



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



EXPERIENCES IMPLEMENTING LAND REFORM IN VANUATU

JOHN MEADOWS
Land Equity International Pty Ltd, Australia
jmeadows@landequity.com.au

Paper prepared for presentation at the
“2017 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 20-24, 2017

Copyright 2017 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Abstract

This paper is a reflective account of the ongoing efforts to implement land reform in Vanuatu.

It is written from the perspective of a practitioner who was involved in supporting key aspects of the implementation of the reforms and who has subsequently maintained a close interest in progress.

The paper provides a context for the reforms; describes the support provided through the Vanuatu Land Program; examines issues and challenges faced during the implementation phase; considers if the reforms can be considered ‘innovative’ and concludes with a consideration of whether the reforms create the necessary policy and legal framework that provides for the protection and preservation of customary land while allowing for sustainable development.

Key Words: Customary land, development, innovation, land policy reform, leasing, sustainability,



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Introduction

In 2013, the Pacific island nation of Vanuatu embarked upon a major land reform initiative. Described by McDonnell (2014) as ushering in a new “new era in the protection of custom owner rights” the blog drew a range of responses variously describing the reforms “a radical overhaul of land law” and a “new paradigm for land dealings in Vanuatu” to a “hybrid system” that “will bring total chaos to Vanuatu” and “the worst example of foreign interference in Vanuatu land issues since Independence.”

As is so often the case where land is involved, the reform initiative divided opinions and reignited old arguments and debates. The initiative came to the fore midway through the five-year Australian / New Zealand Government-funded Vanuatu Land Program (the Land Program), although its beginnings can be traced back to the 2006 Vanuatu National Land Summit (Land Summit), and general issues that have persisted in the Vanuatu land sector since independence.

A formal request for support for the reform initiative came in early 2013 when the then newly-appointed Minister of Lands appealed for donor funding for a reform program. At the time of the request, the Land Program was already providing considerable support to both customary and formal land sectors in pursuit of multiple program objectives that included: improved governance of customary land, informed decisions by customary land holders, effective and enabling services, more equitable land dealings and an improved land information management system. However, the need for reform was recognised by both the Australian and New Zealand Governments who agreed to the Land Program being used as a vehicle through which funding disbursements to support activities associated with the reform could be made.

From 2013, the Program supported a range of activities associated with the reforms, including an extensive public consultation exercise, a week-long land reform summit in Port Vila, the contracting of international and national technical assistance to prepare draft legislation and constitutional amendments, capacity building in the institutions responsible for implementing the laws, and the establishment of “pilot” case studies designed to test processes and procedures established under the new laws.

This paper reflects on 18 months of support provided to the reform implementation process, the issues and challenges that arose, the current status of the reforms and lessons learned.

The Vanuatu Land Program

The Land Program was initially conceived as a component of the broader Australian Government funded Pacific Land Program (PLP); it was envisaged that implementation would take the form of a series of 4/5 year project iterations with each iteration learning from and building upon the previous one. As it turned



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



out the Land Program, which was eventually funded through both the Australian and New Zealand Governments, ran for a single iteration from January 2011 to October 2015.

While an examination of the merits or otherwise of the PLP is not within the scope of this paper, brief mention is justified for the purposes of context and to aid understanding. In an important document issued under the auspices of the PLP and entitled “Making Land Work” (2008) AusAID, the then Australian Government aid agency, stated “AusAID recognises that land policy reform is something that must be driven by Pacific governments and communities, not by donors. For this reason, ‘Making Land Work’ does not seek to advocate any particular policy options or models. Nor does it necessarily reflect AusAID or Australian government policy. Rather, it has been published as an information resource for countries undertaking land policy reform. It draws lessons from international experience, canvasses broad principles and approaches, and seeks to stimulate ideas on policy options”. Importantly, the report made reference to an ‘emerging consensus that a middle way has to be found that essentially combines customary ownership with long term leases that unlock the commercial value of land’.

Despite this seeming attempt at neutral positioning by AusAID the PLP drew immediate criticism; to some it was perceived as lacking in policy direction while for others it was an attempt to impose ‘western ideology’ as a solution to Pacific land issues as reported by AIDWATCH (2010) in their publication ‘In Defence of Melanesian Customary Land’.

From the outset support for a so called ‘middle way’ appeared dubious with many remaining of the view that ‘Making Land Work’ was simply a covert attempt to introduce the commercialisation and commoditisation of customary land.

