

Land tenure and management system of the Solomon Islands (preliminary review with draft)¹

1. Overview of legal and policy instruments on land tenure and management

Constitution of Solomon Islands 1978

- **Aims**
 - General overview of rights and safeguards relating to property, inheritance, and land tenure
- **Specific provisions on Property, Inheritance, and Land Tenure**
 - **Rights**
 - **Protection from deprivation of property:** involuntary land acquisition can occur only where
 - the acquisition is necessary or expedient in the interests of defense, public safety, public order, public morality, public health, town or country planning or the development or utilization of any property in such a manner as to promote the public benefit
 - there is reasonable justification for causing any hardship to the interest holders
 - the acquisition is done under a law which provides for reasonable compensation (including lump sum or instalments, and by cash or other form) in a reasonable time
 - the acquisition is done under a law which provides interest holders with the option of appealing to the High Court with respect to their ownership, the legality of the acquisition, or the compensation payable (Sec. 8-1)
 - **Right to hold land:** the right to hold or acquire a perpetual interest in land shall vest in any person who is a Solomon Islander and only in such other person or persons as may be prescribed by Parliament. (Sec. 110)
 - **Safeguards**
 - **Non-customary land:** Parliament may, in regard to land which has ceased to be customary land
 - Provide for the conversion into a fixed-term interest of any perpetual interest in such land held by a person who is not entitled under the preceding section to hold such a perpetual interest
 - Provide for the compulsory acquisition where necessary of such land or any right over or interest in such land
 - Prescribe the criteria to be adopted in regard to the assessment and payment of compensation for such conversion or compulsory acquisition (which may take account of, but need not be limited to, the following factors: the purchase price, the value of

¹ This draft was prepared by Ms. Clara SHIN following the inception meeting in February 2023, external consultant of KEI.

improvements made between the date of purchase and the date of acquisition, the current use value of the land, and the fact of its abandonment or dereliction). (Sec. 111)

- **Customary land:** parliament shall provide, in relation to any compulsory acquisition of customary land or any right over or interest in it, that
 - Before such land is compulsorily acquired, there shall be prior negotiations with the owner of the land, right or interest
 - The owner shall have a right of access to independent legal advice
 - So far as practicable the interest so acquired shall be limited to a fixed-term interest (Sec. 112)

Land and Titles Act

- **Aims**
 - Consolidate law on tenure, acquisition, and registration of land
 - Preserve customary land rights
 - Streamline and simplify the process for customary land and title registration
- **Specific provisions on Customary Land**
 - **Purchase or lease of Customary Land** (Sec. V, Division 1)
 1. **Appointment of Acquisition Officer:** the Commissioner must, in writing, appoint an Acquisition Officer to act as his agent
 2. **Boundary demarcation and agreement:** the Acquisition Officer must
 - Mark the boundaries of the relevant land on the ground or on a map in such manner as to bring them to the notice of the persons affected
 - Make a written agreement for the purchase or lease of the land with the people who claim to be the owners
 3. **Publication of notice:** the Acquisition Officer must give public notice of the written agreement
 4. **Holding of public hearing:** the Acquisition Officer must organize a public meeting to determine whether the persons named in the agreement are the correct customary landowners
 5. **Record**
 - If there is no dispute at the meeting and no other claimants, the Acquisition Officer records this fact and sends a copy of the determination to the Commissioner
 - If there are rival claimants, the Acquisition Officer must determine the rightful owners of the land, send a copy of his determination to the Commissioner, and bring the record of determination to the attention of the originally identified parties and any claimants
 6. **Appeals**
 - Any person aggrieved by the determination of the Acquisition Officer can make an appeal to the Magistrates Court within 3 months
 - Any person aggrieved by the determination of the Magistrate's Court can make an appeal to the High Court within 3 months

7. **Implementation:** once appeals have been determined or the period for appealing has expired, the agreement for sale or lease of the land in question can be implemented
 8. **Possession and vesting:** where the land is being leased, the Acquisition Officer makes an order vesting Perpetual Estate (PE) in the persons named as lessors—commonly representatives of the customary land group found to own the land
- **Compulsory acquisition of land** (Sec. XXVI + Sec. V, Division 2)
 1. **Landowner identification:** landowner identification is necessary to conduct prior negotiations required in the Constitution
 2. **Prior negotiation:** negotiations must be conducted with the owners of customary land before the land is acquired
 3. **Declaration**
 - The Minister of Lands declares that land is required for a public purpose
 - The declaration must specify the boundaries and extent of land required and the nature of the purpose for which the land is required
 4. **Publication**
 - The declaration must be published in such manner as the Minister thinks fit
 - The common practice is to publish the declaration in the Government Gazette
 - Upon publication, the land is legally acquired
 5. **Appeals:** owners have six months to appeal to the High Court to have the declaration quashed
 6. **Public notification:** if there are no appeals, following the declaration, the Commissioner posts notices describing the declaration, its effect, and the right to compensation
 7. **Notification of owners:** the Commissioner serves written notice of the declaration to each owner or landowning group
 8. **Assistance to prepare claims:** the Provincial Secretary for each Province assists claimants to prepare claims
 9. **Claim for compensation:**
 - Claims must be submitted within 3 months of the acquisition (date of publication in gazette)
 - For customary land, these claims should include some evidence of customary ownership and any evidence as to its value
 10. **Valuation and payment of compensation**
 - The Commissioner considers the claims, accepts or rejects them, and makes an offer of compensation
 - Offers and rejections must be issued within 3 months of receipt of the claim
 - At this stage, the Commissioner may seek advice from the Valuer General or other valuers to inform the amounts of compensation payable

