary landowners having economic incentives for recording and registering their land
- » the importance of consultation, mediation, reconciliation, and cultural appropriateness
- » the importance of having a functioning system and legislative framework for recording and registering customary land
- » the value of pilot projects for developing land recording and registration systems and legislation
- » the need for strong administrative and financial support
- » the need for an enabling environment
- » the need for resources and institutional capacity
- » the benefit of engaging donors.

Contents

»	THE ORIGIN AND HISTORY OF RECORDING LAND RIGHTS	50
»	LEGAL FRAMEWORK FOR RECORDING CUSTOMARY LAND	51
»	APPROACH OF THE PILOT RECORDING SYSTEM	52
	Phase 1—Awareness	54
	Phase 2—Recording	54
	Phase 3—Surveying	56
»	OBJECTIVES OF RECORDING, REGISTERING AND ACQUIRING LAND	56
»	DIFFICULTIES WITH THE PILOT PROJECT	57
»	RECENT PROGRESS	59
»	LESSONS	60
	Promote the economic opportunities arising from registering customary land	60
	Consult widely with stakeholders	60
	Develop a functional framework	60
	Ensure administrative and financial support	61
	Seek donor support	61
	Promote mediation and reconciliation	61
	Adopt culturally appropriate processes	62
»	REFERENCES	63

The origin and history of recording land rights

During the October 2000 Townsville Peace Agreement that formally ended the period of ethnic tensions in Solomon Islands the Malaitan delegation demanded employment for Malaitans evicted from Guadalcanal during the tensions (Rukia 2005).

Since Malaitans had made up about 80 per cent of the workforce of the Guadalcanal-based oil palm company the Ministry of Agriculture proposed that customary land in Auluta Basin be made available for an oil palm development. Such a development would provide employment opportunities and Auluta Basin, which is at the eastern end of the provincial island of Malaita (north-east of Guadalcanal where the Solomon Islands capital of Honiara is located), had been identified by agricultural specialists in the early 1970s as an area potentially suitable for oil palm production.

The Ministry of Agriculture appointed a taskforce to explore ways to access the land needed to develop an oil palm plantation and in 2002 submitted a proposal to the (then) Department of Lands and Survey to register most of the customary land in the Auluta Basin for the development. Because feuding and litigation over land matters were endemic throughout Malaita and a potential threat to any land registration system, a decision was reached to trial processes for recognising, acknowledging and subsequently recording the customary custodians, their systems of land tenure and the boundaries of their lands.

The Secretary of the Tribal Lands Unit within the Department of Lands and Survey (Alec Rukia)—the only staff member—became coordinator of the trial and started work on it towards the end of 2003 (Rukia 2005).

This pilot project ultimately became a component of an ongoing technical assistance project funded by AusAID, the Solomon Islands Institutional Strengthening Land Assistance Project, known as SIISLAP (see Case Study 15, 'Strengthening land administration in Solomon Islands'). The two authors worked separately through SIISLAP on different aspects of this study.

Legal framework for recording customary land

There are two pieces of legislation that relate to land recording, acquisition and transfer in Solomon Islands.

All land registration to date has occurred under the Land and Titles Act 1969 (last amended 1988), which has proved cumbersome for registering customary land (Sullivan 2007). Although the Land and Titles Act recognised the need to define customary land boundaries and group ownership, the colonial administration's recording of those boundaries was sporadic and undertaken only for land required for national development.

Since colonial times, suggestions had been floated for improving the legislation for recording customary land boundaries to protect the rights of custodial tribes. But little had been done before George Scott became the Secretary to the newly created Tribal Lands Unit in 1990. He worked with a local lawyer, Andrew Nori, to develop a bill that became the Customary Land Records Act of 1992. That Act has remained without enabling regulations, and has not been implemented.

The Customary Land Records Act follows the traditional Solomon Islands custom of basing custodianship on lineage or genealogy. For any proposed recording under the Act there are three preconditions.

» **A tribal genealogy or family tree justifying custodianship**

A tribal genealogy is a record of all members of the tribe, beginning from the ancestor who first discovered or received the land, through to present-day populations. The genealogy must be accurate and complete to justify a claim of custodianship.

Customary land in Solomon Islands has been acquired mainly as 'discovered' land, occasionally as land received into the tribe as a gift and then handed down to descendants and, in rare instances, as land that is acknowledged to have been bought informally, but for which no transaction record exists. The members of the tribe that settled on the land are commonly understood to be the direct descendants of the discoverer—the one who found the land. The members of the tribe prove their link to the discoverer by keeping their genealogy—by reciting it or by writing it down, a very recent development.