For its part the Land Program tried to stay faithful to the stated objective of land policy reform “... driven by Pacific Governments and Communities” The Land Program was instigated in response to challenges identified during the Government of Vanuatu’s 2006 Land Summit and to assist with implementing resolutions contained in the Vanuatu Land Sector Framework (2009–2018).

The goal of the Land Program was that:

“All Vanuatu people benefit from equitable and sustainable development of their land through securing the heritage of the future generations.”

The program had five key objectives:

- Objective A1: Informed Collective Decisions by Customary Land Holders
- Objective A2: Participatory Land Governance



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



- Objective A3: Effective and Enabling Services
- Objective B1: A strengthened Customary Land Tribunal consistent with the Government of Vanuatu's (GoV's) national plans
- Objective B2: A Land Information Management System that meets current needs and supports economic development

In pursuit of these objectives, the Land Program supported a diverse range of activities associated with seeking improvements to both the customary and formal land sectors. It included activities associated with recording customary ownership, customary decisions making, conflict resolution and institutional strengthening, as well as activities focusing on improving core land administration functions within the Ministry of Lands (including the Land Registry, Land Survey and Valuation functional areas). In the course of its final two years, the Land Program provided considerable support to efforts to introduce land reform in Vanuatu.

Country Context

According to information obtained from Wikipedia (2015), The Republic of Vanuatu is a South Pacific nation comprising over 80 islands and islets, of which about 65 are inhabited. The country lies between 13° and 21° south and 166° and 170° east - placing the archipelago 1,750 kilometres to the east of northern Australia (Queensland), 500 kilometres northeast of New Caledonia, southeast of the Solomon Islands and west of Fiji.

While the prehistory of Vanuatu is obscure, archaeological evidence points to the lands being inhabited for at least the past 4,000 years. First contact with Europeans occurred in 1606 when de Quiros "discovered" the Island of Espiritu Santo in the north of the group. According to Mundle (2014) in 1774 Captain James Cook, sailing on board HMS Resolution, circumnavigated almost all of the 80 plus islands in the group, subsequently naming them the New Hebrides – a name that lasted until independence in 1980.

Rice (1974) noted that it wasn't until after 1860 that significant sociocultural change occurred as thousands of Ni Vanuatu men and women, who had been indentured to work on plantations in Australia, Fiji and New Caledonia, began to return home. To protect the interests of the mainly British missionaries and French planters, the British and French Governments established a joint naval commission in 1887 that, in 1906, became an Anglo-French Condominium under which both colonial powers established resident commissioners in Port Vila.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Initially, colonial administrative arrangements had minimal impact on most indigenous Ni Van. It wasn't until the post-war years that the effect of European settlement and alienation of land began to be seen as a threat to indigenous lives and livelihoods. By the 1970s, it was estimated that Europeans had acquired more than one-third of the land in the New Hebrides. Political agitation centred upon this dispossession and gave rise to the Vanua'aku Pati (VP) – “Our Land Party”. Political independence was agreed at a 1977 conference in Paris. Elections were held and a constitution drawn up. On the 30 July 1980, the New Hebrides became the independent Republic of Vanuatu – enshrining in its constitution that all land belongs to customary owners, including land alienated during the colonial period.

Demographics and Land Use

Information obtained from Tom'Tavala (2013) estimated the population of Vanuatu at over 266,000 with an average annual growth rate of 2.3%. The urban centres, of Port Vila and Luganville are growing at a faster rate. Shefa province (in which Port Vila is situated) has a growth rate of nearly 4% as a result of rural urban migration. The total land area of Vanuatu is estimated at 12,275 square kilometres. Of this, it is estimated that only 1,470 square kilometres of the total land area is suitable for agriculture. The main categories of land use are permanent crops (58%), permanent pasture (29%) and arable land (13%).

Overview of Land Tenure Arrangements and Legal Framework Pre-2013

The Constitution 1980 (as amended in 2013) provides the basis for the current land tenure system in Vanuatu – supported by a number of land-related laws. The Constitution states the basic principle that “all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants” (Article 73). It added that “the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu” (Article 74) – representing a reversion to the pre-European contact land tenure arrangements.

The Constitution states that “only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognized system of land tenure shall have perpetual ownership of their land” (Article 75). In other words, any other form of tenure that is permitted by law may not be in perpetuity. Land held by customary owners and referred to as “customary land” makes up over 95% of the total land area in Vanuatu.

The Constitution and other laws create two provisos or exceptions to the general rule that allow or permit other tenure types to be created over land acquired from the customary land tenure system. These are Public Lands and Leases.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Article 80 of the Constitution permits government to own land acquired by it for public interest and Article 81 permits government to acquire land from custom owners – the process is governed by the Land Acquisition Act 1992. Public land is essentially land vested in the state by operation of law and/or land held by the state for the benefit of the people.

