

VANUATU

REVIEW OF NATIONAL LAND LEGISLATION, POLICY AND LAND ADMINISTRATION



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Abbreviations

| | |
|--------|--|
| AusAID | Australian Agency for International Development |
| CARMA | Community Area Resource Management Activity |
| COM | Council of Ministers |
| CRP | Comprehensive Reform Program |
| DOLSR | Department of Lands, Surveys and Records |
| LUPO | Land Use Planning Office |
| MoL | Ministry of Lands |
| NZAID | New Zealand Aid |
| OECD | Organisation for Economic Co-operation and Development |
| OVG | Office of the Valuer General |
| PAA | Priorities and Action Agenda |
| REDI | Rural Economic Development Initiative |
| TA | Technical Assistance |
| VANRIS | Vanuatu Resource Information System |
| VG | Valuer General |
| VIPA | Vanuatu Investment Promotion Authority |

Executive Summary

The National Land Summit in September 2006 marked a turning-point in Vanuatu's land affairs. The twenty-six years after independence were marked not by land policy development, but by land policy decline. The 20 main resolutions endorsed by the Summit are evidence of serious problems in such areas as agreements to lease custom land, lease conditions, land use planning, subdivisions, registration procedures, public access to beaches and rivers, and the public's awareness of land rights and laws.

The review team was given the task of assisting the Government to advance the outcomes of the Summit, and identifying the reforms and possible assistance necessary to implement those outcomes, both in the short term and the longer term. The team undertook this task under the direction of a Steering Committee, during February-March 2007. This report reviews Vanuatu's present land policies and the main legislation affecting land, either directly or indirectly, and the present arrangements for land use management and administration.

The report then identifies the reforms which the review team believes are necessary, to implement the National Land Summit's resolutions. First, there is a need for policy development, not only to address serious problems in the leasing of land to outsiders, but also to address the emerging need for greater security of tenure for ni-Vanuatu, and for land dealings between ni-Vanuatu. Problems in lease arrangements have dominated the land agenda so far, but ni-Vanuatu land needs will be a greater priority for the future. Physical planning (or zoning) is a critical tool in efficient land use management and sustainable development, but at present it is seriously deficient, both in rural and urban areas. Foreshore development is taking place without the necessary approvals, causing beach erosion and preventing public access.

To remedy the problems raised at the Land Summit, policies need to be clarified, new legislation introduced, and some existing legislation amended. What is required is not a sweeping revolution, but a reinstatement of sound land tenure and land use principles, as well as fairness and social equity. There is also a pressing need for strengthening the land administration and land use management arrangements. Partly this can be done by institutional reform, partly by better co-ordination, partly by training and capacity-building. Decentralisation is also important, but in order to be effective it must be accompanied by organisation and management reforms.

The report contains a matrix, listing the 20 main resolutions from the Land Summit, and the actions which the review team sees as necessary to implement each of them. There is also a set of recommendations, for consideration by the Steering Committee and further processing within Vanuatu's system for policy-making. These recommendations, some for immediate and short-term action and others for the longer term, are intended to maintain the momentum generated by the Land Summit, and lay the basis for a comprehensive reform of the nation's land policies,

laws and administration. A series of scoping notes are provided for each of the short term initiatives to assist the Steering Committee in submitting proposals for assistance. It is also recommended that the Steering Committee appoint a secretariat to support the development and implementation of the proposed short term initiatives.

The ultimate goal for the Steering Committee is to obtain support for a land reform program that will assist in the implementation of the numerous reform measures that need to be undertaken to satisfactorily progress the 20 resolution from the National Land Summit. Land reform is required in a number of key areas, including legislation and policy, institutional development, land use management and land administration. The drafting of a National Land Law, as provided for in the Constitution, is a high priority and which must be developed with widespread consultation but specifically in consultation with the National Council of Chiefs (Malvatumauri).

1. INTRODUCTION

1.1. The National Land Summit

In July 2005, the Vanuatu National Self-Reliance Summit recommended the holding of a National Land Summit to discuss land issues in relation to national self-reliance. Vanuatu's first National Land Summit was held from 25-29 September 2006 in Port Vila, with the theme of "Sustainable Land Management and Fair Dealings to Ensure Progress with Equity and Stability". Organised by the Ministry of Lands and the Vanuatu Cultural Centre, a series of six Provincial land summits were held in the months leading up to the National Summit to broadly consult about the definition of customary ownership, fair dealings and the role of Government. The goal of the National Land Summit was to agree on resolutions on which to form the basis of a new land policy for the next five to ten years.

The Vanuatu National Land Summit was a highly successful exercise in participatory decision-making, on the most important and sensitive of all subjects - land. The Land Summit provided direction and commitment from various stakeholders to addressing key issues such as customary land ownership, lease agreements, physical planning and decentralisation.

The Summit concluded with twenty resolutions, categorised under the following headings:

- Land ownership.
- Fair dealings.
- Certificate to negotiate.
- Power of the Minister over disputed land.
- Strata title.
- Agents/Middle men or women.
- Lease rental and premium.
- Sustainable development.
- Conditions of lease.
- Public access.
- Enforcement.
- Zoning.
- Awareness.

The twenty resolutions of the National Land Summit have been included in a document "Interim Transitional Strategy and Future Plans to Implement the Resolutions of the National Land Summit 2006" that has been prepared following the summit and endorsed by the Council of Ministers. The Interim Transitional Strategy document is included as Attachment 1 (English version) and Attachment 2 (Bislama version). As well as the twenty resolutions, the document:

- imposed a temporary moratorium on subdivisions, surrendering of existing agricultural leases and the power of the Minister when land is in dispute;
- introduced temporary administrative measures; and

- set out a long term development plan.

On the 21 November 2006, the Council of Ministers endorsed:

- the transitional strategy;
- the establishment and composition of a Steering Committee;
- a commitment to find support for funding to implement the resolutions; and
- endorsed changes that had been made to the 20 resolutions by the Council of Ministers (see Attachment 3 for English version and Attachment 4 for Bislama version).

1.2. The Steering Committee

To maintain the momentum generated by the National Land Summit and to assist in progressing discussion and action in relation to land issues the government has formed a Steering Committee. The role of the Steering Committee is to provide oversight and to monitor and manage the process of moving forward activities against the resolutions, for ultimate presentation to the Government. The committee has a broad membership including government representatives, the Malvatumauri (National Council of Chiefs), the Vanuatu Cultural Centre, women's groups, youth groups and private sector representation. A list of membership of the Steering Committee is included as Attachment 5.

1.3. Technical Assistance Support

The Australian Government through the Australian Agency for International Development (AusAID) has funded technical assistance to work with the Steering Committee to progress the summit resolutions. The Terms of Reference for the technical assistance is included as Attachment 13. The overall objective of the assistance is to:

support the Ministry of Lands in its review of the outcomes from the National Land Summit, and identify the reforms and possible assistance necessary to implement those outcomes, both in the short term and the longer term.

The technical assistance team¹ commenced the contract on 22 January 2007 and the first field visit to Vanuatu was undertaken from 26 January through to 9 February 2007. A draft of the technical assistance report was submitted to the Steering Committee on 18 February 2007. A follow-up field visit was undertaken from 21 to 28 February 2007 to enable detailed discussions with the Steering Committee on the draft report and recommendations and to undertake additional field visits and meetings.

¹ Mr Chris Lunnay (Team Leader/Land Administration), Dr Jim Fingleton (Land Policy/Legislation), Michael Mangawai (Land Administration), Edward Nalyal (Legislation) and Joel Simo (Customary Tenure)

Working under the direction of the Steering Committee the technical assistance team have used the framework of the twenty resolutions from the National Land Summit as the basis for consultations with key stakeholders and as a guide for developing recommendations on possible assistance to implement the outcomes of the Land Summit. The 20 resolutions have been used as the framework for the development of an Action Matrix which outlines all the actions necessary to address the resolutions (see Attachment 8). An extensive program of consultation was undertaken with government officials, private sector, Malvatumauri (National Council of Chiefs), village chiefs and officials, women's groups and the youth of Vanuatu. A number of site visits were also undertaken to locations such as Mele, Pango, Eton, Takara, Santo and Tanna to gain an appreciation of issues and also to discuss possible solutions to the resolutions from the National Land Summit.

This report provides a detailed analysis and review of the land policy and land related legislation, reviews the land administration functions and then outlines the reforms necessary to implement the National Land Summit resolutions. The direction to be undertaken for the implementation of a large reform project is outlined and details are provided on the short term initiatives that are considered necessary to maintain the momentum generated by the Summit. A number of scoping notes are provided for the short term initiatives which will assist the Steering Committee in sourcing support.

2. SUMMARY OF STATUS OF LAND AFFAIRS IN VANUATU

2.1. National Land Summit

The convening of the National Land Summit, development of the interim transitional strategy and establishment of the Steering Committee has occurred at a critical time in the country's land affairs. Over recent years, the land reforms introduced at independence have been largely undermined. Land alienations, which had played such a big part in Vanuatu's mobilisation for independence in 1980, have emerged again on a scale which threatens the livelihoods of ni-Vanuatu, the authority of the government, and the country's social and political stability. The seriousness of this review of the country's land policies, laws and administration must not be underestimated. It was this concern which led the Vanuatu Self-Reliance Summit to recommend the holding of a National Land Summit, to discuss the most important land issues facing Vanuatu, and prepare a set of agreed resolutions based upon the wishes of the people, to present to the national leadership for formulation of a National Land Policy.

The twenty resolutions from the National Land Summit highlight critical areas that need to be addressed and which have received strong endorsement from the people of Vanuatu. It is now the responsibility of the Steering Committee to progress the resolutions in a responsive and efficient manner on behalf of the people of Vanuatu. The reason for urgent action is due to the critical state of affairs in the weaknesses of the land policies, laws and administration.

2.2. Policy development

Policy development on land has been weak over the years since independence. There has been no clear statement of a new land policy since independence, while

the basic policy commitments made at that time have been undermined in important respects. Perhaps the main underlying reasons for this loss of direction were –

- the ambiguity surrounding the legal powers and responsibilities of the custom owners of land, and
- uncertainty over the Government's role in relation to land dealings.

In a country where, by the Constitution, the full land ownership of the custom owners was entrenched, and dealings in land are carried out directly between custom owners and outsiders, failure to address this ambiguity and uncertainty made custom owners very vulnerable to exploitation. Where the Government is given a role in land dealings (eg, the Minister's power of approving negotiators, and the dealings which eventuate from direct negotiations), the powers have frequently been abused. These policy weaknesses must be addressed, and fortunately the Land Summit resolutions go a long way in clarifying these basic matters.

2.3. Legislation

In the absence of policy clarification of the above basic matters, it follows that the land legislation is deficient in important respects. Many new land laws have been passed by the Parliament since independence, but much of the current legislation was designed to handle the conversion of pre-independence titles to the new post-independence regime, yet it remains the basic legal framework for the country's land system to the present day. Where there have been legislative "innovations", one was aimed at converting urban land to individual freehold ownership (against the spirit, and probably the letter, of the Constitution), and another was the introduction of a strata titles regime – a law whose defects have allowed a spate of "unofficial" subdivisions.

2.4. Land administration

The Department of Lands, Surveys and Records has grown to provide a range of land services, some common-place (eg, surveys) but others more particular to Vanuatu, and more demanding. The latter include advising the Minister in the exercise of powers to approve negotiators and the land dealings which eventuate from negotiations (advice which the Minister is not obliged to accept), involvement in settling land disputes, and land use planning (the latter powers being exercised at provincial level). Officials suffer from the usual problems of lack of resources to carry out their functions adequately, but they are also affected by the policy and legislative ambiguities and uncertainties referred to above. In a proposed land dealing, it is unclear who the Lands Officer is supposed to be acting for – the custom owners? the other members of the land-owning group? the local community? the State? The interests of these stakeholders are often in conflict.

The above is only a very brief outline of the deficiencies which undermine achievement of the three main themes of the Land Summit – sustainable land management, fair dealings in land, and progress with equity and stability. This report will provide a more thorough review of Vanuatu's current policies, laws and administrative systems affecting land ownership, management and development.

2.5. Basic needs

Land dealings in Vanuatu (negotiations, leases, registrations, sub-divisions, etc) have got out of control in recent years, and the resolutions of the National Land Summit require that they be brought back under control. This will mean difficult decisions, not only because there has probably been a high level of non-compliance with legal requirements, but also because of the sheer volume of land dealings coming before official bodies for approval. Options which will be considered include:

- a moratorium on further processing of new dealings (a temporary moratorium is already in place);
- an inquiry into the legality of recent dealings, with a view to recommendations for remedying the situation;
- more aggressive application of the remedies currently available – forfeiture of leases, prosecutions for breach of public access and zoning laws, etc.;
- amendments of legislation, possibly with retrospective effects;
- as a last resort, compulsory acquisitions.

Each of the above options entails a degree of risk (including ‘sovereign risk’), which will have to be weighed against the benefits of regaining control over the nation’s land affairs.

2.6. Doing Business in Vanuatu

In “Doing Business in 2007”², the difficulties faced in undertaking business activities in Vanuatu are highlighted. Of the data on 175 countries, Vanuatu is ranked at 58th in doing business. However in relation to trade, employment and land registration Vanuatu is ranked in the bottom half of all countries. These statistics highlight that there are a number of areas where Vanuatu needs to focus attention if it is to improve business and land administration activities.

In relation to registering property it is stated that to register a land parcel (a lease) it takes on average 188 days which is compared with 31.8 days in OECD countries. The cost in Vanuatu to register is approximately 7% of the property value which is compared with 4.3% for OECD countries. These figures reinforce some of the concerns expressed by the National Land Summit and highlight the importance of Vanuatu commencing action immediately to address a review of land related legislation and procedures in land administration.

3. LAND POLICY AND LEGISLATION

3.1. At the time of independence

For present purposes, land policy development in Vanuatu can be regarded as beginning on the eve of independence in 1980. Under the previous British-French

² World Bank, Doing Business in 2007 – How to Reform, 2007.

Condominium, different approaches were taken to land development at different times, and the two governments were pursuing conflicting goals during the pre-independence period. Whereas the British were following a decolonisation agenda, the French were resisting moves in that direction, and as a consequence very little had been done by the joint colonial administration to prepare the country for self-government. Involvement by ni-Vanuatu in economic development had been minimal. Independence in 1980 was achieved after a long struggle, and in fact was accompanied by a rebellion, which was only put down with outside military assistance.

3.1.1. The Constitution 1980

The Vanua'aku Pati won the 1979 election with an overwhelming majority, and set the course for independence on 30 July 1980. The Constitution adopted at independence had been hastily prepared under difficult circumstances, but its provisions on land in Chapter 12 reflected the central issue in the struggle for independence – return of alienated lands to their custom owners. Thus, it provides:

- Article 73: “All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.”³
- Article 74: “The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.”
- Article 75: “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.”
- Article 76: “Parliament, after consultation with the National Council of Chiefs, shall provide for the implementation of Articles 73, 74 and 75 in a national land law and may make different provision for different categories of land, one of which shall be urban land.”
- Article 77: “Parliament shall prescribe such criteria for the assessment of compensation and the manner of its payment as it deems appropriate to persons whose interests are adversely affected by legislation under this Chapter.”
- Article 78: “(1) Where, consequent on the provisions of this Chapter, there is a dispute concerning the ownership of alienated land, the Government shall hold such land until the dispute is resolved.
“(2) The Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land.”
- Article 79: “(1) Notwithstanding Articles 73, 74 and 75, land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen shall only be permitted with the consent of the Government.

³ Articles 73 to 81 were numbered 71 to 79, in the original version of the Constitution.

“(2) The consent required under Sub-article (1) shall be given unless the transaction is prejudicial to the interests of –

- a) the custom owner or owners of the land;
- b) the indigenous citizen where he is not the custom owner;
- c) the community in whose locality the land is situated; or
- d) the Republic of Vanuatu.”

- Article 80: “Notwithstanding Articles 73 and 74, the Government may own land acquired by it in the public interest.”
- Article 81: “(1) Notwithstanding Articles 73 and 74, the Government may buy land from custom owners for the purpose of transferring ownership of it to indigenous citizens or indigenous communities from over-populated islands.

“(2) When redistributing land in accordance with Sub-article (1), the Government shall give priority to ethnic, linguistic, customary and geographical ties.”

Notable features of these constitutional provisions are –

- a) the primacy given to “custom”, “custom owners” and “indigenous citizens” (ni-Vanuatu) in land tenure and land use;
- b) the apparent “self-acting” effect of Art. 73, in returning all land in Vanuatu to its custom owners;
- c) the ambiguity over the nature of “custom ownership” – on the one hand suggesting that it is *group*-based (all land belongs to “the indigenous custom owners *and their descendants*” – Art. 73), while on the other hand suggesting that it is *individual*-based (prejudicial to the interests of the indigenous citizen, “where *he* is not the custom owner” – Art. 79(2)(b));
- d) the combination of a *freedom* for custom owners to deal directly with their land, with a *responsibility* on the Government to prevent transactions which are prejudicial to the interests of the custom owners, the local community or the national interest (Art. 79);
- e) the provision that, notwithstanding the general position that *all* land in Vanuatu belongs to the custom owners (Art. 73), the Government may own land acquired by it “in the public interest” (Art. 80);
- f) the requirement that Parliament, after consultation with the National Council of Chiefs, “shall provide for the implementation of Articles 73, 74 and 75 in a national land law” (Art. 76).

As already mentioned, the Constitution was prepared in less than ideal circumstances, and the intention was that any ambiguities and uncertainties would be resolved in the upcoming National Land Law.

3.1.2. Land Policy Communiqué 1980

On 24 April 1980, three months before independence, the Minister of Lands, Sethy Regenvanu, issued the Government’s *Land Policy Communiqué*. After referring to these forthcoming constitutional provisions, he made a number of elaborations, including that –

- there would be three categories of land – rural, urban and public;

- *rural land* would be owned according to custom, and companies or non-indigenous citizens could lease it directly from its custom owners, subject to Government consent;
- before giving its consent, the Government would make sure that –
 - “the groups owning the land have heard about, discussed, understood and agreed to the lease”;
 - “the representatives chosen by the group to negotiate the lease have been authorised by the group to do so”; and
 - “the lease is in the interests of the custom owners, local people, and the country”;
- once the Government had consented to a rural lease, it would guarantee the security of the lease;
- the Government would hold a perpetual lease of *urban* and *public land*, with the custom owners of the land entitled to a continuing share of the revenue from the land, continuing ownership of certain areas of urban land to develop or lease themselves, and continuing representation on statutory bodies managing the land;
- *public land* would be land needed for public purposes like schools, hospitals and airfields;
- the length of leases would depend on the land use – *rural* leases would normally be for 30 years, *urban* leases for 50 years, and leases for “big investment projects” for up to 75 years;
- *joint venture* agreements could be entered into with custom owners to develop *rural* land.

3.1.3. Land Reform Regulation 1980

On Independence Day, the Land Reform Regulation 1980 came into operation.⁴ In its “long title” it is called a measure “to make interim provision for the implementation of Chapter 12 of the Constitution”. Article 73 of the Constitution had effectively abolished all existing land titles, and the main purpose of the Regulation was to provide for their replacement in certain circumstances. To qualify as an “alienator”, a person had to have a freehold or other beneficial interest in the land, be in occupation of the land, and have maintained the land and improvements in reasonably good condition (Sec. 1). The Regulation conferred on such alienators an entitlement to remain in occupation of the land, until either a lease agreement was negotiated with the custom owners or payment was made for improvements to the land (Sec. 3).

The Regulation also made provision for the negotiation of agreements between former title-holders and custom owners, for their continued occupation of the land. In order to enter into negotiations, alienators had to apply for a Certificate of

⁴ It had been enacted as a Joint Regulation before independence, but its commencement was delayed until independence. It is now called the Land Reform Act.

Registered Negotiator, using the application form set out in the Land Reform (Rural Alienated Land) Regulations 1980. The Certificate had to state the names of the applicant and the custom owners, brief details of the land the subject of negotiations and the object of the negotiations (Sec. 6). The Minister of Lands was given powers of “general management and control” over land in three situations –

- a) where the land was occupied by an alienator, and either there was no approved agreement with the custom owners or the custom ownership was disputed; or
- b) the land was *not* occupied by an alienator, but the custom ownership was disputed; or
- c) the land was not occupied by an alienator, but in the opinion of the Minister the land was inadequately maintained (Sec. 8).

The Minister was given the power to conduct transactions over such lands, including the granting of leases on behalf of the custom owners (Sec. 8(2)). The Minister could also apply to an Island Court to decide on the ownership of the disputed land (Sec. 5(2)).

Section 14 provided –

“When a lease is registered in a register in the Records Office the registration of that lease shall be evidence of the validity of the lease and the details thereof.”

This was the Government’s “guarantee” given to the security of leases, until such time as a new registration system was introduced (as it was in 1983, by the Land Leases Act, see below).

The foregoing arrangements applied mainly to rural lands. In the case of urban land, much of this was owned at independence by the British or French Governments, the Condominium or a municipality. All such land came within the definition of “State land” in the Land Reform Regulation (Sec. 1), and vested in the Government as public land at independence (Sec. 9). Provision was made for payment of compensation to the custom owners of such land (Sec. 11).

3.1.4. Ministerial Statement on Land Policy implementation 1980

On 29 October 1980, three months after independence, the Minister made a *Statement* to Parliament on the implementation of the Land Policy. He referred to the emphasis to that stage on alienated land – about 20% of all land in the rural areas – and his intention to shift his attention to the development of the remaining 80% of custom land as soon as possible. Regarding alienated rural land, the Minister outlined his intended approach to the identification of registered negotiators, the custom owners and the object of negotiations between the two. In the case of custom owners, what he said he was looking for was “general agreement on which groups have interests under custom in a parcel of alienated land, and appointment by them of their representatives, or ‘negotiation team’, for the purpose of the negotiations”.

Where it was clear that the custom owners wished to proceed with negotiations, the Minister said that he would be “looking for development proposals which involve

participation by ni-Vanuatu nationals, in particular the custom owners.” While mentioning that the country’s agricultural policy, and the place of foreign investors in that policy, was still not settled, the Minister referred to three possible situations –

- (i) for major development proposals: an agreement for up to 75 years, but on the basis of a *joint venture* with the custom owners;
- (ii) for minor development proposals: a *lease or joint venture* agreement for up to 30 years;
- (iii) for proposals for no new investment: the area would be reduced to just the residence and immediate surroundings, and a *lease* would be for a maximum of 30 years.

In the case of urban land, the Minister said that town boundaries would be rationalised to exclude large agricultural areas, and the remaining urban land declared *public land* under the Land Reform Regulation. General management of town land would be under the responsibility of the Vila and Luganville Urban Land Corporations⁵. Custom owners of urban lands would have representation on these corporations, and would share in the revenues raised from them. Former title-holders of developed urban land would be issued with *leases* by the corporations, on terms and conditions which were still being considered by the Government. The Minister concluded by advising that he was working on the creation of a new system for registering transactions in the former alienated lands, including transfers, leases and mortgages.

Notable features of these early land policy statements and legislation are –

- a) the Minister’s clear view that the “custom owners” of land in Vanuatu are *groups, not individuals*;
- b) the clear intention that the general maximum for lease periods in rural areas would be 30 years, and would *only* be for up to 75 years for *major* development projects, and *only* if the investor was prepared to enter into a *joint venture* with the custom owners;
- c) it is also clear that the Minister’s power to enter into agreements on behalf of custom owners under Sec. 8 of the Land Reform Regulation (now Land Reform Act) was only intended to be exercised over alienated land, *not* land which had never been alienated;⁶
- d) finally, it is clear that the Land Reform Regulation was only intended to be an “interim” measure, until such time as the National Land Law was prepared as required by Article 76 of the Constitution.

Reviewing these land policies and legislation 27 years later, it is apparent that many of these early principles have been seriously undermined. Findings and conclusions

⁵ These two corporations were later abolished.

⁶ The references to “not occupied by an alienator” in Sec. 8(1)(b) and (c) referred to the many plantations which had been abandoned, during the rebellion and turmoil surrounding independence. Some of the former owners of these plantations had been deported, or declared prohibited immigrants, so negotiations for replacement titles were impossible.

will be drawn on the extent of departure from these policies and legislative requirements in the next part of this report.

3.2. Since independence

The new land policies and legislation required identification of the custom owners of alienated lands and the appropriate “alienator”, and both of these tasks inevitably led to difficulties. In the first case, the fact that some plantation properties had been alienated for almost a century made identification of the former custom owners problematic, and local Land Committees were set up to try to resolve the competing claims. In the case of identifying the “alienator” who was entitled to negotiate with the custom owners, many former plantation owners had been deported following independence because of their political activities, and they were disqualified from being registered as negotiators.

The Minister of Lands, Sethy Regenvanu, fought hard for solutions which, while meeting the Vanua’aku Pati’s commitment to the return of alienated lands, at the same time would restore investor confidence, which he saw as necessary for future agricultural development. In his autobiography in 2004, he wrote –

“I had the dual task of trying to satisfy the expectations and wishes of our people, while at the same time providing the existing and potential foreign investors a degree of assurance that they could continue to enjoy access to land, albeit under the new regime and different laws.”⁷

3.2.1. Alienated land Act 1982

With a view to facilitating the process – and partly in response to the demand for alienated lands to be returned – the Alienated Land Act was passed in 1982. It provided for the establishment of a Register of Alienators (Sec. 2), in which any persons claiming to be alienators had to apply to be registered (Sec. 3). Applicants had to specify the option for which they wished to negotiate – basically, a lease of all or part of the alienated land and/or payment for improvements (Sec. 16(3)). Only if the custom owners were willing to negotiate could the Minister issue a Certificate of Registered Negotiator, under the Land Reform Act (Sec. 16(2)). If the custom owners did not wish to negotiate a lease, the value of improvements was assessed by a Lands Referee (Sec. 21), appointed under the Lands Referee Act.⁸ The land had to be vacated (Sec. 24), and the custom owners had up to 10 years to pay off any compensation (Sec. 17).

Persons who failed to make an application to be registered as an alienator, and deportees, were denied any rights as alienators, although the latter could be entitled to compensation for improvements (Secs. 8, 9). If the custom owners of alienated land could not be identified “within a reasonable time”, the Minister could appoint a person to act as trustee on their behalf, and exercise their powers under the Act

⁷ “Laef Blong Mi: From village to nation”, Sethy John Regenvanu, Institute of Pacific Studies, University of South Pacific, 2004.

⁸ Repealed in 2002.

(Sec. 25). In such cases, any moneys payable to custom owners under a lease had to be paid into a special fund established by the Treasury (Sec. 26).

While the above legislative arrangements provided for the replacement of freeholds and other titles in alienated land by leases, a major gap remained in the new land tenure system – ie, provision for the registration of leasehold titles, and for transfers of leases, mortgages, sub-leases and other interests in registered titles. This gap was filled by the Land Leases Act of 1983. The Act makes simple but comprehensive provision for all the usual ingredients of a land registration law, the main distinctive feature being that it is a law for the registration of leases and dealings in leases, rather than for the registration of land ownership. Apart from this fact, the Act is essentially a law which could have been drafted for *any* country, and it shows minimal evidence of having been tailored to Vanuatu's special circumstances. The term "lease", for example, is defined to mean the grant "by the owner of land of the right to the exclusive possession of *his* land", and the term "lessor" is defined as "the person who has granted a lease or *his* successors in title",⁹ neither definition giving any recognition to the fact that, in Vanuatu, the land is either under custom ownership (if in a rural area) or Government ownership (if in an urban area).

3.2.2. Land Leases Act

The Land Leases Act contains Parts covering the usual subjects – the effect of registration, dispositions, leases, mortgages, transfers, transmissions, easements, subdivisions, etc. As with any registration statute, the basic position is that leases and other dealings in land only gain their legal effect after registration, and upon registration the rights of the proprietor are "not liable to be defeated" (ie, are *indefeasible*), and are held "free from all other interests and claims whatsoever" (Sec 15).¹⁰ Important qualifications on those rights, however, are contained in two provisions – those setting out *implied agreements* and those setting out *overriding interests*.

Notable among the *implied agreements* are –

- the requirement that the lessee will not dispose of the leased land or any interest in it "without the previous written consent of the lessor", which consent shall not be unreasonably withheld (Sec. 40A);
- the requirement not to use the land "for any purpose other than that for which it was leased without the previous written consent of the lessor", which consent shall not be unreasonably withheld (Sec. 41(i));
- the requirement that, on determination of the lease, the lessee will deliver up vacant possession of the leased land and any improvements (Sec. 41(j)).

Notable among the *overriding interests* are –

⁹ Emphasis added in both cases.

¹⁰ Of interest, however, is the absence of the usual "Torrens system" provision that a registered title is *conclusive* evidence of the title-holder's rights as set out in the title

- rights of way existing at the time of the lease's registration (Sec. 17(a));
- rights of compulsory acquisition conferred by any law (Sec. 17(d));
- rights relating to roads conferred by any law (Sec. 17(h)).

Other notable aspects of the Land Leases Act are the following –

- a) lease terms shall not exceed 75 years, and if granted or extended for a longer period shall be deemed to be for 75 years (Sec. 32);
- b) every lease must specify “the purpose and use for which the land is leased”, and “the development conditions, if any” (Sec. 38);
- c) provision is made for regular rent reviews (Sec. 39);
- d) the lessor has a right to forfeit the lease for a breach of its conditions, after serving a notice on the lessee (Sec. 46);
- e) a power in the Supreme Court to order “rectification” of a registration, where it is satisfied that the registration was obtained by fraud or mistake (Sec. 100).

It should also be noted that some of the above protections for the lessors (ie, the custom owners of the leased land) can be modified or removed, by the simple device of expressly providing otherwise in the lease agreement. However, the requirement for the lessor's consent to any disposition of the lease, or interest in it, cannot be modified or removed (Sec. 36).

The Land Leases Act finishes with a Schedule setting out registration fees. Subsidiary legislation introduced under the Act is the Land Lease General Rules and Land Leases Prescribed Forms. The latter consists of 21 forms, including for the following –

- an application for registration;
- a lease;
- a mortgage;
- a transfer of a lease;
- a caution.

However, there is no requirement in the legislation that all their contents *must* be included, and no changes be made to their most important contents.

A number of amendments were recently made to the Land Leases Act, with a view to improving the returns from leases for the lessors (custom owners) and the Government.¹¹ Thus –

- the Land Leases (Amendment) Act of 2003 allowed the lease terms of *public land* to be extended to 75 years on payment of a premium, and made provision for renewal of such leases (Sec. 32B and C);
- the Land Leases (Amendment) Act of 2004 –

¹¹ There was also a long set of amendments enacted in 1995, but never brought into force. They were intended to adjust the Land Leases Act to the introduction of freehold titles in urban areas, under the Freehold Titles Act of 1994. As mentioned in the text, although this Act was brought into force it has never been implemented.

- i. introduced a different formula for calculation of the premium payable for extension of the lease terms of *public land* (Sec. 32B(4));
 - ii. prescribed a fee of 35% of the unimproved market value of the land at the date of application, for an application for renewal of a 75-year lease of *public land* (Sec. 32C(6));
 - iii. imposed the same fee of 35% of the unimproved market value of the land for issue of a new lease of *public land* which had either never before been leased, or was part of a subdivision or strata title development (Sec. 32D);
 - iv. allowed a lessee to pay the first 5 years' rent in advance, where the rent is fixed for a 5-year period (Sec. 39A);
 - v. provided for payment by the lessee to the lessor (ie, custom owner) of not less than 18% of the sale price upon transfer of a lease of *rural land*, unless other arrangements have been made (Sec. 48A);
 - vi. provided for a new "rural lease tax" of 1% of the unimproved market value, payable annually by the lessee to the Government (Sec.50A);
 - vii. increased the registration fees payable to the Government for the creation or transfer of a lease from 2% to 6%, and for the creation or transfer of a mortgage from 0.5% to 1.5%;¹²
- the Land Leases (Amendment) Act of 2006, which reduced the fees for creation or transfer of a lease from 6% to 5%.¹³

While a number of these measures can be seen as trying to get a fairer return for custom owners when the value of their land is increased (eg, by a subdivision or strata title development), this is a difficult matter for governments to manage. Clearly, however, there is a need for all land revenues – rents, fees, premiums and taxes – to be rationalised.