When land was plentiful, it was commonly acquired through a gift for one of two reasons. A piece of agreed tribal land was sometimes given to a warrior who had recently fought off an enemy. Land was also gifted by a landowner to repay help given to him by a daughter, in which case the father would subdivide a piece of land and give it to the daughter's children.

» **Agreed tribal boundaries**

Tribes who share common boundaries must agree on the identified boundary.

» **A tribal land authority**

A Tribal Land Trust Board is expected to deal with the group's customary landholdings. The board should be elected by the tribe and comprise a chairperson, vice chairperson, secretary, treasurer and four-to-six other members, with at least two members being women. Board members are expected to be wise, knowledgeable (educated) and understanding, so the board can conduct its functions and duties under a constitution that serves the interest of the whole tribe.

Approach of the pilot recording system

In Solomon Islands people vigorously defend the pre-eminence of the customary land tenure system. This makes access to land difficult for government and private enterprise. It makes land governance unstable and international investors generally unwilling to engage in business in Solomon Islands. As a result, the processes, limitations, constraints and outcomes of recording and registering customary land are of widespread interest.

To address the issues arising from the customary land tenure system, an entirely new approach to recording customary land was conceived by the Secretary of the Tribal Lands Unit. The processes were intended to evolve, and it was not clear which piece of legislation would be used as the vehicle to record customary tenure. Based on the assumption that either the regulations of the Land and Titles Act, or the statutory requirements of the Customary Land Records Act, or both, would need to be met for registration to be completed, a system was outlined by Rukia, as shown in Figure 1, and trialled with the customary custodians in Auluta Basin.

The coordinator considered four principle elements identified at the outset of the project would ensure that the legislative requirements for recording and registering customary land in Solomon Islands could be met:

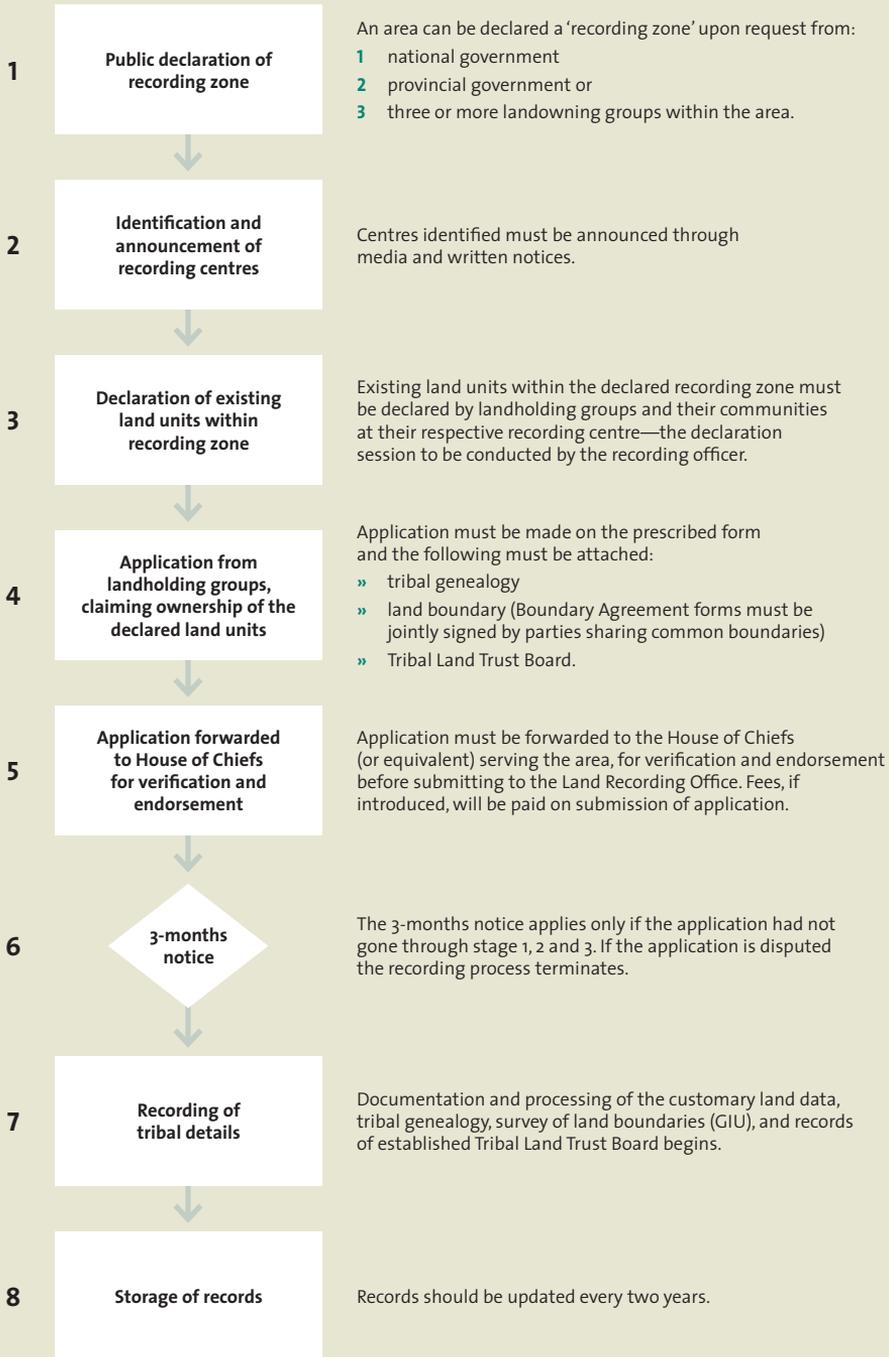
- 1 recording genealogies
- 2 surveying boundaries specific to each group within the broader land area of interest to the Ministry of Agriculture
- 3 ratifying recordings and surveys through a series of group meetings
- 4 developing administrative processes appropriate for managing the data.