The Land Reform (Amendment) Acts 1992 and 2000 vested all lands belonging to the former colonial governments to the Republic as state land and included (through the 2000 amendment) the provision for compensation to be paid to the original custom owners of the land.

The Land Leases Act 1983 facilitated the creation, registration and management of leasehold titles so that a lessee can obtain a leasehold interest for a term not exceeding 75 years.

Arising from the GoV's acquisition of former colonial government land, a large number of leasehold titles are to be found in Vanuatu's two main urban areas, Port Vila and Luganville. There are nearly 9,000 registered leases in total. While the GoV (including Provincial Councils and Municipalities) has priority rights to the use of these lands, private individuals interested in using a block of such land can apply for a lease.

Outside the urban centres, it is possible to obtain a lease over customary land. In summary; an applicant submits an Application for Negotiator Certificate to the Planning Unit of the Department of Lands. An inter-agency Land Management and Planning Committee considers the application. If granted, the Negotiator Certificate will be signed by the Minister, is valid for 12 months, and entitles the Negotiator to proceed with negotiations with customary land owners. If the customary land owners have not previously been determined, a Custom Owner Identification Form is either provided to the Negotiator or sent to a nominated chief in the area where the land is located. Negotiations then proceed and, if successful, the land is surveyed, the negotiator pays fees, the lease is prepared and signed by the lessor and lessee, and the lessee pays the land premium and advanced annual rent. The lease is then sent to the Department of Lands for registration.

The determination of customary owners - a prerequisite to obtaining a lease over customary land - can sometimes prove difficult. By the late 1980s, it was evident that the Island Courts and the Supreme Court were swamped by the large volume of pending customary land dispute cases. The Customary Land Tribunal Act 2001 was passed to "provide for a system based upon custom to resolve disputes about customary land". Although the intent of the legislation was to remove the appellation of the Supreme Court over land disputes, a major criticism of the legislation was that Section 39 of the Act still provided for aggrieved parties to take their case to the Supreme Court – thus providing for a scenario in which customary land



disputes could be dealt with by two distinct procedures – one under the rules of custom and one through the formal court.

Leasing in Vanuatu

A study of leasing in Vanuatu by Scott, Stefanova, Naupa, Vurobaravu, (2012) revealed the following:

- As at December 2010, there were approximately 13,815 registered leases in Vanuatu.
- These covered 1,141.6 square kilometres of land representing 9.5% of the total land area of Vanuatu.
- Out of the total 13,815 leases, 7,010 were urban leases over Public Land (in Port Vila and Luganville) and these comprised 1% of the land under lease in Vanuatu.
- Another 6,803 were rural leases over customary land comprising 99% of the land under lease.

Drivers for Reform

The impetus for reform was driven by the conclusions of the 2006 Land Summit – following which there was a broad consensus on the key issues facing the land sector. Regenvanu (2008) summarised these under the following headings - with the subsequent writing a paraphrase of and comment upon his summation:

The Constitutional Perspective

The focus of the land policy in the immediate post-independence era was to assure Ni-Vanuatu of their customary land rights, including the return of land alienated during the colonial period, with the rights of indigenous custom land owners and their descendants enshrined in Articles 73, 74 and 75 of the Constitution. Despite this, in a ‘Review of national land legislation, policy and land administration’ undertaken on behalf of AusAID, Lunnay, Fingleton, Mangawai, Nalyal and Simo (2007) noted that the conduct of many post-independence land dealings seemed to be “against the spirit, and probably the letter, of the Constitution” It appears that successive governments failed in their constitutional duty to ensure that lease agreements were not prejudicial to either the citizens or the Republic of Vanuatu, and that constitutional principles concerning matters such as the pre-eminence of custom and of group/communal ownership, be upheld.

A Dysfunctional Leasing Process

The Land Summit identified many problems and issues facing the process of leasing. These included:



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



- successive Ministers of Land misusing ministerial powers to sign leases on behalf of custom owners (the power to sign leases on behalf of owners was only intended to apply to land alienated prior to independence). Since 1980, nearly 1,500 leases have been “signed off” by the Minister.
- many leases being granted without the full understanding and consent of the custom land owners.
- leases being poorly drafted with very loose terms and conditions and little prospect of enforcement.