The above three laws, the Land Reform Act, Alienated Land Act and Land Leases Act, and the policies underlying them remain the basic land policy and legislation in Vanuatu to this day. Over the next two decades there were amendments made to those three laws, and four new laws were introduced, but no new land policies were announced. The main changes since 1983 are detailed below.

3.2.3. Land Acquisition Act 1992

Article 80 of the Constitution enabled the Government to own land acquired by it "in the public interest", and Art. 81 enabled the Government to buy land from custom owners for the purpose of land redistribution. The Land Acquisition Act set out the procedure for exercising the Government's powers to acquire land in the public interest. The first step was a decision by the Minister that particular land was

¹² The amendments, although passed in 2004, were not introduced until 27 December 2006. The public notification was accompanied by much confusion and consternation, leading the Minister of Lands to issue a Public Notice, advising that the amendments "will be repealed at the First Extraordinary Session of Parliament in 2007". The amendments, he said, did not reflect the resolutions of the Land Summit, and the policies behind them would be revisited and another amendment prepared.

¹³ The 6% rate, introduced on 27 December 2006, was replaced by 5% when the new amendment came into operation on 1 January 2007, 4 days later.

required for a “public purpose”, which the Act defined as “the utilisation of lands necessary or expedient in the public interest and includes a purpose which under any other written law is deemed to be a public purpose”. There then follows a sequence of steps, from initial notification and investigation to notice of intended acquisition, any appeals, an inquiry into compensation, any further appeals, payment of compensation and taking of possession.

The procedure under the Act has occasionally been invoked, to acquire both customary land and on one occasion a lease, but agreement was reached on compensation without the need to resort to compulsory acquisition.¹⁴ Governments in the Pacific Islands are extremely reluctant to acquire customary land by compulsory acquisition, in part as a reflection of the view that customary land is, essentially, *unalienable*. Nevertheless, the compulsory acquisition powers under the Act remain available, and the Act is not confined to customary land.

3.2.4. Land Reform (Amendment) Acts 1992 and 2000

These amendments were an attempt to resolve the status of lands which, at independence, had belonged to the British or French Governments, the Condominium or a municipality. The Constitution made no reference to such lands (which comprised the main urban areas of Port Vila and Luganville), and it might therefore be thought that they, too, reverted to custom ownership. But the Land Reform Regulation, in its original form, vested all such land (called “state land”) in the Government as *public land* (Sec. 9), and made provision for payment of compensation to the custom owners “for the use of the land and the loss of any improvements thereon”, as well as other special benefits (Sec. 11).¹⁵ The implication was that the lands were only *leased* by the Government from the custom owners, but by the 1992 amendment all the provisions relating to the payment of compensation and other benefits were repealed. The lands in question were simply vested in the Government, without any qualification on their legal status or provision for compensation. The implication *now* was that the lands were *owned* by the Government.

This remained the situation until 2000, when another attempt was made to deal with the outstanding issues affecting such lands. Without referring to their legal status, the 2000 amendment introduced a minimal provision for compensation – basically, allowing the Government to determine the amount of compensation, taking account of “the market value of the land and any other matters that it considers relevant” (Sec. 9B). A right of appeal lay to the Supreme Court against the amount of compensation determined by the Government. According to recent newspaper reports, a total of VT 280 million was paid to villages which claimed custom ownership of the Port Vila urban area, but claims still surface.

¹⁴ Patricia Holmes provides further detail on the Act and the controversy it generated in her unpublished Master of Arts thesis “Land Tenure in Vanuatu: Custom, culture, tradition ... and development?” (1996), at pp14-16.

¹⁵ This compensation “package” implemented the Minister, Sethy Regenvanu’s, commitment in the *Land Policy Communique*, mentioned above in the text.

3.2.5. Urban Lands Act 1993

The decline of the strongly nationalist Vanua'aku Pati during the 1980s allowed government to pass to its opponents, and this Act was introduced by a coalition government led by the Union of Moderate Parties (UMP). Its purpose was to allow the creation of urban zones in addition to Port Vila and Luganville, with a view to encouraging investment outside the two existing towns and promote decentralisation.¹⁶ The Act has a number of novel features, including provision for "Urban Communities" and the compulsory registration of custom land in urban areas and preparation of "development plans".

The Act was apparently drafted outside the Attorney General's Office, and moves were soon under way for its amendment so as to clarify some aspects and bring it into line with the Land Leases Act. In 2003, however, the Urban Land (Repeal) Act was passed. At the time of writing, this repeal has still not been brought into operation. The Act is, therefore, still in force, but its future is doubtful.

3.2.6. Freehold Titles Act 1994

Similar doubts surround the status of this Act, which was also introduced by the UMP-lead government in a further move to free up urban land. It allows indigenous citizens to acquire freehold titles over land in urban areas, if they hold an "unconditional head-lease registered under the Land Leases Act" (Sec. 3). The legislation led to controversy, and doubts were raised over its constitutionality although this was never challenged in court.¹⁷ While it seems inconsistent with the Constitution's emphasis on the customary underpinnings of land tenure, it is certainly arguable that the Act falls within the wording of Art. 75, allowing indigenous citizens "who have acquired their land in accordance with a recognised system of land tenure" to have perpetual ownership of land. Once again, the uncertain status of "state land" in urban areas presents a problem.

The main problem with the Freehold Titles Act, however, is a practical one – the basic nature of the title depends on the citizenship status of the title-holder. While the Act did try to provide for the situation where an indigenous citizen holding a freehold wanted to transfer the title to a non-indigenous citizen (by reverting the title to a lease), this is obviously an unworkable arrangement. Although the Act is still in force, it is understood that no freehold titles have ever been issued.

3.2.7. Strata Titles Act 2000

Strata titles legislation is designed to provide the benefits of registered titles to units within different levels (or "strata") of a building. It is usual, therefore, to make clear in the law that it only applies to buildings. In the case of Vanuatu's Strata Titles Act, the operative provision reads –

"Land including the whole or a part of a building may be subdivided into lots by registering a strata plan in the manner provided by or under this Act." (Sec. 2(1))

¹⁶ For further information on the Act, see Holmes 1996 (as above), pp16-17.

¹⁷ See Holmes (as above), pp17-18.

While it would seem clear enough that the land in question *must* include “the whole or a part of a building”, apparently this wording has been taken in Vanuatu to authorise the approval of strata title developments over *bare* land. This is using the strata title arrangements as a *substitute* for land subdivision, for which provision already exists in the Land Leases Act, Sec. 12(2).

Other provisions of the Strata Titles Act make it clear that the normal requirements for subdivision do not apply to strata titles (Sec. 3(1)), and that, upon registration of a strata plan, separate certificates of title must be issued for each lot in the plan (Sec. 2(2)). Notably, there is no requirement to seek the approval of the custom owners of the land in question to the strata title development. One major restriction, however, is that the strata plan must be approved by a “consent authority” under the Act (Sec. 4(3)), which means the relevant municipal council or Provincial Government (Sec. 1). And the only person who can apply for that consent is a lessee under an “approved lease” (Sec. 3(2)). An “approved lease” is defined to mean –

“a lease registered or capable of registration in the Land Leases Register for a term which, or which together with any option to extend the term exercisable by either the lessor or the lessee, has an unexpired period of *at least 75 years* [emphasis added] at the date the strata plan is to be registered over the land the subject of that lease.” (Sec 1)

The overall effect of these provisions seems to be that the only persons who are capable of applying for a strata title development are those who have converted their lease terms to renewable 75-year terms, under the Land Leases (Amendment) Act 2003 (see above). Those long-term leases are only possible over *public land* – ie, generally, land in urban areas. By Sec. 32 of the Land Leases Act, lease terms over any other land *cannot* exceed 75 years, and if granted or extended for any longer period shall be deemed to be for 75 years¹⁸.

In 2003, the Strata Titles (Amendment) Act was passed, making many technical amendments to the Act. Its main purpose seems to have been to overcome any doubts that strata titling could be applied to undeveloped land.

That completes this account of the specific land policies and legislation introduced at independence, and in the 27 years since. Many other laws have an effect on land tenure and land use, and the main ones will be considered below. They relate to surveys and valuation, land dispute settlement, physical planning and foreshore development, and environment protection. Before considering them, the specific land policies and legislation will now be reviewed.

¹⁸ It is also possible that lessees are executing a new 75-year lease at the time of registration of the strata plan, but this would clearly violate the spirit of Sec. 32 of the Land Leases Act, if not the letter of the law.

4. REVIEW OF THE LAND POLICY AND LEGISLATION

The first point to note is that, after the early enunciation of land policy at the time of independence, no further attempt was made to spell out emerging policy. And once the basic land legislation was in place by 1983, most reforms after that time were only adjustments to that basic machinery. Such changes in policy which did take place were mainly by a weakening of the principles laid down at independence, and instead of policy *development* there was policy *decline*. The 20 resolutions adopted by the National Land Summit in October 2006 reveal serious public concern over the increasing rate of land alienation, ineffective regulation of land dealings and Government failure to protect the public interest, unfair dealings, lack of public awareness of property rights, and abuse of the laws.

The main findings and conclusions about Vanuatu's land policy and legislation, as it has been applied over the last 27 years, are the following –

1. Interim arrangements. What were originally intended as “interim” arrangements have remained in place, without being improved or replaced. This applies particularly to the arrangements for negotiation of leases, which were originally designed for use *only* with “alienators” – ie, those persons who were occupying lands alienated during the colonial era, whose titles were abolished at independence. Today, basically the same arrangements are being used *exclusively* for the negotiation of leases over customary land which has *never* been alienated before. The result is general dissatisfaction. According to a recent report –
 - the custom owners must put up with “lack of access to the leased land, the extreme difficulties of regaining land once leased, multi-generational leases with a 75 year term, and the ability of lessees to subdivide leased land”; and
 - private sector developers report that “100% of leased rural land has had problems associated with land ownership”.¹⁹

The legal requirements, forms and procedures need a major overhaul, to adapt them to use for customary land which has never been alienated. A model for how they might be adapted is provided by the Forestry Act of 2001. In making provision for timber rights agreements (in Part 4 Division 2), the procedure for negotiation of leases was adopted, but also modified to overcome its weaknesses.

2. The Minister's powers. A particular example of the problem in paragraph 1 is the Minister's power to enter into leases on behalf of custom owners. This power was clearly intended to be used *only* in cases where there were unresolved disputes over *alienated* land. Instead, the power has been used extensively by successive Ministers to *take the place of custom owners*, and enter into lease agreements into which the custom owners have had no input. Research shows that 22% of the rural leases entered into on Efate up to

¹⁹ “Implementation of the Customary Land Tribunal Act”, February 2005, NZAID.

December 2001 were signed by the Minister (233 leases).²⁰ This is a recipe for disaster. Not only is it highly unsafe to enter into a lease if the land ownership is disputed, the custom owners are excluded from any involvement in the decision-making over the lease, the rents and other benefits from it, and enforcement of the lease conditions²¹.

3. Custom owners. The fundamental land tenure issues left unresolved by the Constitution in 1980 are still unresolved, 27 years later. In particular, the uncertainty over the nature of custom ownership – is it by a customary *group*, or by *individuals* – remains to this day, and undermines all lease negotiations. On Efate, the existence of land trusts and other bodies which are representative of the custom owners has mitigated the problem,²² but in all other cases there must be serious doubt over whether *all* the people with interests in the land being leased are being properly informed and involved in the negotiations. All too often, it seems, one or two senior males claim to be “the custom owners”, and so entitled to negotiate the leases and monopolise all the benefits themselves.
4. Urban lands. The same uncertainties surround the status of *public lands* in towns, and the entitlements of the former customary owners. While the issues have remained dormant for some years, they may not remain so permanently. Similarly, there is still doubt over whether indigenous citizens can own *freehold* titles.
5. The Government’s role. The balance between the freedom of custom owners to deal directly with their land and the Government’s responsibility to protect them from unfair dealings, as well as to protect the community’s and the national interest, is not being managed satisfactorily. The nature of the Government’s responsibility in land dealings, and how it is exercised, needs to be spelt out in greater detail. Here again, the inappropriateness of the Minister signing leases on the custom owners behalf, while having statutory duties to protect their interests, is demonstrated. There is an unavoidable conflict of interest.
6. Enforcement of lease conditions. A similar problem arises over the enforcement of lease conditions. Whose responsibility is it? Who has the capacity to oversee performance of lease conditions, and take any necessary enforcement action? If the custom owners lack this capacity, then the likelihood of non-compliance is increased.
7. Terms and conditions of leases. There are many issues over the terms and conditions of leases. Thus –

²⁰ “Myth or Reality: Case study of land tenure in Efate, Vanuatu”, Sue Farran, 2002, p.2.

²¹ A number of Ombudsman’s reports deal with abuse of the Minister’s power to enter into leases.

²² The same research shows that 55% of the rural leases on Efate up to December 2001 (587 leases) were signed by such representative bodies.

- a) Are appropriate land use and improvement conditions being imposed and enforced?
 - b) The standard lease periods laid down in the Government land policy statement (30 years for rural leases, 50 years for urban leases and 75 years for major investments and joint ventures) have been routinely ignored. It now seems that the universal lease period – anywhere and for whatever land use – is 75 years. Not only that but it seems that some lessees have written in lease terms for longer than 75 years, by providing for either a right of renewal or payment for improvements. Neither of these is legally valid.
 - c) At the same time, it is unsatisfactory for the position at the end of lease terms to be left open. Clarification is needed on a lessee's rights of renewal, and what the options are in the final years of a lease term.
 - d) Are the custom owners being approached for their consent when a lease is transferred? If a lessee is a company, the lease can be "transferred" by a simple transfer of shares, without the need to seek the custom owners' consent. This is an obvious avenue for abuse, which should be closed.
 - e) While forms are prescribed for leases, there is no statutory requirement that no changes can be made to their most important contents. There is little point in setting out requirements in forms, if one party to the document can simply strike them out. *All* of the implied agreements on the part of a lessee can be struck out by the lessee.
 - f) No attempt seems to have been made to develop the *joint venture* concept. The political leadership put much emphasis on this device at independence.
8. Lease payments. The position regarding payments by the lessees of land is unsatisfactory. At present, it is partly left up to the parties to negotiate, but it is mainly being determined by Government legislative intervention. This is probably a response to the perceived unfairness of arrangements which the lessees are negotiating with the custom owners. There are a number of elements in the payments lessees must make – rents and premiums payable to the custom owners, and shares in a transfer price; fees for service (registration fees); taxes (both national and municipal). These payments must be reasonable and rational. At present, they are not.
9. Abuse of laws. The purpose of the Strata Titles Act is clearly being abused at present, in its use for rural subdivisions of undeveloped land. The genuine purpose of the Act, for issuing titles to units in buildings, must be reinstated.
10. National Land Law. The Constitution in 1980 made provision for the National Land Law, and the above review of the land policies and legislation shows the pressing need to move forward with its introduction. Many of the resolutions from the National Land Summit reinforce the problems identified above, and the most appropriate way to deal with those problems is in the National Land Law. Recommendations for how matters could be addressed there will be made below.

11. Strengthening rights in customary land. A major gap in Vanuatu's present land system is the absence of a law for strengthening rights in customary land. Although the present system provides for the registration of leasehold titles, there is no provision for the custom ownership of any land to be registered. Not only does this lead to doubts over whether the right custom owners have entered into leases (a very common cause for dispute), but no service is provided to custom owners who want to develop their own land, and seek additional security of tenure. There is a range of options available for strengthening rights in customary land, and for entering into agreements (leases, mortgages, etc.) over those rights. These are very sensitive matters, which require much consultation and careful consideration. It would make sense for such matters to be taken up, in the development of the National Land Law.

5. LAND-RELATED LEGISLATION

A number of Acts deal with the professional and technical land aspects of surveying and valuation.

5.1. Land Surveyors Act 1984 (as amended)

This Act sets up a Land Surveyors Board and provides for the regulation of surveyors and the conduct of surveys. Regulations passed under the Act provide for survey marks and boundaries and other technical survey matters, including the minimum areas, road frontages and widths required for subdivisions.

5.2. Valuation of Land Act 2002

This Act sets up the offices of Valuer-General and Principal Valuation Officer, and provides for the valuation of land. The Principal Valuation Officer has a duty to "ascertain the value of each parcel of land in Vanuatu", and enter that value in the Valuation Roll (Sec. 7). Each taxing or rating authority receives a Valuation List relating to land parcels within its area (Sec. 11), and the owners of the parcels are notified of their right to object to a valuation (Sec. 19). Objections are handled by the Valuer-General (Div. 5), from whose determination an appeal lies to the Supreme Court, but only on a point of law (Sec. 26). The Valuation Roll and Valuation Lists are public documents (Sec. 33).

The Act also vests the Valuer-General with the functions previously performed by the Lands Referee under the Lands Referee Act 1983, which it repealed. They include the determination of rent payable for a lease and any reassessment of rent, disputes over the value of improvements, and "any matter ... relating to the interpretation of a provision in the lease" (Sec. 5).

5.3. Land Valuers Registration Act 2002

This Act provides for the registration of land valuers and their professional discipline. Valuing of land by non-registered persons is prohibited (Sec. 13).

5.4. Land dispute settlement

Article 78(2) of the Constitution provides that the Government “shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land”. Land disputes are a fact of life everywhere, and this is particularly so in developing countries, where traditional land tenure and land use systems are coming under many new pressures (population increase, internal migration, monetisation of the economy, etc.). The basic requirement is to have in place a land dispute settlement system which allows disputes to be settled efficiently, and with a degree of finality. Such a system must be locally-based, participatory, simple to administer, affordable and likely to receive the general support of the affected communities.

Among the main questions which need to be addressed in designing a suitable land dispute settlement system are –

- should the emphasis be on restoring the peace, rather than on determining land ownership?
- should responsibility be placed on the disputing parties to resolve their grievances, rather than on an outside body?
- should the dispute settlement forum be interested in the dispute, or neutral?
- should the emphasis be on mediation rather than adjudication?
- how binding should the decisions be, and on whom?
- how restrictive should the opportunity be for appeal?
- should lawyers be involved?

Both Papua New Guinea and Solomon Islands are reviewing their land dispute settlement laws at present, and Vanuatu recently introduced a new system.

5.4.1. Customary Land Tribunals Act 2001

In 2001, jurisdiction over customary land disputes was transferred from the Island Courts to Customary Land Tribunals, by the Customary Land Tribunal Act. These tribunals are constituted in different ways, depending on the location of the land in dispute. A *single village land tribunal* may only deal with land within the boundaries of that village, otherwise the dispute must be dealt with by a *joint village land tribunal*. Appeals from the decision of either of these two bodies lie to a hierarchy of land tribunals, depending on whether the land in dispute lies entirely within a “custom sub-area”, or extends over more than one “custom sub-area”, or “lies partly within one or more custom sub-areas and partly within one or more custom areas that are not divided into custom sub-areas”.²³ There is a final appeal from a custom area land tribunal to an *island land tribunal*.

The membership of the tribunals also varies, depending on the same criteria. In the case of a *single village land tribunal*, it is made up of the “principal chief of that village” (as chairperson), two other chiefs or elders, and a secretary appointed by

²³ This wording in Sec. 12(2)(c) is typical of the complicated style in which the Act has been drafted.

the principal chief (Sec. 8(2)). A *joint village land tribunal* is made up of the “principal chief of each village”, two other chiefs or elders of each village, and a secretary appointed by the two principal chiefs (Sec. 9(2)). A similar formula is applied to the membership of the bodies handling appeals – the *single custom sub-area land tribunal*, *joint custom sub-area land tribunal*, *single custom area land tribunal* or *joint custom area land tribunal*.

The membership of an *island land tribunal* also depends on whether the disputed land lies within a single custom area or more than one custom area. In the former case, there are six members – the chairperson of the custom area council of chiefs, four other chiefs or elders from the custom area, and a secretary appointed by the island council of chiefs (Sec. 23(3)). In the latter case, there are at least seven members – the chairpersons of each custom area council of chiefs, four other chiefs or elders, and a secretary appointed by the island council of chiefs (Sec., 23(5)).

The Act includes provision for the determination of boundaries between custom areas, and the approval of lists of chiefs and elders (Secs. 35, 36). A chief or elder is disqualified from being a member of a tribunal in certain circumstances, including that he or she “has such business or financial interests, or social, religious, political or other beliefs or associations that will prevent him or her from applying custom honestly and adjudicating impartially” (Sec. 37).²⁴ Provision is also made for the procedure of land tribunals, how decisions must be made and the orders a tribunal can make, and allowances and costs for tribunal members (Part 6). The allowances are set out in a schedule to the Act, and must be paid by the disputing parties before the tribunal sits (Sec. 32(2)).

As for the law which applies to land disputes, a land tribunal must determine the rights of the parties “according to custom”, but “the parties may at any time try to reach an amicable settlement of the land dispute, and the tribunal must encourage and facilitate any such attempts” (Sec. 28). Although the object of the Act is to provide a system “based on custom to resolve disputes about customary land” (Sec. 1), a possible limitation on the jurisdiction of the tribunals is the wording of Sec. 7(1) providing for the giving of notices of a dispute. It refers only to disputes “about the ownership or boundaries of customary land”. The power to handle disputes over interests *less than* ownership must be implied from the other provisions of the Act.

The Customary Land Tribunal Act came into operation on 10 December 2001, and it was reviewed less than three years later by a 5-person review team funded by NZAID.²⁵ Among the team’s main findings were –

- a) the majority of landowners interviewed were supportive of the tribunal system, but still “lacked confidence and knowledge” in its implementation;
- b) a minority of chiefs, however, saw it as “undermining their authority and the customary procedures”;

²⁴ The NZAID-funded review of the Act in 2004 (see below in the text) found that there was a “very low level of involvement by women in the tribunal process”.

²⁵ The team members were Geoff Mavromatis, Don Patterson, Josepha Kanawi, Joel Simo and Alicta Vuti.

- c) a number of village and area councils were having difficulty in using the system “because of disputes regarding the rightful chief”; the work done by the Malvatumauri to identify rightful chiefs “appears to have exacerbated the problem”;
- d) problems over land leases were a major cause of land disputes; private sector developers “reported that 100% of leased rural land has had problems associated with land ownership”.

The review team made eight major recommendations, including –

- that the Customary Land Tribunal Act be retained, but strengthened in its provision for applying customary procedures “as the preferred option for resolving customary land disputes” (Rec. 5);
- that the Government continue to work with the Malvatumauri on processes to facilitate “the identification of rightful chiefs so that kastom can be applied to customary land disputes”; as a first step, the Malvatumauri could assist with the recording of kastom related to land ownership (Rec. 6);
- that the Island Courts be available when neither the customary processes nor the land tribunals are able to resolve disputes, but *not* as the preferred option (Rec. 7);
- that a National Policy on Land be adopted (Rec. 3).

By early 2007, further progress has been made in implementing the Act, although tribunals had still not been introduced in much of the country (including around half of Efate). A detailed “Administrative Procedure Guidelines” sets out the administrative steps involved in implementing the Act, which is the responsibility of the Customary Lands Office in the Department of Lands. A further NZAID-funded review was being planned, to identify the support required to fully implement the Act. Some of the main issues which still need to be addressed are –

- Problems in identifying chiefs, and clarifying their authority in the modern context. In Vanuatu, chiefs are officially recognised as having authority in a hierarchy – from village to area, island, provincial and national levels.²⁶ There are area councils of chiefs, as well as island, provincial and national councils of chiefs, the latter also known as the Malvatumauri. Chapter 5 of the Constitution provided for the National Council of Chiefs, with a “general competence to discuss all matters relating to custom and tradition” (Art. 30 (1)). Article 31 required Parliament to enact a law to provide “for the organisation of the National Council of Chiefs and in particular for the role of chiefs at the village, island and district level”. And, as mentioned above, the National Council of Chiefs must be consulted by Parliament before passing the National Land Law (Art. 76). In 2006, the National Council of Chiefs Act was passed, taking the place of an earlier law which only made minimal provision for elections, meetings and voting. The new Act provides for an administrative structure for the National Council of Chiefs, and for its role in registering Island and Urban Councils of Chiefs. Apparently, however, an

²⁶ The Act even introduces the concept of a “principal” village chief, something probably unknown to custom in most parts of Vanuatu.

earlier draft of the law was watered down by the Council of Ministers, to remove powers which the Malvatumauri wished to be included.²⁷

The institution of chiefs is at a cross-roads in Vanuatu.²⁸ Never as strong as in Polynesia, the chiefly concept has probably always depended on official support, and its continued existence and development into the future may depend on that support even more. Their involvement in land dispute settlement is frowned on by the judiciary. The Court of Appeal, in *Valele Family v. Touru*, remarked in 2002 that “the only bodies that have lawful jurisdiction and power to make a determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court”. It continued –

“This conclusion immediately points up a difficulty with attempted settlements of ownership disputes arranged through bodies such as councils of chiefs that are not part of the constitutional system.”

Recently, some aid agencies have shown an interest in developing the chiefly system in Vanuatu, and more particularly the Malvatumauri. The future role of such bodies is highly relevant for land administration.

- Problems with the Customary Land Tribunal Act. The review of the Act in 2004 identified some problems (see above), but a major problem is its extraordinary degree of complexity. This has come about because of the way the Act handles the problem of land disputes which overlap jurisdictions.²⁹ This is a standard problem, but the Act handles it in such a laborious, cumbersome and repetitive way that, at times, it is almost impossible to understand it. With more skilful drafting, the Act could be made much shorter, simpler and more easily understood, without losing its basic purpose.
- Capacity and public awareness. Weaknesses in these areas were also mentioned by the 2004 review. It is certainly true that *any* new law needs to be properly explained to the public, and requires a minimum level of support, to have any chance of achieving its purpose. The matter of essential support for the Customary Land Tribunal Act is being addressed by NZAID. It would be most desirable if public awareness and financial support could be provided *in conjunction with* addressing the problems raised above.

5.5. Physical planning and foreshore development

Physical planning (or “zoning”) is a highly-important tool for effective land administration and rational land use. The main law in Vanuatu is the Physical Planning Act of 1986. The main features of the Act are the following –

²⁷ See “Report on the Vanuatu Judiciary Conference 2006”, at p. 6.

²⁸ And in the Pacific generally.

²⁹ The Act is based on the fundamental premise that land disputes have natural “jurisdictions” – ie, *certain* territories where the authority of *certain* bodies to resolve *certain* matters is acknowledged. All of these notions can be contested.

- a) The Act is administered by Provincial Governments or, in the case of urban areas, Municipal Councils. The Minister currently responsible for the Act is the Minister of Internal Affairs.³⁰
- b) Such bodies can declare Physical Planning Areas (Sec. 2(1)), for which they must prepare and gazette a plan specifying those areas within which they are prepared to consider applications for specified kinds of development (Sec. 3).
- c) No person can carry on development in a Physical Planning Area without having first received permission from the relevant Provincial Government or Council (Sec. 4).³¹
- d) Where an application is made for permission to develop, the Provincial Government or Municipal Council may grant permission (either unconditionally or subject to conditions) or refuse permission (Sec 7(1)).
- e) A person aggrieved by a decision of a Provincial Government or Municipal Council may appeal to the Minister, who may allow or dismiss the appeal (Sec. 9).
- f) Enforcement is dealt with in Schedule 2 of the Act. Where there is non-compliance with the Act's requirements (eg, development without the necessary permission), the relevant Provincial Government or Municipal Council has one year in which to serve an "enforcement notice" on the offender, requiring remedial action to be taken (Para. 1).
- g) A person aggrieved by an "enforcement notice" can appeal to a Magistrate's Court (Para. 2).
- h) Penalties are imposed for failure to comply with "enforcement notices", but *not* in regard to notices requiring the discontinuance of any wrongful use of the land (Para. 4)

In summary, the Act provides a basic structure for physical planning, but it suffers from a number of serious weaknesses, in particular –

- The Act does not legally *impose* the land use restrictions which result from the planning process. Instead, the Act relies on a process of applications for permission, decisions on those applications and then enforcement of those decisions. Enforcement action must be taken within one year, or else the wrongful use of the land cannot be remedied. This is a highly unreliable method for enforcing important restrictions on land use, especially in a country with serious limitations on its administrative capacity. A better system would disallow *any* developments which breached the land use restrictions applying to that land.
- The ability to appeal against land use planning decisions to the Minister is highly unsatisfactory. Land use planning is an expert technical operation, and individuals should not be able to challenge the result of the process to a politician. The same considerations apply generally to

³⁰ This is because the Minister of Internal Affairs is responsible for Provincial Governments and Municipal Councils.

³¹ Certain kinds of activity can be exempted from the requirement for permission – see Sec. 2(3).

allowing appeals to Ministers. Although the intention is that they should act *only* in an executive capacity, and *only* in accordance with the advice of their officials, the temptation to decide in a personal capacity is too great, and there is a high risk of decisions being made improperly.

The above concerns are far from being theoretical. It was apparent to the review team that planning requirements are routinely ignored, and allegations are frequently made of improper decision-making by the Minister.

The other important planning law is the Foreshore Development Act of 1975. This law predates independence, and it is a short and simple Act whose main features are –

- a) No development can be undertaken on the foreshore without having obtained the Minister's consent (Sec.2). The Minister responsible for the Act is the Minister of Internal Affairs.³²
- b) The terms "development" and "foreshore" are widely defined, the latter meaning land below mean high water (MHW) mark and the bed of the sea, including the ports and harbours and land in any lagoon (Sec. 1).
- c) An application for consent must be made in the form in the Schedule, and must be publicly displayed and advertised "in a special edition of the *Gazette*" (Sec. 3).
- d) The Minister considers the application and any representations made, and then decides to grant or refuse the application, or grant it subject to conditions. The Minister's decision is final, and the Minister is not required to give any reasons for the decision (Sec. 4).
- e) A development which has received the Minister's consent must be begun within one year of the date of consent, and be completed within two years or such extended period as the Minister specifies, or else the consent lapses (Sec. 5).
- f) A person who carries out any development contrary to these requirements is liable to a fine of Vt 200,000, and further proceedings may be instituted for continuing failure to comply with the Act (Sec. 6).

While the Act itself is clear, there have been problems with its implementation, in particular –

- It was apparent to the review team that the above requirements are routinely ignored, and that many major structures, land reclamations and other developments are taking place on the foreshore zone in breach of the Act's requirements. Officials in the Ministry of Internal Affairs responsible for the Act's administration agreed that there were many unimproved developments, but in their experience the penalty of Vt 200,000³³ was regarded by many as a small price to pay. It seems that the "further proceedings" anticipated by Sec. 6 (see above) have never been instituted.

³² "Minister" is defined in the Act to mean the Minister responsible for town and country planning.

³³ About USD2,000

- Problems have arisen when custom owners have entered into leases beyond the MHW mark. Under the Land Reform Act, “land” is defined to include “land extending to the sea side of any offshore reef but no further” (Sec. 1). While this provision was no doubt intended to benefit the custom owners by recognising their tenure to such marine areas, it has worked to their disadvantage under the current inadequate supervision of the leasing procedures (see above). A number of leases have been signed which give the lessees title over not just the foreshore zone, but even in some cases to the adjacent offshore reef. Those holding such leases apparently have felt free to build on the foreshore zone, reclaim beachfront land, erect jetties and so on – all without the necessary approval under the Foreshore Development Act.
- Another complication is the fact that the two laws – the Land Reform Act and the Foreshore Development Act – are the responsibility of two different Ministers – the Minister of Lands and the Minister of Internal Affairs. The same complication applies to the Physical Planning Act, with the responsibility for land use planning being split between Lands and Internal Affairs. Such overlaps should be resolved if possible, and if not possible then appropriate mechanisms for coordination of decision-making need to be put in place.

