



Hijacking development futures: “Land development” and reform in Vanuatu

By Lara Daley

Lara Daley is former co-director of AID/WATCH. This paper is an edited version of a briefing paper released by AID/WATCH in September 2009. The author would like to thank the Search Foundation for supporting the field work undertaken for this article.

Photo by Lara Daley
Signs are erected along the coast of Efate highlighting that certain land is “private property”.

“There is a lands process that...technocrats have once again hijacked...taking it away from what the people really wanted to see and made sure that it has become a bureaucratic nightmare and nobody is going to be able to work with it.”
(NGO land advocate 2009)

Introduction

Ni-Vanuatu¹ have a strong history of fighting for their lands and their right to determine their own development futures. Australian debates about land and development in the Pacific region, as well as donor programs emphasising growth-led development have consistently been at odds with ni-Vanuatu interests in supporting and strengthening their customary systems of land and the traditional economy.

This article provides an overview of the land situation in Vanuatu from pre-independence to today. It shows that Australian interests and aid relationships are often in opposition to the needs and aspirations of the majority of ni-Vanuatu and risk hijacking their development futures.

¹Ni-Vanuatu is a term which refers to the indigenous peoples of Vanuatu.

Land and independence

“The struggle for independence was mainly to do with lands because most of our lands were alienated in the first place. [W]e thought the best thing to do was to fight the two colonial powers and become [an] independent country so that we can have all our lands back. When we became independent all the lands were reverted back to the original owners, the custom owners that is.”

(Community member 2009)

The loss of lands during the French-British Condominium sparked the political consciousness that led to the rise of Vanuatu’s independence movement. After independence in 1980, all lost or alienated land was returned to the rightful custom owners as dictated by the Constitution. According to Article 73 of the Constitution, “All land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants.” Importantly, it also states under Article 74 that “The rules of custom shall form the basis of ownership and use of the land in the Republic of Vanuatu” and Article 75 that “only indigenous citizens of the republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.”

However, following independence, a series of laws were introduced which facilitated the protection of European and foreign interests. Whilst some European planters were driven from the land, the majority were granted long-term leases, and existing titles within the Port Vila municipal area were protected by an urban leasehold system (Cox et al 2007).

Land booms resulting in the alienation of customary owners from their lands have been a key feature of Vanuatu’s historical and ongoing interactions with foreign powers. The first was in the 1860s with the establishment of European cotton plantations on the islands of Efate and Epi. By 1972 over a third of the country’s land had been seized

for agricultural purposes, alienating people from their land and livelihoods (Cox et al 2007). Even where customary landowners had not yet been evicted, the ground was literally sold or stolen from underneath their feet. Most recently the foreign controlled real-estate sector has fuelled a land boom resulting in 90 percent of coastal land on the main island, Efate, being alienated and developers moving further afield to Santo and Epi (Cox et al 2007).

Leasehold loopholes and land alienation

“Paradise for sale...around \$NZ150,000 (\$AUD120,000) will secure you 10,000sqm of virgin ocean front rainforest, coconut palms and tranquillity on Aore, Island, 1km off the coast of Santo in Vanuatu.”

(First National Real Estate Advertisement, Island Spirit, Air Vanuatu Inflight Magazine, January – March 2009)

Since independence, the continued evolution of land and land related laws has served the interests of investors, whether or not this has been the intention. Land laws have been created in order for Vanuatu to develop economically and be attractive to investors, which can be seen as a clear departure from customary laws and the Constitution (see Table 1). The current model of “land development” driven by foreign investment is not benefiting ni-Vanuatu and hijacks their control over their lands and development futures.

Whilst the lease system is not technically or legally synonymous with the “sale” of land, such as in the freehold system, in practice it is facilitating rampant land alienation. Land leases are generally granted for 75 years (the life of a coconut palm) for a single payment rather than annual rent, with leases normally dictating that customary owners – if they wish to reclaim their own land at the end of a lease – compensate the leaseholder for any improvements or value added to the land (Stefanova 2008). This is something that is far out of reach for the majority of ni-Vanuatu.