A Lack of Awareness

A lack of awareness and understanding of state (common) law and the implications arising from the leasing of customary land amongst the general population. Matters such as leasehold tenure, lease terms, valuation of land, compensatory mechanisms and payments etc. are either not understood at all or are only understood by a few members of a community. This increases the risk of deals being approved on behalf of the community, rather than by the whole community.

A Land Grab?

The alleged misuse of ministerial powers with regard to the signing of leases, the general lack of due diligence applied to the leasing process by both government and other interested parties, and a general ignorance of process amongst the community led to what was described by McDonnell (2014) as a “land grab”.

Although this may not be on the same scale as some of the large scale agricultural land “acquisitions” taking place in other parts of the world, given the comparative size of Vanuatu and the amount of “usable” land available a report by Stefanova, Porter and Dixon (2012) provided some interesting statistics on leasing in Vanuatu:

- 9.5% of the total land area of Vanuatu has been leased
- On Efate (location of Port Vila the capital), 69.5% of urban land and 43.6% of rural land are under lease.
- 56.5% of coastal Efate (121.5 kilometres of coastline) has been leased.

Legislative and Administrative Failings

The Customary Land Tribunal Unit and the Customary Land Tribunal Act were formed/promulgated to establish the “appropriate customary institutions and procedures to resolve disputes concerning the ownership of customary land” – as envisioned by Article 78(2) of the Constitution. Despite the intention to provide a mechanism whereby disputes in respect of customary land should be dealt with under “kastom”,



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Section 39 of the Customary Land Tribunal provided for appeal to the Supreme Court, thus blurring the lines between custom and formal systems and introducing confusion. Unfortunately matters reached the point where 100% of claims going through the Island Courts were appealed in the Supreme Court leading to a suspension of land hearings in the Supreme Court and the build-up of a backlog of cases in the Island Courts.

The 2007 Review of national land policy and land administration (Lunnay et al.) as referenced above and commissioned following the Land Summit, found that not only was the law not operating as anticipated, but that the GoV's management, administration and operation of the law was also seriously lacking.

Supporting the Land Reform Initiative

With the need for reform recognised by donors it was agreed that that the Land Program would be the most appropriate vehicle through which funding and support for the reforms could be provided. It was further considered that the reform initiative had the potential to make a considerable contribution towards achievement of Land Program objectives concerned with informed collective decision making by customary owners and improved governance of customary land. These were areas which, up to that point in time, the Land Program had struggled to have any impact on.

Following the Minister's request, a work plan and budget were agreed and approved by the donors and the Program Management Committee to support the preparation and implementation of new land laws. In the first instance, funding was used to:

- contract international and national technical assistance to prepare draft legislation and constitutional changes
- fund a Ministerial consultation team to undertake consultation and outreach across all six provinces, and
- prepare communication and education materials.

With Land Program support, an intensive period of public consultation was instigated in September 2013. This involved dialogue and outreach across all six of Vanuatu's provinces, and visits to all of the main population centres.

Following the consultation process, draft constitutional amendments and draft laws were prepared and passed by Parliament in December 2014. The laws were gazetted (became operative) in February 2014.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



The land reform changes were as follows:

Constitutional amendments to Article 30 /78

- Article 30 – subsection 2 – Amendment’s relates any matters relating to custom “MUST” be referred to Malvatumauri (National Council of Chiefs) and consent given, documented and tabled in Parliament
- Article 78 – is amended to ensure that disputes on customary land must be dealt with under custom rather than in the formal legal sector – i.e. removing the right of appeal to the Supreme Court

Land Reform Amendment Act

- Major changes on removal of the Ministerial power to sign off on any land dealings.

Land Leases Act Amendment

- Recognition of the interest of custom owners
- Removed “Land owners” and inserted “Custom owners” (Individualism has been removed from the Act to groupings (Custom owners)).

Custom Land Management Act (Repeal of the Customary Land Tribunal Act)

- Provides a process of identifying custom owners (places the responsibility on custom institutions to identify custom owners and resolves disputes)
- A clear and more transparent way of obtaining a lease – reducing the possibility of disputes
- A tighter process that provides for greater control of development leading to improved environmental sustainability
- Led to the formation of the Customary Land Management Office – replacing the Customary Land Tribunal Unit.

The chief intent of the legislative changes was to afford greater protection to custom owners and to modify/reduce Ministerial powers.

Practical Support

Having provided funding support to the land reform consultation process, the Land Program redefined program activities and diverted resources to assist with implementation of the new laws.