5.6. Environment protection

Another law which is relevant to land administration and land use is the Environmental Management and Conservation Act of 2002, mainly in its requirements for Environmental Impact Assessments (EIAs). The main features of the Act for present purposes are –

- a) All projects, proposals or development activities that are likely to cause “significant environmental, social and/or custom impacts” are subject to the EIA provisions, and in particular activities which “affect coastal dynamics” or “affect important custom resources” (Sec. 12).
- b) Exempt from the EIA provisions is the construction of single family residential dwellings or additions, provided that they are at least 30 metres from any river, stream or the “line of mean high water spring tide of the sea” (Sec. 13).
- c) If a development proposal is subject to the EIA provisions, a Preliminary Environmental Assessment (PEA) must be carried out by the Ministry, Department, etc., that receives the development proposal or application, and a report submitted to the Department of Environment and Conservation (DEC) with recommendations on whether or not a full EIA is needed for the project (Sec. 14).
- d) If a full EIA is required, the DEC must advise the project proponent within 21 days (Sec. 17).
- e) The EIA must be undertaken in accordance with the requirements of the Act, the Regulations and any guidelines issued by the Director of the DEC (Sec. 18).

- f) It is an offence to undertake any activity for which an EIA is required without the necessary approval under the Act (Sec. 24), or to contravene any term or condition of an approval (Se. 41).
- g) There is also provision for the registration of unique sites as community Conservation Areas (Part 4 Division 2).

Problems with the Act's implementation which were mentioned to the review team included –

- The fact that, almost 4 years after the Act's introduction, approval has still not been given for the establishment of the Department of Environment and Conservation. The present Environment Unit suffers from a serious lack of capacity for carrying out the DEC's functions under the Act.
- Given a recent Supreme Court judgment, Environmental officers are uncertain about their powers to enter land in the course of their duties.³⁴
- Many rural subdivisions around Efate have not complied with the Act.
- Again, there is the complication that various Ministerial responsibilities are in potential conflict. The Environment Unit is part of the Ministry of Lands, which also has functions of promoting development, while the subject of foreshore development lies within the responsibility of the Ministry of Internal Affairs.

That completes the review of the main land-related legislation.

6. LAND ADMINISTRATION

The Government of Vanuatu's strategic priorities have been build on previous reform efforts which centred around a Comprehensive Reform Programme (CRP) initiated in 1997 with the assistance of a US\$20 million Programme Loan from the ADB. The CRP was aimed to enhance and sustain private sector-led economic growth with its benefits distributed equitably within Vanuatu. This ambitious objective was to have been achieved by:

- redefining the role of government and enhancing the quality and delivery of its services;
- (ii) increasing the productivity and growth of the commercial and private sector; and
- (iii) supporting improvement of social indicators.

As implementation of the CRP policies proceeded in the late 1990s, refinements were introduced through the deliberations of National Summits and the National Business Forum. In addition, Provinces have prepared Rural Economic Development Initiatives (REDI) Plans to identify key needs in the Provinces and outer islands.

³⁴ Inexplicably, the Act provides no right of entry to officers in the course of their duty although there is an indemnity for officers against actions for damages (Sec. 44). In the 2004 *Kakula Island Resort Case*, Justice Treston of the Vanuatu Supreme Court awarded a total of almost Vt 750 million (around USD 7.5 million) in damages to a developer of a small island tourist resort, against the Government and the Deputy Director of the Environment Unit, for trespass, negligence, injurious falsehood, defamation and breach of confidence.

Despite the substantial reforms and restructuring that have occurred since 1997 Vanuatu has not been able to realise its full development potential. *“There have been many reasons for this relatively poor performance. Chief amongst these has been that generally poor standards of governance remain at all levels of the public service, despite the improvements that have been made since the CRP. Weak institutions and poor standards of governance have been widely recognised within Vanuatu as critical factors in constraining development”*³⁵.

The document goes further in outlining what measures need to be taken to achieve sustainable economic growth. *“To achieve sustainable economic growth and development Vanuatu must adopt an innovative policy making process. It must also be open to a continuing adoption of the economic and structural reforms needed to overcome the weaknesses in its economy. Outward looking, private sector focused strategies that will both broaden and deepen the economic base of the nation must continue to be embraced. Governance standards need to be raised and a more service and customer-oriented approach needs to be adopted by the public service to its dealings with the public and particularly with potential investors”*³⁶.

6.1. Land Use Management and Land Administration

In most countries, responsibility for land use management and land administration matters are spread between a number of different government agencies and the situation in Vanuatu is no different. However with such a split, there is need for a clear delineation of responsibilities and clearly defined administrative procedures, without which there will be confusion and a high probability that administrative, management and enforcement activities will not be undertaken.

The National Land Summit, in approving the 20 resolutions, has highlighted serious public concern over the management and administration of land matters in Vanuatu. There is ineffective regulation of land dealings, failure by the Government to protect the interests of the public and customary owners, poor or non-existent enforcement of regulations, incorrect interpretation of government legislation and a lack of defined responsibilities for numerous administrative activities that should be undertaken to ensure adequate and appropriate management and administration of land. This is all exacerbated by a lack of public awareness of property rights.

In Vanuatu there are a number of ministries and organisations responsible for the management and administration of land matters, and these include:

Ministry of Lands and Natural Resources

- ◆ Department of Lands, Survey and Records which includes, surveying, land registration, land valuation, land use planning and customary lands unit
- ◆ Environment Unit

Ministry of Internal Affairs

³⁵ Priorities and Action Agenda 2006-2015, ‘An Educated, Healthy and Wealthy Vanuatu’, Ministry of Finance and Economic Management, Government of Vanuatu, June 2006, p 3.

³⁶ Ibid p 5.

- ◆ Department of Provincial Affairs
- ◆ Physical Planning Unit
- ◆ National Council of Chiefs

The key agency responsible for the administration of land activities in Vanuatu is the Department of Lands, Survey and Records (DOLSR) under the Ministry of Lands and Natural Resources. The Ministry in the Corporate Plan 2006-2008 details its Vision, Mission and Values and summaries the strategic issues and the role and responsibility of each of the 5 strategic areas of responsibility under its control.

The Vision Statement is:

Our vision is to establish an appropriate framework to promote the sustainable development of the nation's natural resources for the social, environmental and economic well-being of the people of Vanuatu.

The strategic issues identified in the Corporate Plan that relate specifically to the land administration functions are:

- Solving land disputes and promoting effective dealings in the land sector to facilitate economic and social development;
- Improvement in current rating and taxing systems to encourage compliance, equity and transparency.

The roles and responsibilities of the land related functions are detailed as follows:

- Legislation and policy
- Land dispute resolution
- Formulation of land use plans to guide development
- Upgrade and enhance the Information Technology Centre
- Facilitate land lease arrangements
- Efficient execution of land leases and related consents
- Registration of leases
- Upkeep of records in land dealings
- Registration of customary land
- Land valuation
- Lease dispute arbitration.

In the 2007 Portfolio Budget Submission³⁷ it is noted that the overall objectives of the Department of Lands are:

- To provide high quality survey and mapping services;
- To plan for the use of land at the national, regional and local levels to achieve sustainable development and protect the rights of landowners;
- To provide high quality lease management and registry services;

³⁷ Ministry of Lands, Geology and Mines 2007 Portfolio Budget Submission (note that it is not referred to as the Ministry of Lands and Natural Resources)

- To ensure that land disputes are managed and resolved in a fair and timely manner;
- To run awareness and workshops on land policy and interpretation of all land acts.

In relation to land administration activities the issues are; how well are these roles and responsibilities being undertaken, and are the objectives being met? The following analysis and review of the activities within the DOLSR and associated agencies responsible for land administration activities will enable an initial assessment to be made.

A detailed analysis of each of the relevant land related units is provided in Attachment 7.

6.2. Institutional and Organisational Issues

There are a number of strategic issues facing the general operation of activities within the Department of Lands and land administration functions generally. A number of attempts have been made over the past few years to streamline and improve the overall operations of each of the activities that need to be supported within the department. However there has been little attempt to adopt an holistic approach to the review process, to undertake a detailed assessment of each of the functions, review the legislative roles and responsibilities, undertake a training needs analysis and to structure the organisation to avoid duplication and improve efficiency.

There needs to be a focus on implementing good governance within all agencies. The CRP should be revisited to see what lessons can be learnt from that program and what reforms could be successfully implemented into the land related agencies.

Many of the land related activities have a direct interface with the public and it is therefore important that business procedures are reviewed along with the interface between government officials and the public (customer service).

The DOLSR and provincial planning activities need adequate human resources capable of implementing policies effectively and efficiently, to guide, supervise and regulate the implementation of programmes and projects, and to monitor and report on all administrative and technical activities. In order to develop the necessary human resources, current staff may need to receive appropriate training in Vanuatu and possibly abroad.

6.2.1. Organisation, Management and Operations (OMO)

There needs to be an Organisation, Management and Operations (OMO) study undertaken of all land management and land administration related activities in central and provincial governments to gain a clearer picture of the management, institutional and administrative issues.

The Organisation, Management and Operations study would review the following:

- Organisational structures, roles and responsibilities for the operations of DOLSR and provincial planning activities at central and provincial level.

- An assessment of training programs necessary to support land management and land administration activities at both central and provincial levels, develop a training matrix and training plan.
- Staff recruitment for strengthening the DOLSR and other relevant agencies in line with the recommended organisational structures.
- Staff retention programs necessary to maintain systems and services.
- Assessing the sustainability of the DOLSR operations and the educational requirements.
- Review and assessment of financial planning, budgeting and monitoring systems and the introduction of new processes and techniques to achieve improved levels of administrative and operational performance.
- Preparation of manuals, guidelines and administrative procedures.
- Strengthening of DOLSR institutional capacity to handle regulatory, administrative and registry demands associated with implementing legislation.

The OMO study would include an Action Plan detailing the actions required to achieve the agreed objectives, the responsibilities for implementation and a schedule for implementation.

6.2.2. Decentralisation

Article 82 of the Constitution recognises the importance of ensuring that people are able to participate in the Government of their local region and enables the enactment of legislation to support decentralisation and Article 83 provides for the division of Vanuatu into local government regions. The Government passed in 1994 the Decentralisation and Local Government Regions Act which established provincial government regions which commenced decentralisation of responsibilities.

Decentralisation was one of the issues raised during the National Land Summit. A decentralisation policy recognises the importance of providing government services to all provinces of Vanuatu and also assists in reducing the focus on Efate and Port Vila for much of the job creation and economic development. However there are a number of issues that need to be addressed in implementing a decentralised model.

Decentralisation is the transfer of administrative services and functions to lower government levels including the full authority and related responsibilities for provincial policy, planning, implementation and funding. However, decentralised government agency policies in all cases must reflect central policy. Decentralisation does not imply independence; but it does provide a high level of autonomy to act within clearly identified boundaries.

It is not just a matter of implementing a decentralisation policy because it is government policy. There are a number of issues that need to be addressed if it is to work and these include the availability of trained human resources to provide the decentralised services and the type of decentralisation model to be adopted.

There are four main types of decentralization:

- Devolution;
- Semi-autonomy;

- Deconcentration; and,
- Divestment.

The effects of decentralisation depend very much on what kind of decentralisation is chosen. In the case of the DOLSR it may be more relevant to look at deconcentration which involves limited delegation of authorities and responsibilities that are for specific decision-making about financial and management functions. Deconcentration is suitable for sub-ordinate lower-level agencies or sub-agencies. These might include provincial or district offices of central government agencies or service delivery institutions. These agencies have authority delegated through central policy. Financial and administrative actions occur without significant independent local involvement.

If we look at the DOLSR, it is noted that:

- (i) there are a large number of vacant positions;
- (ii) the capacity of the current staff to support the land administration is generally low;
- (iii) there is a lack of clear procedures in many areas;
- (iv) the organisation structure is weak;
- (v) linkages and responsibilities between agencies are weak or non-existent; and
- (vi) technological development throughout the organisation is generally low.

Each of these issues creates an impediment to decentralisation and the aggregation of all the issues makes decentralisation a difficult and very risky proposition at this point in time.

A decentralisation policy is worth implementing but it is important that the central agencies are operating effectively before decentralisation is commenced. Any deficiencies at central level will be magnified at provincial level and could well result in poor land administration services being provided in preference to an improved service which is what is desired. It is strongly recommended that management, institutional and operational issues be addressed at central level before any serious decentralisation policies are implemented.

6.2.3. Overlap and Duplication of Responsibilities

A number of units within different agencies would appear to have adopted very similar responsibilities and undertake similar activities. For example provincial government would appear to be undertaking similar roles in some areas to the Ministry of Lands and Natural Resources in areas such as dispute settlement, control of land activities through public awareness and to promote transparency in relation to land leases. However it is noticeable that there is a general lack of mention of enforcement. As a result of an overlap of responsibilities it would appear that provincial governments are failing to address the land management issues that

should be their responsibility, such as zoning plans, development controls and managing orderly development.

6.2.4. Municipal and Provincial Government

Capacity building for urban planning and management needs to take place at central government and municipality/provincial government.

- Roles and responsibilities of the Physical Planning Unit and municipalities/provincial government need to be reviewed and revised to avoid duplication and delegation of inappropriate responsibilities.
- Internal organisation of the Physical Planning Unit and municipalities/provinces and their internal relationships needs to be reviewed and revised.
- Staff of the Physical Planning Unit and municipalities/provinces involved in urban planning activities need to receive appropriate training.

7. REFORMS NECESSARY TO IMPLEMENT THE NATIONAL LAND SUMMIT RESOLUTIONS - ACTION MATRIX

The resolutions adopted by the National Land Summit cover a broad range of land issues. The Council of Ministers has shown a commitment to progress the resolutions by appointing the Steering Committee to manage and provide oversight for the preparation of a proposal to be submitted to the Government.

The National Land Summit resolutions have been adopted and used as a basis for the preparation of an action matrix which summaries the actions that need to be taken to address each of the resolutions and provides an indication of whether policy, legislative or administrative reform is required. See Attachment 8 for the Action Matrix. Attachment 9 gives an indication of the legislative reforms which could be needed to implement the resolutions.

The action matrix does not provided detail on all the actions that need to be undertaken but highlights what are considered to be the main actions. As an example administrative reforms, capacity building and developing sustainability are actions required to support most of the resolutions but these have not been included in the action matrix as they will need to be part of an overall package of support that needs to be provided in developing the land administration functions in Vanuatu.

The following is a summary of the key actions that are covered in the Action Matrix under each of the categories in the resolutions.

7.1. Land Ownership

There continues to be much confusion in relation to the interpretation of Article 73 of the Constitution and the term “custom owner” and the intent of the constitution. This needs to be clarified and would be done so in a National Land Law which has been allowed for under Article 76 of the Constitution but which has never been drafted.

The need for the preparation of the National Land Law to support a number of the resolutions is continually highlighted throughout the proposed actions.

The importance of building capacity within the National Council of Chiefs and ultimately the Council of Chiefs at each level is emphasised. The Councils of Chiefs will be important in supporting proposed actions such as public awareness, assisting with strengthening the Customary Land Tribunal Act, demarcation of community boundaries and supporting legislative development.

The proposed actions recognise the importance of building capacity and sustainability within the current land administration structure, especially the DOLSR. This along with legislative drafting will be longer term initiatives.

7.2. Fair dealings

There are many issues to be addressed in the Land Leases Act to ensure there is equity and fairness in land dealings. It is proposed that there be an audit undertaken to gain an appreciation of the level of non-compliance in relation to the legislation. A review of the Land Leases Act would include a review of lease periods, increased custom owner involvement in processes, improved compliance and enforcement conditions, effective representation of custom owners in lease negotiations and open and transparent notification of proposals. Improved public awareness would assist in ensuring that land dealings are fair.

7.3. Certificate to negotiate

A number of issues in relation to approvals to negotiate would be addressed in the National Land Law. There would also be a focus on improving administrative procedures to ensure transparency of all procedures.

7.4. Power of the Minister over disputed land

The resolutions have recommended the removal of the Minister's powers to approve leases over disputed land, and a review of past approvals issued by Minister of Lands. It is also recommended that there be a review of the Minister's powers in relation to all other land dealings and approvals. There is a need for the development of an improved dispute resolution process so as to ensure disputes are resolved before any documentation in relation to leases is submitted.

7.5. Strata title

It is recommended that the moratorium on the use of the Strata Titles Act remain in place until such time as the amending legislation has been approved by the Government. Increased consultation and involvement of the lessor in strata developments is also proposed.

7.6. Agents/Middle men or women

The proposed action is to amend the business licensing laws and look at declaring middle men/women as a reserved occupation under the Foreign Investment Act.

7.7. Lease rental and premium

It is proposed that support be provided to the Valuer General and the Office of the Valuer General to enable a review to be undertaken of the present land rents and premium provisions and for legislation to be developed that will enable the use of fair market rentals. A procedure for the calculation of unimproved value is to be developed and issued as a guide to all valuers under the Code of Ethics for valuers.

7.8. Sustainable development

The National Land Law would include a chapter relating to agreements on land which would cover the need for environmental/social impact studies. The development and enforcement of appropriate land management tools such as land use plans and zoning plans are a high priority if there is to be any degree of sustainable development in Vanuatu. At the present rate of uncontrolled development, the lack of appropriate land management tools and poor enforcement, it is questionable whether future development and preservation of customary rights is sustainable.

7.9. Conditions of lease

The National Land Law will ensure there is adequate protection provided for leases to both the lessor and the lessee and that conditions relevant to each lease are included in lease agreements. Development of appropriate land management and land administration regulations will be required to ensure that adequate protection is provided to cultural sites and the environment, and that there is legal access.

7.10. Public access

Poor land management and subdivision controls has resulted in areas of public or customary land becoming inaccessible to the custom owners or general public. The proposed actions have identified a need for the National Land Law to include protection for custom owners to access foreshore areas and other areas of customary significance. Subdivision legislation must be developed to control the development of subdivisions, the establishment of minimum standards for development such as sealed roads and a minimum level of services, and public access.

The municipal and provincial planning authorities must prepare and enforce planning controls and zoning plans. These plans must include the establishment of standard reserve widths along the foreshore and rivers to ensure public access.

7.11. Enforcement

It is recognised that enforcement of legislation in all areas is weak, with limited enforcement powers and ineffective penalties. Improvement can only come about by the Government recognising the importance of development complying with legislation and the need for appropriate staffing to undertake compliance audits.

7.12. Zoning

Land management activities including zoning, land use plans and the preparation of physical plans are weak and in many cases non-existent. The Physical Planning Act needs to be reviewed and support provided to provincial government in developing planning mechanisms required to support urban and rural development in Vanuatu.

7.13. Awareness

A number of areas have been identified where there is a need to ensure that the general public are more aware of land issues. These include land leases, land rights, rights in lease negotiations, appropriate land use and an awareness of environmental matters related to land. In relation to environmental matters it is recommended that there be an increased emphasis and support for land management activities, including land use, environmental impact assessments and identification of sites of historical and environmental significance.

8. IMPLEMENTATION AND DIRECTION

8.1. Land Policy Development

The foundation for a national policy on promoting objectives such as economic development, sustainable land management, fair dealings and equity, social justice, and political stability is a national land policy. Land policies may be associated with: security of tenure; land transaction and access to credit; sustainable management and control of natural resources and the environment; the provision of land for the poor and community groups, minority groups and women; land use and physical planning; land taxation; measures to prevent land speculation; and to prevent land disputes. A coherent national land policy should guide policies within the different sectors.

A schematic for land policy development is set out in Figure 1. The schematic is offered as a guide in helping focus attention on the development of a land policy and land administration framework for Vanuatu. This schematic sets out three levels:

- A top-level Policy Objective that sets out the overall goals of land policy;
- A land policy framework that sets out clear principles for policy formulation and groups land policies in themes. Figure 1 sets out suggestions for the principles, grouped under the topics of efficiency, equity and good governance and also sets out possible themes of: legislation; tenure security; land management; custom; public awareness and environment.
- The third layer is composed of a number of instruments or tools that implement land policy. These instruments include: land administration; land management, public awareness, legislative reform and customary rights.

The instruments and tools highlight the areas in which there will need to be specific attention in developing an efficient and effective land administration system.

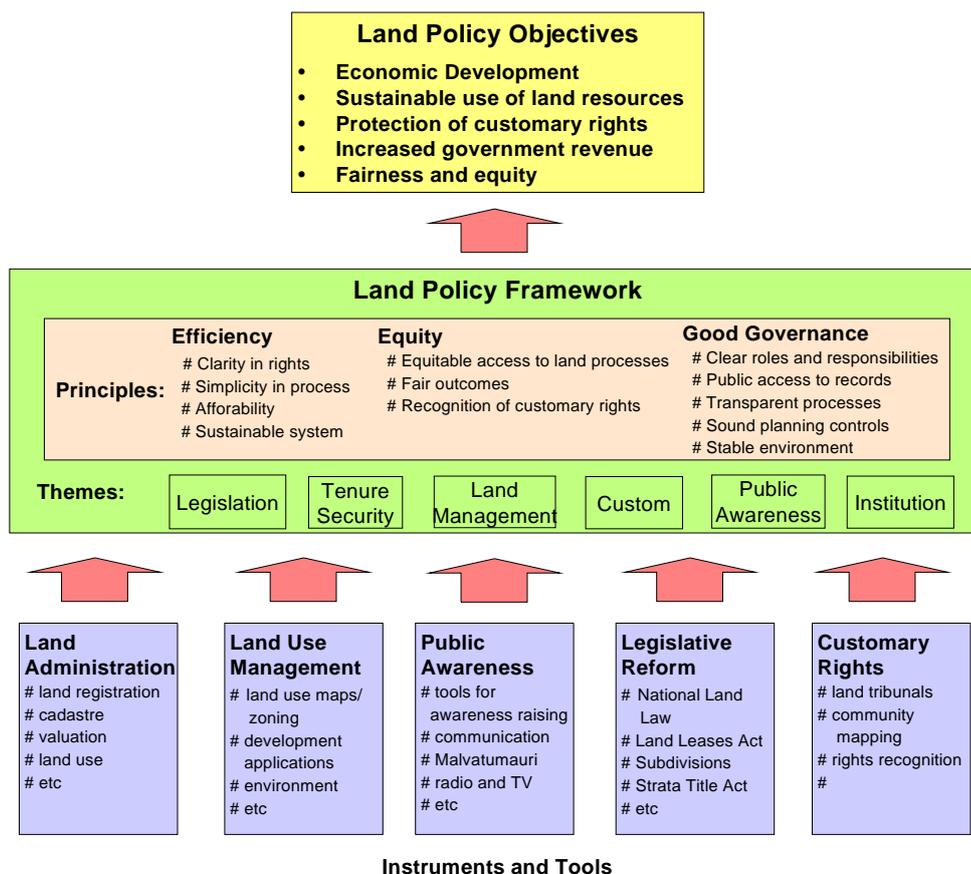


Figure 1: Land Policy Development for Vanuatu

8.2. Long Term Initiative

With the imposition of a temporary moratorium on certain land transactions and land activities it is of paramount importance that the Steering Committee is proactive in progressing as many of the reforms as reasonably possible and follows an acceptable time frame of implementation. A proposed project design and short term support initiatives are detailed in Attachment 10.

The long term initiative details the concept of a proposed land reform project based around a strong platform of capacity building and the development of a sustainable land administration system. The project focuses on providing a high level of support for building on the 20 resolutions adopted at the National Land Summit where issues such as fair dealings, sustainable development, enforcement and awareness were clearly identified. The proposed design places specific emphasis on policy and legislation, institutional development, land management and land administration. A proposed project structure for a Vanuatu Land Management and Administration Project is shown in Figure 2.

| VANUATU LAND USE MANAGEMENT AND ADMINISTRATION SYSTEM Proposed Project Components | | | |
|---|--|--|--|
| Component 1 Policy and Legislation | Component 2 Institutional Development | Component 3 Land Management | Component 4 Land Administration |
| <ul style="list-style-type: none"> • Development of a land policy statement • Review land admin legislation • Draft legislative amendments • Revenue generation policy review • Land policy studies • Review of fees and charges • Public awareness • Review of needs for custom land | <ul style="list-style-type: none"> • Review institutional arrangements - DOLSR, local government, physical planning • Develop new org. structures • Training and capacity building • Educational support | <ul style="list-style-type: none"> • Develop zone maps and regulate • Development applications • Environmental management • Planning approvals • Local government support • Management of squatters developments • Land use planning • Land Tax review | <ul style="list-style-type: none"> • Review land registration procedures • Develop new land registration proc. • Community mapping • Customary Land Unit • Valuation • IT development • Computerisation of the land registry • Strengthening rights in custom land |

Figure 2: Proposed Vanuatu Land Management and Administration Project

The proposed project is a long term initiative required to build capacity and sustainability and clearly will require external funding to implement. It is envisaged that such a reform program would require support for a period of at least 5 years and could realistically cost in the vicinity of A\$10 million over that period.

8.3. Short Term Reforms/Initiatives

The Steering Committee has the responsibility of providing oversight and a monitoring role to progress the 20 resolutions. The committee requires administration support and a person to coordinate activities on a daily basis. It is recommended that the Government appoint immediately, under the Steering Committee Chair, a person to undertake the secretarial duties necessary to support the activities of the Steering Committee. This person must have a good understanding of land issues in Vanuatu and be capable of discussing issues with Steering Committee members, government officials and donor agencies.

A number of short term initiatives have been identified which can be readily implemented with an aim of supporting the implementation of the longer term project reform initiatives. The short term initiatives are also aimed at ensuring that the momentum for reform is maintained and that the Government, through the Steering Committee, is able to demonstrate positive progress in moving forward the 20 resolutions.

In the implementation of the short term initiatives there must be a realisation that some administrative reforms will need to be implemented to support these initiatives. For example there will be little benefit in undertaking legislative or procedural changes that will provide mechanisms for improved enforcement if staff are not made available to undertake the enforcement role. Institutional reform necessary to support changes that come about through the short term initiatives must be managed and funded by the Government.

The short term initiatives are detailed in Attachment 10 and are:

- Public awareness.
- Support for Malvatumauri Council of Chiefs.
- Compliance audit of the Land Leases Act.
- Review of Strata Titles Act.
- Identification of Community Boundaries.
- Administrative Reform.
- Protection of Foreshore Reserves.
- Zoning Map for Luganville.
- Subdivision Controls.

Each of these short term initiatives have been proposed as they can be undertaken as discrete projects over a relatively short period of time, generally between 3 and 12 months. With the possibility of a larger land reform project in mind, all short term initiatives have been selected to provide support to future project design activities.

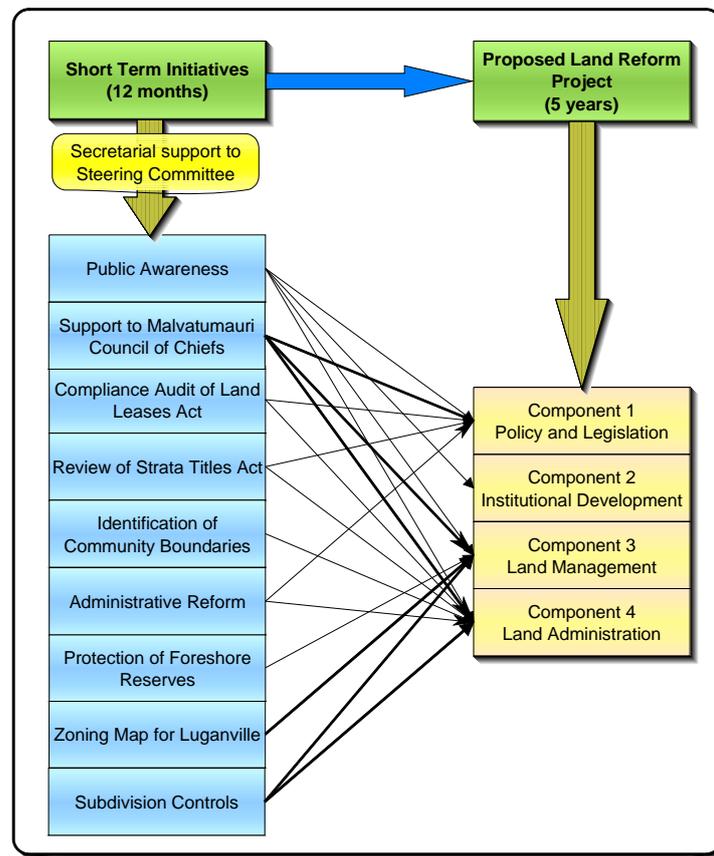


Figure 3: Short Term and Land Reform Project Linkages

Figure 3 shows the linkages between the proposed short term support initiatives and the longer term proposed land reform project.

Scoping Notes (see Attachment 11) have been prepared for each of the short term initiatives and these are aimed at assisting the Steering Committee to present proposals to potential donor agencies to seek support for the initiatives.

8.4. Time Frame

There are a number of assumptions that need to be made in relation to developing a time frame for the development and implementation of a land reform project such as the proposed Vanuatu Land Management and Land Administration Project. A project design will need to be undertaken, the project assessed, accepted by a donor and a budget allocated. This all requires time and a serious commitment by the Government of Vanuatu and the donor agency to proceed with the project.

A suggested time frame for each of the short term support activities as well as a possible design and approval phase for the main land reform project is shown in Figure 4.

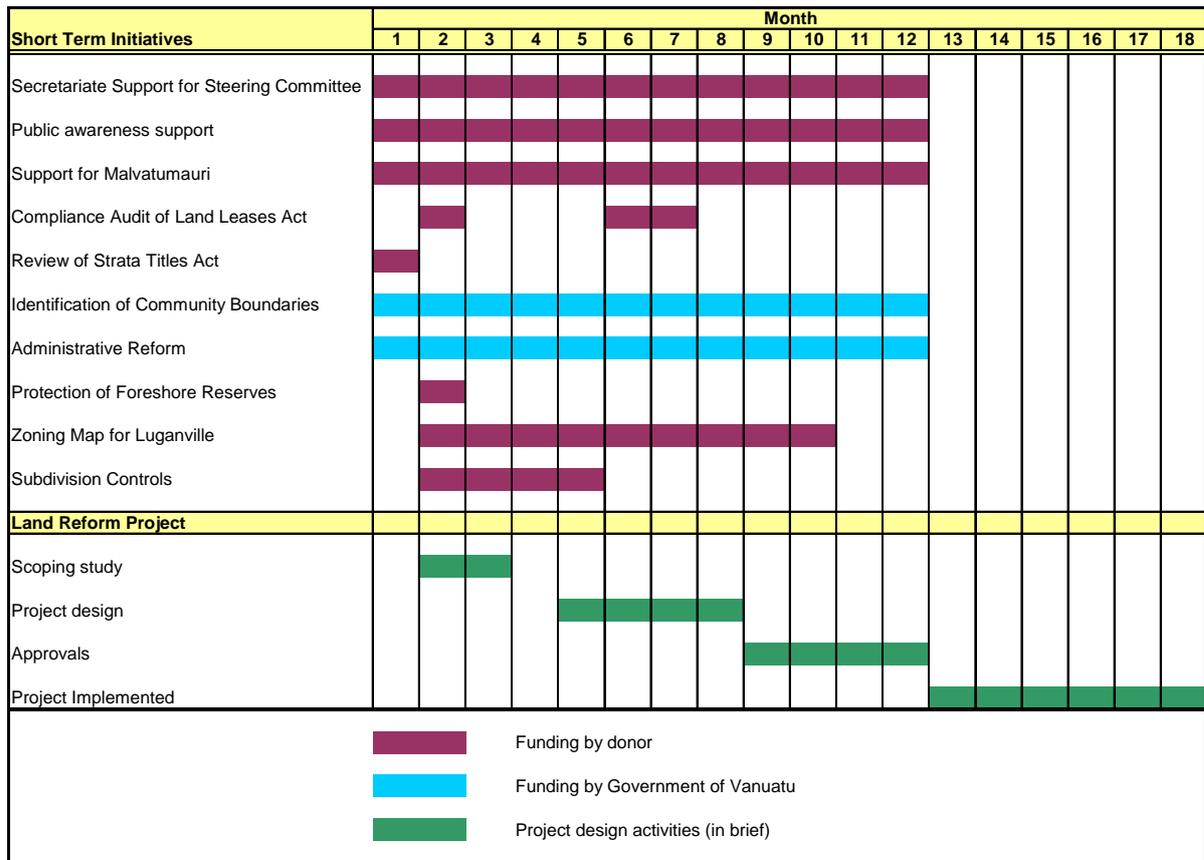


Figure 4: Suggested Time Frame for Implementation

ATTACHMENTS

**INTERIM TRANSITIONAL STRATEGY AND
FUTURE PLANS TO IMPLEMENT THE RESOLUTIONS
OF THE NATIONAL LAND SUMMIT 2006**

INTRODUCTION

From 25 to 29 September 2006, the Government through the Ministry of Lands hosted a first ever National Land Summit, since independence in 1980.