Rukia (2005) noted that the new land recording system should allow people time to identify the rightful owners of tribal lands and to be educated on the dangers and benefits of development and on the phases involved in recording customary land. He noted that time and education were often lacking in existing practices.

Rukia envisaged that the pilot recording system would involve three phases over one year:

- » Awareness—6 months
- » Land recording—2 weeks
- » Land surveying—4 months.

FIGURE 1 » SUMMARY OF PILOTED AND ADVOCATED CUSTOMARY LAND RECORDING SYSTEM



Source: Alec Rukia, Tribal Lands Unit, Department of Lands and Surveys, Honiara, 2005.

PHASE 1—AWARENESS

The awareness phase started with a weekly program on the local short-wave radio stations from mid-2003. Towards the end of 2003 and the beginning of 2004, awareness workshops were held in various centres in Auluta Basin. The first two workshops were held in Nafinua village and Alisisiu village with the assistance of AusAID through the Community Peace and Reconciliation Fund.

SIISLAP provided support to the Secretary of the Tribal Lands Unit to continue his radio programs and to run further awareness workshops. Two workshop centres were established, along with eight recording centres. These centres were also established to serve as meeting places for local people, the recording team, taskforce members, and surrounding tribes. The awareness workshops were open to members of tribal groups close to the centres.

Part of the objective of the workshops was to inform participants of the requirements for developing land, the processes for registering customary land under the current land laws, and the new land recording system about to be introduced. Participants received training in how to record the required data for the new system. Specifically they were trained to draw up a family tree and to fill in the boundary agreement forms, and the functions and role of a Tribal Land Trust Board were explained. The landowners were expected to produce a very detailed and properly completed form to be presented during the recording phase (Kofana 2005).

Although not an official or technically required part of recording customary land, reconciliation programs were very important in facilitating that process. The Tribal Lands Unit played only a supporting role in organising these programs. The ministries of Agriculture and Reconciliation were the main agencies that provided support for the reconciliation programs, with additional support from AusAID's Community Peace and Reconciliation Fund. The programs enabled members of landowning groups to come together to develop an understanding of each other's family trees, and so collectively put together tribal family trees. As it turned out, the success of the whole recording system depended on the success of the reconciliation programs.

PHASE 2—RECORDING

The tribal groups presented the boundary agreement forms, family and tribal tree records and names of the tribal land authority body at the recording centre closest to them (Kofana 2005). The recording team travelled to each of the eight centres to collect the data and record it in the official government book.

At each centre representatives of the tribal groups presented their data in the presence of neighbouring tribes and government officials. The participation of tribal members who had settled in urban centres was welcomed by those who remained on the land. After each presentation, neighbours were accorded the opportunity to disagree with the data presented. When no one objected, the information was collected and declared a true record. A small signing ceremony between heads of the tribal groups and the Secretary of the Tribal Lands Unit was held.