Working with key partners (e.g. the newly-formed Customary Land Management Office and the Malvatumauri National Council of Chiefs, as well as the Department of Lands), efforts focused on building



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



capacity among the institutions responsible for implementation of the new laws. Alongside this, the Ministry of Lands and the Ministry of Justice set about working on implementation practicalities – appointing a consultant to consider the fiscal implications of the new laws, while at the same time appointing an “implementation manager” tasked with preparing an implementation plan.

The support provided through the Land Program included:

- ongoing funding for six Provincial Custom Lands Officer (CLO) positions under the terms of a Memorandum of Understanding between the Land Program and the Ministry of Justice (Under the new land laws, the CLOs would play a key role in the process of custom owner determination.)
- contracting a Ni-Vanuatu administrator to prepare publicity material, cartoon based process flow charts and other general information relating to the new land laws.
- contracting a Ni-Vanuatu training consultant tasked with preparing training modules and materials for use by the CLOs to train Chiefs, adjudicators, secretaries, heads of nakamals, island court justices and community land officers funding support and technical input to a series of workshops designed to raise the awareness of roles, responsibilities and procedures arising from the new land laws.

A key feature of the support was the emphasis on collaboration involving staff of the Customary Land Management Office, Malvatumauri, Department of Lands (Port Vila and Santo), Ministry of Justice, Island Court, Provincial Planning Officers and other stakeholders as invited guests. The Land Program provided direct support to a number of important workshops:

April 2014: A one-week familiarisation workshop in Port Vila - the objective of which was to familiarise all stakeholders with the new land laws and their roles and responsibilities arising from the laws.

September 2014: A workshop designed to review newly-created training modules and materials devised by the training consultant.

September 2014: A workshop designed to review the new forms introduced as a result of the new laws, as well as a general review (walk through) of the revised lease application processes and procedures under the Land Reform (Amendment) Act. The Workshop included presentations on the reform process by the Honourable Minister of Lands and Professor Don Patterson of University of the South Pacific.

October 2014: A workshop that enabled the six provincial CLOs to be trained as trainers - using the materials developed by the training consultant.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



2015 - Support to outreach, awareness and training activities established following formal launch of the new laws – see below.

In addition to the above, the Land Program also provided both input and practical support to an Oversight Implementation Committee (OIC) set up by the GoV as a subcommittee of the Vanuatu Land Governance Committee. The OIC was tasked with meeting regularly to oversee the planning and successful implementation of the new laws. Both the Program Director and the Land Sector Governance Adviser have been appointed to the committee.

Promulgation and Launch

In January 2015, the Ministries of Lands and Justice hosted a joint press conference announcing the commencement of the implementation of the new land laws. The OIC, with Ministerial support, determined that implementation would proceed with community outreach and awareness followed by training on the new laws for chiefs, adjudicators and secretaries – with the outreach and training being delivered by teams of staff comprising representatives of the two implementing ministries supported by the Land Program.

The initial outreach and training focused on predetermined pilot sites that were subject to new applications for a lease over customary land. Ten pilot sites were agreed by the OIC; six on the island of Efate, two on the island of Santo, one on the island of Malekula, and one on the island of Tanna.

Between February 2015 and July 2015 (and notwithstanding a two month cessation of activity following the devastation caused by Tropical Cyclone Pam), the Land Program provided funding support and input into 20 outreach and awareness events and seven training workshops.

Issues and Challenges

Over the course of the final 18 months of the Land Program, the implementation of the reforms faced many issues and challenges. The initial focus on rapid consultation along with preparation and gazettal of constitutional changes and new laws took little account of implementation practicalities. Given Vanuatu's often volatile political landscape, perhaps this was understandably and driven by political expediency. In itself, however, this doesn't negate the need for proper planning. The failure to take a holistic approach to implementation, to consider not only the legislative framework, but also the operational practicalities, led to a drawn out and, at times, ad-hoc approach. Some two years after the laws were passed by parliament and 21 months after they were gazetted, not a single application for lease had been processed to completion under the new laws, even though there have been over 50 such applications.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



A root cause of the ad-hoc approach extends from the failure at the outset of the process to develop a proper project plan and to appoint an experienced project manager. No tangible outputs resulted from the GoV's appointment of an "implementation" manager and thus, no detailed consideration was given to matters such as current and future capacity requirements, staffing requirements, budgets, time lines, objectives and goals and monitoring and evaluation. A situation thus arose whereby many of the issues and failings that accompanied the implementation of the Customary Land Tribunal Act in 2001 were repeated. This caused implementation to become a drawn-out affair without sufficient coordination and activity sequencing and ongoing problems with budgeting and financing of the reform.