The theme of the Summit was: **Sustainable Land Management and Fair Dealings to ensure that social and economic progress takes place in an environment where there is always fairness and stability.**

Land Ownership

Resolution 1:

- The Government to make laws that provide that all land in Vanuatu is owned by groups (tribes, clans, or families).
- Not one person (individual) is an owner of any traditionally owned (kastom) land.
- Members of (kastom) traditional owning group (male and female) must be involved in the decision-making about their land.

Resolution 2:

- The Government must implement and review the existing laws that determine who are kastom owners of land (e.g. Customary Lands Tribunal Act and Chiefs' Laws).
- The Government, Provincial Governments and Malvatumauri National Council of Chiefs must assist the people to document traditional (kastom) land policies (Kastomary Land Laws) in each villages, areas or islands in Vanuatu.
- That would include traditional communities' kastom boundaries, traditional (kastom) land dealings and other rules of kastom.
- To carry out this task, the Government through the Ministry of Lands must set up Land Offices in all the provinces in Vanuatu.

Resolution 3:

- The Government, Malvatumauri National Council of Chiefs and the Vanuatu Cultural Centre must assist the people (Chiefs, Schools, men and women) to be aware about:
 1. Traditional (kastom) economy.
 2. Existing Land Laws.
 3. Kastomary Laws.

Fair Dealings

Resolution 4:

- The Government must implement and review the laws and terms and conditions in a lease agreement, for example, the term of a lease, rent review, development conditions, and other terms.

Resolution 5:

- All lease agreements must:
 1. Be in Bislama.
 2. Involve every member of the land owning group (men, women and the youth).
 3. The Department of Lands must explain clearly to the land owners the terms and conditions of leases and the rights they have under those agreements.
 4. That includes the value of the land, land rent and premium, what the term of the lease is, when to review the rent, so that it is easy to enforce them.
 5. There needs to be legal advice from the Public Solicitor's Office or another body to assist land owners who are interested in leasing any of their land.
 6. In all lease agreements, the Chiefs and land owners must approve:
 - The Certificate of Negotiation.
 - The Lease agreement.
 - Any changes to the conditions of the lease (use of land (class of lease), term of lease).

Certificate of Negotiation

Resolution 6:

1. In all Certificates of Negotiation, there must be approval from the village, area or island council of chiefs (always start with the village chiefs' council) before the Department of Lands or Ministry of Lands can accept the certificates.

Resolution 7:

- There must be notice for every application to negotiate to the chiefs of the area where the land is located. That notice must have the following information:
 1. Detail of application;
 2. Development Plan; and
 3. Location of that Land.

Resolution 8:

- In every application to negotiate there must be:
 1. A copy of the applicant's passport (if they are a foreign investor).
 2. A copy of the Vanuatu Investment Promotion Authority (VIPA) Certificate.
 3. Details as to location of the land, boundaries, land use and area of the land.
 4. Details of development plan and any planning approval.

Power of the Minister over Disputed Land

Resolution 9:

- Remove the power of the Minister to approve leases over disputed land.
- If the land is disputed, the dispute must be resolved before the Minister can approve a lease in relation to that land.

Strata Title

Resolution 10:

- The law must be clear that strata title only applies to buildings but it is not for subdividing land.
- If there is strata title, land owners must have the right (be entitled) to approve the strata titles and gain benefit from them.

Agents/Middle Man or Woman

Resolution 11:

- The Government must regulate the activities of real estate agents and middle men or women (e.g. through a Code of Practice and Ethics).

Lease Rental and Premium

Resolution 12:

- The Government must pass a law for new rates of land rent for different classes of land throughout Vanuatu.
- Land rent in rural areas must be based on a percentage of the value of the land.
- The Government will work out and endorse a new method for calculating land premium which it thinks is fair.

Sustainable Development

Resolution 13:

- Before a lease can be approved or a development can take place on land, there must be a social and environmental study to find out the good and the bad aspects of that development.

Resolution 14:

- Before an area can be leased, there must be a proper land use or zoning for that area.

Conditions of Lease

Resolution 15:

- In every lease there must be conditions:
 1. To protect cultural sites;
 2. To protect the environment (such as rivers, wild life, beach etc); and
 3. For access road into the leased land.

Public Access

Resolution 16:

- There must be public access to the sea and for the custom owner to continue to use the area starting at the high water mark to the end of the reef.
- There must be public access to rivers and lakes in a leased area to allow custom owners to continue to enjoy that area.

Enforcement

Resolution 17:

- The Government must:
 1. Enforce every physical planning, Environmental Protection and Public Access Laws; and
 2. Support custom owners to enforce these conditions such as planning, environment and public access.

Zoning

Resolution 18:

- There is a need for the Government to strengthen the Physical Planning and Zoning laws; and
- The Government must consider giving more powers to the Land Management and Planning Committee (LMPC) through law.

Resolution 19:

- There must be a National Subdivision Policy, Provincial Development Plan and Area Land Use policy.

Awareness

Resolution 20:

- The Environment Unit must help the people (Chiefs, Schools, men and women) to raise their awareness about:
 1. Sustainable development; and
 2. Environmental protection.

To carry out these resolutions, there is a big need to put in place a clear interim transitional strategy to guide the works after the Summit until the time when all detailed work finishes and full implementation of the resolutions comes into full force. This small report provides us the short-term transitional strategy and sets out some major work that the Ministry (of Lands) and other Ministries and agencies need to do.

INTERIM TRANSITIONAL IMPLEMENTATION STRATEGY

Temporary Moratorium

Sub-divisions

- Any application for new subdivisions that have not come through the Department and the Ministry for approval before the Summit took place, are temporarily suspended until further notice.

Surrender of Existing Agricultural Leases

- Any application to surrender existing agricultural leases into residential leases for subdivisions are temporarily suspended until further notice.

Power of the Minister when Land is Disputed

- The Minister's power which is used when land is disputed is temporarily suspended until further notice. The Minister can only use that power in cases of public interest, such as airports, wharfs, and other public utilities.

Temporary administrative measures

Land ownership

1. Advertise kastom owner forms at public places such as Provincial headquarters, schools, nakamals, community halls, and other places to give opportunity to the public to access them.
2. Kastom owner form must be considered through a proper village meeting.
3. That village meeting must have proper minutes to be attached to the kastom owner form when you return it to the Department of Lands.
4. If the nakamal (village meeting) finds that there is a dispute over that land, the dispute goes directly to the chiefs or tribunal to resolve the ownership issue before any application can be submitted to the Department of Lands.
5. Any land that the village meeting refers to the chiefs or Land Tribunal, the Ministry of Lands through the Department of Lands must know about.

How to Find/Determine who is Land Owner

Short-term strategy

1. The Malvatumauri National Council of Chiefs, Cultural Centre, and Provinces need to work with communities to deal with any lease application in accordance with the steps set out in the kastom owner form.

2. The Malvatumauri National Council of Chiefs, Cultural Centre and Provinces need to work with communities to set up and manage Land Tribunals in villages, areas, and islands to carry out their work if the nakamals can no longer resolve those disputes.
3. Any decisions made before the lands Tribunal started operating, or were made outside the Lands Tribunal System and are accepted, please make those decisions available to the Lands Tribunal Office for that Office to cross-check and if there is no longer a dispute, then the Office will accept and register it.

Long-term Strategy

1. The Malvatumauri National Council of Chiefs, Cultural Centre and Provinces need to work with communities to resolve disputes as to who is the proper chief.
2. The Malvatumauri National Council of Chief, Cultural Centre and Provinces need to work with communities to map out traditional community boundaries.
3. The Malvatumauri, National Council of Chiefs, Cultural Centre and Provinces need to work with communities to study and document land policies for each village, area, island or provinces. The Ministry of Lands can help if their help is needed, especially with technical knowledge and machines.

Fair Dealings

1. Any new lease application must have with it a valuation prepared by a registered valuer.
2. If part of the deal involves material goods such as vehicles or anything else, the applicant needs to declare the value of the goods.

Negotiators Certificate

1. A negotiator's certificate for land must be issued to one person only, but cannot be issued to two people.
2. The negotiator,s certificate is valid for one year or 12 months and you cannot renew it if you do not use it.
3. The Minister of Lands cannot approve any negotiator's certificate if the application for that certificate has not been considered by the Land Management and Planning Committee which screens applications and makes recommendations to the Minister to act on.
4. During the term of the negotiator's certificate there must be a quick assessment of the area where there is an interest to determine if there is

a need for a full environmental impact assessment (EIA) or not. If there is a need for a full EIA, that report must be finished and approved as part of the terms and conditions of the lease.

Middle Men or Women

1. Any man or woman who acts as an agent or middleman or woman must provide to the Department of Lands the following:
 - A copy of their business license; and
 - A copy of the Certificate of Incorporation/Registration for their company, issued by the Vanuatu Financial Services Commission.

LONG-TERM IMPLEMENTATION PLANS

Next Steps after the National Land Summit

- Write up the report of the National Land Summit
- Review of the Land Policies
- Review of the Land Laws
- Review of the Land administration
- Approval of the Reform
- Implementation of the Reform
- Technical assistance and financial assistance

LAST WORD

As stated in this report this is a short-term transitional strategy to follow after the National Land Summit had agreed to some important resolutions.

After the review listed above has been carried out, that information will assist us to put together a new land policy for Vanuatu which will include the 20 resolutions of the Summit.

INTARIM TRANSISIONAL STRATEJI MO FIUJA PLANS BLONG IMPLIMENTEM OL RESOLUSENS BLONG NASONAL LAND SAMIT 2006

INTRODAKSEN

Long namba 25 kasem 29 Septemba 2006, Kavman tru long Ministri blong Lands hemi bin hostem wan fes eva Nasonal Land Samit sins independens long 1980. Bigfala tingting bihaen long samit ia hemi blong provaedem wan opotuniti long ol pipol blong Vanuatu blong agri olsem wan nesen long sam ki prinsipols blong hao blong manejem mo developem graon long Vanuatu blong benefit blong olgeta we oli stap liv naoia, mo olgeta we oli no bon yet.

Bigfala toktok blong samit ia hemi: ***Sastenebol Land Manejmen mo Fea Diling blong mekem sua se sosol mo ekonomik prokres hemi tekem ples long wan envaeromen we I gat feanes mo stability hemi stap oltaem.***

Aot long Nasonal Land Samit ia, I bin gat 20 resolusens we ol pipol blong Vanuatu oli bin agri long olgeta mo givim long Kavman tru long Ministri blong Lands blong karemaot olgeta. Ol resolusens ia oli provaedem wan brod fremwok we bae I kaedem ol ditels afta. Hemia nao ol resolusens ia:

Land onasip

Resolusen 1:

- Kavman hemi mekem loa se everi land long Vanuatu hemi own bae grup (traeb, clan o famili).
- Ino gat wan man nomo (individual) hemi ona blong eni kastom graon.
- Ol memba blong kastom onasip grup (man mo woman) oli mas involve long disisen-meking long land blong olgeta.

Resolusen 2:

- Kavman hemi mas implimentem mo rivium ol loa we oli stap naoia blong faenem kastom land ona (eg Lands Traebinol Akt mo ol Jifs).
- Kavman, Provins mo Malvatumauri oli mas asistim ol pipol blong dokumentem ol kastom land polisi (kastomari land loa) long wan wan vilij, eria o aelan) long Vanuatu.
- Hemia inkludim tredisonal komiuniti kastom baondri, kastom land dilings mo ol narafala rul long kastom.
- Blong karemaot ol wok ia, Kavman tru long Ministri blong Lands hemi mas sitemap ofis blong Lands long everi provins blong Vanuatu.

Resolusen 3:

- Kavman, Malvatumauri mo Kaljorol Senta oli mas helpem ol pipol (jifs, skuls, man mo woman) long awea long saed blong:
 1. Kastom ekonomi
 2. Eksisting loas blong graon
 3. Kastomari loas

Fea Dilings

Resolusen 4:

- Kavman hemi mas implimentem mo rivium ol loas mo toktok insaed long lis eg tem blong lis, rivi blong rent, development kondisens mo ol narafala tems.

Resolusen 5:

- Everi lis akrimen I mas:
 1. Stap long Bislama.

2. Involvem everi memba blong land owning grup (man, woman mo yangfala).
3. I mas gat gudfala eksplenesen I kam long Dipatment blong Lands iko long ol land onas – long tem mo kondisen blong lis mo ol raets blong olgeta anda long agrimen ia.
4. Hemia inkludim valiu blong graon, land rent mo premium, hao mas yia lis mo rent rivi, we hemi isi blong enfosem.
5. I nid blong gat likol advaes long Pablik Solisito, o narafal bodi olsem blong helpem ol land onas we oli interest blong lisimaot eni graon blong olgeta.
6. Long everi lis agrimen, ol Jif mo land ona oli mas apruvum:
 - Sitifiket blong nikosiesen
 - Lis agrimen
 - Eni jenis long kondisen blong lis (use blong graon, yia blong lis)

Sitifiket blong nikosiesen

Resolusen 6:

1. Long everi sitifiket blong nikosiet, I mas kat apruvul blong vilij, eria o aelan kaonsel blong ol Jifs (stat oltaem wetem vilij) bifo Dipatmen blong Lands o Ministri blong Lands I save akseptem.

Resolusen 7:

- I mas kat notis blong everi aplikesen blong nikosiet I ko long ol Jifs long eria we graon ia I stap long hem. Notis ia I mas karem ol infomesen ia:
 1. Ditel blong aplikesen;
 2. Developmen Plan; mo
 3. Lokesen blong graon ia.

Resolusen 8:

- Long everi aplikesen blong nikosiet, I mas gat:
 1. Kopi blong paspot blong man o woman we hemi stap aplae (sipos hemi wan investa blong aotsaed long Vanuatu).
 2. Kopi blong VIPA sitifiket
 3. Ditels blong lokesen blong graon, baondri, use mo eria blong graon.
 4. Ditels blong development plan mo eni planning apruvul.

Paoa blong Minista long wan graon we I gat raorao ova long hem

Resolusen 9:

- Karemaot paoa blong Minista blong apruvum ol lis long wan graon we I stap yet long dispiut (raorao).
- Sipos I gat raorao ova long wan graon, oli mas stretem fastaem bifo Minista emi save apruvum wan lis.

Strata Taetol

Resolusen 10:

- Loa I mast ok klia olsem, strata taetol emi blong bilding nomo, be hemi no blong sab-divaedem graon.
- Sipos I gat strata taetol, ol land ona I mas gat raet blong apruvum hem mo kasem benefit tu long hem.

Ejens/midel man o woman

Resolusen 11:

- Kavman emi mas reguletem ol aktiviti blong ol ril estat ejens mo midel man o woman (eg. Kod blong praktis mo ethics).

Lis rentol mo premium

Resolusen 12:

- Kavman hemi mas pasem wan loa blong ol niufala ret blong land rent blong ol diferen klas blong land truaot long Vanuatu.
- Land rent long rurul eria emi mas bes long wan pesentej blong valiu blong graon.
- Kavman bae emi wokemaot mo endosem niufala tingting mo fasen blong kalkiuletem land premium we hemi ting se hemi fea.

Sastenebol Developmen

Resolusen 13:

- Bifo wan lis I save apruv o wan development hemi save tekem ples long wan graon, I mas gat wan sosol mo envaeromentol stadi I tekem ples blong talemaot ol gud saed mo rabis saed blong development ia. Mo tu, hao blong yumi avoedem o manejem ol rabis saed blong development ia.

Resolusen 14:

- Bifo I save gat wan lis long wan eria, I mas gat wan propa land use o zoning long eria ia.

Kondisen blong lis

Resolusen 15:

- Long everi lis I mas gat kondisen blong:
 1. Protektem ol kaljorol saets;
 2. Protektem envaeromen (olsem riva, wael laef, bij, etc); mo
 3. Akses rod I ko wan graon we lis I stap kaveremap.

Pablik akses

Resolusen 16:

- I mas gat pablik akses I ko long solwora, mo tub long kastom ona I save kontiniu blong usum eria we I stat long hae wota mak I ko kasem long en bong rif.
- I mas kat pablik akses I ko long riva mo lek long eria we wan lis I stap long blong alaoem kastom ona blong stil enjoem ol eria ia.

Enfosmen

Resolusen 17:

- Kavman I mas:
 1. Enfosem everi loa blong Fisikol Planing, Envaeromentol Proteksen mo Pablik Akses; mo
 2. Sapotem ol kastom ona blong enfosem ol kondisen ia, olsem planning, envaeroment mo pablik akses.

Zoning

Resolusen 18:

- I gat nid blong Kavman emi strentenem ol loa blong Fisikol Planing mo Zoning; mo
- Kavman I mas lukluk blong givim moa paoa long Land Manejmen Planing Komiti (LMPC) tru long loa.

Resolusen 19:

- I mas gat wan Nasonal Sab-divisen polisi mo Provinsol Developmen Plan mo eria land use polisi.

Aweanes

Resolusen 20:

- Envaeromen Unit I mas helpem ol pipol (Jifs, skuls, man o woman) long aweanes long:
 1. Sastenebol development; mo

2. Envaeromentol proteksen.

Blong karemaot ol resolusens ia, I gat bigfala nid blong kamaot klia wetem wan interim transisional strateji blong kaedem ol wok afta long samit kasem taem we everi ditel wok I finis mo ful implimentesen blong ol resolusens oli kam long ful fos. Smol ripot ia bae hemi givim yumi shot-tem transisional strateji ia mo poentemaot sam bigfala wok we bae Ministri mo ol narafala laen Ministri mo ajensis oli nid blong karemaot.

INTERIM TRANSISIONAL IMPLIMENTESEN STRATEJI

Temporary moratorium

Sab-divisens

- Eni aplikesen blong niu sab-divisen we oli no kam tru yet long Dipatmen mo Ministri blong apruvul bifo samit hemi bin tekem ples oli temporary suspended until further notis.

Saranda long ol eksisting akrikaljarol lises

- Eni aplikesen blong saranda blong eksisting akrikaljarol lis blong kam olsem wan residensol lis blong karemaot ol sab-divisen oli temporary suspended until further notis.

Paoa blong Hon Minista long taem we I gat raorao ova long pis graon

- Paoa blong Hon Minista blong usum long taem blong wan raorao ova long wan pis graon hemi temporarily suspended until further notis. Hon Minista I save usum paoa ia nomo long kes blong ol pablik interes olsem eapot, wuf o ol narafala pablik utilities.

Temporary administretif mesas

Land Onasip

1. Advaetasem kastom ona fom long ol pablik pleses olsem Provinsol Hedkota, skuls, nakamals, komiuniti hols, mo ol narafala pleses we I save givim opotuniti blong pablik blong aksesem.
2. Kastom ona fom oli mas lukluk long hem tru long wan propa vilij miting.
3. Vilij miting ia I mas gat propa miting minits blong atajem wetem kastom ona fom taem yu ritonem I kam long Dipatmen blong Lands.
4. Sipos Nakamal hemi faenem se I gat raorao ova long graon ia, bae kes I ko stret long han blong ol jif o Traebinol blong sotemaot onasip isu ia bifo eni aplikesen I save kam long Dipatmen blong Lands.
5. Eni graon we vilij miting I rifearem I ko long ol jifs o Land Traebinol, Ministri blong Lands tru long Dipatmen blong Lands hemi nid blong save long hem.

Hao blong faenem land ona

Shot-tem strateji

1. Malvatumauri Kaonsel blong ol Jifs, Kaljorol Senta mo Provins oli nid blong stap wok wetem ol komiuniti blong dil wetem eni aplikesen blong lis folem rod we I stap anda long kastom ona fom.
2. Malvatumauri Kaonsel blong ol Jifs, Kaljorol Senta mo Provins oli nid blong stap wok wetem ol komiuniti blong setemap mo manejem ol Lands Traebinols long vilij, eria mo aelan blong karemaot ol wok blong olgeta sipos ol nakamals oli nomo save sotemaot ol raorao ia.
3. Eni disisen we I bin kamaot bifo long taem blong Lands Traebinol o aotsaed long system blong Traebinol mo hemi aksepted, plis mekem ol disisen ia oli avelebol long Lands Traebinol Ofis blong ofis hemi kros jekem mo sipos I nomo gat eni raorao, then bae ofis hemi akseptem mo rejistretem.

Long-tem strateji

1. Malvatumauri Kaonsel blong ol Jifs, Kaljorol Senta mo Provins oli nid blong stap wok wetem ol komiuniti blong sotemaot raorao blong whu ia nao hemi stret Jif.
2. Malvatumauri Kaonsel blong ol Jifs, Kaljorol Senta mo Provins oli nid blong stap wok wetem ol komiuniti blong mapemaot ol tredisonal komiuniti baondris.
3. Malvatumauri Kaonsel blong ol Jifs, Kaljorol Senta mo Provins oli nid blong stap wok wetem ol komiuniti blong stadi mo dokiumentem ol land polisi blong wan wan vilij, eria, aelan o provins. Ministry blong Lands hemi save help sipos I gat nid blong hem, espesoli wetem teknikal nolej mo masins.

Fea Dilings

1. Eni niu aplikesen blong lis hemi mas karem wetem wan valiuesen we wan rejistaed Valiuea hemi bin karemaot.
2. Sipos, pat blong eni dil hemi long meteriol gud olsem trak o ol narafala samting, man o woman we hemi aplae hemi nid blong dikliarem valiu blong hem.

Nikosieta Sitifiket

1. Nikosieta sitifiket long wan graon I mas ko long wan man o woman nomo be ino save ko long tu pipol.
2. Laef blong wan nokosieta sitifiket hemi blong wan yia nomo o 12 manis mo yu no save riniuem sipos yu no usum.
3. Hon Minista blong Lands hemi nomo save saenem eni nekosieta sitifiket sipos hemi no bin pas tru long Land Manejmen mo Planing Komit we hemi stap skrinim ol aplikesens mo mekem rekomendesens long Hon Minista blong tekem disisen long hem.
4. Long laef blong wan nekosieta sitifiket I mas gat wan kwik assessment long eria we interest I stap long hem blong talemaot se I gat nid blong wan ful envaeronmental impact assessment (EIA) o nogat. Sipos I gat nid blong wan ful EIA, ripot ia I mas finis mo aprov olsem pat blong ol lis tems mo kondisens.

Midel man o woman

1. Eni man o woman we hemi stap akt olsem wan ajen o midel man o woman hemi nid blong provaedem long Ofis blong Dipatmen blong Lands ol samting ia:
 - Kopi blong bisnis laesen; mo
 - Kopi blong rejistresen sitifiket blong kampani blong hem we Vanuatu Faenansol Seves Komisen hemi bin givim long hem.

LONG-TEM IMPLIMENTESEN PLANS

Nekis steps afta long Nasonal Land Samit

- Raetemap ripot blong Nasonal Land Samit ia
- Riviu blong Land Polisis
- Riviu blong ol loa blong graon
- Riviu blong ol land administresen
- Apruvol blong rifom
- Implimentesen blong rifom
- Teknikol assistens mo faenansol asistens

LAS TOKTOK

Olsem we I stap long stap blong ripot ia se hemia hemi wan shot-tem transisonal strateji blong folem afta we Nasonal Land Samit I bin sidaon mo agri long samfala impotent resolusens.

Afta we ol riviua ia we I stap long list antap oli karemaot finis, infomesen ia nao bae hemi helpem yumi blong putum tugeta wan niufala land polisi blong Vanuatu we bae hemi tekem insaed ol 20 resolusens blong samit.

Government of the Republic of Vanuatu
Council of Ministers

Hon Maxim Carlot Korman (MP)

Minister of Lands
Vanuatu Government

Tuesday 21st of November 2006

Hon. Minister,

Decisions 138/2006: Outcome of the National Land Summit and the Interim Transitional Strategy.

The Council of Minister met on the 16th of November, number 18 of its ordinary meeting.

The Council agreed on the above decision as follows:

1. Endorse the changes made to the 20 resolutions of the National Land Summit of 2006 (Attached).
2. Endorse the interim transitional strategy to guide the process of land management and development of land until the resolutions of the Summit come to its full force.
3. Endorse a Steering Committee to monitor the implementation of the outcomes from the National Land Summit of 2006. The members of the Steering Committee will include the Ministry of Lands, Finance, Agriculture, Trade and Internal Affairs, Malvatumauri Council of Chiefs, Vanuatu Cultural Centre, Private Sector, Woman's Affairs and a Youth Representative.
4. The government's commitment to find support and funding to implement the resolutions from the National Land Summit as a top priority.

Thank You,

Nadine Alatoa
Secretary General

CC: His Excellency , Head of State
: Hon. Speaker of Parliament

Attachment 3
Council of Ministers Resolutions – English Version

- : Hon. Prime Minister
- : Hon. Deputy Prime Minister
- : Every Ministers
- : Acting Attorney General
- : DG, s
- : 1st PA, s
- :DESP
- : PRO
- : Mrs Toa, Department of Finance
- : Director of Finance
- : DSM

The Council of Ministers decision to change resolutions from the National Land Summit of 2006.

The changes or additions of the Council of Ministers are Bolded (in black writing).

Land Ownership

Resolution 1:

Government to pass a law that all **custom** land in Vanuatu is owned in **accordance with the traditional land tenure system of each (wan-wan) island.**

Resolution 5:

Every lease shall:

1. Be in Bislama
2. Involve all members of the land owning group **where land is owned by groups.** (Man, Woman, and Youth).
3. The Department of Lands to explain to the custom owners, the terms and conditions of the lease and rights to their lease agreement.
4. Include the value of land, land rent and premium, term of the lease, and rent review.
5. There is need for legal advice from the Public Solicitor or any other body as such to help land owners who have interest to lease their land.
6. In every lease agreement, Chiefs and Custom Owners must **firstly agree** (but not approved as a resolution from the Summit) to:
 - Certificate of Negotiation
 - Lease Agreement
 - Any changes to the lease conditions (use of land, term of the lease)

Resolution 7:

Notice of every application to negotiate must go to the Chief **and area TAG** where land is located.

Resolution 8:

Every application to negotiate shall have

1. Copy of a passport of a man or woman (if he or she is an investor outside of Vanuatu)
2. Copy of a VIPA certificate **to show that he or she has the money to invest on land.**

The power of the Minister where land is in dispute

Resolution 9:

Attachment 3
Council of Ministers Resolutions – English Version

- To remove the power of the Minister to approve leases where land is still in dispute.
- Ownership of land must be cleared before the Minister can approve any leases.
- **If there is a dispute over land which is used for public interest, the Minister may sign a lease on behalf of the custom owners.**

Resolution 14:

- To grant any lease on a particular area, it must have a proper land use zone.
- **The government to assist the land owners to survey their land.**

There are no changes to resolutions 2,3,4,6,10,11,12,13,15,16,17,18,19, and 20

**GOUVERNEMENT DE LA
RÉPUBLIQUE DE
VANUATU**

LA SECRÉTAIRE-GÉNÉRALE



**GOVERNMENT OF
THE REPUBLIC OF
VANUATU**

COUNCIL OF MINISTERS

Tiusde 21 Novemba 2006

**Hon. Maxime Carlot Korman
[MP] Minista blong Lands
Vanuatu Gavman**

Hon. Minista,

**DESISON 138/2006: AOT KAM BLONG NASONAL LAND SAMIT 2006
& INTERIM TRENSISONAL STRATEJI**

Kaonsel blong ol Minista (KBM) i bin mit long Tasde 16 Novemba long no. 18 odineri miting blong hem

Taem ia, KBM i agri long desison antap ia, olsem Kaonsel i:

1. Endosem ol jenis we hemi mekem long ol 20 resolusen blong Nasonal land samit 2006. (Atajmen)
2. Endosem ol interim transisonal strateji blong gaedem proses blong land manejmen mo divlopmen blong graon long taem naoia kasem taem we ol resolusen blong Samit oli kam long ful fos.
3. Endosem wan Stiring komiti blong hemi monitarem implimentesen blong ol aot kam blong Nasonal land samit 2006. Membasip blong Stiring komiti we i inkludim ol Ministri blong Lands, Faenans, Agrikalja, Tred mo Intenol Afea; Malvatumauri kaonsel blong ol jif, Vanuatu kaljarol senta, Praevet sekta, ol ripresentetiv blong ol Woman mo ol yang fala.

4. Komitim Gavman blong help blong faenem fanding mo sapot blong karem aot ol resolusen blong samit ia olsem wan top praeoriti blong Gavman.

Tangki



Nadine Alatoa
Sekreteri-Jenerol



Ekselensi Hed blong Stet
Hon. Spika blong Palemén
Hon. Praem Minista
Hon. DPM
Evri Hon. Minista
Akting Atoni-Jeneral
Evri DG
Evri 01 PA
DESP
PRO
MRS. Toa, Dipatmen blong Faenans
Daarekta blong Faenans
DSM

OL JENIS BLONG OL RESOLUSEN BLONG NASONAL LAND SAMIT 2006 WE KBM I
MEKEM

Ol Jenis O Adisen We KBM I Mekem I Stap Long Blak (Bold)

Land Onasip

Resolusen 1:

- ❖ Kavman hemi mekem Lo se evri **kastom** land long Vanuatu hemi own **folem tradisional land tenure sistem blong wan wan aelan.**

Resolusen 5:

- ❖ Everi lis akrimen imas:

1. Stap long Bislama
2. Involem everi memba blong land owning grup **sipos land ia iown bae grup** (Man, Woman mo yangfala).
3. I mas gat gudfala explenesen I kam long Dipatment blong Lands iko long ol land onas — long tem mo kondisen blong lis mo ol raets blong olgeta anda long agrimen ia.
4. Hemia inkludim valiu blong graon, land rent mo premium, hao mas yia lis mo rent rivi, we hemi isi blong enfosem.
5. I nid blong gat likol advaes long Pablik Solisito, o narafala bodi olsem blng helpem ol land onas we oli interest blong lisimaot eni graon blong olgeta.
6. Long everi lis agriment, ol Jif mo land ona oli mas **agri** (be i no apruvum olsem we Samit i bin risolv) **long hem 1st taem**
 - ❖ Sitifiket blong nikosiesen
 - ❖ Lis agrimen

❖ Eni jenis long kondisen blong lis (use blong graon, yia blong lis)

Resolusen 7:

- I mas kat notis blong evri aplikeson blong nigosiet i go long ol jif
mo eria TAG long eria we graon ia i stap long hem

Resolusen 8:

- ❖ Long everi aplikesen blong nikosiet, I mas gat
 1. Kopi blong paspot blong man o woman we hemi stap aplae (sipos hemi wan investa blong aotsaed long Vanuatu)
 2. Kopi blong VIPA sitifiket **mo blong soem se hemi kat mane blong investem long graon**

Pawa blong Minista long sam graon we I gat raorao ova long hem

Resolusen 9:

- ❖ Karmaot paoa blong Minista blong apruvum ol lis long wan graon we I stap yet long dispiut (raorao)
- ❖ Sipos I gat raorao ova long wan graon, oli mas sttretem fastaem bifo Minista emi save apruvum wan lis.
- ❖ **Sipos i kat rao rao ova long graon we bambae oli usum blong pablik interest, Minista i save saenem lis long bihaf blong kastom ona** Resolusen 14:
- ❖ Bifo I save gat wan lis long wan eria, I mas gat wna propa long use o zoning long eria ia.
- ❖ **Gavman i save asistim ol land ona blong mekem sevei long land blong ol.**

I NO KAT JENIS LONG OL RESOLUSEN 2, 3, 4, 6, 10, 11, 12, 13, 15, 16, 17, 18, 19 mo 20

Membership of Steering Committee

There are 12 members of the Steering Committee:

- Russell Nari, Chairman and Director General of Lands, Survey and Land Records
- Simeon Athy, Director General of Finance
- Jeffrey Wilfred, Director General of Agriculture
- Marokon Ailee, Director General of Trade
- Johnson Wabaiat, Director General of Internal Affairs
- Dudley Aru, Acting Solicitor General
- Ralph Regenvanu, Director Cultural Department
- Hilda Taleo, Director, Department of Woman's Affairs
- Paul Tahi, President, Malvatumauri National Council of Chiefs
- Jenny Ligo, Chief Executive Officer, National Council of Women
- Douglas Patterson, Private Sector Representative, Island Property Real Estates
- Michael Taurakoto, Youth Rep, Wan Smol Bag.