Such agreements are often entered into where custom owners possess little understanding of the commercial value of their land (Stefanova 2008) and have limited opportunities to turn any cash payment received from the land into a viable source of alternate livelihood. In addition, the use of the Strata Titles Act to subdivide rural land beyond its intended application for buildings (Stefanova 2008; Lunnay et al 2007), the alleged abuse of the power of the Minister of Lands to intervene on land dealings where a dispute exists (Cox et al 2007), as well as community level confusion or abuse over legitimate authority to enter into land transactions have all further removed control over land from community hands.



Gated communities have sprung up along coastal Efate.
Photo by Lara Daley

Table 1: Land and Land Related Laws in Vanuatu

Law	Year	Purpose
Land Reform Act	1980	To return alienated lands during the Condominium to the rightful custom landholder.
Alienated Land Act	1982	To assist the aims of the Land Reform Act in providing an option for custom landholders to either create a new lease with the alienator or to gradually pay compensation for improvements to the property made by the alienator.
Lands Referee Act	c.1982	To assist the aims of the Alienated Land Act by creating a Lands Referee office to determine the value of improvements made by the alienator.
Land Leases Act	1983 (Amended 1988)	To support both the Land Reform Act and the Alienated Land Act by defining the procedure for lease agreements between custom landholders and those wanting to use their land. Leases are for a maximum of 75 years. Established Land Records Office.
Land Reform Act	1988	Allows the Minister of Lands to act on behalf of the custom landholders where the rightful landholder is not known or there is a land dispute.
Land Acquisition Act	1992	To define the process for the Government in compensating custom landholders for land acquired for public purposes (whether to relocate communities or to acquire urban land).
Urban Lands Act	1993	To define the Government process in declaring urban land in Vanuatu. It introduced a Land Tax and Dweller's Tax for urban leaseholders to pay.
Freehold Titles Act	1994	To enable indigenous ni-Vanuatu to purchase land outright in urban areas.
Customary Land Tribunal Act	2001	To promote the use of custom land tribunals in settling land disputes. This Act established the Customary Land Tribunal Office.
Strata Titles Act	2000	To enable lessees to have title to a part of a larger property. This Act has been applied horizontally for peri-urban subdivisions and is responsible for the current land grab on Efate.
Other relevant legislation		
Environment Act	2003	This Act establishes the need for proposed developments to complete environmental impact assessments prior to receiving government approval.

(Adapted from Naupa and Simo 2008; and Simo 2005)

The National Land Summit

In response to indigenous landholders again losing control of their lands, the national government, with the involvement of the Vanuatu Cultural Centre, a national cultural heritage management and statutory body, held a National Land Summit in September 2006. The Summit was preceded by a series of consultations at the provincial level and addressed land ownership, fair dealings in land and sustainable land development.

Between 500 and 600 people attended the Summit with 20 resolutions being adopted from over 1000 that were put forward (Portegys 2006), the intention being that these resolutions would form the basis of a national land policy. Whilst the *Malvatumauri* (Council of Chiefs) had requested through the Summit a moratorium on *all* land leases, the government adopted a weaker position for fear of driving away investors. It implemented a temporary moratorium on all new subdivisions and applications to convert existing agricultural leases into residential subdivisions (Portegys 2006), as well as a partial curbing of the power

of the Minister of Lands to intervene when land is disputed (Lunnay et al 2007).

Similarly, the resolutions which purport to form the basis of current land initiatives were weakened on key points when approved by the Council of Ministers in November 2006. Resolution 1 from the Summit, which clearly stated that land in Vanuatu is owned by groups (tribes, clans or families) not individuals, and that all members of a traditional owning group (male and female) must be involved in decision-making about their land, was altered to read: "that all custom land in Vanuatu is owned in accordance with the traditional land tenure system of each island" (Lunnay, et al 2007). Whilst the resolution might still be applied in the spirit of the original, its wording leaves it open to interpretations that could undermine community control. Other resolutions were also altered in a way which allows group ownership to be questioned, undermining the essence of customary land and leading to the strong possibility of land ownership and use being privatised to individuals.