The Land Program, for its part, lobbied for the development of a formal project plan, while at the same time working with program partners to support practical inputs that would move the process of implementation forward. The support included the provision of funding for capacity building, outreach and awareness and training.

From the outset, the Land Program's involvement with the reform process, including the initial consultation and drafting of laws to the preparation of guidance material and flow charts covering the new processes and procedures, gave rise to numerous concerns.

The new laws, principally the Customary Land Management Act and Land Reform (Amendment) Act, redefine the process for the determination of custom owners. Similar to the previous legislation, custom owner determination is a prerequisite to being able to negotiate with a custom group in order to obtain a lease. The process of determination of ownership centres on the "nakamal" – this being defined in the Customary Land Management Act as "a customary institution that operates as the seat of governance for a particular area". The processes established under the new laws set out various statutory notice and negotiating periods in which the process of determination of ownership and the negotiation of a lease is carried out. Taking these statutory notice and negotiating periods into account, the Land Program calculated that a potential lessee would be lucky to obtain a lease in 18 months under the new process, assumes that all aspects of the procedure ran smoothly with no disputes. The Land Program voiced concerns as to whether this time frame would suit the needs of investors and their financiers – a concern shared by members of the local Chamber of Commerce.

A further concern centred on the charging of fees associated with the new procedures. This was another aspect of the reform that wasn't given sufficient attention pre-implementation and, as a result, there remains no transparency concerning what fees will be levied for the new processes and whether government will bear certain costs or whether such costs will be passed on to a potential lessee? Land Program attempts to



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



settle the matter were unsuccessful with the issue being passed between the Ministries involved and no one making a ruling or decision. The issue of fees is fundamental to the success or otherwise of the reforms. If the government is going to bear some of the cost, where is the money going to come from? If the potential lessee is going to bear the cost then what is the appropriate level of affordability? Many of the current lease applicants are not large-scale overseas investors but Ni Vanuatu people attempting to establish local small- and medium-size business ventures.

The Land Program also asked whether or not the new laws would lead to better outcomes than those replaced in terms of access to justice and the resolution of matters of ownership and dispute resolution. This concern touched on a number of issues. With the reforms placing emphasis on communal, rather than individual ownership, it was interesting to note that during the outreach and awareness sessions on the island of Efate a number of chiefs made it clear that, as far as they were concerned, there were areas within their communities that they held as individual owners – with some producing documentation in the form of court rulings from the 1980s and 1990s as evidence of such. Such instances imply that while the notion that all custom land in Vanuatu is communally held, the reality on the ground may be somewhat different.

While the empowerment of custom owners to make decisions in respect of their land is extremely well intentioned, the effectiveness of the decision-making process (which according to the new laws will be based upon consensus), remains to be seen. Experience gained during the outreach awareness and training sessions tends to support a position that, in some communities, decision making will still remain in the hands of a few key chiefs and community elders.

Other challenges and issues that emerged during the outreach awareness and training sessions included confusion as to what actually constitutes a “nakamal” – particularly in the context of trying to define it within a legal framework. With the concept of the nakamal being so fundamental to the operation of the new laws (in particular the process of custom owner determination) it was surprising to hear communities debate what the term actually referred to with various interpretations including chiefly title, clan and land area. A debate on the island of Efate concerning the actual number of “custom areas” with some chiefs arguing that there were only two custom areas, and others arguing four. On the island of Santo, a debate broke out regarding the number of nakamals within a customary area and which one, if any, was the supreme nakamal. The delineation of custom boundaries was also questioned with concerns raised about the capability of the Customary Land Management Office to carry out this task. Given the fact that the reforms are built upon the pre-eminence of the nakamal, some of these issues, while not insurmountable, could easily delay or derail the process.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



In practical terms, and of particular concern to the Land Program, was the cost of carrying out activities associated with the new processes and procedures. The Customary Land Management Office is centralised in Port Vila with, in most instances, a single representative (Customary Land Officer) in each of the six provinces. Given the geographic separation and distribution of the Vanuatu islands, the cost of carrying out outreach and training across the provinces using staff from Port Vila is considerable – with the average cost of running a five day training event running up to AUD \$7,000. Given the competing priorities that the GoV faces post Cyclone Pam, the concern remains as to whether the government is able to sustain this approach beyond the completion of the Land Program, or whether a simpler more cost-effective methodology must be identified and implemented. Furthermore, the legislative requirements contained in the Land Reform Amendment Act regarding the placement of public notice boards and use of other media announcements (in respect of the notice periods for custom ownership determination and notification to register a lease) add further substantial costs to the process that will either have to be covered by government or passed on to the applicant.