When there were disagreements between neighbours on the information presented, the Secretary to the Tribal Lands Unit acted as a mediator on the ‘point of concern’. The phrase ‘point of concern’ was used rather than the word ‘dispute’ to ensure parties resolved their disagreements at the meetings rather than through the court system, which was associated with disputes. The disagreeing parties presented their points of concern in front of all present, and the recording teams took note of the concerns and attempted to resolve the disagreements.

A win–win approach to the recording process was encouraged. A way of addressing possible concerns had been established for each type of information presented. For example, three steps were provided to the recording teams for resolving boundary disagreements:

- 1 Ask both parties to walk the boundary together and to resolve their disagreements as they walked.
- 2 If the parties could not agree and their claims overlapped, ask both parties to agree to a compromise—cutting the disputed boundary territory in half and marking the mid-line.
- 3 If the parties continued to disagree, take the point of concern to the House of Chiefs for settlement. This step would remove the disputed land from the proposed oil palm development.

During the recording phase, nearly 90 per cent of all disagreements were resolved at the first step (Table 1). No disputes required referral to the House of Chiefs. This contributed to the local acceptance of the recording system.

TABLE 1 » RATE OF ACCEPTANCE OF PILOT PROCESS

Type of data	Description	Based on	Acceptance rating ^a
Tribal genealogy	Family tree that justified a tribe's claim to landownership	Oral tradition	95%
Tribal land boundary	Signed boundary agreement forms	Oral tradition and on-site agreement of two landowning groups	88%
Tribal land authority	A legal body, elected to represent the tribe	Legal requirement	95%

^a Observations made by the researcher (Kofana) during presentation ceremonies in the Auluta Basin pilot project in 2005.

PHASE 3—SURVEYING

Surveying commenced in 2005 but was slower than initially anticipated. Once the boundaries were identified and agreed, they were marked with paint (at least 3 metres above the ground). The formal recording of agreed tribal boundaries (spear line) remains to be completed using a global positioning system (GPS). The survey will use a GPS to plot the corners of the land boundaries, while aerial photographs will be used to plot the rivers, valleys and sites of cultural significance (tambu sites). Once that is completed, the government is expected to have at its disposal all of the information needed to register the land and acquire it.

Objectives of recording, registering and acquiring land

Recording and/or registering customary land has been a common issue in the Pacific, and has presented a dilemma for governments. SIISLAP supported investigations into this dilemma (see, for example, Sullivan 2007).

Recording implies a process of documenting the social, political and geographic ties behind land tenure, or at least the outcome of those relations. Once registration takes place, the validity of that land tenure does not rely on the ties continuing. For many custodians of customary land, registration signifies a ‘freezing’ of social relations, whereas recording tends to imply that the ties that have been recorded will continue with some degree of sustainability. Registration therefore carries a suggestion of the alienation of customary title. As can be expected, this does not sit well with customary groups.

The Auluta Basin pilot project was an attempt to identify social relations and customary tenure, gain group and provincial recognition of those ties, and record the information without knowing whether the recordings would lead to formal registration. Although the Ministry of Agriculture wanted formal land registration, the Tribal Lands Unit was more focused on defining a workable recording system.

Recording custodianship is not by itself sufficient to guarantee sustainable land tenure. That relies on developing legal and administrative processes that can make the recorded social, political and geographic ties subject to legal jurisdiction. In the Auluta Basin pilot project these processes were not developed or considered at the outset, but were allowed to evolve. This made longer term planning for sustainable recognition of tenure rights difficult.

Since there was no legal protection covering the recording process, the coordinator envisaged that, as soon as the records were completed, the government could invoke the acquisition section of the Land and Titles Act and appoint an acquisition officer to acquire the recorded land in Auluta Basin. The records would then become formalised and protected under the Land and Titles Act, and a formal registered title could be issued for each separately ‘owned’ parcel of land.

The objective was to convert the customary land into registered perpetual estates. In Solomon Islands law, a perpetual estate has many of the characteristics of freehold land, including being able to be leased. By converting the land to perpetual estates, the oil palm venture could proceed to negotiating secure rights of access to land.