The Vanuatu Land Program: The bureaucratisation of a peoples' process

"The issue is with how it's done, the bureaucratic way it's done ...that whole process is inaccessible to even people like me who are well educated. [T]he way they format their stuff and the way they do these evaluations, and then they do a design and then they do an evaluation of it and then there's some peer review and this whole process is...I would say three-quarters Australian citizens all the time in all of these processes. There's always some ni-Vanuatu but less than a quarter. And those people, I don't know if they know what's going on."

(Government/civil society land advocate 2009)

AusAID has assisted in funding a number of land initiatives in Vanuatu. The latest is the Vanuatu Land Program worth \$8-9million (AusAID 2009). Whilst the program may be well intentioned in adopting objectives such as: Informed Collective Decisions by Customary Landholders; Participatory Land Governance; and Effective and Enabling Services, it cannot be separated from broader land, development and trade interests at play. There are a number of issues and potential risks arising from AusAID's involvement in land reform, even where AusAID's primary role appears to be that of a "cash cow". Important questions vital to the program's effectiveness in reflecting the needs and aspirations of ni-Vanuatu remain unaddressed: Who is driving the land reform process? Who sets the overarching objectives of the broader land reform agenda? On whose terms is aid funding disbursed and managed?

A number of interviews conducted by AID/WATCH with key people involved in the land reform process highlighted several issues concerning the level of democratic

ownership over the program, which questions the veracity of AusAID's claim that land policy reform "must be driven by Pacific governments and communities, not by donors" (AusAID 2008a: vii).

Reform process: The Summit resolutions and aid agendas

The 2006 National Land Summit provided clear resolutions and an interim way forward for reforms relating to land. However, it is questionable whether the current land tenure reform process adequately reflects the intent of the resolutions, which were an attempt to return control to customary landholders and limit the control of foreign investors in land. Altering the resolutions through the government approval process and opting out of a continued broad-based participatory approach for a program design process are major issues. Program design is still dominated by Australian personnel. This undermines trust and risks distorting program priorities in favour of those which fit more neatly into bureaucratic processes or Australia's overall "development" agenda. The Vanuatu Government's draft Land Sector Framework also includes scope for the registration of customary lands and prioritises access to new customary land for "development" over dealing with current leased lands – an initiative that sits squarely outside of the Land Summit mandate (Vanuatu Ministry of Lands 2008).

When asked about the current direction of the land program one interviewee stated:

"As far as we're concerned the resolutions are sufficient. When a Chief speaks, everybody knows what they've said. But here's what they've done. They want to take it and put it into some aid language. That aid language is completely incomprehensible to the ni-Vanuatu. The aid



Some fences run all the way to the shoreline preventing local access to the sea on the island of Efate. Photo by Lara Daley

language is able to source money from Australia but is not going to meet our needs. Our needs are very clear. It was clearly articulated in the resolutions. Take it or leave it but don't come and repackage it in the way that AusAID wants to be able to swallow it and then bring something that is completely different from what we had said.”

(NGO land advocate 2009).

As the above quote indicates, donors control the design of the land program, leaving few opportunities for genuine community participation. Ni-Vanuatu who are engaged to varying degrees with the land process through civil society and government forums have indicated that they lack proper understanding of the Vanuatu Land Program design, suggesting the process is far from community-driven or participatory, being consultative at best. In an area as sensitive and vital to life as land, to institute “consultation” and “stakeholder engagement” risks reducing the role of “community” to a rubber stamp on land initiatives, legitimising a process where no real community control exists.

This also has the potential to be exacerbated by an inability of the program to reflect the Melanesian way of doing things, which avoids confrontation and communicates dissent in other ways. A culturally biased process of engagement could assume consent where there is actually clear disagreement. Another hurdle for AusAID is how it will keep to its intentions to be flexible on issues such as the pace of the program and timeframes when the money is clearly tied to a four to five year program (AusAID 2008b; 2009).