**LIST OF RELEVANT LEGISLATION
(as at February 2007)**

A. Constitution (1980)

B. Land legislation

1. Land Reform Act 1980 (as amended to 1985)
 - Land Reform (Amendment) Act 1992
 - Land Reform (Amendment) Act 2000
 - *Land Reform (Rural Alienated Land) Regulations 1980*
 - *Land Reform (Rural Land Corporation) Regulations 1980*
2. Alienated Land Act 1982
3. Land Leases Act 1983 (as amended to 1987)
 - Land Leases (Amendment) Act 1988
 - Land Leases (Amendment) Act 1989
 - Land Leases (Amendment) Act 2003
 - Land Leases (Amendment) Act 2004
 - Land Leases (Amendment) Act 2006
 - *Land Leases General Rules 1984*
 - *Land Leases Prescribed Forms 1984*
4. Land Acquisition Act 1992
 - Land Acquisition (Amendment) Act 2000
5. Urban Lands Act 1993
 - Urban Lands (Repeal) Act 2003
6. Freehold Titles Act 1994
7. Customary Land Tribunal Act 2001
8. Strata Titles Act 2000
 - Strata Titles (Amendment) Act 2003
9. Land Surveyors Act 1984
 - Land Surveyors (Amendment) Act 2003
 - *Land Surveyors Regulations 1985*
10. Land Referee Act 1983
 - Land Referee (Repeal) Act 2002
11. Valuation of Land Act 2002
12. Land Valuers Registration Act 2002

C. Land-related legislation

13. Physical Planning Act 1986
14. Environmental Management and Conservation Act 2002
15. Foreshore Development Act 1975
16. Forestry Act 2001

D. Courts, etc.

17. Islands Courts Act 1983
 - Islands Courts (Amendment) Act 1989
18. National Council of Chiefs (Organisation) Act 1985
19. Customary Land Tribunal Act 2001

E. Sundry others

20. Foreign Investment Promotion Act 1998 (as amended to 2001)
21. Decentralisation Act 1994 (as amended)

**Land Administration
and
Land Use Management
Activities
in Vanuatu**

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1. INTRODUCTION

The Government of Vanuatu's strategic priorities have been build on previous reform efforts which centred around a Comprehensive Reform Programme (CRP) initiated in 1997 with the assistance of a US\$20 million Programme Loan from the ADB. The CRP was aimed to enhance and sustain private sector led economic growth with its benefits distributed equitably within Vanuatu. This ambitious objective was to have been achieved by (i) redefining the role of government and enhancing the quality and delivery of its services, (ii) increasing the productivity and growth of the commercial and private sector, and (iii) supporting improvement of social indicators. As implementation of the CRP policies proceeded in the late 1990s, refinements were introduced through the deliberations of National Summits and the National Business Forum. In addition, Provinces have prepared Rural Economic Development Initiatives (REDI) Plans to identify key needs in the Provinces and outer islands.

Despite the substantial reforms and restructuring that have occurred since 1997 Vanuatu has not been able to realise its full development potential. *“There have been many reasons for this relatively poor performance. Chief amongst these has been that generally poor standards of governance remain at all levels of the public service, despite the improvements that have been made since the CRP. Weak institutions and poor standards of governance have been widely recognised within Vanuatu as critical factors in constraining development”*¹.

The document goes further in outlining what measures need to be taken to achieve sustainable economic growth. *“To achieve sustainable economic growth and development Vanuatu must adopt an innovative policy making process. It must also be open to a continuing adoption of the economic and structural reforms needed to overcome the weaknesses in its economy. Outward looking, private sector focused strategies that will both broaden and deepen the economic base of the nation must continue to be embraced. Governance standards need to be raised and a more service and customer-oriented approach needs to be adopted by the public service to its dealings with the public and particularly with potential investors”*².

1.1. Land Use Management and Land Administration

The land use management and administration sectors of government have yet to embrace innovative policy making and good governance standards as is expected by the Government. There is much to be done.

In most jurisdictions, responsibility for land management and land administration matters are spread between a number of different government agencies and the situation in Vanuatu is no different. However with such a split, there is need for a clear delineation of responsibilities and clearly defined administrative procedures,

¹ Priorities and Action Agenda 2006-2015, 'An Educated, Healthy and Wealthy Vanuatu', Ministry of Finance and Economic Management, Government of Vanuatu, June 2006, p 3

² *ibid* p 5

without which there will be confusion and a high probability that administrative, management and enforcement activities will not be undertaken.

The National Land Summit, in approving the 20 resolutions, has highlighted serious public concern over the management and administration of land matters in Vanuatu. There is ineffective regulation of land dealings, failure by the Government to protect the interests of the public and customary owners, poor or non-existent enforcement of regulations, incorrect interpretation of government legislation and a lack of defined responsibilities for numerous administrative activities that should be undertaken to ensure adequate and appropriate management and administration of land. This is all exacerbated by a lack of public awareness of property rights.

In Vanuatu there are a number of ministries and organisations responsible for the management and administration of land matters, and these include:

- Ministry of Lands and Natural Resources
 - ♦ Department of Lands, Survey and Records which includes, surveying, land registration, land valuation, land use planning and customary lands unit
 - ♦ Environment Unit
- Ministry of Internal Affairs
 - ♦ Department of Provincial Affairs
 - ♦ Physical Planning Unit
 - ♦ National Council of Chiefs

The key agency responsible for the administration of land activities in Vanuatu is the Department of Lands, Survey and Records (DOLSR) under the Ministry of Lands and Natural Resources. The Ministry in the Corporate Plan 2006-2008 details its Vision, Mission and Values and summaries the strategic issues and the role and responsibility of each of the 5 strategic areas of responsibility under its control.

The Vision Statement is:

*Our vision is to establish an appropriate framework to promote the sustainable development of the nation's natural resources for the social, environmental and economic well-being of the people of Vanuatu.*³

The strategic issues identified in the Corporate Plan that relate specifically to the land administration functions are:

- Solving land disputes and promoting effective dealings in the land sector to facilitate economic and social development;
- Improvement in current rating and taxing systems to encourage compliance, equity and transparency.

The roles and responsibilities of the land related functions are detailed as follows:

- Legislation and policy

³ Ministry of Lands, Geology and Mines 2007 Portfolio Budget Submission (note that it is not referred to as the Ministry of Lands and Natural Resources)

- Land dispute resolution
- Formulation of land use plans to guide development
- Upgrade and enhance the Information Technology Centre
- Facilitate land lease arrangements
- Efficient execution of land leases and related consents
- Registration of leases
- Upkeep of records in land dealings
- Registration of customary land
- Land valuation
- Lease dispute arbitration.

In the 2007 Portfolio Budget Submission⁴ it is noted that the overall objective of the Department of Lands is:

- To provide high quality survey and mapping services;
- To plan for the use of land at the national, regional and local levels to achieve sustainable development and protect the rights of landowners;
- To provide high quality lease management and registry services;
- To ensure that land disputes are managed and resolved in a fair and timely manner;
- To run awareness and workshops on land policy and interpretation of all land acts.

The issue in relation to land administration activities is, how well are these roles and responsibilities being undertaken, and are the objectives being met? The following analysis and review of the activities within the DOLSR and associated agencies responsible for land administration activities will enable an initial assessment to be made.

2. DEPARTMENT OF LANDS, SURVEY AND RECORDS

The organisational chart for the Department of Lands, Survey and Records as approved by the Public Service Commission in December 2004 and an outline of the organisational structure down to section or unit level is shown in Figure 1. The structure shows key functional areas of; (i) Surveying and Mapping; (ii) Planning/Enforcement; and (iii) Registry/Lease Control.

⁴ ibid

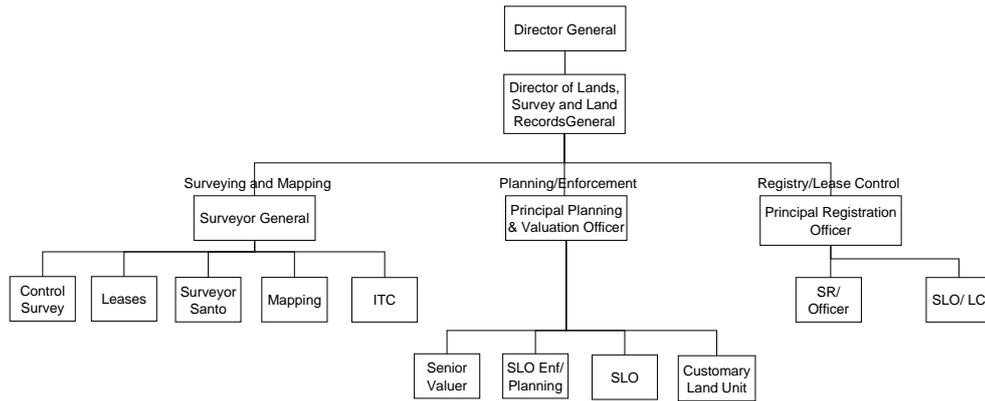


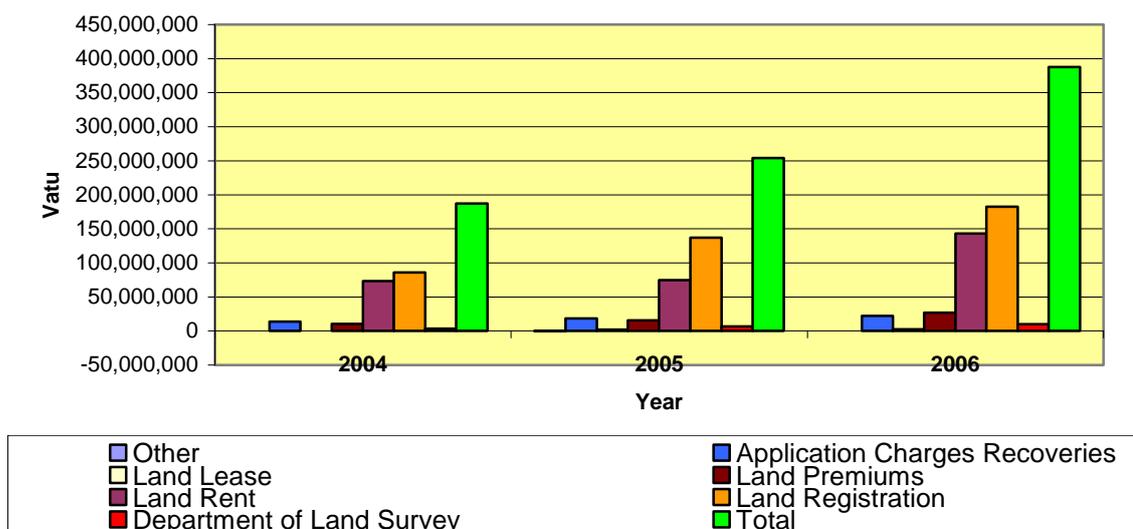
Figure 1: Organisational Structure of DOLSR

The Department of Lands, Survey and Records has overall national responsibility and control in both urban and rural areas for planning, management and implementation of land tenure and land use policies and legislation under the various land laws and regulations of Vanuatu on behalf of the Government.

The total organisation chart shows a staffing of 63 positions; however in reality only 31 positions are filled. It was indicated that funds are available for the filling of many of the vacant positions but for varying reasons they are not filled.

The Department of Lands has significantly increased revenue generation over the past 3 years with the chart below showing that overall revenue has increased by 207%. Increases in revenue for land registration has been 212%, land rent 195% and land premiums 263%. Indications are that the budget revenue for 2007 is Vat 800 million, which is an increase in excess of 100% on the 2006 actual revenue generated.

Department of Lands Revenue



These figures highlight significant actual and planned revenue growth, however there are a number of alarming signs within the Department that need to be addressed with some urgency. Approximately 50% of staff positions in the Department remain vacant, there are large backlogs in the registration of land documents, the private sector are not undertaking some registration activities due to extended delays in registration (in some cases in excess of 12 months) and important functions such as policing compliance are not being undertaken. These issues are covered in detail in the following sections of the report.

The following is a brief summary of the key activities undertaken by the DOLSR that may possibly be impacted by actions required as part of the progression of the 20 resolutions from the National Land Summit.

2.1. Survey and Mapping Section

The objectives of the Surveying and Mapping Section are:

- To maintain and survey control points and conduct crustal monitoring surveys to identify volcanoes around Vanuatu;
- To undertake office calculations and field surveys to complete Government lease agreements;
- To undertake mapping activities and complete field checks for new maps for the whole country;
- To update cadastral base maps;
- To survey customary boundaries.

These activities are undertaken with a staff of 25. There are currently 5 positions vacant.

The Survey and Mapping Section has been undertaking a pilot project on Nguna Island (North Efate) to survey and map community boundaries funded by the Ministry of Lands. They have defined the community boundaries for the villages of Tanoropo, Raitoa and Emoi. The activities involve meetings with the chiefs to explain the process, walking the boundaries with the chiefs, collecting coordinates for the boundaries using a hand held Global Positioning System (GPS) and then using computer software to produce maps which are then checked with the chiefs.

The Mapping Unit presently has a project, supported through the Department of Imagery and Spatial Organisation under the Australian Department of Defence, to undertake mapping of Vanuatu. This project is in its final stages with geographical names data being collected and verified for inclusion on the final maps.

2.1.1. Information Technology Centre

The business plan for the Information Technology Centre (ITC) states the objectives of the unit as being:

- To digitally formulate land use plans to guide development;
- To upgrade and enhance the Vanuatu Resource Information System (VANRIS);
- To establish a Land Use Commission;

- To extend the work of the Customary Land Unit registration throughout the whole country;
- To conduct a land summit for land knowledge.

There would appear to be a significant overlap of responsibilities proposed to be undertaken by the ITC when compared with the responsibilities of a number of other units within the DOLSR. As this unit is intended to take a role in developing information technology within the Department it is unclear as to whether there is an overlap of responsibilities or whether the objectives are intended to refer specifically to the creation/maintenance of computer based data on behalf of other units within the Department.

2.2. Registry and Lease Control Section

The objectives of the Registry and Lease Control Section are:

- To undertake efficient land registration and recording backed by secure storage and maintenance of legal land records.
- To plan and allocate land to be utilised for sustainable development and to enforce effective use of land tenure in accordance with land use policies, conditions of lease and legislation.
- To facilitate the preparation and execution of land leases and other land related documents.
- To provide valuation advice and maintain up to date valuation roles.

The **Records Office** is established under Section 2 of the Land Leases Act and is responsible for all land leases and other land dealings throughout Vanuatu. Responsibilities include:

- Registration of all land leases and other land related documents;
- Collection of registration fees;
- In collaboration with Surveying and Mapping Section ensure all survey plans are correct before registration;
- To establish a one stop shop.

These activities are undertaken with 5 registration staff, 1 secretary and 1 typist. It was suggested that at least 8 to 9 registration staff are required to manage the registration work load. There is a significant back log of registration work and delays in registering documents can be significant. It was reported by the private sector and the banking sector that there are delays of between 3 months and in excess of 1 year to register a mortgage and some other documents. This is an unacceptably long delay and clearly would be having an impact on the land registration activities and general land development in Vanuatu.

The backlogs highlight the need to review the processes involved in the registration of documents. A review would also look at the approval process for the issuing of approvals for negotiation (negotiator certificate) and also the issuing of leases. The current lease process is shown graphically in Figure 2.

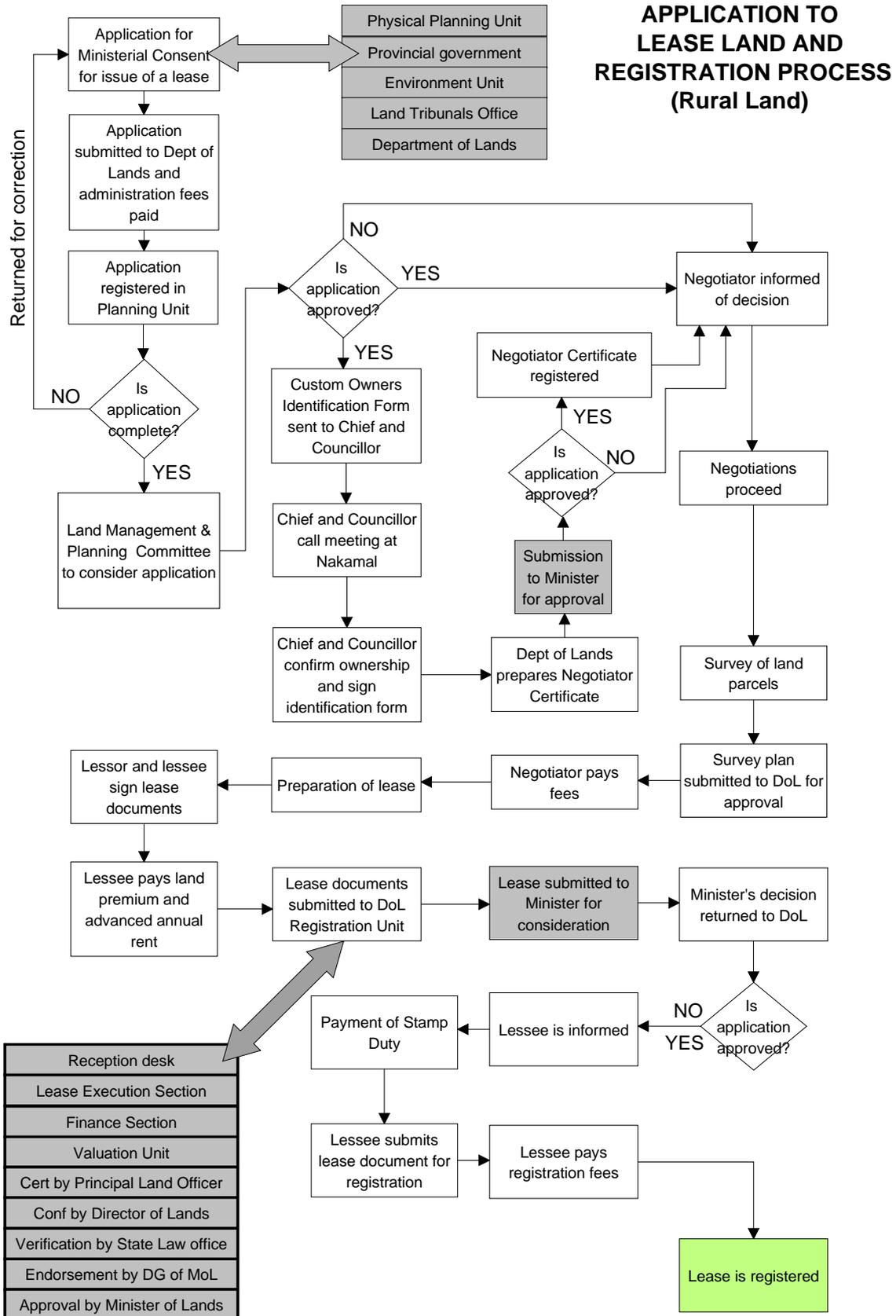


Figure 2: Lease Process

The number of land record transaction and revenue generated from these transactions for 2006 are shown in Table 1.

| Transaction | Quantity | Revenue (Vatu) | Fee Base |
|-----------------------|--------------|--------------------|--|
| Transfer of lease | 1,155 | 104,237,601 | 5% |
| Lease | 817 | 49,581,522 | Premium - 5% Lease Rent x 75 years @ 5% |
| Mortgage | 928 | 27,265,918 | 1.50% |
| Surrender of lease | 113 | 1,110,000 | 10,000 VT |
| Caution | 328 | 1,209,750 | 5,000 VT |
| Transmission of lease | 30 | 139,750 | 2,500 VT |
| Power of Attorney | 51 | 234,750 | 5,000 VT |
| Certification of name | 18 | 40,000 | 2,500 VT |
| Restrictive agreement | 25 | 62,500 | 2,500 VT |
| Grant of easement | 6 | 15,000 | 2,500 VT |
| Totals | 3,471 | 183,896,791 | |

Table 1: Lease Management – Transactions and Revenue for 2006

2.3. Planning and Enforcement Section

2.3.1. Land Use Planning Unit

Objectives of the Planning Unit are:

- To develop a national land use plan to cater for a broad scale assessment of how best land can be managed and used to its optimum;
- To provide regional strategic plans that will reflect local government policies relating to development of land and its conservation;
- To develop policy formulation in identifying land and natural resources limitations and opportunities;
- To provide expert advice, information to landowners and village communities in order to make wise decisions as to the good use of their land in terms of sustainable development.

The unit also has the role of facilitating all land related applications and making recommendations to the Land Management and Planning Committee which sits monthly in Port Vila and Santo.

AusAID initiated in late 1995, support for a Vanuatu Land Use Planning Project with an aim of:

- Building up skills and resources to strengthen land use planning and natural resources management capabilities; and
- Developing effective mechanisms to ensure that land use plans prepared at National, Provincial and community levels are consistent and are implemented.
- Strengthening Provincial planning capabilities.

The project's overall strategy was to create land use plans that integrate between local, provincial and national levels and across all sectors

The National Land Use Plan aimed to integrate a broad set of principles and guidelines, supported by information from the Development Plan, the natural resources inventory Vanuatu National Resource Inventory (VANRIS), the National Conservation Strategy, the National Tourism Management Plan, and data collected by line agencies and other groups such as census data, data relating to agriculture, forestry, geology and mines, rural water supply and cultural heritage.

The project established the Vanuatu Land Use Planning Office (VLUPO), to carry out the tasks at national level, and to train staff and co-ordinate planning activities in the Provinces. At Provincial level, the project assisted in developing Provincial Development Plans and natural resources management capabilities within the office of the Provincial Planner. At the community level, the project assisted villagers in the process of developing land use plans utilizing a Community Area Resource Management Activity (CARMA) "Bridging the Gap".

Since the support from AusAID has ceased it would appear that there has been minimal input to the database, although the system is still operational and land use maps can be produced through the Information Technology Centre (ITC) under Surveying and Mapping.

In the Priorities and Action Agenda for Vanuatu⁵ it is quoted that "No land use system is in place therefore no mechanism is available for identifying conservation and timber production areas". It is then indicated that this is leading to land disputes and a stifling of economic development. This highlights the importance of developing, implementing and maintaining land use plans over all of Vanuatu.

In 2000 the Vanuatu Land Use Planning Project developed a Vanuatu National Land Use Planning Policy. This document was intended to:

- Guide investors seeking to develop land in Vanuatu.
- Provide guidelines for evaluating development proposals.
- Assist with the development of land use policy and land use plans.

It is unclear as to whether this document has been official adopted by the Government, however it would appear that this document is not being followed and used for the implementation of land use policy. It is known that the Shefa Land Use Guide was derived from the National Land Use Policy⁶. However there is little indication of its use in any other area.

⁵ ibid p 28

⁶ Shefa REDI Five Year Economic Development Plan 2003-2007, p 46

2.3.2. Enforcement Unit (Land Dispute Management)

The role of the Enforcement Unit is to deal with compliance matters and address cases where there are breaches of lease conditions.

The Enforcement Unit presently has a staff of 1 official. This person is expected to oversee compliance on a large number of land matters in the Ministry of Lands.

Enforcement, or the lack of it, is a major issue in relation to the control of development activities in Vanuatu. It is clear that one staff member is insufficient to undertake a compliance and enforcement role in relation to land matters and as a result many enforcement issues remain unaddressed or are never identified.

2.3.3. Valuation Unit

The Valuation Unit provides, upon request, the valuation of property for the purpose of land rent, compensation for properties, sale of properties and for statutory purposes. It also provides assessment of rates for taxing purposes especially for the two municipalities.

There are many issues that need to be addressed in the Land Registry Office, most of which are common to land registration agencies that are under staffed and under funded. As well as the administrative and procedural issues there is also the issue of document storage and preservation of records. There is no backup system for any of the land records – leases, mortgages etc. which means that if there is a fire or a natural disaster that has an impact on the registry office building then there is a very good chance that many if not all the land records will be destroyed.

2.3.4. Land Tribunal Office

The objectives of the Land Tribunal Office are:

- To survey and register customary land boundaries;
- To register customary land;
- To resolve land disputes and to determine ownership of land through out Vanuatu;
- To facilitate villagers and chiefs to set up land tribunal courts;
- To establish land tribunal administration and policies.

The organisational structure for the DOLSR approved in December 2004 did not include approval in the proposed structure to support customary land activities. A structure for the Customary Lands Unit was approved in March 2006 and is shown in Figure 3. It was reported that the current reporting arrangement for the Land Tribunal Office is inappropriate and needs to be reviewed.

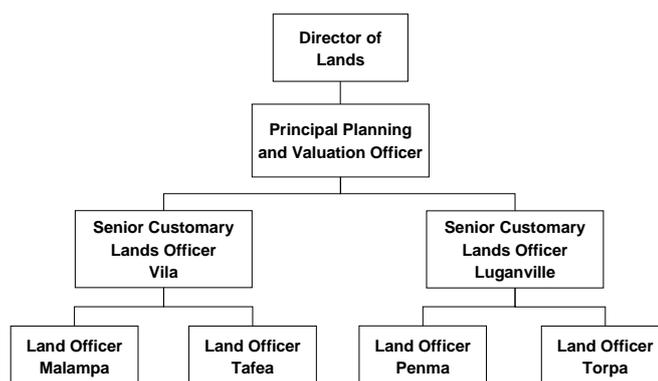


Figure 3: Organisational Structure of Customary Land Unit

Of the 6 operational positions approved for the unit, only 1 position is occupied by a full time office (Senior Customary Lands Officer-Vila). The Senior Customary Lands Officer – Luganville is occupied by a part time officer who has other land administration commitments as well. It is intended that the Land Officer positions included in the organisation at each of the other 4 provinces be only involved in customary lands activities on a part tie basis.

Given the importance of customary rights and the large number of customary land issues in Vanuatu it is of concern that the staffing for this unit is so low. There are a number of other issues in relation to customary lands activities and the apparent lack of coordination. As an example Surveying and Mapping are undertaking pilot activities in relation to the delineation of community boundaries however there is no involvement or linkages with the Land Tribunal Office.

3. OFFICE OF THE VALUER GENERAL

The Office of the Valuer General is a statutory body established under the Valuation of Land Act. Its activities are undertaken independently of the Department of Lands, Valuation Unit and State Law Office and the office budget is separated and is directly controlled by the Valuer General.

The role of the Valuer General is stipulated in Section 3 of the Act and is:

- a) *to exercise functions with respect to the valuation of land in Vanuatu; and*
- b) *to ensure the integrity of valuations under this Act; and*
- c) *to act as a land referee in disputes regarding rentals and land values.*

The Act also defines the functions of the Valuer General which include, resolving disputes regarding valuation of land, dealing with objections and appeals against valuations, determining the amount of rent payable for a lease of land and determining disputes relating to the value of improvements.

4. ENVIRONMENT UNIT

The objectives of the Environment Unit are:

- To conduct research, environmental awareness, formulate and implement government policies for the management of Vanuatu's environment in an ecologically sustainable manner.
- To enable and involve the government and people of Vanuatu to maintain environment quality through the sustainable management of natural resources for the security and benefits of present and future generations.

The Environment Unit was established in 1986. It now has a staff of 2 fulltime employees and 11 contract project staff working on externally funded projects. The current structure of the Environment Unit has three main elements – environment and conservation, extension services and research and monitoring. The Environmental Management and Conservation Act No. 12 of 2002 makes provision for the establishment of a Department of Environment and Conservation and this is reflected in the proposed organisation chart shown in Figure 4.

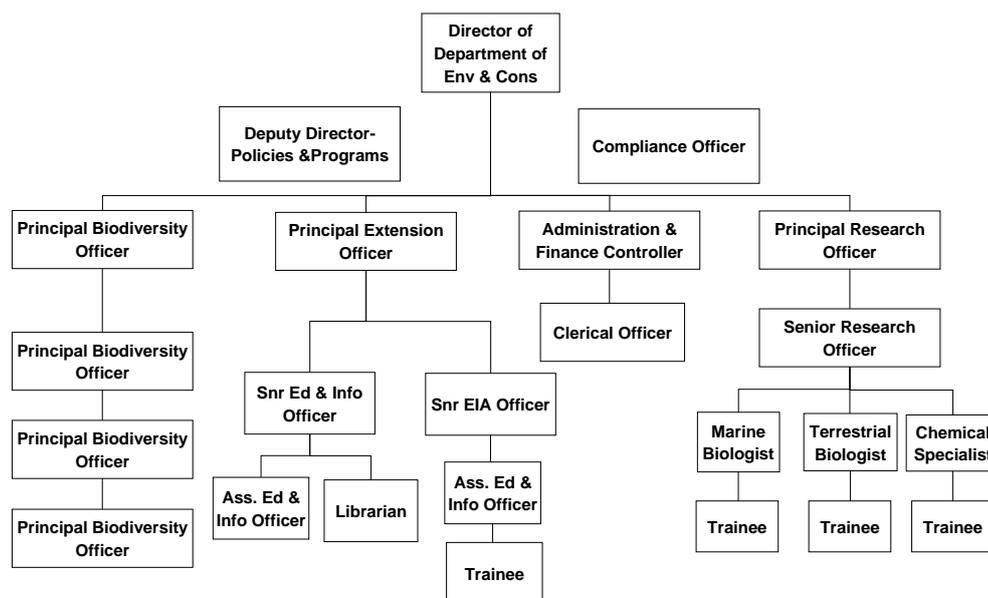


Figure 4: Proposed Organisation Structure for Department of Environment and Conservation

It was clear from the National Land Summit that the people of Vanuatu expect that there be protection provided to the environment and that the government establish appropriate conservation measures. This not only supports sustainability for the country but also ensures that the customary groups are supported in retaining appropriate areas for their own customary activities. At this point in time the Environment Unit has limited input to the planning activities in Vanuatu. At the initial stages of an application for a ministerial consent for the issuing of a lease they are included in the administrative process.

5. MINISTRY OF INTERNAL AFFAIRS - DEPARTMENT OF PROVINCIAL AFFAIRS

The Ministry of Internal Affairs has the mandate to work with other Ministries to improve governance by improving service delivery in all provinces. Within the ministry the Department of Provincial Affairs has responsibility for ensuring sound social and economic development is delivered to all provinces and the municipalities. This department ensures:

- Efficient delivery of services to rural communities;
- Effective development planning processes;
- Autonomy in the management of the provinces and municipalities;
- Enforcement of physical and town planning procedures.