The selection process for adjudicators (key members of the community who will oversee the custom owner determination process and assist with mediation of disputes) caused much debate and argument among the target communities with criticism that the choice of the adjudicators is influenced by bias, cronyism and nepotism of the village chiefs. It is of course difficult to determine if this is true or not; however, the Customary Land Management Office will have to pursue a modified process that will involve publication of the names of those chosen as adjudicators for community perusal and agreement/objection prior to any training commencing. The success or otherwise of this process remains to be seen with the concern being that this will add a further time delay to an already overly long process.

Obtaining consistent and meaningful representation by all members of the community, including women and youth, was often a challenge – particularly in areas where meetings were held in the nakamal which were deemed off limits to women. This was despite very useful assistance in the form of guidelines provided by the Department of Women's Affairs.

Finally, a lack of coordination between the Department of Lands and the Customary Land Management Office with regard to following and maintaining the progress of implementation of the pilots meant that the Land Program experienced considerable difficulty determining the status of each of the pilot site applications (or any applications lodged subsequently) as no system was/is in place to monitor such progress. The situation has, in the view of the Land Program, not only been exacerbated by the lack of an



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



implementation plan that clearly sets out roles and responsibilities, but has also been caused by poor administrative practices and a lack of due care and attention to process.

While none of the aforementioned challenges and issues are of themselves impossible to overcome, they serve to illustrate that – even with the best intentions and a political champion – implementing land reform is challenging and requires a concerted effort and collaboration on the part of all stakeholders to maintain momentum, as well as the ability to compromise to achieve workable solutions.

Addressing the Issues

As a part of the implementation effort and having identified the issues and challenges as a result of its own monitoring and evaluation activity the Land Program set about working with implementation partners to address them. In June 2015 however just as momentum was being gained there was a change of government.

The newly installed government made clear its position on the reforms when in an interview with the national newspaper newly appointed Minister of Lands Telekluk (2015) identified the repeal of the 2013/14 land reform a policy priority. In light of this and after having providing considerable support to the reform initiative the Australian Government decided not to extend the land program beyond 2015.

For many the change of government along with decision to close the Land Program signalled the end of the reform initiative. But no sooner had the new government taken power when it became entangled in a political scandal that resulted in a general election in early 2016. This led to another change of Government and the architect of the land reform initiative being reinstated as Minister of Lands.

With the former Minister back in place the reform initiative was given a new lease of life. In the absence of donor support the Government was forced into preparing a revised implementation plan based upon an incremental approach that focused on those islands where applications for lease had already been submitted and that also took account of financial and resource constraints imposed by the government budget.

Now, three years on from the commencement of the reform program, progress is again being made. While some of the issues have yet to be resolved a year after completion of the Land Program and as part of the government's '100 Day Plan' Narayan (2016) writing in the Daily Post, reports a “twist to the much criticized land reform policy of the government following the issuance of the first ever negotiating certificate for a lease application for a rural custom land”. The article goes on to mention that work has also started on identifying custom governance structures and boundaries on four islands.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Conclusion

While the reforms haven't led to the chaos predicted by some and implementation progress has been made, they have also served to reignite what has sometimes been a latent but often fractious and polarised debate concerning the protection of customary land vs. development.

The 2006 Land Summit and resulting resolutions may well have offered the prospect of an airing of opinions and a settling of differences over land issues and yet in many ways and despite recent reform efforts the seemingly ideological rift between the protection of customary land vs. development remains.

The Making Land Work (2008) publication referenced earlier in this paper made reference to there being 'battle lines' between these opposing views but concluded "While the debate is far from over, the (land) summit and follow-up activities mean the issues are now on the table and the resolution process under way".

Over a decade on from the Land Summit it appears that the 'resolution process' remains a work in progress and that opinions concerning the direction of land policy are as divided as ever reinforcing the view that custom and economic development are mutually exclusive. On the one hand organisations such as The Melanesian Indigenous Defence Alliance (MILDA) (2014) have declared "We oppose any form of alienation of land and sea from customary landowners, whether by outright sale, leases or acquisition which remove landowners' capacity to effectively control, access and use their land and sea" while on the other side of the debate the private sector, investors and businesses in general represented through the likes of the VCCI remain 'anxious' about the new land laws and their potential effect of investment and economic development.

Whether the reforms thus represent a "new paradigm" that can be described as being both innovative and representing a 'middle way' remains open to question. If one can accept that innovation isn't necessarily a time bound concept then it can be argued that the current reform process represents the latest manifestation of an innovative process that began in 1980 with the constitutional enshrinement of indigenous land rights and that continues to this day.