But to facilitate the conversion of customary land to perpetual estates, the land had first to become the property of the government and then be transferred back to the traditional owners. The Auluta Basin tribal landowners were made aware of this legal constraint and discussed their concern about 'losing' their land with government representatives. Most owners pointed out that the transfer of customary land to perpetual estates had been the sticking point in past acquisition attempts (Kofana 2005). They believed they could lose their land. For land to proceed to registration the owners needed to trust the government to return their titles to them immediately.

Difficulties with the pilot project

Administrative difficulties arose as a result of the project being instigated by the Ministry of Agriculture rather than the Ministry of Lands. The Department of Lands and Survey was to prepare budgets for different stages of the project and the Ministry of Agriculture was to approve them and make funds available. In reality this proved to be a problem for the project because of reduced government funding and slow administrative turnaround. The administrative delays disrupted the project's timeframe and created disjuncture in the recording process.

The single-handed effort of the project's coordinator was remarkable. But when he left the Department of Lands and Survey the Auluta Basin project dwindled, with less than all expectations met. The project was able to proceed, only because of the financial and logistical support provided when SIISLAP adopted it as a pilot for identifying a customary land recording system.

With hindsight it would have been more effective for the ministries of Agriculture and Lands to have signed off on a complete management plan for the recording project that contained appropriate milestones and checks and balances. But that was not possible because it was a pilot that depended on processes evolving before they could be defined clearly.

There had been no comprehensive approach developed to finalise the recording process, mainly because of community unwillingness to commit to formal (government-controlled) recording at the project's outset. So although useful initial engagements had been made, by late 2005 there was little sign that the planning and administrative procedures needed for a recording process were in place. Rather the coordinator expected them to develop as the community gained confidence.

Also there was no firm process for taking advantage of land tenure recordings once completed. The Auluta community remained unwilling to use the legislatively defined national system of land title registration. There was effectively nowhere for the recordings to go once created.

The customary land recording project was always going to be contentious, so its sustainability was doubtful at the outset. In effect, the pilot project worked with a constant question mark hanging over it, which undoubtedly made progress difficult. However, it is clear from hindsight that SIISLAP and the Ministry of Agriculture did not manage their stakeholder relations as well as they could have, notwithstanding the difficult circumstances. There was little consistent effort put into developing stakeholder forums and groups that might have fostered a better understanding of the aims and implications of recording.

Given the difficulty of developing an administrative process through a pilot project the Ministry of Agriculture was probably not realistic in expecting the land acquisition process would be completed within a year. Although the ministry faced a time constraint, local communities did not want to be hurried through the process, and the coordinator was content to allow their demands to control the rate of progress. It is therefore not possible to regard the pilot project as an actual recording process but as the beginnings of a recording process.

The recording process was in its initial phases and groups had only begun to articulate their land tenure in preparation for recording when a genealogy software package was tested in this traditional context in late 2005. The software proved inadequate, and its use was not continued. In effect, what had been recorded by that time was a set of flawed genealogies. At a series of meetings groups and individuals had an opportunity to review these genealogies and to stake their claims in a transparent and open manner.

Another difficulty for the Auluta Basin pilot project was the continuing political tensions and incidents of serious unrest and instability. These had a serious impact and influence on the project and its managing institutions.

Recent progress

A lack of administrative commitment to complete the recording almost halted the pilot project. The lack of coordination from Honiara to engage a surveyor when the recording was in progress, coupled with a new government and associated administrative changes, delayed the project throughout 2006, during which time local landowners lost confidence in the process. The delay lasted until the current Acting Commissioner of Lands took office (A Pinita, Commissioner of Lands, Department of Lands and Housing, Honiara, 2007, pers. comm.). Instructions were then given to appoint an officer to acquire the Auluta Basin land records.

Four acquisition officers were appointed and sent to collect the data. Reports reaching the Commissioner of Lands revealed that from the 24 tribal landowning groups that participated in the recording project 19 holdings were ready for registration and acquisition (G Kofana 2007, pers. comm., September). The Auluta communities had confidence in the records, and their quality reduced the work expected of an acquisition officer by half.

The three months notice of acquisition served over the 19 tribal landholdings had lapsed for most of those areas by September 2007 without any objections from neighbours. That lack of dispute is unprecedented in the history of Solomon Islands. The other five tribal landholdings were not ready for acquisition because of disagreements between the neighbours. However, the Ministry of Lands, Housing and Survey has since been advised that the disagreeing parties have resolved their problems and were now seeking to be part of the development.