Appropriate and lasting reforms will only be ensured if the land program genuinely reflects the culture, needs, and aspirations of ni-Vanuatu and through honouring the Land Summit resolutions and actively engaging people at the community level.

Reform management: Inappropriate aid delivery

Another key concern regarding the control of the program is its delivery. AusAID is planning to make the Vanuatu Land Program available for tender by an international company, which will most likely be an Australian company, whose advisors will be responsible for the overall management of the program. This is both a costly way to deliver aid, with contractors being paid a base salary upward of \$180,000 per annum and also threatens to undervalue local control and expertise. An additional complicating factor in this mode of delivery is the actual conflict of interest, as many contractors have a wide portfolio of development and commercial interests

and are potential beneficiaries of easier access to land. Major contractors in the lands sector include:

Coffey International an engineering company that boasts being one of the top 300 companies on the Australian Stock Exchange. It operates in over 80 countries through several “specialist companies,” including Coffey International Development, which specialises in development contracts. Its Asia-Pacific office is one of Australia's largest development contractors, managing over \$400 million of development activities for AusAID (Coffey International 2009).

Hassal and Associates is a “wholly owned subsidiary of GHD” (Hassall & Associates 2009) following a merger in 2008. GHD deals with engineering and architecture, manufacturing, and resource industries such as energy, oil, gas, mining, metals, water, and geotechnical areas (GHD 2009).

Land Equity formed in 2001 by key members of a land titling team from another company, Hatch Associates Pty Ltd, formerly BHP Engineering Pty Ltd. Land Equity specialises in land titling and administration development programs (Land Equity International 2009). BHP Billiton is a multi-billion dollar corporation involved heavily in mining and oil industries (BHP Billiton 2008).

Corporate entities that have conflicting commercial and humanitarian interests, be they direct or indirect, are clearly compromised as an ethical deliverer of aid, particularly in an area as sensitive as land.

The broader development agenda

Australia's approach to land and development is closely aligned with strategies for economic growth. This approach to development in the Pacific is echoed by the Australian Government's current push for PACER Plus, a regional free trade agreement masquerading as a development deal. In the free market model of trade, customary land ownership is interpreted as a barrier to trade and as such a barrier to growth.²

The intersection of land reform agendas and strategies for economic growth based on foreign investment is dangerous territory, particularly where donors have strong influence and clear trade and commercial interests in the region. The conflicts of interest are poorly recognised. In its comments on the NZAID Pacific Strategy Consultation Draft, Oxfam New Zealand (2006: 8) raised similar concerns, stating “The inclusion of land tenure reform in the section that relates to economic growth indicates that New Zealand's interests are also driven by economic

²A study commissioned by the Pacific Islands Forum Secretariat on barriers to trade in services and investment cited customary land in multiple Pacific island countries as a barrier to trade. In Vanuatu's ongoing WTO accession process customary land ownership has been a controversial point to reconcile with free trade norms.

considerations... the solution is not just to shift land tenure into another section of the strategy, but to question why NZAID should be involved.”

However, it is not only the Australian Government and other aid donors who are prioritising investment and growth when dealing with customary land. As Vanuatu MP Ralph Regenvanu (2008: 67) notes, “Determining customary land ownership has become an obsession of government, reflecting its own obsession with promoting capitalist development.” The role of national elites in determining government policy as well as pressure from donors to adopt particular strategies are both factors which may limit the extent to which national development strategies and priorities reflect the development aspirations of Melanesian peoples.

Conclusion

The problems with Australian involvement in Vanuatu’s land reform process are less to do with the specific short-term objectives of the program than with the program’s alienating bureaucratic processes and its collusion with a wider development and trade agenda that is counter to ni-Vanuatu control over land and development.

What’s needed is a more sophisticated way of measuring development than economic growth, one which can account for the real world in which the majority of ni-Vanuatu live. Less confusion between the humanitarian and democratic development aims and Australia’s commercial interests would be aided by removing AusAID from the Department of Foreign Affairs and Trade and would also assist in building trust in Melanesia.