Given the paramount importance and seeming reverence with which custom is still held to this day there is no doubt in the authors mind that the Government of Vanuatu will continue to grapple with what was described by Larmour, as cited by Kingdon and Ward (1995), as the "double bind"; striving to find a balance between the protection of customary land rights, while allowing for development that can create opportunities and employment for its citizens. The land reform process that began with the constitution will no doubt continue. Whether or not it ever achieves a desired balance remains to be seen. One thing is for



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



certain, the polarisation of the debate into pro- and anti-development factions will ultimately serve no one, making it ever more essential to find the ‘middle way’. As the Minister of Lands Housing and Survey for Vanuatu’s close Melanesian neighbour, Solomon Islands, is quoted by McDonnell (2015) as saying “... The only hope for the future is to find a system where people can allow development but still feel comfortable in their daily existence with their connection to the land”. In the context of Pacific land tenure only time will tell if this proves to be a realistic aspiration and that such a system can ever be devised.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



REFERENCES

AID/WATCH., (2010) *In Defense of Melanesian Customary Land*. Sydney, Australia:

AusAID., (2008) *Making Land Work Volume II; Case studies on customary land and development in the Pacific*. Canberra, Australia: Commonwealth of Australia

Kingdon, Elizabeth., Ward, Gerrard R. (1995) *Land Custom and Practice in the South Pacific*. Cambridge, England: Cambridge University Press

Lunnay, Chris., Fingleton, Jim., Mangawai., Michael, Nalyal., Edward, Simo, Joel. (2007). *Vanuatu: Review of National Land Legislation, Policy and Administration*. A report prepared for AusAID.

McDonnell, Siobahn. (2014). *Better protection for customary owners: Key changes in Vanuatu's new land legislation*. Outrigger: Blog of the Pacific Institute. Retrieved 23 September 2015 from <http://pacificinstitute.anu.edu.au/outrigger/2014/03/04/better-protection-for-custom-owners-key-changes-in-vanuatus-new-land-legislation/>

McDonnell, Siobahn. (2015). *Building a pathway to successful land reform in Solomon Islands*. A report prepared for the Solomon Islands Government. Port Vila, Vanuatu: Blue Planet Media +Communications

Melanesian Indigenous Defence Alliance (MILDA). (2014) Lepita Declaration Press Release. Retrieved 16 September 2016 from <https://awasmiffee.potager.org/?p=799>

Mundle, Rob. (2014). *Cook: From Sailor to Legend -The Story of Captain James Cook*. Sydney, Australia: ABC Books.

Narayan, Rita. (2016). First Negotiator Certificates for customary land issued *Loop: Your news now*. Retrieved 30 August 2016 from <http://www.loopvanuatu.com/content/first-negotiators-certificates-customary-land-issued>

Regenvanu, Ralph. (2008). *Issues With Land Reform in Vanuatu. Volume 12(1)* Journal of South Pacific Law (2008) p. 63.

Rice, Edward. (1974). *John Frum He Come: Cargo Cults and Cargo Messiahs in the South Pacific*. New York, USA: Doubleday and Co

Scott, Sue., Stefanova, Milena., Naupa, Anna., Vurobaravu, Karaeviti. (2012). *Vanuatu National Leasing Profile: A Preliminary Analysis*. Justice for the Poor Discussion Note Volume 7, Issue 1, The World Bank

Stefanova, Milena., Porter, Raewyn., Dixon, Rod. (2012). *Towards More Equitable Land Governance in Vanuatu: Ensuring Fair Land Dealings for Customary Groups*. Justice for the Poor Discussion Note, The World Bank p.15.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Telekluk, Hon Minister Paul., Minister of Lands, Vanuatu. (2015, June 27). Telekluk outlines five Lands Ministry priorities. Interview by Ligo, G., For the *The Daily Post*. Retrieved 30 August 2016 from http://dailypost.vu/news/telekluk-outlines-five-lands-ministry-priorities/article_7da1b99d-afdc-5d8a-8bd8-b73a8989150a.html

Tom'tavala, Yoli. (2013). *Background Information and Data for the Land Governance Assessment Framework (LGAF) in Vanuatu*.

Wikipedia – Retrieved 23 September 2015 from <https://en.wikipedia.org/wiki/Vanuatu>

Contact

John Meadows

Land Equity International Pty Ltd

Suite 12, 74 Kembla Street, Wollongong, 2500, NSW, Australia

Tel. + 61 407 404 035

Email: jmeadows@landequity.com.au

Web site: www.landequity.com.au