5.1. Municipal and Provincial Government

To ensure equitable development and distribution of resources in all provinces, the government has enacted a decentralization act, giving more powers to the six provincial governments to run the affairs of their respective provinces. With the funding assistance from AusAID and the Vanuatu Government, each provincial government has initiated a provincial development plan called the Rural Economic Development Initiatives (REDI). The REDI has a national advisory committee, which includes Director-Generals and Directors of the key ministries and departments. Such an arrangement has enabled the provincial plans to be integrated into the national development plans.

Time did not permit a review of the organisational arrangements of the municipal and provincial governments. However in discussions with officials from the Port Vila Municipality and Shefa Province a number of similar issues arose. The lack of staff and vacant positions is a problem which then exacerbates the ability of local government to undertake any meaningful management and enforcement roles.

Port Vila Municipality faces a number of unique issues which are of high priority and need to be addressed with some urgency. The municipal boundary is in urgent need of review and is still the same as was proclaimed at independence. The current boundary is insufficient to cater for expansion of Port Vila as more people move to the area in search of work and improved living conditions. There are also a number of squatter settlements that have been established both within the town boundary and on the outskirts which need to be managed from a planning and infrastructure perspective. It was indicated that the control of the settlements outside the municipal boundaries are managed by the customary groups with little involvement from local government.

Both the municipality and the council indicated that they have limited involvement in development controls and in fact saw the DOLSR as responsible for enforcement. As far as zoning and the regulation of use the emphasis was on the existing land use as stipulated by the DOLSR and not on any zoning or planning requirements. This approach needs to be reviewed if development is to be planned, managed and enforced.

The Shefa Corporate Plan⁷ outlines its objectives in relation to land and includes:

- To help prevent land shortage in collaboration with the Ministry of Lands and Natural Resources, chiefs and communities;
- To control and slow down speculation;
- To help settle land disputes through information dissemination and awareness campaigns with the Ministry of Lands and Natural Resources;
- To help prevent and expose the abuses and overuse of land in collaboration with the Ministry of Lands and Natural Resources.

It is noticeable that there is no mention of the development and maintenance of zoning plans and the control of development. There is a very close link and in many cases, an overlap with activities undertaken in the Ministry of Lands and Natural Resources. The Corporate Plans also makes specific note of the impact of local and foreign investors and the impact they have on land disputes which can delay much needed investment in the province. Conflict between land owners and squatters and the impact this has on service delivery and collection of fees for the province is also noted.

5.2. Physical Planning Unit

The Physical Planning Unit within the Department of Local Authorities has 3 positions for coordinating physical planning and ensuring compliance with legislation, however only one of the positions is currently filled. Limited staff means that there is limited enforcement of planning regulations, no reviews are undertaken of legislation and zoning activities for the municipalities are not being regulated and implemented.

It is the responsibility of the Physical Planning Unit to enforce The Foreshore Development Act [Cap 90]. This Act was passed in 1975 and is inadequate to meet the requirements of the current period with significant development being undertaken up to the medium high water mark and in some cases beyond. It was reported that there is regular abuse of the legislation with structures being built into the foreshore area without approval, however enforcement is difficult, with limited staff and low penalties for infringements.

The Physical Planning Unit also has responsibility for overseeing the preparation of zoning maps, their gazettal and enforcement. The zoning map for Port Vila was prepared in the 1990's but has yet to be gazetted. It is believed that the present map is out of date and is urgent need of review and requires legislative support to ensure enforcement can be undertaken effectively.

⁷ Corporate Plan of the Shefa Provincial Council (Republic of Vanuatu) – 2007-2011, Shefa Provincial Council

6. INSTITUTIONAL AND ORGANISATIONAL ISSUES

There are a number of strategic issues facing the general operation of activities within the Department of Lands and land administration functions generally. A number of attempts have been made over the past few years to streamline and improve the overall operations of each of the activities that need to be support within the department. However there has been little attempt to adopt an holistic approach to the review process, to undertake a detailed assessment of each of the functions, review the legislative roles and responsibilities, undertake a training needs analysis and to structure the organisation to ovoid duplication and improve efficiency.

There needs to be a focus on implementing good governance within all agencies. The CRP should be revisited to see what lessons can be learnt from that program and what reforms could be successfully implemented into the land related agencies.

Many of the land related activities have a direct interface with the public and it is therefore important that business procedures are reviewed along with the interface between government officials and the public (customer service).

The DOLSR and provincial planning activities needs adequate human resources capable of implementing policies effectively and efficiently, to guide, supervise and regulate the implementation of programmes and projects, and to monitor and report on all administrative and technical activities. In order to develop the necessary human resources, current staff may need to receive appropriate training in Vanuatu and possibly abroad.

6.1. Organisation, Management and Operations (OMO)

There needs to be an Organisation, Management and Operations (OMO) study undertaken of all land management and land administration related activities in government and local government to gain a clearer picture of the management, institutional and administrative issues.

The Organisation, Management and Operations study would review the following:

- Organisational structures, roles and responsibilities for the operations of DOLSR and provincial planning activities at central and provincial level.
- An assessment of training programs necessary to support land management and land administration activities at both central and provincial levels, develop a training matrix and training plan.
- Staff recruitment for strengthening the DOLSR and other relevant agencies in line with the recommended organisational structures.
- Staff retention programs necessary to maintain systems and services.
- Assessing the sustainability of the DOLSR operations and the educational requirements.
- Review and assessment of financial planning, budgeting and monitoring systems and the introduction of new processes and techniques to achieve improved levels of administrative and operational performance.
- Preparation of manuals, guidelines and administrative procedures.

- Strengthening of DOLSR institutional capacity to handle regulatory, administrative and registry demands associated with implementing legislation.

The OMO study would include an Action Plan detailing the actions required to achieve the agreed objectives, the responsibilities for implementation and a schedule for implementation.

6.2. Records Office

The Records Office is the main shop front for land administration activities in Vanuatu and it is through the operation of this office that many people undertaking land dealing will gain their impressions of the efficiency of land administration activities. The Records Office is also a generator of significant revenue for the Government. It is for these reasons, at least, that the Records Office must be appropriately staffed and efficiently managed.

However there are a number of issues in relation to the operation of the Records Office that must be addressed with some urgency. These include:

- Improved procedures for processing of documents including the registration of mortgages;
- Appropriate staffing and training to reduce backlogs of document processing;
- Review of authorities and the removal of the Minister to sign land registration documents such as mortgages.

In relation to document management and storage there is an urgent need for document backup systems to be implemented. At present there is no document backup which means that if there is a fire or natural disaster that may destroy the land records there is no way in which the data in these records can be recovered. Such an event would have disastrous consequences for land administration activities including revenue generation. The private sector is aware of this issue and several companies indicated that they maintain their own back up system, mindful of the consequences of the destruction of the land records.

6.3. Decentralisation

Article 82 of the Constitution recognises the importance of ensuring that people are able to participate in the Government of their local region and enables the enactment of legislation to support decentralisation and Article 83 provides for the division of Vanuatu into local government regions. The Government passed in 1994 the Decentralisation and Local Government Regions Act which established local government regions which commenced decentralisation of responsibilities.

Decentralisation was one of the issues raised during the National Land Summit. A decentralisation policy recognises the importance of providing government services to all provinces of Vanuatu and also assists in reducing the focus on Efate and Port Vila for much of the job creation and economic development. However there are a number of issues that need to be addressed in implementing a decentralised model.

Decentralisation is the transfer of administrative services and functions to lower government levels including the full authority and related responsibilities for provincial policy, planning, implementation and funding. However, decentralised government agency policies in all cases must reflect central policy. Decentralisation does not imply independence; but it does provide a high level of autonomy to act within clearly identified boundaries.

It is not just a matter of implementing a decentralisation policy because it is government policy. There are a number of issues that need to be addressed if it is to work and these include the availability of trained human resources to provide the decentralised services and the type of decentralisation model to be adopted.

There are four main types of decentralization:⁸

- Devolution;
- Semi-autonomy;
- Deconcentration; and,
- Divestment.

The effects of decentralisation depend very much on what kind of decentralisation is chosen. In the case of the DOLSR it may be more relevant to look at deconcentration which involves limited delegation of authorities and responsibilities that are for specific decision-making about financial and management functions. Deconcentration is suitable for sub-ordinate lower-level agencies or sub-agencies. These might include provincial or district offices of central government agencies or service delivery institutions. These agencies have authority delegated through central policy. Financial and administrative actions occur without significant independent local involvement.

If we look at the DOLSR, it is noted that; (i) there are a large number of vacant positions; (ii) the capacity of the current staff to support the land administration is generally low; (iii) there is a lack of clear procedures in many areas; (iv) the organisation structure is weak; (v) linkages and responsibilities between agencies are weak or non-existent; and (vi) technological development throughout the organisation is generally low. Each of these issues creates an impediment to decentralisation and the aggregation of all the issues makes decentralisation a difficult and very risky proposition at this point in time.

A decentralisation policy is worth implementing but it is important that the central agencies are operating effectively before decentralisation is commenced. Any deficiencies at central level will be magnified at provincial level and could well result in poor land administration services being provided in preference to an improved service which is what is desired. Therefore it is strongly recommended that management, institutional and operational issues be addressed at central level before any serious decentralisation policies are implemented.

⁸ Cheema G. S. and Collins, K. Undated. [Feature Article: Building Substantive Capacity in Governance and Public Sector Management](#). UNDP.

6.4. Overlap and Duplication of Responsibilities

A number of units within different agencies would appear to have adopted very similar responsibilities and undertake similar activities. For example local government would appear to be undertaking similar roles in some areas to the Ministry of Lands and Natural Resources in areas such as dispute settlement, control of land activities through public awareness and to promote transparency in relation to land leases. However it is noticeable that there is a general lack of mention of enforcement. As a result of an overlap of responsibilities it would appear that local government is failing to address the land management issues that should be their responsibility, such as zoning plans, development controls and managing orderly development.

6.5. Physical Planning and Zoning Issues

Limited capacity, reduced staffing, outdated legislation and limited enforcement powers in both provincial government and the Physical Planning Unit has resulted in many developments being undertaken in Vanuatu, especially on Efate, which have no planning controls, are impacting on customary activities and impacting on the environment. It was noted during the National Land Summit that failure to address physical planning issues is one of the causes for the deterioration of sustainable land management in Vanuatu. There is an urgent need for a number of activities associated with physical planning to be addressed, and these include:

- Review of the zoning for Port Vila and Luganville, new zoning maps to be produced and provided legal support;
- All legislation associated with physical planning, including the Physical Planning Act and the Foreshore Development Act to be reviewed;
- More active participation of local government and the Physical Planning Unit in the approval process for leases and subdivisions;
- Clarification of roles and responsibilities for planning activities;
- Increased staff numbers and improved enforcement powers.

Capacity building for urban planning and management needs to take place at central government and municipality/provincial government.

- Roles and responsibilities of the Physical Planning Unit and municipalities/provincial government need to be reviewed and revised to avoid duplication and delegation of inappropriate responsibilities.
- Internal organisation of the Physical Planning Unit and municipalities/provinces and their internal relationships needs to be reviewed and revised.
- Staff of the Physical Planning Unit and municipalities/provinces involved in urban planning activities need to receive appropriate training.

ACTION MATRIX
based on Resolutions from the National Land Summit, 2006

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|-----------------------|--|---|---|
| Land Ownership | | | |
| 1 | <ul style="list-style-type: none"> • The Government to make laws that provide that all land in Vanuatu is owned by groups (tribes, clans, or families). • Not one person (individual) is owner of any traditionally owned (kastom) land. • Members of (kastom) traditional owning group (male and female) must be involved in the decision-making about their land. | <p>Policy</p> <p>Legislation</p> | <ul style="list-style-type: none"> • Clarify policy in consultation with National Council of Chiefs. • In accordance with Article 76 of the Constitution a National Land Law must be drafted. • As above. • As above. |
| 2 | <ul style="list-style-type: none"> • The Government must implement and review the existing laws that determine who are kastom owners of land (eg Customary Lands Tribunal Act and Chiefs' Laws). • The Government, Provincial Governments and Malvatumauri National Council of Chiefs must assist the people to document traditional (kastom) land policies (Kastomary Land Laws) in each villages, areas or islands in Vanuatu. | <p>Legislation</p> <p>Administration</p> | <ul style="list-style-type: none"> • The Customary Land Tribunal Act to be reviewed and amended where necessary. • (Possible support from NZAID) • Design and implement a land recording system. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|----------------------|--|---|--|
| | <ul style="list-style-type: none"> That would include traditional communities' kastom boundaries, traditional (kastom) land dealings and other rules of kastom. To carry out this task, the Government through the Ministry of Lands must set up Land Offices in all the provinces in Vanuatu. | <p>Administration</p> <p>Administration Legislation Administration Administration</p> <p>Administration</p> | <ul style="list-style-type: none"> Review previous and current pilot activities and considering introduction of a customary lands recording and land registration system. Resources and training required. Legislation developed. Community land boundaries to be adjudicated and officially recorded. Initial focus to be on restructuring and capacity building of the DoL in Port Vila. Many issues need to be addressed. Review of existing provincial operations, future needs and capacity to support provincial land offices. |
| 3 | <ul style="list-style-type: none"> The Government, Malvatumauri National Council of Chiefs and the Vanuatu Cultural Centre must assist the people (Chiefs, Schools, men and women) to be aware about: <ol style="list-style-type: none"> Traditional (kastom) economy. Existing Land Laws. Customary Laws | <p>Administration</p> <p>Administration</p> | <ul style="list-style-type: none"> Capacity building of the Council of Chiefs and Cultural Centre. Education and training required for chiefs at all levels. Develop public awareness campaigns for use by Council of Chiefs and Cultural Centre. |
| Fair Dealings | | | |
| 4 | <ul style="list-style-type: none"> The Government must implement and review the laws and terms and conditions in a lease agreement, for example, the term of a lease, rent review, development conditions, and other terms. | <p>Administration</p> <p>Administration</p> | <ul style="list-style-type: none"> Audit of compliance with the current Land Leases Act and lease agreements. Review of the Land Leases Act including leasing process, involvement of custom owners in lease negotiations, changes in the lease purpose. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|---------|--|---|---|
| 5 | <ul style="list-style-type: none"> • All lease agreements must: <ol style="list-style-type: none"> 1. Be in Bislama. 2. Involve every members of the land owning group (men, women and the youth). 3. The Department of Lands must explain clearly to the land owners the terms and conditions of leases and the rights they have under those agreements. 4. That includes the value of the land, land rent and premium, what the term of the lease is, when to review the rent, so that it is easy to enforce them. 5. There needs to be legal advice from the Public Solicitor's Office or another body to assist land owners who are interested in leasing any of their land. 6. In all lease agreements, the Chiefs and land owners must approve: <ul style="list-style-type: none"> • The Certificate of negotiation • The Lease agreement • Any changes to the conditions of the lease (use of land (class of lease), term of lease) | <p>Administration Administration</p> <p>Legislation Administration Administration</p> | <ul style="list-style-type: none"> • Review lease periods of existing and future leases. • Institutional arrangements and capacity of compliance system to be reviewed. • National Land Law to include a chapter relating to agreements on land (Repeal Land Reform Act). • There must be improved understanding of lease agreements by the lessors. Public awareness campaigns developed and implemented. • Institutional arrangements reviewed and capacity building undertaken. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|-----------------------------------|--|-------------------------------------|--|
| Certificate of Negotiation | | | |
| 6 | <ul style="list-style-type: none"> • In all Certificates of Negotiation, there must be approval from the village, area or island council of chiefs (always start with the village chiefs' council) before the Department of Lands or Ministry of Lands can accept the certificates. | | <ul style="list-style-type: none"> • Same as 5 above |
| 7 | <ul style="list-style-type: none"> • There must be notice for every application to negotiate to the chiefs of the area where the land is located. That notice must have the following information: <ol style="list-style-type: none"> 1. Detail of application. 2. Development plan, and 3. Location of that land. | | <ul style="list-style-type: none"> • Same as 5 above |
| 8 | <ul style="list-style-type: none"> • In every application to negotiate there must be: <ol style="list-style-type: none"> 1. A copy of the applicant's passport (if they are a foreign investor). 2. A copy of the Vanuatu Investment Promotion Authority (VIPA) Certificate. 3. Details as to location of the land, boundaries, land use and area of the land. 4. Details of development plan and any planning approval. | | <ul style="list-style-type: none"> • Same as 5 above. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|---|---|--|---|
| Power of the Minister over Disputed Land | | | |
| 9 | <ul style="list-style-type: none"> Remove the power of the Minister to approve leases over disputed land. If the land is disputed, the dispute must be resolved before the Minister can approve a lease in relation to that land. | <p>Legislation</p> <p>Legislation Administration</p> | <ul style="list-style-type: none"> Powers of the Minister to approve leases over disputed land to be removed. Dispute resolution process to be developed. Review past approvals issued by Ministers of Lands and revise leases as necessary. As above |
| Strata Title | | | |
| 10 | <ul style="list-style-type: none"> The law must be clear that strata title only applies to buildings but it is not for subdividing land. If there is strata title, land owners must have the right (be entitled) to approve the strata titles and gain benefit from them. | <p>Legislation</p> <p>Legislation</p> <p>Administration</p> <p>Policy</p> <p>Legislation</p> | <ul style="list-style-type: none"> All further dealings in relation to the Strata Titles Act be suspended until such time as the Act is amended. Act is being used for land subdivision which was not the intention. Amend Strata Titles Act and remove the opportunity to use the Act for subdivision development. DLSLR staff to receive training on the implementation and management of the Strata Titles Act. Agreement from lessor to be required prior to commencement of any approval process for a strata development. Rights of lessor to premium and annual lease to be included in strata title legislation. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|-----------------------------------|--|-------------------------------------|---|
| Agents/Middle Man or Woman | | | |
| 11 | <ul style="list-style-type: none"> The Government must regulate the activities of real estate agents and middle men or women (eg through a Code of Practice and Ethics). | Legislation Administration | <ul style="list-style-type: none"> Add to or amend the business licensing laws. Declare middle men/women as a reserved occupation under the Foreign Investment Act. |
| Lease Rental and Premium | | | |
| 12 | <ul style="list-style-type: none"> The Government must pass a law for new rates of land rent for different classes of land throughout Vanuatu. Land rent in rural areas must be based on a percentage of the value of the land. The Government will work out and endorse a new method for calculating land premium which it thinks is fair. | Administration Administration | <ul style="list-style-type: none"> Review present land rent/premium provisions and develop legislation on fair market rentals. Develop a procedure for the calculation of unimproved value and issued as a guide to all valuers under the “Code of Ethics” for valuers. |
| Sustainable Development | | | |
| 13 | <ul style="list-style-type: none"> Before a lease can be approved or a development can take place on land, there must be a social and environmental study to find out the good and the bad aspects of that development. | Legislation | <ul style="list-style-type: none"> National Land Law to include a chapter relating to agreements on land (see 5 above), which would cover need for environmental/social impact study and zoning. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|----------------------------|---|---|---|
| 14 | <ul style="list-style-type: none"> Before an area can be leased, there must be a proper land use or zoning for that area. | Legislation Administration Administration Policy Administration Administration | <ul style="list-style-type: none"> See 13 above. <p>Land Use</p> <ul style="list-style-type: none"> Land Use Plans to be developed with the priority being in Shefa and Sanma Provinces. Review of responsibilities for development and maintenance of land use plans to be undertaken. Land use policies to be developed. <p>Zoning</p> <ul style="list-style-type: none"> Physical Plans for Port Vila and Luganville to be reviewed and gazetted to provide legal support. Resources (human and equipment) and training required for municipalities and provinces. |
| Conditions of Lease | | | |
| 15 | <ul style="list-style-type: none"> In every lease there must be conditions: <ol style="list-style-type: none"> To protect cultural sites. To protect the environment (such as rivers, wild life, beach etc), and For access road into the leased land. | Policy and legislation Legislation Administration Legislation and administration. Legislation and administration. Legislation and administration | <ul style="list-style-type: none"> National Land Law to provide necessary protection. Legislation to protect cultural sites. Land use plans to identify cultural sites. Land use zoning to be developed and enforced. Minimum reserves to be established along all foreshores and rivers. Subdivision legislation or planning controls to be developed with requirements for provision of public access roads of a required standard and provision of services. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|----------------------|--|---|--|
| Public Access | | | |
| 16 | <ul style="list-style-type: none"> • There must be public access to the sea and for the custom owner to continue to use the area starting at the high water mark to the end of the reef. • There must be public access to rivers and lakes in a leased area to allow custom owners to continue to enjoy that area. | <p>Legislation</p> <p>Legislation</p> <p>Legislation</p> <p>Legislation</p> <p>Legislation and administration</p> <p>Legislation and administration</p> | <ul style="list-style-type: none"> • National Land Law to guarantee custom owner access to foreshore. • Subdivision legislation or planning controls required to control the development of subdivisions. • Leases over the sea bed to be prohibited as part of private development. Short term licensing to be established to control use over the sea bed. • Planning controls to be developed, enforced and managed by the municipal and provincial planning authorities. • Zoning plans and planning regulations to be developed. • Planning regulations developed to require minimum reserve widths along the coast and rivers (development not to be permitted within reserve areas) |
| Enforcement | | | |
| 17 | <p>The Government must:</p> <ol style="list-style-type: none"> 1. Enforce every physical planning, Environmental Protection and Public Access Laws; and 2. Support custom owners to enforce these conditions such as planning, environment and public access. | Administration | <ul style="list-style-type: none"> • Improved enforcement – compliance audit, enhanced powers, increased capacity |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|---------------|--|---|--|
| Zoning | | | |
| 18 | <ul style="list-style-type: none"> There is a need for the Government to strengthen the Physical Planning and Zoning laws; and The Government must consider giving more powers to the Land Management and Planning Committee (LMPC) through law. | <p>Legislation</p> <p>Administration</p> <p>Legislation</p> <p>Administration</p> | <ul style="list-style-type: none"> Review the Physical Planning Act to clarify legal effect of zoning etc. Appropriate structure developed to take on the necessary approvals role for land administration matters. National Land Law to spell out functions and powers of the decision making body. Review to be undertaken of the powers of the Minister of Lands. |
| 19 | <ul style="list-style-type: none"> There must be a National Subdivision Policy, Provincial Development Plan and Area Land Use policy. | <p>Policy and Legislation</p> <p>Policy and legislation</p> <p>Administration</p> <p>Administration</p> <p>Administration</p> <p>Administration</p> | <p>Subdivisions</p> <ul style="list-style-type: none"> Subdivision legislation to be developed to control all subdivisions. Subdivision legislation to require the construction of roads and provision of a minimal level of services. <p>Provincial Development Plans</p> <ul style="list-style-type: none"> Provincial development plans to be developed based on a priority needs basis. Responsibility for establishment and maintenance of plans to be established. Provide for effective enforcement of plans. Capacity building required to support the development and ongoing maintenance of development plans. |

| Res. No | Resolution | Administration/ Policy/ Legislation | Actions to be Undertaken |
|------------------|---|---|---|
| | | <p>Administration</p> <p>Administration</p> <p>Administration</p> <p>Administration</p> | <p>Land Use Plans</p> <ul style="list-style-type: none"> • Establish clear authority for land use planning. • Appropriate institutional structure to be developed to support land use planning. • Capacity building to enable effective land use planning. • Continuation of the activities previously undertaken under the Land Use Planning Office project. |
| Awareness | | | |
| 20 | <p>The Environment Unit must help the people (Chiefs, Schools, men and women) to raise their awareness about:</p> <ol style="list-style-type: none"> 1. Sustainable development; and 2. Environmental protection. | <p>Administration</p> <p>Administration</p> <p>Administration</p> <p>Administration</p> | <ul style="list-style-type: none"> • Development of ongoing public awareness in all areas of land matters is to be given priority. • Specific programs for sustainable development and environmental protection to be developed. • Preparation of land use plans to be prepared and areas of environmental and historical significance to be identified. • DLSLR enforcement capacity to be developed. • Capacity of Environment Unit needs to be increased. |

REFORMS OF LAND LEGISLATION

1. INTRODUCTION

The following is an outline of the legislative reforms which could be necessary to implement the National Land Summit resolutions, under the headings –

National Land Law
Reforms to existing legislation
New legislation
Transitional arrangements.

2. NATIONAL LAND LAW

The main contents of a National Land Law could be –

- a) A Part setting out the principles of land tenure in Vanuatu, and the law which applies generally to land, including –
 - i. clarification of the nature of custom ownership, and of the rights held at group and individual levels in custom land;
 - ii. clarification of what land custom applies to, and how the operation of custom is affected by legislation;
 - iii. the different categories of land – rural/urban and custom/public;
 - iv. public access to certain lands (foreshores, land extending to offshore reefs, lagoons, rivers, lakes, etc.)
 - v. Government's power to acquire land in the public interest (including for new urban areas);
 - vi. protection of public land from interference with the public interest.

- b) A Part covering land administration, including –
 - i. bodies exercising powers over land at –
 - the national level (eg, the Council of Ministers, the Minister of Lands, a possible National Land Management Committee);
 - the provincial level (eg, the Provincial Council, a possible Provincial Land Management Committee);
 - the local level (eg, a possible Local Land Management Committee);
 - ii. the membership, functions and powers of these bodies over land matters, and how their powers must be exercised;
 - iii. any special arrangements required for the administration of urban land (eg, an Urban Land Management Committee).

- c) A Part covering dealings in land, including –
- i. dealings in custom land –
 - what kinds of dealings in custom land are possible?
 - how are decisions made by the custom owners (to ensure that all persons with an interest in the land under custom are involved)?
 - what are the procedures for entering into those dealings (including for publicity, advice during negotiations and informed decision-making)?
 - what approvals are required (eg, by a Provincial or Local Land Management Committee)?
 - what is the legal effect of such dealings?
 - ii. Dealings in urban land –
 - what kinds of dealings in urban land are possible?
 - what are the procedures for entering into those dealings?
 - what approvals are required?
 - iii. Dealings in public land –
 - what kinds of dealings in public land are possible (eg, licences)?
 - provision for return of public land to custom ownership.
 - iv. The standard terms and conditions of leases, including –
 - maximum lease periods (for different categories of land) and arrangements for possible renewals;
 - mandatory conditions in leases (eg, regarding use, transfer, mortgage, etc.);
 - monitoring of compliance with lease conditions, and periodic reviews;
- d) A Part covering “Miscellaneous” matters, including –
- i. powers of Government officers (to enter and inspect land, etc.);
 - ii. protection of Government officers acting in the course of their duties;
 - iii. enforcement provisions (offences and penalties);

3. REFORMS TO EXISTING LEGISLATION

The main reforms required to implement the National Land Summit resolutions would be –

- e) Land Reform Act. This Act would be repealed. It was originally intended only as an “interim” provision, and much of it was reproduced in the Alienated Land Act two years later. The Act is being used extensively for the negotiation of leases over land which has *never* been “alienated”, which was *not* the intention of the original Land Reform Regulation. Negotiation of such leases in future would be covered by the new National Land Law. (The present power for the Minister to enter into leases on the custom owners’ behalf would not be retained.) Other provisions in the Act which are still relevant (eg, provisions dealing with public lands) could be incorporated into the National Land Law. Care must be taken to ensure that the legal effect of anything done by or under the Act is not removed by its repeal (see D. Transitional arrangements, below).
- f) Alienated Land Act. This Act has probably achieved its purpose and there are probably no more “alienated lands” which can be brought under its provisions. If so, then consideration should be given to its repeal. (The same considerations apply to preserving the operation of its provisions which are still relevant.)
- g) Land Leases Act. This Act is basically alright, although it could be adapted in places to reflect Vanuatu’s circumstances (eg, the fact that “lessors” are custom owners). The Act has been the basis of land titles and dealings for over two decades, and it is important, therefore, to avoid undermining those arrangements. Some adaptation of the Act will be necessary, however, to take account of the new National Land Law (eg, provisions for mandatory controls on dealings in leases, maximum lease terms and renewal of leases).
- h) Land Acquisition Act. This Act has apparently never been used. Governments are usually given a power of compulsory acquisition of land for public purposes and payment of compensation, but in the Pacific Islands this power is almost never used. Perhaps the opportunity could be taken of reviewing this Act, and seeing whether a more suitable system of dedicating land for public purposes can be identified – at least for custom land.
- i) Urban Lands Act. This Act has been repealed, but the repeal Act has not yet been brought into operation. It is probably preferable to handle the requirements for new urban areas in the National Land Law.
- j) Freehold Titles Act. The constitutionality of this Act has been questioned, but it also raises important “public policy” questions. Whether Vanuatu wants to introduce freeholds in land is a matter which should be

considered by the Council of Ministers and the Malvatumauri, in developing the National Land Law, and covered there.

- k) Strata Titles Act. An urgent amendment to this Act is required, to confirm that it applies *only* to buildings and not to bare land. Consideration should be given to whether there is any need for the Act to apply *outside* urban areas, and, if so, in what circumstances.
- l) Customary Land Tribunal Act. The implementation of this Act is facing a number of problems – some relating to basic matters like the authority and identification of chiefs, and others relating to capacity-building. The Act has been drafted in an extraordinarily complicated style, and would benefit from a major revision and simplification.
- m) Physical Planning Act. The main legislative requirement here is for the land use plans to be given mandatory effect. Appeals to the Minister should be replaced by appeal to, or review by, an administrative body – eg, an Urban Land Management Committee. The enforcement provisions of the Act (including the level of fines and other penalties) need to be greatly strengthened.
- n) Foreshore Development Act. The main problem with this Act is chronic failure to observe – or enforce – its requirements. Enforcement needs to be greatly strengthened. There should be *no* leases granted over the foreshore area. (The National Land Law would confirm the rights of public access to foreshore areas, and protect a foreshore zone.) Any necessary private access rights to the foreshore and adjacent underwater area (eg, for jetties or lines to unload fuel) should be by *licence*, not by lease.
- o) Environmental Management and Conservation Act. The main problem with this Act is, again, lack of sufficient administrative resources for its implementation. There is an urgent need to establish the special Department for the environment, as called for by the Act, and to provide it with sufficient staff and funds to carry out its responsibilities. There is no statutory provision of a right of entry for officers carrying out their duties under the Act – a glaring omission, which allowed massive damages to be awarded in 2006, against the Government and an officer of the Environment Unit. The necessary power should be provided, and consideration given to legislating to set aside the court judgment.

4. NEW LEGISLATION

The main new legislation which could be considered in implementing the National Land Summit is a new Custom Land Registration Act. The main contents could be -

- p) A Part covering administration of the Act, including –
 - i. the Registrar of Custom Land – appointment, functions and powers;
 - ii. the Custom Land Register – its establishment and maintenance.
- q) A Part providing for systematic registration of custom land ownership, including –
 - i. Custom Land Registration Areas
 - ii. the registration process;
 - iii. the effects of registration.
- r) A Part providing for registration of interests in custom land, including
 - i. interests in registered custom land;
 - ii. interests in unregistered custom land;
 - iii. the effects of registration.

5. TRANSITIONAL ARRANGEMENTS

When the above legislative reforms have been introduced, the question remains of how to handle *existing* land tenure and land use arrangements which are *contrary* to the new requirements. This is normally done by providing transitional arrangements in the new legislation. The basic options are –

- a) to leave the existing titles as they are, without making any change; or
- b) to adjust the existing titles, either –
 - i. with compensation; or
 - ii. without compensation.

For example, if the new National Land Law provides that the maximum lease period for rural lands is a 30-year renewable lease, the options for existing leases which *exceed* that period are to leave them as they are (ie, just accept that they have already gone through), or reduce them to a remaining term of 30 years – and either pay compensation or don't pay compensation.