In a memorandum of understanding signed with the Auluta Basin landowners in February 2007, the Solomon Islands Government assured them that, once the acquisition process was complete, the perpetual estate titles would be transferred back immediately to the tribal landowners. It also included how benefits from the development would be shared. With these assurances, the majority of Auluta Basin tribal landowners agreed to proceed with the registration process. A few landowners do not want their land converted to plantations, but most of them continue to show commitment to the oil palm development and look forward to the day when the acquisition and transfer of title is made.

This latest development has put into perspective the purpose of recording. It has also identified the place and role of recording in the acquisition of customary land in the context of Solomon Islands and has dispelled initial fears about registration. Recording has slowly gained people's respect and is understood to be the prerequisite of registration. Auluta Basin landowners realise that no recording means no registration and so no oil palm plantation.

The recording project has brought a new hope, with the oil palm development becoming more likely as progress is made. Moreover, the project is contributing to greater stability for the rural population of Auluta Basin. It has brought together members of tribes who have been absent from past decision making.

Lessons

PROMOTE THE ECONOMIC OPPORTUNITIES ARISING FROM REGISTERING CUSTOMARY LAND

LESSON 1

Customary landowners will be motivated to record or register their lands if there are well-defined economic opportunities and if the legislative framework requires recording or registration in order to make the land available to investors.

At the core of the progress so far in recording and registering customary land are the incentives for landowners to make their land available for the oil palm development. This development is seen as providing significant employment and income-earning opportunities. The people of Auluta Basin have gained their appreciation of the economic opportunities that the development could provide through their experiences working on an oil palm plantation in Guadalcanal.

CONSULT WIDELY WITH STAKEHOLDERS

LESSON 2

Customary landowners will be motivated to record or register their lands if there is an effective process of consultation.

The pilot project was very successful at building trust and transparency among villagers. The project held a range of village meetings that were characterised by good will and a lack of conflict over land and group boundaries. The consultation process offered villagers a means of forging a relationship with western styles of land tenure. In part, the success was a result of the excellent people skills of the Secretary of the Tribal Lands Unit.

DEVELOP A FUNCTIONAL FRAMEWORK

LESSON 4

Pilot projects can be useful for developing systems for recording and registering land and for developing legislation.

LESSON 5

Before adopting programs to record or register customary land, there should be a functional system and legislative framework for recording and registering land.

The legal framework in Solomon Islands for recording and registering customary land is unclear. For this reason, it was unclear on what legislative basis the Auluta Basin project would proceed. That situation led to uncertainties at the outset. The pilot project explored these legislative constraints and found ways to work within the existing framework. In addition, the pilot project has helped to identify areas where legislative improvements can be made.

ENSURE ADMINISTRATIVE AND FINANCIAL SUPPORT

LESSON 5

A system for recording customary land needs strong administrative support, with good planning and adequate funding.

LESSON 6

Effective land recording or registration projects require enabling environments.

Administrative constraints were a problem for the pilot project, particularly for planning and financing. This in part was a result of the coordination issues associated with the administration crossing both the agriculture and land ministries. An additional problem was social and political tensions, which had an impact on the project and its managing institutions.

SEEK DONOR SUPPORT

LESSON 7

A successful project needs adequate resources and institutional capacity, and donors can be effectively used to address any shortfalls.

The ministries associated with the Auluta Basin project had insufficient capacity and resources to successfully complete the project. As a result the project lacked well-developed strategic planning and management capacity. SIISLAP stepped in to help address these shortfalls.

PROMOTE MEDIATION AND RECONCILIATION

LESSON 8

Most disputes over land can be effectively resolved through a process of mediation and reconciliation rather than through the courts.

The recording project allowed tribal landowners to resolve their own problems, which proved to be a success. The reconciliation processes ensured the views of all who had an interest in a parcel of tribal land were heard and noted. This provided an opportunity for family or tribal feuds to be resolved. Most disagreements were resolved with reconciliation ceremonies. The Tribal Lands Unit ensured that disagreements were settled before the records were accepted.

ADOPT CULTURALLY APPROPRIATE PROCESSES

LESSON**9**

The recording methodology is improved in accuracy and acceptability if it is built around the existing culture.

LESSON**10**

Where the existing culture is based on group ownership, the appropriate basis for recording and registering customary land is at the group level.

The Secretary of the Tribal Lands Unit understood the local cultural practices and language, which helped to ensure that the recording processes were culturally appropriate. Consistent with tradition, groups were identified by their tribal landholdings.

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