- The Commissioner may make an offer of land in lieu of cash, with the approval of the Land Board and the endorsement of the Cabinet
11. **Acceptance or appeal**
 - Claimants have 3 months from the Commissioner's decision to appeal any rejection, or the amount of compensation offered, to the High Court
 12. **Payment:** if there are no appeals, the Commissioner must cause payment to be made within 3 months of acceptance
 13. **Notice to vacate**
 - Persons with an interest in the acquired land may continue to use and occupy the land until the Commissioner gives them a notice in writing requiring them to vacate
 - These persons, however, cannot develop the land without the Commissioner's consent
 14. **Alteration of the land register:** if there are no appeals and the declaration has not been quashed, the land may be registered to the Commissioner on behalf of the government

Customary Land Records Act

- **Aims**
 - Provide for the recording of customary land holdings
 - Empower land holding groups to appoint representatives to deal with recorded customary land holdings, the establishment of an office of an Office of National Recorder of Customary Land, and Record Offices in the provinces and for other relevant matters in this area
- **Specific provisions**
 - **Administration**
 1. **Central Land Record Office:** responsible for the administration of the provisions of this Act
 2. **Customary land Record Area:** any provincial executive may recommend to the Minister to declare all or any part of the Province to be a Customary Land Record Area
 3. **Land Record Officers:** established for each province by provincial executives
 4. **National Recorder:** responsible for
 - Policy and general administration of customary land holding records
 - Administration of the Central Land Record office and any other Land Record Offices
 - Custody, preservation, and arrangement of customary land records
 - Preparation, maintenance, and publication of customary land records
 - **Processing of claims**
 1. **Application for recording:** any customary land holding group or any interested persons may apply to the Land Record Office in the province

for the recording of such primary rights and the demarcation of the extent of the boundaries of such customary land

2. **Publicizing claim:** the Recording Officer must bring the matter to the attention of all persons that may be affected
3. **Record map:** the Surveyor-General must prepare a map of the land which is subject to the claim
4. **Boundary disputes**
 - Any customary land dispute is dealt with by the surrounding chiefs (locally known as The Council of Chiefs) who know the genealogies, traditional land mapping, sacred sites, historical tales, tribal epics and chants, and the traditional rituals
 - If the losing party is unsatisfied with the decision, they may bring the matter to the Local Court
 - If the losing party is unsatisfied with the decision, they can still appeal to the Magistrate's Court
 - The Magistrate can either make a recommendation to go back through the first and second stages or recommend it to the High Court
5. **Completion of the record:** when the Recording Officer is satisfied that the data collected pursuant to the application is complete and on receipt of the record map from the Surveyor-General, the Recording Officer must issue a notice of such completion and give adequate publicity to that notice

○ **Land Record Office**

1. **Roles of Land Record Office:** each Land Record Office must establish and maintain a record of customary land in its area, consisting of
 - Records of the customary land holding groups in their respective areas, known as the Customary Land Record
 - Record map
 - Files containing the instruments supporting the entries of the records
 - Presentation Book
 - Alphabetical index of the customary land holding groups, together with the name or names of those currently under appointment to represent the customary land holding group
2. **Registration of primary rights**
 - Any customary land holding group whose primary rights are entered in the record may apply to the Registrar of Titles in the prescribed form to have their recorded primary rights registered
 - The Registrar of Titles shall on receipt of such application take such steps as he may consider appropriate to effect such registration
3. **Rights of holding group:** any customary land registered and recorded in the name of a customary land holding group under this Act, must grant such land holding group all rights to use, occupy, enjoy and dispose of such land in accordance with current customary usage

2. Challenges w.r.t ICZMP

- **Lack of clear and consistent documentation:** Customary land in the Solomon Islands is often held and managed through traditional practices and oral history, rather than written documentation. This can make it difficult to establish clear boundaries and ownership rights, which in turn can make it difficult to register customary land.
- **Limited resources and capacity:** The government agencies responsible for land registration in the Solomon Islands often lack the resources, capacity, and expertise to effectively manage the registration process. This leads to delays, errors, and inconsistencies in the registration of customary land. Moreover, this causes the lack of success in resolving disputes.
- **Complex ownership structures:** Customary land in the Solomon Islands is often held collectively by clans or tribes, rather than by individual landowners. This can make it difficult to identify and document ownership rights. This can lead to disputes over the management and use of the land.
- **Limited awareness and understanding:** Many customary landowners in the Solomon Islands may not be aware of their rights under the law or the importance of registering their land. This can make it difficult to convince them to participate in the registration process.
- **Customary law not adequately defined:** although statutes (i.e. Land and Titles Act) have given practical application to customary lands, the legislative arrangements are not satisfactory. This is problematic, as this causes uncertainties, which consequently leads to a culture of land ownership and boundary disputes.
- **Registration problems:** customary land can only be registered in the Solomon Islands if unopposed and under certain conditions. However, it is rare that applications for registrations are unopposed.