There are many such situations, where leases have been issued contrary to the resolutions of the National Land Summit. Remedial actions will include –

- reviewing the present lease terms for rent assessments and reviews;
- removing the power to do strata title developments over undeveloped land;
- confirming public access to all foreshores and reefs;
- prohibiting the leasing of sea beds;
- introducing minimum reserves along foreshores and rivers; and
- reviewing all the leases issued by the Minister of Lands, acting on behalf of custom owners.

In each of these cases, decisions have to be made whether to *impose* the reforms on *existing* title-holders and, if so, whether to provide payment of compensation for loss of any interests or benefits. The Constitution provides a –

“protection for the privacy of the home and other property and from unjust deprivation of property” (Art. 5(1)(j)),

and other ordinary laws provide certain guarantees. The Land Leases Act itself protects the property rights of a registered title-holder (Sec. 15), and the Foreign Investment Promotion Act gives guarantees that –

“there will be no compulsory acquisition of the property of the investor in Vanuatu except in accordance with due process of law and upon payment of just compensation” (Sec. 11(1)).

But these guarantees are not absolute. The constitutional protection is “subject to any restrictions imposed by law on non-citizens”, and the investors’ guarantee can be qualified by a normal law. There are, however, risks attached to acquiring property rights by compulsory process, or not paying full compensation. There would have to be good reasons for doing so, but implementing the resolutions of the National Land Summit is a strong reason. Political decisions have to be made which weigh up the *national interest*, and the *social* and *cultural advantages*, of implementing the resolutions of the National Land Summit, with the *political* and *economic disadvantages* of imposing the reforms on existing title-holders.

PROJECT DESIGN CONCEPT AND SHORT TERM SUPPORT INITIATIVES

APPROACH TO COORDINATION

1. INTRODUCTION

The scope of services for the technical assistance assignment asked that, in broad terms, “the analytical, advisory and grant support for coordinated donor assistance to the land sector” be identified, “with a view to later consultations with the Government and possible follow-up missions to work with the Government on project design for agreed land reform activities”.

It was also a requirement of the assignment to identify reforms that were capable of immediate implementation under the current system. In identifying these reforms, the TA have worked from a concept of a possible larger land reform project so as to ensure that the short term reform initiatives identified will readily link into the longer term initiatives and support a sustainable land administration system for Vanuatu.

It is the belief of the technical assistance team that it may be possible for the Steering Committee to submit proposals for assistance to potential donor agencies to enable a number of the short term reforms to be undertaken within a reasonably short time frame. This is important so that momentum gained from the National Land Summit can be maintained and provide a solid foundation for the major reform initiatives that are proposed to be undertaken at a later stage.

2. CONCEPT FOR PROPOSED LAND REFORM PROJECT

In relation to land management and land administration development in Vanuatu there are numerous longer term initiatives that need to be addressed, and in nearly all cases, the initiatives are inter-related. For this reason it would be in the best interests of the overall development of land reform if these initiatives are addressed as part of a total land reform package of assistance.

A concept for a proposed land reform project is based around a strong platform of capacity building and development of a sustainable land administration system. The project focuses on providing a high level of support for building on the 20 resolutions adopted at the National Land Summit where issues such as fair dealings, sustainable development, enforcement and awareness were clearly identified. The proposed design places specific emphasis on policy and legislation, institutional development, land management and land administration.

A proposed project structure for a Vanuatu Land Management and Administration Project is shown in Figure 1.

VANUATU LAND USE MANAGEMENT AND ADMINISTRATION SYSTEM Proposed Project Components

| Component 1 Policy and Legislation | Component 2 Institutional Development | Component 3 Land Management | Component 4 Land Administration |
|---|--|--|--|
| <ul style="list-style-type: none"> • Development of a land policy statement • Review land admin legislation • Draft legislative amendments • Revenue generation policy review • Land policy studies • Review of fees and charges • Public awareness • Review of needs for custom land | <ul style="list-style-type: none"> • Review institutional arrangements - DOLSR, local government, physical planning • Develop new org. structures • Training and capacity building • Educational support | <ul style="list-style-type: none"> • Develop zone maps and regulate • Development applications • Environmental management • Planning approvals • Local government support • Management of squatters developments • Land use planning • Land Tax review | <ul style="list-style-type: none"> • Review land registration procedures • Develop new land registration proc. • Community mapping • Customary Land Unit • Valuation • IT development • Computerisation of the land registry • Strengthening rights in custom land |

Figure 1: Proposed Vanuatu Land Management and Administration Project

The following is a brief analysis of each of the proposed project components.

2.1. Land Policy and Legislation:

A lack of clear policy direction in a number of areas since independence can account for a number of legislative and administrative weaknesses. The government must be able to enunciate clear land policy. One of the project activities would be to look at developing a land policy statement or even progressing to the development of a full land policy for Vanuatu, which would provide long term guidance for land management and land administration for Vanuatu.

Article 76 of the Constitution provided for the drafting of a National Land Law after consultation with the National Council of Chiefs, but this has never been undertaken. The drafting of this law must be given a high priority to enable many areas of uncertainty that currently exist in relation to land activities to be clarified.

Some initial reforms can be undertaken to support a major review of land related legislation, however a significant input will be required to review all relevant land legislation and to draft amendments or new legislation. It is proposed that the Land Leases Act, Strata Titles Act and Physical Planning Act amongst other be reviewed. It may also be necessary to draft subdivision legislation. Proposed reforms to land legislation are covered in detail in Attachment 9 to the main report.

This component would also support any necessary policy studies that need to be undertaken, including a review of all fees and charges associated with land management and administration. Public awareness activities which were recognised during the National Land Summit as lacking would also be supported under this component, bearing in mind that public awareness issues cross over all 4 project components. The problems associated with poor public education and awareness were also made very clear to the TA team during a number of field visits. The outcomes of the National Land Summit need to be better communicated to the general public as do other land related issues such as land rights, rights in relation to lease negotiations, land use and environmental issues related to land.

2.2. Institutional Development:

The weakness of the institutional structure of a number of land related agencies and specifically the DOLSR makes implementation of new land administration initiatives, enforcement and sustainability of those initiatives very difficult. This is exacerbated by the low level of staffing in a number of units responsible for land management and land administration functions. Improvements to land use management and land administration activities must be supported by developing and strengthening institutional capacity through appropriate training and technical support. Institution development is covered in detail in Attachment 8 of the main report.

2.3. Land Use Management

Physical planning activities are extremely weak and are a major reason for inappropriate development being undertaken in many parts of Vanuatu. Support is required for the development of Land Use Plans for the whole country and Zoning plans for selected areas where development is taking place. Once plans have been developed they must be implemented, legally and administratively. The responsibilities for land use planning, zoning and control of development need to be clarified and support provided for building capacity within the appropriate agencies including local government. Although not identified in the 20 resolutions one area that requires specific attention as part of a large reform program is the need to address the management of squatter settlements.

As with physical planning, there is a need for improved enforcement of environmental protection laws. In particular, the capacity of the Environmental Unit needs to be increased. Access by custom owners to foreshore, rivers and lakes should be guaranteed and these areas need to be appropriately managed. Management and enforcement of Environmental Impact Assessments needs to be supported through appropriate legislation, staffing and training.

2.4. Land Administration

There must be a major review of the whole land registration process including procedures in the Land Registry. There are significant delays in the process of registering documents and the time taken for many of the approvals is far in excess of what is considered reasonable. There is little to be gained in improving other land management and administration activities if the registration system remains inefficient and results in the system not being used as at present in a number of cases.

In valuation there are key initiatives that need to be undertaken. These include development of valuation procedures for valuing rural land, procedures for the calculation of unimproved value and the drafting of legislation to support the introduction of fair market rentals.

Planning and enforcement activities in the DOLSR are weak as they are in other departments and local government. Limited staffing means that enforcement is assigned a low priority and the work load is exacerbated by local and municipal governments seeing the DOLSR as being responsible for the enforcement of land use controls.

Land use activities supported under a previous Land Use Planning Office project have diminished to a stage where there are few activities undertake to support land use planning. The lack of support for land use planning must be addressed.

Customary land issues are a major source of conflict and also the area of much attention during the National Land Summit. However, there is only one person in the Customary Lands Unit to support customary land activities, including the customary land tribunals that have been established to provide a mechanism through which land disputes can be addressed. An analysis of the Customary Land Tribunal Act and its operations are provided in section 5.4.1 of the main report. Significant work needs to be undertaken to support this important activity and indications are that NZAID will be providing support to the Customary Lands Unit. The actual level of support had not been determined at the time of preparing this report.

3. SHORT TERM REFORMS/INITIATIVES

A number of short term initiatives have been identified which can be readily implemented with an aim of supporting the implementation of the longer term project reform initiatives. A summary of each of the proposed short term initiatives is provided below. Detailed “Scoping Notes” are provided for a number of short term initiatives in Attachment 11. These “Scoping Notes” will enable the Steering Committee to present proposals to potential donor agencies to seek support for the short term initiatives.

3.1. Public awareness:

It was made very clear to the Technical Assistance Team that a major issue facing the ongoing development of the 20 resolutions and the implementation of key policy changes in the land sector is a lack of awareness by the majority of village people in relation to land matters. All the people were aware of the National Land Summit, however very few outside of Port Vila were aware of the actual resolutions and the Interim Transitional Strategy. It was also clear that very few village people had a clear understanding of the legislation and procedures associated with the leasing of customary land. This even applied to those who have leased customary land.

There is an urgent need to:

- Develop appropriate awareness raising tools that can be made available to all village people;

- Ensure that village people are aware of their land rights and understand the land leasing procedures;
- Improve the general communication of land matters to as many Ni-Vanuatu as possible;
- Support the Malvatumauri National Council of Chiefs and Vanuatu Cultural Centre in increasing public awareness on land matters.

Any short term support provided for public awareness activities will be beneficial in supporting all component activities proposed for the long term reform initiatives.

*It is **recommended** that the Steering Committee seek technical assistance support to develop appropriate communication tools and assist in developing public awareness in relation to land matters. This support would initially address public awareness in relation to land administration such as leases and land use rights and could be broadened to include land management and environmental issues.*

3.2. Support for Malvatumauri National Council of Chiefs

AusAID, through a project being managed by the Australian Centre for Peace and Conflict Studies, is supporting the development of the Malvatumauri National Council of Chiefs. The focus of this partnership is “the provision of support for the Malvatumauri VNCC to achieve its objectives in relation to the promotion and preservation of kastom governance, and for building capacity related to interaction with introduced systems and management of change at national and community levels. The activity is intended to assist community leaders involved in or connected with kastom governance systems and structures to be able to engage with and manage contemporary development and change processes more confidently. This means providing them with opportunities to consider governance issues relevant to their roles in dynamic and diverse contexts.”¹

The Constitution gives the Malvatumauri a vital consultative part to play in preparation of a National Land Law (Art. 76). Many of the resolutions from the National Land Summit highlight the importance of the Malvatumauri, including –

- i) to promote public awareness of the kastam economy, land laws and kastam;
- ii) to assist in documenting kastam land policies, kastam boundaries and kastam dealings in land.

The Malvatumauri has introduced a process for identifying chiefs at island, area and village levels. These chiefs play an essential role in decision-making over land and the resolution of land disputes. Given the critical part which the Malvatumauri and chiefs will play in developing and implementing the nation’s land policies and laws, additional support should be provided to the process for identifying chiefs. This will enable a national register of chiefs to be created.

*It is **recommended** that additional financial support be provided to the Malvatumauri under the general direction of the Steering Committee, and the particular direction of*

¹ AusAID document titled “Goal, purpose and outputs”.

the Secretary of the Malvatumauri for staff and travel to assist with the process of identifying chiefs at island, area and village levels.

3.3. Compliance Audit of the Land Leases Act:

The current Land Leases Act and its overall management are failing to protect the interests of Ni-Vanuatu. It appears that there may be a high level of non-compliance with the legislation and lease conditions and it is proposed that a compliance audit be undertaken to assess the level of non-compliance. Prior to any review of the Act it is also necessary to gain an understanding of the shortcomings of the current legislation.

Among reported abuses of the leasing system are –

- unapproved changes of lease purpose (eg, from agricultural to rural residential);
- failure to comply with development conditions;
- unapproved transfers of leases (including by share transfers) and disposals of interests;
- attempts to extend the terms of leases beyond the mandatory 75-year limit;
- infringements of rights of way.

In some cases, non-compliance may be readily apparent, either from the records held at the Registry or from information which is readily available. In many cases, however, a physical inspection of the leased land and interviews might be necessary.

Any short term support provided for a compliance audit of the Land Leases Act will be beneficial in supporting component 1 and component 4 activities proposed for the long term reform initiatives.

*It is **recommended** that the Steering Committee seek technical assistance support to undertake an audit of compliance with the Land Leases Act.*

3.4. Review of Strata Titles Act:

It would appear that the Strata Title Act is being used in a manner that was never intended for strata title legislation in the subdivision of broad acre land. It is important that all applications under this legislation be placed on hold until such time as amendments to the legislation can be drafted and approved by parliament to prevent the unintended use of the legislation. Amendments need to address the use of the legislation for the subdivision of broad acre land and the inclusion of the lessors in future negotiations. Any short term support provided for a review of the Strata Titles Act and the drafting of amendments will be beneficial in supporting component 1 and component 4 activities proposed for the long term reform initiatives.

*It is **recommended** that the Steering Committee seek technical assistance to review the current legislation and to draft amendments.*

3.5. Identification of Community Boundaries:

Some initial activity has been undertaken by the DOLSR to develop procedures for the identification of community boundaries. The identification of such boundaries is a key framework for dispute resolution and for the overall management of customary rights. Support for this work needs to continue and appropriate procedures developed to enable it to be undertaken throughout the country. Any short term activities in further developing procedures for the identification of community boundaries will be beneficial in supporting component 4 activities proposed for the long term reform initiatives.

*It is **recommended** that the government continue to support the identification of community boundaries with the aim of developing standard operating procedures that will enable the activity to be undertaken in various areas of the country.*

3.6. Administrative Reforms:

A number of lease agreements are being entered into without the approval of relevant parties and in some cases leases are being negotiated with people who are not the legitimate customary owners of the land. To assist in overcoming a lack of awareness and transparency, priority should be placed on regulating for the public notification of all proposed lease agreements. It is recommended that all proposed lease agreements be put on public display for 30 days and that an official process be developed that enables people to lodge an objection in relation to any proposed lease. Any short term activities in supporting public notification of leases will be beneficial in supporting component 4 activities proposed for the long term reform initiatives.

There are also a number of other short term administrative reforms that were proposed as part of the 20 resolutions that could be supported by the Steering Committee and implemented within a short time period. These include documentation to also be in Bislama and provision of specific documentary evidence to be included with applications. There are a number of administrative issues that can be addressed directly through the Steering Committee that do not require external funding. Any short term activities in supporting administrative reform will be beneficial in supporting component 4 activities proposed for the long term reform initiatives.

*It is **recommended** that the Steering Committee take immediate action in implementing some administrative changes that will show a commitment by the Government in addressing the Summit resolutions. It is also recommended that the government place a high priority on developing a transparent public notification procedure as part of the lease negotiation process.*

3.7. Protection of Foreshore Reserves

The Land Summit identified a number of problems associated with restricted access to foreshore areas and adjacent reefs. In some cases, leases have been granted

which extend below the mean high water mark (HWM), and even beyond to the adjacent reef, and land reclamation and other construction works are being carried out below the mean HWM.

The Foreshore Development Act, administered by the Minister of Internal Affairs, requires that consent be granted before any development is undertaken on foreshores, but this requirement is routinely ignored. The Environmental Management and Conservation Act makes any development activities which “affect coastal dynamics” subject to Environmental Impact Assessment (EIA) provisions, but again the evidence is that these requirements are ignored.

There may be a need to draft specific legislation for protection of the foreshore area, and of public access to it. Care must be taken not to acquire the property rights of custom owners.

*It is **recommended** that the Steering Committee seek support in the drafting of necessary legislation to protect foreshore reserves; guarantee public access to the foreshore and custom owner access to marine resources; make suitable transitional arrangements, to adjust existing developments to the new foreshore protection requirements; and make consequential amendments to related legislation.*

3.8. Zoning Map for Luganville:

Zoning plans have been prepared for Port Vila Municipality and Luganville some years ago but the plans have no legal basis and have never been gazetted. The lack of certainty in the zoning of Port Vila and Luganville is creating problems for the ongoing orderly development of the two urban areas.

Any short term activities in supporting the development of zoning plans will be beneficial in supporting component 3 activities proposed for the long term reform initiatives.

*It is **recommended** that the Steering Committee seek technical assistance to develop a zoning map for Luganville Municipality. The procedure developed should be documented and made available for all provincial governments*

3.9. Subdivision Controls

Increased demand for residential land in Vanuatu, especially on Efate and Santo, has resulted in a significant increase in subdivision development to cater for the demand. The lack of development controls in the Physical Planning Unit of the Ministry of Internal Affairs, the Provincial Governments and the Department of Lands means that in many of the subdivision developments that are being undertaken only limited facilities are being provided. There is also minimal regard being given to cultural and environmental protection.

It is important that in all developments:

- (a) services are provided including water, electricity and telephones;

- (b) roads are constructed to an acceptable standard and adequate drainage is provided;
- (c) there is appropriate access to rivers, seafront areas and beaches for public use; and
- (d) recreational reserves and other public services are provided.

Development should not be approved where:

- (a) development and or subdivision may result in land or environmental degradation;
- (b) there is impact on heritage sites;
- (c) development does not conform to the designated land use;
- (d) there may be an impact on native wildlife; and
- (e) there would be social impacts on customary groups.

Failure to address the control of development will result in significant future expense to the Government in having to provide funding for the provision of services – services which should be funded as part of the initial development.

*It is **recommended** that the Steering Committee seek support in implementing appropriate controls over all future subdivision development.*

4. SHORT TERM AND LONG TERM REFORM PROJECT LINKAGES AND TIME FRAMES

4.1. Linkages

The Steering Committee has the responsibility of providing oversight and a monitoring role to progress the 20 resolutions. The committee requires administration support and a person to coordinate activities on a daily basis. It is recommended that the Government appoint immediately, under the Steering Committee Chair, a person to undertake the secretarial duties necessary to support the activities of the Steering Committee. This person must have a good understanding of land issues in Vanuatu and be capable of discussing issues with Steering Committee members, government officials and donor agencies.

As has been highlighted previously, the key to the success of the implementation of any short term initiatives is the ability to be able to link into, support and influence the longer term reform project initiatives. It is also important that any short term initiatives are directly related to the resolutions from the National Land Summit so as to ensure a continuation of support and ongoing progression of the resolutions.

Figure 2 shows the linkages between the proposed short term support initiatives and the longer term proposed land reform project.

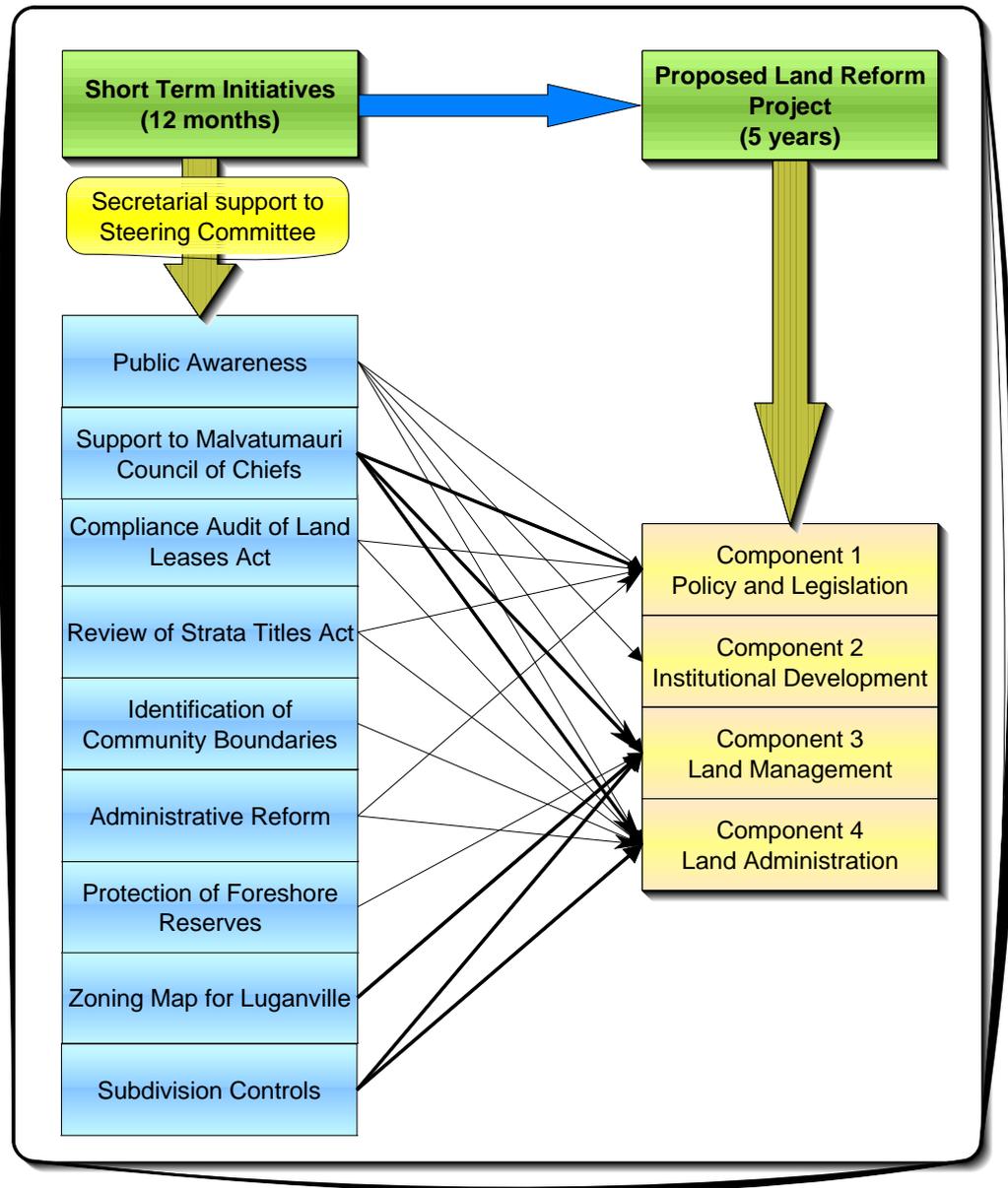


Figure 2 – Short Term Initiatives and Land Reform Project Linkages

4.2. Time Frame

There are a number of assumptions that need to be made in relation to developing a time frame for the development and implementation of a land reform project such as the proposed Vanuatu Land Management and Land Administration Project. A project design will need to be undertaken, the project assessed, accepted by a donor and budget allocated. This all requires time and a serious commitment by the Government of Vanuatu and the donor agency to proceed with the project.

A suggested time frame for each of the short term support activities as well as a possible design and approval phase for the main land reform project is shown in Figure 3.

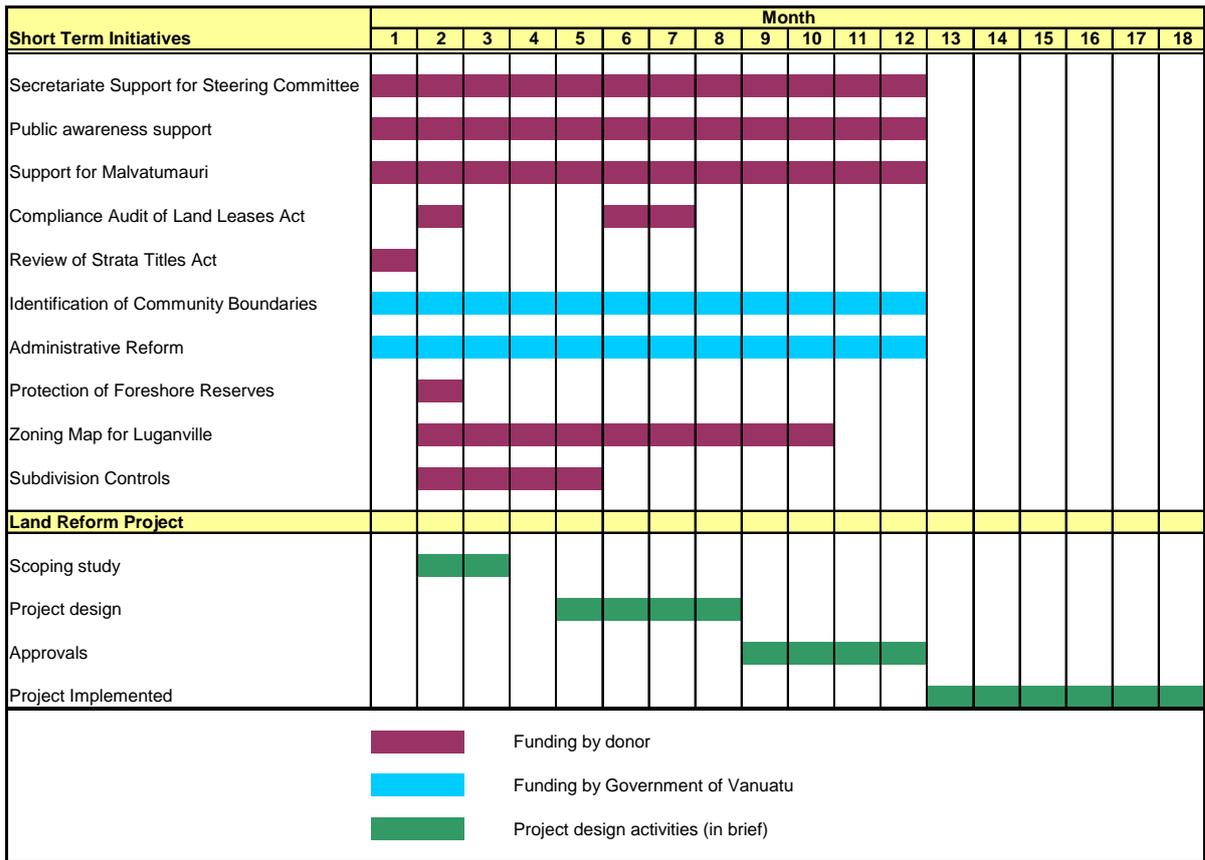


Figure 3: Suggested Time Frame for Implementation

Scoping Notes for Short to Medium Term Development Initiatives

1. INTRODUCTION

The following “Scoping Notes” have been prepared based on a rapid analysis of the current status of the land management and land administration sectors directly associated with or impacted by the 20 resolutions from the National Land Summit and a limited number of discussions with key stakeholders.

The Scoping Notes are aimed at providing a focus for potential short term development support which will ensure that the momentum gained as a result of the provincial land summits and the National Land Summit is not lost. The general population of Vanuatu is expecting that the Government will act quickly in addressing the 20 resolutions and that all appropriate actions are taken. However it will be difficult if not impossible for the Government to undertake many of the complex reform measures necessary without appropriate external technical and financial support.

Each of the Scoping Notes provides details on selected short term initiatives which will enable progress to be made in a number of key areas and which will feed into and support the development of key mainstream activities associated with a land reform project.

2. SCOPING NOTE #1: PUBLIC AWARENESS

Purpose:

To increase public awareness in land matters for all ni-Vanuatu;

- to ensure they are more aware of their rights to land;
- have an understanding of the lease process; and
- are in a better position to preserve their customary rights.

Awareness could be extended to include land use issues, environmental protection and sustainable development in relation to land.

Problems to be addressed:

A clear message in relation to land from the National Land Summit was the general lack of understanding of people’s rights in relation to land, the poor understanding of lease agreements and the lack of consultation within the community in relation to land matters. During field visits this was reinforced with a number of people indicating that even though they have entered into lease arrangements they have little knowledge or understanding of the agreements they have entered into.

Public awareness needs to be improved in many areas relating to land including:

- customary rights to land;

- awareness of rights and responsibilities within the legislative system;
- negotiating lease agreements;
- ongoing management of lease agreements;
- gender awareness;
- appropriate land use management; and
- preservation of access to customary lands.

Public awareness campaigns need to be professionally developed so as to ensure they reach the maximum possible audience and the messages must be simple and able to be clearly understood. There are a number of mediums that can be used but in the Vanuatu situation not one medium is capable of easily reaching all of the population. Radio provides an opportunity for wide coverage and is already being used by the Ministry of Lands with a regular radio segment on land issues; however the radio does not cover the whole nation. Television is a good medium for gaining attention and presenting clear messages; however in Vanuatu it has limited coverage. The printed and verbal media provide the best opportunity for ensuring widespread coverage.

The vastness and geographic spread of the islands of Vanuatu, the different customs and communication difficulties will require some innovative and cooperative approaches to improving public awareness. The opportunity exists to utilise some of the existing institutional frameworks through the Malvatumauri, Vanuatu Cultural Centre and also the Vanuatu Association of Non Government Organisations (VANGO) for the dissemination of public awareness messages. Support would be required to assist with the development of these networks, although there are indications that VANGO has experience in developing public awareness campaigns through its various member NGOs. The Wan Smolbag through their youth network would enable messages to be conveyed through theatre play acting.

Activities:

A strategy for Information, Education and Communication (IEC) needs to be developed. This strategy would need to entail more than the one-off production of posters and radio or TV campaigns. The IEC activities will seek to improve the communities' understanding of their land rights and entitlements using different media and experiences. A public awareness strategy would need to look at the most appropriate way of using the existing resources within Vanuatu such as the Malvatumauri, Vanuatu Cultural Centre, VANGO, and Wan Smolbag.

To ensure that the best approaches are explored and innovative ideas considered as part of the development of public awareness campaigns it is suggested that an international consultant be engaged to provide initial development, direction and support.

Expected outcomes:

The expected outcomes will be:

- an increased awareness of land issues in Vanuatu by the general public;

- an improved understanding of the rights and issues associated with the negotiating and signing of lease agreements; and
- improved understanding of land management issues such as land use and the importance of land to the environment.

Institutional arrangements:

At the present time there is no public relations unit in the Ministry of Lands and Natural Resources or the DOLSR and if emphasis is to be placed on improving public awareness there is a need for staff to be manage and support these activities. The Director General of Lands will need to initially assign one person to a public awareness position who has appropriate IEC skills.

Geographical scope:

Initial development and testing of IEC material would be undertaken on Efate. Following acceptance it will then be possible over time to roll out the community awareness activities throughout the whole country.

Timeframe and Duration:

Support for public awareness needs to commence as soon as possible as there is clearly a need to increase people's knowledge of land issues.

It is proposed that the activity be spread over a period of 6 months within an initial period of 4 months followed by a later period of 2 months.

Immediate action required:

Appointment of an international consultant with demonstrated IEC experience and appointment of a community awareness person to work under the Director General of Lands.

3. SCOPING NOTE #2: SUPPORT FOR MALVATUMAURI COUNCIL OF CHIEFS

Purpose:

To provide additional support to the existing process for identifying chiefs.

Problems to be addressed:

The Constitution gives the Malvatumauri a vital consultative part to play in preparation of a National Land Law (Art. 76). Many of the resolutions from the National Land Summit highlight the importance of the Malvatumauri, including –

- i) to promote public awareness of the kastom economy, land laws and kastom;
- ii) to assist in documenting kastom land policies, kastom boundaries and kastom dealings in land.

The Malvatumauri has introduced a process for identifying chiefs at island, area and village levels. These chiefs play an essential role in decision-making over land and the resolution of land disputes.

Assistance is already being provided to the Malvatumauri, with a view to strengthening the contribution of kastom leadership to the processes of change and development. Given the critical part which the Malvatumauri and chiefs will play in developing and implementing the nation's land policies and laws, additional support should be provided to the process for identifying chiefs.