It is vital that Australia’s aid program is able to account for the strengths and needs of Pacific island countries and identify the opportunities to learn from these strengths – such as customary land – and to build upon, rather than undermine them. Aid, whether focused on problems or strengths, must allow autonomy for governments and communities to take control of their own development futures and support grassroots processes rather than displace them.

References

- AusAID (2008a) *Making Land Work: Reconciling customary land and development in the Pacific*, Vol. 1, AusAID, Canberra.
- AusAID (2008b) *2008-09 Development Assistance Budget*, AusAID, Canberra.
- AusAID (2009) *2009-2010 Procurement Plan*, online at: http://www.dfat.gov.au/tenders/procurement_plan.html accessed 06/09.
- BHP Billiton, ‘Group Highlights 2008’, online at: <http://www.bhpbilliton.com/annualreports2008/2008-business-review-and-annual-report/group-highlights/index.html> accessed 03/09.
- Coffey International “About Coffey International,” online at: <http://www.coffey.com/Default.aspx?aCatId=454> accessed 03/09
- Community Member (2009) Interview with this author, West Tanna, Vanuatu, 4 April.
- Cox M., Alatoa H., Kenni L., Naupa A., Dr. Rawlings G., Soni N., Vatu C., Sokomanu G., and Bulekone V. (2007) *The Unfinished State: Drivers of Change in Vanuatu*, AusAID, Canberra, online at: http://www.ausaid.gov.au/publications/pubout.cfm?ID=5886_7826_215_4825_8415 accessed 03/09.
- GHD (2009) ‘Home Page’, online at: <http://www.ghd.com.au/aprixpublishing.nsf/Content/home> accessed 03/09.
- Government/civil society land advocate (2009) Interviewed with this author, Port Vila, Vanuatu 5 April.
- Hassall and Associates (2009) ‘Home Page’, online at: <http://www.hassall.com.au/international/index.html> accessed 03/09.
- Land Equity International (2009) ‘Company History’, online at: http://www.landequity.com.au/company_history.htm accessed 03/09.
- Lunnay C., Fingleton F., Mangawai M., Nalyal E. and Simo J. (2007) *Review of National Land Legislation, Policy, and Land Administration*, online at: http://www.ausaid.gov.au/publications/pubout.cfm?ID=9890_470_5909_2050_163 accessed 10/08/09.
- Naupa A. and Simo J. (2008) ‘Matrilineal Land Tenure in Vanuatu: Hu I kakae long basket? Case Studies of Raga and Mele’ in Huffer, E. (Ed.) *Land and Women: The Matrilineal Factor – The Cases of the Marshall Islands, Solomon Islands and Vanuatu*, Pacific Islands Forum Secretariat, Fiji.
- NGO land advocate (2009) Interviewed with this author, Port Vila, Vanuatu 1 April.
- Portegys, M. (2006) *Vanuatu: The 2006 Land Summit Briefing Note* Oxfam New Zealand, online at: http://www.oxfam.org.nz/imgs/pdf/onz_vanuatuland_14feb07.pdf accessed 10/08/09.
- Oxfam New Zealand (2006) *Comments on the NZAID Pacific Strategy Consultation draft*, online at: <http://www.oxfam.org.nz/imgs/pdf/onz%20response%20to%20nzaid%20on%20pacific%20strategy%20march%202006.pdf> accessed 05/09.
- Regenvanu, R. (2008) ‘Issues with Land Reform in Vanuatu’, *Journal of South Pacific Law*, 12(1): 63-67.
- Simo, J. (2005) *Report of the National Review of the Customary Land Tribunal Program in Vanuatu*, Vanuatu National Cultural Council, Vanuatu Cultural Centre, Vanuatu.
- Stefanova, M. (2008) *The Price of Tourism: Land Alienation in Vanuatu*, World Bank Justice for the Poor briefing, 2(1), January.
- Vanuatu Ministry of Lands (2008) *Vanuatu Land Sector Framework: 2009-2018*, Draft Report for distribution and comments.