Activities:

Funding to be provided to the Malvatumauri Office to cover the costs of –

- (a) additional staff (2 positions);
- (b) photocopying and office supplies; and
- (c) essential travel,

to assist with the process of identifying chiefs at island, area and village levels.

Expected outcomes:

Identification of chiefs at island, area and village levels and creation of a national register.

Institutional arrangements:

Financial support to be provided under the general direction of the Steering Committee, and the particular direction of the Secretary of the Malvatumauri.

Geographical scope:

It is proposed that the process commence in the northern islands where the chiefs are more clearly defined. This will enable procedures and questionnaires to be refined before moving throughout the whole country.

Timeframe and Duration:

To begin as soon as possible, and continue for 12 months in the first instance.

Persons to be consulted:

- Selwyn Garu, Secretary General of Malvatumauri
- Ralph Regenvanu, member of Kastom Governance Reference Group.

4. SCOPING NOTE #3: COMPLIANCE AUDIT OF THE LAND LEASES ACT

Purpose:

1. To establish the degree of non-compliance with the requirements of –
 - (a) the Land Leases Act, and
 - (b) the terms and conditions of leases registered under the Act.
2. To advise on actions which can be taken to remedy breaches of the Act and lease terms and conditions.

Problems to be addressed:

Since 1980, 7,070 leases have been registered under the Land Leases Act, of which 5,392 are leases of public land in urban areas and 1,678 are leases of rural land from its custom owners. The requirements for all leases are set out in the Act, in particular –

- i) leases must be in the prescribed form (Sec. 35);
- ii) every leases must specify the purpose and use for which the land is leased and any development conditions (Sec. 38);
- iii) a lease term (including any extension) shall not exceed 75 years (Sec. 32);
- iv) leases are subject to *implied agreements* (including a requirement for the lessor's consent to any disposal of the leased land or any interest in it, or any change of the lease purpose) (Sec. 40A, 41) and to *overriding interests* (rights of way existing at the time of the lease's registration) (Sec. 17);

- v) leases are subject to regular rent reviews (Sec. 39);
- vi) upon transfer of a lease of rural land, the lessee must pay the custom owner not less than 18% of the sale price (Sec. 48A, introduced in 2004).

(It should be noted that a high proportion of rural leases, probably more than 20%, have been granted by the Minister of Lands, exercising power under Sec. 8 of the Land Reform Act.)

The Land Leases Act provides the usual remedies for breach of lease conditions – the lessor has a right of forfeiture, after serving a notice on the lessee (Sec. 46). It is not known what action, if any, is taken to pursue these remedies.

Resolutions adopted by the National Land Summit show a widespread perception that the requirements of the Land Leases Act and terms and conditions of leases are not being observed. Custom owners in particular seem insufficiently aware of the requirements of leases they have entered into, and how they can be enforced. There is only one officer in Department of Lands responsible for compliance. In these circumstances, the risk of chronic non-compliance is considerable. Not only may custom owners be losing their entitlements under the leases, but there is a serious threat to the integrity of the leasing system, and public confidence in it.

Among reported abuses of the leasing system are –

- unapproved changes of lease purpose (eg, from agricultural to rural residential);
- failure to comply with development conditions;
- unapproved transfers of leases (including by share transfers) and disposals of interests;
- attempts to extend the terms of leases beyond the mandatory 75-year limit;
- infringements of rights of way.

In some cases, non-compliance may be readily apparent, either from the records held at the Registry or from information which is readily available. In many cases, however, a physical inspection of the leased land and interviews might be necessary.

Activities:

1. Work under the general direction of the Steering Committee which is overseeing implementation of the National Land Summit resolutions, and more particularly under the direction of the Director General of the Ministry of Lands and Natural Resources.
2. Lead a small team of Department of Lands officers in an audit of all registered leases, to identify all cases of probable non-compliance with the lessee's requirements under the Land Leases Act and the lease terms and conditions. It may not be possible to audit all leases and if this is the case then random sampling will be necessary.

3. Develop a methodology, which can quickly and effectively appraise the overall nature and extent of the non-compliance problem, and then apply a process for identifying all cases of probable non-compliance, including by use of questionnaires and follow-up inspections where such is indicated.
4. Identify the appropriate remedial action which is available for such breaches, and how that action might best be taken. Indicate what different approaches might be required for leases of public land, and for leases of rural land which were granted by the Minister under Sec. 8 of the Land Reform Act.
5. Prepare a report which summarises the nature and extent of non-compliance, and what remedial action (if any) has been taken, and make recommendations for improvements in Vanuatu's current land leasing system to overcome the current weaknesses.

Expected outcomes:

- (a) Advice on action to be taken to address the breach of lessee's requirements, in all cases where probable non-compliance has been identified.
- (b) Report on improvements to be made to Vanuatu's land leasing system.

Institutional arrangements:

- (a) General direction from the Steering Committee, and particular day-to-day direction from the Director General.
- (b) The Director General to establish an ad hoc team of suitable officers (say, three) for conduct of the necessary Registry file searches and inspections, and provide any necessary authorisation under the Land Leases Act for the purposes of the audit.

Geographical scope:

The land leasing system operates country-wide, but all registered leases are held in the central Registry of the Land Records Office in Port Vila. Physical inspections of leased land and any necessary interviews will have to be conducted *in situ*.

Timeframe and Duration:

The non-compliance problem is long-standing, but the sooner it is addressed the better. The proposed audit will make a very important input to development of policy on reforms to the land leasing system, and any necessary legislative amendments. The audit should begin as soon as possible

As there is a total of 7,070 registered leases, the audit will be time-consuming. Use of a well-designed questionnaire can pass much of the load of providing information onto lessees. It may make sense to conduct the audit in two phases –

- i) Establishment of the audit team, development of the methodology, preparation of a questionnaire or other information-gathering tools and commencement of the audit. *Duration: 4 weeks*

- ii) Review of the results of the audit, identify all cases of probable non-compliance and appropriate remedial action to be taken, and prepare the report. *Duration: 8 weeks*

Persons to be consulted:

- Developers; lessors and lessees; Provincial government and Physical Planning Unit

5. SCOPING NOTE #4: REVIEW OF STRATA TITLES ACT

Purpose:

To review the Strata Titles Act, and draft amendments necessary to –

- (a) prevent its current use for subdivision of undeveloped land; and
- (b) provide for the adaptation of existing strata titles to the new requirements.

Problems to be addressed:

The Strata Titles Act was introduced in 2000. Its original purpose was to allow for strata titling of land at Iririki Island, which is held under custom ownership and lies outside the Port Vila urban area. The Act was drafted by a private lawyer.

Although the aim of strata titles legislation is to provide the benefits of registered titles to units within different levels (“strata”) of a building, in Vanuatu the Act has increasingly been used for the subdivision of undeveloped rural lands. It is, therefore, being used as a *substitute* for the normal procedure of surrender and subdivision, provided for by Sec. 12 of the Land Leases Act. Among the advantages of using strata titles in this way are that it avoids the normal requirements for lessor approval, and payment of certain fees and charges. This is an *abuse* of the strata titles system.

(An additional problem is that the services – roads, drainage, public access and space, etc. – are often of a poor standard, although this may be a problem with subdivisions generally rather than specifically with strata titles.)

As well as the need to amend the law, provision must be made to adapt the strata titles which have already been completed or are in the process of completion, to bring them into compliance with the new requirements. As far as possible, this should be done without giving rise to claims for compensation.

Activities:

1. Work under the general direction of the Steering Committee which is overseeing implementation of the National Land Summit resolutions, and more

particularly under the direction of the Director General of the Ministry of Lands and Natural Resources.

2. Consult officers in the Department of Lands and lawyers in the Government and private sector, to identify the nature and extent of the current abuse of the strata titles system, and any current illegality.
3. Review the Strata Titles Act with a view to identifying the cause of its current abuse in allowing the subdivision of undeveloped land, and the best method for its removal.
4. Draft amending legislation to –
 - (a) remove the cause of the current abuse; and
 - (b) provide for the adaptation of existing strata titles to the new requirements.
5. Prepare a short report, setting out findings, conclusions, recommendations and draft legislation.

Expected outcomes:

Draft legislation amending the Strata Titles Act as necessary.

Institutional arrangements:

General direction from the Steering Committee, and particular day-to-day direction from the Director General.

Geographical scope:

It is thought that the offending subdivisions are mainly located on coastal Efate and Santo (including offshore islands).

Timeframe and Duration:

At present, approval of new subdivisions has been temporarily suspended by the moratorium adopted by the Council of Ministers. This has led to some negative reaction from real estate agents/developers, and it is important that the necessary amendments be drafted and introduced as soon as possible. *Duration: 2 weeks.*

Immediate action required:

Drafting of amendments to the legislation.

Persons to be consulted:

- Developers; lessors; lessees where the legislation has been used

6. SCOPING NOTE #5: IDENTIFICATION OF COMMUNITY BOUNDARIES

Purpose:

To identify community boundaries with custom owners and record the details.

Problems to be addressed:

With the increasing demand being placed on custom owners to make land available for long term leasing and development there has been an increase in disputes over land boundaries. As a result it is important that a procedure is developed that will enable the identification of land boundaries and the recording of these agreed boundaries.

The Survey and Mapping Section has been undertaking a pilot project on Nguna Island (North Efate) to survey and map community boundaries funded by the Ministry of Lands. They have defined the community boundaries for the villages of Tanoropo, Raitoa and Emoi. The activities involve meetings with the chiefs to explain the process, walking the boundaries with the chiefs, collecting coordinates for the boundaries using a hand held Global Positioning System (GPS) and then using computer software to produce maps which are then checked with the chiefs.

Although this process appears to have been successful in identifying community boundaries the process was done in isolation by the Surveying and Mapping Section. Ongoing activities should ensure that there is involvement from the Land Tribunals Unit and also the Malvatumauri. Also future activities should be aimed at developing procedures that can be implemented in any areas of the country, with emphasis on the whole process and not only the surveying activities.

Activities:

Undertake pilot activities to develop procedures for the identification and recording of community boundaries. A location needs to be selected in consultation with organisations including the Malvatumauri. Field procedures must be developed, documented and then tested.

Expected outcomes:

A set of procedures for the identification of community boundaries which will cover:

- a) Public awareness activities;
- b) Consultation process with chiefs and community to identify boundaries;
- c) Recording procedures covering written records and survey procedures;
- d) Recording (registering) the information in the Land Office.

The development of these procedures will provide valuable input to the design of a land reform project that may include support for the identification of community boundaries.

Institutional arrangements:

A cooperative arrangement is required between the Survey and Mapping Section and the Land Tribunals Unit in the Department of Lands and the Malvatumauri.

Geographical scope:

Location to be selected by Department of Lands in consultation with Malvatumauri.

Timeframe and Duration:

To be commenced as soon as possible and to continue with internal budget.

Indicative budget:

To be determined by the Department of Lands.

Immediate action required:

Continue the field activities as undertaken on Nguna.

7. SCOPING NOTE #6: ADMINISTRATIVE REFORMS

Purpose:

To address a number of administrative issues were identified in the 20 resolutions from the National Land Summit.

Problems to be addressed:

During the discussions that took place at the National Land Summit a number of issues identified were administrative in nature, requiring only changes in procedures or instructions and capable of being addressed without any legislative amendments. Resolution 5 contains a number of administrative changes that can be readily implemented by the Government including;

1. All lease agreements be in Bislama.
2. Agreement of leases involve every member of the land owning group (men, women and the youth).
3. In all lease agreements, the Chiefs and land owners must approve:
 - The Certificate of Negotiation.
 - The Lease agreement.
 - Any changes to the conditions of the lease (use of land (class of lease), term of lease).

Resolution 5 requires that the Certificate to Negotiate must have the approval from the village, area or island council of chiefs before the Ministry of Lands can accept the certificate. Resolution 15 requires protection for cultural sights, the environment and to ensure there is road access to leased areas.

It is possible for the Government to implement either procedural changes or temporary measures to ensure that a number of these administrative issues are addressed with a high level of urgency. This would ensure that the Government is demonstrating a strong commitment to the outcomes from the National Land Summit.

Activities:

The Department of Lands to implement appropriate procedures so as to ensure the issues included in the 20 resolutions that are administrative in nature are addressed.

Expected outcomes:

Increased certainly, transparency and understanding of land transactions and the lease documents.

Institutional arrangements:

Staff in the Department of Lands to be assigned responsibility for implementing changes in procedures.

Geographical scope:

The whole nation.

Timeframe and Duration:

The development of the changes need to commence immediately and should be implemented within 6 months.

Indicative budget:

All activities are to be funded from the Government's recurrent budget.

8. SCOPING NOTE #7: PROTECTION OF FORESHORE RESERVES

Purpose:

To draft the legislation necessary to protect foreshore reserves, and guarantee access by the public and custom owners.

Problems to be addressed:

The Land Summit identified a number of problems associated with restricted access to foreshore areas and adjacent reefs. In some cases, leases have been granted which extend below the mean high water mark (HWM), and even beyond to the adjacent reef, and land reclamation and other construction works are being carried out below the mean HWM.

The Foreshore Development Act, administered by the Minister of Internal Affairs, requires that consent be granted before any development is undertaken on foreshores, but this requirement is routinely ignored. The Environmental Management and Conservation Act makes any development activities which “affect coastal dynamics” subject to Environmental Impact Assessment (EIA) provisions, but again the evidence is that these requirements are ignored.

There may be a need to draft specific legislation for protection of the foreshore area, and of public access to it. Care must be taken not to acquire the property rights of custom owners.

Activities:

1. Work under the general direction of the Steering Committee which is overseeing implementation of the National Land Summit resolutions, and more particularly under the direction of the Director General of the Ministry of Lands and Natural Resources.
2. Consult officers in Departments of Lands and Internal Affairs, to identify the nature and extent of the current problems in three main areas –
 - (a) public access to foreshores;
 - (b) custom owner access to marine resources;
 - (c) protection of foreshores.
3. Review the existing legislation relating to protection of foreshores and of public access, and identify the need for legislative reform.
4. In doing so, address the question of whether different legislative provisions should be made for urban and rural lands.
5. Draft the necessary legislation to –
 - (a) protect a foreshore reserve;
 - (b) guarantee public access to the foreshore and custom owner access to marine resources;
 - (c) make suitable transitional arrangements, to adjust existing developments to the new foreshore protection requirements;
 - (d) make consequential amendments to related legislation.
6. Prepare a short report, setting out findings, conclusions, recommendations and draft legislation.

Expected outcomes:

Draft new legislation as necessary.

Institutional arrangements:

General direction from the Steering Committee, and particular day-to-day direction from the Director General.

Geographical scope:

All coastal regions of Vanuatu.

Timeframe and Duration:

The present problems are affecting custom owners and the public to a greater or lesser extent. Where new coastal subdivisions and construction are intruding on the foreshore areas, any delay will mean increased opposition to change. The assistance should, therefore, begin as soon as possible. *Duration: 2 weeks.*

Immediate action required:

An international consultant to be made available to assist with the drafting of necessary legislation and procedures

Persons to be consulted

- Provincial government; Custom owners; Malvatumauri and Councils of Chiefs

9. SCOPING NOTE #8 – ZONING MAPS FOR LUGANVILLE

Purpose:

To prepare zoning maps for Luganville Municipality which will be developed as a model for use by all provincial governments.

Problems to be addressed:

The Land Summit identified a number of issues associated with zoning maps, physical planning and regulations associated with land development and local government activities.

In seeking to create a strong economy, every country must implement strategies for planning and development so as to improve the infrastructure and create a better environment. Physical planning is the process whereby changes to the environment can be brought about through formal procedures. It involves:

- Reviewing and understanding the existing environment;
- Defining the problems that need to be solved;
- Determining alternative courses of action;
- Evaluating the options for change;
- Selecting an appropriate strategy after consultation with those affected;
- Implementing that strategy and monitoring its consequences; and

- Operating within a formal legislative framework.

Physical planning is the process of allocating resources, particularly land, in order to achieve maximum efficiency while respecting the nature of the environment and the welfare of the community. The manner in which physical planning is conducted depends on the country's political system and on the division of responsibility between different parts of government. Some responsibilities will lie with the central Government while others may be devolved to the local level.

Physical planning is primarily concerned with future land use. Land use is the interaction between land rights and land management. It includes the enjoyment of the land and the rights that are associated with it. A prerequisite for the preparation of a development plan is a land-use survey. Once the outline development plan has been approved, a more detailed plan for each local area can be prepared. As with the outline plan, this local area plan should be legally binding.

Activities:

1. Work under the general direction of the Steering Committee which is overseeing implementation of the National Land Summit resolutions, and more particularly under the direction of the Secretary General of the Luganville Municipality.
2. Using the Luganville Municipality area, undertake a land use plan and develop a physical plan or zoning map for Luganville.
3. Develop procedures that can be made available for all other provincial governments.
4. Review the existing legislation relating to physical planning activities and identify the need for legislative reform.

Expected outcomes:

Draft zoning maps or physical plans for Luganville Municipality. Given the time available and access to resources it may not be possible to complete the whole municipality in the time frame available.

Institutional arrangements:

Undertake activities within the Luganville Municipality

Geographical scope:

Luganville Municipality.

Timeframe and Duration:

To commence as soon as possible and undertaken over a period of 12 months.

Persons to be consulted

- Provincial government; property owners, business organisations, Councils of Chiefs

10. SUBDIVISION CONTROLS

Purpose:

To implement appropriate controls over subdivisions and ensure that future development costs do not have to be funded by the Government.

Problems to be addressed:

Increased demand for residential land in Vanuatu, especially on Efate and Santo has resulted in a significant increase in subdivision development to cater for the demand. The lack of development controls in the Physical Planning Unit of the Ministry of Internal Affairs, the Provincial Governments and the Department of Lands means that in many of the subdivision developments that are being undertaken only limited facilities are being provided. There is also minimal regard being given to cultural and environmental protection.

It is important that in all developments:

- (a) Services are provided including water, electricity and telephones;
- (b) roads are constructed to an acceptable standard and adequate drainage is provided;
- (c) there is appropriate access to rivers, seafront areas and beaches for public use; and
- (d) recreational reserves and other public services are provided.

Development should not be approved where:

- (a) development and or subdivision that may result in land or environmental degradation;
- (b) there is impact on heritage sites;
- (c) development does not conform to the designated land use;
- (d) there may be an impact on native wild life; and
- (e) there would be social impacts on customary groups

Activities:

To establish an effective and efficient process to guide a developer for a land subdivision development. The guiding principles should outline the specific objectives a developer must follow prior to undertake a land subdivision development and also the infrastructure that must be provided.

Expected outcomes:

More orderly subdivision development and significant reduction in future costs to the Government in providing an acceptable level of services for lessors and lessees.

Institutional arrangements:

General direction from the Steering Committee, and particular day-to-day direction from the Director General of Lands.

Geographical scope:

Will apply to the whole Nation.

Timeframe and Duration:

Activities need to commence immediately

Meetings, Personnel Interviewed and Locations Visited

Field Assignment #1: 26 January 2007 to 9 February 2007

| Date | | Personnel Interviewed | Organisation and Location |
|-----------|----|---|--|
| 28 Jan 07 | am | | Visit to various locations around Port Vila including Mele Maat, Mele, Acropara, Erakor and Bellevue |
| 29 Jan 07 | am | <ul style="list-style-type: none"> • Russell Nari | Chair, Steering Committee and Director General of Ministry of Lands |
| | am | <ul style="list-style-type: none"> • Rob Tranter, Counsellor • Anna Naupa, Program Officer | AusAID |
| | pm | <ul style="list-style-type: none"> • Ms Florie Tasso, Acting Principal Registration Office | Department of Lands, Surveys and Registry |
| | pm | <ul style="list-style-type: none"> • Russell Nari | Chair, Steering Committee and Director General of Ministry of Lands |
| 30 Jan 07 | am | <ul style="list-style-type: none"> • Jean-Marc Pierre, Director of Lands • Chris Ioan, Director of Geology, Mines and Water Resources • David Moses, Land Tribunal Officer • George Kerby, Land Enforcement Officer • Dominique William, Land Valuer • Enus Tari, Acting Surveyor General • Moses Kalsale, Land Surveyor • Ms Florie Tasso, Acting Principle Registration Officer | Ministry of Lands and Natural Resources |
| | am | <ul style="list-style-type: none"> • Councillor John Markal, President of Shefa Province | Shefa Province |
| | pm | <ul style="list-style-type: none"> • Moses Kalsale, Land Surveyor • Harold Moli, Project Manager (Mapping Project) | Department of Lands, Surveys and Registry, Survey Section |
| | pm | <ul style="list-style-type: none"> • Chief Paul Tahī • Selwyn Garu, Secretary • Marcellno Ambong, Director of Cultural Centre | Malvatumauri (National Council of Chiefs) |

| Date | | Personnel Interviewed | Organisation and Location |
|-----------|----|--|---|
| 31 Jan 07 | am | • Menzies Samual, Valuer General | Office of the Valuer General |
| | pm | • Michael Taurakoto, Coordinator • 27 representatives of the youth of Vanuatu | Wan Smolbag |
| | pm | • Jenny Ligo, CEO | Vanuatu National Council of Women |
| 1 Feb 07 | am | • Jerry Sampson, Assist Physical Planning Officer | Ministry of Internal Affairs, Physical Planning Unit |
| | pm | • Joe Ligo, CEO | Vanuatu Investment Promotion Authority |
| | pm | • William Ganileo, Database Manager | Survey Section - Department of Lands, Surveys and Land Registry, |
| | pm | • Russel Nari, Chair and Steering Committee members | Steering Committee |
| 2 Feb 07 | am | • Council of Chiefs for Pango • Attended by 20 men and 2 women | Pango |
| | pm | • Women from Pango • Attended by 16 women plus the secretary of the Council of Chiefs | Pango women |
| 3 Feb 07 | am | | • Visit to a number of lease hold development sites – Narpow Point, |
| | am | • Chief Kass Kalou, Chief of Eton | Eton |
| | pm | | • Visit to a number of lease hold development sites – White Sand, Manuro Shores |
| | pm | • Chief of Takara and village officials including the deputy chief and pastor. • 28 men and 6 women | Takara |
| 4 Feb 07 | am | | • Viewed various lease hold development sites on return trip to Port Vila including Black Sands squatter settlement |
| 5 Feb 07 | am | • Russel Nari, Chair | Steering Committee |
| | am | • Rob Tranter, Counsellor • Anna Naupa, Program Officer | AusAID |
| | am | • Adam Ward, Country Head | Westpac Pacific Banking |
| | am | • John Groten, Head of Commercial Banking | ANZ Bank |

| Date | | Personnel Interviewed | Organisation and Location |
|----------|----|--|-------------------------------|
| | pm | • Vincent Lunabek, Chief Justice | Judiciary |
| 6 Feb 07 | am | • Mantas Kilman, Town Planner • Frank Williams, Town Planner | Port Vila Municipality |
| | pm | • Angela Hassan-Sharp, NZAID Manager/First Secretary • James Toa, Development Programme Coordinator | NZAID |
| 7 Feb 07 | am | • Alecta Vuti, National Coordinator | Customary Lands Office, DLSLR |
| | am | • Ernest Bani, Head | Vanuatu Environment Unit |
| | am | • Douglas Patterson, Director | Island Property |
| | pm | • Adam Ward, Country Head Manager • Peter Cleal, Manager Credit and Business Risk | Westpac Pacific Banking |
| 8 Feb 07 | am | • Charles Vatu, Program Officer | AusAID |
| | pm | • Russel Nari, Chair and Steering Committee members | Steering Committee |

Field Assignment #2: 21 February 2007 to 28 February 2007

| Date | | Personnel Interviewed | Organisation and Location |
|----------------------|----|--|---|
| 22 Feb 07 | am | • Russel Nari, Chair and Steering Committee members | Steering Committee |
| Field visit to Santo | | | |
| 23 Feb 07 | am | • Albert Bue, Officer in Charge. • Benuel Tabi, Land Officer | Department of Lands, Santo |
| | am | • Tip Waru Wara Bani, Representative • Jif Salebani, Treasurer • Vuro Tom Raso, Secretary | Subenatavuitan Council of Chiefs, Sanma |
| | am | • Hary Tate, Town Planning Officer | Luganville Municipality |
| | pm | • Joel Path, Secretary General • Cherol Ala, Commissioner for Sanma • Brosper Buletari, Physical Planner | Sanma Province |
| Field visit to Tanna | | | |
| 23 Feb 07 | am | • Remi Kali, President • Andrew Naling, Vice-President | Tafea Provincial Govt. |

| Date | | Personnel Interviewed | Organisation and Location |
|-----------|----|--|---|
| | | <ul style="list-style-type: none"> • Tom Peter Noelam, Secretary-General • Sylvian Tagabu, Planner | |
| | pm | <ul style="list-style-type: none"> • Peter Numaului, President • Seth Kaurau, Secretary • Sam Tukama • Nawata • Nakou Niau • Maimai | Tanna Council of Chiefs (Nikoletan) |
| 24 Feb 07 | am | <ul style="list-style-type: none"> • Thomas Saula, Head Chief • Rose (?) Meake, Pastor • Fainga Nishitavai, Chief • Ruben Lishi Ramoia, Leader • Dickson Naviu, Leader • 7 other men and one woman | Tennis Futuna Settlement |
| | pm | <ul style="list-style-type: none"> • Louis Naling, Matron, | Lanakel Hospital |
| 26 Feb 07 | am | <ul style="list-style-type: none"> • Henry Vira, VANGO Secretary General • Kevin Barnes, Advocacy Coalition on Economics | Vanuatu Association of Non Government Organisations (VANGO) |
| | pm | <ul style="list-style-type: none"> • Douglas Patterson, Island Property • David Russet, Bellevue Property Management • Karen Price, Cornerstone Investments • Elizabeth Muliaki, Cornerstone Investments | Private sector representation |
| | pm | <ul style="list-style-type: none"> • Ralph Regenvanu | National Cultural Centre |
| 27 Feb 07 | am | <ul style="list-style-type: none"> • Kalbeo Kalpat, Principal • Jack Takalo Graham, Deputy Principal | Vanuatu Institute of Technology |
| | am | <ul style="list-style-type: none"> • Administration staff | University of South Pacific, Vanuatu Campus |
| 28 Feb 07 | am | <ul style="list-style-type: none"> • Russell Nari, Chair and Director General | Steering Committee Chair |
| | pm | <ul style="list-style-type: none"> • Rob Tranter, Counsellor • Anna Naupa, Program Officer • Rachel Young, Third Secretary | AusAID and Australian High Commission |

TERMS OF REFERENCE

SUPPORT TO VANUATU'S MINISTRY OF LANDS AND NATURAL RESOURCES

Background

In July 2005, the Vanuatu National Self-Reliance Summit recommended the holding of a National Land Summit to discuss land issues in relation to national self-reliance. Vanuatu's first National Land Summit was held from 25-29 September 2006 in Port Vila, with the theme of "Sustainable Land Management and Fair Dealings to Ensure Progress with Equity and Stability". Organised by the Ministry of Lands and the Vanuatu Cultural Centre, a series of six Provincial land summits were held in the months leading up to the National Summit to broadly consult about the definition of customary ownership, fair dealings and the role of Government. The goal of the National Land Summit was to agree on resolutions on which to form the basis of a new land policy for the next five to ten years.

The Summit concluded with twenty resolutions, broadly categorised as follows:

- I. Land ownership –
 - A. Ownership of land
 - B. How to determine the land owner
 - C. Awareness
- II. Fair dealings –
 - A. Enforcement of lease conditions
 - B. Lease agreements
 - C. Certificates to Negotiate
 - D. Minister's powers over disputed lands
 - E. Strata titles
 - F. Agents/middlemen
 - G. Lease rents and premiums
- III. Sustainable development –
 - A. Before approval of a lease
 - B. Lease conditions
 - C. Public access
 - D. Enforcement
 - E. Zoning
 - F. Awareness

The resolutions will be further categorised into those that can be addressed administratively, and those that require legislative reform, subject to a review of the existing policy, legislation and administrative systems. The interim period between the Summit and the development of a new policy proposal for Parliament in March 2007 will focus on reviewing legislation and policy, with a lands administration review to be conducted once a draft policy is developed.

The interim transitional strategy for taking forward the 20 resolutions from the Summit establishes a Steering Committee to monitor progress against the resolutions. The Steering Committee will include representatives from the Ministry of Lands, the Malvatumauri (National Council of Chiefs), the Vanuatu Cultural Centre, women's groups, youth groups and development partners (on invitation).

Australian assistance to the reform process will be in the form of a team of technical assistance that will report to the Steering Committee. AusAID is seeking an international company to manage the technical assistance team.

Purpose and Objectives of the Assistance

The overall objective of the Assistance is to support the Ministry in its review of the outcomes from the National Land Summit, and identify the reforms and possible assistance necessary to implement those outcomes, both in the short term and the longer term.

Scope of Services

The tasks to be undertaken during the Assistance are –

- 1) Establish and manage a team of foreign and ni-Vanuatu consultants to review Vanuatu's land legislation and policy. International consultants will take the lead for each review.
- 2) Work under the direction of the Steering Committee established by the Government for the purpose of overseeing the process of bringing forward the resolutions and other outcomes from the National Land Summit for Government consideration and implementation. The Steering Committee will guide consultant inputs.
- 3) Assist the Steering Committee in advancing the outcomes of the Summit and to advise on prioritising and sequencing administrative, policy and legislative changes.
- 4) Review Vanuatu's current land policies, legislation and administrative arrangements affecting land, with the general aim of providing a situational analysis and identifying the reforms that would be necessary to implement the resolutions and other outcomes from the National Land Summit.
- 5) Identify those reforms which are capable of immediate implementation under the current system (i.e. administrative in nature), and what inputs would be needed for their implementation.
- 6) Identify those reforms which would require amendments to existing land legislation and administrative arrangements, and what inputs would be needed for their implementation; and assist in preparation of recommendations for Ministers on new policy or legislative measures.
- 7) Collaborate with the NZAID-funded team reviewing the customary land tribunal legislation and other relevant land legislation to ensure that no unnecessary duplication occurs;
- 8) Identify in broad terms the analytical, advisory and grant support for coordinated donor assistance to the Lands sector, with a view to later consultations with the Government and possible follow-up missions to work with the Government on project design for agreed land reform activities.

Methodology

In undertaking the above, the Organisation will be required to establish a team of two ni-Vanuatu and two foreign consultants with relevant expertise. The team of consultants will be required to:

- Undertake a first visit to Vanuatu of approximately 2 weeks duration, for the collection of legislation, standard forms and other related documents, consultations with the Steering Committee, senior Ministry officers, relevant staff from the Ministry and the State Law Office;
- Be briefed by the donor partner on the methodology and logistical arrangements for the visit;
- Prior to departure, present an Aide Memoire as part of the debrief to the donor partner, the Ministry of Lands and the Steering Committee;
- Prepare a draft report for review by the Steering Committee and other stakeholders;
- Undertake a follow-up visit of a week or so to meet with the Steering Committee to obtain feedback on the draft report and to finalise recommendations;
- Prepare a final report in accordance with Reporting Requirements below.

Duration

The Assistance will take up to 45 days, which include –

- 7 days for review of documentation;
- 14 days for fieldwork (first visit);
- 10 days for follow-up visit;
- 14 days for drafting and finalising the report;

Team Composition

A team of at two foreign consultants and two ni-Vanuatu consultants, with appropriate qualifications and extensive experience in reviewing land policies and legislation in relevant developing countries, including expertise in –

- land policy formulation;
- land legislation;
- land reform;
- institution-strengthening;
- intimate knowledge of Melanesian culture and some understanding of Bislama would be an advantage.

Reporting Requirements

- Aide Memoire;
- Report in accordance with the Scope of Services above.

The report will be prepared in draft and submitted within 28 days of return to the Steering Committee and donor partners. The draft report will be finalised during the second in-country visit after receipt of comments from the Steering Committee and donor partners, in a time-frame agreed with the team of consultants.